Justice Deflected:

The Uses and Abuses of Local Transitional Justice Processes

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Abstract

In recent years, there has been a noticeable turn towards the "local" in both the practice and academic study of transitional justice, exemplified by a belief that local transitional justice processes (LTJPs) are superior because they are rooted in cultural practices and closer to the communities and people seeking justice. However, this assumption, and the existing literature on these local initiatives, pays insufficient attention to asymmetric power relations between national and local actors and to the unseen domestic political interests that shape local transitional justice processes on the ground. By taking these factors into account, this dissertation contends that LTJPs can be used paradoxically to *deflect* justice in ways that allow ruling parties to avoid human rights accountability and that obscure the truth about wartime events. The dissertation further argues that the principal means by which justice is deflected is not through overt manipulation by ruling parties, but rather, through more indirect processes of "distortional framing" that ruling parties use to establish discursive limits around discussions of the past and to conceal their own human rights abuses. The cases of Cambodia and Mozambique are examined in detail to reveal and to trace the processes by which distortional framing has been employed as a tactic to deflect justice. This dissertation contributes to the study of transitional justice, not only by challenging the prevailing assumption that LTJPs are inherently preferable because they are more "authentic" or closer to the people, but by providing a novel explanation of how these processes can be manipulated to subvert their own stated goal of advancing the cause of justice, and by providing a detailed account of these distortionary processes at work in two post-conflict countries located on two different continents.

Acknowledgements

The premise for this dissertation grew from my first encounter with Rosalind Shaw and Lars Waldorf's seminal book *Localizing Transitional Justice* as a Master's student at the University of Western Ontario in 2009. Initially captivated by the potential of local TJ, I soon became perplexed by their complexities and unintended consequences, which took me on this rewarding seven-year long journey. I'm beholden to an "army" of individuals without whom achieving an undertaking of this magnitude and duration is unimaginable. Nonetheless, any shortcomings are my own.

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Susan Khazaeli and Chris Leite have been friends and colleagues since day one. Susan has been a trusted pal and reliable study partner from the start. I sometimes wonder how we survived an entire summer locked up in DMS together scribbling on chart paper

List of Acronyms

AGP	*Acordo Geral de Paz*
AIM	Mozambican News Agency
ANS	*Armée Nationaliste Sihanoukienne*
ARES	Rebuilding Hope
CAVR	Commission for Truth, Reception and Reconciliation
CCM	Christian Council of Mozambique
CDP	Cambodian Defenders Project
CGDK	Coalition Government of Democratic Kampuchea
CPK	Communist Party of Kampuchea
CPLC	Civil Party Lead Co-Lawyer Section
CPP	Cambodian People's Party
CRP	Community Reconciliation Process
DC-Cam	Documentation Center of Cambodia
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia
FADM	Mozambique Defence Armed Forces
FRELIMO	*Frente de Libertação de Moçambique*
FRETELIN	*Frente Revolucionária de Timor-Leste Independente*
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia
GBV	Gender-based violence
GIZ	*Gesellschaft für Internationale Zusammenarbeit*
HRW	Human Rights Watch
ICC	International Criminal Court
ICfC	International Center for Conciliation
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally displaced person
KdK	*Kdei Karuna*
KPNLF	Khmer People's National Liberation Front
KR	Khmer Rouge
LRA	Lord's Resistance Army
LTJP	Local transitional justice process
MNR	Mozambican National Resistance
NGO	Non-governmental organization
NRM	National Resistance Movement
ONUMOZ	United Nations Operation in Mozambique
OSJI	Open Society Justice Initiative
PPA	Paris Peace Agreement
PRIO	Peace Research Institute Oslo
PRK	People's Republic of Kampuchea
PTSD	Post-traumatic stress disorder
RENAMO	*Resistência Nacional Moçambicana*

RGC	Royal Government of Cambodia
RPF	Rwandan Patriotic Front
RUF	Revolutionary United Front
SADF	South African Defence Force
SISE	Mozambique Intelligence and Security Service
TC	Truth commission
TJ	Transitional justice
TJRC	Transitional Justice Research Collaborative
TPO	Transcultural Psychosocial Organization Cambodia
TRC	Truth and reconciliation commission
TT	Testimonial therapy
UCDP	Uppsala Conflict Data Program
UN	United Nations
UNDP	United Nations Development Programme
UNTAC	United Nations Transitional Authority in Cambodia
UNTAET	United Nations Transitional Administration in East Timor
US	United States
USAID	United States Agency for International Development
YfP	Youth for Peace Cambodia
VSS	Victim Support Section

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INTRODUCTION

The matter of how to address the human rights abuses of past regimes or in the wake of violent civil war is one of the most difficult dilemmas facing contemporary governments and policy makers. Transitional justice (TJ), as the field is known, is an enormous area of policy and practice that has been the object of intense academic research for more than two decades. States making the perilous transition from war to peace, or from an authoritarian regime to democracy, are increasingly asked to make difficult choices about how to bring perpetrators to justice and whether to reveal the truth about a period of mass violence and repression. In fact, it is now uncommon for any state to undergo a political or post-conflict transition without confronting calls for justice, often resulting in trials, a truth commission (TC), or another TJ measure.

Accordingly, the practice of TJ has expanded significantly in terms of the number of TJ mechanisms and the size and reach of international non-governmental organizations (NGOs) working on TJ issues. The number of trials of former heads of state or government has seen a meteoric rise since the end of the Cold War. While only a handful of senior government leaders were prosecuted for serious human rights violations in the 1970s and 1980s, an astonishing 67 human rights trials of former heads of state or government occurred between 1990 and 2008 (Lutz and Reiger 2009). The use of TCs has also proliferated during this period: whereas only six TCs were launched before 1990, more than three dozen TCs have been created in a variety of transitional contexts since then (Hayner 2010; Wiebelhaus-Brahm 2010).

The scope and influence of international TJ advocacy has also noticeably changed and intensified during this time (see Boesenecker and Vinjamuri 2011; Subotic 2012).

While major international NGOs such as Human Rights Watch (HRW) and Amnesty International maintain dedicated TJ programs, and have been active proponents of accountability for decades, several new NGOs were established in the mid-1990s and early 2000s committed entirely to TJ issues, most notably the Center for Justice and Accountability, the International Center for Transitional Justice (ICTJ) and the Open Society Justice Initiative (OSJI). As a result of the remarkable expansion and institutionalization of the field, the "no-action" option is no longer considered viable and the issue of how to address human rights abuses has featured prominently in transitions, including the most recent ones in Colombia, Myanmar, Sri Lanka and Tunisia.

The academic study of TJ is also burgeoning. There is now an academic journal dedicated exclusively to the field: *International Journal for Transitional Justice*. Numerous leading universities around the world have created academic research centers and scholarly networks for TJ.[1] Many offer undergraduate and graduate courses on the subject, and some even have degree programs in TJ. A simple Google Scholar search of scholarly articles on "Transitional Justice" yields five publications in 1990, 153 in 2000, 781 in 2005, 2,490 in 2010 and a remarkable 4,320 in 2015.

The use of amnesties, for example, has attracted significant scholarly interest (Lessa and Payne 2012; Mallinder 2008; Snyder and Vinjamuri 2003). The impact of TJ mechanisms on democracy, human rights promotion, peace and reconciliation, and deterrence of future violations, has also been a noteworthy area of scholarly inquiry

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[1] Some of the more prominent research centers are the Program on Transitional Justice at the Carr Center for Human Rights Policy at Harvard University, Oxford Transitional Justice Research at the University of Oxford, the Transitional Justice Institute at Ulster University and the Centre for Transitional Justice and Post-Conflict Reconstruction at Western University.

(Gibson 2004; Kim and Sikkink 2010; Olsen, Payne, and Reiter 2010; Sikkink and Walling 2007; Wiebelhaus-Brahm 2010). Some scholars have sought to connect the expansion of the field to broader shifts in world politics in the post-Cold War era and to explain the rapid proliferation of trials and TCs on a global scale (Kim 2012; Sikkink 2011; Sikkink and Kim 2013)—a trend that has been characterized as a "justice cascade" (Lutz and Sikkink 2001) and as a "revolution in accountability" (Sriram 2005).

However, in other respects the scope of this literature has been limited. The vast majority of scholarly writings have centered on *state*-level TJ measures and have examined just a single mechanism—usually trials or a TC (see Backer 2009; Thoms, Ron, and Paris 2010). Much less attention has been devoted to the variety of TJ methods at the *local* level, including traditional courts, healing and reintegration rituals, truth-telling initiatives, reparations, and memorialization projects. Numerous transitional countries rely, in particular, on a range of customary conflict resolution mechanisms that have been used to tackle TJ issues. In post-conflict Burundi, for example, traditional *bashingantahe* councils, a customary conflict-resolution institution, play a vital role in mediating day-to-day disputes (Ingelaere and Kohlhagen 2012). The Acholi people of northern Uganda use several traditional rituals to resolve conflicts, the most well documented being *mato oput*, which is used to bring reconciliation and restore social harmony between the clan of a victim and the perpetrator (Baines 2007; Finnström 2010; Quinn 2007). Healing, cleansing and reintegration rituals have also been used in several countries to address wartime trauma and reintegrate child soldiers, most notably in Mozambique (Honwana 2006; Igreja 2003, 2012) and in Sierra Leone (Shaw 2007; Stovel 2008). Local memorialization projects are also evident in a number of post-war

societies. For example, several Guatemalan communities have initiated "houses of memory" to record atrocities and remember those killed during the war (Arriaza and Roht-Arriaza 2008). Similar spontaneous valorization efforts have been documented in towns across Timor-Leste (L. Kent 2011).

Other local TJ processes have been syncretic or hybrid, mixing traditional practices with ideas imported from elsewhere. Indeed, there has been a flurry of activity over the past decade involving international, national and local actors promoting, adapting, reviving or borrowing customary methods to deal with TJ issues. For example, the United Nations Transitional Administration in East Timor (UNTAET) incorporated a Timorese dispute resolution mechanism, *nahe biti*, into the Commission for Reception, Truth and Reconciliation process to address less serious crimes and to agree on adequate forms of reparations (Babo-Soares 2004; Burgess 2006). Several governments have also turned to traditional methods to address TJ concerns, the best-known example being the *gacaca* courts in Rwanda (Clark 2010; Longman 2006). *Gacaca* involved laypersons working as judges who presided over community hearings where they listened to testimonies and strived to achieve justice and reconciliation for victims of the Rwandan genocide.

In many instances, NGOs also have played a prominent role in promoting locally-rooted TJ. For example, the Sierra Leonean NGO Forum of Conscience partnered with the US foundation Catalyst for Peace to launch *fambul tok*, a community-level forum that facilitates dialogue and reconciliation in Sierra Leone (Friedman 2015; Park 2010). Similarly, the Danish human rights institute Dignity has partnered with the Cambodian NGO Transcultural Psychosocial Organization (TPO) to initiate a culturally-adapted

trauma therapy method that encourages truth-telling and provides healing to Civil Parties of the Extraordinary Chambers in the Courts of Cambodia (ECCC) (Agger et al. 2012; Poluda, Strasser, and Chhim 2012).

Capturing the universe of existing TJ practice, therefore, requires looking beyond state-level mechanisms, such as trials and TCs, and recognizing the diversity of local TJ initiatives that straddle international, national and local boundaries and that combine various aspects of justice, truth-telling, reparation, forgiveness and memory.

Existing Scholarship on Local Transitional Justice Processes

Among the studies that have examined TJ at the local level, most have taken a sanguine view of the cultural and practical advantages of "localizing" TJ, arguing that local transitional justice processes (LTJPs) are more culturally relevant, expedient, cost-effective, practical, and closer to the victims, and that they have the potential to foster reconciliation. Despite caveats that "it is important not to romanticize the local" (Gready and Robins 2014, 349), most scholars have uncritically lauded local TJ practices and their purported advantages as a response to past wrongs.

These positive assessments are based, in particular, on three main assumptions about local TJ practices: their purported cultural relevance, ability to build social capital, and practicality compared to state-level TJ institutions. Above all, local mechanisms are assumed to be more culturally appropriate than Western models such as trials and TCs. One researcher goes so far as to claim that "[traditional] practices, in fact, have more formal authority than comparable Western models" (Quinn 2007, 401). Another pair of analysts asserts that LTJPs' closeness to the local population allows them to "tap more easily into the agency of survivors and be less prone to large-scale patronage and

corruption" (Arriaza and Roht-Arriaza 2008, 153). Scholars and practitioners have further touted the ability of local TJ mechanisms to knit back together the fabric of societies torn apart by war. Theidon (2006), for instance, has argued that they can play a role in healing divides between victims and perpetrators who now live in close quarters to each other after a civil conflict. Still others have praised the capacity of local measures to restore social harmony and relationships in the present life (Quinn 2007) and with the spiritual worlds (Baines 2010; Igreja 2012).

Local TJ mechanisms also tend to be seen as particularly useful for dealing with mid-level and rank-and-file perpetrators, particularly in the context of mass crimes, where the formal judicial system may be overloaded and where resources are generally scarce and subject to other urgent reconstruction priorities, such as health care and rebuilding public infrastructure (Burgess 2006; Longman 2006). In addition, local mechanisms are often considered more cost effective and efficient compared to the exorbitant budgets and lengthy proceedings of trials and TCs, perhaps with good reason: the *gacaca* courts, for instance, heard nearly two million cases at a total cost of US$48.5 million (Gacaca Community Justice 2015), whereas the budget for the International Criminal Tribunal for Rwanda has exceeded $1 billion to complete 75 cases—a cost of US$10 to 15 million per case (Skilbeck 2008).

Importantly, however, while the vast majority of existing scholarship has tended to see these local TJ measures in a positive light, there is little empirical evidence to support these claims. Indeed, the use of local TJ initiatives remains understudied. As Weinstein et al. (2010, 30) point out: "No one has yet demonstrated that this approach is relevant across cultures or nations." Furthermore, the relatively limited amount of

academic research on this subject has suffered from two major shortcomings: First, most studies have explored local TJ mechanisms as judicial (or quasi-judicial) rather than political instruments and have focused narrowly on the local context of these processes, thereby overlooking or even masking the power dynamics at play between international, national and local actors. Second, although some studies have been critical of the TJ paradigm writ large, very few have problematized or challenged the assumption that *localizing* TJ is an inherently desirable objective and an effective way to promote justice after civil war. The few who have challenged this claim, moreover, have focused overwhelmingly on one prominent case—the *gacaca* courts in Rwanda (Chakravarty 2016; Ingelaere 2008; Thomson and Nagy 2011; Waldorf 2006)—or, to a lesser extent, the Acholi reconciliation practices in Uganda (Allen 2010; Finnström 2010).

These multiple shortcomings in the existing literature on local TJ have left a number of vital research questions unanswered, including: How are local methods being used in practice? Are there identifiable patterns and trends in the use of local TJ processes across regions, cultures and political contexts? Why are certain local TJ instruments pursued and not others? What are the political and practical considerations underlying the decision to "go local" or to initiate a grassroots TJ process? Is there an instrumental logic driving their use? Who gets to lead these practices, who gets to take part, and who is excluded? What is the impact of these processes on justice outcomes? Are certain local TJ methods more likely or less likely to promote the truth and justice, and what are the implications of different local methods?

There is a need to scrutinize these questions at a time when local TJ processes are being increasingly endorsed by practitioners and scholars. This dissertation, therefore,

takes stock of how certain local measures are used by powerful political actors, for what purposes and to what effect, in order to offer new insights into the political dynamics of localized TJ—not as these process are imagined or idealized, but rather, as they play out in practice. I pose, in particular, the following research questions: 1) Are local TJ processes manipulated by powerful actors to realize their own self-interested goals, other than obtaining justice and the truth? 2) How does this manipulation occur? 3) What is the impact of such manipulation on the outcomes of local TJ processes?

Main Argument

The principal contention of this dissertation is that some regimes use local TJ processes to insulate their own members or allies from being held accountable for previous human rights abuses—in other words, they use local TJ in order to *deflect* justice. Although some scholars have studied the manipulation of local TJ processes, there is still little understanding of how this type of manipulation takes place—that is, the motives and methods of "justice deflection"—and what the implications of such manipulation may be for justice outcomes. In particular, scholars examining political interference in TJ processes have typically assumed that it involves direct coercion by state authorities. I contend, however, that this manipulation can be indirect: specifically, a ruling party can use various techniques to shape the *narrative* surrounding a local TJ process in ways that distort the truth and protect the regime, itself, and its political allies from investigation or prosecution. I call this a "distortional framing" strategy.

The main purpose of this distortional framing strategy, I argue, is to place temporal limits on discussions about the past, and thus to stake out rigid boundaries regarding who can claim victim or perpetrator status, in order to omit human rights

violations carried out by the ruling party. This type of temporal restriction allows the regime to direct attention away from times when it may have committed atrocities, either as a rebel group or during counterinsurgency operations against belligerents. Casting wartime identities into binary categories of victims and perpetrators also permits the ruling party to eliminate moral grey zones that might otherwise implicate political elites and, instead, to place responsibility on an opposing group for all violations perpetrated during the war. It follows that local TJ measures are liable to be instrumentalized where political elites have themselves been entangled in previous wartime abuses ("the motive") and where they possess the ability to pursue distortional framing strategies ("the means"). Specifically, when a ruling party's apparatus extends all the way down to the village level, it has the means to discipline TJ discourse and to promote a narrative of wartime events, and thus to cast the ruling party in positive terms while deflecting attention away from the role of state agents in past human rights abuses.

By examining the cases of Cambodia and Mozambique, this dissertation provides the first in-depth examination of distortional framing as a technique for deflecting transitional justice at the local level. The ruling parties in both countries have sought to manipulate, and have succeeded in influencing, local TJ processes by setting a discursive frame that effectively imposes temporal limits on discussions about the past as well as establishes rigid boundaries around who can claim the status of either victim or perpetrator. In both cases, these strategies have been pursued deliberately, and have served to insulate political elites from human rights accountability, while also obscuring important parts of the historical record that are inimical to the interests of the ruling party.

In short, these distortional tactics are being used, and they can have serious consequences for both justice and the truth in societies that are recovering from war.

Theoretical Approach

As I shall explain in Chapter 2, my argument rests on a theoretical approach that builds on Erving Goffman's (1974) frame analysis, which is widely employed by interpretive scholars in a number of disciplines. Frames are "schemata of interpretation" that give meaning to events (Goffman 1974, 21). As such, frames allow people to identify and process events in their lives and decide how they will respond. Frame analysis presents a lens to examine what is going on and discern what is salient by considering how narratives surrounding a given event, or set of experiences, are framed by certain understandings and discourses.

The way in which an issue is framed can also sanction, enable or justify certain policy responses and practices, while excluding others (Autesserre 2012). In other words, frames "shape people's views on what counts as a problem and what does not … which events will be noticed and which will not, as well as how they will be interpreted" (Autesserre 2009, 254). They also prescribe some solutions based on how a problem is defined, where blame is assigned, and how a chain of events is understood. The corrective actions taken, in turn, can serve to solidify the frame, which over time may achieve a taken-for-granted quality and become the dominant narrative encapsulating the prevailing understanding of an event. Hence, the study of discursive frames offers a useful theoretical tool to grasp how policy makers understand a particular issue and the menu of available policy options.

Narratives play an important role for outside and local actors working in post-war settings. As Séverine Autesserre (2012, 212) explains: "narratives are necessary for policy makers, journalists, advocacy groups, and practitioners on the ground." They help make sense of extremely complex issues and suggest possible solutions, which is useful for individuals without any prior knowledge of a country's history and culture. This is often the case in post-war settings that receive a large influx of external actors who rotate between conflict zones and rely on the information they receive to identify treatment options and propose solutions. Hunt, Benford and Snow's (1994) concept of "boundary framing" is particularly useful for understanding these circumstances, because it captures the process of delineating collective identities, such as the division between victims and perpetrators.

By employing frame analysis, this dissertation elucidates how discursive constraints serve both to inhibit local TJ processes and to reinforce a strategic frame that protects vulnerable members of the political elite. This type of distortional framing can lead to adverse consequences for TJ, such as shielding abusive regimes from human rights accountability and failing to heal social and political divisions in a society, which in extreme cases may lead to a reversion to fighting.

Alternative Explanations

The dissertation considers, but ultimately rules out, two alternative theoretical explanations for the failure of local TJ processes in Cambodia and Mozambique to yield the truth and contribute to holding key political elites accountable. The first alternative explanation is that discursive restrictions are not deliberate and strategic practices, but unconscious enactments of prevailing norms and understandings. According to this

explanation, which is rooted in mainstream constructivist theory, the regime's support for local TJ processes reflects a "logic of appropriateness" (March and Olsen 1998), meaning that decisions are driven by a resolve to do the "right thing" rather than by an instrumental political calculus or ulterior motives. According to this explanation, the design and discourses surrounding local forms of justice may shelter political elites, but this is an *inadvertent* consequence that reflects principled beliefs and perceptions of what TJ ought to address, not a deliberate strategy to deflect justice.

The second alternative explanation also portrays justice deflection as an unintentional outcome. Specifically, deep-rooted sociocultural norms of forgiveness and silence about the past might explain why discourses arise that place temporal limits on local TJ processes and shield past perpetrators. This alternative explanation recognizes that many non-Western cultures have different customs for dealing with disputes that do not involve direct accusations of wrongdoing, and instead prioritize restoring social harmony and putting the past behind. According to this view, if silence and half-truths about wartime events help the ruling party by protecting its own members and allies, this is an unintentional outcome, reflecting sociocultural norms that emphasize forgiveness and amnesia about the past.

The chapters on Cambodia and Mozambique will consider these alternative explanations and show that they are both inadequate.

Principal Research Findings and Contributions to Scholarship

The two main findings of this dissertation are, first, that ruling parties can use LTJPs to deflect justice, and second, that indirect techniques of distortional framing have been used to accomplish this goal. The case study chapters will demonstrate these distortional

tactics at work in two disparate contexts, one in Southeast Asia and the other in sub-Saharan Africa. As we shall see, the ruling parties in both Cambodia and Mozambique have used framing tactics to set temporal boundaries surrounding discussions of past abuses and to reduce wartime identities into a victim-perpetrator dichotomy. Once these frames were set nationally, they also inhibited local TJ initiatives, resulting in the deflection of justice and obscuring of the historical record in both countries.

By showing that LTJPs can be used to distort, rather than deliver, justice and by exposing how this actually happens through indirect framing methods, this dissertation contributes to the ongoing study of TJ and discursive framing in at least two ways. First, it casts doubt on the prevailing view in the literature that local TJ processes have inherent cultural and practical advantages over national or international TJ instruments. By showing how LTJPs have been manipulated in two very different contexts, the dissertation also suggests that local measures should not be taken at face value, because they are susceptible to elite capture—a conclusion that complements previous findings about elite capture of *state*-level TJ mechanisms, such as trials and TCs (S. Brown and Sriram 2012).

Second, this dissertation emphasizes the need to critically evaluate why some regimes support local TJ, and how hidden power dynamics might influence their use. Doing so requires looking at how LTJPs might reinforce a dominant narrative that insulates political elites and helps the ruling party avoid accountability. It also demands assessing the capacity of the regime to shape LTJPs through local gatekeepers who can discipline the discourse when necessary.

These main contributions are important because they have policy implications for ongoing and future transitions, where local TJ might be considered. It also challenges scholars and practitioners to think more broadly about where else justice deflection may occur. Although the study of LTJPs has commonly focused on sub-Saharan Africa, the Cambodian case study will show that such techniques can also be used in other regions in order to conceal the truth, shelter political elites, and legitimize the ruling party. Hence, the findings caution against the careless promotion of local measures without considering their political consequences. Therefore, in countries where state-level TJ mechanisms are being contested politically and human rights abusers remain in power, it suggests that scholars and practitioners should think more critically about the effects of localizing TJ.

This dissertation also opens several avenues for further research. First, it raises questions about the circumstances that facilitate justice deflection and, conversely, the circumstances that might counteract the tactics of distortional framing. Second, it raises questions about the relationship between LTJPs and state-level TJ mechanisms, their appropriate sequencing, and the extent to which different instruments, such as trials, TCs and amnesties, can enable or inhibit justice efforts on the ground. These questions offer fruitful avenues for further research into the uses and abuses of local transitional justice.

Organization of the Dissertation

The dissertation is divided into two parts. Part One ("Foundations") scrutinizes the "local turn" in TJ and the politics of localizing TJ interventions in the aftermath of mass atrocity. Chapter 1 situates the local turn in the broader development of the TJ field and reviews existing scholarly debates about what forms TJ must take in order to be effective. Chapter 2 presents the main argument and theoretical framework of the dissertation: that

local TJ processes can be deliberately distorted by ruling parties in order to deflect justice, specifically through discursive framing strategies, which 1) set temporal limits on discussions about the past, and 2) depicts the post-war identities of perpetrator and victim as rigid dichotomous categories.

Part Two ("Case Studies") shows the distortional framing strategy at work in Cambodia and Mozambique. Chapter 3 explains my methodology, case selection, and data collection and analysis techniques. Chapter 4 examines the case of Cambodia, a country that emerged from a nearly 30-year-long civil war, which included a major genocide. I demonstrate that a distortional frame was used to influence LTJPs in Cambodia, show how it was enforced locally, and consider the effects of this framing strategy on justice outcomes. I contend, specifically, that the current government, which has been in power since 7 January 1979, has been able to successfully limit discussions of 30 years of conflict to the four-year Khmer Rouge (KR) regime. This has been reinforced by the temporal boundaries of the Extraordinary Chambers in the Courts of Cambodia, which was created to prosecute the senior-most living KR leaders. This frame deliberately overlooks the antecedents and aftermath of the genocide, and puts sole responsibility for all wartime atrocities on the KR leadership. This frame has allowed the ruling party, which has been in office since the removal of the KR in 1979, to avoid responsibility for its own human rights violations during the near three-decade long Cambodian civil war.

Chapter 5 examines how a distortional framing of the Mozambican civil war has shaped memorialization initiatives, psychosocial healing rituals, and the reintegration of ex-combatants at the local level. While Mozambique is typically cited as an example of

"chosen amnesia," I argue that the reluctance to speak about wartime events, above all, reflects a state-imposed directive to bury the past and that LTJPs reinforce this preference. I contend that the ruling party was successfully able to frame the war as one that was triggered by external forces—namely, the aggressive activities of Rhodesia and apartheid-era South Africa to create a rebel movement that sought to destabilize the socialist Mozambican government. This frame deliberately and strategically omits the internal sources of the fighting and casts the insurgents as the only perpetrators of wartime atrocities, while reaffirming the ruling party's claims to legitimacy as liberators of Mozambique from colonial rule. Further, the deflection of justice in Mozambique may have contributed to the renewal of fighting in 2013-14.

The concluding chapter sums up the main findings of the dissertation, offers recommendations for how to mitigate the practical and political pitfalls of localizing TJ, and identifies several avenues for future research on LTJPs.

PART I: Foundations

CHAPTER 1: The "Local Turn" in Transitional Justice

> Due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition.

> – Kofi Annan, United Nations Secretary-General, 2004

Preface

I woke up at dawn on the morning of 20 November 2015 to the sound of roosters crowing and the shimmer of the crimson red sun slicing through the curtains. I had been awaiting this day for a while, as that morning I would be participating in a truth-telling ceremony at the notorious Kraing Ta Chan Security Centre in Tram Kok District, Takéo Province, where over 15,000 people were killed during the KR regime that ruled Cambodia from 1975 to 1979. I crawled out of bed, got dressed, tossed notes, my camera and a few Cliff bars into my bag, and went downstairs to meet my colleagues from the local NGO Youth for Peace (YfP) who would be facilitating today's happening.

After slurping down a bowl of noodles for breakfast, we packed into YfP's white Toyota Land Cruiser and were off. As we zipped through the dusty countryside, I tried to absorb the surrounding sights and sounds: farmers who were already tending to their lush green rice paddies, ponds glittering with lotus flowers, seemingly motionless palm trees towering over village dwellings in the morning haze and mountains rising in the distance along with the sun. We finally arrived at the tiny Ork Pong Village where we met with a group of about 20 Cambodians, some of whom would be sharing their stories at the event later that morning, and were all Civil Parties at the ECCC, the hybrid tribunal established by the UN and Royal Government of Cambodian (RGC) to try the senior-most leadership of the KR.

With the group of ECCC Civil Parties in tow, we completed our trip to Kraing Ta Chan making our way past the eerie barbed wire perimeter wall of the one-time detention centre towards a blanched memorial *stupa* storing the skulls and other remains of victims, which loomed over the complex, a constant reminder of its terrifying past (see Figure 1). Staff members from TPO, a local Cambodian NGO that would be directing the USAID-sponsored truth-telling ceremony, were already on-site. One by one, various community members and other dignitaries trickled in: local schoolchildren and other villagers who wanted to observe the proceedings arrived first; the district governor and village chiefs entered next, followed by Buddhist monks who would be leading the religious ceremony; and, finally, a USAID official and two representatives from the Victim Support Section of the ECCC.

Figure 1: Memorial stupa at Kraing Ta Chan

Source: Author's photograph.

By now, some one hundred people were amassed at the site representing the local, national and international spheres. This diverse collection of individuals coalesced at first on large straw mats laid out in front of the *stupa*, where the monks lead us through a *bang skol*—a Buddhist ceremony that invokes the spirits of those killed. Next, we moved to the adjacent pagoda where TPO guided the truth-telling ceremony where six survivors shared their experiences of life under the KR (see Figure 2). The audience held onto every word of the gripping tales of loss and suffering. At the end of each story, the victim submitted a written account of their testimony to the monks overseeing the ritual, which were penned under the guidance of a TPO counsellor in the days leading up to the event premised on a therapeutic method called "testimonial therapy" that was developed by the Danish NGO Dignity. It was at this point I realized that I was standing at the crossroads of the new TJ landscape where the local, national and international meet.

Figure 2: TPO-led and USAID-funded truth-telling ceremony

Source: Author's photograph.

Introduction

The issue of how to deal with a time of human rights abuses in the wake of authoritarian rule or civil war is one of the most complex and critical priorities in international politics. States transitioning from a repressive regime to democracy or in the delicate post-conflict stage are expected to make difficult choices about whether and how to bring perpetrators to justice, to reveal the truth about the past, and to assist the victims of human rights violations—and what types of mechanisms to employ. Although the TJ field was initially associated with trials, states have been using an increasing diversity of measures, such as truth commissions, amnesties, reparations, lustration, vetting, reforms, apologies, exhumations and reburials, memorialization efforts, and traditional justice measures to address the past and advance reconciliation in the aftermath of mass atrocity.

Moreover, the TJ field has taken a turn towards the local. As the preface of this chapter illustrates, the new transitional justice landscape is now an intricate web of international, national and local actors who work at myriad layers stretching all the way to the community level. Hence, as legal scholar Naomi Roht-Arriaza (2006, 11) has accurately noted, "[t]wo dimensions—national/international, or truth commission/trial— are no longer enough to map the universe of transitional justice efforts." But what factors stimulated this "local turn" in the study and practice of transitional justice? This chapter begins with a brief overview of the field and addresses conceptual matters, such as what transitional justice is. It then explores how three scholarly debates in the literature, together with a series of policy developments at the start of the twenty-first century, have hastened the local turn in TJ. In the final section, I put forward a definition of "local

transitional justice processes" that will set the conceptual scope for the remainder of this study.

Context and Concepts

What is Transitional Justice?

The study of transitional justice became an area of intense academic research in the mid-1990s and is concerned with how new democracies, post-war states and even established democracies where historical injustices remain unresolved address human rights abuses. In theory and in practice, the concept is rooted in the application of different dimensions of justice—retributive, restorative and reparative—in the form of an accepted toolkit to hold perpetrators responsible, reveal the facts about a difficult past and/or to succour the victims of serious crimes in a time of transition.

Retributive justice refers to the belief that perpetrators of serious crimes should be held responsible and punished for their actions. In the context of TJ, it is generally carried out through trials, although some local justice methods encompass elements of retributive justice as well.[1] Restorative justice is a "process of active participation in which the wider community deliberates over past crimes, giving center stage to both victim and offender in a process which seeks to bestow dignity and empowerment upon victims, with special emphasis placed upon contextual factors" (Quinn 2004, 404). TJ measures that facilitate truth-telling, reconciliation and forgiveness have been deployed as instruments to advance this type of justice and many traditional justice mechanisms involve restorative

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[1] To give an example, Wendy Lambourne (2009) demonstrates how the boundaries between restorative and retributive justice can be blurred in her discussion of the *nahe biti* reconciliation ceremony in Timor-Leste and the *gacaca* community courts in Rwanda, which contain aspects of both forms of justice.

features. Finally, Pablo de Greiff (2006, 1), the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, proposes reparative justice seeks to "make up, in some way, for the harms endured by members or sectors of society." These methods can include material and symbolic reparations, apologies, commemoration days, memorialization projects, exhumations and reburials and various grassroots mechanisms.

The meaning of "transitional justice" has evolved. Scholars have proposed both narrow and broad conceptions of the term. For example, Ruti Teitel's (2003, 69) influential definition sees the field in narrow terms as the "conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes." Teitel's definition is inadequate, however, because it privileges the use of legal measures, namely trials, and it sees TJ through what Paige Arthur (2009, 359) calls a "democratization frame," which ignores *post-war* transitions and focuses on movements to democracy. Countries transitioning from war to peace have, in fact, become a central focus of TJ efforts, at least since the conflicts in the former Yugoslavia and Rwanda, and post-conflict transitions are now linked "conceptually to those of emerging democracies, a development that has changed the field" of transitional justice (H. M. Weinstein et al. 2010, 34).

In her critique of Teitel, Naomi Roht-Arriaza offers a broader definition of the term, widening the conceptual boundaries of TJ to cover a "set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law" (Roht-Arriaza 2006, 2). This definition is still too narrow, however,

because it focuses on formal state-level TJ measures (trials, TCs, vetting and reparations) and neglects a number of less formal procedures taking place at the state and sub-state levels, such as memorialization efforts, police and judicial reforms and traditional justice mechanisms.

A broader definition is therefore necessary to cover the full range of contexts and measures. Recent scholarship offers some guidance. In their impressive edited volume, *Transitional Justice in the Asia-Pacific*, Renée Jeffery and Hun Joon Kim (2014, 8) describe TJ as "the pursuit of accountability for, and attempts to make right, the wrongs of human rights violations committed in the past associated with major political shifts, including movements from authoritarian rule to democracy, or ruptures, such as those that mark the end of violent conflicts." This definition is helpful because it covers the universe of formal and informal measures that have been adopted in transitional societies. However, Jeffery and Kim's definition still falls short because it presumes that the galvanizing aims of TJ are to pursue accountability and to right past wrongs, whereas in some countries TJ efforts have focused on advancing reconciliation and peace processes in ways that oppose these principles, even if they are the stated goals.

A better definition of TJ would therefore encompass the full range of its purposes and types. Perhaps the best available definition comes from ICTJ (2011), which argues that transitional justice refers to "the ways countries emerging from periods of conflict and repression address large scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response." I adopt this definition for this dissertation and apply it specifically to post-conflict transitions, which I view as qualitatively different from interventions in new or

consolidated democracies. By embracing a broad understanding of the term, I hope to capture the complex nature and dynamics of the new TJ landscape, which involves myriad actors whose work spans international, national and local divides, reaching all the way down to the grassroots. In the next section, I provide a brief historical overview of the rise of the transitional justice field before shifting to a discussion of the local turn in TJ practice.

The Origins and the Spread of Transitional Justice

Although various modes of transitional justice have been observed since at least the time of the ancient Greeks (Bass 2000; Elster 2004), state officials have been largely immune from prosecution for most of human history. Contemporary TJ practice took shape after the Second World War and has blossomed in the post-Cold War era, a striking trend that Lutz and Sikkink (2001) call the justice cascade and that Sriram (2005) refers to as a revolution in accountability. Kathryn Sikkink (2011) has located the roots of the justice cascade in two interrelated streams (see Figure 3).

Figure 3: The emergence and spread of the international accountability norm
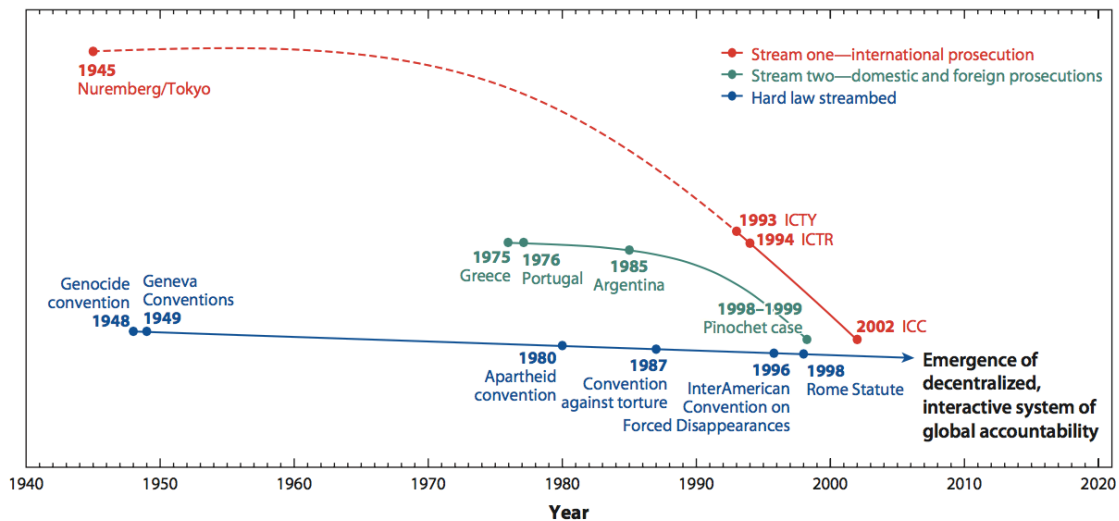
Source: Sikkink and Kim (2013).

The first stream has its origins in the Nuremberg and Tokyo trials in 1945 and 1946 but went dormant for nearly fifty years, reappearing with the launch of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in 1993 and 1994. As noted above, these developments were seen as major events in the field, not least because they extended the traditional parameters of TJ beyond political transitions into the realm of post-conflict peace-building.

The second stream, according to Sikkink, involves domestic and foreign trials, commencing with prosecutions of state agents in Portugal and Greece in the 1970s and domestic trials in Latin America in the 1980s as part of the so-called "third wave" of democratic transitions from dictatorships (Huntington 1991). Foreign trials have also played an important role in this stream and have served as a substitute when efforts of human rights activists were stymied domestically. Particularly significant was the 1998 arrest and extradition of Chilean dictator Augusto Pinochet in England to stand trial for crimes that were committed during his regime (Roht-Arriaza 2005). Taken together, the striking upturn in domestic and foreign trials has marked a new period of justice where bringing perpetrators to account has replaced, or at least seriously challenged, the long-standing impunity norm.

Coinciding with the second stream was the development of the truth commission model as a legitimate TJ mechanism to expose historical facts about serious crimes. In her seminal book, *Unspeakable Truths*, Priscilla Hayner defines a truth commission as a temporary institution focused on the past that is authorized by the state to investigate a pattern of abuses that happened over a period of time, rather than a single event, and to

complete its work with a report of its findings (Hayner 2001, 14). Landmark inquiries were launched in Argentina, Chile, El Salvador, Guatemala and, most famously, South Africa. The strength and participation in these processes established TCs as a viable alternative to trials in the wake of mass atrocities, especially in instances when known perpetrators still held sway in society. In the early 2000s, academics engaged in a lively debate about the suitability of trials and TCs, which focused on competing claims about retributive and restorative justice methods (Fletcher and Weinstein 2002; Nesiah 2006; Rotberg and Thompson 2000). Nonetheless, at the beginning of the twenty-first century, TJ was still largely conceived in terms of a choice between trials *or* TCs.

As Sikkink points out in her justice cascade model, underlying the two streams is a hard law "streambed" that outlaws apartheid, torture, disappearance, genocide, crimes against humanity and war crimes—a body of law that has continued to expand. Taken together, these three developments—the rise of international trials, domestic and foreign trials and associated processes like TCs, and the acceptance of human rights norms— have triggered a "tipping point" and subsequent "norm cascade" around accountability (Sikkink 2011; see Finnemore and Sikkink 1998).[2] The result has been a burgeoning field of human rights practice, academic study and transnational advocacy. In some three decades, TJ has become "normal, institutionalized and mainstreamed" (McEvoy 2007, 412) and rooted as a "paradigm of the rule of law" (Teitel 2003, 71).

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[2] Kathryn Sikkink's "justice cascade" draws on her previous work with Martha Finnemore on the norm life cycle. Finnemore and Sikkink (1998) see normative change as a linear and top-down process of diffusion: at the initial stage of emergence, a norm is contested until it reaches a "tipping point," which occurs when a critical mass of countries has accepted the norm; a systemic "cascade" of the norm follows, whereby outlier states rapidly adopt the norm; once adopted, socialization follows a relatively conflict-free process and the norm eventually attains a taken-for-granted quality.

The Turn Towards the Local

Dominant explanations of the global spread of transitional justice have tended to focus on state-level measures, such as trials, TCs, lustration, reparations and amnesties, paying much less attention to a broad assortment of locally rooted methods in transitional societies, including traditional courts, healing and reintegration rituals, truth-telling initiatives, community reparations, and memorialization projects. Yet as Renée Jeffery and Hun Joon Kim (2014, 3) point out, "previous dichotomous divides are no longer relevant and synthetic and holistic approaches that combine different transitional justice mechanisms and notions of justice have taken hold." Some of these local TJ mechanisms are organic processes, or enacted at the local level in a bottom up manner, while others are hybrid and top-down processes, led by national or international authorities. Hence, as Roht-Arriaza (2006, 11) has noted, "[t]ransitional justice now reaches down into the local village or neighbourhood level, and makes use of a number of techniques drawn from or influenced by local customary law that combine elements of truth-telling, amnesty, justice, reparations, and apology."

In response, the transitional justice field has recently undergone a significant pivot towards the local. In fact, this "local turn" appears to have been driven by two parallel developments: 1) critical and post-positivist reflections on the top-down nature and liberal vision of progress in state-level TJ measures, which echo a parallel critique in the peace-building literature; and 2) the acceptance among practitioners and policymakers of the need for greater attention to local TJ, and the active adoption of these measures by international, national and local actors as transitional justice policy in various states at the

start of the twenty-first century, including in Rwanda, Sierra Leone, Timor-Leste and Uganda. I examine each of these developments in turn.

Scholarly Debates

Early debates about transitional justice centred on competing claims about the supposed destabilizing effects of pursuing accountability during a political or post-conflict transition (peace versus justice) and/or the assumed incompatibility of trials and truth commissions (truth versus justice). By the mid-2000s, scholars had largely moved past these debates to deliberate the correct the sequencing and combination of instruments based on the circumstances of the transition (Dancy and Wiebelhaus-Brahm 2015; Dukalskis 2011; Fletcher and Weinstein 2009; Olsen, Payne, and Reiter 2010), as researchers and practitioners alike conceded the need for a "holistic approach." This term refers to the consensus that has formed in the field that in order "to be effective, transitional justice should include several measures that complement one another … no single measure is as effective on its own as when combined with the others" (International Center for Transitional Justice 2009). Three theoretical debates about TJ— on top-down versus bottom-up approaches, transitional versus transformative justice, and legalism versus legal pluralism—figured prominently in this conceptual shift.

Top-down versus Bottom-up. The surge of state-level TJ models in the 1990s and 2000s sparked a lively debate about whether transitional justice should be promoted from above or from below (Betts 2005; Stover and Weinstein 2004). Although academics and practitioners more than ever understand the need for a holistic approach and to "eschew one-size-fits-all formulas and the importation of foreign models" (UN Secretary-General 2004, 1), a penchant for standardizing a set of instruments drawn from a global toolkit

remains.[3] A few recent studies have taken issue with the top-down imposition of TJ and have called for the use of customary law and other forms of local justice as a complement, or even as an alternative, to trials, TCs and other state-level interventions (Huyse and Salter 2008; Shaw and Waldorf 2010).

Critiques of top-down TJ measures have focused on two aspects: incongruity with local priorities, culture and needs, on the one hand, and the importance of promoting local agency and participation in transitional justice processes in order to guarantee their sustainability and success, on the other hand. Both criticisms are based on the observation that standard top-down methods prioritize international legal norms over local needs, beliefs and practices, which has caused "friction" (Tsing 2005, 4) in their on-the-ground applications. In this context, friction refers to the sometimes adverse and unexpected consequences of implementing global TJ interventions in diverse local cultures and contexts. Further, these methods have been critiqued for their sluggish pace and high costs, and for privileging legal discourses that are too convoluted for most victims to understand (Arriaza and Roht-Arriaza 2008; Fletcher and Weinstein 2002; Millar 2010; Nagy 2008; Robins 2011, 2012; H. M. Weinstein et al. 2010).

Various scholars have criticized top-down mechanisms and have instead endorsed "justice from below" based on the observation that off-the-shelf instruments drawn from global templates clash with local practices (see Hinton 2010; Shaw and Waldorf 2010). Analysts have referred to this uneven and at times abrasive encounter between formal TJ measures and local realities as "frictions of engagement" (Shaw 2007, 183) or

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[3] The Office of the UN High Commissioner for Human Rights (2006) has developed a series of "Rule-of-Law Tools" for trials, truth commissions, reparations and other TJ measures.

"transitional frictions" (A. L. Hinton 2010, 2). In response, observers have advocated bottom-up practices in order to mitigate the remoteness and potentially destabilizing effects of top-down measures, as well as to bring them into line with local priorities and beliefs (Shaw and Waldorf 2010). Alexander Hinton (2010, 1) has argued that the field needs to be more aware of these local realities.

> However well-intentioned, transitional justice needs to more deeply grapple with the messiness of global and transnational involvements and the local, on-the-ground realities with which they intersect, complexities that are too often glossed over, due in part to the privileging of a cluster of liberal normative goods, such as the rule of law, peace, reconciliation, civil society, human rights, combating impunity, and justice.

Proponents of bottom-up approaches have also argued that local forms of justice can offer a helpful supplement to trials and TCs in post-conflict states in order to knit back together the social fabric of communities torn apart by war (Arriaza and Roht-Arriaza 2008; Fletcher and Weinstein 2002; Stover and Weinstein 2004). Local approaches are also seen as more adept at capturing the "meaning of the conflict for people living in specific villages, towns, 'hills' or other local spaces," (Arriaza and Roht-Arriaza 2008, 153), which may differ from the experience of people in capitals or foreign interpretations of the conflict situation. For example, Lia Kent (2011) has shown how victims in Timor-Leste identify more with bottom-up practices of memorialization and commemoration, which they see as more inclusive and accessible than formal and more extravagant top-down equivalents.

Finally, some scholars also have suggested that local methods involving traditional leaders and ritualistic elements can tap into different spiritual worlds and cosmologies, which, according to this view, can be better suited to achieving justice and

reconciliation than formal mechanisms, such as trials and TCs, that may be disconnected from local culture (Roht-Arriaza 2006; Viaene 2010). Tim Kelsall (2005), for example, has argued that a carefully staged reconciliation ceremony of repentance and forgiveness on the last day of public hearings of Sierra Leone's Truth and Reconciliation Commission (TRC) may have created a larger opening for reconciliation than all of the previous days' testimony combined, given public truth-telling's lack of salience in Sierra Leonean culture.

Other scholars have been vocal advocates of local forms of justice based on the perception that "transitional justice needs to adopt a participatory approach to achieve longer-term sustainability, shifting away from the top-down 'one-size-fits-all' approach to allow 'voices from below' to be heard and heeded" (Lundy and McGovern 2008, 265). This stems from a shared unease among some scholars and practitioners that "the voices of those most affected are not always heard or accorded adequate weight" (McEvoy and McGregor 2008, 3). Although civil society organizations have played a prominent role in leading and facilitating these local justice mechanisms (Backer 2003; Bickford 2007; Hovil and Okello 2011; Sperfeldt 2012), it follows that a truly bottom-up view requires broad consultation and sustained engagement with victim constituencies. For instance, Simon Robins' (2011, 2012) pioneering work on Nepal and Timor-Leste develops the basis for a victim-centered, participatory framework anchored in local practice. He sees this approach as a "transitional justice process or mechanisms that arises as a response to the explicit needs of victims, as defined by victims themselves" (Robins 2011, 77). Hence, the theoretical debate about the virtues of top-down versus bottom-up practice has been a leading source for new scholarly thinking about local TJ.

Transitional versus Transformative Justice. Closely related to this debate about top-down versus bottom-up processes is a more recent scholarly exchange about what the purpose of transitional justice should be: a debate about transitional versus transformative justice. While transitional justice refers to the provision of accountability through trials, TCs and other means, according to Paul Gready and Simon Robins (2014, 340), transformative justice refers to a "transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relations and structures of exclusion at both the local and the global level."

Hence, at the core of this debate is a critique of the Western liberal orientation of the TJ paradigm and how it privileges a liberal peace (see Doyle 2005) and other liberal "goods," from political democracy to human rights and accountability. This contrasts with the top-down versus bottom-up debate, which is primarily concerned with the most suitable level of intervention (local versus national). In order to achieve a manner of justice that is more transformative, rather than transitional, critical TJ scholars have advocated a change in existing practice, *inter alia*, "from the legal to the social and political, and from the state and institutions to communities and everyday concerns" (Gready and Robins 2014, 340). In this sense, transformative justice advocates seek to shift TJ away from a Western liberal state building project that prioritizes democratization and legal justice for abuses of civil and political rights (Sharp 2015) towards one that is centred on development (Gready and Robins 2014; Lambourne 2009).

Critical scholars have also cited a visible absence of gender concerns and social and economic justice in mainstream studies, which they have posited may hold the key to

overturning the structural sources of violence. In an effort to overcome these issues, Wendy Lambourne (2009, 30) has challenged scholars to recast their view of the concept of "'transition' as an interim process that links the past and the future, and to think instead in terms of 'transformation,' which implies long-term, sustainable processes embedded in society and … transformation of social, economic and political structures and relationships." Others have confronted the field's liberal teleology and its links to a liberal state building project by shifting the purpose of TJ practice to "the consolidation of a more open-textured, contextually relevant and genuine positive peace" (Sharp 2015, 152; see also Gready and Robins 2014; Shaw and Waldorf 2010).[4]

Prescriptions have centred on holistic and context-specific approaches that take a longer-view and attempt to merge social and economic policy with locally driven praxis to overcome the structural sources of conflict (Gready and Robins 2014). Anna Eriksson (2009, 307), for example, has advocated for bottom-up TJ initiatives in Northern Ireland, suggesting they offer "greater opportunities at aiming for *transformative justice* in their practice, where they can influence broader community structures in developing new norms regarding conflict resolution and approaches to harm and victimisation." This contrasts with existing praxis, which tends to be outcome-oriented and requires adopting a combination of standard TJ measures from a global toolkit that are short-term in nature. In summary, in order to become truly transformative, critical TJ scholars have suggested the field needs to escape its Western liberal paradigmatic bounds, which privileges legal justice and democratization over sustained long-term local engagement, and also needs to

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[4] This refers to Johan Galtung's (1964) concept of a "positive peace," which envisions the restoration of social harmony and removal of the structural sources of conflict, rather than a mere cessation of fighting (i.e., "negative peace").

place more emphasis on reducing structural inequalities and tackling the everyday social and material needs of victims (Gready and Robins 2014; Lambourne 2009; Sharp 2015).

The debate about transitional versus transformative justice mirrors a debate in the critical peace-building literature regarding emancipatory versus liberal forms of building peace (see Campbell, Chandler, and Sabaratnam 2011; Mac Ginty 2011; Richmond 2011; Richmond and Mitchell 2012; Roberts 2011). A fundamental concern of these critiques is the top-down imposition of a liberal state building project, which seeks to install a market economy, democracy and the rule of law in fragile and illiberal contexts. In the broadest sense, studies critical of liberal peace-building have highlighted the destabilizing effects of applying political and economic liberalization too hastily in states that lack effective institutions after a civil war and advocate a more gradual process of reforms (Paris 2004). More radical post-positivist scholars have proposed a shift from state-level liberal peace-building to hybrid and everyday practices that reflect local resistance to the liberal peace. The result is a "liberal-local hybrid," or a "post-liberal" form of peace, which refers to the process in which "local actors attempt to respond to, resist and ultimately reshape peace initiatives through interactions with international actors and institutions" (Richmond and Mitchell 2012, 8; see also Richmond 2011). These critical scholars have championed the concept of the "everyday" as a way to recognize the social realities and daily concerns of people in war-torn societies beyond a strictly liberal provision of peace (Autesserre 2010; D. Chandler 2015; Riaño Alcalá and Baines 2012; Richmond 2009; Roberts 2011).

Therefore, the critical peace-building literature on emancipatory and everyday forms of peace has been a major impetus for the conceptual shift towards the local in TJ as well.[5]

   Legalism versus Legal Pluralism. A third debate that has stimulated new thinking about local practice in the field is an ongoing discussion between legal scholars and experts about what justice is. The focus of this debate is on the supposed clash between universal justice norms, standards and institutions, on the one hand, and local culture and traditional legal systems, on the other (Shaw and Waldorf 2010). Central to this critique is the claim that "legalist" approaches can have negative and potentially destabilizing consequences in non-Western societies, whereas "legal pluralism"[6] can provide TJ mechanisms that are more attuned to local culture (Cobban 2007; Drumbl 2007; Huyse and Salter 2008; Nagy 2009; Quinn 2007; Shaw and Waldorf 2010).

   Critics of legalism in TJ argue that it prioritizes rule of law promotion through legal responses, such as prosecutions, reparations and reforms (McEvoy 2007; Nagy 2008, 2009) and they express concern that this legalist approach has become more prominent as the TJ field has become more professionalized and has achieved a higher level of normative and procedural standardization. According to the critics, the legalist approach to TJ has generated friction in its local applications (Shaw and Waldorf 2010) and can be "detrimentally abstracted from lived realities" (Nagy 2008, 276). Legal pluralism, by contrast, is seen as a possible way to advance reconciliation and justice and

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[5] For an example of the cross-pollination between the peace building and transitional justice literatures, see "Transitional Justice and the Everyday," special issue of *International Journal of Transitional Justice* 6(3) (2012).

[6] Legal pluralism refers to "a situation in which two or more legal systems coexist in the same social field" (Merry 1988, 870).

to neutralize the "perceived encroachment of the hegemony of the secular human rights politics of the West" (Clarke 2009, 38) on primarily non-Western countries.

Advocates of legal pluralism have argued that customary law presents a flexible, culturally salient, locally legitimate and accessible alternative to legalism. Legal pluralists maintain that traditional forms of justice, which can entail customary courts, cleansing ceremonies, religious law and other features, are more accessible and comprehensible to local culture in remote areas (Cowan, Dembour, and Wilson 2001; Merry 2006; R. A. Wilson 2001). They can also be more locally legitimate and are seen as a way to compliment the state as the only source of justice (Berman 2007), which is meaningful in societies where the formal legal system is associated with colonial rule and rural populations have more trust in autochthonous institutions (Mamdani 1996).

Opponents of the legal pluralism approach—mostly human rights activists and legal scholars—have themselves raised concerns about due process, witness protection, impartiality of local authorities, and the scope and potential of pluralist mechanisms to deal with serious crimes in a transitional justice context (Human Rights Watch 2011; Ingelaere 2016; Waldorf 2006). Some scholars have also voiced gender concerns regarding the male-domination and gender-bias of some local methods (Igreja and Dias-Lambranca 2008). Nonetheless, the debate about "letting go of legalism" (McEvoy 2007, 411) and accepting legal pluralism has been part of an expanded scholarly conversation about the importance of local, bottom-up approaches to TJ.

Policy Developments

In addition to an evident shift in TJ scholarship towards the grassroots, the local turn has been prompted by a series of policy developments at the international, national and local

levels. In particular, the UN Secretary-General Kofi Annan's 2004 report on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" was arguably a turning point. Annan warned against the tendency of the international community to adopt one-size-fits-all formulas to TJ that emphasized either trials or TCs, and built a case that "traditional dispute resolution mechanisms are equally relevant" (UN Secretary-General 2004, 4). Annan argued, in particular, that local forms of justice could play a pivotal complimentary role to state-level TJ mechanisms and proposes that "due regard must be given to indigenous and informal traditions for administering justice or settling disputes" (UN Secretary-General 2004, 12). As mentioned earlier, this turn towards the local was in part a response to the length, expense and remoteness of trials and TCs, but equally "inspired by a newfound pragmatism and concern with local ownership" among TJ policy makers and practitioners (Shaw and Waldorf 2010, 15).

Kofi Annan's statement reflected a larger drive for local ownership and context-specific practice in other areas of international politics at about the same time, especially in development aid and peace-building. Local ownership and participation were coming to be seen as necessary conditions for sustainable development and peace. Both were principles of the Paris Declaration on Aid Effectiveness in 2005 and Accra Agenda for Action in 2008. The basic idea was that promoting ownership and participation would foster local agency and home-grown solutions that are more sustainable than externally imposed foreign models and boost aid effectiveness. The peace-building community has also acknowledged the importance of local ownership, participation and context-specific policies in post-war countries. The 2011 "New Deal" for engagement in fragile and conflict-affected countries and UN Peacebuilding Commission similarly state local

ownership and participation are keys for effective and sustainable peace efforts (International Dialogue on Peacebuilding and Statebuilding 2011; UN Peacebuilding Commission 2010). The rising importance of local ownership in these two fields has influenced TJ practice given their close proximity and overlapping objectives.

The strong rhetorical commitment to grassroots measures at the international level has come along with closer attention to locality, including an unprecedented effort to promote customary law and local forms of justice in post-conflict settings. These local instruments have tended to be seen by policy makers and practitioners as good and as offering several advantages over state-level instruments. Shaw and Waldorf (2010, 16) have summarized these points.

> First, [local TJ] has greater capacity (and sometimes greater legitimacy) than devastated or discredited formal justice systems. Second, it may be more responsive to local needs, culture and beliefs than either state or international mechanisms. Third, it can provide some limited accountability for lower-level perpetrators and bystanders whose numbers challenge resource-strapped courts and truth commissions. Finally, it can provide some limited restitution for a wide range of victims—something that is rarely forthcoming from post-conflict states.

Accordingly, international actors and donors have actively sought out the involvement of various local stakeholders, including civil society organizations, religious and traditional authorities, during the design, implementation and evaluation stages (Corradi and Schotsmans 2012). Furthermore, it has become common to conduct local outreach activities and complete population-based surveys on local priorities and attitudes for TJ (H. M. Weinstein et al. 2010; see also Pham et al. 2009; Pham and Vinck 2010). Above all, Kofi Annan's endorsement of customary law and local forms of justice

initiated a flurry of activity by national and international actors to incorporate traditional justice methods into policy in a number of post-conflict states, most notably in Liberia, Rwanda, Sierra Leone, Timor-Leste and Uganda.

Initially, policy makers tried to incorporate local forms of justice as a compliment to more formal state-level mechanisms in order to bridge cultural barriers, to address local-level disputes between neighbours, and to secure reparations for the survivors of large-scale violence.[7] The integration of cultural symbols and rituals into the Sierra Leone and Timor-Leste truth commissions exemplified these early approaches. The Sierra Leonean Truth and Reconciliation Act (2000, § 7[2]), for instance, officially ratified and permitted the Commission to "seek assistance from traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation." In neighbouring Liberia, the Act establishing the Liberian Truth and Reconciliation Commission (2005, § 7[26]) also provided for traditional measures: "The Commission may where it deems it necessary seek assistance from traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation."

Although, in the end, the Sierra Leonean TRC did not formally integrate customary law, it did make use of a staged reconciliation ritual at the close of select public hearings. Facilitated by traditional chiefs and religious leaders, these reconciliation ceremonies tapped into profound cultural symbols and ritual elements, including prayer, invocations and pouring of libations, to obtain the blessing of ancestors (Shaw and

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[7] The next four paragraphs build on Shaw and Waldorf (2010, 15–19).

Waldorf 2010). Rosalind Shaw and several other observers have claimed that these reconciliation rituals might have played a bigger role in producing forgiveness, reconciliation and reintegration than the TRC process itself (Shaw 2010; see also Kelsall 2005; Millar 2010). As Tim Kelsall (2005, 378) contends, "[t]he ceremony had a remarkable impact on the hearings, transforming the atmosphere from one of virtual crisis and farce, to one of emotional release and reconciliation."

International policy makers incorporated customary law and local justice methods even more extensively into Timor Leste's Commission for Truth, Reception and Reconciliation (CAVR). Like the Sierra Leonean TRC, the CAVR was created, *inter alia*, to accelerate "the reception and reintegration of individuals who have caused harm to their communities through the commission of minor criminal offences and other harmful acts through the facilitation of community based mechanisms for reconciliation" (UN Transitional Administration in East Timor 2001, § 3[1]). However, unlike the Sierra Leonean TRC, these local forms of Timorese justice, termed Community Reconciliation Processes (CRPs), were written directly into the Act creating the CAVR. The hearings, designed by UNTAET, adapted a Timorese customary dispute resolution practice called *nahe biti* to address less serious crimes and to facilitate reconciliation and the reintegration of lower-level perpetrators. Local authorities would lead the CRPs, which started with the unrolling of a large woven mat (*biti boot*). The mat would not be rolled back up until the dispute was resolved. The ceremony involved various traditional symbols and rituals, including chants, sacred objects and attire. The main goal of the hearing was to collect testimonies from both the victims and the perpetrator and

ultimately to agree on an acceptable form of compensation that would facilitate the offender's return to community life.

In the ensuing years, a few national governments—most notably Burundi, Rwanda and Uganda—adopted customary law and local forms of transitional justice at their own behest, another sign of the turn towards local TJ in contemporary practice. The best-known example, by far, is the *gacaca*[8] community court system in Rwanda. A revised and scaled-up version of a pre-colonial customary dispute resolution method, the Rwandan government revived *gacaca* in 2001 to tackle the sizeable backlog of incarcerated suspected *génocidaires*. Susan Thomson and Rosemary Nagy (2011, 16) have suggested two underlying motivations for *gacaca*: "[F]irst, the Rwandan government rebuffed 'classic' (western) legal standards of due process that had proved costly, cumbersome and alienating, and, second, it stressed the importance of the country settling its own problems on the basis of Rwandan custom and through the participation of the entire community."

A total of 12,103 *gacaca* courts came into being between 2005 and 2012, hearing nearly two million cases (Gacaca Community Justice 2015). Presided over by a panel of lay judges, the principal aims of these courts were to expedite the pace of trials, identify appropriate reparations and advance the cause of national unity and reconciliation. Despite charges of political interference and coercion in the *gacaca* process, which I will discuss in the next chapter, the courts have been widely praised as an innovative and indigenous solution to the dilemmas of post-conflict justice (Clark 2010; Longman 2006).

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[8] In this context, *gacaca* (the Kinyarwanda word for grass) signifies "justice on the grass" (Thomson and Nagy 2011, 17).

Equally relevant and influential in local TJ practice are Uganda's Acholi reconciliation rituals, which have been used to "cleanse" and to facilitate the reintegration of former child soldiers and ex-combatants in the Lord's Resistance Army (LRA). The most prominent Acholi justice and reconciliation measure is the *mato oput* ("drinking the bitter root") ceremony. This process brings together the clans of both the victim and perpetrator to establish a shared version of past events, to determine an acceptable form of reparation, and to restore harmony between the two parties. The *mato oput* ritual culminates in an elaborate ceremony in which the two sides consume a bitter drink from the *oput* root. This is meant to signify the readiness of both parties to bury any residual bitterness between the two clans and to move forward (Baines 2007; see also Allen 2006; Finnström 2008b). International donors earmarked aid funds to support *mato oput* rituals, which at one time they were even envisaged as a possible means to reintegrate senior LRA commanders, specifically as a special hybrid division of the Ugandan High Court (Allen 2006, 2010).

Debates about these Acholi reconciliation rituals unexpectedly intensified in 2004 when the International Criminal Court (ICC) issued warrants for the LRA leadership at the request of the Ugandan government. The indictments were issued despite protests from traditional authorities who wanted to uphold the tenuous peace and deal with former LRA belligerents in the "Acholi way" (Baines 2007). This reinvigorated long-standing TJ debates about peace versus justice and retributive versus restorative mechanisms, and fuelled new ones about bottom-up versus top-down practice and the position of legalism in the field (Allen 2006; Baines 2007; Branch 2007; Finnström 2010; Hovil and Quinn 2005). Yet, on the whole, *mato oput* and other Acholi rituals stimulated further interest in

local and traditional ways as a viable policy option for transitional justice, including, for example, at the 2006-08 Juba Peace Talks on the conflict in Uganda, which resulted in the inclusion of certain local rituals in the 2007 "Agreement on Accountability and Reconciliation."

In addition to these prominent cases of localized TJ, there have also been instances of spontaneous, small-scale, bottom-up traditional TJ practices in a variety of post-conflict societies as part of everyday autochthonous praxis. For example, traditional healers have performed cleansing and purification ceremonies in Angola, Mozambique, Peru, Sierra Leone and other countries to reintegrate child soldiers and ex-combatants. Similar, unofficial efforts to commemorate those killed or disappeared have been documented in Nepal, Northern Ireland, Timor-Leste and elsewhere (K. Brown 2012; Eriksson 2009; Robins 2011, 2012). Although initiated from below, local NGOs and international donors often (but not always) support these projects. For example, Lia Kent (2011) has described how locals in Liquiçá, Timor-Leste built a small monument of an angel to commemorate a massacre site. A local women's NGO, the UN Development Programme and the government of Japan provided funding. The United States Agency for International Development (USAID), the German Gesellschaft für Internationale Zusammenarbeit (GIZ) and other donor agencies have similarly supported bottom-up TJ initiatives given the growing impetus to prioritize local ownership and participation in development aid projects. Taken together, these developments at the local, national and international levels have all contributed to the local turn in TJ practice.

Defining Local Transitional Justice

The diversity of local TJ mechanisms makes them difficult to define as a single phenomenon. These methods can be bottom-up or top-down and deployed in a wide range of settings. Furthermore, they typically involve a complex web of local, national and international stakeholders and can comprise elements of customary law, tradition and even external ideas and practices imported from elsewhere and adapted to local realities. The lack of existing definitions complicates the task of delineating the term as well: since these practices entail such a variety of sources and techniques, there is no consensus on how to describe the level at which they are practiced (local versus national), or the extent to which they actually reflect autochthonous praxis.[9] Nonetheless, the existing literature offers some guidance for the task of providing an acceptable definition.

Some scholars have used the term "grassroots" or "bottom-up" approaches to connote that these models are indigenous and locally driven (Di Lellio and McCurn 2013; Eriksson 2009; Iliff 2012; Lundy and McGovern 2008). Yet, both of these labels are problematic: even locally implemented TJ processes are often initiated from the top down by NGOs or central state authorities and reflect various global influences. For example, two of the case studies in Andrew Iliff's (2012) article on grassroots TJ—*fambul tok* in Sierra Leone, and Tree of Life in Zimbabwe—are examples of NGO-led interventions supported by foreign donors, while the third example he presents—Rwandan *gacaca*

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[9] Scholars have variably termed the level at which they operate "bottom-up" (Eriksson 2009), "community-based" (Park 2010), "grassroots" (Iliff 2012) or "local" (A. L. Hinton 2010) approaches. On the second point, they have most often been referred to as "customary" (Quinn 2007), "everyday" (K. Brown 2012), "hybrid" (Wallis, Jeffery, and Kent 2016), "indigenous" (Igreja 2012) or "traditional" (Huyse and Salter 2008) forms of justice.

courts—would be better described as a government-imposed customary transitional justice measure than as a bottom-up practice.

Others focus on the level at which these interventions take place. Augustine Park (2010, 95) has used the term "community-based restorative transitional justice" to refer to these methods.

> 'Community-based' justice refers to practices that are not associated with the state, that take place in the community, that involve the participation of the community as a whole, and which, at least in part, emerge endogenously within a community, notwithstanding external assistance, cooperation, or collaboration.

But this formulation, too, is problematic because it implies a remoteness or marginality, whereas local TJ initiatives can also take place in urban areas, such as the small angel monument in Liquiçá, described above. Further, by claiming community-based methods are not linked with the state, Park effectively excludes the landmark *gacaca* courts.

It is preferable to use the term "local" more narrowly to denote where these actions occur. Alexander Hinton (2010, 1), for example, uses the phrase "local justice" to describe "the ways in which justice is experienced, perceived, conceptualized, transacted, and produced in various localities, ranging from village-level interactions between former victims and perpetrators, to offices of nongovernmental organizations, to the courtrooms of international tribunals." However, like Shaw and Waldorf (2010), Hinton's definition refers to how state-level TJ institutions are perceived locally and rather than capture what local justice measures actually are.

I therefore propose to use the term "local transitional justice process" to describe 1) a locally-*based* practice that is 2) informal, participatory and holistic in nature and that

3) seeks to address a legacy of human rights abuses in the wake of mass atrocity. Such initiatives typically bring together various societal actors in an open-ended process that aims to achieve justice, reconciliation and memory, and that often, but not always, taps into traditional symbols and rituals. They can be introduced from above or from below, and often have national and international linkages.

There are three ways *not* to read this definition. First, it does not equate local practices with customary law or traditional forms of justice. Most of these institutions have already been subjected to exogenous influences ranging from colonialism to civil conflict, and in most instances have lost their original form. I prefer the word "informal" to capture how they are adapted, revived and hybridized in their applications for transitional justice, even if they at times involve local customs, traditions and beliefs. Second, by "local," I refer to subnational processes occurring at the district, commune and village levels. The term should not be conflated with the concept of "country ownership," which was initially common among TJ scholars and practitioners (Corradi and Schotsmans 2012), or with everyday practices that lack participatory features. Third, the concept is limited to instances where these local processes are used to pursue TJ; it does not apply to the use of customary law and traditional and religious practices for other ends.

With these disclaimers in mind, the broad definition I propose encompasses the varieties of contemporary bottom-up practice. Furthermore, it offers a useful point of departure for examining the politics of localizing transitional justice and the *actual* ways these local means have been used in post-conflict states, which will be the focus of the next chapters.

Conclusion

Attempts to address human rights abuses following an authoritarian or post-war transition have been among the most significant developments of the past three decades. There is now an expectation that something can, and must, be done to confront a legacy of atrocity. Although there continues to be an emphasis on state-level responses to mass violence in the form of trials and truth commissions, the TJ field has taken a noticeable turn towards the local. Transitional states have adopted an increasingly diverse array of TJ instruments that extend all the way down to the community level and combine different elements of justice, truth-telling, reparation, forgiveness and remembrance.

In the next chapter, I consider the politics of localizing transitional justice following mass atrocity.

CHAPTER 2: Deflecting Justice Through Distortional Framing

Introduction

As noted in the preceding chapter, the field of transitional justice has recently taken a turn towards the local and the practice of TJ is increasingly multilayered and holistic in nature. The means to deal with past abuses in the wake of war extend all the way down to the village level and involve various local methods for justice, truth, reparations and memory. To the extent that these LTJPs have been reviewed in the literature, scholars have tended to see them as more culturally relevant, inclusive, expedient and reflective of local needs, and more cost effective, than state-level measures. However, few studies have problematized—or attempted to theorize—the politics of TJ localization, including how hidden power dynamics and political agendas may shape these processes.

In this chapter, I critically examine the politics of localizing transitional justice in post-conflict states. The first section reviews the existing literature and highlights how most scholars and practitioners have viewed LTJPs favourably and overlooked veiled political motivations and uneven power relations. It also notes that critiques have been limited to the cases of Rwanda and northern Uganda and that these studies have left a number of questions unanswered, such as to what degree LTJPs are free from political interference and for what reasons and in what ways these instruments are manipulated for political purposes. The heart of this chapter grapples with these questions and develops the central argument and theoretical framework of the dissertation. I argue that some governments shape LTJPs in ways that *deflect* justice through a discursive framing tactic that sets temporal limits on debates about the past and casts post-conflict identities in

rigid dichotomous terms. The final section discusses the two leading alternative explanations.

Existing Literature

The flourishing literature on LTJPs is marked by a fascination with locality both in theory and practice. The vast majority of studies have offered a glowing assessment of LTJPs, underlining the cultural and pragmatic advantages of localizing TJ in the aftermath of mass atrocity. A few more recent analyses, however, have contested this dominant view. Focusing mainly on the cases of the *gacaca* courts in Rwanda and Acholi reconciliation rituals in northern Uganda, these works have drawn attention to issues of power and how local practices can be bent to serve government motivations. The first part of this section reviews the predominantly idealistic literature on local TJ, which has extolled the cultural and practical benefits of going local, including their purported potential to foster social repair after a civil war. The second part takes stock of more recent critiques of LTJPs in Rwanda, northern Uganda and other places, which have been more perceptive of veiled political interests and uneven power relations.

Prevailing Positive Assessments of Local Transitional Justice

The localization of transitional justice is generally considered favourably. As I discussed at length in the previous chapter, this reflects a similar sentiment towards local practice in the development and peace-building literatures. Although many proponents caution "not to romanticize the local" (Gready and Robins 2014, 349), there is a noticeable propensity in the field to *uncritically* praise the merits of local TJ measures and identify localization as a vital ingredient for sustainable peace-building without providing sufficient empirical

evidence to back this claim (Cobban 2007; Gready and Robins 2014; Lambourne 2009). This zeal is based on three assumptions concerning their purported: 1) cultural relevance; 2) potential to foster social repair; and 3) practicality compared to state-level TJ methods.

Cultural relevance. Local transitional justice is most often supported based on the notion that these methods are more culturally salient than formal Western models, such as trials and TCs. LTJPs can be more locally legitimate and culturally relatable in rural areas where the majority of atrocities have transpired. As Naomi Roht-Arriaza (2006, 12) notes these models "can draw on indigenous and traditional ceremonies and authorities, tapping into profound spiritual and world-visioning symbols that are often non-Western, based on ideas of community harmony and well-being." Thus, positive accounts have emphasized that LTJPs can embody cultural ideas and methods, which can yield a dividend in terms of justice and reconciliation (Huyse and Salter 2008; Kelsall 2009).

In particular, much has been made of the ritualistic aspects of LTJPs and how the use of traditional authorities and symbols can be more comprehensible to victims in rural areas than the highly impersonal and technocratic nature of more formal TJ interventions, such as trials and TCs. This is particularly evident in countries like Guatemala and Sierra Leone where social norms of denial, forgetting and silence exist. For example, observers have remarked that truth-telling lacks deep roots in Sierra Leonean culture, which limited the ability of the country's TRC to foster reconciliation (Kelsall 2005; Millar 2010, 2011; Shaw 2007). By contrast, cleansing and reintegration practices used in the post-war period were widely celebrated as a more appropriate avenue to reconciliation than the

TRC itself (Alie 2008; Kelsall 2005; Park 2010).[1] In Guatemala, Arriaza and Roht-Arriaza (2008) have similarly noted that remote communities tend to be more receptive to projects that employ Mayan rituals and symbols.

Despite their own warnings to avoid idealizing the local, the vivid symbolism and emotional tenor of these events has far too easily charmed Western analysts who have gone on to romanticize them.[2] In the International IDEA report on traditional justice, Luc Huyse (2008, 6) makes this very observation: "the strengths of the formula (home-grown, locally owned, culturally embedded and so on) received overexposure … [t]he outcome was a great deal of myth making." Even seasoned country experts have downplayed the weaknesses and resisted censuring cultural TJ practices that are not their own. In the case of *gacaca*, one long-time Rwanda observer initially lauded the contentious initiative as a "reasonable expression of the Rwandan government's sovereign right to establish courts consistent with the country's own culture and traditions" (Longman 2006, 223).[3] In sum, given the notion "culture and context 'matter', and that any intervention – peace-building or otherwise – must be 'culturally sensitive'" (Pouligny, Chesterman, and Schnabel 2008, 3), LTJPs have often been touted based on claims about their cultural relevance.

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[1] In her excellent study of "tradition"-inspired reintegration rituals of former child soldiers in Sierra Leone, Laura Stovel (2008, 320) challenges this idea, arguing that "while *many* people choose not to talk about the past, and while customs discourage open conversations about problematic events, it does not follow that *all or even most* Sierra Leoneans prefer silence or avoidance."

[2] The following description of a carefully staged reconciliation ceremony at a TRC public hearing in Sierra Leone is emblematic: "on the final day of the hearings the atmosphere changed … due to the addition of a carefully staged reconciliation ceremony to the proceedings, a ritual that created an emotionally charged atmosphere that succeeded in moving many of the participants and spectators, not least the present author" (Kelsall 2005, 363).

[3] Despite his initial enthusiasm for the *gacaca* courts, Timothy Longman (2009) has since adopted a more critical position.

Potential to foster social repair. Scholars have also admired LTJPs based on the assumption they can "sew together the frayed edges of torn social fabric, or at least bring them close enough so that time can gradually restore them" (Burgess 2006, 177; see also Arriaza and Roht-Arriaza 2008). In plain terms, scholars have lauded the alleged benefits of localizing TJ based on assumptions they can encourage social healing, trust and foster reconciliation in communities torn apart by civil war. As Roht-Arriaza (2006, 12) puts it, "[LTJPs] can also play a role, after 'horizontal' conflicts involving ethnic- or territorially-based armed groups, in allowing neighbours who have been on different sides of a conflict to re-engage and to coexist." Therefore, supporters have ascertained that local processes can play a vital role in healing relationships between "intimate enemies," a concept anthropologist Kimberly Theidon (2006) has coined to describe victims, perpetrators and people who occupy ambiguous victim-perpetrator statuses and resume community life in close proximity to each other after a conflict.

The premise that localizing transitional justice can make a positive contribution to social reconstruction is widespread. Joanna R. Quinn (2007), a proponent of local justice practices in Uganda, has argued that traditional measures can achieve acknowledgement for serious crimes—missing from the country's two TCs—a step she has hypothesized any efficacious social recovery project must go through. As Quinn (2009, 175) continues, "Ugandan society is rich with traditional practices, symbols, rites, and ceremonies … all of which could prove useful in restoring and rebuilding society," although her judgement was based more on *ex ante* speculation.

By contrast, other scholars have advocated local methods for the opposite reason: the observation that they can rebuild trust and foster social repair based on traditions and

beliefs that *preclude* recognition and instead privilege silence and forgiveness (Shaw 2007; Theidon 2006; Viaene 2010). In Sierra Leone, "the art of forgetting" was seen as a key factor for facilitating local reconciliation (Shaw 2007). Similarly, Theidon (2006) has found that communal forgiveness has restored a semblance of sociability and cohesion between intimate enemies in Ayacucho, Peru and has argued that the national reconciliation process could learn a lot from how TJ is being pursued locally. In sum, the restorative potential of LTJPs has often been suggested as a reason for localizing practice.

A related claim is that LTJPs not only have the ability to restore harmony between aggrieved neighbours living side by side, but with the spirit world as well. As Erin Baines (2010, 411) has noted, traditional methods can enable this type of social recovery because they tap into local cosmological beliefs: "People draw upon local cosmologies in times of moral crisis to interpret and navigate the way forward. In northern Uganda, understanding this helps make sense of the way ordinary Acholi seek to repair broken relationships with one another and the spirit worlds." Central to this cosmology is typically an emphasis on communal, rather than individual, atonement and absolution. Hence, LTJPs can offer an approach to mend relationships between neighbours in a way formal institutions cannot: "Where deeper injustices persist, the spirit world enables community members to discuss them in public, creating a space that is otherwise closed by a government amnesty or not addressed in formal justice processes" (Baines 2010, 429; see also Igreja 2012; Igreja and Dias-Lambranca 2008; Viaene 2010).

Practicality. A last oft cited claim in the generally positive literature about LTJPs relates to their practicality, especially if compared to more formal TJ institutions, such as trials and TCs. There are a few dimensions to this assumption. First, many post-war states

lack the basic infrastructure and judicial expertise to deal with the overwhelming number of human rights violations through the standard court system. For example, there were no laws or courts, and only a few lawyers at the time UNTAET was initiated in Timor-Leste (Burgess 2006). Also, as Timothy Longman (2006) has noted, Rwanda's judicial system was in ruins after the genocide, given that the majority of judges and lawyers were killed or in exile. Thus, LTJPs have been supported because they offer a functional legal system at a stage when resources are scarce and other more pressing reconstruction tasks exist, such as rebuilding schools, hospitals and roads damaged during the war.

Second, local practices offer a practical method to deal with a large sum of lower-level perpetrators who are found at the end of all wars. This category includes rank-and-file soldiers and militia, bystanders and those who committed theft and property offences. Rather than pardon these cases and foster impunity, Patrick Burgess (2006) has claimed LTJPs can afford a way to achieve recognition and some justice for less serious crimes without burdening the courts. In northern Uganda, nearly 50% of LRA abductees have participated in the *nyono tong gweno* ("stepping on the egg") cleansing ceremony to resume communal life (Baines 2010). At first, *gacaca* was widely praised for this reason as well. It presented an inventive answer to the country's exceptional dilemma of how to deal with the more than 100,000 genocide suspects who were awaiting trial in deplorable prisons (Clark 2010; Longman 2006). The practicality of the *gacaca* court system, paired with its cultural appeal, prompted many to give it the benefit of the doubt despite their own human rights and political trepidations: "[*gacaca*] remains an innovative approach to accountability and, in this vein, deserves some deference" (Drumbl 2007, 93).

Finally, advocates have stressed that LTJPs are more economical and expeditious

than state-level TJ measures, like trials and TCs. For example, *gacaca* was completed in a decade, while some projected it could take up to a century to process the caseload from the 1994 genocide. The CRP program in Timor-Leste was similarly admired in a United Nations Development Programme (UNDP) report for settling approximately 1,400 cases in only three years: "When compared with the formal justice system, the CRP is seen to be relatively quick and a visibly just resolution of the problem" (Pigou 2004, 86; see also Burgess 2006). Scholars have been quick to point out that LTJPs are significantly more cost-effective than international trials. To this end, the ICTR spent a staggering US$1 billion to complete 75 cases at a cost of US$10 to 15 million per case (Skilbeck 2008), while the *gacaca* courts heard nearly two million cases at a total cost of US$48.5 million (Gacaca Community Justice 2015). To sum up, positive accounts have often rested on pragmatism about the accessibility, reach, efficiency and cost-effectiveness of LTJPs, while at times overlooking their political misgivings.

Recent Critical (Re)assessments

Although the literature on LTJPs is widely favourable, as the previous section has shown, recent critiques—focused primarily on the examples of Rwanda and northern Uganda— have disputed the dominant romantic view. These critical studies can be divided into two groups: 1) mostly legal analyses that have raised due process and human rights concerns; and 2) critiques that have highlighted issues of power and ulterior political motivations. While many of these critical reconsiderations have stimulated new thinking about LTJPs, they are limited in scope and are dwarfed by the dominant optimistic body of literature: "A strong tendency to romanticize persists, particularly in European and North American academic and NGO communities" (Huyse 2008, 8).

Due process and human rights concerns. The first group of critiques comes from legal scholars and practitioners who have probed whether LTJPs meet international law and human rights standards. These analysts have tended to understand local instruments as a judicial institution and, in view of that, have evaluated them against criteria meant to ensure fair trial rights. The fiercest opposition has been aimed at the contentious *gacaca* process in Rwanda, where observers have highlighted a number of concerns relating to the technical expertise of judges, the impartiality and independence of the courts, the lack of rights to appeal and defence counsel, and inadequate witness protection (Amnesty International 2002; Daly 2002; Human Rights Watch 2008, 2011; Sarkin 2001). Supporters have rejected these claims and have countered that nothing suggests *gacaca* is "prima facie inconsistent with the respect of human rights principals" (Longman 2006, 219). In fact, Ariel Meyerstein (2007) has argued that this critique was part of an agenda to adapt *gacaca* into a more familiar Western-styled court modelled on liberal legalism (see also Drumbl 2007).

To a lesser extent, human rights-based critiques have also been voiced in the cases of Timor-Leste and northern Uganda. For example, although Burgess (2006) is generally positive about the role of the CRPs on Timorese justice and reconciliation, he has taken issue with the inequality of arms and absence of legal advice for defendants. In the case of northern Uganda, questions have been raised about the legal competence of traditional measures, which has stirred debate about how they can be upgraded to meet international standards and the exceptional demands of a mass crimes context (Hovil and Quinn 2005; Liu Institute for Global Issues 2005). Adam Branch (2011) has criticized scholarly efforts to fit LTJPs within a legalist paradigm and show how they can meet international criteria

of due process as a potential disciplinary project he terms "ethnojustice."[4] Thus, not only is there a "danger in focusing too narrowly on how local mechanisms might be adapted to meet international standards" (Baines 2007, 108), the whole premise of outside scholars and experts spearheading a process to refashion local customs is distressing (Allen 2010; Branch 2011, 2014; see also Meyerstein 2007).

Several anthropologists have advanced a related critique about the discriminatory nature of some LTJPs, which they argue can reinforce gender hierarchies and exacerbate generational divisions. In Burundi, local customs obstruct women from investiture in the institution of *bashingantahe* (Naniwe-Kaburahe 2008). Although efforts have succeeded to enlist women in management positions on the National Council of Bashingantahe, the institution continues to fall short of norms for gender equality. Victor Igreja and Beatrice Dias-Lambranca (2008) have remarked that traditional healing rites in central Gorongosa also have a gender bias, given that only the spirits of men killed during the Mozambican civil war can reappear in the living world to attain justice. In a most egregious example, the *palava* hut dispute resolution process in Liberia has in some instances required rape victims to marry their attackers (Pajibo 2008).

Another human rights concern is that LTJPs can enflame age-set hierarchies that in some cases precipitated the conflict. This worry has most often been voiced regarding Sierra Leone, where elders oversaw a patrimonial system that sidelined youth and was a leading cause of the Revolutionary United Front (RUF) rebellion (Jackson 2007). Adam Branch (2014, 624) has noticed similar hostility to traditional authority in Uganda.

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[4] Ethnojustice is a discourse that informs human rights interventions where, "the fulfillment of justice is equated with the establishment of a traditional social order" (Branch 2011, 155).

Tensions between male lineage-based authorities and armed young men have been one of the roots of the wars that have plagued northern Uganda for over two decades, so there is no historical precedent that would imply that ex-members of the LRA will necessarily submit to this older male authority now.

Hence, as critics have warned, blindly promoting LTJPs can have the paradoxical effect of shoring up local governance structures that were abusive, corrupt and may have been a factor in the outburst of fighting in the first place (Branch 2011; Stovel 2008) and could serve to exacerbate local violence instead of foster reconciliation.

Power and ulterior political motivations. Political scientists predominantly make up the second group of critics who have drawn attention to issues of power and hidden political interests in LTJPs. Many of these scholars have been critical of the narrow legalism that shapes human rights-based critiques. As Nagy (2009) has argued, observers who have focused exclusively on the legality of LTJPs have blind spots to uneven power relations and hidden political motives (e.g., Drumbl 2007; Longman 2006; Meyerstein 2007). Although very few scholars have probed the relationship between law and power, some studies largely, restricted to the examples of Rwanda and northern Uganda, have nuanced our grasp of how LTJPs actually operate.

Scholars have analyzed the influence of political interests and power dynamics on LTJPs by far the most in the case of Rwanda's *gacaca*. Here, as Lars Waldorf (2006, 10) has noticed "local justice is political justice." Various academics have suggested that a fixation on human rights concerns and the legality of the *gacaca* courts has disregarded the *politics* that undergird this local initiative. Thomson and Nagy (2011, 29) made this point in an excellent article on the interplay between law and power in *gacaca*: "a general

preoccupation with forms of legality neglects the broader sociopolitical environment in which *gacaca* operates." In the Rwandan case, the politicization of *gacaca* has shaped the version of truth that can be spoken in public and, in turn, buttressed the Rwandan Patriotic Front (RPF) government's claims to legitimacy.

A few studies have seen *gacaca* as a form of victor's justice, given it overlooks RPF war crimes committed over the course of the four-year civil war leading up to the Rwandan genocide and also in its wake (Nagy 2009; Rettig 2008; Waldorf 2006, 2009). Waldorf, who headed HRW's field office in Rwanda from 2002 to 2003, made this point in his writings on *gacaca*, suggesting that "[t]he proceedings underscored the ease with which RPF elites can manipulate *gacaca* for their own political ends" (Waldorf 2006, 76). The major aim of this interference has been to politicize wartime identities in a way that emphasizes collective Tutsi victimization and Hutu guilt.[5] This binary framing of the genocide not only omitted RPF war crimes, but other victim classes as well, such as Hutu and Twa resistors and survivors (Thomson and Nagy 2011).[6] It has also bolstered claims that *gacaca*—and the larger effort to foster national unity and reconciliation in Rwanda—has been an exercise in victor's justice devised to serve President Paul Kagame's RPF regime's legitimating needs (Thomson 2011; Waldorf 2009).

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[5] The genocide of Tutsi by Hutu militias started on 6 April 1994, when a plane carrying the Presidents of Rwanda and Burundi was shot down over Kigali. Between 500,000 to one million Tutsi were killed during the ensuing three-month ethnic cleansing campaign. RPF forces stopped the Rwandan genocide militarily on 4 July 1994 (for further reading, see Des Forges 1999; Mamdani 2001; Prunier 1997).

[6] The Hutu are the majority ethnic group in Rwanda forming about 84% of the population, while 14% are Tutsi and less than 1% are Twa. Thomson and Nagy (2011) observe that the experiences of ethnic Twa have been completely marginalized in the *gacaca* process.

Critiques have further stressed the unequal distribution of power in *gacaca* between officials in Kigali, on the one hand, and people at the local level, on the other. So, while advocates have lauded the purported organic and grassroots nature of LTJPs, as was discussed in the earlier section, critics have highlighted that *gacaca* is steeped in asymmetric power relations in practice. This has meant, "power takes the form of directives from 'on high' (the regime in Kigali) and strict monitoring of the ability and willingness of local officials to [conform]" (Thomson and Nagy 2011, 21; see also Rettig 2008). When these boundaries are overstepped, the RPF and its agents have been quick to sanction those who have defied their prescribed roles. Many ordinary Rwandans have engaged in self-censorship and other self-sanctioning tactics as a result, in order to escape unwanted problems with the government (Thomson 2011). Thus, LTJPs like *gacaca* can be used in a coercive manner that feeds existing constellations of power (Thomson 2011; Thomson and Nagy 2011).

The interplay between politics and power is most clear in the type of "truth" about the 1994 genocide that Rwanda's *gacaca* courts have generated and how these narratives have in turn shaped reconciliation. Above all, this has meant that truth-telling can involve voicing a specific version of events in *gacaca* that is acceptable to the ruling RPF regime. Thus, as Bert Ingelaere (2009, 524) clarifies, "[t]he 'truth' is in the first place curtailed by the a priori defining parameters of what the 'truth' can be." In practice, *gacaca* has precluded any discussion of RPF war crimes and has exercised control over who can be recognized as a victim, thereby, omitting non-Tutsi lived experiences during the genocide and supporting a version of reconciliation that expands the power of the RPF government (Thomson and Nagy 2011). As Ingelaere and other critics have noted, these memories

and experiences are simply inexpressible in the TJ architecture that has been put in place in post-genocide Rwanda (Ingelaere 2009; see also Thomson 2011; Thomson and Nagy 2011; Waldorf 2009).

Scholars have asserted that the imposition of the truth and reconciliation through LTJPs like *gacaca* does little to tackle the root causes of violence and ensure long-term stability, leading one group of observers to declare that "*Gacaca* is part of a state-imposed veneer of reconciliation that does little to address the social and political divisions and injustices that underlie mass atrocity and conflict" (Thomson and Nagy 2011, 13). In particular, the lack of acknowledgement in the *gacaca* courts has curtailed the ability to rebuild social capital and build trust after the 1994 genocide. According to Ingelaere (2009, 524), this has largely been imposed from the top.

> The specific functioning of the Gacaca courts in the socio-political constellation of post-genocide Rwanda reveals that amnesia on certain aspects related to the past is not only chosen … but also imposed top-down. Dissonance between popular embodied experiences and understandings of the conflict, and the government-controlled and produced version of the 'Truth' with regard to the past, creates a volume of unexpressed grievance under the surface of daily life.

In summary, the Rwandan case highlights the need to pay greater attention to how LTJPs, such as *gacaca*, reproduce local constellations of power and political motivations.

To a lesser extent, scholars have also found hidden power dynamics and political motives at play in efforts to push local justice in northern Uganda. As Rosalind Shaw and Lars Waldorf (2010, 19) contend, "just as Rwanda's government has appropriated gacaca courts, the Ugandan government seeks to bend local practices to its own purposes." Here, instrumentalizing LTJPs has had large appeal given that Uganda's army also committed

gross human rights violations affecting civilians during its counterinsurgency campaign against the LRA. Hence, by treating LTJPs as a *de facto* amnesty mechanism, Uganda's National Resistance Movement (NRM) regime has avoided calls for the truth and justice. In fact, one long-time observer has speculated that this type of instrumental logic propels President Yoweri Museveni's TJ policy: "it seems likely that the Ugandan government is interested in promoting Acholi traditional justice precisely because traditional justice may guarantee state impunity" (Branch 2011, 175).

Two examples have been cited to suggest that the Ugandan government has instrumentalized LTJPs. The first example is the Museveni government's 2004 referral of the LRA case to the ICC, despite staunch opposition from large segments of civil society, and its subsequent dealings with the Court. Traditional authorities, faith-based groups and local human rights NGOs strongly opposed the indictments and instantly pressed the ICC to halt its work. They argued trials would jeopardize a fragile peace process and that local justice offered a more suitable method to accept LRA leaders (see Baines 2007). Initially, the government rebuffed these calls because the referral was primarily a *political* strategy to end the LRA legally—or, at least, to compel its leadership to accept the amnesty, since a military solution was out of reach (Branch 2004). However, once the implications of the ICC referral became known, mainly that the defence could implicate the government and armed forces, its support for the investigations waned (Allen 2006, 2010). In recent years, President Museveni not only remains stony towards the ICC, but has also become among its most vocal critics even urging other African states to withdraw from the Rome Statute.

The second example relates to the advancement of Acholi reconciliation rituals as a cornerstone of the Juba Peace Talks. Whereas the NRM regime previously exhibited a

disinterest in local means, by the time of the 2006-08 talks, the Ugandan government and members of the armed forces demonstrated a clear willingness to incorporate local justice into the TJ framework. The 2007 "Agreement on Accountability and Reconciliation," signed between the Ugandan government and LRA, reflects these motives. The document identifies a number of rituals that could be used to reconcile LRA returnees, but is vague on specifics and, importantly, omits the Ugandan army and LRA leaders that had been indicted by the ICC (Government of Uganda 2007). The agreement, therefore, was not only a victory for the government, but also for the LRA negotiators, given that LTJPs did not criminalize the rebel group unlike the 2000 Amnesty Act: "Essentially what the LRA delegation had achieved was an alternative to the amnesty arrangements" (Allen 2010, 258).

A number of factors explain this policy shift. Above all, the Ugandan government realized that LTJPs are less consequential provided "no one expects President Museveni and Joseph Kony to perform *mato oput* with each other" (Allen 2010, 259). Localizing TJ effectively shifts the center of the TJ effort *away* from the "big fish" (i.e., political elites, most high-ranking LRA commanders) towards the grassroots level. They do not generate lengthy prison terms or at times even acknowledgment of abuses. As one elder remarked, regarding the *mato oput* reconciliation ceremony, "*mato oput* is forgiveness, forgiveness is amnesty, amnesty is *mato oput*" (quoted in Baines 2007, 110). Tim Allen's (2006, 166) interview with ex-LRA commander Sam Kolo, who accepted the amnesty and defected to the government side in 2005, captures this sentiment.

> I asked [Sam Kolo] whether he was going to perform *mato oput*. He said that he was, but I pressed him on the topic and asked whether he would really look into the faces of those he had harmed and agree to pay

compensation. To this he replied that he would not. He would just do the thing that the Paramount Chief was responsible for. I asked him whether he thought [*mato oput*] meant anything. He smiled, indicating that he did not.

Therefore, while proponents have championed the ability of LTJPs to obtain recognition for past abuses, which can prove essential for rebuilding trust and fostering social capital in post-war societies (Quinn 2007), this fluctuates based on the political environment and how the interplay between law and power plays out in practice. Indeed, as Adam Branch (2011, 175) has observed, while most Acholi (and Ugandan) traditional justice practices require acceptance of responsibility, "under the present circumstances, it seems unlikely that the government would be willing to admit what it has done. Therefore, if promoted exclusively, traditional justice could provide the government and army with impunity for the crimes they have committed in the course of the war." In sum, the years 1986 to 2002 and war crimes and other gross violations of human rights that have been committed by the Ugandan armed forces are likely to remain outside the scope of TJ for the foreseeable future (Finnström 2010).

Main Argument

Although some scholars have problematized how power and political motives have resulted in the instrumentalization of formal TJ measures, such as trials and TCs, in Cambodia (Ainley 2014), the Balkans (Peskin 2008; Subotić 2009), South Africa (Wilson 2001) and elsewhere (see Bass 2000; Vinjamuri and Snyder 2015), only a handful of studies have tried to untangle these dynamics *locally*. Thus, prevailing scholarship on LTJPs continues to take these measures at face value despite findings they "embody

specific socio-cultural constellations of power, just as other state-based judicial instruments do" (Thomson 2011, 387). Branch (2014, 609–10) has made a similar claim, suggesting that local justice, "although conceived of as a reaction against the limitations of orthodox liberal transitional justice, embodies the same political logic as the latter and can lead to similarly counterproductive results." In sum, the lack of scholarly attention to these factors continues to be a major gap in the literature.

My argument is straightforward: LTJPs can be used in an instrumental manner by governing parties to deflect justice—that is, to avoid accountability for their own previous human rights violations—using techniques of distortional framing, a strategy that involves crafting a narrative that reflects the government's interests to evade responsibility for wartime human rights abuses. While some scholars have previously investigated government interference in TJ processes, they have tended to portray this interference as coercive and direct. I contend, by contrast, that manipulation takes a more indirect form wherein the ruling party shapes LTJPs in a way that delimits and distorts the truth. This argument presupposes that ruling parties have both the motive and means to execute a distortional framing strategy for these purposes. Specifically, they have the motive when their own members or allies are at risk of being accused of war crimes, crimes against humanity or other serious wartime abuses; and they have the means to carry out this strategy when the ruling party's administrative apparatus extends all the way down to the village level where it can play a "gatekeeper" function of permitting and preventing local action (Breuning 2011, 2013; Busby 2007, 2010).

Distortional framing strategies can deflect justice in two ways. First, they can set temporal limits on discussions about the war. The timeline of a conflict situation has been

politicized in many post-war states, including Rwanda, Uganda and in other contexts, where efforts have been made to curb discussions to a politically expedient period that produces a specific version of wartime events. For example, in Rwanda, the strategy of the RPF has centred on restricting the framing of the conflict to the 1994 genocide, which thereby neglects RPF war crimes that were committed during the 1990-94 civil war and after the genocide. As Waldorf (2006, 39) has observed, the ruling RPF "insists on its own single, absolutist version of history, rather than acknowledging the multiplicity of historical narratives and interpretations." In turn, as another scholar has noted, these temporal limits frame debates about past violence locally: "The specific functioning of the Gacaca courts in the socio-political constellation of post-genocide Rwanda reveals that amnesia on certain aspects related to the past is not only chosen … but also imposed top-down" (Ingelaere 2009, 524). Similarly, in Uganda, the NRM has controlled discussions about the past to exclude the 1981-86 Ugandan Bush War and post-2002 period when the Ugandan armed forces launched large-scale military offensives against the LRA that caused many civilian casualties. Elsewhere, in Timor-Leste, efforts were made to omit the 1974-76 civil war from the formal TJ process, when the majority of Frente Revolucionária de Timor-Leste Independente (FRETELIN) abuses took place. Meanwhile, in Cambodia the ruling CPP has attempted to restrict discussions of a near three decade-long civil war to the four-year genocidal rule of the KR.

The second way in which distortional framing can serve to deflect justice is by classifying wartime identities into rigid dichotomous categories of victims and perpetrators. The can serve to discredit the opposition by blaming it for *all* human rights abuses committed during a civil war and by casting opposition figures as the *sole*

perpetrators of serious crimes. The purpose of this "othering" strategy (see Campbell 1992; Hansen 2006) is two-fold: first, and foremost, it deflects attention away from government wrongs and assigns primary responsibility to the opposing side; and, second, it simplifies the conflict into a black-and-white narrative of victims and perpetrators that eliminates possible grey zones, where actual lived experiences may unsettle the ruling party's storyline.

Post-war identities are rarely black and white, as the recent literature on "complex political perpetrators" demonstrates. This concept describes individuals, such as child soldiers or female rebels, whose wartime identities do not fit tidily into the victim-perpetrator dichotomy (Baines 2009, 2016; Bernath 2016; Cohen 2013; Moffett 2016).[7] For example, although child soldiers perpetrate heinous crimes, they often do so under extreme duress and are also victims of abduction and forced recruitment. Similarly, as Dara Kay Cohen (2013) has shown in a fascinating article on female combatants, many women also participate in violence alongside male combatants, despite entrenched views that they tend to act as dependents or in supporting roles. Yet, as she points out, they are simultaneously subjected to rape and victimized by other forms of extreme sexual abuse.

This othering strategy is most apparent in Uganda, where the NRM regime, together with the media and human rights NGOs, have framed the LRA conflict as an apolitical crisis with only one guilty party often reduced to Joseph Kony's maniacal leadership (Finnström 2008a; Titeca and Costeur 2015). This narrative neglects gross violations of human rights perpetrated by the Ugandan armed forces. Sverker Finnström

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[7] Complex perpetrators encompass those who doubled as resistors and/or rescuers and victim-perpetrators, such as child soldiers and female combatants who were sexually violated. Some of these scholars prefer the term "complex victims" (Baines 2016; Bernath 2016).

(2010, 151) has described how this othering strategy has contributed to framing the LRA.

> In such a hierarchical structure, the political, cultural, and religious leaders indirectly promote themselves as the *superior* party to the conflict, the ones to forgive the *inferior* party. The latter are the rebels, or 'the children in the bush,' or even the 'terrorists,' 'hyenas,' and 'bandits.' As such, [LRA rebels] are objectified as criminals and children only. They are effectively denied any political subjectivity.

Similar othering strategies have also been used to discredit opponents elsewhere, including in Peru, where the government has branded the Sendero Luminoso (Shining Path) rebels as *terrucos* (terrorists) in order to place fault on and delegitimize the movement. The discursive framing of the Sendero Luminoso as *terrucos* has been repeated locally (Theidon 2006), although less successfully than in urban areas, in part because of the movement's popular support in rural regions, but also the Peruvian TRC's conclusion that state agents were responsible for roughly half of all war-related deaths, which has fomented a more open discussion about responsibility.

Motives

As noted above, successfully executing this distortional framing strategy presupposes that the ruling party has a clear motive to bend the dominant discourse of wartime events in its favour in a way that shelters political elites from justice and upholds the government's legitimacy. I contend that the *prospect* of high-ranking members of the government and/or those who uphold their power being held responsible for gross violations of human rights is a powerful motivator. By "high-ranking members of the government," I mean officials in the executive branch, such as the head of state and senior cabinet members, while "those who uphold their power" denotes military and intelligence

officials. These conditions create an incentive for the ruling party to frame LTJPs in manners that hide, rather than reveal, facts that could be harmful to these political elites. Thus, local means can embolden political elites to "insulate themselves from demands for accountability or justice after periods of conflict" (Branch 2014, 615).

Governments also have a motivation to frame the discourse surrounding LTJPs in ways that consolidate their power and reinforce their legitimacy. As mentioned earlier, scholars have demonstrated how formal TJ measures, such as trials and TCs, have been appropriated to legitimize the ruling party. As Shaw and Waldorf (2010, 16) note in relation to the Rwandan and northern Ugandan examples: "both cases reveal how local accountability mechanisms come under considerable pressure to mete out retributive justice and to serve the state's legitimating needs." A popular rhetorical device for regimes that have come to office militarily has been to emphasize their roles as "liberators" from a genocidal order, colonial rule or chronic civil conflict. Scholars have highlighted this dynamic in Rwanda, where, as Ingelaere (2008, 31) points out, "[l]iberation from a genocidal order is one of the underlying ideological vectors and legitimization strategies [of the RPF]." Other analysts have also made this point. Andrew Iliff (2012, 260) has echoed this claim: "*Gacaca* bolsters the current Rwandan government's framing of the genocide as a singular event legitimating its authoritarian rule and incomparable to any other forms of violence." This rhetorical framing has been a discursive tactic in other states as well most markedly in Cambodia, where the ruling Cambodian People's Party (CPP) has used a similar liberation narrative to shore up its power locally and nationally and to shield the regime from external criticism. Thus, LTJPs appear to provide a low-risk method to deal with the past in a way that legitimizes

the post-conflict regime at the local, national and international levels, thus reinforcing Richard Wilson's (2001) call to pay greater attention to the political factors that motivate successor regimes to pursue a specific TJ policy course.

Means

Distortional framing also presupposes that the ruling party has the means to enact and discipline this frame through a range of social control mechanisms, thus performing a gatekeeper function at the local level. Specifically, the ruling party's power must reach all the way down to the village level, so it can impose a favourable discursive framing of events. If the ruling party has the institutional capacity and a system of political patronage in place at the local level, for example, it can use that system to secure the support of local party cadres to carry out directives in return for influence and access to resources. A local party apparatus with minimally effective bureaucratic competence would also be necessary to approve LTJPs and to ensure that they reflect government interests. With these pieces in place, local party cadres can engage in gatekeeping practices by allowing or disallowing LTJPs based on their conformity to the discursive boundaries supported by the ruling party.

Relatedly, the government should also have a range of social control mechanisms at its disposal in order to ensure that organizers of LTJPs and participants stick within these boundaries once the initiative has been approved and is under way. If the government has framed the war in a certain way through the media and other means, it cannot let LTJPs propose an alternate framing of events that entangles political elites in human rights abuses. The ruling party, therefore, needs to have a variety of enforcement mechanisms at its disposal to make sure nobody oversteps the discursive boundaries it set

out. Although strategies to win the "war of words" can take a direct from, as in Rwanda, where the RPF has co-opted the media and most civil society organizations, I argue that it is above all the result of an indirect socialization process. Aware of the security apparatus of the state and political ties to the ruling party in the community, participants and NGOs acknowledge the perceived costs of overstepping these rules—such as personal harm and social exclusion for people, and decertification and loss of access for NGOs—so both engage in self-sanctioning behaviour and reproduce the state-approved frame of events. Through these indirect means, LTJPs can be used to distort rather than deliver the truth and justice for past abuses.

Consequences

How do we know that LTJPs have ultimately served to deflect rather than deliver justice? The most telling sign is when they insulate ruling party elites from prosecution and hide the truth about past events that implicate the regime.

Sheltering perpetrators can have adverse effects on the long-term credibility of TJ in a society. While scholars, such as Burgess (2006), have argued that LTJPs can play a vital role in re-establishing the rule of law in post-conflict states by holding offenders responsible for their crimes—especially mid-level and rank-and-file perpetrators—justice deflection has the opposite effect by fostering impunity. This has potentially destabilizing consequences in a post-conflict setting, as violators might not be deterred from repeating criminal acts due to a lack of perceived repercussions.

Failing to set the historical record straight can also have negative consequences on the consolidation of peace by impeding individual healing (because victims cannot talk about their suffering) and delaying the development of an understanding about the causes

and consequences of the war. This can make recurrence of the same mistakes possible. A lack of meaningful dialogue can also mean that victims and perpetrators fail to grasp what factors led the latter to commit abuses. Animosity between the two sides can persist and, as a result, perpetrators might be excluded from community life and continue to live with their former wartime comrades in relative isolation. This can raise the likelihood of a return to armed conflict.

Theoretical Approach

My argument draws upon Erving Goffman's (1974) frame analysis, which is an interdisciplinary lens that is widely used in the social sciences by interpretive scholars. In international relations, theorists have used this approach to study foreign aid (van der Veen 2011), humanitarian action (Lanz 2009), peace-building (Autesserre 2009, 2012) and moral movements (Busby 2010; Kapstein and Busby 2013; Keck and Sikkink 1998; Klotz 1995; Price 1998). Frame analysis offers an approach to study what is going on and to discern what is salient based on how the dominant understanding of a particular event or set of experiences has been discursively framed. For Goffman (1974, 21), frames are "schemata of interpretation" that render an otherwise insignificant act into something that now carries meaning; they allow people to identify and process events in their lives, and the world more generally, and thus orient the subsequent actions that are taken. In this section, I explain what frames are and how they operate, and relate discursive framing to the object of my inquiry.

Frames are social objects that reflect the dominant understanding of a situation, in this case a civil conflict.[8] They are also embedded in organizational cultures and routines, practices and narratives by informing how people and entire institutions, such as the UN, understand the world and particular events (e.g., the Cambodian and Mozambican civil wars). Based on this dominant interpretation of events, they imagine the range of possible corrective tools that can be used to address that particular issue. In other words, frames "shape people's views on what counts as a problem and what does not … which events will be noticed and which will not, as well as how they will be interpreted" (Autesserre 2009, 254). Therefore, they identify and define a problem, attribute blame and diagnose causality, and suggest policy options. While dominant understandings "authorize, enable, and justify specific practices and policies" (Autesserre 2012, 255), they also omit others because they are not seen as part of the problem. As a result, the remedial actions taken, in turn, reinforce the meanings embodied in the frame, which over time attain a natural, taken-for-granted quality that becomes the only imaginable understanding of the event (Autesserre 2009, 2012).

Scholars analyzing the influence of discourses in international relations stress that frames are imperative for outside and local actors trying to make sense of highly complex political phenomena. Autesserre (2012, 207), in particular, highlights the prominence of simple narratives, in the sense that actors working in the peace-building field need "an uncomplicated story line, which builds on elements already familiar to the general public, and a straightforward solution." This is paramount in post-conflict settings where

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[8] The next two paragraphs draw on Autesserre (2009, 2012). For more on the role of organizational culture in large-scale bureaucracies, such as the UN, see Barnett and Finnemore (2004).

activists, journalists and practitioners, who are frequently rotated between warzones, depend on the information they obtain to identify treatment options and propose solutions. Frames are a useful simplification tool as they "reify and perpetuate arbitrary and often dichotomous categories" (Autesserre 2009, 222). A simple storyline, such as one with clear-cut victims and perpetrators and a crisp timeline of events, is likely to resonate more with people who have limited prior knowledge of a country's history and culture.

Goffman's approach is limited in that it emphasizes the structural component of frames and overlooks the obvious agency aspect of framing (Gamson 1995); in this case, the ways in which frames can be crafted in a strategic way to achieve specific aims and to promote political motives. For example, in Uganda, Kristof Titeca and Theophile Costeur (2015, 98) have remarked that "an 'official' version of the LRA was presented by the Ugandan regime, emphasizing particular aspects of the 'terrorist' group, to demonize the LRA, minimize the destructive role of many Ugandan policies and practices, disqualify opposition, and mobilize international support." This shows how political actors exercise agency to exploit information asymmetries in order to promote their own interests. Snow and Benford (1988) have acknowledged the importance of both dimensions in their oft-cited typology of core framing tasks, where they split framing into diagnostic, prognostic and motivational framing. Diagnostic framing relates to the initial stage of identifying an event as problematic and in need of corrective action. Prognostic framing entails finding potential solutions and devising a strategy of what needs to be done. Finally, motivational framing refers to the articulation of a "call to arms" in order to mobilize public support for ameliorative action.

One pertinent aspect of diagnostic framing to this dissertation is what sociologists Hunt, Benford and Snow (1994) have referred to as "boundary framing," a concept that combines framing with collective identities. Boundary framing denotes the process of delineating moral binaries between good and evil, or in this case between victims and perpetrators. These socially constructed clusters of actors are referred to as "identity fields" (Hunt, Benford, and Snow 1994). These fields are formed during the life-course of any framing process, especially at the diagnostic stage, when agents detect a problem and attempt to attribute blame and causality (see Snow and Benford 1988). Boundary framing is often strategic, as actors jockey to mobilize support through a range of frame alignment strategies (Snow et al. 1986). As one group of sociologists have summed up, this framing reflects "conscious strategic efforts by groups of people to fashion shared understandings of the world and of themselves that legitimate and motivate collective action" (McAdam, McCarthy, and Zald 1996, 6).

Both the structural and agency components of frames relate to my argument about LTJPs; the ways in which the conflict has been framed structures the scope of LTJPs, but also relies on the actions of local actors to reproduce this narrative. On the one hand, the structural dimension is important, as it determines what a problem is and what it is not, and what the appropriate remedy ought to be. Agency, on the other hand, can be equally pivotal, as political actors might have a host of motivations to frame specific events or experiences, such as temporal boundaries of a conflict and post-war identities, in a certain way to support their interests, such as sheltering political elites. Thus, to be clear, I theorize these two elements—structure and agency—as mutually constituting and see framing as the outcome of a process, wherein, narratives, identities and outcomes all act

on and shape each other. This approach relates to Michael Barnett and Raymond Duvall's (2005) notion of "productive power," meaning that social subjects, such as frames, are produced through diffuse social interactions (in this case through discursive practices). So, while dominant constructivist explanations have tended to view framing as a linear process (Klotz and Lynch 2007), I see it as a process through which frames are generated through indirect and socially diffuse interaction. Furthermore, unlike most existing scholarship, which has used a frame analysis to explain how actors use framing strategies to achieve positive results, such as the framing tactics activists employed to secure policy commitments for debt relief (Busby 2007) and banning landmines (Price 1998), my dissertation seeks to extend this theoretical lens to account for the employment of frame alignment strategies for malicious intents, namely to avoid human rights accountability.

The above discussion of frame analysis still leaves at least one essential question unanswered: Why would subnational and international actors submit to the ruling party's discursive framing? The distortional framing strategy proposed here reflects a sort of tacit bargain between local, national and international actors approximating Michael Barnett and Christoph Zürcher's (2009) concept of a "peace-builder's contract" (see also Zürcher et al. 2013). This model takes into account the preferences of all three stakeholders: The international community wants stability, some sort of TJ process, and cooperation in any accountability measures it is involved with. The ruling party wants to protect its political interests and consolidate its legitimacy, which requires control over the process in order to avoid harm. Finally, local actors want to leverage their support for the TJ process for policy concessions and/or a share of the spoils.

Thus, in accomplishing their own respective political goals in TJ, all of these stakeholders are willing to accept the illusion of change "while leaving largely intact existing state-society relations" (Barnett and Zürcher 2009, 25). In her study of international criminal justice in the former Yugoslavia, for example, Jelena Subotić (2009) demonstrates how domestic political considerations, especially purging political opposition, securing international financial aid and gaining access to the European Union, have fuelled state strategies of compliance in the Balkans, rather than a commitment to bringing perpetrators to account. Similarly, Anuradha Chakravarty (2016) has used bargaining theory to account for compliance in Rwanda's *gacaca* courts, a phenomenon she labels "authoritarian clientelism." This clientelistic arrangement depicts the informal, but self-enforcing tacit contract between local actors and the Rwandan state.

Alternative Explanations

There are two major alternative explanations to the model of strategic framing that I have proposed above to explain the instrumentalization of LTJPs. The first, and most obvious, alternate account draws on constructivist theories of norm dynamics (see Finnemore and Sikkink 1998; Keck and Sikkink 1998; Risse and Sikkink 1999). These scholars describe the process of norm adoption from the time they emerge until when they are internalized and achieve a habitual, prescriptive value. As I mentioned earlier, norms scholarship sees change as a linear process of diffusion: initially, a norm is contested until it reaches a tipping point, which happens when a critical mass of states has recognized the norm; next, a systemic cascade ensues, where outlier countries rapidly accept the norm; at the end, socialization follows a relatively conflict-free process and the norm achieves a

taken-for-granted status (Finnemore and Sikkink 1998; see also Finnemore 1996a; Klotz 1995; Price 1998).

According to this view, which is rooted in mainstream constructivist theory, the government's support for LTJPs above all reflects a "logic of appropriateness" (March and Olsen 1998), meaning that actions are driven by a commitment to do the right thing and not by veiled interests and instrumental political calculus, as this dissertation argues. Specifically, if the design and discourses surrounding LTJPs happen to insulate political members of the ruling party, itself, and its political allies, this is an inadvertent effect, reflecting principled beliefs and perceptions of what TJ interventions ought to deal with. If this alternative explanation is correct, we should find evidence that the ruling party supports LTJPs as they evolve to address new and unexpected areas. This should further be exhibited by examples that the regime has "internalized" the accountability norm over time, meaning that it has accepted ideas about the pursuit of justice as appropriate, which would be observed in the establishment of follow-up TJ instruments, such as more trials, a TC, rhetorical acknowledgement and/or reparations.

The second alternative explanation also portrays justice deflection as resulting from unconscious, rather than deliberate, actions. Specifically, deep-rooted sociocultural practices of forgiveness and silence about the past might explain why discourses develop that place temporal boundaries on LTJPs and shelter past perpetrators. This alternative explanation acknowledges that many non-Western cultures have different customs for dealing with crimes that do not involve direct accusations of wrongdoing, and instead prioritize restoring social order and moving forward. According to this view, if silence and half-truths about wartime events help the ruling party by protecting its own members

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and allies, this is an unintentional outcome, echoing sociocultural norms that emphasize forgiveness and amnesia about the past rather than politics (Buckley-Zistel 2006; see also Eastmond and Selimovic 2012; Shaw 2007).

Stovel (2008, 320) has written about these cultural norms in Sierra Leone: "open dialogue about the problematic past is inconsistent with Sierra Leonean culture, and is not desired by the vast majority of the population. Indeed, Sierra Leoneans often repeated the expressions 'let sleeping dogs lie' and 'forgive and forget.'" Similarly, Samii (2013) contends that this explains a preference to "forgive and forget" in post-conflict Burundi, a claim that has been reported about societal preferences for forgetting in Lebanon, Mozambique and elsewhere. In Rwanda, Buckley-Zistel (2006, 134) has argued: "*Amnesia* is ... *chosen* as opposed to coerced, since it signifies less a public denial than a coping mechanism to avoid antagonisms and to be able to live peacefully. Remembering to forget is thus essential for local existence." Thus, if this alternative explanation is correct, we should find evidence that people prefer to resolve disputes through everyday nonverbal reactions and exhibit a general reluctance to participate in LTJPs and to speak about wartime experiences in public. The case study chapters will assess these alternative explanations and demonstrate how they are insufficient.

Conclusion

Most of the early scholarship on LTJPs put forward glowing reviews based on assumptions about their cultural relevance, inclusiveness, expediency and cost effectiveness. By contrast, in this chapter, I have put forward a theoretical argument explaining why and how ruling parties may seek to use LTJPs to deflect justice and

obscure truth—the opposite of the stated intention of transitional justice—by employing distortional framing techniques.

This raises a number of additional questions: What are the defining features of these discursive frames? Do they include temporal limits or other insulating features, such as putting boundaries around wartime identities? What specific techniques do they use to reproduce and enforce these frames? What are the results of this framing strategy for TJ? These are among the questions explored in the next section of this dissertation, which examines whether local justice deflection through distortional framing has, indeed, taken place in two major post-conflict countries.

PART II: Case Studies

CHAPTER 3: Methodology and Introduction to the Case Studies

Introduction

This chapter sets out the investigative framework employed to scrutinize the three central research questions of this dissertation: 1) Are local TJ processes manipulated by powerful actors to realize their own self-interested goals, other than obtaining justice and the truth? 2) How does this manipulation occur? 3) What is the impact of such manipulation on the outcomes of local TJ processes? In the following pages, I detail the case study approach I use and the process for selecting the cases that forms the basis of my research. I then describe the qualitative research methods, including the methods of structured focused comparison and process tracing, that guide the collection and analysis of both primary and secondary data.

Case Study Approach

The principal methodological challenge of this dissertation is to investigate whether, and to what extent, indirect distortional framing can be used to deflect justice. Establishing this link requires examining complex political processes and dynamics at work. The case study approach is the most effective research method to achieve this objective because it allows the researcher to take a deep-dive into a specific topic and explore a phenomenon within its context. This will enable me to conduct the type of in-depth inquiry and process tracing that is required to answer the research questions. Specifically, I adopt a small-N research design because it will permit me to probe the social, political, and historical particularities of each case study.

Case Selection

The first step in case selection is to identify the entire "universe" of cases. This requires setting the temporal scope of the study and identifying the number of states undergoing a post-conflict transition. By "post-conflict," I mean an end to hostilities by means of a peace agreement or a military victory without a reversion to large-scale violence in the first five years. I restrict the study to a 45-year period from 1965 to 2010 for two reasons. First, the sample includes all post-conflict transitions after the 1988 Aspen Institute Conference, "State Crimes: Punishment or Pardon," which is widely viewed as the origin of TJ as a distinct subfield of human rights practice (Arthur 2009; Orentlicher 2007). Second, this period excludes all civil wars after 2010, because the country's TJ policy is likely still being developed and it is too early to assess the effects of LTJPs.

Using these inclusion criteria, I identify 28 post-conflict transitions between 1965 and 2010 (see Table 1). I reach this total using the UCDP/PRIO Armed Conflict Dataset, adopting its standard definition of "civil war," as countries that have experienced internal armed conflict between the government of a state and one or more intrastate opposition groups, and listing all countries that have experienced large-scale civil war (at least 1,000 war-related deaths in a given year) during this period. My rationale is that the dissertation is concerned with the pursuit of justice in deeply divided societies after mass violence and countries transitioning from episodic violence, such as a coup d'état, are qualitatively different in this respect.

The next step was to narrow the list of countries to those which have used LTJPs (see Table 1). These were identified using the Transitional Justice Research Collaborative (TJRC) Database (Dancy et al. 2014). Secondary literature was also used to identify

countries that have LTJPs, given that the TJRC database only includes countries that have customary mechanisms. Overall, fifteen countries have implemented some form of LTJP. This list is geographically diverse: while LTJPs have been employed across five regions, they are most prevalent in sub-Saharan Africa, but are also widely used in Asia and to a lesser extent in Latin America.

Table 1: Civil Wars, 1965-2010

Country	War years	LTJPs	Belligerents
Eastern Europe			
1. Azerbaijan	1992-1994	N	Nagorno-Karabakh
2. Bosnia and Herzegovina	1992-1995	Y	Rep. Srpska, Croats
3. Croatia	1991-1995	N	Krajina
4. Georgia	1991-1993	N	Abkhazia, South Ossetia, Zviadists
5. Tajikistan	1992-1996	N	UTO
6. Serbia/Kosovo	1998-1999	N	KLA
Asia and Oceania			
7. Cambodia	1970-1998	Y	KR, FUNCINPEC, KPNLF
8. Indonesia/East Timor	1975-1999	Y	FRETILIN
9. Indonesia/Aceh	1989-2005	Y	GAM
10. Nepal	1996-2006	N	CPN-M/UPF
11. Papua New Guinea	1989-1998	Y	BRA
12. Sri Lanka	1983-2009	N	LTTE
North Africa and the Middle East			
13. Algeria	1991-2002	N	AIS, GIM
14. Lebanon	1975-1990	Y	various militias
Sub-Saharan Africa			
15. Angola	1975-2002	Y	UNITA
16. Burundi	1994-2006	Y	CNDD-FDD, FNL
17. Chad	1976-1984, 2005-2010	N	FROLINAT, various rebel groups
18. Republic of the Congo	1997-1999	N	various militias
19. Ethiopia	1974-1991	N	EPLF, EPDM, EPRP, TPLF, etc.
20. Liberia	1989-1995, 2000-2003	Y	NPFL, INPFL, LURD, MODEL
21. Mozambique	1977-1992	Y	FRELIMO, RENAMO
22. Rwanda	1990-1994	Y	RPF
23. Sierra Leone	1991-2000	Y	RUF, AFRC, CDF, etc.
24. Uganda	1981-2007	Y	NRA, LRA, UPDF
Latin America and the Caribbean			
25. El Salvador	1979-1992	N	FMLN
26. Guatemala	1965-1996	Y	URNG, various rebel groups
27. Nicaragua	1981-1989	N	FSLN, Contras
28. Peru	1982-2000	Y	Sendero Luminoso, MRTA

From within these 15 countries, I selected the two case study subjects, Cambodia and Mozambique, for four reasons.

First, they are socially and culturally disparate. Geographically, the two cases could not be more different: Mozambique is situated in sub-Saharan Africa, while Cambodia is in Southeast Asia. Further, Cambodia is a predominantly Buddhist country, while Mozambique is Christian. This will allow me to explore whether justice deflection is not simply limited to a specific region, religion or cultural setting.

Second, they vary in their systems of governance. Freedom House has generally considered Mozambique to be democratic and partly free since the end of its civil war. In contrast, an authoritarian regime has governed Cambodia and its population has generally not enjoyed political and social freedoms. This contrast will enable me to verify whether justice deflection is not merely a function of authoritarianism.

Third, they differ in their TJ approach and the extent of international involvement. Cambodia has implemented an intrusive multi-million-dollar war crimes tribunal, while Mozambique has done little to address wartime abuses (other than enacting an amnesty) and international interest in TJ has been limited. These differences in their approaches will permit me to examine whether justice deflection is not simply more common when international actors are less engaged in the TJ effort.

Fourth, there is a paucity of research about LTJPs in both countries. The existing literature about LTJPs in both Cambodia and Mozambique is limited; a close analysis of the two countries will extend the existing body of knowledge on the use of local forms of justice, which to date has largely focused on Rwanda and Uganda.

Data Collection Methods

Structured Focused Comparison

Structured focused comparison is a method to facilitate the collection and evaluation of data across cases so that it is directly relevant to the research questions under examination (George and Bennett 2005). The method is "structured" because the analyst uses a list of set questions that reflect the principal aim of the research project to guide and standardize the collection of data in a systematic and rigorous way. The method is "focused" because it only considers aspects of the case studies that are relevant to the research goals at hand. This method is suitable for this dissertation because it works best in circumstances when the total number of cases is small and the research questions demand detailed contextual analysis. In the context of this dissertation, both conditions apply.

Accordingly, in scrutinizing the case of Cambodia and Mozambique, I follow a template based on my three central research questions:

1. Are local TJ processes manipulated by powerful actors to realize goals other than obtaining justice and the truth?

   1.1 Was the ruling party motivated to distort local TJ processes—and, if so, why?

   1.2 Did the ruling party establish a discursive frame?

   1.3 What were the defining characteristics of the discursive frame? Did it include temporal limits or other insulating features, such as boundaries around post-war identities?

   1.4 Did the ruling party establish this frame with a deliberate intent to distort the truth and deflect justice?

2. How does this manipulation occur?

    2.1 How did the discursive frame shape local TJ processes?

    2.2 What means did the ruling party use to discipline the frame?

3. What is the impact of such manipulation on the outcomes of local TJ processes?

    3.1 Were high-ranking members of the ruling party insulated from justice?

    3.2 Did the ruling party exclude from consideration information about abuses it allegedly committed?

Process Tracing

Process tracing is a within-case qualitative method that attempts to "trace the links between possible causes and observed outcomes" (George and Bennett 2005, 6). In other words, this method allows the researcher to uncover evidence through a variety of qualitative sources in order to describe a process or the mechanisms through which intervening variables contribute to a causal relationship between an independent event and its outcome (George and Bennett 2005).

I will employ process tracing to isolate key events and disaggregate the framing process into identifiable steps: how and why was the problem defined in the manner it was, who was assigned blame, and what prescriptions were suggested and implemented. There are clear challenges with this method that made it necessary to adapt it slightly. Indeed, frame analysis is an interpretive approach, which makes identifying and separating causes and effects challenging. To this end, I rely on a number of recent analyses that develop interpretive process tracing techniques to study discursive frames (Autesserre 2010, 2014; Hopf 2002, 2012; Pouliot 2007, 2014).

In their authoritative collection on process tracing, Andrew Bennett and Jeffrey T. Checkel (2014, 21) identify a list of best practices when utilizing this approach. Among them, the authors advise to take into consideration viable alternative explanations and to be equally rigorous in their examination. Thus, good process tracing demands not only subjecting one's own hypothesis to testing, but it further demands that the researcher demonstrate how alternative explanations are unable to explain the proposed outcome (Bennett 2008; Collier 2011).

Data Sources and Analysis

This dissertation relies on qualitative data collected from primary and secondary sources. The following table (see Table 2) identifies the sources used to answer each question of the structured focused comparison and the objectives of the data analysis.

Table 2: Data Sources and Proposed Analysis

Question	Sources	Analysis
1.1	• Existing scholarly literature • NGO reports	To examine the extent to which political elites associated with the ruling party may have been implicated in gross violations of human rights during the civil war. To identify potential hidden motives to deflect justice.
1.2 1.3	• Interview results • Existing scholarly literature • NGO reports • Newspaper articles	To determine whether the ruling party set a discursive frame. In the affirmative scenario, to identify the defining features of the discursive frame.
1.4	• Interviews with government officials • Interviews with individuals that have direct knowledge of decision-making • Secondary sources for circumstantial evidence	To determine whether the discursive frame was established with *intent* to distort the truth and justice.

Question	Sources	Analysis
2.1 2.2	• Nonparticipant observations from the fieldwork • Interviews with practitioners • Existing scholarly literature	To explore how the discursive frame shaped LTJPs. To identify the means the ruling party used to discipline the frame.
3.1 3.2	• Existing scholarly literature (to verify findings against the TJRC Database) • Interview results • Nonparticipant observations from the fieldwork	To establish the effects of this framing tactic on TJ. To determine the extent to which political elites have been insulated. To determine the extent to which local TJ processes have excluded incriminating facts about government abuses.

Primary Data Sources: Interviews and Fieldwork

Over the course of my research I carried out 85 interviews with individuals who had some level of involvement or knowledge in the decision-making processes around TJ in Cambodia and Mozambique. Among the cited interviews are politicians, UN officials, donor officials, religious leaders, civil society representatives, journalists, practitioners, and independent analysts (see Appendix A). Having access to such a diverse group of perspectives minimized the potential for confirmation bias. In my analysis, I further triangulated responses obtained from government sources with other authorities, such as civil society officials, activists, journalists and TJ practitioners, to ensure the veracity of the results.

Recruitment of informants was done in two steps. An initial group of informants was identified on the basis of their involvement in decision-making processes relating to TJ in each country. Additional respondents were later solicited using a "snowball" technique, whereby participants helped recruit other informants. Most of the interviews occurred in the capital cities of both countries (i.e., Phnom Penh, Cambodia and Maputo,

Mozambique) and were was carried out from January to March 2014 and December 2015 in Cambodia, and from May to July 2014 and April 2016 in Mozambique.

The interview guide was designed to collect information relevant to the primary goals of the study and to control for alternative explanations. Given the semi-structured format of the interview, respondents were nevertheless able to deviate from the interview guide. Interviews were conducted in English, and while all the informants in Cambodia were fluent in English and did not require translation, five requested translation into Portuguese in Mozambique. Respondents were reminded during the interview that they could decline to answer questions that made them feel uncomfortable.

In addition to interviews, my fieldwork also included nonparticipant observations at local TJ events in both countries. Although I did not conduct any interviews at these events, I did observe various LTJPs being used, including psychosocial interventions, truth-telling ceremonies and memorialization initiatives. These settings also provided me with an opportunity to speak informally with various stakeholders, such as practitioners, participants and local authorities, which gave me the chance to connect the content of the interviews with practice. These research sites (see Appendix B), which were carefully selected to include areas friendly to the ruling party and opposition strongholds, gave a more nuanced understanding of how domestic political factors and power dynamics were playing out in Cambodian and Mozambican villages and affecting TJ processes on the ground, as well as the dominant narratives that were being produced.

Secondary Data Sources

Process tracing involved document analysis of official government statements, editorials and commentary in local and international newspaper articles, and civil society reports.

The focus of the document analysis was to explore how political elites cultivated a narrative about the conflict and responded to deviations from the official understanding, as well as how this was in turn linked to TJ policy.

Research Ethics

The research for this dissertation was carried out in accordance with the ethical standards of the University of Ottawa Research Ethics Board (File Number 10-13-23). Consent of participants was obtained beforehand. Given that most of the interviews involved elite informants, the questions asked were of the type that they would handle on a daily basis. In light of the fact that most participants were in some manner affected by mass violence, I avoided personal questions to mitigate the risk of retraumatization.

I usually recorded the interviews requesting the participant's consent and making it clear that I could turn off the recording device at any time. Informants had discretion over whether specific statements would be unattributed. In some cases, I made judgment calls to withhold a participant's identity (or affiliation) if I thought their responses could have negative social or professional repercussions, even if they had consented otherwise. Identities were stored in an encrypted spreadsheet and data was moved to a secure cloud at the end of each day.

Conclusion

This chapter sketched out the investigative framework I will use to systematically explore the three main research questions. In the next chapters, I will evaluate whether and how discursive framing was used to influence LTJPs in order to shelter political elites and conceal the truth in Cambodia and Mozambique.

CHAPTER 4: Narrating the "Truth" about the Khmer Rouge in Cambodia

Introduction

The genocidal war in Cambodia lasted nearly thirty years, from 1970 to 1998. Some 2.5 million people were killed, more than half (an estimated 1.67 to 1.87 million) during the four years (1975–79) of the Khmer Rouge regime (Kiernan 2008). Although Vietnam invaded Cambodia and expelled the KR in 1979, the KR's military power was not broken; and almost a decade of guerrilla warfare began in the country, persisting until 1998. The Paris Peace Agreement (PPA) of 1991 secured a tenuous peace; multi-party elections were held, and the United Nations Transitional Authority in Cambodia (UNTAC) was created. However, the surviving leadership of the KR continued to resist, boycotting the elections.

In 1997, the Royal Government of Cambodia (RGC)[1] had asked the UN for assistance in setting up a tribunal to prosecute the remaining senior KR officials. An agreement specifying the tribunal's mandate, composition and procedures was reached in 2003, and it finally started operations in 2006. Since then, the Extraordinary Chambers in the Courts of Cambodia (ECCC) has become the centrepiece of Cambodia's TJ policy, and has stimulated the creation of numerous LTJPs in the country.

In this chapter, I scrutinize whether a distortional framing strategy on the part of the ruling Cambodian People's Party (CPP) has influenced those LTJPs. I argue that the government has successfully limited the framing of the conflict to the four-year rule of

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[1] I use the terms RGC and CPP interchangeably to refer to the ruling party.

the KR; and that this frame deliberately downplays the causes of the genocide and its aftermath, casting the KR as the sole perpetrators of violence and ignoring its own complicity in what happened. At the same time, it has encouraged a TJ policy centred on trials and LTJPs—thereby allowing the political elites to avoid justice, since LTJPs (despite their value in some respects) lack the teeth to effectively catch and punish war criminals. In the following sections I contextualize the war, describe these distortions in the narrative, outline how they are enforced locally, and what the effects have been for transitional justice in the country.

Figure 4: Map of Cambodia and its Neighbours

Source: Based on the January 2004 UN map titled Cambodia (#3860 Rev. 4).

Background

Cambodia is situated on the Gulf of Thailand in Southeast Asia, bordering Laos and Thailand to the north, and Vietnam in the south and east (see Figure 4). The Kingdom of Cambodia dates back thousands of years, and flourished most during the time of the Angkor Empire, which lasted six hundred years from 802 to 1431. In 1863, Cambodia became a protectorate of France until it declared independence in 1953. During the period after independence, Cambodia was a constitutional monarchy under King Norodom Sihanouk. The King's harsh governing style, characterized by a one-party rule and political repression, created resentment in the military, and in some factions of his government.[2]

Cambodia's post-independence peace was short-lived, as the conflict in neighbouring Vietnam in the early 1960s spilled across the country's borders. Vietnamese communist guerrillas established paramilitary bases along the Ho Chi Minh Trail in eastern Cambodia, using it to fight American and South Vietnamese forces. To cut off this supply route, in 1969 the US military launched Operation Menu, a massive covert bombing campaign of Cambodia that lasted until 1973. By the end of the four-year operation, the total tonnage of bombs that the US Air Force had dropped on Cambodia exceeded that used by all the Allied forces throughout the entire Second World War—at one point reaching 3,600 tons in a single day (Kiernan 2002).[3] This fact, coupled with regional instability and the military's resentment at the government, left Cambodia in a

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[2] For the best study of Cambodian history from the pre-Angkor era until now, see Chandler (2009).

[3] Although no official count exists of how many people died in the US bombing, Kiernan (2002) estimates are that some 150,000 people (mostly civilians) were killed.

precarious state. In 1970, while King Sihanouk was out of the country on a foreign visit, General Lon Nol took power in a military coup—thereby precipitating the nation into a civil war (D. P. Chandler 1993; Etcheson 1984; Kiernan 2002, 2008).

Under the US-backed Lon Nol, the American government found a new ally for its intensified bombing war on communist Vietnam; and Cambodia also ceased its policy of supporting its neighbouring country. These two elements, together with Lon Nol's authoritarian style, fuelled dissatisfaction in the countryside and support for the KR movement. In the first three years of the Lon Nol regime, the KR ballooned in size from some 10,000 members to more than 200,000 (D. P. Chandler 1993; Kiernan 2002). But over the five years of the civil war, up to 600,000 people died (Peou 2000) and 750,000 refugees migrated from rural areas into the capital city, Phnom Penh, and other regional capitals (D. P. Chandler 1993). Spectacularly, when KR rebels under Pol Pot stormed Phnom Penh on 17 April 1975, ousting Lon Nol, large crowds cheered their arrival—unaware of the impending horror (Dy 2007).

The four-year period of Democratic Kampuchea (DK), as the KR tenure is known, is one of the most tragic episodes in recent human history. As mentioned earlier, the paranoid and totalitarian cult of Pol Pot executed anywhere between 1.67 and 1.87 million Cambodians. On the first day of its regime, the KR evacuated the entire capital city, stripping Phnom Penh of all its inhabitants as the first step in its radical plan to reengineer the Cambodian state into a utopian agrarian economy. The residents were expelled to the countryside, where they were forced to work as labourers on large-scale projects such as irrigation systems and dams. Thousands died from exhaustion, starvation and illness in the brutal conditions (D. P. Chandler 1993; Kiernan 2008). Other perceived

"opponents of the revolution"—particularly intellectuals, doctors, members of the *ancien regime*, foreigners, religious leaders and minority groups—were singled out for execution in the country's notorious "killing fields" (Hinton 2005). A KR slogan from this era captures the regime's murderous ethos: "Better to kill an innocent by mistake than to spare an enemy by mistake!" (quoted in Locard 2004, 209). The regime also severed community bonds; families were compelled to turn on each other or risk death. Spies were urged to report suspicious activities even if it meant implicating their kin (Hinton 2005).

This grisly period came to an end when Vietnam invaded Cambodia on 7 January 1979. Expelled from Phnom Penh, the ousted KR cadres fled en masse to the remote jungle regions in the country's north and northwest provinces. There they re-established themselves in strongholds, with bases along the Thai-Cambodia border, and also in the southern Kampot province, and in the centre of the country around the Tonlé Sap (Gottesman 2004). Relying on refugee camps on the other side of the Thai border for recruitment and supplies, as well as delivery of Chinese arms and ammunition, the KR was able to regroup into a potent guerrilla force numbering 40,000 rebel troops. From these strongholds, the KR would fight the newly installed pro-Vietnamese People's Republic of Kampuchea (PRK) government for another 20 years. (The CPP governed the country throughout the PRK period as the Kampuchean People's Revolutionary Party, before adopting its current name in 1991.)

As Evan Gottesman (2004) explains in one of the few published accounts of this period, the fighting came to follow a predictable seasonal pattern. During the dry season, the PRK assaulted KR bases and targeted suspected sympathizers in Thai refugee camps.

The guerrillas would then retaliate during the rainy season, sabotaging roads and bridges, and raiding administrative posts. The largest of the former offensives took place late in 1984, when the PRK managed to expel all the rebel forces from Cambodia, and eliminated their bases. But the need to cut off the rebels' source of supplies and arms in Thailand led the military to formulate a five-point defence strategy for Kampuchea, known as the "K5 plan." The second of the points (the only one that was ever implemented) was the idea of sealing the Thai-Cambodia border by building a 700-kilometer fence through the mountainous jungles (Slocomb 2001).

In fact, what was eventually constructed was a massive cleared zone, with a rudimentary barrier consisting of trenches, wooden fences or spikes, barbed wire fencing, and millions of landmines. This disastrous project (sometimes called the Bamboo Wall) necessitated the forced relocation of thousands of Cambodian peasants from the south and east to the border area. The regime conscripted 380,000 people into forced labour, clear-cutting the forest, putting up fencing, digging trenches, laying the landmines, and upgrading strategic roads. Many of the labourers contracted malaria, or suffered from exhaustion and hunger; many of them died. The project was hugely unpopular in rural areas, and strangely reminiscent of the DK period (Gottesman 2004; Slocomb 2001). For the peasants, it was "a stark reminder of the terror of the Pol Pot regime, from which the PRK claimed to have liberated them" (Slocomb 2001, 210).

The conflicts during the 1980s featured two other militant factions: the Khmer People's National Liberation Front (KPNLF), and the Armée Nationaliste Sihanoukienne (ANS), the armed branch of the Royalist party. Another player was the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC).

Together, these three resistance groups eventually formed the Coalition Government of Democratic Kampuchea (CGDK), which the international community recognized at the time as the legitimate government of Cambodia (since the PRK was under Vietnamese stewardship). The CDGK even held the country's seat in the UN General Assembly, a remarkable achievement given the KR's membership in the coalition. The occupation by Vietnam also meant that Cambodia was under heavy sanctions by the international community—thus denying the PRK government the humanitarian aid it desperately needed. Help was required not only for the victims of the KR period, but also for the hundreds of thousands of refugees and internally displaced persons (IDPs) who were still recovering from their traumatic experiences under DK.

By the late 1980s, following Vietnam's withdrawal from Cambodia in 1989 (and prompted by broader geopolitical shifts that came with the conclusion of the Cold War), an agreement was negotiated between the UN and countries in the region to end the conflict situation. The warring factions were brought to the table to discuss the parameters of a peace agreement. Years of discussions and negotiations finally yielded a framework, which was signed in Paris on 23 October 1991. The Paris Peace Agreement (PPA) was accepted by all four parties, and by the five permanent members of the UN Security Council (see Hendrickson 1996). The UN launched a transitional authority program: the United Nations Transitional Authority in Cambodia. UNTAC's two main tasks were to organize national elections, and to oversee the demobilization and reintegration of rebel forces. But very soon the KR reneged on the PPA, boycotted the elections, and returned to fighting. During the UNTAC years (1992 and 1993), according to one peacekeeper, the country was "definitely a war zone" (quoted in Vachon 2012).

Maurits van Pelt, who headed the Médecins Sans Frontières field office in Cambodia at the time, lamented that most UNTAC members arrived in the country under the impression that they had "a peacekeeping mission, not a peacemaking mission" (quoted in Vachon 2012). But peace was in short supply in Cambodia then, particularly in the country's interior, which was only accessible with a military escort.

To make matters worse, the ruling Vietnamese-supported CPP, led by Hun Sen, refused to accept the result of the 1993 election, which was won by Norodom Ranariddh's royalist FUNCINPEC party. As a compromise, and to avert full-out war, the UN consented to a power-sharing arrangement that saw Ranariddh installed as First Prime Minister, and the defeated Hun Sen as the Second Prime Minister. During this time, the two rivals competed for defecting KR fighters. The CPP spearheaded what became known as the "win-win" policy, which sought out former KR belligerents in return for amnesty and integration into the government or armed forces. One CPP acquisition under this arrangement was Ieng Sary, Minister of Foreign Affairs during the DK period, who in 1996 brought with him one of the largest and most battle-tested battalions in the KR stronghold area of Malai District.

During this time, the RGC asked the UN to help establish a tribunal to prosecute the remaining KR leaders who were still at large. Although this was a welcome development for human rights activists, many also saw this as a political strategy to coerce the KR to join the government side (Ainley 2014; Ciorciari and Heindel 2014; McCargo 2011). Indeed, by the end of 1998, nearly all had defected to the CPP. (One holdout was "The Butcher," Ta Mok, who was eventually captured the next year, and later died in detention.)

At around this time, in July 1997, the CPP consolidated its power by ousting FUNCINPEC in a military coup d'état. An uneasy coalition followed, during which Hun Sen preserved control over the military, judiciary and bureaucracy, while FUNCINPEC actually formed the government. It was an awkward arrangement: Ranariddh's party was trying to run ministries whose staff had been appointed in the 1980s by the CPP (Vachon and Van 2017). The net result of the coup was to simply reinstate Hun Sen's de facto control over Cambodian politics ahead of the 1998 election, which the CPP handily won. Hun Sen has ruled the country with an iron fist ever since.

The CPP dominated subsequent elections in 2003 and 2008, which were less violent than the earlier one, and largely fair; but they also erased any form of political opposition (Un 2011). As veteran Cambodia analyst Duncan McCargo has pointed out, the CPP was essentially "getting away with authoritarianism" (2005, 107). The most recent elections, in 2013, were marred by mass protests, and excessive use of government force that resulted in many injuries and at least four deaths (Human Rights Watch 2013). From this we can see that the transition to "democracy" has in fact failed to produce any meaningful change in governance style. The CPP has become even more authoritarian with time, and many ex-KR still live in their stronghold areas and have not reintegrated into society. As the 2018 elections approach, the potential for more unrest is strong.

Transitional Justice

The cornerstone of the Cambodian TJ effort is the ECCC (also referred to as the Khmer Rouge Tribunal), which started its work in 2006 after nearly ten years of negotiations between the RGC and UN. The Court is located on a former military compound, roughly 18 kilometers outside Phnom Penh. A hybrid tribunal, its legal and administrative staff

are equally drawn from national and international sources.[4] Although the national judges have a majority in each Chamber, decisions must be reached using a "majority plus one" principle—meaning that Cambodian judges may not override international judges. This is important given that, even in the ECCC itself, patronage is pervasive: loyalty to the CPP determines who gets appointed to the national places on the court (Open Society Justice Initiative 2010; Torrens 2016).

So far, the ECCC has heard only two cases concerning whether members of the KR regime committed genocide and other crimes against humanity (including forced marriage). In Case 001, Kaing Guek Eav (alias "Duch"), the former head of the notorious S-21 Security Centre in Phnom Penh, was sentenced to life in prison. Case 002 is still ongoing, and involves the trials of KR leaders Nuon Chea and Khieu Samphan for their roles in the evacuation of Phnom Penh. (Two other accused, Ieng Sary and his wife Ieng Thirith, died in custody.) Due to its size and complexity, the case was split into two separate trials: although Nuon Chea and Khieu Samphan were both found guilty and sentenced to life in prison, other charges have been laid.

Two more cases, 003 and 004, are also pending. The first involves Meas Muth, charged in absentia, along with Im Chaem—who also features in Case 004. The other accused there are Ao An and Yim Tith. In 2015, to the surprise of many observers, the ECCC announced new indictments in the latter cases. However, it is uncertain whether they will actually go to trial, due to persistent opposition from the government. Prime Minister Hun Sen has repeatedly denounced any new trials, on the unlikely grounds that

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[4] Other such hybrid tribunals have been created in Bosnia and Herzegovina, Kosovo, Lebanon, Sierra Leone, Timor-Leste and, most recently, Senegal (to try crimes committed in Chad).

further proceedings "could cause former Khmer Rouge soldiers to return to the *maquis* and start another civil war" (quoted in Kuch 2015; see also Open Society Justice Initiative 2012).

The ECCC is significant to the study of LTJPs for three main reasons. First, Cambodia's tradition of civil law allows victims to take part in the proceedings. For Case 001, fewer than a hundred people were admitted as Civil Parties; but in Case 002, over 4,000 have been declared. These individuals are the main target audience and participants in LTJPs. Second, the ECCC permits such Civil Parties to claim "collective and moral reparations," meaning that their suffering and harm during the DK era will be acknowledged (Extraordinary Chambers in the Courts of Cambodia 2017). In perhaps the first such example, a number of existing LTJPs were accepted as reparations in Case 002. This deepened the ECCC's contact with the Cambodian NGOs involved in this area through the Court's Civil Party Lead Co-Lawyer Section (CPLC) and its Victim Support Section (VSS). (The CPLC organizes and spearheads the in-court representation of the Civil Parties in Case 002, who all have their own lawyers; and was responsible for proposing the reparations projects for Case 002 with significant involvement of the VSS.)

Third, and related to the preceding points, the ECCC's founding triggered a groundswell of local action, as well as attracting significant interest from donors. As a result, it has influenced all LTJPs that followed. As one observer pointed out, the ECCC was responsible for widespread understanding of transitional justice as it relates to the Khmer Rouge regime.[5] An international donor official reiterated this view, stressing the

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[5] Personal interview, anonymous, Phnom Penh, Cambodia, 18 February 2014.

impact of the ECCC on the scope of LTJPs: "The ECCC was the catalyst for those activities, so in a way it also sets the frame for them in this political environment."[6]

Framing Transitional Justice

Distorting the Frame

I argue that the ruling CPP party has adopted a distortional framing strategy, with the goal of protecting its own interests: to claim legitimacy as the victor in the conflict, and as the liberator of the Cambodian people. This distortion has had the effect not only of influencing the scope of LTJPs in Cambodia, but also of preventing the truth from coming out, and justice from being done. The strategy has two principal elements:

- to emphasize only the four-year DK period when the KR was in power and perpetrated the genocide, thereby denying any discussion of both the antecedents and aftermath of the DK period;
- to shift responsibility for all human rights violations carried out during the conflict onto the KR leadership.

This discursive frame identifies a central **cause** of the civil war, the KR's coming to power; a main **effect**, the Cambodian genocide; and a principal **solution**, prosecuting the surviving KR leadership. Conveniently, it also allows the CPP to avoid responsibility for its own serious violations (which I define in more detail below). In the next section, I discuss two elements of that strategy: temporal limits, and wartime identity.

Temporal Limits

Public dialogue about the civil war in Cambodia is largely limited to the four-year DK

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[6] Personal interview, donor official, Phnom Penh, Cambodia, 29 January 2014.

era. Throughout my field research in both urban and rural populations, I found that the nearly 20 years of civil conflict that followed is a taboo subject in Cambodian society—since it exposes links between the CPP and the Vietnamese occupation when they served in the PRK regime, and touches on the serious abuses and crimes committed by the latter. These systematic abuses of human rights might well be termed war crimes, or crimes against humanity. The preceding period also attracts little attention. The dominant narrative neglects to mention the brutality of the Lon Nol dictatorship, and the US bombing of Cambodia's eastern provinces, which combined to stoke resentment at the government and support for the KR. For the political elites in the ruling CPP, any focus on these times is highly undesirable: it would embarrass them by revealing their many past ties to the KR, and their roles in the PRK regime—thereby tarnishing the party's oft-repeated claim to be liberators of the Cambodian people.

In the period before DK, many people joined the KR for completely rational reasons: resentment of the US bombing, and dissatisfaction with the oppressive regime (Chandler 1993; Kiernan 2002). Even many high-ranking CPP officials joined the KR then, some commanding large battalions. This is only one of the embarrassing facts that has come out during the ECCC proceedings, and that the party has tried to cover up. Many war crimes were committed from 1970 to 1975: over a half-million Cambodians were killed (Peou 2000), and more than 750,000 displaced (D. P. Chandler 1993), triggering a humanitarian disaster. Both sides also committed gender-based crimes, and conscripted child soldiers (Dy 2007).

It was also around this time, in 1972, that the KR first began to show signs of communist radicalization (D. P. Chandler 1993; Kiernan 2002). The guerrillas carried out

the first large-scale internal purges of suspected dissidents; they also started to implement communist schemes, such as collectivization, in KR zones. Members who opposed these reforms, or were suspected of collaborating with the Vietnamese, were executed en masse (D. P. Chandler 1993). The guerrillas also began massacring civilians in large numbers as they marched toward Phnom Penh. So for many Cambodians, their first exposure to the KR came during this time, when the movement had radicalized and controlled over two-thirds of the countryside (Chhim 2012).

If the period leading up to DK has been played down, so has the aftermath. As mentioned earlier, many of the highest-ranking members in the PRK government were former KR cadres who defected to Vietnam during some of the KR's initial purges, including the current Prime Minister Hun Sen (Human Rights Watch 2015). Im Sophea, the former head of the VSS, explains that "the government holds the answer" to why the post-1979 period is off-limits for questioning. "Many people lost their loved ones, but they're scared to come forward. Who would have the power to ask someone to take responsibility for this?"[7] With the powerful political group still in power, silence might seem like the wiser option. Then too, during this phase of the conflict, it's a fact that all the parties—including the PRK government, KR, KPNLF and ANS forces—committed crimes. As noted above, the offensives and counteroffensives of the mid-1980s resulted in significant civilian casualties.

But the most egregious crime against humanity known to have been committed during this phase was, as mentioned earlier, the Bamboo Wall forced labour project. I discuss this in greater depth in the section on motives, but it is worth mentioning here that

[7] Personal interview, Im Sophea, undisclosed location, 23 February 2015.

the plan did have the effect of altering guerrilla strategies. With their bases on Cambodian territory destroyed in 1984–85, and with the K5 belt blocking their access to Thailand, the KR was forced to reassemble into smaller units, and to penetrate deeper into the interior of the country in order to resume their attacks on government and the population (Gottesman 2004; Slocomb 2001). Still, all three rebel groups were able to reconstruct their Cambodia strongholds shortly after Vietnam withdrew from the country in 1989.

However, with external support waning with the end of the Cold War in 1991, the KR began to grow paranoid, and to splinter into rival factions. The CPP capitalized on this internal weakness by encouraging defections through its win-win policy. The final bloody act carried out by the last KR elements (now under the leadership of Ta Mok) was a purge near the Anlong Veng stronghold. This took place sometime between 1993 and 1997, and some 3,000 people were killed. The exact total is not known: the persistence of landmines in the area mean that the graves have yet to be exhumed (Rowley 2006).

However, there are several reasons why the "blame everything on the KR" attitude has gained such broad acceptance. The most obvious reason is that the DK era was the most egregious period of violence. In four years, the Khmer Rouge murdered fully a quarter of Cambodia's population; the rest were forced into labour camps where punishment, starvation, illness and psychological suffering affected an entire generation (D. P. Chandler 1993; Kiernan 2008). The regime's policies further destroyed all sense of individual identity, and tore apart the social fabric of communities. Naturally, the PRK could hardly avoid highlighting the horrors of this period to legitimize its rule, and to rally citizens against the remainder of the KR.

A second reason is that the Cambodian genocide created a dedicated group of national and international scholars and human rights activists. Its goal was to collect and preserve evidence of the DK's crimes, and to try to bring justice to those responsible. These observers included the Americans David Hawk, David Chandler, Alexander Hinton, Ben Kiernan and Gregory Stanton, as well as the Australian Helen Jarvis. Hawk's documentation efforts, in particular, proved to be vital. During a trip to Cambodia in late 1980, he visited a number of refugee camps along the Thai border; and his photographs, written records and oral testimony convinced the US government to adopt the Cambodian Genocide Justice Act, which declared the commitment to prosecute the surviving KR leaders.

Both those reasons likely influenced the temporal scope of the ECCC, which was cemented by the government when the Court was established: it examines only crimes committed during the period 17 April 1975 to 7 January 1979. No other crimes can be introduced there, and nor can any LTJPs. As one researcher has suggested, the ECCC and its related processes "designate some periods as worth institutional remembering, but not others" (P. Manning 2012, 167). Im Sophea lamented that victims from other conflict periods are left out of the TJ process, unable to claim their status and rights as victims. "Some groups of people, who consider themselves victims, would like to cover the whole scope from 1970 to beyond 1979," he said. "They want to discuss who's a survivor, who's wrong, who's to blame, and why it came to that scenario."[8]

The problematic upshot is that there is no public space to address post-1979 traumas. As Kristina Chhim (2012, 61) has noted, "this period should not be isolated

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[8] Personal interview, Im Sophea, undisclosed location, 23 February 2015.

from its antecedents and aftermath, otherwise the historical context is lost." Her study has shown that people also want to talk about their painful memories from other periods, but are disqualified from official recognition by the Court (Chhim 2012). Thus a dominant understanding of Cambodia's civil wars has crystallized, which in turn has both shaped LTJPs, and reinforced government interests. One donor official summed up the restrictive effects of those temporal boundaries.

> It's actually kind of convenient for [the CPP] that it's restricted to that period of 1975–79. So nobody really goes that far out of it. If we started working on the K5 plan, let's say, and tried to also extend the focus of transitional justice to that period … we would get in trouble.[9]

This confirms the idea that NGOs and international donors working on LTJPs are very much aware of the limits placed on discussions of the past. They tailor their programs in accordance with CPP-imposed limits.

Wartime Identity

Another CPP framing strategy is to simplify people's wartime identities into the rigid binary categories of perpetrators and victims—whereas (as is so often the case in war) the lines between the two groups were much more blurred. As Julie Bernath (2016, 50) noted, the thirty years of conflict, spanning the period before and after DK, "produced particularly complex, malleable and fluctuating allegiances and identities." Some victims collaborated with the KR; some rank-and-file KR cadres might have begun as victims, forcibly recruited as child soldiers or wives. In practical terms, this oversimplification has had two main results.

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[9] Personal interview, donor official, Phnom Penh, Cambodia, 29 January 2014.

- It creates a "hierarchy of victimhood" that privileges those with Civil Party status at the ECCC.
- It singles out only the most senior KR leadership—all of whom are either already deceased, or on trial at the ECCC—for responsibility for all the atrocities of Cambodia's civil wars. This tactic makes impossible a more nuanced deliberation of perpetrator identities and accountability.

That definition of victim categorizes into one homogeneous group anyone who suffered at the hands of the KR.[10] This category encompasses at least four groups:

- those who were forcibly relocated from cities ("new people");
- those from rural areas who might have collaborated with the regime ("base people");
- relatives of those who died, starved or did forced labour;
- those who defected from the KR.

This frame polarizes the spectrum of shifting wartime roles and identities into merely victims and perpetrators, good and bad. It also obscures the complicity of those who collaborated with the regime, or defected from it—including many high-ranking CPP ministers. Chhim (2012), an independent scholar who has advised Cambodian NGOs on LTJPs while working for the German NGO GIZ, has argued that this frame overlooks the drastically different victim experiences of "base people" and "new people" (see also Bernath 2016, 49).

There was an important difference between the two types of citizens, as defined by the KR. Before DK, base people were recruited from rural areas to help the

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[10] To highlight this point, a population-based survey found that 93% of people who lived under DK self-identify as victims (Pham et al. 2009). In order to be accurate, this total covers a significant number of victims who carried out crimes or collaborated with the regime as well.

movement's fight against the Lon Nol regime (Dy 2007). As a result, they were viewed as more reliable, and had a more privileged status, than the urban new people who were forcibly evacuated from the cities (Chhim 2012). The base people were trusted with various official roles, serving as group chiefs and providing administrative and logistical support to the regime. Many also served as collaborators or informants. So as Chhim (2012) has remarked, they share some responsibility for the KR's crimes—even though they too suffered harsh treatment, illness, starvation and persecution. (Indeed, Kiernan (2002) estimates that of those executed, about half were new people and the other half were base people. While this suggests no difference between them, Chhim (2012) still maintains that the latter received privileged treatment.) One informant, who spoke on condition of anonymity, validated this idea.

> You have such mixing of victim and perpetrator identities, and plenty of Civil Parties fit both categories. But all of the narrative is based on a sort of "pure victim." And a lot of the ways the victims talk about their suffering is just repeated again and again—it's always the same. Sometimes it feels like there hasn't been a lot of exploration of different victim experiences, the myriad ways victimization can occur. Also some people are victims, but at the same time perpetrators. That's not brought into the narrative at all.[11]

By contrast with the base people, people with an urban background were viewed as emblematic of the old order, and thus enemies of the revolution—"parasitic plants," as one slogan had it (quoted in Locard 2004, 185). After their forced relocation from the cities, new people were subjected to much harsher conditions than base people (Chhim

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[11] Personal interview, anonymous, Phnom Penh, Cambodia, 14 March 2014.

2012). They were made to endure ten-hour workdays labouring on dams, irrigation systems, and other KR projects. Food was extremely scarce and many died from starvation, illness and overwork, as well as being executed for real or imaginary "crimes" (DeFalco 2011; see also Chandler 1993; Kiernan 2008).

But those new people who were strong enough to cope with the hard physical labour, and able to internalize the KR's revolutionary spirit (or at least convince their maniacal bosses that they had), could be promoted to the status of "candidate"—and receive slightly better treatment (Chhim 2012). Conversely, if base people fell out of favour, they were victimized by being demoted to candidates, and treated much more harshly. Under those circumstances, with every incentive to seek KR approval, the label of "innocent victim" is clearly an oversimplification. Even the Civil Party mechanism of the ECCC, as one donor official observed, fails to make this distinction.

> If you look into the backgrounds of these first-class Civil Party victims, you realize how many of them are actually former Khmer Rouge themselves. So you give a certain acknowledgment and legitimacy to these types of people, but a lot of other people are left out.[12]

Not only does such framing homogenize victims, it does the same for perpetrators. Yet among the KR there was a wide range of roles and responsibilities, as well as different levels of personal cruelty. Chhim (2012, 56) suggests that the term Khmer Rouge may have "congealed into an entrenched hazy stereotype"; as she explains, they were never "the homogenous group that the truism suggests," part of the genocidal "Pol Pot/Ieng Sary clique." The broad spectrum of responsibility in the regime—which has largely not

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[12] Personal interview, donor official, Phnom Penh, Cambodia, 29 January 2014.

yet been explored—ranged from high-ranking leaders to mid-level officials, and down to rank-and-file cadres. Of course, as Bernath (2016, 64) has noted, attributing guilt solely to "a few accused is arguably in the interests" of sheltering CPP members. One informant, who spoke on the condition of anonymity, agreed with this assertion.

> The government, and so many people in power, are essentially perpetrators, in one way or another, to whatever degree. That really shuts it down. There's not to be any discussion, since a lot of those "perpetrators" are still leaders in their communities—village chiefs, commune chiefs. Everybody knows that.[13]

According to Peter Manning (2012), one effect of this sheltering has been to bestow a de facto amnesty on former mid-level and rank-and-file KR cadres. Panhavuth Long, a legal consultant for the Open Society Justice Initiative who monitors the ECCC, opined that, "What's happening in Cambodia is a full blanket amnesty, a blind amnesty." This suggests that reconciliation signifies amnesty and silence about the past for the CPP.[14]

But many scholars have documented the fact that the actual lived experiences of KR cadres were far more diverse than this othering process suggests (D. P. Chandler 2000; Kiernan 2008; Mertha 2014). As the regime became increasingly paranoid it began purging its own cadres—particularly in the Eastern Zone, thinking that they were conspiring with foreign forces such as the US or the Vietnamese. So many of the oppressors lived themselves in constant fear of being falsely accused by one of their comrades, and executed (Kiernan 2008). Others had little commitment to the revolution to begin with, having joined the rebels less for ideological reasons than to oppose the

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[13] Personal interview, anonymous, Phnom Penh, Cambodia, 14 March 2014.

[14] Personal interview, Panhavuth Long, Phnom Penh, Cambodia, 11 March 2014.

oppression of the Lon Nol regime. When the KR started to implement its murderous agenda, many of lower-ranking cadres were aghast—but by this point they had no chance to escape without being killed (D. P. Chandler 1993; Kiernan 2008). As Chhim (2012, 55) laments: "It remains wholly unexplored to what extent participation in the murderous system was a matter of basic survival, the acting out of feelings of (ideologically instigated) revenge, or opportunism by those seeking to climb the hierarchy."

Soldiers—some of whom had been kidnapped as children—were often forced to perform violent acts under duress, to demonstrate their dedication to the revolution. All lost relatives during DK. In short, many of the perpetrators were also victims.

But the present official framing has no room for discussions of these nuances and grey zones; and the current sociopolitical climate does not exist "for former KR to publicly self-identify as complex political victims" (Bernath 2016, 51). At the same time those who defected—a group that includes many CPP elites—are somehow absolved of their past connections to the KR. Paradoxically, the distortional frame of the conflict has rebranded these complex perpetrator experiences as examples of victimhood (P. Manning 2012, 2015). As Bernath (2016, 64) observed, the ECCC's attitude to complex political victims reinforces "a discourse of undifferentiated, passive victimhood." In her view, this fact not only reinforces the government's official narrative; it may also "prevent society as a whole from moving beyond the processes of othering."

Blaming the senior KR leadership—which, at the present time, is essentially an abstract entity since most of its members are elderly, dead, or already on trial—allows perpetrators (and, in fact, society as a whole) to sidestep responsibility. It avoids the painful but necessary public process of reflection and introspection how a people's

private or public actions (or inaction) might abet conflict and violence. One donor official made the same point, noting that most people assume that mistakes were made "by the leadership, since very few people actually reflect on their own responsibility in the system." The ECCC, in her view, actually reinforces that attitude. "Because they only try the leaders, they situate all the guilt with those couple of people."[15]

I side with Hiegel and Landrac's (1992, 65) assessment that political interests appear to be driving this framing. "Representing the Khmer Rouge as a homogenous group of indoctrinated fanatics, an incarnation of absolute evil, responsible for all the misfortune of the Khmer people, is a reductive vision of a complex phenomenon," he writes. But it is also "one that many people find satisfying."[16] Again, this relates back to the high-ranking CPP members who are former KR. As one analyst at the Documentation Center of Cambodia (DC-Cam) explained, the ruling party needs to demarcate a well-defined line between itself and the KR regime.

> Even though the CPP can end the Khmer Rouge legally [via the ECCC], they risk being implicated in its crimes. They risk their reputations and their political survival. So the CPP needs to bolster their separation from the Pol Pot group. They were the ones who liberated the people from the genocide. So they need a clear distinction between the criminals and the liberators.[17]

Youk Chhang, executive director of DC-Cam, reiterated this view, and explained that the othering process was the primary reason for creating the ECCC to begin with. "This government wanted a tribunal to show that the Khmer Rouge killed two million people,"

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[15] Personal interview, donor official, Phnom Penh, Cambodia, 29 January 2014.

[16] Author's translation from the original French journal article.

[17] Personal interview, Khamboly Dy, Phnom Penh, Cambodia, 30 January 2014.

he points out. "They don't want us to believe that there were good Khmer Rouge."[18]

What are the implications of this strategy of blaming only the senior KR leadership? First and foremost, it allows those CPP officials, who were once KR cadres and commanders, to avoid responsibility for any abuses they may have committed. (They do not, after all, want to be implicated themselves in prosecutions for war crimes, or crimes against humanity.) The strategy also denies either victim or perpetrator status to the many people affected by violations before or after the genocide. LTJPs reproduce this limited understanding of wartime identities, since they too do not problematize victim or perpetrator roles. Hence they contribute to a polarized storyline, without actually explaining what really happened. One anonymous informant bemoaned the fact that NGOs' discussions about the Khmer Rouge were "always very black-and-white."

> It's important to be more open to other narratives than just "the bad Khmer Rouge" and "the saviour CPP," and also "the poor population who suffered." At the moment there is no space for any in-between discussion of grey areas. Some perpetrators suffered or lost family members, but then at the same time they killed thousands of other people—that's an area that has got no attention at all.[19]

The next section examines the CPP's dual motivations for this othering process.

Motives for Distortional Framing

Most of the CPP elite has previous ties to both the KR and PRK regimes—beginning with Cambodia's current strongman, Prime Minister Hun Sen. He has ruled Cambodia for almost three decades, first as Prime Minister in the PRK government (1985–93); then as

[18] Personal interview, Youk Chhang, Phnom Penh, Cambodia, 27 January 2014.

[19] Personal interview, anonymous, Phnom Penh, Cambodia, 18 February 2014.

Second Prime Minister in the coalition with Norodom Ranariddh (1993–98); and for the past two decades he has been unchallenged after consolidating his power in the 1998 coup. Hun Sen also served as Minister of Foreign Affairs for most of the PRK regime, when he oversaw the country's relations with neighbouring states, in particular Vietnam and some policies, such as the K5 plan. During this time, the other leading figures have been Heng Samrin[20] and Chea Sim[21] (who appear next to Hun Sen in CPP propaganda), and to a lesser amount Hor Namhong.[22]

All four of these men, and several other high-ranking CPP political elites, once held varying levels of responsibility in the KR movement. Hun Sen joined in 1970, serving first as a rank-and-file soldier; but he quickly moved up the ranks to become a commander, which placed him inside the KR political and military structures (Human Rights Watch 2015). His battalions took part in several major battles along the Mekong River Front, including a series of attacks on Kampong Cham that inflicted several thousand civilian casualties. Although the Prime Minister's involvement in these and other assaults has been disputed—in particular his role in the evacuation of Tonlé Bet, and the subduing of the Cham unrest (Human Rights Watch 2015)—it is at least clear that Hun Sen was a KR commander when he defected to Vietnam in June 1977, possibly to avoid the internal purges that were taking place at the time.

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[20] Samrin has held numerous posts under the PRK and CPP, but notably *de facto* leader of the PRK (1979–81), General Secretary of the CPP's predecessor Kampuchean People's Revolutionary Party (1981–91) and President of the National Assembly of Cambodia since 2006.

[21] Sim held numerous high-ranking positions in the PRK and CPP, including President of the CPP (1991–2005), President of the National Assembly of Cambodia (1981–98) and President of the Cambodian Senate (1999–2015) until his death in 2015. He was the leader of an important faction within the CPP that tried to oust Hun Sen in 1994.

[22] Namhong served as Minister of Foreign Affairs from 1998 until his retirement in 2016. He has also been a Deputy Prime Minister since 2004 and remains in this post.

At the same time that Hun Sen was a mid-level KR commander, Heng Samrin and Chea Sim were more high-ranking commanders, both responsible for large battalions. They too defected to Vietnam in 1978, likely for the same reason as Hun Sen. All throughout the ECCC process, Samrin and Namhong's names have repeatedly been mentioned; but both have refused to testify as key witnesses, or to cooperate with the investigations. The legal team defending Nuon Chea before the tribunal in Case 002 has pointed out on several occasions how useful it would be to them to have Samrin's testimony.

> Heng Samrin is the most crucial Defence witness in Case 002/01. Indeed, he is, without a shadow of a doubt, the most important witness in Case 002 overall. As the senior surviving CPK military commander, not to mention the leader of one of the spearheads during the evacuation of Phnom Penh, Heng Samrin could have provided unparalleled eyewitness testimony into charged events, including but not limited to that evacuation.[23]

Meanwhile, Hor Namhong is alleged to have directed the Boeung Trabek Security Centre in Phnom Penh, where dissidents such as diplomats and intellectuals were sent supposedly for "re-education", and were later executed (Phelim and Vong 2001). Although Namhong was himself a prisoner at Boeung Trabek, he is widely alleged to have taken over administration of the prison camp at some point. When a witness in Case 002 mentioned this, Namhong angrily lashed out at the ECCC in a press statement.

> It is unfortunate that those who continue to defend the legacy of the Khmer Rouge regime seek, in the interest of their defense, to deflect

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[23] Prosecutor v. Nuon Chea and Khieu Samphan, Request for Appeal, Case No. 002/19–09–2007-ECCC/SC (4 February 2016). CPK refers to the Communist Party of Kampuchea, which was the name of the political party more popularly known as the Khmer Rouge.

attention from themselves and their cases, by way of stirring up controversy around public figures like myself … [I hope] the legacy of the Khmer Rouge is given its place in the dustbin of history, without defense or controversy (quoted in Crothers 2012).

These two examples illustrate the depth of past linkages between the uppermost echelons of the CPP and the KR. Obviously, a closer examination of these ties could unearth embarrassing or even incriminating facts. For one thing, Hun Sen, Samrin and Sim were all high-ranking officials during the PRK regime, at the time of the infamous K5 plan. Although archival documents are unclear on leadership, Cambodians largely hold the existing CPP regime accountable for the debacle. Some suspect that Hun Sen headed the committee that oversaw the implementation of the plan—a claim he has repeatedly denied (Slocomb 2001). It is also thought that Nhim Vanda, a close confidante of the Prime Minister, supervised the day-to-day operations of the Bamboo Wall (Human Rights Watch 2015).

The PRK regime also committed other human rights violations in the 1980s under the leadership of Hun Sen, who assumed control of the army and the state security apparatus after becoming Prime Minister. His main military objective was to eradicate all three of the armed opposition groups, using any means necessary. These included the very tactics that the KR had adopted earlier, such as government troops forcibly recruiting child soldiers, and committing rape and sexual abuse—which could constitute crimes against humanity With the aim of halting recruitment by the ANS, KPNLF and KR, the military made cross-border assaults on refugee camps in Thailand—again a possible war crime.

There was also considerable political repression during this time. Amnesty International (1987) reports that PRK abuses included arbitrary detention, unfair trials, torture, forced disappearance and extrajudicial killings. HRW (2015) estimates that by the mid-1980s the PRK was holding roughly 5,000 political prisoners, mostly civilians. At least 60% of these detainees were subjected to various forms of torture (Amnesty International 1987). Hence the PRK's ongoing reluctance to talk about the time after the Khmer Rouge. As one informant explained, "Any discussion on what happened at that time would be blaming the current members of the government."[24]

Despite its problematic history, the CPP regime continues to present itself as the liberator of Cambodia. One powerful rhetorical tool it deploys is the "7 January," or "Victory Day," narrative, to remind people of the date it expelled the KR. (Another day the government routinely reminds people of is May 20—originally called the National Day of Hatred, but renamed in 2001 as Day of Remembrance. It is still very politicized, although to a lesser extent than in the 1980s and 1990s.)

As McCargo (2005, 104) observes, "Hun Sen has an interest in whatever will remind people of the Khmer Rouge horrors that he and his party, whatever their flaws, brought to an end." Chhang explained that this relates to the CPP's strategy of sheltering government officials: "They want to show that they [are] the ones who were the saviour, not the killer." In his view, the fact that they defected from the Khmer Rouge "actually helps to give them legitimacy."[25] Sok-Kheang Ly, a Project Leader at DC-Cam, also spoke about how the government rhetoric has affected LTJPs, and allowed the ruling

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[24] Personal interview, anonymous, Phnom Penh, Cambodia, 18 February 2014.

[25] Personal interview, Youk Chhang, Phnom Penh, Cambodia, 27 January 2014.

party to reassert its legitimacy at local events that he has organized.

> We cannot overlook the fact that the CPP liberated the country. But when we hold a local forum, some CPP officials say we need to remember the Khmer Rouge killing, and we need to show gratitude to them for saving us. So they take benefit from it.[26]

This fact presents a challenge for NGOs working in this area, because it politicizes the event. The 7 January narrative allows Hun Sen and his cohorts to accentuate the savagery of the DK period, thereby implicitly suggesting that its own authoritarian nature pales in comparison. Although doubtless true, this allows the CPP to portray its own misdeeds in a relatively favourable light. As McCargo (2005, 107) astutely observed, "strongman rule is a lesser evil than mass murder."

Enforcing the Frame at the Local Level

To further deflect focus away from their own party's abysmal human rights record, the CPP has an excellent platform in the LTJPs—which they use unstintingly to remind the public that they purged the KR. Having the motivation to distort justice is not enough; the ability to implement this distortion is also needed. I suggest that the government has two ways to do this:

- an extremely centralized system of governance
- an array of social and bureaucratic control mechanisms.

Taken together, these factors enable the party to dominate the country's narrative, and to evade accountability for its own abuses. (It is worth noting at this point that, although freedom of press is severely curtailed in Cambodia—especially for the largely state-

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[26] Personal interview, Sok-Kheang Ly, Phnom Penh, Cambodia, 8 December 2015.

owned broadcast media—such suppression has been a less influential factor in crafting the distortional frame than in other countries, such as Mozambique.)[27]

Above all, the radically centralized structure of Cambodian politics has allowed the CPP to limit discussions of its past behaviour. Power rests absolutely with Prime Minister Hun Sen, who has co-opted rivals both inside and outside the party over the past two decades to give him virtually unchallenged control. As a result, the executive branch of government is superbly internally coherent, and completely loyal to Hun Sen. The Prime Minister has full control of state security, which reports directly to him; and he maintains a well-armed personal bodyguard of some 2,000 to 3,000 soldiers (Human Rights Watch 2012). As well, the government relies on an elaborate system of patronage to hold a grip on power from the bureaucracy all the way down to the village level (McCargo 2005; Un 2005). This means that the party is actually strongest in rural areas— since urban hubs (such as Phnom Penh) tend to endorse the political opposition (Un 2011).

These personalized linkages mean that the most remote areas are Hun Sen's political base. As McCargo (2005, 99) has remarked, the CPP has "formidable grassroots networks, and a primary appeal to the rural masses." The party is "considered unbeatable because of its tight grip on village-level political structures." According to Im Sophea, this patron-client dynamic affects how government officials are obliged to talk about the past: "You must be loyal to the party, and its slogans and policies. The achievement of

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[27] Although Cambodia's print media—particularly the country's two English-language daily newspapers—are comparatively freer, they have also faced legal challenges from the government in recent years for publishing articles critical of the ruling party. This policy of harassment culminated in the shocking closure, in September 2017, of the 24-year-old *Cambodia Daily* (Editorial 2017).

the party was to drive out the Khmer Rouge—so you have to speak about that."[28]

The ruling party also enforces compliance through an array of social control mechanisms, both direct and indirect, overt and covert. The former include the persistent use of violence and intimidation to assert its rule—continuing the cycles of political despotism that Cambodia has endured, with varying levels of intensity, since independence: under Sihanouk, Lon Nol, Pol Pot, the PRK, and now the CPP (D. P. Chandler 1993; Kiernan 2002). A HRW report from 2012 documents 13 examples of state repression that have taken place during the twenty years of Hun Sen's government. These include targeting the opposition (such as by attacks on their rallies), silencing government critics, arbitrary detention, unfair trials, torture, forced disappearances, extrajudicial killings, domineering over the media, and assassinating political opponents (Human Rights Watch 2012). The country's long and tragic pattern of brutality since independence means that the Cambodian people are all too familiar with surveillance, and accustomed to intimidation and coercion.

All this means that, as one informant put it, "politics plays an important role in the people's silence about their own experiences during the Khmer Rouge."[29] Individuals are hesitant to share the full extent of their wartime stories, and stick to the events that have been deemed appropriate to discuss publicly. (However, as Astrid Norén-Nilsson (2011) has pointed out, such memories may still be shared privately with families—particular the younger generation.)

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[28] Personal interview, Im Sophea, undisclosed location, 23 February 2015.

[29] Personal interview, Khamboly Dy, Phnom Penh, Cambodia, 30 January 2014.

The CPP's bureaucratic control of village political structures also means that the party is able to regulate events at the grassroots level. Any organized public gathering in Cambodia requires prior approval from the appropriate local authority—either the commune chief or the district governor, depending on the size and location of the event. The applicant must submit a detailed agenda of the proposed gathering, including what topics will be covered, and who will be participating. Requests are approved or rejected on the basis of this information. In the case of an NGO setting up an LTJP, this approval process was particularly difficult, as Im Sophea explained.

> It was not easy. Every time we had to explain the whole concept, the setting, the target group, the level of discussion, and the fact that we should not identify individual persons. We also had to explain to the CPP how we would manage to control the situation.[30]

Although most applications are in fact approved, this process allows the authorities to monitor local initiatives, and even indirectly to shape them. NGOs tend to fashion their TJ proposals around topics that are considered acceptable. As Sok-Kheang Ly explained, "If we say we will talk about K5, no forum is going to take place."[31] One donor official spoke of how these indirect social-control mechanisms promote self-censorship at the village level.

> Communities do not want to go much further if they know that it could cause trouble. It never reaches the point where it would be controversial,

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[30] Personal interview, Im Sophea, undisclosed location, 23 February 2015.

[31] Personal interview, Sok-Kheang Ly, Phnom Penh, Cambodia, 8 December 2015.

where we would face government repression. The people involved restrict themselves to only what is socially accepted, and don't go beyond that.[32]

Thus awareness of the coercive apparatus of the ruling party, and the discursive bounds they enforce, prompts both NGOs and participants to restrict LTJPs to the government-approved parameters. For fear of reprisals, they do not step outside of these.

Consequences of Distortional Framing

Since 2006, the ECCC—the result of a long and arduous negotiation process between the RGC and the UN—has been the centrepiece of Cambodia's TJ policy. Unsurprisingly, however, the Court was originally structured to protect the political interests of the CPP. Indeed, the ruling party's preference for TJ has alternated between zealously prosecuting those still living who were most responsible for the genocide, and an "induced amnesia" (D. P. Chandler 2008). The present arrangement reflects a compromise between those extremes. The ECCC prosecutes a select few KR leaders and absolves all others; and it encourages citizens to limit their recollections of violence to that four-year DK window (Chhim 2012; Manning 2012). This strategically crafted frame shapes LTJPs into a less useful tool than they might otherwise be, thereby enabling the government to evade responsibility; and at the same time it precludes any TJ measures other than purely local processes.

As I indicated earlier, Cambodians participating in the various LTJPs dare not transgress the discursive bounds. The distortional frame of the civil conflict has shaped three vital social healing elements:

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[32] Personal interview, donor official, Phnom Penh, Cambodia, 29 January 2014.

- memorialization
- psychosocial healing methods
- truth-telling practices.

I outline these three local justice mechanisms in detail below.

Memorialization

Memorialization is a potent tool for the Cambodian government. Not only does the fact of publicly acknowledging the people's suffering earn the ruling party widespread sympathy; but the strategy also allows the CPP to impose its own narrative of the country's troubled history.

Memorialization efforts, ongoing since the fall of the KR, have unfolded in three major waves.[33] The first—largely led by the state—took place from immediately after the end of DK in 1979, until roughly the withdrawal of UNTAC in 1993. This phase involved the exhumation of mass graves, and the building of memorial *stupas* (religious monuments) across the country (Sion 2011). This gave civilians the opportunity to grieve for those killed by the KR; the physical sites commemorating the violence also gave them a focus for their anger and hatred. A national event was created for this emotional vengeance: on 20 May every year, the National Day of Hatred, victims were encouraged to talk openly in public spaces about their experiences under DK. Obviously, the day also served a political purpose by reinforcing the PRK's legitimacy as the liberators of the Cambodian people.

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[33] The next three paragraphs build on Chhim (2012, 26–31).

In fact, for many Cambodians, the government's decision to display human remains at mass crime sites was contentious because it is inconsistent with both Khmer culture and Buddhist practice. Traditionally, *stupas* are sacred places where cremated remains are stored (Hughes 2006). The public display of human skulls and bones has made many in the country reluctant to visit these sites. Such *stupas* are not, in fact, traditional places of mourning—they are in large part political monuments that serve the interests of the CPP. Indeed, many academics have questioned whether the commemorative sites are actually designed to preserve a society's collective memory, or to promote a political agenda.

Jens Meierhenrich (2011, 289), for instance, has noticed a similar phenomenon in post-genocide Rwanda.

> By appealing to emotions rather than reason, Rwanda's national memorials keep observers at bay. It is indeed difficult to formulate critical questions about the legitimacy of the post-genocidal regime when one is face to face—both literally and figuratively—with the legacies of the genocidal regime that preceded it. By remembering the past in a very particular, macabre manner, these memorials facilitate a forgetting of the present.

In addition to the construction of *stupas*, the landmark projects of this phase were the conversions of the S-21 prison—the notorious KR detention centre in the heart of Phnom Penh—into the Tuol Sleng Genocide Museum; and of the Choeung Ek "killing fields" into a memorial site. This preservation of the vestiges of the KR's atrocities ensured that not only would survivors remember them, but also that the narrative could be transmitted to future generations. As Manning (2012, 171) pointed out, the two sites "became pivotal in the PRK's construction of a coherent reading of the DK period."

The second wave of memorialization lasted roughly from 1993 to 2006—a period that began with the withdrawal of UNTAC, and ended with the creation of the ECCC. During this 13-year stage, citizens were actually encouraged to forget the past, and to keep quiet about their country's violent history (D. P. Chandler 2008; Hayner 2001). Memorialization stagnated in this period, and many of the memorial *stupas* built in the 1980s fell into disrepair. The younger generation looked at the past with scepticism, dismissing as overblown many of the horror stories they had heard about DK (Dy 2007). Cambodia was faced with the real possibility of collective amnesia and historical revisionism.

This shift was not divorced from the government's political agenda. Indeed, this phase was marked by the CPP's efforts to neuter the influence of its opposition— including attempts to co-opt the remaining KR leaders with its win-win policy, and entering into (occasionally tumultuous) negotiations with the UN to establish a war crimes tribunal. Efforts to preserve historical evidence of that time came from outside of the country. The most notable of these was the Cambodian Genocide Program at Yale University, which later evolved into the non-profit Documentation Center of Cambodia (DC-Cam). Since its inception, this group has been at the forefront of collecting primary documents from the DK period; and its archives have been a vital resource for scholars studying the KR, and for the ECCC itself.

The third wave of memorialization, currently ongoing, was prompted by the establishment of the ECCC in 2006. Marked by a dramatic proliferation of initiatives throughout the country, this phase has seen both the rehabilitation of existing memorials, and a broad focus on public education about the genocide. Partly this renaissance is the

result of moral reparations made to the Civil Parties as a result of the first two cases before the ECCC; private donors have driven other projects. For example, the dilapidated memorial *stupas* at Kraing Ta Chan (Takéo Province) and Phnom Trung Bat (Siem Reap Province) were rehabilitated with the assistance of foreign donors, including the German donor agency GIZ.

Some memorials are more controversial than others. One of the most contentious projects, planned jointly by the VSS and the Ministry of Culture and Fine Arts, is the construction of a memorial at the notorious S-21 prison (an initiative funded entirely by the German government). The memorial proposes to list the names of all the prison's victims (McPherson 2014)—ignoring the fact that most people detained there were KR cadres and, therefore, also perpetrators of war crimes (D. P. Chandler 2000). Youk Chhang is particularly critical of this project, claiming that as much as 80% of the prisoners had already committed crimes before they arrived at Tuol Sleng.[34] Despite the horrors of the prison, it represented the evil regime turning on its own. By glorifying such "victims," the VSS is effectively propagating the CPP's distorted narrative of the past.

More recently, DC-Cam has worked with Cambodia's Ministry of Tourism to convert the KR's last stronghold in Anlong Veng—where some former KR members still live in relative isolation—into a peace centre and tourist site. The group hopes the project might mend the divide between Cambodian society and the KR who are still living (Fitch Little and Vandy 2016). This initiative has the potential to extend the national dialogue into the country's post-1979 period. (Of course, it is possible that the memorial could

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[34] Personal interview, Youk Chhang, Phnom Penh, Cambodia, 30 November 2015.

actually have the reverse effect, by providing yet another tool to reinforce the state-sanctioned narrative of the CPP as victors.)

In my own field research, I concentrated on examining the memorials at Kraing Ta Chan and Phnom Trung Bat. The former is a prison located in Tram Kok District, Takéo Province, roughly 70 kilometres south of Phnom Penh. During the DK era, it was one of the most notorious detention sites in the Southwest Zone. It is estimated that at least 15,000 victims were killed there, and their bodies dumped into pits.[35] In 1979, eight of the mass graves at Kraing Ta Chan were exhumed, and the recovered human remains were placed in a commemorative *stupa*, a 30-foot structure built on a concrete platform in the centre of the compound (see Figure 5). Steps lead up to the main viewing area, where glass-sided cabinets store victims' remains—skulls and bone fragments—on shelves.

Figure 5: Victims' remains at Kraing Ta Chan

Source: Author's Photograph.

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[35] This total is cited in the Case 002 Closing Order for which Kraing Ta Chan was identified as a crime site (Extraordinary Chambers in the Courts of Cambodia 2014).

The second site of my field research, Phnom Trung Bat, is nestled on a hilly countryside in Kralanh District, Siem Reap Province, roughly 55 kilometers northwest of the province's capital, Siem Reap. During the DK period, the site was part of the Northern Zone and was used by the KR for temporary detentions, and for executions. DC-Cam's research concluded that there are at least three mass graves at the site, where an estimated 35,000 people may be buried. The remains of some of the victims were first exhumed in the 1980s and were housed in a rudimentary structure until 2016, when a new *stupa* was built. At 15 feet tall, this memorial is noticeably more modest than Kraing Ta Chan (see Figure 6). Painted silver with intricate ornamentation, it stands on a three-step platform. On each side of the *stupa* is a glass window slit that allows visitors to look inside and see the human remains.

Figure 6: Memorial *stupa* at Phnom Trung Bat

Source: Author's Photograph.

These memorials reinforce the CPP's temporal framing of the conflict, limiting it solely to the horrors carried out by the KR. All narratives about the history of these sites must pass through the prism of the ruling party. Indeed, the memorial sites provide only scant information about what happened, and to whom. The people who lead the tours are often elderly CPP cadres, and they expound the history in their own terms. Even the design of memorials must be approved by local CPP officials, as Tim Minea explains. He is the Executive Director of the NGO Kdei Karuna (KdK, meaning "compassionate action to heal" in Sanskrit).

> Local people introduce some ideas about the history, and work in the community to collect stories of the area and its crime sites. Then we connect these people with the district governor to discuss their idea.[36]

But rather than just approving the proposed design, the district governor asked for a significant adjustment to bring it into line with CPP interests. The initial plan did not intend to display any victim remains; but the governor demanded that this be done. The sight of human bones, in the official view, achieves the objective of evoking strong emotional responses from tourists and locals alike—engendering anger at the KR, and further attracting visitors to the ruling party's political cause.[37]

As well, CPP party leaders have often used national commemorations as political rallies. For instance, senior officials addressed the inauguration ceremonies of the refurbished *stupa*s at Kraing Ta Chan and Phnom Trung Bat, effectively politicizing the occasions. One of the donor officials present commented: "When they opened Kraing Ta

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[36] Personal interview, Tim Minea, Phnom Penh, Cambodia, 14 December 2015.

[37] Personal communication, Tim Minea, Siem Reap, Cambodia, 17 December 2015.

Chan, the governor came and used the opening as a platform for reiterating that the CPP had liberated the country."[38]

The head of one of the major donor agencies involved in TJ in Cambodia had a similar reaction with this type of "elite capture," when one event was hijacked.

> When Kraing Ta Chan was officially opened, the governor of the province gave a speech praising the government … and suddenly I felt like I was part of the government too, which is problematic. But I think that's also why they don't oppose our work, because it's their work as well.[39]

I too witnessed firsthand the intrusion of present-day politicking into a national commemoration, at the opening of the Phnom Trung Bat memorial. The district governor gave a speech that spoke—in particularly vivid terms—of the misery, starvation, torture and death caused by the maniacal Pol Pot; and also of the CPP's role in liberating Cambodians, who owe their existence and prosperity to the ruling party. To make this point even clearer, the speaker's podium featured a large "7" engraved in it, for 7 January 1979.

From such local memorial sites, it is worth returning to the newly constructed Tuol Sleng memorial. The monument offers visitors no information at all on the antecedents of the genocide or its aftermath; on what happened to the country under DK; or on who the victims were, why they were at the prison, and what happened to them. In fact, as an educational site, S-21 suffers from an overall lack of data and context (Ledgerwood 1997; Williams 2004). The memorial does not mention the fact that the victims named on the memorial were KR cadres, and hence perpetrators as well as (or

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[38] Personal interview, donor official, Phnom Penh, Cambodia, 29 January 2014.

[39] Personal interview, donor official, Phnom Penh, Cambodia, 17 February 2014.

instead of) victims. The narrative of suffering conveyed by a visit to S-21 presents a simplified "good versus bad" storyline that rejects any more complex readings of the past. And this is far from anomalous: Tuol Sleng is emblematic of all the memorialization efforts across Cambodia. This reality incited Panhavuth Long to wonder about the memorial process: "Is it to remember, or to forget? Is it for mourning, or for tourism?"[40] To those, I add a third question: Is it to honour the victims of war, or to legitimize the CPP?

Psychosocial Healing Methods

Other elements that have played a pivotal role in TJ at the local level are the intertwined processes of truth-telling and psychosocial healing. These initiatives—culturally adapted methods of therapy designed to provide healing, drawn from local concepts and rituals—have, by and large, been facilitated by local NGOs in collaboration with the communities themselves. As with memorialization efforts, the vast majority of LTJPs implemented have coincided with the creation of the ECCC. Some are designated as reparations by the Court, which has amplified the degree of oversight by the CPLC and the VSS.

One informant (who spoke on condition of anonymity) explained: "There's a real incentive now, on the side of the government, to at least have a show of participation, and to be able to say 'We did this for victims in Cambodia'—when in fact their involvement has been extremely minimal."[41] That point refers to the fact that all reparations projects are externally funded, the RGC having absolutely refused to contribute any financial resources. The same informant pointed out that the phrases "state participation in

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[40] Personal interview, Panhavuth Long, Phnom Penh, Cambodia, 11 Marc h 2014.

[41] Personal interview, anonymous, Phnom Penh, Cambodia, 14 March 2014.

reparations" and "state obligation to repair harm" are off-limits in public discussions. The CPP evidently wants to subtly manipulate the ECCC's non-judicial mechanisms, as well as interfering in its legal affairs.

The main organization carrying out psychosocial healing interventions in Cambodia is Transcultural Psychosocial Organization (TPO), which so far has dealt only with participants selected from among the Civil Parties in ECCC cases. (Consequently, such services are available only to victims from the DK era.) TPO's preferred method is testimonial therapy (Agger et al. 2012)—a technique developed by the Danish human rights institute Dignity, and shared with TPO staff in 2009. The intervention pairs a staff member (a psychologist, psychiatrist or counsellor) with a victim, and the two work together, one-on-one, for four days. The purpose is to create a written record of the victim's traumatic experiences, with the goal of identifying how the past events have affected them psychologically and socially.

The therapy begins with an initial briefing session to explain the process to clients, to ensure that they have the proper coping mechanisms to not be retraumatized by their memories. The idea is to confront their traumatic past, and teach them strategies to cope with the psychological symptoms if they are overcome with their troubled emotions when reminded of the KR period. The counsellor then collects information on the client's life *before* the KR, focusing mainly on the positive memories of that time. This process aims to help the victim to rebuild their personal storyline from happier recollections: of social and familial harmony, of abundant harvests, and of the absence of disruption and despair. Only after that does the intervention expand to include events under DK. The technique used at this stage is exposure, based on the principle that exposing the client to

traumatic memories in a safe therapeutic setting will facilitate their healing. Youn Sarath, a TPO project manager, explained that clients make the best progress if they are able to focus on "the traumatic events at that time: torture, imprisonment, separation from family, starvation, and so on."[42]

TPO then works with the client to finalize their story, so it can be read at the truth ceremony on the final day. In addition to the narrative, the client is also asked to explore the connections between the KR period and their present life.[43] The TT process culminates in a "truth ceremony," a community event that involves other victims, students, elders, religious leaders, local authorities, and often representatives of international donor agencies, as well as the ECCC. CPP politicians from the district or provincial level may also attend.[44]

The event usually begins with a Buddhist "blessing to Heaven" ceremony (*bang skol*) at a memorial *stupa*. Once the community has assembled, participants make offerings to their ancestral spirits by placing money, food, flowers, and drinks at the base of the structure. (Even if the remains of their deceased relatives do not rest at that particular site, it is believed that the offerings will still reach their spirits.) Next the *achar* (elder) lights incense for the ancestral spirits, and leads a chant in the sacred *Pali* language. Buddhist monks join the chant, and share Buddhist teachings about life, death, and coping with events from the past. The *bang skol* ritual ends with the monks

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[42] Personal interview, Youn Sarath, Phnom Penh, Cambodia, 21 March 2014.

[43] While observing one of these sessions, I noticed that this reflection focuses more on establishing a causal relationship between current hardships and earlier suffering under DK, but excludes later conflict periods.

[44] The next two paragraphs are based on the author's participation in four such ceremonies and Agger et al. (2012).

sprinkling holy water on those in attendance, to symbolize purification, healing and well-wishes.

Then the gathering moves to the adjacent pagoda for the truth ceremony. Again Buddhist monks lead the participants in chants; and then, one by one, the victims (or their counsellors) take the microphone to recite their stories—condensed versions of the memories they recounted over the course of their therapy. Sharing these testimonials with their community is a deeply moving moment that can trigger emotional responses in participants and observers alike. After each story is read, the speaker gives a transcript to the monks, who serve as intermediaries between the past, present and future, and also between the worlds of the living and the spirits. The victims kneel in front of the monks, with their hands clasped in front of the heart, and are given a red protective bracelet to bring them good luck, and ward off future evil. At the end of the ceremony the victims present offerings of food to the monks. The cultural belief is that when the monks eat, the meal will find its way to the spirits of their loved ones—many of whom starved to death under the KR.

In the words of Sotheara Chhim, Executive Director of TPO, the benefit of this ritual to the victims is that "it calms down their spirit. When their relatives or ancestors are at peace, they feel peace too."[45] Afterward, participants usually report feeling a release of *teng troung* ("tension on the chest"), and feel empowered that their suffering has been publicly acknowledged (Poluda, Strasser, and Chhim 2012).

In more extreme cases, TT can be used as part of a long-term treatment for victims with "broken courage" (*baksbat*)—a Cambodian concept that approximates the

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[45] Personal interview, Sotheara Chhim, Phnom Penh, Cambodia, 7 December 2015.

Western term of post-traumatic stress disorder (PTSD). People with *baksbat* display all the classic signs of the disorder, including being susceptible to depression, addiction, irrational violence, blackouts, social exclusion and suicide (Chhim 2013). Chhim (2014) has seen symptoms of "broken courage" in several witnesses and Civil Parties at the ECCC. Over the years, TPO and other scholars, notably Devon Hinton, have used Cambodian terms for distress to describe the symptoms exhibited by KR victims, such as *khyal cap* ("wind attack," which approximates the clinical concept of a panic attack or a generalized anxiety disorder); *kut caraeun* ("thinking a lot," obsessive brooding and rumination); and *khmaoch sangot*, or "sleep paralysis" (Hinton et al. 2012; see also Agger 2015).

Although TPO deserves praise for providing psychosocial support to victims of war, TT contributes to the distortional framing of the conflict in at least two ways. First, the participant pool is biased, as it is predominantly drawn from ECCC Civil Parties. The stories that emerge from it are, unsurprisingly, from the 1975–79 timeframe, and unintentionally bolster the identity of the paradigmatic victim from this era. Second, as Youn Sarath's statement suggests, TPO staff appear to actively seek out a specific type of victim narrative—one with a storyline of suffering, starvation, forced labour, and torture under the KR.

This form of guided storytelling also reinforces perpetrator identities. Even when TPO staff performs therapy with former KR members—as they are doing in the former KR stronghold of Malai—they encourage perpetrators to espouse a specific type of narrative. In the words of one staff member: "When we work them, we want to focus on their feelings of guilt, remorse and shame. As part of the Khmer Rouge, they are not

purely victims. They are offenders, perpetrators."[46] In fact, TPO staff members actively discourage such clients from including statements about politics or leadership in their public testimonies, in order to avoid retribution from the authorities.[47]

In short, these interventions—while meaningful and cathartic for participants and observers—nevertheless operate within strict parameters that favour a consistent official narrative, and avoid a thorough reckoning with the past.

Truth-Telling Practices

Truth-telling is also incorporated into a variety of other activities instituted by local NGOs. The Cambodian Defenders Project (CDP) wove elements of truth-telling into its program called Gender-Based Violence (GBV) Under the Khmer Rouge, which worked with women who had been victims of sexual and gender-based crimes. (The initiative, which has since ended, was supported by UN Women, and the UN Trust Fund to End Violence against Women.) Operating as an LTJP, the project organized an annual "truth-telling forum" that was a sort of informal truth commission (though not a state-sanctioned one), culminating in a public hearing. A panel of experts would listen to the stories of the victims and, at the end, would forward a list of recommendations to various stakeholders, such as the RGC and ECCC. The forum provided victims of sexual abuse with a public setting to share their stories about this sensitive topic, often for the first time.

One of the biggest issues the GBV project dealt with was forced marriage, which was widespread under the KR. The regime instituted a systematic process that forced thousands of Cambodians into "marriages," even requiring them to engage in sexual

[46] Personal interview, TPO staff member, Phnom Penh, Cambodia, 8 December 2015.
[47] Ibid.

intercourse under KR supervision. Until the start of the ECCC process, many people did not know that this was a war crime. The CDP conducted extensive research into this subject, and it became a focal point of the truth-telling forums. Duong Savorn, who was the GBV project coordinator, reported that when victims shared their testimonies, and had their experiences recognized by the panel of commissioners, there was an overpowering "sense of relief—the stories were deeply moving, and the public paid attention."[48] The program successfully opened up public space to discuss these crimes, and it gave them the legitimacy they had been denied until then. (Indeed, it had been previously assumed that gender-based crimes had not occurred under the KR, given the regime's self-professed "purity.") The GBV project drew considerable attention to the issue of forced marriage, and contributed to its inclusion in the charges for Case 002.

Yet this project too was limited in its scope by government-defined boundaries, given that the CDP worked only with victims who experienced sexual crimes under DK. Duong conceded that rape and other sexual crimes were widespread in the lead-up to the KR regime, and following its demise: "After 1979, the Khmer Rouge guerrillas would still come from the jungles to the village and rape women."[49]

Finally, in an effort to bring together ex-KR cadres and their victims, DC-Cam, KdK, and TPO have tried to mediate victim-perpetrator dialogues in communities. The only local truth-telling initiative of its kind, these interactions are intended to discourage the demonization of the former KR cadres, open spaces for dialogue between the two sides, and actively engage perpetrators—often marginalized in other truth-telling

[48] Personal interview, Duong Savorn, Phnom Penh, Cambodia, 6 February 2014.
[49] Ibid.

initiatives—in the reconciliation process. Manning (2015) has agreed that this is vital, since most former KR fighters have never been reintegrated into Cambodian society, and still live in isolation in their former strongholds.[50] This initiative is indeed a bold step; for despite their claims of fostering "reconciliation," few NGO-led initiatives actually bring victims and perpetrators into contact with each other.

Those perpetrator "constituencies," mostly in isolated areas along the Thai-Cambodia border, represent a particularly complex case for reconciliation initiatives. Few LTJPs actually engage with former perpetrators in any meaningful ways. The few ex-KR cadres who have joined in victim-perpetrator dialogues were mostly reintegrated after the liberation of the country in 1979, and did not fight in the post-1979 war. Their experiences have left them less ideologically committed to the regime, and less defensive of it; as well, their socioeconomic conditions are more stable than the former KR still in strongholds. As Panhavuth Long pointed out, for a reconciliation to take place, "There must be a process, multiple steps with the victim and the perpetrator interacting together. But I don't think there is a process in this country."

In fact, since the government has allowed former KR cadres to remain in relative isolation on the margins of Cambodian society, many of their social structures have stayed intact—despite their pledges of loyalty to the CPP. Youk Chhang explained the situation.

> They still live in the same mindset and understanding and structure, and
> they still communicate with and report to each other. You speak to

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[50] The most notable six ex-KR districts are Anlong Veng (in Oddar Meanchey province), Malai (Banteay Meanchey), Pailin (Pailin), Phnom Voar (Kampot), Samlot (Battambang) and Veal Veng (Pursat).

someone in Anlong Veng, and you find they're saying the same thing in Malai, and other parts of the country.[51]

This is a major shortcoming of LTJPs: when they engage victims and perpetrators, but ignore the former KR in their stronghold areas, they essentially reinforce existing identity categories. Indeed, rather than contributing to meaningful changes in state-society relations, it could be said that LTJPs merely provide a veneer of reconciliation.

Some of these psychosocial healing and truth-telling initiatives were identified as moral reparations for ECCC Case 002/02. Since then, the CPLC and VSS have also taken on a gatekeeping role—essentially keeping tabs on the NGOs, to make sure that their projects reinforce the ECCC's (and the government's) narrative. One donor official confirmed that current reparations projects are "all in line with the ECCC's idea of justice and historical narrative." Another informant (who spoke on the condition of anonymity) suggested that this interference was also present on the part of the CPLC—which sometimes gives "very clear messages" about what is an acceptable reparation, or what credit should be given to the government: "The CPP now realizes what sort of mileage might be gained out of making a show of being involved in reparations.[52]

These statements illustrate how the ruling party, by acting through the CPLC and VSS, can successfully craft a specific narrative of events that serves its own interests. Not a single government official has been prosecuted; and a 2012 HRW report observed that a culture of impunity is pervasive in the country (recall those 13 instances of human rights abuse that have gone uninvestigated since 1992). The RGC has repeatedly interfered with

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[51] Personal interview, Youk Chhang, Phnom Penh, Cambodia, 30 November 2015.

[52] Personal interview, anonymous, Phnom Penh, Cambodia, 14 March 2014.

the ECCC process, undermining its investigations both directly—by refusing to act on arrest warrants—and indirectly, as in by declaring that prosecutions could trigger a return to war. For this reason, a thorough reckoning of Cambodia's legacy of conflict seems even less likely now that the ECCC and LTJPs have "delivered" justice.

LTJPs have also helped to create a definitive version of the "truth" that excludes from consideration any crimes CPP officials might have committed. Specifically, they reinforce a distorted account of who can claim victim status. To this point, Chhim (2012, 61) has observed that Cambodians "are prepared to remember the effects of the civil war before 1975 and after 1980." But since these memories are completely excluded from any dialogues about the past, this has contributed to silence, impunity, and "a failure to understand the full dimensions of the violence that Cambodians have suffered."

Im Sophea too lamented the impact of these discursive limitations on TJ. "Once you open up the past, you cannot just pick one part of the entire history to present to the public."[53] Indeed, the limitations of the current framework make it impossible to believe that it ever will, or even can, accomplish the justice it is supposed to provide. Rather, this distortional framing of Cambodia's civil war merely provides the CPP with yet another tool, in the form of LTJPs, to propagate its own story.

The next section examines the leading two alternative explanations to see if they are more compelling than the main argument that discursive restrictions are deliberate and strategic practices.

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[53] Personal interview, Im Sophea, undisclosed location, 23 February 2015.

Alternative Explanations

The first of the two alternative explanations holds that the Cambodian government is committed to the pursuit of the truth and justice, and any insulating effects are unconscious enactments of prevailing norms and perceptions about what TJ should cover. If this explanation is accurate, we should find evidence that the government encourages LTJPs as they evolve into new areas; and also examples of follow-up TJ measures, which would show that (despite political wrangling) ideas about human rights accountability have achieved broad acceptance.

This explanation could help to explain certain LTJPs—particularly the efforts (by DC-Cam and the government's Ministry of Tourism) to create a museum and peace centre in Anlong Veng. In a brochure about the project, DC-Cam states that its goal is to "rehabilitate victims and former KR cadres, and share their understanding of their experiences"—both "during the Democratic Kampuchea period, and the civil war years (1979–98) that followed" (Documentation Center of Cambodia 2015). While the broader scope of this project seems promising, there are signs that the Anlong Veng initiative will still continue to reinforce the CPP's distortional frame, rather than reflecting a genuine commitment to the truth. For example, in approving the project, Hun Sen's Cabinet remarked that the site would allow visitors to "understand the last political leadership of the genocidal regime" (quoted in Sambath 2010).

In addition, a monograph that DC-Cam published in 2014 on the history of Anlong Veng, in collaboration with the Ministry of Tourism, focused heavily on the DK years—and contained no reference whatsoever to the K5 plan (Dy and Dearing 2014). Finally, DC-Cam also purposely sidestepped the issue of culpability for human rights

abuses and complex victimhood, choosing instead to focus only on the culture of the area. And anticipating a rapid phase-out of donor funding, some NGOs are starting to shift their programming to more contemporary human rights subjects (such as land grabbing)—even though significantly more work still needs to be done in the area of transitional justice.

At the national level, prospects for follow-up mechanisms—or even the completion of the ECCC's work—are even grimmer, which casts doubt on the idea that the authorities are gradually internalizing the accountability norm. Above all, it has become clear over time that the ECCC is the result of a political strategy to end the KR, rather than a principled belief in justice (Ainley 2014; Ciorciari and Heindel 2014; McCargo 2011). Kirsten Ainley (2014, 148) articulated this point well: "The threat of trials was more a tool used to end the civil war and consolidate [Hun Sen's] power than supported on the basis of justice." This is best shown by the CPP's opposition to Cases 003 and 004. Although the Court surprisingly indicted four new suspects in these cases in 2015, the government has refused to act on arrest warrants. It seems likely that these cases will be dismissed (as has already happened with one of the accused, Im Chaem); and that the ECCC will be dissolved after ruling on Case 002/02, the only one still active. And as I mentioned earlier, foreign donor agencies have had to take on the task of funding reparations, since the CPP has offered no material support. Therefore, based on the ECCC experience alone, there is little support for the notion that the CPP's decision-making has been driven by anything other than self-interest.

The second explanation views deep-rooted sociocultural practices of silence and forgiveness about the past as the main reason why discourses develop that might restrict

LTJPs, and shield political elites. If this explanation is correct, we should see that Cambodians are reluctant to take part in LTJPs, and unwilling to talk in public about their experiences during the conflict. Indeed, this explanation has some credibility. As Chhim (2012, 30) has noted: "Cambodians place high value on maintaining peaceful and harmonious relations and avoiding confrontations, especially with those who are considered powerful. These social norms are closely connected to the high importance of saving face, both of oneself and of others." Also influential is the Buddhist belief that it is better to "let bygones be bygones," and to allow crimes to be accounted for in the next life (Ledgerwood and Un 2003; A. Kent 2006; Zucker 2013).

Without a doubt, such Buddhist ideas about reincarnation and seeking justice through karma play a vital role in Cambodian society. Under normal circumstances, they have traditionally shaped how locals deal with crimes in their communities. In particular, the concept of "saving face" is a major principle in social interaction. This cultural attitude requires people not to talk about disputes openly, or make public accusations; but instead to resolve disagreements through unassuming nonverbal actions that convey remorse, and a yearning for atonement. As Sok-Kheang Ly explains, in Cambodia it's difficult to even apologize personally for some minor personal wrong—let alone the mass atrocities of the Khmer Rouge.

> In Khmer culture we use non-verbal expressions to seek forgiveness. For example, if I've done wrong to you, I usually do not say "sorry" in person. The way I express my regret is to do something good for you. For example, if your family has a religious ceremony or something important that needs a lot of people to assist—even if I was not invited, I just come

to it. That's the kind of gesture that expresses "sorry." Those are the kinds of cultural barriers to the reconciliation process in Cambodia. [54]

But while such ideas about "saving face" and "letting bygones be bygones" do play a key role in Cambodian society; and while there is an undeniable synergistic relationship between a culture of speaking half-truths and silence, and the government preference for burying parts of the past—still, it seems fair to say that politics has in fact played the superior role in shaping what can and cannot be spoken. As mentioned earlier, many civilians have been eager to take part in the ECCC. More than four thousand Civil Parties registered for Case 002 alone; and the LTJPs that I have witnessed are large community events where participants have been more than ready to talk about their experiences. Further, as my research has revealed, people also have vivid recollections of the 1970–75 and post-1979 conflicts, and are willing to speak about these periods as well; but they lack outlets to share their experiences. This suggests that government repression of discussion of these periods is a more significant factor in the silence than the sociocultural one—as Khamboly Dy conceded.

> One reason why people have kept silent for many years is that the state did not provide any mechanisms for them to talk, to share their personal experiences during the Khmer Rouge. What they *did* encourage people to do was to be biased toward their own side by politicizing history, and politicizing their personal experiences.[55]

This statement reveals that the denial and half-truths about certain periods in Cambodia are not merely an unintentional outcome.

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[54] Personal interview, Sok-Kheang Ly, civil society, Phnom Penh, Cambodia, 24 February 2014.

[55] Personal interview, Khamboly Dy, Phnom Penh, Cambodia, 30 January 2014.

Conclusion

This chapter demonstrated how a distortional framing of Cambodia's conflicts shaped LTJPs after the war finally ended. The ECCC's goals should have been only the impartial ones of finding out the truth, and obtaining justice for victims of the civil war. Instead its mandate, set by the ruling party, has served to reinforce the CPP's narrative; and that narrative has been reproduced by the LTJPs.

The first sections of this chapter found that the regime was motivated to manipulate LTJPs for two reasons:

- to protect CPP officials who might have been implicated in war crimes—either as former KR leaders, or as government ministers during the PRK era
- to bolster their legitimacy as the liberators of the Cambodian people.

This frame also cast the war in simplistic terms: as "the bad Khmer Rouge," "the saviour CPP," and "the poor population who suffered"—thereby denying consideration of complex victim and perpetrator identities.

Significant circumstantial evidence suggests that this process of manipulation dates from when the government originally set the ECCC's mandate in 2003—pressuring it to limit the trials only to the four-year rule of the KR, and to those most responsible for the genocide. This intervention, designed both to eliminate the KR legally and to protect the current political elites, has shaped LTJPs ever since. For instance, they have been forced to exclude from their deliberations any issues and policies that may implicate the ruling party.

The Court's relationship with government has often been fraught. When Case 002 began to implicate some current cabinet ministers, Prime Minister Hun Sen ignored

summonses for them to testify, suggested that the revelations could trigger a civil war, and pledged to halt the judicial process. When new charges were laid in Cases 003 and 004, he again denounced the Court and refused to act on its arrest warrants. Informants with knowledge of the inner workings of the ECCC say that this interference has also occurred in the VSS and the CPLC. While not definitive, these findings further support the conclusion that the official intent is to distort justice.

This chapter then examined how this manipulation was carried out, and its dual impacts on local TJ outcomes. First, most LTJPs initiatives have limited themselves to reinforcing the reductionist storyline about the civil conflicts. As one donor official observed: "One of the goals of transitional justice is to change something—not just to consolidate what's already there."[56] Second, this has shaped local understandings of wartime identities, establishing a hierarchy of victimhood with Civil Parties at the top, other DK-era victims next, and victims from other periods left out altogether. (The process also almost entirely omits mid-level and rank-and-file perpetrators.) The result is a discourse that is dramatically under-developed—focusing, as one observer put it, "only on one particular kind of victim narrative."[57]

The ruling party enforces this frame through various methods: the CPLC, the VSS, and its local patronage networks—where party cadres repeatedly use LTJPs as a venue to propagate the "7 January" liberation narrative. They also use bureaucratic control mechanisms, such as requiring agendas and reports from events, to shape local initiatives; this has led NGOs to restrict their work to topics they perceive as acceptable.

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[56] Personal interview, donor official, Phnom Penh, Cambodia, 29 January 2014.

[57] Personal interview, anonymous, Phnom Penh, Cambodia, 14 March 2014.

Finally, changes in the management of the VSS have resulted in greater government oversight of LTJPs linked with the ECCC—a move that one donor official describes as "keeping their eye on how we create the narrative."[58] The end result of this manipulation is to insulate CPP officials from justice: not a single one has been tried for war crimes. Rather than forcing Cambodia's political elites to face justice, LTJPs have paradoxically served only to help them publicize their own version of the "truth."

The ongoing political tensions in Cambodia, and the constant friction between the UN and the CPP over the operation of the ECCC, raise concerns about the future of the country's TJ approach. The CPP's total lack of willingness to act on indictments, coupled with significant donor fatigue, means that a rapid phase-out of international interest and aid seems imminent. Many LTJPs may simply be discontinued. If this happens, the ECCC—despite significant efforts and financial investment—will have missed its opportunity to shine a light on KR atrocities, and bring those responsible to justice.

As well, many former KR cadres remain at large and unassimilated, and many of their leaders are still in power in the CPP. Given Cambodia's history of heavy-handed rule, it is entirely conceivable that violence could one day resurface and tear the country apart again.

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[58] Personal interview, donor official, Phnom Penh, Cambodia, 29 January 2014.

CHAPTER 5: "Reconciliation" without Acknowledgement in Mozambique

Introduction

The brutal civil conflict in Mozambique was shorter than the one in Cambodia, lasting for only sixteen years (1977–92). But over the course of the war, some one million people were killed (Andersson 1992; Vines 1996), and close to six million became refugees or were internally displaced (Wilkinson 1998). The conflict affected nearly every Mozambican in some way, at times even pitting family members against each other.

After the guns fell silent, the ruling Frente de Libertação de Moçambique (FRELIMO) eschewed any formal TJ measure, adopting instead a blanket amnesty for the human rights abuses perpetrated by all sides. Unlike neighbouring South Africa, which instituted a TRC, Mozambique's approach to tackling the innumerable atrocities that took place during the conflict was mainly a policy of burying the past (with the exception of a few LTJPs).

In this chapter, I evaluate to what extent a distortional framing strategy has shaped those LTJPs. In the following sections I contextualize the war, describe these distortions in the narrative, outline how they are enforced locally, and what the effects have been for transitional justice in the country. I contend that the government successfully framed the conflict as one that was triggered by *external* forces—namely the aggressive activities of Rhodesia and apartheid South Africa. FRELIMO was supporting the black liberation movements of those white-run regimes, so they retaliated by establishing and supporting the rebels in Mozambique to fight a destabilization war against the government on their behalf.

This frame strategically omitted the *internal* sources of the fighting, and cast the rebels—the Resistência Nacional Moçambicana (RENAMO)—as the sole perpetrators of violence. In turn, this sanctioned a post-war TJ attitude of "leaving the past alone." Because of this lack of acknowledgement, the country's social and political divisions remained in place. In April 2013, hostilities broke out again between RENAMO and FRELIMO, and continue to the present time.

Background

Mozambique is set on the Indian Ocean on the eastern edge of southern Africa, bordering South Africa and Swaziland in the south, Zambia and Zimbabwe in the west, and Malawi and Tanzania in the north (see Figure 7).

Figure 7: Map of Mozambique and its Neighbours

Source: Based on the May 2016 UN map Mozambique (#3706, Rev. 6).

The country had been a Portuguese colony for centuries, ever since the early sixteenth century. It gained independence in 1975 after a nearly decade-long struggle waged by the anti-colonial coalition FRELIMO. The fight for independence was also aided by political changes in Portugal, resulting in the fall of the Salazar dictatorship. After Portugal renounced the colony FRELIMO formed the country's first government, with its charismatic leader Samora Machel as president.

Almost immediately, the new regime began to exercise authority over all aspects of political life. Mozambique became a one-party socialist state, and FRELIMO (which had built ties with the Soviet bloc) implemented an aggressive Marxist-Leninist program that imposed illiberal forms of political and economic organization. The post-independence period (1975–77) was characterized by a heavy-handed authoritarianism, as FRELIMO set out to radically reform the country's political, economic and social order. The new regime saw "tight control as essential to building socialism," so it "suppressed all political activity outside of FRELIMO, and persecuted anyone accused of having 'benefited' from the old colonial regime" (J. M. Weinstein 2002, 147). Civil liberties were drastically curtailed, particularly freedom of the press and freedom of movement. Political dissidents, and former "collaborators" of the colonial regime (along with criminals, sex workers and the unemployed) were exiled to harsh reeducation camps, where hunger, violence and torture were pervasive.

Economically, FRELIMO adopted an aggressive program of anti-market economic policies, which favoured Soviet-style development projects—particularly in the industrial and agricultural sectors. The regime spurned traditional subsistence agriculture in favour of large-scale collective farming. Since this went against the way of life that

Mozambicans had practiced for generations, and disenfranchised many peasants, this created powerful dissatisfaction in the countryside. That move went hand-in-hand with the regime's anti-tribalist policy, which was similarly hostile to the peasants' traditional social structures (Cahen 2005; Geffray 1990). The traditional authorities (*régulos*) were stripped of their power; and cultural, regional and ethnic differences in the country were discouraged in the name of "national unity."

As a result, the post-independence peace was short-lived. Ian Smith's regime in Rhodesia started to recruit, train and arm dissidents, political exiles and expatriates—mainly people released from the reeducation camps, or who had fought beside the Portuguese in the colonial war. Their goal was to destabilize FRELIMO, in retaliation for the regime's interference in their own affairs. These rebels, initially the Mozambican National Resistance (MNR), came to be known as RENAMO. Their first leader, André Matsangaissa, was a former FRELIMO soldier who had been expelled for theft and banished to a reeducation camp. The Rhodesian secret service recruited him, gave the group military equipment and training (Flower 1987; Hanlon 1991), and provided military assistance. When Ian Smith's Rhodesia became Robert Mugabe's Zimbabwe in 1980, the rebel group lost its primary backing. Fortunately for them, the movement was handed over "lock, stock and barrel" (Flower 1987, 262) to apartheid South Africa, which took over as their principal guarantor and ramped up its military support. Meanwhile, FRELIMO was aided in most of the conflict by the Soviet Union and the Eastern bloc countries.

The South African Defence Force (SADF) actively helped RENAMO to expand its operations and its popular support. By 1981, its ranks had swelled to between 6,000

and 7,000 soldiers, a considerably higher number than under Rhodesian supervision (Vines 1996). Within three years, the rebels were operating in every province of the country, and had nearly 20,000 combatants. During this time, their tactics intensified from sabotage and subversion to terrorizing the populace: they gained notoriety for kidnapping children as soldiers, and committing sexual crimes and mutilation (Gersony 1988; Rupiya 1998). One US State Department official called RENAMO "the Khmer Rouge of Africa" (Gersony 1988). But although RENAMO violations outnumbered government abuses, and were more vicious in character, it is still true that both sides perpetrated war crimes, crimes against humanity, and other gross violations of human rights (Human Rights Watch 1992).

As early as 1988, international efforts were made to bring the two sides together and negotiate a settlement. One catalyst for reconciliation was the fact that Machel had died in a plane crash in 1986. His successor, Joaquim Chissano, renounced the Marxist-Leninist ideology, converted to capitalism, and began peace talks. As well, by 1990 both sides had lost much of their external support. FRELIMO and RENAMO finally sat down at the table together over a two-year span in Rome. The talks were mediated by the Italian government, the Community of Sant'Egidio Catholic lay organization, and some other external parties (Alden 2001; Hume 1994). Finally, the negotiations yielded a peace agreement (AGP, Acordo Geral de Paz) on 4 October 1992.

The accord called for the creation of an international peace-building mission, the United Nations Operation in Mozambique (ONUMOZ). Its functions would include overseeing multi-party elections, demobilizing the armed forces, and reintegrating ex-combatants. Surprisingly, however, the settlement included no TJ provisions, such as a

South African–style TRC or any trials for human rights abuses (for either side in the war). Instead, only ten days after the AGP was signed, the National Assembly passed a blanket amnesty granting immunity to all parties (see Igreja 2015; Igreja and Skaar 2013). As Miguel de Brito, the former Senior Democracy and Governance Advisor for USAID, told me, the amnesty was essentially "a political decision saying we have too many secrets."[1] In the absence of a formal mechanism, Mozambicans turned to their traditional reconciliation rituals—and the new government essentially encouraged them to forget the war. Roberto Luís, a Mozambican development expert, explained that the attitude was: "Let's forget about the past and think about the future. Thinking about the past won't solve anything, but the future will bring us something."[2]

The post-war repatriation effort was one of the largest return movements of people in African history (Bradley 2013). This was all the more difficult because the country was still littered with some two million landmines, which caused injuries and fatalities long after the fighting had stopped, and also prevented farming from being resumed in rural areas (Unruh, Heynen and Hossler 2003). In addition to the human toll, the conflict destroyed the state's physical infrastructure of schools, hospitals, roads and bridges—particularly in the central and northern provinces, where the fighting had been fiercest. However, as a result of the UN's efforts, for many years Mozambique was seen as a rare success story of post-conflict peace building (Fortna 2008; C. Manning 2002; Paris 2004). The country has also frequently been cited as an example of when just "leaving the past alone" is a defensible TJ policy option (Cobban 2007; Hayner 2010).

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[1] Personal interview, Miguel de Brito, Maputo, Mozambique, 27 May 2014.

[2] Personal interview, Roberto Luís, Maputo, Mozambique, 15 May 2014.

In particular, the political transition was seen as a positive matter of peace through economic liberalization. The first post-war elections, widely viewed as free and fair, took place in 1994; FRELIMO won them handily. RENAMO accepted the result and did not return to armed conflict, as some had worried it would (Alden 1996; Jett 1999). Although subsequent elections (in 1999, 2004, 2009 and 2014) have reportedly been marred by some irregularities, they were also ruled free (C. Manning 2010)—despite the fact that the country has slid back into a one-party rule. The transition was also celebrated as an economic miracle, given Mozambique's near 10% annual growth rate throughout the 2000s. This solidified the country's status as a "donor darling," and a model for effective aid development (see Hanlon 2010).

But beneath the veneer of reconciliation, some researchers have called attention to the deep cleavages and episodic violence—particularly around elections—that continue to dog Mozambican society. They warned that, left unaddressed, these schisms could one day snowball into renewed large-scale fighting (Alden 2001; Cahen 2005; J. M. Weinstein 2007). Of the UNOMOZ era, de Brito reflected on the pressure from donors and the UN "to phase out the mission after the elections." The general attitude, he noted, was one of: "The transition is done, it's over, let's move on, there are other wars we need to take care of."[3] It is possible that the international community's exit from Mozambique might have been too hasty. Ilídio da Silva, who worked as a psychologist with child soldiers for the Mozambican Association of Public Health in the 1990s, agreed that the lack of public truth-telling has left unhealed the deep divisions that persist in society.

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[3] Personal interview, Miguel de Brito, Maputo, Mozambique, 27 May 2014.

Despite claims about the "Mozambican miracle," he asserted that tensions continued to simmer.

> Although people say we are at peace, I have always said that we are sitting on a bomb that can explode anytime, anywhere. People didn't have enough time; they didn't have a chance to speak about the violence. For me, speaking is the first step in stopping the cycle.[4]

Colin Darch (2016, 321), a long-time observer of Mozambique, concurred that "conflict has continued to bubble under the surface." For instance, there is widespread public displeasure with the unequal distribution of wealth and economic opportunities, particularly in the central and northern provinces. There are longstanding disagreements over the centralization of power, and the composition of the Mozambique Defence Armed Forces (it was originally supposed to have equal numbers of RENAMO and FRELIMO combatants, but never achieved parity). These political tensions have at times turned into open confrontations (C. Manning 2010).

Framing Transitional Justice

Distorting the Frame

I argue that the FRELIMO government adopted a distortional framing strategy, with the goal of protecting its own interests and avoiding justice for its misdeeds. This distortional frame, which has shaped LTJPs in the country, has two central features:

- blocking from public discussion the immediate post-colonial period, while stressing the initial years of the civil war (when its external support was highest);

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[4] Personal interview, Ilídio da Silva, Maputo, Mozambique, 13 June 2014.

- branding RENAMO as the sole perpetrators of human rights violations, and discrediting it politically.

This discursive frame identifies a primary **cause** of the conflict, the aggressive actions of Rhodesia and apartheid South Africa; a main **effect**, the creation of the rebel group RENAMO; and some principal **solutions**: a TJ policy of selective amnesia, and a focus on demobilizing and reintegrating ex-combatants. This strategy has allowed FRELIMO to avoid disclosing its own wartime abuses, and to uphold its claim to legitimacy as the liberator of the country from colonial rule. In the next section, I discuss two elements of that strategy: temporal limits, and wartime identity.

Temporal Limits

Current discussions about conflict in Mozambican society are generally limited to FRELIMO's struggle against the Portuguese colonial administration, from 1964 to 1974. This history is taught in schools; but no word is said about the immediate post-independence period (1975–77), when FRELIMO aggressively implemented its Marxist-Leninist agenda—which led to the war with RENAMO. As I observed in my fieldwork, the civil conflict is still an extremely sensitive subject—particularly in rural areas, which suffered most from the economic and social disruptions caused by the hostilities. Discussion of that topic unsettles the liberation narrative of the ruling party. Public discourse emphasizes only the first few years of the conflict (1977–81), when RENAMO was strongly supported by Rhodesia and South Africa—which were Mozambique's enemies. It downplays the remaining years of the civil war (1981–92), when FRELIMO's human rights violations became widespread (Human Rights Watch 1992). As Anne Pitcher (2006, 97) observed, the official claim is that Mozambique's troubles after

independence were "externally imposed, not internally generated by decision-makers or the domestic responses by social forces to their policies."

By ignoring its own ill-advised socioeconomic policies, and leaving that period out of its framing of the civil war, FRELIMO has been able to stifle debate and avoid any responsibility for the dissatisfaction it caused (Pitcher 2006). Raul Domingos, second-in-command for RENAMO during the civil war, originally joined the rebels for that reason. In his view, the ruling party wants to erase history.

> FRELIMO wants to say: "We are democratic, we are fighting for the people since 1962, we are the party for freedom, for peace." But if we knew the truth through a TC, from the beginning, we will find that they killed many people.[5]

The regime's framing of the conflict focuses on the years when the anti-government involvement of Rhodesia and South Africa was at its peak. FRELIMO's support to the black liberation movements of those countries is most often cited as the main cause of the civil war, particularly in studies written around the time of the AGP (Hanlon 1991; Minter 1994; Nilsson 1993). Iraê Baptista Lundin is a Mozambican scholar who studied the internal sources of the civil war, and advised President Joaquim Chissano on the reconciliation process. She insisted that the conflict was due to external causes: "The factors that put the situation on fire came from the outside."[6]

Various experts have argued this point, contending that Mozambique could have averted the conflict had it not been for the interference from Rhodesia and South Africa (Minter 1994; see also Hanlon 1991). Mark Simpson (1993, 323) has called attention to

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[5] Personal interview, Raul Domingos, Maputo, Mozambique, 17 July 2014.

[6] Personal interview, Iraê Baptista Lundin, Maputo, Mozambique, 20 April 2016.

this historical bias, pointing out that most such explanations have been put forward by FRELIMO's sympathizers—who "emphasized the role of external factors, in particular the devastating part played by South African destabilization." The government's temporal framing of the conflict in this way was deliberate. I spoke with psychologist Bóia Efraime Júnior, who worked with recovering child soldiers for the Mozambican Association of Public Health, and later founded the psychotherapeutic organization Reconstruindo a Esperança (Rebuilding Hope). He clarified the intent behind the government's framing strategy.

> This apartheid government already had a kind of racist discredit; so if you align RENAMO with it, then you annul any value that RENAMO has. If people try to understand or support RENAMO, that means they're against their own nation, against Mozambican liberation and independence, even against the black Mozambicans. You make it really impossible for anyone to see anything good about the resistance movement, which is the enemy of the country.[7]

As I will discuss in more detail later, FRELIMO's strategy of blaming external sources for RENAMO—and particularly associating it with elements from the Portuguese colonial era—allowed the regime to claim that the civil war was merely an extension of its own anti-colonial struggle. They were even able to repeat one of their famous rallying cries from the 1970s: "*A luta continua*!" ("The struggle continues!") As long-time country expert Michel Cahen (2005, 214) summed up: "South Africa's aggression overdetermined the analysis of the conflict as purely external in nature." As a result, he

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[7] Personal interview, Bóia Efraime Júnior, Maputo, Mozambique, 15 April 2016.

claims, "much more importance was placed on South African and United States covert operations than on the real, internal war."

Whereas the first few years of the Mozambican civil conflict have been central to framing the dominant account of the war, the closing years (1981–92) are comparatively off limits. There are two reasons for this. First, the conflict took on a decidedly internal aspect during this period, in particular after RENAMO crossed the Zambezi River in 1982 and created large "liberated zones" in the provinces of Tete and Zambezia (Cahen 2015). As the rebel group's ranks swelled to more than 20,000, it became clear that the conflict—far from being merely the result of external aggression, as FRELIMO insisted—was rather due to a complex element of popular revolt against the regime's policies (Geffray 1990; see also Cahen 2005; Schafer 2001; Seibert 2003; Vines 1996).

Second, as the war intensified during this time, violations of human rights became more and more heinous. In the southern provinces, RENAMO raids escalated to a new degree of ferocity both in scale and nature (Hultman 2009; Roesch 1992). At the same time, FRELIMO intensified its counterinsurgency operations in RENAMO strongholds such as Manica, Sofala and Zambezia. On both sides, forced recruitment increased—including taking children as soldiers (J. M. Weinstein 2002). But since FRELIMO controlled the media, it managed to contain news coverage. This allowed it to downplay its own culpability. As Mozambican human rights advocate Alica Mabota has bemoaned, "Many truths have not yet been told … until now we have consumed only one part of this history" (quoted in Igreja 2008, 546). Miguel de Brito also concluded that during this particularly vicious phase of the war, atrocities were perpetrated by both sides. This

explains why there has been no appetite for a TC, and also explains the hurried passing of the amnesty law immediately after the peace negotiations.

> Both sides were more interested in covering themselves with the amnesty than in providing any redress for what they had done. In Inhambane Province in Homoíne District, for instance, there was a big massacre involving civilians. Both sides accused each other of being the culprits, and I don't think either side really wanted the truth to come out—because the killings were deliberately done to cast blame on the other side, to legitimize their own actions. So it would be very difficult now for the military leaderships to come out and say: "Actually, we did it." Then in many areas of Zambezia, the air force did carpet-bombing. But officially, there's only speculation as to who was actually behind this stuff.[8]

For this reason, the matters of redress for human rights abuses, and reparations for victims, were never seriously considered during the peace process—even though, as de Brito points out, the issue was raised by several people several times. "Every time, not a single door was opened. It's as if for the political leadership, that issue had been dealt with and closed by the signing of the peace agreement."[9]

Wartime Identity

In addition to setting temporal limits on what may be discussed, the regime's framing of the civil war polarizes wartime identities into the rigid, binary classifications of victims (FRELIMO and civilians) and perpetrators (RENAMO). This othering tactic seeks to deny RENAMO political legitimacy by positioning the group as merely a rag-tag roving band of criminals, lacking any ideological ambitions or military organization (Minter

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[8] Personal interview, Miguel de Brito, Maputo, Mozambique, 27 May 2014.
[9] Ibid.

1994; Vines 1996). FRELIMO contemptuously refers to the rebels with pejorative terms such as "armed bandits" (*bandidos armados*), "jackals" and "terrorists." These attempt to focus public attention on RENAMO abuses, while upholding the image of FRELIMO as the "liberator."

Above all, the distortional frame highlights the viciousness of rebel activities during the war. Indeed, there is no shortage of studies and reports documenting their indiscriminate and atrocious cruelty (Gersony 1988; Nilsson 1993; Nordstrom 1997; Roesch 1992; Vines 1996; Wilson 1992). Common techniques to terrorize local populations included ambushes on civilian vehicles, raids on hospitals and schools, scorched-earth campaigns, forced recruitment (including of child soldiers), kidnapping women as sexual slaves, and ritualistic violence and mutilation (Nordstrom 1997). The latter was a particularly ugly aspect of the fighting: in order to preserve their ammunition, rebels would use knives and machetes to sever hands, ears, noses, and even sexual organs. Partly this was done to incapacitate the victims from fighting against them; mainly it was to sow fear and terror in the population.

A particular source of notoriety was RENAMO's practice of forced recruitment, which has been estimated as providing up to 87% of the rebels' force (Dolan and Schafer 1997). Most of these were abducted as children or youths; and to demonstrate their compulsive "allegiance" to the movement, and to break their ties with their community, they were forced to commit horrific atrocities—often involving family members, (Honwana 2006). RENAMO also routinely abducted women and girls to serve as sexual slaves and servants. The movement viewed rape as a justifiable practice of terror, and considered women as "spoils of war." (Some commanders, including leader Afonso

Dhlakama—who took over in 1979 after Matsangaissa's death—had multiple wives.) In fact, Jessica Schafer has remarked that "both FRELIMO and RENAMO combatants regarded women in the enemy area as fair game for capture and sexual abuse" (2001, 233).

The rebels also distinguished between the areas they selected for taxing, control, or wanton destruction (Gersony 1988). Most human-rights accounts focus on raids in the so-called destruction zones, which were mostly in the south of the country (considered FRELIMO territory), and in other government-controlled areas. People who RENAMO considered loyal to FRELIMO were killed or mutilated, in order to intimidate the population and highlight FRELIMO's inability to provide security; that was meant to turn civilians against the government (Hultman 2009; Seibert 2003). A crucial aspect of RENAMO's war strategy was making sure that their ferocity was publicized. According to one refugee, the rebels always left someone alive, so they could "escape to tell the tale" (quoted in Wilson 1992, 527).

Meanwhile, in zones that were controlled by RENAMO, people "consistently denied that RENAMO committed massacres there. Many who had lived with RENAMO claimed never to have seen any violence against civilians" (Finnegan 1992, 72; see also Schafer 2001). This remark is not entirely correct: particularly toward the end of the war, in RENAMO-controlled areas in the southern provinces, abductions of children, use of terror techniques and sexual crimes were pervasive.

Nevertheless, the point is not that RENAMO did *not* commit serious human rights abuses, but that both sides did. Government soldiers were also responsible for a staggering number of crimes: just like their opponents, they committed summary

executions, engaged in child soldiering, perpetrated sexual crimes—and were mostly responsible for setting the millions of landmines that left a deadly legacy in the country. Like the rebels, the government soldiers were mainly (82%) composed of forcibly recruited fighters (Dolan and Schafer 1997). But through its official press organs, FRELIMO got to define the terms. The regime "called its policy 'conscription,' while describing RENAMO's practices as 'abduction'" (J. M. Weinstein 2002, 145).

At this juncture, it is worth mentioning the 1988 Gersony Report, issued by the US State Department, which played a decisive role in solidifying the frame—and marked America's shift in allegiance from RENAMO to FRELIMO, which had recently converted to capitalism. The report contained many methodological flaws and biases, drawing its testimonies mainly from people who gave "the right answers." These were primarily Mozambican refugees who fled to Malawi in 1987, and so missed the worst of the RENAMO offensives. (Curiously, the report makes no mention of this.) Some civilians, as Cahen observed, would attribute some "acts of banditry and certain massacres to 'RENAMO 1,' but others to 'RENAMO 2'—the euphemistic term for FRELIMO soldiers and militiamen acting on their own" (1998, 13). Timothy Born, a long-time USAID official who was involved in the demining and demobilization processes after the war, echoed this claim.

> The government had managed—with Gersony and others—to paint RENAMO as these insane guys out there eating human flesh. That was the settled government version of history, and a truth commission would only have brought out atrocities on both sides.[10]

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[10] Personal interview, Timothy Born, Maputo, Mozambique, 17 June 2014.

Nonetheless, the Gersony Report shone a spotlight on RENAMO abuses (recall its description of the rebels as "the Khmer Rouge of Africa") while neglecting to mention the coercive tactics, assaults and plunders of government soldiers. But as Cahen's comment shows, the official polarization of wartime identities did not translate to the local level. There people were too scared to assign guilt, and spoke of the atrocities in ambiguous terms. As Efraime pointed out, "Somehow in Mozambique we had victims, but we didn't have victimizers."[11] So while the official discourse assigned clear responsibility to RENAMO for wartime abuses, in the popular mind it was attributed merely to the ambiguous and faceless element of "war."

In the post-war stage, this framing of identities has affected LTJPs. As Efraime explained, "this propaganda" initially biased his organization's psychotherapeutic efforts with former child soldiers.

> Before we started work, we were brainwashed. We thought we had a regular Mozambican army fighting the guerrilla bad guys, RENAMO— and they were supported by the apartheid government, and they even misused children. It was only when we got to the field that we discovered that FRELIMO children were also forced into the army and exploited as militias. We should have known—but somehow there was a resistance on our side, we wanted to believe in the "goods" and the "bads."[12]

Ilídio da Silva, Efraime's colleague in the Mozambican Association of Public Health, corroborated this claim. He added that the distortional framing of wartime identities was pervasive not only among nationals, but internationals as well—particularly the UN and

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[11] Personal interview, Bóia Efraime Júnior, Maputo, Mozambique, 30 May 2014.

[12] Personal interview, Bóia Efraime Júnior, Maputo, Mozambique, 15 April 2016.

World Bank, who were eager to brand Mozambique a success story in order to attract investment.[13]

Another goal of the distortional frame was to discredit RENAMO. Throughout the conflict, the government and the state media consistently referred to RENAMO fighters as *bandidos armados*—as a pack of "jackals" that roamed the countryside, senselessly terrorizing civilians without any political agenda or popular backing. This created an image of RENAMO as a criminal element that perpetrated indiscriminate acts that defied "any purely rational military explanation" (Young 1990, 507). But as a number of studies have demonstrated, RENAMO violence was not senseless. Despite its ferocity, it was rather a concerted strategy to create chaos in Mozambique, weaken the government, destroy the physical infrastructure, and paralyze the economy. Initially, this was done at the behest of the SADF, which trained the rebels in these tactics. After South African support ended, and the rebel group was forced to "grow up" and become a self-sustaining military organization, they carried on with the same tactics (Hultman 2009, 828; see also Seibert 2003; Vines 1996). At around this time, RENAMO also articulated a clearer political agenda calling for democracy, a free market and the rule of law.

As Hultman argues, the "somewhat misleading impression of a gang of unorganized criminals" (2009, 827) is an error. In fact, RENAMO was never a loose collection of roving patrols; rather, it was a highly centralized and hierarchical military organization, with formal structures of command, control and communication (Hultman 2009; Seibert 2003; Vines 1996). Rebels were organized into companies of 100–150 soldiers, which formed battalions of two to three companies each. The battalions were

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[13] Personal interview, Ilídio da Silva, Maputo, Mozambique, 13 June 2014.

assigned to provincial bases, which maintained daily radio contact with RENAMO leadership (based in Sofala). Hultman noted that the leaders "had information about everything that went on in the different provinces" (2009, 828). Knowledge of these realities challenges the government's depiction of RENAMO, and nuances the dichotomous frame of perpetrator and victim.

Motives for Distortional Framing

For the ruling party, two principal motives underlie its distortional framing of the Mozambican civil war. The most obvious is that high-ranking members of FRELIMO could be found responsible for war crimes, crimes against humanity, and other gross human rights violations. The other is that a better awareness of the internal dimensions of the war might well upset the party's claims to legitimacy as a government. Therefore, as I show in this section, FRELIMO has a clear rationale to frame RENAMO as the sole culprit of wartime abuses, and to avoid any mention of the government policies or military actions that resulted in atrocities. This also provides an excellent motive to favour a TJ framework that accentuates amnesty, and leaving the past to be forgotten.

As I indicated earlier, RENAMO is certainly accountable for gross abuses; government soldiers also perpetrated a significant number of atrocities. Cahen, in fact, is certain that "the war was equally savage on both sides" (1998, 13). Both recruited children as soldiers; while these accounted for a larger proportion of RENAMO's force, there were almost twice as many in the government ranks. At the time of their "recruitment," 8,945 rebel soldiers (40.7%) and 16,553 government soldiers (23.3% of the military) were under 18 years old; another 4,334 (19.7%) of the former, and 3,073

(4.3%) of the latter, were aged between 10 and 14 (Barnes 1997).[14] A HRW report (1992, 85) describes an occasion during the war when government forces blockaded a dance club in the coastal town of Vilankulos, Inhambane Province, on a Saturday night. Soldiers obstructed the exits and began a forced recruitment drive, as one observer recalled.

> Given our situation of insecurity, we thought it was bandits attacking. So our surprise can be imagined when we discovered that they were recruiting young people for military service. Is it really possible for any soldier to pick up a gun, and on his own personal initiative recruit young men at dances and in the streets at night?

FRELIMO leaders were also responsible for the wanton destruction and killings that took place in the central and northern provinces in the 1980s, primarily in Zambezia. Indeed, Schafer (2001, 219) noted that "people in RENAMO areas of the district reported that it was government soldiers who were responsible for the worst violence against civilians." In interviews for a Human Rights Watch report (1992), many individuals—IDPs, army personnel, and humanitarian workers—confirmed the government's use of scorched-earth tactics in rebel-controlled areas. Typically, if a village was suspected of harbouring rebels, there were summary executions and the entire village was destroyed. The residents would hide in the bush while the FRELIMO soldiers burned down their homes; but as one survivor explained, the soldiers also assumed that anyone hiding in the bush must be with RENAMO (Schafer 2001). As one civilian told HRW, "We did not know whether we should flee from our soldiers or from RENAMO" (1992, 58). In the later part

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[14] Children under 15 years of age were ineligible for the official UN demobilization process at the end of the war, and so failed to get any of its benefits.

of the war, soldiers were even responsible for some assaults in the southern provinces, their own ground. HRW concluded, for instance, that about a quarter of the 200 attacks on the Maputo suburbs could be attributed to government soldiers (1992). William Finnegan, a *New Yorker* writer who covered the war extensively, wrote about a conversation he had with a man in Manhiça, Maputo Province, about the government soldiers. "They are the most dangerous, because they don't want to leave witnesses—so they kill everyone. The massacre at the Third of February, that was soldiers" (quoted in Finnegan 1992, 227).[15]

The first mass movements of refugees and *deslocados* ("the dislocated," meaning internally displaced people or IDPs) took place in the early 1980s, after government armed forces used heavy artillery in Manica and Sofala provinces. During this time the army began to use forced resettlement as a counterinsurgency tactic, to keep villagers away from RENAMO. They were transferred to squalid, overcrowded, and poorly supplied and defended government-held camps. Left with little food, many died from starvation and illness; and because of the inadequate security, they also became preferred rebel targets.

Counterinsurgency operations in the province of Zambezia also featured heavy aerial bombardment (including the alleged use of napalm against locals in RENAMO zones). This further exacerbated the refugee crisis, as did the millions of landmines that the government placed to prevent the sabotage of roads, bridges, railways, power lines and other public infrastructure. Although demining agencies tend to dodge the subject of

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[15] Third of February (originally named after Heroes' Day, and now known as Taninga) commemorates the town where 211 people were killed in a roadside ambush on 29 October 1987. There is now a memorial at the mass grave.

responsibility in order to preserve their neutrality, one expert (who asked to remain anonymous) confirmed that "it's obvious that government troops laid most of the mines."[16]

As well, the state-controlled media dramatically underreported government abuses during the civil war (which I discuss in more detail in the next section). Even in the present day, the military forces have reverted to many of the same tactics used in the initial conflict: summary executions, forced disappearances, scorched-earth campaigns, and sexual violence. This substantiates the likelihood that these methods were commonly used earlier. In 2016, representatives of HRW (2016a) and the UN High Commissioner for Human Rights (2016) spoke with a few of the nearly 12,000 Mozambican refugees in Malawi who fled FRELIMO military sweeps in Tete and Zambezia. The vast majority of respondents accused the government forces of violence, prompting both agencies to release statements condemning the grave violations against civilians.

Reporting from the same refugee camps, a 2016 Freedom House study found that FRELIMO soldiers committed the majority of attacks on locals—either because they had lost an earlier battle with the rebels and wanted to reassert control in the area, or because they suspected villagers of sheltering RENAMO forces. As one refugee described: "Most of the time the FRELIMO soldiers were on the losing side, so they killed people and set fire to the houses" (Freedom House 2016, 14). By contrast, refugees assigned almost no

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[16] Personal interview, anonymous, Maputo, Mozambique, 18 June 2014. As he explained, when such agencies work with communities, they tend to avoid asking awkward questions—such as "who laid these mines, how do you know about them? People are still afraid of giving information. We're there to destroy the mines, and that's it" (Ibid.).

responsibility for attacks to RENAMO fighters; in fact, they even credited the rebels with warning locals of impending government incursions.

Meanwhile, RENAMO attacks have generally been limited to ambushes on buses and trucks along the main north-south highway (EN1) from the Save River to Muxungue; from Nhampadza to Caia, on the south bank of the Zambezi; and along the EN7 from Vanduzi to the Luenha River. Its troops have also clashed with the armed forces in a number of areas, attacked police stations, and killed or abducted FRELIMO party members (Darch 2016). In particular, HRW has condemned RENAMO attacks on medical facilities. By looting medicine and supplies, and destroying medical equipment, the rebels have imperilled the health of thousands of rural Mozambicans (Human Rights Watch 2016b).

Given the complexity of the war, it is frequently stated that attributing blame for violations would be impossible. Yet considering RENAMO's hierarchical organization, surely the task of identifying and catching "the big fish" ought to be a straightforward one. Even on the government side, the situation is not as complex as one analyst characterized it: "How do you establish accountability of soldiers whose names were never recorded, and who were never salaried, when the commander was never there, and when there were no records anyway?" (Hayner 2010, 198). Indeed, it is an open secret that many of the most senior people in the security apparatus and armed forces remain powerful figures in the present ruling party. The former Minister of Security, Sergio Vieira, is often named as being responsible for many civilian casualties during the war. In fact, Vieira openly acknowledged (while not incriminating himself) that FRELIMO has many "skeletons in the closet." At the National Assembly in 1992, he gave a spirited

defence of the amnesty law.

> There is a need of an amnesty [that] is not only for the crimes committed by RENAMO. There were also incorrect acts by others ... including agents of the state. We need an amnesty that covers all the acts of the state, of the state agents that violated the law, acts that violated the law, possibly illegal executions (quoted in Igreja 2015, 249).

Without such an amnesty, the leaders of the armed forces at the time—Alberto Chipande, Tobias Dai and Lagos Lidimo[17]—could be found liable for war crimes. Aid worker Timothy Born reported that Lidimo (one of the main FRELIMO generals) "was called the 'Butcher of Zambezia' for the government's scorched-earth campaigns there."[18] One senior official—Aguiar Mazula, the first post-conflict Minister of Defence and a FRELIMO negotiator in Rome—actually confided to me that the government decided that it would be best to just quietly bury the issue. "Nobody was clean. If people started talking, who knows what would come of it?"[19]

Recently, RENAMO officials have voiced regret about their approach in Rome, and have tried to call for the creation of a TC. Eduardo Namburete, a member of parliament who was a leading figure in the recent (2013–15) peace negotiations with FRELIMO, speculated on the ruling party's probable thinking.

> FRELIMO did not want the truth about the civil war to come out, because many of the generals—some of whom are still active in the government

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[17] Chipande was Minister of Defence during the war, while Dai was Commander of the Armed Forces. Both, together with Vieira, remain influential members of the FRELIMO Central Committee. Lidimo was appointed the first Chief of the FADM after the civil war, and currently heads the Serviço de Informação e Segurança do Estado (SISE, Mozambique's intelligence service), which is on the front lines of the present battle with RENAMO.

[18] Personal interview, Timothy Born, Maputo, Mozambique, 17 June 2014.

[19] Personal interview, Aguiar Mazula, Maputo, Mozambique, 3 July 2014.

today—will be pointed out as the ones who perpetrated some of the atrocities. It was more convenient for them to say: "Let us not talk about this, let us just forget and move on."[20]

However, Namburete emphasized, this approach will not solve the issue. "You don't settle things like this just by sitting on it. The only way to remove this thing is to bring it to light and resolve it. After that we can shake hands and say, it's finished."

But this does not explain why Namburete and other RENAMO negotiators did not use their position to call for a TC. For that reason Anástacio Chembeze, a mediator in the negotiations, concluded that "there is a tacit recognition that they are all guilty. The fact that nobody wants a TC is an [admission] of responsibility. All parties have bloods on their hands."[21]

FRELIMO's other motive for downplaying the internal causes of the conflict is to maintain its claim to legitimacy as liberators of Mozambique from the colonial administration, and hence the rightful custodians of political power. (This strategy was also used to gain post-liberation control in Namibia (Höhn 2010), South Africa (Wilson 2001), and Zimbabwe (Ranger 2004).) João Pereira, a Mozambican civil society official, observed that "FRELIMO always thought they owned the country, because they fought for the independence. By portraying RENAMO as an external force, they mobilized some Mozambican citizens against them."[22] As Mazula explained, the government tactic was to blame the conflict on external factors.

We did not see the war as a problem between Mozambicans, but one that

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[20] Personal interview, Eduardo Namburete, Maputo, Mozambique, 9 July 2014.

[21] Personal interview, Anástacio Chembeze, Maputo, Mozambique, 22 April 2016.

[22] Personal interview, João Pereira, Maputo, Mozambique, 7 July 2014.

was between ideologies, created by other countries: South Africa, the Rhodesians. We wanted to identify the enemy as capitalism, apartheid, something abstract. But RENAMO was not abstract, they were real—we were fighting them in the bush and people were dying.[23]

For the regime to recognize that RENAMO enjoyed any level of popular support would mean having to acknowledge the serious crimes it perpetrated during its violent Marxist-Leninist period. Marcelino dos Santos, one of the most powerful ideologues in FRELIMO's Central Committee, captures the party's hard-line position: "I never speak about a 'civil war' in Mozambique. It was a war against South Africa. They fought a war ... through an instrument called RENAMO" (quoted in Cobban 2007, 148). The researchers who first wrote about the civil war were ideologically sympathetic to FRELIMO's socialist project, which influenced them to frame the guerrillas as proxies of the white-run Rhodesian and South African regimes. As Schafer explained, this caused them some difficulty in explaining the rebels' popularity.

> Scholars analyzing RENAMO's success at anchoring itself in the countryside initially attempted to find explanations which denied the role of civilian support, because of their overriding belief that RENAMO was not ideologically motivated, but rather a puppet of the apartheid regime. This required them to construct alternative accounts to explain both the soldiers' continued adherence to the guerrilla movement after they had been forcibly recruited, and the way in which a guerrilla army could sustain itself in such conditions (Schafer 2001, 216).

Cahen (2005, 214) echoed this view that RENAMO "had no social base in the country—anyone who argued otherwise was consciously or unconsciously playing apartheid South

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[23] Personal interview, Aguiar Mazula, Maputo, Mozambique, 3 July 2014.

Africa's game." He has since concluded that this research deficit has yet to be overcome.

So if the rebels were *not* merely tools of external forces, what motivated them to fight? Anthropologist Christian Geffray (1990) points to the regime's authoritarian modernization, which overturned traditional structures and communities, and instituted forced resettlement as part of a "village-ization" program. In addition, northerners resented the concentration of power among southern elites. All these influences, according to Geffray, provided a favourable environment for an internal resistance movement. Other scholars have echoed this position. Weinstein (2002, 148) attributed RENAMO's spectacular growth to domestic factors, notably FRELIMO's "high-handed efforts to make peasants change their customary ways." In his view, RENAMO'S appeals "fell on ready ears at least in part because Mozambique's peasant majority was reeling from the disastrous effects" of FRELIMO'S failed policies.

Timothy Born concurred with this position, stressing that the insurgents had a lot of community support, and that "RENAMO was not seen in the bush as a foreign force."[24] Their local support was emphasized in the 1994 national elections, when the rebel group won more than a third of the vote. As well, in the current conflict they have been able to successfully reactivate after two decades of dormancy to sustain a low-intensity insurgency. They have even recruited new insurgents into their ranks (Igreja 2015).

This helps to explain how RENAMO was able to keep going after its external support dried up. Jessica Schafer's 2001 study on rebel motivations is enlightening in this regard. Although most were forcibly recruited, she contends that methods used were

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[24] Personal interview, Timothy Born, Maputo, Mozambique, 17 June 2014.

generally less violent than the reported techniques of deprivation and traumatization (such as deadening recruits' sensibilities by having them assault or kill family members). Even though few fighters joined voluntarily, as in other rebellions, many sympathized with the fight for democracy. One ex-combatant said that he, like many other guerrillas, was prepared "to accept death, because I wanted the country to be free" (quoted in Schafer 2001, 226). That kind of commitment was obviously difficult for the ruling party to stamp out.

Enforcing the Frame at the Local Level

Having the motivation to distort justice is not enough; the ruling party also needs the ability to implement this distortion. I suggest that the government has three ways to do this:

- an extremely centralized system of governance
- control of the media
- an array of social and bureaucratic control mechanisms.

Taken together, these factors have allowed the ruling party to dominate the country's narrative, and to evade accountability for its own abuses.

The centralized nature of the Mozambican political system is perhaps the most important factor. In the immediate post-colonial phase, FRELIMO ruled the state with an iron fist— policing all aspects of political activity, reducing civil liberties, and crushing any form of dissent. During this time, traditional chiefs were replaced with party cadres who took their orders from the central government and implemented them at the district level. (This included some of the most unpopular socialist reforms, such as the establishment of state farms and communal villages.) This system had the effect of

consolidating power in the hands of a few political elites.

But in 1990, despite the adoption of a new constitution (including multi-party politics), the political system remained highly centralized. Although sporadic efforts were made to decentralize it and share power locally after the AGP, not much has changed (Igreja 2013; see also C. Manning 2010; J. M. Weinstein 2007). The ruling party maintains a "monopoly on how 'the rules of the game' are made and applied, as well as to its superior access to money and personnel" (C. Manning 2010, 154). This tactic has been successful enough to allow FRELIMO to maintain power for over forty years. Unlike most other authoritarian regimes, it has never had to resort to force to confound its political opposition: apart from a few notable examples (which I will review later), such practices have been largely absent from Mozambican politics. As veteran country expert Carrie Manning (2010, 154) explained, for decades the regime has been able to pacify threats through the "subtle but effective manipulation" of legal institutions. Another potent tool is its pervasive system of patronage networks, which secure buy-in from local party cadres by connecting party loyalty to class mobility (C. Manning 2010),

FRELIMO's second way to enforce the frame is by dominating the media. As with the introduction of multi-party politics, freedom of the press was only secured in 1990 with the adoption of the new constitution. Before that time the media were state-controlled, which obviously biased coverage of the war. As Hultman (2009, 829) observed, there was little, if any, access to unbiased information: "The government had a massive propaganda machine, documenting and reporting all the atrocities carried out by RENAMO." Cahen (2015) made the same point about the lopsided coverage: "Violence by RENAMO against people loyal to FRELIMO in the south, near the capital city, was

far better documented by the state" —and thus by international news agencies—than violence by FRELIMO "in the distant Zambezian hinterland against RENAMO's 'liberated areas.'" It was their control of the media that allowed the government to brand RENAMO as mere *bandidos armados* (Seibert 2003).

Dennis Jett, the US Ambassador to Mozambique after the war, also described the effect of government control of the media in fabricating an understanding of the conflict. Before the constitution, the government owned most radio and TV stations, and almost all the print media— most notably the Agência de Informação de Moçambique (AIM), the state's only news agency at the time. AIM was an indispensible tool for FRELIMO to spread its one-sided narrative of the war abroad[25]—which involved portraying the actions of government soldiers in a positive light, and demonizing RENAMO. Fernando Lima, a former AIM reporter and current editor of the independent newspaper *Savana*, clarified this connection.

> A significant number of journalists believed that the government was doing the right thing by defending itself against external aggression. RENAMO was not fighting for any ideology, it was carrying out a proxy war on behalf of South Africa. The average journalist did not need to be indoctrinated to believe this—which shows that there was a very sympathetic relationship between journalists and the government.[26]

According to Lima, many journalists—influenced by government control of the media—

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[25] During this period, the Ministry of Information had a budget that dwarfed those of most other ministries, except Defence. As Jett (1999, 206) explained, international coverage of the civil war was influenced by the ideological leanings of those foreign journalists (whether employed by the government or not). They stayed in Mozambique "because of ideological sympathy for FRELIMO, not because of the professional challenge … As a result, pro-government sympathies are constantly reflected in what they write and how they write it."

[26] Personal interview, Fernando Lima, Maputo, Mozambique, 30 June 2014.

thought of RENAMO as "evil entities that cannot be talked to, cannot be interviewed. But the press was controlled; so journalists could not say things that would exemplify the brutality of the war."[27] So it was basically reported from the government side.

Another former AIM reporter was Gil Lauriciano, the only journalist to cover the war in the Zambezi hinterlands. (He wound up being abandoned with a government battalion for nearly two months, before being rescued by helicopter). He had a problem reporting in a manner that the government would accept.

> I would tell my boss that these districts were under RENAMO control; and it would come out as "seriously affected." Eventually we all knew what that meant—my boss, my colleagues, even the authorities. There was no "official" censorship, but you had to know how to put things.[28]

Although the present-day media is free, it has proved to be a weak check against the power of the ruling party (C. Manning 2010). This is compounded by the reality that in comparison to more media-savvy countries, Mozambique is a "low-information" society with a largely "uncritical citizenship" (Mattes and Shenga 2007). In recent years, FRELIMO has cracked down on newspapers that publish stories critical of the ruling party; and it has even bought several formerly independent news outlets (C. Manning 2010). Again, this has caused reporters to censor themselves—continuing to ensure that the party's narrative is spread internationally.

One example came about in 2003, with the publication of Barnabé Ncomo's book about Uria Simango—a founding member of FRELIMO, and part of the triumvirate that ruled the party after its first leader (Eduardo Mondlane) was assassinated. Simango, his

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[27] Ibid.

[28] Personal interview, Gil Lauriciano, Maputo, Mozambique, 19 May 2014.

wife, and some other party dissidents were murdered by FRELIMO cadres in the purges that followed the anti-colonial struggle. (Other perceived threats to the establishment who were "removed" included Lázaro Kavandame, Paulo Gumane and Joana Simeão.) Ncomo's book about the man and his cause (*Uria Simango: Um Homem, Uma Causa*) caught the attention of scholars and activists, who participated in the book launch. But the state television censored any attention to the publication; and FRELIMO officials reacted scornfully, denouncing Simango as a traitor. Nonetheless, one prominent scholar noted that Ncomo's book "smells the truth" (Igreja 2008, 546), and sparked discussion about a topic that had previously been off-limits: did FRELIMO violence contribute to the civil war?

Finally, in addition to government and the media, FRELIMO wields a variety of social control measures. Its aggressive use of violence to govern, and to neutralize opposition, has remained etched in the minds of many Mozambicans. This is especially the case in the centre and north of the country, where people still remember the forced relocations, and the brutal expulsions of thousands to reeducation camps (Cahen 2005; Pitcher 2006).

As I mentioned earlier, on the whole the ruling party has been able to exercise social and political control without overtly violating human rights. Instead it has relied on more subtle means—such as the patronage system, which enables it to preserve a "monopoly of power at every level of the state" (Cahen 2005, 227). Ilídio da Silva emphasized this point: "FRELIMO makes people think that if you're not with them, you

won't succeed in anything."[29] The ruling party's bureaucracy is also an effective one,

setting up an array of regulations to thwart any challenges to the establishment and also

to monitor local action, which is further compounded by the lack of a legitimate civil

society. Efraime, the psychologist, explained how this bureaucratic control inhibited his

organization's ability to build trust with the community: "It was difficult to establish our

credentials with the community. We arrived in cars owned by the Ministry of Health, so

people saw us as part of FRELIMO."[30] Since the team was trying to perform therapeutic

work with former RENAMO child soldiers, this made their task more onerous.

However, the subtle manipulations of the state bureaucracy and the system of

patronage have been accompanied by more coercive measures: intermittent episodes of

violence that mostly take place around elections. The worst took place in 2000, following

the previous year's hotly contested presidential race that saw RENAMO's leader Afonso

Dhlakama narrowly lose amid allegations of voting irregularities. RENAMO supporters

held demonstrations throughout the country and clashed with police, resulting in

hundreds of arrests and 41 deaths. In a shocking example, 82 of those detained were

asphyxiated to death in a prison cell in the northern town of Montepuez; and the tensions

nearly exploded into widespread warfare.

More recently, popular protests over the prices of food, electricity and fuel have

been violently suppressed by police, resulting in many casualties. In 2012, security forces

collided with RENAMO supporters in Nampula, which prompted Dhlakama to retreat

into the bush and renew a low-intensity war. Armed clashes with demonstrators also

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[29] Personal interview, Ilídio da Silva, Maputo, Mozambique, 13 June 2014.

[30] Personal interview, Bóia Efraime, Maputo, Mozambique, 15 April 2016.

followed the 2014 presidential elections, in addition to a distressing series of assassinations: at least nine supposed political killings have happened since March 2015, including that of Jeremias Pondeca, a former RENAMO member of parliament. The most high-profile murder was likely of legal expert Gilles Cistac, who was gunned down in broad daylight outside a Maputo café. (He had defended the constitutionality of a RENAMO parliament petition to create autonomous provincial authorities.)

Most startling were reports of two mass graves that were found in April 2016 in Gorongosa District, Sofala Province. The graves contained 100 and 120 bodies between them, with at least a dozen more remains scattered in the surrounding bush. Zenaida Machado, the Africa researcher for HRW, demanded that the government should urgently act on the reports.

> The Mozambican authorities … should immediately launch a credible and transparent investigation to determine the identities of the victims found, the causes of death, and who is responsible. Denying the existence of the grave without appropriate investigations only serves to raise suspicions about what happened, rather than uncovering the truth (Machado 2016).

But instead of doing this, armed forces initially refused media access to the site, then failed to seal off the crime scene—while local and provincial authorities denied the existence of the graves altogether. The country's top forensic doctor, Antonio Zacarias, criticized the government for making it impossible to identify the victims or the causes of death by not performing autopsies in a timely manner (Agência de Informação de Moçambique 2016).

In all these cases, Human Rights Watch (2016a) criticized the government's inability (or unwillingness) to investigate and prosecute. At the community level,

Mozambicans are acutely aware of the presence of ruling party officials—and without proper safety and security measures, they are reluctant to speak openly. LTJPs need to stay within the discursive boundaries in order to be approved by authorities.

Consequences of Distortional Framing

The 1992 amnesty law (15/92), passed by FRELIMO, is the centrepiece of Mozambique's TJ policy; and this government-imposed directive to "forgive and forget" shapes most of the country's LTJPs. Some scholars believe that people do not want to speak about the horrors of conflict for cultural reasons, or from war fatigue. As Hayner (2010, 197) explained, "the accepted, though largely unstated, belief was 'the less we dwell on the past, the more likely reconciliation will be.'" RENAMO was at first equally enthusiastic about this approach (though it has since backtracked with calls for a TC). I contend that such social amnesia originated in the top echelons of the ruling party (and its political opposition), and gradually trickled all the way down to the community level. President Joaquim Chissano, for example, flatly denied that a truth commission had ever been considered necessary.

> Even before we signed the agreement, we thought how we would deal
> with the question of the crimes committed. We said, well, the best thing to
> do is to accept that we all are guilty of one or another crime.[31]

In order to sidestep accountability for its own misdeeds, the ruling party has excluded the immediate post-colonial period from public dialogue; and laid all responsibility for war crimes at the feet of RENAMO. This distortional frame of the civil conflict has shaped

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[31] Personal interview, Joaquim Chissano, Maputo, Mozambique, 16 July 2014.

several vital social healing elements:

- memorialization
- psychosocial healing methods and reintegration rituals
- traditional courts.

I outline these three local justice mechanisms in detail below.

Memorialization

Despite the shocking death toll of the Mozambican civil war—more than a million casualties—there has been little attempt to commemorate this tragic episode. At the national level, the history of the anti-colonial struggle is taught in schools; but not the armed conflict. There are no museums or national memorials; no cenotaphs, monuments, dedications to the victims of war, or remembrance days; and definitely no official apologies, or expressions of regret.[32] In 2002 the ruling party declared 4 October a holiday—called "The Day of Reconciliation and Peace"—to honour the signing of the AGP. But by that time a decade had elapsed since the agreement, with no official apology.

Contrary to most accounts, some local memorialization initiatives *have* taken place—though they say little about what occurred, and by whom. These projects typically involve constructing a memorial at a *vala comum* (mass grave), and performing traditional religious ceremonies—often to commemorate a massacre that happened there. Most such are in the southern provinces, due to the dramatic escalation of mass violence

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[32] There is, however—according to Miguel de Brito—a small plaque honouring the AGP outside a Shoprite grocery store on the outskirts of Maputo. Unsurprisingly, de Brito says, this "doesn't really mean a thing to anyone." Personal interview, Maputo, Mozambique, 27 May 2014.

carried out by RENAMO forces in the later years of the war. Cobban (2007) described her trip to a memorial in Chiboene, Maputo Province, where 40 people were killed. Another memorial is located in Manjacaze, Gaza Province, honouring the 111 people massacred in an attack in August 1987. In my own fieldwork, I noticed two such memorials along the main north-south highway (EN1) outside the town of Taninga, Maputo Province, and Chongoene, Gaza Province. These memorials are entirely local affairs, and received no formal support from the state (other than being initially approved by the local government).

However, there are comparatively fewer memorials in Mozambique than in many other post-conflict states, including Cambodia. There are two central reasons for this. First, no systematic effort was made to document war crimes, or identify mass crime sites. Second, the nature of the fighting meant that although atrocities were frequent, they were targeted and small-scale, often involving only one to ten people; and they were scattered across the country. Large-scale military massacres only became common in the final stages of the war (Hultman 2009; see also Vines 1996). But the fact that some memorials exist at all disrupts the narrative that Mozambicans all just want to forget the war; and my own research strongly suggests that the memorialization of these events is central to the post-war identities of communities. One observer is Bishop Dinis Sengulane, an Anglican priest and former president of the Conselho Cristão de Moçambique (which has close ties with FRELIMO), who explained that his organization "made a point of making sure that those mass graves do not disappear."[33]

The largest and best-known mass crime site and memorial is in the small town of

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[33] Personal interview, Dinis Sengulane, Maputo, Mozambique, 6 June 2014.

Homoíne, Inhambane Province, which I visited in late April 2016. Here, on 18 July 1987 (according to the official version, disputed by the rebels themselves), RENAMO launched a predawn attack that killed 424 people—nearly all unarmed civilians, mostly women and children. The assault began at the hospital, where victims included the sick, the elderly, and infants.

In the centre of the town today is a valley with a single cashew tree in the middle. The structure holds the remains of 350 of the people killed in the Homoíne attack (the rest are buried in individual graves). Until recently the site was marked only with a concrete platform and a makeshift sign; but the present memorial is more elaborate. The monument has three raised tiled beds, each about 30 feet long, which span the width of the grave. A five-foot-high cement wall creates a backdrop for a marble plaque that reads: "Mass Grave. Here lie more than 350 bodies of Mozambican victims of the Homoíne massacre, which occurred on 18 July 1987. May their souls rest in peace."[34]

The memorial is similar to other local initiatives in other parts of the country. The site does not explain what actually happened in Homoíne, or who was responsible. Its ambiguity makes no attempt to clarify the conflicting stories. The government blamed the raid on RENAMO, drawing international attention to the viciousness of the group and eroding its foreign support. But the rebel leaders denied any involvement, and attributed the massacre to FRELIMO counterinsurgency operations in the area. So lacking any real clarification, the story of Homoíne is left to oral history—which suits the government's preference for silence.

Strangely, when I visited Homoíne, it was difficult to find anyone who could even

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[34] Author's translation.

direct me to the site, let alone speak about what had happened. It was as if the locals had adopted a self-censorship strategy; as if the collective memory of this traumatic event had been completely erased.

When Bishop Sengulane visited the town after the war he met a man who asked him to help bury the remains of some victims, whose spirits were haunting his village. Sengulane asked the man whether rebel or government soldiers were responsible for the deaths. The villager replied: "What killed them was war. If there was no war, neither RENAMO, nor government soldiers would be here. So they are victims of the war."[35] In my own discussions with the residents, they emphasized the importance of remembering that a lot of people had died (in Homoíne and elsewhere). They also noted there was still a lot of trauma among the older members of the community, after what happened three decades ago. Indeed, many people were retraumatized in early 2014, when RENAMO soldiers reactivated an old base in the area and clashed with government forces.

It became clear to me that most villagers were reluctant to speak of the massacre, and deferred to the few people who were allowed to serve as gatekeepers of local history and conveyers of the state-approved narrative. These were entirely the local authorities, FRELIMO party cadres or key witnesses. One of these, a government soldier named Moíses Zefanias, was stationed in Homoíne at the time, and tried to defend the town against the onslaught despite being outnumbered.[36] According to him, the *bandidos* (he refused to call them RENAMO) had attacked villages near Homoíne on several occasions in the preceding years; and in the weeks leading up to the attack, the military knew that

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[35] Personal interview, Dinis Sengulane, Maputo, Mozambique, 6 June 2014.

[36] Personal interview, Moíses Zefanias, Homoíne, Mozambique, 25 April 2016.

the rebel troops were closing in on the town from the north. They reached Homoíne around dawn, before 6 a.m., and immediately besieged the hospital, which was on the edge of town, with heavy gunfire. From there the aggressors moved to the centre of the town, despite resistance from the soldiers (who were quickly overmatched). But it was only later in the morning that the rebels switched from guns to machetes, hoes and axes, working their way through the town and slaughtering people.

Predictably, RENAMO disputes this storyline—and their conviction is striking. In one of his first interviews after the conflict, leader Afonso Dhlakama stoutly denied any role in the massacre. He said that the rebels relied on the population for protection and food; and that the atrocities were in fact the work of government soldiers, trying to turn the population against the rebels. Dhlakama committed to participating in an international inquiry, into Homoíne and other massacres, to determine who was responsible for killing unarmed civilians.

Raul Domingos, the rebels' second-in-command, also blamed the attack on government counterinsurgency groups.

> RENAMO guerrillas took the place for some hours, but their strategy was not to keep the village. They just go in, take medicine, take food, take weapons, leave again. And they did that. But then the army came in and massacred the people—and then they said it was the guerrillas who did it.[37]

In his view, the government grew increasingly anxious in the mid-1980s after RENAMO troops crossed the Save River—which is effectively the centre of the country, dividing north from south. This put the rebels in a strong military position, and caused the

[37] Personal interview, Raul Domingos, Maputo, Mozambique, 21 April 2016.

counterinsurgency groups to escalate their own violence in response.

> They started killing people, and telling villages not to welcome
> RENAMO. But guerrillas are like fish in the water. We are the fish, and
> the people are the water. You do not dry your water, because you will die.
> The government soldiers did the opposite. To intimidate people, they
> killed them dressed like guerrillas.[38]

Domingos pointed out that government forces are using similar tactics in the current conflict—which have been confirmed by Mozambican refugees interviewed in Malawi (Freedom House 2016; Human Rights Watch 2016a). "Homoíne is similar to what's happening today in Angónia [Tete Province]. When the government is losing the battle, they massacre the people. But in Angónia now, people can see that this is the army.[39]

Uncertainty over what actually happened in Homoíne recently inspired journalist Tomás Vieira Mário to write an opinion piece on the thirtieth anniversary of the killing—and to demand an inquiry into the massacre. Mário covered the AGP negotiations in Rome, and also interviewed Dhlakama after the conflict. He spoke movingly of his hope for a "definitive explanation" of the "diabolical forces" that perpetrated the slaughter. "We need to hide our demons; we need to make our catharsis, instead of repressing the past; for it will always chase us, like a shadow casting darkness and fear in our path," he wrote (Mário 2017).[40]

Namburete, the RENAMO Member of Parliament, also decried the lack of official truth- telling about the Homoíne massacre.

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[38] Ibid.

[39] Ibid.

[40] Author's translation.

A lot of lies are hidden. You'll always hear that it was RENAMO who killed the people. It's not true. The guerrillas did not come from Sofala to fight in Homoíne. Those who were fighting in Homoíne were the government troops stationed there. And we're saying, let's go back to Homoíne and ask the people there. They can say: "On that particular day, this, and this, and this happened. There was this person, this person, and this person." That man there might be able to say: "It was General So-and-So who came with his people and looted my shop." This is what FRELIMO is afraid of. But we are willing to face the truth.[41]

When Lucia van den Bergh, the former Association of European Parliamentarians with Africa representative in Mozambique, attended a ceremony in 2009 to mark the twentieth anniversary of the massacre, she reported that people began to share their stories spontaneously. Some people are also eager to claim reparations for their suffering. Benilde Nhalevilo, Executive Director of the National Forum for Community Radios, conducted a radio show on the topic of TJ. She found that the concept of reparations resonated with many of the victims she interviewed. "Many people feel pain. They say: 'I don't have my arm, I don't have my legs, so the government must do something for me.'"[42]

However, in the absence of a formal mechanism—such as a truth commission—there is no public space for people to tell their stories of suffering. As one informant (who works outside the field of TJ) observed: "The reason why we don't have many stories about victims is not necessarily because people doesn't want to talk. It's just because they

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[41] Personal interview, Eduardo Namburete, Maputo, Mozambique, 9 July 2014.

[42] Personal interview, Benilde Nhalevilo, Matola, Mozambique, 6 June 2014.

never had the opportunity to speak."[43] Miguel de Brito shared this opinion. "It doesn't mean that people don't think about it; it doesn't mean it's not eating them away inside. But there's this collective unspoken agreement that the past is in the past. We all know that's not true. This is like a national denial."[44]

Yet by now, it seems unlikely that any sort of Mozambican truth-telling process will emerge. Although the literature on LTJPs assumes that they offer a way to challenge dominant narratives, and to open up new spaces for debate, the experience in Mozambique points to an opposite effect. There, memorialization initiatives are effectively held hostage to a distortional framing of the war that obstructs all discussion. In Homoíne, and at other mass crime sites, public dialogue remains silent on the matter of responsibility: only government-approved gatekeepers are permitted to tell the story. The result is a contradictory version of events that seems unable to decide whether to blame a concrete entity—the rebels—or an abstract one: "the war." The latter point is echoed in the message Bishop Sengulane hopes one day will be found at mass graves around the country—a moving eulogy, which only on reflection can also be read as supporting the government's distortional framing.

> Here, so many people were buried. Victims of war. They were unknown to
> the local people. That is the reason why no one came to claim their body
> to bury their remains; but they were known and precious to God. War,
> never again. Peace, yes, now and forever.[45]

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[43] Personal interview, anonymous, Maputo, Mozambique, 18 June 2014.

[44] Personal interview, Miguel de Brito, Maputo, Mozambique, 27 May 2014.

[45] Personal interview, Dinis Sengulane, Maputo, Mozambique, 6 June 2014.

Psychosocial Healing Methods and Reintegration Rituals

At the local levels, the main TJ mode has been a focus on demobilizing and reintegrating ex-combatants, forgiving and forgetting, and performing psychosocial healing rituals. However, this approach prohibits debate about responsibility.

Reintegration rituals—held to allow child soldiers, ex-combatants and *deslocados* to return to their communities after the war—tap into profound symbols and cosmologies. These rituals were a crucial feature of the peace process, given the intimate nature of violence: members of the same community, and sometimes the same family, were pitted against one another. Nhalevilo described her own family's experience.

> I had two uncles, brothers, and one was soldier in FRELIMO and the other was in RENAMO. It was very powerful to see them giving each other hugs and saying: "OK, the past belongs to the past. Now it's the present, and we are brothers, so let's restart our lives.[46]

Reintegration rituals aim to treat former child soldiers and ex-combatants. However, the main "patient" in these processes is the larger community, rather than just the individuals (Honwana 1997; Lundin 1998). Lundin (1998) explains that these rituals, although regionally diverse, generally involve three phases of reconciliation:

- with oneself, in order to remove the spirit of war and "calm down the heart"
- with the community, in order to heal social divisions
- with former adversaries.[47]

In her study on child soldiers, Alcinda Honwana (2006) described the vital psychosocial function played by the *curandeiros*, traditional healers who act as a medium between the

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[46] Personal interview, Benilde Nhalevilo, Matola, Mozambique, 6 June 2014.

[47] For a more in-depth account of these three stages, see Lundin (1998, 112).

worlds of the living and the spirits. People believe that the conflict drove away the ancestral spirits who normally protect people and communities; and that the proper rites can cleanse individuals, and even entire areas, contaminated by the spirits of those who were killed. Honwana described one such ritual performed by a *curandeiro* for Marcos, a former child soldier. The healer started by invoking the family's ancestral spirits to cleanse and purify the boy of his war deeds. Then Marcos inhaled some herbal smoke, drank a herbal infusion, and was bathed with water treated with herbal remedies. This symbolically cleansed his body, internally and externally, of all the "dirt" accumulated during the war (Honwana 2006, 104).

During the war, girls and young women were frequently sexually violated. For them, special rituals were performed to cleanse and purify their bodies and their spirits. As with the child soldiers, these usually involved some combination of drinking, inhaling and washing with herbal solutions. The goal of these was not just to remove the stigma of sexual violation, but also to facilitate the victims' return to community life (Honwana 2006; see also Dolan and Schafer 1997; Efraime and Errante 2012).

After the war, other rites were performed to prepare the community for the return of refugees and internally displaced people (Efraime and Errante 2012; Honwana 2006). These included the *mhamba* and *ku pahla* rituals, used to venerate the ancestral spirits and to strengthen the links between their domain and the living world. Some IDPs would return home ahead of their families in order to re-establish links with the ancestral spirits, and give the place a good "spiritual scrubbing" (Honwana 2006).

Obviously, the spirits play a fundamental role in healing rituals in certain parts of the country, particularly in the central and southern areas (Dolan and Schafer 1997;

Efraime and Errante 2012; Honwana 2003, 2006).[48] These rituals have been used for centuries—as Lundin has pointed out, "African culture provides a space for healing"[49]—but they took on a new meaning when they were adapted to deal with mass war-related traumas. They now play an important role in promoting post-war healing and reconciliation in rural areas. As Honwana (2003, 61) noted, "the living are haunted by the spirits of the dead ... spirit possession is not a matter of the past, but is at the very heart of modernity."

In southern Mozambique, the restless spirits of the dead are called *N'Fukua*. Because of the trauma of war, they are incapable of assuming their rightful places among the ancestors; so they roam the material world near where they died, trying to haunt their killers but often also endangering innocent passers-by. For instance, even today, many accidents along the country's main north-south highway are attributed to the unsettled spirits of civilians killed in roadside ambushes. And Honwana (2006, 130) describes incidents reported from Manhiça District, in Maputo Province, where one road seemed haunted after dark. As local people approached a certain place, "they felt something beating on them. Others heard voices sending them back. Still others became blind and could not see their way." A *curandeiro* identified the spirit as a RENAMO commander who was killed there. He performed a ritual to pacify the spirit, and the road became safe again.

While people have believed in *N'Fukua* spirits for centuries, Victor Igreja (2003) has described the emergence of a new kind of spirit, called *gamba*, in Gorongosa, Sofala

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[48] To a lesser extent, psychosocial interventions have also been observed in the northern province of Tete (Englund 1998; Marlin 2001).

[49] Personal interview, Iraê Baptista Lundin, Maputo, Mozambique, 26 May 2014.

Province—a place that was at the epicentre of the original conflicts between RENAMO and FRELIMO, and is still an active area at present.[50] The fighting on both sides was vicious: the rebels committed grotesque atrocities, and the armed forces devastated whole villages with heavy artillery. Consequently, war-related trauma among the local population is especially acute (Igreja et al. 2010), and the powers of the dead sometimes reportedly overwhelm entire communities.

> [The people] wake up in the pre-dawn, frightened and shaking with fear because angry spirits have begun to shoot weapons. The shots are so real that everyone tries to escape with bags on their heads, as if they were experiencing a military raid (Igreja 2003, 465).

One everyday feature of modern Gorongosa is the sound of drums being played all night, until dawn—which Igreja (2003) explained as the work of *gamba* healers intervening in cases of spirit possession (a form of local TJ). Like *N'Fukua* spirits, *gamba* spirits are powerful and dangerous; but the rituals to treat them differ fundamentally. *Gamba* rituals offer the potential to turn incidents of suffering into possible sources of healing (Igreja and Dias-Lambranca 2008; Igreja, Dias-Lambranca, and Richters 2008).[51] This is because once healed, victims can become healers themselves; no such possibility exists with *N'Fukua* spirits.

Yet despite the effectiveness of these rituals in comforting those involved, they have a limited ability to address the distortional framing of the war. The primary reason is

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[50] During the first civil war, from 1981 to 1985, RENAMO's main military headquarters was located at Casa Banana in the Gorongosa District. Afonso Dhlakama's current base is also in the area.

[51] For a in-depth account of the *gamba* ceremonies, see Igreja (2003, 2012) and Igreja and Dias-Lambranca (2008).

that healing occurs without acknowledgement: the participants do not verbalize their traumatic experiences, focusing on starting afresh rather than on looking back (Honwana 2006). LTJPs in Mozambique do not seek a detailed verbal account of traumatic events. As Honwana (1997, 303) puts it, catharsis for the participants "is achieved through non-verbal symbolic procedures." This tallies nicely with the ruling party's desire for amnesia. In *N'Fukua* and *gamba* rituals, healers are not eager to inquire into the details of atrocities (Igreja 2003). But since these rituals are based on traditional local methods of resolution, it is unclear whether this reticence is a reaction to political pressure, or whether it merely reflects cultural norms.[52]

Still, there is an irrefutable synergy between these LTJPs, and FRELIMO's preference for silence about the past. The conclusion is inescapable that these rituals are being used to justify the government's strategy of post-war amnesties, impunity and silence, with the philosophy of "'Mozambicans have their own way', and it is therefore not necessary to unleash formal justice processes" (Igreja and Dias-Lambranca 2008, 81). In Miguel de Brito's opinion, the regime has hidden behind these processes. "When people like Chissano realized that these mechanisms were trying, at a certain level, to resolve TJ issues, it was an easy excuse for them to say that justice is happening."[53]

In addition to these traditional rituals, the local NGO called ARES (headed by Bóia Efraime) offered psychological therapy to former child soldiers on Josina Machel Island in southern Mozambique. This was a monumental undertaking, given the extent of

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[52] Lundin pointed out that it was the local communities, not the state, that did the healing: "The 'go local' approach was on the communities. The state did not do it." Personal interview, Iraê Baptista Lundin, Maputo, Mozambique, 26 May 2014.

[53] Personal interview, Miguel de Brito, Maputo, Mozambique, 27 May 2014.

the trauma, the lack of trained staff, and the stigmas attached to mental illness in the local culture. ARES staff discovered, for example, that the local dialect does not even have a word for "psychologist," let alone for the various Western therapeutic methods (Efraime and Errante 2012).

Accordingly, they classified the disturbances they observed into five groups, affecting the victims' socialization, personality, cognitive capacities, psychosomatic responses, and body-related responses (Efraime and Errante 2012). The last category had to do with being out of harmony with the spiritual world, something undetectable by Western diagnoses; so for their interventions to be effective, the team turned for help to local cosmologies and practices. They found that clients benefitted greatly from social reintegration rituals such as *ku pahla* and *ku phemba*. In the latter, a *curandeiro* establishes contact with a bad spirit, and removes it.

ARES faced three practical challenges in conducting its work. The first difficulty was in building trust with their "patients," which turned out to be a long process. Bóia Efraime and Antoinette Errante (2012, 204) described how their initial expectations of uptake were confounded. They had thought that "people would line up outside our makeshift offices for our services"; in fact, they "soon discovered that no one came to see us for therapy." Their relationship with the community only started to change when they built permanent housing for their staff. This prompted a change of heart in residents. As one ex–child soldier put it: "Now you are my neighbour, and I know that you will not go away—so I can come to see you and tell you what is on my mind" (quoted in Efraime and Errante 2012, 204).

The second obstacle was the lack of truth-telling. The state-imposed silence about

the war meant that although there were many victims, there were no perpetrators for them to confront to gain closure (Efraime and Errante 2012). For this reason, therapy could only be conducted in general terms, without any acknowledgement of the specific violent incidents. This fact shows how much the government's framing has shaped the work of local NGOs such as ARES. Child soldiers had to be reintegrated without ever properly acknowledging their past crimes—a matter that has hindered the ability of LTJPs to alter state-society relations.

Yet public truth-telling did in fact exist in Mozambican cultural practices. The psychologists sometimes participated in a community storytelling event, held around a bonfire, called *karingana ua karingana* (which is strikingly similar to the Sierra Leonean local reconciliation method of *fambul tok*). Efraime and Errante (2012, 206) discovered that these storytelling sessions, in which both children and adults participated, "became an opportunity for people to share their wartime experiences. It enabled us [ARES] to gain a much clearer picture of what [they] had endured."

The third, and most intrusive, obstacle was the government's desire to discipline the narrative of child soldiering. When Efraime's team learned that the government army had also engaged in this practice, their work ran into significant problems.

> As long as we were working only with children who had been victims of RENAMO, we had the full support of the Ministry of Public Health. But the moment we started to find out that FRELIMO had also misused children, sold them, and committed atrocities, we lost their support.[54]

With the help of donors, Efraime was able to establish the Rebuilding Hope association,

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[54] Personal interview, Bóia Efraime, Maputo, Mozambique, 30 April 2014.

which ran from 1996 to 2012. When the project wrapped up, he thought of creating a museum from all the documents and stories they had collected—both to document all the atrocities that had been committed, and what the team had done to support the people. But the government thwarted those efforts.[55]

Traditional Courts

Despite the state-imposed directive to forget traumatic events from the war, some cases of spirit possession have been referred to the traditional, or community, courts. These are used at the district or village level to adjudicate minor disputes related to family and community issues. As Igreja (2010a, 52) pointed out, some survivors view "the right to seek justice for their wartime suffering" from the government as "essential conditions for post-war sustainable peace and reconciliation." But the amnesty law prohibits traditional courts from hearing cases involving wartime disputes, and consequently few have been heard.[56] (This is striking in the Mozambican context of legal pluralism.) The few exceptions to this rule have been cases that involve the intervention of spirits, particularly when a *ku pikirira* (dangerous curse) has been invoked. Traditional judges have felt compelled to act in the very limited number of these occurrences, based on the idea of *micero ai vundi*: "A conflict does not go away until it has been redressed."

Igreja (2010a) described three such cases—involving rape, torture, famine, and the spirits of the dead—that went before a traditional court. In each, the judges initially tried to dissuade the victims from seeking recourse, pointing out that the amnesty law

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[55] Ibid.

[56] Igreja (2010a) has seen only ten such cases in the 2001–08 period, involving 25 alleged perpetrators (living and dead) in three traditional courts in three separate communities in Gorongosa District.

prohibited the court from addressing war crimes. But the judges relented when one of the aggrieved parties threatened *ku pikirira* against the alleged perpetrator. During the trial, the judges barred the participants from exploring issues of causation, or providing any specific details about the events. "They did not want to know who the alleged soldiers were, who raped his wife, or who threatened to kill him; they were not interested in hearing about the circumstances" (Igreja 2010a, 65).

These examples prompted Igreja to conclude that the amnesty law has influenced the traditional courts as a TJ mechanism. In his view, the traditional judges are very conscious of their lack of autonomy, the normative boundaries of the state, and the implications of violating these boundaries. In his view, though state officials took no part in those cases, still the judges' and litigants' "knowledge of state law, and the risks of disobeying it" shaped their actions and reactions (Igreja 2010a, 67). This situation serves to replicate the asymmetric power balance between the central government and the local courts, with the former indirectly influencing the latter (to the extent of the judges attempting to dissuade the plaintiffs from their quest for justice).

> The judges recommend reconciliation between the parties without seriously investigating the civil war events—in other words, reconciliation without comprehensive truth-telling. The use of the amnesty law by community courts has deterred war survivors from approaching these courts, and explains the very small number of cases brought before community courts to date (Igreja 2013a, 309).

Despite all the LTJP action in Mozambique, no one has yet been brought to account for war crimes. While several police officers have been tried and sentenced for deaths, excessive use of force, and mistreatment of detainees (including in the Montepuez incident), much else has gone uninvestigated—including a series of assassinations and

extrajudicial killings since the AGP, and even in the present conflict. FRELIMO has always rebuffed RENAMO's calls for the establishment of a TC; more recently, it also turned down calls for inquiries into the refugee situation in Malawi, and the reported mass graves in Sofala Province.

Although LTJPs cannot be declared the sole source for post-conflict impunity, this chapter has shown that they have undeniably helped the ruling party to deflect rather than deliver TJ. The claim that justice was being performed "the Mozambican way" placated initial calls for accountability, and insulated government officials from more formal means.

Alternative Explanations

I propose two main alternative explanations for the discursive framework, and consider both to see if they are more persuasive than the argument that it is a calculated and premeditated political practice.

The first explanation is that Mozambique's ruling party is in fact committed to accountability; and that any insulating effects are unconscious representations of prevailing norms and perceptions about what TJ ought to entail. If this explanation is correct, we should find evidence to show that government support for LTJPs reflected a principled belief in this way of pursuing justice. We should also find evidence that the government supported follow-up mechanisms as they arose.

For this proposition to be credible, the amnesty law would have had to be passed as part of a deliberate effort to achieve peace, with the intention of pursuing justice through other means. In other words, FRELIMO must have thought it was doing the right thing for the time and the circumstances—that is, the prospect that RENAMO could

rearm if it was not assured of impunity. If this was the case, the ruling party would have supported LTJPs as they probed new and unexpected issues, and would have supported the creation of other TJ mechanisms.

However, there is scant evidence to support this notion. Earlier I mentioned the hostile official reaction to the release of Barnabé Ncomo's book; that reckoning with the past was promptly censored. Similarly, RENAMO's repeated calls for a TC have been ignored; the government has repeatedly refused calls to examine the refugee situation in Malawi, and the mass graves in Sofala Province; and it has not treated the recent rebellion as an opportunity to settle matters once and for all. In fact, President Chissano has travelled to other countries (such as Guinea-Bissau) that champion the use of blanket amnesties to avoid charges of human rights abuses. Miguel de Brito described one such instance.

> The president said that in Mozambique we had passed a blanket amnesty law for everybody, because we accepted that we also had made mistakes. It doesn't point to anyone in particular, but covers everybody. He said: "An amnesty law is not an admission of guilt. It just says that nobody did anything, and we can all move on."[57]

This statement seems to show that FRELIMO's approach to accountability was the reverse of a principled political decision. As de Brito put it, the amnesty "is just a sponge that cleans everything."[58]

The second, and more compelling, alternative argument is that deep-seated sociocultural practices of forgetting painful issues, and talking only half-truths about

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[57] Personal interview, Miguel de Brito, Maputo, Mozambique, 27 May 2014.
[58] Ibid.

them, are the main reasons for the partial discourse. If this explanation is correct, we should see that Mozambicans are unwilling to seek recourse through LTJPs, and reluctant to speak about their wartime experiences. And indeed, some of my informants said that local culture was a decisive factor in how people addressed the past. Nhalevilo stressed the "very pacific process" of her culture: "No one was worried who did wrong. We were not trying to identify who killed innocents. The people just wanted to move on, we wanted peace."[59]

Yet despite the culture of denial that is so pervasive in Mozambique, I argue that politics has been more to blame. As RENAMO parliamentarian Namburete stated: "The way of settling conflicts in Africa requires that we sit together and speak out all our issues. I ask for forgiveness, and you forgive me. But that has never happened here."[60] The clearest indication that this alternative explanation does not hold are the popular efforts to preserve the sites of mass crimes, and the victims' continued use of LTJPs for redress. As Victor Igreja (2012, 419) has noted, "the state and its agents who have advocated for silence are the alternative, not the norm."

Conclusion

In this chapter I have examined how the distortional framing of Mozambique's civil war shaped LTJPs in the aftermath, in a manner that deflected justice rather than delivering it. In the absence of any formal TJ policy beyond a blanket amnesty for all parties, LTJPs and a state-imposed process of "directed forgetting" formed the country's approach to

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[59] Personal interview, Benilde Nhalevilo, Matola, Mozambique, 6 June 2014.

[60] Personal interview, Eduardo Namburete, Maputo, Mozambique, 9 July 2014.

addressing its abusive past. Although the possibility of a truth commission was mooted a number of times, no action was ever taken.[61]

The first sections examined whether FRELIMO, the ruling party, has manipulated LTJPs. I found that it had done so for two reasons:

- to shelter any political elites who were guilty of crimes
- to deny the internal sources of the conflict in favour of an external source.

Its motivation for the latter course was to uphold its own claim to legitimacy, proclaiming that it was still continuing its struggle for Mozambican liberation. To achieve these aims, FRELIMO established a discursive frame that emphasized the initial years of the war (1977–81), when external support for RENAMO (by state foes South Africa and Rhodesia) was highest. The ruling party further discredited the rebels as mere proxies for those countries, with no internal support.

The rest of the chapter considered how the manipulation is effected, and what the consequences have been for LTJPs. One result has been to all but erase the war with RENAMO from discussion, in anything other than abstract terms. Memorials make no mention of what actually happened, while healing rituals are unable to help establish timelines or provide details of events. Another result, achieved through subtle manipulation techniques at the local level, is to influence how people talk about wartime identities: they are encouraged to start afresh rather than looking back. As a result, there is little public space to discuss what people actually experienced during the brutality of the conflict—especially as perpetrators. In fact, perpetrators are only ever talked about in vague and general terms. As Efraime pointed out, "Somehow in Mozambique we had

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[61] Personal interview, Miguel de Brito, Maputo, Mozambique, 27 May 2014.

victims, but we didn't have victimizers."[62]

Through its state-controlled media—a vital propaganda tool—the ruling party has successfully disciplined the discourse without having to resort to large-scale abuses. In practice, the country's media knows better than to insist on the principle of hearing both sides; journalists do not report on certain things, and self-censorship is common (although this is less pervasive now than it was in the 1980s).[63] The outcome of all this manipulation is to shield officials from justice. No one in the ruling party, or any of its allies, has been prosecuted for human rights violations. The regime has repeatedly said that it prefers to use "traditional Mozambican justice methods." In sum, LTJPs have both helped the political elites to avoid responsibility, and failed to generate any dialogue about the war.

The recent renewal of hostilities between RENAMO and FRELIMO might conceivably have opened the door for a reassessment of the country's TJ approach. What might this bode for the future? Unfortunately, it does not appear that much will change. The conflict is widely understood in the same terms as before. The original 1992 amnesty law remains firmly intact, and the most recent (2014) peace accord included yet another blanket amnesty. Although RENAMO has repeatedly said that it would participate in a truth commission, it seems improbable that such an exercise will ever happen under FRELIMO. João Pereira perhaps best sums up the situation in Mozambique: "When you talk about this 'reconciliation,' it's a false discourse."[64]

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[62] Personal interview, Bóia Efraime, Maputo, Mozambique, 30 May 2014.

[63] Personal interview, Fernando Lima, Maputo, Mozambique, 30 June 2014.

[64] Personal interview, João Pereira, Maputo, Mozambique, 7 July 2014.

CONCLUSION

The field of transitional justice has flourished during the last two decades. In the wake of authoritarian rule or civil conflict, a "no-action" policy is no longer acceptable; states are now expected, more than ever, to do something to achieve justice, reveal the truth and succour the victims after large-scale abuses have occurred. Although the TJ field was at first related to trials and TCs, with time it has become increasingly multifaceted involving a diversity of means that are now viewed as part of the TJ toolkit, including amnesties, reparations, lustration, vetting, reforms, apologies, reburials, memorialization efforts, and local TJ processes.

In particular, there has recently been a dramatic upturn in interest localizing TJ, or in Huyse's (2008, 1) words, "a hype was born," based on assumptions about the cultural relevance, expediency, cost effectiveness, practicality, and victim-centeredness of local approaches as a means to address past wrongs. Despite presumptions that local forms of justice are beneficial, this dissertation has highlighted that they can be used to deflect, rather than achieve, justice. Below, I summarize the main findings of this dissertation, identify several avenues for future research, and offer recommendations for offsetting the misuse of LTJPs.

Principal Research Findings

This dissertation asked the three following research questions: 1) Are local TJ processes manipulated by powerful actors to realize goals other than obtaining justice and the truth? 2) How does this manipulation occur? 3) What is the impact of such manipulation on the outcomes of local TJ processes?

The case study chapters uncovered that powerful political elites influenced LTJPs to pursue aims other than the truth and justice in two disparate cases, one in Southeast Asia and the other in sub-Saharan Africa. In Cambodia, it showed how Hun Sen's CPP has manipulated local TJ processes to insulate high-ranking government elites who might have been involved in serious abuses either as former KR leaders or as cabinet ministers during the PRK era, and to claim legitimacy as the liberators of the Cambodian people. To support these goals, the CPP crafted a discursive frame that restricts consideration of the past to the four-year DK era (1975-79) and simplifies wartime responsibilities into a straightforward storyline that has served the ruling party's interests—namely, as "the bad Khmer Rouge" versus "the saviour CPP."[1]

In Mozambique, the FRELIMO regime has also manipulated LTJPs for ulterior motives to shield political elites who may have been involved in crimes against humanity both in the lead-up to and during the Mozambican civil war, and to uphold its legitimacy claims as liberators of the country from colonial rule. The ruling party set a discursive frame to advance these goals, which emphasized the external sources of the civil war and denied RENAMO's political support. This allowed the government to assert that it was still defending the Mozambican people against external aggression and fighting for the country's liberation.

The evidence strongly points to the conclusion that these discursive frames were set with an intent to deflect justice in both cases. In Cambodia, the CPP's relationship with the ECCC has grown increasingly hostile over time, particularly as the names of high-ranking officials surfaced in Case 002/02. Prime Minister Hun Sen has repeatedly

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[1] Personal interview, anonymous, Phnom Penh, Cambodia, 18 February 2014.

decried Cases 003 and 004 based on supposed fears that the trials could one day implicate cabinet ministers. Further, informants with knowledge of the inner workings of the ECCC have stated that the CPP has become more engaged through the CPLC and VSS in how LTJPs craft their narrative, so that they reflect the ruling party's version of the "truth." While not definitive, these findings lend further support to the conclusion that this frame was set with a deliberate distortionary intent.

In Mozambique, this was evident in the government's use of the state-controlled media to mask serious crimes perpetrated by the armed forces, including child soldiering, scorched-earth campaigns, and sexual violence. It was further exhibited in FRELIMO's reluctance to pursue trials or a TC, despite repeated calls, in favour of a policy focused on burying the past and using local methods. Aguiar Mazula, a former Minister of Defence, who had direct knowledge of the government's decision-making, confirmed the regime wanted to cover up abuses because "nobody was clean and if people started talking, who knows what would come from this."[2]

The dissertation also explained how this manipulation takes place through indirect disciplinary techniques. In Cambodia, the ruling party has relied primarily on local-level patronage networks and appointments on the national side of the CPLC and VSS to shape the narrative through bureaucratic control mechanisms. In Mozambique, FRELIMO has used subtle manipulation methods and its network of local party cadres to ensure that the amnesty law is observed locally, which has encouraged self-censorship and dissuaded a detailed inquiry into past events.

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[2] Personal interview, Aguiar Mazula, Maputo, Mozambique, 3 July 2014.

As the case-study chapters showed, distortional framing has shaped LTJPs in two manners:

- it blocks discussion of periods that might implicate political elites in war crimes and crimes against humanity;
- it shifts responsibility for all abuses carried out during the conflict to the "other."

In Cambodia, this strategy has confined local justice initiatives to the 1975-79 limits and has dissuaded a more nuanced exploration of victim and perpetrator identities in favour of a discourse that focuses on a certain type of victimization. Similarly, in Mozambique, it has all but erased the postcolonial conflict with RENAMO from public debate, other than in abstract terms, and has encouraged people to not assign blame locally for wartime transgressions and instead focus on the future.

The result of this manipulation is that LTJPs have helped insulate members of the regime and its allies in both countries and have excluded from consideration issues that might implicate the ruling party in serious crimes. In Cambodia, not a single CPP official has been tried for war crimes during the KR period or otherwise. This is also evident in Mozambique, where no one in the ruling party, or any of its allies, has been prosecuted for human rights abuses committed during the Mozambican civil war or in the renewed hostilities with RENAMO. In Cambodia, the CPP continues to obstruct the ECCC and it seems likely that the Court will conclude after ruling in Case 002, despite the issuance of new arrest warrants for Cases 003 and 004. In Mozambique, the use of blanket amnesties and traditional Mozambican rituals remains entrenched as the country's go-to approach to address TJ issues. In summary, LTJPs have paradoxically assisted the ruling parties in both countries shelter political elites and propagate their own version of what occurred, while excluding from consideration potentially incriminating details.

Contributions to Scholarship

By showing that LTJPs can be used to distort, rather than, deliver justice and by exposing how this actually occurs through indirect framing methods, this dissertation contributes to the ongoing study of TJ and discursive framing in at least two ways. First, it unsettles the dominant assumption in the literature that LTJPs have inherent cultural and practical advantages over state-level TJ instruments. By showing in what ways LTJPs have been manipulated in two disparate contexts, it suggests that local measures should not be taken at face value because they too are vulnerable to hijacking—a conclusion that supplements previous findings about elite capture of *state*-level TJ mechanisms, such as trials and TCs (S. Brown and Sriram 2012).

Second, this dissertation emphasizes a need to critically assess why some regimes support local TJ, and how hidden power dynamics might be affecting their use. Doing so requires looking at how LTJPs might reinforce a narrative that insulates political elites by neglecting events where they may have been entangled in serious abuses. It also demands considering the capacity of post-war regimes to shape LTJPs through local gatekeepers who can discipline the discourse when needed at the grassroots. This requires taking into account the ruling party's bureaucratic competence at the local level and how this can be engaged to sway grassroots TJ initiatives through informal patronage networks.

These main contributions are important because they have policy implications for ongoing and future transitions where local TJ might be used to avoid the truth and justice. It also challenges scholars and practitioners to think more broadly about where else this could happen. Hence, analysts and policymakers should be wary of carelessly supporting LTJPs without considering first how they might promote ulterior government interests or

also deliberating how they could reinforce asymmetric power dynamics at the local level. Thus, in countries where state-level TJ mechanisms are being contested and human rights abusers remain in positions of political influence—such as in the contemporary examples of Burundi, Colombia, Myanmar and Sri Lanka—scholars and practitioners need to think twice, and more *criticall*y, about the possible unintended consequences of endorsing local TJ methods in such highly politicized locales.

Implications for Policy

The principal research findings raise several questions about the ways local TJ forms are framed, how they are scoped and the extent to which they are controlled by governments that have a stake in their outcomes. To address some of these dilemmas and implications, I offer three considerations for scholars and practitioners.

First, setting an inclusive frame at the outset is imperative to properly shape how TJ mechanisms are exercised and enforced on the ground. An inclusive frame allows participants to feel heard and to have their lived experiences acknowledged by their community. Indeed, this is an essential element underlying the principle of transitional justice: through an earnest recounting of history, by many individuals, one can arrive at the truth of what occurred. Limits on the scope of LTJPs have the effect of narrowing the discourse of wartime events, sometimes to such a degree that a dominant understanding emerges. Once this takes place, it becomes exceedingly difficult to provide an alternative account of events, one that may challenge the dominant frame about what caused the war, how it was resolved and how society was shaped afterwards. Thus, efforts are required at the start of a transition to set a frame that allows a broad exploration of the sources of a conflict and its effects on the survivors. The basic idea is that LTJPs should be moored in

a wider and more inclusive discourse of the past and ought to strive to create a more open space for public discussion.

Second, international donors and practitioners must commit to providing strategic funding to the countries they work in that can be sustained over the long-term. In both cases, promising projects were often dependent on foreign donors who, unfortunately, did not fully realize the long-term benefits of their support. As an example, in Cambodia, the GBV project showed that LTJPs could create new spaces for addressing sensitive issues. However, just as the programme was showing potential, donors diverted funds elsewhere and it was discontinued. To ensure reliable funding for LTJPs, donors and NGOs need to move from an output-driven funding model to one that is process-oriented. What this means in practice is avoiding putting funding conditions on projects that seek immediate, quantifiable, and measurable results that are concerned by the number of activities that have occurred. Instead, donors should approach the donor-recipient relationship with a longer view and develop strategies that seek to create new spaces for dialogue over a flexible time horizon through means that are deemed appropriate by local participants. Admittedly, the question of financial accountability would have to be negotiated by all the parties involved and project evaluation would have to be completed over a longer time period, which may prove to be more costly and difficult to manage in a post-conflict setting, however, the long-term sustained investment in LTJPs might prove to be more effective and of greater value in the end.

Finally, to challenge an often-oversimplified framing of complex wartime events, those responsible for enacting justice and establishing programmes for reconciliation should be required to have extensive knowledge of the affected country's history and of

the nuances that have both defined the frame and challenged it. Unfortunately, UN staff and donor officials are provided with straightforward, simple explanations about the conflict zones they work in, given the propensity to rotate staff from one place to another due to rapid turnover in the field (Autesserre 2012). This means that solutions are devised based on a limited understanding of a conflict situation, rather than in-depth knowledge accrued over many years of experience and study. All too often, just as practitioners have developed sufficient contextual knowledge about a specific country and could apply that knowledge constructively to the development of practical and useful programmes, they are moved elsewhere. Thus, posting practitioners in places where they already have an in-depth understanding of local culture and history for extended periods of time where they can accrue knowledge and expertise in post-conflict peace-building could offer an answer to counteract distortional framing tactics.

Future Research Avenues

This dissertation opens several avenues for future research, which I outline in the sections that follow.

Prevalence

More research is needed to specify how widespread and influential "justice deflection" is and LTJPs are within specific countries and across regions. The study of LTJPs would benefit, in particular, from the development of a cross-national qualitative dataset that documents the types of local initiatives that are used within a given society, what they entail, and where they are being used. Geographic Information Systems (GIS) software could be utilized, for example, to record mass graves and memorial sites in states where

there is limited existing data (e.g., Mozambique). Furthermore, qualitative descriptions of LTJPs can provide insights into how common and extensive these practices are within countries, regions and on a global scale, and offer a basis to examine political influences, as well as their effectiveness and importance.

Enabling and Mitigating Factors

The findings also raise questions about the conditions that facilitate justice deflection at the local level and, conversely, the circumstances that may work to counteract tactics of distortional framing. Specifically, further research is required that considers which local, national, and international factors facilitate this practice. Comparing cases where LTJPs have been manipulated with those where they have been utilized more effectively could produce new insights into how justice deflection can be offset and mitigated. This might provide donors with a clearer picture of when conditions are ripe to support localizing TJ measures or when efforts and resources should be allocated to counteracting mechanisms, such as good governance initiatives or a combination of state-level TJ measures that open up spaces for discussion about the past first.

Sequencing

Future research ought to also examine the relationship between LTJPs and state-level TJ mechanisms and, furthermore, the proper sequencing of these processes. The case studies in this dissertation suggest that trials and amnesties can enable or inhibit justice efforts on the ground, but more research needs to be done in this area. More broadly, there is a pressing need for more cross-national and cross-regional comparative analysis of LTJPs. Although challenging, given that the study of local processes necessitates on-the-ground

knowledge of the culture, history and language of each country, collaborative research on this topic could offer a way forward to identify patterns and trends across regions and generate theoretical and empirical insights on causal conditions, counteracting factors and effective sequencing.

Role of Forgetting

This dissertation also raises several questions about the role of forgetting in post-conflict societies. Further research should take into account the preferences and priorities of local community members for TJ, and survey the extent of their dissatisfaction with deflection. It may be possible that in the immediate post-war period, a degree of forgetting is needed in order to move on. However, with time, these preferences may shift towards a desire for the truth and justice. Population-based surveys into the dilemmas of remembering versus forgetting might shed light on when these critical junctures happen in a post-conflict recovery process and offer insight into when it is an appropriate time for international donors to support a policy shift. In Mozambique, for example, the findings suggest that such a shift in preferences has occurred but has been undetected.

Role of International Actors

A final avenue for further research concerns the involvement and arguably the complicity of international agents in the misuses of local justice processes. As we recall, the third actor in Barnett and Zürcher's concept of a "peace-builder's contract" is the international community. The findings suggest that at least in some instances and aspects, the role of international actors in promoting TJ has been deeply problematic—an issue that deserves further scholarly attention. For example, future studies could clarify the extent to which

these actors play a role as enablers or bystanders in justice deflection processes. This can help determine the function that the international community could play in working with different categories of local actors to ensure that justice is actually delivered, rather than distorted, locally.

Conclusion

The field of transitional justice has changed significantly over the last three decades. This progress has led to the inclusion of a variety of novel mechanisms meant to overcome the frictions generated from local, national, and international engagements. Although the TJ field is more multidimensional and complex than ever, the central principle of the project has remained the same: to provide victims with a sense of justice and to offer the broader community a means for transitioning towards new social structures following a period of authoritarian rule or civil conflict. Despite extensive enthusiasm about the possibilities of local practice, this dissertation has shown how they too can be distorted. By bringing this issue to light, the hope is that local TJ initiatives can still be saved and moved beyond an empty discourse to foster genuine reconciliation.

Appendix A: Cited Interviews

Cambodia

Name	Title	Organization	Location	Date
Youk Chhang	Executive Director	Documentation Center of Cambodia	Phnom Penh, Cambodia	27-01-2014
[Withheld to Protect Identity]	Donor official	Aid agency	Phnom Penh, Cambodia	29-01-2014
Khamboly Dy	Team Leader	Documentation Center of Cambodia	Phnom Penh, Cambodia	30-01-2014
Duong Savorn	Project Coordinator, Gender-Based Violence (GBV) under the Khmer Rouge Program	Cambodia Defenders Project	Phnom Penh, Cambodia	06-02-2014
[Withheld to Protect Identity]	Donor official	Aid agency	Phnom Penh, Cambodia	17-02-2014
[Withheld to Protect Identity]	[Withheld to Protect Identity]	[Withheld to Protect Identity]	Phnom Penh, Cambodia	18-02-2014
Sok-Kheang Ly	Team Leader	Documentation Center of Cambodia	Phnom Penh, Cambodia	24-02-2014
Panhavuth Long	Program Officer	Cambodia Justice Initiative	Phnom Penh, Cambodia	11-03-2014
[Withheld to Protect Identity]	[Withheld to Protect Identity]	[Withheld to Protect Identity]	Phnom Penh, Cambodia	14-03-2014
Youn Sarath	Project Coordinator	TPO Cambodia	Phnom Penh, Cambodia	21-03-2014
Im Sophea	Former Chief, Victim Support Section	Extraordinary Chambers in the Courts of Cambodia	[Withheld to Protect Identity]	23-02-2015
Youk Chhang	Executive Director	Documentation Center of Cambodia	Phnom Penh, Cambodia	30-11-2015

Panhavuth Long	Program Officer	Cambodia Justice Initiative	Phnom Penh, Cambodia	30-11-2015
Sotheara Chhim	Executive Director	TPO Cambodia	Phnom Penh, Cambodia	07-12-2015
[Withheld to Protect Identity]	Project Leader	TPO Cambodia	Phnom Penh, Cambodia	08-12-2015
Sok-Kheang Ly	Team Leader	DC-Cam	Phnom Penh, Cambodia	08-12-2015
Tim Minea	Executive Director	Kdei Karuna	Phnom Penh, Cambodia	14-12-2015

Mozambique

Name	Title	Organization	Location	Date
Roberto Luís	Project Manager	Re-Innovation Project - SOS	Maputo, Mozambique	15-05-2014
Gil Lauriciano	Journalist	Notícias	Maputo, Mozambique	19-05-2014
Iraê Baptista Lundin	Lecturer	Centre for Strategic and International Studies, Higher Institute of International Relations	Maputo, Mozambique	26-05-2014
Miguel de Brito	Former Senior Democracy and Governance Advisor	United States Agency for International Development	Maputo, Mozambique	27-05-2014
Bóia Efraime Júnior	Director	Rebuilding Hope Association	Maputo, Mozambique	30-05-2014
Benilde Nhalevilo	Executive Director	National Forum of Community Radios	Matola, Mozambique	06-06-2014
Dinis Sengulane	Bishop, Mediator in 2013-14 Peace Talks	Anglican Church	Maputo, Mozambique	06-06-2014
Ilídio da Silva	Psychologist	Mozambican Association for Public Health	Maputo, Mozambique	13-06-2014

Timothy Born	Country Representative	United States Agency for International Development	Maputo, Mozambique	17-06-2014
[Withheld to Protect Identity]	[Withheld to Protect Identity]	[Withheld to Protect Identity]	Maputo, Mozambique	18-06-2014
Fernando Lima	Director	Savana	Maputo, Mozambique	30-06-2014
Gil Lauriciano	Journalist	Notícias	Maputo, Mozambique	03-07-2014
Aguiar Mazula	Minister of Defence, 1994-2000	Government of Mozambique	Maputo, Mozambique	03-07-2014
João Pereira	Director	Civil Society Mechanism (MASC) Foundation	Maputo, Mozambique	07-07-2014
Eduardo Namburete	Member of Parliament	RENAMO	Maputo, Mozambique	09-07-2014
Joaquim Chissano	President of Mozambique, 1986-2005	Government of Mozambique	Maputo, Mozambique	16-07-2014
Raul Domingos	Former Chief of Defence Staff and Commander Southern Zone, Head of the RENAMO delegation at Rome Peace Negotiations	RENAMO	Maputo, Mozambique	17-07-2014
Bóia Efraime Júnior	Director	Rebuilding Hope Association	Maputo, Mozambique	15-04-2016
Iraê Baptista Lundin	Lecturer	Centre for Strategic and International Studies, Higher Institute of International Relations	Maputo, Mozambique	20-04-2016
Raul Domingos	Former Chief of Defence Staff and	RENAMO	Maputo, Mozambique	21-04-2016

	Commander Southern Zone, Head of the RENAMO delegation at Rome Peace Negotiations			
Anástacio Chembeze	Researcher, Mediator in 2013-14 Peace Talks	Higher Institute of Public Administration	Maputo, Mozambique	22-04-2016
Moíses Zefanias	Former Government Soldier	Mozambique Armed Forces	Homoíne, Mozambique	25-04-2016

Appendix B: List of Field Research Sites

Cambodia

1. Tram Kok District, Takéo Province, Cambodia, January 2014.
2. Battambang District, Battambang Province, Cambodia, February 2014.
3. Tram Kok District, Takéo Province, Cambodia, November 2015.
4. Angkor Chey District, Kampot Province, Cambodia, November 2015.
5. Kralanh District, Siem Reap Province, Cambodia, December 2015.

Mozambique

1. Homoíne District, Inhambane Province, Mozambique, April 2016.

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