Truth and Justice

Establishing an Appropriate Accountability Mechanism for Crimes against Humanity and War Crimes in Africa

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The end of the Cold War precipitated optimism regarding a peaceful world order based on ideals of international solidarity and respect for human rights. However, this new attitude slipped into a state of hopelessness with the emergence of devastating conflicts along ethnic, religious, and political fault lines, together with shocking mass human-rights violations such as murder, rape, ethnic cleansing, and other acts of aggression against civilians—especially in Africa.[1] Post–Cold War Africa is blighted by brutish civil wars, such as the 1994 Rwandan genocide, that target innocent civilians. African conflicts have been responsible for more than half of all war-related deaths in the world and have produced millions of refugees and displaced persons.[2] Egregious atrocities against civilians have necessitated the establishment of accountability mechanisms by successor regimes in Africa to redress human-rights abuses and end a tradition of impunity, deter future abuses, and create a social order to advance the process of reconciliation. However, policy makers and practitioners differ on the appropriate mechanism of accountability. Contemporary debate is fixated on the choice between truth commissions and tribunals. While proponents of the former argue for forgiveness to ensure reconciliation, others advocate pun-

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ishment to stop the cycle of impunity and deter future violations. Proponents of restorative justice—individuals who favor reconciliation among former foes over punishment of the perpetrators of crimes—contend that lasting peace necessitates starting afresh by forgiving and forgetting, as does the South African Truth and Reconciliation Commission (TRC).[3] People who favor retributive justice—those who invoke a moral obligation to prosecute violators—maintain that punishment institutionalizes the rule of law and assures the citizenry of states' capacity to safeguard their security and deter future violations.[4] Africa has experimented with both truth commissions and trials, but each has produced mixed results of failure and success.

Truth commissions have existed in Africa since 1974, the South African TRC the most prominent among them. Uganda, Rwanda, Sierra Leone, Kenya, Central African Republic, Ghana, Liberia, Morocco, Democratic Republic of Congo (DRC), and Nigeria also have such commissions, but none has produced the desired results.[5] Uganda's Commission of Inquiry into Disappearances of People in Uganda, established by President Idi Amin in 1974, did not prevent him from committing serious atrocities against his people.[6] Despite global admiration, the South African TRC has been criticized for subjecting powerful individuals such as Winnie Mandela and F. W. de Klerk to a lesser form of accountability despite their involvement in human-rights violations.[7] The Ethiopian War Crimes Trials did not stop the ruling government, which established the trials, from committing such violations. Ethiopians' mistrust in the government, caused by its human-rights record, undermined their confidence in the court as well as its legitimacy.[8] The International Criminal Tribunal of Rwanda (ICTR) has been accused of partiality for prosecuting only Hutus without indicting members of a Tutsi rebel movement—the Rwandese Patriotic Front (RPF)—which reportedly killed thousands of civilians.[9]

A survey of literature on transitional justice in Africa reveals many scholarly works on either truth commissions or tribunals but only a limited number of studies of a hybrid model of truth and justice. This article evaluates the success of South Africa's TRC, Rwanda's ICTR, and Sierra Leone's hybrid model of a national TRC and special court, focusing on transitional justice goals of impartiality, accountability, reconciliation, and deterrence, and proposing an appropriate hybrid model of accountability for Africa. Toward that end, it examines theoretical arguments by proponents of truth commissions, trials, and a hybrid mechanism of truth and trials; addresses the cases of Rwanda's ICTR, South Africa's TRC, and Sierra Leone's hybrid model; and then proposes an appropriate hybrid accountability mechanism for Africa.

Theoretical Arguments: Truth, Trial, or a Hybrid Model of Truth and Trial?

Truth Commissions

Generally, truth commissions are established to investigate and obtain an accurate record of war crimes and human-rights violations by a government or armed opposition. For the most part, they are created at a point of political transition within a country to underscore a break with a horrific record of human-rights abuses and to promote national reconciliation.[10] The mechanism requires acknowledging the truth, which entails perpetrators admitting violations and the concomitant forgiveness by victims—ultimately culminating in healing and reconciliation. According to Aryeh Neier, an acknowledgment of violations at least begins to heal the wounds.[11] Proponents argue that truth telling provides opportunities to heal, restore human dignity, demonstrate censure for horrific acts, facilitate democracy, and promote reconciliation when past abuses are confronted and perpetrators acknowledge them directly to victims.[12] Priscilla Hayner observes that truth commissions elicit values beyond criminal liability, essentially ensuring accountability, preventing further abuses, and promoting political reforms, stability, and reconciliation.[13] The basic thrust of this position is that an honest account of the violence prevents a loss of history and allows society to learn from its past to deter appalling acts in the future.[14] An accurate record of atrocities offers hope that a more knowledgeable citizenry would be emboldened to resist future repressive rule.[15] Charles Krauthammer argues that truth telling promotes reconciliation but that trials are vindictive.[16]

Proponents note that truth commissions are a more viable option than trials, whose political and practical realities make prosecution impracticable.[17] The commissions prove useful when many people have committed atrocities, as in South Africa, making it difficult to prosecute all perpetrators—including the civil service in the previous regime, which was manipulated to commit violations. Jonathan Tepperman observes that the new democracy would discover the impossibility of prosecuting and purging all of its experienced technocrats.[18] A formal objection to prosecution maintains that resource scarcity and an incapacitated domestic judicial system prevent the prosecution of all perpetrators. Additionally, trials would prove expensive for fledgling democracies often strapped for funds. Since not all violators can be prosecuted, trials often face accusations of selectivity that discredit their legitimacy because such charges connote discrimination and favoritism.[19] Skeptics of prosecution further argue that warring factions would not give up fighting and sign peace agreements when they know they would be prosecuted

and jailed. Fear of imprisonment may discourage dictators from leaving power, leading to further violations and dashing any hopes for peace.[20] The argument for leniency involves the salience of reconciliation to build a more peaceful society. The Chilean government, for example, criticized the British and Spanish courts for disturbing the delicate balance between justice and stability reached by all Chilean parties when they arrested former president Augusto Pinochet for crimes against humanity.[21] Stephan Landsman notes that where the balance of power favors the departing regime, amnesty becomes a better option.[22] He contends that since the ultimate goal of ending conflict is reconciliation of combatants and their full reintegration into society, prosecution may destroy the fragile compromise reached by the parties and jeopardize the reconciliation process.[23] Paul van Zyl also observes that the balance of power between the new and old regimes in Chile and South Africa made amnesty the more viable mechanism to secure a transition.[24] Carlos Santiago Nino concurs, writing that a successor regime struggling to consolidate power might avoid stability-threatening prosecution and, to ensure its survivability, would pragmatically co-opt established institutions still loyal to the disposed regime.[25] Some argue that truth commissions, unlike trials, can make reform recommendations to prevent future occurrences of atrocities, establish norms of accountability, create security sectors, strengthen the legal system, instill the practice of human rights, and promote democratic governance.[26]

Despite these cogent arguments in support of truth commissions, some scholars hold that the evidence is decidedly mixed.[27] Jonathan Allen notes that justice often becomes the casualty of political calculation with the choice of truth commissions.[28] As evident in the Ugandan Commission, some truth commissions are farcical and manipulated, subject to criticism as a second-best alternative to criminal prosecution.[29] Diane Orentlicher states that "whatever salutary effects it can produce, [a truth commission] . . . is no substitute for . . . prosecutions. Indeed, to the extent that such an undertaking purports to replace criminal punishment . . . it diminishes the authority of the legal process."[30] Eric Brahm points to anecdotal evidence that "truth can rekindle anger and trigger posttraumatic stress among victims" at the individual level and that it may generate resentment and insecurity at the aggregate level.[31] Juan Méndez and Javier Mariezcurrena also note that truth telling often reappears in states that have conducted truth commissions, suggesting that the commissions themselves do not provide closure to abuses.[32] To skeptics, the ability of such commissions to hold violators accountable seems illusory; consequently, they demand trials as a more appropriate mechanism of accountability.[33]

Tribunals

International or domestic tribunals are established for the prosecution and punishment of war crimes and crimes against humanity. Retributive justice or prosecution dates back to the Nuremberg and Tokyo trials of individuals who committed atrocities during World War II.[34] The recent establishment of ad hoc tribunals for Rwanda, Liberia, and Sierra Leone, as well as the newly created International Criminal Court, manifests the contemporary demand for prosecutions as appropriate responses to mass atrocity. The basic goal is criminal accountability for violators who committed and masterminded gross abuses of human rights. Other objectives of prosecution include exorcising a culture of impunity that breeds future despots, breaking the cycle of violence, and achieving a sense of justice for victims to promote reconciliation and deter similar acts in the future. Proponents of tribunals declare that international law obliges states to investigate and punish violations of human rights, pointing out that the policy of impunity by way of repeated amnesty laws or simply de facto refusal to investigate crimes encourages further human-rights violations.[35] Further, they declare that, "together with deterrence, retribution is the object traditionally assigned to criminal punishment," that modern society strives for rehabilitation of the offender, and that rehabilitation is not a policy of vindictiveness.[36]

Proponents of the tribunal argue that society punishes atrocious acts to underscore the importance of norms that prohibit genocide and crimes against humanity.[37] Méndez also notes that prosecution assures citizens of their importance and that offenses against their inherent human rights will not be tolerated. In its simplest form, punishment signals to would-be violators that society does not brook behavior which breaches the rule of law designed to protect the innocent.[38] Society, therefore, punishes because it is imperative to demonstrate to the victim that his or her rights will be protected. Furthermore, some scholars argue that prosecution is the most effective means of separating collective guilt from individual guilt and thus removes the stigma of historic misdeeds from the innocent members of communities collectively blamed for atrocities committed against other communities, averting future vengeance on them.[39] Tribunals increasingly appear indispensable in upholding the rule of law on a global scale, especially when elementary forms of humanitarian and human rights are blatantly trampled upon. Prosecution reasserts confidence in the rule of law in states emerging from a horrendous past and in a transitional democracy.

Critics of prosecution, however, point to some inherent shortcomings of trials. Some critics believe that the adversarial nature of trials reduces the likelihood of restoring fractured relationships and enhances the possibility of provoking

further violence and putting democratic rule at risk.[40] Trials, critics argue, also appear less effective in dealing with systematic injustices and collective offenses.[41] The pursuit of legal accountability may be unfair, morally inappropriate, and practically difficult because of the virtual impossibility of trying everyone where crimes have been widespread and occurred long ago. Thus, trials bear the stigma of selective justice since, in most cases, lower-level perpetrators are held accountable—not the leadership.[42]

Hybrid Model: Truth and Justice

In view of the limitations of both truth commissions and courts in fully capturing transitional justice goals on their own, some practitioners and advocates have cautioned against relying solely on either prosecution or truth commissions, suggesting a hybrid model of truth and trials as the appropriate accountability mechanism for meeting the goals of transitional justice.[43] Martha Minow notes the "incompleteness and inescapable inadequacy of each possible response to collective atrocities" and indicates that structures of retributive and restorative justice can coexist.[44] According to Bill Rolston, "To seek truth without justice is to risk achieving neither."[45] Van Zyl writes that "properly confronting the past cannot be accomplished successfully by any single institution or approach," suggesting a "holistic approach to transitional justice" that combines truth and trials.[46] Accountability mechanisms of transitional justice, it seems, should not be restricted to a choice between truths and trials; rather, they can include both.[47] According to Elizabeth Evenson, truth commissions and trials have unique institutional competencies, and their concurrent operation would be complementary. She believes that truth commissions can augment prosecutions by providing additional values, such as clarification and acknowledgement of truth, and can recommend reforms, which are neither fully nor adequately captured by prosecutions alone.[48] Proponents identify truth and punishment as legitimate conditions for any policy of accountability for violations of human rights, noting that in such a policy, the truth must be known and punishment must be carried out with due respect for international principles of due process.[49] Truth commissions capture the overflow from prosecutions.

Together, both tribunals and truth commissions create a new paradigm for a society in transition from a ravaged, horrible past to peace by addressing systematic abuses of human rights. One needs prosecution alongside truth because the norms of extrajudicial execution, torture, and genocide—clearly stated in major human-rights instruments—provide a legal and moral obligation to punish. Moreover, in a state where both truth and justice command support (e.g., the South African case), it is appropriate to balance legitimate interest for prosecution

against the desire for a truth commission since neither by itself can achieve reconciliation and stability. More precisely, an adequate model must consider that the operation of prosecution in tandem with truth commissions would satisfy the supporters of both truth and trial, leading to healing and reconciliation. Neither truth nor justice is an alternative but an integral part of a holistic approach to reconciliation and peace. A true and lasting peace should comprise a mix of the truth, forgiveness, and justice to bridge the gap between tribunals and truth commissions. A paradigm shift occurs with the choice of either truth or trial or a hybrid model of truth and justice in which truth commissions concurrently operate in tandem with trials—as in Sierra Leone, Liberia, Peru, and East Timor.[50] In view of the persuasive arguments by advocates for each of the mechanisms, we should ascertain the capacity of each accountability mechanism to realize the goals of transitional justice. This study does so by using the criteria of impartiality, accountability, deterrence, and reconciliation.

Criteria of Evaluating the Accountability Mechanism's Success

Analysts differ on the appropriate framework for analysis in evaluating the success of both truth and trials. Evenson identifies individual criminal accountability, deterrence, punishment, and truth telling as the four general objectives of transitional justice that heal and reconcile a society emerging from egregious crimes.[51] She notes, however, that the particular political, economic, and social contexts of each country in transition will shape its specific goals. Miriam Aukerman also identifies retribution, deterrence, rehabilitation, restoration, and condemnation / social solidarity as the five separate goals for any justice process.[52] This study uses "success" in the sense of the attainment of transitional justice aims of impartiality, accountability, reconciliation, and deterrence. It evaluates the success of South Africa's TRC, Rwanda's ICTR, and Sierra Leone's hybrid model of a national TRC and Special Court that uses these goals of transitional justice.

Accountability for human-rights atrocities involves holding individuals responsible for acts that violate the most cherished, fundamental human rights. It is the state of being answerable, liable, or accountable for crimes committed. Individuals are held culpable or responsible for egregious conduct toward fellow humans, and accountability is a means of protecting human dignity.[53] An accountability mechanism for human-rights violations—truth or trial—designates the procedure of investigation and the determination of individual accountability for such violations, specifying measures to deter future violations. "Criminal responsibility varies from place to place but, in general, to be responsible for a criminal act implies the perpetrator must understand that what they are doing and that it

is wrong."[54] Primarily, it entails the violator's acknowledgement and assumption of responsibility for actions and his suffering punishment for the misconduct.[55]

Impartiality, a principle of justice, holds that violators of human rights should be held accountable for their actions without any prejudice, bias, or favoritism; thus, the accountability mechanism's decisions should be based on objective criteria, and one should hold all violators to the same standard of justice. The theory of judicial independence and impartiality asserts that judges in a court of law must render decisions and punishments in accordance with established legal principles—free from any social, cultural, or political bias.[56] This theory lies at the heart of not only domestic legal systems but also the concept of justice itself. In the realm of international criminal justice, a frequent criticism of this theory is the occurrence of a "victor's justice," which occurs when observers believe that a victorious party is applying different rules to judge the defeated party in the postwar era.[57] Since the victorious party now has control and power to institute a judicial process to prosecute former enemies, it can act in its own interest by simply punishing them instead of pursuing true justice. Victor's justice can also refer to the deliberate refusal to use war-crimes tribunals to prosecute the victors themselves for any crimes.[58]

Reconciliation as an objective of transitional justice denotes the process of reestablishing cordial relations between violators and victims that would lead to peace. The concern is whether conflicting parties can establish a common basis for statehood and acceptance of past atrocities. Closely related to reconciliation is the sense of justice for victims and their families—justice that is necessary for the personal and psychological healing which allows for reconciliation. It also dampens motives for revenge killings. Moreover, reconciliation asserts that one must make a concerted effort to educate members of the public on the process of accountability so that they may view it as legitimate in the search for social and political cohesion.

The theory of deterrence—the act of discouraging actions or preventing occurrences through fear of an existing credible threat of unacceptable counteraction or punishment against the violator—considers the violator a rational, utility-maximizing actor. That is to say, the possibility of facing punishment for criminal activity is a sufficiently strong deterrent to persuade him not to commit the act at all. Persons commit crimes when the expected value of doing so exceeds the cost of punishment.[59] This article examines the accountability mechanism's capacity to deter the recurrence of human-rights violations by examining the success of Rwanda's tribunal, South Africa's TRC, and Sierra Leone's hybrid model of truth and justice, using the above-mentioned criteria.

Cases

The International Criminal Tribunal for Rwanda

In 1994 Rwanda was engulfed in a horrific genocide perpetuated by the Hutu majority, who killed about 800,000 Tutsis and Hutu moderates. To hold all perpetrators of genocide accountable, Rwanda established three mechanisms: the ICTR for Rwanda, the formal domestic justice system, and *gacaca*, an indigenous conflict-resolution process. Further, the United Nations (UN) created a Commission of Experts to investigate and make recommendations concerning grave violations of international law and genocide. The committee recommended establishment of an international tribunal to prosecute offenders, and on 8 November 1994, UN Security Council Resolution 955 did so in the form of the ICTR for Rwanda, which would hold violators accountable. Prior to its creation, debate took place on whether an international or a local tribunal was more suitable. In a report, the Commission of Experts argued that prosecution would be better under an international court rather than a municipal tribunal, warning that convictions by the Rwandan courts would likely be perceived not as justice but as vindictive retribution.[60] An alternate argument offered that domestic courts could enhance the legitimacy of the new Rwandan government and judiciary. The UN decided that acts of genocide would be prosecuted by the ICTR established in Arusha, Tanzania, and other crimes tried by a Rwandan court in Kigali, the capital of Rwanda. The ICTR received funds from the UN and voluntary contributions of money, personnel, and equipment from various countries.[61] The Rwandan court could impose the death penalty, but the UN's international tribunal would not. The Arusha tribunal dealt with the central core of culprits known as the "zero network" of about 100–300 persons who organized and planned the genocide. The Kigali court dealt with local leaders not part of the zero network but who ordered the killing and all those who killed atrociously.

Rwanda's national courts operated in parallel with the ICTR, but the country's formal justice system was so decimated that the government and international observers estimated that at the current pace, it would take more than a century to prosecute the more than 100,000 suspects languishing in Rwandan prisons.[62] Rwanda's judicial system lost over 80 percent of its legal officials, and many legal facilities incurred damage as well.[63] By early 2004, the nation's formal courts had tried approximately 5,500 suspects.[64] The Rwandan government found itself frustratingly wracked in a judicial conundrum because the two Western-inspired justice systems proved incapable of holding all genocide suspects accountable, so it began to look at other options. By 1999 Rwanda authorities felt

they needed an alternate system to augment the work of the courts in expeditiously ensuring justice for both suspects and victims of the genocide. The government recognized that some measured use of restorative justice in tandem with retributive justice would help attain better accountability.[65] Consequently, it decided to blend gacaca with the Western legal tradition, considering gacaca the best option for dealing with the overcrowding of prisons and backlog of cases in the decimated Rwandan courts.[66]

Gacaca—literally "justice on the grass"—is a traditional form of citizen-based, populist conflict-resolution involving the community at every level. It consists of an open, public, participatory tribunal that contextually responds to the needs of the Rwandan communitarian society. Gacaca was used at the local level to settle family disputes and minor offenses between neighbors to restore social order and harmony in the community. Adaptation of a traditional, grassroots conflict-resolution mechanism—the gacaca tribunals—represents an affordable and expedient alternative. Gacaca seeks to incorporate the truth-telling elements of a truth commission into a judicial system that punishes offenders. Consequently, in 2001 the government resurrected and modified the traditional gacaca to deal with the more serious genocidal cases that had clogged the Rwandan prisons and courts. During the period of its operation from 2001 to 2012, the government established about 11,000 gacaca community courts, through which the Rwandan public tried and judged those who wished to confess or had been accused of genocide crimes. The courts would prosecute cases ranging from those involving property (heard at the smallest, or cellule, level) to assaults (heard at the next-higher level) to international and unintentional homicides (at the top level). Those accused of sexual crimes or organizing or inciting genocide would be tried in the formal courts or before the ICTR.[67] The government estimated that it could try all of the accused within five years; indeed, the process proved much faster than the traditional Western legal system.

Assessment of Efforts in Rwanda

The right of the accused to a fair trial and an impartial tribunal is guaranteed in Article 20 of the ICTR statute.[68] The ICTR has been criticized for delays in both bringing detainees to trial and the duration of the latter. By late 2003, the tribunal had adjudicated 17 defendants, and another 50 suspects remained in detention. The ICTR had made a priority of prosecuting those most responsible for the Rwandan genocide. However, the ICTR has been accused of partiality for prosecuting only Hutus despite evidence that the Tutsi-led RPF reportedly killed thousands of civilians.[69] Part of the problem lies in the hindrances posed by the Tutsi-dominated government of Paul Kagame. For instance, in 2002, when the

chief prosecutor launched investigations of several high-ranking RPF officers for such crimes, the Rwandan government restricted travel on Rwandans, making it impossible for witnesses to leave the country to travel to the tribunal in Arusha.[70] As a result, the ICTR had to suspend three trials in June 2002 for lack of witnesses. In addition, the UN Security Council has continuously put pressure on the ICTR to bring its prosecutions to a swift conclusion.[71]

Although designed to "contribute to the process of national reconciliation" in Rwanda, the ICTR has not effectively done so because of accusations of partiality by holding only Hutu violators accountable.[72] As the International Crisis Group notes, "The victims of the crimes of the RPF denounce [the ICTR] . . . as an instrument of the Kigali regime, seeing the ICTR as a symbol of victor's justice."[73] The ICTR had limited impact on reconciliation within Rwanda because a majority of the Rwandan public remains unaware of the tribunal's work. In a survey conducted in 2002 in four Rwandan communities, 87.2 percent of the respondents claimed that they were either not well informed or not at all informed about the tribunal.[74] Its distant location in Tanzania and the prevalence of illiteracy among most Rwandans in rural areas also explain the tribunal's limited impact on reconciliation. Eric Stover and Harry Weinstein found that many Rwandans felt that the work of the ICTR was far removed from their daily lives. They complained that the trials were held far away from Rwanda, in Arusha, and followed Western-style judicial practices, which heavily emphasize procedure with little concern for community interests.[75] Additionally, the respondents pointed out that the tribunal offers survivors of the genocide no formal role other than as witnesses.[76] The adversarial legal approach, whereby two sides of the conflict attempt to make their claims the most credible and truthful—as applied in the ICTR—is regarded as foreign to traditional Rwandan methods of conflict resolution. During the latter, communities come together and determine the nature of events as well as the punishments and reparations needed to reestablish social equilibrium.[77] Rwandans see the ICTR as an activity of the international community conducted for its own benefit rather than a process of reconciliation in Rwanda.

The ICTR could not end the cycle of impunity or achieve deterrence because many Hutu extremists fled to neighboring countries such as Cameroon, Tanzania, Burundi, and the DRC. These individuals included Maj Gen Augustin Bizmungu, the former regime's military commander, and Robert Kajuga, head of the Interahamwe militia, accused of masterminding the genocide. The Hutu-led Democratic Liberation Forces of Rwanda rebel group, comprising the 1994 perpetrators of genocide and based in eastern DRC, actively supports the DRC government troops' war against the Tutsi-government-backed Rally for Congolese Democracy–Goma rebels in the DRC.[78] Although the statute of the ICTR obliged all

states to comply without delay with any request by the tribunal to assist in locating, detaining, or transferring accused persons, most neighboring countries refused to cooperate. Cameroon, for example, did not extradite 12 Rwandan war-crime suspects despite threats of sanctions from the UN. The rules of the tribunal also hindered expedient detention and prosecution of suspects, enabling them to flee Rwanda. The prosecutor could not issue orders and warrants of arrest, detention, and surrender or transfer persons until he satisfied a tribunal judge that a prima facie case existed and the judge confirmed the indictment.[79] This requirement greatly delayed the issuing of detention orders, allowing the principal suspects to flee to refugee camps and disappear. The deterrent effect of the ICTR has had little impact on Hutu hard-liners who see this temporary diaspora as part of the larger Rwandan struggle that they will eventually win. In addition, the slow judicial process in a politically unstable east African region hinders the deterrent objective of the ICTR.[80] The effective and immediate deterrence of criminal activities demands that punishments be meted out with swiftness and certainty.[81] Prof. Mark Drumbl notes that "many [domestic] detainees see themselves as prisoners of war, simply ending up on the losing side. In fact, the prisoners do not even call the events of April to July 1994 'genocide,' but, instead, refer to these events as 'the war.'"[82] As long as the perpetrators of the genocide remained free and unpunished, a climate of fear and hatred and the desire to exact revenge would continue, ultimately resulting in further violence as people took the law into their own hands.[83] The ICTR failed as an effective mechanism of holding all violators accountable, ending the cycle of impunity, and bringing reconciliation to a country ravaged by ethnic division and hatred.

International human-rights leaders and legal scholars also criticized the national courts for failing to meet international standards of justice: "Some defendants had no legal representation; others had lawyers without time to prepare. . . . Rather than ending the cycles of revenge, the trials themselves were revenge."[84] The courts' judicial process was so excruciatingly slow that it became an insufficient and inadequate mechanism to hold all suspects under its jurisdiction accountable and consequently failed to achieve justice, accountability, and reconciliation and end the cycle of impunity.

Gacaca officially sought to establish the truth, fight impunity, and promote reconciliation through reintegrating the guilty parties into society. The government argued that the tried system of gacaca offered an alternative to attaining not only justice but also the truth, reconciliation, and grassroots empowerment. It would promote reconciliation by providing a platform for victims to express themselves. Encouraging acknowledgements and apologies from the perpetrators, gacaca aimed to build trust between victims and perpetrators to facilitate healing

and social harmony. It encouraged forgiveness and offered a means of reconciliation, justice, and reparation for the victims. The convicted prisoner physically helped the victim in a meaningful way through community service. Gacaca's strength lies in its communal, participatory nature, which promotes participatory justice and democratic decision making in the community by involving its members in dispensing justice to reweave the destroyed fabric of the nation. Most Rwandans, including the prisoners of genocide-related crimes, were profoundly supportive of the process.[85] Drumbl believes that shaming is the only way to stop the cycle of genocide, arguing that because of the normalization of brutality, many prisoners do not realize that the killing was wrong since most of them consider themselves prisoners of war.[86] This is very important because some Hutus deny the genocide and believe that there is no need for collective atonement or for individual acknowledgement of culpability.[87] Gacaca that offers shaming fosters emotional acknowledgement of responsibility which would lead to forgiveness, healing, and reconciliation and bring to an end the cycle of impunity in Rwanda. By its punitive character, gacaca avoids the pitfalls of an amnesty and ensures individual responsibility for crimes committed, thus reducing suspicion and encouraging trust within communities. Individual accountability would also eliminate collective guilt of the Hutus and potentially end the cycle of impunity.

Gacaca, however, is legally and operationally flawed and has come under criticism for failing to meet international standards of justice. The accused has no legal representation, and the judges have very little training, depriving suspects of their due process of rights and evidentiary rules.[88] The independence and impartiality of gacaca judges may be compromised since most of them were intrinsically involved in the events of the genocide to some degree.[89] Judges and jury members with pent-up anger could manipulate sentences to exact their own vengeance. Thus, justice in the gacaca could be vulnerable to a judge's bias and political manipulation. Another concern involves the possibility of disparities that could arise from the localized sentencing system applied by untrained judges, undermining equity of justice for criminals and victims alike. If judges are incompetent or biased and if communities conspire to use gacaca to settle scores, then both justice and reconciliation would suffer.

Although gacaca is a potential source of the truth, its provisions for confessions and guilty pleas represent one of its most cited shortcomings. Under these provisions, if someone confesses before being denounced, he or she is eligible for a substantial decrease in the length of the sentence. The concern has to do with the fact that confessions are acceptable only if they include the incrimination of one's coconspirators, thereby raising questions about the validity of the truth of the confessions, given the offer of incentives. One might say that confessions are

coerced and that the incentives could lead to false allegations, "witch hunting," and the settling of personal scores.[90] The truth could prove elusive in gacaca because, with an eye on reduced sentences, suspects could manufacture the truth or their confessions, making them fit the situation.

Widespread intimidation, disappearances, and extrajudicial killings of potential witnesses occurred in the countryside—particularly where perpetrators presumably far outnumbered survivors—to stop them from testifying at a gacaca hearing and therefore undermined the process.[91] The virtual absence of safeguards to ensure the protection of witnesses from the accused or authorities subverts open participation by both victims and witnesses.[92] In such a volatile political climate, rather than improve ethnic tensions and rivalries in Rwanda, gacaca could actually inflame them.

In fact, gacaca is a version of victor's justice because the jurisdiction of the gacaca courts was limited to crimes committed between 1 October 1990 and 31 December 1994, thus eliminating Tutsi killings of Hutu civilians. The gacaca tribunals had jurisdiction only over individuals who committed genocide or crimes against humanity under the previous government.[93] The politically manipulated gacaca process did not prosecute the Tutsis' RPF troops—the current regime's military, which committed serious war crimes against Hutu civilians. In the rhetoric of the government, these "war crimes" are considered separate from the genocide and not tried by gacaca courts. Exclusion of these crimes from the gacaca process establishes an ethnic divide and amounts to an unequal application of the law.[94] The Tutsi-dominated government's dichotomy of victims and perpetrators along ethnic fault lines imposed collective guilt on Hutus, who would see themselves as victims and interpret the process as victor's justice. They would deem the politicized and selective justice of the gacaca process as vengeance rather than reconciliation, ultimately undermining the latter and the security of Rwanda. This application of the gacaca process appears destined to exacerbate the recurring cycles of impunity and subvert reconciliation. Inaction with respect to RPF crimes and punishment of only those who lost the war would prevent the gacaca process from forcefully deterring future genocide.

Truth and Reconciliation in South Africa

In 1995 South Africa's new parliament passed the Promotion of National Unity and Reconciliation Act (no. 34), creating the TRC so that the country could come to terms with its horrific past on a morally acceptable basis and thereby advance the cause of healing and reconciliation.[95] The main objective was to "promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past."[96] It was mandated to establish the causes,

nature, and extent of the gross violations committed between 1 March 1960 and December 1993 as well as determine the identity and whereabouts of victims for the purpose of restoring their dignity. The TRC had the power to grant amnesty to those who fully disclosed their crimes and to recommend measures for preventing the recurrence of human-rights violations.[97] The commission that sat for no more than two years consisted of three subcommittees: the Human Rights Violations Committee, which inquired into gross violations; the Reparation and Reconciliation Committee, which rehabilitated and compensated victims; and the Amnesty Committee, which dealt with indemnities and amnesty. The TRC conditioned amnesty from legal prosecution on perpetrators individually, depending upon their guilt, and victims forfeited their right to prosecute perpetrators in criminal court. It granted amnesty to violators who narrated and accepted their guilt in public and applied for it; the commission did so in respect of acts associated with political objectives and subject to a proportionality test that required the committee's conviction that acts were politically driven. The TRC could also search and seize to compel witnesses to give evidence and to answer incriminating questions. Further, it could rely on information from nongovernmental or human-rights organizations to complement its work. Persons who appeared before the commission were provided with legal assistance. Composed entirely of South Africans, the TRC conducted public hearings; however, to serve the interests of justice, the security of persons, state security, or public order, hearings were held in camera.

Assessment of Efforts in South Africa

Arguably, a truth commission seems the better mechanism than a tribunal, especially in a situation like South Africa, where the use of trials would have subjected almost all of the population to prosecution—an impossibility. Moreover, selective prosecution would have prompted accusations of witch hunting, thereby hindering healing, reconciliation, and societal stability. Truth commissions also ensured a smooth transition from apartheid to democracy because the ruling National Party of de Klerk declared that it would not hand over power to the African National Congress if trials remained a possibility.[98] Had South Africa chosen trials, it would not have undergone peaceful change. According to James Gibson, "the truth and reconciliation process has done little to harm race relations in South Africa"; rather, it has had a positive effect on white and colored persons as well as those of Asian origin.[99] He argues that the truth process has caused "a salutary change in racial attitudes" with a net benefit to South Africa and adduces that truth may have led to reconciliation in South Africa.[100] Commissioner Mary Burton argues that giving public testimony had a healing effect on many survivors:

"The right to be heard and acknowledged, with respect and empathy, did contribute to a process of healing in many cases."[101] The South African TRC differed from its predecessors in Latin America and Eastern Europe, for it claimed that it practiced neither impunity nor vengeance.[102]

Despite its global admiration, the TRC has encountered criticism for failing to achieve accountability, impartiality, reconciliation, and deterrence. Elizabeth Stanley questions the validity of the "truth" predominantly drawn from individual points of view, pointing out that, given the right to reparation for victims and the desire of perpetrators to avoid persecution, the truths told were censored with an eye on benefits, resulting in "truth made to fit."[103] The TRC was accused of partiality for not holding all violators to the same standard of accountability. Stanley observes that some powerful individuals such as Winnie Mandela and de Klerk negotiated a lesser form of truth and accountability by using their influence, legal representation, and money despite their involvement in human-rights violations.[104] The TRC suffered from biased selectivity, damaging its credibility since it "placed a disproportionate emphasis on crimes committed against nonblack South Africans."[105] Limited time and finances also prevented a full recording of the truth in South Africa, negatively affecting reconciliation and societal transformation with the growing perception that state personnel involved in atrocities were not subject to accountability and the rule of law. Indeed, they still held official positions.[106] Gibson finds that the TRC did not move blacks toward reconciliation and that political tolerance—one of his measures of reconciliation—remains scarce in the political culture of southern Africa.[107] All South Africans did not accept the TRC; in fact, many of them, including the wife of the late Steve Biko, challenged the commission in court, seeking justice instead of pardon. According to Tepperman, a poll conducted in South Africa indicated that only 17 percent of the respondents believed that the TRC would lead to forgiveness and real healing.[108] Attacks on South African whites by South African blacks attest to the reality that the TRC failed to realize the objectives of true forgiveness, healing, reconciliation, and deterrence.[109] Mahmood Mamdani summarizes South Africa's failure, arguing that the country compromised justice and chose politically expedient amnesty to attain reconciliation, finding a new democracy based on a flawed judicial response to systemic crime against humanity.[110] The question is, will the dissatisfied resurrect the problem in the future? Reports of attacks on South African whites by South African blacks and xenophobia against immigrants paint a bleak future for reconciliation and breaking the cycle of impunity in South Africa.[111]

Truth and Trials in Sierra Leone

Sierra Leone was wracked by a devastating conflict (1991–2002) characterized by gross human-rights violations that left more than 50,000 dead.[112] With the support of Liberian rebel leader Charles Taylor, Foday Sankoh's Revolutionary United Front (RUF) entered southeastern Sierra Leone in March 1991. The RUF claimed to reignite radical Pan-African revolution in Sierra Leone by acts of protracted insurgencies against incumbent governments that resulted in the deaths of tens of thousands and the displacement of millions. Local and international pressure led to presidential elections in February 1996 won by former UN official Ahmad Tejan Kabbah. Pressured by regional and international stakeholders and on the brink of defeat at the hands of the Civil Defense Forces, the RUF acquiesced in peace negotiations. The resulting Abidjan Agreement of November 1996, however, collapsed within a year.[113] In 1997 the Kabbah administration was overthrown by the Armed Forces Revolutionary Council (AFRC) led by Johnny Paul Koromah, who invited the RUF rebels to join the coalition government. The rule of law collapsed over subsequent months amid serious human-rights violations. Under international and local influence, the AFRC/RUF agreed to return Kabbah to power in October 1997 but reneged. Nigerian forces, acting under regional mandate, finally ousted the AFRC in February 1998, forcing the RUF to retreat to guerrilla-war tactics backed by significant numbers of Sierra Leone soldiers living off the land and financed by "blood diamond" trade. Despite Nigerian intervention, the RUF/AFRC continued to fight voraciously in the countryside, and the conflict reached a stalemate. The presence of forces from the Economic Community of West African States weakened the RUF and the position of Sankoh, who had been captured in Nigeria at the time of the breakdown of the Abidjan Agreement and sentenced to death following Kabbah's reinstatement in 1998, paving the way for renewed peace efforts.[114] A number of cease-fires followed, including the Lomé Peace Accord, intended to end the Sierra Leonean civil war between the RUF rebel alliances and the government of Sierra Leone. With the military standoff continuing, in July 1999 Kabbah and the RUF signed the Lomé agreement, which granted blanket amnesty to RUF rebels and made Sankoh vice president.

This agreement, brokered by the Reverend Jesse Jackson, included an "absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement."[115] However, a reservation to the Lomé Peace Accord held that amnesty provisions "shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international

humanitarian law."[116] The agreement also provided for establishment of the TRC, mandated "to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, [and] get a clear picture of the past in order to facilitate genuine healing and reconciliation."[117]

The RUF, however, showed little commitment to the terms of the agreement and continued the hostilities. Consequently, the UN Security Council in October 1999 authorized establishment of the United Nations Mission in Sierra Leone (UNAMSIL) to assist with implementation of the Lomé Peace Accord. UN peacekeepers were often denied freedom of movement amid violations of the cease-fire, including RUF attacks against civilians and UNAMSIL peacekeepers.[118] A bipolar situation existed, with the RUF controlling the north and east of the country and the government of Sierra Leone or UNAMSIL controlling the west and south.[119] Realizing the mission's incapacitation due to its lack of strength, inadequate resources, and defensive posture, the RUF attacked peacekeepers and civilians, culminating in widespread killings of civilians and the taking of 500 UN peacekeepers hostage in May 2000.[120] Following continued human-rights violations and instability, the government of Sierra Leone wrote to the UN secretary-general requesting the establishment of a special court to bring RUF leaders to justice.[121] In accordance with Security Council Resolution 1315, the UN and the Sierra Leonean government signed an agreement on 16 January 2002, establishing the Special Court, which would prosecute "persons who bear the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law committed within the territory of Sierra Leone."[122]

Sierra Leone's hybrid model of truth and court was coincidentally established because the TRC was already in place on paper when the special court came into being. Created as a condition of the Lomé Peace Accord with the assistance of the international community, the TRC was approved by President Kabbah and RUF leader Sankoh on 7 July 1999. Its mandate called for "creat[ing] an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lome Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered."[123] Many leading figures, including President Kabbah and Valentine Strasser, as well as perpetrators and victims, appeared before the TRC, which operated from November 2002 to October 2004. It submitted a final report to both the Sierra Leonean government and the UN Security Council in 2004. The commis-

sion's main recommendations concerned the fight against corruption, a new bill of rights developed in a participatory constitutional process, judicial independence, efforts to strengthen the role of parliament, stricter control over the security forces, decentralization and enhanced economic autonomy for the provinces, a commitment by the government to deliver basic public services, and the inclusion of youth and women in political decision making.

The Special Court, jointly administered by the UN and the Sierra Leone government, had a mandate to try only those "who bear the greatest responsibility" for the atrocities of the war; a total of 20 defendants would be prosecuted, including Koromah, Sankoh, and Taylor.[124] The latter's trial was moved to the Hague for security reasons. Violators such as forcibly conscripted children and women were held accountable by the truth commission. As mentioned earlier, 70 percent of ex-combatants were children; 80 percent of the female combatants and 72 percent of all combatants claimed forced conscription.[125] On 26 April 2012, former Liberian president Charles Taylor became the first African head of state to be convicted for his part in war crimes.

Assessment of Efforts in Sierra Leone

The Sierra Leonean hybrid model, though coincidental, enjoyed a modicum of success in meeting our criteria, compared to the other cases. In Sierra Leone, unconditional amnesty did not end the conflict, for the rebels continued to commit atrocities, prompting creation of the Special Court to operate in tandem with the truth commission. The model achieved accountability and impartiality by holding all sides responsible, a fact reflected by the daring indictment of Taylor, the former Liberian president, and Sam Hinga Norman, the incumbent Kabbah regime's minister of internal affairs at that time and previously the deputy minister of defense and coordinator of the Civil Defense Forces that opposed the rebel attack.[126] Impartial trials and the truth told at the truth commission enhanced forgiveness and ended the cycle of impunity; they also reconciled and reintegrated former combatants into mainstream Sierra Leonean life, as manifested by the peaceful, democratic transfer of power from the Kabbah government to the current one.

However, the accidental and uncoordinated concurrent operation of both mechanisms proved problematic and expectedly elicited issues on conflict over respective powers, coordination, information sharing, and rivalry. Unlike the intentionally designed East Timorese hybrid model, the Sierra Leonean model lacked a formal, legally binding agreement in advance on issues of coordination, relative legal positions, and common transitional justice goals in their respective statutes; neither did it make arrangements to best reach these goals and thereby

realize full benefits for both institutions.[127] Conflicts arose regarding coordination and information sharing on whether statements obtained by truth commissions should be admissible in criminal prosecutions and, conversely, whether the commissions should have access to evidence collected in criminal investigations.[128] For example, the court denied the TRC's request to interview Special Court detainees Sam Hinga Norman and Augustine Gbao.[129] The decision that denied a public hearing for Norman elicited public displeasure. Lack of coordination and information sharing could have undermined the credibility of the process of accountability, reconciliation, and durable peace if both institutions had reached opposing conclusions about a suspect, such as Norman, appearing before both institutions and giving conflicting testimony to the two bodies. Luckily, the Sierra Leone process avoided this quandary.

There was also disagreement concerning their respective powers since Article 8 of the statute gave the Special Court primacy over the national bodies, including the TRC, by rendering its premises, archives, and documents inviolable. Arguably, the Special Court Ratification Act empowered the court to use coercive measures to force the TRC to share information without giving the latter reciprocal ability to force disclosure of the Special Court's materials.[130] Further, the Special Court could override protections granted by Article 7(3) of the Truth and Reconciliation Commission Act 2000.[131] The subpoena powers of the TRC also conflicted with the Special Agreement Act that secured the inviolability of the Special Court premises.[132] The unequal structural power relationship proved counterproductive, deepening the conflicts on coordination and information sharing.[133] Moreover, unlike the ad hoc tribunal in Rwanda established by chapter 7 of the UN Charter, Sierra Leone's Special Court was a treaty-based institution, depriving it of the power to issue binding orders to third-party states to cooperate with the extradition of suspects as well as assert primacy over the prosecution of suspects in other states.[134] The alleged dominance of foreigners on the Special Court, coupled with the difficulty of accessibility to the court, also caused Sierra Leoneans to become detached from it despite geographical proximity.

Reconciliation depends heavily upon the ease of reintegrating perpetrators into their communities without fear of reprisal. The Sierra Leonean Truth and Reconciliation Commission Act 2000, however, did not make provisions for a specific process of rehabilitation, as did the East Timorese model, which reconciled perpetrators to their communities after full confessions and acts of penance.[135] In the absence of these arrangements, perpetrators in Sierra Leone feared reprisals from their communities and found it difficult to cooperate with the commission.[136] Nevertheless, the TRC facilitated symbolic acts of reconciliation—such as traditional and religious ceremonies to consecrate sites of mass killing and

to erect memorials—alongside its taking of statements, which fostered forgiveness, reintegration, and reconciliation.[137] Perpetrators came forward to ask their communities for forgiveness, granted by local traditional leaders.[138]

The Way Forward for Africa: Demand for a Hybrid Model of Accountability for Truth and Justice

A comparative analysis of the three cases of transitional justice mechanisms has revealed the incompleteness and inescapable inadequacy of either the truth commission or court to hold violators of human rights accountable. The relative success of Sierra Leone suggests that the operation of truth commissions in tandem with trials seems a more appropriate accountability mechanism for Africa. Despite its global admiration, the South African TRC came under criticism for selectivity by subjecting powerful individuals such as Winnie Mandela and F. W. de Klerk to a lesser form of accountability. Thus, many others—such as Mrs. Biko—did not accept the TRC, challenging it in court and seeking justice instead of pardon. The commission could not reconcile South Africans—witness the attacks on South African whites by South African blacks. As mentioned earlier, a poll conducted in South Africa indicated that only 17 percent of the respondents believed that the TRC would lead to real healing. Other African truth commissions, such as those in Uganda and Kenya, failed to reach the desired goals. Uganda's 1974 Commission of Inquiry into Disappearances of People in Uganda, established by President Amin, did not prevent him from committing serious atrocities against his people. Abuses by Amin's forces increased markedly in the following years, earning him the nickname "butcher of Uganda" for killing an estimated 300,000 people.[139] The 2008 Kenyan Truth, Justice, and Reconciliation Commission lost credibility because of concerns of bias in favor of the government by its chairman, Bethuel Kiplagat—linked to the killings of dozens of Somali Muslims in northern Kenya in 1984 during what is known as the Wagalla massacre. This situation culminated in the resignation of American law professor Ronald Slye from the commission after he lost faith in the commission's ability to succeed because of credibility issues involving the chairman.[140]

Similarly, incompetence and manipulation have prevented trials from holding violators accountable in Africa. The Rwandan tribunal seems a failed case because of accusations of partiality and selectivity for prosecuting only Hutus without indicting members of the RPF—the Tutsi rebellious movement, which reportedly killed thousands of civilians—thus earning the tribunal the tag of victor's justice. The TRC could not achieve deterrence and reconciliation since many of the Hutu extremists who fled to neighboring countries were bent on avenging

personal losses and establishing ethnic hegemony.[141] Other African trials, such as the Ethiopian tribunal—the Ethiopian War Crimes Court—also failed, flawed by legal frailties and manipulations of the government. The process lacked popular support because the moral legitimacy of the Ethiopian government to conduct the exercise came into question in light of its abysmal human-rights record. The government's mass arrests of opponents and tampering with judicial independence tainted its reputation. Ethiopians' mistrust in the government subverted their confidence in the court and its moral legitimacy to pursue justice, democratization, and development.[142]

The relative success of Sierra Leone's coincidental but concurrent operation of both truth commission and court, despite some inherent weaknesses, demonstrates that a unified mechanism which recognizes both truth and trials as integral to a holistic approach to obtaining both forgiveness and justice is more efficacious for Africa than either truth commission or court operating on its own. A hybrid model is a broadly integrated justice-and-reconciliation mechanism functioning on the basis of interdependent and complementary prosecution and reconciliation mechanisms. Such a concurrent operation of the unique institutional competencies of truth commissions and trials would facilitate attainment of the transitional justice goals of accountability in Africa. The two accountability mechanisms augment each other, offsetting mutual deficiencies, supplying mutual needs, and thereby bridging the gap between the two. A true and lasting peace in Africa should comprise a mix of truth and justice, as demonstrated in the comparative peace and democratization of Sierra Leone after years of brutality.

As argued, the truth commission is a more viable option than the trial in a state such as South Africa where mass violations have occurred because the sheer number of violators, limited resources, time constraints, and the unwillingness of witnesses to testify for fear of reprisal prevent the court from prosecuting all perpetrators. Truth commissions can also address systematic causes of mass human-rights abuses and make reform recommendations not fully or adequately captured by prosecutions alone, such as applying human-rights practices, the rule of law, security-sector reforms, democratic values to prevent future occurrences of atrocities, or measures to break the cycle of impunity. However the Sierra Leonean and South African cases demonstrate that granting amnesty without prosecuting those who mastermind atrocities would not end the cycle of impunity and atrocities and would undermine healing, reconciliation, and the rule of law. Despite amnesty, the RUF in Sierra Leone continued its atrocities against civilians until creation of the Special Court. A truth commission alone is not an adequate response when violations have been severe and widespread, as in South Africa where some people (e.g., Mrs. Biko) demanded prosecution. James Gibson finds that the

South African truth commission seemed to contribute little to reconciliation among black Africans, confirming the argument for prosecution.[143] The TRC has shown that knowing the truth alone is inadequate for the healing process. A truth commission is good in its own right, but it will be discredited from the start if it does not focus on rendering justice. The principles of human rights and concern for human dignity and the rule of law debunk a blanket forgive-and-forget policy for the most egregious violations.

Prosecution gives victims a sense of justice, confidence in the legal system, and security from the state. In hindsight, South African TRCs also aimed to seek justice alongside truth telling but lacked governmental and judicial commitment to deal with those cases recommended for prosecution. The trial and sentence of former police colonel Eugene de Kock—known as the "Prime Evil"—to a 212-year prison term embody the relevance of both trial and truth to transitional-justice accountability in South Africa. Unless those who mastermind the atrocities are prosecuted, the pursuit of trust, reconciliation, reunification, and peace would become an illusion. The concurrent operation of truth in tandem with trials would capture the full benefits of the goals of transitional justice and satisfy different parties that demand either truth or trial, as in South Africa. As long as high-level violators remain free and unpunished, a climate of fear and hatred as well as the desire for revenge will continue, ultimately resulting in further violence.[144] At least prosecution of the perpetrators of high-level crimes would command popular respect for the process and make them contribute toward the success of the truth commission's reform recommendations. Impartial trials that hold accountable individual violators rather than entire religious, political, or ethnic groups eliminate collective blame, guilt, retribution, and continued or reawakened hostility and contribute to long-term reconciliation. Trials also become the foundation of an independent judicial system that bolsters the rule of law and democratic values in a state emerging from horrendous atrocities. The following discussion offers a framework for an appropriate hybrid mechanism of accountability for Africa informed by the strengths and weaknesses of our cases.

In view of the inherent necessity of both truth commissions and courts, a coordinated and intentionally designed hybrid model of truth and trials established by chapter 7 of the UN Charter and based on the model of the East Timorese example would prove a most viable accountability mechanism for human-rights violations in Africa. The United Nations Transitional Administration in East Timor incorporated truth seeking (the Commission for Reception, Truth, and Reconciliation) into a larger prosecution mechanism, thereby strategically eliminating the rivalry between them.[145] A hybrid model jointly administered by the afflicted state and the UN should be empowered to assert primacy over pros-

ecutions of suspects and issue binding orders to third-party states to cooperate with the extradition of suspects.

Since the operations of truth commissions and courts overlap, they are more likely to use the same resources, events, witnesses, victims, perpetrators, and evidence. To avert potential conflict over their respective powers, coordination, and information sharing, organizers of the two institutions should conclude a formal, legally binding agreement in advance of their operation that addresses issues of coordination, relative legal positions, and common transitional justice goals as well as the best means of attaining them in their respective statutes in order to benefit both institutions. Unlike the Sierra Leone case, both the truth commission and court must have equal authority to obtain information from each other. Primacy of one institution over the other would lead to a power struggle and discord between officials of both institutions that might vitiate the legitimacy of both mechanisms. In the absence of coordination and information sharing, special detainees such as Sam Hinga Norman of Sierra Leone, appearing before a truth commission and a trial court, might give different testimony to the two bodies, causing them to reach conflicting conclusions about individual accountability. Accountability, reconciliation, and durable peace would suffer if a suspect were exonerated by a truth commission but convicted by the court. Better coordination and information flow between the two would avert this potential calamity of transitional justice. Both institutions require impartiality, independence from politics, and adequate resources to function effectively and attain their strategic objectives.

The composition of members on both the court and truth commission is significant in terms of instilling confidence in the process. Biased institutions—allegedly true of the South African and Rwandan TRCs—adversely affect confidence in the process as well as reconciliation. An organization composed of neutral members (both local and international, representing all sides of the conflict), politically untainted by the violence and perceived to provide unbiased prosecution and an account of the past, would instill trust in the process, enhance its credibility, give it legitimacy and authority, and promote reconciliation.[146] Individuals with adequate knowledge of the political and social context of the violence and of conflict-resolution dynamics would prove beneficial in investigating and interviewing the locals, whose involvement also would elicit ownership and thereby boost confidence in the process, ultimately maximizing their cooperation. Foreign involvement is important, especially if the factions become too polarized, by lending credibility to the process. At the onset of the Special Court of Sierra Leone, the government was so concerned about the court's credibility that it included international staff members. A statement by John Leigh, Sierra Leone ambassador to the United States, reflects that concern: "We don't want the court

to be seen as victor's justice . . . and international involvement will prevent this perception."[147] US ambassador Richard Holbrooke called for the United States to demonstrate leadership on this important moral issue. Moreover, the international community can provide qualified judges, prosecutors, or defense attorneys as well as resources that the state lacks.[148]

Of great significance to successful accountability is the location and timing of the process. A number of arguments have arisen regarding locating trials or commissions where the atrocities occurred, especially when the security of suspects, witnesses, and board members could not be guaranteed (e.g., the ICTR located in Arusha, Tanzania). However, as noted earlier, Rwandans had difficulty in following the ICTR's proceedings, and the process had little effect on reconciliation.[149] For the sake of reconciliation, this study supports locating the hybrid mechanism at the place where atrocities occurred. UN forces, alongside the police and military of the new government, can address security concerns and ensure the safety of defendants and witnesses as well as prevent the flight of violators. With the exception of Charles Taylor, whose trial was moved to the Hague for security concerns, Sierra Leone's Special Court heard cases at home, having a greater effect on accountability, reconciliation, and democratization than Rwanda's ICTR. Location of the accountability mechanism in the afflicted state has the additional benefit of facilitating the diffusion of legal knowledge from international to local judicial officials, who will assist in rebuilding and strengthening the country's decimated judicial system as well as the rule of law and human-rights practices.[150]

The expedience and timing of accountability are critical because delays in indictments, arrests, extradition, and prosecution allow violators bent on vengeance to flee and regroup for further violence. In Rwanda, delays in the investigation and arrest of Hutu extremists allowed them to move to neighboring states and plan for revenge on the Tutsi-dominated government. Drawing on the popular dictum "justice delayed, justice denied," one finds that delays in the prosecution of violators deplete the impact of deterrence, reconciliation, and durable peace, thereby impairing citizens' confidence in the process. Prompt accountability demonstrates to the public the readiness of the government and the international community to restore the rule of law and gain citizens' confidence and support for the legal system. Expedience strengthens the message that the international community will not tolerate such crimes. Swift prosecution also demonstrates that people need not take personal vengeance—a key element in the renewal of conflict.

Since a lack of resources and time limitations prevent the court from trying myriad violators, statutes establishing the hybrid model should specifically call for the court to prosecute people who bear the greatest responsibility for crimes

against humanity, leaving those who acted either on compulsion or less atrociously to face the truth commission. Because the statute establishing the ICTR excluded such language, that tribunal was criticized for wasting valuable resources on prosecuting "small fish."[151] The prosecution of leaders who—through false indoctrination and misinformation—incited hatred and inflicted atrocities on other groups would eliminate extremists with vested interests in exacerbating the violence and strengthen the position of constructive political forces committed to democratic pluralism.[152] For the sake of enhancing reconciliation, the statutes of the truth commissions and the courts' specific processes should include formal provisions to facilitate the rehabilitation of perpetrators and their reintegration into communities without fear of reprisal.[153]

Most importantly, sustained international cooperation and political will are vital to the accountability mechanism's effectiveness in investigating, arresting, detaining, extraditing, and prosecuting perpetrators as well as providing funding and resources. Delays and lack of cooperation by the international community undermine the possibilities of deterring future atrocities and damage the potential for healing and reconciliation, as occurred in the Rwandan case. Despite UN efforts to ensure that member states cooperate in the arrest and extradition of individuals charged with genocide to face the Rwandan tribunal, Cameroon and the DRC did not extradite war-crime suspects. The statute establishing the mechanism should oblige all member states to comply without delay with any request to assist in locating, detaining, and extraditing suspects. Furthermore, the UN must demonstrate leadership and political will by applying appropriate punitive measures that would compel defiant member states to cooperate with the accountability mechanisms. The model's success depends upon the moral suasion role of the civil society and the international community as well as the political will of the people.

Conclusion

Egregious atrocities committed against civilians in Africa have necessitated the establishment of accountability mechanisms by successor regimes in Africa to redress human-rights abuses, end the tradition of impunity, deter future abuses, and create a social order to advance the process of reconciliation. Contemporary debate hinges on the question of whether a tribunal or truth commission is the more appropriate means of holding individuals accountable for war crimes. Proponents of commissions argue for forgiveness to ensure reconciliation, but others advocate punishment to stop the cycle of impunity and deter future violations. Both mechanisms have produced mixed results. This article has evaluated the suc-

cess of South Africa's TRC, Rwanda's ICTR, and Sierra Leone's hybrid model of a national TRC and Special Court that emphasizes the transitional justice goals of impartiality, accountability, reconciliation, and deterrence. It found that neither the commission nor the court on its own adequately holds violators of human rights accountable. However, the relative success in Sierra Leone suggests that truth commissions in tandem with trials seem a more appropriate accountability mechanism for Africa. Consequently, this article proposes a framework for an appropriate hybrid mechanism of accountability for Africa—one informed by the strengths and weaknesses of the cases examined.

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