

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**THE ROLE OF PEACE SUPPORT OPERATIONS IN TRANSITIONAL
JUSTICE: A CASE STUDY OF RWANDA**

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DECLARATION

This research project is my original work and has never been presented for examination purposes in any other institution of higher learning.

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Signature:.....

Date:.....

DEDICATION

I dedicate this work to my parents and siblings, who continue to give me overwhelming support and encouragement. To my fiancée Mary Njoki who has continued to give me peace of mind and joy in my heart. To Neil V. Getnick and Margaret J. Finerty who have always been there for me at all times during my study life. My love for you is and will always be inestimable!

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ABSTRACT

Over the last two decades, scholarly and expert interest in the burgeoning field of transitional justice has continued to grow, and today it is unthinkable to conceive of political transitions, or transitions from war to peace, without also thinking about questions of accountability for past human rights abuses and mass atrocities. This is particularly the case in relation to Africa. The exercise of engaging in constructive change needs to transcend the symbolism that often attends to transitional justice processes toward dealing with the underlying structures and human relationships at various levels, politically, socially and economically. The question of transitional justice calls for an understanding of the broader and complex issues of justice in divided societies. It is therefore important to examine and analyze how Rwanda has implemented its Transitional Justice process and how the UN Mission assisted in that process. The general objective of the study is to find out the role that peace support operations played in transitional justice in Rwanda so as to maintain unwavering peace and reconciliation amongst the citizens. The study has adopted the Neoliberalism as the theoretical framework. A basic assumption of neoliberalism is the institutional separation of society into an economic and political sphere, as neoliberals claim that all problems of the economy can be resolved by socially-neutral experts using technical rationality. Both qualitative and quantitative approaches have been used. Often in qualitative design only one object, one case, or one unit is the focus of investigation over an extended period of time. The research is interested in the character and the role of peace support operations in transitional justice in Rwanda. The researcher will use it as a tool for collecting data hoping that the analysis and questions will try and explain Rwanda's transitional justice process. The research has pointed out the various roles of PSOs in other parts of the world and what they were assigned and mandated to do. It observes that in Sub-Saharan Africa their mandate has been minimal and not specific to administering transitional justice processes. Possibly this could be due to the nature of PSOs and how they are deployed to various regions during peace enforcement or peace-making. Sub-Saharan Africa has been unique in the sense that the timing and implementation of Transitional Justice has not been solely a transitioning period, although some have. The research study however, did examine their roles and possible future functions, factoring the context and needs on the ground. Given the cross border nature of conflict and violence in Africa, Rwanda needs to consider mooted a policy that will address transitional justice. In order to address border spillovers, Rwanda and Africa should set up accountability measures to hold rebels who move beyond national borders, so as to end impunity. A show of commitment by all the states in Africa will be vital, and also financing the justice institutions in every country in order to strengthen its judicial capacity. Capacity building and establishment of Africa/Civil society partnership for regional outreach and advocacy work at the community level is important to gain local support. Dialogue and continuous consultations with all stakeholders in the situation is necessary and important element one cannot afford to leave it out.

ACRONYMS

AMIB	African Union Mission in Burundi
ASF	Africa Standby Force
APSA	African Peace and Security Architecture
AU	African Union
CEWS	Continental Early Warning System
CEWARN	Conflict Early Warning and Response Network
DRC	Democratic Republic of the Congo
EASF	Eastern Africa Standby Force
IGAD	Intergovernmental Authority on Development
OAU	Organization of African Unity
PSC	Peace and Security Council
PSOs	Peace Support Operations
RPF	Rwandan Patriotic Front
UN	United Nations
UNOMUR	United Nations Observer Mission Uganda-Rwanda
UNAMIR	United Nations Assistance Mission for Rwanda
UNHCHR	United Nations High Commissioner for Human Rights

CHAPTER ONE: INTRODUCTION

1.1 Background to the study

The end of the Cold War has witnessed increasing sets of practices for dealing with past conflict and human rights abuses. Principles of democracy, human rights and transitional justice are part of this. The question of transitional justice, located within the human rights discourse, emerged from its core values of the post-World War II period in Europe when the victorious allied forces subjected Japanese and German officials to criminal justice for war crimes committed during the war¹.

Today, transitional justice has broadened its scope from the initial concerns with criminal jurisprudence to political considerations of accounting for the past with a view to promoting the rule of law and peace. For societies moving away from civil war/violent conflict and repressive rule, the challenge, often, is that these societies have to reckon with their pasts by promoting accountability, often in very tenuous and fragile circumstances. The dilemma is compounded by transitional governments often inheriting weak and ineffective judicial systems which make it difficult to pursue successful criminal prosecutions².

Generally, there is a whole range of needs arising from the specific contexts of these societies, including the concrete needs of victims and communities that were damaged by violence and the need to overcome structural inequalities and deep-rooted fears and hatreds that may not be satisfied by the action of courts.

¹ For an in-depth discussion on the development of transitional justice, see R. G. Teitel, 'Transitional Justice Genealogy,' *Harvard Human Rights Journal*, Vol. 16, Spring 2003.

² Dragovic-Soso, J. (2011) 'Peace versus Justice? the Dilemma of Transitional Justice in Africa'

While it is important to acknowledge that courts may provide some solace if some perpetrators are successfully prosecuted, for societies that are in transition, often the structures of the security apparatus, the judiciary or the laws that should constrain the actions of officials for example, may remain unchanged even as a more democratic and less abusive government comes into place. It is for these reasons, that alternative and sometimes complementary approaches to criminal accountability have slowly taken shape.

The mechanisms and interventions to address the rising abuse of gross human rights violations and mass atrocities have been established and Transitional justice represents this new model. Agreeably, it is an ostensibly new field and has grown remarkably over the past 30 years³. As a field of practice and theory, Transitional Justice was not heard of prior to the end of the bi-polar war.⁴ Equally, it was through the trials of the Japanese and German officials in Tokyo and Nuremberg that the world came close to Transitional Justice after the World War Two II⁵.

This research examines the challenges and policy options for dealing with questions of past conflict and human rights abuse in Rwanda. It aims to build a practical understanding of the role of transitional justice, and the underlying assumptions and relationship especially between whether to prosecute or not.

1.2 Statement of the problem

³ Andrieu, K. (2010) 'Transitional Justice: A New Discipline in Human Rights'.

⁴ Turner, C. (2013) 'Deconstructing Transitional Justice', Law and Critique: 1-17.

⁵Huyse, L. (2008) 'Introduction: Tradition-Based Approaches in Peacemaking, Transitional Justice and Reconciliation Policies', Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experience, Stockholm, International Institute for Democracy and Electoral Assistance

Over the last two decades, scholarly and expert interest in the burgeoning field of transitional justice has continued to grow, and today it is unthinkable to conceive of political transitions, or transitions from war to peace, without also thinking about questions of accountability for past human rights abuses and mass atrocities. This is particularly the case in relation to Africa.

Today world over, transitional justice is conceived of as a political process of negotiated values and power relations that attempts to constitute the future based on lessons from the past. Political parties in Africa use transitional justice not only as a strategy to protect partisan interests or target political opponents, but also as an instrument to promote their political struggles in the course of moulding a new, post-conflict society and state.

It is clear that the search for equilibrium that achieves justice whilst ensuring social stability and reconciliation will remain a major challenge. It is however, unfortunate that some African countries have only attempted cosmetic measures and circumscribed the mandates of transitional justice mechanisms.

The exercise of engaging in constructive change needs to transcend the symbolism that often attends to transitional justice processes toward dealing with the underlying structures and human relationships at various levels, politically, socially and economically. The question of transitional justice calls for an understanding of the broader and complex issues of justice in divided societies. It is therefore important to examine and analyze how Rwanda has implemented its Transitional Justice process and how the UN Mission assisted in that process.

1.3 Objectives of the Study

1.3.1 General Objective

The general objective of the study is to find out the role that peace support operations played in transitional justice in Rwanda so as to maintain unwavering peace and reconciliation amongst the citizens.

1.3.2 Specific Objectives

1. To examine the role of UN Mission in Rwanda Transitional Justice process
2. To assess the role of Peace Support Operations in Transitional Justice Processes in Rwanda
3. To identify Transitional Justice policy options and how they played out in dealing with questions of past conflict and human rights abuse in Rwanda
4. To examine the thematic approaches to Transitional Justice in Rwanda and discuss their challenges, success and obstacles

1.3.3 Research questions

The specific questions that are going to be the main aim for my study are the following:

1. What was the role of UN Mission in Rwanda Transitional Justice process?
2. What is the place of Peace Support Operations in Transitional Justice in Rwanda?
3. What Transitional Justice policy options were used and how did they play out in dealing with questions of past conflict and human rights abuse in Rwanda?
4. What approaches to Transitional Justice were used in Rwanda and what were the challenges, successes or obstacles?

1.4 Justification of the Study

Scholars in the field of transitional justice seem to have coalesced around the consensus that when a state transitions from conflict, the ideal end-point is the liberal democratic state. The research contends that for Transitional Justice to be successful, the solutions have to be bottom up and homegrown. It advocates for a situation where victims, perpetrators and members of the community equally participate and retributive and restorative justice mechanisms are

complementary to each other. Rebuilding and repairing the divisions in the society is a daunting task which requires a bottom up approach that enjoys ownership⁶.

The study will explore the role of Peace Support Operations (PSOs) in Transitional Justice. It will observe how PSOs have been pivotal in the transition from war to peace. Their role within Transitional Justice has been well documented and this study will explore avenues through which PSOs can be engaged. PSOs have been resourceful in the Transitional Justice process. They played a key role in East Timor, Liberia, El Salvador and Guatemala and included vetting, administration, supervision and coordination of the process.

The study is of service in that upon its completion recommendations will be made on ways and means of dealing with the challenges of past historical injustices and human rights abuses. The study will also reassure the citizenry and all the readers that their attempt to solve any transitional injustice through peaceful means; their efforts don't go to waste but instead build the country's good will and positive image as well as maintaining a long lasting reputation hence, increased level of investors and improved living standards of citizens.

1.5 Scope and Limitation

As Göran Hyden states every scientist must make a practical limitation of his studies range against the background of what the theoretical frame allows. In order for a research study to be empirically strong it is important to limit oneself. The whole meaning of limiting oneself is to allow the theory, material and time line to guide the study. The researcher is going to limit himself by first describing the role of peace support operations and then transitional Justice Challenges. Secondly, the researcher has chosen to focus mainly with the East African state of

⁶ Karen McVeigh, "Spate of killings obstructs Rwanda's quest for justice," *The Observer*, Sunday December 3 2006 <http://www.guardian.co.uk/world/2006/dec/03/rwanda.karenmcveigh>. Accessed 29 May 2014

Rwanda. The reason for doing so is because the quest for transitional justice and the role peace support operations has been witnessed in Rwanda which is part of the East Africa Community- not forgetting that the Kenyan president and his deputy are answering charges in the ICC at the moment. The study will be carried out in Nairobi. The reason is because the Masters Degree research project takes one semester for its completion. Due to this fact and financial constraints, the researcher will have limited time to conduct an extensive study.

1.6 Literature Review

1.6.1 Global Perspective of the Peace Support Operations

Peace Support Operations (PSOs) is a military term used to denote multi-functional and multinational operations conducted impartially in support of a UN mandate involving diplomatic efforts, humanitarian organization/agencies and military forces. They are designed to achieve a long-term political settlement or other conditions specified in the mandate. They include conflict prevention, peacemaking, peace-building, peacekeeping, peace enforcement and humanitarian operations⁷.

PSOs differ from a war because they are complex operations that do not have a designated enemy but are designated as part of a composite approach involving diplomatic efforts and generally humanitarian agencies to achieve a long-term peace settlement.

Today's world, with changing patterns of conflict and threats to UN interest, presents new political and military challenges.

⁷ P. B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocities* (New York: Routledge, 2001)

The existence of instability and potential threats requires a wider and different military capability sufficiently versatile to execute UN peace strategy - across the full range of peace support operations⁸.

PSO are increasing in response to complex intra-state conflicts involving widespread human rights violations. Peace force must deal with deadly and complex strife between ethnic, religious, political and socioeconomic groups within a country or a region. This reality has significant implications to PSO. Without the active and willing involvement of diplomatic, humanitarian agencies, civil police, host nation or government, there can be no self-sustaining peace.

Today, PSO involve a wide range of missions, all for the ultimate purpose of promoting peace and global stability. PSO as a tool of UN was not visualized in the UN Charter.

The first true UN “peacekeeping” Force, composed of armed military units, was the UN Emergency Force, launched after the Suez crisis in 1956. The peacekeeping formula was perceived as an acceptable temporary “solution” to the crisis and, for certain parties to the conflict, the only possible face-saving option⁹.

Secretary-General Dag Hammarskjöld codified the principles of the Peace Support Operations. These complete principles were first prescribed on November 6, 1956, just two days after the General Assembly’s Resolution 998 calling for establishment of the Emergency Force (UNEF)¹⁰.

Three core principles have guided the operations of all peace missions since the inception of United Nations Peacekeeping missions in 1948. They are: consent of the parties to the presence

⁸ Rothchild, D, Sriram, C and Wermester, K., eds. *From Promise to Practice: Strengthening UN Capacities for the Prevention of Violent Conflict* (Boulder: Lynne Rienner, 2002)

⁹ Office of the United Nations High Commissioner for Human Rights (OCHA), *Rule-of-Law Tools for Post-Conflict State: Truth*, (New York and Geneva: United Nations, 2006)
http://huachen.org/english/about/publications/docs/ruleoflaw-TruthCommissions_en.pdf

¹⁰ United Nations. *Charter*. (Jun. 26, 1945), <http://www.un.org/en/documents/charter/index.shtml> (accessed: May17, 2014).

of peacekeepers, impartiality in implementation of the peacekeeping mandate, and a very restricted use of force. For some time the use of force was limited to self-defense. The latter principle has since evolved to encompass not only self-defense, but defense of civilian non-combatants and enforcement/defense of the UN mandate. UN missions are also now routinely referred to as “Peace Support Operations,” as modern day UN missions involve more than just keeping the peace, to include conflict prevention and mediation, peacemaking, peace enforcement, and peace building activities¹¹.

Early peacekeeping missions were begun to support the UN’s founding purpose of maintaining international security and ending the “scourge of war.”¹² Initial missions were similar to those belonging to the UN’s precursor, the League of Nations, which sent unarmed observers to report on the adherence to an armistice or peace agreement by former fighting states. The first two missions – the UN Truce Supervision Organization (UNTSO) in the Middle East and the UN Military Observer Group in India and Pakistan (UNMOGIP) – both followed these practices. It wasn’t until the UN Emergency Force (UNEF I) deployed in 1956 to address the Suez Crisis that the UN began sending armed contingents. To emphasize their “peaceful” intent, they were called “peacekeepers,” with their purpose being to serve as a buffer between Israeli and Egyptian forces.

The UN helped keep the peace by serving, in its own estimation, as an independent and objective party that had the putative will of the international community behind it. Early UN missions occurred in the global context of the Cold War between NATO and Warsaw Pact countries and were relatively simple affairs mainly limited to helping keep a pre-established peace once

¹¹ For useful definitions of each of these types of activities, please see: *United Nations Peacekeeping Operations: Principles and Guidelines*, Pgs. 17-18, available at: http://pbpu.unlb.org/pbps/Library/Capstone_Doctrine_ENG.pdf (accessed: May 17, 2014).

¹² United Nations. *Charter*. (Jun. 26, 1945), <http://www.un.org/en/documents/charter/index.shtml> (accessed: May 17, 2014).

ceasefires had already been declared or peace treaties had been signed. They included tasks such as observation and monitoring, confidence building activities, and support to both the existing peace process and political resolution of the underlying issues causing the conflict. Many of these missions, such those in the Middle East and Kashmir, continue to this day because these conflicts remain unresolved with occasional relapses into violence. Others have ended or have been replaced with subsequent UN missions.¹³

The nature of UN peacekeeping dramatically changed in the 1990s after the fall of the Soviet Union and the end of a bipolar world where the greatest threat to international security was major interstate war. In the new era of intrastate conflicts that followed, such as those in Somalia, Rwanda and the former Yugoslavia, peace support operations mandated by the UN Security Council were widely viewed as failures for their inability to maintain peace, enforce the UN mandate, and protect civilians.

In the case of Rwanda an existing UN force stood by while over 800,000 people were killed in around 100 days during the 1994 genocide. Throughout the Bosnian war, UN forces were ineffective in enforcing both UN Security Council resolutions and maintaining agreed upon ceasefires by the combatants. And despite the UN Security Council designation of Srebrenica as a “safe area,” and the deployment of a battalion of Dutch soldiers to the city, the UN failed to protect the inhabitants, who were overrun in July 2005 by Serb military forces who then massacred approximately 7000 males of military age¹⁴.

Many commentators, both within the UN and outside observers, argue these operations were set up for failure by ill-conceived and unclear mission mandates approved by the Security Council,

¹³ For a list of history of all UN peace support operations, past and present, please see: <http://www.un.org/en/peacekeeping/operations/> (accessed: May 17, 2014).

¹⁴ Reyntjens, Filip and Stef Vandeginste. 2005. 'Rwanda: An Atypical Transition.' In *Roads to Reconciliation*, edited by Elin Skaar, et al. Lanham, MD: Lexington Books

along with unwillingness on the part of the military peacekeeping forces to use force in defense of the mandate, and a severe lack of resources¹⁵. The large scale of the missions and their multinational character created additional problems with deployed units from a variety of countries lacking interoperability, both in terms of equipment packages and shared understanding of the mandate and rules of engagement. And though UN peacekeeping missions call for all UN forces to adhere to instructions of the UN force commander, national contingent leadership very often continued to look to their own national capitals for guidance on even the smallest issues.

Beginning in the mid-90s the UN engaged in a series of evaluations examining the evolving nature of UN peacekeeping in the new post-cold war political environment, issuing reports on the missions in Somalia, Bosnia, and Rwanda and examining the lessons that could be learned from them. The process reached its zenith when Secretary General Kofi Annan called upon UN Diplomat and former Algerian Foreign Minister Lakhdar Brahimi to convene a panel to look at ways to improve UN Peacekeeping, both at UN headquarters and in the field. The resulting “Brahimi Report,” which was released in August 2000, ushered in a new era of self reflection and reform within the UN’s Department of Peacekeeping, and among relevant UN bodies that oversee peacekeeping, such as the Secretariat and the Security Council.

In the twenty years since the end of the Cold War UN peace support missions have evolved from the “traditional” observation and interposition missions of the Cold War era to today’s “multidimensional” missions. In the current environment, peacekeepers are also often tasked with significant post-conflict reconstruction and state-building activities. A recent further complication of peacekeeping is the added mission requirement of “protection of civilians,” though often with the caveat of language limiting the scope of this tasking to the mission’s

¹⁵ United Nations *Charter* (Jun. 26, 1945), <http://www.un.org/en/documents/charter/index.shtml>(accessed: May 17, 2014)

operational areas and whatever the peacekeeping force is deemed capable of. Yet too often UN missions are still constrained by ill-conceived and unclear mission mandates, an unwillingness of the peacekeeping intervention forces to engage in robust use of force to include pre-emptive action, and a lack of resources, both in terms of material and personnel.

Generally, Peace Support Operations (PSOs) have been fundamental in the implementation of Transitional Justice. Moreover, not all PSOs have had the mandate to oversee Transitional Justice processes. It is important to understand specific PSO mandates as this will put into perspective what each PSO can and cannot do. Some of the PSOs that have been crucial in overseeing Transitional Justice include: the United Nations Interim Administration Mission in Kosovo, United Nations Transitional Administration in East Timor, United Nations Observer Mission in El Salvador, United Nations Verification Mission in Guatemala, United Nations Mission in Côte de Ivoire, United Nations Mission in Liberia and United Nations Stabilization Mission in Haiti¹⁶.

The PSOs often play different roles depending on their expertise and needs of a country. Nations emerging from war sometimes lack adequate human resource, capacity and resources to rebuild and reconstruct. PSOs can avert this crisis by addressing existing gaps. In Kosovo and East Timor, the PSOs were directly involved in the administration of judiciaries, police and prison services. In El Salvador, Guatemala, Liberia, Côte de Ivoire and Haiti they were pivotal in the rule of law and justice processes.¹⁷ Not all PSOs have the mandate to oversee Transitional Justice Processes, and those that have had the opportunity such as the ones above, have been

¹⁶ Human Rights Watch. 2004. *Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda*. New York: Human Rights Watch. Available: <http://hrw.org/reports/2004/rwanda0904/rwanda0904.pdf>

¹⁷http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf accessed on 16th May 2014 see also <http://www.unrol.org/files/2004%20report.pdf>

fundamental in aiding states in transition. The mandates accorded to each PSO may differ depending on the needs of each country and availability of resources

Past PSOs such as those of the United Nations have aided host nations by setting up tribunals, truth commissions and reparation programmes. At the UN headquarter level; PSOs have been fundamental in undertaking needs assessments, planning and deployment of staff with specialized expertise. PSOs have been a key contribution to the host nations. In the field, some of their duties have included facilitation, coordination and capacity building. Moreover, they have been pivotal in resource mobilization, record keeping, monitoring and evaluation. Additionally, PSOs play an important role in collecting and documenting information on human rights violations. The information they provide is therefore useful to whatever justice system is set up as evidence against perpetrators and identification of victims and witnesses.

1.6.2 Regional Perspective of PSOs

The emergence of transitional justice mechanisms in an attempt to respond to wartime violence, oppressive governmental regimes and genocide has provided important insight into the necessity of striking a balance between traditional symbolic and material reparations. Further, the significance of culture as evidenced within the Indigenous justice and healing practices of Rwanda in particular, have provided an opportunity to ‘fill the gaps’ often left by the temporal nature of truth commissions and tribunals.

1.6.3 PSOs and Transitional Justice in Rwanda

In 1994, Rwanda experienced genocide for three months where over one million Tutsi and moderate Hutus were killed. Faced with the challenge posed by the genocide, Rwanda had to find ways to achieve reconciliation, end impunity and address hatred. Citizens in Rwanda were

affected part either as perpetrators or victims¹⁸. Over 800,000 people had been accused to have participated in the genocide directly or indirectly and were awaiting trial¹⁹. Initially, Rwanda prosecuted suspects of genocide but was faced with capacity issues both in the prisons and judiciary. With only 5 judges and 50 lawyers, it was impossible to try the suspects through ordinary criminal justice system.

Setting precedence in Africa, Rwanda employed three approaches of Transitional Justice; International, National and Local levels. On the international front was the International Criminal Tribunal of Rwanda based in Arusha whilst on the National level was the ordinary criminal justice through the Local courts in Rwanda and finally at the grassroots were the Gacaca courts representing the local traditional reconciliation mechanisms.²⁰ In 1994, the United Nations Security Council through resolution 995/1994 recommended the setting up of the ICTR²¹. It was mandated to prosecute those who committed genocide and other gross human rights violations. Additionally, it was mandated to play the dual role of contributing to reconciliation and peace²². Compared to the ICTY (Yugoslavia tribunal) the ICTR (Rwanda Tribunal) mandate was narrower²³. Both tribunals were established to deal with the worst atrocities since World War II.

¹⁸ Wielenga, C. and G. Harris (2011) 'Building Peace and Security After Genocide: The Contribution of the Gacaca Courts of Rwanda', *African Security Review*

¹⁹ Ibid

²⁰ Clark, J.N. (2011) 'Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship', *International Criminal Law Review*

²¹ Clark, J.N. (2008) 'The Three Rs: Retributive Justice, Restorative Justice, and Reconciliation', *Contemporary Justice Review*

²² Izabela Steflja (2012) 'Challenges of Transitional Justice in Rwanda' No 18. (January 2012): <http://www.africaportal.org/articles/2012/01/06/challenges-transitional-justice-rwanda>

²³ Barria, L.A. and S.D. Roper (2005) How Effective are International Criminal Tribunals? An Analysis of the ICTY and the ICTR', *The International Journal of Human Rights*

This was in addition to restoring justice to victims and holding perpetrators accountable that otherwise could not be tried in national court processes²⁴.

The Gacaca was set up to address local level crimes and it utilized traditional reconciliation mechanism to resolve conflict. Serving the purpose of instilling social harmony, the Gacaca court utilized both retributive and restorative forms of justice²⁵. They were set up to ‘guarantee accountability, promote rule of law, and to speed up the prosecution of those accused of genocide crimes’²⁶. Given the challenge of capacity, the Gacaca courts helped speed up trials and provided the society with the opportunity to participate in the process. Despite the success celebrated by Gacaca, many issues have been raised concerning the court. The court is blamed for failing to hold the RPF accountable for their crimes, and perceived as serving interests of the government thus representing the victors’ justice²⁷.

The Gacaca system has come under criticism from among others the Survivors Fund, which represents survivors of the genocide, who argue that the Gacaca process poses danger to the survivors since it does not protect them from perpetrators especially after they appear as witnesses. There have been a number of reports about survivors and judges being targeted for giving evidence at the courts.

1.6.4 PSOs and Transitional Justice in Sierra Leone

The case of Sierra Leone provides a multiplatform for analysis. Sierra Leone remains unique due to the implementation of both a Truth and Reconciliation Commission (TRC) and the Special

²⁴ Humphrey, M. (2003) 'International Intervention, Justice and National Reconciliation: The Role of the ICTY and ICTR in Bosnia and Rwanda', *Journal of Human Rights*

²⁵ Malan, J. (2008) 'Understanding Transitional Justice in Africa': *Peace & Conflict in Africa*, London/New York: Zed Books

²⁶ Longman, T. (2009) 'An Assessment of Rwanda's Gacaca Courts', *Peace Review* 21(3): 304-312

²⁷ Ibid

Court for Sierra Leone. While this example demonstrates both the positive and negative impacts of the methods in question, it subsequently ‘raises crucial questions about setting precedents for future transitional justice mechanisms.’²⁸ The issue of cooperation between international and domestic judiciaries has often been perceived as a setback for the progress of judicial approaches. As such, Sierra Leone’s reduced role has meant that the Special Court for Sierra Leone has been perceived as ‘international’, thus raising questions regarding local relevance and risking local disengagement.²⁹ The establishment of the Truth Commission in Sierra Leone³⁰ raised valid questions about the temporary nature of transitional justice mechanisms. Highlighted by the case of Sierra Leone, the impermanent nature has seen locals frustrated by the limited time available to them.³¹

However, if designed and implemented successfully, Truth Commissions are able to foster not only a common understanding and acknowledgement of a country’s horrific past, but also establish a solid foundation for the construction of a durable peace.³² The two-year Commission demonstrated the harsh reality of limited funds as well as a restricting timeline limiting its overall reach.³³ However, despite issues surrounding TRCs, they have highlighted the necessity in embracing local considerations. Although it is important to acknowledge how local

²⁸ Nowrojee, Binaifer, “Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone’s Rape Victims”, *Harvard Human Rights Journal*, Vol.18, 2005

²⁹ Perriello, Tom and Wierda, Marieka, “The Special Court for Sierra Leone Under Scrutiny,” *International Center for Transitional Justice*, March, 2006

³⁰ The Truth Commission in late 2002 until 2004 was based on the South African model. (Found in: ‘*The Truth and Reconciliation Commission Act*’ (Sierra Leone), Available at: http://www.usip.org/library/tc/doc/charters/tc_sierra_leone_02102000.html)

³¹ In the case of Sierra Leone, commissioners and locals were only exposed to the Sierra Leone Truth and Reconciliation Commission (SLTRC) for a week in each province. Found in: Dougherty, Beth. K, “Searching for Answers: Sierra Leone’s Truth and Reconciliation Commission,” *African Studies Quarterly*, Vol.8, 2004, p.44, Available at: www.africa.ufl.edu/asq/v8/v8i1a3.pdf

³² United States Institute of Peace, “Transitional justice: Information Handbook,” *United States Institute of Peace*, 2008, p.12, Accessed: 10th July, 2014, Available at: www.usip.org/sites/default/files/TRANSITIONAL%20JUSTICE%20formatted.pdf

³³ Hayner, Priscilla.B, “Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions.” *Routledge*: New York, 2011, p.59

communities respond to public hearings, the use of traditional justice and healing mechanisms have provided opportunities for this method to be tested as the sole technique, as well as using it in conjunction with judicial procedures.

1.6.5 PSOs and Transitional Justice in Burundi

Burundi's past has been replete with mass human rights violations during which women have been particularly affected. Struggles over land and power resulted in a series of ethnic conflicts since Burundi achieved independence from Belgium in 1962, manifesting in widespread fighting in 1965, 1972, 1988, and, most recently, between 1993 and 2005. The assassination of President Melchior Ndadaye in October 1993 provoked Burundi's most recent and bloody 12-year conflict. These events have had a profound impact on the lives of Burundian women who, in addition to being subject to sexual-based violations, were also victims of internal displacement and subject to economic deprivation. Despite these challenges, women in Burundi have been visible actors in attempts to protect human rights, denounce perpetrators and promote transitional justice. Further, Burundi's most recent political transition has presented a unique opportunity to increase women's access to justice and provide recognition for the harms committed against them through transitional justice initiatives³⁴.

A series of UN-led peace agreements aimed to resolve Burundi's conflict, culminating in the creation of a transitional government in 2003. Following elections in 2005, a government was formed by the *Conseil National pour la Défense de la Démocratie-Front pour la Défense de la Démocratie* (CNDD-FDD) under President Pierre Nkurunziza, a former rebel leader. The new government was bound by the Arusha Peace Accords signed in 2000 which had recommended the creation of both a Truth and Reconciliation Commission (TRC) as well as an International

³⁴ UN Burundi Country Report, 'Burundi and women's political participation – The role of ONUB'. Available at <http://www.un.org/africa/osaa/reports/Burundi%20and%20Women's%20Political%20Participation.pdf>.

Judicial Commission of Inquiry to hold accountable those guilty of crimes against humanity and to assist in Burundi's transition. The Arusha Accords specifically noted the need for the inclusion of women in the transitional justice mechanisms identified and also made special provision for the protection of widows and female-headed households³⁵. The 2005 UN mission's report, popularly known as the Kalomoh Report, also called for the establishment of dual transitional justice mechanisms, composed of both a truth commission and a special chamber to try those bearing greatest responsibility for acts of genocide, war crimes or crimes against humanity³⁶.

This was reinforced by UNSCR 1606 of 2005, which called on the UN Secretary-General to begin negotiations with the Burundian government to take the process forward. After protracted negotiations in November 2007, the government and the UN agreed on the creation, composition and mandate of a tripartite steering committee for "National Consultations on the Establishment of Transitional Justice Mechanisms for Burundi".³⁷

While women in Burundi continue to face numerous social, cultural and legal challenges to their access to justice, there is also considerable support for mechanisms to bring about accountability for past violations. The main recommendations to the EU member states and the European Delegation are as follows³⁸:

Truth-seeking process: Given the breadth and diversity of gender-based crimes committed during Burundi's conflict, women have the right to know the truth about the gross human rights violations committed against them.

³⁵ Accord d'Arusha, Protocole I Chapitre 5, Article 3.

³⁶ G. Nduwayo. *Les Dilemmes de la Justice Transitionnelle au Burundi* [The dilemma of transitional justice in Burundi] (unpublished report), p.35.

³⁷ UN Security Council, S/2005/158, March 2005.

³⁸ Framework agreement between the government of Burundi and the UN

Many women are prepared to share their experiences of human rights abuse, provided that their security and anonymity is protected. However, concerns exist over how the stigma associated with rape and sexual violence will be addressed and how the needs of traumatized individuals will be met during any truth-seeking process³⁹.

Criminal prosecutions: Since women were affected by violence but have also been subject to intimidation over pursuing accountability, there remain sharp divisions as to which types of legal mechanisms are best suited in the current environment. During interviews, two contrasting views were prevalent: those women who called for forgiveness, in line with the sentiment promoted by the authorities; and those women who insisted on the need for prosecutions despite the threats directed towards them and witnesses. Particular calls came for prosecution of perpetrators who infected victims with HIV as a result of sexual violence.

Institutional reform: Many women claimed to be unaware of reforms in the army and police and decried the fact that they still had to live with demobilized people who continue to terrorize and rape in the community. They suggest further reforms so that women's needs are better met, including reform of the legal system to ensure more sensitivity to gender-based crimes⁴⁰.

Reparations: Funding of practical reparations, such as the provision of care for the physical and mental health of victims and educational support to tertiary level for orphans, are of greatest value. Women interviewed noted the need to ensure reparations for those families caring for children born of rape, forced pregnancy and forced prostitution; to ensure compensation for

³⁹ www.initiativeforpeacebuilding.eu

⁴⁰ Ibid

women for the destruction of family property; as well as to provide mechanisms to tackle the feminization of poverty as a result of the conflict⁴¹.

Memory: Monuments commemorating key sites of Burundi's conflict have already been erected at a variety of locations. For example, in Gitega a genocide memorial has been erected on the site where up to 75 Tutsi high school students were abducted from school, locked in a gas station and burnt alive in 1993. For some women, these types of memorials are valued places of mourning and healing, but for others they hold little worth. These differences stem from the lack of information about the rationale for these memorials, and questions have arisen due to their ethnic undertones. Nonetheless, there are many views as to the types of monuments that need to be built in order to satisfy the victims and survivors of the conflict, and women's organizations need to be consulted⁴².

Amnesty: In light of the serious violations of women's rights and the fact that UNSCR 1325 on Women Peace and Security emphasizes in Article 11 that '*all forms of sexual and other violence against women and girls should be excluded from amnesty*', Burundi's transitional justice processes should allow no immunity for sexual-based violations⁴³.

1.6.6 Role of AU Missions in Transitional Justice

The African Union has engaged in the development of transitional justice in Africa. In fact, despite the fact that the African Union has yet to adopt a specific framework on transitional justice, the core values included in the African Union's key documents demonstrate the importance of the issues and are indicative of the form that transitional justice is taking in the continent. The African Union's Panel of the Wise (a five member consultative body of the AU)

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

should adopt an advocacy role to promote and reinforce guiding principles. Specifically, the Panel is urged to place transitional justice issues at the centre of a new continental legal architecture, which would include promoting ratification of existing legal instruments such as the African Charter on Human and People's rights and the new African Court on Human and Peoples' Rights.

1.6.7 AU Mission in Rwanda Transitional Justice

Rwanda provides a far-reaching example of experiments in justice and reconciliation. It also reveals how the combination of international, national, and traditional criminal prosecutions can both facilitate and limit justice and reconciliation. A number of ceasefire agreements were signed by the Rwandan Patriotic Front (RPF) and government, including one signed on 22 July 1992 in Arusha, Tanzania that resulted in the Organization of African Unity (OAU) establishing a 50-member Neutral Military Observer Group (NMOG I) led by Nigerian General Ekundayo Opaleye. The negotiations for a peace settlement continued in Arusha, interrupted by a massive RPF offensive in early February 1993. Uganda participated through the United Nations Observer Mission Uganda-Rwanda (UNOMUR) approved by the United Nations Security Council (UNSC) on 22 June 1993 to keep vigil on her border⁴⁴. The United Nations later created the International Criminal Tribunal for Rwanda (ICTR) based in Arusha in November 1994 to prosecute the masterminds of the genocide and other serious violations of international humanitarian law.

1.6.8 The AU Mission in Burundi Transitional Justice

The Arusha Agreement made provision for an international peacekeeping force in Burundi. The October 2002 ceasefire agreement between the Transitional Government of Burundi (TGoB) and

⁴⁴ [S/RES/846 \(1993\)](#) PDF, [United Nations Security Council](#), 22 June 1993

the Armed Political Parties and Movements (APPMs) stressed that the truce should be verified and controlled by a peacekeeping mission, either mandated by the UN or undertaken by the AU. The ceasefire agreement signed in December 2002 confirmed that the verification and control of that agreement should be conducted by the African Union.

The August 2000 Arusha Peace and Reconciliation Agreement for Burundi and the so-called Kalomoh report conducted by experts sent by the UN provide the basis for dealing with issues of reconciliation and justice for mass atrocities of the past in Burundi. The Kalomoh report assessed the feasibility of the mechanisms proposed in the agreement. The report recommended the creation of a truth and reconciliation commission in accordance with the agreement and, instead of the special tribunal provided for in the agreement, a special chamber within Burundi's court system staffed by national and international members and personnel. The Security Council approved the Kalomoh report in Resolution 1606 (2005). Since then, the UN and the government have been engaged in protracted negotiations regarding the operational framework for the proposed mechanisms.

1.6.9 AU Mission in Sierra Leone Transitional Justice

The conflict in Sierra Leone dates from March 1991 when fighters of the Revolutionary United Front (RUF) launched a war from the east of the country near the border with Liberia to overthrow the government. With the support of the Military Observer Group (ECOMOG) of the Economic Community of West African States (ECOWAS) Sierra Leone's army tried at first to defend the government but, the following year, the army itself overthrew the government⁴⁵. Despite the change of power, the RUF continued its attacks. In February 1995, the United Nations Secretary-General appointed a Special Envoy, Mr. Berhanu Dinka (Ethiopia). He

⁴⁵ Mobekk, Eirin, "Transitional Justice in Post-Conflict Societies- Approaches to Reconciliation", in *Post Conflict Societies- From Intervention to Sustainable Local Ownership*", ed. Ebnöther, Anja. H et al. Geneva Centre for the Democratic Control of Armed Forces (DCAF): Geneva, 2005, p.287

worked in collaboration with the Organization of African Unity (OAU) and ECOWAS to try to negotiate a settlement to the conflict and return the country to civilian rule.

Parliamentary and presidential elections were held in February 1996, and the army relinquished power to the winner, Alhaji Dr. Ahmed Tejan Kabbah. The RUF, however, did not participate in the elections and would not recognize the results. The conflict continued. Special Envoy Dinka assisted in negotiating a peace agreement, in November 1996, between the Government and RUF known as the Abidjan Accord. The agreement was derailed by another military coup d'état in May 1997. This time the army joined forces with the RUF and formed a ruling junta. President Kabbah and his government went into exile in neighboring Guinea. A new Special Envoy, Mr. Francis G. Okelo (Uganda) and other representatives of the international community tried, but failed, to persuade the junta to step down. The Security Council imposed an oil and arms embargo on 8 October 1997 and authorized ECOWAS to ensure its implementation using ECOMOG troops⁴⁶.

On 23 October, the ECOWAS Committee of Five on Sierra Leone and a delegation representing the chairman of the junta held talks at Conakry and signed a peace plan which, among other things, called for a ceasefire to be monitored by ECOMOG and -- if approved by the UN Security Council -- assisted by UN military observers. On 5 November, President Kabbah issued a statement indicating his acceptance of the agreement, and stated his Government's willingness to cooperate with ECOWAS, ECOMOG, the United Nations and UNHCR in the implementation of their respective roles. Although the junta publicly committed itself to implementing the agreement, it subsequently criticized key provisions and raised a number of issues, with the result that the agreement was never implemented⁴⁷.

⁴⁶ <http://www.un.org/en/peacekeeping/missions/past/unamsil/background.html>

⁴⁷ Ibid

In February 1998, ECOMOG, responding to an attack by rebel/army junta forces, launched a military attack that led to the collapse of the junta and its expulsion from Freetown. On 10 March, President Kabbah was returned to office. The Security Council terminated the oil and arms embargo and strengthened the office of the Special Envoy to include UN military liaison officers and security advisory personnel.⁴⁸

On June 1998, the Security Council established the United Nations Observer Mission in Sierra Leone (UNOMSIL) for an initial period of six months. The Secretary-General named Special Envoy Okelo as his Special Representative and Chief of Mission. The mission monitored and advised efforts to disarm combatants and restructure the nation's security forces. Unarmed UNOMSIL teams, under the protection of ECOMOG, documented reports of on-going atrocities and human rights abuses committed against civilians⁴⁹.

Fighting continued with the rebel alliance gaining control of more than half the country. In December 1998 the alliance began an offensive to retake Freetown and in January overran most of the city. All UNOMSIL personnel were evacuated. The Special Representative and the Chief Military Observer continued performing their duties, maintaining close contact with all parties to the conflict and monitoring the situation. Later the same month, ECOMOG troops retook the capital and again installed the civilian government, although thousands of rebels were still reportedly hiding out in the surrounding countryside⁵⁰.

In the aftermath of the rebel attack, Special Representative Okelo, in consultation with West African states, initiated a series of diplomatic efforts aimed at opening up dialogue with the rebels. Negotiations between the Government and the rebels began in May 1999 and on 7 July all parties to the conflict signed an agreement in Lome to end hostilities and form a government of

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

national unity. The parties to the conflict also requested an expanded role for UNOMSIL. On 20 August the UN Security Council authorized an increase in the number of military observers to 210.

On 22 October 1999, the Security Council authorized the establishment of UNAMSIL, a new and much larger mission with a maximum of 6,000 military personnel, including 260 military observers, to assist the Government and the parties in carrying out provisions of the Lome peace agreement. At the same time, the Council decided to terminate UNOMSIL.

On 7 February 2000, the Security Council, by its resolution 1289, decided to revise the mandate of UNAMSIL to include a number of additional tasks. It decided to expand the military component to a maximum of 11,100 military personnel, including the 260 military observers already deployed. The Council also authorized increases in the civil affairs, civilian police, administrative and technical components of UNAMSIL, as proposed by the Secretary-General.

The Security Council again increased the authorized strength of UNAMSIL, to 13,000 military personnel, including the 260 military observers by its resolution 1299 of 19 May 2000. On 30 March 2001, a further increase was authorized to 17,500 military personnel, including the 260 military observers. The Council took this decision by its resolution 1346, and, by the same resolution, approved a revised concept of operations⁵¹.

In response, the Security Council passed Resolution 1315 establishing the Special Court for Sierra Leone. By agreeing to the creation of the court, the government effectively repudiated the amnesty. The establishment of the special court changed the dynamics of Sierra Leone's peace process, which had already mandated a truth commission. Delays in getting the truth commission started meant that it had to operate simultaneously with the special court, causing confusion

⁵¹ Nowrojee, Binaifer, "Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims", *Harvard Human Rights Journal*, Vol.18, 2005, p.85.

among the victims. The court's mandate did not mention how it would cooperate with the existing Truth and Reconciliation Commission. Both should have played complementary roles, with the court trying and convicting only the masterminds of the conflict, and the Truth and Reconciliation Commission providing a more complete record of the conflict⁵². As a result, the creation of the Special Court for Sierra Leone essentially relegated the Truth and Reconciliation Commission to second-class status, with donors increasingly diverting funds to the court.

1.7 Theoretical Framework

1.7.1 Neoliberalism

Neoliberalism first became dominant in the United States and Great Britain during the governments of Reagan and Thatcher, respectively.⁵³

In time, these ideas gained a foothold in the major international development agencies, including the International Monetary Fund (IMF) and the World Bank. Embedded in neoliberal discourse is the belief that the political ideals of human dignity and individual freedom are universally central to human civilization⁵⁴. Such ideals, according to Harvey, are both compelling and seductive. For neoliberals, these ideals lead to the normative theory that human well-being is best advanced by “liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.”⁵⁵

⁵² *The Truth and Reconciliation Commission Act'* (Sierra Leone), Available at: http://www.usip.org/library/tc/doc/charters/tc_sierra_leone_02102000.html

⁵³ David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005).

⁵⁴ Ibid

⁵⁵ Ibid

In this ideological view of dignity and freedom, the state exists to guarantee the integrity of money and private property through the establishment of a military, police force, and legal structures.⁵⁶

The development of neoliberalism is based on a specific premise regarding the nature of society: “the notion that, however complex social relations might be, there exists an imminent market-like essence to each individual, regardless of a society’s culture or history.”

Neoliberals believe that the economic sphere functions according to a basic rationality whereas the political sphere is assumed to be inherently irrational.

A basic assumption of neoliberalism, then, is the institutional separation of society into an economic and political sphere, as neoliberals claim that all problems of the economy can be resolved by socially-neutral experts using technical rationality. Derived from this belief, neoliberal policy prescriptions emphasize market solutions to relieve the problems of (re)distribution. At the core of this is that “long-term harmony of interest is implicit in economic activity within the framework of a free market.”⁵⁷

With this, the rolling back of the state is identified as an integral process in order to unleash market forces. The state’s role, in this light, is to provide a “conducive environment for the private accumulation of capital by the bourgeoisies—both international and local... the redesigned pro-capitalist state is expected to protect the capitalists and their physical assets from destruction by the possible actions of the exploited and marginalized subaltern classes.”⁵⁸ Such a

⁵⁶ Ibid

⁵⁷ Paul Williams and Ian Taylor, “Neoliberalism and the Political Economy of the ‘New’ South Africa,” *New Political Economy* 5, no. 1 (2000)

⁵⁸ George Klay Kieh, Jr. “The New Globalization: Scope, Nature and Dimensions,” in *Africa and the New Globalization*, edited by George Klay Kieh, Jr. (Hampshire: Ashgate Publishing Limited, 2008)

neoliberal view, is, according to Harvey, “threatened not only by fascism, dictatorship, and communism (the old political battles), but by all forms of state intervention that substituted collective judgments for those of individuals free to choose.”⁵⁹

As a result of this “rolling back” of the state, there is often a retrenchment of the social safety net forcing states that adopt these policies to end various programs in areas such as public education, public housing, and public transportation. In many African states, the World Bank and IMF have pressured governments to stop investing in public higher education and, instead, allow private ownership to assume control over these vital services. In response, Kieh argues that “ultimately, the overarching contour is the facilitation of the rapacious process of capital accumulation by metropolitan-based multinational corporations and other businesses. That is, the capitalist doctrine dictates that all ‘barriers’ to profit-making are to be removed, and the possibilities for the unbridled and unfettered accumulation of wealth be expanded and protected.”⁶⁰

What we see is that the principle of profit-making trumps the condition of basic human needs. Vulnerable groups including women and children are, no doubt disproportionately affected. According to Joseph Stiglitz, former vice president and chief economists of the World Bank, the economic solutions subscribed by the IMF and the World Bank have “the feel of the colonial rulers; they help to create a dual economy in which there are pockets of wealth... But a dual economy is not a developed economy.”⁶¹ The roles of the IMF and World Bank have steadily increased throughout the world. Today, these institutions are not merely loan providers. As seen in by the Structural Adjustment Programs required and promoted by the World Bank and IMF,

⁵⁹ Harvey, *A Brief History of Neoliberalism*

⁶⁰ Kieh, Jr. “The New Globalization,”

⁶¹ Joseph Stiglitz, *Globalization and its Discontents* (New York: W.W. Norton, 2003)

they have become heavily involved in institutional reforms and governance in developing countries.⁶²

While neoliberalism emerged to enact a specific new economic doctrine, it, no doubt, entails to a “broader ideological norm—neoliberalism—concerning the nature of society.”⁶³ A richer understanding of neoliberalism is as a “project to expand and universalize free-market social relations.”⁶⁴ The incorporation of the phrase, “free market social relations” alludes to the fact that, much of the work being done by the IMF and World Bank goes beyond a “rolling back of the state.” To Harrison, neoliberalism is an attempt to shape the economy, the state, and society.⁶⁵

Indeed, the faith in the removing of the state, ever present in the 1980s, has given way to a realization that “reducing the state’s unproductive involvement in society was not a sufficient condition to ensure the development of properly functioning markets.” The provision of social infrastructure was needed to ensure the conditions for individuals to act socially in a market-conforming fashion; “education provides the cognitive ability to balance utilities; roads create mobility, and bring markets to more remote areas. A stronger state ability to establish a regime of property in rural areas is seen as a key part of agricultural development, allowing land to be used more efficiently, productively and as collateral for loans.”⁶⁶

The states expansion into society did not fit nicely into the neoliberal framework; however, according Harrison, it “represents the fuller ambition of neoliberalism and its champions—social

⁶² John Makum Mbaku, “The African Debt Crisis and the New Globalization,” in *Africa and the New Globalization*, ed. George Klay Kieh, Jr. (Hampshire: Ashgate Publishing Limited, 2008)

⁶³ Harrison, “Economic Faith, Social Project and a Misreading of African Society,”

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Ibid

engineering to create a market society that involves the state (under the auspices of external agencies) as the principal engineer.”⁶⁷

Such social engineering sought to bring the wisdom of the free market into both public institutions as well as into broader society, more generally.⁶⁸ It is in this context that transitional justice can contribute to the construction of the liberal state. Increasingly, institutionalization has been argued as necessary prior to the liberalization of a state. The building of strong and effective political and legal institutions, including a written constitution, a functioning judiciary, and a police force able to enforce the new rules, are all critical for a functioning state.⁶⁹

In response, international community has sought to promote the development of “functioning (and indeed democratic) political institutions, public administrations that can deliver basic goods and services, and a legal framework which is sufficiently robust to encourage investment, trade and industry as well as more general public confidence in the state.”⁷⁰

According to McEvoy “developing the state’s institutional capacity to deliver justice is thus viewed as a core element in the process of re-building structures of governance more generally. It is both a practical and symbolic necessity as well as a way of seeing reconstruction.”⁷¹

Indeed, the power of transitional justice was not fully realized until the international community came to the consensus that significant investment into liberal institutions was necessary for societies emerging from conflict.

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Kieran McEvoy, “Letting Go of Legalism: Developing a ‘Thicker’ Version of Transitional Justice in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, eds. by Kieran McEvoy and Lorna McGregor (Oxford: Hart Publishing, 2008)

⁷⁰ Ibid

⁷¹ Ibid

McEvoy writes,

In such a context, law becomes an important practical and symbolic break with the past; an effort to publicly demonstrate a new found legitimacy and accountability. In some such circumstances, the signing up to and implementing of international human rights agreements are integral to seeking international respectability. A professed respect for the rule of law demonstrates a 'fitness of purpose' for countries to take a proper place amongst the community of nations, or even the recovery of a sense of national self-confidence and pride⁷².

The value placed on transitional justice mechanisms as tools for establishing liberal democracy forces a re-thinking of the role of power in transitional justice. Indeed, in this light, they are more than just mechanisms of justice but are “meticulous rituals of power” which reaffirm the importance of a liberal democratic state and the accompanying capitalist relations.

1.8 Methodology

This research adopts a case study design to explain and analyze the core issues in transitional justice and peace. Robert K. Yin affirms that case studies are a preferred strategy when “how” or “why” questions are being posed, when the investigator has little control over events, and when the focus is on a contemporary phenomenon within real-life context⁷³. Martyn Denscombe states that “case studies aim on one or a few research units in the purpose to get a deep going report of events, relations, experiences or processes that appear in this special research unit.

The main purpose of this research study is to focus on the role of peace support operations- the means rather than the ends. This study is pragmatic in a way that it is going to cover real life events that have occurred or are in the ongoing process of happening in Rwanda in regards to Transitional Justice. By using a case study, the researcher hopes to get a deeper understanding of

⁷² Ibid

⁷³ Yin, Robert K, 2003. Case study research: design and methods. Thousand Oaks, Calif.: Sage Publications cop.

how peace support operations in Rwanda handled the issue of transitional justice; besides it gives the researcher an opportunity to see the complexity of the situation.

The research has adopted both qualitative and quantitative approaches. Often in qualitative design only one object, one case, or one unit is the focus of investigation over an extended period of time. In Handbook of qualitative research by Norman Denzin and Yvonna Lincoln, they offer what they call a generic definition; “qualitative research is multi-method in focus, involving an interpretive, naturalistic approach to its subject matter. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or interpret phenomena in terms of the meanings people bring to them. Qualitative research involves the studied use and collection of a variety of empirical materials – case study, personal experience, introspective, life story, interview, observational, historical, interactions, and visual texts-the described routine and problematic moments and meanings in individuals’ lives”⁷⁴.

The research is interested in the character and the role of peace support operations in transitional justice in Rwanda. To be clear, qualitative data is an interpreting process and can be used as either a part of collecting data or as a foundation for theory development. The researcher will use it as a tool for collecting data hoping that the analysis and questions will try and explain Rwanda’s transitional justice process. Research outcomes are of no value if the methods do not justify our confidence. Those who read and rely on research outcomes must be satisfied that they lead to truthful outcomes⁷⁵.

³ Newman, Isadore - Benz, R Carolyn, 1998. Qualitative-quantitative research methodology: exploring the interactive continuum. Carbondale, Ill: Southern Illinois University Press.

⁷⁵ Ibid

1.8.1 Sample and Sampling Procedure

The field of transitional justice has not been well published by scholars. The researcher was interested in the role that peace support operations play during the transitional justice process. To get the appropriate sample to be studied, there were three major sources of data for this project, namely in-depth interviews with key experts in the field, focus group discussions with Rwandese citizens who live in Nakuru Kenya and survey questionnaire.

The survey questionnaires were administered to a total of 50 respondents. The purposive sampling technique was adopted. This technique would involve visits to Universities such as Nairobi and Methodist Universities, streets in the Nairobi Business District and Westlands to interview the respondents. The research was through actual visits. It involved systematic random sampling technique, involving every 10th person; this was used where there would be several potential respondents at a sampling site. The researcher used a case study approach to investigate issues relevant to peace support operations and transitional justice process in Rwanda, thereby limiting the sample size to 55.

1.8.2 Data Collection Procedure

The study made use of primary data collected from the questionnaires, in-depth interviews with key informants and through the use of Focus Group Discussions. Secondary data was obtained from books, websites and journals. The researcher will first seek authorization to conduct the interview with the experts and also with the organization officials. The questionnaires were self-administered. The respondents shall be given a period of one week to fill in and then the researcher shall go to collect the filled questionnaire after the agreed period of time. The questionnaires shall consist of both open-ended and closed ended questions. This enabled the respondents to give the information needed without limitations.

When conducting case studies evidence may come from different sources, for example documents, archival records, interviews, direct observation, participant-observation, and physical artefacts⁷⁶. Besides that, there are three overriding principles that are important to any data collection effort when doing this type of studies, these include (a) multiple sources of evidence (b) a case study database and (c) a chain of evidence. The incorporation of these principles into a case study will increase its quality substantially⁷⁷.

Also material from the International Peace Support Training Centre (IPSTC) in Karen Nairobi, a research and training institution focusing on capacity building at the strategic, operational and tactical levels within the framework of the African Peace and Security Architecture (APSA) and which has developed into the regional Centre of excellence for the African Standby Force (ASF) in Eastern Africa, will be of great use. The authors of the books referred from, are all established scholars.

1.8.3 Validity and Reliability

Validity refers to what amount of credibility this research has, and even so if the framework and method fit the purpose of the study. In this research, it refers to if the peace support operations indicators that the researcher is going to define and use as measures of the transitional justice process have credibility to the study. The researcher will prepare a questionnaire and an interview guide for key informants that were used to collect data from the respondents. To ensure that it is not biased and that it is appropriate to get to the field, the questionnaire will be given to the researcher's supervisor. The supervisor's corrections and suggestions make the instrument better and fit for the study. Data to be collected through different techniques will be triangulated to build consistent justification for various subject matters. The researcher will weigh against

⁷⁶ Ibid

⁷⁷ Yin, Robert K, 2003. Case study research: design and methods. Thousand Oaks, Calif.: Sage Publications cop.

results from the questionnaire and what was observed to come up with clear and explicable report.

Reliability refers to the robustness of the measurement process, for example can you measure the same thing so that it shows the same results. The reliability is defined as the extent to which a measurement is free from random error components. In this case study, the researcher will have reliability if the indicators in the research show the same results if the same indicators were to be used several times again. Reliability is often tested in quantitative studies and methods that consist mostly of statistics. A pilot study will be conducted to ensure that the instrument (questionnaire) is reliable for the study. The questionnaires will be administered to respondents, filled in and collected. The questionnaire provides consistent results that prove that the instrument is reliable for the study.

1.8.4 Data Analysis

Data analyzing employed both quantitative and qualitative techniques. While qualitative is non-numerical information which is related to qualities, values, such as a person's views and its aim being to gather in-depth understanding of human behavior and reasons behind that behavior, quantitative is systematic scientific numerical information⁷⁸. The data collected through a code sheet was coded and fed to a computer and then analyzed with the help of SPSS to generate frequency tables and percentages. Qualitative data was presented in extensive narrative essays. Data from the open-ended questions was analyzed in descriptive narrative.

⁷⁸ Ibid

1.9 Chapter Outline

This research project is organized as follows; Chapter one is the proposal which contains the background to the study, statement of the problem, study objectives and questions, literature review, theoretical framework and methodology. Chapter two will examine the role of UN Mission in Rwanda Transitional Justice process. Chapter three situates the Transitional Justice policy options used in Rwanda and how they played out in dealing with questions of past conflict and human rights abuse in Rwanda. Chapter four will provide thematic approaches to Transitional Justice in Rwanda and discuss the challenges, success and obstacles. The chapter five will provide the summary, conclusions and recommendations.

CHAPTER TWO:

THE ROLE OF UN MISSION IN RWANDA TRANSITIONAL JUSTICE PROCESS

The United Nations Assistance Mission for Rwanda was a mission instituted by the United Nations to aid the implementation of the Arusha Accords, signed August 4, 1993, which were meant to end the Rwandan Civil War. The mission lasted from October 1993 to March 1996. Its activities were meant to aid the peace process between the Hutu-dominated Rwandese government and the Tutsi-dominated rebel Rwandan Patriotic Front (RPF).

Fighting between the Armed Forces of the mainly Hutu Government of Rwanda and the Tutsi-led Rwandese Patriotic Front (RPF) first broke out in October 1990 across the border between Rwanda and its northern neighbor, Uganda. A number of ceasefire agreements followed, including one negotiated at Arusha, United Republic of Tanzania, on 22 July 1992, which arranged for the presence in Rwanda of a 50-member Neutral Military Observer Group I (NMOG I) furnished by the Organization of African Unity (OAU). Hostilities resumed in the northern part of the country in early February 1993, interrupting comprehensive negotiations between the Government of Rwanda and RPF, which were supported by OAU and facilitated by the United Republic of Tanzania⁷⁹.

The United Nations active involvement in Rwanda started in 1993, when Rwanda and Uganda requested the deployment of military observers along the common border to prevent the military use of the area by RPF. The Security Council in June 1993 established the United Nations

⁷⁹ William J. Lahneman (2004). *Military intervention: cases in context for the twenty-first century*. Rowman & Littlefield

Observer Mission Uganda-Rwanda (UNOMUR) on the Ugandan side of the border to verify that no military assistance reached Rwanda⁸⁰.

Meanwhile, the Arusha talks, brokered by Tanzania and OAU, reconvened in March 1993 and finally led to a peace agreement in August 1993. The comprehensive peace agreement called for a democratically elected government and provided for the establishment of a broad-based transitional Government until the elections, in addition to repatriation of refugees and integration of the armed forces of the two sides. Both sides asked the United Nations to assist in the implementation of the agreement. In early August 1993, NMOG I was replaced by an expanded NMOG II force composed of some 130 personnel to operate as an interim measure pending the deployment of the neutral international force.

In October 1993, the Security Council, by its resolution 872 (1993), established another international force, the United Nations Assistance Mission for Rwanda (UNAMIR), to help the parties implement the agreement, monitor its implementation and support the transitional Government. UNAMIR's demilitarized zone sector headquarters was established upon the arrival of the advance party and became operational on 1 November 1993, when the NMOG II elements were absorbed into UNAMIR⁸¹. Deployment of the UNAMIR battalion in Kigali, composed of contingents from Belgium and Bangladesh, was completed in the first part of December 1993, and the Kigali weapons-secure area was established on 24 December.

The United Nations solicited troop contributions, but initially only Belgium with a half a battalion of 400 troops, and Bangladesh with a logistical element of 400 troops, offered personnel. It took five months to reach the authorized strength of 2,548. But because of many

⁸⁰ <http://www.un.org/en/peacekeeping/missions/past/unamir.htm>

⁸¹ <http://www.un.org/en/peacekeeping/missions/past/unamir.htm>

unresolved issues between the parties, implementation of the agreement was delayed. Consequently, the inauguration of the transitional Government never took place.

In April 1994, the Presidents of Rwanda and of Burundi were killed while returning from peace talks in Tanzania, when the Rwandese plane crashed, in circumstances that are still to be determined, as it was landing in Kigali, Rwanda's capital. This set off a tidal wave of political and ethnic killings: the Prime Minister, cabinet ministers and UNAMIR peacekeepers were among the first victims.

The killings, targeting Tutsi and moderate Hutus, were mainly carried out by the armed forces, the presidential guard and the ruling party's youth militia, as subsequently confirmed by the Special Rapporteur on Rwanda of the United Nations Human Rights Commission. The RPF resumed its advance from the north and the east of Rwanda, and government authority disintegrated.

An interim Government was formed, but failed to stop the massacres. With the RPF's southward push, the number of displaced persons and refugees increased tremendously. On 28 April alone, 280,000 people fled to Tanzania to escape the violence. Another wave of refugees went to Zaire. The United Nations and other agencies provided emergency assistance on an unprecedented scale⁸².

UNAMIR sought to arrange a ceasefire, without success, and its personnel came increasingly under attack. After some countries unilaterally withdrew their contingents, the Security Council, by its resolution 912 (1994) of 21 April 1994, reduced UNAMIR's strength from 2,548 to 270. Despite its reduced presence, UNAMIR troops managed to protect thousands of Rwandese who took shelter at sites under UNAMIR control.

⁸² Linda Melvern, *Conspiracy to Murder: The Rwandan Genocide*, Verso: New York, 2004

The Security Council, by adopting resolution 918 (1994) of 17 May 1994, imposed an arms embargo against Rwanda, called for urgent international action and increased UNAMIR's strength to up to 5,500 troops. But it took nearly six months for Member States to provide the troops⁸³.

To contribute to the security of civilians, the Council, by resolution 929 (1994) of 22 June 1994 authorized under Chapter VII of the United Nations Charter a multi-national humanitarian operation. French-led multinational forces carried out "Operation Turquoise", which established a humanitarian protection zone in south-western Rwanda. The operation ended in August 1994 and UNAMIR took over in the zone⁸⁴.

In July, RPF forces took control of Rwanda, ending the civil war, and established a broad-based Government. The new Government declared its commitment to the 1993 peace agreement and assured UNAMIR that it would cooperate on the return of refugees. For their part, when the conflict broken out in April, UNOMUR observers had expanded their monitoring activities in Uganda to the entire border area. But the Security Council gradually scaled down the operation, and UNOMUR left Uganda in September⁸⁵.

By October 1994, estimates suggested that out of a population of 7.9 million, at least half a million people had been killed. Some 2 million had fled to other countries and as many as 2 million people were internally displaced. A United Nations humanitarian appeal launched in July raised \$762 million, making it possible to respond to the enormous humanitarian challenge⁸⁶.

⁸³ <http://www.un.org/en/peacekeeping/missions/past/unamir.htm>

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Barnett, Michael. *Eyewitness to a Genocide: The United Nations and Rwanda*. Cornell University Press, 2002

A Commission of Experts established by the Security Council reported in September that "overwhelming evidence" proved that Hutu elements had perpetrated acts of genocide against the Tutsi group in a "concerted, planned, systematic and methodical way." The final report of the Commission was presented to the Council in December 1994.

Following the end of the main killings the challenges for UNAMIR (and the many NGOs who arrived in the country) were to maintain the fragile peace, stabilize the government and, most importantly, care for the nearly 4 million displaced persons in camps within Rwanda, Zaire, Tanzania, Burundi and Uganda. The massive camps around Lake Kivu in the north west of Rwanda were holding about 1.2 million people and this was creating enormous security, health and ecological problems.

After the late arrival of the much needed troop support, UNAMIR continued to carry out its mandate to the best of its abilities. In 1996, however, with assertion from the new Rwandese government that UNAMIR had failed in its priority mission, the UN withdrew the UNAMIR mandate on March 8, 1996. In the end, 27 members of UNAMIR - 22 soldiers, three military observers, one civilian police and one local staff - lost their lives during the mission.

Despite the failure of UNAMIR in its main mission, its humanitarian services during the 1994 genocide are recognized to this day as having saved the lives of thousands or tens of thousands of Rwandan Tutsi and Hutu moderates who would have otherwise been killed. However, the actions of the UN in Rwanda (and particularly the Head of Peacekeeping Operations at the time, Kofi Annan) have been used by some as examples of the over-bureaucratic and dithering approach of the UN. (General Dallaire was particularly critical of Annan's performance).⁸⁷

Countries that contributed troops to UNAMIR throughout its existence were: Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Canada, Chad, Congo, Djibouti, Egypt,

⁸⁷ Romeo Dallaire, [Shake Hands with the Devil](#), Carroll & Graf: New York, 2003

Ethiopia, Fiji, Germany, Ghana, Guinea, Guinea Bissau, Guyana, India, Jordan, Kenya, Malawi, Mali, Netherlands, Niger, Nigeria, Pakistan, Poland, Romania, Russia, Senegal, Slovakia, Spain, Switzerland, Togo, Tunisia, United Kingdom, Uruguay, Zambia and Zimbabwe.

In the following months, UNAMIR continued its efforts to ensure security and stability, support humanitarian assistance, clear landmines and help refugees to resettle. But Rwanda supported ending the mission, stating that UNAMIR did not respond to its priority needs. The Security Council heeded that request, and UNAMIR left in March 1996⁸⁸.

At a meeting organized by Rwanda and the United Nations Development Programme in 1996, international donors pledged over \$617 million towards the reconstruction of the country. United Nations agencies have continued to provide humanitarian aid and to assist in the return of the refugees.

2.1 International Criminal Tribunal Court for Rwanda

On 8 November 1994, the Security Council established the International Tribunal for Rwanda "for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994". Located in Arusha, Tanzania, the Tribunal issued the first indictments in 1995 and held the first trials in 1997⁸⁹.

2.2 The 1999 Independent Inquiry

Five years after the event, the United Nations and the whole international community remained accused of not having prevented the genocide. In view of the enormity of what happened, and the questions that continued to surround the actions of the United Nations and its Member States

⁸⁸ <http://www.un.org/en/peacekeeping/missions/past/unamir.htm>

⁸⁹ Ibid

before and during the crisis, in March 1999 the Secretary-General, with the approval of the Security Council, commissioned an independent inquiry into those actions.

The members included Mr. Ingvar Carlsson (former Prime Minister of Sweden), Professor Han Sung- Joo (former Foreign Minister of the Republic of Korea) and Lieutenant-General Rufus M. Kupolati (rtd.) (Nigeria).

The findings of the inquiry were made public on 15 December 1999. The inquiry concluded that the overriding failure in international community's response was the lack of resources and political will, as well as errors of judgement as to the nature of the events in Rwanda. Expressing deep remorse over the failure to prevent the genocide in Rwanda, the Secretary-General, in a statement on 16 December, said that he fully accepted the conclusions of the report. He welcomed the emphasis which the inquiry had put on the lessons to be learned and its recommendations to ensure that the United Nations and the international community could and would act to prevent or halt any other such catastrophe in the future⁹⁰.

⁹⁰ Ibid

CHAPTER THREE:

TRANSITIONAL JUSTICE POLICY OPTIONS USED IN DEALING WITH PAST CONFLICT AND HUMAN RIGHTS VIOLATIONS

Varying transitional justice approaches have been presented as a means of dealing with past conflict and human rights violations. These approaches range from taking an aggressive line by adopting policies aimed at emphasizing punishment and condemnation of perpetrators to taking more lenient measures that emphasize forgiveness and conciliation. Still there are procedures that accommodate a middle ground approach favouring policies aimed at balancing numerous goals including punishment, reconciliation and the establishment of an accurate historical record like was the case with the South African Truth and Reconciliation Commission. The essentials for constructing policy frameworks for dealing with past conflict and impunity include the following:

3.1 Truth Telling and evidence gathering in Rwanda Transitional Justice

The prosecution of genocide suspects was faced by lack of evidence due to the fact that in some areas, no one was left to tell what happened and only those present were either relatives of the perpetrators or those who did not want to create poor relations with the relatives of the suspect by testifying to Gacaca trials about “who, when, how it happened. It was thus an imperative challenge to the State to deliver justice and at the same time endeavor to reconcile and unify Rwandans. For purposes of establishing the truth and encouraging the public to play their role in justice process, a National Unity and Reconciliation Commission (NURC) was established.

Primarily, the NURC was mandated with preparation and coordination of all country's programmes on promotion of national unity and reconciliation, investigate and report on

systematic patterns of abuse, recommend changes and help understand the underlying causes of serious human rights violations that occurred.

It encouraged the public to tell the truth known to them about how genocide was perpetrated. To this end, great achievements have been attained by this commission in promoting tolerance among all members of the populations. Through the commission, Rwandans have come to understand and appreciate the value of coexisting and living in harmony with each others as they strive to build a peaceful nation that they will leave to their children. Indeed, very strong and useful social values and components are communicated through the Commission to all walks of Rwandans⁹¹. Justice Albie Sachs argues that truth, by its very nature, is not neat, it is not compact, it is not finished.⁹²

3.2 Unity, Reconciliation and Institutional Reforms in Rwanda Transitional Justice

There is no doubt that the 1994 genocide against the Tutsi was in many ways manifest of abusive state institutions such as armed forces, police and courts to mention among others which by and large called for introduction by appropriate means and establishment of novel structural machinery capable of preventing recurrence of serious human rights abuses and impunity. The overriding political challenge of the post genocide government was to reconcile Rwandans who had been divided for ages without negating the desire to render justice to the victims which was badly needed for the government to maintain its legitimacy. The trials for the genocide suspects was publicized to be one geared towards achieving or promoting Unity and Reconciliation rather retributive justice. This was enhanced by reforming state institutions directly delivering or

⁹¹ Annual Activity Report of NURC of 2010/2011

⁹² The San Francisco Chronicle: 2006

contributing towards unity of Rwandans. This culminated into Constitutional amendment to establish a national fund for the support of genocide survivors⁹³.

The institutional reform was not limited to unifying the genocide suspect and their victims but a complete institutional overhaul touching on gender, children and other special groups, institutions to combat corruption and injustice and those ensuring the state support of the genocide survivors. This overhauling of structural institutions was enhanced by establishment of relevant organs/institutions with specialized mandate of protection and promotion of human rights for better dispensation of justice. These institutions include, the national fund for the support of Genocide survivors (GARG), National Unity and Reconciliation Commission (NURC), National Commission for Human Rights (NCHR)⁹⁴, the Office of the Ombudsman, the National Commission to fight against Genocide (CNRG) Gender Observatory Monitoring Office (GOM), National Council for Women (NCW), Itorero⁹⁵, Ingando solidarity camps which has transformed itself into Intore z'igihugu (civic Article 14 of the 2003 Rwandan constitution as amended to date provides that: “the state shall within the limits of its capacity, take special measures for the welfare of the survivors who were rendered destitute by genocide against the Tutsi committed in Rwanda from October 1st, 1990 to December 31st 1994.....” The NCHR was also established with a two-fold mission i.e., investigating and follow-up on human rights violations and educating the population on their rights. For further information, see the Law N°04/99 of 12/03/1999 establishing the National Commission of human rights, O.G. n° 6 of

⁹³ Article 14 of the 2003 Rwandan constitution as amended to date provides that: “the state shall within the limits of its capacity, take special measures for the welfare of the survivors who were rendered destitute by genocide against the Tutsi committed in Rwanda from October 1st, 1990 to December 31st 1994.....”

⁹⁴ The NCHR was also established with a two-fold mission i.e., investigating and follow-up on human rights violations and educating the population on their rights. For further information, see the Law N°04/99 of 12/03/1999 establishing the National Commission of human rights, O.G. n° 6 of 15/03/1999.

⁹⁵ Traditional Rwandan schools), where self reliance, nationalism and moral values of integrity and taboos are taught

15/03/1999, Traditional Rwandan schools, where self reliance, nationalism and moral values of integrity and taboos are taught education program. All these institutions which are largely decentralized to the lowest administrative unit of the country have a legal duty to promote unity and reconciliation of Rwandans and to protect citizens from acts of human rights abuses⁹⁶.

Such initiatives often with material elements (such as cash payments or health services) as well as symbolic aspects (such as public apologies or day of remembrance) have been provided to survivors via a fund set up under an Act of 22 January 1998 as amended to date, which was designed to help the neediest survivors in key areas such as education, health care and housing among others. Finally, the Government has made every effort to protect survivors and ensure that the perpetrators of genocide do not repeat their heinous crime, by resisting separatist ideas and combating those who continue to hold and disseminate such views.

3.3 Reparations in Rwanda Transitional Justice

Hamber observes that reparations contribute to the process of publicly acknowledging wrongdoing, restoring survivors' dignity and raising public awareness about the harms victims have suffered⁹⁷. While the drive for the establishment of Gacaca Courts was among others, its restorative nature which is naturally inherent in the system and of course for the purposes of empowering the citizens to participate in rendering justice and hence ownership, the government indeed recognized the need to repair in some way the physical damage suffered by the victims. As such, the law instituting Gacaca Courts took into considerations this need of civil reparation.

⁹⁶ See the 9th, and 10th periodic report of the Republic of Rwanda under the African Charter on Human and Peoples' rights (Paras 15, 16 and 17, p 7 -8.) and le 8ème rapport périodique du Rwanda à la Commission Africaine des droits de l'homme et des peuples (pages 9-11; 17-24)

⁹⁷ Hamber, B, 'Repairing the Irreparable: Dealing With Double-Binds of Making Reparations For Crimes of the Past,' INCORE

Civil reparations included among others construction of destroyed residential homes, restitution of other property rooted and financial compensation for moral damages. In criminal matters, the state is a secondary victim of crimes and one of the measures sought by the government to be redressed was institution of works for public interests executed by the genocide convicts. By this way, the convicts, constructed and repaired public roads, public buildings, institutions and other public amenities. In this way, the government believed that the public works would benefit Rwandans in general including the victims who enjoyed those public works constructed by the convicts. However commentators and other pressure rights groups do believe that it is overtly notable that the issue of civil reparations to the victims of genocide remains a serious challenge in Rwanda. The history and issues that were associated to compensation of the Jews to date proves to us such a dilemma. Particularly in Rwanda, black and white truth reveals that most of the perpetrators of genocide and other crimes against humanity - dispose no or inadequate means to meet damages awarded by courts to victims. This has only meant that the government through a holistic approach has resorted to taking sole initiatives that offer basic support to victims of genocide.

3.4 Prosecutions in Rwanda Transitional Justice

The Gacaca justice system was formally instituted by the post-genocide government guided by the spirit of embracing a restorative justice rather than retributive justice as one of the government strategies to restore the Rwandan social fabric which had been severely destroyed by the Genocide against Tutsi. The traditional system was thus in a way modernized to ensure effective delivery of Justice and the ownership of the system by the victims. Modernization included formal legal framework of prosecution of genocide suspects and redressing victims by way of civil reparations. The sought for Gacaca justice system was also propelled by the then a

limited number justice qualified personnel⁹⁸ (some of them were just killed and others had fled the country) a situation which put the country into a big challenge of administering justice at the time it was badly needed by a mass of victims.

While the conventional Justice system of ordinary courts tried a bit to handle some trials but realistically it was not feasible to deliver Justice to the survivors of Genocide⁹⁹. The estimated minimum period required to complete the known numbers of suspects was estimated at 100 years. This period was believed to be repugnant to principle of justice-reasonable delay (Justice delayed is Justice denied. Combined with conventional courts, the inspired by tradition Gacaca Courts were established in 2001 to address these challenges¹⁰⁰. The establishment of Gacaca courts manifested the Government tireless efforts to develop a just means and approach that would try more than 100,000 people accused of genocide, war crimes, and related crimes against humanity which were in recorded at the time.

Recently, Gacaca officially closed its activities, leaving behind a legacy of remarkable successes that saw around 2 million trials in a period of 7 years. This was far beyond expectations of everyone in Rwanda and all regional and international stakeholders of Justice in Rwanda. More importantly though, is that Gacaca helped Rwandans to rediscover their ability to find solutions to seemingly intractable questions and achieve restoration of unity, trust and reconciliation among themselves and to forge a way forward to economic reconstruction of their nation. On the international level, an ad hoc tribunal –the International Criminal Tribunal for Rwanda (ICTR) was established by the United Nations Security Council to prosecute individuals responsible for

⁹⁸ Karen McVeigh, “Spate of killings obstructs Rwanda's quest for justice,” *The Observer*, Sunday December 3 2006 <http://www.guardian.co.uk/world/2006/dec/03/rwanda.karenmcveigh>. Accessed 24 June 2014

⁹⁹ “The Search For Reconciliation”, *The San Francisco Chronicle Editorial*, Sunday, June 25, 2006

¹⁰⁰ The law on Gacaca provided for “four categories” of suspects. The first category included people that conceived, planned and executed genocide were tried by the conventional courts while the second, third and fourth categories were tried by Gacaca courts

genocide, crimes against humanity and serious violations of international humanitarian law committed in Rwanda during 1994. To date, around 37 trials have been held by the Arusha based Court.

As opposed to a restorative Gacaca justice courts, the ICTR comparatively sounds to be a retributive Justice whose slow pace trials and failures to apprehend several masterminders of genocide is said by many if not by all victims to be a failure given the resources allocated to it. It is estimated that at least 3.4 million of people were directly involved in the perpetration of Genocide but only 1.9 million were brought to trial. The other 1.5 million (approx) fled the country after the fall of the rouge regime.

Recent figures presented indicate that at the time of formal closure of Gacaca trials, at least 1,951,388 genocide cases had been tried and completed as of 31st January 2012 segregated below by the following categories¹⁰¹:

TOTAL NUMBER OF CASES: 1,951,388

CATEGORY	NO. OF CASES	GUILTY	NOT GUILTY
FIRST	31,453	24,730 (79%)	6,723 (21%)
SECOND	649,599	433,471 (67%)	216,128 (33%)
THIRD	1,270,336	1,270,336 (96%)	49,865 (4%)

Table 3.1

To Rwandans, this was a success story regardless of the perception held by legal practitioners and scholars that the traditional system trials fell below international minimum standards of criminal trail including the fundamental right to defense. Rwandans believed that Gacaca courts

¹⁰¹ Quote from International Institute for Democracy and Electoral Assistance (IDEA) citing United Nations High Commissioner for Human Rights (UNHCHR), Gacaca: Le Droit Coutumier au Rwanda (Kigali, 1996), passim

are home grown and they fit into the underlying stated objective of accountability with overtones referring to reconciliation.

3.5 Blending Policy Options

Responding to concerns of past human rights abuse in an emotionally charged and politically sensitive environment can be very problematic. The bottom-line becomes whether to prosecute or not? Instructively, the question of criminal justice has been central to conventional legal systems. The argument is that there can be no 'justice' if those who violate fundamental rights are freed from the action of the courts. In this way, justice is seen to exist only if there is full respect and protection for human rights as well as an independent and impartial judiciary able to investigate and bring to trial those who have broken the law and violated human rights. Additionally, under international obligations, states have a duty to deal with impunity by bringing those responsible for human rights abuses to justice. The conceptual underpinning for taking legal action against perpetrators of human rights abuses is based on various premises, including the argument that justice requires such measures. In this case, there is a moral duty to punish cruel crimes against humanity. Prosecution in this case is seen as a moral obligation owed to victims and their families. There is also the contention that democracy is based on the rule of law and a point must be made to affirm that neither high officials nor anyone else is above the law. Prosecution can also be seen as important in deterring future violations of human rights¹⁰². Prosecutions, therefore, are perceived as a necessity in asserting the supremacy of democratic values and norms and to encourage the public to believe in them. In other words, unless major

¹⁰² Ibid

crimes are investigated and punished, there can be no real growth of trust, no implanting of democratic norms in the society at large and no genuine consolidation of democracy¹⁰³.

Those opposed to prosecution make countering arguments, that democracy has to be based on reconciliation where key players in society endeavour to patch up their past divisions. In this case the process of democratisation involves the explicit or implicit understanding among groups that there will be no retribution for past outrages. In many conflict situations, members on both sides of the divide play a role in perpetrating human rights abuse. A general amnesty in such circumstances may be deemed as a fair and stronger base for democracy than efforts to prosecute one side or the other or both. In some cases the crimes of the authoritarian officials were justified at the time by the overriding need to suppress what may have been perceived as rebellion in order to 'restore law and order.'

These actions may even have been supported by sections of the public at the time and this creates a complex situation on the issue of responsibility. Like was the case in South Africa, each side to the conflict had people who supported its course albeit perhaps not being actively involved in the struggle. Many people and groups in society may have shared in the guilty of the crimes committed by the apartheid regime. In such cases, some form amnesty may be necessary because of the challenges of bringing all those culpable to book. Legal and moral arguments for prosecution have, sometimes too been countered by the moral imperative of crafting a stable democracy. In such a case, the consolidation of democracy takes precedence over the punishment of individuals. The arguments for and against prosecution and amnesty may sound noble, but in actual practice, to prosecute or not, is less affected by moral or legal considerations.

¹⁰³ Whitehead, L, "Consolidation of Fragile Democracies: A Discussion with Illustrations,' in Pastor, R. A (ed) *Democracy in the Americas: Stopping the Pendulum*, (New York: Holmes & Meier, 1989).

In South Africa, it was almost exclusively shaped by politics of negotiation, by the nature of the democratisation process and the distribution of political power during and after transition. Eventually, the historical context of the society and the prevailing circumstances of the society in transition should play a key role in determining the appropriate blend of the policy options to be adopted. A fine balance of options calls for a clear understanding of each policy's implications and, of course there has to be leadership and political will¹⁰⁴.

¹⁰⁴ "The Search For Reconciliation", *The San Francisco Chronicle Editorial*, Sunday, June 25, 2006

CHAPTER FOUR: THEMATIC APPROACHES TO TRANSITIONAL JUSTICE IN RWANDA AND THE CHALLENGES, SUCCESSES AND OBSTACLES

The post genocide government undertook disarmament, demobilization and reintegration (DDR) programs of the former government soldiers. Generally, the programs involved the reassurance of former combatants that they will be reintegrated, not punished. By and large, this program provides a remarkable counterexample, where DDR was largely regarded a success.¹² Most of the combatants who fought on the side of the genocidal forces have been demobilized and reintegrated over the last eighteen years.

Here is what the UNDP Rwanda office stated on Rwandan Gacaca Courts during their formal closure on the 18th June 2012 and that lessons can be learnt from the statement about the legacy left behind by Rwandan Gacaca Courts:¹⁰⁵ The United Nations commended Gacaca courts for delivering on their mandate and providing a solution for the complex nature of the cases related to the 1994 Genocide against the Tutsi. The praise came as Rwanda prepares to officially close the work of the semi-traditional courts later today. A statement sent from the UN office in Rwanda stated that the Gacaca process played a key role in advancing peace, stability and reconciliation. “Not only did it address the enormous backlog of genocide-related cases and contributed to reducing prison overcrowding, and certainly it also has contributed to peace and reconciliation.” Gacaca proceedings opened in June 2002 as a response to the overwhelming backlog of Genocide-related cases and the severe overcrowding of the prison system.

During the 10 years, Gacaca jurisdictions tried more than 1.9 million cases and according to the UN, these were “far from being “mob” or “vigilante” justice, as many legal critics predicted, about 25% of Gacaca cases have resulted in acquittal. “The Gacaca experience serves as a lesson

¹⁰⁵ Lars Waldorf, *Transitional Justice and DDR: The case of Rwanda*.

for us all, the UN recognised that national or “home-grown” initiatives should be supported, as they have a more direct and sustainable impact on populations” the statement read. UNDP has been a strong supporter of Gacaca throughout the process, having provided \$1.6 million to the Gacaca Courts for manuals, trainings, advocacy, and document important lessons learned during Gacaca process. “It is important to record and disseminate the lessons learned of this unique process globally. It is equally important, however, to preserve the enormous volumes of rich and diverse repository historical material gathered through the Gacaca process,” the UN added. It noted that the Gacaca Documentation Centre in Kigali will be one of the largest archives documenting a mass crime anywhere in the world and will be an invaluable resource for Rwandans and foreigners alike.

4.1 Challenges and obstacles in Transitional Justice in Rwanda

Transitional justice as a process has been politicized and hijacked by politicians to serve their own interests. In some cases, it has proved difficult to prosecute some leaders as they hold positions of authority. In other scenarios, commissions of inquiry have been established but have failed to challenge the status quo¹⁰⁶. Transitional justice approach has been blamed for being selective thus promoting the victors justice. In Rwanda, the Gacaca courts have come under scrutiny for failing to address crimes committed by the Rwanda Patriotic Front (RPF). Therefore the mechanism has been hampered by structural problems stemming from the nature of its political environment.

Other challenges experienced within Transitional Justice include structural issues, typical of countries beset by protracted conflict. These countries find themselves with no resources,

¹⁰⁶ Call, C.T. (2004) 'Is Transitional Justice really just', *Brown J. World Aff.* 11: 104

mechanisms or even state structures to deal with suspects of gross human rights violations. Complexities arising from lean resources interfere with the transitional justice process. At the extreme end is the question of how to repair social divisions and ensure Justice, Truth, Peace and Reconciliation prevail. Despite these challenges, societies must find ways of breaking away from the past if they have to move forward. Otherwise, when the past is not dealt with, chances of cyclic violence is possible as a culture of impunity is engrained.

4.2 Successes in Transitional Justice in Rwanda

The transitional justice in Rwandan experience has a record of enormous success if viewed from its angle of ultimate goals: ‘to restore the lost Rwandan element of humanity, peace, co-existence, unity and reconciliation of Rwandans’. The success can only be noted if what we try to avoid are not delinked during evaluation of the Rwandan transitional Justice from the underlying cause of the Rwandan conflict, the conflict itself and its devastating impact on the society and economy and then the national desire for a transformed Rwandan society. The entire world watched genocide happens in Rwanda and so the entire world wondered how such grave and heinous human rights abuses were to be addressed. The speed at which new institutions were established and former ones strengthened to hold the country together was amazing. The establishment of Gacaca Courts that tried nearly two million suspects within ten years was not only impeccable but also a strong signal to Rwandans that solutions to their problems are within their means. Dialogue and continuous consultations with all stakeholders in the situation is necessary and important¹⁰⁷.

¹⁰⁷ Lars Waldorf, *Transitional Justice and DDR: The case of Rwanda*.

CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Summary of Findings and Conclusion

The research project sought to examine and analyze how Rwanda implemented Transitional Justice. It explored the experiences of Rwanda and sought to understand how successful the process had been. In addition, it also looked into the obstacles, challenges, and opportunities for Transitional Justice. Equally important, it located the role of Peace Support Operations (PSOs) within Transitional justices by citing examples of past PSOs in Africa. Another observation was the tension between local mechanisms and western liberal forms of justice, as the case of International Criminal Tribunal Court of Rwanda in Arusha. This research observed that, in such scenarios there needs to be a negotiation and tradeoffs. This does not mean diverting from the international standards; rather such interventions should consider the long and short term implications and whether the needs of victims will be catered for.

The research has pointed out the various roles of PSOs in other parts of the world and what they were assigned and mandated to do. It observes that in Sub-Saharan Africa their mandate has been minimal and not specific to administering transitional justice processes. Possibly this could be due to the nature of PSOs and how they are deployed to various regions during peace enforcement or peace-making. Sub-Saharan Africa has been unique in the sense that the timing and implementation of Transitional Justice has not been solely a transitioning period, although some have. The research study however, did examine their roles and possible future functions, factoring the context and needs on the ground.

Some of the challenges experienced in Rwanda ranged from issues of timing and sequencing of Transitional justice. The research study argues that for the Transitional Justice process to be successful, Africa needs to consider homegrown solutions to Transitional justice and build on local support, such as Rwanda's Gacaca courts. Other challenges included structural issues such as lack of resources, institutional challenges and lack of political will. The research recognized that Transitional Justice was not a one size fits all, and although the study looked into Rwanda as a country, it concluded it was not homogenous. Thus context is fundamental to designing the needs of Transitional Justice process. Additionally, consultation and inclusion of societies involved was vital.

5.2 Recommendations

Considering that potential for Transitional Justice to leverage peace and security in Rwanda is fundamental, there is need to strengthen transitional justice mechanisms. As it is, Transitional Justice has only managed to address reconciliation at the global level and national level but states still struggle to attain local level reconciliation. There is need for Rwanda and Africa as a whole, to develop ingenious strategies in order to achieve durable peace. Coming up with homegrown solutions will be key and also important for ownership. On another level, societies with local reconciliation mechanisms can be revived and developed to serve the purpose of local level reconciliation.

The design of Transitional justice processes ought to factor structural issues that would otherwise not be addressed in a normative model. As pointed out earlier, issues such as structural violence, poverty and even cultural violence hide underneath and could be one of the causes of cyclic violence, as they often fail to feature in the process. Still on this, addressing the question of inclusiveness and local ownership is vital. For Transitional Justice processes to meet its goals, all

parties of the conflict and members of the society ought to understand, take responsibility and participate in the process.

While issues such as victor's justice and vested interests take the core in transitional justice in the Sub-Saharan Africa, lack of effective transitional justice has implications on other aspects of the nation-state such as development. As a result, this could affect the progress of a nation as they have to address their past to move forward. Therefore, building strong mechanisms and drawing on past successes on Transitional Justice is fundamental to move this debate forward.

Given the cross border nature of conflict and violence in Africa, Rwanda needs to consider mooting a policy that will address transitional justice. In order to address border spillovers, Rwanda and Africa should set up accountability measures to hold rebels who move beyond national borders, so as to end impunity. A show of commitment by all the states in Africa will be vital, and also financing the justice institutions in every country in order to strengthen its judicial capacity. Capacity building and establishment of Africa/Civil society partnership for regional outreach and advocacy work at the community level is important to gain local support. Dialogue and continuous consultations with all stakeholders in the situation is necessary and important element one cannot afford to leave it out.

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APPENDICES

Appendix 1- Questionnaire

I am Simon Ngiro, a Masters student at the University of Nairobi's Institute of Diplomacy and International Studies, and I am collecting data for my thesis titled, "The Role of Peace Support Operations in Transitional Justice: A Case study of Rwanda". I kindly request for 30 minutes from your busy schedule to fill in the questionnaire for me; the voluntary information will be used for academic purposes only.

Instructions: Please answer ALL the questions appropriately by ticking at the correct check box.

1). What is your understanding of the term Peace Support Operations? Do you think Peace Support Operations in Rwanda after the genocide were essential in the transition process?

2). In your knowledge, what reconciliatory approaches did Rwanda take after the genocide in 1994?

3). Is the justice and reconciliation process in Rwanda after the genocide in 1994 different from the justice and reconciliation process adopted in Kenya after the post-election violence? If so, why? -----

4). In your own view, do you think that Paul Kagame's government has succeeded in terms of transitional justice and democracy?

Yes () or No ()

a) If 'Yes' above what should Kagame's government do to maintain and improve its healing and reconciliation process in Rwanda?

b). If 'NO' above what are the weaknesses that the Kagame government should work on to establish a favourable living conditions for all the Rwandans?

5). In your view, what does reconciliation in Rwanda look like?

6). Can we say that Rwanda is a reconciled country? Is the reconciliation process complete?

7). There are many core dimensions within transitional justice, e.g. criminal prosecutions, institutional reforms, restitution for the victims, truth commissions, etc. Which one would you say is the most crucial to impose first in periods of the transition? Otherwise, what far reaching negative consequences will result?

8). How should we measure the success of transitional justice? In a case of Hybrid Regimes in post-conflict societies such as Rwanda, is the number of resolved trials or cases won an indication of success? Or should we focus more on the legitimacy of a new regime?

9). What of the role of the religious organization in reconciliation efforts? How were they involved?

10). How effective do you think the local courts ‘Gacaca’ were in their reconciliation work?

11). I have heard that recently the official way to refer to the genocide is as the “Genocide of the Tutsis.” Do you think this will cause tension since there were other victims during the genocide, such as moderate Hutus?

12). When we talk about reconciliation, we normally mention a very specific way of commemorating victims in post-conflict societies, especially in Rwanda. Could you illustrate in this case what the commemoration of victims look like?

13). From your experiences in many post-conflict countries, including Somaliland and Rwanda, do you consider amnesties as an adequate transitional mechanism within a process of regime transition?

14). Were the UN and African union Missions in Rwanda successful?

15). What are the most important things for Rwandans to focus on in the immediate future & for example, the next five years?

Appendix 2

Interview guide for an expert interview with Louis Moreno Ocampo, former Chief Prosecutor of the ICC to be carried in Nairobi via Skype video call on June 2014

I am Simon Ngure, a Master of Arts in International Studies student at the University of Nairobi, doing a research study on the on the role of peace support operations in Transitional justice: Case study of Rwanda.

Through your many years as a Public Prosecutor in Argentina and recently as the Chief Prosecutor of the International Criminal Court (ICC) based at The Hague, Netherlands, you are among personalities who have not only occupied public space on the field of transitional justice but also influenced it. The information that you will provide will be treated with confidence. With your permission, I would like to record the interview just to remain focused on our discussion.

1. According to you, what is Transitional justice? Who are the players in a transitional Justice System?
2. What role do the peace support operations play in a transitional justice process?
3. Do you think that the UN Mission in Rwanda was successful? Yes or No, and why?
4. You were the Chief Prosecutor of the ICC from 2003-2012. You therefore understand very well about the International Criminal Tribunal Court for Rwanda in Arusha. Up to now, some Rwandese citizens have never received justice. What are the challenges encountered during investigations? What does the International Criminal Court (ICC) do about it?
5. How is the Kenyan case in the ICC different from that of Rwanda at the International Criminal Tribunal of Rwanda in Arusha, Tanzania?
6. What is the difference between retributive or restorative justice? Which is the best justice system and, why?
7. How can various transitional justice policy options be blended to respond to concerns of past conflict and human rights abuses in Rwanda?
8. What lessons can be learnt from the case of Rwanda?

Thank you!

Appendix 3

Interview guide for Key Informants

1. Do you think that the Peace Support Operations after the Rwanda 1994 genocide helped in any way?
2. Which transitional justice mechanism is the most crucial to be imposed first in periods of the transition?
3. Peace support operations took place in a number of African Countries such as Burundi, Sierra Leone etcetera. Do you have a hint of their role in these countries' transitional justice? Was the transitional justice policy options used successful?
4. In your view, were the UN and AU Missions important in Rwanda? What was their mandate and were they more effective than the local courts 'Gacaca'?
5. Is there an existing connection between transitional justice and democratization? That is to say, if transitional justice is not fully implemented, will there be a negative impact on the process of democratization and furthermore on consolidation of a democratic regime like Rwanda?
6. I read somewhere that one of the reconciliation policies in Rwanda require former perpetrators who participated in Genocide to wash the bones and skulls of those they had killed in 1994? Why is it so?
7. Why do you think that amnesties should be seen as the very last resort of any political decision to be taken in the transitional process?
8. What lessons can be learnt from the Rwanda transitional justice after the genocide in 1994?

*****END*****