Achieving Reconciliation in Divided Societies

By Jeremy Sarkin

The onset of the twenty-first century has been marked by numerous transitions from repressive rule to democracy throughout the world. Given that many displaced regimes are often characterized by large-scale human rights violations, the manner in which new democracies reconcile with their oppressive pasts will have a marked impact upon transitional societies’ chances for long-term peace, stability, and reconciliation.¹ At the request of the Prosecutor, the Judicial Chambers of the Court have so far approved the indictments of nine individuals. Transitioning societies face monumental challenges as they confront possible tensions between peace and justice. Individual and collective needs must be balanced against the political realities faced by a new government, which in all likelihood inherited a fragile state and limited political power. In addition, post-atrocity policies often carry the dual aims of preventing future human rights violations and repairing the damage caused by the past abuse.

Post-conflict states have several options through which they may address these issues. For example, comprehensive accounts of the past are often sought as a useful tool to aid societies in their transitions from oppression to peace. However, atoning for the past is often seen as running counter to the aims of national reconciliation, unity, and institutional reconstruction. Accordingly, post-conflict governments often choose policies based upon the contexts of their transitions, taking into account the seriousness of the crimes committed as well as the resources available. In so doing, they face choices including the prudence of adopting amnesty, criminal trials, or truth commissions.

While criminal trials² and truth commissions³ each facilitate the revelation of

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details on past abuses, they are not mutually exclusive. Rather, the specifics of balancing the two mechanisms must be determined upon a case-by-case basis. Given the varying circumstances among states, it is impossible to impose uniform transitional justice mechanisms upon post-conflict situations. However, given that each emerging state must be founded upon a commitment to human rights and a dedication to the rule of law, it is useful to consider a range of measures—including new laws and new (or transformed) institutions—that might aid in the transitional process.

An attempt will be made here to trace the surge in interest regarding reconciliation as a transitional justice mechanism in recent decades, including the policy motivations behind this interest. This will be followed by critically assessing the most popular reconciliation instruments, including truth commissions, in part by examining the efforts of South Africa, Rwanda, and East Timor. This comparative analysis reveals that, while the goals of reconciliation programs are indeed laudable, the specific policies and instrumentalities by which these goals are achieved remains case specific. Post-conflict states should thus refrain from adopting truth commission templates and instead critically examine their own circumstances—such as history and economic outlook—before embarking upon a particular reconciliation scheme.

The 1990’s: The Increase in State Interest in Reconciliation

Since the mid-1990s, reconciliation has assumed a prominent place upon the world stage. Various countries including Algeria, Canada, Guatemala, Namibia, Nicaragua, South Africa, and Timor-Leste have enacted laws that promote reconciliation in order to heal divisions within their societies. Reconciliation commissions have recently been established in Ghana, Morocco, Nigeria, Peru, Sierra Leone, and Timor-Leste. Countries such as Australia, Fiji, Rwanda, and the Solomon Islands have created ministries of reconciliation. Angola’s first post-war government has promoted a formal and comprehensive framework of national reconciliation, while the Liberian opposition movement (the Liberian Unity and Reconciliation Defense) claims to promote reconciliation, as does President Ellen Johnson-Sirleaf’s government. Long-standing enemies North and South Korea are exhibiting signs of reconciliation. Finally, the Arab League’s March 2006 sponsorship of an International Conference on Reconciliation, focused on the reconstruction of Iraq, indicating reconciliation’s spread into the Arab world.

Yet for all of reconciliation’s benefits, the increasing phenomenon of related initiatives has an unforeseen complication. Reconciliation is so easily invoked, so commonly promoted, and so immediately appealing that few
policymakers consider the scores of serious questions raised by related initiatives. Scant attention is being paid to the details of fostering reconciliation, or to the complex ways in which reconciliation impacts other challenges of transitional politics, such as the feasibility of justice after mass atrocity, the redistribution of wealth, the promotion of civil society, and the relevance of the past to the present and the future.

Understanding reconciliation in times of political transition raises fundamental and vexing questions about the human condition, in part because related discussions invariably arise in the wake of gross human rights violations, such as disappearances, killings, torture, kidnapping, rape, and widespread child abuse. Reconciliation necessarily raises questions about the geneses of conflict and compels inquiries into how human beings can commit such horrors upon each other. Does confronting the face of evil necessitate a hard look at ourselves or are some people uniquely capable of evil?

Yet it is precisely this conundrum that renders reconciliation so deeply compelling: it not only implicates the worst of what human beings are capable, but the best as well. Reconciliation represents the possibility of transforming war into peace, trauma into survival, and hatred into forgiveness. It is the means by which human beings connect with one another, despite the odds imposed by unspeakable crimes. Reconciliation also exemplifies the potential for the limitless strength and generosity of the human spirit.

Generally speaking, reconciliation describes a process of coming together. However, the term carries a normative—almost moral—aspect as well. That is to say, reconciliation is the unification (or re-unification) of things destined to be together. In contrast to its less common relative—conciliation—reconciliation denotes the coming together of things that once were united but have been torn apart; a return to or recreation of the status quo ante, whether real or imagined. For many observers, reconciliation is exemplified by the question of how war-ravaged societies return to a modicum of normality after neighbors have endured and perpetrated against one another crimes of unspeakable inhumanity.

Reconciliation may also be considered as an evolving process rather than a static end point. Yet the questions remain: how does one measure the degree to which reconciliation has been reached in a society? What are the
indicators? What measurements may be used? Once defined, can absolute reconciliation ever be achieved?

It is reconciliation’s promise of a return to normalcy that renders it so appealing to transitional states. This appeal has reached such a fever pitch that the failure to achieve reconciliation is often viewed as a harbinger of ongoing and future conflict and violence.

Yet what does “reconciliation” mean to different countries? Is it national unity? Peace? Healing? Empathy? Stability? Harmony? Or does it represent the development of a democracy that ensures utmost inclusivity and opportunity as well as access to resources for all? Is it all of these or none? Is it simply the process of “moving on”?

Unsurprisingly, the answer to these questions varies from state to state. For example, in Angola, national reconciliation has been characterized as “the coming together once again of Angolans to live together peacefully in the same Fatherland and in a spirit of cooperation, in the pursuit of the common good.” On the other hand, Fijians have set the goal of reconciliation as the “promotion of racial harmony and social cohesion through social, cultural, educational and other activities at all levels within the indigenous Fijian community and between various racial groups.”

However, it does not take an in-depth inquiry to uncover the challenges inherent in applying glossy definitions to ground-level post-conflict situations. Implementing reconciliation programs necessitates the formulation of clear answers to highly complex inquiries, including the amount of focus on the past, the compatibility of reconciliation with justice and respect for human rights, the viability of forgiveness among erstwhile enemies, and so on. Each one of these questions, in turn, raises its own inquiries.

For instance, the relationship between truth and reconciliation is extremely complicated. Many believe that truth begets reconciliation. The South African Truth and Reconciliation Commission, for example, proclaimed “Truth: The Road to Reconciliation,” and insisted on the indispensability of truth as disinfectant of conflict-related wounds, a cathartic release, and heal balm. Even if truth is a precondition to reconciliation, the very definition of “truth” has yet to be determined. Is it merely the accumulation of forensically-proven facts or does truth represent a more complex and multi-faceted narrative? Moreover, it is possible that truth-seeking impedes reconciliation because the horror of the truth can harden attitudes thus rendering forgiveness and empathy all but impossible.
On the other hand, the quest for reconciliation may avoid the truth altogether if it encourages people to forget the past. Yet again, reconciliation may lead to truth by facilitating the conditions in which the truth can emerge.\textsuperscript{17} Equally vexing questions surround the relationship between reconciliation and justice. Transition amplifies the critical nature of the link between justice and reconciliation, particularly when the past has been characterized by strife, violence, and polarization. Reconciliation often arises amid questions of how to address the fate of atrocity’s perpetrators—a broad term encompassing everyone from the architects to foot soldiers of past offenses. The current dominant ideology holds that reconciliation is incompatible with justice and the latter is to be favored at the expense of the former whenever they come into conflict. In cases where reconciliation is accepted, it is usually as a mere by-product of the criminal justice system. This view of reconciliation rejects prosecution and thus could thwart, rather than advance, the cause of justice. This is a narrow view. It is quite possible that reconciliation can promote justice insofar as it aims to heal troubled communities and also to redress the imbalance of the past trauma. At the very least, reconciliation can be indifferent to justice.

Despite such theoretical debates, the fact is that few post-conflict states enjoy the luxury of choosing between justice and reconciliation. In too many situations, traditional aims of justice may be illusory given the scale and scope of the atrocities committed. Moreover, justice can fail due to practical challenges. While punishing the perpetrators may heighten tensions in the fledgling society and thereby hinder reconciliation, impunity undermines the new government’s efforts to promote the democratic ethos and rule of law and to reinforce the division between the old, oppressive regime and the new, democratic, human-rights-respecting order. Taken to its logical extreme, the absence of punishment can turn successors into collaborators.

Moreover, even in cases where post-conflict regimes pursue reconciliation agendas, progress is often undermined by persistent inequalities that fuel renewed conflict. Economic disparities significantly impact a nation’s prospects for reconciliation. In order for reconciliation to occur, a nation’s economy after conflict must grow, along with its per capita income. For instance some argue that, of the new democracies in Africa, only Namibia, South Africa, and Seychelles are economically prepared for democracy.\textsuperscript{18}
Competing Transitional Interests? Examining States’ Motivations to Reconcile

Reconciliation enjoys both high and low ranks on the agendas of most transitional states. While leaders and opposition groups often advance the rhetoric of reconciliation through speeches, charters, special commissions, governmental departments, and symbolic acts, the extent to which the goal of reconciliation genuinely animates the policies and politics of the transitional government remains in doubt. Reconciliation’s rhetorical appeal is strong enough to make it susceptible to exploitation. How is one to tell, for instance, whether executive endorsement of amnesty reflects unprincipled capitulation to the perpetrators of the past rather than an honest effort to move the country forward towards true reconciliation and healing? Or how does one gauge whether a government-sponsored reconciliation conference amounts to a genuine offer of an olive branch?

Governments profess to pursue reconciliation for a host of reasons. Sometimes, reconciliation is lauded as a means to promote the cause of justice, particularly in the context of restorative justice. Some governments assert that reconciliation promotes deterrence, which is important not only for the intrinsic value in having peace but also for its instrumental value in promoting the rule of law and drawing a bright line between the old and new regimes. Reconciliation policies can also aid in the consolidation of democracy. Of course, if reconciliation is achieved, this can have very positive effects on outsiders’ perception of the country. For example, a country that has successfully transitioned from hatred to reconciliation will be attractive to outside investors and tourists.

A stable society — particularly one in a heterogeneous state — is contingent on peaceful relationships among different social, ethnic, and political groups. In the wake of strife, reconciliation must be a prominent issue on the agenda of any new government so that once-warring groups will trust each other and work together. Finally, governments may promote reconciliation in response to popular demand or because the government sees the need for it. These are, after all, situations in which many people have fought tirelessly for the right to insist on peace and reconciliation.

Moreover, the manner in which a nation deals with its past reverberates throughout its present. Local and international observers often measure the success of a new regime by its treatment of the past, including how victims and perpetrators are treated by each other and society in general. While the redistribution of resources or retooling of the educational, health, housing,
or other welfare systems might be more important in the long run as may be reconstruction tasks, reconciliation is almost as significant. Given that past abuse often prompts transition, the public often desires assurance that the sacrifices endured to change the regime were not in vain. Reconciliation programs are also a new government’s most visible opportunity to distinguish themselves from the abusive regimes of the past. A government that openly eschews impunity demonstrates its commitment to justice and the rule of law; whereas a more conciliatory, victim-oriented stance, models empathy and forgiveness. Regardless of which model a post-conflict government adopts, reconciliation policies put the past on the public agenda. They also establish values of openness and transparency in contrast to the secrecy and suppression of the predecessor regime.

In preparing for its future, a government must prioritize the consolidation of democracy as well as respect for the rule of law and human rights. Such goals will remain unattainable if they exist outside of the framework of a functioning democracy. The extent to which reconciliation can be achieved varies among states and societies. Moreover, there are differing opinions on what divided societies can achieve. Reconciliation can occur for individual people or among populations. Regardless, reconciliation is achieved throughout collective action or the embrace of symbols. It can take place as the result of transition, elections, or sports victories. Reconciliation achieved in such ways is in danger of being fleeting.

Long-term and ongoing reconciliation, by contrast, requires an inclusive process that is accepted by once-divided people. It can transpire via words or actions but undone through one’s perceptions. Reconciliation can also be encumbered when nation building is neglected. It is fragile enough to be undermined by a single leader. It is reached as the result of a conscious step or simply in the presence at a commemoration event. Reconciliation can be achieved in the wake of an oral or written request for forgiveness or peace agreement as informal as a handshake or communal meal. Sometimes reparations are required to trigger the road the reconciliation. A speech by the leader of a group or nation that recognizes the position of the once-despised group—provided that it is genuine and without limitation or exception—can also begin a process of reconciliation.

While national governments certainly play a major role in the process of reconciliation, they are far from the only actors involved. Individual leaders and institutions are also critical. Yet, even though institutions such as religious groups, sports teams, women’s groups, youth groups, the military, and the police have important roles in this regard, they can also slow the
reconciliation process. In light of the proliferation of so many intertwined alternatives, societies embarking on reconciliation projects must specify the level at which their reconciliation efforts are aimed in order not to waste scarce resources.

In addition, the level at which reconciliation is required by a transitional society must be linked to the type of violence, trauma, or separation it endured. Reconciliation policies must be driven by an understanding of the underlying conflict in order to be responsive to the specific needs of a particular society. For example, a national commission may not promote reconciliation at the communal or individual level; conversely, funding for trauma centres may not promote political or national reconciliation.

Conflict creates a wide range of individual traumas. In the aftermath of political conflict, people may face the horror of discrete events such as a rape or the loss of a loved one, or with ongoing conditions such as imprisonment, torture, displacement, or famine or disease. Most conflicts involve a combination of these hardships; survivors must reconcile themselves to some or all of them.

Given that individuals are the building blocks of society, population-wide trauma can hinder national reconstruction at every level. Thus, post-trauma national health is contingent upon broad individual healing. Governments can help promote such healing in a variety of ways. For example, governments can allay fears that surround these concerns through public assurances. Public statements demonstrate the state’s commitment to safety not only to victims but also to those who may wish to undermine it. The government can also promote physical safety, depending on the nature of the trauma from which individuals in the country are recovering.

In addition, post-conflict governments must foster individual reconciliation when personal trauma is so widespread as to be national in scope or effect. Failure to promote individual reconciliation can impede national reconciliation and reconstruction. Widespread individual healing, however, is difficult to achieve. It requires substantial resources. It compels personalized assessment because individuals do not heal in the same way; indeed, some never heal entirely and others are not as accepting and tolerant of each other. Personality—which is partly made up of past events and trauma—is a key factor in determining the degree and scope to which reconciliation can oc-
cur. Other factors include perceptions of others—including perpetrators, witnesses, and innocent third parties, and their treatment of the survivor. Perhaps most importantly, it can be a challenge to discern the connection between national and individual reconciliation. “National” and “reconciliation” pose practical and conceptual problems. Nationhood often connotes a centralized government that controls a defined territory and implies that the people within that territory identify themselves as members of the national polity—even if they also identify with other cultural, ethnic, or regional ways. While this framework is the norm throughout much of the world, it is not universal. In addition, post-conflict states rarely fit the dominant paradigm of nationhood.

**Truth Commissions: The Most-Favored Reconciliation Model**

As transitional states search for methods by which to promote reconciliation, truth commissions have risen in popularity, though they are not the only alternative to trials. While truth commissions first emerged in the 1970s, they enjoyed surges in popularity: in the mid-1980s, after the apparent success of the Salvadoran commission in 1984; and in the mid-1990s, following in the footsteps of the South African Truth and Reconciliation Commission (TRC). Recently, Nigeria, Morocco, Sierra Leone, Ghana, Timor-Leste, and Peru have established truth commissions and there have been unofficial commissions in Northern Ireland and Greensboro, North Carolina in the United States.

The proliferation of truth commissions has led to a diversification in their form. Truth commissions vary in every important structural aspect depending upon their location. One commonality is the frequent inclusion of truth commission provisions in peace accords, though most commissions continue to emerge from within cultures, which explains their diversity in structure and in form. Most truth commissions are mandated by the government, although some successful truth commissions have been developed by the United Nations (El Salvador), international non-governmental organizations (NGOs) (Rwanda in the early 1990s), or domestic NGOs (Brazil). Governmental commissions can be created by executive order (Chile) or by legislation (South Africa). While most truth commissions are limited in duration, some are not (Chad and Uganda). Some have extensive authority, such as the power to subpoena, while others rely upon volunteer participation.

The jurisdiction of truth commissions also varies. Some commissions examine broad historical patterns of abuses that occurred over a lengthy period of time (Chile), while others are limited to investigating specific acts committed by specific people. Some truth commissions involve as wide a swath of the
population as possible (Sierra Leone, Timor-Leste, and South Africa), while others operate in secret and at the margins (Guatemala). Some are required to “name names,” whereas others are prohibited from doing so.

As a whole, truth commissions are assumed to be the transitional justice mechanisms most capable of promoting reconciliation, if only because they are often designed specifically for that purpose. By contrast, if trials—which are primarily designed to punish perpetrators—and amnesty laws—which are primarily designed to absolve them—promote reconciliation, it is only as a by-product of their principal aims.

Three National Reconciliation Policies: South Africa, Rwanda and Timor-Leste

Three countries that have pursued reconciliation policies via national institutions are South Africa, Rwanda, and Timor-Leste. Each nation has emerged from transitions relatively close to one another, but yet their approaches to justice have varied widely. South Africa and Timor-Leste established truth commissions; Rwanda did not. As a result, Rwandans have not experienced the national catharsis associated with regular public hearings as have South Africans or Timorese, although Rwanda’s gacaca courts might achieve some of this at the local level. Rwanda established a National Unity and Reconciliation Commission which is ostensibly devoted to promoting reconciliation throughout the country by reeducating those in detention or former exiles. However, the commission has problems in its design and composition. The extent to which reconciliation is prioritized is also questioned.

Not only does Rwanda’s response to atrocity differ from those of South Africa and East Timor but so did the very nature of its conflict. During the 1994 genocide in Rwanda, nearly every village was scarred by violence. South Africa did not witness that level or nature of violence. However, apartheid did severely impact the majority of the population by segregating people by race into separate towns and villages; this had long term implications on issues such as political empowerment, economic empowerment, and land possession still visible today.

The South African and East Timorese truth commissions provide excellent examples of eliciting victim stories. The South African TRC achieved this by inviting victims to participate in the truth commission process, first as witnesses during the Human Rights Hearings and then as opponents to amnesty during the Amnesty Hearings.
The South African government’s emphatic promotion of bilateral reconciliation suggests that it felt that the success of its transition was at least partly predicated upon the ability of survivors and perpetrators of gross human rights abuses to coexist. In fact, such insistence was not always welcome. Some individual witnesses vehemently resisted what they perceived to be the TRC’s efforts to impose reconciliation and forgiveness upon them.

Another distinction among the three nations is the level of international cooperation in reconciliation programs. For example, international actors assisted Rwanda and Timor-Leste in establishing their accountability mechanisms whereas South Africa rejected such assistance. Public participation has also evolved with increasing use of truth commissions. While the first generation of truth commissions operated largely behind closed doors, the current wave—including commissions in South Africa, Sierra Leone, Timor-Leste, and perhaps Bosnia—is characterized by a high degree of public participation and transparency.

Not only do the models of reconciliation vary among the three countries but the policy motivations behind their establishments differ as well. For example, Rwanda’s gacaca courts are a prime example of supposed participatory justice, as opposed to the exclusive nature of domestic and international criminal tribunals. On the other hand, South Africa’s choice to incorporate an amnesty law into its TRC structure enabled the commission to deal with crimes committed. Therefore, reconciliation was both a pragmatic and a principled response to the post-apartheid period. It was the best of the transitional justice alternatives, given the cost and uncertainty of high-profile trials, the lack of information about the gross human rights abuses, and the desperate need to avoid inter-racial and political violence. Moreover, the TRC embodied a principled mode by which South Africans could confront the horrible realities of apartheid and emphatically depart from the values of the prior regime.

Despite its virtues, no country has promoted reconciliation as a sole alternative to trials. Even the South African TRC has emphasized its complementary role vis-à-vis trials, though, admittedly, almost no trials have occurred. The TRC argued that the truth-for-amnesty exchange mandated by its enabling legislation constituted a form of public shaming that would follow alleged perpetrators back to their communities.

Yet while the TRC Act required perpetrators to fully disclose their participation in motivated crimes, it did not require remorse, restitution, or any
other form of amends. Some argue that this is a fatal flaw of the South African process. Admittedly, avowals of remorse and regret are easily faked and often so detected by victims. They can be issued for the wrong reasons, particularly when there is material benefit to for displaying remorse. They can also be delivered in ways that are only minimally sincere and thus inadequate for the victims. Given that it is impossible to secure true and valuable remorse, it might be argued that remorse should not play a significant role in any meaningful reconciliation process. Yet, inviting—without demanding—acknowledgment of responsibility and remorse may very well honor the victims as well as the perpetrators. Such an invitation will provide an opportunity to observe the absence of remorse, which—while disappointing—reflects the extent to which the population remains divided and the victims remain at risk.

The South African TRC did not predicate amnesty upon reparations of any kind. As a result, thousands of perpetrators have enjoyed amnesty while millions of victims await the most basic of human services. This disconnect is in part because many of the latter were not found to be “victims” under the formal terms of the TRC’s mandate. Of those who were deemed to be victims, few have received adequate financial benefit. To date, the government of South Africa has paid only a fraction of the nominal amounts that the TRC recommended. This inequality among the beneficiaries of the TRC process has generated substantial bitterness and resentment. It is also reinforced by the perpetual inequalities in the standard of living between blacks and whites in South Africa.

Early in its inception, TRC discussions focused on national reconciliation. However, by the conclusion of its mandate, many questioned the degree to which the TRC had actively attempted to promote reconciliation and whether it played a sufficient role in this regard. Various activities and statements by the TRC document their role in the process of reconciliation, but public opinion about the Commission—which is one indicator of the level of reconciliation achieved—differed along racial lines.

While reconciliation rhetoric was deployed during the formulation and genesis of the TRC and anecdotal evidence of reconciliation efforts abound, critical questions concern the effect that these efforts had on the state of South Africa. However, given that reconciliation is an ongoing process, it might be unfair so soon after the TRC has concluded to critique the extent
to which it has achieved its stated goals. Moreover, no single institution can be held accountable for reconciling an entire scarred nation. Although, the state plays the most important role in the reconciliation process, the role of individuals in the attempt to achieve reconciliation cannot be overstated. For example, in South Africa, the role of Archbishop Tutu has been critical, as was that of President Gusmao in Timor-Leste.

Timor-Leste’s truth commission operated in tandem with a UN-backed Special Court which prosecuted those guilty of certain crimes. To achieve reconciliation, Timor-Leste developed a model that relied on traditional reconciliation processes. Unlike Rwanda’s gacaca courts, which are being used to prosecute tens of thousands, the Timorese model operates as a variation on reconciliation, rather than as a variation of a justice system. The national reconciliation commission (CAVR) sponsored several programs to facilitate community healing; one such particular program included the reintegration (or acolhimento) of soldiers and refugees. Its Community Reconciliation Program (CRP), combined traditional justice, arbitration, mediation and other components of the law. Like Rwandan gacaca, the CRP emphasized community participation and addressed only minor offenses because community members refused to reconcile with those responsible for more serious crimes until they had been prosecuted.

However, the gacaca courts in Rwanda differ from East Timor’s CRP in other ways. While gacaca courts derive from Rwanda’s traditional legal system and have been used for centuries, they are being revived and completely reshaped to accommodate the government’s need to prosecute accused genocidaires. Gacaca supposedly prioritizes group relations over individual rights. The restoration of relationships and reconciliation of groups is essential.

As such, traditional mechanisms have, in theory, the potential to promote reconciliation in several ways. First, public participation is intended to foster cohesiveness among community members. Moreover, local and public processes may constitute a form of public shaming of accused. Second, the public’s commitment to the process—as demonstrated by their participation—enhances legitimacy of the process, which in turn can promote the sense of justice and faith in the rule of law. Third, and most importantly from a reintegration standpoint, the public is assumed to have endorsed any result assessed. Fourth, traditional processes may exact concessions from defendants in exchange for the right of return. Such concessions may be verbal—such as an apology or showing of remorse, or it may be material, in the form of a promise to help build a home for the victim’s family, pay restitution, or perform community service, depending on the defendant’s
skills or the nature of the crime. Such displays illustrate a returnee’s genuine remorse but also materially enhance the quality of life of the community members at large and perhaps also that of the victim. Such exchanges help victims and communities move on.

Regardless of its supposed promise, the optimism with which some in the international community have embraced the Rwandan system, and expressing feelings that Rwanda ought to be given some latitude in regard to these mechanisms, gacaca has in practice been plagued by problems. There are problems in its conceptualization and intent, especially as conceived by those who appear before them as perpetrators. What was gacaca in the past is not the gacaca of today. Many see these courts as political processes rather than legal ones, and that these processes are victor’s justice meant to keep the majority out of power.

In January 2006, Human Rights Watch (HRW) reported that, despite their initial legitimacy, gacaca courts have bred a sense of distrust. The organization also described how some judges ignored the gacaca rules and subjected hundreds to preventive detention because they gave false or incomplete evidence. In addition, HRW observed that approximately 10,000 people fled to neighboring countries out of fear of false accusations and unfair trials, and that many of the courts had failed to inspire public confidence in part because hundreds of the judges themselves were accused of crimes, some witnesses were unwilling to testify, and the courts were precluded from addressing crimes allegedly committed by Rwandan Patriotic Front (RPF) soldiers. HRW has gone as far as to assert that the courts deliver one-sided justice.

Even though Timor-Leste’s CRP is based upon customary law, it is not as structured as gacaca. The process allows “flexibility for the inclusion of elements from local traditional practice.” Village elders attend proceedings along with the deponents, victims, CRP panel members, and interested community members. Proceedings are usually open and incorporate traditional rituals such as a collective prayer to promote a “spirit of concord.” Participants are not allowed to interrupt as the deponent told his or her story. Only when the deponent finishes are victims and community members permitted to speak and ask questions. The panel then moderates an intra-party discussion, culminating in a Community Reconciliation Agreement that puts forth the acts of reconciliation assigned to the deponent, which serve to demonstrate his or her commitment to the community.

In addition to involving the public in its proceedings, the CAVR took its public information role very seriously, producing a range of accessible ma-
terial, such as a feature-length film in multiple languages, a photographic exhibition, a series of books on the hearings, and a photographic book of survivors. A weekly radio program covered many community reconciliation hearings, as well as other issues. The South African TRC undertook similar initiatives though Rwanda’s gacaca has not.

Drawing upon affordable technologies and international aid, national truth commissions—such as those in Morocco, Timor-Leste, Peru, and Sierra Leone—are disseminating their reports more widely. The South African TRC published reports on the internet and made them available in bookshops, whereas Rwanda has done little to disseminate its reconciliation process publicly.

The Timorese process, by contrast, allowed victims an opportunity to speak directly to the nation. Many of the hearings were broadcast on television and radio, and thus the “victim’s narrative was heard throughout Timor-Leste.” The hearings therefore placed ordinary people at the centre of the national debate on healing, reconciliation and justice.” A similar approach occurred in South Africa with much of the TRC process being televised and broadcast on the radio. In Timor-Leste acts of reconciliation include traditional (wrapping of negative acts in a coconut to be buried in a forest and presenting the community with a fresh coconut, representing positive acts), symbolic (contributing a sacrificial animal to be enjoyed at a communal feast), constructive (repair of buildings or tree planting over a period of three months), and compensatory (including cash, livestock, textiles, and ornaments). Parties often confirmed the speaking of the truth through reading animal entrails. Proceedings ended with a summary of the day’s events and a “moral teaching presented on the theme of togetherness.”

Early indications suggest that the CRP has effectively helped formalize the reintegration of people into their communities, although recent events of conflict and violence in Timor-Leste suggest that more programming is needed at the institutional level. According to the Chair of the CAVR: “The spiritual and cultural practices of particular regions can be used during hearings and negotiations, give additional meaning and force to the process, in addition to giving the relevant communities a larger sense of ownership and participation.” The process effectively reached illiterate Timorese because it “recognised both the depth of community experience of violence and the rich East Timorese oral tradition. They were initially created as a research tool in the Commission’s truth-seeking work, but were soon acknowledged as valuable occasions for developing community understanding and healing.” The CAVR’s historical record developed in this way and became authoritative
within the community even if not scientifically accurate. It also furnished a starting point for future investigations and a foundation for recommendations to the national government for compensatory or reparatory programs.

In a series of CAVR-sponsored healing workshops, Timorese torture survivors used art, music, theater, and dance to catalyze discussion and understanding. Singing and theatre were seen to be important because of various types of disability of victims. However, as suggested earlier, Timor-Leste’s recent troubles reveal that more reconciliation programs need to be undertaken. Reconciliation is more than truth telling and forgiveness. Indeed, in a domestic transitional setting, reconciliation encompasses both conflict resolution and social rehabilitation. Moreover, reconciliation takes place at different levels within a nation: personal, inter-personal, collective and national. Developing cohesive and neutral national institutions is critical to ensure peace and stability. Post-conflict governments often inherit societies that have been fractured by oppressive regimes that have manipulated race, religion, and ethnicity to gain and maintain power. Populations that have been subjected to divide and rule tactics are likely to remain divided and harbor fear and resentment against each other. Reconciliation is a long-term process aimed at addressing these formidable obstacles. As such, it requires measured programs and processes.

In some countries, the central government is so weak that it can barely be realistically said that the nation is a particular thing; rather, the territory that purportedly makes up the nation is broken up into distinct regions, populations, or political or economic interests. It may be a state from an international and legalistic point of view, but cannot claim to be a nation. To achieve nationhood is to achieve much more.

Thus, at some levels South Africa has done relatively well at building a nation although not so well at dealing with reconciliation between groups and individuals. Timor-Leste and Rwanda have still a long road to travel to achieve reconciliation at many different levels.

Conclusion

When weighing the mechanics and methodology of reconciliation programs and policy, it is important to remember that each country has different political, social, cultural, ethnic, and linguistic groups and issues; none of which are the same in any two countries. As a result, there is no universal model for transitional justice or reconciliation. While lessons can be shared among post-conflict states and best practices adapted to the needs of specific
countries, it would be dangerous to copy or duplicate what has been done elsewhere and expect the same results, given the inner diversity previously discussed. Countries with similar conditions may be able to adopt a specific piece of legislation or policy, but its impact will be different than in the state of origin. Indeed, it may even fail simply because it is deemed to belong to another country or another context. It is thus imperative for each country to set its own reconciliation agenda by taking into account in its history, socio-economic context as well as other issues.

-Elizabeth Sterling served as lead editor for this article.

NOTES
3 Unspeakable Truths: Confronting State Terror and Atrocity, Priscilla Hayner, (Routledge, 2000).
4 See further Jeremy Sarkin “To prosecute or not to prosecute that is the question? An examination of the constitutional and legal issues concerning criminal trials” in Charles Villa-Vicencio and Erik Doxtader (eds) The Provocations of Amnesty David Philip Publishers 237-264.
12 Forgiveness and Reconciliation edited by Raymond G. Helmick and Rodney L. Petersen Templeton Foundation Press.
13 The Lusaka Protocol agreed to by The Government of the Republic of Angola (GRA) and the Union for the Total Independence of Angola (UNITA) on 15 November 1994.


Ibid.

Ibid.


CAVR Part 9, paras. 68-70; 88.

Final Report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR), Part 10, para. 133

Ibid.

CAVR Report Part 9, paras. 74-86.

Ibid.

