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TRUTH AND JUSTICE? TOWARDS COMPREHENSIVE TRANSITIONAL JUSTICE
IN UGANDA AND THE DEMOCRATIC REPUBLIC OF CONGO

by

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A THESIS

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Abstract: The field of transitional justice currently views retributive and restorative justice as a means of reconciliation dichotomously. With practice becoming increasingly legalistic, the restorative approach is seen as not forcing accountability. This is a mistake. This article will attempt to show that prosecutions and truth and reconciliation commissions can complement one another to attain the most justice for the most people. Using the case studies of Uganda and the Democratic Republic of the Congo, I will examine under what conditions retributive and restorative justice will be used, and how they can be used to promote national reconciliation.

Key words: transitional justice, Uganda, Democratic Republic of Congo, restorative justice, retributive justice

The pursuit of justice in post-conflict situations has become *de rigueur*, but what form that justice should take is hotly debated. Should legal justice be privileged over truth in the aftermath of mass atrocity? Or should reconciliation of the people be seen as more important? Both in study and practice, the transitional justice field has viewed retributive and restorative justice as dichotomous means of post-conflict reconciliation. Rather than blindly adhering to this norm, the international community should question why we continue to do so. Rather than being seen as competitive means of post-conflict reconciliation, restorative and retributive justice should be seen as complementary – working together to achieve the most justice for the most people.

As Stover and Weinstein put it, “Justice, like beauty, is in the eye of the beholder and can be interpreted in a variety of ways” (2004, p. 4). Recognizing the difficulties associated with utilizing only one of these types of justices, some countries have begun to implement both restorative – defined as truth and reconciliation commissions – and retributive – using the International Criminal Court and domestic courts – justice into their post-conflict reconstruction planning. This combination of transitional justice mechanisms shows how accountability for war atrocities is implemented, reaching the top ranking members of the government to the average citizen who took up arms.

The Current Debate

The international community often has a hand in a post-conflict country’s transitional justice planning, be it through funding, design, or assisting in establishing the special commissions or courts. This is not a purely altruistic gesture – the international community benefits from having a hand in the planning. Utilizing transitional justice

mechanisms can bring a country closer in line with the democratic ideals espoused by the international community, deter future conflict, and improve human rights protection.

Therefore, the international community is investing – both literally and figuratively – in the future of the country by assisting with implementing transitional justice.

Like all investments, however, the international community looks for a return. One of the most visible returns is the use of trials, which enforces compliance with international laws and norms. Rooted in the Nuremberg and Tokyo trials, the prosecutorial approach to transitional justice is meant to strengthen the rule of law and signify that human rights abuses will not be tolerated (Humphrey 2003; International Center for Transitional Justice [ICTJ] 2015). It focuses primarily on the punishment of those deemed most responsible for human rights violations. There are two philosophical justifications for this: the retributive and deterrence theories. The retributive theory, generally associated with Kant, holds that individuals are free agents and can be punished for actions they voluntarily engaged in. Classical deterrence theory is a moral justification for punishment; it can stop others from committing similar crimes and thus provides for the common good (Seils 2013).

Echoing these theoretical groundings, advocates of retributive justice argue that the “culture of impunity” is challenged through the use of punishment (Shinoda 2002; Humphrey 2003; Kerr & Mobekk 2007). These trials are a very public method of forcing the issue of accountability. If the former leader of a country can be brought up on criminal charges, they argue, it shows that anyone – leaders or those carrying out the orders – can be held accountable for those same crimes. By this logic, using trial could also prevent future atrocities from being committed. Proponents of international tribunals

contend that prosecuting human rights abuses has empirically been shown to improve human rights protection, and that the deterrence effect is felt beyond the confines of a single country (Kim & Sikkink 2010). Those who advocate for retributive justice believe that this deterrence effect has the ability to ensure international security by enhancing the jurisprudence of international law (Landsman 1996; United Nations [UN] Security Council 2004; Bosco 2014). The trials also bring the country in line with international standards of punishment and demonstrate the appropriate means of holding perpetrators responsible. Doing so can help to normalize the pattern of behavior that conforms to democratic behaviors (Snyder & Vinjamuri 2004). Where the trials take place, however, is subject to debate within the legalist camp. Some argue that moving the trials out of the country takes the justice out of the hands of the stakeholders and makes it inaccessible to those who suffered the most. In addition, moving the courts out of the country is a missed opportunity to rebuild trust in the judicial system and the new government (Kerr & Mobekk 2007; Duff 2014).

Trials also serve to ensure the rights of the perpetrator while restoring the rights of the victim (Humphrey 2003; Snyder & Vinjamuri 2004). It is believed that they have a strong reconciliatory power and can help to move the country forward as it rebuilds. The prosecution has a duty to provide a strong case against the defendant, which necessitates information gathering. This creates a historical record of the atrocities committed that can be released to the public. Holding public trials allows the citizens to see the extent of the human rights violations, and prevents future rewriting of the history (Landsman 1996). By prosecuting those who are most responsible for the crimes committed – typically military, political, and rebel leadership – trials individualize guilt. For example, all

Germans did not commit the Holocaust – the argument goes – it was Hitler and his top leadership that committed it. This individualization of guilt promotes social reconciliation by allowing former enemies to live together once again and attempt to move forward.

Restorative justice emerged as an alternative to retributive justice. Wherein retributive justice is focused on the crimes committed, restorative justice is primarily concerned with repairing the harm done to communities (Gavrielides 2007). Unlike retributive justice, which further isolates an offender from the community, restorative justice works to bring the person back into the fold by holding “offenders accountable by having them (1) accept and acknowledge responsibility for their offenses, (2) to the best of their ability repair the harm they caused to victims and communities, and (3) work to reduce the risk of re-offense by building positive social ties to the community” (Karp 2004, p. xv). As Wright (1996) argued that “the response to crime would be, not to add to the harm caused, by imposing further harm on the offender, but to do as much as possible to restore the situation” (112). Justice, therefore, is derived from reconciliation rather than punishment.

While there are numerous mechanisms of restorative justice, truth and reconciliation commissions (TRCs) are the most well known. Since 1974, more than 25 such commissions have been created across the world (Kerr & Mobekk 2007). TRCs are established to investigate human rights abuses committed during a specific time period, typically outlined in its mandate. The ultimate goal of the commission is to find out – as the name implies – the truth of what happened during that time and usually produces a report detailing its findings. This truth-telling exercise is also thought to promote social reconciliation by allowing the victims to speak out about what occurred and possibly find

out what happened to loved ones who may have disappeared. Like retributive justice, it creates an official history that allows the country to unify and build upon, which can stabilize the country and political institutions. The rationale of the commissions is grounded in their moral conception – “‘truth and reconciliation’ may be explicated...in terms of truth as acknowledgement and justice as recognition” (du Toit, 2000, p. 123). This acknowledgement and recognition of the wrongs done to victims, they argue, will foster individual reconciliation. Even those who are not able to testify in front of the commission could find their story represented by someone who spoke out.

There are inherent limits to each of these types of justice. The time required and expense of conducting trials constrains the reach of retributive justice. It is infeasible to try all former combatants. A very clear example of this is seen in Rwanda, where the prison population in 1998 reached approximately 130,000 people with only 1,292 people having been tried (Human Rights Watch [HRW] 2014). Given this, many courts threaten only those at the higher echelons of power within the conflict. This gives some credence to the argument put forth by restorative justice advocates – that their approach is more concerned with the people of the country while retributive justice is used for the benefit of the international community. They argue that their approach to justice reaches more people as it is concerned primarily with the community level, is low cost, and not confined by availability of the infrastructure to hold trials which is often destroyed during the conflict (Gavrielides 2007). Yet there are problems with using strictly restorative measures. With the level of violence committed during the conflicts in which transitional justice is used, there is often a desire among the people to see the perpetrators punished

for their crimes. Restorative justice is not concerned with punishing and may not have a built in reparations mechanism that could be construed as punishment.

While there may have been an underlying logical to keeping these conversations separated when the field of transitional justice began, doing so now is detrimental to the pursuit of justice. Though the field has pointed out this issue, there remains a gap in the literature to address the problem. In practice, the international community continues to push countries to engage in retributive justice with the domestic governments, national, and international nongovernmental actors advocating for the use of restorative measures. This creates a false dichotomy of retributive and restorative justice. It also illustrates how the international community privileges retributive justice when their reach is limited – there is more prestige and visible accountability with the use of trials. More importantly, it fails to recognize under what conditions restorative and retributive justice could be implemented with relative success.

The pursuit of justice and reconciliation should not be seen as hierarchical. The mechanisms utilized by retributive and restorative justice have differing mandates and reach various levels of perpetrators. To achieve the most justice for the most people, it is logical that they work with one another. Yet the field of transitional justice lacks a theory of how they work together to complement one another to facilitate transitional justice. This article will attempt to address that gap.

Truth and Justice?

As the previous section shows, retributive and restorative justices are concerned with different aspects of reconciliation. Yet little attention is paid to under what

conditions these mechanisms will be implemented under. Even less attention is paid to why both approaches will be used. This begs the question: with the application of transitional justice becoming more and more legalistic, why are countries implementing both retributive and restorative justice measures? This article will attempt to identify under which conditions a government will pursue either type of justice as well as a pluralistic approach. To investigate this, retributive justice will be tested using cases being tried in front of the International Criminal Court (ICC) and national courts. The creation of a TRC will act as a proxy for restorative justice. Using the ICC necessitates a time barrier for the retributive variable, therefore only contemporary cases (when the Rome Statutes came into force in 2002 until now) can be considered.

From the end of the Cold War, there has been a marked decline in the number of interstate conflict and an increase in the number of intrastate conflicts. This, however, does not preclude outside actors intervening in the country's domestic affairs. Whether by invoking the Responsibility to Protect norm, an effect of conflict contagion, or under the auspices of international security, countries continue to get involved in conflicts beyond their borders. External actors may choose to deploy troops with humanitarian intervention in an attempt to stop the fighting or utilize non-military means. Intervening countries may use their foreign aid as a "carrot and stick" means of manipulating domestic governments into complying with international norms of justice, i.e. prosecution. They might also exert pressure by sending delegates to speak to members of the government. In return for their involvement, these interveners will want to see action. The first argument this paper will put forth is that countries that have experienced an external intervention will face pressure to indict those most responsible for crimes, and

therefore will pursue retributive justice. Externally intervening countries may push for this top-down approach to justice help to stabilize the emerging government and prove their commitment to rebuilding the country. To continue the above analogy, the intervening countries are investing in the post-conflict country and will expect a return on their investment. Seeing those who committed the crimes they stepped in to stop being publically held accountable is one way of validating their intervention. Therefore, they would stress the importance of retributive justice.

The new government faces many issues as it turns its attention to rebuilding and reconciliation. One of these problems is a weak national judicial system. It may have been corrupted by the previous regime, leading the citizens to mistrust the government leaders or their ability to remain unbiased in their prosecution. Rather than remaining apolitical, the courts could be used as a political tool in which the new government exacts their revenge on former enemies. In addition, the country may lack the physical infrastructure necessary for trials – courthouses, prison facilities, etc. – and/or the personnel resources – judges, prosecutors, defense attorneys, etc. – may have fled, hindering the ability to conduct fair trials. Recognizing these difficulties, my second argument is that countries emerging from conflicts in which the national judicial system is weak will implement restorative justice means. The lack of trust and physical infrastructure could make the government turn towards restorative justice. As these are community oriented, these mechanisms are more of a mid-level approach to implementing justice. The national government is often removed from the proceedings, and government created restorative justice mechanisms are removed from its sphere of influence. The lack of infrastructure does not limit their implementation as they can be

held outside like the gacaca courts in Rwanda, and TRC statement takers travel the country to collect people's stories. With the lower cost of these mechanisms, governments might turn to them as a stopgap as the national judiciary rebuilds.

External intervention and a weak national judiciary are not mutually exclusive conditions; they can and have appeared together in post-conflict situations. The third and primary argument of this paper examines the interaction between these two variables. I argue that countries subjected to both an external intervention and have a weak national judiciary are more likely to utilize both retributive and restorative justice in a complementary approach. This main argument of this paper is that a government can practice both retributive and restorative justice to assist in reconciling the citizens and begin the rebuilding process.

This paper will use two case studies to test these arguments. Located in the Great Lakes region of Africa, Uganda and the Democratic Republic of the Congo have both experienced protracted conflict almost from the moment of their independence from their colonial power. Their respective despotic leaders engaged in massive human rights violations ruled for years before civil wars tore the countries apart. These wars crossed borders, with the history of the two countries intertwining. Uganda began to address its tumultuous past with restorative transitional justice mechanisms in the 1970s, and the DRC following suit in 2003 using retributive mechanisms. More recently, Uganda and the DRC became the first to invoke Article 14 of the Rome Statute and self-refer their situations to the ICC, becoming the first and second countries respectively to do so.

Using historical analysis and more recent news articles, the rest of this paper will examine the atrocities the citizens' experiences and how the countries have addressed

them. The next section will give a brief historical overview of the conflicts, and the following two sections will discuss their use of retributive and restorative transitional justice mechanisms.

A Brief History

Uganda

The ongoing conflict in Uganda is Africa's longest running civil war. Following the state's independence from Britain in 1962, political maneuvering weakened the government. Prime Minister Milton Obote suspended the country's constitution in 1966 and removed the President and Vice President from power before proclaiming himself President of Uganda. He managed to stay in power until a coup in 1971, which occurred while he was out of the country. Powerless, he fled to Tanzania while Ugandan Army Major Idi Amin Dada rose to the presidency.

The people greeted Amin as a hero, falsely believing that he would institute democracy after Obote's repressive rule. The promised elections did not occur and he moved his family into the presidential palace. Rather than abolishing the secret police, Amin tightened his grip on the country and earned the nickname "The Butcher of Uganda". Almost immediately upon taking power, he began to track down his enemies, including military officers and soldiers that he believed were loyal to Obote, mainly those in the Acholi and Langi ethnic groups. It is estimated that approximately six thousand soldiers – two thirds of the standing army – were executed in his first year of power (Horvitz & Catherwood 2006). Political prisoners were often taken from their jail cells and beaten to death. By early 1972, an estimated 5,000 Acholi and Langi soldiers, and

twice as many civilians, had disappeared (Moore 2003). After announcing that he would make Uganda a “black man’s country”, the Asian community was forced from the country. After “receiving a dream from God” Amin expelled the country’s 40,000-80,000 Indians and Pakistanis (Horvitz & Catherwood 2006; Moore 2003). By the time he was forcibly removed from power eight years later, an estimated 300,000 and 500,000 people had been murdered (Horvitz & Catherwood 2006).

In 1979, Tanzania overthrew Amin and restored Obote to power; who continued to terrorize the people of Uganda. With the aid of the Uganda National Liberation Army (UNLA), he fought off a guerilla campaign led by Yoweri Museveni and his National Resistance Army (NRA). The UNLA displaced thousands in the northwest, forcing them to enter Sudan as refugees, but those in the Luwero Triangle (region north of the capital Kampala) had no such escape. The NRA secured local support and the UNLA responded by treating most civilians as collaborators. They were herded into camps and executed; it is unknown how many died but it certainly thousands (Allen 2006). Museveni succeeded in overthrowing Obote in 1985. Joseph Kony exploited the resentment of northern Acholi who wanted Obote to remain in power, but would later turn on them. He created the Lord’s Resistance Army (LRA) and is attempting to overthrow Museveni and establish a government based on the Ten Commandments (Horvitz & Catherwood 2006).

Subsidized by Sudan, the Lord’s Resistance Army (LRA) was considered one of Africa’s most brutal and effective guerrilla campaigns at its height. The LRA’s method of war has both psychological and physical impact. They use extreme violence – especially against civilians – to instill fear and maintain control (Pham et al 2005). The rebels routinely engage in mutilation; rape is used to torture and sexual slavery is not

uncommon. Both adults and children are abducted, with the ratio of three children to every adult, and forced to take up arms or perform labor for the LRA. While once powerful, their influence in the region has had a marked decline over the years. In 2009 the LRA called for a ceasefire after Uganda, the DRC, and Sudan launched a joint military offensive against them with the backing of the United States, but Kony and the LRA leadership remain at large.

The LRA is not the only group accused of human rights violations within the country. The Ugandan army – the UPDF – has engaged in abuses; even the President acknowledged that it is “not entirely made up of angels” (Ross 2003). These violations include summary execution, torture, rape, child recruitment, and inhuman conditions of detention in unauthorized detention locations (HRW 2003). These have increased after the launch of Operation Iron Fist began in 2000. Perpetrators are rarely punished for their crimes against civilians; the few investigations are done internally and supports the appearance of impunity for the army. If any punishment is ordered, it is at the discretion of the field commander; soldiers can be transferred and, in extremely rare cases, face court martial. As expected, this engenders little trust from the people who might have turned to their government for protection and no longer feel as though they can.

DRC

The DRC has experienced repression and conflict from its time as a Belgian colony. Conditions in the country were so terrible under King Leopold II’s rule that the Belgian parliament bowed to international pressure and formally removed the DRC from his control. Belgium maintained a colonial administration until the country achieved

independence on June 30, 1960. Lacking the capacity for self-governance, the country almost immediately descended into civil war. Within five years, the DRC was under the thumb of a despotic ruler.

Joseph Mobutu was able to gain power through a military coup and, because of his opposition to Communism, gained the political backing of the United States. Human rights violations and political repression were common. The country was consolidated under one political party with Mobutu at its head. According to Lemarchand (2009), Mobutu had an “unparalleled capacity to institutionalize kleptocracy at every level of the social pyramid and [an] unrivaled talent for transforming personal rule into a cult, and political clientalism into cronyism” (p. 218). Corruption was pervasive within the government; he isolated the city-states and took foreign aid for himself while the national infrastructure failed.

With the end of the Cold War, Mobutu’s grasp on power began to weaken (Stearns 2011). The collapse of the commodity prices in the 1980s reduced his ability to fund the extensive patronage system he had established and the country was forced to allow multi-party political competition in the 1990s. Rather than stabilizing the country, this brought about increased domestic turmoil. In an attempt to draw attention from his failing regime, Mobutu began to pit communities against one another. The Banyamulenge – descendants of immigrant Rwandans in the Kivu provinces – were stripped of their citizenship and – consequently – their land rights. Ethnic violence erupted and a massacre of the Banyamulenge occurred in 1993. The decayed state apparatus and flow of refugees across the Rwandan border during the 1994 genocide proved to be too much for the state structure, leading its collapse. The fleeing

Interahamwe used the refugee camps on the eastern boarder as a base for incursions against Rwanda. The First Congo War began in 1996 when Rwanda, Uganda, and Burundi joined forces to invade the country to overthrow Mobutu, who was willingly harboring foreign rebel groups. At the time of the invasion, Mobutu was caught off guard as he was in Switzerland being treated for prostate cancer. Having come to power through a coup and fearing being overthrown, Mobutu had purposely kept the security forces weak, and his rule crumbled (Stearns 2011). On May 16, 1997, Laurent Kabila, who was backed by the invading countries, proclaimed victory and was named President the following day.

Kabila turned the country into a police state – it was Mobutuism without Mobutu (Lemarchand 2009, p. 231). Relations between the new president and his former backers deteriorated rapidly. Rwanda and Uganda economically exploited the country, and allegations of Kabila being a puppet for Paul Kagame ran rampant. Fearing that Kagame was plotting to overthrow him, Kabila asked that the troops that had helped him rise to power return to their home countries. After the troops withdrew, a Rwandan Tutsi rebel group called the Reassemblement Congolais pour la Democratie (RCD) and the Ugandan Movement for the Liberation of Congo (MLC) invaded. Citing security concerns, Rwanda redeployed troops under the guise of humanitarian intervention to stop the genocide against the Congolese Tutsis with Uganda joining shortly thereafter (Reyntjens 2009). Angola, Zimbabwe, and Namibia sent troops to assist Kabila. By 1998, the Second Congolese War was begun.

Sometimes known as Africa's Great War or the African World War, no less than eleven countries were involved in the fighting (Stearns 2011). Rebel groups preyed on the

Congolese people, leaving trails of destruction in their wake. The prevalence of sexual violence, especially in the eastern region, earned the country the title of 'Rape Capitol of the World'. Negotiations and a ceasefire failed, leaving the fighting to continue across the country. On the afternoon of January 16, 2001, Kabila was shot and killed by his bodyguard, a former child soldier (Stearns 2011). His son Joseph was declared president ten days after his death.

Joseph Kabila's presidency is seen as a U-turn from his father's and the international community applauded his desire to restart the peace process (Stearns 2011). In April 2001, UN peacekeepers arrived and a peace agreement was signed the following year. All of the foreign governments, excluding Rwanda, withdrew their troops by 2003. As part of the peace agreement, a transitional government was established until an election could be held on July 30, 2006. A dispute between the supporters of Kabila and Bemba led to a battle in the streets of Kinshasa, forcing peacekeepers to take control of the city. Another election was held in December and Kabila was sworn in as President shortly there after (Stearns 2011).

While the Second Congolese War was officially over, a new rebellion was about to start. In March 2009, the National Congress for the Defense of the People (CNDP) signed a peace agreement with the Congolese government, and many of the fighters were integrated into the army. In April 2012, rebel factions broke away from the army and called themselves M23 after the date of the peace agreement they had signed (Aljazeera 2013). It is unclear if they were rebelling over the pay and conditions in the army, or the pressure to arrest Bosco Ntaganda after the ICC indicted him. Rwanda denied the DRC's accusation of supporting M23, even with the UN also insists that the rebel group received

support from Kigali. After a strong government offensive, M23 surrendered in November 2013.

Retributive Justice

This section will examine how Uganda and the DRC have addressed their respective past conflicts using retributive justice. As previously stated, this paper theorizes that external intervention will lead to the use of retributive justice. Both countries have self-referred their situations to the ICC and have begun to restore the national judiciary, but have faced issues in doing so.

Uganda

Uganda has a mixed history of utilizing retributive justice. The crimes committed under Obote and Amin's rule were not addressed with trials and no one was held accountable even with international intervention. With the country transitioning from one authoritarian regime to another, this is unsurprising. Dictators do not want their crimes to be aired publically, and they protect their own people. This pseudo-norm of non-prosecution ended with the LRA atrocities.

President Museveni referred the case to the ICC on December 16, 2003 under pressure from outside actors. For years the conflict was virtually invisible to the international community. UN Under Secretary General for Humanitarian Affairs and Emergency Relief Coordinator Jan Egeland even went as far as calling it "the biggest forgotten, neglected humanitarian crisis in the world today" (Relief Web 2003). As supporters of the ICC and major providers of humanitarian aid, European countries began

to pressure Museveni to invoke Article 14 and allow the Prosecutor to open an investigation (Burke-White & Kaplan 2009; Bosco 2014). With the ICC still looking for cases to prosecute, Luis Moreno-Ocampo, the Chief Prosecutor of the ICC, met with delegates from Uganda to discuss the LRA's activities. Recognizing the political benefits of a referral – raising the international profile of the conflict, added pressure on the LRA and their Sudanese benefactors, transferring the costs (both monetary and political) of the apprehension and prosecution of the LRA to the international community – Museveni agreed to refer the case to the ICC (Burke-White & Kaplan 2009). In addition to these benefits, he now had a legitimate threat against the LRA if they refused to negotiate – end the conflict or face prosecution.

At the time Museveni invited the ICC to investigate, there had been numerous peace talks. In 2003, the LRA declared a cease-fire and agreed to speak with the government about ending hostilities but this fell through when the group killed a member of the Presidential peace team, and the prospect for peace has been bleak since then. With the backing of the United States, Great Britain, The Netherlands, Norway, and the Catholic Church, a face-to-face meeting between senior government officials and LRA leaders was organized in 2004 to attempt to restart the peace process (Moy 2006). It was only in 2006 that there was a breakthrough in the peace talks. Representatives for Museveni met with LRA leadership in Juba, Sudan; Kony did not attend but sent two deputies – Otti and Martin Ojul. The talks began well in August when a cease-fire was agreed upon; the LRA commanders agreed to withdraw from Uganda into southern Sudan and to remain in displacement camps protected by the South Sudanese government (Baldauf 2006). By September, it failed when the LRA accused Uganda of attacking one

of their camps; another truce was signed in November 2006. This cycle would continue for another eighteen months.

The ICC's indictments were the end of the peace agreements. When Moreno-Ocampo formally began his investigation in 2004, he was contentious of not jeopardizing the new peace initiative. When progress failed, however, he decided to intervene and issue the arrest warrants (Clark 2010). Critics have argued that he was hasty this action. In an interview with the *New York Times*, Betty Bigombe, a member of the Ugandan Parliament, said, "There is now no hope of getting them to surrender. I have told the court they have rushed too much" (New York Times 2005). Until the arrest warrants are lifted, Kony refuses to sign a peace agreement; the open warrant makes him ineligible for amnesty, which had been a central part of Bigombe's negotiations.

Legal justice on the international level for the LRA victims has been slow moving. With the ICC issuing only five indictments in total – all for LRA commanders – there seems to be some credence to this argument (Clark, 2010). Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Raska Lukwiya had arrest warrants issued for them on July 8, 2005, and they were unsealed on October 13th of that year (International Criminal Court [ICC] n.d.). Without the assistance of national governments, the ICC has had difficulty apprehending the LRA leaders and the cases remained in limbo. Two of those indicted will never face justice as they have been killed: Raska Lukwiya by the UPDF in 2006, and Otti by Kony after reportedly accepting hundreds of thousands of dollars from Uganda to act as a spy (Baldauf 2012). On January 6, 2015, the first arrest was made when Dominic Ongwen, a former child soldier, surrendered himself in the Central African Republic. The lowest ranking five LRA

leaders indicted, Ongwen was transferred to The Hague to stand trial and made his first appearance at the ICC on January 26th. On March 6th, the Pre-Trial Chamber II decided to postpone the commencement of charges until January 21, 2016 to allow the Prosecution to better prepare; the charges were confirmed and the case is committed to trial (ICC; ICC 2015). The trial is scheduled to commence on December 6, 2016 (ICC 2016). Joseph Kony and Okot Odhiambo still remain at large though there is hope that Ongwen's testimony will assist in bring them to justice.

The domestic pursuit of retributive justice has been relatively unsuccessful as well. Uganda created the International Crimes Division (ICD) in May 2011. The idea for the ICD stemmed from the Juba Peace Negotiations. While the talks failed, the Ugandan government committed to unilaterally implement the agreement to the extent possible. The ICD is mandated to prosecute genocide, war crimes, and crimes against humanity, as well as other crimes including terrorism, piracy, and human trafficking (HRW 2012). Penalties for the crimes range from a few years imprisonment to the death; verdicts can be appealed to the Uganda's Constitutional Court and Uganda's Supreme Court (HRW 2012). The ICD is comprised of five judges who are appointed by the country's principal judge in consultation with the High Court's chief justice, a registrar, and a prosecutions and investigations unit.

Thus far, only one case has been brought before the ICD and it has been wrought with difficulties. Thomas Kwoyelo, a commander in the LRA, was taken into custody in March 2009 in the DRC. He was held in the custody of military intelligence for three months in an undisclosed location before being moved to Gulu Prison, and then finally to Luzira Prison. During this time, he applied for amnesty under the 2000 Amnesty Act, but

did not receive a response. In August 2010, Kwoyelo was charged with twelve counts of violating Uganda's 1964 Geneva Conventions Acts, including taking hostages, grave breaches of willful killing, and extensive destruction of property in the Amuru and Gulu districts (HRW 2012). When the trial opened on July 11, 2011 Kwoyelo faced an additional fifty-three charges including: murder, attempted murder, kidnapping, kidnapping with the intent to murder, robbery, and robbery using a deadly weapon (HRW 2012). He pleaded not guilty to all charges.

Kwoyelo's defense team questioned the constitutionality of the case because the question of his amnesty application. On July 25th, the objections were sent to the Constitutional Court which was to rule on three arguments: whether Kwoyelo was denied equal treatment under the Amnesty Act by not being granted amnesty; if the Amnesty Act was unconstitutional and thus should not bar Kwoyelo's case from proceeding; and if his detention in an undisclosed location when he was first captured was unconstitutional (HRW 2012). On September 22, 2011, the trial ended when Kwoyelo was granted amnesty. The Constitutional Court found that he should have been granted it as it was in line with the other LRA members, and Kwoyelo was discriminated against by not being granted amnesty (British Broadcasting Corporation [BBC] 2011). This was appealed to the Supreme Court, and Kwoyelo was remanded to prison until a decision was given. In March 2012, the Supreme Court stayed a January 2012 order that would grant him amnesty, and the following month the Attorney General filed an appeal to set aside the Constitutional Court's decision and resume the trial. Arguments were presented in March 2014 and the Supreme Court found that Kwoyelo was not eligible for amnesty on April 8, 2015. His trial was set to begin on May 2, 2016 but had to be postponed until July 18 due

to difficulties in mobilizing funds to facilitate outreach to victim communities; it was again postponed without giving a date though it has been hinted that the pre-trial will begin in August 2016 with the full trial scheduled for the following month (International Justice Monitor 2016; Nakandha 2016).

Without a single case completed, it is hard to examine the effects of the national court. There are an additional nine cases pending after the ICD's jurisdiction was expanded – a majority of which are concerned with human trafficking and terrorism – but many have stalled due to constitutional questions pending judgment from the Constitutional Court. In 2012 charges against former LRA field commander Caesar Achellam were filed and an arrest warrant was issued in 2014 but it has yet to be executed due to problems with the UPDF. The Directorate of Public Prosecutions has also announced that they are investigating two former LRA commanders captured in the Central African Republic in 2013, as well as leaders of the Allied Democratic Forces (Kihika & Regué 2015).

On both the domestic and international level, the pursuit of retributive justice in Uganda has been slow moving. It is, however, being used. Crimes committed under Amin and Obote went unanswered for even with the intervention of Tanzania. Continuing that trend would have been unsuccessful in today's world. Countries that gave the Ugandan government foreign aid were able to pressure them into meeting with the ICC delegates, and finally to refer the situation to the court. Without this coercive pressure, there might not have been trials. This does give some support to the argument that international intervention will lead to the use of retributive justice in the form of trials.

DRC

The DRC was the second case to be referred to the ICC in March 2004. Like Uganda, it faced external pressure to self-refer their case. The UN Organization Mission in the Democratic Republic of the Congo (MONUC) had a built-in mechanism that collected evidence for future trials to be conducted. This evidence helped the Office of the Prosecutor in forcing the issue. The country was just beginning to address the atrocities committed during the conflict when the attention of the Court began to focus on it. In July 2003 Moreno-Ocampo announced that he had received several communications from individuals and NGOs concerning the Congo, and would be following the situation closely (ICC 2004). Many considered this a signal that the DRC would be the first country that the Prosecutor would initiate an investigation into. In September 2003, Moreno-Ocampo informed the Assembly of Parties that he was prepared to seek authorization from a Pre-Trial Chamber to start an investigation. Reflecting on his speech, the Prosecutor said, “what we did was invite publicly the Democratic Republic of Congo to refer to us the case, saying that the alleged cases were extremely grave and also that the DRC itself recognized that they were unable to control the situation” (2006). Rather than becoming the first *proprio motu* investigation, Kabila caved to the pressure and chose to invoke Article 14.

With the referral, the ICC was able to open an investigation in July 2004 and referred to Pre-Trial Chamber I on July 4th. However, a number of factors complicated the ICC’s involvement. From the beginning, the jurisdiction of the Court was limited as it was unable to investigate crimes committed before the Rome Statute entered into force in

2002. This may have been a contributing factor as to why Kabila decided to allow the case to proceed. Having risen to office after his father was assassinated, Joseph Kabila had little political clout in his patchwork government that was filled with vice presidents and ministers from opposing parties – some former enemies in the conflict. Kabila, having participated very little in the conflict, was safe from the Prosecutor but members of his government were vulnerable to the ICC. Unable to rely on the weak domestic judicial system, he could use the Court to remove them from the government and political contention (Schiff 2008). It also served to strengthen his position in the international community – particularly with the European Union and France who had strongly encouraged him to sign the Rome Statute – by showing his willingness to embrace international justice.

Just prior to the beginning of the investigation, the weak transitional government began to fall apart as the Kivu province broke away. A new outbreak of violence displaced citizens as the government struggled to maintain their tenuous control over the region. Tensions between Rwanda and the Congo ramped up again as the UN peacekeepers and invested parties tried to maintain the political and military peace (Bosco 2014). It was under these conditions that the ICC chose to focus its attention on the atrocities committed in Ituri rather than Kivu. To date, the Court has issued six indictments stemming from its investigation in the DRC, and has the only two convictions in the history of the Court. Thomas Lubanga Dyilo – the founder of the Union of Congolese Patriots – was the first person to be found guilty on March 14, 2012 of enlisting and conscripting child soldiers and was sentenced to fourteen years imprisonment. Though the verdict and sentence was confirmed in December 2014 (ICC

2014). The process for reparations to his victims was appealed by both the defense and the victims; on March 3, 2016 Appeals Chamber amended the trial chamber decision and ordered the Trust Fund for Victims to present a draft implementation for collective reparations within six months of the issuance of the judgment (Pena 2015). The draft presented in November 2015 was rejected by Trial Chamber II for being incomplete and incapable of being implemented and ordered that the missing information be provided at regular intervals with the completed report due on December 31, 2016 (Carayon 2016). Dyilo is sentenced to prison until March 2020; he freely decided to serve his sentence in Kinshasha.

Germain “Simba” Katangais was arrested in March 2005 in connection with the killing of nine Bangladeshi UN peacekeepers and transferred to the ICC in October 2007. The former leader of the Front of Patriotic Resistance in Ituri was the second person to be found guilty, with four counts of war crimes and one count of accessory to a crime against humanity in connection with the 2003 massacre of the Bogoro village. He was sentenced to twelve years imprisonment with time served (ICC 2014). Like Lubanga, Katangais wished to serve his time in Kinshasha and was due to be released on January 18, 2016 after serving two-thirds of his sentence. However, the state announced that they would be pursuing national war crimes charges for the killing of the peacekeepers that had been filed against him prior to his transfer to the ICC. This does not violate the double jeopardy clause, which forbids a defendant from being tried for the same or similar crime following an acquittal or conviction, as the killing of the peacekeepers was not one of the crimes he was tried for at the ICC (HRW 2015).

One ICC trial regarding the DRC is currently underway. Bosco Ntaganda – a former leader of the Patriotic Forces for the Liberation of Congo – is standing trial for thirteen counts of war crimes and five counts of crimes against humanity after surrendering himself to the US Embassy in Kigali in 2013 and being transferred to The Hague (ICC 2014). An arrest warrant for Sylvestre Mudacumura of Democratic Forces for the Liberation of Rwanda was issued but he remains at large. It alleges that he is responsible for committing nine counts of war crimes between January 2009 and September 2010. Two cases were completed without sentencing. Callixte Mbarushimana was arrested in France in October 2010 and transferred to The Hague; the sealed arrest warrant accused him with five counts of crimes against humanity and eight counts of war crimes. On December 16, 2011 the Pre-Trial Chamber I found that there was insufficient evidence to proceed to trial, and Mbarushimana was released a week later. Mathieu Ngudjolo of the National Integrationist Front was arrested in February 6, 2008 and surrendered to The Hague where he was acquitted of three crimes against humanity and seven war crimes on December 18, 2012 and released. The judgment was sent to the Appeals Chamber but the acquittal was confirmed on February 27, 2015.

Though the DRC government referred the situation to the ICC, they did not cooperate when it came to apprehending those indicted. All State Parties to the Rome Statute are required to work with the ICC, including executing arrest warrants. As shown above, the Congolese government did not work to arrest all of those indicted by the Court, even those who were easily reached. Ntaganda, for instance, was publically seen in Goma with a Congolese Minister of Interior and other high ranking military members in January 2009 – nearly three years after a sealed arrest warrant was issued by Pre-Trial

Chamber I and almost a year after it was unsealed (Gegout 2013). Congolese authorities channeled the common argument of peace versus justice in post-conflict situations, arguing that arresting ex-warlords and those who had integrated into the armed forces under the peace agreement could throw the country back into conflict. Kabila seemed to be of two minds on this point – the international media widely circulated quotes where he called for Ntaganda’s arrest but an audio recording played by UN-backed Radio Okapi showed his reluctance:

There is someone called General Bosco Ntaganda who is under an international arrest warrant. I am often asked when visiting this region: Why haven’t you transferred Bosco to the ICC yet? I have always given you the same answer. But today, I am going to give you another answer. But my position has not changed yet. With the indiscipline that has occurred here, we do not even need to arrest Bosco Ntaganda and transfer him to the ICC. We can arrest him ourselves. We have more than one hundred reasons to arrest him and put him on trial right here. I am told that the international community’s pressure will continue. Look, I do not work for the international community. We work on behalf of our population from all across Congo and North Kivu. Concretely, when it comes to the indiscipline that we came here to solve, if there is any other case, it will give us a reason to arrest any officers, starting with Bosco and all others (Congo News Agency 2012)

Of the indicted, the Congolese authorities arrested only two – Ngudjolo and Katangais.

A possible correction of the problem of removing the trials from the domestic judicial system is the reparations scheme set up by the ICC. The Court is the first international criminal tribunal to institute a reparations program for victims of the crimes tried, though the Extraordinary Chambers in the Courts of Cambodia allows for certain types of reparations. There is also a Trust Fund for Victims that the State Parties established for those not directly connected to a case or conviction. With Lubanga’s trial completed, we will now see how this system operates. The Trial Chamber I decided that

the existing reparations system needed to be reevaluated before implementation began, so the evidence on its reconciliatory power will be an interesting advance to follow.

Like in Uganda, establishing national courts in the DRC has been a difficult task. With the jurisdiction of the ICC only extending back to those crimes committed from July 2002 forward, a vast majority of cases would fall to under the domestic jurisdiction. Even for those crimes that do fall under its jurisdiction, the ICC has focused its work [on](#) those few high-ranking leaders leaving most of the cases unaddressed. The sheer number of cases would overwhelm the already weak judicial system in the DRC. The courts would face issues in prosecution as the international laws are not integrated into the domestic legal system, and a number of the prisons have been destroyed during the ongoing conflict. According to a 2010 report, the country only has 2,000 magistrates for a country of 70 million – that means there is one magistrate for every 35,000 citizens. The same report states that the acceptable world average is a magistrate for every 5,000 citizens (Horovitz 2012). This gap fosters a culture of impunity, which destabilizes peace and stability in the country.

The national court system encompasses both the military and civilian courts. Shortly after ratifying the Rome Statute, the country's parliament amended the military criminal code to grant it exclusive jurisdiction over international crimes. Rather than adopting the definitions for genocide, war crimes, and crimes against humanity put forward by the Statute, the new military code proposed alternatives that are unclear and impede the pursuit of justice (Adjami & Mushiata 2010). A few trials have been conducted to mixed results. In May 2014, the trial of 39 soldiers accused of the mass rape

of 130 women concluded with only two convictions; 24 others were convicted of other crimes such as looting (Aljazeera 2014).

The court's first major success was the prosecution of the former rebel leader turned general Jerome Kakwavu. Known for his ruthlessness, he regularly ordered his soldiers to go to local schools and choose the pretty young girls to sexually enslave for days or weeks. Kakwavu and his rebels were integrated into the Congolese military in 2004 and – after pressure from UN Security Council ambassadors – he was arrested in 2005. Provisionally released shortly thereafter, he resumed his duty as general. It took pressure from a 2009 visit by US Secretary of State Hillary Clinton for Kakwavu to be detained pending trial. The trial and investigation were delayed and plagued with issues, but finally preceded. In November 2014 Kakwavu was found guilty of committing serious violations – including repeatedly raping two women who came forward to testify, two murders, and acts of torture on two other people – and failing to stop war crimes committed by the men under his command (van Woudenberg 2014). He was sentenced to 10 years in prison. The next big hurdle the military court system faces is the prosecution of Bedi Mobuli Egangela, a Lieutenant Colonel who is facing multiple charges including murder, rape, and torture (BBC 2014).

Recognizing that national courts are falling short on countering the culture of impunity, international organizations and NGOs have pushed for the creation of mobile courts. These courts are staffed entirely by Congolese and function within the country's judicial system. Special attention has been made to find justice for victims of rape, though it has the flexibility to hear other serious crimes such as murder and theft. These courts allow for traveling judges, prosecutors, and defense council to dispense justice to

remote corners of the country where the nearest court may be a week's travel away (Open Society Foundation 2013). Given the closer proximity to the victims than the ICC and the provincial courts, these mobile courts have great potential for local reconciliation.

Both the UN and the ICC forced the issue of trials in the aftermath of the atrocities committed. While there has been a ruling on four of the trials before the Court, the domestic courts still face an uphill battle. With the assistance of INGOs, retributive justice is being spread to the rural parts of the country where the ICC's reach is extremely limited.

Successful Retributive Justice?

The above cases do provide support for the argument that external intervention leads to the use of retributive justice. However, given the lack of completed cases it would be easy to say that the retributive approach to justice has been a failure. Advocates of retributive justice argue that trials challenge the culture of impunity but it is unclear whether this is true. The Lord's Resistance Army continued to attack civilians in Uganda and other African countries. It could be argued that the DRC government's unwillingness to arrest those who are indicted by the ICC supports a culture of impunity. Additionally, the reconciliatory power is difficult to gauge as even with the completed trials as are struggling to implement reparations for the victims. Finally it underlines three of the most prominent critiques of the retributive process: the process is slow and expensive, and only reaches the top echelons of power.

There are two areas in which retributive justice has proved beneficial. Having the trials conducted in the country does seem to assist in rebuilding the national judicial

infrastructure. Like the ICC, these courts are struggling to with completing cases but their creation has forced the country to rebuild the infrastructure and to adopt international human rights laws to prosecute genocide and other crimes against humanity. It has also served to bring the country in line with international standards of punishment. Though they still utilize the death penalty, it is not a violation of international law as it is only a norm; this would only be a violation if the person was summarily executed or entitled to a lower sentence. While there are numerous issues with the court system, advocates of retributive justice should investigate these small victories to see where they can be generalized and what lessons can be learned from them.

Restorative Justice and Truth Commissions

The above section illustrates the difficulties that the legal system faces in pursuing justice on both the local and international scale. Given this, we would expect to find evidence for the second argument – countries would implement restorative justice means. Both Uganda and the DRC have created TRCs but they are viewed as failures; rather than discouraging any future restorative justice, it has led to calls for new commissions.

Uganda

Uganda is one of the few countries that have established two TRCs within a twenty-year span. Neither was particularly successful but they did lay the groundwork for a third commission to be launched. Amin established the first TRC – the Commission of Inquiry into the Disappearances of People in Uganda – in 1974. It was the first TRC in the world set up to document violations and make recommendations (Track Impunity

Always [TRIAL] 2012). The Commission was mandated to investigate the disappearances in the beginning of Amin's reign, from the 25 January 1971 until June 1974. Four men composed the Commission: an expatriate Pakistani judge as President, two Ugandan police superintendents, and a Ugandan army officer (TRIAL 2012). It was rather remarkable that Amin not only established the Commission but also gave it the ability to compel witnesses to testify and obtain official information. However, government departments – mainly the police and military intelligence – circumvented this by restricting information.

A total of 308 cases were presented to the Commission over six months, and most were conducted in public. It was concluded that the Public Security Unit and the National Investigation Bureau – both established by Amin – were mainly responsible for the disappearances. It also heavily criticized army officers for abuse of power. The Commission recommended that the police and the armed forces be reformed and that all law enforcement officials be trained in human rights standards (United States Institute of Peace [USIP] a). While a confidential copy of the report was given to Amin, he chose – unsurprisingly – not to make the report public and it had little effect on his governing practices. The four commissioners were persecuted after the report was written: the Pakistani judge lost his job, one commissioner was accused of murder and sentenced to death, and a third fled the country to avoid being arrested (TRIAL 2012). It is widely viewed as Amin's weak attempt at countering national pressure on his regime. The only benefit of the entire exercise was that it established a historical truth of the abuses that occurred during that time frame.

Upon entering office, Museveni attempted to improve the country's reputation on human rights in an attempt to gain legitimacy. He was also trying to curry favor with the international community in order to increase financial aide, and to appease internal opposition (Quinn 2007). Even though the first commission was almost universally viewed as a failure, Museveni decided to create another TRC. The Commission of Inquiry into Violations of Human Rights was established on May 16, 1986, and mandated to investigate all aspects of human rights violations that occurred between October 9, 1962 and January 25, 1986 (USIP b). Like Amin's TRC, it was doomed to fail almost from the beginning.

When the Commission began its work, it was composed of five men. Caving to international and domestic pressure, Museveni appointed historian Joan Kakwenzire to the Commission (Quinn 2007). The mandate was extremely broad and vague but allowed for all human rights abuses to be investigated. There was also an institutional failure in providing support for the Commission and the investigation into the abuses that occurred. Funding shortfalls slowed the operation, even causing it to stop entirely during its second year of work. It was only with a US \$93,000 donation from the Ford Foundation that the Commission was able to continue its work (TRIAL 2012). The international community helped to finance its continued existence, with the Danish International Development Agency (DANIDA) as the largest external contributor. DANIDA provided equipment and expertise, as well as US \$363,000 that allowed the Commission to complete its work. With the delays, the original three years that the Commission was expected to work was expanded to eight, during which 608 witnesses testified (Quinn 2007).

Despite the setbacks, the TRC published its final report in 1994. It found that there was widespread evidence of arbitrary detention and recommended that those laws allowing detention without trial be repealed. The TRC also recommended that human rights education be incorporated into the school and university curriculum, as well as into the training programs of the army and security forces (USIP b). As with the 1974 report, it was not widely circulated and a majority of Ugandans know little or nothing about it (Quinn 2007). Small pamphlets containing the Report's findings were published, but were not distributed due to lack of funds and a waning interest in all things relating to Uganda's past. Museveni encouraged this thinking by emphasizing that they should not dwell on the past atrocities (Quinn 2007). It is because of this attitude that there are virtually no monuments or memorials, and the school children are unaware of what happened.

Although the previous two truth commissions have almost universally been viewed as failures, there continues to be calls for the establishment of a third TRC. Religious leaders in particular have been very vocal on this front. The retired Bishop of the Kitgum Diocese, Macleord Baker Ochola said, "The government must take up a bold step to institute a special commission for this region because neglecting the situation could turn to be a time bomb waiting to explode anytime" (Makumbi & Eriku 2011). Doing so would establish a definitive history of the conflict and help to combat the "blame game" occurring between the LRA and the government over whom is responsible for the atrocities. Museveni has been at the forefront of asking religious leaders to stay out of politics, saying that their should be guiding the spiritual masses instead (Makumbi & Eriku 2011).

Another interesting problem any future Ugandan TRC that examines this conflict will confront is the 2000 Amnesty Act. Its influence reaches past the trials, where voluntarily confessing to crimes the person had committed could lead to freedom from prosecution. The Act is meant to aid in demobilization, resettlement, and reintegration as well as promote reconciliation and a dialogue between the victims and the perpetrators. This is very similar to what TRCs are meant to do. If a person could be granted amnesty for past crimes, the argument went, why would they have any dealings with the TRC? It suggested that the TRC's work was less important, and that amnesty should be the pushed for. In essence, the debate was if establishing a historical truth was necessary.

DRC

The DRC's truth commission was established in 2003 as a result of the Sun City Agreement. The Comprehensive Peace Agreement created the framework for the TRC as an institute to support democracy but it did not create a specific mandate. As with the newly formed government, the TRC was designed to be a power-sharing mechanism where all parties had a vote in the selection of the leadership. With Law No.4/2004, the National Assembly and Senate formally created the TRC but did nothing to clarify the mandate (Naughton 2014).

One glaring issue with the mandate is that it did not establish a temporal framework in which to operate – it was tasked with documenting political and human rights violations from independence in 1960 but did not give an end date. Another problem was how blatantly political the supposed independent commission was. While a

civil society representative was placed at the head of the TRC, the political parties appointed the remaining seven members of the bureau, who in turn were able to direct the selection of an additional thirteen members almost a year and a half later (Naughton 2014). The commission was meant to complete its task by the 2005 elections but the delay in selecting the commissioners used more than half of the two year's allowed by the Comprehensive Peace Agreement. Even with the elections pushed back until 2006, the TRC had a limited time frame in which to work as the Supreme Court did not approve its formal bylaws until April 1, 2005.

The commission's ability to complete its mandate was also hampered by physical security issues. Though there was a negotiated peace agreement, fighting continued throughout the country. Unable to ensure the security of staff, victims, and witnesses, the TRC had limited to no access to certain parts of the country. Recognizing this difficulty, the Commission eventually abandoned its truth-seeking goal and instead focused on conflict prevention and mediation as the elections drew near (Naughton 2014). The final report – totaling 84 pages – was submitted to Parliament in February 2007. During its 3 year and 10 month existence, the TRC conducted zero investigations or hearings and only produced generic recommendations. As Naughton (2014) stated, the TRC “did not support the fundamental objectives of a truth commission: accountability through fact-finding, acknowledgment of victims, and truth seeking to identify the root causes of violence to prevent its recurrence” (p. 55).

Though the TRC is viewed as an utter failure, the report did have one interesting recommendation. Recognizing that it had abandoned its mandate and done little to reconcile the country, the commissioners proposed the creation of a second TRC and

even attached a proposed draft law to begin the legislative process (Naughton 2014). To date, there has not been a second TRC but it could be beneficial in the reconciliation process at a future time.

Restorative Justice Failures

Uganda and the DRC cases demonstrate the difficulties TRCs face. While they are meant to be independent entities, it is unsurprising that they are inherently political. Due to this, it is hard to create an official history that is apolitical and all encompassing. It is also difficult to gauge how much they have done in terms of reconciliation; however, it would be fair assumption that it has done little to nothing. However, the cases do provide support for this paper's second argument – that countries will utilize restorative justice when there is a weak national judiciary. And, while the TRCs may not be viewed as a success and the reports were not circulated, the Ugandan case demonstrates that the commissions can reach many people. If they were to actually enforce their mandate and focus on reconciliation, the TRCs could be a powerful tool. The continuing calls for the creation of new TRCs in Uganda and the DRC demonstrate that countries have not given up on the mechanism.

Conclusions and Implications

While the cases of Uganda and the DRC demonstrate that both retributive and restorative justice can exist within the bounds of a single country, it does not do so perfectly. The cases provide support for the first argument put forth – external intervention will lead to pressure to implement retributive justice. Both Europe and the

ICC Prosecutor pressured Uganda and the DRC to invoke Article 14 of the Rome Statute and refer their situations to the newly created Court. Rebuilding the national judiciary has also become a focus of international organizations and NGOs. Doing so allows for trials to remain closer to the stakeholders and promote reconciliation within the country.

There is also support for the second argument – the corruption of the judicial system by the previous regime will lead to the implementation of restorative justice – but with a caveat. While a weak national judicial system may lead to the creation of a TRC, it does not mean that it will be successful. As both countries are facing calls for a new commission, the countries should use the past experience as a learning experience for a potential new TRC. It is important that the commission remain independent and is given the funding to complete its mandate, demonstrating the political will of the government to hold the perpetrators accountable while creating an official history of the time period.

While not directly addressed in the body of the work, the third and primary argument – that external intervention and a weak national judiciary will lead to a complementary approach – does have support from the two case studies. The countries implemented a complementary approach to transitional justice by utilizing both retributive and restorative justice mechanisms. As many countries emerging from conflict face both of these conditions, this study provides an example of how countries could use retributive and restorative means and which pitfalls to avoid.

These cases can be viewed as radical failures of transitional justice, but there are a few important lessons that can be drawn from them. The use of mobile courts in the DRC is an excellent example of the international community and national governments recognizing the inherent limitations of the court system and adopting a new system to

reach more people. We can also see that countries are choosing to engage the International Criminal Court in a strategic way. Uganda used the ICC as a threat against the Lord's Resistance Army to bring them to the negotiation table, while Joseph Kabila used it to remove political enemies. Both have also used it as a means of improving their standing within the international community. The continued calls for truth and reconciliation commissions in the countries that have had a history of failed attempts are very promising. It demonstrates that people still believe that they have value. The international community and national governments should take note of this and strive to implement restorative mechanisms that are both apolitical and widely accessible.

Transitional justice is meant to reconcile the people of a given country after a conflict situation. With the increase of external intervention, there is an added issue of public accountability to the international community that must be taken into consideration. Given the limited reach trials both in country and at the ICC, their ability to aid in reconciliation is somewhat inhibited. It is therefore logical to include a mechanism that reaches more people – a truth and reconciliation commission has the potential to do so. Implementing a complementary approach would allow for the country to see those most responsible being brought to justice while also working to reconcile the people to their community – therefore doing the most good for the most people.

Uganda and the DRC have both shown that countries can implement both retributive and restorative mechanisms when working on transitional justice. For the mechanisms to truly work towards reconciliation, however, the government must have the political will to subsidize and support the mechanisms while allowing them to remain apolitical. Doing so will allow them to be seen as legitimate tools of reconciliation rather

than as a means of implementing victors justice. Recognizing that these do not occur in a vacuum, it is important that the international community work with the national governments to ensure that an accurate record of human rights violations is created and that all sides of the conflict are held accountable for their actions, not just the losers. Implementing both a top-down approach of justice through prosecutions and a mid-level approach with a truth commission will ensure that justice reaches more citizens, and push the country closer to the goal of attaining the most justice for the most people.

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