I. Introduction

What role should restorative justice play in International Criminal Law? Should Truth and Reconciliation Commissions be a transitional justice mechanism, or are they simply ineffective? Moreover, what is the role that culture plays in determining the effectiveness of a Truth and Reconciliation Commission versus an International Criminal Tribunal? These questions comprise the bedrock of transitional justice, and how best to help a society to reconcile and rebuild after years of civil conflict or unrest. This paper attempts to provide an answer to these questions, but more importantly, to begin the discussion. It will examine the basic tenets of restorative justice, and how rituals and practices that have been used for thousands of years in indigenous communities resemble the restorative approach. Case studies will be used to demonstrate the use of restorative justice in international law. All of the above will go to support the recommendation of this paper – that international criminal tribunals and truth commissions that incorporate local customs complement each other to bring about the peace and justice required for a country to heal from conflict.

II. What is Restorative Justice?

According to John Braithwaite, one of the most well known scholars in this field, “[r]estorative justice is most commonly defined by what it is an alternative to.”¹ Proponents have found it hard to find a common definition, with the best working definition being offered by Tony Marshall, which states, “[r]estorative justice is a process

whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future.”\(^2\) Restorative justice seeks “...to transform the way contemporary societies view and respond to crime and related forms of troublesome behaviour.”\(^3\) It aims to replace “...our existing highly professionalized systems of punitive justice and control... with community-based reparative justice and moralizing social control,”\(^4\)

Another leading scholar, Mark Umbreit, identifies six clusters of principles within restorative justice. They are: “... the nature of the crime, ... the goal of justice, ... the role of victims, ... the role of offenders, ... the role of the local community, [and]... the role of the formal... justice system.”\(^5\) The theory seeks to redefine crime as tearing “... the social or community fabric,”\(^6\) rather than a mere “... act of lawbreaking”\(^7\) against the state. The proper goal is not to “... focus solely on punishment, deterrence, or rehabilitation of individual offenders”\(^8\) but “... to repair the damage done and restore relationships, personal and communal, to their original state.”\(^9\) Restorative justice gives victims and offenders a role in the process.\(^10\) In addition to the two directly affected parties, restorative justice also includes a role for the broader affected community, in both

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\(^2\) \textit{Id.} at 5.


\(^4\) \textit{Id.}


\(^6\) \textit{Id.}

\(^7\) \textit{Id.}


\(^9\) Umbreit and Coates, \textit{supra} note 5, at 44. Umbreit recognizes that a perfect return to the original state of the relationship is not always possible, but aims to return the relationship “... to the extent possible.” \textit{Id.}

\(^10\) \textit{Id.}
resolving the conflict, and developing ways to prevent future crimes. Though an alternative to the formal state justice system, restorative justice does not completely eradicate it; rather, according to Umbreit, “...the formal justice system must continue to work to ensure victim, offender, and family...involvement which values genuine engagement of all participants without coercion.”

Unlike traditional Western criminal law, restorative justice focuses as much, if not more, on the process of coming to agreement rather than the sanctions agreed upon. The process, and responses to it, is meant to “... repair harm, heal parties, mend broken relationships, and build communities.” These ideals are found in many restorative justice programs, such as drug courts, addiction treatment programs, and victim offender dialogue. Kurki summarizes it perfectly when she states, “In short, restorative justice is about relationships – how relationships are harmed by crime and how they can be rebuilt to promote recovery and healing for people affected by crime.”

III. Restorative Justice & Indigenous Communities

Where did restorative justice come from? Did it just develop in the minds of a few Western social justice advocates in the 1970’s and 1980’s, or has it always existed in one form or another throughout human history? Many proponents believe that restorative justice is mankind’s “original” mechanism for dealing with crime, and was widely

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11 Id. Restorative justice’s mission “...include[s] preventing crime and solving neighborhood conflicts.” See Kurki, supra note 8, at 236.
12 Id.
13 Kurki, supra note 8, at 239. Kurki states that one reason for this different emphasis is that the sanctions offered in restorative justice are often similar, if not the same as, traditional sanctions, “... including restitution, community service, letters of apology, jail visits, anger management, alcohol or narcotic treatment programs, and the like.” Id.
14 Id. at 263.
15 Id. at 266.
practiced before the emergence of the modern “state.”\textsuperscript{16} While such strong statements inevitably oversimplify the traditions of First Nations and indigenous societies, there is some truth to be gleaned from the study of indigenous conflict resolution techniques, and much of what we in “The West” practice today in the way of restorative justice has been heavily influenced by such practices.\textsuperscript{17}

Sentencing and Peacemaking circles in the United States and Canada were inspired by First Nation and Navajo practices. The programs originally began in Canada in the early 1990s as a way to deal more effectively with First Nation offenders.\textsuperscript{18} Supporters believe “…the circle process empowers its participants to take ownership of the process and to develop solutions to problems in accordance with their values and customs.”\textsuperscript{19} In addition to empowerment, such sentencing circles also “…help to prevent the culture shock which many First Nation people experience[d] when they [had] to appear in court.”\textsuperscript{20} In practice, the circles are “facilitated community meetings attended by victims, offenders, their families and friends, interested members of the community and usually representatives of the criminal justice system.”\textsuperscript{21} After an opening prayer and laying down some ground rules, the participants are each able to tell their side of the story as well as to introduce possible solutions and reparations for the offender.\textsuperscript{22} Though the circle is convened because of a certain offence, discussion of issues in the circle may

\textsuperscript{17} \textit{Id.} at 114-115.
\textsuperscript{19} \textit{Id.}
\textsuperscript{20} \textit{Id.}
\textsuperscript{21} \textit{Id.} at 16.
\textsuperscript{22} \textit{Id.} at 17. This offender can make suggestions as to the next step as well.
go beyond the offensive act in order to “... uncover deeper problems.”23 After all issues have been discussed, and all parties feel that they have been able to express themselves and their feelings, the judge passes sentence according to what was brought out in the circle.24 Similar traditions are found in the Navajo Nation in the United States.25 Finding that “[t]he Western justice system did not fit well with the Navajo culture,”26 the Navajo Nation started reintegrating traditional law into the current justice system in the 1980s.27 Circles such as these introduce a more horizontal enforcement of justice among equals, rather than a vertical system of justice between the state and offender.28

Other notable peace making and restorative justice practices that derive from indigenous rituals have been relatively successful in Australia and New Zealand. In the late 1980s, the New Zealand government was concerned about the crime statistics among their indigenous populations, mainly comprised of the Maori ethnic group.29 After an extensive report was published by the Department of Justice, New Zealand introduced the idea of “Family Group Conferencing” (FGC) into the juvenile system.30 The FGCs worked so well in this arena, that they were introduced into adult criminal proceedings in 2002.31 Family group conferences begin with a description of the events that led to the meeting, “…and the offender is invited to admit or deny involvement.”32 If the offender

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23 *Id.* This attempt to uncover deeper problems that lead to the offender’s behavior was also an aim of the TRC in South Africa. While the TRC did not attempt to provide any excuses – black or white, it played a significant role in uncovering the structural racism that existed in the Apartheid Era. See James L. Gibson, *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?*, 603 Annals AAPSS (Jan. 2006), 83.
24 *Id.*
25 *Id.* at 19.
26 *Id.*
27 *Id.*
28 *Id.*
29 *Id.* at 10.
30 *Id.* at 10-11.
32 Zernova, *supra* note 18, at 11.
was in fact involved (and is willing to own up to such involvement), then the victims are
given an opportunity to describe how the offense impacted and affected them.33 After all
those who were affected relay their experiences,34 the discussion moves on to how best to
repair the harm that has been done. The family of the offender meets privately to develop
a reparations plan that includes ways to repair the harm as well as ways to keep such
harm from occurring again.35 This plan is then presented to the whole group for
discussion and agreement. After such agreement has been reached, a judge approves it,
making the agreement binding on all involved parties.36

These conferences proved to be extremely satisfactory to offenders and their
families, and moderately satisfactory to victims. Recidivism rates decreased greatly.37
Particularly with those offenders who were Maoris, it resonated with traditional justice
mechanisms such as the “whanau conferences” that had been practiced by the group for
centuries.38 This is because before the British colonized the area, the Maoris had no
judicial system even closely resembling those of the West.39 Instead, they “... saw
conflicts and wrongdoings as affecting extended families and clans of victims and
offenders. So, in the aftermath of crime extended families of the victim and the offender
came together and negotiated a conflict resolution.”40

The New Zealand FGCs were so effective that Australia adopted a modified
version in their Wagga Wagga conferences.41 The main difference between the New

33 Id.
34 Other affected groups involve friends of the victim, as well as friends and family of the offender.
35 Zernova, supra note 18, at 11.
36 Id.
37 Id. at 11-12.
38 Id. at 10.
39 Id.
40 Id.
41 Id. at 12.
Zealand model and others is the role of police. Particularly in Australia and the U.K., the conferences are led by police, rather than by social workers or other agency employees.42

Such traditions have also been used to help to reintegrate former combatants back into society after civil war, particularly in Sierra Leone and Uganda.43 In these situations coordination with local law enforcement agencies has been sparse, and many argue that such restorative traditions are not utilized enough.44 These traditions are similar to all those mentioned and discussed above, and have been used to resolve “...intra-tribal disputes through apology, negotiation, compensation, and forgiveness.”45

IV. Restorative Justice in International Criminal Law

The introduction of restorative justice into International Criminal Law has been a relatively recent phenomenon. The predominant mechanism by which restorative justice has been introduced into international law is that of Truth and Reconciliation Commissions. The first TRC was begun in 1975, and to date there have been a total of twenty-four that have been instituted world-wide.46 In fact, TRCs have become the preferred means of “...states to address large-scale violence and move forward collectively.”47

What exactly is a truth commission? While procedures and other aspects may differ, the underlying philosophy remains the same. They are, as Desmond Tutu said, a

42 Id.
43 See Rosalind Shaw, Rethinking Truth and Reconciliation Commissions Lessons from Sierra Leone, United States Institute for Peace Special Report 130 (Feb. 2005) and Scott Worden, The Justice Dilemma in Uganda, United States Institute for Peace, USIPeace Briefing (Feb. 2008).
44 Rosalind Shaw, Rethinking Truth and Reconciliation Commissions Lessons from Sierra Leone, United States Institute for Peace Special Report 130, 8 (Feb. 2005).
47 Id.
“third way” between the victor’s justice as evidenced in Nuremberg and current international criminal tribunals such as the ICTY, ICTR, or ICC. In practice, they are “...temporary bodies... set up to investigate a past history of human rights violations that took place within a country during a specified period of time.” Most of them have mandates that establish responsibilities such as “...establish[ing] an authoritative record of the past, overcome[ing] communal and official denial of atrocities, violence, or abuses . . . [and] restor[ing] dignity to victims and promot[ing] psychological healing . . .” Many argue that TRCs allows societies to focus “... on the underlying causes of [the] conflict and human rights abuses such as rules and practices rather than on individual perpetrators.” Therefore TRCs are able to avoid the collective guilt problem that advocated after WWI and which Nuremberg attempted to remedy, and “... may be better able . . . to facilitate needed political and cultural change and to pay more attention to the needs of victims.” Addressing these needs is particularly important in cases such as civil war and large scale violence. This is because if victims’ needs are not adequately addressed, they may resort to self-help measures of vengeance – which only serves to continue the violence and renew hostilities.

The following section will examine several examples of TRCs that were formed to attempt to address past wrongs and encourage societies to move forward. Each analysis

49 Id.
50 Id.
52 Id.
will be divided into the six principles of restorative justice as advocated by Mark Umbreit.54

V. Case Studies in International Law

A. The South African Truth and Reconciliation Commission

  *Nature of the Crimes*

The South African TRC was formed in 1995 to address the vast human rights abuses that were committed during the apartheid regime.55 The harm suffered by apartheid came not from a rogue dictator, but from a ruling party who enacted laws that systematically and structurally discriminated against the non-White population. “Many of the revelations unearthed by the TRC involved extreme excesses in the political repression the state applied against dissidents.”56 However, in its evenhandedness, the TRC also showed the unjust actions of the Blacks in their struggle for freedom. While urgently attempting to overcome the apartheid regime, the Black revolutionaries were not immune from the draw of terrorism, and in several situations, lives of innocent White civilians were taken.57

Moving on from human rights abuses came differently to South Africa than other countries such as Argentina and Uganda.58 This is mainly because South Africa under apartheid was not ruled by a tyrannical leader, but instead involved the systematic oppression of one group over others.59 While in other such experiences, the main regime had ended, in South Africa, many of the perpetrators and planners of the regime were still

54 See Umbreit and Coates, supra note 5 and accompanying text.
56 *Id.*, at 98.
57 *Id.*, at 100.
59 *Id.*
Thus, the rebuilding of the nation had to take on a more collaborative process, in order to avoid instituting a similar situation to the one that had just been overthrown.

**Goal of Justice**

The goal of this innovative transition experiment was to examine and document “...atrocities committed during the struggle over apartheid.” It was designed to foster reconciliation between South Africans not only on the individual level, but also on the macro, interracial level – “. . . between those who profited from apartheid and those who were injured by it.” The TRC was designed “. . . to produce a ‘collective memory’ for South Africa” – one that was shared by Whites, Coloreds, and Blacks alike.

**Role of the Victims & Role of the Offenders**

The respective roles of victims and offenders cannot be so easily divided in truth commissions, because the success of the process depends not only on the offenders admitting their guilt, but also on the satisfaction of the victims, and the effect that the TRC has had in their ability to move on with their lives. The TRC “[a]llow[ed] people to come forward and tell their stories . . . in all their gory and human detail.” Perpetrators were allowed to come forward and apologize to the victims – expressing their remorse about their actions. While many feared that the grant of amnesty from prosecution

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60 Brahm, supra note 51, at 17.  
61 Gibson, supra note 58, at 344.  
62 Id. at 344.  
63 Gibson, supra note 55, at 87.  
64 Id., at 89.  
65 Id., at 104.  
66 Id.
would produce insincere apologies, and one certainly cannot rule out the possibility that such situations did occur, plenty of the perpetrators apologized “... in terms that were widely understood to be sincere.” Ultimately, the success of the South African TRC depended on the cooperation of both the victims and offenders – the role of the offenders was necessary to bring out truth, the role of the victims was designed to bring about reconciliation.

**Role of the Local Community**

“For restorative justice, community is both subject and object...” This is because restorative justice cannot exist without the community, but it also shapes the community and transforms it into a more peaceful one. There were several reasons why the role of the community was essential to the success of the South African TRC. The TRC had to involve the community because “... much of the abuse in South Africa was perpetrated, supported, and maintained in a systematic manner [that] implicat[ed] most, if not all, of the population in some way.” It was therefore very important that the community account for their own actions during the reign of apartheid – mainly, their presence as “... supporters and silent witnesses...” Because restorative justice defines crimes as a crime against the community, the community must play an essential role in restoring the equilibrium. By having a stake in the outcome, the smaller communities, as well as the larger community of South Africa as a whole were encouraged to help,

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67 *Id.* However, the degree of satisfaction with the sincerity of apologies varied by social group and race. See Jay A. Vora & Erika Vora, *The Effectiveness of South Africa’s Truth and Reconciliation Commission: Perceptions of Xhosa, Afrikaner, and English South Africans.* 34 Journal of Black Studies (Jan. 2004), 301, 308-309. “The Afrikaners perceived the TRC to be less effective in bringing out the truth than the English participants... and much less effective than did the Xhosa.”


69 *Id.*

70 *Id.*

71 *Id.* See also, *supra* note 6 and accompanying text.
rather than hinder the outcome. This is because, ultimately, it was their country and their livelihoods that would be affected by the success or failure of the TRC.\textsuperscript{72}

\textit{Role of the Formal Justice System}

The formal justice played a larger part in the South African reconciliation \textit{after} the TRC was completed, rather than creating the actual reconciliation itself. This is particularly understandable in South Africa because of the fact that apartheid was legal, and the abuses that were committed were committed under the authority of the rule of law.\textsuperscript{73} “The apartheid government held trials and inquests, struck commissions, and imprisoned those who did not follow the law.”\textsuperscript{74} Because of this, several scholars assert that “[o]nly [after the TRC] can courts uphold [the] rule [of law]; they cannot be its source.”\textsuperscript{75}

B. Uganda

\textit{Nature of the Crimes}

The nature of the crimes in the conflict that has been raging in Uganda for over twenty one years is of a completely different type than those crimes found in South Africa. While the apartheid regime involved oppression from a governmental level, and the silencing of political dissidents, the crimes that have taken place in Uganda are much more violent and horrific.\textsuperscript{76} “Rape, mutilation, humiliation, torture, murder, massacres, beatings, arson, looting, abduction and forced enslavement and internment are trademarks

\begin{flushleft}
\textsuperscript{72} \textit{Id.}
\textsuperscript{73} \textit{Id.}
\textsuperscript{74} \textit{Id.}
\textsuperscript{75} \textit{Id.} “It is difficult to understand how more trials would now suddenly imbue the society with respect for the rule of law. This can only happen, it would seem, after the transition has taken place, and a rule of law has been established.”
\end{flushleft}
of [the Ugandan] conflict.” While in South Africa crimes were committed by both sides, the ambiguity of who to punish in Uganda is even greater. The line between victim and perpetrator has even blurred, because of the common use of child soldiers.  

**Goal of Justice**

The goal of the justice sought in Uganda seems to be accountability. They are less concerned right now with developing a “collective memory” as in South Africa, mainly because the country has been divided and the majority of the atrocities are occurring in the north, while people in the south live relatively peaceful lives. In February of 2008, the government and the LRA signed a peace agreement that provided for a fairly comprehensive plan of bringing the perpetrators to justice, whether through the ICC, the national courts, or traditional Acholi tribal methods. The main goal of the Ugandan peace agreement was simply that – to provide peace. The government at this time must allow people to feel safe and to be able to live “normal” lives before they can begin to think about attempting to obtain a true record of events.  

Moreover, it appears that the main mechanism for obtaining truth will not be a government sponsored truth commission, but that truth will be found on a more local level, through traditional Acholi tribal methods. Through these rituals, Ugandans hope to “... understand the root causes of the conflict ... learn what happened to loved ones who are still missing ... lay the spirits of the dead to rest and cleanse the area of misfortune ...
receive both symbolic and material compensation . . . [and] move towards reconciliation."\textsuperscript{82}

\textit{Role of the Victims & Role of the Offenders}

Because the actual truth-telling process has not actually begun in Uganda (as the leader of the LRA, Joseph Kony has broken several promises and refuses to continue negotiations until the ICC arrest warrant for him is lifted),\textsuperscript{83} the actual process and procedure is merely in the minds of both the government and the villagers who are hoping to obtain closure from the process. One Acholi woman believed the role of the victims and offenders should be as such:

A truth process should start mediating truth-telling and forgiveness in private between the perpetrator and the victim. The perpetrators should be asked if they are ready to come out and confess and ask for forgiveness from the people they wronged. If they accept, then they should be made to go and ask for forgiveness from these people. Then the victims will grant them forgiveness.\textsuperscript{84}

In this way the roles of the victims and offenders are both similar and different to the roles each played in South Africa. While the roles are essentially the same, the forgiveness and truth telling that is desired is to take place in private rather than on a national stage as in South Africa.

\textit{Role of the Local Community}

The desired design for the Ugandan truth telling process provides a role for the community after the process, but limits the public’s access and role in the actual truth telling process itself.\textsuperscript{85} For instance, one woman, when describing the role of the community and the public believed that the matter should only be brought to the

\textsuperscript{82} Baines and Ojok, \textit{supra} note 77, 6-9.
\textsuperscript{83} Worden, \textit{supra} note 45, at 5.
\textsuperscript{84} Baines and Ojok, \textit{supra} note 77, at 15.
\textsuperscript{85} \textit{Id.}
community “. . . when the offender has refused to confess and ask forgiveness.”
86 Data shows however, that this limited role of the community is not desired only because of tradition or values, but also because of fear. 87 However, the traditional justice methods require much more community involvement than a government run truth commission, because it is the community members who are responsible for mediating and creating peace in their village.

**Role of the Formal Justice System**

The role of the formal justice system in Uganda’s truth commission is much more limited than in South Africa or commissions in Latin America. A policy of amnesty has been developed, but unlike in South Africa it is not given to incentivize offenders to come forward and tell the truth about what has happened. Rather, it is primarily to strip the rebel groups of their members, since the amnesty agreement provides that ““. . . any Ugandan who has . . . engaged in war or armed rebellion against the government by either participating in combat, engaging in other criminal activity connected with the conflict, or aiding or abetting insurgents shall not be prosecuted or subjected to any form of punishment as long as they agree to renounce their affiliation with rebel groups. . .’”

86 *Id.*
87 *Id.* One villager stated, “I feel that it is better if the truth is told in public because each one can tell us what they saw with their own eyes before everyone. But also on the other hand, it can be told privately if one fears to talk about what the soldiers and the Government did because they can follow you and kill you since they own guns. After privately hearing what everyone has to say, it can be integrated into one story and told in public as the community’s general view or one voice.”
88 *Id.*
C. East Timor

Nature of the Crimes

The crimes in East Timor were again those of government oppression and violent resistance prior to the country’s independence from Indonesia in 1999.89 The Timorese Commission for Reception, Truth and Reconciliation (CAVR) was established by the new government in 2001. While it provided for formal justice mechanisms, it also highlighted and encouraged local restorative rituals as well.

Goal of Justice

The goal of the CAVR is similar to the commissions established in South Africa and Latin America. Its procedure was set up to encourage “...a process of public confession and acceptance of criminal acts perpetrated between 1974 and 1999. This period covered the atrocities committed in the name of the nationalist Timorese political factions of Fretilin and UDT, as well as those of the Indonesian army and its indigenous militias.”90

Role of the Victims & Role of the Offenders

The particular ritual that is found in East Timorese culture is that of nahe biti, literally, “laying down the mat.”91 This ritual serves as a venue “...to discuss and settle issues among the interested parties through consensus.”92 The focus is once again, on process, as nahe biti “...is regarded only as part of an all-inclusive process and not as the end of the process itself.”93 It might be possible to compare the ritual of nahe biti with the

90 Id.
92 Id.
93 Id.
development in the United States that has come to be known as Victim Offender Mediation or Victim Offender Dialogue. The reconciliation is intended to be between the specific victim and offender, and by healing that relationship, the health of the society is promoted as well.  

Role of the Local Community

Confidentiality is key in nahe biti, as “[m]atters that are discussed and settled on the mat (biti) should not be brought into the community.” This reflects the aim of nahe biti which “… goes beyond short-term reconciliation towards…continuing harmony and peace in the society.” However, the community and its leaders do play a significant role in arranging instances of nahe biti, and providing for law and order.

Role of the Formal Justice System

While the new Constitution provides for individual criminal liability for such crimes under both domestic and international law, the government has indicated that although “reconciliation and truth-telling” will be promoted, only the major violations will be investigated and tried by the government, “…whereas lesser crimes such as looting, burning and minor assaults in the past will be dealt with through community-based reconciliation.”

D. Conclusion

Overall, it can be seen that in recent years there has been a movement towards using restorative justice methods after civil conflicts. Whether the restorative methods are

\[94\ Id.\]
\[95\ Id.\]
\[96\ Id.\ at 22.\]
\[97\ McWilliam, supra note 90, at 2.\]
\[98\ Babo-Soares, supra note 92, at 29.\]
\[99\ Id.\]
in lieu of criminal proceedings, or to cover crimes that the state has neither the resources nor the desire to prosecute, restorative methods have become an important part of international transitional justice. But what about situations in which the nature of the crimes have been so horrendous that it is not possible simply to sit on a mat or in a public hearing in order to resolve the conflicts? The case study of Uganda provides an example of when restorative traditions may work for some perpetrators and low level offenders, but cannot possibly be seen as sufficient in dealing with the higher ups and commanders such as Joseph Kony. This situation also occurred in Sierra Leone, where the idea of having concurrent or complementary tribunals and truth commissions was developed.

VI. The Benefit of Complementary Criminal Tribunals and TRCs

For most international human rights scholars, the most concerning concept of truth commissions are the fact that they do not provide “justice” for the wrong doers, because they often grant amnesty or lesser sentences in order to incentivize perpetrators to participate.\textsuperscript{100} Some critics view truth commissions as “. . . a choice for truth over justice for the sake of peace, stability or some other value.”\textsuperscript{101} Supporters respond to this critique by presenting TRCs as a way to obtain “‘justice to the extent possible’.”\textsuperscript{102} This is because often times after a civil conflict there are so many offenders that it would be impossible to try them all, or circumstances exist that would make it infeasible to hold trials. Truth commissions at least “. . . ensure some justice for victims by investigating and acknowledging the truth of what happened and providing a forum through which

\begin{footnotesize}
\begin{itemize}
\item[101] \textit{Id.}
\item[102] \textit{Id.}, at 353.
\end{itemize}
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their stories might be heard.”103 Still other supporters don’t take a “better some justice than no justice” approach, but defend TRCs as a mechanism for obtaining justice – just a different kind of justice.104 These supporters point to the principles of restorative justice and assert that “... truth commissions [are] the preferred means of doing justice in transitional contexts because of the different requirements of justice in response to gross human rights abuse and violence.”105

It is my contention however, that international criminal tribunals and truth commissions need not be mutually exclusive. In fact, there are several examples, the most notable ones in Sierra Leone and Liberia, of truth commissions and tribunals serving complementary roles in the search for international criminal justice. This is because the international community’s ability to prosecute and punish all human rights violators in a particular conflict is limited – particularly in civil conflicts where a huge segment of the population has committed such atrocities. Also, in many civil conflicts in Africa, the international community is now faced with how to deal with child soldiers – while they are offenders, they are also victims of the conflict, and therefore may have different needs and a different level of culpability than adult combatants.106

While having truth commissions and tribunals run concurrently bring up several procedural issues, such as whether or not a statement obtained at a truth commission might be used in an adversarial trial conducted by the tribunal, if coordinated carefully, they can serve very complementary and positive roles.107 As the international community

103 Id.
104 Id.
105 Id.
106 Worden, supra note 45, at 6.
has learned from the formation of the ad hoc tribunals, bringing justice to a civil conflict can be costly, and time consuming.\textsuperscript{108} Inevitably, there are more offenders than can be realistically tried. However, it is usually the case that those who bore the greatest responsibility can be narrowed down to anywhere between five or fifteen people. This was the case in Sierra Leone, where the original Chief Prosecutor, David Crane, was given the mandate to try only those with the greatest responsibility.\textsuperscript{109} This mandate however gave no guidance as to what to do with the 50,000-70,000 ex-combatants who were conscripted while children, and were as much victims as they were perpetrators.\textsuperscript{110}

The truth commission and local and indigenous restorative rituals provided an answer to this problem, and allowed low level ex-combatants to reintegrate into their communities.\textsuperscript{111} By having the truth commission and tribunal run concurrently, peace was able to be brought to the West African region torn apart by Charles Taylor and his accomplices, in both an efficient and timely manner.

VII. Recommendation: Criminal Liability, Local Rituals, and Forgiveness

While the Sierra Leone case study provides a very good example of complementary truth commissions and tribunals, it was not without its own faults. For one, though local rituals were used to integrate child soldiers back into their communities, these rituals were not always given the deference that they deserved, and at times the truth commission forced the creation of a “collective memory” when what the people really needed and wanted in order to move on was more along the lines of a

\begin{itemize}
\item \textsuperscript{108} The two most well known ad hoc tribunals, the ICTY and the ICTR, have taken over 15 years to complete their mandate.
\item \textsuperscript{109} Shaw, \textit{supra} note 44, at 4.
\item \textsuperscript{110} Evenson, \textit{supra} note 108, at 762.
\item \textsuperscript{111} Of course with certain conditions such as showing sincere remorse, revoking their allegiance to the rebel armed forces.
\end{itemize}
“collective forgiveness.” This forgiveness at times took the form of truth telling, but at other times took the form of forgetting, coupled with attempts to move forward.\textsuperscript{112} An example of this forgetting is a cleansing ritual that communities in Sierra Leone used for child soldiers, in which they “cooled the heart” of the ex-combatant.\textsuperscript{113} These ceremonies involved reversing “. . . the work of the combatant groups that had made the child into a fighter, restoring the child’s relationship with God and the ancestors – and thereby also with the family and community. . .”\textsuperscript{114} While some communities performed such ceremonies for whole groups of ex-combatants, others performed them in a more private matter. Regardless of whether the ceremony was held in public or private, once the heart of the child had been “cooled,” the community was not to talk about what that child had done ever again.\textsuperscript{115} Because of the importance of forgetting in such rituals, many contend that the truth commission in Sierra Leone forced communities to relive experiences that they had already wiped clean, and simply wished to forget.\textsuperscript{116} While this may have been true, I do not believe that using restorative methods in post conflict societies need always conflict with local custom. As has been shown in this paper, local tribal reconciliation customs are for the most part, extremely restorative in their nature, and have influenced many “modern” approaches in the field. Therefore it is not an either or situation with local customs and truth commission, in the same way that it is not with truth commissions and tribunals. It is possible to integrate local customs into truth commissions so that both a collective memory is formed and a community’s needs are met. For instance, in Sierra Leone it would be quite possible to have the truth commission able to compile the

\begin{footnotesize}
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\item[112] Shaw, supra note 44, at 9.
\item[113] \textit{Id.}
\item[114] \textit{Id.}
\item[115] \textit{Id.}
\item[116] \textit{Id.}
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information at the cleansing ceremonies, and instead of requiring victims and offenders to relive their situation after each had made an attempt to put it behind them, the information could be kept and given to the government for deterrent purposes, but the individuals themselves could move on with their lives. Moreover, for those who bore the greatest responsibility in causing the conflict, such amnesty and forgiveness would not be available to them, but they would be tried by a tribunal, and “justice” would be served. In this way, retributive justice, restorative justice, and local customs can, and must, each play a complementary and essential role in helping to rebuild a society after conflict.