

Combatting Cultures of Impunity After Insurgent Violence: Case Studies on Nepal, Sri

Lanka, and Peru

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ABSTRACT

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Directly contrasting interstate warfare, intrastate violence comprises of violence in an individual state, typically between an opposition of anti-state actors versus the state and its coercive forces. This project particularly examines recent insurgent groups in opposition to the state. These conflicts, rooted in deep embitterment, are often regarded as enduring, lasting several years before cessation. This thesis considers both the legitimate grievances the anti-state insurgency experienced prior to the conflict, as well as the legitimate counterinsurgency initiative the state used to protect its monopoly of violence. These internal conflicts result in countless non-combatant casualties and human rights violations, creating “wounds” for survivors. Whether the conflict ends in peace agreement or military victory, nation-states need to determine how to deal with these imposing wounds. Once the conflict ends, the tendency of the state to give impunity to various state actors, remaining issues of human rights, and accountability for unjustified killings are all explored. The last section explores how transitional justice measures can potentially heal these wounds from conflict.

Case studies on the insurgency movements of the Communist Party of Nepal (Maoist) (CPN-M) against Nepal, the Liberation Tigers of Tamil Eelam (LTTE) against Sri Lanka, and the Shining Path (PCP-SL) against Peru, follow the chapters, offering concrete examples of the experience particular states have had, both during conflict and in post-conflict, analyzing the complexities and varying issues that result.

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Introduction

“*War is hell,*” Michael Walzer declares in *Just and Unjust Wars*.¹ War undoubtedly is hell: it destroys societies with unforgiving force, potentially resulting in the deaths of tens of thousands including innocent civilians, and displaces even more from their homes. In Syria alone, 3.8 million are currently displaced in neighboring countries like Jordan and Lebanon, unable to return to their own country, compromising the largest refugee crisis to date.² Though war is hell, it is something that is not going away anytime soon, especially in the twenty first century as unpredictable threats constantly rise. Headlines in the news and in social media constantly stream into homes, shocking individuals with atrocities such as another suicide bomb attack in Afghanistan, the recent events in Ukraine, the continuation of the Israeli-Palestinian conflict, Nigeria’s Boko Haram’s massive kidnapping of Nigerian school girls in summer 2014, or yet another beheading video produced by ISIL.

War and mass killings have plagued the twentieth century between the two World Wars, several genocides, and the Cold War. Though many regard the twentieth century as being “bloodiest century” yet, war has always composed an intrinsic role in human societies, with evidence spanning back centuries. War can be defined as, “an act of force by an organized social power to compel an enemy to submit to its will.”³ By definition, war needs to be between at least two collective actors. Interstate conflict, or war between states, is “the ultimate way in which

¹ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2006), 22.

² Chris Huber and Kathryn Reid, “FAQs: War in Syria, Children, and the Refugee Crisis,” *World Vision*, last modified Jan 14, 2015, <http://www.worldvision.org/news-stories-videos/faqs-war-syria-children-and-refugee-crisis>.

³ Martin Shaw, *War and Genocide: Organized Killing in Modern Society* (Cambridge, UK: Polity Press in association with Blackwell), 18.

power relations are tested by, and conflicts resolved between, state-like collective actors.”⁴

Realist thinkers in International Relations always have perceived war to be a fundamentally natural characteristic of societies due to the concept of anarchy. Since states are products of an anarchic society with no higher power above them, they are constantly in competition with each other, fighting to rise as the regional hegemon. War has allowed states to secure this overarching power, and it is evident that it will remain with us.

Shifting away from realist thinking, it is evident that the conventional ways we perceive war is dramatically changing, in many ways for the better, and in some situations for the worst. Instead of engaging in wars to gain power, increasingly wars are fought for violations of international law, directly contrasting with realism and anarchy beliefs. No longer are wars ending with a clear “winner” with a dramatic victory on the battlefield. Instead, there has been an increase of truces and peace agreements to mediate differences instead of engaging in further combat, signifying that ultimately peace is valued overall. Additionally, the way countries think about the necessity of war is changing. Before World War I, prior attitudes in Europe, “saw war as inevitable, as beneficial to the winners, something ‘to be welcomed, not avoided..., a philosophical and moral good.’”⁵ Progressively, throughout the past couple centuries, fewer countries have justified military intervention in other countries unless driven by a rational explanation (however, this does not account for a number of current interventions).

World War II especially fueled the disenchantment behind the common practice of resorting to war. At the end of the war, the world was shocked of the destruction that humans could potentially inflict against one another, and promised to prevent this from happening ever again. Immediately following the end of World War II, the United Nations (UN) created the

⁴ Ibid., 63.

⁵ Joshua S. Goldstein, *Winning the War on War: The Decline of Armed Conflict Worldwide* (New York: Dutton, 2011), 224.

Universal Declaration of Human Rights (UDHR). The purpose behind the document remains as a standard definition of human rights for the international community, establishing a necessary foundation. The UDHR asserts that all citizens of the world have equal and unalienable rights. Based on these rights, the international community should protect these rights and ensure justice and peace for all.⁶ Several subsequent bodies have emerged since ensuring that the UDHR works as a force to protect all global citizens from human rights violations. After the effective formulation of the UDHR, binding international treaties to uphold these values were established since the UDHR does not possess binding mechanisms within the document itself.⁷

While some consider that UDHR has become part of customary international law, the UDHR ultimately is a UN General Assembly resolution, not a treaty, therefore not binding. In addition to the UDHR, the international community has developed numerous treaties and additional international law standards including, but not limited to, human rights law and humanitarian law. Human rights law and humanitarian law are both separate legal instruments but also interrelate together working to make war crimes illegal. Both institutions of law contain language forbidding torture, genocide, slavery, and extra-judicial killings. However, these laws are not necessarily effective, even if states sign them. Signing a treaty is simply a declaration, not a guarantee. Treaties only officially become bound when a “treaty has been *ratified* or acceded to according to the constitutional procedures of that country.”⁸ Scholars have explored potential explanations behind the phenomenon of why states ignore their obligations to protect human rights despite signing these treaties. Essentially, states will willingly condemn other countries for their human rights violations, but hesitate when others object their own practices. For example,

⁶ Jack Donnelly, *International Human Rights*, (Boulder, Colo: Westview Press, 2007), 5.

⁷ Susan Waltz, “Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights,” *Third World Quarterly* 23 (2002): 437, accessed December 16, 2014. <http://www.jstor.org/stable/-3993535>

⁸ Donnelly, *International Human Rights*, 5.

this occurs with the United States even though the United States largely supported the establishment these binding instructions. By not ratifying these documents, the U.S. avoids any accountability of potential prosecution for its torture practices in Guantanamo. Oona A. Hathaway suggests that states with poor human rights records will willingly sign off on treaties since they possess an extremely small prospect for complying with these treaties.⁹ When they sign, enforcement is not guaranteed as they can postpone actual reinforcement by not making efforts to put these treaties into legislation in their respective states.

The dynamics of war are certainly changing with time. At the moment, there is a complete absence of direct interstate war, or war between two states. Goldstein celebrates stating, “Taking interstate wars off the table has rid us, for the most part, of large battles with heavy weapons such as tanks and artillery, which are hugely lethal and destructive.”¹⁰ As the immediate threat of interstate conflict fades away, it is increasingly apparent that “*all* armed conflicts in the world today are civil wars. In each of them a government is fighting against insurgent forces, which often operate out of uniform and do not follow the laws of war.”¹¹ Because of these conditions, significant attention needs to shift towards internal conflicts, as they are increasingly more likely to proliferate in global politics.

Intrastate conflicts have manifested in a variety of forms, but always comprise a conflict between two or more armed forces. By nature, these conflicts are extremely asymmetrical in nature in that the government and insurgents bring varying levels of force against one another, with one side (usually the state and its forces) being significantly stronger. Asymmetrical conflict contrasts directly with symmetrical warfare in that interstate conflict operates as “classic

⁹ Oona A. Hathaway, “Why Do Countries Commit to Human Rights Treaties?” *The Journal of Conflict Resolution* 51 (2007): 590, accessed December 16, 2014, <http://www.jstor.org/stable/27638567>.

¹⁰ Goldstein, 276.

¹¹ *Ibid.*, 279.

armed conflict between States of roughly equal military strength.”¹² By contrast, the “inequality between the belligerents and their weaponry is the rule rather than the exception” in asymmetrical warfare.¹³ While two sides are present, internal wars can become more degenerate in nature with civilians being explicitly targeted as an enemy. Genocide represents a prime extreme of degenerate war where it is a “conflict between organized armed forces, on the one hand, and civilian populations that are largely unarmed on the other.”¹⁴ Since the Holocaust, genocides have surfaced in Bosnia, Cambodia, Rwanda, and other countries.

Though not as on massive of a scale as interstate war, internal conflict also comprises of situations of grave human rights violations and atrocities. For these individuals living in internal conflict, the threat of war is extremely pressing. Mary Griffin of International of the Red Cross (ICRC) accounts, “Internal armed conflicts have been the predominant and the most brutal type of conflict over the past 50 years. They have been the forum for the most flagrant and widespread human rights abuses and where the tragic consequences of impunity have been most clearly in evidence.”¹⁵ Since intrastate conflicts occur in sovereign, independent states, the international community has considerably less authority in challenging prevailing impunity in states that committed atrocities during intrastate conflict. Essentially, combatting impunity resides with the state itself. However, the international community has ruthlessly campaigned to extend human rights responsibilities to war crimes occurring during internal conflict as the ICRC reiterates, “It is now evident that customary law imposes individual criminal responsibility for all

¹² Toni Pfanner, “Asymmetrical Warfare from the Perspective of Humanitarian Law and Humanitarian Action,” *International Review of the Red Cross* 87 (2005): 152, accessed February 10, 2015, https://www.icrc.org/-eng/assets/files/other/irrc_857_pfanner.pdf

¹³ *Ibid.*, 152-153.

¹⁴ Shaw, 46.

¹⁵ Mary Griffin, “Ending the Impunity of Perpetrators of Human Rights Atrocities: A Major Challenge for International Law in the 21st Century,” *International Review of the Red Cross* 838 (2000): accessed October 24, 2014, <https://www.icrc.org/eng/resources/documents/misc/57jqhj.htm>

violations committed in internal armed conflicts.”¹⁶ However, actually enforcing these mechanisms has been challenging.

This thesis particularly addresses themes of impunity and the direct challenges states face when transitioning to a more peaceful society post-conflict. In interstate war, enemies will never necessarily face each other after combat. But what happens when your enemy lives next door? A strange phenomenon in intrastate war is that it positions families and friends directly against each other. Post-conflict, these former enemies must learn to live again in a state amongst individuals who potentially could have done them wrong. The most poignant recent example being in Rwanda, where Tutsis may be forced to see everyday the individual who may have murdered their whole family.

Straying away from interstate conflict, the rest of this project exclusively focuses on intrastate conflict, centering in on conflicts that sprouts from the rise of insurgency groups. The first chapter pays special attention to the roots of conflict itself and the potential conditions which inspire an insurgency, the second focuses on a state’s general counterinsurgency plan and the issues of impunity which develop within that plan, while the third chapter explores what transpires post-conflict and the limitations of exploring truth, justice, and memory.

Accompanying these chapters are concrete examples with case studies on Nepal, Sri Lanka, and Peru, who all recently experienced violent intrastate conflicts. All these cases saw insurgencies rise against the state. The insurgencies in examination are: the People’s Liberation Army of the Communist Party of Nepal (PLA-CPN), the Partido Comunista de Peru-Sendero Luminoso or the Communist Party of Peru-Shining Path (PCP-SL), and finally the Liberation Tigers of Tamil Eelam (LTTE). While these case studies are not entirely analogous, they

¹⁶ Mary Griffin, “Ending the Impunity of Perpetrators of Human Rights Atrocities.”

accurately represent conditions of a) how insurgent groups can rise within a state due to legitimate grievances, b) how the state responded to the threat of the insurgent group, and c) what specific measures or lack thereof the state utilized to provide accountability for any breaches in international human rights standards. While not all conflicts are similar as the case studies, they all possess intersecting characteristics. We certainly can learn from these lessons. In particular, we can begin to comprehend how human rights violations can be confronted in our world today. Much can be discerned from the ways states respond to these threats and resultantly how states actively disregard accountability for human rights violations amidst a persistent international community that is increasingly encouraging a newfound respect for human rights.

Chapter One: Roots of Internal Conflict

*Conflict is inevitable. Territory Disputes, contrary notions of leadership, differences of taste—in the world in which we live conflict, whether it is on the job, in the home, or on the international horizon, will always make up a part of our landscape.*¹⁷

-Catherine Claire Larson

As Larson claims, conflict certainly is inevitable. It permeates whenever conflicting opinions surface. States are especially conducive to conflict since multiple groups of varying ethnicities, religions, all coexist within a state's borders. Political scientists commonly define conflict as, "competition among groups for power, resources, opportunities, status, or respect, competition that is usually pursued and adjusted by peaceful means, but may under some circumstances turn violent."¹⁸ While conflict is inevitable in states, there are certain situations where it can escalate into violence and other situations where discrepancies remain at bay. In accordance with this definition of conflict by political scientists, this chapter specifically examines how competition can escalate into a violent situation in states with insurgency movements. These insurgency movements represent non-state actors vying for their own interests and concerns.

Statehood vs. Nationhood

Before tackling the components behind internal conflict, it is critical to distinguish statehood in order to conceptualize how some states end up experiencing insurgent based violence whereas others do not. For example, states such as Canada and Norway have never been challenged by rebel insurgencies whereas countries such as Ireland and Indonesia have been forced to battle extremely violent and ruthless insurgent groups for years. For some reason, these

¹⁷ Catherine C. Larson, *As We Forgive: Stories of Reconciliation from Rwanda*, (Grand Rapids, Mich: Zondervan, 2009), 51.

¹⁸ Stefan Wolff, *Ethnic Conflict: A Global Perspective*, (Oxford New York: Oxford University Press, 2006), 7.

insurgent groups rise and reach the point of willingly utilizing violence against innocent civilians for their own distinctive political motivations. Understanding the characteristics behind the composition of a state is crucial before beginning to comprehend how conflict erupts between these non-state actors and a state and its agents.

A state is a collective governing an established territory with specific borders. In order to be considered a “healthy” state, a state needs to possess fundamental characteristics. Such characteristics include: a defined territorial base, a semi-functioning government, a sound population, and recognition from the international community as a state such as bodies like the UN.¹⁹ Traditionally, a state has taxes, state officials, set laws, a currency, a postal service, a police force, and some form of a military, or means of protection. With these systems in place, states have the ability to regulate the affairs of the state, enforce taxes, wage war against other states, imprison civilians, and more. All these functions contribute to a state’s sovereignty, which prevents other states from interfering with a state’s inherent right to rule over its territory.²⁰ While the terms “state” and “nation” often are used interchangeably, the two terms do not always have the same definition.

In contrast, nations are “groups of people claiming common bonds like language, culture, and historical identity.”²¹ These groups of people share these common characteristics, unifying them together under a collective identity. Nations can have specific territory set aside which the group identifies with, but not necessarily have its own established statehood. Some nations have sovereignty and rule states such as the French, Egyptians, Germans, and Japanese. Other groups of nationalities do not enjoy this same entitlement to their territory, as their nationalities do not

¹⁹ James A. Paul, “Nations and States,” last modified January 19, 2001, <https://www.globalpolicy.org/component/content/article/172/30345.html>

²⁰ Ibid.

²¹ Ibid.

align with the rest of the state's population. For instance both Tibetans and Palestinians represent "nations" struggling to have jurisdiction over the land in which they reside. The Kurds in the Middle East serve as a unique situation where its large diaspora resides in multiple states, potentially threatening those nationalities that govern the states they live in. In regards to the future case study in this project, the Tamils in Sri Lanka represent this issue. The Tamil Tigers rose as an insurgency group with the goal of having their own autonomy, eventually deciding to secede from the rest of Sri Lanka. The Tamil struggle directly coincides with the concept of the nation-state as they desire the right to have national self-determination. Instead of identifying with the Sinhalese majority, the Tamils wish to control their own livelihood. They identify more with the ethnonational roots over the state.

Ethnonational roots can potentially spur distinctly ethnonational movements. These movements occur after "Having experienced discrimination or persecution, many of these groups are now taking collective action in support of national self-determination."²² One major example concerns the Kashmiris living in India, which has led to extreme tensions between the relations between India and Pakistan. Hindus rule the overwhelmingly Muslim Kashmiris in India, creating disparity, as the Kashmiris largely do not identify with the ruling government's principles.²³ Ethnonational movements do not always stem from a collective religion, and could instead be class based, race based, or ideologically based. Another distinction is that not all ethnonationalists desire their own territory.²⁴ They may wish for a simple recognition of their status, they may want the government to make specific accommodations in the constitution, or too, they may desire certain services. Since nationalities come with their own specific interests or

²² "The State," accessed October 24, 2014, <http://www.wwnorton.com/college-/polisci/essentialsof-international-relations5/ch/05/summary.aspx>

²³ "The State."

²⁴ Ibid.

goals, differing opinions are bound to arise causing tension when various groups live with each other in the same territory.

Ethnic conflict erupts when these tensions become hostile. Ethnic conflict itself possesses inherent differences from other forms of conflict. Stefan Wolff in *Ethnic Conflict: A Global Perspective*, asserts that in order to make a conflict ethnic, “the goals of at least one conflict party are defined in (exclusively) ethnic terms, and in which the primary fault line of confrontation is one of ethnic distinctions.”²⁵ Therefore, both groups do not need to be fighting for ethnic purposes. One group could fight another for the purpose of eliminating the other as a way to control a specific area, or a group could fight for more autonomy as discussed previously. Ethnic conflict develops with ethnic pluralism.²⁶ Ethnic pluralism occurs when more than one ethnic community is in a political space. Milton Esman in *An Introduction to Ethnic Conflict*, claims, “When ethnic communities encounter one another, their contact provides the necessary condition for conflict.”²⁷ One side will feel the pressure to control the territory, especially in the event where one ethnicity dominates the political sphere. However, even if the necessary components of violence conflict exist, it does not guarantee that conflict will erupt.

The unfixed nature of boundaries in states offers an explanation to why all these differing nationalities exist within in the same territory.²⁸ Contrary to first assumption, it would appear as if boundaries are fixed and unchanging. However, quite the opposite is true. James A. Paul accounts, “State boundaries are arbitrary and often changed—by war, negotiation, arbitration, and even by sale of territory for money.”²⁹ The disagreement between Chile and Argentina over the borderlines in Patagonia represents one example. Another being after Yugoslavia collapsed,

²⁵ Wolff, *Ethnic Conflict*, 2.

²⁶ Milton J. Esman, *An Introduction to Ethnic Conflict*, (Oxford Malden, MA, USA: Polity, 2004), 1.

²⁷ Wolff, *Ethnic Conflict*, 4.

²⁸ Paul, “Nations and States.”

²⁹ *Ibid.*

unsettled borders resulted in extreme competition of who possessed sovereignty over the land.³⁰ These are just some examples of the countless situations where defined states have fluctuated over the years.

One way to shed light on the situation of fluctuating states is by examining the way the United Nations (UN) has grown in membership since 1945. Since its conception, the UN has experienced extreme growth. When world powers founded the United Nations on October 24th 1945, it composed of just 51 member states.³¹ Since its conception, 143 member states have joined the United Nations, amounting to a total of 193 nations.³² The nations allowed membership must be, according to the United Nations Charter, “peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.”³³ According to this definition, these numbers do not account for other states within the international community for just being an entity does not mean it can be formally recognized as an independent state, such as Taiwan. Despite these restrictions, it remains evident that over the past couple of decades, there has been an increase in fragmenting states. The high numbers of states joining the UN are composed of many small states, often from fragmenting former nation-states. The international community has witnessed escalating periods of new statehood especially in the 1990s. The phenomenon of fragmenting states originates from a variety of sources, such as the de-colonization and dissolving of former countries from prior wars.

³⁰ Paul, “Nations and States.”

³¹ Ibid.

³² “Membership in the United Nations,” accessed October 30, 2014, <http://www.unvienna.org/unov/en/faq.html>

³³ Ibid.

After World War II, former colonial powers increasingly gave up their colonial power in the late 1950s to 1960s.³⁴ Resultantly, new sovereign states entered the political sphere, gaining independence. A peak of decolonization occurred in 1960 when eighteen former African colonies gained independence.³⁵ Algeria offers an example of a former colony that struggled intensely for its independence until 1962. In addition to decolonization, the breakup of the Soviet Union sprouted fourteen new independent states in the early 1990s.³⁶ The civilians, once declaring allegiance to the Soviet Union, now were directed to declare allegiance to their respective countries instead. Feelings of nationalism to Poland, Croatia, and Moldova replaced communism.³⁷ The inherent problem with these new states is that guaranteed allegiance does not necessarily follow with the creation of the state. Furthermore, a creation of a state does not ensure that all living within the borders will necessarily identify with the same nation per se. A surplus of varying nationalities can coexist within the new border, sprouting discontent. The breakup of Yugoslavia represents the disunity issues when varying ethnic groups comprise the state.³⁸ After World War I, Yugoslavia was created as one entity to unify the Slavic groups over creating several small states. Issues soon became apparent since in the little over one million population, six nationalities were present.³⁹ The problems in Yugoslavia's situation represent the extreme difficulties with unifying peoples in these new states.

Besides varying groups of differing ethnicities and nationalities, other issues arise with these new states. Weak statehood, or poorly governable situations make it arduous for

³⁴ John Mueller, "War Has Almost Ceased to Exist: An Assessment," *Political Science Quarterly* 124(2009): 308, accessed January 14, 2015, doi: 10.1002/j.1538-165X.2009.tb00650.x

³⁵ David Strang, "Global Patterns of Decolonization, 1500-1987," *International Studies Quarterly* (35): 437, accessed January 11, 2015. <http://www.jstor.org/stable/2600949>

³⁶ Chauncy D. Harris, "New European Countries and Their Minorities," *American Geographical Society* (83) 301, accessed January 11, 2015, <http://www.jstor.org/stable/215732>

³⁷ *Ibid*, 302.

³⁸ *Ibid* 303

³⁹ *Ibid* 304

governments to maintain control. John Mueller attributes decolonization with unleashing a stream of poorly governable states. He states, “With the decolonization of the late 1950s and 1960s, a group of poorly governed societies came into being, and many found themselves having to deal with civil warfare.”⁴⁰ These poorly governed states also needed to deal with their former colonial powers in the aftermath of the Cold War backing out of financial assistance.⁴¹ Such was the case of France, which gave far less assistance to its former colonies in Africa, sprouting issues financially and leaving the governments unable to police their citizens effectively. As previously mentioned, the post-Cold War period saw “an increase in the number of incompetent governments, as weak, confused, ill-directed, and sometimes criminal governments emerged in many of the post-Communist countries, replacing comparatively competent police states.”⁴² These poorly governed states became conducive to extreme disorder. The combination of dissatisfied people living in poor conditions and an inadequate government in control makes it more likely for conflict to erupt within the state.

Conflict can erupt within the state when governments lose control of the fundamental conditions of statehood as previously defined. In contrast, more adequate governments, or those who have control over their main responsibilities are less likely to experience violence. Mueller testifies, “Civil wars are least likely to occur in stable democracies and in stable autocracies — that is, in countries with effective governments and policing forces.”⁴³ These stable governments are able to control the discontent effectively. However, states that do not have effective governments or working policing forces that are able to control the population have extreme difficulty balancing unrest in their territory. Political Scientists classify these states as “failed

⁴⁰ Mueller, “War Has Almost Ceased to Exist: An Assessment,” 308.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

states.” A state can reach this point when, “it is no longer able to provide the services for which it exists.”⁴⁴ When states experience difficulty maintaining order and legitimacy, it creates the potential of an eruption of civil war. Mueller states, “many civil wars have effectively been caused by inept governments, which tend to apply excessive and indiscriminate force to try to deal with relatively small bands of troublemakers, often turning friendly or indifferent subjects into hostile ones.”⁴⁵

The case studies examined in this thesis all come from countries who had disparities in the population. They did not necessarily have all the components of a healthy state. However, these states were not unique in experiencing conflict as intrastate conflicts have been on the rise.

Rise of Intrastate Conflict

Individual states throughout the world, have been experiencing an influx of conflict according to Brendan O’Leary and John Tirman.⁴⁶ This influx of conflict shifts away from the predominance of interstate conflict as established in the introduction, as Christian Davenport and Scott Gates claim interstate conflicts are on the decline, while intrastate violence situations are increasingly growing.⁴⁷ John Mueller also indicates that since the end of World War II, the most common wars sprouting have been those of civil wars within a singular state.⁴⁸ He establishes, “Most civil wars have taken place in the poorest countries of the world, and many have been

⁴⁴ Stein Sundstol Eriksen, “‘State Failure’ in Theory and Practice: The Idea of the State and the Contradictions of State Formation,” *Review of International Studies* 37(2010): 231, accessed January 27, 2015, doi:10.1017/S0260210510000409

⁴⁵ Mueller, “War Has Almost Ceased to Exist: An Assessment,” 309.

⁴⁶ Brendan O’Leary and John Tirman. Introduction to *Terror, Insurgency and the State*, edited by Marianne Heiberg, Brendan O’Leary, and John Tirman, (Philadelphia: University of Pennsylvania Press, 2007), 1.

⁴⁷ Christian Davenport and Scott Gates, “Four Reasons Why Interstate Scholars Don’t Read Intrastate Work and Why They Are Wrong, Part 1,” last modified January 21, 2014, <http://politicalviolenceataglance.org/2014/01/21/-four-reasons-why-interstate-conflict-scholars-dont-read-intrastate-work-and-why-they-are-wrong-part-1/>

⁴⁸ Mueller, “War Has Almost Ceased to Exist: An Assessment,” 308.

labeled ‘new war,’ ‘ethnic conflict,’ or, most grandly, ‘clashes of civilizations’.”⁴⁹ Yet, there are inherent problems with simplifying civil conflicts in this nature. The conditions are far more complex in reality and not all can be simplified to these classifications, or just one explanation. While intrastate conflict, or internal struggles within a state, currently originates most violent conflicts in the world, the subject is far less researched than interstate conflict.⁵⁰

Even though significant more literature on interstate conflict exists, social scientists currently are compiling together a field of work stressing the importance of studying intrastate violence. Intrastate conflict holds a rising prevalence due to there being a peak of civil wars in the international political sphere. 1994 marks the year of highest peak of internal wars, as 44 unresolved civil wars were going on.⁵¹

It appears as if these conflicts are a new phenomenon in post-Cold War politics since the Cold War dominated international politics for 45 years. Additionally, some may believe that there is a rise of intrastate conflicts over interstate conflicts because of a high number of new conflicts emerging. But significant literature suggests quite the opposite. James Fearon and David D. Laitin propose, “the prevalence of civil wars in the post-Cold War is not due to effects of the end of the Cold War. Nor is it the result of civil wars breaking out a steadily increasing rate over the period.”⁵² While various conflicts erupted after the collapse of the Soviet Union, many of the seeds of these conflicts were rooted far before the Soviet Union collapsed. Therefore, these conflicts cannot be explained simply because of being a by-product of the Cold War. Another key point for context is with the end of the Cold War in 1991, many of the civil

⁴⁹ Mueller, “War Has Almost Ceased to Exist: An Assessment,” 308.

⁵⁰ David Bloomfield, Terri Barnes, and Lucien Huyse, *Reconciliation After Violent Conflict: A Handbook*, (Stockholm: International IDEA, 2003), 10.

⁵¹ John Fearon, “Why Do Some Civil Wars Last So Much Longer than Others?” *Journal of Peace Research* 41 (2002), 1, accessed January 20, 2015, doi: 10.1177/0022343304043770.

⁵² Ibid.

wars inspired by the Cold War also ended within states.⁵³ Mueller accounts, “Although the end of the Cold War tended to increase the problem of civil wars... lingering ideological civil wars inspired or enhanced by the Cold War contest died out (or became transmogrified into criminal ones) with its demise.”⁵⁴ While a few conflicts arose in the early 1990s in international politics as a result of the Soviet Union, it does not explain the phenomenon as a whole. The surge of internal wars after the Cold War was on top of an already high peak of conflicts erupting.⁵⁵

Besides the misconception that rise of intrastate violence is primarily due to a post-Cold War phenomenon, Fearon and Laitin also challenge the concept that the main reason intrastate conflicts are more common is because of a steady increase of conflicts breaking out. In actuality, the numbers demonstrate that outbreak of civil war is actually not that statistically high or significant. In fact, since 1945, the rate of outbreak of civil wars within states has been just 2.3 per year. While the outbreak percentage is relatively low, the conflicts only end at a rate of 1.7 per year.⁵⁶ With the wars out breaking at higher rates and not ending with the same momentum, it is apparent that internal conflicts are becoming a significant concern in the international community.

On the contrary, interstate wars are not breaking out or enduring at the same rate as internal conflicts. For example, the Uppsala Conflict Data Program (UCDP) reported that the war between Djibouti vs. Eritrea in 2008 marked the first new interstate conflict erupting since 2003.⁵⁷ This accounts for the 36 conflicts present in the world at that time. While interstate conflicts have erupted, the only real prominent interstate conflicts erupting in the 2000s were

⁵³ Mueller, “War Has Almost Ceased to Exist: An Assessment,” 309.

⁵⁴ Ibid.

⁵⁵ Fearon, “Why Do Some Civil Wars Last So Much Longer than Others?,” 1.

⁵⁶ Ibid.

⁵⁷ Lotta Harbom and Peter Wallensteen, “Armed Conflicts, 1946-2009,” *Journal of Peace Research* 47 (2010), 503, accessed January 19, 2015, <http://www.jstor.org/stable/20752204>.

between Eritrea and Djibouti and India and Pakistan. The rest of the recent conflicts were internal in nature, scholars referring to them as enduring conflicts.⁵⁸

In accordance with the rate between the outbreak and the end dates of civil war, scholars have acquired a general consensus that attributes that these conflicts are more predominant because as mentioned before, they are enduring situations. Peace becomes more of an unattainable goal, as the conflict does not end easily.⁵⁹ Fearndon and Laitin report that, “the average duration of the civil wars in progress have increased steadily from 2 years in 1947 to about 15 years in 1999.”⁶⁰ Political Scientist analysts regard internal war of civil wars, insurgencies, and terrorism as durable due to the resilient nature of combatants involved in these situations.⁶¹ The particular case studies in this project particularly concern insurgencies that are of more durable nature. Thus, the resilience of the combatants involved will be later explored in detail later on in the chapter. However, not all internal conflicts last as long as the average rate of 15 years.

A possible way to understand the differing nature of long-term intrastate violence versus short-term violence is by comparing the intrinsic characteristics that differentiate between long term and short-term conflicts. John Fearndon’s 2002 research, “Why Do Some Civil Wars Last So Much Longer Than Others?” goes into detail about specific factors contributing to civil wars becoming more of an enduring conflict over more of a short-term conflict. In his research, he distinguishes common themes present in short-term conflicts verse the common trends in long-term conflicts.

⁵⁸ Lotta Harbom and Peter Wallenstein, “Armed Conflicts, 1946-2009,” 53.

⁵⁹ Fearndon, “Why Do Some Civil Wars Last So Much Longer than Others?”, 1.

⁶⁰ Ibid.

⁶¹ O’Leary and Tirmon, Introduction to *Terror, Insurgency and the State*, 1.

Feardon distinguishes shorter civil wars in two ways, the first being that conflicts arise from coup attempts and overwhelmingly popular revolution movements. A coup inspired war is a “civil war between groups that aim to take control of a state, and that are led by individuals who were recently members of the state’s central government, including the armed forces.”⁶² Short periods of violence from coup takeovers include coups in Latin America in the beginning of the Cold War such as Argentina in 1955, Paraguay in 1947, and the Dominican Republic in 1965. Outside of Latin America, short violence periods came after coups in Iraq in 1959 and the Yemen Arab Republic in 1948. Overwhelmingly popular revolutions provoking eventual violence are civil wars “that, at its outset, involved mass demonstrations in the capitol city in favor of deposing the regime in power.”⁶³ Examples include the Cuban revolution in 1958 and the Iranian Revolution. The Iranian Revolution, which only lasted from 1978-1979, resulted in the ousting of the king Shah Mohammad Reza Pahlavi and the implementation of the Iranian Republic. In coup and popular revolution wars, the median war duration is just at 2.1 years compared to the high median of non-coup and non-revolutionary wars, which on average last between 9.4 to 13.3 years.⁶⁴ A potential explanation to why coup and popular revolutionary civil wars last significantly shorter is due to the fact that that these wars possess more of an “all or nothing” mentality.⁶⁵ The coup leaders will either succeed with great results or fail and be crushed by the opposition, which pans out immediately.

The second characterization of briefer civil wars is a civil war which if fought over a discontinuous territory.⁶⁶ Wars that are fought over discontinuous territories refer to wars fought against colonial regimes. Such anticolonial civil wars were those seen in French Algeria in the

⁶² Feardon, “Why Do Some Civil Wars Last So Much Longer than Others?” 8.

⁶³ Ibid., 9.

⁶⁴ Ibid.

⁶⁵ Ibid., 20.

⁶⁶ Ibid., 10

1950s and the Mau Mau rebellion in Kenya.⁶⁷ Feardon's research discovered in his empirical research that the average duration of decolonization wars were about 4.4 to 6.7 years.⁶⁸ The short duration of these wars can be explained to both the cost of the war and international support. The colonial powers likely will not keep a war going for long due to the high nature of cost in conducting a war overseas and far from a home base. Furthermore, the colonial power would look unfavorable in the international community if they conducted such a war, and would likely not maintain domestic or international support.⁶⁹

In contrast from shorter civil wars, Feardon then differentiates circumstances of longer civil wars due to particular characteristics. He claims peripheral insurgencies are at the core of the explanation to why some internal wars last longer than others. Peripheral insurgencies, as defined by Feardon, are "civil wars involving rural guerilla bands operating typically near the state's borders have, with a few interesting exceptions, been remarkably difficult to end."⁷⁰ Peripheral insurgencies contain particular characteristics fueling the fire of the civil war, causing them to last far longer than other civil war situations. Feardon calls these insurgencies "sons of the soil."⁷¹ These "sons of the soil" insurgencies lead civil wars to last far longer with an average duration of 27.2 to 39.1 years compared to 6 to 8.7 for the rest of the civil wars he examined.⁷²

In contrast to the shorter civil wars, which arose from coups, popular revolutions, and anti-colonialism, these wars have a band of insurgent rebels who are willing to fight and stay at war. Rebels fighting for the cause, feel extremely strongly for the cause they fight for and will engage in more risks. The future case studies, which will be discussed later on, contain particular

⁶⁷ Feardon, "Why Do Some Civil Wars Last So Much Longer than Others?", 10.

⁶⁸ Ibid., 11.

⁶⁹ Ibid.

⁷⁰ Ibid., 3.

⁷¹ Ibid., 12.

⁷² Ibid.

attributes of peripheral insurgencies. These insurgencies were long lasting due to the resilient nature of these groups. The primary motivations for willingness to begin and stay at war will be examined below.

Insurgencies

While wars between nations may not be as relevant in the years to come, insurgency warfare resulting in civil war in nations is likely to remain on the horizon. These civil wars stem from the enduring insurgencies of “sons of soil” which Feardon outlines above. Dr. Eliot A. Cohen, Counselor of the Department of State from 2007 to 2009, believes the global community has been generating a number of conditions allowing insurgencies to not only emerge, but also thrive. Cohen claims that while countries are less likely to engage in war against each other, “Insurgency, however, can and will flourish in the modern environment. The strains created by globalization, by the collapse of wear state structures, by demographic, environmental, and economic pressures... all augur in a period in which free and moderate governance is at risk.”⁷³ Instead of dismissing budding insurgencies, analysts should critically examine them carefully. Since insurgency warfare possesses the potential of erupting in varying states, the warfare poses the threat of seriously altering the makeup of the international political sphere.

As established, the primary case studies examined in this thesis: Nepal, Sri Lanka, and Peru, concern violent intrastate conflicts fueled by initial insurgency movements. The particular insurgencies in examination are: Nepal with the People’s Liberation Army of the Communist Party of Nepal (PLA-CPN), the Partido Comunista de Peru-Sendero Luminoso or the Communist Party of Peru-Shining Path (PCP-SL) for Peru, and finally Sri Lanka with the

⁷³ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, by Henrietta Fore, Robert Gates, Condoleeza Rice, January 13, 2009, <http://www.state.gov/documents/organization/119629.pdf>

Liberation Tigers of Tamil Eelam (LTTE).⁷⁴ Even though these insurgent groups possess particular characteristics unique to their situational circumstances, significant overlap does exist. Common intersections between the groups set up the potential for cross comparison.

The United States Government Interagency Counterinsurgency Initiative defines insurgency as “the organized use of subversion and violence to seize, nullify, or challenge political control of a region.”⁷⁵ Most insurgencies aim for delegitimizing the government with the end goal of gaining control over the political sphere in the state. Other varying cases could be that the group desires secession from the state and form their own independent state, or they may request significant changes to the Constitution. The group uses violence as a political tool to acquire space where the group can exercise both their political and economic authority where before they may have been silenced.⁷⁶

As previously stated, individuals typically regard insurgencies as a movement with the goal of gaining territorial control of the state. Nonetheless, varying explanations for the incentives of insurgencies challenge this conception. Marianne Heiberg, Brendan O’Leary, and John Tirman offer alternative explanations in their compilation of work: *Terror, Insurgency, and the State*. As a whole, their comparative project studies contemporary insurgencies, offering insight behind the organizations themselves. In the work, the authors lay out several types of insurgencies.

The first type of insurgency they summarize is insurgencies that have the end goal of gaining either national liberation or national territory. These rebels can be secessionists such as the Tamils and the Kurdistan Worker’s Party who wished to secede and have their own independent state, separate from the government. Or, they can be both secessionists and

⁷⁴ O’Leary and Tirmon, Introduction to *Terror, Insurgency and the State*, 3.

⁷⁵ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 6.

⁷⁶ Ibid.

irredentists, advocating for the re-unification of their country such as the case with Hamas and the Irish Republican Army (IRA).⁷⁷ Another potential explanation is that the groups are Marxist: driven by ideology. Such is the case for both the Maoists in Nepal and the Shining Path, as well as FARC, the Revolutionary Armed Forces of Colombia. The Marxist rooted insurgencies commonly fuel on of the grievances of a collective group, often ethnically based. The leaders recognize grievances of a collective group of people, and mobilize support that way. Marxist insurgencies traditionally stress class struggles, inequalities between the elite and the common man, and socialism. Other insurgencies have more of a religious foundation. Hamas, Hezbollah, and the Jammu Kashmir Hizb-ul Mujahideen all are strictly Islamist. However, significant numbers of religious participants in insurgency movements are not limited to Islam. Both the Basque Country and Liberty (ETA) and the IRA insurgency movements had substantial numbers of practicing Catholics in their ranks, suggesting religion can act more as a recruitment method compared to having the foundation be on religion.⁷⁸

Relating back to the case studies, the PCP-SL, the PLA-CPN, and LTTE all possess some of the above characteristics for beginning an insurgency movement. These characteristics are also present in the way the groups recruited members. In regards to religion being an incentive, these case studies demonstrate slight indications that these insurgencies were overtly religious, but they do carry some attributes. Some scholars have theorized that the Maoists in Nepal could have mobilized supporters because of direct opposition with the Hindu caste system in Nepal.⁷⁹ The dissatisfaction with the caste system suggests underlying disagreements with the religious limitations in the state of Nepal. Secondly, while the LTTE was more ethnically based with the Tamils as an ethnic group, there were also religious components. In addition to being an ethnic

⁷⁷ O'Leary and Tirmon, *Introduction to Terror, Insurgency and the State*, 3.

⁷⁸ *Ibid.*, 4

⁷⁹ *Ibid.*

minority, the Tamils were typically Hindu, contrasting with the Singhalese who celebrate Buddhism.⁸⁰

Nevertheless, since these case studies are predominantly Marxist driven insurgencies, religion was not at the core. Both the foundation and the leaders were secular who just happened to be fighting regimes with an established religion, with the exception of Peru. All three of the cases have roots in Marxist ideologies. Marxist-Leninist thought commonly inspired recent insurgencies as “During the Twentieth Century, insurgents were often motivated by Marxism, religion or nationalism (or a combination of these).”⁸¹ While Marxist principles behind revolution influenced the Tamil Tigers, but the insurgency was not explicitly Marxist as an identity. The PCL-SL and PLA-CN were both more explicitly Marxist in all aspects of the movement. Specifically, both the Shining Path and the PLA-CN were both Maoist based.⁸²

Maoism refers to a branch of Marxism, which centers on the ideologies of Mao Zedong. Mao, once the leader of the Chinese Communist Party (CCP), is “remembered as China’s paramount Marxist-Leninist leader and theorist.”⁸³ Mao’s armed offense in the 1930s and 1940s defeated China, demonstrating that armed struggle can overtake a government.⁸⁴ His success with leading a communist revolution outside of Russia paved the way for other communist revolutions to erupt after Mao especially in Asia, Africa, and Latin America. Beforehand, these countries could not relate to Soviet communism, “It was really only after the emergence of the Sino-Soviet split in the 1960s – and especially after the onset of the Cultural Revolution (CR) in 1966 – that Maoism was appreciated in the third world as a complete, military, political, cultural

⁸⁰ O’Leary and Tirmon, Introduction to *Terror, Insurgency and the State*, 3.

⁸¹ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 6.

⁸² O’Leary and Tirmon, Introduction to *Terror, Insurgency and the State*, 4.

⁸³ Timothy Cheek, *A Critical Introduction to Mao*, (New York: Cambridge University Press, 2010), 4.

⁸⁴ Shaw, *War and Genocide*, 29.

and economic ideology distinct from Soviet Communism.”⁸⁵ Maoism offered a way for peasantry classes in these parts of the world to acquire national liberation. Appealing to marginalized peoples, Maoism “provided the ideological underpinnings and a practical blueprint for the struggle.”⁸⁶

Many of the insurgencies of the 20th century used Mao’s ‘Protracted Warfare’ model to achieve their motivations. The model “being monolithic organizations with a centralized, hierarchical command structure, clearly defined aims and a sequenced approach to achieve them.”⁸⁷ Violence remains at the center of how these organizations achieve their goals. Insurgent groups utilize military tactics as a strategy to politically challenge an established state.

However, these military tactics rarely compose of traditional warfare, making it significantly difficult to defeat. The groups practice unconventional warfare tactics such as guerilla warfare, terrorism, and coercion/intimidation with the goal of mobilizing a group to fight behind their common goal. In addition to militaristic tactics, insurgent activity also extends to political mobilization such as specific propaganda campaigns, party organization, and recruitment of combatants and supporters.⁸⁸

An insurgency movement goes through several phases before it reaches high levels of violence. All insurgencies begin from a revolutionary thought. Insurgency stems from revolutions that support them aim to destroy the power of established regimes.”⁸⁹ It takes several steps before a revolution can turn into an insurgency, as actual fighting with combatants is the final step of a revolution. Essentially, “Insurgencies may evolve through some or all the stages of

⁸⁵ Alexander Cook, “Third World Maoism,” In *A Critical Introduction to Mao*, edited by Timothy Cheek, 228-312, (New York: Cambridge University Press, 2010), 290.

⁸⁶ *Ibid.*, 288.

⁸⁷ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 6.

⁸⁸ *Ibid.*

⁸⁹ Shaw, *War and Genocide*, 28.

subversion and radicalization, popular unrest, civil disobedience, localized guerilla activity, and widespread guerilla warfare to open, semi-conventional armed conflict.”⁹⁰ First, pre-insurgency begins with the leadership’s conception. Second is organizational in which the group directly recruits guerillas and acquires supplies. The third phase is guerilla warfare where insurgents utilize unconventional war tactics against the government.

Guerilla warfare includes many avenues of violence. Insurgents do not have the same access to military materials as the government and utilize guerilla tactics such as “raids, ambushes, assassinations, sabotage, booby traps, and impoverished explosive devices take advantage of mobility, stealth, deception, and surprise to weaken, discredit or paralyze the less agile government security forces.”⁹¹ By nature, the guerilla practices are expected to last longer because they do not have conventional means of power. Feardon attests, “The strategy of violence in peripheral insurgencies is radically different. Rebel leaders rarely expect to win quickly by means of a tipping process that causes the government to collapse.”⁹² Insurgencies also utilize terrorism a tactic. All of these tactics aim to tire the governments by forcing them to exhaust their resources.⁹³ Their strategies are able to flourish with set conditions that favor the peripheral insurgencies. Feardon and Laitin claim that insurgencies last so long and can be successful “by the presences of a rural base area, preferably with rough, inaccessible terrain; rebels with local knowledge of the population superior to the government’s, which aids rebels in hiding from superior government forces; and by foreign financial or logistic support and training.”⁹⁴

⁹⁰ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 11.

⁹¹ *Ibid.*, 10.

⁹² Feardon, “Why Do Some Civil Wars Last So Much Longer than Others?”,20.

⁹³ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 11.

⁹⁴ John Feardon and David D. Laitin, “Ethnicity, Insurgency, and Civil War,” (paper presented at the Annual Meeting of the American Political Science Association, San Francisco, California, August 30-September 2, 2001).

However with these practices, come unjustified killings of civilians. Insurgents will readily commit massive atrocities and appalling acts as they are “intended to prompt opponents to reach irrationally, in ways that harm their interests.”⁹⁵ Insurgents will willingly murder civilians who work for the government in public, “thereby deterring others who might seek to work with the government.”⁹⁶ Goldstein reports about an incident in Zimbabwe: “a peasant in Zimbabwe explained that guerrillas murdered someone who was helping the government in order to show that ‘they had the power to do anything and instill fear so that none would repeat the mistake.’”⁹⁷ During times of conflict, civilians will align with whomever to ensure their protection. Because of the instability of violence, “insurgents may be able to encourage people to turn to them in preference to the government to ‘restore’ to public order.”⁹⁸ This phenomenon not just true for aligning with the insurgents, but with whoever controls the territory, be that either the insurgency or the government. The alignment may not necessarily resonant with the true sentiments of the individual.⁹⁹

Despite instances of violence against innocent civilians, insurgencies still manage to attract combatants willingly. Individuals justify acts of terror and violence. The Counterinsurgency Guide suggests that insurgencies promote their ideology but their methodology can “include the provision of money, basic social services, control of land, or positions of authority.”¹⁰⁰ Additionally, the insurgency can recognize particular social ills and offer an alternative to alleviate grievances.

⁹⁵ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 10.

⁹⁶ *Ibid.*, 11.

⁹⁷ Goldstein, *Winning the War on War*, 298.

⁹⁸ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 10.

⁹⁹ Goldstein, *Winning the War on War*, 298.

¹⁰⁰ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 9.

Partially the tactic works so well because of inequalities in both the economy and political access. Disparities within the economy can predispose presumed peaceful states to conflict.¹⁰¹ Situations of extreme poverty and economic inequalities amongst groups in states often leads towards extreme anger and hostility, encouraging individuals to find alternative methods to acquire their economic autonomy. Frances Stewart, director of Development Studies at Oxford, accounts that out of the ten poorest countries in the world, eight of them are currently experiencing violent conflict or have recently went through have recently witnessed or are currently experiencing violent conflict.¹⁰² This measure indicates a correlation between certain economic factors and the likelihood that an insurgency has the potential to gain momentum in areas that never seen violence beforehand. Paul Collier, Anke Hoeffler, and Måns Söderbom in “Post Conflict Risks,” stress the importance of examining economic conditions that ensure the feasibility of conflict rather than stressing on the motivation of the leaders of the insurgent groups themselves.¹⁰³ As reiterated above, the charismatic leaders can thrive on the grievances of the population and use their situations to their advantage.

In addition to the feasibility thesis, Political Scientists have put forth more hypotheses explaining this correlation between poor economic environments with high unemployment rates, periods of long economic stagnation with little or no economic growth, absent governmental services, and chronic poverty conditions.¹⁰⁴ Stewart introduces some economic hypotheses: group motivation hypothesis, private motivation hypothesis, and the failure of the social contract.

¹⁰¹ Francis Stewart, “Root Causes of Violent Conflict in Developing Countries,” accessed November 10, 2014, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1122271/>.

¹⁰² Ibid.

¹⁰³ Paul Collier, Anke Hoeffler, and Mans Soderbom, “Post Conflict Risks,*” *Journal of Peace Research* 45 (2008), 464, accessed November 11, 2014, <http://www.jstor.org/stable/27640710>

¹⁰⁴ Ibid.

These hypotheses attempt the task of explaining the apparent connection between rising insurgencies and inequality disparities.

The group motivation hypothesis sheds light on how most conflicts concern fighting between differing groups. These groups may “be divided along cultural or religious lines, by geography, or by class.”¹⁰⁵ However, simple differences in groups do not necessarily lead to fighting as Joshua A. Goldstein asserts, “High ethnic fractionalization in a society does not make war more likely.”¹⁰⁶ Differences in groups must have another layer to make a group motivated to engage in conflict. Stewart affirms, “Group differences only become worth fighting for, however, if there are other important differences between groups, particularly in the distribution and exercise of political and economic power.”¹⁰⁷ Such was the situation in Peru. Guzman mobilized Peruvian supporters “among his students and local peasants in the poor and mountainous South-Central Andes.”¹⁰⁸ He appealed to the peasants by rallying on their group inequalities, gaining the name “Shampoo” for utilizing brainwashing tactics.¹⁰⁹ Guzman mobilized the indigenous Inca behind his campaign by using the Andean metaphor of three mountains. The three mountains he defined as “the imperialism of the international superpowers, the semifeudalism of the Peruvian nation, and the bureaucratic capitalism of the regime in Lima.”¹¹⁰ The Counterinsurgency Guide attests that “The charisma of insurgent leaders can sometimes be more important than ideology in convincing others to join their movement.”¹¹¹ Guzman is just one example of a charismatic leader who was able to unite a group of alienated people, who might have never been inspired to act with violence beforehand. Essentially, a

¹⁰⁵ Francis Stewart, “Root Causes of Violent Conflict in Developing Countries.”

¹⁰⁶ Goldstein, *Winning the War on War*, 297

¹⁰⁷ Francis Stewart, “Root Causes of Violent Conflict in Developing Countries.”

¹⁰⁸ Cook, “Third World Maoism,” 304.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*, 305.

¹¹¹ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 6.

charismatic leader can mobilize supporters easily if they belong to a specific group as Goldstein accounts “Ethnicity may make mobilization of people into a rebellion easier by increasing trust and cohesion within the group.”¹¹²

The private motivation hypothesis accounts for how insurgencies can motivate individuals to join their ranks based on compensatory reasons. It gives individuals a way to have employment with the army, which is especially appealing if there are high numbers of unemployment.¹¹³ The private motivation hypothesis can also be referred to as a “greed hypothesis.” Situations in Sudan, Sierra Leone, and Liberia all specifically support the greed hypothesis.¹¹⁴ War can create opportunities to make a profit in trading arms, producing illicit drugs, and trading in diamonds, timber, and other products.¹¹⁵

The third hypothesis, the failure of the social contract, is the conception that the government had failed the people and thus they responded with violence. Stewart states, “People accept state authority so long as the state delivers services and provides reasonable economic conditions (employment and incomes).”¹¹⁶ Without these services and resulting high levels of poverty, violence erupts. Some studies indicate that there is a correlation between low capita rates and poor economic growth with conflict erupting. For example, one study drew a correlation between GDP and likelihood for conflict. The study estimates that “the probability that a typical country would experience a new armed conflict within five years, based on its annual GDP per capita.”¹¹⁷ Additionally, James Feardon and David D. Laitin discovered in their

¹¹² Goldstein, *Winning the War on War*, 297.

¹¹³ Francis Stewart, “Root Causes of Violent Conflict in Developing Countries.”

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ Goldstein, *Winning the War on War*, 292

research that poverty is an important factor as it makes a state weak in itself.¹¹⁸ They claim, “Poverty should also directly favor insurgency by making the life of a guerrilla relatively more attractive and so aiding in recruitment.”¹¹⁹ Ultimately, when the government does not give the civilians any options, violence becomes a reasonable way to accomplish their desires.

All of these hypotheses offer some insight to not only why conflicts erupt but also how insurgent groups can use these grievances for their recruitment and mobilizing. Not all insurgents need to be fixated on the ideology behind the movement. “Insurgencies were often led by university educated ‘intellectual elites’ whose personal circumstances were sometimes far removed from those of the rank-and-file insurgents that they inspired.”¹²⁰ Further, these hypotheses suggest that insurgencies motivations can overlap as there can be a combination of all these reasons contributing to motivation.

Because of a variety of potential motivations, insurgency groups rise. Chapter Two explicitly explores about how states consequently respond to these insurgent threats that directly endangers the state.

¹¹⁸ O’Leary and Tirmon, Introduction to *Terror, Insurgency and the State*, 11.

¹¹⁹ Fearon and Laitin, “Ethnicity, Insurgency, and Civil War,” 3.

¹²⁰ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 6.

Chapter Two: State Response, Impunity, and Denial

War can either be fought justly or unjustly... It is a crime to commit aggression, but aggressive war is a rule-governed activity. It is right to resist aggression, but the resistance is subject to moral (and legal) restraint.¹²¹

-Michael Walzer

As described in the previous chapter, peripheral insurgencies, or “sons of the soil” rebellions, pose a serious threat against the overall health of a state. Somehow, these non-state organizations acquire a means of violence with the direct intention of gaining political power against the state. Their motivations, deeply rooted in aggravated frustrations with the state, set up the conditions of an internal war when they challenge the state. When insurgent movements obtain a means of violence and mobilize civilians behind the cause, the movements directly challenge a state’s legitimacy for, “A legitimate government is one that can fight its own internal wars.”¹²² In order to regain legitimacy as a state against these threats, a state needs to formulate an appropriate response. States have a plethora of options they can use at their expense in responding to these threats. Above, Michael Walzer advises against a state choosing to respond by crossing moral and legal restraints. Rules of warfare and morality challenge a state’s choice when innocent lives are lost and human rights violations proliferate.

Means of Violence: A State’s Right

To reiterate, a state becomes illegitimate in the event it fails to fight internal challenges. Maintaining control within the borders of a state is critical to a state’s survival as an entity for a state’s validity resonates both in its ability to exercise control and protect its citizens. States

¹²¹ Walzer, *Unjust and Just Wars*, 21.

¹²² *Ibid.*, 101.

demonstrate control by employing its own means of violence against potential threats. Martin Shaw reiterates, “Authority was always intimately connected with the use of violence, since in order to become or remain legitimate, a state needed to be able to demonstrate its capacity to use force.”¹²³ As the prior chapter suggests, controlling the monopoly of violence defines a state.

Though a means of violence connects directly to a state’s legitimacy, not all states will use their means of violence unless directly provoked. But when a tangible threat surfaces, states will engage in all necessary violence responses for states claim “rights to exercise particular kinds of violence and prevent others from doing so.”¹²⁴ Peripheral insurgencies only become a tangible threat when an insurgency shifts from an ideological conception to an organization with actual weaponry. When the conception of an insurgency first develops, states hesitate to respond immediately due to lack of official threat, or the threat may be regarded as petty. Such was the case when the Kurdistan Workers’ Party (PKK) first emerged. Turkey hesitated to tangibly respond since it originally perceived the insurgency as a simple bandit organization targeting only wealthy Kurdish landlords.¹²⁵ Peru’s response to the Shining Path took a slow trajectory as well. The government hesitated to respond until the PCP-SL transformed from enticing fear by hanging dogs from streetlights to actually acquiring arms, granting them full capability to launch serious attacks against the Peruvian police and unarmed civilians. Once the threat escalated, the Peruvian state needed to tactfully respond to the threat.¹²⁶

¹²³ Shaw, *War and Genocide*, 62.

¹²⁴ *Ibid.*, 58

¹²⁵ Robert J. Art and Louise Richardson, *Democracy and Counterterrorism: Lessons from the Past* (Washington, D.C: United States Institute of Peace Press, 2007), 356.

¹²⁶ Rebecca K. Root, *Transitional Justice in Peru*, (New York: Palgrave Macmillan, 2012), 7.

Counterinsurgency Initiatives

States engage in counterinsurgency policies and practices in order to respond to insurgent threats. All counterinsurgency movements stem from situations as the one described in Turkey and Peru, wherein a state faces a direct attack to their control of the monopoly of violence. The *Counterinsurgency Guide* defines counterinsurgency as “comprehensive civilian and military efforts taken to simultaneously defeat and contain insurgency and address its root causes.”¹²⁷ The state employs its military and other coercive agents to either eliminate the threat in entirety, or constrain the threat. Direct counterinsurgency initiatives depend largely on the situational factors within the country itself as well as the nature of the insurgency itself. The nature of counterinsurgencies depends on three factors: “the characteristics of the environment (physical, economic, political and human) in which it takes place; the nature of the insurgent group (or groups); and the nature of the counterinsurgent government and its security forces.”¹²⁸

According to the *Guide to the Analysis of Insurgency*, a government waits to begin a counterinsurgency initiative until a defined perceived threat exists as explored earlier with both the PKK and the PCP-SL. Governmental response to pre-insurgency is minimal as it just involves a leadership emerging. When an insurgency movement shifts towards a more organizational stage when it recruits guerilla combatants, obtains supplies, and gains support from other nations, governments will develop a counterinsurgency organization. Usually, the government will not respond with militia warfare until the insurgency begins using actual guerilla warfare tactics. While not all insurgencies reach this point, in the instance that

¹²⁷ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 12.

¹²⁸ *Ibid.*

insurgencies reach the point of conventional warfare, the government utilizes its own conventional warfare tactics and engages in a civil war against the opposition.

Once a state commences a counterinsurgency initiative, it quickly proves to be an arduous undertaking. Committing to a counterinsurgency movement means that it will cost the government both an extreme amount of money and time.¹²⁹ This can be seen in the conflict between FARC (Fuerzas Armadas Revolucionarias de Colombia) and the Colombian government. The enduring conflict begun in 1964 and is showing little signs from ending any time soon.¹³⁰ The Colombian state and its coercive agents were incapable of putting an easy end to the influence of FARC, draining resources as well as costing thousands of lives in the process. A state's main priority behind counterinsurgency movements is to "build popular support for a government while marginalizing the insurgents: it's therefore fundamentally an *armed political competition* with the insurgents."¹³¹ Since counterinsurgencies can progress into armed competition, besides money and time, countless combatants and noncombatants lives are lost in the process.

Idealistically, governments launch counterinsurgency movements with the intention of protecting the population from groups using violence against them. Unfortunately, counterinsurgency efforts often escalate into situations where states engage in criminal violations against unarmed civilians, contributing towards state mistrust. Oftentimes during counterinsurgency initiatives, lines blur and civilians are caught in the crossfires. Shaw confirms, "Because guerilla war is irregular and often seeks to overcome the power advantages of orthodox states, its practice has long been accompanied by violence against (actual or putative) civilian

¹²⁹ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 12.

¹³⁰ Art and Richardson, *Democracy and Counterterrorism*, 221.

¹³¹ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 12.

supporters of the state.”¹³² A primary reason why criminal violations against unarmed civilians occur is because counterinsurgency movements are more population-centric over enemy-centric.¹³³ Counterinsurgency efforts cannot be specifically enemy-centric because of the nature of the insurgencies they resist. Since these intrastate conflicts are “Peoples Wars,” civilians experience significant violence.

As explored in Chapter One, “People’s Wars” or Maoist theories on guerilla warfare, have dominated most of the revolutions in the last half-century. At the core of Maoist principle is “the total mobilization and involvement of ‘the people’—ordinary nonmilitary citizens who could otherwise be thought of as civilians.”¹³⁴ Mao illustrates the total involvement of the people by referring to the troops as the “fish” and civilians as the “water.” The “water” determines the “fish’s” survival. In essence, without the “water”, the civilians, the troops perish. Civilians provide insurgencies with housing, food, and other necessary materials for survival. Due to the ingrained nature of this relationship between combatants and civilians in insurgent warfare, an appropriate counterinsurgency movement needs to come up with a solution that effectively ends the supply of the “water.”

The fact that the government cannot easily distinguish insurgents apart from the general population, gives tremendous advantages for insurgent movements. Fearndon and Laitin assert, “If government forces knew who the rebels were and how to find them, they would be fairly easily destroyed or captured.”¹³⁵ Considering that insurgencies lack the same wealth of resources compared to states such as advanced weaponry, governmental security forces could easily defeat the insurgent movement. Subsequently, insurgents employ alternative methodology to make the

¹³² Shaw, *War and Genocide*, 17.

¹³³ Bureau of Political-Military Affairs, *Counterinsurgency Guide*, 12.

¹³⁴ Hugo Slim, *Killing Civilians: Method, Madness, and Morality in War* (New York: Columbia University Press, 2008), 206.

¹³⁵ Fearndon and Laitin, “Ethnicity, Insurgency, and Civil War,” 7.

counterinsurgency initiative that much more complicated by integrating combatants among civilian. A successful counterinsurgency initiative is one that effectively separates noncombatants and rebels without limiting the life experience of noncombatants.¹³⁶ Achieving this, however, proves exceedingly difficult.

When removed from conflict situations, one can claim that it is easy to discern who is a civilian versus who is a combatant. Civilians are clearly unarmed men, women, and children. In contrast, in the midst of internal conflict, it has become increasingly difficult discerning who supports the insurgency versus those who support the state. Therefore, “Cruel tyrants may not care whether or not the people are in support of what they do and end up killing many of their people in the process.”¹³⁷ For instance, this occurred in Nepal when Nepalese security forces infiltrated countryside villages. Security forces were unable to easily differentiate the rebels from the rest of the population and resultantly inflicted harm on innocent Nepalese in their efforts to end the Maoist threat.

Stopping insurgencies is challenging for these typical assumptions we make about innocent civilians needing protection are often blurred for the civilians are the “water” in the insurgency. In the midst of war, especially intrastate wars, “The great majority of people who decide to kill civilians do so because they cannot truly accept that most people who are not armed really do exist “outside” the war somehow and should be protected from its suffering.”¹³⁸ To an extent, this perception is sometimes accurate: not all civilians are blameless.¹³⁹ The generalization that all civilians are innocent proves to be a dangerous assumption as scattered throughout the population are people that possess a “wide spectrum of different interests, roles,

¹³⁶ Fearndon and Laitin, “Ethnicity, Insurgency, and Civil War,” 9.

¹³⁷ Slim, *Killing Civilians*, 205.

¹³⁸ *Ibid.*, 183.

¹³⁹ *Ibid.*, 187

and views in the war.”¹⁴⁰ Some innocent appearing civilians could actually have an intrinsic role in the conflict.

Regardless of the possibility that civilians are supporters of the insurgency, when state actors eliminate the “water,” they directly violate international law by engaging in unjust behaviors. The Geneva Convention in 1949 established specific treaties in international humanitarian law. The international community adopted two other Protocols in 1977 and 2005 to address more specifically how combatants should behave during conflict, particularly in regards of how they should protect civilians.¹⁴¹ When violence extends beyond justified behaviors and becomes unnecessary or cruel, it becomes criminal according to international law, especially when violence involves non-combatants. While violence and cruelty certainly overlap, “Cruelty, on the other hand, can never be justified because it is the intentional infliction of physical pain on individuals who are in a position of weakness.”¹⁴² By definition, civilians are in a position of weakness as they lack necessary means to defend themselves. The Sri Lankan government’s decision to attack the “No Fire Zone,” fully aware of the innocent civilians trapped there, represents a concrete example of such cruelty. While these humanitarian laws are in place, they cannot explicitly undermine the means of violence each state has for its sovereignty.

During combat, violence is justified when violence becomes necessary for the purpose of achieving goals and for resisting aggression. By definition, soldiers are liable to be killed because “soldiers as a class are set apart from the world of peaceful activity; they are trained to fight, provided with weapons, required to fight on demand.”¹⁴³ Fair aggression against soldiers is a completely justified process in warfare. Insurgents directly surrender their noncombatant status

¹⁴⁰ Ibid., 187-188

¹⁴¹ Donnelly, *International Human Rights*, 14.

¹⁴² Shaw, *War and Genocide*, 171.

¹⁴³ Walzer, *Just and Unjust Wars*, 144.

and are liable to be killed as they engage in war tactics. On the other hand, this blatantly disregards the common occurrence of insurgent groups forcibly recruiting rebels, including the practice of child soldiers.

The rebel organization's usage of terrorist tactics directly blurs the line between unjust and just behavior for state actors' aggression in responding to these threats. In essence, terrorist warfare deliberately violates all conventional rules of war by intentionally targeting noncombatants. This is demonstrated with suicide bombing tactics used by both Hamas and the Tamil Tigers. Nevertheless, in responding to these threats, state actors should avoid violating the rights of civilians and breaching beyond the brutality of the opposition. In spite of this delicate balance, states engage in behaviors that undeniably infringe on international law such as detention without trial, kidnapping, prisoner abuse, and torture.¹⁴⁴ These crimes are similar to the non-state actor's actions but "because the government's actions are defined as legitimate and necessary to ensure national security, the public usually accepts the alibi, making it complicit in crimes of power."¹⁴⁵ In essence, state actors justify these severe measures by claiming their reaction necessary against the terrorist threat.

A Culture of Impunity Permits Violations

A culture of impunity encourages these severe measures. Impunity is when perpetrators fear no consequences for inflicting mass atrocities and human rights violations, allowing any behaviors for successful outcomes. Alex J. Bellamy for the Stanley Foundation suggests that if

¹⁴⁴ Michael Welch, *Crimes of Power & States of Impunity the U.S. Response to Terror*, (New Brunswick, N.J.: Rutgers University Press, 2009), 171.

¹⁴⁵ *Ibid.*

three factors are present in early level violence, it provides the conditions for government actions to easily escalate to mass atrocities. The three factors are:

1. Violence intentionally targeted against civilians
2. Impunity for the perpetrators of these early crimes.
3. The existence of a significant threat to the survival of the governing regime and failure of initial attempts to counter that threat.¹⁴⁶

These factors certainly do not guarantee that mass atrocities will occur on a reoccurring basis, but they do offer a prediction. The likelihood that mass atrocities will occur is significantly higher. The first instance, violence against civilians, works as a form of a “trial massacre.” Once perpetrators realize they can get away without repercussions for no one was arrested nor did any explicit international pressure transpire, the necessary components of a cycle of impunity are solidified.¹⁴⁷ Once the perpetrators enjoy no ramifications, they know that future instances of violence against civilians could similarly go unpunished. Therefore, it becomes more feasible that future atrocities on a larger scale could be employed without hesitation.¹⁴⁸

Once a culture of impunity is established during intrastate conflict, violence escalates significantly. This is evident in the case studies of Nepal, Peru, and Sri Lanka. In fighting the PCP-M, Nepali security forces dramatically escalated repression after King Gyanendra staged a coup against the civilian government. Under the coup, Nepal soon became a worldwide leader in enforced disappearances in the early 2000s. With the emergence of the Shining Path, the Peruvian government decided to respond with violence. Fighting the Shining Path, the Peruvian military “enjoyed a vast new sphere of power over the Peruvian countryside, generous arms expenditures, virtual legal immunity and autonomy in the conduct of its counterinsurgency

¹⁴⁶ Alex Bellamy, Stanley Foundation, “Mass Atrocities in Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Prevent,” February 2011, accessed February 6, 2015, <http://www.stanleyfoundation.org/publications/pab/BellamyPAB22011.pdf>, 13.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

campaign.”¹⁴⁹ Effectively, the military had complete impunity as they also controlled the judicial system, allowing all violations to go unpunished.

Challenging the Practice of Denial

In order to cover up atrocities from armed conflict and avoid responsibility for these violations, states potentially engaged in denial practices post-conflict. The practice of denial directly interferes with accountability and disrupts sustainable peace prospects. Stanley Cohen in *States of Denial* suggests that some states try to use psychological concepts such as cultural repression, shared amnesia and forgetting, and collective denial assuming “that an entire society can forget, repress, or dissociate itself from its discreditable past record.”¹⁵⁰ States engage in collective denial and forgetting through “official state policy—the deliberate cover-up, the rewriting of history—or through cultural slippage in which information just disappears.”¹⁵¹ This type of denial occurred when the Sudanese government engaged with a policy of denial, claiming that no attacks occurred on civilians at all, despite concrete evidence. Furthermore, El Salvador engaged in similar behavior when it claimed that a massacre of 794 people did not transpire despite *The New York Times* publishing a detailed account of the massacre.¹⁵² The instances of denial by El Salvador and Sudan represent outright denial, which is rare. Statements of denial manifest into several forms such as disputing accusations that are unreliable, claiming the violation was something else entirely, or by justifying their actions by defending their actions were an appropriate moral response.¹⁵³

¹⁴⁹ Root, *Transitional Justice in Peru*, 21.

¹⁵⁰ Cohen, *States of Denial*, 132.

¹⁵¹ *Ibid.*, 132-133.

¹⁵² Goldstein, *Winning the War on War*, 306.

¹⁵³ Welch, *Crimes of Power & States of Impunity*, 165.

Collective denial by states directly hinders any possibility of post-conflict healing as states used their coercive power to prevent accountability for human rights violations. The only accountability for war crimes resides with the “loser” of the war as the “winner” enjoys eminent impunity for their actions. However, blocking full accountability and avoiding ways of healing might be dangerous. Failure to prosecute human rights violations potentially molds a country to foster a culture of impunity throughout the future of the state, resulting in grave consequences. Kathryn Sikkink suggests that if no one prosecutes individuals for human rights violations, it “leads to a particular set of expectations—a culture of impunity that in turn can rebound back into more violations.”¹⁵⁴ As we will see in Peru’s case study, Fujimori ran the state rooted in corruption practices. With a culture of impunity in place, it fosters negative attitudes that permeate into the future of the state since governmental authorities and other perpetrators who committed atrocities will still likely possess positions of political power.

With these leaders maintaining coercive power, impunity flourishes in the transitional government creating extreme tensions as victims struggle to heal from the conflict. Disallowing victims to heal by seeking justice and receiving appropriate reparations creates problems as these conflicts leave victims with deeply rooted feelings of embitterment for both the non-state actors and state agents. Addressing issues of accountability, justice, the truth, are all critical considerations. However, the potential to challenge these situations are dependent based on the willingness of the state to engage in these practices. The next chapter explores the limitations states face post-conflict to combat both impunity and address the painful memories from conflict.

¹⁵⁴ Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics*. New York: W.W. Norton & Co, 2011), 158.

Chapter Three: Transitional Justice

People always ask, 'Why reopen wounds that have been closed?' ... "Because they were badly closed. First you have to cure the infection, or they will reopen themselves."¹⁵⁵

-Horacio Verbitsky
Argentine Journalist

Once internal conflict ends, states are placed in a transitional period, left with unresolved questions from the past. Horacio Verbitsky stresses that it is critical for states to “cure the infection” by critically addressing the “wounds” from the conflict. Providing answers for survivors who experienced grave human rights violations and trauma directly works to heal these wounds. States have a variety of options of addressing these answers: by ignoring them, giving amnesty to the perpetrators as part of a political deal, creating fact-finding commissions, or bringing perpetrators to trial.”¹⁵⁶ Actively being able to engage in methods to address accountability for violations depends largely on the political context of the respective state. As Chapter Two stresses, states that transfer impunity practices from the conflict will unlikely explore measures that threaten their legitimacy and hold them accountable for violations. However, these measures may offer critical solutions to the healing of the embittered wounds post-conflict which threaten to resurface.

Transitional Justice as an Alternative Method

Methods of transitional justice efforts propose potential techniques for “curing the infection” that Verbitsky urges needs healing by directly working with civilian demands and concerns. Before a state can establish a pathway towards sustainable peace, some form of healing and addressing of the past needs to occur. Because state and non-state actors have relationships

¹⁵⁵ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, (New York: Routledge, 2011), 145.

¹⁵⁶ Goldstein, *Winning the War on War*, 122.

based on intense feelings of hatred, a negotiation does not necessarily solidify peace. While compromises between forces resolve the end of fighting and can establish a new political system, the fact remains that, “The very best democratic system in the world produced by the most able democrats will not survive if the general population to which it applies are not minimally prepared to trust the system and each other.”¹⁵⁷ There needs to be an additional forum to discuss these sentiments and address hostile relationships for the whole population. Addressing these sentiments allows a “minimum basis of trust so that there can be a degree of cooperation and mutual reliance between them.”¹⁵⁸ Transitional justice can work as that forum.

Transitional justice offers several avenues for states transitioning from periods of state and insurgent violence. The International Center for Transitional Justice (ICTJ) defines transitional justice as “a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy.”¹⁵⁹ The premise behind transitional justice is to give victims of human rights violations the right to the truth, receive reparations, and ensure the perpetrators are punished appropriately.¹⁶⁰ Various methods in transitional justice can be utilized to accomplish these goals for victims after periods of insurgent violence. These basic approaches include: criminal prosecutions, reparation programs, truth commissions, gender justice, security system reform, and memorialization efforts.¹⁶¹ With all of these options come significant benefits as well as potentially hazardous risks. Both the risks and benefits will be explored below, taking examples from societies who engaged in transitional justice.

¹⁵⁷ Bloomfield et al., *Reconciliation After Violent Conflict*, 11.

¹⁵⁸ Ibid.

¹⁵⁹ International Center for Transitional Justice, “What Is Transitional Justice?” accessed February 15, 2015, <http://www.ictj.org/about/transitional-justice>

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

Many Faces of Justice: Exploring Retributive Justice and Restorative Justice Options

Individuals define “justice” in their own particular way. Not one conventional all-encompassing definition for the term exists as, “It can mean fairness, political and economic equality of both opportunity and outcome, and accountability.”¹⁶² This is especially evident in post-conflict circumstances. Before engaging in justice practices, states must determine how deeply they want to engage in justice, distinguishing where the line ends before justice turns more into a method of revenge. Kathryn Sikkink determines that there are three possible models for addressing accountability and justice: 1) the impunity model, 2) the state accountability model, and 3) the individual criminal accountability model.¹⁶³ Post-conflict societies can directly apply these models to their circumstantial situations by engaging in either impunity or the transitional justice methods of retributive or restorative justice.

The impunity model, or excuse from justice, in post-conflict situations only applies to the “winners” of the conflict as the victors often prosecute the “losers.” Despite the fact that the victors committed similar crimes, they are virtually excused from all accountability. Historically speaking, states have only taken the easier, first model of impunity for decades. Up until the late 1980s and early 1990s, almost universally, states shielded human rights abusers from punishment by avoiding perusing accountability for human rights abuses completely.¹⁶⁴ Instead of indicting either leaders of rebel groups or leaders of states for crimes against humanity, these individuals could leave the country, escaping responsibility for their actions. Such was the case with the dictators Jean-Claude ‘Baby Doc’ Duvalier in Haiti and Idi Amin in Uganda who found

¹⁶² Sikkink, *The Justice Cascade*, 12.

¹⁶³ *Ibid.*, 13-14.

¹⁶⁴ Rebecca K. Root, *Transitional Justice in Peru*, 1.

sanctuary elsewhere without facing prosecution.¹⁶⁵ While impunity remains prevalent throughout the world as leaders of states remain in power despite engaging in serious human rights violations such as Bashar al-Assad in Syria, the world is now witnessing a dramatic shift as regimes fall and change. The fall of political regimes opens up the possibility of exploring accountability holistically and engaging in more options.

One justice option post-conflict societies can choose is retributive justice. Retributive justice measures depend on achieving justice by concrete criminal prosecutions, a largely western concept. Supporters of retributive justice believe in it because it stresses that perpetrators need a definitive form of punishment. They argue that an official prosecution leads towards “the gradual building of self-confidence and mutual trust, and implanting a culture of human rights and democracy.”¹⁶⁶ Without prosecution, complete trust in the state is unattainable. However, “Prosecutions of human rights violators remain the rarest, most controversial, and most difficult to implement of the options available to a transitioning state.”¹⁶⁷ One of the primary reasons why prosecutions are so controversial is because the trials may not be completely fair, resulting in the enragement of the allies of those prosecuted. If the trials are completed in an “unjust” way, it directly impedes a completely just process of ensuring accountability. Also, prosecutions may not resonate with the sentiments of the population based on cultural circumstances or religious beliefs.

Criminal prosecutions ultimately result in the investigation and indictment of the major generals or perpetrators either during the conflict or previous administration.¹⁶⁸ A fair prosecution can be held in either national tribunals within states as seen in Ethiopia or in

¹⁶⁵ Joanna R. Quinn, “Transitional Justice,” in *Human Rights: Politics and Practice*, ed. Michael E. Goodhart. (New York: Oxford University Press, 2009), 355.

¹⁶⁶ Bloomfield et al., *Reconciliation After Violent Conflict*, 97.

¹⁶⁷ Root, *Transitional Justice in Peru*, 5.

¹⁶⁸ ICTJ, “What Is Transitional Justice?”

international tribunals. International tribunals such as the International Tribunal for the former Yugoslavia (ICTY), the International Court of Justice, or the International Criminal Court (ICC) can substitute national tribunals in instances where the state does not have the capacity to carry out a fair trial.¹⁶⁹

Retributive justice provides several benefits: it prevents private revenge, it ensures perpetrators will not return to leadership positions, it gives victims concrete closure with a guilty verdict, it individualizes guilt, strengthens the value of democracy in the state post conflict, and directly ends the cycle of impunity.¹⁷⁰ These advantages are undeniably beneficial. Prosecutions guarantee that former leaders responsible for the most severe violations of human rights will not return to power and be able to inflict these types of violations again. We live in a society where former leaders can be jailed for their decisions and actions during their administration, something inconceivable beforehand. The arrest of Augusto Pinochet in 1998 by the United Kingdom “shattered the image of heads of state as beyond the reach of law.”¹⁷¹ Pinochet’s arrest demonstrated that no one is necessarily immune from justice. Individualizing guilt is critical in situations like Rwanda, where a significant amount of the community likely engaged in criminal behaviors. Instead of blaming the Hutu community with collective guilt, retributive justice results in individual accountability that prevents negative stereotypes against an entire group “which may provoke more violence in turn.”¹⁷² If states can surpass the difficulties that come with implementing an effective trial, retributive justice is certainly a worthwhile consideration for the transitional justice process.

¹⁶⁹ Bloomfield et al., *Reconciliation After Violent Conflict*, 100.

¹⁷⁰ *Ibid.*, 98.

¹⁷¹ Root, *Transitional Justice in Peru*, 6.

¹⁷² Bloomfield et al., *Reconciliation After Violent Conflict*, 98.

While criminal prosecution offers many benefits, retributive justice measures often come with significant shortcomings and limitations. States may need to stop their retributive justice process midway before completion due to a variety of factors. For instance, Argentina began its justice process with the Trials of the Juntas in 1985 but was forced to stop the process just two years into the process.¹⁷³ Another shortcoming is that the process in itself may disrupt the peace process as more focus may be placed on prosecuting criminals over concentrating on the transition to a new government and formulating a return to normalcy. Further concerns include: that the fast nature of the trial may result in trials being unequal or ineffective due to urgency, that the trials may violate traditional rule-of-law, that courts cannot accommodate situations when both sides have inflicted crimes, that there is too much focus on individual guilt over patterns in atrocities, and that trials may directly interfere with the culture of a particular society.¹⁷⁴ Before communities engage in a system of justice, post-conflict policymakers need to address crucial questions including whether they should bring to trial both anti-state actors and state actors and whether they should only investigate leaders or other actors as well like torturers. In order to best achieve justice goals, transitioning governments must “strike a balance between the demands of retributive justice and political prudence or, in other words, to reconcile moral imperatives and political constraints.”¹⁷⁵ The balance can occur only if both the risks and advantages are carefully weighed beforehand.

Not all transitioning governments conclude that retributive justice is the most viable answer for their circumstances. Instead, they decide to focus more on restorative justice measures. The most prominent example is in the way South Africa handled the transition from apartheid. Desmond Tutu claims that for South Africa justice is different, as South Africa needs

¹⁷³ Ibid., 99.

¹⁷⁴ Ibid., 105-106.

¹⁷⁵ Ibid., 106.

justice that rehabilitates “both the victims and the perpetrator, who should be given the opportunity to be reintegrated into the community he or she has injured by his or her offence.”¹⁷⁶ Hesitations such as those in South Africa have led some post-conflict communities to apply restorative justice over retributive justice. Instead of being perpetrator-oriented, restorative justice “works with the full participation of the victim and of the relevant communities in discussing facts, identifying the causes of misconduct and the defining sanctions. The ultimate aim is to restore relations as far as possible, both between victim and offender and within the broader community to which they belong.”¹⁷⁷ Restorative justice often employs a combination of other transitional justice measures, which will be explored below.

Reparations for the Victims

Reparations pursue mediating some of the wounds victims from conflict acquired. ICTJ defines reparations as “state-sponsored initiatives that help repair the material and moral damages of past abuse.”¹⁷⁸ These measures can be either material or financial, or in the form of apologies. Past examples of reparations include Germany compensating Israel for Holocaust crimes or when the United States government gave financial reparation to Japanese-American internment camp descendants.¹⁷⁹ As seen with the examples of both Israelis and Japanese-American internment victims, reparations have traditionally been only associated with addressing abuses further in the past than more recent situations.

As transitional justice expands as a field and becomes more prevalent in the international community, reparations are becoming more common in the transition practices from post-

¹⁷⁶ Ibid., 106.

¹⁷⁷ Bloomfield et al., *Reconciliation After Violent Conflict*, 111.

¹⁷⁸ ICTJ, “What Is Transitional Justice?”

¹⁷⁹ Root, *Transitional Justice in Peru*, 5.

conflict and post-authoritarian rule and working towards healing for the future.¹⁸⁰ While there has been considerable progression, reparations are far from being a perfect system. Resultantly, they need to be considered more of a partial gesture as victims “may be repelled by the idea that their suffering can be ‘compensated,’ and may see this as paying people off to keep quiet.”¹⁸¹ Further, reparations pose dangers when reparation programs do not fulfill all the promises that the programs proposed due to financial or other constraints.

The *Handbook to Reconciliation* claims that while reparation efforts have appeared under various terms, they all embody efforts to repair past abuses. These terms include: restitution, compensation, rehabilitation, satisfaction, and redress.¹⁸² “Restitution” can be defined as the “re-establishment of the situation which existed before the wrongful act was committed.”¹⁸³ This practice determines that if possible, victims will receive stolen property back and or freedoms and legal rights which might have been taken during conflict. While the premise of restoring a community back to its previous condition pre-conflict appears favorable, it also brews numerous complaints. For example, in the event that communities were in dire poverty pre-conflict, it is offensive for reparation programs to suggest that they restore these communities back to their previous condition, instead of advocating for improving the condition itself. Particular attention should focus on improving conditions in instances of post-conflict societies where insurgencies mobilized support behind inequality grievances.

The second term, “compensation,” refers to states paying victims money acknowledging their mistakes and attempting to mediate for what the victims lost.¹⁸⁴ Compensation efforts can account for nominal damages, pecuniary damages, moral damages, and punitive damages.

¹⁸⁰ Bloomfield et al., *Reconciliation After Violent Conflict*, 145.

¹⁸¹ Cohen, *States of Denial*, 232.

¹⁸² Bloomfield et al., *Reconciliation After Violent Conflict*, 145.

¹⁸³ *Ibid.*, 145.

¹⁸⁴ *Ibid.*

Nominal damages offer victims a small portion of money to represent the return of rights, pecuniary damages aim to give a financial equivalent to the harm a victim experienced, moral damages relate to “immaterial harm, such as fear, humiliation, mental distress or harm to a person’s reputation or dignity,” and punitive damages are “intended rather to punish or deter than to make up for the loss suffered.”¹⁸⁵ Compensation can become controversial as in Argentina, a family member of a disappeared laments, “Life doesn’t have a price. The reparation only buys your conscience and sells your blood. The president is likely to say to us, ‘You can’t talk, we paid you.’”¹⁸⁶ Compensation efforts should explicitly reiterate from the beginning that the reparation is not meant to put a price on the suffering.

“Rehabilitation” aims to mediate any health complications from the conflict as internal conflict often results in victims suffering both extreme physical and psychological problems. In terms of physical problems, victims could have been maimed during crossfire between the anti-state actors and the state actors, or even could be injured post-conflict with landmines in countries such as in Afghanistan or Cambodia. Or survivors of conflict may experience psychological problems such as refugees from the Bosnian Genocide suffering with Post Traumatic Stress Disorder (PTSD). Rehabilitation efforts directly tackle these ailments.

Finally, “satisfaction,” encompasses a more controversial form of reparation. Under the umbrella of satisfaction, is the gesture of a formal apology by perpetrators accompanied with acknowledgement of the past atrocities.¹⁸⁷ Apologies sometimes come immediately, but as seen in El Salvador, official apologies can come years later.¹⁸⁸ Apologies by nature can be empty and ultimately “unsatisfying” for survivors, as they may appear half-hearted and forced. The

¹⁸⁵ Ibid., 145.

¹⁸⁶ Hayner, *Unspeakable Truths*, 171.

¹⁸⁷ Bloomfield et al., *Reconciliation After Violent Conflict*, 145.

¹⁸⁸ Hayner, *Unspeakable Truths*, 280.

Japanese lack of apology and remorse for South Korean comfort women during World War II particularly has been controversial. Oftentimes, state leaders avoid apologizing altogether such as the President of Sierra Leone in 2004.¹⁸⁹ Yet, apologies are necessary acknowledgements of wrongdoing if done in the right way.

Reparations are by no means perfect. They can fall short to their proposed goals because of a lack of funding and may take too long to formulate and make decisions such as discerning who should receive reparations verse those who should not have priority. Despite imperfection, reparations potentially offer critical services to states in post-conflict situations. Even though many can be left dissatisfied by the efforts of reparations, “they may do far more to improve the lives of survivors than granting them to put their enemies in the docket ever could.”¹⁹⁰ The international community increasingly stresses the need for reparation programs. Specifically, UN has discerned the importance with its 2005 document: *The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.¹⁹¹ One of the greatest problems exists in regards to reparation programs is discerning who qualifies as a victim deserving reparation. These judgments are especially problematic when a majority of the population was victimized and affected by the war, like in Sierra Leone.¹⁹² Adding to the issue with implementing reparation programs are monetary and time constraints, as these programs cannot materialize automatically. Money for reparations causes controversy in that taxpayers may end up paying for programs or victims may regard reparations as “blood money” when the guilty pay for their misconduct. Nevertheless, reparations deserve critical consideration, as

¹⁸⁹ Ibid., 282.

¹⁹⁰ Root, *Transitional Justice in Peru*, 5.

¹⁹¹ Hayner, *Unspeakable Truths*, 164.

¹⁹² Ibid.

transitional justice measures need to address situations “where gross inequalities are a product of past oppression.”¹⁹³ Such was the case especially for the conflicts in Peru, Nepal, and Sri Lanka.

The Right to Know the Truth: Truth Commissions

Truth in general is subjective, and it is even more subjective in post-conflict societies. Perceptions of the truth are subject to change as Priscilla B. Hayner asserts, “The search for truth does seem a simple idea. It is, instead, usually very difficult and contentious, but worth the many efforts to try to get it right.”¹⁹⁴ While the process of creating a high functioning truth commission will be an arduous journey, for nation-states post intrastate violence, the process itself is necessary to explore as a potential option. Uncovering the history of the past through truth telling and fact-finding ideally sets up appropriate conditions for mediating formerly divided nation-states as it provides for the transition of a nation-state founded on mutual trust and understanding.¹⁹⁵ Truth commissions serve as both investigation processes and reporting on periods of abuse.¹⁹⁶ Full acknowledgement of the truth asserts governments no longer can hide behind their denials.

Stanley Cohen suggests that engaging in truth-seeking practices is critical for three distinct reasons. The first is that it is important for states to acknowledge abuses that they may have denied. Though individuals remember the past and what occurred, an official assertion that events happened is critical. The second reason is “the special sensitivity of the victims.”¹⁹⁷ Exposing the truth offers potential closure for victims by offering unresolved answers for “disappeared” family members and asserting that the use of torture was unjustified. Finally,

¹⁹³ Ibid., 190.

¹⁹⁴ Ibid., 237.

¹⁹⁵ Bloomfield et al., *Reconciliation After Violent Conflict*, 122.

¹⁹⁶ ICTJ, “What Is Transitional Justice?”

¹⁹⁷ Cohen, *States of Denial*, 226.

Cohen's third reason is that truth commissions aim for ensuring that these abuses will "never again" happen. When states expose the past, it is hoped that the horror of the past itself will be enough to warn future generations from letting it happen again.¹⁹⁸

Truth commissions are one of the more popular methods for transitioning societies from internal conflict. Since 1974, there have been roughly 40 cases alone. While not all truth commissions were the most effective and may have needed to end early, with all the failures come noteworthy success stories. For instance, the truth commission in Guatemala after its civil war: the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan People to Suffer.¹⁹⁹ After going through great lengths to find people to give testimony, trekking through mountains to interview survivors, Guatemala's commission produced monumental findings, asserting that under counterinsurgency operations, higher authorities of the state committed acts of genocide against the Mayans.²⁰⁰ Such assertions against state authorities would have been virtually impossible beforehand without the truth commission. Morocco represents another success, as its 2004 commission, "stands apart in the speed and efficient with which the state has implemented the commission's recommendations for reparations."²⁰¹ Some 9,000 victims have benefited so far from financial reparations from the commission.

While there have been roughly 40 instances of truth commissions thus far, not all are referred to as truth commissions as "some of them did not at the time of their operation consider themselves to be truth commissions, nor were they understood to be such by the wider public."²⁰² In fact, the first well-known commission in Argentina in 1983 is still called the CONADEP, or

¹⁹⁸ Ibid.

¹⁹⁹ Hayner, *Unspeakable Truths*, 34.

²⁰⁰ Ibid.

²⁰¹ Ibid., 44.

²⁰² Bloomfield et al., *Reconciliation After Violent Conflict*, 125.

the National Commission on the Disappeared.²⁰³ As the Argentine commission's name suggests, commissions can be highly specific for the truth it sets to find. Due to the varying nature, truth commissions can easily get convoluted for what they aim to resolve and what they do not.

Hayner's definition of truth commissions provides some clarity for what truth commissions do or do not aim to accomplish:

A truth commission (1) is focused on the past, rather than on going, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review.²⁰⁴

Her definition clearly outlines both the capabilities and necessary circumstances of truth commissions. As previously discussed, additional transitional justice measures such as reparations and criminal prosecutions in some countries would have been virtually impossible without the work of truth commissions. By using testimonies from victims, truth commissions discern specific needs of survivors and recommend essential reparations to accommodate these needs.

Overwhelmingly, commissions can potentially provide necessary information that aids domestic or international tribunals. Some mandates include the need to end impunity, and urge directly for criminal justice. Hayner suggests that the information truth commissions creates is critical for prosecutions claiming that in the past they have "contributed directly and successfully to prosecutions, even resulting, in rare cases, in the conviction and jailing of top commanders or political leaders."²⁰⁵ While truth commissions by nature cannot explicitly prosecute perpetrators, the wealth of information they produce is monumental, by gathering victim's accounts and

²⁰³ Hayner, *Unspeakable Truths*, 10.

²⁰⁴ *Ibid.*, 11-12.

²⁰⁵ *Ibid.*, 93.

specific instances during the conflict. The fact that truth commissions merely provide information, but do not prosecute is critical. Criticizers of truth commissions often become disgruntled with the limits of truth commissions when criminal prosecutions do not follow after because they assumed that prosecutions were guaranteed. Despite these limitations, commissions can “build a case for and recommend forms of accountability short of criminal sanction, such as civil liability, removal from office, restitution or community service schemes.”²⁰⁶ The wealth of information for these cases would be impossible without the critical recommendations from commissions.

Critics of truth commissions claim that they foster too many unrealistic expectations for victims. A truth commission does not have the capacity, nor is it the goal, to solve all of a country’s problems. Ultimately, truth commissions have the potential to offer critical services for nation-states in transitions from internal conflict. They must work in accordance with other transitional justice measures to expand beyond just asserting the truth. Working with other methods can bring either justice or reparations for victims. However, these benefits will likely take a considerable amount of time. Truth commissions need to be an all-encompassing effort, engaging with a variety of individuals who had different roles in the conflict from both non-state and state actors and victims. South Africa’s Truth Commission offers a concrete example as it got all actors to testify, including members of the armed wing of the African National Congress (ANC). However, with South Africa’s quest for a “full truth,” comes controversy as it granted ANC perpetrators amnesty for fully disclosing their involvement in crimes during the apartheid era. All that was required for amnesty was for perpetrators to demonstrate that their crimes were politically motivated and they did not have to give “an apology nor any sign of remorse.”²⁰⁷

²⁰⁶ Bloomfield et al., *Reconciliation After Violent Conflict*, 126.

²⁰⁷ Hayner, *Unspeakable Truths*, 29.

Because of South Africa's practice of amnesty, it remains unlikely that future truth commissions will be willing to engage in efforts to find the "full truth."

Truth commissions certainly spur a variety of complaints in post-conflict communities, particularly among perpetrators who do not want to be exposed and in hesitant victims who do not want to relieve their pain. Engaging in these efforts is critical though, because "At the very least, a nation unable to acknowledge its past publically is less likely to be able to prevent new human rights violations."²⁰⁸

Keeping the Memory Alive: Memorialization

Along with truth being extremely disputed, perceptions of "accurate" memory are also extremely contentious. Therefore, efforts to memorialize from post-conflict periods bring intense debates. Memorialization efforts according to the ICTJ can include "museums and memorials that preserve public memory of victims and raise moral consciousness about past abuse, in order to bulwark against its recurrence."²⁰⁹ The feeling of needing to commemorate victims has deep roots as societies have been "building statues, naming streets and city squares after them, poetry and prayer, vigils and marches" for hundreds of years.²¹⁰ Memorialization efforts works toward both remembering and honoring victims of suffering, especially when they take the shape of memorials that can offer as concrete places that serve as places to honor the past and potentially bring some closure to victims.²¹¹ Museums also seek to educate the younger generations about the past, fostering commitments to avoid repeating the past. Memorialization efforts cultivate states of collective memory, ending a state's insistence on denying and forgetting the past.

²⁰⁸ Donnelly, *International Human Rights*, 71.

²⁰⁹ ICTJ, "What is Transitional Justice?"

²¹⁰ Cohen, *States of Denial*, 233.

²¹¹ Bloomfield et al., *Reconciliation After Violent Conflict*, 30.

Some memorialization efforts can be more informative than others. One example is how the Museum of the Potential Holocaust in Jerusalem incorporates a historical narration of the Holocaust as well as warning against repeating the Holocaust by showing modern day examples of anti-Semitic photos.²¹² Other memorialization efforts offer a more chilling warning such as the Tuol Sleng Genocide Museum in Phnom Penh, Cambodia. The museum chronicles the events of the genocide at a former school turned torture center, having guests walk through the exact rooms Cambodians were imprisoned. Countries like Argentina and have created several memorials in a variety of forms from monuments, street names, and also activities of remembrance such as its annual March 24 demonstrations, which remembers the day the military junta began.²¹³

Despite these benefits of memorialization, some scholars fear memory can be dangerous. Andrew Rigby warns, “Too great a concern with remembering the past can mean that the divisions and conflicts of old never die, the wounds are never healed. In such circumstances the past continues to dominate the present, and hence to some degree determines the future.”²¹⁴ In addition to Rigby’s concern that if too much pressure is on remembering the past and not moving forward, memory can also be arbitrary because of its selective nature. Memories are not concrete and misguided perceptions could fester into future generations.²¹⁵

Memorialization efforts prove not to be simple endeavors, and might take several years to implement due to disagreements. Individuals can disagree on whether or not memorials honor the victims appropriately or not, a primary example being the Vietnam memorial. Further, the way historical events are portrayed in memorial efforts is highly debatable as seen with the

²¹² Cohen, *States of Denial*, 234.

²¹³ ICTJ, “Truth and Memory,” accessed March 11, 2015, <https://www.ictj.org/our-work/transitional-justice-issues/truth-and-memory>

²¹⁴ Bloomfield et al., *Reconciliation After Violent Conflict*, 30.

²¹⁵ *Ibid.*

Enola Gay controversy in the Smithsonian’s National Air and Space Museum. These concerns transition directly on how history text books for future generations should describe the past. Along with memory come strong sentiments as Cohen states memory wars emerge, as individuals challenge appropriate accounts of the past. With these battles, Cohen writes: “statues are pulled down, street names changed, and public holidays abolished.”²¹⁶ While highly contestable and potentially destructive, memory battles are important to engage in as they work on honoring the past, and figuring a collective memory for the new state.

Transitional Justice Working for a Transitional State

While not completely exhaustive, all these potential methods of transitional justice provide potential options for a transitional nation-state to explore post-conflict. Societies emerging from prolonged, lengthy conflicts need a way to grapple with the embittered residue entrenched throughout the nation-state. A possible method to mediate, or a combination of these transitional justice methods, provides “a process through which a society moves from a divided past to a shared future.”²¹⁷ Policymakers and activists have stressed the importance of utilizing either one or a combination of these practices in order to mend the “wounds” of society. Ideally, by engaging with these practices it hopes to avoid:

A history of unaddressed massive abuses is likely to be socially divisive, to generate mistrust between groups and in the institutions of the State, and to hamper or slow down the achievement of security and development goals. It raises questions about the commitment to the rule of law and, ultimately, can lead to cyclical recurrence of violence in various forms.²¹⁸

Even though there are direct benefits from transitional justice, some scholars disagree heavily on engaging in transitional justice practices at all. Baglione classifies this school of thought as

²¹⁶ Cohen, *States of Denial*, 234.

²¹⁷ Bloomfield et al., *Reconciliation After Violent Conflict*, 12.

²¹⁸ ICTJ, “What is Transitional Justice?”

“Traditionalism.” Traditionalists avoid focusing on memory and accountability after conflict and instead emphasizes on “institution- and coalition building as the most important strategies for stabilizing post-war societies.”²¹⁹ Traditionalists warn that seeking the truth and engaging in justice practices prevents a steady trajectory towards peace as justice. Besides impeding the peace process, at the core of the disagreement with transitional justice for Traditionalists is the fact that the term “Reconciliation” often accompanies these measures. To many, “reconciliation can be offensive as it contains religious undertones and could potentially suggest that victims need to “forgive” their perpetrators and they believe that it could be used “as an excuse to belittle or ignore their suffering.”²²⁰ Traditionalists and Reconciliationists do not disagree on all accounts, as they “agree on the long-term nature of the peacebuilding process, the tenacity of violence in this period, the danger of equating democracy with elections, and the importance of creating an efficacious state.”²²¹ Because of the similarities and ultimate end goals of peace, a combination of the schools of thought would work well in conversation together, despite concrete differences.

Ignoring the past does not solve the extreme embittering sentiments left post-conflict. It is an extremely worthwhile process to engage in transitional justice methods as these sentiments could manifest into future conflict. Reconciliation does not have to follow the meaning of “complete forgiveness.” It instead offers a way for, “finding a way to live alongside former enemies—not necessarily to love them, or forgive them, or forget the past in any way, but to coexist with them, to develop the degree of cooperation necessary to share our society with them, so that we all have better lives together than we have had separately.”²²²

²¹⁹ Lisa A. Baglione, “Peacebuilding: A Time to Listen to and Learn from Reconciliationism,” 121.

²²⁰ Bloomfield et al., *Reconciliation After Violent Conflict*, 14.

²²¹ Baglione, “Peacebuilding,” 121.

²²² Bloomfield et al., *Reconciliation After Violent Conflict*, 12.

Expanding on the end goal of “Reconciliation” from the *Handbook to Reconciliation*, I move away from the definition of reconciliation in that it works to completely mend the relationships between former enemies. These hostilities are deeply rooted, and rightfully so. They are not going to go away overnight. It is important to work towards the efforts transitional justice works as a hopeful goal, something that likely will not be achieved in full capacity.

By directly addressing past massive abuses, transitional justice aims to build support in societies along lines of trust. Without addressing these issues, transitional governments are built on lies, denial, and impunity. By combatting these issues results in “stable and just peace, one that will weather—without violence, political differences of opinion that are bound to emerge as citizens lives together.”²²³ However, these practices are going to come with time and these practices are not going to be perfect. It is all part of a transitional process working step by step to heal these “wounds” from conflict and post-authoritarian rule.

²²³ Baglione, “Peacebuilding,” 128.

Nepal and the CPN-M

*If you really wanted your rights
Why did you have to get a gun?
If you really wanted your rights
Why did you have to kill your
brothers?
If you really wanted equality
Why did you have to use a bullet?*
Maha Prasad Subedi
Khotang²²⁴

Maha Prasad Subedi, a Nepalese elementary student, reflects on the remorseful feelings some Nepalese citizens felt after viewing a photo gallery of images from the civil war between the Nepalese government and the insurgent group known as the Communist Party of Nepal (Maoist), or CPN-M. The violent conflict between these two actors engulfed the state of Nepal from 1996-2006. Tragically, a significant amount of non-combatants and innocent civilians were caught in the crossfire between the two forces, with the lower castes representing most of the victims. At the culmination of the conflict in 2006, there were roughly 15,000 casualties and 1,350 enforced disappearances, hundreds of torture victims, and about 100,000 to 250,000 were displaced from their homes.²²⁵ Today, the “disappeared” individuals remain unaccounted for, and survivors still seek answers.

Though almost ten years have passed since the end of the conflict, the Nepalese state has made little progress in transitional justice measures to mediate these “wounds” from the conflict. Largely, the current political situation of Nepal contributes to the lack of progress in addressing past human rights violations from both sides of the conflict. In order to thoroughly contextualize

²²⁴ Kunda Dixit, *Pheri yasto nahos! : Nepālako yuddha, 2052-2062 kā abhivyakti*, (Kathmandu: Publication Nepalaya, 2009), 162.

²²⁵ Kunda Dixit, *A People War Images of the Nepal Conflict 1996-2006 = Laḍāim̐mā janatā: Nepālako yuddhaka citraharu, 2052-063*. (Kathmandu: Publication Nepalaya, 2006),3.

both the issues in Nepal's internal war and its post-conflict process, several components will be explored throughout this case study. The background with the conflict itself will include: factors leading up to insurgency, the rise of the CPN-M insurgency as a threat to the Nepali state, and Nepal's counterinsurgency movement to protect its monopoly of violence. Finally, Nepal's experience with transitional justice measures will be explored.

Background Leading up to the Insurgency

Often regarded as a "Zone of Peace," analysts assumed Nepal unlikely to ever have violence erupt within its borders. The fact that Nepal has avoided any form of conflict since the Anglo-Nepal wars in 1816 contributes significantly to this assumption.²²⁶ Yet, on February 13th 1996, Nepal proved to the world that it was not immune to combat with the declaration of a "People's War."²²⁷ While shocking, the civil war brought to the surface various underlying grievances which have frustrated marginalized Nepalese for years. The root causes of the civil war "could be regarded as the outcome of a combination of political, economic, social, and historical factors."²²⁸ The Maoist insurgency sparked a fire, a fire which could have been ignited decades ago.

Nepal has existed as an authoritarian state for most of its existence, as only recently has the state shifted to more democratic practices. The monarchy, in power from 1749 to 1951, dominated all political authority in Nepal. Within the monarchic system, Nepal witnessed several

²²⁶ Dixit, *A People War*, 4.

²²⁷ Cook, "Third World Maoism," 308.

²²⁸ Atiqa Javed, Fiona Duncan, and Grace Watson, "Truth and Reconciliation: Transitional Justice in Post-Conflict Nepal," *South Asian Human Rights Solidarity* 34 (2014):12, accessed March 9, 2015, <http://www.insec.org.np/pics/pub-lication/1407234555.pdf>

shifts in power from the Shah dynasty to the Rana family.²²⁹ In 1951, Nepali politics changed dramatically with an emphasis on democracy. This shift toward democracy came when the Shah dynasty gained back monarchical power and “the political system that emerged after 1950 was a liberal democracy under the aegis of a constitutional monarch.”²³⁰ However, introducing democracy to the formally autocratic country ended up being extremely more arduous than anticipated.

In 1959, Nepal participated in its first parliamentary elections. In these elections, nine different political parties formed and ran in opposition to each other. While the Nepalese Congress Party (NCP) won by a huge victory, King Mahendra immediately rejected this victory by repealing the Constitution and breaking up the multiple political party system completely. All democracy efforts ended with the Panchayat system as it declared political parties illegal. The following decade was marked by political dissatisfaction as opposition parties to the Panchayat system started leading anti-governmental protests. These protests suggested tremendous discontent among Nepalese, resulting in a shift towards a new “democratic era.”²³¹ After witnessing revolutions in Nepal, King Birenda decided to “start an era of constitutional monarchy and multiparty democracy in Nepal.”²³² Despite transitioning to free elections in the 1990s and ending the Panchayat system, discontent remained.

This discontent among Nepalese spurred from a variety of frustrations. Democratization failed as viable solution for solving Nepal’s political problems. Instead of being concerned with actually improving Nepal, Nepali politicians were “deeply embroiled in personalized internal

²²⁹ Nabaha Gul, “Question of Nepal: Political Instability and Maoist Insurgency,” *Pakistan Institute of International Affairs* 55 (2002): 28, accessed February 7, 2015, <http://www.jstor.org/stable/41394409>

²³⁰ Ibid.

²³¹ Harald Olav Skar, “PLA CPN (M): The Insurgency of the People’s Liberation Army of the Communist Party of Nepal,” In *Terror, Insurgency and the State*, edited by Marianne Heiberg, Brendan O’Leary, and John Tirman, 359-386, (Philadelphia: University of Pennsylvania Press, 2007), 360.

²³² Paul K. Davis, et al., “Public Support for the Maoists in Nepal,” in *Understanding and Influencing Public Support for Insurgency and Terrorism*, (RAND Corporation, 2012), 120.

party battles.”²³³ The politicians also represented a limited scope of the Nepali population, as most of the political leaders were part of the Brahmin and Chhetri caste groups and from the professional working class. It soon became evident that these leaders were rooted in the nepotism of the Kathmandu elite from higher castes, paying little regard for the grievances of the population outside of Kathmandu.²³⁴ While the monarchy did not have as much power as before, the king evidently was cynical about the political parties and became increasingly closer to the military. Along with this limited representation, came practices rooted in corruption.

The new open political system’s corruption came directly from the practices of the Panchayat years. Both commissions and bribes plagued the Panchayat system, and it transitioned directly into the campaigns of the new politicians.²³⁵ As mentioned, the small elite group of the Chhetri and Bahuns castes composed Nepali politicians. Even though these castes only represented between 16 and 13 percent of the population respectfully, they dominated top positions in civil services and were extremely well off economically.²³⁶ Based on the limited representation of the population, Nepalese who did not belong to these specific castes felt increasingly marginalized. Marginalized Nepalese included lower castes, women, and those not residing in urban areas lacking the same level of access to development. In addition to severe corruption, The Nepali state proved its political weakness in other avenues as the state had “power-centric intraparty and interparty conflicts, poorly institutionalized political bodies, and ineffective leadership.”²³⁷

Adding to extreme political exclusion, the Nepali state’s economic situation also influenced some of the population to resort to violence. In 2001, the Nepali state ranked amongst

²³³ Davis, “Public Support for the Maoists in Nepal,” 121.

²³⁴ Ibid.

²³⁵ John Whelpton, *A History of Nepal*, (Cambridge New York: Cambridge University Press, 2005), 201.

²³⁶ Davis, “Public Support for the Maoists in Nepal,” 138

²³⁷ Ibid., 125

the lowest nations in the United Nation Development Programme's (UNDP's) Human Development Index (HDI) category of "Inequality in income or consumption".²³⁸ The UNDP placed the Nepali state in the lowest classification of "low human development" ranking the state 129 out of 162 states. This low ranking resembles data from the HDI in early 1990. Along with a low human development score, Nepal had "a gross domestic product per capita of \$896, life expectancy at birth of 52.5 years, and an adult literacy rate of 25.6 percent."²³⁹ Few employment opportunities for a large young population allowed the Maoists to recruit manpower. Before the insurgency, the poor represented 42 percent of the 23 million Nepalese population.²⁴⁰ Along with poverty, those living in the poorest areas of the country "also have the lowest access to education and basic health services, highest rates of infant mortality, and highest rates of child malnutrition."²⁴¹ Due to these circumstances, the Nepali state possessed many of the characteristics which make a state conducive for escalating to a situation of violent conflict.

CPN-M: A "Successful Insurgency"

As established in Chapter One, disparities of poverty and political, social, and economic undercurrents cultivate conflict in seemingly peaceful states. Prior to the conflict, Nepal certainly possessed these inequalities, allowing for the rise of the CPN-M insurgency. Not only was the eruption of violence surprising, but also the insurgency ended up being tremendously successful, as analysts now regard the CPN-M one of history's most successful insurgency movements.²⁴² By declaring a "People's War," the Maoists finally offered marginalized Nepalese a voice for

²³⁸ *Human Development Report 2001: Making New Technologies Work for Human Development*, (New York Oxford: Oxford University Press, 2001).

²³⁹ Davis, "Public Support for the Maoists in Nepal,"120.

²⁴⁰ Skar, "PLA CPN (M): The Insurgency of the People's Liberation Army of the Communist Party of Nepal,"359

²⁴¹ *Ibid.*, 364.

²⁴² Davis, "Public Support for the Maoists in Nepal."

their grievances. As previously mentioned in the last section, grievances such as “The exclusion of citizens, a feudal ruling structure with its links to the military, Kathmandu’s apathy and neglect for the rest of the country, an expanding population forced to share limited resources, and millions of youth without opportunities,” made an insurrection conducive.²⁴³ The insurgency began when the political party, the United People’s Front Nepal (UPF), split into two factions after reaching a breaking point with these frustrations.²⁴⁴ Puspa Kamal Dahal, commonly known as Prachanda, decided to boycott elections for the year and instead begin an armed uprising, resorting to violence to achieve his political goals. Prachanda renamed his faction and supporters of UPF to the Communist Party of Nepal. His slogan, “Let us march ahead on the path of struggle towards establishing the people’s rule by wrecking the reactionary ruling system of state.”²⁴⁵ Immediately after splitting into a separate faction, the CPN-M presented a detailed list of forty demands to the Kathmandu based government.²⁴⁶ Some of the demands “called for an end to the domination of foreign powers, such as India; a secular state, with the monarchy stripped of its privileges; and a wider range of social and economic reforms.”²⁴⁷ Along with the demands, the CPN declared that it would form its own army under the name, the People’s Liberation Army (PLA) and launch its armed movement on February 17th 1996.²⁴⁸

Initially, CPN-M targeted most of their violence at government officials, or individuals associated with the Nepalese government. Human Rights Watch claimed, “The Maoists have assassinated or executed suspected government informants, local political activists and non-

²⁴³ Dixit, *A People War*, 4.

²⁴⁴ Davis, “Public Support for the Maoists in Nepal,”121.

²⁴⁵ Ibid, 135.

²⁴⁶ Whelpton, *A History of Nepal*, 204

²⁴⁷ Davis, “Public Support for the Maoists in Nepal,”121.

²⁴⁸ Skar, “PLA CPN (M): The Insurgency of the People’s Liberation Army of the Communist Party of Nepal,”361

Maoist party officials.”²⁴⁹ The report also claims that the CPN-M specifically targeted police officers. Besides focusing on more governmental office related individuals, the Maoists also inflicted crimes against innocent Nepalese.

Despite using these tactics against innocent Nepalese, the Maoists still mobilized significant support for the insurgency. What started with a few dozen fighters in 1996, ended up magnifying up to 30,000 fighters at the peak of the conflict.²⁵⁰ The CPN-M strategically worked with its resources and targeted particular individuals using propaganda tactics to generate support. For example, in villages, they would conduct mass gatherings and send out door-to-door motivators.²⁵¹ In these mass gatherings, the Maoists appealed to villagers by altering traditional cultural practices of dancing and music with Maoist ideology. Using these cultural practices, they could portray their ideology in a way to convince individuals to join the movement. As established earlier, there is a strong correlation between violence and poverty. Nepal represented no exception to this as Harald Olav Skar reiterates, “Promising a better and more egalitarian society in one of the poorest countries in Asia has certain strategic advantages, as the potential recruitment base is large.”²⁵² Therefore, the Maoists easily mobilized disgruntled villagers with these propaganda tactics.

The Maoists needed to appeal to the rest of Nepal besides just the villagers in rural Nepal. Therefore, the CPN-M produced pamphlets, newspapers, and magazines for more literate Nepalese in efforts to generate support with upper middle class Nepalese who did not identify with some of these concerns.²⁵³ The Maoists gave women trapped in a patriarchal society a plethora of options to get involved in military ranks where before they had faced structural

²⁴⁹ Human Rights Watch, “Nepal: Country Summary,” 2006, <http://www.hrw.org/legacy/wr2k6/pdf/nepal.pdf>

²⁵⁰ Ibid.

²⁵¹ Davis, “Public Support for the Maoists in Nepal,” 136.

²⁵² Skar, “PLA CPN (M): The Insurgency of the People’s Liberation Army of the Communist Party of Nepal,” 364.

²⁵³ Davis, “Public Support for the Maoists in Nepal,” 136.

violence from the state and family life. The CPN-M argued, “women and gender equality can only be achieved in a classless communist society.”²⁵⁴ Finally, the Maoists appealed to students disgruntled with the lack of employment opportunities after school.

Nepalese Counterinsurgency Plan

Despite the growing insurgency in the countryside, the Nepalese government did not formally perceive the CPN-M as a legitimate threat until 2001 when the Maoists branched out from rural areas to more urban areas. At that point, the Maoists controlled roughly 70 percent of the countryside.²⁵⁵ It was only when the CPN-M began to affect lives of Nepalese in the center of the kingdom “that the Nepalese government attempted to control the flaring insurgency.”²⁵⁶ In part, the state did not respond to the threat of violence because violence of the Maoists only escalated in 2001 when the CPN-M announced “Prachandapath.”²⁵⁷ Prachandapath shifted the ideology of the CPN-M campaign by escalating the insurgency’s violence. The campaign combined both the Russian model of armed insurrection coupled with the Chinese model of protracted warfare. By engaging in these behaviors, the Nepalese security forces needed to respond critically as these efforts were particularly ruthless and more difficult to end.²⁵⁸

The Nepalese state soon demonstrated its willingness to end the threat of the insurgency. The army itself was extremely bloodthirsty, killing any civilians suspected as Maoist sympathizers. State repression particularly proliferated when the government declared a state of emergency in 2001. The state of emergency granted the Royal Nepalese Army complete military impunity. Granting impunity for military forces encouraged violations, which manifested in

²⁵⁴ Ibid.

²⁵⁵ Skar, “PLA CPN (M): The Insurgency of the People’s Liberation Army of the Communist Party of Nepal,” 360.

²⁵⁶ Davis, “Public Support for the Maoists in Nepal,” 122.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

Nepal's counterinsurgency efforts. The state appeared willing to engage in any practices necessary to end the terrorist tactics of the Maoists. Violence escalated in 2005 after King Gyanendra announced the enforcement of a coup against the civilian government in February of that year, deeming the coup necessary to end the nine-year-old insurgency.²⁵⁹ With King Gyanendra's coup, came a surge of human rights violations.

Human Rights Violations

Throughout the conflict, both forces displayed grave violations of human rights against innocent civilians, displaying little regard for international law and engaged in unjust war practices.

For example, the Maoists would engage in military tactics causing unnecessary casualties for civilians. A Human Rights Watch (HRW) report in 2006 claims that the Maoists engaged in practices such as, "extortion, murder, forced displacement of civilians, and abductions."²⁶⁰ Besides these violations, the Maoists also forcibly abducted students directly from schools in order to sway them to the Maoist side. HRW and other human rights organizations' investigations discovered that the CPN-M used children as spies, couriers, and messengers.²⁶¹

In response, the security forces far surpassed necessary aggression in war to combat the Maoists. An Amnesty International report in 2003 reiterated that despite the Maoist's violation of human rights, the "most transgressions had been by the Royal Nepalese Army, and that Nepal now held the world record in human disappearances."²⁶² The Nepalese Government engaged in

²⁵⁹ Human Rights Watch, "Nepal: Country Summary."

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Skar, "PLA CPN (M): The Insurgency of the People's Liberation Army of the Communist Party of Nepal," 360.

thousands of unlawful killings of civilians as well as practiced torture and arbitrary arrests of any suspected insurgents.

End of the Conflict

The decade of conflict officially came to an end in November 2006 when the two sides signed the Comprehensive Peace Agreement (CPA).²⁶³ The conflict between Nepali security forces and the Maoists represents a peculiar case as neither side officially accomplished a “victory” over the other and instead came to a truce. While both sides viciously battled each other, the state disorganized and invited the Maoists to join the government, creating a representative democracy.

The Nepalese government could have taken the route of other states in suppressing the insurgency with extreme force and brutality. However, the extreme popularity of the Maoists and growing disillusionment with the monarchy allowed for this outcome. The Royal Massacre in 2001 shattered many Nepalese’s faith in the monarchical system. As soon as Prince Dipendra murdered the entire royal family, many Nepalese grew critical of the monarchy, abandoning feelings of high esteem. The replacement king, King Gyanendra, ended up being extremely unpopular partially for a conspiracy theory that he set up the massacre as well as his corrupt practices regarding money and disregard for political parties.²⁶⁴ These conditions directly contributed to the acceptance of the CPA.

The creation of the CPA, “declared the beginning of a new peaceful co-operation between the government and the Maoists, guaranteeing sovereignty, progressive political

²⁶³ Javed, Duncan, and Watson, “Truth and Reconciliation: Transitional Justice in Post-Conflict Nepal,” 15.

²⁶⁴ Whelpton, *A History of Nepal*, 215.

resolution, democratic reform of the state and social and economic transformation.”²⁶⁵ The CPA established democratic elections for June 2007, ensuring representation from the CPN-M.²⁶⁶

Transitional Justice Measures

Along with ensuring a ceasefire of violence between the two forces and setting up elections, the CPA proposed recommendations which included transitional justice practices. Within the CPA, both parties aspired to end human rights violations in the country and made vows to end impunity and protect the rights of the disappeared.²⁶⁷ Yet, almost nine years since the CPA, little progress has been made in ensuring effective justice measures and efforts have been inconsistent. Accountability is imperative as, “the failure to punish the perpetrators of these crimes has perpetuated an environment in which violations continue to be committed with impunity.”²⁶⁸ Because of this hostile environment, impunity needs to be broken down.

The political reality in Nepal principally impedes on the exploration of particular transitional practices. Since both forces currently are in the government and hold high positions of power, it remains unlikely, at least any time soon, retributive justice will hold human rights violators accountable for their crimes.

While retributive justice is extremely unlikely in Nepal, other transitional justice measures such as truth commissions and reparations for the victims are considerably more probable. In fact, the CPA in 2006 originally proposed four transitional justice measures:

- (i) the Truth and Reconciliation Commission to investigate serious violations of human rights and crimes against humanity
- (ii) the National Peace and Reconciliation Commission to provide assistance to conflict victims

²⁶⁵ Javed, Duncan, and Watson, “Truth and Reconciliation: Transitional Justice in Post-Conflict Nepal,” 15.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Ibid., 15-16.

- (iii) a High-Level Inquiry Commission on Disappeared Citizens
- (iv) a High-Level State Restructuring Recommendation Commission²⁶⁹

However, actually enforcing these suggestions has proved challenging. Up until 2014, several efforts to begin a truth commission have been thwarted as the “unconstitutional” by the Supreme Court. The case *Madhav Kumar Basnet v Government of Nepal* determined that the TRC ordinance in 2013, “obstructed transitional justice, violated both the Nepalese Constitution and international human rights law, and contravened previous Supreme Court orders.”²⁷⁰ Most of the critique behind the TRC in Nepal was that a state could directly interfere in the commission in that the commission’s members could be removed if they engaged in “bad conduct” or “lack of efficiency.”²⁷¹ Furthermore, the TRC included an amnesty clause, allowing human rights abusers to continue to enjoy impunity. Recently, Nepal created a new act of the Commission on Investigation of Disappeared Persons, Truth, and Reconciliation. HRW advocates that the commission should be challenged for the inclusion of the amnesty clause.²⁷²

However, the insistence of removing the amnesty clause may be detrimental for victims. The Informal Sector Service Centre (INSEC) in Kathmandu warns that victim’s rights cannot be ignored as “64% of respondents said that finding out the truth about those who were forcibly disappeared was their top priority.”²⁷³ Families of the disappeared are forced to experience anxiety over not knowing the fate of their loved ones, and “the religious traditions carried out after death require human remains or proof of death; a mechanism without an amnesty clause can inhibit this closure.”²⁷⁴ The unwavering determination of human rights groups and other

²⁶⁹ Ibid., 15.

²⁷⁰ Ibid., 16.

²⁷¹ Ibid.

²⁷² Human Rights Watch, “Nepal Justice for Conflict-Era Crimes Remains Out of Reach,” last modified January 29, 2015, <http://www.hrw.org/news/2015/01/29/nepal-justice-conflict-era-crimes-remains-out-reach>

²⁷³ Javed, Duncan, and Watson, “Truth and Reconciliation: Transitional Justice in Post-Conflict Nepal,” 17.

²⁷⁴ Ibid.

countries to remove the amnesty clause may result in the truth about the disappeared taking years to surface.

Overall, victim's rights are at the heart of these efforts and need to be holistically addressed. Yet, while truth commission efforts have been inconsistent throughout the years, significant efforts have been made to give compensation to victims. Under the Interim Relief Program (IRP) in 2008, Nepal has given reparations "in the form of cash payments, scholarships, reimbursements of medical costs, compensation for "loss of" or "damage to" property, and skills training."²⁷⁵ However, the IRP was never supposed to be a long-term program as "it has been anticipated that the responsibility for recommending reparations would rest with the long-awaited Truth and Reconciliation Commission."²⁷⁶ Ultimately, a TRC could recommend a more comprehensive reparation program to best aid victim's needs.

Due to the resilient determinations of state officials in avoiding accountability, it is unlikely that justice will prevail in retributive form. HRW claimed in its recent *World Report 2015*, "In spite of the new coalition government pledging to uphold long overdue promises of justice, accountability, and a new constitution, the Nepali government made virtually no discernable progress in any of these areas."²⁷⁷ The international community and human rights groups are adamantly fighting against this situation as seen with the arrest of army Colonel Kumar Lama when he visited England in 2013. The United Kingdom charged Kumar Lama with two counts of torture by "'inflicting severe pain or suffering' as a public official on two separate

²⁷⁵ International Center for Transitional Justice, "To Walk Freely with a Wide Heart": A Study of the Needs and Aspirations for Reparative Justice of Victims of Conflict-Related Abuses in Nepal, <https://www.ictj.org/sites/default/files/ICTJ-Report-Nepal-Reparations-2014.pdf>, 1.

²⁷⁶ Ibid.

²⁷⁷ Human Rights Watch, "Nepal Justice for Conflict-Era Crimes Remains Out of Reach."

individuals.”²⁷⁸ Nepal claims that by arresting Lama, the United Kingdom is breaching its rights as a sovereign state and does not acknowledge any wrongdoing.

Nepal needs to engage in issues of transitional justice. Engaging in an effective truth commission can potentially provide answers for victims and their families as well recommend appropriate reparation programs that are feasible for the government to hand out and improve the situation.

²⁷⁸ “Nepal’s Colonel Kumar Luma charged in UK with torture,” *BBC News*, January 4, 2013, <http://www.bbc.com/news/world-asia-20914282> (accessed March 9, 2015).

Sri Lanka and the LTTE

*We will not cave into pressures from any international quarters, locally and internationally, and will not stop until the war is completely over.*²⁷⁹

-Former President Mahinda Rajapaksa

31 March 2009

President Mahinda Rajapaksa's statement on the 31st of March 2009 demonstrates the willingness the Sri Lankan government had to take any necessary measures to end the internal conflict between its armed forces and the insurgent group of the Liberation Tigers of Tamil Eelam (LTTE). Rajapaksa and the government engaged in any possible counterinsurgency measures to combat terrorism in Sri Lanka. The United Nations estimates that 100,000 deaths accumulated over the four-decade long civil war on the island located off of India.²⁸⁰ In the final five months of the conflict, the government mercilessly destroyed the Tigers along with trapped civilians, paying little consideration for international human right standards. While Sri Lanka's response was extreme, the government needed to respond to the considerable threat of the LTTE as the Tigers themselves engaged in terrorist tactics to accomplish their political aims. The events leading up to this decision of such magnitude were extremely complex and need to be thoroughly explored. Since the end of the conflict, the international community has pressed the government to tackle issues of transitional justice to investigate war crimes by both sides. Thus far, the future of transitional justice measures in Sri Lanka is grim, as the government has avoided any measures of accountability. However, a shocking new election in the state provides some hope for the potential progression of transitional justice in Sri Lanka.

²⁷⁹ Francis Harrison, *Still Counting the Dead: Survivors of Sri Lanka's Hidden War* (London: Portobello Books, 2012), 11.

²⁸⁰ *Ibid.*, 6.

Background: Sri Lanka's Legacy of Colonialism

Since Sri Lanka's government operated as a democracy, it could be assumed that intrastate conflict could have been largely avoided as popular grievances could have been addressed with democratic practices. However, the democracy largely only accounted for the majority population, the Sinhalese. The Sinhalese won majority rule in post-colonialism elections in 1948. Their victory is largely attributed to the fact that they represented roughly 75 percent of the population, while other minorities composed the rest with the Tamils accounting for just ten percent of the population. The Tamils are an ethnic class in Sri Lanka, who descend from darker-skinned Dravidian migrants in south India, speak Tamil, and live in the northern and eastern provinces of the island. The Sinhalese embody almost a polar opposite characteristics contrasting in "geographic, racial, linguistic, and religious" qualities.²⁸¹ Differing from the Tamils, the Sinhalese mostly reside in the southwest portion of the island, have roots with the Northern Indian Aryan peoples, practice Theravada Buddhism, and speak the Sinhala language.²⁸² Post-colonialism, these ethnic differences were manifested and divided the two groups further apart.

The legacy of colonialism in Sri Lanka sprouted the necessary conditions for internal conflict by proliferating the divide between these two groups. Colonialism on the island began with the Portuguese in 1595 when they conquered the island of Ceylon, now known as Sri Lanka.²⁸³ The Dutch ruled Ceylon as two separate ethnic territories, causing virtual isolation between the Tamils and Sinhalese. However, when the British replaced Dutch rule in 1802, they brought the two ethnicities back together, manifesting the divide. The British created a system of

²⁸¹ Michael P. Arena and Bruce A. Arrigo, *The Terrorist Identity Explaining the Terrorist Threat*, (New York: New York University Press, 2006), 92.

²⁸² *Ibid.*

²⁸³ *Ibid.*, 91.

minority dominance over the majority, following the steps of other colonial powers like Belgium's decision to rule Rwanda by Tutsi minority over the Hutu majority. By having the Tamils dominate the majority class of the Sinhalese, it allowed Britain to maintain more control over the colony. With this dominance, came great rewards for the Tamils. For instance, the Tamils composed most of the government's civil service in positions such as civil servants, lawyers, teachers, and doctors.²⁸⁴ Over the years, these privileges that the Tamils reaped from British colonial rule, steadily infuriated the Sinhalese.

On February 4th, 1948, Sri Lanka peacefully experienced a transition from colonial rule when Britain's colonial influence began dissolving in India.²⁸⁵ After acquiring independence, Sri Lanka switched to majoritarian political rule by holding elections. Immediately after independence, the Sinhalese won a fair election, gaining about 80 percent of the seats in Parliament. The elections themselves were legitimate as "they were achieved in a legal, transparent manner through both popular and parliamentary votes that achieved substantial minorities."²⁸⁶ With this newfound political power, the Sinhalese created a relatively sound government. In hindsight, literacy rates were dramatically improving and the government itself was doing considerably well.

Besides enacting positive changes in the government, the Sinhalese seemingly "got their revenge" from the lack of opportunities they experienced during British colonial rule. Their new acts resulted in extreme anger from the Tamils, who were used to being in positions of high power. The new governmental practices "were designed to redress the imbalances that favored

²⁸⁴ Ibid., 91.

²⁸⁵ Brendan O'Duffy, "LTTE: Majoritarianism, Self-Determination, and Military-to-Political Transition in Sri Lanka," In *Terror, Insurgency and the State*, edited by Marianne Heiberg, Brendan O'Leary, and John Tirman, 257-287 (Philadelphia: University of Pennsylvania Press, 2007), 257.

²⁸⁶ Art and Richardson, *Democracy and Counterterrorism*, 486.

Tamils during the colonial period.”²⁸⁷ The first measure was the Sinhalese-Only Act of 1956, which declared the Sinhala language as Sri Lanka’s official language.²⁸⁸ While the act and other laws began as ways to protect Theravada Buddhism and the Sinhala language, these laws prompted further ostracizing legislation for the Tamils. For example, the 1970s practice of “standardization” made it extremely difficult for Tamil university applicants to gain admittance to universities, as the schools required them to have disproportionately higher exam results than Sinhalese applicants.²⁸⁹

The Tamils progressively became enraged by these reforms which marginalized them as the reforms dramatically uprooted the system that older generations of Tamils had enjoyed throughout colonialism. With bleak hopes in the economy and education becoming more difficult to attain, “upper-, middle-, and lower-class Tamil men developed a collective sense of hopelessness for their future.”²⁹⁰ Adding to this strife, protests against this legislation by Tamils resulted in bouts of anti-Tamil violence at the hands of Sinhalese mobs.²⁹¹

The Emergence of the LTTE

The steady accumulation of anger over the years from the Tamils encouraged the possibility of LTTE rising and generating support. Working off the aggravations of infuriated young Tamils, Velupillai Prabhakarani created a potential solution with the Liberation Tigers of Tamil Eelam in 1972, determining that violence was the only answer to alleviate their grievances. While the LTTE had initial humble beginnings, it escalated from just 30 rebels with

²⁸⁷ Brendan O’Duffy, “LTTE: Majoritarianism, Self-Determination, and Military-to-Political Transition in Sri Lanka,” 259

²⁸⁸ Arena and Arrigo, *The Terrorist Identity*, 92.

²⁸⁹ Ibid.

²⁹⁰ Ibid., 93.

²⁹¹ Ibid., 177.

limited arms to “one of the world’s foremost paramilitary groups by 1991.”²⁹² Along with being one of the more ruthless insurgency groups, the LTTE had the equipment to go with it: “with tanks, artillery, naval and air wings, and spies and sleeper suicide bombers planted all over the island.”²⁹³ By engaging in violent and terroristic tactics, the Tamils ruthlessly posed a serious threat to the safety of innocent civilians within the state.

Certainly not all Tamils supported the LTTE’s insistence of violence, but significant amounts of Tamils did support the possibility of gaining independence from Sinhalese rule. Various Tamil groups expressed their grievances in Thumpu, Bhutan in July of 1985, advocating for:

recognition of the Tamil people as a distinct nationality; guarantee of the territorial integrity of an independent Tamil homeland; recognition of the inalienable right of the Tamil nation to self-determination; and safeguards of the fundamental rights of the Tamil people outside the independent Tamil homeland²⁹⁴

The LTTE convinced a significant amount of Tamils that violence offered a solution to finally acquire these goals of autonomy and self-determination. The LTTE’s original goal was for the creation of a separate state and to secure a national homeland located in the North and the East of Sri Lanka. The LTTE determined it was seemingly impossible for the Tamils and Sinhalese to coexist together and that “The features of Sinhala state oppression clearly indicate a devious plan calculated to destroy the national identity of the Tamil people.”²⁹⁵ Over time, the ultimate goals of the insurgency shifted from this strict objective for a completely independent state as it became apparent that it would be improbable.

²⁹² Brendan O’Duffy, “LTTE: Majoritarianism, Self-Determination, and Military-to-Political Transition in Sri Lanka,” 257.

²⁹³ Harrison, *Still Counting the Dead*, 4.

²⁹⁴ Brendan O’Duffy, “LTTE: Majoritarianism, Self-Determination, and Military-to-Political Transition in Sri Lanka,” 262.

²⁹⁵ Arena and Arrigo, *The Terrorist Identity*, 180.

Prabhakaran and the LTTE possessed similar components of Marxist insurgencies in that it engaged in guerilla practices and terrorism. The LTTE engaged in terrorist behaviors such as suicide bombings and other attacks. Thomas A. Marks distinguishes that, “Far from any attempt to avoid casualties, there was an effort to maximize those affected. This was terrorism, but it remained dedicated to consolidation and expansion of the counter-state, to terrorism as a method of action as opposed to a logic of action.”²⁹⁶

LTTE’s Challenge to the State

The LTTE posed a direct threat to the legitimacy of the state of Sri Lanka, both in the insurgency’s insistence with creating an independent state and the use of terror tactics. The LTTE’s persistence of creating an independent state in Sri Lanka enticed deep concern amongst the Sinhalese. At the center of their concern, was the island’s close proximity to India since India houses a huge population of Tamil. Roughly 60 million Hindu Tamils currently live in the southern state of Tamil Nadu.²⁹⁷ If the LTTE succeeded in gaining independence as a separate state, the Tamil diaspora would largely support their interests. With such a close proximity to India, the power of Sri Lanka as a state could be significantly challenged. Besides the threat of secession breaking up the state as a collective, the LTTE’s use of violence and terror tactics directly challenged the government’s control of the monopoly of violence. The terrorist attacks were extremely destructive as well as successful with completed political assassinations.

Due to the severity of the situation with the Tamil Tigers, the Sri Lankan government needed to generate a response to protect civilians as these terrorist tactics victimized innocent civilians. The aggressive nature of the Tamils resulted in the world regarding the rebels as a

²⁹⁶ Art and Richardson, *Democracy and Counterterrorism*, 486.

²⁹⁷ Brendan O’Duffy, “LTTE: Majoritarianism, Self-Determination, and Military-to-Political Transition in Sri Lanka,” 258 .

brutal terrorist group, allowing Sri Lanka to justify its counterinsurgency strategies as part of the global “war on terror.”²⁹⁸ By labeling the ethnic conflict as such, Marks warns that, “a focus on rooting out ‘the terrorists,’ as opposed to emphasizing political solutions to sources of conflict, often leads to abuse of the populace.”²⁹⁹

Throughout the years, the Sri Lankan government tried ending the influence of the Tigers, with little success. After a series of cease fires and LTTE breaches of the cease fires by continuing to commit terrorist acts during them, the government responded with the “Sri Lankan Option,” which offered an easy solution to squash Tamil opposition by taking any military needs necessary. Brigadier-General Shavendra Silva claimed on February 23rd 2009: “We have a job to do. We are not bothered about any truce at the moment.”³⁰⁰ Disregarding any potential to politically work on the situation with the LTTE, the government instead took a completely militaristic approach. An inherent problem with this military approach was that it resulted in the government engaging in extreme violations of international law. Sri Lanka used “scorched-earth tactics, blurring the distinction between civilians and combatants, and enforcing a media blackout.”³⁰¹ While both sides engaged in violations of war crimes, the government’s final offensive to destroy all aspects of the LTTE in 2009 represents particularly inexcusable behavior. While the behavior was inexcusable, the behavior was successful as it ended with a victory over the LTTE on May 19th, 2009.

²⁹⁸ Harrison, *Still Counting the Dead*, 6.

²⁹⁹ Art and Richardson, *Democracy and Counterterrorism*, 484.

³⁰⁰ Harrison, *Still Counting the Dead*, 11.

³⁰¹ *Ibid.*, 7.

War Crimes During the Conflict

Particularly in the last months of the conflict, both the LTTE and the government are allegedly guilty of war crimes. LTTE forcibly recruited child soldiers throughout the insurgency, and in the last moments of the war, insurgents used hundreds of thousands of civilians as human shields in combat.³⁰² An International Crisis Report produced this statement in the midst of the conflict:

While the government and LTTE - and their vigorous online supporters - try to blame the other side for the current carnage, such accusations lead nowhere. The fact is, both sides are at fault, and both sides are almost certainly guilty of war crimes. The international community needs to put all possible pressure on the parties to end this madness, which is only causing extreme suffering among the civilian population³⁰³

However, the Sri Lankan government far surpassed those of the Tamil Tigers as they engaged in behaviors on a much grander scale. By nature, the government has access to far more means of violence than the LTTE and should have engaged in a fair fight that would not have resulted in the loss of lives of so many civilians.

Throughout the conflict, the United Nations and other human rights groups urged the government to stop using heavy weaponry. Yet, the government ignored these requests, determined to bring an end to the LTTE. A Human Rights Watch report in 2010 accounts, “Government forces repeatedly and indiscriminately shelled densely populated areas, sometimes using heavy artillery and other area weapons incapable of distinguishing between civilians and combatants.”³⁰⁴ Disturbingly, the government sectioned off specific areas as “no-fire zones” and “safe zones” but kept firing on these areas anyway, unnecessarily harming innocent civilians caught in the middle. Escalating suffering was the government’s decision to ban all humanitarian

³⁰² Human Rights Watch, “Sri Lanka: Events of 2009,” *World Report 2010*, <http://www.hrw.org/world-report-2010/sri-lanka>

³⁰³ <http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/op-eds/sri-lankas-death-zone.aspx>

³⁰⁴ Human Rights Watch, “Sri Lanka: Events of 2009.”

aid groups and human rights organizations in war zones causing civilians trapped in war zones to be without necessary survival means such as water, food, and shelter. In the last five months alone, the UN approximates that 7,000 people were killed and at least 13,000 injured.³⁰⁵ While both sides inflicted grave human rights violations, the government inflicted severe crimes that were effectively disproportionate to the Tamil Tigers.

Denial and Lack of Accountability

As mentioned, the 26-year conflict between Sri Lanka security forces and the LTTE finally came to an end in 2009 with the Sri Lankan government declaring military victory. For years the political condition in Sri Lanka limited engaging in transitional justice options. While in office, President Rajapaksa took significant measures to avoid all accountability investigations. Recently, the UN has proposed a new investigation with OHCHR (Office of the High Commissioner for Human Rights) concerning the human rights abuses enacted by both the government and the Tigers. While in power, Rajapaksa routinely rejected these efforts, refusing “to grant visas to the UN investigators, and said only Sri Lankans could conduct such an inquiry.”³⁰⁶ Based on the way Sri Lanka has handled issues from the conflict, it is unlikely that these investigations would be completely holistic.

Sri Lanka’s current denial practices have directly transitioned from its practice of denying during the conflict. In the midst of the final offensive a report claims, “The government has denied harming Tamil civilians, and has ruthlessly moved against anyone who challenges the

³⁰⁵ Ibid.

³⁰⁶ “Sri Lanka Urges UN to Delay War Crimes Report,” *BBC News*, February 12, 2013, <http://www.bbc.com/news/world-asia-31434613> (accessed March 12, 2015).

official line.”³⁰⁷ The documentary *No Fire Zone* by Callum Macrae shows explicit footage of human rights violations that directly conflict with the Geneva Convention. Included in the footage were executions of LTTE soldiers after they surrendered.³⁰⁸ Joshua Hammer in “The Terrible War for Sri Lanka,” accounts that this exact “footage has been labeled fake by the Sri Lankan government, yet it is authenticated by forensic pathologists.”³⁰⁹ By labeling concrete footage as fake, the government clearly engages in the same denial practices Cohen explores in *States of Denial*. HRW attests, “The government's refusal to address accountability for serious abuses continues a longstanding pattern of impunity for rights violations by state security forces.”³¹⁰ The government’s denial of the footage proves indicative of the adamant nature of its insistence on ignoring accountability for crimes against humanity.

A major barrier preventing addressing impunity issues in Sri Lanka, is that oftentimes human rights lawyers, journalists, and aid workers are labeled as sympathizers with the LTTE, and proponents of terrorism.³¹¹ The Sri Lankan government can easily label all challengers with this label, making it difficult for any change to transpire. In addition to a lack of justice for the government’s actions, LTTE leaders have not been subject to investigation. The International Crisis Group (ICG) explains the lack of prosecutions for LTTE leaders, “in part because of their reliance on suicide attacks but also because of the failures of the justice system.”³¹² A lack of accountability and ignoring the festering wounds from the conflict poses several inherent issues with negative repercussions for Sri Lanka as well as other international states.

³⁰⁷ Joshua Hammer, “The Terrible War for Sri Lanka,” *The New York Review*, March 5, 2015 Issue, (accessed February 13, 2015), <http://www.nybooks.com/articles/archives/2015/mar/05/terrible-war-sri-lanka/?pagnination=false=true>, 3.

³⁰⁸ *Ibid.*, 5.

³⁰⁹ *Ibid.*

³¹⁰ Human Rights Watch, “Sri Lanka: Events of 2009.”

³¹¹ Harrison, *Still Counting the Dead*, 229.

³¹² International Crisis Group, “War Crime in Sri Lanka,” *Asia Report*, 191 (2010) (accessed February 22, 2015), [http://www.crisisgroup.org/~media/files/asia/south-asia/sri-lanka/191%20war%20crimes%20in%20sri%20lanka.ashx](http://www.crisisgroup.org/~/media/files/asia/south-asia/sri-lanka/191%20war%20crimes%20in%20sri%20lanka.ashx), 28

One of the most pressing consequences of ignoring accountability and avoiding either retributive or restorative justice is that victims may take revenge in their own hands. Engaging in revenge may sprout new violence. TCG claims:

The defeat of the LTTE has left many shocked and directionless; as yet it is unclear whether the inchoate fury and sense of humiliation will coalesce into a renewed support for violence. If it did, it would only take a small portion of the diaspora to fund and propagate a new insurgency³¹³

As the TGC suggests, the large Tamil diaspora population could easily fund and support a new insurgency. As established earlier, the southern state of Tamil Nadu in India comprises a huge number of Tamils, which is located in extreme close proximity to the island. Tamils are not limited to India, as a quarter million of Tamils also live abroad.³¹⁴ These compose the same Tamils who proved willing to fund insurgency in the past. Therefore, it is not outlandish that there could be a reemergence of a violent insurgency in Sri Lanka. Addressing accountability from the conflict offers some mediation for preventing the diaspora from seeking revenge.

Another major concern with allowing Sri Lanka to have zero accountability for war crimes is that it encourages other state dealing with ethnic differences to use Sri Lanka's approach as a model of counterterrorism. Especially troublesome is how "other countries with ethnic problems have been studying Sri Lanka's approach—the Burmese military, the Thais and the Bangladeshis, for example."³¹⁵ While Sri Lanka successfully crushed all opposition the LTTE posed, their ultimate efforts were unjustifiable. If the international community fails to make officials experience no accountability for their actions, it just allows similar atrocities of this

³¹³ Ibid., 29

³¹⁴ Ibid.

³¹⁵ Harrison, *Still Counting the Dead*, 7.

nature to occur in the future. The ICG confirms, “The ‘Sri Lankan model’ of counter-insurgency sets a dangerous precedent that should be rejected clearly.”³¹⁶

In the near future, Sri Lanka needs to formulate an appropriate form of justice to keep several issues at bay. The future of Sri Lanka is in a fragile place as, “The truth of what happened during the course of the war, especially in its last months, must be established if Tamils and Sinhalese are to live as equal citizens.”³¹⁷ The way the Sri Lanka government defeated the LTTE ignores the root grievances of what sprouted the conflict itself.

Thus far, Sri Lanka began an internal investigation with the Lessons Learned and Reconciliation Commission (LLRC).³¹⁸ An intrinsic problem with LLRC is that on the board of the commission were “governmental officials who’d publicly defended Sri Lanka against accusations of war crimes – a serious conflict of interest.”³¹⁹ The fact that these generals were on the board is indicative in the reports as they place most of the blame of their own crimes of harming civilians as the faults of rebels. Therefore, international investigations offer the only feasible solution of discovering the facts from the conflict, in the most unbiased way possible.³²⁰ In terms of feasible justice measures, the UN Security Council would likely be the only viable force to prosecute senior government officials. The Security Council could replicate an ad hoc criminal tribunal like in Yugoslavia, but China and Russia’s continue to veto any efforts. Based on the reluctance to engage in any behaviors of addressing the past, these efforts may take a considerable amount of time.

³¹⁶ International Crisis Group, “War Crime in Sri Lanka,” 29.

³¹⁷ *Ibid.*, 28.

³¹⁸ Harrison, *Still Counting the Dead*, 232.

³¹⁹ *Ibid.*

³²⁰ International Crisis Group, “War Crime in Sri Lanka,” 28.

Are the Tides Changing in Sri Lanka?

President Rajapaksa's decade long political reign over Sri Lanka has discouraged any exploration for accountability and challenging impunity. However, due to a recent election, the transitional justice situation in Sri Lanka may dramatically change in the near future with the recent removal of Rajapaksa in January 2015. The election's results shocked Sri Lanka, as it marks the closest election in nine years.

Opposition candidate Maithripala Sirisena won 51.28 percent of the vote against Rajapaksa.³²¹ Sirisena, a former cabinet minister, is vowing to "limit the president's executive powers, root out corruption and nepotism, and strengthen parliament and the judiciary."³²² Overall, Sirisena has blatantly vocalized criticism of Rajapaksa's practices, making it promising that he may make significant progress in addressing alleged war crimes from the conflict. The new foreign minister, Mr. Samaraweera, told the Carnegie Endowment for International Peace in Washington in February that, "Unlike the previous government, we are not in a state of denial, saying that such violations have not happened."³²³

Since Sirisena's election, the world has already witnessed tremendous changes, virtually impossible months before under Rajapaksa's rule. For example, Gotabhaya Rajapaksa, the former president's brother, is currently forbidden from leaving the country pending investigations on his recent involvement with a ship carrying more than 3,000 weapons to the island.³²⁴ This travel restriction alone is monumental as it paves the way for potential future investigations against governmental authorities. Additionally, formally imprisoned Jeyakumari

³²¹ Gabriel Domínguez, "Introducing Maithripala Sirisena – Sri Lanka's New President," *DW*, January 9, 2015 (accessed March 10, 2015), <http://www.dw.de/introducing-maithripala-sirisena-sri-lankas-new-president/a-18181694>.

³²² *Ibid.*

³²³ Sri Lanka Urges UN to Delay War Crimes Report."

³²⁴ "Sri Lanka Travel Ban for Gotabhaya Rajapaksa Over Arms Ship," *BBC News*, March 9, 2015, (accessed March 10, 2015), <http://www.bbc.com/news/world-asia-31794762>.

Balendran, who was held for a year without bail for protesting enforced disappearances, was recently put on bail.³²⁵ It is likely that much more is to change in the coming months.

While these progresses are enormous, addressing the violations from the conflict itself may prove to be more difficult. As of March 12, 2015, Siriensa has confirmed that he will carry out a domestic inquiry for alleged war crimes, but will not allow outside investigators from the UN to aid the process. Furthermore, in a recent interview with *Al-Jazeera*, Siriensa explicitly denied the footage from *No Fire Zone* as legitimate.³²⁶ While it is progress that Siriensa agreed to engage in an inquiry concerning the war crimes in Sri Lanka, his explicit insistence that he does not believe in the war crimes claims from the documentary is troublesome. There may be progress in engaging in transitional justice, but if an inquiry is completely domestic, it poses the threat of being extremely biased.

³²⁵ “Sri Lanka Frees Tamil Activist Jeyakumari Balendran On Bail,” *BBC News*, March 10, 2015 (accessed March 10, 2015), <http://www.bbc.com/news/world-asia-31812030>.

³²⁶ “Sri Lanka Plans Domestic Inquiry Into War Crimes but Refuses UN Probe,” *Al-Jazeera*, March 12, 2015, (accessed March 12, 2015), <http://america.aljazeera.com/articles/2015/3/12/sri-lanka-plans-investigation-into-war-crimes.html>.

Peru and the PCP-SL

*But the Peruvian case must also stand as a warning about the limitations of transitional justice. Much work remains to be done to persuade the people of Peru and many other countries that the extension of human rights to all citizens is more necessary than ever in the “age of terrorism” and to address fundamental inequalities before they erupt into violence*³²⁷

An internal struggle plagued Peru for roughly two decades, beginning in the early 1980s and fading out in the 1990s. During this time period, Peruvian security forces ruthlessly fought against internal terrorism threats. The Sendero Luminoso (PCP-SL), or Shining Path, composed the most dominant force, waging a massive armed insurgency movement. Besides the PCP-SL, another subversive group, the Túpac Amaru Revolutionary Movement (MRTA), emerged as a secondary threat. The fight between these forces “had claimed at least 50,000 lives—most of them rural, uneducated, and poor.”³²⁸ Collectively, between these three actors, the two-armed insurgent groups and Peru’s coercive state agents, severe violations of human rights were committed, including extrajudicial killings, torture, enforced disappearances, and terrorism.

In a similar fashion to Sri Lanka and Nepal, Peru persistently avoided acknowledging any form of accountability for its violations against international humanitarian law. The state covered up crimes with impunity measures and avoided conducting trials unless they indicted PCP-SL members. In contrast to the other case studies, Peru’s culture of impunity astonishingly came to an end in November 2000, with the collapse of Fujimori’s regime. The demise of Fujimori’s presidency, flagrant with abuse and corruption even post-conflict, finally opened up windows of opportunity to address human rights abuses during the conflict against the Sendero Luminoso, ten years after the cessation of violence.

³²⁷ Root, *Transitional Justice in Peru*, 173.

³²⁸ Alexander Cook, “Third World Maoism,” 304.

Peru offers a concrete example of the full variety of options a state possesses in the aftermath of a violent insurgency. Due to their political circumstances, the other two case studies have significantly less options in engaging in potential transitional justice measures. Besides being the first state to ever extradite its own democratically elected leader for human rights abuses, “Peru has used virtually every tool in the transitional justice toolkit.”³²⁹ Such programs included: a truth and reconciliation commission, revoking official amnesties, apologies, and actual prosecutions of individual armed force members, guerilla fighters, and the government’s executive branch.³³⁰ While transitional efforts in Peru certainly were not flawless and without controversy, the Peruvian state accomplished monumental efforts by engaging thoroughly in transitional justice options. Based on the fact that the previous two case studies went into explicit detail concerning both the insurgencies and the counterinsurgency response, this case study summaries these occurrences and focuses more attention to the transitional justice measures that Fujimori’s fall permitted Peru to engage in.

Contextual Background

At the core of comprehending the conflict between the PCP-SL and the Peruvian government, is how divided Peru is as a country. Historians often explain that within Peru, exists two separate nations.³³¹ As established in Chapter One, nations as an entity can at times be more unified and possess stronger sentiments of allegiance over the state they reside in. Negative sentiments can especially flourish if the state fails to provide necessary services and support to all members of society. These sentiments can manifest into something troublesome, challenging the authority of the state, as seen with the case in Peru. The mestizo population, or descendants

³²⁹ Root, *Transitional Justice in Peru*, 8

³³⁰ *Ibid.*, 8

³³¹ *Ibid.*, 15.

of both European and indigenous peoples, represent the first “nation” in Peru.³³² Most of the population (excluding Peruvians living in the Amazonian region and the mainland) representing the first “nation,” resides in cities along the coast, such as the capital city of Lima. In contrast, the second “nation” of Peru lives throughout the Andean mountains, united by their Inca ancestry and their language, Quechua.³³³

Since Peru’s independence from Spain on June 28th, 1821, the divide between these two nations has interfered in formulating a unified Peru. Largely, these conditions are byproducts from Peru’s colonial legacy. Spanish conquistadors established the divide when they conquered the Inca. Separating the indigenous from the rest of the state, the Spanish “established a pattern of neglecting the countryside and its people that would be followed long after independence.”³³⁴ While one portion of Peru lives comfortably as middle class, the state denies the other side critical resources, causing the indigenous to live in an extremely underdeveloped world. The lack of access to the modern world further divides the inherent cultural differences between the Quechua highland people and the rest of Peru. The pattern of neglect carried on for centuries, as the government instead focused on Lima and the surrounding areas. The Peruvian governmental denied basic services as Root illustrates, “Children were more likely to die in infancy, to live without access to potable water, to grow up without entering a school room or encountering a police officer, and to suffer infectious disease.”³³⁵ Effectively, those living in the Andes were completely excluded from national development.

When Abimael Guzmán Reynoso, waged the Sendero Luminoso insurgency, he appealed directly to these disparities the Quechua experienced for years. Guzmán convinced “this poor,

³³² Ibid.

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Ibid.

indigenous Peru that the other, bourgeois Peru was fundamentally corrupt and responsible for its miserable living conditions.”³³⁶ The Shining Path proposed an alternative for the indigenous population to no longer rely on the state that constantly failed them. Along with providing an ideal rebel base, the Andean highlands offered the perfect location, as it is deeply secluded from the rest of the country. Guzmán and the Shining Path leaders directly exploited the conditions of the indigenous in the Andes to their benefit, working towards PCP-SL’s end goal of destroying “the state and the vestiges of the corrupt, semifuedal, oligarchic society.”³³⁷

As the insurgency progressed and became more violent, support for the PCP-SL wavered significantly. It quickly became apparent that the radical ideology behind the movement increasingly victimized their target “beneficiaries.”³³⁸ The peasants soon realized that the isolating nature of the ideology “related to neither its heritage nor its needs, and they compounded the negative effects of their efforts by using terror and intimidation to maintain local ‘support.’”³³⁹ Indigenous peasants became caught in crossfire, constantly victimized, particularly when the Peruvian government finally responded to insurgent threat.

However, the government’s response came slow. Not until two years into the insurgency, did the Peruvian government respond to the Shining Path’s threat, as it was preoccupied with transitioning from a military coup ending in 1980. When the state formally acknowledged the threats, it overcompensated for its initial inaction. The military directly responded to Guzmán’s use of Maoist theory as: “Some generals spoke of inverting the Maoist dictum that a guerilla moves among the people like a fish in water. If this is so, they asserted, their duty is to drain the

³³⁶ Ibid.

³³⁷ Marc Chernick, “PCP-SL: The Defeat of Sendero Luminoso,” In *Terror, Insurgency and the State*, edited by Marianne Heiberg, Brendan O’Leary, and John Tirman, 289-320. (Philadelphia: University of Pennsylvania Press, 2007), 295.

³³⁸ Art and Richardson, *Democracy and Counterterrorism*, 203.

³³⁹ Ibid.

sea.”³⁴⁰ This statement demonstrates the ruthless force the military was willing to use in order to end the threat of the Shining Path. Coupled with virtual impunity for their actions, the military enforced their strict campaign with little regard for the civilian population.

President Fujimori defeated the Shining Path with his self-imposed coup, or *autoglope*, in 1992. His ruthless plan of attack was accomplished because the *autoglope* “allowed the president to enact the counterinsurgency in its entirety.”³⁴¹ The self-coup declared a state of emergency where Fujimori acquired dictatorial power over his own democratically elected government.³⁴² Under the state of emergency, the armed forces received “wide-ranging protections for military prerogatives, effective immunity from prosecution, new limitations on press reporting on military operations, and further expansion of military powers.”³⁴³ The intense shift of aggression effectively ended the influence of the Shining Path in just a few short years, beginning with the imprisonment of Guzmán. Peru’s employment of its coercive agents resulted in the decisive victory of the government and military over the PCP-SL. Marc Chernick accounts that, “Since the end of the Cold War, few internal conflicts have ended so decisively with one side victorious and the other defeated.”³⁴⁴

After the decisive victory against the Shining Path, Fujimori fed off of the fear from terrorism, allowing him to practice his authoritarian behavior and discredit any political opposition for ten years. From 1990 to 2000, Fujimori “blocked investigations into accounts of human rights abuses perpetuated by the state’s security forces during their counterinsurgency efforts as well as inquiries into his own complicity in authorizing anti-terror operations that

³⁴⁰ Arena and Arrigo, *The Terrorist Identity*, 289.

³⁴¹ Root, *Transitional Justice in Peru*, 29

³⁴² Arena and Arrigo, *The Terrorist Identity*, 315.

³⁴³ Root, *Transitional Justice in Peru*, 30

³⁴⁴ Arena and Arrigo, *The Terrorist Identity*, 290.

involved extrajudicial killings and massacres.”³⁴⁵ Fujimori avoided all future accountability by giving amnesty to all state authorities for any human rights violations in June 1995.³⁴⁶ Only until Fujimori resigned from his presidential role, by escaping to Japan because of a corruption scandal, could Peru address the legacy of the consequences of its internal war.³⁴⁷

Transitional Justice in Peru

With the removal of Fujimori, Peru could completely address the internal conflict without the limitations from the corrupt administration. Interim president Valentín Paniagua made profound progress towards exploring transitional justice and bringing the state out of a regime rooted in impunity and corrupt practices. Both politicians in opposition against Fujimori and human rights organizations strongly encouraged the efforts towards combatting impunity from the conflict and Fujimori’s regime. Peruvian and international nongovernmental organizations (NGOs) were pivotal in their advocacy for undertaking accountability and truth concerns. Such organizations included the *Asociación Pro Derechos Humanos (APRODEH)* and the *Asociación Nacional de Familiares de Secuestrados, Detendios, y Desparecidos del Perú (ANFASEP)*.³⁴⁸ Like the *Madres de Plazo de Mayo* in Argentina, ANFASEP composed of mothers of the disappeared. Beginning with a Quechua-speaking peasant, ANFASEP quickly transformed into one of the principal NGOs in Peru advocating for justice from the conflict.³⁴⁹ Under President Toledo, all accountability concerns would be holistically approached.

Since the Shining Path is a terrorist organization, many Peruvians felt “that the concept of reconciliation, so central to transitional justice, is inappropriate for their country: one does not

³⁴⁵ Arena and Arrigo, *The Terrorist Identity*, 315.

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ Root, *Transitional Justice in Peru*, 45.

³⁴⁹ Ibid.

reconcile with terrorists.”³⁵⁰ How can an individual possibly forgive someone who engaged in acts of terror in their communities with a simple apology? As examined in Chapter Three, reconciliation is a process, not a means to an end. Reconciliation efforts by transitional justice measures do not guarantee that there will, or should, be “forgiveness.” Therefore, engaging in transitional justice measures is extremely critical for building a collective future post-conflict. In addition to exploring restorative justice options, Peru engaged in retributive justice practices to showcase and provide accountability for the human rights abuses both the PCP-SL and the Peruvian military engaged in throughout the two decades of conflict. Peru explored all these measures to understand the conditions in which the Shining Path emerged and addressed the “legacies of a counterinsurgency strategy that imperiled the most marginalized—poor, rural, Quechua-speaking, indigenous Peruvians.”³⁵¹ The upcoming sections briefly summarize Peru’s exploration of different transitional justice options as the country used to complete their “transitional justice toolkit.”

Truth and Justice Reconciliation Commission

Peru’s truth commission, the *Comisión de la Verdad y Reconciliación* (CVR) was one of the first measures completed post Fujimori after human rights NGOs extensively pressured an inquiry in learning about the atrocities. Overall, the CVR was extremely successful in terms of its thoroughness. Priscilla Haynor, founder of the International Center for Transitional Justice, regards the CVR as one the top five comprehensive truth commissions completed thus far.³⁵² Under the mandate the commission was to ideally “identify those responsible, elaborate proposals for reparations of victims and their families, and recommend preventive and follow-up

³⁵⁰ Ibid., 8

³⁵¹ Ibid., 9

³⁵² Ibid., 97

measures to implement its recommendations.”³⁵³ In order to achieve this mandate, the CVR collected testimonies and conducted public hearings of a variety of people including incarcerated terrorists, political leaders, families of the disappeared, military commanders, and more.³⁵⁴

The legacy of the CVR provided a wealth of information with thorough accounts of the conflict. Its final report composed of nine volumes, detailing atrocities from both sides. Contrary to a former popular opinion by human rights activists, the CVR discovered that most of the violence was in fact committed by PCP-SL rebels over the government. Additionally, the commission discovered that 75 percent of the victims composed of indigenous people, stressing the role that racism and discrimination played in the conflict. These findings directly contributed to the CVR’s recommendations for both reparations and future justice measures.

However, the CVR did not come without controversy. Those who opposed the commission from its conception claimed that it favored the terrorists, but the commission soon proved that it presented the most accurate account possible from the conflict, outlying atrocities from both sides. Two years after the end of the truth commission, members of the commission received death threats. It is understood that this was “in reaction to the effectiveness of the report, and the fact that criminal prosecutions recommended by the commission were then beginning to make progress in the courts.”³⁵⁵ While both the conservative political class and members of the Shining Path regard the TRC final report with disdain, “the relatives of victims and human rights defenders are unrelenting in their efforts. The final report has become a crucial

³⁵³ Chernick, “PCP-SL: The Defeat of Sendero Luminoso,” 315.

³⁵⁴ Root, *Transitional Justice in Peru*, 75.

³⁵⁵ *Ibid.*, 39.

platform for the human rights movement, and a historical accusation against those that exclude and are violent.”³⁵⁶

Retributive Justice Post-Conflict

As described above, the CVR offered critical information for the Peruvian judicial system in giving a confidential report for the courts to use. With the access to both the accounts from the CVR and this confidential document, the Peruvian judiciary gathered enough material to prosecute and convict President Fujimori and other key authorities responsible for atrocities. After leaving Japan for a trip to Chile, Fujimori was extradited back to Peru in 2005 with an international arrest warrant. The former president ended up being convicted in 2009 for both his corruption during his administration and his role in grave human rights violations.³⁵⁷ Today, Guzmán remains behind bars since his initial capture. Besides successfully prosecuting these violators of human rights, Peru had to face an additional component in its transitional justice process. Throughout the 1990s, Peru unjustly tried thousands of individuals for terrorism in its military courts.³⁵⁸ These military courts were arbitrary and directly violated appropriate conditions of due process. Accordingly, retributive justice in Peru fell into three categories: the need for retrial for these alleged terrorists, ensuring accountability of members of the armed forces, and the indictment of Fujimori.

Both during the conflict itself and immediately following the cessation of violence, military courts tried roughly 2,000 perceived terrorists in military courts. Peru’s Constitutional Court later declared that these trials under Fujimori antiterrorism legislation were explicitly

³⁵⁶ International Center for Transitional Justice, “Ten Years After Peru’s Truth Commission, last modified August 19, 2013, (accessed March 10, 2015), <https://www.ictj.org/news/ten-years-after-peru-truth-commission>.

³⁵⁷ Hayner, *Unspeakable Truths*, 39.

³⁵⁸ Root, *Transitional Justice in Peru*, 102.

unconstitutional and thus granted a retrial to any prisoners who filed for a new trial.³⁵⁹ Among them was Guzmán, which triggered emotional protests. During the initial military tribunals, innocent individuals were imprisoned and as a result, about 100 individuals were given pardons.³⁶⁰ However, these pardons did not come without extreme controversy. While some were innocent, guilty members of the Shining Path will likely never be held accountable for their actions “because they either eluded capture or collaborated with security forces in exchange for their freedom (especially after the 1992 Repentance Law).”³⁶¹

While searching communities for Shining Path perpetrators is extremely difficult, holding members of the armed forces was more achievable. The Inter-American Court’s decision in *Barrios Altos* nullified Fujimori’s 1995 amnesty laws which gave impunity to all human rights violations committed by governmental forces. Since the repeal of amnesty, various military officials have been brought to justice. For example, Julio Salazar Monroe, the head of military intelligence, was sentenced for his involvement in organizing the *Grupo Colina* death squad and ordering the La Cuenta massacre.³⁶² While there has been progress in prosecutions, justice has been severely limited as, “State crimes that fit the much more widespread patterns of human rights abuses—that is, crimes committed by the armed forces in the 1980s in the poor, rural district of Ayacucho against marginalized sectors of the population—have resulted in a mere handful of cases and even fewer convictions.”³⁶³ Here, the CVR’s hopefulness with justice has fallen short.

The last category of retributive justice, the arrest of Fujimori follows the pattern of prosecuting former heads of state in Latin America. Fujimori’s arrest resembles cases like i

³⁵⁹ Ibid., 102.

³⁶⁰ Ibid., 105.

³⁶¹ Ibid., 108.

³⁶² Ibid., 110.

³⁶³ Ibid., 118.

Argentina with military junta leaders and in Chile with Augusto Pinochet. After being arrested, Fujimori was found guilty “of corruption, abuse of authority, and authorizing unlawful search and seizure, kidnapping, assault and aggravated homicide carried out by *Grupo Colina*.”³⁶⁴ For these crimes, Fujimori faces 25 years in prison. His imprisonment brought the once thought impossible to become possible.

Reparations and Restorative Justice in Peru

After the end of the conflict, Peru demonstrated a willingness to provide reparations for victims who experienced some of the worst hardships both during and after the years of violence. However, efforts to mediate these hardships have taken an understandably substantial amount of time. Coupled with reparation programs being both economically and politically challenging, these programs need to address Peru’s history of marginalizing the indigenous population in the country as well as make considerable efforts to overcome widespread discrimination.³⁶⁵ Despite Peru’s alleged commitment for implementing these programs, time progresses and victims are left waiting, “even after having suffered a serious violation sometimes twenty or more years ago and having navigated the long victim-registration process to finally achieve some recognition as right bearers.”³⁶⁶ Largely, the difficulty to carry through with these recommendations in full form is indicative of the Peruvian elites’ hesitance with recognizing their responsibility in the conflict’s violations against the indigenous population and the conditions evident beforehand.³⁶⁷

³⁶⁴ Ibid., 123.

³⁶⁵ Cristian Correa, “Reparations in Peru: From Recommendations to Implementation,” International Center for Transitional Justice June 2010, https://www.ictj.org/sites/default/files/ICTJ_Report_Peru_Reparations_2013.pdf, 1.

³⁶⁶ Ibid.

³⁶⁷ Ibid.

With the completion of the CVR's findings in 2003, the CVR produced a comprehensive reparation plan for the Peruvian government. *Plan Integral de Reparaciones*, or the Comprehensive Reparations Plan (PIR) "envisions a variety of reparations, including programs focused on health, education, symbolic, individual, and collective benefits, as well as those intended to restore the rights of citizens."³⁶⁸ After the truth commission, the *Registro Único de Víctimas* (RUV) was created to develop an official registry of victims deserving reparation. In order to qualify for reparation, victims must undergo a painful process of testifying their hardships they experienced during the conflict.³⁶⁹ Once identified, victims must wait for their appropriate compensation. Ultimately, the Reparations Council has no authority to actually carry out the program, thus leaving the implementation program in the hands of the governmental office: the *Comisión Multisectoral de Alto Nivel* (CMAN). The CVR anticipated that these plans would be implemented immediately, but various factors have impeded with full application.

Actually implementing these programs has become more convoluted throughout the years. As of 2013, out of the 5,697 communities needing reparation, CMAN has implemented reparation projects in roughly only 1,946 communities.³⁷⁰ These projects aim to prove basic infrastructure such as "roads, potable water sources, community and health centers, and the support for the raising of livestock and fish."³⁷¹ However, these collective projects come with challenges. There is no explicit indication that these are efforts to mediate the political violence and "Hundreds of thousands of people live in these communities, and most are unaware that the reparation projects in their communities serve any reparative purpose."³⁷² The collective programs have served as a political purpose, as Garcia once used images from the improvements

³⁶⁸ Root, *Transitional Justice in Peru*, 131.

³⁶⁹ *Ibid.*, 136.

³⁷⁰ Correa, "Reparations in Peru: From Recommendations to Implementation."

³⁷¹ Root, *Transitional Justice in Peru*, 137.

³⁷² *Ibid.*, 137.

for public relations purposes. Root criticizes that since Garcia was president during the most violent years his use of these programs to promote his popularity “is an indicator of how transitional justice processes can be misappropriated.”³⁷³

The CVR additionally recommended that Peru needed to engage in memorialization efforts. Implementing these programs has spurred significant debate, as Peru has not yet formed a cohesive policy concerning memorialization. While monuments have sprouted throughout the country, these efforts are only localized efforts. One private memorial is the “El Ojo que Lloro” (The Eye that Cries) in Lima.³⁷⁴ Civil society organizations have proposed for the establishment of a National Museum of Memory. Much debate over the inclusion of certain exhibitions has spurred contested debate throughout Peru. Where human rights violations occurred, some regional governments have decided to rename the places to honor those who experienced the atrocity.³⁷⁵ Since the government does not have a unified stance on memorialization, it is currently dependent on individual communities.

Actually engaging in a successful reparations program has proven to be an extremely difficult process as seen in Peru. Critics remain extremely disappointed with Peru’s failure to give out individual monetary compensation as well as failing to fully address promises of improving education and health care. While there has been discouragement, Peru’s reparation efforts, though gradual, are making some necessary progress. While not initially suggested by the PIR, several organizations have been working towards identifying remains of the victims of enforced disappearances in order to provide closure for families searching for their loved ones. From 2002 to 2012 alone, “the remains of 2,109 victims were recovered, of which 1,074 were

³⁷³ Ibid., 137.

³⁷⁴ Correa, “Reparations in Peru: From Recommendations to Implementation,” 24.

³⁷⁵ Ibid., 25.

identified and returned to their families.”³⁷⁶ Despite not being all-encompassing, these efforts are certainly commendable.

Moving Forward

Peru’s transitional justice efforts have taken the first critical steps in addressing the wounds from its internal conflict. While these initial efforts have certainly not been perfect and at times are rather flawed and contested, these steps are momentous nonetheless. Peru’s experience with transitional justice indicates that while the process of implementing justice practices in post-conflict situations is an extremely long and arduous journey, it proves to be a worthwhile one. The idealized complete version of reconciliation is likely impossible in Peru largely because of the confusion and because of the fact that the Shining Path was fundamentally a terrorist group. The process of discerning who could receive reparation sheds light on the level of gravity behind these decisions. Early on, the RUV determined that “any individual in any way affiliated with a subversive organization from being identified as a victim in the RUV, even in cases where the state was found responsible for raping, torturing, or extrajudicial executing that individual” would not be granted reparation.³⁷⁷ If a Shining Path member accidentally benefited from the RUV, public infuriation could jeopardize the future of all reparation programs in Peru.³⁷⁸ The extreme hostile nature of the insurgency group further complicates the way in which Peru can heal from the conflict. Despite this confusion, the conflict between the PCP-SL causes mostly the poor indigenous suffering, and these violations need to be addressed.

³⁷⁶ Ibid., 24.

³⁷⁷ Root, *Transitional Justice in Peru*, 131.

³⁷⁸ Ibid., 136.

Reparation and restorative justice measures have encompassed significant efforts virtually impossible under Fujimori, bringing Peru closer towards bridging the gap between the “Two Perus.” Both the CVR and Peru’s retributive justice experience suggest that battling cultures of impunity from conflict is possible, although a delicate process. ICTJ reiterates, “Nevertheless, the process of fully acknowledging society’s responsibility for its part in violations, as well as overcoming the historical marginalization of vast numbers of its society, will require additional time and effort.”³⁷⁹ Transitional justice and combatting impunity is overall a learning process that will take time. Policymakers in other states in the future can use Peru’s transitional justice experience as a framework for potential methods of battling impunity post-conflict in their own respective situations.

³⁷⁹ Correa, “Reparations in Peru: From Recommendations to Implementation,” 30.

Conclusion

The individual ways that the case studies all dealt with their respective insurgencies and post-conflict transitions offer various lessons for the future. We can learn both how we tackle insurgencies and terrorism as well as the restrictions states and societies may face in addressing prevailing impunity from conflict while dealing with festering wounds from survivors. Taking time and discerning from these lessons is particularly critical as Chapter One indicates that the international community is no longer experiencing the threat of war on an interstate level, that is, huge state forces fighting each other, but more so on an intrastate level. Non-state actors such as insurgency organizations are increasingly threatening a state's power by declaring armed rebellions. Due to the fact that most of these insurgencies are "People's Wars" and apply Mao's method of protracted warfare, the threats of these rebellions are extremely pressing as they are enduring, long-lasting conflicts.

We certainly live in an age of terrorism with indiscriminate attacks posing a threat at any moment. 2016 will mark the fifteenth year anniversary since 9/11, and terrorism still poses a very tangible threat. The way in which states have battled their own terrorist threats of insurgencies presents various lessons for the international community in how to handle situations of terror, whether it is on the global scale or in individual respective states. While some form of response against terrorism is required, responses can potentially result in disturbing consequences. Donnelly claims that our collective fight against terrorism, whether it is a global or specifically state threat, has become, "a crusade against evil to be pursued without too much concern for the ordinary restraints of law and conventional limits on the use of force."³⁸⁰ During

³⁸⁰ Donnelly, *International Human Rights*, 214.

these fights against terrorism, security forces blur the lines between just and unjust behavior in war as campaigns to combat terrorism directly end up targeting civilians, since it is so difficult to distinguish between innocent civilians and insurgents. Because of these campaigns, “human rights are the price exacted not just from terrorists but from peaceful political opponents, members of groups that are feared or despised, and ordinary individuals accidentally or arbitrarily caught up in the security apparatus.”³⁸¹ Particularly concerning is the way unarmed, defenseless civilians become caught in the midst of the conflict between armed forces. Subsequently, counterterrorism and counterinsurgency tactics efforts need to delicately respond to these situations in ways that end the threat but avoid engaging in brutal behaviors that often significantly surpass the level of violence that they fight.

The case studies’ respective counterinsurgency strategies of fighting insurgent threat demonstrate potential avenues in the fight against terrorism. Nepal represents the most peculiar situation because after attempting to defeat the CPN-M, the state abandoned its efforts when it became evident that the Maoists gained considerable popularity in the country and the fight would be more difficult. CPN-M abandoning its resort to violence and transitioning towards a political party participating in elections is an especially unique situation. Unlike Nepal, which ended in a peace agreement between the non-state and state actors, both Peru and Sri Lanka defeated their insurgencies with a complete military victory and avoided negotiations between the parties post-conflict. The ways that Peru and Sri Lanka both respectfully fought their insurgency threats of the PCP-SL and the LTTE offer warnings against resorting to complete indiscriminate force in order to regain a monopoly of violence. While Peru successfully suppressed the PCP-SL’s threat without surpassing the amount of atrocities the Shining Path

³⁸¹ Ibid., 215.

engaged in, as the CVR report demonstrates, the Peruvian solution of complete military suppression should not be the answer for other states. In fact, if other states try to replicate Peru's tactics of the *autoglope* and other practices, it could potentially escalate to a higher scale of violations of human rights. Sri Lanka represents such a situation. The "Sri Lanka Option" of using unforgiving military force, resulted in abuse on a massive scale with the indiscriminate attacks on "No-fire zones" where innocent civilians sought refuge. Perhaps if the Maoists in Nepal were not as popular, the Nepalese security forces may have engaged in similar behaviors as Sri Lanka and Peru, but tremendous support and popularity prevented this reaction.

No matter how an intrastate conflict ends, either by a peaceful agreement or a military victory, internal conflicts leave societies with a myriad of unanswered questions. One of the biggest issues that this thesis discerns is the degree that post-conflict can address these questions. As Chapter Two discusses, there is a tendency of governments to avoid answering these questions at all and instead these governments practice denial, ensuring impunity from the conflict directly transitions into the succeeding government. Because of this tendency, it has been commonplace that oftentimes post-conflict societies will actively avoid addressing any of the "wounds" from the past. Consequently, transitional justice options are severely limited based on the political context, which poses an abundance of problems for the survivors who have gone through tremendous suffering and seek answers.

However as Kathryn Sikkink stresses, there has been a "Justice Cascade" occurring in the past two decades in global politics. For some reason, former politicians no longer enjoy their limitless impunity and both international and domestic courts are holding them responsible for their human rights violations. However, in order for this to happen, political leaders from conflict

or authoritarian administrations need to either step down or be replaced in a transitional election of some form. If they remain in power, it directly blocks any holistic investigation efforts.

Largely, international and national NGOs have played an instrumental role in challenging a state's human rights abuses by directly challenging these pervasive impunity and denial practices. Collective and organized denial creates extreme "barriers to finding out what actually happened...especially as government leaders go to great lengths to stonewall and cover up human rights abuses while deploying a sharply crafted spin."³⁸² Because governments are so determined to cover up atrocities, international NGOs such as Amnesty International and Human Rights Watch have published reports exposing these crimes to the international community with direct evidence. By publishing these reports, these groups create pressure for the governments to appease demands, as they may be "ashamed" by the publicized findings. Other international groups such as the Center for Transitional Justice helps aid transitioning countries in post-conflict settings. Independent national human rights groups have also emerged as seen in Peru, wherein they may call for answers to find disappeared family members or advocate for specific reparation programs that communities and victims need. In Peru, the CVR benefited tremendously from the work of human rights groups like the organization, *Coordinadora Nacional de Derechos Humanos*.³⁸³ While instrumental, the capabilities of these groups are severely limited when leaders remain in power.

When states finally embark on transitional justice measures, a number of issues surface. Transitioning societies must wrestle with the extent that they should engage in retributive justice program and prosecute former officials and rebel leaders. With justice comes the dilemma of having either too much justice or not enough. States need to pay attention to the potential that at

³⁸² Michael Welch, *Crimes of Power & States of Impunity*, 165.

³⁸³ Root, *Transitional Justice in Peru*, 75-76.

some point there may be too much justice, as efforts may manifest into a form of revenge. While reparations programs for victims help alleviate some of the “wounds” they suffer from, reparations also pose the danger that victims may feel that reparations represent “blood money” or that they put a price on their suffering. Discovering the “truth” with truth commissions is a shaky ground as it creates the potential of granting amnesties for a “complete truth” as seen in the South African Commission. Furthermore, there are concerns that the findings may not be wholly accurate and instead plagued with bias. Memory and memorization also spurns debates over “what” gets remembered and how future generations will learn about the past. Further, these practices may pave the road for disappointment, as survivor’s specific demands may not be met or fall short.

As seen in the case studies, transitional justice is a shaky ground. An inherent concern with these particular post-conflict situations is that the situations are tremendously sensitive. Conventional concepts of full “Reconciliation” is certainly off the table as no one can ask someone to actually forgive a terrorist, or forgive the state for its use of state terrorism tactics. Despite this, as I mention at the end of Chapter 3, reconciliation is ultimately a process, not a goal. Complete reconciliation will likely never occur, but it is crucial to work towards engaging in practices that allow former enemies to coexist together in the same state, though they may not coexist perfectly.

Peru’s use of its “transitional justice toolkit” proves that it is worthwhile to engage in a variety of measures. Despite being worthwhile, Peru still faced a plethora of challenges. For instance, while greatly successful, the CVR spurred divide, particularly in the disagreements with former Shining Path rebels and Conservatives in the Peruvian government as they initially adamantly denied some of the testimonies being accurate. Tensions even escalated to the point

that members of the commission received death threats. Though commission members received death threats, it reveals how effective the facts found in the truth commission ended up being. In addition to providing evidence, the CVR put together a comprehensive reparation plan, but unfortunately, these suggestions have not yet been implemented in full force and to an extent cannot possibly fulfill the promises due to monetary constraints.

Sri Lanka and Nepal have had limited experience with transitional justice, largely contributed to their respective political contexts. If they engage in transitional justice practices, both can potentially benefit significantly. If Nepal follows through with its truth commission, the commission could provide necessary recommendations for the full implementation of Nepal's reparation programs, giving needed services for the lower castes, which experienced the most violations during the conflict. While it is important for truth commission possess an unbiased board, with human rights groups continuing to declare the amendment of Nepalese officials (now representing both former government officials and CPN-M rebels) possibly receiving amnesty for the truth commission, this might unnecessarily prolong the truth process, impeding with the closure process of families of disappeared as they still have unanswered questions. It is evident that while the international community scorns Nepal's practices of impunity as seen with the United Kingdom's arrest of Kumar Lama in 2013, it is unlikely that Nepal will ever engage in retributive justice. For Sri Lanka, the tides certainly are turning with January's election of President Sirisena. While Sirisena has been implementing change post-Rajapaksa as he appears to be challenging former governmental practices, it remains unclear the actual extent that Sirisena will address accountability from the past with Sirisena's recent refusal to have the UN conduct an investigation on the alleged war crimes from the conflict. While a domestic inquiry is

monumental in light of Rajapaksa's insistence to deny the past, it poses a concern of how unbiased the inquiry will actually be since it may potentially serve as a cover-up for war crimes.

Overall, transitional justice is a worthwhile process. It can directly aid post-conflict societies to form a respect for trust in the new government, leading towards a path of recovery. Ultimately it is a process that takes time. It is not going to be easy, as societies have to grapple with a variety of issues surfacing with each option. Nevertheless appropriate transitional justice practices can reap long-lasting benefits for recovering nation-states. Transitional justice can directly address the root causes that inspired the conflict, and work towards eliminating the threat of a reemergence of violence.

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