Truth and Reconciliation in Sub-Saharan Africa

– Transitional Justice in South Africa, Sierra Leone and Rwanda

Minna Nauclér
Abstract

The Sub-Saharan African countries of South Africa, Sierra Leone and Rwanda have recently gone through post-conflict political transitions where one of the main dilemmas is how to deal with the past. The three countries have all opted for a transitional justice mechanism that involves truth-telling in order to address past abuses, and with the prospect of reconciliation. The objective of this study is to compare the truth-telling process in relation to the political and social structures of each country and their possible prospects for reconciliation and democratic consolidation. The theoretical framework of transitional justice is applied to the cases to analyze the role of state structures in the truth-telling mechanisms. The study concludes that the accomplishment of a truth-telling mechanism is dependent on the state’s political support and capacity in initiating the process, exercising its mandate and implementing its recommendations. Truth-telling mechanisms can then distinguish the patterns of past abuse in flawed state structures, recommend institutional reform, and in this way contribute to reconciliation and democratic consolidation. The study concludes that the prospects for reconciliation and democratic consolidation are slim in Rwanda, dependent on international initiatives in Sierra Leone, but seem hopeful for South Africa.

Key words: transitional justice, reconciliation, South Africa, Sierra Leone, Rwanda

Characters: 89 292
Table of Contents

1 Introduction ........................................................................................................................... 1
   1.2 Statement of Purpose ........................................................................................................ 2
   1.3 Method and Material ......................................................................................................... 2
   1.4 Theoretical Framework ..................................................................................................... 4
   1.5 Limitations ......................................................................................................................... 4
   1.6 Disposition ......................................................................................................................... 4

2 Theoretical Framework ........................................................................................................ 6
   2.1 Transitional Justice ........................................................................................................... 6
      2.1.1 Democratization and Transitional Justice ................................................................. 7
   2.2 Dealing with the Past ....................................................................................................... 8
   2.3 Democratic Consolidation ................................................................................................ 9
   2.4 Truth-Revealing Processes ............................................................................................. 10
      2.4.1 Truth and Reconciliation ......................................................................................... 11
   2.5 Reconciliation in Transitional Justice ............................................................................ 12
      2.5.1 Interpretations and Sub-Dimensions of Reconciliation ........................................... 13
      2.5.2 Reconciliation and Social Structures ....................................................................... 14
      2.5.3 Reconciliation and Democratic Consolidation ........................................................ 15

3 Sub-Saharan African Transitional Justice ........................................................................ 17
   3.1 Neopatrimonial Regimes and Transitional Justice ......................................................... 17
      3.1.1 Political and Social Structures in Neopatrimonial Regimes ...................................... 18
      3.1.2 Truth Commissions and Reconciliation .................................................................. 19
   3.2 Sierra Leone .................................................................................................................... 19
      3.2.1 A Decade of Civil War ............................................................................................ 20
      3.2.2 Peace and Transitional justice ................................................................................ 20
      3.2.3 The Sierra Leone Truth and Reconciliation Commission ........................................ 21
      3.2.4 Reparation Programs ............................................................................................... 22
      3.2.5 Reconciliation .......................................................................................................... 23
      3.2.6 Sierra Leone: Summary ........................................................................................... 23
1 Introduction

During the last decade more attention have been given to the legal aspect of democratic transitions throughout the world, and especially so after the end of the Cold War. Since the fall of the Berlin Wall, many countries have begun making the journey of democratization towards a rule of law, and transitions from authoritarian and repressive rule to liberal democracy and human rights respecting regimes have occurred in all parts of the world. The judicial aspects of these transitions have come to be known as transitional justice, signifying legal measures in times of (democratic) transitions. The notion of transitional justice is also closely related to the international regime of human rights and violations of these rights, where most transitional countries show a bleak record of human rights abuses (Vité 2005).

Over the last half of the past century, international law as well as human rights have developed significantly and been given greater importance in the international discourse of peacebuilding and conflict resolution. There have also been an increasing number of democratic transitions in many parts of the world, further increasing the salience of transitional justice (Backer 2003; Koch – Vedsted-Hansen 2006; Posner – Vermeule 2005). The international community’s growing commitment to post-conflict peacebuilding have also contributed to giving a more prominent role to transitional justice and its different mechanism, seeing how these can help address the needs and grievances of victims of a former repressive regime in addition to promoting reconciliation and reforming of state institutions (Klug 2000 pp. 66f; Hansen 2000; van Zyl 2005 p. 209).

Especially Sub-Saharan Africa has been long ridden with civil war and internal strife, leaving many victims as well as perpetrators in its wake. During the last decade, many of these conflicts have come to a near end, bringing countries the task of how to deal with a repressive and abusive past. Many Sub-Saharan African countries share similar experiences, and have often been involved in each others wars and conflicts throughout the last decades following independence during the Cold War. This have in many cases led to several transitional similarities between Sub-Saharan African countries on the journey towards democracy (Bosire 2006 ; Sesay 2007 p. 6).
1.2 Statement of Purpose

The aim of this study is to examine the evolution of the transitional truth-telling processes and their relation to reconciliation and democratic consolidation in South Africa, Sierra Leone and Rwanda. The political conditions in this part of Africa are similar, but still have many local differences in terms of political and social structures as well as mode of transition. Different countries have chosen to deal with the past through different measures, with varying success. In examining the different circumstances in the three countries and their choice and implementation of truth-telling and other transitional justice measures, I will try to sketch the relationship between the chosen mechanisms of transitional justice, reconciliation and democratic consolidation.

Transitional justice measures in political transitions and a democratization process such as truth-telling are implemented with the hope of achieving reconciliation. The truth-telling process includes the establishment and mandate of a truth-telling mechanism, its operational function as well as the implementation of its findings and its possible contribution to reconciliation. Their success is most often evaluated in relation to the prevalence of reconciliation, in many ways problematic due to the many interpretations of the concept. In most post-conflict peacebuilding discourses reconciliation is of great importance to the consolidation of democracy. Consolidation is highly dependent on the healing of wounds and the coming to terms with the past, which may not always involve justice in its legal sense. Truth commissions may circumvent the trials and prosecution of perpetrators and grant them amnesties, but may provide information to the public about past injustices and crimes that might contribute to a kind of public justice and social exposure of guilt and blame.

The issue at question is:

What is the role of social and political structures in transitional truth-telling processes?

1.3 Method and Material

The theoretical approaches of transitional justice will be applied to the transitional cases of South Africa, Sierra Leone and Rwanda. The study will explore the three cases and the implemented measures of transitional justice in order to attempt to find possible patterns in
the appearance of the two concepts reconciliation and democratic consolidation through the lens of transitional justice. The results are unlikely to indicate one clear conclusion on the matter, but will attempt to sketch the outlines of the situation in the three countries and the different procedures implemented in order to find possible similarities and patterns.

This study has a most similar design approach, comparing countries with a similar background and colonial history in a geographically limited area, the Sub-Saharan Africa. It takes the shape of a comparative case study of the truth-seeking processes in the countries of South Africa, Sierra Leone and Rwanda in relation to reconciliation and democratic consolidation.

The notion of transitional justice and the associated concepts of justice, truth and reconciliation all entail a certain degree of normativity and issues of subjectivity. To avoid entering into a discussing on the basis of these issues, this study uses the human rights regime doctrine and its assumed pivotal role in post-conflict peacebuilding as guiding. The transition to democracy should be guided by the canon of human rights as a norm, but there might be instances where one sometimes has to adopt a more pragmatic stand point, in acknowledging that there may be necessary to allow the trade-off between human rights and the feasible options in the democratization process and effort towards reconciliation. The latter is a highly subjective factor and difficult to operationalize, but some research on the terms of reconciliation has been conducted and will be used in the study to illustrate the discourse and its problems.

The relative lack of country-specific research on the situation in the different countries of South Africa, Sierra Leone and Rwanda and the impact of transitional justice measures on society limits the study to be based mostly on academic articles from scientific journals. The literature on transitional justice in general, political transitions and democratization in on the other hand more extensive, and consists of both articles and text books etc. As a result, the first part of the paper will be more general in its character and mostly make references to the wider discourse on transitional justice, while the later part will focus on the three cases and draw from the existing material on them. The majority of transitional justice scholars seem to agree on the general measures of the theory, but some have slightly diverging views on their application. Reflecting the different views, they will be presented as objectively as possible throughout the study.
1.4 Theoretical Framework

Transitional justice in post-conflict societies mainly focuses on the judiciary, since “[a] dysfunctional judicial system adversely affects efforts to restore political stability necessary to the development of democratic institutions” (Jeong 2005 p. 69), but also include non-judicial complementary mechanisms to facilitate peacebuilding. Its components are in many cases vital to a process of democratization and consolidation of democracy, providing different suggestions on how to deal with the past. This dilemma requires making strategic choices and weighing advantages against disadvantages in adopting the most appropriate transitional policies for the specific situation in the concerned country. The cultural and political circumstances could play an important role of the outcome of the implementation of the chosen measures in terms of reconciliation and democratic consolidation. Transitional justice mechanisms and measures include trials and reparation programs, but also vetting and truth revealing processes. The theoretical framework of transitional justice and its concepts will be presented in further detail in the theoretical chapter.

1.5 Limitations

The study will focus on the truth-seeking processes in the transitional countries, and will thus only briefly discuss other transitional justice initiatives in the countries, such as the Special Court for Sierra Leone or the International Criminal Court for Rwanda. Neither will other counties’ involvement in the conflict be discussed, such as the cross-border conflict in Rwanda and its neighbouring countries, nor Liberia’s involvement in the Sierra Leone civil war.

1.6 Disposition

The paper is based on the theory of transitional justice and its ideas about political transitions in relation to the subsequent democratization process. Further will then the concepts of reconciliation and its implications for the democratic consolidation in transitional justice be explored, together with the role of truth-revealing measures such as truth commissions in the process. The various implications of the relationship between the concepts are then applied to
the transitions of the three Sub-Saharan African countries of South Africa, Sierra Leone and Rwanda. The cases mainly serve to illustrate the different measures of transitional justice and its implications, thus the focus of the study will not be on historical events, but focus on the transitional period and problems.
2 Theoretical Framework

The basic elements of transitional justice and democratization, the rule of law and democracy essentially represent the two notions of negative and positive liberty. While the negative liberty is contained by the limitations of authority, where the rule of law serves to protect citizens from state abuse, the positive liberty of democracy is dependent on the possibility to exercise civil and political rights (Sejersted 1988 pp. 131f). Earlier incorporated in democratization theories, transitional justice constitutes an elaboration of the legal aspect of political transitions towards democracy in former authoritarian states. Transitional justice contains elements from the diverging fields of law, politics, and sociology, sometimes rendering it a contested status as well as questioning its effects on societies in transition (Bosire 2006 p. 33; see also e.g. Teitel 1997; Kritz 1995; McAdams 1997). Poverty and unequal distribution of resources have often been pointed out as contributing factors to, and also consequences of, conflict and authoritarian rule. In the interest of stability, democratic consolidation, and long-term reconciliation, transitional justice measures can seek to clarify, and have an impact on, these root causes of violence and abuse (Bosire 2006 p. 3). The research in the area of transitional justice has been slowly and constantly increasing in the last decade, and is gaining a more salient position in democratization debates. This is perhaps due to the increasing number of democratic transitions occurring simultaneously, and scholars are taking up an interest in the theoretical field of transitional justice and its various components.

2.1 Transitional Justice

Transitional justice theory provides mechanisms mainly for dealing with the past in countries that have suffered from violations of human rights, and focuses on past actions and abuses. The most central elements of transitional justice are prosecutions, truth-seeking and reparations, but other non-judicial measures such as institutional reform and reconciliation are also included in the theoretical provisions in relation to post-conflict peacebuilding. Coming to terms with the past and accepting future challenges should be much easier when the diverse physical and social need of victims and perpetrators are effectively cared for, when “truth” is also backed by material “justice”. Prosecutions, truth-seeking and reparations are in many cases labelled as backward-looking measures to establish accountability for past abuses, while
institutional reform and reconciliation constitute forward-looking measures contributing to the impending democratization process (van Zyl 2005; Sesay 2007 p. 28; Posner – Vermeule 2003).

The impact of transitional justice measures is debated among scholars where many (e.g. Huntington 1991; Sieff – Vinjamuri 1999) consider truth commissions and prosecutions of war criminals to do more damage than good in post-conflict societies, disturbing the peace process and disrupting the balance between justice and peace, in many cases discouraging a reconciliation process. On the other hand, other scholars (e.g. Jeong 2005; van Zyl 2005) consider transitional justice measures as a necessity in the democratization process and its consolidation, where it is highly difficult for a post-conflict society to move forwards until acknowledging the wrongdoings of the past and adopting strategies to prevent similar patterns to arise once more. The issue of accountability also plays an important role in how to deal with perpetrators and individuals associated with the previous regime and implicated in its crimes and abuses, and whether to impose sanctions on individuals indirectly implicated in the regime’s crimes (Huyse 1995 pp 51f).

The new government’s course of action in a transition and the choice of implementing truth commissions, trials or to simply do nothing depends on the relative strength of demands from the public and the outgoing regime. The choice is usually leaning towards trials as the outgoing regime becomes weaker, and towards nothing as the outgoing regime becomes stronger, with truth commissions being the most likely outcome when the relative strength of the demands is roughly equal (Skaar 1999 p. 1110).

2. 1. 1 Democratization and Transitional Justice

The character of new democracies is most often highly dependent on the new regime’s policies, such as the transitional authorities or a democratically elected government by popular vote, as the new regime decide on how to implement the principle of the rule of law in the democratization process. In this situation, transitional justice refers to the “formal or informal procedures implemented by a group or institution of accepted legitimacy around the time of a transition out of an oppressive or violent social order, for rendering justice to perpetrators and their collaborators, as well as to their victims” (Kaminski et al. 2006 p 295). In the new regime’s handling of the balance between peace and justice, they need to consider the magnitude of the crimes committed either by the previous regime or the opposition and
the degree of societal “amnesia”, and thus the new regime set the tone for the subsequent process of transitional justice (Berat – Shain 1995 pp. 175).

Criticism of transitional justice includes among other things the issue of retroactive justice in the prosecution of war criminals and extrajudicial measures violating property right through reparation programs (Posner – Vermeule 2003 pp. 23ff). However, proponents of transitional justice emphasize the transitional characteristic of the theory. Measures and mechanisms of transitional justice are not meant to be a permanent feature of the political system, but only to be in operation during the initial transitional phase of the democratization process. It is at this time that the societal demand for holding perpetrators and wrongdoers accountable for their past crimes and human rights abuses is at its peak, subsequently the measures are only to be in place until such demands have subsided. Although many scholars argue that laws in constitutional democracies should be executed according to protocol in a deontological fashion, it is of importance to also consider the design of the judiciary and the legal framework from a forward-looking perspective. Once implemented, laws of states going through a democratization process should be respected and abided by. Nevertheless, in the initial stages of the transition and institutional design the adoption and implementation of laws ought to be carried out with their long-term desirability and future outcomes in mind (Kaminiski – Nalepa 2006 pp. 400f; Teitel 2000 p. 161). It is assumed that the transition from war to peace and national reconciliation will be long and torturous, but necessary and expedient if stability and sustainable long-term peace are to be accomplished (Sesay 2007 p. 14).

2.2 Dealing with the Past

When it comes to dealing with the past and choosing the appropriate transitional justice measures to do so, the mode of transition is one of the most influential factors in the adoption of transitional justice mechanisms. When the new regime has come to power through an overthrow of the previous government, there are very few constraints on the new regime’s political limits in carrying out transitional justice measures and precedence can be given to restoring the legal system and the judiciary according to transitional justice reforms and recommendations. On the other hand, where the transition and the handover of power have been characterized by a negotiated reform or compromise the politics of the newly installed regime could still be heavily influenced by the old elite and earlier prevalent social order and
system. Influential individuals from the previous regime may still have some power and control over elements of society that might jeopardize the transition and in some cases a possible peace process. A policy of forgiveness would in transitions where the former elites still are influential help avoid confrontation and a resurgent of conflict to occur, hence exchanging trials, substantial institutional reform and political purging of prominent individuals for less far-reaching measures such as amnesties and truth-seeking processes. The new democratic regime is simply too vulnerable because of the still powerful elements in the system to refuse the acquittal of perpetrators and the individuals responsible of human rights abuses (Stepan 1986; Huyse 1995 p. 76).

The core dilemmas of democratic transitions are principally how to deal with the former regime and its followers, as well as how to go about the process of reconciliation and reconstruction of society (Kaminski et al. 2006 p. 295). As mentioned earlier, the imminent political risk in a post-conflict society, often highly polarized, and with a new, usually weak, government is the danger of transitional justice measures doing more harm than good. Former state officials and political opponents could still have connections in the system or hold onto positions of power in the new government, in this way having the possibility to spoil the democratization process and the quest from justice through violent uprisings or activities of subversion. Security forces such as the police or armed forces are often not entirely neutralized, thus prosecution of members of these forces could provoke a coup d’etat and result in setbacks in the democratization process, bringing the transition back to square one. Furthermore, democratic systems under development could lose public support in the measures are not implemented as planned, and there is also the risk of loosing the respect of the armed forces the new democratic government are trying to gain control over (Cohen 1995 p. 34; Berat – Shain 1995 p. 166).

2.3 Democratic Consolidation

The long-term democratic consolidation of a state in transition could be advanced by transitional justice measures that involve the society’s behaviour, attitudes and legal foundation (Linz – Stepan 1996 pp. 6ff). The crimes of the accused, abuses and violations of human rights, must be addressed and investigated or there can be no real increase in trust, nor can a democratic norm become rooted in society in general. Subsequently, without transitional justice measures, there can be no real democratic consolidation (Huyse 1995 p.
If the new government succeeds in reforming institutions and pursue a democratization process, they can also justify the necessity of the transitional justice measures taken against the previous regime and its adherents and contribute to rebuilding the societal confidence in state institutions that the earlier regime had ruined. The implementation of universal suffrage, equality before the law and equal rights unquestionably illustrates the end of discriminatory practices and constitute a move towards democracy (Przeworski 1988; David – Choi 2006 p. 344). The legitimacy issue is consequently of importance for a new or reinstated democracy, and here prosecution is considered as one of the measures necessary to “assert the supremacy of democratic values and norms and to encourage the public to believe in them” (Huntington 1991 p. 213). The political will is central to the accomplishment of restoring the rule of law, and without the political commitment to transitional justice measures as prosecution or institutional reform, the popular cynicism and distrust of the political system could once again take hold in the society (Mani 2000 p. 99f; Huyse 1995 p. 56.)

2.4 Truth-Revealing Processes

The transitional justice measure of truth-revealing processes, such as truth commissions, is most common after negotiated democratic transitions and less frequent in the aftermath of independence wars or armed conflict between states (Kaminski – Nalepa 2006 p. 386). In order to carry out a successful process of truth revealing process such as a truth commission, there needs to be a strong and broad political mandate as well as the political will necessary to support the proceedings throughout its course. After the end of the proceedings there is also the need for political commitment in carrying out and implementing the recommended reforms and measures suggested in the final report of the truth commission or the like. If these prerequisites are not met, the opportunity for justice may be lost and the truth revealing process might fail (Mani 2005 p. 517f).

The type of transition and the current relationship between the present and former regime also has implications for a possible truth revealing process in the transition. While total regime change is uncommon, and the removal of each and every individual previously allied with the former regime from positions of power is not feasible, there will probably most frequently always be some remains of the former regime in the new system (Cohen 1995 p. 15).
According to research, truth commissions have most often been employed in situations where the transitional state is still influenced by elements of the former regime and dependent on the cooperation of potential spoilers in order to maintain the political stability. Truth commissions are thus “most useful when they provide political cover from amnesties, and when they help a strong, reformist coalition to undertake the strengthening of legal institutions as part of a strategy based on the logic of consequences” (Snyder – Vinjamuri 2003 p. 31).

However, truth commissions do not unconditionally have to trade peace for justice. Victims’ positions can be strengthened through the establishment of truth commissions, and the society as a whole benefit from effects of a truth commissions in breaking violent patterns and restoring civil order (Chinapen – Vernon 2006 p. 118ff; David – Choi 2006 p. 340). In many cases, a victim-centred approach based on the demands of the injured party is problematic since their demands for justice are rarely internally coherent. In some situations, some of the victims are content with truth-telling and political testimony as redress, while others are not satisfied with truth alone, and demand punishment for those who have confessed crime and abuses. In such cases the dilemma arises on weather to start legal proceedings despite the fact that a majority of the population is against it, on the grounds that judicial measures and the rule of law should take precedence over non-judicial measures such as truth commissions. In addition, there is the argument that legal values need to be upheld and that one should not waive legal proceedings on account of erratic public opinion. Nevertheless, the starting point for both approaches is the premise that some kind of truth-revealing process first has to take place (Cohen 1995 pp. 42-44).

2.4.1 Truth and Reconciliation

In academic literature, the essential objective of truth-revealing processes is allegedly to achieve reconciliation between members of the society who supported different sides in the earlier conflict before regime change (Kaminski – Nalepa 2006 p. 386). For victims and survivors of the previous regime’s abuses and violations of human rights, the main value of truth revealing processes lies in the truth itself. Usually, prior to the transition and the ensuing transitional justice measure of truth revealing, the truth was not available to the public and after years of lies and denial on the part of the government, there is a strong desire to find out what really took place and what has happened to missing and disappeared family members and
loved ones. For many of the victims, truth is sometimes more important than justice in its legal sense. Justice can not change the past, but the truth might change the perception of it (Cohen 1995 p.18). On the other hand, the conflation of truth with reconciliation obscures the many contributions, besides reconciliation, that truth makes to society. Only focusing on the presence or absence of reconciliation as a basis for assessing contributions of truth-telling mechanism runs the serious risk of overlooking various other ways in which they actually are successful, or the many contributions they do make. Despite the various problems, almost every attempt at coming to terms with the past has some accomplishments (Borer 2004 p. 19, 22).

Some sort of truth and reconciliation is mostly deemed necessary for a successful democratization process. In order to achieve democratic consolidation, there need to be a commitment to a policy of tolerance, the rule of law and the like, and reconciliation is generally considered indispensable to fulfil such commitments. The rudiments of a democratic political culture need to be present in order to achieve democratic consolidation. Democratic beliefs, values and attitudes as well as attitudes need to be prevalent in the political system, and a democratic culture founded on reconciliation is more likely to be stable than a political culture that is not (Gibson 2006 p. 420, 430).

2.5 Reconciliation in Transitional Justice

In the cases where the reconciliation process involves elements of forgiveness the need to know the truth becomes especially important. If victims and survivors do not know the truth about what they are supposed to forgive, they will have a hard time in forgiving perpetrators and individuals involve in the wrongdoings (Cohen 1995 p. 41). Reconciliation is a central theme in both post-conflict peacebuilding theories and transitional justice, and its linking of the past and the present is emphasized in both fields. Generally, transitional justice is considered to give greater importance to the past and the dilemma on how to deal with the burden of old crimes and abuses, than to reconciliatory measures which are considered as more of a forward-looking measure in its objective of a return to normalcy (Mani 2005 p. 514). However, many other scholars include forward-looking measures in transitional justice theory and state reconciliation as one of the desired components of a democratic transition. Measures such as truth revealing processes and prosecutions, their naming and punishing violations of human rights are considered to promote reconciliation between perpetrators and
victims and help heal their wounds (Kaminski – Nalepa 2006 pp. 396f). In order to restore democratic values and put the moral order back in place, justice needs to be done. The new government owes doing justice to its constituents, and it is especially important as a moral obligation to the victims of the former regime. Justice serves to heal the wounds of the repressive system in the post-authoritarian state, and to repair the damage that the previous regime has done, both in private and public spheres (Huyse 1995 p. 55).

2.5.1 Interpretations and Sub-Dimensions of Reconciliation

There are two general dominating interpretations of reconciliation, the interpersonal or individual reconciliation, and national unity and reconciliation. Individual reconciliation happens to individuals, usually between two people, but also sometimes with oneself. This interpretation is mostly associated with either a religious or therapeutic paradigm. Where the therapeutic and medical model emphasizes the healing of individual victims, their experience of catharsis and the restoration of broken relationships, the religious paradigm emphasizes a religious conversion model of sorts, with repentance and forgiveness as key components. The national unity and reconciliation is most closely associated with a political paradigm, where the units of analysis are not individuals but socio-political institutions and processes. It includes an understanding that cultural diversity is not to be regarded as a threat but an asset, and in reality to be accepted rather than engineered away. The acceptance of an element of political discord is considered as a healthy sign, and the existence of free institutions, political competition and the rule of law mediates the political unity. This unity is to be understood as an allegiance to a framework of institutions, laws, and practices that guarantee the negative liberty of individuals and is dependent on the insistence that political unity is compatible with, and might also require certain kinds of political divisions and disagreement (Borer 2004 p. 23, 25).

The academic literature on reconciliation also divides the concept into four sub-dimension, characterized by interracial reconciliation, political tolerance, support for human rights principles and the rule of law, as well as the extension of legitimacy to political institutions. Indirectly, reconciliation thus involves the rejection of interracial stereotypes and prejudice and recognition of the opposition’s rights to political contestation. Further, support for human rights principle and the rule of law may involve re-education of personnel on the human rights doctrine. While the educational phase constitutes an important part of the
transition and a shift towards democratic values, information and instruction on human rights do not only include the provisions of liberties and rights in human rights covenants and the like, but have a broader approach on the general values of a rule of law and democratic behaviour. The importance of personal responsibility in a democratic political culture is also part if the re-education, such as the limits of obedience to authority, the virtues of whistle-blowing and taking a stance against misuse of governmental positions, the duty to intervene (Cohen 1995 p. 42; Gibson 2006 p. 413).

2.5.2 Reconciliation and Social Structures

Reconciliation also involves the process of changing societal norms and values, which is thought to be advanced by some sort of truth revealing process. If victims get to share their experiences and stories with the general public, it can serve to create a better understanding of the past and a rectifying of an inaccurate history. Truth revealing may also contribute to the healing process in providing sympathy and a social acknowledgement of past event for victims, as well as promote changes in attitude in society towards those who have suffered from abuses. The testimonies of victims can help reveal the pattern of violations of human rights and abuses and thus facilitate the reforms of institutions and the structure of the political system as a whole (David – Choi Yuk-ping 2005 p. 434). On the other hand, truth-telling as a national healing process is also questioned, where the idea of healing a nation that is “wounded or traumatized is primarily a nation-building rhetoric [...] deriving from the nineteen century models of society as akin to an organism that can be healthy or sick” (Sesay 2007 p. 28f).

A theoretical focus on national reconciliation does not indicate that individual reconciliation will automatically follow in a situation of political post-conflict peacebuilding and its process of national reconciliation, and the latter might even come to impair the progress of the individual reconciliation process. Contrary to the approach of individual reconciliation, the national unity and reconciliation approach assumes that former enemies are unlikely to agree with each other or even get along very well. The best that could be hoped for in a process of national unity and reconciliation is improved peaceful coexistence. It is imperative that citizens feel inclined to reinvest their trust in state authorities and its institutions. The citizens’ feeling and perception of individual reconciliation will influence their relation to the state authorities, and unless they feel reconciled with the new government
and its institutional shape, the democratization process could be in jeopardy (Borer 2004 p. 25).

In the aftermath of political conflict, the process of individual reconciliation is highly dependent on the notion of forgiveness. Forgiveness plays an important role in an individual reconciliation process when it is deemed benefitting for victims as well as perpetrators in divided societies and constitutes an important component in the transition towards peace and national reconciliation. It can contribute to ending cycles of violence, rekindling the relationship between victims and perpetrators as well as helping bystanders to realize their own role in the past conflict (Mani 2005 p. 513; David – Choi 2006 p. 340).

2.5.3 Reconciliation and Democratic Consolidation

The reconciliation process and its prospective outcome can then play a part in the democratic consolidation of a post-conflict society. The different sub-dimensions of reconciliation can contribute to the democratization process in several ways. Reduced political intolerance would lead to an expansion of the individual freedom and help to form an unrestricted marketplace of ideas, while a decline intergroup prejudice would result in increased intergroup trust and cooperation. When support for a human rights consistent system grow stronger, society will no longer tolerate authorities to suspend or manipulate the rule of law thus limiting the ability of authorities to circumvent human rights regulations, creating more trustworthy institutions. Institutional legitimacy then expands the capacity of state institutions to make unpopular but politically necessary decisions. The creation of a sort of collective memory through a truth revealing process can then help to shift the political debate from past events to move on and focus on the future (Gibson 2006 p. 415).

But the international community needs to commit to countries in need throughout a longer period of time than the two to five years that is customary. Interventions are now failing to produce states that will be stable and capable of exercising sovereign responsibilities, while the traditional format of troops deployment for peace-keeping, disarmament, demobilization and reintegration, elections etc., external interventions treat peacebuilding efforts as implementing an “operational checklist”, involving fixes to various institutions and processes within a compressed time-frame, without tackling underlying political dynamics (Sesay 2007 p. 19).
Because of the very subjective character of reconciliation and the processes aimed at achieving it, it is an intensely debated matter with differing opinions on its merits and shortcomings. Some scholars believe the reconciliation can only be achieved through a kind of justice that is inclusive and uniting rather than exclusive and dividing. Reconciliation need to be centred on survivors rather than dividing individuals into categories of victims and perpetrators, and a process of reconciliation has to be permanent and progressive rather than transitional, temporal and incomplete. Consequently, truth commissions and prosecutions do not fulfil these requirements, and a better alternative would be a more inclusive kind of retributive justice. All individuals in a post-conflict society must be regarded as “survivors” of the conflict and subsequently be included in the type of transitional justice measure that is to be carried out (Mani 2005 p. 522; see also Backer 2003). On the other hand, there is the assumption that this is the kind of justice that a system based on democratic values could provide. The rule of law and participatory provisions would ensure inclusiveness and prohibitions against discriminatory practices. In this way, if national reconciliation contributes to the consolidation of democracy, it could also help individual reconciliation in providing a more inclusive system and democratic, inclusive justice.

The transitional justice dilemma of dealing with the past is an unavoidable task for democratizing states. Many times, the successor government may be tempted to abandon the transitional process due to the many delicate and volatile elements of the process. But there is no other way forward. The new regime must make choices on how to proceed, even though each alternative may present serious difficulties and problems. If the various problems that transitional justice try to remedy are left unattended, the price to pay may be very costly in terms of the progress of democratization and consolidation, not to mention reconciliation. Reconciliation is considered to be a crucial factor for the democratic consolidation in a developing democracy, even though some assert that reconciliation can only be achieved if one “lets the sleeping dogs lie”, meaning that society should forget the past abuses and refrain from seeking justice. On the other hand, critics of impunity claim the contrary, arguing that the survival of a new or newly reinstated democratic state is dependent on the measures of transitional justice carried out to promote democratization, the rule of law, reconciliation and democratic consolidation. Of these measures prosecutions is emphasized as especially important in ensuring that future state-sanctioned crimes do not occur once again, but trials and prosecutions are not always possible to carry out in the transitional states, depending on the political situation (Huyse 1995 pp 64f).
3 Sub-Saharan African Transitional Justice

Most studies on democratic transitions have focused on Europe and Latin America, while Africa has received little attention up until now. In the years following the end of the Cold War more than twenty African states were holding competitive presidential or legislative elections due to national and international pressure. Although still not showing an impressive record of democratization, many African countries are going through transitions towards democracy (Bratton – van de Walle 1994 p. 453). On the other hand, while the end of the Cold War led to the withdrawal of the great powers from Africa, it also triggered the collapse of central authorities in many African states that were once financed and supported by Washington and Moscow (Sesay 2007 p. 12). Around the world, and especially in Africa, prosecutions for human rights abuses are neither timely nor widespread, in part due to limited technical, legal and political capacity, and it may very well be that conditions for successful implementation of a truth-telling mechanism are not present in countries in Sub-Saharan Africa (Bosire 2006 p. 30).

3.1 Neopatrimonial Regimes and Transitional Justice

Transitions in other parts of the world, especially Latin America and Southern Europe, have had authoritarian regimes with more of a corporatist character, while African political institutions have developed within a framework of neopatrimonial regimes rather than corporatist. African regimes during the early 1990s did not show any of the formal governing coalitions between organized state and social interest or the collective bargaining over basic public policies that characterize corporatism. Neopatrimonial regimes are characterized by the chief executive’s maintaining of authority through personal qualities rather than through ideology or law, and the distinction between private and public interests is often blurred. The right to rule is attributed to a person rather than an office, and relationships of loyalty and dependence encompass a formal political and administrative system where leaders occupy bureaucratic offices to gain personal wealth and status, and not to perform public service (Bratton – van de Walle 1994 p. 457f).

Generally, transitional justice is understood within “the legal framework of state responsibilities, with an underlying assumption of a model of an institutionalized state with its
organs “unconstrained by the dynamics of social pressures” in a society composed of citizens whose relations are mediated by the law rather than other means, such as kinship” (Bosire 2006 p. 31). Negotiated agreement on political transition in a neopatrimonial system is highly unlikely due to the political conditions, when the incumbent regime and the opposition usually are so polarized due to the all-or-nothing power struggles that there is little possibility that moderate fractions from either side can negotiate an agreement. As opposed to corporatist regimes, where parties of a political pact are representatives of major interest blocks within the state and society, neopatrimonial states cannot reflect this representation thus making it hard to build a political consensus around any intra-elite agreement. The likelihood of pacts is dependent on the degree of formal political institutionalization in a regime, where well developed institutions such as the military or the opposition can present organized bargaining positions and demonstrate credible political power (Bratton – van de Walle 1994 p. 465). Subsequently, as opposed to transitional justice measures in countries like Chile and Argentina, where measures were administered following relatively clear instances of regime change, most transitional cases in Africa implementing transitional justice measures do so following a negotiated transition without a clear break with the past and ongoing conflicts (Bosire 2006 p. 8).

3.1.1 Political and Social Structures in Neopatrimonial Regimes

Although patrimonial structures can be found in virtually all polities, it is particularly salient in African politics. Personal relationships do influence and play a part in all bureaucratic systems, but they are very much a foundation and superstructure of the political institutions in many African societies (Bratton – van de Walle 1994 p. 459). The implementing of transitional justice measures, with their origins in particular institutional contexts, in African states characterized by poor institutionalization and skewed socioeconomic structures is paramount to their underperformance. Transitional justice measures cannot be carried out in an “institutional desert”, and critics connote an institutional minimum beyond the achievement of most African countries in transition (Bosire 2006 p. 31f).
3.1.2 Truth Commissions and Reconciliation

One of the transitional justice approaches in addressing past abuses is the Truth and Reconciliation Commission, TRC, believed to provide a platform for victims and perpetrators alike, to have a voice that would enable them to come to terms with the horrifying past. Truth and Reconciliation Commissions as strategies for coming to terms with the past in Africa came into prominence following the example of South Africa after the end of apartheid and the return to majority rule in 1994. In the aftermath of the Rwandan genocide, where hundreds of thousands of people lost their lives, the Rwandan authorities put in place local mechanisms, the *gacaca* courts, to establish the truth of what happened to promote national reconciliation in general (Sesay 2007 p. 5).

Reconciliation is also understood as integrally linked to economic development, where inequitable distribution of resources and appalling poverty constitute some of the root causes of war. Continued economic marginalization can make sustaining the transition difficult to accomplished, but despite this there are currently no cases in Africa in which the reconciliation project has been integrally linked with social and economic development, the redistribution of wealth being beyond the scope of the South African Truth and Reconciliation Commission (Bosire 2006 p. 28).

The backgrounds, contexts, trajectories as well as consequences of conflict do vary from one African country to another. Also, while atrocities committed during conflict and civil wars, their specific nature also tend to differ. In the case of Sierra Leone, there was large-scale amputation involving one or both limbs, rape, kidnappings and other forms of impunity that were quite unprecedented in the history of civil war not just in West Africa, but also in other parts of the world. It was therefore apparent that the Sierra Leone Truth and Reconciliation Commission was intended to address impunity and provide relief to both victims and perpetrators, among other things (Sesay 2007 p. 6).

3.2 Sierra Leone

In Sierra Leone, the pre-war period was characterized by an institutional collapse and the weakening of security forces such as the army and the police, as well as the judiciary and civil service (Bosire 2006 p. 18). The creation of a one-party state in Sierra Leone in 1978 escalated the internal conflict between different ethnic groups. For several years before then,
the country had operated as a de facto one-party state, following the disappearance of the opposition parties in Parliament and the appointment of the armed forces commander as a member of Parliament and minister of state in the Ministry of Defence. The state had the characteristics of a neopatrimonial competitive one-party system, with a long-serving leader who have consolidated and institutionalized support in ruling parties to become politically “secure”. The president, Siaka Stevens, was convinced that whosoever controlled the state resources could build personal power and dished out state resources as political patronage (Sesay 2007 p. 10; Bratton – van de Walle 1994 p. 482f).

3.2.1 A Decade of Civil War

The decade-long civil war in Sierra Leone, from 1991 to 2002, claimed over 50 000 mostly civilian lives, many thousand were maimed and mutilated and approximately two million people were displaced. Abuses were committed by all sides in the conflict that became notorious for such offences as amputation, sexual slavery and rape, the abduction of children and subsequent forced recruitment of child soldiers (Gready 2005 p. 15). It has been estimated that over 10 00 child soldiers were involved in the war, and some 4,000 people had been the victims of purposeful amputation (Sesay 2007 p. 12; Dougherty 2004 p. 39f).

The Revolutionary United Front (RUF) was particularly notorious for its crude and indiscriminate amputation of limbs, “a phenomenon that was to give a different meaning to popular English phrases such as “short sleeve” and “long sleeve”. In the idiom of the RUF “short sleeve” meant crude amputation of either or both arms from the elbow, while “long sleeve” was cutting of the hand from the wrist” (Sesay 2007 p. 12).

3.2.2 Peace and Transitional justice

The 1999 Lomé Peace Agreement provided for a cessation of hostilities, the disarmament, demobilization and reintegration of combatants, and granted amnesty and pardon to all armed factions as well as former combatants, ensuring that no official or judicial sanctions would be imposed, but this was later contested by the UN Special Representative of the Secretary General, thus creating an opening for the establishment of a Special Court (Dougherty 2004 p. 40; Bosire 2006 p. 23). The Court has operated alongside a Truth and Reconciliation Commission, also provided for in the Lomé Peace Agreement, and both the Court and the
Commission began their work in 2002. The Truth and Reconciliation Commission submitted their report in 2004 while the Special Court had a three-year mandate. The Court would prosecute serious violations of international humanitarian law and domestic Sierra Leonean law, and try a small group of around 20 people with the greatest responsibility for crimes and abuses (Gready 2005 p. 15f).

In practice the two institutions did not have clear guidelines to govern their interactions, but they presently agreed on that no information that had been given in confidentiality would later be passed on to the Court from the Commission. Nevertheless, the fear of possible prosecution kept many perpetrators from testifying, and the existence of the Court complicated matters when people had to understand two separate transitional justice institutions and the relationship between them (Dougherty 2004 p. 44, 46).

The participation of the ex-combatants was considered essential to the Truth and Reconciliation Commission’s compiling of a complete record of the conflict. Unlike the South African Truth and Reconciliation Commission, where perpetrators received amnesty only in return for truthful testimony, its counterpart in Sierra Leone had no power to grant amnesty to those who came forward and confessed their crimes. Despite the lack of incentives, some perpetrators did come forward and while former combatants hesitated to testify at the early hearings, once it was seen that the Special Court was not interested in them, their numbers increased (Graybill – Lanegan 2004 p. 10; Dougherty 2004 p. 47).

3.2.3 The Sierra Leone Truth and Reconciliation Commission

The mandate of the Sierra Leone Truth and Reconciliation Commission was to “address impunity, break the cycle of violence, provide a forum for both the victims and the perpetrators of human rights violations to tell their story, and to get a clear picture of the past in order to facilitate genuine healing and reconciliation” (Dougherty 2004 p. 41). Criticism of the Commission include that it has been too process-oriented, focusing on the public truth-telling that was expected to lead to forgiveness, while overlooking the need to prioritize the issues of reparations as an important step towards true reconciliation. In addition, the Commission has been accused of giving too much attention to the pursuit of individual and community reconciliation in a forced way, thus failing to effectively mobilize the public (Sesay 2007 p. 16).
Although the Sierra Leone Truth and Reconciliation Commission on the whole is considered to have fulfilled its mandated task of providing a public forum for victims and perpetrators to tell their stories in the way it generated widespread interest and participation, there were limited contributions to the four major groups of victims, women, children amputees and ex-combatants (Dougherty 2004 p. 50). But the popular expectations from the Commission have not wholly been met. Most of the Commission’s recommendations are hinged on government good will that cannot be guaranteed, and although there are faltering attempts to decentralize government in theory, almost everything is still centralized around the president and the ruling party in practise and the system is ridden with corruption, marginalization and tribalism (Sesay 2007 p. 52).

To make matters worse, the Sierra Leone Truth and Reconciliation Commission lacked adequate funding and suffered from serious mismanagement and staff recruitment problems (Dougherty 2004 p. 39). Also the selection of commissioners, ideally widely respected persons of consummate morals, posed problems of compromise. In Sierra Leone, the national commissioners of the truth commission were by many seen as sympathizers of the ruling party, which was further underpinned by the president’s refusal to apologize for wrongdoings by the state, and later the Chairman Bishop Humper’s thanking the Civil Defence Force (CDF) militia, known for widespread abuses of human rights, for its work in defending the country (Bosire 2006 p. 14). The staffing crises led to the damaging of the Sierra Leone Truth and Reconciliation Commission’s reputation and unwillingness amongst international donors to contribute to a dysfunctional institution. Generally truth commissions are funded by their national governments, but the Sierra Leone government was hardly in a position to offer much support (Dougherty 2004 p. 43).

3.2.4 Reparation Programs

The Sierra Leone Truth and Reconciliation Commission recommended reparations for amputees, wounded, women victims of sexual abuse, children and war widows since there victims suffered multiple violations and were deemed in an urgent need of a particular type of assistance to address their current needs, even if this would only serve to put them on an equal footing with a larger category of victims. Reparations were recommended to be delivered in packages containing medical and psychological care, education and skills-training programs, but given the extremely poor quality of public services in Sierra Leone, the benefits were
depended on the existing institutions’ capacity to deliver them (Bosire 2006 p. 17). Even though the Sierra Leone government in theory were inclined towards providing material and other forms of compensation to victims, it would be a difficult project in reality since the state is depending on input from and control by the international community (Sesay 2007 p. 28).

3.2.5 Reconciliation

There have also been criticism of the government’s effectiveness in addressing the many causes of the Sierra Leone civil war, since reconciliation is not only an inter-personal and inter-communal process but also linked to government policies and structural macro-level reforms needed to address the original causes of the conflict (Sesay 2007 p. 16).

The long-term of the success of the Sierra Leone Truth and Reconciliation Commission can not be separated from the general post-war climate and will depend to a large extent on whether it is able to address the background conditions that led to the hostilities, as well as its ability to deploy mechanisms that will effect the qualitative changes to the post-conflict political and social conditions of the population in particular and the country in general. Sierra Leone cannot embark on the imperative transition from insecurity to genuine peace and development in a fragile political and economic situation that without a massive injection of material and finance assistance from the international community (ibid. p. 46, 50).

3.2.6 Sierra Leone: Summary

Sierra Leone has since the end of the civil war been characterized by an almost total collapse of state institutions, with serious capacity problems and widespread corruption, as well as the long-lasting injuries and traumas to both society and individuals. The lack of institutional infrastructure in dealing with the past abuses were partly addressed by international and UN assistance, but also contributed to diminished local ownership of the process. The confusion in relation to the different task of the Special Court and the Truth and Reconciliation Commission further impeded the popular participation, as well as the lack of funding, mismanagement of administration and seeming partiality of commissionaires. Although the Commission could be seen as having contributed to individual reconciliation in some cases, the ambition of national unity and reconciliation is still highly dependent on the capacity of state functions, and continued international support and pressure to continue the path towards
democratization. The apparent unwillingness of the ruling elite to admit to abuses and wrongdoings further complicate the process, and the apparent elements of continued corruption and personal rule do not indicate a bright and positive future.

3.3 Rwanda

After the death of Rwandan Hutu president Juvenal Habyarimana in April 1994, Hutus started a killing spree that resulted in the massacre of at least 900,000 Tutsis, as well as moderate Hutus, during a period of three months. The massacre was an effort to thwart the power-sharing agreement that the late president had agreed to under the Arusha Peace Accords of 1993, and did not stop until the Tutsi-led Rwandan Patriotic Front defeated the remains on the interim government and its armed forces (Graybill 2004 p. 1120).

The genocide created an initial population displacement of 1.7 million Hutus, left 400,000 widows, 500,000 orphans and 130,000 imprisoned, suspected of having committed acts of genocide (Tiemessen 2004 p. 58f).

3.3.1 Post-Genocide Peace

Since coming to power after the genocide, the Rwandan Patriotic Front has developed the characteristics of a militarized ethnocracy that proclaim the survival of Tutsis over the well-being of Hutus. This contradicts an official appearance that Rwanda has managed to successfully democratize its political institutions and shown a commitment to promote “Rwandaness” instead of ethnic division. Despite significant progress in terms of power-sharing, the government has in many ways simultaneously been pursuing a process of “Tutsification” of state institutions, including faulty elections, restrictions on civil society and the militarization of the state, while there has been little pressure from the international community to give democratization a more prominent feature on the development agenda, trading democracy for stability (Tiemessen 2004 p. 66f).

3.3.2 Transitional Justice in Rwanda

Rwanda exemplifies the pursuit of justice without reconciliation, where the victorious Rwandan Patriotic Front had ended the genocide and done away with the remnants of the
Hutu government, and were thus not held back or limited by political compromises on the transition and subsequent legal measures (Graybill 2004 p. 1121).

The scale of the crimes in Rwanda both indicates the overwhelming need for justice as well as the impossibility of justice. The almost total destruction of personnel and infrastructure of the domestic criminal justice system posed additional challenges for transitional justice, as well as the post-genocide imprisonment of almost 130,000 individuals (Gready 2005 p. 10). Post-genocide Rwanda found many legal professionals dead or in exile, in addition to the vacuum in the judicial structure. The court’s incapacity to carry out prosecutions was further exacerbated by the sheer number of perpetrators. In 2000, Rwanda was estimated to have had more than 125,000 individuals in detention, an amount that would be overwhelming to any judiciary (Bosire 2006 p. 10).

Political and cultural factors in large part explain Rwanda’s initial preference for prosecution of the genocidaires. Having outdone the interim Hutu government, the Rwandan Patriotic Front was under no pressure to compromise (Des Forges 1999 pp. 245-246).

3.3.3 The International Criminal Tribunal for Rwanda

The International Criminal Court for Rwanda (ICTR) was established in Arusha, Tanzania, through the United Nations Security Council Resolution 955 in November 1994 to prosecute acts of genocide, crimes against humanity and violations of the Geneva Convention that were committed between January and December 1994. During the 10 years since the genocide, the ICTR has only handed down 23 verdicts and is planning to try 70 more cases during its term up until 2008, when its mandate expires (Graybill 2004 p. 1121f).

As the tribunal is isolated from Rwanda in terms of geography as well as its impact on Rwanda society, those on trial at the tribunal are equally distanced from the population by their status as former elite in the genocide, and thus the indictment of these genocide leaders will have very little effect on the reconciliation within the Rwandan community. In August 1996, the Rwandan government then decided to introduce national legislation in order to prosecute all the lesser perpetrators that he ICTR would not deal with (Tiemessen 2004 p. 63, 57; Graybill 2004 p. 1121).
3.3.4 Local Gacaca Proceedings

In the 10 years since the genocide, only 6 500 individuals have been tried in the state courts for genocide and crimes against humanity, whereas approximately 85 000 are still in jail awaiting trial. This does not only have legal implications such as the right to a speedy trial, but also involves huge costs for the Rwandan state in terms of housing, clothing and food for the detainees while the economy, labour market and agricultural sector suffered from a lack of manpower. In response to the ineffectiveness of the ICTR and the incapacity of its national court system, the Rwandan government has revived the traditional form of dispute resolution, gacaca. As many as 10 000 gacaca courts will try genocide suspects in the communities where their crimes were committed, and the accused will subsequently be tried and judged by their neighbours (Graybill 2004 p. 1121f; Tiemessen 2004 p. 58).

The gacaca court system is an indigenous and participatory form of justice, and the adaptation of a traditional community-based conflict resolution mechanism into a forum for judging the serious crimes of genocide brings together the accused, survivors, witnesses and bystanders of the conflict and contributes to a public debate. In gacaca courts, both the crime and the remedy also draw on a history of collective action, mass mobilization under state direction, characteristics similar to the nature of the genocide they are dealing with (Gready 2005 p. 12f; see also Graybill 2004 p. 1123).

The gacaca processes are unfortunately highly politicized and the participant’s assumption of guilt is often based on racial prejudices and ethnic group membership. The new, modernized elements of gacaca also serve the interests of a Tutsi ethnocracy government, thus contributing to a form of victor’s justice that is riddled with the ethnic tensions of pre-genocide Rwanda. If the gacaca process is threatened by the same politicized ethnic classification that spurred the genocide, reconciliation will be hard to attain (Tiemessen 2004 p. 64, 58).

3.3.5 Reconciliation through Gacaca

Initial support for the gacaca proceeding were high, and people though that the local proceedings would bring Rwandans closer together, as well as result in unity and reconciliation. Gacaca proceeding encourages the accused to confess to their crimes, and do most often release the suspect they try back into the community on the premise that they have
already served their sentence in jail waiting to be tried. The reasoning is that once there is confession, victims will forgive, and apology is even written into the gacaca law. The gacaca reintegration of suspects back into community and the truth-telling nature of confessions offer hopes for reconciliation (Graybill 2004 p. 1123f; Tiemessen 2004 p. 61).

The main problem with gacaca is it one-sided character, whereas other justice measure do try perpetrators form both sides of the conflict, the gacaca system only judges the perpetrators of the genocide. The fact that the proceedings are exclusively judging Hutu acts, while ignoring the Rwandan Patriotic Front’s violations might be one of the reasons as to why there has been a decrease in the willingness to participate. Many Hutus see the gacaca proceedings as blatantly unjust, and the one-sided focus might hinder the long-term prospect of reconciliation. One of the dangers the Tutsi ethnocracy poses to the gacaca is the assignment of collective guilt to Hutus, in that all Hutus are deemed perpetrators as their survival of the genocide seemingly assumes their participation or complicity, leaving the Rwandan justice closely associates it with Tutsi power, as nothing more than victor’s justice (Tiemessen 2004 p. 67f ; Graybill 2004 p. 1124).

3.3.6 Rwanda: Summary

The situation in post-genocide Rwanda in characterized by a growing ethnic polarization in state structures and institutions, where the victorious Tutsi population, despite an official appearance of democratic progress, in reality are gaining more and more control over the state apparatus. The scale of crimes and number of individuals implicated in the genocide made international justice in the shape of an International Criminal Tribunal fro Rwanda unable to address the reconciliatory issue as well as the accountability for lower level criminals and the local judicial measure of gacaca proceedings were revived. Although the gacaca courts contain elements of transitional justice, such as truth-telling, reparations and apology, the modernized version of the proceeding is rigidly controlled by the state authorities. Thus, there is a great risk that the process will be characterized by a notion of victor’s justice, where individuals are judged on the basis of ethnicity rather than generating reconciliation and truth. The gacac proceedings do not contribute to the national unity and reconciliation in analyzing abusive state patterns, but are rather administered in accordance with such a pattern. The contribution to reconciliation is thus limited, there might be cases of interpersonal reconciliation as individuals share their experiences, but on the level of national reconciliation
no effort is being made to identify, address and reform social structures and political institutions that could contribute to such national unity and reconciliation. Rwanda could therefore be in danger of having its history repeat itself again.

3.4 South Africa

South Africa is in the literature classified as a settler oligarchy, which does not fall under the definition of a neopatrimonial regime. Settler oligarchies are more closely related to exclusionary democracies, typical of regions in Latin America and Africa where white settlers gained independent control of the state. The dominant racial group uses the instruments of law to deny political rights to ethnic majorities, most commonly through limited franchise and emergency legislation (Bratton – van de Walle 1994 p. 474).

In terms of procedure, apartheid was also very much a system founded in the rule of law. Political suppression and racial discrimination were not carried out in an unregulated and arbitrary manner outside the law. On the contrary, the abuse was carefully practised in accordance with legal rules and procedures. The comparison of the entrenchment of the rule of law in South Africa thus ought not to be made to fully operating democracies, but instead to other authoritarian states in which the rule of law often is highly arbitrate. Needless to say, repression can occur in a rule of law as well and serve democrats and dictators alike, but in South Africa the rule of law provided a procedural protection to a remarkable degree for those that it simultaneously denied substantive rights (Gibson 2006 p. 422). This fact probably contributed to the understanding of the oppositional elite that the continued legality and viability of the former state institutions were essential in achieving a peaceful transition and transfer of power, despite the old regime’s evident lack of legitimacy (Berat – Shain 1995 p. 167).

3.4.1 The Political Transition

The South African reconciliation process was moreover facilitated by a public respect for elite incumbent and opposition leaders and a belief that they had not directly been implicated in the illegal abuses. The political institutions of apartheid were unquestionably designed in a repressive and autocratic way, and came to clash with international norms of human rights over time. State officials carried out many human rights abuses in an extralegal fashion as
well, but apartheid yet maintained a relatively elevated level of state legalism. If this was not the case in practise, the system was nevertheless so designed in theory and the general behaviour of state officials and institutions was markedly rooted in concepts of professionalism like impartiality, institutional autonomy from partisan policies and continuity of service, qualities closely associated with values of democracy (Berat – Shain 1995 pp. 167, 188f).

The South African Truth and Reconciliation Commission (TRC) is by many regarded as the most successful any country has yet fashioned, and is certainly one of the most debated truth commission worldwide (Gibson 2006 p. 409). In settler oligarchies such as South Africa, the struggle is less over the right of political actors to hold diverse political beliefs than over the extension of the franchise to previously excluded sections of the population. The South African political transition took place through a pact between moderate leaders of corporate factions in the government and opposition, and was distinguished by an attempt to compromise between the interests of the old and new regime. The democratic opposition with the African National Congress (ANC) in the lead came to negotiate a power-sharing agreement with the same forces, and at times the very same individuals, that were to blame for the worst oppression. In spite of the apparent flaws of such an agreement, some measures of impunity could be a necessary component in order to attain the political conditions for a rule of law to eventually develop (Bratton – van de Walle 1994 p. 487; Cohen 1995 p. 34).

3.4.2 Transitional Justice in South Africa

During the transition, the issue of granting amnesties was made non-negotiable by the apartheid forces in the bargaining, and the ANC had but to accept the situation. The South African military was yet a strong institution, and the ANC’s influence was diminished by the loss of assistance from the disintegrating Soviet Union. To avoid the outbreak of full-blown South African civil war, the demands for extensive trials had to be discarded as a viable alternative and sacrificed (van Zyl 1999 pp. 650f; Gibson 2006 p. 424).

Nevertheless, the truth and reconciliation procedure involved far more than simply amnesties, and in many cases even amnesty hearings became tutorials on forgiveness and reconciliation. Some of the most significant aspects of the process were the opportunity that was given to the victims to tell their stories and in some ways the regaining of their dignity through the acknowledgement of wrongdoing. In this way, the amnesty proceeding could
divert the attention to the victims from a focus on the perpetrators in a victims-centred approach, with emphasis on a form of justice that was non-retributive and thus further contribute to its achievement. Notwithstanding its granting of amnesties to perpetrators of gross human rights abuses, the commission appeared to help create a type of justice that was satisfactory for many victims, and could in this way surmount the prosecutable justice deficit (Gibson 2006 pp. 417, 425).

3.4.3 The South African Truth and Reconciliation Commission

In South Africa, leaders of the transition popularized the “truth for amnesty” exchange, promising that those denied amnesty would be prosecuted afterward. But with the apartheid regime controlling government security forces, such a compromise resulted from necessity and many claim that South Africa in practise granted a blanket amnesty since the first conviction for a person that was denied amnesty came as late as in 2004. Only about 1 000 successful amnesty applicants out of a total of 7 000 in a population of 43 millions were reintegrated into society and a mere 2 000 of the 20 000 deponents in the Human Rights Violation hearings were offered to testify publicly at the Truth and Reconciliation Commission about the abuses they had suffered (Graybill 2004 p. 1119; Bosire 2006 p. 24).

Very few perpetrators thus came face to face with their victims in encounters mediated by the Truth and Reconciliation Commissions. However, in the cases where individual reconciliation did occur, it is assumed to have led to the reconciliation of the nation at large, and although the complex divisions and differences of various sorts and levels, South Africa is not considered “an unreconciled nation in the sense of being threatened by imminent disintegration and internecine conflict” (Graybill 2004 p. 1120).

On the personal level, the only generalization that can be made, breaking down justice to individual perception and experience, is that it is impossible to make generalizations. Justice is a ‘personal journey’, about both processes and ends. The TRC, in a host of varied and creative ways, assisted some South African on their journey, and provided such a process, towards defining, claiming and owning justice, personally and nationally (Gready 2005 p. 5).
3.4.4 Reconciliation

One of the first phases of the reconciliatory process is the realization that former opponents have been unjustly victimized and that some of the responsibility may lie on one’s own side. The South African TRC even-handedly distributed the blame to all parties of the conflict in a way that contributed to the reconciliation process, and in line with this reasoning the truth also came to contribute to the democratic consolidation in the way that the Commission helped change society and people’s perception of both themselves and their opponents. The ANC elite also acknowledged the abuses committed by their own people from the start, and took part of the blame to further facilitate reconciliation (Gibson 2006 p. 419; Berat – Shain 1995 p. 167).

It is not particularly helpful to begin a process of evaluation by asking whether the TRC effected reconciliation, because the answers are more complicated than the simplicity of the question suggests. In the South African case, despite the TRC’s popularizing of the term reconciliation, it never provided the country with a clear definition of what it really meant. The consequences were that people were very confused about the goals of the TRC, about what it could and could not realistically deliver (Borer 2004 p. 20, 26f).

Even though the transitional process in general opinion was considered successful in South Africa, the truth and reconciliation process that was carried out there may not result in such a triumph in another place. The conditions that favoured reconciliation in South Africa might be absent and the sought outcome not attained, leaving unfulfilled and exaggerated expectations behind (Mani 2005 p. 519). In comparison, the conflict between the apartheid regime and the opposition was not a full-scale civil war and large proportions of the inhabitants were not directly concerned by the conflict. This makes undoubtedly reconciliation easier than elsewhere (Gibson 2006 p. 426).

Although it may very well be too early to determine how much reconciliation the TRC achieved, either in terms of individual or national reconciliation, early evidence suggests that it succeeded and failed on both levels. In terms of individual reconciliation, there were powerful instances of healing for victims or interpersonal reconciliation between victims and perpetrators, indicated by a sometimes astounding ability to forgive, whereas the TRC in some cases could not help others to put the past behind them in the painful struggle for forgiveness. In the terms of the more political interpretation of reconciliation, the evidence is similarly mixed, where progress and efforts has been made to create democratic and rights
respecting institutions. Nevertheless, old habits die hard and the institutional reform process is a lengthy one and the process is far from complete, since political tolerance does remain scarce in South African political culture (Borer 2004 p. 33; Graybill – Lanegan 2004 p. 4).

3.4.5 South Africa: Summary

South Africa’s transition from apartheid rule was characterized by the negotiated settlement with strong incumbent influence. The democratic opposition lacked the political means to substantially influence the transition and the subsequent process to deal with the past, thus having to agree to an extensive granting of amnesties. Both the incumbent and oppositional elites accepted part of the blame directed at them by the Truth and Reconciliation Commission, and the TRC was considered as being fairly unbiased. Although the commission did have a limited reach to a population of 43 million, it did illustrate the abusive patterns of the past and can in some ways be said to have contributed to individual reconciliation. While it would be presumptuous to claim South Africa a reconciled nation, it is clearly not unreconciled in such a way that a threatening civil war is looming in the distance. The institutional structures of the former apartheid state were, maybe surprisingly, highly legalistic and democratic with the capacity to contribute to the national unity and reconciliation, partly explaining its alleged success. Democratic consolidation is a lengthy process and there are still malfunctioning institutions and elements of abuse in the South African society, but the necessary components for a positive development are largely present and may help keep the transition towards democratic consolidation on the right track.
4 Summarizing Conclusions

In a context of post-conflict peace-building, transitional justice and truth-seeking mechanisms try to redress a judicial deficit and a culture of impunity. As part of democratization theory, transitional justice and its various mechanisms are intended to contribute to a process of democratic consolidation and the adherence to the rule of law. Contributions could be manifested both in terms of institutional reform and implementation of rights respecting laws, but could also be of a less tangible character in the shape of the contribution to the development of a democratic, pluralistic culture or the strengthening of legal norms. The overall conditions in post-conflict states are often dire, not only are the functions of state institutions and the judicial structure impoverished, but also the structures of civil society, communal and family life are in ruins. Political and social structures bear traces of neopatrimonialism and misuse. Poverty is often rife due to earlier mismanagement on behalf of the former administration, and there could be ethnic or intergroup tensions still lingering, threatening to set the peace process off balance and jeopardizing personal security.

4.1 Transitional Justice in Sub-Saharan Africa

Post-conflict states in Africa do often manifest different institutional and legal structures than the Western states where the notion of a rule of law and later also transitional justice originated. This has implications in at least two dimension, where transitional justice logic is on the one hand said to promote values and notions of a rule of law that is not wholly applicable to culturally and politically different system, but also that some of the transitional justice measures that do not live up to a full legal standard in the eyes of the Western world, are deemed extrajudicial, such as *gacaca* courts or the grating of blanket amnesties. Proponents of the former category of mechanisms emphasis their transitional and temporal character, as well as the need for compromise to achieve a higher goal of for instance reconciliation or institutional reform in a democratization process. This illustrates the balance of interests involved and the careful attention that need to be paid in making choices of transitional justice measures. The political situation and structure in the transitional state also limits the choices of measures. Where the transition is negotiated with a strong out-going
regime, the room for action might be very scant and the compromise may severely undercut efforts to establish accountability.

4.3 Truth-Seeking and Reconciliation

Truth-revealing processes such as those in South Africa, Sierra Leone and Rwanda, are most common after negotiated transitions and often combined with other measures such as amnesties, reparation or as in the case of Sierra Leone, a Special Court. In order to carry out a successful truth-seeking process, there need to be a clear and broad mandate as well as political will and support throughout the process. In the case of a truth commission, a political commitment in carrying out the recommendations of the commission is also required for the process to be successful.

The success of truth commissions is often closely related to the achievement of reconciliation. This is problematic in many ways, where reconciliation seldom is precisely defined and thus hard to “measure”. Most often, truth commissions are judge on the basis of interpersonal reconciliation, where they are least likely to have an impact due to the arbitrary character of personal perceptions. While the very same process can leave certain individuals satisfied, it can also stir emotions and rip open unhealed wound for others, thus making it impossible to generalize on its impact on an interpersonal level. On the other hand, the notion of national unity and reconciliation is more probable to be advanced through a truth-telling mechanism such as a truth commission. The commission could then identify structural malpractices and areas of desired institutional reform in order to promote the spreading of an inclusive democratic culture and contribute to democratization in general.

Truth-seeking measures in combination with amnesties are both problematic and facilitating, where the granting of amnesties might be necessary for individuals to come forward and testify, but also may contribute to a culture of impunity. There is also the risk that amnesties in combination with truth will anger victims who cannot seek retributive justice for the wrong done to them, even though the truth is now out in the open. The partial granting of amnesties such as in Sierra Leone do also pose problems when it confuses people about the different tasks of the institutions and inhibited perpetrators that had not been indicted by the Special Court to come forward in the Truth and Reconciliation Commission out of fear that their confessions would be passed on to the Court.
The structure of state institutions is further a key element in the reconciliation process, where a limited state capacity and corrupt administration hinders the implementation of measures to achieve national unity and reconciliation. Socioeconomic factors often diminish the possibility to carry out reparation programs in backing “truth” with material “justice, and limit the possible reform of malfunctioning institutions. International pressure then becomes imperative in maintaining a political will and support for a continued process, and the development of a democratic culture where the ambition of national unity and reconciliation could be pursued. Truth then has little value, if it does not have an impact on the flawed structure that made the abuses possible in the first place.

The political and social structures thus limits both the scope of the truth-seeking process, in they way that they are to provide support and mandate for the process, as well as the ability to carry out the recommended institutional reform and measures to promote reconciliation and avoid similar incidents from happening again.

4.3.1 Sierra Leone

In Sierra Leone, the lack of political will as well as institutional capacity to carry out the recommendations of the Truth and Reconciliation Commission has seriously hampered the reconciliation process. Provided for by the Lomé Peace Agreement through international intervention, the truth-telling process even started with a limited local ownership. With a near collapsed judicial system, a history of widespread physical abuse, and large socioeconomic disparities, the country has been in need for international assistance both in terms of carrying out the transitional justice process and the reform of state institutions. Seemingly, there is no apparent political willingness and commitment to the reconciliation process, where a partial government and a corrupt administration limit the scope for justice. Transitional justice and truth-seeking in Sierra Leone may have been successful on an interpersonal level, but in terms of national unity and reconciliation it still has a long way to go.

4.3.2 Rwanda

In Rwanda, the question is if there has been much of a truth-seeking process at all. Since the gacaca courts seem to be part of a larger government scheme of “Tutsification” of the state structure and institutions, the question is whether the truth has been the central issue.
Depending on the individual perception of confessions at *gacaca* proceedings, there might be a contribution to the interpersonal reconciliation process, but in terms of national unity and reconciliation *gacaca* proceedings produce little “truth” about state structures and patterns of abuse that contributed to the outbreak of violence and the subsequent genocide in the first place. There seems to be both a lack of willingness and commitment of behalf of the Tutsi regime to seriously address malpractices, illustrated by the one-sided character of the *gacaca* trials, as well as the lack of a national unity and reconciliation approach of *gacaca* proceeding, limiting their larger impact on society.

4.3.3 South Africa

The transition in South Africa was characterized by a negotiated agreement between the apartheid regime and the democratic opposition with the ANC in the lead. Although the agreement included extensive provisions for amnesties and the scope of the Truth and Reconciliation Commission was limited and only directly involved a fraction the population, it seemingly did contribute to reconciliation both on an interpersonal level and well as in relation national unity and reconciliation. The Commission enjoyed both a broad mandated as well as governmental support.

Though the reconciliation on the interpersonal level was, as could be expected, depending on the individuals’ perception of the concept and not accomplished in the case of many of the victims, there is still evidence to support the claim that the truth commission did help victims in numerous cases. In relation to the national unity and reconciliation the commissions work was facilitated by the broad mandate and political support, the relatively democratic character of the state institutions and the prevalence of a judiciary committed to the rule of law, and thus an institutional capacity to carry out the reforms necessary in advancing reconciliation. The truth-seeking process in South Africa was both supported by state institutions as well as accepted by them, and although the implementation of recommendations and the development of an altogether democratic culture take time, South Africa is seemingly on the track towards democratization.
4.4 Conclusions

Transitional justice and the mechanisms of truth-telling seem to be highly dependent on the political and social structures of the state, where the lack of support and political willingness in both in initiating and carrying through a truth-telling process obstruct the workings the mechanism. Where there is also a lack of institutional and state capacity or incentives to implement the reforms necessary to advance national unity and reconciliation, the society is either dependent on the international community for financial help and pressure to keep the process going, as illustrated by the case of Sierra Leone, or either very much in danger of slipping back into old patterns of malpractice and abuse that is the case in Rwanda. The opposite is illustrated by the case of South Africa, where a process towards national unity and reconciliation is well under way, although with occasional setbacks.

As for the issue of individual reconciliation, truth-seeking measures are considered to do both harm and good. The procedure has been shown to have helped some individuals to reconcile with their perpetrators, but for others it has constituted yet another trauma. The focus of truth-seeking mechanisms’ outcome in terms of reconciliation ought thus to be more focused on the aspect of national unity and reconciliation.

In relation to democratic consolidation, this type of reconciliation can be seen as part of a democratization process, where to truth-seeking process mainly serves to indentify and diagnose the problems and character of the former patterns of abuse. In this way, a truth-seeking process can be able to point an attentive ruling elite in the right direction for addressing problems properly, rather than providing a solving to the problem themselves. As such, a truth commission’s recommendations can help to advance national unity and reconciliation, consolidate democracy and further the implementation of democratic reform as well as the cultivation of a democratic culture in society.
5 Bibliography


