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Locating Human Rights in Post-Genocide Reconstruction: Reconnecting the Global, National and Local

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To the Graduate Council:

I am submitting herewith a thesis written by Elizabeth Warrick Guyol-Meinrath entitled "Locating Human Rights in Post-Genocide Reconstruction: Reconnecting the Global, National and Local." I have examined the final electronic copy of this thesis for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts, with a major in Anthropology.

Tricia R. Hepner, Major Professor

We have read this thesis and recommend its acceptance:

Gregory V. Button, Graciela S. Cabana

Accepted for the Council:
Carolyn R. Hodges

Vice Provost and Dean of the Graduate School

(Original signatures are on file with official student records.)

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Locating Human Rights in Post-Genocide Reconstruction: Reconnecting the Global, National and Local

A Thesis Presented for the
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Last, I want to dedicate this to my father, David. I know you would have read each word carefully and thoughtfully.

Abstract

Despite the ever-expanding criticism of the way the international community conducts its aid missions, it remains clear that humanitarian intervention is necessary for the successful rebuilding of post-genocide nations. As such, the interactions of the international aid community with the national governments and local communities of Cambodia, Guatemala and Rwanda are of particular importance to this thesis. By analyzing these relationships and their resulting policies, it becomes clear that peace cannot last if the survivors are unable to relate to the justice and reconciliation measures implemented. Local cultural norms and traditions, as well as input from survivors, must be the foundation from which national and international policies are built. Furthermore, the goal of international intervention must focus on rebuilding the legitimacy of the nation-state in the eyes of both the local citizens and the international community. As it is oftentimes the state itself that commits genocide against its own people, it is imperative that the new government be seen as separate from the old, that the state itself institute justice and reconciliation policies with the aid of the international community, and that the international community adhere to a "light footprint" policy.

Ultimately, the most effective solutions are those that have cultural and historical meaning for the affected local communities, are implemented by the state and are supported by the international community. To establish sustainable initiatives the international community must adopt a human rights oriented policy that addresses the underlying causes of genocide and encourages the local appropriation of human rights dialogue. Using an analytical framework derived from anthropology's foci on human rights, politics and law, I argue that the recognition of overarching themes across these case studies can help improve the way international, national and local post-genocide justice, reconciliation and state-building policies are formed.

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CHAPTER 1
Introduction: Rethinking Post-Genocide Reconstruction

Comparing Events of Genocide
Guatemala: The Power of the Local

In 1999, the Guatemalan *Comisión para el Escalarecimiento Histórico* (CEH), or

Commission for Historical Clarification, published a groundbreaking report bringing the

Guatemalan army to task for its genocidal policies during the country's Civil War. Sadly, very

few of the CEH report's suggestions for the achievement of justice and reconciliation have been

implemented, and humanitarian efforts of non-governmental agencies have been severely

undermined by military and government institutions.

While national initiatives, such as the CEH and the *Fundación Antropología Forense de

Guatemala* (FAFG), or Guatemalan Forensic Anthropology Foundation, have been instrumental

in bringing the atrocities committed by the army to light, resistance from the Guatemalan

government, court system and army has ensured that few of the perpetrators have been held

accountable in a court of law. For example, in 2005, the constitutional court in Guatemala ruled

that sixteen army soldiers on trial for war crimes were exempt from prosecution (Watts 2005).

Various groups have attempted to put General Montt, Guatemala's political and military leader at

the time of the genocide, on trial, but in September of 2007 he was elected to the Guatemalan

Congress, granting him immunity from prosecution.

In addition, the CEH's suggestions for ways to reduce socioeconomic disparity between

Maya and non-Maya Guatemalans have been ignored, making long-term stability and peace in

Guatemala a virtual impossibility (Villarreal 2000:2). In lieu of government action, some

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successful reconciliation and social justice movements have been supported by transnational groups, including Network in Solidarity with the People of Guatemala (NISGUA) and the Guatemalan Human Rights Commission (GHRC). With their encouragement, survivors of the genocide are coming up with ways to take ownership of their past, utilizing storytelling, theater and community participation in mass grave excavations to create a dialogue that is endowing Maya communities with a sense of strength and solidarity. Despite the successes of these local initiatives in helping survivors come to terms with their pasts, the Guatemalan government has remained largely impervious to the pressures of these actors, and physical and structural violence continues to be committed against the Maya people and those who support them.

Cambodia: Failure of the International Community

In 1979, the Vietnamese military removed the genocidal Khmer Rouge government from power in Cambodia. Despite the complete destruction of Cambodia's national infrastructure under the Khmer Rouge, the United Nations refused aid to the struggling nation. During the roughly three and a half years the Khmer Rouge was in power, nearly two million Cambodians perished as a direct result of the government's policies. However, Cold War politics ensured that the Khmer Rouge continued to be recognized by the international community as the true government of Cambodia, and it retained its United Nations seat until 1982 (Fawthrop and Jarvis 2004:31-2; Terry 2002:134).

With diplomatic impunity protecting Khmer Rouge officials, Pol Pot and his followers used their United Nations vote to block potential aid to the struggling People's Republic, even

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withholding medical aid while an epidemic of malaria killed thousands of men, women and children (Fawthrop and Jarvis 2004:35-38). In 1991, the United Nations finally launched a peace keeping mission to assist the embattled nation. While this mission was the largest and most expensive peace keeping operation to date, costing over 3 billion dollars, it was largely unsuccessful. The United Nations' refugee camps were used blatantly as bases of operation by the Khmer Rouge, allowing them to continue staging attacks on the people of Cambodia.

Furthermore, the democratic elections the United Nations sponsored during their second attempt at peace keeping in 1993 resulted in a coalition government that dissolved in less than a year (Etcheson 2005:40-1; Hinton 2005:13). However, in 2009 a new joint Cambodian-United Nations tribunal was launched to try former members of the Khmer Rouge for war crimes. While this effort has been widely criticized from a legal standpoint, it has sparked a new social movement in Cambodia that is helping Cambodians re-create their national memory and establishing social spaces within civil society, for public human rights dialogue.

An Anthropological Approach to Post-Genocide Initiatives

As these two examples show, there is ample country-specific research available regarding the various successes and failures of locally, nationally and internationally based post-genocide rebuilding programs. However, thus far little attention has been paid to the overarching themes of what works, what does not work and what can be done to improve the contributions of the international community to post-genocide justice and reconciliation processes. Again and again, research and experience demonstrate that locally based initiatives are the most culturally meaningful to post-genocide survivor communities. As such, these types of initiatives have the

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potential to foster the reconstruction of social spaces in which dialogue regarding human rights can flourish. This is a crucial component of post-genocide rebuilding that has been recognized by many transnational institutions, such as Human Rights Watch and the Guatemalan Human Rights Commission, but is too often overlooked by the international community. Hence, critiques of the international community's traditional "top-down" method of promoting and monitoring human rights have called for increased inclusion of "bottom-up" approaches (Messer 2009:121-2).

However, while valuable, local and transnational approaches do not always have the resources or clout to effect the large scale political and economic changes needed to promote stable state-building and implement sustainable rebuilding programs. What is required, then, is an approach that strikes a balance between widely accepted international approaches and local, grassroots initiatives. Essentially, the human rights, culture oriented approach that is often used by transnational organizations should be combined with the political, nation-state focus typical of international institutions like the United Nations.

My quest for a more efficient and effective approach to international aid is not a new one. In particular, the fields of applied and development anthropology have long focused on ways to improve international and transnational initiatives focused on aid and development. Additionally, studies of power relations and the contextualization of genocide have become increasingly popular in anthropology. Indeed, "the relationship of indigenous and ethnic groups to states; to the social organization and culture of governments, IGOs and NGOs; and to plural legal systems as they guarantee or interfere with human rights are now central topics for anthropological study" (Messer 1993:239).

In the 1980s, standard approaches to third-world development were criticized for perpetuating "inequality and the lack of effective (em)power(ment) in the name of humanitarian assistance and political feel good factors," (Simon 1997:183) and anthropology called for development practices that included local actors in an effort to effect change "from below" (Simon 1997:183). While the idea of "development" has been critiqued as being inherently imperialist, Westerncentric and ultimately destructive for poor and indigenous communities, Simon and others have defended the field as necessary, calling for the creation of a more reflexive, culturally sensitive approach to providing development aid that incorporates "indigenous traditions, histories and 'knowledges'" (Simon 1997:185).

Meanwhile, the field of applied anthropology has advocated the removal of anthropology from the purely academic and situating it in the "real world," the "systematic joining of critical social theory with application and for pragmatic engagement with the contemporary problems of our social and physical world" (Rylko-Bauer, Singer and Willigen 2006:178). After the Vietnam War, the field of anthropology experienced a shift in which the cataloguing of other cultures gave way in importance to *understanding.* Applied anthropology uses anthropology's unique ability to understand societies within historical, cultural, political and economic contexts to further a global ideal of human rights, transforming the anthropologist from observer into advocate (Rylko-Bauer, Singer and Willigen 2006:181-3; Messer 1993:237).

In the 1970s, Laura Nader encouraged anthropologists to "study up" and focus not only on impoverished, marginalized communities but also on those communities and individuals who control power and wealth (Wedel, Shore, Feldman, et. al. 2005:33). By understanding the social, political and economic networks that provide a framework for genocide and other conflicts, more

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effective policies for justice and reconciliation can be created. In particular, anthropology can help inform public policy by studying the way the state and its local populations interact, as well as understanding how "state policies and government practices are experienced and interpreted by people at the local level" (Wedel, Shore, Feldman, et. al. 2005: 34). As such, "the relationship between policy, research, and action continues to be a focus of reflection and analysis within applied anthropology" (Rylko-Bauer, Singer and Willigen 2006:186).

As such, in this thesis I try to rise to Simon's call for anthropology "to unite understanding and action, or theory and practice, into a single process which puts people at the very centre of both...helping people to help themselves through appropriate enabling interventions...rather than merely the untargeted giving of increased aid volumes" (Simon 1997:197). As such, this thesis is meant for anthropologists in all subfields, but particularly those working in the development, human rights, public policy and applied fields. Additionally, I hope that anyone outside of anthropology who is interested or works in the field of post-genocide reconstruction may find the ideas presented here useful. The concepts here are meant to extend beyond the theoretical realm and into the real world to be used "on the ground."

Case Studies and Thesis Objectives

This thesis is not a critique of the international community's aid policies established in Cambodia, Guatemala and Rwanda, insofar as I only use what has already been said of their successes and failures. Neither is this a critique of the nationally run judicial trials or truth commissions held by each country. This is, however, an analysis of what the international aid community, and the United Nations in particular, can do in the future to improve the way it

works with and responds to the needs of post-genocide survivor communities. To illustrate the dialectical relationship between the local and the global, I show how *gacaca* trials in Rwanda function as a nation and state-building exercise, how Guatemala's development of grassroots reconciliation programs has changed the international community's perception of local solutions, and how the modern social movement in Cambodia is helping to re-write national memory.

I have chosen to look at the post-genocide justice and reconciliation initiatives of Cambodia, Guatemala and Rwanda for several reasons. Throughout my studies I have written papers detailing the social, political, economic and historical contexts of a number of genocides and critiquing the various international, national and local level rebuilding initiatives implemented in each case. During this process I began noticing that the critiques of these initiatives were all focusing on the same basic issues: the ineffectiveness of top-down approaches, the need for local actors to be included in the development of reconstruction processes, and the inability of any of the three spheres to implement programs that were sustainable.

As I began doing more research, it became clear that there was a gap in the anthropological literature. Despite a recognition of these recurring problems in existing post-genocide reconstruction approaches there was no discussion of how to solve them. In addition, the articles that compared and contrasted various post-conflict situations either focused on one geographic area or on one sphere of intervention (international, national or local). Examining the existing literature in the fields of development, politics, economics and law I found the same situation in each case.

In an attempt to fill this gap in the literature, I offer a geographically broad analysis that takes into account the contributions of the global, national and local spheres in each case. I specifically chose to analyze Guatemala, Cambodia and Rwanda for several reasons. First, their cultures, physical locations and historical relationships with the international community are vastly different. This maximizes the ability to find the most basic common denominators, independent of cultural or situational similarities, that contribute to the success or failure of post-genocide reconstruction policies. Second, each of these three countries have taken very different approaches in addressing their genocides. The balance between justice and reconciliation, the particular motives and desires of survivors, the balance of power between international, national and local actors, and the very nature and scope of the genocides have all impacted the development of reconstruction policies. This highlights the importance of developing situation-specific, culturally relevant policies.

In addition, the wide variety of approaches seen within these three countries provides a representative sample of the type of international, national and local justice and reconciliation initiatives we have seen implemented in the past. By assessing a variety of approaches we can provide a wider knowledge base for future aid missions to draw upon. By studying the social, political and economic conditions underlying the development of particular initiative types, and evaluating their respective strengths and weaknesses, we can perhaps begin to recognize patterns of what works and what does not work in various situations.

As this thesis shows, post-genocide rebuilding processes are about more than helping survivor communities heal or repairing national infrastructure; indeed, they are crucial to the furtherance of a discourse of human rights through their ability to redefine social spaces and

strengthen civil society, critical elements for interrupting of the cycle of violence that genocide embodies. While it is clear that each nation's needs must be assessed on a case by case basis, with cookie-cutter initiatives incapable of addressing the particular needs of survivor communities, this does not invalidate the need for universally applicable guidelines for action.

Using an analytical framework derived from anthropology's foci on human rights, politics and law, I argue that the recognition of overarching themes across these case studies can help improve the way international policies of post-genocide justice, reconciliation and state building are formed. Based on my analysis I propose a tripartite approach in which the international community give primacy to the rebuilding of the nation-state and national identity, identify and incorporate local practices and knowledge in the development of initiatives, and commit to the protection of human rights as the ultimate goal of international intervention.

First, I review the current literature regarding studies of post-genocide reconstruction, then detail the challenges of creating international aid initiatives within a human rights framework. This is followed by a discussion that unpacks the meaning of human rights, and a navigation of the relationship between aid, the nation-state system and human rights. From there, the internationally, nationally and locally based post-genocide rebuilding initiatives established in Guatemala, Cambodia and Rwanda are explored individually. In the end, I use my analysis of these topics to propose an internationally based approach to post-genocide intervention that focuses on the establishment of long-term, sustainable justice, reconciliation and state-building programs.

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CHAPTER 2
Literature Review: Goals and Challenges of Post-Genocide Reconstruction

The Role of International Intervention

Lakhdar Brahimi (2007), the former Special Advisor to the Secretary-General of the United Nations, writes about the challenges state-building in post-conflict nations presents for the international community, acknowledging first and foremost the absolute necessity of international cooperation in successfully re-building these devastated countries. Besides the ethical and moral impetus for assisting those in need, Brahimi also points to political and economic motivators, reminding us that in our increasingly globalized world, the effects of genocide in one nation do not stay confined to that nation alone. Instead, a ripple effect is created, with the outpouring of refugees affecting surrounding nations and, ultimately, countries across the globe. Additionally, the destruction of the national economy or political structure of a nation, even a small, poor nation, affects the global economic and political environment. Like an intricate spider web, when one strand breaks the rest of the structure is weakened, making the development of strategies to promote long-term stability of particular importance (Brahimi 2007:2).

That being said, international assistance can easily come to resemble imperialism if it fails to take a culturally sensitive, reflexive, human rights oriented approach, leading, ultimately, to the failure of rebuilding initiatives. Thus, the development of justice and reconciliation programs in post-genocide nations must take into consideration the particular economic, political

political and social traditions and capacities of that country, as well as the underlying causes of violence (Brahimi 2007:5-6).

Although there are hundreds of non-governmental organizations (NGOs), human rights groups, religious-based charities, special interest groups, and government sponsored aid programs that routinely provide aid to post-conflict countries, I focus specifically on the programs and actions of the United Nations. Arguably the most influential aid organization since its inception in 1945, the United Nations is comprised of 192 member States and has played a consistently prominent role in post-conflict reconstruction around the world. There are many critics who argue that the very creation of the United Nations, and the continued need for its existence is evidence of the sovereign nation-state system's inability to support successful international relations programs (Goodale 2009:5; Maguire 2005:5). These individuals provide a compelling critique against the perpetuation of the nation-state, and, particularly, the use of nationalist rhetoric as an appropriate forum for the promotion of human rights.

However, this thesis shows that, although a cautious and reflexive approach to state-building is crucial, reconstructing the state and national identity must be central to post-conflict rebuilding approaches. In a post-genocide context, the nation-state and a universal ideal of human rights need not be mutually exclusive. Additionally, local and national justice and reconciliation programs are often the ideal places to develop a dialogue of human rights. As Shannon Speed (2009) concludes about the discourse of human rights in relation to conflict, part of the rebuilding process is the renegotiation of power relations between the local population and the state. In this way, those who were previously marginalized can become primary actors in this dialogue of power. By capitalizing on this through the inclusion of local actors in the

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development of justice and reconciliation strategies, new social spaces, primed for the discussion of what human rights are, may be created (Speed 2009:242).

While the central role of justice and reconciliation in the re-establishment of peace in post-conflict regions is a relatively new concept, and certainly one that did not enter into the realm of international law until after World War II, it is now well established that justice, understood here as the legal assigning of responsibility for wrongs committed, is crucial for the re-creation of stable states and strong civil societies. Likewise, re-establishing social cohesion and national identity is just as important (Etcheson 2005:10-1; Soyinka 2004:476; Oomen 2009:179). The power of justice and reconciliation mechanisms lies in the creation of open dialogue, of a cataloguing of the past, with individual sufferings and horrors being entered forever into the country's, and the world's, archives. It is perhaps this aspect that is the most therapeutic: those who were previously oppressed and denied full personhood are now being heard (Soyinka 2004:477). Of course, there is a fine balance between justice and reconciliation that must be maintained, as legal sentencing is hollow without the restoration of social relations and the ability of survivors to deal with their grief. Likewise, reconciliation without justice is virtually impossible. Those whose lives have been destroyed cannot be expected to move on while the individuals who raped, tortured and/or killed their loved ones face no consequences for their actions (Oomen 2009:198).

Including Local Actors in Program Development

There is also a great deal of debate within the study and practice of post-conflict reconstruction about the extent to which victims should participate in the formation of justice and

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reconciliation programs. Unlike *criminal* justice, which focuses primarily on retribution and punishment, *transitional* justice is concerned with transformation, reconciliation, victims' needs, and dealing with perpetrators. Essentially, transitional justice attempts to reconstruct the social fabric of post-conflict societies (Olugbuo 2010:109). Hirsch (2010) discusses the recent movement that critiques international justice models, such as the United Nations' International Criminal Tribunals. This critique focuses on the failure of these initiatives to adequately meet the needs of survivors (2010:150). While transnational human rights groups, by the very nature of the transnational NGO structure, often work with local groups and individuals to help formulate their programs, the top-down approach of international groups, such as the United Nations, often fail to do so.

Much of the basis for this critique lies in the observation that top-down models of justice are often Western-centric and based on ideals, rules and procedures that are unfamiliar to the survivors they are supposed to serve, inhibiting their ability to be culturally "translated" and legitimized (Hirsch 2010:155). Thus, the value of incorporating local opinions into the development of transitional justice programs is fairly obvious from a moral standpoint and exemplifies why an anthropological, reflexive, human rights based approach to post-genocide reconstruction would be valuable. Indeed, Hirsch explains the view of one advocate of this approach as such: "Drumbl contends that, for reasons of efficacy and morality, those victims actually harmed should have a voice in determining the extent of international law's role as a remedy after mass violence...He envisions identifying a horizontal plane of justice options" (2010:153-4).

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However, Hirsch (2010) also reminds us that there are serious flaws in the reasoning of Drumbl and others who share his opinions. Culture is not a homogenous entity. The opinions expressed by one individual do not necessarily correlate with the opinions of other members of that group. Various historical, social, political and economic factors are at work, and relying on local "culture" to give survivors a unified voice in developing the best strategy for justice and reconciliation is unrealistic. Furthermore, international organizations do not have the advantage of transnational ones in that "it is of course impossible to understand the complexities of the operation of a particular custom when a committee is dealing with eight different countries in two weeks. One cannot expect committee members to spend a month reading the anthropological literature...in order to determine the meaning of a custom" (2006:118).

Additional concerns include the mindset of survivors in the wake of mass atrocity, as their opinions regarding the best way to achieve justice and reconciliation may be influenced by where they are in their own personal mourning and rebuilding process (Hirsch 2010:165-6). Says Shaw, "people select, in different contexts and historical conditions, which of several strategies will best allow them to rebuild their lives...People who have to rebuild their postconflict lives in conditions of state collapse, institutional failure, and chronic insecurity make 'choiceless decisions'" (2010:222-3).

This does not mean that international institutions, such as the United Nations, should reject the concept of integrating the local altogether, or that they should leave the human rights aspects of justice and reconciliation to the realm of transnational organizations. The real issue is not so much with "Western" justice being unfamiliar to non-Western communities, but rather the tendency of the United Nations to prioritize of the needs of the international community over

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those of survivors and the failure to work within a human rights oriented framework. As such, there should be a balance between the political/retributive justice oriented international approach and the human rights/social justice oriented transnational approach. The incorporation of local actors, their beliefs and traditions into a universal ideal of human rights law, within the context of international post-conflict intervention, is not an unattainable ideal. In fact, I argue that post-genocide United Nations interventions work best, in the long-term, when a balance is struck between the global, national and local.

Aside from the fact that long-term stability is only possible if the justice and reconciliation methods implemented are culturally relevant and internalized by the survivors, it is a time-tested truth that cooperatives of any sort are more successful when all parties can reach an agreement of methods and goals. As An-Na'im (2009) concludes, this involves the establishment of common cultural denominators, a concept inherent to the development of a universal standard of human rights (2009:74). The key, then, to establishing legitimacy for the programs produced, is the combined participation of international, national and local elements through both formal and informal power structures (Brahimi 2007:7).

As such, Oomen advocates "an empirical, people -based approach" that focuses on input, demos and output, that is the procedures and principles that go into planning justice and reconciliation mechanisms, the stakeholders involved in planning them, and the results of the implementation of these mechanisms (2009:175). Legitimacy confers power, ensuring that the methods and results of justice and reconciliation programs are accepted as moral and just by the people for whom they were designed, for it is here that "a reinterpretation of the past, a rephrasing of common identity, a record of what took place and why" is created (Oomen

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2009:182). To succeed at this, post-genocide reconciliation and transitional justice programs must be seen as legitimate by all parties involved in order to achieve sustainable peace, and a conscious effort should be made to promote their legitimacy.

This focus on creating and maintaining legitimacy is central to the interests of the international community. With aid programs costing millions, even billions of dollars, and the destabilizing economic and political impact genocide has on the international community as a whole, the development of short-term strategies is counterintuitive and counterproductive. Here the United Nations has the advantage over other smaller, non-political aid groups, as the United Nations has the multilateral political influence and resources available to assist with the creation of justice and reconciliation initiatives that are perceived as legitimate by both the international community and the local population (Brahimi 2007:18-9; Sarkin 2001:143).

Of course, one of the best ways to ensure legitimacy is to employ structures that are transparent and culturally familiar, utilizing the input of local and national traditions and cultural norms as a basis on which to build these institutions (Oomen 2009:181). This also affects overall legitimacy of the nation-state, as the justice and reconciliation programs established must be perceived as of benefit to the survivors of genocide. If those involved in the establishment of these programs, referred to as the demos, do not seem to be acting in the best interest of the people, even legitimacy of the input and output will not be enough to make programs successful in the long-term. That is, if the motives of those developing and implementing justice and reconciliation initiatives are perceived to be self-serving, the initiatives will lack legitimacy among survivors. Here, Oomen notes that there are four main aspects of output legitimacy: the timely application of initiatives, the volume of output, the public accessibility of the initiatives

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and the objectivity of the initiatives (2009:183). Legitimacy, then, must be gained "while physically rebuilding the country and reweaving common narratives of belonging" (Oomen 2009:198). To better understand the existing methods of pursuing legitimate justice and reconciliation programs, we must first explore the difference between modern transnational and international movements.

Defining the Transnational / International Relationship

Transnational groups focus on globally relevant topics and the administrative sector of the group is generally based in one particular country (often a Western nation). However, the majority of the work done by transnational groups is locally based, carried out via organizations local to the region. This includes groups such as Oxfam, *Medicins san Frontieres* and Amnesty International (Toulmin 1994). On the other hand, international organizations, such as the United Nations and the International Criminal Court, while generally open to working with local organizations, usually deploy their own staff to conduct peace and aid missions. In a legal context, transnational justice refers to efforts of third party countries to try individuals from other nations for crimes committed there. Examples of this include Spain's attempts to try General Efraín Ríos Montt for crimes against humanity committed in Guatemala and their trial of Augusto Pinochet for his actions in Chile (Dickinson 2004). In contrast, international groups seeking retributive justice set up court systems independent of the nation-state system. That is, they do not utilize the court system of any particular sovereign nation. Examples of this include the United Nations' International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

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The difference between transnational and international organizations also extends to their mandates. As Victoria Sanford (2003) notes, literature examining transnational NGOs emphasizes the humanitarian aspects of post-conflict aid and development (249). Relatively little attention is paid to the political, legal and social nuances of what human rights or social justice are, or how to achieve them in actual practice. Say Goodale and Clarke, " transnational actors often promote justice and human rights as if they were conjoined normative twins, as in 'our NGO works around the world for the protection of basic human rights and justice,'... [where] justice is offered as a vague characterization of some future end-state" (2010:10). In contrast, international organizations, like the United Nations, are inherently political and are concerned with the functioning of the global nation-state system. The focus here is on negotiating truces and ceasefires, the rebuilding of infrastructure and implementing retributive justice systems. As such, there exists a gap between transnational and international initiatives where the disconnect between the global and the local is magnified. The international community's view of "global" and "local" powers as antagonistic of each other has inhibited its ability to establish truly effective post-conflict justice, reconciliation and rebuilding programs, and this dichotomy must be removed from the international community's policy development playbook.

As has been shown, the role of the international community in providing post-conflict aid, the relationship between justice and reconciliation, and whether nation-states are appropriate forums for promoting human rights represent the central debates surrounding the development of post-genocide rebuilding strategies. As well, this thesis explores the roles of national and local actors, legitimacy theory, what justice and human rights are and the "proper" methods for obtaining them, and the relationship between transnational and international organizations. The

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following sections discuss these issues in greater depth before finally situating them within the context of post-genocide Cambodia, Guatemala and Rwanda. First, I begin with a discussion of the development of human rights and international aid since the Cold War.

Locating Human Rights within International Aid

The concept of human rights can be traced from Greco-Roman stoicism up through the European Renaissance and Enlightenment, all of which recognized that governments have a duty to provide for their citizens, and that humans have a right to dignity which is not earned, but inherent as part of our humanity (Weston 2006:17; Goodale 2009:2). After World War II, it was determined that legal definitions needed to be penned and measures needed to be taken to ensure human rights were respected and promoted. However, the politically independent, yet economically interdependent, nation-state structure of the modern world makes it politically and fiscally prudent in some cases, and imprudent in others, for countries to interfere in the affairs of their peers (Claude and Weston 2006b:5-6). At the head of this movement, NGOs have stepped in as the leading defenders and promoters of human rights, filling needs that fall into the gaps between states and free markets. Though not entirely free from biases or political agendas, NGOs do not have the same constraints as nation-states. They may criticize more freely and make demands without worrying about igniting a frenzy of finger pointing. Unfortunately, local and transnational NGOs may not always have the resources necessary to address core causes of human rights violations.

With the end of the Cold War came a new era in the way international intervention is conducted. The concept of sovereignty gave way to the idea that the international community has

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not only a right, but a moral imperative, to intervene in conflict and post-conflict situations if violations of human rights are being committed (Terry 2002:13). Unfortunately, the international community does not always adhere to a policy of moral imperative, as political and economic issues play as large, if not a larger, role in determining how and when intervention occurs. This is particularly apparent in the study of genocide, as semantic debate over the 1948 Convention on the Prevention of Genocide's definition of "genocide" often precludes the timely preventative intervention of international powers in genocide situations. As such, the needs of those we are supposed to be helping often take a back seat to linguistic nitpicking and competition between countries and between organizations for funding, prestige, and other such concerns. In the race to be seen "doing" something, the international community often forgets that the goal of international intervention should be to assist post-conflict nations in getting back on their feet by coordinating with local and national leaders (Brahimi 2007:3).

Additionally, the Western-dominated aid community often pushes for Western-centric programs, showing more concern for how the international, i.e. Western, community will perceive justice and reconciliation programs than how they will benefit the local communities for whom they are being established. Furthermore, new post-conflict national governments have their own agendas that may or may not be in line with the goals of aid programs. These factors, along with many others, plague the fields of human rights intervention and post-conflict rebuilding. Though not without their flaws, the fact remains that these NGOs have made huge strides in putting pressure on the global community to take human rights seriously (Claude and Weston 2006b:13).

In particular, three issues appear again and again in the literature as consistent problems in establishing successful peace initiatives. First is the international community's ignoring of local cultural norms and conditions. In his work on state-building, James Scott details the importance of avoiding an imperialistic approach to state-building and believes the use of a multivocal system that incorporates local cultural norms and knowledge prevents this from occurring (Scott 1998:6) In addition, in his theories on the importance of achieving and maintaining legitimacy for justice and reconciliation initiatives, Abdullahi Ahmed An-Na-'im notes that, "people are more likely to observe normative propositions if they believe them to be sanctioned by their own cultural traditions" (An-Na'im 2009:69). Incorporating local knowledge and tradition in the formation of justice and reconciliation initiatives not only leads to the development of culturally relevant programs that allow genocide survivors to confront the trauma they have experienced, it also encourages the formation of social spaces that have been destroyed by past conflict. As Brahimi (2007) points out, the international community and national government can only lay the groundwork for successful reconciliation to occur. Ultimately, it is only at the local level, through communities' appropriation and internalization of these initiatives, that reconciliation can actually occur (15; Speed 2009:231).

Second is the focus of the international community on quantitative measures of progress. This approach has been labeled "technocratic" by Fiona Terry, the director of research at *Médecins sans Frontières*. She critiques the focus on numbers, for example of distributed gallons or pounds or food, water and medicinal aid, as evidence of the success of aid missions (2002:202). This focus precludes the development of policies that establish a relationship between the local communities and the international sphere, the result of which is the reduction

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of "human beings to their biological state, defined and represented by what they lack to stay alive" (Terry 2002:242). This also removes the focus of aid from the long-term goal of reconstruction and stability to the short-term satisfaction of basic needs.

As such, the transnational dialogue surrounding human rights must become the discursive framework by which the success of international intervention and post-conflict reconstruction policies are judged by the humanitarian community, what Arjun Appadurai calls a global "ideoscape" (Goodale 2009:2-3). These ideoscapes are the "collections of political images, often related to the ideologies of states, or the counter-ideologies of those competing for power with the state. Ideoscapes are composed of elements of the Enlightenment world-view, including ideas like 'freedom', 'rights', 'representation' and 'democracy'" (Ledgerwood and Un 2003:531-2). Globalization has helped spread these ideas, and, as we shall see, they are often imposed upon post-genocide nations through United Nations intervention programs.

Third is the neglect of state building as a crucial element of aid. This goes beyond the rebuilding of roads and reopening of schools to addressing the devastation of the institutions of government: presidents, parliaments, boards of defense, education and health, etc. Common sense, not to mention experience, dictates that long-term stability cannot exist without a stable government able to sustain itself. However, Brahimi notes that in past interventions, the United Nations often set up power structures that were redundant of the ones being rebuilt by the local government, clearly favoring the production of short-term solutions and undermining the state's authority and effectiveness. It is for this reason that Brahimi advocates the United Nations' recently adopted policy of "light footprint" action, which acknowledges the primacy of the local

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and seeks to avoid reinventing the wheel by establishing parallel programs that compete with national authority and undermine the perceived stability of the State (Brahimi 2007:4-6).

Torini cautions that a light footprint approach is meaningless without the inclusion of national and local actors in decision making processes, while Terry demonstrates the interface of this issue and that of technocratic focus in her critique of aid missions in post-genocide Rwanda, saying, "relatively sophisticated programs were being conducted in the camps while funding requests to enable rudimentary improvements to the justice system in Rwanda were ignored, in spite of the widespread acknowledgment that justice was a prerequisite to breaking the cycle of impunity that plagued the country" (Terry 2002:202; Torini 2008:247-248). As such, the interdependence of the issues discussed here is exemplified, demonstrating the necessity of the tripartite plan I propose for establishing successful, long-term rebuilding processes: identifying and incorporating local practices and knowledge, focusing on the rebuilding of the nation-state and national identity, and committing to the protection of human rights as the ultimate goal of international intervention. Without all of these elements working together, long-lasting peace cannot be established. To better understand how all these elements fit together, the meaning of the phrase "human rights," as well as the relationship between human rights and anthropology, must be more clearly defined.

CHAPTER 3
Unpacking the Meaning of "Human Rights"

Human Rights from an Anthropological Perspective

Due to the complex nature of human rights issues and the natural tendency of anthropology to critically analyze its own motivations, intentions and actions, it is likely that anthropology as a discipline will never reach a fully united consensus of what its relationship should be with human rights. However, the dialogue regarding how human rights should be defined, whose responsibility it is to promote them, how they should be promoted and so forth, has proven important in linking the fields of anthropology and human rights. In turn, this has spurred the development of critical, reflexive approaches to promoting human rights within a post-genocide context.

One major issue anthropology has faced is whether a universal standard of human rights can ever exist. After all, cultural relativism is a pylon of anthropology and something as seemingly simple as "who is human" may be answered differently by people from different cultures (Messer 1996:103). However, the American Anthropological Association's 1999 statement that, "when any culture or society denies or permits the denial of such opportunity [to fully realize their humanity] to any of its own members or others, the American Anthropological Association has an ethical responsibility to protest and oppose such deprivation," went a long way in resolving the culture versus rights deadlock (AAA 2009:101-2). Ultimately, the promotion of human rights does not necessitate the suppression of cultural difference, and anthropologists are now some of the most passionate defenders of human rights around the world.

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Anthropologists are continually seeking new ways to use our understanding of the multiplicity of human rights standards to develop culturally meaningful ways to promote human rights around the world (Weston 2006:20; Messer 2009:105). In particular, Abdullahi Ahmed An-Na'im supports a "cross-cultural approach" to human rights work and dialogue, seeking to develop a multi-cultural consensus on those common denominators that can provide a basic framework for a normative standard of human rights (Goodale 2009:6). By redefining human rights as the right to culture, and reframing culture as a vehicle for human rights rather than a barrier, those who wish to commit human rights violations can no longer hide behind the "right to culture" defense. The dehumanization of any group is unacceptable no matter the pretext, and cultural relativism does not necessitate tolerance for cruelty (Kymlicka 1996:58; Renteln 1988:68). As Eriksen states, culture does not define action, action defines culture; and it has become the role of anthropology to help "translate" human rights into a meaningful format among cultural differences (2001:360; Goodale 2009:6). Paul Farmer and Nancy Scheper-Hughes seem to do this in their work in applied anthropology, setting culture aside in favor of restoring health and dignity to individuals who are victims of structural violence (2002:148-165; 2003:167-197).

That being said, a dialogue of human rights only makes sense within the context of culture, as "the 'reality' of human rights is culturally constructed" (Preis 1996:347). Values from one society cannot be superficially imposed upon another, as they cannot be fully internalized by the imposed upon culture. According to Sen's "capabilities approach", the cultural construction of human rights occurs in two main realms: opportunity and process. Opportunity is the freedom of individuals to choose or not choose a particular course of action and have the ability to pursue

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the decided upon course. Process refers to the way in which societies create dialogue to determine what capabilities, or freedoms, should be available to all (2009:87-91). This dialectical and dialogical element is crucial to the establishment of human rights in post-conflict communities, as "both human rights and capabilities have to depend on the process of public reasoning, which neither can lose without serious impoverishment of its respective intellectual content" (Sen 1999:96).

This ability of local actors to " harness human rights discourse and invest it with meaning" is what Shannon Speed refers to as "local appropriation" (2009:242; Goodale 2009:10). This process allows human rights to be incorporated into daily life, grounding theory in actual practice. According to Merry, this is critical, as "the practice of human rights is always embedded in preexisting relations of meaning and production" (Goodale 2007:24). This open dialogue of rights as capabilities also contributes to an understanding of the ways in which a human rights based approach can help address the underlying power disparities that contribute to the development of genocide.

Human rights are generally divided into three main categories, or generations. The first generation encompasses civil and political rights, the second includes economic, social and cultural rights, and the third deals with solidarity rights (Weston 2006:21). Although described as a generational system, these three categories are closely intertwined, and cannot exist independently of each other. The first generation rights are outlined in the United Nations General Assembly's 1976 International Covenant on Civil and Political Rights (ICCPR), and are characterized as "negative" rights (Weston 2006:21). That is, the government is required to avoid torturing individuals, imprisoning them for no reason, committing genocide and so forth. Second

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generation rights are outlined in the United Nations General Assembly's 1976 International

Covenant on Economic, Social and Cultural Rights (ICESCR), and are characterized as

"positive" freedoms (Claude and Weston 2006a:161). This includes the right to equal access to

work, food, clean water, education, health care and participation in cultural activities. Although

interconnected with first generation rights, second generation rights encompass issues that

require state involvement and regulation. Lastly, third generation rights have recently emerged to

include the right to social and economic development, political participation, cultural and

socioeconomic sustainability and access to natural resources (Claude and Weston 2006b:8).

These third generation rights are further explored by Sen (1999), who states that the restriction of

public engagement in political and social affairs is a violation of human rights, as civil and

political freedoms are an important part of third generation rights (16). As such, Sen (1999)

categorizes these third generation rights into five areas:

> 1) political freedoms (participate in politics)...2) economic facilities (opportunities to utilize economic
> resources for the purpose of consumption or production or exchange)...3) social opportunities (education,
> health care, etc. that influence the individual's substantive freedom to live better)...4) transparency
> guarantees (these have a clear instrumental role in preventing corruption, financial irresponsibility and
> underhand dealings)...5) protective security (to provide a social safety net for preventing the affected
> population from being reduced to abject misery). [38-40]

Perhaps one of the most important aspects in understanding human rights issues is

understanding them within context, as contextualization is a critical component for the

legitimacy and effective implementation of human rights as a social, political and legal reality

(Goodale 2009:10). Virtually no culture in the world is "pure." The rise of exploration, conquest,

colonization and globalization has ensured that nearly every group has had contact with other

nations and societies. This can be seen in the effects of Belgian colonization of Rwanda, the Cold

War's influence on Cambodian politics, and the role of international export politics in the

perpetuation of structural violence in Guatemala. Thus, human rights issues are not structurally superficial; the layers must be peeled back before core issues are revealed, and, without addressing the core issues, policies are hollow and ineffective. In a post-genocide context, it is particularly important to understand "the dimensions of inequality by which states or groups exclude individuals or collectivities from human rights protections on the basis of race, language, or other cultural grouping," as "the circumstances under which an ethnic group or state assimilates rather than distances or violates strangers constitutes a special case for understanding human rights and social obligations" (Messer 2009:105; 114).

From Theory to Practice: Situating Human Rights "On the Ground"

On the issue of context, Sally Merry's research has been central to anthropology's understanding of human rights. Of particular interest is Merry's work detailing the way human rights are taken out of the theoretical realm, internalized at the local level and implemented in daily life, an area of study Goodale poetically describes as, "the ambiguous middle spaces in which the international and transnational discursive rubber meets the winding local road" (2010:7). Merry (2010) contends that an understanding of international human rights law requires not only analysis of the global structures that produce and enforce it, but also the way these laws are internalized and applied in national and local justice systems. As Merry points out, human rights law, and by extension the mechanisms that enforce them, "work within the specific circumstances of violations and conflicts.

Under these conditions, justice cannot exist simply as a disembodied transcendent aspiration but is expressed through particular decisions and actions" (2010:29). Merry (2006)

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sees this process as occurring in two distinct ways: through "replication" and through "hybridization." Here, replication is defined as vernacularization in which external actors introduce concepts of human rights, developed in international discursive frameworks, into a society without providing context with which local actors can relate to and internalize them. In contrast to this imposition of human rights is hybridization's method of vernacularization in which international human rights ideals are incorporated into local culture through dialogue and engagement with local actors (44-8). Goodale and Clarke (2010) further explain that the actual process of vernacularization occurs at the micro level, and that "the meanings of 'human rights' and 'justice' for local actors take on significance only in the course of actual political and social struggles" (9-11). It is here that much of the tension between global and local occurs in human rights discourse, as individual actors and communities (the local) must internalize human rights (global) through their own particular cultural lens (local), a process of translation that often requires transnational and/or international assistance (global).

As part of this global/local debate, the legal enforcement of human rights has often been seen as problematic, as human rights violations are committed at the local level, but the consequences transcend sovereign boundaries to become issues of legal concern at the international level. The difficulty of imposing international law upon sovereign states is particularly acute in the case of genocide, where it is often the state itself that is responsible for the violence (Hinton 2002:27). Even with the 1948 Convention on the Prevention and Punishment of Genocide's establishment of formal legal measures against genocide, it remains a difficult crime to prosecute (Hinton 2002:4). When human rights violations are committed by a government against its people, it is difficult for either transnational organizations or the

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international community to force these "rogue" sovereign states to comply, given the lack of enforcement mechanisms. When individuals commit violent acts, they may be jailed, fined or even executed by local or national legal mechanisms. These retributive punishments do not translate well when states are the ones committing violent acts. Instead, behavior modification of states seen to violate basic human rights standards is compelled through the use of sanctions, political pressure, travel bans, and general public shaming (Merry 2010:30). Additionally, civil society itself is an important player in forcing governments to provide their citizens with the tools to maintain a decent quality of life (Merry 2010:32). While, transnational humanitarian groups often have a hand in developing and supporting these strong civil societies, the politically focused international community has yet to prioritize the importance of local level individual and group agency in forcing government accountability.

Despite these difficulties, enforcement of international law regarding genocide is important in the deterrence of future genocide and the achievement of justice for survivors. Says Wilson:

> ...international law often "vernacularizes" local conflicts; that is, it lifts questions of conflict resolution out of a local or regional context and raises it to a higher level, usually that of the nation-state or international court or commission. Vernacularization is built into the structure of international human rights law, which has "*jus cogens*" status (literally "higher law") raising it above all other legal norms and formally granting jurisdiction to international courts hearing human rights cases. [2007:355]

Wilson goes on to explain that this vernacularization of legal process aids in the formation of new national identities for the survivors of genocide by linking local actors to the international community, helping them to see themselves as actors in the much larger global human rights landscape (2007:348). However, as we shall see, this is only possible when international groups like the United Nations establish justice mechanisms that survivors can relate to.

The establishment of social spaces in which the vernacularization of human rights can occur are imperative to the long-term success of programs set up by post-conflict intervention, as "within countries, interaction and discussion further internalize norms into domestic social and political processes" (Merry 2010:33). In short, the vernacularization of human rights allows these concepts to be internalized "on the ground," as it were, by local actors. This promotes dialogue and the creation of social spaces that strengthen civic society, thereby decreasing the chances for authoritarian governments to emerge and increasing the chances for long-term stability in post-genocide countries. Ultimately, this reduces the need for costly and controversial international interventions. Merry's language is succinct yet determined when she states, "the power of human rights depends on extensive local normative change" (2010:34).

The political entity that is the international community, represented by the United Nations, must recognize that the basis for long-lasting post-genocide rebuilding programs lies in the vernacularization of human rights, and that the entities that make up local, national and international legal frameworks must work together to ensure this process' success. As law does not exist in a vacuum, but is appropriated by the cultures that implement and interpret it, Merry concludes that the judicial application of internationally developed human rights law must compliment pre-existing justice mechanisms and work alongside them if they are to be accepted by the survivors of genocide (2010:30).

Given the central role of the nation-state in providing both context and a forum for vernacularization and the understanding and promotion of human rights, an analysis of the role of the nation-state as it relates to the establishment of justice and reconciliation initiatives constitutes the next section.

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State Building as a Human Rights Imperative

The modern movement towards globalization both helps and hinders the protection of human rights. New technologies, such as the internet, allows information about human rights violations around the world to be disseminated in the blink of an eye, while power struggles between state sovereignty and international regulation exacerbate efforts to ensure a basic global standard of human rights. Additional difficulty is presented by Arendt's demonstration of how the rise of nation-states has, in many ways, led to more problems than it has solved; for instance, the need for internationally based human rights work to be conducted within the framework of international relations (An-Na'im 2009:73; Arendt 2009:46).

The nation-state is characterized by scholars as a reaction to the increased global flow of people, goods and ideas across traditional economic, political and cultural boundaries. The modern nation-state sought to bring organization to this process by establishing controlled physical and ideological boundaries, expressed as territorial borders and shared national identity (Calhoun 1997:20). In post-genocide situations, these boundaries are obscured by the sudden outflow of refugees, the fracturing of national identity through the recognition and persecution of an internal "other," and the delegitimization of the state in the eyes of both survivors and the international community (Oomen 2009:178; Goodale 2009:5).

There has been much debate over whether state-building in the wake of genocide is either responsible or desirable. After all, it is often the state itself that has committed genocide against its own people, or at least failed to prevent its occurrence. However, Brahimi clarifies that state-building in this context refers to the transformation of weak, repressive states into stable ones capable of providing the goods and services necessary to support its people (2007:5). As such, it

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is crucial that a human rights focus be maintained during this process to avoid establishing another weak or authoritarian state. The very structure of modern states, with census, property and tax structures rendering the population and territory legible to the state, provides the means for potentially abusive projects of social engineering to be established, while an authoritarian governmental structure enables the state to bring these projects to fruition in the absence of a strong civil society (Scott 1998:5).

By focusing on human rights as an important component of state building, from the way the government and its institutions treat citizens to the capacity for local discourse, a balance of power between the state and the people can be created and maintained, preventing the establishment of a civil society incapacitated by state policies. In fact, Brahimi asserts that state-building and peacekeeping are inseparable, with recovery aid focusing on meeting basic needs and development aid providing the structures and institutions needed to continue administering services after the international community has gone (2007:18). Additionally, Simon notes that the aversion to utilizing the state as a forum for promoting and distributing socioeconomic programs preclude the sustainability of development programs, ultimately undermining international and transnational aid initiatives (Simon 1997:189-95). This is demonstrated in Arendt's study of the spaces in which human rights are developed and protected, in which she finds that the Rights of Man, a precursor to modern concepts of human rights, "had been defined as "inalienable" because they were supposed to be independent of all governments; but it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee

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them" (2009:46). Without one, the other cannot succeed. Thus, the power of state-building to reconstruct nations in the wake of genocide exists on several levels.

First, modern states are intimately linked to the formation of national identity. The policies of the state help formulate the way people view social categories, such as ethnicity, and internalize them as part of their identity, what Calhoun (1997) refers to as "nationalism as discourse" (66; Oomen 2009:182). This can clearly be seen in Guatemala, Cambodia and Rwanda, as repressive regimes used propaganda and structural violence to persecute particular ethnicities, contributing to genocidal policies in each case. However, it must be remembered that this same power can be harnessed to bring unity and cohesion to fractured societies. Calhoun (1997) believed that national identities and the ideologies that accompany them are created primarily in the context of conflict and the struggle to overcome it, making rebuilding initiatives in post-genocide scenarios particularly important to the development of national identity (108). As Hinton (2002) writes, "the very existence of the nation-state is predicated upon the assumption that there is a political 'imagined community' of theoretically uniform 'citizens' who, despite living in distant locales and disparate social positions, read the same newspapers and share a similar set of interests, legal rights, and obligations" (13). One of the goals of post-conflict reconstruction, then, is to recreate these social bonds, rebuilding communities and promoting solidarity where it has been fractured. This not only provides a support network for survivors, but also forms a foundation upon which the stability of the state is based.

Second, a focus on the reinvention of the state is important for interrupting the cycle of violence that encompasses genocide. Genocide is never a spontaneous event. It is couched within a framework of violence that may span hundreds of years and involves not only social but

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political and economic upheaval. These instabilities may be furthered by government policies encouraging the identification of local groups as "others," as subhuman entities to which equal access to education, political, economic, legal and social opportunities are not afforded (Hinton 2002:6). This fomentation of social division, when combined with political and economic insecurity, can lead to fear, anger and hatred that is projected upon the "other." The main population begins to see the marginalized group as dangerous, an impediment to the happiness and success of mainstream society. From here, it is only a small step towards the conclusion that annihilation of the "other" by any means necessary is the only way to preserve the well-being of the rest (Hinton 2002:29). After genocide, perpetrators and survivors must continue to coexist, and "in these uneasy day-to-day arrangements memories of intimate violence and discourses of insiders and outsiders, perpetrators and victims linger right below the surface, and preclude the notion of a communal identity" (Oomen 2009:182). It has been observed that the subsequent ability of populations to reconstruct society from these fragmented groups; perpetrators, survivors, refugees, etc., rather than re-erupt into violent conflict, is predicated on state structure and the existence of socially respected government authority (Messer 2009:114).

Third, the legitimacy of the state is inherently linked to its ability to provide goods and services for the people that enable them to achieve an acceptable standard of living, what Oomen refers to as "socioeconomic justice" (2009:197). These include access to healthcare, nutritious food, clean water, education and housing. Oomen writes that people interviewed in post-conflict areas often list these basic entitlements as more important than justice for the wrongs they have endured, for "even if...justice mechanisms are perceived as fair, they will still lack legitimacy if they operate within a context of ongoing discrimination and deprivation" (2009:197). Here, state-

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building and human rights intersect in Sen's bipartite capabilities approach of opportunity and process. The state's ability to provide access to socioeconomic justice constitutes opportunity, while the reestablishment of local human rights dialogue through an empowered civil society constitutes process. Framing human rights in the context of Sen's capabilities approach transforms human rights from an intangible ideal, imbuing them with a tactile element that will have meaning for local communities. As Arendt points out, "no paradox of contemporary politics is filled with a more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as 'inalienable' those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves" (2009:39).

A discourse that frames basic needs as basic rights is, therefore, an excellent way to introduce human rights to fragmented communities in a way that is meaningful to them. Civil society, thus, provides a communications infrastructure that allows people to see themselves as individuals as well as members of a community that transcends familial and village links and extends to national identity (Calhoun 1997:117). Here, Scott's theory of a strong civil society as necessary for the prevention of future structural violence and Sen's theory of rights as capabilities are seen to mutually reinforce each other, as " the viability and universality of human rights and of an acceptable specification of capabilities are dependent on their ability to survive open critical scrutiny in public reasoning" (Sen 2009:96). The irony, then, is that the localized initiatives that are such an important part of justice and reconciliation processes cannot be established if civil society remains fractured. Before legal justice can be achieved, socioeconomic justice must be established.

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Last, the international community cannot, and should not, maintain a presence indefinitely within countries to whom they provide aid. This is where the United Nations' concept of "light footprint" intervention comes into play. To bolster the state's legitimacy, it must be able to provide for its population on its own. The justice, reconciliation and rebuilding programs implemented can only be sustained in the long term through national institutions. The state must be strong enough to deal with the aftershocks of genocide and the possibility of continued attacks from the groups who initiated the genocide, as can be seen in Rwanda and Cambodia. As such, it is the duty of the international community to assist in state-building. As Brahimi notes, "it makes no sense to inject massive international assistance to try and build peace and stability without supporting state-structures and ensuring the active participation of national leadership within those structures" (2007:6). This tenet forms the basis for much of my critique of the various justice and reconciliation initiatives in Guatemala, Cambodia and Rwanda. But before delving into a detailed analysis of these programs, I provide a brief description of the genocide in each nation.

CHAPTER 4
Understanding Genocide: Case Studies

Guatemala

The Guatemalan Civil War lasted from 1960 to 1996 (Wright 2007:31). The war is referred to by most Guatemalans as *La Violencia*, or The Violence. In 1963, a CIA backed military coup overthrew the democratically elected progressive president of Guatemala and a long stretch of military rule followed (Jonas 1996:146). As a result of the oppressive social, political and economic conditions of the country as a whole, several guerilla groups formed and, in 1982, banded together to form the *Unidad Revolucionaria Nacional Guatemalteca* (URNG). Later that year in a military junta, General Efraín Ríos Montt became the leader of Guatemala, and in an effort to put down the guerilla army, staged a scorched earth campaign (Wright 2007:31). The campaign was centered in Guatemala's highlands and focused on the Mayan villages located there. Montt was convinced that the villagers would sympathize with the rebels and join the effort to overtake Guatemala. Montt's tactics were simple, but the cost of human life was astronomical. The army and various paramilitary groups invaded Maya villages, burning all their crops and forcing the men and boys to join as military patrols to prevent the URNG from taking control of the villages (Wright 2007:31).

Even when the villagers cooperated, they were often subjected to torture or other abuses to inspire fear and obedience. If it was believed that any member of the community was cooperating with the guerillas, the entire village paid the price. The women would be raped and everyone, including the children and the elderly, would be killed. Those who survived were forced into "model" villages created by the government to make the population easier to control

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(Sanford 2003:172). Many people tried to hide in the forests covering the mountains, but even those who survived the army attacks risked being pressed into service with the guerrillas or dying of exhaustion and malnutrition (Sanford 2003:193).

Overall, the death toll exceeded that of the Civil Wars of Chile, Nicaragua, El Salvador and Argentina combined: over 200 thousand people, with 626 Maya villages destroyed and roughly 38 thousand Mayas disappeared at the hand of the military. More than 1.5 million people were displaced, many of them to Mexico. Eighty-three percent of the victims were Maya.

Cambodia

The Cambodian genocide was encapsulated within the Thirty Years War, which began in 1968 with a coup against Prince Sihanouk, and ended in 1999 as a result of United Nations intervention (Etcheson 2005:3). The coup, supported largely by Cambodia's educated middle class, installed Lon Nol as Cambodia's new leader in 1970. Meanwhile, the Khmer Rouge was operating in the countryside, taking control of rural communities, executing or expelling local leaders and replacing them with members from the Khmer Rouge's ranks (Etcheson 2005:5). Newly installed Lon Nol was backed by the United States, which was at the time embroiled in the increasingly complex Vietnam War. Given the proximity of Cambodia to Vietnam, this change in Cambodian leadership altered the tone of the Vietnam War significantly. Suddenly, the Khmer Rouge began receiving aid from the USSR and China. As a result, in 1975 the Khmer Rouge wrested power from Lon Nol and formed the state of Democratic Kampuchea (Shapiro-Phim 2007:180; Hannum 1989:85).

After seizing power, the Khmer Rouge, led by Pol Pot, sought to create the perfect communist nation (Short 2005:150). The Khmer Rouge emphasized the need for Cambodia to purify itself, both mentally and physically, to fully realize its separation from the old social order. The Khmer Rouge put restrictions on freedom of speech, closed all schools, hospitals and courts, and set about eliminating anyone with ties to the former regime. Officers and troops, civil servants and those with higher education were all executed along with their families (Etcheson 2005:4-10; Hinton 2005:1).

After this social purging, Pol Pot evacuated the cities and the Cambodian population was funneled into labor camps and detention facilities (Etcheson 2005:15). The largest and most infamous prison facility was Tuol Sleng, referred to enigmatically as S-21. Originally a Phnom Penh high school, S-21 became the hub of the Khmer Rouge interrogation system. Between 1976 and 1978, 14,000 men, women and children were incarcerated in Tuol Sleng. Only ten of those 14,000 individuals survived to see the Khmer Rouge ousted in 1979 (Hannum 1989:129; Maguire 2005:1; Hinton 2005:3).

With the entire population of Cambodia exported from the cities to the countryside, those who were not killed were put to work growing rice. Everything was done collectively: planting, harvesting, dining and sleeping (Hinton 2005:10). By breaking up families and villages, the Khmer Rouge hoped to remove the family as the basic unit of life and replace it with loyalty to the collective. People could no longer choose where to live or whom to marry, and were kept apart from their loved ones for months at a time (Hinton 2005: 129, Mam 2006:120).

Despite such a large work force, rice production was not up to the standards Pol Pot anticipated. Rather than adjusting his percentages, the people's rations were cut to keep up

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export profits. The Khmer Rouge was in power for only three years, eight months and twenty days, but the devastation to the nation of Cambodia was astronomical (Fawthrop and Jarvis 2004: 14). From 1975 to 1979, anywhere from 1.7 to 2.2 million Cambodians perished; of that number, 25 percent died from starvation, 25 percent from disease and 50 percent from execution or torture (Kiernan 2007:547; Fein 1997:19).

Rwanda

As with any genocide, the factors that led up to the genocide in Rwanda are numerous and complex, and it is necessary to look at Rwanda's history to understand the events of 1994. According to Western media, the main cause of the genocide was the boiling over of an ancient feud between the Hutu and Tutsi ethnic groups that comprise Rwanda's population. Although this is a vast oversimplification of the conflict that "conceals the political, ideological and economic character of the actual alignments...[and] ignores the political responsibility of those who manipulated emotions, reactivated traumas and practiced the politics of polarization" (Pieterse 1997:77-79), the origin of the Hutu and Tutsi identities is undeniably of central importance.   Rwandan folklore holds that the Tutsi, a Nilotic herding people from Ethiopia, moved into Rwanda some time after the Hutu, who were farmers of Bantu origin (Fisiy 1998:19-20). However, by the time the Germans and the Belgians colonized the region, these divisions were mostly obfuscated. In 1933, the colonial administration in Rwanda decided to divide the local population into the Belgians' interpretation of what it meant to be Tutsi and Hutu. Wealthier Rwandans, those who owned more head of cattle, were assigned a Tutsi identity. Those who did not meet these standards were categorized as Hutu (Hintjens 1999:249-50). The

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Belgians issued corresponding identity cards to all Rwandans, effectively racializing these ethnic categories.

Throughout the colonial period the Belgians favored the Tutsi, and the resulting intensification of socioeconomic stratification led to resentment between the two groups. Resulting discrimination fueled social divisions and incorporated these biases and divisions into Rwandan folklore, saturating national culture to the extent that these identities continue to be used even today (Gourevitch 1998:15). In 1962, a group of Hutu took over the colonial government and Rwanda gained its independence from Belgium. The Hutus in power, after enduring years of Tutsi favoritism, lashed out and many Tutsi were killed or forced to leave the country (Uvin 1999:256).

In 1973, General Habyarimana took over Rwanda and implemented a military dictatorship, maintaining power until 1994. Habyarimana's regime perpetuated the notion that Rwanda was rightfully a Hutu nation, and that the Tutsi were "alien invaders from the north who should therefore be exterminated or sent home" (Pieterse 2001:82). As Pieterse observes, "these distinctions, although historically relevant, did not count on the ground but were *made to count* through interventions and manipulations by the political leadership...It follows that there is something profoundly deceptive and incongruous about calling these situations 'ethnic conflict'" (2001:78-9). The radical Hutu, whom had formed a group called the *interhamwe,* or Hutu Power, nurtured these tensions through vicious radio broadcasts, preparing Hutu to respond to a signal to attack all Tutsi and sympathetic Hutu (Gourevitch 1998:18).

The final blow that would throw the country into a genocidal frenzy came on April 6, 1994 when General Habyarimana's plane was shot down, killing the Rwandan president and the

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President of Burundi, who had also been on board (Verwimp 2004:233). The attacks were publicly blamed on Tutsi rebels, and the *interhamwe* sent out a message over the radio to "cut the tall trees," the agreed upon signal to mobilize the waiting Hutu (Gourevitch 1998:202). Across the nation, Tutsi and the Hutu who supported them were hunted and killed with organized precision.

The systematic rape, torture and killing of Tutsi and moderate Hutu continued for nearly one hundred days. The genocide finally ended when the rebel Rwandan Patriotic Front (RPF) captured the Rwandan capital of Kigali. Nearly one million people were dead and hundreds of thousands of children had lost one or both parents (Briggs 2005:7). The devastation was so widespread that Ian Martin, a former secretary-general of Amnesty International and the chief of the Human Rights Field Operations in Rwanda from 1995 to 1996, described the situation as an "impossibility of justice" (Uvin 2001:181).

Effects of Genocide

The effects of genocide extend far beyond the eradication of populations. In many cases, they include the destruction of national and local infrastructure and institutions, including hospitals, schools, factories, police departments and government structures. Additionally, fields, homes, livestock and water supplies are often destroyed, and land mines litter the remaining usable land. This is accompanied by increased infant mortality rates and disease among the surviving population, hunger, poverty, trauma related mental illness, the fracturing of communities and families, and the loss of the economic, social and political networks upon which the population relied (Hinton 2002:23). In such an environment, paranoia and violence

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ferment to create conditions necessitating third party intervention, such as United Nations aid and peacekeeping programs.

In Cambodia, after the fall of the Khmer Rouge in 1979, Phnom Penh, which had two million residents in 1975, was occupied by only 70 people. The city was overgrown, with nature having taken over in the absence of human intervention. Wild animals lived in vacant, crumbling buildings and grass and vines covered storefronts and sidewalks; it was the stuff of science fiction. There was no power supply, no water supply. There were no schools or hospitals, markets to buy food or factories to produce goods. The re-establishment of hospitals, schools and courts was hindered at the most basic level by lack of access to necessities like pencils and paper. Additionally, unusually high rates of domestic violence and mental illnesses, such as post-traumatic stress disorder (PTSD) and clinical depression, continue to be observed in the population (Hannum 1989:91).

As refugees returned to Rwanda and survivors began to rebuild their lives, McNairn explains how suspicious Rwandans had become of one another, saying, "when people were first resettled together in Umutara, the others saw those from Tanzania as *interhamwe*; those from Uganda were seen as RPF who would kill everyone else because of the genocide" (McNairn 2004:87). The United Nations Children's Fund (UNICEF) interviewed 3,030 Rwandan children and found that 16 percent of those interviewed had survived by hiding under dead bodies, 80 percent had lost immediate family members and over one-third witnessed other children taking part in genocidal acts (Charny 1999, vol.1:145). Over 250 thousand women and girls had been raped, and the thousands of children born as a result of those assaults were dubbed *enfants mauvais souvenirs,* French for "children of bad memories." Cases of AIDS and HIV

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skyrocketed, and it is estimated that between half a million and a million Rwandans contracted the disease as a direct result of the genocide (Briggs 2005:13). Other interviews of 2,100 Rwandans conducted between 1999 and 2003 found that 24.8 percent of the interviewees displayed physical and emotional problems consistent with symptoms of post-traumatic stress disorder, or PTSD (Weinstein and Stover 2004).

In Guatemala, survivors' lives were completely changed as well. The model villages the army had forced survivors into continued to be used as "work for food" programs. Villagers were told what to plant and when and the crop was used to feed the army first, then the remaining food was distributed amongst the villagers. Survivors from different ethnolinguistic Maya groups were thrown into these communities together, often unable to communicate with one another and with no knowledge of whether the rest of their family had survived the army invasions that had forced their resettlement. Women and girls were often raped by army soldiers, and men were conscripted to build access roads, helipads and airstrips for army vehicles, dig torture pits and as serve as village patrols (Sanford 2003:137). Villagers feared their neighbors, never knowing who was working as a spy for the army, while language barriers prevented villagers from banding together to oppose the military (Sanford 2003:138). For those Maya who avoided forced resettlement, lack of contact between villages meant that they thought they had been specially targeted by the military. It would not be until many years later that some of the more isolated villages would understand the scope of what had happened.

Given this level of social, economic, political and infrastructural destruction, it is clear that post-conflict rebuilding must occur at all levels: national, international and local. In the following chapters the initiatives implemented in Cambodia, Guatemala and Rwanda will be

explored in depth and within their social, political and historical contexts, beginning with the

nationally based initiatives established in each country.

CHAPTER 5
An Exercise in Sovereignty: National Initiatives

This section focuses on the post-genocide national initiatives implemented by the governments in Cambodia, Guatemala and Rwanda. Along with brief descriptions of each initiative, I draw upon the theories and anthropological frameworks outlined in the first six chapters to offer an analysis of why these programs have failed and how they could have been improved under my proposed tripartite model. Further, this chapter highlights the devastating disconnect between the international, national and local communities and demonstrates the need for cooperation between these three elements in the development of post-genocide rebuilding programs.

Cambodia

Immediately after the Khmer Rouge was ousted in Cambodia, Vietnam helped set up the People's Republic of Kampuchea, led by Hun Sen. This new government set up the People's Revolutionary Tribunal, or PRT, in August of 1979 to charge Pol Pot and his second in command, Ieng Sary, with genocide (Fawthrop and Jarvis 2004:5). The goal of these trials was to preserve the new found peace by trying those who had orchestrated and directed the genocide, not to prosecute every individual linked to the Khmer Rouge. The tribunal focused solely on the highest in command, for fear that attempting to try all members of the Khmer Rouge would cause panic and disrupt the already fragile stability of the nation (Fawthrop and Jarvis 2004:150).

Both Pol Pot and Ieng Sary were tried in absentia, as they were living in exile Thailand. The PRT was the first trial for war crimes since Nuremberg, and in large part was politically

motivated. The People's Republic of Kampuchea was governed by a mixture of former Khmer Rouge members and individuals who had escaped the country before the worst of the violence began. To set itself apart from the previous regime, the government used the PRT to gain the good faith of the people (Etcheson 2005:13). Survivors of torture and imprisonment, as well as refugees, testified at the trial and incriminating documents were presented, along with evidence from mass graves excavations. No evidence was presented to directly link Pol Pot or Ieng Sary to orders given to incite genocide, in part because many of the upper level officials to whom such directives may have been given now held positions in the new government and were not eager to incriminate themselves. The PRT found both Pol Pot and Ieng Sary guilty of genocide and sentenced them to death. However, with both men out of reach in Thailand, the sentences were mostly for show, an attempt to boost morale and depict the state as the champion of popular justice (Etcheson 2005:14-6).

While the PRT was a landmark event for the new, Vietnam sponsored Cambodian government, it failed to meet the basic goal of transitional justice, to reconstruct Cambodia's social fabric, by using the trials as political propaganda rather than focusing on victim needs, reconciliation, transformation and perpetrator punishment (Olugbuo 2010:109). Designed under Vietnamese authority, the People's Revolutionary Tribunal was imposed from above and did not include local level input. While it is widely recognized that a critical element of the post-genocide rebuilding process is the renegotiation of power between individuals and the state, and that local level appropriation of justice and reconciliation is necessary as reconciliation can only occur at the local level, the post-genocide Cambodian government's top-down implementation of

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rebuilding programs precluded the ability of any of these crucial processes to occur (Speed 2009:231-242; Brahimi 2007:15).

In addition, the PRT was rejected by the international community as a show trial, the outcome pre-determined by a biased court system and run by a rogue government unrecognized by the United Nations. Fear that Vietnam was trying to build a Soviet-bloc in southeast Asia, coupled with the still-fresh memory of the United States' defeat in the Vietnam War formed the basis of United Nations decisions, and the United Nations seized on the PRT trials as yet another reason to withhold aid to Cambodia, and trade embargoes were put in place (Terry 2002:134-6). In addition, the United States funneled over \$85 million to the Khmer Rouge between 1980 and 1986. In 1980 Sir Robert Jackson, a high ranking United Nations administrator working in Cambodia told the press point-blank that "'no humanitarian operation in this century has been so totally and continuously influenced by political factors'" (Fawthrop and Jarvis 2002:39; Terry 2002:121). Terry sums this up as a low point in international relations policy by quoting Jean-Christophe Rufin, one of the founders of Médecins Sans Frontières as saying, "our way of envisaging socialist countries oscillates constantly between an ironic criticism of their inefficiency, and suspicion that they can orchestrate diabolical plots in fine detail" (2002:147).

Along with the PRT, policies of reconciliation were also established in Cambodia, with the new government offering amnesty to Khmer Rouge members who defected and joined the cause of The People's Republic of Kampuchea. Those who accepted this offer were put through a process of re-education before being freed to join the rebuilding process. Those who could not be "re-educated" were put in jail to await trial. Such measures of forgiveness were necessary if the nation was to rebuild successfully, as such a large portion of the population had been

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eliminated. After all, former Khmer Rouge officials were the only ones with political experience or education (Etcheson 2005:18-19). However, this policy set a standard of impunity that Cambodia is still struggling to overcome.

The uneasy relationship between Cambodia and the international community dramatically affect national policy regarding the genocide. Several times throughout the 1990s Cambodia changed its policies to garner approval from the United Nations and reap the benefits of international aid; at other times blatantly undermining United Nations authority to boost its own power and legitimacy. This inconsistency in government policy has continued to be a serious barrier to Cambodia's pursuit of justice and reconciliation.

In the years immediately following the fall of the Khmer Rouge, the government emphasized the importance of remembering the atrocities of the genocide. In the early and mid-1980s Cambodia's government included an intense account of the genocide in the curriculum of its elementary schools. The graphic nature of these accounts can be seen in an analysis of Cambodian textbooks dating to this period, including a fourth-grade book that:

> ...included a poem entitled, 'The Suffering of the Kampuchean People in the Pol Pot–Ieng Sary Period', which was adorned with a graphic showing a couple being executed while a child watched in horror as a man was being hanged in the background" and a first-grade book with entries giving "unsparing answers to the six and seven year olds, describing 'the most savage acts of killing', such as when 'these despicable ones' dug 'enormous, deep ditches' into which they dumped their victims 'dead or alive' after striking them with hoes, axes and clubs." [Hinton 2009]

In addition, an annual commemorative holiday, Hate Day, was celebrated. During Hate Day ceremonies, which were mandatory for all Khmer, survivors specially selected by the government publicly recounted their experiences of the genocide. Williams writes that these ceremonies were primarily political tools used to keep public hatred and pain caused by the genocide alive, thereby legitimizing the government's ongoing war with the Khmer Rouge and

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binding the people to the state with the recognition that the state alone could provide protective security (2004:249). Strict government control over public ceremonies and compulsory participation transformed the holiday from a genuine day of mourning and remembrance into a political tool to achieve greater levels of social control. Hate Day did not provide a forum for open dialogue or a public cataloguing of the past, both important elements of reconciliation, but rather continued to silence survivors just as the Khmer Rouge regime had silenced them (Soyinka 2004:477).

Hate Day was officially removed from the Cambodian calendar in 1991; tellingly, this was the same year the United Nations stepped in to assist Cambodia in thwarting the Khmer Rouge's attacks along the Thai border. Along with the end of Hate Day celebrations came a new government policy that promoted forgetting as the best way to deal with the genocide, encouraging a sort of national amnesia. By 1993, when the Paris Peace Accord was signed, all school textbooks had been edited to remove any but the most benign references to the Khmer Rouge regime (Chandler 2008:356; Munyas 2008:424; Hinton 2009).

In 1996, the government again changed tack and pronounced forgiveness as central to Cambodia's rebuilding process. Amnesty and formal pardons were granted to former Khmer Rouge leaders willing to renounce their old allegiances and serve in the new government, while lower-level fighters were accepted into re-education programs. Then, in 2001, it was declared that all known burial sites of those who perished during the genocide would be marked as official memorials. Additionally, the first government sponsored memorial to be built since the 1980s, the War Memorial was constructed by the Ministry of Defense. Finally, in 2009, the history of the Khmer Rouge era and the genocide were reintroduced into the school curriculum, this time to

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be taught at the high school level (Williams 2004:249). However, the sixteen year absence of genocide education has dramatically affected the population, as will

be discussed at length later.

Clearly, the Cambodian government has failed to establish a coherent, long-term strategy for establishing post-genocide justice and reconciliation programs, instead bouncing back and forth between a variety of approaches that ignore the necessary balance between socioeconomic justice, retributive justice, nation building and reconciliation, pursuing only justice or only reconciliation at any given time (Oomen 2009:198). Additionally, the government's programs failed to provide any of the five rights outlined by Sen (1999) as important for the achievement of first, second and third generation rights: political freedom, economic facilities, social opportunities, protective security or transparency guarantees (38-40). Without state-building or a commitment to human rights taking precedence in post-genocide Cambodia, the reconstruction of a stable state that is capable of and invested in providing socioeconomic and transitional justice for its people could not and did not occur.

While state-building and peacekeeping have been recognized as inseparable, with recovery aid meeting basic needs and development aid providing the necessary framework for administering social services in the long term, until recently, with the establishment of the joint tribunal, the United Nations did nothing to help Cambodia establish long term strategies for post-genocide rebuilding, and even encouraged the government's political pandering (Brahimi 2007:18). This policy of dangling international aid in front of post-conflict governments like a carrot on a stick is counterproductive to the formation of stable, non-authoritarian states and exemplifies the need for the adoption of a reflexive, human rights based mandate. Rather than

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trying to force compliance with international policy and law by making unstable states jump through hoops, thereby fostering the love-hate relationship demonstrated here, it would be far more productive to work closely with the state on developing sustainable strategies for post-genocide justice, reconciliation and rebuilding. The case of the United Nations' failure in Cambodia has also shown that a delay in aid can have devastating consequences, as authoritarian regimes unwilling to comply with United Nations programs may have already taken hold by the time the international community arrives, and that immediate assistance is an important aspect of the success of international intervention.

Guatemala

In Guatemala, the government and military officials who had sanctioned the military's genocide of Maya highlanders remained in power after the genocide was over, and little progress was made in establishing justice or reconciliation mechanisms. Finally, in 1992 a forensic team was put together by the United Nations Human Rights Commission (UNHRC). A peace agreement was reached in 1996 by the URNG (*Unidad Revolucionaria Nacional Guatemalteca*) and the government of Guatemala, and proper investigations into the atrocities began in 1997. Eventually, Guatemala formed its own forensic anthropology team, known as the FAFG (*Fundación de Antropología Forense de Guatemala*), modeled after the Argentinian EAAF (*Equipo Argentino de Antropología Forense*) (Steadman and Haglund 2005:24). As of 2006, this organization had looked into more than five hundred reported mass grave sites and recovered thousands of bodies (Ferllini 2007:15).

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Unfortunately, few national trials have been established to hold government and military officials accountable for *La Violencia*, and the ones that have been established mostly target low ranking soldiers rather than those who masterminded the genocide. However, in 2009 Guatemalan national courts found four ex-military officers guilty of crimes against humanity and sentenced to life in prison for the forced disappearances of El Jute village members in 1982. Of these four men, one was a colonel in the Guatemalan army, the first time a high ranking official has been convicted by Guatemala's national courts for involvement in the genocide. Representatives from several prominent Guatemalan human rights groups were present for the sentencing, as well as ambassadors from the United States, Chile, Holland and Switzerland (Schieber 2009).

This ruling represents a dramatic change from past court precedent, in which amnesty has been granted to accused military and government officials under the 1996 Law of National Reconciliation. The technical language of the law blatantly skirts the statutes set down by the 1994 peace accord signed by the Guatemalan Armed Forces and the URNG, which state that the Guatemalan government cannot implement measures to impede the prosecution of human rights violations (Rohter 1996). It is this 1996 Law of National Reconciliation that led to the Guatemalan national court's 2005 decision to grant amnesty to the sixteen soldiers accused of crimes against humanity, as mentioned in the first vignette of my introduction.

While some progress has been made recently under the new government, overall the national court system has failed to provide the timely application of initiatives, objective rulings, publicly accessible forums for justice or an acceptable volume of output given the scale of the genocide (Oomen 2009:183). These four elements are the aspects that lend legitimacy to justice

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programs, and their absence has crippled the national court system's legitimacy in the eyes of genocide survivors, making both reconciliation and the renegotiation of power between the people and the state impossible.

Given its poor record of judicial conviction, Guatemala's greatest contribution to the establishment of justice and reconciliation thus far is the Commission for Historical Clarification, or *Comisión para el Escalarecimiento Histórico's* (CEH), 1999 report. Forming this three member commission was German international lawyer Christian Tomuschat, Guatemalan politician and indigenous affairs expert Otilia Lux de Cotí and Guatemalan judge Alfredo Balsells Tojo (CEH 1999). Interestingly, the CEH was one of the first investigative teams to delineate between a policy of genocide and acts of genocide. According to the CEH report, actions committed when genocide is the ultimate goal constitutes a policy of genocide. Alternatively, committing genocide as part of a plan to achieve some other goal is an act of genocide (Sanford 2003:150). In this interpretation, the government of Guatemala did not have a policy of genocide, but used genocidal acts as a means to prevent the guerillas from gaining momentum. However, the military general who served during *La Violencia* was documented in a 1981 United States Department of State Memorandum as saying he believed that the higher the rate of genocide against the Maya, the more successful the government's campaign would be. Clearly, the extermination of the Maya was more than just a means to an end (Sanford 2003:153).

The Commission shocked Guatemala by publishing a report stating that 93 percent of civilian deaths during the civil war were caused by the military, while 3 percent were caused by the guerillas. The majority of Guatemalans, and many human rights groups around the world,

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had doubted that the CEH would take the government and military to task, given the enormous amount of power officials responsible for the genocide still held. Unfortunately, per the agreements of the Commission, no prosecutions could result from the evidence collected by the study (CEH Report 1998). This has dramatically impacted the balance of justice and reconciliation in Guatemala, as both are necessary elements of a successful, long-term post-genocide rebuilding process (Oomen 2009:198).

Still, the very act of publicly and officially assigning blame to the government and military has been therapeutic for survivors of *La Violencia* and defied all assumptions that the CEH, like the national court system and post-genocide government, would rather sweep the genocide under the rug than risk implicating influential officials. The CEH has laid the groundwork for open dialogue regarding the genocide to occur, allowing survivors to take ownership of their past and empower themselves through their participation in the development of the official historical record (Soyinka 2004:477).

While sponsored and supported by the United Nations, the CEH was officially conducted by Guatemala. Says Sanford, "in the Guatemalan case, the presence of internationals was important to the security of the nationals and also to demonstrate the international visibility of the work of the FAFG and the CEH" (2003:257). Past United Nations precedent has held that truth commissions are most efficient when run by the international community. The CEH proved otherwise, demonstrating that cooperation between international and national actors is not only efficient, but effective in producing an unbiased report of events. This illustrates the importance of international participation in the development of post-genocide rebuilding strategies, and it is important to remember that the ability for post-conflict societies to rebuild and achieve lasting

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peace and stability is based largely on the existence of a stable state structure and socially legitimized government authority (Messer 2009:114).

The lack of emphasis on either state-building or a commitment to human rights in Guatemala means that many Maya survivors continue to be subjected to structural violence and are denied socioeconomic justice, negating many of the positive effects the CEH report has had on the development of public dialogue. Without socioeconomic justice, survivors lack both opportunity, the freedom to choose or not choose a particular course of action and have the ability to pursue that course, and process, open dialogue to determine what rights should be available to all (Sen 2009:87-91; Oomen 1009:197). This returns us to Shaw's observation that individuals who are forced to rebuild after genocide in a system that fails to provide opportunity, process and protective security for its citizens make "choiceless decisions" (2010:222-3). Without the rebuilding of a responsible state and a dedication to the promotion of rights as capabilities, it has proved nearly impossible for Guatemala to address the underlying socioeconomic issues that helped contribute to *La Violencia.*

Rwanda

In Rwanda, those who are not charged with organizing the genocide are dealt with by the national justice system. These trials are the product of a special chamber within the regular national justice system, established by Organic Law 08/96. Although the national courts are meant to replace the ones destroyed during the genocide, they are actually quite different from the pre-genocide legal system. For example, a Bar Association has been established and judges

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and lawyers are no longer politically appointed (Uvin 2004:181-2). The trials, which started in 1996, are broadcast over national radio. Offenders are divided into four main categories:

> Category One includes the 'planners, organizers, instigators, supervisors and leaders of the crime of genocide or of a crime against humanity,' 'persons who acted in positions of authority,' 'notorious murderers,' and 'persons who committed acts of sexual torture'. Category Two includes 'perpetrators, conspirators or accomplices of intentional homicide or serious assault...causing death.' Category Three includes "persons...guilty of other serious assaults against the person." Category Four includes "persons who committed offenses against property." [Charny 1999, vol. 2:558]

Unfortunately, in the aftermath of the genocide, Rwanda found itself unprepared to handle the volume of cases it was presented with. Bass sums up the difficulties facing Rwanda's judicial system, saying, "even with the best will in the world, a court system short on pencils and police inspectors, and subject to intimidation from outside the courtroom, would have found the conditions in Rwanda next to impossible" (2000:307). Since members of the justice system were targeted during the genocide, over two-thirds of the nation's judges had been killed or had left the country. The Bar Association was barely two years old and only fifty magistrates were available to hear cases. In 1996, the judges who were in charge had received less than six months of training before being assigned to their posts. Furthermore, prosecutors were and are under constant scrutiny, and face intense political pressure to secure guilty verdicts. The odds are heavily against the defendants, who often are assigned no case file or lawyer and receive no assistance if they are illiterate. The standard amount of time given for defendants to prepare for trial is eight days. (Bass 2000:307) Individuals awaiting trial are not allowed to post bail and may defendants have spent years in jail awaiting their trial (Briggs 2005:20). Additionally:

> Those seeking police assistance must often pay for fuel for the police to visit a crime scene, and courts sometimes ask litigants to reimburse them for the paper needed to create a file and preserve the official record. In remote areas, the police often fail to investigate for lack of transportation to the crime scene, and the evidence goes stale. Prosecutors are usually new recruits fresh out of undergraduate law programs...[m]indful of this problem, judges sometimes take steps to help the prosecution make its case, reasoning that the government is less prepared and more poorly financed than the defense they may even try to collect evidence on their own. [Widner 2001:67-70]

Though over 130 thousand individuals accused of committing crimes relating to the genocide were incarcerated in jails in 1998 awaiting trial, by 2004 only 5,500 cases had been heard (Zorbas 2004:35). The overcrowded jails, or *cacheaux,* and prisons do not have enough guards, so the inmates are simply locked into the facilities from the outside and left to police themselves. Even more alarming is the fact that Rwanda cannot afford to feed the inmates. Instead, it is up to individuals' family members to bring them food and medicine, even when they are detained in facilities far away from their homes. The International Committee of the Red Cross (ICRC) tries to assist with feeding inmates, but their resources are limited to the large, central prisons (Zorbas 2004:33). Rwanda's Chief Prosecutor has admitted that an estimated 20 percent of those currently detained have been falsely accused of crimes, and that more people currently die in prison each year than are tried (Uvin 2004:182).

Furthermore, with a virtually all Tutsi judiciary, many Hutu in Rwanda have found themselves alienated from the process they perceive to be nothing more than victors' justice. In 2000, Michael Moussalli, the Special Representative of the Commission on Human Rights found that, "'some Rwandans outside and inside Rwanda do not sufficiently recognize the state as theirs and do not sufficiently recognize the justice rendered as theirs...many Hutu remain alienated from and intimidated by this regime'" (Sarkin 2001:149-150).

While the national courts were established in a timely manner and have slowly but surely built up their volume of output regarding the hearing and sentencing the accused, they remain inaccessible to those without money or means of transportation. Additionally, the objectivity of the courts has been a serious point of contention, particularly for the Hutu population. As such, the legitimacy of the trials and sentences has not been approved by the population as a whole and

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marginalizes the Hutu. Considering the large Hutu majority in Rwanda, the government's solution to preventing possible dissent has been to become increasingly authoritarian, putting the kibosh on both an open dialogue of the past and the renegotiation of power between the people and the state. Given that reconciliation can only occur at the local level via the appropriation and internalization of rebuilding initiatives, Rwanda's national court system will not be successful in reconstructing Rwanda's social fabric (Brahimi 2007:15; Speed 2009:231).

The national initiatives established in Cambodia, Guatemala and Rwanda have all failed to address the needs of their survivor communities, and as a result have not succeeded in establishing justice, reconciliation or peace. Each initiative failed for the same basic reasons: their disconnect with the international and local spheres, their inability to obtain legitimacy in the eyes of survivors, and their failure to balance socioeconomic justice, retributive justice and reconciliation. Next, I look at the international community's contributions to rebuilding in each nation and assess their effectiveness.

CHAPTER 6
The Global Response: International Initiatives

In this chapter, I outline the internationally based initiatives implemented in Rwanda, Cambodia and Guatemala. The theories outlined in the beginning chapters provide the framework for my analysis and illustrate the successes and failures of each program. Ultimately, this chapter assesses how the international community can overcome the disconnect between the global, national and local and improve the way it responds to and works with post-genocide communities by using my tripartite model and focusing on rebuilding the state and national identity, identifying and incorporating local practices and knowledge in the development of initiatives, and committing to the protection of human rights as the ultimate goal of international intervention.

Rwanda

After the genocide, Rwanda received a great deal of international assistance and the United Nations established the International Criminal Tribunal for Rwanda (ICTR) on November 8, 1994 through United Nations Security Council Resolution 955. Modeled after the 1993 International Criminal Tribunal for the Former Yugoslavia (ICTY), ICTR was formally titled the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwanda Citizens Responsible for Genocide and other such Violations Committed in the Territory of Neighboring States, between 1 January 1994 and 31 December 1994, effectively

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limiting the ICTR from prosecuting those responsible for acts of retaliation against Hutu in the days following the genocide.

The ICTR was initially supported by the Rwandan government. However, after the United Nations decided to base the trials in Arusha, Tanzania and the ICTR decreed that the United Nations would decide who would be tried and how they would be punished, and that RPF members who had committed war crimes during the fight against the *interhamwe* would be tried as well, Rwanda rescinded its support. In fact, in the Security Council vote that formally established the ICTR, Rwanda was the only nation to vote against it (Graybill 2004:1121). This is unsurprising considering that the new government consisted primarily of ex-RPF leaders. Ironically, even though the ICTR would be trying the alleged masterminds of the genocide, while Rwanda's national courts would try those who merely participated in it, the maximum sentence an individual could receive from the United Nations trial was life in prison, while those tried in the national courts could be given the death sentence. It has been a point of contention that the ringleaders of the genocide, those being tried by the ICTR receive what Rwandans consider a lighter sentence than many Category One offenders tried within Rwanda.

Furthermore, the United Nations' insistence on Western methods of justice cost the ICTR dearly, as "adhering to international standards of justice which require that defendants' rights are scrupulously protected led to the release of one leading genocide suspect, Jean-Bosco Barayagwiza, when prosecutors failed to present his case within the specified time" (Graybill 2004:1122). Although this decision was later reversed (in a controversial ruling that led many to question the objectivity of the trials) and Barayagwiza was sentenced to life in prison nine years later, this particular incident so outraged the Rwandan government that they suspended the

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ability of witnesses to testify by withholding the paperwork needed for witnesses to leave and re-enter the country, hindering ICTR's ability to proceed (Graybill 2004:1122). Additionally, the United Nations has been unable to protect witnesses who agree to testify against those on trial, and numerous individuals have been assassinated. The ICTR has also been beleaguered with allegations of incompetence and corruption, which an internal investigation confirmed were largely true (Zorbas 2004:33-34).

This is not to say that the ICTR has been a complete failure. The ICTR was the first international court to charge and sentence individuals for crimes of genocide, a huge step forward in international standards of law (Charny 1999, vol. 2:560). The first ICTR judgments came on September 2 and 4, 1998:

> Mr. Jean-Paul Akayesu, former mayor of Taba commune, was found guilty on 2 September of 9 out of 15 counts of genocide, crimes against humanity, and violations of common Article 3 of the Geneva Conventions. This case was hailed in much of the world press as the first conviction for genocide by an international court. The former prime minister of Rwanda, Mr. Jean Kambanda, after pleading guilty to six counts of genocide and crimes against humanity, was sentenced on 4 September 1998 to life imprisonment. [Charny 1999, vol. 2:560]

As of 2003, the ICTR had passed judgment and sentencing on ten individuals and imprisoned 56 others in anticipation of their trials. However, of those found guilty, none were actual organizers of the violence.

Interestingly, a survey conducted in Rwanda found that Hutus more often favored the ICTR over local forms of justice than Tutsis did, and the authors of the study concluded that this was likely due to hopes that the ICTR would be more fair than local trials (Weinstein and Stover 2004). This indicates that the involvement of an unbiased third party is important in ensuring justice is delivered fairly. However, it lacks the cultural sensitivity which many experts feel is so crucial to the rebuilding process in post–genocide communities and, unfortunately, many

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Rwandans feel that the ICTR has ultimately failed, as it neglected its duty to meet the needs of the victims (Pieterse 2001:90). The International Crisis Group published a report in 2001 which concluded that the ICTR had failed to assist with social rehabilitation, as it was not culturally relevant to Rwandans (2001). Additionally, Weinstein and Stover's study found that:

> ...only 29% of people interviewed thought the ICTR trials would contribute significantly to the reconciliation process. [...] The inability of Rwandans to connect with the type of justice promised by ICTR meant that public support for the trials was not as great as the UN hoped it would be. In fact, only 87% of people interviewed were well informed about what ICTR was and how it operated, and of that 87% only 52% thought ICTR was well run and 54% thought it would be beneficial to the reconciliation process. [2004]

At the end of the process, the international community will walk away while the Rwandans will be left to live with the outcomes decided for them (Uvin 2001:186-7).

This lack of perceived legitimacy among survivors is a critical problem, as legitimacy confers power. The methods and results of justice and reconciliation programs must be accepted as moral and just by the people for whom they were designed, for the key to establishing legitimacy is the combined participation of international, national and local elements through both formal and informal power structures (Brahimi 2007:7). These elements cannot be found in the input, output or demos of the ICTR, and this disconnect between global and local processes has hindered the likelihood for human rights to be vernacularized in Rwandan society (Oomen 2009:175; Merry 2006:44-8). This, in turn, results in the failure of Rwandan civil society to empower itself through a dialogue of rights as capabilities, paving the way for the Rwandan state to impose authoritarian measures of discipline in the name of "national security," the consequences of which will be explored in chapter nine.

Guatemala

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Although a number of transnational groups have become involved in establishing post-genocide justice and reconciliation initiatives in Guatemala, the international community has remained surprisingly hands-off. The exception to this rule has been Spain, where human rights advocate and Maya survivor of *La Violencia,* Rigoberta Menchú Tum filed criminal complaints regarding Guatemala's genocide in 1999. Spain's high court initially rejected the complaints, stating that all judicial options had not be exhausted within Guatemala itself (CJA 2009). However, Tum and other human rights advocates presented a case illustrating the corruption of Guatemala's government, military and court systems and Spain agreed to pursue the case, declaring their right to jurisdiction as a nation dedicated to promoting international criminal responsibility for crimes against humanity. Included in the six defendants listed by Tum are former Guatemalan presidents Oscar Humberto Mejía Victores and Efraín Ríos Montt, as well as former National Police Director Garcia Arrendonco. These men are charged with genocide, torture and state terrorism (CJA 2009).

In 2006, Spain requested the extradition of the defendants from Guatemala. The Guatemalan Constitutional Court (GCC) originally agreed to the extraditions, but overturned the decision in 2007, denying extradition and refusing Spain's request to send representatives to interview key witnesses within Guatemala. In turn, Spain flew forty of these witnesses to Spain to be interviewed on Spanish soil, and decided to try Victores, Montt, Arrendonco and the other defendants en absentia, using the witness testimony and FAFG exhumation reports as evidence (CJA 2009).

Additionally, the Inter-American Court of Human Rights (IAHCR), established in 1979, ruled in December of 2009 that the Guatemalan government must pay $3 million to survivors of

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the Dos Erres massacre of 1982, where the army killed over 200 civilians in a three day period. Additionally, the IACHR ruled that the national courts must stop stalling cases against government and military officials responsible for the Dos Erres massacre (Reuters 2009).

Noticeably, the absence of the United Nations in the development of internationally based assistance for Guatemala speaks volumes about United Nations policy. Unlike in Rwanda or Cambodia, the international community had no political stake in assisting Guatemala. Again, this is where the adoption of a human rights based mandate is essential to improved functioning of United Nations assistance to post-conflict nations. Post-genocide rebuilding processes are crucial to the furtherance of a discourse of human rights through their ability to redefine social spaces and strengthen civil society. By separating peacekeeping from state-building and focusing on providing technocratic aid and quick-fix solutions, international initiatives relegate themselves to providing expensive, short-term, unsustainable aid (Brahimi 2007:18). Without UN intervention that supports the development of these social spaces through state-building, the establishment of justice and reconciliation programs, and the development of a Guatemalan state capable of and interested in providing socioeconomic justice for the Maya community, the violence that plagues Guatemala cannot be resolved.

Cambodia

In 1989, the last Vietnamese forces left Cambodia under severe international pressure. The Khmer Rouge, which had been hiding out in Thailand, re-emerged to challenge the Hun Sen regime. It was clear "the Cambodia situation" was not going away. With the Cold War losing steam, the United Nations intervened in 1991 (Etcheson 2005:28-51). The United Nations hosted

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peace talks between rebel forces and the government, leading to the Paris Peace Agreement. Chinese aid to the Khmer Rouge was halted and 362,000 refugees were repatriated (Etcheson 2005:40-1; Hinton 2005:13). However, the Khmer Rouge reneged on its signature of the peace treaty and continued to terrorize the Thai border. When it became obvious to rebels that the peacekeepers would not fight back, United Nations presence ceased to deter the escalation of violence.

It was clear that peacekeeping was not working, and the United Nations hastily arranged democratic elections in 1993 (Etcheson 2005:9). This was carried out by the United Nations Transitional Authority (UNTAC), and involved a great deal of propagandizing and politicking on the part of both Hun Sen, Cambodia's interim leader and presidential hopeful, and UNTAC. Unfortunately, UNTAC lacked the resources to establish truly effective programs, with only one United Nations representative per province in place to carry out UNTAC's mandates. These representatives were charged with the development and implementation of programs to monitor, protect and educate Cambodians about human rights as they related to the upcoming elections.

As part of the Paris Peace Agreement, Cambodia was required to abide by the human rights standards set forth in the United Nations' Universal Declaration of Human Rights (UDHR), and UNTAC was tasked not only with peacekeeping, but with educating the Cambodian people on the universal human rights outlined in this document (Ledgerwood and Un 2003:524-31). UNTAC set out, at first, to vernacularize universal concepts of human rights through replication, the imposition of foreign ideals, rather than hybridization, with United Nations staff in charge of the writing and production of media programs designed to explain human rights via radio and television programs (Merry 2006:44-8). While UNTAC would later

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turn this process over to the Cambodians, these initiatives were ultimately unsuccessful for several reasons (Ledgerwood and Un 2003:534-5).

First, the interim Cambodian government was trying desperately to maintain its control over the population and cement itself as the rightful government before Cambodians went to the polls to vote. As such, the government was using its police and military forces to impose authoritarian rule over the country in hopes of creating the appearance of social and political stability. This prevented the creation of a strong civil society within which an open discourse of human rights could be developed, preventing local appropriation and internalization of UNTAC's programs.

Second, UNTAC focused nearly exclusively on promoting those human rights that related to the elections, not human rights as a whole. This meant that the human rights outlined in the UDHR had little meaning for Cambodians once the elections were over. Third, UNTAC tried to impose Western-style justice through the severely crippled Cambodian national court system. When prosecutors were unable to meet deadlines or otherwise failed to meet the standard of justice imposed by the United Nations, prisoners were released. The Cambodian government seized upon this as "evidence" that UNTAC's human rights agenda was detrimental to the nation (Ledgerwood and Un 2003:534-5). Hun Sen's government began a media campaign to undermine UNTAC that claimed the United Nations' version of human rights meant rights only for criminals and genocide perpetrators, and that the crime rate had risen dramatically since the United Nations arrived. Fliers were passed out in Phnom Penh that said the Cambodian Constitution protected basic human rights, that the Khmer Rouge had trampled the sacred tenets

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of the constitution. These fliers stated that formally electing Hun Sen's government was the only way to ensure the Khmer Rouge did not return to power.

Furthermore, political hopefuls Hun Sen and Prince Ranarridh proclaimed that the United Nations' brand of human rights, developed in lofts and office buildings in Western cities, had no meaning in Cambodia, again hindering the sustainability of UNTAC's message through the inhibiting of local discourse and appropriation (Ledgerwood and Un 2003:536-8). Rather than work together, the United Nations and the Cambodian government created antagonistic, parallel institutions, violating one of the basic principles of light-footprint intervention.

The election was held in 1993 and re-established the monarchy by electing Prince Ranariddh, but Hun Sen refused to give up power so the United Nations declared them co-prime ministers (Maguire 2005:3). This government was accepted by the international community and the United Nations pulled out of Cambodia (Etcheson 2005:41). By 1994, diplomacy was thrown out the window and the co-prime ministers were no longer on speaking terms. The country's loyalties were split, with supporters from both sides fighting in the streets (Etcheson 2005:45-49). The established concept that human rights only applied to some individuals and not to those deemed "enemies of the state" or "criminals" set a dangerous standard, as anyone who opposed the government fell into those groups. With the dissolution of the joint government and the resulting power struggle dividing political loyalties, definitions of whom was a criminal or enemy of the state changed on a day to day basis, further destabilizing the state's authority (Ledgerwood and Un: 2003:538).

In 1994, the United Nations intervened for a second time and staged peace talks between Hun Sen, Ranariddh and Khmer Rouge leaders but made little progress. A few months later,

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Ranariddh was exiled and Hun Sen was left in control. It was evident to both the United Nations and the Cambodian government that a war crimes trial would be necessary to generate any sort of lasting peace (Fawthrop and Jarvis 2004:119). In late 1994, the Cambodian Genocide Justice Act was signed into law, obligating the United Nations to assist Cambodia in forming a war crimes tribunal, but it would take another thirteen years before negotiations of the details were complete. In 2003, The United Nations, represented by Hans Corell, and Cambodia, represented by Suk An, signed a tentative agreement in which twelve high-level officials of the former Khmer Rouge regime would be tried for a variety of crimes under both international and national law, including " homicide, torture, religious persecution, destruction of cultural property, genocide, crimes against humanity, war crimes and crimes against internationally protected persons" (Maguire 2005:191). During proceedings, the Cambodians would carry a voting majority over the United Nations in both the appeals court and the war crimes court, four to three and three to two respectively.

Proponents of the joint trial system argued that it would be locally accessible since it would be held in Cambodia, as opposed to the ICTR, which was criticized for its remote Tanzanian location. Additionally, it avoided the political difficulties of a traditional United Nations international criminal tribunal, as many United Nations officials believed that China would veto the formation of such a tribunal during the Security Council vote (Maguire 2005:191; Fawthrop and Jarvis 2004:157). There was also a great deal of criticism of the trial, as transnational groups, including Human Rights Watch and Amnesty International, believed an internationally acceptable standard of justice could not be attained so long as Cambodia held the voting majority (Maguire 2005:195).

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This returns us to Hirsch's (2010) discussion of the extent to which local actors should participate in developing and applying justice and reconciliation initiatives (150). Seeing as how the United Nations' top-down approach to human rights is cited again and again as being unable to meet the needs of survivors, ineffective at establishing reconciliation at a national or local level, and a barrier to the vernacularization of human rights that is so crucial, it appears that a compromise is the best solution. While the concerns of critics of the joint United Nations-Cambodian trial have some validity, they also advance two dangerous assumptions: that the local and the global are antagonistic of each other and that protecting the integrity of Western-based concepts of justice is what defending human rights should be about.

A survey taken by the Cambodian Center for Social Development indicates that a mixed tribunal would go a long way towards helping the Cambodian people heal, with 82 percent of the population stating that the trial of former Khmer Rouge leaders will be advantageous to true national reconciliation (Fawthrop and Jarvis 2004:143-4). In late 2007, both sides settled for a joint United Nations-Cambodian war crimes tribunal, to be held in Cambodia and sanctioned by the international community. In February of 2009 the trials began, with five former Khmer Rouge leaders indicted for a variety of crimes against humanity, although genocide is no longer included as a charge. It is important to note that this is the same year Cambodian schools reincorporated the history of the genocide back into the educational curriculum, a move likely designed to illicit popular approval of the joint trials from the new generations of Cambodians who were born after the fall of the Khmer Rouge.

As Oomen has stated previously, internationally based courts are most likely to be considered legitimate by survivors if local actors are included in the court's design and

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implementation; that is, included in the input. Likewise, if local actors are incorporated as stakeholders in the success of international courts, thereby becoming part of the demos, the output, or results, of the trials are more likely to be accepted by national and local communities of survivors (2009:184). This also ties in with Merry's (2006) concept of hybridization approaches to vernacularization being the most effective method of tying the global, national and local together (44-8).

Illustrating this point is the consensus of many anthropologists and policy experts that UNTAC's greatest accomplishment was achieved at the local level: the fostering of grassroots Cambodian human rights NGOs. While in Cambodia, UNTAC established programs to train and fund burgeoning human rights groups that were popping up at the local level. Long after UNTAC pulled out, these NGOs have continued the fight to promote human rights in Cambodia and will be discussed in more detail in the next chapter (Ledgerwood and Un 2003:535). Remembering Preis's point that "the 'reality' of human rights is culturally constructed" (2006:347), and that reconciliation can only occur at the local level via the appropriation and internalization of justice and reconciliation initiatives (Brahimi 2007:15; Speed 2009:231), UNTAC sets one shining example of how the international community can work side by side with the local sphere to create sustainable, long-term rebuilding programs.

While anthropology has succeeded in demonstrating culture's link to every aspect of social life, from language to dress to religious practices, the idea that justice is anti-cultural continues to prevail, fueling the myth that the global and the local are incompatible and inhibiting the international community from developing truly successful post-genocide justice initiatives. The international community's resulting preoccupation with providing technocratic

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aid is detrimental in that it removes the focus of aid from long-term reconstruction to the short-term satisfaction of basic needs (Terry 2002:242). This, in turn, results in the development of parallel programs that compete with state based initiatives instead of working with them. It is only by reconnecting the global, national and local that a new, more holistic approach to post-genocide reconstruction can be developed.

CHAPTER 7
Primacy of the Home Front: Local Initiatives

In this chapter I analyze the local initiatives established in Rwanda, Guatemala and
Cambodia using an anthropological framework. In particular, I examine how *gacaca* trials in
Rwanda function as a nation and state-building exercise, how Guatemala's development of
grassroots reconciliation programs has changed the international community's perception of
local solutions, and how the modern social movement in Cambodia is helping to re-write their
national memory.

Rwanda
The Aftermath of Rwanda's Genocide

By 2001, the government had successfully rebuilt the majority of Rwanda's infrastructure
(Sarkin 2001:155). However, the genocide of 1994 has permanently altered the way Rwandans
live their daily lives and changed the way they think about society. Over 80 percent of Rwandans
lost at least one family member in the genocide, while one-sixth of the adult male population is
incarcerated and awaiting trial for crimes committed during the ninety day genocide. Over one
million refugees have returned to Rwanda since late 1994, only to find that their homes, fields
and livestock have been either destroyed or claimed by others in their absence.

In an effort to ameliorate property disputes, which were of no priority in a court system
overburdened with prosecuting crimes of genocide, in late 1996 the Rwandan government
implemented a program to funnel tens of thousands of returned refugees into low cost housing in
government designated villages, or *imidugudu*. While some individuals have benefitted from this
program, Human Rights Watch reveals:

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> In some cases homeowners have been obliged to destroy their own homes before moving to the *imidugudu*; in others landholders have been obliged to cede their fields to serve as building sites. Persons unwilling to move and those critical of the policy have been subject to harassment, imprisonment, and fines of government officials...this policy of rural resettlement decreed a drastic change in the way of life of approximately 94 per cent of the population. [Sarkin 2001:153]

These factors have completely changed the structure of Rwandan society, where traditional community life was built around close-knit extended families, and where shared history, descent and religious practices defined what it meant to be Rwandan (Briggs 2005:24). Individuals can no longer openly claim to be Hutu or Tutsi, resettlement programs are stripping individuals of the ties to their land, and families have been fractured by death and incarceration. Rwandans have been left to flounder, unable at this time to forge identity through kinship or ethnicity. Perhaps, then, the most difficult challenge the Rwandan government has faced is the depolarization of society. To construct this new collective identity, Rwanda must re-imagine its national identity and obtain legitimacy in the eyes of the people.

This reconstruction of national identity is intimately linked to the achievement of social justice, for the new government can gain formal recognition and legitimacy from its people by holding human rights violators legally responsible for their actions. This process distances the nation's violent past from hope for a peaceful and just future, producing "new narratives about past atrocities, assigning responsibility for creating conditions that made massive violations of human rights possible. Providing a secure foundation for the rule of law, many advocates agree, requires a comprehensive accounting for the past" (Drexler 2010: 229; Sarkin 2001:147-8).

Rwanda is not the first nation faced with the task of reprogramming a society fractured by ethnic politics. Unfortunately for the governments that inherit these legacies, their stability is based in large part on their ability to correct the injustices of the past in the eyes of the people (Pieterse 2001 89; Sarkin 2001:144-154). Says Sarkin, "the goal has to be to find an appropriate

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balance between denouncing the abuses committed by the former regime, consolidating the new regime, and achieving reconciliation" (2001:147-148). One of the most effective ways to achieve these goals is through ritual, which Kertzer defines as, "action wrapped in a web of symbolism...the repetitive use of emotionally charged symbols in symbolically significant locations at symbolically appropriate times" (1988:9). Through these actions, those in power create an emotionally compelling image that naturalizes their redefinition of the way the citizens should see the world. One of the most powerful functions of ritual is its ability to connect the present, the past and the future, and individuals to the state, building continuity. This is particularly important in societies that have had their history perverted and used to destroy society from the inside out (Kertzer 1988:1-2;9).

While the ICTR and Rwanda's national courts have made progress in meting out justice, those systems lack the component of reconciliation that is necessary for post-conflict nations to depolarize and maintain a stable state in the long term. The goal of these Western-style trials is to determine guilt or innocence and punish accordingly, with no civic space provided to assist victims in the recovery process or help address the underlying issues that caused the genocide (Pieterse 1997:74; Sarkin 2001:148).

Reinventing the Gacaca System

Given the need for Rwanda to reforge its national identity to ensure the long-term stability of the state, the implications of the failures of these initiatives to engage the populace go far beyond issues of human rights and improving the standard of living for a traumatized population. Calhoun advises that, recognition "as a nation clearly requires social solidarity- some

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level of integration among the members of the ostensible nation, and collective identity- the recognition of the whole by its members, and a sense of individual self that includes membership in the whole" (1997:4). How, then can Rwanda bring together its fragmented population and recreate a sense of national identity? I argue that the *gacaca* court system has the potential to achieve this goal. By implementing a form of restorative justice integral to the history of both the Hutu and the Tutsi, the Rwandan government can help break down divisions between groups and put its people on the path to successful reconciliation. According to Fisiy, "the process of sharing a common social memory, with shared symbols, myths and practices provided the cultural glue that helps hold group identity together" (1998:19).

If we turn to Kertzer's (1988) definition of ritual and apply it to the *gacaca* system, we begin to see the *gacaca* as a ritual ideally suited to the task of nation building. For what is more "emotionally charged" than the community based trial of a genocidaire? And what is a more "symbolically significant location" than the government established village that victim and perpetrator alike have been forced into as a result of the genocide? And, lastly, what is a more "symbolically appropriate time" to confess and forgive than at a government sponsored, community based trial for one's sins and the local is linked to the national and international through the framework of human rights discourse?

Of course there are practical reasons for the Rwandan government to implement the *gacaca* system: relieving the overwhelmed national courts and overcrowded jails while still saving face and delivering justice, for example. And, given the nature of the Rwandan genocide, it is appropriate that the government turn to "a populist response to a populist genocide" (Daly 2002:381). However, there is a deeper issue at work here. The *gacaca* is political mechanism that

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has the potential to lend legitimacy to the state by providing "a way to understand such abstract political entities as the nation and a means (indeed the compulsion) of identifying with them" (Kertzer 1988:13).

Gacaca, literally translated from Kinyarwanda as "justice on the lawn," is a community based trial system modeled on pre-colonial Rwandan tradition. Historically, Rwandan communities used to settle property, marriage and land disputes by encouraging voluntary public confessions and apologies in exchange for community understanding and reduced legal penalties. This approach emphasizes truth telling, atonement through community service, and reintegration into society (Scheffer 2004:85). The community based system was used from pre-colonial times until the genocide, although colonialism's introduction of Western models of justice had replaced the *gacaca* as Rwanda's main judicial system by the 1960s (Karbo and Mutisi 2008; Graybill 2004:1123).

After years of planning, beginning with the drafting of the *gacaca's* modified structure in the same Organic Law that established the national court system, elections for *gacaca* judges were held in 2001. More than 260 thousand Hutu and Tutsi men and women were chosen to serve as judges in nearly 11 thousand jurisdictions. To be considered for a position as a judge, individuals must be a Rwandan national, at least 21 years old, and considered honorable by the community. The *gacaca* system began operating in 2002, and was fully implemented nationwide by 2004 (Graybill 2004:1117-23; Sarkin 2001:164).

As part of the modification from its traditional format, the modern *gacaca* operates on four levels. The most local level, the cell, operates in individual villages and hears Category Four

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crimes, as defined by Rwanda's Organic Law 08/96. The sector, which encompasses several villages within a particular area, hears Category Three crimes, while the district, which is comprised of several regional sectors, hears Category Two crimes. Lastly, the province hears appeals from the districts. Category One crimes are still considered the territory of the national court system (Graybill 2004:1123). The *gacaca* counts time served in detention centers while individuals await trial towards the final sentence, and those who confess to their crimes through the *gacaca* system receive lighter sentences than do those tried in the national courts. However, the government has given the *gacaca's* lay judges the power to sentence defendants to up to a lifetime in prison. There is no death sentence in the *gacaca* court (Weirzynska 2004:1956).

In accordance with the traditional *gacaca* system, individuals found guilty also pay money into a victim compensation fund, which the government also supports with an 8 percent pay-in of its annual national revenue, further connection the local to the national. As part of their sentences, many persons found guilty by the *gacaca* are required to perform acts of community service, such as rebuilding homes, repairing schools and hospitals, laboring as farm workers, and maintaining public green spaces (Graybill 2004:1123-4).

Not everyone is eligible for a *gacaca* trial. As in the national court system, individuals from the RPF who committed crimes of retaliation will not be tried. Furthermore, confessions from any individual will not be heard unless they include "(1) all information about the crime, (2) an apology, and crucially (3) the incrimination of one's co-conspirators" (Zorbas 2004:36-37). Those who meet these requirements often serve sentences, lasting one to three months, in solidarity camps rather than prison. These camps are run by the Rwandan Ministry of Unity and Reconciliation and provide vocational training and use Rwandan history to educate individuals

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about the need for strong community bonds to ensure an end to the violence (Penal Reform International 2004:45-6). In order to make the trials as uniform as possible throughout the country, judges are required to complete week–long training sessions conducted by members of the Rwandan judicial system (Chakravarty 2006:134). Karbo and Mutisi 2004 further describe the structure of the *gacaca* trials as such:

> Like in pre-colonial Rwanda, the gacaca trials in contemporary Rwanda are chaired by "community judges" known as the inyangamugayo. These are elected household heads from the community who are essentially women and men of integrity. The judges receive no salaries but are entitled to free schooling and medical fees for their families. Approximately, 11,000 Gacaca courts are operating in Rwanda and each court has a panel of 19 judges. For a gacaca session to be regarded as valid there is a required presence of at least 15 judges and 100 witnesses. [6-7]

The first step in a *gacaca* trial is a pretrial, in which the accused may present their version of events to the community. In this stage, witnesses are called to corroborate the defendant's story. Next, the actual trial is held in which formal charges are made against the accused. At this stage, defendants have a chance to agree or disagree with what they are being charged with, as well as the category into which their crimes are classified. When all the testimonies have been heard, the judges must reach a majority decision and set a sentence, which is announced publicly to the community. When the sentencing is announced, the defendant may either accept the judges' decision or appeal for a new trial (Chakravarty 2006:135).

The communal nature of these trials is incredibly important as, "rituals bring all the people together, sanctifying their unity and thus contracting the divisive tendencies that plague their daily social life. The greater the divisiveness in society, the greater the need for compensatory ritual to hold the society together" (Kertzer 1988:63). By participating in a ritual that requires the cooperation of the collective to be successful, individuals build ties with the community and are viewed as essential members of the community by their peers. Barriers are

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broken down, and social divisions are trumped by an all encompassing membership in the nation (Kertzer 1988:16-7). Says Oomen, "the legitimacy of the demos in determining the legitimacy of transitional justice mechanisms might well lie at the level of the nation-state...the priority in setting up transitional justice mechanisms should lie at this level, hooking on to processes of nation-building and narratives of belonging and strengthening them" (2009:197).

However, the *gacaca* system has been plagued by a variety of problems. First, although *gacaca* are intended to help repair the social fabric of Rwandan communities, the system is based on the idea that a tight-knit community already exists. Traditional *gacaca* took place within communities that were made up primarily of family members linked by blood and marriage. After the genocide, these communities were destroyed, and the forced resettlement program simply cobbled together makeshift villages. Without social cohesion and a basic level of trust between community members, the open environment required by the *gacaca* to allow for successful testimony and communal forgiveness cannot exist. This catch twenty-two has severely impeded the *gacaca* system's ability to function. This problem has been compounded by an increasing level of violence against those prepared to testify in the *gacaca* setting. Dozens, even hundreds, of witnesses have been intimidated into silence and/or assassinated since the official, nation-wide establishment of the *gacaca* system in 2004.

Even worse for the success of the *gacaca* judicial system is the state's policy of forced cooperation. Compliance with and participation in *gacaca* trials is mandatory, essentially forcing reconciliation upon the people of Rwanda. This violates the input, output and the demos aspects of Oomen's theory of legitimacy, essentially nullifying any advantage to the *gacaca's* "local" approach (2009:175). Says Oomen, "forced reconciliation, as it takes place in Rwanda, with little

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or no space for alternative narratives, individual accountability and feelings of anger and grievance can help perpetuate the very narratives that played such a large role in the genocide" (2009:197). Add to this the amnesty RPF members enjoy for their role in the violence, perpetuating the polarizing and damaging idea that Hutu are bad and Tutsi are good, a particularly dangerous policy given the large Hutu majority in Rwanda.

While the use of traditional justice and reconciliation mechanisms, such as the *gacaca*, has the potential to provide meaningful justice for survivors, vernacularize human rights concepts and encourage long-term, sustainable peace in the wake of mass atrocity, the extent to which the Rwandan government has appropriated and co-opted the *gacaca* system has invalidated it as a viable solution in the eyes of survivors by turning it into a government project in sheep's clothing (Oomen 2009:194).

Assessing Rwanda's Current State

This complete co-opting of the *gacaca* system part of a broader pattern of increased government authoritarianism that has Rwandan's fearing the state rather than supporting it, destabilizing the country. Says Hintjens, "the political climate has deteriorated, with assassinations and disappearances of opposition politicians increasing since 2003. Prominent personalities have been abducted and killed...most indicators suggest that Rwanda is now more class divided and polarized than ever before" (2008:18-20). As is illustrated by my earlier discussion of the change in annual day of mourning events in Rwanda, it appears that the Rwandan state is more interested in using the genocide as a political boon to further the careers of particular individuals than in overcoming the social, economic and political injustices that led

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to the genocide in the first place (Hintjens 2008:25). In this instance, the presence of state authority has more to do with the perpetuation of social division than the assuagement of it, creating a dangerous discourse of national identity.

Nowhere is this more apparent than in the state's control over classifications of identity. The categories of Hutu and Tutsi have been outlawed by the government, replaced by the administrative and legal use of alternative categories based on various roles during the genocide: "(1) survivors; (2) old caseload returnees; (3) new caseload returnees; (4) suspected genocidaires" (Hintjens 2008:14). Of course, these identities are problematic as the popular and forced participation in torture, rape and killing during the genocide makes it nearly impossible for any individual to belong to only one of these categories. Additionally, assigning social and serious implications. This forced identity completely destroys the productive healing qualities that the reformation of national identity at the local level, and within a framework of human rights discourse, can provide. Says Hintjens, "it is a basic right to be able to define one's identity 'from below,' and without coercion...[identity politics] should not be repressed in the name of security and post-genocide nation-building" (2008:6). Indeed, this falls directly under the realm of third generation rights, in which Rwandans' right to social opportunities, political freedoms and protective security, as outlined by Sen (1999) have been violated (38-40).

Additionally, social injustice continues to run rampant in Rwanda, clearly violating Rwandans' first and second generation rights, as outlined by the United Nations in the ICCPR and ICESCR, respectively. Indeed, many Rwandans living in rural areas have no access to land upon which to make a living, and levels of extreme poverty are disproportionately high in Rwanda. Food shortages and lack of access to basic education and health care are common for

many rural Rwandans, making dependence on government aid a virtual necessity (Hintjens 2008:21). As such, Rwandans today lack access to both the opportunity and process aspects of human rights (Sen 2005:87-91). Lack of opportunity keeps Rwandans in abject poverty, beholden to the government and unable to build the strong civil society necessary to keep the increasingly authoritarian government in check. As a result, the social cohesion necessary to make the *gacaca* courts successful cannot be developed, and the local appropriation and vernacularization of human rights is impeded, perpetuating the cycle of a weak civil society unable to demand even basic social justice.

Guatemala
Excavations of Mass Graves

In Guatemala, transnational groups have supported local initiatives to promote reconciliation and push the government for trials to bring the orchestrators of the genocide to justice. The Guatemalan forensic team, or FAFG, is one key player in achieving both these goals. One of the first sites excavated by the FAFG was the village of Plan de Sánchez in 1994. The exhumation was done under the auspices of the Guatemalan High Court and involved the excavation of eighteen separate mass graves within the village. The team was assisted by the village members, as well as people from neighboring villages, who provided food for the members of the excavation team and helped remove and sift dirt. This not only expedited the process, it also gave a sense of closure and accomplishment to the people of Plan de Sánchez (Sanford 2003:40-1).

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Evidence of government disapproval of the excavations could be seen in the reticence of the police who were assigned to watch over the operation to become involved (Sanford 2003:43). According to one officer, he did not wish to be associated with the excavation because, in order to keep his job, he did not want to look as though he was supporting it. At one point Sanford says the officer saw the remains of a woman with her baby in one of the mass graves and said, "Look at this. It is a woman with a baby on her back. They told us they were pure guerrillas. There aren't guerrillas. That's a mother and a baby. That's a crime." (2003:43)

The investigation into the genocide at Plan de Sánchez was successful in proving that the bodies interred there were those of unarmed civilians, mostly women and children, and not of guerrilla fighters or civilians caught in the middle of a conflict between the army and the guerrillas, two assertions that the government had made in the past. The excavations also helped prove that the killings were systematic and well-planned, indicating that the army had meant to massacre the village from the beginning (Sanford 2003:47).

Perhaps the most important thing to come out of the excavations at Plan de Sánchez, from a human rights perspective, was an increased awareness amongst the population of Guatemala about the truth of the genocide, as well as the closure found by many of the survivors. According to Sanford (2003), the very act of the community organizing itself to request that the FAFG conduct an excavation has been therapeutic, allowing them to repossess their village as their own. As Sanford explains, "as a community, survivors challenged these public spaces as mere reminders of Maya loss and remade them into sites of popular memory contesting state stories" (2003:231).

This community-based process of remembering has empowered the community of Plan de Sánchez, and many other communities, to break free from the atmosphere of fear that forced silence creates. Such processes, says Sanford, become "a discourse of empowerment for the individual, community, and nation...[and] these discourses are often local appropriations and reformulations of global human rights discourse" (2003:212). This appropriation of discourse strengthens Maya civil society, providing a framework for them to share their stories, weaving a narrative of collective loss and challenging the state's official version of events. It is due to this challenge, this newfound freedom of personal and community agency, that excavations have been conducted and legal justice has begun to be served to those responsible for the genocide (Sanford 2003:231).

For survivors of the Guatemalan genocide, the ability to share their stories has been incredibly important. Explains Sanford, " witnessing is necessary not simply to reconstruct the past but as an active part of community recovery, the regeneration of agency, and to a political project for seeking redress though the accretion of truth" (2003:211). Sanford (2003) goes on to explain that the ritual of carrying the body of one's loved one in a proper burial ceremony is of great importance to the Maya communities in Guatemala. As such, after the FAFG's exhumations of the mass graves, the community holds a traditional burial ceremony for the victims, a compilation of Roman Catholic and traditional Maya religious rituals. The importance of this process is seen in Kertzer's explanation of ritual as a means of reducing anxiety, allowing people to participate in familiar, spiritually meaningful actions and giving them a sense of control over their lives (1988:131-2). The emotional nature of these rituals ties the community together, as few families were untouched by *La Violencia.*

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According to Kertzer, " ritual can be seen as a form of rhetoric, the propagation of a message through a complex symbolic performance. Rhetoric follows certain culturally prescribed forms whose built-in logic makes the course of the argument predictable at the same time that it lends credence to the thesis advanced" (1988:101). In this particular case, the "complex symbolic performance" is the burial ritual, and the message being propagated is that the community demands redress for the wrongs committed against them by the state. Standing up to the oppressive policies of the state through the use of traditional ceremonies, communities like Plan de Sánchez are not only empowering themselves, but appropriating global human rights discourse and demanding the right to a dignified quality of life free from government and army repression.

The village of Plan de Sánchez has also made great strides in rebuilding the community's infrastructure since the FAFG's excavations. In keeping with Oomen's (2009) observation that socioeconomic justice, retributive justice and reconciliation processes must go hand in hand for any of the three to be successful (197), Sanford found that:

> Local community initiatives for land rights, literacy, access to health care, education, and justice met with state repression but were not silenced by La Violencia. Rather, these initiatives were held in suspension until the community could reconstruct local memory in a public space. Reburial following exhumation did not draw a process to an end; it provided space for the redeployment of these local initiatives and it reinvigorated community mobilization for social justice- both of which had been suspended by fear. [2003 211]

Interestingly, while Oomen found that those she interviewed in other nations valued the attainment of socioeconomic justice over the immediate need for retributive justice, Sanford found that the community of Plan de Sánchez needed the process of reconciliation to start before they could attend to the establishment of socioeconomic justice. Clearly, particular social, economic and political circumstances, as well as cultural norms, affect these findings. However,

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the bottom line remains that socioeconomic justice, retributive justice and reconciliation processes must be seen as intimately linked. Thus, international aid programs should focus on establishing all three if long-term stability is to be achieved.

Healing as a Community

In Santa Maria Tzejá, Manz (2002) followed the development of a theater group that wrote a play based on the experiences of the villagers during *La Violencia* called "There is Nothing Concealed That Will Not Be Discovered (Matthew 10:26)." Performed by the villagers themselves, the play not only recounts the personal experiences of the villagers but also gives a point by point analysis of the ways in which the army and the government violated the Guatemalan Constitution (Manz 2002:303). The connection of personal stories with the overall failings of the state to protect its Maya citizens is an excellent example of the way local communities have begun using a human rights oriented approach in the development of local reconciliation initiatives.

Of course, not all the community members are comfortable with the play's direct criticism of the government. In particular, Manz found that those villagers who had cooperated with the army were particularly vehement in their opposition to the public performance of the play, usually expressing a preference for silence and forgetting (2002:303-4). Often, impassioned debate and conversation amongst audience members followed each performance, with some arguing that the army would punish the village for daring to speak so openly about the genocide and others supporting the open critique of *La Violencia*. Ultimately, Manz found that these conversations strengthened community ties by allowing individuals to state their opinions

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openly, promoting free speech and the kind of open dialogue that the community had not experienced since the beginning of the Civil War (2002:303).

Another reconciliation initiative that has been particularly successful, this time in the community of Rabinal, is the *Equipo de Estudios Comunitarios y Acción Psicosocial* (ECAP), or the Pyscho-Social Community Studies and Action Team. Founded by anthropologist Rolando Alecio and psychologists Olga Alicia Paz and Felipe Sartí in 1996, ECAP focuses on developing sustainable community healing projects based on the process of community testimony. This use of public testimony regarding the effects of *La Violencia* in Rabinal is a crucial part of survivors' "struggle to reassert their connectedness to the threatened collective entities of community, ethnicity and nationality" (Sanford 2003:241-2). Says Sanford:

> By creating safe collective spaces for individuals to speak and be heard, individuals and communities are able to recuperate and redefine collective identity in the aftermath of violence. It is this nascent collective identity that offers hope for the recovery of human dignity and the reconstruction of the social fabric so damaged by political violence. Like the exhumations, this process of collective recovery of psycho-social community identity also establishes the community as the conduit for the individual to the nation. [2003:244-5]

This community, then, has seized control over their own justice and reconciliation agenda, rather than having it dictated to them by others. At the same time, external forces, specifically ECAP, have provided them with a framework upon which to build a dialogue of human rights. This give-and-take approach has proven successful in Rabinal and, since its inception, the ECAP program has spread to nineteen other villages in the area (Sanford 2003:270).

Aside from being important to the healing process for survivors of the genocide, the re-creation of social space has helped provide a forum for reconciliation that connects individuals to the local community, the local community to the greater Maya community, and the Maya community to the nation. Indigenous, local leaders now have a voice that, through ECAP,

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can be heard on a national, and even global, level. The crimes of the army and the government have come to light, and, as a direct result of ECAP's work, several local military commissioners have been tried in the national court system and found guilty of crimes against humanity (Sanford 2003:270). Says Sanford, "revealing and reflecting upon the true responsibilities and motivations of *La Violencia* has allowed for public recognition of local structures of violence and lateral impunity, which has opened the way to community reconciliation and healing" (2003 271). Clearly, healing and justice can both be accomplished through the same mechanisms if those mechanisms provide connections between local, national and global actors.

In the war crimes trials being conducted in Guatemala today, trials that would not have been possible without transnational and international assistance, Merry's concept of vernacularization is clearly visible. There has been a strong push for the court proceedings to be conducted in Maya dialects as well as the standard Spanish, out of deference for the victims who represent the defendants in these cases. Even though the Maya continue to be marginalized in Guatemalan society, human rights discourse imported by international groups has provided these communities with a new way to assert their right to be social and political actors. Additionally, this vernacularization of human rights and development of social spaces has helped survivors reconstruct the community ties that bind individuals together. In her research following up on the changes to daily life in Rabinal since the implementation of ECAP, Sanford notes that the Maya community members and the *ladino*, or non-indigenous, community members are slowly working together to rebuild their community. She notes that, "Achi and ladina women stroll the streets arm in arm...children play games and cruise the streets on their bicycles. While some might think that these changes are due simply to the passage of time, this comfortable freedom of

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movement is hard to find in other municipalities where truth of La Violencia remains locked in silence" (2003:248).

Cambodia
Hidden in Plain View: National Memory

The Tuol Sleng prison was transformed into a genocide memorial while Cambodia was under Vietnamese control after the expulsion of the Khmer Rouge from Phnom Penh in 1979. The memorial is designed to show what daily life was like for prisoners, and photographs of all the prisoners, taken upon their admittance to Tuol Sleng by prison staff, cover the walls. A map composed of the skulls and bones of those executed at the facility, cobbled into the shape of Cambodia, used to adorn one wall near the museum's exit, but this was removed in 2003 (Lorey and Beezley 2002:xxiv; Hintjens 2009). Nearby, the famous Choeung Ek killing field has also been turned into a genocide memorial. These are the two most well-known memorials in all of Cambodia, and are used to illustrate the two most prominent genocide narratives: the state's official position that characterizes the communist movement as a glorious part of Cambodia's past that was hijacked by the Khmer Rouge, and the popular local narrative that characterizes the communist period as an epic failure from start to finish (Lorey and Beezley 2002:xxiv).

In 1995, King Sihanouk suggested that the bones displayed at Tuol Sleng and Choeung Ek be cremated in keeping with Buddhist tradition. Only through cremation can the souls of the dead become free to be reborn, and there was concern that the display kept those individuals trapped from completing the soul's proper cycle. However, the skeletal remains were considered too important as evidence that could be used against the orchestrators of the genocide in future

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trials (Ly 2003:70). This clash between retributive justice and Buddhist spirituality is a these that permeates much of Cambodia's discourse on post-genocide reconstruction.

As of 2003, there was only one survivor from Tuol Sleng left alive, an artist named Vann Nath. Nath survived in prison by painting portraits of Pol Pot, and was recruited by the government after the Khmer Rouge's fall to paint portraits depicting the tortures used routinely at Tuol Sleng. The paintings now hang in the museum, and have been critiqued as contributing to a pornography of violence, as "the social realist style, coupled with the artist's desire to describe vividly the horror that he had witnessed, overpowered his personal narrative...[and] destabilizes these paintings' context" (Ly 2003:71-2).

Overall the pornography of violence critique has been extended to both Tuol Sleng and Choeung Ek as a whole, as their displays lack historical, social and political context. As such, there is a push to make them more educational and to see the genocide not only in terms of Cambodia's social and political history, but also in a geopolitical context (Chandler 2008:360-361). Continued amnesty and impunity for former Khmer Rouge leaders has prevented Cambodians from achieving either justice or reconciliation. Without these elements memorials cannot be seen within the context of historical narrative, reducing them to what Williams (2004) calls "'guardians of an absent meaning'" (2004:235), the sites failing to "communicate a nation whose educational system, religious and cultural traditions, economy, social formations, and family structures were leveled" (Williams 2004:248).

According to Williams (2004), the focus on mechanisms and modes of death and torture supersedes focus on the victims as real people, and means "the sites may be experienced as theaters of grueling historical spectacle rather than sanctuaries for private tribute"(242-3).

Instead, the focus lies on those who were doing the killing and torturing, empowering the genocidaires and impeding the ability of these memorials to serve as spaces for survivors to seek closure and move towards a spirit of reconciliation (Williams 2004:246). Some Cambodians even wish away the monuments and reminders of the genocide for fear the younger generations will resort to violence to avenge their elders, re-establishing the cycle of Khmer-on-Khmer violence Pol Pot began (Etcheson 2005:1-2; Munyas 2008:422).

Another crucial factor contributing to a paucity of justice and reconciliation initiatives is that the majority of Cambodia's modern population were born after the Khmer Rouge fell from power, and, for those fortunate enough to attend school, the period was not discussed in the classroom until 2009. Parents and grandparents often do not tell the younger generations their stories of suffering. Although monuments dedicated to those killed under the Khmer Rouge are erected all over Cambodia, the horror of what survivors went through has kept many of them silent (Hughes 2006:265). Those who have attempted to relay the truth to their children may even find their stories discredited, for, if they were true, would not the perpetrators have been punished by now? Would not the United Nations have intervened in the face of such atrocity?

Furthermore, former members of the Khmer Rouge who retained positions of power in the subsequent regime worked hard to justify their actions, fashioning the Khmer Rouge as misguided but heroic, seeking to improve life for all Cambodians (Etcheson 2005:2). Given this propaganda, the fact that both Tuol Sleng and Choeung Ek were established during the period of Vietnamese occupation, with Vietnam being a centuries-old enemy of Cambodia, has led some Cambodians to doubt the veracity of the evidence preserved at these memorials. Instead, some

believe the memorials are political propaganda designed by the Vietnamese to justify their invasion of Cambodia and the ousting of the Khmer Rouge (Williams 2004:248).

Overall, studies have found that, "in the absence of adequate education on the history of the Khmer Rouge period, the prevalent exposure to the horrors of the genocide at homes, schools, museums and memorials has worked to produce fear, anger, disbelief or denial in many Cambodian youth" (2008:414). Indeed, the process of designing and implementing monuments, memorials and genocide education programs itself is an important part of the healing process for genocide survivors, as these processes provide an invitation for open dialogue and the creation of social solidarity based on shared memories of loss (Williams 2004:248-9).

In 2001, a new War Museum was opened by Cambodia's Ministry of Defense in Siem Reap, the only major government sponsored genocide museum not established during the Vietnamese occupation. Rather than taking this opportunity to use this project to promote reconciliation by incorporating local actors, the government designed the War Museum to be popular with international tourists, fashioning it in the popular "dark tourism" style that capitalizes on the shock value of violence (Williams 2004:251).

Effectiveness of Local Human Rights NGOs

These critiques come out of a rising awareness in Cambodia of the relationship of human rights to justice and reconciliation. The local human rights NGOs in Cambodia, the legacy of UNTAC, have been instrumental in the vernacularization of human rights discourse in Cambodia. The benefit of these groups over the UNTAC initiative can be seen in their multi-prong approach to promoting human rights. In Phnom Penh, local NGOs use what Ledgerwood

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and Un term a "militant" approach, while in the countryside a "mystic" approach is taken (2003:539). The militant method has been praised for its role in forcing the Cambodian government to allow the development of social spaces and a stronger civic society than has been seen in the past. For the first time since the fall of the Khmer Rouge, Cambodians "are able to publicly advocate liberal ideas such as the transformation of institutional and legal structures to ensure government transparency and equal political participation" (Ledgerwood and Un 2003:540). However, these social spaces are located primarily in Phnom Penh and have not extended to the countryside.

In contrast, the mystic method utilizes Merry's (2006) hybridization approach to vernacularization, investing human rights discourse into pre-existing Theravada Buddhist tradition, and "while there are no words for 'rights' in Buddhism, human rights are usually seen as corresponding to articulated duties or obligations that are stated in the Buddhist precepts" (Ledgerwood and Un 2003:540). In a study conducted regarding the effectiveness of this strategy, as used by the Cambodian Institute for Human Rights (CIHR), it was found that Cambodians responded well to the incorporation of universal human rights discourse into Buddhist teaching and saw the concepts as inherently linked (Ledgerwood and Un 2003:544).

However, the work of local NGOs has been critiqued for much the same reason as was UNTAC's approach: their narrow scope. While UNTAC focused on human rights that applied primarily to the upcoming democratic elections, CIHR focuses on the formation of personal ethics and morals, with first generation rights regarding due, process and rights as socioeconomic capabilities, left unexplored (Ledgerwood and UN 2003:544). As first, second and third generation rights, as well as individual and group rights, are necessarily co-dependent, a more

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holistic discussion of human rights must occur if they are to be fully realized. Additionally, as that the lack of retributive justice has ultimately hindered Cambodia's ability to achieve reconciliation, it is alarming that:

> ...these Buddhist discourses have come into tension with the global human rights discourses that are associated with another mode of remembering the past: holding a tribunal. While Buddhism promotes mindful understanding of the past, which is one Buddhist argument for holding the tribunal, it also asserts the importance of letting go of the past and freeing oneself of anger and attachment. Depending on how they are invoked, these notions may clash with assertions that the trial will enable Cambodians to attain 'justice', to finally be able to 'heal themselves', and to impose the 'rule of law.' [Hinton 2009]

This is an excellent example of how ideoscapes function, as "the interface between global discourses or ideoscapes, such as that of human rights, and local meaning results not in conceptual homogeneity but in heterogeneity" (Ledgerwood and Un 2003:540). While the investment of Buddhist tradition with modern human rights discourse has proven effective as a way to raise local awareness about human rights concepts, differing interpretations of Buddhist practice have given rise to multiple ideas of what is the "best" way to achieve justice and reconciliation.

The development of human rights discourse in Cambodia, initiated by UNTAC and carried on by transnational and local actors, is a positive sign for Cambodia, particularly in conjunction with the start of the joint United Nations-Cambodian war crimes trials in 2009. It is by encouraging the inclusion of local actors in the development of justice and reconciliation strategies that new social spaces, primed for the discussion of what human rights are, are created (Speed 2009:242). Thus, debate over the role of genocide memorials and museums has been sparked, and, for the first time, Cambodian youths have begun pushing for textbooks that cover more than anecdotal information about the Khmer Rouge regime and discuss the cultural, economic and socio-political factors, both local and global, that led to the genocide (Chandler

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2008:357; Munyas 2008:426). Additionally, social spaces in Phnom Penh have fostered the development of public protest, calling for a decrease in state authoritarianism and reflecting Speed's (2009) point that post-conflict rebuilding begins in the renegotiation of power relations between the local population and the state (242).

The Importance of "Truth"

In all of these cases, the construction and reconstruction of an official narrative of genocide has played a large role in the rebuilding process. In Guatemala, the official state-sanctioned narrative of events is being challenged and rewritten in legal and artistic forums. In Cambodia, recognition that their state-created national memory lacks historical, economic, social and political context has led to a push to redefine Cambodia's national identity in a more diachronic way: connecting past, present and future generations. In Rwanda, the state's official narrative of the genocide has been used to reinstitute authoritarian policies that continue to exacerbate the very social rifts that the government professes to bridge. Drexler (2010) comments on the importance of historical narrative in post-conflict areas, saying:

> Just as legal processes or their absence, have produced inaccurate historical narratives, distorted historical narratives have produced inaccurate dangerous laws and treacherous gaps in what judicial processes are conducted...In a context where legal institutions have endorsed impunity and historical narratives have justified state violence...No historical narrative provides justice; it only lays- or undermines- the foundations for a state and society in which actions have knowable causes and predictable consequences. [238-240]

In Cambodia, as well as Guatemala, the post-genocide government attempted to create a historical narrative that downplayed its role in the violence. In the case of Guatemala, this was due to the fact that the same government that had sanctioned the army's violent persecution of the Maya was still in power. To maintain that power, officials attempted to cover up and even

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justify their actions as a reasonable response to the terrorist threat imposed upon the state by the guerillas. In attempting to legitimize the army's policies, the state continues to disempower and marginalize the Maya, using structural violence to strip them of their history and silence their political voice.

In Cambodia, the regime changed with the end of the genocide, but many of the officials in the new government had been key players in the old government as well. The People's Revolutionary Tribunal (PRT) was one tool used by the new government to construct a state-sanctioned narrative of the genocide. The political message of the trial was twofold: the new leader, Hun Sen, was a defender of the people who condemned the actions of the Khmer Rouge's leaders, while the former members of the Khmer Rouge who still held positions of power in the new government were legitimized by promoting the Khmer Rouge as a a well-meaning social movement gone horribly wrong.

In Rwanda, the post-genocide ruling party is the Rwandan Patriotic Front (RPF), a political extension of the rebel group that fought against the *interhamwe* to stop the genocide. Their members hold virtually every government position, making Rwanda a one party state once again (Hintjens 2008:6). Hintjens describes the events at the annual day of mourning in 1994 and in 2004 as observed by one reporter, stating, "'the first genocide commemorations in 1995 had been a genuine exercise in collective mourning for all Rwandans, but by 2004 the frank recollection of the events of the genocide had been overtaken by an officially elaborated rhetoric, an officially sanctioned version of the genocide'" (in 2008:22). He goes on to say "official accounts of the genocide have 'frozen' political identities...The official myth of the genocide has in effect become the foundation myth of the new Rwanda" (2008:31).

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It should also be noted that, in each of these three nations, amnesty for particular actors in the genocide has been included as part of the rebuilding process. In Guatemala, amnesty has been granted to military and government members under national law, the ability to pursue legal justice sacrificed as part of the requirements for the CEH's report. In Cambodia, a policy of amnesty was granted to ex-Khmer Rouge members as reconciliation and the seeming impossibility of reconstructing a nation without them were given precedence. In Rwanda, the crimes committed by RPF members have been excluded from national and local trials, justified by the state as necessary for ending the genocide.

It has often been claimed that these actions were necessary for achieving national security and social stability, yet an Amnesty International report finds that "'a failure to investigate past abuses and bring those responsible to justice increases the chances of human rights violations recurring'" (Sanford 2003:252-3). Furthermore, Sanford (2003) finds that, where state sanctioned impunity is granted to particular members of society, militarization of the government increases, while NGOs and social spaces are disempowered. This creates a cycle in which the government loses legitimacy and must increase their authoritarianism to maintain control of the public (253). Ultimately, "impunity is a law of exception that permits and foments actions of the state against the citizenry...it inverts the relationship of a state that represents and responds to the needs of the people to a people who are submitted to the whims of the state" (Sanford 2003:253), sanctioning a state-crafted version of genocide that disempowers local actors.

Thus, even after reconciliation has begun and a more holistic version of the "truth" is crafted (as is currently happening in each of these nations), retributive justice- the prosecution of

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those responsible for genocide- must occur if the cycle of impunity is to be broken. Kertzer (1988) tells us that "the hallmark of power is the construction of reality" (5), and by adding their voices to the development of historical narrative, helping to construct historical reality, survivors are taking back power from the oppressive institutions that control them. Thus, the preservation of social spaces that allow for public remembrance and testimony, as well as the achievement of a balance between justice and reconciliation, is important for several reasons: to restore dignity to survivors, show that all individuals are equal under the law, and to prevent the perpetuation of future violence (Sanford 2003:262). Says Oomen, "a reinterpretation of the past, a rephrasing of common identity, a record of what took place and why, is crucial towards re-establishing legitimacy" (2009:182), as justice that is applied with inconsistency alienates a government's citizens.

When gross injustice has occurred, as in genocide, the failure of the state to provide retributive and socioeconomic justice for survivors may lead them to "reject the principles of liberal justice, and may seek other more immediate and severe solutions to their problems of physical security" (Wilson 2007:360). Again, we see the cycle of violence perpetuated when the state lacks legitimacy in the eyes of its people and when justice and reconciliation fail to be delivered in tandem. Says Wilson,"the pronouncing of certain baseline truths is essential to challenging lies about the past. There is a uniquely pressing impulse that is simultaneously political, ethical and historical, to establish 'who did what to whom' in conditions of great epistemological uncertainty" (2007:363).

CHAPTER 8:
Conclusion: Locating Human Rights in Post-Genocide Reconstruction

After analyzing the various international, national and local justice and reconciliation initiatives implemented in Cambodia, Guatemala and Rwanda, there are several conclusions we can draw. At the most basic level, the disconnect between local, national and global actors has severely hampered the ability of initiatives to be successful. The United Nations is uniquely situated to improve the communication between these actors, and any justice and reconciliation initiatives established must be the result of cooperation between these actors if initiatives are to be sustainable and successful. As Terry (2002) reminds us, "aid organizations incur responsibilities to the recipients of their assistance when they choose to intervene in a crisis. Just as their presence can confer legitimacy on regimes or authorities, so it imparts a sense of solidarity with the 'victims' and an element of trust" (154).

Of central concern is the fact that the failure of previously established initiatives is inherently linked to the lack of a framework for the vernacularization of human rights, as well as to the inability, or disinterest, of states to provide socioeconomic justice for its citizens. As legitimacy of the state and of justice and reconciliation initiatives is achieved through both formal and informal power structures, the need for communication between global, national and local level actors cannot be overemphasized. Mechanisms implemented must be developed through dialogue between these actors and have cultural and historical meaning for survivors, be implemented by the state and be supported by international community. In this way, the input,

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demos and output will be balanced and imbue justice, reconciliation and rebuilding initiatives with legitimacy.

Furthermore, initiatives must balance justice, reconciliation and nation-building. The legal assigning of responsibility for wrongs committed is crucial for the re-creation of stable states and unified civil societies, while reconciliation is important for the re-creation of social spaces in which human rights concepts can be appropriated and vernacularized, a process that provides checks and balances to maintain an equilibrium of power between the state and its citizens. Additionally, the appropriation of human rights discourse at the local level encourages local actors to contribute to the holistic production of historical narrative regarding the violence they have survived. Finally, the implementation of policies that contribute to socioeconomic justice are necessary, as first, second and third generation rights are all interdependent.

Only by implementing initiatives that meet all of these requirements can the "light footprint" approach to international aid and intervention succeed. This is essential, as, without a dedication to this type of approach, the state will be undermined by the establishment of parallel administrative structures by the international community. This undermines the state and makes the implementation of sustainable reconstruction initiatives impossible. Says Brahimi (2007),"it is only the rule of law that can create the framework for power to be transformed from a repressive force into an instrument for the realization of citizenship rights, central to the formulation of a new state" (20).

As such, international organizations, in particular the United Nations, should focus on long-term, sustainable justice, reconciliation and state-building programs that focus on the following areas, "healing wounds of the survivors; some form of justice; historical accounting

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via truth telling; and repatriation, social and psychological counseling projects, education, dialogue processes and support for civil society grassroots initiatives" (Brahimi 2007:8). This must be accomplished through the establishment of dialogue between international, national and local actors, breaking down the view of these arenas as mutually incompatible, and taking into consideration the historical, economic, political, and social factors that led to the eruption of genocide. It is often assumed that "'truth plus justice equals sustainable peace'" (Shaw 2010:223). However, this neglects the complexity that historical, cultural, social, political and economic factors add to post-genocide reconstruction. A more nuanced approach to post-genocide intervention can be achieved through the application of a tripartite system based on identifying and incorporating local practices and knowledge, focusing on the rebuilding of the nation-state and national identity, and committing to the protection of human rights as the ultimate goal of international intervention. These elements are inextricably connected and must be established together if long-term rebuilding is to be successful.

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Vita

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