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Media and Transitional Justice

A Dream of Symbiosis in a Troubled Relationship

Introduction

One of the least studied, yet highly significant relationships that unfolds in transitional contexts, where efforts are underway to reckon with past abuses, is the nexus between transitional justice measures and the media. This paper¹ provides an overview of the main issues that often burden this relationship with mutual mistrust and at times even open conflict. The paper also provides examples of the positive social impacts of media engaging with transitional justice processes, where a degree of complementarity exists. Moreover, it makes a case for the media to constructively engage with such processes in the public interest, of which the media is a natural guardian.

The power of media can be instrumentalized toward either virtuous or nefarious ends, and there are myriad examples of media being used to foment violence and dehumanize groups targeted in conflict or various forms of state repression. Media has been used to polarize or inflame underlying identity issues, deepen divides and reinforce the root causes of conflict. Such manipulation of media easily extends into transitional times and may take the form of “us-versus-them” biases that reinforce nationalist myths of victimhood and supremacy. Not all members of society may support efforts to arrive at truth and accountability for past violations, especially members of the former regime or the formerly loyal elites, and media companies owned by political parties, government factions, or powerful business interests “can seize on polarizing myths as a mode of retaining their loyal following, often subverting the possibility of bridge figures emerging.”²

At the same time, media can also *support and promote* transitional justice mechanisms by reflecting society’s new values and demands of victims. In a global online debate hosted by the International Center for Transitional Justice (ICTJ), UN Special Adviser for the Prevention of Genocide Adama Dieng asserted, “If media has the power to incite and fuel such heinous crimes as we witnessed in Rwanda and elsewhere, then

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¹ A version of this paper by the authors will appear under the same title, in *Research Handbook on Transitional Justice*, D. Jacobs, C. Lawther, and L. Moffett (eds) (Edward Elgar, forthcoming 2017).

² Monroe E. Price and Nicole Stremmlau, “Media and Transitional Justice: Towards a Systematic Approach,” *International Journal of Communication* 6 (2012), 1077–1099.

Media and Transitional Justice: A Dream of Symbiosis in a Troubled Relationship

About the Authors

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it is also possible that it can be used as a force for good to promote peaceful coexistence among the population.”

Drawing on academic work on the subject and the voices of journalists, transitional justice practitioners, and academics, this paper charts the ways in which the media can impact the success of transitional justice efforts and examines the myriad factors shaping journalists' approach to reporting on these processes. It then analyzes the distinct ways that media covers or interacts with transitional justice processes during their various stages. This sets the stage for a brief analysis of examples of different forms of symbiosis between media and transitional justice processes, which emphasizes the positive impact of special reporting projects dedicated solely to covering these issues. The discussion of the complementarity between the two is followed by examples of the destructive impact of politicized and negative media coverage, which has seriously undermined the work of truth commissions or trials in certain countries, diminishing any lasting societal impact they might have. Finally, the paper draws attention to the possible benefits that emerging transitional contexts like Colombia could experience from understanding the significance of this complex relationship and addressing the need for a constructive engagement of media in the transitional justice process from the beginning.

A Crucial Relationship, Between Symbiosis and Conflict

A constructive discussion of the role of media in transitional justice has as its point of departure the idea that acting in the public interest is an underlying principle of journalism.

Bennett introduces the idea that journalists owe democracy a duty of social responsibility, guided by certain professional norms that he defines as “those moral standards, codes of ethics, and guidelines about inserting one's voice and viewpoint into a story that enable journalists to make personal decisions.”³ For example, how a story is framed will largely determine its impact on the reader or viewer because it is the process by which a communication source, such as a news organization, defines and constructs a political issue or public controversy.

Transitional justice measures aim to establish the truth regarding massive human rights abuses and pursue accountability—via truth commissions, trials, reparation programs, and institutional reforms—and these measures are, in their essence, catalysts of social change. In the aftermath of mass atrocity or extended periods of dictatorship and repression, transitional justice measures signal a shift in the dominant values of a society—from an environment in which no person was safe if they belonged to a targeted group to a sustainable peace and a system of values in which the rule of law is respected and citizens trust the state as a guarantor of rights.

In such processes—which usually take place in deeply polarized societies—media reporting is not restricted to merely presenting the facts, but it instead shapes the parameters for interpreting the facts and divisive political issues. Media coverage can

3 W. Lance Bennett, *News: The Politics of Illusion*, 7th Edition (New York: Pearson Longman, 2007).

mitigate or obscure the substance of transitional justice efforts to establish what happened, who the victims were, and who was responsible for the violations, as well as either catalyze or paralyze the debate on how to repair victims and ensure that past violations do not recur.

In “Mediating Post-conflict Dialogue: The Media’s Role in Transitional Justice Processes,” Laplante and Phenicie describe this influence in clear terms:

Given the central role that the media plays in keeping citizens informed and shaping public opinion in democratic societies, it is inevitable that the media would also influence the public’s impression of the work of transitional justice mechanisms and the information they seek to impart. Indeed, news making is agenda setting because it influences what the public regards as important for them to think about in society and politics.⁴

The relationship between media and transitional justice efforts in any given situation exists within a spectrum delineated by two diametrically opposed manifestations: symbiosis and conflict. There are countless examples of media projects that have been crucial to promoting victims’ rights, championing accountability, and even catalyzing transitional justice processes by uncovering hidden truths about crimes and their perpetrators. In South Africa, for example, the media played an instrumental role in the early successes of the country’s Truth and Reconciliation Commission (TRC).



In Bouaké, Côte d'Ivoire, participants in workshops on reparations for victims of conflict took to the local airwaves to discuss their experiences, victims' ongoing needs, and how the state should respond, February 2015. (ICTJ)

4 Lisa J. Laplante and Kelly Phenicie, “Mediating Post-Conflict Dialogue: The Media’s Role in Transitional Justice Processes,” *Marquette Law Review* 93:1 (2009), 251–283

On the other hand, in Peru, countries of the former Yugoslavia, and numerous other transitional contexts the media has often played a decisively negative role in mediating information about war crimes trials or truth commissions, often cementing divisive public misperceptions and fueling political polarization in already-fractured societies.⁵ The politicization of coverage, the “us-versus-them” bias in reporting that reinforces nationalist myths of victimhood and supremacy, and some journalists’ inadequate knowledge of procedures and legal concepts are some of the sources of this negative impact.⁶

However, transitional justice practitioners must shoulder their share of responsibility for this troubled relationship. Transitional justice institutions often do not see media as an ally but as an ill-informed nuisance, if not an adversary. The philosophy of “our work speaks for itself” permeates many a courtroom and office staffed by those whose decisions could irreversibly shape societies’ ability to reckon with a violent past.⁷ In some cases, the furthest they go in ensuring a broader social impact of their work is to task special offices with “outreach,” while the idea of working with media to ensure this broader impact is reduced to organizing trainings and education seminars for reporters.⁸ Such outreach efforts can often amount to no more than “public relations by other means” and do little to create a genuine sense of ownership in the key constituencies of transitional justice—victims, civil society, policy makers and broader public.

In the extreme, there have been cases of direct conflict involving journalists who publish information protected by, for example, an order of an international tribunal, which has resulted in subpoenas, indictments, and judgments against journalists. The International Criminal Tribunal for the former Yugoslavia (ICTY) had several such cases; the court went as far as prosecuting and penalizing journalists for publishing names of protected witnesses.⁹ Instead of symbiosis, the dynamics have been those of animosity, conflict, and retribution, with lines clearly drawn between legal mandates on the one side and interpretations of press freedom on the other.

Laplante summarizes the dilemmas that arise from contexts where denial and incitement may persist despite transitional justice efforts:

The potential need to regulate journalism during transitions reveals a fundamental contradiction in the goals of TJ. On the one hand, TJ seeks to promote a culture of respect for human rights, the rule of law and democracy, which necessarily includes free speech, the right to information and objective journalism. This formula relies on tolerance for public debate and disagreement, as ‘even when it is heated, dialogue is crucial for laying the ground for reconciliation and reconstruction.’ On the other hand, by

5 Clara Ramírez-Barat, ed., *Transitional Justice, Culture and Society: Beyond Outreach* (New York: Social Science Research Center, 2014).

6 Dejan Anastasijević, “Who can Carry the Torch? Online Debate: Should Media Actively Support Transitional Justice?” ICTJ, 2014, www.ictj.org/debate/article/who-can-carry-torch

7 Lara J. Nettelfield, *Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal's Impact in a Postwar State* (Cambridge: Cambridge University Press, 2010).

8 Refik Hodzic, “Living the Legacy of Mass Atrocities: Victims’ Perspectives on War Crimes Trials,” *International Journal of Criminal Justice* (2010).

9 Human Rights House, “Accused journalist appears before the ICTY,” October 15, 2005, <http://humanrights-house.org/Articles/6848.html>

definition, transitional justice projects promote one version of the past: (1) human rights violations occurred, and (2) they were morally and legally wrong... Transitional justice processes therefore theoretically require restrictions on the full application of free speech—at least in the short term—in order to draw a baseline of conduct (human rights norms) and to ensure that delicate democracies take root and grow deep enough to withstand more vigorous dissent and disagreement. Yet, this restriction requires a very delicate and careful balance of rights—especially in the aftermath of violent conflict and repression—to avoid the danger of a post-conflict government assuming an authoritarian stance and control of media reporting.¹⁰

El Salvadoran journalist Carlos Dada asserts that more than objectivity, journalism has an obligation to *fairness*, which necessitates seeking out diverse victims' narratives and wider contexts, in order to educate the public on the extent of past atrocities. Moreover, this obligation further compels journalists to hold the powerful accountable, which is itself a core purpose of transitional justice and a critical point of intersection. The coverage of the trial of former Guatemalan dictator José Efraín Ríos Montt by *El Faro*, an online magazine published in San Salvador with significant influence in Central America, stands as an illustrative example. Dada, one of *El Faro*'s founders, explains:

We allocated more resources to covering the trial than most Guatemalan media. We took that editorial decision because we knew it was a very important step for the society: to unveil what happened, and to reconcile the country and its indigenous communities with their own past. The trial advanced the truth not only in respect of the country's past, but it also revealed how Guatemalan power structures still operate to this day. The trial gave the indigenous communities not only a restoration of their dignity, but also a worldwide visibility and recognition of their suffering throughout history. It confirmed how divided and unequal the Guatemalan society still is and how weak the country's institutions still are.¹¹

In such transitioning societies, media can support the process of social change by taking a proactive role in providing a platform for victims' experiences, which have been historically silenced and marginalized. Sharing victims' stories can be a form of restoration, a relief for the harm they suffered (another principle at the heart of transitional justice), and even a catalyst for broader public acknowledgment. Dada further remarks:

Justice, like journalism, aims for the truth. Usually, in “ordinary” courts those truths are necessary to solve differences among private citizens or between citizens and the state. But in transitional justice, those truths are a matter for the public sphere. It is in the public's interest to establish the truth about human rights violations and to forge them into the collective memory.¹²

10 Lisa Laplante, “Should Media Actively Support Transitional Justice Efforts?,” ICTJ Website, 2014, www.ictj.org/debate/article/media-and-transitional-justice-complex-understudied-relationship

11 Carlos Dada, “Reporting on Flawed Justice,” ICTJ Online Debate: Should Media Actively Support Transitional Justice?, ICTJ Website, 2014, www.ictj.org/debate/article/reporting-flawed-justice

12 Carlos Dada, “Journalism and Transitional Justice,” ICTJ Online Debate: Should Media Actively Support Transitional Justice?, ICTJ Website, 2014, www.ictj.org/debate/article/journalism-and-transitional-justice

Simply by choosing which stories to cover, whose narratives to feature, how much context to include, which sources to consider, and so forth, media representatives make subjective choices that affect the public. Laplante and Phenicie link news making with agenda setting “because [the media] influences what the public regards as important for them to think about in society and politics.” Therefore, they argue, it is inevitable that the media influences and shapes public impressions of transitional justice mechanisms and that the information they seek to impart, even simple news headlines “as carriers of ideologies,” can affect people’s perception of an issue. Dieng remarks:

At its best, objective media has no regard for religion, political affiliation, social status, power: it is there to document the truth – all sides of the truth. As such it can play an invaluable role in ensuring that the truth is told, that lies are exposed for what they are, that those who seek to manipulate populations by insisting on differences and sowing seeds of hatred are not allowed to succeed.¹³

At the same time, it is important to acknowledge the risks that media representatives and outlets take on by covering contested and socially challenging subjects, such as charges of war crimes, use of repressive tactics, corruption, human rights abuses, and genocide. Journalists take on personal risks by covering abuses while they are ongoing, and by serving sometimes as witnesses on the stand against suspected perpetrators, particularly against those who hold power. In any given year, dozens of journalists are killed for doing their jobs, investigating and reporting on the facts. Similarly, media outlets may risk censure or attacks if they choose to cover some topics that cast some individuals or groups, including leaders and political parties, in a negative light. In some transitions where freedom of the press does not have a long or strong tradition, the media may find it difficult to report freely on these subjects.

Though the relationship between media and transitional justice is complex and often troubled, it is clearly instrumental to the processes of social change that transitional justice aims to initiate and contribute to. At the same time, a glance at the existing body of academic work reveals that it is possibly one of the least studied elements affecting transitional justice processes.

Symbiosis as a Possibility

Analytically, there would appear to be several overlapping stages in transitional processes that pose somewhat different questions as to the role of journalists in relation to them. While the exploration of positive aspects of the relationship between media and transitional justice inevitably leads to the coverage of trials and truth commissions, the starting point is firmly rooted in the kind of reporting that uncovers massive human rights violations and catalyzes societal reflection on the past and even formal transitional justice efforts.

This first stage would roughly fall into the category of active abuses of human rights, with the state actively engaged in violations of human rights, such as enforced disap-

¹³ Ibid.

pearances, torture, crimes against humanity, and/or failing to protect its citizens from such violations. The positive role of journalists in these circumstances is relatively clear: their primary responsibility is to report on these atrocities, dig out information as to who is responsible, and inform the public and the international community on the underlying political issues. There is often a moral urgency in that reporting. Moreover, reporting on atrocities often leads to uncovering material and information that may become evidence for transitional justice processes, whether utilized in establishing a record for truth commission processes, court proceedings, or institutional reforms. There may be difficult questions to answer down the road regarding what materials or sources should be turned over to commissions or courts, but there is little question that what is published becomes part of the public record and potentially relevant for future accountability efforts. Such reporting may also create public outrage and political momentum to stop abuses and/or mediate the conflict that is producing those abuses.

There are many examples of such courageous journalistic endeavors, too numerous to list here, but one that stands out is that of the groundbreaking dispatches by a group of British and American journalists from the notorious Bosnian Serb detention camps in Omarska and Trnopolje, which triggered the UN Security Council to authorize a Commission of Experts to examine the situation.¹⁴ The Commission's findings led to a report from the UN Secretary General report calling for the creation of the first international war crimes court since the International Military Tribunal at Nuremberg: the ICTY.¹⁵



Ed Vulliamy, of The Guardian, one of the journalists who broke the story of concentration camps in Prijedor, Bosnia, testifying before the ICTY. (SENSE News Agency)

¹⁴ UN Security Council, *Final report of the Commission of Experts established pursuant to UNSC Resolution 780 (S/1994/674)*, May 27, 1992, www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf

¹⁵ *Sense Tribunal*, "Karadzic's Guest in Omarska and Trnopolje", September 19, 2012, www.sense-agency.com/icty/karadzics-guests-in-omarska-and-trnopolje.29.html?news_id=14181

Although this case is an exception rather than a rule when it comes to judicial and political action on accountability resulting from media reports on human rights violations, it needs to be studied as an example of the potential that media has to spark international action on accountability for massive human rights abuses. In the case of the ICTY, this relationship continued as media reports on crimes committed during the Yugoslav conflict often served to provide prosecutors with leads as they launched investigations, with a number of journalists later testifying in the resulting trials.¹⁶

Clearly, this example needs to be understood in the broader context of the political dynamics of the time, which could be seen as the “golden years” of the international justice movement, with the establishment of a number of ad hoc international tribunals and, ultimately, the International Criminal Court (in 1998). Since then, we have witnessed a number of reversals in the international community’s commitment to accountability for massive human rights violations.¹⁷ At the same time, the media landscape has changed dramatically since the early 1990s, with the advent of the 24-hour news cycle and social media, which has resulted in an “oversaturation and fatigue” with stories of atrocities and injustice.¹⁸ These factors have led to a reality in which it is difficult to imagine an effect on international public opinion and key policy makers that reports from Omarska and Trnopolje had in 1992.

Another phase of engagement between media and transitional justice is when social movements push for accountability and sufficient political will in the society emerges to engage in transitional justice processes. These societies are attempting to address the past by developing a shared understanding of what happened or, put in bolder terms, explore the truth. However, experience shows that for affected communities to understand how transitional justice works and to participate in these processes, they need some knowledge of the concepts underlying the field of transitional justice and also input on the approach to be taken. A key element of this stage of a transitional justice effort is a wide consultation process, which allows for input by victims, affected communities, and other parts of the society on how transitional justice should unfold in the country. Such consultations may determine how the various elements of accountability will be implemented or sequenced. For example, will the process start with a truth commission or commission of inquiry or some other way (with prosecutions or reparations, etc.)?

A relatively recent case is Tunisia, where, after the 2011 revolution, a wide consultation well beyond Tunis elites and into the countryside and engaged both secular and Islamist groups, resulting in a comprehensive law on transitional justice in 2013. The political dynamics in the country have since shifted significantly, affecting the transitional justice process. However, the role of media in the early post-revolution days can be seen as constructive.¹⁹ The role of journalists has been critical to both enhancing

¹⁶ A total of 47 journalists have testified before the ICTY. Karim A. A. Khan, Caroline Buisman, and Chris Gosnell, eds. *Principles of Evidence in International Criminal Justice* (Oxford University Press, 2010).

¹⁷ David Tolbert and Michael Ignatieff, “Is the International Community Abandoning the Fight Against Impunity,” ICTJ Website, 2015.

¹⁸ Andrew Hoskins and Ben O’Loughlin, *War and Media: The Emergence of Diffused War* (Cambridge: Polity Press, 2010).

¹⁹ Christopher K. Lamont and H ela Boujne, *Transitional Justice in Tunisia: Negotiating Justice in Transition*, *Politicka misao*, 49:5 (2012).

participants' understanding of transitional justice process and raising public awareness that those consultations are taking place.

Across contexts, while consultation processes and related discussions are key elements in transitional justice, they occur against existing backgrounds and narratives that are largely shaped by the media and the press. The contours of how the media, the press, and reporters operate will vary considerably from context to context, but most of the information that citizens, whether leaders or laypersons, in government, civil society or otherwise, receive will be filtered through the media. This includes both the underlying human rights abuses themselves as well as information about transitional justice, including how transitional justice works and relevant comparative experiences.

It could be argued that in these cases reporters and those working in journalism have a serious responsibility to report on underlying abuses and explain transitional justice accurately, as such an approach is consistent with journalistic standards of ethics and professionalism. What is called for is accurate reporting, rather than advocacy *per se*. However, there is also a strong argument that journalists have a moral responsibility to go beyond simple reporting of the facts to press for accountability. There are many examples of this, ranging from Émile Zola's "J'accuse . . .!" letter published in a French newspaper during the Dreyfus affair,²⁰ to the reporting on segregation and the killing of civil rights workers in the United States,²¹ to coverage of apartheid-era abuses in South Africa and a host of conflicts around the world.

At the very least reporters have an ethical duty to identify those committing human rights violations, to make clear to the public the structures that enable these abuses to take place, and to report accurately on any transitional justice efforts that follow. At the end of the day where massive human rights abuses are occurring, journalists are often those best placed to call out abuses and identify the perpetrators, though often at great personal risk.

Once transitional justice measures are established, a somewhat different set of considerations arise for journalists. Their role of describing and explaining to the public relatively unknown processes such as truth commissions, reparation programs, and war crimes trials for high-level leaders, etc., are critically important for those mechanisms to function effectively. This role seems, at least notionally, fairly straightforward, as it requires journalists to know the subject matter, understand the underlying purposes of these measures, and evaluate their processes and results against a variety of comparative experience.

Bennett fortifies this view by challenging the longstanding belief that the media has little impact on politics and polemic social issues, even in "normal" times. With a great degree of relevance to the role of media in communicating on ongoing transitional justice measures, Bennett posits that the "framing" of the news through the

20 On January 13, 1898, French writer Émile Zola published a famous editorial, titled "J'accuse . . .!" in The letter exposed a military cover-up regarding Captain Alfred Dreyfus, a Jewish French army captain who had been accused of espionage in 1894 and sentenced in a secret military court-martial to imprisonment in a South American penal colony. Two years later, evidence of Dreyfus's innocence surfaced, but the army suppressed the information. Zola's letter excoriated the military for concealing the mistaken conviction.

21 Stephen Smith, "'Mississippi Burning' Murders Resonate 50 Years later," CBS, June 20, 2014, www.cbsnews.com/news/mississippi-burning-murders-resonate-50-years-later/

choice of words, phrases, and images that convey a particular “angle” of a controversy can exert significant influence on the public perceptions and opinions.²²

Basically, media *mediate* public discussion around transitional justice processes: They decide what will reach the public domain, whose voice will be represented and whether the focus will be on the substance—the circumstances and the causes of the abuses—or on the marginal. They truly have the power to transform a divisive war of narratives about the past into a constructive dialogue that can be fertile ground for acknowledgement and accountability.



In a rare front page editorial, Kenya’s biggest selling daily newspaper urges political leaders to sort out their differences in order to avoid the “path of death and destruction,” April 9, 2009. (Anthony Morland/IRIN)

There is one context in which the transitional justice process is unfolding with a seeming awareness of the crucial importance of this relationship by both those leading the implementation and the media: Colombia. As the country nears the plebiscite on the historic peace agreement between the government and the Revolutionary Armed Forces of Colombia (FARC), with transitional justice at its core, there is an active conversation between practitioners and the media, including within the journalistic community, about the role that media will play in the debate on the acceptance of the potential peace agreement and its implementation.

Colombia’s media landscape is the arena in which the battle is being fought for clarity about the relevance of the peace process and the provisions on accountability for serious crimes, along with other aspects of the agreement, with a referendum looming once the agreement is finalized. Given the contentious view of the Havana process among the Colombian public, and ongoing debate over prosecutions, truth tell-

22 W. Lance Bennett, *News: The Politics of Illusion*, 7th Edition (New York: Pearson Longman, 2007).

ing, demobilization, and reparations, this referendum will be a critical step toward determining Colombia's future. If the media were to embrace its decisive role in the process, it would be a major departure from the yellow journalism and sensationalism rife during the active conflict. Colombian journalist Olga Lucia Lozano writes:

Journalism in Colombia should open itself to new possibilities. It should be able to create conditions whereby its role is not limited to informing but instead includes the capacity to take action: Take action to monitor each step of a process and advocate for fulfillment of the agreements. Take action to create a space where victims, citizens, and the state can perceive themselves and communicate as equals. Take action to encourage society to take interest in topics that they would otherwise avoid, due to fatigue or indifference. Transitional justice processes can only achieve their desired effects if the media stop trying to approach reality as editors and instead engage with it. They should interact with all those who take part in the narrative and generate a shared sense of responsibility with the users or the audiences, where we are all responsible for ensuring that agreements are implemented.²³

For Lozano, there is a clear mandate on the media to productively engage with the peace process and encourage public support. The challenge will be whether media can educate the public without falling prey to historic political fault lines that would exacerbate social tensions and further entrench the legacy of the conflict. Just as the country's political leadership makes a shift from conflict to peace with transitional justice as its heart, so will the media have to make a shift in language and focus to allow for a new societal paradigm to be built. A transformation will be required on both fronts, a transformation of values.

Special Projects, Special Impact

The richest vein of examples of the constructive impact that media engagement can have with transitional justice efforts lies in the history of reporting projects created to provide special coverage of transitional justice processes. Perhaps the best and most well-known example comes from South Africa. Alex Boraine, Deputy Chairman of South Africa's TRC wrote, "Unlike many other truth commissions, this one was center stage, and the media coverage, particularly radio, enabled the poor, the illiterate, and people living in rural areas to participate in its work so that it was truly a national experience rather than restricted to a small handful of selected commissioners."

The backbone of this media undertaking was a weekly television digest called *TRC Special Report*, which ran for two years, employing some of the best storytellers in South African journalism at the time to tell the "stories behind the stories" of the TRC. The program was broadcast in prime time. Cole describes in "Reverberations of Testimony: South Africa's Truth and Reconciliation Commission in Art and Media:"

Both television and radio gave their audiences experientially rich access to those who gave testimony. Whether that access was conveyed largely

23 Olga Lucía Lozano, "Journalism: For What Purpose?," ICTJ Online Debate: Should Media Actively Support Transitional Justice Efforts?, ICTJ Website, 2014, www.ictj.org/debate/article/journalism-what-purpose

through sonic dimensions of timbre, tone, gasps, and silence through radio, or through the added visual registers such as body language, clothing, and facial expressions that are conveyed through television, broadcast media made manifest the *people* who were at the center of the public hearings. This included people who were classified as “victims” giving testimony, perpetrators asking for amnesty, spectators in the hall, or the commissioners presiding over the proceedings. Broadcast media provided a personalization and particularization of the stories the commission called forth - stories that in aggregate could otherwise be mind-numbing in magnitude, scale, and sheer brutality. Both the hearings and their promulgation via broadcast coverage made individuals the central site of the commission’s communication, whereas print coverage and the TRC’s own summary report privileged information divorced from its human sources.²⁴

The decisive impact of TRC coverage by broadcast media comes to light especially when contrasted with the critical and at times hostile tone of the reporting by most of the country’s print media. As Gibson says of media coverage, “Complaints and condemnation of the Truth and Reconciliation Commission far outnumber laudatory assessments.” However, as Cole writes, news programs, memoirs, and artistic works based on TRC testimony generated critical public engagement and amplified the communicative impact of this extraordinary transitional justice process so that its stories and themes reverberated long after the commission formally concluded its work.²⁵

This dynamic where special reporting projects work to fairly mediate proceedings of transitional justice measures in an otherwise hostile media landscape controlled by political forces invested in minimizing their societal impact (if not derailing them altogether) is present in various other contexts. Examples of *SENSE News Agency* reporting from the ICTY and *Hirondelle News Agency* reporting from the International Criminal Tribunal for Rwanda (ICTR), a tribunal created to try those most responsible for serious crimes, including genocide, committed in Rwanda and neighboring states from January 1, 1994, to December 31, 1994. Both stand out both in terms of their coverage and the invaluable record their consistent reporting has created on the two ad hoc tribunals.

SENSE is a specialized project focused on regular and comprehensive coverage of the work of the ICTY. Since 1998 the agency has continuously produced daily news reports and a weekly television program titled *The Tribunal for TV* networks in Bosnia & Herzegovina, Croatia, Serbia & Montenegro and FYROM, which are disseminated free of charge. In addition to daily reports and weekly TV programs, SENSE has so far produced seven documentary films: *Triumph of Evil* (2001), about the Srebrenica genocide trial; *Against All Odds* (2003), chronicling the first ten years of the ICTY; three documentaries detailing the case against Dr. Radovan Karadzic and General Ratko Mladic, *The Fugitives* (2004), *Life and Deeds of Radovan Karadzic* (2005), *Rise and Fall of General Mladic* (2005); *Beyond Reasonable Doubt* (2005), an examination

24 Catherine Cole, “Reverberations of Testimony: South African Truth and Reconciliation Commission in Art and Media,” in ed. Clara Ramírez-Barat, *Transitional Justice, Culture, and Society: Beyond Outreach* (New York: SSR, 2014).

25 Ibid.

of the Srebrenica massacre 10 years later; and *Sarajevo Roses – Terror in 12 Pictures* (2012), about the way the 44-month siege of Bosnia-Herzegovina’s capital has been depicted and reconstructed in trials before the ICTY.

Hirondelle News Agency was the only media outlet reporting regularly in four languages (English, French, Kinyarwanda and Kiswahili) on the ICTR and other judicial proceedings related to the Rwandan genocide. Since it was created in 1997, it has produced more than 17,000 dispatches, creating a unique record of the ICTR’s work. Its reporting on the ICC focuses particularly on those countries where Fondation Hirondelle has leading radio stations with nationwide coverage: the Democratic Republic of Congo (*Radio Okapi*), the Central African Republic (*Radio Ndeke Luka*), and South Sudan (*Radio Miraya*). As well as a small team of four permanent staff in Arusha, it works with a network of correspondents in Kigali, Nairobi, Paris, Brussels and in The Hague (at the ICC). It also receives support from international staff based in Switzerland and the United States.

SENSE and *Hirondelle*, as well as some other special reporting projects, such as the interactive community radio in the DRC,²⁶ *BIRN Justice Report* in the Balkans,²⁷ and *Plaza Publica*’s online reporting project on Rios Montt’s trial in Guatemala,²⁸ resemble the context, if not the immediate impact of the *TRC Special Report*. This is largely due to the unique political atmosphere in which these special reporting projects have operated, where the key opinion makers in the political establishment who control or enjoy the support of media and institutions—intelligentsia, academia, religious institutions, and—are existentially invested in undermining any efforts at truth and accountability. In such circumstances, their short-term impact is severely limited. However, the body of reporting they produced remains an invaluable record that will continue to reverberate as these societies grapple with legacies of atrocities and conflict.

Hostile Discourse as a Legacy of Conflict

Equally detrimental, some transitional justice practitioners and policy makers may underestimate the importance of media for their efforts or, worse, see the media as a nuisance or even negative collaborator.²⁹

Although the ICTY is considered a success in terms of number of perpetrators it has indicted (the most of any other tribunal), its social impact has been quite limited because of the minimal amount of local media coverage it has garnered. Many media outlets, still under the control of elites resisting change and fearing the potential public impact, focused on marginal issues to distract from the main points of the trials. Reporters neutralized political messages and downplayed emergent patterns

26 Wanda E. Hall, “The Media’s Potential in Developing Social Awareness for Justice: The Example of Interactive Radio for Justice,” in ed. Clara Ramírez-Barat, *Transitional Justice, Culture, and Society: Beyond Outreach* (New York: Social Science Research Center, 2014).

27 *BIRN Justice Report* website, www.justice-report.com/en/page/home

28 Open Society Foundations, “Rios Montt Genocide Trial: New Website Will Report on Proceedings,” March 18, 2013, www.opensocietyfoundations.org/press-releases/rios-montt-genocide-trial-new-website-will-report-proceedings

29 Mirko Klarin, *Justice Unseen*, XY Films, 2004.

to interfere with the public's understanding. Again, some journalists went so far as to overtly violate ICTY orders by publishing confidential information, including names of protected witnesses. Anastasijević suggests that much of the failure to shift public opinion away from ethnic divisions towards conflict resolution was due to the entrenched perceptions of “our heroes” and “their monsters” in the media long that existed before the trials even began:

Most media in the former Yugoslavia report on The Hague trials as sports matches, favoring “our boys” over prosecutors and jeering at the “monsters” from another ethnic group. There are exceptions, of course, but they are few, and some journalists were subjected to threats for not being patriotic enough.³⁰

Jelacic, a former ICTY spokesperson, deems that the media bears significant responsibility for the limited societal impact of what she calls “the most extensive focus on transitional justice processes in modern history”:

For 20 years, by and large, the historical developments in its courtrooms were reduced to selective propaganda and politically slanted articles in the early stages of trials, then went so far as to tabloidise the significance of the arrest of the last fugitives from justice to the issue of the “colour of the blanket” available in the detention unit and dietary preferences. The trials covered by the media in the countries of the former Yugoslavia were reduced to those in which the accused came from the same ethnic group or nation, whereas those in which the victims belonged to that same group were marginalised. The picture painted to the general public was skewed. Sprinkled, as coverage was, with a daily doze of political manipulation in the guise of “analysis”, the trials never had a chance to have a meaningful and positive impact on the society – even if the Tribunal had opted to have a much more robust and engaging outreach.³¹

Similarly, the trial of former Peruvian President Alberto Fujimori in Lima did not lead to a more progressive, solid national agreement on the past. In this case, the media, mostly intentionally, missed the forest of important and serious content for the trees of trivial details. Distorted, sensational, and sometimes outright false stories by Fujimori sympathizers (*Fujimoristas*) in the media also distracted from presenting real evidence, “As media reports tended to focus on scandals and logistics, offering merely superficial information without digging into the deeper issues.”³²

Through the *Fujimoristas*' success in commandeering the media to give renewed value to their agenda, the country is again divided into two sides of an old debate and ultimately distracted from the nuances of the actual *content* of the trial – the egregious human rights violations and the illegality of security measures that occurred during a national emer-

30 Dejan Anastasijević, “Who can Carry the Torch? Online Debate: Should Media Actively Support Transitional Justice?,” ICTJ, 2014, www.ictj.org/debate/article/who-can-carry-torch

31 Nerma Jelacic, Comments, ICTJ Online Debate, “Should Media Actively Support Transitional Justice?,” ICTJ, 2014, www.ictj.org/debate/article/should-media-actively-support-transitional-justice-efforts

32 Lisa J. Laplante and Kelly Phenicie, “Media, Trials and Truth Commissions: ‘Mediating’ Reconciliation in Peru’s Transitional Justice Process,” *The International Journal of Transitional Justice* 4:2 (2010), 207–229.

gency – that arguably could help the nation arrive at a shared consensus on the past.³³

Public attention was drawn into petty, media-driven controversies between politicians and commissioners, instead of the actual topics at hand. The press also drew attention away from incriminating evidence by painting more sympathetic images of Fujimori, including poor prison conditions and his deteriorating health, which actually amounted to public relations maneuvers that promoted falsehoods. “By merely ‘reporting’ what the Fujimoristas said, local journalists exacerbated the drama, and consequently, the division among Peruvians. Here they once again revealed a paradox of journalism by which ‘the more objective or fair reporters try to be, the more official bias they introduce into the news.’”³⁴ Instead of taking the opportunity to engage in productive debate and move beyond historical divisions and attitudes by offering broader context and analysis, Peruvian media coverage further pitted opposing sides against one another, allowing for continued tolerance of state abuse, polarization, and failure to demand accountability.



Former Guatemalan dictator José Efraín Ríos Montt surrounded by reporters during his trial in Guatemala City for genocide and crimes against humanity against the indigenous Mayan Ixil population during the Civil War. He was found guilty on May 10, 2013; however, the verdict was later overturned by Guatemala’s Constitutional Court. (Sandra Sebastián/Plaza Publica)

Laplante and Phenicie summarize the long-term impact of the lack of appropriate media support for transitional justice in Peru:

Thus, it could be argued that the failure of Peruvian society to reach a consensus regarding the role that the government and armed forces should

³³ Ibid.

³⁴ Ibid.

assume during social conflict gives rise to continued conflicts. Arguably, the PTRC's inability to really engage the media during its work - and the media's corresponding inability to capitalize on underlying rather than superficial issues - represents a failed opportunity.³⁵

Experts who have participated in the work of the Peruvian truth commission emphasize as one of its most significant achievements that it provided a platform for victims from rural areas to testify and speak about their experiences and in doing so brought their suffering closer to those in the capital and urban centers who were largely uninterested in the abuses, if not disdainful of the victims.³⁶ But Laplante and Phenicie see this contribution of the truth commission as severely affected by the politicized media coverage of its work and the trial of Fujimori:

In the end, the failure of the Peruvian journalists to mediate the Fujimoristas' sensationalism has meant that journalists failed to address the ongoing public opinion that the alleged crimes were justified . . . On the contrary, [it] has helped to increase Fujimori's image as the country's savior, and thus increased his popularity. In fact, the sudden political prominence of his daughter . . . may be directly linked to the Fujimoristas' manipulation of the media.³⁷

Again, the two cases of countries in the former Yugoslavia and Peru are merely illustrative of numerous contexts in which the media continues to implement agendas of political elites hostile to transitional justice processes. Gordy posits that journalists working in the national media are themselves affected by the conflict their society is coming out of, and it is difficult to apply theories of objectivity and impartiality when one faces such internal struggles:

In many instances media outlets have been complicit with violence, very often by omission and sometimes by commission. What we have been able to see in very many instances has been the behaviour of domestic media as cheerleaders for one or another party in a criminal case, providing partial information and tendentious interpretation.³⁸

Lisa Laplante goes a step further:

Experience shows we cannot assume that the media will be "blank slates" ready to accommodate the new political order and automatically create a healthy level of constructive dialogue and debate about the past, especially in the polarized environments that typify post conflict recovery. Certain outlets or members of the media who themselves acted to encourage or incite violence in the past may become subject to accountability measures like trials and truth commissions.³⁹

35 Ibid.

36 ICTJ, *The Case for Justice*, 2010, www.youtube.com/watch?v=2fm1GmDwOqo

37 Lisa J. Laplante and Kelly Phenicie, "Media, Trials and Truth Commissions: 'Mediating' Reconciliation in Peru's Transitional Justice Process," *The International Journal of Transitional Justice* 4:2 (2010), 207–229.

38 Eric Gordy, Comments, ICTJ Online Debate, Should Media Actively Support Transitional Justice Efforts?, 2014, www.ictj.org/debate/overview/media

39 Lisa J. Laplante, "Media and Transitional Justice: A Complex, Understudied Relationship," ICTJ Online Debate: Should Media Actively Support Transitional Justice Efforts?, 2014.

Sometimes the conflict between transitional justice mechanisms and hostile media escalates into open conflict. The ICTY had several such cases. So, instead of symbiosis, the dynamics described here are those of animosity, conflict, and retribution with lines clearly drawn between legal mandates of transitional justice institutions on one side and political allegiances and interpretations of press freedom on the other.

Conclusion

The relationship between media and transitional justice is as crucial today as it is troubled and understudied. The rich body of experiences that populate the spectrum of examples between situations of symbiosis and conflict between them remains largely unexplored and misunderstood. At the same time, the awareness of the relationship and its importance is growing in the fields of both transitional justice and the media.

Unfortunately, when it comes to many transitional justice practitioners, the awareness of the value of engaging with media has yet to evolve from a reluctant agreement to “have some outreach,” usually driven by the realization that without clear, effective communication, the perception of their efforts will be negative or misconstrued. Without the active participation of media as agents of social change fully aware of their impact or responsibility regarding the process, the sense of ownership of transitional justice efforts in key constituencies will remain elusive, even with the most sophisticated outreach effort. At the same time, the media must accept that undermining transitional justice processes is not compatible with the proclaimed underlying principle of journalism: acting in the public interest.

What does this mean in reality? If the goal of the various mechanisms of transitional justice is to impact people’s lives for the better, the media’s role in sharing information and shaping public debate and discourse must be intentionally incorporated from the very beginning. How to do this and what it would look like, however, is still largely unexplored, both in practice and in theory. It is clear, however, that the dialogue must begin at the earliest stages of transitional justice process and it must extend beyond the notions of training about legal and procedural issues.

Arriving at a collective memory of the past is one of the greatest challenges facing a post-conflict society because it implies reaching a degree of consensus in a polarized context. While truth commissions attempt to present an objective account of the events of a society’s repressive or violent past, they inevitably contend with multiple perspectives and interpretations of this history. In essence, truth commissions and other transitional justice mechanisms must mediate this conflict to bring society to a shared version of this past, which arguably entails a society-wide admission that egregious human rights violations occurred and that victims must be acknowledged. However, for this end to result, transitional justice efforts rely on the media to encourage consensus making about the past—a daunting but crucial undertaking if society is to escape sliding back into conflict.

Ultimately, the media has the potential to bridge the gap between yesterday’s enemies by replacing fearmongering with a focus on empathy, by illustrating how much people have in common and championing victims’ rights to truth and justice. Especially

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in contexts where the media played a destructive role in the process of the dehumanization of “the other”, which usually laid the groundwork for massive human rights violations, it is precisely in this arena where the shift from denial to acknowledgement must happen. In addition to amplifying messages of acknowledgement coming from transitional justice processes, the media can produce and commission content which will feature voices of victims to humanize them again, and demonstrate that empathy for the other is not an act of betrayal of national or ethnic interests, as wartime ideologies almost always teach.

These are mere examples of what the media can constructively do in transitional contexts to signal to its audiences that the norm of hatred and conflict is being dismantled. There lies the enormous potential for a symbiosis with transitional justice efforts, which, like the media, at least in theory, are established and designed to act in the public interest.