1 | *Agency in Times of Transitional Justice*
Recognized and Unrecognized Mechanisms "at Work"

Village members are slowly gathering around as the bonfire crackles. The setting is completely dark, but not at all quiet. Everyone present is Sierra Leonean, except me. Drummers begin playing and the traditional Sampa dancer performs different "plays,"[1] while audience members give "small money." There is lots of chattering and loud conversation, children giggling and running, men exchanging greetings and a teenage boy, who runs to do a flip over the bonfire. Women are walking around selling groundnuts, sweets and little plastic packets of alcohol. Across the road, the only other light in the village is coming from a hut with young boys who are using a generator to charge their phones and watch films. Motorbikes and public transport occasionally drive through as the ceremony gets underway. All of sudden, the music comes to an end and Fambul Tok staff stand up with a megaphone to explain the evening's program: "What made the war happen? Jealous minds, greed; what will make the war not happen again? Selflessness and love. If we love ourselves, we won't hurt ourselves and we will unite as one. After the war, the Truth and Reconciliation Commission came, but maybe you did not get the chance to go. It is your time to get things off your chest. If you come up [and speak], your mind will blow and God will bless you." Over the next half hour, people slowly and hesitantly came forward to "blow their minds." As people began recounting their wartime experiences, the crowd began chattering again, and many people left. This was not due to anything specific per se, but rather, as interviews later confirmed, people were not interested in listening to or discussing war-related experiences. Many returned when the dancing began again.

(Gbintimaria, Bombali District 2014)

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[1] A sampa is a woman (or a man dressed as a woman) wearing traditional garb who sings and dances. Plays refer to dances that usually tell a particular story about Sierra Leonean society and are based on particular traditions but are also somewhat improvised. A sampa is an important part of the female secret society.

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This bonfire ceremony, which took place in Bombali District, Northern Sierra Leone, was organized by a local organization, Fambul Tok, as part of a program that aimed to help people move past their war-related experiences from the decade-long civil conflict (1991–2002). The conflict, which largely began as a result of disenfranchised youth, ravaged all parts of the country and became renowned for the particularly brutal levels of violence that ensued, such as amputations, rape and the abduction of child soldiers (Abdullah et al. 2010; Ferme 2001; Park 2007; Mackenzie 2010; Mitton 2015a). After the war, various transitional justice mechanisms were implemented, which, at least in part, sought to help Sierra Leoneans address these violent experiences. Unlike other post-conflict mechanisms in Sierra Leone – such as the Truth and Reconciliation Commission (TRC) and Special Court for Sierra Leone (SCSL) – Fambul Tok attempted to create space for people (both victims and perpetrators) to discuss and reconcile their wartime experiences through what were promoted as more locally relevant channels. Sierra Leoneans, however, had diverse experiences of the war and post-war periods, both in how they encountered violence and their engagement with notions of transitions and justice.

Fambul Tok is emblematic of more recent trends that have sought to localize transitional justice programs and processes. Broadly speaking, transitional justice (TJ) is an umbrella term that refers to mechanisms and programs employed in the wake of authoritarianism or armed conflict to help states and societies move past experiences of violence and repression (Bell 2009; Buckley-Zistel et al. 2014). While the Nuremberg trials are generally regarded as one of the first TJ efforts, such efforts became more prominent in the 1980s and early 1990s when authoritarian countries were transitioning from authoritarian regimes to democracies (Arthur 2009; Roht-Arriaza 2006). Generally speaking, transitional justice initiatives have largely been top-down and internationally driven and have commonly materialized through different types of courts, truth commissions and reparations programs (among others). They have, in many respects, become the "go-to" toolkit for addressing authoritarian and post-conflict societies (Clark and Palmer 2012; Lutz 2006; Nagy and Williams 2012). It was not until the early 2000s, after such mechanisms had been critiqued for being too distanced from target populations, that notions related to "local," "ownership," "participation" and "victim-centric" (Hinton 2011; Lundy and McGovern 2008; Robins 2011; Sharp 2014;

Shaw and Waldorf 2010) were more explicitly integrated into TJ discourse and practice.

Localizing these processes and programs is supposed to better reflect the contextually specific needs and priorities of those impacted by violence (MacDonald 2015; Shaw and Waldorf 2010). Programs such as Mato Oput in Uganda and the Gacaca Courts in Rwanda (discussed in greater detail below) have paved the way for recognizing the legitimacy of and potential for localizing transitional justice and reconciliation in practice (Huyse 2008; Sharp 2014). Founded in 2008, Fambul Tok also embodied many of the characteristics of what qualified as a local program: It was founded and has been exclusively staffed by Sierra Leoneans, traditions and rituals are a crucial part of their program, they primarily work in more rural areas and community ownership and participation are central to their mandate and approach (Kochanski 2020; Sharp 2018). In practice, however, local TJ mechanisms are also problematic, and are often interpreted and engaged with by participants in multiple and diverse ways. As I will examine in this book, local experiences, needs and priorities cannot necessarily be addressed by one approach, set-aside space or institution, regardless of whether or not it is considered local. The people and places who make up so-called local contexts shape and are shaped by broader structures and power dynamics (both internally and internationally), which influence intended and unintended outcomes of these processes.

Academic studies on TJ mechanisms have tended to measure the impact and effectiveness of these programs against their own goals (Cilliers et al. 2016; Van der Merwe et al. 2009). This has resulted in a robust literature that largely focuses on the institutions and programs themselves, often ignoring the social and political backdrops in which they are enacted (Gready and Robins 2019; Sharp 2018). These institutions, organizations and programs are what I refer to as *recognized mechanisms* – official bodies and institutions with preconceived goals and processes that are already part of the transitional justice "toolkit." As local mechanisms and programs, particularly those with donor funding and operating through NGOs and formalized institutions, have become increasingly legitimized, these programs have also become part of what is deemed an acceptable "tool" in the toolkit. Although Fambul Tok is supposed to better align with the social and cultural needs of Sierra Leonean communities (Anderson 2020; Boas and Tom 2016; Girelli 2017; Lambourne 2016; Park 2010; Van der

Merwe and Brankovic 2016), it still functions as an institution, implementing a particular program blueprint in each area the organization operates and are thus very much part of the recognized category. Participants, however, had differing perspectives and engagements with the program. The opening anecdote provides a snapshot of the diverse attitudes toward speaking publicly about the conflict. It demonstrates how, in spite of the organization advocating for war-related discussions in more familiar and culturally relevant settings, this was not necessarily desired or a priority for many Sierra Leoneans, particularly twelve years after the war. This, however, does not mean that people did not engage with or benefit from the program; they did, just not in the ways that were intended. Rather, individuals and communities capitalized on different aspects of Fambul Tok's program, which suggests that it was the participants, not the organization, who shaped the outcomes.

This agency, however, extends beyond the confines of recognized institutions and programs. Individuals also engage in a variety of *unrecognized* mechanisms – processes outside the official institutional scope and discourse not traditionally understood or recognized by the transitional justice community as part of the toolkit – that help people gradually move past their wartime experiences and re-obtain a sense of normality in their everyday lives. This includes processes of social and economic restoration, as well as agricultural and religious engagement. By examining unrecognized mechanisms, we are able to deconstruct linear notions of transition and analyze how local transitional justice is made up of individual activities occurring in multiple temporalities. There are a variety of ways in which people without access to or interest in recognized mechanisms are able to move past their war-related experiences (in some form). While places like Sierra Leone do tend to think in more communal terms (in whatever community that may be), it is nonetheless important to acknowledge that individuals also had diverse experiences of violence and a range of perspectives about what constituted transition and justice. Thus, while some aspects and dimensions of these experiences can be thought of as communal, it is also important to explore the individual *within* the context of their own communities.

By looking at these diverse activities, engagements and outcomes of both recognized and unrecognized mechanisms, the following chapters will examine the many ways in which "transitional justice

actually functions in [those] places and times and attend[s] to local experiences, priorities, and practices" (Shaw and Waldorf 2010, 4). In so doing, they will question the foundational assumptions upon which these programs are based and examine the various dynamics between different locals at play within these settings. Building upon literature in development studies (Ferguson 1994; Mosse and Lewis 2006), this book seeks to go beyond discussions in transitional justice of "societies," "organizations" and "program effectiveness" and looks more specifically at individuals and communities and their different activities in times of transition, how justice is enacted through a range of processes and how priorities shift over time. This book argues that transitional justice does not happen *to* or *for* post-conflict societies; rather, individuals and communities creatively engage with these programs to produce outcomes based on their own needs and priorities that help them move past both war-related experiences and more contemporary issues. In so doing, the analysis adds to a growing body of politics and development literature that looks not at whether things (such as institutions and processes) behave as they should or as they are expected to but at how things *actually work* in practice (Bierschenk and Olivier de Sardan 2014).

Transitional Justice: A Brief Review

Transitional justice emerged as a recognized academic field in the late 1980s and early 1990s when many Latin American and Eastern European countries were transitioning from dictatorships to democracies (Arthur 2009; Roht-Arriaza 2006).[2] At the time, transitional justice referred to dealing with a specific category of crimes, largely gross human rights violations committed under repressive regimes. The two key goals were to provide some measure of justice for those who had suffered and to ensure stable democracies. Peace and reconciliation were understood to be at odds with justice for victims or individuals of these regimes, resulting in a "peace versus justice" debate (Leebaw 2008; Orentlicher 2007). In short, the early years of transitional justice primarily focused on the stability of the state and a transition to democracy. Fundamental assumptions about

[2] As noted above, some scholars would argue that transitional justice began much earlier. See, for example, Elster (2004).

democracy and democratic citizenship went unquestioned, and more specific needs and priorities of societies or individuals were not as prominent at this point in time (Arthur 2009).

In the mid-1990s, however, transitional justice mechanisms expanded to also redress gross human rights violations committed during periods of violent conflict. Therefore, the question of "transition to what" also became a reference to a transition from conflict to peace (Leebaw 2008; Sharp 2015). In response to these shifts, international criminal tribunals were established to hold individuals accountable for the atrocities committed during the conflicts in the former Yugoslavia and Rwanda. In so doing, these tribunals aimed to help the establishment of peace, demonstrating how the peace versus justice debate "largely shifted from whether to pursue some form of transitional justice, to what form it should take, what the degree of international involvement should be and who should be targeted" (Kerr and Mobekk 2007, 2). From this period onward, it was widely assumed that peace and justice were mutually reinforcing (Nagy 2008; Sriram 2009).

There were (and in many ways still are) particularly high expectations, especially in the international justice community, about what these international courts were able to achieve and their potential to deter future war crimes more globally (Cronin-Furman 2013; Nickson and Neikirk 2018; Subotic 2010). However, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), as well as the rationale underpinning these tribunals, have been heavily scrutinized (Clark 2008; Hinton 2011). There was an underlying assumption that justice was equated with courts and individualizing justice (Moghalu 2006). As Nicola Palmer (2015) points out, though, both these institutions had to go through a process of legitimizing themselves, which would suggest that courts were not necessarily self-evident forms of justice for local populations impacted by conflict-related violence. Their design and implementation were predicated upon liberal assumptions about how justice is understood and the relationship between courts and the people for whom they were created. These tribunals were also physically removed from the areas where violence had occurred (the ICTY was located in The Hague, while the ICTR was located in Arusha, Tanzania) and many individuals did not understand or relate to the technical legal nature of these trials. If individuals do not relate to the

means through which justice is being facilitated, it is difficult to imagine how this could lead to any genuine form of societal or individual sense of reconciliation. Therefore, individuals were both physically and psychologically distanced from these tribunals (Gready 2005; Stover and Weinstein 2004). The notion that justice could have a broad range of meanings or that people needed to be more involved in these processes was not reflected in discussions about international tribunals and ultimately pushed the debate to a discussion about localizing these processes (Sharp 2018). As Bert Ingelaere points out in the case of Rwanda, people "simply prefer the justice of proximity" (2008, 51). These criticisms led practitioners to reevaluate some aspects of the juridical model, which would ultimately be reflected in the localization of the hybrid court model designed in Sierra Leone.

Another critical moment on the "transitional justice timeline" was during the mid-1990s when the Truth and Reconciliation Commission was established in South Africa. Truth commissions, which are set up to investigate human rights abuses and provide a forum for individuals to discuss their experiences of violence and repression (Chapman and Ball 2001; Hayner 2002; Minow 1998), can, in theory, provide a sense of closure and reconciliation. While I do not intend to interrogate the theoretical contours of "truth" and "reconciliation" in this book, the South African case study is important to highlight in order to establish critical shifts in transitional justice discourse and practice. While truth commissions can also be problematic and are, like courts, based on a set of assumptions about the nature of truth and truth-telling as cathartic (Mendeloff 2004; Shaw 2007), the South African TRC aimed to demonstrate that invoking a reconciliation framework achieved goals similar to those of other transitional justice mechanisms and that reconciliation/restoration can themselves be a form of justice. Reconciliation, broadly speaking, has been adapted as a "container concept" (Buckley-Zistel 2008, 139) to discuss political and social processes after violent conflicts and often employs participatory components such as truth-telling, acknowledgement and forgiveness that enable people to move beyond their animosity (Daly and Sarkin 2007; Friedman 2017). This is commonly associated with restorative justice, as it also aims to restore relationships that resulted from wrongdoing. Whereas retributive justice seeks to prosecute individuals for wrongdoing, restorative justice takes a more holistic approach, attempting to restore a community as a whole (Johnstone

2011; Llewellyn and Philpott 2014). These were some of the key goals of the South African TRC.

The other reason the South African TRC is important to highlight is because it was the first national TJ initiative to cite an indigenous concept in the name of "culture" and "tradition" and align it with a justice framework (Daly and Sarkin 2007). Archbishop Desmond Tutu championed the term *Ubuntu,* which expressed a community based on reciprocity, respect for human dignity, cohesion and solidarity. The South African Truth and Reconciliation Report translates Ubuntu as "humanness". It is described by a Constitutional Court justice as emphasising: "respect for human dignity, marking a shift from confrontation to conciliation" (2002, Vol. 1, 127). Richard Wilson (2001) describes Ubuntu as an ideological concept where notions of human rights, restorative justice, reconciliation and nation-building converge under the umbrella of a populist pan-African rhetoric. The notion of aligning an indigenous concept with reconciliation generalized restorative justice as "inherently African." Framing particular mechanisms in the context of traditional and cultural values was a new and important shift in transitional justice that ultimately became very influential in future programs and paved the way for localizing transitional justice.

Great Expectations? Localizing Transitional Justice

The relative success of the South African TRC combined with the harsh critiques of international criminal tribunals generated shifts in transitional justice practice. As a result, notions of local and local ownership became more central to the design and implementation of these programs and processes. One scholar demonstrates how quickly this shift occurred, pointing out that in the 1992 Agenda for Peace report, the word "local" does not appear. However, in a 2011 UNDP Governance for Peace document the world "local" appears 197 times (Mac Ginty 2015, 840). Engaging with the local (in some form) has thus come to be understood as a necessary element of post-conflict institutions and programs. Advocates often argue that localizing these mechanisms means that they are more culturally salient, cost effective and closer to the victims of the actual crimes and can, therefore, better respond to their needs (Kochanski 2020, 27). Tailoring particular strategies to unique social and political experiences can help to foster

support, promote participation and facilitate ownership (Kochanski 2020, 27). Dustin Sharp points out how localizing can actually refer to different categories, namely "control (agency, decision making, funding), process (bottom-up, participatory, homegrown) and substance (values, practices, priorities)" (2018, 42). Local and localization can, therefore, refer to a wide range of practices which can be anything from small symbolic acts or nods to particular populations to entire programs and processes.

Similar to the initially high expectations of international criminal courts, localization efforts also yielded high expectations. In the mid-2000s, there was a sense among both practitioners and academics that localizing these processes was somehow a silver bullet to addressing the growing pains of a rapidly expanding field that had initially placed a significant focus on criminal prosecutions (e.g., Huyse 2008; McEvoy 2008; Roht-Arriaza 2006; Stover and Weinstein 2004; UN Security Council 2004). By engaging with more locally specific dimensions – either processes "invented" or locally repurposed to address particular conflicts, such as the Gacaca tribunals, or incorporating what were thought to be locally relevant traditions into existing mechanisms, such as the ceremonies at the TRC in Sierra Leone and East Timor – transitional justice advocates seemingly believed this would overcome a lot of the processual and substantive criticisms from the 1990s. It was also hoped that these mechanisms would have a greater impact and connection to the populations for whom justice is being served. As discussed below though, local mechanisms have also faced their own criticisms. In fact, the reasons these expectations were not necessarily met largely derived from similar foundational assumptions and expectations about the capacity of transitional justice mechanisms more generally.

Over the past twenty years, various post-conflict societies have embraced more local approaches or programs. Commonly cited examples of these programs include Timor-Leste, Rwanda and Uganda. After the twenty-four-year long repressive Indonesian occupation of Timor-Leste, a 1999 referendum ushered in independence. The Commission for Reception, Truth and Reconciliation (CAVR) was established in an attempt to facilitate reconciliation for those who had suffered during this period. The Commission was a hybrid of concepts from criminal law, civil procedure, mediation and local traditions called *nahe biti boot*, as well as established practices referred to as *adat* or

lisan, which aimed, in part, to facilitate local participation and communal reconciliation (Drexler 2009; Kent 2012). The Gacaca courts, which took place between 2002 and 2012 in communities across Rwanda, were established to address certain categories of crimes committed during the 1994 genocide due in part to the fact that the ICTR was unable to prosecute most of the perpetrators who had committed crimes. Gacaca purported to be a historically traditional conflict resolution mechanism revived to meet the needs of an overstretched post-genocidal state (Clark 2010; Ingelaere 2016). Finally, traditional Acholi rituals, such as *Mato Oput* and *Nyono Tong Gweno*, were invoked in the mid-2000s in response to crimes committed in Northern Uganda, which served as a battleground between the Lord's Resistance Army (LRA) and government forces from 1987 to the mid-2000s (although the LRA continues to exist in much smaller numbers). These programs also attempted to establish justice and reconciliation in accordance with alleged local ideas and experiences (Baines 2007; Finnstrom 2010; Latigo 2008). Other examples of similar processes can be found in places like Mozambique (Igreja 2012), Burundi (Nee and Uvin 2010) and Guatemala (Arriaza and Roht-Arriaza 2008). While these latter processes were not necessarily streamlined as part of an institutional program per se, they encompassed similar ideas and characteristics, such as traditional rituals and local practices, as ones that were part of more formalized structures.

Proponents of these local processes and programs argue that they embody values similar to transitional justice and human rights agendas. As Adam Branch points out: "[Some] argue that traditional justice in fact represents an indigenization of universal human rights standards and adheres to the same values and human rights protections as more orthodox forms of Western justice" (2011, 155). In other words, localizing these programs constituted a mere translation of similar concepts and ideas into local idioms (Merry 2006, 42).

Many scholars, however, have also criticized these processes. One common line of critique is based on the extent to which they are authentically local. In reference to Gacaca, for example, many have pointed to the fact that it bore little resemblance to its original form (Reyntjens and Vandeginste 2005; Waldorf 2010), lawyers posed concerns about fairness and due process (although legal systems anywhere embody "constellations of power") (Thomson and Nagy 2011) and, perhaps most importantly, that the process became part