

# MEDIATING POST-CONFLICT DIALOGUE: THE MEDIA'S ROLE IN TRANSITIONAL JUSTICE PROCESSES

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## I. INTRODUCTION

“Peru is like a double A battery: it lives permanently polarized,” a local journalist recently wrote in a Lima-based magazine.<sup>1</sup> He wrote his observation nearly a decade after the conclusion of Peru’s twenty-year internal armed conflict that began in 1980 in which state agents contributed to systematic and generalized human rights violations while fighting to defeat national subversive groups. During this conflict, print and broadcast media parted from objectivity as it became obligated to take a stand on government actions, choosing to either defend them or, alternatively, resist and face backlash. When Alberto Fujimori came to power in 1990, his authoritarian approach to national security included manipulation of the media intended to compel the public to support his repressive regime.<sup>2</sup> Fujimori eventually fled the country in 2000 due to corruption scandals,<sup>3</sup> at which time a transitional government established the Peruvian Truth and Reconciliation Commission (PTRC) and initiated criminal trials to prosecute human rights abusers.<sup>4</sup> Yet, even after issuance of the PTRC’s nine-volume report in 2003 and the conviction of key perpetrators,<sup>5</sup> including Fujimori, Peru still suffers intense

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1. José Villaorduña, *Un chifa a que es culpable*, DEDOMEDIO (Peru), Apr. 2009, at 18, 19 (authors’ trans.).

2. See *infra* Part III.A.

3. See Lisa J. Laplante, *Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes*, 49 VA. J. INT’L L. 915, 919 (2009).

4. Lisa J. Laplante, *On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development*, 10 YALE HUM. RTS. & DEV. L.J. 141, 143 (2007).

5. PERUVIAN TRUTH AND RECONCILIATION COMM’N, TRUTH AND RECONCILIATION COMMISSION FINAL REPORT (2003), <http://www.cverdad.org.pe/ifinal/index.php> [hereinafter PTRC].

polarization on issues regarding its past conflict.<sup>6</sup> Notably, mass media plays a direct role in this ongoing societal tension.

Indeed, for many post-conflict countries like Peru, the end of gunfire does not necessarily imply an end to internal conflict. Remaining post-conflict societal friction may even be as threatening to long-lasting peace as the war itself. This situation may be attributed, in part, to the media's failure to adequately mediate conflicting views of a country's history—its causes and consequences, its villains and heroes. Certainly, newspapers, radio, and television, as well as the newly emerging micromedia (e.g., email) and middle media (e.g., web logs or “blogs”),<sup>7</sup> reach huge audiences on a daily basis before, during, or after conflict. As primary information sources in a democracy, these news outlets affect not only society's impression of what news and issues should receive attention, but also the perception of this information. Given the great role that the media plays in shaping public opinion, it merits careful discussion.

Certainly, the process of how a country transitions toward a peaceful democracy after episodes of political violence has earned significant and increasing attention and has even become its own field of study—transitional justice. Up until now, the theory of transitional justice has offered a standard formula consisting of a combination of restorative and retributive justice through truth commissions, trials of human rights violators, and reform of political and legal institutions.<sup>8</sup> These measures aim to foster reconciliation—a form of ongoing conflict resolution and management—among not only opposing sides to the conflict, but also the citizens caught in their crossfire.

Despite the plethora of academic and scholarly literature in the transitional justice field, the role and influence that the media has in these processes remain largely unexplored. In response, this Article examines the weight of the media's impact on both societies in conflict and societies in post-conflict transition settings, including coverage of truth commission work and criminal trials. It explores the case of Peru to show how media coverage of transitional justice processes, and the dialogue that ensues, can promote or hinder national

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6. See *infra* Part III.D.

7. W. Lance Bennett has used the term “micromedia” to describe e-mail and the term “middle media” to describe blogs. W. LANCE BENNETT, *NEWS: THE POLITICS OF ILLUSION* 8 (7th ed. 2007).

8. See Laplante, *supra* note 3, at 921 (stating that definitions of transitional justice vary, but that trials serve an important purpose in the field of transitional justice); Laplante, *supra* note 4, at 145 (quoting Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69, 79 (2003) (“[T]ransitional justice [is] ‘the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.’”)); Lisa J. Laplante & Kimberly Theidon, *Transitional Justice in Times of Conflict: Colombia's Ley de Justicia y Paz*, 28 MICH. J. INT'L L. 49, 50 (2006) (“By definition, transitional justice involves alternative approaches to conventional justice, thus provoking lively and at times contentious debate.”).

reconciliation in post-conflict settings. The Article contends that if reconciliation lays the foundation for preventing new cycles of violence, then transitional justice theory must begin considering how to attend to the media so that it exerts a positive influence on post-conflict recovery. To initiate this new direction in the field, the Article examines the media through two important lenses: first, the way in which the media disseminates information about transitional justice mechanisms such as truth commissions and trials, and the impact that this reporting has on increasing or decreasing local tensions; and second, how media institutions play a role in conflict and thus must be held accountable and subject to reform in transitional justice settings to ensure sustainable and peaceful democracies.

Part II discusses transitional justice theory as it applies to post-conflict societies, paying particular attention to its overarching goal of reconciliation and long-term conflict resolution. Part III explores the media's impact in conflict settings, using Peru as a case study, and suggests that conflict situations impact media institutions and that media institutions thus should become subject to reform. Finally, Part IV identifies some of the ways in which systematic support or reform of the media may be approached based on the particular challenges facing post-conflict transitions.

## II. TRANSITIONAL JUSTICE THEORY AND ITS LIMITED DEBATE ON THE MEDIA

After a society endures an internal armed conflict, repression, or other deviant political situations, how does it build or restore the rule of law, a culture of human rights, and democracy? This question has shaped the evolution of the transitional justice field, which traces back to the Nuremberg trials in 1945 but gained particular salience during the post-Cold War era when numerous authoritarian and Communist states began to transition toward democracy.<sup>9</sup> Over the past two decades, transitional justice theory has expanded and diversified through ongoing analysis and perspective on how to approach issues such as: How does the state provide redress to victims for the injustices brought against them? What is the state's role in repairing victims or punishing oppressors? How can citizens reconcile with their government and fellow citizens after being caught in crossfire? Constrained by difficult and divisive political realities and pressured by demands for justice and accountability, states in transition have usually resorted to mechanisms like

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9. See, e.g., Laplante, *supra* note 3, at 920–31 (describing the history of transitional justice); see generally Roy Palmer Domenico, *Italian Fascists on Trial, 1943–1948*, in [2 COUNTRY STUDIES] TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES 175, 184 (Neil J. Kritz ed., 1995) (describing trials and investigations taking place in France and Italy during 1944 and 1945).

truth commissions, reparations, institutional reform, and limited criminal trials with amnesties.<sup>10</sup>

Typically, transitional justice projects use these mechanisms for the express purpose of achieving the overarching goals of reconciliation and finally sustainable peace.<sup>11</sup> Very generally, reconciliation refers to “developing a mutual conciliatory accommodation between antagonistic or formerly antagonistic persons or groups,”<sup>12</sup> and is both a *process* and an *end point*. The PTRC viewed reconciliation as forming a new social pact with the marginalized citizens who suffered the most in the armed conflict; thus, it recommended the incorporation of inclusive and participatory channels into the country’s democratic reforms.<sup>13</sup> While the notion of reconciliation remains one of the least defined and most contested topics in transitional justice,<sup>14</sup> it frequently embodies the idea of nonrepetition and prevention of new violence.<sup>15</sup> This sentiment is reflected in common mottos coined to accompany transitional justice experiences, such as Peru’s civil society slogan “*Para que no se repita*” (“So that it doesn’t happen again”), or the name of Argentinean truth commission report “*Nunca más*” (“Never again”).<sup>16</sup> In essence, a post-conflict setting always potentially exists as a pre-conflict situation without the institution of certain measures to ensure peace. The notion of national reconciliation thus points toward a thicker definition of conflict resolution and management in post-conflict settings. As communication scholar Eytan Gilboa explains:

The distinction between resolution and reconciliation is based on the assumption that even if parties to a conflict reach a

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10. See Lisa J. Laplante, *Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence Through a Human Rights Framework*, 2 INT’L J. TRANSITIONAL JUST. 331, 333 (2008) (“[R]emedies include[] prosecuting perpetrators of human rights violations, revealing the truth about past crimes, providing victims/survivors with reparations and reforming governmental institutions.”); PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR & ATROCITY 155 (2001).

11. See HAYNER, *supra* note 10, at 11 (“A state may have a number of objectives in responding to past abuses: to punish perpetrators, establish the truth, repair or address damages, pay respect to victims, and prevent further abuses. There may be other aims as well, such as promoting national reconciliation and reducing conflict over the past . . .”).

12. *Id.* at 155. Reconciliation as a concept is commonly associated with the notion of forgiveness between victims and perpetrators due to the South African Truth & Reconciliation Commission’s heavy emphasis on religious pardons. See *id.*

13. See Lisa J. Laplante, *The Peruvian Truth Commission’s Historical Memory Project: Empowering Truth-Tellers to Confront Truth Deniers*, 6 J. HUM. RTS. 433, 439 (2007).

14. See Jeremy Sarkin & Erin Daly, *Too Many Questions, Too Few Answers: Reconciliation in Transitional Societies*, 35 COLUM. HUM. RTS. L. REV. 661, 665–66 (2004) (stating that the definition of reconciliation varies by country).

15. See Laplante, *supra* note 10, at 332.

16. *Id.*; Para Que No Se Repita, <http://www.paraquenoserepita.org.pe/> (last visited Dec. 2, 2009).

peace agreement, it is only an agreement between leaders, not between peoples, and that to be effective it must be fully implemented and respected over time. Successful conflict resolution ends with a formal peace agreement (negative peace), while successful reconciliation ends with a positive or stable peace.<sup>17</sup>

Building on Gilboa's distinction, transitional justice encompasses more than just the cessation of warfare—it aims to establish and build deeper institutional and inter-societal reforms toward lasting peace.<sup>18</sup> Indeed, it is often generalized popular dissatisfaction with the performance of state institutions, combined with the state's failure to provide democratic channels to hear and respond to these complaints, that give rise to social grievances and cause such protest to become violent.<sup>19</sup> Thus, transitional justice promotes addressing these flint-like issues at their roots, requiring reform and the population's ability to agree on its past. For example, truth commissions seek to create a collective memory and consensus among a population<sup>20</sup> that is often still divided in the wake of conflict; trials and reparations seek to reveal wrongdoing and settle accounts so as to quiet vengeful tendencies; and institutional reform aims to repair legal and political institutions to ensure that the rule of law and democracy operates properly to resolve conflicts.<sup>21</sup>

Strikingly absent in transitional justice scholarship, however, is discussion of the role, as well as possible reform of, media institutions and systems in the transitional justice processes that play out in post-conflict societies.<sup>22</sup> This gap in the literature comes as no surprise considering that the role of the media in conflict and post-conflict settings remains a relatively unexplored area of research across *all* disciplines, even that of media communications study.<sup>23</sup> However, this lack of study on the role of the media in conflict and post-conflict societies does not mean the media has a limited impact in these situations. On the contrary, “[m]edia can positively influence reconciliation

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17. Eytan Gilboa, *Media and International Conflict: A Multidisciplinary Approach*, 2007 J. DISP. RESOL. 229, 232.

18. See Laplante, *supra* note 10, at 332–33.

19. See *id.* at 337 (“[V]iolence flows from persistent socioeconomic inequalities, coupled with a lack of effective channels of redress.”).

20. See Laplante & Theidon, *supra* note 8, at 91.

21. See HAYNER, *supra* note 10, at 11 (listing the aims of transitional justice programs).

22. For example, Priscilla Hayner's book now stands as a standard text in the field of transitional justice but mentions media only five times, once to mention possible secondary trauma suffered by journalists covering the truth commission hearings, *id.* at 152, and the other times to mention when the media covered a truth commission closely, *id.* at 42, 100, 225–26. There is limited analysis and no suggestion of the need to directly address the institution of media as part of reform efforts in post-conflict settings. See *id.* at 42, 100, 152, 225–26.

23. See Gilboa, *supra* note 17, at 229.

in the aftermath of violent conflict just as the negative use of the media magnifies and promotes conflict.”<sup>24</sup> Furthermore, as the Organization for Security and Co-operation in Europe (OSCE) recognized, “building a free and independent media is integral to creating an open and civil society as well as fostering peace and reconciliation.”<sup>25</sup> Yet, given that the media tends to suffer direct attacks on its independence both during and after conflict,<sup>26</sup> the media faces difficult and unique challenges in the conflict recovery process.

### III. THE MEDIA IN TIMES OF CONFLICT

The role of the media in conflict settings may be too often underestimated. Indeed, the media has great potential to either incite or calm societal tensions. Consider, for example, how at the same time that some journalists take great risks to assure full coverage of controversial issues like political violence, corruption, and human rights violations, other national journalists directly assist in the commission of these egregious crimes. For example, Rwanda became a “textbook example” of the media used “to encourage and sustain genocidal tendencies.”<sup>27</sup> Specifically, the private broadcast company *Libre des Mille Collines* and the national Radio Rwanda took active roles in fomenting ethnic hatred among citizens, driving the Hutu people to kill at least a half-million of the Tutsi population in 1994.<sup>28</sup> Similarly, the media played a central role in fueling ethnic tensions in the Balkan wars, in which the Serbian state controlled the media to promote its campaign against Kosovar Albanians, assuring that journalists who took “views contrary to the official perspective . . . were routinely harassed, mostly unread or unheard, and did little to change public opinion.”<sup>29</sup>

The recently concluded civil war in Sri Lanka, where an estimated 70,000 to 80,000 civilians were killed over the course of three decades, offers another example of how the media plays an integral role in influencing public

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24. Ellen Yamshon & Daniel Yamshon, *Comics Media in Conflict Resolution Programs: Are They Effective in Promoting and Sustaining Peace?*, 11 HARV. NEGOT. L. REV. 421, 425 (2006).

25. Monroe E. Price, *Restructuring the Media in Post-Conflict Societies: Four Perspectives: The Experience of Intergovernmental and Non-governmental Organizations*, 2 CARDOZO ONLINE J. CONFLICT RESOL. 1, 31 (2000).

26. See, e.g., *infra* notes 74–81, 88–97, 125–34 and accompanying text.

27. Price, *supra* note 25, at 1–2.

28. See Alison Des Forges, *Silencing the Voices of Hate in Rwanda*, in FORGING PEACE: INTERVENTION, HUMAN RIGHTS, AND THE MANAGEMENT OF MEDIA SPACE 236, 236 (Monroe E. Price & Mark Thompson eds., 2002) [hereinafter FORGING PEACE]; see also Phyllis E. Bernard, *Eliminationist Discourse in a Conflicted Society: Lessons for America from Africa?*, 93 MARQ. L. REV. 173, 191–200 (2009).

29. Price, *supra* note 25, at 5; see also Lynn M. Malley, *Observations from an American Conflict Resolution Professional in Serbia on the Effects of the Accessibility of International Media*, 93 MARQ. L. REV. 241, 247–48 (2009).

opinion.<sup>30</sup> Sri Lanka features three functioning languages: the majority population speaks Sinhalese, the main minority groups speak Tamil, and the working language is English.<sup>31</sup> The media divides along the same lines.<sup>32</sup> In this way, the war between government forces and the separatist-group Liberation Tigers of Tamil Eelam (the LTTE) managed to extend to the press.<sup>33</sup> The Sinhalese media mainly backed the Sri Lankan military and its push to destroy the LTTE,<sup>34</sup> whereas the Tamil media covered the effects of the war on the Tamil population, and, in some cases, supported the LTTE.<sup>35</sup> The English-language media was divided between the state-owned media house, which produced mainly pro-government propaganda, and a handful of independent papers that often self-censored for fear of repression.<sup>36</sup> During the final stages of Sri Lanka's civil war, no journalists were actually allowed into the war zone, resulting in an utter lack of professional firsthand accounts to explain what exactly was happening. This total blackout meant that few official sources outside of the government existed.

The Centre for Policy Alternatives (CPA), a Sri Lankan think tank, released a media-monitoring report examining coverage during the final months of the war, from January through April.<sup>37</sup> The CPA found that due to polarized media coverage, Sri Lankans learned very different things about the war and thus formed different perceptions depending on the media coverage available to their ethnicity and language.<sup>38</sup> The Tamil media used more sources and covered war-related civilian death and disasters.<sup>39</sup> On the other hand, the (mostly government-run) English and Sinhalese media relied almost exclusively on state sources and only included information approved by authorities,<sup>40</sup> who had a different focus from the Tamil media:

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30. The authors thank distinguished international journalist Jesse Hardman for sharing this information about Sri Lanka, where he trained local journalists in 2008.

31. See Cent. Intelligence Agency, World Factbook 2008, Sri Lanka, <https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html>.

32. See Media React to Sri Lanka "Victory," BBC News (May 19, 2009), [http://news.bbc.co.uk/2/hi/south\\_asia/8056787.stm](http://news.bbc.co.uk/2/hi/south_asia/8056787.stm) (listing some of the different language newspapers and how the newspapers covered the end of the civil war in Sri Lanka).

33. See, e.g., *id.*

34. See CTR. FOR POL'Y ALTERNATIVES, KEY TRENDS FROM MEDIA MONITORING: JANUARY TO APRIL 2009, <http://www.cpalanka.org/mediamonitring2009/wp-content/uploads/2009/06/key-trends-jan-to-apr-2009.pdf>.

35. See *id.*

36. See *id.* As part of its coverage of Sri Lanka's war, the BBC printed excerpts from the different Sri Lankan media as the war ended. See Media React to Sri Lanka "Victory," *supra* note 32.

37. See CTR. FOR POL'Y ALTERNATIVES, *supra* note 34.

38. See *id.*

39. See *id.* All civilian casualties in the northern war front were Tamil. *Id.*

40. See *id.*

What was mostly revealed through the information provided by the authorities was either transportation of essential commodities or the harassments that the civilians [were] facing under the LTTE. It was only the Tamil media which reported on the loss of lives[,] injuries, dearth of food and medicine and many other grievances that the people [were] suffering, in addition to such information provided. For this they were depending on the sources such as [web site] reports, foreign media reports and the statements of local and international institutions and individuals[,] etc.<sup>41</sup>

For Sri Lankans to get a more complete picture of what exactly went on during the last stages of the war, they had to read multiple newspapers and web sites and then somehow discern what to believe.

Certainly, the role that the media carries out during conflict can have a major impact on society, greatly influencing the aggravation or the abatement of opposing sentiments. In fact, due to this immense power the media has over society's perceptions, the manipulation of the media is almost always a primary tool for repressive political leaders and warlords.<sup>42</sup> In these exceptionally complex settings, journalists often face significant limits on their abilities to successfully practice their profession. *New York Times* editor and Pulitzer Prize winner Tina Rosenberg observes: "In many countries, journalists must also contend with laws that make libel a criminal offense, and use a very broad standard to define libel. Venezuela criminalizes expression deemed disrespectful to public officials even if completely true."<sup>43</sup> The media's experience during Peru's conflict resembles this pattern and offers an important look at how both extremes—positive and negative journalism—play out in both conflict and post-conflict settings.

#### A. *The Media in Peru's Conflict*

Peruvian journalists and the media had important roles from the start of Peru's internal armed conflict, which the self-declared Maoist group *Sendero Luminoso* (Shining Path, or SL), led by Abimael Guzmán, ignited when it took up arms against the state in 1980.<sup>44</sup> Capitalizing on the Peruvian poor's

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41. CTR. FOR POL'Y ALTERNATIVES, CPA MEDIA MONITORING IN 2009: CHANNEL 4 AND HUMANITARIAN REPORTAGE, June 1, 2009, <http://www.cpalanka.org/mediamonitoring2009/?p=197#more-197>.

42. See Price, *supra* note 25, at 1; see, e.g., *infra* text accompanying notes 69–97.

43. Tina Rosenberg, *The Long, Hard Road of Investigative Reporting in Latin America*, N.Y. TIMES, July 2, 2006, at 9.

44. See NELSON MANRIQUE GÁLVEZ, EL TIEMPO DEL MIEDO: LA VIOLENCIA POLITICA EN EL



rising popular dissatisfaction with socioeconomic conditions, SL conducted a vigorous recruiting campaign in the rural highlands,<sup>45</sup> increasing its influence while spreading fear and terror. With most of the battle occurring far from the coastal capital of Lima, many Peruvians remained ignorant of the violence's extent and the lives it claimed.<sup>46</sup> In fact, "in part because the war was still a mystery to many urban Peruvians," eight journalists began a trip on January 26, 1983, from Lima to Ayacucho, as "an expedition in search of the 'truth.'"<sup>47</sup> They had planned to "investigate rumors that the 'Indians' had been killing the *Senderistas*,"<sup>48</sup> or SL members, by traveling to the village of Huaychao.<sup>49</sup> Yet in the course of their trip, they passed through a town named Uchuraccay where they were brutally murdered.<sup>50</sup> The causes for and events surrounding the journalists' murders are still a subject of heated debate.<sup>51</sup> However, the violent case of Uchuraccay succeeded for the first time in raising national awareness of the rising violence in Peru.<sup>52</sup> For many, the case of Uchuraccay marked the initiation of the conflict in rural Peru because until then, "the violence had not captured significant national attention."<sup>53</sup>

Under similarly ambiguous circumstances, 135 inhabitants of Uchuraccay also were murdered in the months following the journalists' deaths, caught between attacks by SL, repression from state forces, and protection measures of the local *rondas campesinas* (rural self-defense committees).<sup>54</sup> Yet these deaths would not be discovered until the investigations of the PTRC nearly two decades later.<sup>55</sup> The PTRC considered the case of Uchuraccay to be "an emblematic example of the violence and pain in the country's collective memory."<sup>56</sup> Just as a "20-year oblivion" blanketed the deaths of the Uchuraccay inhabitants, the only explanations given for the journalists' murders resulted from "controversial investigations that failed to clarify the

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PERÚ 1980–1996, at 14 (2002). The Tupac Amaru Revolutionary Movement (MRTA) soon followed as a lesser force in 1983. See Laplante, *supra* note 3, at 945 n.155.

45. MANRIQUE, *supra* note 44, at 14.

46. See Kimberly Theidon, *Histories of Innocence: Post-War Stories in Peru*, in LOCALIZING TRANSITIONAL JUSTICE: INTERVENTIONS AND PRIORITIES AFTER MASS VIOLENCE (Rosalind Shaw, Lars Waldorf & Pierre Hazan eds., forthcoming 2010) (manuscript at 8, on file with the authors).

47. *Id.*

48. Kimberly Theidon, "How We Learned To Kill our Brother"?: *Memory, Mortality and Reconciliation in Peru*, 29 BULLETIN DE L'INSTITUT FRANÇAIS D'ÉTUDES ANDINES [BULL. INST. FR. ÉTUDES ANDINES] 539, 543 (2000) (Peru).

49. *Id.*

50. *Id.*

51. *Id.* at 544.

52. See Theidon, *supra* note 46 (manuscript at 8).

53. *Id.*

54. 5 PTRC, *supra* note 5, at 121.

55. *Id.*

56. *Id.* (authors' trans.).

reason for their deaths.”<sup>57</sup>

As depicted in the case of Uchuraccay, the confusing nature of the guerrilla-style war, as well as the government’s failure to understand it, led to vast human rights violations, including murder, mass graves, extrajudicial executions, forced disappearances, widespread gender violence, torture, and many other examples of brutality as much against the combatants as the innocent bystanders.<sup>58</sup> Yet, the fact that the victims were journalists distinguishes the Uchuraccay case because their untimely deaths resulted from their protagonist roles in assuring transparency and truth about the conflict. Though it is true that “the media take[s] on greater responsibility as the public reflexively turns to [it] for clarification, and at times even for direction”<sup>59</sup> during times of conflict, it is this very burden that puts journalists’ lives at risk. Importantly in the Uchuraccay case, it was the journalists’ diligent efforts to provide information on the conflict and their resulting martyrdom that revealed the conflict’s severity to those in Lima, including the Peruvian government.<sup>60</sup> In turn, the national press “actively participated in the dispute on the facts,” giving rise to national awareness on the weight of the expanding internal armed conflict.<sup>61</sup>

Despite the pronounced risks, journalists continued to play a critical role in Peru’s conflict into the 1990s, when Alberto Fujimori came to power. Fujimori was elected in 1990 despite his relative political obscurity because many Peruvians believed he represented the change they so desperately awaited.<sup>62</sup> A stifling economic crisis coupled with the ominous spread of terrorism<sup>63</sup> made the population especially willing to accept harsh measures that would immediately and visibly improve daily life. In this context, Fujimori’s government was easily able to slide toward authoritarianism and

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57. *Id.* (authors’ trans.).

58. See generally 1 PTRC, *supra* note 5.

59. Claude Salhani, *Media in Conflict: Inciting Violence in Kosovo*, 7 GEO. J. INT’L AFF. 33, 37 (2006).

60. See Theidon, *supra* note 48 at 543; Theidon, *supra* note 46 (manuscript at 8).

61. 5 PTRC, *supra* note 5, at 156 (authors’ trans.).

62. With his motto of “[h]onesty, technology and work,” and playing on the existing image of the Japanese as hardworking and decent, Alberto Fujimori seemed to embody this change. See SALLY BOWEN, *EL EXPEDIENTE FUJIMORI: PERÚ Y SU PRESIDENTE 1990–2000*, at 13 (Richard Bauer ed., 2000) (authors’ trans.). As a political “outsider” and ethnic minority, he particularly appealed to certain sectors of Peruvian society that had been traditionally marginalized by mainstream politics. See Steven Levitsky, *Fujimori and Post-Party Politics in Peru*, J. DEMOCRACY 78, 82 (1999).

63. See Laplante, *supra* note 3, at 945 (noting that Alan García’s first term, from 1985 to 1990, plunged the country into an economic crisis, with inflation rising to 2 million percent). See MANRIQUE, *supra* note 44, at 51; Laplante, *supra* note 3, at 945. In this context, the violence that prevailed in the rural areas slowly began to seep into the capital. Car bombs and electrical blackouts, once unfamiliar, soon became commonplace in Lima.

corruption. Fujimori gained worldwide notoriety when he conducted a self-coup in April 1992, during which he dismantled the Congress, judiciary, and Constitutional Congress.<sup>64</sup> He used his expanded executive powers to issue draconian antiterrorism laws and create what was later discovered to be a military death squad to carry out extrajudicial executions of suspected terrorists.<sup>65</sup> In fact, as early as 1991, Fujimori's administration faced national and international scrutiny when state armed forces were suspected of conducting two massacres: the *Barrios Altos* in 1991 (a neighborhood fundraiser where fifteen people were executed) and *La Cantuta* in July 1992 (a university where nine students and a professor were kidnapped and murdered).<sup>66</sup>

Despite early indications of state involvement in these tragic events, the government repeatedly changed its official story, first blaming SL, then blaming alleged rogue state agents. Ultimately, it took investigative journalism to uncover the truth and put pressure on the state to investigate the wrongdoing.<sup>67</sup> For example, the magazine *Sí* first provided evidence that the executors were actually part of a government-led death squad unofficially known as *Colina*.<sup>68</sup> Some of the media not only maintained the national spotlight on the government's abuses, but also created an ongoing record of Fujimori's regime, which would eventually be used in the trial against him to prove his role in human rights abuses and corruption.<sup>69</sup> Yet, the vigilance of journalists did not come without challenge and opposition.

Indeed, the commendable contribution of some of Peru's journalists must be understood within the larger scheme of the Fujimori government to use the media to maintain its stronghold while cultivating a culture of fear. This technique was the brainchild of Fujimori's top advisor and "spy-chief," Vladimiro Montesinos, who was inspired by Adolf Hitler's *Mein Kampf* and

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64. Laplante, *supra* note 3, at 945.

65. *Id.* at 946–47. In Fujimori's human rights trial, Supreme Court judges determined that this was part of his counterterrorism strategy. See Sala Penal Especial de la Corte Suprema de Justicia de la República [CSJR] [Special Criminal Chamber of the Supreme Court of the Republic], 07/04/2009, "Luis Antonio León Borja y otros v. Alberto Fujimori Fujimori / asesinato, lesiones y secuestro" (Peru), available at <http://www.pj.gob.pe/noticias/noticias.asp?codigo=10410&opcion=detalle> [hereinafter Fujimori Human Rights Trial].

66. Laplante, *supra* note 3, at 947–50.

67. See *id.* at 950. Due to international and national pressure, Fujimori eventually initiated trials against members of the *Colina* death squad. *Id.* at 951–52. However, after he was reelected in 1995, Fujimori issued amnesty laws, freeing state agents who had been imprisoned for rights abuses since 1980. *Id.* at 953–54. With this law, *Colina* members were pardoned, freeing them of their conviction for the *La Cantuta* massacre. *Id.* at 954.

68. See *id.* at 950.

69. Fujimori Human Rights Trial, *supra* note 65, at 77.

the Nazis' use of media control to keep a tight rein over the population.<sup>70</sup> For example, Fujimori and Montesinos used bribes and blackmail, obligating media outlets to take a favorable position on Fujimori's government.<sup>71</sup> The government even had a military operation—"Plan Bermuda"—that specifically persecuted key members of the opposition and journalists.<sup>72</sup> Only a handful of news organizations resisted this pressure throughout Fujimori's regime, most notably *Caretas*, *La República*, and *El Comercio*.<sup>73</sup>

But the stakes for remaining independent were high. For example, for refusing a bribe from Montesinos to withhold an article portraying the advisor as "Fujimori's Rasputin," Enrique Zileri, the director of influential political magazine *Caretas*, was taken to court and required to pay a substantial fine.<sup>74</sup> Given that Fujimori's scheme included bribing judges, the judiciary became a powerful weapon against those who refused to comply with the invitation to cooperate.<sup>75</sup> Even today, there still exists a marked rivalry between Fujimori and newspapers like *Caretas*, which never abandoned its staunch anti-Fujimori reporting, and, as a consequence, were frequent victims of his authoritarian controls.<sup>76</sup>

While a handful of national newspapers managed to maintain some level of independence, another sector of the local media succumbed to the government's pressures. Specifically, Fujimori capitalized on the existence of *chicha* newspapers, a genre of press that arose as a result of the large-scale migration of Peruvians from the sierra to Lima after the violence in the 1980s.<sup>77</sup> Written largely for undereducated populations, *chicha* newspapers used a less formal style of writing, published sensationalized or even vulgar news, and often displayed pictures of scantily dressed women.<sup>78</sup> Recognizing the mass acceptance of these *chicha* among lower social sectors, Fujimori and his supporters bought them with bribes in exchange for the *chicha*'s

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70. SALLY BOWEN & JANE HOLLIGAN, *EL ESPÍA IMPERFECTO: LA TELARAÑA SINIESTRA DE VLADIMIRO MONTESINOS* 42 (2003).

71. See, e.g., John McMillan & Pablo Zoido, *How to Subvert Democracy: Montesinos in Peru*, 18 J. ECON. PERSP. 69, 79, 81 tbl.4, 82, 84 (2004) (describing the blackmail and bribery that took place during Fujimori's presidency and listing bribes paid to media outlets).

72. BOWEN, *supra* note 62, at 351.

73. See McMillan & Zoido, *supra* note 71, at 84; César Arias Quincot, *La Infame Década del Fujimorato*, in *CÓMO FUJIMORI JODIÓ AL PERÚ* 29, 59 (Carlos Milla Batres ed., 2001).

74. BOWEN, *supra* note 62, at 342–43.

75. See, e.g., McMillan & Zoido, *supra* note 71, at 77, 80 tbl.3 (describing and listing bribes paid to members of the judiciary).

76. *Id.* at 84 (describing how the Fujimori government harassed these newspapers through libel suits, incarceration, death threats, and by discrediting the independent journalists in articles written in the media outlets that the Fujimori government had already bribed).

77. See generally JUAN GARGUREVICH, *LA PRENSA SENSACIONALISTA EN EL PERÚ* 245–94 tbl.6 (2002) (authors' trans.).

78. *Id.* at 13.

publication of stories that favored Fujimori and attacked his political opposition, including critical journalists from news outlets that tried to maintain independence.<sup>79</sup> In various cases, this submissiveness to the regime was actually a “strategy for survival.”<sup>80</sup> Overburdened with large outstanding debts, some media outlets found themselves obligated to accept bribes.<sup>81</sup>

“Smokescreens” (*cortinas de humo*) were another common tactic of Fujimori’s government to maintain and increase civilian support of his repressive rule.<sup>82</sup> This involved feeding journalists trivial pieces of news that would be strategically blown out of proportion to distract the population from more pressing issues.<sup>83</sup> In this way, Fujimori’s government employed techniques like “political spin, sensation, and insider buzz” to shape the daily news, thus denying citizens “a solid basis for critical thinking or effective action.”<sup>84</sup> One of the earliest and most representative examples of these smokescreens was the “Crying Virgin.”<sup>85</sup> In the district of Callao in 1991, a statue of the Virgin Mary was said to be found crying real tears.<sup>86</sup> With all of Lima’s attention on its neighboring miracle, the cholera epidemic that killed many people in lower classes nearly went unnoticed.<sup>87</sup>

Meanwhile, Montesinos also controlled television programming by offering large bribes to station owners. This strategy sought to promote “‘political reeducation’ or perverse, authoritative politicizing.”<sup>88</sup> For example, Fujimori used a popular talk show hosted by Laura Bozzo to bolster his regime.<sup>89</sup> On the contrary, when station owner Baruch Ivcher Bronstein, a dual citizen of Israeli birth, refused to capitulate to this pressure, Fujimori’s government stripped him of his Peruvian citizenship, forcing Ivcher to leave the country.<sup>90</sup> Through this type of extensive manipulation of television

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79. See CARLOS IVÁN DEGREGORI, *LA DÉCADA DE LA ANTIPOLÍTICA: AUGE Y HUÍDA DE ALBERTO FUJIMORI Y VLADIMIRO MONTESINOS* 173 (2000). Examples of *chicha* newspapers include EL MAÑANERO, EL CHINO, LA CHUCHI, EL TÍO, and EL CHATO. McMillan & Zoido, *supra* note 71, at 79.

80. DEGREGORI, *supra* note 79, at 114 n.2 (authors’ trans.).

81. See BOWEN, *supra* note 62, at 342–43; DEGREGORI, *supra* note 79, at 114 n.2 (authors’ trans.).

82. See Jo-Marie Burt, “*Quien Habla Es Terroista*”: *The Political Use of Fear in Fujimori’s Peru*, 41 *LATIN AM. RES. REV.* 32, 53 (2006).

83. See *id.* (describing how counterinsurgency operations were used as a smokescreen to cover up the Fujimori government’s crimes).

84. See BENNETT, *supra* note 7, at xvi.

85. BOWEN, *supra* note 62, at 340.

86. *Id.*

87. *Id.*

88. DEGREGORI, *supra* note 79, at 115 (authors’ trans.).

89. *Id.* (authors’ trans.).

90. Bronstein eventually resorted to the Inter-American Commission on Human Rights to seek relief, resulting in a judgment by the Inter-American Court of Human Rights. *Ivcher Bronstein v.*

programs and televised news, it became difficult to distinguish government-fabricated news from real news. For example, in a trial against him in August 1996, well-known druglord Demetrio Chávez Peñaherrera, nicknamed “Vaticano,” testified that Montesinos gave him \$50,000 each month between July 1991 and August 1992 to use an air landing strip in a drug-trafficking zone of the Peruvian jungle.<sup>91</sup> However, under suspicious circumstances, Vaticano reappeared the following day, and—stuttering—retracted what he had first testified, deactivating possible investigations of Montesinos.<sup>92</sup> There was later evidence that Vaticano had been tortured,<sup>93</sup> as were many who criticized the government, making it even more difficult to distinguish which news could be trusted and which news was manipulated.

Over time, the field of information in Peru turned into a “dumbing propagandistic monologue manufactured by mercenaries of the pen, voice and image, whose intention was to keep Peruvians in the idolatry of the regime.”<sup>94</sup> The media grew “debased through bribes and through fear, instrumenting campaigns to manipulate public opinion.”<sup>95</sup> Indeed, one of Fujimori’s most powerful media tricks was to sustain the perceived threat of terrorism to maintain public support for his draconian and otherwise unlawful activity. He employed a common technique among political actors to “use . . . myths, stereotypes, scapegoats, and other symbolic devices”<sup>96</sup> to influence the public’s perceptions. It has been observed that

[W]hen the media tell such stories because they fit the news values that organizations are looking for, there are few restraints on the fabrication of political reality. Under such circumstances, political actors can manage issues, conflicts, and crises by simply throwing symbols at them—symbols that may be irrelevant to the matters at hand yet provoke powerful emotional responses from the public.<sup>97</sup>

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Peru, Case 11.762, Inter-Am. C.H.R., Report No. 20/98, OEA/Ser.L/V/II.98, doc. 6 rev. (1997), available at <http://www.cidh.org/annualrep/97eng/Peru11762.htm>. See also Case of Ivcher-Bronstein v. Peru, 2001 Inter-Am. Ct. H.R. (ser. C) No. 54 (Sept. 24, 1999), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_54\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_54_ing.pdf).

91. BOWEN, *supra* note 62, at 268.

92. *Regreso con Roncha*, CARETAS (Peru), Apr. 10, 2003, available at <http://www.caretas.com.pe/2003/1767/articulos/roncha.phtml> (authors’ trans.).

93. *Id.*

94. Mario Vargas Llosa, *Cómo Fujimori Jodió al Perú*, in *CÓMO FUJIMORI JODIÓ AL PERÚ*, *supra* note 73, at 15, 17 (authors’ trans.).

95. *Id.* (authors’ trans.).

96. Author W. Lance Bennett argues that there is always a temptation for politicians to use “myths, stereotypes, scapegoats, and other symbolic devices.” BENNETT, *supra* note 7, at 105.

97. *Id.*

Similarly, Fujimori fabricated his own news, reproduced by the majority of media outlets, to shape popular opinion toward supporting his questionable regime.

Ironically, despite all of these controls, it was the national media that caused the demise of Fujimori's regime in 2000. A group of congressmen and journalists from the opposition called a press conference to show one of thousands of "vladivideos"<sup>98</sup>—the term for videos showing Montesinos bribing hundreds of powerful elites, including members of the press, Peruvian Congress, business community, entertainment industry, and other spheres of influence.<sup>99</sup> The video event, fully covered by the broadcast and print media, unleashed an incredible scandal, serving as proof of what many had long suspected and attempted to prove in vain: the extent to which Peru's democracy and society had been corrupted. Fujimori staged a dramatic manhunt of Montesinos, who had fled to Panama, and aired a broadcast that featured him confiscating the remaining videos from Montesinos' home.<sup>100</sup> Soon after, on November 13, 2000, Fujimori fled the country under the pretext of attending an international conference, only to fax his resignation from Japan where he would reside for the next five years.<sup>101</sup> From there, he ran a weekly radio program to maintain his political base, one that would continue to support him even up until and after his criminal conviction in 2009.<sup>102</sup>

In the wake of Fujimori's departure, the transitional government embarked on its transitional justice project by establishing the PTRC in 2001 to begin investigations into the internal armed conflict and Fujimori's authoritarian regime.<sup>103</sup> The PTRC's two-year investigation concluded with the publication of its nine-volume *Final Report*, in which it detailed systematic human rights violations since 1980.<sup>104</sup> It estimated that 70,000 people had been killed, disproportionately impacting the poor, rural,

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98. McMillan & Zoido, *supra* note 71, at 71, 89.

99. *Id.* at 71.

100. John R. Hamilton, *The Fall of Fujimori: A Diplomat's Perspective*, 30 FLETCHER F. WORLD AFF. 191, 200–04 (2006); Clifford Krauss, *Playing Cat and Mouse, with Copters, in Peru*, N.Y. TIMES, Oct. 27, 2000, at A10.

101. Laplante, *supra* note 3, at 957; Hamilton, *supra* note 100, at 208.

102. Much evidence reveals that Alberto Fujimori has retained a certain level of support in Peru. For instance, a February 2008 survey conducted while he was on trial for human rights violations in Peru revealed that he was the politician with whom Peruvians most sympathized. See Praxis Institute for Social Justice, *Fujimori on Trial Blog*, *Fujimorismo: A Rising Power?* (Apr. 16, 2008), <http://fujimoriontrial.org/?p=287>. Furthermore, Fujimori's political party was also leading the polls for the 2011 presidential race with its candidate, Keiko Fujimori, the former president's daughter. See Praxis Institute for Social Justice, *Fujimori on Trial Blog*, *Conviction Doesn't Settle Debate on Fujimori's Presidency* (May 13, 2009), <http://fujimoriontrial.org/?p=616>.

103. See Laplante, *supra* note 3, at 919.

104. See generally PTRC, *supra* note 5.

indigenous farmers.<sup>105</sup> The PTRC recognized that its mission included educating the country about the massive human rights violations that occurred during Peru's "war on terrorism."<sup>106</sup> This task depended on media outreach, an observation the PTRC learned by studying previous truth commissions around the world.<sup>107</sup>

### B. *The Media and Truth Commissions*

Transitional justice projects inevitably rely on the media to reach their goals of disseminating the truth about a dark period of a country's history. Certainly, given the central role that the media plays in keeping citizens informed and shaping public opinion in democratic societies,<sup>108</sup> it is inevitable that the media would also influence the public's impression of the work of transitional justice mechanisms and the information the transitional justice mechanisms 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."<sup>109</sup>

An example of the media's agenda-setting power can be seen in the way Spain's local media renewed public interest in righting past abuses after a twenty-year "pact of forgetting."<sup>110</sup> Dictator General Francisco Franco came to power in Spain after a gruesome civil war from 1936 to 1939 between Franco's Nationalist forces and the Spanish Republicans, resulting in more than 300,000 deaths.<sup>111</sup> Upon winning the war, Franco instated a repressive dictatorship, which lasted until his death in 1975.<sup>112</sup> During that time, an estimated 440,000 Republicans went into exile, and another 400,000 remained in Spain and were subjected to imprisonment or forced labor.<sup>113</sup> The Republicans were also systematically attacked by the regime through the media and educational systems that "portrayed the defeated Republicans as bloodthirsty traitors against Spain."<sup>114</sup> Yet, upon Franco's death, Spanish society virtually buried his government's abuses against the "defeated enemy," opting to forget the past rather than carry out truth commissions and

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105. HATUN WILLAKUY, *VERSIÓN ABREVIADA DEL INFORME FINAL DE LA COMISIÓN DE LA VERDAD Y RECONCILIACIÓN* 434 (2004).

106. Laplante, *supra* note 4, at 147–48.

107. *See id.* at 148.

108. BENNETT, *supra* note 7, at 2.

109. *Id.* at 8.

110. *See* Madeleine Davis, *Is Spain Recovering Its Memory?: Breaking the Pacto del Olvido*, 27 *HUM. RTS. Q.* 858, 873–74 (2005).

111. *Id.* at 860.

112. *Id.*

113. *Id.*

114. *Id.* at 862.



trials to redress wrongdoings.<sup>115</sup>

However, local media coverage of the extradition proceedings brought against Chile's former dictator Augusto Pinochet, who had traveled to England in 1998 for medical treatment, reignited interest in seeking accountability about the truth and human rights violations.<sup>116</sup> Spanish Judge Baltazar Garzón Real's petition to extradite Pinochet for alleged human rights crimes against Spanish citizens roused the country's collective memory of its own dictator.<sup>117</sup> As the Spanish press began to draw parallels with Franco, Spain began to reexamine its own conflict and post-conflict periods.<sup>118</sup> Eventually, journalists and academics helped beckon in a delayed transitional justice project through advocating the importance of "reactivating memory,"<sup>119</sup> which led to the exhumation of mass graves, the identification of victims' remains, literature, and museum exhibits on the war.<sup>120</sup> In essence, the local media was able to awaken the society's quest for the truth, a need that had gone largely underground.

Spain's experience speaks of the effort to construct collective narratives and interpretations of the past. One of the key roles that the media plays in transitional justice settings, as exemplified by Spain, is facilitating public debate and deliberation on difficult truths about a collective past.<sup>121</sup> Yet, arriving at a collective memory of the past is one of the greatest challenges facing a post-conflict society because it implies reaching a consensus in a polarized context.<sup>122</sup> 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 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, truth commissions rely on the media to encourage consensus-making about the past—a daunting task.

A report on the media and conflict prevention issued by the United Nations Educational, Scientific and Cultural Organization (UNESCO) contends that the media have the opportunity to provide a safe battleground to

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115. *See id.* at 862–66.

116. *Id.* at 868.

117. *Id.*

118. *Id.* at 868–69.

119. *Id.* at 873–74.

120. *Id.* at 874.

121. *See, e.g., id.*

122. *See* ALEXANDRA BARAHONA DE BRITO, CARMEN GONZALEZ ENRIQUEZ & PALOMA AGUILAR, *THE POLITICS OF MEMORY: TRANSITIONAL JUSTICE IN DEMOCRATIZING SOCIETIES* 1 (2001).

“help[] . . . transform destructive conflicts into non-destructive debates.”<sup>123</sup> In theory, the findings of truth commissions, if transmitted through newspapers, television, and radio, can encourage dialogue while also raising recognition of how citizens, and society in general, suffered as a consequence of the breakdown of the rule of law and violations of human rights. Transitional justice scholars argue that reconciliation can only follow once this collective memory has been attained.<sup>124</sup>

The transitional justice experience in South Africa exemplifies the critical role that the media can play in assuring that a truth commission’s work enters the public domain for full debate and discussion. South Africa undertook its transitional justice process to address almost fifty years of apartheid (1948–1994) by establishing its Truth and Reconciliation Commission (SATRC) in 1995.<sup>125</sup> The SATRC’s public hearings, where victims publicly gave testimony, enjoyed both extensive media coverage and ample public interest.<sup>126</sup> Truth Commission Deputy Chairman Alex Boraine 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.<sup>127</sup>

Thus the media made the SATRC’s work more accessible to diverse sectors of society.

In contrast to South Africa’s experience, the PTRC received limited media attention and arguably failed to create a report accepted by all sides of the conflict. To date, members of the armed forces and pro-Fujimori supporters question the validity of the PTRC’s findings, making ongoing challenges to the methodology it employed to arrive at the victim count of nearly 70,000—a statistical method brought to the PTRC by expert Patrick Ball and previously used in the SATRC report.<sup>128</sup> Attempts to initiate investigations into the

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123. Andrew Puddephatt, *Turning Broadcasters into a Genuine Public Service*, in UNITED NATIONS EDUC., SCI. AND CULTURAL ORG. (UNESCO), *MEDIA: CONFLICT PREVENTION AND RECONSTRUCTION* 21, 22 (Barry James ed., 2004).

124. Laplante, *supra* note 13, at 445.

125. Catherine M. Cole, *Performance, Transitional Justice, and the Law: South Africa’s Truth and Reconciliation Commission*, 59 *THEATRE J.* 167, 172 (2007).

126. Audrey R. Chapman & Patrick Ball, *The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala*, 23 *HUM. RTS. Q.* 1, 23 (2001).

127. Cole, *supra* note 125, at 172 (quoting Alex Boraine, *A COUNTRY UNMASKED: INSIDE SOUTH AFRICA’S TRUTH AND RECONCILIATION COMMISSION* 89 (2000)).

128. See Jina Moore, *A Human Rights Statistician Finds Truth in Numbers*, *CHRISTIAN SCI. MONITOR*, Feb. 7, 2008, at 20. Before this estimation, the country’s NGOs and ombudsman had

PTRC's use of funds continuously surface even today, enjoying wide press coverage, yet never resulting in substantial discovery of embezzlement and all the while implying the commissioners were corrupt.<sup>129</sup>

During the PTRC's work from 2001 to 2003, media reports tended to focus on scandals and logistics, offering merely superficial information without digging into the deeper issues. The beginning of the PTRC's formation was marked by reports on budget and salary.<sup>130</sup> Headlines on the PTRC would read *The Truth Commission Needs More than \$5 Million for Work*<sup>131</sup> or *Commissioners Start Work with 260,000-Dollar Deficit*.<sup>132</sup> A pro-Fujimori newspaper capitalized on the commissioners' salaries, disclosing each one's pay as listed on supposedly "secret documents" of the PTRC's accounts that the newspaper's journalists had skillfully acquired.<sup>133</sup> This in turn provoked responses from the commissioners, reassuring that these salaries were public information.<sup>134</sup>

Similarly, during the middle of its work in 2002, the PTRC received strong criticism from the Alianza Popular Revolucionaria Americana political party (APRA),<sup>135</sup> headed by Alan García, who had been president during one of the periods (1985–1990) included in the PTRC work, and, at the time of publication, was serving as its president. The APRA made public statements claiming that it would request a new truth commission, one "that is authentic and impartially reviews cases of human rights violations in Peru without political connotations."<sup>136</sup> APRA politician Mauricio Mulder further suggested that the commissioners resign.<sup>137</sup> Incidentally, these remarks were produced around the time that the PTRC was investigating Alan García concerning his role during the violence.<sup>138</sup> In response, a sort of ping-pong debate sparked in the media, in which various public figures, including the commissioners themselves, commented on the criticisms and spoke in favor

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calculated that 25,000 people were killed.

129. See *Comisión de Defensa cita a miembros de la CVR*, PERÚ21, Oct. 2, 2008, at 8, available at <http://peru21.pe/noticia/217649/comision-defensa-cita-miembros-comision-verdad>.

130. See, e.g., *Comisionados inician labor con déficit de 260 mil dólares*, LIBERACIÓN (Peru), Sept. 18, 2001; *Más de US\$ 5 millones necesita Comisión de la Verdad para labor*, CORREO (Peru), Aug. 18, 2001.

131. *Más de US\$ 5 millones necesita Comisión de la Verdad para labor*, *supra* note 130.

132. *Comisionados inician labor con déficit de 260 mil dólares*, *supra* note 130.

133. *Comisionados de la Verdad cobran honorarios en dólares a través del PNUD*, LA RAZÓN (Peru), Apr. 5, 2002 (authors' trans.).

134. See *No hay planillas secretas en Comisión de la Verdad*, LA REPÚBLICA (Peru), Apr. 6, 2002.

135. *APRA pedirá nueva Comisión de la Verdad*, CORREO (Peru), Mar. 27, 2002, at 4.

136. *Id.* (authors' trans.).

137. Víctor Durand, *Partidos respaldan Comisión de la Verdad*, LA REPÚBLICA (Peru), Mar. 30, 2002, at 5.

138. *Alan García no tiene miedo a ser investigado*, EXPRESO (Peru), Mar. 28, 2002.

or against them.<sup>139</sup> Needless to say, the public's attention was repeatedly focused on these media-driven controversies instead of on the issues at heart—the brutal killing of thousands of marginalized Peruvians as a result of a questionable national security campaign.

Consequently, the PTRC report has yet to provide a common ground between conflicting sectors of society, resulting in polarization on key issues that continue to be the root cause of present-day conflicts. At bottom, there is still a large majority of the population that believes the state violence was justified to defeat terrorism, reflecting a common sentiment that all the victims were terrorists<sup>140</sup> (although the PTRC reported many massacres in which children and elderly were killed; moreover, many victims were killed outside of battle and without previous judicial determination of their affiliations<sup>141</sup>). This attitude results in a continued high tolerance for state abuse and the failure to demand accountability. Francisco Miró Quesada, director of local news group *El Comercio*, described Peru's penchant for authoritarianism in the following way: “[D]ictatorship is a bad inheritance from traditional societies . . . . Conflict is in the head of those who only understand democracy as a formal rather than real mechanism. This happens because in the Peruvian state and in Peruvian society there exists in many sectors an authoritarian culture.”<sup>142</sup>

In fact, some academics have already noted this tendency in post-conflict settings and have suggested that theories of political transition have been limited by focusing only on “particular conceptions of democracy.”<sup>143</sup> Not all governments tainted by human rights abuses may be so clearly labeled “authoritarian.” Rather, similar violations may be “manifest in states that have experienced prolonged, structured, communal, political violence, even where the political structures could broadly be considered ‘democratic.’”<sup>144</sup>

This observation is particularly clear in the case of Peru. While certain sectors of Peruvian society are certain that Fujimori was a dictator, other sectors pardon his hardhandedness because they believe him responsible for

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139. For one example, see *Carlos Tapia dice que Mulder está mal informado*, LIBERACIÓN (Peru), Mar. 24, 2002.

140. See Lisa J. Laplante & Kimberly Theidon, *Commissioning Truth, Constructing Silences: The Peruvian Truth Commission and the Other Truths of “Terrorists,”* in MIRRORS OF JUSTICE: LAW AND POWER IN THE POST-COLD WAR ERA (Kamari Maxine Clarke & Mark Goodale eds., forthcoming 2010).

141. See 6 PTRC, *supra* note 5, at ch.1.

142. Posting of Francisco Miró Quesada R. to Audiencias Públicas de El Comercio, <http://blogs.elcomercio.pe/audiencias/2009/06/consulta-dialogo-y-modernidad.html> (June 26, 2009) (authors' trans.).

143. Fionnuala Ní Aoláin & Colm Campbell, *The Paradox of Transition in Conflicted Democracies*, 27 HUM. RTS. Q. 172, 173 (2005).

144. *Id.* at 174.

eradicating terrorism.<sup>145</sup> As a result, Peru remains polarized not only on the issue of Fujimori, but on whether a hardhanded ruler is actually more effective than a democratic leader. The failure to create a collective memory and consensus on what minimum human rights standards should apply when a government uses its coercive force against a civilian population arguably could be why social unrest in Peru still devolves into violent clashes with state security.

In June 2009, indigenous communities in Bagua suffered a violent encounter with police forces, culminating in the death of nine civilians and twenty-four police officers, according to authorities, though native communities have claimed the civilian toll reached at least twenty-five.<sup>146</sup> After months of attempts at dialogue with the central government, indigenous rights group National Organization of the Amazon Indigenous People of Peru (AIDSESEP) blocked a highway in the *selva* (jungle) as a sign of protest against legislative decrees it believed jeopardized indigenous rights to land and cultural identity.<sup>147</sup> When the police acted on orders to clear the highway, freeing transit, violence broke out, ultimately provoking the deaths.<sup>148</sup> Commentators, including journalists, revisited the issue only recently raised by the PTRC: the lack of a common belief in the rights of *all* citizens before the state—even the historically marginalized and disenfranchised. Journalist Guisella Vargas Ochoa wrote, “the government needs to use more wisely tools that allow us to communicate in order to prevent or resolve the current crisis and to bring about unity among Peruvians, recognizing the importance of citizen participation in decision-making.”<sup>149</sup> Yet this communication failure was arguably exacerbated by the media’s role in reporting on the growing tensions in Bagua, and undermined the space for dialogue. Political analyst Mirko Lauer described the media scene in his local column:

The Bagua tragedy instantly converted in[to] a war of different perspectives launched with fury and defiance, which the media has taken on with a similar attitude. The government talks of an international conspiracy while the opposition makes accusations of planned genocide. Up to

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145. Kelly Phenicie & Lisa Laplante, *Peru: The Struggle for Memory*, OPENDEMOCRACY, Apr. 8, 2009, <http://www.opendemocracy.net/article/peru-the-struggle-for-memory>.

146. Simon Romero, *Protestors Gird for Long Fight over Opening Peru’s Amazon*, N.Y. TIMES, June 12, 2009, at A6.

147. *Id.*

148. *Qué ministros dejaron el Gabinete Ministerial junto a Yehude Simon?*, EL COMERCIO (Peru), June 11, 2009, <http://www.elcomercio.com.pe/noticia/312801/que-ministros-dejaron-gabinete-ministerial-junto-yehude-simon> (authors’ trans.).

149. Guisella Vargas Ochoa, *Como los siete palos*, EL COMERCIO (Peru), July 9, 2009, <http://www.elcomercio.pe/impres/notes/como-siete-palos/20090709/311671> (authors’ trans.).

now, there is no really effective evidence for either of these, but they are still being repeated.<sup>150</sup>

In fact, the international press started to shine light on the reality behind the events in Bagua.<sup>151</sup> Foreign Affairs Minister José Antonio García Belaunde stated that the foreign press, such as the newspapers *New York Times*, *Washington Post*, and *El País* in Spain, began to dismiss false allegations that Bagua was part of a genocide conspiracy.<sup>152</sup>

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 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. Had there been more societal discussion about the tension between the State's national security issues and citizens' rights, then perhaps this could have led to greater understanding during future clashes between the state and the governed. Because the media provide channels for carrying out debate on conflicting issues in polarized societies, the media have the power to mediate these difficult conflicts. Essentially, the critical role of the media here arises out of the fact that “[i]n modern societies . . . public deliberation is (and probably must be) largely *mediated*, with professional communicators rather than ordinary citizens talking to each other and to the public through mass media of communications.”<sup>153</sup>

The burden of this obligation suggests that journalists are responsible for not only reporting information, but also processing it, as opposed to leaving it in crude form—they do not necessarily have free reign to say and report anything they want. 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.”<sup>154</sup> Here, media reporting does not consist of merely presenting the facts, but instead shaping the

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150. Mirko Lauer, *Bagua: no se puede manejar el tema con vaguedades*, LA REPÚBLICA (Peru), June 9, 2009, <http://www.larepublica.pe/observador/09/06/2009/bagua-no-se-puede-manejar-el-tema-con-vaguedades> (authors' trans.).

151. *Canciller: La verdad sobre Bagua se abre paso en medios extranjeros*, RPP NOTICIAS (Peru), June 17, 2009, [http://www.rpp.com.pe/2009-06-17-canciller-la-verdad-sobre-bagua-se-abre-paso-en-medios-extranjeros-noticia\\_188764.html](http://www.rpp.com.pe/2009-06-17-canciller-la-verdad-sobre-bagua-se-abre-paso-en-medios-extranjeros-noticia_188764.html) (authors' trans.).

152. *Id.*

153. BENJAMIN I. PAGE, WHO DELIBERATES?: MASS MEDIA IN MODERN DEMOCRACY 1 (1996).

154. Thomas E. Nelson, Rosalee A. Clawson & Zoe M. Oxley, *Media Framing of a Civil Liberties Conflict and Its Effect on Tolerance*, 91 AM. POL. SCI. REV. 567, 567 (1997).

parameters for interpreting the facts and events published for mass consumption. The media must understand that “[p]eople’s reasoning about divisive political issues may be shaped by the mass media’s depiction of the issues.”<sup>155</sup>

The importance of this process cannot be underestimated because it “is essential to democracy, in order to ensure that the public’s policy preferences—upon which democratic decisions are based—are informed, enlightened, and authentic.”<sup>156</sup> Seeing as the media has the power to shape public opinion, the media can serve to mitigate or provoke the extremes in polarized societies, and thus the reaction to transitional mechanisms such as truth commissions, trials, and reforms.

For example, the media can just as easily “demonise people and contribute to violence” as it can “humanise opponents after a conflict.”<sup>157</sup> Whether intentionally or not, the way journalists frame the information they receive from news sources can drastically shape collective sentiments in tense environments, either easing longstanding strife or exacerbating it:

[T]he choices journalists make about how to cover a story—from the words, phrases, and images they convey to the broader “angle” they take on a controversy—can result in substantially different portrayals of the very same event and the broader controversy it represents. These alternative portrayals, or frames, can exert appreciable influence on citizens’ perceptions of the issue and, ultimately, the opinions they express.<sup>158</sup>

Ultimately the media can bridge the gap between “others,” and overcome the “us versus them” phenomena by “graphically illustrat[ing] how much people have in common.”<sup>159</sup> In the case of Peru, much of the population still views the thousands of slain and disappeared victims—largely indigenous farmers—as terrorists deserving their punishment.<sup>160</sup> By attempting to “humanize” this population, the media could assist in breaking down stereotypes and cultivating empathy and respect towards this underclass.

The failure of the PTRC to engage the media more fully in a way that would offer new frames for understanding the conflict through a human rights lens amounts to a missed opportunity. Greater discussion on this topic could

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155. *Id.*

156. PAGE, *supra* note 153, at 1.

157. Puddephatt, *supra* note 123, at 22.

158. Nelson, Clawson & Oxley, *supra* note 154, at 576.

159. Puddephatt, *supra* note 123, at 22.

160. Laplante & Theidon, *supra* note 140.

have helped strengthen a human rights culture and acted as a prophylactic against future abuses. That is, when members of a society internalize the mores of individual rights and state accountability, then they are more likely to reject state political violence, while also demanding accountability measures. Unfortunately, Peru's scant respect for the rule of law to date has made its society less amenable to domestic human rights trials, including that of Fujimori.

### C. *The Media and Trials*

The state initiated criminal proceedings against Fujimori on December 10, 2007, after successfully winning its extradition request to Chile.<sup>161</sup> Unlike with the work of the PTRC, this human rights trial attracted impressive media coverage that, in turn, generated elevated public interest. Being one of the first presidents to stand trial in his home country, both national and international press closely followed the Fujimori trial proceedings.<sup>162</sup> Nationally, several major daily newspapers published either articles or small updates for each trial session—nearly every Monday, Wednesday, and Friday from December 10, 2007, until April 7, 2009. Similarly, televised news programs gave periodic updates, and one cable news channel even aired all 161 trial sessions.<sup>163</sup> When key witnesses testified, public television channels also broadcasted these hearings, and news analyses programs conducted related interviews with local experts on the proceedings. Frequently, newspapers dedicated their front-page stories to Fujimori's criminal trial.

Yet, a national survey conducted by local pollster Ipsos APOYO revealed that only 32% of the population believed the coverage was sufficient and 40% thought the coverage was insufficient.<sup>164</sup> Most notable was that the state-owned channel failed to adequately cover the trial sessions, much less broadcast them live.<sup>165</sup> Only a cable television channel, available to subscribers, aired all of the trial sessions,<sup>166</sup> thus reaching a limited number of Peruvians around the country.

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161. Laplante, *supra* note 3, at 979.

162. Internationally, major news agencies such as the Associated Press and Reuters published news only for significant events, such as the trial's start and end, medical problems that Fujimori experienced, and testimony of key witnesses. See, e.g., Simon Romero, *Peru's Ex-President Is Convicted and Given 25 Years for Killings and Other Abuses*, N.Y. TIMES, Apr. 8, 2009, at A6; see also Peru: *Fujimori Asleep at Trial*, N.Y. TIMES, Mar. 26, 2008, at A12.

163. Praxis Institute for Social Justice, *Fujimori on Trial Blog*, State-Run Channel Doesn't Air Fujimori's Trial (Apr. 11, 2008), <http://fujimoriontrial.org/?p=277>.

164. Ipsos APOYO, *El avance de Keiko Fujimori* (Mar. 16, 2009), [http://www.ipsos-apoyo.com.pe/sites/default/files/opinion\\_data/Opinion\\_Data\\_Marzo\\_2009.pdf](http://www.ipsos-apoyo.com.pe/sites/default/files/opinion_data/Opinion_Data_Marzo_2009.pdf) [hereinafter Ipsos APOYO]. Twenty percent of Peruvians considered the media coverage to be excessive. *Id.*

165. Praxis Institute for Social Justice, *supra* note 163.

166. *Id.*



Significantly, the pro-Fujimori following—namely Fujimori’s children and members of his political party, including incumbent members of Congress—repeatedly accused the local media of failing to publish objective reports.<sup>167</sup> During the trial, Fujimori’s lawyer, César Nakazaki, even claimed that the former president was the target of and long ago convicted in a “media trial” that was, in turn, influencing the judges trying him.<sup>168</sup> In contrast, an opinion poll showed that 41% of Peruvians believed the trial media coverage to be impartial and 13% considered it biased in Fujimori’s favor.<sup>169</sup> Yet, accusations by Fujimori’s supporters (referred to as “Fujimoristas”) undoubtedly influenced the 33% who agreed that the coverage was biased against Fujimori.<sup>170</sup>

This debate on media objectivity in Fujimori’s trial resonates with an ongoing tension in post-conflict media reporting on the standard for objectivity. Ultimately, while Fujimori indeed had a right to a fair trial that included a public hearing with impartial judges, if the media was reporting on the evidence brought against him, then it was inevitable that they could appear biased. The evidence was damning. Indeed, even before the PTRC wrote its report condemning Fujimori’s role in perpetrating human rights abuses, national and international organizations issued scathing condemnations.<sup>171</sup> Following Fujimori’s self-coup, the international community openly called into question his respect for democracy.<sup>172</sup> Since then, major press agencies have called his presidency “authoritarian” and suggested he had “near-dictatorial” tendencies.<sup>173</sup> Furthermore, the Inter-American Court of Human rights has implicated Fujimori’s complicity in the same human rights violations that formed the charges against him in his trial—the Barrios Altos and La Cantuta massacres.<sup>174</sup>

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167. See *Mayoría de medios ya condenó a mi padre*, RPP NOTICIAS, Feb. 23, 2009, [http://www.rpp.com.pe/2009-02-23-mayoria-de-medios-ya-condeno-a-mi-padre-afirma-keiko-fujimori-noticia\\_166213.html](http://www.rpp.com.pe/2009-02-23-mayoria-de-medios-ya-condeno-a-mi-padre-afirma-keiko-fujimori-noticia_166213.html).

168. Praxis Institute for Social Justice, *Fujimori on Trial Blog*, *Fujimori’s Defense Says Certain Judicial Powers Are Weak when Faced with Media Pressure* (Feb. 20, 2009), <http://fujimoriontrial.org/?p=576>.

169. Ipsos APOYO, *supra* note 164.

170. See *id.*

171. See ROBIN KIRK & ANNE MANUAL, HUMAN RIGHTS WATCH, *HUMAN RIGHTS IN PERU: ONE YEAR AFTER FUJIMORI’S COUP* (1993).

172. See Barbara Crossette, *U.S., Condemning Fujimori, Cuts Aid to Peru*, N.Y. TIMES, Apr. 7, 1992, at A16.

173. Calvin Sims, *Key Officials Quit in Peru as Fujimori Faces Protests*, N.Y. TIMES, July 18, 1997, at A3; Nathaniel C. Nash, *Fujimori Winning Both Peruvian Votes, Counts Show*, N. Y. TIMES, Nov. 23, 1992, at A3.

174. Barrios Altos Case, 2002 Inter-Am. Ct. H.R. (ser. C) No. 75 (Mar. 14, 2001), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_75\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.pdf); La Cantuta Case, 2007 Inter-Am. Ct. H.R. (ser. C) No. 162 (Nov. 29, 2006), available at

#### D. Mitigating Sensationalization

At the same time Fujimori supporters were saying that the media was biased against him, they were using the media to create their own distractions to the real issues at trial.<sup>175</sup> In this way, they demonstrated one of the greatest challenges for the media in post-conflict settings with regard to sensationalization. As seen in various transitional societies, some individuals belonging to one side of a past conflict either strategically or inadvertently dramatize conflict-related issues. This situation can present serious difficulties for journalists who strive to adhere to the classic professional standard “as defined by fairness, accuracy, balance, and detached, fact-based reporting.”<sup>176</sup> By not mediating the unrefined facts in an effort to stay neutral and fair, journalists show how “the very reporting norms that seem most desirable actually limit [their] capacity . . . to challenge deceptions and lies when they occur.”<sup>177</sup>

For example, in 2002, Slobodan Milosevic, ex-president of the former Yugoslavia, was placed on trial in The Hague for alleged war crimes and crimes against humanity,<sup>178</sup> including ethnic cleansing for killing approximately 250,000 Kosovar Albanians. Yet despite such grave charges, he was able to captivate Serbian society with accusations that his trial signified a political prosecution.<sup>179</sup> Milosevic was able to “transform his identity as the accused and a prisoner into that of a hero.”<sup>180</sup> One Serb recounted that his mother had “hated Milosevic more than anyone else” but then converted as she watched his trial, “encourag[ing] him with ‘bravo’ shouts, although she hated him for ten years.”<sup>181</sup> It was through the transparency of his trial’s media coverage that Milosevic managed to reanimate past conspiracy theories and present himself as a hero.<sup>182</sup> The fact that the media allowed Milosevic to broadcast his allegations, in the end, strengthened the support of his followers and kept alive societal divisions in Serbia, as seen when tens of thousands of supporters attended Milosevic’s

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[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_162\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_162_ing.pdf).

175. See, e.g., Praxis Institute for Social Justice, *supra* note 168.

176. BENNETT, *supra* note 7, at xxiii–xxiv.

177. *Id.* at xxiv.

178. Marlise Simons, *Milosevic Died of Heart Attack, Autopsy Shows*, N.Y. TIMES, Mar. 13, 2006, at A1.

179. Jelena Tasic, *Transparent Broadcast?: The Reception of Milošević’s Trial in Serbia*, in PATHS TO INTERNATIONAL JUSTICE: SOCIAL AND LEGAL PERSPECTIVES 83, 90, 94 (Marie-Bénédicte Dembour & Tobias Kelly eds., 2007).

180. *Id.* at 94.

181. *Id.* at 93.

182. *Id.* at 90, 94.

funeral after he died on March 18, 2006, while imprisoned at The Hague.<sup>183</sup> Arguably, the media's failure to screen some of Milosevic statements, no doubt because they were merely reporting "the facts," potentially delayed societal reconciliation.

Similar to Milosevic, Fujimori also increased his own popularity through a calculated use of the media coverage of his trial. For example, on the first day of his human rights trial, the judges asked if he accepted the charges brought against him. Fujimori gave a four-minute speech on how he had saved the country from terrorism, culminating in his energetic plea: "I am innocent!"<sup>184</sup> This exclamation yielded ample coverage nationally and internationally and resulted in the creation of cell phone ringtones and music videos using Fujimori's proclamation as a theme song.<sup>185</sup> Fujimori not only played on the resilient belief of a large portion of the population that his hardhanded approach to the war on terrorism saved the country, he also solidified this collective interpretation of the past. Importantly, he achieved this influence only because the media did not provide a larger context to contest his claims. One rarely sees reference to an important historical fact clarified by the PTRC: years of intelligence investigations initiated before Fujimori came to power ultimately led to the arrest of terrorist group leaders, and consequently the decline in violence.<sup>186</sup> Thus, the media failed to raise awareness that Fujimori's hardhanded measures occurred *after* the terrorist threat to the nation had largely ended.

At the same time, Fujimori and the Fujimoristas used the press during his human rights trial to distract the public with trivial matters, and thus drew attention away from evidence that might dissuade them from supporting Fujimori. For example, Fujimori and his family frequently complained to the local media that abusive prison conditions were responsible for his deteriorating health.<sup>187</sup> When Fujimori was diagnosed with a small outbreak of leukoplakia, a type of lesion characterized by white patches, a pro-Fujimori newspaper ran the headline *Fujimori Has Cancer! Abusive Trial Kills Him Slowly* on its front page.<sup>188</sup> Yet, Fujimori was never diagnosed with cancer, and the press failed to inform the public that leukoplakia only causes cancer in

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183. Milosevic Buried in Hometown, Voice of Am. News (Mar. 18, 2006), <http://www1.voanews.com/english/news/a-13-2006-03-18-voa5.html>.

184. Monte Hayes, Former Peru President Sentenced to 6 Years in Prison for Abuse of Authority, Associated Press (Dec. 12, 2007).

185. See YouTube.com, Ringtone Fujimori .. Soy inocente!!!, <http://www.youtube.com/watch?v=YsRqsJJWYnI&feature=related> (last visited Dec. 2, 2009).

186. 8 PTRC, *supra* note 5, at 156.

187. Praxis Institute for Social Justice, Fujimori on Trial Blog, Fujimori: Victim of His Own Health? (May 23, 2008), <http://fujimoriontrial.org/?p=335>.

188. *Fujimori tiene cáncer!*, LA RAZÓN (Peru), May 20, 2008, at 1 (authors' trans.).

an estimated three percent of those who experience lesions.<sup>189</sup> Fujimori's son, Kenji Fujimori, also told members of the press that his father suffered from "high arterial hypertension, bronchitis, acute lumbago [lower back pain], swelling in the legs, digestive disorders and new worrying symptoms," supposedly as a result of his prison conditions.<sup>190</sup> Yet in reality, the former president had daily access to an outdoor patio, could receive visits from anyone he approved, had an ample living area, television, and all the reading material he requested.<sup>191</sup> These kinds of public relations maneuvers amount to "careful stage setting, scripting, and acting to create convincing images that often have little to do with the underlying reality of the situation," essentially "pseudo event[s]" that create false truths.<sup>192</sup>

On one occasion, Peru's then-Justice Minister Rosario Fernández was moved to publicly scold Fujimori's political supporters for their misleading statements to the press. She ordered them to be "more responsible in their declarations [to the press], because they are misinforming the population regarding former president Alberto Fujimori's legal and personal situation."<sup>193</sup> Yet, perhaps the responsibility for this misinformation belongs, in part, to journalists for failing to either filter any outrageous statements or to provide alternative views to counter them and provide the public with a more balanced view of the truth. 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."<sup>194</sup> By not screening out such sensationalization, journalists become complicit in distracting audiences from the real issues at hand. They fall prey to this ploy to "trivialize news content" to "distract[] attention from any broad or enduring political significance the event may have had."<sup>195</sup> If the information is "inaccurate, incomplete, misleading, or full of outright lies . . . even a rational public can be fooled."<sup>196</sup> Unfortunately, the consequences are not just a harmful nuisance because such information can

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189. Praxis Institute for Social Justice, *Fujimori on Trial Blog, Specialist Explains Leukoplakia and its Effects* (May 26, 2008), <http://fujimoriontrial.org/?p=340>.

190. *Kenji Fujimori: "Se han enseñado con mi padre,"* 24 HORAS LIBRE (Peru), May 19, 2008, <http://www.24horaslibre.com/politica/1211203545.php> (authors' trans.).

191. *Ex dictador tenía privilegios carcelarios antes de la renovación de su régimen,* LA REPÚBLICA (Peru), Aug. 4, 2008, <http://www.larepublica.pe/archive/all/larepublica/20080804/pasadas/15/161478>.

192. BENNETT, *supra* note 7, at 132.

193. *Fujimoristas deben dejar de desinformar,* LA REPÚBLICA (Peru), Feb. 24, 2008, <http://www.larepublica.pe/archive/all/larepublica/20080224/1/node/26038/total/01> (authors' trans.).

194. BENNETT, *supra* note 7, at 157.

195. *Id.* at 57.

196. PAGE, *supra* note 153, at 2.

mislead the public towards “favoring policies that harm themselves and their neighbors, or policies that violate their deepest values.”<sup>197</sup>

In the end, the failure of the Peruvian journalists to mediate the Fujimoristas’ sensationalism has meant that the journalists failed to address the ongoing public opinion that the alleged crimes were justified. In October 2007, a poll revealed that 78% of residents in Peru’s capital city Lima approved of the former president’s extradition home to face criminal charges of corruption and human rights violations.<sup>198</sup> But in June 2008—six months after Fujimori’s human rights trial began—another survey showed that while 53% of Peruvians believed Fujimori was guilty of the charges he faced, almost 65% said they still approved of his government because they believed he was responsible for eradicating terrorism and ending the internal conflict.<sup>199</sup> In this way, the trial coverage did not contest the idea that human rights violations are justified in national security situations. On the contrary, the trial coverage 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 Keiko Fujimori, who has been a member of Congress since 2006 and during the trial ascended the polls as the favorite potential 2011 presidential election candidate,<sup>200</sup> may be directly linked to the Fujimoristas’ manipulation of the media.

#### IV. BUILDING AN APPROACH TO THE MEDIA IN TRANSITIONAL JUSTICE PROCESSES

The media plays a central role in reconciliation processes that assure conflict resolution and prevention. Yet, a transition process does not begin with a whole new media system, but rather inherits whatever media institutions existed before and inevitably played a role during the period in question. Thus, countries embarking on a transitional justice project must also inevitably consider how to address any long-term damage to national media institutions and cultures. As one scholar observed:

In post-conflict contexts where the society was torn asunder through words as well as other weapons, almost all stations are often affiliated with a highly partisan political party or a

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197. *Id.*

198. Último Estudio de Opinión Pública Política a Nivel Lima Metropolitana—29 Septiembre al 02 de Octubre 2007 I Parte, CPI (Oct. 2, 2007), <http://www.cpi.com.pe/descargas/OPLI20071002.pdf>.

199. *Julio Salazar Monroe dice que altos cargos militares dependían de Fujimori*, EL COMERCIO (Peru), June 3, 2008, <http://www.elcomercio.com.pe/ediciononline/HTML/2008-06-02/julio-salazar-monroe-dice-que-altos-cargos-militares-dependian-fujimori.html>.

200. See Praxis Institute for Social Justice, *supra* note 102.

local power. Patterns of professional journalistic ethics and responsibility are often in decline and, as a result, the level of professionalism of local media outlets is often relatively low when measured against international standards. This lack of professionalism further undermines any claim of independence that these local media outlets claim.<sup>201</sup>

Certainly, journalists also are products of the conflict that a country has experienced. The fact that journalists are often persecuted, threatened, or harmed during conflicts may very well affect their ability to have a neutral opinion, report objectively on their oppressors, or mitigate sensationalism from certain sectors.<sup>202</sup> The process of transitional justice, including a truth commission and subsequent trials, may even represent a kind of “victory” for them. In this way, journalists may see this process as vindication of their views such that they become unwilling to offer other, opposing views.<sup>203</sup>

This particular challenge was reported during Liberia’s transitional justice period. Despite the significant investment of resources in training journalists, it was still “hard to tell when a story” on the Liberian truth commission or the Charles Taylor trial was “news or opinion.”<sup>204</sup> Similarly, in Cambodia, the United Nations Transitional Authority for Cambodia (UNTAC) confronted many difficulties when it attempted to rebuild the media institution after the Khmer Rouge regime collapsed in 1998.<sup>205</sup> In particular, it was hard to undo the professional culture after years of state-controlled media that since 1975 had instilled a habit of obedience, prohibited an independent journalist association, killed journalists, and generally discouraged a free press guided by codes of professional ethics.<sup>206</sup> With minimal effective redress for libel and other civil offenses, local journalists lacked professional restraint and newspapers subsidized by powerful individuals would run “wild headlines and unsourced stories—especially in the years of the coalition government from 1993 to 1997—[that] contributed to the political tension and fractionalisation.”<sup>207</sup>

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201. Price, *supra* note 25, at 3.

202. *See id.*

203. Barry James, *A Free Press Is Not a Luxury*, in UNITED NATIONS EDUC., SCI. AND CULTURAL ORG. (UNESCO), MEDIA: CONFLICT PREVENTION AND RECONSTRUCTION 11, 11 (Barry James ed., 2004).

204. LAWRENCE RANDALL & COSME R. PULANO JR., LIBERIA MEDIA CTR., TRANSITIONAL JUSTICE REPORTING AUDIT: A REVIEW OF MEDIA COVERAGE OF THE TRUTH AND RECONCILIATION PROCESS IN LIBERIA 5 (2008), available at [http://portal.unesco.org/ci/en/files/26332/12069594763review\\_media\\_coverage\\_liberia.pdf/review\\_media\\_coverage\\_liberia.pdf](http://portal.unesco.org/ci/en/files/26332/12069594763review_media_coverage_liberia.pdf/review_media_coverage_liberia.pdf).

205. Price, *supra* note 25, at 18–19.

206. *Id.*

207. *Id.* at 20.

This situation raises the challenging question of whether certain protocols or guidelines should be established for the media operating in post-conflict settings. As one advocate of this approach explains, “[t]here must be a more systematic international approach to building or rebuilding the media environment in post-conflict societies. It is no use promising vast sums of money for reconstruction and then moving on to . . . a different conflict zone six months later. Building institutions is a long term commitment . . . .”<sup>208</sup> The Institute on War and Peace Reporting has a set of “six duties” for journalists covering conflict and peace.<sup>209</sup> The list outlines that reporters, even in the face of the increased external pressures that come with war, must maintain standards such as professional research and balanced coverage.<sup>210</sup> But it goes further, highlighting the responsibility of reporters to cover the “trauma and the human stories of all the conflict’s victims,” and that true balance requires a look at alternatives to war: “We should report on the efforts of those working on peace and reconciliation every bit as much as those who exacerbate the conflict.”<sup>211</sup> The list of duties ends with a call for journalists to consider the impact of their work and the necessity to remain independent observers: “We should always be aware that our reporting will affect the conflict and the lives of people in it. We should be ever vigilant to avoid being used by one side or the other in their war efforts and to expose those attempts at media manipulation if so found.”<sup>212</sup>

Although related to war journalism, the same idea could apply to post-conflict settings. In fact, a whole new genre of peace journalism or “conflict sensitive journalism”<sup>213</sup> has been developed “to positively influence behavioral responses to conflict and shepherd in a new era of understanding, harmony, and security in conflict regions and broken societies across the world” and to foster tolerance and reconciliation.<sup>214</sup> Communication scholar 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

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208. Puddephatt, *supra* note 123, at 26.

209. The six duties are the duty to: (1) understand the conflict; (2) report fairly; (3) report the background and causes of the conflict; (4) present the human side; (5) report on peace efforts; and (6) recognize journalists’ influence. INT’L JOURNALISTS’ NETWORK, GUIDELINES FOR PEACE REPORTING, [http://ijnet.org/ijnet/training\\_materials/guidelines\\_for\\_peace\\_reporting](http://ijnet.org/ijnet/training_materials/guidelines_for_peace_reporting).

210. *See id.*

211. *Id.*

212. *Id.*

213. Ross Howard, Global Journalism Ethics: Conflict Sensitive Journalism in Practice, [http://www.journalismethics.ca/global\\_journalism\\_ethics/conflict\\_sensitivity\\_in\\_practice.htm](http://www.journalismethics.ca/global_journalism_ethics/conflict_sensitivity_in_practice.htm) (last visited Dec. 2, 2009).

214. Yamshon & Yamshon, *supra* note 24, at 422.

decisions.”<sup>215</sup> Along these lines, in Bosnia the Office of the High Representative established

an entire framework—an architecture of media law—with objective standards and a mechanism to determine whether a media violation occurred and the proper sanction for each violation. The reform sought to put into place a new legal system with tribunals, enforcement mechanisms, and licensing agencies with the result that the media system would no longer be “ethnically based and directly or indirectly associated to the main mono-ethnic political parties.”<sup>216</sup>

Yet, the attempt to create such standards raises the question: “[H]ow can the processes of media restructuring and support take place in a way most consistent with international norms of freedom to receive and impart information?”<sup>217</sup> Indeed, the right to information that lays the foundation for freedom of the press arises out of international human rights law.<sup>218</sup> The United Nations Interim Administration Mission in Kosovo (UNMIK) Media Regulatory Commission provoked international controversy because its “plan to regulate the Kosovar press” appeared “tantamount to censorship.”<sup>219</sup> Yet, the fact that journalists have been convicted of war crimes and crimes against humanity for their role in provoking political violence and assisting in repressive regimes<sup>220</sup> raises the question of whether there should be stricter standards for the media. Thus, a balance must be struck.

In attempting to develop more systematic approaches to media reform, there may very well be more than one approach to prescribing media policies in post-conflict environments because the “[s]pecific historic distinctions and peacekeeping needs will be of paramount importance indicating priorities.”<sup>221</sup> Certainly,

the previous regime type has a determinative influence both on the paths open for a transition country and on the tasks

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215. BENNETT, *supra* note 7, at 156.

216. Price, *supra* note 25, at 12.

217. *Id.* at 3–4.

218. Stephanie Fariior, *Hate Propaganda and International Human Rights Law*, in FORGING PEACE, *supra* note 28, at 69, 69.

219. Price, *supra* note 25, at 32.

220. *See, e.g.*, Eric Blinderman, *International Law and Information Intervention*, in FORGING PEACE, *supra* note 28, at 104, 104 (discussing criminal convictions of journalists in the Nuremberg trials and in the Rwandan genocide).

221. Price, *supra* note 25, at 54.



that need to be addressed in order to reach democratic consolidation. It is therefore reasonable to assume that the tasks and paths open for the establishment of free and independent media could also be highly dependent upon the previous regime of a country in transition.<sup>222</sup>

The landscape of preexisting media structures and those to come will hopefully inform what approach must be taken to post-conflict recovery schemes.

Based on the overwhelming evidence of the media's unavoidable impact in conflict and post-conflict settings, we are convinced that the media can be turned into a real agent in bringing about sustainable peace. However, for the media to really attain this potential, more specialized studies must be conducted to determine how to best implement in practice this theoretical approach. To date, reports on support given to media reform still find that studies on media impact have been more focused on freedom and pluralism than on accountability, which has "more or less been on the backburner."<sup>223</sup> But the slant of a journalist, even if unintentional, can be just as damaging as a dictator's fabrication; both can serve to mislead and ultimately form public opinion based on misinformation. Here, that idea that the pen may be mightier than the sword fits quite literally into the context of journalism and war and post-conflict situations. For that reason, we call on journalists and academics alike to further explore the particularities of the media's influence on conflict issues and its untapped potential to mend societal ruptures.

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222. MEDIA REFORM: DEMOCRATIZING THE MEDIA, DEMOCRATIZING THE STATE 3 (Monroe E. Price, Beata Rozumilowicz & Stefaan G. Verhulst eds., 2002).

223. RANDALL & PULANO JR., *supra* note 204, at 4.