



# **AFRICAN TRUTH COMMISSIONS AND TRANSITIONAL JUSTICE**

John Perry and  
T. Debey Sayndee



# African Truth Commissions and Transitional Justice



# African Truth Commissions and Transitional Justice

John Perry and T. Debey Sayndee

LEXINGTON BOOKS  
Lanham • Boulder • New York • London

Published by Lexington Books  
An imprint of The Rowman & Littlefield Publishing Group, Inc.  
4501 Forbes Boulevard, Suite 200, Lanham, Maryland 20706  
www.rowman.com

Unit A, Whitacre Mews, 26-34 Stannary Street, London SE11 4AB

Copyright © 2015 by Lexington Books

*All rights reserved.* No part of this book may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without written permission from the publisher, except by a reviewer who may quote passages in a review.

British Library Cataloguing in Publication Information Available

**Library of Congress Cataloging-in-Publication Data**

Perry, John, 1946 February 7-  
African truth commissions and transitional justice / John Perry and T. Debey Sayndee.  
p. cm.  
Includes bibliographical references and index.  
ISBN 978-1-4985-0407-2 (cloth : alk. paper) – ISBN 978-1-4985-0408-9 (ebook)  
1. Transitional justice–Africa. 2. Truth commissions–Africa. 3. Human rights–Africa. I. Sayndee, T. Debey, 1957- II. Title.  
JC578P419 2015  
323.4'9096–dc23  
2015002892



The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences Permanence of Paper for Printed Library Materials, ANSI/NISO Z39.48-1992.

Printed in the United States of America

This book is dedicated to an African leader seeking to reconcile a divided society usually with complexities; and to policy makers and academics who need to have a true appreciation of the potential gains and limitations of truth commissions.





# Contents

Acknowledgments	ix
Introduction: What Is a Truth Commission and Why Is It Important?	xi
1 Liberia's Truth and Reconciliation Commission	1
2 The Truth and Reconciliation Commission of South Africa	15
3 The Truth and Reconciliation Commission of Sierra Leone	27
4 The National Reconciliation Commission of Ghana	41
5 The National Human Rights Commission (NHRC) and Human Rights Violations Investigation Commission (HRVIC) of Nigeria	51
6 Chad: Africa's Second Truth Commission	63
7 The First Truth Commission in an Arab Country: The Equity and Reconciliation Commission of Morocco	69
Conclusion	79
Bibliography	83
Index	91
About the Authors	97



# Acknowledgments

The authors acknowledge the assistance offered by Professor Richard Lebrun of St. Paul's College at the University of Manitoba in Canada and Tom Donoghue from Calgary in editing the text. However any errors that remain are ours, not theirs. We would also like to recognize the technical assistance rendered to us by K. Sackie M. Nyaqueth of Monrovia, Liberia.



# Introduction

## *What Is a Truth Commission and Why Is It Important?*

There are different kinds of justice. Retributive justice is largely Western. The African understanding is far more restorative—not so much to punish as to redress or restore a balance that has been knocked askew.<sup>1</sup>

The year 1979 was significant for a number of reasons. The Three Mile Island nuclear facility in Pennsylvania, United States, suffered an accident and threatened to melt down. From then on the nuclear industry has labored under new and serious social concerns. Ayatollah Ruhollah Khomeini took over Iran on February 1st, and the Islamic Revolution continues to this day. Later, on April 3rd, Prime Minister Begin of Israel returned from Egypt after a two-day official visit. The hope for peace in the Middle East has never been extinguished since that important effort to normalize Egyptian-Israeli relations. In the field of human rights three notorious dictators in Africa fell from power: Idi Amin of Uganda, Jean-Bedel Bokassa of the Central African Republic, and Marcus Nguema of Equatorial Guinea. The year 1979 was the last year of the True Whig Party, which had been in power in the Republic of Liberia in West Africa for more than 100 years. In April 1980, President William Tolbert was killed in a military coup ushering in a period of political instability followed by a brutal and protracted 14-year civil war.

In 1979 the idea was born to create an African charter of human rights. In 1986 the African Charter on Human and People's Rights came into force, having received the agreement of a majority of the Organization of African Unity.

According to Richard Carver, the former director of Human Rights Watch, the Charter is important for at least two reasons: (1) it enshrined the idea that protection of human rights is an international responsibility and that criticism of human rights abuse is not an interference but a responsibility; and (2) the African Charter espouses for the first time a specifically African concept of human rights.

In the past African governments resisted much criticism of their human rights record because, they claimed, the dominant standard of human rights was Western and did not fit the African situation. Human rights advocates in Africa argued that the West favored the rights of atomized individuals whereas Africa stressed collective rights.<sup>2</sup>

The failure to respect *human rights* during the regimes of Amin, Bokassa, and Nguema leads to a number of questions. How should these societies and others like them deal with their evil pasts? What is the relation of the state's past to its future and how the social understanding of human rights can be (re)created in such a state. The field of transitional justice tries to respond to such issues.

By the term "transitional justice" we refer to something related to but also different from other forms of fairness such as retributive, social (distributive), and restorative justice. In the effort to rebuild a "failed state" certain mechanisms and procedures we are calling transitional justice can enable a national community to move from the position of suffering egregious human rights violations and undemocratic rule to the return to the rule of law and some version of participatory democracy. Transitional justice emerges in the interregnum between past and future in a still fragile state.

Transitional justice in the Americas followed decades of military dictatorship and cruel oppression, which involved widespread abductions, detention, torture and disappearances, all of which was carried out under the rubric of "national security" and in total secrecy.<sup>3</sup> The disturbing revelations about the past that emerged in a state transition reveal the depths of a state's criminality, the hallmark of which is "impunity."

Given the practice of state concealment, how are the advocates of human rights and the rule of law to prove what took place, when disappearances meant vanished victims, witnesses lived in fear, and a complete government cover-up had been implemented? The issue of truth led to the so-called truth commissions. This commission of inquiry has emerged as the principal mechanism to cope with the evil of the modern repressive state. This is because bureaucratic murder needs an institutional counterpart, a response that can respond to a massive policy of persecution.<sup>4</sup>

As Ruti Teitel has put it, the truth commission has emerged "as impunity's antidote and amnesty's analogue."<sup>5</sup> In Argentina, Chile, El Salvador, Honduras, Haiti, and Guatemala, where the violence was so massive that the possibility of criminal retribution was unlikely, the truth commission became a central mechanism of political transition. The troubling question was the same in all of these regimes of brutal military rule: should the past wrongs simply be forgotten?

Almost 40 years ago the first truth commission was convened in Argentina, and since then more than 67 have followed in Central and South America and elsewhere.<sup>6</sup> Argentina's transition began with the National Commission on the Disappeared (CONADEP), which led to the formation of a criminal justice structure and finally to prosecutions. A similar process has happened in Chile.

Initially, lacking the power of criminal prosecution the Argentinian commission was more a fact-finding than an investigative body. Howev-

er, thanks in part to its long and thorough report *Nunca Más* (Never Again), this first South American truth commission set the standard to be emulated by others that followed.

Chile's National Commission on Truth and Reconciliation, confining its investigation to establishing the facts about those lost due to the military's disappearance policy, came to the conclusion that the policy affected thousands of citizens.

In El Salvador, a long and bloody civil war killed 75,000 and displaced thousands of others. The final peace accords stipulated an international "truth commission" be established because it was deemed to be unrealistic to establish an impartial commission in such a divided community. The truce in Guatemala followed a 36-year-long war, which resulted in the deaths of thousands of persons and led to a truth commission called the Commission on Historical Clarification. It found sustained racial persecution and even genocide perpetrated against the Mayans.

In Honduras, after more than a decade of disappearances a Commission for the Protection of Human Rights was set up in 1992 to investigate. The commission's report found vital information of close to 200 cases of disappearances and accused several members of the army high command of being responsible.

In Haiti the National Commission on truth and justice was created in 1995 to establish the truth about the most egregious violations of human rights between 1991 and 1994 both domestically and abroad and to help in the reconciliation of all Haitians.

In Africa, truth commissions after repressive rule took place in the context of fragile, fledgling democracies in Liberia, Uganda, Chad, post-apartheid South Africa, Ghana, and Nigeria, and, within the context of a regime that continued to violate human rights in the Western Sahara and among those accused of supporting the Islamist cause, in the Kingdom of Morocco.

A central question we will address in this book is how such weakened post-conflict states in the midst of transition can ensure that both peace and justice will prevail. Related to this question is the relationship between justice and reconciliation. Can we speak of political reconciliation as well as the personal variety?

Those who prioritize peace and reconciliation stress there may be political and moral trade-offs, which are required to ensure peace. Under what circumstances, if at all, does this require the suspension of international law with respect to genocide, crimes against humanity, and war crimes? Put differently, are there circumstances when restorative, transitional, and distributive justice should take precedence over the demands of retributive justice? Or, is it possible to have all four?

Specifically, within the wider field of transitional justice we will study the phenomenon of truth commissions in Africa, begun paradoxically by Idi Amin in Uganda in 1974. It is incongruous that the first truth commis-

sion in Africa was in Uganda because the Idi Amin regime had no intention of abiding by human rights, and the precise reason why it established a truth commission to discover how they had been violated in Uganda since 1971 is difficult to understand.

Since Idi Amin's Ugandan truth commission in 1974, the journey of transitional justice has often included a hybrid, state-mandated institution, the truth commission, which tries to combine the various types of justice.

Building from origins in Latin America, independent and effective truth commissions have become an essential part of transitional justice efforts around the world. More than eight have taken place in sub-Saharan Africa, including the one in South Africa, which broke new ground by emphasizing truth recovery but also facilitating healing and reconciliation.<sup>7</sup> Fully one-third of all truth commissions have been established on the African continent, and most of these in the last ten years.<sup>8</sup> The use of truth commissions has broadened to embrace social ills other than civil wars and tyranny to include the historical and serious injustice suffered by aboriginal people in Canada and government corruption in the Philippines.

A truth commission has been roughly defined as "an official investigative body that documents a pattern of past human rights abuses."<sup>9</sup>

Another description is that a truth commission is "[An] officially sanctioned, temporary, non-judicial body . . . granted a relatively short period for statement taking, investigations, research, and public hearings before completing their work."<sup>10</sup>

Other definitions of truth commission include the following:

- a. An investigatory body established by the state (or by a dominant faction within the state)
- b. To determine the truth about widespread human rights violations that occurred in the past;
- c. [and] to discover which parties may be blamed for their participation in perpetrating such violations;
- d. In order to investigate, over a specified period of time, a pattern of abuses, rather than a specific event.<sup>11</sup>

Within the context of this book the truth commissions dealing with two different situations have been studied: the end of an authoritarian regime (South Africa, Ghana, Nigeria, Chad, and Morocco) and the end of a civil war (Liberia and Sierra Leone). The need for the "truth" that a truth commission seeks to deliver is of more significance in a post-authoritarian context where deception was part and parcel of the abuse than in post-conflict settings, because weak institutions combined with large numbers of victims and perpetrators can overwhelm a truth commission.<sup>12</sup>



In either of these two cases, the expectations for truth commissions are almost always greater than they can deliver.<sup>13</sup> Each truth commission is unique in form, structure, and mandate. However, something common to them all is that a truth commission is not a court of law. The two have been confused, but should be distinguished. A truth commission does not determine individual criminal liability or order criminal sanctions. That said, a truth commission can do many things that courts cannot or generally do not do. Trials focus on the actions of specific individuals; truth commissions focus on the large patterns of overall events. Furthermore, courts do not typically investigate the various social or political factors that led to the violence, or the internal structure of abusive forces. Courts do not submit policy recommendations or suggestions for political or military reforms. Finally while court records may be public, court opinions generally are not widely distributed. By way of contrast, the report of a truth commission can be read by the public, and this may encourage a wide and serious social dialogue, which is an important public function of a truth commission. In brief, a truth commission's strengths are in those very areas that fall outside the parameters of a court.<sup>14</sup>

Although truth commissions do not have the power to prosecute, many have recommended that prosecutions in court take place, and some have opened up their records for prosecuting authorities to examine. Indeed, according to the Rome statutes of the International Criminal Court, they can be obliged to do so, which may compromise the confidentiality of a truth commission.<sup>15</sup>

This represents a potential clash between truth commissions and the International Criminal Court (ICC) and raises political and legal problems. Most of the cases dealt with by the ICC come from states emerging from civil wars or repressive authoritarian rule. There may be an overlap between the investigations of the ICC and the work of truth commissions.

Little guidance on such questions is offered from the terms of reference of the ICC. Other than the question of national amnesties that have been granted by some truth commissions, the issues raised by the court's relationship with future truth commissions were never directly discussed.<sup>16</sup>

The statutes of the ICC require state parties to the treaty to cooperate fully with the court, and to "comply with the requests by the court to provide assistance in relation to investigations or prosecutions," including "the provision of records and documents."<sup>17</sup> If its records must be made available to the court a truth commission's ability to grant confidentiality to its witnesses would be compromised, and therefore its investigating powers constrained.

Most truth commissions comment in some detail on the strength and independence of the judiciary. This analysis could help the court determine whether the state is unwilling or unable to investigate or prosecute a case, which is a key test for the court to gain jurisdiction over a matter.<sup>18</sup>

Some truth commissions have also opted to publicly name persons they have concluded were perpetrators of specific violations. This can raise difficult questions of due process. The usual approach is to allow persons whom the commission intends to name in the report to respond to allegations made against them, either in writing or in a private meeting, before the commission names them in public.<sup>19</sup>

Minimal requirements of due process in courts of law include the following: the accused must be informed in advance of the charges, and must be given enough time and opportunity to prepare him or herself, including the right to legal counsel and the right to call and confront witnesses. Since a truth commission is not a court of law, due process need not be so stringent, but some version of these provisions needs to be offered to someone whom the commissioners are considering to name in their final report.<sup>20</sup>

The emerging standard of proof for truth commissions is to rely on a “balance of probabilities,” sometimes known as “a preponderance of evidence,” which means there is more evidence to show something to be true than not to be true.<sup>21</sup>

But this raises the question of whether or not a truth commission should name names. This issue of whether or not a truth commission should publicly name those they have concluded are guilty of human rights crimes has attracted controversy. There are two opposing principles at play here. Both have been strongly argued by rights advocates.

The first of these principles insists that due process requires that individuals accused of crimes must be allowed to defend themselves before being declared guilty. If a commission, which does not represent a court of law nor have the same strict procedures, names individuals responsible for human rights crimes when, in the view of the commissioners, there is good evidence of their guilt, they may have violated due process requirements.<sup>22</sup>

The second principle is that telling the full truth necessitates naming the persons responsible for human rights crimes when there is clear evidence of their culpability. The survivors and their families often yearn for this to happen. Naming names is an important part of the truth-telling process, and is especially important if the judicial system does not function well enough to permit trials.

Some commissions have been concerned about the security risks in naming perpetrators. They worry about the safety of witnesses who provided them with names, for the safety of commission members or staff, or about the risk of revenge taken against those named, especially if there is no likelihood that justice will be found in the courts.

The key problem is that, despite the caveat that a truth commission is not a court of law, “those named in a truth commission report are popularly understood to be guilty, period.”<sup>23</sup>

Following the second principle favoring naming the names, many human rights lawyers make the case that a commission should identify perpetrators if there is strong evidence to do so, especially if the courts in the country do not function well, but that they must always respect due process standards before doing so.

José Zalaquett in his introduction to the English translation of the Chilean Commission's report wrote that in Chile "to name culprits who had not defended themselves and were not obliged to do so would have been the moral equivalent to convicting someone without due process." This would have been in contradiction with the spirit, if not the letter, of the rule of law and human rights principles. Zalaquett then argued that naming just a few perpetrators was inherently unfair, leaving perpetrators to the luck of the draw, since no commission can investigate all accused wrongdoers and thus only a few perpetrators will be singled out.<sup>24</sup> The question still remains unresolved, however, whether or not there is a trade-off here between truth and justice. Many proponents of truth-seeking as a value in and of itself state that forgiveness will result from airing the full truth. The question they ask is how victims can forgive without knowing *whom* to forgive and *what* to forgive them for.<sup>25</sup>

It is important to keep in mind there is an inherent right to the truth enjoyed by victims or survivors or by society as a whole, which is implied in Article 19 of the Universal Declaration of Human Rights with its provision of the right to "seek, receive and impart information."<sup>26</sup> The "Joint Principles" confirm the "inalienable right to truth as an international legal principle."<sup>27</sup>

Naming the names of perpetrators has the purpose of assisting the courts in trying the cases that may result. If the sole goal of a truth commission is not criminal convictions, it is also not only "fact finding"; it is, rather, acknowledging the truth rather than finding it.<sup>28</sup> Juan Méndez, former Director of Americas Watch, wrote: "Knowledge that is officially sanctioned, and thereby made part of the public cognitive scene: acquires a mysterious quality that is not there when it is merely 'truth.' Official acknowledgement at least begins to heal the wounds."<sup>29</sup>

The most obvious reason to conduct a truth commission is to engage in "sanctioned fact finding." That is, it is important to establish as accurate a record of a country's past as possible. Leaving an honest and complete account of the violence in the past may prevent this history from being lost or rewritten.

This opens up the possibility for a society to learn from its past in the hope that this will prevent the return of such violence in the future.<sup>30</sup> Sanctioned fact-finding may begin the process leading to civic reconciliation, but the road to this goal is not easy. This is because true reconciliation might depend not only on a clear end to the threat of further violence but also on a reparations program for those injured or who have lost property, memorialization at sites of major human rights violations, at-

tention to structural inequalities, the existence of civic linkages in society that bring formerly opposing parties together, or, more simply, the passage of time.<sup>31</sup>

Some of the benefits of a truth commission include the welcome afforded to it by the survivors of violence and by human rights advocates. Its reports are often widely read. *Nunca Más* (Never Again), the report of the National Commission on the Disappearance of Persons of Argentina mentioned above, was and continues to be a best seller. The summary of facts in the report can be conclusive and fair. Furthermore, a truth commission can have a cathartic effect in a society and may represent an important step toward formally acknowledging a long-silenced past. It can help to purge wrongdoers, as processing a will or accessing a bank account cannot be settled without a death certificate. In Argentina, the state designed a new legal status of "forcibly disappeared" which is functionally equivalent to a death certificate.<sup>32</sup> Finally, truth commissions can contribute to the future with specific recommendations for reform.<sup>33</sup> In summary, the breadth and flexibility of a truth commission are its strength.

But not all truth commissions have been so successful. Some have reported only a narrow slice of the past. In some cases, such as that of Zimbabwe in 1985, the report has not been released to the public. There is disagreement as to whether or not truth commissions assist in the promotion of national reconciliation, or whether they serve to deepen hatred and resentments by digging up old issues.

However, no truth commission has caused a situation to become worse.<sup>34</sup>

Factors that encourage reconciliation within the parameters of transitional justice include: an end to the violence or the threat of violence; acknowledgment of harm done and reparation for it; and addressing structural inequalities and material needs.<sup>35</sup>

This lack of success need not mean that the idea of a truth commission in a particular country is a failure. One pattern that appears to be emerging is countries making use of truth commissions at multiple points in time. Uganda, Uruguay, Nepal, and Chile are examples of this phenomenon. There is some evidence that some countries are repeating or redoubling their previous efforts at transitional justice. It suggests that less than optimal experiences do not necessarily sour a country on the truth commission idea.<sup>36</sup>

Some apparent successes of truth commissions may not hold up to closer scrutiny. For example, there is the question of whether talking leads to healing. Individuals suffer from the intense psychological trauma that often results from extreme events.

It is true that some survivors of violence are remarkably resilient. In dire circumstances, or forced by having merely to survive from day to day, they effectively suppress their memories or even seem to recover

from the experience in sound mind and spirit. But many others suffer terribly from the memory of torture, gender-based violence, or witnessing the brutal murder of a loved one. Many argue an important function of truth commissions is to assist victims to heal themselves through providing a forum for them to tell their story.<sup>37</sup>

But one might ask whether these optimistic assumptions remain valid for truth commissions. Truth commissions do not offer long-term therapy. They offer survivors a one-time only opportunity to tell their story, usually to a stranger whom they will likely never see again. There has been to date no study of the psychological impact of truth commissions on survivors, but the available evidence is worrisome due to the possibility of re-traumatization.<sup>38</sup>

Among the ways some truth commissions have not been fully successful is their failure to address themselves to economic crimes. In their effort to unearth the truth about human rights abuses, massacres of innocent civilians, other war crimes, and crimes against humanity, transitional justice initiatives such as truth commissions have largely ignored large-scale corruption and other economic crimes committed by politically compromised persons and of non-state armed groups. The few exceptions such as the initiatives carried out in Chad, Sierra Leone, and Liberia show that transitional justice can be strengthened and impunity can be dealt with more effectively if it engages with accountability for corruption and economic crimes.<sup>39</sup>

While not the focus of the present study, one should be cognizant of unofficial truth commissions. These are the initiatives of non-governmental organizations and share with their official counterparts the core idea that by bringing out the truth concerning human rights abuses and atrocities that occurred during specific periods in the past a society can build a more just, stable, and democratic future.<sup>40</sup>

The unofficial truth commissions share certain characteristics with each other: they are rooted in civil society and are driven by victims' groups, universities, churches, and other social organizations. Unofficial truth commissions are not primarily state based.

An example of a successful unofficial truth commission was one sponsored by the Roman Catholic Archdiocese of São Paulo in Brazil entitled *Nunca Mais* (1985), which, with its "lofty goals" and integrity, "merits comparison with other truth commissions."<sup>41</sup>

Guatemala offers a second example of an "unofficial" truth commission. Before the end of the three-decade-long civil war, the task of investigating human rights abuses was taken up by a church organization, the REHMI/Oficina de Derechos Humanos de Arzobispado (Archbishop's Office of Human Rights or ODHA). Tasked with the goal of the "restoration of historical memory," this unofficial report was intended to be integrated into the official report that appeared likely to surface when the war was finally settled. These unofficial findings and records of racial

persecution would rock Guatemala and subsequently be confirmed by the official report, *The Memory of Silence*.<sup>42</sup> Another example of unofficial truth commissions were the two set up by the African National Congress in South Africa during the apartheid era.

Unofficial truth projects and state-based or quasi-governmental truth commissions each have certain strengths. Given the right conditions, official truth commissions may be more likely to establish a society-wide dialogue about the past than the unofficial type. On the other hand, the unofficial commissions have advantages of community-level truth telling and allow the “voices from below” to be heard and understood.<sup>43</sup>

In some situations and contexts official truth commissions are not feasible because of political complications or can become compromised and therefore ineffective. In such situations unofficial truth projects can serve as replacements for official truth commissions. They can also be precursors to an official truth commission, or they can be complementary initiatives.<sup>44</sup>

According to Priscilla Hayner, who has studied truth commissions throughout the world for many years, among the factors that determine the success or failure of a truth commission the most important one is the choice of the person or persons to manage a truth commission. Several commissions got into early trouble because of weak management leading to staff divisions, misdirected or slow-to-start investigations, and insufficient funding.

The head of a truth commission stands apart from other government or non-governmental officials because of the position’s public profile, which places him/her under the spotlight with the attendant political pressures. He/she needs to be creative and have strong organizational and leadership skills in order to manage the range of overlapping activities such as investigations, recruitment and training of a large and disparate staff, and raising and administering funds.<sup>45</sup> It is also helpful if the head of a truth commission is known to be a person of acknowledged moral integrity and probity.

Of secondary importance but still of concern is the commission’s length of tenure. Ideally one year to two and a half years would be best. The second Commission of Inquiry established in Uganda in 1986 was given no time limit and it took more than nine years before it was finished.<sup>46</sup> It is useful if the report of a commission comes out while there is still momentum of political and social transition under way and when a spirit of reconciliation may still be in the air and recommended reforms are more likely to be implemented.<sup>47</sup>

In the chapters that follow seven specific truth commissions in Africa have been discussed along with the necessary background information and context in order to understand the challenge each was facing. To date, no other publication has dealt with African truth commissions as a group. This is one contribution of the present work.

We begin with the one in Liberia, where the authors of this study live and work. Liberia's Truth and Reconciliation Commission can, in our view, be counted among those that have been "less successful."

## NOTES

1. Desmond Tutu, in Tina Roseberg, "Recovering From Apartheid", *The New Yorker*, November 18, 1996.
2. R. Carver, "Called to Account: How African Governments Investigate Human Rights Violations," *African Affairs* 89 (1990): 391–92.
3. Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000), 77.
4. *Ibid.*, 78.
5. *Ibid.*, 79.
6. Miatangi Sirleaf, "The Truth About Truth Commissions: Why They Do Not Function Optimally in Post-Conflict Situations," *Cardoza Law Review*, 35.6 (2014): 2263–347, at 2264.
7. "Truth and Memory, Truth-Seeking, Including Truth Commissions." International Center for Transitional Justice, accessed August 29, 2014, <http://www.ictj.org/our-work/transitional-justice-issues/truth-and-memory>.
8. Mark Freeman, *Truth Commissions and Procedural Fairness* (London: Cambridge University Press, 2006).
9. D. J. Hendy, "Is a Truth Commission the Solution in Post-Conflict Iraq?" *Ohio State Journal of Dispute Resolution* 20.2 (2005): 527–62 at 527.
10. "Rule of Law Tools for Post-Conflict States" (New York and Geneva: United Nations, 2006), <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf> (accessed August 29, 2014).
11. J. Quinn, "Classifying Truth Commissions," Paper delivered at Concerned Philosophers for Peace, McMaster University ON Canada, 29 Oct. 2000, [http://politicalscience.uwo.ca/docs/Joanna\\_Quinn/CPPclassifyingtruthcommissions.pdf](http://politicalscience.uwo.ca/docs/Joanna_Quinn/CPPclassifyingtruthcommissions.pdf) (accessed August 29, 2014); P.B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (London: Routledge, 2001), 17.
12. Sirleaf, 2263.
13. Hayner, *Unspeakable Truths*, 8.
14. P. B. Hayner, "Commissioning the Truth: Further Research Questions," *Third World Quarterly* 17.1 (1996): 19–29 at 26.
15. A. C. Bisset, "Rethinking the Powers of Truth Commissions in Light of the ICC Statute," *Journal of International Criminal Justice* 7.5 (2009), 963–82 at 965.
16. Hayner, *Unspeakable Truths*, 206.
17. Rome Statute of the International Criminal Court, 2002, Article 87.
18. Rome Statute of the International Criminal Court, Article 17, par 1 (a) and (b), cited by Hayner, *Unspeakable Truths*, 213.
19. P. B. Hayner, "Truth Commissions: A Schematic Overview," *International Review of the Red Cross* 88.262 (2006): 295–310, at 295.
20. Hayner, *Unspeakable Truths*, 127.
21. *Ibid.*, 129.
22. *Ibid.*, 107.
23. *Ibid.*, 108.
24. *Ibid.*, 128.
25. *Ibid.*, 31.
26. *Ibid.*
27. L. Joinet, "Set of Principles for the Protection and Promotion of Human Rights Intended to Strengthen Action to Combat Impunity," UN Subcommission for Prevention of Discrimination and Protection of Minorities, 48th Session, Annex II, Agenda Item 10, at 12, E/CN.4/Sub.2/29 June 1996.

28. P. B. Hayner, "Fifteen Truth Commissions 1974–1994. A Comparative Study," *Human Rights Quarterly* 16.4 (1994), 597–655 at 606.
29. J. Méndez, Review of *A Miracle, A Universe*. Méndez credits Thomas Nagel for this distinction. Cited in Hayner, "Commissioning the Truth," 26.
30. Hayner, "Commissioning the Truth."
31. Hayner, *Unspeakable Truths*, 6.
32. *Ibid.*, 30.
33. Hayner, "Fifteen Truth Commissions", 597, 609; *Unspeakable Truths*, 11.
34. Hayner, "Fifteen Truth Commissions," 11.
35. Hayner, *Unspeakable Truths*, 163.
36. G. Dancy, H. Kim, and E. Wibelhaus-Brahm. "The Turn to Truth: Trends in Truth Commission Experimentation," *Journal of Human Rights* 9.1 (2010): 45–61.
37. Hayner, *Unspeakable Truths*, 134.
38. *Ibid.*, 154.
39. R. Carranza, "Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes," *The International Journal of Transitional Justice* 2 (2008): 310–30 at 311.
40. Louis Bickford, "Unofficial Truth Projects," *Human Rights Quarterly* 29.4 (2007): 994–1035 at 994.
41. *Ibid.*, 995.
42. Teitel, *Transitional Justice*, 80.
43. *Ibid.*
44. *Ibid.*, 1004.
45. Hayner, *Unspeakable Truths*, 215.
46. *Ibid.*, 222.
47. *Ibid.*, 223.



# ONE

## Liberia's Truth and Reconciliation Commission

Many truth commissions are created by countries within specific contexts to deal with serious problems following civil conflicts or the history of autocracy of regimes that have fallen from power. This was certainly the case with the small West African Republic of Liberia.

The Republic of Liberia is Africa's oldest independent country after Ethiopia. It was established in 1847 by former slaves sent to what is now Liberia in the early 1800s, despite the fact that the area was already occupied by various indigenous ethnic groups who had inhabited the region for centuries.

Today Liberia's 3.2 million citizens speak English and more than 20 tribal languages. Ethnically 95 percent of Liberia is composed of indigenous tribes; 2.5 percent Americo-Liberians, descendants of former U.S. slaves; and 2.5 percent Congo people, descendants of Caribbean slaves. The religions of Liberia are indigenous beliefs (40 percent), Christian (40 percent), and Muslim (20 percent).

Liberia became notorious to the world at large in the 1990s and the early years of the twenty-first century for its long running and disastrous civil wars and its role in fomenting a rebellion in neighboring Sierra Leone. At least 250,000 persons were killed in Liberia's two civil conflicts and many thousands more fled the fighting. The struggle left the country in economic ruin and overrun with weapons.<sup>1</sup>

In 1980 then Liberian President William Tolbert was overthrown by Sergeant Samuel K. Doe after food price riots in 1979. The coup ended the history of dominance by the minority Americo-Liberians and Congos, but began a period of political and social instability.

By the late 1980s, arbitrary rule, a fraudulent election, and economic collapse resulted in civil war when Charles Taylor's National Patriotic

Front of Liberia (NPFL) militia overran much of the countryside outside the capital Monrovia. In 1990 Taylor's forces entered Monrovia; Mr. Doe was tortured and then killed. Fighting intensified as the rebels broke into various factions and battled each other, the Liberian army, and West African peacekeepers. In 1995 a peace agreement was signed that led to the election of Mr. Taylor as president in 1997.

The peace was short-lived, and anti-government fighting broke out in the north in 1999 led by the Liberians United for Reconciliation and Democracy (LURD) and in the south led by the Movement for Democracy in Liberia (MODEL). Mr. Taylor accused Guinea of supporting LURD. Meanwhile Ghana, Nigeria, and others accused Mr. Taylor of backing rebels in Sierra Leone.

Matters came to a head later in 2003, when under international pressure Mr. Taylor, the leaders of LURD and MODEL, and representatives of civil society including women's organizations agreed to attend peace talks in Accra, Ghana.<sup>2</sup> It was during the talks leading to the comprehensive peace agreement that the idea of a truth and reconciliation commission was conceived and then enshrined in the final agreement.

At the opening ceremony of the Liberian peace talks there was a surprise. More than an hour late in starting, some delegates were aware of the reason for the delay. Others were not. Several international delegates were all smiles. Others looked unhappy.

At last the host, General Abdulsalami Abubakar of Nigeria, and other senior delegates filed into the front of the room. President Charles Taylor was part of the group. After a brief opening ceremony, Taylor was invited to the microphone to speak. Representatives of LURD and MODEL walked out in protest. Taylor was not on the agenda to speak and represented an unwelcome turn of events.<sup>3</sup>

"Some people believe Taylor is the problem," Taylor said, speaking of himself in the third person. "If President Taylor removes himself from Liberia, will that bring peace? If so, I will remove myself." As he was speaking, CNN was announcing that Taylor had been indicted by the Special Court for Sierra Leone.

After the ceremony Ghanians, who had guaranteed protection to Taylor and the other militia leaders, hastily conferred. Within a few hours, Taylor was on the Ghanaian presidential plane going home to Liberia.

Thirteen previous attempts had been made to broker a successful peace treaty during the long Liberian conflict. With Taylor's surprise announcement the nature of the Accra peace conference changed. Few had hoped that the Accra meeting would be successful or would last more than two weeks. Now the peace settlement became a long, drawn-out affair lasting 76 days. It concluded with, among other things, a transitional government, an agreement for institutional reforms, a massive disarmament and demobilization program, and a plan to establish Liberia's Truth and Reconciliation Commission (TRC). Last, but far from least, an

early agreement was made that Charles Taylor would leave the presidency almost immediately.<sup>4</sup>

The warring factions exercised considerable power to set the terms of the accord. Despite this, the agreement did not include an amnesty for past crimes, explicitly leaving this question open for future consideration.

Priscilla Hayner has offered five reasons for the non-inclusion of amnesty in the Accra Comprehensive Peace Agreement.

1. The main priority of the warring parties was not self-protection but power. The factions demanded key political positions, which they succeeded in obtaining for themselves.
2. Since Liberia's court system was weak, the threat of court action seemed to be minimal. The Special Court for Sierra Leone was interested in prosecuting only one Liberian, namely Charles Taylor. Verbal assurances were proffered by other factions and international participants that no prosecutions were in the offing.
3. A blanket amnesty would have been unacceptable to the general public. The war had been too vicious and had gone on for too long, and was pounding Monrovia even as the talks proceeded.
4. Rebel leaders were themselves insisting on retributive justice for some of the notoriously brutal massacres and other atrocities and also for economic crimes.
5. An alternative to the dilemma of amnesty versus prosecution was quickly found: a truth and reconciliation commission was proposed to fill this space, keeping other alternative ideas off the table.<sup>5</sup>

Some discussion on the pros and cons of truth commissions in Liberia and in other countries of Africa and the trade-offs involved seems appropriate at this point. Truth commissions have been conceived as an alternative to full prosecution of offenders on the one hand and unconditional amnesty on the other. Advocates of truth commissions such as those attending the peace talks in Accra in 2003 took the view that some form of recognition and disclosure of past outrages was needed if the new democracies were to distance themselves from the past and thus claim for themselves political legitimacy.<sup>6</sup>

These proponents of truth commissions then go on to claim that a commitment to full prosecutions through the criminal justice system or through war crime trials would be threatening to the new democracies by provoking hostility and division. Transitional justice and democratization, they suggest, require something different from the demands of strictly retributive justice.

There are critics of this viewpoint. They say this amounts to making a virtue out of a necessity—or more particularly in the case of Liberia out of a particular, and perhaps erroneous, judgment concerning necessity. These critics view truth commissions as merely political compromises,

institutions that emerge out of an unprincipled negotiation of a transfer of power. Justice then becomes a victim of a political calculation.<sup>7</sup>

Victims make “elemental claims for retributive justice”<sup>8</sup> and they object to seeing rapists, torturers, and militia-sponsored killers walking freely in the streets, effectively unpunished.

In response to these objections proponents of truth commissions make the argument that these processes promote healing and individual catharsis, help individual victims to confront and go beyond their trauma, and force perpetrators to contemplate the true nature of their actions, make reparations to victims, and assist in the disclosure of truth. In this way truth commissions prevent the unfinished business of the past from poisoning social relations in the present. Finally, truth commissions do this more satisfactorily than trials, because trials would force victims<sup>9</sup> to enter an adversarial atmosphere, would be conducted selectively, producing less information about past abuses and have uncertain outcomes.<sup>10</sup>

The arguments in favor of truth commissions tend to confuse aspiration with prediction. We do not really know whether truth commissions actually secure the benefits claimed for them such as healing, catharsis, disclosure of the truth, and national reconciliation. The evidence is mixed, and in the case of Liberia’s TRC suggests that these good things may not happen. Are the proponents of truth commissions simply engaging in wishful thinking?

A defender of an absolutist conception of retributive justice might insist that justice should always be done “though the heavens fall” (*fiat justitia ruat caelum*), and hold that justice must be realized regardless of consequences.

During the Accra peace negotiations, shortly after the ceasefire agreement was signed, the issue of accountability reared its head. Civil society representatives proposed the setting up of a war crimes tribunal. Representatives of the rebel factions also demanded justice for the Taylor government.

The chair of the proceedings, General Abubakar, reminded them that they also could be accused of war crimes. This was a new idea for them. They had previously believed that they were not committing crimes but were acting in revenge for the crimes committed by the government.<sup>11</sup>

The trade-off between a war crimes tribunal and a TRC became clear in everyone’s mind. A leading civil society delegate at the talks explained the thinking as follows:

The TRC became a very attractive option, because the dominant view of participants from civil society and political parties was for a war crimes court. The TRC was attractive. You didn’t need a general amnesty, because the TRC would give you an amnesty, it was thought. There was a sense that it was clear: a tribunal means you would be put

away, but the TRC wouldn't put you in jail. No one paid any attention to explaining what this meant.<sup>12</sup>

This confusion would become a problem in the years following the publication of the Final Report of the TRC in 2009. The final language in the accord on the subject of amnesty in the Accra Accord reads as follows:

The NTGL (National Transitional Government of Liberia) shall give consideration to a recommendation for general amnesty to all persons and parties engaged or involved in military activities during the Liberian civil conflict that is the subject of this agreement.<sup>13</sup>

The TRC of Liberia was, from the start, a compromise,<sup>14</sup> and this fact came back to haunt Liberians before the decade ended.

The TRC encountered political difficulties almost immediately. The chairman of Liberia's transitional government, Gyude Bryant, appointed nine commissioners prior to the passage of the act creating the TRC. Since these appointments lacked transparency, civil society leaders and UN personnel called for a more participatory process.

Following the passage of the TRC Act into law on June 10, 2005, Bryant, the outgoing transitional government chairman, appointed a new set of commissioners in October 2005, just before Liberia's national elections. The nine commissioners—four of whom were women as mandated by the Act—represented various segments of society and had been carefully vetted for conflicts of interest, particularly involvement with the warring factions.

According to the Act the TRC was to investigate Liberia's troubled history between 1979 and 2003. This also represented another compromise. The Americo-Liberians and Congos argued that Liberia was plunged into crisis with the coup of 1980 and the assassination of the sitting president. The indigenous Liberians argued that the crisis actually began at least in 1979 with the rice riots and the problematic official inquiry that followed, if not many years before.<sup>15</sup> In the Act's preamble we read:

That introspection, national healing and reconciliation will be greatly enhanced by a process which seeks to establish the truth through a public dialogue which engages the nation about the nature, causes, and effects of the civil conflicts and the impact it has had on the Liberian nation in order to make recommendations which will promote peace, justice and reconciliation.<sup>16</sup>

A majority of the parties in the CPA negotiations two years earlier had thought of the TRC as an alternative to criminal prosecutions; many Liberians saw the TRC process as a precursor to criminal justice.<sup>17</sup> The possibility of prosecutions did find its way into the TRC Act that mandated the commission to make detailed recommendations on prosecutions.

Notwithstanding this provision, the basic objective of the commission was “to promote national peace, security, unity, and reconciliation.”<sup>18</sup>

The Act broke new ground by going beyond the mandate of previous truth commissions elsewhere in underlining the need to recognize violence perpetrated against women and children as well as the exploitation of natural and public resources to pursue the conflict. One ambiguity in the Act was the fact that references to gender-based violations were linked only to the experiences of women. This resulted in the failure of the TRC to report on sexual violence against men and boys.

Only the recommendations for prosecution were mandated by the Act to be presented in detail in the final report that was to “recommend for amnesty persons who made full disclosures of their wrongs and thereby expressed remorse for their acts and/or omissions . . . provided that amnesty or exoneration not apply to violations of international law and crimes against humanity.”<sup>19</sup>

One serious error in the Act that led to several constitutional challenges to the TRC later had to do with the implementation of the TRC. According to section 48 of the Act:

The Head of State shall report to the National Legislature within three months of receipt of the report of the TRC, and on a quarterly basis thereafter, as to the implementation of the commission’s recommendations. All recommendations shall be implemented. Where the implementation of any recommendation has not been complied with the Legislature shall require the Head of State to show cause for such non-compliance.<sup>20</sup>

The problem with this provision in the TRC Act is that it seems to violate the separation of powers in the three branches of the Liberian government according to the Republic’s constitution.

In February 2006 Liberia’s newly elected president Ellen Johnson Sirleaf inaugurated the commissioners. None of the commissioners had had previous experience with truth commissions. The chairman of the commissioners was a young lawyer, Jerome Verdier, a human rights activist with no particular administrative experience and no national or international profile at the time he was appointed. Two other of the TRC commissioners were clergymen, and it was surprising that one or the other was not made chair of the commission. Both were older and of a higher national standing than Verdier. Furthermore, the church in Liberia enjoyed credibility. Unlike the churches in Rwanda, their leaders played a positive role during the war inasmuch as they condemned the atrocities and were instrumental in the various attempts to forge a negotiated settlement during the many years of conflict.<sup>21</sup>

Following passage of the Act by the transitional government, the TRC did not immediately begin work. As outlined in the Act, their three-month preparatory phase began.

The TRC officially launched operations on June 22, 2006. An innovative initiative from the start was the task of conducting activities with Liberia's diaspora. The commission argued that diaspora members "continue to be engaged with developments on the homeland, supported, financed instruments for regime change; [thus] their voices must be heard and their issues and concerns must be addressed in fostering national reconciliation."<sup>22</sup>

The TRC had a difficult start. Internal power struggles and painful relations with donors hindered the TRC's productivity. Formally speaking, the TRC was composed of the nine presidentially appointed commissioners who were charged with accomplishing the TRC's mandate.<sup>23</sup>

Although the TRC had a formal decision-making process, it tended to take their decisions informally. Within the TRC until March 2007, all politically important decisions were made by the nine commissioners, who had an equal say in the decision, while the chairman's role was one of mediating disputes and framing discussions. In other words, Jerome Verdier did not have a policy-making role. The commissioners met every Tuesday behind closed doors.<sup>24</sup>

To complicate the picture, decisions about the TRC were also taken by the International Contact Group Liberia (ICGL). This group was composed of the TRC,<sup>25</sup> some of its donors, and important actors in Liberia's post-conflict reconstruction process. The ICGL met every Thursday, also in private sessions.

In the process of fulfilling its mandate the TRC conducted a number of activities. Its trademark public hearings, for example, required significant organizational and logistical support beforehand. Statement takers, research teams, and investigators had to be hired and trained, and some security arrangements made to protect the participants.

Many of these statement takers and researchers were underqualified, to say the least. The TRC also had to organize publicity campaigns that were vital to its work. Without public awareness, there would have been no public participation by potential participants who lived all over Liberia and the world, especially in the United States.

Until March 2007 commissioners were responsible for executing daily activities at the TRC by default.<sup>26</sup> Each commissioner was in charge of a thematic topic of activities that occurred during the wars. This resulted in the commissioners being involved in all stages of the TRC's daily processes, from research to investigations to locating witnesses. This eventually resulted in confusion and fighting over responsibilities and the establishment of personal zones of power and control.

Battles took place over resources such as vehicles, office supplies, and authority. It was reported that two female commissioners, Pearl Brown Bull and Massa Washington, got involved in a fist fight.<sup>27</sup> The work of the TRC's highly qualified, motivated, and enthusiastic staff was severely affected by the hostilities that had been unleashed.

The staff was discouraged from communicating with each other despite the overlapping nature of their work. Not surprisingly, this situation resulted in a severe retardation of TRC productivity. One former international consultant noted that during its first 18 months nothing much happened at Liberia's TRC.<sup>28</sup>

In March 2007 the ICGL decided that enough was enough and that structural adjustments were needed if the TRC was to fulfill its ambitious mandate in the allotted time. The result was a division of labor of TRC activities and increased intervention by the ICGL in the form of specific deadlines for certain documents and the suspension of additional funding until such deadlines were met.<sup>29</sup>

The tensions already existing within the TRC and between the TRC and its donors were further exacerbated by this new arrangement that shifted power away from the commissioners. Daily operations of the commission became the responsibility of the TRC secretariat headed by Nathaniel Kwabo, the executive secretary.

The increased involvement of the ICGL fostered resentment. On the one hand donors felt that they had bought for themselves some authority, but the commissioners regarded themselves as representing Liberia and advocated national ownership over the work and the final product of the TRC. National sovereignty was a constant issue, and donor skepticism and commissioner hostility led to tensions and a stifling atmosphere.<sup>30</sup>

Despite these administrative challenges the TRC collected 20,000 written statements, several dozen personal interviews, and more than 500 live public testimonies of witnesses including perpetrators of atrocities and direct victims in 15 counties and the Liberian diaspora.<sup>31</sup> To put the number 20,000 in perspective, South Africa's Truth and Reconciliation Commission collected 21,000 statements, but with this important difference: South Africa's population is almost 14 times that of Liberia's.<sup>32</sup>

The public profile of the TRC was the open hearings that began in the capital, Monrovia, in January 2008. Eighteen months long and broadcast live, the hearings were the longest in recorded history of truth commissions anywhere.

Perhaps without intending it, the beginning of the TRC hearings coincided with the beginning of the war crimes trial in the Hague of Charles Taylor.

Two dramatic testimonies occurred in the first week of the public hearings. At their opening, attended by the president and some of her cabinet ministers, David Saweh testified that a prominent musician and close advisor to the president, Marcus Davies, also known as Sunday gar Dearboy, was a former NPFL fighter who had caused the gang rape and killing of Sahweh's sister. Saweh also made the claim that Dearboy had also killed his father in the attack. Months later Saweh was charged with libel for making these statements under oath to the TRC.



Dearboy was a Liberian celebrity, and he had an office in the executive mansion of the president. This testimony was a major embarrassment for President Johnson Sirleaf, who seemed visibly flustered and unceremoniously left the Centennial Pavilion, where the hearings were being held. Subsequently she took an unfriendly attitude toward the commission. She described the TRC process as a charade and vowed never to appear before it.<sup>33</sup> A year later the president relented and appeared before the commission in an on-camera session in February 2009.

The other sensational testimony in the first week of the hearings was that of Joshua Blahyi, a former combatant with the Krahn-dominated ULIMO-J faction and leader of the Butt Naked Brigade, a unit of naked child fighters who believed that nudity prevented bullets from reaching their targets and who allegedly participated in ritual cannibalism.

This faction fought under General Butt Naked (Blahyi) in the battles in Monrovia in April 1996. Shortly after this slaughter, Blahyi claimed that he became a born-again Christian and began a popular church in Monrovia. At the hearings Blahyi testified he was responsible for the deaths of 20,000 persons during the war, and he underlined the fact that his confession was an act of contrition. He went on to call on other factional leaders to come forward and confess to the TRC.<sup>34</sup>

Thinking that the fear of prosecution might explain the apparent reluctance of key players in the war to appear before the commission, the chairman, Mr. Verdier, issued a series of statements in March 2008 emphasizing the amnesty provisions of the TRC Act.

In one of these March 2008 statements the caveat in the Act that Amnesty would not apply to violations against international humanitarian law and crimes against humanity in accordance with international laws and standards was amended by stating that the TRC would determine what constituted international humanitarian law violations and that it would take into account "the strong desire for national unity and reconciliation."<sup>35</sup> This offered the commission a measure of flexibility anticipated by neither the TRC Act nor Article 34 of the Accra Accord.<sup>36</sup>

To further induce appearances before the commission a list of 198 alleged perpetrators and 139 other persons of interest was released by the TRC on November 30, 2008. This was open to criticism because not everyone listed had been contacted prior to the release of the list thus suggesting that the TRC's public call amounted to an accusation against those named.<sup>37</sup>

The presence of the perpetrators at the hearings hurt more than helped the process. This was because the perpetrators sometimes brought forth lies, half-truths, and shocking justifications for the terrible destruction in which they participated in the name of liberation.

Senator Prince Johnson in his testimony tried to intimidate the commissioners<sup>38</sup> and threatened that political instability would follow if they considered prosecution. Sekou Damate Conneh Jr., the leader of LURD,

interrupted the TRC's questioning by suggesting that the commission build a monument to commemorate his struggle for justice. The audience was so outraged by this suggestion that they transformed themselves into a mob and attempted to attack him.

The assault was prevented by the timely intervention of the newly reconstituted Liberian National Police along with security personnel of the UN Mission in Liberia (UNMIL).<sup>39</sup> Perhaps as a result of these events the TRC determined not to create a forum for victims and perpetrators to meet and reconcile. The commission made this decision due to concerns about "the physical and psychological welfare of victims."<sup>40</sup>

In addition to the risk of mob violence, another disconcerting feature of the public hearings was the demeanor of the commissioners, who, listening to testimony of victims, looked unshocked or would even smile or laugh. Worse still, onlookers would giggle when victims narrated unusual forms of atrocities.<sup>41</sup>

The TRC submitted its Final Report in June 2009 following three years of testimonies to inquire into the root causes of Liberia's conflict. Among the recommendations of the TRC report was the call to establish an extraordinary tribunal and domestic court to prosecute 128 and 58 individuals, respectively, for gross violations of human rights and violations of international humanitarian law, including all former heads of warring factions and generals.<sup>42</sup>

In addition the TRC recommended a reprieve from prosecution for 38 individuals who cooperated with the commission and admitted their transgressions, including Joshua Milton Blahyi, General Butt Naked.

Another 49 individuals including President Johnson Sirleaf, who admitted in her testimony on February 12, 2009, that she had supported Charles Taylor's rebellion in 1990 and apologized for her error of judgment, and Associate Justice of the Supreme Court Kabineh Ja'neh were recommended for lustration, defined by the TRC as a form of justice that is punitive but not as harsh as prosecution. Specifically in the Liberian context it meant being barred from holding public office for 30 years, making written or oral apologies, and doing community service.<sup>43</sup>

Two of the eight remaining TRC commissioners, neither of whom had participated in the drafting committee of the Final Report, publicly distanced themselves from the report and its recommendations. One of the two, Pearl Brown Bull, wrote: "I cannot concur with my fellow commissioners that Prosecution in a Court of Competent Jurisdiction and other forms of public sanction will foster genuine reconciliation and combat impunity to promote justice, peace and security."<sup>44</sup>

The apparent courage of the TRC in making these recommendations vindicated the commission from its previous perceived shortcomings. The expected happy ending for the perpetrators who had behaved badly at the hearings did not happen. The public was delighted. The lists were carried in people's wallets, posted in their houses near their calendars

and displayed in taxis, often leading to debate on the subject of prosecutions.<sup>45</sup>

Criticism was also forthcoming. A week after the report's release, a group calling itself "Signatories to the Accra Comprehensive Peace Accord," former leaders of warring factions, now government officials, held a news conference dismissing the entire TRC report and accusing Verdier of treason for trying to overthrow Johnson Sirleaf's government.

Commanders and generals who a few years before had been sworn enemies were now partners in defending their impunity.<sup>46</sup> Another important issue was the lack of due process and transparency in assembling the names on the lists. The International Center for Transitional Justice in Liberia wrote the following:

The lack of due process with the lack of supporting information linking those on the lists with the violations or crimes they allegedly perpetrated is exacerbated by the fact that the lists are presented without any explanation of the criteria and methodology used by the TRC.<sup>47</sup>

The TRC Act does not prescribe a standard of proof to guide the process of determining recommendations. As a result, the TRC used the "preponderance of evidence" based on the volume and credibility of the evidence gathered by the commission from different primary sources. Since the TRC was not a court of law, no further proof was deemed to be needed, the Final Report suggested.<sup>48</sup>

Among the worthwhile features of the TRC one should begin by saying that despite its many difficulties and delays the commissioners accomplished the task given to them and produced three published volumes and two unpublished volumes of material.

The third volume contains 13 appendices including in-depth chapters on the impact of the conflicts on women, children, religious, and other groups, information on economic crimes, statistical interpretations of information gathered from statements as well as more than 150 recommendations on the way forward for Liberia. Due to lack of funding the fourth volume, including transcripts of the TRC conducted workshops and public hearings, remains unpublished.<sup>49</sup>

All of this material offers Independent National Commission of Human Rights (INCHR), an institution mandated by both the CPA and the TRC Act, a solid basis for its future work. This includes the evaluation and possible implementation of a traditional Liberian transitional justice mechanism known as the "Palava Hut" (Towards National Reconciliation and Dialogues).

Other important points for the INCHR include memorialization at the sites of massacres and other human rights outrages, providing recommendations concerning reparations for victims, producing clear criteria for the Legislature to approve nominations for appointed public office that would effectively deal with those accused of conflict-related human

rights and economic crimes abusers. All of this is quite apart from the contentious issues of the recommendations of prosecution and public sanctions of those found on the various lists published by the TRC.

Despite the fact that in 2009 there were only 20,000 Internet users in Liberia making it 194th in the world's use of this information technology (Central Intelligence Agency), still the TRC is by far the most technologically advanced truth commission to date.<sup>50</sup> Its website has been referred to as the "world's first truly interactive website."<sup>51</sup>

Liberia's TRC website became the first truth commission website to permit the submission of formal statements. It hosts an online forum and maintains a memorial section. Individuals can actually fill out an amnesty application online.<sup>52</sup> This is an outstanding feature in favor of Liberia's TRC. There are, however, many negative points.

Proscovia Svård summarizes the criticism in a succinct manner:<sup>53</sup>

1. There was a lack of due process in formulating the recommendations and transparency in naming the names. Most of the people listed for sanctions were never referred to in the entire report.
2. The report was written by consultants who were ignorant of Liberian realities.
3. Several members of the TRC and their international advisor disassociated themselves from the final report and this gave rise to problems of credibility.
4. There were also issues of due process and constitutionality. People who testified were asked to recount their experiences and did not know if anything said would be held against them.
5. The TRC lost the lawsuit filed against it on the grounds that lustration was a form of punishment and as such was illegal and unconstitutional unless adjudicated in a court of law.
6. The treatment of the president Ellen Johnson Sirleaf who was recommended for lustration was thought by many to be unfair inasmuch as the infamous General Butt Naked (Joshua Milton Blahyi) who claimed to have taken 20,000 lives, was recommended for amnesty.
7. The last recommendation and others like it were seen as destabilizing to the precarious peace in Liberia.

The public's expectations for Liberia's TRC were, by and large, unrealistic. As has happened with other truth commissions, the lack of leadership with Jerome Verdier as chairman meant that the TRC had problems from the start.

Verdier was not the top-notch manager that the TRC needed. Furthermore, the compromise of the TRC mediating between a general amnesty on the one hand and criminal prosecutions on the other meant that the hybrid result of some recommendations for amnesty and some recommendations for prosecution pleased no one.

At the Accra peace talks the only truth commission of which the delegates had some awareness was that of South Africa. They seemed unaware of the truth commission held in Sierra Leone that was more germane to the situation in Liberia.<sup>54</sup> It was from the South African experience that the amnesty for truth idea seemed to have arisen, and, as in South Africa so also in Liberia, this was a matter of serious contention.

Having said all this Liberia's TRC has provided a solid basis for the future work of its successor body, the INCHR, and possibly for the International Criminal Court if this body were to determine that the judicial and political realities are unable to take action against those with executive responsibility for crimes against humanity, war crimes, and possible genocide during the civil wars in Liberia.

It is important to point out that the allegation of genocide was never made by the TRC, but its historical background section offers information leading to this conclusion. These predictions take us away from the task of evaluating the TRC of Liberia, which, on balance, provided Liberia with a positive step to eventual peace and conflict resolution.

## NOTES

1. BBC News, Liberia Profile, <http://www.bbc.co.uk/news/world-africa-13729504> (accessed September 1, 2014).

2. Ibid.

3. P. Hayner, "Negotiating Peace in Liberia: Preserving the Possibility for Justice," *Report of the Centre for Humanitarian Dialogue*, International Centre for Transitional Justice, 2007, 4.

4. Ibid.

5. Ibid., 6.

6. J. Allen, "Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission," *The University of Toronto Law Journal* 49.3 (1999): 315–53, at 315.

7. Ibid.

8. M. Walzer, "The Hard Questions: Judgement Days," *The New Republic*, 15 Dec. 1997, 13.

9. Allen, "Balancing Justice and Social Unity."

10. Ibid, 316.

11. Hayner, "Negotiating Peace in Liberia," 15n19.

12. Ibid.

13. United States Institute of Peace, Accra Comprehensive Peace Agreement, Article XXXIV, [www.usip.org](http://www.usip.org) (accessed September 2, 2014).

14. P. J. Allen, A. Weah, and L. Goodfriend, "Liberia Beyond the Truth and Reconciliation Commission Options in Liberia," *International Centre for Transitional Justice*, May 2010.

15. L. Gberie, "Truth and Justice on Trial in Liberia," *African Affairs* 107.428 (2008): 455–65 at 455.

16. Allen et al. "Liberia," 6; Ministry of Foreign Affairs, Monrovia, Liberia, "Preamble. An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia, June 22, 2005, [www.refworld.org/docid/473c6b3d.html](http://www.refworld.org/docid/473c6b3d.html) (accessed September 3, 2014).

17. Allen et al. "Liberia," 6.

18. TRC Act, Art. IV, Sect. 4.

19. Allen et al. "Liberia," 6; TRC Act, Art. X, Sect. 45.
20. Kwesi Aning and Thomas Jaye, "Liberia: A Briefing Paper on the TRC Report," Kofi Annan Peacekeeping Training Centre Occasional Paper No. 33, April 2011, 7–8; TRC Act, Section 46.
21. Gberie, "Truth and Justice on Trial," 465.
22. Allen et al. "Liberia," 7; TRC of Liberia, Consolidated Final Report, 6.
23. R. de la Cruz, "'God-Willing I Will Be Back': Gauging the Truth and Reconciliation's Capacity to Deter Economic Crimes in Liberia," *African Security Review* 17.4 (2008): 64–78.
24. Ibid.
25. Ibid.
26. Ibid.
27. Gberie, "Truth and Justice on Trial," 462.
28. A. Loden, "Civil Society and Security Reform in Post-Conflict Liberia: Painting a Moving Train Without Brushes," *The International Journal of Transitional Justice* 1 (2007): 297–307.
29. De la Cruz, "'God-Willing I Will Be Back.'"
30. Ibid.
31. P. Svärd, "Liberia's Truth and Reconciliation Commission: The Importance of Documentation in Postwar Education and Reconciliation," Kujenga Amani SSRRC Forums <http://forums.ssrc.org/kujenga-amani/2i0013/09/29> (accessed 4 September 2014); A. Weah, "Hopes and Uncertainties: Liberia's Journey to End Impunity," *The International Journal of Transitional Justice* 10 (2012): 1–13.
32. S. Pelsinger, "Liberia's Long Tail. How Web 2.0 is Changing Truth Commissions," *Human Rights Law Review* 10.4 (2010): 730–48, at 738.
33. Gberie, "Truth and Justice on Trial," 457–58.
34. Ibid., 458.
35. Liberian TRC, Bulletin Number 6, Policy Paper on Application for Amnesty, March 2008, [http://trcofliberia.org/press\\_releases/162](http://trcofliberia.org/press_releases/162) (accessed September 3, 2014).
36. Gberie, "Truth and Justice on Trial," 462.
37. Allen et al. "Liberia," 9.
38. Weah, "Hopes and Uncertainties," 9.
39. Ibid.
40. Truth and Reconciliation of Liberia, Final Report, Vol. One, p. 29, <http://www.trcLiberia.org/reports/final-report> accessed December 1, 2014.
41. Gberie, "Truth and Justice on Trial," 459; Weah, "Hopes and Uncertainties," 8.
42. Allen et al. "Liberia," 10.
43. Ibid.
44. Liberian TRC, Dissenting Report, 2009, <http://www.peopletopeople.info/id293.html> (accessed September 3, 2014); Allen et al. "Liberia," 9.
45. Weah, "Hopes and Uncertainties," 10.
46. Ibid., 5–6.
47. Allen et al. "Liberia," 16.
48. Weah, "Hopes and Uncertainties," 6.
49. Allen et al. "Liberia," 21.
50. Pelsinger, "Liberia's Long Tail," 736.
51. M. L. Best, T. N. Smyth, and D. Serrano-Boquero, "Designing for and With Diaspora: A Case Study of Work With the Truth and Reconciliation Commission in Liberia," Georgia Institute of Technology, <http://mikeb.inta.gatech.edu/uploads/papers/kiosk.chi.case.pdf> (accessed September 3, 2014).
52. Ibid., 736.
53. Svärd, "Liberia's Truth and Reconciliation Commission."
54. Hayner, "Negotiating Peace in Liberia," 17.

## TWO

# The Truth and Reconciliation Commission of South Africa

Transitional justice, by turning the spotlight of investigation on issues of justice, reparations, truth seeking and institutional reform, contributes to the development of a rich framework within which to position peace building efforts.<sup>1</sup>

If Liberia presented us with diversity in languages and traditions, an essential element to understanding the context of the Truth and Reconciliation Commission there, South Africa does so as well. Official recognition has been granted in South Africa to 11 languages including Afrikaans, English, Ndebele, Pedi, Sotho, Swati, Tsonga, Venda, Xhosa, and Zulu. The population is composed of a number of ethnic groups: black (75 percent), white (14 percent), colored (9 percent), and Indian (2 percent). Sixty-eight percent are Christian, 3 percent Muslim, 1.5 percent Hindu, and 28.5 percent practice indigenous beliefs and animism.

Community leaders in South Africa include rabbis and chieftains, rugby players and returned exiles. In South Africa traditional healers practice medicine around the corner from stockbrokers and housing ranges from mud huts to the equivalent of palaces with swimming pools.<sup>2</sup>

Until now South Africa remains a deeply divided nation. The distribution of wealth still reflects racial divisions—whites in affluence, blacks in poverty. The official unemployment rate was approximately 23 percent in 2008.<sup>3</sup>

It is only recently that the diverse communities have enjoyed political representation. Until 1994 South Africa was ruled by a white minority government that was so committed to holding on to power it took activists most of the last century before they managed to win the battle to get rid of apartheid and extend democracy to the rest of the population.

In the middle of the apartheid regime, the African National Congress (ANC), led by Nelson Mandela, emerged as the most important opposition group to the apartheid government. Decades of struggle, resistance, and violence followed. In the early 1990s Mandela was released from Robben Island Prison, where he had spent decades in imprisonment and hard labor, and the difficult process of facilitating the transition to democracy began.<sup>4</sup>

One method the ANC and then the first elected government of South Africa chose to accomplish this peaceful transition was the truth commission, of which there were three. All had to do with the egregious injustice of apartheid.

Beginning in 1948 the National Party of South Africa instituted a systemic and explicitly racialized policy of classifying the nation's population. The structure that this government created and implemented—apartheid—dictated where a person could live and work as well as the degree of political involvement he/she could enjoy. Maintained by the country's minority class of white South Africans, the system often depended on state-sponsored violence.<sup>5</sup>

The apartheid regime poisoned and bombed opponents and encouraged trouble in neighboring countries. As a result, in 1970, the UN General Assembly declared apartheid to be a crime against humanity,<sup>6</sup> a phrase first coined by the African American George Washington Williams to describe Belgian atrocities perpetrated against the indigenous people of the Congo in the last two decades of the nineteenth century.<sup>7</sup>

There was not a single non-white who did not suffer under the apartheid policies. Apartheid attempted to maintain the status quo of white supremacy through the implementation of massive social change to achieve its goals. To do this, government officials enacted legislation to create a systematic pattern of legalized racial discrimination. To enforce this system they constructed a massive internal security system and armed it with draconian legal powers.

The most devastating law was the Population Registration Act of 1950, which formed the foundation of the apartheid state. It provided for the classification of every South African into one of four racial groups—white, or Indian, or colored, or Bantu, which stood for African.

The second law was the Group Areas Act. The entire nation was divided into zones for exclusive occupation by designated racial groups. Implemented in 1954, the result was mass population transfers and the wholesale destruction of communities. In human terms the consequence was immense suffering—a huge loss of property, income, and, above all, human dignity. The Group Areas Act also resulted in the infamous South African passport that you had to carry everywhere. If the police were to find you without it, you would be thrown into jail.

The next pieces of legislation were the 1949 Prohibition of Mixed Marriages Act and the 1950 Immorality Amendment Act followed by the 1950



Suppression of Communism Act and the 1953 Separate Amenities Act. The result of this last piece of legislation were signs on the doors of toilets, above water fountains and other facilities of "*blankes*" and "*nie blankes*," or "whites" and "nonwhites." One could not push a button to drink water where a white person drank because you "would pollute it with your blackness."<sup>8</sup>

Late in their time of opposition and resistance to the apartheid regime the African National Congress established two truth commissions to investigate and publicly report on its own human rights abuses in the past.

Reports of abuses in ANC detention camps were widespread. In 1991 a group of 32 former detainees of ANC camps, all former ANC members who had been accused of being agents of the state, formed a committee to confront the ANC on the detention camp abuses. They called themselves the Returned Exiles Committee and they attracted international attention to their complaints.

Nelson Mandela, recently released from prison, appointed the Commission of Enquiry into Complaints by former African National Congress Prisoners and Detainees, later known as the Skweyuja Commission. This commission's mandate was to investigate ANC detention camps throughout southern Africa including Angola, Tanzania, and Zambia.<sup>9</sup>

The terms of reference called for a full and thorough investigation of complaints by former detainees, and recommendations on action that might be taken by the ANC based on the commission's findings. Two of the three commissioners were ANC members, suggesting the commission was not neutral, although the third commissioner who was the author of the report was not connected to the ANC.

Seven months later Mandela received a strong 74-page report documenting what it described as "staggering brutality" in ANC camps over the past years and detailed torture and other abuses inflicted on detainees. It did not name responsible individuals but did recommend that urgent and immediate attention be given to identifying and dealing with those responsible for the maltreatment of detainees and that the ANC "clean its own ranks."<sup>10</sup>

As recommended by the commission, the report was immediately issued to the public and attracted international attention. Nelson Mandela accepted collective responsibility on behalf of the leadership of the ANC for the serious abuses and irregularities that had occurred, but insisted that the individuals should not be held personally accountable.<sup>11</sup>

Some in the ANC questioned the report's accuracy and accused it of bias. As a result, shortly after the first ANC Commission finished its work in 1992, Nelson Mandela named a second commission of inquiry to look again into abuses in ANC detention camps. The new commission, known later as the Motsuenyane Commission, was headed by three commissioners from the United States, Zimbabwe, and South Africa who were widely accepted as being impartial.<sup>12</sup>

The proceedings were different from the first commission inasmuch as the second was structured like formal court hearings. Counsels were retained to represent the complainants and a legal defense team to represent the defendants accused of abuses. The commission held public hearings over a five-week period in 1993, when some 50 witnesses were heard, including 11 alleged perpetrators of human rights abuses. The accused had the chance to confront and challenge their accusers—their alleged victims of torture or abuse.

The commission's report submitted in August 1993 was positively received.<sup>13</sup> It reached conclusions similar to the first commission, citing severe abuses at ANC detention camps over a number of years.

However, the format of the second report was quite different from the first. It not only described events: the type and prevalence of abuse, and the structural causes and patterns of abuse, but the second report also concentrated on a description of each case brought before it, concluding with a list of specific individuals who had violated the rights of each complainant, as well as a list of what rights had been violated.

The ANC responded to the report with a long statement, congratulating the commission for its work, accepting its general conclusions, although it denied that "there was any systematic policy of abuse" and calling for a truth commission to be set up to cover abuses on both sides in South Africa since 1948. And so it is to this truth commission, the one best known as the Truth and Reconciliation Commission, to which we now turn our attention.

The Truth and Reconciliation Commission (TRC) was the fruit of a political compromise whose terms made the Commission possible but also set the limits within which it would work.<sup>14</sup> The essentially peaceful transition from a racist apartheid regime to a multi-racial democracy carried a price tag. The price paid for peace was to rule out retribution in favor of reconciliation.<sup>15</sup> South African Minister Kadar Asmal said the following:

We must deliberately sacrifice the formal trappings of justice, the courts, and the trials, for an even higher good: Truth. We sacrifice justice because the pains of justice might traumatize our country or affect the transition. We sacrifice justice for truth so as to consolidate democracy, to close the chapter on the past and to avoid confrontation.<sup>16</sup>

Both the mandate and the structure of the TRC were infused with restorative conceptions of justice rather than retributive. "Ubuntu," the unique African form of justice was near its heart. Ubuntu can be defined as humanness—a pervasive spirit of caring and community, harmony and hospitality, respect, and responsiveness that individuals and groups display for one another. "A person is a person through others." This

statement conveys the idea that a person becomes a person only through his/her relationship with and recognition by others.<sup>17</sup>

Notwithstanding the special African notion of justice, the TRC was also the fruit of hard-fought battles that people unfamiliar with Ubuntu would categorize as broadly political. The TRC emerged as an important outcome of the negotiated settlement between warring political parties that had reached a stalemate by 1990. The National Party, on the one hand, was unable to achieve a victory over an increasingly militant resistance to the apartheid system. The resistance movements, on the other hand, were unable to initiate a comprehensive revolution against the apartheid state.<sup>18</sup>

The resulting negotiated settlement contained the following elements: (1) a power-sharing agreement was reached for the first five years of the transitional government within a free-market system; (2) minority rights were retained and white civil servants were allowed to keep their positions in the state bureaucratic structures; (3) amnesty was promised to all activists, politicians, and soldiers with the proviso that full disclosures be made with regard to their contributions to gross human rights violations and atrocities.<sup>19</sup> It was this third feature of the political compromise that has resulted in controversy.

The TRC was a hybrid institution which straddled both judicial and reconciliatory procedures. This resulted in a structural tension during the hearings in which the human faces of healing and reconciliation were juxtaposed with the judicial process in a court-like setting similar to that of the second ANC truth commission.

This structure allowed a human component in the hearings to emerge, and that turned out to be what the country needed for reconciliation to happen. What was lost in this process was any justice with respect to the racialized macro-economic inequalities pervading South Africa,<sup>20</sup> about which we will say more.

In other words, the TRC was the product of a series of political compromises in the legislative process of South Africa. In 1994, the newly established South African parliament voted on a bill that carried the title the Promotion of National Unity and Reconciliation Act. This was the law that empowered the Truth and Reconciliation Commission.

When it reached the South African Senate the big debate was over the issue of providing a blanket amnesty. The former government had been forced to abandon its original plan that the Norgaard principles should govern amnesty provisions. These principles held that amnesty should be possible for all offences committed in pursuit of a political objective unless they had exercised "egregious or disproportionate violence."

The ANC rejected such light terms. However, the ANC was also forced to admit that its own members who had perpetrated violence would also have to appear before the TRC. As well, to the National Party's bitter disappointment, it was finally decided that the hearings would

not be held in secret. The TRC therefore reflected a certain amount of political compromise and not so much “the will of the people” imposed on the minority.<sup>21</sup>

After passage of the enabling legislation for the TRC, the idea that a full inquiry into the past could facilitate reconciliation rather than deepen already bitter divisions intrigued many in South Africa and beyond. Even more thought provoking was the idea that justice can be served by granting amnesty to those who make full disclosure of their part in committing gross human rights violations in the service of some political cause.

The question in the minds of many was how there could be reconciliation if gross human rights violators could go free. They thought that surely reconciliation requires justice as well as truth.<sup>22</sup>

The Government of South Africa embedded the granting of amnesty within a concerted official fact-finding effort. The TRC’s mandate was to uncover the truth about past abuses using amnesty as a mechanism rather than to punish past crimes.<sup>23</sup>

The TRC was inaugurated in December 1995, and its first hearings and investigations began in April 1996. The commission’s empowering act gave it the power to grant individualized amnesty, search premises, seize evidence, subpoena witnesses, and run a sophisticated witness protection program.

With a staff of 300, a budget of \$18 million each year for two and a half years, and four large offices, the TRC was by far the largest truth commission yet conducted anywhere.<sup>24</sup>

Three committees were established. An account of their powers and mandate is well described by Priscilla Hayner. The Human Rights Violations Committee was responsible for collecting statements from victims and witnesses and recording the extent of gross violations of human rights. The Amnesty Committee processed and decided individual applications for amnesty. And the Reparations and Rehabilitation Committee was responsible for designing and putting forward to the Government recommendations for a reparations program.

By far the greatest and most controversial innovation of the TRC was its power to grant amnesty for politically motivated crimes committed between 1960 and April 1994. The commission received 7,112 (which includes a number of additional categories such as “withdraw”) applications for amnesty.

Only 849 applications were accepted; 5,392 were refused.<sup>25</sup> Amnesty was only given to those alleged perpetrators who fully confessed to their involvement with past crimes and showed them to be politically motivated. For gross violations of human rights each applicant was expected to appear in a public hearing to answer questions from the commission from legal counsel representing the victims or their families and directly from victims themselves.

Any crimes committed for personal gain, or out of personal malice, ill will, or spite were not eligible for amnesty. Neither an apology nor any sign of remorse was necessary to be granted amnesty.<sup>26</sup>

More than 20,000 applications to the government for reparations were approved by the TRC.<sup>27</sup> Among them was that of Mrs. Nohle Mohape, whose testimony was featured at the first hearing of the TRC. Her words summarized well the stories of suffering and oppression experienced by so many during apartheid.

Mrs. Mohape's husband had been detained and killed by South African police, and she had been subject to banning, harassment, detention, and torture by security officials.<sup>28</sup> She had come to the TRC "to try to find out what happened."

At the first TRC hearing a huge banner hung from the wall reading "Truth: The Road to Reconciliation."<sup>29</sup> J. N. Clark suggested that three questions needed to be asked about the relationship between truth and reconciliation: (1) Is truth-telling healing for victims? (2) How much truth is needed for reconciliation? (3) Is it enough that people simply accept the truth?<sup>30</sup>

The certitude that truth leads to reconciliation and justice is repeatedly emphasized within the transitional justice literature. But D. Mendeloff questioned this nexus: "We actually know very little about the impact of truth-telling or truth-seeking on justice."<sup>31</sup> Those directly involved with the TRC process, such as Chairman Desmond Tutu, have tended to argue that "revealing is healing. . . . The acceptance, the affirmation, the acknowledgment that they had indeed suffered was cathartic for them."<sup>32</sup>

The TRC's final report makes the claim that the process of giving testimony served a therapeutic function.<sup>33</sup> However, a study published in the *British Journal of Psychiatry* disputes this claim and argues that:

[t]here was no significant association between TRC participation and current psychiatric status or current forgiveness attitudes and low forgiveness was associated with poorer psychiatric health. Therefore, truth commissions should form part of, rather than a substitute for, comprehensive therapeutic interventions for survivors of human rights abuses.<sup>34</sup>

Reverend Peter Storey, who attended many public hearings, agreed that truth telling was in fact healing. He saw this at some amnesty hearings. What was important for victims and their families was the truth about individual perpetrators.

They came face to face with this individual responsible for their pain and suffering. And now, this person was in front of them and this person was now divested of all the leather and the brass and the shiny buttons and the boots that they dressed up in and which gave them their fierce image. Here is in fact a pot-bellied, middle-aged Afrikaner sitting there and looking pathetic actually, and becoming more pathetic

as his confession and its defenses rolled out. And it is not as if the family says, "Oh shame, you need my forgiveness." It was something different. You could almost see the families saying "So this is who it was! This is such a pathetic person. I think I can walk away." I'm not talking forgiveness in the sort of classical sense. I'm talking about somebody being set free of a nightmare.<sup>35</sup>

The TRC took testimony from 23,000 victims, 2,000 of whom appeared in public hearings. It also held special hearings focused on key institutions, special thematic issues, and key events.<sup>36</sup>

Participation in the TRC was filled with emotion. Victims in many ways relived the horror of their experience. The South African commissioners decided that emotional or psychological support mechanisms should be put in place to help deal with the trauma that would be experienced.

This support system was left to a small group called the "briefers." Their role was to prepare those who would testify in a public hearing before the Human Rights Violation Committee, and support them emotionally through the process.

There were only 14 briefers across the entire country. They received no specialized training and used the system of critical incident stress management employed in treating trauma victims throughout the world. The briefers were unable to meet the needs of those who appeared in the public hearings. As a result, they called for and received some support on a volunteer basis from professionals. But even this was insufficient to meet the magnitude of the challenge.<sup>37</sup> Tutu himself has acknowledged that because there was insufficient professional help available, some victims walked away from the process more traumatized than they had been at the start.<sup>38</sup>

The white community was shocked by the revelations that came out of the public hearings. Some felt that the victim hearings were so compelling that their testimonies ultimately would have a far more lasting and deep impact than the final report ever could or would.<sup>39</sup> Others felt that the public hearings were cumbersome. Rather than enhance the ability of the commission to reflect and analyze the evidence presented they felt that these events took on a life of their own and drained limited resources from other important commission work.<sup>40</sup>

Another problem was that of translation. It was believed that with the great discrepancy between the emotions of the witnesses and those translating them, much of the impact of their testimony was lost.<sup>41</sup>

A structural disconnection at the TRC had to do with the granting of amnesties and the recommendations by the TRC to the government for reparations to be granted to individual victims who had appeared before them.

The amnesty process was based on the legislation that stipulated that whoever told the truth about the crimes perpetrated against victims and

survivors was granted amnesty. Sometimes perpetrators were given legal assistance. They could hire three, four, and sometimes five lawyers at the State's (i.e. taxpayer's) expense. Once perpetrators told the truth about what had happened to individuals, to members of families and actually specified where the victims were buried they almost invariably received forgiveness, and walked away from the hearing with an amnesty. For instance, in one amnesty hearing the following transpired:

So and so was burnt at the beach while we were having braai and beer and steak and we were conversing about this person not burning fast enough. We were talking about pouring whiskey or gasoline. This is where this person is buried.<sup>42</sup>

If a perpetrator could receive an amnesty for his or her nefarious deeds on the spot, the same was not the case for a victim or a family seeking redress. The TRC recommended that each of the victims be awarded between 20,000 South African Rand (ZAR) and 25,000 ZAR per year for six years. Ultimately the government adopted a static compensation approach. It provided 30,000 ZAR (approximately USD 4,000) for each victim identified by the TRC. According to the TRC's national research director, this was a very meager payment.<sup>43</sup> No less problematic was the fact that victims had to wait several years to receive reparations.

The most serious issue with the TRC has to do with the fact that the victims of the apartheid system were left out of the process. Though the TRC acknowledged apartheid to be a crime against humanity<sup>44</sup> that targeted entire communities for ethnic and racial cleansing and policing, the commission majority was reluctant to go beyond this formal acknowledgment.

In other words, despite the central characteristic of apartheid being that it affected entire communities, the commission's analysis reduced apartheid from a relationship between the state and entire communities to one between the state and individuals.

The opening chapter of the final volume of the commission's five-volume Report notes that:

There had been an expectation that the commission would investigate many of the human rights violations which were caused, for example, by the denial of freedom of movement through the pass laws, by forced removals of peoples from their lands, by the denial of the franchise to citizens, by the treatment of farm workers and other labor disputes, and by discrimination in such areas as education and work opportunities. Many organizations lobbied the commission to insist that these issues should form part of its investigations. Commission members, too, felt that these were important areas that could not be ignored. Nevertheless, they could not be interpreted as falling directly within the commission's mandate.<sup>45</sup>

The "mandate" of the Act that set up the TRC reads as follows:

“gross violations of human rights” means the violation of human rights through (a) the killing, abduction, torture or severe ill treatment of any person; or (b) any attempt; conspiracy; incitement; instigation; command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to 10 May 1994 within or outside the Republic and the commission of which was advised, planned, directed, or ordered by any person acting with a political motive.<sup>46</sup>

The commission majority distinguished conflicts of the past from the policies of apartheid<sup>47</sup> and placed the latter as the background of gross human rights abuses. Therefore the project of apartheid was not deemed to be political and its abuses were effectively written out of the Report of the TRC.<sup>48</sup>

With respect to the victims deserving of reparation, the commission majority confined them to three groups: (1) victims named in a statement by a relative or other interested person; (2) victims who personally made a statement to the commission; and (3) victims identified through the amnesty process.<sup>49</sup> This resulted in a list of individuals with no reference to groups. But the violence of apartheid targeted groups more than specific individuals. For this reason most victims of apartheid were unidentified individuals.<sup>50</sup>

The Khulumani Support Group (KSG) is a note worthy civil society organization in post-transitional South Africa. KSG represents more than 54,000 individuals, survivors and families of South Africa’s apartheid past, some 74 percent of whom are unemployed. KSG has underlined some outstanding issues of the TRC and for the past 12 years has sought redress from the South African government in U.S. courts, thus far unsuccessfully, for its “failure to make good on its reparations promises or to deal comprehensively with the lifelong consequences to victims and survivors of the gross human rights abuses that resulted from their stand against the ‘machinery’ of apartheid on an almost daily basis.”<sup>51</sup>

For all the criticisms leveled against it, the TRC marked a decisive turning point in South African history. It also marked a turning point in global awareness about truth commissions—today no commission is better known around the world.<sup>52</sup> One can distinguish the TRC method from the Nuremberg method of prosecution and claim that the reconciliatory approach in dealing with human rights after political change was successful.<sup>53</sup>

After apartheid ended, Archbishop Desmond Tutu led the experiment of the TRC from 1996 to 1998 in order to nonviolently address the atrocities of apartheid in South Africa. While by no means perfect it is still one of the most remarkable efforts of peace making in recent human history.<sup>54</sup>



## NOTES

1. Emmanuel Kisiangani, "Between Principle and Pragmatism in Transitional Justice. South Africa's TRC and Peace Building," Institute for Security Studies, Paper 156. <http://www.issafrica.org/publications/between-principle-and-pragmatism-in-transitional-justice-south-africas-trc-and-peace-building> (accessed September 4, 2014).
2. BBC News, South Africa Profile, [http://news.bbc.co.uk/2/hi/countres\\_profile/default.stm](http://news.bbc.co.uk/2/hi/countres_profile/default.stm) (accessed September 4, 2014).
3. Murray Leibbrandt, Ingrid Woolard, Hayley McEwen, and Charlotte Koep, "Employment and Inequality Outcomes in South Africa," South Africa Labor and Development Research Unity (SALDRU) and School, Stevens, Gart Economics, University of Capetown, 2014, <http://www.oecd.org/employment/emp/452868.pdf> (accessed September 4, 2014).
4. J. Simcock, "Unfinished Business: Reconciling the Apartheid Reparation Litigation With South Africa's Truth and Reconciliation Commission," *Stanford Journal of International Law* 27.1 (2011): 239.
5. Ibid.
6. United Nations General Assembly, Res. 2624 (XXV), UN Doc. A/8102 [Oct. 13, 1970], <http://www.un.org/documents/ga/res/25/ares.htm> (accessed September 4, 2014).
7. R. Thakur, "Dealing With Guilt Beyond Crime," In: *From Sovereign Impunity to International Accountability*, edited by Ramesh Thakur and Peter Malcontent (Tokyo: University Press, 2004), 272.
8. M. Ramashala, "Is Reconciliation Possible Without Redress? The South African Experience of the Truth and Reconciliation Commission," 4, <http://www.anu.au/htc/freilich/events/archive/reconciliation> (accessed August 18, 2013).
9. Hayner, P. B. "Fifteen Truth Commissions 1974–1994. A Comparative Study," *Human Rights Quarterly* 16.4 (1994): 597–655 at 625.
10. Ibid.
11. Ibid.
12. Ibid., 632.
13. Ibid.
14. M. Mamdani, "Amnesty or Impunity: A Preliminary Critique of the Truth and Reconciliation Commission of South Africa," *Diacritics* 32.3–4 (2002): 33.
15. Thakur, "Dealing With Guilt Beyond Crime," 285.
16. Verwoerd, Wilhelm, "Justice After Apartheid? Reflections on the South African Truth and Reconciliation Commission," Paper delivered at the fifth International Conference on Ethics and Development, Madras, India, 1997.
17. Mangaliso, M. Z. "Building Competitive Advantage From Ubuntu: Management Lessons from South Africa," *The Academy of Management Executive* 15.3 (2001): 23–33 at 24.
18. Van der Walt, Clint, Vijé Franchi, and Garth Stevens. "The South African Truth and Reconciliation Commission: Race, Historical Compromise and Transitional Democracy," *International Journal of Intercultural Relations*, 27.2 (2003): 251–67 at 252.
19. Ibid.
20. Ibid., 254.
21. Simcock, "Unfinished Business," 242.
22. Dyzenhaus, D. "Debating South Africa's Truth and Reconciliation Commission," *University of Toronto Law Journal* 19.3 (1999): 311–14 at 311.
23. BBC News, op. cit.
24. Hayner, P. B. *Unspeakable Truths. Confronting State Terror and Atrocity* (London: Routledge, 2001), 41.
25. University of Witwatersrand, South African History Archive, Historical Papers, "Traces of Truth: Documents Relating to the South African Truth and Reconciliation Commission, Category 3, Amnesty," [http://www.truth.ww1.wits.ac.za/cat\\_desc.php?cat=3](http://www.truth.ww1.wits.ac.za/cat_desc.php?cat=3) (accessed September 6, 2014).

26. *Ibid.*, 43.
27. Truth and Reconciliation Commission of South Africa, 1998, Volume 5, Chapter 2, <http://www.justice.gov.za/trc>.
28. E. Doxtrader and P. J. Salazar, *Truth and Reconciliation in South Africa: The Fundamental documents*, IX (Cape Town: David Phillips Publishers 2007).
29. J. Teperman, "Truth and Consequences," *Foreign Affairs* 81.2 (2002): 128–45.
30. Clark, J. N. "Reconciliation via Truth? A Study of South Africa's TRC," *Journal of Human Rights* 11.2 (2012): 189–209.
31. D. Mendeloff, "Truth-Seeking, Truth-Telling and Post-Conflict Peace Building: Curb the Enthusiasm?" *International Studies Review* 6.3 (2004): 355–80.
32. Clark, *Op. cit.*, 189; D. Tutu, *No Future Without Forgiveness* (London: Rider, 1999), 127.
33. Truth and Reconciliation Commission, Hearing Held at Bloemfontein, SA, Tues. July 29, 1997, 1, <http://www.justice.gov.za/trc/reparations/bloem.htm> (accessed September 8, 2014).
34. D. Kaminer, D. Stein, I. Mranga, and N. Zungu-Dirwanyi, "The Truth and Reconciliation Commission in South Africa. Relation to Psychiatric Status and Forgiveness Among Survivors of Human Rights Abuses" *British Journal of Psychiatry* 178.4 (2001): 373–77 at 377, doi 10.1192 (accessed September 8, 2014).
35. Clark, *Op. cit.*, 193.
36. J. R. Quinn and M. Freeman. "Lessons Learned: Practical Lessons Gleaned From Inside the Truth Commissions of Guatemala and South Africa," *Human Rights Quarterly* 25.4 (2003): 1117–49 at 1117.
37. *Ibid.*, 1133.
38. Tutu, *No Future Without Forgiveness*, 186.
39. Quinn, "Practical Lessons," 1141.
40. *Ibid.*
41. *Truth in Translation*. The "Truth" Behind the Play, 16, [http://www.truthintranslation.org/educational\\_materials.pdf](http://www.truthintranslation.org/educational_materials.pdf) (accessed September 9, 2014).
42. Ramshala, "Is Reconciliation Possible Without Redress?"
43. Daly, E. "Truth Skepticism: An Inquiry Into the Value of Truth in Times of Transition," *The International Journal of Transitional Justice* 2 (2008): 23–41.
44. Truth and Reconciliation Commission of South Africa, I: 70–71.
45. *Ibid.*, 5:11, #48.
46. *Ibid.*, 1:60, #42; Mamdani, "Amnesty or Impunity," 36.
47. Truth and Reconciliation Commission of South Africa 1:10–11, #46–47.
48. Mamdani, 37.
49. TRC 1:86, #136.
50. Mamdani, 40.
51. Shandan Mufti, "US Judge Rules Against Apartheid Claim," September 5, 2014, [http://www.khulumani.in-the-news/1004\\_us\\_judge\\_rules\\_against\\_apartheid\\_claim.html](http://www.khulumani.in-the-news/1004_us_judge_rules_against_apartheid_claim.html).
52. Quinn. "Practical Lessons," 1121.
53. B. Gooley. "Nuremberg or the South African TRC: A Comparison of the Retributive and Restorative Models of Justice," University of Connecticut, Honors Scholar Program, Digital Commons @ U Conn. Spring 5-6-2012
54. J. Voira, and E. Voira. "The Effectiveness of South Africa's Truth and Reconciliation Commission: Perceptions of Xhosa, Afrikaner, and English South Africans," 34.3 (2004): 301–22.

# THREE

---

## The Truth and Reconciliation Commission of Sierra Leone

Building a lasting peace in Sierra Leone can only begin with a comprehensive knowledge and understanding of the country's past. The past holds many lessons that will aid in forging a politically and economically healthy Sierra Leone. Knowledge and understanding are the most powerful deterrents to the recurrence of conflict as Sierra Leone strives to give meaning to the sentiments of "never again."<sup>1</sup>

Sierra Leone has emerged from its civil war in 2002, and democracy is slowly becoming reestablished. During the war from 1991 to 2002 tens of thousands died and more than 2 million were displaced, which is about one-third of the population.<sup>2</sup> A lasting feature of the war was the atrocities committed by the rebels, whose trademark was the purposeful hacking off of the hands or feet of their victims.

The people of Sierra Leone are still trying to come to terms with the calamity they suffered. As a result of the war Sierra Leone ranked last on the Human Development Index due to high rates of infant and maternal deaths, the fatalities caused directly or indirectly by the war, an illiteracy rate estimated at 80 percent, low enrollment in schools, and extreme poverty. Seventy five percent of the population lives on two dollars a day or less. Shockingly, the average life expectancy at birth was 34.3 years.<sup>3</sup> The Sierra Leone Truth Commission set out to try to provide answers to two seemingly simple, but profound, questions: Why Sierra Leone? What went wrong?

Sierra Leone played a special part in the history of the transatlantic slave trade. From 1771 and 1774, Henry Smeathman, an English botanist who came to West Africa to collect specimens, traveled throughout Sierra Leone.<sup>4</sup> As a base he used the Banana Islands, governed by the Caulkers, an Afro-European family descended from an English trader and the

daughter of an African chief. While living with them, Smeathman considered the possibility of creating a similar settlement. Upon his return to England, Smeathman conceived of a plan for such a settlement, built on a plantation culture but based on free labor, in which black and white citizens would live out a form of democratic liberalism. He had in mind the so-called Black Poor—a group of free but marginalized Africans living in London. They would be supported by a group of English philanthropists who sought a solution for this group.

Impressed by the picture painted by the botanist, the philanthropists selected Sierra Leone as the site for their haven for the Black Poor. The plan appealed to more than just the Black Poor. When ships left Britain for Sierra Leone in early 1787, whites as well as blacks were among the colonizers. Just a month after they arrived in May 1787 the first settlement lay in ruins, burned to the ground by a Temne chief in revenge for the earlier burning of one of his towns by a British warship.

Not to be deterred, the philanthropists in London established a new association called the Sierra Leone Company. Their aim was to create a more formally organized colony. They seized their opportunity in 1791 in the form of a group of blacks from Nova Scotia who wished to join the settlement. The British government supported the plan and agreed to transport these emigrants to Sierra Leone. Accordingly, 1,200 free blacks left Nova Scotia for Sierra Leone in January 1792. Upon arrival three months later they gave the name Freetown to the settlement they established.

The settlers did not enjoy an open or friendly relationship with the Sierra Leone Company, which exercised tight control over the colony. The years that followed were characterized by “rebellion, war and financial disasters.”<sup>5</sup> In 1808, the British government took over responsibility for the colony.

During the period from 1808 to 1864 the original group of black settlers was joined by a far greater number of Africans rescued from slave ships to form a 70,000-strong community known as the Creoles. They developed their own language, Krio, and built up Freetown, establishing themselves in many of the most important positions in society.

Although Freetown was dominated by the Creoles, the interior of Sierra Leone was populated with competing communities and political configurations. The south was occupied by societies that were part of the Mende group. In the northern part of the country the Temne were dominant.

The foundation of civil society in the hinterland was the chiefdom. The political head was the Paramount Chief, the “father of his people.” This was the basic unit of British administration. The chief had to maintain a balance between traditional rule and colonial power.

Until the British government declared Sierra Leone to be a protectorate in 1896, the position of the Creoles was dominant. The establishment

of the Protectorate undermined the political monopoly of the Creoles in the area of trade with the indigenes.

As a political and economic elite they diminished in importance. The colonial experience consisted of competition between two different elite groups—the Creoles and the local chiefs—over natural resources and trading rights.<sup>6</sup> As a result, Sierra Leone was not a united nation when granted independence in 1961.

In 1951, for the first time, an elected African majority took power in the Legislative Council. In that same year the Sierra Leone People's Party (SLPP) was founded. This was a challenge to Creole pretensions. Politically the SLPP depended on the chiefs, and on the April 27, 1951, it led the country to independence under Sir Milton Margai.

An authoritarian, Margai's rule depended on the chiefs. When he died in 1964 his younger half-brother Albert replaced him. Under his rule the SLPP was defeated in the 1967 general elections by the All People's Congress (APC) led by a trade unionist Siaka Stevens.

Originally the APC was an inclusive movement appealing to a wide swath of dissidents and in particular the youth who felt excluded in the competition between the Creole leaders and the chiefdom elite.

In 1973, using violence and manipulation of the voting process, the APC enabled all its candidates to be elected, gaining control of every seat in parliament. This meant that Sierra Leone had become a one-party state. This situation was formalized in 1978, when the APC organized a referendum that seemed to show that 97 percent of the voters were in favor of a one-party state.<sup>7</sup> Stevens was then in a position to transfer power to Joseph Momoh, who assumed the presidency in January 1986.

Claiming to represent a "New Order," Momoh followed a political philosophy he called "Constructive Nationalism." Notwithstanding the theory of governance, Momoh inherited from Stevens a country in severe economic crisis. It had so little legitimacy that the Revolutionary United Front (RUF) had no difficulty invading eastern Sierra Leone at Bomaru in Kailahun from Charles Taylor-controlled Liberian territory on March 23, 1991.

In the civil war that followed the social and political fabric of Sierra Leone was pushed into an abyss from which it is only now emerging.

Commentators have identified five "causes" of the war.<sup>8</sup>

1. The system of patrimonial government operative prior to the war;<sup>9</sup>
2. The scale of impoverishment among the people;<sup>10</sup>
3. The large number of unemployed and unoccupied youth in the country;<sup>11</sup>
4. The conflict in neighboring Liberia;<sup>12</sup>
5. The presence of large amounts of alluvial diamonds.<sup>13</sup>

None of the five were primary. In fact, the All People's Congress (APC), which had been in power for 23 years, had failed to meet their most basic

obligations as a government. The central initiating cause of the conflict was the failure of the APC to provide for the fundamental needs of the people.<sup>14</sup>

The brutal war between the government and the RUF was predominantly fought in the eastern part of the country, but the conflict put a tremendous stress on the entire political and social system. The RUF, led by Foday Sankoh, was known for its terror tactic of physical mutilations, rape, and the recruitment of child soldiers.

In 1992 Captain Valentine Strasser, apparently frustrated by the failure to deal with the rebel threat, deposed President Momoh in a military coup. Under international pressure, Strasser announced plans for the first multi-party election since 1967, but the Defence Minister, Brigadier Julius Maada Bio, ousted Strasser, and Ahmed Tejan Kabbah was elected president. In November 1996 Kabbah signed a peace deal with Sankoh's rebels.

In 1997 the peace deal unraveled, and the army, led by Major Johnny Paul Koroma, deposed President Kabbah. The military junta—the Armed Forces Revolutionary Council (AFRC) and Koroma—suspended the constitution, banned demonstrations, and abolished political parties. Kabbah fled to Guinea to mobilize international support.<sup>15</sup>

In February 1998 a Nigerian-led West African intervention force ECOMOG stormed into Freetown and drove out the rebels. A month later, in March 1998, Kabbah made a triumphant return to Freetown. But the triumph was short-lived.

In January 1999 RUF rebels seized parts of Freetown from ECOMOG. After weeks of bitter fighting they were driven out, leaving 5,000 dead and a devastated city. In May 1999 a ceasefire was arranged and the people in Freetown entertained the hope that eight years of civil war might finally be over.

In July 1999 six weeks of talks in the Togolese capital Lomé resulted in a peace agreement under which the rebels received posts in the government and assurances that they would not be prosecuted for war crimes. The agreement also provided for the future establishment of the Sierra Leone Truth and Reconciliation Commission (SLTRC).

In November 1999 UN troops arrived to police the peace agreement. But in April 2000 they came under attack in the east of the country. First 50 and then several hundred UN troops were abducted by the RUF rebels.

In May 2000 the rebels moved in on Freetown, where 800 British paratroopers were sent to evacuate British citizens and to help secure the airport for the UN. In September 2000 British forces began an operation to rescue the UN hostages.

In March 2001 UN troops for the first time began to deploy peacefully in rebel held territory, and in May the disarmament of the rebels began as the Sierra Leone army itself started to deploy in rebel-held territory.

In January 2002 the war was declared to be over. The UN mission declared that the disarmament of 45,000 rebel fighters was complete. The government and the UN agreed to set up a war crimes court.

In May 2002 Kabbah won a landslide electoral victory. His Sierra Leone People's Party secured a majority in parliament. In July 2003 rebel leader Foday Sankoh died of natural causes while awaiting trial for war crimes.

One of the important findings of the SLTRC was that while it is true that the RUF and the military junta, the AFRC, committed the most egregious abuses during the war, pro-government forces—the Civil Defence Forces (CDFs) and the peace keeping forces of ECOMOG—also perpetrated violations of humanitarian law.

The SLTRC finds its origins in the Lomé Peace Agreement signed on July 7, 1999. The most controversial provision in this peace treaty was the blanket amnesty, included at the insistence of the RUF and with little discussion at the time.

Article IX granted an absolute and free pardon to RUF leader Foday Sankoh specifically and “to all combatants and collaborators” for “anything done by them in pursuit of their objectives, up to the time of the signing of the present agreements.”<sup>16</sup> At the last minute, the UN representative attached a caveat to his signature to the effect that the amnesty shall not apply to those who had committed international crimes of genocide, crimes against humanity or war crimes, and other serious violations of international humanitarian law.

The amnesty offended human rights advocates, who angrily pointed to the terrible abuses committed by all sides. But in reply it could be said that the amnesty provision had been approved by some 200 representatives of civil society at a national conference held in March 1999 to establish a national consensus on terms for the peace agreement. The signatories defended the amnesty stating they had no choice but to agree to it because to do otherwise meant that the RUF would not have signed the deal.<sup>17</sup>

The human rights community did manage to obtain some measure of accountability. Article XXVI of the Accord established a Truth and Reconciliation Commission, to commence operations within 90 days of the signing of the agreement, and to submit its findings and recommendations within a year.

According to Solomon Berewa, who had been Attorney General of Sierra Leone when the TRC legislation was enacted, “far from being fault-finding and punitive, it is to serve as the most legitimate and credible forum for victims to reclaim their human worth, and a channel for perpetrators of atrocities to expiate their guilt and chasten their consciences.”<sup>18</sup>

The process has been compared to a national catharsis, involving truth telling, respectful listening, and, above all, compensation for victims in

deserving cases. In Michael Ignatief's view "all that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse."<sup>19</sup>

The collapse of the Lomé Accord in May 2000 delayed the establishment of the SLTRC for two years. An interim secretariat was finally named in March 2002, and the official inauguration took place the following July.

The SLTRC's statutes took account of the lessons learned from earlier truth commissions. It obtained a three-month preparation period so that the time spent in setting up logistical and administrative support would not be taken away from its official life span, which was one year with the possibility of a six-month extension, broad powers of investigation, and the obligation of the government to implement its reforms. The statutes explicitly mentioned the obligation to listen to women's voices and to study the role of children as both victims and perpetrators.<sup>20</sup>

Civil society was involved not only in pushing for the creation of the SLTRC but also in maintaining interest in it during the long delay in setting it up. Civil society actors were also influential in sensitizing the public on the need for the commission.

The SLTRC represented the first foray of the UN's Office of the High Commission for Human Rights (OHCHR) into transitional justice. Involving itself in every aspect of the SLTRC, the OHCHR helped write the statutes, managed fund-raising appeals, and controlled 90 percent of the budget. It carried out the public information campaign, necessary for the eventual success of the SLTRC.

Despite all of this help the SLTRC suffered from serious mismanagement from the very start. The controversy surrounding the appointment of one of the commissioners, a woman named Yasmin Jusu-Sheriff, whom critics charged with incompetence but supporters claimed was a lightning rod for the commission's failures, is an example of the problems faced by the SLTRC.

A July 2002 review by the UNDP found that one-third of the commission's personnel was "unqualified or redundant" and that "the hiring process was seen as politically motivated."<sup>21</sup> Although directed to remove Jusu-Sheriff and others, the commission refused. This led to a full-blown staffing crisis beginning on October 4, when the contracts of the commission's staff expired without a permanent secretariat being in place. This left it with a two-person staff. Reviews of new applications ground to a halt when two of the international commissioners raised questions about the fairness of the whole process.

After freezing the hiring process the OHCHR and the UNDP helped to reformulate the job descriptions and then re-advertised the positions. As well, they provided an interim staff and a caretaker secretariat for three months.



The staffing crisis harmed the SLTRC's credibility with donors, who understandably were unwilling to contribute to a dysfunctional institution. This delayed the beginning of statement taking from October until December 2002 and forced the SLTRC to cut back on some of its activities.

The SLTRC lost momentum on its program of sensitizing the public, wasted several months of its one-year mandate, and generally disappointed those Sierra Leonians who had already waited two years for it to begin work. Statement takers were not hired or trained until late November, and the staff was not complete until early 2003.

The commission did research on nine major themes such as the history and nature of the conflict well after the hearings were finished. Because of these delays the SLTRC was unable to meet its original October 2003 deadline for its final report and ran well over its statutory six-month extension. As a result, the SLTRC had problems with funding.<sup>22</sup> Initially the budget for the SLTRC was \$10 million, but poor donor response forced a budgetary reduction to less than \$7 million. In the end the TRC received only \$4 million, a disappointing result for such an important institution.

Many TRCs have run short of funding or suffered constraints due to an inadequate budget. In the case of the SLTRC there were a number of reasons for their fiscal difficulties: poor fund-raising efforts by the OHCHR and the commission itself; donor fatigue; competition for funds and for trained personnel with the Special Court for Sierra Leone (SCSL); and the unimpressive start of the SLTRC. Generally, some portion of the cost of truth commissions is funded by the national governments, but the government of Sierra Leone was not in a position to offer much support.

As a result the SLTRC's work suffered. The commission was only able to spend one week for public hearings in each province, which was far too little time. Executive Secretary Frank Karkbo pointed out that the hearings phase was the key to the accomplishment of the commission's mandate because they gave ordinary people ownership through participation, especially in the ritual of reconciliation on the last day of each week's sessions. But in addition to financial challenges the SLTRC faced something no other TRC had encountered.

The SLTRC had to deal with the existence of a transitional justice institution, the Special Court for Sierra Leone (SCSL). As originally conceived during the Lomé peace talks in 1999, there was never any thought of criminal prosecutions as they related to the SLTRC, especially because a comprehensive amnesty had been given to the perpetrators on all sides of the conflict.

But this changed a year later and well before the SLTRC was formally established. A renewal in the fighting led the president of Sierra Leone to request the United Nations to establish an international criminal tribunal.

The idea was immediately endorsed by the Security Council, which claimed that the Truth and Reconciliation Commission would play a

complementary role with the Special Court. They would operate in a mutually supportive manner which fully respected their distinct but related functions.<sup>23</sup>

For about 18 months of the life span of the SLTRC the two institutions operated in tandem. Working from different perspectives, both institutions tried to investigate and understand the complex conflict that brought Sierra Leone to its knees during the 1990s. In the end, the relationship between the two bodies was never clarified. Until near the end of the SLTRC's work, however, this lack of clarity did not pose a problem.

In the final months of the SLTRC's activities, in late 2003, three prisoners who had been indicted by the SCSL requested that they be allowed to testify in a public hearing of the Truth Commission. The Prosecutor opposed the request, and ultimately the issue was adjudicated before judges of the court. On November 28, 2003, the president of the Appeals Chamber, Geoffrey Robinson, gave each side some satisfaction by ruling that the accused could testify, but not publicly.<sup>24</sup> In the end the accused chose not to testify on camera before the SLTRC.

The real lesson of the experiment in Sierra Leone is that truth commissions can work productively together with war crimes courts, even if they must do so in parallel. Furthermore this complementary relationship may have a synergistic effect on the search for post-conflict justice as part of the struggle against impunity.<sup>25</sup>

Among the strengths of the SLTRC we can identify the following:<sup>26</sup>

- Its mandate was transparent;
- The SLTRC had a broad scope of inquiry and strong investigative tools to investigate it;
- Local civil society and the international community were active and supportive on its behalf.

Its negative aspects include the following:

- The operation of the SCSL introduced some unfortunate points of comparison with the SLTRC. The SCSL got off to a quick start and operated with efficiency;
- The SCSL had more resources and high-profile suspects;
- Confusion between the two institutions deterred some ex-combatants from appearing before the SLTRC for fear that they would later be prosecuted by the SCSL; people struggled to understand the two separate transitional justice institutions and the relationship between them;
- There were difficulties and weaknesses in the SLTRC's management and funding;
- There were outreach challenges. The illiteracy rate in Sierra Leone is about 80 percent, so written material had to be in pictures; the

lack of a single lingua franca required translating materials into several different local languages;

- The SLTRC had limited resources and a small staff.

In the fall of 2002 the NGO Campaign for Good Governance conducted a poll to determine the understanding of the SLTRC by the public. The poll found high levels of support and willingness to cooperate with the commission. Seventy-four percent had heard of the SLTRC (71 percent through the radio), and 65 percent said that in their view the SLTRC was necessary, but 60 percent doubted that the SLTRC would be able to provide security and confidentiality to its witnesses.<sup>27</sup>

Statement taking began December 4, 2002, in Bomaru, where the war had started in 1991. The public hearings began on April 14, 2003, in Freetown, and ended there on August 6th with the testimony of President Kabbah. The United Nations–operated Radio UNAMSIL carried the hearings live, and there were weekly television summaries.

The commission traveled to each of the 12 districts for public hearings lasting one week each. There were four days of public hearings and one day of closed hearings. Victims of sexual violence, all children under 18, and ex-combatants who feared speaking openly could testify in closed hearings, although the majority of women opted to tell their stories publicly. Every witness had the assistance of a counselor before, during, and after the hearings. At the close of the hearings in each district, an official ceremony was held, which usually involved traditional rites of forgiveness for perpetrators who had asked to be publicly forgiven.<sup>28</sup>

A national reconciliation ceremony was held in Freetown at the close of the hearings phase. A procession marched to the National Stadium, where speeches and apologies were made, before continuing to Congo Cross Bridge, renamed Peace Bridge.<sup>29</sup>

In addition to the testimony hearings the SLTRC held three other types of hearings: thematic hearings, that included sessions on good governance, the role of civil society and immigrant communities, and the management of mineral resources. Event-specific hearings were also held, covering pivotal points in the conflict such as the 1992 and 1997 coups, the rape of Freetown, and the hostage taking of the UN peacekeepers.

Finally, there were also institutional hearings, which examined the involvement of the armed forces and police, the civil service, and the media in the conflict.

The SLTRC collected some 8,000 statements and received 1,500 more from the Campaign for Good Governance. Ninety public hearings were held, and about 350 persons gave evidence as individual witnesses. The SLTRC also developed a data base that permitted the commissioners to have a rough idea, especially for the RUF and AFRC, about who was commanding whom, when, and where.

Participation of four stakeholder groups was viewed as crucial to the commission's credibility: women and girls, children, amputees, and ex-combatants. In nearly all the districts the involvement of women was strong. Women constituted between 35 and 45 percent of those testifying, and many offered to do so publicly concerning the violence done to them.

Most children who offered to testify were victims, although more children testified as perpetrators than adult perpetrators.

The amputees were key stakeholders in the SLTRC process. Of the estimated 4,000 purposeful amputations, only about 1,000 people survived their trauma. Most of these survivors are now unable to support themselves, and complained of the poor living conditions in the camps. They felt neglected because, in their view, all the attention and financial resources seemed to be going to ex-combatants in the disarmament, demobilization, and rehabilitation (DDR) process. As a result of their various grievances the amputees threatened to boycott the hearings unless their complaints were addressed. They presented a seven-point document with their demands, which included pleas for proper shelter for each amputee, a bag of rice, and 200,000 leones (about USD \$100) every month until they died, free education for their children, the provision of medical facilities, and a re-integration allowance of approximately USD \$150.

The commissioners accepted the document, but urged amputees to tell their stories to the SLTRC so that the record of the war could be complete. When the public hearings opened in Freetown, the first person to testify was an amputee.<sup>30</sup>

The final group whose participation was considered crucial to the production of a complete account of the conflict was the ex-combatants. They did not have the usual incentive of an amnesty to testify for the crimes to which they confessed, since they had already received unconditional amnesties.

Confusion between the SCSL and the SLTRC also acted as an impediment to gaining their co-operation. Some perpetrators were concerned that their testimony before the SLTRC would be used against them in a criminal prosecution.

The NGO PRIDE conducted a study of the views of ex-combatants toward the SLTRC and SCSL. The majority of the ex-combatants had heard about the SLTRC, supported it, and expressed a willingness to testify before it. Only 15 percent of those surveyed believed they had done anything wrong. The study also revealed nearly half of the ex-combatants did not feel that they understood the SLTRC.

Concern about the SCSL and fears for their security at first acted as a deterrent to the participation of ex-combatants. But as the hearings went on, and the SCSL did not pursue those who testified, more and more ex-combatants came forward. The reasons for this were various. Many ex-combatants wanted to return to their communities but were afraid of

their reception; they thought that participation in the SLTRC was one means of easing the path of reintegration. In the end, an unprecedented 13 percent of individual statements came from perpetrators, and approximately a third of those who appeared in hearings admitted to their own wrongs, often in great detail.<sup>31</sup>

The Report of the SLTRC did not subscribe to the “just war” theory that was popular among Sierra Leone’s ruling elite. According to this idea any means was acceptable in order to suppress the rebellion. Therefore it condemned many of the atrocities perpetrated by the government-sponsored Civil Defence Forces, in particular by its subgroup known as the Kamojars, by the mercenaries from the company Executive Outcomes hired by the Kabbah government, and by ECOMOG peacekeepers. All sides in the conflict were responsible for serious violations of human rights and international humanitarian law.<sup>32</sup>

The Final Report of the SLTRC also did not denounce the rebellion as an inherently perverse development in view of the sad state of governance in Sierra Leone in the early 1990s. The findings of the TRC disagreed with the common view that at the root of the war in Sierra Leone were diamonds. The commission noted that the rebel groups did not focus exclusively on the alluvial diamond areas in the east of Sierra Leone until the later years of the conflict. While diamonds were a factor in the conflict, their role has been overstated.

The “Recommendations” section is important in the Final Report, because the legislation creating the commission required they be implemented by the Government. According to section 17 of the Act, “The Government shall faithfully and timeously implement the recommendations of the report that are directed to state bodies and encourage or facilitate the implementation of any recommendations that may be directed to others.”<sup>33</sup> These recommendations find their inspiration in the big issues of contemporary human rights.

For example, the commission called for the abolition of the death penalty as well as the commutation of all outstanding death sentences. Capital punishment imposed for the crime of treason had been used by the Sierra Leone government as its way of intimidating political opponents since the time of independence.

Sierra Leone has been condemned for its use and abuse of the death penalty by both the Human Rights Committee and the African Commission of Human and People’s Rights as a response to the abusive use of capital punishment by the Kabbah regime at the height of the conflict.<sup>34</sup>

In the past, many truth commissions operated not only when the conflict was ended but also when the social transformation was well underway. The end of the conflict in Sierra Leone was little more than a cease-fire, not a decisive victory by one side over the other. Above all, there has been no triumph of a progressive social vision over the perversity of the past. Only in the long run will we know whether Sierra Leone is prepared

to address the underlying causes that drove desperate young men and women to take up arms that brought on the decade-long war.<sup>35</sup>

## NOTES

1. Witness to Truth, Final Report of the Sierra Leone Truth and Reconciliation Commission, November 2004, V. 2, Ch. 1, N. 97, <http://www.sierraleonetr.com> (accessed September 12, 2014).

2. BBC News Africa, Sierra Leone, Country profile, <http://www.bbc.com/news/world-africa-14094194>, World Factbook, The Central Intelligence Agency, Africa: Sierra Leone, <http://www.cia.gov/library/publications/the-world-factbook/geos/sl/html> (accessed September 12, 2014).

3. B. K. Dougherty, "Searching for Answers: Sierra Leone's Truth and Reconciliation Commission," *African Studies Quarterly* 8.1:39.

4. A. Boås, "Liberia and Sierra Leon: Dead Ringers?" *Third World Quarterly* 22.5 (2001).

5. *Ibid.*, 705.

6. *Ibid.*

7. *Ibid.*

8. G. Millar, "Ah lef ma case for God," *Journal of Peace Psychology* 18.2 (2012):131–42 at 131.

9. S. Kpundeh, "Corruption and Political Insurgency in Sierra Leone," In: I. Abdullah, (Ed), *Between Democracy and Terror: The Civil War in Sierra Leone* (Senegal: Council for the Development of Social Science Research in Africa, 2004), 90–103.

10. J. P. Pham. "Making Sense of a Senseless War," *Human Rights and Human Welfare* 7 (2007): 35–51.

11. I. Abdullah, "Bush Path to Destruction: The Origin and Character of the Revolutionary United Front/Sierra Leone," *The Journal of Modern African Studies* 36.2 (1998): 203–35.

12. A. Boås, "Liberia and Sierra Leone."

13. L. Gberie, *A Dirty War in West Africa: The RUF and the Destruction of Sierra Leone* (London, England: C. Hurst, 2005).

14. S. Archibald and S. Richards, "Converts to Human Rights? Popular Debate About War and Justice in Rural Central Sierra Leone," *Africa Journal of the International Africa Institute* 72.3 (2002): 339–67.

15. BBC News, Sierra Leone profile, Chronicle of key events. <http://www.bbc.com/news/world-africa-14094419> (accessed March 7, 2015).

16. Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, Welcome to the Sierra Leone Web, <http://www.sierra-leone.org/lomeaccord.html> (accessed September 13, 2014).

17. Dougherty, "Searching for Answers."

18. W. Schabas, "A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone," *Criminal Law Forum* 15.1 (2004): 3–54 at 8.

19. Michael Ignatief, "Articles of Faith," *Index on Censorship* 25.5 (1996): 110–22 at 113 doi 10.1177/030642209602500522

20. Dougherty, "Searching for Answers," 41.

21. *Ibid.*, 42.

22. *Ibid.*, 41.

23. Schabas, "A Synergistic Relationship," 4.

24. *Ibid.*, 5.

25. *Ibid.*, 6.

26. Dougherty, "Searching for Answers," 45.

27. *Ibid.*, 46.

28. T. Kensall, "Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone," *Human Rights Quarterly* 27.2 (2007): 361–91 at 361.
29. Dougherty, "Searching for Answers," 46.
30. Ibid.
31. Ibid.
32. Schabas, "A Synergistic Relationship," 12.
33. Sierra Leone, The Truth and Reconciliation Act 2000, <http://www.sierra-leone/laws/2000-4.pdf> (accessed September 13, 2014).
34. Schabas, "A Synergistic Relationship."
35. Ibid.





## FOUR

# The National Reconciliation Commission of Ghana

It seems clear that truth commissions are here to stay. With that in mind, at the very least the National Reconciliation Commission of Ghana can serve as an instructional example for the design of future commissions. At best, it will serve to promote individual healing and the reconciliation of a nation.<sup>1</sup>

If it is true that all comparisons are odious (John Donne, *Elegy VIII*), the history and circumstances of Sierra Leone are different from those of Ghana. An important reason for this is that while Sierra Leone was recovering from a long and devastating civil war when its truth commission was held, Ghana had not endured such an experience. Instead it has had its own experience of having had the first revolution in West Africa.

Ghana enjoys being first in a number of other important ways. Ghana was the first area in sub-Saharan Africa where Europeans arrived to trade, first in gold, later in slaves. It was also the first black African nation in the region to achieve independence from a colonial power, specifically from Britain. The population of Ghana is approximately 21 million, 51 percent female and 49 percent male.

Despite being rich in mineral resources and endowed with a good education system and an efficient civil service, Ghana fell victim to corruption and mismanagement soon after independence.<sup>2</sup>

Having had the same president from 1981 to 2000, four successful democratic elections in 1992, 1996, 2000 (which represented the first ever change in government through the ballot box), and in 2004, Ghana could be described as one of the only countries in sub-Saharan Africa that has enjoyed some political stability.

Yet Ghana has had its share of political upheavals and ethnic conflict: violence and detention of political opponents in the first republic, four

military *coups d'états* starting from 1966, several inter-ethnic wars, and 11 years of a socialist-inspired revolution, during which the rule of law was suspended and various types of atrocities and human rights violations were visited on the Ghanaian people.<sup>3</sup>

During the election campaign of 2000 the ruling New Patriotic Party (NPP) made national reconciliation an issue. In his January 2001 presidential acceptance speech John Agyekum Kufour promised an active policy of reconciliation designed to heal the wounds of the past. Less than a year later, the government introduced the National Reconciliation Bill in Parliament.

This set in motion a legislative process resulting in the National Reconciliation Commission Act, which received parliamentary assent on January 7, 2002. With this legal support in place, the president, in consultation with the Council of State, appointed the nine members of the National Reconciliation Commission (NRC), who started public hearings on January 14, 2003.

Having been granted a six-month extension at the end of one year, the NRC ended its public hearings on July 13, 2004, and presented its report to the president on October 12, 2004.<sup>4</sup>

The NRC's mandate was to establish an accurate and complete historical record of human rights violations and abuses related to the killing, abduction, disappearance, detention, torture, ill-treatment, and seizure of property during three periods of unconstitutional government between March 6, 1957, and January 6, 1993. Any person could apply to have the commission investigate specific issues within its mandate. The NRC was also empowered to make recommendations for redress of victims and implementation of institutional reform.<sup>5</sup>

At least four key issues emerged regarding the NRC. These were:

1. Did Ghana's socio-political experience make it necessary that the nation go through a national reconciliation exercise?
2. If the answer to this initial question was yes, what period of history or what political regimes should have been covered by such an examination?
3. How should members of the reconciliation commission have been chosen and by whom?
4. What ought to have been the subject of the investigation (e.g. murder, torture, loss of livelihood, etc.)?<sup>6</sup>

The process of selection of commissioners for the NRC was problematic. Keeping in mind that "the persons selected to manage a truth commission will determine its ultimate success or failure"<sup>7</sup> it was unfortunate that, unlike the truth commissions of South Africa and Sierra Leone, the procedure in Ghana was not transparent. The commissioners that served on the NRC were chosen by the president in consultation

with his Council of State. Due to the unilateral nature of this process there was a lack of public involvement.<sup>8</sup>

The NRC was established nine years after the return to democracy. Was there a necessity for a truth commission? This initial skepticism was also fueled by speculation that it was being established for political reasons. It is one thing to admit the inherently political nature of transitional justice, and it is quite another to allow political considerations to become a key motivation. In the case of Ghana the political motivations were thought to include an attempt by John Kufour to discredit the Provisional National Defense Council (PNDC), the political party of former President Jerry Rawlings, which was then the official opposition, in advance of the next elections.

The time frame of the NRC gave rise to an acrimonious and damaging controversy because it focused solely on the past military regimes of former President Rawlings. Experts on the work of truth commissions recommend that when establishing the mandate of a commission, the period to be examined should be a consecutive period of time and not broken up to examine selected chunks of history, as this can easily feed into perceptions of bias and victimization.<sup>9</sup>

When established for the right reasons, truth commissions are intended to “help establish the truth about the past; promote accountability among perpetrators of human rights violations; provide a public platform for victims; inform and catalyze public debate; recommend victim reparation; recommend necessary legal and institutional reforms; promote social reconciliation; and help to consolidate a democratic transition.”<sup>10</sup> There was no guarantee that a truth commission such as the NRC of Ghana had been set up with the proper motivations or that it managed to achieve some or all of these benefits.

Public support for the government when it initiated the NRC was high. According to nation wide surveys conducted by the Ghana Centre for Democratic Development (CDD) six out of 10 Ghanaians perceived that the regimes associated with ex-president Jerry Rawlings had the worst human rights record in the country’s history, and a majority of Ghanaians were supportive of setting up the NRC. An even greater percentage (84 percent) of respondents supported some form of national reconciliation. The most significant goal respondents envisaged for the NRC process was peace.

Despite its preference for reconciliation and forgiveness, a clear majority (63 percent) of Ghanaians believed perpetrators should be tried and 82 percent were opposed to granting indemnity to perpetrators, even though there was a complete amnesty entrenched in the 1992 Ghanaian Constitution.<sup>11</sup>

The new Constitution came into effect in 1993, when democratic elections were held in which Rawlings was returned to power. In case he faced electoral defeat Rawlings had embedded a self-amnesty in the 1992

Constitution, the current supreme legislation of Ghana. Clauses were included that safeguarded Rawling's regime from the legal consequences of criminal acts they committed during their time in power. Section 34(2) of the Transitional Provisions attached to the Constitution we read as follows:

It is not lawful for any court or tribunal to entertain any action or to take any decision or make any order or grant any remedy or relief in any proceedings instituted against the Government or any person acting under the authority of the Government of Ghana.<sup>12</sup>

These provisions were rendered tamper proof by a further Constitutional clause that blocks Parliament from amending the Transitional Provisions, thus entrenching the self-amnesty.<sup>13</sup> As a result of this amnesty, victims had no recourse to the courts for their grievances, and the idea of a truth commission was given birth in the hope that it would achieve some measure of accountability and reveal the full and terrible extent of past violations.<sup>14</sup> The question is whether the NRC's version of truth was an unworthy second option as opposed to punitive justice.

The wider political context of the NRC was that it took place when there was minimal international interest in a truth commission in Ghana, which meant that money spent on the NRC would have to be diverted from other government priorities in view of the fact that international financial support was unavailable.

The government funding for the NRC was then subject to competition. Institutions in Ghana that had supported the restoration of democracy in Ghana such as the Commission for Human Rights and Administrative Justice and the National Commission for Civil Education were starved for resources.<sup>15</sup> These institutions were among those that made the claim that the NRC suffered from bias.

Although the title National Reconciliation Commission did not include the word "truth" in its name, the recording of truth was considered to be a core objective.<sup>16</sup> The NRC therefore tried to provide space for victims to relate stories of abuse and to establish the accuracy of these claims through independent investigation.

Due to lack of resources the investigative capacity of the NRC was weak. This also gave rise to the charge of bias. It is claimed by Yaw Frimpong Anokye, a senior statement taker with the NRC, that 70 percent of the statements submitted to the NRC were never investigated.<sup>17</sup> He further charged that as a result of this poor investigative capacity individuals were able to exaggerate their claims, lie outright, or use the NRC as a political platform, knowing that their stories would never be investigated.

Apart from the quality of truth in individual testimonies, the political opposition to President Kufour claimed to detect a subtle shift in attitude whenever a perceived supporter of former President Rawlings testified.

The chairperson of the commission, Justice Kweku Etrew Amua-Sekyi, was criticized for his alleged bias in dealing with witnesses. Some have concluded that because of his political background and his personal grievances against former regimes, the treatment meted out to those thought to be Rawlings supporters was unfair.<sup>18</sup>

They also accused the commissioners of allowing some witnesses time and space to tell lengthy stories while others were hurried through their testimonies. For this reason they charged that the NRC process was nothing more than a politicized witch hunt.<sup>19</sup>

Despite these problems the NRC managed to produce a wealth (4,240 petitions) of memories, convictions, and complaints about Ghana's economic and social history from individuals of diverse socio-economic backgrounds, ethnic origins, and political persuasions and perspectives.<sup>20</sup>

The definition of "violations" in the mandate of the NRC was also controversial. Should it have focused its investigation on instances of murder, torture, or gender-based violence, or would the personal upheavals involved in other forms of human rights abuse also qualify to receive a hearing and possible compensation?

Were some forms of suffering due to human rights violations not significant enough to have been aired by the NRC, and to be worthy of reparations adjudication? The effort of the NRC was to be inclusive. For example, a man from Ghana's Central Region petitioned the NRC about the continuing impact of his father's detention in "protective custody" after the overthrow of Dr. Kwame Nkrumah's government. He said his father was a "staunch Convention of People's Party activist in Cape Coast" and often traveled with Dr. Nkrumah as a praise singer.

After the National Liberation Council *coup d'état* overthrowing Nkrumah, the petitioner's father, like many other CPP activists, was detained by the new administration, supposedly to protect him. For the petitioner, his father's detention for three years transformed his life.

At the time of the coup, we were four children. I was the firstborn. Because of the absence of my father, none of the other children could have any education. I was lucky that my grandmother took care of me so I was able to complete school, after some great difficulty in 1979.<sup>21</sup>

This petitioner then spoke to the commission about his struggles, the heavy loads he had to carry at the transport station, the difficulty of saving for his school fees while trying to take care of his mother, and how these difficulties shaped his family's life after his father's detention.

In other words, the violation to his human rights extended far beyond the precise moment when the police came to take away his father in 1966, but also included the resulting limitations of his family's economic and educational prospects.<sup>22</sup>

Similarly, one woman petitioned the NRC regarding her prison detention after the December 31, 1981, coup that brought Rawlings into power for a second time. As a woman organizer for the People's National Party (the overthrown government) after the coup she became a political target and was subsequently detained at the Nsawam prison for some years. For this petitioner, this period of detention continued to constrict her life prospects even 20 years afterward.

I wish to note that I developed a severe stomach problem in Nsawam and also lost my sight. Which to date I still experience. Also, when I was convicted I had children who were then ten years. When I was released and came back, things have gone so wrong in terms of their upkeep and their education. All the monies and my business I left behind have been messed up.<sup>23</sup>

Following her release, the petitioner struggled to re-integrate into her community as a released convict. She testified that after she was released "the whole township was running from me because they thought I was a ghost. It took some of my neighbors well over a year to talk to me. I am at the moment unemployed and I never stood firm on my feet after the incarceration at Nsawam prison." Her story was of a life derailed by a single instance of state injustice.<sup>24</sup>

Petitioners such as those just described were engaged in a legalistic pattern of proceedings at the NRC. After the watershed hearings of the South African Truth and Reconciliation Commission public hearings were used to provide victims with a space to recount their experiences in their own words and receive national acknowledgment.

The proceedings at the NRC, in the view of some commentators, inappropriately resembled a courtroom more than a reconciliatory process. The nine commissioners sat on a raised dais and peered down at the witness, who sat below them with only an interpreter at his/her side. The witness was flanked by commission staff on one side and any alleged perpetrators and their counsel on the other. They were led in their testimony by the commission counsel, questioned by commission members, and then dismissed.<sup>25</sup>

The engagement of alleged perpetrators is important for transitional justice because considerable value is added to the national reconciliation project if and when they apologize to those harmed by their actions or even acknowledge their wrongdoings. This is an integral part of restoring a moral code in society and contributes to healing and reconciliation.<sup>26</sup>

However, without the threat of prosecution for perpetrators who fail to come forward ("a stick"), or the prospect of an amnesty offered to them ("a carrot") getting perpetrators to testify before the commission in Ghana was difficult. Despite Ghana's constitutional amnesty, 80 individuals accused of past crimes testified before the commission. Those who

testified included the former President John Jerry Rawlings and the former National Security Advisor Captain Kojo Tsikata.<sup>27</sup>

However, only a few admitted to wrongdoing or asked for forgiveness. This refusal to accept responsibility was a serious blow to the efforts of the NRC.<sup>28</sup>

In its findings the NRC began by noting that the period of colonial government contributed to the legacy of human rights abuses in Ghana. It went on to say that law enforcement institutions and the armed forces were responsible for the highest percentage of abuses.

A comprehensive reparation program was recommended including apologies, a memorial, and monetary compensation. Symbolic reparations included monuments, commemorative events, and a national day of remembrance. The amount to be paid to alleged victims was to be based on the type of violations that they suffered.

The commission recommended reparations for 3,000 victims of repression under Rawlings rule. These reparations included scholarship and health benefits for survivors and their families, restitution of confiscated property, and monetary compensation.<sup>29</sup> Possible funding sources were also recommended. The government started a reparations program in the fall of 2006. It mandated a reparations committee should be established to ensure compliance with the recommendations of the NRC, but to date the Government of Ghana's commitment to reparations has been weak because of lack of available funds.<sup>30</sup>

This is disappointing because, according to the NRC Final Report, "getting monetary compensation was indicated by most of the statement makers as their primary reason for petitioning."<sup>31</sup> By comparison, only a small proportion of victims cited justice as their primary concern.

If the reparations program has been disappointing, the efforts to implement the reforms recommended by the NRC have been more positive. The NRC had recommended reforms within the prisons and the military. According to its submissions to the UN Human Rights Council in June 2008, Ghana has been taking steps to reform its judiciary and aims to tackle corruption in the public sector. However, according to the report of the Council, police brutality was on the rise and the proceedings of the justice system were slow.<sup>32</sup>

With respect to Ghana's decision in the early twenty-first century to engage seriously in the process of national reconciliation the first decision that needed to be taken was whether or not to look into the abuses of the past.

Once the decision was taken in the affirmative, the question then became how to deal with victims and perpetrators. Would the transitional justice policy deal primarily with offenders (through amnesty, prosecution, and/or lustration) or victims (through truth telling, compensation, and symbolic measures)?<sup>33</sup> In part because of its Constitutional amnesty, the National Reconciliation Commission of Ghana chose to take the non-

retributive approach and to deal primarily with the victims in an individualized process that no other truth commission to date has attempted. The results have been mixed, and many remain dissatisfied at the eventual outcome, but they may have entertained unrealizable expectations.

The reply to those who remain disappointed is that the anticipations for a transitional justice process at the outset usually exceed the eventual results. This is due to the complexity of each nation's historical, political, and economic reality at the time that the process was undertaken.

## NOTES

1. Meredith Wain, "Ghana's National Reconciliation Commission," *Peace Magazine* 19.2 (2003): 18.
2. BBC Ghana profile, BBC News Africa <http://www.bbc.com/news/world-africa-13433790> (accessed April 11, 2014).
3. R. K. Ameh, "Doing Justice After Conflict: The Case for Ghana's National Reconciliation Commission," *Canadian Journal of Law and Society* 21.1 (2006): 85–109, at 85.
4. *Ibid.*
5. Ghana, National Reconciliation Act 2002, <http://www.ghanareview.com/reconc-nact.html> (accessed September 15, 2014).
6. Ghana, National Reconciliation Commission, United States Institute of Peace, <http://www.usip.org/publications/truth-commissions-ghana> (accessed September 15, 2014).
7. M. Freeman and P. B. Hayner, "Truth Telling," Chapter 8 In: Bloomfield, D., Barnes, T. and Huyse L. (eds.), *Reconciliation After Violent Conflict: A Handbook* (Stockholm: International IDEA, 2003), 122–40 at 129, <http://www.idea.int/publications/reconciliation/index.cfm> (accessed September 15, 2014).
8. N. Valji, "Ghana's National Reconciliation Commission: A Comparative Assessment, International Center for Transitional Justice." Occasional Paper Series, 2006, <http://www.ictj.org/sites/default/files/ICTJ-Ghana-ReconciliationCommission-2006-English-O.pdf> (accessed September 15, 2014).
9. Freeman and Hayner, "Truth Telling."
10. *Ibid.*, 125.
11. Public Opinion on National Reconciliation in Ghana. Survey Evidence, Ghana Center for Democratic Development, Research Paper no. 10, 2002, <http://www.cddghana.org> (accessed September 14, 2014).
12. Constitution of the Republic of Ghana Transitional Provisions 34 (1) and (2), <http://www.ghanaweb.com/GhanaHomePage/republic/constitution.php?id=Gschedule1.html>.
13. Valji, "Ghana's National Reconciliation Commission," 31.
14. *Ibid.*, 32.
15. Gyimah-Boadi, E., *National Reconciliation in Ghana: Prospects and Challenges* (Accra: CDD Ghana, 2002).
16. The National Reconciliation Commission, Final Report (Accra: National Reconciliation Commission, 2004), V. 2, N. 2.
17. Valji, "Ghana's National Reconciliation Commission," 19.
18. *Ibid.*, 9.
19. *Ibid.*
20. A. A. Asari, "The Ghanaian National Reconciliation Commission: Reparation in a Global Age," *The Global South* 2.2 (2008): 31–53, at 39.
21. National Reconciliation Commission Petitioner File ACC 01326, cited in Asari.
22. Asari, "The Ghanaian National Reconciliation Commission," 39.
23. The National Reconciliation Commission, File AAC 1106.



24. Asari, "The Ghanaian National Reconciliation Commission," 39.
25. "The National Reconciliation Commission Hearings: Matters Arising," (Ghana Center for Democratic Development, 2003), 3.
26. Freeman and Hayner, "Truth Telling."
27. Ghana, National Reconciliation Commission, United States Institute of Peace.
28. Valji, "Ghana's National Reconciliation Commission."
29. Ibid.
30. United States Institute for Peace.
31. The National Reconciliation Commission, Final Report.
32. Universal Periodic Review, United Nations General Assembly, Human Rights Working Group on the Universal Periodic Review, Second Session 5–16 May 2008, p. 4, 6, 19–21, <http://www.ohchr.org/en/hrbodies/upr/pages/ghsession2.aspx> (accessed September 17, 2014).
33. F. Oduro, "Reconciling a Divided Nation Through a Non-Retributive Justice Approach: Ghana's National Reconciliation Initiative," *The International Journal of Human Rights* 9.3 (2005): 327–47, doi 1080/13642980500170774.



## FIVE

# The National Human Rights Commission (NHRC) and Human Rights Violations Investigation Commission (HRVIC) of Nigeria

How should societies deal with their evil past? . . . What emerges is a pragmatic balancing with political realism . . . legal practices bridge a persistent struggle between two points: adherence to established convention and radical transformation . . . the jurisprudence of these periods does not follow such core principles of legality as regularity, generality, and prospectivity—the very essence of the rule of law in ordinary times.<sup>1</sup>

Nigeria achieved its independence from British colonial rule on October 1, 1960. Since then this multi-religious and multi-ethnic country, home to more than 250 different indigenous groups, has gone through a civil war and more than 30 years of military dictatorship under seven military regimes.<sup>2</sup> During this period two different truth commissions were established to attempt to deal with the violations of human rights committed during this period. The second of these, the Human Rights Violations Investigation Commission, later called the Judicial Commission for the Investigation of Human Rights Violations, in its final report said: “For much of the greater part of the period covered by this Report, Nigeria was under military rule . . . the casualties included human dignity, human rights and our basic freedoms.”<sup>3</sup>

Despite efforts to establish a unified democracy, ethnic, religious, and social tensions led to violence and communal upheavals. Thousands of ethnic Igbo were murdered in massacres in 1966, leading to an effort by Biafra in the southeast to secede from the Republic. The civil war that

followed lasted until 1970 with an estimated three million deaths, many due to hunger and disease.

Military coups in 1975 and 1983 and their attendant economic crises made democratization and constitutional reforms difficult. General Ibrahim Babangida annulled the elections in 1993 and imprisoned the winner, Chief M. K. O. Abiola, a popular Yoruba businessman, all in order to keep himself in power.

Abiola died in custody under suspicious circumstances. His wife was assassinated. Riots followed. And the Defense Minister General Sani Abacha seized control of the government in 1993. Numerous human rights abuses then took place.<sup>4</sup>

The military regime led by General Abacha was the most brutal and rapacious since the end of the colonial era. Among the appalling violations that made the government of Abacha notorious was the trial by a Civil Disturbances Special Tribunal of Chief Ken Saro Wiwa and eight Ogoni activists from the Niger River Delta region, who had been accused of the murder of some prominent Ogoni leaders.

They were sentenced to death in a trial that was considered by many observers to have been unfair. Despite widespread appeals by various statesmen including Bill Clinton and Nelson Mandela, as well as the United Nations through its Secretary General, for commutation of the death sentences, the nine were hanged in 1995 on the eve of a Commonwealth Heads of Government meeting in Auckland, New Zealand. The uproar that followed led to the suspension of Nigeria from the Commonwealth.<sup>5</sup>

As a result of the mass outcry over the hanging and other human rights violations Nigeria came under international censure for its appalling human rights record.<sup>6</sup> The resolution on Nigeria passed by the General Assembly was strong.

The Assembly reminded the Nigerian government that they were a signatory to the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Vienna Declaration and Program of Action, and other human rights instruments and that they had the obligation to fulfill what they had freely undertaken. The Assembly also pointed out that the 1993 election provided evidence of widespread popular support for democratic rule.

The Assembly went on to condemn what it called "the arbitrary executions of Ken Sara Wiwa" and the other eight co-defendants after a flawed judicial process as well as other violations of human rights and fundamental freedoms in Nigeria. Finally it directed the commission on Human Rights at its next session to give urgent attention to the situation of human rights in Nigeria.

It is with this background that the military regime of General Sani Abacha established the (Nigerian) National Human Rights Commission

in 1996 at a time that was, for the majority of Nigerians, one of great adversity.

There was widespread skepticism and even cynicism that the commission was merely a propaganda exercise, designed to deflect the attention of the General Assembly of the United Nations and others from the Abacha regime's dismal human rights record. The NHRC was expected to be a miserable failure.<sup>7</sup>

There were a number of reasons why the structure of the NHC did not bode well for its success. It was not independent from the Government of Nigeria. Under the law that set it up the NHC did not enjoy security of tenure. The members of the NHC's Governing Council, including its Chair and Executive Council, could be removed by the Head of State "if she is satisfied that it is in the interest of the public that the member should not remain in office."<sup>8</sup> They were appointed by the Head of State on the recommendation of the Attorney General and the Minister of Justice of the Federation.

The NHC possessed neither legal and operational autonomy nor financial autonomy. Section 17 of its enabling law authorized the Attorney General to give the NHC "such directives of a general nature with regard to the exercise of the Council of its functions of the Council under this Decree." Section 15 mandated that the NHC should submit its budget through the AG to the Federal Executive Council for its approval.

In other words, in principle the NHC was designed as a "parastatal" or subordinate agency of the Federal Ministry of Justice. This did not suggest the NHC enjoyed much independence. The NHC did not regard itself as a branch of the Ministry of Justice. It pursued its agenda with an admirable, even courageous, independence.

On the positive side the NHC was diverse as to gender and ethnicity. Both the northern and southern geopolitical regions of the country were well represented on the Governing Council. Section 2 of the Decree mandated that it would be composed of at least three representatives of the registered human rights organizations in Nigeria, three representatives of the mass media (two of whom must be appointed from the private sector), two senior legal practitioners, and three other persons to represent a variety of interests. Finally the Chair was to be a retired judge.

The commission had a reasonably well defined jurisdiction.<sup>9</sup> Its broad purview is set out in Section 5 of the Decree. This included the jurisdiction to deal with all matters relating to the protection of human rights as guaranteed by the Constitution of Nigeria, the African Charter on Human and People's Rights, and other international treaties on human rights to which Nigeria was a signatory.

Section 5 also mandated the NHC to monitor and investigate cases of human rights violations, assist victims of violations, seek redress for such victims, undertake studies on all matters pertaining to human rights, render policy advice to the government, publish reports on the state of

human rights in Nigeria, organize local and international seminars or other events, participate in all relevant international activity, maintain a library, collect data, disseminate relevant information and materials, and carry out all such other activities as were necessary or expedient for the performance of its functions under the Decree.

The problem with this mandate and jurisdiction was that the NHC lacked the explicitly stated power to compel the attendance of a reluctant person at a hearing, compel the production of any relevant information or document, sue in the regular law courts to enforce its decisions, render binding decisions, or to visit the prisons at any time.

Once again, the lack of this formal power did not prevent the NHC from exercising it by visiting the prisons and to compel the attendance of witnesses and the production of documents. This was because Section 6 (a) of the Decree permitted it "to do such other things as were necessary or expedient for the performance of its functions under this Decree."<sup>10</sup>

On the important question of accessibility of the NHC, awareness of the institution seemed to have been widespread among the urban elite. A small field survey of a small randomly selected sample of lawyers who lived in the capital Abuja and the provincial capital Enugu showed that 95.65 percent of those (lawyers) questioned reported knowledge of the existence and functions of the NHC.

Field surveys of the general public in Enugu reported knowledge of the existence and functions of the NHC. Virtually every one of these reported that they had learned about the NHC and its functions from the mass media.<sup>11</sup>

By way of contrast, in the question of physical accessibility to the public the NHC did not perform commendably. It had its headquarters in Abuja, but just four zonal offices. This may have been due to resource problems it faced from the beginning. This was an issue because a majority of Nigeria's 120 million people are poor rural dwellers who could not afford a journey to the capital to seek redress for abuses committed against them.

Furthermore, many of the most serious human rights abuses that occurred in Nigeria happened in these remote rural locations away from the scrutiny of the largely urban-centered mass media and NGOs. That the NHC received only 800 complaints in the first five years of its existence testified to its absence from the grass roots.

The 50 senior staff and 48 junior staff cooperated extensively with local human rights NGOs in Nigeria. It maintained four departments: administration and finance; public affairs and information; research, planning, and statistics; and legal/investigative.

For compensation and assistance of victims it had a Human Rights Trust Fund of more than 100 million naira (roughly one million U.S. dollars). It constantly complained of a lack of funds.

The NHC was accountable to the executive and not to the Parliament. In the specific case of Nigeria this was unhealthy because of the overconcentration of power in the hands of the executive.<sup>12</sup> The Decree did not provide any guidance with respect to the direct accountability of the NHC to the general public, but in practice it was quite concerned with explaining itself to the public.

For the first five years of its existence the NHC had to contend with a militaristic and dictatorial governance structure that greatly impeded its work, noted Bukhari Bello, its Executive Secretary:

During Abacha[’s] time, people did complain . . . and the commission made recommendations, because that is what the law says, that they should make recommendations to government on what to do. But the government did not do anything about it. The commission cannot go ahead and enforce decisions . . . even courts and their orders were violated by the [Abacha] government, talk less [sic] of a commission which does [not have power to enforce its own decisions].<sup>13</sup>

The founding Chair of the NHC, Dr. Chidi Odinkalu, has been acknowledged as dedicated, courageous, and outspoken. He often criticized the Abacha dictatorship that appointed him and worked hand in hand with Nigeria’s NGO community, as did his executive secretary Dr. Mohammed Tabi’u. Thanks to them and others, while the NHRC was initially greeted with skepticism, the performance of the commission, even in the darkest days of military dictatorship, has led to the steady, albeit slow, dissipation of this cynicism.

Most expected the NHC to be subservient to the Abacha government. This was not the case. It set a high standard of courage and cooperation in the face of a terrible dictatorship.<sup>14</sup>

In 2010 the (Nigerian) NRC Act was amended, and the National Human Rights Commission now serves as an extra-judicial mechanism for the promotion and protection of human rights.

President Abacha died unexpectedly in 1998. Shortly thereafter Nigeria returned to civil democratic rule on May 29, 1999, following the successful completion of a transition program, and saw the emergence of Chief Olusegan Obasanjo as president following an election that was considered free and fair by the international community.

One of the first executive decisions made by President Obasanjo was his decision to create a truth commission. The Human Rights Violations Investigative Commission (HRVIC) was set up by Statutory Instrument No. 8 of 1999.<sup>15</sup> The highly respected retired judge Chukwudifu Oputa served as its chair. For this reason it is also known as the Oputa Panel.

The commission started off with a very broad mandate, and it was originally given just 90 days to complete its work.<sup>16</sup> Its original direction was to “ascertain or establish the causes, nature and extent of human rights violations or abuses with particular reference to all known or sus-

pected cases of mysterious deaths and assassinations or attempted assassinations committed in Nigeria between the January 1, 1984, and May 28, 1999." Between 1984 and 1999 there were successive military governments in Nigeria.

The commission initially interpreted human rights violations or abuses widely, including cases of dismissal from employment without due compensation. When it first began to accept statements the commissioners found that in just a few weeks' time they had received close to 10,000 written submissions complaining of various violations. It was estimated that 9,000 of these had to do with labor disputes.

After due reflection, the commission refocused its attention on gross violations of human rights. At the commission's request, President Obasanjo extended its working period to one year, and he also extended the period it would cover back to 1966, the date of the first military coup in Nigeria.<sup>17</sup>

The HRVIC was mandated to do the following:<sup>18</sup>

- a. Ascertain or establish the causes, nature, and extent of all gross violations of human rights committed in Nigeria between the January 15, 1966, and May 28, 1999;
- b. Identify the person or persons, authorities, institutions, or organizations which may be held accountable for such violations of human rights and determine the motives and circumstances thereof and the effect on such victims and the society generally;
- c. Determine whether such abuses or violations were the product of deliberate state policy of any of its organs or institutions or whether they arose from abuses of their office by state officials or whether they were the acts of any political organization, liberation movement, or other groups or individuals;
- d. Recommend measures that may be used whether judicial, administrative, or institutional to redress past injustice or forestall future violations or abuses of human rights;
- e. Make any other recommendations that are, in the opinion of the Judicial Commission, in the public interest and are necessitated by the evidence; and
- f. Receive any legitimate financial or other assistance from whatever source that may aid and facilitate the realization of its objectives.

Despite this clear mandate, the Oputa Panel labored under the fundamental lack of a legal foundation for its work. In an implicit admission of its shaky legal position, the Oputa Panel specifically asked for an amendment of its mandate to reflect the status of a full-fledged truth commission. Although it was established within the context of the Tribunals of Inquiry Act (TIA), there is little doubt the HRIVC viewed its status as going beyond that of a commission of inquiry.



The crucial issue of jurisdictional scope of the HRVIC within Nigeria's federal political system was not addressed in the mandate. Legislation was needed to delineate the power-sharing arrangements between the central and state governments. This required legislation that would clearly define the scope of the powers of a federal truth commission with unlimited jurisdiction over the country and with coercive capacity to subpoena witnesses and documents.

The HRVIC also had powers to order the detention of any individual it determined to be in contempt of the commission.<sup>19</sup> The problem was that the TIA, the judicial basis for the HRVIC, was legislation promulgated for state investigative bodies.

After handing over its report to the government in 2002 and after a six-month waiting period the government unexpectedly annulled the commission on the grounds that it was unconstitutional, citing a Supreme Court decision as the foundation for its decision.<sup>20</sup>

Despite the fact that it was not mentioned in its mandate, the HRVIC viewed its key objectives as securing forgiveness and reconciliation. President Obasanjo declared the commission's goal to be "complete reconciliation."<sup>21</sup> It is perhaps for the reason of seeking reconciliation that the Oputa Panel<sup>22</sup> never made use of its coercive powers nor demanded the arrest of any reluctant witnesses. It maintained this position even when three past military rulers and their security chiefs openly defied a summons from the panel. Therefore, in its pursuit of reconciliation and forgiveness the commission permitted its authority to be flaunted and this raised questions about the effectiveness of the panel. This tension between reconciliation and justice plagued the work of the HRVIC.<sup>23</sup>

The definition of "gross violation" of human rights was never established either in its terms of reference or in the enabling legislation that established the commission. The Oputa Panel therefore made use of various sources to determine what constituted a gross violation, such as the definition in Section 1 of the Promotion of National Unity and Reconciliation Act establishing the South African Truth and Reconciliation Commission, international human rights instruments, and the Nigerian Constitution.<sup>24</sup>

Handicapped by factors such as limited personnel, time, and financial resources, the commission made a determination that only 200 cases would be heard at the public hearings, and based on the evidence presented it recommended that prosecutions should be pursued in 150 cases. The impact of the HRVIC was aided and abetted by the extensive media coverage of the public hearings and the fact that President Obasanjo himself appeared on two occasions before the commission.

His first appearance was as a victim, the second as a potential perpetrator when he was asked to respond to allegations of human rights violations committed during his tenure as a military head of state.<sup>25</sup>

As has been the case in other truth commissions we have studied, the commission's effectiveness was undermined by the number of alleged perpetrators who obstructed proceedings at public hearings and stubbornly denied allegations in the face of strong testimony of various otherwise unconnected victims.<sup>26</sup> The commission noted with a certain bluntness that "such witnesses cannot all be lying and the alleged perpetrators cannot all be witnesses of truth."<sup>27</sup>

In its analysis the commission concluded that military rule had ushered in a "vicious cycle" of violence that had seeped into the very fabric of society and "expressed itself in various dimensions: in domestic violence, in armed robberies, in the rise . . . of ethno-communal and religious riots and in brigandage, impunity, and lawlessness."<sup>28</sup>

Of the 150 cases the commission recommended for prosecution, one of the most significant involved the murder of Dele Giwa. Dela Giwa was a prominent journalist, editor, and publisher of *Newswatch*, an important magazine in Lagos. Giwa was allegedly murdered in 1986 by military intelligence personnel on the orders of General Ibrahim Babangida, then the head of state. Efforts by his lawyer, Gani Fawehinmi, to investigate and prosecute those responsible were frustrated by the military.

The HRVIC issued a summons to General Babangida and his two security chiefs to appear before it. None obeyed. Instead the trio presented a petition to the High Court to restrain the commission from summoning them. They argued President Obasanjo lacked the power under the existing law to establish a body like the HRVIC for the whole Republic. They also asked the court to stop the commission from summoning them, claiming it contravened their right to liberty. Their case wound its way on appeal through the Court of Appeal to the Supreme Court of Nigeria.

Both the Court of Appeal and the Supreme Court chose to focus on the individual rights of the witnesses summoned and found these rights had been infringed by the powers of the commission to compel witnesses to appear. A broader perspective could have been germane to the case, which would have considered that the issues arising from the litigation transcended the question of personal rights of the plaintiffs and involved instead the individual rights of the victims whose cases were being dealt with by the commission.<sup>29</sup>

The controverted issue was the unconstitutionality of the coercive or compulsive powers of the commission such as the powers of the commission to subpoena witnesses and to mete out punishment for contempt.<sup>30</sup> The courts held that those powers infringed the fundamental right to liberty guaranteed by Section 36 of the Nigerian Constitution.

The commission faced other issues as well. The composition of the Oputa Panel was challenged as being unrepresentative of the heterogeneous profile of Nigeria. Some segments of the country, specifically the Muslims, felt alienated by the makeup of the membership.

Oputa himself was a Catholic, and four other members were Christians. Some Northerners in the Hausa and Fulani communities felt targeted in the commission's final report and considered it to be Obasanjo's personal vendetta against the Abacha regime for his incarceration and pointed to the composition of the panel as evidence.<sup>31</sup>

The HRVIC was poorly funded. It took more than a year before the commission began sitting, and at one point it was forced to suspend its work due to financial difficulties.

The financial lifeline extended to the Oputa Panel by the Ford Foundation allowed it to continue its work. Associated with these fiscal challenges was the fact that the Oputa Panel was unable to generate much international interest. Evidence for this is the fact that the non-implementation of the final report and recommendations, including reparations for victims, has hardly attracted international censure.

The work of the commission resulted in an eight-volume report consisting of 15,000 pages of text. It was handed over to the government in June 2002. In its report the commission made several recommendations to the Government for redress of the human rights violations of the military. It proposed compensations and reparations to the victims as well as security sector reforms involving a restructuring of the armed forces and police.<sup>32</sup>

However, few of these recommendations were accepted. Ultimately, the Obasanjo administration refused to publish or implement the Oputa Panel Report, anchoring its reluctance on the Supreme Court decision in the litigation challenging the legality of certain powers of the commission.

The government maintained it was constrained from taking the report further as a result of this judgment.<sup>33</sup> Because of the non-release of the report and the government's effective annulment of the commission, some Nigerians may have received the message that their past suffering was not worthy of concern, and the criminal proceedings in the 150 cases came to a halt.<sup>34</sup>

Given that reconciliation was a priority for the Oputa Panel, its effort to mediate in the tripartite conflict in the Niger River Delta between two factions of the Ogonis and a Shell subsidiary are worthy of mention. The conflict is rooted in the environmental, social, and socio-economic sufferings of the local population, which they attribute to the refusal of the government to redistribute oil revenues to the region and the company's failure to take responsibility for the serious environmental damage caused by the extraction of natural resources.<sup>35</sup> In the Delta human rights violations have "accompanied the agitation of resource control and self-determination in this oil-rich region of the country."<sup>36</sup>

The peace accord brokered by the HRVIC in the Ogoni land was at the time widely recognized as a "landmark achievement."<sup>37</sup> However, this peace agreement was short-lived.

In summary, the HRVIC failed on several accounts. Although the commission produced an extensive catalog of the sufferings of Nigerians during the authoritarian era, the government that created the HRVIC refused to acknowledge its findings and implement its recommendations made in the report. This meant that the commission's conscientious efforts had a limited effect on Nigerian society and the development of policies on human rights.<sup>38</sup>

It is ironic that the ongoing work of the National Human Rights Commission created by the most egregious human rights violator in Nigerian history, General Sani Abacha, may have greater and longer term effects on the enhancement of human rights than the truth commission created later. The Nigerian case is a testimony to the great difficulty that truth commissions everywhere face to reconcile the goal of creating a comprehensive truth account with that of contributing to reconciliation.<sup>39</sup>

## NOTES

1. Ruti Teitel, *Transitional Justice* (New York: Oxford, 2000).
2. H. O. Yusuf, "The Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria," *The International Journal of Transitional Justice* 1.2 (2007): 268–86 at 269.
3. Human Rights Violations Investigation Commission of Nigeria 2002, Synoptic Overview, Oputa Panel, <http://www.dawodu.com/oputa1.htm> (accessed September 19, 2014).
4. Truth Commission of Nigeria, United States Institute of Peace, <http://www.usip.org/publications/truth-commission-nigeria> (accessed September 20, 2014).
5. C. U. Gwam, "The Need for Nigeria to Seek Advisory Services and Technical Assistance in the Field of Human Rights," *Journal of Humanitarian Assistance, Field Experience and Current Research on Humanitarian Action and Policy*, May 12, 2000, <http://www.sites.tufts.edu/jha> (accessed September 20, 2014).
6. United Nations General Assembly 1995, Resolution A/RES/50/199/635/Add 3.
7. O. C. Okafor and S. C. Agbakwas, "On Legalism, Popular Agency and 'Voices of Suffering': The Nigerian Human Rights Commission in Context," *Human Rights Quarterly* 24.3 (2002): 662–720.
8. Okafor and Agbakwas, 70, National Human Rights Commission 1995, Decree Number 22, Supplement to 82 Official Gazette Extraordinary Republic of Nigeria, pt A.
9. Okafor.
10. National Human Rights Commission.
11. Okafor and Agbakwas, 706.
12. *Ibid.*, 709.
13. *Guardian Weekly*, 22 Dec. 2000, cited in Okafor and Agbakwas, 710.
14. Okafor and Agbakwas, 714.
15. Yusuf, 271.
16. Hayner, P. B. *Unspeakable Truths. Confronting State Terror and Atrocity* (London: Routledge, 2001), 69.
17. *Ibid.*
18. Yusuf, 271.
19. *Ibid.*, 272.
20. E. Guàker, "A Study of the Nigerian Truth Commission and Why It Failed," Masters Thesis, Bora Research Archive, Institute of Comparative Politics, University of

Bergen, February 2009, [https://bora.uiB.no/bitstream/handle/956/6215/Master percent-thesis\\_Elisabet\\_Guaaker\\_PRT percent201.PDF](https://bora.uiB.no/bitstream/handle/956/6215/Master%20thesis_Elisabet_Guaaker_PRT%20percent201.PDF) (accessed September 22, 2014).

21. Yusuf, 272.

22. Oputa Panel, HRVIC.

23. Yusuf, 273.

24. *Ibid.*, 274.

25. *Ibid.*, 275.

26. *Ibid.*

27. Synoptic Overview, Oputa Panel, N. 6 at 7.

28. *Ibid.*, 49.

29. Yusuf, 275.

30. Tribunal of Inquiry Act, *The Complete Laws of Nigeria*, n. 14, s.6, and s. 11, <http://www.placng.org/lawsofnigeria/node/392> (accessed September 22, 2014).

31. Guàker, 34; M. Haruna, "The Oputa Witch-Hunt," *Daily Trust* (Abuja), June 2002.

32. HRVIC.

33. Yusuf.

34. Guàker, 30; Centre for Conflict Resolution; S. Pilay and H. Scanlon, "Peace Versus Justice? Truth and Reconciliation Commission and War Crimes Tribunals," Advisory Group Seminar, Cape Town, South Africa, May 17–18, 2007, Governance, Social Development, Humanitarian, Conflict (GSDHC), <http://www.gsdr.org/go/display-andtype=documentandd=3100> (accessed September 22, 2014), 21.

35. Guàker, 28.

36. Yusuf, 284.

37. Guàker, 28.

38. *Ibid.*, 3.

39. *Ibid.*, 35.



## SIX

---

### Chad

#### *Africa's Second Truth Commission*

The process of coming to terms with the past can have great psychological benefit for those seeking trauma healing. By providing official acknowledgement of past crimes, the process helps restore dignity to victims. Sometimes describing the terrible details can bring peace. A truth commission offers victims a chance to finally tell what happened to them. "The chance to tell one's story and be heard without interruption or skepticism is crucial to many people, and nowhere more vital than for the victims of trauma."<sup>1</sup>

Fully one-third of all truth commissions have been established on the African continent. In an earlier chapter mention was made of the first truth commission having two parts: the first established by Idi Amin Dada in Uganda in 1974, the second by President Yoweri Museveni in 1986.<sup>2</sup> Seventeen years later the second commission began its work in Chad. In view of the fact that the information it unearthed about the human rights crimes committed personally by Hissène Habré and his subsequent indictment in 2013 by Senegal, where he was living in exile, the truth commission of Chad deserves our attention.

Chad is mainly a desert country that is rich in gold and uranium and now also stands to be further enriched from its newly discovered oil and gas resources. However, Africa's fifth-largest country suffers from an inadequate infrastructure and internal conflict. It is a poor country, and its health and social conditions compare unfavorably with those elsewhere in the region.

Based on the 1993 census reports there are 130 distinct languages spoken in Chad.<sup>3</sup> Perhaps because of this radical diversity, the post-independence period of Chad's history has seen instability and violence aris-

ing mainly from tension between the mainly Arab-Muslim north and the predominantly Christian and animist south.

In 1969 Muslim dissatisfaction with the first president, Ngarta Tombalbaye, a Christian from the south, developed into a guerilla war. At the same time Chad experienced a severe drought, all of which undermined the president's rule, and in 1975 President Tombalbaye was assassinated in a coup led by another southerner, Felix Malloum.

Mr. Malloum in his turn failed to end the war, and in 1979 he was overthrown by a Libyan backed northerner, Goukouki Oueddei. Despite the national unity government that was then established following the Lagos Accord, the fighting continued, with a defense minister, Hissène Habré, on the opposing side.

In 1982, with the help of France, Habré captured the capital N'Djamena, and Mr. Oueddei escaped to the north, where he formed a rival government.<sup>4</sup> Once Habré took control he began a program of widespread repression including torture and killings. Attempts by France, Zaire, and Libya failed to oust Habré until Idriss Deby, one of Habré's former generals, escaped to Sudan and gained Libyan support to launch an attack in December 1990 against Habré that proved to be successful.

Deby became president, and on December 29, 1990, one month after coming to power, the new president established by presidential decree "the commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré and/or Accessories."<sup>5</sup>

Due to a shortage of office space, the commission had to set up its headquarters in the security forces' detention center known as the Directorate of Documentation and Security (DDS). Because this was where some of the worst tortures and killings had taken place, many former victims were deterred from coming forward to give testimony. A second challenge for the commission was the lack of resources such as transportation.

Lack of transport . . . paralyzed the commission for a considerable time. At the start, the commission was furnished with two small urban automobiles, a 504 and a small Suzuki, whereas all-terrain vehicles were actually required for travel to the provinces and the outskirts of Ndjamen. On 25 August 1991 a Toyota all-terrain vehicle was put at the disposal of the commission. But during the events of 13 October 1991, unfortunately, the Toyota and the little Suzuki were taken off by combatants. A month later the Toyota was recovered, but the Suzuki was not found until 3 January 1992. . . . This is why the commission was unable to send investigators to the interior of the country during the entire initial period.<sup>6</sup>

Commissioners received threats from former security personnel who had been rehired into the new intelligence services.<sup>7</sup> Thus, as the Report describes:



Within the commission, some members judged the task too hazardous and disappeared altogether. Others reappeared only at the end of the month to pick up their pay and vanished again.<sup>8</sup>

At the end of the six-month mandate the commission received a four-month extension, and had to replace 75 percent of the original commissioners.

Many were surprised by the report when it was published in May 1992 by its detail and in its proof of foreign involvement in the funding and training of the worst violators. The report claimed that 40,000 persons were killed by the security forces and that there were 200,000 cases of torture.<sup>9</sup> The director of the Human Rights Program of the Carter Center was at the ceremony when the report was released and said the following:

The findings were shocking: at least 40,000 were killed by the security forces during Habré's regime. Detailed evidence was presented about Habré's personal involvement in the torture and killing of prisoners. The diplomatic corps present at the ceremony was shocked to hear that the investigation uncovered the fact that members of the security service, the DDS, who carried out all the killings and other abuses, were trained until the collapse of Habré's regime in December 1990 by U.S. personnel both in the USA and N'Djamena. The DDS received a monthly payment of 5 million FCFA from the U.S. government. This amount had doubled since 1989. Iraq was also named as a contributor to the DDS budget, along with France, Zaire and Egypt. A U.S. advisor worked closely with the DDS Director at the DDS headquarters where political prisoners were tortured and killed.<sup>10</sup>

U.S. involvement in Chad had originally been discovered by Amnesty International several years earlier, according to Benomar, but the "large scale of the genocide" that was going on made U.S. involvement "hard to believe at the time, even for some in the international community."<sup>11</sup>

Although it did not conduct public hearings and therefore its work was not well known by the general public, the Chadian commission was the first truth commissions to name individuals responsible for human rights crimes, and the only commission to dare to publish the photographs of those named. Some 40 high officials in the successor government were included in the list of those named.<sup>12</sup>

Following three exhumations of bodies outside of Ndjamenan the Final Report said: "The commission at first believed that it was dealing with a major massacre. But the further the investigation proceeded the clearer it became that it was a veritable genocide carried out against the Chadian people."<sup>13</sup> It went on to describe the concerted attack led by Habré and his ethnic community the Goranana against their erstwhile allies and then bitter enemies the Zaghwa.

President Deby's government that created the commission itself stood accused of human rights violations, especially after new rebellions against it started again in the west of the country. In fact, some human rights observers had the impression that the commission's deeper purpose was to improve the image of President Deby. Priscilla Hayner quoted an unnamed U.S. State Department official familiar with the commission who, when asked about U.S. involvement in the abuses detailed in the Report, said: "Wasn't that just Deby proving that Habré was an SOB?"<sup>14</sup>

The commission made some recommendations, the principal of which was to accelerate the establishment of an independent judiciary and to reform the security forces. The commission also recommended the creation of a National Human Rights Commission and prosecutions of perpetrators as well as symbolic reparations. It included a recommendation to prosecute Habré within the context of legal action taken against other alleged perpetrators.

The commission's report took on new importance in 2000 and 2001, when human rights organizations used it to support their efforts to have Habré prosecuted for violations of international criminal law.

Two NGOs, Human Rights Watch and the International Federation of Human Rights (FIDH), and victims of Habré conducted "one of the world's most patient and tenacious campaigns for justice."<sup>15</sup> The case faced many roadblocks and delays, but none of these deterred those pursuing Habré. "After more than 22 years, it finally ended . . . at a luxurious seaside villa in Senegal, when the former dictator of Chad was arrested on allegations of overseeing the murder of up to 40,000 people."<sup>16</sup>

The efforts by his victims to prosecute him were stalled endlessly by legal technicalities and political obstruction. Habré was becoming a symbol of how, despite the best efforts of truth commissions, African rulers enjoyed impunity from justice. For many years Habré had been protected by the government of former Senegal president Abdoulaye Wade, who carefully stalled every attempt at a domestic or international prosecution.

But in 2012 Mr. Wade was defeated in an election and the new president Macky Sall committed himself and his government to take action against corrupt officials who had been protected and shielded by the previous government. Mr. Sall agreed to set up a special court in the Senegal justice system to prosecute Mr. Habré, and this court was established in February 2013. The trial of Mr. Habré is expected to begin late in 2014 or in early 2015.<sup>17</sup>

Important evidence for Habré's upcoming trial will be the DDS files. In 2001 Human Rights Watch found the files in the headquarters in Ndjamena abandoned by the DDS. Among the tens of thousands of documents were daily lists of prisoners and deaths in detention, interrogation reports, surveillance reports, and death certificates.

The files reveal how Habré placed the DDS under his direct control and kept a tight rein over DDS operations. The Chadian government gave permission to the victims' association, Human Rights Watch, and the International Federation of Human Rights to copy the documents.<sup>18</sup>

A Belgian judge and his team spent years investigating Habré's crimes. Using the method of "universal jurisdiction" they indicted him on charges of crimes against humanity, genocide, war crimes, and torture. The Belgian file, that was given to the Extraordinary African Chambers (EAC) in the Senegalese Courts, was an important part of the more than two decades' efforts to secure a mechanism for the trial of Hissène Habré.

The Habré trial will break new legal ground in international criminal justice in Africa. It will be the first trial by an African state of the former head of state of another African state. As well it will be the first internationalized tribunal to be established with the involvement of the African Union. Finally the EAC will set a precedent for the creation of an internationalized criminal tribunal that operates fully on the basis of universal jurisdiction.<sup>19</sup>

Universal jurisdiction allows states or international organizations to claim jurisdiction over an accused person regardless of where the alleged crime was committed. Crimes such as genocide prosecuted under universal jurisdiction are considered to be crimes committed against all people because certain universal norms are owed to the entire world community.

At the time the commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré and His Accomplices and/or Accessories completed its work in 1992 and published its Final Report the eventual prosecution of Habré could not have been imagined.

Instead the 10 members of the commission, one of whom was a woman, and their two secretaries simply did their best to represent the truth of the reign of terror in Chad and other countries where the DDS hunted down his adversaries. At the time of writing it is not known what the verdict of the EAC will be, but in addition to the Belgian judge, the human rights organizations, and victims' groups involved, the truth commission of Chad deserves a great deal of credit.

## NOTES

1. M. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998).

2. Hayner, P.B. "Fifteen Truth Commissions 1974–1994. A Comparative Study," *Human Rights Quarterly* 16.4 (1994): 597–655 at 611 and 618.

3. World Factbook, Chad, The Central Intelligence Agency <https://www.cia.gov/library/publications/the-world-factbook/geos/cd.html> (accessed September 23, 2014).

4. Chad profile, BBC News Africa, <http://www.bbc.com/news/world-africa-13164686> (accessed September 23, 2014).

5. Truth Commission Chad, United States Institute of Peace, <http://www.usip.org/category/countries/chad> (accessed September 23, 2014).
6. Chad: Report of the Commission of Inquiry Into the Crimes and Misappropriations Committed by Ex-President Habré and His Accomplices and/or Accessories. Investigations of Crimes Against the Physical and Mental Integrity of Persons and Their Possessions, May 7, 1992, <http://www.usip.org/sites/default/files/resources/collections/commissions/Chad-Report.pdf> (accessed September 23, 2014).
7. Hayner, "Fifteen Truth Commissions," 623.
8. Chad: Report.
9. Hayner, "Fifteen Truth Commissions".
10. J. Benomar, "Confronting the Past: Justice after Transitions," *Journal of Democracy* 4.1 (1993): 13.
11. Ibid.
12. Truth Commission Chad.
13. Chad: Report 57.
14. Interview with U.S. State Department official, 7 May 1993, cited in Hayner "Fifteen Truth Commissions."
15. G. York, "Former Dictator of Chad Arrested on Allegations of 40,000 Murders," *The Globe and Mail* (Toronto), June 30, 2013.
16. Ibid.
17. Ibid.
18. Senegal: Case against Habré Set to Continue. Human Rights Watch, <http://www.hrw.org/habre-case> (accessed September 23, 2014).
19. S. Williams, "The Extraordinary African Chambers in the Senegalese Courts," *Journal of International Criminal Justice* 11.5 (2013): 1139–60 at 1139.

## SEVEN

### The First Truth Commission in an Arab Country

#### *The Equity and Reconciliation Commission of Morocco*

I think the worst condemnation for somebody is when you . . . yourself . . . are asking every day for death, and you cannot die. And that's why prison is the worst condemnation for somebody. To kill somebody is so quick—that's why the king decided not to kill us . . . maybe.<sup>1</sup>

The Equity and Reconciliation Commission of Morocco, also known by its French acronym IER (Instance équité et réconciliation), was significant for a number of reasons. In addition to being the first truth commission in the Arab world it was also the first truth commission to expose the human rights abuses of a regime, in this case a monarchy, that was still in power.

The other truth commissions studied in this work followed regime change at the end of a civil conflict, authoritarian rule, or a discredited political system as was the case of apartheid in South Africa. In Morocco's case, the IER investigated the disappearances and forced exiles of people during the years of rule of Mohammed VI's father and grandfather.

Another significant feature is that basing itself on Islamic ethics the IER developed a new form of restorative justice. Finally, the IER promoted "reconciliatory justice rather than accusatory justice" which, according to Amnesty International, translates into impunity for serious human rights abuses.<sup>2</sup>

A country in the Maghreb region of North Africa, the Kingdom of Morocco is characterized in a geographical sense by rugged, mountainous interior as well as large areas of desert. Along with Spain and France

it has both Atlantic and Mediterranean coastlines. Morocco has a population of more than 33 million and an area of 446,550 square kilometers. Rabat is its political capital, but its largest city is Casablanca.<sup>3</sup>

After a 1911 invasion Morocco was a French protectorate from 1912 to 1956, when Sultan Mohammed became King Mohammed V. He was succeeded in 1961 by his son, Hassan II, who ruled for 38 years until his death in 1999, when he was succeeded by his son, Mohammed VI. The power of the monarchy in Morocco derives at least in part from the King's religious authority.

The King's family, the Alawi, claim descent from the Prophet Mohammed and maintain their legitimacy through carefully constructed ceremonies held each year that reinforce the King's role as *amir al-mumin* (Commander of the Faithful). The monarchy is widely respected as a legitimate source of authority in Moroccan society.<sup>4</sup>

Although he played an important role in the search for peace in the Middle East, Hassan II also ruthlessly suppressed all opposition to his rule within Morocco. The IER investigated nearly 10,000 cases of human rights abuses ranging from death in detention to forced exile.<sup>5</sup> The 38 years of Hassan's reign are known by his opponents in Morocco as *les années de plomb* (years of lead). Hassan's son who succeeded him after his death in 1999 is Mohammed VI, a cautious modernizer who has introduced some economic and social liberalization.<sup>6</sup>

In order to appreciate the format that the IER followed, some background and context is important. Morocco's political system is officially a constitutional monarchy. However, the makhzan, or royal court in the palace, controls the levers of power and guides all important political decisions. During the first half-century of independence the makhzan employed a number of coercive strategies to manage political challenges. These gave rise to the abuses that eventually led to the IER.<sup>7</sup>

The first period of post-colonial political life in Morocco was characterized by a power struggle between the monarchy and the nationalist opposition parties, the conservative Istiqlal (Independence) and the leftist Union National des Forces Populaires (UNFP).

In due course these forces were joined by Islamists, advocates for the independence of Western Sahara and those behind several unsuccessful coup attempts.<sup>8</sup> In order to deal with these opponents King Mohammed V and Hassan II inherited from the French colonial administration a set of repressive, undemocratic emergency laws. These included the Code of Penal Procedure—a number of rules governing police investigations, prosecutions, and remedies to the law.

There were no restrictions on police power, particularly during the period called *garde à vue* detention while an investigation was under way.<sup>9</sup> The fact that widespread abuse of power took place should come to no one's surprise, especially during the late 1960s and early 1970s.

It is during this period, *les années de plomb*, of the reign of Hassan II, the human rights abuses that the IER would later investigate took place. While outright repression was an effective method of stifling opposition in the short term, Hassan II was shrewd enough to recognize it was not a sustainable strategy to maintain the monarchy. For this reason, from the mid-1970s he excused himself from direct involvement in politics, reactivated a multi-party system,<sup>10</sup> and promoted the recovery of the Sahara as a national objective.<sup>11</sup> He retained his right to preside over any cabinet meeting he chose, and to change the constitution by referendum without parliamentary consent. Although the space for political involvement had increased, the palace had not abandoned its monopoly on power.

The pressure for reform continued, and in the early 1990s at the end of the Cold War the palace initiated a concerted effort to improve Morocco's human rights record. In 1991 during hearings before the U.S. Congress testimony exposed the horrors of the military prison of Tazmamart, a place the existence of which the palace had repeatedly denied.<sup>12</sup> In advance of Hassan II's visit to the United States 270 individuals were released from detention, some of whom had disappeared up to 19 years earlier.<sup>13</sup>

Highly dependent on tourism and cultivating a self-image as an extension of Europe, Morocco was sensitive to Western criticism. At home in Morocco human rights organizations became ever more effective in lobbying for change. The Conseil Consultatif des Droits de l'Homme (CCDH) created in 1990 was intended to advise the King directly and consisted of government ministers, academics, and representatives from the kingdom's political and human rights organizations.

It was this group that organized the first official investigation into past human rights abuses. In 1998 Hassan II directed the CCDH to resolve all the outstanding human rights files. The following year the CCDH published a memorandum asserting a total of 112 Moroccans had suffered disappearances, 56 of whom were dead.<sup>14</sup> Relative to the later findings of the IER these numbers were quite low, but the memorandum was important because for the first time the state officially recognized its role in forced disappearances.<sup>15</sup> As well, in 1992 Hassan II personally drafted amendments to the constitution that committed the Kingdom to respect human rights.

At Hassan's death in July 1999 his son Mohammed VI inherited control of the same institutions of the modern state as had been enjoyed for 38 years by his father. However, the new King at age 35 displayed a different character than his late father. In his first national speech Mohammed VI acknowledged state responsibility for past disappearances and dismissed the much feared Driss Basri from his post as Interior Minister, in which he had served for many years.

The new King's first initiative in the field of human rights rectification was not to create the IER, but to attempt to respond to victims' demands

by creating the Independent Arbitration Commission for the purpose of “receiving applications for compensation from victims of ‘disappearances’ (or their survivors) and of arbitrary detention, and determining the amount of compensation the state should pay them.”<sup>16</sup>

The panel of the Arbitration Commission operated for four years, held closed hearings with approximately 8,000 individual testimonies at 196 general hearings and nearly 400 individual ones. They awarded a total of nearly USD \$100 million to victims of certain categories of abuse. This represented a remarkable advance. The operation of the panel was an implicit acknowledgment of responsibility of the state, and substantial and much-needed compensation was provided to a significant number of victims and their families.

The work of this commission was widely criticized by human rights advocacy groups and boycotted by many victims because no information about individual cases was divulged to the public, and only money was offered when many would have preferred death certificates, mental and/or physical health care, the return of bodily remains, and/or an apology from the state in addition to the money.<sup>17</sup> The deadline for application resulted in more than 6,000 being excluded from its deliberations. Another criticism focused on the exclusion from its mandate of other important categories of human rights abuses such as extrajudicial executions.

Meanwhile extensive discussions were being held both within the palace and between royal advisors and prominent human rights activists particularly Driss Benezekri, who had spent 17 years in prison for left-wing student activism, regarding a truth commission. Within the palace there seemed to be at least two categories of elites: “soft liners” and “hard liners.” The “soft liners” were the newcomers whom Mohammed VI had brought with him into the makhzan. They seemed to believe it would be possible to reform certain aspects of the regime and doing so would strengthen the monarchy. The “hard liners,” primarily state security officials, the military, and policemen, saw that any humbling of the state would be viewed as a sign of weakness. Mohammed VI agreed with his younger advisors, and perceived the IER as a means to disarm public criticism and strengthen his image as a modern and compassionate monarch.<sup>18</sup>

The most seriously complicating factor to progress in democratic reform was the Casablanca bombings on May 16, 2003. It was within the context of this tragedy that the IER was created and operated. Twelve suicide bombers killed themselves and 33 innocent bystanders in Casablanca, just months before the CCDH had sent its recommendation to King Mohammed VI regarding the formation of what would later become the IER. In the year following the attacks, the Moroccan government changed the kingdom’s penal code and was accused by human rights advocates of holding between 2,000 and 3,000 persons with alleged ties to Islamists in *garde à vue* in the name of national security.<sup>19</sup> The



reports of groups such as Human Rights Watch indicate that “these suspects routinely were arrested without warrants, held in secret detention, and then convicted in unfair and hasty proceedings.”<sup>20</sup>

Despite the illegal nature of these cases, the Kingdom of Morocco is insulated from criticism as it tries to deal with terrorism. The war on terror can be seen as a convenient excuse to infringe on the human rights of alleged terrorists, but the current practices of the palace are neither as widespread nor as systematic as they were during *les années de plomb*.

Due to the aftermath of the Casablanca bombings the IER was unable to examine these more recent cases, and its mandate was restricted to the years between 1956 and 1999. The IER was created on January 7, 2004, by Mohammed VI. It was composed of Driss Benzekeri as head and sixteen commissioners, several of whom had served prison sentences of up to ten years and two of whom had been living in exile.

In a speech in Agadir in January 2004 marking the IER’s inauguration, King Mohammed VI emphasized that the commission would have to come up with a model of a truth commission of its own which is an extra-judicial means to resolve outstanding issues in human rights. The King made it clear he considered the body a truth commission. He made reference to Islamic ideals in delineating the IER’s approach and methods “which advocate tolerance and forgiveness.”<sup>21</sup>

Hazan has argued that by “stressing the importance of religion and the search for national unity in achieving reconciliation,” the King shrewdly “depoliticizes impunity by justifying it spiritually as ‘forgiveness.’”<sup>22</sup> The King’s religious authority conferred on his statements a special legitimacy. The argument of Joffé is that Western and Islamic political institutions are different. “The traditional Islamic state was meant to reflect the principles of the Constitution of Medina, which emphasizes the unity (tawhid) of the Muslim community, the umma or dar al-islam; its external obligation for collective defense (jihad), and its internal imperative of egalitarian religious practice, as well as the role of the Prophet as its leader and arbiter.”<sup>23</sup>

In other words, good governance meant fair treatment and so long as the leader made sure each person in the community was treated equitably and allowed to play his or her role within the religious community, it did not matter whether governance reflected the input of the popular will.

Citizens expected to be treated well and the main issue with the Hasanian period was not that it was undemocratic so much that it was repressive, and in this way upset the consensual relationship between the King and his subjects. Within the demand for redress, social justice in the sense of restitution of what one has been deprived of may be more important than accountability achieved through criminal trials.<sup>24</sup>

In an April 2008 interview with D. El-Yazami, Rachel Linn learned that in late 2004 when the commissioners held meetings to explain the

commission they met with the complaint from communities that these communities had been collectively punished. Communities located near detention centers or sites of civil disturbances were deprived of essential government services such as roads or health clinics, not to mention being subjected to human rights abuses and the disappearance of community members when they were only indirectly connected to the opposition that the state wished to punish.<sup>25</sup> The commissioners thus resolved that suitable redress would have to focus on restoring the social compact that had been upset during the Hassanian period and on reintegrating victims back into the state.

In order to persuade the King to establish the IER, Benzekri and his fellow commissioners were required to make some compromises, the most serious of which was to create a limit on accountability. The commissioners believed a truth commission in Morocco could have a positive impact through its ability to push the Kingdom toward institutional reforms and creating channels for public discussion and dissent.

Criminal responsibility was unthinkable for the monarchy, and the majority of Moroccan society accepted this position. In an April 2008 interview with Linn, Ahmed Herzenni, the president of the CCDH, said he and Benzekri agreed on a number of points at the outset:

Our view was that we should go in the way of reconciliation because: (1) we had observed other experiences, such as South African, that gave credit to the idea of preferencing reconciliation over punishment; (2) we were complaining about the judiciary at the time, and knew that there was no way to reform it quickly enough to make sure it would try and punish those we would want to implicate of human rights abuses; and (3) even if we were to use the judicial system, we didn't have enough evidence against those who we potentially would like to hold responsible.<sup>26</sup>

Earlier in an April 2005 interview with Human Rights Watch, Benzekri said, "Were the IER to name perpetrators our work would get bogged down in defamation, and in political charges and counter charges. . . . It is not individual responsibility we are after. . . . We will establish responsibility of the state and the institutions of the state."<sup>27</sup>

To aid in the effort to repair the social contract in Morocco the IER designed a new development for a truth commission—a community reparations program. Eleven regions in Morocco were selected by the IER and consulted to create projects that would respond to the particular ways in which the communities had suffered.

These proposed projects were intended to preserve the collective memories and to provide appropriate social and economic aid. For instance former political prisons were converted into social centers where community members could study the past.<sup>28</sup>

The purpose of these projects, explained El-Yazami, was to help people “move from fear to citizenship. At the local level we have to show [a] process of change [is taking place] in Morocco; people still fear the state, and these projects can be local, small examples of a changing relationship.”<sup>29</sup>

A serious constraint on the IER investigation was the state of the archives that could have been used to fill in the gaps in memory of witnesses. “The commission often had to grapple with the deplorable state of the archives and a non-regulated legal framework to control these sources and to impose sanctions in case of damage incurred or destructions.”<sup>30</sup>

Three months after its official inauguration by King Mohammed VI, the IER reported having received more than 20,000 cases. A few days before the end of its official mandate Benzekri said it had received “close to 40,000 pieces of correspondence concerning between 25,000 and 30,000 cases.”<sup>31</sup>

The IER conducted a number of closed meetings with former officials who might have been in a position to provide information on a number of specific cases as well as their perspectives on events under investigation. Between December 2004 and May 2005, seven televised public hearings were held around the Kingdom, including areas that had suffered some of the harshest repressions. The eighth and final hearing had been planned for El-Ayoun, in the Western Sahara, but was postponed perhaps because of the political unrest that shook the region in May 2005. This was unfortunate because the Western Sahara was the area hardest hit by human rights violations. Furthermore, the IER failed to admit that the region of the Western Sahara had suffered disproportionately as indicated by its exclusion from the collective reparation program.<sup>32</sup>

Before participating in a hearing a witness had to agree to abide by a “pact of honor” presented to them in preparation meetings that included the commitment not to mention King Mohammed VI or Hassan II or attack any political party, union, or association. The most contentious item in the pact of honor was its last clause between the public witnesses and the IER that forbid the mentioning of suspected perpetrators by name.<sup>33</sup>

The goals of the public hearings were to inform the Moroccan people of the violations committed by the state and to show the suffering and the dignity of the victims. The hearings took the same form.

At each hearing 10 victims spoke before those assembled, members of the IER, journalists, and members of the public, under a portrait of Mohammed VI, and presented what they had suffered during the reign of his father, Hassan II, or grandfather Mohammed V. Each had about 20 minutes to speak in whatever language they chose, after which no one could ask questions or otherwise respond by applause or other expressions of emotion. Absolute silence prevailed.

These formal public sessions offered partial truths, namely the truths as seen and lived by the victims and their families. But the narratives did not present in a public way the narratives and perspectives of the perpetrators and the forces that generated these human rights violations. One victim put the case to Amnesty International in February 2008: "I knew my truth; but I still don't know what the state's truth is."<sup>34</sup>

In addition to the victims' hearings the IER organized a series of thematic seminars intended to complement the victims' hearings by providing contextual information about the violations committed over four decades and to discuss the reforms needed to establish the rule of law in the Kingdom as well as the protection of freedoms, and to guarantee the non-repetition of past violations.

The five thematic hearings were held<sup>35</sup> between February 15 and March 15, 2005, and the speakers and participants were scholars and policy analysts.

With respect to individual compensation, the IER received applications from 16,861 individuals, of whom 9,280 will eventually receive benefits. In addition 1,895 persons were recommended to receive other forms of reparations such as social integration through professional or administrative arrangements.<sup>36</sup>

The Moroccan IER is a case of the truism of the half-empty or half-full glass of justice for those who had suffered human rights abuses, depending on one's point of view. As Hanny Megally, the director of the Middle East and North Africa Program at the International Center for Transitional Justice (ICTJ), pointed out, even the process of holding a truth commission in Morocco has taken time. In the early 1990s some of the disappeared were released from the detention centers where they had been held for many years. This was followed by a compensation committee set up to make reparations to those who had suffered. In 2006 the IER published the report on its findings. "Each step was presented as the last step before turning the page. The compensation process paved the way for the truth commission. There is no reason not to think that other steps, whether further reforms, the removal of those responsible for abuses from public office or even prosecution, have been completely ruled out."<sup>37</sup>

## NOTES

1. Interview with Malika Oufkir, author of *Stolen Lives: Twenty Years in a Desert Jail*, <http://www.abc.net.au/foreign/content/2009/s2595672.htm> (accessed November 25, 2014).

2. Amnesty International, "Morocco/Western Sahara: Broken Promises: The Equity and Reconciliation Commission and Its Follow-up," London: Amnesty International Publications, 5.

3. "Morocco," *Wikipedia*, <http://en.wikipedia.org/wiki/morocco> (accessed November 18, 2014).

4. Rachel Linn, "'Change Within Continuity': The Equity and Reconciliation Commission and Political Reform in Morocco," *Journal of North African Studies* 16.1 (2011): 3.
5. This is the number given by the IER President Driss Benzekri. Human Rights Watch, Morocco's Truth Commission, "Honoring Past Victims During an Uncertain Present," Vol. 17, No. 11, November 2005.
6. BBC News—Morocco profile, <http://www.bbc.com/news/world-africa-14121> (accessed November 18, 2014).
7. Linn, "Change," 2.
8. M. Ottaway and M. Riley, "Morocco from Top Down Reform to Democratic Transition," *Carnegie Papers* 71, Carnegie Endowment for International Peace, 2006, 6, [http://carnegieendowment.org/files/cp71\\_ottaway\\_final](http://carnegieendowment.org/files/cp71_ottaway_final) (accessed November 21, 2014).
9. S. Slymovics, *The Performance of Human Rights in Morocco* (Philadelphia: University of Pennsylvania Press, 2005), 47.
10. G. Joffé, "Politics in the Muslim World: Morocco, Iran and Indonesia," In: L.S. Graham, ed. *The Politics of Governing: A Comparative Introduction* (Washington, DC: C.Q. Press, 2007), cited in Linn, "Change," 4.
11. C. R. Pennell, *Morocco Since 1830: A History* (London: Hurst and Company, 2000).
12. S. E. Waltz, *Human Rights and Reform: Changing the Face of North African Politics*. London: University of California Press, 1995, 211, cited in Linn, "Change," 4.
13. L. Grotti and E. Goldstein, "Morocco's Truth Commission: Honoring Past Victims during an Uncertain Present," Human Rights Watch 2005, 6–7, <http://www.hrw.org/en/reports/2005/11/27moroccos-truth-commission> (accessed November 21, 2014).
14. Grotti and Goldstein, "Morocco's," 9.
15. Slymovics, *Performance*, 22, cited in Linn, "Change," 5.
16. Grotti and Goldstein, "Morocco's," 10.
17. V. Opgenhaffen and M. Freeman, "Transitional Justice in Morocco: A Progress Report," (New York: International Center for Transitional Justice, 2005). [http://www.ictj.org/publications?Keys=dtid\\_1%5B%5D=37andlanguage%5B%5D=en](http://www.ictj.org/publications?Keys=dtid_1%5B%5D=37andlanguage%5B%5D=en) (accessed November 21, 2014).
18. P. Hazan, "Morocco: Betting on a Truth and Reconciliation Commission," United States Institute for Peace, Special Report, 2006, <http://www.usip.org/files/resources/sr165.pdf> (accessed November 21, 2014).
19. Slymovics, *Performance*, 17, cited in Linn, "Change".
20. E. Goldstein, "Morocco's New Truth Commission: Turning the Page on Past Human Rights Abuses?" *Arab Reform Bulletin* 2.6 (2004).
21. Instance Équité et Réconciliation, The Speech of His Majesty the King Mohammed VI, January 2004, [http://ier.ma/article.php3?id\\_article=1297](http://ier.ma/article.php3?id_article=1297) (accessed November 24, 2014).
22. Hazan, "Morocco," 9.
23. Joffé, "Politics," 238.
24. Linn, "Change," 10.
25. D. El-Yazami, Member Instance Équité et Réconciliation, cited in Linn, "Change," 10.
26. Linn, "Change," 8.
27. Grotti and Goldstein, "Morocco's," 30.
28. El Yazami, interview with Linn on April 4, 2008.
29. El Yazami, interview with Linn on April 3, 2008.
30. Kingdom of Morocco, Justice and Reconciliation Commission, National Commission for Truth, Justice and Reconciliation, Summary of the Final Report, 2005.
31. *Ibid.*, 34.
32. Amnesty International, 10, 29.
33. *Ibid.*, 38.

34. Amnesty International, 5.
35. *Ibid.*, 39.
36. Kingdom of Morocco, Final Report, 44.
37. Hanny Megally, Interview, IRIN, Humanitarian News and Analysis, <http://www.irinnews/indepth.aspx.InDepthid=7andReportid=59455> (accessed November 25, 2014).

# Conclusion

An unanswered question thus far is why it is important to study African truth commissions as a group, and what they have to tell us about the genetic development of transitional justice.

Although the term “transitional justice” was coined in the 1990s,<sup>1</sup> the origins of the idea can be traced to the League of Nations, which followed World War I.<sup>2</sup> As Ruti Teitel has pointed out, after 1945 transitional justice became international with the various war crimes tribunals run by the Allies in Germany and Japan. The Cold War with its bipolar balance of power ended this phase of transitional justice.

The second, or post-Cold War phase, led to the movement of democratic transitions and modernization beginning in 1989.<sup>3</sup> This second phase did not entail a return to the Phase I international justice but rather the rise of nation building. The leading model of this second phase is restorative justice. The goal was to construct an alternative history of past abuse in order to preserve peace in the future. The new international mechanism was not<sup>4</sup> the international war crimes trial as in Phase I but the truth commission. Typically a truth commission at the end of its work offers recommendations to prevent a recurrence of human rights abuses.

At the end of the twentieth century the third phase of transitional justice was characterized by steady conflict, “war in a time of peace,” and political fragmentation of weak states. The “Nuremberg model” of transitional justice was permanently entrenched in Phase III with the establishment of the International Criminal Court.

Although the truth commissions we have studied in Africa were part of the second phase in transitional justice they also point toward phase three. This is because, with the noteworthy exception of South Africa’s truth commission, they have not yet succeeded in starting to rebuild their nations and their recommendations and efforts at restorative justice have until now had uncertain results. The truth commissions in Ghana, Nigeria, and Chad had the political purpose of discrediting the previous regime. Eventually some of the evidence unearthed in the Chadian commission has become important to the hybrid court in Senegal established to try Hissène Habré. The truth commission in Sierra Leone was run concurrently with an international court. The three lists of various types of perpetrators developed by the Liberian truth commission await attention by the international legal community. The Moroccan truth commission finessed the question of legal accountability by not disclosing the

names of the perpetrators. If the third phase of transitional justice in which we now are is characterized by a steady state of conflict, the truth commissions we have studied provide us with evidence of this as well as an argument for the use of the good offices of the International Criminal Court as a complement to their work.

In addition to the fact that the authors of this volume are working in Africa, it was important in this book to study a number of African truth commissions to highlight the success of South Africa's as compared with others held on the same continent. The African truth commission which confirmed the world community's confidence regarding the value and possibilities of conducting a truth commission was South Africa's third effort at transitional justice using this method of proceeding. Forty years earlier the truth commission of Argentina and others in Latin America had done the same. The effort of South Africa's truth commission to bring reconciliation and modeling the possibility of post-apartheid nation building has had *international significance*. Although the achievement of South Africa's commission of inquiry has been overstated *by some* and the missed opportunity for the commission to address itself to the human damage done by the system of apartheid may never return, still it is possible to say that the truth commission along with the reconciling leadership of Nelson Mandela averted a potential African blood bath.

Other truth commissions have had more local importance, and have never lived up to the unreal public expectations of them. In some respects they have been disappointing, but the fact that in the case of Uganda, South Africa, and Nigeria they have been repeated speaks to their perceived potential despite their defects.

The truth commission of Chad points to the fact that it may take many years for their investigations that they initiated to come to any resolution. Chad's truth commission pointed out and provided graphic detail concerning the egregious nature of the Habré regime's human rights record and indirectly led to his indictment and imprisonment in Senegal as he awaits his "days in court." The use made of universal jurisdiction gives hope to people in Liberia that the problem of impunity is not intractable.

The motives behind setting up a truth commission are various. No one can say for sure why exactly dictators like Idi Amin of Uganda or Sani Abacha of Nigeria initiated their truth commissions. In the case of Ghana's and Chad's, and of Nigeria's second commission, it may have been "political" in the sense that a successor administration sought to heap disgrace upon the preceding regime.

A common challenge for all the truth commissions in Africa that we have studied is financial support. The international community has its own perspective on what a particular commission could and should accomplish, and when this does not happen, or if the money they have contributed has not in their view been used wisely, they may threaten to withhold it, as happened in Liberia and Sierra Leone. Lack of resources is



also the reason why compensation for victims has not always been provided to the extent needed by them.

Since the creation of the International Criminal Court, a new challenge to truth commissions is how to offer confidentiality to accused perpetrators who choose to testify when the evidence they give might be used against them in future prosecutions by the ICC. Running a truth commission conjointly with criminal proceedings, as was done in Sierra Leone, is one possible answer, but the Rome statutes originally setting up the ICC did not take this matter up in sufficient detail to avoid future complications.

Every truth commission we have studied in one way or another has had difficulty in persuading alleged perpetrators of human rights abuses to testify at the inquiry. If and when they do, as in the case of Liberia and Ghana, their presence was more disruptive than helpful. Again, the best success was in the South African formula of full truth in exchange for amnesty.

But the basic issue remains that unless perpetrators can find some potential benefits for themselves they will refuse to take part.

Finally, protection of commissioners and victims who give testimony from potential harm is a final and serious challenge for truth commissions. Naming the names, and in the case of Chad their photos as well, of alleged perpetrators is helpful for the resolution of the many tragedies unearthed by the testimony of a truth commission, but raises issues of due process and equity. Not all allegations of criminal violations have been sufficiently investigated by a particular commission, which leads to problems of credibility. Liberia still labors under many questions with respect to the three published lists of those its commission recommended should be sanctioned in various ways, and until now this has not been done.

Communities or those individuals who have lived for many years under authoritarian rule or civil conflict face many social tasks. Among the most important is that of communal reconciliation. Truth commissions can help with this. While none can be said to have accomplished this process, all have made a new beginning in the community based on the truth of the tragedies and mistakes of their past. In no case of the truth commissions we have studied, even the ones under Idi Amin and Sani Abacha, can we say that it would have been better if they had not been held. This speaks to their value as a means of achieving transitional justice.

## NOTES

1. *Transitional Justice Theories*, edited Susanne Buckley-Zeitel, Teresa Koloma Beck, Christian Braun, and Friederick Mieth (New York: Routledge, 2014), 1.

2. R. G. Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003): 69–94 at 70.
3. *Ibid.*, 71.
4. *Ibid.*, 80.

# Bibliography

- Abdullah, I. "Bush Path to Destruction: The Origin and Character of the Revolutionary United Front/Sierra Leone," *The Journal of Modern African Studies* 36.2 (1998): 203–35.
- Allen, J. "Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission," *The University of Toronto Law Journal* 49.3 (1999): 315–53.
- Allen, P. J., A. Weah, and L. Goodfriend. "Liberia Beyond the Truth and Reconciliation Commission Options in Liberia," International Centre for Transitional Justice, May 2010, 1–39.
- Ameh, R. K. "Doing Justice After Conflict: The Case for Ghana's National Reconciliation Commission," *Canadian Journal of Law and Society* 21.1 (2006): 85–109.
- Amnesty International. "Morocco/Western Sahara Broken Promises: The Equity and Reconciliation Commission and Its Follow-up" (London, UK: Amnesty International Publications, 2010), 4–101.
- Aning, Kwesi, and Thomas Jaye. "Liberia: A Briefing Paper on the TRC Report," Kofi Annan Peacekeeping Training Centre Occasional Paper No. 33, April 2011, 1–23.
- Archibald, S., and S. Richards. "Converts to Human Rights? Popular Debate About War and Justice in Rural Central Sierra Leone," *Africa Journal of the International Africa Institute* 72.3 (2002): 339–67.
- Asari, A. A. "The Ghanaian National Reconciliation Commission: Reparation in a Global Age," *The Global South* 2.2 (2008): 31–53.
- BBC News. "Liberian Leader Defiant Till the End," August 11, 2003. <http://news.bbc.co.uk/2/hi/africa/3140417.stm> (accessed September 24, 2014).
- . Ghana profile, BBC News Africa. <http://www.bbc.com/news/world-africa-13433790> (accessed April 11, 2014).
- . Liberia Profile. <http://www.bbc.co.uk/news/world-africa-13729504>.
- . Morocco profile. <http://www.bbc.com/news/world-africa-14121> (accessed November 18, 2014).
- . Sierra Leone, Country profile. <http://www.bbc.com/news/world-africa-14094194>.
- . Sierra Leone profile. Chronicle of key events. <http://www.bbc.com/news/world-africa-14094419> (accessed March 7, 2015).
- . South Africa Profile, [http://news.bbc.co.uk/2/hi/countrres\\_profile/default.stm](http://news.bbc.co.uk/2/hi/countrres_profile/default.stm) (accessed September 4, 2014).
- Benomar, J. "Justice After Transition: Confronting the Past," *Journal of Democracy* 4.1 (1993): 3–14.
- Best, M. L., T. N. Smyth, and D. Serrano-Boquero, "Designing For and With Diaspora: A Case Study of Work with the Truth and Reconciliation Commission in Liberia," Georgia Institute of Technology. <http://mikeb.inta.gatech.edu/uploads/papers/kiosk.chi.case.pdf> (accessed September 3, 2014).
- Bisset, C. "Rethinking the Powers of Truth Commissions in Light of the ICC Statute," *Journal of International Criminal Justice* 7.5 (2009): 963–82.
- Boås, Morten. "Liberia and Sierra Leone—Dead Ringers?" *Third World Quarterly* 22.5 (2001): 697–723.
- Buckley-Zeitel, Susanne, Teresa Koloma Beck, Christian Braun, and Friederick Mieth (eds.). *Transitional Justice Theories* (New York: Routledge, 2014).

- Carranza, R. "Plunder and Pain: Should Transitional Justice Engage With Corruption and Economic Crimes," *The International Journal of Transitional Justice* 2 (2008): 310–30.
- Carver, R. "Called to Account: How African Governments Investigate Human Rights Violations," *African Affairs* 89 (1990): 391–415.
- Chad: Report of the Commission of Inquiry Into the Crimes and Misappropriations Committed by ex-President Habré, His Accomplices and/or Accessories. Investigations of Crimes Against the Physical and Mental Integrity of Persons and Their Possessions, May 7, 1992. <http://www.usip.org/sites/default/files/resources/collections/commissions/Chad-Report.pdf> (accessed September 23, 2014).
- Clark, J. N. "Reconciliation via Truth? A Study of South Africa's TRC," *Journal of Human Rights* 11.2 (2012): 189–209.
- Constitution of the Republic of Ghana Transitional Provisions 34 (1) and (2). <http://www.ghanaweb.com/GhanaHomePage/republic/constitution.php?id=Gschedule1.html>.
- Daly, E. "Truth Skepticism: An Inquiry Into the Value of Truth in Times of Transition," *The International Journal of Transitional Justice* 2 (2008): 23–41.
- Dancy, G., H. Kim, and E. Wibelhaus-Brahm. "The Turn to Truth: Trends in Truth Commission Experimentation," *Journal of Human Rights* 9.1 (2010): 45–61.
- de la Cruz, R. "'God-willing I will be back': Gauging the Truth and Reconciliation's Capacity to Deter Economic Crimes in Liberia," *African Security Review* 17.4 (2008): 64–78.
- Dougherty, B. K. "Searching for Answers: Sierra Leone's Truth and Reconciliation Commission," *African Studies Quarterly* 8.1 (2004): 39–56.
- Doxtrader, E., and P. J. Salazar. *Truth and Reconciliation in South Africa. The Fundamental Documents*, IX (Cape Town: David Phillips Publishers 2007).
- Dyzenhaus, D. "Debating South Africa's Truth and Reconciliation Commission," *University of Toronto Law Journal* 19.3 (1999): 311–14.
- Freeman, Mark. *Truth Commissions and Procedural Fairness*. (London: Cambridge University Press, 2006).
- Freeman, M., and P. B. Hayner. "Truth Telling," Chapter 8 In: D. Bloomfield, T. Barnes, and L. Huyse (eds.), *Reconciliation After Violent Conflict: A Handbook* (Stockholm: International IDEA, 2003), 122–40. <http://www.idea.int/publications/reconciliation/index.cfm> (accessed September 15, 2014).
- Gberie, L. *A Dirty War in West Africa. The RUF and the Destruction of Sierra Leone* (London: C. Hurst, 2005).
- . "Truth and Justice on Trial in Liberia," *African Affairs* 107.428 (2008): 455–65.
- Ghana Center for Democratic Development, Public Opinion on National Reconciliation in Ghana. Survey evidence, Research Paper no. 10, 2002. <http://www.cddghana.org> (accessed September 14, 2014).
- Ghana. The National Reconciliation Commission, File AAC 1106.
- Ghana. "The National Reconciliation Commission Hearings: Matters Arising" (Ghana Center for Democratic Development, 2003).
- Ghana. National Reconciliation Act 2002. <http://www.ghanareview.com/reconact.html> (accessed September 15, 2014).
- Ghana. National Reconciliation Commission, United States Institute of Peace. <http://www.usip.org/publications/truth-commissions-ghana> (accessed September 15, 2014).
- Goldstein, E. "Morocco's New Truth Commission: Turning the Page on Past Human Rights Abuses?" *Arab Reform Bulletin* 2.6 (2004).
- Gooley, B. "Nuremberg or the South African TRC: A Comparison of the Retributive and Restorative Models of Justice," University of Connecticut, Honors Scholar Program, Digital Commons @ U Conn. Spring 5-6-2012.
- Government of Liberia. Ministry of Foreign Affairs, Monrovia, Liberia. "Preamble. An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia, June 22, 2005. [www.refworld.org/docid/473c6b3d2.html](http://www.refworld.org/docid/473c6b3d2.html) (accessed 3 September 2014).

- . TRC of Liberia, Consolidated Final Report. <http://trcofliberia.org> (accessed December 11, 2014).
- . TRC of Liberia, Final Report 1, 29. <http://www.trcLiberia.org/reports/final-report> (accessed December 1, 2014).
- . TRC of Liberia, Liberian TRC Bulletin Number 6, Policy Paper on plication for Amnesty, March 2008. [http://trcofliberia.org/press\\_releases/162](http://trcofliberia.org/press_releases/162) (accessed September 3, 2014).
- . TRC of Liberia, Dissenting Report, 2009. <http://www.peopletopeople.info/id293.html> (accessed September 3, 2014).
- Grotti, L., and E. Goldstein, "Morocco's Truth Commission: Honoring Past Victims During an Uncertain Present," Human Rights Watch 2005, 6–7. <http://www.hrw.org/en/reports/2005/11/27moroccos-truth-commission> (accessed November 21, 2014).
- Guåker, E. "A Study of the Nigerian Truth Commission and Why It Failed," Masters Thesis, Bora Research Archive, Institute of Comparative Politics, University of Bergen, February 2009. [https://bora.uib.no/bitstream/handle/956/6215/Master%thesis\\_Elisabet\\_Guaaker\\_PRT%201.PDF](https://bora.uib.no/bitstream/handle/956/6215/Master%thesis_Elisabet_Guaaker_PRT%201.PDF) (accessed September 22, 2014).
- Gwam, C. U. "The Need for Nigeria to Seek Advisory Services and Technical Assistance in the Field of Human Rights," *Journal of Humanitarian Assistance, Field Experience and Current Research on Humanitarian Action and Policy*, May 12, 2000. <http://www.sites.tufts.edu/jha> (accessed September 20, 2014).
- Gyimah-Boadi, E. *National Reconciliation in Ghana: Prospects and Challenges* (Accra: Center for Democratic Development Ghana, 2002). <http://www.cddgh.org>.
- Hayner, P. B. "Commissioning the Truth: Further Research Questions," *Third World Quarterly* 17.1 (1996): 19–29.
- . "Fifteen Truth Commissions 1974–1994. A Comparative Study," *Human Rights Quarterly* 16.4 (1994): 597–655.
- . "Negotiating Peace in Liberia: Preserving the Possibility for Justice," Report of the Centre for Humanitarian Dialogue, International Centre for Transitional Justice, 2007: 1–32.
- . "Truth Commissions: A Schematic Overview," *International Review of the Red Cross* 88.262 (2006): 295–310.
- . *Unspeakable Truths. Confronting State Terror and Atrocity* (London: Routledge, 2001).
- Hazan, P. "Morocco: Betting on a Truth and Reconciliation Commission," United States Institute for Peace, Special Report, 2006. <http://www.usip.org/files/resources/sr165.pdf>
- Hendy, D. J. "Is a Truth Commission the Solution in Post-Conflict Iraq?" *Ohio State Journal of Dispute Resolution* 20.2 (2005): 527–62.
- . "Morocco's Truth Commission. Honoring Past Victims During an Uncertain Present," 17.11, November 2005.
- Human Rights Watch. Senegal: Case against Habré Set to Continue. <http://www.hrw.org/habre-case> (accessed September 23, 2014).
- International Criminal Court. Rome Statute of the International Criminal Court, Article 17, par 1 Article 87.
- Ignatief, Michael. "Articles of Faith," *Index on Censorship* 25.5(1996):110–122 at 113. doi 10.1177/030642209602500522.
- Instance Équité et Réconciliation. The Speech of His Majesty the King Mohammed VI, January 2004. [http://ier.ma/article.php3?id\\_aricle=1297](http://ier.ma/article.php3?id_aricle=1297) (accessed November 24, 2014).
- Interview with U.S. State Department Official, May 7, 1993, cited in Hayner, "Fifteen Truth Commissions," p. 625.
- Joffé, G. "Politics in the Muslim World: Morocco, Iran and Indonesia," In: *The Politics of Governing: A Comparative Introduction*, edited by L. S. Graham (Washington, DC: C.Q. Press, 2007).

- Joinet, L. Set of Principles for the Protection and Promotion of Human Rights Intended to Strengthen Action to Combat Impunity, UN Subcommission for Prevention of Discrimination and Protection of Minorities, 48th Session, Annex II, Agenda Item 10, at 12, E/CN.4/Sub.2/29 June 1996.
- Kaminer, D., D. Stein, I. Mranga, and N. Zungu-Dirwanyi. "The Truth and Reconciliation Commission in South Africa: Relation to Psychiatric Status and Forgiveness Among Survivors of Human Rights Abuses," *British Journal of Psychiatry* 178.4 (2001): 373–77. doi 10.1192 (accessed September 8, 2014).
- Kensall, T. "Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone," *Human Rights Quarterly* 27.2 (2007): 361–91.
- Kingdom of Morocco. Justice and Reconciliation Commission, National Commission for Truth, Justice and Reconciliation, Summary of the Final Report, 2005. <http://www.refonte.ccdh.org.ma> (accessed December 23, 2014).
- Kisiangani, Emmanuel. "Between Principle and Pragmatism in Transitional Justice. South Africa's TRC and Peace Building," Institute for Security Studies, Paper 156. <http://www.issafrica.org/publications/between-principle-and-pragmatism-in-transitional-justice-south-africas-trc-and-peace-building> (accessed September 4, 2014).
- Kpundeh, S. "Corruption and Political Insurgency in Sierra Leone," In *Between Democracy and Terror: The Civil War in Sierra Leone*, edited by I. Abdullah (Senegal: Council for the Development of Social Science Research in Africa, 2004), 90–103.
- Leibbrandt, Murray, Ingrid Woolard, Hayley McEwen, and Charlotte Koep, "Employment and Inequality Outcomes in South Africa," South Africa Labor and Development Research Unity (SALDRU) and School, Stevens, Gert Economics, University of Capetown, 2014. <http://www.oecd.org/employment/emp/452868.pdf> (accessed September 4, 2014).
- Linn, Rachel. "'Change Within Continuity': The Equity and Reconciliation Commission and Political Reform in Morocco," *Journal of North African Studies* 16.1 (2011): 1–17.
- Loden, Alexander. "Civil Society and Security Reform in Post-Conflict Liberia: Painting a Moving Train Without Brushes," *The International Journal of Transitional Justice* 1 (2007): 297–307.
- Mamdani, M. "'Amnesty or Impunity': A Preliminary Critique of the Truth and Reconciliation Commission of South Africa," *Diacritics* 32.3–4 (2002): 33–59.
- Mangali, M. Z. "Building Competitive Advantage from Ubuntu: Management Lessons from South Africa," *The Academy of Management Executive* 15.3 (2001): 23–33.
- Megally, Hanny. Interview, IRIN, Humanitarian News and Analysis. <http://www.irinnews/indepth.aspx.InDepthid=7&Reportid=59455> (accessed November 25, 2014).
- Mendeloff, D. "Truth-Seeking, Truth-Telling and Post-Conflict Peace Building: Curb the Enthusiasm?" *International Studies Review* 6.3 (2004): 355–80.
- Méndez, J. Review of *A Miracle, A Universe*. *New York Law School Journal of Human Rights* 8.2 (1991): 577–96.
- Millar, G. "Ah lef ma case for God," *Journal of Peace Psychology* 18.2 (2012): 131–42.
- Minow, M. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998).
- Nigeria. Human Rights Violations Investigation Commission of Nigeria 2002, Synoptic Overview, Oputa Panel.
- Nigeria Tribunal of Inquiry Act, *The Complete Laws of Nigeria*, n. 14, s.6, and s. 11. <http://www.placng.org/lawsofnigeria/node/392> (accessed September 22, 2014).
- . Truth Commission of Nigeria, United States Institute of Peace. [http://www.usip.org/publications/truth\\_commission-nigeria](http://www.usip.org/publications/truth_commission-nigeria) (accessed September 20, 2014).
- Oduro, F. "Reconciling a Divided Nation Through a Non-Retributive Justice Approach: Ghana's National Reconciliation Initiative," *The International Journal of Human Rights* 9.3 (2005): 327–47. doi 1080/13642980500170774.

- Okafor, O. C., and S. C. Agbakwas. "On Legalism, Popular Agency and 'Voices of Suffering': The Nigerian Human Rights Commission in Context," *Human Rights Quarterly* 24.3 (2002): 662–720.
- Oppenhaffen, V., and M. Freeman. "Transitional Justice in Morocco: A Progress Report," (New York: International Center for Transitional Justice, 2005). [http://www.ictj.org/publications?Keys=dtid\\_1%5B%5D=37&language%5B%5D=en](http://www.ictj.org/publications?Keys=dtid_1%5B%5D=37&language%5B%5D=en) (accessed November 21, 2014).
- Ottaway, M., and M. Riley. "Morocco from Top Down Reform to Democratic Transition," *Carnegie Papers* 71, Carnegie Endowment for International Peace, 2006, 6. [http://carnegieendowment.org/files/cp71-ottaway\\_final](http://carnegieendowment.org/files/cp71-ottaway_final) (accessed November 21, 2014).
- Oufkir, Malika. Interview with author of *Stolen Lives: Twenty Years in a Desert Jail*. <http://www.abc.net.au/foreign/content/2009/s2595672.htm> (accessed November 25, 2014).
- Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone. Welcome to the Sierra Leone Web. <http://www.sierra-leone.org/lomeaccord.html> (accessed September 13, 2014).
- Pelsinger, S. "Liberia's Long Tail. How Web 2.0 Is Changing Truth Commissions," *Human Rights Law Review* 10.4 (2010): 730–48.
- Pennell, C. R. *Morocco Since 1830: A History* (London: Hurst & Company, 2000).
- Pham, J. P. "Making Sense of a Senseless War." *Human Rights and Human Welfare* 7 (2007): 35–51.
- Pilay, S., and H. Scanlon. "Peace Versus Justice? Truth and Reconciliation Commission and War Crimes Tribunals," Centre for Conflict Resolution, Advisory Group Seminar, Cape Town, South Africa, May 17–18, 2007, Governance, Social Development, Humanitarian, Conflict (GSDHC). <http://www.gsdr.org/go/display&type=document&d=3100> (accessed September 22, 2014).
- Quinn, J. "Classifying Truth Commissions." Paper delivered at Concerned Philosophers for Peace, McMaster University ON Canada, October 29, 2000. [http://political-science.uwo.ca/docs/Joanna\\_Quinn/CPPclassifyingtruthcommissions.pdf](http://political-science.uwo.ca/docs/Joanna_Quinn/CPPclassifyingtruthcommissions.pdf) (accessed August 29, 2014).
- Quinn, J. R., and M. Freeman. "Lessons Learned. Practical Lessons Gleaned From Inside the Truth Commissions of Guatemala and South Africa," *Human Rights Quarterly* 25.4 (2003): 1117–49.
- Ramashala, M. "Is Reconciliation Possible Without Redress? The South African Experience of the Truth and Reconciliation Commission," 4. <http://www.anu.au/hc/freilich/events/archive/reconciliation> (accessed August 18, 2013).
- Rosenberg, Tina. "Recovering from Apartheid," *The New Yorker*, November 18, 1996.
- Schabas, W. "A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone," *Criminal Law Forum* 15.1 (2004): 3–54.
- Shandani, Mufti. US Judge Rules against Apartheid Claim. Sept. 5, 2014. [khulumani/in-the-news/1004\\_us\\_judge\\_rules\\_against\\_apartheid\\_claim.html](http://khulumani.in-the-news/1004_us_judge_rules_against_apartheid_claim.html).
- Sierra Leone. The Truth and Reconciliation Act 2000. <http://www.sierra-leone/laws/2000-4.pdf> (accessed September 13, 2014).
- Simcock, J. "Unfinished Business: Reconciling the Apartheid Reparation Litigation with South Africa's Truth and Reconciliation Commission," *Stanford Journal of International Law* 47.1 (2011): 239–62.
- Sirleaf, Matiangi. "The Truth About Truth Commissions: Why They Do Not Function Optimally in Post-Conflict Situations," *Cardoza Law Review*, 35.6 (2014): 2263–347.
- Slymovich, S. *The Performance of Human Rights in Morocco* (Philadelphia: University of Pennsylvania Press, 2005).
- Svård, P. "Liberia's Truth and Reconciliation Commission: The Importance of Documentation in Postwar Education and Reconciliation," Kujenga Amani SSRC Forums. <http://forums.ssrc.org/kujenga-amani/20013/09/29> (accessed September 4, 2014).

- Teitel, R. G. *Transitional Justice* (New York: Oxford University Press, 2000).
- . "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003): 69–94.
- Teperman, J. "Truth and Consequences," *Foreign Affairs* 81.2 (2002): 128–45.
- Thakur, R. "Dealing With Guilt beyond Crime." In *From Sovereign Impunity to International Accountability*, edited by Ramesh Thakur and Peter Malcontent (Tokyo: University Press, 2004).
- Truth and Memory. Truth-Seeking, Including Truth Commissions, International Center for Transitional Justice. <http://www.ictj.org/our-work/transitional-justice-issues/truth-and-memory> (accessed August 29, 2014).
- Truth and Reconciliation Commission. Hearing Held at Bloemfontein, SA, Tuesday, July 29, 1997, 1. <http://www.justice.gov.za/trc/reparations/bloem.htm> (accessed September 8, 2014).
- Truth and Reconciliation Commission of South Africa, 1998, Volume 5, Chapter 2. <http://www.justice.gov.za/trc>.
- Truth in Translation. The "Truth" Behind the Play, 16. [http://www.truthintranslation.org/educational\\_materials.pdf](http://www.truthintranslation.org/educational_materials.pdf) (accessed September 9, 2014).
- United Nations General Assembly, Res. 2624 (XXV), UN Doc. A/8102 [Oct. 13, 1970]. <http://www.un.org/documents/ga/res/25/ares.htm> (accessed September 4, 2014).
- United Nations General Assembly 1995. Resolution on Nigeria A/RES/50/199/635/Add 3.
- United Nations Organization. "Rule of Law Tools for Post-Conflict States" (New York and Geneva: United Nations, 2006). <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf> (accessed August 29, 2014).
- United States Institute of Peace. Accra Comprehensive Peace Agreement, Article XXXIV. [www.usip.org](http://www.usip.org) (accessed September 2, 2014).
- Universal Periodic Review, United Nations General Assembly. Human Rights Working Group on the Universal Periodic Review, Second Session May 5–16, 2008, p. 4, 6, #19–21. <http://www.ohchr.org/en/hrbodies/upr/pages/ghsession2.aspx> (accessed September 17, 2014).
- University of Witwatersrand. South African History Archive, Historical Papers, "Traces of Truth. Documents Relating to the South African Truth and Reconciliation Commission, Category 3, Amnesty," [http://www.truth.wv1.wits.ac.za/cat\\_descr.php?cat=3](http://www.truth.wv1.wits.ac.za/cat_descr.php?cat=3) (accessed September 6, 2014).
- Valji, N. "Ghana's National Reconciliation Commission: A Comparative Assessment." International Center for Transitional Justice, Occasional Paper Series, 2006. <http://www.ictj.org/sites/default/files/ICTJ-Ghana-ReconciliationCommission-2006-English-O.pdf> (accessed September 15, 2014).
- Van der Walt, Clint, Vijé Franchi, and Garth Stevens. "The South African Truth and Reconciliation Commission: Race, Historical Compromise and Transitional Democracy," *International Journal of Intercultural Relations*, 27.2 (2003): 251–67.
- Verwoerd, Wilhelm. "Justice after Apartheid? Reflections on the South African Truth and Reconciliation Commission." *Paper Delivered at the Fifth International Conference on Ethics and Development*. Madras, India, 1997.
- Voira, J., and E. Voira. "The Effectiveness of South Africa's Truth and Reconciliation Commission: Perceptions of Xhosa, Afrikaner, and English South Africans," 34.3 (2004): 301–22.
- Wain, Meredith. "Ghana's National Reconciliation Commission," *Peace Magazine* 19.2 (2003): 18.
- Waltz, S. E. *Human Rights and Reform: Changing the Face of North African Politics*. (London: University of California Press, 1995).
- Walzer, M. "The Hard Questions: Judgement Days" *The New Republic* 217.24(1997): 13–14.
- Weah, A. "Hopes and Uncertainties: Liberia's Journey to End Impunity," *The International Journal of Transitional Justice* 10 (2012): 1–13.



- Williams, S. "The Extraordinary African Chambers in the Senegalese Courts," *Journal of International Criminal Justice* 11.5 (2013): 1139–60.
- Witness to Truth, Final Report of the Sierra Leone Truth and Reconciliation Commission, November 2004, V. 2, Ch. 1, N. 97. <http://www.sierraleonetrc.org> (accessed September 12, 2014).
- World Factbook. Africa, Chad, The Central Intelligence Agency. <https://www.cia.gov/library/publications/the-world-factbook/geos/cd.html> (accessed September 23, 2014).
- . Central Intelligence Agency, Africa: Sierra Leone. <http://www.cia.gov/library/publications/the-world-factbook/geos/sl/html> (accessed September 12, 2014).
- York, G. "Former Dictator of Chad Arrested on Allegations of 40,000 Murders," *The Globe and Mail* (Toronto), June 30, 2013.
- Yusuf, H. O. "The Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria," *The International Journal of Transitional Justice* 1.2 (2007): 268–86.



# Index

- Abacha, General Sani, 52, 81; and most brutal regime in Nigerian history, 52; and National Human Rights Commission, 52
- Abubakar, General Abdulsalami, 2, 4
- African Charter on Human and People's Rights, xi
- African National Congress, 17; and Commission of Enquiry into Complaints by former African National Congress Prisoners and Detainees, 17; and Montsuenyane Commission, 17–18
- All People's Congress (APC), 29; and one-party state, 29; and failure to meet most basic obligations as government, 29; as inclusive, 29
- Amin, Idi, xi, xii, 81; and Africa's first truth commission, xiii
- amnesty, 3
- Amua-Sakyi, Justice Kweku Etrew, 44
- Anokye, Frimpong, 44
- apartheid, 15, 16–17; as system left out in TRC, 23; as system left out in the TRC, 23
- Argentina, xii
- Babangida, General Ibrahim, 58
- Basri, Driss, 71
- Begin, Prime Minister, xi
- Bello, Bukhari, 55
- Benzekri, Driss, 72, 74
- Blahyi, Joshua (aka General Butt Naked), 9
- Bokassa, Jean Bedek, xi, xii
- Bull, Pearl Brown, 7, 10
- Carver, Richard, xi
- Casablanca bombings, 72
- Chad, 63; and US involvement, 65
- Chile, xii
- Clinton, President Bill, 52
- Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré and/or Accessories, 64, 80; and headquarters in security forces detention center, 64; and inability to send investigators to the interior of Chad, 64; and lack of transportation, 64; and many years before resolution, 80; and recommendation to establish independent judiciary and to reform security forces, 66; and recommendation to prosecute Habré, 66; and shocking findings, 65; and threats to the lives of commissioners, 64; and use of report by human rights organizations to have Habré prosecuted for violations of international criminal law, 66; as first truth commission not only to name individuals responsible for human rights crimes but also to publish their photographs, 65
- Commission on the Disappeared (CONADEP), xii
- Comprehensive Peace Agreement (CPA), 2
- Conseil Consultatif des Droits de l'homme (CCDH), 71; and 1998 directive by Hassan to resolve all outstanding human rights files, 71
- Deby, Idriss, 64; and human rights violations, 66
- disappearances, xii
- Doe, Samuel K., 1

- El Salvador, xii
- Equity and Reconciliation Commission of Morocco (IER), 69; and charge of collective punishment, 73; and closed meetings, 75; and community reparations program, 74; and disrepair of archives as a serious issue, 75; and formal sessions, 75; and individual compensation, 76; and investigation of the disappearance and forced exile of people during the reigns of the father and grandfather of Mohammed VI, 69; and limit on accountability, 74; and “pact of honor” of witnesses, 75; and partial truths of victims and their families but not truths of perpetrators, 76; and refusal to admit that Western Sahara had suffered disproportionately, 75; and thematic seminars, 76; as based on Islamic ethics, 69; as first truth commission in the Arab world, 69; as first truth commission to expose the human rights violations of a regime still in power, 69
- executive outcomes, 37
- Extraordinary African Chambers in the Senegalese courts, 67
- Fawehinmi, Gani, 58
- Freetown, 28; and Creole community, 28
- Ghana, 2, 41; and colonial legacy contributing to human rights abuses, 46; and constitutional legal protection of Rawling’s regime, 43; and corruption and mismanagement, 41; and first revolution in Africa, 41; and peace talks on Liberia, 2; and political stability, 41
- Giwa, Dela, 58
- Goranana, 65
- Group Areas Act, 16
- Guatemala, xii
- Habré, Hissène, 63, 64, 79; and Belgian efforts to prosecute, 67; and first trial by an African state of the former head of state of another African state, 67; and future trial, 66; and patient pursuit of victims of Habré for justice, 66
- Haiti, xii
- Hassan II, King: and *années de plomb* (years of lead), 70; and personal draft of human rights amendments to the constitution, 71; and ruthless suppression of all opposition during 38 year reign, 70; and unsuccessful coup attempts, 70
- Hayner, Priscilla, xx, 3, 20, 66
- Herzenni, Ahmed, 74
- human rights, xii
- Human Rights Violations Investigation Commission of Nigeria (aka Judicial Commission for the Investigation of Human Rights Violations or Oputa Panel), 51; and appeal to Supreme Court, 58; and decision to hear only 200 cases, 57; and efforts to determine what constituted a “gross violation” of human rights, 57; and efforts to mediate conflict in Niger River Delta, 59; and financial lifeline by Ford Foundation, 59; and initial interpretation of human rights abuses, 56; and irony that the NHC created by Abacha may have longer term effect than the HRVIC, 60; and lack of legal foundation, 56; and mandate, 56; and Muslim resentment against make-up of the Panel, 59; and need for legislation to define its jurisdiction and powers, 57; and obstruction by alleged perpetrators, 58; and original direction, 55; and recommendations to Government, 59; and refusal of the Obasanjo regime to publish or implement Oputa Panel Report, 59; and request for amendment to its mandate to reflect status as a truth commission, 57; and tension between reconciliation and justice,

- 57; as handicapped by lack of time and finances, 57; as Obasanjo's personal vendetta against Sani Abacha, 59
- Human Rights Watch, xi; as poorly funded, 59
- Ignatief, Michael, 31
- Immorality Amendment Act, 16
- impunity, xii
- Independent Arbitration Commission: and deadline for application, 72; and exclusion from mandate of important categories of human rights abuses, 72; as widely criticized by human rights advocacy groups, 72
- Independent National Commission of Human Rights (INCHR), 11, 13
- International Contact Group Liberia, 7, 8
- International Criminal Court, 79; and potential conflict with truth commissions, 81
- Iran, xi
- Islamic Revolution, xi
- Ja'neh, Kabineh, 10
- Joinet Principles, xvii
- justice and reconciliation, xiii
- Jusu-Sheriff, Yasmin, 32
- Kabbah, Ahmed Tejan, 30; and flight to Guinea, 30; and landslide win in 2002 election, 30; and peace deal, 30; and triumphant return to Freetown, 30
- Kabineh, Ja'neh, 10
- Kamojars, 37
- Khomeini, Ayatollah Ruhollah, xi
- Khulumani Support Group, 24
- Kwabo, Nathaniel, 8
- League of Nations, 79
- Liberia, 1
- Liberians United for Reconciliation and Democracy (LURD), 2
- Lomé peace agreement, 30; and blanket amnesty, 31
- Malloum, Felix, 64
- Mandela, Nelson, 17, 52, 80
- Margai, Albert, 29
- Margai, Sir Milton, 29
- Megally, Hanny, 76
- Mendez, Juan, xvii
- Mohammed VI, 71; and creation of Independent Arbitration Commission, 71–72; and depoliticizing impunity by stressing forgiveness, 73; and two categories of elites, 72
- Mohape, Mrs. Nohle, 21
- Momoh, Joseph, 29; and “constructive nationalism”, 29
- Morocco, 69; and attempts to improve human rights record, 71; and issue of the independence of Western Sahara, 70; and non-abandonment of monopoly on power, 71; and political history, 70; and repressive, undemocratic laws inherited from colonial French administration, 70; as dependent on tourism, 71
- Movement for Democracy in Liberia (MODEL), 2
- National Human Rights Commission of Nigeria, 51; and diversity, 53; and co-operation with local NGOs, 54; and diversity, 53; and lack of autonomy, 53; and well defined jurisdiction, 53; as a parastatal, 53; as pursuing agenda with courageous independence, 53; as structure, 53
- National Patriotic Front of Liberia, 1
- National Reconciliation Commission of Ghana (NRC), 41; and comprehensive reparations program, 47; and court-room style proceedings, 46; and definition of “violations”, 45; and four key issues, 42; and government funding, 44; and lack of transparency of choice of commissioners, 42; and mandate, 42; and public support, 43; and restriction of deliberations to periods of unconstitutional rule, 42,

- 43; and selection of commissioners, 42; and trial of perpetrators as public desire, 43; as political witch hunt, 45; as second best option to punitive justice, 44; as suffering from bias, 44
- national security, xii
- Nguema, Marcus, xi, xii
- Nigeria, 51; and civil war, 51; and expulsion from Commonwealth, 52; and military coups, 51; and resolutions on human rights violations in the General Assembly of the UNO, 52
- N'Djamana, 64; and evidence of veritable genocide nearby, 65; and files found in DDS headquarters, 66
- Nkrumah, Dr. Kwame, 45
- Nova Scotia, Canada, 28
- Nsawam prison, 46
- Nunca Más, xii
- Obasanjo, Chief Olusegan, 55; and two appearances before the HRVIC, 57
- Odinkalu, Dr. Chidi, 55
- Oputa, Chukwudifu, 55
- Organization of African Unity, xi
- Oueddei, Goukouki, 64
- Palava Hut, 11
- peace and reconciliation, xiii
- perpetrators and naming names, xvii
- Population Registration Act, 16
- Prohibition of Mixed Marriages Act, 16
- Rawlings, John Jerry, 46
- restorative justice, xi, 79
- retributive justice, xi, xii, 3; and trials, 4; as absolutist concept, 4; ruled out in South Africa, 18
- right to the truth, xvii
- rule of law, xii
- Sall, Macky, 66
- Sankoh, Foday, 30; and recruitment of child soldiers, 30; and terror tactics, 30
- Saro Wiwa, Chief Ken, 52; and Ogoni activists, 52
- Saweh, David (aka Sunday gar Dearboy), 8
- Senegal, 63; and arrest of Habré at seaside villa for murder of 40,000 people, 66
- Separate Amenities Act, 16
- Sierra Leone, 1, 27; and civil war, 29; and five causes of civil war, 29; and independence in 1961, 29; as British protectorate, 28; as country in severe economic crisis, 29
- Sierra Leone Company, 28
- Sierra Leone People's Party (SLPP), 29; as challenge to Creole pretensions, 29; as dependent on the chiefs, 29
- Sierra Leone Truth and Reconciliation Commission (SLTRC), 27, 30; and delay after collapse of Lomé accord, 32; and ex-combatants, 36; and finding that all sides in conflict perpetrated violations of humanitarian law, 31; and mandate to listen to women's voices and to study role of children as victims and perpetrators, 32; and negative aspects, 34–35; and purposeful amputees, 36; and recommendation to abolish death penalty, 37; and role of diamonds in fuelling conflict, 37; and strengths, 34; as first foray of the United Nations Office of the High Commission for Human Rights (OHCHR) into transitional justice, 32; as national catharsis, 31
- Sirleaf, President Ellen Johnson, 9, 10
- Skweyuja Commission, 17
- Smeathman, Henry, 27–28
- social justice, xii
- South Africa, 15
- Special Court for Sierra Leone (SCSL), 3, 33; and 2003 request by three indicted prisoners to appear in public before the SLTRC, 34; and success of the experiment, 34; as conceived by the UN Security Council to play complementary and supportive role with SLTRC, 33; as operating in tandem with the SLTRC, 34

- Stevens, Siaka, 29  
 Storey, Rev. Peter, 21  
 Strasser, Captain Valentine, 30; and  
   military coup, 30; and plans for  
   multi-party election, 30  
 Suppression of Communism Act, 16
- Taylor, Charles, 1, 2, 8  
 Tazmamart prison, 71  
 Teitel, Ruti, xii, 79  
 Temne, 28; and Paramount Chief, 28  
 Three Mile Island nuclear facility, xi  
 Tolbert, William, xi, 1  
 Tombalbaye, Ngarta, 64  
 torture, xii  
 transitional justice, xii, 79; and  
   “Nuremberg Model”, 79; and truth  
   commissions, xiv; and “war in a  
   time of peace”, 79; as international,  
   79  
 Truth and Reconciliation Commission  
   of Liberia, 4; and apparent courage,  
   10; and exploitation of natural and  
   public resources, 6; and final report,  
   10; and Liberia’s diaspora, 7; and  
   political difficulties, 5; and  
   recommendation to prosecute  
   individuals, 10; and violation of the  
   separation of powers, 6; and  
   violence perpetrated against  
   women and children, 6; as  
   compromise, 5; as failure, 12; as  
   precursor to criminal justice, 5; as  
   success, 11, 12; as trade-off of war  
   crimes tribunal, 4  
 Truth and Reconciliation Commission  
   of South Africa, 18, 80; and  
   emotional support mechanisms, 22;  
   and granting amnesty, 20; and  
   mandate not including effects of  
   apartheid on communities, 23; and  
   Norgaard Principles, 19; and  
   problem of translation, 22; and  
   reparations, 22, 23; and three  
   committees, 20; as decisive turning  
   point in South African history, 24;  
   as hybrid institution, 19; as largest  
   truth commission anywhere, 20  
 truth and justice, xvii  
 truth commissions, xii; and apparent  
   success, xviii; and due process, xvii,  
   11, 81; and economic crimes, xx; and  
   management skills of head of  
   commission, xx; and trade-offs, 3;  
   and unofficial types, xix; as  
   alternative to amnesty or  
   prosecution, 3; as sanctioned fact  
   finding, xvii; as unsuccessful, xviii;  
   as unique, xv; as used on multiple  
   occasions, xviii; at the end of an  
   authoritative regime, xiv; at the end  
   of a civil war, xiv, 1; benefits of,  
   xviii; definition, xiv; impact of  
   truth-telling or truth-seeking on  
   justice, 21; in Africa, xiii; in Canada,  
   xiv; in Chile, xiii; in El Salvador, xiii;  
   in Guatemala, xiii; in Haiti, xiii; in  
   Honduras, xiii; in the Philippines,  
   xiv; in Liberia, 2; no significant  
   association with forgiveness, 21; not  
   a court of law, xv; reasons for  
   success or failure, xx; South  
   America’s first, xii  
 Tsikata, Captain Kojo, 46  
 Tutu, Archbishop Desmond, 21, 23
- Ubuntu, 18  
 United Nations troops, 30; as enforcing  
   Lomé peace agreement, 30; as  
   abducted by RUF, 30; as rescued by  
   British forces, 30  
 universal jurisdiction, 67, 80
- Verdier, Jerome, 6, 9, 12
- Wade, Abdoulay, 66  
 Washington, Massa, 7  
 West African intervention force  
   (ECOMOG), 30
- Zaghwa, 65





## About the Authors

**John Perry**, SJ, is a Canadian academic who has been a volunteer working at the Kofi Annan Institute for Conflict Transformation at the University of Liberia since 2008. Having an interest in social issues, he has published books on Catholic moral positions on torture and slavery, and finds post-conflict and, hopefully, post-Ebola-epidemic Liberia engaging and important.

**T. Debey Sayndee** is associate professor/director at the Kofi Annan Institute for Conflict Transformation (KAICT), University of Liberia. He has worked for over 20 years on complex nexuses of the conflicts in West Africa, particularly Liberia and Sierra Leone, and served as consultant for the UN agencies on peace, security, and development issues. He has worked in civil society for many years and is a strong advocate on Women's rights issues and the quest for a *Peace-able* world. He has contributed several publications on natural resources and development policies.