Towards a New Paradigm for Transitional Justice?

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A Critical Comparison of the Truth Commissions of South Africa, Guatemala and Sierra Leone

The Twentieth Century was, by any measure, the most violent and sanguinary in history. Across the world, civil wars erupted and brutal regimes arose as rival, often ethnic groups fought to fill the power vacuums created by the onset of decolonisation and the end of the Cold War. Yet over the last thirty-five years much of the developing world has experienced what Samuel Huntington famously, if inaccurately, called the 'third wave' of democratisation.[1] Nations that had hitherto been governed by despotic regimes or had experienced civil war began the uneasy transition towards liberal, 'Western', democracy. One ripple effect of this third wave has been a paradigm shift in the way these newly democratic states choose to deal with the national atrocities and human rights violations that occurred under the former military or political regimes. Whilst these new democratic states inevitably want to move on from the horrors of the past, as well as cement their positions as the new, legitimate forms of government, there has been an increased recognition of the need to properly confront past human rights violations in order that understanding and closure can be achieved on both an individual and national level. Only then can a country move forward towards a sustained peace.[2] This desire has formed the basis of the idea of a truth commission.

This discussion will focus on a critical comparison of the South African Truth and Reconciliation Commission, the Guatemalan Commission for Historical Clarification and the Sierra Leone Truth and Reconciliation Commission.[3] With regards to this mechanism for transitional justice, there are only two things scholars agree on; the impossibility of producing a single, transposable model for future truth commissions, and, in spite of this, the need to endeavour towards this end. In such light, this study will look at several key aspects of these commissions in order to attempt to establish whether the adoption of certain elements over others enabled these truth commissions to have a greater impact with regards to their titular mandate. However, this mechanism for achieving transitional justice must briefly be viewed within the context of the failures of the two main alternatives to this approach.

1.1 Truth Commissions – An Alternative to Retributive Criminal Trials

Truth commissions, as they are collectively known, offer a 'third way' between the use of the domestic judicial system that sacrifices a deeper knowledge of the events in favour of the politically-appealing retributive justice, and a policy of blanket amnesty that sacrifices justice without the guarantee that perpetrators will reveal the truth.[4] The infamous Nuremburg Trials are illustrative of the numerous inadequacies of criminal courts in dealing with the social, psychological and anthropological impact of such endemic human rights violations. In pursuing retributive justice, the plight of the victims is of secondary importance, being considered only insofar as their testimonies help lead to the convictions of the regimes' perpetrators. Moreover, an authoritative historical account of the period under scrutiny is never achieved.[5] Even in countries that have managed to retain a strong, impartial judicial system, which is seldom the case, the chances of successful prosecution are slim. As Chapman and Ball note, 'even in the case of Nazi war crimes, fewer than 6,500 of the 90,000 cases brought to court resulted in convictions'.[6] In the case of the 1994 Rwandan genocide, 'authorities admitted that at the present rate of prosecutions, Rwandan courts would take 150 years to try all the suspects'.[7] Trials do not offer practical provisions for the victims in terms of reparations, and they make no suggestions for institutional change that could mitigate against the possibility of further atrocities occurring in the future. The procurement of truth, let alone justice or national reconciliation, is seldom achieved by such means, and the wounds inflicted upon societies are left untreated.[8]

The importance of gleaning the truth and creating an objective history of past horrors has led some commentators to suggest that a policy of 'let bygones be bygones' should be pursued. Impunity for the perpetrators in return for information pertaining to, for example, the location of mass graves, and the lack of criminal justice that results from such impunity, is a price worth paying. Yet this position has faced even more criticism than has the use of criminal courts. Amputees from Sierra Leone's civil war, no longer able to work to support their families, seldom find solace in a policy that deprives them of both justice and any concrete, material reparations. Truth alone, they point out, cannot feed a family.[9]

Although differing in size, scope and structure, occasionally leading to a stretching of the definition, there have been 30 truth commissions in 28 countries since 1974.[10] As Hayner observes, all truth commissions share four essential characteristics; they focus on the past; they investigate a period of time rather than a specific event; they exist temporarily, for a pre-defined period of time; and they have, at least in theory, some extended authority, such as powers of subpoena, seizure and search.[11]

In essence, truth commissions share two essential goals; Firstly, to produce an authoritative, and officially recognised version of history about the period under scrutiny, primarily based on the empirical data provided to the truth commissions by the victims and perpetrators.[12] Secondly, truth commissions aim to establish long-term reconciliation between the different groups involved in the conflict. To this end, truth commissions are mandated to produce recommendations for the government regarding ways in which the government can begin to tend to individual and societal wounds, and inoculate against future recurrences of state violence, for example through institutional reform, reparations payments and community integration projects.

1.2 The Research Gap – Problems with Comparative and Historical Analyses

Although one would assume that a proliferation and increased acceptance of the use of truth commissions as mechanisms for transitional justice would be matched by academic studies in this field, there still remains a relative dearth of research on truth commissions from both a comparative and historical perspective. Writing in 2009, Fletcher et al commented, 'the past fifteen years have not seen a concomitant surge of empirical research that would substantiate the direction that the international community has taken'.[13] Consequently, a number of assumptions, such as the ability of truth commissions to deliver truth and/or reconciliation are made, but seldom challenged;[14] 'common wisdom asserts that truth commissions promote individual healing and reconciliation, which leads to national healing and reconciliation, which in turns provides a bedrock for democracy', yet there is little in the way of empirical research that shows this has been the case.[15] The problem in attempting this is that 'anyone seeking to evaluate mechanisms of transitional justice will soon discover few criteria against which to judge them'.[16]

There are several reasons why there is a dearth of research from both a historical and comparative perspective. With regards to the latter, any comparison of truth commissions, and any conclusions that are drawn from this, must be tempered with an understanding of the historical, political and social differences in the contexts in which these commissions were created. The strength of the existing legal system and the extent to which it follows 'Western' models of justice, the nature and extent of the human rights abuses, the country's level of development and economic strength, and the cultural complexion of the country, are all significant variables.[17] In terms of historical approaches, the phenomenon of the truth commission is relatively new; only in the last few years has it become possible for scholars to attempt an assessment of truth commissions. Those that have attempted such historical analyses of these commissions tend to do so in isolation from those either preceding or succeeding them.

Fletcher's aforementioned analysis of truth commissions from a 'historical perspective' is not so much a study of the post-commission state of these countries, but rather is a theoretical analysis of the structure of truth commissions in light of the historical context that called for their creation. Furthermore, it is done within the wider context of transitional justice in general, with these commissions being compared alongside peace processes in places such as Northern Ireland, which hitherto has not had a truth commission. Du Pisani and Kim's analysis of the SATRC from a historical perspective 'assesses the significance of the TRC for historians and the writing of history in South Africa',[18] thus focussing more on the paradigm shift in the creation of history itself; from history heretofore being the preserve of official, state authorship, followed by academic reevaluation, towards what may now be called a

democratisation of history, and the epistemological successes and limitations that follow. In any case, it studies the SATRC in isolation from other commissions.

With regard to comparative approaches, there are still relatively few studies that compare the work of truth commissions, even less so from a historical perspective. Graybill and Lanegran's comprehensive list of comparative works numbers a total of only *eight*, of which theirs is the most recent.[19] Their study does focus on the SATRC and the SLTRC, yet does so contemporaneously. Fletcher suggests that a period of at least six to eight years from the publication of the commissions' report is needed before any retrospective analysis of these commissions can commence.[20] Given that the Sierra Leone Truth and Reconciliation Commission's final report was published the same year as Graybill and Lanegran's comparative study, there has thus been no attempt as yet to compare the structure, mandate and processes of the Sierra Leonean Commission from a position of hindsight. In much the same way, given that the SATRC did not officially end its work until 2002, and given that the CEH published its report in 1999, Chapman and Ball's study was limited in its ability to analyse the successes and failures of various aspects of these truth commissions from a historical perspective.

1.3 Remit of Inquiry

Establishing a common set of criteria by which to measure the efficacy of these commissions is at best a challenge, and at worst impossible. How does one attempt to even define truth and reconciliation, let alone measure them? Given the limited temporal jurisdiction and transitory nature of truth commissions, to what extent can the post-commission strength of the economy, and other socioeconomic factors be used as yardsticks for measuring reconciliation? At what point is the responsibility to deliver restoration and healing transferred from the truth commission to the government that called for its creation? Given that there will certainly be future truth commissions, 'while these questions may prove impossible to answer… transitional justice scholars and proponents must continue to engage with these questions and avoid premature closure'.[21]

For reasons aforementioned, it is both impossible and worthless to conclude in a general sense that one truth commission was more successful than another. In fact, given the infancy of this field of study, establishing what questions need to be asked is somewhat more important than the need to come to conclusions. Therefore, conclusions that are reached throughout this discussion relate to particular aspects of each of the truth commissions; the strength and interpretation of their mandates, the ways in which data was assimilated and used to produce a history of events, the judicial powers granted to each of the commissions (and the extent to which this helped or hindered the process), and the degree to which recommendations were implemented by the respective governments. In doing so, this author hopes that some conclusions, tentative as they must be, may be made regarding the extent to which these aspects contributed to the commissions' ability to achieve their titular mandate; the procurement of truth and the fostering of reconciliation.

2. Historical Context of the Truth Commission

2.1 South Africa

Between 1948 and 1994, the National Party Government enforced a legal system known as apartheid. Legal legislation segregated and stratified the country's inhabitants according to their race; "white", "black", "coloured", and "Indian". This legal system of segregation ensured that economically, socially, politically, and of course legally, the "white" Boer population remained superior to the other ethnic groups. As a consequence huge wage differentials existed between the Boer population and the other racial groups, and the living conditions of these inferior groups was far below that of the white population. An attempt to categorise the nature of the conflict can be made by looking at what both groups in the conflict hoped to achieve. The system of apartheid was created to ensure two things: racial segregation and economic hegemony over the black African population. In this sense the conflict was both identity-based and socioeconomic in nature, of which the latter essentially refers to a Marxist view of the black population hoping to obtain economic equality and the white population seeking to maintain this inequality. That said, these two things are obviously inter-connected and to some degree mutually inclusive.

Although since 1994 this system of segregation has ceased to exist, and electoral reform meant the black population gained political power literally overnight, the living conditions of black and 'coloured' people is still far below that of the white population. To all intensive purposes racial segregation, although not legally enforced, still exists in South Africa and tension between these ethnic groups is still a major issue. Despite calls for calm from both sides of the political and racial divide, the reaction to the brutal murder of white supremacist and Afrikaner Weertstandsbeweging leader Eugene Terreblanche has shown that racial reconciliation is far from being realized in the rainbow nation.[22]

2.2 Guatemala

Guatemala's civil war must be viewed within the context of colonialisation. The Ladino population, which constituted around 40 per cent of the population during the time of the conflict, are mixed descendents of the Spanish *Conquistadores* and the country's indigenous population. This ethnic group subjugated the indigenous Mayan population to economic, political, social and legal discrimination. This discrimination was enforced by a military regime and led to the deaths of many thousands of Mayan people, particularly in remote rural areas. Fletcher argues that in many respects this conflict had an ideological substrate, yet issues of racial identity were very significant as well. After diplomatic intervention by the UN, the Oslo Accords of 1994 called for the creation of a commission of inquiry into human rights abuses in Guatemala.[23]

2.3 Sierra Leone

The legacy of colonialism was a significant factor in Sierra Leone's civil war, which occurred between 1991 and 2002. In essence, the colonialists created a system that gave political and economic power to the country's landowner population, to the detriment of the country's other thirteen ethnic groups.[24] The reasons for war were essentially socioeconomic, with control of the country's diamond mines being pivotal in this respect.[25] By 1991 the rebel Revolutionary United Front, led by Foday Sankoh, and the Armed Forces Revolutionary Council, to whom they were allied, began attacks on villages in the eastern provinces of Sierra Leone in opposition to President Momoh's All Peoples Congress Government.[26] The eleven-year civil war that ensued led to the displacement of around 50 per cent of the country's population of 4.5 million, with at least 50,000 killings and over 100,000 mutilations carried out by the RUF and the AFRC. The use of child soldiers and sex slaves was also a prominent feature of the RUF and AFRC's actions.[27] With UN and international intervention, both diplomatically and militarily, a peace agreement was signed between the Sierra Leone Peoples Party Government, headed by President Kabbah, a former UN diplomat, the RUF and the AFRC in 1999.[28] Article XXVI of the Lome Agreement called for an independent truth commission to be established to look into the events of the civil war, primarily by "provid[ing] a forum for both the victims and perpetrators of human rights violations to tell their story." In 2000, the Truth and Reconciliation Commission Act was passed. A resurgence of violence from the RUF led to a two year delay to the start of the Commissions' proceedings, and the Government later asked for the Commission to be created and co-managed by the UN.[29]

3. Concepts of Truth: Practical and Epistemological Issues

Since the establishment of truth is one of two main objectives of truth commissions, it is crucial to understand how each of the commissions defined this concept. Only then is it possible to judge whether, and to what degree each of the commissions was able to fulfill the mandates assigned to them. To this end, historians must engage in epistemological and philosophical debates regarding the conceptualization of truth in each of the commissions' reports. Hayner's belief that the truth is largely known by all sides, and that the job of the commissions is largely to acknowledge it,[30] belies the inherent complexities of such a challenge. As Chapman and Ball acknowledge, 'Social, technological and methodological constraints, as well as epistemological limitations of what can be known, all affect a commission's ability to produce an authoritative account'.[31]

Although established after the much-lauded SATRC, the Guatemalan CEH did not make the same attempts to qualify the different levels of truth that the SATRC saw as crucial to its work. Whilst the Commission did recognize that 'social' truth existed, and it did attempt to fuse legal, anthropological, scientific, economic and sociological approaches to truth,[32] the CEH made no attempts to distinguish this 'social' truth from an overall, all-encompassing

conceptualization of the truth in the production of its report; the concept is only ever referred to as 'the truth'.[33] Moreover, the word 'truth' is conspicuous by its absence in the name of the Commission, and symbolic of the painstaking peace negotiations between the UN, the Government and the URNG in creating the Commission in the first place. As far as the Commission was concerned, the 'truth' would reveal itself naturally, through the collection and processing of victim and perpetrator testimony.[34]

In its attempts to address the issues of how to define what is meant by 'truth', the SATRC differed from all of the truth commissions that had preceded it, and produced a framework that was later to be copied by the SLTRC, although not the CEH. The South African model understood the epistemological limitations of approaching truth from a purely *a priori* perspective. In taking a post-modernist outlook on truth, the Commission did not simply refer to 'the truth' but rather recognized the subjective and differential nature of this concept. The report stated 'it was not enough simply to determine what had happened. Truth as factual, objective information cannot be divorced from the way in which this information is acquired; nor can such information be separated from the purposes it is required to serve'.[35] The SATRC distinguished between four types of truth; 'factual or forensic truth; personal or narrative truth; social or 'dialogue' truth and healing and restorative truth.'[36] Unlike the truth commissions that had preceded it, and unlike the CEH, the SATRC saw the latter three truths as goals to be achieved.[37]

The SATRC was also aware that truth existed on two fundamental levels.[38] Firstly, there is micro-truth, which refers to private, individual truth, and which is the product of people's own personal experiences. Using computer software, the SATRC hoped to amalgamate the sum of all these individual experiences, their location and magnitude, in order to establish general trends and patterns of violence.[39] Yet, under the terms of the mandate, the SATRC was also charged with establishing 'the antecedents, circumstances, factors and context of such violations'.[40] An understanding of these things would reveal a public, macro-level truth. It was this conception of truth that was to form the basis of the final report. The SLTRC, borrowing almost verbatim from the SATRC, also categorized the truth into these four parts.[41] Clearly, then, there was a definite attempt made by both of these commissions to deal with the epistemology of truth.

However, neither the SATRC, despite being the most self-aware of these three commissions, nor the SLTRC, which adopted similar conceptualizations of truth, have escaped criticism regarding their quest for a deeper level (or levels) of truth. Some of the problems were hardly the fault of either commission, and some criticisms of the SATRC's ability to uncover these truths are perhaps fairer than others. One of Chapman and Ball's criticisms of the SATRC was that it was unable to reconcile micro and macro-truths.[42] However, this criticism seems somewhat redundant. Firstly, Would it *ever* be possible to reconcile these truths? Isn't the point in categorizing these truths to show that truth exists at many different, and separate levels? To try and force them into one overall truth would seem to negate the efforts made to consider the epistemological problems of such a task. Even if it were possible to amalgamate the two, there is little way of knowing how this would affect the overall goal of achieving reconciliation.

Another problem beyond the control of each of the commissions was how accurate the testimonies of victims could be, given the effects that trauma has on a person's ability to remember. Thirdly, one may question the degree to which the testimonies of 21,000 people, in the SATRC's case, can be seen to be representative of a population of 40 million.[43] In Guatemala, of the many thousands of victims documented by the CEH, testimonies regarding the abuses were forthcoming from only 15 per cent, with only 50 per cent of these testimonies coming from the victim themselves. Therefore, victim testimony to the CEH was just 7 per cent.[44] What were the reasons for more people not wanting to come forward, and what effect might this have had on the overall version of history that the SATRC wrote? Yet this, like the last limitation, is a problem that all truth commissions face.

Some serious questions have been raised about the ways in which the SATRC in particular used the data it collected in order to create the version of history as seen in the report. To begin with, one may question the legitimacy of using such data to produce an 'authoritative' account. Over three years, some 21,000 testimonies were taken by the SATRC, yet 50 per cent of these were from the families of witnesses, not from the victims themselves (sometimes for obvious reasons). Therefore, this does beg the question; whose truth is it that is being revealed? Secondly, studies have shown that there was an over-representation of testimonies from Afrikaners and Boers, thus further skewing the results.[45] A similar situation occurred in the data assimilation of the CEH. Chapman and Ball also note that the CEH

focused more on the plight of the Indian population in the highlands in the 1980's than on abuses suffered by the Ladino population in the 1960's.[46] Of the original 21,000 testimonies taken by the SATRC, 1800 of these testimonies were selected for public hearing. Many scholars have questioned what criteria were used by the SATRC to decide which should be heard in public. Some scholars have suggested there is evidence that the SATRC picked testimonies that seemed to be representative of the overall pattern of violence the SATRC was hoping to demonstrate.[47]

It is this last criticism that is possibly the most crucial of those raised. Connected to the above criticism, Chapman and Ball argue that 'framing acknowledgement as a distinct kind of truth suggests that restorative truth (and the resulting reconciliation) might somehow be different from (or even contradictory to) the forensic, legal truth demanded by the CEH witnesses'. They therefore pose the question; 'was the [SA]TRC a "truth and reconciliation commission", or a "truth *or* reconciliation commission? … When the [SA]TRC faced decisions between pursuing truth or reconciliation, they chose reconciliation.'[48] This can also be seen in the exaggerated blame assigned to ANC members and the black population in the Commission's final report. Head Commissioner Desmond Tutu's desire to attribute blame more evenly, so as to engender more support from the Afrikaner population is indicative of the primacy given to reconciliation over the truth. The rationale behind the 'third way' in the first place was that *retributive* justice for the victims of abuses would have to be sacrificed in order for the truth to be revealed. If the truth commissions then sacrifice the truth in favour of reconciliation, without any guarantee that the latter will be achieved, this does raise the question of whether the victims got anything from the process at all. This becomes particularly pertinent when one considers that the perpetrators were, albeit conditionally, granted amnesty in return for this truth.

In essence, although the SATRC and SLTRC went to great lengths to conceptualise the levels of truth they hoped to procure, the processes by which testimonies were assimilated somewhat nullified their understanding of epistemology. If future truth commissions are to learn anything from this, it is that in reality even the most self-aware of truth commissions will taint the truth that they have procured from the victims, whether unwittingly or not. Whether there is any way around this problem remains to be seen, yet as long as post-conflict states choose to use this mechanism for transitional justice, they run the risk of creating, albeit with good intentions, another type of victors' history**.**

4. Mandates, Operations and Procedures

The juridical boundaries of each of the commissions' investigations are dictated by their mandates, as stipulated in the acts that called for their creation. The question here is whether the strength of the mandate has a significant effect on the overall capacity of the commission to achieve its overall goals; truth and reconciliation.

On first glancing at the mandates of the three commissions, one would assume that the CEH remit of investigation was much broader in terms of the scope and depth of the investigations it was required to carry out. As CEH High Commissioner Christian Tomuschat recalls, given that the Oslo Accords stated that the 36 years of military dictatorship from 1960-1996 be investigated, 'to require that the CEH investigate "the" human rights violations – textually meaning "all" human rights violations committed during the relevant years… amounted from the very outset to the overburdening of the CEH'.[49] Guatemala did not have recourse in a strong, impartial judicial system, let alone the powers of *subpoena* and search by which to obtain evidence from the military, so the task afforded to them was highly unrealistic. The commissioners, looking at similar problems faced by analogous commissions in Chile and El Salvador, therefore had to interpret the terms of reference of the CEH in a manner that would allow for a narrower investigation into these abuses. Priority was thus given to extrajudicial killings, forced disappearances and sexual violations. The Catholic Church, believing the structurally weak and overburdened CEH would collapse under its own weight, established their own investigation; The Recovery of Historical Memory (REHMI) Project. The report, entitled "Nunca Mas!" (No More!), published in 1998, reported on some 55,000 but, but due to fears for the safety of witnesses, it decided against naming names.[50]

However, the saving grace of the CEH's mandate came in the section of the Oslo Accord entitled "Funcionamiento: … Los trabajos, recomendaciones, e informes de la comision *no individualizaran responsibilidas*",[51] without which the Commission may very well have collapsed under its own weight. In being prohibited from investigating or naming

individuals believed to have committed human rights violations, the CEH was forced to look instead at the institutions and sections of society that were responsible for these violations. The final report of the CEH drew on the data assimilation from 7200 testimonies[52] and documented the killings of 200,000 persons, the disappearance of a further 50,000 and the displacement of one million of the country's Mayan population.[53] In this sense, the Commission did not strictly adhere to the terms of reference as stipulated by the Oslo Accords, but it did adhere to the more salient mandate of the CEH; to attempt to provide a history of atrocities under the military regimes in order to attempt an explanation of the phenomenon of genocide that had occurred. Although the identities of the perpetrators of these crimes would never be revealed, it is virtually impossible that a Commission with a temporal jurisdiction of just six months, beginning from the signing of the peace accords, (with a less-than-magnanimous option granted to them of extending their work for a further six months), would have been able to identify the perpetrators of even a fraction of the 200,000 killings.[54] Thus, attempts by the Guatemalan Government to ensure impunity for those involved resulted in the ability of the CEH to uncover a much more complete picture of the patterns of abuse, and the institutions that were therein complicit.

The commissioners' interpretation of the SATRC mandate, as stipulated by the Promotion of National Unity and Reconciliation Act No. 34, sought actively to achieve the type of truth that the CEH was forced to pursue. The SATRC mandate, as stipulated by the Act was to:

[establish] as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from I March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations.[55]

Of importance here is the reference to the 'antecendents, circumstances, factors and context of such violations'. This in theory allowed the SATRC to produce a comprehensive history of events that, by looking at the involvement of big businesses and corporations, the judicial institutions and the police force, would allow *patterns* of abuse to be uncovered. This would in theory also allow for a better understanding of these institutions' influence in the maintenance of inequality and the subordination, both socially and economically, of the black population on a geographical basis. Whilst a geographical understanding of human rights violations was produced, to a limited degree, by a mapping of the locations of the 21,000 witness testimonies that were given to the commission, the SATRC's references to these institutionalized abuses were somewhat downplayed. Perhaps, as before, this was due to the primacy given to reconciliation and national healing, rather than an extensive exposé of institutional abuse.

The SLTRC mandate was almost identical in wording to that of the SATRC, further proof of the SATRC's influence over the way future truth commissions have been formed. However, there were several differences in the operative powers of the SLTRC that limited its ability to procure the macro-level truth it quested for. It did not have significant powers of *subpoena,* nor amnesty. In place of these powers was the Special Court for Sierra Leone (of which more later) that hindered the SLTRC's ability to gain the trust of belligerent parties. In fact, the 2006 Report by the Sierra Leone Working Group on Truth and Reconciliation concluded that the process was 'deeply flawed', giving special attention to the failures resulting from the fractious relationship of the Commission and the Court.[56] Much has been made of this relationship, as shall later be discussed, since the SCSL greatly impeded on the SLTRC's ability to perform its mandate, especially with regard to its ability to get RUF members to trust the Commission. If future truth commissions are to establish their own special courts to work alongside a truth commission, more attention will have to be paid to the effect the relationship between the two has on the commission's ability to pursue its mandate.

5. Judicial Powers

5.1 Amnesty

The SATRC was the only one of the three commissions discussed here to have any powers to grant amnesty in any real sense. As Jenkins observes, 'although the South African TRC has inspired a new generation of truth commissions in Africa and around the world, the amnesty process has never been repeated.'[57] The Act that called for the creation of the SATRC also created three sub-committees; the Committee on Human Rights Violations, the

Committee on Reparations and Rehabilitation, and the Committee on Amnesty. The latter was given the power to grant conditional amnesty to applicants who achieved, amongst some others, two essential criteria; they had committed the violation as part of a political action, as oppose to a regular murder, and that they give public testimony before the SATRC. Over the three years of its existence, the SATRC received some 7000 applications, with only 1167 of these being granted.[58] The idea behind this was to procure the truth, using amnesty as the gambit. As the TRC process got underway, there was more and more resentment amongst foreign governments, NGO's and victims towards this policy. Throughout the trial, there were numerous cases in which it appeared the witness withheld information, or embellished the truth, simply as a means to receive amnesty for their crime. The fact that no other country has pursued such a policy of truth for amnesty perhaps attests to the optimism of those that believed that the truth would do away with the need for retributive justice. The use of amnesty was not pivotal to the overall findings, despite it being one of the hallmarks of the SATRC process, since the number of witness testimonies far exceeded that of successful amnesty applicants.

With regards to the CEH, the signing of the National Reconciliation Law in 1996 essentially made sure that the CEH had no involvement in the determination of the consequences of abuses with regards to penal law.[59] The Law itself was an essential component of the CEH's overall process, since it gave blanket amnesty to the perpetrators apart from those who were believed to have committed acts of genocide, as in accordance with the International Convent on Civil and Political Rights. Contemporaneously, there were unfounded worries that the Law could be interpreted to include amnesty for acts of genocide. Human rights activists Helen Mack and Frank LaRue contesting the constitutionality of this Law, stating the pre-eminence of international law in Guatemala's constitution.[60] However, without the Law the CEH would certainly have been overburdened if it had itself been forced to apply by analogy the international laws regarding amnesty.[61]

5.2 Subpoena

Of the three commissions under scrutiny, only the CEH did not have powers of *subpoena.* The question here is whether this actually made any difference to the ability of each of the commissions to establish the truth. Originally, the SLTRC was given extensive powers to 'issue summonses and subpoenas as it deems necessary in fulfilment of its mandate.'[62] However, in the three years following the signing of the Lome Agreement, continued acts of violence from the RUF saw these powers all but repealed. Instead, and with the help of the UN, the SLTRC was established alongside a Special Court for Sierra Leone (SCSL), which looked to prosecute those that were believed to have committed the most heinous of crimes during this time. The creation of the SCSL posed significant problems for the Commission. Not only had the Commission now lost most of its powers of *subpoena,* members of the belligerent sides were now skeptical about giving testimony to the Commission, for fear that the information provided to the Commission could be used against them as evidence in court. It was the SCSL's power to *subpoena,* and not the limited *subpoena* powers of the SLTRC, that was the cause of many conflicts between the two institutions. Consequently, for the first period of the Commissions' existence, it saw very few witnesses from the RUF come forward.[63] Added to this problem was the attitude, perceived or otherwise, of UN-picked American Prosecutor David Crane, who, as Tim Kelsall observed, 'approached the task with nearly religious fervor as the representative of Western law and beliefs'.[64] However, once they understood that the SLTRC would not divulge any information to the SCSL, and David Crane had given assurances to similar effect, there was an influx of RUF members who came to give testimony. In this sense, the fact that the SLTRC could not issue extensive *subpoenas* was mitigated by the willingness of members of both sides to come forward once they had been given such assurances.

Yet it was not only the perpetrators who did not understand the relationship between the SLTRC and the SCSL. No formal set of agreements had been made prior to the establishment of the SCSL as to how it might interact with the SLTRC throughout the duration of their existences.[65] This became a particularly pertinent issue with regards to the trials of child soldiers. Unlike the Rome Statute, which defines the age of an adult soldier as being over 18, the SCSL held that anyone over the age of 15 should legally be considered liable for prosecution in an adult court. It was the belief of the UN and the SLTRC alike that such issues were better dealt with by the Commission.[66] Although this was finally agreed by each of the institutions, it did highlight the complexities and inherent paradoxes of establishing a truth commission alongside a criminal court. If future commissions are to consider such a hybrid solution, they must first clarify the exact nature, jurisdiction and legal primacy within the relationship of likewise institutions.

The CEH, as mentioned, did not have powers of *subpoena.* Given that they were not allowed to name perpetrators, it would have been bizarre if they did have such powers. Throughout the process the CEH was hindered by the brick-wall response of the military establishment However, the main achievement of the CEH, despite its lack of official acknowledgement, was in its ability to report on the involvement of these institutions. The CEH did, after all, conclude that 'the Guatemalan state, which includes the army, paramilitary groups and other security forces, was responsible for 93% of the human rights violations that occurred during the internal armed conflict. The guerrilla was responsible for 3% and other unidentified groups for 4%.'[67] In contrast, the REHMI Project, whose very existence was due to the low expectations the Catholic Church had of the ability of the CEH to establish the truth, assigned a relatively low 79.2% of responsibility to the armed forces.[68] In any case, *subpoenas* could not have been used by the CEH without recourse to the Guatemalan Judiciary Institution. Given that the judicial system had the propensity to favour those associated with the military regime, the use of these courts for the requesting of subpoenas would have compromised the impartiality of the Commission.[69]

In essence, although it would have helped if the CEH had such powers, the end result in this circumstance would likely have been the same.

South Africa was the only one of these truth commissions to have the power of *subpoena* in any meaningful sense. However, it made very little difference in terms of it findings, principally because the SATRC put more emphasis on the victims than on the perpetrators. *Subpoenas* were not seen by the SATRC as the best way of obtaining evidence, and when they were used, were shown to be incredibly ineffective. P.W. Botha was *subpoenaed* by the Commission, but later had this repealed in court. Similar stories were true of the majority of cases in which *subpoenas* were issued. As Fletcher notes, one of the bizarre things about truth commissions is that there seems to be an inverse relationship between the strength of the judicial system and the extent to which it is used.[70] In this case, the power to *subpoena* contributed very little to the overall outcome.

6. International versus Independent Commissions

Another question that bedevils scholars of transitional justice is whether the presence of international involvement, particularly that of the UN, in the creation and co-management of these commissions can be shown to make any difference to their overall efficiency and outcome. Although it would be foolish to make any general conclusions regarding this question on the basis of the experiences of just three commissions, it seems there are few areas within the commissions of Sierra Leone and Guatemala in which the UN truly showed its worth. In many respects, the SATRC proved to be much more competent on its own.

In what ways, then, did the UN actually help in the establishment of the CEH and the SLTRC? Certainly, the UN did play an important role in the signing of both the Oslo Accords and the Lome Agreement. With regards to the former, it is unlikely that the URNG would have had such a strong voice at the negotiation table had it not been for the imposition of the UN between the URNG and the Government of Guatemala. There can be little doubt that the Guatemalan Government showed minimal enthusiasm regarding the establishment of the Commission, doing what they could at the negotiating tables to minimize the strength of the CEH. Certainly, the URNG became increasingly warm to the idea of UN presence. As Jonas writes, 'by late 1993, "the URNG came to appreciate more clearly the necessity of UN involvement in getting its full agenda discussed and reaching binding agreements"'.[71]

In both cases, the UN assisted with the selection of the commissioners. The purpose of this was to give the commissions a sense of impartiality; only if the perpetrators trusted that the commissions were not just instruments of the State would they come forward to give testimony. Commissioners were chosen from the respective countries as well as from the international community, and from varying fields of expertise as deemed relevant to the work of the commissions. In this respect, Guatemala's CEH was the first to have a foreigner head the Commission; Christian Tomuschat, a German law professor and former UN Special Expert on Human Rights for Guatemala. In the case of the SLTRC, although Sierra Leonean Dr. Rev. Joseph Humper headed the Commission, three of the remaining six commissioners were chosen from overseas. As Hayner writes, 'some Sierra Leonean observers worried initially that the Sierra Leonean members may be too aligned, as a group, with the current governing party, but the internationalization of the Commission has helped to offset this concern'.[72] In a similar way, the UN arguably had

an important psychological effect on the victims and their families. The presence of foreign influence created some degree of confidence in these people that the commission will be able to achieve its objectives. Moreover, UN presence added pressure on the Government to cooperate with the commissions and implement the recommendations put forth in the report.

However, whilst it is often presumed that UN presence is invaluable in such peace processes, UN involvement in the negotiations of the Oslo Accords can hardly be called a resounding success, nor can their subsequent involvement in the CEH. The conditions that were agreed on vis-à-vis the powers of the CEH were nothing like as strong as those of the SATRC. The CEH was not allowed to name individuals who were involved in the systemic human rights abuses, nor did it have powers of subpoena or amnesty. It had a budget of just $9 million, which, although larger than any of the previous Latin American commissions, was still a paltry amount considering the huge remit of the investigation.[73] Therefore, the UN's presence at the negotiating table did little to ensure the establishment of a strong truth commission.

The ability of the UN's presence to draw international attention is perhaps also not as great as one would assume. The brutal murder of Guatemalan anthropologist Myrna Mack, who had been working in the highlands, arguably gained more publicity and forced Guatemala into the consciousness of the rest of the world; 'the campaign that developed around her death was more intense than anything previously in Guatemala's record of assassinations' and 'made it impossible for the government to ignore the issue'.[74] Perhaps most significantly of all, eleven years since the publication of the CEH's report, the Guatemalan Government is yet to officially recognise it.[75] As a consequence, 'the CEH report has hardly been disseminated in Guatemala at all. Even though, between 1999 and 2000, the report's conclusions were translated into seven of the 20 Mayan languages, the complete report was published in Spanish only. It is currently extremely difficult to obtain'.[76]

Aside from the help in negotiating the Lome Agreement, the presence of the UN, and the actions it undertook, often impeded with the work of the Commission. The SLTRC's budget, a mere $6.27 million compared with the Special Court's budget of $58 million, clearly shows the preferential treatment given to the SCSL.[77] The temporal jurisdiction, as with the CEH, was limited to just 18 months.

With respect to the above variables, the SATRC was almost the polar-opposite. As has been seen, it had powers of amnesty, *subpoena* and search. Furthermore, all of its 17 commissioners were South African citizens and its budget for the 1996/7 fiscal year *alone* was $69.419 million, with around $253 million in donations from international sources, such as NGO's and foreign governments.[78] Owing largely to the celebrity of Nelson Mandela, who, as President of the Republic decreed the Commission, and Desmond Tutu, who carried significant moral weight, the profile of the Commission across the world was much bigger than that of the other two commissions, with the daily radio transmission of the SATRC hearings being picked up across the world. Such global interest in the Commission, due in part to the phenomenal scale of it, meant that even without UN backing, there was considerable pressure on the government to acknowledge its findings, disseminate the report both domestically and internationally, and act upon the recommendations given to it by the Commissions' report.

Of course, it would be absurd to argue that the UN was not needed in both the CEH and SLTRC. As stated, there is little chance the peace accords that established the commissions of Guatemala and Sierra Leone would ever have been signed if it weren't for the assistance, diplomatically, militarily and monetarily, of the UN. Furthermore, the South African case is somewhat of an anomaly, and should not be used as a yardstick to measure the successes of other commissions, especially regarding its budget. It would, then, be absurd to make any wider conclusions regarding the efficacy of UN involvement in future truth commissions, however, it does seem that the level to which the UN is held in high regard is disproportionate to its ability to help in the formation of truth commissions, even if it is instrumental in calling for their creation.

7. The Aftermath – Reparations and Recommendations

As Hayner observes, 'the record of implementation of Truth Commission recommendations has been among the weakest aspects of truth commissions to date'.[79] Of course, the responsibility to implement such measures lies

with the incumbent Government, yet it would seem reasonable that, to some degree, one criterion for establishing the success of each of the commissions is the extent to which the recommendations made by the commission to the Government have been implemented. Although in each of the countries, steps have been made to give reparations to the victims and their families and changes have been made to the respective constitutions and judicial institutions, on the whole there has been little attempt from each government to implement these recommendations. It seems that, despite rhetoric to the contrary, the respective truth commissions, although less so with the SATRC, were seen as nothing more than political expedients allowing for a line to be drawn under the period under scrutiny.

The Oslo Accord stated that part of the Commission's mandate was to "recommend, in particular, measures to preserve the memory of the victims, to foster a culture of mutual respect and observance of human rights and to strengthen the democratic process." In such light, the CEH recommended that more should be done to strengthen the democratic process. This has been achieved to a limited, yet noteworthy degree;

the establishment of the Public Prosecutor's Office as an autonomous institution (1993); the removal of military jurisdiction for common crimes committed by army members (1996); the creation of the National Civilian Police and the Public Defender's Office (1997); the creation of the Coordinating Body for the Modernisation of the Justice Sector (1997); the creation of judicial and civil service professions within the judiciary (1999); the passage of the Penitentiary System Law; the creation of the National Institute for Forensic Sciences (2006)[80]

In general, however, a study by Impunity Watch found that the Government 'did not acknowledge the content of its report or duly support the implementation of its recommendations'.[81] Furthermore, the Government has failed to lustrate any of the officials found to be complicit in human rights abuses, nor has it yet established a civilian commission to examine the conduct of the military elite or other armed personnel. There have also been no reparations handed out to the victims.[82] With the Government unwilling to recognise the CEH report, it seems unlikely that any major change will occur in the near future.

The SATRC made substantial recommendations to the Government. Most importantly it recommended that monetary reparations, amongst other types, be given to the victims and their families through the establishment of the Reparation and Rehabilitation Committee. The amount, it was suggested, should not exceed more than R 23,023 (approx. £2,302) per victim per year. Multiplied by the number eligible for such reparations, the total figure would be R 864,400,000 over six years.[83] The Government opted for a figure quarter of this amount. With regards to lustration, the SATRC deemed that this would not be appropriate in the context of South Africa, since implementation of such a policy would likely be in contravention of International Law.[84] Many of the other recommendations made by the SATRC were symbolic in gesture, such as the need to 'reach out to fellow South Africans in the spirit of tolerance and understanding',[85] which is hard to measure, and therefore easier for the Government to avoid implementing.

A 2008 report entitled 'the state of Human Rights in Sierra Leone' does not seem too enthusiastic about the chances of many of the SLTRC's recommendations being fulfilled. In the 99 pages of the report, the recommendations made by the SATRC feature only twice, taking up only slightly more lines of the page. It asks only two things of the Government; that the President publicly apologise for the conflict, especially to women, and that it expedite the establishment of the Special Fund for War Victims.[86]

8. Conclusions

As stated in the beginning of this discussion, the phenomenon of the truth commission is still a very recent one. Scholars of transitional justice are still grappling with the ways in which one might attempt to assess the efficacy of different aspects of truth commissions to achieve their objectives. One of the problems at this stage is knowing which questions need to be asked, let alone what the answers to those questions might be. Therefore, with regards to the aspects of the commissions discussed, any conclusions made must be tempered with an understanding of the contextual differences that exist between each of the commissions.

With regards to the epistemological limitations of creating a history of events, there can be no doubt that the South

African Commission provided a framework, adopted almost verbatim by the SLTRC, for conceptualizing truth that was far superior to that of the CEH. Whilst there were undoubtedly many weaknesses with the South African approach, not least its tendency to handpick testimonies that seemed to corroborate the overall pattern that was emerging, it seems unlikely that, within the general model of truth commissions, much more could be done to take into account the complexities of this issue.

With regards to amnesty, 'some would argue that a discussion on amnesty and prosecutions should never be conducted in isolation from the question of reparations' since they represent 'the *"haves" and the "have-nots" in society'.[87]* It seems imperative that if such powers are to be bestowed upon a commission, powers to allocate reparations payments should also be given to the commission. If perpetrators are granted amnesty in return for the truth, the victims should also receive something. Monetary reparation is the most requested form of reparation sought by victims. In countries such as South Africa, in which socioeconomic subjugation caused huge differentials in living standards, the need for access to such things as housing, electricity, water, and healthcare, or money by which these necessities can be paid for, seems to be of much more importance to these people than the procurement of truth, whoever's truth it might be.[88]

In terms of the mandate, a couple of important observations can be made. The temporal jurisdictions of the SLTRC and the CEH were, without doubt, too short; 18 months seems an adequate amount of time for the writing of such a report, but too short a time to investigate such systemic human rights violations. Since the purpose of such commissions is to help restore the dignity of the victims, once they are invited to come before a commission, the commission must be able to hear the testimonies of these victims. To turn them away would endanger the work of the commission, and its legitimacy as a mechanism for transitional justice. Had the CEH been granted powers of subpoena and amnesty, and thus the ability to summon members of the military, this process would have required even longer. Similarly, had its mandate not prohibited it from investigating individuals, the number of cases that would have fallen within its remit would have suffocated the commission. However, one must not lose sight of the fact that these commissions are to be used as transitional justice mechanisms, with the emphasis perhaps more on 'transitional' than 'justice'.

Secondly, as shown by Guatemala, unpredictable results can occur when forming the mandates. Whilst it seems probable that, given the chance to return to the negotiating table in Oslo, the Guatemalan Government would again have refused to allow the naming of individuals, there is little doubt that they could have predicted the effect this had on the ability of the CEH to establish such a consummate understanding of the role of key institutions in the country's civil war.

The debate regarding the causal assumptions about this model of transitional justice will likely continue for years to come, especially in the field of anthropology. Indeed, Shaw argues that truth commissions can help by challenging the official version of past events and allowing a platform for victims to be heard, yet their ability to achieve their titular mandate is hugely overestimated. They quest for a particular truth that does not exist, and assume that whatever, and whoever's, truth they establish can be the basis for both individual and national catharthis.[89] Wilson and Hamber conclude that "nations do not have collective psyches which can be healed, nor do whole nations suffer post-traumatic stress disorder and to assert otherwise is to psychologize an abstract entity which exists primarily in the minds of nation-building politicians", therefore negating one of the core elements of truth commissions' mandates.[90] For Kelsall, a highly symbolic and emotionally charged service held on the last day of the SLTRC, in which perpetrators received blessings and forgiveness from both the Commissioners and the victims, did much more than the hearings themselves to foster reconciliation.[91] So maybe it is the symbolic nature of such mechanisms that does more that anything else to foster reconciliation.

Yet perhaps the issue that is likely to cause the greatest debate amongst historians in the future is the paradigm shift in the way that histories of past events are created. Does the fundamental process by which all truth commissions procure the truth inherently weaken the truth as it is eventually perceived, and thus the version of history that is created? In the first instance, the victim of such crimes may provide a distorted view of the truth, either to serve their own ends, for example in order to qualify for reparations payments, or because of the effects that the traumatic experience had on their ability to recall in detail what actually happened to them. From this point, the testimony will

evolve somewhat as it is interpreted by those, such as the commissioner and the transcriber, who listen to the testimony. From here, the testimony will be incorporated into the commission's report, where it will then be studied by citizens and academics alike, each of whom will impose their own expectations about the event, as perceived as part of an overall picture of events. Therefore, in going through such a lengthy process, does the version of truth, and thus history, that is produced at the end of this process bare any resemblance to the truth that was originally experienced by the victim?[92] This paradigm shift towards a democratisation of history is likely to fuel great debate in the coming years by those that seek to understand the role that truth commissions play in the formation of history.

6. Bibliography

6.1 Primary Sources

South Africa

Truth and Reconciliation Commission of South Africa Report, (London: Macmillan, 1999), 1-5

Office of the President, No. 34 of 1995, Promotion of National Unity and Reconciliation Act No. 1111 (26 July, 1995), reproduced at http://www.fas.org/irp/world/rsa/act95_034.htm; accessed 20 December 2009

Kubheka. T, 'The South African Truth and Reconciliation Commission: Data

Processing', in Ball. P, Spirer. H.F, Spirer. L, *Making The Case: Investigating Large Scale Human Rights Violations Using Information Systems And Data Analysis,* (American Association for the Advancement of Science, 2005), pp. 41-94

O'Sullivan. G, 'The South African Truth and Reconciliation Commission: Database Representation', in, Ball. P, Spirer. H.F, Spirer. L, *Making The Case: Investigating Large Scale Human Rights Violations Using Information Systems And Data Analysis,* (American Association for the Advancement of Science, 2005), pp. 95-136

Sierra Leone

Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission, (Graphic Packaging, 2004), 1-3b, reproduced at, http://humanrightsdoctorate.blogspot.com/2009/11/sierra-leone-truth-and-reconciliation.html; accessed 20 December 2009

Truth and Reconciliation Commission Act 2000, Parliament of Sierra Leone, 2000, reproduced at, http://web.archive.org/web/20051230045239/www.sierra-leone.org/trcact2000.html; accessed 20 December 2009

Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, Lomé, Togo, July 7, 1999, reproduced at, http://humanrightsdoctorate.blogspot.com/2009/11/sierra-leone-truth-and-reconciliation.html; accessed 20 December 2009

Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, reproduced at http://www.afrol.com/Countries/Sierra_Leone/documents/un_sil_court_041000.htm; accessed 18 January 2010

Human Rights Commission of Sierra Leone Report: The State of Human Rights in Sierra Leone, 2008, (2008),

Guatemala

Report of the Commission for Historical Clarification: Memorio Del Silencio, (1999), reproduced at, http://shr.aaas.org/guatemala/ceh/report/english/toc.html; accessed 20 December 2009

Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan people to suffer, 23 June 1994, Guat.-U.R.N.G.-U.N., 36 I.L.M., 283 (1997), reproduced at http://www.un.org/Depts/minugua/paz6.htm; accessed 20 December 2009,

Ball. P, 'The Guatemalan Commission for Historical Clarification: Generating Analytic Reports', Ball. P, Spirer. H.F, Spirer. L, *Making The Case: Investigating Large Scale Human Rights Violations Using Information Systems And Data Analysis,* (American Association for the Advancement of Science, 2005), pp. 259-286, reproduced at, http://shr.aaas.org/guatemala/ceh/ceh.htm; accessed 20 December 2009

Scheibreithner. E, 'The Guatemalan Commission for Historical Clarification: Generating Analytical Reports', in, Ball. P, Spirer. H.F, Spirer. L, *Making The Case: Investigating Large Scale Human Rights Violations Using Information Systems And Data Analysis,* (American Association for the Advancement of Science, 2005), pp. 245-258, reproduced at, http://shr.aaas.org/guatemala/ceh/ceh.htm; accessed 20 December 2009

Sequiera. H, 'The Guatemalan Commission for Historical Clarification: Database Representation', in, Ball. P, Spirer. H.F, Spirer. L, *Making The Case: Investigating Large Scale Human Rights Violations Using Information Systems And Data Analysis,* (American Association for the Advancement of Science, 2005), pp. 223-244, reproduced at, http://shr.aaas.org/guatemala/ceh/ceh.htm; accessed 20 December 2009

Impunity Watch, *Recognising the Past: Challenges for the combat of impunity in Guatemala,* (Impunity Watch Publications, 2008), pp. 1-40, reproduced at http://www.impunitywatch.org/en/publication/30; accessed 15 March 2010

6.2 Secondary Sources

Books

Hayner, P., *Unspeakable Truths: Confronting State Terror and Atrocity,* (New York; Routledge, 2001)

Huntington, S., *The Third Wave: Democratisation in the Late Twentieth Century,* (University of Oklahoma Press, 1991)

Jonas, S., *Of Centaurs and Doves: Guatemala's Peace Process,* (Westview Press, 2000), pp. 37-68

Keen, D., *Conflict and Collusion in Sierra Leone,* (James Currey: Palgrave, 2004), pp. 1-9, 302-303

Mamdani, M., 'The Truth According to the TRC', in I. Amadiume, and A. An-Na'im (eds),*The Politics of Memory: Truth, Healing and Social Justice,* (London: Zed Books, 2000), pp. 176-183

Ntsebeza, D., 'Responding to the Symposium: The Legacy of the TRC', in Doxtader, E., Villa-Vicencio, C., (eds),*The Provocations of Amnesty: Memory, Justice and Impunity,* (Africa World Press, 2003), pp. 23-29

Shaw, R., *Forgive and Forget: Rethinking Memory in Sierra Leone's Truth and Reconciliation Commission,* (United States Institute of Peace, 2004), pp. 1-16

R. Seider, *Guatemala after the Peace Accords,* (Institute of Latin American Studies, 1998), p. 245-255

Tutu, D. *No Future without Forgiveness* (Doubleday, 1999), pp. 1-14

Articles

Allen, J., 'Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission', *University of Toronto Law Journal,* 49, 3, (1999), p. 315-353

Chapman, A. R., and Ball, P., 'The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa and Guatemala', *Human Rights Quarterly,* 23, 2, (2001), pp. 1-43

Du Piscani, J., and Kim, K., 'Establishing the Truth about the Apartheid Past: Historians and the South African Truth and Reconciliation Commission', *African Studies Quarterly,* 8, 1 (2004), p. 77-95

E. Evenson, 'Truth and Justice in Sierra Leone: Coordination between Commission and Court', *Columbia Law Review*, 104, 3 (2004), p. 730-76

Fletcher, L. E., Weinstein, H. M., and Rowen, J., 'Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective', *Human Rights Quarterly,* 31 (2009), pp. 163–220

Freeman, M. and Quinn, J. R., 'Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa', *Human Rights Quarterly*, 25, 4 (2003), pp. 1117-114

Graybill, L., and Lanegran, K., 'Truth, Justice, and Reconciliation in Africa: Issues and Cases', *African Studies Quarterly,* 8, 1, (2004), p. 1-18

Hamber, B., and Wilson, R., 'Symbolic Closure Through Memory, Reparation, and Revenge in Post-Conflict Societies', *Journal of Human Rights,* 1, 1 (2002), pp. 35-53

Hayner, P., 'Truth Commissions – 1974 to 1994: A Comparative Study', *Human Rights Quarterly*, 16, 4 (1994), pp. 597-655

Jenkins, C., 'They have built a legal system without punishment': reflections on the use of amnesty in the South African transition', Transformation, 64 (2007), pp. 27-65

Kelsall, T., 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly*, 27, 2 (2005) pp. 361-391

Kelsall, T., 'Politics, Anti-Politics, International Justice: Language and Power in the Special Court for Sierra Leone', 32 (2006), Rev. Int'l Stud., pp. 578-99

Laakso, J., 'In Pursuit of Truth, Justice and Reconciliation: The Truth Commissions of East Timor and South Africa' *Social Alternatives* 22, 2 (2003), pp. 48-54

Lamin, A. R., 'Building Peace Through Accountability in Sierra Leone: The Truth and Reconciliation Commission and the Special Court', *Journal of Asian and African Studies,* 38 (2003) pp. 295-320

Linton, S., 'Cambodia, East Timor and Sierra Leone: Experiments in International Justice', *Criminal Law Forum,* 12, (2001), pp. 185-246

Skaar, E., 'Truth Commissions, Trials – or Nothing? Policy Options in Democratic Transitions', *Third World Quarterly* 20, 6 (1999), pp. 1109-1128

Tomuschat, C., 'Clarification Commission in Guatemala', *Human Rights Quarterly,* 23 (2001), pp. 239-258

Websites

http://www.usip.org/resources-tools/latest; accessed 17 February 2010

BBC News Website, 5 April 2010; accessed 5 April 2010

http://www.amnesty.org/en/international-justice/issues/truth-commissions; accessed 1 February 2010

Pambazuka News, 3 February 2006, reproduced at, http://www.pambazuka.org/en/category/rights/32427; accessed 17 November 2009

[1] S. Huntington, *The Third Wave: Democratisation in the Late Twentieth Century,* (University of Oklahoma Press, 1991), p. 2

[2] J. Allen, 'Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission', *University of Toronto Law Journal,* 49, 3, (1999), p. 315

[3] Hereafter SATRC, CEH and SLTRC, respectively.

[4] D. Tutu, *No Future without Forgiveness* (Doubleday, 1999), p. 3

[5] The fact that after sixty-five years since the liberation of Auschwitz, there are still some who deny the holocaust ever happened is testament to the failures of such trials to produce an authoritative, undeniable account of these atrocities.

[6] A. R. Chapman, P. Ball, 'The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa and Guatemala', *Human Rights Quarterly,* 23, 2, (2001), p. 2

[7] L. Graybill, K. Lanegran, 'Truth, Justice, and Reconciliation in Africa: Issues and Cases', *African Studies Quarterly,* 8, 1, (2004), p. 8

[8] A. R. Chapman, P. Ball, 'The Truth of Truth Commissions', p. 2

[9] L. Graybill, K. Lanegran, 'Truth, Justice, and Reconciliation in Africa: Issues and Cases', p. 12. See also, E. Skaar, 'Truth Commissions, Trials – or Nothing? Policy Options in Democratic Transitions', *Third World Quarterly* 20, 6 (1999), p. 1110

[10] This figure depends upon the criteria used. The United States Institute for Peace lists 39 truth commissions including those still in session. See, http://www.usip.org/resources-tools/latest; accessed 17 February 2010. Amnesty International lists just 28. See, http://www.amnesty.org/en/international-justice/issues/truth-commissions; accessed 1 February 2010. Using the same criteria as Hayner, who is regarded by many as the authority on this subject, this author puts the number at thirty. See, P. Hayner, *Unspeakable Truths: Facing The Challenge Of Truth Commissions,* (London: Routledge, 2002), p. 303–11

[11] P. Hayner, 'Truth Commissions – 1974 to 1994: A Comparative Study', *Human Rights Quarterly*, 16, 4 (1994), p. 598. Since 1994, there have been some truth commissions that have not had powers of subpoena, including Sierra Leone and Guatemala.

[12] E. Evenson, 'Truth and Justice in Sierra Leone: Coordination between Commission and Court',*Columbia Law Review*, 104, 3 (2004), p. 761

[13] L. E. Fletcher, H. M. Weinstein, J. Rowen, 'Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective', *Human Rights Quarterly,* 31 (2009), p. 8. Authorship in the discussion will hereafter be attributed to Fletcher, for purposes of simplicity.

[14] Gibson. J., 'Does Truth Lead To Reconciliation? Testing The Causal Assumptions Of The South African Truth And Reconciliation Process', *American Journal Of Political Science*, 48, 2, (Apr., 2004), p. 204

[15] L. Graybill, K. Lanegran, 'Truth, Justice, and Reconciliation in Africa: Issues and Cases', *African Studies*

Quarterly, 8, 1 (2004), p. 4

[16] *Ibid*., p. 3

[17] L. E. Fletcher, H. M. Weinstein, J. Rowen, 'Context, Timing and the Dynamics of Transitional Justice', p. 166

[18] J. Du Piscani, K. Kim, 'Establishing the Truth about the Apartheid Past: Historians and the South African Truth and Reconciliation Commission', *African Studies Quarterly,* 8, 1 (2004), p. 78

[19] L. Graybill, K. Lanegran, 'Truth, Justice, and Reconciliation in Africa: Issues and Cases', *African Studies Quarterly,* 8, 1 (2004), pp. 1-18. The other comparative studies are, A. R. Chapman and P. Ball, 'The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa and Guatemala', *Human Rights Quarterly,* 23, 2 (2001), pp. 1-43; P. Hayner, 'Truth Commissions – 1974 to 1994: A Comparative Study', *Human Rights Quarterly*, 16, 4 (1994), pp. 597-655; P. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity,* (New York; Routledge, 2001); J. Laakso, 'In Pursuit of Truth, Justice and Reconciliation: The Truth Commissions of East Timor and South Africa' *Social Alternatives* 22, 2 (2003), pp. 48-54; K. Lanegran, 'Confronting Human Rights Abuses: Lessons from African Institutions', *Journal of Development Alternatives and Area Studies,* 22, 1 & 2 (2003), pp. 38-57; S. Linton, 'Cambodia, East Timor and Sierra Leone: Experiments in International Justice', *Criminal Law Forum,* 12, (2001), pp. 185-246; M. Freeman, J. R. Quinn, 'Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa', *Human Rights Quarterly*, 25, 4 (2003), pp. 1117-1149; E. Skaar, 'Truth Commissions, Trials – or Nothing? Policy Options in Democratic Transitions', *Third World Quarterly* 20, 6 (1999), pp. 1109-1128

[20] L. E. Fletcher, H. M. Weinstein, J. Rowen, 'Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective', p. 206

[21] *Ibid.,* p. 170

[22] BBC News Website, 5 April 2010; accessed 5 April 2010

[23] Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan people to suffer, 23 June 1994, Guat.-U.R.N.G.-U.N, (Oslo Accords)

[24] D. Keen, *Conflict and Collusion in Sierra Leone,* (James Currey: Palgrave, 2004), p. 9

[25] T. Kelsall, 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', *Human Rights Quarterly*, 27, 2 (2005) p. 362

[26] Hereafter referred to as the RUF

[27] D. Keen, *Conflict and Collusion in Sierra Leone,* p. 41

[28] Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, Article IX: Pardon and Amnesty, Lomé: Togo, 7 July 1999, (Lome Agreement), reproduced at http://www.usip.org/library/pa/sl/sierra_leone_07071999.html#9; accessed 29 December 2009.

[29] Sierra Leone Truth and Reconciliation Commission Act 2000 (Feb. 2000), reproduced at http://www.usip.org/library/tc/doc/charters/tc_sierra_leone_02102000.html; accessed 29 December 2009

[30] P. Hayner, 'Truth Commissions – 1974 to 1994', p. 607

[31] A. Chapman and P. Ball, 'The Truth of Truth Commissions', p. 22

[32] *Ibid.,* p. 22

[33] Report of the Commission for Historical Clarification: Memorio Del Silencio, (Report of the Commission for Historical Clarification), reproduced at http://shr.aaas.org/guatemala/ceh/report/english/toc.html; accessed December 17 2009

[34] A. Chapman and P. Ball, 'The Truth of Truth Commissions', p. 11

[35] Truth and Reconciliation Commission of South Africa Report, (London: Macmillan, 1999), 1 (5) 44

[36] *Ibid*., 1(5) 29-45

[37] A. Chapman and P. Ball, 'The Truth of Truth Commissions', p. 22

[38] Truth and Reconciliation Commission of South Africa Report, 1 (5) 40

[39] Kubheka. T, 'The South African Truth and Reconciliation Commission: Data Processing', in Ball. P, Spirer. H.F, Spirer. L, Making The Case: Investigating Large Scale Human Rights Violations Using Information Systems And Data Analysis, (American Association for the Advancement of Science, 2005), p. 43

[40] Truth and Reconciliation Commission of South Africa Report, 1 (4) 31 (3a)

[41] Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission, (Graphic Packaging, 2004), (Report of the Sierra Leone Truth and Reconciliation Commission), 1 (3) 20-29, reproduced at, http://humanrightsdoctorate.blogspot.com/2009/11/sierra-leone-truth-and-reconciliation.html; accessed 20 December 2009

[42] A. Chapman and P. Ball, 'The Truth of Truth Commissions', p. 25. See also, M. Mamdani, (2000) 'The Truth According to the TRC', in I. Amadiume, and A. An-Na'im (eds), *The Politics of Memory: Truth, Healing and Social Justice* (London: Zed Books, 2000), p. 12

[43] Sequiera. H, The Guatemalan Commission for Historical Clarification: Database Representation, in, Ball. P, Spirer. H.F, Spirer. L, Making The Case: Investigating Large Scale Human Rights Violations Using Information Systems And Data Analysis, (American Association for the Advancement of Science, 2005), p. 235

[44] A. Chapman and P. Ball, 'The Truth of Truth Commissions', p. 12

[45] O'Sullivan. G, 'The South African Truth and Reconciliation Commission: Database Representation', in, Ball. P, Spirer. H.F, Spirer. L, *Making The Case: Investigating Large Scale Human Rights Violations Using Information Systems And Data Analysis*, (American Association for the Advancement of Science, 2005), p. 101

[46] A. Chapman and P. Ball, 'The Truth of Truth Commissions', p. 8

[47] *Ibid.*, p. 8

[48] *Ibid.,* p. 12

[49] C. Tomuschat, 'Clarification Commission in Guatemala', *Human Rights Quarterly,* 23 (2001), p. 239

[50] REHMI. *Guatemala: Never Again!*, (New York: Orbis Books, 1999),

[51] Oslo Accords, Section (3), 3

[52] E. Scheibreithner, 'The Guatemalan Commission for Historical Clarification: Generating Analytical Reports', in, P. Ball, H. F. Spirer, and L. Spirer, *Making The Case: Investigating Large Scale Human Rights Violations Using Information Systems And Data Analysis*, (American Association for the Advancement of Science, 2005**), p.**

[53] Report of the Commission for Historical Clarification**,** Section (2), 82

[54] On April 26, 1998, just two days after publicly presenting "Nunca Mas!", the final report of the Recovery of Historical Memory (REMHI) Project, Bishop Juan Gerardi, who headed the project, was assassinated outside his home.

[55] Office of the President, No. 34 of 1995, Promotion of National Unity and Reconciliation Act No. 1111 (26 July 1995). Reproduced in, Truth and Reconciliation Commission of South Africa Report, 1 (4) 31 (3.1a)

[56] Pambazuka News, *Sierra Leone: Searching for Truth and Reconciliation*, 3 Feb. 2006, *available at* http://www.pambazuka.org/en/category/rights/32427; accessed 17 November 2009

[57] C. Jenkins, 'They have built a legal system without punishment': reflections on the use of amnesty in the South African transition', Transformation, 64 (2007), p. 27

[58] *Ibid.,* p. 30

[59] C. Tomuschat, 'Clarification Commission in Guatemala', p. 245

[60] Guatemala is a signatory to (1) The American Convention on Human Rights (May 1978); (2) The International Pact on Civil and Political Rights (1966, Guatemala signed in 1992); (3) The United Nations Convention Against Torture and Cruel, Inhumane and Degrading Punishment (1984, Guatemala signed in 1990); and (4) the Geneva Conventions (1949, Guatemala signed in 1952), although it has not yet ratified the Rome Statute on the prohibition of torture.

[61] A. Ross, 'The Creation and Conduct of the Guatemalan Commission for Historical Clarification', p. 76

[62] Sierra Leone Truth and Reconciliation Commission Act 2000, Section, (3) 8 (1.g)

[63] E. Evenson, 'Truth and Justice in Sierra Leone: Coordination between Commission and Court',*Columbia Law Review*, 104, 3 (2004), p. 764

[64] T. Kelsall, 'Politics, Anti-Politics, International Justice: Language and Power in the Special Court for Sierra Leone', 32 (2006), Rev. Int'l Stud., p. 587

[65] A. R. Lamin, 'Building Peace Through Accountability in Sierra Leone: The Truth and Reconciliation Commission and the Special Court', *Journal of Asian and African Studies,* 38 (2003) pp. 299

[66] For the Secretary-General's position, see Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, supra note 21, ff. 32–38, reproduced at http://www.afrol.com/Countries/Sierra_Leone/documents/un_sil_court_041000.htm; accessed 18 January 2010

[67] Report of the Commission for Historical Clarification, 2 (2) 111

[68] R. Seider, *Guatemala after the Peace Accords,* (Institute of Latin American Studies, 1998), p. 252

[69] C. Tomuschat, 'Clarification Commission in Guatemala', p. 246

[70] L. E. Fletcher, H. M. Weinstein, J. Rowen, 'Context, Timing and the Dynamics of Transitional Justice: A

Historical Perspective', p. 211

[71] S. Jonas, *Of Centaurs and Doves: Guatemala's Peace Process*, (Westview Press, 2000), p. 42

[72] P. Hayner, 'The Sierra Leone Truth and Reconciliation Commission: Reviewing the First Year', *International Center for Transitional Justice,* (2004), p. 2

[73] A. Ross, 'The Creation and Conduct of the Guatemalan Commission for Historical Clarification', *Geoforum*, 37 (2006), p. 77

[74] *Ibid.,* p. 75

[75] Impunity Watch, *Recognising the Past: Challenges for the combat of impunity in Guatemala,* (Impunity Watch Publications, 2008), p. 17, reproduced at http://www.impunitywatch.org/en/publication/30; accessed 15 March 2010

[76] *Ibid.,* p. 15.

[77] D. Keen, *Conflict and Collusion in Sierra Leone*, p. 302-3

[78]Truth and Reconciliation Report of South Africa, 1 (11), Appendix 2

[79] Hayner, P., Unspeakable Truths: Confronting State Terror and Atrocity, (New York; Routledge, 2001), p. 169

[80] Impunity Watch, *Recognising the Past: Challenges for the combat of impunity in Guatemala,* (Impunity Watch Publications, 2008), p. 20, reproduced at http://www.impunitywatch.org/en/publication/30; accessed 15 March 2010

[81] *Ibid.,* p. 20

[82] *Ibid.,* p. 33

[83] Truth and Reconciliation Report of South Africa, 5 (5) 75

[84] *Ibid.,* 5 (8) 19

[85] *Ibid.,* 5 (8) 1

[86] Human Rights Commission of Sierra Leone Report: The State of Human Rights in Sierra Leone, 2008, (2008), Section (3) 4, 1

[87] D. Ntsebeza, 'Responding to the Symposium: The Legacy of the TRC', in Doxtader, E., Villa-Vicencio, C., (eds), *The Provocations of Amnesty: Memory, Justice and Impunity,* (Africa World Press, 2003), p. 23

[88] *Ibid.*, 5 (5) 44

[89] R. Shaw, *Forgive and Forget: Rethinking Memory in Sierra Leone's Truth and Reconciliation Commission,* (United States Institute of Peace, 2004), p. 4

[90] B. Hamber, R. Wilson 'Symbolic Closure Through Memory, Reparation, and Revenge in Post-Conflict Societies', *Journal of Human Rights* 1, 1 (2002), p. 36

[91] T. Kelsall, 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', p. 388

[92] Mamdani, M., 'The Truth According to the TRC', in I. Amadiume, and A. An-Na'im (eds), *The Politics of Memory: Truth, Healing and Social Justice,* (London: Zed Books, 2000), p. 12

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