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Truth, Justice, and Reconciliation in Africa: Issues and Cases

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Abstract: This essay identifies a number of problematic issues concerning transitional justice and restorative justice in particular and suggests that they can be fruitfully explored through thoughtful examination of the truth-seeking projects of this issue's case countries: South Africa, Rwanda and Sierra Leone. One debate is whether political transitions genuinely require a unique type of justice or whether transitional justice results from a mere political choice which compromises justice. A second issue concerns transitional justice's goals. Related to this issue is the lack of clarity concerning the criteria for a successful transitional judicial structure. A third debate is whether truth commissions do actually bring healing and reconciliation among former enemies. Finally, there is a set of very practical concerns that need attention: what are the ideal balances between trials and truth commissions, domestic and international initiatives, efficiency and effectiveness?

Pardon rather than punishment, or pardon for the many alongside punishment of the few, has become a trend for transitional societies coming out of eras marked by intrastate conflict. Restorative justice, which favors reconciliation among former foes over punishment of perpetrators of crimes, has been increasingly applied since 1974, with truth commissions implemented in approximately two dozen countries around the world. Most prominent among these in Africa has been South Africa's Truth and Reconciliation Commission, but Rwanda, Sierra Leone, the Central African Republic, Ghana, Morocco and Nigeria have also embarked on "truth telling" processes that emphasize reconciliation. Moreover, the Kenyan government

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recently announced that it will establish its own truth commission by the end of 2004, and peace agreements in Liberia and the Democratic Republic of the Congo have provided for the formation of truth commissions. These developments suggest that the idea of restorative justice is not just a fad but represents an innovative approach for citizens of many countries wrestling with the question of how to live with former enemies.

This essay identifies a number of problematic issues raised in the literature concerning transitional justice in general as well as restorative justice in particular and introduces the three case study countries highlighted in this special issue. In the articles that follow, authors analyze transitional justice efforts in South Africa, Rwanda, and Sierra Leone and discuss lessons that emerge.

ISSUES

During the ongoing wave of democratic transformations, one can observe a “paradigm shift” in the means by which new leaders address their nations’ violent past.¹ There is a new commitment at both domestic and international levels to bring justice and healing to people who have experienced gross human rights atrocities perpetrated by ousted regimes or rebel groups. Political leaders and legal theorists have argued that learning the truth about past human rights violations and punishing those responsible for them are prerequisites for the establishment of democracy and respect for the rule of law. Thus, they call for structures of transitional justice during an interim period to confront the crimes of the past in order to lay the foundations for legitimate judicial systems and democratic norms. Such structures have included the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda as well as truth commissions, hybrid UN-funded courts, and revived traditional judicial structures such as Rwanda’s *gacaca*.

Transitional justice processes have inspired a growing field of study. Legal scholars tackle theoretical and ethical issues surrounding transitional justice norms, participants and researchers have analyzed a number of transitional justice institutions, and a small number of scholars have published comparative studies.² A survey of the literature reveals that a number of significant issues concerning transitional justice and its structures continue to bedevil practitioners attempting to implement it and scholars hoping to conceptualize or interpret it.

This essay highlights four such issues. First, there is disagreement over whether political transitions genuinely require a unique type of justice—one that emphasizes reconciliation as opposed to strict retributive justice—or whether transitional justice results from a mere political compromise in which “justice becomes the casualty of a political calculation.”³ In short, are structures of transitional justice only “second best” options? Second is the question of whether processes of transitional justice have a consistent set of goals, with a related issue being the lack of clarity within the literature concerning the criteria for a successful transitional judicial process or specific structure. Third is the debate surrounding the oft-repeated assertion that truth commissions can heal individuals and nations, bringing reconciliation among former enemies. Fourth and finally, there is a set of very practical concerns that require attention, including determination of what are the ideal balances between trials and truth commissions, domestic and international initiatives, efficiency and effectiveness.

Scholars have not reached a consensus on whether the unique economic, social, and political features of transitional periods legitimately demand a response to past human rights crimes that favors reconciliation over retribution. Is the granting of conditional amnesty to those who

confess to crimes before a truth-seeking body, for example, a political expedient that significantly compromises justice? Or is it an appropriate policy within the context of the many challenges facing a society in political transformation?

Ruti Teitel, for example, stresses the limited character of transitional justice and takes note of the compromises to formal justice that it entails.⁴ Some scholars emphasize that political compromises necessarily determine the formation, mandates, and operations of courts and truth commissions, consequently limiting their effectiveness.⁵ Others do not see transitional structures like truth commissions as inferior to formal court systems.⁶ They emphasize that transitional societies face an array of challenges and therefore must ask different things of justice structures than those asked of formal courts in established democracies. Transitioning societies may value peace and reconciliation more than retribution. Therefore, restorative structures may indeed be the best judicial option.⁷

Another difficulty concerns the goals transitional justice processes can be expected to achieve. If transitional justice is inherently different from justice in established democracies, the unique services it employs should be identifiable. If this process is implemented during a finite period, the way in which transitional justice alters society should also be identifiable. Any evaluation of the success of such institutions must be done with a firm understanding of the goals of transitional justice, yet consensus on what these goals should be is largely missing from the academic literature.

Elizabeth Evenson identifies four general goals of transitional justice: “providing for individual criminal accountability, deterrence, and punishment, and establishing a common truth about the past which can carry the society forward in a process of healing and reconciliation.”⁸ However, she notes that the individual context of each country will shape its specific goals. Likewise, Miriam Aukerman identifies five separate goals for any justice process -- retribution, deterrence, rehabilitation, restoration, and condemnation/social solidarity -- among which political leaders choose based on their societies’ unique needs and characteristics.⁹ We believe that careful evaluation of specific structures is needed in order to discover what these mechanisms actually achieve. Anyone seeking to evaluate mechanisms of transitional justice will soon discover few criteria against which to judge them. However, Priscilla Hayner’s work is a notable exception. In her path-breaking comparison of truth commissions, she identified some of their basic requirements. According to Hayner, truth commissions should: operate impartially free of political interference, have adequate resources and access to the information they deem necessary, be implemented as quickly as possible after the period they are expected to investigate, work for a limited specified period, and be empowered to make widely and expeditiously distributed recommendations for further action to governments with the expectation that those recommendations will be considered seriously.¹⁰

Hayner proposes examining three distinct elements to evaluate the success of a truth commission: the commission’s process, product, and eventual impact. The process is judged by “the degree to which it engages the public in understanding unknowns (or in admitting that they have been denied) . . . whether it gains full participation from all actors in the course of its investigations, including former perpetrators; and whether its work is positive and supportive to victims and survivors.”¹¹ The commission’s final written product should be evaluated according to “the extent of truth that is revealed, as well as its proposals for reparations and reform.”¹² Regarding its impact, Hayner notes that “the degree to which the commission’s work contributes to long-term reconciliation, healing, and reform will be determined in large part by whether perpetrators or state officials acknowledge and apologize for wrongs, whether and how

the commission's report is distributed and put to use, and whether its core recommendations are implemented."¹³ These guidelines pertain exclusively to truth commissions. There is no consensus concerning even a rudimentary set of criteria against which to measure the success of other transitional justice institutions, such as ad hoc international criminal tribunals or hybrid courts.

A third problem is that scholars and practitioners engage in assertions about what these structures can do but rarely test those assumptions. Common wisdom asserts that truth commissions promote individual healing and reconciliation, which leads to national healing and reconciliation, which in turn provides a bedrock for democracy. But, as Tristan Borer notes in this issue, no one has yet proven that truth commissions secure their supposed benefits, such as healing, truth, and national reconciliation. In fact, a few scholars are beginning to conclude that the evidence is decidedly mixed.¹⁴ Brandon Hamber and Richard Wilson, for example, reject entirely the metaphor of national healing arguing, "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."¹⁵

In an important study of South Africa, James L. Gibson has tested the "truth leads to reconciliation" assertion head-on using extensive surveys and social science analysis. He concludes that the South African Truth and Reconciliation Commission did indeed succeed in convincing a majority of South Africans across the political spectrum that all sides were guilty of human rights violations and in turn suffered from violations. This provided them with a common interpretation of the apartheid era, which is serving as a basis for reconciliation. However, the process is far from complete because political tolerance, one of Gibson's measures of reconciliation, remains scarce in South African political culture.¹⁶ Similar studies of other structures of transitional justice are needed to enhance our understanding of their merits.

Finally, a number of practical questions about the choice of transitional justice mechanisms require additional attention. One fundamental question asks under what conditions should a society turn to trials, or truth commissions, or both. Miriam Aukerman sees a "prosecution preference" at work in the international legal community.¹⁷ The work of Diane Orentlicher reflects this perspective although she does note that there are conditions under which prosecuting those in the past regime accused of human rights violations is unwise.¹⁸ This approach argues that support for the rule of law and human rights norms can not be established among a society while an impotent judicial system allows prominent criminals to enjoy impunity.

In contrast, other observers, particularly those who argue that retribution is only one of the goals of transitional justice mechanisms, see wisdom in preferring restorative judicial bodies. Brian Walsh, for example, concludes that prosecutions of human rights violators can jeopardize a reconciliation process.¹⁹ Other writers are concerned that the bipolar nature of trials, in which prosecutions tend to make a clear distinction between the innocent and the guilty, makes them entirely inappropriate for redressing the systemic exploitation and violence which many transitioning societies have experienced.²⁰ Elin Skaar concludes that whether a new government chooses truth commissions, trials or nothing, "depends on the relative strength of demands from the public and the outgoing regime, the choice tending towards trials as the outgoing regime becomes weaker and towards nothing as the outgoing regime becomes stronger, with truth commissions being the most likely outcome when the relative strength of the demands is roughly equal."²¹ Her study explains why one option is selected over another but does not address the issue of whether that option was the best possible choice.

Some writers, particularly those who share Martha Minow's realization of "the incompleteness and inescapable inadequacy of each possible response to collective atrocities," suggest that structures of retributive and restorative justice can coexist during a transition.²² Elizabeth Evenson believes that with careful planning, coexisting trials and truth commissions can be complimentary. She argues that "truth commissions can augment the work of prosecutions in establishing accountability for widespread human rights abuses."²³ Further research is needed to determine under what circumstances two structures may indeed be better than one and how to achieve cooperation between them.

What should be the appropriate role for the international community in establishing structures of transitional justice? The spectrum of recent judicial responses to human rights abuses runs from external justice, such as the extreme universal jurisdiction asserted by the Belgian legislature in its proposed prosecution of Israeli Prime Minister Ariel Sharon through the United Nations' International Criminal Tribunals and the International Criminal Court, to the "internationalized internal processes" of the UN-funded courts for Sierra Leone and East Timor, to finally the entirely domestic processes at the other extreme such as South Africa's truth commission and Rwanda's *gacaca*.²⁴ Neil Kritz addresses the question of how to determine when international or national mechanisms are required. For Kritz, "the best scenario would be for the international community to provide appropriate assistance to enable a society emerging from mass abuse to deal with the issues of justice and accountability itself."²⁵ However, since local judicial structures are usually decimated or compromised where societies have recently experienced widespread abuse, it is often "incumbent upon the international community to take on the task of accountability for the abuses in question."²⁶ Even if one shares Kritz's commitment to building domestic judicial competencies, assessing the appropriate balance between domestic and international actors in any specific context will be tricky.

Finally, empirical studies of specific courts and commissions are needed to identify operational lessons. In a recent study, Joanna Quinn and Mark Freeman surveyed individuals who worked in the truth commissions of Guatemala and South Africa. Quinn and Freeman synthesized the observations into lessons learned concerning commission mandate and structure, data collection and public hearings, and information management and outreach to the public.²⁷ The authors distill the most common themes running through the practitioners' assessments: "we needed more time, greater resources, better staff, better training, better internal coordination, and better management; nevertheless, it was an intense and remarkable experience, and we partially achieved some important objectives."²⁸ If we are to see more efficient and effective structures in the future, researchers should seek out similar lessons from the staffs of other transitional justice structures.

CASES

We turn now to the three African experiments of transitional justice examined in this issue – South Africa, Rwanda, and Sierra Leone. We identify for each country some of the contentious issues discussed in the previous section.

South Africa

South Africa's Truth and Reconciliation Commission (TRC) is arguably the continent's best known example of restorative justice. Established in 1995, the TRC was charged with

investigating gross human rights abuses that occurred between 1960 and 1994 so as to create as complete an accounting as possible of the atrocities of that period. Perpetrators were offered amnesty in exchange for full disclosure about their past crimes. To a significant degree, this was part of a political compromise between the African National Congress and the outgoing apartheid government led by the National Party that was deemed necessary for a peaceful transition to democracy.

South Africa's version of restorative justice emphasized reconciliation between perpetrators and victims built ideally on a perpetrator's repentance and a victim's forgiveness. Ultimately, it was hoped, the South African nation as a whole would likewise become reconciled. Although the TRC's task was not officially framed in religious terms, the dominant role of Chairman Archbishop Tutu meant that his theological view of reconciliation often trumped other views. This was aided by the large number of commissioners who came from the faith community.

It has been argued that two features of South Africa's religious culture supported the TRC's emphasis on forgiveness, rather than punishment: Christian theology and the traditional concept of ubuntu.²⁹ The Christian admonition to forgive one's enemies and embrace the sinner within the family of God was widely accepted among the largely Christian South African population.³⁰ Due in part to the considerable role many church organizations played in protests against apartheid, the teachings of the church retained relevance for many South Africans.³¹ The concept of ubuntu was also used to legitimize the TRC's call for reconciliation. Difficult to translate precisely, ubuntu encompasses the notion of "humaneness" or "humanness." A common Xhosa expression states, "Umuntu ngumuntu ngabanye bantu," which translates as "People are people through other people." Thus, ubuntu emphasizes community over individual. As John Mbiti explains, "Whatever happens to the individual happens to the whole group, and whatever happens to the whole group happens to the individual. The individual can only say: 'I am because we are, and since we are, therefore I am.'"³² This belief in the indivisibility of humanity, it is argued, creates a capacity for forgiveness. Complete assessments of the TRC will require extensive testing of the degree to which the truth commission resonated with South Africa's religious culture, a project begun by Audrey Chapman and Bernard Spong for the American Association for the Advancement of Science.³³

How did the truth commission work? At the Human Rights Violations Committee hearings, a select group of victims testified publicly about how they had suffered. About one tenth of the 20,000 deponents testified – a very small number out of a national population of 43 million. Still, anecdotal evidence suggests that for many who addressed the commission, the value of telling one's story before a supportive audience was significant. Referring to the psychological value of testifying, one witness said: "When the officer tortured me at that time in John Vorster Square, he laughed at me: 'You can scream your head off, nobody will ever hear you!' 'He was wrong. Today there are people who will hear me.'"³⁴ Commissioner Mary Burton agrees that giving public testimony had been healing for many survivors: "The right to be heard and acknowledged, with respect and empathy, did contribute to a process of healing in many cases."³⁵

A second committee, the Amnesty Committee, held hearings for those who admitted having committed crimes. Approximately 7,000 applicants applied for amnesty. However, many were common criminals hoping to convince the commissioners that they had political -- not criminal -- motives, and only a few were top leaders of the apartheid system. Nearly half of the applicants were from the African National Congress.³⁶ Contrition was not a requirement for amnesty, and indeed many applicants did not apologize for their actions. In the end, amnesty was granted to

approximately 16% of the applicants.³⁷ Thus, out of a population of 43 million people, only about one thousand individuals acknowledged their responsibility for apartheid's crimes, receiving amnesty and reintegration back into society.

Scholars debate the advisability of offering amnesty. In promising amnesty to apartheid killers, did the ANC choose a more comfortable political expedient and found a new democracy on a flawed judicial response to a systemic crime against humanity? Mahmood Mamdani argues that the TRC resulted in "an institutionally produced truth, as the outcome of a process of truth-seeking, one whose boundaries were so narrowly defined by power and whose search was so committed to reinforcing the new power, that it turned the political boundaries of a compromise into analytical boundaries of truth-seeking."³⁸ Did the government compromise justice in its effort to provide an interpretation of apartheid crimes that would facilitate reconciliation among the races? If so, is this a failure of transitional justice or a strength of such a response to atrocities?

The South African case can provide empirical evidence to help scholars make more informed evaluations of transitional justice. However, such work will require identification of the means to judge the TRC's impact. For example, how can we know whether reconciliation emerged from the TRC? What does reconciliation look like? Who becomes reconciled?

In her contribution to this special edition, Tristan Borer addresses this challenge directly by identifying the multiple meanings of reconciliation used by people inside and outside of South Africa's TRC. She demonstrates that the TRC's founding documents, as well as its final report, failed to define clearly the kind of reconciliation the commission was charged with building. She finds two models of reconciliation permeating the commission's statute and report.

"Interpersonal or individual reconciliation," in which victims and perpetrators of gross human rights violations have their relationships restored with the victims being healed, is one goal which the commission sought to achieve. Yet, the commission also strove to hasten "national unity and reconciliation" in order to create a nation "democratically at peace with itself." Borer argues that the lack of clarity hampered the commission's work and has affected the way it has been judged. She finds that while the TRC was empowered to contribute primarily to "national unity and reconciliation," the greater popular expectation was for the TRC to foster "interpersonal or individual reconciliation." The unfortunate result of this dichotomy is that "the TRC is most likely to be judged in a way that makes it least likely to appear successful."

Borer draws cautionary lessons for any future effort to analyze similar truth-seeking transitional structures. She emphasizes testing the argument that truth leads to reconciliation, rather than simply asserting it. Testing requires a clear definition of reconciliation and the identification of ways to observe it. Only then, she asserts, can any future truth commission tailor its work to achievable goals that scholars can evaluate according to clear criteria.

Also in this volume, historians Jacobus du Pisani and Kwang-Su Kim evaluate the TRC's work as a process of historical research, and its final report as an interpretation of the apartheid period. They identify many significant flaws in the TRC's work, such as its dependence upon subjective truths submitted in unverified individual testimony, but also show how these very shortcomings bring constructive challenges to the authority and relevance of history as an academic discipline. They see the TRC as initiating a "democratized history-making process" in South Africa in which public history and individual experiences receive greater prominence, and "interest in the possibilities of history" is revived.

Joining the debate over the appropriate goals for truth commissions and what they ultimately contribute to reconciliation, Du Pisani and Kim argue strongly that truth commissions

ought not to be expected to uncover “the truth” about a violent past. From the outset “the TRC had to pursue historical truth not for its own sake, but in the service of reconciliation and nation-building,” which therefore imposed “a discursive framework on testifiers” and the way in which their evidence was interpreted in the commission’s report. Du Pisani and Kim lament that the TRC’s work gave the impression of a nation having achieved closure after its apartheid past. Rather, they call upon historians to remain “committed to the never ending debate of history and not to the type of closure sought by priests and politicians.” They conclude that while truth commissions can dramatically enliven a society’s confrontation with its past, they can make only a partial contribution to using history as “an essential tool in re-defining national identity.”

Rwanda

At the same time as South Africans went to the polls to elect their first democratic government, Rwandans 2,000 miles to the north were perpetrating the fastest genocide in recorded history. Beginning in April 1994, Hutus massacred 800,000 Tutsis over one hundred days in an effort to thwart the power-sharing arrangement mandated by the Arusha Peace Accords of 1993.³⁹ The Tutsi-led Rwandan Patriotic Front eventually defeated the Hutu-led interim government and ended the genocide.

In stark contrast to South African’s experiment with restorative justice, Rwandans asked for United Nations assistance to establish a structure for retributive justice. Archbishop Tutu had urged Rwandans to forego punishment in favor of pardon fearing that “justice with ashes” would be the outcome of the Rwandan effort to punish the perpetrators of the genocide.⁴⁰ Instead, the UN Security Council established the International Criminal Tribunal for Rwanda (ICTR) in 1994 to prosecute the masterminds of the genocide.

Political and cultural factors in large part explain Rwanda’s initial preference for prosecution of the genocidaires. Having vanquished the interim Hutu government, the Rwandan Patriotic Front was under no pressure to compromise. In addition, the religious-redemptive model of forgiveness and reconciliation was significantly discredited by the degree to which church leaders were implicated in the genocide.⁴¹

However, by 1999 the government “recognized that some measured use of the restorative justice approach might indeed better serve the country’s needs.”⁴² A traditional method of conflict resolution – *gacaca* – was resurrected to deal with the situation. Practical considerations played a major role in Rwanda’s turn to restorative justice. First, it quickly became clear that the ICTR was unlikely to try more than a hundred of the most prominent suspects. Meanwhile over 100,000 people accused of human rights crimes languished in Rwandan prisons. It was simply impossible for the country’s decimated justice system to try the huge number of suspects. Authorities admitted that at the present rate of prosecutions, Rwandan courts would take 150 years to try all the suspects. Consequently, in early 2001, the government passed a law establishing the *gacaca* system of a hierarchically organized network of about 11,000 community courts that would try lower level crimes.⁴³

The traditional system of *gacaca* existed from the pre-colonial times into the 1990s. It was used alongside the formal judicial system at the local level, especially in settling family disputes and minor offenses between neighbors. Intended primarily to restore social order, traditional *gacaca* meted out punishments with the intention of restoring harmony between the community and those responsible for discord. Now resurrected to deal with crimes more serious than those

for which it was originally intended, *gacaca* began on a national level in November 2002 and most cells began work in 2003.

Gacaca encompasses three important features of relevance to broader experiments of reconciliatory justice. First, *gacaca* rewards those who confess their crimes with the halving of prison sentences. As a result, 60,238 prisoners have confessed to participating in the genocide. Second, *gacaca* law highlights apologies. Part of the procedure of the traditional *gacaca* system, apology has been maintained in the new variant as an important ingredient to promote reconciliation. Third, reparations to victims is a cornerstone of *gacaca*. Those found guilty must contribute to a compensation fund and/or perform community service. Klaas de Jonge of Penal Reform International applauds this form of direct reparations as it will contribute something tangible to improve victims' lives.⁴⁴

Rwanda's experiments with transitional justice have much to teach us about the strengths and weakness of these structures. International and domestic, retributive and restorative structures are being deployed to address the atrocities of the genocide. Therefore, researchers have an opportunity to probe a number of the practical questions identified above concerning the comparative advantages of each of these approaches. Here, too, we must develop criteria against which to measure these structures' success. How can we measure the degree of justice the ICTR has achieved? How will we know whether *gacaca* leads to individual and/or national reconciliation? Concurrent retributive and restorative justice mechanisms provide fruitful material with which to examine the fundamental question of whether restorative justice is merely "second-best."

In her contribution to this volume, Alana Tiemessen addresses a number of these questions. She reviews the differences between restorative and retributive justice and demonstrates their different norms at work in the *gacaca* and in the International Criminal Tribunal for Rwanda. Using Mark Drumbl's typology of post-genocide societies, she makes the argument in favor of employing restorative justice structures in Rwanda's transition. However, she roundly condemns the political manipulation she observes of *gacaca* by the Tutsi-led government of Rwanda. She argues that "one of the dangers that the Tutsi ethnocracy poses to the success of *Gacaca* is that it serves the government's agenda of assigning collective guilt to Hutus." Tiemessen draws attention to an important weakness of transitional justice structures -- their vulnerability to political manipulations by elites -- and cautions against overly optimistic expectations of the degree to which such structures can bring reconciliation to stricken societies.

Tiemessen notes the problems raised in Rwanda, as in South Africa, from the lack of clear and appropriate measures of reconciliation. She also observes that "the path from justice to reconciliation is not necessarily linear," but rather "is conditioned by two important factors: the relationship between victims and aggressors and the form of power that justice flows from." Unfortunately, she sees these factors in Rwanda as raising "grave concerns for the ability of any kind of justice to contribute to reconciliation."

Sierra Leone

In an attempt to deal with the crimes committed during a long and brutal civil war in which 50-75,000 perished, two million people were displaced, and thousands of civilians were mutilated, Sierra Leone has embarked on a two-pronged process. The persons "who bear the greatest responsibility" for crimes against humanity, war crimes, and other serious violations of

humanitarian law will be tried in a UN-funded Special Court, and others (both perpetrators and victims) were heard in a South African-styled Truth and Reconciliation Commission.⁴⁵ But the two institutions have two very different objectives: the Special Court emphasizes justice through punishment while the TRC promotes reconciliation through a process of truth telling, apology and pardon. As the Registrar for the Special Court put it, there will be punishment for the few masterminds, and forgiveness for the many foot soldiers.⁴⁶

The Sierra Leone Truth Commission (SLTRC), established in July 2002 by an act of Parliament, began gathering statements in December 2002 from citizens of all war time affiliations and commenced public hearings in April 2003.⁴⁷ Its mandate was to create an impartial record of human rights violations committed during the war (1991 to 1999), and to address the conflict's root causes. Its ultimate goal, according to President Tejan Kabbah, was nothing less than "the reconciling of our population."⁴⁸ After many delays, the truth commission's final five volume report was presented to President Kabbah in October 2004. At the time of writing, the report had not been widely disseminated or read.

The SLTRC is a uniquely designed structure. It resembles the South African model in being headed by a religious leader, Joseph Humper, Bishop of the United Methodist Church and President of the Inter-Religious Council.⁴⁹ However, unlike the South African TRC, it has no power to grant amnesty to those who came forward to acknowledge their crimes. Also, as it operated concurrently with the Special Court, there was concern that the Special Court's prosecutor could develop a case from the public truth commission testimony.

Despite the lack of incentives, some perpetrators did in fact come before the TRC. While former combatants hesitated to testify at the early hearings, once it was seen that the Special Court was not interested in subpoenaing them, their numbers increased. Commissioner William Schabas has written that many perpetrators came forward to tell their stories "and in some cases, to ask pardon or forgiveness of the victims."⁵⁰ The vast number of alleged perpetrators – some 70,000 – makes their reintegration vital if reconciliation is to take place. Perpetrator participation was especially important in terms of accountability, because it is unlikely that the Special Court will prosecute more than a dozen suspects. In the end, approximately 13% of individual witness statements before the truth commission came from perpetrators.⁵¹

By August 2003, the TRC had taken 8000 statements from victims, perpetrators, and witnesses. 350 witnesses testified publicly.⁵² Most likely there would have been more hearings, and more witness statements taken, had there been more generous funding for the TRC.⁵³ The TRC was able to facilitate victim-offender mediation in some cases where the victims welcomed it. Each week, a reconciliation ceremony was held where perpetrators and victims could come together. Many of those who acknowledged their crimes were baptized through a special cleansing ceremony and thereby ritually reintegrated into the community.⁵⁴ On the issue of apology and forgiveness, TRC Chair Bishop Humper stated: "We will not expect you [victims] to forget, but we will expect you to forgive. And the message to the perpetrator will be that by our own cultural standard [there is] a duty to express remorse, to confess, and to accept forgiveness. Because forgiveness cannot come on a silver platter."⁵⁵

Compensation for victims is critical to the success of Sierra Leone's truth commission. When witnesses were asked at hearings what they would like the Commission to include in its recommendations, they invariably responded: "free education for our children, access to medical care, adequate housing."⁵⁶ Ideally, Sierra Leone will learn from South Africa's mistake. Despite the recommendation from South Africa's TRC to the government for substantial reparations to

victims, the South African government belatedly awarded only minimal reparations to victims in 2003, embittering many victims who felt they had been used in the name of “nation building” and “reconciliation.”⁵⁷ The Act authorizing the SLTRC requires the government to implement the truth commission’s recommendations, and the commission is authorized to make recommendations regarding the Special Fund for War Victims.

The Sierra Leone case also raises some of the controversial issues identified in this essay. Here again is an opportunity to determine the merit of the transitional justice approach. If the Special Court, as expected, tries less than a dozen individuals, has it achieved more or less than the Sierra Leonean domestic judicial system could reasonably have achieved in the near future? Here also is an opportunity to discuss the practical issues of cooperation between domestic and international actors as well as trials and truth commissions. Finally, of course, careful examination will be needed to determine the degree of justice and reconciliation these bodies bring to the victims of Sierra Leone’s civil war.

Beth Dougherty’s article addresses a number of these questions with an examination of Sierra Leone’s truth commission. She demonstrates the utility of employing Priscilla Hayner’s criteria for a successful truth commission. The first criterion is a process that “encompasses engaging the public, gaining the full participation of stakeholders” and supporting victims and survivors. The second is a product to be evaluated according to “the extent of truth revealed, proposals and recommendations for reform, and the establishment of individual and institutional accountability.” The final criterion is a commission’s “contributions to long-term healing, reconciliation and reform.” Dougherty offers a detailed evaluation of Sierra Leone’s truth commission and finds many shortcomings in its ability both to reach out to and engage the public and to achieve the maximum participation of victims and perpetrators of human rights abuses. Writing before the release of the commission’s final report, Dougherty presents an assessment of the impact of the commission’s public hearings, and identifies criteria against which to evaluate its final report.⁵⁸ She also offers preliminary observations of its contributions to the needs of four major stakeholder groups: women and girls, children, amputees, and ex-combatants.

Dougherty’s article confronts the possibilities and pit-falls of concurrent retributive and restorative justice structures. She analyzes the working relationship between Sierra Leone’s truth commission and the UN-funded Special Court for Sierra Leone, highlighting how both institutions clashed over whether to allow indicted suspects held by the Special Court to testify before the truth commission. Her conclusions should inform policy-makers considering similar structures in other environments.

CONCLUSION

All of the authors in this volume call for modest expectations of transitional justice institutions. Tristan Borer carefully demonstrates that South Africa’s TRC appears to be making a lesser contribution to interpersonal reconciliation than to national unity. Jacobus Du Pisani and Kwang-Su Kim emphasize that the interpretations of “the truth” revealed by a process like South Africa’s truth commission must be regarded as one set of voices among many others. Scholars must continue to pursue broader assessments of a violent past. Alana Tiemessen forcefully argues that both the ICTR and *gacaca* will fall short of hastening full reconciliation which Rwandans need to avoid future violence, but she is hopeful that Rwandans will receive some measure of justice. Similarly, Beth Dougherty notes that Sierra Leone’s truth commission has struggled to fulfill its objectives and appears to have made limited contributions to addressing the

needs of its major stakeholder groups. Amputees, for example, regard reparations as the single most important component of justice for them, but the truth commission can only make recommendations to Sierra Leone's government for appropriate payments for victims. None of the articles that follow argue that these experiments in transitional justice have been irrelevant or total failures, but all do call for modest expectations and rigorous evaluation of the actual results.

NOTES

1. Kritz, 1996, p. 128.

2. Examples of theoretical literature include Allen, 2001; Aukerman, 2002; Biggar, 2001; Kritz, 1995; Minow, 1998; Posner and Vermeule, 2004; Sriram, 2003; Teitel, 2000. See on Rwanda: Akhavan, 1996; Magnarella, 2000; Moghalu, 2002; Neuffer, 2002; Packer 2002. See on Sierra Leone: Evenson, 2004; Gberie, 2003; Haines, 2003; Hall and Kazemi, 2003; Hayner 2004; Schabas, 2003; Schocken, 2002; Tejan-Cole, 2003. See on South Africa: Boraine, 2000; Gibson, 2004; Graybill, 2002; Krog, 1998; Meredith, 1999; Rotberg and Thompson, 2000; Villa-Vicencio and Verwoerd, 2000; Wilson, 1996. Examples of comparative studies include Chapman and Ball, 2001; Graybill, 2004; Hayner, 2001; Laakso, 2003; Lanegran 2003; Linton, 2001; Quinn and Freeman, 2003; Skaar, 1999.

3. Allen, 2001, p. 315.

4. Teitel, 2000; see also Gutmann and Thompson, 2000.

5. Bass, 2000; Lanegran, 2003, 2005; Mertes, 2000.

6. See Biggar, 2001b; Hayner, 2001, p. 88.

7. See Allen, 1999; Aukerman, 2002; Zalaquett, 1995.

8. Evenson, 2004, p. 761.

9. Aukerman, 2002.

10. Hayner, 1994.

11. Hayner, 2001, p. 252.

12. Ibid.

13. Ibid.

14. Allen, 2001; Hayner, 2001.

15. Hamber and Wilson, 2002, p. 36.

16. Gibson, 2004.

17. Aukerman, 2002, p. 39.

18. Orentlicher, 1995.

19. Walsh, 1996.

20. Bass, 2000; Humphrey, 2003.

21. Skaar, 1999, p. 1110.

22. Minow, 1998, p. 5.

23. Evenson, 2004, p. 752.

24. Sriram, 2003, p. 313.

25. Kritz, 1996, p. 148.

26. Kritz, 1996, p. 147.

27. Quinn and Freeman, 2003, p. 1124.

28. Quinn and Freeman, 2003, p. 1147.

29. Graybill, 2005.

30. See Kistner, 1996; Storey, 1997; Tutu, 1999. 77% of South Africans identify themselves as Christians.

31. See Walshe, 1995.

32. Mbiti, 1969, pp. 108-109.

33. Chapman and Spong, 2003.

34. Cited by Meiring, 2000, p. 50.

35. Cited by Hamber, 1999, p. 5.

36. Lodge, 2003, p. 185.

37. 7,094 individuals applied for amnesty; 1,160 were granted amnesty.

38. Mamdani, 2000, pp. 177-8.

39. Some 10,000-30,000 moderate Hutus opposed to the genocide were murdered as well.

40. Cited by Gevisser, 1996.

41. Des Forges, 1999, pp. 245-248.

42. Cobban, 2002.

43. *Gacaca* courts will prosecute cases ranging from property crimes (heard at the smallest, or *cellule*, level) to assaults (heard at the next higher level) through to intentional and unintentional homicides (at the top level). Those accused of sexual crimes or organizing or inciting genocide will be tried in the formal courts if they do not come before the ICTR.

44. Cited in Stockman, 2000, p. 37.

45. No more than 15-30 individuals are likely to be indicted. See International Crisis Group, August 4, 2003, p. 10.

46. Vincent, 2002.

47. There were 4 combatant groups: Revolutionary United Front (RUF), Sierra Leone Armed Forces, Armed Forces Ruling Council (AFRC), and Civil Defense Force (CDF).

48. Adongo, 2003.

49. One of the three international commissioners, Yasmin Sooka, a South African human rights lawyer, served on the SATRC.

50. Schabas, 2003, p. 1051.

51. Hayner, 2004.

52. Ibid.

53. The operating budget for the SLTRC was US \$4.5 million for one year, which came mainly from international donors.

54. Hayner, 2004, p. 5.

55. "Sierra Leone: Truth and Reconciliation," 2003.

56. Schabas, 2003, p. 1046.

57. The government awarded a one-off final reparations grant of R30,000 (US\$ 4200).

58. The truth commission presented its report to President Kabbah in October 2004 when this issue was in its final production phase.

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