# How to Build a Nation: Examining the Role of Truth Commissions in Transitional Societies

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There are many challenges that a transitional democracy must face after serious human rights abuses. One of the most immediate is how to respond to those who perpetrated the abuses. Each country approaches this question differently, though there are three main categories into which their actions fall. One is to prosecute the perpetrators in a trial, another is to establish a truth commission, and a third is to enact a blanket amnesty – generally through legislation - for all involved in the human rights abuses. While it must be stated that each country's situation is unique, there are certain common ideas and trends. In analysing these trends – and, more specifically, the trends of failed solutions – it becomes clear that certain methods of dealing with past human rights abuses are more effective than others. It is this paper's argument that truth commissions do more good for a developing democracy than any of the other options. This is because they can be more effective at creating a national identity and uniting people rather than recreating divisions that previously existed. In creating this national identity and unity, truth commissions can lead to more stable societies that are better able to protect and preserve human rights.

Over the course of this paper, I will analyse several cases from countries that used truth commissions as part of their transition from human rights abusing regimes into more democratic governments, including Haiti, Uganda, South Africa, and Timor-Leste. These

examples were chosen because they provide a broad range of structures and success rates as well as diverse contexts. I will also analyse those that did not use truth commissions, looking both at how effective their methods were and why these alternative methods were not as successful at stabilising and rebuilding a nation. This will include the use of amnesties and national amnesias (as found in Lebanon and Rwanda), and the use of trials (as found in Rwanda). I will also examine the difficulties trials present in terms of establishing a national identity that truth commissions avert.

It is important to first establish what a truth commission comprises. There are various forms of truth commissions with a variety of goals, as will be seen throughout this paper. Generally, truth commissions are comprised of a number of people, ranging from a small number (seven, in the case of the Haitian truth commission) to a very large group. These commissions generally include scholars and experts in the field, though it is not uncommon to see peace activists and prominent members of the community involved in the truth commissions, as was the case in South Africa. Largely, these commissions focus on establishing what human rights abuses occurred during a certain period of time and why they occurred. Truth commissions also rely on testimony gathered from as many people involved in human rights abuses as possible, asking for the truth about events from these people in exchange for either amnesty (in the case of those accused of crimes) or resolution (in the case of those seeking justice). However, the testimony gathered and how to interpret it is often fraught with difficulties. Despite this, truth commissions seek to take a restorative approach to the question of justice rather than a retributive one. Restorative justice has the goal of engaging all parties involved in the crime in a dialogue so as to help them reconcile their differences and understand the other's perspective. Retributive justice,

on the other hand, approaches a crime with the idea that justice requires that the perpetrators be punished. It is this question of whether a dialogue is capable of delivering any kind of justice that is most often the concern with truth commissions.

Asking whether truth commissions are preferable to trials does beg the question: what does 'preferable' entail? If the goal of the transitional government is strictly retribution, then trials are always going to be preferable as they make it possible to individualise a crime and its related punishment. However, if a government intends on making a more stable and safe nation, then the 'preferable' option must further that goal. A politically stable nation is more likely to be able to support institutions that defend and support human rights than an unstable one, suggesting that the 'preferable' path must also be the one which leads to the most stable nation. For the purposes of this paper, 'preferable' will be understood to mean 'more likely to create a stable and safe society'. Of course, it's not always clear what will create a more stable society, as illustrated by the variety of techniques and approaches that are used in transitional societies. It is in analysing the effectiveness of these techniques and why they fail that we gain an understanding of why truth commissions can be more effective than courts.

Lebanon is perhaps a textbook example of national amnesia as a strategy for coping with human rights abuses and atrocities. National amnesia is a variant on the idea of blanket amnesty. In an effort to either control the historical narrative or prevent future conflict, discussion of the past is strictly controlled, creating a sense of amnesia about events. In the wake of the Lebanese civil war (1975-1990), instead of discussing the issues that caused the war and the war crimes that occurred over the course of the war, the government instituted a policy of amnesia, arguing that discussing the war and the tensions that

caused it would only reignite hostilities (Jaquemet 2009, p. 69). Springing from the 1991 amnesty law, this strategy sought to ensure that ethnic and religious hostilities could not be reignited in Lebanon's multi-ethnic, multi-religious society (Krayem 2014). The Tai'f Agreement was signed in 1989 to end the Lebanese Civil War (*Ta'if Agreement* 1989). One of its goals was to rectify past colonial influences that had fractured the country by changing the governmental system to one that granted more power to the Muslim majority while removing power from the Maronite Christian minority (*Ta'if Agreement* 1989). However, despite the Tai'f Agreement, Lebanon is far from a stable society. Rather than being able to forget the past, the ethnic and religious tensions that sparked the first war still remain and are active influences in Lebanon (Nayel 2014). The Tai'f Agreement, with its emphasis on sectarian identity as a key part of the government, has ensured that no-one in Lebanon can view themselves as 'Lebanese,' but must instead view themselves as 'Maronite' or 'Sunni' first (Krayem 2014). The unfortunate consequence of this is that the history of the conflict has become heavily sectarian and politicised. Attempts made in 2001 to create and teach a common history failed because of this sectarianism (Haugbølle 2012, p. 15). This inability to deal with sectarianism and division, in turn, means that the fractures that caused the civil war and the tensions between groups have not been resolved. Rather, they have been strengthened and continue to flare up (Nayel 2014).

The same is true of Rwanda, which, rather than choosing to address the causes of and existence of sectarianism instead focused on creating a specific historical narrative and supressing alternate discussions (Hintjens 2008, p. 16). This narrative is primarily that Hutu murdered Tutsis, and that Tutsis were the sole victims while Hutus were the sole perpetrators. Though the previous ethnic terms of

'Hutu,' 'Tutsi,' and 'Twa' have been abandoned by the government, there are very limited practical implications of this, especially given the massive trauma suffered by Tutsis as a whole. People still see and define themselves by these terms, even if they no longer exist on identity cards and governmental documents. Rather than ensuring that there is no further ethnic violence, the abolishment of ethnic terms has instead created more insidious ways of dividing people, based on physical appearance and perception of who suffered during the genocide (Hintjens 2008, p. 33). Equally, Hutu survivors of the genocide feel alienated by a narrative that describes Tutsis as the sole victims and Hutus as the sole perpetrators of violence. This has, in turn, led to further resentment of the Tutsis by the Hutus, leading to further clashes and tensions in Rwanda (Hintjens 2008, p. 32).

Though the idea of national amnesia or a set narrative is based on a desire to create a stable society and not repeat the mistakes of the past, these examples suggest that this policy is unsuccessful. Enforcing a policy of amnesia does not erase the memories of the human rights abuses, and indeed, forcing such a narrative on people can increase rather than decrease hostilities, as the example of Rwanda demonstrates. However, the reason for this policy's failure provides the greatest insight into how a transitional society can become more stable.

In the examples of Rwanda and Lebanon, the conflicts that arose were based on ethnic or religious hostilities. More generally, both were based on a sense of seeing the other party as thoroughly 'other' and fundamentally different or inhuman. In Rwanda, this was accompanied by a dehumanisation of the Tutsis, allowing them to be seen as animals to be slaughtered rather than as people who had lived alongside the Hutus for generations (Gourevitch 1998, p. 75). It was these ethnic conflicts that led to human rights abuses, and this dehumanisation of the other that led to thousands of deaths and

disappearances. To create a more stable society, it is these underlying ethnic conflicts that must be addressed.

It is at this point that the difference between trials and truth commissions becomes more relevant. With a trial, wrong doing is individualised (Taylor and Gukalskis 2012, p. 675). A crime against humanity can be seen as the product of a single, deranged individual or group of individuals rather than as a product of a troubled society, allowing the societal causes of the crime to linger without being addressed. A truth commission, however, because of its focus on truth rather blame, is able to explore the underlying causes of this person's actions, and expose societal factors in a crime.

Post-genocide conflict resolution in Rwanda is, once again, a good example of the dangers of individualising crimes. The Rwandan government approached the genocide in two very specific ways. First, it implemented a policy of national amnesia, instituting a very specific history and making it illegal to question that history, even if it didn't reflect what actually happened. In 2001, the Rwandan government also created Gacaca courts, a series of local courts designed to better prosecute individuals responsible for crimes against humanity during the Rwandan genocide (Hintjens 2008, p. 17). However, these courts had serious flaws, some of which can be seen as unique to Rwanda, but others which betray a more systemic problem with relying on retributive justice. The Gacaca courts do not provide legal representation, meaning that many of the accused have no way to defend themselves, either by self-representing or through formal legal representation. Often, the courts are used not necessarily as a way of pursuing justice against those who committed genocide, but rather as a way of denouncing those who are not welcome in the community (Hintjens 2008, p. 17). Because of its reliance on eyewitness testimony

rather than on hard evidence, the court can be abused fairly easily (Hintjens 2008, p. 17).

More generally, however, the Gacaca courts operate with a very limited definition of a 'victim'. Victims', according to the court, are exclusively Tutsis who survived the genocide (Hintjens 2008, p. 16). Despite the slaughter of Hutu and Twa alongside the Tutsi, these other groups are not acknowledged as official victims, and are instead considered either perpetrators or bystanders with no allowance for those who fall into multiple categories (Hintjens 2008, p. 16). While this could be seen as a problem specific to Rwanda, part of the very nature of a court is to enforce a dichotomy between victim and perpetrator, regardless of whether or not that is the case in a given situation. Courts rely on the idea that if a crime has been committed, it must be punished; with the alternative being to find that the person did not commit the crime. There is no middle ground between punishment and lack of guilt, something which firmly establishes that one is either a perpetrator or not a perpetrator. Certainly in the case of Rwanda where Tutsis and Hutus had been oppressing each other and committing atrocities against one another for decades, there is some blurring of the line between 'victim' and 'perpetrator', and especially in how people perceive of themselves.

This is not to say that this is a problem exclusive to Rwanda and the Gacaca courts, but rather to establish a more general problem with the idea of using a court to explore societal relations. The fact that a person must be a victim or perpetrator limits the ability to explore what circumstances have led to that particular relationship. Equally, such a divide serves to further separate the two parties from one another, potentially leading to further alienating and dehumanisation. The question of who qualifies as 'Tutsi' or 'Hutu' in a society with a great deal of intermarriage presents the question of how, exactly, only

Tutsis can be considered victims when the label 'Tutsi' itself is based not on experience or self-identity, but on a father's ancestry (Hintjens 2008, p. 31).

It could be argued that these problems are unique to Rwanda, and that, in most situations, it is generally better understood who is a victim and who is a perpetrator. In the case of genocide or ethnic conflict, not every society is as mixed as Rwanda, with other examples presenting much clearer boundaries – the most obvious being the Holocaust – between victim and perpetrator.

However, a brief examination of Uganda illustrates why this argument – that it is possible to establish clear victims and perpetrators – is problematic. In Uganda, children have been forced to fight as soldiers for various warlords and armies throughout northern Uganda. These children have, over the course of the conflict, gone on to commit war crimes of their own. It would seem clear that, because they have violated the law, they ought to be held responsible for these crimes, but that would be ignoring that they were themselves victims of war crimes. It would also ignore the fact that, if Uganda is to recover from the immense damage to its infrastructure and economy caused by the prolonged conflicts, it must reintegrate these former soldiers into its society (Clark 2010, p. 151). Given these factors, it would seem unlikely that simply declaring all the soldiers as perpetrators would lead to a more stable Uganda. Doing so would only create a society that would have neither the means nor the hope to rebuild because of the resentment that blanket prosecution would create.

The International Criminal Court (ICC) proposed a solution of only issuing warrants for the leaders of rebel armies, but this too is problematic. The most obvious issue is that of labelling only a few individuals as clear perpetrators, implying that others that have committed crimes are not worth pursuing or that their crimes are

somehow less worthy of attention. It also potentially creates the problem that those individuals could be seen as not being perpetrators at all, given the lack of attention paid to them. In addition to these concerns, the ICC's warrants also limited peace talks by creating a new threat for the leaders of having to face prosecution after conflict ended (Clark 2010, p. 142). After the ICC issued its warrants, peace talks slowed, and the possibility of the leaders' surrender faded (Clark 2010, p. 145). There was also the concern that ICC violated Uganda's amnesty law, meaning that there could be resentment not only on the part of the reintegrated soldiers towards their prosecutors, but on the part of all Ugandans towards the ICC and courts more generally (Clark 2010, p. 148). The ICC has been seen by some as an imperialistic agent, instilling its own sense of how Uganda ought to be run, regardless of what Ugandans themselves want (Clark 2010, p. 148). This, in turn, could lead to resentment of the idea of trials as an invading force imposing on Uganda. Issuing warrants in Uganda, then, has had the opposite effect from the intended. Rather than creating a norm of upholding and respecting human rights, it has instead stymied peace talks and potentially caused more harm than good.

What these examples demonstrate is the divisive effect labelling people as 'perpetrators' or 'victims' has, especially in cases where the distinction is not altogether clear. Inherent in this is the further problem that this dichotomy creates or exacerbates a divide, leading to further hostilities. However, it must also be clear from the examples of hostilities in Lebanon and Rwanda after the official end of conflict that simply ignoring the past doesn't improve the situation or national stability. A third option must be considered if any progress towards preserving human rights is to be made.

When commenting on South Africa's Truth and Reconciliation Commission (TRC) in 1998, Archbishop Desmond Tutu stated that he

felt its primary purpose was to reaffirm the dignity of its participants after decades of dehumanisation (Tutu 1998, p. 58). Though the South African truth commission had many problems, it is also widely considered to be one of the most successful truth commissions, primarily because of this attitude of reconciliation for formerly opposed parties (Cherry 1999, p. 14). Tutu's opinion that everyone was a victim of Apartheid helped further this cause of reconciliation (Tutu 1998, p. 58). In making this idea known, and in offering amnesty to both whites and blacks, the TRC presented South Africans with the idea that each of them was in some way harmed by Apartheid, and that each of them could benefit from moving past it.

More than anything else, this idea helped forge a new identity for South Africa, one based not in ethnic divides, but one where a black South African and white South African shared the same past and could potentially share the same future. The decision to say that Apartheid was a universal violation ensured that there could be a dialogue of what occurred over the course of it and an understanding that it would not happen again. Equally, it led to the conception of every person as 'South African,' rather than one group or another being 'other,' meaning there could be less resentment between ethnic groups for past atrocities. In this lessened resentment comes a greater sense of unity. It is this creation of a dialogue with both other parties and the past that is the strength of a truth commission.

The idea of a common identity can do more for peace than trials and retributive justice. Another example of this can be found in Cyprus, a country with a long history of violence and dehumanisation of the 'other'. More recently, however, the conflicts between the Greek and Turkish Cypriots have begun to be bridged by grassroots movements trying to find the remains and fates of people who have disappeared during the island's various conflicts (Kovras 2012, p. 94).

These movements have focused on bringing Turkish and Greek Cypriots together in the context of trying to find truth in an otherwise terrible situation. In doing so, this has humanised the unknown other. Rather than seeing each other in terms of 'Greek' or 'Turkish,' Cypriots instead have begun to see each other as suffering the same abuses and having the same questions about the fates of their loved ones (Dennis 2011). In short, by viewing the other as 'similar' rather than 'other,' there is a greater sense of unity and a greater chance for peace. Indeed, in the wake of these grassroots movements, there have been renewed peace talks on the island, raising hopes that something like a quest for truth can ultimately lead to greater peace and stability (Kovras 2012, p. 97).

This is not to say that truth commissions are universal panaceas and automatically guarantee that a country will become democratic and stable. Uganda is an example of a country that held truth commissions, but which still failed to resolve conflicts (Quinn 2003, p. 2). However, the cause of this lies not necessarily with anything inherent to a truth commission, but with its execution. The first Ugandan truth commission in 1974 operated with no power, and under the same government that had committed the violations. Its motivation to explore violations was limited, especially given that its report was never published, and its members faced retaliation for what little they did publish. However, it still succeeded in reporting a fairly large number of violations, given the circumstances (Commission of Inquiry into the Disappearances of People in Uganda since 25 January, 1971, 1974). The later 1986 commission was highly public, but was more of a tool to legitimise the new government than an investigation into the previous human rights abuses (Trial 2014). Because its focus was not on rebuilding the country but on delegitimising the previous regimes, it was unsuccessful at establishing peace and stability.

It could be argued based on the example of Uganda that the fact that truth commissions are instigated by corrupt governments as a way of gaining legitimacy is itself evidence of the fact that truth commissions are a flawed institutions. After all, if they are so readily abused, it must speak to how easily they themselves can be corrupted. What this argument misses, though, is that the same could be said of trials or any post-conflict strategy. Simply because a process can be abused does not mean that that process itself is a failure. Rather, it implies that publicness of the process and its motivations can create a more effective post-conflict strategy.

It is possible to analyse truth commissions that failed and see that their failure was not necessarily due to anything inherently wrong with truth commissions, but rather with their flawed executions. Haiti's truth commission into abuses committed during the 1991-1994 coup d'état, for instance, was extremely limited and closed, offering very little opportunity for victims to speak and have their stories acknowledged (McCalpin 2012, p. 139). In being closed and not well-publicised, the truth commission had an aura of illegitimacy surrounding it. Its unwillingness to name those accused or those who had spoken to the commission further cemented the idea that the commission was corrupt. While naming contributors had the possibility of putting the participants in danger, one criticism levelled at the commission was that the truth couldn't be expressed if it was being censored (McCalpin 2012, p. 150). In censoring these names – regardless of the motivations – the commission lost legitimacy because it was seen as not accurately representing the people. Without a sense of legitimacy or public support, the commission could not possibly create a sense of common identity or common collective history.

There is a very serious problem that the Haitian truth commission brings to light, and it is a problem inherent to truth

commissions. In many cases, the truth can be a painful thing and can potentially put lives in danger. It could be suggested that truth commissions ought to be avoided because of this potential danger to the individuals who participate. There is no easy solution to this particular problem, though suggesting that truth commissions take all possible steps to increase their own legitimacy while still maintaining the safety of their participants is a good place to start. In the case of Haiti, being more open in its participation and well-publicised likely would have granted it greater legitimacy, better allowing it to refrain from putting its participants in danger. Though Haiti illustrates a flaw with truth commissions, it is likely that with sufficient protections in place and with a sufficient establishment of legitimacy, it is possible to both protect participants and be seen as revealing the truth. It is also worth noting that the problem of threats to participants is not unique to truth commissions. Some who have chosen to testify in Rwanda's gacaca courts have faced violence for their testimonies (McVeigh 2006). What this suggests is not a problem inherent to truth commissions, but rather a problem with public testimony. Once again, however, there can be no legitimacy without some degree of publicness, meaning the solution is not to ban public testimony, but rather to take every possible effort to ensure the safety of participants.

As a final example which perhaps best encapsulates the debate about truth commissions, the Timor-Leste Commission for Reception, Truth, and Reconciliation (CAVR) represents possibly the best example of both the successes of a truth commission and the ways in which it can fail. In this case, the CAVR sought to establish both a quantitative truth of how many were killed over the course of wars with Indonesia, but also a qualitative truth of what happened and how it happened, with the intention of preventing further conflict (UN Transitional Administration in East Timor (UNTAET) Regulation

2001/10, 2001). The quantitative aspect was a dismal failure, being unable to determine death tolls and the exact number of victims specifically because, in many cases, the victims had been completely wiped out (Roosa 2007, p. 575). However, the CAVR could also be considered a success as it allowed East Timorese to have their experiences acknowledged publicly. Speaking to the commission was eventually seen as a healing ritual (Roosa 2007, p. 574). Rather than being a failure, then, it can be said that the CAVR succeeded in one of its goals, namely of helping heal East Timor, even if its other goal of obtaining quantitative data failed.

These cases demonstrate that truth commissions can be successful if they set out with certain goals in mind. The goal of a truth commission must not be to acquire quantitative data about the number killed or disappeared as this will only serve to limit what 'truth' is to a definition that it can't possibly fulfil. Rather it must explore what happened and why it happened, albeit in an experiential sense rather than an objective, quantitative sense. This raises the question, however, of the paradox of calling a study based in subjective experience a 'truth' commission. In the case of South Africa, this paradox was acknowledged, with the final report by the TRC stating that the truths they sought were not only concrete, but the truths of experience. In other words, they meant to explore not only what happened, but how it happened and how it was perceived as happening (Truth and Reconciliation Commission of South Africa, 1998, p. 135). Just as a truth commission should not be used to find quantitative data because it will most likely fail, it must also not be used to obtain evidence that could be used in courts. Rather, a truth commission functions at its best when it establishes a truth that can be agreed upon by all parties, one that represents a communal understanding of history, and one that can be used to forge a new, communal identity. South Africa once again

serves as a good example of this, with post-Apartheid conflict being relatively limited, and a focus being placed on creating a more unified 'rainbow nation'.

It would be easy to say that if the goal of a truth commission is to establish a common identity, then Rwanda's imposed history could be the right idea. However, it's important to note the distinction between the cases. In the case of Rwanda, the communal history is imposed with no ability for the victims of events to place themselves in the narrative. It is a truth that is forced on Rwandans rather than one that is agreed upon. The ideal truth should be one in which everyone has a chance to place themselves, and in the creation of which everyone participates. It is absolutely vital that truth commissions be public, and grant everyone the chance to participate, specifically because this is the only way to create a universal narrative. Without large-scale participation, people do not have a chance to shape or place themselves within the historical narrative, thus ensuring that it will not be seen as universal. This narrative may not reflect an objective truth, but that does not mean that the truth it finds is without value. Rather, it is a truth that can help heal a damaged nation, and one that can allow it to move on by including everyone and their experiences.

The question of whether to institute trials or truth commissions in a transitional country is a difficult one. When framed in the context of creating a more stable and secure society, however, it becomes easier to see what can be done to create that society. When ethnic, religious, or political tensions lie at the heart of a nation's troubles, it is impossible to move on until these are dealt with, as the continuing tensions in Lebanon and Rwanda demonstrate. It is equally impossible to move on when an imposed history does not reflect the experienced history, or when there are explicit perpetrators and victims that do not fit into that imposed history, as Rwanda and Uganda once again demonstrate.

Rather, the only way for a nation to truly rebuild after a series of human rights abuses is for it to create a sense that everyone is equal, and an identity that transcends ethnic or religious labels. If one accepts that the ultimate goal of any transitional government should be to establish a safer and more secure nation, then it is clear that a truth commissions, and their ability to create a new national identity in which each individual is able to place themselves and their experiences, are more valuable and preferable to trials.

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