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## Ghana's National Reconciliation Commission: A Comparative Assessment

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for the *International Center  
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## **About the ICTJ**

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.

In order to promote justice, peace, and reconciliation, government officials and nongovernmental advocates are likely to consider a variety of transitional justice approaches including both judicial and nonjudicial responses to human rights crimes. The ICTJ assists in the development of integrated, comprehensive, and localized approaches to transitional justice comprising five key elements: prosecuting perpetrators, documenting and acknowledging violations through nonjudicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and facilitating reconciliation processes.

The Center is committed to building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organizations and experts around the world to do so. By working in the field through local languages, the ICTJ provides comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organizations, governments and others.

## **About CSVr**

The Centre for the Study of Violence and Reconciliation (CSVr) is an independent non-governmental organization based in South Africa whose mission is to develop and implement innovative and integrated human security interventions based upon a commitment to social justice and fundamental rights for people who are vulnerable or excluded. CSVr pursues these goals as essential to its aspiration of preventing violence in all its forms and building sustainable peace and reconciliation in societies emerging from violent pasts - in South Africa, on the African continent and globally.

In pursuance of this vision, CSVr:

- provides high quality research that enhances the understanding of the causes of violence, societies in transition and the obstacles to sustainable peace and reconciliation;
- undertakes strategic interventions that help prevent and address the causes of violence and promote sustainable peace and reconciliation; and
- advocates for changes to policy, legislation, practice, attitude, behavior and culture that will contribute to the prevention and eradication of violence and the achievement of sustainable peace, reconciliation, and development.

## **About the Author**

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## **Foreword by Vasuki Nesiah**

*Senior Associate and head of the ICTJ's Ghana Program<sup>1</sup>*

On March 6th, 1957, Kwame Nkrumah formally declared Ghana's sovereignty as an independent nation in an address to assembled luminaries from Ghana and around the world, delivered from the podium of the Old Parliament House in Accra. As this was the first African country to win independence from Britain, the event represented the hopes and aspirations of statehood for an entire generation of freedom fighters. Nkrumah famously said "Seek ye first the political kingdom and all else shall be added unto you." Yet history would prove that 'all else' would not be 'added on' so easily; on January 14th, 2003—46 years after independence—the National Reconciliation Commission (NRC) inaugurated public hearings in that very same chamber of the Old Parliament House, seeking to come to terms with the difficult path of post-colonial statehood. Sadly, Ghana's post-independence history had been overshadowed by authoritarian and military rule and marked by a bleak history of human rights abuses, demonstrating alarming parallels between abusive colonial military power and approaches to dissent by successive post-colonial administrations.

In his January 2001 acceptance speech, the newly elected president of Ghana, John Agyekum Kufuor, promised an active policy of national reconciliation designed to heal the wounds of the past. In January 2002, he signed into law a bill creating the NRC, mandated to examine decades of human rights abuse. The following year, a nine member Commission began to hold public hearings. Over 4,000 people submitted statements about killings, disappearances, sexual violence, torture, and other kinds of abuse. Approximately half of the deponents were also invited to public hearings, where the nation tuned in to hear the Commission's proceedings. After taking in statements, convening hearings, launching investigations, and conducting research and analyses regarding the patterns, causes, and consequences of Ghana's human rights history, the NRC closed its doors and submitted its final report (including recommendations for reform and reparations) in October, 2004.

The NRC was to be the first national institution to provide Ghanaians opportunities to publicly relate their experiences of abuse, uncover the truth about the past, and seek redress. It was meant to be a national process of examining the more anguished moments of the past decades, undertaken with the hope that incorporating some measure of justice to catalyze a national conversation about the political dynamics of governance and citizenship in Ghana would help the nation move forward. Clearly, the process that the Commission inaugurated is a long, historical path and its work is only the first phase of that journey. However, it is important—even at this early stage—to take stock, assess the Commission's contributions, and further strategize on addressing ongoing issues of accountability, redress, and reform. Moreover, as truth commission processes proliferate across the globe, a critical analysis of the Ghanaian experience offers an opportunity to interrogate emerging orthodoxies around truth commissions, question the modalities around how they are operationalized, and revisit their potential role in the politics of justice and reconciliation.

The following paper, written by Nahla Valji of the Center for the Study of Violence and Reconciliation (CSV), represents a key step in a broad effort to look back and critically examine the legacy of the Ghanaian NRC. This paper seeks to assess the Commission in relation to some of the more crucial debates that tend to animate conversations about truth commissions within the field of transitional justice. In so doing, it compares and contrasts the

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<sup>1</sup> The ICTJ's Ghana team also includes Consultant Eric Darko and Program Associate Kelli Muddell, who managed the production of this paper from inception to completion.

Ghanaian experience to other commissions around the globe to elicit deeper understanding on both fronts.

There are several key issues that are worth highlighting in relation to an assessment of truth commission processes. Many of these issues are captured in debates about mandates and how they should be interpreted. For example, discussions around the historical period that is to be examined by the commission, how it defines terms like ‘violations’, its methodology for conceptualizing how one constitutes categories of ‘victims’, and numerous other difficult matters emerge around the mandate. Second, the operational practices adopted by a commission are also subject to scrutiny; the technology of truth that it mobilizes through statement-taking forms, research categories, statistical coding processes, and the nature of the ‘truth’ that then gets the imprimatur of official legitimation are all bases for debate. Finally, there are the broader political dynamics within which a commission needs to be situated, not only on the basis of issues raised by partisan political affiliation, but also the structural issues it highlights and those it displaces; the political initiatives it strengthens and those it compromises; the victims/survivors/civil society groups it reaches out to who feel some ownership of the process, as well as those it neglects or alienates.

As a result of the ICTJ’s close engagement with the commission process in Ghana, we know that all these issues were relevant to the Ghanaian process. For instance, even at the time of parliamentary debate on legislation for the Commission, there was much public controversy about whether its purview should be confined to the military years or whether it should examine Ghana’s entire post-colonial history. Likewise, there may have been arguments about whether it should also look into the pre-independence period, reflected in the historical section of the final report, which examines the long reach of colonial governance on the human rights history of Ghana.

For many, this was an opportunity to finally put to rest the model of one party rule as a political framework that enabled abuse; for others, this was about revising the relationship between the military and civilian population by strengthening the framework for civilian oversight of the security forces. Others argued about whether the Commission should look only at national actors, or if it should also examine the international financial institutions and governments that supported the military governments and ignored human rights abuses, begging the question of whether or not truth commissions and other nationally directed transitional justice institutions absolve international actors of responsibility, and obscure how regional and global geopolitical dynamics fundamentally shape institutions of governance and citizenship. This is not unrelated to debates about more and less legal definitions of accountability; in many countries there have been debates about whether the focus should be on the accountability of perpetrators of human rights abuse or the responsibility of beneficiaries of human rights abuse.

In Ghana, there was also the question of how the Commission would relate to judicial accountability, given the backdrop of a constitutional amnesty that still limited the terrain of legal action. Some worried that the rhetoric of reconciliation would short change justice on the backs of victims, while others thought the Commission would ensure that victims had some level of redress, whereas the amnesty would have foreclosed all options. Many raised the issue of whether the violations examined by the commission should be confined to violations of bodily integrity or extend to socio-economic violations and the reproduction of structural injustice? Given the acute poverty shaping the dominant reality of many Ghanaians, there were important questions about the politics of ‘truth’, in particular, whether commissions generate a distorted truth when they avert their gaze from some of histories abuses to focus on others.

Similarly, a question of ‘bias’ haunted the Commission from the outset. While there was much media attention paid to issues of partisan politics, there were also questions of bias in relation to issues of politically marginalized communities: did the Commission’s process also ‘deliver’ as it were for the rural poor, ethnic minorities, women, and other disenfranchised groups? This question arose as a reflection of the Commission’s institutional culture and the way it operationalized its mandate (in relation to the role of civil society and the media, the norms and practices regarding evidence, law, psychosocial support etc.)—many felt it was all couched in inaccessible, overly legal terms.

The Ghanaian experience begs a slew of deeper, philosophical and political questions that emerge from transitional justice mechanisms. Should there have been more civil society ownership? Is this a process that consolidates the political elite rather than opening up governance structures to more radical scrutiny? These issues are tied to the complexities of analyzing the differentiated human rights impact for socially marginalized communities. The distributive impact, as it were, of commission processes and the human rights history they narrate, are an ever-present undercurrent for many commissions. Finally, what are the lines of legitimacy and accountability between commission-like processes and the ‘victims’ whose interests they claim to represent? Whose voices speak to us in the final report?

These are just a few of the many challenging questions that need to be probed from different angles. In addition to this study, the ICTJ is developing two other papers that will provide different windows into the NRC process. One of these will situate the Commission in the history of justice struggles within Ghana and assesses its contribution to those efforts. The other will be based on a survey of individuals who submitted petitions to the Commission regarding human rights violations they experienced, and analyze their perceptions of how the Commission addressed ‘victim’/survivor priorities. Even with these planned, we will need to ask more questions and conduct further analyses of the post-commission process as we move forward.

As of this writing, the government has just announced a plan for disbursement of reparations within the coming months and civil society groups are busily convening forums to address the institutional reforms that still need to happen. These and other steps will need to be closely watched and engaged with to ensure success in the post-commission process.

Given the ICTJ’s deep involvement with the Commission, this also provides us a rich opportunity for self-reflection. From 2001, the Center worked with the justice ministry and civil society to advice on the legislation for the NRC, as well as steps to establish the nine-member Commission. With the inauguration of the commissioners in May 2002, our focus shifted to addressing the operational challenges faced by the new Commission. Since the release of the Commission's final report in April 2005, the ICTJ has been engaged with the legal and policy issues entailed in implementation of the Commission’s reparations plan, and analyzing areas where accountability gaps persist, such as in the representation of women’s voices in the NRC process. The Center’s follow-up initiatives have included areas such as crafting the reparations strategy, recommending institutional reform, and guiding the dissemination of the final report.

In the course of its engagement in Ghana, the ICTJ has prioritized collaboration with civil society on a wide range of issues, including the TRC mandate, victim support and advocacy, reparations, institutional reform, and the gendered dimensions of Ghana’s human rights record. The Center’s technical input has been designed to strengthen the capacity of civil society groups to enable them to engage with transitional justice issues and advocate for their agendas even after our involvement in Ghana ends.

Efforts to achieve transitional justice in Ghana have included credible and important initiatives to pursue truth, reparations, legal accountability, and institutional reform. Human rights advocates in Ghana have shown resilience through difficult times, as well as the vision and commitment required to deepen and strengthen democratization during more favorable periods. Given Ghana's role in the region—and in Africa more generally—the impact of this spirit, and the reach of the achievements it has engendered, will extend far beyond Ghana's borders.

The Old Parliament House was chosen as the venue for the NRC process because of its historical significance as the 'midwife' in the birth of Ghana's independence. Martin Luther King—present at the Old Parliament House on that March day in 1957—was inspired and elated by the experience and later remarked that one of the most memorable aspects of the day was that Nkrumah and his comrades entered the hall not with crowns but the prison caps from their period of detention in British prisons, where they served time for their political activism. Like those prison caps, the Commission process was to also a statement regarding justice and accountability and a call to reflect on the long reach of historical abuses. Reflecting on his experience in Accra, King said,

“Ghana tells us that the forces of the universe are on the side of justice. That’s what it tells us, now. You can interpret Ghana any kind of way you want to, but Ghana tells me that the forces of the universe are on the side of justice. That night when I saw that old flag coming down and the new flag coming up, I saw something else. That wasn’t just an Ephemeral, evanescent event appearing on the stage of history, but it was an event with eternal meaning, for it symbolizes something. That thing symbolized to me that an old order is passing away and a new order is coming into being.”

Yet this is not a place for naive romanticisms; as King says himself in those same reflections about Ghanaian Independence Day, this is not an easy process and “the road to freedom is a difficult, hard road.” Just as the first raising of the Ghanaian flag did not represent the end of the road, the submission of the NRC’s final report did not mean the journey towards truth and justice was over. We must bear that in mind as we continue to assess the Commission’s legacy on that long, hard road...

## **CONTENTS**

### **Ghana's National Reconciliation Commission: A Comparative Assessment**

- I. Establishing a Truth Commission**
- II. Contextual Constraints**
  - A. Funding the Commission
  - B. Political Context
- III. Key Debates Surrounding the National Reconciliation Commission (NRC)**
  - A. Time Frame Covered by the Commission
  - B. Commissioner Selection Process
  - C. Perceptions of Bias
  - D. Legalistic Nature of the Commission's Proceedings
- IV. Perpetrator Engagement with the NRC**
- V. The NRC's Fulfilment of Victim Needs**
  - A. Acknowledgement
  - B. Truth Seeking
  - C. Reparations
- VI. Furthering Reconciliation**
  - A. Politicization of the NRC as an Obstacle to Reconciliation
- VII. Immunity or Prosecutions-Addressing Impunity and Furthering Reconciliation**
- VIII. Establishing a Historical Context for Past Injustices: The Role and Reform of Institutions**
  - A. Assessing the Impact of the NRC on Institutional Reform
- IX. The Role of Civil Society during the Work of the NRC**
  - A. Absence of a Victims' Association
  - B. Role of the Media
- X. Conclusion: Key Recommendations**
- Annex 1 List of Interviewees**



## **GHANA'S NATIONAL RECONCILIATION COMMISSION: A COMPARATIVE ASSESSMENT<sup>2</sup>**

Since gaining independence in 1957, Ghana has experienced four coups and successive military regimes. Human rights violations occurred under each of the military governments and intensified following the two coups initiated by former President J. J. Rawlings in 1979 and 1982. Respect for rights improved during interim periods of civilian rule; however, most civilian administrations were too short-lived to counter the culture of impunity and disrespect for the rule of law that had become entrenched under former administrations. And here too, civilian administrations abused their powers in order to target officials of former regimes. As a key consequence of this history, a culture of human rights and respect for democratic principles was unable to take root during this time.

In the early 1990s, then President Rawlings initiated a gradual return from military rule to democracy. A new constitution came into effect in 1993 and democratic elections were held in which Rawlings was returned to power. He remained president of the country until the next elections in 2000. While much democratization was achieved during this period, Rawlings' continued position of power was a roadblock to investigations into the past and justice for historical abuses. To ensure that this impunity would continue once it was out of power, the Rawlings administration entrenched a self-amnesty in the 1992 Constitution which barred any legal measures being taken against members of either the Provisional National Defence Council (PNDC) or the Armed Forces Revolutionary Council (AFRC), both military regimes headed by Rawlings himself.

It was only with the second democratic elections in 2000, which replaced Rawlings with President Kufuor of the New Patriotic Party (NPP), that the issue of the past took centre stage. In his election manifesto Kufuor pledged to establish an institution to further national reconciliation. After the election it was decided that this institution would take the form of a truth commission. As a result of the amnesty that was constitutionally entrenched during the previous administration, victims had no recourse to the courts for their grievances and a truth commission was believed to be the only way to secure some measure of accountability and acknowledgement, as well as to reveal the full extent of past violations. The National Reconciliation Commission (NRC) was therefore legislated into existence in 2002 with a mandate to:

[S]eek and promote national reconciliation among the people of this country by recommending appropriate redress for persons who have suffered any injury, hurt, damage or grievance or who have in any other manner been adversely affected by abuses and violations of their human rights arising from activities or inactivities of public institutions and persons holding public office during periods of unconstitutional government ...<sup>3</sup>

This report aims to evaluate the National Reconciliation Commission against its own objectives and in the context of the comparative experiences of truth commissions in other countries. The research is based on primary and secondary source material on the Ghanaian process as well as

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<sup>2</sup> The author is grateful to the Ghana Center for Democratic Development (CDD-Ghana), and in particular Wahab Abdul Musah, for the time and energy spent coordinating interviews during her time in Ghana.

<sup>3</sup> *The National Reconciliation Act 2002*, Act 611, Parliament of the Republic of Ghana. Available at [http://www.ghanaweb.com/law\\_cms/article.php?ID=2259](http://www.ghanaweb.com/law_cms/article.php?ID=2259).

a series of 14 interviews conducted with local civil society representatives in Ghana in September 2005. This was supplemented with follow up correspondence as well as discussions with those involved with truth commissions in other countries.

## I. ESTABLISHING A TRUTH COMMISSION

Countries choosing to establish truth commissions generally do so during the transition period immediately following conflict and/or an authoritarian regime.<sup>4</sup> In the case of Ghana, the NRC was established some nine years after a return to democracy. This lapse in time initially lead some to question the necessity for a truth commission in a country that had nominally completed its transition and consolidated a democratic system of government in the preceding decade. Moreover, Ghana's history of abuses, which were assumed to be limited in number, as well as its now stable system of governance, stood in stark contrast to its neighbors in the region; in particular Nigeria, Sierra Leone, Liberia and Côte D'Ivoire, where conflict and militarism continued to threaten stability. The initial scepticism regarding the need for a truth commission was also fuelled by speculation that it was being established for political motives. In particular, some accused the Kufour administration of establishing a truth commission with the sole aim of discrediting the PNDC, former President Rawlings' political party and now the official opposition, ahead of the next elections.

Different countries adopt truth commissions for different reasons, and the decision is invariably influenced by a range of political and resource interests, how those in power define their interests, as well as the type of transition being experienced. When established for the right reasons, truth commissions are intended to "help establish the truth about the past; promote accountability among perpetrators of human rights violations; provide a public platform for victims; inform and catalyse public debate; recommend victim reparation; recommend necessary legal and institutional reforms; promote social reconciliation; and help to consolidate a democratic transition."<sup>5</sup>

Freeman and Hayner warn, however, that truth commissions can also be employed for the wrong reasons:

Even where a truth commission is established, there is no certainty that it has been established with the proper motives or that it will achieve the many potential benefits discussed above. For example, it is possible that a government may perceive a truth commission as a vehicle for the indirect pursuit of political vendettas or as a way to delegate responsibility to others for difficult tasks that it is not willing to carry out itself. It may also make the commission deliberately weak and thereby make it easier to challenge or reject the results later. Cynical governments may also establish truth commissions to try to insulate themselves against criticism from victims that not enough has been done to redress the human rights abuses of the past.<sup>6</sup>

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<sup>4</sup> Attafuaah writes that Ghana is perhaps the only country to institute a truth commission so long after the political transition has been effected. See K.A. Attafuaah, "An Overview of Ghana's National Reconciliation Commission and its Relationship with the Courts," *Criminal Law Forum* 15, 2004, at 125-134.

<sup>5</sup> M. Freeman and P. B. Hayner, "Truth-Telling," in D. Bloomfield, T. Barnes and L. Huyse eds., *Reconciliation After Violent Conflict: A Handbook*, Stockholm: International IDEA, 2003, at 125.

<sup>6</sup> Id. at 127.

Examples of the questionable use of truth commissions include the 1986 Ugandan commission, the Commission of Inquiry into Violations of Human Rights (CIVHR). Announced by President Museveni within months of coming to power, some believe that the Commission was merely an attempt to curry favor with the international community.<sup>7</sup> As a result, Quinn writes that when its international “use” ran dry, so did domestic political interest.<sup>8</sup> Consequently “the process appears to have left no indelible mark on Ugandan society; the country’s memory of past events, at least in terms of the CIVHR has failed.”<sup>9</sup> Brahm similarly writes of commissions where political will faltered suddenly when the commission turned its attention to the role of the current government:

... in places such as Zimbabwe and Haiti, the publication of the commission's report was hindered or completely stopped because it was too critical of the new government. In Bolivia and Ecuador, commissions were disbanded before completing their work because the investigations became too politically sensitive.<sup>10</sup>

The question of whether a country needs—or needed—a truth commission is difficult to assess and can only fully be answered in the longer term once the impact of the commission’s work has been felt.<sup>11</sup> In the Ghanaian context, while incidents of violence may have seemed comparatively minimal, there exists a long history of oppression, authoritarianism and anti-democratic practices in the country, as well as continued use of violence by successive regimes. Ken Attafuah, executive secretary of the NRC, writes that while Ghana may appear a “haven of peace and tranquillity,” this partial view “obscures the history of ethnic violence, hostility and human rights abuses that have been experienced.”<sup>12</sup> Moreover, it is deceptive to judge the influence of the past on a country’s democratic transition merely by looking at comparative levels of violence and repression. In Brazil, for example, where much like Ghana economic growth was coupled with comparatively lower levels of repression than neighboring regimes, the expectation was for a fairly smooth transition. Kritiz writes, however, that it was precisely these factors which allowed former political actors to retain both influence and credibility, making the nation vulnerable to regression.<sup>13</sup> And while some may have questioned the need for a truth commission based on assumed levels of past abuse, it is unlikely they anticipated

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<sup>7</sup> See J. Quinn, *The Politics of Acknowledgement: An Analysis of Uganda's Truth Commission*, Toronto: YCISS, 2003, and E. Brahm, “Truth Commissions,” *Beyond Intractability*, [www.beyondintractability.org/essay/truth\\_commissions/](http://www.beyondintractability.org/essay/truth_commissions/), 2004.

<sup>8</sup> See Quinn, *supra* note 6. What is interesting about Ghana’s decision to establish a truth commission is that in many countries, truth commissions have been established in response to mounting international pressure to deal with the violations of the past—for example in Guatemala, El Salvador, Sierra Leone, and others. In Ghana, by contrast, the international community, and more specifically international financial institutions such as the IMF and others, treated Ghana as a success story for much of its recent past—in particular the period under Rawlings when the majority of abuses occurred. There was therefore no international pressure to set up a commission and it is arguable that the failure to finance the NRC in the same way that other such commissions have been financed was due in part to an unwillingness on the part of the international community to acknowledge its role in Ghana’s past.

<sup>9</sup> See Quinn, *supra* note 6.

<sup>10</sup> See Brahm, *supra* note 6.

<sup>11</sup> Different objectives have different time frames. For example, the recording of history and acknowledgement of victims can be achieved by a truth commission in the short term. The longer term goals of deepening democracy, effecting institutional transformation and implementing a comprehensive reparations policy obviously require more distance to evaluate.

<sup>12</sup> See Attafuah, *supra* note 3 at 126.

<sup>13</sup> N. J. Kritiz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Vol. 2, Washington, D.C.: United States Institute of Peace, 1995.

that the Commission would receive more than 4000 statements relating human rights violations—validating to a great extent the need for just such an institution.

## II. CONTEXTUAL CONSTRAINTS

### A. Funding the Commission

Critics also questioned the need for a truth commission from an economic standpoint, alleging that money spent on a truth commission is money diverted from competing and more urgent budgetary priorities, in particular social spending in a country where just under a third of the population subsists below the poverty line.<sup>14</sup> Minimal international interest or support meant that the Commission was funded almost entirely from an already overstretched national budget. The result was a no-win situation where the money spent on the NRC was seen as money diverted from other priorities and yet the resources were so few as to render the NRC much less effective than it might otherwise have been.

Beyond the bread and butter priorities of social spending, the NRC took place within a context where other institutions that support Ghanaian democracy—such as the Commission for Human Rights and Administrative Justice (CHRAJ) and the National Commission for Civil Education (NCCE)—were already starved for resources.<sup>15</sup> By further diverting limited resources from existing institutions of democratic support, some felt that the NRC's existence could undermine the long term impact of these structures.

Questioning the necessity or relevance of a truth commission is understandable in a country where poverty is endemic and economic concerns seem more urgent to the average citizen. On the other hand, it is generally accepted today that almost half of all post-conflict countries relapse into conflict in the five years following a peace agreement.<sup>16</sup> In a recent study, researchers found that in those countries where “reconciliation events” were held, 64 percent did not return to violent conflict, while of those where no such events took place, only 9 percent did not return to war.<sup>17</sup> A truth commission would surely qualify as such an “event,” and while it is arguable that preventing a return to authoritarianism and military rule is qualitatively different from preventing a return to mass conflict, such studies demonstrate the contribution that reconciliation processes can play in rebuilding social relations and social infrastructure.

Nearly all truth commissions have taken place in the South, in poor countries.<sup>18</sup> As conflict exacerbates this poverty, the investment in mechanisms aimed to build peace and reconciliation

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<sup>14</sup> These same economic realities hindered the ability of the Commission to sustain the interest of the population. As Richard Apronti and Veronica Ayikwei Kofie of the Ghana Centre for Human and Peoples Rights observed in an interview, the NRC has fallen off the country's agenda since the Final Report was handed over to government; in part because government has been slow to react, but more so because people feel that there are more pressing economic priorities that have more relevance and urgency in their lives. The diminishing relevance of the Commission raises concerns about the long term impact of its work.

<sup>15</sup> E. Gyimah-Boadi, *National Reconciliation in Ghana: Prospects and Challenges*, Accra: CDD-Ghana, 2002.

<sup>16</sup> C. Guicherd, *Picking up the Pieces: What to expect from the Peacebuilding Commission*, New York: Friedrich Ebert Foundation, 2005.

<sup>17</sup> E. Garcia, “Bridging memory and hope: reflections on conflict settings,” in *Reconciliation: Rhetoric or Relevant*, B. Hamber and G. Kelly, eds., Belfast: Democratic Dialogue, 2005, at 39.

<sup>18</sup> Exceptions to this include the Greensboro Truth and Reconciliation Commission in the United States as well as other more widely defined truth-seeking initiatives in countries such as Northern Ireland.

and address the past are of vital importance. In writing on the tension that can sometimes surround funding these mechanisms, Quinn observes:

In transitional societies, the outward signs of poverty and destitution sometimes mask the importance of rebuilding those structural social institutions that form the basis of any stable society. Often, scarce resources are allocated to the repair of the physical infrastructure in its many forms, rather than to the repair of its social infrastructure.<sup>19</sup>

## **B. Political Context**

As noted previously, the NRC was established nine years after a return to democracy. In theory, the distance from the past and the emergence of strong democratic institutions should have strengthened the capacity of the Commission to carry out its mandate. In reality, the National Reconciliation Commission was plagued by the ongoing political roles of both former President Rawlings, who continues to dominate Ghana's political landscape, and the National Democratic Congress (NDC), the heir to Rawlings' PNDC party, and the main opposition party in Parliament.

## **III. KEY DEBATES SURROUNDING THE NATIONAL RECONCILIATION COMMISSION (NRC)**

### **A. Time Frame Covered by the NRC**

By far the most acrimonious and damaging controversy to surround the establishment of the National Reconciliation Commission centred on the time frame covered by the Commission's mandate. Before the framework for a truth commission was even drafted, the then attorney general made it clear to an enquiry from the Civil Society Coalition<sup>20</sup> that the Commission would focus solely on past military regimes, and more specifically, on the military regimes of former President Rawlings. The government was adamant on this point, arguing that the inclusion of any other administrations would dilute the intended effect of the Commission.<sup>21</sup>

The attempt to focus solely on former President Rawlings has been described as a disservice to the work of the Commission. Experts on the work of truth commissions recommend that when establishing the mandate of a commission, the period to be examined should be a consecutive period of time and not broken up to examine select chunks of history, as this can easily feed into perceptions of bias and victimization.<sup>22</sup> The latter approach to setting time frames has been utilized in other country contexts as a means to a political end, resulting in a weakening of the outcome as well as the credibility of the commission. In Uganda, for example, the Commission of Inquiry into Human Rights Violations (CIVHR) was expressly forbidden to examine violations which had occurred after January 1986, when Museveni came to power. Many Ugandans continued to suffer abuses at the hands of Museveni's government, minimizing the relevance the Commission had for the ordinary citizen.<sup>23</sup>

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<sup>19</sup> See Quinn, *supra* note 6 at 2.

<sup>20</sup> The Civil Society Coalition was a grouping of over 20 organizations initiated by CDD-Ghana to mobilize support and conduct public awareness and advocacy during the work of the NRC. See section below on the role of civil society.

<sup>21</sup> C. Dadzie (personal communication).

<sup>22</sup> See Freeman and Hayner, *supra* note 4.

<sup>23</sup> See Quinn, *supra* note 6.

Eventually, through persistent intervention from both domestic and international civil society, the Final Act of the National Reconciliation Commission was amended to reflect the recommendations for a continuous time frame. The stated focus remained on past military regimes but a “window” was provided so that those who wanted to report abuses under any other regime dating back to independence would not be turned away. The compromise was seen as a face saving measure by some, with the continued emphasis on the military regimes of the PNDC and AFRC now only slightly more veiled. Chris Dadzie, director of public education at the CHRAJ and a member of the Civil Society Coalition, describes the issue of the time frame as the “sore point” of the Commission, noting that prior to this issue, the idea of a truth commission had been supported by all political parties:

I think in parliament, the whole parliament, both opposition and the ruling government were of the same mind to have a truth commission. That was very obvious. But when it came out as though you are only limited to this group, then it was seen as, then it went into bipartisanship and then it was bitter, I mean that was bitter ...

Dadzie goes on to say that although the opposition had originally supported the idea of a commission, the issue of the time frame was so damaging that they walked out of Parliament when the NRC Bill was passed, condemning the entire exercise as a witch hunt aimed at discrediting the opposition ahead of the next elections.<sup>24</sup> It would seem that the initial controversy did serious damage to perceptions of the Commission. Before it had even begun, it had been dismissed by an entire segment of Ghanaian society as a politically targeted machination to discredit the opposition party. The debate over the time frame was subsequently compounded by other controversies, and from that point forward, the NRC was plagued by active opposition from the NDC, who nicknamed it the “Nail Rawlings Commission.” This overwhelming politicization of the NRC’s work from the outset set the tone for the Commission and plagued its credibility to the end; it mattered little that once the Commission was operational the constructed discourse of “doors” and “windows” fell away, as did the express focus on periods of military rule in statement taking and public hearings.

## **B. Commissioner Selection Process**

After the drafting of legislation, the selection of commissioners is one of the earliest and most crucial steps towards establishing a truth commission. Perhaps more than any other single factor, “the persons selected to manage a truth commission will determine its ultimate success or failure.”<sup>25</sup> As a truth commission is intended to foster national reconciliation, involvement of the public and a sense of ownership from the outset are crucial contributors to success, and commissions are more likely to garner public support and credibility where the process of selection is seen to be participatory and transparent. For these reasons, it is generally accepted that appointments should be conducted in a manner that is open, participatory and transparent. Unilateral appointments can instil mistrust and suspicion as to the objectivity or independence of those leading the commission. South Africa, Sierra Leone and Timor-Leste are all examples of countries that sought to appoint commissioners through a transparent exercise with active civil society involvement.

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<sup>24</sup> There are contradictory views on the initial position of the NDC regarding a truth commission. While some interviewees stated that the opposition had initially been in agreement with the idea of establishing such a body and only walked out in protest over the proposed mandate of the Commission, the former attorney-general is adamant that the NDC opposed the very idea of a commission and declared from the start that it was a “witch hunt.”

<sup>25</sup> See Freeman and Hayner, *supra* note 4 at 129.

South Africa was the first country to initiate sustained public involvement in the commissioner selection process. Nominations were first solicited from civil society and nominees were interviewed by a selection panel which was itself multiracial and included representatives from all major political parties, trade unions and civil society. After public interviews with almost 300 nominees, the selection panel created a shortlist of candidates. Of these, 25 names were presented to the president and cabinet. The president then requested that the public submit questions for the final interview, further increasing public participation and interest, before he selected the final 17.<sup>26</sup>

In Sierra Leone, while the international commissioners were appointed by the UN High Commissioner for Human Rights, national commissioners were selected following a lengthy process similar to that of South Africa's. The selection coordinator (the Special Representative of the Secretary General of the United Nations) requested nominations from the public. In consultation with three members of an advisory board, the selection coordinator created a shortlist of names and gave them to a selection panel which comprised members of the government, the former armed opposition, human rights groups and religious groups. The national commissioners were chosen from this list by the selection panel after undergoing interviews. The names of candidates approved by the selection panel were then forwarded to the president of Sierra Leone for appointment.<sup>27</sup>

While no country's selection process is ever without controversy, the process of transparent engagement can ensure that commissioners begin their work with some amount of public credibility. In contrast, commissioners that served on the National Reconciliation Commission were chosen by the president in consultation with the Council of State, a non-partisan body of Ghanaians who provide counsel and advice to the president.<sup>28</sup> The Civil Society Coalition, after meetings and consultation, submitted guidelines to the Council of State which recommended that the appointment process be as open, transparent and consultative as possible. The principles outlined in the guidelines were ignored, however, and beyond the closed discussions within the Council of State, the selection process did not involve members of the public. The Ghana Center for Democratic Development (CDD-Ghana) believes that an initial list of candidates was deliberately leaked to the media in order to gauge public reactions and that changes were then made before the final appointments. This assertion is disputed by others who recall that vocal opposition to some of the leaked names did not change matters and the choice of commissioners was not altered. Irrespective, the use of a media leak to gauge public sentiment cannot be said to constitute a sufficiently open or consultative process.

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<sup>26</sup> L. S. Graybill, *Truth and Reconciliation in South Africa: Miracle or Model?*, Boulder, Colorado: Lynne Rienner Publishers, 2002.

<sup>27</sup> See P. J. Allen, S. B. S. Lahai, et al., *Sierra Leone's Truth & Reconciliation Commission and Special Court: A Citizen's Handbook*, New York: ICTJ, 2003, and Freeman and Hayner, supra note 4. Despite the best efforts to ensure a transparent commissioner selection process, this does not inure those selected from allegations of bias. In Sierra Leone, for example, a recent report concludes that although the appointment process was credible and aimed to produce commissioners independent of government, those interviewed for the report nevertheless felt that this effort had failed and that the national commissioners were largely "pro-government." See *Searching for Truth and Reconciliation in Sierra Leone*, Freetown: Sierra Leone Working Group on Truth and Reconciliation, 2006.

<sup>28</sup> This Council is mandated by Article 89 of the 1992 Constitution and comprises a former chief justice, a former chief of the defense staff of the Armed Forces, a former inspector general of police, elected representatives from each region and 11 presidential appointees.

There are differing views as to the impact that the unilateral appointment of commissioners had on the NRC itself and on its public credibility. The criticism voiced at this early stage in the NRC seemed largely directed at the lack of public involvement and less at the individuals selected, although even here the opposition NDC party in particular declared the Commission to be a political tool of government presided over by individuals hand picked by the president. The Civil Society Coalition believes that although their recommendations on public consultation were ignored, their recommendations on gender and the representation of various sectors were heeded. Commissioners were drawn from a wide variety of backgrounds and represented the legal community, academia, traditional leaders, religious groups, trade unions, and the military.<sup>29</sup> Three of the nine commissioners were women. Initially the diversity of the panel seemed to secure some buy-in from the public, but criticism of the commissioners became more pronounced during the public hearings when the treatment of some witnesses by the panel served to heighten perceptions that the NRC was not a politically neutral body.<sup>30</sup>

### C. Perceptions of Bias

During its operation, the NRC was plagued with accusations of bias, in particular from members of the opposition. Additionally, some of those interviewed during the course of this research suggested that even supporters of the Commission recognized certain inconsistencies. Two issues in particular were raised during the interviews—that of a subtle attitude shift observed among the commissioners whenever a perceived supporter of former President Rawlings testified, and related to this, the treatment of some witnesses by the chairperson of the Commission.

The commissioners have been criticized for being biased in their treatment of witnesses at the public hearings, with accusations that some witnesses were given time and space to tell lengthy stories—including stories that went beyond the Commission’s mandate—while others were made to feel less welcome and were hurried through their testimonies. This attitude was reportedly more pronounced when an individual appeared to be defending the previous Rawlings regimes or was a respondent (as opposed to a petitioner).<sup>31</sup> For example, Dadzie relates that during the hearing for the head of the Bureau of National Investigations (who was responding to allegations of torture) the Commission seemed to be moving him along and circumscribing his testimony to the extent that he eventually protested against his treatment. She noted that in comparison to the treatment of other witnesses it left the impression that,

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<sup>29</sup> Interestingly, and in contrast to most truth commissions, ethnic group representation does not seem to have been taken into consideration.

<sup>30</sup> Some interviewees also expressed concern at the role of the executive secretary who became a prominent public figure during the work of the Commission. In particular, functions of public relations and media outreach were conducted by executive secretary rather than the public relations officer. This was seen as problematic because his appointment was political, made by the president. Rashid Abu Baker Guar-Gorman, director of the Institute for Democratic Studies, noted that this situation unnecessarily politicized the outreach function of the NRC (personal communication). Bright Kwame Blewu, General Secretary of the Ghana Journalists Association (GJA), also commented on the executive secretary’s role, stating that the dual position of executive secretary and media spokesperson confused the lines of communication between journalists and the Commission (personal communication). See section on truth seeking and human resources below for further commentary on staffing issues at the Commission.

<sup>31</sup> The NRC agreed to the use of the general term “witnesses” to refer to those who came before it to give testimony. It was believed that using the language of “victims” and “perpetrators” (in the tradition of other Commissions) would do more to polarize than reconcile. In reality, however, witnesses were divided into petitioners—those who filed a complaint with the Commission about past abuses, and respondents—those who came before the Commission to respond to allegations made against them.

“everybody wasn’t getting the same kind of [treatment] ... it’s like you are interesting if you come with horror stories of that, but if you are seen as a perpetrator you didn’t quite get the same hearing.”<sup>32</sup>

The chairperson of the Commission, Justice Kwaku Etrew Amua-Sekyi, in particular attracted criticism for allegedly exhibiting bias in his treatment of witnesses. Some have concluded that because of his political background and his personal grievances against former regimes, the treatment he meted out to those thought to be Rawlings supporters was unfair. Richard Quashigah, Senior Editor with Radio Ghana and a member of the Ghana Journalists Association (GJA), identified the chairperson’s attitude towards perceived Rawlings supporters as being problematic and evidence of bias. He cited incidents where he believed that the chairperson used his position and the opportunity provided by the hearings to “get his own back” with a witness.<sup>33</sup> Others, such as Rashid Abu Baker Guar-Gorman of the Institute for Democratic Studies, described the chairperson as “temperamental” with witnesses and believed that this “marred the NRC.”<sup>34</sup> Dadzie talks of a bias in the Commission beyond just the chairperson and states that there were several complaints about people not being given a fair hearing if they were suspected of being Rawlings supporters.<sup>35</sup> These sorts of perceptions gave ammunition to the opposition NDC party and validated their assertions that the NRC was a politically motivated witch hunt.

Given the sensitivity of the issues before the NRC, questions of bias are fair objectives for public scrutiny and debate. However, it is likely that some criticisms were rooted in partisan affiliations and were themselves expressions of political bias rather than neutral judgment.

In pursuing their claims of victimization, the NDC voiced a formal complaint against the Commission, citing a lack of procedural fairness in the course of the public hearings.<sup>36</sup> Accusations of bias were also brought before the Accra High Court, where the former chairperson of the Ghana National Petroleum Corporation, Mr. Tsatsu Tsikata, alleged that Justice Amuah Sekyi was not conducting himself in a judicial manner “devoid of bias, arbitrariness or animosity” in his role as chairperson.<sup>37</sup> The Court ruled against Mr. Tsikata, however, and found that Justice Amua Sekyi had acted in line with the NRC Act.

Allegations of bias are necessarily subjective and in reality, given the nature of a truth commission’s work, few commissions escape such allegations. In Peru, opposition legislators called for the Truth and Reconciliation Commission to be investigated for bias, for its findings to be kept secret, and even for it to be disbanded during the course of its work.<sup>38</sup> The new government of President Alan Garcia also has been resistant to the work of the Peruvian Commission. The Government has established a special legal defense fund for military

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<sup>32</sup> C. Dadzie (personal communication).

<sup>33</sup> R. Quashigah (personal communication).

<sup>34</sup> R. Guar-Gorman (personal communication).

<sup>35</sup> C. Dadzie (personal communication).

<sup>36</sup> In February 2003, the NDC filed a “Memorandum to the National Reconciliation Commission on AFRC and PNDC Appointees and State Officials Appearing Before the Commission” directly before the NRC Commissioners. See “NDC Complaints Against the NRC: How Valid?” *Democracy Watch* (Ghana Center for Democratic Development) 4:1, 2003, at 2.

<sup>37</sup> “Tsatsu Tsikata wins round one,” Ghana News Agency, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=61193>, July 7, 2004.

<sup>38</sup> See Human Rights Watch, [www.hrw.org](http://www.hrw.org).

personnel accused of human rights abuses that took place during the period of time investigated by the Peruvian Truth and Reconciliation Commission.<sup>39</sup>

In South Africa, no side was happy with the findings of the Truth and Reconciliation Commission (TRC). During much of the Commission's life, the National Party (NP; the governing party under apartheid) and the Inkatha Freedom Party (IFP) accused the Commission of being biased towards the African National Congress (ANC) and leading a political witch hunt. Elements of the ANC were equally unhappy with the Commission for condemning acts of violence on both sides, and thereby giving the impression of a moral equivalence between the acts the ANC perpetrated in what they claimed was a just war and the violations of the Apartheid government. In the end, the NP, IFP and ANC all launched separate court challenges to either block certain sections of the Commission's Final Report or prevent its release altogether. The TRC maintained that while it acknowledged the moral justification of the liberation struggle and its objectives, it nevertheless had a duty to condemn the sometimes excessive means used. Ironically, it is perhaps a mark of the TRC's success that all sides saw it as biased, evidence that the Commission was in fact an independent and autonomous institution fulfilling its mandate. Indeed, Villa-Vicencio and Doxtader write of the need for transitional justice mechanisms to focus on the condemnation of the use of violence on all sides, and that this can be done within a framework which still recognizes the moral legitimacy of a just war.<sup>40</sup>

#### **D. Legalistic Nature of the Commission's Proceedings**

Although they may have some of the powers and functions of a legal body, truth commissions are established as quasi-judicial mechanisms focused on providing acknowledgement and, where possible, truth for victims. Important as the role of the law is in these processes, the domination of an overtly legal tone can detract from the primary objectives of healing and public acknowledgement for victims. In research conducted by the Centre for the Study of Violence and Reconciliation in South Africa, victims who had testified before the TRC were asked what lessons should be shared with other countries establishing truth commissions.<sup>41</sup> One of the most important issues raised was a need for sensitivity and integrity when dealing with victims. Picker notes that because of the nature of the testimony and the previous experiences of victimization and oppression, emphasis needs to be placed on the way in which witnesses are treated during the hearings, and that "intimidating settings that may re-evoke memories of interrogations need to be carefully avoided."<sup>42</sup>

In creating a safe space for survivors to relate their testimonies, the physical layout of the hearings plays a role in setting the tone. In South Africa and Timor-Leste, informal settings were created to encourage victims to feel comfortable. In Peru, commissioners and participants sat together at a common table during the hearings. In Ghana, the layout and tone of the public hearings were identified as key concerns by many of the interviewees. Professor Gyimah-Boadi, executive director of CDD-Ghana, described the set up of the public hearings as "exceedingly legalistic." He states that the public hearings room was laid out much like a

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<sup>39</sup> Associated Press, "Perú: Hacen precisiones sobre defensa legal a militares acusados," Sept. 24, 2006.

<sup>40</sup> C. Villa-Vicencio and E. Doxtader, eds., *The Provocations of Amnesty: Memory, Justice and Impunity*, Cape Town: Institute for Justice and Reconciliation, 2003.

<sup>41</sup> R. Picker, *Victims' Perspectives about the Human Rights Violations Hearings*, Johannesburg: Centre for the Study of Violence and Reconciliation, 2005.

<sup>42</sup> *Id.*

courtroom; lawyers and commissioners were referred to as “my Lord”; there was excessive involvement of lawyers; and at times witnesses were “badgered to stick to time and facts.”<sup>43</sup>

In an article in *Democracy Watch*, the quarterly newsletter of CDD-Ghana, the hearings were described as

inappropriately resemble[ing] courtroom proceedings, more than they do a reconciliatory process—with the nine commissioners on a raised dais peering down at the witness who sits below them with only the interpreter at his/her side. The witness is flanked by Commission staff on one side and any alleged perpetrators and their counsel on the other. They are led in their testimony by Commission counsel, questioned by Commission members, and then dismissed.<sup>44</sup>

While the Commission did begin to incorporate measures to make the space more welcoming and conducive to witnesses (e.g. the interpreter greeting witnesses before commencing, asking what victims expect of the commission, etc.), this only served to temper the underlying formal and legal nature of the hearings, rather than fully overcoming them.

The juridical style of the NRC appears to have its roots in a number of factors. Historically in Ghana there has been a practice of establishing commissions of enquiry. Although used to enquire into the conduct of public officials, these commissions were also used by the administrations that established them to target and discredit preceding administrations. It has been argued that the Commission did not do enough to break with the legacy of these past commissions or differentiate in their public hearings between a truth commission, which is designed to provide a space for victims to tell their stories, and a legal fact-finding body aimed purely at determining guilt or innocence. Yaw Frimpong Anokye, a senior statement taker with the NRC, states that the chairperson was initially uninterested in learning from the experiences of countries such as South Africa because he saw the NRC as merely another commission of enquiry and ran it as such. Another factor that contributed to the legal nature of Commission proceedings was the composition of the panel of commissioners. The chairperson, Justice Amua-Sekyi, who arguably had the greatest influence on proceedings,<sup>45</sup> was a retired Supreme Court judge. Although only two of the eight remaining commissioners were lawyers, Gyimah-Boadi believes that they brought with them the training and experience of an adversarial setting, which dominated the work of the NRC, rather than the mediation and reconciliation skills required for a truth commission seeking to prioritize victims and their needs.

Dadzie suggests that the judicial nature of the public hearings was also motivated in part by the fact that most of the commissioners had lived through the injustices under investigation and the desire for retributive justice as the path to national reconciliation still dominated: “I don’t have any doubt that they were wanting to [reconcile the nation]. But as for the way that truth

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<sup>43</sup> E. Gyimah-Boadi (personal communication).

<sup>44</sup> “National Reconciliation Commission Hearings: Matters Arising,” *Democracy Watch* (Ghana Center for Democratic Development) 4:1, 2003, at 3.

<sup>45</sup> The profession, background and character of a chairperson, more so than any other individual, often has a profound impact on the tone a truth commission adopts. Some interviewees believe the NRC would have been vastly different had it been led by a religious figure such as Reverend Palmer-Buckle. This too, however, comes with its own tone and set of assumptions which can have an equally adverse effect on commission proceedings. For example, in South Africa it is alleged that victims felt an overwhelming sense of pressure to forgive regardless of their own readiness to do so, in large part because of the dominance of a Christian theological imperative of reconciliation as forgiveness in the discourse of Chairperson Archbishop Desmond Tutu.

commissions would normally be expected to do it ... I am not sure whether that was their view generally.”<sup>46</sup> Judicial mannerisms were by no means attributable to all commissioners, and the role of Reverend Palmer-Buckle in providing healing and comfort was mentioned in several interviews. Additionally, commissioners were seen to “learn on the job,” with their treatment of witnesses evolving throughout the process. This was aided by an intervention from the Civil Society Coalition and the International Center for Transitional Justice (ICTJ).

Public hearings of truth commissions are not proceedings with judicial effect, and while principles of natural justice and fairness are obviously applicable, they are not intended to be constricted by the same standards of rules of evidence and *audi alterum partem* considerations. They are intended firstly as a space for victims to tell their stories and receive acknowledgement, a space removed from the imbalances of power that led to the abuses suffered. The courtroom atmosphere of the NRC’s public hearings was criticized for intimidating witnesses and weakening the ability of the commission to confer adequate public acknowledgement. The legal character of the hearings also lent itself to the excessive involvement of lawyers, in particular on behalf of respondents. The more powerful and affluent the respondent, the larger and more intimidating was the accompanying legal team. Petitioners, on the other hand, relied primarily on legal aid. This reproduction of societal power imbalances between petitioners and respondents hindered the reconciliatory and healing functions of the commission. The impression given was that perpetrators came armed with legal teams to defend themselves from the truth and were unrepentant in the face of victims’ accusations.<sup>47</sup> It is arguable that the striking similarity of the set up to that of a courtroom encouraged respondents to think of their own defence rather than be open to honesty and reconciliation. This perceived arrogance on the part of perpetrators served to reinforce perceptions of continuing impunity for those among the respondents who still wield power and influence.<sup>48</sup>

#### IV. PERPETRATOR ENGAGEMENT WITH THE NRC

While a truth commission’s own investigations may be successful in securing some new truth for victims even in the absence of perpetrator cooperation, considerable value is added to the national reconciliation project when perpetrators willingly acknowledge their wrongdoing and, even more so, when they apologize to those harmed by their actions.<sup>49</sup> Acknowledgement, particularly where retributive justice is not an option, is an integral part of restoring a moral code in society and contributing to healing and reconciliation. Conversely, securing reconciliation is severely hampered in cases where the majority of perpetrators refuse to accept responsibility or ask forgiveness. In interviews conducted by the Chilean human rights organization CODEPU, one Chilean victim stated that reconciliation was not possible “while

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<sup>46</sup> C. Dadzie (personal communication).

<sup>47</sup> Justice Crabbe, a former justice and chairperson of the Civil Society Coalition, defended the use of lawyers given the gravity of the subject matter and the accusations being levelled at respondents. He further noted that it should not have been intimidating for witnesses as this is the way cases play out in a court of law each day. However as the NRC was intended as a truth commission and not a judicial commission of enquiry, the comparison to a court of law only reinforces the argument that judicial considerations overrode the purported victim-focused nature of the Commission.

<sup>48</sup> Others noted, however, that the mere fact that respondents were forced to come before the Commission and face their accusers was groundbreaking. In a country dominated by “big men,” the ability of victims to confront the accused served, in this context, as a form of justice and accountability.

<sup>49</sup> V. E. Cuevas, M. L. O. Rojas, et al., *Truth Commissions: An Uncertain Path? Comparative Study of Truth Commissions in Argentina, Chile, El Salvador, Guatemala and South Africa From the Perspectives of Victims, their Relatives, Human Rights Organisations and Experts*. Santiago de Chile and Geneva: CODEPU (Chile) and APT (Switzerland), 2002.

those men keep justifying their crimes ... while they remain loyal to their pact of silence.”<sup>50</sup> Finding avenues to encourage those who violated human rights in the past to come forward and willingly engage is a central dilemma for all truth commissions. Multiple factors can hamper perpetrator engagement, including a sustained belief in the righteousness of past actions and fear of public shaming, in addition to the possible legal consequences of a confession.<sup>51</sup>

Without the threat of prosecution for perpetrators who do not come forward (“a stick”), or the prospect of amnesty for those who do (“a carrot”)—two factors that existed only with the South African truth commission—getting perpetrators to acknowledge wrongdoing is extremely difficult.<sup>52</sup> In Ghana, the problems of soliciting perpetrator engagement were compounded by specific factors which included the present day political climate. Bright Kwame Blewu, general secretary of the GJA, observes that there was an unwillingness to allow any new information to be revealed because the key actors implicated in the NRC’s work were either members of the current government or the opposition party, who feared that any information extracted would be used by political opponents to further their own agendas. Consequently, Blewu claims that the problem was less an absence of incentive to tell the truth, as much as the presence of an incentive *not* to tell the truth. In this way, little was revealed by respondents, and the process was used as a forum for scoring political points, rather than as a reconciliation exercise. As a result of these general and specific disincentives, perpetrators in Ghana did not willingly come forward to acknowledge wrongdoing but came forward primarily to refute allegations against them once they had already been named. Approximately 80 individuals accused of past crimes testified before the Commission, but only a few admitted to wrongdoing or asked forgiveness.<sup>53</sup> This denial of responsibility on the part of almost all respondents was a serious blow to the efforts of the NRC.<sup>54</sup>

There were exceptions of course, such as the former deputy chairman of the AFRC who delivered an unreserved apology to victims of his regime. On the whole, however, such incidents appear to have been few and far between. When asked to reflect on the success of the Commission in encouraging individual reconciliation between petitioners and respondents, all interviewees cited the same example—that of a prison official who admitted the harm inflicted on a petitioner and asked for forgiveness. The incident culminated in a hug shared between accuser and accused. When questioned about the same example being given uniformly across

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<sup>50</sup> Id. at 27.

<sup>51</sup> The credibility of a truth commission is also integral here—if it can easily be dismissed as victor’s justice or lacking in credibility then the task of getting perpetrator communities to acknowledge wrongdoing will be that much more difficult.

<sup>52</sup> Even with the “carrot and stick” approach, South Africa was largely unsuccessful in getting most perpetrators to come forward, in particular the intellectual authors of past crimes.

<sup>53</sup> This is in marked contrast to Sierra Leone, where an unexpected number of perpetrators came forward to the TRC. According to a review of the first year of this commission’s work, 13% of the 8000 individual statements already recorded came directly from perpetrators themselves. Approximately a third of those who appeared in hearings admitted to their acts freely and in detail. See Priscilla Hayner, *The Sierra Leone Truth and Reconciliation Commission: Reviewing the First Year*, New York: International Center for Transitional Justice, 2004.

<sup>54</sup> A refusal by authors of past violations to participate in truth commission processes or acknowledge responsibility also serves as an obstacle to the long-term impact of a truth commission. In Chile, for example, Kritz notes that the impact of the Rettig Commission Report was fairly limited, in part because the goal of achieving some measure of repentance from perpetrators failed to materialize. See Kritz, *supra* note 12.

interviews, Dadzie stated that she was unsurprised, and that this was because to her mind, this was “the only one—there was no real individual reconciliation to talk of.”<sup>55</sup>

With the NRC, there was a reliance on individual exchanges of reconciliation and forgiveness to symbolize the intentions and possibilities of the truth commission process.<sup>56</sup> However, in such a process, there are risks that not all perpetrators will seek to further these goals. When alleged perpetrators refuses to accept responsibility for their acts, or worse, uses the opportunity presented by public hearings to demonstrate a lack of remorse and proclaim the legitimacy of their actions, a commission can worsen divisions rather than bridging them. This is particularly damaging when the alleged perpetrator is a high profile political figure with a strong base of support, such as former President Rawlings, who appeared before the NRC in 2003.

Handling a former head of state presents a perilous path for a truth commission to navigate. On one hand, calling a former head of state to testify serves as visible evidence of the application of the rule of law to all citizens, regardless of rank or position. But on the other hand, it can bolster the views of those who see the commission as little more than a vehicle for discrediting political rivals of the current administration. At the same time, those who governed a state during a time of conflict or systematic human rights violations can contribute uniquely to acknowledging harm, accepting responsibility and promoting reconciliation. However, they can also inflict further damage by refusing to accept responsibility or continually denying harm.

More damningly, high profile witnesses can simply refuse to recognize the legitimacy of the commission and ignore requests to appear before it. Such has been the response of high profile state officials in other countries, including Nigeria, Sierra Leone and South Africa. In Sierra Leone, the TRC went to great lengths to provide logistical support to get a coup leader to a hearing, but even still he failed to arrive as scheduled.<sup>57</sup> In South Africa, former apartheid-era President P. W. Botha was subpoenaed in 1997 to answer questions regarding the policies and activities of the State Security Council during his time in the presidency. Botha refused to appear before the commission and a criminal charge was laid against him. He was tried, found guilty, and sentenced to a fine of approximately US\$2000 or 12 months imprisonment, with an additional 12 months imprisonment suspended for 5 years. Botha appealed, however, and had the conviction overturned. Similarly in Nigeria, three key former military rulers—Generals Mohammedu Buhari, Ibrahim Babangida, and Abdulsalam Abubakar—all repeatedly defied summonses to appear before the Oputa Panel (Nigeria’s truth commission) to answer allegations of rights abuses. The case was taken to court, which ruled that the Oputa Commission did not have the legal authority to compel testimony because it did not conform to

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<sup>55</sup> C. Dadzie (personal communication). In spite of a lack of perpetrator engagement or involvement, petitioners who came before the Commission were encouraged to forgive and preached to at length about the need for forgiveness, a practice of truth commissions more generally. This has been criticized as failing to take into account the individualized experiences of grief, acceptance and healing. It should also be noted that there were those who felt that there were more cases of individual reconciliation than people can recall from the televised proceedings. Crabbe asserts that there were additional cases that took place away from the media spotlight and were facilitated by the work of the Commission.

<sup>56</sup> The object of the NRC was to promote national reconciliation; however, the Commission often defined the achievement of this goal in narrow terms. Largely, the focus was on individual exchanges of apology and forgiveness between perpetrator and victim. Setting such expectations was perhaps unrealistic, as no truth commissions can succeed in ensuring that such acts occur. A more nuanced approach to reconciliation that was not grounded solely in individual exchanges might have allowed the Commission to better meet its objective.

<sup>57</sup> S. Roughneen, “But war hurts more,” *Open Democracy*, [www.opendemocracy.net/democracy-apologypolitics/article\\_1372.jsp](http://www.opendemocracy.net/democracy-apologypolitics/article_1372.jsp), July 22, 2003.

the Constitution. In both cases, former heads of state publicly “thumbed their noses” at the commissions and succeeded in evading the institution’s grasp.

Given these experiences of past truth commissions and the inherent tensions in bringing to account a still popular former head of state, no respondent’s testimony before the Ghanaian Commission was more anticipated or debated than that of former President Rawlings. According to NRC Commissioner Lt. General Erskine, the former president was invited in writing to respond to allegations made to the Commission regarding himself and his regime on a number of occasions during the public hearings. Unsatisfied with his response, the Commission decided to subpoena Rawlings in reference to a specific case concerning an allegation of extra-judicial killings.<sup>58</sup> In early 2004, Rawlings was made to appear before the commissioners in a frenzy of heightened expectations and public protests. Supporters and detractors alike camped outside the old Parliament buildings in Accra, the site of the public hearings, the night before Rawlings was to appear before the commission. By the morning of the hearing there were an estimated 4000 people in the streets awaiting the hearing. The moment has been described as bringing the country to a halt, as all stopped to listen to their radios or tune into the live broadcast on television. Seated before the Commission, the former president was asked about the existence and whereabouts of a videotape that was allegedly made of the killings. He confirmed that such a tape had existed but claimed that he did not know what had become of it. After less than 30 minutes and only a handful of questions, the Commission dismissed the former president.

Criticism has been levelled at the commissioners for their handling of this crucial moment. With the vast majority of petitions before the NRC relating to the periods in which Rawlings was in power, the commissioners’ truncated and anti-climatic interaction with him seemed to be a confusing disappointment. Some said that it was a mistake to bring Rawlings to the Commission to ask only two questions and immediately release him, particularly in light of all the expectations and media hype, much of it fuelled by the NRC itself. Others have argued that the Commission could have asked for a wider subpoena allowing them to explore other aspects of Rawlings time in power or could have chosen to not interpret the subpoena so strictly and expanded its line of questioning. If the NRC was only interested in the tape and nothing else, then Rawlings should have been subpoenaed to give evidence on the matter in private. Having brought him before the Commission, the commissioners should have seized the opportunity by asking properly researched questions related to the political and institutional factors that led to the reported abuses. Instead, the entire incident was seen as a pointless exercise that showed the Commission up as ill-prepared and incompetent. The stand off added little to the reconciliation exercise and instead did more to bring political divisions to the fore.

The criticism of the NRC’s handling of Rawlings is understandable given the built up expectation and heightened tensions. But the Rawlings hearing is demonstrative of a more general difficulty in the work of truth commissions: that of the handling of high profile witnesses. As previously noted, truth commissions often take place in politically charged environments in which their dealings with high profile figures from any of the groupings under investigation can lead to increased division and accusations of a lack of neutrality. In Ghana, the polarization of the country in the lead up to Rawlings’ appearance had the potential to bring the country and its political turmoil to a violent head. Blewu, a seasoned journalist, describes the collective sigh of relief that took place once the questioning was finished, remarking: “when we made it through [the Rawlings hearing] I knew we’d made it.” There is a danger, particularly with public hearings, in providing a political platform for personalities of the past

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<sup>58</sup> E. Erskine (personal communication).

who can then use the opportunity to justify actions, cast scorn or condemnation on the commission itself and call into question the credibility of victims as well as the process as a whole. On the other hand, truth commissions need to exemplify the equal application of the rule of law, and by failing to call public personalities to account, they would be contributing little to establishing a norm of accountability.

Given these universal complexities in handling the testimony of high profile witnesses, it can be argued that the NRC's conduct surrounding Rawlings' testimony was appropriate to the circumstances. The Commission had used a subpoena to bring the former president before it and was therefore limited to the particulars of the case cited in the subpoena. To attempt to take advantage of the situation and expand the basis of the interview would have demonstrated bias, and would have meant applying one set of rules for some witnesses and not for others. Erskine, in recollecting that day, argues that further questioning would have achieved nothing but would instead have played into the ex-president's hands.<sup>59</sup> Sensitive to the volatility of the situation and in particular to the political rally taking place outside, the Commission was concerned that Rawlings not be handed a platform from which to politic or mobilize loyalties. More importantly, there was a symbolic victory in bringing Rawlings before the Commission, however limited the questioning might have been. His appearance visually demonstrated the equal application of the rule of law and accountability. The mere fact that Rawlings appeared before the Commission demonstrated his recognition of its authority and potentially strengthened its legitimacy in the eyes of ordinary Ghanaians.

## **V. THE NRC'S FULFILMENT OF VICTIM NEEDS**

### **A. Acknowledgement**

Over the past two decades truth commissions have evolved from institutions primarily concerned with conducting investigatory work behind closed doors to forums which treat individual testimony as an opportunity to contribute to healing. This shift was precipitated by the South African Truth and Reconciliation Commission, where for the first time public hearings were utilized to provide victims with a space to recount their experiences in their own words and receive symbolic national acknowledgement.<sup>60</sup> It has been recognized that this kind

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<sup>59</sup> E. Erskine (personal communication).

<sup>60</sup> It needs to be noted that the positive benefits that are assumed to derive from telling one's story in a "cathartic" and public manner are based on a Western psychoanalytic discourse that is untested and under-researched in relation to truth commissions. In South Africa, the Trauma Centre for Survivors of Violence and Torture in Cape Town found that for many victims who testified before the commission, the experience reopened wounds and often left them far more embittered (See Graybill, *supra* note 25). After the initial sense of relief brought on by publicly telling their stories, many re-experienced the symptoms induced by the original violation, as well as the onset of new symptoms. The Centre reported that some 50–60 percent of the victims seen by them had been re-traumatized by testifying before the TRC (See Graybill, *supra* note 25). Qualitative research conducted by the Centre for the Study of Violence and Reconciliation supports these statistics and this view is exemplified by one victim who reported "They [the TRC] saw the pain we were going through and did not even attempt to help us. We had to relieve our sad experiences and most of us got sick after that, they did not even take us to doctors to receive medication. We were left to see how we take care of ourselves. They are the ones who asked us to testify after so many years, we were already forgetting what had happened and they reminded us of the events." (See Picker, *supra* note 40). In Ghana interviewees seemed to say almost uniformly that the NRC's biggest achievement was "getting the pain out" as Erskine termed it (personal communication). This assumption of the healing benefits of recalling former traumas should be properly followed up with longer term research in the Ghanaian context.

of public acknowledgement can form the basis for reconciliation between citizens as well as between citizens and the state, in that it visually demonstrates the valuing and inclusion of those who were previously excluded. Following the lead of South Africa, Sierra Leone and others, the NRC also held national public hearings. The Commission received some 4240 petitions, of which just over 2000 were heard publicly. Cases heard in public were selected based on the seriousness of the allegations as well as on a first come, first served basis. The majority of cases not given public hearings involved incidents of administrative injustice, such as the large number of wrongful dismissals that occurred under successive military regimes.

The fact that cases of wrongful dismissal were covered in the NRC's mandate at all is a positive demonstration of its willingness to reflect the full range of victims' experiences and confer acknowledgement as widely as possible.<sup>61</sup> In its Final Report, the Commission writes that it tried to apply a very broad and liberal definition to each of the categories and types of violations in its mandate, and drew on international human rights law, humanitarian law principles and common law understanding of the violations. This broad reading allowed the NRC to classify various acts (e.g. mock executions) as torture or ill-treatment and to recognize certain forms of administrative injustice as rights violations.<sup>62</sup>

In some countries, limitations placed on the types of violations covered by a truth commission's mandate have been a source of exclusion and discontent for victims rather than a source of acknowledgement. In South Africa, for example, the Truth and Reconciliation Commission's mandate did not cover the crime of apartheid itself, but rather chose to focus on individual violent acts. As a consequence of this narrow focus, investigations and statement gathering did not cover the structural violations experienced, such as the practice of forced removals, a violation suffered by millions of ordinary black South Africans who lost homes and livelihoods as a result of this policy.<sup>63</sup> In Chile, the mandate of the Rettig Commission covered only killings and disappearances, leaving out the widespread use of torture that did not result in death. The mandate of El Salvador's commission limited it to investigating only the most serious of human rights violations. In each of these cases, the ability of the truth commission to make victims feel included and acknowledged was severely hampered by limited and narrow interpretations of harm.<sup>64</sup>

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<sup>61</sup> In broadly defining the human rights violations the NRC was to document, the Commission's mandate provided for an inclusive number of victims to be acknowledged. However, the process of gathering testimony has been criticized for not being equally inclusive. Professor Gyimah-Boadi notes that given the high number of individuals forced into exile in neighboring countries, the gathering of statements should have taken place in the region as a whole, as was the case with the Sierra Leone truth commission. By failing to do so, large numbers of potential petitioners were essentially left out of the process.

<sup>62</sup> *The National Reconciliation Commission Final Report*, Accra: National Reconciliation Commission, 2004, Vol. 1, Ch. 2.

<sup>63</sup> M. Mamdani, "Reconciliation Without Justice," *South African Review of Books* 46, 1996.

<sup>64</sup> It should be noted however that states that institute truth commissions are faced with the challenge of balancing the need to acknowledge as many victims as possible with the need to maintain a realistic and manageable mandate. Uganda's Commission of Inquiry into Violations of Human Rights is one example of a commission whose mandate was so broad and vague and covered such a large time frame that it was completely unmanageable with its limited resources. This led to the commission taking eight years to complete its work, during which time it faded into obscurity in the national consciousness, thereby ensuring that it had almost none of the desired impact (See Quinn, *supra* note 6).

## B. Truth Seeking

Victims' need for truth varies in different contexts, and is in part dependent on the type of conflict or oppression experienced by the nation as well as the post-conflict context and timing. Today's truth commissions have their roots in Cold War Latin America, where covert operations and secret death squads were the order of the day. Under these circumstances, and faced with continued state denial of atrocities, the need to know the truth and have it publicly acknowledged was paramount for victims and was recognized as a vital form of reparation. In Argentina, where the National Commission on the Disappearance of Persons (CONADEP) was established to investigate cases of forced disappearance—a crime that by its nature uses the withholding of truth as a weapon against those left behind—the Commission found that “[T]he first indispensable reparation demanded by society after fundamental institutions had been restored was to ascertain the truth of what had happened, to ‘face up’ to the immediate past and let the country judge.”<sup>65</sup>

Though the so-called “Joinet Principles” confirm the “inalienable right to truth” as an international legal principle,<sup>66</sup> truth-seeking is not always a priority in every country context. In contexts where human rights violations are committed openly, even if the individual perpetrator might not be known, the need for truth does not acquire the same urgency.<sup>67</sup> In Rwanda, for example, a delegation visiting South Africa in 1997 to examine the TRC process chose to reject the idea of a truth commission. They concluded that “truth” was not at that point a priority in post-genocide Rwanda, as the killers for the most part were well known to their own communities and had carried out their acts in broad daylight.<sup>68</sup> In other contexts where perpetrators and their victims continue to reside in the same communities, reopening old wounds in the name of truth may not be an effective path to reconciliation and victim healing, particularly when it is not matched with a well conceived approach to reparations and restorative justice.

In Ghana, different types of human rights violations appear to have left victims with different kinds of truth-seeking needs. For example, in cases of abuse or killings of members of rival political parties or former government officials during the numerous coups and coup attempts, the perpetrators were often known to the victims and their families. In some cases it was even possible for the families to point out where they suspected that their relatives' bodies lay. The need for further truth was also inconsequential in cases of administrative abuse, such as the politically motivated dismissals that formed a large number of the cases reported to the NRC. Individual truth for petitioners was more important in cases of random and pervasive targeting

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<sup>65</sup> *Nunca Más (Never Again): A Report by Argentina's National Commission on Disappeared People*, London: Faber & Faber, 1986.

<sup>66</sup> Set of Principles for the Protection and Promotion of Human Rights Intended to Strengthen Action to Combat Impunity, UN Subcommission for Prevention of Discrimination and Protection of Minorities, 48th Sess., Annex II, Agenda Item 10, at 12, UN Doc. E/CN.4/Sub.2/1996/18, 29 June 1996 (Special Rapporteur Louis Joinet).

<sup>67</sup> This assumption that truth-seeking needs are less urgent is made at a collective level and individuals may of course feel differently according to their own experiences.

<sup>68</sup> Rwanda is also an example of how timing impacts on the desire for truth. Immediately after the genocide the need for individual truth in the form of a truth commission was ruled out, but today the country has put in place *Gacaca* tribunals—thousands of grassroots traditional courts—which function in much the same way as localized truth commissions, albeit with the twin aims of securing both truth and justice.

and abuse of citizens by petty officials and officers in uniform, who were not known to the victims.

Although the National Reconciliation Commission did not include the term “truth” in its name, the recording of truth, in particular for the purposes of clarifying and recording the history of the country, was considered a core objective.<sup>69</sup> In interpreting its mandate, the Commission saw that it could contribute to national reconciliation by providing space for victims to relate stories of abuse, and equally, to establish the accuracy of these claims through investigation. But the ability of the Commission to unearth new truth for individual petitioners and, more importantly, to verify and corroborate the statements being submitted, was severely hampered by a lack of investigative capacity. As a result of these resource constraints, Anokye claims that 70 percent of statements that were submitted to the NRC were never investigated, even in a cursory manner. Yet many of the petitioners were approved to give testimony during the nationally broadcast public hearings. Anokye contends that as a result, individuals were able to exaggerate their claims, lie outright, or use the Commission as a political platform, knowing that their stories would not be investigated. However, it is important to note that not everyone shared this opinion, and victims suffered losses that were legitimately brought before the NRC.<sup>70</sup>

Nevertheless, weak investigative capacity did compromise the credibility of the Commission as a whole and also provided fuel for the criticisms of the opposition NDC. In a memorandum to the Commission in February 2003, the NDC cited the failure to conduct adequate investigations before public hearings as one of the key indications of the Commission’s bias. They gave the example of a former trader who stated in her public testimony that she was picked up and tortured during the AFRC era, and that soldiers took 25 million cedis from her. The NDC memo pointed out that in 1979, that sum of money “must have represented the annual turnover of the biggest supermarket chains in the country.” Moreover, it is unlikely that the money would have fit in a compact box, as the highest currency denomination at the time was 10 cedis. While this is only one case, the obvious lack of even cursory statement checks opened the Commission up to potential manipulation and hence undermined its credibility.<sup>71</sup>

In addition to these issues, Guar-Gorman alleges that the Commission dismissed almost half of its researchers and many of its statement takers less than half way through its mandate. This compounded a situation in which the number of researchers employed was already abysmally low.<sup>72</sup> The Commission’s research capacity was hindered by government funding, which was released intermittently undermining the NRC’s ability to hire a team to work continuously. In part perhaps to overcome these deficiencies in capacity, it has been suggested that the Commission aimed to utilize the public hearings as an investigative tool, as opposed to solely a space for victims to tell their stories uninterrupted, as has been the case with other commissions. It is for this reason perhaps that almost 50 percent of victims who submitted statements were given a public hearing; in comparison to only 8 percent in South Africa and 3 percent in Peru, where hearings were used to represent patterns and types of abuse. While this may have contributed to how the public hearings were structured, a larger issue at stake was the

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<sup>69</sup> See supra note 61, Vol. 2, Ch. 2.

<sup>70</sup> Y. Anokye (personal communication).

<sup>71</sup> While this case was used by the NDC to criticize the investigative capacity of the Commission, it also was likely hampered by reparation issues. With regard to these issues, truth commissions must clearly communicate to victims that their compensation for economic crimes may not be the exact amount lost. Such a lack of clarity may lead victims to inflate their testimony about what was taken from them.

<sup>72</sup> R. Guar-Gorman (personal communication).

NRC's definition of truth and its own role in the truth-seeking process. While recording the truth was considered a core objective of the Commission's work, its vision of such truth was narrowly defined. The Commissioner's focus on questioning victims on the details of their testimony during the public hearings was indicative of the value placed on forensic evidence. It sometimes appeared that the NRC viewed itself as fact checker, rather than an instrument to explore larger historical events and patterns of violence. As demonstrated by Rawlings' testimony, discussed above, the Commission focused predominately on establishing the historical veracity of specific instances of impunity instead of probing the political and institutional factors behind such abuses. A more visionary approach to the NRC's role in uncovering past violations would have likely restructured its view of its investigation and research functions, allowing the Commission an opportunity to provide a more holistic account of Ghana's legacy of abuse.

However, even if the Commission's intention was to utilize the public hearings as a tool for interrogating and clarifying testimony, its success was questionable, as it was still reliant on the inadequate investigations conducted prior to the hearings. In a 2003 article in *Democracy Watch*, the writer observed that "the Commissioners have rarely displayed an ability to test evidence through relevant questioning. Although this is a learned skill, it also appears to be at least in part because the investigation reports do not contain adequate detail."<sup>73</sup>

Moreover, human resource issues also compromised those few investigations that were initiated. This was due in large part to the investigators used, many of whom were former state officials. Where state institutions may previously have been used against the people, the utilization of former officials can have dire implications for truth-seeking initiatives. In Chile, for example, the Rettig Commission had no regional offices, and testimony in rural areas was often collected by public officials who had been there at the time of the dictatorship. This provoked obvious feelings of distrust and fear among witnesses and an unwillingness to come forward. Similarly in Ghana, Anokye confirms that many investigations were carried out by retired police officers.<sup>74</sup> Obviously as a result of police involvement in past repression, witnesses were reluctant to cooperate. Use of such personnel also lent itself to the perception that the NRC was merely another politically targeted commission of enquiry, such as those experienced in the past.

Lastly, the composition of Commission staff had a gendered impact on the information recorded. Anokye observed that those working alongside him as statement takers were almost exclusively male. He argues that in a country where cultural sensitivities make it offensive to even use the word rape in front of a woman, let alone discuss such crimes in public, the consequence of the Commission's overwhelmingly male frontline was an inaccurate representation of women's experiences. In particular, he argues that it was commonly known that soldiers and others used the cover of the nation-wide curfew during the 1980s to perpetuate an untold number of rapes and sexual assaults. Yet few if any of these cases were captured in the Commission's work.

While the limited and low quality investigations performed by the NRC are of serious concern, it should also be noted that the limited resources inherent to truth commissions are a real constraint on adequately satisfying victims' need for truth. In South Africa, where human and financial resources were some of the best available to any truth commission to date, investigations following statement taking were generally done at a superficial level, and often

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<sup>73</sup> See supra note 43 at 2.

<sup>74</sup> Y. Anokye (personal communication).

only after the public hearings had already taken place.<sup>75</sup> With over 22,000 victim statements accepted by the TRC, and a larger number filed with them, the South African commission was unable to perform proper investigations in all cases. Resources were instead focused on a selection of cases. Subsequent studies have shown that the amount of new truth uncovered by the TRC was in fact minimal. In focus groups conducted with victims who had submitted statements to the TRC, it was found that:

Victims who were dissatisfied with the “amount of truth” tended to blame the Commission’s investigative efforts: Either due to incapacity, “lack of passion” regarding the truth at stake or due to politically motivated unwillingness to “really rock the boat.” In some cases victims pointed out obvious inconsistencies and contradictions that were apparently not followed-up by the TRC’s investigators.<sup>76</sup>

Despite these limitations, the South African TRC still ranks as one of the commissions with the highest standard of corroboration and investigation. Most commissions do not have the capacity to perform even basic corroboration, let alone investigations. Timor-Leste is a case in point, where even minimal corroboration of statements was limited.<sup>77</sup>

In its Final Report, the National Reconciliation Commission writes that it “regarded the obligation to establish an ‘accurate, complete and historical record of violations and abuses of human rights’ as the cornerstone of its mandate.”<sup>78</sup> Although the success of this objective at an individual level is questionable and despite the NRC’s focus on forensically verifiable truth, the Final Report did outline the context and historical factors that led to the political upheavals and abuses of the past, as well as examining and documenting the role of institutions. In this way, the Commission has been credited with exposing Ghanaians to the full extent of past abuses, many of which were previously unknown. Gyimah-Boadi reflects that even he, a professor of political history at the national university with years of experience, was surprised by the new information he learned through the Commission’s work.

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<sup>75</sup> P. Pigou (personal communication).

<sup>76</sup> See Picker, *supra* note 40.

<sup>77</sup> P. Pigou (personal communication).

<sup>78</sup> See *supra* note 61, Vol. 2, Ch. 2.

### C. Reparations<sup>79</sup>

One of the seven core functions<sup>80</sup> entrusted to the Commission was to recommend redress for those who were found to be victims of past political repression. Recommendations of redress are an important function of truth commissions. Although a comprehensive reparations policy cannot reverse the damage incurred, it can contribute extensively to healing wounds, encouraging reconciliation and asserting the value of citizens previously excluded from the national project. Unnecessary delays in establishing a reparations policy once a truth commission has completed its work can have the opposite effect—that of making victims feel once more devalued and marginalized by the state. Such has been the experience of victims in numerous countries where the government either failed to respond to a commission’s recommendations for some years, as in South Africa and Sierra Leone; or where the government rejected the recommendations or refused to respond, as has been the case in Guatemala, where the government has yet to announce the recommended reparations package emanating from the work of the Commission for Historical Clarification.<sup>81</sup>

In Ghana, the implementation of a comprehensive reparations policy has an even greater urgency because of the emphasis that petitioners, as well as Ghanaian society, have placed on the need for reparations and compensation. According to the NRC Report, “getting monetary compensation was indicated by most of the statement makers as their primary reason for petitioning.”<sup>82</sup> Nine out of ten statement makers cited compensation as one of their reasons for

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<sup>79</sup> Since the time of writing, the current Attorney General, Joe Ghartey, has announced that the Government has made an allocation of ₵13.5 billion in this year’s supplementary budget and is ready to begin disbursing reparations as early as September 2006. It was also ready to implement the NRC’s recommendations on restitution of property illegitimately confiscated by the state. Ghartey noted that while the recommendations of the NRC will be implemented there was also acknowledgment that, “to say that the nation could pay back what some of these people lost would be an illusion, since no amount of money can replace what some of them went through”. He also expressed regrets for the delay in implementing the recommendations for reparations and restitution and explained that this was caused by funding problems, as well as problems with establishing title to disputed property. (See Daily Graphic, August 24<sup>th</sup>, 2006). When the author was writing this paper and interviewing interlocutors in Ghana on reparations, there was still no budgetary commitment and many commentators had been critical of this delay. Given the publication schedule, the author was unable to return to Ghana to follow-up with the interviewees for their analysis of this important new development.

<sup>80</sup> The core functions of the NRC in relation to its mandate were to:

- Investigate human rights abuses
- Investigate the broader context in which abuses took place
- Identify victims
- Recommend redress
- Investigate and determine whether these abuses were planned by the State or those in public office
- Conduct any relevant investigations
- Educate the public and give sufficient publicity to its work

(See *The National Reconciliation Commission Final Report*, Accra: National Reconciliation Commission, 2004.)

<sup>81</sup> Guatemala’s failure to compensate victims was coupled with a policy of paying “redress” to members of the PACs, paramilitary units responsible for much of the violence and atrocities of the conflict. This only served to amplify feelings of injustice and victimization. See N. Valji, *Race, Citizenship and Violence in Transitioning Societies: A Guatemalan case study*, Johannesburg: Centre for the Study of Violence and Reconciliation, 2004.

<sup>82</sup> *The National Reconciliation Commission Final Report*, Accra: National Reconciliation Commission, 2004.

coming before the NRC. By comparison, only a small proportion of victims cited justice as their primary concern.<sup>83</sup> The very fact that reparations are a key victim priority means that following through quickly and competently on a reparations policy will be crucial to furthering national reconciliation. In this regard, petitioners have the backing of a societal consensus on the need for reparations to further reconciliation. A survey conducted by CDD-Ghana prior to the implementation of the NRC pointed to near universal agreement on the need for monetary compensation, symbolic reparations and restorative measures.<sup>84</sup>

In its Final Report, the NRC recommends a comprehensive reparations policy that covers a range of acts, *viz.* a formal apology from the current head of state; symbolic reparations in the form of monuments and commemorative events, including a monument to the women of Ghana and a National Day of Remembrance; scholarship and health benefits for survivors and their families; restitution of confiscated property; and monetary compensation. With regards to monetary compensation, the Report proposes amounts to be paid out to victims based on the types of violations suffered. The specificity of this recommendation has been a source of concern for some in civil society who feel that assigning monetary values to types of violations trivializes the experiences of petitioners in addition to creating a hierarchy of harms.<sup>85</sup> It would have been preferable if the Commission had laid down the principles for redress and restitution, rather than ascribing specific monetary values.<sup>86</sup> In South Africa and elsewhere, the practice of granting a “one sum for all” type of monetary compensation has been heavily criticized for failing to take into consideration individual impact and needs. In assessing the impact of one time payments, Makhalemele writes:

Without a targeted strategy of addressing the other aspects of reparation, these once-off financial grants will leave survivors unfulfilled, both in terms of addressing their actual needs—that arose from their victimisation—and in their satisfaction that the transitional deal-making was fair.<sup>87</sup>

The NRC had the opportunity, based on its mandate, to recommend an individualized process of assessment and reparation. This is something that no other commission to date has done, but that many have advocated as the best way to achieve the primary objective of reparations—addressing the individual impact of past human rights violations. Moreover, in Ghana the

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<sup>83</sup> *Id.*

<sup>84</sup> *Public Opinion on National Reconciliation in Ghana: Survey Evidence*. Accra: CDD-Ghana, 2001. Approximately nine out of ten Ghanaians wanted victims of human rights violations to be compensated. In terms of the forms that this compensation should take, 72 percent favored asset restitution, 42 percent favored symbolic and service-oriented reparations, and 41 percent said that victims should receive monetary compensation. Interestingly, the vast majority—67 percent—thought that government should bear the costs of the reparations program and only a minority thought that this cost should be borne by the perpetrators themselves.

<sup>85</sup> Reparations are intended to heal individual harm. Because the same violation can be experienced by two people very differently (and the impact is often exacerbated by poverty) any attempt at redress is weakened if it does not take into account what it is trying to redress. Such measures are not intended to punish resilience but at the same time they need to be able to contribute to individual requirements for healing if they are to fulfill their objectives.

<sup>86</sup> E. Gyimah-Boadi (personal communication). There is also a concern that in the context of a high inflation economy such as Ghana’s, the amounts specified may have devalued by the time the compensation is awarded, destroying the objective of the exercise (E. Gyimah-Boadi, personal communication).

<sup>87</sup> O. Makhalemele, *Southern Africa Reconciliation Project: Khulumani Case Study*, Johannesburg: Centre for the Study of Violence and Reconciliation, 2004.

number of victims is not as overwhelming as in Rwanda, Sierra Leone, Timor-Leste, Guatemala and elsewhere. Given the small numbers, it should be possible to provide an individually informed package of monetary compensation as well as free and fast tracked access to needed services such as medical care and educational bursaries.

The government's response to the reparations' recommendations has been mixed. In the White Paper accompanying the release of the Final Report in April 2005, the Ghanaian government formally accepted the Report and laid out their plans for moving forward. The then attorney general, Ayikoi Otoo, the minister<sup>88</sup> responsible for taking forward the work of the Commission, accepted the recommendations pertaining to reparations for victims and stated that "urgent steps are being taken by the government to establish the Fund, to resource it and to provide modalities for its effective deployment as an important healing tool for Ghana."<sup>89</sup> More specifically, the White Paper released with the Report committed the government to setting up a reparations fund by December 2005.<sup>90</sup> Otoo said that according to his consultations with NRC commissioners, the reparations fund will require 13.5 billion cedis (approximately US\$1.5 million) to cover the recommended reparations policy, money that is not currently available.<sup>91</sup> In December 2005, Otoo announced that an application has been made to the minister of economic planning to solicit funds from the supplementary budget, but as of February 2006 there has been no response<sup>92</sup>. There is some money available at present, but Otoo states that the government does not want to give money in a piecemeal fashion whereby some would receive reparations ahead of others<sup>93</sup>.

As conflict and post-conflict societies are disproportionately located in the poorer regions of the world, obtaining funding to follow through on a promise of reparations is always a key consideration. The Final Report makes recommendations on possible sources of funding. These include: making provisions in the national budget, allocating a percentage of Ghana's HIPC (Highly Indebted Poor Countries) funding, perpetrator contributions, public donations, and proceeds from the sale of the Final Report. Contributions from those who perpetrated human rights violations would go a considerable distance in demonstrating remorse, acknowledging suffering and restoring a sense of justice for victims. However, given the low level of perpetrator engagement with the NRC and the unapologetic and defensive nature of those who did come forward, it is unlikely that there will be many "voluntary" contributions.<sup>94</sup> When asked whether the possibility of forced contributions or community service was ever debated in the Commission, Erskine responds that most perpetrators were foot soldiers who have difficulty making ends meet themselves.<sup>95</sup> Moreover, some have died or retired and the

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<sup>88</sup> In Ghana's system the Attorney General also serves as the Minister of Justice.

<sup>89</sup> "NRC Revisited," Accra Daily Mail, <http://www.accra-mail.com/mailnews.asp?id=12722>, Apr. 25, 2005.

<sup>90</sup> The Minister for Finance and Economic Planning failed to comment on the NRC Report, the Reparations Fund or its financial implications in his 2005 budget statement—a poor reflection of the government's commitment.

<sup>91</sup> A. Otoo (personal communication).

<sup>92</sup> See supra note 78 for developments since then.

<sup>93</sup> Id.

<sup>94</sup> Crabbe disputes the assessment that no perpetrators would willingly pay reparations (personal communication). He states that in the past the Government Gazette would record contributions made to government coffers under the heading "conscience money" where individuals wanted to make contributions in an anonymous fashion to clear their consciences. He believes that, should the opportunity be made available once more, there are those who would want to ease their guilt in this manner (personal communication).

<sup>95</sup> E. Erskine (personal communication).

identities of many others are unknown. The former NRC commissioner goes on to argue that since most perpetrators were in uniform at the time of their criminal activities and were government employees, it is incumbent on government to pay the reparations, not on individuals.

The issue of where money should come from for reparations points to a dilemma facing many states undertaking transitional justice processes; namely the tension between the realities of budget constraints and the principle that it is those in power who must assume the responsibility for reparations. The Civil Society Coalition has recently begun sensitizing individuals to the fact that government alone cannot find the money to fulfil its obligations, and that corporations, individuals and civil society should make contributions. Coalition Chairperson and former Supreme Court Judge Justice Crabbe argues that the reality in countries such as Ghana, much as in all countries in the South, is that the national pie is of a limited size and the needs of the country are great<sup>96</sup>. In this case, he notes it should not be government that has the sole responsibility for past victims but society as a whole.<sup>97</sup>

Although awareness campaigns could further public education as well as raise additional funds, Erskine observes that it is important for the government to assume overall responsibility for driving and enforcing a reparations policy, both because of its international legal obligations and in order to demonstrate the commitment of the newly constituted democracy to all its citizens, particularly those who have fallen outside the protection of the state in the past.<sup>98</sup>

It is possible that the challenges the government has faced in allocating fund for reparations in a timely manner could have been addressed, at least in part, by anticipating the need for funding in advance. In particular, the founding Act of the NRC established as one of the functions of the Commission to “identify and specify the victims of the violations and abuses and make appropriate recommendations for redress.” In the first half of 2003, the NRC confirmed that it would be recommending a reparations fund for petitioners that would include educational bursaries for children of affected families. As some form of victim redress was clearly anticipated from early on, implementation could have been greatly assisted had there been a plan in place prior to the shutting down of the NRC.

When questioned on the idea of establishing the fund ahead of time, the former attorney general defended the position of the government, arguing that it would not have been possible to act prior to issuing a White Paper at the Commission’s conclusion and with the government’s formal acceptance of the recommendations.<sup>99</sup> Members of the Civil Society Coalition seem to agree that it would not have been practical to set up the fund earlier, due to resource constraints. The money available for the NRC’s work was minimal and any fund would then have been competing directly with the Commission for limited resources. Also, it was hoped that there would be international funding for the Commission and its work, but this funding was much less than anticipated.<sup>100</sup> Regardless of the factors that contributed to the delay in funding

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<sup>96</sup> Significantly, Justice Crabbe has since been appointed to the three person committee overseeing the disbursement of reparations (see supra note 78).

<sup>97</sup> J. Crabbe (personal communication). The government announced in August 2006 that it has made the entire budgetary allocation; however, to the extent that the budget is at least partly funded through general taxation, it could be said that society did indeed share the responsibility as recommended by Justice Crabbe.

<sup>98</sup> E. Erskine (personal communication).

<sup>99</sup> A. Otoo (personal communication).

<sup>100</sup> According to the NRC Final Report, the Commission received a grant of US\$25,000 from USAID, a small grant from the Open Society Initiative, and some equipment from the latter as well as from the

reparations, the lack of forward planning means that the government was left scrambling to find the required funds, while victims waited.

The waiting period can be a source of tremendous frustration and disappointment to victims. As in the South African context, some victims have already died since the process began and it was important for the government to have been in a position to address recommendations promptly (upon submission of the final report) in order to fulfil the promises of the reconciliation exercise. Delays may have led to further divisions and a sense of resentment on the part of victims. Additionally, political disinterest in following through on the work of the NRC will give impetus to those who decried the Commission as merely a political tool. Erskine, himself a commissioner, says that the uncertainty surrounding the implementation of the recommendations is a serious concern to those who served on the Commission, as they are weary of being perceived as political tools.<sup>101</sup>

Balanced with this need for urgency in establishing a reparations policy, however, is a need for that policy to be well thought through, informed by all relevant stakeholders and comprehensive in reach. It is encouraging to note that the government has, of its own accord, reiterated the need for compensation to be made available as soon as possible. What is of concern is the tone in which reparations are being framed and the types of reparations that will be instituted. In particular, the former attorney general said that compensation will take the form of one time payments to victims, and that as far as the NRC recommendations are concerned the priority for government is the finalization of these payments so that the door can be shut on the NRC process. Otoo argued that there are competing economic concerns in Ghana<sup>102</sup> and as the minister responsible for the NRC he was categorical that the Commission is not a priority beyond the reparations and rehabilitation fund.<sup>103</sup> It is unclear if the current Attorney General, Joe Ghartney, shares the same perception of his responsibilities regarding the NRC process.

In the past Gyimah-Boadi had expressed concern that government has not consulted on any anticipated reparations policy to date and that in the rush to pay out and be finished with the NRC, the policy adopted may be haphazard and lack the intended impact. The process of open

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South African Embassy in Accra. Compare this to the funding provided to the Sierra Leonean truth commission, which was primarily funded by international sources, including grants of between half a million and a million US dollars each from the United States, the United Kingdom and the European Union, as well as significant support from smaller donor nations.

<sup>101</sup> E. Erskine (personal communication).

<sup>102</sup> On the issue of budgetary constraints on paying reparations in a climate of widespread poverty, Vandeginste notes that this cannot be used as an excuse, as the payment of reparations is a judicial imperative—i.e., other judicial orders have judicial effect and these must be no different from the imperative to pay reparations under the rule of law. He does note, however, that given the economic realities of these countries, governments may need to distinguish between urgent humanitarian and other reparation needs, and cites the proposed Rwandan approach as a potential model. In Rwanda, a National Fund for Assistance to Survivors of the Genocide and Massacres has been created alongside a proposed Compensation Fund for Victims: “the latter will deal with the implementation of judicial awards in favor of survivors or relatives of victims. The aim of the former is of a more humanitarian nature: the most economically disadvantaged victims of the genocide are eligible for assistance with housing, education, health and social integration, irrespective of judicial recognition of their right to reparation.” See S. Vandeginste, “Reparation,” *Reconciliation After Violent Conflict: a handbook*. D. Bloomfield, T. Barnes, and L. Huyse. Stockholm: International Institute for Democracy and Electoral Assistance, 2003, at 159.

<sup>103</sup> This pertained in particular to the sidelining of the NRC’s recommendations on institutional reform, covered in the section below.

and transparent exchange during policy formulation can have a positive impact on the restoration of relationships within and between the state and its citizens and can constitute a form of reparation in itself. Additionally, while compensation must take into consideration the realistic limitations of a state budget and not reduce victims' needs to mere cash, it is equally important to ensure that compensation is sufficient so as to not further devalue or demean victims.

The obligation on states to pay reparations to those who have suffered violations of their human rights is clearly outlined in international law. However, the political will to honor the intention of reparations—that is to repair, respect and acknowledge—does not always accompany the right. Reparations policies are a sensitive policy issue. It is not merely the act of compensation that is relevant but the process of informing policy and the rhetoric which accompanies it. In South Africa, reparations payments were delayed for almost eight years after the start of the TRC process, and during this period, the rhetoric of government shifted to conflating reparations with a broader development agenda and the provision of services to the poor. Alongside this shift came a sometimes subtle, other times forthright, derision of those who sought individual reparations as somehow “cashing in” on the liberation struggle and their role in it. In interviews conducted with victims who were members of the Khulumani Support Group, many voiced distress at the dismissive attitude with which government treated their demands for monetary reparations.<sup>104</sup> They were insulted and hurt by the insinuations that they were merely “capitalizing on their suffering,” particularly as many of them felt that their inability to overcome poverty was a direct result of the human rights violation they had suffered.<sup>105</sup>

If handled incorrectly, reparations policies can inflict further harm and marginalization. The rhetoric that was advanced by Otoo regarding the payment of a one time sum quickly risks giving victims the impression that the state views the NRC as a commercial transaction, and that having acquired what was needed from witnesses, they are merely concluding this transaction.

Sustainable national reconciliation cannot be achieved through policies that fail to adequately fulfil victim's needs. Members of the Civil Society Coalition have strongly urged the government to accept the recommendation in the Final Report for a follow-up institution; in fact, there is provision for the establishment of a reparations fund in the legislation inaugurating the commission.<sup>106</sup> A follow-up body could see to conclusion unresolved matters arising from the Commission's work and the implementation of its recommendations, in particular those on institutional reform and reparations. Gyimah-Boadi argues that given the historical experience of the country, an independent and neutral body charged with overseeing reparations is a must.<sup>107</sup> In the past, rehabilitative measures have been selective and politically biased, utilized

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<sup>104</sup> This discourse by government is even more disingenuous given that in the Azapo case, a Constitutional Court case which dealt with the legality of the TRC amnesty process in South Africa, Justice Didcott noted in a concurring judgment that the reparations due to victims was a direct *quid pro quo* for the removal of their rights to justice in the TRC Act. (See *Truth and Reconciliation Commission of South Africa Report*, Vol. 5, Ch.5, Cape Town: Truth and Reconciliation Commission, 2003.).

<sup>105</sup> See Makhalemele, *supra* note 86.

<sup>106</sup> See *supra* note 2 at Section 20.2.h.

<sup>107</sup> Apronti and Kofie also note that a follow-up institution would help to keep these issues alive and on the national agenda. Since the close of the NRC “these issues have fallen from the national conscience” and it has primarily been incumbent on civil society to sustain a debate on the subject (R. Apronti and V. Kofie, personal communication). However, the track record internationally for establishing post-TRC follow up institutions has been dismal, even in countries where there were clear recommendations in this

as a tool of successive regimes to favor their own supporters. Given the controversy that has surrounded the NRC, extra effort should be made to ensure that current policies are seen to be informed, comprehensive and consultative.

## VI. FURTHERING RECONCILIATION

The primary objective of the National Reconciliation Commission, reflected in its name and its mandate, was national reconciliation. The importance of a reconciliation process after the 2000 elections was recognized by a clear majority of the population. A survey conducted by CDD-Ghana in 2001 found that 89 percent of those surveyed favored the implementation of a process or mechanism for reconciliation.<sup>108</sup> The call for reconciliation was supported on both sides of the political divide, and initially, the idea of a truth commission as a vehicle for reconciliation seemed also to be widely supported. Little debate seems to have occurred nationally, however, around a common understanding of the word “reconciliation.”

Reconciliation is an ambiguous term, used both to describe a process as well as an end goal. Its ambiguity has lent itself to different meanings in different political settings. For example:

[I]n post-genocide Rwanda the word was taboo for many years. In Kosovo the very term “reconciliation” is so charged within the Albanian community that it is simply not used publicly. In some Latin American and Asian countries reconciliation is often considered a codeword for those who wanted nothing to change or is equated with a “forgive-and-forget policy.”<sup>109</sup>

Reconciliation is a highly contested term in South Africa. For some, due to the strong emphasis on forgiveness at the TRC—personified in the discourse and character of Chairperson Archbishop Tutu—the term reconciliation has been most frequently equated with forgiveness.<sup>110</sup> In Guatemala, the term was manipulated to a different political end in the naming of the 1996 Law of National Reconciliation—in effect a de facto amnesty for past political perpetrators.

Given the ambiguity and potential for political manipulation associated with the term, it would have been useful if the National Reconciliation Commission had embarked on an internal discussion, as well as a national dialogue, on the goal of reconciliation, the meaning of the term, and the concrete outcomes anticipated. In reference to his experience with the Sierra Leone TRC, Howard Varney, head of the investigations unit, states that in Sierra Leone, Commission staff were still debating the meaning of reconciliation right up until the end of the life of the Commission.<sup>111</sup> The lack of a common definition to guide their work meant that they

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regard. Perhaps the most successful example to date was the establishment by the Chilean legislature in 1992 of the National Reparation and Reconciliation Corporation (CNRR), which followed on the work of the Chilean Commission and continued investigations. By 1996, the CNRR had investigated a further 850 cases that the Commission had not been able to address. Since late 2005, South Africa has made moves towards establishing a post-TRC unit within the Department of Justice.

<sup>108</sup> See supra note 83.

<sup>109</sup> L. Huyse, “Theory and Practice,” in B. Hamber and G. Kelly, eds., *Reconciliation: Rhetoric or Relevant*, Belfast: Democratic Dialogue, 2005, at 7.

<sup>110</sup> See *The SA Reconciliation Barometer: Tracking socio-political trends* (Institute for Justice and Reconciliation) 1:1, 2003. Available online at <http://www.ijr.org.za/politicalanalysis/reconcbar/Apr2003.PDF>

<sup>111</sup> *Searching for Truth and Reconciliation in Sierra Leone*, Freetown: Sierra Leone Working Group on Truth and Reconciliation, 2006.

did not develop a program on reconciliation until they had almost reached the end of their mandate—resulting in what Varney characterizes as “too little, too late.”<sup>112</sup> In the absence of such a discussion, the danger is that a commission can be working towards a goal that is understood and defined differently by different audiences, leading to differing interpretations of the institution’s success.<sup>113</sup>

#### **A. Politicization of the NRC as an Obstacle to Reconciliation**

Every truth commission functions in a political climate that shapes its role and mandate, and more importantly, its potential impact. The role of the political climate varies from case to case, but is particularly determined by the kinds of power still wielded by past political players. In Chile, for example, where the spectre of former dictator Augusto Pinochet continues to cast a shadow over the political landscape, the Rettig Commission was given a limited mandate, one that allowed only certain crimes to be investigated, precluded public hearings and did not call for perpetrators to be named. The nature of the reconciliation process is also shaped by the type of transition being experienced. Bloomfield, in writing on the “context of reconciliation,” explores the different outcomes of different types of political scenarios:

[T]he overthrow of an oppressive regime—may strongly encourage punitive structures for retributive justice ... reform from within, may encourage self-protecting moves towards amnesty ... a negotiated peace, may open up the possibility of a process designed through negotiation between equals. In this case, though, one side may pursue amnesty for its members and supporters as the price of its agreement to support coexistence while the other is pursuing justice and punishment as the price of its support ... Finally, if the transition produces a new, all-powerful regime ... the new state may find that it has great power to insist on reconciliation and to implement it by forcing the old power to accept judicial punishment for their acts. On the other hand, such a one-sided process may simply stoke the former powers’ perception that they have now become the victims—which will almost certainly guarantee problems of unreconciled resentments further down the road.<sup>114</sup>

While it is one thing to acknowledge the inherently political nature of transitional justice processes, it is another to allow political considerations to overshadow and dominate these processes. It has been alleged that this was precisely what was allowed to happen in the case of Ghana. Ken Noonoo, political editor of the daily print newspaper the *Ghanaian Times*, suggests that given the role that past political figures continue to play in Ghana it was always expected that the reconciliation process would be politicized.<sup>115</sup> What came as a surprise to Noonoo and his colleagues was just how politicized the process actually became. Throughout the lifespan of the NRC, the Kufuor government continued to launch, and respond to, political

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<sup>112</sup> Id.

<sup>113</sup> There has been much written on the meaning of reconciliation in a post-conflict setting. One useful working definition is that of Bar-Tal, who defines reconciliation as a state between two past rivals of: “mutual recognition and acceptance, invested interests and goals in developing peaceful relations, mutual trust, positive attitudes as well as sensitivity and consideration of other party’s needs and interests.” See 2002 Nature of Reconciliation. Paper presented at Stockholm Forum: A Conference on Truth, Justice and Reconciliation, Stockholm. This implies that the other group is an equal partner and that future disagreements must be resolved in a non-violent manner.

<sup>114</sup> D. Bloomfield, “The Context of Reconciliation,” in D. Bloomfield, T. Barnes and L. Huyse, eds., *Reconciliation After Violent Conflict: A Handbook*, Stockholm: International IDEA, 2003, at 43.

<sup>115</sup> K. Noonoo (personal communication).

attacks from the opposition NDC party. Consequently, Ghanaians were given contradictory and inconsistent messages relating to “reconciliation.” Nowhere was there evidence of the political leadership necessary for the success of a national reconciliation project. The absence of this leadership was mentioned by a number of interviewees. The recurring example used was the initial and catastrophic attempt by the NPP government to focus the Commission exclusively on the human rights violations that occurred during the Rawlings regimes. From the beginning this gave the impression of an institution that was being established largely as victor’s justice in an attempt to discredit the former government, now a key political rival, ahead of the 2004 general elections.

When asked to evaluate the contribution of the National Reconciliation Commission to national reconciliation, the former attorney general responded “how do you measure reconciliation?” He went on to question how this goal could be achieved through the Commission’s work when the present day political parties are based on the divisions of the past, divisions that are therefore rooted firmly in present day politics.<sup>116</sup>

In the pursuit of reconciliation, the Commission was considered by many to be a “second best” option, given that the road of prosecutions was blockaded by the Transitional Provisions of the inherited Constitution. In the memorandum introducing the NRC, the then attorney general wrote:

[T]here appears to be no legal avenues to get redress, seek compensation or impose any sanction of any wrong doer or violator of human rights. The National Reconciliation Commission, which is not a court or tribunal, can at least recommend some relief, and provide a forum for the victims to ventilate their grievances, a process, which we know from elsewhere, can itself be cathartic, a part of the healing process.<sup>117</sup>

The government’s attitude gave some the impression that even though the NRC was created by the present administration, its members were reluctant to give themselves over to a process that would not secure retributive justice. Dadzie remarks that in private conversations with government officials, they often expressed that it was necessary to be “tough” with members of past regimes.<sup>118</sup> In spite of a constitutional block on prosecutions, talk in the lead up to the Commission among some in academia, policy making and senior levels of government seemed to view the NRC as a vehicle to gather evidence (albeit indirectly, as no evidence presented before the Commission could have judicial effect) in order to push for criminal prosecutions later on.

Resigned to its second best option, the government seemed weak in its commitment to healing and reconciliation. One civil society activist noted that, having instituted the process, government officials refused to follow through or assist in setting the tone for the nation through their own behaviour. Rather than calling on people to reconcile, throughout the time of the NRC hearings “there was a lot of bickering over the whole process itself and also a lot of bickering about every day things between this government [and the opposition].”<sup>119</sup>

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<sup>116</sup> A. Otoo (personal communication).

<sup>117</sup> “Memorandum Introducing the National Reconciliation Commission,” Accra: Minister of Justice and Attorney-General, 6 July 2001.

<sup>118</sup> C. Dadzie (personal communication).

<sup>119</sup> C. Dadzie (personal communication).

The lack of a united expression of support from government officials for the objectives of the NRC contributed to confusion among citizens *vis-à-vis* the Commission and their own attitudes to reconciliation. This does not imply that the political opposition demonstrated any commitment to the process themselves and that they were not similarly responsible for undermining the reconciliation project. But having instituted a truth commission, and knowing the necessity for government to lead by example, the government's failure to seize the opportunity for reconciliation afforded by the NRC was a confusing contradiction. Dadzie concludes that "more could have been done if the government had purposefully shown a gracious face ... if government as government had purposely shown some graciousness, it would have negated some of the bitter expressions from other people."<sup>120</sup>

As the Commission's public hearings drew to a close, a radio poll was conducted in Accra with callers phoning in to voice their views on the NRC's contribution to national reconciliation. While the poll is methodologically limited and certainly not fully representative of Ghanaian society, it does provide some indication of sentiments. Approximately 80 percent thought that the NRC had contributed to further *dividing* the country rather than reconciling it. It is possible that airing the truth about the past can sometimes exacerbate divisions in the short term, but contribute to a new way of understanding the past and therefore deepen democratization in the long term. It is also relevant that at the time of the poll, people's experience of the NRC was solely based on the public hearings, which are not the only component of the Commission's work towards reconciliation. Much still depends on the government's implementation of the recommendations in a speedy and comprehensive manner, in particular those relating to reparations and institutional reform. Gyimah-Boadi, in attempting to anticipate the NRC's long term chances of success and impact, placed the Commission in the context of similar processes on the continent. He notes that in countries as diverse as Côte d'Ivoire, Nigeria, Burkina Faso and South Africa, reconciliation processes have given rise to important recommendations, which have in turn been met with delays, procrastination and a lack of political interest.<sup>121</sup>

## VII. IMMUNITY OR PROSECUTIONS—ADDRESSING IMPUNITY AND FURTHERING RECONCILIATION

The 1992 Constitution, the current supreme legislation of Ghana, was drafted by the government of former President Rawlings prior to a return to democracy in 1993. Included in the Transitional Provisions document attached to the Constitution are clauses that safeguard Rawlings' officials from the legal consequences of criminal acts they committed during their time in power. In particular, it bars any judicial action pertaining to the criminal actions of persons who acted in the name of, or as operatives of, the AFRC or PNDC governments. This indemnity for past political crimes is outlined in Sections 34(1) and (2) of the Provisions. Section 34(2) and reads:

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

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<sup>120</sup> C. Dadzie (personal communication).

<sup>121</sup> See Gyimah-Boadi, *supra* note 14. The track record on the implementation of African truth commission recommendations has been dealt a further blow by the experience of Sierra Leone. Almost a year and a half after that country's truth commission handed over its final report in October 2004, little has been done to implement its recommendations.

Any potential tampering with these sections is prevented by a further Constitutional clause that blocks Parliament from amending the Transitional Provisions, thus entrenching the self-amnesty. As stated above, faced with a seeming inability to prosecute for past political crimes, when it came to power in 2000 the Kufour Government conceived of the NRC as an alternative mechanism to seek some semblance of justice for victims.<sup>122</sup> As the Commission was a non-judicial body with no legal effect—meaning that no information obtained by the Commission could be passed to the courts or used in the pursuit of prosecutions<sup>123</sup>—it did not abrogate the Constitutional provisions. But the decision to have a truth commission as a response to the imposed self-amnesty, has meant that the Commission has been regarded as an unworthy second option.

The desire for retributive justice seems to have remained strong in many Ghanaians' minds. In 2001, CDD-Ghana conducted a survey in which they found that 82 percent of Ghanaians opposed the granting of indemnity to perpetrators of past human rights violations (even though the majority of respondents had no knowledge of the indemnity clause in question) and more than 6 in 10 stated that perpetrators must be tried.<sup>124</sup> In the words of the former attorney general, coming forward to a truth commission to tell what others did to you or what you did to others is, in his view, not justice, but it is all that the NRC provided for.<sup>125</sup>

Although the indemnity clauses in the Transitional Provisions are constitutionally entrenched and ostensibly placed beyond the legal amending authority of Parliament, the granting of self-amnesties—in particular for acts such as murder, torture and forced disappearances—is in violation of Ghana's obligations under international law. Therefore, it can be argued not only that the amnesty provisions are meaningless and reversible, but that the Kufour administration is obliged to reverse them to ensure that the rule of law is applied equally to all. There are international precedents for the reversal of self-amnesties, the most recent being the lifting of immunity for former Chilean dictator Augusto Pinochet.<sup>126</sup> There is a growing consensus in the international community that those who commit political crimes must face justice in order to ensure future peace, stability and respect for human rights.

In its Final Report, the NRC recommends that a national referendum be held on the indemnity clauses. Erskine notes that this recommendation was a direct result of a request from a number

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<sup>122</sup> The issue of the Transitional Provisions was also raised in the context of the debates around the subpoena power of the NRC and whether this power extended to those who enjoyed constitutional immunity (See Gyimah-Boadi, *supra* note 14).

<sup>123</sup> In the pursuit of historical truth, the Commission did have the powers of a court such as search, seizure and subpoena, however these were used minimally, if at all.

<sup>124</sup> See *supra* note 83.

<sup>125</sup> A. Otoo (personal communication). Dadzie asserts that even though the NRC was to have no judicial effect and was put forward as a reconciliatory body, at the start of its work there were many in the legal community, civil society and high levels of government who secretly believed that the Commission could be used to unearth information and identify witnesses, which could then be used indirectly to secure prosecutions later on. For this reason—the recurring desire for and preoccupation with retributive justice—she does not feel that Ghana gained as much from its truth commission as it could have under other circumstances.

<sup>126</sup> Where there is political will to revoke self-granted amnesties, a way to do so is often found. In Argentina, the self-amnesty imposed by the military prior to democratization was overturned by the newly elected government of President Alfonsín through a court of law. Alfonsín's government made the case that as the previous regime was not democratically elected, it did not enjoy legitimacy and therefore the laws it proclaimed, in particular the amnesty legislation, were illegitimate.

of petitioners that these laws somehow be reviewed.<sup>127</sup> By holding a referendum, the government would allow the nation to choose its own path to reconciliation and how best to deal with the perpetrators of the past, an important step to moving past current divisions. As indicated by the CDD-Ghana survey, there is clear evidence that, beyond the victims who came to the NRC with the request for a referendum, the majority of Ghanaians would likewise support both a referendum and the repealing of the immunity provisions.

It is unlikely, however, that such a referendum will occur any time soon, if at all. According to the former attorney general, there is no political will to pursue prosecutions given the current political climate.<sup>128</sup> Moreover, before prosecutions could be conducted, the results of a positive referendum would first need to be translated into a constitutional amendment, something which both government and many members of civil society seem to oppose.<sup>129</sup>

This reluctance to admit amendments to the current constitution has its roots in recent Ghanaian political history. Historically, constitutional amendments were often political manipulations, personally targeted and utilized whenever the regime in power needed to gain the upper hand in its dealings. For this reason, many in government, civil society and the legal community are loathe to propose any further amendments, feeling that the country must just “work with what it has,” even though the current constitution was written under military rule. In the words of Gyimah-Boadi:

[W]e need to learn to live with that aspect of the Constitution because we have had too many changes to the Constitution and I believe that every dispensation has its own price and its own trade-offs. And the trade-off we’ve made in this case to have a peaceful transition from other eras to democratic rule is to let some of these sleeping dogs lie, having established the pain of those who suffered.<sup>130</sup>

The shadow of the politically manipulated past means that amending the Transitional Provisions, though intended to redress impunity, could ironically contribute to a weakened sense of the equal application of the law in Ghana. This is contrary to mainstream transitional justice thinking about what contributes to perceptions of impunity. Crabbe also argues that the use of international law to trump domestic constitutional law is a slippery slope, in that it could then be invoked at any time to justify future amendments, weakening the sovereignty and sacredness of this legal text.<sup>131</sup> The complexities and potential impact of reversing a pre-existing amnesty regime are outlined by Méndez, who writes that:

Undoubtedly to insist on prosecutions in the presence of an important legal obstacle like a pre-existing amnesty law that has had firm legal effects would be irresponsible, because it would subvert the very rule of law that we proclaim and because it would violate the cardinal principle of *nullem crimen nulla poena sine lege* (the defendants at

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<sup>127</sup> E. Erskine (personal communication).

<sup>128</sup> A. Otoo (personal communication).

<sup>129</sup> There are also questions about whether a national referendum would meet the legal requirements that would permit the amendment of the Transitional Provisions. But given the argument for the supremacy of international law in this matter (which would override domestic legal considerations), this should not be an obstacle should an amendment be sought.

<sup>130</sup> E. Gyimah-Boadi (personal communication).

<sup>131</sup> J. Crabbe (personal communication).

all times are entitled to be judged by the criminal law most benevolent to them that exists at or after the time of the commission of the crime).<sup>132</sup>

Méndez also notes that it is impossible to predict the future impact of current policies given that “the deterrent effect on the future of either a policy of impunity or one of accountability is an unprovable proposition.”<sup>133</sup> Gyimah-Boadi, when questioned about the effects of impunity in the Ghanaian context, notes similar concerns, but points also to the fact that it is difficult to identify *what* will contribute to impunity in different contexts. In Ghana, he believes that leaving the indemnity clauses intact in the Constitution would not have an adverse effect as the impunity “inherent in the system [derives] from other cultural and social factors other than the legal Constitution.”<sup>134</sup>

Nevertheless, Erskine believes that this dilemma illustrates precisely the need for holding a referendum: by allowing the people themselves to say whether the Constitution should or should not be amended, it would defuse any conviction that the move was politically motivated.<sup>135</sup>

The reluctance to hold this referendum extends beyond concerns about amending the Constitution; it includes a lack of political will to pursue the prosecutions themselves. In his speech on the occasion of receiving the NRC Final Report, President Kufour stated that perpetrators must now live with their consciences, a statement that was understood to imply that there will be no prosecutions. This was confirmed by former Attorney General Otoo, who says that in his view, Ghana remains a “fragile democracy,” with only 12 years of constitutional democracy behind it. There is a desire to “stabilize the system and not rock the boat,” and to focus energy on teaching people that democracy is better than military rule.<sup>136</sup>

The reluctance of some in the government to push prosecutions is supported by sections of civil society who similarly feel that prosecutions would threaten the country’s still embryonic democracy. This is because the current opposition party, with its antecedents in former President Rawlings’ PNDC party, continues to have widespread support in the country. The issue of sequencing and timing is a prime consideration for transitional justice policies in any

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<sup>132</sup> J. E. Méndez, “Accountability for Past Abuses,” *Human Rights Quarterly* 19, 1997, at 255-282.

<sup>133</sup> J. E. Méndez, “In Defense of Transitional Justice,” in A. J. McAdams, ed., *Transitional Justice and the Rule of Law in New Democracies*, Notre Dame and London: University of Notre Dame Press, 1997, at 3. Méndez goes on to write that the decision to prosecute is not primarily about deterrence but rather about acknowledging the dignity of victims and establishing a culture of respect for the uniform application of the rule of law.

<sup>134</sup> E. Gyimah-Boadi (personal communication).

<sup>135</sup> E. Erskine (personal communication). Crabbe argues that it is possible, in his legal opinion, to pursue prosecutions without repealing the offending constitutional provisions. He states that these clauses grant immunity only for acts that were governed by an executive, legislative or judicial action. If they were not, then they could fall outside the reach of the provisions. This is because the Constitution was intended to absolve responsibility for the treasonable act of overthrowing the government, and so acts that fall outside “the mere overthrow of the Government” should be justiciable in his view. If this reading is correct, however, it would seem to open the door only for the prosecution of foot soldiers and not of those who were in command. This would further perpetuate the selective application of the rule of law. In contrast, an alternative reading of these clauses is that it would in fact be those higher up the chain of command who would potentially be open to prosecution, because it will be incumbent on these individuals to prove that they acted under the authority of the PNDC or AFRC, and not in their personal capacities.

<sup>136</sup> A. Otoo (personal communication).

context, and there appears to be some consensus in the Ghanaian context that this is not the time for retributive justice.

There is, however, a real threat that the longer a society waits to prosecute, the fewer chances there are for successful prosecutions, as evidence is lost to fading memories, disappearing documentation and the death of witnesses. In Ghana these factors are compounded by the fact that many victims did not know their perpetrators and would thus be unable to identify them. The chances of securing successful prosecutions are already believed to be low, and with the passing of time it is likely that very few of the cases will be strong enough to secure convictions. In other words, there needs to be an awareness that, by delaying the pursuit of justice in the perceived interests of democracy and peace at present, it is possible that the chances for legal justice or punitive action will be lost forever.

### **VIII. ESTABLISHING A HISTORICAL CONTEXT FOR PAST INJUSTICES: THE ROLE AND REFORM OF INSTITUTIONS**

A key weakness in many of the Latin American truth commissions prior to Guatemala's Commission for Historical Clarification (CEH) was the failure to present a historical context and reflect on the role of institutions. Before the CEH, Latin American truth commissions merely detailed individual acts of violence in an ahistorical and decontextualized fashion, doing little to inform the nation of the factors which had facilitated oppression.<sup>137</sup> Deviating from its narrow and legalistic ancestors, the Guatemalan process detailed the ways in which the institutions of the state were utilized to racially oppress and systematically impoverish the Mayan population, culminating in a policy of genocide. Because of this comprehensive contextual analysis, the CEH was able to have a deeper impact, in some ways, than previous commissions.<sup>138</sup>

The impact of South Africa's Truth and Reconciliation Commission was similarly weakened by a disproportionate emphasis on individual acts outside of the broader context of racism and apartheid.<sup>139</sup> This is not to say that the history of the apartheid era was disregarded, but it was dealt with only in the Final Report, a lengthy and expensive seven volume document which few have the means to access. The sustained focus on individual acts during the public hearings, the only experience of the TRC for the majority of South Africans, meant that there was little in the proceedings which challenged perceptions of the system as a whole among former beneficiaries. Wilson argues that this was because all other considerations were subordinated to the nation-building imperative of the Commission, and as a result South Africans today "are

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<sup>137</sup> G. Grandin, "The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile and Guatemala," *The American Historical Review* 110:1, 2005, at 46-67.

<sup>138</sup> This does not mean that the CEH had the desired impact overall—it was constrained by an inability to name names, could not hold public hearings and functioned in a situation of ongoing impunity and political unwillingness to do right by the victims of the past. However, many in Guatemala feel that, given the constraints placed on the CEH and its mandate, the focus on the institutions and the findings of institutional racism and genocide were victories that secured some form of acknowledgement in a country where the existence of a policy of internal colonialism has always been denied. See Valji, *supra* note 80.

<sup>139</sup> See M. Fullard, *Dis-placing Race: The South African Truth and Reconciliation Commission (TRC) and Interpretations of Violence*, Johannesburg: Centre for the Study of Violence and Reconciliation, 2004.

not united by a shared political understanding of apartheid, but by their shared moral denunciation of wrong acts.”<sup>140</sup>

As Wilson implies, the importance of a structural analysis is that it maps historical and institutional factors and lends itself to concrete recommendations on institutional transformation. Recognizing this, many recent truth commissions have incorporated institutional and/or thematic hearings into their work. Sierra Leone conducted hearings on thematic issues, such as governance and the management of mineral resources; events, such as specific coups or executions; and institutions. Timor-Leste held thematic hearings on topics such as the civil war, and women and the conflict. The Peruvian TRC held five thematic hearings, seven Public Assemblies and 15 public Citizens’ Meetings, which gave civil society the space to reflect on its experiences of the violence. The evolution of public institutional hearings in the mandate of truth commissions is a move towards increasing the relevance and impact of commissions, as the focus moves from documenting individual violations to the systemic context of the violations and the reconstruction of citizen-state relations.

In Ghana, the NRC’s examination of the role of institutions was conducted primarily through the work of six sub-committees within the Commission who were charged with conducting investigations and hearings into their respective institutions. Each committee was headed by a commissioner and made up of experts or practitioners from the sector under examination. The six established committees looked at the media, the chieftaincy and religious bodies, students and labor, the legal profession and judiciary, security agencies, and professional bodies (other than the legal profession). The committees were tasked with examining the role played by various state institutions and civil society groups in contributing to past human rights violations, as well as the potential role of these institutions in preventing such abuses in future. Their findings and separate reports were then integrated into the Commission’s Final Report.

The NRC Report included a comprehensive focus on the social, historical and political contexts of past human rights violations. It detailed how successive regimes used and politicized for their own ends key sectors of national civic life, including the judiciary, trade unions, the media, the courts, the military, the traditional leadership and civil society, through ongoing exchanges of power. As a result, institutions of the state no longer represented the needs, or protected the interests, of the people but rather primarily served the interests of those in power.

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<sup>140</sup> R. Wilson, *The Politics of Truth and Reconciliation in South Africa*, Cambridge: Cambridge University Press, 2001, at 55.

## A. Assessing the Impact of the NRC on Institutional Reforms

Examining the role of institutions in past crimes is valuable because it increases awareness among the population of the consequences of authoritarianism. In the White Paper presented at the official release of the NRC's Report, the Kufour administration called on citizens to acknowledge what can occur in the absence of democracy as well as to familiarize themselves with indicators of anti-democratic practices as a preventative measure against future oppression. The Paper states:

Finally, Government exhorts all Ghanaians to make the Report an early warning mechanism that enables us all to detect the actions and persons likely to attempt to turn back the clock of Constitutional Democracy in Ghana. As the Commission has amply chronicled, prevention will always be better than cure.

Awareness of past wrongdoings and authoritarian practices is inadequate, however, if it is not coupled with a plan for the prevention of future occurrences. In the words of Tina Rosenberg, "understanding the past is crucial for a distressed nation, but such comprehension is useful only if it leads to change."<sup>141</sup> As such, truth commissions are tasked with making recommendations for institutional reforms that can guard against the reoccurrence of abuses. Institutional reforms support the strengthening of democracy and respect for the rule of law. They are also essential contributors to the construction of a post-conflict citizenship and function as a form of reparation, not just to individual victims but to society as a whole.<sup>142</sup>

Recommendations in the NRC Report are particularly focused on the prison system, the police and the military, given that these were the institutions most responsible for past violations. Some of the key recommendations made with regards to these institutions include: improving the working relationship between the political and military sectors at the highest levels, revising the training curriculum in the state security sector so as inculcate a respect for human rights and civilian authority, and improving civilian oversight.

It is difficult to extrapolate the impact of a truth commission on social reforms, given that they take place during a time of political change which generally includes a plethora of other institutions and policies aimed at furthering reforms and democratization. While Ghana's Commission took place some years after a return to democracy, it nevertheless coincided with a time of accelerated transformation. This makes it difficult to isolate the Commission's impact from that of other structures and policies, and a general trend in society towards democratization. Institutional transformation began gradually with the return to civilian government in 1993, and included the creation of a national human rights mechanism, the CHRAJ. The new body was given strong enforcement powers and, unlike other national human rights institutions on the continent, CHRAJ has a wide network of offices across the country. This gives it broad reach and grassroots accessibility.<sup>143</sup> In addition to CHRAJ, two other institutions were established during this period with a similar mandate of ensuring government accountability—the National Media Commission and the NCCE.

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<sup>141</sup> T. Rosenberg, "Truth Commissions Take On a Local Flavor," *The New York Times*, Feb. 26, 2001.

<sup>142</sup> The United Nations principles on reparation cite non-repetition as a form of reparation. This can only be achieved by reforming institutions and addressing the root causes of conflict.

<sup>143</sup> *Protectors or Pretenders? Government Human Rights Commissions in Africa*, New York: Human Rights Watch, 2001.

With the return to civilian rule, the Armed Forces began a gradual move back to the barracks and out of civilian life. Much effort has subsequently been made to improve the image of state security institutions; today, at almost every major intersection in Accra, there are billboards pronouncing the virtues of the Armed Forces and their necessity in a properly functioning constitutional democracy. Other measures aimed at increasing the transparency of these once-dreaded state institutions include open-house days when members of the public can visit military barracks, and increasing the media's access to the military.

Many of these societal reforms began under President Rawlings but have accelerated following the installation of a new government in 2000. In the words of Gyimah-Boadi, "the new regime marked a break from a government or a party with military antecedents to a party without military antecedents." He goes on to say that basic rights, such as the right of *habeas corpus* and freedom of assembly, are generally well respected today; the relationship between government and the media has improved enormously; and there have been some attempts at addressing impunity among lower ranking officials, contributing to rebuilding the relationship between the state and its citizens.<sup>144</sup>

Given that institutional transformation had already begun prior to the NRC's work, the impact of the Commission's institutional investigations should be examined in terms of their effectiveness in raising awareness of past institutional abuses, serving as a warning for future abuses and deepening existing reform initiatives through the recommendations detailed in the Final Report.

There is a general sense among interviewees that the work of the NRC increased levels of awareness of the nature and extent of abuses that occurred in the name of the state. According to Dadzie, "it has become far more etched on the minds and the public imagination now and that will impact future institutional changes and reforms."<sup>145</sup> While awareness of past crimes has contributed to delegitimizing military regimes, this does not mean, according to GJA head Blewu, that Ghana will never again experience a coup or an attempted coup. It means, rather, that should such an event take place, there will be increased opposition and a defending of democracy by ordinary citizens in a way that did not occur in the past.<sup>146</sup>

The Commission's ability to raise awareness of the consequences of military rule was not limited to the civilian population. There was also an impact within the Armed Forces itself. The exposing of the hypocrisy and violence of the past made those in the security institutions more aware of the consequences of allowing themselves and their institutions to be used for others' agendas. It was also revealed that it was not just civilians who suffered under previous regimes; often soldiers became victims of the very regimes they helped put in power, and after a coup were either killed or forced to flee. It is hoped that this realization will dampen the willingness of soldiers to be involved in future military interventions.

The impact of the Commission on the public imagination appears therefore to be significant. Nevertheless, there has been strong criticism of the missed opportunities for public education and awareness that were manifest in the way in which institutional hearings were conducted. The Act constituting the National Reconciliation Commission provided for some hearings to be held *in camera* where it was established that there was "good cause" for the information disclosed to be kept private. The Commission, however, chose to conduct all hearings by the

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<sup>144</sup> E. Gyimah-Boadi (personal communication).

<sup>145</sup> C. Dadzie (personal communication).

<sup>146</sup> B. Blewu (personal communication).

six subcommittees in private, a decision which the director of public education for CHRAJ says was incomprehensible and disappointing. Dadzie argues that the *in camera* hearings limited the impact of the NRC and did not allow Ghanaians to follow the ways in which conclusions in the Report were reached. She doubts that much of the information disclosed would have been of a classified nature, even in the Armed Forces hearing where the concern would have been for establishing how and why coups were planned and “how people in the military and police get into this kind of brutality.”<sup>147</sup> In particular, the use of private hearings related to the security institutions should have been limited, as it was at the hands of these officials that the majority of abuses occurred. Instead there was a false distinction created between the individual and the institutional, with individual perpetrators being called to testify before the public hearings, and the institutions that facilitated and encouraged their crimes being investigated behind closed doors. This false dichotomy did nothing to contribute to a better public understanding of why these abuses occurred. In the end, as Dadzie argues, it limited the impact of the Commission as a whole.<sup>148</sup>

While truth commissions speak with conviction of “never again,” they often fall into the trap of defining potential, future acts through the narrow lens of the political conflict of the past, without adequately making the link to ongoing abuses and new forms of violence in the present. In South Africa, for example, visual representations of torture methods during the public hearings left a deep impression on society and were generally believed to have discredited violent means of extracting information. In reality, because of the narrow discourse of the TRC, which focused on political abuses of the past, the impact seems to have been to discredit the use of torture against political prisoners—without discrediting the use of torture itself. In a large national survey conducted shortly after the TRC closed, respondents were asked whether police should have the right to use force on criminals to extract information. Forty-seven percent of respondents either supported the use of force by the police or did not indicate that they had knowledge or an opinion on the subject.<sup>149</sup>

Similarly, the NRC has been criticized for adopting a limited focus on institutional abuses of the past without adequately making connections to ongoing institutional abuses under the current democratic administration. Guar-Gorman is passionate in his view that institutional reform has not been addressed in a serious manner. He cites as an example the continued incidents of deaths in protective custody, with one such case going before the courts in 2005.<sup>150</sup> Similarly, Dadzie supports the view that change has not gone far enough and that the NRC failed to make the connection to, or condemn, current abuses. Speaking of the relationship between past and present, she states that during the periods of the coups “people got arrested and locked up and of course they would be beaten up, which you see it was almost routine. And it wasn’t just those times, it’s happening now ... peoples’ perceptions regarding this

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<sup>147</sup> C. Dadzie (personal communication). There have been some debates in the transitional justice field about process versus product in a truth commission’s work. In the case of Ghana, had the process contributed to the product in a more transparent manner, the Commission’s impact would have been considerably strengthened.

<sup>148</sup> Crabbe believes that the *in camera* hearings were justified on the grounds of state security or personal security, which was in line with the NRC Act, and that this did not detract from the value of the conclusions reached. But others point out that issues of security do not explain why all institutional hearings were conducted behind closed doors.

<sup>149</sup> P. Pigou, N. Valji, et al., *Assessing Knowledge of Human Rights among the General Population and Selected Target Groups*, Johannesburg: Community Agency for Social Enquiry, 1998.

<sup>150</sup> R. Guar-Gorman (personal communication).

behaviour have not changed too much.”<sup>151</sup> Dadzie also notes that because the accounts of abuses occurring under the new government have not been dealt with in the same way or with the same level of seriousness as the alleged abuses under past regimes, it has reinforced for some that the NRC exercise was indeed a political tool and that little has in fact changed, not only at the level of institutions but in the corridors of power as well.<sup>152</sup>

There is no doubt that should the NRC’s recommendations for institutional and societal reform be implemented, these would, at a minimum, begin to address the concerns of those who believe that the NRC has been an exercise in political manipulation. Indeed, the impact of the Commission’s work cannot be fully appreciated until the recommendations detailed in the Final Report have been taken up and given an opportunity to impact on institutional culture. The government made a commendable first step in this direction when it accepted the Final Report and recommendations of the NRC in their entirety in the 2005 White Paper. No other government has made such a move in relation to past truth commissions. In many cases, governments have accepted the findings in a final report without accepting the recommendations. This is exemplified by the recent response of President Gusmao of Timor-Leste to the Final Report of the Commission for Reception, Truth and Reconciliation (CAVR). The president stated that he accepts the Report in its entirety as the findings are merely a summary of the information elicited through the public hearings, stories which all Timorese know through their own experiences. However, he also noted that while he accepts the Report and the legitimacy of its recommendations, this does not translate into a commitment to implementing the recommendations—in particular those concerning reparations and legal action against perpetrators, both of which the CAVR describes as instrumental to reconciliation. In fact, President Gusmao has rejected both these recommendations, stating that prosecutions will redivide the new democracy and that holding Indonesia to account would undermine that country’s path to democracy and thus harm Timor-Leste in the long run.<sup>153</sup>

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<sup>151</sup> C. Dadzie (personal communication). Dadzie blames ongoing abuses in institutions such as the prisons and police service largely on the working conditions and salaries of the officials. She argues that the abuses are carried out by the institutions and not by the individuals, that the deprivations and culture inherent in these institutions have affected the officers themselves.

<sup>152</sup> Present day abuses seem endemic in the institutions themselves and are not about the continuing role of past regime perpetrators in the new administrations. In fact, the NRC’s Final Report did not recommend that state security institutions be individually vetted. Its only recommendation in this regard was that future “positive vetting” be practiced to ensure that the most suitable candidates and those with a commitment to and understanding of human rights and democratic values be employed. In another country context, reforming future employment practices without first vetting institutions to remove past offenders would undoubtedly undermine transformation and reconciliation. However, in Ghana there is not the same level of concern within civil society about current security force personnel. Past practices demoralized the Armed Forces to such an extent that many chose to leave rather than remain in the barracks. Dadzie notes that resignations were so widespread, that today there are young generals who would not otherwise be in those positions. In addition, those who were found to be “ill-disciplined” were either retired early or were transferred laterally to other institutions. Together with the amount of time that has elapsed since military rule, the cumulative effect seems to be one of natural attrition, where officers who served under previous military regimes, for the most part, no longer serve in these institutions (personal communication). It is also worth noting that there are multiple causes of human rights abuses in Ghana, with civil-military relations being but one factor. Another critical contributing factor has been the tradition of one party rule, particularly in the period immediately following independence. Rawlings’ reform to a multiparty system of government during his final term made a key impact on the culture of the state, and thus began to diminish the potential for further abuse.

<sup>153</sup> J. Kingston, “East Timor’s Search for Justice and Reconciliation,” *Z Magazine*, [www.zmag.org/content/showarticle.cfm?ItemID=9566](http://www.zmag.org/content/showarticle.cfm?ItemID=9566), 2006.

While Ghana's acceptance of the recommendations is a positive step, the reality is that implementation of these recommendations, beyond a reparations policy, is unlikely to happen in the near future, if at all. Like most truth commissions to date, the recommendations made by the Commission are non-binding.<sup>154</sup> This has been a key weakness in the mandate and work of truth commissions globally. With the Final Report completed and the actual institution of the truth commission shut down, momentum is lost. More often than not it falls on civil society to keep these issues on the national agenda, and this is made all the more difficult where there is either no political will or active resistance on the part of government to follow through.

It is telling that, in accepting key recommendations for institutional reform in the White Paper, responsibility was shifted from government to the institutions concerned, with no mention of a plan for implementation or monitoring. For example, the White Paper "directs [the Armed Forces, Police and Prisons Services] to study the recommendations with a view to their implementation." No plan is proposed, beyond recommending that institutions read the Report. There has been, however, a commitment by the prison system to undertake reasonably sustainable institutional reform. While this commitment existed separately from the Commission's recommendations, the NRC's interest in these issues did act as an impetus for the prison reforms.<sup>155</sup>

The White Paper also states that government: "commends Volume 4 of the NRC Report to the educational authorities in our civil, military and police establishments. They would find in that Volume elements that ought to be considered seriously for inclusion in their curricula and training strategies."<sup>156</sup> The Paper goes on to state that copies of the Report should be required reading in all schools. In neither of these cases is there any mention of a plan to distribute the Report. When questioned on future plans for the Report, the former attorney general conceded that it would be ideal if the NRC Final Report were to inform school curricula, but that they do not have the money or a plan in place to follow this through.

An adequate dissemination strategy for the work of a truth commission is an integral component to the commission's long-term success and relevance. In particular, in the absence of a policy aimed at integrating both the work and findings of a truth commission into the curricula of schools,<sup>157</sup> there is no impact made on subsequent generations and no lasting contribution to understanding the role of military rule in violence and oppression. Moreover, proper dissemination furthers acknowledgement for the victims and is in itself a form of reparation. In Argentina, where the CONADEP report has been reprinted no less than 25 times, one victim said, "it is the most read book in the history of Argentina. I feel that CONADEP is

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<sup>154</sup> During the setting up of the NRC there were calls for the resulting recommendations to be made binding, but these were ignored. To date, it would appear that only El Salvador (a truth commission established and run by the UN) and Ghana's neighbor, Sierra Leone, have given their commissions the power to make recommendations that would be binding on government. However the effect of binding versus non-binding recommendations seems to be of little consequence. In El Salvador the government rejected the recommendations, claiming that no further action was necessary, and in Sierra Leone, the Government White Paper gave cursory treatment to many of the recommendations marked as imperative by the Commission, while simply ignoring many others.

<sup>155</sup> Discussions at "Workshop on Institutional Reform," sponsored by CDD and ICTJ, Accra, December 2005.

<sup>156</sup> *Government White Paper on NRC Report*, Accra: Minister for Justice and Attorney-General, 2005.

<sup>157</sup> Sierra Leone is perhaps the country that has made the greatest attempts to reach the youth through the Final Report of its commission. UNICEF produced a special report on the TRC for youth and the Working Group on Truth and Reconciliation has recently launched a textbook version of the report along with cartoons and exercise questions for use in secondary schools.

still having an impact on new generations.”<sup>158</sup> Some truth commissions, after the initial investment of time, money and human resources in collecting the information, have seen that their reports have no reach or impact. Such was the case in Uganda; after eight years of work, the final report, containing 720 pages of testimony, analysis and recommendations, along with names of victims, has never made it beyond the hands of a select few in government and donor offices.

## **IX. THE ROLE OF CIVIL SOCIETY DURING THE WORK OF THE NRC**

A strong civil society presence in countries undertaking a truth commission can have an exponential impact on the quality of the commission’s outcomes, as well as assist in countering weaknesses or limitations inherent in the commission. In Guatemala, for example, there was great concern that the CEH would have no impact given that it was prevented from naming perpetrators; was to have no judicial effect and no powers of search and seizure; and, most damningly, was meant to complete its work within a six-month time frame. Civil society, led by the Catholic Church, set about conducting its own truth commission, known by its Spanish acronym REMHI, prior to the launch of the CEH. The intention was to utilize REMHI’s investigative capacity and the information it gathered to bolster the outcome and cumulative impact of the official truth commission. In many other Latin American countries, including Argentina, Chile, El Salvador, Peru and Colombia, human rights organizations have played a key role in initiating the documentation and denunciation of systematic patterns of human rights abuses.<sup>159</sup>

The presence of a strong and mobilized civil society during a transitional justice process plays a vital role in its success. Paradoxically, due to the social fragmentation that accompanies conflicts and authoritarian oppression, it is not often that these mechanisms take place in a context of strong and organized support. In Ghana it would appear that the timing of the Commission lent itself to a different kind of relationship with civil society. As the Commission took place nine years after a gradual return to democracy, the politicization and weakening of the civil society sector under previous military regimes had begun to be reversed. Civil society was becoming organized and vibrant. Through the initiative of CDD-Ghana, some 20 organizations joined together to form the Civil Society Coalition, taking a leadership role in ensuring that the NRC was as effective as possible.

Even before there was a formal announcement of the framework for the Commission, the Coalition had requested a meeting with the attorney general in order to hear what was being considered. Gyimah-Boadi recalls how government was initially reluctant to collaborate or share with civil society. Given the experience and capacity vested in organizations such as CDD-Ghana, however, channels of communication gradually opened. Eventually the Coalition was consulted extensively on the various drafts of the NRC Act, and Gyimah-Boadi describes the end process of developing the framework and legislation as “open, consultative and participatory.”<sup>160</sup>

Initially, the draft Act for the NRC was modelled largely on the South African Truth and Reconciliation Commission. Before the drafting of the Bill, the attorney general commissioned an academic to travel to South Africa in order to understand that country’s experiences and

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<sup>158</sup> See Cuevas, Rojas, et al., supra note 48 at 22.

<sup>159</sup> E. Garcia, “Bridging memory and hope: reflections on conflict settings,” in *Reconciliation: Rhetoric or Relevant*, B. Hamber and G. Kelly, eds., Belfast: Democratic Dialogue, 2005.

<sup>160</sup> See Gyimah-Boadi, supra note 14.

translate them into the Ghanaian context. Concerned that the NRC needed to be informed by a wider range of experiences than South Africa's alone, the Coalition, in partnership with its international contacts such as the ICTJ, hosted conferences that drew together the experiences of other countries. The first such conference included participants from all political parties, the attorney general, civil society and academia. Participants were informed of the work of truth commissions in other countries, in particular Latin American countries, Nigeria and Côte D'Ivoire. They then spent time going through the proposed draft legislation clause by clause. Subsequent conferences were held to familiarize commissioners and Commission staff with international experiences as well.

The Coalition played an integral role in the work of the NRC. Most of the public education and victim mobilization was conducted by civil society. Faced with serious limitations to the Commission's work posed by its limited resources, the Coalition mobilized its own resources and, under a Memorandum of Understanding with the NRC, administered a fund which assisted victims in need of logistical support and transportation to testify before the Commission. Coalition members collected statements from rural areas and utilized their own organizations to conduct awareness and outreach.<sup>161</sup>

There were some weaknesses in civil society efforts to impact the work of the NRC, resulting in issues being sidelined within the NRC's operations. There were no proactive efforts to include women's groups or those working on legal issues. While the Coalition could have assembled a more representative constituency, the NRC must also be faulted for not catalyzing those relationships on its own. The Commission has been criticized for not effectively reaching out to women's groups and strategizing on issues such as outreach to women victims, gender sensitivity training for staff, and measures to make victims of sexual violence feel safe while reporting the violations they suffered.<sup>162</sup> A greater inclusion of civil society groups would have likely led to other issues, such as gender, being better represented in the truth commission process.

While it is clear that the strength of civil society was an asset to the NRC's work, it would also seem that the process of conducting a truth commission also strengthened civil society. The experience of mobilizing the resources of different civil society organizations in order to harness strengths and constituencies to a common purpose has, by all accounts, been positive for member organizations. Additionally, there is widespread acknowledgement among all stakeholders of the critical role that CDD-Ghana played in mobilizing like-minded organizations and drawing in international contacts, resources, theoretical knowledge, and experience. The presence of a strong domestic organization facilitated the involvement of international partners such as the ICTJ. Gyimah-Boadi speaks of a "hypernationalism" that predominates in particular among the Ghanaian elite, which would have made the role of international actors in informing and assisting the NRC unwelcome had it not been facilitated through a domestic channel. This experience clearly reinforces the necessity of building the local capacity of civil society in countries undergoing transition.

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<sup>161</sup> Despite the efforts of the Coalition, Guar-Gorman notes that there were still witnesses who could not appear before the NRC because of financial constraints. This was just one of many ways in which the limited resources available to the Commission hampered its reach and impact.

<sup>162</sup> V. Nesiiah, *Truth Commissions and Gender: Principles, Policies, and Procedures*, New York: International Center for Transitional Justice, 2006.

## A. Absence of a Victims' Association

While civil society engagement with the NRC was strong, there was a notable absence of a distinct victims group through which victims could mobilize and centralize their engagement with the Commission. In describing the role of victims associations in post-conflict settings, Huyse writes:

[V]ictim associations are key actors in this area. They operate in most post-conflict societies and range from small groups, like the Mothers of the Plaza de Mayo in Argentina, to large-scale organizations of survivors, like IBUKA in Rwanda. They cover a whole array of activities in the area of empowerment. They act as pressure groups, inform public opinion, offer legal aid.<sup>163</sup>

In countries where a truth commission takes place, victims associations can provide forums for victims to mobilize, strategize, coordinate their engagement and ensure that their voices are heard. The establishment of the Khulumani Support Group in South Africa and its early engagement with the truth commission there were distinguishing characteristics of the South African experience. However, victims groups in societies such as Chile and El Salvador were created in response to the weaknesses of their respective truth commissions.<sup>164</sup> By engaging with the TRC in an organized manner, Khulumani was able to influence its work, in particular with regards to victims' issues. Khulumani continues to conduct advocacy around relevant issues.

The function of a victims association, however, extends beyond the parameters of a truth commission. In the case of Khulumani, only a small percentage of the organization's members went to the TRC to make statements.<sup>165</sup> The associations also play a crucial role in healing through the effect of "suffering together":

While trauma can silently continue to kill victims from within, talking about it in the company of fellow-sufferers may give them a sense of relief and can start a cathartic process. The exchange of information, the learning process of listening to other people's problems and questions, the gradual discovering of the power of alliances—all these facilitate the development of social and politico-legal skills.<sup>166</sup>

Huyse goes on to say that such self-help groups can assist victims to play a significant role in reconciliation projects.

In countries where the conflict was horizontal as well as vertical, victims associations can provide a space for healing and reconciliation for victims across the conflict line and at a community level if they are willing to pursue an inclusive definition of "victim." In the course of focus groups held with victim organizations in South Africa, Khulumani participants noted

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<sup>163</sup> L. Huyse, "Victims," in D. Bloomfield, T. Barnes and L. Huyse, eds., *Reconciliation After Violent Conflict: A Handbook*, Stockholm: International IDEA, 2003, at 62.

<sup>164</sup> See Makhalemele, *supra* note 86.

<sup>165</sup> See Picker, *supra* note 40 at endnote 13.

<sup>166</sup> See Huyse, *supra* note 162 at 63.

that their victim support group was almost exclusively colored and African.<sup>167</sup> It was felt that the focus group itself had provided a place for new understanding, as it included white victims of acts perpetrated by those fighting the apartheid regime. The white victims also expressed an appreciation for the role of such support groups. In the course of the focus group interviews one participant remarked:

That woman whose husband was killed who was a colonel, might find it beneficial to talk to a woman of the same age whose husband was also killed in the blast but was black, who was a business man working on the street. She is just as much a victim but unfortunately the TRC did not bring the people together to share.<sup>168</sup>

It is difficult to predict what the effects would have been had there been an organized victims' movement in Ghana. To a large extent the vertical and isolated nature of the violence and the long time frame in which these violations occurred stood as obstacles to the formation of such a movement. In other contexts, the presence of these associations has strengthened the voice of victims, lent credibility to the truth commission process through their involvement, and has contributed to keeping the issues of justice for past crimes on the national agenda.

## **B. Role of the Media**

The role of the media in any national reconciliation project is of central importance. In the case of the NRC, this sector deserves specific mention both because of its political past, and more importantly, for the lessons learned about its involvement that may be applied to future reconciliation initiatives.

The NRC Final Report highlights the less than glorious past of the Ghanaian media, in which some elements of the press were used as the personal mouthpieces of successive regimes and where anti-democratic attitudes and vilification of the slowness of due process and governance under constitutional democracies contributed to national support for subsequent coups. The media was also a target for those in power, and repression of freedom of expression and broad libel laws were used to silence independent or critical voices. According to Amnesty International, over 150 criminal and civil libel actions were brought against journalists in the years prior to the democratic elections in 2000, with some cases resulting in imprisonment.<sup>169</sup>

As a result of this politicization and undermining of press independence in the past, there was concern about the role of the media in relating the work of the NRC to the population. The role of the media is central to the success of any reconciliation process. The media serve to educate and inform the public, provide a link between the process and the people it is intended to impact, and offer a space for citizens to share their views, concerns and criticisms. As Blewu put it, the media was crucial to the whole NRC process; they had the capacity to torpedo everything but they also had the capacity to contribute to the objectives of the NRC in a way that no other institution could. Blewu went on to observe that this is the case with any such process, because no matter how good the work of the commission is or what they might be

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<sup>167</sup> In South African parlance, "colored" refers to people of mixed racial origin and "African" refers to those who are black, while "Black South Africans" is an inclusive definition of these categories of individuals. This racial classification is a legacy from the Apartheid years.

<sup>168</sup> See Picker, *supra* note 40.

<sup>169</sup> Amnesty International, "Ghana: Imprisonment of Journalists," news release, November 12, 1999.

achieving, without the media to accurately relate the process to the people, the process will fail.<sup>170</sup>

Since the Kufour Government came to power, press freedom has been strengthened. The offending laws regarding the media have been repealed and the sector, though still heavily politicized, is regaining its footing under democracy. The perceptions of the media as being politically led influenced, however, and it was this lack of credibility that threatened to undermine the media's potential contribution to the NRC's objectives.

To address this problem, the GJA, in partnership with the funding organization Ibis, hosted a conference on "the media and the national reconciliation process" in 2001. The workshop produced a guiding document, referred to as the Akosambo Principles, for the way in which the media would cover the work of the National Reconciliation Commission. All of the media outlets represented at this conference contributed to and accepted the principles in the final document. Blewu believes that the principles were generally adhered to by those who participated and that the process had a wider impact beyond journalists' conduct. Because of the transparent manner in which they were drafted and adopted—a process in which the public was both involved and informed—the principles contributed to strengthening public confidence in media coverage of the NRC. Blewu contends that throughout the life of the NRC, if certain media outlets printed stories on the Commission that were obviously partisan, these did not ruin the credibility of the media as a whole or anger the public. This was because the public had confidence that it was not the entire industry that was partisan, but rather individual outlets.<sup>171</sup> In short, the Akosambo Principles contributed to individualizing undemocratic behavior and preventing it from being viewed as an industry norm.

In illustrating the impact of the principles, Blewu cites the leaking of the Final Report, which occurred after the Commission had handed the Report to government. The government had announced that it would not release the document until after the national elections, to prevent it from being utilized as a political tool. Nevertheless, certain strategic (i.e., pro-government) sections of the Report were leaked from an unknown source to select media outlets. Blewu is adamant that the media should not have printed the Report, as they were allowing themselves to be used as pawns in a political manipulation. But he also notes that it was not all media outlets that did so, and that there were some who knew that the document was accessible and could have published it but chose not to. Because only certain media outlets ran with the story, those that did were seen to be aligned with the government. Blewu argues that these outlets obviously did not take the Akosambo Principles seriously, or they would have realized that they were contributing to a further polarization of society, rather than adding value to the reconciliation process.<sup>172</sup>

It is evident that the Akosambo Principles and the training provided for the media did not prevent all sensationalist and politically biased coverage. Going back to Blewu's account, a key example of this is the leaking of the Final Report, described above, in a way that would score maximum points for the current government ahead of the upcoming national elections.

According to Blewu's account, the media largely played a positive role during the NRC, but not all his journalist colleagues feel equally enthusiastic about the contributions of their sector to the Commission's work. Noonoo believes that in spite of prior agreements, it was evident that

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<sup>170</sup> B. Blewu (personal communication).

<sup>171</sup> B. Blewu (personal communication).

<sup>172</sup> B. Blewu (personal communication).

media outlets were still picking and choosing which narrative threads and angles they would reflect in their publications, based on their own political biases.<sup>173</sup> He is supported in this view by Quashigah, who noted that because of this ongoing politicization, the live broadcasts of the NRC’s public hearings played a critical role in reflecting the Commission’s processes to the people in an unmediated way, and by so doing “minimized the potential for abuse by reporters.”<sup>174</sup>

Nevertheless, all agree that this should not detract from the significance of having key players in the media industry adopt principles to govern their coverage of the NRC, as well as the importance of gathering the media together before the truth commission began its work. Through this process, as well as a training initiative for journalists conducted by CDD-Ghana and the ICTJ, journalists were educated on the transitional justice experiences of other countries, the role of the media in these processes, and the duties and obligations incumbent on the media during this time, lending an informed dimension to their coverage as well as contributing to the ongoing and needed reform of the media sector.

## **X. CONCLUSION: KEY RECOMMENDATIONS**

Ghana’s experience holds lessons for countries that are also considering enacting a truth commission to deal with past human rights violations. Some lessons identified by interviewees during the course of this research include:

- Commissioners should be chosen not only on the basis of intellect and background, but also based on their ability to set the tone required to facilitate the commission’s proceedings. In the Ghanaian context some interviewees felt that Reverend Palmer-Buckle had the most appropriate style and temperament.
- Factors contributing to an over-legalization of the public hearings could have been mitigated by additional training for Commission staff ahead of time. This would have presented an opportunity to reach consensus on key objectives of the Commission and how best to reflect these objectives in the character and tone of the hearings.
- A key strength of the experience has been the involvement of the media, and the media outlets’ agreement on a set of principles to guide their coverage of the NRC’s work.
- A proactive civil society is able to have a fundamental impact by intervening early, pulling in contacts, organizing funding and training, and using civil society organizations to mobilize constituencies and supplement the work of the commission where necessary.
- To assure that gender does not become invisible, but is an analytical and organizational tool in the operationalizing of all aspects of a commission’s work, there needs to be a focal point on gender within a commission, designated staff to address related issues on an ongoing basis, and strong relations between the commission and women’s groups.
- It was useful to involve diverse international actors with a wide range of transitional justice experiences to bring to both civil society and the Commission the lessons of other countries’ experiences.
- Securing support and financial commitment from the international community is key to the success of a commission where national resources for the institution are limited. To this end, international and local civil society organizations should make global and long term efforts to sensitize governments on the aims, impact and necessity of transitional justice mechanisms. Lack of resources can severely constrain a truth commission and weaken it to the point where it may contribute to divisions rather than reconciliation.

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<sup>173</sup> K. Noonoo (personal communication).

<sup>174</sup> R. Quashigah (personal communication).

Gyimah-Boadi writes that funding has been the one key factor that has stood as an obstacle to the success of reconciliation processes.<sup>175</sup> This does not refer just to funding for the mechanism itself, but also for the social and economic commitments that are needed in order to achieve full reconciliation—including reparations.

- The mandate of truth commissions must cover a historical timeframe that extends to all key players in the political field, rather than only focusing on periods of rule by opposition political parties.
- To the extent possible, efforts should be made to secure the committed support of all political players. In Ghana, where the NDC, as the leading opposition party, enjoys substantial support amongst Ghanaians,<sup>176</sup> the withdrawal of their support for the National Reconciliation Commission and the subsequent politicization undermined the Commission's support base and severely hampered its ability to further the objective of reconciliation.

The main obstacles that plagued the work of Ghana's National Reconciliation Commission from start to finish were a lack of resources and an overt politicization of the institution and its work. The NRC nevertheless documented far more human rights violations than initially anticipated, and was successful in securing some reconciliation and needed acknowledgement for individual petitioners. At a national level, the government's actions in taking forward the work of the NRC will have an impact on sustainable reconciliation and a deepening of democratic values. The Commission's key recommendations included institutional transformation, the implementation of a participatory and comprehensive reparations policy, dissemination of the Final Report and a referendum to determine future prosecutions. If these recommendations are ignored or rejected, it is possible that the Commission could leave a legacy of injustice rather than one of national reconciliation.

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<sup>175</sup> See Gyimah-Boadi, *supra* note 14.

<sup>176</sup> According to Noonoo, the NDC polls approximately 46 percent support among Ghanaians.

## **ANNEX 1 List of Interviewees**

Yaw Frimpong Anokye  
Former NRC staff member (senior  
statement taker)

Richard Apronti  
Ghana Centre for Human and Peoples  
Rights

Veronica Aykwei Kofie  
Executive Director, Ghana Centre for  
Human and Peoples Rights

Bright Kwame Blewu  
General Secretary, Ghana Journalists  
Association

Justice Crabbe  
Chairperson, Civil Society Coalition  
Ministry of Justice

Chris Dadzie  
Commission for Human Rights and  
Administrative Justice

Emmanuel Erskine  
Former Lt. General, Ghana Armed Forces  
Former NRC Commissioner

Kwame Gyasi  
Representative of Muslim Mission on Civil  
Society Coalition

Emmanuel Gyimah-Boadi  
Executive Director, Ghana Center for  
Democratic Development  
Professor, Department of Political Science,  
University of Ghana

Rashid Abu Baker Kwesi Guar-Gorman  
Director, Institute for Democratic Studies

Bib Hughes  
Programme Manager, Kofi Annan Centre  
for International Peacekeeping Training

Ken Noonoo  
Political Editor, Ghanaian Times

Ayikoi Otoo  
Former Attorney General and Minister of  
Justice

Richard Quashigah  
Senior Editor, Radio Ghana

### **Additional Interviewees (outside of Ghana)**

John Caulker  
Chairperson, Sierra Leone Working Group  
on Truth and Reconciliation

Piers Pigou  
Former investigator with the South African  
and Timor-Leste truth commissions









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