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Transitional Justice in Ghana

An Appraisal of the National
Reconciliation Commission

Marian Yankson-Mensah



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Commission



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Marian Yankson-Mensah
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*To my daughters, Naa Dromo Mensah
(may she rest in peace) and Evette Ama
Kumah Mensah*

Foreword

Marian Yankson-Mensah's study of the Ghanaian National Reconciliation Commission (NRC) provides a reminder of the recurring nexus between time, place, ideas and values in the quest for national as well as international justice. No community, nation, region or continent is an island unto itself—especially not in the age of global media. Each nation is directly and indirectly influenced by the trends, ideas, lessons and ideologies of others, as well as the wish of all people in every part of the world to be free from oppression, exploitation and dictatorship.

The book provides a lucid and exemplary study of the African struggle for accountability and the endeavours in Ghana for political stability—within the parameters of the scholarly debate on the continuity between norms of international justice and the pursuit of peace. It traces this debate from the escalation of democracy in African and Latin American nations in the 1980s, which gave rise to the proliferation of truth commissions in global politics.

No one model or size fits all. The debate on which comes first, justice or peace, and the inevitable quest for a balance between the two, requires careful contextual analysis and realistic choices, grounded in an ethic of responsibility rather than abstract forms of idealism. It involves a realistic commitment to international law, which requires a process of prosecutions for gross violations of human rights and a commitment to 'ultimate ends' that serve the emotional and material needs of victims. This aspires to the restoration of the basic principles and praxis of social justice by seeking to redress losses suffered by victims of past abuses as well as the creation of institutional structures that minimise the repetition of atrocities.

In a formative essay on the study of transitional justice written in the wake of the Chilean National Commission on Truth and Reconciliation, José Zalaquett argues that the ultimate goal of transitional justice involves the creation of a policy that furthers two overall objectives: the prevention of the recurrence of past abuses, and to the extent that this is possible, reparations for the damage caused by these atrocities. Allowing for the pursuit of these ideals to be exercised with different levels of severity or prudence, Zalaquett insists that this discretion needs to reflect the sovereign will of a nation. It is at the same time pertinent to recognize that the Rome Statute of the International Criminal Court (ICC), ratified on 1 July 2002,

states that the four core crimes under international law: genocide, crimes against humanity, war crimes, and the crime of aggression ‘shall not be subject to any statute of limitations’. Where states are ‘unable’ or ‘unwilling’ to investigate and prosecute such crimes, the ICC has jurisdiction to do so, provided such crimes are committed in the territory of a state party or by a national of a state party. In addition, the ICC may exercise its jurisdiction with respect to cases committed in the territory of or by a national of a non-state party where such a case is referred to the prosecutor by the United Nations Security Council.

Important, not least in the African situation, where presidents often endeavour to be ‘presidents for life’, Article 27(1) of the Rome Statute applies jurisdiction ‘equally to all persons without any distinction based on official capacity’. A head of state or a government official, serving in an official capacity, shall not be exempted from criminal responsibility. Article 27(2), in turn, states that ‘Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not prevent the ICC from exercising its jurisdiction over such a person’.

The African Union and some of its member states, together with scholars elsewhere in the world, have frequently resisted the investigation of heads of state as well as other government officials investigated in pre-trial structures of the ICC. Some African states have, in turn, threatened to withdraw from the ICC in protest against the threat of such investigations. Other reasons for resistance to the court by African states include its apparent reluctance to prosecute the alleged atrocities of major powers and permanent members of the United Nations Security Council. African nations have further objected to what is perceived as an undue focus by the ICC on African states.

However, international legal norms have not been consistently applied as seen in transitional justice processes in Ghana, South Africa and other parts of the world. Written within the context of this debate, Yankson-Mensah provides a pertinent case-study on the Ghanaian NRC, which suggests that prosecution of perpetrators was not realistically possible. Unlike the South African Truth and Reconciliation Commission, it did not make allowance for perpetrators to apply for amnesty as an incentive to uncover past atrocities and did not name individual perpetrators in its final report.

The formal discussion on ‘The Role of Truth Commissions and Prosecutions’, organised by the Ghana Centre for Democratic Development, after the presentation of the NRC report to President John Agyekum Kufuor, is representative of the enduring tensions concerning the possibility of future prosecutions of past human rights abuses in Ghana. The president is reported to have neither anticipated nor eliminated the possibility of prosecutions. This, it appears, will be left to the discretion of the judicial and political leadership, the will of the people through democratic and civil processes.

The focus and subsequent response to the NRC in Ghanaian civil society, political debate and scholarly circles is primarily focused on the objectives, methodology and praxis of the commission, its impact on the pursuit of national reconciliation and the right of victims to reparations as well as the need for

institutional reforms. Yankson-Mensah provides a penetrating legal and contextual analysis of these and related objectives in her concluding chapters, providing an important assessment of the NRC and possible future developments in the pursuit of human rights in Ghana—and by implication in other African countries. Her study makes a pertinent contribution to the global transitional justice debate.

Cape Town, South Africa
2019

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Finally yet importantly, I am eternally grateful to the Almighty God, in whom I live and have my being. His grace has brought me thus far and I am forever grateful.

Nuremberg, Germany

Marian Yankson-Mensah

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Abbreviations and Acronyms

NRC National Reconciliation Commission
TRC Truth and Reconciliation Commission

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Chapter 1

Introduction



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Abstract In 2002, a transitional justice process was initiated in Ghana through the establishment of the National Reconciliation Commission. In order to situate the Ghanaian transitional justice process within the context of international human rights principles for post-conflict and post-dictatorship state reconstruction, this chapter elucidates the subject of transitional justice by highlighting its scope, sketching its origins and identifying the underlying factors for development of the subject. It also focuses on the topic of truth commissions by examining their history, benefits and shortcomings. In addition, the chapter reflects on the contemporary legal basis for establishment of truth commissions by providing an overview of the right to truth. It concludes with an outline of the research objectives as well as the methodology and structure of the book.

Keywords Ghana · Transitional Justice · Truth Commissions · Right to Truth · Transitions · Origins of Transitional Justice · History of Truth Commissions · Benefits and Shortcomings of Truth Commissions

1.1 Background to the Study

Sited in a subregion that is notoriously known for civil wars, political dictatorship and massive human rights violations,¹ Ghana has earned a reputation as a model of peace and political stability within West Africa. The country has been described as ‘a model for Africa’ in relation to democracy,² and ‘one of Africa’s stars of democracy’.³ Yet Ghana has not always enjoyed this reputation. Like its counterparts in West Africa, the country has had to confront human rights violations perpetrated during decades of political instability.

Following independence from British colonial rule in 1957, much of Ghana’s first three and half decades were marred by political instability on account of military disruptions of constitutional government. The nation has experienced four republican regimes and five military regimes. The current (fourth) republican regime, which started on 7 January 1993, marked the third transition to constitutional rule after independence and was the first transitional era in which steps were taken to address human rights violations perpetrated by past regimes. The main transitional justice mechanism that was utilised during Ghana’s transition to democracy was the National Reconciliation Commission (NRC), which was established in 2002 and completed its work in 2004.

¹For instance, West Africa is believed to have witnessed the highest number of military putsches in the world: see Kandeh 2004, p. 1. Also, the subregion has been plagued by civil wars in Sierra Leone (1991–2002), Liberia (1989–1997, 1999–2003), Mali (2012 to date), and Côte d’Ivoire (civil war from 2002 to 2007 and election crisis from 2010 to 2011) as well as devastating terrorist activities by the Boko Haram group in Nigeria (2002 to date). These civil wars and terrorist activities have visited untold human rights violations on West Africa.

²This description was made by the former President of the United States, Barack Obama during his speech to Ghana’s Parliament when he visited the country in 2009: see Slack 2012. <https://www.whitehouse.gov/blog/2012/06/14/archives-president-obamas-trip-ghana>. Accessed 7 October 2019.

³See Kermeliotis 2014. <http://edition.cnn.com/2014/02/26/world/africa/ghana-history-overview-on-the-road/index.html>. Accessed 5 August 2019.

1.1.1 *Defining Transitional Justice*

The word ‘transition’ originates from the Latin word ‘*transire*’, which means to ‘go across’.^{4,5} In transitional justice, the notion of transition connotes a change that brings about a form of liberation, which is usually a change from a dictatorial or conflicted political regime to a democratic one.⁶ Societies in transition engage in a form of self-assessment, given that even key state actors, such as the relevant adjudicating authorities, may have been complicit in past atrocities.⁷ A primary question that runs through most transitions is how to deal with perpetrators of past human rights abuses. Transitional justice thus reflects the different methods available to transitional societies in this regard.⁸ The United Nations has defined the term as ‘the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’.⁹ The five main mechanisms that are utilised by transitional societies are prosecutions, truth commissions, amnesties, reparations and institutional reform.¹⁰

⁴Oxford Learners Dictionary 2019. http://www.oxfordlearnersdictionaries.com/definition/english/transition_1?q=transition. Accessed 14 October 2019.

⁵Ibid.

⁶Regarding the subject of change, Ambos 2009, pp. 21–22, has conceptualised instances in which the concept of transitional justice could apply in the absence of a regime change. An example is where negotiations for peace occur in the time of a conflict that is still in progress. See also Teitel 2000, p. 5, who writes that different factors have been used to ascertain the end of a transition, such as the holding of elections and the acceptance of principles of rule of law in the country.

⁷Elster 1998, p. 14.

⁸Arthur 2009, pp. 328–329.

⁹See United Nations Security Council 2004, para 8. For further explanation of the concept, see also Teitel 2000, p. 6, who conceptualises the terminology in terms of the role of law during transition; and Roht-Arriaza 2006, pp. 1–2.

¹⁰See Roht-Arriaza 2006, p. 2, where she states that these four mechanisms put together make up a narrower meaning of transitional justice. See also Ambos 2009, pp. 21–22; and Bonacker and Buckley-Zistel 2013, p. 5. In addition to the above-mentioned mechanisms which are common, other mechanisms of transitional justice are occasionally identified, such as memorialisation and national consultation: see for instance Freeman 2006, pp. 5–6; International Centre for Transitional Justice. <https://www.ictj.org/about/transitional-justice>. Accessed 1 April 2019; and the United Nations 2010, p. 2.

1.1.2 *Tracing the Roots of Transitional Justice*

Views differ on when the field of transitional justice began to emerge. Elster compares modern transitions to those that occurred in the fifth century,¹¹ whilst Arthur argues that the field began to emerge in the late 1980s.¹² Teitel, however, writes that the development of transitional justice can be traced to the aftermath of the First World War.¹³ According to Teitel, the Treaty of Versailles, which ended the war, required Germany to accept responsibility for the war and prosecuted German perpetrators,¹⁴ setting the stage for the subject's further internationalisation through later trials to punish war criminals.¹⁵ Prominent amongst the trials used to hold perpetrators accountable were the Nuremberg Trial of 1945–1946 and the 1946 Tokyo Trial.¹⁶

Following these trials, the subject of transitional justice took further shape in 1979, when the Woodrow Wilson International Center for Scholars launched a 'Transitions' project.¹⁷ Pursuant to this project, a four-volume series, *Transitions from Authoritarian Rule*, was published in 1986.¹⁸ Hayner believes that these books helped to shape the subject further by highlighting and putting into proper perspective the predicaments that transitional societies in Latin America faced regarding how to deal with perpetrators and members of past regimes.¹⁹

The parameters of transitional justice gained further crystallisation after the Cold War, a period that witnessed an increase in political transitions worldwide.²⁰ It was not until 1992 that the term 'transitional justice' was first used to refer to justice in

¹¹See Elster 2004, pp. 3–4, 21, who writes that as early as the 5th Century, democratic transitions occurred in Athens, when there was a defeat of a democratic regime by an oligarchy, and a subsequent return of democracy. According to him, each of these transitions occasioned some means for dealing with the oligarchs, and the Athenians were confronted with several questions that are similar to the very questions that modern societies in transition have had to answer. Another notable historical example is the trial and execution of Louis XVI, during the French Revolution of the 18th Century, because of the offence of treason. On this example, see Allen 1999, p. 318; and Benomar 1995, p. 32.

¹²Arthur 2009, pp. 321–367.

¹³See Teitel 2003, pp. 70, 72–74, who calls this the post-war phase.

¹⁴See Trueman 2015. <https://www.historylearningsite.co.uk/modern-world-history-1918-to-1980/the-treaty-of-versailles/>. Accessed 12 April 2018; and Teitel 2000, p. 39.

¹⁵See Teitel 2003, pp. 70, 72–74.

¹⁶For details of these trials, see Werle and Jessberger 2014, pp. 5–11.

¹⁷The Woodrow Wilson International Center for Scholars is a memorial of America's former President Woodrow Wilson, where research is undertaken on issues of global and national concern. See Wilson Center. <https://www.wilsoncenter.org/about-the-wilson-center>. Accessed 21 October 2019.

¹⁸See Lowenthal 1986, pp. vii–viii.

¹⁹Hayner 2011, p. 7. See also O'Donnell and Schmitter 1986.

²⁰See Teitel 2003, pp. 71, 75–78, who refers to this phase as post-cold war transitional justice.

times of transition from a repressive regime to democracy.²¹ The term gained further popularity as a result of the 1995 publication of Neil Kritz's four volumes on the subject.²² By then, the subject had become well known to the extent that the various mechanisms of transitional justice were firmly established.²³ Today, transitional justice has become more recognised, with nongovernmental organisations having emerged to assist transitional societies in diverse ways.²⁴ Nonetheless, the concept remains very broad and sometimes unclear regarding its actual scope. Key international organisations, such as the United Nations, the African Union and the European Union, have drafted guidelines and policies on the subject.²⁵ In addition, a number of United Nations soft law documents have expounded principles applicable to mechanisms of transitional justice, thereby throwing light on how they can be implemented in states.²⁶ Although these guidelines and policies have no binding effect, they constitute a guidance framework for societies in transition.

²¹According to Arthur 2009, p. 329; and Leebaw 2008, p. 100, the term was first used in an article in the Boston Herald, which talked about a conference which was scheduled to be held in Salzburg, Austria about 'Justice in Times of Transition'. The conference, which was organised by the Charter 77 Foundation, New York was supposed to help the rulers in Eastern Europe take some lessons from how some Latin American countries had dealt with past human rights violations. Prior to the said conference, the term was used severally by the coordinators and their consultants, which included Ruti Teitel and Herman Schwartz. In that same year (1992), the co-ordinators of the conference started 'the Project on Justice in Times of Transition', an organisation which helps divided societies who are in the process of bringing out change in their society. This organisation is now known as 'Beyond Conflict'. For further details about the Salzburg Conference, see Kritz 1995, pp. xix–xxx. See also Teitel 2003, pp. 71, 89–92.

²²See Kritz 1995. See also Arthur 2009, pp. 329–331.

²³See Arthur 2009, pp. 329–331.

²⁴Chiefly amongst the organisations that deal with transitional justice are the International Centre for Transitional Justice, the United States Institute of Peace's Rule of Law Centre and the Institute of Justice and Reconciliation in South Africa. These bodies provide assistance to transitional societies by undertaking research on transitional justice, providing advice on policy making and collaborating with victim support groups, nongovernmental organisations and civil society bodies: see the International Centre for Transitional Justice. <https://www.ictj.org/about>. Accessed 30 June 2019; Institute of Justice and Reconciliation. <http://www.ijr.org.za/>. Accessed 30 October 2019; and United States Institute of Peace <http://www.usip.org/centers/rule-of-law-glas>. Accessed 30 October 2019.

²⁵See for instance, African Union 2019. https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf. Accessed 2 November 2019; European Union. http://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf. Accessed 22 January 2019; and United Nations 2010.

²⁶Examples of such soft law documents are the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005 and the United Nations Commission on Human Rights Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, 2005.

1.1.3 *Transitional Justice and Truth Commissions*

Truth commissions are recognised as one of the main mechanisms of transitional justice. Yet, like other terminologies in the field of transitional justice, there are diverse definitions of the term.²⁷ According to the United Nations, truth commissions are ‘non-judicial or quasi-judicial investigative bodies, which map patterns of past violence, and unearth the causes and consequences of these destructive events’.²⁸

Truth commissions constitute an institutional means of dealing with past human rights violations, without subjecting perpetrators to trial. Truth commissions are therefore distinguishable from courts in many ways. Unlike courts, the underlying focus of truth commissions is to establish historical truth by providing an account of past human rights violations to form part of the country’s historical records.²⁹ Moreover, truth commissions are more victim-centred in comparison with courts. In court trials, victims may be called to provide testimony for the sole purpose of ascertaining the guilt of a perpetrator (and the testimony may be vehemently opposed by the defence), whereas truth commissions pay attention to victims’ stories and also hear from perpetrators when necessary, with a central focus on the healing of victims. Therefore, truth commissions do not normally utilise judicial methods like cross-examinations, which may cause trauma to the victims.³⁰ Unlike courts, truth commissions have the capacity to deal with a large number of cases over a short period of time³¹ and are therefore practicable in instances where a significant part of the society might have been involved in the crimes in question.³² In addition, the proceedings and outcomes of truth commissions differ significantly from those of courts. For instance, the proceedings of truth commissions cannot establish individual criminal responsibility, although they produce a record of the crimes committed. Moreover, they cannot give sentences to perpetrators.³³

²⁷For examples of truth commission features, see Freeman 2006, pp. 14–18; Hayner 2011, pp. 11–12; Lund 1998, p. 282; and Mncwabe 2013, pp. 98–99.

²⁸United Nations 2010, p. 8.

²⁹See Lund 1998, p. 282.

³⁰See for instance González and Varney 2013, p. 11. <https://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf>. Accessed 2 November 2019, who write on the victim friendliness of East Timor’s Truth, Reception and Reconciliation Commission, which utilised a large number of staff to facilitate the provision of funds to enable people who were displaced go back to their homes. For further explanation and instances of the victim-centredness of truth commissions, see also: Aldana 2006, p. 111; and Hayner 2011, p. 22.

³¹See Buergenthal 2006–2007, p. 222, who calls this the ‘macro fact-finding’ function of truth commissions. In contrast, courts undertake ‘micro fact finding’ for specific criminal cases. For a detailed discussion of the difference between truth commissions and courts, see also Freeman 2006, pp. 10, 72.

³²See Tomuschat 2001, pp. 236–237.

³³See González and Varney 2013, p. 10. <https://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf>. Accessed 2 November 2019.

1.1.4 *The Origin of Truth Commissions*

Historically, trials were the usual recourse for addressing atrocities perpetrated during past political regimes. Scharf, however, considers the first instance of a truth commission, in the beginning of the 20th century: the establishment of a commission to conduct enquiries into war crimes that occurred during the Balkan Wars of 1912 and 1913.³⁴ According to Scharf, subsequent to this was the Commission des Responsabilités des Auteurs de la Guerre et Sanctions, which was created after the First World War by the 1919 preliminary Paris Peace Conference to determine the originators of the war and the violations committed by Germany and its allies during the war.³⁵ During the Second World War, the Allied powers established the United Nations War Crimes Commission (in 1943) to investigate German war crimes.³⁶ In 1944, the Far Eastern and Pacific Sub-Commission (a subcommission of the United Nations War Crimes Commission) was established to investigate Japanese war crimes.³⁷ In 1971, a truth commission was set up in Uganda by former president Idi Amin Dada to investigate disappearances that occurred during the initial stages of his government.³⁸

Truth commissions eventually gained widespread use in the 1980s. There were many reasons for the popularity of truth commissions at that time. A key factor is globalisation and its attendant effects, such as enhanced dissemination of human rights-related information and increased maturity of human rights advocacy.³⁹ Nevertheless, the most cited factor is the so-called third wave of democratisation, which occurred from the 1970s through the 1980s and early 1990s.⁴⁰ In Europe, Latin America and Africa, approximately 30 countries transitioned during this

³⁴See Scharf 1997, p. 377. See also the International Commission to Inquire into the Causes and Conduct of the Balkan Wars 1914. <http://www.pollitecon.com/html/ebooks/Carnegie-Report-on-the-Balkan-Wars.pdf>. Accessed 6 October 2019.

³⁵Scharf 1997, p. 377. According to him, this commission's findings formed the groundwork for the establishment of an international tribunal to try the German Kaiser. About this commission, see also Werle and Jessberger 2014, pp. 2–3.

³⁶Ibid. See also the United Nations War Crimes Commission 1948, pp. 2–3.

³⁷See Schoepfel 2016, p. 113.

³⁸See Hayner 1994, pp. 611–613. According to her, the outcome of this commission was short-lived. Subsequent to submission of the commission's report to the President, the members of the commission suffered various ill treatments from the state. One member was dismissed from his employment while another member was sentenced to death after institution of some murder charges against him. Eventually, a third member escaped being arrested by fleeing the country. It should be noted that it is still debatable whether these commissions can be regarded as truth commissions. However, Hayner 2011, pp. 239–240 regards the Ugandan commission of enquiry as a truth commission. See also Scharf 1997, p. 377, who describes the Commission des Responsabilités des Auteurs de la Guerre et Sanctions, the United Nations War Crimes Commission, and the Far Eastern Commission as truth commissions.

³⁹See Heine 2007, pp. 70–71.

⁴⁰Ibid., p. 67. See also Reilly 1998, p. 135.

period from dictatorial, repressive regimes to democracy.⁴¹ Moreover, the collapse of the Soviet Union played a major role,⁴² through the consequences of the end of the Cold War in 1989, which in turn led to the cessation of deep-seated conflicts and dictatorial regimes.⁴³ With these transitions, the states in question were confronted with the recurring questions faced by transitional societies. For instance, transitions give rise to the need to prevent the recurrence of past human rights violations and also to satisfy the rights of victims.⁴⁴ Furthermore, the nature of human rights violations that characterise repressive and conflicted regimes give rise to many unanswered questions and leave several facts undisclosed, hence leading to calls for ‘truth’ during transition.⁴⁵ These needs of transitional societies could not be effectively and exclusively catered to by prosecutions.⁴⁶ It may be argued that if the judiciary was present throughout the period when massive human rights violations were committed, then it was somehow ‘complicit’ in the commission of those atrocities.⁴⁷ Hence, it is not recommendable to use that same channel to investigate abuses, when it has not yet been reformed.⁴⁸

Truth commissions thus became an alternative means for dealing with past human rights violations. Unlike prosecutions, truth commissions find a middle

⁴¹See Huntington 1991a, p. 12, who has outlined five underlying causes of the third wave: (1) the heightened issues of ‘legitimacy’ that were associated with repressive regimes, at a time when the values of democracy had become widely accepted, coupled with the economic and energy crisis of the 1970s; (2) the increase in worldwide population of the urban middle class in the 1960s as a result of worldwide ‘economic growth’, improved standards of living and increase in education; (3) transformation in some of the doctrinal values of the catholic church in 1963, which led the church into advocacy for social, political and economic changes and opposition of repressive rule; (4) general attitudinal change of western ‘external actors’, such as the European Community and the United States, towards advocacy for protection of democracy and human rights; and (5) the new democratic societies provided inspiration for other societies to adopt democracy, which sparked off a ‘snowball effect’. See also Huntington 1991b, pp. 45–46.

⁴²See Goldstone 1996, p. 485.

⁴³See Bloomfield and Reilly 1998, p. 13; Hayner 2011, p. 3; and Heine 2007, pp. 70–71.

⁴⁴See Hayner 2011, p. 3; Heine 2007, p. 67; and Reilly 1998, p. 135.

⁴⁵For instance, although a greater part of the society might be aware of the occurrence of human rights violations in general, the nature of some of these violations, such as disappearances, involves a large amount of secrecy. See Popkin and Roht-Arriaza 1995, p. 81. See also Roht-Arriaza 2006, p. 3, where she uses the example of Eastern Europe to explain this point.

⁴⁶See Hayner 2011, pp. 7–8, who asserts that when trials are used, the state in question will not be able to establish the underlying causes of the human rights violations nor put in place mechanisms to effect institutional reform in the police, military and the judiciary to prevent future occurrences of a similar nature. Moreover, she asserts that strained relationships amongst different sections of the society may remain unhealed.

⁴⁷See Popkin and Roht-Arriaza 1995, p. 82.

⁴⁸*Ibid.* In this regard, it may take a long time after transition to create a new, effective and independent judiciary and bring about reform in the state’s law enforcement mechanisms. For further details on the strengths of truth commissions, as against prosecutions, see Freeman 2006, pp. 10, 72; Verdeja 2009, pp. 100, 102; Gitau 2010, p. 148. See also Kritz 1995, p. xxii, who writes that using prosecutions to deal with perpetrators of past human rights violations may be contrary to the principles of ‘nullum crimen sine lege’ and ‘nulla poena sine lege’.

ground between criminal justice and societal healing by increasing a society's comprehension of its past, without merely focusing on bringing perpetrators to book.⁴⁹

In Latin America, the first truth commission was established in Bolivia in 1982.⁵⁰ This was followed by Argentina's Comisión Nacional sobre la Desaparición de Personas in 1983.⁵¹ Other truth commissions were subsequently established in Chile (1990), El Salvador (1992) and Guatemala (1994).⁵² With the establishment of the South African Truth and Reconciliation Commission (TRC) in 1994, truth commissions received more international attention.⁵³ Unlike earlier truth commissions, the South African TRC's enabling law gave it a large mandate and massive investigative powers, including the power to grant amnesties, conduct search and seizures and issue subpoenas.⁵⁴ The South African TRC thus set the precedent for several other transitional societies to establish truth commissions.⁵⁵

As of August 2019, 58 truth commissions were listed on the website of the Transitional Justice Database Project, which was started by the University of Wisconsin.⁵⁶ Of this number, 19 truth commissions were in Africa, 17 in the Americas, 16 in Asia and six in Europe.⁵⁷

1.1.5 The Right to Truth

As observed above, one of the factors that led to the emergence of truth commissions as a mechanism of transitional justice is the need for 'truth' about past human rights violations during transitions from repressive regimes to democracy.⁵⁸ The establishment of truth commissions is recognised as a means of fulfilling the right to truth.

The right to truth entails the entitlement of victims, their next of kin and representatives to the facts relating to the causes and conditions of breaches of international human rights law and serious violations of international humanitarian

⁴⁹See Allen 1999, p. 320; and Hayner 2011, pp. 11–12.

⁵⁰See Hayner 2011, pp. 240–241.

⁵¹See Freeman 2006, pp. 25–26; Hayner 1994, pp. 614–615, 2011, p. 10.

⁵²For more information about these truth commissions, see Fuentes and Collins 2013, pp. 295–299; Collins 2013, pp. 156–157; and Isa 2013, pp. 322–325.

⁵³See Wiebelhaus-Brahm 2010, p. 3; Freeman 2006, pp. 25–26; and Hayner 2011, p. 4.

⁵⁴See Hayner 2011, pp. 27–31.

⁵⁵See Wiebelhaus-Brahm 2010, p. 3; Freeman 2006, pp. 25–26; and Hayner 2011, p. 4.

⁵⁶See Transitional Justice Database Project. <http://www.tjdbproject.com/index.php?page=1&&mtype%3A%3A2=Truth+Commission&startyear=&endyear=>. Accessed 31 August 2019.

⁵⁷Ibid.

⁵⁸See Sect. 1.1.4 in the present chapter of this book.