

THE POLITICS OF ACKNOWLEDGEMENT

THE POLITICS OF ACKNOWLEDGEMENT:
TRUTH COMMISSIONS IN UGANDA AND HAITI

By

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ABSTRACT

In the aftermath of a period of mass violations of human rights, societies are left with a weakened social infrastructure, on top of a similarly weakened physical infrastructure. The “Politics of Acknowledgement” posits that a society must pass through several stages in its quest to right the wrongs of the past, and remedy the social problems, and explores the role of acknowledgement in the process of societal recovery. I argue that the process of acknowledgement is of particular importance, forming a necessary but not sufficient condition in any successful process of societal recovery to allow the society to move forward. Acknowledgement can lead to forgiveness, which allows social trust and civic engagement to grow, all of which can lead to the development of civil society and, ultimately, democracy.

The thesis considers how the truth commissions of Uganda and Haiti were able to foster such acknowledgement. Both commissions were beset by a number constraints. Chief among these was a lack of political will to see the commission successfully through. This led directly to the failure of the commissions. The commissions failed in securing the social capital, security, and funding required to complete their work in a timely fashion. The evidence shows that neither commission was able to foster any significant levels of acknowledgement. As a result, social trust and civil society simply did not develop, which compromised the development of democracy in both Haiti and Uganda.

ACKNOWLEDGEMENTS

I have come to realize that the act of acknowledgement must be broadly defined. Indeed, that kind of acknowledgement with which this study is most centrally concerned could not occur without the simple act of pausing to recognize those events which have shaped the present. As such, I would very much like to acknowledge those individuals and groups who have had such a profound impact on my work.

I am grateful, first and foremost, for the opportunities and funding that have been provided to me. Chief among these was a Doctoral Research Grant awarded to me by the International Development Research Centre in Ottawa that allowed me to pursue my field research. No less important were two Graduate Research Fellowships awarded by the Institute on Globalization and the Human Condition at McMaster University that funded me over a period of two years. I am also appreciative of the Ontario Graduate Scholarship that funded my final year.

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LIST OF ABBREVIATIONS

AAAS	American Association for the Advancement of Science
AIDS	Acquired Immune Deficiency Syndrome
CEH	Historical Clarification Commission (Guatemala)
CID	Criminal Investigation Department, CIVHR
CIVHR	Commission of Inquiry into Violations of Human Rights (Uganda)
CNVJ	<i>Commission nationale de vérité et de justice</i> (Haiti)
DANIDA	Danish International Development Agency
DPP	Director of Public Prosecutions, CIVHR
FADH	Armed Forces of Haiti
FRAPH	Front for the Advancement and Progress of Haiti
HIV	Human Immunodeficiency Virus, the virus which causes AIDS
HSM	Holy Spirit Movement, a rebel force in the north of Uganda led by Alice Lakwena
IACHR	Inter-American Commission on Human Rights
ICHRDD	International Centre for Human Rights and Democratic Development
IGO	international governmental organization
IMF	International Monetary Fund
INGO	international non-governmental organization
LRA	Lord's Resistance Army, a rebel force in the north of Uganda led by Joseph Kony; an offshoot of the HSM
MDSO	Most Different Systems Design

MICIVIH	International Civilian Mission in Haiti, joint mission of United Nations and Organization of American States
NGO	non-governmental organization
NRA	National Resistance Army; became National Resistance Movement
NRM	National Resistance Movement; formerly National Resistance Army
OAS	Organization of American States
OAU	Organization of African Unity
OEA/DEMOC	Civilian Mission to re-establish and strengthen constitutional democracy in Haiti, established by OAS
ONUVEH	UN Observer Group for the Verification of the Elections in Haiti
RC	Resistance Council (Uganda)
SIDA	Swedish International Development Agency
TRC	Truth and Reconciliation Commission (South Africa)
UHEDOC	Uganda Human Rights Education and Documentation Centre
UHRC	Uganda Human Rights Commission
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNMIH	UN Mission in Haiti
USAID	U.S. Agency for International Development

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CHAPTER ONE
INTRODUCTION

Mass atrocity devastates a society. Whether the result of a regime bent on the elimination of certain groups, or a civil war, or any number of other causes, the effect of human rights violations on a society can leave deep and lasting scars. The impact is often felt in at least two dimensions: physical and social. The destruction of the physical infrastructure becomes apparent in crumbling hospitals, bullet-riddled buildings, and collapsed roads and bridges. Just as important, however, and often-overlooked, is the social infrastructure, which includes the justice system, civil society, and participation in the political system, to name only a few. In most cases, the finite financial resources of the society enable it to tackle either the physical *or* the social. The trade-off in selecting one over the other can have obvious consequences. Yet engaging in the repair of the social infrastructure can have many and significant benefits.

This study is concerned with that social infrastructure. It arose out of an initial interest in how societies begin to reckon with a history of mass atrocity, and how societies might go about getting the social dimension working again. What I very quickly realized was that the rebuilding of a society is not a simple task. Indeed, it is a process that comprises several discrete yet inter-related steps. As I define them, these steps include acknowledgement, the act of forgiveness, and the development of social trust and civic engagement. These lead to the generation of social capital, the social currency which

allows any of a variety of outcomes to develop. These outcomes might include reconciliation, restitution, apology, democracy and justice, although one could envision significantly more. I am concerned with that path of rebuilding that allows for the broader development of participatory democracy. Along with that, however, I argue that justice must also begin to emerge.

At the very core of this process is acknowledgement. Acknowledgement is a necessary but not sufficient condition in the process of rebuilding. That is, societies, and the individuals who make up those societies, must first engage in a process of acknowledgement before any of the other steps, as outlined briefly above, can take place. This means publicly admitting to and accepting a knowledge of the events which have taken place. In many communities, past crimes are simply never discussed. Rather, events, and the consequences of the acts committed, are left to bubble under the surface. I argue that unless these atrocities are both privately and publicly acknowledged, the society cannot move forward on the continuum of social rebuilding.

The concept of acknowledgement, as I use it here, is different from the manner in which it has been used elsewhere. Govier, for example, sees acknowledgement as a perpetrator-centric pursuit.¹ In the model I have developed, however, I conceive of acknowledgement as an activity to be undertaken by both victims and perpetrators. Indeed, proper and successful acknowledgement by a society cannot take place unless perpetrators own up to their crimes and their victims admit to having been brutalized. In

¹ Trudy Govier, "What is Acknowledgement and Why is it Important?" TMs, 2000, 5, author's collection, Calgary, AB.

this way, the facts about what happened are brought into the realm of public discourse, and the power of perpetrator over victim is broken.

This focus on acknowledgement is important. Societies that have been devastated by conflict and atrocity are increasingly bombarded with solutions and offers of assistance. Following the genocide which took place in Rwanda, for example, institutions were established at several levels (i.e. international tribunals, national courts, and informal community hearings called *gacaca*) that were intended to begin to rebuild the social infrastructure of the decimated country. Similarly, the ethnic cleansing that had taken place in the former Yugoslavia was dealt with in the form of a tribunal. Yet these institutions were experiments at best. The officials who established these institutions had never before seen them at work. No one knew for certain how the societies in question would “take” to these institutions, or what effect they might have. This study attempts to frame the work of such institutions within that process of acknowledgement, which is detailed more clearly in chapter two.

The study, then, begins with the theoretical assumptions. These ideas are important in that they frame not only the discussion that follows, but also because they inform the construct around which the thesis is based. With these arguments in mind, the study moves to some observations about the truth commission as a mechanism within which such ideas might reasonably be fostered, as well as a brief overview of the two truth commissions that are the cases under investigation. It is then that the methodology for the study itself is examined. A clear understanding of the theory as well as the mechanism to

be considered is critical for the methodology employed to be understood. For this reason, the methodology appears somewhat later in the text than might otherwise be the case.

Public acknowledgement does not often take place spontaneously, outside of the construct of some kind of institution designed to bring it about. It seemed to me that one type of mechanism which might be suitable for the purpose of encouraging acknowledgement might, in fact, be the truth commission. These bodies are appointed to collect evidence and testimony in establishing the “truth” about past events. Since the mid-1970s, truth commissions have been used as a means of repairing the social infrastructure of countries, with a focus on restorative justice as a desired outcome. To date, the best-known truth commission has been the Truth and Reconciliation Commission of South Africa, although approximately 25 others have operated with varying degrees of support and success.

In an effort to “test” the hypothetical model of acknowledgement which I had developed, I selected two of these truth commissions: Uganda and Haiti. Because I was less concerned with the differences in the countries themselves, and more concerned with the variations in the truth commissions as mechanisms of acknowledgement, the study has been designed using the Most Different Systems Design.² This design has allowed me to focus on the differences between these commissions, even though they are located on different continents and involve cultural and political complexities.

² Adam Przeworski and Henry Teune, *The Logic of Comparative Social Inquiry*, (New York: Wiley, 1970) 31-38.

The Ugandan Commission of Inquiry into Violations of Human Rights (CIVHR) was established in 1986 to consider all of the human rights abuses that had taken place since the country's independence in 1962. This included the atrocities committed under the regimes of both Idi Amin and Milton Obote. In all, nearly 1,000,000 people were tortured and killed during this period. The truth commission was appointed when Yoweri Museveni and the National Resistance Army seized power in 1986. It completed its work in 1994.

The Haitian truth commission, the *Commission nationale de vérité et de justice* (CNVJ), was appointed to look at the abuses perpetrated during the period from 1991 to 1994, when duly-elected President Jean-Bertrand Aristide was exiled, and Haiti was under the military dictatorship of Raoul Cédras. During this period, Aristide's supporters were brutalized and many were killed. The truth commission was appointed in 1994, when Aristide returned to Haiti. It operated until 1996.

In both cases, the truth commissions succeeded very little in accomplishing their mandates. Indeed, both commissions were buffeted by a series of limitations and deficiencies which frustrated their respective efforts to get at the truth about the events which had taken place. As a result, both commissions failed to support any significant public acknowledgement of past events.

This study, then, also considers just what this lack of acknowledgement on the part of both commissions actually meant. The impact of these limitations and deficiencies was felt in a variety of ways, including a lack of political will in support of the commissions, and institutional constraints that beset both commissions from the very beginning. A

detailed look at these particular shortcomings is presented in chapters six and seven, in an attempt to explain how and why the failure to achieve public acknowledgement was so acute. A discussion of just how the commissions tried and failed to acknowledge appears in chapter eight.

In the theory of acknowledgement, I also identify one link in the chain between the building of social trust, and the potential outcome of democracy, as civic engagement. If acknowledgement has taken place, according to the theoretical model, then the growth of individual and societal participation in the stuff of civil society ought to serve as evidence of the success of the process of acknowledgement. Conversely, if acknowledgement has not taken place, the development of civil society will be retarded. Chapter nine is devoted to the consideration of evidence of civil society in both Uganda and Haiti.

As such, it has become apparent that the truth commissions of Uganda and Haiti were unable to foster any real public acknowledgement. Since acknowledgement, a necessary condition for the development of the democratic process, was missing, civic engagement was similarly hindered. The result is that democracy has not developed in either country.

In fact, both commissions failed even to capture public attention in any real way. One consequence of this was that collecting the data to be used for this study was often difficult. It took nearly three years to find the Report of the Ugandan CIVHR, for example. Eventually a photocopied version arrived via the Danish Foreign Ministry in Copenhagen. Yet when I arrived in Uganda, my first interviewee took a published copy from a tall stack of Commission reports sitting on top of his filing cabinet and presented it

to me. Similarly, when an official at Makerere University gave me a ring of keys and told me that some of the documentation from the CIVHR was being kept “somewhere” in the building, I was astonished to come across a dusty closet occupied by a water heater – and a mountain of boxes filled with primary documentation from the Commission. The lack of public interest had conspired to keep the information produced by the Commission from being disseminated.

The collection of data for the Haitian commission was equally challenging. In the end, I was unable to travel to Haiti due to security concerns. As a result, much of the data I have collected surrounding the Haitian case was found in other places. Because of the international nature of the Haitian CNVJ, however, significant amounts of material were available in other places. I was able, in the end, to access primary material in both Montreal and Washington.

The following study considers the role of acknowledgement in helping two societies, Uganda and Haiti, in the rebuilding of their social infrastructure. As a theoretical proposition, acknowledgement appears to hold significant promise in figuring out when and how societies can begin the process toward recovery. As a test of the truth commission, it is apparent that in not all cases is the truth commission able to foster the process of acknowledgement.

PART ONE
THEORETICAL MODEL

The study centres around a concept called acknowledgement. The following chapters outline the role of this concept of acknowledgement. They also situate the argument within the context of the truth commission, especially with respect to the truth commissions of Uganda and Haiti.

CHAPTER TWO

THE POLITICS OF ACKNOWLEDGEMENT

One of the most daunting tasks faced by a society left in ruin after a period of mass atrocity is the rebuilding of that society. In transitional societies, the outward signs of poverty and destitution often 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 the social infrastructure of that same community. Roads and schools, for example, are given priority over issues of justice and security. Reckoning with past injustices, however, is an important step in the process of acknowledgement and forgiveness, leading to the rebuilding of a viable democracy, a restructured judicial system, and strengthened networks of civic engagement, all of which may lead, ultimately, to increased levels of social trust. These are particularly important in overcoming the causes of conflict within divided transitional societies.

There is a strong and causal relationship between acknowledgement and forgiveness, social trust, democracy, and reconciliation. It is my hypothesis that acknowledgement is one stage through which any successful process of societal recovery must pass. Acknowledgement in and of itself is not an end point, as is reconciliation, for example. Nor is it, in and of itself, able to bring about some kind of meaningful change. Rather, it forms a necessary but not sufficient condition for outcomes such as

democratization and judicial reform, along with social trust, to be realized. Ultimately, I argue that acknowledgement is responsible for the creation of the bonds of social capital and social trust, which foster the democratic goals sought by transitional societies.

In attempting to reckon with a history of mass human rights violations committed at the hands of the state, societies have increasingly opted to use methods of alternative and restorative justice over more widely-accepted methods of retributive justice. I define restorative justice as a process of active participation in which the wider community deliberates over past crimes, giving centre stage to both victim and offender in a process which seeks to bestow dignity and empowerment upon victims, with special emphasis placed upon contextual factors.¹

This type of restorative justice has broad applicability. Mechanisms such as the truth commission have proven to be useful instruments in searching for details of past events in societies where mass violations of human rights have occurred. Victims and perpetrators come forward to tell their stories, and from these a narrative history of the often graphic and frightening nature of the society's past emerges.

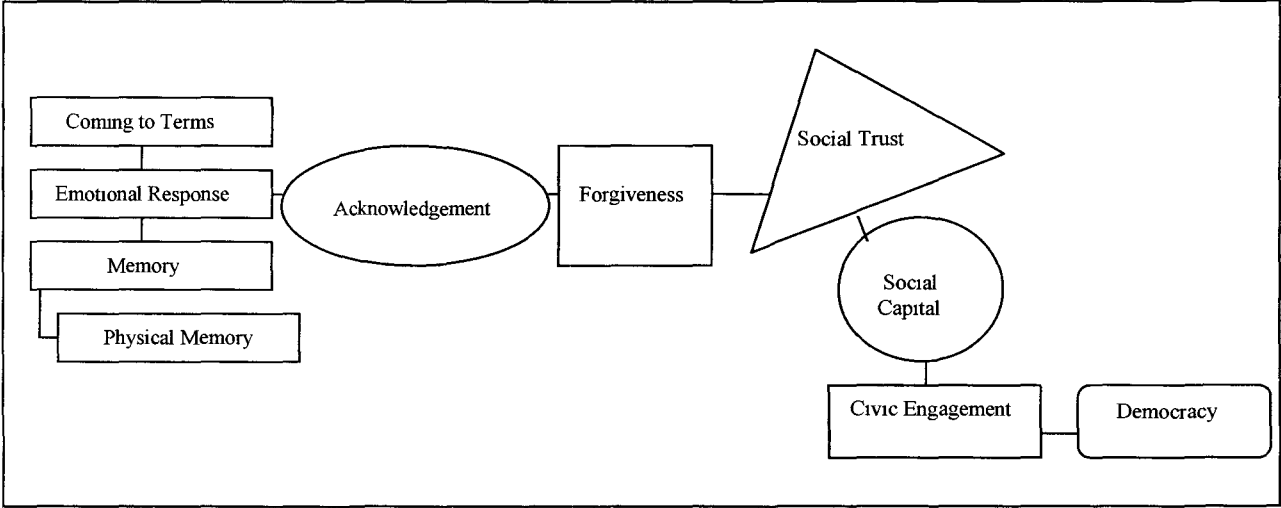
What is especially important about this truth-seeking, however, is the acknowledgement which takes place throughout. Acknowledging the events of the past and one's complicity in them is particularly important. My theory of acknowledgement presupposes that acknowledgement is necessarily a multi-faceted process, comprised of separate and distinct acts to be undertaken by individuals within a given society. I have

¹ Adapted from Sinclair Dinnen, "Restorative Justice in Papua New Guinea," *International Journal of the Sociology of Law* 25 (1997): 245-262.

identified several of the components of acknowledgement, all of which are important in moving beyond acknowledgement to strengthen those aspects of civil society which are necessary for it to function as a cohesive whole. These include emotional response and coming to terms with the past, memory and remembering, and the commemoration and memorialization of past events. It is my hypothesis that acknowledgement is one stage through which any successful process of societal recovery must pass.

The balance of this chapter, therefore, outlines the factors contributing to and influenced by acknowledgement. (See Fig. 2-1.) I argue that acknowledgement is composed of at least three elements, each of which may have varying and interchangeable parts: coming to terms with the past, emotional response, and memory and remembering. Acknowledgement itself, I argue, is a necessary but not sufficient condition of reckoning with the past. Once acknowledgement has taken place, however, the barriers to forgiveness are significantly reduced. This act of forgiveness allows victims to begin again to pursue relationships of camaraderie and friendship or civic engagement, and to establish bonds of trust, generating social capital and, ultimately, democracy.

Figure 2-1: Diagram of The Politics of Acknowledgement



Coming to Terms with the Past

In order for any society to begin to move forward, it must come to terms with its past. By this, I mean that people must be called to account for past events. The truth commission provides a means by which people may testify to their experiences and to the experiences of others who have been disappeared or killed. In facing the details of history,² past events can be revisited, evidence uncovered, people and institutions potentially held accountable, and a rationale of deterrence³ made possible. Some, however, believe that such details should instead be left well enough alone.⁴

² Nicholas Frayling, *Pardon and Peace: A reflection on the making of peace in Ireland* (London: SPCK, 1996), 35.
³ Diane F. Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," ed. Neil J. Krutz, vol. 1, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, D.C.: United States Institute of Peace Press, 1995), 406-407.
⁴ Theodor W. Adorno, "What Does Coming to Terms with the Past Mean?" ed. Geoffrey Hartman, *Bitburg in Moral and Political Perspective* (Bloomington: Indiana University Press, 1986), 114-116.

And, although it is true that history tends to alter memory, leading to questions of accuracy⁵ and credibility,⁶ both individuals and societies must begin to talk about those events which have taken place. For it is in the open discussion of these atrocities, in the revealing of the criminal actions of the perpetrator, that the victim can begin to take control of her circumstances; by implication, a society filled with powerless individual victims comprises a suffering, struggling whole. If wrongs are never discussed, the dregs of past atrocities are simply left to fester under the surface of that society.

Just what does this “coming to terms with the past” mean? It deals with elements of both consciousness and acceptance. My theory of acknowledgement assumes that in dealing with the past, one must accept “the admission of something as true or as stated and the recognition of the authority of the claims of others,” as it is defined by the Oxford Canadian Dictionary. Such an act is necessary before moving on in the process of working toward reconciliation, or forgiveness, or any one of a number of potential goals. Frayling says the following: “We have to be prepared to face our own history, however strong may be our personal inclination to disown it.”⁷ Adorno’s definition explicitly excludes a “serious working through of the past;” he eschews any deep sense of remembering in favour of forgetting altogether about the events of the past and “turning the page.”⁸ These definitions are wide-ranging, but they are important because they demonstrate the disagreement that exists within the literature about what a coming to terms with the past

⁵ Maurice Mandelbaum, *The Problem of Historical Knowledge* (New York: Liveright Publishing Corporation, 1938) chapters 1,6.

⁶ Lawrence Langer, *Admitting the Holocaust: Collected Essays* (New York: Oxford University Press, 1995), 37-38.

⁷ Frayling, *Pardon and Peace*, 35.

⁸ Adorno, “Coming to Terms with the Past,” 114.

should include. However, to varying degrees, many scholars do agree that some form of coming to terms with the past is necessary. It is on this basis that the theory of acknowledgement proceeds.

This coming to terms with the past can also take vastly different forms. In her recent work, Minow discusses the need for truth commissions, trials, and reparation in instances where human rights have been violated on a mass scale.⁹ Hayner's work reflects a belief in the capacity of the truth commission to uncover evidence and enabling such past deeds to be recognized.¹⁰ Orentlicher speaks of both national and international judicial remedies intended to help in this process,¹¹ as does Power, whose argument for trials appears to be based mainly upon her perception of the inadequacies of truth commissions generally.¹² Human Rights Watch has adopted a policy based upon governments ensuring accountability for past abuses¹³ that is echoed by others working toward dealing successfully with perpetrators of mass human rights violations.¹⁴ Governments at many levels have also adopted strategies deemed useful in coming to terms with the past; the

⁹ See Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), chapters 3,4,5.

¹⁰ See both Priscilla Hayner, "Fifteen Truth Commissions -- 1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16 (1994): 597-655; and Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001), 24-31.

¹¹ Orentlicher, "Settling Accounts," 376-383.

¹² Samantha Power, "The Stages of Justice: Review of Mark Osiel's *Mass Atrocity, Collective Memory and the Law*," *The New Republic* Mar. 2, 1998: 34.

¹³ Human Rights Watch, "Policy Statement on Accountability for Past Abuses," ed. Neil J. Kritz, vol. 1, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, D.C.: United States Institute of Peace Press, 1995), 217-223.

¹⁴ See, for example, José Zalaquett, "Balancing Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," ed. Neil J. Kritz, vol. 1, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, D.C.: United States Institute of Peace Press, 1995), 203-205.

Compensation for Victims of Crime Act passed by the Government of Ontario is one such example.¹⁵

A coming to terms with the past is not only warranted but encouraged because it is through the process of reckoning with the past that one can confront it directly. Frayling's approach is that "history has to be revisited and interpreted if we are to understand that present dilemmas have their roots in past events and decisions."¹⁶ This approach fits with the sense that "tainted memory" must be dealt with in order to avoid a life of ruin.¹⁷ There may also be a need for "hard facts" in transitional societies.¹⁸ Still others posit that the way in which the past is called up and made present is critical. The level of comprehension and the lengths to which society is willing to go in dealing with such horrors has everything to do with the relative success of the process itself.¹⁹ If a truth commission merely engages a select few citizens at the pinnacle of society in any number of poorly-publicized fora, the majority of the population will not become engaged in the process of acknowledgement that could be fostered by the truth commission.

There does appear to be a consensus that in talking about mass violations, and by extension through prosecuting them, a rationale of deterrence is developed within the

¹⁵ The Ontario Criminal Injuries Compensation Board operates under the auspices of the Ministry of the Attorney General, as per the guidelines of the Compensation for Victims of Crime Act (1993). Compensation is given in a number of circumstances, including loss incurred by dependants and also for pain and suffering as a result of a criminal act. In this way, the suffering of individual victims is acknowledged. This nicely illustrates, on a "micro" level, the concept of acknowledgement as it applies to the broader, "macro" level.

¹⁶ Frayling, *Pardon and Peace*, 36.

¹⁷ Langer, *Admitting the Holocaust*, 37-38.

¹⁸ Power, "The Stages of Justice," 36.

¹⁹ Adorno, "Coming to Terms with the Past," 126.

country.²⁰ In many cases, as happened in the Argentine National Commission on the Disappeared, the truth commission is seen as a “preliminary step toward prosecutions that [then] follow, and indeed the information from this commission was critical to later trials.”²¹ The truth commission can also function as a conduit for the strengthening of democracy through the building of democratic institutions. For example, the public nature of the South African Truth and Reconciliation Commission showed people how the rule of law was supposed to work. And when one extrapolates from the individual to the collective, such attempts at public enlightenment and exploration of the past seem entirely more pressing and urgent.

Admittedly, there are others whose exhortation to leave things well enough alone is strong. In discussing his metaphorical time machine, Lowenthal’s look at the past examines many significant risks to revisiting history: he cites disappointment, the inability to cope, and problems living again in the present as reasons to avoid any type of antiquarian introspection.²² Others have counselled against dredging up the past for fear of “stirring up trouble,” as in the cases of both Mozambique and Cambodia, where people simply did “not want to reenter [*sic*] into this morass of conflict, hatred and pain... [and chose instead] to focus on the future.”²³ Many have also considered the potentially destabilizing effects that such introspection might pose on any type of transitional

²⁰ Orentlicher, “Settling Accounts,” 406-407.

²¹ Hayner, *Unspeakable Truths*, 16-17.

²² David Lowenthal, *The Past is a Foreign Country* (New York: Cambridge University Press, 1985) 28-35.

²³ Hayner, *Unspeakable Truths*, 185. See generally, Chapter 12, “Leaving the Past Alone,” 183-205.

society.²⁴ And telling the truth about the past is sometimes considered dangerous when combined with judicial activity²⁵ because of its potentially destabilizing effect. Certainly, transitional societies are in a fragile and weakened state, and the total costs of such a process for any transitional society may be too much to bear.²⁶ These costs might include a return to hostile or violent relations between community members or increased instability.

Still other difficulties present themselves in the process of coming to terms with the past. In the gathering of testimony, which comprises a major aspect of facing the past, questions of historical inaccuracy are often raised. Debates between historical purists and historical relativists pit value-laden accounts against verifiability.²⁷ In addition, as has been discovered in the testimony of Holocaust survivors, events are rarely remembered in any semblance of temporal or chronological order but, instead, in “durational time.”²⁸ As defined by the Oxford Canadian Dictionary, this is “the time during which anything continues... until the end of a particular activity,” making less and less credible the details reported. Acknowledgement, in the sense of accepting the claims of others, is particularly relevant.

Coming to terms with the past, whether turning the page, or retrieving the past, is fraught with inconsistencies and disagreement. However, a society’s ability to overcome a

²⁴ Luc Huyse, “Justice After Transitions: On the Choices Successor Elites Make in Dealing with the Past,” ed. Neil J. Kritz, vol. 1, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, D.C.: United States Institute of Peace Press, 1995), 115.

²⁵ Orentlicher, “Settling Accounts,” 379-380.

²⁶ Paul van Zyl, “Plenary Session: Truth Commissions,” paper presented at the Twelfth Annual Meeting of The Academic Council on the United Nations System, New York, NY, 17 Jun. 1999.

²⁷ Mandelbaum, *The Problem of Historical Knowledge*, chapters 1,6.

²⁸ Langer, *Admitting the Holocaust*, 15-22.

legacy of mass violations of human rights must not only confront its past, but begin to do something to overcome it—in truth, in all its many guises, lies freedom.

Emotional Response

Individuals must go through a wide range of emotions before they are able to move beyond the overwhelming feelings of loss experienced in traumatic situations. Although terribly difficult in many cases, the expression of emotion is a healthy response. Victims and their families are often forced to carry on with the tasks of everyday living without benefit of reflection on the past. These people may consciously remember nothing of past events,²⁹ and the daily trauma they continue to experience may simply become normalized.³⁰ Or, a conscious decision is made to reject the truth surrounding the past, as witnessed in denial and revisionism.³¹ Denial and revisionism may be carried out by both victims and perpetrators, although revisionism is characteristically the province of perpetrators. This denial becomes internalized as a means of coping, in much the same manner as those who normalize events.

In order to move on, however, the literature reveals many approaches to the study of emotion, and to what I have termed “emotional response” in particular. One of these is the study of the stages of grief put forward by Kübler-Ross: denial, anger, bargaining,

²⁹ Hillel Klein and Ilany Kogan, “Some Observations on Denial and Avoidance in Jewish Holocaust and Post-Holocaust Experience,” in *Denial: A Clarification of Concepts and Research*, ed. E.L. Edelstein, Donald L. Nathanson, and Andrew M. Stone (New York: Plenum Press, 1989) 299-304.

³⁰ Rafael Moses, “Denial in Political Process,” in *Denial: A Clarification of Concepts and Research*, ed. E.L. Edelstein, Donald L. Nathanson, and Andrew M. Stone (New York: Plenum Press, 1989) 291-295.

³¹ Pierre Vidal-Naquet, *Assassins of Memory: Essays on the Denial of the Holocaust*, trans. Jeffrey Mehlman (New York: Cambridge University Press, 1992) 20; and Trudy Govier, “What is Acknowledgement and Why is it Important?” TMs, 2000, 11, author’s collection. Calgary, AB.

depression and acceptance.³² Kübler-Ross's conception of the spectrum of emotional responses is helpful in providing a picture of the process of grieving experienced by "ordinary" people who are dealing with many of the same feelings as those people in societies recovering from an extended period of atrocity: feelings of loss, lack of self-worth/self-respect,³³ and helplessness.³⁴ There is no question that trauma and grief are, indeed, related, and that trauma can complicate the grieving process.³⁵ Certainly, the literature reflects many similar divisions and a fascination with certain emotional responses over others. Not all of the divisions proposed by Kübler-Ross will be considered here, while other, more applicable approaches to this study will be discussed: denial, mourning and revenge.

Denial

Denial is one emotional response which has garnered much attention, particularly in the collective sense. Interestingly, both victims and perpetrators engage in such practices. In the first manifestation, denial is seen as a passive avoidance of historical realities. Moses discusses the "normalization" of some events, including terrorism and atrocity. He submits that such dangerous activities are often ignored or avoided in order to "continue

³² Elisabeth Kübler-Ross, *On Death and Dying* (Don Mills: Maxwell Macmillan, 1969) 34-105. It should be noted that Kübler-Ross developed her theory around the grieving process of "ordinary" individuals and that its applicability to persons having faced situations of mass human rights violations may be limited.

³³ Jeffrie G. Murphy, "Retributive Hatred: an essay on criminal liability and the emotions," in *Liability and responsibility: Essays in law and morals*, eds. R.G. Frey and Christopher W. Morris (New York: Cambridge University Press, 1991) 360.

³⁴ Trudy Govier, "Revenge, Forgiveness and the Unforgivable," TMs, 2001, 24, author's collection, Calgary, AB.

³⁵ See Cynthia Blomquist, "Comfort for the Grieving Child," in *Healing the Children of War*, ed. Phyllis Kilbourn (Monrovia, CA: MARC Publications, 1997) 58-61.

functioning.”³⁶ The danger with this, in my view, is that in such long periods of commonplace threats and corresponding denial, denial becomes internalized as a coping strategy and may continue even in the aftermath of such activity. Klein and Kogan, along with Davidson, seem to support this premise, in their work on denial as a defence mechanism³⁷ and *The Survivor Syndrome*,³⁸ respectively. *The Survivor Syndrome* refers to a period of time in which Holocaust survivors (and, presumably, survivors of more recent genocides) are apparently free of the symptoms exhibited by other survivors. This “symptom-free interval” is explained by two major factors, including adaptation to new conditions and the need for a period of physical recovery. After this period of forgetting and denial, painful memories come “flooding back.”

One other extremely prolific form of denial has been revisionism. Revisionists, incredibly, attempt to rewrite history, which constitutes a very active form of denial. Specifically, revisionists deny that the Holocaust ever took place, and have sought to prove this in many ways. “Revisionism attempts to deprive, ideologically, a whole community of memory.”³⁹ Ernst Zundel is a revisionist, as is Robert Faurisson, a French professor of literature. Vidal-Naquet suggests that the ideas of revisionism are an attempt to hide profound ignorance on the part of its authors.⁴⁰ At the very least, in my opinion, revisionism constitutes denial; taken to its logical conclusion, revisionists’ refusal to come to terms with past events constitutes an extreme form of self-deception, as seen in some

³⁶ Moses, “Denial in Political Process,” 291-295.

³⁷ Klein and Kogan. “Some Observations,” 299-304.

³⁸ See Shamaï Davidson, “Avoidance and Denial in the Life Cycle of Holocaust Survivors,” in *Denial: A Clarification of Concepts and Research*, ed. E.L. Edelstein, Donald L. Nathanson, and Andrew M. Stone (New York: Plenum Press, 1989) 313-316.

³⁹ Vidal-Naquet, *Assassins of Memory*, 20.

Germans' post-war denial of much of what happened during the Holocaust.⁴¹ This self-deception is especially important when considering the potential impact upon future generations. A mistaken belief (or ignorance) of events in the past could promote a repetition of history.

Acknowledgement of that past also appears to be very important in a society's ability to follow through with the process of transition to some semblance of a civil society. "It's what happens and can only happen to knowledge when it becomes officially sanctioned, when it is made part of the public scene."⁴² Govier allows that acknowledgement is a "necessary condition of the willingness to make restitution and commit to positive change."⁴³ Although Govier conceives of acknowledgment in this manner, this definition is not entirely accurate. I think that not only perpetrators but victims, too, may acknowledge those crimes committed against them. As stated above, I believe acknowledgement to be one step in the process through which a society, made up of both victims and perpetrators, must pass in order to achieve the goal of civil society.

Mourning

Moving past denial is essential if the necessary mourning is to take place. Until the facts are recognized and people on both sides have come to terms with the events of the past, the society cannot begin to grieve its losses. Mourning is another of the emotional responses

⁴⁰ Ibid., 11.

⁴¹ Govier, "What is Acknowledgement," 11.

⁴² Lawrence Weschler, *A Miracle, A Universe: Settling Accounts with Torturers* (New York: Pantheon Books, 1990) 4.

⁴³ Trudy Govier, "What is Acknowledgement," 5.

which is easily extrapolated from the individual to the collective; Mitscherlich and Mitscherlich describe the inability to mourn as a long-lasting group phenomenon.⁴⁴ In studying Holocaust survivors, they found that many had had more than they could bear simply in resuming everyday life. Accordingly, they had skipped the mourning process altogether. Mourning encompasses many of Kübler-Ross's stages of grief. The detrimental effects of the inability to mourn are seen clearly in instances of disappearances, where families are unable to move forward in virtually any stage of their lives. Disappearances leave "family members, ignorant of the fate of their loved ones, their emotions alternating between hope and despair, wondering and waiting, sometimes for years, for news that may never come."⁴⁵ In many cases, societies experience a similar paralysis when they have failed to mourn.⁴⁶

Revenge

Revenge is another common emotional response to events of the past. A first group argues that revenge is a good and natural process to greater or lesser extent. Murphy is one of these. He endorses revenge and vindictiveness, along with hatred, citing Western systems of retributive justice as proof of the obvious benefit of vengeance. In the Victorian era, Murphy adds, "certain wrongdoers quite properly excite[d] resentment."⁴⁷ Jacoby treats

⁴⁴ Alexander and Margarete Mitscherlich, *The Inability to Mourn: Principles of Collective Behaviour* (New York: Grove Press, 1975) xii.

⁴⁵ United Nations High Commissioner for Human Rights, "I. Rights violated by the practice of disappearance." *Fact Sheet No.6 (Rev.2), Enforced or Involuntary Disappearances*, [report on-line]; (Geneva: Office of the United Nations High Commissioner for Human Rights, 1996-2000.); available from <http://www.unhchr.ch/html/menu6/2/fs6.htm#rig>; internet; accessed 14 Mar. 2001.

⁴⁶ Mitscherlich and Mitscherlich, *The Inability to Mourn*, xii.

⁴⁷ Murphy, "Retributive hatred," 353.

vengeance as somewhat analogous to absolution and, at the same time, vindictiveness.⁴⁸

Both authors see little harm in letting justice take care of itself, resulting as it would in blood feuds or frontier justice.⁴⁹ I disagree.

These arguments are not convincing for several reasons. First, promoting or even allowing vengeance in a period of social rebuilding simply perpetuates the cyclical patterns of criminality which have brought about the need for acknowledgement to occur. In this respect, revenge fundamentally undermines the acknowledgement process. Retribution almost always excludes the emotive necessity which is addressed through the process of acknowledgement. The framers of South Africa's interim constitution recognized this point in their focus on *ubuntu*, a Zulu word "which in its most fundamental sense represents personhood, humanity, humaneness and morality."⁵⁰ It was used to describe the desired form that their non-retributive focus on the past would take.⁵¹

Second, in Boesak's words, "the quest for vengeance must be weighed with regard to love, forgiveness, sacrifice and peace."⁵² All agree that vengeance is rife with feelings of hatred, anger, vindictiveness, and potentially violent retaliation. Revenge, it is argued, attracts "brutality and dehumanization" and other forms of terror.⁵³ In this respect,

⁴⁸ Jacoby speaks of "a constructive use of vindictiveness." See Susan Jacoby, *Wild Justice* (New York: Harper and Row, 1983) in Govier, "Revenge, Forgiveness and the Unforgivable," 18,20.

⁴⁹ Govier, "Revenge, Forgiveness and the Unforgivable," 24-33.

⁵⁰ Yvonne Mokgoro, "Ubuntu and the Law in South Africa," *Buffalo Human Rights Law Review*, no. 4 (1998): 15.

⁵¹ Kader Asmal, Louise Asmal and Ronald Suresh Roberts, *Reconciliation Through Truth* (New York: St. Martin's Press, 1997) 21.

⁵² Willa Boesak, *God's Wrathful Children: Political Oppression and Christian Ethics* (Grand Rapids, MI: Wm. Eerdmans Publishing Co., 1995) 178.

⁵³ Govier, "Revenge, Forgiveness and the Unforgivable," 29-34.

vengeance prevents movement toward the forgiveness, sacrifice, internal peace and, ultimately, love needed for moving forward.

In short, emotional responses, including the avoidance of denial and vengeance, and moving through a period of mourning, are very important in the process of giving life to civil society. However, not all of these emotional responses are particularly healthy, especially if allowed to run their course and reach their logical conclusion. In this category are included both avoidance and revisionism, denial's double-edged sword, and also revenge. On the other hand, many of the emotional stages are seen as being more cathartic and more profitable for the society, including acknowledgement and mourning. In all, therefore, it is foolish to believe that to repress any of these responses is any better. Rather, things like denial and revenge must be explored and then alternative means found to allow the responses to come to fruition.

Memory and Remembering

The combination of coming to terms with the past and emotional response hinges upon memory and the remembering of past events. Past recollections form a critical component of the acknowledgement process. In fact, individual memories appear to become situated “within the larger narrative of the community,”⁵⁴ forming a cultural or social collective memory. In this way, remembering by individuals contributes to the creation of a self-portrait of the larger society. It is a fundamental element of the building of stronger societies.

The literature surrounding the subject of memory is vast. Many of these treatments come from a psychological or psychoanalytic perspective and deal solely with individual memory. There are others, however, who have looked at memory in a social or collective context, whose work is much more relevant to this study. For example, Nora identifies three kinds of memory which he claims have lapsed due to what he calls a “preoccupation with the individual psychology of remembering” and a general disconnect with the past: *archive-memory*, or the desperate re-creation of history through physical artefact; *duty-memory*, a demand for the recovery of history, especially by marginalized and persecuted groups; and *distance-memory*, the recognition of the chasm between past and present which drives the act of remembering. Nora argues that the present generation, i.e. citizens of the late 20th and 21st Centuries, have found a frightening discontinuity between past and present, causing a faulty sense of distance-memory.⁵⁵ If distance memory is faulty, the remembering of past events becomes an impossible task for a group or society to undertake.

Not everyone agrees that memory is capable of playing a role of any importance in the process of moving forward. Some speak of the “harmless oblivion” of forgetting, even temporarily.⁵⁶ Some see a purpose in simply avoiding the process of remembering altogether.⁵⁷ Still others, however, see the remembering of horrific experiences like the

⁵⁴ Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick (USA): Transaction Publishers, 1997) 258.

⁵⁵ Pierre Nora, “Between Memory and History: *Les Lieux de Mémoire*,” *Reflections* 26 (Spring 1989): 15-16.

⁵⁶ Aharon Appelfeld, “The Awakening,” in *Holocaust Remembrance: the shapes of memory*, ed. Geoffrey Hartman (Cambridge, MA: Basil Blackwell, 1994) 149-151.

⁵⁷ Saul Friedlander, “Trauma, Memory and Transference,” in *Holocaust Remembrance: the shapes of memory*, ed. Geoffrey Hartman (Cambridge, MA: Basil Blackwell, 1994) 261-262; Martin Jay, “Against

Holocaust as a guaranteed antecedent to a “tainted” future.⁵⁸ Remembering, they argue, will serve only to poison present and future acts of living. Additionally, collective memory has also been shown to possess the power to divide whole societies.⁵⁹

Contrary to such positions, however, there is evidence to support the claim that these initially unpleasant memories will be transformed into building-blocks for an even stronger society.⁶⁰ In order to develop this claim, we must consider whether a collective or societal memory exists. It is possible for individual acts or sentiments, particularly of trust and memory, to be extrapolated to the collective. That is, those acts which might normally be ascribed to an individual might often as easily be attributed to groups of people, keeping in mind that groups are “logically distinct” from their members.⁶¹

Collective experiences constitute one of the strongest building-blocks which may be employed when asking communities to begin to form new and cohesive relationships with one another. Many members of the community, after all, will have shared experiences which may be remembered in a similar manner. For example, women whose husbands have been disappeared will have faced similar hardships and subsequent feelings. It is not only experiences, however, which are shared within a given society, among and

consolation: Walter Benjamin and the refusal to mourn,” in *War and Remembrance in the Twentieth Century*, eds. Jay Winter and Emmanuel Sivan (Cambridge: Cambridge University Press, 1999) 221-230.

⁵⁸ Langer, *Admitting the Holocaust*, 38.

⁵⁹ Paula K. Speck, “The Trial of the Argentine Juntas,” in *University of Miami Inter-American Law Review* 18 (1987) 491-533 in Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick (USA): Transaction Publishers, 1997) 14.

⁶⁰ Carina Perelli, “*Memoria de Sangre: Fear, Hope, and Disenchantment in Argentina*,” in *Remapping Memory*, ed. Jonathan Boyarin 1994) 39, 49-50 in Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick (USA): Transaction Publishers, 1997) 14; Dietrich Bonhoeffer in Geiko Müller-Fahrenholz, *The Art of Forgiveness: Theological Reflections on Healing and Reconciliation* (Geneva: WCC Publications, 1997) 43.

⁶¹ See Trudy Govier, *Social Trust and Human Communities* (Montreal: McGill-Queen’s University Press, 1997) 206.

between those involved in a particular set of events, but also the general remembering of such events. The manner in which a community has chosen either to honour or reject such events, for example, will, in part, determine their response to such events in memory. And this shared experience constitutes collective memory.

Accordingly, it is important both to define it and to understand the meaning of collective memory. Mirroring the conceptual paradigms with which the social sciences have long grappled, the views on collective memory can be divided as follows. The *liberal* view argues against public narratives as satisfactory channels for dealing with the cathartic urge to remember, while the *communitarian* approach calls for individuals undertaking some process of remembering to locate their memories “within the larger narrative of the community [past and future].”⁶² Lastly, the *post-modern* conception of memory supports the proliferation of many narratives, with no more value attached to one than the other, and without the formation of an official narrative.⁶³

The ideal model of memory-building lies somewhere between the liberal and communitarian approaches, although is closer to the communitarian conception. The post-modern position, however, simply is not valid because a narrative must be created and must, in turn, be given some modicum of at least quasi-official standing. Otherwise, the experiences of those who come forward cannot be acknowledged.

What, then, is collective memory? Collective memory “consists of the stories a society tells about momentous events in its history, the events that most profoundly affect

⁶² Osiel, *Mass Atrocity*, 258.

⁶³ For an excellent discussion of these paradigms, see, generally *Ibid.*, 256-261.

the lives of its members...”⁶⁴ Sturken’s version, which she calls *cultural memory*, is seen as something outside of formalized historical accounts that is richly imbued with cultural significance and whose meaning, when shared in the public realm, changes from that meaning which it held as an individual memory.⁶⁵ Connerton’s version, *social memory*, is similar; he goes further in adding that “it is an implicit rule that participants in any social order must presuppose a shared memory.”⁶⁶ Such memory is “embedded in the social structure” of a community.⁶⁷ In many cases, it involves a form of deep remembering, of dealing completely and honestly with inner feelings of guilt and hurt,⁶⁸ or some form of deep memory focused completely on the series of memories in question.⁶⁹ In looking at such definitions, it seems obvious that collective remembering, in all its various guises, exists in a realm different from that of individual or personal memory. And its importance to a community in the process of reckoning with both past and future is again reinforced.

Admittedly, many have reservations about the process of remembering as merely an interpretation or fictitious account of past events, somewhat in the vein of historiography. Certainly, the way in which past events are remembered changes over time, based on a greater perspective or seen through the lens of time and space. A

⁶⁴ Ibid. 18-19.

⁶⁵ Marita Sturken, *Tangled Memories: The Vietnam War, the AIDS Epidemic, and the Politics of Remembering* (Berkeley: University of California Press, 1997) 2.

⁶⁶ Paul Connerton, *How Societies Remember* (New York: Cambridge University Press, 1989) 3.

⁶⁷ Jay Winter and Emmanuel Sivan, “Introduction,” in *War and Remembrance in the Twentieth Century* (Cambridge: Cambridge University Press, 1999) 24.

⁶⁸ Geiko Müller-Fahrenholz, *The Art of Forgiveness: Theological Reflections on Healing and Reconciliation* (Geneva: WCC Publications, 1997) 48.

⁶⁹ Lawrence L. Langer, “Remembering Survival,” in *Holocaust Remembrance: the shapes of memory*, ed. Geoffrey Hartman (Cambridge, MA: Basil Blackwell, 1994) 253.

distinction must be made between (a) historical reconstruction,⁷⁰ most often undertaken by inductive researchers like historians; (b) the “evidentiary assumptions and legal fictions”⁷¹ created by judges and prosecutors in criminal trials following periods of mass atrocity; and (c) a general and purposeful altering of events from the past as they pass through the memory;⁷² and collective memory itself. Although these understandings have their place in particular circumstances, it must be emphasized that collective memory is not concerned with the creation of any formal type of memory. Rather, it is the self-portrait that society, through its remembering, creates, that should be emphasized. Collective memory that strays too far may be dangerous. For example, the self-portrait might serve to reinforce hatred. In these cases, the focus should remain instead on the solidarity created among those remembering and on their common experiences.

In summary, collective memory is indeed a reality, distinct from the simple extrapolation of individual memory to the collective consciousness. A society bent on moving forward must construct a collective memory. It joins moving past denial and opening up to mourning as part of acknowledgement.

Commemoration

The mental act of remembering is often complemented by physical manifestations in the form of monuments and memorials. In many societies, these are erected to honour both victims and survivors. They may be hospitals or schools named after war heroes or former

⁷⁰ Connerton, *How Societies Remember*, 13.

⁷¹ Osiel, *Mass Atrocity*, 272.

⁷² Lowenthal, *The Past is a Foreign Country*, 263-264.

leaders, or actual memorial markers raised. In other instances, days of remembrance are held to bring to mind past events. The physicality of memory serves as an indication of social acknowledgement.

Commemoration in a transitional society is a part of the acknowledgement that helps move a society forward. A transitional society is one whose past regime has been corrupt and tyrannical, and whose actions have caused grievous harm to many citizens. It becomes transitional when it stops or is attempting to stop such behaviour while trying to get back to the business of everyday life, with full inclusion extended to every member of society.⁷³ Monuments and memorials can provide an important indicator of the state administration's position on moving society forward in the wake of past atrocity. The history of societal debate surrounding commemorations old and new, and also the society's reaction to and reception of these markers of memory, however, may provide a clearer and somewhat different picture as to the value of such monuments to that society.

The list of those things used for commemoration is long. It includes special days and public ceremonies, flags, museums, functional memorials, such as hospitals and schools, cemeteries and/or sepulchres, and monuments and physical memorials. These have a common function in helping to keep memory alive. Through this process of commemoration, people are provided with the opportunity to use the lessons from that which is being remembered as an on-going reminder in their daily lives.⁷⁴

⁷³ This draws loosely upon J.G. Ruggie's definition wherein "arametric" conditions are reestablished; see J.G. Ruggie, "International Structure and International Transformation: Space, Time and Method," *Global Changes and Theoretical Challenges: Approaches to World Politics for the 1990s*, eds. Ernst-Otto Cziempel and James N. Rosenau (Toronto: Lexington Books, 1989) 28-30.

⁷⁴ James M. Mayo, *War Memorials as Political Landscape: The American Experience and Beyond* (New York: Praeger, 1988), 16, 58.

There are a number of examples of monuments that have been constructed to record the names of the dead and missing, and to provide them with a final resting place. The literature is particularly rich with prescriptive ideas as to how such commemoration should proceed. Only the finest materials must be used. The construction must reflect a sense of going forward.⁷⁵ And they should be placed in urban centres where they will often be seen. Such ideas appear, however, not to be temporally bounded. In 1809, Godwin pleaded for simplicity in the design of such monuments.⁷⁶ The same principles were used in the construction of the Vietnam War Memorial more than 150 years later.⁷⁷ Such principles remain valid because honouring heroes and victims is an important step in acknowledging the events of the past.

In 1866, Howells argued that monuments and memorials should commemorate not only the fallen, but also survivors,⁷⁸ a view still valued. The practical purpose of having monuments is straightforward: they exist “to invite the collaboration of the community in acts of remembrance.”⁷⁹ Moreover, this act of remembrance must be an on-going activity.

Others take a similar stance:

[B]y creating common spaces for memory, monuments propagate the illusion of common memory. If part of the state’s aim is to create a sense of shared values and ideals, then it will also be the state’s aim to create the sense of common memory. Public memorials, national days of commemoration, and shared calendars thus all work to create common loci around which national identity is forged.⁸⁰

⁷⁵ Ibid., 61.

⁷⁶ William Godwin, *Essay on Sepulchres: or, a proposal for erecting some memorial of the illustrious dead in all ages on the spot where their remains have been interred* (London: W. Miller, 1809), 88.

⁷⁷ Maya Lin, “Making the Memorial,” *The New York Review of Books*, 2 November 2000, 33-35.

⁷⁸ William Dean Howells, “Question of Monuments,” *Atlantic Monthly* XVII No. 103 (May 1866): 648.

⁷⁹ James E. Young, “Memory and Monument,” in *Bitburg in Moral and Political Perspective*, ed. Geoffrey H. Hartman. (Bloomington: Indiana University Press, 1986), 110, 112.

⁸⁰ Idem, *The Texture of Memory: Holocaust Memorials and Meaning* (New Haven: Yale University Press, 1993), 6.

More obviously sinister intentions may be at play in the importance of monuments and memorials. It is often the first task of those who take over the reins of power from a prior regime to destroy any monuments that support the former regime.⁸¹ Many times, victors will manipulate the events of the past to suit their purposes. These actions are an attempt on the part of those in power to demonstrate what will and will not be tolerated, and to draw the proverbial line in the sand.⁸² Hitler, for one, employed such a strategy. Beginning with a ban on the carving of gravestones for Jews by German citizens in 1936, Hitler embarked on a plan to obliterate Jews from the collective German memory in conjunction with his plan to destroy them as a people.⁸³ This action is particularly significant in light of commemoration's social purpose, as explored above. The act of physical remembering is as significant as the act of choosing wilfully to disregard those same memories. Commemorations can be seen to have both stabilizing and reinforcing properties.⁸⁴

Commemoration can take on great importance in a given society, seeking acknowledgement based on collective memory. Israel's Holocaust Remembrance Day, *Yom Hashoa*, is marked by absolute stillness at an appointed time. Everything comes to a stop, and even people driving on highways get out of their cars and stand still along the side of the road.⁸⁵ The marking of history in this manner provides an example of what Handelman calls an "event-that-models": a "symbol that stands for, evokes, or brings into

⁸¹ Sanford Levinson, *Written in Stone: Public Monuments in Changing Societies* (Durham: Duke University Press, 1998), 12.

⁸² *Ibid.*, 10.

⁸³ Young, "Memory and Monument," 111.

being something else.”⁸⁶ In this case, the standstill forces Israeli citizens to pay attention to the events marked by the observance of *Yom Hashoa*. Following Handelman, such acts of commemoration can play an instructive role within a society, teaching others to respect, revere and even to fear the event being recognized. Even in defeat, such physical remembrances allow a society to honour the individuals who fought and died,⁸⁷ although it must be noted that sometimes commemoration politicizes events, causing some citizens to withdraw further into their *Gemeinschaft* communities.⁸⁸

Official commemorations do provide a means by which the state can ensure some sense of normalcy.⁸⁹ First, commemoration takes a particular act from the present and imposes some measure of space and time between it and those who lived its horrors. In this respect, commemoration separates particular events from the day-to-day activity of the community. Second, by speaking openly and directly about events of the past, victims are recognized for their suffering in some way. This recognition is an essential element of acknowledgement.

As with any critique of historiography, one form of which is commemoration in its many guises, some argue that the “truth” is not presented in any retelling. In this view, the historian’s account is simply that which the historian feels is important to record.⁹⁰ Nonetheless, the historian’s accounts may become superimposed upon the memory of the

⁸⁴ Mayo, *War Memorials as Political Landscape*, 11.

⁸⁵ Young, *The Texture of Memory*, 264-279.

⁸⁶ Don Handelman, *Models and Mirrors: towards an anthropology of public events* (New York: Cambridge University Press, 1990) 27.

⁸⁷ Mayo, *War Memorials as Political Landscape*, 169-170.

⁸⁸ Nat J. Colletta and Michelle L. Cullen, *Violent Conflict and the Transformation of Social Capital* (Washington: The World Bank, 2000) 6-16.

⁸⁹ Levinson, *Written in Stone*, 80-81.

citizen and may come to be seen as a more important account. In contrast, archaeology relies on “[a] breadth of knowledge, an open mind, and the creativity to speculate or interpret.”⁹¹ Especially in cases where one side is either not left or is left unable to tell its side of the story (e.g. disappeared Argentines), or where no official account exists which contains the complete record of events from both sides of the story (e.g. South Africa’s apartheid-era history), I support the archaeological approach. It allows the researcher to come to some conclusions as to what actually happened.

It is worth noting, however, that state-sanctioned commemoration is itself a reconstruction and manipulation of actual events. It is the country’s cultivation of a particular narrative that may become the basis for a national identity.⁹² This “ritualization” fits with Handelman’s event-that-models: “at some point, it may even be the act of remembering together that becomes the shared memory; once ritualized, remembering together becomes an event in itself that is to be shared and remembered.”⁹³ Commemorative projects are, therefore, subject to controversy, for this and other reasons. Charges of patronage and a failure to represent the general public often accompany the building of monuments and memorials.⁹⁴ Despite such dangers, monuments and memorials can play an important part in constructing collective memory.

⁹⁰ Robin Winks in Levinson, *Written in Stone*, 64; Young, “Memory and Monument,” 111.

⁹¹ Kelley M. Wickham-Crowley and Catherine E. Karkov, “A Dialogic Commentary: Speaking with the past,” in *Spaces of the Living and Dead: An Archaeological Dialogue*, eds. Catherine E. Karkov, Kelley M. Wickham-Crowley, Bailey K. Young (Oxford: Oxbow Books, 1999) 149.

⁹² Young, *The Texture of Memory*, 53.

⁹³ *Ibid.*, 7.

⁹⁴ Harriett F. Senie, *Contemporary Public Structure: Tradition, Transformation, and Controversy* (New York: Oxford University Press, 1992) 217-223.

Forgiveness and Reconciliation

Once acknowledgement, in its many forms and guises, has taken place, the barriers to forgiveness are significantly reduced. And genuine forgiveness, the setting free or dismissal of the debt of the perpetrator, can then take place. This is not to suggest that hurts magically disappear with forgiveness, or that victims necessarily become able to forget the offence. Rather, through the process of forgiving, the victim is granted some measure of grace and comfort.⁹⁵ The benefit of forgiveness, then, has much less to do with the perpetrator than with the victim, and is of potentially more benefit to the person engaged in forgiveness than to other people. The carrying of grudges and outright discrimination and bitterness that come with resentment and unforgiveness are the stuff which keeps acknowledgement from taking hold, and truth-telling from having any meaningful impact.

In order to discuss intelligently the concept of forgiveness, it is important that it be defined in clear and useful terms. Forgiveness is not excusing, nor is it pardoning, although it has these as its roots.⁹⁶ Nor is it condoning, forgetting, or denying.⁹⁷ Forgiveness is often linked, and I believe wrongly, with a “waiving of *quid pro quo* justice.”⁹⁸ This is not forgiveness, but, rather, granting a pardon. I define forgiveness as a “letting go” or a “giving over” of emotions of hate, guilt, or anger. And, although the cost

⁹⁵ Richard Foster, *Finding the Heart's True Home* (London: Hodder and Stoughten, 2000) 199-200.

⁹⁶ Elliot N. Dorff, “The Elements of Forgiveness: A Jewish Approach,” in *Dimensions of Forgiveness: Psychological Research and Theological Perspectives*, ed. Everett J. Worthington (Philadelphia: Templeton Foundation Press, 1998) 35.

⁹⁷ Robert D. Enwright and Catherine T. Coyle, “Researching the Process Model of Forgiveness Within Psychological Interventions,” in *Dimensions of Forgiveness: Psychological Research and Theological Perspectives*, ed. Everett J. Worthington (Philadelphia: Templeton Foundation Press, 1998) 140-142.

of forgiveness may be high for the giver, forgiveness costs the recipient nothing. It is a mainly interpersonal process,⁹⁹ although its intrapersonal value, I believe, should not be underestimated. Murphy and Hampton insist that forgiveness is a cognitive process, that it may not be dismissed as a knee-jerk reaction.¹⁰⁰ I share this belief. Additionally, forgiveness may be carried out unilaterally, where a victim may decide to forgive regardless of whether the perpetrator has asked for any kind of forgiveness. Govier discusses this against a backdrop of bilateral forgiveness.¹⁰¹

Various authors have devised schemes and systems of organizing the phases of forgiveness. Worthington's Pyramid Model emphasizes five steps: the victim must recall the hurt; and then empathize with the one who hurt her; forgiveness must be given as an altruistic gift; the victim must make a public commitment to forgive; and the victim must maintain that forgiveness.¹⁰² Enwright and Coyle look at the process as a series of twenty steps divided among four categories: the uncovering phase, the decision phase, the work phase and the defining phase.¹⁰³ Similarly, Smedes' interpretation labels the four stages as

⁹⁸ C.F.D. Moule, *Forgiveness and Reconciliation: And Other New Testament Themes* (Cambridge: SPCK, 1998) x.

⁹⁹ Excellent discussions of this point are available in Enwright and Coyle, "Researching the Process Model of Forgiveness," 140; and Roy Baumeister, Julie Juola Exline, and Kristin L. Sommer, "The Victim Role, Grudge Theory, and Two Dimensions of Forgiveness," in *Dimensions of Forgiveness: Psychological Research and Theological Perspectives*, ed. Everett J. Worthington (Philadelphia: Templeton Foundation Press, 1998) 79-83.

¹⁰⁰ Jeffrie G. Murphy and Jean Hampton, *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988) 4-8; 116-120.

¹⁰¹ Govier, "Revenge, Forgiveness and the Unforgivable," 136-153.

¹⁰² Everett L. Worthington, Jr. "The Pyramid Model of Forgiveness: Some Interdisciplinary Speculations about Unforgiveness and the Promotion of Forgiveness," in *Dimensions of Forgiveness: Psychological Research and Theological Perspectives*, ed. Everett J. Worthington (Philadelphia: Templeton Foundation Press, 1998) 113-128.

¹⁰³ Enwright and Coyle, "Researching the Process Model of Forgiveness," 144-147.

follows: hurt, hate, healing and coming together.¹⁰⁴ What all three conceptions have in common, I believe, is an emphasis on acknowledging the incident which has caused such pain and moving toward some form of reconciliation through the act of “ceasing to feel angry”–forgiveness. This is important in that it shows that acknowledgement is a fundamental notion.

From the Judeo-Christian perspective, there are primarily two conceptions of forgiveness, one coming out of the Jewish faith and based on the Hebrew Bible or Torah, and one coming from the Christian faith, as laid out in the New Testament. According to these sources, Judaism holds that if a wrongdoer has been punished, the community may not discuss the crime unless out of fear that the perpetrator will commit the same crime again.¹⁰⁵ The second part of forgiveness in the Jewish tradition is the spot at which Judaism and Christianity diverge: in atonement, the wrongdoing or sin is paid for by the sacrifice of a blameless animal, and one is forgiven. Today, however, in Judaism the need to carry out the age-old requirement of sacrifice has been replaced by the call for justice.¹⁰⁶ Instead of the ceremony of sacrifice, many of the Jewish faith believe that social activism will fulfill their need to be purified. Christians believe, however, that their ultimate sacrifice was made, and their sins covered for eternity, by Jesus’ death on the cross. It is only through the intercession of Jesus, Christians believe, with God the Father, that we have been forgiven, and the Christian faith centres around this point.

¹⁰⁴ Lewis B. Smedes, *Forgive and Forget: Healing the Hurts we Don't Deserve* (Cambridge: Harper and Row Publishers, 1984) 2-37.

¹⁰⁵ Dorff, “The Elements of Forgiveness: A Jewish Approach,” 36-37.

¹⁰⁶ Müller-Fahrenheit, *The Art of Forgiveness*, 5-6.

The tenets of the Islamic faith hold, however, that “no man has the power to confer or withhold forgiveness,”¹⁰⁷ that there is no guarantee that forgiveness will be granted, and even then, that it is conditional. The Qur’an addresses this in Surah 4:110: “If any one does evil or wrongs his own soul but afterwards seeks Allah’s forgiveness, he will find Allah *oft-forgiving* [emphasis added], most merciful.” But this forgiveness is only extended to those who are true believers: Muslims. The Qur’an warns of this in Surah 47:35: “Verily, those who disbelieve and hinder people from the way of Allah, and then die while they are disbelievers—Allah, certainly, will not forgive them.” This position departs fundamentally from the beliefs of both Christianity and Judaism.

In many of the Eastern religions, as well, forgiveness is not emphasized as it is in Christianity. Rather, Buddhism and Hinduism, for example, take forgiveness to be an “ethical step on the path” to achieving higher consciousness, a part of the “vision of selflessness and giving.”¹⁰⁸

One of the questions which seems to plague theologians and philosophers regarding forgiveness concerns agency. Forgiveness is the province of ordinary men and women. Yet in cases where those victims who might have offered forgiveness have died, or where those perpetrators who ought to ask forgiveness are no longer able, is it acceptable for their descendants to do so? Müller-Fahrenheit is very clear on this point; “it is wrong,” he says, “to say only the victims can forgive.”¹⁰⁹ Conversely, Murphy and Hampton state: “I do not have standing to resent or forgive you unless I myself have been the victim of your

¹⁰⁷ Thomas W. Lippmann, *Understanding Islam* (Scarborough: New American Library, 1982) 2.

¹⁰⁸ Theodore M. Ludwig, *The Sacred Paths of the East* (Englewood Cliffs, NJ: Prentice-Hall, 1993) 123.

¹⁰⁹ Müller-Fahrenheit, *The Art of Forgiveness*, 30.

wrongdoing.”¹¹⁰ I am inclined to agree with Müller-Fahrenholz. It would seem as though to deny someone the right to offer forgiveness would be to deny persons the opportunity to “cease to feel angry” and thus would do more harm than good. The victim’s opportunity to forgive, and by extension the opportunity for victims affected indirectly to forgive, then, is of great benefit.

Forgiveness is important because it makes reconciliation possible. Reconciliation is commonly seen as a restored relationship between one-time enemies. The Oxford Paperback Dictionary provides the most concise definition of reconciliation. To reconcile, it says, is to: “1. restore friendship between (people) after an estrangement or quarrel; 2. induce (a person or oneself) to accept an unwelcome fact or situation; 3. bring (facts or statements, etc.) into harmony or compatibility when they appear to conflict.”

Interestingly, reconciliation was once thought to be the special preserve of God, who alone could grant it.¹¹¹ Today, however, reconciliation is a widely-used concept which is being called for in diverse circumstances, including the native Canadians’ battle for compensation for the horrible treatment many endured in residential schools.¹¹² To many, it appears to be a less-expensive means of dealing with a troubled past. Often, transitional societies must make difficult decisions regarding the allocation of limited funds, and may be forced to decide against forms of retributive justice.¹¹³

¹¹⁰ Murphy and Hampton, *Forgiveness and Mercy*, 21.

¹¹¹ Müller-Fahrenholz, *The Art of Forgiveness*, 2-4.

¹¹² Mofina discusses the call for reconciliation in the Canadian context. See Rick Mofina, “Chief wants school abuses aired in public hearings; calls for South African-style ‘Truth Commission,’” *Ottawa Citizen* (26 December, 2000); available from <http://www.ottawacitizen.com/national/001226/5073444.html>; Internet; accessed 2 May 2001.

¹¹³ van Zyl, “Plenary Session: Truth Commissions.”

Govier describes three types of reconciliation. First, reconciliation may be simply non-violent co-existence, and be used mainly by the legal community. Second, it may involve deep emotional forgiveness and trust. Third, Govier provides her own definition which fits neither category. A community must engender enough trust to build “sustainable cooperation.”¹¹⁴ This third definition seems especially important for societies dealing with a legacy of mass human rights violations.

“Forgiveness offers a way out... It does not settle all questions of blame and fairness, but it does allow a relationship to start over, to begin anew.”¹¹⁵ In this view, forgiveness, in fact, leads to reconciliation. “The teleology of forgiveness is reconciliation.”¹¹⁶ Worthington qualifies his support for such a statement by claiming that the two are merely interdependent processes.¹¹⁷ It is worth noting that Govier believes that the two, forgiveness and reconciliation, may exist independent of each other.¹¹⁸ However, I argue that in light of the evidence presented in the literature surrounding forgiveness, that there must be at least a germ of “ceasing to be angry” in even the most practical of reconciliations. Müller-Fahrenholz adds that “forgiveness sets the stage for renewed relationships built on trust.”¹¹⁹ And these relationships of trust are at their root the same ones that can be seen as building-blocks for democracy.

Forgiveness, then, has provided the “missing link” in the building of a theory around acknowledgement, setting the victim free.

¹¹⁴ Govier, “Revenge, Forgiveness and the Unforgivable,” 159-160.

¹¹⁵ Philip Yancey, *What’s So Amazing About Grace?* (Grand Rapids: Zondervan Publishing House, 1997) 98.

¹¹⁶ Robert C. Roberts, “Forgiveness,” *American Philosophical Quarterly* 32 (1995): 299.

¹¹⁷ Worthington, “The Pyramid Model of Forgiveness,” 129-130.

¹¹⁸ Govier, “Revenge, Forgiveness and the Unforgivable,” 157.

Trust: How Civil Society is Affected

This setting free enables the victim to start again to pursue relationships of camaraderie and friendship. Moreover, through the establishment of such interaction the victim is able to establish bonds of trust, and to begin to participate in various social interactions and organizations.¹²⁰ In societies devastated by mass atrocity, the ability to trust is one of the parts of civil society which is most badly damaged. Without trust, there is apt to be distrust or worse. People inevitably stop believing their neighbours, stop accepting the word of their superiors, and stop participating in the life of civil society.¹²¹ They become afraid and suspicious, and begin to keep to themselves, eschewing community projects.

Trust, that sentiment which informs interactions between and among individuals, has been identified as a “functional prerequisite for [even] the possibility of a society.”¹²² It may be ascribed equally to groups with little difficulty.¹²³ Furthermore, trust has also been identified as an essential element in the development of networks of civic engagement¹²⁴ and in the creation of strong political structures.¹²⁵ It is also fundamental to the sustainable cooperation that must exist in order for any kind of restoration of

¹¹⁹ Müller-Fahrenholz, *The Art of Forgiveness*, 36.

¹²⁰ *Ibid.*, 36.

¹²¹ Gabriel Almond and Sidney Verba, *The Civic Culture* (Princeton: Princeton University Press, 1963) chapter 10.

¹²² David J. Lewis and Andrew Weigert, “Trust as a Social Reality” *Social Force*, 63 (1985): 968.

¹²³ Govier and Verwoerd warn against four inferences: the fallacy of composition, in which an individual’s characteristics may be ascribed to the entire group; the fallacy of division, in which an individual’s characteristics may be inferred from the characteristics of the entire group; hypostatization, whereby the nature or “ontology” of the group is seen as different from that of its members; and atomization, whereby the individual is understood only within the context of her group affiliation. See Trudy Govier and Wilhelm Verwoerd, “Trust and the Problem of National Reconciliation,” TMs, 2000, 13-14, author’s collection, Calgary, AB.

¹²⁴ Robert Putnam, *Making Democracy Work*, (Princeton: Princeton University Press, 1993) 163-185.

¹²⁵ Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley: University of California Press, 1984) chapter 6. See also Almond and Verba, *The Civic Culture*, 264-265.

relationships or acknowledgement of past events—reconciliation—to occur. A society's beginning to trust, and the connection of such interpersonal trust with the laying of the foundations of democratic participation, the strengthening of civic institutions, and the re-establishment of social relationships, then, can have significant implications for that society's transition from a divided, dysfunctional society to a democratic one.

In many parts of the world, states and the societies within them are attempting to acclimate themselves in the aftermath of civil strife, genocide, and war which have destroyed nearly every shred of the civil society which once existed. One of the parts of society which appears to have been badly damaged is the ability to trust. The following looks at the concept of trust and its implications for civil society, with an eye toward the issues of reorientation and rebuilding as they confront societies in transition.

A brief review of the scholarly literature surrounding trust reveals a wide and varied understanding of the concept among those who have studied it. Some have considered trust only in its role in psychology and development. Others have expanded their interpretation to include a discussion of trust as a factor in decisions as varied as industrial problem-solving and mob-mentality behaviour.¹²⁶ Others, including Govier, Almond and Verba, and Putnam, have looked at trust in the context of civil society and civic cooperation. This thinking is especially relevant for understanding how to rebuild societies in transition.

¹²⁶ See Govier, *Social Trust and Human Communities*, 3-25 for an excellent literature review.

Trust is defined as “fundamentally an attitude, based on beliefs and feelings, and implying expectations and dispositions.”¹²⁷ It makes decisions possible. It allows the individual to depend on others for a variety of purposes, from specialized knowledge to personal safety. It informs interaction between and among individuals. Trust, then, is a sentiment that allows for a whole range of connections, with cognitive, emotional and behavioural elements,¹²⁸ and which can take place at a variety of levels from the individual to the systems/institutional level.¹²⁹

Although often conceived as an individual attribute, trust can be ascribed to groups with little difficulty, keeping in mind that groups are “logically distinct” from their members.¹³⁰ Groups can and do trust, much as they take decisions and actions.¹³¹ In fact, trust exists specifically within the context of social relationships. Overall, trust is seen as fundamental to the success (and, correspondingly, failure) of groups.¹³² Along with systems of beliefs and norms, trust is essential in the building of civil society.¹³³ It is seen as a “functional prerequisite for [even] the possibility of a society.”¹³⁴

The rotating credit association, as studied by Geertz, is widely cited as an example of an institutionalized system of trust. The very word for rotating credit association, *arisan*, translates to “mutual help.” In the Javanese case, the *arisan* holds a place

¹²⁷ Ibid., 3.

¹²⁸ Lewis and Weigert, “Trust as a Social Reality,” 970-971.

¹²⁹ Ibid., 974.

¹³⁰ Govier, *Social Trust and Human Communities*, 203.

¹³¹ Ibid., 207.

¹³² Martin Deutsch, “Cooperation and Trust,” in *Nebraska Symposium on Motivation*, ed. Marshall Jones (Lincoln: University of Nebraska Press, 1962) 276-283.

¹³³ Putnam, *Making Democracy Work*, 167.

¹³⁴ Lewis and Weigert, “Trust as a Social Reality,” 968.

somewhere between Tönnies' conceptions of *Gemeinschaft* and *Gesellschaft*:¹³⁵ kinship ties give way to the *arisan*, an "intermediate institution."¹³⁶ And the biggest benefit?: *rukun*, or communal harmony.¹³⁷

Another example with somewhat more currency in Western circles is that of the South African Truth and Reconciliation Commission. Govier and Verwoerd discuss the relationship between truth, trust and reconciliation. They imagine a gradation of trust which can (and does) result in different levels of reconciliation, the most salient of which mixes a healthy dose of truth with "mundane reliability" to allow for cooperation.¹³⁸

In both the Javanese and South African cases, trust impacts upon the behaviour of a particular group. Inferences may be drawn for the rest of society in general from these two examples. Coleman discusses the relative significance of trust in relationships from social exchange to authority structures.¹³⁹ Govier adds that trust informs our actions and interactions, our assessments and our motivation.¹⁴⁰ And her validations of trust nicely dovetail with Coleman's conception: we must trust in everything from the mundane to the judgements of experts.¹⁴¹

¹³⁵ Ferdinand Tönnies, *Community and Society* (New York: Harper and Row, 1957) in Rhoda E. Howard, *Human Rights and the Search for Community* (Boulder: Westview Press, 1995) 25. See also Max Weber, *Economy and Society*, Part II, eds. Guenther Roth and Claus Wittich (New York: Bedminster Press, 1968) 313.

¹³⁶ Clifford Geertz, "The Rotating Credit Association: A 'Middle Rung' in Development," *Economic Development and Cultural Change* X.2.II (1962): 259.

¹³⁷ *Ibid.*, 243.

¹³⁸ Govier and Verwoerd, "Trust and the Problem of National Reconciliation," 16, 20.

¹³⁹ James S. Coleman, *Foundations of Social Theory* (Cambridge: The Belknap Press of Harvard University Press, 1990) chapters 6, 7.

¹⁴⁰ Trudy Govier, "An Epistemology of Trust," *International Journal of Moral and Social Studies* 8.2 (1993): 158-169.

¹⁴¹ *Idem.*, "Trust and Testimony: Nine Arguments on Testimonial Knowledge," *Ibid.*: 28-29, 34.

Trust, then, is an important determinant in creating a society. It is instrumental in producing social capital. And it is this social capital which produces civil society. Putnam's 30-year study of Italy's experiment with democratic institutions is a seminal work, dealing with this relationship. "Social trust" is the terminology used to explain *confianza*, or mutual trust, which, if properly nurtured, develops into deep and far-reaching networks of civic engagement.¹⁴² Putnam found that, in those parts of Italian society where such strong networks, consisting of something as simple as a bowling league or as complex as Geertz's rotating credit associations existed, democracy had taken a firm hold. And the social capital produced by such memberships, instead of disappearing once used, only multiplied exponentially.¹⁴³

Indeed, other studies have yielded similar results. Almond and Verba, in their investigation of what they termed "civic culture," found a strong positive correlation between societies with a high incidence of membership in extra-curricular organizations and stable democracy.¹⁴⁴ They also found a link between interpersonal trust stemming from membership and the creation of strong political structures.¹⁴⁵ In yet another investigation, Barber concluded that communal and mutually beneficial living, along with civic attitude, creates a strong democracy.¹⁴⁶ Clearly, links exist between trust as it is manifest in social organizations, and democracy.

¹⁴² Putnam, *Making Democracy Work*, 169.

¹⁴³ *Ibid.*, 177.

¹⁴⁴ Almond and Verba, *The Civic Culture*, 264-265.

¹⁴⁵ *Ibid.*, 284.

¹⁴⁶ Barber, *Strong Democracy*, chapter 6.

War, mass killings, and civil strife have unpleasant and often horrific after-effects. In some cases, the infrastructure of the state is damaged beyond use. In other cases, people have become separated, through time and circumstances, from their neighbours. The population may disengage from the political process altogether. This damage to social capital damages the ability of civil society to recover after a period of mass atrocity.

The effect of a decline in social capital can have devastating consequences. Moser and Holland argue that declining social capital adversely affects both individual and group participation in civil society activities.¹⁴⁷ Colletta and Cullen describe a further effect of violent conflict: “This damage to a nation’s social capital – the norms, values and social relations that bond communities together, as well as the bridges between communal groups (civil society) and the state – impedes the ability of either communal groups or the state to recover after hostilities cease.”¹⁴⁸ Certainly, there is a need for trust in efforts to rebuild, at all levels and in many different ways. Without trust, there cannot be a civil society. And without a civil society, there cannot be democracy.

Conclusions

Acknowledgement in and of itself is not an end point, as are reconciliation and strengthened civic institutions, for example. Nor is it, in and of itself, able to bring about some kind of meaningful change. Rather, it forms a necessary but not sufficient condition for outcomes such as democratization and judicial reform, and reconciliation, along with

¹⁴⁷ Caroline Moser and Jeremy Holland, *Urban Poverty and Violence in Jamaica: Latin America and Caribbean Studies Series* (Washington, D.C.: World Bank, 1997).

¹⁴⁸ Colletta and Cullen, *Violent Conflict and the Transformation of Social Capital*, 4.

social trust, to be realized. Ultimately the effect of the progression of acknowledgement, as outlined above, is to make possible both the *act* and the *process* of forgiveness.¹⁴⁹ And forgiveness itself, through acknowledgement, makes possible the creation of the bonds of social capital and social trust, which foster those democratic goals sought by transitional societies.

The implications of the process of acknowledgement in overcoming the causes of conflict have the potential to effect real and lasting change. In allowing victims to come forward without fear of retribution to tell the often grim details of how various family members have been disappeared, raped or murdered, for example, the pattern of abuses from community to community becomes apparent. The testimony of perpetrators, too, helps to build an elucidated picture of events, while at the same time openly exposing their actions. By bringing these events out into the open, the power of the perpetrators over their victims is finally severed. When these crimes have been acknowledged, individuals and their communities can begin once again to form relationships with their neighbours and to participate in the social activities and civic structures of society, finally defeating the deep-rooted conflicts which have served to paralyse that society. It is these networks of civic engagement, enabled by the process of acknowledgement and forgiveness, which will lead to the rebuilding of the basic foundations of democracy.

¹⁴⁹ Schumm draws a distinction between the *aphiemi* or “letting go” act of forgiveness performed by God, and the “process” or struggle that humans often undergo in attempting to do the same. See Dale Henry Schumm, “Forgiveness in the Healing Process,” in *Healing the Children of War*, ed. Phyllis Kilbourn (Monrovia, CA: MARC Publications, 1997) 274-275.

CHAPTER THREE

TRUTH COMMISSIONS

The process of reckoning with the past is by no means simple. Often, whole segments of the population have become pitted against one another, and those who formerly held the reins of power have come to live side by side with those against whom they once acted. The mechanisms and instruments used in instances of transitional and restorative justice are many. They have been honed and developed over time, and new tools offer significant promise in this regard. This chapter considers some of these, and then focuses on the truth commission as a mechanism of acknowledgement. The truth commission is defined and explored in greater detail, with consideration given to its applicability to the process of acknowledgement as it has been defined in chapter two.

Introduction

The state, according to modern liberal political thought, exists in the main for the protection of its citizens. Sometimes, however, the state assumes the role of perpetrator, carrying out gross human rights violations against its own people over significant periods of time. In other cases, groups within the state carry out similar atrocities. Once the campaign of terror ceases, whether due to the installation of a new regime or to the reform of a past regime, citizens must resume their lives. Such gross negligence and horror, however, leave in their wake a broken and dysfunctional people, unable to live either in

their former lives and roles or in the newly-created circumstances in which they find themselves.

Societies in crisis, therefore, need healing. Simply ignoring the past will bring no such “closure” for the individuals on both sides of the societal divide which is inescapably created. Rather, the discussion of group and individual experiences, the creation of a common and official narrative, and the recognition of others’ experiences as valid, however different, are required. By acknowledging the past and by talking about one’s own experience, as victim or perpetrator or both, this acceptance can be attained. In the form of truth-telling, acknowledgement appears to provide an effective remedy which gives impetus to the healing process and is thought to contribute to the reconciliation of society.

What is needed is a form of restorative justice and/or deliberation over past crimes, as the community deems fit. Restorative justice, as I defined it in chapter two, is a process in which the community actively deliberates over past crimes. Victim and perpetrator become the focus of the process. As a result, victims are both dignified and accepted. The process of restorative justice provides an opportunity for the victim to play a central role, in a variety of ways, including giving testimony or in deciding to reconcile with the perpetrator. The perpetrator, too, is able to tell what he remembers about specific events from his perspective. In so doing, each is encouraged to listen to the testimony of the other, and to attempt to put aside feelings of bitterness or hatred so that they might continue to live side by side in the same communities, accepting the atrocity which has taken place, and having gone some distance toward forgiveness and reconciliation.

Such restorative justice is to be distinguished from retributive justice, wherein a convicted perpetrator is tried, sentenced and imprisoned for his particular misdeed.¹ In many cases, societies attempting to recover from an era of mass injustices, those that were termed “transitional” societies in chapter two, cannot financially afford the expenses which are inevitably incurred in all levels of the process, from policing, to court appearances, to sentencing and incarceration.² Similar trade-offs must also be made between the pursuit of justice and the pursuit of democracy, both of which, if they are to be attained, come with significant cost both financially and psychologically to society.³

I am concerned here with a group of transitional societies that have been plagued by corruption and intense communal violence. In these societies, the regime in power has stopped, is attempting to stop or is stopping such behaviour (whether due to a regime change or not), and is attempting to get back to the business of everyday life, with full inclusion extended to every member of society. The key to this process is that a conscious and sincere effort has been made, and publicly stated, to actively stop the cycle of violence and begin again to rebuild society.

In many cases, the mechanism developed for dealing with past atrocity is an amalgam of the two systems: a blend of restorative and retributive justice. Elements of restorative justice are attractive because they allow for a dialogue to begin. Similarly, the

¹ Punishment in the model of western justice may have a “counterdeterrent effect” and is therefore undesirable in cases of mass human rights violations. See Gordon Bazemore, “Communities, Victims and Offender Reintegration: Restorative Justice and Earned Redemption,” *Civic Repentance*, ed. Amitai Etzioni (New York: Rowman and Littlefield Publishers Inc., 1999) 69-76.

² Paul van Zyl, “Plenary Session: Truth Commissions,” paper presented at the Twelfth Annual Meeting of The Academic Council on the United Nations System, New York, NY, 17 Jun. 1999.

³ Mark Gibney, “Decommunization: Human Rights Lessons from the Past and Present, and Prospects for the Future,” *Denver Journal of International Law and Policy* 23.1 (1994): 89.

principles of retributive justice are appealing because they speak to the very human desire for reprisal and the settling of scores. In each case, the precise balance of the two will be different.

Alternative Models

States have attempted to deal with such mass violations of human rights by using a variety of restorative methods and instruments. By attempting to classify the different means by which states have addressed their unique past, the potential for greater understanding of the issues and their respective complexities can be identified.

The first of these instruments is the trial or international tribunal. In the post-war period, the Nuremberg and Tokyo trials marked the international community's first real attempt to prosecute those who had perpetrated abuses on a wide scale, although individual states have commonly struggled to prosecute and punish the perpetrators of atrocities.⁴ The relative success of the international tribunals has been marred by difficulties encountered in gaining custody of those to be prosecuted, and the relatively small number of people ever prosecuted. The success of national prosecutions can be almost wholly ineffective if the prior regime has any significant level of involvement in the trials, or, conversely, if the society itself chooses not to become involved with them. And, although trials and tribunals could go some distance toward producing the kind of information required for acknowledgement to take place, it is clear that the stringent admissibility requirements and limited audience make information obtained through these mechanisms

less desirable. As a result, some are hesitant to point to these proceedings and their impact on their respective communities as having been successful.⁵

Only recently has the world community, under the auspices of the United Nations, begun again to prosecute criminals for mass violations of human rights, in order to compensate for states' own inability or perhaps unwillingness to apply justice.⁶ The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda were begun in the early 1990s. The International Criminal Court is in its infancy. Elaborating on Human Rights Watch's distinction, Hayner situates such trials within the "justice" phase of transition.⁷

Such bodies, however, are both labour- and knowledge-intensive. Often, a dichotomy of responses is carried out. In the first and very common scenario, hundreds of people are needed to run these complex organizations, fulfilling and in many cases duplicating the services already provided by national retributive justice systems: courtrooms staffed by clerical and security staff, judges assisted by legal staff, and prisons. In the second scenario, as has been played out in other circumstances, the legal system is simply unable to deal with the onslaught of cases which would inevitably be brought before it. The Cambodian case provides a useful illustration. In 2000, its weak court system comprised judges, 80% of whom did not hold law degrees, and many of whom had

⁴ See Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998) 25-51.

⁵ See Priscilla Hayner, *Unspeakable Truths* (New York: Routledge, 2003) 12-13.

⁶ Ivo Banac, "History, War-Crimes Tribunals, and the Prospect of Truth Commissions in Balkan Conflicts," paper presented at *Rebuilding Societies in Transition*, a meeting of The Academic Council on the United Nations System, Yale University, New Haven, CT, 24 Mar. 2000.

⁷ Priscilla B. Hayner, "Fifteen Truth Commissions - 1974 to 1994," *Human Rights Quarterly* 16 (1994): 605.

never received formal education at all, let alone training in legal matters.⁸ In such cases, the population grew accustomed to the weak system and became more comfortable in circumventing the legal system altogether.⁹ Any system of trials or tribunals, if it were to be implemented under such circumstances, therefore, could be met with mistrust or worse by the very population it is intended to help. Such a reaction could be detrimental to the process of rebuilding civic trust, discussed above.

In other cases, the sheer magnitude of the period of mass atrocity would make it nearly impossible to deal effectively with the cases at hand. In Ethiopia, a truth commission was set up to investigate the atrocities which had been committed under Ethiopian President Mengistu Haile-Mariam. Yet charges had been brought, under the commission, against only 5,198 people by 1998,¹⁰ although significantly more had been involved in the mass atrocity there. Prosecutions of military and police personnel and political figures were also largely unsuccessful.¹¹ Similarly, in Rwanda, approximately 120,000 Rwandans remained in prison in 2000, six years after the genocide of approximately 800,000 Rwandans in 1994. It is estimated that if the regular court system tried to deal with these cases, it would take upwards of 180 years.¹² Those constructing the

⁸ Kay Johnson, "Will Justice Ever be Served?" *Time*, 10 Apr. 2000, 17.

⁹ Human Rights Watch, "Cambodia: Khmer Rouge Tribunal Must Meet International Standards," 19 December 2002 [article on-line]; available from <http://hrw.org/press/2002/02/cambodiatribunal.htm>; Internet; accessed 23 December 2002.

¹⁰ U.S. Department of State, "Ethiopia Report on Human Rights Practices for 1998," 26 Feb. 1999; available from http://www.state.gov/www/global/human_rights/1998_hrp_report/ethiopia.html; internet; accessed 27 Jan. 2000.

¹¹ *Truth Commission: A Comparative Assessment: An Interdisciplinary Discussion Held at Harvard Law School in May, 1996* (Cambridge, MA: Harvard Law School Human Rights Program, 1996) 11.

¹² Rafeudin Ahmed, "Economic Development and Justice for Countries in Transition," paper presented at *Rebuilding Societies in Transition*, a meeting of The Academic Council on the United Nations System, Yale University, New Haven, CT, 24 Mar. 2000.

model of restorative justice must recognize and deal with these constraints and the perceptions of the system and its limitations.

Together, these two problems indicate a significant lack in the capacity of the legal system in these transitional states to provide a legitimate forum in which to try perpetrators using the retributive model. To be sure, even those countries with a comprehensive legal system in place are sceptical as to the benefit of such a forum, as witnessed in their reticence in joining the movement toward an International Criminal Court. The tribunal option, then, has some serious disadvantages.

A second possible instrument is reparation. Minow divides this instrument into two parts: apology and restitution.¹³ In effect, reparation of any stripe may involve either one or both of these steps. After a government has wronged its people, it ought to (and in several isolated cases, has done so with limited success) extend to those people its expression of sorrow over its actions. This expression may or may not include some monetary compensation for the losses incurred by the people. Australia's Council for Aboriginal Reconciliation, appointed in 1991, for example, released its *Document Towards Reconciliation* in the early summer of 2000.¹⁴ To date, however, the Australian government has steadfastly refused to issue any form of apology, stating that "the present generation has no responsibility to apologize for the wrongs of a previous generation."¹⁵ Similarly, the Government of Canada released a "Statement of Reconciliation" in January

¹³ Martha Minow, *Between Vengeance and Forgiveness*, 107-117.

¹⁴ Australian Council for Aboriginal Reconciliation, "Document Towards Reconciliation," [document online]; available from <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/12/pg3.htm>; internet; accessed 21 May 2003.

1998 to acknowledge “the legacies of the past affecting the Aboriginal peoples of Canada... to learn from our past and to find ways to deal with the negative impacts that certain historical decisions continue to have in our society today.”¹⁶ Yet the Government of Canada has never issued an apology.

The example most often cited, and which is touted as a success, is of the Japanese-Canadians and Americans who were interned during the Second World War. In 1988, the American government gave those Japanese who had been interned USD \$20,000 per survivor as a form of compensation under the Civil Liberties Act,¹⁷ while in the same year, the Canadian government awarded CAD \$21,000 under the Japanese Canadian Redress Agreement.¹⁸ The distinct disadvantage of such a strategy for other cases is that societies emerging from an extended period of repression and torture, in which a segment of the population has been marginalized, and military and/or civilian police presence strengthened, are often in poor moral and financial shape. Often, such reparation is simply not possible, at least on a large scale.

In any case, the recipients of reparation, either in the form of apology or financial restitution, are almost never satisfied with what they are given. Some Japanese Canadians, for example, whose homes and businesses were confiscated and never returned, felt that the sum of \$21,000 could never be enough to compensate them both for their loss of

¹⁵ U.S. Department of State, “Australia Report on Human Rights Practices – 2001,” 4 Mar. 2002; available from <http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8249.htm>; internet; accessed 19 Aug. 2002.

¹⁶ Department of Indian and Northern Affairs, “Statement of Reconciliation,” Jan. 1998 [document on-line]; available from http://www.ainc-inac.gc.ca/gs/rec_e.html; internet; accessed 21 May 2003.

¹⁷ Minow, *Between Vengeance and Justice*, 94-102.

¹⁸ *Final Report on the Implementation of the Japanese Canadian Redress Agreement, 1988* (Ottawa: Japanese Canadian Redress Secretariat and Canadian Heritage, November 1997) 5.

property and profit, nor for the psychological trauma they endured during that period.¹⁹ Likewise, Aboriginal leaders in Australia would have been satisfied by nothing less than a full apology,²⁰ something which successive governments seemed unwilling to provide. Reparation, therefore, seems like a less-than-perfect solution.

Another response to mass human rights abuses by the state has been the truth commission. In the spirit of restorative justice, the truth commission often avoids retribution and sentencing. Rather, it pushes for provision of an apology or reparation to the citizens of a country who have been wronged by human rights abuses. This tendency is due in part to the relative cost associated with other forms of reparation, resources which are often thought to be better allocated to other social programs in a transitional society.²¹ The truth commission fits squarely within the “truth” phase, as opposed to the “justice” phase identified above.²² Certainly, truth commissions may not be appropriate in every context. They do, however, have the potential to generate many benefits for societies in transition.

Truth Commissions Defined

Truth commissions have been variously defined, with scholars not yet agreed on a single formulation. In the form of trials, tribunals and/or investigatory bodies, all have attempted to address, and also to redress a legacy of human rights abuses in a particular country, in various forms and to varying degrees of success. Scholars are also divided over which

¹⁹ Masumi Hayashi, *Canadian Concentration Camps*; [essay on-line]; available from http://www.csuohio.edu/art_photos/canada/canada.html; internet; accessed 26 May 2003.

²⁰ U.S. Department of State, “Australia Report on Human Rights Practices – 2001.”

²¹ van Zyl, “Plenary Session: Truth Commissions.”

institutions ought and ought not to be included in such a category. While Brazil was still under one of a succession of repressive military regimes which held power in that country from 1964-1985, individual members of the Roman Catholic Church and the World Council of Churches secretly gathered several thousand pages of documents kept by the regimes themselves, including verbatim transcripts from secret military trials.²³ This truth-seeking effort was not a *bona fide* truth commission.

The Historical Clarification Commission (*La Comisión para el Esclarecimiento Histórico* or CEH) in Guatemala, on the other hand, which existed from 1997-1999, sought to examine the events which had taken place during the fighting between the Guatemalan government and leftist rebels. The CEH was conducted in accordance with the rules set out in the negotiations between the government and the rebels under the Oslo Accord process, and collected testimony from thousands of Guatemalans in virtually every area of the country. This commission is often seen as a truth commission. The distinction to be made between the two is that the Brazilian process involved neither participation nor direct testimony from Brazilian citizens, and was conducted in secret. The Guatemalan process, conversely, was conducted in the open, and in virtually every area of the country.

Whether or not a country's attempt at restorative justice ought to be counted as a truth commission, then, really depends on the manner in which the truth commission is defined. I define a truth commission to be made up of four components: it is (a) a non-judicial investigatory body established, sanctioned or empowered by the state (or by a

²² Hayner, "Fifteen Truth Commissions," 605.

²³ An excellent account of the Brazilian truth-seeking effort is contained in Lawrence Weschler, *A Miracle, A Universe: Settling Accounts with Torturers* (New York: Pantheon Books, 1990).

dominant faction within the state) to (b) determine the truth about widespread human rights violations that occurred (c) in the past to discover which parties may be blamed for their participation in perpetrating such violations (d) over a specified period of time. These four characteristics adequately address the various needs of the truth commission. The implicit recognition by the state of the truth commission is especially important, as it gives the commission both legitimacy and, theoretically at least, affords it many of the privileges and protections extended to institutions of the state itself. It is also the case that the commission should be established to investigate patterns of abuses and specific violations committed over a period of time, and not just a single specific event. This broad focus sets the truth commission apart from other types of institutions. It is particularly important to note that the commission cannot be expected to look into violations which continue, as those forces committing the crimes could seriously hinder the commission's work. Finally, the commission must be given a specified and temporary time period within which to conduct its work. This distinguishes truth commissions from more permanent human rights commissions that are often simultaneously established.

The first-ever truth commission was convoked in Uganda in 1974, although it completely failed to promote either truth or acknowledgement. (The 1974 Commission has no relation to the 1986 Ugandan commission under investigation in this study). The recommendations of this early commission, however, were never followed, and the commissioners themselves faced retribution by Amin's forces. "The Pakistani [Commissioner] lost his employment with the government, another commissioner was

framed with murder charges and sentenced to death, and a third fled the country to avoid arrest.”²⁴ In no way should the 1974 Ugandan commission be seen as a success.

Since that time, more than 20 truth commissions have been appointed by national governments, among them highly successful commissions in Argentina and Chile. The truth commission may be variously concerned with other aspects of reparation, including property and/or loss of income. Truth commissions are, however, effectively prohibited from dealing with aspects other than human rights abuses because of the relative cost associated with other forms of reparation, monies which might better be allocated to other facets of the transitional society.²⁵

The success of truth commissions appears to depend upon the creation of a common and official—by means of being identified with an official record—“truth narrative” which can lead to the outward and public acknowledgement of past events. This hearing of the experiences of oneself and others might well validate the experience of those involved in past crimes. It is believed that the discussion of group and individual experiences, and the recognition of others’ experiences as valid, however different, are required. I argue that this acknowledgement, as discussed in the previous chapter, is central in allowing the entire community to move on. It is one step in the process of reconciliation between victims and perpetrators. It is influential in bringing a sense of healing to the community.

Others, however, argue that the such bodies ought to be defined and measured differently. In his work on decommunization and denazification, Gibney has delineated a common process followed by Eastern European countries, as follows. The first element is

²⁴ Hayner, “Fifteen Truth Commissions,” 611-613.

the establishment of the truth about the former regime. Second, there is punishment for those who perpetrated the human rights violations. Third, institutions are created to assist in the transition of society to democracy. Fourth, victims and survivors are compensated and acknowledged. Finally, a process of healing and understanding is thought to begin.²⁶

Hayner's truth commission model differs from Gibney's in several respects. Her model cites four primary components relating to the process of inquiry of truth commissions. The first of these is a focus by the commission on past events. Second, the inquiry's focus is more concerned with widespread human rights violations over a period of time and space and less concerned with particular events. Third, the mandate of the commission is temporary and clearly defined. Fourth, the authority of the tribunal in terms of inquiry must be augmented to allow for deeper levels of investigation.²⁷

It is my contention that the two types of inquiry detailed above are not at all equivalent to each other and, therefore, may not both be called truth commissions. Those bodies detailed by Gibney are not truth commissions, in the sense that their aim and intention is very different from that which would be created by Hayner's model. Although those included in Gibney's model do seek to establish truth, many successful "truth commissions" have been undertaken and completed which have not overtly included democracy-building in their mandate.

²⁵ van Zyl, "Plenary Session: Truth Commissions."

²⁶ Gibney, "Decommunization," 87.

²⁷ Hayner, "Fifteen Truth Commissions," 604.

The inclusion of punishment as a facet of the truth commission is also problematic,²⁸ since the very idea of punishment runs counter to the widely-held premise behind the truth commission, which is something more akin to voluntary participation. But the evidence that the truth commission collects may sometimes be used in parallel efforts to bring perpetrators to account in retributive fora. Even so, the truth commission itself is never involved in the prosecution of perpetrators.

These two characteristics would appear to justify the exclusion of tribunals such as that undertaken for Rwanda, or that which occurred in post-war Japan. The tribunals themselves and the prosecutory officials presiding over them were appointed by foreign nationals. Only the top officials in each case were ever tried. The impact on the respective communities appears to have been negligible. In its purest form, the mandate of the truth commission is simply that which is implied by its name: to establish a common truth and to report only on the truth which has been found.

Variable Aspects of the Truth Commission:

Or, Are All Truth Commissions the Same?

There have been at least 25 truth commissions established around the world since 1974, according to my definition. Evidence from each of these commissions has shown the truth commission to be capable of many things, including: establishing the truth about the past, fostering accountability for perpetrators of human rights violations, recommending

²⁸ “*State Crimes: Punishment or Pardon,*” *Papers and Report of the Conference November 4-6, 1988 Wye Centre, Maryland* (Queenstown, Maryland: The Justice and Society Program of the Aspen Institute, 1989) 2-5.

necessary legal and institutional reforms, providing a public platform for victims, informing and catalysing public debate, helping to consolidate a democratic transition, and serving as a safeguard against historical revisionism. Typically, however, a truth commission will produce only some of these effects, and even then with varying degrees of success. Limiting factors might include, for example, weak terms of reference; biased commissioners or staff; a weak civil society; political instability; victim fears about testifying; a lack of political will to carry out and complete the work of the commission; limited funds, capacity, and time; and a weak or corrupt administration of justice.

The manner in which the truth commission is initially conceived, and later carried out, can have a significant impact on the outcome of the commission. No two truth commissions, therefore, are ever identical in the way they operate or in the mandate they strive to fulfill. Rather, each commission is endowed with characteristics specific to its own tenure. Even the perceived end-product will vary, according to those elements which have been included or excluded as the truth commission is formed.

One such potentially limiting factor is the length of time given to the commission in which to complete its work. Some truth commissions are limited to a strict time-frame of mere months in which to establish themselves as a cohesive investigative body and get on with the business of finding the truth. The Guatemalan Historical Clarification Commission, for example, was given a period of six months, with an option for an additional six months, in which to establish a commission, complete its work, and issue a final report. Others are given no such limits and their work persists for years before any conclusion is reached, as in Uganda. Certainly, the capacity of each commission will be

dramatically affected by the amount of time it is given in which to carry out investigations and conduct the work it is to do. In a period of six months, for example, the scale of a commission's investigation would have to be significantly smaller to compensate for the constrictions imposed. Christian Tomuschat, Chairman of the Guatemalan CEH, suggests that both minimum and maximum time frames are important both to allow the commission to explore those events it is meant to do, and to prevent it from flagging, recommending that a truth commission be allowed to continue for no longer than five years.²⁹

Likewise, the scope of the work of the truth commission will influence the outcome, and will be influenced by the time limits imposed from the outset. In the case of Uganda, the CIVHR was expected to look at all events which had taken place between 1961, when the country declared its independence from Britain, and 1986, when Museveni and the National Resistance Army assumed power. In the intervening period, however, literally millions of abuses had taken place. How, then, was the CIVHR to balance its mandate with the very real restrictions that had been imposed? The short answer is that the commission eventually decided to review as many cases as it could. But many thousands of cases went untouched.

Indeed, much of what will be done will be determined by the particular interests of those founding the commission. These might include the recommendation of specific reforms, or the investigation of one set of events over another. For example, if the commission is to be funded and generally supported by the national government, certain elements may be emphasized over others, meaning that important events and cases may be

²⁹ Christian Tomuschat, "Clarification Commission in Guatemala," *Human Rights Quarterly* 23.2 (2001):

completely ignored. In some cases, like the truth commission of El Salvador, the United Nations entirely funded the work of the commission. Some, including the commissions of Guatemala and Haiti, are funded by a mixture of national and international governmental agencies. Others, like the Ugandan CIVHR, cobbled together funding that consisted of small donations made by agencies from around the world. The nature of the commission's funding could, therefore, have a significant impact upon the direction of the commission's work.

In Chile, for example, the national government appointed the truth commission "to satisfy the basic demands of justice and create indispensable conditions for achieving true national reconciliation."³⁰ In other cases, however, different elements might take precedence, depending on the particular bent that is emphasized. The South African Truth and Reconciliation Commission (TRC) is instructive in this regard. The framers of the commission focused especially on mending the community in the wake of the decades of abuses which had taken place during the apartheid era. It was their intention that this reconciliation should be "reconciliation between people, but [that] it must be on a morally acceptable basis."³¹ But not all truth commissions do or should promote reconciliation as an end-goal. Some have argued, in fact, that the inclusion of reconciliation as part of the TRC's mandate simply clouded the initially straight-forward mandate of the commission:

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³⁰ Cynthia Brown, *Human Rights and the "Politics of Agreements:" Chile during President Aylwin's First Year* (New York: Human Rights Watch, 1991) 17.

³¹ Abdullah Omar, "Truth and Reconciliation in South Africa: Accounting for the Past," *Buffalo Human Rights Law Review* 4 (1998): 5.

to find the truth.³² Other truth commissions, including the Haitian CNVJ, simply go in search of the truth. And sometimes this straightforward approach results in a less convoluted path to the truth.

The distinct culture of the society, therefore, appears to play a special role in the determination of the form which all of its institutions (including its truth-telling apparatus) will take. Certainly, some of the societal idiosyncrasies identified above might be attributed to mere stereotypical assumptions. However, it is fair to say, as others have already done, that culture is one of the most significant determinants in the building of policy instruments like the truth commission.³³ In many states, the government, business and social institutions that develop are simply hybrids of the international model which have been tailored specifically to work in a local situation, while in other cases a national distinctiveness is readily visible.

The manner in which people are enticed to provide details of past events is another of the contentious issues surrounding the formation and implementation of truth commissions. The question of how to encourage willing and active participation is difficult to answer. If the prior regime still has some control over the social and political system of the country, victims may hesitate to come forward. Such was the case in Haiti— one of the commissioners reported that the simple act of coming forward was seen to be dangerous. Even if victims do feel safe, persuading perpetrators to participate in the

³² Janis Grobbelaar, "The South African Truth and Reconciliation Commission: Some lessons learned from INFOCOM?," *Lessons Learned Collection*, International Center for Transitional Justice, New York [2000].

³³ Priscilla B. Hayner, "Plenary Session: Truth Commissions," paper presented at the Twelfth Annual Meeting of The Academic Council on the United Nations System, New York, NY, 17 Jun. 1999.

proceedings can be almost impossible. In such cases, truth commissions have attempted to use a variety of “carrots” to convince both sides to come forward.

For victims, promises of restitution or reparation, as discussed above, can provide real incentives. Victims could be provided, for example, with psychological counseling at no cost for telling their story. Certainly, the relief which comes with telling one’s story, often for the first time, could be seen as reward enough. Monetary compensation could also be awarded. However, the financial reality for many of the countries carrying out truth-seeking exercises in the form of the truth commission is such that monetary rewards are simply beyond their means. As well, the threat of people coming forward to provide false testimony simply to obtain promised compensation is very real, as happened several times throughout the life of the Ugandan commission.

Ensuring the participation of perpetrators is decidedly more difficult. For this reason, some truth commissions have opted to provide criminal and civil amnesty in exchange for testimony, as did the South African TRC. The TRC process did not, in the end, give rise to high levels of public participation. Although victim participation was high, perpetrators chose not to participate in large measure, and much of the wider community likewise chose not to become involved. Many, including Archbishop Desmond Tutu, Chair of the TRC, had imagined that a majority of perpetrators and notorious politicians would come forward—but this turned out not to be the case. This is not surprising; individual perpetrators rarely volunteer details of their crimes, and institutions responsible for many of the abuses also tend not to be cooperative. So, while the carrot of amnesty may be one option considered for truth commissions, it will only be

effective where there is a credible threat of prosecution. Indeed, most human rights organizations properly caution against even considering it except under the most extraordinary of circumstances.³⁴ Amnesty can, moreover, negate the very principle of universality that ought to be used in such a process and may run the risk of undermining public and victim support. Indeed, most truth commissions will be quite successful without it.

Accessing information can also be difficult for the truth commission, even when it has worked out the details of eliciting participants for the process. One means of collecting information and working with victims is via public hearings. The purpose of public hearings is primarily to provide a public platform for victims and bring the truth to the public in an unadulterated form, not to collect new information. Nevertheless, new information does emerge at public hearings, either in response to questions, or when the victim is allowed to speak freely. The CNVJ in Haiti did not utilize public hearings in any form, following in the tradition of many of the Latin American truth commissions. The Ugandan commission, however, did make use of public hearings as a means of collecting information, as did the South African TRC.

Public hearings can present opportunities for extraordinary public impact, but they also pose risks. Indeed, the political climate in some contexts may not be conducive to public truth-telling. Many victims and their families may still fear retribution and reprisal by the perpetrators of atrocities. Moreover, those public institutions that ought to be available to support victims and the truth commission, including a police force functional

³⁴ See, for example, studies undertaken by the International Center for Transitional Justice at

security apparatus, may not be cooperative, independent, or under civilian control. Also, the participation of perpetrators can further traumatize potential participants, and the steep financial and logistical burden of public hearings can be extremely high. All these risks must be taken into account, and weighed against the potential benefits of holding hearings.

Almost every commission, though, does make use of investigations as the primary means of collecting information. The role of the investigations team is to establish as detailed a picture as possible of past events. An investigator's work can go beyond simply recording the narratives of victims. These teams are responsible for following up on details in order to verify facts and establish the nature and extent of the violations revealed in collected statements, corroborating where possible such evidence. Like police detectives, commission investigators also proactively seek out information and sources that will allow cases to be developed in more depth. Accordingly, consulting a wide variety of sources from various periods and locations, including forensic reports, government records, and intelligence reports from both national and international sources is important, especially in cases where the likelihood of documents disappearing is high. It is often the case that commissions stand by helplessly as government and military agencies claim that the documents have been "lost" or destroyed pursuant to office protocols. Where such documents are obtained, however, they are helpful in painting a clearer picture of the contextual factors that eventually explain the patterns of abuses that have occurred, as well as helping to reconstruct events to allow for some assessment of responsibility.

The make-up of every truth commission, however, will be different. It is important to note that, while many commissions do include several of the characteristics listed above, others do not. The truth commission is not simply an exact template that is at all applicable or desirable in each and every state. Rather, it is important to realize that each of these variables may be more or less applicable in different cases. But that the design of each truth commission will have at its core the same general principle: to obtain the truth.

Different Conceptions of Truth

Truth itself is a concept which defies strict definition. There are different types of truth which were developed to serve as standards in the South African case, and which could be used as a benchmark for like endeavors. First is forensic or factual truth, which is often especially helpful in reducing the amount of counter-factual material which may be presented. Another is a personal or normative truth; especially in cases like South Africa, where so many of the written records of the era of abuses may have been destroyed,³⁵ this oral tradition enables the restoration of dignity and the creation of a narrative truth. Additionally, one must consider sociological or dialogical truth, or the act of an experience as perceived through debate, in which case the act of obtaining the truth is accorded almost as much significance as the truth itself. Finally, through the acknowledgement of the

³⁵ Richard Penwill, "Not a Legal Concept," *Track Two: Constructive Approaches to Community and Political Conflict* 3-4 (Dec. 1997): 27-30, Centre for Conflict Resolution and the Media Peace Centre [web page]; available from <http://www.truth.org.za/reading/tracktwo/p27.htm>; internet; accessed 7 October 1998.

activities of the past and a recognition of responsibility for those actions may come a healing and restorative truth.³⁶

Another means of conceptualizing truth divides truths into either subjective or objective meanings. To consider truth from a subjective standpoint, one must understand the entire contextual background from within which the truth comes.³⁷ Thus, it is the truth as it is perceived to have taken place that is particularly illustrative. Conversely, objective truth is independent of beliefs and opinions. Truth forces the discarding of perceptions and is presented only in fact-like form.³⁸ Certainly, both of these “truths” must be considered in the course of a TRC, although subjective truth-telling appears to be especially helpful in developing a cohesive and seamless rendition of events as they actually occurred.

That which is developed in the process of truth-telling, therefore, is an established narrative of truth, constructed from the shards of individual truth as relayed to the tribunal. But can there be one single narrative? Each account emerges, “talking up” different facts and particular details of things remembered, and corresponding normative judgments must be made in taking decisions to accept or reject the addition of a particular detail to that narrative. However, it is a steadfast reliance by commissioners on particularly invariant rules as laid out in several international conventions and treaties which ensures a valid

³⁶ Dr. Alex Boraine, “Can ‘Truth-Telling’ Promote Reconciliation?” Truth and Reconciliation Commission Home Page [web page]; available from <http://www.truth.org.za/reading/beyond.htm>; internet; accessed 7 October 1998, 1-3.

³⁷ Michelle Parlevliet, “Considering Truth: Dealing with a Legacy of Gross Human Rights Violations,” *Netherlands Quarterly of Human Rights* 16.2 (1998): 146.

³⁸ Parlevliet 145-146.

interpretation of details as they are added to the collective narrative.³⁹ International law provides substantive rules which are meant to prevent the types of abuses which are brought forward throughout the work of the commission: rights to life, liberty and the security of the person, or rights against arbitrary arrest, detention or exile, to name just two. Once the “truth” has been given voice, it has entered into the public domain where the existence of such memories may no longer be denied.⁴⁰ This is acknowledgement.

Citizens have an inherent right to this truth. Such a right was established in Article 19 of the Universal Declaration of Human Rights, which says, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁴¹ Similar sentiments are also contained within Article 9 of the African Charter on Human and Peoples’ Rights, which says, “Every individual shall have the right to receive information.”⁴² Hayner asserts that states’ duty to try and to punish the perpetrators of human rights abuses gives others the right to the information turned up in the process.⁴³ So, for example, the arrest of former Chilean dictator Augusto Pinochet in London, England in 1998 was a direct result of criminal complaints filed by those victims seeking the truth, who had been denied the opportunity of similar action in their home

³⁹ For example, the International Covenant on Civil and Political Rights states that depriving someone of his life is wrong. See “International Covenant on Civil and Political Rights,” *Twenty-five Human Rights Documents* (New York: Centre for the Study of Human Rights/Columbia University, 1994) 18.

⁴⁰ *Truth Commissions: A Comparative Assessment*, 17.

⁴¹ “Universal Declaration of Human Rights,” *Twenty-Five Human Rights Documents* (New York: Center for the Study of Human Rights Columbia University, 1994) 8.

⁴² “Appendix One: The African Charter on Human and Peoples’ Rights.” *Human Rights and Development in Africa*. Eds. Claude E. Welch, Jr. and Ronald I. Meltzer. Albany, NY: State University of New York Press, 1984.

⁴³ Hayner 611.

countries of Chile and Argentina;⁴⁴ the principles of international law, as applied in this case, support this right to truth.

This quest for the “truth” is no easy task. Many truth commissions in the immediate post-war period have spent countless hours and even more money in the development of institutions and the tracking down of testimony for such a purpose. The cases of Uganda and Haiti, as outlined in chapter four, and explained in the following chapters, provide a glimpse of the conditions that led to the establishment of the truth commissions in each case.

The Truth Commission as a Mechanism of Acknowledgement

In attempting to reckon with a history of mass human rights violations committed at the hands of the state, then, many societies have increasingly opted to use methods of alternative and restorative justice over more widely-accepted methods of western retributive justice. Mechanisms such as the truth commission have proven to be useful instruments in searching for details of past events in societies where mass violations of human rights have occurred. Victims and perpetrators come forward to tell their stories, and from these a narrative history of the often graphic and frightening nature of the society’s past emerges.

The value of this type of participation, therefore, is derived not from the ability to pursue perpetrators within a rubric based on the faulty system of democracy and justice

⁴⁴ *The Pinochet Precedent: How Victims Can Pursue Human Rights Criminals Abroad* (New York: Human Rights Watch, 2000); [report on-line.]; available from <http://www.hrw.org/campaigns/chile-98/brochfln.htm>; internet; accessed 6 Mar. 2000.

which initially allowed the events to occur. Nor should the pursuit of perpetrators be a main focus. Instead, the value comes from an individual's opportunity to confront the atrocity head-on, and to begin to understand the details of past conflict. It is only by undertaking this process, by actively acknowledging the reality of the murders of husbands and wives and children, for example, that individuals can begin to move beyond the tangled issues surrounding their understanding of the situation, and can begin to explore, even tentatively, the possibility of once again becoming connected with the lives and activities of others.

Indeed, as I argued in chapter two, the efforts of the individual are especially valuable to the society as a whole. For, as the truth commission enables one individual to come face-to-face with his or her own reality, so it also enables another to uncover the truth about his or her own situation, and so on. Herein lies perhaps the most important consequence of the broader work of the truth commission: the aggregate effect of such acknowledgement is to enable vast numbers of these individuals to begin to engage in the stuff of civil society.

The truth commission also has the capacity to encapsulate the both the stories of the individuals who appear before it, and their experience with acknowledgement. The summative effect of this collection of stories and experiences is the creation of a common social language, which Covey has identified as being crucial in the building, and, I would

argue, rebuilding, of any society.⁴⁵ Acknowledgement, then, which has been achieved by means of the truth commission, therefore constitutes this common social language.

One Caveat

Results of the type examined above frequently occur. The truth commission appears, in many cases, to provide an effective means of dealing with the legacy left by months or even years of abuse in light of the intense financial burdens already shouldered by many of these countries, and also as a result of the distrust of the internationally-accepted model of retributive justice. Examples of significant societal impact are to be found in the truth commissions of Chile and Argentina, and likely South Africa. To be sure, there are others which also had a dramatic effect on a given society.

This endorsement, however, must be qualified: in not all cases has the truth commission been entirely successful. In fact, the very elements which can specifically assist the truth commission, if they are missing, can have a negative effect. In the cases of Uganda and Haiti, as discussed in the following chapter, these ingredients appear, quite simply, to have been missing.

The tradition of truth-telling in the realm of justice is centuries old. In the period following the perpetration of gross violations of human rights on a massive scale, torn societies become transitional societies and begin to search for a means by which their experiences, both collective and individual, can be left behind. The truth commission is an

⁴⁵ Stephen R. Covey, *Living the 7 Habits*, excerpts read by the author, (New York: Simon & Schuster, 1999), recording.

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innovative instrument being used to attempt to achieve a particular end: acknowledgement
of past events. And sometimes it works.

CHAPTER FOUR
THE TRUTH COMMISSIONS OF UGANDA AND HAITI:
BACKGROUND AND HISTORY

The truth commission has been adopted in more than twenty-five states since it was first used in Uganda in 1974. Although the 1974 Ugandan Commission was a failure, since that time other countries have used the truth commission with greater degrees of success. The first successful use was in Argentina (1983-1984). In every case, the antecedent period of atrocity had compelled those who came to power in the transitional phase to seek to understand and bring to rights that which had occurred, at least outwardly. As their central mandate, the truth commissions thus created had only to seek the truth, with attendant variations in several cases.

In the autumn of 1998, the Truth and Reconciliation Commission (TRC) of South Africa presented its Final Report to Parliament. Around the world, people had been watching with interest as South Africa attempted to use this “new” instrument of restorative and transitional justice to make sense of the many apartheid-era atrocities and abuses which had been committed. The actions in question had been committed by those on all sides of the conflict, although to varying degrees. The TRC had attempted to eliminate many of the elements of retributive justice in favour of coaxing South Africans into accepting abstract concepts like forgiveness and reconciliation, all the while recording the details of those crimes in a search for the “truth.” Spectators outside South Africa,

along with those who had been intricately involved in drafting the shape of the TRC, expressed broad support for its seeming success.

Truth commissions were also used in Uganda and Haiti. Emerging from respective eras of human rights abuses on a vast scale, the appointment of truth commissions in all cases has sought to address vastly different contextual circumstances. This chapter lays out, in broad strokes, an historical account of the political circumstances in both Uganda and Haiti. This background information is central in understanding the horror of the human rights abuses which were perpetrated in each country. It also sets the stage for the creation of the truth commissions in each country.

In no case should the reader assume that the circumstances of either commission are meant to be considered as equal. Nor should the comparison of the two undermine the importance of each case and the role it has played in the global understanding of the use of the truth commission as an instrument of both truth and justice. More importantly, such a comparison is in no way intended to minimize the abuses suffered by the people of Uganda and Haiti. Rather, as will be explained further in chapter five, the deliberate exploration of each case is meant to highlight those features which are intrinsically different.

Uganda

Social and Historical Context

Until the late nineteenth century, there were few Europeans in the Great Lakes region of Africa. When Europeans began to arrive, it was in waves: first came occasional visits by travelers in the 1860s and early 1870s; next came missionaries in the late 1870s; and,

finally, the Imperial British East Africa Company in 1890. Britain formally declared a protectorate over the area which now comprises Uganda in 1894.¹

At that time, the country was divided into a series of indigenous kingdoms and chieftaincies, each of which had its own ruler and leadership system.² The Kingdom of Buganda was Uganda's principal Kingdom during this period, and the British counted the Baganda³ as their main strategic allies. After Britain colonized the Kingdoms of Bunyoro, Toro, Ankole and Bugosa in 1896, the Baganda promptly became the highly-favoured agents of the British Crown, acting as tax collectors and labour recruiters, and forcing the Buganda culture on those from other parts of the new Protectorate of Uganda. As a result of this colonial policy, the other kingdoms deeply resented the Baganda. Into this already tense atmosphere was woven a tense relationship between Muslim traders from the coast of east Africa and Christians. Serious conflict between the two groups ensued in the form of war between 1888 and 1889, and also between Christian factions in 1892, from which the Protestants emerged victorious.⁴ In 1900 the Uganda Agreement,⁵ a treaty between the British protectorate and the kingdom of Buganda, was signed, an attempt to establish indirect British rule in the protectorate. The Uganda Agreement divided Buganda along religious lines, and Ganda chiefs were given pockets of land measured in square miles

¹ M. Louise Pirouet, "Uganda: History to 1971," *Encyclopedia of Africa South of the Sahara*, ed. John Middleton (New York: Charles Scribner's Sons, 1996) 303-306.

² Dirk Berg-Schlosser and Rainer Siegler, *Political Stability and Development: A Comparative Analysis of Kenya, Tanzania and Uganda* (Boulder: Lynne Rienner Publishers, 1990) 97.

³ "The people of Buganda are referred to as *Baganda* (the singular form is *Muganda*), their language is referred to as *Luganda*, and they refer to their customs as *Kiganda* customs." From "Introduction," *The Buganda Home Page*; [article on-line]; <http://www.buganda.com/bugintro.htm>; internet; accessed 24 May 2003.

⁴ Pirouet 304.

⁵ The Uganda Agreement of 1900 is also referred to in the literature as the Buganda Agreement, as it significantly changed Bugandan society. See Berg-Schlosser and Siegler 97-99.

(called *mailo* lands) as their private property, their rule restricted to a central royal council. During this period, Uganda was held up by Britain as a model of indirect rule.⁶

Government and Politics

Uganda's political structure continued in much the same configuration, even through especially violent strikes in Buganda during 1945 and 1949, until 1962. The Baganda were rioting against unfair government policies regarding cotton sales, and for the right to local representation. In March of that year, internal autonomy was granted to Uganda, followed by complete sovereignty on 9 October, 1962. A National Assembly was elected, and a semi-federal constitution drafted; for the first time since colonialism and contact with the British, Ugandans once again enjoyed independence.

The original structure of Uganda's post-independence government was established in the form of Legislative and Executive Councils in 1920. Ugandans were not granted access to either of these bodies until 1944 and the early 1950s, respectively.⁷ Those politicians who entered the fray in 1962, then, were novices in the use of Britain's exported Westminster parliamentary system, itself an ancient and well-established institution. Even the new prime minister, Milton Obote, a Langi tribesman who held office from 1962 to 1971, was relatively inexperienced in the ways of parliamentary democracy.

Life under Obote and his successors turned out to be very different than it had been under the British. From 1962 until 1986, Uganda experienced a series of coups,

⁶ Pirouet 304.

⁷ Samwiri Lwanga-Lunyiigo, "The Colonial Roots of Conflict," in *Conflict Resolution in Uganda*, ed. Kumar Rupesinghe (Oslo: International Peace Research Institute, 1989) 37.

culminating in a great concentration of power in the hands of the head of state. Obote's first term in power was characterized by significant numbers of riots and armed attacks.⁸ Many of the violent protests were carried out by the Baganda in protest against Obote's consolidation of power. Other uprisings came from the Ugandan military.

General Idi Amin Dada, an illiterate career soldier of "limited intelligence"⁹ from the minority Kakwa tribe in the northwest of the country, served as Obote's army commander. In 1971, Amin overthrew Obote, suspended the constitution and ruled under a provisional government structure until 1979. To sustain his authority, Amin, who came to be known as "the butcher," carried out a reign of terror, systematically murdering and torturing those he considered to stand in his way.¹⁰ He targeted those who were seen to have supported Obote, especially people of Acholi and Langi descent, many of whom tended to dominate the military. The more than 70,000 ethnic Asians living in Uganda were brutally expelled by Amin in 1972 and their property confiscated, compensation for which had yet to be determined at the time of writing.¹¹ During this period, violence was rampant, and the military and paramilitary mechanisms of the state conducted brutal campaigns of torture.¹² No exact figures of the number of people who were killed under

⁸ Berg-Schlosser and Siegler 196.

⁹ Thomas P. Ofcansky, *Uganda: Tarnished Pearl of Africa* (Boulder: Westview, 1996) 42.

¹⁰ Nancy G. Wright, "Uganda: History From 1971," *Encyclopedia of Africa South of the Sahara*, ed. John Middleton (New York: Charles Scribner's Sons, 1996) 306.

¹¹ Pirouet 305.

¹² Berg-Schlosser and Siegler 199; Edward Khiddu-Makubuya, "Paramilitarism and Human Rights," in *Conflict Resolution in Uganda*, ed. Kumar Rupesinghe (Oslo: International Peace Research Institute, 1989) 141-157.

Amin exist. The Commission's Report refers only to the "hundreds of thousands" who died.¹³ Conservative estimates place the figure at between 300,000¹⁴ and 500,000.¹⁵

In 1978, Amin's Ugandan forces attacked Tanzania and annexed 1,800-square kilometres of Tanzania. Amin reportedly believed that he was "teaching President Nyerere [of Tanzania] a lesson"¹⁶ for Tanzania's September 1972 invasion of Uganda, which had been organized by Obote and supported by the Tanzanian government. In November 1978, in support of Amin's opponents (including forces led by past president Obote and future president Museveni), Tanzania invaded Uganda. By April 1979, Amin's forces were defeated. Amin himself fled to exile in Libya.¹⁷ Interim governments were appointed in 1979 and 1980.

As the result of rigged elections in 1980, Obote returned to power. He remained until July 1985 when he was overthrown, again by a faction of the Ugandan military. The country was once again assailed by "rampant human rights abuses,"¹⁸ under Obote's "Operation Bonanza,"¹⁹ this time far worse than anything experienced during Obote's first term in office. The paramilitary apparatus of the state again began its practice of routinely violating human rights, by means of rape, torture, looting and destruction of property.²⁰ The scale of repression and abuse was roughly the same as it had been under Amin. The

¹³ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights* (Kampala: UPPC, 1994) 628.

¹⁴ Philip Briggs, *Uganda* (Old Saybrook, CT: The Globe Pequot Press, 1998) 23.

¹⁵ Yoweri Kaguta Museveni, *Sowing the Mustard Seed* (London: Macmillan, 1997) 41.

¹⁶ *Ibid.*, 92.

¹⁷ Ofcansky, *Uganda: Tarnished Pearl of Africa*, 47.

¹⁸ "Uganda," *The World Almanac and Book of Facts 1999*, ed. Robert Famighetti (Mahwah, NJ: Primedia Reference, 1998) 852.

¹⁹ Ofcansky, *Uganda: Tarnished Pearl of Africa*, 54-55.

²⁰ Berg-Schlosser and Siegler 199, Khiddu-Makubuya, "Paramilitarism" 153.

only difference for many Ugandans was that their former leader (Amin) had been substituted for another (Obote) with a heightened and reinvigorated fury. Conservative estimates again place the number of those killed during this period at approximately 300,000²¹ to 320,000.²² From July 1985, a military council governed for six months, until it, too, was overthrown.

Yoweri Museveni seized power in January, 1986, abolishing all political parties except the National Resistance Movement (NRM) that had made his victory possible.²³ Museveni and the NRM (formerly the National Resistance Army – NRA) had been fighting against the regimes of Amin and Obote, as well as the transitional regimes, in Uganda since 1971.²⁴ Conditions began to improve in Uganda after Museveni took power. Buganda and some of the other Ugandan monarchies were restored, but to considerably less status than they once held.²⁵ The human rights abuses abated.

In 2003, the structure of Uganda's government remained much the same as it was when Museveni came to power in 1986. The Republic of Uganda was governed by President Yoweri Museveni and Prime Minister Apollo Nsubambi.²⁶ Yet Uganda was left devastated by more than two decades of intense struggle and brutality. It is one of the states in the world most badly affected by HIV and AIDS.²⁷ Non-governmental organizations (NGOs) have been forced to assume much of the encumbrance of the

²¹ *Uganda* (Brooklyn: Interlink Books, 1998) 53; Ofcansky, *Uganda: Tarnished Pearl of Africa*, 55.

²² Ofcansky, *Uganda: Tarnished Pearl of Africa*, 55.

²³ For a much more complete account of Uganda's history from 1971, see Berg-Schlosser and Siegler 97-132.

²⁴ Museveni, *Sowing the Mustard Seed*, 33, 46-173.

²⁵ "Uganda," *The World Almanac and Book of Facts 2000*, ed. Robert Famighetti (Mahwah, NJ: Primedia Reference, 1999) 868.

²⁶ "Uganda" (1999), 852.

provision and contribution of financial support²⁸ as the state itself has been financially unable to offer assistance in all areas.²⁹

Acholi, in northern Uganda, remained at the mercy of both rebel armies and Ugandan forces. “The conflict in Acholiland began soon after Uganda's last regime change in January 1986. It was triggered by the NRM's methods for consolidating control over the northern parts of the country.”³⁰ Joseph Kony, leader of the Lord's Resistance Army (LRA), seized Ugandan boys to act as soldiers, and kidnapped girls to be used by him and his fellow rebels as their wives. “The LRA rebels say they are fighting for the establishment of a government based on the biblical Ten Commandments,”³¹ and worked toward the overthrow of Museveni's government. (Kony's forces took over from a group called the Holy Spirit Movement, which was led by a woman called Alice Lakwena, who claimed to receive visions from God that told her to carry out vicious attacks. Lakwena and Kony were cousins.) Until 2002, the Government of Sudan backed the LRA in retaliation for Uganda's official backing of the southern Sudan Peoples Liberation group.³² Vicious fighting continued into 2003.

²⁷ “Mariandina AIDS Research Foundation,” *National Information Centre*, 11 Sep. 1999; [article on-line]; available from <http://www.mariandina.or.ug>; internet.

²⁸ Hölger Bernt Hansen and Michael Twaddle, “Introduction,” in *Changing Uganda: The Dilemmas of Structural Adjustment and Revolutionary Change*, eds. Hölger Bernt Hansen and Michael Twaddle (London: James Currey, 1991) 15.

²⁹ Susan Dicklich, “Indigenous NGOs and political participation,” in *Developing Uganda*, eds. Hölger Bernt Hansen and Michael Twaddle (Oxford: James Currey, 1998) 145.

³⁰ Catherine Barnes and Okello Lucima, “Introduction,” *Accord* (2002) 11: 1.

³¹ “Lord's Resistance Army,” [article on-line]; available from <http://www.globalsecurity.org/military/world/para/lra.htm>; internet; accessed 29 June 2003.

³² *Ibid.*, 2. For an excellent summary of events, see Michael Twaddle and Hölger Bernt Hansen, “The changing state of Uganda,” in *Developing Uganda*, eds. Hölger Bernt Hansen and Michael Twaddle (Athens, Ohio: Ohio State University, 1998) 5-6.

Citizens sometimes still associate “government” with violence and corruption.³³ In an effort to reverse this image, the government annually granted amnesty and pardon to prisoners.³⁴ This was specified in Museveni’s “Prerogative of Mercy,” which allowed the President to pardon any criminals responsible for crimes committed before the 1995 Constitution came into force.³⁵ The Government has attempted to create a new image, through agencies such as the official government daily newspaper, *The New Vision*,³⁶ Radio Uganda,³⁷ and the National Museum, National Cultural Centre and Nommo Gallery. All are evidence of what the government boasts of as a “forged union of many peoples... [who] live and work together as one people, all proud to be Ugandans, while each cherishes their history and traditions.”³⁸

In 2003, the people of Uganda remained poor. Continued military involvement in other countries in the Great Lakes Region, as well as against rebel activity in the north of the country exacted a high cost both militarily and economically. And, although the government implemented changes intended to stabilize the country, more than 35% of the

³³ James Tumusiime and Sylvester Onyang, “UPDF amasses in Karamoja,” *The Monitor*, 11 Sep. 1999; [article on-line]; available from http://www.africanews.org/east/uganda/stories/19990911_feat4.html; internet.

³⁴ “Professor Rugumayo Tours Luzira Prisons Complex,” *New Vision*, 11 Sep. 1999; [article on-line]; available from http://www.africanews.org/east/uganda/stories/19990911_feat4.html; internet.

³⁵ *Uganda Constitution (1995)*, article 281.

³⁶ “News in Uganda,” *National Information Centre*, 11 Sep. 1999; [article on-line]; available from <http://www.nic.ug/News>; internet.

³⁷ U.S. Department of State, “Uganda Report on Human Rights Practices for 1998,” 26 Feb. 1999; [report on-line]; available from http://www.state.gov/www/global/human_rights/1998_hrp_report/uganda.html, 25 July 1999; internet.

³⁸ “Uganda Arts and Culture,” *National Information Centre*, 11 Sep. 1999; [article on-line]; available from <http://www.nic.ug/Arts>; internet.

population lived in abject poverty.³⁹ The Government, however, continued to perpetrate human rights abuses, and “there continued to be numerous, serious problems.”⁴⁰

Commission of Inquiry into Violations of Human Rights

The Commission of Inquiry into Violations of Human Rights (CIVHR) was appointed on 16 May 1986, three months after Museveni took office. The Commission was inaugurated one month later, on 13 June 1986.⁴¹ Until the tabling of the Report on 10 October 1994, the Commission worked to gather evidence and testimony relating to the events of 1962 to 1986. Thousands of people completed questionnaires with regard to their recollection of particular events, many of which were then investigated in the field with the thought that they could be recommended for prosecution. From these, particularly strong and representative cases were chosen to appear before the Commission. In all, 608 witnesses appeared before the CIVHR, from 11 December 1986 to 7 April 1993.⁴² The Commission travelled to many regions of the country, holding hearings and collecting testimony in seventeen districts.⁴³ This testimony was gathered and bound into eighteen volumes. Today, one set of these volumes is housed at the Uganda Human Rights Commission. Each of the commissioners displays his or her set proudly in their homes and offices. Two

³⁹ “Uganda,” CIA: *The World Factbook* 19 March 2002; [report on-line]; available from <http://www.odci.gov/cia/publications/factbook/print/ug.html>; internet; accessed 23 May 2003.

⁴⁰ U.S. Department of State, “Uganda Report on Human Rights Practices for 2002,” 31 Mar. 2003; [report on-line]; available from <http://www.state.gov/g/drl/rls/hrrpt/2002/18232.htm>; internet; accessed 24 May 2003.

⁴¹ Although the CIVHR was named and appointed in May, it was not until June that its work officially began. This is common for truth commissions, who must first design a mandate for themselves, find office space and furniture, and hire staff. For a more in-depth discussion, see Joanna Quinn and Mark Freeman, “Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa,” accepted for publication in *Human Rights Quarterly*, (Nov. 2003).

⁴² The Republic of Uganda, *The Report of the CIVHR*, Appendix 10: xxx.

complete sets reside in that same locked closet wherein so much material surrounding the Commission was found. The final report is more than 720 pages long, and contains testimony, analysis, and recommendations, along with lists of names of those who were subjected to torture and abuse.

Haiti

Social and Historical Context

Haiti was the first of the discoveries of Christopher Columbus in the New World. In 1492, when the *Santa Maria* ran aground off the island of Hispaniola, his crew was forced ashore, and settled the first of the Spanish colonies. More than 500,000 Taino Arawaks were already living on the island, but colonial barbarity and disease killed nearly all of them before the middle of the next century. Once the Arawak had been wiped out, new slaves were imported from Africa by 1520; the French export of slaves to the New World began in 1633, and grew quickly. The island was also frequented by the many pirates who inhabited nearby islands. The burgeoning settlement, however, was largely forgotten by the Spaniards. In 1697, at the end of the War of the Grand Alliance between England, Spain, France and the Netherlands, the Treaty of Ryswick ceded the western part of the island of Hispaniola to the French, who had begun to trade in goods produced almost entirely by slave labour in the settlement, including coffee, indigo, cocoa, cotton and sugar.⁴⁴

⁴³ Ibid., Table Three: V-VI.

⁴⁴ John R. Ballard, *Upholding Democracy: The U.S. Military Campaign in Haiti, 1994-1997* (Westport, CT: Praeger, 1998) 3.

By the mid-1700s, the colony was populated by 36,000 whites who ruled over 700,000 black slaves, along with some freed slaves and mulattoes.⁴⁵ Authoritarian laws restricting the clothing and occupations of freed and slave blacks, and imposing strict curfews, were enacted. In this way the black population was controlled. White landowners in Haiti were dismayed to realize that the freedom fought for in the French Revolution would apply to the colonies as well. By 1791 an organized slave revolt under Toussaint l'Ouverture, a freed slave, had begun. When slavery was abolished by the French in 1794, the Haitian revolution began in earnest. The French sent 20,000 soldiers to quell the uprising, and the Haitians were defeated after only three months. L'Ouverture was captured and exiled to France, where he died shortly afterward. Haitians, however, continued their fight. After a bloody 12-year struggle, under l'Ouverture supporters Jean-Jacques Dessalines and Henri Christophe, the Haitians defeated the French army. On 1 January 1804, Haiti declared independence.

Government and Politics

Independence was no guarantor of stability for the new country. The new president, Jean-Jacques Dessalines, threw away the old ways of governing, promulgated a new constitution, stole liberally from the national treasury, and declared himself president-for-life.⁴⁶ Dessalines was quickly assassinated, and the army assumed power. The north and south of Haiti divided under different rulers; the two were reunited in 1820. The western and eastern parts of the island of Hispaniola were also reunited, briefly, as Haiti conquered

⁴⁵ Ibid.

the Spanish Santo Domingo. Haiti and Santo Domingo officially separated in 1821. General political and economic instability continued for the greater part of a century: from 1843 to 1915, most of the twenty-two presidents served less than two years. The traditional plantation system broke down, and Haitians were forced to rent their small plots of land from largely absentee landlords.⁴⁷

By 1911, Haiti was declared fiscally insolvent.⁴⁸ In 1825, France had recognized the independence of Haiti, but had saddled the country with a crippling debt when it demanded 150 million French francs as an indemnity.⁴⁹ At first, this money was borrowed from the French, and then, later, from the United States. Haiti was unable to repay this debt until 1922. This early and substantial borrowing marked the beginning of Haiti's destitute financial situation.

In the early years of the twentieth century, the United States began to become deeply involved in Haitian affairs. Via the Roosevelt Corollary to the Monroe Doctrine⁵⁰ Americans gave themselves the right to interfere in other countries in the hemisphere in cases where problems might cause Europe to step in. Debt was seen as one such problem requiring American intervention.⁵¹ Already, the Americans had opened a military base in the country. In 1915, the U.S. fleet invaded Haiti, and the Americans installed a puppet government in Port-au-Prince, fortified by an American security force which maintained an

⁴⁶ Catholic Institute for International Relations, *Haiti: Building Democracy* (London: CIIR, 1996) 4-5.

⁴⁷ From Latin America Bureau (Research & Action), *Haiti: Family Business* (London: Latin America Bureau (Research & Action), Limited, 1985) 17-18.

⁴⁸ Ballard, *Upholding Democracy*, 17.

⁴⁹ Catholic Institute for International Relations, *Haiti: Rebuilding Democracy*, 17.

⁵⁰ Roosevelt issued the Corollary (to the Monroe Doctrine) as part of an 1904 message to Congress. Roosevelt and later U.S. presidents cited the corollary to justify U.S. intervention in the Dominican Republic, Cuba, Nicaragua, Mexico and Haiti.

extensive presence in Haiti. U.S. interests, and especially the fear that Cuban influence could spread, preserved elite bureaucratic positions for mulattoes, and entrenched them in the nation's most powerful and influential positions. The U.S. assumed complete control over Haiti's finances,⁵² and consumed more than 75% of the country's resources.⁵³ When the U.S. departed in 1934, fiscal control remained in American hands, and the systems put in place under the occupation were preserved for more than a decade.

The Dominican Republic, which shared the Island of Hispaniola with Haiti, treated the residents of the tiny nation badly. In the years following American occupation, the plummeting Haitian economy forced thousands of Haitians across the Dominican border to earn a living working in banana plantations. During that time, Dominican President Trujillo intervened forcefully in Haitian politics. Trujillo himself "ruled brutally."⁵⁴ It is estimated that between 20,000 and 30,000 Haitians were massacred in the Dominican Republic during the post-occupation period, and that those who dissented against the Haitian government were also subjected to torture, disappeared or murdered.⁵⁵

With the echoes of oppression still fresh in the hearts of the Haitian people, a new breed of politician began to emerge. A black Haitian, Dumarais Estimé, was elected in May 1946 on a tide of rising popular discontent. Haitian blacks were frustrated with the ruling class of whites and mulattoes, and began to act to change this system. Estimé was deposed four years later. In December, 1950, his successor, Colonel Paul Magloire,

⁵¹ Ballard, *Upholding Democracy*, 17-18.

⁵² *Ibid.*, 22.

⁵³ *Ibid.*, 17-18.

⁵⁴ "Dominican Republic," *The World Almanac and Book of Facts 2001*, ed. Robert Famighetti (Mahwah, NJ: Primedia Reference, 2000) 784.

⁵⁵ Latin American Bureau, *Haiti: Family Business*, 23.

attempted to stem the tide of popular expression, and to return to the repressive regime imposed by the Americans. He wanted a mulatto elite to rule, and was willing to support them with military backing. Support also came from the Roman Catholic Church and the U.S. So did significant corruption. When, in turn, Magloire was ousted in May, 1956, he was followed by no less than five provisional governments and a civil uprising that lasted for one day.⁵⁶

One politician, however, rose to real and lasting prominence: As the Minister of Health in the government of former president Estimé, medical doctor François Duvalier had introduced penicillin to Haiti, making him the much-loved “Papa Doc” of the Haitian people.⁵⁷ He was elected President in September, 1956. Among his key reforms, Papa Doc Duvalier was especially disposed to ideas of *noirisme* (the advancement of blacks and the rejection of Western domination),⁵⁸ and espoused Voodoo ideologies⁵⁹ more so than the ideas of the Roman Catholic Church. However, Duvalier’s pro-Haitian transformations quickly turned to repression and tyranny, and an estimated 30,000-60,000 people were killed under his command. Acting as his personal army, a group of supporters nick-named the *tonton macoutes* helped to carry out Duvalier’s reign of terror. Yet the U.S. continued

⁵⁶ Ibid., 24.

⁵⁷ Ballard, *Upholding Democracy*, 29-30.

⁵⁸ Latin American Bureau, *Haiti: Family Business*, 25.

⁵⁹ Voodoo is the traditional religion practiced in Haiti, and the use of black magic is an integral part of its practice. “After a person dies in voodoo, his soul goes back to Africa, to Guinée, that is, back to freedom. This belief sprang up among the first generation of black Haitians, slaves who had made the long middle passage and whose only happy moments were spent at the proscribed voodoo dances and ceremonies in the woods behind the plantations, where they summoned up the better days in the land of their birth. These slaves dreamed of liberation after death, and the tradition of the return to Africa was passed down through the generations. The flip side of this is the zombi, who dies free and rises into slavery. As slaves, the worst thing the blacks of St.-Domingue could imagine was a slavery that continued even after death. In postrevolutionary Haiti, where freedom from slavery was the most important aspect of a man’s life, the worst

to support the once-democratically-elected Duvalier. When Papa Doc died in 1971, his 19 year-old son, Jean-Claude was installed as President. “Baby Doc” Duvalier eased many of the oppressive policies of his father for a time, but eventually he, too, cracked down on dissidents within the country. As the economic situation worsened, further aggravated by the growing world-wide oil crisis, dissent among Baby Doc’s critics grew. He was forced to leave Haiti in 1986.

Among Duvalier’s critics were a group of progressive Roman Catholic priests who espoused liberation theology. Liberation theology teaches spiritual fulfillment through social and political freedom. These ideas found substantial support among the most impoverished sections of Haitian society in peasant groups, cooperatives and the peasant vigilante groups which had sprung up in defence against the *tontons macoutes*.⁶⁰ One of the most active was the *ti légliz*, a Créole word meaning “little church,” which has come to describe a progressive group of Roman Catholic activists who have been instrumental in bringing change to Haiti. Its most visible face was Father Jean-Bertrand Aristide. He and the *ti légliz* stood for justice, openness, and participation,⁶¹ the very principles on which Aristide later campaigned. In a stunning electoral victory in 1990, Aristide was elected with 67% of the popular vote, an indication of his deep support within the electorate.⁶² Just over six months from the day he took office, when the military engineered a coup against him, Aristide was forced into exile first in Venezuela and later in Washington.

that could happen, again, was slavery.” Amy Wilentz, *The Rainy Season* (New York: Simon and Schuster, 1984) 174.

⁶⁰ Charles Arthur, *After the Dance, the Drum is Heavy: Haiti one year after the invasion* (London: The Haiti Support Group, 1995) 8.

⁶¹ *Ibid.*

American President George Bush sided with the Haitian bourgeoisie and military – a powerful group that wanted Aristide to remain out of power. Bush hoped simply to wait out the terms of the Haitian constitution, which said that incumbent presidents may not be re-elected. In this case, Aristide’s term was set to expire in 1996. Bush also sought to “repatriate” Haitian refugees who had begun to turn up in the U.S. back to Haiti.⁶³

In 1991 and for the next three years, a campaign of torture was waged against Aristide’s supporters by the regime of General Raoul Cédras, which had staged the coup to force Aristide into exile. A series of provisional governments, all backed by the armed forces under Cédras, ruled the country. All of these governments were unconstitutional de facto regimes. They were led by President Joseph Nerette (September 1991 to June 1992), Prime Minister Marc Bezin (June 1992 to June 1993), Robert Malval (August 1993 to August 1994), President Emile Jonassaint (August 1994 to October 1994). From September 1991, Aristide had established a government-in-exile, and during this period parallel governments existed: the de facto Haitian regime, and the constitutional government-in-exile.

During this period, the country was rocked by violent outbreaks carried out by the military-backed Cédras regime to crack down on Aristide’s supporters. 5,000 or more were killed. Thousands more were beaten, tortured, and raped by Haitian military and police officials. More than 50,000 attempted to escape by boat to the United States. As

⁶² Jean-Bertrand Aristide, *Dignity*, 2nd ed. (Charlottesville, VA: The Rector and Visitors of the University of Virginia, 1996) 14.

⁶³ Alex Dupuy, *Haiti in the New World Order: The limits of the democratic revolution* (Boulder: Westview, 1997) 139-141.

many as 300,000 went into hiding within the country itself.⁶⁴ The violence was considerably worse in certain regions of the country, where wholesale slaughter ensued.⁶⁵ In other cases, Aristide's key supporters were brutally murdered.⁶⁶ In June 1993, an oil and arms embargo was imposed by the United Nations. Yet the Bush administration repeatedly refused to sanction the country in any real way, preferring instead to force Aristide into a complicated power-sharing agreement.⁶⁷

The change in America's Haiti policy was the result of the then-recent presidential elections in Washington, in which Bill Clinton was elected. President Clinton's position differed greatly from that of former President Bush, because he had actively campaigned for the repatriation of Haitian refugees. But after he was elected, he changed his position and stated that he would return Aristide to power to resolve the refugee issue. However, he placed strict constraints on Aristide's return to power, and warned that Aristide would be forced to make concessions to the bourgeoisie and military.⁶⁸ On 3 July, 1993, the U.S. brokered the Governor's Island Accord, signed by Aristide and Cédras, which assured the U.S. of a military "counter-balance" against Aristide's left-leaning agenda.⁶⁹ The U.S. further undermined Aristide's position by negotiating handsome settlements with the former regime in return for their cooperation.⁷⁰ On 15 October, 1994, Aristide was returned to power in Port-au-Prince—with the support of more than 20,000 U.S. troops and uneven

⁶⁴ Arthur, *After the Dance*, 2-3 and Alex Dupuy, *Haiti in the New World: The limits of the democratic revolution* (Boulder: Westview, 1997) 139.

⁶⁵ Argentine Forensic Anthropology Team, *Annual Report 2000* (New York: EAAF, 2000) 50-55.

⁶⁶ "Vérité et Justice," *Information Libre* IX.00 (Jan. 1997): 22-40.

⁶⁷ Dupuy, *Haiti in the New World Order*, 139-140.

⁶⁸ *Ibid.* 140-141.

⁶⁹ Catholic Institute for International Relations, *Haiti: Rebuilding Democracy*, 15.

⁷⁰ *Ibid.*, 160.

support from the international community. Aristide finished serving his one term in office, and then stepped aside to cede power to René Préval, as per the terms of the constitution. But Aristide was re-elected in 2000 with 92% of the electoral vote, and returned to office in February, 2001.⁷¹ The next election was scheduled for 2005.

In 2003, Haiti seemed poised for all-out confrontation. Haiti remained “one of the poorest countries in the Western Hemisphere.”⁷² An estimated 80% of the population lived below the poverty line, and fully $\frac{2}{3}$ of the eligible labour force was unemployed.⁷³ Only 45% of the population was considered literate.⁷⁴ AIDS was a serious problem in Haiti. Haiti’s overall adult AIDS rate was estimated to be 5.17%.⁷⁵ The disease had killed nearly 300,000 Haitians by 1998,⁷⁶ and these figures were projected to continue to grow. AIDS had a devastating impact on the country. The human rights abuses also continued. In early 1992, Organization of American States officials “noted a worsening political, economic and social situation in the country” in the wake of government-sponsored human rights abuses.⁷⁷ The social, political and economic situation left the people of Haiti in an extremely vulnerable position, making the establishment of any kind of democracy difficult.

⁷¹ “Haiti,” CIA: *The World Factbook* 19 March 2002; [report on-line]; available from <http://www.odci.gov/cia/publications/factbook/print/ha.html>; internet; accessed 23 May 2003.

⁷² “Haiti,” CIA: *The World Factbook* 19 June 2002; [report on-line]; available from <http://www.cia.gov/cia/publications/factbook/>; internet; accessed 2 July 2002.

⁷³ “Haiti,” CIA: *The World Factbook* 19 March 2002.

⁷⁴ “Haiti,” *The World Almanac and Book of Facts 2001*, ed. Lori P. Wiesenfeld (Mahwah, NJ: World Almanac Education Group, 2001) 795.

⁷⁵ Rene Loewenson and Alan Whiteside, *HIV/AIDS Implications for Poverty Reduction – UNDP Policy Paper*, (New York: UNDP, 2001) 3.

⁷⁶ Alfredo S. Lanier, “AIDS epidemic adds to tragedy in hapless Haiti,” *The Chicago Tribune*, 12 July 2000.

⁷⁷ U.S. Department of State, “Haiti Report on Human Rights Practices for 2002,” 31 Mar. 2003; [report on-line]; available from <http://www.state.gov/g/drl/rls/hrrpt/2002/18335.htm>; internet; accessed 24 May 2003.

Commission nationale de vérité et de justice

The *Commission nationale de vérité et de justice* (CNVJ) was appointed by Presidential decree on 28 March 1995. This announcement came less than six months after Aristide returned to Haiti and resumed power. Article 4 of the mandate charged the Commission to seek to identify instigators, criminals and accessories to the serious human rights violations and the crimes against humanity which had been carried out during the coup d'état, from 29 September 1991 to 15 October 1994, both inside and outside of the country.⁷⁸ The Haitian commission was to be carried out by the Organization of American States (OAS) and the United Nations Permanent Mission to Haiti (*International Civilian Mission in Haiti* or MICIVIH). Accordingly, four of the appointed commissioners were Haitian nationals, all of whom had then been living in exile, and three others were representatives of the international community. Initially, the Commission was to complete its work by September 1995, but this period was eventually extended by three months. The Commission presented its final report in December 1995. In the end, the Commission was forced to deliver a report that many considered unfinished, simply because Aristide was being forced to hand power over to his elected successor, and the mandate had stipulated that the report must be presented directly to Aristide.

During the tenure of the Commission, more than 7,000 people revealed their stories to teams of investigators across the country.⁷⁹ The final report was, however, essentially intended for an international audience. Even though the mandate of the commission had

⁷⁸ The Republic of Haiti, *Rapport de la Commission Nationale de Vérité et de Justice*, trans. Joanna R. Quinn (Port-au-Prince: Government of Haiti, 1995) Annexe I, 355-357.

⁷⁹ *Ibid.*, Chapitre 3.

been understood as including public enlightenment, time and financial constraints imposed strict limitations on the reporting of what had been uncovered. The report succeeds in revealing the names of more than 8,700 victims from the period, along with a comprehensive and cross-referenced list of the abuses they suffered.⁸⁰ Its eight chapters are filled with often-detailed analyses of the events which took place.

⁸⁰ *Ibid.*, Annexe III, 1-456.

CHAPTER FIVE

METHODOLOGY

Chapter two laid out a theoretical model that addresses the importance of acknowledgement in the rebuilding of a society after a period of gross human rights abuses. Chapter three addressed the possibility that the truth commission can itself be a mechanism for this acknowledgement to occur. Chapter four elaborated on the use of truth commissions in two cases. My initial assumption was that the truth commission could provide an environment that would allow individuals, and the society collectively, to go through the stages of acknowledgement. This would then allow the society to move on to the act of forgiveness, and through social trust and civic engagement to begin to develop a civil society ripe for the beginnings of democracy. Indeed, by studying the cases of the truth commissions of Uganda and Haiti, I have sought to determine whether or not I was correct in my earlier assumption.

This chapter examines the framework within which I have tested the above hypothesis. It looks first at the aim and scope of the investigation. Second, the chapter examines the methodological conceptions I have used in undertaking this study. Third, data collection methods are described, along with a discussion of the difficulties I encountered. Finally, the chapter looks at the providers of the majority of the data, the interviewees themselves.

Aim and Scope of Study

Answers to questions about truth and justice, however they may be determined theoretically, are largely to be found in the experiences of the groups of people who have grappled with similar issues. Indeed, the twenty or more countries that have employed a truth commission to deal with such questions provide a considerable diversity of experiences. In the context of each country's political, social, cultural and economic conditions, the truth commission attempts to provide a means by which to examine the events of the past.

The politics of acknowledgement, as detailed in chapter two, provides a unique starting point for an examination of the impact that can be made by a particular truth commission. Acknowledging the events of the past and one's complicity in them, and dealing with the emotional implications of reckoning with both personal and social experiences is particularly important. The component parts of the process of acknowledgement are equally beneficial. Ultimately, acknowledgement, an intricate amalgam of processes including remembering and coming to terms with the past, forms a necessary but not sufficient condition for the creation of the bonds of social capital and social trust, which foster the democratic goals sought by transitional societies.

In seeking to test the theoretical assumptions that I had made, I looked to two truth commissions about which not much had been written: Haiti and Uganda. The Haitian Commission is significantly more well-known; the involvement of international non-governmental organizations (INGOs) like the Organization of American States and the United Nations (UN) in cooperation ensured some level of both interest and involvement

from the international community. In addition, the historic (and then-current) involvement of the United States directly in Haitian affairs gave the activities of the Haitian truth commission comparatively more saliency in the U.S.

The small level of attention paid to the Haitian Commission stands in direct contrast to a clear disregard for the Ugandan Commission. The Ugandan CIVHR has been almost completely ignored—both inside and outside the country. In Uganda, only a small number of people seem cognizant that such a commission ever existed, and of these a significant number are unable to remember much at all about it. Many more are completely unaware. Even that small element of the international community that was involved has forgotten almost entirely the contribution that was made. This is discussed in much greater detail in the following chapters.

The aim of the study is to examine the events surrounding the truth commissions established in both countries, to see whether they were able to engender any kind of acknowledgement. As such, I am interested not so much in what came before the truth commissions were established, although I recognize the events of the past were, in fact, the *raison d'être* for the creation of both commissions. Rather, I am interested in the events surrounding the actual operation of each commission, as well as any changes which were brought about as a direct or indirect result of the work of the commission. These case studies provide an excellent picture of the truth commission at work. More importantly, however, they provide a glimpse into the way in which societies respond to state-organized truth-seeking and acknowledgement.

Methodological Approaches

My interest, therefore, lies in the work of the truth commissions themselves, along with their resultant outcomes. I wanted to focus on that end product in both cases. There is no doubt that between and amongst themselves, truth commissions can actually be enormously different, with different conceptual frameworks and vastly different structures. What constitutes a truth commission is almost by definition elastic. Hayner submits that a truth commission must focus on and investigate a wide-ranging cross-section of past events for a pre-determined period of time.¹ Apart from these requirements, however, in its purest form, the mandate of the truth commission is simply that which is implied by its name: to establish a common truth and to report on that truth which has been found. For this reason, I have elected to take as a given the basic similarities of truth commissions and their outcomes and have sought to identify those features that the Ugandan and Haitian cases have in common which account for those outcomes.

This focus on outcomes is indicative of Przeworski and Teune's Most Different Systems Design (MDS), which I have used in establishing the cases of Uganda and Haiti for consideration.² Because I am interested in the outcome of the truth commissions, and not in the various similarities between the truth commissions themselves, except as explanatory variables, MDS allows for the intersystemic differences in culture and religion between the countries, for example, to be disregarded, in order that the research can focus on their one commonality: the outcome of the truth commission. Landman has

¹ Priscilla Hayner, "Fifteen Truth Commissions - 1974 to 1994," *Human Rights Quarterly* 16 (1994): 604.

² Adam Przeworski and Henry Teune, *The Logic of Comparative Social Inquiry* (New York: Wiley, 1970) 31-38.

advocated the use of MDS in studies of this type, saying “MDS allows the researcher to distill out the common elements from a diverse set of cases that have greater explanatory power.”³

The strength of such an approach, I believe, lies in its ability to focus on the similarities between the cases, no matter in which set of circumstances they are conducted. The countries of Uganda and Haiti are located in different geographical regions, and the people of these countries speak different languages, organize their society differently, practice politics differently, and adhere to different religions. But MDS as an approach is valuable because these two countries can still be compared, inductively, on the basis of their one salient commonality: each country’s experience with the truth commission as a mechanism of acknowledgement.

The study also makes use of the “Folk Bayesian” approach, which allows for a moving “back and forth between theory and data, rather than taking a single pass through the data.”⁴ In this way, the cases selected are meant only to complement and test the theory developed around the concept of acknowledgement. This is not to say that the theory has not been tested, but, rather, that the cases themselves have been used to test different components of it.

The theoretical premises of the politics of acknowledgement provide a multi-faceted approach to the rebuilding of society. But as a theory it is still at the stage of hypothesis. As a result, I was interested as much in what my interviewees, having

³ Todd Landman, “Comparative Politics and Human Rights,” *Human Rights Quarterly* 24 (2002): 904.

themselves undertaken the process of state-sponsored truth-telling in the form of their participation in the truth commission, thought about my acknowledgement hypothesis as I was in their own experiences with the truth commission as an institution. In every case, I asked my interviewees to tell me what they thought about how this set of ideas and processes might have helped in the rebuilding of society. Yet I was equally concerned with how the truth commission itself had been able to foster such activity. Neither part of the process – theory or data – can be complete without the other.

The research also relies on Clifford Geertz's model of thick description.⁵ The study attempts to emulate Geertz's in the ethnographic observation of the process itself. In the analysis of the truth commissions of Uganda and Haiti, the study aims to identify many of the indicators of acknowledgement identified above. In so doing, the research makes use of non-invasive observation techniques including elite interviewing and archival research. Some of the techniques used included visiting memorials and monuments, attending meetings where pertinent issues were being discussed, examining training and education manuals and relevant pieces of legislation, and reading through various and significant documents and articles related to the truth commissions themselves. The study, therefore, is largely qualitative in nature; any data collected have been used both in the formulation and reformulation of the theory.

⁴ Timothy J. McKeown, "Case Studies and the Statistical Worldview: Review of King, Keohane, and Verba's *Designing Social Inquiry: Scientific Inference in Qualitative Research*," *International Organization* 53.1 (Winter 1999): 180.

⁵ Clifford Geertz, "Thick Description: Toward an Interpretive Theory of Culture," *The Interpretation of Cultures*, ed. Clifford Geertz (New York: Basic Books, 1973) 7-10.

Data Collection

Information surrounding either commission is difficult to find. In seeking to collect data of this kind, it soon became apparent that travelling to both Uganda and Haiti would be the best approach, as archival records and other materials normally remain within the country of their origin. In many cases, so, too, do the people involved. The Haitian commission, due to its international configuration, turned out to be at least a partial exception to this rule.

In the summer of 2001, I spent nine weeks in Uganda, investigating the commission. While there, I was based primarily in the largest city, Kampala. I was therefore able to access the resources both of Makerere University and of the Uganda Human Rights Commission, as well as several different government ministries. I did travel outside the capital twice, through the Luweero Triangle region where so much of the violence under Obote had taken place.

A similar trip to Haiti, however, proved impossible. Throughout the autumn of 2001, as I prepared to leave for Haiti, reports of escalating violence began to emerge. In late November, the Canadian Department of Foreign Affairs and International Trade issued an advisory stating that travel to Haiti should be avoided.⁶ However, because many of the key figures in the Haitian CNVJ had been foreign nationals, many of them had gone on to other projects with their same organizations (ie. OAS, UN) in North America. In the end, I was able to interview several people in both Washington, D.C. and New York. Earlier, I

⁶ Department of Foreign Affairs and International Trade, "Haiti," *Travel Report*; [report on-line]; available from http://www.voyage.gc.ca/destinations/report_e.asp?country=Haiti; internet; accessed 20 November 2001.

had travelled to Geneva, Switzerland and The Hague, Netherlands. I was also able to access several notables through the large Haitian diaspora community in Montreal and Ottawa. Finally, I was able to conduct written interviews with a few people who remain in Haiti via email.

In each case, I had earlier developed a skeleton outline of the types of questions I was interested in asking of people belonging to various groups and occupations, but the questions were purposely open-ended to allow for a diversity of responses. I hoped to ask the same kinds of questions of each person. I realized before the interview process began that I would be encountering a varied group of interviewees, each with his or her own set of occupation- and training-related language or jargon, understandings, and specialities. Put simply, I thought that I would have greater success in asking questions about specific elements of the acknowledgement or truth commission process if I targeted the questions to people more involved in certain related aspects by experience, occupation or societal position. I assumed that by asking questions in language with which they were familiar I might have greater success. But I also wanted to capitalize on the expertise that each of the potential interviewees might have in specific areas. Consequently, the questions were drafted so as to address similar issues, but were adapted for different interviewees. If it did happen that an interviewee did not respond to a question posed as formulated, I was careful to ask the same question in a different manner. Many of the questions I was able to use universally. Appendix A lists the questions I had drafted to ask of interviewees. However, as explained above, I often deviated somewhat from these questions to allow the interviewee to pursue aspects of the topic that they found to be of use.

In constructing the questions, I opted to use semi-structured or open-ended questions in order to capitalize on what the interviewee knew. I hoped to respect the principle that the interviewee knows best what is relevant. “In elite interviewing... the investigator is willing, and often eager to let the interviewee teach him about what the problem, the question, the situation, is.”⁷ I was careful to allow the conversation to explore sometimes tangential aspects of these ideas, which resulted, many times, in particularly illuminating interpretations and explanations. And, when issues arose from the questions asked or the answers given, I was anxious to pursue alternative lines of questioning; as such, I was able to elicit a broad diversity of opinion relating not only to the precise question I had asked, but also to issues the interviewees felt deserved attention. In total, I interviewed 35 people in Uganda, as well as several informants. I also conducted one email interview and one telephone interview with international non-governmental organization workers. I interviewed 19 people concerning the Haitian commission. 15 of these interviews were conducted in person. Four were conducted via email.

I conducted most of the interviews in English. However, three face-to-face interviews, and three email interviews were conducted in French. In four cases, the interviews were conducted in a mixture of French and English. In these cases, I used the same questions simply translated into French, and allowed the same open-ended responses.

Recent concerns over ethics in research have led to an increased vigilance in the requirement of consent forms and liability waivers. McMaster University’s Research Ethics Board was no exception, and prescribed an elaborate system of consent forms,

⁷ Lewis Anthony Dexter, *Elite and Specialized Interviewing* (Evanston: Northwestern University Press,

liability waivers and information letters. Realizing the difficulty I might face, I elected to proceed with a condensed version of the standard consent form, along with a more lengthy information letter. In each case, my interviewees were asked to complete the consent form before the interview began. This process, however, was sometimes off-putting for people who had earlier agreed to speak with me. Especially in cases where I was interviewing former refugees, for example, who had been routinely persecuted by the state, or individuals opposed to the government even where opposition activity is banned, such people were extremely wary of the consent forms, and often chose not to be interviewed as a result. In a few cases, people in Uganda asked that our conversation not be recorded, that their responses be kept confidential, and that they not be identified in any way. The majority of these individuals proved to be critics of the NRM and Museveni in some way, and feared for their jobs or their security and that of their families if their identities were revealed. I was, however, able to use much of the information supplied by these people, properly defined as “informants”⁸ to check the validity of the responses of the interviewees. Although I was unable to use their contributions directly, much of what these people told me has been invaluable as background and contextual information.

Each face-to-face interview lasted approximately two hours. In most cases, the interviews were tape recorded and then transcribed. The majority of these interviews were conducted privately, in offices, boardrooms or private homes. In some cases, the interviews were conducted in public places including restaurants and coffee shops. I found the interviewees to be more generous in their responses when the interviews were held in

1970) 5.

private locations. Additionally, I found the noise of the public locales distracted the interviewees.

I also collected archival data in a series of visits to the Uganda Human Rights Commission and the Makerere University Human Rights and Peace Centre in Uganda, and the International Centre for Human Rights and Democratic Development (now called “Rights and Democracy”) in Montreal. I was also furnished with use of documentation by other INGOs pertaining to both commissions. Specifically, these institutions provided access to many of the primary documents produced and used by the truth commissions. They also provided several secondary documents which proved useful.

Materials surrounding the Ugandan Commission, including the final copy of the Commission’s report, are difficult to find – both within and outside Uganda. The outside world has largely ignored the CIVHR, and, as a result, the work of the Commission remains virtually unknown. The Final Report of the Commission had an extremely limited publication, and even these copies were poorly, if at all, distributed. After approximately two years, I was able to obtain a photocopy of the report, a copy of which I had traced to the Danish Ministry of Foreign Affairs.⁹ Many of the documents that discuss the Commission contain only small references to it, and even these are few. Documentation and commentary on the Haitian Commission is significantly easier to find. I was easily able to access the Final Report of the Haitian Commission, versions of which are even available on the internet in several places.

⁸ Ibid., 7-14.

⁹ I wish to thank Georg Ulrich of the Danish Human Rights Centre, and Marete Lisbet Voetmann of the Danish Ministry of Foreign Affairs for their assistance in obtaining a copy of the report.

While in Uganda, I also engaged in what might be called “casual observation” in the major cities of Kampala and Entebbe, and also in the Luweero Triangle region. As I was concerned with what kind of impact the truth commission had made on the process of acknowledgement, I was especially interested to find monuments and memorials, including streets named after long-dead national heroes, historical sites, and as it turned out, military tanks. I was more interested, however, to see whether these people could see any evidence of acknowledgement. This is discussed further in subsequent chapters.

Research Population

I was looking, primarily, to speak with so-called “elites”: policy-makers and other prominent individuals who had been directly involved in the process. Commissioners and government officials, for example, were my initial targets. From there, I widened my net to include opposition party members, academics, and religious and community leaders. I chose many of these people in part because I assumed that they would at least have heard of the commissions. I was also interested in the effect of the commissions on the wider community, so civic leaders seemed a natural choice. They, too, were anxious to contribute to my knowledge of both commissions. I was also anxious to speak with people who would not normally fit into anything other than the category of private citizens; their stories were often the most emotional, and the most informative. And I managed to speak, in both cases, with those who were exiled from their respective countries in the years before the commissions were even considered.

I found it extremely difficult to find many of the people I hoped to interview by what I would have considered conventional means. Because of the technically inferior system of land line telephones in Uganda, for example, many Ugandans instead use cellular telephones exclusively – and for these no telephone directory exists. Similarly, government directories are not widely available or easily accessible over the internet. Many of my potential interviewees had moved on, in the years since their respective commissions had finished their work, to other positions around the world. I relied, therefore, on referrals from the people I interviewed. This approach is commonly referred to as the “snowball” technique. For the most part, the people I interviewed were extremely forthcoming with the names and contact information of people I should attempt to speak with. Indeed, many interviews concluded with the exchange of telephone numbers and the promise of other names and numbers in the days to come. In nearly every case, the referral him or herself contacted me within a matter of hours to establish a time to get together.

In Uganda, I interviewed 35 people, and spoke with many other people, “informants,” who provided me with a great deal of information. I spoke in person with the six truth commissioners, as well as NGO and INGO workers, government and opposition officials, professors, former guerrilla soldiers, pastors, journalists, returned refugees, and civic leaders. I also conducted one email interview and one telephone interview with INGO workers, and interviewed in person one Asian-Ugandan still in exile in Toronto.

I was unable to travel to Haiti, but nonetheless I was able to interview 19 people. I interviewed three of the commissioners, several advisors and consultants to the

commission, members of the international investigations team, a pastor, NGO and INGO workers, and a Haitian living in exile. 15 of these interviews were conducted in person. Four were conducted via email.

Although I received permission to identify quotations from the majority of those whom I interviewed, I have chosen not to do so. Instead, the interviewees have been variously identified by use of descriptors which are meant to explain their particular affiliation with the truth commissions of Uganda and Haiti, their political affiliation, or an experience they have had. In most cases, I have presented the comments that the interviewees made in the form of direct quotations, although their names have not been included. In a couple of cases, with the express permission of the interviewee, I have actually attributed a direct quotation.

The result is a qualitative study intended as an in-depth examination of the outcomes of the truth commissions of Uganda and Haiti. Because the contributions of the interviewees have been judged to be comprehensible, plausible and consistent,¹⁰ they add a great deal of contextuality and depth to the inquiry.

¹⁰ Ibid., 7.

PART TWO

ANALYSIS:

PARALLELS BETWEEN THE UGANDAN AND HAITIAN CASES

In previous chapters, I have attempted to outline the principles of the theory and process of acknowledgement, and to situate this argument within a discussion of the utility of truth commissions, mechanisms often used in the reckoning of societies with past atrocity. I have argued that acknowledgement is a necessary but not sufficient condition for democracy, along with coming to terms with the past, emotional response, memory and remembering, the building of networks of social trust, and civic engagement. More specifically, I have detailed the truth commissions of both Uganda and Haiti, which have been selected to illustrate the theoretical suppositions. It must be noted here that the comparison of Uganda's and Haiti's truth commissions highlights them as having been vastly different in their relative success from those of other countries, such as South Africa, Chile or Guatemala.

The following chapters mark a shift in the focus of the study. We turn now to an analysis of these two truth commissions against those same principles of acknowledgement articulated above. The purpose of this section is to treat each of the cases, the Ugandan Commission of Inquiry into Violations of Human Rights and the Haitian *Commission nationale de vérité et de justice* on the basis of those same suppositions. Indeed, many of those “indications” of the different stages in the process of acknowledgement are exactly

those used to determine the levels of acknowledgement attained by the two countries through their experiences with their respective commissions.

In selecting the truth commissions of Haiti and Uganda as cases to be compared against the rubric of the theory of acknowledgement, the Most Different Systems Design (MDSD) was chosen to “control” in small measure for the variations which necessarily exist between and among truth commissions, all of which are different according to social, political, cultural and ideological factors. In so doing, I have elected to focus on the two commissions selected as essentially “similar” creations.

Accordingly, the next series of chapters has been organized more or less around these similarities, as they relate to the deficiencies of each of the commissions and the systemic difficulties they faced. The Haitian and Ugandan truth commissions are in many ways parallel cases, derailed by a series of both avoidable and inevitable difficulties. Both commissions, for example, experienced a significant dearth of either government or popular support. And the institutional shortcomings of these commissions were magnified according to the circumstances in which each was created. These are explored below.

CHAPTER SIX

POLITICAL WILL

Truth commissions do not work in a vacuum. Instead, society and the state apparatus provide an environment that is filled with complicating factors, which can include a wide variety of actors and the activities they undertake, based on their own interests. From the time an idea is conceived to the time it is made manifest in the form of a truth commission, it has been shaped by many people and the views, beliefs and opinions they have expressed.

The bringing forward of new and innovative ideas and strategies is simply the first part of the process. This is done by “policy entrepreneurs,” people who possess a distinct mixture of qualities, combining some measure of authority in a given policy area, good negotiating skills or a particularly good network of contacts and authority, along with persistence. These people look for and seize upon opportunities to push a particular program or agenda through a “policy window,” openings which occur only rarely and especially unpredictably.¹

In both Uganda and Haiti, as with almost every truth commission ever held, the policy window was provided in the form of a particular moment of transition, when a regime change occurred. At that time, the old vanguard was displaced, and the new regime suddenly could implement its own policies. This is discussed in greater detail in chapter

¹ John Kingdon, *Agendas, Alternatives, and Public Policies* (Boston: Little Brown, 1984) 171-198.

four. The system-wide nature of the transition presented real opportunities for change at many levels. The new policies were those which had been used and developed in the struggle to attain the new positions of leadership and power.

What ultimately makes an idea thrust through a policy window successful, however, is the input which that idea continues to receive. In all cases, input in the form of use and participation must occur, or the construct itself (in this case the truth commission) will wither. In some cases, the input will come in the form of support for the political construct and the shape it has taken, serving to reinforce it. Continued good publicity, for example, is important in making sure that the community will participate in the activities of a truth commission. In other cases, the input will come in the form of activities which serve to undermine the way it is able to function. As a result, the construct in question may cease to be effective.

These inputs are a reflection of the interests being pursued or protected by the people who are involved, both directly and indirectly, with the truth commission. Rational choice theory asserts that people pursue various courses of action based upon their own perceived self-interest.² As such, their “reaction” to political constructs like the truth commission will depend in large part on the value that they place on the commission *vis à vis* their assessment of how it will help or hinder themselves, personally.

These reactions are what I have called *political will*. They are the government minister’s decision to fight against the truth commission. And they are the ordinary person’s decision to appear before the commission to present testimony. This chapter is

² Alexander Rosenberg, *Philosophy of Social Science* (Boulder: Westview, 1995) 74-88.

concerned with what the political will or reaction of a variety of actors to the Ugandan and Haitian truth commissions was, and what the concomitant effect of this reaction was.

Here, I am most interested in how the people within those societies reacted to the truth commissions, in choosing to support the truth commission and its acknowledgement-building activities, or not. This reaction is seen as an indication of their willingness to acknowledge past abuses. It is important to attempt to gauge the reaction of different groups, and of society as a whole, in seeking to understand whether any kind of acknowledgement was actually experienced by the two societies. This chapter looks at several factors, including the conditions that led to the establishment of the commissions in both countries, public reaction, government support, the overall policy network, and opposition to the commissions.

Uganda

Conditions of Establishment

Yoweri Museveni and the National Resistance Army (NRA, later changed to “National Resistance Movement” or NRM) seized control of the government in 1986, after nearly fifteen years of bush warfare, and swept to power by means of a violent military coup which left little or no room for opposition voices. Although neither he nor most of his supporters had ever been in a legitimate position of power prior to that time, the ideological precepts which had initially provoked his opposition, first to Obote and then to Amin, had been developed over a period of many years. When Museveni arrived in the capital to assume power, he arrived with a significant body of ideas to be implemented.

One of his first acts was to outline a ten-point programme in which he emphasized democracy, security, national unity, independence, restoring and rehabilitating social services, ending corruption and misuse of power, dealing with the plight of displaced people, pan-African cooperation and pursuing a mixed economy as the basic tenets of his philosophy.³ In pursuit of these goals, Museveni established, among other institutions, a truth commission to address the wrongs that had been perpetrated.

Many of Museveni's supporters had been forced into exile in various countries during the periods of violence which occurred under Obote and Amin. But when Museveni and the NRM came to power, many of these people returned to Uganda. Some became Museveni's closest confidants and advisors. One of these, Grace Ibingira, had been in exile in New York, but remained deeply concerned with issues of human rights, and became instrumental in the formulation of government policy upon his return. Another, John Nagenda, returned from exile in the UK with the idea of a human rights commission.⁴ These two men appear to have been the main Ugandan "policy entrepreneurs," although Museveni's acceptance of their plan was aided in part by his close relationship with Roger P. Winter, Director of the U.S. Committee for Refugees in Washington, who spent a considerable amount of time with the members of the NRM even before their accession to power in 1986.

The legislation establishing the Commission of Inquiry into Violations of Human Rights (CIVHR) was tabled in Parliament in May, 1986 (see Appendix B), three months

³ Yoweri Kaguta Museveni, *Sowing the Mustard Seed* (London: Macmillan, 1997) 217.

⁴ John Nagenda, interview by author, 12 July 2001, Kampala, Uganda. John Nagenda was later appointed as one of the Commissioners of the CIVHR.

after the NRM had assumed office. A few weeks later, on 13 June, 1986, the Commission was inaugurated at a formal ceremony, presided over by then-Minister of Justice, Joseph Mulenga. In setting the Commission on its course, Mr. Mulenga stated:

It is the desire of Government that you shall carry out the inquiry and compile and submit your report as expeditiously as humanly possible. To that end, I hereby pledge full government support and assistance to the Commission and I call upon all members of the public who have information that is relevant to your inquiry to come forward and give to you much information and all necessary assistance that you may require. I wish you all the best in your endeavours in the task that lies ahead.⁵

For some at the time, Museveni's accession to power represented simply the next in a long line of short-lived regime changes. Museveni was viewed by many as no better than Amin or Obote: "When Museveni came in, first of all [it was] very mysterious. Between July 1985 and July 1986 when he took over there was this period of absolutely... [speaker's voice trails off] It was like anarchy."

The terms of the appointment of the Commission were such that the Commission was forbidden to look at issues which had occurred after January 1986, when Museveni and the NRM had taken power. In fact, in this period, many were still suffering abuses at the hands of the NRM as Museveni sought to strengthen his hold on power.⁶ Especially in the northern parts of Uganda, Museveni's forces engaged in widespread violence. And the Uganda Human Rights Commission (UHRC), when it was founded in 1996 as a direct result of the Commission's recommendations, was expressly forbidden to examine any issue that had taken place prior to its formation. The CIVHR was not allowed to examine

⁵ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights* (Kampala: UPPC, 1994) iii.

adequately many of the pertinent issues in Uganda at that point, many of which remained salient a decade or more later.⁷

Public Reaction

Many Ugandans had heard of the Commission through various media outlets, and reactions were mixed. Some Ugandans and many in the international community were already calling for substantial reforms. From the relatively small community of women's and human rights supporters came criticism that the government had not included any women on the commission. The government responded by adding Joan Kakwenzire, an historian and women's advocate, to the panel of commissioners. Others, including those who had been appointed to the commission, also voiced concerns to do with a Commission of Inquiry which had been set up under Idi Amin, and another established by Milton Obote, the results of which were never made public. Here, too, the government sought to reassure the commissioners and the public at large that this Commission would be taken seriously. The Report states that "ordinary Ugandans welcomed the Inquiry with enthusiasm, regarding it as an indication of the Government's commitment to upholding human rights, and rule of law."⁸

The Commission of Inquiry into Violations of Human Rights was Museveni's attempt to deal with the legacy of nearly twenty-five years of mass atrocity. Certainly, many of those appointed to share in the task of carrying out the Commission's work were

⁶ M. Louise Pirouet, "Human rights issues in Museveni's Uganda," in *Changing Uganda*, eds. Hölger Bernt Hansen and Michael Twaddle (Athens, Ohio: Ohio University Press, 1991) 197-209.

⁷ *Ibid.*, 202.

confirmed patriotic human rights supporters who were honoured to have been asked to participate; others were selected because of their strong knowledge of the law. In every case, their appointments were made because of a specified set of knowledge that each had, in part because they were in some ways familiar with the violence that had been perpetrated against various ethnic groups because of their own regional affiliations. The Chair, Justice Oder, a Langi whose community had suffered under Amin, was taken from the Supreme Court. Commissioner Edward Khiddu-Makubuya, from Luweero District where significant abuses had also occurred, was a doctoral graduate of Yale Law School and a Professor of Law at Makerere University. Some of the commissioners had no previous connection either to Museveni or to his National Resistance Movement. John Kawanga, a Baganda lawyer, was appointed to the Commission. Museveni speaks of John Kawanga as having been a school friend,⁹ but today Kawanga is a committed member of the Democratic Party, and campaigns actively against many of the President's ideas.¹⁰ Commissioner Joan Kakwenzire, a professor of history, had come to Uganda as an orphaned Tutsi refugee in the early 1960s. Others knew Museveni personally, and had fought alongside him in the NRA struggle. John Nagenda is a Baganda author and poet. Jack Luyombya is a Baganda surgeon who had supported Museveni since his days in the bush.

Altogether, there were six: a lawyer, a professor of law, a judge, a professor of history and sometime women's advocate, a writer, and a medical doctor. Any casual

⁸ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights*, 15.

⁹ Museveni, *Sowing the Mustard Seed*, 28.

¹⁰ Matovu Twaha, "Kawanga returns Museveni fire," *The Monitor* (Kampala), 25 June 2001.

observer might rightfully have thought that this combination of personalities and years of experience would be enough to carry the Commission through to a successful conclusion. The rationale behind these political appointments was never fully explained, even to the Commissioners themselves. One Commissioner described it as follows:

I was not even consulted, and I protested! The minister who appointed me came to me and said, “You’ve been appointed to the Commission of Inquiry into Violations of Human Rights and here is the notice.” And I said “What? Without consultation?” I said I didn’t like it. And then I said okay, eventually. I said “Why me?” Maybe because bad things had been done in my region. I think they had reasons. But anyway I accepted and started work. I don’t know the real reason behind it, because I was never consulted.”

The reaction of Ugandans to the work of the Commission was mostly positive. In spite of this, the CIVHR seems to have failed in many respects. This failure can be ascribed to the manner in which the Commission was received in different quarters. The reaction was by no means uniform. Several of the Commissioners I interviewed suggested that Ugandans wanted nothing more than to return in safety to their homes. Their purpose in coming forward to the Commission was not to seek to forgive or to commemorate a fallen family member, although these could well have been by-products. Indeed, the Commissioners revealed that many Ugandans came forward because they thought that they would be compensated for their losses, which was not the case.

The poor and down-trodden were among the first to come forward. The Report is filled with stories of peasant cultivators, plantation workers and domestic workers. Their testimony is both descriptive and powerful:

This man, the guard, he had all sorts of equipments. [*sic*] He had two hammers, one of five kilos, another one was two and a half. He had a panga [a Ugandan word meaning a large scythe-like knife] which was sharpened on both sides, he showed us all these. He had two iron bars. ...He had a big gun and a pistol, he had this

bayonet, he had all things. This man, we were told inside, had beaten Nsubuga. The man had beaten all his ankles, Nsubuga could not stand up at all because they used to call it removing the fuse. I do not know what fuse. They had beaten all his ankles [and] here in the knees, I understand there is some liquid inside the knee [*sic*] – this one had gone out. ... And that other gentleman ...actually had a very big wound on the head ... You could see the maggots coming out of their bodies. Stinking, but again we were also thrown to stay with these people; stinking, they were actually rotten...¹¹

These people believed strongly enough in the system that they entrusted their stories and facts to the Commission. Evidence also suggests, as did many of the commissioners, that these people also believed that they might be in some way rewarded or compensated both for their participation and for the information they sought to provide, but no compensation was forthcoming. The poor were actually among the biggest proponents of the work of the Commission.

The Report notes that “ordinary people always responded enthusiastically while the elites were always hesitant to come forward.”¹² This sentiment was echoed over and over again in the recollections of the various commissioners:

Of course access was quite difficult. Some people would come to us, we would go to them. The peasants welcomed the opportunity to talk to us and it was moving when you talked to them. I think the sort of sophisticated people didn't come to us. Maybe they thought nothing would come out of it, maybe they were too busy, but what do you do.

Participation in the process was also suspect, inasmuch as elites hesitated to come forward and to participate in the exercise at all. Many of their stories appear in the Report, in part because of the startling abuse of their positions of authority. One former minister under Obote II, Mayanja Nkangi, for example, testified to all types of human rights abuses

¹¹ *Ibid.*, 78.

¹² *Ibid.*, 17.

against the Baganda, one of the largest ethnic groups in Uganda.¹³ One wonders whether or not elites simply avoided appearing before the Commission if at all possible because they were somehow complicit in the various crimes committed from 1962 onward.

Government Support

Museveni was hasty in appointing the Commission. Its mandate was extremely broad and vague. It included the order to investigate nearly every type of human rights abuse imaginable, all of which had been committed between the time of Independence in 1962 and the beginning of Museveni's term in office. The legislation listed nine wide-ranging categories of violations for consideration, along with a clause demanding that the Commissioners consider "any other matter connected with or incidental to the matters" already mentioned.¹⁴ These included investigation of mass murder; arbitrary arrest, detention and imprisonment; unfair trials; torture; crimes of law enforcement agents; the displacement, expulsion or disappearance of Ugandans; discriminatory treatment; the denial of any human right; the protection of anyone who had perpetrated such crimes; and anything else the Commission deemed necessary. Otherwise, the scope, size and subject matter for consideration were largely undetermined, as was the manner in which such abuses ought to be examined. Neither the fact that these abuses totaled well into the hundreds of thousands, nor that the scope of criminal activity had not been specified, was addressed. Instead, the fledgling group of Commissioners was left to sort out such issues. As so often happens in the establishment of truth commissions, this sweeping mandate

¹³ Ibid., 513.

proved difficult to manage.¹⁵ The CIVHR consulted with an international truth commission expert, Dr. José Zalaquett¹⁶ part-way through its mandate. The CIVHR's unwieldy nature, however, was evident from the very start.

But what was Museveni's real motive in establishing such a commission? In his inaugural speech, Mulenga gave the official version:

During the four months that the NRM Government has been in power, the Ugandan has regained his human dignity. We can now walk with our heads up. We are proud to have a leadership that truly recognizes and genuinely proclaims the right to life, liberty, security of the person and to the protection of the law, [*sic*] are the basis of the very existence of a nation. The NRM Government proclaims that these rights cannot be subject to negotiations between leaders and the people they lead. Any Government which is incapable of providing the appropriate political environment for the enjoyment of these rights by its people, has no justification for its continued existence in power. It is because of this principle that the sons and daughters of this nation with unusual determination and courage joined the National Resistance Army in a people [*sic*] struggle that culminated in the overthrow of repressive and fascist regimes of the resent [*sic*] past in order to restore those rights.¹⁷

One of the commissioners explained his understanding of the appointment of the Commission in these terms:

When this government came into power it really wanted to address that problem and in essence that revolution took place. And when they came to power that is why they set up this Commission, to make sure it was reported, and we advised how to prevent it for the future.

¹⁴ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights*, 3-4.

¹⁵ The experience of Guatemala in this regard is similar. See Christian Tomuschat, "Clarification Commission in Guatemala," *Human Rights Quarterly* 23.2 (2001): 239-240.

¹⁶ José Zalaquett is a professor of Ethics, Government, and Human Rights at the University of Chile in Santiago. He was a member of the Chilean National Truth and Reconciliation Commission, and was formerly Chairman of Amnesty International.

¹⁷ The Republic of Uganda, "Appendix I," *The Report of the Commission of Inquiry into Violations of Human Rights*, ii.

Overall Policy

In reality, however, in order to obtain support from Ugandans during its first couple of years in power, the NRM kept announcing other new and innovative programs aimed at changing its image from a rag-tag bush army to that of honoured politicians. Early in his first term, for example, Museveni had pledged to establish a system of democracy.¹⁸ The outward appearance of propriety, and of good-hearted intent was enough for the moment. Certainly, Ugandans and international observers were desperate to find a leader for Uganda who would last longer than one term in office, and who would comport himself more legitimately than had his predecessors. Under the circumstances, Museveni seemed like the best possible choice. A series of constitutional reforms and disputed electoral victories kept him in power nearly twenty years later.

In order to appease the world community, Museveni needed to take some steps in the direction of securing peace and guaranteeing human rights to the citizens of Uganda. In his Ten-Point Programme, Museveni had pledged the “elimination of corruption and misuse of power.”¹⁹ But where to start? The corruption of the police was legendary, and the exploits of previous regimes had caused people to fear for their lives on an almost daily basis for nearly twenty-five years. Many had fled savage beatings and death threats by the government officials of Uganda for the relative safety of Kenya and other East African countries. Others who could afford to travel had gone into exile in countries around the world. The Asian population of Uganda was expelled under Idi Amin in 1972. Those

¹⁸ Ofcansky, *Uganda: Tarnished Pearl of Africa*, 59.

¹⁹ Museveni, *Sowing the Mustard Seed*, 217.

Ugandans who remained behind faced the memory of the horrible acts they had seen carried out, or in which they, themselves, had participated.

Beginning in 1986, Museveni set about reforming Uganda drawing primarily on his own ideas. Ideas such as African unity and nationalism had dominated his political views as a student at Dar es Salam University.²⁰ By 2000, his views were more liberal.²¹ In recounting the details of the platform he pursued in 1986, Museveni himself lists, among others, the building of a new national army, and putting down the insurrection in the north as perhaps his most important priorities.²² Certainly, his eye was not on coming to terms with the horrors of Uganda's recent past. In fact, nowhere in his memoirs is there the suggestion of a truth commission. Yet one was appointed in 1986.

In implementing the Commission, Museveni in effect "circled the wagons" – some of the Commissioners had been with the NRM in the bush, and were now seen as being handsomely rewarded for their past efforts. In the summer of 2001, Commissioner Jack Luyombya was awarded a medal on Heroes' Day for his long service to Museveni and the NRM dating from the 1970s and the time he spent in the bush. Commissioner John Nagenda, who had been at Dar es Salaam University with Museveni, was similarly honoured.²³ The majority of the other Commissioners were chosen from among the groups which had been most persecuted during the period in question. Today, all of the

²⁰ Ibid., 23-33.

²¹ Jim Ocitti, *Political Evolution and Democratic Practice in Uganda 1952-1996* (Queenston, Ontario: The Edwin Mellen Press, 2000) 347.

²² Ibid., 174-180.

²³ Anthony Mugeere, "Awards for Nalubaale, Damu, Luwero Triangle heroes," *The New Vision*, 12 July 2001, 24-25.

Commissioners still enjoy positions in public life, a direct result of their very public work for the Commission.

He also became friendly with international aid agencies such as the World Bank and International Monetary Fund (IMF), and served for two years as the Chairman of the Organization of African Unity (OAU).²⁴ Announcing the truth commission appeared to solve many of his problems at once: he could convince Ugandans that he cared about the abuses they had suffered, and he could prove to the international community his efforts at human rights reforms. Once the CIVHR was announced, however, his focus on righting past wrongs began to dissipate.

With the presence of all of these other variables, then, how could the Commission have hoped to succeed? “My overall impression was that the government was not really committed to do whatever it took to secure that the Commission functioned properly and within a reasonable period of time,” said José Zalaquett, the international expert who consulted with officials from the Commission in mid-1987.²⁵ These sentiments are echoed by those in the donor community. “The NRM never had any intention to follow up on 1986 [the evidence revealed before the CIVHR].”

The Commission of Inquiry into Violations of Human Rights had every hope of succeeding. Other commissions and truth collecting efforts in other countries, after all, had made do with much less. One thinks especially of the secretive nature of the Brazilian truth-collecting process and of the stunning results released in its widely-publicized report, “Nunca Mais” (Never Again). The Brazilian truth-seeking exercise consisted of

²⁴ Ibid., 58.

clandestine (and then-illegal) document-gathering by members of the clergy, without benefit of state sanction or funding, while the regime in question remained in power.²⁶ The CIVHR even benefited from the experience of an international consultant, José Zalaquett, whose Argentine Commission initially set the parameters of truth-seeking success. Among the commissioners was a collective spirit of honour, of urgency, and of a need to prevent and protect against future human rights abuses.

The Commission itself was launched with a comprehensive system of procedures and policies that were put in place to facilitate the collection of as much information as possible. The work of the Commission was carried out in nearly all 33 Districts of Uganda. In each place in which the Commission was to hear evidence, it was preceded by a Team of Investigators whose job was to organize witnesses to complete questionnaires about the abuses they wished to report. The Investigations Team compiled evidence, carried out further investigation, recorded statements, and assisted respondents in completing the questionnaires. On a case by case basis, claims with some basis for action were referred onward for investigation by the Criminal Investigation Department (CID), Director of Public Prosecutions (DPP), and by the Commission itself. This necessitated the opening of three separate files.

From these, a small number of representative cases were selected by the Legal Counsel to be heard in public hearings before the Commission. After this process was completed, an Administrative Team made arrangements for the public hearings, each of

²⁵ Dr. José Zalaquett, email interview by author, 28 Sep. 2002.

²⁶ See Lawrence Weschler, *A Miracle, A Universe: Settling Accounts with Torturers* (New York: Pantheon Books, 1990).

which often lasted more than a week, to begin coordinating and negotiating everything from a suitable, centrally-located meeting place to the provision of electric power, where it was available. The public hearings process was often difficult for the audience and especially hard for the witnesses, as painful memories were recollected aloud. The commissioners, too, found the testimony extremely affecting:

It was very moving being on the commission. I can remember a man who came to see us, had a terrible strange tale about how he had been tortured in various ways. His testicles were tied, and he was hit so of course his testicles came out and then he was with 10 other people who were being buried alive. They were buried 2 by 2 and because he was the odd number he survived.

Another recalled:

Sometimes I would even be crying. Yes, and I even felt sick. I did fall sick, actually. Sometimes I would react in a strange way. I remember one time we had come and somebody was giving really horrible evidence of how they were made to bite a friend's nose [off] and chew it. I just felt so sick I had to get out and throw up.

Evidently, that same testimony made quite an impact on some of the other commissioners as well, because another commissioner reported the following reaction:

We saw a couple of kids who looked odd in the distance. They didn't have any noses. They had had to face one another and were told, "you bite his nose and you bite his," that kind of thing. It was terrible.

The testimony of witnesses was almost always made in public, and was duly recorded by the commission, always in writing, often on audio-tapes, and sometimes on video-tape. These records were later transcribed.

The Government of Uganda, for example, seemed to explicitly support the Commission, but at the same time, pursued a different series of goals and objectives, that, in the end, provided none of the things promised initially. In Uganda in 1986, Museveni's

government was simply seen as the next in a series of military coups, a military government fighting to hold on to what legitimacy it could. His statements in favour of democracy, therefore, combined with his progressive stance on dealing with Uganda's recent past, were seen to be a nice bit of window-dressing. As Museveni's initial term in office wore on, it began to seem that that he had no genuine intention of supporting the truth commission in any real way. After several months in power, Museveni and the NRM chose to focus on strengthening Uganda's economy, and on rebuilding the military and police force in their quest for "the rule of law."²⁷ In doing so, they sometimes sacrificed human rights for the greater good of Museveni's own agenda.²⁸ In 2003, Museveni continued to pursue what he claimed was a "democratic government that relies on consensus rather than force... [yet he had] postponed elections... and banned political parties."²⁹

At the same time as the appointment of the truth commission, Museveni was appointing Commissions in many other fields. In 1986, the Commission of Inquiry into Local Government was established, followed in 1988, by the Interim Electoral Commission and the Constitutional Commission. Ugandans were overwhelmed with commissions since 1986 to the point where, when I asked anyone about the Commission of Inquiry into Violations of Human Rights, I would invariably be asked, "Which one?"

The Amnesty Commission, however, presented the largest threat to the CIVHR (1986-1994) of any of the commissions appointed. The Amnesty Commission was

²⁷ Museveni, *Sowing the Mustard Seed*, 192-193.

²⁸ Ofcansky, *Uganda: Tarnished Pearl of Africa*, 155.

²⁹ *Ibid.*, 60.

established in 2001, although it had been discussed as early as the late 1980s. The Amnesty Act of 2000, provided for an “Amnesty for Ugandans involved in acts of a war-like nature in various parts of the country and for other connected purposes.”³⁰ The Amnesty Commission’s mandate was “to monitor programmes of demobilization, reintegration and resettlement.”³¹ Specifically, it was designed to deal with the return of rebels to their respective communities. Many of these rebels, among them kidnapped child soldiers, had been fighting with the LRA since 1986. A broader discussion of the conflict in the north is outlined in chapter three.

The earliest fighting, then, was taking place as the Ugandan truth commission was being formed. Yet because its mandate limited the scope of its investigation of any crimes beyond January 1986, it was strictly prohibited from dealing with the LRA cases. Similarly, by 2001, the NRM could not simply “reactivate” the CIVHR to deal with these abuses, because it was temporally limited from doing so by the original mandate; once the truth commission had finished its work, as a temporary body, it could not simply be reinstated. The idea of a broad-ranging amnesty, however, appealed to many Ugandans. One Commissioner reported that when the Amnesty Commission was first discussed, it began to erode the vigour of the CIVHR in suggesting that the work of the CIVHR was becoming less important, and that an amnesty should be imposed to free Ugandans from any responsibility for events of the past. Such thinking essentially challenged the supposed purpose for the Commission of Inquiry, to determine the truth about past events.

³⁰ The Republic of Uganda, *The Amnesty Act, 2000*, Preamble I.2, 1.

³¹ *Ibid.*, III.7, 3.

Unconditional amnesty necessarily negates the need to dredge up the past, and instead smoothes it over, never again to be discussed.³²

Concurrently with the CIVHR, the Government also appointed a Constitutional Commission in 1991. This directly coincided with the CIVHR, which continued until 1994. For four years, the Constitutional Commission held public hearings and consultations as to what would become the new constitution. The CIVHR was asked to contribute a proposal to the Constitutional Commission. In their submission, the CIVHR Commissioners argued strongly for the enumeration of human rights in the new Constitution, and advocated the full spectrum of civil, political, social, economic and cultural rights, as well as the creation of a permanent human rights commission. This submission obviously had an effect on the constitutional process, for the Uganda Human Rights Commission was established under the 1995 Constitution as a direct result. In fact, parts of the 1995 Constitution read almost as though they were taken straight from the CIVHR's proposal.³³ This is one of the few successes to emanate from the CIVHR.

Opposition

Although Museveni at least paid lip service to these important ideas of human rights and of making a record of the events of the past, the Ministry of Justice was to have had an oversight role with respect to the Commission. Minister of Justice Mulenga, who appointed the Commission in 1986, promised that the government would not bury its

³² By 2002, the Amnesty Commission had extended amnesty to 4,714 rebels. It had also requested and received an additional six months of amnesty-granting. See U.S. Department of State, "Uganda Report on

findings.³⁴ Similarly, the Solicitors General and Attorneys General who served during that period shouldered some responsibility with regard to its completion. The Report goes so far as to thank these individuals and agencies for their support.³⁵ Yet a government official reported that officials serving with the Ministry of Justice in 2001 saw very little relevance in the CIVHR, and were, instead, anxious to focus on new reforms. Indeed, this fits with Museveni's plan to rebuild Uganda, and to dwell only on the future.

Even those arms of the Commission that were to have been supported by the Ministry of Justice, and the Solicitors and Attorneys General (the Criminal Investigations Department and the Director of Public Prosecutions) managed to thwart the work of the Commission with their relative inaction. Their roles were to take the evidence gathered in preliminary investigations, and to prepare cases for trial, respectively. Yet very few cases were investigated and a smaller number were ever prosecuted.³⁶ One international development agency staffer told me that agencies like hers funded these ministries adequately, and continue to do so. Her agency's fiscal reports support this claim. The reason for their inaction, then, was because they chose not to become involved.

Others, too, appeared to want to thwart the process, although in a less overt manner. According to the Report:

A serious problem was the mysterious loss of some evidence already gathered by the Commission, especially photographic exhibits. This problem, it is suspected, may have arisen from two sources:

Human Rights Practices for 2002" 31 Mar. 2003; [report on-line];
www.state.gov/g/drl/rls/hrrpt/2002/18232.htm; internet; accessed 24 May 2003.

³³ *Uganda Constitution (1995)*, articles 20-49.

³⁴ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights*, 15, Sec 2.8 (I).

³⁵ *Ibid.*, 17, Sec 2.9 (I).

³⁶ *Ibid.*, 18, Sec 2.9 (III).

- (i) Negligent or poor administrative handling of these exhibits by the legal Counsel and the investigation team and the “many” Secretaries to the Commission who were responsible for the records of the Commission proceedings, or,
- (ii) External interference.³⁷

One of the commissioners, however, was more pessimistic about the whereabouts of the missing evidence:

At one point, somebody destroyed the [Report]. So during the inquiry you find that in some cases the documents disappear. You can write the report and you know you made inquiries about that and the record is no longer there, but it is in your memory. So during the Commission some documents disappeared. I think that they disappeared deliberately. There were many Commission staff and somebody could come and say I want that document and pay you so much. It happened with the police. There was a criminal investigation. So that sort of thing happened, and we saw that there was a lot of ignorance.

Museveni faced opposition elsewhere as well. In the northern regions of Uganda, participation was extremely difficult. The rebel activity of Lakwena’s Holy Spirit Movement (HSM) and Kony’s Lord’s Resistance Army made it next to impossible to travel to areas such as Kitgum in the heart of the rebel-held territory. Museveni’s troops simply could not make any headway among the Acholi in northern areas, because people blamed Museveni for failing to keep his promises of peace and security. The Commission spent only the better part of four days in this area, and even then nearly five years after the CIVHR had begun its public hearings.³⁸ Political opinion in the area was dead set against Museveni, and by extension, the Commissions created by him.

The lack of political will in support of the Commission, then, is a central reason for its lack of success. The attitudes of the NRM and Museveni himself toward the Commission seem to have been a clever attempt to gain the support of those both inside

³⁷ Ibid., 18.

Uganda and around the world who would be impressed by its appointment. This is nowhere clearer than in the funding of the new Uganda Human Rights Commission by international aid agencies and governments, contrasted with Museveni's willingness to sacrifice human rights in order to achieve his goals.³⁹ Similarly, the virtual absence of the Ministry of Justice and other Ministers from the Commission, even in times of desperation, reveal the extremely low levels of support the Commission actually enjoyed.

Haiti

Conditions of Establishment

The government of former Catholic priest Jean-Bertrand Aristide, which began again in 1994 after his having been popularly elected, exiled, and returned to power, marked his second attempt to govern Haiti. Aristide resigned his priesthood in February of 1994, and was expelled from the Salesian Order of the Roman Catholic Church for "incitement to hate and violence (and) the exaltation of class struggle"⁴⁰ not long after. As discussed in chapter four, Aristide had been forced into exile soon after he acceded to power in 1990-1991. In 1994, although he had the somewhat ambiguous support of the international community, he was forced into a power-sharing agreement with the military—the very group that had forced him from office three years before, and had perpetrated a series of crimes against the people of Haiti in his absence.

³⁸ Ibid., V, Table Three: "Itinerary of the Commission 1986-1991."

³⁹ Thomas P. Ofcansky, *Uganda: Tarnished Pearl of Africa* (Boulder: Westview, 1996) 155.

⁴⁰ "Newsmaker Headlines: Jean-Bertrand Aristide," [article on-line]; available from <http://www.cnn.com/resources/newsmakers/world/namerica/aristide.html>; internet; accessed 29 June 2003.

While in exile, Aristide had written determinedly about his ideas for effecting real and lasting change in Haiti.⁴¹ In these documents, Aristide put forward theoretical suppositions and practical suggestions as to how Haitians' lives could be improved. Much of his writing and his "radical and deeply held beliefs"⁴² were based upon the teachings of a strand of Latin American liberation theology based loosely upon the Roman Catholic faith which emphasizes compassion and the teachings of Christ in an attempt to raise the political consciousness of the poor in the struggle against oppressors. In fact, Aristide's ideas found their largest currency among the poorest parts of Haitian society: jobless youth, peasants, and a very few members of the Haitian bourgeoisie, along with the community of Haitians in exile.⁴³ His 1990 campaign slogan encompassed many of these ideas, and appealed to a wide audience: "Justice, Participation, and Transparency."⁴⁴

In fact, it was the Haitian diaspora community abroad which acted as policy entrepreneurs for the idea of establishing a truth commission in Haiti. Throughout the growing conflict of the Duvalier era, as discussed in chapter seven, many of the country's intellectuals, including much of the legal community, had fled.⁴⁵ The diaspora community, in fact, was fundamental in shaping the policies and conditions under which Aristide could

⁴¹ See, for example, Jean-Bertrand Aristide, *Dignity*, 2nd ed. (Charlottesville, VA: The Rector and Visitors of the University of Virginia, 1996) and Idem, *Peace, Justice and Power* (Washington, D.C.: National Press Books, 1995), both of which were written during Aristide's time in exile.

⁴² Amy Wilentz, *The Rainy Season* (New York: Simon and Schuster, 1984) 221.

⁴³ *Ibid.*, 111-113.

⁴⁴ Catholic Institute for International Relations, *Haiti: Building Democracy* (London: CIIR, 1996) 3.

⁴⁵ *Ibid.*, 3.

return to power.⁴⁶ These diaspora communities were scattered around North America and the Caribbean, in New York, Boston, Santo Domingo, Miami and Montreal.

Public Reaction

The group located in Montreal was among the most influential of all the Haitian groups outside of Haiti. Working with support and funding from the International Centre for Human Rights and Democratic Development (ICHRDD), an agency funded by the Canadian government, at that time under the leadership of Ed Broadbent, former national leader of the New Democratic Party in Canada, the ICHRDD encouraged the human rights process initiated by the Montreal Haitians. Throughout 1993, and leading up to the Governors' Island Accord, as outlined in chapter four, in July of that year, the diaspora community worked increasingly to return Aristide to power.⁴⁷

In October 1994, the group held a popular tribunal in Montreal, called "The International Tribunal on Rights in Haiti,"⁴⁸ to mobilize public opinion surrounding the political issues, by reason of which Aristide remained in exile. The group considered the objectives, mandate, jurisdiction, powers, role of civil society, composition, establishing and financing its activities, duration and the final report.⁴⁹ The results of this effort, outlined in broad strokes in "*Proposition pour une Commission de la Vérité en Haïti*:"

⁴⁶ See Michel S. Laguerre, "The Role of the Diaspora in Haitian Politics," in *Haiti Renewed: Political and Economic Prospects* (Cambridge, MA: The World Peace Foundation, 1997) 170-177.

⁴⁷ John Ballard, *Upholding Democracy: The U.S. Military Campaign in Haiti, 1994-1997* (Westport, CT: Praeger, 1998) 48.

⁴⁸ *Proposition pour une Commission de la Vérité en Haïti: Éléments constitutifs* (Montreal: ICHRDD, 1994) 1-59.

⁴⁹ *Ibid.*, i.

Éléments constitutifs,” constituted the framework for what would become the Haitian truth commission.

Many of those who eventually became involved in the Haitian CNVJ were involved in this initial attempt at truth commission-style investigation in Montreal. Indeed, the Haitian diaspora community had enormous influence on the commissioners who were finally selected. Two of the commissioners, exiled Haitians living in Montreal, Ertha Elysée and René Magloire, the executive secretary, Jean-Claude Icart, another exiled Haitian in Montreal, and a consultant on judicial reform, Juanita Westmoreland-Traoré, were, in fact, from Montreal. Ed Broadbent, ICHRDD head, played a special role as international advisor to the commission. At the head of the commission was a Haitian woman and sociologist named Françoise Boucard. One other Haitian commissioner, Freud Jean, was selected as a representative of the Haitian NGO community.

Other international government organizations (IGOs) also responded to the burgeoning program of democracy and justice in Haiti, and contributed to it. The Organization of American States was among the leaders in this regard. Bertha Santoscoy, then the Haiti Director at the Inter-American Commission on Human Rights (IACHR), under the auspices of the OAS, was appointed as Director of the Investigations Unit. Two members of the IACHR were appointed as commissioners: Patrick Robinson and Oliver Jackman. Various interns from the OAS were seconded to work as part of the international staff component of the commission. Bacre Waly Ndiaye, a Senegalese lawyer, was seconded from his work as UN Special Rapporteur on Extrajudicial Executions by MICIVIH, the International Civilian Mission in Haiti, run jointly by the United Nations

and OAS. In addition, the American Association for the Advancement of Science (AAAS) provided a statistician with experience in other truth commissions, Patrick Ball, to handle the quantitative aspects of the commission's work. An international team of forensic anthropologists, two from Guatemala, two from Argentina, and one American, was also called in to assist in finding proof to support the suppositions made during the course of data collection.

In the end, the commission was decreed on 28 March 1995, five months after Aristide returned to office. The truth commission was established because, as Aristide stated, "Knowledge of the truth and the official recognition of the responsibilities of the state for the harm it inflicted will rehabilitate the dignity of victims in public opinion."⁵⁰ Indeed, many of the elements that had been proposed in Montreal were incorporated wholesale into the formation of the CNVJ.⁵¹

Aristide himself looked at the *Commission nationale de vérité et de justice* as an opportunity for healing: "After his return to power, Aristide stressed the importance of reconciliation, the need for his country to bind the wounds and move forward together to build a democracy."⁵² In the articles laying out the shape the Commission was to take, Aristide stated: "Reconciliation decreed by the President can never become reality unless the truth is told about those crimes committed, [o]nly the complete and public truth will

⁵⁰ The Republic of Haiti, *Rapport de la Commission Nationale de Vérité et de Justice* (Port-au-Prince: Government of Haiti, 1995) Annexe I, 355.

⁵¹ See, for example, *Proposition pour une Commission de la Vérité en Haïti*, 11-18.

⁵² Robert Pastor, "A Popular Democratic Revolution in a Predemocratic Society: The Case of Haiti," in *Haiti Renewed: Political and Economic Responses* (Cambridge, MA: The World Peace Foundation, 1997) 122.

satisfy the elementary requirements of the principles of justice and create the conditions necessary for a real and effective transition and for national reconciliation.”⁵³

The commissioners, many of whom had been involved in the Montreal process, perceived the purpose of forming a Commission differently than Aristide:

Since the 1980s, it is becoming necessary for the people of Haiti to crystallize their claims for justice. The official statements, moreover, of a decayed judicial system, ossified and inefficient, and the cry of the people are nothing other than a thirst for another new and efficient justice within the framework of the laws of the land.⁵⁴

Overall Policy

Certainly, Aristide’s desire for democracy through reconciliation was supported by the international community and the international NGO community. Popular opinion inside Haiti at the time was also leaning toward punitive trials as a means of dealing with past crimes. At one point, a group of women who had been raped, appeared before a panel of the IACHR, asking for their perpetrators to be brought to trial. The IACHR, like most of the international agencies involved, pushed instead for the creation of a truth commission, citing speed and efficiency, as well as pervasive disorder within the judicial system as reasons for their choice.

Others, however, discounted Aristide’s ability to support any type of reconciliation and saw the truth commission as merely an opportunity to assign accountability for human rights crimes, modeled as it was on the former truth commissions in El Salvador, Chile and

⁵³ The Republic of Haiti, *Rapport de la Commission Nationale de Vérité et de Justice*, Annexe I, 354.

⁵⁴ Freud Jean, “Entrevue: HIL a Rencontré Freud Jean, membre de la Commission Nationale de Vérité et Justice,” *Information Libre* X.100 (1997): 11. Quotation translated by author.

Argentina.⁵⁵ In all three cases, the truth commissions had offered an open-and-shut introspective on past abuses, and reconciled their respective societies. Others believed that the truth commission would seek a path between the two: that the truth commission was intended to balance the need for justice with the need for reconciliation.⁵⁶ Still others, like a respondent who was in Haiti for several years as part of an international police force said, bluntly, of Aristide: “I don’t think he has a sincere interest.” An international consultant who had been present throughout the Montreal process began to sense that Aristide was distancing himself from the CNVJ.

But was there ever hope that the truth commission could work? In part, such a question can be answered only in the definition or redefinition of “success.” If the objectives of the truth commission were laid out simply to meet a judicial function or a requirement for speed and efficiency, as posited above, then the CNVJ, operating as it was under Aristide’s return to power and the beginnings of a process of “normalization,” ought to have been able to more than meet the expectations it was given, even accounting for deficient resources and corruption. Certainly, the Commission placed an enormous amount of emphasis on aspects of juridical reform. Even then, however, one official at ICHRDD, in reflecting on the work of the CNVJ, noted that the Commission “[didn’t] seek to address the structural and systematic nature of inequity and imbalance.”

If the mandate had been defined in higher theoretical terms to include the need to achieve some form of reconciliation, the potential outcome would have been decidedly different. An IGO staffer on loan to the CNVJ felt that “the perceived need for

⁵⁵ Catholic Institute for International Relations, *Haiti: Building Democracies*, 22.

enlightenment was understood within the mandate.” Although all of the commissioners said that they had hoped simply to do their best, they were very conscious of the limitations they faced. The dangerous political climate meant that public hearings could not be held. “Reconciliation,” one said, “is simply not possible unless one says ‘I did you wrong’ – and perpetrators were never forced to appear.” Said another:

Commissions can't do both things, they don't have the resources and they don't have the skill factors. What you are asking people to do is sort of therapy social work on one side versus social science, legal research on the other, completely different skill sets. The one that gets mixed together like in South Africa it doesn't work on either score. Doesn't work either way.

As Françoise Boucard, the head of the Commission, stated, “The commission will expose crimes and make recommendations... but truth never replaces justice... [With only] truth, truth, truth you won't ever get where you have to get: a justice system with police to carry out inquiries, prosecute and sentence.”⁵⁷

Many noted that the conditions under which the Commission was forced to operate also acted as a deterrent. To be sure, nearly every respondent noted the issues of security which still confronted Haitian society. The army, which was supposed to have been dismantled by the time that the CNVJ commenced operations, was still able to exercise substantial power. Those who had already been demobilized were making noises of discontent directed at Lavalas, and at Aristide himself. As a result, people felt that security dangers still existed. “Many people were not enthusiastic because they had to be careful about security. People can be suspicious. Why would you expose yourself?” asked one

⁵⁶ Pastor, “A Popular Democratic Revolution,” 125.

⁵⁷ “Haiti: Justice and Impunity,” *Haiti Net* 3.18 (17 Jun. 1995), accessed 20 Oct. 2002; available from <http://www.hartford-hwp.com/archives/43a/092.html>; internet.

international consultant. As a result, the holding of public hearings, and for a long time legal proceedings, was simply not possible.

Even so, one commissioner believed whole-heartedly that the Commission could succeed, especially once the regime change had been effected and Aristide was back in power.

Haitian society was not at all the same society [as that encountered between 1991 and 1994, under Cédras]. The UN presence assured that. And many of the military were in exile. It was absolutely a new society because the victims could talk. I saw a willingness on the part of the authorities to recognize what had happened. It's true that in some regions small groups existed – fringe groups, poor people, people without. But they were there even before the coup d'état, probably already there under Duvalier. And they haven't yet embraced the future.

One Commissioner was so certain that the Commission could make a difference that when she was asked to participate, she did not hesitate to join, even though it meant forfeiting the years of doctoral study she had already completed while in exile.

The very structure of the Commission, in fact, was designed with success in mind. From the beginning, the framers of the truth commission had an international model in mind, as outlined in chapter three. Certainly, the appointment of national and international commissioners was meant to combat charges of bias that would inevitably have risen had only Haitians from the diaspora community been appointed. Their appointments certainly allowed each of the international agencies at least some measure of representation. The fact that each of the international commissioners had a clear and successful track record in a variety of legal fields relating to the Haitian situation only lent the Commission a greater degree of credibility. Indeed, one international NGO representative noted that Haitians appeared to have a special respect for those international commissioners and Commission

workers who were themselves black. Above all, the international presence as coordinated from Montreal was designed to tell Haitians, “We care about what you’ve gone through. We want to stop it. And we’ll work with you.”

The staff composition, too, was international in nature. Even the investigations teams comprised national and international staff, selected “so they could be more open.” They were sent out in pairs of one national and one international investigator to speak with victims and their families in the completion of the questionnaires which were filled out in each case. “The idea of mixing national and international staff was a good idea in theory,” reported one former investigator, “but hard to coordinate. And it contributed to a highly politicized environment, because each of us had different decision-making styles, different methodologies and different interviewing techniques.” In addition, the staff was paid by the Haitian government, which many criticized for not appearing to take any ownership of the process.

The Terms of Reference of the Commission provided strict guidelines (see Appendix C), meant to regulate its internal workings. The document laid out the internal power structure of the Commission, warned of the importance of discretion, outlined a consensus model of decision-making, discussed the participation of experts and expert organizations. The guidelines mandated that a register should be kept for complaints. It gave specific rules for the collection of testimony from people living in Haiti, and those who had fled to other countries, and the videotaping of such testimony. The terms of office also gave specific regulations dealing with legal aspects of the CNVJ’s work, including burden of proof. It also gave the Commission ideas regarding translation and

confidentiality.⁵⁸ Yet it allowed the commissioners a significant amount of leeway in establishing the modalities they thought best in constructing the Commission.

Initially, the Commission tried to use some methods of data collection which had been employed in the Salvadoran commission, but they simply did not work. One of the main difficulties they encountered was the fact that many of the country's Créole-speaking citizens were illiterate. They also discovered that ordinary Haitians were hesitant to reveal their problems to outsiders, and so the CNVJ determined to find a "made-in-Haiti" solution that excluded the meddling internationals. In the end, a questionnaire was developed to allow for the later questioning of victims, but which would also prove the responsibility of the state in terms of its role and goals in the atrocity under consideration.

Some, however, still contend that not enough focus was put into developing a "big picture" idea of what the truth commission was going to do. Rather, the Haitian Commission became engrossed in a deep examination of only a few cases. One staffer put it this way:

Often enough you don't know what the questions are when you start, and that is okay. It is kind of undergraduate research methods to think, identify your research question before you start, that is nonsense. You can't do that, you identify your research process as part of the research. The original question is part of the research. A series of questions is part of the research. By the end you should know what it is. I don't know at the end if we knew what the questions were in Haiti. And what I think is, we had a real lack of strategic thinking...

She continued:

I have a couple of reasons why I think that happened: First because Françoise [Boucard] was coordinator of the Commission, President of the Commission, she was also essentially the CEO. It was an inappropriate role for the same person to have. She spent all her time managing the commission. She had to do it because

⁵⁸ The Republic of Haiti, *Rapport de la Commission Nationale de Vérité et de Justice*, Annexe I, 380-386.

there was no one else for months. Now when Jean-Claude [Icart] finally came on board, months after the Commission started – he didn't come on board until the Commission was 60 percent over – when he came on board he took a lot of that off her shoulders but it was too late. She was already in the habit of running everything and no one ever stops being CEO. That is really hard, especially when there is so much administration to be dealt with. So she really didn't have space to do it.

The president of the Commission, however, had very little support from the rest of the commissioners.

The other commissioners, the Haitian commissioners were each focused, it seems to me on particular questions. Rene [Magloire] on his own legal issues, they kept him and Oliver [Jackman] and Patrick [Robinson] going around in circles on their legal questions. It doesn't get you to these big strategic visions.

One of the most successful aspects of the Haitian commission, at least from a social scientific perspective, was the creation of a quantitative database which allowed the Commission to generate detailed analyses of patterns of abuses which happened in specific geographic areas or to certain types of people. The result was that an analysis of crimes against humanity and other trends could be done electronically. This marked the first time that a truth commission had ever developed a bank of information to be used in the work of the truth commission and in the legal cases that were intended to follow. This database was created and maintained by Patrick Ball, a social scientist specializing in quantitative methods, from the AAAS. As a result, a cross-check had to be done of the interview forms, to clarify information, and the information analysts asked for hand-written notes to be attached to the forms, after which a double-verification of data was performed by the AAAS.

The terms of reference, discussed above, which stemmed back to the proposal generated by the Montreal group asked the Commission to focus on a few strategic cases

of abuse which had occurred. Many people were disturbed by this: “We were not able to assess responsibility for these cases, but [the cases] were published in the final report, which was the initial idea.” Even the Commissioners had trouble coming to an agreement on basic legal jurisprudence: “According to [Commissioner Oliver] Jackman, he thought, for example, that an individual case could be recognized as a crime against humanity. And [Commissioner Ndiaye Waly] Bacre, evidently, his position was the opposite.” In the end, a significant amount of evidence, including reports by forensic anthropologists, was prepared for a small number of extremely dramatic cases.

Government Support

As in Uganda, the Government of Haiti appeared to be in support of its truth commission. Aristide’s writings while in exile had shown that he was concerned about the need for Haiti to heal. The decree which established the Commission, and which came from the Office of the President, continued many of these same themes. It pledged the support of the Ministries of Justice, Interior, National Defence, Economy and Finance, and Coordination of Information.⁵⁹

Unlike Uganda, however, these Ministries actually seemed willing to assist the Commission. This could have been in part because the intellectual community was both small and inter-related. Françoise Boucard, for example, was married to the Minister of Health.⁶⁰ Others involved in the Commission also had ties to those in Aristide’s cabinet.

⁵⁹ Ibid., Annexe I, 355.

⁶⁰ “Truth Commission Buried,” *This Week in Haiti* 12.41 (4-10 Jan. 1995), accessed 20 Oct. 2002; available from <http://www.hartford-hwp.com/archives/43a/003.html>; internet.

The husband of Commissioner Ertha Elysée was at one point Minister of Justice-in-exile. And Commissioner René Magloire left his post at the CNVJ part-way through to take up the position of Minister of Justice. As one commissioner said, “everyone knows everyone in the intellectual community.”

Even so, the commissioners were conscious of their need to remain and to appear independent. This was especially true of the judiciary which was still seen as corrupt. This lack of independence imposed certain limitations on the truth commission. One commissioner, when asked about the ability of commissioners to remain objective, said, “There were those who were sociologists but there were those who were jurists, and they were conscious of limitations in terms of independence of the magistrature and at the same time, the need to convey, the need to reform.”

The government’s commitment to the process was evident in other ways as well. Some of the investigative work performed by the forensic anthropologists confirmed that death rates, which had doubled and even tripled under Cédras, had decreased sharply when Aristide took power. The government even provided the salaries for the thirty or more members of the investigative team, both national and international.

In other ways, however, Aristide’s government appeared not to support the work of the CNVJ. For example, when the Final Report was presented to Aristide, along with lists of details about past crimes and the names of perpetrators, he chose not to make these details public. There is now some speculation that the proof contained in these pages was not compelling enough to withstand the intensity of a courtroom proceeding, and for this reason, Aristide chose not to share the information with Haitians. The subsequent

government also failed to provide reparation to those Haitians who had come forward, even though that had been a part of the original idea. As one staffer recalled, “The government just never took ownership.”

In one way, however, the government did finally provide something that many of the Commissioners cited as very important: the Office of the Public Prosecutor. Over the course of the work of the truth commission, the Commission had repeatedly called for the creation of this office. The justice system within Haiti at that time was in a state of serious decay. The corrupt system of judges and police enforcement personnel that had been in place under the Cédras regime was still in place. This was a virtual guarantee that cases brought before a judicial panel, especially if the alleged crime had been committed in support of Aristide, would be treated harshly. This was particularly unsatisfactory to several of the commissioners: “I am a bit disappointed because we came, we risked our lives maybe, and nothing happened.” As a result, many of the acts of repression which had occurred under the previous regime went unpunished.

“The debut of justice should have a judiciary mechanism capable of bringing about some sort of justice,” said one commissioner. As it was, the military was still able to exert some influence on the judiciary, which meant that legal proceedings could not be undertaken. The establishment of the Public Prosecutor finally allowed some of the cases to be taken to court, and to be heard before an impartial officer of the court. In addition, a “follow-up office,” called the *Bureau des poursuites et suivi* (Proceedings and Follow-up Office) was established, although it was not announced until September 1997.⁶¹

⁶¹ “Haiti: Still Crying Out for Justice,” Amnesty International (1998): AMR 36/02/98.

Opposition

Opposition to Aristide and to his program of reform was visible in other ways as well. Over the course of the life of the truth commission, the commissioners received death threats. “Because many Cédras supporters were still around, we received threats, death threats and people calling and shooting the air so you can hear it through the phone, that they are shooting, this kind of thing.” Said another, “Prudence was the rule, I would have to say. There were many threats. Especially against Mme Boucard.” For this reason, the Commission was careful not to expose the international commissioners to any more danger than was absolutely necessary.

The international community disappointed the Commission and Aristide’s government on several occasions. During the period from 1991 to 1994, the U.S. government seized materials from the Front for the Advancement and Progress of Haiti (FRAPH), the Haitian military government’s principal paramilitary arm, and the Haitian military. They also classified as secret a series of documents implicating various U.S. agencies in various crimes during the same period. Despite numerous requests to the American government by the Commission and through diplomatic channels, the Haitian truth commission was never able to procure any of the more than 60,000 pages from the seizures and documents for which it asked.⁶²

To some extent, the international composition of the Commission also worked against it. Many of the staffers criticized the international officials for being absent

⁶² Human Right Watch, *Thirst for Justice: A Decade of Impunity in Haiti* 8.7 (Sep. 1996): 2-3. See also “Letter to Albert Gore,” The Republic of Haiti, *Rapport de la Commission Nationale de Vérité et de Justice*, Annexe I, 369.

throughout long periods of time during which the work of the Commission continued. They were seen as not being particularly involved in the hands-on running of the Commission. Many, including all of the international commissioners and the Director of Investigations, Bertha Santoscoy, were forced to spend a great deal of time in their regular jobs outside of Haiti. They, too, saw it as a great disadvantage. Commissioner Bacre described it this way: “All the internationals [commissioners], you have to be there almost every month or every two months for at least sixteen days. So it was almost half of our time at least ten days or fifteen if not more about two weeks. So I had to combine it with my work as a lawyer and my mandate as a UN official.”

Some ordinary Haitians were ambivalent about the truth commission process. One international staffer said, “many Haitians probably didn’t even know the Commission existed.” Others remarked on the degree to which Aristide’s government began to resemble the corrupt regimes of the past, since Aristide was no longer living among the people as he had prior to his exile in 1991.

The Commission was unable to do much to change this image for a variety of reasons. Chief among them was the production of a Final Report which had an extremely limited distribution, and no form of follow-up among the Haitian populace.

[The report was intended for] largely elites. But basically they are your audience. Anything that is not a sit com or a soap commercial your audience is already elite. In Haiti anything written down is already in a very narrow elite. Now is that a problem? Maybe it is, maybe it is not. My personal feeling is that commission reports are about shaking popular opinion. There are some kinds of taxi drivers in the streets, that sort of thing that you want to influence and those have to do with the big pictures, you talk to taxi drivers in the street in Guatemala and they will tell you that genocide was committed against the Mayan people by the army. How did that happen? The commission’s decision to print a short version of their report and put tens of thousands of copies of it on the street, those things contribute to it.

What they did is they changed the tone of what journalists can say and what journalists do say and that was what kind of happened.

This focus was something that the organizers had had in mind from the beginning. “We wanted to prepare a report for the government.” As a result, the entire second volume of the Report which contained the Appendices and long lists of victims’ names was completely inappropriate for public consumption. The first volume, although it could have been published in condensed form by the commission, was not. Instead, it was assumed that one of the civil society organizations in the country would rise to the challenge. None did, with the exception of a small report published in *Information Libre* in 1997.

The report itself is filled with facts and figures, and with numerous lists. It is primarily filled with what might be called “trend analysis.” It seems remarkably short on details of actual cases, unlike the Ugandan report, and contains no actual testimonies. Neither volume ever included the names of perpetrators. Yet when details of specific crimes are included, they are equally shocking. In the end, the report does describe some gruesome details, organized by category, and telling a whole story:

2 Oct. 1991, the residents of Gonaïves supported President Aristide and were against the military coup d’état that had taken place three days previously. According to the testimony, seven civilians were killed by members of the FADH [Armed Forces of Haiti] during that day. According to the Peace and Justice Commission, a Catholic organization, at least seven others were hurt by bullets and others severely bruised.

According to different sources, the seven people killed were: Frantz Moïse, Fred Chériska, Liné Joseph, Jean-Pierre Dazmé, Elysien Dazmé, Navoir Odéna and Yfalien Alcius, people about whom an amount of information can be obtained.

The bodies were returned to the families without autopsy. The CNVJ was able to retrieve from The Hospital of the Providence [*sic*] of Gonaïves the death certificates of Fred Chériska, de Liné Joseph, et de Elysien Dazmé. Doctors at the hospital cited the following as the cause of death for the three certificates: “death by certain events.” The bodies were buried by the families. Five are interred at the

Gonaïves cemetery from where the team had exhumed the bodies in September 1995.⁶³

Descriptions of other cases differ slightly:

Rocheny Ulysse reports the disappearance of her two brothers, Louis Ulysse and Rameau Ulysse since 22 April 1994. They were all together when there was a loud noise and the three tried to run away. Rocheny hid in a latrine, and the two others took a boat and left on the water where they were trapped by military fire. Each of the victims leaves children aged 3 to 7 years.⁶⁴

The completion of the Final Report was rushed. Aristide was unable, under the rules of the Constitution, to stay on for another term in 1996. Article 134-3 of the Haitian Constitution (1987) states that “The President of the Republic may not be re-elected. He may serve an additional term only after any interval of five (5) years.”⁶⁵ Because the Report had been commissioned by President Aristide, the commissioners felt that the report must be given to him before he left. This meant that the commission staff had little more than one month to put the report together before Aristide left Haiti and stepped down as president on 6 February 1996. “At best, the report was incomplete.”

In the end, the presumed success of the Commission was questioned by nearly everyone who was involved in the process. “Unfortunately,” said one commissioner, “it was a very, very disappointing term, we did a lot of work without any, almost no proof, very little.”

The commission wasn't really a success. It did what it could do in those times and the conditions that came with the times. Was it smart to have a commission like that? Under those conditions? I don't know. We simply tried to do our best. One could say that the commission was a success simply because we remitted a report!

⁶³ The Republic of Haiti, *Rapport de la Commission Nationale de Vérité et de Justice*, 51. Quotation translated by author.

⁶⁴ *Ibid.*, 69.

⁶⁵ *Haiti Constitution (1987)*, article 134-3.

It was our mandate to remit a report, and we remitted a report! Of course, there were some weaknesses. ...The commission contributed to the advancement of democracy.

[We] worked really, really hard. It was hard. A lot of tears shed. It was very stressful, we felt like this was the chance the Haitians had and it was blown, and we could see it getting blown, and that was awfully sad.

Conclusions

The truth commissions of Uganda and Haiti, then, faced remarkably similar circumstances. In both cases, they were established rapidly upon the accession of a new regime to power, after a period of prolonged human rights abuses at the hands of the state apparatus which had come before. The main difference, of course, is that Aristide came to power legitimately as a result of direct elections, and with the support of people both within and outside of the country.

In Uganda, Museveni situated the CIVHR as part of a larger plan of political, economic and social reform, as did Aristide in Haiti. In each case, the government appeared to be implementing a policy behind which it was firmly planted. It seemed hopeful, therefore, that the commissions could both succeed. Yet as the experiences detailed above demonstrate, in neither case was the commission well supported. In fact, political will at almost every level, from agencies of government to popular support among the civilian population, was simply not behind the truth commissions.

Almost immediately following the enactment of the truth commissions, however, various groups began to react. While some, including the poorest segments of society, as well as government supporters seem to have felt that the commissions were doing a good

job – or at least as good a job as could be expected under the circumstances—others appear to have been discontented with the process as a whole. Among these, in both Uganda and Haiti, were opposition groups and elites. The truth commissions of Uganda and Haiti, therefore, were victims of a political will that seemed not to care whether or not they succeeded.

CHAPTER SEVEN

INSTITUTIONAL CONSTRAINTS

The truth commissions of Uganda and Haiti failed to achieve many of the goals that might have been expected from the creation of such institutions. The discussion in chapter six reveals lack of political will as one of the main causes of the relative failure of both commissions. The shortage of ideational support was the main reason that the commissions failed.

This lack of support led to what can be called “institutional constraints.” In other words, many of the intrinsic needs of both commissions simply were not met as a result. In fact, the commissions encountered many and significant difficulties during their existence. Truth-seeking bodies such as truth commissions have basic requirements. Alex Boraine, Deputy Chair of the South African Truth and Reconciliation Commission, notes that these can be difficult to obtain, and explains his South African experience:

It was decided at the first meetings that I would be charged with the responsibility of getting the logistics in place, drawing up a staff complement, and initiating a search for key staff members. This was an extraordinarily difficult task We stumbled from one vacant building to another, trying to find offices in the centre of Cape Town that would be modest and which would make a spectrum of visitors feel comfortable. We eventually found a building which looked like a vast barn, with no internal walls and not too much flooring or ceiling. We called in a company to draw up plans and to renovate the building without delay. While this work was under way I visited a number of furniture factories and, working from a great deal of ignorance, placed orders so that the commissioners would at

least have a desk, a chair, and the bare necessities to assist them with their work.¹

South Africa's experience in this regard, however, seems almost idyllic when compared with the extreme conditions under which the Haitian and Ugandan commissions were forced to operate. This chapter looks at the many constraints faced by both commissions.

They can be grouped into four categories: inadequate capacity, security concerns, lack of funding, and time delays. *Social capacity* refers to the ability (or inability) of the “machinery” of the truth commission to function. Social capacity represents the minimal institutional needs that must be met in order for a truth commission to work. The social needs of the commission will include the recruitment of commissioners who are perceived in the community to be objective and neutral, and who are committed to spending the time required of them by the commission, recruitment of competent staff, and recruitment of potentially national and international advisors. *Security concerns* can also serve to prevent the commissions from effectively carrying out their mandate, whether because of the vulnerability of evidence or because of physical safety issues. Both commissions were forced to deal with such concerns. In Uganda and Haiti, the commissions were also, for varying reasons, chronically short of the *funding and resources* required to carry out truth-seeking activities. As a result, the commissions had to spend an enormous amount of time in the procurement of items needed for these purposes, instead of on the duties of the truth commission. Finally, a considerable amount of *time* is required to complete the various facets of the work of a truth commission. In the cases of Uganda and Haiti, this flood of

¹ Alex Boraine, *A Country Unmasked* (New York: Oxford University Press, 2000) 83-84.

tasks, both planned for and unanticipated, significantly hampered the work of the commissions.

Although the commissions showed remarkable parallels, there were significant differences between the two commissions. Chief among these differences was the high levels of support, both financial and otherwise, that the Haitian CNVJ received from the international community. The Ugandan CIVHR, too, sought to cover a time period nearly eight times longer than that considered by the Haitian commission. Nonetheless, both commissions operated in a somewhat similar fashion, following fairly closely what had become the norm for the functioning of truth commissions. As a result, both faced analogous limitations.

Such constraints bear some relation to political will, as discussed in chapter six. In fact, these failures are a direct result of the way in which people at every level responded to the commissions, a by-product of the “response” that Ugandans and Haitians, as well as those in the international community, had to both commissions. In many ways, the failures identified in this chapter sound remarkably like those responses that people had to the commissions. Yet they differ, in that the capacity, security, funding and time constraints are themselves a manifestation of the lack of political will in tangible matters that greatly affected the commissions. The failures outlined here represent the manner in which that lack of political will exhibited in both Uganda and Haiti had a direct impact upon the activities pursued by the commissions, and also on the outcomes they were able to influence. Where chapter six is concerned with how people reacted to the truth commissions, this chapter looks at the consequence of those same reactions.

Had the commissions been in the position of enjoying higher levels of support from government and other agencies, it is within reason to suppose that these sorts of institutional needs would also have been provided. For example, strong parliamentary and presidential backing might have ensured that those government departments whose mandate it was to support the commission would have done so. Instead, both commissions suffered enormously in this regard.

The institutional failures exist on their own as a measure of the relative breakdown of each of the commissions. The constraints which faced the commissions of Uganda and Haiti parallel those visited upon the society as a whole as a result of various social and political events. The truth commission appears, however, to have magnified each of these in a rather dramatic fashion. This chapter analyzes, then, the many and significant institutional constraints which bound the truth commissions of Uganda and Haiti. These constraints, in turn, contributed significantly to the relative failure of both commissions.

Uganda

Social Capacity

Institutional constraints are paramount among the reasons for the relatively little success that the CIVHR enjoyed. From the very beginning, the Commission seemed unable to gather the momentum necessary to carry out an activity of the scale envisaged. The Report of the Commission outlines many of its own shortcomings, including what it calls the

“vastness of the exercise.”² The Commission was burdened with the task of sifting through, and collecting testimony about, nearly twenty-five years’ worth of abuses. Many thousands of individual cases of abuse had taken place. Coupled with this task was the fact that, unlike in the circumstances covered by other Commissions, the abuses in Uganda had been carried out by a series of different rulers and their supporters, rotating groups of perpetrators whose power was won and lost with each successive turn-over of the government.³ The context, therefore, of the information gathered by the Commission was different, depending on both the ethnic background (and therefore political allegiance) of the victim and that of the perpetrator. Those who had curried favour with Obote were the targets of Amin’s wrath. In turn, when Obote resumed power, he brutalized Amin’s supporters. In between, successor regimes had fought their own battles. And Museveni, in turn, conquered Obote’s power base. In this way, the violence was cyclical.⁴

At the CIVHR’s inception in June 1986, the commissioners’ duty was clear: to undertake an inquiry into “all aspects of violations of human rights, breaches of the rule of law and excessive abuses of power, committed against persons in Uganda by the regimes in Government, their servants, agents or agencies whatsoever called, during the period from the 9th day of October, 1962 to the 25th day of January, 1986.”⁵

The Commissioners were excited at the prospect of the work that lay before them. One commissioner explained:

² The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights* (Kampala: UPPC, 1994) 17, Sections 2.9 (II).

³ See, for example, the testimony of Adonia Tiberondwa. *Ibid.*, 529.

⁴ The Report mentions this in several places. See, for example, p. 61.

⁵ *Ibid.*, 3.

We were asked informally what we thought we could do. This was back in the 80s and I have always thought there should be a Commission for Human Rights and that was the only thing I was interested in. I wasn't interested in being a minister, being in business, but I really thought that it was very important that we should look into what had happened and also find out ways in which we could help so that this would not happen again. So that was my interest. So when I was asked, I said, "yes that is what I wanted to do" so that is what I did... We did whatever we did to sort of change the system, and I thought that the past should be put behind us, sure, but before that we should know who did what and when and wrestle it. Therefore I was very happy to join the Commission.

In the beginning, some of the commissioners knew each other only slightly. Others, including those from within legal and academic circles, knew each other better. And, although all but Justice Oder had been friends and allies of Museveni throughout his struggle in the bush, their interpretation of both their mandate and the manner in which such activity should be undertaken differed greatly. As one commissioner put it, "My recollection is that at the beginning we had different points of view and I think that those different views continued throughout the inquiry, but eventually we agreed that we had not been put together to love each other, we had been put together to do a job and I think that eventually we did a good job."

The Commissioners faced an initial dilemma, in that Uganda's conformity to international human rights conventions and standards had been, and remained, lacking. Uganda did become a signatory to the International Covenant on Economic, Social and Cultural Rights on 21 January, 1987.⁶ But it was not until 21 June 1995, after the work of the Commission had been completed, that the country became a signatory to the

⁶ Office of the United Nations High Commissioner for Human Rights, "Status of Ratifications of the International Human Rights Treaties as of 21 August 2002," [document on-line]; (Geneva: Office of the United Nations High Commissioner for Human Rights, 2002); available from www.unhchr.ch/html/menu3/b/a_ccpr.htm; internet; accessed 17 November 2002.

International Covenant on Civil and Political Rights.⁷ Likewise, it was not until after the 1995 Constitution had been promulgated, and upon a recommendation from the Commission itself, that the Uganda Human Rights Commission (UHRC) was founded.⁸ The appointment of the UHRC signified that the Ugandan government, at least in principle, had made a commitment to promote and protect human rights.

Many Ugandans had only a basic knowledge of rights up to the late 1980s and beyond. Even today, one government official noted, “the police [only] understand about rights in a roundabout way.” The process of dealing openly with the human rights abuses of the past in the form of the truth commission was unprecedented. The 1974 Commission appointed by Amin had failed. As such, “there were many people and a lot of them did not offer to come forward. They didn’t see any use in coming forward.”

Many members of the “unofficial” opposition – since official opposition had been outlawed in Uganda when Museveni came to power – criticized the exercise from the start. “[The commission] is one of the gimmicks they were trying to use. They said okay, let’s put in an Inquiry, let’s point out all the wrong things that were done. Justify ourselves for having come to do the right things.” Supporters of Obote, against whom Museveni had been fighting for many years, felt that the commission was targeted especially at them and their organization:

In fact, the Commission of Inquiry was not intended really to inquire into Amin. It was intended to criminalize Obote and the Uganda People’s Congress. Both when you look at the people who were appointed on it, and so on and when it came to interview people they were all looking for evidence, all these crimes, all the abuses of human rights done by Obote. There was not much inquiry actually in that report

⁷ Ibid.

⁸ *Constitution of the Republic of Uganda (1995)*, articles 51-58.

about Amin. Because Amin's atrocities were obvious. They could be seen anyway.

In any case, many of the existing structures of government, left from the British withdrawal at the time of independence in 1962, were mere shells. The years of conflict within the country had caused attention and money to be spent elsewhere, especially on military activities. Many government employees had been among those who fled into exile at various points throughout the periods of conflict,⁹ and many of these were slow to return after Museveni took power. Moreover, those who still held positions in the public service, and who were not declared Movement members, were suspected of being partisan to a cause other than that of Museveni. One opposition member, referring to the process of political education carried out in Uganda, known as *chaka-mchaka*,¹⁰ put it this way:

Public servants were also subjected to *chaka-mchaka*. Unless you went to *chaka-mchaka*, you were not allowed to hold any government office. If you were in government office at all, they would find a way of retiring you. Selecting you, in other words. The first victims would be those who resisted or rejected the Movement ideology. Then the rest would follow. People who were not easily identified with the Movement were targeted.

Of further hindrance to the Commission was a lack of cooperation between various government agencies. The legal system as it existed in 1986 did not allow for prosecutions. "Immediately after the war, we weren't ready – the police [are] still not ready – they were still managed by the same structure that was part and parcel of the violations, so you will not get that keen cooperation," said one commissioner. The government agencies that were charged with carrying out activities essential to the

⁹ Philip Briggs, *Uganda* (Old Saybrook, CT: The Globe Pequot Press, 1998) 23.

¹⁰ *Chaka-mchaka* is a process of political education carried out in Uganda. Some contend that it is political indoctrination. See Ebenezer Bifubyeka, "RDC Clarifies on Chaka-Mchaka," *New Vision*, 01 May 2002.

commission, including the Criminal Investigations Division (CID) and Director of Public Prosecutions (DPP) avoided completing nearly every task assigned to them by the Commission. As a result, one observer noted that “some [cases] got lost in the bureaucracy and corruption of the DPP’s office.”

Security Concerns

The gathering of information was impeded by the passage of time. Over the course of the decades that had elapsed since the first of the abuses took place, many of those who had been victims had died. In other cases, victims and their families and casual observers had simply forgotten details relevant to their cases. This problem was compounded by the fact that, as one commissioner recognized, “the Commission was quasi-judicial, so it was not supposed to take hearsay. It was supposed to be truth or fact.”

Although the Commissioners variously reported that “the facts were known to everybody,” one Commissioner noted “the absence of hard evidence.” As time passes, and as those who have committed atrocities attempt to hide their complicity in past events, physical proof is often destroyed. In fact, at different points in the work of the Commission, significant evidence went missing.¹¹ Whole files disappeared, and audio and video recordings could not be found. Some of the commissioners wondered if the disappearance of evidence was due merely to sloppy archival and storage techniques, but others speculated that people inside the CIVHR had purposely destroyed evidence that would implicate them or their friends and family. The Chairman of the Commission,

¹¹ The Republic of Uganda, *The Report of the CIVHR*, 18, Sec 2.9 (III).

Justice Oder, had to be provided with a bodyguard. And police escorts were used throughout the work of the Commission. Many government officials appeared unable and perhaps unwilling to tolerate the Commission's attempt to delve into the issues of the past.

As noted above, several significant constraints were at the root of the delays. Although the Report discusses the rebellion of the Holy Spirit Movement (HSM) and the Lord's Resistance Army (LRA) which grew out of the HSM in the north as a factor in the delay of the Commission's work,¹² this problem was only one of the many reasons for the delay. Especially in the early years of the NRM's term in office, areas in northern Uganda were under attack by both rebel armies and Ugandan forces. The LRA kidnapped children to act as both soldiers and wives for soldiers from areas northern regions. At the same time, the LRA was doing battle with the Karamojong cattle thieves from eastern Uganda.¹³ Much the same as the bush warfare carried out by Museveni in attempting to oust Obote II, Museveni was determined that the rebel armies should be disarmed and disabled. These areas were, in fact, inaccessible during certain periods of the life of the Commission, due to brutal fighting. Some of this fighting continued in 2003, and those children who were kidnapped had only just begun to return to their families. One commissioner described the situation:

When we began in '86 and '87, there was insurgence and in '88 and '89, a counter-rebellion, that before had been defeated, and which had regrouped in the north. So whoever the Commission would be looking for, he would run into the other side to

¹² The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights*, 17, Sec 2.9 (IV).

¹³ For an excellent summary of events, see Michael Twaddle and Hölger Bernt Hansen, "The changing state of Uganda," *Developing Uganda* (Athens, Ohio: Ohio State University, 1998) 5-6.

escape justice. And you find that by being so dramatic and strict on pursuing the violators, they would run into the bush. And they become the persecuted. And you are investigating, and the crimes again are being committed in the north.

The ability of the CIVHR, then, to provide a thorough inquiry into human rights violations, breaches of the rule of law and excessive abuses of power was significantly compromised.

Funding and Resources

If the social resources of Uganda had been depleted in the years since Independence, the financial resources of the country had been all but obliterated. An Asian-Ugandan man expelled in 1972 told of his family's vast wealth. "My family owned 80% of the mahogany forests in Uganda. When we left, we left all of that behind. And when I went back a few years ago to see about reclaiming our assets, there was nothing left. Nothing at all. The people must have chopped it all down and burned it for charcoal. What are you going to do? They need to eat." All over Uganda, people had been forced to use whatever means they could simply to survive.

Societies in transition must make difficult decisions as to how scarce resources will be allocated. The repair of the physical infrastructure can be as important as the repair of the social infrastructure of community, and the physical is often pursued instead of the social. Such was the case in Uganda. One of the commissioners put it this way: "Just look at the economy of this country, it was in shambles when the NRM came in 1986." The total discretionary budget for all of Uganda in 1999/2000 was only USD

\$568,000,000,¹⁴ and of this, human rights spending comprised only .0016%.¹⁵ In 1986, these figures were considerably smaller. “When the government came to power, there was no money.”

This lack of economic resources proved to be one of the main constraints facing the Commission. The offices of the Commission were continually being moved, in order for accommodation to be provided for the many other Commissions that were being appointed at that time. And, as time went on and more and more information was gathered, adequate storage facilities became a serious problem. The Commission’s Report speaks of the Commission itself as having been hastily appointed,¹⁶ with no provision having been made for funding the actual day-to-day activities of the CIVHR. “We couldn’t depend on government funds,” said one commissioner. This lack of attention would seem to be indicative of the lack of commitment to the CIVHR by Museveni and the NRM.¹⁷ Museveni simply had other priorities, as evidenced both by government spending and program initiatives.

Throughout the eight-year period, work on the Commission was stopped for months on end due to a lack of funding. When money was not available, the Commission ceased work and closed the doors. Everything, including archiving and investigations, was forced to stop, as was the public hearings process. When it did resume, the distances that

¹⁴ The actual figure is USH 1,055,400,000,000/=. Magona Ishmael, Uganda Ministry of Finance, email correspondence, 19 July 2001.

¹⁵ Ibid.

¹⁶ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights*, 16, Sec 2.9 (I).

¹⁷ Joan Kakwenzire, “Problems of Implementing Human Rights in Uganda,” in *Three Papers Presented before the Commission of Inquiry into Violations of Human Rights, February 15-16, 1990, Kampala, Uganda* (Washington, DC: U.S. Committee for Refugees, 1990) 30.

had to be crossed to reach outlying areas and collect testimony, along with the sheer number of people to be seen, made for difficult work.

In addition, the Commission faced chronic shortages of such essential requirements as transportation to and from hearings outside Kampala, staff, filing cabinets and stationery. From time to time, Commissioners were even forced to ask those whose testimony they were to hear to provide their own paper and pen in order for the testimony to be recorded.¹⁸ Hearings outside of Kampala were also difficult due to the fact that commissioners were unable to afford petrol for their vehicles: “We tried our best to go to all the districts, but we were very badly funded.”

The commissioners were personally victims of this shortage. “We were hardly being paid, actually... We were given our allowance of 300 shillings, which at that time bought you a bottle of Pepsi-Cola or whatever.¹⁹” As a result, the commissioners held other jobs throughout the tenure of the commission. In the end, it took eight years for a final report to be prepared and tabled.

In fact, it is thanks to the external donor community that the Commission was able to finish its work at all. The Ford Foundation’s donation of USD \$93,000 early on in the work of the Commission enabled hearings to recommence.²⁰ The Swedish International Development Agency’s (SIDA) funding in the amount of USD \$90,000 was used to purchase badly needed office supplies. The Danish International Development Agency

¹⁸ Ibid., 28.

¹⁹ At 2002 exchange rates, USH 300/= represents slightly more than USD \$1.

²⁰ Thomas P. Ofcansky, *Uganda: Tarnished Pearl of Africa* (Boulder: Westview, 1996) 66.

(DANIDA), the largest external donor to the CIVHR, provided equipment and expertise, along with USD \$363,000; this donation allowed the Commission to finish its work.

Other donors included the International Centre for Human Rights and Democratic Development (ICHRDD) in Montreal, which provided a computer to the Commission.²¹ Germany and Australia are also listed as donors, although the Report does not provide a total dollar amount for the international assistance provided by either country. Neither government is able to find any record of having contributed, although both are sure that they must have done so.²² This indicates that the contributions of both governments, like that of the ICHRDD, were probably small. An official with one of the donor agencies reports that much of the external involvement came about as the external donor community tried to support Museveni in his “good” policies and foster new ones in turn.

Another significant problem was the lack of even the most basic technology. Experience with other truth commissions has shown that the provision of a working telephone and photocopier can make a significant difference.²³ From time to time, the commission did not have even this basic equipment, although at other times they had access to more sophisticated video and audio-recording equipment. “I would say that the problem with us was the lack of technology, because we have not had the benefit of

²¹ The *ICHRDD Annual Report – 1992* provides details of the contribution of the ICHRDD: “The Centre assisted in the purchase of a computer and its software components to facilitate the publication of this report.” See International Centre for Human Rights and Democratic Development, *Annual Report – 1992* (Montreal: ICHRDD, 1992) 30.

²² Bernd Gruschinski, Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (Federal Ministry for Economic Cooperation and Development), Div. 214 Ostafrika/East Africa, email interview by author, 8 June 2002. Also Amanda Harris, Human Rights and CDI Team, Economic and Sector Policy Section, Corporate Policy Branch, AusAID, email interview by author, 24 May 2002.

²³ Joanna R. Quinn and Mark Freeman, “Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions Of Guatemala and South Africa,” accepted for publication in *Human Rights Quarterly* (Nov. 2003) 20.

collecting a lot of information and the like. If you go to the archives, probably you would find things that were written in the newspapers during that time. But if you went there and looked for the newspaper of 9 October, 1962, you may not get it.”

Time

Time is the basis of the third of the institutional failures. In considering the activities of the commission, and their respective delays, it becomes apparent just how much of a constraint these delays presented to the commission. Initially, for example, it had been hoped that the work of the CIVHR could be completed within a period of three years, yet it was not until 1994 (eight years after it began) that the Report was tabled. In truth, the appointment of the commission had specified no initial deadline. During the period between 1986, when the Commission was appointed, and 1994, some of the evidence which had existed either disappeared or was damaged. Some of those who might have testified as either victims or perpetrators either died or moved to other countries; and many of the events were lost to the ravages of time and memory.

In addition, the Commission had been given the task of looking at all of the violations which had taken place. Hundreds of Ugandans came forward to provide information to the Commission. In an effort to facilitate the prosecutions which should have resulted from the gathering of this testimony, three different agencies were then to be dispatched to verify the information already gathered, much of which was difficult to verify: the Criminal Investigations Department, the Director of Public Prosecutions, and the Commission itself. The legal department worked with those selected as representative

of a particular group to produce a coherent version of events. These stories were recorded and then filed. Here again, the quasi-judicial imperative under which the Commission had been asked to operate required a significant amount of verification. This progression caused substantial delays.

The writing of the Report presented its own particular challenges. Various commissioners were assigned the task of writing chapters. This was a slow process, however, because by then many of the Commissioners had moved on to very public positions, many within the government. And even after they had been received, each of the chapters had to be “harmonized.” For this reason, the Commission was forced to hire a local consultant to assist in the completion of the Report. When the Report was finally produced, more than eight years after the Commission’s appointment, it was without significant fanfare.

. This process resulted in eighteen typewritten, professionally bound volumes of written testimony, that record every word spoken in the public hearings held by the Commission. The convoluted process was lengthy, and was further compromised by the destruction of evidence. The disappearance of evidence seriously hampered the process of investigations. As isolated episodes, each of the impediments faced by the Commission would have been minor. Together, they conspired to set the work of the Commission back by more than five years.

Summary

Hampered as it was by what appears to be a widespread lack of understanding of the meaning of human rights and how they had been violated, and by the lack of a consensus and conception of how the CIVHR should operate, the Commission was never fully able to realize its mandate. One of the people interviewed explained that abuse at the hands of the government had become so routine that many people no longer realized that the government should not be allowed to do what it was doing. Indeed, the Report reflects this problem: “From 1971 onwards, the people of Uganda just looked on when their compatriots were being subjected to human rights abuse.”²⁴ People also had no knowledge of the language of “rights,” something which only changed in the 1990s. Similarly, the financial difficulties of the Commission, caused in large part by the failure of the NRM to commit to the enterprise and helped only by the generosity of external donors, so hindered the work that when it finally made its report, any impetus gained by its work had largely dissipated.

Haiti

Social Capacity

As in Uganda, the Haitian commission was forced to deal with many significant institutional constraints. These limitations deeply affected the manner in which the CNVJ was able “to globally establish the truth about the most serious violations of human rights committed between 29 September 1991 and 15 October 1994, both inside and outside the

²⁴ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights*, 588.

country, and to help in the reconciliation of all Haitians, without prejudice to judicial remedies that might arise from such violations.”²⁵

In fact, as described in chapter six, the community of Haitians abroad was very influential both in setting up the Commission, and in helping to carry out its mandate. This community was made up of many of Haiti’s most educated citizens, including influential judges and lawyers.²⁶ To be sure, the diaspora community, and especially that part of the diaspora community resident in Montreal, was important in getting the Commission off the ground. Indeed, the Haitian diaspora community even participated from abroad, sending written accounts and coming themselves to testify before the Commission. Yet this community, which is especially influential among the Haitian electorate and political establishment,²⁷ seemed to want to do things their own way. Indeed, although the Haitian community in Montreal had asked the International Centre for Human Rights and Democratic Development (ICHRDD) for assistance, the ICHRDD sometimes felt that the diaspora was not approaching things in the right manner. They were concerned, for example, about the number of international commissioners to be appointed, and withheld funding until the commission’s composition reflected a better balance.

The people who had remained in Haiti responded quite differently, depending on the segment of the population in which they happened to find themselves. Haiti is the poorest country in the Western hemisphere, and 75 per cent of its population lives in abject

²⁵ The Republic of Haiti, *Rapport de la Commission Nationale de Vérité et de Justice* (Port-au-Prince: Government of Haiti, 1995) Annexe I, 355.

²⁶ Catholic Institute for International Relations, *Haiti: Building Democracy* (London: CIIR, 1996) 3.

²⁷ Robert I. Rotberg, ed, *Haiti Renewed: Political and Economic Prospects* (Cambridge, MA: The World Peace Foundation, 1997) 170.

poverty.²⁸ The peasant population, however, had been some of Aristide's biggest supporters prior to his time in exile. The implementation of the truth commission, therefore, ought to have been able to count on grass-roots mobilization of support. Instead, the Commission failed to win the popular support of Haitians, by ignoring local NGOs and failing to tell ordinary Haitians about the purpose of the Commission.²⁹ Even the media seemed uninterested.³⁰ Still, a great many Haitians did come forward. The CNVJ carried out 8,650 interviews with people who reported 19,308 violations.³¹ An international consultant to the commission made the following observation: "I had a great respect for people I was working with and meeting, because they were actually trying to accomplish something."

There is, however, a minority section of the population that is not poor. Since the days before François "Papa Doc" Duvalier took power, the elite has comprised mainly white and mulatto citizens, although a significant number of blacks themselves also fall within this group.³² The appointment of the truth commission sent ripples of fear through the traditional elites in Haiti.³³ Because of their long-time association with the government apparatus, many could have been found guilty under such a mechanism. Indeed, "if a serious truth commission was established, most of the Haitian bourgeoisie, most of the

²⁸ Catholic Institute for International Relations, *Haiti: Building Democracy*, 3.

²⁹ *Ibid.*, 23.

³⁰ "Elements of a Conjecture," in *Haiti Info* 4.17 (June 1996): 4.

³¹ Amnesty International, *Haiti: Still Crying Out for Justice* (Washington: AI, July 1998) 8; AI Index: AMR 36/02/98.

³² Latin America Bureau (Research & Action), *Haiti: Family Business* (London: Latin America Bureau (Research & Action), Limited, 1985) 25.

³³ Rotberg, *Haiti Renewed*, 124.

Haitian officer corps... would be indicted.”³⁴ An Amnesty Law was promulgated in October 1994 in fulfillment of Section 6 of the 1993 Governors Island Accord, to pardon members of the regime that had toppled Aristide.³⁵ But even this was of no real comfort, because it did not protect the perpetrators, as they had hoped it would.³⁶ The perpetrators were still at large. For this reason, the Commission aimed the report “largely at elites.”

Despite their claims to the contrary, all of the Haitian commissioners had strong ties to this elite community. As one international consultant put it, “They were all either friends, lovers, or associates of people in the Haitian government.” Despite these links, the Commission *appeared* to manage to maintain a discrete distance from the government, which seemed reluctant to press the legal model. For example, when asked about who would be heading the Commission, which was then in its infancy, then-Minister of Justice Ernst Mallebranche replied, “It was François [*sic*] somebody.”³⁷

At a certain point, however, “Aristide, too, began to distance himself from the Commission.” These very ties seemed to call into question the commissioners’ ability to pursue objectively the truth about Haiti’s past. People began to question the legitimacy of the work of the CNVJ.

Partly to blame was the international community. “There was a diversity of international actors throwing around their power, but not talking to each other,” reported one IGO consultant. Chief among these groups was the large American contingent which remained on the ground in Haiti. The U.S. Agency for International Development

³⁴ “‘Truth Commission’ Buried in Secrecy,” in *This Week in Haiti* 10.41 (4-10 January 1995): 2.

³⁵ United Nations, *Governors Island Accord*, 1993, Section 6.

³⁶ Catholic Institute for International Relations, *Haiti: Building Democracy*, 23.

(USAID), for example, offered large sums of money in exchange for the adoption of American-style processes, including USD \$18 million for justice programs including police reform and changes to the judicial system.³⁸ At the same time however, the White House and Department of Defense seized records and documents which would have been of significant value to the truth commission.³⁹ Many of Haiti's politicians also had strong ties to the United States.⁴⁰

International groups, including the joint UN/OAS International Civilian Mission in Haiti (MICIVIH), refused to help the truth commission implement any of its programs, stating that it was not there for these purposes. MICIVIH had been appointed in January 1993, after a request by Aristide for assistance in monitoring violence, and establishing dialogue between Haitians. Its earlier incarnation, the United Nations Observer Group for the Verification of the Elections in Haiti (ONUVEH) had been deployed from 10 October 1990 to February 1991,⁴¹ to observe and monitor the elections process. Personnel from the Organization of American States (OAS) had been included in ONUVEH.⁴² MICIVIH was deployed in February 1993.⁴³ On 11 October, 1993, after Haitian military forces prevented a United Nations ship from landing and threatened to kill journalists then on Haitian soil, all United Nations and OAS personnel, including MICIVIH staff, were evacuated from

³⁷ "'Truth Commission,' Buried in Secrecy," 1.

³⁸ "Elements of a Conjecture," 3.

³⁹ Brody, "International Aspects," 231. See also "What's in the FRAPH documents? Notes by Center research director James Morrell of discussions with a U.S. government official who has read the documents. April 20, 1998;" [article on-line]; <http://www.us.net/cip/fraph.htm>; internet; accessed 26 May 2003.

⁴⁰ "Haiti: Justice and Impunity," 5.

⁴¹ Department of National Defence, *Toward a New World (Dis)Order: 1989 - ?*; [report on-line]; http://www.img.forces.gc.ca/commelec/brhistory/chap7_e.htm; internet; accessed 28 May 2003.

⁴² MICIVIH, *Crisis in Haiti: Seeking a Political Solution*, UN DPI #1402-5M; [report on-line]; <http://www.un.org/rights/micivih/rapports/crisis.htm>; internet; accessed 27 May 2003; 1.

⁴³ MICIVIH, *Crisis in Haiti: Seeking a Political Solution*, 4.

Haiti. MICIVIH observers did not begin to return until January 1994. MICIVIH observers were again expelled from Haiti by Cédras' military forces on 11 July 1994, but returned again on 22 October 1994.

Other international observers and forces were active in Haiti as well. On 8 October 1991, the OAS voted to deploy a civilian mission, OEA/DEMOC “re-establish and strengthen constitutional democracy in Haiti.”⁴⁴ The United Nations also established a 1300-member United Nations Mission in Haiti (UNMIH) for a 6-month period, with police monitoring and military construction capabilities. But UNMIH's deployment was prevented on 11 October 1993 by Haitian armed forces. UNMIH finally entered Haiti on 5 March 1994, with 6,000 personnel.⁴⁵

There appears to have been a fairly free flow of personnel between MICIVIH and the truth commission, which may have resulted from the same joint sponsorship by the UN and OAS for the truth commission and for MICIVIH. In fact, many of the CNVJ's investigators were taken exclusively from the ranks of the OAS. At one point, MICIVIH refused to participate in judicial reform projects, stating that these were beyond the mandate of the mission.⁴⁶ MICIVIH personnel had a considerable amount to say about the manner in which the truth commission and many of its programs were run, prompting many respondents to relate their frustration, even more than five years later.

[Two staff members in particular] came through MICIVIH. A lot of people came through MICIVIH... These two had senior positions, but they had no experience.

⁴⁴ “Early Regional Efforts,” *United Nations Mission in Haiti*: [report on-line]; <http://www.gmu.edu/departments/t-po/resource-bk/mission/unmih.html>; internet; accessed 28 May 2003.

⁴⁵ Many of the details of these two paragraphs are taken from *Ibid.*, and *United Nations Mission in Haiti*: [report on-line]; http://www.un.org/Depts/dpko/dpko/co_mission/unmih.htm; internet; accessed 28 May 2003.

⁴⁶ Brody, “International Aspects,” 233.

As far as I could tell, they had no useful experience. Their ideas were terrible and we spent months undoing the mess they made. They made a lot of bad decisions that we argued about, they made bad decisions that we had to clean up after them.

This international involvement, moreover, came at a price. “Haiti had once been the centre of attention,” one senior IGO member and commission member stated. “But suddenly the attention disappeared, making it seem as though the whole situation was suddenly okay.” World attention turned elsewhere. And Haiti was forgotten. There have since been calls for the governments of the United Nations and others to share the obligations of prosecuting those in Haiti who violated human rights.⁴⁷

The CNVJ’s Final Report, too, was the subject of much anxiety. “There were too many competing visions [for how it would turn out],” said one of the senior commission members. Some felt that the Report should represent a cross-section of cases that the Commission had looked at. Others wanted to focus entirely on several large cases. In the end, the Report looked mainly at the larger cases that the Commission considered. The final version was written only in French.⁴⁸ This decision effectively excludes the vast majority of the Haitian audience, many of whom cannot read, and most of whom speak only Créole. The Report, therefore, was aimed mainly at Haitian elites. It was never meant for the consumption of ordinary Haitians.

⁴⁷ AI, *Haiti: Still Crying Out*, 42.

Security Concerns

Moreover, nearly everyone realized that the existing police and judicial bodies were inadequate to assist with the work of the Commission. Some even called the political changes brought in by Aristide a “sham reform”⁴⁹ because so much of the existing apparatus remained in place. Some of the state apparatus had been replaced by appointees of Aristide’s regime, although the “revamping of the judicial system was slow and inadequate.”⁵⁰ “The legal system was weak at best, predatory at worst. ...Police forces [were still] new and inexperienced... and Haitians’ confidence in their justice system [was] as low as ever.”⁵¹

All of the commissioners with whom I spoke noted the presence of militia and para-military forces as having been cause for great alarm for their own personal safety. Former soldiers and *tonton macoutes* had yet to be disarmed.⁵² One commissioner put it this way: “There was a feeling of impunity and insecurity. There were very strong feelings of that.” Another commissioner was more blunt about the experience of serving on the commission, saying, “I can’t speak for everybody, but I can say that excessive prudence was the rule. Mme Boucard received many, many death threats. Regularly.”

As a result, the public hearings which had been part of the initial proposal put forward at the ICHRDD meetings in Montreal were vetoed. “Public hearings weren’t

⁴⁸ AI, *Haiti: Still Crying Out*, 8.

⁴⁹ “Haiti: Justice and Impunity.” *Haiti Net* 3.18 (17 Jun. 1995); available from <http://www.hartford-hwp.com/archives/43a/092.html>; internet; accessed 20 Oct. 2002; 4.

⁵⁰ AI, *Haiti: Still Crying Out*, 11.

⁵¹ Reed Brody, “International Aspects of Current Efforts at Judicial Reform: Undermining Justice in Haiti,” in *The (Un)Rule of Law and the Under-Privileged in Latin America*, eds. Juan Mendez, Guillermo O’Donnell, and Paulo Sérgio Pinheiro. (Notre Dame: University of Notre Dame Press, 1998) 228-229.

⁵² Brody, “International Aspects,” 229.

possible because we couldn't guarantee the safety of the victims [in coming forward.]” The CNVJ was greatly affected by these set-backs. Commissioners were not able to investigate significant amounts of information, while those who came forward could not be called upon to testify openly.

Partly as a result of the international presence on the Commission, partly because the mandate of the Commission had so explicitly recommended that the CNVJ make use of truth commission “experts,” and partly because the CNVJ had the benefit of the experience of the other commissions which had gone before, the Commission was subjected to various experimental techniques which had either been tried elsewhere, or which were thought to be new and improved. Said one international consultant, “[Our first ideas] didn't work. So then we reformulated our plan regarding personnel, funding, the number of investigations, and rights violated. We had to start over.” In addition, the Commission called upon the assistance of the Argentine Forensic Anthropology Team to conduct a forensic audit of human rights abuses, but then was required to assign some of its staff to assist the Forensic Team. All of this took resources away from the main thrust of the Commission: investigations.

Funding

Similar to its Ugandan counterpart, the Haitian commission was chronically short of funds. Haiti, too, had undergone decades of resource-depleting conflict. The Duvaliers, who had governed from the mid-1950s until 1986, had stolen more than USD \$1 billion.⁵³ The

⁵³ Catholic Institute for International Relations, *Haiti: Building Democracy*, 4.

people of Haiti remained poor. In 1994, as Cédras and his supporters prepared to leave, the conditions were described as follows:

Amid this atmosphere of hope lingered reminders of the harshness of everyday life in Haiti. In the cities, the Haitian military and its paramilitary affiliates continued to abuse Aristide supporters when the opportunity presented itself. Hunger abounded and literally compelled Haitians to loot a food warehouse. The rural areas were devoid of the political and administrative infrastructure needed to restore, with any degree of efficiency, basic services such as water, electricity, and schools.⁵⁴

Amid such conditions, allegations of widespread corruption at the highest levels were rampant. In 1994, the United States brokered the deal which would push Cédras out and allow Aristide to return. To entice Cédras to step down from power and leave Haiti, the Americans announced a program under which, for example, they would rent the homes owned by Cédras for USD \$5,000 per month. They also allowed more than 600 Haitian military officers access to their bank accounts which contained hundreds of thousands of dollars in stolen money. In addition, they planned to pay off those Haitian soldiers who would not be recruited into the “new” police service because of their past record of repression. In all, the U.S. planned to spend USD \$5 million on such initiatives.⁵⁵

Corruption had become an entrenched part of everyday life in Haiti, even for those outside the upper echelons of power. An IGO staffer described the bribery and corruption:

It has just been a way of life so long there that, me getting your attention as a result of you paying me X number of dollars doesn't really mean anything, it is just like an understanding, I expect something, you expect to give me something and we are both comfortable with that arrangement. I guess an example would be your telephone. I remember when I went into the city and lived in this new apartment. There was a dentist who owned this, and we didn't have any phones. He was just

⁵⁴ Irwin P. Stotzky, *Silencing the Guns in Haiti* (Chicago: University of Chicago Press, 1997) 40.

⁵⁵ Alex Dupuy, *Haiti in the New World Order: The limits of the democratic revolution* (Boulder: Westview, 1997) 160.

putting the apartments together and we wanted a phone line of course, and he said okay, I think I can get you a phone line that you can share between the two apartments, which was not a problem. He knew the director of the phone company in Haiti. So that was going to be easy, or so he thought. But I guess he had been away from Haiti too long, because he forgot something. He did know the director who said yes I think I can look after it. But three or four weeks after we still didn't have our phone lines because the director of the telephone company is not the man who controls the line going from the pole to your house. What had to happen was, we had to find the man who works at the telephone lines. Then it was easy. He just takes out somebody's line who lives further up the hill and you get it. Maybe three or four or five months later your phone is gone again and you wonder why and you have to go back to him and, okay, he pulled yours off for somebody else so now it is your turn again to pay again to get one back. They don't think that it is right, they know that it is not right, but they accept that that is the way it is, seemingly in every activity.

It was in this environment that the Haitian Commission was established. The Commission was given a USD \$2.5 million operating budget, cobbled together from money given by the United Nations and the OAS, along with donations from members of *La Francophonie*, including Canada.⁵⁶ But almost from the beginning, Madame Boucard, the chair of the Commission, complained that she was short of funds.⁵⁷ The task of fund-raising fell first to Mme Boucard, and later to Jean-Claude Icart, who joined the Commission already in progress. "We had great difficulty in finding money."

The Commission had needs which had to be met in order to operate. Certain items, including transportation, phone lines, radios and equipment had to be found. One international consultant recalled the following scenario.

There are material concerns too. You know, when I arrived at the Commission, the Commission didn't have a photocopy machine, they had been promised a machine from the beginning of the operation, I think the Commission arrived, the

⁵⁶ Canada's gave CAD \$350,000 to the Commission. CIDA, "Haiti: Canadian Peacebuilding Experience," [report on-line]; http://www.acdi-cida.gc.ca/cida_ind.nsf/0/fe1aa41ae95989648525698b00665cbb?OpenDocument#6; internet; accessed 27 May 2003.

⁵⁷ "Haiti: Justice and Impunity," 3.

photocopier arrived while I was there. Then it was a matter of, you know, having it function, because I think a part of missing for the preparation of several copies of the document and so on. So, I mean, materially, you can imagine if you have to leave your offices to go downtown to make a photocopies and come back and use the fax to do photocopies. You now, it's really living in another world, you can't be too cheap under those circumstances and meet deadlines.

The international community, it seems, was slow to come forward with the resources required by the Commission. Agencies like the ICHRDD set certain conditions which had to be met before any money could be given. This including ensuring an adequate amount of international representation on the Commission, for example. Presumably, other international agencies donating money had similar processes.

The Commission had other needs as well. The salaries of staff, both Haitian and international, had to be paid. The salaries and travel expenses for both international commissioners and executive members had to be met. Investigative teams had to be transported to the field to carry out their investigative work. Specialized teams, including the Argentine Forensic Anthropology Team, expected to be paid as well.

Eventually, the Commission was funded by a number of sources. The ICHRDD gave funding and expertise, and also helped the CNVJ to procure funding throughout its existence. The American Association for the Advancement of Science (AAAS) and OAS each provided both specialized personnel and additional funding. The AAAS, for example, paid for the work of the Argentine Forensic Anthropology Team. The United States funded its own programs, including justice initiatives and policing.⁵⁸ The United Nations paid some of the salaries.

⁵⁸ Brody, "International Aspects," 233.

Between the Commission and the Government of Haiti, the rest of the financial needs had to be met. The CNVJ bore the majority of salary and transportation costs. The salary of an international investigator was 60,000 gourdes per month.⁵⁹ The government was left to pick up the rest of the costs, from the scant 6 per cent of the national budget that was allocated to Justice issues.⁶⁰ Indeed, other agencies operated concurrently with the truth commission in Haiti, augmenting the system of transitional justice that the CNVJ was trying to implement. Among these, agencies such as USAID and MICIVIH carried out their own programming. And IGOs including the Royal Canadian Mounted Police implemented programs as well. In the end, the Government of Haiti and the Commission itself were simply unable to adequately fund the Commission's work.

Time

When Aristide returned to Haiti, one of his first acts was the appointment of the Commission. One of the Commissioners described Aristide's sense of the need for a Commission to be appointed. "I think there was a tremendous feeling that Haiti had to confront the past. This was a mechanism that was used. President Aristide had been ousted for three years. There was a period of military rule. In that time the number of atrocities and extra judicial killings rose substantially. I think the establishment of a Commission came at the right time. Yes there was this feeling that they had to confront the past." At the same time, most of the diaspora community was still living outside the

⁵⁹ In 2002, this converted to approximately \$1,700 USD.

⁶⁰ "Elements of a Conjuncture," 3.

country, and had not yet returned. “Judicial reform had not yet taken root.” It had not yet returned by 2003.

International experts in the field of transitional justice agree that allowing too much time to elapse between the appointment and conclusion of a truth commission can cause the commission to lose momentum. Initially, the work of the Haitian Commission was expected to take six months. Early on, however, there was speculation that this short period would not be enough.⁶¹ Six months turned into nine. The work of the Commission, minus the final report, was finally submitted on 5 February, 1996, despite the numerous delays and constraints detailed above. It had taken ten months.

Some of the delay was attributable to the difficulties of accommodating the busy schedules of the international commissioners. The external commissioners and international staff admitted that they simply did not have enough time to spend on the work of the Commission. Two of the Haitian commissioners had returned from their homes in Montreal, and held jobs and commitments in both Canada and Haiti at the same time. The daily workings of the CNVJ, too, were hampered by constraints.

Another of the facets of the Haitian CNVJ which, in many ways, acted as a constraint, was the international nature of the composition of the Commission. By the end of the Commission’s life, one half of the commissioners were “foreign” and travelled back and forth from their full-time jobs elsewhere in North America to Haiti.

Many of the national and international commission staffers felt that the external commissioners, as a result of their absence for at least half the time, were not involved

⁶¹ “Haiti: Justice and Impunity,” 5.

enough in the Commission. “They had no degree of understanding of the national politics of Haiti,” said one international member of the investigations team.

The weakness in the Commission appeared to start at the top: Françoise Boucard had had to assume responsibility for both the internal and external activities of the Commission. Those involved in the commission variously reported that Boucard seemed that she might have been incompetent, and never fully in control. Her role comprised many functions, including fund-raising and general management. Perhaps as a result, the Commission itself was disorganized and poorly managed.⁶²

The head of the investigations side also came under criticism. The Director of Investigations was Bertha Santoscoy, the Haiti Specialist from the Inter-American Human Rights Commission, on loan from the OAS, maintained her position at the OAS at the same time as she attempted to coordinate the Commission’s investigative efforts. As a result, Santoscoy was not able to spend much time in Haiti. She admitted, “It was difficult to wear both hats.”

Consequently, there seemed to be no coordinated strategy. In the end, each of the commissioners chose to focus on a specific facet, and each of the rest of the investigation team worked within these different lines of questioning. Additionally, because the management of the CNVJ was so chaotic, the commissioners wound up trying to accomplish what were essentially operational tasks.

One of the commission’s staff recalled:

The commissioners [could have been freed] from these kinds of operational things sufficiently that the commissioners might have grappled with the strategic vision.

⁶² Catholic Institute for International Relations, *Haiti: Building Democracy*, 23.

Feed them data, but don't require them to do things. They will do it. Commissioners who are involved in the day to day things, that is all they think about. That is all they do, happily. When you get involved with running a commission you become overwhelmed by hundreds and thousands of things that are incredibly urgent and they are really not important. Like you have got to get vehicles because you can't get the team over there, so make calls around to get the vehicles, the radios, the security control, hundreds and hundreds of things that are really, really urgent. We can't get the data until we get out in the field, we can't come back from the field, until we go to the field, so we need vehicles.

She continued:

For commissioners to be doing things like that is a death sentence for a commission. That is one of the things that I think that kind of gripped the Haitian Commission from above, with Françoise in particular, not the other commissioners. Certainly Patrick Robinson never found a vehicle for anybody. But Françoise in particular being involved in that kind of thing was devastating. It is not because Françoise doesn't understand this is because she didn't have any help. She had to do it because there was no one else for months. If the commission was going to move she had to do it, so she got trapped and then she couldn't let go of that role when Jean Claude came on board, and then it was too late for her to kind of step back and you know, that would have required super human effort that wasn't forthcoming. Which I don't really hold her responsible for, I mean it really was a failure of the whole project not of certain individuals to pull through.

The Commission spent more time than they had planned on the investigations portion of their work. Initially, they had hoped to have approximately 2,000 respondents, but eventually they heard from more than 8,700. One international consultant reported that they were somewhat "surprised to learn that the people of Haiti wanted to talk and tell the investigators what had happened to them." The staff of the Commission then meticulously documented the abuses reported by the respondents, and prepared a statistical analysis of the observable trends, paid for by the AAAS.

The preparation of the Final Report also took significantly longer than had been planned. But the imminent departure of President Aristide at the expiration of his term as President at the beginning of February 1997, meant that the Commission staff had no

choice but to expedite the writing process. The first draft of the Report had a circulation of only 75 initial copies. But it was this version of the Report which was presented to Aristide on 6 February 1997, as he again left Haiti for exile. Eighteen months later, a second version of the report with additional appendices and other information was prepared.

Summary

Those forces which frustrated the work of the Haitian truth commission were not simply an ill sentiment emanating from within the country. This is not to suggest that many of the constraints imposed upon the CNVJ did not come from Haitians themselves, because certainly they did. But it is also true that many international agencies were operating within Haiti, attempting to carry out their own work under their own agendas. MICIVIH was perhaps the largest of these, and stuck doggedly to its initial mandate: the monitoring of violence. The activities of the United States government and forces deployed to Haiti, as described above, served to make the situation increasingly difficult. These two conflicting agendas compounded the difficulties experienced by the Commission.

Conclusions

In many ways, the institutional constraints presented above were distinct failures of the truth commissions of Uganda and Haiti. The commissions both suffered from shortages of everything from equipment and funding, to much-needed technical assistance, to time to complete all that had been laid out within the respective mandates. Certainly, each was an

obstacle that the Commission had to surmount. Here again, the truth commissions were victims of low levels of political will.

CHAPTER EIGHT

ACKNOWLEDGEMENT

The assessment of the truth commissions of Uganda and Haiti has so far looked at those factors which hindered and constrained the commissions themselves. Both commissions suffered from a decided lack of political will and substantial institutional limitations. These shortcomings conspired to produce commissions that were considerably less able than they had hoped to undertake and successfully perform the activities normally associated with truth commissions. As a result, the commissions were less able to produce any significant results.

One of those outcomes that both commissions clearly failed to properly address and encourage was acknowledgement, which can promote a society's reckoning with a history of abuse. This process, as laid out in chapter two, is essential in the building and rebuilding of social trust and civic engagement within a fractured society, and ultimately in addressing the root causes of conflict in transitional societies. This chapter explores the idea of acknowledgement as it relates to the role and activities of the truth commissions.

Acknowledgement and Truth Commissions: A recapitulation

In their efforts to address the atrocities committed in preceding years, the truth commissions of Uganda and Haiti focused mainly on the assembly of evidence. Many individuals came forward to provide detailed accounts of the things they had both seen and

experienced. Often, this coming forward represented the first time that victims and their families had ever spoken of such events. Previously, they had done what was necessary to survive in the physically, socially and politically dangerous climate of the period of abuse.

After years or even decades during which the very mention of such acts is in many ways taboo, the chance to begin to unpack the details of experiences and long-repressed memories can present a unique opportunity. This reckoning with past injustices can form a critical stage in the collective repair of a society. I argue that the process of acknowledgement is of particular importance, forming a necessary (but not sufficient) condition in any successful process of societal recovery to allow the society to move forward.

Acknowledgement, as outlined in chapter two, comprises several distinct yet inter-related components. Coming to terms with the past is an especially important part of this progression. Learning of and accepting the truth about past events can be especially traumatic. Through the giving of testimony and factual investigation, past events can be revisited, and the society can begin to talk about those events which have taken place. The evidence provided and gathered at this stage contributes to the openness of discussions and a wider societal disclosure. Making known the truth about past events can also lead to accountability, if the trail of the evidence uncovered is followed. If this coming to terms is not accomplished, and wrongs are never discussed, the incomplete knowledge of such events remains latent in the collective psyche of society. Such partial knowledge may, in fact, be more terrifying than anything revealed in the disclosure of events.

Accordingly, such revelation brings about an often-strong emotional response. This reaction can encompass feelings of denial, anger, bargaining, depression and acceptance, although it is likely that some individuals may already have ventured some distance through this sequence in the years since the atrocity occurred. An individual may, therefore, be “stuck” at a particular stage, which has become internalized as a means of coping. Having had to concentrate on the stuff of everyday living in the intervening period, many victims and their families have not often had the luxury of reflection on the past, and may continue to experience trauma regularly. Without recognition of past wrongs and steps taken to assist in coming to terms with them, societies cannot properly grieve and move beyond these atrocities.

The recollection of past events, therefore, is a direct result both of coming to terms with past events and the subsequent emotional response to them. The evidence suggests that a recollection of past wrongs forms a critical component of the acknowledgement process. The extrapolation of individual memories to the realm of the collective contributes to the creation of a self-portrait of the larger society. This memory can become manifest physically in the form of monuments built and memorials observed to honour both victims and survivors. It can also be inaccurate and self-serving.

The truth commission, as a truth-seeking instrument, can provide the opportunity for the broader community to begin to explore the process of acknowledgement. The truth commission provides a forum where people may testify to their experiences and to the experiences of others who have been tortured, disappeared or killed. Victims and

sometimes perpetrators come forward to tell their stories. From these a narrative history of the society's past emerges.

Therefore, the potential capacity of the truth commission to facilitate acknowledgement as part of its truth-seeking mandate is enormous. For truth commissions possess the potential to facilitate real and lasting change. Indeed, in view of the experiences of truth commissions in other jurisdictions, one might have expected that the truth commissions of Uganda and Haiti would have contributed in a strong way to such aims. Yet both commissions failed to promote the acknowledgement of past atrocities in any substantive way.

The truth commissions of Uganda and Haiti failed for many reasons. First, both commissions had elected to focus on different desired outcomes, and not overtly on acknowledgement as a goal they hoped to achieve. As a result, the underlying theme of acknowledgement was often overpowered by the quest for other outcomes, including reconciliation in Uganda and justice in Haiti. In many ways, Haiti's commission was more successful than Uganda's, especially when considering how each country appears to have come to terms with its past. Haiti's data collection efforts culminated in a substantially larger and more revealing compilation of information, in part because of the statistical and forensic work that was completed. Yet these data were never publicized, and the findings of both commissions were never popularly disseminated. At the time of writing, the facts were largely unknown to the general population of both countries, because the particulars, in the form of the final reports, at least, remained inaccessible.

In both cases, ordinary citizens were fearful of the process, and especially afraid to come forward. Commissioners, staffers and observers alike noted the climate of fear which seemed to permeate the responses of people to the commissions, at least initially. Again, it must be said that Haiti's efforts were better rewarded, as thousands came forward. Overall, however, many of these reported being afraid. This fear stems largely from the experiences Ugandans and Haitians had under regimes which systematically tortured and abused their citizens for many decades. It is no wonder, then, that many in both countries associate government and its agencies with violence, and respond with fear. They have been conditioned to think this way.

In the end, the commissions failed to encourage acknowledgement in any real way. The active remembering which the commissions had so encouraged came to an abrupt halt once the commission submitted its final work. In the case of Uganda, these stoppages occurred several times throughout the life of the Commission as well. Any public remembering that was done, moreover, was likely insignificant compared to the private remembering that Ugandans and Haitians had done over the years since the abuses had been perpetrated, although this study looks only at the public remembering that occurred. It is clear that the citizens of both countries had grown used to keeping their silence. With one notable exception in each case, the population and their respective governments have not carried any of this public memory over into acts of physical remembering in the form of memorials and monuments.

Uganda

The Commission of Inquiry into Violations of Human Rights: Mandate and Role

The CIVHR in Uganda was endowed with a challenging mandate. The legislation creating the commission specifically names five tasks the commission was meant to address: redress negative forces; assemble evidence; identify the perpetrators of any and all crimes; probe the systems and machineries of the state; and restore the rule of law.¹ To be sure, this slate of directives represented a mammoth task.

The CIVHR did not explicitly identify acknowledgement as a goal of its undertaking. Yet embedded within its mandate is one of the basic tenets of acknowledgement: the assembly of evidence. One commissioner noted that they had, in fact, established the Commission around the basic principles of acknowledgement:

It is bad enough for you to suffer all these things, it is bad enough. But for you to not be able to explain to somebody, it is even worse. They should be able to tell their sufferings to somebody. To say that this actually happened to me because some of the perpetrators were caught, and they are the victims, and you did this to me and even if they were not there, people in authority will know. Here is the day of reckoning. I think this very important, for people to explain. In terms of society, whoever is in power, or in position of authority is on notice, however long it will take it will be exposed. The day of reckoning cannot be avoided.

The Commission itself played an important role, and ought to have fostered such acknowledgement. The CIVHR provided a forum for the giving of testimony, and a great deal of the Commission's time was taken up listening to those who had come to testify before it. In fact, the Commission received testimony from 608 witnesses in public

¹ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights* (Kampala: UPPC, 1994) 3-5.

hearings held in 20 of the 39 districts of Uganda. As well, many other Ugandans completed questionnaires, which told of the abuses they had suffered.

The commissioners themselves attempted to address the question of the validity of the claims made, and to determine the truth about what had happened. The Commission had the power to summon witnesses to corroborate facts but in many cases people willingly came to testify before the Commission. Some cases were then referred to the Criminal Investigations Department and Director of Public Prosecutions, although the results of this process were “rarely” successful.²

The information provided to the Commission was collected and recorded and then preserved in a permanent record of the events of the period in question. The Commission was able to compile vast amounts of testimony and evidence, much of which was recorded in the 720-page Report, that resulted from the process. The testimony was bound into 18 printed volumes, one copy of which was housed at the Uganda Human Rights Commission offices in Kampala in 2001.

The commissioners were especially vigilant in attempting to make such facts known to the wider community. They attempted to travel widely throughout the country, and to make their own faces known. Efforts were also made to advertise the Commission’s itinerary and schedule public hearings and to keep the public aware of what had happened in the public hearings. The rationale, as explained by one of the commissioners, was this: “Putting these things in the newspapers and such is a good thing. Otherwise, people would never believe. You collect evidence *in camera*, you know, and you

² Ibid., 18.

screen out what they can see, then they will never believe. So you let them come and listen and you open it up to them... you could show what was going wrong.”

Failure to Acknowledge

For all its good intentions, as demonstrated in previous chapters, the Commission failed to produce the kinds of results which ought to have been expected of it. Instead, the net result of the work of the CIVHR was substantively lacking. Using the rubric of the process of acknowledgement, the shortcomings of the Commission are illustrated below:

Coming to Terms with the Past

As discussed briefly above, the Commission of Inquiry into Violations of Human Rights was perhaps most successful in assisting Ugandans in coming to terms with their past, although even in this respect, the Commission was not especially successful. The CIVHR was not at all successful in encouraging the other facets of the process of acknowledgement, including emotional response and remembering. Rather, the CIVHR was simply inclined to address those aspects of acknowledgement which are more closely associated with coming to terms with the past.

The Commission set out to collect evidence pertaining to those crimes and abuses which had taken place between 1961 and 1986, as specified in its mandate. It tackled the mammoth task of receiving information in the form of questionnaires, along with personal testimony from victims and their families at the public hearings that were held throughout the country. “Some of them came just to show us what had happened.” That such

information was gathered from people from nearly every district of the country is a testament to the seriousness with which the Commission tried to follow the mandate.

The importance of collecting such information, however, was greatly diminished by copious amounts of evidence that went missing during the life of the commission. Each of the commissioners described their frustration with a system lax enough for documents to “mysteriously” disappear.

There was little accountability for particular crimes, both past and present, within Uganda. Certainly, the commissioners felt that there was little that could be done to stop the kind of theft and graft which accompanied the activities of the Commission. But beyond this, even when the CIVHR found evidence of criminality in the evidence they were collecting, the wider legal system that had been set up to deal with such information failed to do so. “We took some [perpetrators] into court without them asking. If we had evidence and the culprit was there, we would put the matter to the government institution to charge them. Some of them were charged and others were not, which was demoralizing both to us and to the people,” one commissioner explained. Another simply stated, “I, too, have not been very happy with the way what happened has been preserved.”

Even the open dialogue that the commissioners tried to create only went so far toward creating the conditions under which Ugandans could begin to acknowledge their country’s past. Although they tried to keep the proceedings in the public eye, the lack of adequate technology to provide everything from linguistic translation of newspapers and radio broadcasts to televisions and television signals made this a difficult task.

It is possible, however, that Ugandans only partly achieved this “coming to terms with the past” for another reason altogether. The very concept of the truth commission met with resistance in many quarters because of the manner in which it was introduced—many Ugandans were not included in the process, which was far from being a grass-roots idea. This differs from truth commissions such as that which took place in South Africa, where many South Africans were involved in the activities of the truth commission. A Ugandan academic noted that the commission “wasn’t something that was home-grown. The pressure was neither from civil society, or from political activists. It was really something that came out of the bush, and was part of that legacy that kind of continues.”

Emotional Response

The Commission of Inquiry into Violations of Human Rights had the potential to encourage acknowledgement among the population. As outlined above, another of the components of acknowledgment is the emotional response that people have and exhibit when coming to terms with their past. In this section, we examine the extent to which Ugandans appear to have dealt emotionally with the atrocity of the past.

Ugandans had grown used to maintaining a silence around the abuses they had suffered. Said one commissioner, “Ugandans I think are not generally a remembering people. They tend to forget that everything in their life has been unfair. So, the people in the community forget.” Indeed, Ugandans regularly use phrases such as “life must go on” and “you can’t do much about it.” The perpetrators, especially, had no desire to come forward. They were content to keep the events of the past a secret.

As discussed briefly, above, the Ugandan community needed to be cajoled into engaging in the act of thinking about, remembering and grieving publicly over the losses which had occurred in the Amin and Obote II years. The commissioners felt strongly “that it was important indeed for people to confront what had happened... They did not have anywhere where they could pour out their hearts until the commission came.” Another commissioner reiterated, “You can’t make it forbidden that people suffered. They keep reminding you.”

From the late 1960s until the mid-1980s, Ugandans had lived in a permanent state of fear. When friends and family members were killed, those who remained were forced into hiding. Some went into exile for a period of months or years. There was no time for the burial of bodies. “This generation of ours,” reported one journalist, “we grew up knowing people would be killed and that sort of thing.” These were the stories poured out before the Commission, and which caused one commissioner to remember “the catharsis of the victims who poured their souls out to us.” But the number of Ugandans who actually came forward was, in fact, quite small.

The commission met with a certain amount of resistance when it began to call for people to come forward. This reticence was due, in part, to the fact that many people appeared, simply, not to want to remember. “There were very many people who suffered and many of them did not offer to come forward. Others were saying, they don’t see any use of coming forward and inciting hatred. Especially if they thought the government would do nothing even if they give their stories. So many people did not come because of that.”

Many, however, were also terrified to come forward. In some cases, they were frightened by the prospect of interaction with what they saw as “the government.” The governments of Amin and Obote had been the very forces to wreak terror on their lives. People in Uganda have therefore developed a mistrust of government. “People were afraid to talk. They seemed scared. That was one of the problems, to know even what happened. They were afraid to talk. They feared.” Another commissioner remembered:

At first they were scared. Reticent. They were reluctant. They didn’t want to come because they didn’t know what would happen. Some thought if they came forward they would be showing themselves coming out. Maybe if the perpetrators were still around they would follow them. They didn’t know the motives of government for the commission. I think in every place they had to be assured that, look, come clean. You won’t be restrained by anybody. You are free to come, alone, and tell us your story. Nothing will happen to you. So, after they got assurance, they could come.

Fear, however, was only one emotion that motivated people to decline the opportunity to participate. Some people felt a sense of awkwardness at having to deal with the past so openly. “I think our people get embarrassed about this kind of thing, especially young people.” For others, it was a deep sense of humiliation that prevented them from taking part. “By speaking to this panel of ours, they are shamed. When we have talked about their shame, they [feel that they have] violated some kind of power.”

Many were happy enough to participate in the activities of the Commission. For some, it was simply time. “My contention is that there are enough average men on the street who really deep in their hearts say “enough, is enough, already. Let’s get on with rebuilding this nation as human beings,” said one member of the clergy. Another put it this way: “It was very important indeed for people to confront what had happened. To tell, to get it on the record. To get it off your chest. Some people said ‘Now that I have spoken

I feel very happy. Even if nothing has happened. I got it off my chest. I told somebody.” Others, however, were willing to participate because they thought their efforts might lead to the arrest, finally, of perpetrators. “Some wanted to tell their story because they hoped [the perpetrators] will be in jail—they will be incarcerated, what we call political rationality.”

The Commission found, however, that even if the details about the abuses suffered decades ago have been repressed, people still remember these events. “You can only try to forget,” said one commissioner. A clergy member put it this way: “They have not forgotten, but I think most of our people have faith. They like to live more ahead. I must try to forgive and go ahead with my life but the not forgetting is what will help me and my children to separate true friends from those who are not friends. So, I must not forget my enemy to let my children know what happened and from which angle did it happen... They can’t forget, they can’t forget.”

Memory

One of the ways in which the Commission of Inquiry into Violations of Human Rights was most successful in promoting acknowledgement within society was in its attempt to build a narrative from the portraits which emerge from members of that society. In the case of Uganda, this was especially important. During the period in which Amin was in power, he went to great lengths to ensure that no records would be kept. This presented a real difficulty for the Commission:

When we started, I think the first thing that hit us was the absence of hard evidence. Oh, people would give testimony and talk of what happened, name names, but

when it really came to where to pin those people down, other than what we had heard, evidence became a really big difficulty. But, you know, these were crimes that were committed, and names that were known. They had committed crimes in the open. We, too, as commissioners, we used to see them committing crimes. But they would say ‘I hardly was there, and—you know, instructions were given on the telephone’ (they were verbal) and even then when we began to get at evidence, you’d find enough evidence against someone, but the one who gave the instructions didn’t have evidence. Take, for example, the soldier—you might have incriminating evidence, but the one who did it is not working in isolation. There is somebody who is sending him. So we began to hear cases, and we began to see, as the pattern emerged, perhaps the person who was there out in the field doing the torturing is the one you can get evidence against. But not the man who is the big man.

In fact, there hardly any physical, written record of the history of Uganda since Independence in 1962 remained in the country. Whole libraries had been destroyed. “We used to have a department of archives where you could go investigate and get information but it was destroyed and the information, and papers and booklets and so on were destroyed. You go to a room where it is supposed to be and it just stands in heaps of papers. You can’t reconstitute that.”

As a result, the Commission was especially vigilant in verifying and corroborating the evidence with which it was presented. “Often, nine or ten people would all come in with the same story, but three or four would be sufficient for us, so we wouldn’t waste time. But each of them would see the story from a different angle. Memory differs. No two people can describe the same incident in identical terms. It is always different.”

However, these efforts were mainly in vain: hardly anyone in the country ever saw the Report, or the companion Pamphlet which was published with it. The outside world largely ignored the CIVHR, and, as a result, the work of the Commission remains virtually unknown. The Final Report of the Commission had an extremely limited publication, and

even these copies were poorly, if at all, distributed. Many of the documents that discuss the Commission contain only small references to it, and even these are few.

As the work of the Commission came to a close nearly eight years after its inception, three of the commissioners decided to form a non-governmental organization which they named the Uganda Human Rights Education and Documentation Centre (UHEDOC). It was their hope that the Centre would be able to archive the evidence collected by the Commission, and to provide a forum in which the dialogue surrounding human rights which had begun under the Commission could continue. “We started this Centre. It was partly sponsored by the Danish Centre for Human Rights. It ran for four years. And we assembled a lot of materials and information. But like other things in the Third World, we ran out of funds. It was a brilliant idea. But we had to look for a new home for the information. So, we decided to place the materials where they would not be lost forever, in an institution. I literally transferred everything.” In 2001, that material resided in a locked and dusty closet in an out-of-the-way corner of the campus of Makerere University in Kampala.

The greatest benefit of acknowledgement, it seems, has been for the commissioners themselves. For, relative to the total population of Uganda of the day, which numbered between 14,700,000 in 1986 and 19,800,000 in 1994,³ the actual number of participants was very small. Hundreds of people completed questionnaires detailing their own history of abuse. 608 witnesses were called to testify before the Commission. Beyond this,

³ “Uganda,” in U.S. Census Bureau International Database [database on-line] (Washington, D.C.: U.S. Census Bureau, 2002, accessed 19 December 2002); available from <http://blue.census.gov/cgi-bin/ipc/idbsprd>; internet.

however, aside from hearing about such abuses via radio broadcasts or reading about them in newspaper accounts, most Ugandans themselves were never directly involved in the work of the Commission.

As a result of this spotty “remembering” on the part of the citizens of Uganda, the outward signs of memory that might be expected do not exist, at least publicly. (It is likely that Ugandans do, in fact, remember their own stories even if they are not told publicly.) In part, this stems from the policy of Yoweri Museveni, President of Uganda, who seems to have made a conscious decision not to memorialize anything or anyone. One commissioner said of the process of memorialization, “It has really been low-key, basically because the President wanted it that way. He was playing the politics of accommodation, and he didn’t want to recognize those wounded in the fighting.”

The truth commission was unable to foster acknowledgement manifest in physical memory. But this is not the case throughout the country, where symbols of earlier regimes remain. For example, the tribal kingdoms of the country were reinstated under Museveni. These kingdoms had been abolished in 1967, under Obote,⁴ but were restored in 1993 without any political powers.⁵ The existence of the kingdoms is protected under the 1995 Constitution.⁶ In July 2001, Museveni hosted Libyan President Muammar Gaddafi in a state visit during which Gaddafi attended the coronation anniversary celebrations of King Oyo of Toro, a kingdom in the west of Uganda.⁷

⁴ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights*, 23.

⁵ *Uganda* (Brooklyn: Interlink Books, 1998) 298-299.

⁶ *Uganda Constitution (1995)*, article 246.

⁷ Gawayo Tegulle, “Why is Gaddafi in love with Uganda?” *New Vision* (Kampala), 18 July 2001.

In Kampala in 2003, there were a handful of streets which were named after people important to the causes and campaigns of former leaders. One of these, Luwuum Street, was named after Archbishop Luwuum, who was killed in the time of Amin. He was so honoured by Obote, and the street name remains unchanged. Some of the memorial projects implemented by former governments had been co-opted by Museveni's regime. Perhaps the best example of this is a national holiday called "Heroes' Day." Initially instigated by the Uganda People's Congress (UPC) to mark Obote's return to power in 1980,⁸ Heroes' Day was still held under the NRM. In 2001, Heroes' Day was held ostensibly to "remember people of all kinds who died during the war."⁹ However, Museveni has chosen to use the day to recognize those people who helped him attain power in the bush war. Among these, in 2001, were two of the commissioners of the CIVHR: John Nagenda and Joan Kakwenzire, both now Special Presidential Advisors. Mr. Nagenda said of receiving his medal, "You could say that we are called heroes of the bush war. For me, of course I thought this was way too incredible and I knew people who did more work. On the other hand, for me, it was very fulfilling to be given this medal because we did whatever we did to sort of change the system, and I thought that the past should be put behind us."

Critics argue, though, that "a national Heroes' Day should include all heroes of the country, whether in the present regime or in past regimes."¹⁰ It has also been suggested that the government could build a memorial to honour those who died at the hands of government

⁸ Charles Onyango-Obbo "17 Years Ago, Museveni did it to Binasisa," *The Monitor* (Kampala), accessed 22 December 2002; available from www.charlesobbo.com/article68.html; internet.

⁹ Joshua Kato, "Honour our living heroes," *New Vision* (Kampala), 9 June 2001.

forces between 1962 and 1986. A member of the unofficial opposition remembered, “It was arranged to build a memorial tower or some sort of statue to remember the people who have died because of their country. That one was even passed in parliament but it didn’t happen.”

In fact, some memorials do exist. Especially in the District of Luweero, there is an impetus to remember what happened. The Luweero Triangle, as it is often called, was the scene of some of the worst fighting, from 1980-1985, in the history of Uganda. And the citizens there, in cooperation with the Ministry of State in charge of the Luweero Triangle, are attempting to memorialize those who died. Along the side of the highway that runs throughout the length of the district sit two abandoned tanks. The citizens of Luweero District have asked specifically that they be left as a reminder of the fighting.

In that area, there was also a mass burial of thousands of skulls left from the fighting. One commissioner explained:

At the end of the war there were lots of skulls, scattered all over Uganda. So this government made an effort to collect those skulls and skeletons. They had sites where they kept them for some time; people went to see the skulls. Initially they were really just collected in the open, and people could see there was a skull over here, a skull over there. Then they collected all of these because they could not tell who the skulls were. Eventually the government went and collected them and made mass burials of those skulls at the various sites in the country. So those places are there.”

The concentration of skulls at various sites constitutes a physical remembrance or memorial.

¹⁰ Paul Okello in Joshua Kato, “Honour our living heroes,” *New Vision* (Kampala), 9 June 2001.

Outcome of Uganda's Efforts at Acknowledgement

It would appear, then, that Uganda's efforts at acknowledgement, through the Commission of Inquiry into Violations of Human Rights, were hit and miss. In some instances, it does appear that the Commission was trying to usher the individuals who appeared before it toward some kind of acknowledgement. Yet the people of Uganda rarely saw the benefit of such efforts. A former refugee during the Amin era, in reflecting on the successes of the Commission, said this: "Well, I think it was a lesson to most of them. But they didn't learn anything from what happened, or they seem to have forgotten."

Haiti

The Commission nationale de vérité et de justice: Mandate and Role

The mandate of the *Commission nationale de vérité et de justice* (CNVJ) was unambiguously clear-cut: "to globally establish the truth about the most serious violations of human rights committed between 29 September 1991 and 15 October 1994, both inside and outside the country and to help in the reconciliation of all Haitians, without prejudice to judicial remedies that might arise from such violations."¹¹ The Commission was directed to look at the 1112 days during which the brutal abuse of Aristide's supporters, both inside and outside of Haiti, had taken place.

Here again, the mandate of the commission does not specifically address the concept of acknowledgement. The mandate does specify that the desired outcome of the work of the commission is reconciliation—a necessary but not sufficient condition for

democracy that can only result from an active acknowledgement of past events. This reconciliation, however, was perceived in a conceptually different manner by the Haitian commission. While it was recognized that “reconciliation pronounced by the President cannot become reality unless the truth is told about crimes committed,”¹² the focus was less on “the restoration of friendship between (people) after an estrangement or quarrel” as discussed in chapter two than on bringing the perpetrators of crimes that had been committed to account for what they had done.

The very name of the Haitian body reflects the Commission’s attention to justice, and indeed this focus on justice factored heavily in the Commission’s work. One commissioner explained, “Reconciliation was a major objective. The people said, ‘Reconciliation is not possible without justice.’ Therefore if we could just get the process of justice started, people would be justified in their suffering and their sorrow. Justice would not only be like a balm, but it would also make possible forgiveness.”

An international investigator who worked for the Commission, however, said this: “Reconciliation was just not a goal. We were more interested in justice and prosecution. Reconciliation was too far down the line. First, we had to go step by step.” Another of the commissioners reported: “I think there was an element of striving for reconciliation. Perhaps the stronger element, though, was getting the information in order to establish the truth.”

¹¹ The Republic of Haiti, *Rapport de la Commission Nationale de Vérité et de Justice* (Port-au-Prince: Government of Haiti, 1995) Annexe I, 355.

¹² *Ibid.*, 354.

In fact, the Commission's mandate expressly established the CNVJ as a non-judicial body,¹³ although it was granted the power to refer appropriate cases to judicial authorities.¹⁴ The Presidential Decree setting out the Commission focuses mainly on the Commission's duty to collect by means of interviews, inspections and investigations "the evidence, facts, elements of proof and information" about the crimes and human rights abuses committed by means of interviews, inspections and investigations.¹⁵ (See Appendix C.)

The collection of such evidence, in point of fact, comprised the majority of the Commission's activities. At its peak, the Secretariat of the Commission employed no less than 100 people. The majority of these operated as investigators based in the field, collecting questionnaires and interviewing victims and their families. This testimony, in the form of information about each victim identified by the investigators, was eventually compiled and released as a 435-page Appendix to the main Report.¹⁶

In the end, it was decided that the CNVJ should focus mainly on a small number of high-profile cases. The Report itself devotes only one 55-page chapter to the discussion of specific cases. The rest is devoted to descriptions of methodology and discussions of general and systemic repression, along with the recommendations made by the Commission. The three appendices contain official documents, statistics, and victim information, respectively.

¹³ Ibid., 357.

¹⁴ Ibid., 358.

¹⁵ Ibid., 357-358.

Failure to Acknowledge

The Haitian commission, therefore, accomplished a variety of tasks. Yet few of these appear to have substantively contributed to any significant acknowledgement by the society. The theoretical premises of acknowledgement are explored below as they relate to the Commission's activities.

Coming to Terms with the Past

The greatest contribution made by the CNVJ to the process of acknowledgement comes in the form of evidence. The CNVJ collected a great deal of evidence about the abuses which had taken place. The Report, as discussed above, managed to establish some elements of truth about these events. This truth, however, was highly subjective, as those providing information were themselves victims of the prior regime; few perpetrators ever came forward, and their accounts remain outstanding.

In addition to the Report, however, the Haitian commission utilized a specialized team of forensic anthropologists to collect posthumous information about specific killings. During two forensic missions to Haiti in 1995, the Argentine Forensic Anthropology Team conducted investigations of ten cases of human rights violations. "In six of these... human remains were exhumed or collected from the surface, and analyzed at the University Hospital of Port-au-Prince."¹⁷ This evidence led to the "conviction of fifty-three people in the Raboteau case [one of the highly publicized cases focused on in the Report of the

¹⁶ Ibid., Annexe III, 1-435.

¹⁷ Argentine Forensic Anthropology Team, *Annual Report 2000* (New York: EAAF, 2000) 53.

Commission] in 2000... [This marked] the first time that physical evidence [had] been used in Haitian judicial history.”¹⁸

Another of the “firsts” achieved by the Commission was the creation of a database into which details of each crime were entered. Under the direction of Dr. Patrick Ball of the American Association for the Advancement of Science (AAAS), the Commission collected and organized information provided by victims into their families. This information was then used to produce statistical data that revealed correlations and patterns in the crimes committed. From these, reports were produced that allowed the commissioners to determine in great detail facts about the abuses that had taken place. One staffer remembered, “There were one or two core reports that we did that looked into what kind of crimes were committed most in what regions, and who the targets seemed to be, broken down by age, gender, that sort of thing.” At that time, the database was the most sophisticated of its kind. Such databases have since been employed in other truth commissions, including South Africa.

Of added benefit in the furthering of the process of acknowledgement was a high level of participation among Haitians. Several of the commissioners reported that the grass-roots sector of the population participated. “People spontaneously came forward. We collected 8,000 or more interviews. People only wanted to listen and to be recognized. They clearly demonstrated that they were not coming for money; just testifying was in itself a formal recognition. In many cases, people walked far and spent the night in order to be able to testify.” Said another, “The community was on-side.”

¹⁸ Ibid., 50.

But any hope of open discussion that had been voiced during the consultations in Montreal, as described in chapter six, was dashed. It quickly became apparent that it would not be possible to hold public hearings. “Public hearings were not possible, because we could not ensure the safety of the victims. But we could not ensure the safety of the perpetrators either. And we could not even assure the protection of the people in charge or those we would ask to come and testify,” said one commissioner. The *tonton macoutes* (paramilitary groups) and Cédras’ supporters still lived in and among the general Haitian population, and regularly engaged in intimidation of Aristide’s supporters.

Moreover, the corruption that was so prevalent in Haiti served to reduce the accountability that might have been pursued by the Commission. The CNVJ focused especially on aspects of judicial and police reform. At that time, the majority of judges were those who remained from the prior regime, and could not be counted on to be fair and impartial. The Presidential Decree setting out the terms of the Commission recognized this, calling on the commissioners to work only with “competent judicial authorities.”¹⁹ Besides, perpetrators were never made to come forward, as the Commission had no authority to compel their attendance. “I think that was a great deficiency in the work of the Commission,” said one commissioner, “because we didn’t have the chance to hear what those who had made these horrors had come to say. But if we heard some, they were always hiding: the soldiers behind their duty, and the others expressed no regret for what they had done.”

¹⁹ The Republic of Haiti, *Rapport de la Commission Nationale de Vérité et de Justice*, Annexe I, 358.

In the end, the successes achieved in the assembly of information were for naught. The Final Report was hurriedly prepared and presented to President Aristide on 5 February 1996, just as he was preparing to leave office. Only 75 copies of the Report were printed. More than two years later, a second edition was produced which included the three appendices. Yet not even all of the commissioners ever received a copy. Most Haitians have never seen a copy of the Report.

The later edition, which included 435 pages of names, and totalled 925 pages, was simply too unwieldy to be of much benefit. “It was inaccessible,” one senior international staffer reported. “It was written in French, which most Haitians don’t read or write.” Even if it had been written in Créole, the literacy rate is only 45%.²⁰ Consequently, except for the 8,000 witnesses who appeared before the Commission, most Haitians were simply never exposed to the work of the Commission. “Many Haitians probably didn’t know CNVJ existed.” As a result, many did not have the opportunity to begin to publicly acknowledge their difficult past.

Emotional Response

If acknowledgement is taking place, I posit that the individuals involved in the process will be responding emotionally to those things that they are remembering and being told. Haitians, in fact, seemed to exhibit few of those emotions, at least publicly.

It was not as though people were able to let the memory of what had happened die, however. “People were not able, certainly, to forget.” The events that had taken place

²⁰ “Haiti,” *Encyclopedia Britannica Almanac* (Chicago: Encyclopedia Britannica, 2002) 498.

from 1991 to 1994 were still fresh in the minds of those who had suffered. The complete transition to legitimately-elected, democratic governance and the stability that ought to have accompanied this change had not been effected.

The evidence indicates that Haitians had not yet dealt with the emotions that resulted from their history of abuse. One international consultant working for the CNVJ explained, “[The commission] met some doctors and psychologists who had worked with victims and there had been some groups formed, support groups formed for victims of rape, and sexual assaults. But they required so much more.”

“People wanted to testify,” reported one of the commissioners, “but it was too hard.” One international NGO worker reported, “They wouldn’t talk about it but it pervaded their lives.” An IGO staffer reported, “They are too concerned with what is happening today and how am I going to be able to look after my children today?” Said another, “In Haiti, you go on with life. Most families would lose people... The picking-up afterward, for a lot of Haitians that was life.” In fact, not dealing outwardly with the emotions that arise after a period of abuse may well have become a national tradition. Since the beginning of Haiti’s history, Haitians have endured cruelty, hardship and often abuse by the government and its agents. This violence has been almost unrelenting for more than two hundred years. Certainly, many in the present generation lived first under the regime of the Duvaliers, and then suffered still more abuses under Cédras.

The lack of public remembering and acknowledgement was likely due to two factors present in the case of the CNVJ. First, Haitians apparently shy away from remembering aloud those experiences that the Commission was eager to hear because they

are afraid. “There were people I think who were leery of the Commission,” said one international consultant employed by the CNVJ. “People were simply afraid to come forward with their stories... That fear still exists.” Second, others were apparently reluctant to share their experiences because of the presence of non-Haitians. An international NGO worker explained, “Haitians are hesitant to admit problems to outsiders.”

It is entirely possible, as the evidence appears to indicate, that the scars from the events of the early 1990s were so insignificant as to pale beside the oppression and abuses suffered under the regimes of the Duvaliers from the 1950s forward. “Under Duvalier, there were a lot of witch doctors that were killed at that time. There were a lot of other people who were looked at as authority figures that were just missing. There were some very brutal things happened [*sic*].” Similarly, the past two hundred years have been unkind to the Haitian people. “What I sense has happened and is happening is that they are still in that same mode that they have been in the last two hundred years.”

Even so, some 8,700 Haitians did choose to come forward. One commissioner said, “I think there was tremendous feeling that they had to confront the past... I think there were obviously some people for whom the process was cathartic and one could see that in the way they gave their evidence.” Another related that “[Haitians felt] that for the first time they have the opportunity to speak. It was therapeutic.”

Memory

As discussed above, the CNVJ proved particularly adept at building a common narrative of past experiences. These stories came together in the database that was established to provide a cohesive record of events. They also formed the basis for the Report which was finally published after the work of the Commission had been completed in early 1995. These two compilations of information were perhaps the most successful tools used by the CNVJ in working toward acknowledgement. In fact, this information now forms the most complete record of events now known, since the military regime of Cédras had apparently left no record of their tactics.

A description has also been provided, above, as to the ineffective methods employed (or, rather, in this case “not employed”) by the commission to ensure the very distribution of the Report. Beyond that, however, the Report and therefore the results and recommendations of the Commission were simply inaccessible to the Haitian public. “There were a number of articles, etc., on the radio at the moment of handing over the Report,” recounted one commissioner. One journal, *Information Libre*, did publish a two-part series on the work of the Commission in 1997. Yet even this was inaccessible to the majority of Haitians. At one point, a Haitian newspaper also leaked a three-page list of the alleged perpetrators named by the victims who had testified before the Commission.²¹ Despite this, the acknowledgement achieved by the CNVJ was not a popular acknowledgement, which is to say an acknowledgement by the grass-roots, by any means.

²¹ “Enfin, la liste des présumés assassins!” *Haiti Progrès* 15.47, 11-17 February 1998, 10-11, and 15.48, 18-24 February 1998, 10-13.

As such, and even more a result of the fact that public hearings never took place, outside of the inner circle that consisted of commissioners and commission staff, along with the related government officials, few others knew any details of what the Commission had found. Even though commission staffers admitted that public enlightenment “was understood to be part of the mandate,” the Commission made few overtures in that direction. “The work of the Commission did not have the follow-up I would have wished on the level of legislative changes. I think that would have had a large impact, even on the level of the population.” Clearly, had the Commission’s work been aimed at the majority of the Haitian population, more popular coverage, including radio broadcasts, would have been pursued.

Following up on the work of the CNVJ was made more difficult by the immediate transfer of power that occurred hours after the Report had been presented to President Aristide. As described in chapter five, Aristide’s constitutionally-limited term as president had expired, and Aristide ceded power to his elected successor, René Préval. Aristide had not had the opportunity to make public the findings outlined in the Report, including the list of names of the perpetrators who had been accused of committing many of the abuses. Préval chose not to, despite repeated calls from groups like Human Rights Watch.²² The lack of adequate support from the police and the judiciary, and the remaining influence held by Cédras caused Préval to take measures to “avoid a witch-hunt, which would undoubtedly have created more problems than it would have solved.”

²² Human Rights Watch, *Thirst for Justice: A Decade of Impunity in Haiti* 8.7 (Sep. 1996) 5.

A collective memory that stems from the work of the Commission is conspicuously absent. There are but a couple of instances in which any significant form of common memory can be seen. This, therefore, has an extremely negative impact upon the presence of physical memory in Haiti as a whole. The one example of physical memory exists because of the work done in the case of Gonaïves, where a mass murder took place. On 22 April 1994, the slum of Raboteau, in the city of Gonaïves was raided by a group of soldiers and civilian paramilitaries. Between eight and 15 people died and many more were tortured and forced to lie in open sewers.²³ The president of the Commission, Mme Françoise Boucard, conducted a short service of remembrance, after the results of the forensic investigation had been completed, for those who had died. The Commission was also involved in erecting a monument to commemorate the victims of the massacre. A criminal trial was also held in 2000 to determine the guilt of those charged with the crime.²⁴ Aside from this case, Haiti bears no indication of physical memory other than physical scars from the legacy of abuse.

Outcome of Haiti's Efforts at Acknowledgement

The evidence is clear: Haiti was by no means successful in its attempt at acknowledgement, which was begun in the form of the *Commission nationale de vérité et de justice*. The overall mandate of the CNVJ was at best problematic: the people were not encouraged to reckon with any events beyond those which had occurred under Cédras. It

²³ Peter Greste, "Massacre witness hearings open in Haiti," *BBC News* 4 October 2000; [article on-line]; available from <http://news.bbc.co.uk/2/hi/americas/955744.stm>; internet; accessed 28 May 2003.

²⁴ *Ibid.*

seems that they have never acknowledged the abuses and crimes that have occurred under any of the leaders of recent years.

In 2002, the people of Haiti seemed largely unaware of the activities of the Commission, and had not benefited from its work in any real sense. One commissioner insisted, “the Commission was only one part of the process to transform Haiti” and yet would not say whether he felt that Haiti had benefited from its work. The benefits are negligible at best.

Conclusions

The truth commissions of Uganda and Haiti, then, were relatively unsuccessful in generating any kind of real acknowledgement among the ordinary citizens of Uganda and Haiti, at least gauging by the three indicators identified in chapter two: coming to terms with the past; emotional response; and memory and remembering. In both cases, the goal of acknowledgement was never the explicit outcome envisioned. That is to say, the commissioners appeared to understand the necessity of the components of acknowledgement in reaching an end goal that included strengthened civil society and democratic development. An examination of these indicators, however, reveals that the commissions were not successful in developing any of the three indicators to a degree sufficient to provoke or promote any kind of real acknowledgement.

In chapter two, I posited that acknowledgement is a necessary but not sufficient condition for democracy which must be present in order for those same desired outcomes to occur. Acknowledgement itself, I argue, is able to bring about forgiveness, which can

lead to the generation of social capital and social trust. If these commodities are present in sufficient quantity, they should begin to foster the participation of ordinary citizens in the stuff of civil society. In chapter nine, we examine the composition of the civil society found in Uganda and Haiti, and the social underpinnings that support it.

CHAPTER NINE

SOCIAL UNDERPINNINGS/CIVIL SOCIETY

The theory of acknowledgement, with which this study has primarily been concerned, considers the role of acknowledgment in any society's reckoning with past atrocity. It posits that acknowledgement is a necessary but not sufficient condition for the realization of desired outcomes, including democracy or justice. This does not mean that acknowledgement is a simple act. Nor does it mean that acknowledgement is the only step necessary for societies aiming to move forward. There are a series of steps located between these points (see Fig. 2-1) that figure prominently in any process of acknowledgement.

Among these are the development of social trust, civic engagement and social capital. As described in chapter two, and more broadly below, these inter-related elements form a core process of activities that serve to solidify inter-personal and societal relations within any transitional society. In sum, if citizens can begin to trust one another, and to trust that the society will not harm them, they begin to engage in societal activities, which might include membership in civil society organizations or social movements. This activity generates social capital, the currency of social interaction. This social capital leads to the development of civil society, the social underpinnings of any society, which in turn leads to the development of democracy or other outcomes including a strengthened judiciary.

In chapter eight, we considered how the truth commissions of Uganda and Haiti were able to facilitate acknowledgement within society. It appears that neither commission was able to foster any real levels of acknowledgement. Following the theory as laid out above, we should see correspondingly low levels of development of civil society in both Uganda and Haiti.

This chapter considers the evidence of the existence of civil society in both countries. In it, I look at the broad framework of civil society as another test of the acknowledgement that these truth commissions were able to promote. Membership in social movements and civil organizations is used as an indicator of the levels of civil society that exist.

The Relationship between Acknowledgement and Civil Society

In the theory laid out above, I posit that one logical and important outcome of any successful process of acknowledgement ought to be the ability to trust. Trust is central in the interpersonal relationships people have with their families, friends, neighbours and fellow citizens. O'Neill asserts that "trust often invites reciprocal trust: and when it does, we have virtuous spirals."¹ Trust is also important in ensuring that people can believe in and depend upon their family, friends and neighbours in a variety of contexts and circumstances. This level of trust is instrumental in building informal civil networks, and in giving people the confidence to join in the activities of civil society. These activities

¹ Onora O'Neill, "Trust and Terror," in *A Question of Trust: BBC Reith Lectures 2002* (London: BBC, 2002); [lecture on-line]; available from http://www.bbc.co.uk/radio4/reith2002/lecture2_text.shtml; internet; accessed 9 January 2003.

can range from membership in social organizations to outings with family or friends to local establishments, to communal living or working arrangements.

As discussed in chapter two, Robert Putnam argues that where strong networks of civil society exist, democracy should also exist.² The development of such engagement within society is critical because the social interaction inherent in such group memberships fosters what Putnam labelled *social capital*. The “virtuous spirals” of which O’Neill speaks appear to be the very building blocks of this social capital. Putnam asserts that “[c]ivil associations contribute to the effectiveness and stability of democratic government... both because of their “internal” effects on individual members and because of their “external” effects on the wider polity.”³ Civil society represents a necessary but not sufficient condition for the formation of democracy.

Putnam’s conception of social capital, along with those of Coleman, Fukuyama and others, is based on a society that is both developed and peaceful.⁴ Yet not all societies fit into this particular mold. Crime and violence have a strong and deleterious effect on levels of social capital. Conflict can devastate the social fabric of a nation, by destroying social capital. The disappearance of social capital, and also social cohesion as it is often called, leads to social breakdown, further conflict, increased crime and civil strife.

Social cohesion, as defined by Berkman and Kawachi, is intertwined with the notion of social capital. “Social capital forms a subset of the notion of social cohesion. Social cohesion refers to two broader intertwined features of society: (1) the absence of

² Robert Putnam, *Making Democracy Work* (Princeton: Princeton University Press, 1993) 90.

³ *Ibid.*, 89.

latent conflict... and (2) the presence of strong social bonds – measured by levels of trust and norms of reciprocity, the abundance of associations that bridge social divisions (civic society), and the presence of institutions of conflict management, e.g., responsive democracy, an independent judiciary, and an independent media.”⁵ Social cohesion is the “key intervening variable between social capital and violent conflict.”⁶

Recent studies have demonstrated this effect. Moser and Holland found that declining social capital leads to a climate of fear that directly impedes citizens’ ability to participate and cooperate.⁷ Another study by Colletta and Cullen describes the effect of violent conflict: “This damage to a nation’s social capital – the norms, values and social relations that bond communities together, as well as the bridges between communal groups (civil society) and the state – impedes the ability of either communal groups or the state to recover after hostilities cease.”⁸ In the late 1990s, this effect was recognized by agencies such as UNAIDS and the World Bank, and incorporated into their programming.⁹

One cautionary note comes from Africanists who have been trying to situate the civil society debate within the African context. Although wide-ranging definitions of civil society in Africa have been put forward, Hutchful warns that the differences being reported

⁴ See James S. Coleman, *Foundations of Social Theory* (Cambridge: Harvard University Press, 1990) chapters 6, 7; Francis Fukuyama, *Trust: The Social Values and the Creation of Prosperity* (New York: Free Press, 1995) 153.

⁵ Lisa F. Berkman and Ichiro Kawachi, eds., *Social Epidemiology* (New York: Oxford University Press, 2000) 175.

⁶ Nat J. Colletta and Michelle L. Cullen, *Violent Conflict and the Transformation of Social Capital* (Washington: The World Bank, 2000) 13. See also Amartya Sen, *Development as Freedom* (New York: Knopf, 1999).

⁷ Caroline Moser and Jeremy Holland, *Urban Poverty and Violence in Jamaica: Latin America and Caribbean Studies Series* (Washington, D.C.: World Bank, 1997).

⁸ Colletta and Cullen, *Violent Conflict and the Transformation of Social Capital*, 4.

⁹ See, for example, Rene Loewenson and Alan Whiteside, *HIV/AIDS Implications for Poverty Reduction—UNDP Policy Paper* (New York: UNDP, 2001).

may simply result from societies at “different phases of the evolution of civil society, reflecting civil society in formation.”¹⁰ Civil society itself, at least as defined in the Western conception, and as envisioned by colonial regimes, simply may not have existed in Africa. In the end, Hutchful agrees that civil society “is on its way, but not yet there – and it may be arising in unexpected places.”¹¹

As such, civil society, as it applies in the developing world, is perhaps best defined by Stepan: “Civil society is that arena where manifold social movements... and civic organizations from all classes... attempt to constitute themselves in an ensemble of arrangements so that they can express themselves and advance their interests.”¹² This definition can encompass both social movements and social engagement, as well as organized civil society groups. Its use also represents a significant departure from the manner in which the term *civil society* is currently used by governments and many aid agencies, which tends to focus on civic organizations. The civil society that is important in this instance is not membership in particular organizations or groups, but, rather a diverse “ensemble of arrangements,” as defined by Stepan, that allow for social engagement at a variety of levels. This is a useful definition in that it focuses not on any variation of the state-society paradigm¹³ but, rather, on the associational lives of the individuals within each context.

The under-development of civil society and the disappearance of social capital, then, are not insignificant. Rather, once social capital has been destroyed through

¹⁰ Eboe Hutchful, “The Civil Society Debate in Africa,” *International Journal* 51.1 (Winter 1995-1996): 58.

¹¹ *Ibid.*, 73-74.

¹² Alfred Stepan, *Rethinking Military Politics: Brazil and the Southern Cone* (Princeton: Princeton University Press, 1988) 3-4.

instances of prolonged violent conflict, the social underpinnings of that particular society have likewise been destroyed. As a result, civil society's ability to engage in cooperative activities is severely reduced. This loss of social capital as a result of violent conflict in turn lessens society's ability to prevent further conflict. The prescription? "Development needs to nurture and transform social capital in order to create and maintain the mechanisms and institutions necessary for strengthening social cohesion, managing diversity, preventing violent conflict, and sustaining peace and reconciliation."¹⁴ The truth commission is often counted on as being one of those institutions. In the cases of Uganda and Haiti, however, truth commissions were apparently able to do none of these things successfully.

Considering Demographic Realities

Before looking at the evidence of social capital and civic engagement after the truth commissions in both Uganda and Haiti, it is important to note that in each case there were factors which exacerbated the impact of the human rights abuses and violent deaths. The outcomes of the Commission of Inquiry into Violations of Human Rights in Uganda and the *Commission nationale de vérité et de justice* in Haiti were not predicated solely on the commissions themselves. Truth commissions, like other mechanisms employed in transitional societies, do not operate inside a vacuum, but, rather, in an unstable and fluid environment.

¹³ Hutchful, "The Civil Society Debate in Africa," 64.

¹⁴ Colletta and Cullen, *Violent Conflict*, 123.

The outcomes of the truth commissions of Uganda and Haiti, therefore, were hampered by a number of factors, all of which were completely out of the control of the truth commissioners themselves. In both cases, these factors combined with the effects of the violent conflict under consideration to further weaken civil society.

Uganda: Demographic Reality

In Uganda, the most significant factor that served to compound the outcomes stemming from the truth commission was the sheer number of deaths which had occurred in the years from Independence onward. Although statistical data are incomplete (i.e. accurate information was only sometimes collected) the International Database of the U.S. Bureau of the Census provides a startling picture of the impact of such deaths on Ugandan society: significant groups of Uganda's population decreased by more than 1,000,000 between 1969 and 1991, years for which significant data are available. President Museveni himself claimed that approximately 500,000 had been killed by Amin and his supporters.¹⁵ Other estimates approximate the number of deaths under Obote during his second term in power at 320,000.¹⁶ The number of combined deaths, therefore, approximated 820,000 to 1,000,000.

One significant demographic group for which the fighting posed a significant risk was young people, men and women, between the ages of 15 and 29. This age-group was physically engaged in fighting and active resistance against those in positions of power who were waging the civil wars. U.S. Census Bureau Data shows that the size of this

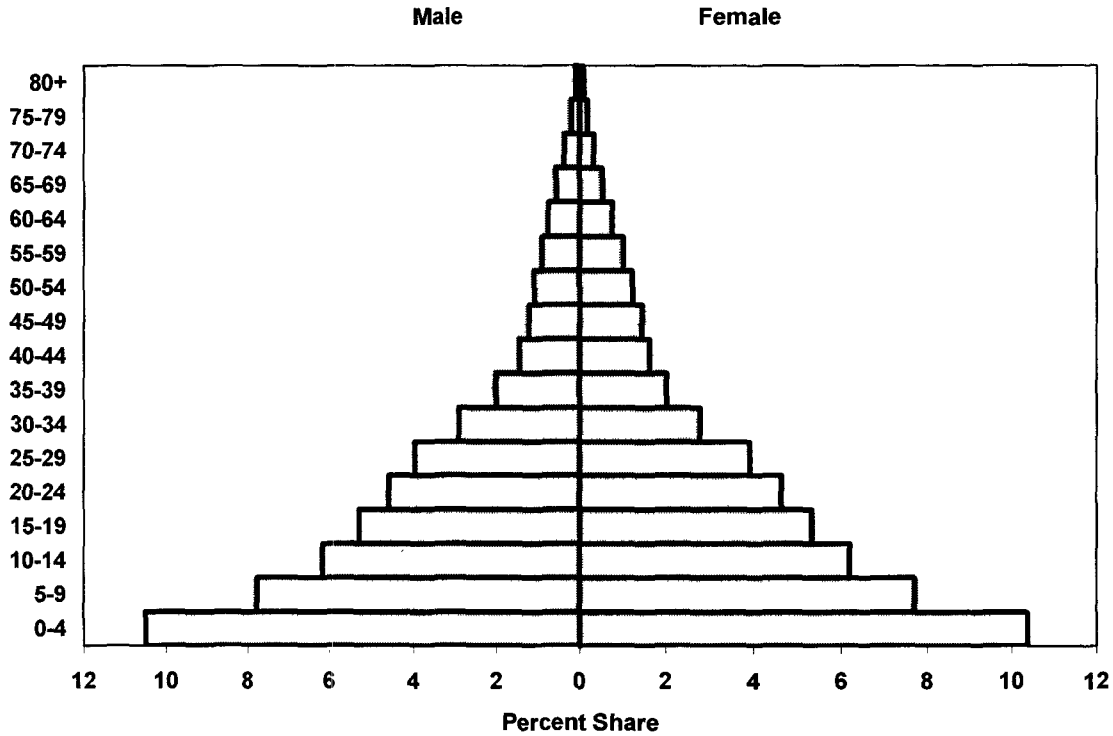
¹⁵ Yoweri Kaguta Museveni, *Sowing the Mustard Seed* (London: Macmillan, 1997) 41.

group alone had declined by close to 600,000 people by 1991, from 2,284,992 in 1969. In percentage terms, this amounts to an average decline of 26% for this particular age-group. The decline in populations of men and women in this period is similar, for in many cases women were also targeted. For individual groups, such as males aged 25-29 years, these rates are even higher, peaking as high as 36%. This is demonstrated in Figure 9-1, which shows the shortfall between the population in 1970 and those same groups in 1990. Indeed, the annual percentage growth of the population began to decline steeply in 1969, and fell sharply in 1972-3 and again in 1980-1.¹⁷ These dates correspond exactly with the reported increases in violence and killing under Amin, and Obote in his second term. The decline in the annual percentage growth is illustrated in Figure 9-2.

¹⁶ Thomas P. Ofcansky, *Uganda: Tarnished Pearl of Africa* (Boulder: Westview, 1996) 55.

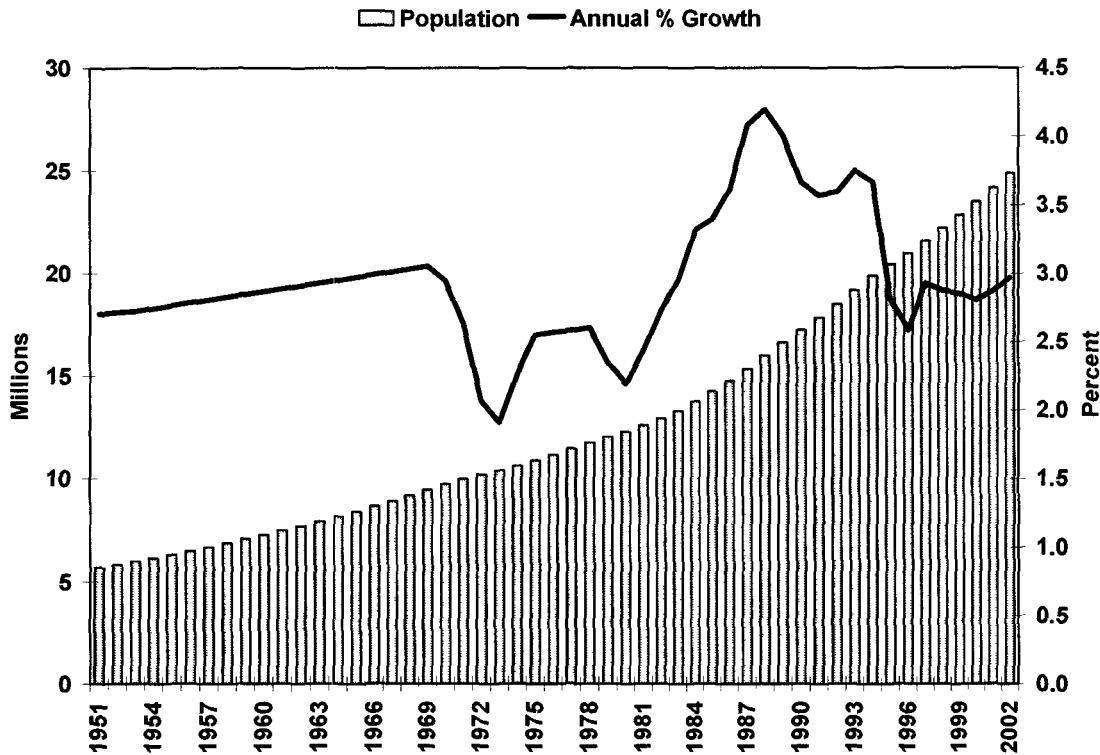
¹⁷ Data compiled using "Uganda: Enumerated and Adjusted Census Population," U.S. Bureau of the Census, International Data Base; [data-base on-line]; available from <http://www.census.gov/ipc/www/idbnew.html>; internet; accessed 19 December 2002.

Figure 9-1: Population Pyramid, Uganda: 1990 (Outline) vs. 1970 (Shaded Bars)¹⁸



¹⁸ I wish to thank Gerald Bierling of the Department of Political Science at McMaster University for his assistance with Fig. 9-1 and Fig. 9-2.

Figure 9-2: Population Change in Uganda, 1951-2002



These numbers are important because they clearly highlight those segments of the population that were killed under successive regimes from the late 1960s until the 1980s, when Museveni acceded to power. More importantly, however, they provide an effective explanation as to one key reason why Ugandans failed to begin again to participate in active civil society: Many of those people who should have been able to remember what active civic engagement constituted simply were not alive to remember. “Normal” interactions between members of the society had long since ceased to occur. Animosity and fear had prevented people from “constituting themselves in an ensemble of arrangements,” as proposed by Stepan. Consequently, those who were left had no memory

of the kinds of social and civic engagement in which people had been engaged in earlier times. This is indicative of the “weakened social fabric” predicted by Colletta and Cullen where violent conflict has persisted.¹⁹

By the time the CIVHR had completed its work in 1994, another demographic reality had surfaced, which had begun to lay waste to more of the population: HIV/AIDS. In fact, HIV and AIDS had not been a major factor in the period from 1961-1986, although the first confirmed case of AIDS was identified in Uganda as early as 1982.²⁰ But after 1986, in the period in which Uganda was attempting to rebuild, AIDS became a significant factor. At its peak in 1992, for example, the AIDS rate among pregnant women in Uganda reached approximately 30%, although it had reportedly fallen to 11% by 2000.²¹ In 2000, the overall adult rate was approximately 8%.²²

The scourge of AIDS presented a similar set of implications for Ugandan society: Adult victims of AIDS, who made up fully 85% of Uganda’s HIV/AIDS infected population in 2001,²³ would otherwise have been members of Uganda’s civil society. They would have been the people taking an active role in the daily civic life of the country. Their orphans, who numbered approximately 880,000 in 2001²⁴ are now shouldering the

¹⁹ Colletta and Cullen, *Violent Conflict*, 3.

²⁰ James P.M. Ntozi and Fred E. Ahimbisibwe, “Some factors in the decline of AIDS in Uganda,” *The Continuing HIV/AIDS Epidemic*. 1999: 93-107; [journal on-line]; available from http://nceph.anu.edu.au/htc/pdfs/ContinuingHIV/Ntozi_Ahimb.pdf; internet; accessed 10 January 2003.

²¹ UNAIDS, “A Global Overview of the Epidemic,” *Report on the Global HIV/AIDS Epidemic 2002* [article on-line]; available from http://www.unaids.org/barcelona/presskit/barcelona%20report/contents_html.html; Internet; accessed 10 January 2003.

²² Loewenson and Whiteside, *HIV/AIDS Implications for Poverty Reduction – UNDP Policy Paper*, 3.

²³ “Uganda: UNAIDS/WHO Epidemiological Fact Sheet: 2002 Update;” [report on-line]; available from http://www.unaids.org/hivaidsinfo/statistics/fact_sheets/pdfs/Uganda_en.pdf; internet; accessed 10 January 2003.

²⁴ Ibid.

burden of caring for siblings and supporting family units. They have little time for participation in the activities of civil society.

Haiti: Demographic Reality

In Haiti, by contrast, the population did not experience such significant losses due to the political and military apparatus controlled by Cédras. The U.S. Bureau of Census shows no decline in population growth,²⁵ as might be expected if wholesale slaughter of particular groups had occurred. This is so for a couple of reasons. First, the time lag between the crimes and the implementation of the truth commission was only three years, a significantly shorter period than that under consideration in Uganda. The rate of growth within the country progressed steadily from before Cédras took power, and continued to increase at more or less the same rate into the early part of the 21st century. Second, there is no indication that any one age group was targeted by the regime. In the end, vast numbers of Haitians were not executed, at least not on the same scale as witnessed in Uganda. Instead, hundreds of thousands of Haitians were psychologically and physically traumatized by the events that took place. Although this is not reflected demographically, it remains a significant factor.

What disrupted Haitian society more, however, was the incidence of HIV/AIDS that has continued to increase. Haiti's struggle with AIDS has been called "by far the

²⁵ "Haiti," U.S. Bureau of the Census, International Data Base; [data base on-line]; available from <http://www.census.gov/cgi-bin/ipc/idbsprd>; internet; accessed 30 June 2003.

worst in the Western Hemisphere.”²⁶ UNAIDS estimates Haiti’s overall adult AIDS rate at approximately 5%.²⁷ “About 300,000 Haitians had died of AIDS by 1998, according to the Policy Project, or between 100 and 150 people daily – quite a toll for a country with a population of about 7 million.”²⁸

The AIDS epidemic strongly corresponds to the political situation in Haiti. “Studies have found that AIDS likely spread to the countryside during the reign of terror imposed by the military after Aristide's first term, when young men—many of them infected—fled the capital. The rate of infection in Port-au-Prince remains at least twice that of rural areas.”²⁹

As a result, the demographic reality for the restoration of civil society and social capital in Haiti is that people in the country have had to deal increasingly with the struggle of living with AIDS and the deficits the disease creates in its wake, and have not had the capacity to indulge themselves in any public reflection on events of the past. UNAIDS identifies several areas which suffer greatly in an environment so affected: mortality, healthcare, education, economy, poverty, food security, women and social cohesion.³⁰ This has meant that Haitians, too, have had to work even harder at the tasks of self-preservation including finding food, clothing and shelter simply as a matter of survival. This cancels out any opportunity they might have had for public reflection on their country’s past.

²⁶ Alfredo S. Lanier, “AIDS epidemic adds to tragedy in hapless Haiti,” *The Chicago Tribune*, 12 July 2000.

²⁷ Loewenson and Whiteside, *HIV/AIDS Implications for Poverty Reduction – UNDP Policy Paper*, 3.

²⁸ Lanier, “AIDS epidemic adds to tragedy in hapless Haiti.”

²⁹ *Ibid.*

³⁰ Loewenson and Whiteside, *HIV/AIDS Implications for Poverty Reduction – UNDP Policy Paper*, 7-12.

The Combined Impact of Demographic Realities

The impact of the demographic realities discussed above cannot be effectively measured. What is readily apparent, however, is that many of the people of Uganda and Haiti did not have the relative luxury of taking the time to fully engage in the work of the truth commissions while they were in operation.

Civil Society after the Commissions

Uganda

Prior to the CIVHR

For hundreds of years, the people of Uganda had lived in discrete social communities, each composed of a more or less homogeneous population, comprised of individuals who shared ties of blood and kinship. They also shared linguistic, religious, and cultural traditions. Within these communities, people learned to count on the cooperation of friends and family. Outside of these communities were other discrete communities with shared ties.

One commissioner described his own upbringing:

I belong to the Central Region here, the Buganda tribe. We have our own culture. You know here in Uganda there are many tribes. Each tribe has their own culture. And each one is caring for others' suffering and this is part and parcel of our Baganda culture. To the extent that we have a so-called "extended family" type of culture, whereby the child belongs to the clan, to the whole community. We name our names according to the clans. There is a lineage of succession according to clan. So the child belongs to the community and in the community the child is respected by the entire community. And the community has an obligation to see that child through. Before the war, that sort of culture was there. But unfortunately all of that changed. Before, we were human beings engaged in communal work, constructing wells, building a bridge, like clearing the road, cleaning your area. You were not paid, but you would do it on charity because it was serving the community. That sort of culture

was there. But unfortunately with the turmoil and the politics that sort of life was destroyed.

Hutchful and others clearly include the traditional sphere of African life, as described above, as part of civil society.³¹

Yet between the kingdoms there existed a substantial animosity. As discussed in chapter four, the Kingdom of Buganda, particularly, attempted several times to conquer the other kingdoms.³² From 1894, when the British claimed Uganda as a protectorate, the colonial powers began to re-define the social structure of the country. The British favoured certain groups over others. An official in a quasi-governmental organization explained the history of the police in Uganda:

The entire history of the police, just imagine, they are really not police, they are made up of a police recruiting army from 1906. The British decided they needed an army, so in 1901 they decided to pick some big strong people from the north to fight – what we call Nubian – they come from the mountains in Sudan. Those were originally the people who were chosen to be the police. English foreigners, when they came here, identified certain tribal groups, like the people here in the central Uganda area, who questioned the colonials why they wanted them to do so and so. So they went to the north and relocated the whole bunch of them down here to keep the law. The police are people who you ran away from. They are foreigners. They are strangers. They beat up people, and sometimes they kill them.

Even after Uganda declared independence in 1962, the Ugandan leaders pursued policies that further divided the population. In 1967, the traditional Kingdoms were abolished.³³ “Obote was creating artificial divisions among the people... He thus actually served imperialism by emphasising internal differences.”³⁴ One commissioner reflected on

³¹ Hutchful, “The Civil Society Debate in Africa,” 67.

³² Ofcansky, *Uganda: Tarnished Pearl of Africa*, 14-16.

³³ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights* (Kampala: UPPC, 1994) 23.

³⁴ Museveni, *Sowing the Mustard Seed*, 44.

the changes in post-independence Uganda: “You know, the colonialists really changed people’s cultures. But unfortunately the Ugandan leaders who took over after Independence hoped they would form a Ugandan mono-culture and that people would forget their own cultures. Which is very difficult. And the way it was done was by using the police to do it. And the people suffered... Unfortunately the government destroyed those cultures.”

The country was divided along several lines.³⁵ The first of these is the north-south divide. In part, this arises because the colonial powers had chosen to favour certain groups over others, as described in the recruiting of the police force, above. The second divide is religious cleavages. These divisions run mainly between Protestant, Catholic and Muslim segments of the population, as evidenced in the three major political parties that came to exist after independence: the Catholic Democratic Party, the nominally Protestant Uganda People’s Congress, and the Kabaka Yekka, an Anglican Bugandan party.³⁶ These party divisions also reflect the third clash: ethnicity. President Museveni described these how these cleavages play out in national politics: “The question of policies never comes into discussions of party politics. The argument is simply: ‘You are black, therefore you are in this party; you are white, therefore you are in the other party; you are a Protestant or Catholic, therefore you two cannot belong together in the same party.’ If someone takes a position on an issue, it is after he or she has already been press-ganged into an identity group. The person then argues this position from the point of view of identity, and not

³⁵ Susan Dicklitch, “Uganda: A microcosm for crisis and hope in sub-Saharan Africa,” *International Journal* 51.1 (Winter 1995-1996) 105-108.

³⁶ Dirk Berg-Schlosser and Rainer Sieglar, *Political Stability and Development: A Comparative Analysis of Kenya, Tanzania and Uganda* (Boulder: Lynne Rienner Publishers, 1990) 99-100.

from the merits of the issue at hand.”³⁷ As a result, both Obote and Museveni attempted to “demonstrate denominational impartiality.”³⁸ Obote, a Protestant, visited the Vatican to try to allay inter-denominational fears. Museveni’s approach was to ban all political parties, which are so closely tied to ethnic and religious groups.³⁹

As the *Gemeinschaft* or primary kinship community gave way to a wider developing *Gesellschaft* society, with fewer primary ties of kinship, philosophical and social values were eroded.⁴⁰ A now-deceased politician once described the situation:

As early as 1964, Obote began to spread a belief through some of his zealous cronies that, “Politics is a dirty game.” The ultimate consequences of this view were devastating... To hold then that politics is a dirty game is to remove one of the basic brakes that society imposes on leaders to assure reasonable, just government. Suddenly, everything became attainable, doable, however normally reprehensible. A way then became open to violate all norms of public conduct and laws, with culprits having no qualms, having been themselves convinced that everything and anything is acceptable since politics is a dirty game. The ground was therefore set to violate public laws and institutions as a prelude to the destruction of human rights.⁴¹

Prior to the implementation of Commission of Inquiry into Violations of Human Rights (CIVHR) but after the human rights abuses under Amin and Obote had been perpetrated, then, Ugandan society was severely fractured. As Hutchful and others have argued, even those traditional societies described above had been shaken. Norms and mores of Ugandan society had been shattered. Those growing up amidst such dramatic change had a

³⁷ Museveni, *Sowing the Mustard Seed*, 16.

³⁸ Ofcansky, *Uganda: Tarnished Pearl of Africa*, 74-75.

³⁹ Dicklitch, “Uganda: A microcosm of crisis and hope,” 108.

⁴⁰ Ferdinand Tönnies, *Community and Society* (New York: Harper and Row, 1957) in Rhoda E. Howard, *Human Rights and the Search for Community* (Boulder: Westview Press, 1995) 25. See also Max Weber, *Economy and Society*, Part II, eds. Guenther Roth and Claus Wittich (New York: Bedminster Press, 1968) 313.

⁴¹ Grace Ibingira, “Human Rights Violation Excesses: Why Uganda,” in *Three Papers Presented before the Commission of Inquiry into Violations of Human Rights February 15-16, 1990, Kampala, Uganda* (Washington, DC: U.S. Committee for Refugees, 1990) 5.

sobering outlook, as described by one journalist: “The generation of ours, we grew up knowing that people would be killed and that kind of thing. It is a terrible situation that we went through. When we were really maturing, there was all death. So perhaps we thought anybody opposing should be taken or that kind of thing, we grew up like that. So we had to be subdued to survive.”

Museveni's Goals

When Museveni took power in 1986, after more than two decades of civil strife, he publicly committed to the rebuilding process. As part of his Ten-Point Programme, Museveni stressed the importance of the “consolidation of national unity and [the] elimination of all forms of sectarianism.”⁴² He sought to develop a national strategy to “disengage imperialism.”⁴³ In this pursuit, Museveni developed a system of participatory governance. He implemented a series of Resistance Councils, called RCs, (named after the Resistance Movement that Museveni himself championed), “local committees based within the population” as a mechanism for the translation of local ideas to the central government, and meant as a system of encouraging grassroots participation.⁴⁴

Dicklitch saw the RC system as “important in bringing together people of different ethnicities and religions to work for mutual benefit.”⁴⁵ Yet she warned that the RCs also acted as a tool of the NRM to harmonize political opinions, and that dissent was not

⁴² Museveni, *Sowing the Mustard Seed*, 217.

⁴³ *Ibid.*, 44.

⁴⁴ *Ibid.*, 41.

⁴⁵ Dicklitch, “Uganda: A microcosm of crisis and hope,” 112.

tolerated. As a result, “the NRM’s claim to populism [was] slowly eroding.”⁴⁶ There existed a parallel system of agencies ready to take on many of the responsibilities abdicated by the state. These took the form of civil society organizations, a great number of which came into being when Museveni came to power in 1986. Prior to that time, most social organizations were self-help organizations operating at the local level. “Most Ugandans were too terrorized by the state for the duration of the 1970s and 1980s to engage in any... activity.”⁴⁷

Results of the CIVHR

The Commission itself was responsible for introducing a new and different way of thinking about the past. It was also, perhaps more than any other institution in Uganda before or since, responsible for introducing the concept and language of rights to Ugandans, although this was achieved only in a limited way. The outcomes of the Commission were mitigated not only by those factors detailed above, but also by a lack of support from civil society. “The Commission wasn’t something that was home-grown, or came out of pressure either from civil society, or from political activists. It was really something that came out of the bush, and was part of that legacy that kind of continues.” Said another observer of Ugandan politics: “You didn’t have a really strong civil society presence engaged with the Commission. Even in deciding which cases to bring before the Commission. There was a remarkable absence really of pressure from civil society on the

⁴⁶ Ibid., 113-114.

⁴⁷ Idem, *The Elusive Promise of NGOs in Africa: Lessons from Uganda* (New York: MacMillan and St. Martin’s Press, 1998) 54.

Commission to go out there and say ‘look at that incident, this kind of issue needs to be considered.’”

While some critics of the CIVHR are clearly sceptical about the degree to which the Commission was responsible for bringing Ugandans to a point at which they were able to reflect on their collective past, most are willing to agree that it went some distance toward reinforcing the social infrastructure. Nearly all of the commissioners believe that the CIVHR played an important part in re-building the bonds of trust and civic engagement within Uganda. “I think that civil society was strengthened by the process,” said one commissioner, in a comment repeated by many.

Others point to the community of human rights NGOs which burgeoned in the immediate aftermath of the Commission. “I would say that the growth of civil society has really sort of taken place after the Commission.” “The commission paved the way for human rights not only in government but in the population, and made them realize, ‘Look, a lot of things have happened which we didn’t know about, but the commission caught it.’ Also, I think that probably the judiciary has become more human rights-minded than before. Before, human rights never figured at all.”

Evidence of Civil Society

An evangelical pastor reported that the basic building block of society, “the traditional family network in Uganda, is in total chaos.” “Society is fractured but there is a new generation.” A Catholic priest confided, “You can feel that it is building up.” Bit by bit, society is being strengthened. One young professional keen on reform within the country put it this way: “It is just like you have been very, very sick, okay, so you are not going to be

able to eat this kind of food that everybody eats, you are on a special diet. And then you can decide what you can eat.”

One of the commissioners pointed to investment in Uganda as a sign of people’s growing levels of trust: “Just look at this country. It was in shambles until the Movement came in 1986. There are big factories, there are shops, there are farms and so on. One of the industries of development is construction. We are progressing. The rates are very high here but the rents have been going down. This was not happening before, and why not? People are not prepared to put their money into physical structures if they are not sure how [society] works. It is a very simple thing. Unless there is some confidence.” Hutchful and others point out that civil society is increasing in Africa, generally.⁴⁸

Yet the evidence of ordinary Ugandans having chosen to participate in civil society organizations does not clearly demonstrate such trust. While it is true that Ugandans have begun to rely on individuals outside of the traditional family unit to share the burdens of everyday life, including the collection of water for daily use or the cooperative selling of crafts at a communal market, these interactions do not logically extend to formal memberships in civil society organizations. Even those colonial membership organizations founded by the British, including Rotary Clubs⁴⁹ and Girl Guides⁵⁰ did not boast substantial membership increases in the years following independence. In fact, membership in these

⁴⁸ Hutchful, “The Civil Society Debate in Africa,” 73.

⁴⁹ Rotary International confirms that membership had risen from 255 in 1985 to 700 in 1994 and 1273 in 2002. Holly Hass, Rotary International, email correspondence, 18 November 2002.

⁵⁰ The Uganda Girl Guides Association reported that membership closely mirrored the political and social problems which plagued Uganda from the 1960s onward, and came to a virtual halt between 1971 and 1986. Joy Felly Mayanja, Chief Commissioner of The Uganda Girl Guides Association, email correspondence, 2 December 2002.

sorts of organizations dipped sharply under Amin's regime and during Obote's second term in office.

The situation regarding the seeming lack of interest in joining civil society organizations was described as follows:

Decades of brutal rule and civil war have helped to precipitate societal disengagement from politics... Ugandans are still hesitant to become too political, or to be perceived by the regime as too political. This hesitancy further reinforces the unwillingness of people in NGOs to engage the regime, directly or indirectly, on a plethora of issues. Linked to these years of repression and civil war, suspicion and lack of trust still permeate Ugandan polity and society. This does not provide fertile ground for the development of democratic values, trust, or compromise, or a rights-protective society.

Furthermore, the existence of a society, economy, and polity has helped to undermine voluntarism and the development of a democratic political culture and rights-protective society. The psychiatric impact of years of civil war and terror have weakened the basis for mutual trust, understanding and compromise: all fundamental components of a democratic civil society.⁵¹

In addition, Ugandans appeared to perceive of civil society organizations as being made up of mainly external organizations. In many facets of Ugandan life, external patrons supplied much of the funding and expertise required for rebuilding. Certainly, it is true that Uganda continued to rely heavily on foreign aid and that external actors have "acquire[d] a significant amount of political influence over the regime."⁵² It also appears that external agencies also provide much of the social infrastructure that one might expect to see provided by national agencies.⁵³

One major exception is religious affiliation and church membership within the country. Nominal Christians comprise approximately 66% of Uganda's population.

⁵¹ Susan Dicklitch, "Action for Development in Uganda," in *NGOs and Human Rights: Promise and Performance*, ed. Claude Welch, Jr. (Philadelphia: University of Pennsylvania Press, 2001) 185.

⁵² *Idem.*, "Uganda: A microcosm of crisis and hope," 117.

⁵³ "Why Civil Society Organisations were involved," *The New Vision*, 23 July 2001, 28-29.

Roughly half of these are adherents of the Roman Catholic Church, and half are Protestant, the majority of whom belong to the Church of Uganda. Muslims comprise approximately 16% of the population.⁵⁴ Overall, many ordinary Ugandans regularly attend religious services; it was reported in 2000 that religion was important for as many as 85% of all adults in Uganda.⁵⁵ The religious community (supplemented, like many other Ugandan activities, by involvement from external organizations including international missionary agencies) is also involved in each community in a variety of ways, including the provision of education, health care and leisure activities.

“The good thing about Ugandans is that they are [beginning to be] very up front and vocal,” reported one quasi-governmental organization official. Yet they are still subject to some level of censure from the Movement Government. “Civil society has grown numerically. I’m not too sure about qualitatively. I consider myself part of civil society, I mean this is a criticism, you know, myself too. I think that there’s a limit in which civil society sees itself operating.” Even judges are often suspected of “suffering from some interference,” according to another young professional eager to see change within the country. “Ugandans have had to rely on themselves, their relatives and close neighbours in order to survive years of repressive rule. Organizations such as neighbourhood, burial, credit and savings and parent-teacher associations existed prior to the NRM regime.”⁵⁶ In 1996, more than 1,000 NGOs were operating in Uganda.⁵⁷

⁵⁴ Alexander Creed, *Uganda*, Major World Nations Book Series (Philadelphia: Chelsea House Publishers, 1999) 57-58.

⁵⁵ *The Pew Global Attitudes Project* (19 December 2000); [report on-line]; www.religioustolerance.org/rel_impo.htm; internet; accessed 1 June 2003.

⁵⁶ Dicklitch, *The Elusive Promise of NGOs in Africa*, 128-129.

⁵⁷ *Ibid.*, 29.

But by 2003, Museveni had not re-introduced the element of opposition to the Ugandan political landscape. Political parties were banned under the 1986 Political Parties and Organizations Act,⁵⁸ and the no-party Movement system was confirmed by Ugandans in a Referendum held in 2000.⁵⁹ Opposition members and their leaders were often harassed and arrested in advance of planned political rallies.⁶⁰ Neither had any real civic education been carried out.

A member of the unofficial opposition had this to say: “The political situation definitely has not improved. The institutions of democracy and civil society which can play its role: the government wants to have control of them. Democratic institutions like political parties of course are all abolished. And what other institution can develop a concept that would promote democracy? We have nothing else.” One wonders how it should be surprising that civil society was unable to “grow and strengthen... given the fact that society was almost uniformly repressed by those in power during the majority of the independence years.”⁶¹ In the end, members of Uganda’s political and intellectual elite were not at all positive about the developments in civil society that had begun to appear. “Scratch the surface,” said one, “and I think you’ll find very serious problems.”

The Ugandan CIVHR was unsuccessful in its bid to foster the growth of civil society through acknowledgement. Evidence supporting the development of social movements and civil organizations, identified above as an indicator of the level of civil

⁵⁸ Will Ross, “Uganda restrictions under fire,” *BBC News*, 3 July 2002.

⁵⁹ “USAID/Uganda,” [report on-line]; (Washington: USAID, 2002); available from <http://www.usaid.org/about-usaid-uganda.htm>; internet; accessed 5 November 2002.

⁶⁰ Paul Busharizi, “One Killed in Uganda Ahead of Banned Rally,” *Reuters.com*; [article on-line]; available from http://www.reuters.com/news_article.jhtml?type=worldnews&StoryID=510967; Internet; accessed 12 January 2002.

society, is equivocal. To be sure, some civil society had begun to surface. Yet the limited efforts of the truth commission to lead Ugandans in the exercise of public acknowledgement has not led to the overt growth of civil society.

Haiti

Prior to the CNVJ

Haiti can lay claim to being one of the oldest independent nations in the Western Hemisphere. “Haiti [has long had] a vigorous tradition of participatory democracy at the grassroots level.”⁶² This is not to suggest, however, that Haitians’ perspectives have been welcomed by those in power, much less addressed. Indeed, over much of those two hundred years, Haiti was ruled by corrupt and despotic leaders with little regard for the wishes of ordinary Haitians. Papa Doc Duvalier, for example, “attacked or marginalized all the groupings and institutions of an already weak society... extended families, schools, neighbourhoods, clergy, press, villages, trade unions, soccer teams and carnival bands. At one point, he even outlawed the boy scouts [*sic*].”⁶³ As a result, Haitians simply do not trust government or foreigners,⁶⁴ and many perceive institutions connected with the justice system, like the CNVJ, as contemptible.⁶⁵

In response, Haitians turned inward to their *Gemeinschaft* communities for support in the tasks of everyday living. “People live[d] close to their land in small kin groups

⁶¹ *Ibid.*, 47.

⁶² Catholic Institute for International Relations, *Haiti: Building Democracy*, 23.

⁶³ Michel-Rolf Trouillot, “Haiti’s Nightmare and Lessons of History,” in *NACLA Report on the Americas* 53.11 (Jan./Feb. 1994): 50.

⁶⁴ Irwin Stotzky, *Silencing the Guns in Haiti* (Chicago: University of Chicago Press, 1997) 87.

rather than in villages... Rural Haiti... organized around the avoidance of social organization beyond the level of kinship. There [was] a lack of organizations at the intermediate level between kin and the state... [And] until recently, there has been no functioning representative institutions, whether farmers' cooperatives or peasant leagues, outside the cities."⁶⁶

These linkages led Haitians to live and work in semi-communal arrangements. Haitians built their houses in groupings of three or four, all with a shared compound, called a *lakou*. This allowed them to pool their goods and services, including food and childcare. Their labour, too, was shared in the interest of maximum success. In an arrangement called *konbit*, Haitians combined their labour to help friends and neighbours in projects such as harvesting crops.⁶⁷ Yet the *konbits*, too, "all of which gave people hope – are destroyed now. Everyone is back to working and trying to subsist on his own... The solidarity is gone; it's each person for himself."⁶⁸

Haiti's history of repression caused many to quit the fight for participatory democracy. Haitians "resign[ed] themselves to the continuation of the historical pattern of impunity and domination."⁶⁹ Traditionally, interest groups were almost never a factor in Haitian politics,⁷⁰ although many popular organizations came to openly exist after 1986

⁶⁵ Ibid., 94.

⁶⁶ Brian Weinstein and Aaron Segal, *Haiti: The failure of politics* (New York: Praeger, 1992) 8.

⁶⁷ Charles Arthur, *After the Dance, the Drum is Heavy: Haiti one year after the invasion* (London: The Haiti Support Group, 1995) 5.

⁶⁸ Americas Watch and National Coalition for Haitian Refugees, *Silencing a People: The Destruction of Civil Society in Haiti* (New York: Human Rights Watch, 1993) 1-2.

⁶⁹ Reed Brody, "International Aspects of Current Efforts at Judicial Reform: Undermining Justice in Haiti," in *The (Un)Rule of Law and the Under-Privileged in Latin America*, eds. Juan Mendez, Guillermo O'Donnell, and Paulo Sérgio Pinheiro (Notre Dame: University of Notre Dame Press, 1998) 229.

⁷⁰ Weinstein and Segal, *Haiti: The failure of politics*, 154.

when Jean-Claude “Baby Doc” Duvalier left Haiti.⁷¹ This typical sense of complacency and despair led to a “rotted society where [criminals] benefit[ted] from a complete impunity.”⁷²

Especially in urban areas, however, and increasingly in rural areas as well, in the years between Duvalier and the Cédras crack-down, Haitians had “created a bewildering array of social organizations almost overnight... people formed civic organizations at the neighbourhood and town level.”⁷³ In fact, “the strength of Haitian civil society lay in its breadth and diversity outside the narrow realm of electoral politics.... The diversity and depth of civil society, as opposed to any particular political party, provided the base of support for Jean-Bertrand Aristide’s electoral campaign and overwhelming victory.... Although not all popular groups endorsed Aristide, many if not most backed the charismatic priest, providing his last-minute candidacy with the organizational muscle it needed to pull off his electoral landslide.”⁷⁴

Thus, when Cédras swept to power with his military regime, civil society was one of the military’s first targets. “Civil society suffered grievously under the military. No organization that supported human rights or democracy could safely meet, demonstrate or express its views. Peasant groups, literacy campaigners, women’s organizations, human rights advocates, students and the Catholic base communities—*ti legliz* or ‘little church’—

⁷¹ Arthur, *After the Dance*, 8.

⁷² “Haiti: Justice and Impunity,” *Haiti Net* 3.18 (17 Jun. 1995; [article on-line]; available from <http://www.hartford-hwp.com/archives/43a/092.html>; internet); accessed 20 Oct. 2002.

⁷³ Andrew S. Levin, “Civil Society and Democratization in Haiti,” *Emory International Law Review* 9.2 (1995) 15.

⁷⁴ Americas Watch and National Coalition for Haitian Refugees, *Silencing a People*, 4.

were the first targets of the Haitian military because they represented change.”⁷⁵ “These organizations of civil society were as much of a target of the army’s repression as was the Aristide government.”⁷⁶

Aristide’s goals

Before coming to power, Jean Bertrand Aristide had worked and lived as a Roman Catholic priest in a Port-au-Prince parish. In the slums of the inner-city Aristide developed his own progressive brand of liberation theology, a movement within the Catholic church that preaches spiritual fulfilment through social and political freedom. One journalist recollected of one of Aristide’s fiery sermons:

The text today is Jesus saying, ‘What is the Lord’s, is mine, and what is mine is the Lord’s...’ He is happy, beaming down at his people, his face relaxed, talking as if he were simply in a room filled with friends. Then, slowly, another Aristide emerges. Beads of sweat form on his high forehead, and his eyes focus on something farther away than the people in the front rows. His long fingers grasp the side of the altar table, and his body begins to sway. He stops talking, and begins preaching, prophesying... He takes the text and with some stunning leaps of logic and rhetorical twists, arrives at the conclusion that the only Christian way to run an economy is through communal property, since we are all, like Jesus, the children of the Lord, all brothers and sisters.

Once he is into his sermon, he is possessed, in part by the force of his own words, in part by the congregation’s response. He hammers at the air, points his finger like a knife, solicits repetition first from one side of the church, then from the other, personally and by name attacks capitalism and with a brutal round of statistics shows what it does to the People of the Third World.⁷⁷

In fact, Aristide’s teachings in liberation theology deviated greatly from the teachings of the Roman Catholic Church. Still, liberation theology and those who taught these

⁷⁵ Catholic Institute for International Relations, *Haiti: Building Democracy* (London: CIIR, 1996) 4.

⁷⁶ Americas Watch and National Coalition for Haitian Refugees, *Silencing a People*, 4.

⁷⁷ Amy Wilentz, *The Rainy Season* (New York: Simon and Schuster, 1984) 110.

principles were enormously popular. The Vatican so disliked Aristide's philosophy and political activities that Aristide was expelled from his religious order, and later left the priesthood.⁷⁸

When he gained power, Aristide put forward much the same plan for social and economic reconstruction as he had propounded from the pulpit. He pledged to “[shift] the social balance of power away from the executive branch of government. To do this, [he said] the government means to empower several components of grass-roots society, such as political parties, labour unions, grass-roots organizations, cooperatives, and community groups.”⁷⁹ Clearly, he openly espoused mass popular participation.

Results of the CNVJ

The planning process that eventually led to the Haitian Commission had been very clear that it placed the strengthening of civil society high on its list of priorities. Its final proposal, a solution proposed by a number of Haitians in exile in Montreal, listed “strengthening freedom of expression, favouring the blossoming of democratic space, and the reinforcement of the democratic components of civil society” among its goals.⁸⁰ Although by 1994, NGOs in Haiti had grown increasingly weak, they were still defiant and militant, denouncing the injustices which were occurring at a rapid rate. One, a group made up of civil society and human rights organizations, *La Plateforme*, was involved from the onset of the process.

⁷⁸“Country Profile: Haiti,” *BBC News*, 23 July 2002.

⁷⁹ Stotzky, *Silencing the Guns in Haiti*, 106.

⁸⁰ *Proposition pour une Commission de la Vérité en Haïti: Éléments Constitutifs* (Montreal: ICHRDD, 1994)

33. Quotation translated by author.

The appointment of Father Freud Jean as one of the commissioners reflected this association. Jean was (and remained in 2003) a leader of the Program for Alternative Justice, a Haitian human rights organization. He, too, had been heavily involved in the work of *ti legliz*. His involvement in the work of the Commission could have signified an acceptance by civil society organizations of the Commission. But it did not. “The NGOs were critics in good faith. They were very much a loyal opposition.” One senior commission staffer remembered the conflict that arose from within civil society groups:

I think it was difficult for Freud Jean to maintain his ties with civil society. I think that was very strained for him. I think he became the point of criticism for civil society. I don't know. I don't want to criticize him for that because I don't know how he would have done it right. It is not clear to me how it would have been done right in 1995. Knowing then what we know now, given the circumstances we faced at that time, a lot of civil society organizations have questions that most civil society organizations have around truth commissions, which is why are you getting all of this money and not us? Why can't we do it?

In the end, the participation engendered by the CNVJ came mainly from outside the organized civil society groups. “The grass-roots were totally left out of the process,” remembered one international investigator. Another admitted, “Maybe the truth commission missed an opportunity to strengthen civil society, and you know the reason the relationship between civil society and the commission was not that great – there was a lot of tension and mistrust.”

Evidence of Civil Society

Civil society does exist, insist those who were involved with the Commission. One international staffer put it this way: “I would hesitate to say that there wasn't any strong civil society. I think the interesting question is to ask how there even was as much as there

was, given the circumstances of the past decades. It is always going to be limited. The question is how limited.” What Haiti lacks is an “active civil society... Family and friendship associations continue to take precedence [over more formal organizations], a legacy of the Duvalier era and omnipresent informants.”⁸¹

When questioned about social organizations such as Rotary and Girl Guides, for example, one evangelical pastor who worked in Haiti for more than twenty years said, “It would never work in Haïti financially because they could never afford it. The cost of things would be totally out of whack. So it all depends on the social aspect of it. I know some areas do have Guides or Cubs or Scouts. There are those agencies there.”⁸² An international policing expert explained it like this:

Yes, you see them [social organizations in Haiti]. If you take some group that is similar to Girl Guides or something like that, you will probably see one thing; you will see the girls would probably be a little older in those groups than what we would see here. They have immense pride, wearing their banners and whatever they happen to have that affiliates them with that organization; they are really, really proud of that. So these organizations exist.

In fact, membership in civil society organizations formed an important part of the lives of ordinary Haitians. “The explosion of the popular sector between 1986 and 1994 created a bewildering array of social organizations almost overnight.”⁸³

In rural areas, one interviewee argued that “the Church becomes a major focal point for civic engagement. The Church becomes the social point for the society, especially in

⁸¹ Weinstein and Segal, *Haiti: The future of politics*, 154.

⁸² *L'Association Nationale des Guides d'Haiti* reported a membership of 775 in 2001. From World Association of Girl Guides and Girl Scouts, “Haiti:” [report on-line]; available from <http://www.waggs.org/aroundtheworld/regions/countries/whem/haiti.htm>; internet; accessed 15 December 2002. Rotary International reported a membership of 289 in 2002. Holly Hass, Rotary International, email correspondence, 18 November 2002.

⁸³ Levin, “Civil Society and Democratization in Haiti,” 14-15.

the province areas. In a city area like Port-au-Prince, Gonaïves, Le Cap Haïtien, you will have maybe some more of those club type things. There are clubs there, it's interesting to see some of the different agencies and groups that are there." But "[o]rganized... groups lack support outside the capital,"⁸⁴ where the poor remain "disempowered... and fear of [the brutality of government informants]... still stalks city and countryside."⁸⁵

Equally true, however, was the predominance of international NGOs who worked in Haiti. One directory of organizations working in Haiti lists a total of 117 agencies. But only nine of these are Haitian organizations.⁸⁶ Even those organizations that are of Haitian origin are supplemented by international organizations and their support.⁸⁷ Many would argue that this provision is detrimental: "The spread of NGO culture is the spread of a culture of charity and dependency, not democracy and sustainability."⁸⁸

It has been said that "the fabric of Haitian society has changed since [1997]."⁸⁹ Certainly, those familiar with the situation seem to concur. One commissioner shared his thoughts about whether the country had changed:

Oh yes. Completely. Completely. It's a country on the verge of exploding. A society completely divided. It's a country where the population had a lot of hope. So they stayed and then the international community prevented President Aristide from doing what was necessary. There is a lot of animosity because the majority of people are treated very poorly by the intellectuals that make up the opposition. And then, as though they never thought they would rebel, the faction is very big, even

⁸⁴ Ibid.

⁸⁵ Brody, "International Aspects of Current Efforts at Judicial Reform," 229.

⁸⁶ See Haiti Reborn, "Directory of Organizations Working in and for Haiti;" [directory on-line]; www.haitireborn.org/resources/directory.php; internet; accessed 1 June 2003.

⁸⁷ U.S. Department of State, "Uganda Report on Human Rights Practices," 31 Mar. 2003; [report on-line]; www.state.gov/g/drl/rls/hrrpt/2002/18335.htm; internet; accessed 24 May 2003.

⁸⁸ Mahmood Mamdani, *And Fire Does Not Always Beget Ash: Critical Reflections on the NRM* (Kampala: Monitor Publications, 1995) 113.

⁸⁹ John Ballard, *Upholding Democracy: The U.S. Military Campaign in Haiti, 1994-1997* (Westport, CT: Praeger, 1998) 218.

without counting that it is a population that is truly suffering. The people suffer because they have nothing.

Critics argue that this change might well be the un-doing of the country. “Haiti has never had a secure democratic government, and it is not clear that there are enough elements of civil society to provide a proper foundation for one.”⁹⁰ For, although many civic organizations have been formed at local levels,⁹¹ there is as yet no sense that this burgeoning participatory force is anything other than a manifestation of Haitians’ instinctual need for survival, and whether or not Haiti can “complete the transition to democracy.”⁹²

The Haitian truth commission, then, was unable to support any substantial growth in civil society. As a test of the development of acknowledgement resulting from the truth commission, this lack of civil society, in the form of social movements and civil organizations, indicates that wide-scale public acknowledgement did not occur. The efforts of the Haitian CNVJ to promote the exercise of public acknowledgement were not successful.

Conclusions

The theory of acknowledgement in the rebuilding of a society, which has been the focus of this study, posits that acknowledgement is a necessary but not sufficient condition for outcomes like democracy or justice to be realized. But the progression is not a simple one. To acknowledge, a society must come to terms with its past through a process of emotional

⁹⁰ Stotzky, *Silencing the Guns in Haiti*, 80.

⁹¹ Levin, “Civil Society and Democratization in Haiti,” 15.

recognition, and remembering. Only after it has acknowledged can a society forgive and then begin to cultivate social trust and civic engagement. In chapter eight, we looked at how the Ugandan and Haitian truth commissions were able to provide a mechanism within which the people of both countries could begin to acknowledge their respective histories of human rights atrocity. As it turned out, neither was particularly successful in this undertaking.

According to the same theory, then, if no real acknowledgement has taken place, the society will remain at that same pre-acknowledgement stage. It cannot move on to rebuilding activities. Civil society will be unable to develop, and no social capital will be generated. Using Stepan's definition, this engagement will comprise "manifold social movements... and civic organizations."⁹³

The reality is that in both Uganda and Haiti, the societies which existed were severely damaged. People living in these societies had consciously turned away from public participation at many levels, and they had lost the trust they needed to begin to participate again. Instead, they felt most comfortable and safe when they engaged only with a few close and trusted individuals. The truth commissions' small efforts at acknowledgement were not enough to bring Ugandans and Haitians to the next stages of the rebuilding process.

By the early part of the twenty-first century, there was some evidence of social movements and civic organizations in both countries. First, in both countries, there has been a low level of growth in activity in the local organizations of civil society. It is as yet

⁹² Ibid., 22.

unclear whether this activity will lead to lasting institutions of democracy. Second, both countries have relied on the Church, whether Roman Catholic or Protestant, as a dominant institution in the civil sector. The church has responded in both countries by providing much-needed social infrastructure to these societies. Finally, the international sector has continued to play a significant role in the civil societies of both countries, for better or worse.

What is clear is that in neither Uganda nor Haiti had civil society become a substantial force. Membership in social organizations and movements, while beginning to grow, had not developed to a point of prominence. This reflects low levels of trust and a still-deeply fractured society. The development of civil society had not occurred because the necessary antecedent, acknowledgement, had also not occurred.

⁹³ Stepan, *Rethinking Military Politics*, 3-4.

CHAPTER TEN

CONCLUSIONS

In the aftermath of a period of mass atrocity, many societies struggle to find a way to repair the damage caused to the physical infrastructure, including roads, hospitals and schools. Yet the social infrastructure is also often badly damaged, and societies must make difficult choices about which aspect to fix. Sometimes, authorities elect to salvage those parts of the social infrastructure that remain. The ensuing process, however, is at the mercy of a host of variables, including political will and other institutional constraints.

At the core of its ability to succeed lies the somewhat intangible concept of acknowledgement. In their quest to rebuild, societies must first grapple with acknowledgement. This theory of the process of acknowledgement and its potential outcomes, however, is different from the theoretical suppositions provided by others interested in the transitional process. Govier, for example, also speaks of acknowledgement, but she conceives of acknowledgement as an action that may be taken only by perpetrators.¹ Others, including Henderson,² Murphy and Hampton³ focus their attention at the end-point of the process – forgiveness – rather than on what I would consider to be the essential building-block of forgiveness: acknowledgement.

¹ Trudy Govier, “What is Acknowledgement and Why is it Important?” TMs, 2000, 11, author’s collection, Calgary, AB.

² See generally Michael Henderson, *Forgiveness: Breaking the Chain of Hate* (Wilsonville, OR: Book Partners, 1999); and Idem, *The Forgiveness Factor: Stories of Hope in a World of Conflict* (London: Grosvenor Books, 1996).

The theory of acknowledgement, therefore, seeks to explicate an often-overlooked component of reckoning with the past. This differs from the existing literature, which has tended to focus on certain ingredients (e.g. memory, forgiveness, trust, or reconciliation) in the process of dealing with the past. Such ideas, I would argue, are of great importance. But few people have attempted to clarify just how it is that societies are able to get to such a point. Acknowledgement provides that missing link.

The Study:

The Politics of Acknowledgement

As a result, this study has focused on the process of acknowledgement. I have attempted to explain acknowledgement as it relates to the other important concepts that contribute to this process: memory, forgiveness, trust and reconciliation. I have argued that acknowledging the events of the past and one's involvement in them can be particularly important. It will by necessity encompass many facets, from emotional responses and coming to terms with the past, to memory and remembering, to commemorating and memorializing past events. Acknowledgement is one stage through which any successful process of societal recovery must pass. In and of itself it is not an end point, as is reconciliation, for example. Nor is it, in and of itself, able to bring about some kind of meaningful change. It is a necessary but not sufficient condition in order for societies to begin to realize desired outcomes such as social capital and democracy. Ultimately, I argue

³ Jeffrie Murphy and Jean Hampton, *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988) 4-8; 116-120.

that acknowledgement can be a factor in the creation of the bonds of social capital and social trust, which foster the democratic goals sought by transitional societies.

The implications of the process of acknowledgement, in overcoming the causes of conflict, can have the potential to affect real and lasting change. In allowing victims to come forward without fear of retribution to tell the often grim details of how various family members have been disappeared, raped or murdered, for example, the pattern of abuses from community to community becomes apparent. The testimony of perpetrators, too, may help to build a clearer picture of events, while at the same time openly exposing their actions. By bringing all these events out into the open, the power of the perpetrators over their victims is finally severed. And when these crimes have been acknowledged, individuals and their communities can begin once again to form relationships with their neighbours and to participate in the social activities and civic structures of society, finally defeating the deep-rooted conflicts which have served to paralyse that society. These networks of civic engagement can contribute to the rebuilding of democracy.

Truth Commissions

In order to test the theory, I selected two cases to see whether the process of the theory of acknowledgement, as I have outlined it, was present (or not) in their activities. The truth commissions of Uganda and Haiti proved to be interesting cases to study in light of the model of acknowledgement presented in the dissertation. The two commissions, although established in light of completely different circumstances, and subject to different socio-political constraints, shared a number of commonalities.

I had looked to the truth commission as being able to facilitate the process of acknowledgement, or to act as a *mechanism of acknowledgement*. The very purpose of the truth commission, the bringing together of victims (and sometimes even perpetrators) to give details of past crimes, can provide the ideal context in which acknowledgement can take place. It is the process of active acknowledgement that is important. The truth commission can provide a forum in which the details surrounding past abuse can be revealed. This revelation, or acknowledgement, can lead to a clearer understanding of such past events at both the individual and societal level. It can also pave the way for the individual to begin to trust in civil society, and to begin once again to participate in it.

In other contexts, truth commissions have, of course, been able to do many of these things. The most salient of these is South Africa's Truth and Reconciliation Commission (TRC). The TRC was clearly initiated with the hope of achieving reconciliation through the truth-seeking process. The TRC focused significantly more on the potential mending of society than has any other Commission to date.⁴ Another, the National Commission on Truth and Reconciliation of Chile, was created specifically to confront Chile's legacy of human rights violations and to pay the "social debt" left by the strict economic reforms of the regime of General Augusto Pinochet. Indeed, the "acknowledgement" accomplished through its activities appears to have played a vital role in helping Chile to regain democracy.⁵

⁴ See Joanna R. Quinn and Mark Freeman, "Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa," accepted for publication in *Human Rights Quarterly* (Nov. 2003).

⁵ See Joanna R. Quinn, "Dealing with a Legacy of Mass Atrocity: Truth Commissions in Uganda and Chile," *Netherlands Quarterly of Human Rights* 19.4 (December 2001): 383-402.

The truth commissions of Uganda and Haiti, however, provide a picture of acknowledgement-seeking that appears to fall at the opposite end of the continuum: The Haitian *Commission nationale de vérité et de justice* (CNVJ) was appointed less than six months after Aristide returned to Haiti and resumed power. The mandate charged the Commission with seeking to identify instigators, criminals and accessories to the serious human rights violations and crimes against the humanity which had been carried out after the coup d'état by Raoul Cédras. The Commission was carried out in conjunction with the Organization of American States (OAS) and the United Nations Permanent Mission to Haiti (MICIVIH). During the process, more than 8,700 people revealed their stories to teams of investigators across the country. In the end, the Commission was forced to deliver a report that many considered unfinished, because Aristide's term in office had expired.

The Haitian commission suffered from several factors. One of the most important of these was the presence of and intimidation by the very perpetrators whose crimes were being detailed in the proceedings of the CNVJ, all of whom were still living and working in the same communities where the abuses had taken place. Another important difficulty, closely related to the first, was the timing of the Commission: the CNVJ asked people to come forward to talk about crimes that had only recently taken place. It is entirely possible that these people had never had the opportunity to absorb those things that had happened on an individual and emotional basis, which would necessarily complicate the process of coming forward. Third, it is possible that Haitians were simply afraid. Or, fourth, Haitians had no faith in their political and judicial institutions, most of which were still operated by

officials from the former regime. Political will and institutional constraints also combined to undermine the impact of the CNVJ.

As a result, Haitians did not participate in the activities of the Commission in any significant way. In the end, only 8,700 Haitians, plus approximately thirty more who worked for the Commission, were directly involved. Few Haitians outside of this limited group knew about the work of the Commission: difficulties in translation (i.e. the Commission operated in French, and most Haitians speak only Créole), low literacy rates, and the limited number of radios and other communications media in the country combined to keep average Haitians in ignorance of the commission. Moreover, the Report was never made widely available.

The Ugandan Commission of Inquiry into Violations of Human Rights (CIVHR) was appointed three months after Museveni had taken office. The Commission worked to gather evidence and testimony relating to the events of 1962 – 1986. Thousands of people completed questionnaires with regard to their recollection of particular events, many of which were then investigated in the field. In all, 608 witnesses appeared before the CIVHR. The final report contains testimony, analysis, and recommendations, along with lists of names of those who were subjected to torture and abuse.

The work of the Ugandan CIVHR was affected by many and significant difficulties. One of the most devastating was the chronic lack of funding. This affected nearly every facet of the Commission's work, and led to work stoppages, limited travel, and incomplete record-keeping. At the root of the CIVHR's money troubles, however, was the second difficulty experienced by the Commission: the very limited support it

received from President Museveni and the various agencies of his government. Clearly, the success of the Commission was not a real priority for the NRM or the President himself. Third, Ugandans had learned to distrust public institutions, and the CIVHR was no different. Additionally, institutional constraints and further issues of political will served to minimize the impact of the Commission.

Consequently, few Ugandans were ever aware of the Commission. Similar to the Haitian Commission, few Ugandans ever came into direct contact with the CIVHR. A couple of thousand people completed questionnaires and 608 people gave testimony in public hearings held at various points throughout its eight-year duration. The distribution of the Final Report was also problematic: few copies of the actual Report or its condensed version were ever distributed. Coupled with difficulties in accessibility, the activities of the CIVHR remain largely unknown to the people of Uganda.

In both cases, the truth commissions were beset by frequent and often insurmountable problems. In comparing the two on the level of relative success and failure, the various shortcomings and inconsistencies highlight the relative failures faced by both. When compared to more successful truth commissions like those held in South Africa and Chile, the failures of the Ugandan and Haitian commissions become evident.

When the two commissions are compared to each other, however, these same weaknesses and inconsistencies present a slightly different picture. The opposition, both overt and hidden, that the Commission faced led to an overall failure to provide the required capacity, funding and time. The failure of Uganda, its government and its society to embrace the work of the CIVHR led to various discernable outcomes. Certainly, the

larger society was not prompted to publicly acknowledge the crimes committed between 1962 and 1986. The modest and still-growing civil society by 2003 indicated that some acknowledgement had taken place. But democracy was not firmly entrenched, and Museveni showed no sign of allowing it to take hold.

The Haitian situation, although comparable, is distinct. The broader Haitian community, similarly, showed little sign of public acknowledgement under the direction of the truth commission. The CNVJ also had to contend with lackluster support both politically and socially. Yet it faced somewhat fewer institutional constraints. However, low levels of civil society were evident in 2003, although it appeared to be increasing slightly. Neither had democracy taken hold. The political situation in Haiti in 2003 remained tenuous, with no apparent solution on the horizon.

As such, one might easily point to the Haitian commission as having been more successful. Or one could argue that the Ugandan commission had accomplished more. Certainly, each of the two commissions succeeded more than the other in different areas. And, owing to the backdrop of cultural specificities against each was set, the corresponding outcomes affected their respective societies differently. In the end, however, the Ugandan commission appears to have been more able to foster some level of acknowledgement, although it must be understood that this acknowledgement was not at all successful relative to the more successful truth commissions. This acknowledgement helps to explain the slight increase in civil society in Uganda. But the failure of the country to accept or implement democracy still stands as an indication of just how much the country failed to acknowledge.

Findings

In neither case does it appear that the truth commission played a role in fostering a serious working-through of past issues. Neither the Haitian CNVJ nor the Ugandan CIVHR was able to promote any substantial levels of societal truth-telling, for the reasons noted above. The type of popular acknowledgement needed to stimulate the kinds of trust and social capital needed to help both countries develop strengthened civil societies was missing. In this sense, then, the truth commissions were not a success.

This lack of acknowledgement in both cases led to several repercussions which dramatically affected the transitions that Uganda and Haiti were able to make. The impact of the missing ingredient of acknowledgement was to discourage the development of social trust between individuals, and between individuals and institutions. Ugandans and Haitians, it seemed, were been unable to put away their feelings of suspicion and wariness to trust anyone outside of immediate family members. They remained guarded and cautious about interactions outside of their *Gemeinschaft* communities.

As a result, civic engagement had not developed. As illustrated in chapter nine, Ugandans themselves had only just begun to pursue relationships within the broader society and to engage in the social organizations that might have been expected. Haitians, on the other hand, seemed to have withdrawn further into their primary associations. Ties of kinship aside, the citizens of Haiti had chosen not to associate with anyone outside of a close family group, and rejected outside participation. The one ingredient missing in all of these undeveloped aspects of societal transition, however, is social capital. If by regular contact with others from one's community in relationships of trust and engagement social

capital is built, and if through social capital such bonds are reinforced, then Uganda and Haiti are missing a substantial segment of what ought to be the promotion of transition. They are missing both the rebuilding and the reinforcing of social capital. This directly echoes Putnam's social capital thesis: "...Strong interpersonal ties (like kinship and intimate friendship) are less important than "weak ties" (like acquaintanceship and shared membership in secondary associations) in sustaining community cohesion and collective action."⁶ Certainly, the truth commissions of Uganda and Haiti failed to foster any such activity.

This meant that the development of social and political institutions of civil society was delayed. But more importantly, democracy itself failed to develop. In Uganda and Haiti, the direct result of this was a population that had disengaged from the political process. Without pressure from collective structures of participation, politicians in both countries were free to pursue their political agendas – without fear of reprisal from their constituents.

Acknowledgement, then, is a necessary component in the process that allows individuals and communities collectively to begin to interact with each other. Although acknowledgement is in no way a sufficient condition for democracy, it is obviously desirable. Without acknowledgement, the rest of the process to democratization is much less likely.

⁶ Robert Putnam, *Making Democracy Work* (Princeton: Princeton University Press, 1993) 175.

Future Applications for Acknowledgement

While it is possible, and indeed probable, that the truth commission as an instrument of transitional justice is inherently capable of fostering acknowledgement within the broader civil society, these two cases have illustrated that it is not always the case that it can or does. The truth commission, like various other mechanisms which may be utilized by societies attempting to move toward democracy and a strengthened civil society, must be given the tools it needs to create the appropriate conditions for social healing to take place. These conditions include a mandate which recognizes the need, for example, to involve a substantial group of the population in the activities of the commission itself. This involvement may be either direct, implying actual participation in the activities of the commission, whether through the giving of testimony or as a witness present at some aspect of the commission's daily activities; or indirect, most likely through the receipt of direct and regular information distributed by the commission through the media. This means that, in order to promote acknowledgement, truth commissions must be vigilant in their dissemination of information.⁷

It is also the case that truth commissions, no matter in what circumstances they are established, must never be left to stand alone. The truth commission can only constitute part of a society's efforts toward acknowledgement. The truth commissions of Chile and South Africa, discussed above, were particularly successful because they were part of larger political objectives toward the same goals which were pursued by their respective governments. From his inaugural speech, President Aylwin of Chile had proclaimed that

⁷ Quinn and Freeman, "Lessons Learned," 20.

his government would work to confront Chile's legacy of human rights violations and pay the "social debt" left by the strict economic reforms of Pinochet. The theme of his government would be national reconciliation. The truth commission was only one component of an overall plan, other elements of which included political prisoners and reparation, democracy, and the reinstatement of international relations with other countries.⁸ Similarly, South Africa pursued its goal of reconciliation under the Promotion of National Unity and Reconciliation Act, which both implemented the TRC and outlined a broad range of reforms to be pursued.⁹ It is no wonder that these two commissions were able to achieve so much.

The Ugandan and Haitian commissions were fraught with difficulties, among them inadequacies in political will, which appears to have led to the problems each experienced with capacity issues. One wonders what the necessary ingredient must be, if political will is not enough. Here again, the cases of Chile and South Africa are instructive. In these cases, such deficiencies never posed a problem. Again, this appears to be the result of the comprehensive strategies promised and then vigorously pursued by the governing bodies of each country.

The circumstances within which each commission works also no doubt contribute to its ability to achieve these objectives. In the case of Uganda, for example, the number of deaths which had taken place appear to have had an impact upon the social memory its citizens were able to employ in the development of new networks of civic engagement and social trust. These circumstances dramatically changed the way the commission proceeded

⁸ Quinn, "Dealing with a Legacy of Mass Atrocity," 397-398.

to address its need for acknowledgement of past events. How the community chooses to incorporate or merely even to recognize these exacerbating factors will have a direct bearing on the outcome of the commission.

There is also some question as to whether a society at an early stage in the transition process will be able to find acknowledgement. In other words, is there ever a point which comes “too soon” for the efforts toward acknowledgement to be successful? It seems likely, for example, that a truth commission appointed without the necessary institutions of justice in place is certain to fail. Likewise, it is important for those abuses that the commission is appointed to study to have stopped.

Especially in the case of Haiti, it is evident that the CNVJ came at a very early stage. This is also possibly true for Uganda in its adoption of the CIVHR. The perpetrators still held an enormous amount of power within Haitian society, and the other institutions which ought to have been available to support the Commission in its activities were simply not in place. As well, Aristide’s hold on some semblance of democracy was tenuous at best, and proved unsustainable within a few short months. Certainly, the CNVJ would have stood a much better chance had even some of these conditions been more favourable to its existence. It seems likely, therefore, that societies so teetering on the verge of transition would be better to wait until they have established a firmer hold on these aspects of transition.

It also seems likely that the truth commission simply may not be the ideal way to foster acknowledgement within every society. Undoubtedly, in the cases studied here, the

⁹ Quinn and Freeman, “Lessons Learned,” 3.

truth commission failed as a mechanism of acknowledgement. This failure comes perhaps from the fact that the truth commission is a foreign instrument, inserted from outside, which seeks to do many things. It is likely, therefore, that home-grown mechanisms might stand a better chance. The truth commission as an instrument would be more successful if it were buoyed by an alternative mechanism. The Rwandans, for example, have moved to embrace truth-seeking bodies at many levels: international criminal tribunals and national courts are buttressed by indigenously-rooted “gacaca” trials.¹⁰ Many also contemplate the use of the truth commission as a means of obtaining still more of the truth. Here again, the attempts at acknowledgement seem to be supported by an over-arching strategy that aims to support each of these mechanisms. Perhaps it is the case that the truth commission is not the ideal way to find acknowledgement, but that it may be the best alternative available to certain societies at different points.

¹⁰ In 2003, the *gacaca* trials are still relatively new, and little has been written in the scholarly literature about them. See, generally, *World Report 2003: Rwanda* (New York: Human Rights Watch, 2003).

APPENDIX A:

INTERVIEW QUESTIONS

The questions listed below are the skeleton questions I intended to ask those people who consented to be interviewed. My aim was to ask the same kinds of questions of each person, although I was aware, for example, that a priest, whose job it is to counsel people, would be better able to answer questions explicitly pertaining to how people had responded to coming to terms with the past and emotional response than would an archivist. I also wanted to be sure to learn as much from an interviewee as possible, and hoped to tap his or her area of expertise. As a result, I drafted questions designed to address similar issues, but tailored differently for different interviewees. In some cases, after asking a question in a particular manner, I got no response at all, and so opted to ask the same question from a different angle. In other cases, I was able to use the same questions generically. The questions are thus divided by occupation, and grouped by subject-matter.

When interviews were conducted in French, I used translated versions of the same questions, and asked the same types of questions to the same types of interviewees.

NGO Workers

· *revenge*

Was it ever suggested that justice should be left to take care of itself?

Was there a sentiment that people were vindicated for the revenge they sought?

Did you see evidence of further feuding as a result of the truth commission?

· *reconciliation/other forms of justice/repair of civil society*

Who participated in the truth commission?

Was there any sense of grass-roots support?

· *social trust*

Can you identify particular social organizations within your society? e.g. Rotary clubs, etc.

Did you see any evidence of community organizations either growing or declining during and after the truth commission process?

Have new organizations been created since the truth commission?

Who belongs to these organizations?

Spiritual Leaders

· *emotional response*

Can you describe the church's role in the truth process? e.g. counselling
Was there such a thing as collective mourning during the atrocity? after?
Did people exhibit an inability to mourn?

· *forgiveness/reconciliation*

Define forgiveness. Do different faiths define forgiveness differently?
What was the role of the church in reckoning with the past? Did the church
encourage/discourage it?
Archbishop Desmond Tutu of South Africa relied on the tenets of Christianity throughout
the TRC. Was there any evidence of such a reliance in the case of your country?
Did you see any evidence of a restoration of relationships as a result of the truth
commission?

· *memory/remembering*

Has the church in any way commemorated the events of under consideration by the
commission?
Did the church in any way act to promote/discourage such commemorations?

· *social trust*

Did you see any evidence of community organizations either growing or declining during
and after the truth commission process? e.g. church membership/activities, para-church
organizations/activities
Does your church place value on “social capital”? “It’s just like a magic penny...”
Did the role of the church change after the start of the commission?
Did the role of the church change between the years the commission is looking at?

Academics

· *historical revisionism*

Have you any thoughts on the importance of temporal or chronological remembrance?

· *social trust*

What of Govier's “third way” of reconciliation? i.e. sustainable cooperation
Have you any thoughts on patterns of civic cooperation since the commission?

Archivists/Architects

· importance of remembering

Were monuments or other commemorations destroyed by prior regimes? Or, were they re-worked and re-signified?

In providing guidance as to whether or not to save or destroy particular documents, did the state seek to influence your work in either direction?

Were the names, dates, events ever recorded?

In choosing to remember some memories, one must choose to disregard some others. Did you feel that?

What happened to the old symbols of the former regime? e.g. Confederate flag

Was any thought given to creating a public/official narrative?

· shared memory

Was any thought given to ceremonies as cultural analogue?

Were the commemorations created meant as cultural symbols?

· state's position on memory/commemoration

Were any official commemorations commissioned?

Were monuments or other commemorations destroyed by prior regimes? Or, were they re-worked and re-signified?

In providing guidance one way or the other, did the state seek to influence your work in either direction?

· rationale for creating monuments

Was any thought given to ceremonies as cultural analogue?

Was any thought given to the materials/construction methods employed to honour those who died?

What thought went into the particular design chosen? e.g. Maya Lin – simplicity

Were the commemorations created meant as cultural symbols?

Sometimes such symbols are meant to create an illusion of common memory. Did you feel that?

Monuments are often seen as having stabilizing and reinforcing properties. Is this the case in your work?

Journalists

· *remembering*

Some cultures see unpleasant memories as building blocks for a stronger society. Was there any evidence of this? Did you try to remember or disregard these memories in your work?

Many times, events are simply denied. Was there much of this once the commission began?

Were some events/occurrences “normalized” during the years when the abuses were being perpetrated? After?

Was any thought given to creating a public/official narrative?

Was there a temptation toward historiography or historical reconstruction?

Did you observe any patterns of participation or group membership either before, during or after the truth commission?

Truth Commissioners

· *remembering*

Did you find it difficult to accept the admission of something as true or as stated, and the recognition of the authority of the claims of others? How did you feel you ought to deal with obviously fraudulent claims?

Was deep memory (i.e. dealing honestly with feelings of guilt and hurt) ever a goal of the truth commission process?

Do you find that there is any discontinuity between past and present? Was the society at all unable to remember?

· *confronting and dealing with past*

How did you go about recording names, dates and events?

Did you feel that temporal/chronological remembering was important?

Did you feel any sense of needing to overcome the past? i.e. rather than merely confront it

Did you feel that it was important to create a collective memory? Or to manipulate the collective memory?

· *ultimate goal – envision definite outcome*

Did you seek any kind of reconciliation? e.g. Govier’s “third way” or sustainable cooperation

Was there a need for hard facts? Did you strive for a serious working through of the past?

Was there any sense of the need for public enlightenment? e.g. developing a rationale for deterrence

Was any thought given to creating a public narrative?

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McMaster University – Political Science

· *pardon/condoning/forgetting/denying*

What of those who refused to remember?

What impetus was there for people to come forward?

Was there any thought given to amnesty being granted?

Why did the government opt for a truth commission as opposed to other forms of justice used in other countries?

· *technical information*

Who participated in the truth commission?

Who was in the audience?

Was there any sense of grass-roots support?

APPENDIX B:

UGANDA COMMISSION OF INQUIRY INTO VIOLATIONS OF HUMAN RIGHTS
TERMS OF REFERENCE

The Commission of Inquiry Act (Cap 56), Legal Notice No. 5 of 1986
16 May, 1986

A COMMISSION.

WHEREAS for a period of nearly two decades the people of Uganda have experienced diverse forms of violationw of human rights, breaches of the rule of law and excessive abuse of power, in contravention of the provisions of the Constitution of Uganda and of the Universal Declaration of Human Rights to which Uganda is party:

AND WHEREAS in the interest of good Government, public security and welfare and constitutional supremacy it is deemed expedient that the causes of, the circumstances surrounding and possible ways of preventing the recurrence of the matters aforesaid, be inquired into:

NOW THEREFORE, IN EXERCISE of the power conferred upon the Minister by Section 2 of the Commissions of Inquiry Act, (Cap. 56), I, JOSEPH NYAMIHANA MULENGA, DO HEREBY appoint:

- (i) Hon. Mr. Justice Arthur O. Oder;
- (ii) Dr. Edward Khiddu-Makubuya;
- (iii) Dr. Jack Luyombya;
- (iv) Mr. John Baptist Kawanga;
- (v) Mr. John Nagenda;
- (vi) Mrs. Joan Kakwenzire;

to be Commissioners to inquire into all aspects of violations of human rights, breaches of the rule of law and excessive abuses of power, committed against persons in Uganda by the regimes in Government, their servants, agents or agencies whatsoever called, during the period from the 9th day of October, 1962 to the 25th day of January, 986 and possible ways of preventing the recurrence of the aforesaid matters, and in particular, but without limiting the generality of the foregoing, to inquire into:

- (a) The causes and circumstances surrounding the mass murders and all acts or omissions resulting in the arbitrary deprivation of human life, committed in various parts of Uganda;
- (b) the causes and circumstances surrounding the numerous arbitrary arrests, consequent detentions without trial, arbitrary imprisonment and abuse of the powers of detention and restriction under the Public Order and Security Act, 1967, (Act 20 of 1967);
- (c) the denial of any person of a fair and public trial before an independent and impartial court established by law;
- (d) the subjection of any person to torture, cruel, inhuman and degrading treatment;
- (e) the manner in which the law enforcement agents and the state security agencies executed their functions, the extent to which the practices and procedures employed in the execution of such functions may have violated the human rights of any person and the extent to which the state security agencies may have interfered with the functioning of the law-enforcement agents;
- (f) the causes and circumstances surrounding the massive displacement of persons and expulsion of people including Ugandan citizens from Uganda and the consequent disappearance or presumed death of some of them;

- (g) the subjection of any person to discriminatory treatment by virtue of race, tribe, place of origin, political opinion, creed or sex, by any person acting under any written law or in the performance of the functions of any public office or public authority;
- (h) the denial to any person of any other fundamental freedoms and rights prescribed under Chapter III of the Constitution of Uganda or the unlawful interference with the enjoyment by any person in Uganda of the said freedoms and rights;
- (i) the protection by act or omission of any person that perpetrated any of the aforesaid things from due process of law;
- (j) any other matter connected with or incidental to the matters aforesaid which the Commission may wish to examine and recommend;

AND I DO HEREBY direct that Hon. Justice Arthur O. Oder be the Chairman of the Commission:

AND I DO HEREBY appoint Mr. Ben B. Oluka to be the Secretary t the Commission:

AND I DO HEREBY direct that in the proper discharge of its duty, the Commission may call such witnesses and ask for the production of such evidence as it may deem necessary and may receive such assistance from any person as it may think fit:

AND I DO HEREBY prescribe that the said Commission shall in the course of its inquiry, so far as is practicable, apply the law of evidence, and shall in particular conform with the following instructions, that is to say,

- (a) that any person desiring to give evidence to the Commission shall do so in person;
- (b) that hearsay evidence which adversely affects the reputation of any person or tends to reflect in any way upon the character or conduct of any person shall not be received;
- (c) that no expression of opinion on the character, conduct or motives of any person shall be received in evidence;
- (d) that any person who in the opinion of the Commissioners is adversely affected by the evidence given before the Commission shall be given an opportunity to be heard and to cross-examine the person giving such evidence, and

except insofar as the Commissioners consider it essential for ascertaining the truth of the matter into which the Commissioners are commissioned to inquire, not to depart from such instructions;

AND I DO HEREBY direct that the said inquiry be held at such times and in such places within Uganda as the said Commission may from time to time, determine, and may be held in public or in private or partly in public and partly in private as the Commission may from time to time determine;

AND I DO HEREBY direct that the Commission shall start as soon as possible and shall execute the said inquiry with all due diligence and speed and make their report to me with recommendations without undue delay and within the shortest possible time;

AND I DO HEREBY require all other persons whom it may concern to take due notice hereby and to give their obedience accordingly.

DATED this 16th day of May, 1986.

.....
JOSEPH NYAMIHANA MULENGA, S.C.
Minister of Justice/Attorney General

APPENDIX C:

HAITI COMMISSION NATIONALE DE VÉRITÉ ET DE JUSTICE
TERMS OF REFERENCE

Arrêté Présidentiel
le 28 mars 1995
Jean-Bertrand Aristide
Président

Vu le Titre III, Chapitre II, sections A, B, C, D, E, F, G, H, I, J et l'article 136 de la Constitution;

Vu la Déclaration Universelle des Droits de l'Homme de 1948;

Vu les Conventions internationales relatives aux droits de l'homme auxquelles l'État Haïtien est partie;

Vu l'Accord de l'Île des Gouverneurs et le Pacte Politique de New York signés respectivement les 3 et 16 juillet 1993;

Vu l'Amnistie accordée par le Président de la République conformément à l'article 147 de la Constitution;

Considérant la nécessité d'harmoniser les relations au sein de la nation haïtien;

Considérant la volonté du Peuple Haïtien d'édifier un État de Droit dans le pays;

Considérant que cet État de Droit ne peut être construit sur l'impunité mais doit nécessairement reposer sur la confiance des citoyens dans la régulation du fonctionnement démocratique des Institutions, notamment celle de la Justice;

Considérant que la réconciliation prônée par le Président ne peut devenir réalité que si au moins la vérité est dite sur tous les crimes commis entre le 29 septembre 1991 et le 15 octobre 1994;

Considérant que seule la vérité complète et publique permettra de satisfaire aux exigences élémentaires des principes de Justice et de créer les conditions indispensables à la réalisation d'un processus réel et effectif de transition et de réconciliation nationale;

Considérant que la connaissance de la vérité et la reconnaissance officielle par l'État de ses responsabilités à l'égard des torts causés pourront réhabiliter la dignité des victimes dans l'opinion publique;

Considérant qu'il convient d'instituer une Commission présidentielle en vue de faire le jour sur les graves violations des droits de l'homme survenues au cours des trois dernières années;

Sur le rapport des Ministres de la Justice, de l'Intérieur, de la Défense nationale, de l'Economie et des Finances, de l'Information et de la Coordination et après délibération en Conseil des Ministres,

ARRÊTÉ

Article 1

Est rapporté l'Arrêté en date du 17 décembre 1994 créant la Commission Nationale de Vérité et de Justice.

Article 2

Il est créé une “Commission Nationale de Vérité et de Justice” en vue d’établir globalement la vérité sur les plus graves violations des droits de l’homme commises entre le 29 septembre 1991 et le 15 octobre 1994 à l’intérieur et à l’extérieur du pays et d’aider à la réconciliation de tous les Haïtiens, et ce, sans préjudice aux recours judiciaires pouvant naître de telles violations.

On entend par graves violations des droits de l’homme les situations de disparitions forcées, de détentions arbitraires, d’exécutions, de torture de détenus ayant entraîné la mort, de traitements cruels, inhumains et dégradants et dans lesquelles il apparaît que la responsabilité de l’État est engagée à travers des actes commis par ses fonctionnaires ou par des personnes à son service, de même que les séquestrations et les attentats à la vie et contre les biens de particuliers pour des motifs politiques.

Article 3

La Commission devra porter une attention particulière aux violations et crimes contre l’humanité commis par les mêmes personnes ou groupes de personnes, notamment contre les femmes victimes de crimes ou d’agressions de nature sexuelle pour des motifs politiques.

Article 4

Pour une meilleure compréhension et connaissance publique et approfondie de la vérité la Commission devra enquêter sur ces graves violations des droits de l’homme et crimes contre l’humanité commis depuis le coup d’État du 29 septembre 1991. En conséquence, la Commission devra chercher à identifier les auteurs matériels et/ou les complices de ces actes, leurs instigateurs et faire la lumière de ces méthodes et moyens utilisés.

Article 5

La Commission enquêtra sur l’existence passée de groupes paramilitaires et de groupes armés illégaux ou groupes de personnes agissant en toute impunité, sous le couvert de l’État haïtien, à son instigation ou avec sa tolérance, et se librant de manière systématique à des actes de violations de droits de l’homme et à des crimes contre l’humanité.

Article 6

La Commission devra réunir les informations, faits, indices, témoignages et tout élément de preuve permettant d’identifier les victimes de toutes les violations et de tous les crimes décrits antérieurement et de connaître leur situation passée et présente. En particulier, d’établir dans la mesure du possible la nature et la gravité des sévices et préjudices matériels subis par les victimes, les causes et les circonstances entourant les tortures, traitements cruels, inhumains ou dégradants, disparitions, arrestations arbitraires, détentions sans procès, incarcérations et emprisonnements arbitraires ou décès éventuels et les souffrances endurées.

Article 7

La Commission recommandera de justes mesures de réparation et de réhabilitation destinées à rendre la dignité aux victimes et/ou à leur famille ou à leurs ayants, droit, qui pourront faire valoir leurs revendications d’ordre moral, matériel et social selon leur situation actuelle, conformément au droit et aux principes de justice.

Article 8

La Commission recommandera aussi les mesures d’ordre légal et administratif destinées à prévenir la répétition dans l’avenir des violations aux droits de l’homme et crimes contre l’humanité.

Elle devra:

- a) Recommander les réformes nécessaires de l’État et de ses Institutions publiques, en particulier du système judiciaire, des forces de police et de sécurité publique, des Forces Armées d’Haïti;
- b) Recommander les mesures visant à ce que les auteurs connus et/ou leurs complices de graves violations de droits de l’homme et de crimes contre l’humanité soient remplacés dans leurs postes ou responsabilités au service de l’État et/ou que l’accès à la fonction publique soit interdit à de telles

personnes, le tout conformément au droit et aux principes de justice et sans préjudice aux obligations et attributions des Tribunaux haïtiens en ces matières:

c) Recommander également des mesures propres à empêcher la résurgence d'organisations illégales et à assurer la fin de l'impunité en vue de contribuer à la création de conditions objectives de réconciliation de la nation avec elle-même et de justice pour tous.

Article 9

Les travaux de la Commission ne sont pas de nature judiciaire ni de nature juridictionnelle.

Article 10

La Commission bénéficie de tous les privilèges nécessaires à son organisation et à son fonctionnement. Elle mènera ses travaux de manière indépendante et impartiale et de manière à préserver la confidentialité des dossiers des victimes, des témoins et des sources d'information.

Article 11

Aux fins de réalisation de ses travaux, la Commission est habilitée à:

a) Faire connaître son mandat de manière intégrale et de façon la plus étendue possible, sur tout le territoire haïtien, et ce, par tous les moyens jugés nécessaires.

b) S'établir librement dans n'importe quel endroit du territoire national.

c) Recueillir, pendant la durée de son mandat et selon la forme qu'elle aura prévue à cet effet, les témoignages, les faits, les éléments de preuve, les détails et les informations que lui procureront les victimes, leurs représentants, ayants droit, héritiers légaux, parents ou toute autre personne.

d) Recueillir, toujours dans le cadre de son mandat et selon la forme qu'elle aura prévue à cet effet, les témoignages, les faits, les éléments de preuve, les détails et les informations que pourraient lui remettre, de leur propre initiative ou sur demande de la Commission, les organisations de promotion et de protection des droits de l'homme, religieuses, sociales ou de développement, haïtiennes ou internationales, intergouvernementales ou non gouvernementales, sur les matières de sa compétence.

e) Réaliser des entrevues, en privé et en toute liberté, avec toute personne ainsi que toute groupe, toute association, entité ou institution et/ou tout membre de ceux-ci sans restriction aucune.

f) Visiter librement tout établissement ou endroit public ou privé, tout lieu, bâtiment, local, dépendance ou propriété de l'État haïtien dont la Commission jugera utile la visite ou l'inspection pour l'accomplissement de son mandat.

g) Mener toutes les enquêtes et démarches qu'elle estime utiles à l'accomplissement de son mandat. Exiger la production de tout rapport, pièce, document, antécédent, détail et information pouvant faciliter la bonne marche de ses travaux.

Article 12

Si dans l'accomplissement de son mandat, la Commission a connaissance de faits qui revêtent les caractéristiques criminels, de délits et de violations de droits qui n'entrent pas dans le cadre de son mandat, elle les mettra sans délai à la disposition des autorités judiciaires compétentes.

Article 13

La Commission est composée de sept (7) membres choisis parmi des personnalités connues pour leur engagement en faveur de la primauté du droit et du respect des droits de l'homme ainsi que pour leur compétence, leur intégrité, leur crédibilité et leur autorité morale et intellectuelle. Trois (3) de ces membres sont choisis en consultation étroite avec l'Organisation des Nations Unies et l'Organisation des États Américains.

Article 14

Sont nommés les Commissaires suivants:

1. Madame Françoise BOUCARD, Présidente
2. Monsieur Gérard-Émmanuel DES ÎLES
3. Madame Ertha ELYSÉE
4. Monsieur Freud JEAN
5. Monsieur René MAGLOIRE
6. Monsieur Bacre Waly NDIAYE
7. Monsieur Patrick ROBINSON

Article 15

Les autorités et services de l'administration de l'État, de même que tous ceux qui auront été convoqués seront tenus d'apporter à la Commission l'aide et la collaboration qui lui sont nécessaires dans l'accomplissement de son mandat. La Commission pourra requérir l'aide de toute autorité judiciaire ou de police pour contraindre tous ceux qui refuseraient d'obtempérer à toute réquisition de sa part.

Article 16

Aucune action ne peut être intentée contre toute personne agissant à titre de Commissaire ou de Commettant pour les actes posés dans le cadre de ses fonctions.

Article 17

La Commission est d'ordre publique.

Tout recours ordinaire ou extraordinaire devant les Tribunaux visant à en empêcher le fonctionnement ou l'exécution de ses travaux est irrecevable.

Article 18

Tout membre démissionnaire de la Commission est remplacé par Arrêté Présidentiel.

Article 19

La Commission est assistée d'un Secrétariat composé d'Haïtiens et de consultants étrangers choisis dans un processus de consultation avec les organismes de droits de l'homme. Le Secrétaire Générale de la Commission a pour attributions d'organiser, de diriger le secrétariat avec le personnel requis pour l'accomplissement de ses travaux. Il remplit aussi les autres tâches que lui confie la Commission.

Article 20

La Commission adoptera ses règlements de régie interne propres à assurer son bon fonctionnement.

Article 21

La Commission aura un délai de six (6) mois pour remplir son mandat.

Ce délai pourra être prorogé de trois (3) mois, par simple communiqué du Ministre de la Justice, dans le cas où la Commission n'aurait pas terminé son rapport.

Article 22

La Commission devra préparer un rapport public, détaillé et complet, sur la base des travaux réalisés, des cas répertoriés, des enquêtes menées et des informations recueillies dans le cadre de son mandat, qui énonce les conclusions et recommandations auxquelles sont parvenus les membres de la Commission au meilleur de leur jugement et en leur âme et conscience.

Article 23

Le rapport sera remis au Président de la République qui le rendra public. En outre, il appartiendra au Président et au Gouvernement d'adopter les recommandations formulées par la Commission et de mettre en oeuvre toutes les mesures nécessaires pour leur réalisation.

Article 24

Pour le financement des activités de la Commission, le Gouvernement d'Haïti pourra rechercher la coopération de la communauté internationale et des Pays l'appuyant dans cette initiative.

Article 25

Le Ministre de l'Economie et des Finances prendra toutes les mesures nécessaires pour mettre à la disposition du Ministre de la Justice les moyens suffisants pour le fonctionnement de la Commission.

Article 26

Le présent Arrêté sera publié et exécuté à la diligence des Ministres de la Justice, de l'Intérieur, de la Défense Nationale, de l'Economie et des Finances, chacun en ce qui la concerne.

Donné au Palais National, à Port-au-Prince, le 28 mars 1995. An 192ème de l'Indépendance.

Par le Président:	Jean-Bertrand ARISTIDE
Le Premier Ministre:	Smarck MICHEL
Le Ministre de l'Intérieur:	Mondésir BEAUBRUN
Le Ministre de la Justice:	Jean-Joseph EXUME
Le Ministre de l'Economie et des Finances:	Marie Michèle REY
Le Ministre de l'Inforamtion et de la Coordination:	Henry Claude MENARD
Le Ministre de la Défense:	Wildran L'HERISSON
Le Ministre des Affaires Etrangères:	Claudette WERLEIGH
Le Ministre du Commerce et de l'Industrie:	Maurice LAFORTUNE
Le Ministre du Plan et de la Coopération Externe:	Jean Marie CHERESTAL
Le Ministre de l'Agriculture, des Ressources Naturelles et du Développement Rural:	François SEVERIN
Le Ministre des Travaux Publics, Transports et Communications:	Georges ANGLADE
Le Ministre de la Santé Publique et de la Population:	Jean Joseph MOLIERE
Le Ministre de la Fonction Publique:	Antoine BARBIER
Le Ministre des Affaires Sociales:	Enoid JOSEPH

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Le Ministre de l'Éducation Nationale,
de la Jeunesse et des Sports:

Emmanuel BUTEAU

Le Ministre de l'Environnement:

Antoine VERDIER

Le Ministre de la Culture:

Jean-Claude BAJEUX

Le Ministre à la Condition Féminine
et des Droits de la Femme:

Lise Marie DEJEAN

Le Ministre des Haïtiens
vivant à l'étranger:

Fritz CASSEUS

Arrêté Présidentiel
le 20 avril 1995
Jean-Bertrand Aristide
Président

Vu l'article 136 de la Constitution;

Vu l'Arrêté du 28 mars 1995 créant la Commission de Vérité et de Justice;

Considérant que l'un des membres de la Commission est démissionnaire et qu'il convient de procéder à son remplacement;

Sur le rapport des Ministres de la Justice, de l'Intérieur, de la Défense Nationale, de l'Economie et des Finances, de l'Information et de la Coordination;

Et après délibération en Conseil des Ministres:

ARRÊTÉ

Article 1. L'article 14 de l'Arrêté du 28 mars 1998 créant la Commission Nationale de Vérité et de Justice est ainsi modifié:

Article 14. Sont nommés les Commissaires suivants:

1. Madame Françoise BOUCARD, Présidente
2. Monsieur Oliver JACKMAN
3. Madame Ertha ELYSÉE
4. Monsieur Freud JEAN
5. Monsieur René MAGLOIRE
6. Monsieur Bacre Waly NDIAYE
7. Monsieur Patrick ROBINSON

Article 2. Le présent Arrêté sera publié et exécuté à la diligence des Ministres de la Justice, de l'Intérieur, de la Défense Nationale, de l'Economie et des Finances, de l'Information et de la Coordination, chacun en ce qui le concerne.

Donné au Palais National, à Port-au-Prince, le 20 avril 1995, An 192e. de l'Indépendance.

Par le Président: Jean-Bertrand ARISTIDE

Le Premier Ministre: Smarck MICHEL

Le Ministre de l'Intérieur: Mondésir BEAUBRUN

Le Ministre de l'Economie

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Et des Finances:

Marie Michèle REY

Le Ministre de l'Information

Henry Claude MENARD

Et de la Coordination:

Le Ministre de l'Environnement:

Antoine VERDIER

Le Ministre de la Culture:

Jean Claude BAJEUX

Le Ministre à la Condition Féminine
et des Droits de la Femme:

Lise Marie DEJEAN

Le Ministre des Haïtiens
vivant à l'étranger:

Fritz CASSEUS

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