Occasional Paper

*Seeking Truth and Justice: Lessons from the South Africa experience.*

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Project Background

The idea behind this project is to carry out a research on the process of truth telling and accountability for human rights abuses of the past. This is to enable us design a model to address incidences of such abuses that have occurred in some countries within the West African sub-region. Particularly the last decade has witnessed gross abuses and repression in Nigeria, Liberia and Sierra Leone. We have also witnessed the orgy of violence that characterised the power struggle in Liberia, Sierra Leone and Guinea-Bissau. Even Ghana probably the most stable country in the region has witnessed serious human rights abuses for which victims are still seeking justice.

For instance Nigeria which is the most populous country in Africa fought a civil war from 1967 – 1970. The Igbo ethnic group and south eastern minorities lost about one million civilians mostly Igbos who are believed to have died of starvation during the war. 28 years after the civil war ended the Igbos have not been properly rehabilitated and re-integrated into the polity. Promises made by the government to improve the Igbo war-torn area were not kept. The plight of the people has been swept under the carpet by successive governments. Further the country has been ruled by the military for all but 10 years since independence in 1960. The years of military rule has been characterised by gross human rights abuses and repression of political dissent. Respect for rule of law and due process has been abandoned for naked abuse of power. The press has reported several cases of people being harassed, detained without trial, tortured, extra-judicially executed, brazenly murdered, discriminated against and some even forcibly displaced from their homes. Successive military governments have enacted decrees that are aimed at curtailing the enjoyment of fundamental rights and liberties by the people. The authority and independence of the judiciary have been significantly impaired by the military regime’s arrogation of judicial power and the prohibition of court review of its action. The worst abuses so far was under the regime of late General Sani Abacha who carried out wide spread repression of human rights
advocates, pro-democracy activists, journalists and critics of his government. Extra-judicial killings, torture, assassinations, imprisonment and general harassment of critics and opponents were the hallmark of his administration.¹

When General Abacha mysteriously died on June 8 1998, General Abdulsalam Abubakar replaced him. On assuming power General Abubakar took steps towards national reconciliation. He released hundreds of political detainees, granted amnesty to exiles and dropped phantom treason charges against prominent opposition leaders. Abubakar also announced a new transition programme and has so far allowed freedom of press and association. Though steps taken by the new regime are laudable there is however no doubt that the gross abuses that started with previous regimes and climaxed under Abacha’s government had caused so much pain and injustice that has to be addressed in the interest of national reconciliation. Unfortunately, the current administration does not even appear willing to acknowledge what happened or even punish the perpetrators.²

In the same vein the power struggle in the post war Liberia, Sierra Leone and of late in Guinea – Bissau has also resulted in gross human rights violations. Although demands for a truth Commission has been consistent and vociferous in both Liberia and Sierra Leone, President Charles Taylor recently dismissed these calls with the explanation that Liberia is not South Africa and that the people have their traditional way of dispute/conflict resolution.³

In Liberia after more than 7 years of civil war, the Abuja Peace Accord was signed restoring peace to the country. The war however left about 200,000 people dead, 1.2 million displaced internally, and approximately 750,000 refugees in neighbouring countries.⁴ During the conflict political and other extra-judicial killing, Disappearances, torture and other cruel, inhuman or degrading treatment or

² See Interview with Nigeria military ruler General Abdulsalam Abubakar, West Africa, 10 October 1998
³ See interview with President Charles Taylor, West Africa, 10 October 1998
punishment and arbitrary arrest and detention were widely reported. Similarly in Sierra Leone dissident junior military officers violently seized power from the democratically elected government of President Ahmed Tejan Kabbah. The military suspended the constitution, banned political parties and all public demonstrations and meetings and ruled by decree. Before the coup, government military forces and rebel RUF forces committed grave human rights abuses including extra-judicial killing of unarmed civilians, torture, mutilation, rape, beatings, arbitrary arrest and detention, and illegal searches. After the coup the situation became worse as the junta and the RUF intensified the abuses. The junta jailed civic leaders opposed to it and students without regard to due process of law. Some detainees were killed while others were amputated, and women were raped. There was a complete break down of the court system which, in fact, could rightly be said to have ceased to exist.

In February 1998 the ECOMOG forces restored the democratically elected government to power and some order was restored in the country. The situation is however still tense and if serious efforts are not made to heal the wounds of the conflict and bring about national reconciliation the power struggle might resurface and the country might relapse into another conflict. In Guinea-Bissau a country of about 1 million people the violent conflict there has generated an estimated 300,000 internally displaced people and some 13,000 refugees. Both sides to the conflict as well as the Senegalese troops assisting the government have committed serious violations of international human rights and humanitarian law. There have been reported cases of widespread torture and deliberate and arbitrary killings that are taking place in the country. Also in Ghana regarded as relatively stable, U.S. Department of State Country Report on Human Rights Practices for 1997 indicates that there are serious violations of human rights in the country.

The state of affairs in these countries briefly reviewed above clearly points to the need for a process of accountability to address the violations and put an end to impunity on the part of both the

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5 Ibid
government and some interests. It is only by so doing that stability of the polity and genuine reconciliation could be achieved.

The experiences of South Africa and particularly the Latin American countries have shown that the attempt to return a country that has been racked by years of violence, repression and gross human rights violation must start with the search for truth. Truth has assumed the position of absolute value that cannot be compromised under any circumstance. Any meaningful and legitimate attempt towards coming to terms with past atrocities must accompany the truth to light by officially establishing what happened. The revelation of what happened must be an essential ingredient to any approach towards the past. The notion of seeking the truth must not only reveal what happened but provides a normative blueprint for the organisation of the society and the state in future.

It must however be emphasised that no one model is sacrosanct as the complexities of the issue defies any attempt to subject it to any universally accepted set of rules. But be that as it may, there are certain recurring decimals that ought to be identified within a particular country or region. Those peculiarities ought to be further analysed, as a thorough understanding of all the issues would help in designing a model that can be adapted for countries in the sub-region transiting to a democratic order.

Chapter One

(a) Background to the South African Truth & Reconciliation Commission

The first South African Constitution was promulgated in 1910. It was structurally racist and undemocratic in that it excluded the vast majority of the population, who are blacks from enjoying the basic civil and political rights. The policy of exclusion was further entrenched in 1948 when the National Party came to power. The party introduced the policy of apartheid, a policy through which white supremacy and domination determined the state policies relating to all spheres of life such as
franchise, housing, land, residence, schools, transport, health and social services. In brief it could be said that under apartheid the minority whites dominated all other statutorily defined colour groups on a territorial, residential, political, social and economic basis. The above scenario became entrenched in South Africa and lasted for almost 50 years leaving the nation in which majority of its population were victims of assassinations, gruesome murder, abductions, torture, disappearances, forced evictions including other forms of cruel, inhuman and degrading treatments and punishment which were principally sponsored by the state. The white domination in South Africa was first resisted through peaceful means by the victims of the apartheid policy but when that did not bear any fruitful result the various liberation movements, led by the African National Congress (A.N.C) resorted to armed resistance to dismantle apartheid. The armed resistance, international pressure and massive civil disobedience saw to the scraping of apartheid. The ban on the African National Congress (A.N.C) and other liberation movements were lifted on the 2 February 1990 and talks started for the formation of a government of national unity and the enthronement of majority rule.

It must be stated here that the demise of apartheid was not the outcome of revolution or a reform in which the freedom fighters were victorious. It was a political settlement, which was negotiated by all the parties concerned. The negotiation culminated in the adoption of the interim constitution. The constitution contained a bill of rights to which every citizen is guaranteed protection under the law. The courts were enjoined to promote the values that underlie an open and democratic society based on freedom and equality. However the crucial question that lingered was how to deal with the situation in which great majority of the population had suffered gross violation of human rights. The issue of redressing the violations of the past and preventing its recurrence was a very touchy issue that needed urgent attention. There was a cry for justice by the families of victims who were murdered or made to disappear. Those who were imprisoned and detained in there thousands made homeless and suffered the indignity and humiliation of statutory inferiority also cried for justice. There was also talk of amnesty for the perpetrators as a way of putting the past behind and moving forward with the new South Africa where every one was now "equal" The debate and public discussion on how to deal with the past was endless. The victims understandably favoured a

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9 CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT 200 OF 1993
Sonny C. Onyegbula

Nuremberg sort of trial but that was not to be. Nuremberg was a victor's trial but in the case of South Africa there was no victor and no vanquished. It was a negotiated political settlement and compromise that saw the end of apartheid. But many still felt it was important for South Africa that a thorough examination of the past be done so as to build a new society and to assure the victims and their families that the abuses of the past would not be repeated. Though it may appear that the Truth and Reconciliation Commission was not set to achieve justice hence the amnesty provision. The alternative, could have been, possibly general amnesties, which would have been worse. The political situation in the country made it necessary to sacrifice justice in the interest of peace and common good. Some people have argued that the amnesty provision is unjust and unfair to the thousands or maybe millions of South Africans who suffered under apartheid. Though it was a sacrifice of justice to some extent, it was much better than Chile, El Salvador etc. or even Argentina. Some justice is achieved by individual applications and the accounting process. Though many felt that the perpetrators of the crimes under apartheid should face trial but in the words of one of the key architects of the TRC, Kadar Asmal that was not in the interest of the new South Africa. He put it succinctly in these words.

" I therefore say to those who were legalistic blinkers, who argue that immunity would be an affront to justice, that they simply do not understand the nature of the negotiated revolution that we lived through... we must deliberately sacrifice the formal trappings of justice, the courts and the trials, for an even higher good: Truth. We sacrifice justice, because the pains of justice might traumatis our country or affect the transition. We sacrifice justice for truth so as to consolidate democracy, to close the chapter of the past and to avoid confrontation."

The question of how to deal with the past was also faced by the African National Congress (A.N.C). Allegations that there were human rights abuses in its own camps whilst in exile had

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10 Position paper by Brain Currin of the Lawyers for Human Rights on Pros and Cons of a General Amnesty, November 1992
11 It is interesting to note that General Pinochet, the former Chilean dictator was arrested in London for murders and torture committed during his 17 year dictatorship.(see The Guardian Newspaper Monday October 19 1998)
12 Kadar Asmal is now a minister in the government of President Nelson Mandela
13 HANSARD 1995: 1383, 1382
spread for years. The A.N.C first set up an internal enquiry. The report of that enquiry published in October 1992 was immediately criticised as being flawed because the commission lacked independence. A second inquiry, which was chaired by Dr Samuel M. Motsuenyane, was established late in 1992. The proceedings of the commission were markedly different from the first commission. Its proceedings were structured much like formal court hearings. The commission hired counsel to represent the complainants and a legal defence team to represent the defendants. At the end of its work the commission reported its findings to the national executive council of the party.

The report confirmed that there was a basis for the allegation of abuses but tied them to the overall human rights violations that engulfed the entire country. It called for the appointment of a truth commission as a way to redress these violations.

Before the Truth and Reconciliation commission was eventually established in South Africa the issue of how to deal with the past was debated all over the country. The most important of the debates and discussions on the issue were the two conferences held under the auspices of the civil society. They were entitled “Justice in Transition: Dealing with the past” and "truth and reconciliation" respectively. The first conference attracted leading scholars and human rights practitioners from Eastern and Central Europe and South America who shared their experiences with the South Africans. The outcome of that conference was a book titled “Dealing with the Past” Truth and Reconciliation in South Africa. The book was widely distributed across the country. The second conference held a few months later had a majority of participants from South Africa with key participants from Argentina and Chile. That conference produced a book entitled "Healing of a

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14 See, e.g., AMNESTY INTERNATIONAL, SOUTH AFRICA: TORTURE, ILL TREATMENT, AND EXECUTIONS IN AFRICAN NATIONAL CONGRESS CAMPS (AI Index: AFR 53/2792, 1992)
15 The Commission was also referred as the Skweyiya Commission, named after its chair, Advocate T.L Skweyiya
17 The report was submitted in August 1993
18 THE REPORT OF THE COMMISSION OF ENQUIRY INTO CERTAIN ALLEGATIONS OF CRUELTY AND HUMAN RIGHTS ABUSE AGAINST ANC PRISONERS AND DETAINEES BY ANC MEMBERS 11 (20 AUGUST 1993)
19 The first conference was organised by Institute for Democracy in South Africa (IDASA)
which was also widely publicised and read across the country. The germane issue in all
the conferences and workshops that were held in South Africa were that they all concentrated on
the conceptualisation of a truth and reconciliation commission. The input from the conferences was
sent to the parliamentary standing committee on justice, which finalised the bill on the Truth and
Reconciliation Commission. The South African Minister of Justice, Dullar Omar while introducing
the Bill before parliament captures what the Bill represented to the people of South Africa. He said
that the Bill provides

"A pathway, a stepping stone, towards the historic bridge of which the constitution speaks where by
our society can leave behind the past of a deeply divided society characterised by strife, conflict,
untold suffering and injustice, and commence the journey towards a future founded on recognition of
human rights, democracy and peaceful co-existence, and development opportunities for all South
Africans irrespective of colour, race, class, belief or sex." Public hearings and debate in parliament
followed this and the Promotion of National Unity and Reconciliation Bill was eventually passed with
an overwhelming majority.

From the outset the process leading to the passing of the Bill and the appointment of the members of
the commission was democratic as well as transparent. People from all walks of life were
couraged to apply for consideration as commissioners in the commission and about 299 names
were received. A small representative committee appointed by President Nelson Mandela vetted the
names. The committee held public hearings from which a list of 25 names from those who applied
was drawn up and submitted to the President. The President then, in consultation with his cabinet
appointed from the list the 17 commissioners to serve on the Commission. The Commission was
inaugurated on December 16 1995 and held its first hearing on April 15 1996. The public hearings on
human rights violations were concluded with the Chemical and Biological Warfare Programme
hearings on July 31 1998. The body’s final report was handed to President Mandela on 29 October

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21 “Healing of a Nation” edited by Alex Boraine and Janet Levy IDASA 1994
22 Speech by the Justice Minister Dullar Omar while introducing the Promotion of National Unity and Reconciliation Bill
before parliament in Cape Town South Africa in August 1994.
23 The amnesty hearings will continue well into 1999 until all the outstanding applications are disposed off
1998. The report is in five volumes and contains twenty-seven hundred pages and chronicles investigations into atrocities committed during the deadliest years of apartheid – from 1960 to 1994. During this period state-sponsored death squads assassinated 220 mostly black activists. The government also detained 75,000 civilians without charges and swept up 3.5 million people from their homes at gunpoint. The report called apartheid "a crime against humanity" and said the white government was the primary perpetrator of gross violation of human rights. The Commission criticised such white-dominated institutions as Christian churches, the media, businesses, and the courts for their role in sustaining apartheid. The report also criticised the African National Congress saying that the political and military group created to fight apartheid had itself perpetrated gross violations of human rights in that its distinction between civilian and military targets was blurred. The report singled out for individual criticism the former South Africa President P.W. Botha, as well as Winnie Madikizela-Mandela whose Mandela United Football Club was blamed for killings and torture of dissidents. Even before the report was released both the African National Congress and the last apartheid-era president, F.W. de Klerk, went to court to block part of the report from being published. References to De Klerk were deleted from the report, but a court will decide later if it they would be published.

(b) Structure of the Truth and Reconciliation Commission

The Truth and Reconciliation Commission is made up of 17 commissioners. The commissioners serve full time and the process under which they were appointed underlines the transparency and great responsibility which the office bestowed on them. The commission is divided into 3 committees. They are the Committee on Human Rights Violations, the Committee on Amnesty and the Committee on Rehabilitation and Reparation.

(i) Committee on Human Rights Violations

The committee is provided for under section 12 of the Promotion of National Unity and

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Reconciliation Act 1995 (hereinafter referred to as the Act). It consists of a Chairperson and two Vice-Chairpersons who are commissioners designated by the Commission. It is also composed of such other commissioners as the commission deems fit and not more than three other members who must be persons who have expertise on human rights or investigative or fact-finding procedures. It is saddled with the responsibility of investigating cases of gross human rights violations committed in a political context between 1 March 1960 and 9 May 1994. Cases of gross human rights violations in this context include murder, kidnapping, torture or severe ill treatment of people. The committee offers the victims opportunity to tell their story in a dignified way. After the victim or family members or dependants of those who have been killed or disappeared tell their story to the committee it will do the following:

- Investigate the human rights violation
- Find out whom was responsible for them
- Find out how it happened
- Hold public hearings on the case

The committee in the course of its investigations identified the victims of gross human rights violations and referred their cases to the committee on reparation and rehabilitation for consideration.

(ii) Committee on Amnesty

The committee on amnesty is provided for by section 16 of the Act. The committee originally consisted of a Chairperson, a Vice-Chairperson and three other members. The persons must be appropriately qualified South African citizens broadly representative of the South African community. The State President appoints the Chairperson, Vice-Chairperson and one other member and after consultations with the commission appoints two commissioners as members of the committee. The chairman of the committee must be a serving or retired judge. The committee has
been expanded to deal with the higher than expected caseload and backlog that has built up. There are now about 20 members in this committee. The committee has the responsibility to facilitate and promote the granting of amnesty to people who have committed crimes or gross human rights violations within a political context between March 1960 and 5 December 1993. The crimes or violations could have been committed inside or outside of South Africa. The procedure for amnesty as provided under section 3(a) – (c) of Act 34 of 1995 is as follows:

The application must be made within the 12-month period of 14 December 1995 to 10 May 1997;

The amnesty has to be applied for on individual basis, as the committee does not grant blanket amnesty;

The applicant must complete a prescribed form which is published in the Government Gazette and which calls for very detailed information relating to specific offences;

The applicants must make "full disclosures" of the offences they committed;

In cases of gross human rights violations (as defined in the Act) the applicants will appear before the amnesty committee and the hearings will be open to the public while applications in respect of ordinary offences are heard in camera.

Once an application complying with the above procedure has been received the committee will hold a hearing to determine whether or not to grant amnesty. This is usually done for cases where the applicants have committed gross human rights violation.

If the application is successful it extinguishes any civil or criminal liability in respect of the offence for which the application is made and if the applicant is already in prison serving a conviction for the offence, he or she will be released. If however the amnesty application fails the applicant will also be notified in writing of the refusal and may stand trial in future but no information supplied by the applicant in respect of the application for amnesty can be used against him. The committee uses the following criteria to determine whether an act, omission or an offence is one associated with a political objective:
The motive of the person who committed the act, omission or offence;
The act, omission or offence must have been committed in the course or as part of a political uprising, disturbance or event, or in relation thereto:
The legal and factual nature of the act, omission or offence, including the gravity of the act, omission or offence;
Whether the act, omission or offence was committed in the execution of an order and who gave the order;
The relationship between the act, omission or offence and the political objective pursued and in particular the proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued.

(iii) The Committee on Reparation and Rehabilitation

The Committee on Reparation and Rehabilitation is provided for under section 23 of the Act. It is made up of a chairperson, a Vice-chairperson and not more than five other members. The chairperson and the vice-chairperson must be person designated as commissioners of the commission. They must be fit and proper persons who are suitably qualified South African citizens and must be representative of the South African community.

The powers, duties and functions of the Committee include the following:

To consider matters referred to it by:

The Commission
The Committee on Human Rights Violation
The Committee on Amnesty
Gather evidence in respect of victims of gross human rights violations.
The committee is to receive applications for reparations from any person who is of the opinion that he or she has suffered harm as a result of gross human rights violation. The committee after consideration of the application and any evidence before it shall determine if the applicant is a victim and thereafter make recommendations in an endeavour to restore the human and civil dignity of the person.

The committee developed a reparation policy, which has five components as stated below:

- Individual Reparation Grant, which will be part of an individual financial grant;
- Symbolic Reparation, which will help communities to commemorate together the pain and victories of the past;
- Community Rehabilitation Programmes:
- Institutional reform, designed to prevent human rights abuses from happening again; and
- Urgent Interim Reparation

Chapter Two
Supporting and Opposing Views to the idea of TRC

(i) Government

The main role of the TRC is to promote national unity and reconciliation in a new spirit different from the past characterised by conflicts and division. The legislation states that the TRC will achieve this onerous objective in the following ways:

Establishing as complete a picture as possible the cause, nature and extent of the gross violations of
human rights that occurred from 1 March 1960 and 9 May 1994;

Facilitating the granting of amnesty to persons who make full disclosures of acts committed with a political objective;

Establishing and make known the fate or whereabouts of victims and restoring their civil and human dignity by giving them an opportunity to relate their own accounts of violations for which they are victims and recommending reparation measures for them;

Compiling a comprehensive report on its activities and findings of the commissions and containing recommendations of measures to prevent future violations of human rights.

The views of the government with respect to what the Commission sought to achieve could aptly be captured in the introductory speech of the South African Minister of Justice, Dullar Omar while introducing the Promotion of National Unity and Reconciliation Bill before parliament.25

The government believes that the substance of the Commission is the very essence of the constitutional commitment to reconciliation and the reconstruction of society. It hopes that it will provide a secure foundation for the people of South Africa to transcend their ugly past, which was marked by gross human rights violations and a legacy of hatred, fear, guilt and revenge. Then move into a future of hope, equality and respect for the human rights of all persons. A society where everyone will be protected by the rule of law and the constitution: a new South Africa.

The government sees the TRC as a main pathway, a stepping stone together with other institutions supporting constitutional democracy such as the Land claims court, the Public Protector, the Human Rights, Gender, Youth and Electoral Commissions, and the Independent Broadcasting Authority. These bodies present a package of responses to the injustice of the past. The TRC also has the singular role of capturing in a complete a picture as possible that horrible past and also to restore the

25 See supra note 22
human and civil dignity of the victims by granting them the opportunity to relate their stories of the violations for which they were victims.

(ii) Civil society

The way the civil society sees the TRC is varied and depends on what section of the civil society one focuses on. The government endeavoured to involve the civil society in the process leading to the establishment of the TRC. Most of the non-governmental organisations, the universities and community-based organisations were all part of the process leading to the establishment of the TRC and actually seconded some of their staff to work for the commission. However, the reception and the appreciation of the impact of the commission by the South Africa citizenry have been varied. It ranges from those who see the Commission as a "Kleenex" Commission and a witch-hunt to those who are disillusioned about the process under which perpetrators of gross human rights violations are granted amnesty instead of being punished. However to some of the victims and their families the TRC has provided a unique opportunity for them to tell their story in a dignified way and also for them to learn what happened to their loved ones. Facts that have remained hidden for a long time have now been exposed. The people have been offered the opportunity to participate in the symbolic reburial of their loved ones. That to a great extent grants them the opportunity to find closure to the lingering and painful memories of the past. Even so, the issue of amnesty for the perpetrators has not been well received by some of the victims and their families. They see the amnesty as a travesty of justice for the crimes that were committed. They feel perpetrators of gross human rights violations should be tried and punished for the heinous crimes that they have committed.

Other categories of the civil society are the cynical ones who are mostly beneficiaries of the apartheid system. They see the TRC as ploys by the ANC-led government to witch hunt them. They consider the exercise a waste of resources arguing that the past should be put behind and all the money being spent on the TRC should be used for more pressing needs.
Then there are also those who have always denied knowledge of the heinous crimes committed under the apartheid era. They claim that they did not know what was happening in their country during apartheid. Their feeling about the TRC is mixed and they only follow its proceedings in perfunctory manner. Those ones still have the same attitude towards the TRC. To them life goes on they are not bothered on what is going on and merely listens perfunctorily when the issue are mentioned. To them they did not create the evils of the past and could not be bothered with the efforts at healing the wounds. Most of the white youth in South Africa belong to this category.

It should be mentioned here that a survey conducted in the closing week of the TRC hearings revealed that most people think the panel’s work worsened, rather than healed racial tensions out of about 2,500 people surveyed only about 18 percent believed the TRC had not fuelled racial tensions. However the chairperson of the commission Archbishop Desmond Tutu defending the commissions’ work stated that the outcome of the survey was not unexpected. He remarked that “if you uncover the ghastly atrocities that took place... it would be very odd if people suddenly then were ecstatic and said, It’s wonderful.” He further stated that the truth is quite crucial to the process of reconciliation and that the commission has made a very significant contribution to that.  

(iii) Business

The TRC as part of its mandate to arrive at a complete understanding of the political conflict that occurred in South Africa between March 1960 and May 1994 issued a public appeal for submission from the business community in South Africa.  

The Commissions hearings on business centred on three main themes:

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26 See survey conducted by AC-Nielson (Market Research Africa) Reported by South Africa Press Association (SAPA) July 27 1997
The relationship between apartheid and the economy. This covers issues as to whether business was an innocent bystander or an active participant in apartheid.

Business, governments and the trade unions. This theme covers the attitude of business towards trade unions and unions towards business. It also covers what the role of management and union leadership was to strikes and human rights.

Total onslaught, total strategy and reform. This theme covers the participation of businesses in South Africa defence industry, security apparatus and homeland interest.

About 70 companies, business organisations, unions and individuals made submissions to the Commission. The Commission in a statement by Dr Alex Boraine, Acting Chairperson, Truth and Reconciliation Commission said it received enough positive responses so far as to indicate it could expect widespread co-operation from the business community.28

However the optimism of Dr Alex Boraine on the response of business to the Commission did not reflect on the attitude of some important players to the inquiry. For example the Chamber of Mines representing one of the most profitable and controversial sectors of the economy in its submission summed up a century of mining in South Africa with a six and half page document that failed to deal with any of the contentious issues that dog the industry. Some companies like the Gold fields of South Africa, which was quite notorious during the apartheid era for the brutality of its private police force refused to put in an appearance.

In the same manner Shell oil company which played a crucial role in shoring up the apartheid state by ensuring oil got to South Africa also failed to account for itself. Other big company that failed to account for their role during apartheid includes Mercedes Benz who supplied Unimog chasis that were used by the South Africa Defence Force for transport and combat vehicle.

In contrast to Anglo-American business: the Afrikaner business was more concerned to involve itself in the soul-searching exercise represented by the Truth and Reconciliation Commission.

28 Ibid
The insurance giant Sanlam, for instance - while claiming to have led something of a rebellion against petty apartheid from the early 1970s -- acknowledges that it benefited from apartheid, relative to disadvantaged groupings. "The past cannot be undone, but contemplating these events leaves us with a deep feeling of sadness and regret."

Similarly the Afrikaanse Handelsinstituut, while arguing that apartheid was counter-productive for the white business establishment, concedes that it disadvantaged black business.

"Separate development in the end meant social engineering with brutal human costs and enormous wastage of resources. As a business organisation we should have appreciated much earlier that moral and economic realities militate conclusively against even the loftiest interpretation of separate development." Admitting that "fellow South Africans were gravely wronged", it offers its "sincere regret for these failings" and "apologies to those affected".

But perhaps the most telling insight into the relationship between big business and apartheid is provided by the man who fell victim to PW Botha's wagging finger - the former chief executive of Barclays Bank, Chris Ball, who was driven out of the country by the former state president's charge that he was sympathetic to the ANC.

In a closely reasoned submission, Ball argues that business leaders - whether through conditioning, or a lack of a conceptual frame-work - did not have the intellectual grasp to understand their manipulation by the apartheid regime. "Most businesses were bystanders, passive rather than innocent," he says of apartheid. Ball stresses his anxiety not to personalise his submission, but says that Barclays's attitude to apartheid was directly related to the attitude of the chief executive officer of the day. "My predecessors were sensitised, but passive, my successor conservative."

Businesses were directly involved in the defence industry "and profited from it", he says.

"The involvement in the security apparatus was in the supply of equipment, not in participating in
security activities, which were fairly well hidden from most business people.

"The regime did try to obtain information from banks about payment flows to underground organisations, made in many cases through Barclays”.

"We resisted those enquiries, though there was probably leakage of information by members of the staff who supported the regime. Business, including the banks, was active in rebutting and frustrating sanctions. "There was a genuinely felt belief that sanctions would not improve conditions in South Africa, or even produce change."

The black business attitude to the TRC was that of caution and suspicion. One black business executive approached by the South Africa Mail and Guardian Newspaper declined to comment on the role of business saying “We are a comparatively small company and most white business people are not happy with the Commission asking them to testify”.

Another businessman who sought anonymity said they feared the commission hearing was a way of “putting business on the hook, and getting us to pay compensation”.

Generally it could be said that some key business players in South Africa appeared quite confused about the purpose of the inquiry on business. Some of them felt that since the Commission’s mandate was to investigate gross human rights violations it had nothing to do with them. After all they neither murdered nor tortured any one. 

Apart from this seeming confusion some of them saw the TRC as huge joke. For example the South African Chamber of Commerce (Sacob) referring to an article in the Financial Mail of 1994 likened the TRC to a Television programme called circus. This underscores the level of unserious ness to which the chamber attached to the work of TRC.

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29 See Electronic Mail & Guardian Johannesburg, South Africa. September 12 1997 p.2
30 Ibid
Chapter Three
Case Studies Summary/Context

The TRC was set up in 1995 to investigate crimes committed during the nearly five decades that South Africa was governed under apartheid, a system of strict racial separation and white-minority rule. The commission looked at the actions of both government forces and black liberation movements under the auspices of the hearings conducted by its Committees on Human Rights Violations and Amnesty.

The first hearing was held on April 15, 1996 and since then the commission has heard or read reports of about 21,000 victims of gross human rights abuses and received about 7,600 applications for amnesty from perpetrators of human rights violations under the apartheid regime. The hearings summed up the apartheid’s grisly past which included the death of black consciousness leader Steve Biko, murders and assaults implicating Winnie Madikizela-Mandela, police death squads and decades of torture, beatings and killings of other prominent anti-apartheid activists. The hearings further included the bombings targeted at liberation movements both in and out of South Africa and the buildings that housed the South Africa Council of Churches headquarters and other organisations opposed to the apartheid policy of the government. The climax was the sinister but secret biological and chemical warfare programme of the South Africa Defence Force.

The summary of the cases below are given not because they are more important than the other cases heard earlier or later but only for the fact that I personally witnessed the hearings and find it expedient to write briefly about them.

(i) Craddock 4 Amnesty Hearing

31 Ibid
32 The mandate of TRC was restricted to crimes committed between March 1960 to May 1994
The hearings were in respect of applications for amnesty for the killings of what is known as the Cradock 4 by Messrs Eric Alexander Taylor, Gerhardus Johannes Lotz, Nicolaas Jakobus, Janse van Rensburg, Harold Snyman, Johan Martin van Zyl, also known as Sakkie, Hermanus Barend du Plessis and Eugene Alexander de Kock. They were all members of the South African security police.

The Craddock 4 were Matthew Goniwe, Fort Calata, Sparrow Mkhonto and Sicelo Mhlawuli. They were members of the United Democratic Front a non-violent political organisation opposed to the apartheid policy of the then South African government. The widows of the four deceased persons through their counsel opposed the application for amnesty mainly on the grounds that the applicants have not made a full disclosure and that they are protecting persons who were involved in these killings. The applicants apart from the 4th applicant who was said to be terminally ill gave evidence on the political activities of the deceased persons and how the deceased persons were considered as subversive elements and threat to the continued existence of the apartheid state. They also gave evidence of how they received orders to murder the deceased persons and burn their corpse and make it appear as if they were killed by rival liberation movements such as Inkatha Freedom Party (IFP) or Azania Peoples Organisation (AZAPO).

The applicants were cross-examined by the counsel for the widows. The counsel through cross-examination tried to establish that some of the deceased persons were engaged in non-violent political activities and that in particular one of the deceased, Mr Mhlawuli was not engaged in any political activity but was just killed because he was found in company of the activists. The widows also called witnesses who knew the deceased persons to give evidence about their political and other activities. The witnesses all spoke in glowing terms about the deceased persons and their non-violent political activities. What came out clearly was that the deceased persons were highly respected community leaders and their deaths were a great loss to their community and the country as a whole. At the time of writing the amnesty committee is yet to give its decision on the applications.

(ii) Chemical and Biological Warfare hearings (CBW)
The special hearings into the South Africa’s Chemical and Biological Warfare (CBW) programme explored among other things the following:

The institutional arrangements that gave rise to the former government’s CBW programme;

The front companies that were established to support the programme;

Individual human rights violations that resulted from the programme;

The Involvement of the South Africa Defence Force (SADF) in experimentation on human and animals; and

The financial implications for the state.

It was revealed that the programme included covert assassinations by poisoning, the manipulation of fertility and animal experimentation. Part of the details revealed was that SADF had a poison programme where scientist prepared a range of untraceable deadly poisons, diseases that could cause epidemics and infertility serums aimed at black women. The force used a front company called Roodeplaat Research Laboratories (RRL) for these activities.

In his evidence at the hearing Dr Michael Odendaal a microbiologist for the laboratory testified that he prepared about 260ml of cholera germ, which he said was capable of causing serious epidemic. He also admitted that anthrax and other lethal poisons, which were produced, were later introduced to alcoholic drinks, food, chocolates and cigarettes. Cholera germs that were produced were to be used to cause epidemic during a war situation. Another SADF’s company Delta G produced thousand of kilograms of estacy and mandras, which was to be used in incapacitating opponents.

It was further revealed at the hearing that a weapons expert developed for SADF a mechanism that could be used to propel poisonous substances. These included rings with a secret compartment, walking sticks, umbrellas, bicycle pumps and poison bearing screwdrivers. In fact 95 percent of the projects undertaken by the RRL were of offensive nature as opposed to developing defensive capabilities.

A key witness, Dr Wouter Basson who was described by several witnesses as the mastermind of the programme was reluctant to testify but was forced to give his testimony after his efforts to use
legal manoeuvres to evade the hearing failed. Basson had earlier gone to court for a declaration that his testimony before the commission would bias potential jurors in an upcoming criminal trial he is due to face for fraud, conspiracy to commit murder and manufacturing the drug ecstasy. The court ruled that he must testify. Dr Basson in his testimony stated that the United States and other Western countries such as Germany, Japan, Canada and Britain shared military secrets with him concerning chemical and biological warfare. In exchange he provided them with information on the chemical weapons capability of former Soviet Union, Cuba, East German forces stationed in the neighbouring African countries.

(c) Pre 1994 Election bombings amnesty hearings

The hearings were in respect of applications for amnesty by twelve neo-Nazi Afrikaner Resistance Movement (Here in after called AWB) members seeking amnesty for attempting to derail the first all-race elections in April 1994. The applicants engaged in a three day bombing spree, killing 21 people and injuring 46 on the East Rand, West Rand, Pretoria and Johannesburg. The applicants were: Nicholas Clifton Barnard, Abraham Liebrecht Myburgh, Etienne Jacobus le Roux, Petrus Paulus Steyn, Jan Bastiaan de Wet, Gerhardus Daniel Fourie, Johannes Andries Venter, Jacobus Petrus Nel, Abraham Christoffel Fourie, Jan Wilhem du Plessis, Johannes Petrus Olivier and Johannes Abraham Vlok.

They have applied for amnesty for detonating bombs, which killed and maimed civilians. They say in their applications that the AWB, the Conservative Party and the Afrikaner Volksfront met in Ventersdorp and other venues in the Western Transvaal early in 1994 to discuss where a future Volkstaat would be established and to prepare for war. They add that after these meetings, the AWB's generals, and General Chris van den Heever in particular, gave commandos instructions to prepare for war. General van den Heever informed members that the AWB would not be ruled by an ANC-SACP alliance. At the hearings the families of the persons who were killed by the bombs
through their lawyers opposed the amnesty applications arguing that the bombings were mere criminal acts, which had no political objectives. They further argued that there was no way detonating bombs in the places the bombs were placed could have stopped the elections. The applicants did not target political party's offices, polling booths or government properties rather they targeted mostly the black population. The hearing was adjourned to enable some of the applicants call further witnesses.

It should be noted that on June 18, 1998 the leader of the AWB issued a statement accepting moral and political responsibility for the bombings. He however did not apply for amnesty.

Chapter Four
Impact of the Truth and Reconciliation Commission on the society

There has been a healthy and dynamic debate among the various sections of the South African civil society on the work of the TRC. It is therefore a difficult task to determine the success or otherwise of the commission and the impact it has made on the society. This is because the assessment will depend essentially on whose yardstick or criteria that is used. Moreso, it is rather too early to measure the success or otherwise of the commission.

However in my view even at this early stage the TRC has had a tremendous impact on the majority of the black South African population and other disadvantaged groups. Victims have testified of the dignity they felt by merely having a statement taker sympathetically listen to their stories and those who have testified in the public hearings have stated that they now feel relieved that they have had the opportunity to share their grief with other people.

The TRC has also offered the opportunity for perpetrators of gross human rights violations who apply for amnesty to come forward to tell stories of the violations they committed. As a result of this, many families are now aware of what happened to their loved ones and if they were killed, how and where they were buried. With the help of the Reparation and Rehabilitation Committee families are able to exhume the corpse of their loved ones and dignified and proper burials are given to them at
the expense of the state. This process has gone a long way in restoring the dignity and reducing the pain and anguish the families have suffered for the loss. This is indeed a unique opportunity to find closure to painful and lingering memories of the past.

The activities of the TRC are widely reported by the media. The reported stories especially in respect of the testimonies of victims have enabled people to attain a common understanding of the past and more importantly to adopt a common vision of what should be done in promoting the healing of the nation and injecting a culture of human rights.

The main function of the TRC is to provide for measures aimed at the granting of reparation, rehabilitation and the restoration of the human and civil dignity of victims of human rights violations. To this end the TRC provides a process to hear and heal the pain of the past and provide symbolic ways to collectively redress imbalances and suffering as a nation. According to Hlengiwe Mkhize, a Commissioner in the TRC and Chairperson of the Reparation and Rehabilitation Committee, the commission have provided "South Africa with the opportunity of former enemies to look one another in the face, Know one another's names, and move beyond responses born out of fear into a place of common understanding which may even provide an opportunity for common nurturing in the future." ³³

The TRC series of post-hearing community programmes made some impact in fashioning out ways of bringing reconciliation to the communities. The hearings are a follow up to the human rights violation hearings. They focus on not only mobilisation of the community towards the healing process, but to listening and getting input from the community about the reparation process. The hearings involve the rubbing of mind between officials of the TRC and representatives of different sectors of the civil society. They are aimed at taking care of the pains the communities suffered and finding ways to improve the quality of live of members of the community. The TRC saw the programme as

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a first step towards healing and eventually reconciliation. It believed the pains of the past suffering and injustices have to be taken away first and the quality of life of the ordinary people has to be improved. It is a sharing with the community and the TRC about opportunities lost, about psychological devastation, about physical devastation, about almost every thing the people went through between 1960 and 1994.

The TRC also held public discussion forum on the just war debate and reconciliation. It does this by constituting a panel of people representing different shades of opinion and sectors of the society to engage publicly over the issues. The Commission believed that engaging the public in its activities they would slowly move towards solutions or answers to some of the vexing issues.34

Other issues in which the TRC held public debates include Reconstruction and Economic Justice, Perpetrators, Transforming the Society through Reconciliation. These public debates and discussions formed an important element of the TRC work in engaging the people of South Africa and hearing their views on all these issues. They also afforded the opportunity for South Africans of different races and colour to speak to them selves honestly and openly.

The impact of the TRC on South Africans could be summed up in the words of the Chairperson of the Commission, Archbishop Desmond Tutu during his speech at the Johannesburg Press Club. According to the noble laureate “The commission is just one element. It has made a contribution. But the work of reconciliation is something that has to be undertaken by all of us and it is not something that will happen overnight.”35

34 See speech by Denzil Potgieter, TRC Commissioner during the debate on just war and reconciliation, held on 6 May 1997 at Green Market Square, Cape Town
Chapter Five
Problems of the Past, Prospects for the Future - Comparing the experience of the Truth Commissions in Argentina, Chile, Uganda and Germany

The TRC in South Africa presents a very unique model suitable for addressing the gross human rights violations following a period of violence and repression. This may either be in the context of states experiencing change of power from an authoritarian or military rule to some form of democracy or to states ravaged by a prolonged period of civil or ethnic strife. The model however is not a whole sale one that should be adopted lock, stock and barrel. The peculiar situation of the South Africa society and its past made the model appropriate for South Africa. South Africa under apartheid operated a minority democracy where the majority black population were excluded from the political process and subjected to state sponsored policy of discrimination and gross human rights violations. Comparatively the Argentine, Chilean and Ugandan experiences were occasioned by different circumstances.

Though this study is mainly on the South African Truth and Reconciliation Commission it will be helpful to do a brief comparative study on the Commissions that have existed in Argentina, Chile and Uganda. This is important mainly for the reasons that in these countries military dictatorship played a very significant role in the abuses that occurred. Further, the South African Commission drew extensively from the Latin American experiences.

ARGENTINA

The then newly elected civilian government of President Raul Alfonsin unilaterally established the Truth Commission in Argentina. It was known as the National Commission on the Disappeared. The

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33 See Archbishop Desmond Tutu’s press club speech Cape Town South Africa, 21 October 1997
commission had the mandate to investigate the unprecedented political violence of the 7 years of military rule between 1976 and 1983.

The commission was made up of 10 individuals who were chosen for their consistent stance on the defence of human rights. The commission members were drawn from different sectors of Argentine society with well-known writer Ernesto Sabato as chair. The commission received files and documentation on human rights abuses from various human rights organisations. They also inspected detention centres, secret cemeteries and police facilities. The commission’s staff took statements from victims at Argentines Embassies and consulates abroad. Even those who were in exile returned home to tell their story to the commission. The commission regularly issued press briefings and synopsis of the testimonies it had taken was shown in a two hour documentary on television. And the end of its work the commission published a report documenting cases of 9000 persons who had disappeared. The Argentine commission received international attention and is reputed to have (in conjunction with the efforts of the government to prosecute those responsible for gross abuse of human rights) made the best effort in Latin America to hold past regimes accountable for the abuses of the past.

The Argentinean attempt at accountability for human rights abuses of the past has been seen as the most successful in Latin America. The trials of junta members restored the dignity and majesty of the courts. It also demonstrated that a democratic government could take important steps towards establishing the truth about the past and bring an end to an era of impunity and abuse of human rights and due process.

CHILE

After taking office in 1990, President Patricio Aylwin established the National Commission for Truth and Reconciliation. The mandate of the commission was to investigate abuses resulting in death and disappearances over the previous 17 years of military rule. It was to account by name every person who has been killed or tortured or disappeared and to explore the circumstances of these events and the way in which the security police, courts and state had operated. The commission was at the end
of its work expected to make detailed recommendation for reparations and prevention of future abuses. The government said that it was only on the basis of truth that it would be possible to satisfy the basic demand for justice and create an indispensable condition for achieving true national reconciliation. The Commission was headed by a former Senator Raul Rettig and comprised of 4 persons each representing the opposition and the government. The commission was well staffed and worked full time for 9 months and within this period investigated 3,400 cases. It went round the country and talked to families of victims and held hearings in which family members of victims were treated with dignity. It also received cooperation from the military, which responded to all the commission’s inquiries.

At the end of its work the commission issued a unanimous report but did not name the perpetrators of the gross human rights violations. The report included far-reaching recommendations. It criticised the Dirección de inteligencia Nacional (DINA) which was the secret police operating from 1974-1977, and of the judiciary for failing to act to restrain abuse. The commission also recommended the establishment of a National Corporation for Reparation and Reconciliation to follow up on the work of the commission. This corporation provides an excellent model for continuing the work of the commission and implementing its recommendation. It had a two-year mandate to promote reparation to victims, assist in the search for the remains of the disappeared, and formulate proposals for the consolidation of a culture respectful of human rights. As a further effort towards national reconciliation President Aylwin in March 1991 gave a televised address in which as the representative of the Chilean society and government, he asked pardon of the victims and requested all who participated in the excesses committed to make gestures of recognition of the pain caused and cooperate in diminishing it.

The major criticism against this commission is that it did not name the names of the perpetrators. The thinking of the Commission as expressed by José Zalaquett, a former commissioner with the Chilean commission was that since the commission was appointed by executive power and was not part of

36 The reparation specified by law include a fixed pension for spouses, parents, and children under 25 of the disappeared and executed; free medical treatment; scholarship for children until they are 35 years of age; and exemption from military service for relatives if desired.
the judiciary and so could not conduct trials? It would be wrong to pass judgement on the guilt of persons who could not defend themselves before the commission.\textsuperscript{37} I disagree with this view because as shown later by the mechanism adopted by the South Africa Truth and Reconciliation Commission it would have been possible to name names of perpetrators and also give them opportunity to defend themselves while applying for amnesty for the violations that they have committed.

UGANDA

In Uganda there has been two commissions set up to investigate human rights abuses. The first was set up in 1974 under Idi Amin Dada to investigate the accusation of disappearances at the hands of the military forces during the early years of Amin government.\textsuperscript{38} The commission was headed by a Pakistani Judge and was comprised of two police officers and a soldier. They had powers to compel witnesses and obtain official information.\textsuperscript{39} The commission operated under difficult conditions as access to information was blocked by many sectors of the government.\textsuperscript{40} At the end it heard 545 witnesses and documented 308 cases of disappearances. In its report it held the two special security bodies set up by Amin responsible for the disappearances. It also criticised the army and the police for abuse of power and made several recommendations to the government. Amin never published the reports and none of the recommendations were implemented. The four commissioners were later targeted by the state in apparent reprisal for their work.\textsuperscript{41}

The second Commission was set up by President Yoweri Museveni to investigate human rights violations from the time of independence in 1962 to the time of take over of the new government in 1986.\textsuperscript{42} The commission was headed by a justice of the Supreme Court and comprised of 5 other

\textsuperscript{37} See Dealing with the past, Truth and Reconciliation in South Africa 2\textsuperscript{nd} edition edited by Alex Boraine, Janet Levy and Ronel Scheffer p51
\textsuperscript{38} See Richard Carver, Called to Account: How African Governments Investigate Human Rights Violations, 89 (356) AFR. AFFAIRS (1990)
\textsuperscript{39} The Commission was set up by a presidential legal notice under the Commission of Inquiry Act 1914
\textsuperscript{40} See supra note 16 at p. 613
\textsuperscript{41} See supra. note 37 at p.400
\textsuperscript{42} The Commissions of Inquiry Act, Legal Notice No. 5 of 1986 of 15 May 1986
commissioners. The mandate of the commission was quite expansive. At the end of its investigation it was required to recommend possible ways of preventing the recurrence of such violations. The Commission did quite an extensive work in investigating the orgy of violence and gross human rights violations that Ugandans were subjected to by successive military and civilian dictatorships until 1986. It held hearings throughout Uganda and its sessions were highly publicised by the media. However the work of the commission was hampered mainly by lack of funds and full time personnel and so it could only complete its work in 1994 which was six years behind schedule.43

Chapter Six
Lessons for Emerging Democracies in West Africa

The issue of accountability for human rights abuses of past have become a topical and relevant issue in international human rights discourse. It is a revelation that societies that are deeply divided by ethnic, social and political rivalry could be consciously mobilised by the government towards reconciliation and building a society based on respect for human rights and the rule of law. The bane of most of the countries in West Africa is that there has not been a real effort by the governments to promote reconciliation between disaffected sections of the society. Instead the despotic regimes have manipulated the diversities of the people to remain in power by a system of divide and rule, repression of dissent and blatant impunity.

The South Africa experience and those of Latin America have shown that though the truth and reconciliation process may fall short of justice it has contributed immensely to the breaking of silence. It has given face and voices to occurrences which where hitherto known only in statistical and general terms. The rehabilitation and reparation aspect of the truth and reconciliation process has also turned out to be a major vehicle for the healing process. It is an attempt to hear and heal the pain of the past and to provide symbolic ways to redress imbalances and sufferings of the past. For

43 See supra. note 16 at 619
example the Truth and Reconciliation Commission in South Africa has provided an opportunity for former enemies to look one another in the face and begin a process of reconciliation borne out of common understanding of each other past.

Several countries in West Africa have been torn by many years of civil war, ethnic strife and conflicts; others have witnessed despotic regimes by corrupt and inept military officers who impose their leadership on the people. The recurrent decimal in these two scenarios is that the countries have witnessed many years of gross violations of human rights and near complete erosion of the rule of law and due process. Fundamental rights and freedoms are recklessly violated and due process of law completely non-existent guaranteeing continuos impunity by agents of the government. As these countries attempt to reappraise their past and move into a future founded on respect for rule of law and human rights in an emerging democratic order, it becomes imperative that abuses of the past be revisited. The reasons for this are many; they include that for an enduring democratic order to be established there is need to know the truth of what happened and who was responsible for them. It is equally important to bring to book the perpetrators of those gross abuses and to restore the civil dignity of the victims of those abuses in form of reparation and assurances that the violations of the past will not be repeated.

The first condition to be fulfilled in coming to terms with the past is that the truth must be known and for the process of truth telling to have credibility it must be publicly investigated and officially acknowledged. This is because the victims of the abuses places great importance on the acknowledgement by the government that abuses have occurred and that it (the government) takes responsibility for them. For the process to have credibility the investigation must be carried out by an official body, which must be seen as impartial. In South Africa the government involved the civil populace in the establishment of its Truth Commission. The process of selection of the members of the commission was transparent and all sections of the South Africa’s multi racial society were represented and the end what emerged was a commission generally seen as impartial. In Argentina and Chile, the government appointed persons representing all shades of political persuasions in the commission, which strengthened its independence and credibility. In Uruguay the government refused to institute any independent investigation into the past and this led to wide spread
dissatisfaction among the people and continuing lack of confidence on the government.\textsuperscript{44} The violence and dictatorship that have been witnessed in some countries in the West Africa sub-region makes it imperative that a truth Commission with the vital elements drawn from the experiences of South Africa, Argentina, Chile and El Salvador has to be appointed once democracy is restored in the countries.\textsuperscript{45} The appointment of such a commission must be transparent and seen to be so by involving the people from the early stage. The membership should include both representatives of the government and the opposition. The function of such a commission should not only be focused on giving a hearing to the victims of the abuses. It should also be used to find creative ways to bring a balance between truth telling, reconciliation and justice. The Commission should have the widest power of investigation, as was the case with the Truth and Reconciliation Commission in South Africa. This would enable the commission to carry out its investigative duties properly so as to be able to establish the individual as well as institutional responsibility for policies that led to the abuses. The commission must however follow internationally recognised standards for due process. The right to fair hearing of those accused for responsible for the abuses must be respected in all cases. The Commission must also seek assistance and co-operation of human rights organisations, as these organisations are a storehouse of relevant information and documentation on the abuses that have occurred in the past. Again the experience of South Africa is relevant here. The Commission relied extensively on the information and documentation from the human rights and civil society organisations in its work. This obviously will help in achieving a comprehensive and truthful report. The commission stands to lose a lot and this will impact on the quality of its work if it distances itself from the human rights and advocacy groups. The issue of reparation, restitution and rehabilitation for victims of abuses is also of immense importance. It will be relevant to look more closely at the reparation policy of the South Africa Truth and Reconciliation Commission, which to me is quite extensive, and also the model of the Chilean Corporation on Reparation and Reconciliation.

A genuine attempt should also be made to reorganise the security forces and institute human rights courses and programmes as part of the curricular of the armed forces and other security services.

\textsuperscript{44} See supra note 20 at p.44-5, see also South Africa - Accounting for the past, The lessons for South Africa from Latin America. October 23, 1992 Volume 4, Issue 11 (News from Africa Watch)
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This would help in building a culture of subordination of the military to civilian authority and the respect of human rights and rule of law within those institutions. Those who are responsible for gross human rights violations should not be allowed to hold positions of authority in the countries where they are likely to repeat those abuses, they should in fact be disqualified from holding high public offices. As part of the healing process an acknowledgement of the crimes by the state preferably by the President of the country and a public apology to the victims and their families will go a long way to rebuilding confidence in the government and help in the healing process.46

An important lesson that could be drawn from the experience of Argentina is in the area of prosecution of those responsible for the abuses. Argentina is reputed to have carried out the most successful accounting process in Latin America because of the prosecution of leaders of the regime responsible for the past abuses. In Chile and Uruguay prosecution was difficult to achieve while in South Africa some people including the former defence minister have been prosecuted and those who did not apply for amnesty may be prosecuted in due course.47 In the West Africa sub-region those who are responsible for the abuses of the past have also plundered the economy of the countries. They are likely to have strong political clout and power even under a democratic setting, which makes it more difficult to achieve accountability. It is important to observe that it not just enough that the truth is told and officially acknowledged. The government must go further than that by settling the issues judicially. By this those who are responsible for the abuses ought to be prosecuted. The prosecution of the perpetrators signals that no one is a sacred cow and this would be etched in the history books as a reminder to up coming violators that impunity for human rights abuses would not be tolerated in the society. The Latin American experience of policies of accountability clearly exemplifies this point.48 Also in South Africa the combination of truth telling, amnesty and prosecutions gave some credibility to the process of accounting in that country. Another lesson that could be drawn from the experiences of South Africa and those of Latin America is that the process of truth telling and accountability should be set in motion as soon as a

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45 Countries like Liberia, Sierra Leone, Guinea-Bissau and Nigeria readily come to mind.
46 President Aylwin of Chile delivered a public apology on national television to victims of the abuses of the previous government.
47 It is left to be seen if the government will have the political will to prosecute them.
democratic order is established. A time limit should be set but there should be continuity in the area of reparation and rehabilitation of victims of the abuses. This approach should not be seen as holistic as gradual approach could also be effective as exemplified in Chile and Paraguay. The political realities in the West Africa sub-region suggest that most of the people involved in the abuses may still have considerable influence in the new dispensation. In such a situation more success would be achieved if accountability were undertaken more slowly. For example in Nigeria most people who are accused of being responsible for gross human rights violation during the regime of late General Sani Abacha still hold important position under the new regime. Consequently it will be difficult to proceed judicially against those persons still in government. The same is also applicable for countries like Liberia and Sierra Leone, especially for Liberia where the political party presently in power was mostly responsible for the gross violations of human rights and Geneva Conventions of 1949 relating to non-international armed conflict during the Liberian civil war.

The process of accountability must also take into consideration gender related problems that might occur in the process of truth telling. Some of the problems that might arise in this circumstance are the difficulty a woman who has been raped and brutalised would have to tell her story in full public glare. For the process to include such category of people who have suffered gross human rights abuses a way has to be devised for them to tell their stories even if it is in camera.

The issue of accounting for the past is a difficult exercise but in the interest of peace, reconciliation and development it must be carried out. The truth must be told and people must be made to account for past abuses. If this is not done there cannot be reconciliation which is a central to rebuilding the country and re-establishing the respect for human rights and the rule of law.

Another factor that will hinder accountability may be the physical absence of infrastructure in the judicial system of the countries in question. In Nigeria the judiciary is not effective. Many years of military rule coupled with harassment of judges, disobedience of court and the general contempt with which the military government treats the judiciary has inflicted incalculable damages on the institution and has weakened its effectiveness. The situation could even be worse for countries like Sierra

48 In Argentina and Paraguay truth telling and prosecution was relatively used to achieve some degree of accountability.
49 General Sani Abacha who is reputed to be the most brutal military dictator to rule Nigeria died suddenly on June 8
Leone and Liberia, especially for Liberia where many years of civil destroyed almost all institutions in the country.

The issue of amnesty for human rights violators has been identified as the big issue. It is clear that in any negotiated transition amnesty can not be avoided. There must be some sort of amnesty as was the case in South Africa\textsuperscript{50} and the Latin American countries. However the sort of amnesty that would be acceptable to the people would certainly not be a general or blanket amnesty. In Latin America general amnesty granted members of the armed forces were unpopular, divisive and indeed regarded as illegitimate.\textsuperscript{51} In South Africa blanket amnesty was rejected but a rather ingenious process which combined truth telling in exchange for amnesty was adopted.\textsuperscript{52} The realities in South Africa made this option the most feasible.

For an enduring stability that will lead to economic emancipation to be maintained in the affected countries in the West Africa sub-region the importance of accounting for the human rights abuses of the past cannot be over-emphasised. There must be a process of truth telling, reconciliation and accountability for gross human rights abuses. The government must officially acknowledge the violations and atone to the victims and their families, without this being done a healing process cannot begin and forgiveness cannot commence.

Conclusion and Recommendations to the Centre for Democracy and Development

The challenge of coming to terms with human rights violations of the past is unavoidable for any


\textsuperscript{51} See supra. Note 37 p.46, see also supra. note 44 (News from Africa Watch) p. 25
emerging democracy. Countries that have witnessed years of violence and repression coupled with gross human rights violations must honestly and painfully look at the responsibility for past abuses. This is the only way the country can transform itself into a united and democratic society where justice for its citizens are assured and guaranteed. For any meaningful healing process to be initiated, the truth of what happened and why it happened must be known by the victims, their families and the country as a whole. The government must officially and publicly acknowledge the pain and sufferings of the victims and offer them reparation for sufferings they have been through. The stepping stone for reconciliation can be a Truth Commission, which will provide the forum for the truth to be told, and the sufferings of the victims of the abuses acknowledged. The country can then begin to move towards a peaceful reconciliation and restoration of a culture of respect for human rights and due process of law. Truth telling alone without any form of justice to the victims of the abuses will not suffice. Hence the need for justice to be implemented by prosecuting perpetrators of such human rights violations. The reason why it is necessary to prosecute is that it sends a signal that impunity would not be tolerated. Where political consideration makes it impossible for violators to be prosecuted the country should takes steps to ensure that non-prosecution would not amount to impunity for violators. Blanket amnesty for human rights violators should also be avoided as it encourages impunity.

Adding impetus to the quest of accountability for human rights abuses is the recent establishment of the International Criminal Court. The court provides an auspicious opportunity for the international community to move forward towards a future free from the odious scourge of gross human rights violations. The court represents a radical departure from the traditional real politick paradigm which has so often and for so long ignored the victims of gross human rights violations and legitimised the rule of tyrants especially in Africa and the third world.

The question of reparation for victims of gross human rights abuses is absolutely central to the

52 see supra note 50 p.162 at note 70
53 The South Africa model is apt in this respect because it ensures accountability through a combined process of truth telling and amnesty. Those who did not apply for amnesty face likely prosecution at the end of the life of the truth Commission.
process of truth, justice and reconciliation. In order for the process to move forward it is important that the state acknowledges the pains, suffering and losses suffered by the victims and their families. This could easily be achieved by evolving a reparation policy aimed at improving the quality of life of the victims. This will in turn contribute to the restoration of the civil dignity of the victims and the pain of the relatives.

The experience of South Africa and the Latin American countries in the truth and reconciliation process offers a good appraisal of how countries in transition could contend with the past. The process also offers a unique opportunity for accountability for violations of the past. Further the relative success of the project in Latin America is an indication that a country can move away from a past characterised by repression and gross violation of human rights to build a new country based on the rule of law and respect for human rights and fundamental freedoms.

The bane of most of the countries in West Africa is that there has not been a real effort on the governments to promote reconciliation between disaffected sections of the society. Unfortunately the despotic regimes have manipulated the diversities of the people to remain in power by the old system of divide and rule, repression of dissent and playing one group against the other. Such violence and dictatorship that has been witnessed in the sub-region makes it imperative for a truth commission to be established in the respective countries once a democratic order is established.

In drawing up a model suitable for West Africa there is no doubt that there is a lot that could be drawn from the South Africa experience but it should not stop there. The experiences of the Latin America countries, the most successful being Argentina should be studied in greater detail especially since the violations that occurred in those countries were during long period of military rule as is the case with Nigeria and some West African countries. The Uganda commission is also of significant importance due to the orgy of violence and gross violations that occurred during both military and civilian rule in the country. It should be necessary to study how the regime of President Yoweri Museveni in Uganda was able to achieve relative reconciliation in the country without more blood letting and Nuremberg type of trial.
CDD should conduct further research on the process of truth telling and accountability in Latin America, Germany, Eastern Europe and those of Uganda, Ethiopia and Chad. A complete picture of the scenario in these regions would enrich any model that is eventually produced since the research would reveal what is feasible under the circumstance.

Any model designed should only be a guideline as states in the sub-region has to tailor it down to the specific local circumstances.

Truth, justice and reconciliation can only be achieved in a country where respect for the rule of law and human rights is the norm. This can only be attained if there are supporting structures provided by the constitution to ensure that there is accountability and a culture of respect for human rights and fundamental freedoms.54

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54 For example the South Africa Constitution provides for other institutions supporting constitutional democracy such as the Land claims court, the Public Protector, the Human Rights, Gender, Youth and Electoral Commissions, and the


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