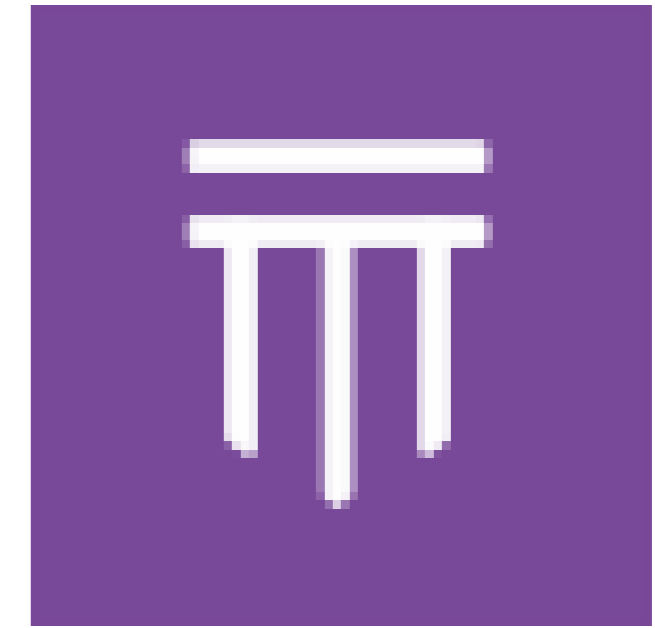


Brno, 10 November 2021

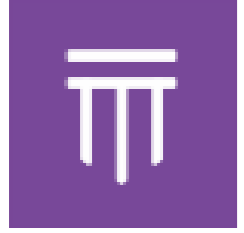
Transitional justice

Truth revelation processes



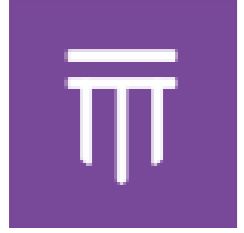
JUSTIN
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TRC

- Why alternative justice?
 - Legal v political justice
 - Internal (domestic)
 - Retribution v restoration
 - Individual criminal liability v reconciliation



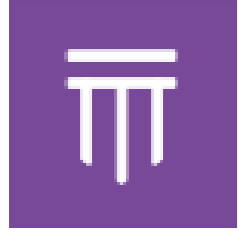
TRC

- Temporary mandate
- Financing? (GOV, PARL, UN, NGOs)
- Independence
- Investigation



Meaning of Truth in TJ

- *It is only through generating such understanding that the horrors of the past can effectively be prevented from occurring again. Knowledge and understanding are the most powerful deterrents against conflict and war (SL TRC)*



Meaning of Truth in TJ

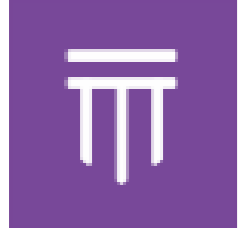
Commission of inquiry

Court proceedings

Truth commissions

Historical commissions

- goals, methodologies, mandates, tools



Meaning of Truth in TJ

Court proceedings: legal approach, determine the culpability of perpetrators, aim: establishment of punishment.

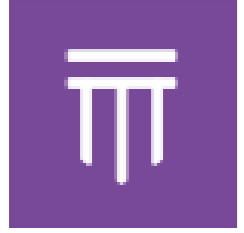
TRCs: much broader inquiry, provide narrative of the abuses during certain historical period. Typically, they have mandate to establish an authoritative and historically accurate record of the past

Historical commission: address events of the past affecting specific ethnic, racial, other groups. They are not part of political transitions, might not even deal with current issues



Tasks of TRCs

- Historical account of the past
- Overcome communal and official denial of the atrocity
- Identify victims
- Certify whether applicants qualify as victims to obtain reparations
- Identify the architects of the past violence
- Restore dignity to victims, promote psychological healing
- End and prevent violence
- Legitimate and promote the stability of the new regime
- Educate the population
- forge the basis for a democratic political order that respects and protects R
- Recommend ways to deter future violations and atrocities
- Determine eligibility of applicants for amnesty



Tasks of TRCs

- Limitations
 - What is the truth / confirmation of beliefs about the past
 - How to find objective truth
 - Do we really want to establish the truth?
- How to reconcile the truth with the lack of prosecutions?
- *The truth is so commonly use that it seems to be a transparent notion, clear to all who are involved or interested in redressing past abuses, but 'truth', like 'justice' and 'reconciliation' is an elusive concept that defies rigid definitions (Parleviet 1998)*
- Cultures vary in how they approach and value truth telling

Africa

- Aim and context?
- Legitimacy?
- Independence?
- Cooperation?
- Budget?

East & South-East Asia

- Aim and context?
- Legitimacy?
- Independence?
- Cooperation?
- Budget?

Europe

- Aim and context?
- Legitimacy?
- Independence?
- Cooperation?
- Budget?

What have we learnt?

Posthumus and Zvongbo 2021

- Varieties of Truth Commissions Project
 - Used also to address non-transitional issues, racial injustices mostly, HR abuses of indigenous people
 - Multilevel TRCs: international, national, subnational (USA, Brazil, Colombia, Mexico)
 - Redistribution of responsibility for HR abuses and redistribution of responsibility to provide redress. Important for federal countries

Lawther 2021

- Construction of victimhood: TRC as a truth recovery platform, but: may lead to creation of hierarchies of truth
- Truth as trumps

What have we learnt?

Kochanski 2021

- Legitimacy crisis of TJ – attempts to solve it via locally rooted mechanisms
- Why? TRCs susceptible to elite manipulation. Plus prioritisation of democratisation and justice for civil and political rights violations over social and economic justice
- Answer: localization of truth-seeking
 - Local level of knowledge, prioritisation of victims' needs (participation)
 - Rests on shaky assumptions about benefits of local TJ
 - Why? TRCs susceptible to elite manipulation. Plus prioritisation of democratisation and justice for civil and political rights violations over social and economic justice
- TRCs romanticised

What have we learnt?

Hayner 2010

- Overstated role of truth
- But: El Salvador: reforms based on TRC recommendations. South Africa: few ppl would try to defend the system of apartheid
- Generally more visible work than that of (particularly international) courts
- Some level of disappointment is necessary as the goals are too big to be reasonably achievable
- Some repercussions and consequences not foreseen: future criminal trials relying on materials documented by TRC
- Benefits: wider reach than limited criminal trials

What have we learnt?

Hayner 2010

- Truth, Justice and Peace
 - TRCs – fewer powers than courts
 - Varied relationship, but typically only collection of material and outline of state's responsibility
 - They often strengthen prosecutions
 - What happens when they work in the context of amnesties?
 - Authorization of the state
 - + better access to official sources of information, increased security, greater likelihood that RRC report will receive serious attention
 - - abuse of power

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Thank you for your
attention