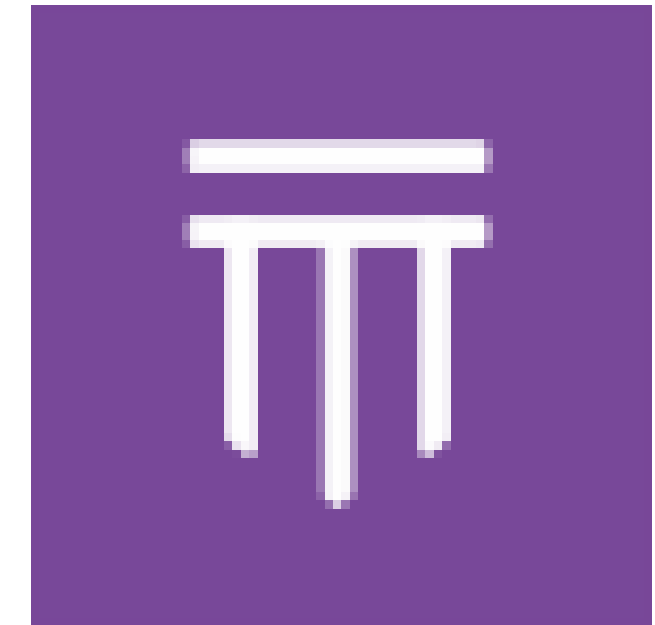


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International transitional justice: Truth and reconciliation commission (TRCs)



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What are TRCs?

- Alternative mechanisms of transitional justice
- Typical for Latin America
 - CEE
 - Africa



Core elements?



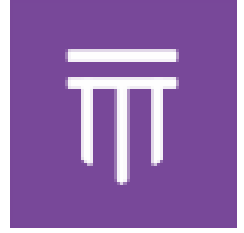
Core elements?

- They address the past
- Offer complex picture of HR violations
- Temporal character
- Financing = sponsor



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

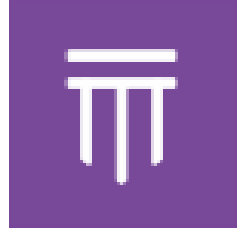
Commission of inquiry

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



TRCs

- 1974-2006
 - 35 different TRCs
 - First one: El Salvador 1974
 - Uruguay, Philippines, Chad, Zimbabwe, Ethiopia, Uganda, South Africa, Rwanda, Sierra Leone



Advantages

- Reconciliation
- Large scope of targeted perpetrators
- Goal: historical documentation of facts instead of „mere“ prosecution
- Faster (does that mean more effective?)
- More space / focus on victims
- General focus
- Uncover deeper cleavages and incentives leading to HR violations



Disadvantages

- Impunity of perpetrators
- Costs + cost/benefit effect
- Disproportionality of punishments
- Dependency on the guarantor (government)
- Refusal of justice (amnesties)
- Lack of considerations of wider political circumstances
- Politicization



Disadvantages -> Risks?

- **Politicization**
- **What is the truth?**
- **National reconciliation?**
 - Creation of deeper resentment
 - Exacerbation of old issues that have been dug up anew
 - Implicated persons might argue against revisiting the past
 - Risk of follow-up violence (Zimbabwe, Rwanda)



Disadvantages -> Risks?

- **What is the truth?**
 - When and to whom to submit the report?
 - Mandate? Political – referendum?
 - Reporting on the role of international actors?
 - Timing?
 - Under whose name?
 - Logistic issues



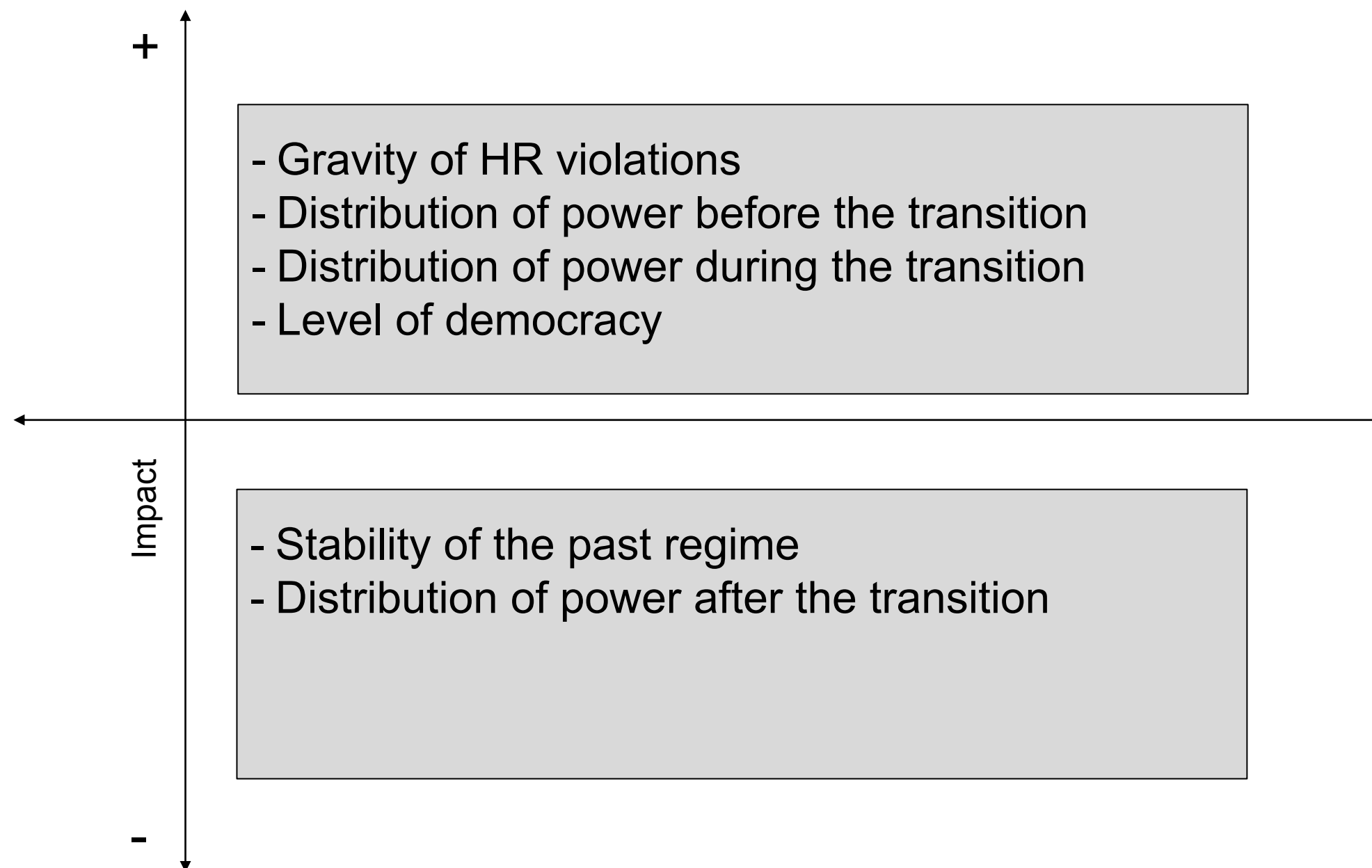
Disadvantages -> Risks?

- **Staffing and budget**
 - Proportionality
 - How many clerks
 - Expenses
 - Funding from whom?
- **Public or private?**
 - Confidentiality v fairness
- **Naming the names**



TRCs – motives behind introduction

- Sikking & Walling (2005), Chapman & Ball: part of transition
- Not exclusive to democracies





South Africa

- Apartheid
- Nelson Mandela (1994)

Let us stretch out our hands to those who have beaten us and say to them that we are all South Africans...Now is the time to heal the old wounds and to build a new South Africa.

- Reconciliation without forgetting
- Museum of apartheid in Johannesburg
- Model for future TRCs?





South Africa - background

- Apartheid – race segregation policy of the National party between 1948-1994
- Roots in colonial era – official policy since 1948, splitting the inhabitants into 4 racial groups
 - National
 - White
 - Colour
 - Asian
- Leading to reconceptualization of South Africa as a country not created by a single nation
- 1970s: ban on non-white political representation
- Education, health, access to beaches, services, settlement in cities, electoral rights
- Legal?
- Popular revolt in 1950 -> more restrictions
- Engineers of apartheid: South Africans



South Africa - background

- Promotion of National Unity and Reconciliation Act, no. 34 of 1995 – establishes TRC in Cape Town
- Court-like restorative mechanism
- Founder: Nelson Mandela
- Chairman: Desmond Tutu
- Mandate
 - To bear witness to, record, and grant amnesty to perpetrators of crimes related to HR violations from **1 March 1960 to 6 December 1993**
 - To offer reparation + rehabilitation to victims
- Composed of 3 committees
 - The HR Violations Committee (HR abuses between 1960-1993)
 - The Reparation and Rehabilitation Committee (restoration of victims' dignity)
 - The Amnesty Committee – decisions on applications of individuals who applied for amnesty
- Cape Town, St George Cathedral



South Africa - background

- Focuses on storytelling
- Victims are given enough space to tell their truth
- Apartheid context, clarification of history
 - Previous president de Klerk denied apartheid as well as the accountability of the National Party
- Not all politicians agreed to cooperate and participate on the TRC
- Some victims refused to face their HR violations perpetrators



South Africa - amnesties

- The most controversial part
 - Requests and applications from many prominent political actors
 - Symbolic act of forgiveness
-
- In effect between 1996-1998, finished its activity with 85 volume report to Nelson Mandela, 29 October 1998



South Africa - criticism

- Would judicial trials and prosecutions be more effective?
- Retribution – Reconciliation: only one element
- Translations of witness accounts
- Not all population supports the amnesties
- Lack of understanding what the TRC's mandate was
- Case of Steve Biko
 - Activist, apartheid fighter, murdered by the security forces
- Case of former president Botha



Universal jurisdiction - Spain

- Transition and democratization?
- Proceedings after Franco's death: 1975-1976 – non-confrontational character
- End of 1970s:
 - Economic model of 1950s drained by civil war
 - Liberalization, opening of markets, Europeanization, value and geographic return to Europe
 - Regime exhausted also ideologically
- Transition: transformation
- Milder regime than in Greece and Portugal
- Key transition actors: Francoist institutional networks
- Juan Carlos



Universal jurisdiction - Spain

- Juan Carlos – abolishment of the Tribunal for public order
- 1976 king amnesty for all persons imprisoned for political crimes and terrorism
- 1977 Parliament approves general amnesty: political crimes of both parties
 - Support of the Communist party
 - Memories endanger transition
- National amnesia
 - Policy of forgetting (oblivion)
 - Pacto de olvido
 - Long time span
 - Integration
 - Supported by 61 % of population
- Instead of TJ, democratization hook = European communities + Cold War



Universal jurisdiction - Spain

- 30 years later....
 - 2007 Historical memory act
 - 16 October 2008 Baltasar Garzon orders investigation of francoist crimes
 - Systematic murders and forced disappearances
- 68 pages long report of the Supreme Court
 - Crimes against humanity
 - Statute of limitations
 - International law



Universal jurisdiction - Spain

- Baltasar Garzon
 - First famous by an attempt to try members of the previous Chilean junta on the count of crimes of genocide, terrorism and torture during the 1976-1983 dictatorship, including Pinochet
 - Issued arrest warrant on Pinochet, based on the factual findings of the Chilean TRC
 - Other examples of the use of universal jurisdiction:
 - Bin Ladin
 - Berlusconi
 - Henry Kissinger



Assessing the Effectiveness of TRCs

- How?



Assessing the Effectiveness of TRCs

- Publication of the final report is not enough
 - Bolivia, Philippines
- Influence of the government
 - Haiti, Uganda
- What is the aim of TRC: interpretation or documentation?



Assessing the Effectiveness of TRCs

- How?
- Crocker: 8 goals of reckoning with the past
 1. Investigation and establishment of truth
 - *Emotional truth?*
 - *One truth or many?*
 2. Creation of a public platform for victims
 3. Accountability and Punishment
 4. Rule of Law compliance
 - Kangaroo truth commission
 5. Compensation to Victims
 6. Institutional reform
 7. Reconciliation (and reintegration of former enemies)
 8. Public deliberation
- Plus civic society
- Plus international society



Assessing the Effectiveness of TRCs

- How?
- Gibson: under some conditions, TRC can contribute to societal transformation.
- Effectiveness is dependent upon 2 crucial factors
 - 1) attention of its constituents
 - 2) perception of legitimacy among the mass public



Assessing the Effectiveness of TRCs

- Gibson 2009

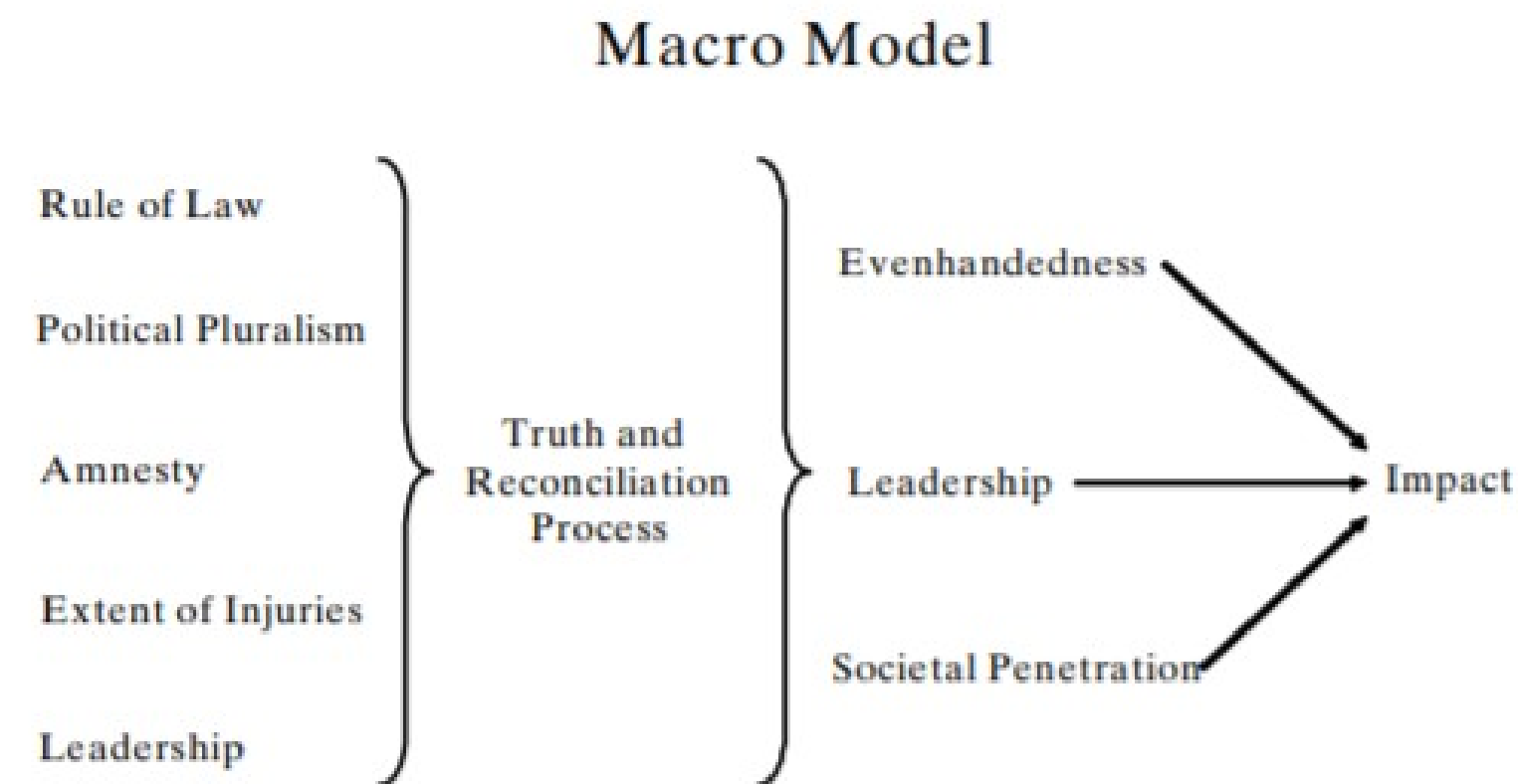
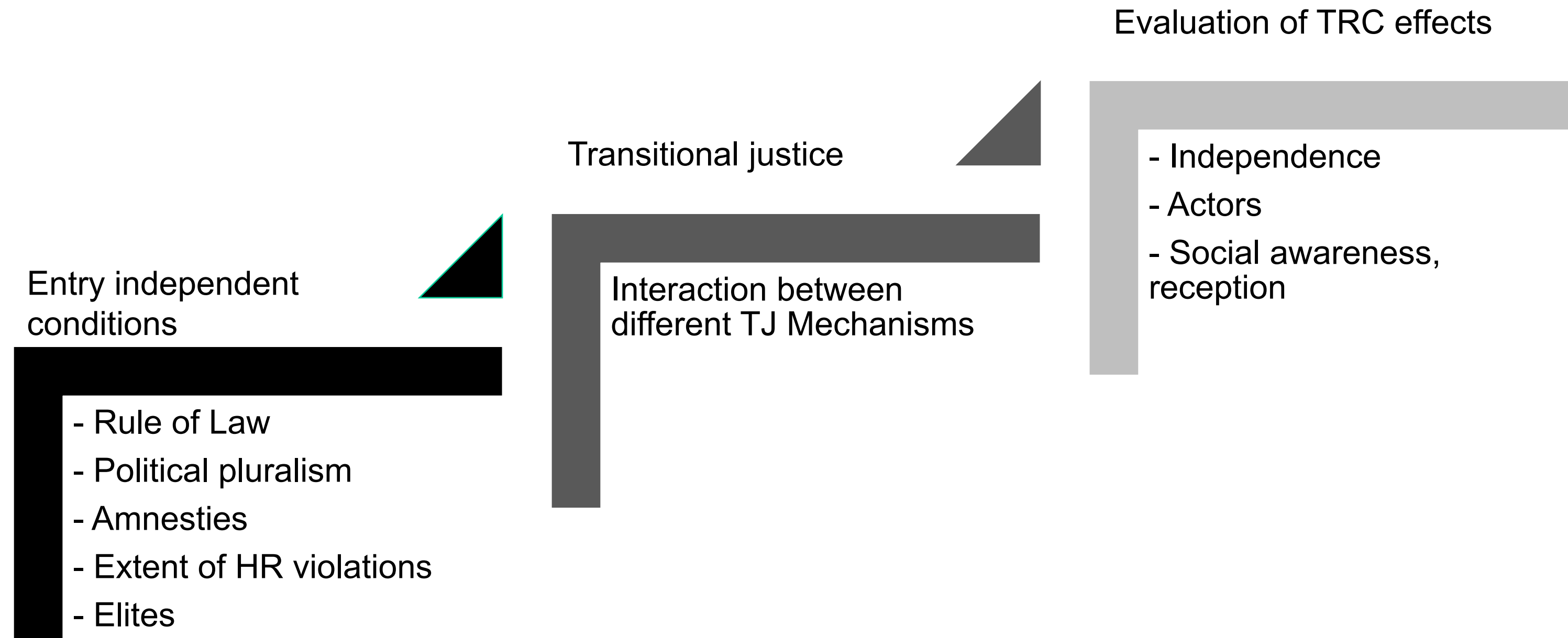
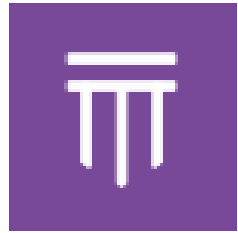


Figure 1: A Macro-Level Model of the Influence of the Truth and Reconciliation Process



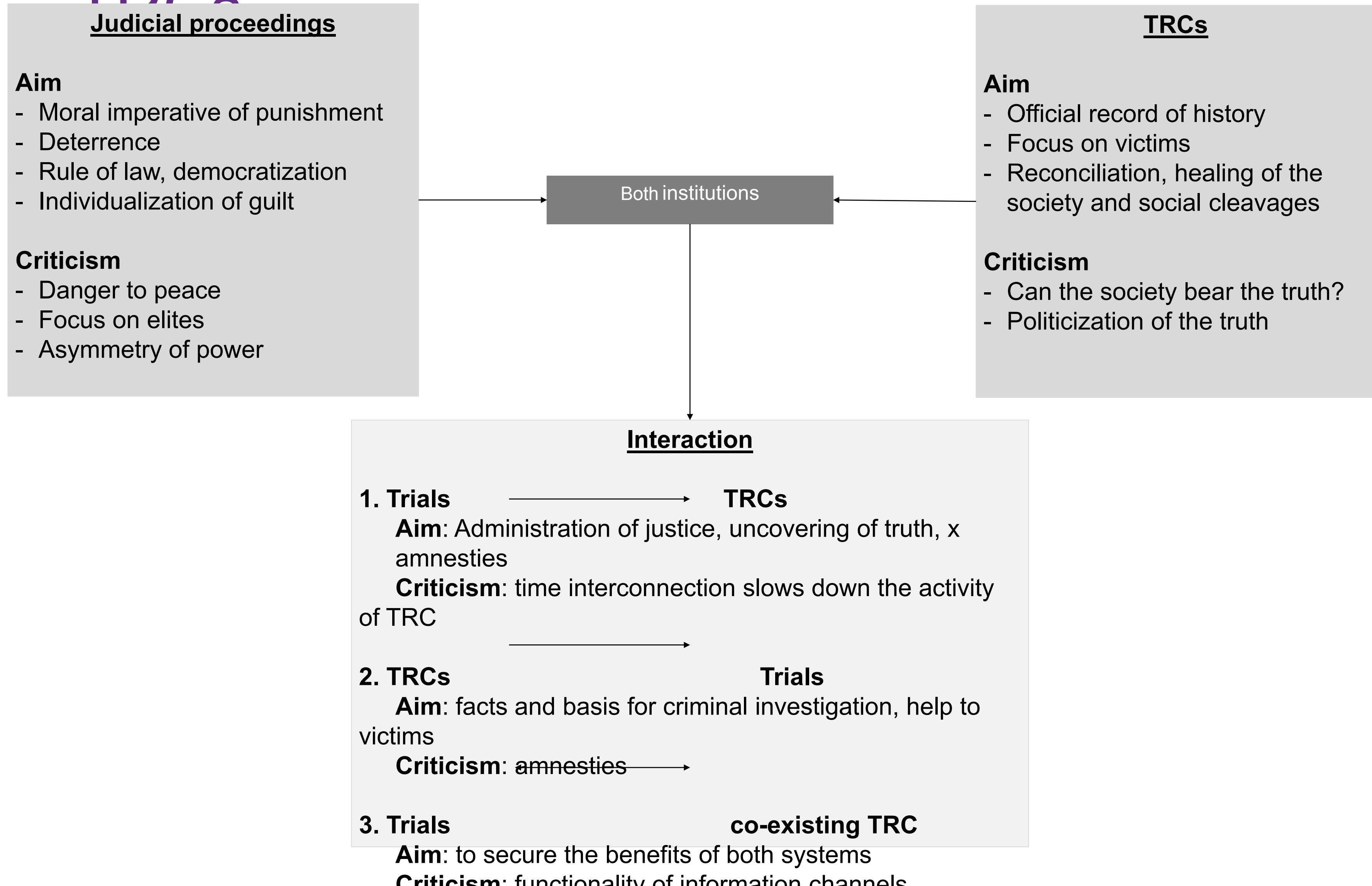
Assessing the Effectiveness of TRCs





Interaction between criminal trials and

TRCs



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 the 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