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The Right to the truth and Truth Commissions

Abstract

This article initially will attempt to locate the sources and the legal status of the right to the truth, in the field of international law. For this purpose the article seeks to trace the evolution of the concept of the right to know the truth about past events regarding the execution of heinous crimes, by entering in the field of transitional justice. Attention will be put on the individual character of this right existent in the judicial and legislative processes; as well on the collective character of this right which is called upon in the aftermath of the violent conflict or oppressive regime, for uncovering and investigating the serious human rights violations.

Keywords: truth, right, transitional justice, truth commission, victims, memory, narrative

1. Legal conception of the right to the truth and the emergence of truth commissions

With the emergence of the right to the truth at the international, regional and national levels, this right has acquired legal value that has ambivalent nature that puts the right to the truth, “somewhere on the threshold of a legal norm and narrative device.”² Notwithstanding the proclamation of this right as inalienable and autonomous³, foremost international authorities have “characterized this right as one of the emerging principles in international law in view of the fact that the precept has not been established as a norm clearly and unquestionably validated in an international treaty.”⁴ Variety of interpretations, relegate the rank of the right to the truth to

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² Y. Naqvi , ‘The Right to Truth in International Law: Fact or Fiction’, *International Review of the Red Cross*, Vol 88, No. 862, June 2006, p. 273.

³ UN Human Rights Council, *UN Human Rights Council: Right to the Truth, Report of the Office of the High Commissioner for Human Rights*, 7 June 2007, A/HRC/5/7, available at: <http://www.refworld.org/docid/46822ce22.html> [accessed 4 May 2014]

⁴ Juan E. Méndez, “The Right to Truth”, in Christopher C. Joyner (ed.), *Reining in Impunity for International Crimes and Serious Violations of Fundamental Human Rights: Proceedings of the Siracusa Conference 17–21 September 1998*, St. Agnes, Erés, 1998, p. 264 cited in Yasmin Naqvi, *The Right to Truth in International Law: Fact or Fiction?*, *International Review of the Red Cross*, Vol 88, No. 862, June, 2006, p. 263.

the “third generation” human rights, “more accurately classified as *lex ferenda*”, soft law.⁵ The nonexistence of “explicit treaty directly pertaining to the right, defining its parameters under international law”⁶ relates to the opinion of Yasmin Naqvi, when she points out, that “the right to the truth is not enshrined in any universal instrument *per se*, which could mean that there are two possible options to characterize it as a source of law: the right to the truth as a right under customary law or the right to the truth as a general principle of law.”⁷

This article will try to interpret closely the work of the truth commissions, for they possess distinctive duty which is directly associated with the right to the truth, as essential right that is providing the legal basis for their existence. Notable feature of truth commissions, compared with judicial proceeding, is their involvement with the *forgotten victims from forgotten places*. In every transitional society, the main mechanisms of transitional justice are closely related to state obligations under international human rights law. Each of these state obligations is arising from international law and it is correlated with particular right. In this manner it is created an explicit “commitment for investigation and identifying victims and perpetrators of serious violations of human rights”, which corresponds with ‘the right to the truth’, otherwise known as, the right to know the truth.⁸ The right to the truth, is not necessary unitary, because it can possess both individual and collective dimension. The individual dimension of the right to the truth acquires a strong affirmation from numerous bodies created with human rights instruments, albeit there are many forms of this right that are described differently in each convention that envisages the right to the truth. The practice that has created the “right to the truth” (or the right to know the truth), was first established through the work of the Human Rights Committee and the supervisory bodies established under the American Convention on Human Rights (1969). These bodies “have long recognized that the anguish that individuals experience as a result of uncertainty about the fate of close relatives who are direct victims of enforced disappearance in itself constitutes cruel, inhuman or degrading treatment and thus is a distinct violation of the relevant treaty”.⁹ “From this it follows that State authorities must investigate what happened to the victims and inform their relatives of their fate. Recent case law under the American

⁵ Theodor Meron, ‘On a Hierarchy of International Human Rights’, *American Journal of International Law*, Vol. 80, 1986 cited in G. Duffin, ‘Past Truths and Present Justice: The Right to Truth in Transition’, *MA International Studies and Diplomacy of the School of Oriental and African Studies*, University of London, London, 2010, p. 9.

⁶ *Ibid.*

⁷ Y. Naqvi, ‘The Right to Truth in International Law: Fact or Fiction’, *International Review of the Red Cross*, Vol 88, No. 862, June 2006, p. 254.

⁸ A full review of most of the state obligations and the rights which are correlative to them, are contained in the following documents which are issued by official bodies of the United Nations: L. Joinet, “Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity,” UN doc. E/CN.4/Sub.2/1997/20/Rev. 1 (1997) [Joinet Principles] updated in 2005 by the UN expert Diane Orentlicher with the report for “Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity,” UN doc. E/CN.4/2005/102/Add.1; and in the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law,” further addition to the GA res. A/C.3/60/L.24 [Bassiouni Principles].

⁹ *Independent Study on Best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of Impunity*, by Professor Diane Orentlicher, E/CN.4/2004/88, Commission on Human Rights, 27 February 2004, pp. 6-7.

Convention has recognized that the next of kin of victims of serious violations of human rights other than enforced disappearance also have a right to be kept apprised of official investigations”.¹⁰

There is also a case-law of the European Court of Human Rights that was first created with the issuing of verdicts in cases of enforced disappearances in 1998. In these verdicts by the European Court against Governments, the Court found that the failure of a state to provide information for the victims of enforced disappearance, due to the lack of an effective investigation of the fate and finding the remains of those who perished in circumstances that are life-threatening, constitutes violation of the Article 3 of the European Convention on Human Rights that prohibits torture, inhuman or degrading treatment or punishment. The Court further stated that the States also violated the right to respect for private and family life of close relatives to the victims of enforced disappearance (Art. 8), constitutes a continuing violation of State’s procedural obligation to protect the right to life (Art 2) of the European Convention on Human rights.¹¹

The right to the truth has been broadly interpreted by the numerous national and regional courts, as well as by international supervisory mechanisms for human rights (treaty bodies). The right to the truth was explicitly affirmed as a human right in 2005 with the Resolution titled “Right to the Truth” prepared by the UN Commission on Human Rights.¹²

The right to the truth was further implicitly contained in the International Convention for the Protection of All Persons from Enforced Disappearance¹³. Similarly to the previous is the right of families to know the fate of their missing relatives which was earlier also provided in relevant provisions of international humanitarian law, such as Article 32, supported by Article 33

¹⁰ Ibid.

¹¹ “Interpreting the same treaty in a case concerning the 1995 massacre in the Bosnian town of Srebrenica, the Human Rights Chamber for Bosnia and Herzegovina found that the failure of Republika Srpska authorities “to inform the applicants about the truth of the fate and whereabouts of their missing loved ones”, including their failure to conduct a “meaningful and effective investigation into the massacre”, violated article 3; also Supervisory bodies have linked the right of relatives to know the fate of their loved ones to other fundamental rights. In the *Srebrenica* case, the Human Rights Chamber concluded that the Republika Srpska’s failure to disclose information concerning some 7,500 missing men violated the applicants’ right to respect for their private and family life as well as article 3. The European Court has found that a State’s failure to conduct an effective investigation “aimed at clarifying the whereabouts and fate” of “missing persons who disappeared in life-threatening circumstances” constitutes a continuing violation of its procedural obligation to protect the right to life (art. 2).” Ibid. p.7.

¹² The Resolution “*Right to the Truth*” 2005/66, was prepared at the request of the UN High Commissioner for Human Rights, as preparation for a study that would determine the legal basis of a ‘right to the truth’, its existing scope and content provided in international law, including finding the best practices from the States, as well recommendations for effective implementation of the right to the truth.

¹³ The Convention was adopted by General Assembly resolution A/RES/61/177 of 20 December 2006. Article 24(2) of this Convention states that “each victim has the right to have serious human rights violations effectively investigated by the state, to be informed of the fate of missing or forcibly disappeared relatives, to be kept informed of the state of official investigations into disappearances and other serious violations, to be provided with the ‘mortal remains’ of loved ones once they have been located and to know the identity of those responsible for the violations.” See: M. Freeman, *Truth Commissions and Procedural Fairness*, 1st ed, Cambridge University Press, New York, 2006, pp.6-7

of the Additional Protocol I to the Geneva Conventions of 1949¹⁴; also, the Committee for Human Rights established that the violation of Article 7 of the International Covenant on Civil and Political Rights constituted an infringement of the right to the truth.¹⁵

“The right has further permeated human rights law, professing to encompass all gross or systematic human rights violations such as torture, genocide and extrajudicial executions. It has been linked by advocates to the right to not be subjected to torture or cruel, inhuman or degrading treatment, rights of the child, rights to protection of the family, and the right to peace.”¹⁶

Subsequently The United Nations Human Rights Council in 2007 requested a report by the Office of the High Commissioner for Human Rights on best practices for implementation of the right to the truth.¹⁷ “The study concludes that the right to the truth about gross human rights violations and serious violations of human rights law is an inalienable and autonomous right, linked to the duty and obligation of the State to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations.”¹⁸

As mentioned above, the right to the truth also encompasses a collective dimension, which creates “collective” (or societal) right to the truth about systemic violation of human rights that were committed. It is emanating from the Inter -American Commission, whose constant practice affirms the collective dimension of the right to the truth, as category of social mechanism for identification and if possible for a punishment of the responsible perpetrators. “The Inter - American Commission highlights another dimension of the right to the truth, namely, knowledge of the complete and public truth regarding the events of gross violations and the specific circumstances, in which they happened, which represents an essential element of the right to reparation for severe violation of human rights.”¹⁹

¹⁴ Article 32, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

¹⁵ Due to the comprehensive content of the right to the truth, “violations of the right to the truth (or right to know) have been deemed, among other things, violations of the prohibition on torture, the right to respect for private and family life, the right to life, the right to an effective remedy, and the right to reparation. Like most human rights, however, the right to truth is probably not absolute. It may be subject to limitations in the broader public interest.” *Ibid.* p.8

¹⁶ G. Duffin , ‘Past Truths and Present Justice: The Right to Truth in Transition’, *MA International Studies and Diplomacy of the School of Oriental and African Studies*, University of London, London, 2010, p. 9.

¹⁷ In the decision 2/105 of the Human Rights Council, in which the Council requested the Office of the High Commissioner for Human Rights “to prepare a follow-up report on the study on the right to the truth, which shall include best national and international practices, in particular legislative, administrative or any other measures, as well as individual and societal dimensions of this right, taking into account the views of States and relevant intergovernmental and non-governmental organizations, to be examined at its fifth session in June 2007

¹⁸ UN Human Rights Council, *UN Human Rights Council: Right to the Truth, Report of the Office of the High Commissioner for Human Rights*, 7 June 2007, A/HRC/5/7, available at: <http://www.refworld.org/docid/46822ce22.html> [accessed 4 May 2014]

¹⁹ In 2002, the Inter - American Court of Human Rights in numerous judgments, affirmed the right of the society to know the truth about past crimes intended for the complete realization of the right to the truth and also affect the prevention of recurrence of the actions that led to severe injuries which are related with this right. Similarly, to the

This leads to the conclusion that the right to the truth can serve as a significant and timely remedy for the protection of the rights provided by the American Convention of Human Rights (Article 25).²⁰

So far, we can conclude that the individual nature of the right to the truth emerges from “single violations of human rights that entail individual and case-specific remedies (for the victims of victim’s family)” established in the jurisprudence and human rights bodies; while societal nature of the same right is shaped from a “necessity for broad inquiry into the causes and reason” for mass violations of human rights, subsequently established with the practice of truth commissions or other formal inquiries, addressed in the UN and Security Council Resolutions.²¹

For the purpose of further exploring this article’s subjects, we will take into consideration the moderate approach²² to transitional justice that advocates for truth commissions as “unique” mechanisms that can establish median field for the realization of the transitional justice objectives. The moderate approach finds that the truth commissions are the most effective for the advancement of human rights and democracy in transitional societies, while promoting the norm of accountability, with an exceptional consideration for the victims needs.²³ Truth commissions are mechanisms which “entail processes of individualized inquiries establishing wrongdoing, with findings made public in formal ritualized processes.”²⁴ The presence of the perpetrators and victims is essential in the process of the truth commissions. “Exposure of perpetrator’s offenses itself is an informal form of punishment, through “shaming,” subjecting perpetrators to social censure and ostracism, as well as individual confessions that feature the hallmarks of punishment.”²⁵ Therefore, the moderate approach through truth commissions is attempting to restore the dignity of victims, thereby avoiding the risky trials that can mobilize anti-democratic forces in the society that would harm the democracy and the rule of law. The purpose of the moderate approach is to generate tendency towards the norm of accountability, which will be

Inter - American Commission, the Court found that the right of the relatives and the society to know the truth about the severe injuries represents a “significant measure of reparations” for serious violations of human rights. *Independent Study on Best Practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of Impunity*, by Professor Diane Orientlicher, E/CN.4/2004/88, Commission on Human Rights, 27 February 2004, pp. 7-10.

²⁰ Ibid.

²¹ Y. Naqvi, ‘The Right to Truth in International Law: Fact or Fiction?’, *International Review of the Red Cross*, Vol 88, No. 862, June, 2006, p. 260.

²² T. D. Olsen., L. A. Payne., & G. A. Reiter., ‘The Justice Balance: When Transitional Justice Improves Human Rights and Democracy’, *Human Rights Quarterly* 32, 2010

²³ Ibid.

²⁴ R. Teitel, *Transitional Justice*, Oxford University Press, Oxford, 2000, pp. 89-90.

²⁵ “Truth is seen by some as a precursor phase that leads to other legal processes, such as prosecution, whereas others see the truth inquiries as a fully independent alternative to other responses. Thus, for example, *Nunca Más*, Argentina’s report, was just the first stage in the country’s project of dealing with its past.” Ibid.

concentrated on the condition of the victims and which can establish a balance between the political restraints present in emerging democracies and urgency of the demands of justice.²⁶

The attempts for dealing with past mass atrocities have created the truth commissions, as one of the most important mechanisms of transitional justice, which are a model of institutions that possess “great power in the appropriation of public imagination”.²⁷ Truth and reconciliation commissions have achieved so far foregone contribution to the overall practice of transitional justice. These entities represent a specific form of inquiry commissions in terms of their particularly significant importance in transitional processes as mechanisms for achieving effective fulfillment of the right to the truth.

From the establishment of the first truth commissions in Uganda, Bolivia, Argentina, Zimbabwe, Uruguay, Philippines, Chile, 40 similar reporting bodies have been created in over 28 countries, to varying degrees of success.²⁸ The creation of the truth commissions is a reaction to the expressed and considerable necessity for establishing entities that could function in dealing with the past violence in two distinctive and different situations in the transitional societies. One was the specific situations in the post - authoritarian transitional societies in Latin America (Argentina, Chile, El Salvador, Bolivia, Uruguay, Ecuador, Guatemala, Peru and Panama), in which commissions were necessary because of the urgent need for detection and identification the truth of the facts, which have long been hidden by the specific governing structures of abuse in these societies. Past ruling regimes in these countries, acted criminally through the institutions of the state, in large part by secretly practicing systematic torture and other inhumane atrocities; using through extensive practices of forced disappearances backed by erasing every trace of the victims of this crimes.²⁹ The second characteristic situation existed in the post-conflict societies, in which the truth about the ways in which mass crimes were perpetrated and their victims was undisguised, but there the need for truth commissions was manifested precisely because of the existence of multiple truths, each with different, however exclusive group (ethnic) content.

Thus, the activity of the National Commission on the Disappearance of Persons is considered the first established body which further initiated the emergence of other commissions. Dilemmas on the issue of whether it can be considered a first commission are arising from its limited impact only on the region of Latin America.³⁰

²⁶ Olsen D. T., Payne L. A., & Reiter G. A., ‘The Justice Balance: When Transitional Justice Improves Human Rights and Democracy’, *Human Rights Quarterly* 32, 2010, pp. 987-989.

²⁷ M. Aukerman, ‘Extraordinary Evil, Ordinary Crimes: A Framework for Understanding Transitional Justice’, *Harvard Human Rights Journal*, 15:1, 2002, p. 59.

²⁸ G. Duffin, *Past Truths and Present Justice: The Right to Truth in Transition*, MA International Studies and Diplomacy of the School of Oriental and African Studies, University of London, London, 2010, p. 14.

²⁹ A. H. Henkin (ed.), *The Legacy of Abuse: Confronting the Past, Facing the Future*, The Aspen Institute, Washington, DC, USA, 2002, p. 37.

³⁰ M. Freeman, *Truth Commissions and Procedural Fairness*, 1st ed, Cambridge University Press, New York, 2006, pp. 25-26.

Unlike the Argentina's truth commission, South African Truth and Reconciliation Commission that was established after the abolition of the apartheid regime in South Africa in the mid 90's, provided an experience that later was widely accepted in the modern practice of establishing such commissions. Although the South African commission was the only one that incorporated application for amnesty, intended for each perpetrator in exchange for their recognition of the truth about the crimes they have committed, because of its robust effect this commission serves as a model that clearly distinguishes two historical periods in the practice of the truth commissions. The differences arising from this historical "demarcation" point to the next: early models of commissions, antecedent to the South African Commission, are different in terms that they do not provide for the maintenance of public hearings and they focus on the interests of the victims; whereas commissions as the Southern African Commission for Truth and Reconciliation and following commissions established upon it, are modern models of such entities, which without exception, are obliged to hold public hearings in which attention will be paid primarily to the victims.³¹

2. The position of victims in truth commissions proceedings and the multiplicity of truths

In this segment, we shall analyse the causal relationship between the established truth and the restorative processes of transition.

Truth commissions possess specific structural features that are necessary for "dealing with a broad historical perspective, which aim to overcome, but also to complement the reductive processes of the retributive justice".³² The proceedings before the truth commissions were designed to be informal and "discursive" because of the "multidirectional" nature of the restorative justice, as well as because of the reason aimed at allowing the presence of all the parties that were involved in the conflict; there is a necessity for all the parties to take a crucial role in the conflict resolution, as well in the processes of facing the past. The inclusive nature of the truth commissions was planned to be sufficiently adaptable approach to the aftermath of mass atrocities and also for discovering the detailed description of the collective violence that was carried out through complex interactions between the perpetrators and their accomplices.³³

The proceedings before the truth commissions should satisfy the needs of the victims for official validation of their victimization by uncovering cogent evidence of the violence they have endured. When the violence was extensive and it had occurred throughout the whole nation, then the processes of official confirmation of the widespread victimization become a collective

³¹ Ibid.

³² M. Aukerman, 'Extraordinary Evil, Ordinary Crimes: A Framework for Understanding Transitional Justice', *Harvard Human Rights Journal* 15:1, 2002, p. 65.

³³ Ibid.

necessity. Thus the official confirmation of the collective trauma, without exemption would involve complex processes for the transformation of the individual trauma narratives for each victim, into “collective meta-narrative” for the past violence.³⁴

The existence of the individual trauma in the complex collective narrative, builds the victim’s ability to “reintegrate the narrative of violence in its own biography”; in this way, each victim could understand its own suffering, not only as personal misfortune, but as part of a “broad processes of social cataclysm.”³⁵

The creation of a collective narrative of the truth is a central commitment of the truth commissions in regard to the shaping of the memory for the past oppression, violence and abuse on individuals, which through the commission’s processes would be permanently inscribed in the official public record. This public record should affect the social memory in a way in which it can ensure that the past violence must not be forgotten.³⁶

Taking into account such needs of the victims, without building a collective narrative that expresses individual traumas would lead to undesirable situations in which “the individuals or the nations will hold too much memory or too much truth” that are superficial or overflow without being retained in certain common context.³⁷ Kimberly Theidon refers to this situation as “the tyranny of total recall.”³⁸ The truth commissions which are often seen as “archetypes of victimization” are burdened with numerous requirements that often cannot be achieved because of the limited duration of these mechanisms, which often leave behind large groups of victims that are excluded from the processes. Such consequences are arising from the way in which the status of the victim is defined (as an illustration, only for people who have suffered serious injuries through torture, rape, abduction, or forced disappearance of their relatives etc.), which in turn is closely linked to the form of violence that is included in the commission’s mandate. Namely, if the commission is exclusively focused on political violence, without taking into account the structural violence, then the commissions “definition of a person, who would be considered a victim, inevitably will be too restrictive”, which would hinder the inclusiveness of the processes.³⁹

³⁴ K. Avruch, ‘Truth and Reconciliation Commissions: Problems in Transitional Justice and the Reconstruction of Identity’, *Transcultural Psychiatry* 47 (1), Sage Publications Journal, February 2010, p. 38.

³⁵ Coming to such understanding, affects the victim’s perception in a way that can change its position by overcoming trauma, hopelessness and preoccupation with its loss and personal injury (...) See more: M. Minow, *Between Vengeance and Forgiveness: facing history after genocide and mass violence*, Beacon Press books, USA, 1998, p. 63.

³⁶ K. Avruch, ‘Truth and Reconciliation Commissions: Problems in Transitional Justice and the Reconstruction of Identity’, *Transcultural Psychiatry* 47 (1), Sage Publications Journal, February 2010, p. 37.

³⁷ M. Minow, *Between Vengeance and Forgiveness: facing history after genocide and mass violence*, Beacon Press books, USA, 1998, p. 62.

³⁸ K.. Theidon, *The International Journal of Transitional Justice*, Vol. 3, Oxford Journals, 2009, p.295.

³⁹ K. Andrieu, ‘Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm’, *Security Dialogue*, vol. 41, no. 5, Sage Publications Journal, October 2010, pp. 542-548.

In this way legitimized narratives can impose hierarchically structured and authoritative official history of the past, which will conceal a multitude of different individual and collective traumatic experiences, which is one of the main flaws of the restorative transitional justice.

For the purpose of describing the individual experiences in the conflicts, we will mention the interpretation of Karl Jaspers, who claims that every individual suffers differently, because most individuals find meaning only in their own suffering. Everyone is trying to interpret its hardships and losses as a personal victimization. The attempts for the interpretation of the individual victimization of a numerous victims often bring a completely different interpretation that makes the divisions that existed before even thicker.⁴⁰

Jean Amery, who was a victim of torture by the Gestapo Secret police in Nazi Germany, denies the rationality of objectifying the suffering, speaking about his own captivity in the moral truth of the conflict. Amery was faced with “logical nonsense, in seeking objectivity in the deeds of his tormentors and passive witnesses to mass murder, torture, violation of any kind, which he considered only as chains of physical events that are facts in the physical system, but which are not deeds within the moral system.” After the experiences of his survival, Jean Amery couldn’t find objectivity in mass crimes.⁴¹

Aside from questioning the objectivity of the collective narrative, commissions are also dealing with “practical difficulties in building of the common, collective narratives in societies in which are present sharp antagonistic interpretations on the last violent conflict.”⁴² For this reason, here we will try to analyze the particular challenges which commissions are facing in the process of the promotion of the restorative justice and in the creation of social dialogue in post-conflict societies.

Precisely in this function of the commissions the transitional dilemmas of the restorative justice which these quasi legal bodies are trying to untangle, can be found. Namely, if the aim of transitional justice is to create a tolerant, pluralist society, then the question arises as to whether such goal can be achieved by creating a “single truth”, which is created with patronage by the state in which the commission is operating.⁴³

The reality of deep divisions is so excessive in post-conflict societies, which imposes inextricable limitations in achieving consensus on a single interpretation of the conflict. In such societies, any attempt for the unilateral reading of the conflict, carries the risk of creating

⁴⁰ K. Jaspers, *The Question of German Guilt (Perspectives in Continental Philosophy)*, Fordham University Press, 2001, New York, p.16.

⁴¹ J. Amery, *At the Mind's Limits: Contemplations by a Survivor on Auschwitz and its Realities*, Indiana University Press, 1980, p. 70.

⁴² K. Avruch, ‘Truth and Reconciliation Commissions: Problems in Transitional Justice and the Reconstruction of Identity’, *Transcultural Psychiatry* 47 (1), Sage Publications Journal, February 2010, p. 38.

⁴³ K. Andrieu, ‘Transitional Justice: A New Discipline in Human Rights’, *Online Encyclopedia of Mass Violence*, [online], published on 18 January 2010, <http://www.massviolence.org/Transitional-Justice-A-New-Discipline-in-Human-Rights>, ISSN 1961-9898, p. 11.

artificial groups of perpetrators and victims, when the official interpretation completely overlooks the many complex actions of past mass violence. Attempts for creation of an official history can lead to counter - productive and competitive narratives that celebrate or deny the officially established memory about the past. Such narratives are directly related to the complex system of truths that appear in the work of the truth commissions.⁴⁴ “As such, the power of truth, once proclaimed as a right, can have the paradoxical consequence of disempowering the very victims it claims to empower. It is because the human rights discourse instigates its own ‘regime of truth’.”⁴⁵

On that matter, the South African Truth Commission (1995-1998) “allowed for many permutations, identifying and accommodating social truth, factual and forensic truth, personal and narrative truth, and healing and restorative truth.”⁴⁶

We will try to clarify the definitions of the different types of truth, which can best enunciate their nature and content. The forensic truth is the truth regarding the factual circumstances of the human rights violations and the disappearance of persons, which are determined through evidence presented in unbiased and objective processes. For that reason this truth is known also as “factual truth”.⁴⁷

Unlike the factual truth is the “narrative truth”⁴⁸, which contains and serves to express personal perceptions, myths and emotions linked with personal experiences of individuals. The South African commission has explicitly recognized the “healing potential”⁴⁹ of the narrative truth. Furthermore in the processes, was established the existence of the “social truth”⁵⁰, which possesses more “diffuse and abstract”⁵¹ content unlike other types of truths. Social truth is concerned only with facts about its origin, but it touches on the values on which this truth is attached and it possesses a “normative capacity” in terms of “the organization of the society in a way that recurrence of abuses would be prevented.”⁵² For this form of truth to originate, are required appropriate processes of an open and inclusive dialogue, from which this truth extracts its own content as a ‘socially constructed truth’. There is also a “restorative truth”⁵³ which is affirmed by documentation of the facts that confirm the individual experiences of the victims and survivors and helps with regaining of their personal dignity.

⁴⁴ Ibid.

⁴⁵ G. Duffin, ‘Past Truths and Present Justice: The Right to Truth in Transition’, *MA International Studies and Diplomacy of the School of Oriental and African Studies*, University of London, London, 2010, p. 6.

⁴⁶ Ibid. p. 16.

⁴⁷ M. Valiñas M., K. Vanspauwen, ‘Truth-seeking after violent conflict: experiences from South Africa and Bosnia and Herzegovina’, *Contemporary Justice Review*, Vol. 12, No. 3, Routledge, Taylor and Francis, September 2009, p. 271.

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

⁵² Ibid

⁵³ Ibid

After this we can conclude that the work of truth commissions doesn't engage a simple definition of the notion of truth, which causes commissions to act in a "relative epistemological and rhetorical reality."⁵⁴

In this sense, intellectual interpretations of the practice of South African truth commission highlighted the complexity of determining the truth by finding that the existence of different types of truth which exist only as such can only fulfill the various needs of the victims. However, the universal function of the commissions, as creators of official, authoritative narratives in these circumstances may lead to the imposition of a single vision of the past which is legitimized by the Commission. This in turn may create uncertainty and risky consequences, such as, possible attempts by the Commission to impose "utopian vision for full reconciliation."⁵⁵

On the basis of their mandate, the truth commissions can determine what has to be included in the official history of the nation's past, and what has to stay off of its traumatic past; which institutes their apparent political role that is prevalent in the societal context of transition. Therefore, the activities of the commissions related to collective memory, contribute for them to be perceived as official bodies that "produce a memory."⁵⁶

The way that is created, moreover, perceived the "official version of the past", has made it difficult to be imposed on the true beliefs of many individuals and groups in a post-conflict society. The role of the truth commissions is to build narratives and to create the official past, one which would be understandable and comprehensive sufficiently enough for achieving the reconciliatory democratic perspective.⁵⁷ Because of their subordinate role, there is an argument that compares truth commissions with "morality plays of the early Elizabethan period, where the characters functioned allegorically, representing the various virtues and vices; these dramas were intended to convey a lesson for the better conduct of life, in the words of one interpreter."⁵⁸

Thus the official history created with the work of the truth commissions, usually can function as a "great meta – narrative" that serves for "liberal redemption." Consequently, this official "recount of collective destruction" often aims to provide a "rebirth" of a nation, which again speaks about the political function of the truth commissions.⁵⁹ The consequences of "establishing

⁵⁴ K. Avruch, 'Truth and Reconciliation Commissions: Problems in Transitional Justice and the Reconstruction of Identity', *Transcultural Psychiatry* 47 (1), Sage Publications Journal, February 2010, p. 39

⁵⁵ K. Andrieu, 'Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm', *Security Dialogue*, vol. 41, no. 5, Sage Publications Journal, October 2010, pp. 542-543.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ M. Osiel, 1995, 'Ever Again: Legal Remembrance of Administrative Massacre', *University of Pennsylvania Law Review*, 1:144, p. 684.

⁵⁹ Kora Andrieu, 'Transitional Justice: A New Discipline in Human Rights', *Online Encyclopedia of Mass Violence*, [online], published on 18 January 2010, <http://www.massviolence.org/Transitional-Justice-A-New-Discipline-in-Human-Rights>, ISSN 1961-9898, pp. 12-15.

truth as a form of ‘meta-narrative’ are that other discourses may be crowded, even though the function of this can be to enact crucial change and ‘discontinuity’ from the past regime.”⁶⁰

Despite the assumptions for the collective memory as consensual, it can be evident that it can only exist as an ideal. Therefore, its (idealistic) quintessence can be a potential carrier of new oppressive structures. We can try to clarify this opinion with Michael Foucault’s similar observations about the notion of the idealistic nature of collective memory and its oppressive origins and tendencies.

Unambiguously, Foucault marks the collective memory, as materialized by the dynamics of the social conflict that makes the collective memory inexplicable, nor existent, in the absence of antagonistic memories (counter memories). The dynamic essence of the collective memory makes it to be the area in the struggle for control, because the control over the one group’s memory is primarily a social control administered through the possession of this memory and deciding what that memory must contain.⁶¹

Going further with the interpretation of the assumption that “facts are never truly obvious” but they are always mediated, then the problem which arises in their interpretation is inevitable in the processes of creating official collective narratives.⁶²

Depending on the extent to which the truth commissions will demonstrate ineptitude to recognize the wide incongruity between the information and individual or group’s beliefs, they may fail to affect the public consciousness and the way people will interpret the information. Which could bring abolition of the “possibilities for establishing a common moral ground necessary” for the initiation of the processes of “reconciliation.”⁶³ Finally, as Ruti Teitel points out, “truth is not an autonomous response; reconstructing critical facts is inextricably tied up in other societal practices, when the truth becomes known, when certain critical knowledge is publicly recognized, the shared knowledge often sets in motion other legal responses, such as sanctions against perpetrators, reparations for victims, and institutional changes; truth reports go on to make recommendations of a structural nature.”⁶⁴

⁶⁰ G. Duffin, ‘Past Truths and Present Justice: The Right to Truth in Transition’, *MA International Studies and Diplomacy of the School of Oriental and African Studies*, University of London, London, 2010, p. 41.

⁶¹ Foucault M., ‘Film and Popular Memory’, *Radical Philosophy* 11: 25–64. 1969 cited in Andrieu, ‘Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm’, *Security Dialogue*, vol. 41, no. 5, Sage Publications Journal, October 2010, p. 542.

⁶² K. Avruch, ‘Truth and Reconciliation Commissions: Problems in Transitional Justice and the Reconstruction of Identity’, *Transcultural Psychiatry* 47 (1), Sage Publications Journal, February 2010, p. 38.

⁶³ Kora Andrieu, ‘Transitional Justice: A New Discipline in Human Rights’, *Online Encyclopedia of Mass Violence*, [online], published on 18 January 2010, <http://www.massviolence.org/Transitional-Justice-A-New-Discipline-in-Human-Rights>, ISSN 1961-9898, p. 12.

⁶⁴ R. Teitel, *Transitional Justice*, Oxford University Press, Oxford, 2000, p. 88.

Having in mind that legal prosecutions “ignore the fact, widely cited in the truth versus justice debate, that amnesties can produce a wider form of truth if perpetrators of abuses find themselves free to come forward without the threat of retribution”,⁶⁵ it is common for the truth commissions to act in a paradox, since at the same time these commissions have a mandate to meet the public need for detailed disclosure of the crimes committed, while ensuring the fair treatment to offenders. In this sense, although commissions are considered as entities that “serve as a guarantee” against “collective amnesia”, they leave behind numerous truths about horrendous crimes that demand justice and punishment. Not attending to these needs, jeopardizes the notion of justice, legal procedures and the rule of law.⁶⁶

In the relationship between justice and truth, the question arises in regard to how reconciliation would be possible if the victims seeking justice feel that such justice is not achieved, nor that it ever has existed attempt for justice to be enabled.⁶⁷ Therefore, the necessity for actualizing the truth can be attained, when the processes of truth telling about traumatic experiences in the aftermath of mass violence, are complemented with formal judicial processes. Unless the truth inquiry is controlled a priori, it leads in diverse directions, to trials, other sanctions, victim’s remedies, and structural changes⁶⁸ that enable larger processes of attribution of accountability and broad societal healing.

At the end, we’re obliged to present the regressive aspect of the complementarity between restorative and retributive processes. It is around the “question of whether a truth commission or other non-judicial, truth seeking mechanism should name names of those found responsible for serious human rights violations.”⁶⁹ Yasmin Naqvi points to the “clash between the individual’s and society’s right to the truth and the alleged perpetrator’s due process rights, predominantly the presumption of innocence and the right to defend oneself against criminal charges in fair trial.”⁷⁰

⁶⁵ Broad-based amnesty clauses for politically motivated crimes were introduced in “South Africa, Sierra Leone, Mozambique, and Angola amongst others” G. Duffin, Past Truths and Present Justice: ‘The Right to Truth in Transition’, *MA International Studies and Diplomacy of the School of Oriental and African Studies*, University of London, London, 2010, p. 20.

⁶⁶ K. Andrieu, ‘Transitional Justice: A New Discipline in Human Rights’, *Online Encyclopedia of Mass Violence*, [online], published on 18 January 2010, <http://www.massviolence.org/Transitional-Justice-A-New-Discipline-in-Human-Rights>, ISSN 1961-9898, pp. 11-12.

⁶⁷ K. Avruch, ‘Truth and Reconciliation Commissions: Problems in Transitional Justice and the Reconstruction of Identity’, *Transcultural Psychiatry* 47 (1), Sage Publications Journal, February 2010, p. 37.

⁶⁸ R. Teitel, *Transitional Justice*, Oxford University Press, Oxford, 2000, pp. 89.

⁶⁹ Y. Naqvi. ‘The Right to Truth in International Law: Fact or Fiction’, *International Review of the Red Cross*, Vol 88, No. 862, June 2006, p. 272.

⁷⁰ Ibid.

Conclusion

Only with the possession of the required inherent autonomy that inquiry bodies such as truth commissions should own, their processes can initiate effective investigations and inquiries as well as mending of the fractured societal fabric. Even though these bodies are, or ought to be independent from the state, they are reliant on the civil society, whose role is critical for the transitional justice processes. Truth commissions, as bodies for collective reflection, are not in a capacity to function without the support and presence of the heterogenic components of the civil society, such as victims coalitions, human rights groups, religious and moral leaders, among many other sectors in the civil society, which will engage in the building of the public perceptions that the truth-finding processes are in ownership of the citizens; thus they will contribute to the preconditions for tolerance and respect for human rights. Their achievement will be measured by their ability for creating a technically veritable history of the past conflict and the human rights abuses that transpired, which wouldn't be frail and subjugated to negation, rationalization, forgetting, and expulsion from the social memory.

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