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TRUTH COMMISSIONS: DISTRACTION TOOL OR KEY TO DEMOCRATIZATION AND RECONCILIATION?

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Abstract

In the last 30 years, the concept of transitional justice has been experiencing greater use and popularity. Facing the problematic past is inevitable when a country's past is full of major and massive human rights violations, no matter whether they come from a repressive regime or a violent conflict. In this regard, one of the most widely used and at the same time, one of the most popular mechanisms of transitional justice are the truth commissions. Entering transitional justice practice modestly during the 80-s of XX - century, today the truth commissions represent one of the most popular mechanisms for dealing with problematic past. In the last 25 years, the world has witnessed the existence of more than 30 truth commissions. The experience with all of them shows us that every truth commission is unique in terms of its powers, mandate, and structure. However, regardless of the non-existence of a fixed model of a truth commission, for many authors, there is a consensus on their role in the process of facing the problematic past. The truth commissions, regardless of their structure, power and mandate, are a mechanism that investigates, establishes and publicly acknowledges the truth, assists in the moral condemnation of committed crimes, meets the needs of victims, assists in the reconciliation process and offers a platform for political and institutional reforms, which has a positive effect on the process of facing the problematic past. The subject of this paper will be an analysis of the functioning and significance of the truth commissions. The paper attempts to show that truth commissions are a mechanism that contributes to the process of facing the problematic past and affects democratic consolidation and reconciliation in one country. The main methods that are used are the method of analysis, the historical, normative, and political method. The overall conclusion is that the truth commissions are only one of the mechanisms of transitional justice from which one cannot expect to complete the whole process of facing the problematic past, but they constitute a mechanism which has great meaning on the road towards democratic consolidation and the process of reconciliation.

Keywords: *politics, political system, democracy, transitional justice, transition, truth commissions.*

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I. INTRODUCTION

The second half of the XX-th century, among other things, was marked with a big rise in the concept of transitional justice. The idea that societies have a responsibility to confront their problematic past resulting from a repressive regime or a violent conflict slowly but surely has occupied the processes of democratic consolidation and reconciliation. From a historical perspective, certain roots of the concept of transitional justice may be traced back to ancient Greece, but still, the trials in Nuremberg and Tokyo, after World War II, are considered the starting point of the concept of transitional justice.¹ The fall of the regimes in South America, Spain, Portugal, the conflicts in Africa and of course, the fall of Yugoslavia and the conflicts, that resulted from its demise, opened up sufficient space for this concept to be drastically developed in the last 30 years and today to be one of the most interesting questions in the field of legal-political theory. Despite the great upsurge of ideas for transitional justice in the last 30 years, the theory still has a problem to create a generally accepted definition for the concept of transitional justice. In most cases, the definition of the International Center for Transitional Justice is accepted, according to which the term transitional justice refers to a range of approaches that societies undertake to reckon with legacies of widespread or systematic human rights abuse as they move from a period of violent conflict or oppression towards peace, democracy, the rule of law, and respect for individual and collective rights.² Often, in the literature devoted to transitional justice, this phenomenon is explained through its mechanisms. It can be noted that this concept contains a whole range of mechanisms, which can generally be divided into two groups: judicial and non-judicial mechanisms. Trials, truth commissions, institutional reforms, amnesty, lustration, reparations, rehabilitation, reconciliation projects, monuments, disarmament and reintegration are some of the basic mechanisms used by the concept of transitional justice.³ What we can freely conclude is that all the mechanisms of transitional justice have the same goal. And that is the promotion of justice, accountability, reconciliation, the rule of law, accepting the suffering of victims, the establishment of democratic institutions and preventing future human rights violations.⁴ For the proponents of the concept of transitional justice, a society cannot move forward until it faces the sins of its problematic past.

II. DEFINING THE TERM TRUTH COMMISSION

As already mentioned, the concept of transitional justice is often explained through its mechanisms. Whichever mechanism is used, the purpose of all mechanisms is the same. Facing the problematic past that is a result of either a previous repressive regime or violent conflict. In this regard, the truth commissions are one of the most used, and also one of the most popular mechanisms of transitional justice.

¹ Patrcija Lundy and Mark McGovern, "Whose Justice? Rethinking Transitional Justice From the Bottom Up" *Journal of Law and Society* Vol. 35 No.2, Cardiff: Cardiff University Law School, 2008 265-292, 268.

² Maria Avello, *European Efforts in Transitional Justice*, Madrid: Fríde, 2007, 1-2.

³ Noemi Turgis, "What is transitional justice", *International Journal on rule of law, transitional justice and human rights* No.1, Sarajevo: Pravnik and Konrad Adenauer – Stiftung: 2010, 15.

⁴ Patrcija Lundy and Mark McGovern, "Whose Justice? Rethinking Transitional Justice From the Bottom Up" *Journal of Law and Society* Vol. 35 No.2, Cardiff: Cardiff University Law School, 2008 265-292, 268.

The truth commissions modestly entered into the debates of transitional justice. The first real experience with a truth commission took place in 1974 in Uganda,⁵ and since then the truth commissions began to be used in South American countries. It can be noticed that the first experiences with the truth commissions are negative. The truth commissions in Uganda, Bolivia and the Philippines failed to complete their work and publish a final report. However, the bad experiences with the truth commissions in Uganda and Bolivia are followed by positive examples from Argentina and Chile, which restored the hope that the truth commissions may be applicable in the process of facing the problematic past and represent a mechanism, that will contribute to democratic consolidation of a certain society. On the wings of success of the truth commissions' work in Argentina and Chile, in the early 90s of the XX century, more and more countries decided to accede to the application of this mechanism. The truth commissions in Chad, El Salvador and Haiti are the ones that follow, but the one in the South African Republic had the biggest influence for the popularity of the truth commissions. That is the crucial point and from that moment until today, the truth commissions shifted from being the weaker alternative to trials to a practice that is morally equal and complementary to the judicial option.⁶ The popularity of this mechanism is confirmed by the fact that truth commissions have been created in more than 30 countries in the past 25 years.⁷ Giving a brief historical overview of the rise of the truth commissions, the next logical step would be to define them. The most detailed definition of what is a truth commission is offered by Priscilla Hayner. According to her, the definition of truth commissions is made up of four elements.⁸ First, the truth commissions are focused on the past. Second, the truth commissions are not focused on a specific event but try to portray a general image of the violation of human rights in a certain period, in a certain country. Third, the truth commissions have precisely determined mandate and after the publication of the final report, they stop with their work and existence. Fourth and last, the truth commissions are always created by state institutions. There are also cases when the truth commissions are neither established nor financially supported by the countries but by international organizations. Such is the case with the truth commissions in El Salvador and Guatemala, which were established under the auspices of the United Nations. There are also examples where truth commissions are being established under the auspices of NGOs (Rwanda, Uruguay). However, it should be taken into consideration that in theory, the informal and independent projects, often organized by NGOs', do not meet the criteria for truth commissions.⁹ Thus, conceptual clarity and analytical rigour demand that truth commissions hold official governmental status.¹⁰ The truth commissions must draw their authority from either state institutions or relevant international organizations. Hence, according to everything aforementioned, we could conclude that the truth commissions are often defined as temporary official state bodies, which aim is to investigate the violations of human

⁵ Rebekka Clara Friedman, *Hybrid TRCs and National Reconciliation in Sierra Leone and Peru*, Dis. London: The London School of Economics and Political Science, 2012, 13

⁶ Michal Ben – Josef Hirsch, "Ideational change and the emergence of the international norm of truth commissions", *European Journal of International Relations Volume 20 No3*, London: Sage, 2014, 812

⁷ Priscilla B. Hayner, "Truth commissions: a schematic overview", *International Review of the Red Cross Volume 88 No 862*, Cambridge: Cambridge University Press, 2006, 295

⁸ Priscilla Hayner, "Commissioning the truth: Further research questions", *Third World Quarterly* Vol. 17 No1, Oxford: Routledge, 1996, 19-29, 20

⁹ Tricia Olsen, Leigh Payne and Andrew Reiter, *Transitional Justice in Balance: comparing processes, weighing efficacy*, Washington: United States Institute of Peace Press, 2010, 34

¹⁰ Ibid.

rights that have occurred in the past in certain country and at the end of their research to publish a final report which will present the findings of their research.

Few things related to the truth commissions must be immediately noted. First, truth commissions are a non-judicial mechanism of transitional justice that relies on voluntary cooperation and the power of moral condemnation. They are not formal courts, they do not have the task of prosecuting perpetrators, they do not have the power and authority to establish criminal liability and to impose sanctions on individuals.¹¹ On the contrary, their goal is to discover, clarify and formally acknowledge past abuses, to respond to specific needs of victims, to contribute to justice and accountability, to outline institutional responsibility and recommend reforms and to promote reconciliation and reduce conflict over the past.¹² Therefore, although they do not have the power of coercion, in theory very often we can find arguments that truth commissions are far more superior and more important in relation to the criminal trials.

Second, although Hayner's definition is accepted in theory, it should be taken into consideration that there is no one model for a truth commission.¹³ The truth commissions vary dramatically in terms of their competencies, structure, and way of operation. The experience with them so far shows that the greater the number of truth commissions is in the world, the more different models are there for their organization. Therefore, when creating a truth commission, the creators are faced with several dilemmas regarding the competencies, structure, time-limit of their mandate and its functioning. Regardless of the dilemmas, the creators of the truth commissions in their creation must keep in mind that the chosen solutions should lead the commissions to establish legitimacy and credibility among the wider public. The question of how the public receives and engages with the truth commission is crucial to its success.¹⁴ So, let us go over the dilemmas and challenges the creators of a truth commission are faced with during its creation.

III. DILEMMAS AND CHALLENGES IN THE CREATION OF A TRUTH COMMISSION

The first dilemma and challenge in the creation of a truth commission are related to its powers. The experience so far tells us that often the commissions have a limited and strictly determined scope of competencies. As a result, it happens that a number of human rights violations are omitted from the focus of the truth commission. Thus, for example, in Chile, the commission investigated disappearances, executions and tortures leading to death.¹⁵ The victims, who suffered a violation of their human rights but such violations did not lead to their death, were excluded from the scope of the commission. An interesting example comes from Uruguay, where the Uruguayan commission missed the majority of the human rights violation that had taken place during the military regime because of the limited mandate: illegal detention and torture –

¹¹ Priscilla Hayner, "Commissioning the truth: Further research questions", *Third World Quarterly* Vol. 17 No1, Oxford: Routledge, 1996, 19-29, 21

¹² Jazmin Acuna Cantero, *After Truth: The Truth commission, Media, and Race Relations in Post-Apartheid South Africa*, New London: Connecticut College, 2011, 35

¹³ David K. Androff, "Truth commissions: An International Human Rights Intervention and Its Connection to Social Work", *British Journal of Social Work* Volume 40 No 6, Oxford: Oxford University Press, 2010, 1965

¹⁴ DPI Working Paper, *Obstacles and Opportunities for Transitional Justice: Truth commissions*, London: Democratic Progress Institute, 2012, 29

¹⁵ Priscilla B. Hayner, "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study", *Transitional justice: Volume 1, General consideration*, Washington: United States Institute of Peace Press, 1995, 247

the bulk of the abuses were ignored.¹⁶ It should be taken into consideration that the selective investigation of the human rights will cause additional bitterness among the victims, whose case is not covered by the commission. Moreover, the selective investigation will lead to an inconsistent report, and such a report will stain the entire work of the commission. Supporters of transitional justice and truth commissions believe that such commissions should have a wide range of strong competencies.¹⁷ According to them, the scope of the commission's competencies should be wide enough to cover all human rights violations that have occurred in the problematic past. In this regard, it should be noted that in addition to the wide range of competencies, to conduct a detailed investigation, it is important to point out that the level of funds and manpower available is an obvious determinant of success.¹⁸ The adequate funding should provide an adequate number of employees within the commission, which will ensure that as many cases as possible are being investigated. The lack of finances causes the truth commissions to be understaffed and financially constrained. This has a subtle impact on the commission's power as it can lead to a situation in which truth commissions decide to impose restrictions on what they will investigate or include in the report, due to lack of funds. Only, a detailed investigation by the truth commission will strengthen its legitimacy among the wider public, and we have already mentioned that the public's perception of the commission's work is one of the most important points for its work.

The second dilemma regarding the creation of truth commissions is related to its composition. The question concerned is which people should be members of the truth commissions. Although this issue may seem technical at first glance, the decision on who will be part of this commission plays a huge role in the further significance and impact of the commission's work on society. To be successful, truth commissions must establish both their independence from all the actors in a contested history and their moral authority to examine and judge the acts and motivations of others.¹⁹ Whether they will succeed in this depends on the quality and credibility of the commission members. It is impossible to expect that the commission's work and its final report will have a major impact on society if the wider public has doubts about the quality and credibility of the commission members. In this respect, often we come across the dilemmas of whether the commission should be composed of domestic experts, or foreign experts can be part of it also. The involvement of international experts within the commission contributes towards greater objectivity and disinterestedness.²⁰ That, in turn, will help strengthen the legitimacy and credibility of the commission. Additionally, a commission composed of international figures may be the only workable option if the sides are too polarized.²¹ The international experts, in a state of deep division of a society, should be a bridge between different groups and contribute to the neutrality and impartiality of the work of the commission. On the other hand, foreigners often

¹⁶ Ibid

¹⁷ Priscila B. Hayner, "International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal", *Law and Contemporary Problems Volume 59 No4*, Durham: Duke University School of Law, 1996, 179

¹⁸ DPI Working Paper, *Obstacles and Opportunities for Transitional Justice: Truth commissions*, London: Democratic Progress Institute, 2012, 32

¹⁹ Margaret Popkin and Naomi Roht-Arriaza, "Truth as Justice: Investigatory Commissions in Latin America", *Transitional justice: Volume 1, General consideration*, Washington: United States Institute of Peace Press, 1995, 269

²⁰ Ibid

²¹ Eric Brahm, "Uncovering the Truth: Examining Truth Commission Success and Impact", *International Studies Perspectives Volume 8 No 1*, Malden: Blackwell Publishing, 2007, 31

lack local knowledge and may leave the truth commission without an advocate within the country.²² The insufficient knowledge of the local environment, spirit and history of the country can lead to wrong conclusions and recommendations that will again negatively affect the work of the commission and its credibility.

The third question related to the functioning of truth commissions concerns the time-limit for their work. In Hayner's definition, we have pointed out that the truth commissions are temporary bodies that cease to exist after the publication of their report. It should be noted that when establishing the truth commissions, the deadline for publishing the final report is predetermined. Most often, these bodies are set up for a short period - one to three years.²³ In almost all cases, the truth commissions have complained that the time frame for their functioning is too short and that it does not allow a detailed investigation of all the important cases in which human rights violations have been registered. However, while sometimes the time –limit provided for the work of the truth commissions may adversely affect the quality of their investigation, there is no doubt that there must be a precise time limit on the commission's term of office. Thus, for example, the 1986 Uganda truth commission serves as a reminder of why the non-existence of a predetermined time-limit is devastating for the functioning and meaning of the commissions. The lack of a pre-determined time-limit for the commission to complete the investigation and publish the report has led to a situation in which the Uganda truth commission published its final report nine years after its formation.²⁴ Thus, it is quite justified to question the significance of the work of the commission if its report is published after so many years! Nine years is a very long period of time in which many situations in one society have occurred and changed.

The fourth dilemma regarding the functioning of the truth commissions concerns the question of whether the hearing of the victims and the perpetrators of human rights violations should be public or private. Public hearings are recommended in countries where the truth commission is focused more on the reconciliation process and less on the process of finding the truth.²⁵ In such a situation, it is recommended that the hearings are public, in order to stimulate the process of national reconciliation. In this regard, in the countries where the primary goal of the truth commissions is national reconciliation, the truth commissions usually are holding hearings throughout the country often aired on the radio and television.²⁶ Also, public hearings can give a greater sense of transparency and public involvement.²⁷ Public hearings are recommended in countries where the ruling elites are suspected of trying to obstruct and compromise the investigation of the truth commissions. In such a situation, the private hearings, far from the eyes of the wider public is opening space for political influence over the work of the truth commission. On the other hand, public hearings have a positive effect on the transparency of the commission's work and contribute to neutralizing the political influences over it. However, it should be taken into consideration that public hearings can have negative consequences for the work of truth commissions. Public hearings risk scaring away witnesses that otherwise might

²² Ibid

²³ Priscilla B. Hayner, "Truth commissions: a schematic overview", *International Review of the Red Cross* Volume 88 No 862, Cambridge: Cambridge University Press, 2006, 295

²⁴ Priscilla B. Hayner, "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study", *Transitional justice: Volume 1, General consideration*, Washington: United States Institute of Peace Press, 1995, 249

²⁵ Rebekka Clara Friedman, *Hybrid TRCs and National Reconciliation in Sierra Leone and Peru*, Dis. London: The London School of Economics and Political Science, 2012, 41.

²⁶ Rebekka Clara Friedman, op cit. 116

²⁷ DPI Working Paper, *Obstacles and Opportunities for Transitional Justice: Truth commissions*, London: Democratic Progress Institute, 2012, 29

testify or putting in danger those that do.²⁸ That is why a private hearing is most often recommended because it offers greater privacy and protection for both victims and perpetrators. The feeling of privacy and protection will increase the number of victims and perpetrators who are willing to cooperate with the commission. The experience in this area so far shows that in most cases, hearings are held in great secrecy, out of the public eye, and the wider public is informed with the work of the commission in detail through its final report. However, it should also be noted that the number of truth commissions which conduct public hearings has been steadily increasing, especially in the last decade. Herewith, we would like to point out that the findings of the truth commissions must be visible to the wider public in the country, regardless of the nature of the hearings. It cannot be expected that the work of the commission will have an impact on society if the society is not familiar with its work.

Fifth, one of the most controversial questions about the functioning of the truth commissions is whether the final report should contain the names of the perpetrators of human rights violations. There are different experiences from around the world and the arguments for (non) publishing are further divided. On the one hand, the process of naming the perpetrators can raise difficult questions of due process.²⁹ The publication of the name of the perpetrator without the perpetrator having the opportunity for a proper insight into the process and appropriate defence is contrary to the right to a fair trial. Moreover, the publication of the names of the perpetrators can be dangerous for their safety. Rwanda is a country that has experience with the naming of perpetrators of human rights violations. In Rwanda out of three Burgomasters named by the commission for some of the worst atrocities, two were killed in the months after the report's publication.³⁰ Here we should have in mind that private justice is far from the democratic values and does not contribute to the processes of reconciliation and democratic consolidation. On the other hand, through the often public shaming that could accompany the open disclosure of wrongdoings, truth commissions might provide some degree of punishment to perpetrators.³¹ The publication of the names is especially recommended in countries where the credibility of the judiciary is in question and where the perpetrators of human rights violations after the change of the repressive regime or after the end of the violent conflict are still part of the institutions.³² In such a situation, it is quite expected that the perpetrators still have the power to influence the process of facing the problematic past to remain on the margins. Therefore, in societies where the perpetrators are part of the institutions, the new system and still have power, naming the perpetrators is often the only mechanism that leads to their accountability and puts pressure on them to be further prosecuted or withdraw from positions in state institutions. Naming the perpetrators and the establishment of the truth may provoke the awakening of the society and pressure them to activate other mechanisms of transitional justice.

Such challenges and dilemmas are always present among the creators of truth commissions. The decision regarding which recommendations are to be followed and which not, depends on the

²⁸ Priscilla B. Hayner, "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study", *Transitional justice: Volume 1, General consideration*, Washington: United States Institute of Peace Press, 1995, 254

²⁹ Priscilla B. Hayner, "Truth commissions: a schematic overview", *International Review of the Red Cross* Volume 88 No 862, Cambridge: Cambridge University Press, 2006, 296

³⁰ Priscilla B. Hayner, "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study", *Transitional justice: Volume 1, General consideration*, Washington: United States Institute of Peace Press, 1995, 257

³¹ Jazmin Acuna Cantero, op cit., 25

³² Margaret Popkin and Naomi Roht-Arriaza, "Truth as Justice: Investigatory Commissions in Latin America", *Transitional justice: Volume 1, General consideration*, Washington: United States Institute of Peace Press, 1995, 281

situation in a country. Certain solutions can have positive effects in one country, while those same solutions can prove to be detrimental to the commission's work in another country. Each truth commission should be adapted to the unique political and social circumstances in which it is formed. The aim in such circumstances is to make the most of the work of the truth commission and thus influence the process of reconciliation and democratic consolidation.

IV. THE EFFECTS OF THE TRUTH COMMISSIONS IN THE PROCESS OF FACING THE PROBLEMATIC PAST

Regardless of their structure and competencies, the truth commissions today are one of the most popular mechanisms for dealing with human rights violations. This is because the truth commissions, with their actions, at the same time, manage to achieve more goals in the process of democratic consolidation and reconciliation. Let us go over the positive aspects of the truth commissions in the process of facing the problematic past.

First, it should be emphasized, at the outset, that the truth commissions are most often implemented when the balance of power is such that the criminal prosecutions of offenders look unlikely, as the previous regime still maintains the economic, political, social or forceful upper-hand.³³ The alternative to truth commission is often not conducting trials, but doing nothing at all.³⁴ Therefore, it is common for the truth commissions to be the first mechanism that political elites undertake in the process of confronting the problematic past after the fall of the repressive regime or after the end of the violent conflict. In that direction, the decision to establish a truth commission can have a major impact on the social and political situation of a country. That may be a message to society that there should be no impunity for violation of human right.³⁵ Also, the establishment of the truth commission is an opportunity for the new political elites to be morally, politically and legally disassociation from the crimes of the previous regime.³⁶ Such distancing can contribute to (re)establishing accountability to political institutions, help to build a human rights culture and ultimately restore trust to a shattered society.³⁷ A small step that will lead to big changes! Changes that will open the door for implementation of other mechanisms of transitional justice (criminal trials, lustration, reparations, etc.). Changes that will positively contribute to the reconciliation process and a more substantial and faster transition to democracy.

Second, the name of this transitional justice mechanism contains the word truth. This means that the primary task of these commissions is to investigate, determine and officially acknowledge the truth. The main purpose of the investigation, the acknowledgement and official recognition of the truth consists in the premise that exposure and condemnation of certain past events will prevent their repetition.³⁸ Therefore, the truth commissions, through the final report, have the task of acquainting the wider public with the general picture of what was happening during the

³³ Elizabeth Stanley, "Truth commissions and the recognition of state crime", *British Journal of Criminology*, Oxford: Oxford University Press, 2005, 587

³⁴ Eric Brahm, op cit. 21

³⁵ Mary Albon, "Truth and Justice: The Delicate Balance – Documentation of Prior Regimes and Individual Rights", *Transitional justice: Volume 1, General consideration*, Washington: United States Institute of Peace Press, 1995, 290

³⁶ Nenad Dimitrijevic, "Justice beyond Blame: Moral Justification of (The Idea of) a Truth Commission", *Journal of Conflict resolution Volume 50 No3*, Online: Sage Publication, 2006, 369

³⁷ Eric Brahm, op cit. 20

³⁸ Jazmin Acuna Cantero, op cit.. 25

repressive regime or the violent conflict, hoping that society will learn from it. It should also be taken into consideration that the absence of official research and the acknowledging the truth can lead to different interpretations of what has happened in the problematic past, interpretations that, in turn, will lead to contradictory, confusing accounts of what happened.³⁹ The contradictions and confusion can be the cause of new conflicts and uncertainties.

However, even though the truth commissions conduct research and establish the truth, they also play a big role in the process of the official acknowledgement of the truth. Very often admitting the truth, and not its disclosure is the greatest benefit of the commission's work.⁴⁰ In many cases, the official institutions and perpetrators of human rights violations deny that the violations of human rights occurred or claim to have occurred, but not in such large dimensions. Truth commissions are a powerful tool in dealing with the lies and myths that surround the conflict and violation committed.⁴¹ In this regard, the official recognition of the truth by the commission will close the door for denial that the violations of human rights have actually occurred. Closure of the denial door will completely open the door for dealing with the problematic past. Official recognition of the truth contained in the commission's report can play a major role in the psychological recognition of truth, which has long been denied.⁴² It should be taken into consideration that the public and official recognition of the truth by the commission may entail official recognition and apology by the holders of the highest political functions in the country (Chile, Honduras). Such an apology would bring some consolation to the victims and reaffirm the determination of political elites to build a society in which there is no room for tolerance for human rights violations.

Thirdly, the focus of the criminal trials is on establishing the criminal accountability of the perpetrators, while the truth commissions can play an important role in addressing the needs of victims, their families and their communities.⁴³ The prosecution of the perpetrators is indeed a satisfaction for the victims, but sometimes the criminal trials can expose the victims to additional sufferings and inconveniences. In the trial, the perpetrators are represented by lawyers, who have the task to dismiss the charges against their clients. Therefore, it often happens that the victims testifying to the violence of perpetrators are subject to harsh cross-examination.⁴⁴ All this can lead to a bitter feeling of the victim that their pain is denied and underestimated. On the contrary, the truth commissions are a mechanism for officially acknowledging the suffering of victims.⁴⁵ They are a mechanism that allows victims to retell their sufferings without being subjected to interrogations and scepticism of cross-examination.⁴⁶ Additionally, it should be stress out that the truth commissions include social workers, who have to deliver direct services to the victims of violence that participate in the truth commissions.⁴⁷ All this leads the victims to feel that they are in the centre and that society shows recognition and care for their suffering. Such a feeling will

³⁹ Jazmin Acuna Cantero, op cit.. 36

⁴⁰ Mark Vasallo, "Truth commissions: General Considerations and a Critical Comparison of the Commissions of Chile and El Salvador", *The University of Miami Inter – American Law Review Volume 33 No 1*, Miami: Joe Christensen. Inc, 2002, 158.

⁴¹ Yasmin Sooka, *Dealing with the past and transitional justice: building peace through accountability*, *International Review of the Red Cross Volume 88 No 862*, Cambridge: Cambridge University Press, 2006, 318

⁴² Priscilla Hayner, "Commissioning the truth: Further research questions", *Third World Quarterly* Vol. 17 No1, Oxford: Routledge, 1996, 19-29, 21

⁴³ Yasmin Sooka, op cit. 319

⁴⁴ David K. Androff, op cit. 1961

⁴⁵ Eric Brahm, op cit. 20

⁴⁶ David K. Androff op cit. 1967

⁴⁷ David K. Androff op cit. 1963

lead to a greater number of victims who are willing to share their story. Revelling the truth of their experiences assists the reintegration of victims into their communities and facilitates the opportunity to be restored to the status they held before the conflict.⁴⁸

Due to all this, for many authors, the truth commissions are superior regarding the criminal trials because they contain great power of reconciliation. The truth commissions are a mechanism that promotes values of compassion and peace, which are vital for stability.⁴⁹ A mechanism that has the capacity for reconciliation, because on the one hand it is dedicated to the needs of the victims and their suffering, and on the other hand it promotes a space for face-to-face dialogue between the victims and the perpetrators. Such a space for dialogue allows for the acknowledgement of harms caused and suffered.⁵⁰ Only through such a process, a real reconciliation can be achieved, which will be the foundation for building a stable and democratic society. That is why there are authors who believe that the process of researching, establishing and publicly acknowledging the truth is sometimes more important than prosecuting every human rights violator.⁵¹

Fourth, although the truth commissions do not have the power to establish criminal liability and impose sanctions on individuals, still, they do contribute to the accountability of perpetrators of human rights violations. The process of research, establishing and acknowledging the truth, itself, is putting pressure on the judiciary to start prosecuting the perpetrators.⁵² When the truth will be revealed, under the influence of the wider public, the prosecutors and judiciary will find it difficult to remain silent about the human rights violations. Also, the truth commissions may reach a broader group of both perpetrators and victims.⁵³ Therefore, by interrogating the victims and perpetrators, the truth commissions come up with very important and detailed information, statements and evidence. In this regard, the commission's investigations may lead to the disclosure of evidence that could further benefit the public prosecutor's office and thus contribute positively to the legal battle against the perpetrators of human rights violations. However, even if the commission's work does not lead to the prosecution of the perpetrators, by naming them in the final report, the truth commissions contribute to the perpetrators' accountability. This accountability indeed relies on moral condemnation, but in the absence of prosecution, the publication of the names of the perpetrators of human rights violations will cause their public embarrassment and pressure by the public to withdraw from the public functions (Chile, Rwanda, El Salvador, Argentina). The public embarrassment is a certain consolation for the victims, and their withdrawal from the public functions will have a positive effect on the legitimacy and credibility of the new democratic institutions.

Fifth, the truth commissions, through a detailed investigation of the problematic past, among other things, seek to identify a pattern of abuses⁵⁴ and find out the basic reasons why human rights violations occurred and why the relevant institutions failed to prevent such violations. Detecting the root causes opens the door towards institutional and political reforms. Therefore, the truth commissions in their reports almost always contain recommendations for institutional and political reforms. Reforms in the area of police, judiciary, army, etc. Reforms that should prevent future human rights violations. Though these recommendations typically carry no legal

⁴⁸ Yasmin Sooka, op cit. 319

⁴⁹ Jazmin Acuna Cantero, op cit.. 51.

⁵⁰ David K. Androff op cit. 1967

⁵¹ Jazmin Acuna Cantero, op cit.. 36

⁵² Priscilla B. Hayner, " Truth commissions: a schematic overview", *International Review of the Red Cross Volume 88 No 862*, Cambridge: Cambridge University Press, 2006, 296

⁵³ Eric Brahm, op cit. 22

⁵⁴ Eric Brahm, op cit. 21

obligation, they can catalyze future reform and as goals that the people of the nation can point to in their quest for political reorganization.⁵⁵ Due to the official status of the commission and its credibility, political elites will hardly be able to remain completely deaf to the recommendations of the final report.

On the other hand, some theoreticians do not have a positive approach towards the truth commissions. We can divide them into two groups. The first group includes theoreticians who believe that truth commissions have no influence over the process of reconciliation and democratic consolidation and that they are a mechanism that can be abused by the political elites. According to them, the truth commissions are weak substitutes for criminal trials and mechanism increasingly seen by abusive governments as a soft option for avoiding justice.⁵⁶ The establishment of a truth commission with factory defects (problematic in terms of competencies, mandate, structure and finance) is a great opportunity to manipulate the domestic and international public in a situation when the political elites do not really want to enter the process of facing the problematic past, but, they want to show the domestic and international public that certain steps have been taken in that area. That is why commissions set up by some governments might simply be seeking to manipulate the public perception of past misdeeds under the veil of the disclosure.⁵⁷ Therefore, it is not always clear whether the establishment of a truth commission is a signal of change or a tool for political defocusing. Additionally, the position of these theoreticians is reinforced by the fact that the truth commissions do not have the power to prosecute perpetrators or force perpetrators and victims to testify before them, as well as, the implementation of the recommendations of the final commission report, due to their optional nature, depends on the will of the political elites. Therefore, these theoreticians consider the truth commissions as a soft mechanism of transitional justice, which serves more to confuse the public than to truly confront the problematic past.

Unlike the theoreticians from the first group, the theoreticians from the second group not only that they do not see the truth commissions positively but they also see them as a mechanism that negatively affects the stability of a certain society. According to them, the process of reconciliation and democratic consolidation needs unity and strength, and the decision to search for the truth can be an unnecessary opening of new wounds and divisions. Thus, these theoreticians believe that the establishment of a truth commission may generate resentment and insecurity – For victims, lack of punishment may seem a travesty of justice and for perpetrators, the proceedings may be threatening the reputations and social position.⁵⁸ In this regard, according to these theoreticians, the process of searching, establishing and accepting the truth, leads only to additional uncertainty and danger in society because it makes the perpetrators feel threatened, and also does not meet the needs of victims. Thus, this mechanism only fuels the anger of both the victims and the perpetrators and can lead to new conflicts in the already fragile society.

V. CONCLUSION

After the end of World War II, the idea that societies have a responsibility to deal with their problematic past became dominant in the legal-political theory. In this regard, in the last four

⁵⁵ Mark Vasallo, op cit. 159

⁵⁶ Eric Brahm, op cit. 22

⁵⁷ Mark Vasallo, op cit. 161

⁵⁸ Eric Brahm, op cit. 23

decades, the truth commissions have developed rapidly as one of the mechanisms of transitional justice. A brief historical analysis will immediately show that in the last 25 years more than 30 countries have had experience with such bodies. Even though, the popularity of this mechanism is evident, the experience with all of them shows us that each truth commission is unique in terms of its competencies, mandate and structure. When establishing a truth commission the following things are those that cause strong headaches and dilemmas for its creator: scope of its competencies, the decision on who should be a commission member and whether the commission should be composed only of domestic experts or it should also include international experts, which is the time-limit for the commission to finish its work, the decision on whether the hearings of the commission will be private or they will be opened for the public and whether the final report of the commission should include the names of the perpetrators or such a solution represents a violation of the basic principles of the rule of law. However, the truth commissions, regardless of their structure, competencies and mandate, are a mechanism that investigates, establishes and publicly acknowledges the truth, aids in the moral condemnation of committed crimes, meet the needs of the victims, aids in the reconciliation process and offers a platform for political and institutional reform. Therefore, for many authors, the truth commissions influence the creation of legitimate and accountable democratic institutions, contribute to building a democratic political culture related to respecting human rights and play a major role in the process of national reconciliation. Some theoreticians believe that truth commissions negatively affect the stability and quality of democratic consolidation in a transitional society. However, it should be taken into consideration that the number of theoreticians who see the truth commissions negatively is far lower than the number of theoreticians who see these commissions positively. Priscilla Hayner's position that no truth commission has contributed to the deterioration of a society in transition from conflict or a repressive regime to peace and democracy, is becoming generally accepted. The truth commissions should not be seen as a mechanism only for itself but as one of the mechanisms in the process of facing the problematic past. We cannot expect that the truth commissions will succeed in bearing the whole burden from the process of facing the problematic past, but we can expect it to be a mechanism that positively affects a number of processes and is a great motivation and incentive to activate other mechanisms of transitional justice. A mechanism for which we can freely say still waters run deep.

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