

**DESIGNING A TRUTH COMMISSION FOR
POST-CONFLICT DARFUR: LESSONS LEARNED FROM
EL SALVADOR AND SIERRA LEONE**

by

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Bachelor of Arts, Simon Fraser University, 2003

Bachelor of Law, University of British Columbia, 2006

PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF PUBLIC POLICY

In the
Faculty
of
Arts and Social Sciences

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SIMON FRASER UNIVERSITY

Spring 2008

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Abstract

At some point, hopefully in the near future, the conflict in Darfur will come to an end. At the conclusion of the conflict it is imperative that transitional justice mechanisms be put in place that provide the people of Darfur with an accurate record and account of the abuses perpetrated during the course of the conflict. This study seeks to provide a model for the establishment of a truth commission in post-conflict Darfur. The model is devised from an analysis of the successes and failures of the El Salvadoran and Sierra Leonean truth commissions. These two case studies provide important insights into the creation and operation of truth commissions within transitional contexts. The experiences of El Salvador and Sierra Leone provide a base from which a suggested truth commission model for post-conflict Darfur can be created.

Executive Summary

In 2005, the United Nations Security Council passed resolution 1564, which called for the establishment of a Commission of Inquiry to investigate the violations of international human rights and humanitarian law taking place in Darfur. The U.N. Commission of Inquiry prepared a comprehensive report on the abuses taking place in Darfur and proposed recommendations aimed at bringing a semblance of peace and stability to Darfur. One of the recommendations put forward by the Commission of Inquiry was the establishment of a truth and reconciliation commission for Darfur. The intention of this analysis is to devise a truth commission model for post-conflict Darfur, as per the request of the U.N. Commission of Inquiry. The study will utilize a case study approach to formulate a suitable truth commission model for post-conflict Darfur setting

A variety of factors is utilized to select a set of appropriate case studies for the analysis. First, if a truth commission failed to submit a final report or submitted its final report on or after January 2005, it was ruled out as a suitable case study candidate. Second, truth commission's whose mandates were limited to the investigation of specific acts, such as disappearances, were also not considered suitable case study candidates. Third, I searched for truth commissions established in countries where a conflict had been brought to an end by way of a peace agreement. In the end, the truth commissions established in El Salvador and Sierra Leone were deemed the most suitable commissions for the purposes of this study.

The successes and failures of the Salvadoran and Sierra Leonean truth commissions were judged utilizing a series of dependent and independent variables. The dependent variables selected for this study were identified in the transitional justice literature as being appropriate criteria for measuring the success of truth commission processes. All of the independent variables had been recognized in the literature as having a significant impact on the outcome of truth commission processes. The dependent and independent variables were applied to each of the case study commission's. The findings of the case study analysis reveal that certain independent variables, such as the extent to which the commission engaged with NGOs and the commission's use of public hearings, appeared to have a greater influence on the dependent variables than other independent variables. At the conclusion of this process, a number of findings could be made in regards to the successes and failures of both the Commission on the Truth in El Salvador and the Truth and Reconciliation Commission in Sierra Leone. Overall, the Commission in Sierra Leone performed marginally better than the Commission in El Salvador under most of the dependent variables.

Having assessed the successes and failures of the truth commissions in El Salvador and Sierra Leone, I began to construct policy alternatives to address the abovementioned policy problem. I begin the policy option section of the analysis by identifying the independent variables that were demonstrated to have had a positive impact on the success of the truth commissions in both El Salvador and Sierra Leone. These variables are considered to play a significant role in the success of truth commission processes, and thus any truth commission established in post-conflict Darfur should seek to incorporate all of these characteristics. I then move on to construct two

truth commission models that could be implemented in a post-conflict Darfur setting.

The first model is based to a large extent on the Commission established in Sierra Leone and prioritizes the need to engage the public in truth commission processes. The second model is largely based on the Commission established in El Salvador and emphasizes the need to preserve the impartiality of the commission.

Each policy option was assessed against the criteria of effectiveness, political feasibility, administrative feasibility, and impartiality. After assessing and scoring each policy option using the abovementioned criteria I came to the determination that the first policy option was best suited to meet the needs of transitional justice in post-conflict Darfur.

Dedication

I would like to thank my parents and sisters for their continual support and encouragement throughout my various educational pursuits. To my wife, Meera, I know I can accomplish anything in life with you by my side.

Acknowledgements

I would like to begin by thanking Professor Doug McArthur, for his continual support and guidance throughout the research and writing process. I would also like to extend a sincere thank you to Professor Kennedy Stewart, whose assistance during the writing process helped focus and refine my capstone.

I am extremely grateful to Mark Freeman, Laura Stovel and Zoe Dugal, your insights on transitional justice, generally, and truth commissions, specifically, proved to be vitally important for my analysis.

I want to thank all my classmates, friends and family for the continual support they have provided me throughout the course of this program.

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Glossary

AFRC	Armed Forces Revolutionary Council
APC	All People's Congress
CDF	Civil Defense Forces
CPA	Comprehensive Peace Agreement
DLF	Darfur Liberation Front
FMLN	Farabundo Marti National
FUC	Front Uni pour le Changement
JEM	Justice and Equality Movement
ICCPR	International Covenant on Civil and Political Rights
NIF	National Islamic Front
NHRC	National Human Rights Commission
OHCHR	Office of the High Commissioner for Human Rights
PDF	Popular Defense Forces
PTS	Political Terror Scale
RUF	Revolutionary United Front
SLPP	Sierra Leone People's Party
SCSL	Special Court for Sierra Leone
SFDA	Sudan Federal Democratic Alliance
SLA	Sudanese Liberation Army/Movement
SLA/AA	Abdel Wahid led faction of the Sudanese Liberation Army/Movement
SLA/MM	Mini Minawi led faction of the Sudanese Liberation Army/Movement
SPLA	Sudan People's Liberation Army/Movement
UNAMSIL	United Nations Mission in Sierra Leone
UNDP	United Nations Development Programmed
UNIOSIL	United Nations Integrated Office in Sierra Leone

1: Introduction

The region of Darfur is situated in the western half of Sudan (see Appendix A). Sudan has a population of approximately 39 million, of which 68 percent are classified as rural, 32 percent as urban and 7 percent as nomadic.¹ The religious makeup of Sudan is comprised of Islam, which is dominant in northern Sudan, and Christianity and animist religious beliefs, which are largely confined to the southern regions of the country.

Since 2003, the government of Sudan has carried out a devastating campaign of wonton destruction and mass murder in Darfur. As a result of the violence, over 2.5 million of Darfur's 6 million inhabitants have been forced to flee their homes for internally displaced person camps or refugee camps in neighbouring Chad. In September 2004, amidst escalating violence in Darfur, the United Nations Security Council passed resolution 1564, which called for the establishment of a Commission of Inquiry on Darfur. The Commission was tasked with investigating the violations of international human rights law and humanitarian law purported to be taking place in Darfur (see Appendix D). The Commission's report provided a detailed account of the atrocities taking place in Darfur and contained recommendations directed at ensuring accountability for the crimes committed in Darfur. One of the Commission's recommendations called for the establishment of a truth and reconciliation commission for Darfur.²

1.1 Background to the Conflict

The current conflict in Darfur is rooted in a long-standing history of political and economic marginalization experienced by the people of Darfur at the hands of the central government in Khartoum. Since Sudan achieved independence in 1956, the country has vacillated between military regimes and democratically elected governments (see Appendix B). One constant feature of post-independence Sudan has been the persistent neglect and marginalization of Darfur by successive Sudanese governments. An oft-cited criticism of the Sudanese government is that the vast majority of central government spending is directed towards the north of the country, which is where most of the Khartoum-based political elite reside and that regions that lie on the periphery of the Sudanese state receive little in terms of funding and financial investment.³

The marginalization of Darfur at the hands of successive central governments has contributed to the rise of rebel movements in Darfur, whose objective it is to oust the current government of President El-Bashir and put in its place a central governing authority that gives credence to the demands and needs of the regions on the periphery of the Sudanese state.

1.2 Rebel Groups in Darfur

The principle insurgent forces involved in the conflict are the Sudanese Liberation Army/Movement (SLA) and the Justice and Equality Movement (JEM). The SLA is the largest rebel organization operating within Darfur. The need to repair the history of marginalization endured by the people of Darfur is the principle grievance cited by the SLA. The membership of the SLA consists primarily of people belonging to the Zaghawa, Fur and Maasalit tribes. The SLA claim to embrace an inclusionary agenda

that rises above the ethnic divisions of Arab and African and in furtherance of this goal they have sought to recruit Darfurian Arabs into their ranks. In April 2003, the SLA successfully carried out military operations against army installations of the central government, including the capturing of the airport at El Fasher in North Darfur. The intensity and ferociousness of the response by the Sudanese government to the growing insurrectionary movement in Darfur indicates how seriously the central government viewed the threat posed by the SLA.

The Sudanese government's military response in Darfur has had a devastating impact on the SLA. The heavy-handed response of the Sudanese government contributed to the fracturing of the SLA along tribal lines. The Fur factions of the SLA, which suffered heavy losses during the Sudanese government offensive in Darfur, grew increasingly inclined towards supporting peace negotiations with the Sudanese government. In contrast, the Zaghawa factions of the SLA remained resolutely opposed to the idea of negotiating with the government of Sudan. A leadership quarrel hastened the fractionalization of the SLA, such that two factions began to emerge, a Zaghawa-led SLA under the leadership of Mini Minawi and a Fur-led SLA under the leadership of Abdel Wahid.⁴

The second major Darfur –based rebel movement is the Justice and Equality Movement (JEM). The JEM emerged in 2001 and is led by Dr. Khali Ibrahim. The JEM has a relatively narrow support base that is comprised primarily of the Kobe branch of the Zaghawa tribe. The military capabilities of the JEM pale in comparison to those of the SLA, but the JEM have proven to be more skilful in the political realm. In 2001, the JEM authored and distributed a manifesto, referred to as the “Black Book.” The Black

Book contends that successive post-independence governments in Sudan have sought to economically and politically marginalize Darfur.⁵ The arguments contained within the Black Book are intended to appeal to a cross-section of Sudanese society, including those of Arab, Afro-Arab and African descent, as well as Christians and Muslims.⁶

1.3 Government Forces and the Janjaweed

Sudanese armed forces along with groups of Arab militias, popularly known as Janjaweed, are widely seen as responsible for the vast majority of abuses committed in Darfur since the beginning of 2003. The Janjaweed are the most recent manifestation of a well-established strategy of the Sudanese government to encourage the mobilization of Arab fighters in order to suppress burgeoning rebel movements. For instance, during the 1969-1985 Jaafar Mohammed an-Nimeiri and 1986-1989 Sadiq el-Mahdi regimes, the Sudanese government armed local Arab militias of the Rizeigat tribe in southern Darfur and of the Misseriya in southern Kordofan to fight against the Sudan People's Liberation Army (SPLM) of southern Sudan. As the Sudanese government became cognizant of the increasing threat posed by the rebel movement in Darfur, they petitioned a number of Arab tribes to assist them in their fight against the rebels⁷ (see Appendix E). A number of tribal leaders answered the calls of the government and began organizing militias and recruiting fighters.

The final report of the International Commission of Inquiry on Darfur contains a considerable amount of information on the organization and structure of the Janjaweed. Importantly, the report notes that within the conflict in Darfur there are essentially three different types of Janjaweed fighters, each classified on the nature of their relationship with the central government. The first category of Janjaweed includes groups who received support, including weapons, from the government of Sudan, but were otherwise only loosely affiliated with the government. The second category of Janjaweed, include militias that operate in close proximity

with the government's armed forces and are often headed by individuals whose tribal identities are closely affiliated with those of leading Sudanese military officers.⁸ The third category of Janjaweed includes members of the Popular Defence Forces (PDF) and Borders Intelligence Unit, which are state institutions established under Sudanese law.

2: Policy Problem

The International Commission of Inquiry recommended the establishment of a truth and reconciliation commission for Darfur once the conflict in the region is brought to an end. The creation of such a truth and reconciliation commission is the policy problem that will be addressed in this analysis. Although all truth commissions have similar overarching objectives, namely to uncover the truth and foster reconciliation, the form and structure of a truth commission has to be uniquely suited to the post-conflict setting in which it is to be implemented. For instance, a truth commission established in a transitioning state where a former dictatorial regime has been completely removed from power will have different attributes and characteristics than a truth commission instituted in a country where a conflict has been brought to an end by way of a power sharing agreement between rebel forces and the government. When seeking to construct a truth commission model for post-conflict Darfur one must be cognizant of a variety of political and socio-economic factors at play in Darfur. A truth and reconciliation commission can only be established in Darfur once the conflict comes to an end. As a result, it would be prudent at this point to provide a brief overview of the prospects for peace in Darfur.

3: Prospects for Peace

In May 2006, the Darfur Peace Agreement (DPA) was signed in Abuja, Nigeria between the government of Sudan and the Minni Minawi led faction of the SLA (SLA/MM). Many of the rebels, including JEM and the Abdel Wahid led faction of the SLA (SLA/AA), believed that the DPA favoured the government, and therefore refused to sign the agreement.⁹ Ultimately, the DPA proved unsuccessful at bringing about a cessation of hostilities in Darfur. The failure of the DPA to bring lasting peace to Darfur can be attributed to a variety of factors. First, frustrated by the lack of willingness of the rebels and the Sudanese government to concede any ground, the United Nations and the African Union (AU) practiced, what has been referred to as ‘deadline diplomacy’ in a desperate effort to compel the parties to finalize a peace agreement.¹⁰ These efforts resulted in a flawed agreement that disproportionately favoured the government of Sudan because the AU mediators were cognizant of the fact that if the agreement did not win the approval of the Sudanese government then there would be no agreement for the rebels to sign.¹¹ Second, the fragmentation of the rebel movement in Darfur severely debilitated the Abuja negotiations. Throughout the course of the Abuja talks, discord between the various rebel groups in Darfur was rife. The SLA was embroiled in a leadership dispute and there was distrust among SLA supporters with regards to JEM and its perceived Islamist stance.¹² The disunity among Darfur’s rebel groups resulted in an inability on the part of the rebel movement to present a unified and cohesive stance at Abuja. Furthermore, the government of Sudan aggravated the schisms within the rebel

movement by co-opting certain rebel groups, such as the SLA/MM. In fact, after the signing of the DPA, the SLA/MM fought alongside the government in their counterinsurgency campaign against the SLA/AA and the JEM.¹³ Third, the lack of an international consensus on how to deal with Darfur hampered efforts to negotiate an end to the conflict. As of 2005, the United States and Europe had adopted distinctly different approaches to the resolution of the conflict in Darfur.¹⁴ Moreover, the influence that the United States was willing to exercise over the Abuja talks began to wane as they became increasingly consumed with the war in Iraq. Meanwhile, China, who has large economic interests in Sudan, proved willing to employ stall tactics within the Security Council for the benefit of the Sudanese government.¹⁵

A number of recent developments spur optimism that an end to the conflict in Darfur may be foreseeable at some point in the near future. Of most importance has been the policy shift exhibited by China on the issue of Darfur. China's engagement on the Darfur question has shifted from a stance characterized by inertia and passivity to one characterized by active engagement and mediation. A number of revelations prompted a shift in Chinese policy towards Darfur, which included an increasing awareness among the Chinese that the conflict in Darfur had the potential to negatively affect China's economic interests in Sudan.¹⁶ The mediation efforts of the Chinese government were crucial to securing the consent of the Sudanese government for the deployment of the joint AU/UN peacekeeping force in Darfur. In addition, the internal tensions that plagued the rebel movement during the Abuja negotiations have been quelled to a certain extent. In fact, a number of smaller rebel groups have joined forces under the banner of the United Front for Liberation and Development (UFLD), who along with the SLA/AA

and JEM comprise the mainstream rebel movements currently operating in Darfur.¹⁷

Lastly, as a result of pressure from the Chinese government, international persistence and the threat of new sanctions, such as a no-fly zone, the Sudanese government has slowly begun to soften its position on a number of matters, including the deployment of a joint AU/UN force in Darfur.¹⁸ The abovementioned developments may pave the way for the resolution of the conflict in Darfur and the institution of a comprehensive peace accord.

4: Literature Review

4.1 Transitional Justice – Generally

Societies appealing for the institution of transitional justice mechanisms are united by a common objective, which is that they are all seeking to come to terms with a traumatic and disturbing history.¹⁹ Mark Freeman, a director at the International Center for Transitional Justice, has identified four important mechanisms through which the objectives of transitional justice are often pursued, they include:

1. *Trials* – whether civil or criminal, national or international, domestic or foreign;
2. *Fact-finding bodies* – whether truth commissions or other similar national or international investigative bodies;
3. *Reparations* – whether compensatory, symbolic, restitutionary or rehabilitative in nature;
4. *Justice Reforms* – including legal and constitutional reforms, and the removal of abusers from public positions through vetting or lustration procedures.

A variety of factors, specific to each transitional justice setting, must be taken into consideration when seeking to determine the most appropriate mechanism(s) of transitional justice to employ in a given circumstance. For example, the urgent prosecution of persons deemed responsible for having committed acts of violence would not be feasible in a country, such as El Salvador, where the judiciary was widely viewed as succumbing to political pressure throughout the country's decade long civil war. It is critical to bear in mind that although the concept of transitional justice is not so nuanced as to avoid classification and categorization, the choice and design of a transitional justice process has to be tailored to suit the unique features of each post-transitional setting.

That being said, previous examples of transitional justice can provide valuable lessons to countries seeking to come to terms with a history tainted by extreme violence and repression.

Many theorists have referred to the need to think of transitional justice as a multi-faceted concept that is made up of a number of complimentary components. In this regard, it is important to recognize that the various mechanisms of transitional justice are not mutually exclusive, but in fact when implemented correctly have the capacity to complement one another.²⁰ For example, within a transitional setting, criminal trials and truth commissions both have an integral role to play in assisting a society recover from the trauma of mass abuse. These mechanisms can operate concurrently within a transitional setting, but as the experience in Sierra Leone teaches us, their respective roles must be clearly spelled out and their relationship clearly defined so as to avoid any conflict or uncertainty.

4.2 Truth Commissions – Specifically

4.2.1 Truth Commissions - Defined

According to Priscilla Hayner, a renowned expert on truth and reconciliation processes, a truth commission can generally be defined as a provisional body that has the following attributes: (1) only examines past events; (2) investigates patterns of abuses committed over a designated period of time; (3) submits a final report containing their findings and proposed recommendations; and (4) is officially authorized and endorsed by the state.²¹ In his book entitled “Truth Commissions and Procedural Fairness”, Freeman adds a number of additional characteristics, which he contends are critical to developing a

precise understanding of truth commission processes. Supplementing Hayner's definition, Freeman states that truth commissions share the following characteristics: (1) as commissions of inquiry, their primary function and focus is to investigate severe acts of violence and repression; (2) they concentrate on abusive acts that took place during recent episodes of armed conflict; (3) they offer an "account of the broad causes and consequences" of the abuses that took place; (4) they focus on abuses that took place in the state in which the commission is established; (5) they are victim-centred bodies; and (6) they operate independently from the state.²²

4.2.2 Truth Commissions and the Right to Know the Truth

The legal justification for processes aimed at unearthing the truth, such as truth commissions, is rooted in the notion that there exists a right to know the truth. The Inter-American Court of Human Rights was one of the first adjudicative bodies to clearly articulate the obligations of states regarding the right to truth. The court in its ruling in the case of *Velasques Rodriguez v. Honduras* (1988) held the following:

"The state has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation."²³

More recently, the right to know the truth has been explicitly referred to in a number of U.N. declarations. For example, the U.N.'s Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity makes reference in Principle 2 to an inalienable right to the truth stating:

"Every people have the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and

reasons that led, through massive or systematic violations, to the perpetration of those crimes.”²⁴

Furthermore, in 2005, the U.N. Commission on Human rights passed a resolution entitled, “The right to the Truth.” The resolution emphasizes the imperative obligation of societies to:

“Recognize the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families, within the framework of each State’s domestic legal system, to know the truth regarding such violations, including the identity of the perpetrators and the causes, facts and circumstances in which such violations took place.”²⁵

The growing recognition of the existence of a right to truth is an important development in the field of transitional justice and provides legal backing to the pleas for truth discovery that are often made within societies transitioning out of a period scarred by widespread violence and repression.

4.2.3 Purpose of a Truth Commission

A country emerging from a period marked by large scale abuses and violence may decide to establish a truth commission for a number of reasons. First, the most apparent and obvious objective of a truth commission is to establish an accurate and complete record of the period in a country’s history that the commission has been mandated to investigate.²⁶ In effect, a truth commission provides a country with an opportunity to tear away the muzzle that has silenced public discussion of a country’s history and usher in a new era of enhanced public scrutiny and debate.

Second, a country emerging from a period marred by large-scale human rights violations would be well-advised to institute a system of transitional justice, such as a truth commission, that prioritizes the needs and desires of victims. A truth commission, if designed and instituted properly, has the capacity to serve the interests of victims in a

variety of ways. For instance, Hayner points out that truth commissions' proceedings provide victims with a forum through which they are able to recount their experiences of victimization and provide the general public with an understanding of the abuses that were inflicted upon many citizens.²⁷ A truth commission may also provide assistance to victims by, for example, recommending that a reparations program be established to compensate victims and their families.²⁸

Third, truth commissions are uniquely situated to provide an impartial evaluation of what individuals and institutions bare responsibility for acts of violence and are able to suggest recommendations aimed at ensuring that a society does not relapse into violence.²⁹ Truth commissions have the potential to contribute a great deal to the processes of reconciliation and justice in transitional settings; however, their success is largely contingent upon the contexts in which they are established and expected to conduct their work.

4.2.4 The Suitability of a Truth Commission

Truth commissions are likely to be more successful and constructive in certain transitional justice settings as compared to others. Yasmin Sooka, who was a member of the Truth and Reconciliation Commission in South Africa and was appointed by the U.N.'s Office of the High Commissioner for Human Rights to be one of the three international commissioners on the Truth and Reconciliation Commission in Sierra Leone, has devised a list of circumstances in which she contends a truth commission should be seen as an appropriate means by which to address issues of transitional justice. First, Sooka points out that the manner by which a conflict is brought to an end plays a very important role in determining which transitional justice mechanisms to employ. A

conflict that has come to an end as a result of a peace agreement, brokered between the warring parties, is often deemed an appropriate setting in which to establish a truth commission.³⁰ In contrast, the introduction of criminal justice measures may be a more practical and suitable endeavour in a context in which one side has managed to achieve a military victory over opposing forces.³¹

Second, if perpetrators wield a considerable amount of power and influence in the post-conflict state certain transitional justice mechanisms, such as criminal prosecutions, may not be implementable. On the other hand, those in positions of power who have been accused of committing abuses may be amenable to the notion of establishing a truth commission.³² Nevertheless, officials within the military and other security institutions, who have retained their positions in the post-conflict state, may fear being implicated in the findings of the truth commission, and thus will still likely seek to obstruct various aspects of the commission's work.³³

Lastly, the success of any truth commission rests heavily on the public's acceptance of and engagement with the commission. Thus, only if there is widespread public support for its establishment should a truth commission be regarded as a suitable means by which to pursue transitional justice initiatives.³⁴

Clearly, the design and operation of a truth commission is greatly influenced by the environment in which the commission conduct its work. Factors, including the nature of the underlying conflict and the state of the country's legal and political system, will weigh heavily on the minds of those tasked with designing a truth commission for a state in transition.

4.2.5 Potential Benefits of Truth Commission Proceedings

There are a number of tangible and intangible contributions a properly constructed and managed truth commission can make within a society seeking to emerge from the shadows of war and bloodshed. First, truth commissions tend to be victim-centered bodies, and as such carry a host of potential benefits for victims. For instance, by creating a common narrative of a country's troubled past, truth commissions have the capacity to put to rest many of the myths often propagated about an unsettling period in a country's history.³⁵ The South African Truth and Reconciliation Commission was able to dispel the prevailing view among many white South Africans that the state had not been involved in the commission of gross human rights violations against the country's black population.³⁶ The development of this common narrative contributes greatly to a victim's sense of public acknowledgement of the abuses inflicted against them. In addition, a truth commission is uniquely tailored to acknowledge the pain inflicted upon scores of victims and has the capacity to propose measures aimed at seeking to improve the quality of victims' lives.³⁷ For example, the institution of a reparations program is often seen as constituting a formal recognition of the torment inflicted upon victims and a means by which to restore or to improve the quality of victims' lives.³⁸

Second, though truth commissions are not adjudicatory bodies, there are a variety of ways in which a truth commission can indirectly augment the prospects for justice in a transitioning country. A truth commission can most directly advance the cause of justice by forwarding all the information it has collected over the course of its operations to the appropriate prosecutorial authorities.³⁹ The detailed evidence of human rights violations compiled by truth commissions can prove to be an invaluable and reliable source of

evidence for prosecuting authorities, both domestically and internationally. For instance, the truth commission report in Chile was heavily relied on by Spanish judge, Baltasar Garzon, in his efforts to bring charges against former Chilean dictator Augusto Pinochet.⁴⁰ In addition, Hayner contends that there are a number of indirect ways in which a truth commission can contribute to the advancement of justice in a transitional setting. For instance, as an independent and autonomous entity, a truth commission occupies a privileged position within the transitional state, which allows it to legitimately and critically assess the role various institutions, such as the judiciary, played throughout the period under investigation. In fact, Hayner maintains that truth commissions are uniquely suited to detail and assess the responsibility the judicial system must bear for tolerating and sanctioning abuses committed by the governing authorities.⁴¹

Third, truth commissions have the ability to raise the public's awareness of crimes, such as rape and other forms of sexual violence, endured primarily by women. Truth commissions have not always been diligent at documenting the abuses suffered by women during periods of conflict. The lack of adequate attention afforded to crimes of rape and other forms of sexual violence within many truth commissions can be attributed to a variety of factors. To begin with, victims of rape and sexual abuse are stigmatized within many societies, and thus female victims are understandably hesitant to come forward and report incidences of sexual violence.⁴² Furthermore, many truth commissions are set up in a manner that is not conscious of the needs of female victims of sexual violence. For example, the Commission on the Truth in El Salvador detailed a prominent case involving the deaths of three U.S. nuns and one lay worker, but chose not to report the fact that the all four of the victims had been raped prior to being killed by

government soldiers. The Commission sought to justify this glaring oversight by arguing that, in their opinion, the act of rape did not fall within their mandate of investigating politically motivated crimes.⁴³ The debate over whether rape and other forms of sexual abuse fall within the ambit of politically motivated crimes has now been largely settled. International legal instruments, such as the *Rome Statute of the International Criminal Court*, explicitly recognize that instances of rape and sexual abuse can constitute war crimes or crimes against humanity in certain circumstances.⁴⁴

Recent truth commissions have proven much more adept at documenting and reporting incidences of sexual violence. For instance, the South African Truth and Reconciliation Commission established a series of women-focused hearings where female deponents were permitted to give testimony in private hearings with complete anonymity before a panel of female commissioners.⁴⁵ Clearly, truth commissions have become increasingly aware of the critical role they have to play in documenting and reporting the trauma suffered by female victims of rape and sexual abuse.

5: Methodology

The methodology used in this study consists of two components: a case-study analysis and an elite interview process. The case-study segment of the analysis will contain an in-depth review of truth commissions implemented in two different countries. A set of dependent variables have been selected as a means to determine why one truth commission was more successful than the other. The dependent variables were modelled on factors identified in the literature as being appropriate criteria for measuring the success of truth commission processes. A series of independent variables were selected in order to explain any variability in the dependent variables. Each of the independent variables has been identified within the transitional justice literature as having a substantial impact on the outcomes of truth commission processes. An elite interview process was used to gather information on each of the case study countries, to determine the soundness of the dependent and independent variables, and to judge the appropriateness of the policy options presented at the end of the paper.

5.1 Dependent and Independent Variables

The dependent and independent variables that will be utilized in this study were selected after a rigorous and exhaustive examination of the literature on transitional justice. The dependant variables in this analysis are measures of success for truth commissions. The independent variables consist of various components of truth commissions that the literature indicated were factors in the success of truth

commissions. Table 6.1.1.1 contains a summary overview of the hypothesized relationship between the dependent variables and each independent variable.

5.1.1 Dependent Variables

The dependent variables that will be used in the course of this study will be categorized and defined in the following manner:

- a) The degree to which the commission's final report provides an accurate and thorough record of the conflict and abuses committed during the course of the conflict. The accuracy and thoroughness of the final report will be measured by assessing whether or not the commission's final report accounts for abuses committed by all parties involved in the conflict.
- b) The overall impartiality of the Commission. The overall impartiality of the Commission will be measured by assessing the extent to which the commission's commissioners are viewed as being impartial.
- c) The availability and accessibility of the final report produced by the truth commission. The availability and accessibility of the commission's final report will be measured by assessing the efforts engaged in by the commission to make the contents of the final report known to the public.
- d) The degree of political stability in the transitional state since the commission completed its work. Political stability will be measured using the "political terror scale" (PTS) devised by Gibney and Dalton. The PTS codes countries on a scale of 1-5 based on the description of countries found within Amnesty International's and the U.S. State Department's annual country reports. For a complete description of the various levels of the PTS see Appendix H.
- e) The degree to which the core recommendations proposed by each of the truth commissions have been implemented. When making recommendations, truth commissions usually identify a core set of recommendations that they deem require urgent attention. The measure that will be used to assess this variable is

the number of the commission’s core recommendations that have been fully implemented. Various reports and studies completed on the status of the commission’s recommendations will be examined to determine the record of implementation within each case study country.

Table 5.1: Dependent Variables and Measures

DEPENDENT VARIABLE	MEASURE
The accuracy and thoroughness of the commission’s final report.	Does the commission report on abuses committed by all sides involved in the conflict.
Overall impartiality of the commission.	The extent to which the commission’s commissioners are viewed as being impartial.
Public awareness of the commission’s findings.	The efforts engaged in by the commission to make the contents of the final report known to the public.
The degree of political stability in the country since the commission completed its work.	The Political Terror Scale, which codes countries on a scale of 1-5 based on the descriptions found within Amnesty International’s and the U.S. State Department’s annual country reports .
The degree to which the core recommendations proposed by the truth commissions have been implemented.	The number of the commission’s core recommendations that have been fully implemented.

5.1.2 Independent Variables

The following independent variables were identified in the transitional justice literature as being important factors in the success and/or failure of truth commissions processes.

- a) The flexibility of the truth commission’s investigative mandate

The flexibility of the truth commission’s mandate will be measured according to the investigative direction and boundaries contained within the commission’s mandate. Some truth commissions are granted broad investigative mandates that permit the commission to examine a wide variety of abuses.⁴⁶ For example, the South African truth

and reconciliation commission was given a mandate that sanctioned the investigation of an expansive array of abuses, including murder, torture, threats, racially motivated attacks, and instances of gross discrimination.⁴⁷ In contrast, in other transitional contexts the framers of a commission's mandate may wish to restrict the scope and nature of abuses to be investigated by the commission. For instance, the Argentine National Commission on the Forced Disappearance of Persons operated under a very restrictive mandate that was confined exclusively to the investigation of disappearances alleged to have been committed by the security forces from 1976 – 1983.⁴⁸

b) Budget allocated to the truth commission

The budget of the truth commission will be assessed using figures provided in the commission's final report. Many truth commissions have encountered some form of budgetary shortfall during the course of their operations. These funding shortages can have a significant impact on a truth commission's work. For instance, a truth commission may seriously circumscribe the amount and nature of cases it intends to investigate because of budgetary limitations.

c) Public involvement in the appointment of commissioners

The measure for this variable will involve an assessment of the degree of public involvement in the procedures selected for the appointment of commissioners to the truth commission. The process adopted to appoint commissioners has a tangible impact on public attitudes towards the commission and its work. For instance, an appointment process that is heavily dominated by the political executive of the transitional state may be seen, in some instances, to compromise the impartiality of the truth commission. A growing understanding and appreciation of the fact that the appointment process is

intimately tied to public perceptions of the truth commission have led to the adoption of appointment techniques that actively engage the public. In fact, a number of truth commissions have conducted extensive consultations with members of the public in their effort to recruit commissioners.

d) The truth commissions use of public hearings

The measure for this variable will be the proportion of truth commission hearings conducted in public. In general, since truth commissions are engaged in the business of public truth telling it is reasonable to assume that truth commissions should strive to conduct the majority of their hearings in public. Freeman has identified a number of potential benefits that stem from the use of public hearings, some of which are described below. First, public hearings provide victims with an unprecedented public platform through which they are able to communicate their experiences.⁴⁹ Second, the public nature of such hearings can engender greater sympathy for victims and help galvanize public support for a variety of justice, reparation and reform related initiatives.⁵⁰ Third, in countries where a significant proportion of the population is illiterate, public hearings can assist in broadcasting the work of the commission to the public.⁵¹ While there are a number of advantages to holding public hearings, they may not be feasible or appropriate in all circumstances. Freeman contends that the security situation in some transitional countries may be so tenuous that victims cannot be expected to come forward and provide testimony in a public hearing.⁵² Furthermore, a truth commission may permit victims belonging to particularly vulnerable groups, such as women and children, or deponents who have legitimate security concerns to provide their testimony within a private hearing.

e) Engagement between civil society groups and the truth commission

The measure for this variable is the extent to which the truth commission seeks to engage the NGO community. Truth commissions often work in close cooperation with and seek the assistance of a wide variety of domestic and/or international non-governmental organizations (NGOs). The pool of trained and qualified staff provided by NGOs can prove to be an indispensable source of knowledge and expertise for truth commissions operating within a transitional context ravaged by war, deprivation and judicial and political incompetence. For example, members of NGOs occupied key positions, including senior staffing positions, within Argentina's National Commission on the Disappeared.⁵³ Furthermore, some commissions have relied heavily on NGOs to enhance public awareness about their mandate and inform the public about the contents of their final reports. On the other hand, some truth commissions have purposely avoided developing strong ties with NGOs over concerns that too close of a relationship between themselves and NGOs may colour the impartiality of the commission.

f) The naming of perpetrators by the truth commission

A number of truth commission mandates, including those in El Salvador and South Africa, empowered the commission to name individuals responsible for human rights abuses.⁵⁴ There has been considerable debate over the question of permitting truth commissions to include the names of perpetrators within their final reports. On the one hand, those against naming names argue that due process requirements necessitate that persons accused of crimes be afforded the opportunity to defend themselves prior to any pronouncement regarding their guilt.⁵⁵ On the other hand, those in favour of naming names contend that in order to provide a full and accurate account of the truth, a

commission must include the names of perpetrators where there is clear evidence pointing to their guilt.⁵⁶ The measure for this variable will be based on whether or not the commission's final report includes the names of alleged perpetrators.

- g) Extent to which political leaders acknowledged and apologized for the abuses that were committed

The recognition by political leaders of the violence that was inflicted upon innocent individuals can serve an important symbolic purpose. For example, the offering of an official apology by the President of a transitioning state has the capacity to set in motion the processes of truth telling and reconciliation and nurture a sense of stability within the transitioning state. This measure for this variable will require ascertaining whether or not the political leaders in the case study countries offered an official apology to their respective citizenry's.

- h) Security provided to persons who testified before the commission

In many transitional settings, a tenuous political and security environment may undermine the public's willingness to come forward and provide testimony to a truth commission. Consequently, a truth commission may see the need to enact certain measures that are intended to protect the identity and ensure the safety of persons who provide testimony to the commission. The measurement for this variable will require an assessment of the security measures in place to ensure the protection of persons who provide testimony to the commission.

- i) Legal status of recommendations

A legal obligation may be imposed on the government to ensure that the recommendations proffered by a truth commission are indeed implemented. This legal

obligation may be found within the mandate of the commission or may be included in a peace agreement that provides for the establishment of the truth commission.

Table 5.2: Independent Variables and Measures

INDEPENDENT VARIABLE	MEASURE
The flexibility of the commission's investigative mandate	The level of generality and flexibility contained within the commission's mandate
The financial standing of the commission	The budget provided to the commission.
Public involvement in the appointment of commissioners.	Does the process for appointing commissioners engage the public.
Use of public hearings.	The proportion of commission hearings conducted in public.
Engagement with civil society groups	The degree of engagement between the commission and NGOs.
The naming of perpetrators	Whether or not the commission's final report includes the names of perpetrators.
Extent to which political leaders apologize for abuses committed during the conflict	Whether or not political leaders offer an official apology to the citizens of the transitioning state.
Security provided to persons who testified before the commission.	What type of security measures are in place to ensure the safety of persons who provide testimony to the commission.
Legal status of recommendations.	Is there a binding legal commitment placed on the government to implement the commission's recommendations.

Table 5.3: Hypothesized Relationships between Dependent and Independent Variables

	Accuracy and thoroughness of final report	Overall impartiality of the commission	Public awareness of commission findings	Political Stability	Implementation of commission's core recommendations
Flexible mandate	+				
Size of budget	+		+		
Public involvement in the appointment of commissioners		+			

Use of public hearings			+		
NGO engagement	+	-	+		+
Name names	+	-		-	
Witness security	+				
Apology from political leaders			+	+	+
Legally Binding Recommendations					+

The use of “+” indicates a positive relationship between the variables.
The use of “-“ indicates a negative relationship between the variables.

5.2 Rationale for Case Study Selection

Truth commissions are employed by countries seeking to come to terms with a past marred by appalling human rights violations. The list of possible truth commissions to be included in this study was narrowed down on the basis of a number of considerations. First, truth commissions that either failed to submit a final report or submitted their final report on or after January 2005 were not considered suitable case study candidates. Many transitional justice theorists argue that when assessing the successes and failures of a truth commission one should allow a reasonable amount of time to have passed from the date on which the truth commission submitted its final report. The list of truth commissions deemed ineligible because of the date on which they issued their final report or for their failure to submit a final report included the commissions established in East Timor, Ghana, Bolivia and Algeria (for a full list see Appendix F).

Second, truth commissions whose mandates were limited to identifying cases of alleged disappearances and/ or determining the whereabouts of persons declared as disappeared were deemed not to be appropriate case studies. Any truth commission

instituted in Darfur should be provided with a mandate that permits the examination of the whole range of atrocities committed during the course of the conflict. Potential case study countries eliminated based on this criterion included Argentina and Chile (for a full list see Appendix F).

Third, the likelihood that the conflict in Darfur will end by way of a peace agreement meant that the conflict in any potential case study country should have also come to an end through the signing of a peace agreement. As a result, truth commissions established in countries, such as Uruguay and Chad, where those alleged to have committed the vast majority of abuses had been completely removed from government were not considered suitable case studies for the purposes of this analysis.

The criteria listed above, considerably reduced the amount of possible case study countries. The commissions established in El Salvador, Guatemala and Sierra Leone all possessed the necessary attributes to be deemed appropriate case study countries. In all three of these countries a truth commission was established following the signing of a peace agreement between rebel groups and the government. In addition, in each of these countries, persons widely implicated in the perpetration of abuses, remained in or acquired positions of political power within the newly configured transitional government. The Guatemalan commission was modelled largely along the lines of the Salvadoran commission; thus, only the latter was chosen for the case study analysis. Sierra Leone's Truth and Reconciliation Commission was also selected for the case study analysis. Although the Sierra Leonean Commission submitted its final report fairly recently it was still deemed the most suitable candidate among the truth commissions listed in Appendix H. The timing of the release of the Sierra Leonean Commission's

final report was not considered as significant a factor as some of the other criteria identified above, such as the requirement that conflict that led to the establishment of the truth commission be resolved through the signing of a peace agreement. Furthermore, the variable dealing with the status of the truth commission's recommendations is the only dependent variable whose analysis would likely be enriched with the passage of time. Fortunately, a recent study released by the Human Rights and Law Section of the United Nations Integrated Office in Sierra Leone (UNIOSIL) provides a detailed status update on each of the recommendations submitted by the Truth and Reconciliation Commission.

5.3 Case Studies

5.3.1 El Salvador

For over a decade, the El Salvadoran government was embroiled in a violent civil war against the Farabundo Marti National (FMLN), a leftist guerrilla organization. The El Salvadoran conflict was essentially a class war, fuelled by pervasive economic inequality and a fraudulent and corrupt political elite.⁵⁷ The Salvadoran government, with the assistance of its paramilitary allies, orchestrated a brutal counterinsurgency campaign bent on eliminating the leftist threat. The government and its allies used a variety of cruel and egregious tactics throughout the duration of the conflict, including torture, forced disappearances, assassination, massacres and forced displacement.⁵⁸ The most infamous acts of brutality orchestrated by the government during the war, included: the death squad assassination of Archbishop Oscar Romero in March 1980; the rape and murder of four U.S. churchwomen by National Guardsmen in December 1980; the infamous "El Mozote" massacre of hundreds of unarmed civilians in December 1981;

and the killing of six Jesuit priests in November 1989.⁵⁹ The FMLN also employed tactics, such as assassinations, that violated international legal principles.⁶⁰ It has been estimated that over the course of the conflict (1980 – 1991) approximately 1.4 percent of the Salvadoran population was killed.⁶¹

In January 1992, the U.N. brokered a peace accord between the Salvadoran government and the FMLN. The peace accord included provisions providing for the establishment of a Commission on the Truth. Also, the peace accord did not usher in a new government; rather, the government tasked with overseeing the transition was the same right-wing government that had led the violent counterinsurgency campaign during the closing years of the war.⁶²

5.3.2 Sierra Leone

Sierra Leone was embroiled in a ten-year civil war that was marked by the commission of appalling atrocities. In March 1991, rebel forces from the Revolutionary United Front (RUF) began waging a war on the government of Sierra Leone. The leaders of the RUF were dissatisfied with the corrupt governing regime in Freetown and were disenchanted with the socio-economic inequalities that marred Sierra Leonean society.⁶³ The RUF were joined in their struggle against the government by the Armed Forces Revolutionary Council (AFRC), which was comprised largely of former soldiers of the Sierra Leone Army.⁶⁴ On the other side of the conflict, the government of Sierra Leone were aided in their fight against the RUF and the AFRC by the Civil Defense Force (CDF). The CDF was an armed militia group that was created by the government, whose stated purpose was to provide local security for the people of Sierra Leone.⁶⁵ The RUF and the AFRC were widely indicted for committing the most egregious abuses during the course of the conflict, which included deliberate amputations, mass rape, torture and the forced enlistment of children into combat roles.

The conflict in Sierra Leone engendered an almost incomprehensible level of abuse and misery, with an estimated 50,000 – 75,000 persons dead, two million displaced, tens of thousands of women and girls raped and/or forced into sexual slavery, approximately 4,000 victims of purposeful amputations and thousands of forcibly recruited child soldiers. After several failed attempts to bring a halt to the fighting, a peace agreement between the government of Sierra Leone and the RUF was finally agreed to in Lome, Togo on July 7, 1999. Article XXVI of the Lome Peace Accord called for the establishment of a Truth and Reconciliation Commission within 90 days of the signing of the agreement.⁶⁶

6: Case Study Analysis: Sierra Leone

In this segment of the analysis, each of the dependent and independent variables will be analyzed in the context of the Truth and Reconciliation Commission established in Sierra Leone.

6.1 Dependent Variables

6.1.1 Did the Commission Compile an Accurate and Thorough Record of the Conflict

In an attempt to compile an accurate record of abuses committed during the conflict, Commission staff sought to take statements from a geographically disperse set of victims. While the initial goal of the Commission was to take statements in every chiefdom, this proved to be impractical. The Commission did manage to collect statements in 141 of the 149 chiefdoms, as well as in Gambia, Guinea and Nigeria.⁶⁷ The Commission succeeded in documenting the suffering of a geographically disperse cross-section of men, women and children in Sierra Leone. Of the statements provided to the Commission, roughly one-third of the statements were given by women, while men accounted for approximately two-thirds of statements given to the Commission.⁶⁸ In terms of the ethnic make-up of those who provided statements to the Commission, 44.3 percent of all deponents belonged to the Mende ethnic group and 20.5 percent belonged to the Temne ethnic group.⁶⁹ The remaining statements were given by deponents belonging to a range of smaller ethnic groups.

Volume 2 of the Commission's final report provides an account of the violations and abuses of international human rights and humanitarian law committed by all the warring factions, including: the RUF; the Sierra Leone Army (SLA); the National Provisional Ruling Council (NPRC); the Armed Forces Revolutionary Council (AFRC); the Sierra Leone People's Party Government (SLPP); and the Civil Defence Forces (CDF).

6.1.2 Overall Impartiality of the Commission

The impartiality of Sierra Leone's Truth and Reconciliation Commission was damaged by allegations that the process for appointing national commissioners was tainted by a lack of transparency and fairness.⁷⁰ For instance, there were claims that the President of Sierra Leone had appointed Jusu-Sheriff as one of the national commissioners despite the fact that the nominating committee had recommended the appointment of another person.⁷¹ Jusu-Sheriff, who had strong ties to President Kabbah and the ruling SLPP, was a source of controversy throughout the duration of the Commission's work.⁷²

6.1.3 Public Awareness of the Commission's Findings

In its final report the Commission documents both its successes and failures in disseminating the final report to the public of Sierra Leone and ensuring that the public were knowledgeable about the contents of the report. The Commission acknowledged that its failure to conclude arrangements for the dissemination of the final report prior to its publication hurt subsequent dissemination efforts. The Commission's failure in this regard was not due to a lack of U.N. or NGO willingness to assist in dissemination

efforts. In fact, the final report points out that a number of civil society organizations had been engaged with the Commission in devising a strategy for the dissemination of the final report. Furthermore, a number of meetings had taken place between the Commission and the Human Rights Section of UNAMSIL to establish a framework plan for the dissemination of the final report.⁷³ UNICEF also wished to use the report as an advocacy tool for its programmes and UNICEF representatives met with staff of the Commission to discuss plans for disseminating the final report.

The failure to have arrangements in place for the dissemination of the final report was largely the fault of the Commission, which neglected to accept or support the offers of assistance made by UNAMSIL and a host of NGO's. Fortunately, a number of NGOs did initiate a host of initiatives to distribute the report. First, the NGO WITNESS received independent funding to produce a video version of the Commission's final report. Upon its completion, WITNESS embarked on a campaign to disseminate the video report throughout Sierra Leone and created a dissemination fund to assist them in this regard.⁷⁴ The fund, among other things, was utilized to purchase televisions, VCR's and broadcast equipment.⁷⁵ NGOs toured the country with the video equipment for a few months showing and explaining the contents of the video version of the report.⁷⁶ In addition, one of the major newspapers in Sierra Leone ran various sections of the report for a number of months.⁷⁷ Second, the Commission, with the assistance of the U.N. and other stakeholders, produced a child friendly version of the report that was distributed to various schools throughout Sierra Leone. Third, the U.N. along with other stakeholders has set up consultative workshops and radio programs on the final report, focusing on its findings and recommendations.⁷⁸ In addition, the U.N has been working with the

Ministry of Education to include human rights education into the curricula of schools, which may be used as a venue to introduce elements of the Commission's final report into the education system at all levels.

6.1.4 The Degree of Political Stability in the Country since the Commission Completed its Operations.

Throughout the course of the conflict (1991-1999), with the exception of 1991, Sierra Leone was classified as either a level 4 or 5 country on the Political Terror Scale (PTS). Based on the U.S. State Department's Country Report, Sierra Leone was classified under the PTS as a level 4 country in 1992, 1993, and 1995 and as a level 5 country in 1994, 1996, 1997, 1998 and 1999. Based on Amnesty International's country report, Sierra Leone was classified under the PTS as a level 4 country in 1992, 1993, 1995 and 1997 and as a level 5 country in 1994, 1996, 1998 and 1999. In the years preceding the signing of the Peace Accords and the completion of the Truth and Reconciliation Commission's work, Sierra Leone's ranking on the political terror scale markedly improved. Based on the U.S. State Department's Country report and Amnesty International's country report, Sierra Leone, maintained a level 2 or 3 PTS ranking from 1993-2006, with the only exception being a level 4 PTS classification based on the U.S. State Department's 2003 country report.

6.1.5 Whether or not the Core Recommendations of the Commission's Final Report were Implemented.

In determining whether the core recommendations of the Commission's final report were implemented, I intend to only examine the status of recommendations classified as imperative by the Commission. Only eight of the fifty-nine

recommendations that the Commission deemed imperative had been implemented as of 2007. A further nine of the imperative recommendations had only been partly implemented. While these numbers may look less than impressive it is important to remember that expecting a government to swiftly implement numerous recommendations is unrealistic. Therefore, it is important to examine which recommendations have been implemented and determine whether the government has implemented or failed to implement some of the most critical and significant recommendations.

First, of the implemented recommendations one of the most significant has been the creation of a National Human Rights Commission (NHRC). While the establishment of the NHRC is a significant feat in and of itself, the NHRC, since its inception, has been plagued by a lack of proper financing.⁷⁹ The precarious financial predicament of the NHRC became even more worrisome when the government of Sierra Leone designated the NHRC as the official follow-up committee to monitor implementation of the Truth and Reconciliation Commission's recommendations. Second, the government has abided by the recommendation that a binding code of conduct be established for judges and magistrates. The Code of Conduct for Judges and Magistrates was adopted in 2006.⁸⁰ Third, under the category of recommendations intended to improve the plight and status of women in Sierra Leone, the government has repealed statutory and customary laws that discriminated against women, including those that prevented inheritance and access to land.⁸¹ However, a great deal of efforts needs to be directed towards making the women of Sierra Leone aware of their rights and enforcing new laws, such as the *Domestic Violence Act and the Registration of Customary Marriage and Divorce Act*.⁸²

Fourth, a children's right bill was enacted in June 2007; however, considerable efforts need to be devoted to sensitizing the public about the contents and meaning of the bill.⁸³

The majority of the recommendations classified as imperative by the Commission have not been implemented. First, the Commission's recommendation that representation on the Judicial and Legal services Commission and the Bar of Sierra Leone be broadened has yet to be implemented. Second, the government has failed to abide by a number of recommendations focused on women. For instance, the government of Sierra Leone has not yet ratified the protocol to the African Charter on the Rights of Women and no legislation has been passed that would require political parties in Sierra Leone to ensure that at least 30 percent of their candidates for all public elections are female, as per the Commission's recommendations.⁸⁴ Third, some of the recommendations pertaining to the youth of Sierra Leone have not been implemented. For example, no law has been introduced to ensure that at least 10 percent of political party candidates for all public elections are youth.⁸⁵ Fourth, a number of the recommendations advanced by the Commission concerning the country's mineral resources have not been acted on. For example, the government has failed to abide by the recommendation that it publish a regular and detailed account of how it has allocated the proceeds generated from the diamond industry.⁸⁶ Also, the government has failed to act on the Commission's recommendation that mining license holders who employ children in mining activities have their licenses permanently revoked.⁸⁷ Lastly, the government has failed to heed the Commission's recommendation regarding the ratification of a number of international human rights instruments, including Optional Protocol 2 to the ICCPR and the Optional

Protocol of the Convention on the Elimination of All Forms of Discrimination Against Women (for full list see Appendix E).

It is important to note that the government's record regarding the implementation of the Commission's recommendations has markedly improved since the election of the All People's Congress (APC) and the appointment of the new President, Ernest Bai Koroma in September 2007. President Koroma has publicly pronounced that he will ensure that the recommendations of the Commission are implemented.⁸⁸ In addition, the status of a number of the recommendations depends to a large degree on the findings of the Constitutional Review Commission, which has yet to release a final report. Consequently, a large proportion of the recommendations are identified as being "in progress" by the Human Rights and Rule of Law Section of UNIOSIL, which carried out a status update on the recommendations in 2007.

6.2 Independent Variables

6.2.1 Flexibility of the Commission's Investigative Mandate

Sierra Leone's Truth and Reconciliation Commission was bestowed with a broad and flexible investigate mandate. The fact-finding mandate of Sierra's Leone's Truth and Reconciliation Commission is set out in section 6(1) of the *Truth and Reconciliation Act 2000 (TRC Act)*. The mandate requires the commission to provide an impartial historical account of the violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the outbreak of hostilities in 1991 up until the signing of the *Lome Peace Agreement* on 7 July 1999.⁸⁹ The general reference to "human rights and international humanitarian law" meant that the commission's

investigations were not restricted to gross violations, as was the case with the South African Truth and Reconciliation Commission, nor were they confined to what Schabas refers to as the classic violations of bodily integrity, namely killing, rape, other violent crimes and wanton destruction of property or pillage.⁹⁰ The commission was also bestowed with a broad territorial mandate. Section 6(2)(a) of the *TRC Act* instructed the Commission to investigate the role of both internal and external factors in the conflict. Specifically, the Commission was to examine whether the conflict in Sierra Leone was “the result of deliberate planning, policy or authorization by any government.” In furtherance of this goal, the Commission was empowered to seek out information from victims, witnesses, government officials and other actors in foreign countries.⁹¹ To its credit, the Commission did examine the role played by foreign actors in the conflict, such as Libya’s Muammar Ghadaffi and Liberia’s Charles Taylor.⁹² In addition, the *TRC Act* instructed the Commission to give special attention to the plight of certain victimized groups and certain types of abuses. For instance, s.7(4) of the *TRC Act*, directs the Commission to devote a considerable amount of attention to children, including child soldiers, and to victims of sexual abuse.⁹³

In conclusion, Sierra Leone’s Truth and Reconciliation Commission was conferred with a broad and flexible mandate centred on an exploration of the causes of the conflict and an examination of the human rights violations and abuses perpetrated during the course of the conflict. The Commission interpreted its mandate in a way that permitted it to investigate and report on a wide scope of human rights violations, including economic, social and cultural rights alongside the more traditional civil and political rights involving attacks on bodily integrity and property.⁹⁴

6.2.2 Budget Allocated to the Commission

The Sierra Leonean Truth and Reconciliation Commission was plagued by budgetary shortfalls throughout its lifetime. The precarious financial state of the commission was apparent right from the outset. The United Nations Office of the High Commissioner for Human Rights (OHCHR) initially estimated a budget of \$10 million, which was reconsidered after poor donor response by the international community.⁹⁵ The commission emerged with a new budget of \$6.5 million, but in the end, the commission was only able to secure approximately \$4 million in funding.

A host of factors inhibited the Sierra Leonean Truth and Reconciliation Commission from procuring the level of funding it desired. First, the commission relied on international donors for virtually all of its financing and early donor response from the international community was very weak.⁹⁶ For example, the Commission's inauguration ceremony was postponed by a month to July 2002 because only \$1.1 million in funding had been secured. In fact, over the summer of 2003 the estimated budget of the Commission was reduced to \$6.5 million, which in turn forced the Commission to reduce its staff and activities.⁹⁷ The Commission's unimpressive beginning tainted donor confidence in its activities and negatively affected the ability of the OHCHR to secure funding commitments. Donor confidence in the Commission began to improve once the hearings phase was well underway.

Second, the commission's failure to meet its initial funding estimates can be partly attributed to the establishment of the Special Court for Sierra Leone (SCSL). The Commission and the SCSL, in essence, competed with one another to gain access to the limited amount of funding made available by the international community. The court's

clear mandate to prosecute those who bore the greatest responsibility for abuses, which was explicitly spelled out in Article 1 of its statute, and the fact that it got off to an impressive start and operated efficiently stood in stark contrast to the delays and setbacks that initially plagued the commission.⁹⁸ Other factors that have been cited as reasons for the inability of the Commission to secure the level of funding it desired included donor fatigue and the poor fundraising efforts of the OHCHR.⁹⁹

The Commission's tumultuous funding predicament negatively influenced its operations and activities. In Sierra Leone, public hearings were seen as an important tool in raising public awareness about the commission and its work. However, the Commission was only able to allocate one week for public hearings in each province, with the exception of Freetown, which was allotted more days.¹⁰⁰ The one-week allotment for public hearings in most provinces, only permitted two or three dozen individuals to give testimony before the commission in each province.¹⁰¹ In addition, the Commission lacked the financial resources to pursue measures intended to nurture a sense of political stability within the transitioning state. For instance, the dire financial predicament of the Commission meant that it could not engage in widespread reconciliation efforts. Fortunately, follow-up district support committees operated by the Inter-Religious Council, with funding from the UNDP, facilitated reconciliation efforts throughout the country.¹⁰² Funding uncertainties continued to plague the Commission even as it prepared its final report. In fact, the Commission had to seek funding from UNICEF for the publication of the children's version of its final report and the International Center for Transitional Justice for the publication of the picture version of its final report.¹⁰³

6.2.3 Public Involvement in the Appointment of Commissioners

The Sierra Leonean Truth and Reconciliation Commission was comprised of a mix of international and national commissioners. The Commission's three international commissioners were selected by the U.N. High Commissioner for Human Rights, Mary Robinson. The process for selecting national commissioners was an inclusive one that sought out the participation and opinions of the public. The Special Representative of the U.N. Secretary General in Freetown was appointed in the *TRC Act* as the selection coordinator and was responsible for eliciting calls for nominations from the public to identify candidates for the position of commissioner.¹⁰⁴ In addition, a selection panel was convened consisting of representatives from the two parties of the former armed opposition, the President, the governmental human rights commission, the non-governmental Interreligious Council and a coalition of human rights groups.¹⁰⁵ The panel was responsible for interviewing, ranking and commenting on each of the finalists and presenting their assessments to the selection coordinator, who was tasked with selecting the final four candidates.¹⁰⁶ Both the recommended list of national and international commissioners needed to be forwarded to the President of Sierra Leone for official appointment.¹⁰⁷ The international commissioners were Yasmin Louise Sooka (South Africa), Ajaaratou Satang Jow (Gambia) and William Schabas (Ireland). The national commissioners were Bishop Joseph Humber, Laura Marcus-Jones, John Kamara and Sylvanus Torto.

Despite the consultative nature of the processes used to select commissioners to the Sierra Leone Truth and Reconciliation Commission, there were lingering concerns regarding the impartiality and transparency of the appointment process. For instance,

concerns have been raised over the strong and direct links between some of the national commissioners and the ruling Sierra Leone People's Party.¹⁰⁸ Also, many have questioned the process surrounding the appointment of the Commission's Interim Executive Secretary, Yasmin Jusu-Sheriff. A report from a local newspaper claimed that President Kabbah had pushed through the appointment of Jusu-Sheriff, despite the fact that the nominating committee had apparently recommended another candidate.¹⁰⁹

6.2.4 The Commission's use of Public Hearings

The Sierra Leonean Truth and Reconciliation Commission held hearings in both public and private. The commission regarded public hearings as being crucial to the fulfilment of its mandate. In a country, such as Sierra Leone, where a large segment of the population is illiterate, public hearings were seen as a vital means by which to disseminate the truth to the public in an accessible and comprehensible manner.¹¹⁰ During the public hearings phase, the commission visited each of the 12 districts for a period of one week and held four days of public hearings and one day of private hearings. The public hearings, with the exception of those held in Freetown, were generally well attended. The lack of public attendance at the hearings in Freetown can be attributed to the media coverage, including nightly television broadcasts, devoted to the hearings in Freetown.¹¹¹

Section 8 (1)(c) of the *TRC Act* gave the commission the power "to interview any individual, group or members of organizations or institutions and, at the commission's discretion, to conduct such interviews in private."¹¹² Victims of sexual violence, children under the age of 18 and persons, including ex-combatants, who had legitimate concerns for their safety if they spoke publicly were permitted to testify in closed hearings.¹¹³

Furthermore, the Commission organized special hearings for women, where female victims were able to give their testimony before a private audience comprised entirely of women.¹¹⁴ Interestingly, many female victims of sexual violence demanded and were permitted to give their testimony in public.¹¹⁵ For many of the victims of sexual violence it appeared important to recount their experiences in public in order to counteract the public stigma associated with sexual violence and to reveal the systematic use and prevalence of sexual violence during the conflict and the disastrous toll it wrought on the lives of female victims.¹¹⁶

6.2.5 The Commission's Engagement with Civil Society Groups

The Commission worked in close partnership with a number of NGOs operating in Sierra Leone. The Commission's final report mentions that it established collaborative partnerships with UNICEF, the Centre for the Victims of Torture, the Amputees Association, the Inter-Religious Council and a host of NGOs working with combatants.¹¹⁷ The results of such collaborative efforts included, the Commission's partnership with the NGO WITNESS to produce a one-hour video version of the final report entitled "Witness to Truth."¹¹⁸ In addition, the Commission worked in collaboration with UNICEF to create a children's version of the final report.¹¹⁹ Both of these efforts proved extremely valuable in disseminating the findings of the Commission to the public of Sierra Leone.

The Sierra Leonean Truth and Reconciliation Commission undertook public outreach efforts in collaboration with a number of NGOs in order to spread awareness about the Commission and its operations. In September of 2002, the Commission embarked upon its "Town Hall" phase of activities, in which a commissioner and a group

of volunteers would spend an average of one week in each of the districts, convening meetings with a variety of community and faith based organizations.¹²⁰ During these meetings, the commissioner and the accompanying volunteer staff would inform the participants of the structure of the Commission and its operations, methods and procedures.¹²¹ The objective of the “Town Hall” phase of activities was to cultivate a general sense of understanding about the Commission amongst the public of Sierra Leone, which in turn might spur public participation in Commission processes. The success of this phase of the Commission’s work rested largely on the shoulders of the district officers, who fell under the control of the Ministry of Local Government, because they were expected to inform their communities of the arrival of the Commission staff and organize attendance at the meetings.¹²² While some district officers did an admirable job and succeeded in arranging well attended meetings, others proved woefully inadequate, and therefore sometimes Commission staff would arrive in a community where the inhabitants knew little about their pending arrival.¹²³

6.2.6 The Commission and the Decision to Name Names

In its final report, the Commission discussed how it arrived at a decision on whether to include the names of perpetrators within its final report. The Commission outlined arguments against naming names, which included the lack of time and resources required to conduct the investigations that are needed to identify perpetrators by name.¹²⁴ Another issue that the Commission cited as cautioning against the naming of names was the risk of appearing arbitrary and partial. The naming of individual perpetrators requires lengthy investigations and the gathering of conclusive evidence. The Commission would clearly not be able to investigate and seek to name perpetrators for all the abuses

committed during the course of the conflict. As a result, the Commission feared that according individual responsibility only to certain individuals would open it up to accusations of partiality and arbitrariness.¹²⁵

The Commission listed a number of advantages to including the names of perpetrators in its final report. First, the Commission felt that there existed a strong need to counter the reign of impunity that had prevailed throughout the conflict, which became an even more pressing issue with the inclusion of the amnesty within the Lome Peace Agreement.¹²⁶ Second, the Commission recognized that the naming of perpetrators would offer a degree of vindication to victims and provide an official recognition of the suffering that victims had been forced to endure.¹²⁷ Third, the Commission saw naming names as a means to bring accuracy to the historical record of the conflict and to discredit the many myths surrounding the conflict.¹²⁸ In the end, the Commission decided to include the names of perpetrators within its final report.

In the process of naming perpetrators the Commission employed a standard of proof that was not akin to the proof beyond a reasonable doubt standard used in criminal prosecutions, but was more similar to the balance of probabilities standard. This standard was rigorous enough to ensure that erroneous findings of responsibility and accountability would be very unlikely.¹²⁹ The Commission stated that it only made findings of individual responsibility when “the commission was satisfied that the information or evidence at its disposal pointed overwhelmingly to a particular conclusion.”¹³⁰ The Commission notified persons they intended to levy allegations against and provided them with the opportunity to respond to the allegations in a hearing, an interview or in writing.¹³¹

6.2.7 Security Provided to Persons who Testified before the Commission

The Commission in Sierra Leone was created amidst a tenuous security environment. Many civilians feared that they would be subjected to reprisals if they chose to testify before the Commission. These fears were not unfounded, particularly since large numbers of ex-combatants had been inducted into the Sierra Leonean National Army. The Commission did not have the resources nor the staff to implement a sophisticated witness protection program, as was established in South Africa, to protect those who testified before the Truth and Reconciliation Commission. Permitting the taking of testimony on a confidential basis was the primary tool used by the Commission to protect the identity and safety of deponents.

The Act creating the Commission contained provisions for the taking of testimony on a confidential basis. Section 7(3) of the *TRC Act 2000* states “At the discretion of the Commission, any person, shall be permitted to provide information to the Commission on a confidential basis and the Commission shall not be compelled to disclose any information given to it in confidence.”¹³² Also, article 14(3) of the Commission’s mandate provides that “No member of the Commission or member of staff of the Commission shall make private use of or profit from any confidential information gained as a result of their work in the commission or divulge such information to any other person except in the course of their functions as a member or staff of the commission and any contravention of this provision may result in dismissal from the commission.”¹³³

6.2.8 Extent to which Political Leaders Acknowledged and Apologized for the Abuses that were Committed.

Political leaders in Sierra Leone varied in their willingness to accept responsibility for the conflict and apologize for the abuses committed during the course of the conflict. Leaders of the All People's Congress (APC), which won the most recent Presidential and Parliamentary elections in 2007, apologized to the people of Sierra Leone on numerous occasions for the role they played in inciting the conflict.¹³⁴ At the time the conflict broke out the APC was in power, and many have blamed the repressive tactics employed by the APC during their rule as one of the root causes of the conflict. On the other hand, the Sierra Leone People's Party (SLPP), which governed the country from 1996 to 2007, were considerably less contrite than their APC counterparts. For instance, the former President of Sierra Leone and leader of the SLPP, Ahmed Tejan Kabbah, refused to apologize during the public hearings phase of the Commission's operations, which made headlines throughout the country and was seen as a major setback to the processes of healing and reconciliation in Sierra Leone.¹³⁵ The President failed to appreciate that he was not being asked to apologize for any acts he himself had committed. Rather, the offering of an apology by a head of state is largely a symbolic gesture that can have important socio-political ramifications in the transitioning state.¹³⁶

6.2.9 Legally Binding Nature of Recommendations

The statute creating Sierra Leone's Truth and Reconciliation Commission required the government of Sierra Leone to implement the reforms recommended by the commission.¹³⁷

7: Case Study Analysis: El Salvador

In this segment of the analysis, each of the dependent and independent variables will be analyzed in the context of the Commission on the Truth established in El Salvador.

7.1 Dependent Variables

7.1.1 Did the Commission Compile an Accurate and Thorough Record of the Conflict

El Salvador's Commission on the Truth reported on violations perpetrated by the government, military and the various factions of the FMLN. In the Commission's final report more attention is devoted to the atrocities committed by the government and the military due to the fact that the nature of the evidence received by the Commission tended to implicate government and military forces more often than their counterparts in the FMLN. In fact, the Commission concluded that 95 per cent of abuses were perpetrated by persons affiliated with the government or the military.¹³⁸

7.1.2 Overall Impartiality of the Commission

El Salvador's Commission on the Truth worked diligently to preserve its image of impartiality. For instance, due to objectivity concerns the Commission refrained from including any Salvadorans on the staff of the Commission.¹³⁹ The Commission's image of impartiality was tarnished to a certain degree by accusations that it named perpetrators in an uneven and biased manner. For example, human rights advocates were

disappointed by the fact that the Commission did not include the names of civilian leaders connected to the operation of the death squads, who were widely considered to be financed by El Salvador's right-wing economic elite.¹⁴⁰ In addition, the Commission was criticized for its decision to name persons from only one of the five divisions of the FMLN.¹⁴¹ The Commission defended its decision to name perpetrators from only one of the five sectors of the FMLN on the grounds that it did not have enough evidence to implicate individuals from the other four FMLN groups.¹⁴²

7.1.3 Public Awareness of the Commission's findings

The final report of El Salvador's Commission on the Truth was not widely disseminated and is not widely available in El Salvador even today.¹⁴³ The combination of a government staunchly opposed to the findings of the commission, a political opposition more interested in other features of the peace accords and weak civil society organizations, resulted in the commission's final report never being widely embraced or circulated in El Salvador.¹⁴⁴ In fact, Popkin remarks that only a small constituency of Salvadorans got behind the final report and demanded that the commission's recommendations be implemented.¹⁴⁵

7.1.4 The Degree of Political Stability in the Country since the Commission Completed its Operations

Throughout the course of the conflict (1980-1991), El Salvador was classified as a level 4 or 5 country on the Political Terror Scale (PTS). Based on the U.S. State Department's Country Report, El Salvador was classified under the PTS as a level 4 country throughout the duration of the civil war. Based on Amnesty International's country report, El Salvador was classified under the PTS as a level 5 country from 1980-

1984 and also in 1986, 1987 and 1988 and was coded as a level 4 country in 1985 and from 1989-1993. In the years preceding the signing of the Peace Accords and the completion of the truth commission's work El Salvador's ranking on the political terror scale markedly improved. Based on the U.S. State Department's Country report and Amnesty International's country report, El Salvador has maintained either a level 2 or 3 PTS ranking from 1993-2006. Remarkably, based on Amnesty International's 2002 country report, El Salvador was allotted a level 1 ranking on the political terror scale.

7.1.5 Whether or not the Core Recommendations of the Final Report were Implemented

The Commission asserted that in making its recommendations it was seeking to “establish and strengthen the proper balance of power among the executive, legislative and judicial branches and to institute full and indisputable civilian control over the military, paramilitary, intelligence and security forces.”¹⁴⁶ The Commission identified a set of recommendations that emerged directly from the results of their investigations and which they deemed required urgent implementation. First, the Commission made a number of recommendations in the area of judicial reform. The Commission spoke of the need to drastically reduce the powers vested in the Supreme Court, and in particular the President of the Supreme Court. The Supreme Court exercised monopolistic control over the entire judicial system. The careers of both judges and lawyers depended on the prerogative of the Supreme Court, and thus judges and lawyers were hesitant to take a position against the stance of the Supreme Court.¹⁴⁷ The Commission recommended the immediate removal of the justices currently sitting on the Supreme Court and that control over the supervision and certification of lawyers and judges be taken away from the

Supreme Court. The Commission also recommended that the “National Council of the Judiciary” be accorded the responsibility to evaluate the performance of judges and remove those it found to be unfit.

The judicial reform recommendations put forward by the Commission have only been partially implemented. The Commission’s call for the immediate replacement of the Supreme Court prior to the expiry of the justices’ terms was met with a great deal of disdain and ridicule by the government, who argued that the recommendation contravened the constitution. Nevertheless, Popkin argues that the Commission’s bold demand for the removal of the Supreme Court justices may have served as the impetus for the appointment of an entirely new Supreme Court when the former justices terms expired in June 1994 and for the fact that professional experience featured prominently in the selection process for the newly constituted Supreme Court.¹⁴⁸ The National Judiciary Council, which was formerly seen essentially as an instrument of the Supreme Court, has been reformed and no longer includes representatives of the judicial branch.¹⁴⁹ Under its new enabling legislation, the Council has been given administrative autonomy, but has not been vested with the power to either reprimand or appoint judges.¹⁵⁰ In defiance of the recommendations of the Commission, the power to appoint, transfer and sanction judges’ remains within the purview of the Supreme Court. In addition, the Supreme Court has maintained its supervisory responsibility vis a vis the legal profession in El Salvador.¹⁵¹ Clearly, the judicial reform programme articulated by the Truth Commission has only been partially implemented and to the dismay of many the power over judges specifically and the legal profession generally still remains concentrated within the Supreme Court.

Second, the Commission's recommendations spoke to the urgent need to dismiss members of the armed forces and civil services that had been identified for their involvement in acts of violence during the civil war. The Commission also called for the disqualification of such individuals from holding public office for a period of no less than ten years and a permanent barring of such persons from any activity related to public security or national defence. The government reacted negatively to these recommendations, proclaiming that the Commission had overstepped its mandate. Only those officers who had been identified by the previously established Ad Hoc Commission, which was tasked with identifying military officers responsible for human rights violations and offering binding recommendations for either their transfer or removal, were forced to retire from the military.¹⁵²

A brief mention should be made of the status of some of the other recommendations forwarded by the Commission, which though not classified as requiring urgent attention, were nonetheless crucial to the process of post-conflict reconciliation in El Salvador. First, the government has adhered to the Commission's recommendation that extrajudicial confessions be prohibited as evidence in court. In 1997, extrajudicial confessions were banned through a constitutional amendment.¹⁵³ Second, in terms of reparations, the Commission called for the establishment of a special fund for the purposes of providing material compensation to the victims of violence. The fund was to be managed by an independent authority and vested with the necessary legal and administrative powers to assure its proper functioning.¹⁵⁴ The Commission maintained that 1 percent of all international assistance received by El Salvador be allocated to the fund.¹⁵⁵ The Salvadoran government and the international community

did not avidly support this proposal, and thus the fund has yet to be established. In fact, since the Truth Commission completed its work no serious attention has been devoted to the issue of reparations for victims of the conflict.¹⁵⁶

7.2 Independent Variables

7.2.1 Flexibility of the Commission's Investigative Mandate

The Commission's mandate directed it to investigate "serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth." The mandate goes on to point out that the Commission shall take the following into account when deciding on the nature and types of cases to investigate: "(a) the exceptional importance to be attached to the acts to be investigated, their characteristics and impact, and the social unrest to which they gave rise; and (b) the need to create confidence in the positive changes which the peace process is promoting and to assist the transition to national reconciliation."¹⁵⁷ The mandate did not list or identify any specific cases for investigation; thus, the Commission was given a large degree of freedom to construct its own investigative platform.

Based on the criteria outlined in the mandate, namely serious acts of violence and their impact or repercussions, the Commission decided to investigate two types of cases. First, the Commission investigated cases or acts, which by their very nature, outraged Salvadoran society and/or the international community.¹⁵⁸ Second, the Commission chose to investigate a string of particular cases that shared similar characteristics and together revealed a systematic pattern of violence and indignation that outraged Salvadoran society.¹⁵⁹ The final report demonstrated that the Commission, when

deciding on whether to investigate a case or not, took a number of factors into consideration, including the representative nature of the case, the availability of ample evidence, the investigatory resources at the disposal of the Commission, the time required to conduct a thorough investigation and the need to combat impunity.¹⁶⁰

7.2.2 Budget Allocated to the Commission

The Commission on the Truth was funded entirely through contributions made by U.N. member states. The largest contributions came from the government of the United States, which donated \$1 million, and several European countries, principally the Scandinavian countries.¹⁶¹ The El Salvadoran government did not provide any financing to the Commission.¹⁶² The Commission did experience a shortage of funds in its initial stages, but ultimately managed to secure \$2.5 million in funding.¹⁶³

7.2.3 Public Involvement in the Appointment of Commissioners

The appointment process in El Salvador did not involve broad consultative processes that sought to engage the public and seek out the opinions of civil society organizations. Rather, commissioners were appointed by the U.N. Secretary-General on the approval of the two parties to the peace accords. The commission was comprised entirely of foreign nationals: Belisario Betancur, former President of Colombia; Thomas Buergenthal, former President of the Inter-American Court of Human rights and professor of law at George Washington University; and Reinaldo Figueredo Planchart, the former Venezuelan minister of foreign relations. The decision to exclusively appoint foreign nationals to the Commission stemmed from the belief that post-conflict El Salvador was so politically polarized that if Salvadoran nationals were appointed as

commissioners, the Commission and its operations would run the risk of being accused of bias and prejudice. Fittingly, the Commissioners, in their first meeting with the media upon their arrival in El Salvador, exclaimed that they would not let themselves be pressured and assured that they were in search of the objective truth.¹⁶⁴

7.2.4 The Commission's use of Public Hearings

Although public hearings are often seen to play a critical role in the processes of public truth acknowledgement, the circumstances of a specific transitional context may caution against the use of public hearings for a variety of reasons, including the safety of those who testify before the commission. In fact, Freeman asserts that public hearings will not be possible or desirable in every transitional context.¹⁶⁵ A number of factors advised against holding public hearings in El Salvador. The most prominent of these factors was the fear of deponents that if they provided testimony in a public hearing they would be subjected to retaliatory acts of violence at the hands of perpetrators.¹⁶⁶ As a result, all hearings conducted by El Salvador's Commission on the Truth were conducted in private.

7.2.5 The Commission's Engagement with Civil Society Groups

El Salvador's Commission on the Truth was concerned that the development of a close working relationship with human rights organizations would tarnish the image of impartiality that the Commission desperately needed to preserve in the politically polarized environment within which it was required to conduct its work. As a result, while human rights organizations were invited to and did provide important information to the Commission, the relationship between local human rights experts and the

Commission was distant and impersonal.¹⁶⁷ It was often argued that the Commission should have developed a closer working relationship with Salvadoran human rights organizations, which could have provided the comprehensive knowledge and insight on the country and its politics, which some critics argued was missing from the Commission's final report.¹⁶⁸

7.2.6 The Commission and the Decision to Name Names

The Commission ardently defended its view that the naming of perpetrators was necessary if the Commission was to fulfil its mandate to make the complete truth known and combat the sense of impunity that had taken root over the course of the civil war. The Commission established three levels of evidence to measure the strength of evidence brought to its attention: "overwhelming evidence" (conclusive or highly convincing evidence to support the Commission's finding); "substantial evidence" (very solid evidence to support the Commission's finding); and "sufficient evidence" (more evidence to support the Commission's finding than to contradict it).¹⁶⁹ In cases where only "sufficient evidence" could be found to link a party to a specific act of violence the Commission withheld including the name of that individual within its final report.¹⁷⁰ On the other hand, in cases where the Commission was able to collect "substantial evidence" or "overwhelming evidence" regarding the perpetration of specific abuses by a party, the decision was made to include the name of the offending party within the final report.¹⁷¹ The Commission required that the decision to name a perpetrator be based on two credible and independent sources, including at least one primary source.¹⁷² This requirement was deemed necessary by the Commission to certify the reliability of its findings as all hearings were conducted in private and the identities of witnesses kept confidential, which meant that the accused would not be given the opportunity to confront and cross-examine their accusers as per standard due process of law requirements.¹⁷³

When the Commission began its work, the government of President Alfredo Cristiani and the country's military elite appeared to side with the Commission on the need to identify those within the government and military found to be responsible for committing abuses during the conflict.¹⁷⁴ The amenable tone of the government and the military on the issue of naming names drastically changed as word began to spread that the Commission had collected damning evidence against high-ranking government officials, such as General Rene Emilio Ponce, the Minister of Defense.¹⁷⁵ Prior to the release of its final report, the Commission came under fierce pressure to not include the names of perpetrators within its final report. In the face of this growing pressure, the Commission proved resolute and defiant, identifying by name over forty individuals it deemed responsible for planning and carrying out an assortment of abuses.¹⁷⁶

7.2.7 Security Provided to Witnesses who Testified before the Commission

The Commission was consumed with concerns relating to the safety and security of individuals who provided testimony to the Commission. The conflict in El Salvador did not officially end until six months into the Commission's operations, up until the official cessation of hostilities only a cease-fire agreement had been in place.¹⁷⁷ As a result, individuals implicated in the perpetration of abuses, such as senior military officers, members of the government and the judiciary, wielded considerable power and influence throughout much of the Commission's tenure. In fact, in 1992 El Salvador was classified as a level 4 country on the Political Terror scale, which meant that political imprisonment, murder, disappearances and torture still occurred on a frequent basis throughout the course of the Commission's existence. The population of El Salvador was acutely aware of the power still wielded by individuals known to have been directly

involved in acts of violence during the civil war. In fact, much of the Salvadoran public believed that persons who had committed acts of violence during the course of the civil war possessed the capacity to exact physical and/or material injury on any individual who offered testimony to the Commission regarding acts of violence committed between 1980 and 1991.¹⁷⁸

The reality of the situation on the ground meant that the Commission had to devote a considerable amount of effort to ensuring the safety and security of prospective witnesses so that individuals would indeed come forward and offer testimony to the Commission. Unfortunately, the Commission did not possess the financial nor administrative means to establish a witness protection program or other sophisticated initiatives intended to ensure the safety and security of witnesses. Instead, the Commission adopted a strict policy of confidentiality in order to protect the identity of persons who provided evidence implicating certain individuals and institutions for acts of violence perpetrated during the course of the civil war. Paragraph seven of the Commission's mandate states that the activities of the Commission will be conducted on a confidential basis.

7.2.8 Extent to which Political Leaders Acknowledged and Apologized for the Abuses that were Committed

Political and military leaders in El Salvador failed to acknowledge and take responsibility for the numerous acts of violence documented within the Commission's final report. The Salvadoran military refuted the findings contained within the final report and accused the Commission of being tainted with bias. In fact, the Salvadoran military presented a long statement on national television, read by the defense minister,

who himself had been implicated in the report, in response to the report.¹⁷⁹ With the full military high command at his sides, the defense minister proceeded to condemn the final report as being “unfair, incomplete, illegal, unethical, biased and insolent.”¹⁸⁰ The defense minister also ridiculed the Commission for failing to grasp and document the extent of the communist threat in El Salvador.¹⁸¹ The political elite in El Salvador failed to take the opportunity to accept at least partial responsibility for the violence that had consumed the country and offer an apology to the people of El Salvador. The President at the time, Alfredo Cristiani, commented to the press that the report failed to satiate the Salvadoran public’s desire for national reconciliation, which he argued could only be achieved through forgiving and forgetting the country’s painful history.¹⁸² The disregard and disdain that existed for the report amongst the political and military elite within El Salvador led to the hasty ratification of a sweeping amnesty law only five days after the release of the Commission’s final report.

7.2.9 Legally Binding Nature of Recommendations

The mandate of El Salvador’s Commission on the Truth stated that the recommendations offered by the Commission would be binding on the government in power.¹⁸³

8: Assessing the Truth Commissions of El Salvador and Sierra Leone

A number of conclusions can be reached regarding the successes and failures of the Truth and Reconciliation Commission in Sierra Leone and El Salvador's Commission on the Truth. In the following portion of the analysis, I will examine how each of the commission's performed under the five dependent variables and analyze the relationship between the dependent variables and independent variables in each case study.

8.1 Sierra Leone: Analysis of Relationship between Dependent and Independent Variables.

In this segment of the analysis, the results of the case study analysis will be presented and the hypothesized relationships between the dependent and independent variables will be explored. Below is a table presenting the results of the hypothesis testing in the case of Sierra Leone's Truth and Reconciliation Commission.

Table 8.1: Relationship between Variables in Sierra Leone's Truth and Reconciliation Commission

	Accuracy and thoroughness of final report	Overall impartiality of the commission	Public awareness of commission's findings	Political stability	Implementation of commission's recommendations
Flexible mandate	+				
Size of budget	+		+		
Public involvement in the appointment of commissioners		+/-			

	Accuracy and thoroughness of final report	Overall impartiality of the commission	Public awareness of commission's findings	Political stability	Implementation of commission's recommendations
Use of public hearings			+		
NGO engagement	+	-	+		+
Name names	+	-		-	
Witness security	+				
Apology from political leaders			+	+	+
Legally Binding Recommendations					+

Blue indicates that the hypothesized relationship was proven to be accurate.

Red indicates that the hypothesized relationship was proven not to be accurate.

The use of '+/-' means that this independent variable may have had both a positive and negative effect on the impartiality dependent variable.

8.1.1 Accuracy and Thoroughness of the Commission's Final Report

I hypothesized that a number of variables would affect the accuracy and thoroughness of the Commission's final report. First, my hypothesis that the flexibility of the Commission's mandate would increase the accuracy and thoroughness of the final report has appeared to be proven correct. The flexible and broad mandate provided to Sierra Leone's Truth and Reconciliation Commission allowed it to investigate a myriad of abuses committed by all actors involved in the conflict. Furthermore, the mandate permitted the Commission to examine the involvement of external actors, such as Charles Taylor, the former President of Liberia. Second, I hypothesized that a larger budget would positively affect that accuracy and thoroughness of the Commission's final report. The budgetary difficulties experienced by Sierra Leone's Truth and Reconciliation were well documented, but appeared to not have any substantial negative impact on the

accuracy and thoroughness of the Commission's final report. In fact, despite these financial limitations, the Commission was able to produce a detailed and accurate account of the conflict in Sierra Leone. Third, the decision to include the names of perpetrators within the Commission's final report did positively affect the accuracy and thoroughness of the final report. The inclusion of the names of perpetrators was deemed by the Commission to be important because it brought a sense of accuracy to the historical record of the conflict in Sierra Leone. Fourth, the security provided to persons who testified before the Commission did positively contribute to the accuracy and thoroughness of the Commission's final report. The assurances of confidentiality provided to potential deponents were a critical factor in getting members of the public to testify before the Commission.

8.1.2 Overall Impartiality of the Commission

The overall impartiality of the Commission was thought to be affected by a number of variables. First, the involvement of the public in the commissioner appointment process did contribute to the perception of impartiality that the Commission was seeking to uphold. Unfortunately, political interference by the ruling SPP and President Kabbah in the commissioner appointment process severely undermined any sense of impartiality fostered by the public appointment process. Second, the Commission's engagement with NGOs did not appear to negatively affect the Commission's image of impartiality, as had been hypothesized.

8.1.3 Public Awareness of Commission Findings

The public of Sierra Leone's awareness of the findings of the Commission was thought to be influenced by a number of factors. First, evidence that budgetary shortcomings negatively impacted the efforts of the Commission to increase public awareness about its findings were inconclusive. However, the decision to conduct public hearings and the Commission's engagement with NGOs appears to have had a significant impact on the public's awareness of the Commission's findings. First, the holding of public hearings provided the people of Sierra Leone with an intimate account of the types of abuses perpetrated during the course of the conflict. Second, much of the public's knowledge in regards to the Commission and its findings can be attributed to the diligent efforts of a number of NGOs, many of whom partook in campaigns to make the contents of the Commission's final report known to the public. Lastly, the unwillingness of the political leadership of Sierra Leone to apologize for the abuses committed during the course of the conflict negatively impacted efforts to inform the public about the Commission's findings. Not surprisingly, a government that does not fully accept the findings of a truth commission cannot be expected to promote efforts aimed at enhancing the public's awareness of such findings.

8.1.4 Political Stability

None of the variables identified in this study as likely to have an impact on the level of political stability in post-conflict Sierra Leone proved to be accurate. In contrast to the hypothesis, the decision to name names and the lack of an apology from political leaders did not have the negative effect on political stability in post-conflict Sierra Leone.

8.1.5 Implementation of Core Recommendations

The implementation of the Sierra Leonean Commission's core recommendations has proceeded along very slowly. The failure to implement many of the Commission's core recommendations can be accredited to the former SPP-led government of Sierra Leone and its leader President Kabbah. The SPP government refused to apologize for the abuses committed during the conflict and thus did not appear to be in any rush to implement the recommendations offered by the Commission. On the other hand, the newly elected APC-led government apologized profusely for their role in the conflict and have demonstrated a keen interest in implementing the recommendations advanced by the Commission. The incessant efforts of NGOs to hold the government of Sierra Leone accountable for their failure to implement the Commission's recommendations has had a positive impact on the record of implementation in Sierra Leone. In fact, after the completion of the Commission's work, NGOs continued to pressure the national government to implement the Commission's recommendations. Lastly, the decision to make the Commission's recommendations legally binding on the government did not have any discernible impact on the record of implementation in Sierra Leone.

8.2 El Salvador: Analysis of Relationship between Dependent and Independent Variables

Table 8.2: Relationship between Variables in El Salvador’s Commission on the Truth

	Accuracy and thoroughness of final report	Overall impartiality of the commission	Public awareness of commission’s findings	Political stability	Implementation of commission’s core recommendations
Flexible mandate	+				
Size of budget	+		+		
Public involvement in the appointment of commissioners		+			
Use of public hearings			+		
NGO engagement	+	-	+		+
Name names	+	-		-	
Witness security	+				
Apology from political leaders			+	+	+
Legally binding Recommendations					+

Blue indicates that the hypothesized relationship was proven to be accurate.

Red indicates that the hypothesized relationship was proven not to be accurate.

8.2.1 Accuracy and Thoroughness of the Commission’s Final Report

The accuracy and thoroughness of the final report was positively impacted by the flexible mandate provided to El Salvador’s Commission on the Truth. The Commission was granted a fair degree of freedom to frame their own investigative strategy and approach. The accuracy and thoroughness of the report was not negatively affected by the Commission’s relatively meagre budget. In fact, the Commission’s final report was

praised for helping to dispel many of the myths that had been propagated about the civil war in El Salvador.

8.2.2 Overall Impartiality of the Commission

The impartiality of the Commission in El Salvador was not affected by the failure to involve the public in the commissioner appointment process. In fact, because of the highly polarized political environment in which it was operating, the Commission was likely weary of soliciting input from the public in regards to the appointment of commissioners. In addition, the Commission on the Truth in El Salvador was of the opinion that in order to preserve its appearance of impartiality it could not develop close relationships with NGOs. The limited engagement the Commission had with NGOs did not affect the image of impartiality that the Commission was seeking to uphold. As hypothesized, the Commission's image of impartiality was negatively affected by the decision to name perpetrators within its final report. In particular, the Commission received criticism for what its critics charged as its uneven naming pattern. For instance, the Commission was heavily scrutinized for naming perpetrators from only one of the five factions of the FMLN.¹⁸⁴ Some have argued that this decision may have contributed to the disintegration of the FMLN shortly after the release of the final report.¹⁸⁵ The Commission defended its decision to only include the names of persons belonging to one of the FMLN groups on the basis that it simply lacked the required evidence to name persons from the other four FMLN groups.¹⁸⁶ In addition, human right organizations derided the Commission for its failure to name civilian leaders that were believed to have connections with El Salvador's notorious death squads.¹⁸⁷ The criticism became even

more pointed once rumours spread that the Commission had in fact identified some civilian leaders who had connections to the death squads.¹⁸⁸

8.2.3 Public Awareness of Commission Findings

A number of variables were thought to affect the public's awareness of the Commission's findings. First, there is no compelling evidence to indicate that the Commission's relatively meagre budget had a significant impact on the public's awareness of the Commission's findings. Second, the decision of the Commission not to hold public hearings may have negatively affected the public's awareness of the Commission's findings. As was demonstrated in the case of Sierra Leone, public hearings can play an important role in informing the public of the nature, objectives and results of the Commission's work. However, one must keep in mind that public hearings in the Salvadoran context were unimaginable because of victims and witnesses intense fear of reprisals by perpetrators.¹⁸⁹ Third, the decision of the Commission to not foster a close working relationship with NGOs most likely had a negative impact on the public's awareness of the Commission's findings. Once the Commission had completed its work and the commissioners and commission staff, who were all foreign nationals, left the country there was no sense of the Commission left on the ground in El Salvador. The NGO community in El Salvador did not possess the capacity to fill the vacuum left by the commissioners and commission staff. An NGO community that had worked in close partnership with Commission staff could have contributed a great deal to efforts to distribute and explain the findings of the Commission to the people of El Salvador. Lastly, the failure of political leaders in El Salvador to make an official apology to the public is indicative of the political elites disdain for the Commission and its findings.

The Salvadoran political elite's disapproval of the findings arrived at by the Commission likely had a negative impact on efforts to disseminate these findings amongst the public of El Salvador.

8.2.4 Political Stability

The factors that I hypothesized would have negatively impacted the level of political stability in El Salvador, such as the refusal of political leaders to issue an official apology and the inclusion of the names of perpetrators within the Commission's final report, were proven to be inaccurate.

8.2.5 Implementation of Core Recommendations

Three variables were theorized to influence the implementation of the Commission's core recommendations. First, the Salvadoran political elite's lack of willingness to accept the findings of the commission negatively influenced the record of implementation in El Salvador. Understandably, a government that does not support the findings of a truth commission is not likely to enthusiastically embrace and/or seek to implement that commission's recommendations. Second, mandating that the commission's recommendations be implemented has not appeared to have had any positive impact on the record of implementation in El Salvador. Third, the decision of the Commission on the Truth in El Salvador to refrain from developing close relations with NGOs most likely had an impact on the fate of the recommendations submitted by the Commission. Often once a commission has completed its work, NGOs are left to follow up and put pressure on the government to implement the recommendations advanced by the commission.

8.3 Summarizing the Results and Accounting for any Variability

In this segment of the analysis, the performance of the commission's under each dependent variable will be compared and assessed against one another.

8.3.1 Comparing the Results

Table 8.3: Performance of the El Salvadoran and Sierra Leonean Truth Commissions under each Dependent Variable

Dependent Variables	EL SALVADOR	SIERRA LEONE
Accuracy and thoroughness of final report	HIGH	HIGH
Overall impartiality of the commission	HIGH/MEDIUM	MEDIUM
Public awareness of commission's findings	LOW	MEDIUM
Political stability	HIGH	HIGH
Implementation of commission's core recommendations	LOW	MEDIUM

High: indicates that the Commission performed very well under this variable.

Medium: indicates that the Commission performed moderately well under this variable.

Low: indicates that the Commission performed poorly under this variable.

8.3.2 Accounting for the Variability in the Results

Both the Truth and Reconciliation Commission in Sierra Leone and the Commission on the Truth in El Salvador performed well under the "accuracy and thoroughness" variable. The success of both of these commissions under this variable can be attributed to a variety of factors. First, the decision of both commissions to include the names of perpetrators within their respective final reports undoubtedly contributed to the accuracy and comprehensiveness of each commission's final report. Second, both commission mandates were constructed in a manner that permitted each of

the commission's a fair degree of flexibility and did not hinder the investigative activities of commissioner's and commission staff. Third, measures adopted to ensure the security of persons who provided testimony to each commission were essential to producing an accurate and thorough report. Both of the commissions were required to conduct their work in an unstable security environment. Thus, in the absence of some form of assurance to potential deponents that their identities would remain confidential, it is unlikely that many people would have been willing to come forward to give testimony to each commission. Fourth, the information provided by NGOs also contributed to the development of a precise and comprehensive account of the conflict each commission was mandated to investigate.

In terms of overall impartiality, El Salvador's Commission on the Truth received a higher rating than the Truth and Reconciliation Commission in Sierra Leone. The poorer performance of the Sierra Leonean Commission under this variable can be largely attributed to the interference by political leaders in the appointment of the Commission's national commissioners. Commissioners are the public representatives of the commission, and thus any development that tarnishes the image of commissioners is likely to have far-reaching effects for the credibility and public standing of the commission as a whole. In the case of El Salvador, the control over the appointment process exercised by the OHCHR and the decision to only appoint foreign nationals to the post of commissioner resulted in an appointment process that was largely insulated from the biases of domestic political interference.

The truth commissions of El Salvador and Sierra Leone did not prove to be overwhelmingly successful in making the contents of their respective final reports known

and understood by the public. The Sierra Leone Truth Commission did fare better in this regard than the Commission on the truth in El Salvador. First, the decision of the Commission in Sierra Leone to conduct the majority of its hearings in public, while not directly related to the public's awareness about the contents of the final report, did have a positive impact on the public's awareness of the purposes and aims of the Commission. As was pointed out by Laura Stovel, the public hearings were generally well attended and those conducted in Freetown were even broadcast on local television. On the other hand, the decision of the El Salvadoran Commission to conduct all hearings in private definitely contributed to the Salvadoran public's lack of awareness of the Commission's objectives and operations. Second, the public of Sierra Leone's awareness of the findings of the Commission was positively impacted by the Commission's decision to seek out the assistance of NGOs. That relationship that was cultivated between the Commission in Sierra Leone and various NGOs proved to be invaluable when it came to publicizing the contents of the final report to the public. The production of a video version of the final report by the NGO WITNESS and their efforts to broadcast it throughout Sierra Leone serve as a testament to the important role NGOs can play in the dissemination and publication of truth commission findings. The El Salvadoran Commission chose not to develop an intimate working relationship with NGOs over fears that such a relationship had the potential to taint the Commission's appearance of impartiality. While these concerns were legitimate, the Commission's decision to not cultivate relations with NGOs negatively affected efforts to disseminate and publicize the Commission's final report. The Commission on the Truth in El Salvador failed to fully appreciate the fact that once a truth commission has completed its work and submitted its final report, the

onus often falls on civil society organizations to make the contents of the report known to the public.

The attitudes of political leaders in both Sierra Leone and El Salvador undoubtedly influenced government-led efforts to spread public awareness regarding the contents of each commission's final reports. The unwillingness of political leaders in El Salvador and Sierra Leone to offer an official apology to their citizens stemmed largely from the disdain with which these political leaders viewed the findings of their respective truth commission's.

The level of political stability in both countries since the close of each commissions operations has been high. The level of political stability in Sierra Leone and El Salvador was not impacted by any of the factors that I hypothesized would negatively affect political stability. The decision to include the names of perpetrators within each commission's final report and the failure of political leaders in both El Salvador and Sierra Leone to make an official apology did not negatively influence political stability in both of these transitioning states.

A number of variables influenced the record regarding the implementation of each of the commission's core recommendations. First, it appears that the lack of willingness of the governing political elite in both El Salvador and Sierra Leone to make an official apology may have contributed to the lack of implementation of many of the recommendations proffered by each commission. The decision of the Salvadoran Commission to include the names of perpetrators within its final report figured prominently in the decision of the Salvadoran government to largely repudiate the findings of the Commission, including many of its recommendations. In addition, while

not blatantly documented, the decision of the Sierra Leonean Commission to also name perpetrators in its final report may have negatively impacted the Kabbah government's willingness to accept the findings and recommendations of the Truth Commission. Furthermore, mandating that the commission's recommendations be implemented has appeared to, as of yet, not had any discernible impact on the implementation of each commission's recommendations.

Second, the decision of the Commission on the Truth in El Salvador to refrain from developing close relations with NGOs appears to have had a negative impact on the implementation of the recommendations submitted by the Commission. In contrast, the comparatively better record of implementation in Sierra Leone can be partially attributed to the relationship the Truth and Reconciliation Commission fostered with NGOs, who after the completion of the Commission's work continued to pressure the national government to live up to its legal obligations to implement the Commission's recommendations.

Third, the decision to make the recommendations offered by both commissions legally binding on the governments of Sierra Leone and El Salvador did not have the expected positive effect on the record of implementation. Despite the legally binding nature of the recommendations, both the governments of El Salvador and Sierra Leone did not feel compelled to implement the recommendations in a steadfast manner.

9: Policy Options

9.1 General Attributes any Truth Commission Must Possess

Based on the findings in the case study analysis I have been able to identify a set of attributes that any truth commission established in Darfur should strive to possess. These attributes made critical contributions to the successes and/or failures of the commissions established in both Sierra Leone and El Salvador.

- a) The Commission receives appropriate funding and staff

Adequate financial and human resources are important to the proper functioning of any truth commission. Most previous truth commissions have been accorded a budget that has ranged anywhere between USD 1 million to USD 5 million.¹⁹⁰ However, a series of more recently constituted truth commissions, such as those in Peru and East Timor, have had budgets that have exceeded the USD 5 million mark.¹⁹¹ Depending on how sophisticated and ambitious the mandate of the truth commission is, a budget anywhere between USD 5 million and USD 10 million would most likely be sufficient.

- b) The Commission is provided with a flexible, yet strong investigative mandate

Concerning the creation of mandates for truth commissions, Freeman argues that there is a need to strike a balance between flexibility and specificity. Specifically, there need to be parameters that restrict what commissions can do, but commissions must be afforded enough flexibility to cope with all the new developments that may arise during the course of their investigations. A mandate should not restrict a commission's investigations to specific events. Rather, the investigative mandate of a commission

should utilize general terms, which grant the commission a fair degree of freedom to configure its investigations but provide general restrictions on the nature of acts that the commission is expected to investigate.¹⁹² The Sierra Leonean Commission has been lauded for striking the right balance between flexibility and specificity. In quantitative terms, a mandate that is approximately three to five pages long, which provides enough direction and detail regarding restrictions but also provides for a fair amount of flexibility, would be ideal.¹⁹³

- c) The Commission is mandated to offer recommendations and an obligation is put on the state to provide periodic reports on the implementation status of the recommendations.

Truth Commission's that assume in good faith that recommendations will be implemented take a very big risk to the extent that they have not prepared the ground for successful implementation of their recommendations. On the other hand, as the experiences of Sierra Leone and El Salvador demonstrate, imposing a legal obligation on the state to implement the commission's recommendations provides no guarantee that such recommendations will be implemented. Indeed, the imposition of a legal obligation on the state by an unelected, appointed, provisional body may spawn a great deal of consternation within government circles and amongst the public, especially if the recommendations are seen as going against the constitutional obligations of the state or the democratic will of the people.¹⁹⁴ Consequently, truth commissions should avoid becoming de facto lawmakers by legally obligating the state to implement their recommendations.¹⁹⁵ A more advisable approach would be for the commission's mandate to oblige the state to give serious consideration to the recommendations advanced by the commission and detail the recommendations that have been

implemented and provide reasons for cases of non-implementation, in essence creating an obligation to report back.¹⁹⁶ In addition, an increasingly common practice provided for within the terms of reference of truth commissions has been the establishment of a follow up body to supervise, monitor and coordinate the implementation of the commission's recommendations.¹⁹⁷ This body could take the form of an ad-hoc, inter-ministerial body or a permanent body.

- d) The Commission should make the offering of an official apology by political leaders a point of emphasis.

The political leadership of Sierra Leone and El Salvador failed to issue an official apology to their respective populations in regards to the violence that had subsumed their countries. The failure of political leaders in both case study countries to issue an apology was indicative of the general disdain with which the political leadership viewed the findings of each commission. The contempt for the findings of the truth commission contributed to a general lack of willingness amongst both governments to publicize the findings of the commission and to implement the reforms recommended by the commission. Throughout its operations, a truth commission would be well advised to stress to the national government the importance of issuing an official apology. This apology will in turn place a sort of moral obligation on the state to support the findings and recommendations of the truth commission.

- e) The establishment of a security system to ensure the safety of persons who provide testimony to the Commission.

In transitioning states, the security environment is often fragile, and thus potential witnesses and victims may be reluctant to provide testimony to a truth commission because of fears that they may be targeted for doing so. Consequently, a truth

commission must put in place a system of security that is intended to protect the identity of persons who provide testimony to the commission. At a minimum, these security measures should consist of a guarantee of confidentiality and the opportunity to provide testimony in a closed, private hearing. Depending on the budget accorded to the truth commission, more sophisticated security measures, such as a witness protection program, may also be instituted.

- f) The Commission should seek a substantial amount of engagement with the local and international NGO community operating in Darfur.

This analysis has proven that engagement with NGOs is a critical factor in the success of truth commission processes. A truth commission established in Darfur should actively seek out the assistance of NGOs for a variety of purposes, including in regards to the collection of evidence, the hiring of staff, the creation of public awareness campaigns and the dissemination of the commission's final report.

- g) Most Commission hearings would be conducted in public, supplemented by limited private hearings for children, victims of sexual abuse and deponents who had genuine fears for their safety.

A truth commission should in every sense be as public as possible, and thus as many hearings as possible should be held in public.¹⁹⁸ The public nature of hearings assists people understand the root causes of the conflict and promotes a form of public dialogue that can serve as a sort of national catharsis for a country seeking to come to terms with its traumatic history. That being said, for particularly vulnerable categories of victims, such as children and victims of sexual crimes, private hearings should be the default rule.

9.2 Policy Options

The policy options presented below are modelled after the results of the case study analysis. The attributes of the Sierra Leonean and El Salvadoran Commission's that produced conflicting results found to have positively affected the work of both commissions have been included in all of the policy options.

9.2.1 Policy Option #1

The first truth commission model, which is partly modelled on Sierra Leone's Truth and Reconciliation Commission, prioritizes the need to engage the public in truth commission processes. Such a commission would have the following attributes:

- a) A mix of international and domestic commissioners. The international commissioners would be appointed by a U.N. organ, such as the OHCHR, and the domestic commissioners would be appointed by the OHCHR after broad consultations with the public, NGO community and the parties to the peace agreement. When appointing domestic commissioner's a great deal of emphasis would be placed on ensuring that the appointment process is immunized from political manipulation and interference.
- b) The mandate of the Commission would permit the Commission to name perpetrators.

9.2.2 Policy Option #2

The second truth commission model, which is partly modelled on El Salvador's Commission on the Truth, prioritizes preserving the impartiality of truth commission processes. Such a commission would have the following attributes:

- a) All commissioners would be foreign nationals and would be selected by a U.N. organ, such as the OHCHR, with the approval of all the parties to the peace agreement.
- b) The mandate of the Commission would not permit the naming of perpetrators.

10: Criteria and Measurements

The policy options will be tested against a set of criteria. The criteria that will be used to assess each of the policy options are effectiveness, political acceptability, administrative feasibility and impartiality. The criteria will be used to evaluate each policy option and at the end of the evaluation section, a final policy recommendation will be made.

10.1 Effectiveness

The policy recommendation must be judged on its ability to address the objectives that a truth commission established in post-conflict Darfur would be expected to meet. These objectives would include, establishing an impartial historical account of the period under investigation and raising public awareness about the truth behind the conflict and making that truth known to the public. Each policy option must be scrutinized to determine how effective it is at meeting these objectives.

10.2 Political Feasibility

The political feasibility criterion entails determining the degree to which the policy option would be acceptable to certain key stakeholders. The stakeholders whose acceptability will be judged under the political feasibility criterion are the government of Sudan, victims of the conflict, the Office of the High Commissioner for Human Rights (the OHCHR is intended to serve as a proxy for the international community/U.N.) and international/domestic NGOs.

10.3 Administrative Feasibility/Ease

Acknowledging the administrative complexities involved in implementing each of the policy options is critical in determining the most suitable course of action. The administrative feasibility criterion seeks to provide an assessment of the administrative complexities entailed with each of the policy options. The administrative feasibility criterion will be measured by examining the complexities involved in appointing commissioners under each policy option.

10.4 Impartiality

The legitimacy of any truth commission is intimately tied to its ability to maintain an image as an impartial institution. In the politically charged environments in which truth commissions are often forced to operate, a host of actors may seek to undermine the credibility and impartiality of the commission's findings. As a result, a truth commission's sense of impartiality must be zealously defended and preserved.

Table 10.1: Criteria for the Assessment of Policy Alternatives

Criterion	Definition	Measurement
Effectiveness	Is the policy option effective at producing an accurate historical record of the conflict and raising public awareness about the truth behind the conflict.	High = 3 Medium = 2 Low = 1
Political Feasibility	To what extent will the policy option be palatable to the government of Sudan, victims of the conflict in Darfur, the OHCHR and domestic and international NGOs.	High = 3 Medium = 2 Low = 1
Administrative Feasibility	The complexity involved in the appointment of commissioners under each policy option.	High = 3 Medium = 2 Low = 1
Impartiality	The extent to which each policy option is able to assure that the commission maintains its appearance of impartiality.	High = 3 Medium = 2 Low = 1

11: Assessment of Policy Options

This section will provide an assessment of each of the policy options. The criteria outlined in the previous section will be utilized to determine the suitability of each of the policy options.

11.1 Summary of Policy Evaluation

Table 11.1: Scoring System for each Criteria

Criteria	Option #1	Option #2
Effectiveness	High	Medium/High
Political Feasibility	Medium/High	Medium
Administrative Feasibility	Medium	High
Impartiality	Medium	High
Totals	9.5/12	10.5/12

11.2 Assessment of Policy Option #1

Policy option #1 received a high score under the effectiveness criterion. The truth commission model described under policy option #1 will most likely produce an accurate and comprehensive account of the period it has been mandated to investigate. In addition, the inclusion of international commissioners appointed by the OHCHR provides an assurance of a degree of impartiality. Under this option, the prospective truth commission would seek to develop strong links with domestic and international NGOs, who in turn would be able to provide valuable information to the truth commission in

regards to the conflict. For instance, Chile's National Commission on Truth and Reconciliation received a great deal of information from NGOs, including detailed records on the thousands of court cases brought by victims and their families over the course of Pinochet's rule.¹⁹⁹ Furthermore, NGOs would also be able to assist the commission in raising public awareness about its work and findings.

Policy option #1 will also prove quite competent in ensuring that the public becomes aware and knowledgeable of the commission's findings. First, public hearings have a unique ability to foster an intimate and detailed understanding of the conflict amongst the public. As was demonstrated in the case of Sierra Leone, the convening of public hearings allows victims to frankly and sincerely recount their experiences of victimization and provides perpetrators a forum in which to take responsibility for their actions. Second, policy option #1 provides for the appointment of some domestic commissioners and the development of strong links with domestic and international NGOs, both of which have important ramifications for fostering public awareness about the commission's findings. These factors ensure that after the completion of the commission's work there will be a cadre of individuals on the ground in Sudan who, because of their intimate involvement in the work of the commission, will continue to promote awareness of the commission's findings to the Sudanese public.

Policy option #1 received a medium/high score under the political feasibility criterion. This policy option will be politically palatable to a number of key actors, including domestic and international NGOs and the international community. The international community and NGOs will be eager to be involved in the commission's work and thus would thoroughly support the type of commission envisioned under policy

option #1. Victims would definitely be pleased with the fact that the commission envisioned under policy option #1 would be permitted to include the names of perpetrators within its final report. Those who advocate for the inclusion of the names of perpetrators within commission reports contend that providing a full account of the truth requires the naming of perpetrators where there is clear evidence pointing to their guilt. The Sudanese government would not embrace a commission formatted along the parameters detailed in policy option #1 largely because of the strong international presence within such a commission and the power accorded to the commission to include the names of perpetrators within its final report. In fact, throughout the conflict in Darfur, the government of Sudan has sought to hinder international efforts to stem the violence.

As regards administrative feasibility, this policy option was given a medium score. Policy option #1 envisions the institution of a broad public consultation campaign for the selection of domestic commissioners. The establishment of such a campaign may involve a fair deal of administrative complexity in regards to the solicitation of nominations from the public, the subsequent vetting of nominations and the selection of a final list of commissioners for appointment. The appointment process for international commissioners would be far less administratively burdensome and would closely resemble the manner in which the Truth and Reconciliation Commission in Sierra Leone selected its international commissioners. Under this policy option, international commissioners would be appointed by the OHCHR in consultation with a variety of groups and organizations, including international and domestic NGOs stationed in Darfur.

Under the impartiality criterion policy option #1 was assigned a score of medium. The naming of perpetrators and engagement between the commission and domestic/international NGOs envisioned under policy option #1 has the possibility to spark outcries of bias from the commission's critics, such as the government of Sudan. In fact, it was the concern over being branded as a biased institution that impelled the Commission on the Truth in El Salvador to diligently avoid building close partnerships with the NGO community. Overall, policy option #1 received the highest score out of the various policy alternatives, 9.5 points out of a possible 12.

11.3 Assessment of Policy Option #2

Policy option #2 received a medium/high score under the effectiveness criterion. This policy option can be expected to produce a largely accurate and thorough accounting of the conflict in Darfur. In fact, the entirely international make-up of the commissioners and their appointment by a respected international organ, such as the OHCHR, will likely ensure that the accuracy of the commission's final report will not be widely questioned. That being said, the inability of the commission under this option to disclose the names of perpetrators will negatively affect the accuracy and thoroughness of the commission's final report. In terms of public awareness, the active engagement between NGOs and the commission envisioned under policy option #2 will facilitate efforts to spread knowledge of the commission and foster appreciation for the work of the commission amongst the public.

Policy option #2 received a medium score under the political feasibility criterion. First, it is unlikely that the government of Sudan would be accepting of the heavy international presence entailed with this policy option. Throughout the course of the

conflict in Darfur, the Sudanese government has rebuked and/or obstructed numerous international efforts to halt the fighting in Darfur and to provide humanitarian assistance to millions of displaced Darfurians. Second, the attitudes of victims towards policy option #2 would likely be mixed. On the one hand, policy option #2 satiates the needs of victims who would like to testify in a private setting and those who would prefer to give testimony in a public hearing. On the other hand, the decision to not permit the commission includes the names of perpetrators within its final report would likely be met with a great deal of consternation by victims' rights advocates. Third, NGOs would be pleased by policy option #2's recommendation that the commission seek to actively engage NGOs and utilize their vast assortment of expertise and knowledge. Lastly, the OHCHR is not likely to disapprove of any of the aspects of a truth commission designed along the lines of those set out under policy option #2.

Under the administrative criterion, this policy option received a high score. The appointment process for commissioners will be relatively straightforward and heavily dominated by the OHCHR. The commissioner appointment process under policy option #2 would not include the administratively exhaustive public consultations used to select domestic commissioners under policy option #1.

With respect to impartiality, policy option #2 received a high score. Indeed, the rationale behind the decision to refrain from including the names of perpetrators in the commission's final report and appointing only international commissioners stemmed largely from a desire to preserve the impartiality of the commission. Policy option #2 received the a score of the three policy alternatives, 11 out of a possible score of 12.

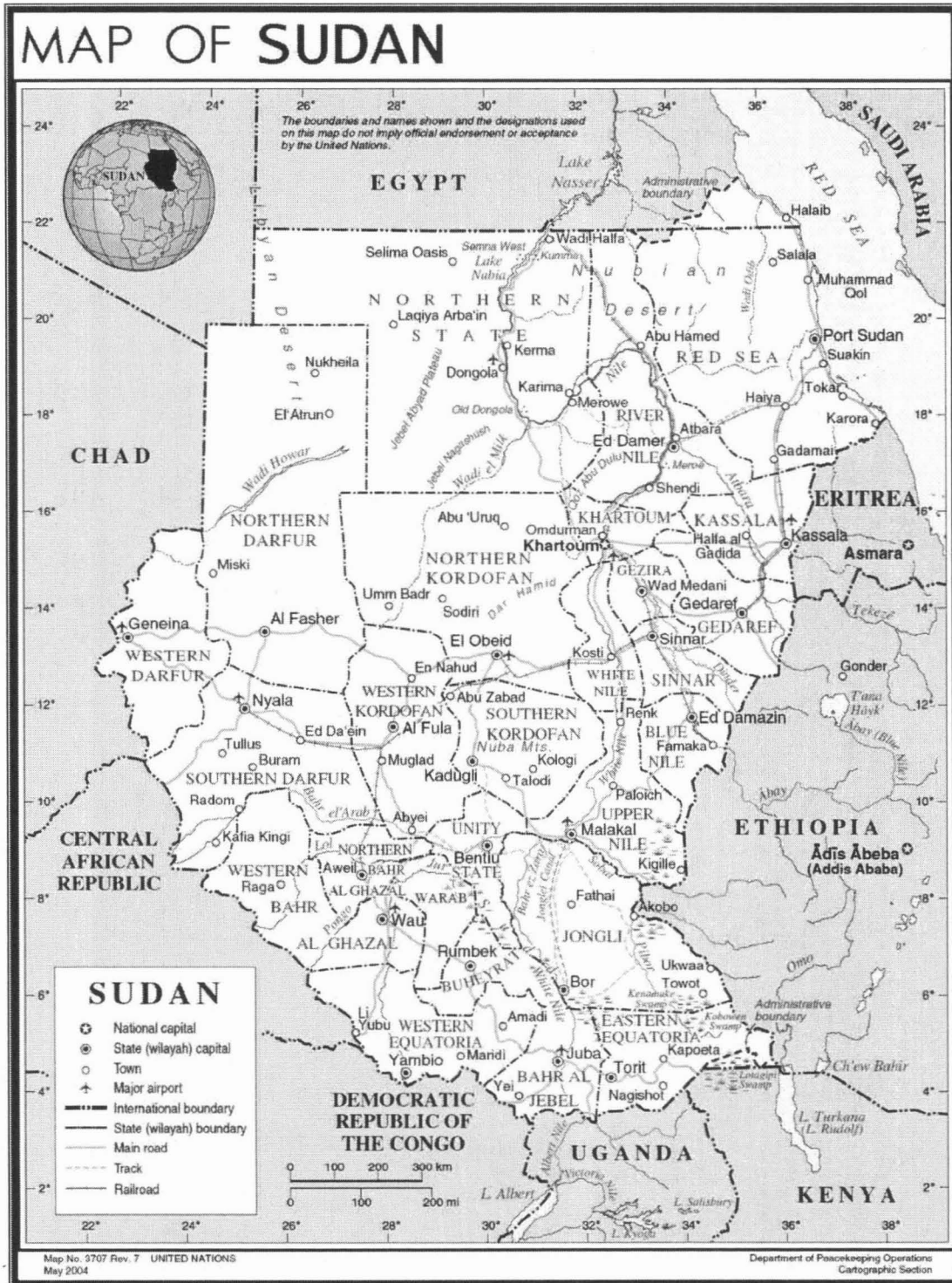
12: Policy Recommendation

Based on the evaluation of the policy options, this section provides a recommendation regarding which truth commission model is best suited to meet the needs of transitional justice in post-conflict Darfur. Based partially on the scoring matrix and partially on the perceived needs of transitional justice in post-conflict Darfur, I would recommend the construction of a truth commission designed along the lines outlined under policy option #1. The truth commission model illustrated under policy option #1 carries a number of attributes that I believe would be crucial to meeting the needs of transitional justice in post conflict Darfur. First, the truth commission model detailed under policy option #1 would contain both national and international commissioners. A truth commission composed solely of national commissioners and staff may be prone to exploitation at the hands of the Sudanese government and therefore could not be trusted to provide an impartial and accurate account of the conflict in Darfur. In addition, under policy option #1 the public would be intimately involved in the selection of national commissioners. This public involvement is crucial to not only bringing a sense of local ownership to commission processes but also in enhancing the public's view of the impartiality of the commission. Second, the truth commission envisioned under policy option #1 would hold public hearings, supplemented by limited private hearings. The holding of public hearings is crucial for not only raising awareness about the commission and its activities but also for revealing and discrediting the falsehoods concerning the conflict that have been widely circulated in Sudanese society. Third, the mandate of the

truth commission described under policy option #1 would permit the commission to include the names of perpetrators within its final report. In order to present a full account of the truth it is important to ensure that the Commission is given the prerogative to name perpetrators when there is clear evidence pointing to their guilt.²⁰⁰ If a determination is made by the commission to name names than it must justify its reasons for doing so on political, moral and legal grounds and inform the alleged perpetrator of the allegations against him/her and provide them with an opportunity to respond to the evidence against them either in writing or through oral testimony.²⁰¹ Lastly, under policy option #1 the commission would seek to actively engage and solicit the support of NGOs. Developing close partnerships with NGOs will provide valuable assistance to the commission as it seeks to spread public awareness about its operations and findings. Furthermore, the development of a close partnership between the commission and NGOs will ensure that after the commission completes its work there will be individuals and groups left behind to carry on the legacy of the commission's work, which will include pressuring the Sudanese government to implement the recommendations proffered by the commission.

Appendices

Appendix A: Map of Sudan



**Appendix B:
Military Regimes and Democratic Governments in Sudan
since Independence**

Date	Government
1956 1st January 1956	Sudan becomes an independent republic based on a democracy of sectarian parties.
1958, November	Coup d'état resulting in the military regime of General Ibrahim Aboud.
1964, October	A transitional government led by Khattam al Khalifa (intended to prepare the country for democratic elections and devise a constitution).
1966, July	Coalition government of Sadiq al Mahdi, who won the parliamentary vote
1967, May	Mohamed Ahmed Maghoub replaced Sadiq al Mahdi
1968,	Elections returned Mohamed Ahmed Maghoub.
1969, May	Coup d'état led by Colonel Jaafar Numayri
1983, May	Numayri re-elected with 99.6% of the vote!!
1985, April	Numayri overthrown by the Transitional Military Council lead by General Swar al-Dahab
1985, 14th April	Sadiq al-Mahdi re-elected, winning 99 of the 301 seats.
	Revolutionary Council
1989, June 30th	Military takeover by the Revolutionary Command Council led by Brigadier Umar Hasan Ahmad al-Bashir. Ruled with the National Islamic Front led by Hasan el-Turabi.
1999	Split in the National Congress, and breakaway group formed by Turabi known as the National Popular Congress.

Appendix C:
**Customary Rules on Internal Armed Conflict Applicable
to the Conflict in Darfur**

- (i) The distinction between combatants and civilians, and the protection of civilians, notably against violence to life and person, in particular murder (this rule was reaffirmed in some agreements concluded by the Government of Sudan with the rebels);
- (ii) The prohibition on deliberate attacks on civilians;
- (iii) The prohibition on indiscriminate attacks on civilians, even if there may be a few armed elements among civilians;
- (iv) The prohibition on attacks aimed at terrorizing civilians;
- (v) The prohibition on intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (vi) The prohibition of attacks against civilian objects;
- (vii) The obligation to take precautions in order to minimize incidental loss and damage as a result of attacks, such that each party must do everything feasible to ensure that targets are military objectives and to choose means or methods of combat that will minimize loss of civilians;
- (viii) The obligation to ensure that when attacking military objectives, incidental loss to civilians is not disproportionate to the military gain anticipated;
- (ix) The prohibition on destruction and devastation not justified by military necessity;
- (x) The prohibition on the destruction of objects indispensable to the survival of the civilian population;
- (xi) The prohibition on attacks on works and installations containing dangerous forces;
- (xii) The protection of cultural objects and places of worship;
- (xiii) The prohibition on the forcible transfer of civilians;
- (xiv) The prohibition on torture and any inhuman or cruel treatment or punishment;
- (xv) The prohibition on outrages upon personal dignity, in particular humiliating and degrading treatment, including rape and sexual violence;
- (xvi) The prohibition on declaring that no quarter will be given.
- (xvii) The prohibition on ill-treatment of enemy combatants *hors de combat* and the obligation to treat captured enemy combatants humanely.

- (xviii) The prohibition on the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees recognized as indispensable by the world community;
- (xix) The prohibition on collective punishments;
- (xx) The prohibition on the taking of hostages;
- (xxi) The prohibition on acts of terrorism;
- (xxii) The prohibition on pillage;
- (xxiii) The obligation to protect the wounded and sick;
- (xxiv) The prohibition on the use in armed hostilities of children under the age of 15.

Appendix D: International Human Rights and Humanitarian Law Violations Committed in Darfur

International Legal Principles Applicable to the Conflict in Darfur

The following section will provide a cursory overview of the international human rights law and humanitarian law principles applicable to the conflict in Darfur. With regards, to international human rights law, the Sudanese state is bound by a number of treaties. The international human rights law treaties to which Sudan is a signatory include: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of all forms of Racial Discrimination (ICERD); and the Convention on the Rights of the Child (CRC).²⁰² State parties are permitted to derogate from some of the principles enshrined within these treaties upon the declaration of a state of emergency. For instance, Article 4 of the ICCPR sets out detailed instructions for states wishing to derogate from the derogable provisions of the covenant. Article 4 requires that the state wishing to derogate immediately notify the Secretary-General of the U.N. of their decision and provide justification for their decision.²⁰³ In addition, the notification by States parties should include full information about the measures taken and a clear explanation of the reasons for them, with full documentation attached regarding their law.²⁰⁴ According to the Sudanese government, the country has been in a perpetual state of emergency since 1999; however, the government has not undertaken the procedures necessary to legally derogate from its obligations within certain international human rights law treaties. Sudan's non-compliance can be explained by the fact that the Sudanese application to derogate would not likely meet the stringent and

detailed requirements contained within Article 4 of the ICCPR. There are certain non-derogable provisions of international human rights law that the government of Sudan is bound to comply with at all times. For instance, Article 4 of the ICCPR details the provisions of the covenant that are non-derogable, which include, the right to life, the prohibition of torture or cruel, inhuman or degrading punishment, the prohibition of slavery, the slave trade and servitude, and freedom of thought, conscience and religion.²⁰⁵

A variety of international humanitarian legal principles also apply to the conflict in Darfur. The government of Sudan is required to abide by the four Geneva Conventions. Common Article 3 of the Geneva Conventions sets out a list of a minimum standards that warring parties are required to abide by in the course of any armed conflict, including any intra-state conflict. The principles and rules contained within Common Article 3 are binding on both state parties and insurrectionary forces that have acquired some measure of organized structure and are able to exercise effective control over a portion of territory.²⁰⁶ Sudan is not a signatory to the two Additional Protocols of 1977, which expand the protections afforded to civilians and combatants within internal armed conflicts. Nevertheless, there has been a discernible evolution in the customary legal principles applicable to internal armed conflicts. For instance, in 1995, the ICTY in its judgement in the *Tadic* case (interlocutory appeal) held that the main body of international humanitarian law had taken on a customary character and was thus applicable to internal, as well as international, armed conflicts.²⁰⁷ for a complete list of the customary international rules that apply to internal armed conflicts see Appendix C).

The rebel movements operating in Darfur are also bound by a series of international human rights and humanitarian law principles. The SLA and the JEM both

have the requisite degree of organization, stability and effective control over territory to acquire international legal personality, and thus are bound by the customary international legal norms applicable to internal armed conflicts listed in Appendix C.

Violations of International Human Rights and Humanitarian Law

The government of Sudan has been accused of committing a litany of gross violations of international human rights and humanitarian law in Darfur since 2003. Rebel forces in Darfur; have also committed gross violations of international human rights and humanitarian law, but the scale of violations committed by the rebels pale in comparison to the acts of violence attributed to the Sudanese government and the Janjaweed. The tribal groups that dominate the ranks of the JEM and the SLA, namely the Zaghawa, Fur and Masaalit, have been the primary targets of the ruthless campaign of wanton destruction and death carried out by Sudanese government forces and the Janjaweed.²⁰⁸ The next section will detail the nature of the reported violations allegedly committed by the government of Sudan, the Janjaweed and the SLA/JEM since early 2003.

Indiscriminate Attacks on Civilians

International law forbids attacks deliberately directed at civilians not involved in armed hostilities. In addition, international law prohibits any indiscriminate attack against civilians, that is, any attack on areas or places where both civilians and combatants may be found, which is not directed at a specific military objective. The U.N. Commission of Inquiry's Report found that the vast majority of indiscriminate attacks on civilians in Darfur were committed by government forces and the Janjaweed, operating

either in concert with one another or independently. The attacks carried out by government military forces and the Janjaweed often follow a similar pattern. A number of eyewitnesses reported that ground attacks against villages in Darfur commenced with the arrival of government troops in vehicles, who were trailed by a swarm of Janjaweed on horses and camels.²⁰⁹ In addition, many of the attacks were preceded by aerial bombardments and/or aerial surveillance.²¹⁰

One report of an attack on a village that was investigated by the U.N. Commission of Inquiry took place in Anka Village in North Darfur on either the 17 or 18 of February 2004. Victims in Anka Village reported that the attack began with an aerial bombardment of the village, which lasted for approximately two hours. Upon completion of the aerial bombardment between 300 to 400 Janjaweed on foot and another 100 Janjaweed on camels and horseback entered the village, accompanied by 18 vehicles carrying government soldiers.²¹¹ The soldiers and the Janjaweed proceeded to loot the village and set fire to a number of buildings in the village.²¹²

Darfur-based rebel forces have also been accused of indiscriminately targeting civilians. For instance, JEM forces carried out three separate attacks against villages in West Darfur in late 2003. In the first of these attacks JEM forces arrived in vehicles and on horses and camels in the town of Kulbus, armed with a large cache of weapons, including Kalashnikov's and machine guns.²¹³ These attacks resulted in the injury of fifty civilians and the death of seventeen civilians.²¹⁴

Killing of Civilians

The murder of civilians contravenes a number of international human rights norms. Murder is prohibited under the provisions of the ICCPR and the African Charter

on Human and People's Rights, which both protect the right to life and to not be arbitrarily deprived of life.²¹⁵ With regards to international humanitarian law, the murder of non-combatants in the course of an internal armed conflict is strictly prohibited under the provisions of Common Article 3 of the Geneva Conventions and by Article 4(2)(a) of Additional Protocol II. While all parties to the conflict in Darfur have committed crimes against the civilian population, the government of Sudan and the Janjaweed have been responsible for the great majority of civilian deaths. For instance, a joint attack by government forces and the Janjaweed on the Village of Surra, in South Darfur, in January 2004 resulted in the deaths of approximately 250 persons, including many women and children. Another coordinated attack took place in the village of Kailek in March 2004. Villagers who survived the attack on Kailek reported that a number of male villagers that were captured by government and Janjaweed forces were paraded in front of their fellow villagers and summarily executed.²¹⁶

The number of civilians who have died as a result of rebel attacks in Darfur are comparatively small in number. One such incident occurred when SLA and JEM forces attacked members of the nomadic Rezeigat tribe in the Kulbus region of West Darfur. It has been estimated that approximately forty-eight persons, including women and children, were killed during the course of this attack.²¹⁷

Deliberate Destruction of Homes, Water Sources and Other Essential Civilian Property

Article 11 of the International Covenant on Economic, Social and Cultural Rights provides, that "the State Parties to the present Covenant recognize the right of everyone to adequate food, clothing and housing." Moreover, customary international law

“prohibits and criminalizes the destruction of property of a hostile party carried out by a belligerent in the course of an international or internal armed conflict, and not justified by military need.”²¹⁸ The massive destruction of villages at the hands of government forces and the Janjaweed cannot be justified on the basis of military necessity. The inhabitants of these villages consisted overwhelmingly of civilians and if rebels were living there or taking shelter in some homes, this fact does not justify the targeting of the entire village.

The razing of villages throughout Darfur is an established fact. As early as 2004, various reports estimated that over 600 villages had been completely destroyed and an additional 100 – 200 villages had been partially destroyed.²¹⁹ Accounts of the attacks taken from displaced villagers reveal a strikingly similar pattern of destruction. In the course of the government and Janjaweed led attacks critically important sources of food, such as village granaries and mango trees were often destroyed.²²⁰ In addition, government and Janjaweed forces deliberately destroyed wells and other water sources, which in the arid environment of Darfur are vitally important for survival. Some displaced villagers even reported that the attackers dumped the dead bodies of humans or the carcasses of cattle into the village wells in an attempt to deliberately contaminate the water source, thus making the return of displaced villagers to their homes impossible.²²¹

In addition, principles embedded within international customary law forbid the forcible transfer of civilian populations both in times of peace and in times of war. As explicated in Article 7 (2) of the Statute of the ICC, which may be held to codify customary international legal norms on the matter, “deportation or forcible transfer of population means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted

under international law.” The forced expulsion of Darfurians from the areas in which they have traditionally resided as a result of indiscriminate attacks on their residences stands as a clear violation of the principles of international human rights and humanitarian law.

In terms of the rebels, there are reports that JEM and SLA forces have purposely targeted and destroyed buildings in towns and villages. For instance, in the rebel-led attack on the town of Kulbus in West Darfur credible testimony from eyewitnesses indicates that rebel forces were responsible for destroying a school, hospital and market.²²² Furthermore, eyewitness accounts indicate that one village near the town of Kulbus was also destroyed.²²³

Rape and Other Forms of Sexual Violence

Rape and other forms of sexual violence are prohibited under a number of international human rights treaties to which Sudan is a party, such as the ICCPR, the CRC and the African Charter on Human and Peoples’ Rights. International humanitarian law contains similar prohibitions against acts of rape and other forms of sexual violence in the course of an armed conflict. For instance, Common Article 3 of the Geneva Conventions prohibits “violence to life and person, in particular . . . cruel treatment and torture.”²²⁴ In addition, the provisions of Additional Protocol II of the Geneva Conventions that prohibit “rape, enforced prostitution and any form of indecent assault”, have attained customary legal status and are therefore binding on all the parties to the conflict in Darfur.

Rape and sexual violence against women and girls has been a notoriously prominent aspect of the conflict in Darfur. A Human Rights Watch study documenting

the prevalence of rape and other forms of sexual violence in Darfur since the outbreak of hostilities in 2003 provided startling details of the systematic campaign of rape and sexual violence being promulgated by government and Janjaweed forces against the female populations of certain ethnic groups in Darfur. The innumerable incidences of rape and sexual violence have had a terrorizing effect on entire communities, often inducing residents to flee their villages. For instance, a large-scale episode of rape and sexual violence committed by Janjaweed forces against a Zaghawa community in North Darfur in October 2004 impelled many residents of the village to flee to Chad.²²⁵ Human Rights Watch and the report of the U.N. International Commission of Inquiry both concluded that rape and sexual violence have been used by the government and the Janjaweed as a tactic to not only instil fear and terror amongst the targeted communities in Darfur, but also to subjugate and humiliate them.

Women and girls in Darfur continue to be vulnerable to acts of rape and other forms of sexual violence in IDP and refugee camps. Women are particularly vulnerable to attack when they leave the relative safety of the displaced person camps to collect necessities, such as firewood and water.²²⁶ Medecins sans Frontieres (MSF) teams stationed in West and South Darfur reported 500 cases of rape between October 2004 and mid-February 2005, of which 82 percent were reported to have taken place when the victims left the towns and displaced person camps in search of firewood, water or grass for animal fodder.²²⁷ Sadly, due to the chronic failure to report instances of rape in Darfur, the figures provided by MSF only represent a fraction of the actual rapes that took place within this period.

Appendix E: Motives of the Government of Sudan

A desire to hold onto power along with a steadfast belief in an Arab supremacist ideology are the primary motivations behind the government of Sudan's ruthless assault on Darfur's non-Arab African population. President Bashir's National Islamic Front (NIF) have used violence, intimidation, control over resources and shrewd politics to maintain and solidify their hold on power. The NIF government of President Bashir is aware that their support base outside of Khartoum is weak. As a result, the central government has used violence to intimidate into submission groups on the peripheries of the state who desire to attain a power and wealth sharing agreement with Khartoum, similar to the one contained in the Comprehensive Peace Agreement (2005) concluded between the government of Sudan and John Garang's southern SPLA forces.²²⁸ The violence and brutality inflicted upon the non-Arab Africans of Darfur is emblematic of the Sudanese government's policy to use violence as a means by which to consolidate its power.

The government of Sudan's tactics in Darfur appear also to be driven by an ideology of Arab supremacy. The NIF has a long history of promoting Arab interests at the expense of Darfur's non-Arab African population. For instance, in the early 1990s the NIF engineered an administrative reorganization of the Dar Masalit region of Darfur, which is home to the non-Arab African Masalit tribe. The reorganization of Dar Masalit, which was ruled by a sultan, resulted in the appointment by Khartoum of eight new Arab emirs, in spite of the fact that Arabs constituted less than one-fourth of the population of Dar Masalit.²²⁹ More recently, in 2004, in the midst of its brutal campaign in Darfur, the

government of Sudan claimed that the land vacated by Darfur's displaced non-Arab African population should be up for the taking if the land remained unoccupied for a period of one year.²³⁰

**Appendix F:
List of Truth Commission (1974 – 2002)**

Country	Date of Commission	Time Covered	Report Publicly Issued?	Reason for non-use in case study analysis
Uganda	1974	1971-1974	1975	
Bolivia	1982-1984	1967-1982	Commission Disbanded	The Commission disbanded three years after its creation without issuing a final report.
Argentina	1983-1984	1976-1983	1985	Established by the new government to investigate past disappearances that took place during the 1976-1983 military rule.
Uruguay	1985	1973-1982	1985	Two inquiry commissions were established by a new government to investigate abuses committed during the 1973-1985 military rule.
Zimbabwe	1985	1983	No	The final report of the Commission established to investigate the killing of civilians in the Matabeleland region was never made public.
Uganda	1986-1995	1962-1986	No	Established by the new government to investigate the past abuses of the Obote and Amin regimes
Philippines	1986	1972-1986	No	Established by a new government to investigate past abuses committed by the military during the 1972-1986 Marcos regime. The Commission never released a final report.
Nepal	1990-1991	1961-1990	1994	Established to investigate abuses that took place during the autocratic Panchayat system under which political parties were banned from 1962-1990.
Chile	1990-1991	1973-1990	1991	Established by the new government to investigate past disappearances that took place during the 1973-1990 military rule.
Chad	1991-1992	1982-1990	1992	Established by the new government to investigate crimes committed during the eight-year rule of Hisssein Habre.
Germany ^a	1992-1994	1949-1989	1994	Established by the German Parliament to investigate abuses committed during the 1949-1989 communist rule.
El Salvador	1992-1993	1980-1991	1993	The Commission was mandated by the U.N. brokered peaces agreements that brought the civil war in El Salvador to an end.
Sri Lanka	1994-1997	1988-1994	1997	Established by the newly appointed President to investigate disappearances since January 1, 1988.

Country	Date of Commission	Time Covered	Report Publicly Issued?	Reason for non-use in case study analysis
Haiti	1995-1996	1991-1994	Limited, 1996	Established by President Aristide to investigate abuses committed from the September 30 1991 coup that ousted Aristide until his restoration to power in September 1994.
Burundi	1995-1996	1993-1995	1996	
South Africa ^c	1995-2000	1960-1994	1998	Established by the South African Parliament to investigate abuses that took place during the apartheid era between 1960 and 1994.
Ecuador	1996-1997	1979-1996	Commission Disbanded	Established by the newly appointed President to investigate abuses that took place during the preceding 17 years. The Commission was disbanded.
Guatemala	1997-1999	1962-1996	1999	Commission was established as a result of peace agreements between the government and rebel forces. The Commission was mandated investigate abuses that were committed during the country's 36-year civil war.
Nigeria	1999-2001	1966-1999	Report in Process	Established by the newly appointed President to investigate abuses that took place under the rule of former President Shehu Shagari and the military.
Peru	2000-2002	1980-2000	2003	Established by the caretaker government of Valentin Paniagua to investigate abuses committed between 1980 and 2000 by rebel groups and the military during the administrations of former Presidents Belaunde, Garcia and Fujimori.
Uruguay	2000-2001	1973-1985	2003	Established by a new government to investigate disappearances that place during the 1973-1985 military rule.
Panama	2001-2002	1968-1989	2002	Established by the President to investigate abuses committed during the 1968-1989 military rule.
Serbia and Montenegro	2001-2003	1991-2001	Final Report not Produced	Established by the Yugoslav President to investigate abuses committed in Slovenia, Croatia, Bosnia and Kosovo over the last decade.
Bosnia	2003-2004	July 10-19, 1995	2004	
East Timor	2000-2005	1974-1999	2005	Established by the U.N. Transitional Administration in East Timor to investigate abuses committed between April 1974 and October 1999.

Country	Date of Commission	Time Covered	Report Publicly Issued?	Reason for non-use in case study analysis
Sierra Leone	2002	1991-1999	2004	A peace agreement between the government of Sierra Leone and rebel groups called for the establishment of a truth and reconciliation commission to investigate abuses committed since the beginning of the conflict in 1991.
Ghana	2002	1966-2001	Commission Ongoing	In December 2001 the Parliament of Ghana called for the establishment of a National Reconciliation Commission to investigate abuses committed during times of instability and unconstitutional governments.
Algeria	2003	2005	2005	Established by the President to investigate cases of disappearance that occurred during the civil strife that consumed the country in the 1990s.
Morocco	2004	1956-1999	2005	Established by King Mohammed VI by royal decree to primarily examine abuses committed during the reign of King Hussein II.
Paraguay	2004	1954-2004	Commission Ongoing	Established by law 2225 to investigate human rights crimes between 1954 and 2004, particularly during the 35-year dictatorship of Alfredo Stroessner.
Democratic Republic of the Congo	2004	1960-end of mandate period	Commission Ongoing	Established as one of the five institutions in support of democracy, encompassed in the Pretoria Agreement (December 2002) on power sharing during the transition.
Liberia	2006	1979-2003	Commission Ongoing	Established to investigate abuses during the period January 1979 to October 14, 2003 although could also explore period before 1979.

^aWhile Germany conducted a truth commission consistent with the definition adopted here, it focused on the former East Germany. Comparative regional measures do not exist for the pre- and post-unification East. Because comparisons cannot be made, the case is not included in the analysis.

^bRwanda is included because the commission was granted quasi-official status and received some cooperation from authorities.

^cAlthough the commission issued its report in 1998, it continued to work on the granting of amnesty and making reparation recommendations.

Sources: (Hayner, 1994; Bronkhorst, 1995; Hayner, 2001; USIP, <http://www.usip.org/library/truth.html>).

Appendix G:
List of international human rights instruments the government of Sierra Leone has yet to ratify

- (i) Optional Protocol 2 to the International Covenant on Civil and Political rights;
- (ii) The international Convention on the Protection of All Migrant Workers and Members of their families;
- (iii) Optional Protocol of the Convention on the Elimination of All Forms of Discrimination Against Women;
- (iv) Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (v) Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- (vi) Protocol on the African Charter on Human and People's Rights on the Rights of Women in Africa;
- (vii) ILO Convention 138, Worst Forms of Child Labour;
- (viii) ILO Convention 182, regarding Minimum Age for Admission to Employment

Appendix H: Levels of Political Terror Scale

Level 1:

Countries under a secure rule of law, people are not imprisoned for their view, and torture is rare or exceptional. Political murders are extremely rare.

Level 2:

There is a limited amount of imprisonment for nonviolent political activity. However, few persons are affected, torture and beatings are exceptional. Political murder is rare.

Level 3:

There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted.

Level 4:

The practices of level 3 are expanded to larger numbers. Murders, disappearances and torture are a common part of life. In spite of its generality, on this level terror affects those who interests themselves in politics or ideas.

Level 5:

The terrors of level 4 have been expanded to the whole population. The leaders of these societies place no limits on the means or thoroughness with which they pursue personal or ideological goals.

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