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## Transitional justice and liberal post-conflict governance: Synergies and symmetries, frictions and contradictions

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## Chapter III: Economic Violence in the Practice of African Truth Commissions and Beyond<sup>1</sup>

Over the last three decades, truth commissions in their various forms, together with other transitional justice mechanisms, have become an increasingly popular means of attempting to address legacies of violence.<sup>2</sup> While mandates vary, the core mission of most truth commissions includes an attempt to diagnosis “what went wrong” in the lead up to the conflict or period of abuses, to document and understand the human rights abuses that were perpetrated, particularly from the perspective of those defined as “victims,” and to offer prescriptions for the future with a view to preventing recurrence of conflict. Given the tangled political, economic, and social roots of many conflicts, this is no easy task. Conflicts do not begin in a vacuum, isolated from deeper socioeconomic and historical forces, and their ripple effects rarely cease when the guns fall silent. While there is a tendency to associate conflict with the most extreme forms of physical violence, murder, rape, and torture for example, the violence of conflict is often carried out at multiple levels. “Economic violence” in various forms, including widespread corruption, theft and looting from civilians, plunder of natural resources to fuel wartime economies and fill warlords’ pockets, and other violations of economic and social rights, is also deeply woven into the narrative of many modern conflicts, as both driver and sustainer. In addition to violations of bodily integrity, many individuals lose life savings, homes, and the ability to sustain themselves in the future. For many victims, it is the combination of both physical and economic violence that makes conflict utterly devastating. As a result, the poverty and lack of access to basic social services that may have pre-dated the conflict are all the more crippling in the conflict’s aftermath.

But while forms of economic violence are part and parcel of many modern conflicts, the great majority of truth commissions created in the wake of violent conflict have chosen to place almost exclusive emphasis on documenting and analyzing acts of physical violence and other civil and political rights violations. Issues of equally devastating economic and social justice have received comparatively little attention. In the 1980s and 1990s, for example, Latin American truth commissions in Argentina, Uruguay, and Chile, largely prioritized violations of civil and political rights, passing over the role of economic crimes in the violence that was perpetrated.<sup>3</sup> The much-lauded

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<sup>1</sup> This dissertation chapter was originally published as a chapter in my edited volume: Dustin Sharp, ed., *Justice and Economic Violence in Transition* (New York, Springer, 2014).

<sup>2</sup> A few portions of this chapter, particularly the case study on Sierra Leone, are drawn from an article first published in the Harvard Human Rights Journal. See Dustin Sharp, “Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice,” *Harvard Human Rights Journal* 26 (2013).

<sup>3</sup> James Cavallaro and Sebastián Albuja, “The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond,” in *Transitional Justice from Below, Grassroots Activism and the Struggle for Change*, ed. Kieran McEvoy and Lorna McGregor (Oxford and Portland, Oregon: Hart Publishing, 2008), 122.

South African truth commission focused on murder, torture, and other egregious acts of bodily harm, but not on the economic and structural violence of the apartheid system itself. Where some of these truth commissions have grappled with economic violence in limited ways, it has often been treated as context, useful in helping to understand why physical violence took place, but little more.<sup>4</sup> Whatever merits the truth narrative woven by a commission following such an approach might have, it will inevitably be a truth distorted by the notion that there is a tidy and clean division between economics and politics, between some of the key drivers and sustainers of conflict, and its most egregious effects. Ultimately, the marginalization of the economic within the transitional justice agenda can also serve to distort the policies thought to be necessary in the wake of conflict.<sup>5</sup>

In contrast with these historical patterns, an increasing number of truth commissions in the last decade, many of them African, have taken steps to shift economic violence into the foreground of their work. A few have even identified forms of economic violence as a “root cause” of the conflict in question and included among their recommendations measures intended to address the underpinnings of economic violence. This chapter will explore the pioneering work of five African truth commissions—Chad, Ghana, Sierra Leone, Liberia, and Kenya—using the case studies as a prism to explore some of the practical, legal, and policy dilemmas raised by the greater inclusion of economic violence in the transitional justice agenda. I argue that while these efforts have varied in terms of quality, rigor, and the amount of attention paid to economic violence, they nevertheless represent an important step in moving economic violence into the foreground of the transitional justice agenda, and in linking analysis and understanding of some of the drivers and sustainers of conflict with necessary peacebuilding initiatives in the wake of conflict. At the same time, while African truth commissions have made great strides in moving economic violence into the foreground, they have rarely chosen to frame the issues in question as human rights issues, even where claims of violations of economic and social rights would be strong. This represents a lost opportunity for addressing poverty and other issues of economic violence in the post-conflict context. Going forward, I argue that truth commissions choosing to address economic violence will need to find ways to retain focus despite broadening mandates. Focusing on an “economic violence-human rights nexus” would be one way to achieve such focus.

This chapter will proceed in three parts. In part one, I discuss the role of truth commissions in transitional justice generally, describing their functions, ascribed purposes, and a few broad streams of critique that have been raised relating to their work. I analyze the historic focus of many truth commissions—what Cavallero and Albuja have called the “dominant script”—and the relative invisibility of economic issues therein. I also discuss the spectrum of approaches a truth commission might choose to take in addressing economic violence if it wished to counter these historic patterns. In the

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<sup>4</sup> See Zinaida Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice,” *International Journal of Transitional Justice* 2, no. 3 (2008): 275-76.

<sup>5</sup> *Ibid.*, 266-268.

second part, I look at economic violence in the practice of five African truth commissions and beyond, using the case studies to outline the promises and pitfalls of attempting to move economic violence into the foreground of transitional justice work. The third and final part concludes the chapter with recommendations for improving the quality and rigor of work on economic violence.

A note about terminology is in order before continuing. In this chapter, I use the terms “physical violence” and “economic violence” as shorthand to refer to a range of phenomena. “Physical violence” refers to murder, rape, torture, disappearances, and other classic violations of civil and political rights. In contrast, “economic violence” refers to violations of economic and social rights, plunder of natural resources, and various forms of economic crime carried out by authorities in violation of generally applicable criminal law, including large-scale embezzlement, fraud, tax crimes, and other forms of corruption. While most of the “physical violence” discussed in this article constitutes a violation of civil and political rights under international law, the concept of “economic violence” includes but is also broader than violations of economic and social rights under international law.<sup>6</sup> Though they discuss the phenomena I have grouped under the category of “economic violence,” the truth commissions I discuss in this chapter do not use the term as such. Many of them do not even refer to economic and social rights explicitly, preferring instead to talk about “economic crimes” under national law. I am therefore using the phrase “economic violence” in a relatively broad sense that encompasses the varied economic crimes and economic and social rights violations at issue in the work of the truth commissions used as case studies in this chapter.

#### **A. Truth Commissions and Transitional Justice**

Though many of the mechanisms associated with transitional justice have origins and parallels going back centuries if not millennia, as a domain of policy, practice, and academic study, the modern field of transitional justice emerged in the 1980s and 90s with the surge of political transitions in both Eastern Europe and Latin America that followed in the wake of the end of the Cold War.<sup>7</sup> The field encompasses the diverse ways in which societies attempt to grapple with a legacy of widespread human rights abuses as part of a transition to a more democratic and peaceful future. In recent years,

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<sup>6</sup> Beyond the International Covenant on Economic, Social and Cultural Rights, economic, social, and cultural rights have the status of binding law in a number of international human rights treaties. Examples include the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; the European Social Charter; and the African Charter on Human and Peoples Rights.

<sup>7</sup> See generally, Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Volume I. General Considerations* (Washington: United States Institute of Peace, 1995).

transitional justice has come to be associated not just with narrow political transitions to democracy, but with post-conflict reconstruction and peacebuilding more generally.<sup>8</sup> As endorsed by the United Nations in a landmark 2004 report, transitional justice is said to comprise

*the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.*<sup>9</sup>

Despite the increasingly open-ended nature of transitional justice, the paradigmatic “third wave” transitions at the origins of the field, transitions from authoritarianism and communism to Western liberal democracy, were “crucial to structuring the initial conceptual boundaries of the field,” and remain relevant today to understanding the field’s constructed boundaries and limitations.<sup>10</sup>

Transitional justice is often said to be at once backward looking, insofar as it is preoccupied with abuses committed by various factions prior to the transition or conflict, and forward looking, insofar as it attempts to prevent recurrence and lay the groundwork for long-term peace by promoting accountability, reconciliation, and institutional reform. While the transitional justice “toolbox” has broadened to include a range of mechanisms and practices designed to encourage reconciliation and various forms of accountability, the most iconic, and perhaps most dominant mechanisms associated with transitional justice are prosecutions and truth commissions.

#### *i. The Rise of the Truth Commission*

When in 1984 Argentina’s Sábatto Commission (*Comisión Nacional sobre la Desaparición de Personas*, CONADEP) charged with investigating disappearances in the course of Argentina’s dirty war published its final report, *Nunca Más* (or “Never Again”), it could hardly know that it was in the vanguard of a worldwide trend.<sup>11</sup> In the nearly three decades that have followed, the concept of the truth commission has been exported throughout the world, with an average of over one new truth commission being

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<sup>8</sup> See Chandra Sriram, Olga Martin-Ortega, Johanna Herman, “Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice,” JAD-PbP Working Paper Series No 1. (May 2009), 13 (discussing increasing linkages between transitional justice and a broader set of peacebuilding activities).

<sup>9</sup> United Nations Secretary General, “The Rule of Law and Transitional Justice in Post-conflict Societies,” UN Doc. S/2004/616 (August 23, 2004), para. 8.

<sup>10</sup> Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31 (2009): 326.

<sup>11</sup> *Nunca Más, Report of the Argentine National Commission on the Disappeared* (New York: Farar, Strauss and Giroux, 1986).

created per year since the early 1980s.<sup>12</sup> Priscilla Hayner, perhaps the world authority on the subject, has documented the existence of some 40 modern-day truth commissions.<sup>13</sup> While truth commissions have spanned the globe, ranging from South Africa and South Korea, to Morocco, Germany, and Greensboro, North Carolina, at least 65 percent of them have been split almost equally between Latin America and Sub-Saharan Africa. With the recent creation of truth commissions in Brazil and Côte d'Ivoire, the worldwide list will likely only continue to grow in the coming years. Truth commissions, together with other transitional justice mechanisms appear to have become a routine part of the "post-conflict checklist" that includes security-sector reform, judicial reform, and national elections. Increasingly, both rhetoric and actual policy choices suggest that the question is no longer *whether* something will be done in the wake of large-scale human rights abuses, but *what* should be done. Truth commissions in their various forms have been and will likely continue to be a consistent part of the response to that question in the years to come.

At the most general level, truth commissions across the world have a remarkable similarity. As defined by Hayner, a truth commission:

*(1) is focused on the past, rather than ongoing events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; (5) is officially authorized or empowered by the state under review.*<sup>14</sup>

The purposes and goals ascribed to such bodies are far ranging, though some claims appear to be anchored more in articles of faith than rooted in robust empirical evidence. It is often assumed, for example, that establishment of "the truth" is a necessary precursor to reconciliation and national and individual healing, though the historical record and individual experience certainly provides examples that might lead one to question such claims. Others argue with more modesty that while they may be an imperfect mechanism for justice, truth commissions can at least help to create a bulwark against later denial of the abuses that took place, and of forgetting.<sup>15</sup> Beyond establishing a historical record of events, truth commissions can also provide a national forum in which victims' experience of conflict can be heard and publically acknowledged, often for the first time. Truth commissions have also been instrumental in articulating

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<sup>12</sup> While Uganda and others can arguably lay the claim to having held the first truth commission, Argentina's commission is of unquestionably higher influence in the spread of truth commissions around the world, and was the first to publish a report that became a best seller.

<sup>13</sup> Prisilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2011), 11-12.

<sup>14</sup> Hayner, *Unspeakable Truths*, 11-12.

<sup>15</sup> See, for example, Alexander Boraine, "Truth and Reconciliation in South Africa," in *Truth v. Justice*, eds. Robert Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000), 141-157.

policy platforms for necessary change in the wake of conflict, occasionally leading to the implementation of reparations programs and a number of significant prosecutions.<sup>16</sup>

Yet despite their popularity and the powers ascribed to them, truth commissions have not been without their disappointments, failures, and critics. Some truth commissions, including one of the case studies used in this chapter, Chad, have been seen as too partisan to do credible work and establish an unvarnished historical record of events. Others, including commissions in Bolivia, Zimbabwe, and the Philippines, have failed to even publish a report. Still others, such as the Liberian commission, have produced lengthy reports that are groundbreaking in certain respects, but nevertheless considered to lack the requisite rigor that the subject matter requires.<sup>17</sup> Even when their work has been of relatively high caliber, the bulk of recommendations issued by truth commissions are in many cases simply ignored by governments. Finally, advocates from the mainstream human rights community have often argued against the use of truth commissions in the absence of prosecutions, calling them a “soft option” for avoiding hard justice, a choice all too readily welcomed by warlords intent on avoiding “real” forms of accountability.<sup>18</sup>

As should come as no surprise, truth commissions have also faced withering criticism from academics. When it comes to the question of conflict prevention, political scientist David Mendeloff has argued that many of the core claims and assumptions underlying the creation of truth commissions—including the notion that personal healing promotes national healing, that truth-telling promotes reconciliation, and that forgetting the past necessarily leads to war—are flawed, and that “truth-telling advocates claim far more about the power of truth-telling than logic or evidence dictates.”<sup>19</sup> In view of some of the questionable claims made, Mendeloff argues, one should not be so quick to proclaim the necessity of truth commission in the aftermath of violent conflict. Other critics like anthropologist Rosalind Shaw have argued that the particular model of truth commission that has been exported throughout the world, rooted as it is in Western traditions of public confession, sin, and forgiveness, may at times conflict with and even serve to displace local traditions of memory, healing, and social forgetting and that more context-specific approaches may be required.<sup>20</sup> Yet despite these trenchant critiques from activists and academics, the truth commission as a worldwide phenomenon continues to flourish.

## *ii. The Practice of Truth Commissions; Following a Dominant Script*

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<sup>16</sup> Hayner, *Unspeakable Truths*, 5.

<sup>17</sup> For a critical take on the work of the Liberian truth commission, see, e.g., Jonny Steinberg, “Liberia’s Experiment with Transitional Justice,” *African Affairs* 109 (2009): 136.

<sup>18</sup> Reed Brody, “Justice: The First Casualty of Truth?,” *The Nation*, April 30, 2001, 25.

<sup>19</sup> David Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?,” *International Studies Review* 6 (2004): 356.

<sup>20</sup> Rosalind Shaw, “Rethinking Truth and Reconciliation Commissions; Lessons from Sierra Leone” (United States Institute for Peace Special Report 130, 2005); see also Tim Kelsall, “Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone,” *Human Rights Quarterly* 27 (2005): 361.

Truth commissions are, of course, not a monolith and there is no single model that has been used throughout the world. With many different iterations across the globe, truth commissions have demonstrated variability and adaptability across a number of dimensions. They have varied as to the enacting authority establishing them, the scope of abuses addressed, the time and budget allocated to their work, whether they could pardon violators in exchange for a confession, whether to name names and use photos of those responsible in their final report, whether to provide compensation to victims, the scope of investigative powers, and the legally binding nature of any recommendations that they might issue. As variations in form, composition and powers demonstrate, the truth commission is an open-ended institution, combining some of the features of a court, an investigative legislative committee, and community therapy body, its ultimate form and power determined only by the institutional imagination of its creators, and the political and financial realities they face.

Yet despite their variability and adaptability across the world, when it comes to the scope of abuses that they address, most truth commissions have generally worked within fairly established parameters that emphasize physical violence and civil and political rights violations, with dimensions of economic violence, including violations of economic and social rights, corruption, and other economic crimes pushed to the margins, if they are addressed at all. For example, one of the world's first truth commissions, the Sábato Commission in Argentina focused exclusively on forced disappearances, despite the range of civil and political rights abuses in which the military had engaged, to say nothing of economic crimes and corruption. Truth commissions created shortly thereafter in Uruguay (1985) and Chile (1990-91) focused exclusively on disappearances. Though their mandates were somewhat broader, truth commissions in El Salvador (1992-93) and Guatemala (1997-99) focused on a relatively narrow band of the human rights spectrum. In South Africa (1995-2002), only those who had suffered "gross violations of human rights, including killing, abduction, torture, or ill-treatment" qualified as "victims."<sup>21</sup> The apartheid system itself, in some ways perhaps the embodiment of structural and economic violence, was largely treated as context to instances of egregious bodily harm that became the commission's principal focus. As Cavallaro and Albuja have argued, the near invisibility of economic violence in the work of these truth commissions cannot be attributed to an absence of corruption and economic crimes in the countries and political regimes at issue.<sup>22</sup>

That this pattern should be so marked notwithstanding geographic distance and great variability in the underlying conflicts at issue is in a sense remarkable. In tracking this pattern across the truth commissions of Latin America, Cavallero and Albuja have posited that the narrow focus of these early truth commissions developed not because it was particularly well suited to context specific needs, but due to a process of "acculturation" whereby a dominant script is replicated again and again as a result of

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<sup>21</sup> Pablo De Greiff and Roger Duthie, "Repairing the Past: Reparations for Victims of Human Rights Violations," in *The Handbook on Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 8.

<sup>22</sup> Cavallaro and Albuja, "The Lost Agenda," 128.

“repeated information exchange and consultations with prior commission members and a cadre of international scholars and practitioners in the area.”<sup>23</sup> Paige Arthur has similarly documented the vital importance of conferences and information exchanges to the early development of transitional justice norms, practices, and institutional parameters.<sup>24</sup> Once a dominant paradigm for truth commissions as “denouncing only a limited set of human rights violations developed legitimacy in world society,” Cavallero and Albuja argue, “modifying the script to include economic crimes and corruption—and thus undoing the process of socialization of the model—became extremely difficult.”<sup>25</sup>

The script developed in Latin America subsequently became the model for export throughout the world. Perhaps most importantly in terms of truth commission genealogy, the narrow Latin American model was largely the one adopted in South Africa. As explained by Alexander Boraine, former vice chairperson for the South African commission: “In the work leading up to the appointment of the TRC, we were greatly influenced and assisted in studying many of these commissions, particularly those in Chile and Argentina.”<sup>26</sup> The South African commission remains today perhaps the most famous truth commission in the world, and certainly the most influential in sub-Saharan Africa. In my dealings with human rights activists across sub-Saharan Africa over the last ten years, I have found that many are not even aware that the South African commission was preceded by other truth commissions, having come to see it as a uniquely “African” approach to addressing transitional justice issues.

The narrow script of these early Latin American truth commission is of course not unique to the field of transitional justice, but reflects a deeper ambivalence regarding the proper status of economic and social rights within the international human rights community.<sup>27</sup> Though formally universal and “indivisible”<sup>28</sup> from civil and political rights, economic and social rights have long lingered at the periphery of the focus and action of the key players in the international human rights movement, including the largest and most influential NGOs, Amnesty International and Human Rights Watch.<sup>29</sup> This was particularly true in the 1980s and 1990s when the Latin American script for truth commissions was being developed.

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<sup>23</sup> *Ibid.*, 125.

<sup>24</sup> See generally, Arthur, “How ‘Transitions’ Reshaped Human Rights.”

<sup>25</sup> Cavallero and Albuja, “The Lost Agenda,” 125.

<sup>26</sup> Boraine, “Truth and Reconciliation in South Africa,” 142-143.

<sup>27</sup> Louise Arbour, “Economic and Social Justice for Societies in Transition,” *International Law and Politics* 40 (2007), 5.

<sup>28</sup> World Conference on Human Rights, June 14-25, 1993, Vienna Declaration and Programme of Action, UN Doc A/CONF.157/23 (July 12, 1993); United Nations Millennium Declaration, G.A. Res. 55/2, UN Doc A/RES/55/ 2 (Sept. 13, 2000).

<sup>29</sup> Kenneth Roth, “Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization,” *Human Rights Quarterly* (2004): 63; Curt Goering, “Amnesty International and Economic, Social, and Cultural Rights,” in *Ethics in Action: The Ethical Challenges of International Human Rights Nongovernmental Organizations*, eds. Daniel Bell Jean-Marc Coicaud (Cambridge: Cambridge University Press, 2006), 204 (tracing the history of Human Rights Watch and Amnesty International’s early ambivalence towards economic and social rights).

### *iii. The Costs of Undue Narrowness*

Whatever the precise historic reasons for the exclusion of economic violence from the ambit of truth commissions, the invisibility of the economic in their work is not without its costs. As one of the means of defining the historical record and creating the officially sanctioned narrative of conflict, exclusion of the economic has the potential to distort our understanding of the governance regimes that helped in part to precipitate the conflict, and impoverish our understanding of the conflict dynamics themselves. For example, the impression shared by some that corruption was limited during some Latin American dictatorships may be due in part to the fact that truth commissions created to document abuses committed by these regimes paid little attention to issues of corruption, in spite of the economic mismanagement and abuses by elites that served as among the driving forces of the underlying conflicts.<sup>30</sup> Looking back, regimes that perpetrated both economic violence and physical violence may come to be remembered as firm, perhaps occasionally abusive, but strict, orderly, and fiscally clean. There could be a danger of romanticizing such figures in the messy and often crime-ridden world of some modern Latin American democracies.

As the number of truth commissions across the world has grown, many of them have come to play an increasingly important agenda-setting role for post-conflict governments, issuing detailed policy recommendations to a variety of actors on matters touching the rule of law, human rights, and broader governance more generally. In some cases, these recommendations are even binding as a matter of law, with Liberia and Sierra Leone being two examples. Where economic violence has played a key role in driving abuses both during and in the lead up to the conflict, excluding these issues as a matter of course risks producing a set of recommendations that are not well tailored to the crisis at issue, and which do not lay the proper groundwork to prevent recurrence of the dynamics that led to the conflict.

The risk of such distortions will likely vary from country to country, and conflict to conflict. For example, whatever the relevance to certain Latin American countries of a more narrow approach to transitional justice that largely excludes economic violence, one might particularly question its applicability to other regions of the world with completely different legacies of conflict and governance. It has been argued, for example, that for many countries in Sub-Saharan Africa, with their history of neopatrimonial governance regimes based on systems of patronage and clientelism, dimensions of economic violence such as corruption might logically arise “as one of the central justice issues of such transitions.”<sup>31</sup> In such cases, the seemingly self-replicating nature of the dominant script carries with it the risk of excluding issues that are potentially fundamental to post-conflict peacebuilding. In countries such as Liberia, Sierra Leone, and the Democratic Republic of the Congo where plunder of natural resources, corruption, and looting from civilians have featured so prominently, any truth commission

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<sup>30</sup> Cavallaro and Albuja, “The Lost Agenda,” 129.

<sup>31</sup> Arthur, “How ‘Transitions’ Reshaped Human Rights,” 359.

that would choose to ignore such major features of the conflict would produce a seriously distorted narrative and set of policy recommendations.

In sum, exclusion of economic violence from the ambit of truth commissions carries the risk of distorting the historical record, hindering understanding of the drivers of conflict, and biasing the reforms and initiatives thought necessary in the wake of conflict. Whether dealing with conflicts in Africa, Latin America, or elsewhere, there is simply no compelling *a priori* reason that economic violence should be excluded from the ambit of transitional justice mechanisms. Rather, the scope of inquiry and work should be based on a highly contextualized understanding of the roots of the conflict in question and the needs of the transition.<sup>32</sup> In many instances, I argue, such an analysis would lead to what has been alternately called a “deeper, richer, and broader vision of justice” and a “thicker” or more holistic version of transitional justice in which economic and physical violence are placed in the foreground.<sup>33</sup>

#### *iv. Writing a New Script*

To say that a truth commission should not exclude economic violence from the ambit of its work as a matter of course does not answer the question of how and to what extent economic violence should be addressed. As reflected in the case studies discussed later in this chapter, a truth commission might choose to take a relatively broad or narrow approach to issues of economic violence in transition. At the broadest end of the spectrum, a truth commission with a wide temporal and subject matter mandate might look deep into history, examining the socioeconomic underpinnings and structural violence that often predate conflicts by decades if not centuries. Such an approach might involve looking at instances of corruption and other economic crimes not only during a particular conflict period, including sale of natural resources and other national assets to fuel violent conflict, but in the years leading up to the violent conflict as well. At its most direct, such an approach would involve framing many such issues not simply as useful background to understand why fighting broke out, but as independent violations of international and national law, including violations of economic and social rights. If such a commission were to take a similarly broad and deep approach to its recommendations for legal, policy, and institutional reforms, one could imagine measures that would include, among others, affirmative action, land-tenure reform, redistributive taxation, the creation of anti-corruption commissions endowed with serious power, and special development assistance to regions most economically affected by the conflict. At the most extreme end, such measures might be hard to distinguish from the work of the field of economic development.

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<sup>32</sup> Miriam Aukerman, “Extraordinary Evil, Ordinary Crimes: A Framework for Understanding Transitional Justice,” *Harvard Human Rights Journal* 15 (2002): 91-97 (calling for a goal and culture specific response to mass atrocities).

<sup>33</sup> Alexander Boraine, “Transitional Justice: A Holistic Interpretation,” *Journal of International Affairs* 60 (2006), 18; Kieran McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” *Journal of Law and Society* 34 (2007): 417.

Of course, to say that in addressing economic violence a truth commission might choose such an approach does not mean that it would necessarily be wise to do so. At its most extreme, an especially broad approach to economic violence might risk political backlash from entrenched elites, dooming even more modest recommendations made by the commission to irrelevancy. Such a broad approach would also bring costs in terms of the extra time, expertise, and finances needed to address the range of both physical and economic violence that took place.

At the narrow end of the spectrum, a truth commission might include economic violence within its ambit, but do so in a relatively restricted way, looking perhaps only to egregious violations of economic and social rights that rise to the level of war crimes committed during a relatively restricted period.<sup>34</sup> One could also imagine an approach where a commission would choose to document violations of economic and social rights only to the extent they were concomitant with civil and political rights violations (seizure of assets from political prisoners, for example). Relatively narrow approaches to addressing economic violence in transition would be less likely to risk political backlash, and would be less of a strain on a commission pushing up against resource constraints, both temporal and financial.

## **B. Economic Violence in the Practice of African Truth Commissions and Beyond**

While the dominant script described above has shaped the narrative of the majority of the world's truth commissions, an increasing number of truth commissions, many of them African, have taken steps to shift economic violence into the foreground of their work. A few of them, Liberia and Sierra Leone, have even gone so far as to identify forms of economic violence as among the "root causes" of the conflict in question and included in their recommendations measures intended to address the underpinnings of economic violence. In this section, I will present case studies examining the background and work of five African truth commissions, Chad, Ghana, Sierra Leone, Liberia, and Kenya. I will also briefly look at the work of two truth commissions outside of Africa, East Timor and the Solomon Islands. While they may not be the only examples of truth commissions that have focused on economic violence to more than a small degree, they represent many of the most prominent examples in the world today, and serve a prism to explore some of the practical, legal, and policy dilemmas raised by the greater inclusion of economic violence in the transitional justice agenda.

- i. Chad: The Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, His Accomplices and/or Accessories (1990-1992)<sup>35</sup>*

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<sup>34</sup> See Evelyne Schmid, "War Crimes Related to Violations of Economic, Social and Cultural Rights," *Heidelberg Journal of International Law* 71, no. 3 (2011): 3, 5, 9-17.

<sup>35</sup> Commission d'Enquête du Ministère Chadien de la Justice sur Les Crimes et Détournements de l'ex-Président Habré et de ses Complices.

Chad's post-independence history has been tumultuous, punctuated at seemingly regular intervals by internal conflict and *coups d'état*. Though the relatively recent discovery of oil and the construction of a pipeline to facilitate its export have filled national coffers to unprecedented levels, landlocked and isolated, Chad remains one of Africa's poorest, worst-governed, and most conflict-ridden countries.<sup>36</sup> Chad's most notorious military leader, Hissein Habré, served as president from 1982 until 1990, receiving significant support during his reign from both France and the United States who saw in Habré a bulwark against Libyan expansion in the region. Habré's reign "was marked by paranoia, clanism, severe political repression, and torture."<sup>37</sup> The chief arm of terror in the police state created by Habré was the Directorate of Documentation and Security (DDS), the security force chiefly responsible for torture and other acts of political repression. Brought to the pinnacle of power in a bloody coup, Habré's fall from power came when one of his former lieutenants, Idriss Déby (still serving as Chad's president over two decades later) mounted a successful insurgency.

Almost immediately after Habré's fall from power, President Déby authorized the creation of a "Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, His Accomplices and/or Accessories." As suggested by the name given, the commission's mandate included both classic violations of physical integrity, including "illegal imprisonments, detentions, assassinations, disappearances, torture, and acts of barbarity," as well as crimes of an economic nature, including embezzlement and theft of public and private goods.<sup>38</sup> From the start, however, the ambitious goals assigned to the commission were not matched by the resources or time allocated to it. With a total of eight months to do its work (after an extension was granted), a minuscule budget, the loss of two of its four vehicles for a period of time due to ongoing combat in parts of the country, and threats from members of the security forces they were investigating, the commission's efforts were greatly hampered and delayed.<sup>39</sup> Complicating matters further, due to a shortage of space, the commission was assigned to work in the former headquarters of Habré's secret police, the DDS, an institution described by the commission as "the principal organ of repression and terror" of the Habré regime, perhaps the worst possible place to locate a truth commission in all

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<sup>36</sup> Chad currently ranks 175 of 182 on the United Nations Human Development Index, 173 of 180 on Transparency International's Corruption Perception Index, and 46 of 48 on the Mo Ibrahim Index of African Governance. Life expectancy is 47.7 years and 80% of the population lives on less than one U.S. dollar a day. For a discussion of the Chad-Cameroon oil pipeline, see Dustin Sharp, "Requiem for a Pipedream; Oil, the World Bank, and the Need for Human Rights Assessments," *Emory International Law Review* 25 (2011): 379.

<sup>37</sup> Sharp, "Requiem for a Pipedream," 387.

<sup>38</sup> Decree Creating the Commission of Inquiry into the Crimes and Misappropriations Committed by ex-President Habré, His Accomplices and/or Accessories, Decree No. 014/P.CE/CJ/90 (December 29, 1990), Article 2.

<sup>39</sup> *Les Crimes et Détournements de l'ex-Président Habré et de ses Complices* (Chadian TRC Report) (Paris: L'Harmattan, 1993), 9.

of Chad.<sup>40</sup> The negative effects of this location on the willingness of former political prisoners to testify cannot have been eased when the commission began to use prisoners from the jails to perform mass exhumations at the sites of Habré's largest atrocities.<sup>41</sup> The commission's report was published in early 1992.

To some, the work of the commission was little more than a political hatchet job designed to make Habré look worse than the man who replaced him, a type of victor's justice.<sup>42</sup> Indeed, the loose language of the report's opening pages does little to dispel this impression, with passages likening Habré to a "camel thief" with innate criminal penchants.<sup>43</sup> The failure to fully account for the round figures offered in the report regarding of the number of victims—Habré is said to be responsible for 40,000 victims, 80,000 orphans, and 30,000 widows—might also lead one to question the report's rigor.<sup>44</sup> But despite its many shortcomings, the Chadian commission's report is groundbreaking in a number of respects: it was the first truth commission report to name names, publishing the actual photos of key torturers, many of whom were still serving in government at the time.<sup>45</sup> The commission called for the prosecution of Habré, as well as torturers serving in government.<sup>46</sup> Finally, the report also took an open look at the role of foreign powers (France, the United States, and others) in supporting the Habré regime, including the budgetary support and training provided to the DDS itself.

Beyond these notable achievements, a perhaps underappreciated innovation in the commission's work is the degree to which the report addressed a range of economic issues, going so far as to divide its report, and indeed its staff, into two sections, one looking at violations of physical integrity and the other at the embezzlement of public goods. As published in the commission's final report, the efforts of the economic crimes section are a little disappointing. For the most part, it appears that the commission could not make sufficient sense of the maze of presidential accounts, national and international, to tease out the full workings of Habré's financial system. The most concrete evidence of personal pillage appears to be the scramble for money on the eve of Habré's fall from power when millions of dollars were stolen from the state's coffers. The commission makes no attempt to link any of these large-scale financial crimes to economic and social rights and the general poverty that has plagued Chad during the

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<sup>40</sup> *Chadian TRC Report*, 21.

<sup>41</sup> *Chadian TRC Report*, 150.

<sup>42</sup> Priscilla Hayner, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16 (1994): 625.

<sup>43</sup> *Chadian TRC Report*, 18.

<sup>44</sup> *Chadian TRC Report*, 97.

<sup>45</sup> Hayner, "Fifteen Truth Commissions," 625.

<sup>46</sup> While the government of Chad has done little to follow these recommendations, a coalition of Habré's victims and human rights NGOs have been attempting to prosecute Habré for violations of the Convention Against Torture since 1999. For a look at the genesis of these efforts, see Dustin Sharp, "Prosecutions, Development, and Justice: The Trial of Hissène Habré," *Harvard Human Rights Journal* 16 (2003). For a review of more recent developments in the Habré case, see Laura Bingham, "Trying for a Just Result? The Hissène Habré Affair and Judicial Independence in Senegal," *Temple International and Comparative Law Journal* 23 (2009).

Habré regime and after. Given the complexity of the work, short staffing, and the limited amount of time allotted, the quality of the economic section's work is perhaps not surprising.

Despite the apparent inability of the financial crimes unit to do the type of forensic accounting that would crack the code of Habré's alleged personal embezzlements, the Commission's report nevertheless breaks ground in illustrating the links between political repression and violence, on the one hand, with economic violence on the other. In documenting the widespread torture and disappearances that characterized Habré's brutal reign, the report documents in some detail the DDS practice of routinely seizing the family wealth of Habré's thousands of political prisoners, including bank accounts, houses, cars and other physical goods. The proceeds were used not only to line the pockets of the members of the DDS and provide houses to Habré regime loyalists, but also to bridge DDS budgetary gaps.<sup>47</sup> In a very real sense then, political terror in Habré's Chad was directly fueled by economic violence. The combination of political and economic violence had huge implications for the extended families of political prisoners. To illustrate this, the commission attempted to estimate the number of indirect victims of Habré's political violence by looking at the number of orphans and widows who lost all economic support as a result of the disappearance of a father or mother, together with the seizure of all of the family's goods and eviction from their home. In doing so, the Chadian truth commission broke new ground in helping to illustrate the socioeconomic ripple effects of political violence.<sup>48</sup>

#### *ii. Ghana: The National Reconciliation Commission (2003-2004)*

Though Ghana is often known today for relative prosperity and stability in a troubled region, its post independence history has at times been overshadowed by authoritarian and military rule, including four military *coups d'état* since 1966. Human rights abuses occurred under all periods of military rule, but intensified under Jerry John Rawlings' two socialist-inspired military regimes spanning a total period of 11 years from the late 1970s until the early 1990s. These periods were characterized by killings, abductions, disappearances, torture, and confiscation of property.<sup>49</sup> While periods of civilian rule were generally associated with increased, if imperfect, respect for rights, such administrations were generally too short-lived to counter the impunity that had taken root. Ghana's experience with military rule came to a formal close in 1993 after a new constitution came into effect and democratic elections were held returning Rawlings to power in a civilian capacity. The new constitution included an amnesty provision for past abuses.

The second democratic elections of 2000, which replaced Rawlings with John Kufor brought a definitive close to Ghana's experience with military rule. In the lead up to the elections, John Kufor promised an active policy of national reconciliation intended to

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<sup>47</sup> *Chadian TRC Report*, 27-28.

<sup>48</sup> *Chadian TRC Report*, 97.

<sup>49</sup> Robert Ameh, "Doing Justice after Conflict: The Case for Ghana's National Reconciliation Commission," *Canadian Journal of Law and Society* 21 (2006): 96.

address Ghana's troubled past.<sup>50</sup> In early 2003, a National Reconciliation Commission (NRC) began its work in the same building where Kwame Nkrumah declared Ghana's independence 46 years earlier. The NRC would be the first national initiative to provide Ghanaians opportunities to publically relate their experiences of abuse and to seek redress.

The creation of the NRC proved controversial in several respects. Some questioned the need for a commission some nine years into Ghana's democratic transition. There was also a lively debate surrounding the time period and types of violations that would constitute the commission's mandate, particularly whether the commission would focus only on periods of military rule, or, as ultimately decided, abuses under both military and civilian rule. With respect to the commission's subject matter mandate, "Many raised the issue of whether the violations examined by the commission should be confined to violations of bodily integrity or extend to socio-economic violations and the reproduction of structural injustice."<sup>51</sup> In the end, the commission was instructed to investigate violations and abuses of human rights relating to seven categories—"killings, abductions, disappearances, detentions, torture, ill-treatment and seizure of properties"<sup>52</sup>—but it was also given the flexibility in investigate "any others matters" it deemed necessary to promote reconciliation.<sup>53</sup>

To outsiders looking at the seven enumerated categories of abuses within the commission's mandate, the addition of "seizure of properties" might appear anomalous, coming as it does after some of the most egregious violations of civil and political rights abuses imaginable. Seen through the lens of Ghanaian history, however, particularly periods of military rule under Rawlings' two socialist-inspired regimes where contested economic narratives were central to the story of military repression, it would have been strange to exclude dimensions of economic violence from the work of any such commission. Under Rawlings' military regimes, much of the political violence targeted economic actors accused of "kalabule," or corruption and profiteering. Those thought to be rich and politically conservative, including the market women who controlled private trading businesses, were particularly targeted. Abuses against such figures included severe physical violence as well as property seizure. Such targeted violence may have reached its peak in 1979 with the execution without trial of two former heads of state and six senior military officers accused of corruption.<sup>54</sup>

In documenting the economic violence perpetrated by soldiers during Ghana's military regimes, the commission's report helps to illustrate the complicated interplay between economic and political violence. Indeed, as presented in the report, forms of economic violence and political violence are almost inextricably intertwined during

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<sup>50</sup> Nahla Valji, "Ghana's National Reconciliation Commission: A Comparative Assessment," International Center for Transitional Justice, Occasional Paper Series (September 2006).

<sup>51</sup> *Ibid.*, forward.

<sup>52</sup> The commission understood seizure of property to include "confiscation of factories, houses, vehicles, goods, cash crops and food crops, and various sums of money." *National Reconciliation Commission Report (Ghana NRC Report)* (2004), Vol I, 92.

<sup>53</sup> *Ghana NRC Report*, Vol. I, 10-14.

<sup>54</sup> *Ibid.*, 96.

certain periods of Ghana's history. In tailoring its recommendations to the abuses documented, the commission ultimately urged a range of policies relating to the economic violence that was meted out, ranging from restitution, to a special memorial for traders, one of the groups heavily brutalized by a combination of physical and economic violence.<sup>55</sup> Beyond property seizures, the commission also looked at labor violations as forms of economic violence. Unlike some dimensions of economic violence such as property seizure and the infamous burning of the central market in Tamale, which the commission does not generally conceptualize as violations of economic and social rights *per se*, it describes summary dismissals of public servants by various military regimes as "one form of human rights abuse."<sup>56</sup>

Despite its many achievements, the Ghanaian commission was criticized for being narrowly legalistic in its approach to truth and reconciliation, something reflected in the final report's narrative style.<sup>57</sup> The commission's report does not, for example, contain a particularly deep analysis of the broader social conditions of wealth and poverty that may have in part inspired the abusive practices of "revolutionary" governments. Rather, it largely seeks to detail a rather atomized catalogue of abuses perpetrated by soldiers, from killing and abductions to property seizure. Unlike the work of the Chadian truth commission, there is little effort devoted to detailing the ripple effects of both economic and political violence on the lives of families and their ability to support themselves. Thus, although the report breaks important ground in documenting aspects of economic violence, in some ways it continues to represent a more decontextualized and conventional human rights approach to reporting on violations. The story told in the commission's report becomes primarily a narrative of unchecked indiscipline by young rogue soldiers who mete out revolutionary zeal. The remedy to the problems evoked by such a narrative in turn tends to focus on the need to reign in unchecked security forces rather than to address broader social and economic conditions. This stands in contrast to the work of truth commissions analyzed later in this chapter such as Liberia and Sierra Leone that have explicitly identified large meta-drivers of the conflicts and abuses in question such as poverty, disenfranchised youth, and the scrum for natural resources, and tailored recommendations to address these "root causes."

### *iii. Sierra Leone: Truth and Reconciliation Commission (2002-2004)*

In March 1991, a rag-tag group of disaffected students and would-be revolutionaries, led by Foday Sankoh and supported by Charles Taylor in neighboring Liberia, launched their first attacks in Eastern Sierra Leone under the banner of the Revolutionary United Front (RUF). Though the RUF was in its earliest days loosely united against the endemic corruption and inept governance of President Momoh's government, their efforts quickly degenerated into what appeared to be a war against the civilian population as drug-

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<sup>55</sup> *Ghana NRC Report*, Vol. II, 42.

<sup>56</sup> *Ghana NRC Report*, Vol. I, 76.

<sup>57</sup> Valji, "A Comparative Assessment," 10.

addled child soldiers raped, pillaged, maimed, and killed with impunity. In the eleven years that followed, the civil war enveloped the entire country, killing as many as 50,000 people.<sup>58</sup> Though notorious for its extreme brutality and mass amputations, it was also a conflict that gave the world a new vocabulary for thinking about the linkages between natural resources and violent conflict as factions vied for control of Sierra Leone's lucrative alluvial diamond fields, the so-called "blood diamonds" that helped in part to sustain the conflict. The war only came to an end in 2002 with the intervention of the United Nations, Guinea, and the British army. The Lomé Peace Accord that brought a formal end to the conflict called for the creation of a Truth and Reconciliation Commission. Subsequently, the government also asked the United Nations for help in setting up a Special Court for Sierra Leone in order to try those who "bear the greatest responsibility."<sup>59</sup>

Tasked with making sense of a war that seemed to many to be without purpose, the Sierra Leone Truth and Reconciliation Commission took a historically deep and thematically broad view of the roots and drivers of the conflict. In interpreting its mandate, the commission adopted a broad view of the concept of human rights, comprising civil and political, economic and social, "as well as other categories such as the right to development and the right to peace."<sup>60</sup> It emphasized in its analysis dimensions of both physical and economic violence, going so far as to place corruption, poverty, and structural violence as the core building blocks for the conflict: "the central cause of the war was endemic greed, corruption, and nepotism that deprived the nation of its dignity that reduced most people to a state of poverty."<sup>61</sup> Rather than treat facets of economic and structural violence as mere context, the commission traces the intertwined nature of economic, physical, and political violence both before and during the conflict itself. Thus, for example, in documenting violence that took place in the course of the conflict, the commission lists destruction of property, looting of goods, and extortion, along with serious violations of bodily integrity such as killing, assault, and rape as among the most common "violations" that took place with no attempt to create hierarchies of suffering.<sup>62</sup> It also examined and the secondary economic and social rights impacts of the conflict, such as the impact on the health and education of women and children.<sup>63</sup>

The inseparable nature of economic and physical violence in the course of the Sierra Leonean conflict is perhaps expressed most clearly in the way that natural resources played into conflict dynamics, both before and during the conflict itself. While to many outsiders the conflict in Sierra Leone was often seen as little more than a brutal scrum for the nation's diamond resources, in fact, it might more plausibly be argued that diamonds played into both greed and grievance dynamics. Thus, for example, in the

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<sup>58</sup> John Bellows and Miguel Edward, "War and Institutions: New Evidence from Sierra Leone," *The American Economic Review* 96 (2006): 394.

<sup>59</sup> Statute of the Special Court for Sierra Leone, art. 1.

<sup>60</sup> *Witness to Truth, Report of the Sierra Leone Truth and Reconciliation Commission* (2004), Vol. I, 37-38.

<sup>61</sup> *Witness to Truth*, Vol. II, 27.

<sup>62</sup> *Ibid.*, 35.

<sup>63</sup> *Ibid.*, 99-105.

decades before the eruption of conflict, the commission examines the role of elites in siphoning off the country's diamond wealth to the detriment of development and poverty alleviation, creating some of the conditions, including widespread frustration with corruption, that made the conflict possible. Once the conflict erupted, control of diamond production became a key strategy for several factions, influencing the targeting of certain areas with attendant human rights consequences. The commission found it important to emphasize, however, that this did not feature highly in the early years of the conflict, ultimately concluding that while diamonds helped to fuel and sustain the conflict, plunder was not the driving factor that precipitated the RUF's initial brutal campaign.<sup>64</sup>

The report's recommendations, which are in principle binding upon the government of Sierra Leone,<sup>65</sup> are ambitious and wide ranging. While the bulk of the recommendations appear to target stronger rule of law and greater respect for civil and political rights, there are also recommendations tailored to dimensions of economic violence as expressed before and during the conflict, including a repeal of laws preventing women from owning land, the need for a stronger anti-corruption commission, better basic service delivery, and better and more transparent use of diamond revenues. Taken together, the recommendations of the Sierra Leonean TRC were perhaps the most comprehensive, and most holistic set of recommendations issued by any truth commission up to that time.

In issuing its recommendations, the commission attempted to calibrate what was realistically achievable in the short, medium, and long term. In this respect, it is worth noting that recommendations targeting improvement of economic and social rights are more likely to be qualified by the commission as something the government must "work towards" rather than something that is "imperative." While this is in part understandable given Sierra Leone's resource limitations, it may also serve to reinforce the notion that these are "backburner" issues compared to more pressing issues relating to civil and political rights. In this regard, it is unfortunate that the commission did not more explicitly couch the economic violence that it documented in explicitly human rights terms. As things stand, though there have been notable exceptions, including the passage of Sierra Leone's three gender bills,<sup>66</sup> many of the commission's recommendations have not been implemented. Understanding that misuse of diamond revenues and other instances of corruption can lead to violations of the rights to health and education, for example, might have given activists and citizens groups a tool to campaign and press for the implementation of certain recommendations.<sup>67</sup>

#### iv. Liberia: Truth and Reconciliation Commission (2006-2009)

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<sup>64</sup> *Witness to Truth*, Vol. I, 12.

<sup>65</sup> Republic of Sierra Leone, The Truth and Reconciliation Act (2000), Section 17.

<sup>66</sup> Specifically, the Domestic Violence Act, the Registration of Customary Marriage and Divorce Act, and the Devolution of Estates Act.

<sup>67</sup> Lisa Laplante, "Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework," *International Journal of Transitional Justice* 2 (2008): 337-350.

On Christmas eve 1989, former government minister Charles Taylor and a small group of Libyan-trained rebels launched an insurgency from neighboring Côte d'Ivoire in an attempt to topple the abusive regime of Samuel Doe, who ruled Liberia from 1980 to his death in 1990. The civil war that would consume Liberia for the next 14 years, punctuated only by a brief relative peace from 1996-1999, would result in the loss of as many as 250,000 lives and the displacement of one million individuals. While staggering in themselves for a country whose pre-war population numbered just over two million, such numbers only begin to capture the brutality of a conflict now famous for its use of child soldiers, widespread sexual violence, and rapacious looting as Charles Taylor and other rebel faction leaders encouraged their troops to "pay themselves."<sup>68</sup> Charles Taylor sustained his war effort in large part through plunder of Liberia's natural resources, including timber and diamonds, many of which were trafficked from neighboring Sierra Leone. The war only came to a definitive end in 2003 with the combined interventions of neighboring (Guinea), regional (Nigeria), and international powers (the United Nations and the United States). In early 2006, a transitional government was replaced by Ellen Johnson Sirleaf, Africa's first and only elected female head of state, and her new administration.

The comprehensive peace accords of 2003 provided for the creation of a truth and reconciliation commission that was to "deal with the root causes of the crises in Liberia, including human rights violations."<sup>69</sup> The commission, which was not actually launched until early 2006, was tasked with investigating "gross human rights violations and violations of international humanitarian law," including massacres, rape, murder, and extra-judicial killings. It was also mandated to investigate "economic crimes, such as the exploitation of natural or public resources to perpetuate the armed conflict."<sup>70</sup> In terms of temporal scope, the commission's mandate actually stretched back to 1979, some ten years before the formal beginning of the civil war, the final year of Americo-Liberian rule. It was further permitted to look at "any other period preceding 1979." This was a significant concession to many of Liberia's so-called "natives," who continue to view the tiny but still influential elite who ruled the country since its founding as a colony in 1822 with some suspicion, and who associate the structural violence and disenfranchisement woven throughout Liberia's history as fundamental to understanding the eruption of war in 1989.

From the outset, the Liberian commission's trajectory was a shaky one. The commission was cash-strapped, and its commissioners generally perceived as lacking the requisite stature and expertise. Disputes within the commission even led to a fistfight between two female commissioners. Of the former warlords who testified, some chose to grandstand and even express open contempt for the commission. At times, the conduct of commissioners appeared deeply unprofessional, including episodes of "gigg[ing] when victims narrated unusual forms of atrocities, including particularly creative forms of

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<sup>68</sup> *Truth and Reconciliation Commission, Consolidated Final Report (2009) (Liberia TRC Report)*, Vol. I, 44.

<sup>69</sup> *Republic of Liberia, An Act to Establish the Truth and Reconciliation Commission for Liberia* (Liberian TRC Act), May 12, 2005, preamble.

<sup>70</sup> *Ibid.*, Article IV, Section 4(a).

rape.”<sup>71</sup> The commission’s final report has been criticized for lacking rigor, even described by one critic as “unsightly and horribly flawed.”<sup>72</sup> Perhaps unsurprisingly, two of the nine commissioners refused to sign the final report.

Despite these serious shortcomings, the commission’s final report was a bombshell. It recommended 98 people for prosecution and that 50 people be barred from public office for 30 years due to support they gave to Liberia’s warring factions. The list of those subject to censure included President Ellen Johnson Sirleaf herself, an icon of the international women’s movement and widely respected as an exemplar of good governance. While some welcomed the recommendations for prosecution and censure, they have arguably made enemies of even some of the report’s natural allies.<sup>73</sup>

Given the drama surrounding the commission and the controversy arising out of its recommendations for prosecution and censure, it is perhaps unsurprising that some of the more progressive aspects of its work have been underappreciated. The commission was, for example, the first to take statements from citizens living abroad, particularly the large diaspora community living in the United States. It was also innovative in terms of its attempts to detail violations against women and children.<sup>74</sup> Finally, the commission broke ground in its relatively extensive exploration economic violence. Indeed, the report squarely identifies as among the “root causes of the conflict,” factors such as poverty, an “entrenched political and social system founded on privilege, patronage . . . and endemic corruption which created limited access to education, and justice, economic and social opportunities,” and “historical disputes over land acquisition, distribution and accessibility.”<sup>75</sup>

In reading the commission’s account of the civil war, this more holistic approach makes clear that physical and economic violence are almost impossible to separate in attempting to understand the unfolding of Liberia’s civil war. For example, the commission details instances of Charles Taylor’s soldiers helping to guard the very logging companies who were paying Taylor for the privilege of operating in his territory, which in turn allowed Taylor to buy arms and take more territory, extorting even more companies and further diverting the proceeds of plunder and pillage into his war machine. Other aspects of the war economy, including widespread looting, are also documented. Though the report does not do so explicitly, one can trace in its narrative of the war economy an exaggerated form of the plunder and patronage system that in many ways started with Liberia’s colonization by repatriated slaves some 150 years earlier.

Beyond the war economy, other dimensions of economic violence, such as issues of land-tenure, are treated rather breezily and without the necessary rigor that complex issues require. Similarly, while many of the recommendations relating to

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<sup>71</sup> Lansana Gberie, “Truth and Justice on Trial in Liberia,” *African Affairs* 107 (2008): 428.

<sup>72</sup> Steinberg, “Liberia’s Experiment,” 136.

<sup>73</sup> *Ibid.*

<sup>74</sup> Paul James-Allen, Aaron Weah, and Lizzie Goodfriend, “Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia,” International Center for Transitional Justice (May 2010), 3.

<sup>75</sup> *Liberia TRC Report*, Vol. II, 16-17.

economic violence seem sensible enough, including further investigations into those individuals accused of economic crimes, repatriation of unlawfully acquired monies, and the building of a new culture of integrity in politics, in general the report's recommendations section is unmoored from the rigorous documentation and empirical data one would expect to find in the body of a report. Thus, although the likelihood that many of its recommendations will be adopted has already been deeply undermined by the controversy surrounding its recommendations for censure, the overall shoddy workmanship of the report, including the general lack of congruence and consistency between the various sections of the report, and between the report and its recommendations, does not help matters.

If its groundbreaking though incomplete treatment of economic violence is to be welcomed, one can lament the lost opportunity to make tighter connections between the economic crimes discussed in the report, and violations of economic and social rights under international law. Indeed, economic and social rights receive scant mention in the report as an explicit matter, though there are a few vague mentions of "economic rights." In the end, the war economy detailed in the report comes to be seen as a product of unchecked greed and criminality by certain individuals, but there is little attention to the actual suffering it imposed on the people, an effect compounded by the near complete absence of victim voices throughout the report. In addition, the failure to cast economic violence as a rights issue robs would be activists and reformers of an important lobbying tool using a universal vocabulary that would serve to link war time violations of economic and social rights with violations before and after the conflict took place. The Liberian commission's approach to economic violence is therefore both ambitious and progressive, but also serves as a cautionary tale. Documenting economic violence is a complicated exercise that requires time, finances, and expertise. A commission without these resources should think carefully about how best to pursue a broad mandate.

#### v. *Kenya: Truth, Justice, and Reconciliation Commission (2009-ongoing)*

Compared to some of its more troubled neighbors, Kenya has, to outsiders at least, appeared to be a relatively stable and peaceful nation. Yet Kenya's post independence history has a darker side, and has been "marked by authoritarianism, political repression, gross violations of human rights, and widespread corruption."<sup>76</sup> Ethnic cleansing, detention without trial and of political prisoners, torture, and extrajudicial killings have all featured in the nearly forty years of rule under presidents Kenyatta and Moi and the Kenya African National Union party (KANU).<sup>77</sup> Shortly after historic elections brought an end to KANU rule, a new coalition government under President Kibaki created a task force to study the question of holding a public inquiry into past injustices. Based on broad-based consultations, the 2003 task force recommended the creation of a "Truth,

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<sup>76</sup> Godfrey Musila, "Options for Transitional Justice in Kenya: Autonomy and the Challenge of External Prescriptions," *International Journal of Transitional Justice* 3(2009): 447.

<sup>77</sup> See generally, Makau Mutua, chairperson, "Republic of Kenya, Report of the Task Force on the Establishment of a Truth, Justice and Reconciliation Commission," *Buffalo Human Rights Law Review* 10 (2004).

Justice, and Reconciliation Commission" (TJRC), but its recommendations were ignored. It would take the postelection chaos of 2007, where politically orchestrated violence left more than 1100 people dead, to provide the impetus for further action. In the wake of that violence, a national dialogue and reconciliation process mediated by former UN Secretary General Kofi Annan helped to create consensus that "historical injustices," issues at the core of the post-electoral violence, finally needed to be addressed. In 2008, the Kenyan parliament adopted an act providing for the establishment of the TJRC.<sup>78</sup>

As established, the mandate of the Kenyan TJRC is spectacularly broad, not only in terms of temporal scope, going back to 1963, but in terms of the range of "historical injustices" it was authorized to investigate during its two-year operational period.<sup>79</sup> Those issues range from egregious acts of physical violence, such as "abductions, disappearances, detentions, torture, sexual violations, murder, extrajudicial killings" to rather ill-defined "economic rights" and "economic crimes," including irregular and illegal acquisition of public land, grand corruption, exploitation of natural or public resources, and "perceived economic marginalization of communities."<sup>80</sup> While the commission's mandate is exceptional when viewed against the "dominant script" followed by most truth commissions throughout the world, the transitional justice narrative in Kenya has long seen forms of economic violence as central to the historical injustices that need to be addressed.<sup>81</sup> Indeed, in tracing the history of transitional justice initiatives in Kenya, Godfrey Musila has argued that economic issues actually have a longer pedigree and are more central to most accounts of victimization in Kenya than civil and political rights, which "were late entrants to the Kenyan debate."<sup>82</sup>

The sheer breadth of the commission's mandate, however, led to worry that its ambitious goals may not be manageable in terms of time and cost. Before the TJRC even began its work, Human Rights Watch, for example, argued that the commission should either be given a longer life, or the scope of its mandate reduced.<sup>83</sup> In examining the possibility of overreach, the task force established to study the possibility of a truth commission in 2003 noted that, particularly in Kenya, "economic crimes are so intertwined with human rights violations that it is impossible to establish watertight compartments between the two types of violations."<sup>84</sup> Nevertheless, as a means of ensuring that an examination into historical injustices remains focused and manageable, it argued that that "a truth commission should investigate a selected set of economic crimes that directly lead to the violations of economic, social, and cultural rights."<sup>85</sup> In

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<sup>78</sup> Republic of Kenya, *The Truth, Justice and Reconciliation Act, 2008* (Kenyan TRC Act).

<sup>79</sup> The commission began its work in August 2009, yet as a result of repeated delays and extensions, its final report had yet to be issued as of this writing in January 2013.

<sup>80</sup> The Truth, Justice and Reconciliation Act, 2008.

<sup>81</sup> Godfrey Musila, "Options for Transitional Justice in Kenya: Autonomy and the Challenge of External Prescriptions," *International Journal of Transitional Justice* 3 (2009): 446.

<sup>82</sup> Musila, "Options for Transitional Justice in Kenya," 460.

<sup>83</sup> Human Rights Watch, "Kenya: Proposed Truth Commission Bill Seriously Flawed," Press Release (March 13, 2008).

<sup>84</sup> Mutua, "Report of the Task Force," 41.

<sup>85</sup> *Ibid.*, 42.

other words, by focusing specifically on an economic crimes-human rights violations nexus, a truth commission might frame and focus its inquiry into historical injustices in ways that are holistic, yet limited enough to be manageable. As adopted, however, the TJRC Act mentions “economic crimes” and “economic rights,” but the terms go largely undefined and their overlap with violations of internationally recognized economic and social rights is unclear. The apparent distinction made in the Act between “human rights,” on the one hand, with “economic rights,” on the other does little to clarify the muddled waters.

As of this writing, release of the TJRC’s final report has been greatly delayed, and it remains to be seen whether it will produce a report without rigor, similar to the Liberian report discussed above, “mired in the enormous details of history that . . . obfuscate[s] and preclude[s] possibilities for legal accountability.”<sup>86</sup> Thus, only time will tell whether the commission’s final product will be as rigorous and groundbreaking as its mandate is holistic and broad.

vi. *Economic Violence in the Work of Truth Commissions Outside of Sub-Saharan Africa*

Though this chapter has primarily focused on the role of economic violence in the work of African commissions, truth commissions outside of Africa have also begun to move beyond the dominant and relatively narrow script that has traditionally circumscribed the work of truth seeking bodies around the world. In East Timor, the report of the Commission for Reception, Truth, and Reconciliation (2002-2005), often known by its Portuguese Acronym, CAVR, took an extended look at economic violence under the Indonesian occupation.<sup>87</sup> The commission’s final report, *Chega!* (or “enough”), has a chapter explicitly dedicated to exploring violations of economic and social rights, including the rights to an adequate standard of living, health, and education. In general, the commission’s analysis is comparatively sophisticated, linking up a range of Indonesian policies with violations of economic and social rights in creative and unexpected ways, including the use of education as a propaganda tool as a violation of the right to education, forced resettlement of villagers into areas with poor soils and malarial conditions as a violation of the right to health, and the manipulation of coffee prices to fund military operations as a violation of the right to an adequate livelihood.<sup>88</sup> The tight linkage between the commission’s work on economic violence and specific violations of economic and social rights under international law continues into the recommendations section, with specific recommendations grouped under headings such as “right to education and self-determination” and “right to health and a sustainable environment.”<sup>89</sup> Overall, the commission’s elaborate treatment of economic and social rights violations under Indonesian occupation stands in contrast with many of the African

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<sup>86</sup> Musila, “Options for Transitional Justice in Kenya,” 453.

<sup>87</sup> Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste, CAVR.

<sup>88</sup> *Chega!, The Report of the Commission for Reception, Truth and Reconciliation in Timor Leste (CAVR), Final Report* (2005), part 7.9, 3.

<sup>89</sup> *Ibid.*, part 11, 10-12.

case studies discussed above, which have examined various forms of economic violence, but rarely done so in explicit terms of economic and social rights. Nevertheless, despite offering perhaps the most extensive and explicit treatment of economic and social rights of any truth commission to date, for purposes of reparations, the East Timorese commission's definition was limited to victims of violations of civil and political rights.<sup>90</sup> While the necessity of such distinctions as a matter of resource constraints might be argued, such practices have the effect of promoting hierarchies of rights and granting de facto impunity to the architects of economic violence.

Beyond East Timor, in 2009 the Solomon Islands Truth and Reconciliation Commission was created in order to examine the ethnic violence arising out of disputes over land ownership and economic displacement that wracked the region between 1997 and 2003 in a period known as "the Tensions."<sup>91</sup> The scope of the commission's work includes investigating and reporting on a relatively broad range of physical violence and civil and political rights, including killings, abductions, enforced disappearances, torture, rape, sexual abuse, forced displacements, deprivation of liberty and serious ill-treatment.<sup>92</sup> In contrast, the range of economic rights to be so investigated is comparatively limited, including only "the right to own property and the right to settle and make a living," but the commission is also tasked with assessing the impact of the conflict on key sectors such health and education. The act establishing the commission makes clear than any such assessment is to be done "without diluting emphasis on individual victims."<sup>93</sup> It therefore appears that parliament was intent on precluding a loose and overly broad inquiry unmoored from concrete violations of human rights.<sup>94</sup> When the five-volume final report is made public, it will be clear whether economic violence has indeed been of significant if circumscribed importance to the commission's work.<sup>95</sup>

### C. Broadening the Script, Yet Retaining Focus

With few exceptions, the transitional justice institutions of the 1980s and 90s worked to build a justice narrative that was relatively narrow, focusing largely on egregious acts of physical abuse, while issues of economic violence were pushed to the sidelines. Seen against the backdrop of this "dominant script," the work of the truth commissions outlined in this chapter is pioneering, even while the work of some individual commissions has

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<sup>90</sup> *Ibid.*, part 11, 40-41.

<sup>91</sup> For background on "the Tensions," see generally James Cockayne, "Operation Helpem Fren: Solomon Islands, Transitional Justice and the Silence of Contemporary Legal Pathologies on Questions of Distributive Justice," NYU School of Law Center for Human Rights and Global Justice, Working Paper Series, No. 3 (2004).

<sup>92</sup> *The Solomon Islands, Truth and Reconciliation Act, 2008 (Solomon Islands TRC Act)*, section 5.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> While the commission's final report was given to the Prime Minister in early 2012, as of this writing, it is unclear when it will be made widely publically available.

been deeply flawed. Taken together, the work of these commissions suggests that the dominant script is slowly giving way to a much more holistic conception of justice in transition in which economic violence is increasingly placed in the foreground.

One might well ask *why* a number of African commissions appear to have broken from the dominant script to varying degrees. While the answer presented here is somewhat speculative, there are at least three plausible explanations. First, in the case of Chad, it appears to have worked in such splendid isolation that it was not heavily influenced by the dominant script to begin with.<sup>96</sup> At the same time, Chad's cash-strapped government appeared to be desperate to reclaim some of the funds embezzled by Habré on the eve of his fall from power, making a focus on corruption important if only out of self-interest. Second, speaking more broadly, unlike the early Latin American commissions, most of the commissions outlined in this chapter were operating at a time when work on economic and social rights had become much more prevalent in the UN and NGO world more generally, with activists vigorously pressing the need to give both civil political and economic and social rights equal pride of place. If early Latin American commissions of the 1980s and 90s in some ways expressed the human rights *zeitgeist* of the era, they also represented the least common denominator of what could be agreed to at the time. Yet by the end of the millennium, the parameters of the possible in the world of human rights and transitional justice had expanded, as reflected in the work of the commissions discussed in this chapter. Finally, for at least some of the conflicts presented in this chapter, economic violence was so deeply written into the logic of the conflict that to focus exclusively on violations of physical integrity would have seemed wholly inadequate. It is simply not possible to understand conflicts in Sierra Leone and Liberia, for example, without reference to facets of economic violence.

Whatever the precise reasons for this evolving work, the empirical evidence of a change in the dominant script that these commissions represent has been accompanied by signs of a normative shift in international policymaking. For example, a recent report from the UN Secretary General observes "a growing recognition that truth commissions should also address the economic, social, and cultural rights dimensions of conflict to enhance long-term peace and security."<sup>97</sup> Given these emerging normative and empirical trends, now is the time to take stock of the work that has been done with an eye to improving future practice.

One of the challenges illustrated in this chapter is that while the work of some truth commissions is starting to broaden, it is not clear that the budgets and time allocated to do this work has increased commensurately. Addressing legacies of economic violence in the context of a truth commission is challenging work, at times requiring new methods of research and documentation that call on particular sets of expertise. In many instances, such work does not lend itself to the relatively straightforward victim hearings that have been the mainstay of many truth commissions in the past. To some extent, the case studies discussed in this chapter reflect the dangers of broadening mandates

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<sup>96</sup> Cavallaro and Albuja, "The Lost Agenda," 138.

<sup>97</sup> United Nations Secretary General, "The Rule of Law and Transitional Justice in Post-Conflict Societies," UN Doc. S/2011/634 (October 12, 2011), para. 7.

without at the same time broadening the resources needed to accomplish the work. In Chad, for example, the attempt to unravel Hissein Habré's alleged financial schemes did not appear to benefit from the time, financial wherewithal, or expertise in forensic accounting that would have been required to thoroughly and convincingly expose the economic misdeeds of the former regime. In attempting to document aspects of economic violence in Liberia and East Timor, the truth commissions in question appeared to be especially reliant on secondary sources, a fact that may detract from credibility when so many other aspects of a commission's work are based on primary fact-finding and first-hand testimony.<sup>98</sup> Finally, analytically, the work and mandates of several of the truth commissions discussed in this chapter bear a confused and inexact relationship with economic and social rights recognized under international law, which at times gives the final reports a rather loose and freewheeling feel.

Given the unlikelihood in the near term that the resources allocated to truth commissions will increase dramatically over historical levels, commissions addressing aspects of economic violence will need to find better ways to manage broadening mandates. To some extent, increased work on economic violence might give transitional justice more relevance to new constellations of actors and institutions, including development and financial organizations. Some issues of resources and expertise might therefore be addressed through new partnerships. In the end, however, the work of the Liberian truth commission illustrates that partnerships alone cannot ensure quality work, and many truth commissions will still need to find some kind of filtering device to tighten the focus on economic violence to manageable levels.

One potential filter that might increase the rigor of work on economic violence would be to focus specifically on an “economic violence-human rights nexus,” looking primarily at those aspects of economic violence that most directly and egregiously impact economic and social rights recognized under international law. While this approach might at times exclude certain kinds of conduct from a commission's purview—not every act of corruption might be seen to undermine the right to health or education, for example<sup>99</sup>—it could also provide some benefits in terms of requiring truth commissions to focus on the rights bearers themselves, the victims of economic violence, without getting lost in numbers and open-ended historical analysis. A sharper focus on the intersection of economic violence and internationally recognized economic and social rights would also likely give civil society and citizen groups a powerful mobilization tool once a truth commission issues its report. Given the extent to which the recommendations of many truth commissions are simply ignored by governments, this should not be overlooked. Of course, in focusing on a rights nexus, truth commissions should be wary not to become overly lawyerly and atomistic, losing the broader thread and historical context in which rights violations are produced. As with so many other questions of transitional justice, striking the right balance will be key.

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<sup>98</sup> In its final report, the East Timorese commission acknowledged its heavy reliance on secondary sources as one of the limitations of its analysis. *Chega!*, part 7.9, 5.

<sup>99</sup> See Chris Albin-Lackey, “Corruption, Human Rights, and Activism: Useful Connections and their Limits,” in this volume.

Beyond looking to an economic violence-human rights nexus, there may be other ways of circumscribing mandates to manageable levels. Each truth commission will have to find a context-appropriate solution to addressing economic violence. But despite the risks of taking a more holistic approach to questions of justice in transition, there is simply no *a priori* reason to exclude economic violence from the mandate and work of a truth commission as a general matter. This is particularly true when economic violence has been written into the logic of the conflict itself, as illustrated in various ways by the work of the truth commissions described in this chapter. The script is slowly changing, and those changes bring new challenges. Just as the human rights movement has found that greater embrace of economic and social rights has required hard thinking about new advocacy strategies and research methods, so too the field of transitional justice needs to focus greater energies on devising more holistic yet rigorous and disciplined approaches to questions of economic violence and justice in transition.<sup>100</sup> Examining the pioneering work of African truth commissions on economic violence helps to give some important clues as to where this work must begin.

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<sup>100</sup> See generally Roth, “*Defending Economic, Social and Cultural Rights.*” (Explaining the particular methodological challenges associated with trying to apply a “naming and shaming” documentation strategy to violations of economic and social rights); Goering, “*Amnesty International and Economic, Social, and Cultural Rights.*” (Tracing the history of Amnesty International’s ambivalence towards economic and social rights).

