Pluralistic Justice

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TJ Literature

• Formerly peace versus justice debate dominated
• Now focused on the optimal sequence of these mechanisms to achieve democratic consolidation and respect for human rights
• Concluded that only combinations of transitional justice processes positively affect human rights and democracy
• Little emphasis on how their interaction in practice contributes to these goals
• Emerging focus on the root causes of mass abuse
Guatemalan Transitional Justice Experience

• 36 Year Internal Armed Conflict.
• 200,000 mostly indigenous Mayans killed.
• 93% of human rights violations were carried out by government forces.
• TRC concluded that the military committed “genocidal acts” in four specific areas, including the Ixil region.
The Historical Clarification Commission (CEH)

- Established by the Oslo Accord in 1994 to document the human rights violations committed during the armed conflict.
- According to its mandate, “the CEH could not individualize responsibility, nor have any judicial effect.”
- Characterized as a piñata of forgetting.
The Recovery of Historical Memory (REMHI) Project
Guatemalan Generals Case in Spain
Methodology

• Conducted over two dozen interviews of judges, prosecutors, human rights organizations
• Also interviewed both former staff and leadership of CEH and REMHI
• First researcher to have collected all post TRC cases with sentences for crimes involving the armed conflict
• Obtained the full record in the case brought in Spain under the principle of universal jurisdiction
Molina Theissen Hearings
Pre-TRC Cases in the TRC Reports

• Eleven cases with convictions that pre-date the CEH and REMHI.

• While REHMI contained scant references to the various cases that pre-date it, the CEH referenced these cases throughout its report.

• CEH concluded that the Guatemalan judiciary was “an instrument of defense and protection of the powerful” and identified needed judicial reforms.
Use of TRC Report

- None: 22%
- REMHI only: 0%
- Both: 33%
- CEH only: 45%
Evidentiary Uses of Reports

• Corroborate Testimony
• Provide Historical Context
• Demonstrate Patterns of Misconduct or Modus Operandi
• Describe the Operations and Structure of Military and Paramilitary Groups
• Identify Impact on Affected Communities
Other Uses of Truth Commission Work

- Locate Sites for Exhumations
- Find Witnesses
- Identify Perpetrators
- Provide Background for Expert Witnesses
- Identify Military Documents
Post-Conflict Pluralism

Truth Commissions as

- Norm Diffusers
- Investigative Units
- Locales for Narrative Contestation
- Cultural Conveyers
Benefits of Pluralistic Justice

- Focuses on the root causes of societal failures, rather than individualizing these failures.
- Better achieves the layered goals of justice, including more victim-centered justice.
- Creates space for multiple truths to co-exist.
- Ideally, prevents us from reliving the mistakes of the past by addressing abuse at its individual, collective and systemic levels.