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## The Togolese Truth, Justice and Reconciliation Commission: Lessons for Transitional Justice Processes Elsewhere

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## The Togolese Truth, Justice and Reconciliation Commission: Lessons for Transitional Justice Processes Elsewhere

### Abstract

Certain truth and reconciliation processes around the world remain understudied. This means that valuable lessons for transitional justice processes elsewhere are not learned. This article therefore examines lessons from the Togolese Truth, Justice, and Reconciliation Commission (CVJR). It examines the historical context of violence in Togo in order to understand why the country decided to establish a truth commission and looks at how previous inquiries established the need for such a process. Other issues examined are the CVJR's mandate, the time period provided to do its work, and the pros and cons of the choices made with respect to these matters. The article looks at the powers of the CVJR, its recommendations, and examines issues related to truth recovery, victims' needs, and the Commission's ability to combat impunity. Finally, the Commission's effectiveness and legacy for the country are assessed. The article argues that for an under-resourced process the commission performed well in some areas but not so well in other areas. It is argued that it was a useful process in some respects, but that more could have been done had the process optimally worked. The article provides lessons that can be ascertained from the Togolese process.

**Keywords:** *Keywords Transitional justice, truth and reconciliation commissions, dealing with the past, Togo, prosecutions, Togolese Truth, Justice and Reconciliation Commission (CVJR), human rights, violence, conflict.*

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## **The Role of the Truth, Justice and Reconciliation Commission (CVJR) in Togo**

**Jeremy Sarkin and Tetevi Davi**

As states in transition seek processes to address the legacy of mass human rights abuses, Truth Commissions have increased in popularity (Hinton, 2010). Truth commissions have come to dominate the transitional justice landscape and have become the *status quo* in many countries—emerging from an era of gross human rights violations and abuses (Sarkin, 2017). Depending upon how a truth commission is defined, more than 45 such processes have operated in different countries around the world (Hayner, 2010, p. 11). A *broader* definition of truth commission presents more (Usami, 2015). In fact, there have been more than a 100 such processes globally. These numbers are on the rise, as more and more states turn to Truth Commissions in redressing past human rights abuses (Van Der Merwe, Baxter, & Chapman, 2009, p. 7).

Truth Commissions first emerged in the 1970s. Since then they have enjoyed surges in popularity after the apparent success of the Argentinian 1984 Truth Commission and in the mid-1990s following in the footsteps of the South African Truth and Reconciliation Commission. Some Truth Commissions, such as the South African Commission, have been extensively analysed and evaluated in the transitional justice literature (Krog, 2015). Many others, particularly in Africa (but also in Asia), have received very little academic coverage (Kim, 2012). That little scholarly attention has been focused on a range of transitional justice mechanisms in places such as Burundi (Crippa, 2012), Liberia (De Ycaza, 2013), and Togo (the focus of this paper), is highly problematic. It indicates the extent to which experiences from certain parts of the world have been neglected by researchers. Critically, transitional justice is weakened if these processes are not scrutinized, and if the innovations and lessons learned in these places are overlooked. The aforementioned processes provide useful comparative lessons and add to the collection of relative experiences about Truth Commissions and transitional justice, in general. A more holistic and global examination of Truth Commissions strengthens transitional justice, as it gives more qualified instruction about what works and what does not.

This article examines the Togolese Truth, Justice, and Reconciliation Commission (CVJR) from the historical context of violence in Togo so that it may be understood why the country decided to establish a Truth Commission. It looks at how previous inquiries established the need for such a process, and examines other issues: the CVJR's mandate, the time period provided to do its work, and the pros and cons of the choices made with respect to these matters. This article also evaluates the powers of the CVJR, its recommendations, and issues related to truth recovery, victims' needs, and the Commission's ability to combat impunity. Finally, it assesses the effectiveness and legacy of the Commission for the country, and its impact on reconciliation. The

article argues that for an under-resourced process, the Commission performed well in some areas, but not so well in others. It is reasoned in the article that the process was useful in some respects, but that more could have resulted had it optimally worked.

### **The Role of Truth Commissions in Post-Conflict Societies**

Countries such as Togo that attempt to emerge from a period of mass human rights abuses—and confront the legacy of those abuses—are obliged to address a host of critical questions (Bakiner, 2013). Such questions take the form of: What happened? Who carried out the abuses? Who were the victims? Should there be accountability? Should reparations be provided to victims? Truth Commissions are often the vehicles through which these issues are dealt (Cryer, 2007, p. 561). However, the primary impetus behind the establishment of Truth Commissions is to gather information regarding human rights abuses that occurred over a particular period of a nation's history (Sriram, 2004, p. 33). Their role is to gather as much information as possible (Bakiner, 2013). This is important because certain sectors of a society will be aware that human rights abuses have previously taken place, but there may be many who—perhaps due to the clandestine nature of operations or the lies and denials of those responsible—are unaware of the full extent of abuses committed. An important role is served, as the truth may be a way for victims and perpetrators to restore their relationships (Kritz, 1995, p. 1). A fractured society is permitted to begin to reconcile (Sarkin & Sensibaugh, 2009, p. 1062). Some believe that that once victims and perpetrators come face to face and divulge their versions of events, they will be able to bury their feelings of hate and resentment for one another and live in some degree of peace and harmony (Daly & Sarkin, 2004, p. 61). The idea is controversial to some extent, but has become central to the establishment of many Truth Commissions and remains a foundational belief in the implementation of many such Commissions today (Daly & Sarkin, 2004, p. 66). Notwithstanding, Truth Commissions face many difficulties. They are often situated in places where resources are limited, and this deeply affects their abilities to impact the situation in that country.

In addition to truth recovery and assistance with reconciliation, Truth and Reconciliation Commissions (TRCs), as they have become known, can also help to identify victims for reparations (Sarkin, 2014). In the wake of large-scale human rights abuses, an abundance of individuals deserves (and often desperately needs) reparations for the harms and losses that they have suffered. However, these victims may be unknown to the government of the day, or ignored. Truth Commissions provide a platform by which those who have suffered can make themselves known to the authorities (Brahm, 2004, p. 2), and TRC provisions recommend the government implement various types of reparations.

Each TRC is established with its own unique mandate that seeks to delineate not only the operative time frame, but specific parameters, such as the crimes it will have the power to

investigate, and the measures it can address once its investigations are complete (Brahm, 2004, p. 7). As well as having its own unique mandate, each TRC has its own unique structure (Sarkin, 2004, p. 34). Features of TRCs will vary with regard to the composition of their membership, and the way in which these members are elected (Hayner, 2010 p. 23). Truth Commissions, if narrowly defined, do not focus exclusively on one particular event, but adopt a more holistic approach, attempting to paint a picture of certain human rights abuses that occurred as part of a conflict. Truth Commissions are not permanent bodies but temporary institutions that are necessarily dissolved once their investigations are complete and their mandate is over (Hayner, 2010). As part of their work, Truth Commissions generally issue final reports detailing their investigative findings and may submit recommendations to the government concerning the steps to take in order to redress the harms that victims have suffered and to ensure sustainable peace (Nowak, 2011, p. 107). TRCs are usually established by the State, and therefore their investigations are sanctioned by the State (Dancy, Kim, & Wiebelhaus-Brahm, 2010, p. 4). This is significant, as the official authorization of the work of Truth Commissions imbues their conclusions with a sense of legitimacy and gravitas. A Truth Commission report constitutes a common and authoritative narrative that can rebut biased and revisionist versions of events circulating after a period of mass atrocities. Their recommendations are also important on a range of issues to ensure non-recurrence of what happened in the past to cause the violence and conflict. TRCs usually recommend measures to ensure peace and stability in matters of democratic measures, as well as human rights protections (Tutu, 1999, para 35). Thus, a critical role they play—depending upon the extent to which the government takes up those recommendations—is to ensure that measures are adopted to address the past problems and enact laws, processes, and institutions to prevent future atrocities. The difficulty is that many of recommendations of such institutions are not taken up by the State, as one can observe in the case of Togo.

### **Violence in Togo**

Togo is one of the smallest countries on the African continent. It is situated in the coastal region of The *Gulf of Guinea*, with Ghana to its West, Benin to its East, and Burkina Faso to its North (Togo Country Profile, 2016). It has a population of around 7,000,000 comprised of over 40 different ethnic groups and a multitude of religious denominations (Togo Country Profile, 2016). A German protectorate from 1884-1914, Togo was placed under Anglo-French administration at the outbreak of the First World War (Gayibor, 1997). As a result of a deal struck between the two colonial powers, the Western part of Togo was annexed to British Ghana, and what is today considered Togo proper was absorbed into the French colonial empire (Gayibor, 1997). Togo remained a French protectorate until it gained its independence in 1960 (Gayibor, 1997, p. 137).

Togo's history, both preceding and succeeding independence, has been marred by political violence and civil unrest (Cornevin & Cornevin, 1964, p. 58). The 1958 election of the nation's first President, Sylvanus Olympio, was accompanied by violent clashes between the major political factions—leaving hundreds of people dead or injured (Agbobli, 2007, p. 104). The tensions and violence continued throughout Olympio's presidency, and five years into his tenure he was assassinated in a military *coup d'état* (Ajavon, 1989, p. 141). However, following the *coup* in Togo, an interim government was established, which was ousted by another military coup in 1967 that ushered in the regime of the military colonel Gnassingbé Eyadema (Toulabor, 1986, p. 62).

Upon seizing power, Eyadema declared a state of emergency and embarked on a campaign of violence and terror to entrench his regime (Améganvi, 2011, p. 56). He suspended the Constitution, dissolved the National Assembly, and granted control over all of the State's civil and political apparatus to the army (Toulabor, 1986). He also abolished the multi-party political system, making his party, the *Rassemblement du Peuple Togolais* (RPT), the sole political force in Togo. Resentment at Eyadema's appropriation of powers and at his widespread use of violence and intimidation erupted into large-scale protests and violence in 1990 (Toulabor, 1986, p. 56). The army killed hundreds of people during these demonstrations (Améganvi, 2011, p. 72).

When Eyadema died in 2005, his son, Faure Gnassingbé, was proclaimed President by the military (Améganvi, 2011, p. 111), thus sparking new tensions and igniting a fresh wave of violence across the country. Whilst official figures vary as to the total number killed, the United Nations' fact-finding mission estimated the death toll at between 400 and 500 (United Nations, 2005). It is against this backdrop that the Togolese Truth, Justice, and Reconciliation Commission was established to deal with this legacy of violence and initiate a process of reconciliation.

### **Togo's « Commission de Vérité, Justice et Réconciliation » (CVJR)**

The Togo Commission de Vérité, Justice et Réconciliation (CVJR) was established by Presidential decree on 25 February 2009 (Republique Togolaise Décret Présidentiel, 2009). The decree facilitated an expedient establishment process that bypassed parliamentary review, which would have likely been lengthy and controversial. Indeed, some feared Parliament might not have adopted the process as envisioned, if at all. A swift creation of the CVJR by the government may also have been strategic in deflecting mounting domestic and international criticism from civil society groups and NGOs. These groups had strongly criticised the violence that had occurred in the 2005 elections and had called on the President to put an end to the “hereditary dictatorship” they argued had been created by the army's installation of Faure as President upon the death of his father (La FIDH et la LTDH condamnent vigoureusement la dictature héréditaire, 2005).

The CVJR's establishment followed two inquiries and an historical commission mandated to assess the electoral violence that had rocked the country in 2005. First was the National

Independent Special Commission Inquiry (CNSEI), which was instructed in 2005 by former Togolese Prime Minister, Joseph Koffigoh, to examine the effects of the violence and make recommendations for actions regarding the perpetrators (CNSEI Report, 2005). The second inquiry was carried out by United Nations Special Envoy for Togo, Doudou Diène, who was charged with shedding light on the allegations of mass human rights violations that occurred before, during, and after the Presidential elections in 2005 (UN Office of the High Commissioner for Human Rights, 2005). An earlier International Commission of Inquiry for Togo had been established on 7 June 2000, under the auspices of the United Nations and the Organization of African Unity. Its role was to verify, in Amnesty International's 1999 report, allegations that hundreds of extrajudicial executions had occurred in the 1998 Togo Presidential elections (Amnesty International, 1999). A 2001 Report on the 1998 allegations found: "In the main, those singled out for execution have been members of opposition parties, but in some cases persons arrested for offenses under ordinary law have also been executed" (UN Commission on Human Rights, 2001), thus seeming to confirm Amnesty's allegations.

A further 2005 UN Report dealt with human rights violations committed over many years in the country, and the context in which they had been committed. It stated:

General Gnassingbé Eyadema ruled Togo for 38 years with a strong hand and little respect for good governance, human rights or democratic practices ... According to many national and international observers, his rule was marked by ethnic and clan wielding of power, with systematic recourse to violence in the face of opposition. This climate generated permanent political and social opposition and a constant deterioration of human rights in the country. (Domegni, 2016a).

The inquiry also determined that the violence around the elections was caused by the security forces, together with their supporters, but that opposition supporters also committed human rights violations (UN Office of the High Commissioner for Human Rights, 2005, Sec. 7.1).

The Togolese Historical Commission was established by Presidential decree in September 2005 (Republique Togolaise Final Report of the Commission Vérité, Justice et Réconciliation, 2012, p. 58), charged with developing an objective account of Togo's history of political violence, and proposing solutions in order to restore peace, promote reconciliation, and ensure lasting respect for human rights within the country (Republique Togolaise Décret Présidentiel, 2009). As a result of these various recommendations and processes, the TRC came into existence.

### **Consultations and Victim-Centred Processes**

Truth Commissions are seldom established under sufficient consultation with victims (Kpanake & Mullet, 2011b, p. 201). As a result, those whose suffered abuse rarely have their needs taken into account. This was not the case in Togo, where the CVJR was formally implemented

following broad national consultations between the government, civil society, and the wider population in 2006 (Republique Togolaise Final Report, 2012, p. 58). The fact that civil society played a role in the creation of the CVJR was a positive step, as these organizations had a detailed and reliable record of human rights abuses that had occurred within the context of the political violence in Togo, and they could shed light on areas in more detail than even some witnesses (Iwata, 2004). An independent assessment of events might not have been possible either from the citizenry, who were so greatly affected by the violence, or the government or military who may have been motivated by the desire to obscure events from public view. Other TRCs would benefit from the value of consultation and a victim-centred process as a means for increasing participation rates, as well as enhancing the likelihood of positive results. Dissatisfaction with the work of such a body is likely to be lessened, as people will feel it is *their* process. The CVJR in this respect started well, but did not maintain its momentum as far as victims and the public were concerned. More could have been done to keep citizens interested and informed about the work of the Commission during its life. We shall return to this topic later.

### **Mandates and Commission Membership**

The jurisdictions and mandates of Truth Commissions vary according to the perceived needs of the country in question. Some commissions examine broad historical patterns of abuses that occurred over a lengthy period of time, whilst others are limited to investigating specific acts committed by specific people. Some truth commissions involve as wide a swathe of the population as possible (Sierra Leone, Timor-Leste, and South Africa); others operate in secret and at the margins of society (Guatemala). Some are required to “name names,” whereas others are prohibited from doing so. The Togo process did not bar names from being mentioned, but the official line was that when names were mentioned the person concerned had a right to reply. However, the names of perpetrators were not mentioned in the Report.

The Togo Commission began on 25 Feb, 2009, and operated until 3 April 2012, when its first volume 309-page summary report was formally submitted. The report was short compared to those issued by other commissions that have spanned thousands of pages. The summary report does not contain the details necessary for later research, so it is hoped that the many thousands of witness statements will become publically available. Three further volumes were submitted in May 2013, but these have yet to be published. Volume III is supposed to contain the names of victims and the estimates of the cost for reparations, which some believe cannot be published (Domegni, 2016b). Though problematic, it should not hold up the publication of volumes II and IV. It might be suggested that to save costs they could be published in the interim on the Internet.

The CVJR was mandated to examine all politically related violence and gross human rights abuses that occurred between 1958 and 2005 (Republique Togolaise Décret Présidentiel, 2009).

Such a mandate can be argued to have been at once too broad and too narrow. It is possible to claim that it was too broad, as the investigative timeframe of more than half a century meant the Commission lacked the ability to cover many incidents in greater detail or depth. At the same time, it may be said that the Commission's mandate was too narrow, as it was unable to analyse the electoral violence that occurred in 2005 or in 2011 in which hundreds of people were killed in Togo (Report from Civil Society Organisations and Trade Unions of Togo, 2012). The Committee suffered a significant setback, as inquiry into violence associated with the current government was precluded, which may have negatively influenced people's perceptions regarding the sincerity of the current President (Tété-Adjalogo, 2013).

The Commission duration was a period of 18 months. TRCs are often given short life spans so that they open wounds, attempt to deal with them quickly, and then close them up again. The purpose of the brief life, so to speak, is to avoid creating long-term problems by causing too much resentment against those who caused the abuses, and it also ensures a minimization of the victims' pain in reliving the past for an extended time. In case there was a need for more time to complete its work, the presidential decree provided for the extension of the CVJR's duration for up to six months (Republique Togolaise Décret Présidentiel, 2009). This is a standard provision, as whilst TRCs should exist for short periods, often they do not complete their work in the time mandated. Thus, a lesson that emerges is that while a short process is needed, the time given to such institutions ought to be realistic. The clock should start when the Commission is truly ready to begin its work.

As is also common, the Togo Commission was mandated to produce a report detailing its findings and recommendations for submission to the President (Togo Décret Présidentiel, 2009). However, as noted, not all volumes of the report have been released. This occurs in some processes, but there should be ways to get volumes published within three months of being handed over.

The Togolese Commission was composed of 11 members, elected on the basis of a national consultation process. This involved politicians, civil society, and other organizations (Republique Togolaise Final Report, 2012, p. 61). The commissioners, as has become best practice, were drawn from a diverse cross-section of Togolese society and included notable figures from the religious, legal, and medical communities, as well as from civil society organizations including women's rights groups (Republique Togolaise Final Report, 2012, p. 61). Commissioners were granted complete immunity from prosecution in relation to any disclosure in the exercise of their functions (Republique Togolaise Final Report, 2012, p. 61.) Immunity was a positive aspect of the Commission, as it protected people from being intimidated and prevented legal threats by perpetrators and others who feared what may emerge from the process. Crucially, mechanisms to

appoint Commissioners receive too little attention. The Paris Principles (which establish that human rights, independence, sufficient funding, and an inclusive and transparent appointment process—critical factors in establishing the role, functions, composition, and status of these institutions) are the international standards that apply to National Human Rights Institutions (NHRIs) and ought to be made applicable also to Truth Commissions. Their diversity and independence will be enhanced, which are crucial if these institutions are to act optimally. To ensure that as many people participate as possible, the plurality of the society must be represented. Otherwise those “unrepresented” will fail to see the institution as theirs and may opt out from cooperating with it.

### **Powers of the Commission**

The issue of the powers given to Truth Commissions is one of major importance. Too often the process is not permitted the ability to search and seize documents, or to require witnesses to testify through subpoenas. Truth Commissions have at times been given the power to require perpetrators to testify, but with safeguards that sometimes include the provision that information obtained in such ways cannot be used against the person who provided it. Far too often perpetrators do not contribute to such processes without amnesty, or the granting of immunity from prosecution. Coercive means may ensure meaningful contributions. Obviously the right to non-self-incrimination is essential, but if such information cannot be used against the perpetrator, there is no reason for that information not to be obtained.

The CVJR was granted the power to initiate investigations and obtain any necessary documentation relating to persons, state institutions, and political and religious authorities (Republique Togolaise Final Report, 2012, p. 62). The Commission could also request witnesses and alleged perpetrators to appear before it for questioning. However, this power was limited to notifying persons that their presence was sought. The CVJR was not given the mandate to compel or subpoena individuals to appear before it to provide testimony, nor to grant any amnesty to induce them to appear before the Commission. Though amnesty has become an increasingly controversial topic in recent times—with some commentators considering it an unacceptable exchange of justice for truth, and others declaring it contrary to a developing international law obligation to prosecute perpetrators of gross human rights abuses (LaPlante, 2008, p. 82)—issuing amnesty still occurs extensively. It has nevertheless proven itself to be a successful means of inducing perpetrators, in certain circumstances, to come forward and divulge the stories of their abuses. The South African Commission experienced this, as thousands came forward—though not as many as should have been expected. In Togo, with no power to grant amnesty and no other formal legal means of compelling individuals to testify, the CVJR found that few perpetrators came forward to provide

evidence, and this left large gaps and inconsistencies in much of its work (Republique Togolaise Final Report, 2012, p. 64.) The President of the CVJR noted:

At this time, I must acknowledge that the marginal participation of the alleged perpetrators remains one of the most regrettable weaknesses of our mission; And on this subject I share the disappointment of many Togolese who would have liked to hear words of contrition on the part of those who have yielded to their passions as well as the assurance of forgiveness on the lips of those who have suffered. (author translation) (Speech at the Ceremony of the presentation of the CVJR report in Lomé, on 3 April 2012 by Nicodemus Barrigah-Benissan, President of the CVJR, République Togolaise Final Report, 2012)

Surely, more ways to ensure that perpetrators contributed to the work of the TRC could have been devised. This is a perennial problem for TRCs. Togo was not unique in this regard, but steps could have been taken by investigations and other methods to cajole such people into participation. If the Commission had been given the powers of search and seizure, as well as the ability to subpoena perpetrators, more would have participated (as was the case in other countries such as South Africa and Sierra Leone) (Sarkin, 2004).

CVJR was a useful mechanism, despite the limitations, in the identification and stigmatisation of certain groups that were involved in human rights abuses in Togo. For example, the role of the army and paid militias in past atrocities within Togo is well documented in the Final report of the CVJR (Republique Togolaise Final Report, 2012, p. 46-54). The roles of certain high-ranking officials in the violence were also illuminated in the written depositions and during the oral hearings of the Commission (Republique Togolaise Final Report, 2012, pp. 46-54). However, more could have emerged. Critics contend that the hearings were “systematically distorted by fear of the truth, especially in the unwillingness to name and bring to justice the perpetrators of the 2005 violence” (Lado, 2016).

Hopefully, over time more truth will surface when the other volumes of the report are published. Although the CVJR was not given the power to punish these perpetrators for their actions, their identification was an important means of exposing them to public opprobrium and in preventing the denial, revisionism, and collective blame that has become a key feature of the divisions within Togo over the years (Tété-Adjalo, 2013). CVJR has left this important legacy.

### **Commission Recommendations**

The Commission was required to recommend courses of action against those responsible for the grave human rights abuses (Republique Togolaise Décret Présidentiel, 2009). However, as is common in the legislation of such commissions, only non-binding recommendations could be made following its investigations (Republique Togolaise Final Report, 2012, p. 63). The Commission

made sixty-eight recommendations on matters such as finding ways to promote understanding and reverence for the various ethnic groups in the country, reforming the electoral system, reforming the security sector and the judiciary, fighting impunity, the provision of various types of reparations and promoting the roles of civil society, and protecting human rights defenders. It recommended reconciliation incentives, including monuments and days of memorial. The Commission called for the establishment of an institution to grant reparations and reinforce the rule of law. It also recommended that the State investigate various crimes committed during the periods of violence to determine which perpetrators of serious violations ought to be prosecuted. Many of these have not been implemented as will be discussed below. One specific issue of importance is that Faure Gnassingbé, in spite of a recommendation by the CVJR to limit successive presidential terms, was elected to another term in office in 2015. This undermines democracy in the country, and the role and legacy of the CVJR.

The fact that the CVJR could not compel the government to act and could not take any action of its own meant that the power to redress Togo's legacy of human rights abuses lies exclusively in the hands of the executive. They can choose to adopt the CVJR's recommendations or simply to disregard them, rendering the work of the commission otiose. A particular problem arises when those in power inherit powers from family members. Accepting and implementing recommendations concerning the incumbent's predecessor is often difficult.

It is useful that the government has acted on the Commission's recommendations to create a High Commission for Reconciliation and Strengthening of National Unity (HCCRUN). The entity is responsible for distributing reparations through a specially designated fund and ensuring the implementation of the CVJR's other recommendations. Whilst it claims a plan of action for implementing the CVJR's sixty-eight recommendations, there is nothing in the report that suggests the recommendations have begun to be implemented, nor does it elaborate how the government plans to implement them. This again raises the spectre that the government is just paying lip service to the commission's recommendations. However, some believe that it is not inaction but rather that "government is reluctant to implement the recommendations, because high-ranking members within the government, military, and administration figure among the perpetrators and continue to benefit from impunity" (Bertelsmann Stiftung, 2016, p. 14). At the end of the day, the CVJR made some useful recommendations. As with all such processes it is the onus of the State to take them up and implement them. The deficiency in the Togolese context is that more of the recommendations need to be put into effect—not only to ensure important building on the work of the CVJR, but also to offer respect to the work of the Commission, and for victims to feel that the process was worthwhile.

## **Truth Recovery**

The CVJR must be credited with illuminating many of the previously unknown—or unacknowledged—human rights abuse in Togo. Statements made by 22,415 people were provided to the commission regarding human rights abuses, and 523 individuals testified in public before the Commission (Republique Togolaise Final Report, 2012, p. 95 & 99). Through its oral hearings and collection of written depositions, the CVJR provided a medium through which victims, for the first time, expressed their individual experiences. A vital role has been played in allowing suffering to enter into the public consciousness and be recognized as part of Togo's history. However, more public hearings should have been held as only a small percentage of those who gave statements were able to testify.

The exposure of previously unknown or unacknowledged human rights abuses has been aided by the incredibly broad dissemination of the CVJR's work. This was a notable achievement, as many processes do not reach out to the community they serve, and few involve the communities in which they are established. As well as making its final report publicly available, the CVJR had its hearings broadcast live on radio and several television channels (CVJR, *Comprendre les audiences, 06 radios en synchronisation à Aného*, 2012). Updates on the work of the Commission and many other important documents, such as its list of recommendations, have been made available on the Internet (CVJR, *Documents et média*, 2012). A film about the Commission was also produced and broadcast to the general public upon the completion of its mandate (CVJR, *Fin de mission: Une émission spéciale TV pour la pédagogie de rapport final*, 2012). This broad, multi-platform dissemination of the Commission's work has been instrumental in reaching a large audience, which has resulted in a strong impression on the minds of the Togolese people. The communication has also augmented pressure on the government to affect change (Okonofua, 2015).

More could have been learned had the Commission been more active and engaged with more people. The more than 20,000 victims who participated matches the number of participants in the South African process, suggesting impressive engagement (Sarkin, 2004). However, had the process been more expedient, and ways found to bring others into the inquiries, more could have been learned about the past. Still, the process of truth recovery in Togo was overall useful.

## **Combating Impunity**

One of the central aims of the CVJR was to combat impunity within Togo. It is important to note is that the truth recovery process detailed a variety of issues, including the involvement of the army and militias in the perpetual violence in Togo. This may have an effect over time on levels of impunity. A key moment detailed in the report, for example, occurred in 1963 following the election of President Olympio, when a company of non-commissioned officers, who had fought for the French in the Algerian War and in Indo-China, mutinied and assassinated him (Republique

Togolaise Final Report, 2012, p. 46). Though this may have been widely known before the Commission, the fact that this was included in the report provided the basis for those who were involved to be sought and prosecuted. The Report also detailed grave human rights abuses committed by militias formed in support of various political parties who were involved in massacres and other grave human rights abuses in the wake of the nation's independence (Republique Togolaise Final Report, 2012, p. 51). It is telling that the history of the role of the army and military is general, and specific names are not mentioned anywhere in the report. Thus, despite the revelations and recommendations of the Commission, impunity continues to be a major issue in the country. Despite the implications of several key individuals during the CVJR's investigations, there is little evidence of members of the administration or armed forces being brought to trial for their role in the atrocities committed. Recent reports suggest that routine violence and intimidation at the hands of the army and police force remain a daily reality for many of Togo's citizens who have little redress due to a corrupt judiciary very much under government control (Siliadin, 2014). Whilst the CVJR made several recommendations to tackle impunity, which included institutional reforms of the military and police service and for the prosecution of some of the major perpetrators, these proposals have yet to be enforced (Kpanake & Mullet, 2011a). A more robust approach is needed, including criminal trials to restore respect for the rule of law in Togo, to avoid incidence of long-term impunity.

### **Towards Reconciliation**

Participation in the CVJR may have represented a cathartic experience for some victims, but it may not have enabled them to transcend feelings of hatred and resentment built up over many years. Many Togolese people remain extremely angered at the violence and impunity that continues to operate within their country (Améganvi, 2016). After the installation of the current President by the military in 2005, and his subsequent re-election 2011, which was condemned as fraudulent (Steadfast in Protest, Annual Report 2011, Togo, 2011), many still consider the current Presidency as little more than an extension of the erstwhile autocratic regime of ex-President Gnassingbé Eyadema. The current government's efforts to restore peace and improve conditions are viewed among the people with incredulity (Améganvi, 2016). That said, in recent years inter-communal violence has abated within Togo (Okonofua, 2015). This could be interpreted as a sign that people are putting their differences aside. However, the idea that there is greater trust between peoples after the work of the CVJR is an unsupported assertion, and mistrust for government officials and members of the military within Togo remains high (Siliadin, 2014). That a power sharing arrangement was entered into after the 2010 elections is certainly helpful, illustrating a number of opposition personnel accepting ministerial portfolios. While this was initially controversial amongst the opposition and led to the suspension of the leader of the opposition by his party, the

deal was later accepted (Butty, 2012). Unfortunately, however, the political parties in 2014 could not agree on a range of political reforms, including amendments to the Constitution and the electoral system. This led to a political impasse that persists today (Amnesty International, 2015). Thus, it can be argued that the CVJR played a part in promoting reconciliation. However, for reconciliation to more fully occur, the legacy of the reconciliation work of the CVJR needs to be leveraged. The State has a major role to play in this regard, but cannot do so until its human rights stance improves.

### **The Effectiveness and Legacy of the Commission**

Truth Commissions can be effective mechanisms for achieving transitional justice. However, much depends on how *effectiveness is defined*. If it is seen as the ability of a mechanism to achieve its aims, then it is clear that in the case of Togo the Truth Commission was in some sense, effective. As it sought national reconciliation, peace, and political stability, the Commission has achieved its mandate. Usefully, there have been little major unrest and violent incidents in the country (Ahlin, Dionne, & Roberts, 2015). However, human rights of the citizens are still not sufficiently respected by the state. Freedom of speech has restricted, as well as the freedom to peacefully gather and protest. The security forces often use excessive force. The human rights situation in the country today undermines the work and legacy of the CVJR.

It is difficult to assess the overall impact that the CVJR has had in Togo, as only four years have passed since its completion. In the short span of time, it is impossible to gauge any long-term benefits or disadvantages of the Commission's work. However, it is possible to at least assess some short-term effects and changes in the country that may have resulted from the role of the CVJR.

One important step toward reconciliation occurred when the President of Togo, upon receiving the CVJR report, apologized to victims. Official apologies of this type allow victims to see that the state is remorseful about what has transpired. However, absent further steps, such as implementing the recommendations, apologies can be perceived as empty. At the time of apology, the leader of the opposition noted, "Time will tell whether these apologies by the government and the president, in person, are serious or are not serious" (Butty, 2012).

Since the closing of the CVJR doors in 2012, some initiatives to implement the work of the institution have occurred. In 2014, Togo's Council of Ministers submitted a draft white paper to the President regarding the recommendations made by the CVJR (CVJR, *Adoption de l'avant-projet de Livre blanc*, 2014), which advocated urgent implementation of the sixty-eight key recommendations. The release of this draft white paper was an extremely critical step for Togo, as it purported to transform the CVJR's work from merely a set of theoretical recommendations, into concrete governmental strategic implementation. However, few practical steps have been taken to actuate the recommendations. (Kohnert, 2015). What did occur, at the headquarters of the

delegation of the European Union in Togo in 2014, was the involvement of civil society in an event marking the official commencement of several government-sponsored projects designed to implement various recommendations. The government committed to fund twenty-nine projects, including a project on women's access to land, a project addressing access to employment without discrimination, and a project addressing issues arising from the traditional chief system in Togo (CVJR, *Synthèse des recommandations*, 2012). These are clearly positive developments, and it is clear that as a result of the work of the CVJR, the government has now pledged to address and make ground on a number of critical issues by establishing and funding projects. As noted above, the role of civil society in the establishment of the CVJR was important. Again, it is of particular importance that civil society has been very involved in the follow up process to the CVJR and given the latitude necessary to implement a number of projects in ways seen fit. This empowers and incorporates civil society into development work and should be a boon for the people of the country.

Another development in 2014 was, as previously mentioned, the Togolese government establishment of the Office of the High Commissioner for Reconciliation and Strengthening National Unity (HCCRUN). The Office's establishment was a recommendation made by the CVJR in 2012, charging it with implementing the recommendations (Republique Togolaise Final Report, 2012, p. 285). The establishment of this institution indicates a further level of commitment by the government to take forward the work of the CVJR—strengthening the legacy.

The extent to which the CVJR has affected the political processes can also be assessed to some degree by what transpired during the 2015 presidential elections held in the country. The outcome saw Faure Gnassingbé re-elected to the presidency for a third term. Whilst the opposition boycotted the election (CVJR, *Documents et média*, 2016), international observers and local civil society organizations declared the elections had taken place peacefully and without violence, although voter turnout was low (Lewis & Zodzi, 2016). It may not be evident the election was peaceful specifically because of the work of the truth commission, but it is certainly possible that the effort to place electoral violence at the centre of the national consciousness may have had a positive effect on the process—ensuring that those in power had no recourse to violence in securing or influencing the electoral outcome (Ahlin et al., 2015).

The CVJR's impact can be further ascertained by developments in 2016, when Togo was the subject of a Universal Periodic Review process at the United Nations Human Rights Council. In its National Report, the Togolese government noted it had entrusted both the CVJR and the National Human Rights Commission with the investigation of human rights abuses committed at the time of the 2005 Presidential elections (UN HRC, 2016). The government declared that it would take up the recommendations presented by these two bodies. However, it did not state how much progress

had been made in implementing the recommendations. The government also claimed to have complied with a judgement of the Court of Justice of the Economic Community of West African States (ECOWAS Court) concerning the 2005 electoral violence, and the government further stated in its UPR report that it had paid damages to the victims in the amount of 532 million CFA Francs (approx. 1 million USD) (UN HRC, 2016). Again, whilst it is difficult to assess whether these steps by the government were a direct result of the CVJR, it is certainly clear that some efforts have been made to adhere to the rule of law in Togo, and this change may be attributable, at least in part, to the work of the Commission (Okonofua, 2015).

The role of the Commission has not always been viewed positively, having been criticized for being silent, and often inactive, during the process (Johnson, 2010). Bishop Nicodème Barrigah-Benissan, the President of the CVJR, addressed a press conference on 3 June, 2010, stating: “We were very public about our activities at the beginning of our appointment, but we have kept silent in the time since, which is not very understandable. We now want to break our silence and say that in fact, we have not been inactive” (Johnson, 2010).

Unfortunately, a general culture of impunity still exists in Togo (Amnesty International, 2015). Despite the recommendations of the CVJR to bring to justice those responsible for the violence and human rights abuses that were committed in 2005, to-date not a single high ranking official or member of the security forces has been prosecuted or sanctioned for their role in the election killings (Amnesty International, 2015).

As noted previously, the government produced a draft white paper in 2014 solidifying plans to implement the CVJR’s recommendations. However, in a subsequent report, the Deputy High Commissioner for Human Rights noted that the government was yet to implement any of the Commission’s recommendations (UN HRC, 2014). This lack of action on the Commission’s recommendations was again reinforced at a high-level workshop on the work of the Commission held this year (Domegni, 2016b).

The role enacted by the CVJR continues to be undermined by allegations that torture and other violations of civil and political rights are still prevalent in Togo. The 2015/2016 Amnesty International World report found that during peaceful protests in Togo against a government-built nature reserve, several protesters were arrested, beaten, and tortured by the security forces (Amnesty International, 2017). Amnesty noted in their report that no one had been prosecuted for these abuses against the demonstrators (Amnesty International, 2017). There have also been reports of a persistent crackdown by the government on the media, and journalists expressing opinions contrary to the government have been arrested and prosecuted under the country’s strict defamation laws (Freedom House, 2016). This chilling effect on the media in Togo has resulted in many news outlets opting not to publish material critical of the government (Freedom House, 2016).

If the effectiveness of the CVJR is to be determined by its capacity to bring about lasting change in the political and human rights climate in Togo, then much still needs to be done. The steps taken by the CVJR, which had the potential to ensure positive progress in the country, have been undermined by government inaction on the recommendations, and the continued violence and intimidation dealt to those viewed as political dissidents. Until the culture of impunity is addressed in Togo, the Truth Commission will be viewed with some scepticism and as a smokescreen for covering up enduring human rights violations, rather than as a *bona fide* means of redressing and preventing them.

### **Conclusion**

Academically, little is known about the Togolese transitional justice process, as it remains one of the most under-researched of such processes. It nonetheless has lessons to offer for other transitional justice processes. The work of the CVJR indicates that it had insufficient resources and insufficient time to carry out the task of examining human rights abuses over a period longer than 20 years. The Togo Commission had a time span of forty-seven years, replete with human rights abuses to investigate, but was unable to do justice to its mission. The Togolese process reflects the reality that too often TRC recommendations are ignored by states. Having few specific investigative powers to achieve their goals was a limitation. The Commissioners should have been able to issue compulsory orders, such as subpoenas, requiring individuals to appear and testify before them. This would have ensured that, in the absence of amnesty, there was a means of compelling individuals to provide evidence and aid the work of the commission, and it proved a major setback for the Togolese CVJR.

As is clear from the Togolese process, peace and justice are not mutually exclusive, and transitional justice processes must not ignore accountability in the formal sense. If a transitional justice process is to be successful and have long-term, positive effects, Truth Commissions should be followed or accompanied by select prosecutions. This has not occurred in Togo, undermining the work of the CVJR and promoting impunity. Though recommended by the Commission, it has not occurred. Whilst Truth Commissions are generally blamed for being ineffective at combating impunity, the reality is that state authorities determine who and for what reason people are prosecuted. In this regard, the CVJR cannot be blamed for a lack of action by the state; issues of accountability remain unresolved.

Progress on reconciliation remains unclear in the country. The political problems and lack of progress on a number of issues have stymied success. The TRC has ensured some progress was made towards greater reconciliation in the country. More work is needed, however, to prevent future violence. The CVJR could have played a greater role. The promotion of reconciliation is a process in which Truth Commissions can only play a small role (Daly & Sarkin, 2004). National

governments, with the support of other actors, play the major role in the process of achieving reconciliation (Sarkin, 2008). Togo needs to advance on a range of issues to ensure past problems cannot reoccur. Future conflict and violence can only be avoided if the reasons why they were part of the country's landscape in the past are removed and democratic and human rights norms instilled.

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