

RECONSTRUCTION OF A LOST PERFORMANCE THROUGH LITERARY THEORY

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International truth commissions first developed in the 1970s to provide a critical alternative to domestic criminal justice systems in assessing responsibility for large scale human rights abuses.¹ The punitive theme of traditional criminal justice systems in which they prosecute perpetrators of past injustices focused more specifically on individual atrocities.² They neglected the importance of hearing the stories and the different perspectives of all victims.³ In order to escape such inherent limitations, truth commissions sought to investigate more than just individual responsibilities and were created to focus especially on giving victims a public voice.⁴ Through considering their various accounts, commissions attempted to answer the unanswered questions and to link together the entire chain of circumstances and individual atrocities that created such massive human rights violations.⁵ Thus, through acknowledging and hearing the suffering of all victims, societies could understand in precise detail what occurred and why.⁶ Indeed, truth commissions were designed to go beyond the limitations of law into the possibilities of literature.

With a new goal and emphasis, transitional governments built truth commissions from a different structure than the criminal justice system.⁷ The transition

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1. PRISCILLA HAYNER, *UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY* 14 (2001).

2. Daniel Philpott, *Introduction to THE POLITICS OF PAST EVIL: RELIGION, RECONCILIATION, AND THE DILEMMAS OF TRANSITIONAL JUSTICE* 1, 4 (Daniel Philpott ed., 2006).

3. Priscilla Hayner identifies the limited role of victims during a trial:

[V]ictims are invited to testify only as needed to back up the specific claims of a case, usually comprising a very narrow set of events which constitutes the crime charged. Usually very few victims are called to testify, and their testimony is likely to be directly and perhaps even aggressively challenged by the defense attorneys in court.

HAYNER, *supra* note 1, at 28.

4. *See id.*

5. Robert I. Rotberg, *Truth Commissions and the Provision of Truth, Justice, and Reconciliation*, in *TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS* 3, 3–4 (Robert I. Rotberg & Dennis Thompson eds., 2000).

6. Philpott, *supra* note 2, at 4.

7. Rotberg, *supra* note 5, at 3.

from court to commission largely nullified the roles of the traditional legal authorities (lawyers and judges) in dictating the narrative structure of the case.⁸ However, a democratic distribution of power did not occur. Though the truth commissions sought to focus on the value of individual experiences through testimonies, the witnesses remained marginalized, as the narrative power merely shifted from the judges and lawyers to the literary professional, the transcriber, who has the role of converting events into text. Thus, truth commissions ultimately face limitations in their goal to emphasize individual perspectives as a result of the dominating authority of the transcriber, not the witnesses.

The particular case of the Sierra Leone Truth and Reconciliation Commission (TRC) illustrates this intrinsic failure of the truth commissions. Following eleven years of civil war, the Lomé Peace Accord⁹ between the Government of Sierra Leone and the Revolutionary United Front (RUF)¹⁰ produced Sierra Leone's Truth and Reconciliation Commission.¹¹ Its purpose was "to create an

8. Truth commissions possess a different structure and aim than judicial courts. Hayner states, "On one level, truth commissions clearly hold fewer powers than do courts. They have no powers to put anyone in jail, they can't enforce their recommendations, and most haven't even had the power to compel anyone to come forward to answer questions." HAYNER, *supra* note 1, at 16. As such, traditional legal authorities, like prosecutors and defense lawyers, become unnecessary; rather, truth commissions have selected commissioners to manage investigations, influence commission policy, and direct the final report. *Id.* at 215–16.

9. Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), July 7, 1999, <http://www.sierra-leone.org/lomeaccord.html> (last visited Jan. 7, 2007). Incorporating the ceasefire agreement of May 18, 1999 that stopped the civil war between the government and the RUF/SL, the Lomé Peace Accord (named after Lomé, the capital of Togo, where the negotiations and signing occurred) contemplates a lasting peace agreement for "sustainable peace and security," providing a "definitive settlement of the fratricidal war . . . [and] genuine national unity and reconciliation." *Id.* (preamble). President Ahmad Tejan Kabbah signed with Corporal Foday Saybana Sankoh, the leader of the RUF/SL; part of the agreement grants Sankoh a position in the transitional government, *id.* arts. V(2), VII(12), as well as amnesty for him and all his combatants, *id.* art. IX.

10. The Revolutionary United Front is the rebel army whose goal was to overthrow the government in Sierra Leone, which led to the ten-year civil war, from 1991 to 2002. It was created by Foday Sankoh and his two allies, Abu Kanu and Rashid Mansaray, with support from Charles Taylor of Liberia. Although the RUF was initially popular with Sierra Leonians because of its promises for free education, healthcare, and equal sharing of diamond resources, the RUF did not keep its promises but used funds to buy more arms once it gained control of the diamond mines. During the war, the RUF became notorious for its cruel practices to civilians and recruitment of child soldiers. Obituary, *Foday Sankoh*, THE ECONOMIST, Aug. 9, 2003, at 73, 73.

11. Loosely modeled after South Africa's Truth and Reconciliation Commission, see 1 SIERRA LEONE TRUTH & RECONCILIATION COMMISSION, WITNESS TO TRUTH: REPORT OF THE SIERRA LEONE TRUTH & RECONCILIATION COMMISSION, at 82, para. 21 (2004), available at <http://www.trcsierraleone.org/pdf/start.html> [hereinafter WITNESS TO TRUTH], Sierra Leone's version sought to bring healing to a traumatized nation in documenting human rights abuses committed during the civil war. Bishop Joseph Christian Humper, *Foreword to WITNESS TO TRUTH*, *supra*, at 1. The Commission worked alongside an international criminal tribunal, the Special Court for Sierra Leone. WITNESS TO TRUTH, *supra*, at 15, para. 26. Originally, solely the Commission had responsibility for establishing accountability for the atrocities that had been committed during the conflict because of the pardon and amnesty provisions of the Lomé Peace Agreement. *Id.* at 23. However, following breaches of the Lomé Peace Agreement by the RUF and abandonment of the amnesty provisions, the United Nations and the Government of Sierra Leone agreed to create the

impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict . . . ; to address impunity; to respond to the needs of victims; to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.”¹² In seeking to prevent future crimes from occurring, the Sierra Leone TRC also adopted a nationalistic spirit of community and reconciliation upon which to build their hopes for a better society.¹³ After countless reviews of statements and hearings, the Sierra Leone TRC produced its final report—a 1500 page document and its 3500 page annex—to shed light on atrocities of the war.¹⁴ Included in this annex are the transcripts of all the hearings which took place as the TRC moved around through several locations in Sierra Leone.¹⁵ The testimonies of the witnesses have been translated and transcribed so that those outside of Sierra Leone can also better understand how the armed conflict evolved and affected the lives of citizens.¹⁶ However, a close examination of these transcripts reveals the boundaries and limitations of the TRC. In particular, the transcript of one child soldier, Master Bowanag,¹⁷ demonstrates the unequal power distribution in which the transcriber’s authority eliminates the child’s perspective and his language of expression.

The testimony of Master Bowanag can be understood as both a form of narrative and a performance. The story of his experience in Sierra Leone’s war is what the TRC has categorized as “personal and narrative truth.”¹⁸ His testimony of being abducted as a child and undergoing harsh training at rebel camps to be-

Special Court. *Id.* The official website of Sierra Leone’s Truth and Reconciliation Commission is <http://www.trcsierraleone.org>.

12. Truth and Reconciliation Act of 2000, Part III, § 6, <http://www.sierra-leone.org/trcact2000.html> (last visited Jan. 7, 2007).

13. WITNESS TO TRUTH, *supra* note 11, at 2.

14. *See generally id.*

15. Hearings were scheduled to be held in Freetown, Port Loko District, Bo District, Kailahun, Koinadugu, Bombali, Kenema, Kambia, Kono, Tonkolili, Pujehun, Moyamba, and Bonthe. *See* TRC Hearings Schedule April–July 2003, <http://www.sierra-leone.org/trchearingschedule.html> (last visited Jan. 7, 2007). However, public hearings from Tonkolili and Pujehun were not recorded in the TRC Report. *See* WITNESS TO TRUTH, *supra* note 11, app. 3 (Transcripts of TRC Public Hearings), available at www.trcsierraleone.org/pdf/APPENDICES/Appendix%203%20Transcript%20of%20Public%20Hearings.pdf.

16. While witnesses testified in the language of their choice, the interpreters translated their testimonies into English for the reproduced report. WITNESS TO TRUTH, *supra* note 11 at 164, para. 112.

17. WITNESS TO TRUTH, *supra* note 11, app. 3, pt. 2, at 118–23 (Public Hearings Held in the District Headquarter Towns), available at www.trcsierraleone.org/pdf/APPENDICES/Appendix%203%20Transcript%20of%20Public%20Hearings.pdf [hereinafter District Headquarter Hearings].

18. The TRC Final Report describes the witness testimony as a “personal and narrative truth,” where the “truth is not the history of battles, military leaders and political parties, but rather a series of personal stories and accounts, telling a tale of the suffering, the pain and of the immense dignity of the common people of Sierra Leone.” WITNESS TO TRUTH, *supra* note 11, at 83, para. 25. The TRC addresses four different kinds of truth: factual or forensic truth; personal and narrative truth; social truth; healing and restorative truth. *Id.* at 82–83.

come a child soldier is a remarkable story of survival. The narrative leaves the reader, the audience of the TRC, with a harrowing, poignant account of this young boy, who unwillingly fulfilled the position of both victim and perpetrator during the conflict.¹⁹

In addition, as a transcription of an oral storytelling, the witness's testimony becomes a kind of performance. While the narrative is a flat presentation of a story, a performance actively engages a story's meaning—in this case, the exchange between Master Bowanag and the Commissioners becomes similar to an enactment of a drama as well. The question and answer session following the story Master Bowanag offers structurally functions as a dialogue, in which two characters hold a conversation to discover more information and reveal such facts to the audience.²⁰ This dramatic technique lends the space of the TRC a stage-like quality where the witness and commissioners transform into actors dependent upon each other's roles.²¹ Even more poignantly, the performative aspect of the testimony appears through two songs—one called "Promise" and the second title unknown²²—that Master Bowanag sings to the TRC. These songs become an important part of the testimonial by contributing a lyrical, aesthetic feature to the narrative.

However, while the reader is given the full transcript of the dialogue between the witness and the Commissioners, a key performative aspect of the testimonial is lost through the complete elimination of the songs.²³ The transcript provides neither the musical score (which understandably would have been difficult to record) nor the lyrics (which easily could have been interpreted and transcribed). By so eliminating a portion of the performer's intended meaning, the testimony frustrates the reader's understanding of Master Bowanag's perspective.

The exclusion of these songs points to two phenomena in the sphere of law.

19. Master Bowanag, the witness, as a child soldier can be seen as both a victim and perpetrator of war—while he was trained as a soldier to commit atrocities and became part of the rebel force, he is also a victim of the war as he was abducted from his home to become a soldier. District Headquarter Hearings, *supra* note 17, at 118–19. Moreover, he experienced extremely difficult conditions, physically and mentally, during the training process by the rebels. *See id.* at 118–19. The TRC classifies the child soldier as an example of a witness, victim, and perpetrator: "If the child was forcibly enlisted, he was a victim. On the other hand, after his forced recruitment, he was likely to have committed human rights violations during his time as a combatant, thus qualifying him as a perpetrator. Furthermore, the child soldier was likely to have been a witness to atrocities committed by others." WITNESS TO TRUTH, *supra* note 11, at 165, para. 114.

20. *See* District Headquarters Hearings, *supra* note 17, at 119–23.

21. Even the language used in the final report distinguishes between the witness and Commissioners as well as the audience, who is literally watching the interchange between them. Describing the procedures for hearings, "the seating arrangement . . . resembled a semi-circle, with the witness facing the audience, sitting in the middle between the Commissioners and the leaders of evidence." WITNESS TO TRUTH, *supra* note 11, at 182, para. 204. To view the stage-like seating arrangement on video, go to http://www.witness.org/option,com_rightsalert/Itemid,178/task,view_alert_id,16/ (last visited Jan. 7, 2007).

22. District Headquarters Hearings, *supra* note 17, at 118.

23. *Id.*

First, it reveals the expectation that a witness is to express her story only through the traditional forms of linear narrative. Here, the idea of a song and its inherent qualities extended beyond the contours of legal space and understanding of the TRC. Though both Master Bowanag's songs and his individual narrative represent for him a way to express the truth, the TRC officially acknowledges only one form, implicitly deeming others to be unacceptable. Moreover, memorializing only one portion of the witnessing in the transcript calls into question the place of the witness himself within the legal space of the TRC. As a child, what is Master Bowanag's voice as opposed to the expected language of expression?²⁴ The loss of opportunity to convey the full truth of Master Bowanag's testimony is the failure of the TRC to accommodate him as a witness and to operate from a child's perspective. While divesting legal professionals (lawyers and judges) of their power in the traditional courtroom, the TRC did not successfully distribute that power to the witnesses, but rather transferred control to the literary professional, the transcriber.

Second, the missing songs in the transcript highlight the peculiar power relations that exist in the functioning of the TRC. In a common court of law, the power is not held by the witnesses or defendants, but by the lawyers and judges. As specialists of the law, both lawyers and judges derive their power from the "arcane and elite" language that they employ in the particular space of a trial.²⁵ Therefore, normally "legal dialogue is exclusory . . . [and] it is unlikely to be to the advantage to the laity to speak for themselves in legal settings [as] they are unlikely to be heard."²⁶ However the power dynamics in the TRC are different because the TRC exists as a forum for the laity to express themselves in their vernacular.²⁷ The specialized, legal language is not applicable to witnesses and thus, as the interchange between Master Bowanag and the Commissioners demonstrate, does not appear relevant at all.²⁸ Rather, because of the particular

24. These questions become especially pertinent considering Article 12 of the United Nations Convention on the Rights of the Child:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Convention on the Rights of the Child, art. 12, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3.

25. PETER GOODRICH, *LANGUAGES OF LAW: FROM LOGICS OF MEMORY TO NOMADIC MASKS* 184 (1990).

26. *Id.* at 185.

27. The Commission emphatically distinguishes itself from the Special Court, which plays the more traditional role of prosecuting and sentencing the most egregious perpetrators after a trial. "The purpose of the Commission is to give an opportunity to victims, perpetrators and witnesses to the conflict to speak about their experiences. . . . The Commission is for everybody. . . ." WITNESS TO TRUTH, *supra* note 11, at 185.

28. In one of his first statements, Commissioner Bishop Humper addresses Master Bowanag

structure and purpose of the TRC, the attention shifts more to the testimonies of the witnesses and the witnesses themselves as a means to discovering the complex nature of the armed conflict.

However, while the obvious spotlight is on the witnesses, the real, hidden power of the TRC resides in the role of transcriber. Transcribing does not only focus on the job of copying verbatim but also includes the process of selecting and interpreting. The Oxford English Dictionary includes in the entry *transcript* the meaning “a copy, imitation, reproduction; a representation, rendering, interpretation.”²⁹ Thus, the process of producing transcripts is for the transcriber/translator to interpret the scene, and then to record it *according* to his interpretation. Not only does the transcriber have latitude to decide how to represent or render a testimony, she chooses to listen and understand a testimony in a particular way, which he then transcribes into the form of text. She chooses the language of translation, decides how to copy the accounts in an accurate manner, and selects what exactly gets transcribed. In Master Bowanag’s case, this power of the transcriber left the songs without translation and transcription—instead, the transcriber deemed it sufficient to represent the performance with one line merely indicating, “{Sang two songs}.”³⁰

The exclusion of these songs is of serious significance since they function as part of Master Bowanag’s testimonial to the TRC. Its elimination from the transcript creates a complex tension between the narrative part of the testimony and the performative aspect of it. These dual responsibilities of the final testimony find a balance to form a relationship of dependency—despite the fact that the narrative is the main portion of the testimony, the narrative itself also acknowledges the performance as a vital aspect though the songs are missing from the transcript. After listening to the two songs, Commissioner Bishop Humper says, “You have told us so much in your songs.”³¹ By thus appreciating the importance of the songs, the performative aspect of the testimony gains immense power. Though the personal narrative account appears to be the prime component of the entire testimony—structurally it is the longest block of text³²—the narrative itself concedes the substantive value of Master Bowanag’s songs. In addition, the placement of the songs chronologically, before the actual account of Master Bowanag, recognizes and affirms the primacy of the songs to the overall testimonial. Indeed, in his opening speech, Commissioner Bishop Humper reiterates the witness’s intentions: “Initially, you said that you will do something

and the audience, saying “we are a family you can relate to.” District Headquarters Hearings, *supra* note 17, at 118. He tells Master Bowanag, “Feel relaxed . . . Say whatever you want to say to us this afternoon.” *Id.* at 118. The Commissioner speaks to Master Bowanag colloquially and anticipates it in return by giving the witness full freedom to express his thoughts.

29. OXFORD ENGLISH DICTIONARY 392 (2d ed. 1989).

30. District Headquarters Hearings, *supra* note 17, at 118.

31. *Id.*

32. *Id.* at 118–19.

before we do anything; you said that you will sing a song.”³³ Master Bowanag’s use of the songs to introduce his hearing indicates the utmost significance of the songs over the more standard linear narrative preserved in the transcript. In effect, by so noting the impact of the songs yet dismissing their content in the process of transcription, the testimony acknowledges and internalizes its subversion of the witness’s intentions.

The tension between the narrative and performative functions of the testimony is further complicated as the narrative itself becomes an essential tool in our imagined reconstruction of the lost performance. Because the performance is such a compelling aspect of the testimony, the reader becomes curious to discover the mysterious content of the songs. The surrounding narrative provides the only clues as to composition and meaning of Master Bowanag’s songs. One way to reconstruct the meaning of the songs is by examining the narrative through study of semiotics, the use of signs to determine how meaning is made and understood.³⁴ I identify the sign of performance as the text itself—the bracketed three words, “{sang two songs},” that give the physical indication of where the song was performed during the hearing.” The empty space, or the void where the songs should have existed, highlights that this sign in itself is meaningless. Rather, the reader must look to the two components of a sign—the signifier and the signified—in order to reconstruct meaning.

Here, the signifier, “{sang two songs},” represents the actual songs that Master Bowanag sang at the time of his hearing. However, because the performances are past events lacking a sign in the form of text, the songs’ meaning is lost and the signifier necessarily fails in reconstructing that meaning for the reader. Consequently, we can only give meaning to the sign by constructing the intention and significance of Master Bowanag’s song through the exploration of the signified, the concept that the sign represents, through contextualization of the surrounding narrative. Thus, examining the narrative as a larger whole, including Master Bowanag’s account and his dialogue with the Commissioners, provides some insight into the meaning of the lost songs.

If we can identify the signified, we might realize the purpose and value of Master Bowanag’s song, and thereby give meaning to the sign as a whole. The narrative suggests that the performance is a composition of national identity as well as a song of individual expression. The Commissioner, upon hearing the songs, immediately responds to the power of the performance, declaring, “In your songs, you spoke on behalf of all your brothers. Your songs will go out not only for this country, but for the entire world. . . . [A]ll the commissioners and

33. *Id.* at 118.

34. See, e.g., FERDINAND DE SAUSSURE, COURSE IN GENERAL LINGUISTICS (Charles Bally & Albert Sechehaye eds., Wade Baskin trans., Philosophical Library 1959) (1915). Saussure theorized that the association of the *signifier* (the sound-image) with the *signified* (the concept) results in the *sign* as the whole linguistic item conveying meaning. *Id.* at 67.

staff here are your people.”³⁵ These statements clearly express the nationalistic sentiment inherent in the goals of the TRC in Sierra Leone.³⁶ Particularly in referring to all the people in the TRC as “your people,” meaning part of the same ethnic, national group, the Commissioner draws attention to this posture. More explicitly, Commissioner Hajaratu Satang Jow observes later, “We have heard your story and we believe your songs will reach out to all Sierra Leoneans.”³⁷ Note that the Commissioner, consciously or unconsciously, differentiates between Master Bowanag’s story and his songs—though the story has been heard, he credits the songs with achieving a connection to the greater community. The claim to represent an entire nation suggests the songs’ universal themes, ideas of shared humanity, to which all of Sierra Leone and “the entire world” can relate.³⁸

As much as Master Bowanag’s song serves as an expression of national identity, the transcript also reveals the performance as signifying individual selfhood. Commissioner Kamara gives the reader a glimpse into this other meaning of the songs as he states, “In accordance with your songs, I hope it will help other children not to be in this same situation . . . which you found yourself in.”³⁹ In addition to reaching out to his fellow child soldiers, as well as other children who will hopefully never be forced into such circumstances, Master Bowanag’s song fundamentally describes his personal situation. The creation of a national identity from these songs is in actuality a grander projection of Master Bowanag’s individual identity. This primary signification as selfhood is further confirmed at the end of the hearing when Commissioner Hajaratu Satang Jow asks, “The two songs you sang just now, who composed them?” and Master Bowanag responds, “Myself.”⁴⁰ These songs are not the lyrics and melodies composed by a professional artist, but remain purely Master Bowanag’s creations, adding another personal aspect to the performance. In the act of singing he finds his own language with which to assert his individual voice. As such, the songs intimately represent his emotions, his experiences alone. And this confirms the vital aspect of the performance to the hearing, the purpose of which

35. District Headquarters Hearings, *supra* note 17, at 118.

36. The TRC not only looked in the past to formulate an accurate, historical account, but also focused on the future in terms of preventing further atrocities. The report states that “prevention of a repetition . . . involves a change in the way the people of Sierra Leone behave with each other, on individual and collective levels. It also concerns their attitude towards themselves, to their own country and to their public institutions.” WITNESS TO TRUTH, *supra* note 11, at 46, para. 87. The Commission created a special project called the National Vision for Sierra Leone, which became the forum for Sierra Leoneans to describe the society they wish to see in the future. *Id.* In the Foreword, Commissioner Bishop Humper expresses his hope that “the Report will serve as a road-map towards the building of a new society in which all Sierra Leoneans can walk unafraid with pride and dignity.” *Id.* at 2.

37. District Headquarters Hearings, *supra* note 17, at 119.

38. *See id.* at 118.

39. *Id.* at 121.

40. *Id.* at 123.

was to disclose the truth through individual witnesses.

Master Bowanag's testimony reveals itself to be much more complicated than a simple narrative followed by a question and answer period. From the interactions between Commissioners and the witness, and the omissions of certain content of the testimonial alluded to in the transcript, the reader can perceive the power dynamics of the TRC and how language functions within such a setting. The tensions created by the mutual existence and dependency of the testimony as both narrative and performance demonstrates the importance of both these aspects of the hearing. Reconstructing the lost performance from the transcript leads to the conclusion that the songs signify both an individual experience and its supervening national identity. However, this reconstructed perception of a wholesome national identity is crucially flawed: it relies wholly on the perspective of the Commissioners, who are not only adults but the educated elite. The narrative suffers severe limitations in its lack of performative details from the perspective of Master Bowanag himself. The serious dilemma here is that the TRC's well-intentioned use of narrative precludes complete or absolutely accurate testimony when the transcript is such that the process of reconstruction excludes the person from whom the performance derived. That is, the TRC transcriber's decision to eliminate the substance of the child's performance wrests the child's perspective from the testimony. Thus, although the contextualization by the narrative permits for a skeletal model of the actual songs, the interpretive process which the audience or reader undertakes here is inherently limited. Ultimately, this has critical implications for the larger goal of truth commissions because of the void in victims' voices. Though commissions may have escaped the limitations of law, they did not fully exploit the possibilities of literature as their procedures for displaying narratives are inadequate; rather, they fail in their mission of publicly acknowledging the varying perspectives of victims' sufferings to discover the full truth of historical abuses and achieve reconciliation.

PART IV:
CONSTITUTIONAL LAW

