

TRUTH COMMISSIONS: AN OVERVIEW

Since the Spring of 1993, publication of the report of the United Nations Commission on the Truth for El Salvador, there has been a marked increase in interest in truth commissions. Partly as a result of the widespread attention brought to the El Salvador report, truth commissions-official bodies set up to investigate a past period of human rights abuses or violations of international humanitarian law-are being considered for a number of other countries now in the midst of political transition.

Although truth commissions have become increasingly popular, they are still relatively under-studied. Outside of the attention given to the two or three more well-known commissions in Latin America, there has been little comparative research in this area, despite a multitude of questions. No definition or defining parameters of truth commissions have been identified. There has been little exploration of the constraints, limitations, and challenges common to such official truth-seeking bodies, and no serious look at what objectives such commissions can realistically be expected to fulfill. And while new truth commissions are now being developed, there has of yet been no comprehensive survey of past truth commissions.¹

In fact there are many more examples of truth commissions than is generally realized. Through a description of fifteen truth commissions that have existed to date, and a comparison of some of the key issues highlighted by these commissions, I intend to begin to address some of these questions here.

The Commission on the Truth for El Salvador (commonly known as the "Truth Commission") is in many ways a classic truth commission: the commission, established as part of the peace agreement between the government and armed opposition in El Salvador, was given eight months to write a report outlining the extent of human rights abuses and violations of international humanitarian law over twelve years of civil war in El Salvador. The commission staff took testimony from witnesses or victims of violence, investigated a number of cases in great depth, and compiled statistics on the tens of thousands of cases brought to its attention. The commission's final report describes the widespread abuse against civilians by the armed forces and by the death squads and, although in significantly lower numbers, the abuses by the armed opposition. The report also points out parties responsible for the violence, highlights the failings of the judicial system, and recommends measures for reform. As many have noted, the Truth Commission report in the end confirmed what many people, particularly Salvadorans, have long accepted as true, but official acknowledgement of the widespread abuses was important in itself.

The Truth Commission in El Salvador was the first such commission to be sponsored by, paid for, and staffed by the United Nations. The idea for this truth commission was based on the experiences of Chile and Argentina, the most well-known previous cases of national human rights commissions set up to investigate the past. Less well known, however, are at least twelve other such commissions in other countries-a total of at least fifteen such commissions to date. In addition to Argentina and Chile, governmental commissions have been set up in Uruguay, the Philippines, Chad, Bolivia, Zimbabwe, Ethiopia, Germany, and Uganda (where they have two). An international non-governmental Truth Commission reported on Rwanda in early 1993. Two separate truth commissions were established by the African National Congress (ANC) to evaluate the ANC's record of abuses in its detention camps throughout Southern Africa. Table I summarizes these fifteen cases in chronological order.²

Truth Commissions can play a critical role in a country struggling to come to terms with a history of massive human rights crimes. A number of the commissions outlined here have been notable successes: their investigations welcomed by survivors of the violence and by human rights advocates alike, their reports widely read, their summary of facts considered conclusive and fair. Such commissions are often an important step of formally acknowledging a long-silenced past. But not all truth commissions have been so successful. Some have been significantly limited from a full and fair accounting of the past-limited by mandate, by political constraints or restricted access to information, or by a basic lack of resources, for example--and have reported only a narrow slice of the "truth". In some cases truth commission final reports have been kept confidential.

The Context: Defining the Parameters

Truth Commissions, as I will call them generically, are bodies set up to investigate a past history of violations of human rights in a particular country-which can include violations by the military or other government forces or by armed opposition forces. National Truth Commissions are usually sponsored by the executive branch of government, less commonly by the legislative branch. In the alternative, a truth commission can be sponsored internationally, by the United Nations or by nongovernmental organizations. While there are now three examples of non-governmental truth commissions (the Rwandan and two ANC commissions), most non-governmental human rights investigations are not commissions by the definition used here. By "truth commissions" I mean only those bodies that fit a fairly defined, limited mold. ■

Extracted from an article by Priscilla B. Hayner in *Human Rights Quarterly* 16 (1994)

My own definition of a truth commission includes four primary elements. First, a truth commission focuses on the past. Second, a truth commission is not focused on a specific event, but attempts to paint the overall picture of certain human rights abuses, or violations of international humanitarian law, over a period of time. Third, a truth commission usually exists temporarily and for a pre-defined period of time, ceasing to exist with the submission of a report of its findings. Finally, a truth commission is always vested with some sort of authority, by way of its sponsor, that allows it greater access to information, greater security or protection to dig into sensitive issues, and a greater impact with its report.

Most truth commissions are created at a point of political transition within a country, used either to demonstrate or underscore a break with a past record of human rights abuses, to promote national reconciliation, and/or to obtain or sustain political legitimacy.

There have been a number of national non-governmental projects that have served truth commission-like functions—investigating the record of violence and publishing a report—but which have not operated with the authority of the typical structure of a truth commission. The efforts in Brazil have perhaps received the most attention. These projects are not included in the list of truth commissions here, but they provide important alternative approaches to documenting the past, and are thus described briefly below in section five.

Truth commissions must be distinguished from the formal legal accountability achieved through prosecution of individuals responsible for abuses. The fifteen cases here show that prosecutions are very rare after a truth commission report; in most cases there are no trials of any kind, even when the identity of violators and the extent of the atrocities are widely known.³ The very mandate of truth commissions generally prevent them from playing an active role in the prosecution vs. amnesty decision that often follows a truth commission report, although some truth commissions have recommended prosecutions or forwarded their materials to the courts.

Given the intentionally temporary nature and narrow mandate of truth commissions, the decision whether to prosecute is generally a political one, or a reflection of political realities, that is taken apart from a truth commission's sphere of influence.

The issue of prosecution vs. amnesty—what Human Rights Watch refers to as the justice phase, as opposed to the truth phase—will not be addressed here. There is a wealth of literature on this,⁴ debating whether there is an international legal obligation to punish past crimes, the political constraints and limitations of prosecution, the limitations of due obedience laws, and other issues, but I will not enter into that discussion here. This paper focuses only on the truth phase, in the terminology above, which is a separate process from that of taking individuals to court.

Likewise, this article will not address the subject of war crimes trials. Such international tribunals established to try specific individuals charged with human rights crimes can help shed light on the overall extent of abuses during a period of conflict. But such trials are focused on the acts of certain individuals, and do not attempt to investigate or report on the overall pattern of violations. War crimes trials are of an intrinsically different nature from truth commissions.

There has been a sharp increase in interest in truth commissions over the past year or so. This is due to a variety of factors: the attention that the El Salvador Truth Commission report received; a growing consensus that past human rights crimes cannot go ignored during a democratic transition; a perceived need to institute truth commission-like bodies in various conflicts around the world. After El Salvador, a "truth commission" is now a known and attractive entity, thought of as a piece of the solution for places like South Africa, Guatemala, and Malawi. Indeed, it is likely that a truth commission will be established in each of these three countries relatively soon.⁵ In Mexico, South Korea, and Honduras there are also calls for truth commissions.⁶

The efforts of the National Commissioner for the protection of the human rights in Honduras, a government post, may provide a new precedent for a truth commission. Acting on his own initiative, in the last four months of 1993, commissioner Leo Valladares Lanza put together a lengthy report on disappearances in Honduras that occurred between 1980 and 1993.⁷ The report is based on press accounts and other public sources of information, and is internationally subtitled a "preliminary report", calling on the government to establish a truth commission that can undertake a more extensive study and which will have access to restricted information⁸. The report has brought the issue of disappearances to the forefront; the day after the report was published the Honduran military promised to open its secret files on political killings and disappearances in the 1980s, and to allow judges to question accused officers. As the *New York Times* comments, "The decision by the military is unusual in a country where the armed forces have long been powerful and not held accountable for rights abuses."⁹

Truth commissions, indeed, are becoming increasingly more common. Between March 1992 and late 1993, six truth commissions were established. And whereas all nine commissions established between 1974 and 1991 were sponsored by the President or parliament of the country, four of these last six commissions are new, untraditional models: sponsored by the United Nations, by an opposition party, or by a coalition of non-governmental organisations. There need be no fixed model: in the unique circumstances of each country, other new and innovative models for a truth commission may yet be developed.

Why a Truth Commission?

A human rights commission set up to investigate abuses of the past can serve many different, often overlapping,

purposes. The most straightforward reason to set up a truth commission is that of sanctioned fact finding: to establish an accurate record of a country's past, and thus help to provide a fair record of a country's history and its government's much-disputed acts. Leaving an honest account of the violence prevents history from being lost or re-written, and allows a society to learn from its past in order to prevent a repetition of such violence in the future.

But "fact finding" is perhaps an inaccurate description of investigation which often ends up confirming widely-held beliefs about what has happened and who is responsible. In many situations that warrant a post-mortem truth commission, the victimized populations are often clear about what abuses took place and who has carried them out. In many civil conflicts, including both authoritarian military repression and full-blown civil wars with a strong armed opposition, much of the violence is carried out either with explicit acknowledgement of the responsible parties (political kidnappings, public announcements of groups or individuals that are targeted, etc.), or by uniformed personnel who leave witnesses to acts such as disappearances or mass killings. While not true in every case, a general understanding of who did what during a period of violence is usually well accepted by the civilian population within a country.

Given this knowledge, the importance of truth commissions might be described more accurately as *acknowledging* the truth rather than finding the truth. "Acknowledgement implies that the state has admitted its misdeeds and recognized that it was wrong", writes Aryeh Neier.¹⁰ Juan Mendez, then Director of Americas Watch, writes; "Knowledge that is officially sanctioned and thereby made part of public cognitive scene" ...acquires a mysterious quality that is not there when it is merely 'truth'. Official acknowledgement at least begins to heal the wounds.¹¹ An official acknowledgement of the facts outlined in a truth commission report by government or opposition forces can play an important psychological role in recognizing a 'truth' which has long been denied.

Truth commissions are usually set up during or immediately after a political transition in a country which may be in the form of a gradual democratization, as in Chile and South Africa, a negotiated settlement of civil war, as in El Salvador, a military victory by rebels, as in Uganda and Chad, or a rapid democratic opening after repressive military rule, as in Argentina and Uruguay. A truth commission can play an important role in the transition, either by affirming a real change in the human rights practices of the government and a respect for the rule of law in the country, or by helping to legitimize or strengthen the authority and popularity of a new head of state or both.

Of course, a commission can also be set up by a government to manipulate the public perception of its own tarnished image, in order to promote a more favourable view of the country's human rights policies and practices. This is particularly likely when a government is under international pressure to improve its human rights record. Given the mandate of commissions, by definition, to look at the past rather than the present, it is

easy for a new government to justify not being subject to the investigations of the commission, while professing improved human rights policies. Any current abuses are therefore conveniently overlooked by the commission. Given this dynamic, it is not always immediately clear whether a government's commission is more a political tool or an accurate reflection of change. The first truth commission in Uganda and the truth commission in Chad are cases in point. In Uganda in 1974, Idi Amin set up a commission partly in response to pressure from international human rights organisations. But Amin disregarded the commission's report, and continued his brutal rule. In Chad, even as the Commission of Inquiry was finishing its report on the past, the government was accused of trying to whitewash its own abuses.

It certainly is not assured that the existence of a truth commission will make the repetition of similar human rights abuses less likely in the future. Neier acknowledges this point:

I do not claim that acknowledging and disclosing the truth about past abuses, or punishing those responsible for abuses, will necessarily deter future abuses. I doubt there is decisive evidence for this proposition. The same can be said of the contrary view, sometimes argued by proponents of amnesties, that an amnesty promotes reconciliation. While if a government making a transition to democracy attempts to punish those guilty of past abuses, it risks allowing those people to seize power again. Either outcome is possible. Whether the guilty are accorded amnesty or punished is only one among many factors that affect the pattern of events in any country.¹²

But the expressed intent of most truth commissions is to lessen the likelihood of human rights atrocities recurring in the future. This is stated in many commission reports, or even written into commissions' operating mandates. The titles of one governmental and three independent non-governmental Latin American reports reflect this sentiment—the now well known *Nunca Mas* (Never Again). A commission can perhaps help reduce the likelihood of future abuses simply by publishing an accurate record of the violence, with the hope that a more knowledgeable citizenry will recognize and resist any sign of return to repressive rule.

More concretely, truth commissions can contribute to the future with specific recommendations for reform. Not all commissions make recommendations, but commission reports have included recommendations covering military and police reform, the strengthening of democratic institutions, measures to promote national reconciliation, reparation to victims of the violence, or reform of the judicial system. In most cases, these recommendations are not obligatory (with the exception of El Salvador), but they can provide pressure points around which the civilian society or the international community can lobby for change in the future.

Most human rights organisations and activists feel that the contributions of a truth commission process outweigh the political risks involved, or indeed that a full truth-telling is

necessary before real healing can take place. "Self-investigation, self-observations is critical," comments a Chilean human rights lawyer who worked on the El Salvador Truth Commission. "It's always very clear that the government doesn't want to do it, but it is an obligation that they cannot ignore. In Chile and Argentina, they had commissions in order to forget the past, to turn the page afterwards. But the trick is, how not to close the book.... Commissions aren't perfect, but what do you do without them?"¹³

There is disagreement, however, as to whether truth commissions help to promote national reconciliation, or whether, as some argue, they create deeper resentment and exacerbate old issues that have been dug up anew. Persons that are implicated in any report—which may include the military, the political leadership, guerrilla combatants, or judges—might well be expected to argue against revising the past. But neutral parties have also argued that investigating the past can be harmful to the future, and question the contributions of such a "hot" report in a politically fragile environment. There are many examples in history of periods of massive human rights violations that are not investigated and documented subsequently; most interesting nonetheless are those examples where this is intentionally decided for the purpose of national reconciliation.

As far as is known, no truth commission is planned in the current transition in Mozambique—with a full history of atrocities during the war there—nor in Angola, if peace ever returns there. The parties to the Mozambique conflict have insisted that demobilization is their first priority, and have rebuffed international human rights organisations' proposals for a truth commission body. Nor does there seem to be an interest on the part of the general Mozambique population in reviewing the horror of the past. Asking about this, a US Department of State official summed up the reconciliation vs. truth commission debate that continues even to the State Department: "There is a need to empty wounds of all old infections before healing can start", he said. "But in some countries, like Angola and Mozambique, I'm not sure you'd have anything left if you cleaned out all the infection... I used to feel very strongly that truth needs to come out. But there are others here that don't feel that way; they feel that it is most important to focus on the elimination of future abuses, especially in war-ravaged countries."¹⁴

In fact, no truth commission to date has caused a situation to become worse; Zimbabwe is the only case where some suggest that violence might be sparked if the truth commission report were to be released, but this results in part from not releasing the report immediately. In Rwanda, government forces went on killing rampages immediately upon the commission's departure from the country in January 1993. But this reflected ongoing tactics of terror (suspended during the commission's two-week visit) as much as a specific response to the commission's work; only a small number of the several hundred killed during those two days had been involved with helping or testifying before the commission, according to the commission's co-chair.¹⁵ When the Rwandan commission report

was published six weeks later, international pressure on the Rwandan government forced the military to stop its campaign of terror. Even with unexpectedly explicit and strongly-worded reports, the overall impact of each truth commission has generally been positive, often reducing tension and increasing national reconciliation, and perhaps increasing the understanding of and respect for human rights issues by the general public and political leaders alike.

There are, of course, clear limitations to truth commissions. Most importantly, as a general rule, truth commissions do not have prosecutory powers such as the power to subpoena witnesses or bring cases to trial,¹⁶ nor do they act as judicial bodies to pronounce individuals guilty of crime. Those commissions that have publicly named the individuals responsible for certain acts generally state clearly that these are not judicial decisions.

Truth commissions also generally do not investigate current human rights conditions.¹⁷ They do not, therefore, fill the need for a permanent human rights commission or agency responsive to present day rights concerns.

The Right to Truth

Human rights advocates have begun to focus on an inherent right to truth in existing human rights law. International human rights law obliges states to investigate and punish violations of human rights; within this is the inherent right of the citizenry to know the results of such investigations. Frank LaRue of the Center for Human Rights Legal Action in Washington and Richard Carver of Article 19 have been among the first to articulate this right to truth. Carver writes, "Article 19 considers that there is indeed a 'right to know the truth' which is contained within the right to 'seek, receive and impart information' which is guaranteed by Article 19 of the Universal Declaration of Human Rights." He also cites a similar "right to receive information" in the African Charter on Human and Peoples' Rights. Human Rights advocates also point to the ruling of the Inter-American Court of Human Rights in the Velasquez Rodriguez case of 29 July 1988, which concluded that the state has a duty to investigate the fate of the disappeared and disclose the information to relatives.

Notes

1. Of the articles or books to date that address truth commissions, some of the better overviews include: *The Justice and Society Program of the Aspen Institute, State Crimes: Punishment or Pardon* (1989); David Weissbrodt & Paul W. Fraser, *Report of the Chilean National Commission on Truth and Reconciliation*, 14 (4) Hum. Rts. Q. 601 (1992) (book review) (which compares a number of past commissions); Richard Carver, *Called to Account: How African Governments Investigate Human Rights Violations*, 89 (356) AFRICAN AFFAIRS 391 (1990); Juan Mendez, *Review of A Miracle, A Universe, by Lawrence Weschler*, 8(2) N.Y.L. Sch. J. of Hum. Rts. 577 (1991); Aryeh Neier, *What Should be Done About the Guilty?*, THE NEW YORK REV. OF BOOKS, 1 Feb. 1990, at

32; Jamal Benomar, *Confronting the Past: Justice After Transitions*, 4 JOURNAL OF DEMOCRACY 3 (JAN. 1993); and Jamal Benomar, *Coming To Terms With The Past: How Emerging Democracies cope with a History of HUMAN RIGHTS VIOLATIONS* (Carter Center of Emory University, 1Jul. 1992).

2. This list of fifteen truth commissions is not exhaustive. There are other past commissions that could well be considered truth commissions under the definition used here, and certainly deserve further study. For example, in 1977 the central government of India appointed a "Shah Commission of Inquiry" to investigate abuses that took place under the state of emergency declared 25 Jun. 1975. See *Shah Commission of Inquiry, Interim Report 1* (1978). An International Commission of Inquiry into Human Rights Abuses in Burundi since 21 Oct. 1993, a non-governmental commission similar to the Rwanda commission, was finishing its report in June 1994, reporting on the violence that took place in Burundi in late 1993. *Commission Internationale D'Enquete sur les Violations des Droits de L'homme au Burundi Depuis le 21 Octobre 1993* (Human Rights Watch/Africa, 1994). There were also a number of municipal or regional commissions in Argentina, in addition to the national truth commission, which investigated abuses under the military regime.

3. In only a few of the fifteen cases looked at here was there an amnesty law passed explicitly preventing trials, but in most other cases there was in effect a de facto amnesty-prosecutions were never seriously considered. Likewise, in only a few cases, such as in Bolivia and Argentina, have there been trials in conjunction with or as a result of the truth commission investigations. Trials are also expected in Ethiopia.

4. see, e.g., Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537 (1991), and Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78(2) CAL. L. REV. 449 (1990), and their references to numerous other sources.

5. Since this was written, the government of South Africa has announced plans for a truth commission. See *infra* note 85. For further reference, see the African National Congress' call for a truth commission in *African National Congress National Executive Committee's Response to the Motsuenyane Commission's report* (8th Aug. 1993). see also *Institute for Democracy in South Africa, dealing with the past: Truth and reconciliation in South Africa* (Alex Boraine et al. eds., 1994), a compilation of papers from a Feb. 1994 international conference.

Two weeks after South Africa's announcement, negotiators in Guatemala signed an agreement to establish a truth commission in Guatemala, formally named the "Commission for Clarification of Violations of Human Rights and Acts of Violence That Caused Sufferings to the Guatemalan People". The commission will begin work after final peace accords are signed, expected to be Dec. 1994, and cover the period from 1960 or 1961 until the date the final peace accord is signed. One of the three commissioners will be appointed by the United Nations Secretary-General. The issue of a truth commission has been a difficult, sticking point throughout the negotiations, with the opposition URNG insisting that such a commission was essential to any peace accord. See *Guatemalan Foes Agree to Set Up Rights Panel*, N.Y. Times, 24 June 1994, at A2.

In Malawi, party leaders have agreed in principle to a truth commission. See Article 19, *Malawi's Past: The Right to Truth*, 29 CENSORSHIP NEWS, 17 NOV. 1993, which argues for a truth commission; this statement was adopted by a consortium of human rights and church groups in Malawi to push the issue into the political limelight; see also 19 ARTICLE 19 BULLETIN, Jan./Feb. 1994, at 4.

6. In Mexico, a non-governmental effort which calls itself a truth commission is investigating the 1968 killings at Tlatelolco where the armed forces shot into a crowd of protesting students and killed hundreds. There are calls for an in-depth commission to investigate this event. In South Korea, academics and activists are pushing the government to investigate the killings at Kwangju in 1980, where human rights observers estimate over 2,000 were killed, but no in-depth investigation ever took place. See ASIA WATCH, HUMAN RIGHTS IN KOREA 41-42 (1986). Whether these proposed commissions might study the larger picture of human rights during the period at hand, rather than focusing narrowly on these events, is not clear.

7. *Comisionado Nacional de Proteccion de Los derechos Humanos, Informe Preliminar Sobre Los Desaparecidos en Honduras 1980-1993: Los Hechos Hablan por si Mismos* (1994). The commissioner's original report is over 1,000 pages. This published report comprises major excerpts from the original report.

8. In conversation with the author, Commissioner Valladares insisted that his efforts did not constitute a truth commission, and that the government still held the responsibility to establish one.

9. *Honduras to Open files on killings: Army Says It Will Let Judges Question Officers in Cases of Political Slayings*, N.Y. Times, 31 Dec. 1993, at A7.

10. Neier, *supra* note 2, at 34.

11. Mendez, *supra* note 2, at 583. Mendez cites Professor Thomas Nagel for his articulation of this distinction.

12. Neier, *supra* note 2, at 35.

13. Interview with Sergio Hevia Larenas, Chilean human rights lawyer (12 Mar. 1993) (interview in Spanish; translation by author).

14. Interview with US State Department official (7 May 1993).

15. Interview with Alison DesForges, Co-Chair of the International Commission of investigation on Human Rights Violations in Rwanda Since 1 Oct. 1990 (24 Apr. 1993).

16. The Special Prosecutor's Office in Ethiopia is the exception, as it is both documenting the past and taking individuals to court.

17. The commissions in the Philippines and Rwanda are exceptions: they investigated human rights violations that occurred up until and including the period in which the commissions operated.

18. Article 19, *Malawi's Past*, *supra* note 6; see also Carlos J. Chipoco, *El Derecho a la Verdad: Un Analisis Comparativo*, paper presented at the Latin American Studies Association Conference (12 Mar. 1994).