

The Truth about Truth Commissions

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A Brief History and Description of Process

Truth commissions are often created within countries during times of political transition -- usually to demonstrate a new government's break with a past record of rights abuses, to promote national reconciliation, and/or to obtain or sustain political legitimacy (Hayner 1995). Some experts believe that reconciliation is the most important contribution of truth commissions to the post-conflict effort. Others believe that a public detailing of past human rights abuses can strengthen new democracies by preventing the festering of resentment and desire for revenge that can threaten a new government. Still others believe that a truth commission process helps prevent future abuses of human rights and supports other legal norms.

Investigating past gross violations of human rights, including genocide, can overwhelm a transitional judicial system. Truth commissions, with few staff needs and, often, funding by international organizations, are created to deal specifically with the immediate and past history of abuse -- but need to be paired with judicial reforms and processes in order to ensure that the past does not recur. Truth commissions are not courts of law -- they do not prosecute the perpetrators of human rights abuses -- but rather offer both an alternative extra-judicial forum for the discovery of the "truth" about past abuses, and for public debate about how to deal with perpetrators. Thus, truth commissions are legal only in the sense that their authority is most often embodied in some legal document (e.g., a treaty or legislation) and that they can sometimes make recommendations for criminal processes to the Supreme Court or other legal entity.

Past truth commissions have varied widely in structure, exact mandate, and degrees of success. Usually commissions have been initiated by a variety of actors, including international organizations, treaties, new presidents, legislatures, and more. Likewise, the selection of the commission's members seems to be based on the political context of each country. Priscilla Hayner suggests that there are four main characteristics common to all truth commissions (Hayner 1995):

- a focus on the past;
- a concentration on depicting an overall view of rights abuses over a period of time, rather than focusing on a specific event;
- a restricted or limited time frame, where the commission ceases to exist following the submission of a report of its findings; and
- vested authority, by way of its sponsor, that allows access to information, increased security to dig into sensitive issues, and ultimately a stronger impact with its report.

Richard Goldstone notes that there are two types of truth commissions (Goldstone 1995:609):

- those that enable confessions of guilt for past human rights abuses in exchange for amnesty;
- a modified form where the most serious offenders remain subject to loss of office or even prosecution.

Although there have been at least 15 truth commissions established in 13 countries over the last 20 years, experts feel that not all truth commissions have been successful (e.g., Uganda and the Philippines) (Hayner). Often this is because in many cases a truth commission's mandate or authority has been diminished, access to information has been restricted, resources are lacking, or alleged perpetrators have been protected by their institutions. The result is that truth commissions are often not allowed to present a full and fair accounting of the past -- and then the risk of reprisals and other forms of violence rises, reconciliation is stalled, and transitional democracies may degenerate.

Other experts believe that judging truth commissions by international or foreign ideals of justice disregards the strength of truth commissions -- that they are uniquely context-sensitive processes. Some experts believe that truth commissions are not, therefore, a "good export product when it comes to the national unity of a multi-ethnic society" (Burundian President Sylvestre Ntibantuganya, as reported by Haq 1995). Given that transitional situations are perilous and mutable, any attempt to deal with a history of human rights abuses must be designed to include the significant support of all the parties in the conflict. The "transition to democracy is fraught with profound social and cultural dilemmas" (Boston Globe 1995:76). Thus, sometimes the truth commission process may appear flawed by international standards but offer the only viable judicial process given the domestic context. In reality justice is often best served after the truth commission is disbanded, when the legal reform process begins to handle the aftermath of the investigation's findings.

Truth Commissions or War Crimes Tribunals

Today there is confusion and debate regarding which judicial process to support: truth commissions or war crimes tribunals. Internal processes tend to focus on the establishment of a truth commission, where reconciliation is the major objective, while international processes support war crimes tribunals, where international justice is the goal. Some experts have suggested that the context of the past conflict determines which of these two processes is most relevant: when there is a clear winner and loser, war crimes tribunals may work best, but when the "old state gives up its power before being conquered" truth commissions may be the best choice (Boston Globe 1995:Ibid.).

The assumption is that the effort to seek legal redress through a war crimes tribunal may prevent the performance of crimes in the future, but it may also endanger transitional democracies by threatening still powerful perpetrators of human rights abuses (Ibid.).

On the other hand, if the prevailing political climate does not seem conducive to permitting criminal trials for those who deserve them, the "simple" value of truth as discovered by a truth commission may offer the public solace. Thus, in transitional societies, justice may be best (and temporarily) defined as creating the "opportunity for the consolidation of democracy with a full recognition of what has come before" (Ibid.). As stated by Ruben Zamora, a leftist politician in El Salvador whose brother was slain in 1980 by state security forces, "knowing the truth is a form of justice" (As quoted in Boston Globe).

Preliminary Lessons Learned

Although the process, mandate, composition, authority, and results of truth commissions are varied, because of their ties to the specific country context in which they were created, it is possible to begin to draw out some findings. Goldstone notes that preliminary lessons learned include (Goldstone 1995:615):

- there is a deep seated need of victims for acknowledgement of past human rights abuses;
- the need for acknowledgement becomes greater depending on the severity of the violations and amount of time that has elapsed since they occurred;
- beware of generalizing -- the correct approach to the past will depend on a myriad of political, economic, and cultural forces;
- to ignore or "gloss over" serious human rights abuses will, sooner or later, impose a heavy price on a society that allows this to happen.

Conclusion

Today, in a post-Cold War transitional time period, complex political emergencies seem to be on the rise. The relevance of truth commissions -- as part of the reconciliation process, as part of the process of consolidating nascent democracies, and as part of an effort to prevent future abuses of human rights -- will continue to rise correspondingly. The value of truth commissions is best summed up by Richard Goldstone, who has been involved in the South African truth commission, and the war crimes tribunals in the former Yugoslavia and in Rwanda, "[f]orgiveness cannot be granted without knowledge; and without forgiveness, there cannot be any meaningful reconciliation. The only hope of breaking cycles of violence is by public acknowledgement of such violence and the exposure of those responsible for it" (Goldstone 1995:615).

Brief Review of Case Studies

- Argentina: Established by the new President Alfonsín in December 1983, the National Commission on Disappeared Persons was the first commission in Latin America to publish a report. The Commission was authorized to establish the truth about the events related to the disappearance of people in Argentina during the military regime between 1977 and 1983. The Commission was chaired by Ernesto Sábato, a Latin American novelist, and the other members were well known Argentine citizens. After investigating 8,960 cases of human rights abuses, the Commission released its report in November 1984, almost a year after it was established.

Throughout the process there was domestic pressure to create a Congressional Commission that would have greater powers than the truth commission, including the ability to compel testimony and obtain material evidence. Indeed, Argentine security forces did not honor the Presidential order to cooperate because of the limited authority of the Commission. Despite this limitation, the Commission's final report did manage to disclose details of the disappearances, the methods of torture used, the clandestine detention centers, the means of extermination of the victims, and the names of the disappeared.

After the release of the Commission's report, criminal proceedings followed. Two past Argentine presidents and a score of military leaders were put on trial. When prosecutions of middle-ranking officers were initiated, there was a threatened coup and all of the prosecutions were aborted. "That was a lesson taken to heart throughout South America" (Goldstone 1995:612).

Amnesty: Amnesty laws were passed in Argentina that seem to protect over 1,000 perpetrators of gross human rights abuses.

Authority: The Commission did not have the power to subpoena or compel testimony; and it did not have the mandate to identify individuals by name (a separate report to the Government identified the perpetrators by name).

- Chile: In April 1990, the new Chilean President Patricio Aylwin established the Chilean National Commission on Truth and Reconciliation -- also known as the Rettig Commission. The Commission had nine months to complete its investigation and present a report to the President on the "truth about the most serious human rights violations ... in order to bring about the reconciliation of all Chileans" (Pasqualucci 1994:22). Despite the short time frame, the Commission investigated 3,400 cases of human rights abuse.

The report was made public, but national debate about how to deal with the truth of the past was halted after three political assassinations. Nevertheless, President Aylwin carried out many of the Commission's recommendations. And, by "all accounts, the Chilean Commission materially assisted that nation to put an unhappy past behind it and allow its people to get on with building a better future" (Goldstone 1995:613).

Amnesty: Amnesty laws were passed in Chile to protect perpetrators of gross human rights abuses. Currently, legal and political debate in Chile focuses on whether and how to bring convicted members of the military establishment to justice.

Authority: The Commission had the power to identify the victims and families; it recommended legal and executive measures which should be adopted by the State to prevent such abuses in the future; it did not have subpoena powers; and the Commission was restricted from undertaking a judicial role and from identifying or sanctioning the perpetrators of the abuses.

- El Salvador: The Commission on the Truth for El Salvador was formally established on July 15, 1992, as provided by the Salvadoran Peace Accords under the auspices of the United Nations. Its mandate required that the Commission be comprised of three individuals appointed by the United Nations (UN) Secretary-General, after consultation with the parties to the Accord. Belisario Betancur, former President of Colombia, Reinaldo Figueredo, former Foreign Minister of Venezuela, and Thomas Buergenthal, former President of the Inter-American Court of Human Rights and Professor at the George Washington University, were appointed to the Commission. This was the first time any negotiated settlement included a provision requiring a truth commission composed of foreign nationals. Many legal experts believe that foreign nationals will be included in future truth commissions (see Haiti example).

The Commission was tasked with investigating the violence that occurred in El Salvador between 1980 and 1991, and to put an end to the perception or reality of impunity on the part of the officers of the armed forces. Thus, unlike many other truth commissions, the Salvador Commission's main purpose was prevention rather than reconciliation. The Commission was allowed six months to complete its investigations, make recommendations, and submit its report to the parties of the Accord and to the UN Secretary-General. In the end it took the Commission eight months to issue the final report (April 15, 1993), and it could only focus on the most egregious acts committed during the civil war.

USAID granted \$1 million to the Secretary-General of the United Nations to provide resources for the Salvador Commission to carry out its program. Other nations and donors provided an additional \$1.5 million.

Amnesty: Amnesty laws were passed in El Salvador within five days of the release of the Commission's report, in order to protect the perpetrators of gross human rights abuses named in the report.

Authority: The Commission had the authority to gather any information it considered relevant: it had the power to interview, freely and in private, any individuals, groups, or members of organizations or institutions. It did not have the ability to function in the manner of a judicial body; public testimony did not occur in order to protect those who provided information from reprisals, and it lacked the power to subpoena financial records

or telephone logs. The Commission had the authority to publicize the names of the perpetrators of the worst human rights abuses, although this authority was later unsuccessfully contested. It also had the power to make recommendations concerning follow-up criminal trials and amnesties, and it had the authority to make binding recommendations to the Government of El Salvador concerning legal, political or administrative measures to prevent the repetition of such acts in the future (the Government pardoned all the persons named in the Commission report).

- Honduras: Although not quite a truth commission, the governmental Office of the National Commissioner for Human Rights was established by executive decree in 1992 in order to monitor the ongoing human rights situation in Honduras. The first Commissioner, Dr. Leo Valledares, a former president of the InterAmerican Commission on Human Rights, undertook a truth commission-type investigation of the disappearances between 1980 and 1993. The Honduran report goes beyond that of many typical truth commissions by detailing the involvement of other countries, particularly the United States and Argentina, in the policies which resulted in human rights abuses (Pasqualucci 1994:28).

Amnesty: Amnesty laws were passed in Honduras that protect the perpetrators of human rights abuses from prosecution.

Authority: The Commissioner was authorized to investigate past and current human rights abuses.

- Rwanda: In contrast to most truth commissions, the Commission established in 1992 in Rwanda was composed only of members of international non-governmental organizations. Mandated by the Arusha accords, the Commission's report uncovered many human rights abuses. "It had an immediate effect on the policies of the two European powers most involved in Rwanda, Belgium and France" (Goldstone 1995:613). Whatever long-term effects the Commission's investigations might have had were abrogated by the genocide of 1994/1995.

- South Africa: Instituted by an act of parliament in July 1995, the South African Truth Commission was "designed to extract the truth about the crimes, put them on record, and then to forgive the perpetrators" (The Economist 1995:46). F.W. de Klerk has stated that the main task of the commission is to "deal with the past in a way which will be helpful with regard to reconciliation" (BBC Summary of World Broadcasts 1995, emphasis added). The 17-member Truth Commission, headed by Archbishop Desmond Tutu, will have 18 months to investigate the human rights abuses committed between 1960 and 1993 (The Financial Post 1995:2).

The Commission is divided into three committees: one will consider applications for amnesty; the second committee will hold public hearings around the country to take testimony and complaints from the victims of crime; and the third will deal with the victims of abuse or their surviving relatives and seek to aid those still suffering from the effects of the violence, and may order the payment of reparations (O'Loughlin 1996:9). A number of

countries have offered to help the investigations unit by seconding police officers to South Africa.

Norway has offered \$689,000 US to assist the South Africa Truth Commission (Agence France Presse 1996).

There are many South Africans who fear that the truth commission will become an Afrikaner-bashing exercise, and that it will deliberately persecute former members of the Afrikaner military establishment (Mutume 1996). However, others believe that the truth commission process offers a viable compromise between those who want "murderers" tried and those who want an opportunity to forgive the acknowledged perpetrators of violence (The Economist 1995:46). To complicate matters further, 11 retired apartheid-era military leaders were arrested by the South African Government in October of 1995. Because the exact relationship between criminal trials and the Commission investigations are unclear, tension has increased in the country over how to deal with the perpetrators of human rights abuses.

This is by no means the first truth commission sponsored in South Africa. Indeed, in 1992 and 1993 the African National Congress examined its own past through two separate commissions (Hayner:Ibid.).

Amnesty: The Commission has the power to grant amnesty to "penitent" offenders -- although the offenders must prove that the crimes were politically motivated.

Authority: The Commission will have the power to award compensation to victims. It will have no power to summon or prosecute, only to pardon. The Commission can authorize its investigation units to "break into public and private buildings" (Russell 1996:14).

- Haiti: Set up in April of 1995, Haiti's National Commission for Truth and Justice sent its official report to outgoing President Jean-Bertrand Aristide in February 1996. Directed by Francoise Boucard, a Haitian sociologist, the Commission was composed of seven members (Canada NewsWire 1995), three of whom were foreign nationals (from Barbados, Jamaica, and Senegal) and were chosen with the support of the UN and Organization of American States. According to many experts, the main purpose of the truth commission process in Haiti was to promote reconciliation: "there cannot be durable democracy in Haiti without reconciliation and there cannot be reconciliation without justice" (Ibid.).

The Commission report, which is 1,200 pages long and involved testimony from 5,450 witnesses nationwide, identified around 8,600 victims and nearly 20,000 human rights violations during the regime of General Raoul Cedras (Coughlin 1996). Because it felt that the Haitian legal system alone can not adequately prosecute the offenders, the Commission's report called on the UN Security Council to establish an international tribunal to investigate, pursue, and punish the perpetrators of serious human rights violations (Ibid.). Most of the report's other recommendations focused on reforming the judicial system, including the prosecutorial system, the police force, and the Haitian legal code.

Many human rights groups, non-governmental organizations, and popular organizations felt that the Commission's report did not go far enough in its recommendations (Ibid). Indeed, last year these groups called on the Commission to investigate "national and international political and economic links to the coup regime, as well as the complicity of the judicial and parliamentary branches of government" (Inter Press Service 1995). They also asked not only for individual, but also institutional, responsibility for the human rights abuses (Ibid.).

Amnesty: The Haitian parliament adopted a resolution to grant political amnesty for actions directly related to the coup d'etat (Broadbent 1994:A27).

Authority: The mandate of the Commission was to report on and analyze the period between September 1991 and October 1994. The Commission was also asked to make non-binding recommendations to the Government of Haiti. It did not name names, but suggested that it could if judicial proceedings were initiated.

- **Cambodia:** The establishment of a mixed Cambodian-foreign truth commission has been recommended by Steven Ratner and Jason Abrams (both of the US Department of State) as a "more feasible" process to investigate genocide and other crimes than a war crimes tribunal (Lee 1995; Reuters August 25, 1995).
- **Mozambique:** There have been calls for the establishment of a truth commission similar to the one set up in South Africa (Africa News 1995).
- **Bosnia:** There have been suggestions that a truth commission would complement the ongoing war crimes tribunal process (Johnstone and LeVine 1993).
- Other Countries where "Truth Commissions" have existed include: Denmark (post World War II), Australia (post World War II), Yugoslavia (post World War II), Uruguay, Guatemala, Bolivia, the Philippines, Germany, Chad, Zimbabwe, Ethiopia, and Uganda (2 separate commissions).
- Countries where "International Criminal Tribunals" currently exist: The former Yugoslavia and Rwanda.

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