



Facing the Past: The role of Truth Commissions in post-conflict societies

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Facing the Past:

The Role of Truth Commissions in Post-conflict Societies

Ed Cairns, Seamus Dunn, Brandon Hamber & Graeme Simpson

A Joint Report by The Centre for the Study of Violence and Reconciliation in South Africa
and The Centre for the Study of Conflict in Northern Ireland

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Our thanks to the researchers who contributed to this paper

Isayvani Naiker, Lauren Segal, Sello Mabotja & Frances McLernon

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1.A Brief History of Truth Commissions

The following section gives a brief overview of some of the truth commissions¹ that have taken place around the world. The information provided below is not exhaustive.

1.1 Historical Overview

Perhaps the first recorded instance of what would be today recognised as a ‘truth commission’ took place during the Peloponnesian War (404 BC), when about 1500 people were killed during political and social strife and also as a result of purges. When the new government usurped the reigns of power, it set in motion a process of reconciliation. This marked the historical advent of the granting of amnesty (derived from the Latin word “amnesia” meaning to forget).

Since then, amnesties have been a feature of modern warfare - for example

- Germany (1920s) - 15 Amnesties granted during the Weimar Republic.
- Israel (1967) - After the Six Day War general amnesties were granted.
- USA (1970’s) - The Carter administration indemnified convicted Vietnam War Veterans.

More recently some twenty ‘truth commission’ (see Table 1) have been undertaken worldwide of which the following are of particular interest:

1.2 Argentina

- 1983 Trials for offences committed during the ‘dirty war’.
- 1984 National Commission on Disappeared Persons established (a truth commission).
- The first commission to receive large scale international attention

¹ For a review of truth commissions that have taken place see Bronkhorst (1995) Hayner (1994).

- Emphasis was put on the “disappeared” and compensation for the victims’ families is paid for by the government.
- 8,960 cases of disappearances formally documented, but the report warns that the number may be higher.
- In human rights circles it is informally felt that there are “30,000 disappeared”.
- 1186 bodies exhumed from unmarked graves by the Truth Commission.
- 1080 cases are submitted to the civilian court for prosecution by the Truth Commission
- 1989 President Raul Alfonsin pardons those convicted.
- Minister of Interior inquiry into the plight of the Disappeared children, 1988 49 children traced and 150 fate is still unknown

1.3 Uganda

- Idi Amin establishes the Commission of Inquiry into Disappearances, ineffectual and a “white-wash”
- The second “official” truth commission, after Argentina.
- Established in 1986 under the leadership of President Museveni.
- The “Commission of Inquiry into Violations of Human Rights” was to investigate all violations that occurred in Uganda between 9 October 1962 and 25 January 1986.
- The Commission heard about 1500 cases and investigated about 600 of these.
- The Commission often had to stop operating due to shortages of funds and basic essentials like paper.
- The Commission only issued its 1,500-page final report in 1994, nine years after its work began.

1.4 El Salvador

- Truth Commission set-up after 1991 Peace Agreements.
- Mandate was to investigate violations of human rights by the government and opposition movement since 1980 and it could investigate “serious acts of violence....[whose]....impact on society urgently demands that the public should know the truth” (cited in Hayner, 1994).

- United Nations controlled the Commission known as the “Commission on Truth in El Salvador”
- Committee presented findings on 32 detailed cases which it selected for research from the 22 000 cases reported.
- The names of the perpetrators were mentioned and various injunctions - such as being barred from occupying public office or military position for a specified period of time - were recommended against those found to have been involved in the abuses.
- One week after the report was published, through its legislative powers, the El Salvadorian parliament passed a general amnesty law in 1993.

1.5 Chile

- President Aylwin set-up the National Commission for Truth and Reconciliation and it started work in 1990.
- The Commission was set-up by Presidential Decree because Parliament failed to pass the required law
- The Commission was broadly representative of the ideological spectrum of parties and groupings in the country.
- Report of 1 094 pages released in 1991.
- The report received international acclaim
- When the report was released President Alywin publicly apologised to the victims and their families on behalf of the state.
- 3 500 cases studied by the Commission.
- The Commission established that 2 200 people (including 957 that disappeared) were victims of atrocities committed by the state, while 90 were victims of actions undertaken by subversive groups.
- For about 600 people, there was insufficient evidence or time to investigate their cases.
- In 1994 it was officially acknowledged that deaths and disappearances were probably more than the 3 000 reported by the Commission.
- The Chilean report has a 74-page section on “reparation” containing hundreds of suggestions. These deal with public rehabilitation for victims, through, for example, monuments, parks, death

certificates for the disappeared, standard pensions for relatives, medical care, and the provision of education and housing for those affected.

- There is a section called *Prevention* under the “Reparation” chapter of the report. Suggestions here include the ratification of treaties, creating a data bank of detentions, making withholding of information about disappearances punishable and including human rights education in curricula (Bronkhorst, 1995).
- The National Corporation for Reparation and Reconciliation was instituted in 1992 to consolidate the Commission’s work. Relief grants in the form of specific reparations like medical and educational benefits and pensions were provided for. Victims relatives were granted \$400 a month, working out to a total of about 20 million dollars a year.
- In Chile it is reported by those working in the human rights field that five years after the fall of the dictatorship, people still want to report cases and, in fact, are often unaware that the National Commission on Truth and Reconciliation issued its report in 1991 (Bronkhorst, 1995)

Table 1
 TRUTH COMMISSIONS &
 WAR TRIBUNALS 1971 - 1996

COUNTRY	TITLE • DATE • SPONSORING AUTHORITY	DATES COVERED • CIRCUMSTANCES
UGANDA	Commission of Inquiry into the Disappearances of People in Uganda since 25 January 1971 (1974-1975). Report published 1975. President	25 Jan 1971-1974. Prompted by international pressure on government. Disappearances
BOLIVIA	Comisión Nacional de Investigación de Desaparecidos (1982-1984). No final report. President	1967-1982. Change from military to democratic rule. Disappearances
ARGENTINA	Comisión Nacional para la Desaparición de Personas ('The Sabato Commission' or CONADEP) (1983-1984). Report published 1985. President	1976-1983. Change from military to democratic rule. Disappearances
URUGUAY	Comisión Investigadora sobre la Situación de Personas Desaparecidas y Hechos que la Motivaron (1985). Report published 1985. President	1973-1982. change from military to democratic rule. Disappearances
ZIMBABWE	Commission of Inquiry (1985). Report kept confidential. President	1983. Pressure to investigate repression in Matabeleland where at least 1,500 civilians were killed
UGANDA	Commission of Inquiry into Violations of Human Rights (1986-1994). Report published 1994. President	Dec 1962-Jan 1986. Following overthrow of Obote government. Human rights abused
PHILIPPINES	Presidential Committee on Human rights (1986-1987). Did not complete report. President	1972-1986. Transition to democratic regime. State crimes during period of martial law

CHILE	Comisión Nacional para la Verdad y Reconciliación ('The Rettig Commission') (1990-1991). Report published 1991. President	Sept 11 1973-Mar 1990. Change from military to democratic rule. Abuses resulting in death or disappearance during time of junta
CHAD	Commission d'Enquête sur les Crimes et Détournements Commis par l'Ex-Président Habré, ses co-Auteurs et/ou Complices (1991-1992). Report published May 1992. President	1982-90. New government. Killings, torture and illegal detentions during previous regime
SOUTH AFRICA	Commission of Enquiry into Complaints by Former African National Congress Prisoners and Detainees 'The Skweyiya Commission' (1992). Report published October 1992. ANC	1979-1991. ANC investigation into allegations by former members of human rights abuses in its camps outside South Africa
GERMANY	Enquet Kommission Aufarbeitung von Geschichte und Folgen der SED-Diktator in Deutschland (1992-present). Parliament	1949-1989. Reunification. Human rights violations under Communist rule in East Germany
EL SALVADOR	Comisión de la Verdad Para El Salvador (1992-1993). Report published March 1993. UN	Jan 1980-Jul 1991. Ceasefire and peace accords after civil war. Investigation into 'serious acts of violence'
RWANDA	International Commission of Investigation on Human Rights Violations in Rwanda (1993). Report published March 1993. Human Rights Watch/Africa, International Federations of Human Rights, Interafrican Human Rights, Center for Human Rights and Democratic Development	Oct 1990-1993. Ceasefire and agreement by rebels and the government to establish commission. Abuses during civil war

SOUTH AFRICA	Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuses Against ANC Prisoners and Detainees by ANC Members ('The Motsuenyane Commission') (1993). Report published August 1993. ANC	1979-1991. Criticisms of lack of independence and due process in previous commission on abuses in ANC camps
ETHIOPIA	Office of the Special Prosecutor (1993-present). Transitional government	1974-1991. Overthrow of 'Dergue' military regime. To document abuses under rule of President Mengistu Haile-Mariam and to investigate genocide and crimes against humanity
FORMER YUGOSLAVIA	International Criminal Tribunal for the former Yugoslavia (1991-present). UN	1991-present. To judge those thought responsible for grave violations of international human rights including serious infraction the Geneva Convention 1949, violations of the laws and customs of war; genocide; crimes against humanity
HAITI	Commission Nationale de Vérité et de Justice (March 1995). Report published April 1996. President	29 September 1991-15 October 1994. Set up following restoration of President Jean-Bertrand Aristide in October 1994 by US-led multinational force. To establish the truth concerning the most serious human rights violations committed inside and outside the country and to help towards the reconciliation of all Haitians
RWANDA	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighbouring states (June 1995-present). UN	6 April 1994 - 15 July 1994. Set up by the Security Council following a preliminary report from its Commission of Experts
SOUTH AFRICA	Truth and Reconciliation Commission (including a Committee on Human Rights Violations, Committee on Amnesty and a Committee on Reparation and Rehabilitation. (November 1995-April 1998). Parliament under the Promotion of National Unity and Reconciliation Act, July 1995 (<i>see p38 & following</i>))	1 March 1960-5 December 1993. To investigate the causes and extent of gross violations of human rights committed during the apartheid era. To grant amnesties to perpetrators under certain conditions and recommend compensation for victims
CHILE	Reconciliation and Compensation Corporation (1990-1996). Report published 22 August 1996. President	Further investigation into abuses under Pinochet regime, 1971-1990 (<i>see above</i>)

2. To Investigate or Not to Investigate: That is the Question

2.1 Should the past be investigated?

Many would argue that the way a country decides to face its past is central to its future and that a decision to confront or not to confront the deeds of the past has vital consequences for the nature of its future government. As George Orwell said, “Whoever controls the past controls the future.” Philosopher Charles Taylor provides a philosophical perspective to this argument. He believes that the present and the future are strongly shaped by the past and that “in order to understand properly what we are about, we have to understand how we got to where we are.” He emphasises the ways in which the past can be “forgotten” but nevertheless continues to exercise its influence in a myriad of ways.

The myriad of ways that the past can affect the future is, of course, shot through with political considerations. Certainly, in modern states, it is the power of political groupings and parties that often decide on how the past will be investigated, or perhaps not investigated, and written or re-written. All nations, and specifically those in transition, whether consciously or not, excavate and sifted through the historical strata of their society - and then present it to the world. Through this process, countries generate new narratives and historical truths. In essence, there is no truth in writing history, only truths. Nonetheless, despite the difficulty of having to reconcile many versions of the past, it is argued that truth commissions can help write a fair record of history (Hayner, 1996).

2.2 Reasons for doing nothing

Several arguments have been advanced for not dealing with the past. Survivors of traumatic events and, more broadly, governments in transformation from past political conflict like South Africa and elsewhere, are often urged to “let sleeping dogs lie” or to “let bygones be bygones”. Often this is due to a fear of de-

railing peace initiatives and a realisation that uncovering the past can be psychologically painful. This can make countries in transition choose to focus primarily on building a new future rather than unpacking, or exploring, the past. Not surprisingly, the ex-deputy president of South Africa, F. W. De Klerk, along with other leaders of his National Party (NP), has urged South Africans to “forget the past” and look forward to “new beginnings”. The reasons offered for this forward-looking approach are never expressed as overtly political or based on an admission of the cruelty of apartheid. Rather, these politicians, most of whom were directly involved in constructing and maintaining the apartheid system, argue that by investigating past abuses new political cleavages will emerge, delaying the process of healing and jeopardising the building of a human rights culture in the future. Perhaps obviously, those who have argued for an unequivocal “moving on” are generally those with the most to hide about their actions in the past.

However, arguments against unlocking the wounds of the past do not always have such clear political agendas. There is an argument to be made that particularly young people need to “move on” psychologically after political turmoil - they should not be expected to carry the guilt of other people’s actions. Such a burden may hamper them from building a different future.

Another argument is that, due to the highly political nature of truth recovery process, any commission’s work cannot avoid being tainted by political agendas. Yet other lines of argument suggest that despite worthy intentions, the quest to uncover the past will always tend to degenerate into a witch-hunt which will ultimately undermine political stability and in the end result in no real political change or institutional transformation. Finally, some assert that investigating the past can take much effort and involve the expenditure of a great amount of very limited resources, yet show little reward.

2.3 For the sake of survivors

On the other hand, according to Hayner (1996), the rewards of focusing on the past, particularly through a truth commission, can be many. A truth commission, in Hayner’s (1996) opinion, can promote reconciliation, outline needed reform, allow victims to air their pain, provide acknowledgement of a long-suppressed past and hopefully keep such horrors from being repeated. At the very least, a survey of past

commissions suggests that such commissions' investigations have not worsened human rights situations in any of the countries in which they have been attempted (Hayner, 1996).

One of the strongest justifications for having an investigation becomes clear when one approaches the past in a psychological sense and from the perspective of survivors and the families of past abuses.

Psychologically, "sleeping dogs do not lie"; past traumas do not simply pass or disappear with the passage of time. The past can never just be ignored, and past traumas can always be expected to have emotional consequences for an individual². Repressed pain and trauma generally block emotional life, have psychologically adverse consequences and can even lead to physical symptoms (Miller, 1991).

Psychological restoration and healing can only occur through providing the space for survivors to feel heard and for every detail of the traumatic event to be re-experienced in a safe environment.

Extrapolating this to broader society one could argue that many survivors of a conflict ridden past can be left feeling vulnerable, helpless, without an explanation of events and with a distorted cognitive picture of society and humanity. Something more than individual intervention, perhaps a process on a macro-political level, may be necessary to deal with these distortions.

A truth commission, for example, by creating an accurate picture of the past, could liberate individuals and broader society from this skewed view of humanity - a view constituted solely of the legacy of inhuman acts of brutality (particularly if a country's past has been extremely violent). Furthermore, by creating a realistic perspective on past human rights abuses, individual and collective cognitive recovery could be aided by allowing survivors to accept what happened to them and deal with their resultant emotional responses. Importantly, acknowledging and uncovering the roots of the traumatic incident may also serve to absolve the feelings of guilt and personal responsibility (Danieli, 1992; Miller, 1991; Scott & Stradling, 1993) that survivors often experience after traumatic events.

² *see* Hamber (1995) for more in-depth discussion on the psychological implications of the South African Truth and Reconciliation Commission and debates about the psychological nature of Truth Commissions.

On an individual level one can only come to terms with what one has lived through by re-experiencing every detail of the traumatic event (Jelin, 1994; Miller, 1991). A truth recovery process can facilitate this, albeit in a limited way, through a testimony giving process which gives those who were violated space to recount their abuses. Through giving testimony, the process of re-living and building a context of meaning for survivors can be facilitated. This can serve the cognitive function of re-shaping the event for the survivor while also allowing for the individual's feelings to be dealt with and for the essentially abnormal event to be integrated into the cognitive and emotional matrix of the survivor's life. Furthermore, giving testimony, when coupled with a macro-political truth recovery process can, unlike traditional psychotherapy that privatises social trauma, affirm the locus of control as lying outside the individual and thus providing means for regaining status as a social actor (Lykes & Liem, 1990).

2.4 Overcoming a culture of silence

An additional consequence of political violence and turmoil - one that is evident in most countries that are moving away from authoritarian rule - has been the development of what can be termed a culture of silence, or what Danieli (1981; 1992) terms a "conspiracy of silence". Silence, misinformation and the so-called "official story" are often the hallmark of past repressive societies. The difficulty of distinguishing between the true and the untrue is the direct result of state repression (Lykes & Liem, 1990). This silence can be individually destructive in the long-run and results in individuals being excluded from social, emotional and political life. This leaves most survivors feeling misunderstood and with the impression that nobody is willing to hear their story. Similarly, the process of silence that is often forced and fostered by military regimes can result in security apparatuses continuing to function as abusive institutions, despite political changes in a country. Thus, by breaking this culture of silence, the process of truth recovery or investigating the past can be instrumental in contributing not only to psychological rehabilitation, but also to institutional transformation. In the words of José Zalaquett, a Chilean human rights lawyer who worked on the Chilean Truth Commission, "Truth doesn't bring the dead back to life...but it brings them out of silence" (cited in Rosenberg, 1996).

Furthermore, rituals, symbols, commemoration and reparations can play an important role in any process of healing, bereavement and addressing trauma and the past. They can help grieving by allowing individuals

to focus exclusively on the grief and to share their feelings with others. Clearly, universal experiences after any social catastrophe or trauma (and even after more positive social experiences) point to the need for high levels of recognition, commemoration, memorial activities and rituals (Danieli, 1992). Symbolic representation of trauma, particularly if the symbols are personalised, can serve a psychologically restorative function and the granting of reparations can facilitate a process of coming to terms with the traumatic event and be a marker of an individual's mastery over it. These sorts of processes are visible on a more collective level when monuments and memorials are built after wars and civil strife.

Having nationally agreed upon investigations into the past and giving survivors space to tell of their hardships in the past can, it is argued, serve some of the functions of a healing ritual. An investigative body can symbolically represent a collective willingness to deal with and part from the past. If such a body also makes recommendations, and hopefully is also able to implement such recommendations and develop institutional apparatuses for preventing the re-occurrence of human rights violations, then this can represent, both symbolically and concretely, the process of "becoming something new". This can be essential to emerging democracies that are also trying to shape a collective national identity.

2.5 Compensation

Clearly, there is also often a need for survivors to receive some compensation or symbolic acknowledgement for their efforts or struggles to change an unjust system. Symbolically it is not the physical reparation but the process of amending, recognising and acknowledging that serve the most restorative psychological function for a nation or individuals. An example that supports this view is the group of women who are relatives of family members who "disappeared" during the period of military rule in Argentina known as the *Madres de la Plaza de Mayo*. They refused to accept monetary reparation as they felt that the state was buying their silence rather than granting social and historical recognition (Danieli, 1992). Argentinean society remains immersed in the phenomenon of social disappearances because the social processes of acknowledgement and recognition have not occurred (Jelin, 1994). This is further supported by a recent article that emphasises that, surprisingly, of the many monuments scattered about Buenos Aires there is still not one to the "30000" who disappeared (Valentine, 1995). However, this issue

is a double-edged sword because although symbolic acknowledgement and recognition can be useful, at the same time they can never be enough or bring back loved ones.

2.6 Religious and cultural justifications

In addition to the psychological necessities and usefulness of investigating the past that have been outlined, a range of religious and cultural justifications have also been made for investigating the past. Within these perspectives the issue of reconciliation plays a much larger role. The World Council on Religion and Peace (1996) in South Africa clearly feels that, based on an understanding of all major faiths, harmony can only be restored if perpetrators acknowledge their wrongdoing, express remorse for their action, seek and ask forgiveness and earnestly commit themselves to not repeat such wrongs in the future. They feel the South African Truth and Reconciliation Commission, through public acknowledgement and some attempts to make restitution, can only address some of these steps. A submission to the South African Truth And Reconciliation Commission by the Jewish Movement for Social Action (1997) notes that there is a need to look at the past but also argues that reconciliation is broader than simply a formal commission. They feel that the person who has done wrong has to make peace with the wronged person directly - the world endures on justice (not vengeance), truth and peace according to their faith.

Similarly, Christian and, particularly Catholic, perspectives time and time again liken the South African Truth Commission to a public confessional for immoral actions. Objections from the religious community in South Africa have been that this is only one step, as remorse is also an integral component to forgiveness. Perpetrators do not have to say they are sorry to receive “legal” forgiveness and be granted amnesty - it is this aspect that most faiths, and many individuals, stress is needed for the process of forgiveness of the perpetrator to take place.

2.7 Reconciliation

Despite this, in South Africa reconciliation remains a stated aim of the South African Truth and Reconciliation Commission and part of its work. Truth recovery is linked to the concept of reconciliation and healing. An open evaluation of the past, the writing of a unified history, an assertion of dignity for victims and the cathartic nature of telling one’s story are all considered necessary to heal past wounds and

foster reconciliation. This is summed up by Asmal, Asmal & Roberts (1996) when they write, “Reconciliation, in this its rich and meaningful sense, is thus a real closing of the ledger book of the past. A crucial element in that closing is an ending of the divisive cycle of accusation, denial and counter-accusations; not a forgetting of these accusations and counter accusations, but more a settling of them through a process of evaluation -- like the accountant’s job of reconciling conflicting claims before closing a ledger book (p.46).”

However, the challenge lies in realising that reconciliation during times of political transition not only needs to occur through bodies like truth commissions and through setting aside political differences but also through real material change. In South Africa, for example, it is impossible to think of reconciliation without a level of redistributing power and coupling this process with a broader process of social transformation. Such a transition is characterised by managed development, physical violence prevention (e.g. reducing the number of available weapons) and violence prevention education programmes, increased awareness and monitoring of human rights issues through a range of statutory bodies and civil organs and the radical transformation of state institutions. Only if this occurs will the impact of violence and the threat of future violence, which will persist as long as structural inequalities remain, be minimised.

2.8 Safeguarding future human rights

A further important argument advanced for the need for a truth recovery process is that investigating past abuses is an important safeguard against a country committing further abuses. One of the strongest motivations for investigating the past is that most countries with abusive pasts have, over a number of years, set in place a range of oppressive institutions that run anti-thetical to a human rights culture. An investigation into clandestine death squads and the uncovering of the operations of abusive state structures so as to prevent such structures from developing again has always been a primary motive of most inquiries into the past. It is often intended that through a truth commission the information uncovered about past abuses will assist in leaving an undisputed account of history and document how violations occurred. This then opens up the possibility to learn from the past and in so doing ensures that future transgressions of human rights do not occur. In essence, it is hoped that the truth can aid in some form of social transformation and the development of a human rights culture.

This argument is often supported by examples of countries where there has been no scrutiny of state institutions responsible for violence. A case in point is Zimbabwe. It is argued that little changed in the security apparatus after the transition to the Mugabe government. The head of the Central Intelligence Agency who had orchestrated attempts to assassinate Mugabe himself, kept his job and the police services remained virtually unchanged (Roht-Arriaza, 1995). The state of emergency which had been put in place in 1965 continued 13 years after independence, and detention without trial was used extensively (Segal, 1996). It could be argued that the human rights violations committed by the Mugabe regime, in particular the Matabeleland Massacres of 1985, had their roots in the negotiated settlement of 1980 that ensured that there was no investigation whatsoever into the past (Carver, 1997; Segal, 1996). Mugabe clearly emphasised breaking with the past and agreed to a blanket amnesty for all acts committed during the war, thus leaving the institutions responsible for previous violations completely unchallenged. In this context it was not unlikely that future violations would occur and this is exactly what happened in Zimbabwe.

Similarly, in Brazil, the blanket amnesty, coupled with no investigation into the past by the old or new governments, has meant that an official truth was never uncovered and that the past has continued to linger. As a result, the families of victims continue to seek the truth and draw attention to the numerous atrocities perpetrated by the past government despite the fact that a civilian government was instated in 1985. For example, the *Comissão de Familiares de Mortos e Desaparecidos Políticos* in São Paulo recently managed to get the government to finance an expedition of the internationally known *Equipo Argentino de Antropología Forense* (Argentine Forensic Anthropology Team or EAAF). This group excavated several suspected burial sites of killed guerrillas in Araguaia³ who died over 15 years ago. Three bodies were recovered but the bone marrow required for verification was missing in two of the bodies. The results are awaited on some of the remains which were found.

³ Araguaia is a remote forest area in central Brazil near the Araguaia River from which a few hundred leftist guerrillas operated trying to overthrow the government. The remoteness of the area made communication and supply routes difficult. This, coupled with the strength of government forces, resulted in the majority of the guerrillas being killed. Some of the bodies discovered even had their hands removed so as to make identification difficult (Roelofse-Campbell, 1996)

It is not uncommon for families to be seeking redress and the truth many years after dictatorships or wars, particularly in countries where there have been no investigations. Their plight in many senses provides a strong justification for setting-up an investigatory body of some sort after a violent period in a country. Having said this, even in countries like Argentina and Chile where there have been commissions of inquiry or truth commissions, families are also still unsatisfied and continue to this day to remind the society of their past difficulties. Perhaps the point is that where there are investigations at least some families have the potential to find out the truth.

However, the difficulty is often not in getting consensus to help victims find the truth. Rather, it is the question of justice for the known perpetrators that is the most difficult issue to deal with. In most countries, justice is seen as essential to dealing with the past and truth is not seen, certainly by many victims, as sufficient in itself. In some cases, it is argued that prosecuting perpetrators of past abuses is the best way to give the society a clear message that human rights violations are incorrect and should never happen again. However, in most recent transitions this is unlikely as transitions appear to be more and more negotiated rather than forced. Often, the answer to how justice will be dealt with is usually determined by the political circumstances of the day.

For example, as part of a difficult process of negotiations between the NP and the African National Congress (ANC) in South Africa, the Interim Constitution bound the new government to an amnesty clause, giving people immunity for offences committed in the course of conflict of the past. Amnesty was argued to be in the interest of reconciliation and reconstruction. Nonetheless, in South Africa, Brazil, Argentina, Chile and elsewhere, immunity against prosecution for crimes committed under military regimes is the issue that still sits hardest amongst the relatives of the murdered and disappeared.

It could be argued that in countries where there have been extensive truth commissions, the ability of these commissions to contribute to fundamental change have partly remained dependent on the political compromises that underpin them. These have specifically been with regard to amnesty agreements made prior to their establishment. In Chile, despite the efforts of the Truth Commission there to hear testimonies of victims, the fact that a blanket amnesty had already been agreed to (and that former Junta leader, General

Pinochet, remained Commander-in-Chief of the army) resulted in a lack of acceptance of responsibility by the armed forces. The decayed moral fibre of institutions such as the military therefore remained largely unchanged. In the same vein, some argue that the fact that human rights abuses in Argentina went largely unpunished after the transition to democracy meant that the law courts were prevented from fulfilling the function of symbolic redress (Edelman, Kordon and Lagos, 1995) and the prestige and professional status of the armed forces, who were accused of large-scale violations, remained intact (Waldman, 1993).

The most important lesson from Latin American experiences is that amnesties are unpopular and are widely considered to constitute a fundamental breach of justice. It may be possible to justify amnesty for political and/or practical reasons, and this may be accepted for less serious offences in exchange for truth-telling but extending immunity to the grossest human rights abuses is generally not acceptable to victims or society at large (Africa Watch, 1992). Nonetheless, at times, the desire of survivors for the truth is sometimes stronger than their need for retribution (Weschler, 1989 cited in Lykes & Liem, 1990).

Whatever the case may be with the granting of amnesty and its relationship to issues of justice, the point is clear, namely that the past remains a critical factor for any new government or transition process. The issues have to be dealt with - one way or another - and a structured process for dealing with the past seems more optimal. At the very least, acknowledgement of the past, in lieu of prosecution of those guilty of the worst crimes, is seen as the bare necessity for healing some wounds. An official record of the truth is always considered to be of some benefit.

In South Africa prominent lawyers, theologians and church leaders warned against unconditional amnesty as this would counteract the very concerns of a national policy of reconciliation (Kistner, 1994). They insisted on acknowledgement of the truth as the minimum requirement in exchange for amnesty. Drawing on the experience of Latin American efforts to recover from decades of military dictatorship, Human Rights Watch concludes that the most important lesson for South Africa is that “if any country is to come to terms with its past and successfully turn its attention to the future, it is essential that the truth of the past be officially established. It is impossible to expect ‘reconciliation’ if part of the population refuses to accept that

anything was ever wrong, and the other part has never received any acknowledgement of the suffering it has undergone or of the ultimate responsibility for that suffering” (Africa Watch, 1992, p.2).

Besides the complexities involved in truth recovery processes, the actual decision to embark on such a process can itself present its own dilemmas. The investigation of the past can itself become a way of diverting public attention. More importantly, there is an extremely delicate balance between the concerns of truth, justice and amnesty and maintaining political stability. In South Africa, for example, to address the problems of institutional reform various structures and commissions have been established (along with a new constitution) to protect the society from future violations of human rights. Some of these include the Truth and Reconciliation Commission, the Human Rights Commission, the Gender and Youth Commissions, the establishment of the Office of the Public Protector, anti-corruption units, a judicial inquiry into illegal arms dealing, and a new Police Services Act which includes provision for an Independent Complaints Directorate. However, when analysing the history of many countries in transition, a tension is often apparent between the theoretical and legislative powers of such bodies and their ability to actually contribute to fundamental institutional change.

Roht-Arriaza (1995) states that transitional governments which face the paradox of having to institute changes before they lose widespread credibility and are overwhelmed by intractable social and economic problems, tend to first turn to institutions that they can create from scratch. These would include investigatory commissions, ad-hoc groups and statutory commissions which require little extra infrastructure to begin functioning. The problem is that these bodies often fail to contribute to fundamental change or do not substantially guarantee the prevention future violence. There is always the potential for such bodies to become little more than stability tools of the transitional government to “whitewash” issues, or for them to become bureaucratically and politically defunct - no matter how well intentioned they initially were.

A case in point is the 1974 commission set-up in Uganda by President Idi Amin to investigate the disappearances that took place under his government. After the Commission completed its work, he rejected its report and extensive human rights violations continued throughout the period of his leadership. Hayner

(1996) concludes from this Ugandan example that commissions can in some cases be used to project the image of concern for human rights issues and to satisfy the donors who provide aid, but at the end of the day they remain a “whitewash” and represent no substantial will to change.

2.9 Achieving institutional change

Furthermore, establishing the truth has a complex link to a process of transformation or, more specifically, to achieving substantial institutional change. The case of Brazil provides an interesting example. Perhaps if Brazil had a truth commission and, through this process, the facts were revealed about its dictatorship (1964-1985), demands for justice would not still reverberate through the society and the present-day police would not be so brutal and infringe upon human rights as much as they do.

However, the issue of knowing the truth in Brazil is an interesting one⁴. It could be argued that - even without any formal truth recovery process - at least a large part of the truth is in fact known. This is due primarily to the publication of the book *Brazil: Nunca Mais* (Weschler, 1990). This unofficial documentation of history and brutality in Brazil was the national best-seller and retained that position for twenty-five weeks. There are 200 000 copies of the book in circulation and it has become the single best-selling non-fiction book in Brazilian literary history (Weschler, 1990). The book, although not official, has received “semi-official status” through its extensive sales (Bronkhorst, 1995). This begs the questions: Do Brazilians not know the truth? And, if they do, what has the impact of knowing this truth had on their society?

The answer to this question is a complex one. One argument is that the truth has not had sufficient impact in changing institutions and attitudes in Brazil because the political trajectory taken by the country was already entrenched before the election of a civilian government in 1985 or the publication of the book. This point is supported by Elio Gaspari from *Veja*⁵ who commented that *Brazil: Nunca Mais*: “was bought and read - avidly read. No, that’s not my point. Rather, it’s a question of who has been reading it. People in this

⁴ For a more in-depth discussion on truth recovery processes, and the lack thereof, in Brazil and the implications for any truth recovery process see Hamber (1997).

⁵ *Veja* is Brazil’s leading newsweekly with a circulation of over 1 million copies. *Veja* also ran a spread on the development of *Brazil: Nunca Mais* at the time of its publication. This undoubtedly popularized the book.

country over the age of forty bought few copies. Either they already knew all about the torture and didn't want to know. Furthermore - and this is fundamental - the book came out after the compromise of the elites had been sealed. The transition from military rule in 1985 was consummated only because the civilian elites in this country - personified by politicians - had in effect already signalled to the generals that they would not delve into the past and would honour the amnesty" (cited in Weschler, 1990: 76).

In addition, in Brazil the truth was not coupled with anyone taking responsibility for the past or any transformation of the institutions responsible for past abuses. There has been little public acknowledgement of wrongdoing and where there has, it has certainly been limited. Even when the names of 444 torturers were released to the press in 1985, for the most part those exposed who had positions in government and elsewhere were able to keep them, with only a few people being fired from their positions (Weschler, 1990). On the whole, perpetrators had to deal with little more than some public contempt.

Clearly knowing the (albeit unofficial) truth has been insufficient as the individuals and institutions responsible for past abuses still violate human rights in Brazil today. Those responsible for past atrocities seem to operate freely. For example, despite being named in *Brazil Tortura: Nunca Mais*, the Military Attaché in London was only recently removed, due to under protest from the British Parliament, from his post when was discovered to have been a torturer. He then returned to Brazil to take up another post in the armed forces without loss of commission. Similarly, institutions responsible for the abuses of the past have not been through any processes of transformation. It is only recently, for example, that the São Paulo military police⁶ have started to recognise the need for civilian oversight structures in the service. The result is that a context of impunity remains in Brazil and permeates the operations of the military police and other state apparatuses throughout the country, leading to continued large scale human rights violations.

The lesson from Brazil seems to be that the political direction chosen by a country after transition has a significant impact on how the truth can or cannot be used. In other words, publication of the truth, as may occur through the South African TRC, will be insufficient. To reveal the truth and make future

⁶ In Brazil there are two types of police. The Civil Police who carry-out criminal investigations and the Military Police who are the uniformed police who police the streets and are trained within a military academy and structure.

recommendations is not enough. The publication of the TRC's final report will have to be integrated into processes of real institutional transformation. The chapter of South Africa's history will not close with the last word of the final report. In fact, it will only begin. Thus, any inquiry into the past or truth commission will have a responsibility to ensure that some structures are in place to translate the "truth" into transformation. Truth, for truth's sake, can be pointless.

2.10 Conclusions

In conclusion, this section has argued that there are many reasons for looking at the past. What is clear is that there is some general agreement that some focus on the past is nearly always necessary. Without doubt, it can be seen from current experiences that most countries have decided that they cannot afford simply to ignore past abuses. How these are dealt with can be highly situationally specific. Psychologically and morally an investigation into the past can only but be beneficial. Nonetheless, the words of Zalaquett as he reflects on the Chilean Truth Commission perhaps capture the challenges that may lie ahead if a country undertakes such a process: "The political stakes involved in settling accounts with the past are extraordinarily high, that a fully satisfactory outcome can hardly be expected, and that the social tensions brought about by the legacy of human rights violations linger on for a long time" (Zalaquett, 1993, p. xxiii).

3. Different Models for Confronting the Past

Investigations into past human rights violations can take on many different forms depending on the nature of the abuses and the political circumstances in which a country finds itself. This section briefly outlines the different models which have been adopted.

3.1 Truth Commissions

It is interesting to note that a "truth commission" was not really a concept or an expression which was in circulation or in vogue prior to 1984. Today, it has great currency, but it is often loosely used to describe any process that investigates the past. As noted above (see Table 1) there have been over 20 truth commissions around the world over the last two decades which have taken different approaches.

In defining a “truth commission”, the first point to make is that truth commissions take place at a specific moment in a country’s history, namely that of a marked political transition. The new government which has come to power takes a decision to look at the broad spectrum of past human rights abuses rather than investigating individual cases. An independent body of commissioners is appointed either by the parliament or by a special committee appointed by the President. The truth commission is given a broad representative mandate. Within this definition, the formal aspects of how the truth commission is organised are less important than the political juncture at which it is established or the broad mandate of the commission. Truth commissions do not prosecute individuals, although some may hand over names to the courts for prosecution. Most commissions that have been established have an important public acknowledgement function and the aim of the body is often to let the country gain a broader picture about the abuses that happened in the past.

Hayner (1996) feels truth commissions, which often do not always use this name, have four primary elements. These are that ‘truth commissions’:

- investigate the past.
- focus not on one event, but record many abuses over a period of time and often focus on describing patterns of abuses.
- are temporary bodies and generally conclude with a report.
- and that they are generally sanctioned by the government (and sometimes the opposition) to investigate the past. This gives them more power and ability to make implementable recommendations.

3.2 Commissions of Inquiry

A commission of inquiry which is concerned with human rights issues (not all commissions deal with abuses of human rights) differs from a truth commission in that it usually looks at a single set of events rather than a broad spectrum of history. It can be set up by the very government that has committed the

atrocities in question. As is the case with a truth commission, however, an inquiry is not the same as a criminal investigation as it does not have to establish beyond reasonable doubt that an individual/individuals have carried out an act. The objective is usually to ascertain whether human rights violations were committed and to prevent them from occurring in the future. However, the reports of the commissions of inquiry are not always made public, as is generally the case with truth commissions. Commissions of inquiry have often been used to stave off potential criticism of the government of the day.

3.3 War Tribunals

The Nuremberg trials set a dramatic precedent for dealing with war crimes and human rights violations through the means of international law. Subsequent war tribunals have not necessarily followed the Nuremberg model but central to their definition is also their use of international laws to prosecute individuals who have committed gross violations of human rights. The tribunal resembles a court of law with evidence being brought for and against the individual(s) concerned. Usually the tribunal is made up of a range of international lawyers and judges. Recent examples include the Rwandan War Crimes Tribunal and the Yugoslavian War Crimes Tribunal.

3.4 Lustrations

In Eastern Europe, and in many other countries throughout history, there has been little focus on dealing with the past through truth commissions. Often, purges and clearing of people's names has been the main focus of investigations into the past and these have often amounted to what are commonly termed "witch-hunts". The word lustration comes from the Latin word *lustrare* meaning to "purify by fire" (Bronkhorst, 1995). The Czech Republic provides a good example of this process. A 'Lustration Law' of 1991 banned former Communist party officials from holding public office. As a result, some 200 000 people have applied to have their names cleared, claiming that they never collaborated with the security police. So far, 198 officials have been prosecuted (Bronkhorst, 1995). In Bulgaria, through the Panev Law adopted in December 1992, individuals holding lead positions in the state are required to provide a written statement of past communist activities. To date, 9 000 top enterprise managers, 14 000 officers of the security agency,

90% of government administrators and a third of all diplomats have been removed (Bronkhorst, 1995). In 1993 the government, due to a concern that informal purging may take place, imposed criminal penalties for dissemination of information from secret files.

3.5 Community-based “Truth Commissions”

Searching for the truth and breaking the silence of military regimes has always been the work of human rights groups. Their work can occur through truth commissions or other truth recovery processes which are not necessarily agreed to by the government. During dictatorships, books and reports are routinely released by human rights groups that have revealed the truth. Training statement-takers and recording stories at the community level have in the past had powerful effects for communities. In South Africa, this process took place before the collapse of apartheid due to the efforts of many NGOs. Such actions may be also carried out by church groups, as was the case in Guatemala (the Archbishop’s Human Rights Office). Other semi-official investigations can be important to truth recovery processes. Much of the history of torture in Brazil during the dictatorship (1964-1985) is documented in a book entitled *Brazil: Nunca Mais* (Brazil: Never More). This book, produced by the Catholic Archdiocese, was compiled largely from official court proceedings of military court cases and played a critical role in revealing the truth in Brazil as no official investigation was undertaken. It was put together whilst the military was still in power. Over 1 million pages of information were photocopied and collated secretly, without the knowledge of the officials. In published form this information was used to analyse over 700 formal cases of torture tried in the military courts. In Malawi, it was decided recently that while a consultation process as to whether a truth commission should be undertaken to investigate the Banda regime takes place, stories should be collected by NGOs so as to begin the truth recovery process.

3.6 The South African Truth and Reconciliation Commission:

The following section briefly outlines the functions and operations of the South African Truth and Reconciliation Commission (TRC).

The Truth and Reconciliation Commission was the first independent body established in South Africa to deal with the issue of past political violence and the prevention of future human rights abuses. The TRC was brought into existence through an act of Parliament known as the National Unity and Reconciliation Act. The TRC began operating in December 1995. Since its inception it has aimed to give voice to the experiences of victims, witnesses and perpetrators of apartheid-era violence so as to provide as complete a picture as possible of the causes, nature and extent of past abuses that occurred between the period 1 March 1960 to 10 May 1994.

The TRC has the express purpose of facilitating a truth recovery process through taking statements from survivors and families of victims of gross violations of human rights (i.e. murder, attempted murder, abduction and torture or severe ill-treatment). So-called representative and demonstrative cases are chosen from among the statements taken in order to be presented at public hearings. At these hearings, survivors and families of victims relate how they were victimised. At other hearings, perpetrators' confessions and amnesty applications are heard. At the end of its term of office in March 1998, the TRC is obligated to write a policy which will ensure that survivors and families of victims are granted reparation. The government is responsible for implementing this policy.

As part of its reconciliatory function, the TRC is also responsible for the granting of amnesty. This means that perpetrators of gross violations of human rights, who apply and meet the TRC's criteria for amnesty, are freed from prosecution and all criminal and civil liability. To receive amnesty, perpetrators must have committed politically-motivated crimes and are required to fully disclose all the information concerning their deeds. In effect, this means that amnesty is not automatic in South Africa, but if the criteria for amnesty are met, the TRC will substitute or trade retributive justice for the full truth. It is intended that the information made available through this process will assist in leaving an undisputed account of history and provide thorough documentation of how violations occurred. This (theoretically) opens the possibility to learn from the past and, in so doing, to ensure that future violence does not occur. At the end of its full term of office, the TRC will have to submit its findings to Parliament in a comprehensive report, hand over its reparations policy to government and make recommendations aimed at preventing such large-scale abuses from ever occurring again.

Eighteen months after the TRC began its two years of work, the TRC had taken some 10 700 statements from survivors or families of victims of political violence. A number of representative cases have been selected for public hearings based on these statements. Sixty-five such hearings, at which victims have told their stories to the nation, have been held thus far. The TRC has also received a staggering 6 887 amnesty applications. Although time is running out for the operations of the Commission, only 1 347 findings have been processed to date⁷.

4. Dealing with the Past: Issues to Consider and Recommendations

The following section provides a discussion on areas that need to be considered when a country is undertaking a truth recovery process or investigating its past. These areas have been chosen due to the fact that they have been key areas of contention, success or difficulty in the South African experience. As a result, the recommendations below are largely tailored to fit closest with countries that are moving from authoritarian to democratic rule. However, the suggestions and discussion, if properly contextualised, may provide issues to consider when dealing with the aftermath of any conflict situation. The guidelines do not presume any preference for a truth commission or commission of inquiry or any other process for dealing with the past. Nonetheless, an assumption is made that it is better to attempt to deal with past than to try to ignore it. Truth Commissions form the mainstay of the following discussion largely because this report has drawn from the South African experience.

4.1 Motivation for a Truth Recovery Process

The motivation for a truth recovery process needs to be carefully considered. Truth Commissions have become accepted international practice and are presently in vogue. However, this is not a sufficient

⁷ If amnesty is being sought for a gross violation of human rights then a public hearing has to take place. Only 26 amnesties have been granted and 19 refused through the public process. This is negligible considering the number of applications still to be processed. If the violation is not a gross violation then this can be processed in Chambers. 1 684 applications have been processed in this manner to date, of which 1 302 amnesties have been rejected and 382 are pending.

justification to hold such an inquiry. Creative initiatives are needed and differing ways of dealing with the past is in a constant state of flux and under experimentation. Public debate, comparative research (looking at countries in transition who have had truth commissions versus those who have not) and the running of extensive preparation and consultative workshops should be undertaken when deciding on how to deal with the past. Dealing with the past cuts across all spheres of social life and is not a purely political task. Thus, discussions should include not only politicians, but also writers, cultural workers, human rights activists, historians, academics, faith communities and, above all else, victims of past abuses. While such consultation occurred to some degree in South Africa, there was little consultation at the grass-roots community level, especially prior to the establishment of the TRC. Many people in South Africa feel that they were never consulted on the idea of a Truth Commission and, as a result, are resistant to the idea. Nonetheless, extensive and detailed discussion at higher levels prior to the setting up of the Commission in South Africa did result in the development of a new model for truth commissions - namely, one which includes victim's testimony and amnesty processes - which is unique in that it trades formal justice for truth.

It is the duty of NGOs and human rights groups to also ensure that any truth recovery process is not used by new governments to white-wash issues through bureaucratic structures while presenting a facade of concern. This has occurred in many countries in the world. Such Commissions are often set-up to appease international concerns. A good example was the Harms Commission of Inquiry which was set-up by the National Party government under apartheid in South Africa. Even after holding hearings, it proceeded to "officially" deny the existence of covert hit-squads operating in South Africa. The work of this Commission has subsequently been discredited by the work of the Truth and Reconciliation Commission. Extensive consultation across the society is necessary to develop a genuine collective agreement to deal with the past and ensure that any commission is not simply an agreed to structure suiting specific political agendas. A unilateral decision to set-up a truth commission or hold a commission of inquiry should always be treated with suspicion.

4.2 Type of Process

Truth is assumed to be a pillar of reconciliation and a necessary precondition in dealing with the past. However, the processes undertaken to investigate or uncover the so-called truth can be varied and what shape they take is dependent on a number of variables. Such process can include truth commissions, commissions of inquiry, war crime tribunals or grass-roots non-governmental projects. The balance of forces at the time of transition play a significant role in shaping the process. For example, in South Africa - given the nature of the negotiated settlement - it was impossible to undertake large scale prosecutions. Thus, amnesty was a necessary precursor to peace. However, one should not immediately presume that if a negotiated settlement has taken place that this means that a proper truth recovery or prosecution process cannot take place. Truth commissions should never be completely limited by the political process that instituted them. Rather, constraints and opportunities provided by their terms of reference and the competencies of the staff in carrying out the process are just as, if not more, important. The success of dealing with the past is dependent on a number of factors and not only on the type of process undertaken.

Perhaps the most controversial issue is the thorny question of whether past perpetrators should be punished or pardoned, and whether there is any realistic mechanism for punitive measures which fall short of criminal prosecutions, but which would satisfy the obligations imposed on the successor regime under international law. This central issue impacts directly on the pro-active, preventive potential of reconciliation through truth recovery. Drawing on the South African case, present indications are that indemnification from civil and criminal liability could be an effective *quid pro quo* for disclosure on the part of perpetrators of past gross human rights abuses. If punitive measures are not seen to be taken at some level, this could jeopardise the attempts at restoration of the rule of law and the re-building of a new moral order. Any process which falls short of doing full justice may compromise attempts to assert accountability as a governmental principle. The damage caused by the inability to prosecute may be minimised by coupling “truth recovery” as a prerequisite for amnesty.

Whilst prosecutions may be desirable, as a matter of principle, in rebuilding the credibility of the judiciary, a prosecutorial process which fails due to lack of evidence could do even more to damage the credibility of these state institutions. Failed prosecutions can have a devastating effect. Sometimes it is argued that criminal justice processes reveal truth. However, one needs to realise even if a prosecution does take place,

the nature of the truth revealed can be extremely limited and constricted by the judicial process. Besides, it is often impossible to prosecute, due to factors such as political compromises, inefficiencies of the criminal justice system and/or the fact that much of the evidence may have been destroyed. As a minimum requirement, it would seem that the publication of the identity of those responsible (or “naming names” - as it is often referred to) or their removal from public office are punitive measures essential to building a culture of accountability and to restoring public confidence in state institutions.

The danger of a “truth recovery” process which offers little demonstrable action in this regard is that it may fail to generate popular confidence in the new government. Even more important, if the process amounts to little more than a mere testimony of victims and an amnesty process hidden from public view, then this may convey a particularly dangerous message of continued impunity in state structures. This may in fact contribute to consolidating an organisational culture of abusive and unaccountable practices within institutions of the state.

In sum, amnesties are discouraged internationally and can contribute to a “culture of impunity”. Amnesties are always unpopular with those who have been victimised and can have long-term implications for the credibility of a new state. The granting of amnesty therefore needs to be considered very carefully. Where amnesties are unavoidable for pragmatic political reasons, at the very least there needs to be some type of condition for granting amnesty, such as the South African case of requiring the truth as a trade for the amnesty. Some form of accountability or highly visible action, such as the removal of perpetrators from public office or the publication of their names and deeds, may also be considered as an option to demonstrate a new, accountable moral order.

4.3 Appointment Process of Commissioners and Composition

There are different examples of appointment processes of Commissioner or those who will head up commissions of inquiry. In some cases, Commissioners may be respected judges, in others they may be appointed by parliament or governmental decree. However, it is recommended that any appointment

procedure be as public as possible so as to ensure additional credibility for those selected. In South Africa, the Act creating the TRC stipulated that the appointment of Truth Commissioners was to be made by President Mandela in consultation with his cabinet. The process for selecting Commissioners was an extremely consultative one which included public nominations and an invitation to the public to submit questions to be asked the short-listed nominees. Each candidate was interviewed publicly. This certainly won credibility for the Commissioners.

Commissioners may be appointed from inside the country, as was the case in South Africa, or they may be appointed from international bodies, as was the case in El Salvador (where Commissioners were from the United Nations). International bodies are often necessary, especially when internal conflicts are particularly strained. In South Africa a relatively impartial group was chosen and the Act stipulated that they could not be from political parties. However, allegiances were often clear from people's histories. This did make the South African Commission open to much political hostility, with accusations made that Commissioners not being objective. South Africa had intended to have a limited number of international people on the Commission - perhaps if this had happened it may have assisted with problems of perceived prejudices. Furthermore, it may have been useful in South Africa to elect Commissioners who were not aligned to some form of political work in the past. Commissioners were human rights lawyers, doctors, clergy, politicians, and psychologists. However, cultural workers, artists, entrepreneurs, and writers, for example, may have provided a more diverse cross-section and attracted less politically motivated criticism. Obviously, the dynamics in each country will need to be evaluated separately. In any case, the need for independent and impartial Commissioners must be accepted as a crucial condition right from the start.

4.4 Number of Commissioners and Staff

Depending on the size of the country, the number of Commissioners may vary. South Africa had 17 Commissioners and some 200 staff members. This is a large number and was very expensive. However, the country is large and the TRC mandate was extensive. As a result, complaints of the Commission being under-resourced were voiced throughout the process. The high number of Commissioner did make decision-making difficult and occasions for personal and political grievances between Commissioners

increased by having so many. Strong differences of opinion, both personal and ideological in nature, did disrupt the process at times. It is debatable if Commissioners are needed at all hearings - the TRC had Committee members who operated like Commissioners and this was fairly effective. Nonetheless, if Commissioners are high profile personalities, their symbolic significance can be very important to any truth recovery process. The case of South Africa teaches us that perhaps only a few symbolic people are needed and that 17 was far too high. Perhaps 7 Commissioners, and a system where a number of prominent individuals would offer their services (for free) to sit at the hearings would have been more realistic. An odd number is recommended in case of disagreements or deadlocks.

4.5 Area of Focus and Mandate

Each internationally established Commission thus far has had a different area of focus, i.e. focusing only on “disappearances”, others having broader mandates. The South Africa TRC focused on what were called gross-violations of human rights - which included torture or severe-ill treatment, murder, attempted murder and abduction. This mandate was used as it was broader than other ones, like that of the Chilean Commission, that focused only on ‘disappearances’. However, it was narrower than ones like the El Salvadorean Commission, which had a very broad mandate and could investigate “serious acts of violence... [whose] impact on society urgently demands that the public should know the truth” (cited in Hayner, 1994).

Despite the relative broadness of the South African Commission’s mandate, many people still felt that it missed many types of violations and was too narrow. This was in part because the South African context was dominated for many years by not only gross violations, but also insidious and subtle acts (e.g. job discrimination by race). However, it was also because the Commission itself failed to adequately define certain categories (like “ill-treatment”) and did not publicise guidelines for what constituted such violations. Practically speaking, the focus in South Africa seems realistic - provided that broader contextual information is included in the final report. If a country has been wracked by a specific type of violation, as was the case of “disappearances” in Chile and Argentina, then these areas can be the sole focus of a Commission. A limited, yet sufficiently encompassing mandate which can be interpreted broadly (e.g. severe ill-treatment), as was the case in South Africa, is recommended.

4.6 Time Span of a Commission

It is necessary to decide on a fixed time limit for any commission or investigation into the past. Two years, as in the South Africa model, seems like an adequate time for the extensive investigation required in South Africa. Commissions in Latin America have generally had shorter time spans. The mandate should never be open-ended and a time limit should be set on when the report has to be submitted to Parliament to avoid the Ugandan scenario where the final report was completed 9 years after the Commission. An additional important lesson from South Africa is that some extra time should be allotted for setting up the Commission's operations. This time should not be part of the total working time span of the Commission. In South Africa, where an extensive structure was needed to be set-up, the Commission lost some 6 months in simply creating a new bureaucracy and employing staff before it started to do its work as outlined in the Act.

4.7 Nature of the Hearings

Truth commissions, or any inquiries into the past, can focus either on victims or perpetrators, or both. Past truth commissions have generally focused on victims and given them space to recount their abuses and open their cases for investigation. The South African model is the first one that links a victim and perpetrator focus. In South Africa, the perpetrator focus has at times over-shadowed the needs of victims, often simply because of the sensationalism of perpetrator testimony. However, gaining information from victims and perpetrators can only be encouraged.

Hearings in any inquiry into the past can also be held in public or in secret. In South Africa, all the hearings were public and this seemed to help with a national process of psychological acknowledgment and restoration. Public processes are more and more becoming the international norm in investigations into past abuses. Of course, the protection of witnesses becomes critical in a public hearings process, although in-camera or secret hearings if people are in serious danger can be legislated, as was the case in South Africa.

A range of legal issues need to be considered if public hearings are undertaken. Examples are the right of an alleged perpetrator to a defence if named publicly, or the protection of witnesses against libel charges.

4.8 Victim-Aid Strategies

Any Commission or inquiry which involves hearings and statement taking processes should as a matter of course be accepted as a traumatic experience for the witnesses and their families. Psychological support services therefore are essential before and after hearings. A network of service providers is needed. South Africa's follow-up of individuals on a psychological level has been poor and more services should have been provided. Many victims have been left with feelings of unresolved trauma. Counselling should be provided to victims or survivors on an ongoing basis and rehabilitation strategies for perpetrators and their families ought to be considered. Furthermore, all staff of the Commission should be trained to deal with survivors and families of victims in a psychologically sensitive manner. Support for the staff to combat vicarious traumatisation, which was high in South Africa, should be ensured through the use of support groups. In South Africa victim-support fell under the ambit of the work of the Committee on Reparations and Rehabilitations. It is suggested that in any Commission, or prosecution process for that matter, a separate body responsible for the psychological well-being of witnesses be operationalised.

4.9 Naming Names

Naming names remains a controversial issue, with the debate essentially revolving around whether the names of perpetrators should be mentioned in any reports. There are differing approaches and different investigation processes may impact on this debate. For example, the South African TRC is naming perpetrators in its report but they will only be named after they have applied for amnesty. In other models, perpetrators can be named with the intent of handing their names over for prosecution. This, of course, has legal ramifications. Where there have been examples of names been handed over for prosecution by a

commission, prosecutions have rarely followed. In the past, particularly in the 1980s, commissions did not name names. Today, it is becoming more and more standard practice in truth recovery processes.

Many people feel that if the perpetrator is getting amnesty then their being named is the minimum that should be asked for in exchange. This is certainly the position in South Africa. A similar issue is the removal of people responsible for gross violations from public office. The South African TRC cannot do this. Of course, such debates are extremely sensitive - especially if an armed struggle has been waged by all sides and a negotiated settlement is reached. There are a couple of issues. First, those in the previous regime, through the negotiation process, will have obtained some measure of impunity for themselves. Second, some of those occupying positions in the new government will have been involved in the resistance struggle. Recognising that struggles are not always morally equitable, there is still no getting around the fact that some of these former combatants may have committed human rights violations. The difficult nature of dealing with these realities makes the debates around the removal of those in office extremely contentious.

4.10 Reparation and Compensation

In South Africa, people are denied the right to civil claims because of the amnesty agreement and because of this fact, and due to a Constitutional Court judgement, reparation is considered obligatory. Legally, it is also standard practice to compensate victims of human rights abuses and often, successor governments, even if they were not responsible for the violation, have to make such payments. In the South African case, the word “reparation” is used instead of “compensation” to denote those various strategies, such as building monuments or non-monetary claims like bursary schemes, will be considered instead of compensating survivors and families of victims only with cash. Prior to any investigation into the past, careful thought should be given concerning the possible types of reparation and the potential costs involved. The enormity of the reparation process was underestimated in South Africa.

In addition, the South Africa TRC can only make recommendations about reparation, with the government being responsible for implementing such recommendations. This has meant that the TRC can make an

accurate assessment based on exactly the number of people who have come forward, rather than spending their time simply administering pensions and the like. In this regard this arrangement has been positive. However, it also makes effective implementation less likely and a very distant reality for most survivors and families of victims. No funds were allocated up front for reparation, so lobbying the government for reparation money still needs to take place. The likelihood is that the government may argue, after the TRC has drawn-up a plan, that there are more pressing priorities and deny extensive funds for reparation.

The South African example clearly demonstrates that reparation and compensation need more consideration before the process begins and that a starting fund should be allocated up front. It is also important to remember that compensation for abuses is a contested social terrain. In Latin America, some victims refuse any compensation as they see it as “blood money”, yet there are others who welcome it. This points also to the need for reparation to be broader than money. The right to compensation for victims of past violence is an internationally standard practice and should be argued for in all social spheres and legitimised by the new government.

4.11 Funding the Investigation

Funding for the any Commission should be adequate, realistic and obtained up front. South Africa’s TRC has been the most well-resourced commission to date and yet funding difficulties were still a reality. Commissioners in South Africa were extremely well-paid and sophisticated equipment was purchased. This may have been necessary, although costs could have been cut by having fewer Commissioners and utilising NGOs and community organisations more than was done. In contrast, in both Uganda and Chad, the Commissions established there had to stop functioning at times due to a lack of funds. Truth commissions are not cheap processes if they are to be run effectively. Similarly, this may also be said for the undertaking of judicial processes after transition. In South Africa it has been felt that the Truth Commission process, which has cost about 36 million dollars, was a lot cheaper than undertaking massive and extensive prosecutions. Furthermore, it is difficult to weigh-up the immediate costs against the long-term savings a process like the TRC may make for the society.

4.12 Management and Human Resources

Management and human resources are integral to the success of any investigation into the past. If an extensive commission or investigatory body is set-up, the staffing and management of the body should be a very serious consideration. Often, the political considerations are discussed first and a plan put into place in isolation of consideration such as whether a country has the human resources to carry it out. South Africa, for example, battled to find good investigators inside the country with a soundtrack record. At times, the South Africa TRC was also hampered by incompetent staff (some, not all staff, - it should be noted) and by the fact that people who were placed in high profile positions, particularly Commissioners, were selected for their profile rather than management skills. This did impact on the efficient running of the organisation.

An body, especially one working under extreme political pressure, needs good management and a strong human resources team. Organograms of how the body will function should be drawn up and the number of necessary staff should be considered and finalised before the Commission is set-up. This should be an integral part of any discussion process when considering different ways of dealing with the past.

Researchers tend to focus on the political and social issues and little research is done on the management processes of politically established bodies.

4.13 Investigation Units

Investigation teams and experienced investigators are a critical arm of any Commission. An investigative team should be well-resourced in terms of human resources and equipment. Investigation units should draw on national and international expertise. In South Africa, where such a large number of violations occurred, the number of investigators was hopelessly inadequate. As much as possible - unless past existing investigation units are discredited and not impartial - building links to operating structures (e.g. police units, special prosecutors task units, etc.) can ensure efficiency and also create sustainability for investigations. At times in South Africa, tensions arose between Attorney Generals who were planning prosecutions or had been building cases for a number of years and the TRC who were investigating cases essentially to grant

people amnesty. As a result, there was little information flow between different investigators often working on the same cases, albeit for different reasons.

There are also key questions which would need answering with regard to the precise investigative powers of any investigative unit. In the case of South Africa, it has always been considered a strength of the TRC that it had the powers of subpoena and search and seizure. This has undoubtedly assisted with successful investigation and is a prerequisite to good investigative work.

4.14 Access to Information

A further area requiring examination are questions over the mechanisms needed for securing access to relevant information - particularly information contained in the archives of the intelligence and security establishments which are often the focus of investigation after political change. In principle, any amount of access to security records, for investigative units or individual victims, operates as an additional incentive to those in the know or who perpetrated deeds that may have been documented, to voluntarily disclose such information. Disclosure by perpetrators can decrease their possible punishment (e.g. turn state-witness in exchange for immunity), or if full-disclosure is a prerequisite for amnesty, as is the case in South Africa, it can help ensure (from their perspective) that they are not prosecuted. This is dependent on the method decided upon to investigate the past.

Personal access of victims to their own security files, is, arguably, also critical for rehabilitation. Public access to information contained in the files of the "security establishment" must be made possible as part of any national and individual reconciliation effort. Support for victims, whether psychological or otherwise, should be provided as security files can house particularly sensitive or unknown information, e.g. political affiliations of trusted friends or even personal information about loved ones. Uncovering such information can be extremely traumatic. Access to any information in state hands will also need to be regulated and legislated. This option should be considered carefully, as it may be a futile exercise if the majority of records relating to any official knowledge of the past were destroyed during transition processes.

4.15 Building Reconciliation and a Human Rights Culture

Both politically, and in terms of its social value, any body or commission that focuses on the past needs to clearly articulate a “reconciliation programme” as part of its mandate. This may be determined by the nature of the political and social dynamics of the country being investigated. However, it is simply not adequate to assert that public knowledge is a prerequisite to forgiveness or to assume that disclosure of past human rights abuses will necessarily result in a culture of transparency and accountability. Education programmes, human rights awareness campaigns and reconciliation workshops should be run simultaneously with an investigation into the past. These should be run in sectors of society such as schools, civil society, security institutions, the judiciary and the military, to mention a few. There needs to be a pervasive focus on transformation across the society. Any commission or investigatory body will not instantaneously result in a new human rights culture - regardless of the depth and breadth of the truth revealed.

4.16 Relationship to Civil Society

Any truth commission or investigative body is only as successful as its relationship to civil society. Grass-roots organisations are indispensable to the work of a truth commission. These relationships need to be fostered and maintained. One of the serious weaknesses of the South African TRC was that it pulled NGOs into the process far too late. NGOs can provide psycho-social assistance to victims, access to communities, credibility to the process, access to NGO archives, and assistance in taking statements from survivors. They can also carry forward education and reconciliation programs.

Furthermore, it is vital that Commissioners, or the staff of any body, realise that in most cases it is NGOs that will continue their work once the body ceases to function. It is also worthwhile remembering that the prevention of future violence is aided by a strong civil society. Therefore, NGOs should be supported not only because they can assist any truth recovery or investigative process, but also because they are necessary for a stable democracy. In South Africa, many of the strongest members of civil society were hired by the

Commission. This strengthened the TRC, but simultaneously undermined NGOs, who, ironically, the TRC will probably identify as bodies that need to be vibrant and operative as a safeguard against future violence.

4.17 Reporting and Recommendations

Any commission or investigatory body must end with a report documenting its findings over the period under investigation. This report should be publicly available and made accessible. Truth commissions, more so than commissions of inquiry or other such bodies, generally include an element of acknowledgment and public education about past abuses. Thus, public access to the report is vital. Accessibility can be achieved through summarised copies of the findings. Other creative strategies like TV programmes, radio broadcasts and exhibitions (as was the case in Chad) can be used.

In the past many commissions have made good recommendations. However, these have rarely been implemented. Some suggestions to ensure that recommendations are implemented can be, firstly, to encourage and foster civil society's relationship to the recommendations-making structure. A strong civil society that is informed of the recommendations can lobby for implementation. Secondly, the commission, or investigative body, can leave behind an implementing structure. Thirdly, recommendations should be practical and include suggested implementation strategies in the report. There should be not only broad recommendations, e.g. police need to be trained with a human rights awareness. Exactly how proposals can be achieved should be included in the recommendations. Fourthly, key role-players and international constituencies should be canvassed and used to pressure governments to implement recommendations after the commission or investigative body has stopped existing.

4.18 Transition and Constant Change

Truth commissions and investigative bodies are established during times of transition. Often, countries in transition fail to see the long-term implications of their actions, as present difficulties seem so overwhelming during times of change. Any body that deals with the past should be acutely aware of its long-term impact and of the fact that dynamics, both political and social, are heightened during times of

transition. Being politically swayed or being absorbed into the tense political issues of the moment need to be avoided. Nonetheless, at the same time, truth commissions and investigative bodies need to be seen as part of the transition process and should not operate as isolated structures focusing only on the past. The role of their investigations in the transition, or reconstruction, process should be to continually draw links between the past and present. For example, the political violence of the past should not be seen as unrelated to the criminal violence of the present. Truth commissions can play an active role in pointing out such links to a society. During its life the South African Truth Commission has not done this sort of work extensively.

In addition, it needs to be realised that the door does not close on the past with commission's final report. The process is ongoing and a truth commission, or for that matter, any investigative body, is only one of the components of transition and reconciliation process. In Chile, six years after the Truth Commission there, there is still a reparation dispensing body operating and conflicts about the past still exist. Issues of the past cannot be expected to simply go away because a process for dealing with the past has been set-up. Furthermore, any truth recovery or investigative process happens within a context. In some countries, ongoing conflict has scuppered the efforts of truth commissions. In others, investigative activities have proceeded regardless of such conflicts and have been able to provide a model of a more normative social order, thus playing a constructive stabilising role.

4.19 Conclusion

In some respects the primary challenges which face a truth commission are not so much about how it deals with the past, but how it deals with the future.

However, there is already much to be learned from this process in different societies which can be used as lessons that may be of value to social engineers in other countries which face similar dynamics in their transition from oppressive or conflict-ridden societies, to peaceful ones premised on reconciliation and entrenched democratic practice.

In particular it would be misleading to abstract this from many other parallel initiatives. Truth commission is but one vehicle of reconciliation which must be considered as well as a range of mechanisms aimed at developmental redress of historical inequities, which operate simultaneously with it. The assumption which underpins the TRC in South Africa for instance is that the process of “truth telling” lies at the heart of the processes of reconciliation and nation building. However it is a mistake to assume that truth recovery equates with healing or that truth alone will lead to reconciliation. By the same token, the content and terms of such a reconciliation process can be misleading in the assumption that they will simply prevent future violence.

There are undoubtedly times when all countries may have to sacrifice principles in the name of pragmatism - in order to end wars or to achieve peace. However, so long as this is done with scant regard for its impact on the credibility of the criminal justice processes, we breathe life into the culture of impunity which is a foundation stone of criminal behaviour in any society. At some point, when amnesties are granted someone has to bear the moral responsibility - not only for the political violence - but also for the burgeoning violent crime that has occurred in many countries after transition when the so-called political violence has decreased. These are the matters which require careful scrutiny and consideration from any society which contemplates this route to reconciliation.

5. A Truth Commission for Northern Ireland?

5.1 Does Northern Ireland Need a Truth Commission?

It is not difficult to mount an argument that Northern Ireland needs a Truth Commission. To begin with there are the headline grabbing issues "like Bloody Sunday, the Stalker affair, the murder of Pat Finucane, cases like the Casement Accused and the UDR 4..which cry out for openness, transparency, accountability and truth" (O'Rawe, 1996). To these can be added a multitude of incidents which, while they may not have made the headlines, still remain as unexplained events in the lives of ordinary people.

It could also be argued that Northern Ireland needs a Truth Commission because such a process could be at "the heart of reconciliation" especially if, as claimed in South Africa, it would help society to face unwelcome truths "in order to harmonise incommensurable world views so that inevitable and continuing conflicts and differences stand at least within a single universe of comprehensibility" (Asmal, Asmal & Roberts, 1996, P. 46). This is an argument however, as we note below, that should be treated with some caution.

5.2 Does Northern Ireland want a Truth Commission?

At the present moment in Northern Ireland's history, there is what can almost be described as an obsession with things South African. In particular, no academic meeting or community-based conference is complete without a visiting South African expert. In contrast to this enthusiasm to import the South African peace process into Northern Ireland there appears to be no corresponding enthusiasm for the idea of a South African-style Truth and Reconciliation Commission.

Some observers therefore have claimed that many people in Northern Ireland might ask if any type of Truth Commission would be appropriate here at all (O'Rawe, 1995, P.14). Others claim that people in Northern Ireland are largely ambivalent to the whole concept. This ambivalence was observed at first-hand by Rolston (1996) who was a witness in August 1996, when, as part of the West Belfast Festival, Paula McBride, a South African human rights activist, spoke about the Truth and Reconciliation Commission currently operating in her country.

The audience, which included republican ex-prisoners, victims, relatives and others, according to Rolston, listened more avidly, knowledgeably and sympathetically to what McBride had to say. Despite this...

no-one instantly demanded such a commission for the North of Ireland. On the contrary, the audience was sceptical: almost unanimously they agreed that calls for a truth commission in Ireland would be premature.
 Rolston, 1996, P.32

Earlier evidence of this same ambivalence is on record from 1995, when amid much hype a conference "Reconciliation and Community: The future of Peace in Northern Ireland" was held in Belfast. According to the organisers (Paul Arthur and Timothy Phillips), this was a "historic event" which allowed distinguished leaders from other societies to share their experiences with leaders from Northern Ireland about the process of rebuilding peace and community.

One panel was devoted to the topic of "Memory and Acknowledgement: Exploring a Common History" which, according to the official report of the conference, involved speakers from Ireland (North and South), the Czech Republic and South Africa. Apparently, many fine sentiments were offered: For example, it was noted that "the cruelties of the past need to be remembered...in order to release us from their consequences rather than to tie us to them" while the audience was reminded that "forgiveness disarms the past and empowers the present".

What was interesting in the present context was that following these speakers and immediately after a presentation on the TRC in South Africa, there was a 'Northern Ireland Response' which came from Brian Keenan plus two local politicians, one from Sinn Fein and the other from the Ulster Democratic Party. If the conference report is accurate, only Dr. Keenan embraced the idea of a TRC for Northern Ireland or, in fact, even alluded to the possibility.

5.3 Would there be special problems for a Truth Commission in Northern Ireland

As noted above there are many technical problems which have to be overcome by any society contemplating a Truth Commission. Generally speaking many of these decisions can at least be guided by others' experiences.

Perhaps one of the biggest problems for Northern Ireland is the temptation to think of establishing a truth commission to further the peace process. In this respect, it is vitally important that people in Northern Ireland understand that

A truth commission cannot overcome a society's divisions. It can only winnow out the solid core of facts upon which society's arguments with itself should be conducted. But it cannot bring these arguments to a conclusion. Ignatieff (1996, P. 113)

An important question therefore is when would Northern Ireland be ready for a truth commission? Certainly the answer would appear to be "not yet", if one reads a report by Leonard (1997). This report, which looked at the idea of commissioning a Peace Memorial for Northern Ireland, records the controversial nature of public outdoor memorials to victims of the present troubles. For example, she notes that when a granite boulder was unveiled in 1996 to mark where three members of the UDR had been killed in 1980, it was destroyed two weeks later. Similarly, the first plaque recording the death of civilians in the bookmaker's shop on the Ormeau Road in 1992 was destroyed. Apparently, such reactions to memorials are not new because, according to Leonard (1997), "Since the eighteenth century outdoor military and political monuments in Ireland have repeatedly been attacked".

All of this makes the idea of a truth commission for Northern Ireland problematic because the general consensus appears to be that truth commissions are most likely to succeed in societies that have already reached some form of political consensus, such as in South Africa. Unfortunately, as Darby (1983) has noted, Ireland is a society where dates are fixed like beacons in folklore and mythology,... trip off the tongue during ordinary conversations like the latest football scores in other environments and are recorded for posterity on gable walls all over Northern Ireland. This is a problem for many societies torn apart by civil war or racial conflict, according to Ignatieff (1966). In such societies, he cautions that 'what is mythic - and hence what is poisonous - about the past ...is that it is not past at all'. This, he cautions, makes the process of coming to terms with the past much more complicated than 'simply sifting fact from fiction, lies from truth.' (P. 121).

But perhaps the key problem is reflected in Rolston's (1996) comment that "despite reservations the concept of a genuine truth commission - one with the authority, legitimacy and support to unearth the truth - should not be rejected out of hand". This of course begs the question - how does one define "genuine", and whose "authority" and "legitimacy" did he have in mind? As noted earlier, perhaps one of the major failings of the South African TRC was that "there was little consultation at the grass-roots level" prior to setting up the

TRC. While any future truth commission in Northern Ireland would want to emulate the innovative nature of the South African process, care should also be taken to learn from its mistakes. Therefore, answers to these questions should be sought via a much wider debate concerning a truth commission for Northern Ireland which should reach beyond political leaders and academics to embrace those who have become victims directly and indirectly over the last twenty-five years.

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