

## *Truth and Reconciliation Commissions*

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During a transition from a period of widespread violence and repression to a society in which democracy and the rule of law prevail, a number of countries have confronted the difficult legacy of human rights abuse through efforts to promote reconciliation and justice. In countries as diverse as Bosnia and Herzegovina, Peru, Sierra Leone, and Timor-Leste, government officials, nongovernmental advocates, and the United Nations have responded to past human rights violations by establishing truth-seeking initiatives, at times helping to prosecute individual perpetrators, as well as providing reparations to victims.

As of January 2005, thirty-six Truth and Reconciliation Commissions – also known as truth commissions – have been established in order to facilitate the process of reconciliation in societies that have been divided during periods of violence and grave human rights abuses. The principal objectives of such commissions are to give individuals who have suffered serious human rights violations an opportunity to communicate their experiences to persons in authority and to receive collective acknowledgment of responsibility for their suffering. These temporary commissions focus on a past, pre-defined period of time during which the abuses occurred, and typically cease to exist with the publication of a report on their findings.

Since 1973, truth commissions have been established by presidential decree, legislative decision, NGOs, or the United Nations. Typically, a strong mandate is necessary in order to access sensitive files, subpoena powerful political figures, and to protect truth commission members during the inquiry. The mandate must also properly define the truth commission's scope, and allow inquiries into the relevant time period, areas, and acts to be investigated. Examples of truth commissions established by presidential decree are: Argentina, Bolivia, Chad, Chile, Ecuador, Germany, Ghana, Haiti, Malawi, Nepal, Nigeria, Panama, Peru, the Philippines, Serbia and Montenegro, South Africa, South Korea, Sri Lanka, Uganda, Uruguay, and Zimbabwe. The truth commissions of El Salvador, Guatemala, and Sierra Leone were created by parliamentary order, but were authorized by peace agreements negotiated between those governments and opposition forces. Other truth commissions have been established by the United Nations (*e.g.*, El Salvador, Guatemala, and Timor-Leste) or by NGOs (*e.g.*, Brazil).

The first truth commission took place in Uganda in 1974; its mandate was to investigate and report on the 308 disappearances that occurred during the government of Idi Amin. Since then, and including four commissions proposed in 2004, there have been fourteen truth commissions proposed or established in Latin America, thirteen in Africa, six in Asia, two in Europe and Central Asia, and one in the Middle East and Northern Africa. By decade, the number of truth commissions increased from one in the 1970s, six in the 1980s, thirteen in the 1990s, and sixteen from 2000 to 2004. Each commission has built upon previous models, which attempted to improve and elaborate the truth-seeking and reconciliation process.

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The ways in which truth commissions are created and composed, and the scope of their activities vary greatly. Some commissions are comprised of prominent individuals in the country after a period of grave human rights violations, as in the case of Argentina. Other commissions are entirely or partially composed of distinguished persons from other countries, for example, in El Salvador and Timor-Leste. On the one hand, international commissions can provide impartiality and objectivity, although their recommendations may not always be accepted; their activities may be regarded as an imposition of the international community's will on the country concerned, or the commission members may lack contextual knowledge. National commissions, on the other hand, may understand the situation in the country, but their members may be accused of bias. Mixed commissions may partake of the advantages of both the national and international commissions. The establishing entity ultimately determines the composition of the commission.

In some instances, non-governmental organizations (NGOs) have created their own truth commissions – particularly when governments have failed to act. For example, the archbishop of Sao Paulo, with the support of an NGO, the World Council of Churches, investigated human rights abuses under Brazil's military government after the government refused the public's demand for a formal inquiry. The International Center for Transitional Justice (ICTJ) was established as an NGO in March 2001 to propagate truth commissions and has since then helped to transfer the expertise developed in previous commissions to new efforts. The ICTJ is currently working in many countries, including Ghana, Guatemala, Northern Ireland, Peru, Sierra Leone, South Africa, Sri Lanka, Timor-Leste, the United States, and the former Yugoslavia.

In pursuit of reconciliation, truth commissions usually strive to investigate past human rights abuses; to provide an official forum where victims and perpetrators alike can tell their stories and offer evidence; and to prepare an authoritative report that documents the events, makes conclusions, and suggests ways in which similar atrocities can be avoided in the future. The final reports of the truth commission are almost always made public, and contain the commission's observations, conclusions, and recommendations. The final report does not establish the "truth" – since the truth was usually openly known during the period examined – so much as it formally documents the "truth" in such a way that it must be acknowledged by the state. The publication of the final report establishes the documented events as part of the state's history, which, along with the report's recommendations, attempts to prevent reoccurrences. The final report may also name those responsible for or involved in the human rights violations, although at times may refrain from doing so for fear of backlash or even a return to the violence of the past.

Public hearings held by truth commissions serve the three purposes of furthering information collection, permitting individual victims to tell their stories, and enabling national catharsis. The hearings, sometimes publicly broadcast throughout the country concerned, allow individuals affected by human rights violations to tell their stories of grief and suffering – often for the first time. Some truth commissions entice public testimony from human rights violators by offering the possibility of amnesty in exchange. Although truth commissions do not normally

have the power to prosecute, they can make recommendations for prosecution as was possible in Peru and South Africa. Truth commissions, however, usually do not identify individuals responsible for human rights abuses; some perpetrators may have been granted amnesty. For example, the South African Truth and Reconciliation Commission was authorized to grant amnesty to those perpetrators who provided a full account of their wrongdoing. The issue of amnesty is extremely controversial, because amnesty may give past and future perpetrators impunity for their misconduct. The decision whether to grant amnesty brings into question the purpose of truth commissions (truth or accountability) and whether there is a duty to prosecute offenders or a possibility that some offenders can be absolved of criminal responsibility. Amnesty considerations aside, public hearings force a country to confront and accept its past, and provide truth commissions with invaluable data from which it can construct its final report.

A truth commissions may also make recommendations for reparations to be given to the victims, which usually take the form of cash payments, pensions, free access to health care and psychiatric treatment, or public memorials and national remembrance days. Due to governmental resource constraints, however, reparations may not involve substantial payments of compensation. There have, however, for example in Argentina, been some efforts to seek compensation from the perpetrators rather than relying entirely on the government.

Of the thirty-six truth commissions, the truth commissions in Argentina, Chile, and South African have been the most visible models. The National Commission of the Disappeared of Argentina was created by Argentinean President Raul Alfonsín in 1983 to address the disappearances of more than 9,000 individuals during the period of military rule from 1976 to 1983. The commission was comprised of thirteen members; ten were selected by the President and six were to be nominated by the two houses of the legislature, but only the chamber of deputies responded by nominating three members. The commission heard testimony from thousands of individuals, conducted its own investigations, and in 1984 produced a final report, "Nunca Mas: Informe de la Comisión Nacional sobre la Desaparición de Personas," that implicated more than 1,300 military officers. In 1985 the former leaders of the military junta, General Jorge Videla and Admiral Emilio Massera, were tried and sentenced to life in prison by Argentine courts for their role in the atrocities. The convictions stood as a testament to the role Truth Commissions could play in holding human rights violators accountable. Unfortunately justice was short-lived, as both Videla and Massera were pardoned by President Alfonsín's successor, Carlos Menem, in 1990. Also in 1990, the Argentine Congress passed a law establishing a pension for the relatives of the disappeared (*los desaparecidos*), which was equal to seventy-five percent of the minimum lifetime salary. Some families were reluctant to claim these funds because they did not want to acknowledge that their relatives had died. In 1991, the government enacted another law enabling individuals who were detained without trial during the period 1976-79 to receive significant compensation. Many victims have been unable to claim this money, however, because of their inability to provide the required evidence that proves they were detained.

The military dictatorship that ruled Chile from 1973 until 1990 resulted in massive human rights abuses causing thousands of deaths, disappearances, torture, and arbitrary arrests.

In 1990, Chilean President Patricio Aylwin established the National Commission for Truth and Reconciliation, comprised of eight distinguished Chileans. The Commission sought to provide an officially sanctioned forum in which the victims and relatives could give their testimony. Although seeking to gain government acknowledgment of its responsibility for the violations, the Commission faced significant obstacles to the complete exposure of “truth,” primarily due to the continued presence of Augusto Pinochet as Commander-in-Chief of the Chilean Army. The Commission published its report in 1991 and proposed reparations procedures, which were later implemented by the Congress, but the Commission stopped short of recommending individuals for prosecution. Recent developments in Chile, however, suggest that barriers to the exposure of individual responsibility for human rights violations may be diminishing over time. For example, after many decades, the Chilean Supreme Court ruled that Pinochet could be tried for his involvement in several disappearances and deaths and he was placed under house arrest.

The Commission of Truth and Reconciliation of South Africa is considered to be another very visible model for truth commissions. The South African Parliament established the Commission in 1995 to examine the human rights violations associated with the Apartheid era, which gripped South Africa from 1960 to 1994. The Commission was authorized to have seventeen members and “not more than two persons who are not South African citizens may be appointed as commissioners.” In practice, all the members of the commission were South African nationals, although one or two were born outside of the country. The Commission was well-funded and had a mandate to hold public hearings, consider applications for amnesty, and determine necessary reparations for victims. The public hearings, held across South Africa, were successful in collecting information and allowing the nation to acknowledge more than thirty years of apartheid. The Commission’s power to grant amnesty in exchange for full disclosure by applicants was highly controversial, but was considered politically necessary in order for the Commission to come into existence. In any case, the Commission found that most perpetrators failed to provide a full account of their wrongdoing and thus the Commission refused more than eighty-five percent of immunity applications.

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