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Commission on Human Rights (CHR)

**“Truth Commissions: Instrument in Post-Conflict Management for the
Reconstruction of Democratic Structures”**

Chairperson:

Nikolaus Hiebaum, born 1976 in Vienna, Austria, is a senior at Webster University Vienna studying International Relations and plans to graduate in May 2004. His main areas of interest during his studies have been African politics and the political implications of Islamic movements in Central and South East Asia. The topic of his senior thesis is "Post-colonial influence of France in Gabon and of Great Britain in Kenya," and the focus of this thesis rests on showing the mechanisms of how former colonizers retained their influence on their former colonies. Work wise Nikolaus Hiebaum is more down to earth. He works as a business analyst for key account customer loyalty programs at a major aviation group. Besides studying and working Nikolaus Hiebaum's greatest passion is traveling, which his job facilitates, architecture, and photography. In 2003 Nikolaus Hiebaum participated at the VIMUN as delegate for Malaysia in the CHR. He speaks German, English, and French.

Co-Chairperson:

Nikolaus Cichy was born in Wielun, Poland, in 1978 and has lived in Austria since 1988. He attended secondary schools (Bundesgymnasium) in Baden and Wiener Neustadt. After his Civil Service (Zivildienst) at the Hospital of Wiener Neustadt, he studied Medicine at the University of Vienna from 1999-2000 and switched to International Business Administration at the University of Vienna in 2000 where he specializes in International Management and Corporate Finance. From 2002 to 2003 he took part in the ERASMUS-exchange program and studied at the ESCP-EAP, European School of Management in Paris, France. Following that he worked in Frankfurt am Main, Germany, for two major auditing and consulting companies for half a year. He will finish his studies in January 2005. Nikolaus Cichy speaks German, English, French, and Polish. His great interests are national and international politics and other global issues. Apart from that, he loves traveling and sailing in which he is holder of a skipper's license.

Introduction to the Committee:

Office of the High Commissioner for Human Rights (OHCHR)

"The United Nations vision is of a world in which the human rights of all are fully respected and enjoyed in conditions of global peace. The High Commissioner works to keep that vision to the forefront through constant encouragement of the international community and its member States to uphold universally agreed human rights standards. It is our role to alert Governments and the world community to the daily reality that these standards are too often ignored or unfulfilled, and to be a voice for the victims of human rights violations everywhere. It is also our role to press the international community to take the steps that can prevent violations, including support for the right to development." (see OHCHR Homepage)

Essentially, examples of human rights issues include the right to self-determination, the question of the violation of human rights and fundamental freedoms in any part of the world, economic, social and cultural rights, civil and political rights, including the questions of torture and detention, disappearances and summary executions, the independence of the judiciary, impunity and religious intolerance, racism, the human rights of women, children, migrant workers, minorities and displaced persons or indigenous issues.

The OHCHR works on the basis of legal documents like the Charter of the United Nations, the Universal Declaration of Human Rights, International Covenants on Human Rights and the 1993 Vienna Declaration and Programme of Action. The regular budget of the OHCHR for 2004 is made up of USD 27.1 million from the United Nations and USD 54.8 million from voluntary contributions (see OHCHR Homepage).

For dealing with all of the mentioned and many other issues the Office of the High Commissioner of Human Rights consists of Human Rights Bodies to whom it works as secretariat.

The Commission on Human Rights (CHR):

The Commission on Human Rights (CHR) is the principal United Nations body concerned with human rights and was established in 1946 by the Economic and Social Council being its subsidiary body. It is composed of 53 States whose representatives meet in Geneva in Switzerland in March/April on a regular basis to discuss prevailing issues and to find solutions to current problems in the area of human rights around the world. Each year the meetings are observed by about 3,000 delegates from member and observer States and from NGOs.

In the case of urgent and acute human rights violations the CHR can meet in special sessions to ensure that these issues are dealt with early enough and to prevent further escalation of the situation. During its regular sessions the CHR debates the work of the experts in different countries and on different mandates, it adopts resolutions and decisions and is supported by the Sub-Commission on the Promotion and Protection of Human Rights, different working groups and a network of individual experts who report to it on specific issues.

Just after the creation of the Commission its main task was the elaboration of various standards on human rights. It was the CHR that drafted the Universal Declaration of Human Rights and many other standards like civil and political rights, economic, social and cultural rights, the elimination of racial discrimination or the rights of the child. The current focus, however, is to respond to human rights violations over the world and to protect and promote the widely accepted covenants and standards.

The Commission monitors and publicly reports on human rights issues. It can address specific topics for a longer period of time in different countries or territories (country mandates) or on major human rights violations worldwide (thematic mandates). The name used for these mandates is also "Special Procedures." Some examples for country mandates are: Sudan, Somalia, Iraq, the Palestinian territories, Myanmar, Liberia, Haiti, Cambodia, Burundi, the Democratic Republic of the Congo, Afghanistan, Bosnia and Herzegovina and The Federal Republic of Yugoslavia. Thematic mandates are, inter alia, "The Working Group on Arbitrary Detention", "The Working Group on Enforced or Involuntary Disappearances" or other mandates that deal with topics like the independence of judges and lawyers (see OHCHR Homepage).

All states that accept the standards are obliged to implement them and are monitored on a regular basis. Usually, reports have to be submitted and are examined by the Commission and its bodies based on information gained from the concerned governments, independent NGOs, individual experts, and rapporteurs. The examination of the compliance with the regulations is a very delicate task but it is crucial to ensure the implementation of human rights around the world.

If the Commission realizes that in some areas standards have to be adapted due to changes in the prevailing situation in a specific country or worldwide it can establish working groups to handle the new challenges. The main present topics treated by working groups are torture, inhuman treatment in custody, the right to development and rights of indigenous people (see OHCHR Homepage).

The Commission also supports governments through advisory services and technical cooperation concerning human rights. This includes seminars, training courses, expert advice or scholarships and fellowships which are offered to protect and promote human rights in the concerned countries or regions. Through its many field presences the CHR aims to help countries to fulfill its obligations in terms of implementation of human rights at the national level.

The **Sub-Commission on the Promotion and Protection of Human Rights**, which is a subsidiary body of the Commission is composed of 26 experts and serves as a sort of think tank. It undertakes research and carries out studies to support the Commission. Besides it makes recommendations to the Commission and performs any other tasks assigned to it. The Sub-Commission meets annually for three weeks in Geneva (see OHCHR Homepage).

The **treaty-monitoring bodies** are composed of 10-23 experts who serve as guardians of the treaties. They examine how well the States that have ratified the treaties implement human rights in practice and in law and sometimes have rights to carry out investigations in that area (see OHCHR Homepage).

Introduction to the Issue:

Truth Commissions

Although human rights are defined in a range of drafts and covenants they were and are still being broken in many countries and territories. Especially after long periods of conflicts or wars, there is often a chance to help the countries or regions to go through the transformation process towards a new democratic society where people can feel safe and are granted their rights by official institutions.

The instrument that has helped in many cases to support this process of transition was a "truth commission." This is a body established to help a country to cope with its past and to define new relationships between former enemies in a state where human rights were once violated by one or more sides and where now people are no longer victims of an oppressive regime. In this context truth commissions are of high interest for the United Nations and particularly for the Commission on Human Rights as a guardian of human dignity.

Designing Truth Commissions

How do truth commissions work and what are the main challenges when establishing such a commission? Each country or region that was victim of human rights abuses has its own history and political environment. Commissions have to take into account all the circumstances to be successful; there are no two equal cases.

In the political context the nature of human rights abuses and the nature of political transition have to be examined. Moreover, the extent of dominance and power of the perpetrators after the transition process have to be evaluated because it has a meaningful impact on the nature of work of the commission and its results. The greater the power of the former actors, the more difficult they can be held responsible for their crimes. After all, the current focus on healing or justice and the acceptance by the public play a very important role in creating a truth commission. In the case of a focus on healing, the parties are more willing to forgive each other and to go on peacefully without trials at courts and looking back into the past, but sometimes it is not possible and jurisdiction has to assume an important role in the transition process.

A high acceptance by the public means that evidence can be collected faster and more accurately and that the decisions of the commission are more likely to be adopted and implemented.

Political Context

According to TruthCommissions.org truth commissions are not created in a vacuum. They are set up in response to specific human rights abuses, which in turn are an outgrowth of the particular history, political culture, and institutional structure of a country. Any given political context provides both enabling and constraining forces.

Like a geographic environment, 'political context' provides a landscape to be mindful of. Other than the chapters to follow, 'Political context' leaves the designer with little room for choice. Rather, it lays the ground for the eight defining parameters of truth commissions. For example, different types of human rights abuses will shape the kind of investigations that are necessary. The political transition process will determine the extent to which former perpetrators remain in power. The greater, in turn, the power of former perpetrators, the more limited the investigative power of a commission will be. Political culture and public opinion, too, are important factors for the establishment of truth commissions. A national focus on either healing or justice will shape the creation process significantly. Widespread national support for a commission can balance out opposition from former perpetrators.

Five components of political context that are particularly relevant for the design of a truth commission can be identified (see TruthCommissions.org Homepage)

- a) Nature of violence and human rights abused to be investigated
- b) Nature of political transition
- c) Extent of dominance and power of perpetrators after transition
- d) Prevailing focus on healing or justice
- e) Public support for truth commissions

Composition of Commissions

Another important issue to be taken into account concerns the initiator of a Truth Commission. As credibility plays a crucial role in the transition process, especially after long periods of distrust and hatred during a conflict, the commissions are mostly established by the countries' new leaders (the President, the Parliament) or by independent international bodies like the United Nations, local or international NGOs. In addition, one has to determine the time period reaching back into the past, which will have an impact on the amount and sometimes on the sort of crimes examined. Eventhough, violations of human rights seem to be independent of the context in which they occur, it sometimes plays a role whether they were committed during a civil war for instance, where both sides were the perpetrators, or just on one side that exploited its strong position and was the main guilty party.

Once the former questions are answered, the truth commission has finally to be designed in more detail. Decisions have to be made like which kinds of human rights violations are going to be examined for instance, which are the time and the geographic horizons for the investigation or what should be the purpose and scope of the recommendations made by the commission. Should the investigation just show the perpetrators' names or should it serve as a basis for trial and search for justice? All these factors influence in a highly delicate way the results and the final acceptance of the Truth Commission by the public.

To ensure the credibility of the commission, lots of staff decisions have to be made as well: How many commissioners to choose? The greater the number of them, the more interests can be represented, but the higher the organizational effort, and the ability to make decisions accepted by all members of the commission may be limited. Which nationality and professional background should the commissioners have to be credible and unbiased?

As a consequence, the individual commissioners that are appointed to a commission are highly visible and often seen as representing the seriosity of the effort to face the past of gross human right abuses. Their credibility is a crucial factor for the proceedings and effectiveness of a truth commission. They can also come to embody the hope for a better future and the trust in a fair assessment of the past (see TruthCommissions.org Homepage).

A list of the following important factors that needs to be kept in mind:

- a) Number of commissioners
- b) Nationality of commissioners
- c) Professional background of commissioners
- d) Reputation of commissioners
- e) Diversity and representativeness of commissioners

Amnesty one important tool when dealing with the question of guilt of perpetrators after civil wars. Sometimes, it is the only way to reconcile all parties and former forces in one country. The commission has to decide in what way and to whom amnesty is to be accorded. On the one hand, there are very often too many perpetrators and followers to punish. This might then result in a strong opposition to the commission and its work and therefore not help anybody. On the other hand, amnesty for everybody would undermine the commission's credibility and just turn it into a tool without any relevance. In many cases amnesty is therefore limited to certain groups or certain time spans.

After the completion of all its work, truth commissions usually present their findings and recommendations to the public. In some cases this knowledge is shared with the country's officials only, but most of the time reports accessible to the public are prepared. Here again, there are many possibilities of ~~as~~ how to disseminate the findings and conclusions. One common way of dissemination is certainly media coverage that makes wide access to the materials possible.

Eventually, the government has to decide to which extent implementing the recommendations of the commission is feasible. As a truth commission is no legal body, it's the government's decision to apologize for atrocities of the past to the victims and to prosecute the perpetrators. In many cases, especially where at least parts of the former regime remain in power or in influential positions, they tend to protect their former allies and themselves by limiting their cooperation.

In some cases the commission's work can be continued by other organizations or bodies. Their tasks can be continued investigation, allocation of reparations, legal, medical or psychological assistance.

Brief History and Description of Truth Commissions

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

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

Some highly affected countries:

Countries that have had a truth commission:

Argentina, Bolivia, Chad, Chile, East Timor, Ecuador, El Salvador, Germany, Guatemala, Haiti, Malawi, Nepal, Nigeria, Panama, Peru, Philippines, Serbia and Montenegro (formerly Federal Republic of Yugoslavia), Sierra Leone, South Africa, South Korea, Sri Lanka, Uganda, Uruguay, Zimbabwe

Countries that have called for the establishment of new truth commissions or similar bodies:

Afghanistan, Angola, Bosnia-Herzegovina, Cambodia, Colombia, Indonesia, Jamaica, Kenya, Mexico, Morocco, Philippines, Uganda, Venezuela, Zimbabwe

Countries that have had commissions of inquiry and related bodies

Bolivia, Brazil, Burundi, Côte d'Ivoire, East Timor, Ethiopia, Honduras, Paraguay, Peru, Rwanda, South Africa, Uganda

In the following part we would like to give you a brief overview on the composition, the mandate, the work, and the impact of truth commissions by looking at country cases of Argentina, Chile, El Salvador, and South Africa.

Argentina: The National Commission on Disappeared Persons (CONADEP)

In 1976 the Argentinean armed forces seized power in a coup d'état. For the next three years the military orchestrated a campaign that came to be known as the "dirty war," directed at wiping out not only guerrillas and terrorists, but also what General Jorge Videla, the army's representative in the initial junta, called "subversive thought." In the name of this objective the military killed or caused to "disappear" an estimated 10,000 to 30,000 people. Very few of those who disappeared had any connection to the left-wing terrorist groups who provided the excuse for military excesses. People from all sectors of society, all regions and all classes were targeted for violence. The disappearances fostered a general sense of insecurity and fear. In 1979 the military declared victory over the subversive elements, and the number of disappearances decreased dramatically. Throughout the years 1979 to 1982 pressure both internationally and domestically for information about the fate of the "desaparecidos" increased. The power of domestic voices grew as a result of the economic crisis.

Finally, in 1982, the Argentine military was defeated in the war against Great Britain over the Malvinas / Falklands islands, forcing them to allow general elections. Raul Alfonsín was elected president in 1983. Within his first week in office he appointed a National Commission on Disappeared Persons, and selected 10 prominent citizens, known for their consistent defense of human rights, as members. During this momentous first week Alfonsín also repealed the military amnesty that had been declared before the armed forces left office, and asked for the prosecution of the nine leaders of the military junta.

The Commission was charged with a fairly narrow mission: to investigate the fate and whereabouts of the disappeared, and to produce a report to the president. At their first meeting they chose Ernesto Sabato, a well-respected Argentine author, as Commission Chair.

CONADEP was given means to hire more than 60 people, and access to all government facilities. The Security Forces were also ordered to cooperate with investigators. However, it was not given subpoena power or the ability to compel testimony. All criminal evidence that was uncovered had to be turned over to the courts. CONADEP took testimony from relatives of the disappeared as well as fellow prisoners who had been released. They established several regional offices, which were open to take testimonies, travelled extensively to collect testimonies from people *in* rural areas, and took testimonies at a number of Argentine Embassies abroad.

It is believed, however, that the majority of crimes in many rural areas went unreported because of lack of access to the commission, and continuing fear of reprisal. Once testimony was given an investigation was carried out as soon as there was sufficient evidence, records were given to the courts. Unfortunately, because of the lack of ability to compel evidence, and because of the widespread destruction of military documents, it was very hard to gather any new evidence about the disappeared. Although the Commission was able to provide comprehensive documents of cases of almost 9000 disappeared people only very little new information could be offered to the relatives and friends of the victims.

During the time of CONADEP's work, commissioners held regular press briefings, raising awareness of what had happened during the military regime. After six months of work, in July of 1984, CONADEP presented a two-hour synopsis of testimonies on national television. The public presentation of victim voices was so powerful, that the government almost refused to air the program. Two months later CONADEP issued its final report to the President, which included 50,000 pages of documentation. The summary was published under the title *Nunca Mas* and became an immediate and enduring bestseller in Argentina. *Nunca Mas* was sold with an annex including the names of all 8,961 of the disappeared. The extensive report given to the President also included a list of all military personnel believed to be involved in the disappearances and the use of torture. This list was released to the press and published.

One of the most unique aspects of the Argentinean case is that several of the military leaders were held accountable for their crimes. Nine of the top Junta leaders were brought to trial. Eventhough, only 5 of them were consequently found guilty CONADEP was still considered a success. In the end the trials did not only contribute significantly to the raising of public awareness regarding the issue of wide-spread abuses as they happened during the military regime but they also served as an additional and official recognition by the government that crimes were committed.

Then, in 1987 all other attempts for at prosecution were stopped by two exculpatory laws. The first prevented any further charges from being brought, the second was a "due obedience" law which exempted all military personnel from prosecution who had been following orders. This effectively limited the ability of the families of the disappeared, whose cases had been presented to the court by CONADEP, from forwarding charges.

In 1990 Congress passed a law granting a pension equal to 75% of the minimum lifetime salary of the disappeared to the next-of-kin. Evidence presented in the CONADEP report has been important in enabling families to gain access to this pension fund.

In 1991 the government enacted another law enabling individuals who were detained without trial during the period 1976-79 to receive significant compensation. Still, many were unable to claim this money since they were required to provide sufficient evidence of how long they had been detained and when they had been released. This due to the fact, that the military has been unwilling to provide supporting documents and the CONADEP report has not been useful since it does not list cases of individuals whoe were detained and released.

Chile : The Chilean National Commission on Truth and Reconciliation

In 1973 General Augusto Pinochet overthrew President Allende in a coup d'état. The coup and its aftermath were extremely violent with Pinochet's forces responsible for 1,200 deaths or disappearances in the first 3 months. Censorship was imposed, all political opposition barred and the Congress was dissolved. For the next four years Pinochet's government, led by the intelligence service DINA and then CNI, harshly prevented any and all opposition, through the use of harassment, torture, killings, disappearances and exile. In 1978 the Pinochet government passed an amnesty law barring all prosecution of those who committed human rights abuses from the time of the coup through early that year, which was the time of the worst abuses. In 1980 several opposition groups formed an armed resistance. Government violence thereafter was justified in the name of fighting against these groups. In response to growing domestic and international pressure, in 1988, confident of the support of the Chilean people, Pinochet agreed that a plebiscite could be held allowing the population to vote on his continued rule. A strong "No" vote led to a general election in 1989. Patricio Aylwin won the election and took office in 1990. However, Pinochet was to remain Commander-in-Chief of the Army through 1997. Moreover, most of the judiciary had been selected by Pinochet, and the Senate was dominated by military supporters.

Soon after assuming office Aylwin created the National Commission on Truth and Reconciliation (also known as the Rettig Commission) and appointed nine members. The membership was evenly divided politically between Pinochet supporters and opponents. They were given four central tasks to:

1. provide an overview of how the repressive system worked.
2. account for every person who died or disappeared between September 1973 and March 1990.
3. propose measures of reparations.
4. propose measures of prevention.

The Rettig Commission was given nine months to complete its investigations and write a report. *Still*, it did not have subpoena powers or the ability to compel testimony. Further, it was explicitly stated in the document creating the commission that it did not have any judiciary powers, but was purely an information-gathering instrument. One result of this limitation is that the report does not state the names of those responsible for the crimes as described. Thus, no new information about those responsible for the past crimes was made available by the Commission's work. All information uncovered by the Rettig Commission was handed over to the courts. The Chilean Commission had more than 60 staff members, and hired six social workers to address the needs of victims and their families. The Commission received testimony from over 4,000 complainants as well as *of* a few members of the military who came forward voluntarily. The Commission also used information provided by Chilean Human Rights groups and the Catholic Church.

Essentially, the Commission was particularly concerned with meeting the needs of the victims of state violence. The Commissioners took the responsibility of taking testimony very seriously, and considered it a critical part of helping victims reclaim their faith in the State. Victims were politely ushered into state offices, previously the site of violence and fear, and offered coffee. A Chilean flag lay on the desk. Testifiers' stories were listened to with respect and sympathy. Testifiers were permitted to tell the story in whatever way they wished, and they were not cross-examined. The Commission uncovered very little new information about the fate of the disappeared. This failure was due both to the fact that it was not given access to military records and that it did not have any ability to compel evidence from members of the military.

Another significant limitation of the Commission's work was that it only addressed human rights violations resulting in death. Thus, while the Commission's report details the cases of 2,115 individuals killed by government forces and 164 victims of left-wing violence, and names each victim, it does not provide any information about the estimated 200,000 victims of gross human rights violations. These individuals were further *not* given the opportunity to provide testimony to the Commission. Additionally, the report provides a general overview of the violence during the Pinochet regime, as well as outline in painful detail the ways that torture was used and the methods employed.

In presenting the Commission's report to the nation, President Aylwin apologized to the victims and their families on behalf of the state. He also sent a letter to each family apologizing for the crimes of the past, along with a copy of the Commission's report. Interestingly, while the various wings of the military condemned the report as an attempt to destabilize the state, no one directly denied the information *it* contained. The information in the report was so meticulously documented that it was impossible to completely deny its reliability. As a result, the Rettig Commission report calls for a significant reparations policy, including legal and administrative assistance, financial support for education, medical care and psychological services, and symbolic reparations to vindicate the victims such as public monuments or parks.

A law promulgated in 1992 provided significant financial support to the family of all victims named in the report. A fund has also been created for children of the disappeared to support their continuing education. Further, the Ministry of Health established teams in cities around the country offering general medical and mental health care to victim's families. Unlike the other forms of reparations these medical and mental health services are available to victims of gross human rights violations and families of the disappeared alike. The Commission report was welcomed by human rights organizations and the public.

However, three assassinations by leftist groups in the three weeks following the release of the report shifted the focus of public discussion to debate violence from the left, thereby effectively ending public discussion on the report and its findings. Tens of thousands of copies of the report were held back from circulation to avoid political violence. Families of the disappeared have continued to bring those responsible for the death of their family members to justice.

Despite the 1978 Amnesty law several military officers have been held responsible for their role in the former regime only a few have actually gone to jail. Still, in 1999 five Senior Military Officers were brought to trial because of their role in the disappearance, and probable death, of 75 political prisoners. The judges ruled that, because the deaths of several of these 75 individuals had not been certified, the violence could be considered on-going, and that as a result the Amnesty Law offered no protection.

El Salvador : The United Nations Truth Commission for El Salvador

The civil war in El Salvador lasted for twelve years. Almost 75,000 people were killed. The Salvadoran armed forces, backed by the United States fought against the FMLN, an alliance of five leftist groups, supported by Cuba, Sandinista Nicaragua, and the Soviet Union. The Salvadoran armed forces indiscriminately massacred and displaced peasants living in areas where the FMLN operated. The FMLN assassinated political opposition. The justice system was unable to hold perpetrators accountable. As the Cold War, and thus the free flows of aid, drew to an end it was obvious that neither side could win a clear victory. This led to UN-mediated peace negotiations, and ultimately, in 1992, peace accords ending the war. The accords called for various "confidence building" measures to try to break down the deep mistrust between groups, and establish a common understanding of past events. One of these measures was a commission to determine the truth about the worst of the abuses that had occurred during the war.

Consequently, the Commission was given six months to complete its work, with the possibility of a three-month extension. The three Commissioners, appointed by the UN Secretary-General after consultation with the parties, were all well respected international human rights figures. None of these individuals were El Salvadoran. The mandate of the commission did not dictate that all violence should be investigated, but instead that the Commission should focus its work on the most significant violent incidents, particularly those that were considered to have had a "special or broader impact on society in general". The mandate also dictated that the general purpose of the Truth Commission was to promote national reconciliation. In order to reassure El Salvadorians that the Commission was not partisan it was decided that no Salvadorans should be hired to work as staff members. Thus the staff, consisting of lawyers, sociologists, forensic anthropologists and social workers, were drawn from other Latin American countries, the US and Europe.

The Commission was extremely well-resourced, compared to the Chilean Truth Commissions, with an operating budget of 2½ million dollars. Eventually, the Truth Commission staff established several offices throughout the country and set up an "open door" policy urging all witnesses and victims to come forward with information. However, the staff had significant difficulty for the first several months attracting testifiers. It has been suggested that victims were unwilling to speak with staff members both because of a general lack of trust in the Commission, and because the information gathering took place so soon after the end of the violence, before people felt confident that the peace would last. Staff and Commissioners also interviewed government officials, employees of NGO's, church leaders, media representatives, FMLN leadership, and community leaders.

This broad collection of information provided a general overview of major events during the 12-year civil war, which allowed Commissioners to select several cases that they believed to be paradigmatic of the violence. They also chose to investigate several of the more-well known cases about which there was lack of clarity as to who was responsible. One consequence of including only well-known or paradigmatic cases was that the Commission report did not include information about the majority of the victims from whom testimony was taken. Thus, most who testified failed to get any public recognition of the pain that they endured. The Truth Commission report provides extensive documentation about each of the selected cases. Names of the perpetrators, as well as the victims, are provided. Once investigations were completed and it was clear that an individual would be named as a perpetrator, that individual was invited to come before the Commission to hear the charges against him/her and provide his/her side of the story. It should further be noted that the Commissioners developed a complex system that enabled them to determine whether or not the evidence presented was sufficient to warrant publishing the information. Only cases where there was substantial evidence were included in the report. The report also made a series of recommendations including lustration of all individuals named in the report; provision of compensation to victims and their relatives; creation of public monuments and national holidays in the memory of victims of the conflict; and a number of judicial and institutional reforms. However, the report did not recommend prosecution of the perpetrators named in the report, nor did the commission turn its information over to the courts. It did not do so because of the belief that the judiciary at that time would have been unable to hear the cases without bias.

Five days after the report was issued a sweeping amnesty law was passed, granting amnesty for all criminal and civil liability. The president issued a statement saying that the Truth Commission had exceeded its mandate. While the Peace Agreement dictated that the Truth Commission recommendations were binding, the UN was slow in pushing for compliance, and ultimately did little to ensure that structural changes were implemented. Though the FLMN had initially pushed for the Truth Commission, when the recommendations were actually issued the FLMN conditioned its compliance on the compliance of the government. To date, only few of the recommendations have been implemented. No compensation has been granted to victims or their families. Not one official has been prosecuted. While some of the officers named by the Commission report have been removed from office, these individuals were all also on a list created by an ad hoc commission composed of three Salvadoran civilians who were charged with "purifying" the armed

forces (the ad hoc commission was also created as part of the peace accords). Still, the removal of these officers has been credited more to the pressure exerted by the ad hoc commission than the Truth Commission. Recently a coalition of NGOs has lodged a case against several military officers for the killing of several Jesuits (including Psychologist Ignacio Martin Baro). The evidence collected by the Truth Commission forms an essential element in the prosecution's case.

Guatemala: The Historical Clarification Commission (CEH)

The Historical Clarification Commission (CEH) was established on June 23, 1994, as part of peace agreements between the Guatemalan government and the National Guatemalan Revolutionary Unit (URNG), to investigate human rights violations in the 36-year armed conflict within the country. The commission was chaired by German law professor Christian Tomuschat of Berlin's Humboldt University, and included two Guatemalans: lawyer Edgar Balsells, and Otilia Lux Coti, a Mayan woman and university professor of pedagogy. In a public ceremony in Guatemala City on February 25, 1999, the commission's final report, entitled in English *Guatemala: Memory of Silence*, was turned over to representatives of the Guatemalan government and URNG as well as to the U.N. secretary general, who is charged with its public release.

South Africa : The South African Truth and Reconciliation Commission

The system of Apartheid was instituted as official state policy in 1948 and remained in place until 1992. Under Apartheid every South African was placed into a racial category: African, Colored, Indian or White, and the groups were segregated from one another in all spheres of life and activity. Non-white South Africans were denied basic political rights, freedom of movement and assembly, and access to decent education and health care. Forced removals, with little or no warning, of non-white South Africans driven from their homes and relocated to rural African "homelands", or townships outside of cities were commonplace. Any dissident was harshly punished. Human Rights NGOs estimate that as many as 200,000 South Africans were arrested between 1960 and 1992, the majority of whom were tortured while in detention. International sanctions and the consistent, well-organized domestic struggle against the injustices of apartheid slowly wore down the South African Government.

In 1990 Nelson Mandela, the leader of the African National Congress, the most powerful anti-apartheid group, was released from prison. Following his release serious negotiations between the ANC and the ruling National Party (NP) began. After years of intense and often difficult negotiations the parties produced an interim constitution in December of 1993 which provided the basis for general elections in April 1994 with all South Africans participating on equal rights for the first time. One of the most contested issues in these negotiations was whether or not the past government should be granted amnesty for crimes committed during the apartheid era. The NP insisted that there should be a general amnesty. The ANC pushed for accountability for all past crimes. Ultimately it was agreed that there should be amnesty for politically motivated offenses.

In April of 1994 the first democratic elections were held. The ANC and Nelson Mandela won 61% of the vote. In November of 1994 the new government introduced the Promotion of National Unity and Reconciliation Bill in Parliament. The Bill provided for amnesty as it had been previously agreed on, but required that amnesty should only be granted to perpetrators after full disclosure of their crimes as well as the fact that they were politically motivated. Those who did not do so would be vulnerable to prosecution. The proposed medium for this disclosure was a Truth Commission.

The Truth Commission, eventually called the Truth and Reconciliation Commission, was designed in broad consultation between political parties, human rights NGO's, Church groups, trauma centers, and others who had been involved in the struggle against apartheid. Hundreds of proposals and submissions were put before the design commission, and numerous public hearings were held.

After months of discussions the form of the Commission was determined. Seventeen Commissioners were appointed to oversee three Committees. The three committees include:

- an Amnesty Committee, which would hear Amnesty applications

- a Human Rights Committee, which would provide a forum in which victims could come forward and tell their stories and
- a Rehabilitation and Reparations Committee which would put forward recommendations regarding the transformation of South African civil institutions and the reparation of victims.

Commissioners were selected in part as a deliberate political attempt to be highly representative of South African society, with seven black members, six white members, two Colored members, and two Indian members. Anglican Archbishop Desmond Tutu was selected to act as Commission chair. At the height of its work the South African TRC had approximately 400 staff members, significantly more than any of the previous TC's. Its annual budget also exceeded that of other TC's at about \$9 million per year. The work of the Commission lasted for almost 3 years.

The Rehabilitation and Reparations Committee was also required to provide support to victims during the on-going work of the Commission. 13 "Briefers" were hired to provide psychological support to the victims. The Rehabilitation and Reparations Committee was by far the least well-staffed and well-funded arm of the TRC.

The Human Rights Committee received testimony from 20,000 individuals. Staff members travelled throughout the country taking testimony from all those who came forward to speak. Public hearings were also held in 80 communities throughout the country, in every location in which more than 200 people came forward to provide testimony. Paradigmatic local cases were chosen for presentation at the hearings. The Commissioners, led by Archbishop Tutu, listened sympathetically, and provided the victims space to speak freely about what had happened to them. On several occasions Tutu cried along with the testifiers.

Essentially, one TRC briefer and three local community members, who had received brief training in preparation for the session previously, were present at each hearing providing support to both those testifying and those in the audience.

Archbishop Tutu was the driving force behind the commission's work. He created the framework through which the work of the TRC was understood. He made little attempt to separate his work on the commission from his spiritual beliefs, often referred to as *Ubuntu theology*. *Ubuntu* is the traditional African notion "which affirms an organic wholeness of humanity, a wholeness realized in and through other people." Desmond Tutu merged this traditional thought with Christian values of forgiveness, repentance and reconciliation. This ideology led to a subtle pressure on those who testified to forgive those who had committed crimes against them, as according to the *ubuntu* ideology it was only through forgiveness and the recognition of the humanity of the wrongdoer that testifiers could fully reclaim their own humanity.

The driving philosophy behind the TRC was the idea that "Reconciliation is only possible if we build on the foundation of truth. Amnesia may be comforting, but in the end it will prevent reconciliation rather than promoting it." (Archbishop Tutu's Pressclub speech, 21 October 1997). The creators of the TRC also believed that providing victims with the truth would facilitate the healing process. The hope was that by making amnesty conditional upon full disclosure such a truth would emerge. While 7,060 individuals came before the Amnesty Committee, providing significant information for many victims, it is commonly agreed that perpetrators who did not approach the TRC far outnumbered those who did, and that the majority of those who testified failed to reveal information about the many of their crimes.

Thus, while some critical new information was revealed, the majority of the 20,000 victims who testified before the Human Rights Committee failed to gain any new information. Theoretically, the fact that amnesty was conditional upon full disclosure of crimes should have motivated perpetrators to reveal all of the all salient information about their crimes.

However, the TRC's investigatory department was understaffed and inefficient, which limited the amnesty committee's ability to determine whether or not perpetrators had completely disclosed their crimes. Moreover, the threat of prosecution was always somewhat weak given the enormous number of perpetrators and the high costs for each trial. Perpetrators thus knew that the state was unlikely to bring charges against each of them.

Still, the TRC received extensive media attention. Hearings of both the Human Rights and the Amnesty Committees were endlessly covered in the papers and on TV. A weekly prime time television program documented the unfolding work of the Commission. Therefore, it was difficult for any South African to ignore the truths that the TRC revealed. The TRC final report made 250 separate recommendations. Among them

were significant reparation policies that included financial reparations to each of the victims, and the construction of public memorials commemorating victim suffering.

The final report was delivered to President Mandela in October of 1998, and released nationally and internationally the same day. As he presented the document to the public, Mandela gave a moving speech in which he apologized to victims on behalf of the South African government. However, in general, there has been a striking lack of political support for the TRC final report and its recommendations. To date none of the recommendations have been translated into legislation. More disturbingly, Parliament has only discussed the report for half a day, and has not seriously engaged in the difficult issues raised by the report.

The question of blanket amnesty has again been raised, and President Thabo Mbeki has made several pointed comments about the importance of putting the past in the past. While small "urgent interim reparations" have been paid out to individuals named as victims in the TRC final report, there has not yet been any decision about whether or not a full reparations policy will be put in place. While the full five-volume report (approximately 4,000 pages long) can be found on-line and in most bookstores, it is still out of reach for the majority of South Africans. To date a more easily accessible, shorter version has not been published. Moreover the report has been published only in English. Given that South Africa has 11 official languages this is a significant oversight. At the moment though, the TRC is working on a second report which should be published.

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