Fifteen Truth Commissions--1974 to 1994: A Comparative Study

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Priscilla B. Hayner[1]

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This article was completed in May 1994. On 7 June, the South African government announced plans for a truth commission, details of which were to be established by August. And on 23 June, the Guatemalan government and opposition signed an agreement to establish a truth commission in Guatemala, likely to begin work at the end of 1994. These developments are elaborated in footnotes to the text.

I. TRUTH COMMISSIONS: AN OVERVIEW

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

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

has of yet been no comprehensive survey of past truth commissions.[2]

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

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

The Truth Commission in El Salvador was the first such commission to be sponsored by, paid for, and staffed by the United Nations. The idea for this truth commission was based on the experiences of Chile and Argentina, the most well-known previous cases of national human rights commissions set up to investigate the past. Less well known, however, are at least twelve other such commissions in other countries—a total of at least fifteen such

2. Of the articles or books to date that address truth commissions, some of the better overviews include: The Justice and Society Program of The Aspen Institute, State Crimes: Punishment or Pardon (1989); David Weissbrodt & Paul W. Fraser, *Report of the Chilean National Commission on Truth and Reconciliation*, 14(4) Hum. Rts. Q. 601 (1992) (book review) (which compares a number of past commissions); Richard Carver, *Called to Account: How African Governments Investigate Human Rights Violations*, 89(356) African Affairs 391 (1990); Juan Méndez, *Review of A Miracle, A Universe, by Lawrence Weschler*, 8(2) N.Y. L. Sch. J. of Hum. Rts. 577 (1991); Aryeh Neier, *What Should be Done About the Guilty?*, The New York Rev. of Books, 1 Feb. 1990, at 32; Jamal Benomar, *Confronting the Past: Justice After Transitions*, 4 J. of Democracy 3 (Jan. 1993); and Jamal Benomar, Coming to Terms with the Past: How Emerging Democracies Cope With a History of Human Rights Violations (Carter Center of Emory University, 1 Jul. 1992).

commissions to date. In addition to Argentina and Chile, governmental commissions have been set up in Uruguay, the Philippines, Chad, Bolivia, Zimbabwe, Ethiopia, Germany, and Uganda (where there have been two). An international nongovernmental truth commission reported on Rwanda in early 1993. Two separate truth commissions were established by the African National Congress (ANC) to evaluate the ANC's record of abuses in its detention camps throughout Southern Africa. Table I summarizes these fifteen cases in chronological order.[3]

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

The Context: Defining the Parameters

Truth commissions, as I will call them generically, are bodies set up to investigate a past history of violations of human rights in a particular country—which can include violations by the military or other government forces or by armed opposition forces. National truth commissions are usually sponsored by the executive branch of government, less commonly by the legislative branch. In the alternative, a truth commission can be

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

TABLE I

Fifteen Truth Commissions In Chronological Order
Priscilla B. Hayner, May 1994

Country	*Name of Truth Commission*	*Title of Report and Publication Date*	*Date of Commission*	*Dates Covered*	*Sponsored by*
Uganda	Commission of Inquiry into the Disappearances of People in Uganda since the 25th January, 1971	*Report of the Commission of Inquiry into the Disappearances of People in Uganda since the 25th January, 1971, 1975*	1974	Jan. 25, 1971–1974	President
Bolivia	Comisión Nacional de Investigación de Desaparecidos (National Commission of Inquiry into Disappearances)	Did not produce a final report	1982–1984	1967–1982	President
Argentina	Comisión Nacional para la Desaparición de Personas (National Commission on the Disappearance of Persons) ("The Sábato Commission" or "CONADEP")	*Nunca Más* (Never Again) 1985	1983–1984	1976–1983	President
Uruguay	Comisión Investigadora sobre la Situación de Personas Desaparecidas y Hechos que la Motivaron (Investigative Commission on the Situation of "Disappeared" People and Its Causes)	Informe Final de la Comisión Investigadora sobre la Situación de Personas Desaparecidas y Hechos que la Motivaron (Final Report of the Investigative Commission on the Situation of the "Disappeared" People and its Causes)	1985	1973–1982	Parliament
Zimbabwe	Commission of Inquiry	Report kept confidential	1985	1983	President
Uganda	Commission of Inquiry into Violations of Human Rights	Still in operation	1986–present	Dec. 1962–Jan. 1986	President

TABLE I, continued

Country	*Name of Truth Commission*	*Title of Report and Publication Date*	*Date of Commission*	*Dates Covered*	*Sponsored by*
Philippines	Presidential Committee on Human Rights	Did not complete report	1986–1987 (did not finish)	1972–1986	President
Chile	Comisión Nacional para la Verdad y Reconciliación (National Commission on Truth and Reconciliation) ("The Rettig Commission")	*Informe de la Comisión de la Verdad y Reconciliación* (Report of the National Commission on Truth and Reconciliation) 1991	1990–1991	Sept. 11, 1973–Mar. 11, 1990	President
Chad	Commission d'Enquête sur les Crimes et Détournements Commis par l'Ex-Président Habré, ses co-Auteurs et/ou Complices (Commission of Inquiry on the Crimes and Misappropriations Committed by the Ex-President Habré, his Accomplices and/or Accessories)	*Rapport de la Commission* (Report of the Commission) May 7, 1992	1991–1992	1982–1990	President
South Africa (ANC)	Commission of Enquiry into Complaints by Former African National Congress Prisoners and Detainees ("The Skweyiya Commission")	*Report of the Commission of Enquiry into Complaints by Former African National Congress Prisoners and Detainees* October 1992	1992	1979–1991	African National Congress
Germany	Enquet Kommission Aufarbeitung von Geschichte und Folgen der SED-Diktator in Deutschland (Study Commission for the Assessment of History and Consequences of the SED Dictatorship in Germany)	Still in operation	1992–present	1949–1989	Parliament

TABLE I, continued

Country	*Name of Truth Commission*	*Title of Report and Publication Date*	*Date of Commission*	*Dates Covered*	*Sponsored by*
El Salvador	Comisión de la Verdad Para El Salvador (Commission on the Truth for El Salvador)	*De la Locura a la Esperanza* From Madness to Hope) March 15, 1993	1992–1993	Jan. 1980–Jul. 1991	United Nations
Rwanda	International Commission of Investigation on Human Rights Violations in Rwanda Since October 1, 1990	*Report of the International Commission of Investigation on Human Rights Violations in Rwanda Since October 1, 1990* March 1993	1993	Oct 1990–1993	Four international NGOs
South Africa (ANC)	Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuse Against ANC Prisoners and Detainees by ANC Members ("The Motsuenyane Commission")	*Reports of the Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuse Against ANC Prisoners and Detainees by ANC Members* August 20, 1993	1993	1979–1991	African National Congress
Ethiopia	Office of the Special Prosecutor	Still in operation	1993–present	1974–1991	President

sponsored internationally, by the United Nations or by nongovernmental organizations. While there are now three examples of nongovernmental truth commissions (the Rwandan and two ANC commissions), most nongovernmental human rights investigations are not truth commissions by the definition used here. By "truth commissions" I mean only those bodies that fit a fairly defined, limited mold.

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

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

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

Truth commissions must be distinguished from the formal legal accountability achieved through the prosecution of individuals responsible for abuses. The fifteen cases here show that prosecutions are very rare after a truth commission report; in most cases there are no trials of any kind, even when the identity of violators and the extent of the atrocities are widely known.[4] The very mandate of truth commissions generally prevent them from playing an active role in the prosecution vs. amnesty decision that often follows a truth commission report, although some truth commissions have recommended prosecutions or forwarded their materials to the courts.

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

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

The issue of prosecution vs. amnesty—what Human Rights Watch refers to as the justice phase, as opposed to the truth phase—will not be addressed here. There is a wealth of literature on this,[5] debating whether there is an international legal obligation to punish past crimes, the political constraints and limitations of prosecutions, the limitations of due obedience laws, and other issues, but I will not enter into that discussion here. This paper focuses only on the truth phase, in the terminology above, which is a separate process from that of taking individuals to court.

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

There has been a sharp increase in interest in truth commissions over the past year or so. This is due to a variety of factors: the attention that the El Salvador Truth Commission report received; a growing consensus that past human rights crimes cannot go ignored during a democratic transition; a perceived need to institute truth commission-like bodies in various conflicts around the world. After El Salvador, a "truth commission" is now a known and attractive entity—thought of as a piece of the solution for places like South Africa, Guatemala, and Malawi. Indeed, it is likely that a truth commission will be established in each of these three countries relatively soon.[6] In Mexico, South Korea, and Honduras there are also calls for truth commissions.[7]

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

6. Since this was written, the government of South Africa has announced plans for a truth commission. *See infra* note 85. For further reference, see the African National Congress' call for a truth commission in AFRICAN NATIONAL CONGRESS NATIONAL EXECUTIVE COMMITTEE'S RESPONSE TO THE MOTSUENYANE COMMISSION'S REPORT (8 Aug. 1993). *See also* INSTITUTE FOR DEMOCRACY IN SOUTH AFRICA, DEALING WITH THE PAST: TRUTH AND RECONCILIATION IN SOUTH AFRICA (Alex Boraine et al. eds., 1994), a compilation of papers from a Feb. 1994 international conference.

   Two weeks after South Africa's announcement, negotiators in Guatemala signed an agreement to establish a truth commission in Guatemala, formally named the "Commission for the Clarification of Violations of Human Rights and Acts of Violence That

The efforts of the National Commissioner for the Protection of Human Rights in Honduras, a government post, may provide a new precedent for a truth commission. Acting on his own initiative, in the last four months of 1993 Commissioner Leo Valladares Lanza put together a lengthy report on disappearances in Honduras that occurred between 1980 and 1993.[8] The report is based on press accounts and other public sources of information, and is intentionally subtitled a "preliminary report," calling on the government to establish a truth commission that can undertake a more extensive study and which will have access to restricted information.[9] The report has brought the issue of disappearances to the forefront; the day after the report was published the Honduran military promised to open its secret files on political killings and disappearances in the 1980s, and to allow judges to question accused officers. As the *New York Times* comments, "The decision by the military is unusual in a country where the armed forces have long been powerful and not held accountable for rights abuses."[10]

Truth commissions, indeed, are becoming increasingly more common. Between March 1992 and late 1993, six truth commissions were established. And whereas all nine commissions established between 1974 and

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Caused Sufferings to the Guatemalan People." The commission will begin work after final peace accords are signed, expected to be Dec. 1994, and cover the period from 1960 or 1961 until the date the final peace accord is signed. One of the three commissioners will be appointed by the United Nations Secretary-General. The issue of a truth commission has been a difficult sticking point throughout the negotiations, with the opposition URNG insisting that such a commission was essential to any peace accord. *See Guatemalan Foes Agree to Set Up Rights Panel*, N.Y. Times, 24 June 1994, at A2.

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

7. In Mexico, a nongovernmental effort which calls itself a truth commission is investigating the 1968 killings at Tlatelolco where the armed forces shot into a crowd of protesting students and killed hundreds. There are calls for an in-depth commission to investigate this event. In South Korea, academics and activists are pushing the government to investigate the killings at Kwangju in 1980, where human rights observers estimate over 2,000 were killed, but no in-depth investigation ever took place. *See* Asia Watch, Human Rights in Korea 41–42 (1986). Whether these proposed commissions might study the larger picture of human rights during the period at hand, rather than focusing narrowly on these events, is not clear.
8. Comisionado Nacional de Protección de los Derechos Humanos, Informe Preliminar sobre los Desaparecidos en Honduras 1980–1993: Los Hechos Hablan por si Mismos (1994). The commissioner's original report is over 1,000 pages. This published report is comprised of major excerpts from the original report.
9. In conversation with the author, Commissioner Valladares insisted that his efforts did not constitute a truth commission, and that the government still held the responsibility to establish one.
10. *Honduras to Open Files on Killings: Army Says It Will Let Judges Question Officers in Cases of Political Slayings*, N.Y. Times, 31 Dec. 1993, at A7.

1991 were sponsored by the president or parliament of the country, four of these last six commissions are new, untraditional models: sponsored by the United Nations, by an opposition party, or by a coalition of nongovernmental organizations. There need be no fixed model: in the unique circumstances of each country, other new and innovative models for a truth commission may yet be developed.

II. WHY A TRUTH COMMISSION?

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

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

Given this knowledge, the importance of truth commissions might be described more accurately as *acknowledging* the truth rather than finding the truth. "Acknowledgement implies that the state has admitted its misdeeds and recognized that it was wrong," writes Aryeh Neier.[11] Juan Méndez, then Director of Americas Watch, writes, "Knowledge that is officially sanctioned, and thereby made 'part of the public cognitive scene'. . . acquires a mysterious quality that is not there when it is merely 'truth.' Official acknowledgement at least begins to heal the wounds."[12] An official acknowledgment of the facts outlined in a truth commission report

11. Neier, *supra* note 2, at 34.
12. Méndez, *supra* note 2, at 583. Méndez cites Professor Thomas Nagel for his articulation of this distinction.

by government or opposition forces can play an important psychological role in recognizing a 'truth' which has long been denied.

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

Of course, a commission can also be set up by a government to manipulate the public perception of its own tarnished image, in order to promote a more favorable view of the country's human rights policies and practices. This is particularly likely when a government is under international pressure to improve its human rights record. Given the mandate of commissions, by definition, to look at the past rather than the present, it is easy for a new government to justify not being subject to the investigations of the commission, while professing improved human rights policies. Any current abuses are therefore conveniently overlooked by the commission. Given this dynamic, it is not always immediately clear whether a government's commission is more a political tool or an accurate reflection of change. The first truth commission in Uganda and the truth commission in Chad are cases in point. In Uganda in 1974, Idi Amin set up a commission partly in response to pressure from international human rights organizations. But Amin disregarded the commission's report, and continued his brutal rule. In Chad, even as the Commission of Inquiry was finishing its report on the past, the government was accused of trying to whitewash its own abuses.

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

> I do not claim that acknowledging and disclosing the truth about past abuses, or punishing those responsible for abuses, will necessarily deter future abuses. I doubt there is decisive evidence for this proposition. The same can be said of the contrary view, sometimes argued by proponents of amnesties, that an amnesty promotes reconciliation, while if a government making a transition to democracy attempts to punish those guilty of past abuses, it risks allowing those people to seize power again. Either outcome is possible. Whether the guilty are accorded amnesty or punished is only one among many factors that affect the pattern of events in any country.[13]

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

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

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

Most human rights organizations and activists feel that the contributions of a truth commission process outweigh the political risks involved, or indeed that a full truth-telling is necessary before real healing can take place. "Self-investigation, self-observation, is critical," comments a Chilean human rights lawyer who worked on the El Salvador Truth Commission. "It's always very clear that the government doesn't want to do it; but it is an obligation that they cannot ignore. In Chile and Argentina, they had commissions in order to forget the past, to turn the page afterwards. But the trick is, how not to close the book . . . . Commissions aren't perfect, but what do you do without them?"[14]

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

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

As far as is known, no truth commission is planned in the current transition in Mozambique—with a full history of atrocities during the war there—nor in Angola, if peace ever returns there. The parties to the Mozambique conflict have insisted that demobilization is their first priority, and have rebuffed international human rights organizations' proposals for a truth commission body. Nor does there seem to be an interest on the part of the general Mozambique population in reviewing the horrors of the past. Asked about this, a US Department of State official summed up the reconciliation vs. truth commission debate that continues even to the State Department: "There is a need to empty wounds of all the old infection before healing can start," he said. "But in some countries, like Angola and Mozambique, I'm not sure you'd have anything left if you cleaned out all the infection. . . . I used to feel very strongly that truth needs to come out. But there are others here that don't feel that way; they feel that it is most important to focus on the elimination of future abuses, especially in war-ravaged countries."[15]

In fact, no truth commission to date has caused a situation to become worse; Zimbabwe is the only case where some suggest that violence might be sparked if the truth commission report were to be released, but this results in part from not releasing the report immediately. In Rwanda, government forces went on killing rampages immediately upon the commission's departure from the country in January 1993. But this reflected ongoing tactics of terror (suspended during the commission's two-week visit) as much as a specific response to the commission's work; only a small number of the several hundred killed during those two days had been involved with helping or testifying before the commission, according to the commission's co-chair.[16] When the Rwandan commission report was published six weeks later, international pressure on the Rwandan government forced the military to stop its campaign of terror. Even with unexpectedly explicit and strongly-worded reports, the overall impact of each truth commission has generally been positive, often reducing tension and increasing national reconciliation, and perhaps increasing the understanding of and respect for human rights issues by the general public and political leaders alike.

There are, of course, clear limitations to truth commissions. Most importantly, as a general rule, truth commissions do not have prosecutory powers such as the power to subpoena witnesses or bring cases to trial,[17]

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15. Interview with US State Department official (7 May 1993).
16. Interview with Alison Des Forges, Co-Chair of the International Commission of Investigation on Human Rights Violations in Rwanda Since 1 Oct. 1990 (24 Apr. 1993).
17. The Special Prosecutor's Office in Ethiopia is the exception, as it is both documenting the past and taking individuals to court.

nor do they act as judicial bodies to pronounce individuals guilty of crimes. Those commissions that have publicly named the individuals responsible for certain acts generally state clearly that these are not judicial decisions.

Truth commissions also generally do not investigate current human rights conditions.[18] They do not, therefore, fill the need for a permanent human rights commission or agency responsive to present day rights concerns.

The Right to Truth

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

III. FIFTEEN TRUTH COMMISSIONS, 1974–1994

Uganda 1974

The "Commission of Inquiry into 'Disappearances' of People in Uganda Since the 25th of January, 1971" was established by President Idi Amin Dada in Uganda in June 1974, with a mandate to investigate the accusations of disappearances at the hands of military forces during the first years

18. The commissions in the Philippines and Rwanda are exceptions: they investigated human rights violations that occurred up until and including the period in which the commissions operated.
19. Article 19, *Malawi's Past*, *supra* note 6; *see also* Carlos J. Chipoco, El Derecho a la Verdad: Un Análisis Comparativo, paper presented at the Latin American Studies Association Conference (12 Mar. 1994).

of the Amin government.[20] The commission was created in response to increasing public pressure to investigate the disappearances. The commission was comprised of an expatriate Pakistani judge as the chair, two Ugandan police superintendents, and a Ugandan army officer. Established by a presidential legal notice under the Commissions of Inquiry Act of 1914, the commission had the power to compel witnesses to testify and to call for evidence from official sources, although access to information was blocked by many sectors of the government, including the military police and military intelligence. As with most truth commissions, this commission clearly perceived its role as one of investigating and reporting on the disappearances, but not as serving a judicial criminal function, and the commission stated this at length in its report.[21] The commission heard 545 witnesses and documented 308 cases of disappearances; hearings were generally public, unless requested otherwise. "In view of the considerable practical difficulties it faced and the highly unfavorable political climate in which it operated, the commission's achievement was remarkable," noted Richard Carver, Research Director of Africa Watch at the time. Carver continued:

> The Commission concluded that the Public Safety Unit and the State Research Bureau, special security bodies set up by Amin, bore the main responsibility for the 'disappearances.' It also criticized army officers for abuse of powers, as well as the activities of the military police and intelligence.[22]

The Commission concluded with specific recommendations for reform of the police and security forces and training for law enforcement officials in the legal rights of citizens.

Although the hearings of the commission were public, President Amin did not publish the commission report (nor was he required to under the commission's terms of reference) and none of the recommendations of the commission were implemented.

The commission report had little impact on the practices of the Amin government. After the submission of the report, the four commissioners were targeted by the state in apparent reprisal for their work: the Pakistani lost his employment with the government, another commissioner was framed with murder charges and sentenced to death, and a third fled the country to avoid arrest.[23] As is now well-known, abuses by Idi Amin's forces

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20. Details of this commission are spelled out in Richard Carver, *Called to Account: How African Governments Investigate Human Rights Violations*, 89(356) Afr. Affairs (1990).
21. Report of the Commission of Inquiry into the Disappearance of People in Uganda since the 25th of January, 1971, *cited in* Richard Carver, *id.*
22. Carver, *supra* note 20, at 399.
23. *Id.* at 400.

increased markedly in the following years, earning Amin the nickname the "butcher of Uganda."

Carver asks, "So was the whole exercise a waste of time?" He argues that it was not, on three grounds. He cites the importance of the commission report in refuting the current revisionist views of the 1970s in Uganda, the fact that disappearances decreased, in the short term, during the period of the commission's investigation, and the fact that this early knowledge of the atrocities places clear responsibility on international supporters of Amin who continued to back him well into the 1970s.[24] Considering the extent of government-sponsored violence that followed the commission's report, Carver certainly seems to be putting a silver lining around a very dark cloud. But others have echoed similar sentiments: the importance of establishing a historical record alone should not be underrated.

This commission worked under, and made recommendations to, the same government that it was investigating. Therefore, its first priority was probably to try to prevent future abuses by government forces. This could potentially have been done by influencing the government's willingness (through public denunciation of the abuses) or its ability (through recommended reforms) to continue the same abuses—but the commission did not attain either result. The commission was set up without any political will or commitment to real change in human rights policy or practice.

The 1974 Ugandan commission has been all but forgotten or discounted in history: in setting up the Ugandan Commission of Inquiry in 1986, there was no reference made to the similar commission that had operated there just twelve years earlier.[25]

Bolivia

The first Latin American truth commission was in Bolivia, where the government of President Hernán Siles Zuazo created a "National Commission of Inquiry into Disappearances" just days after the return to democratic rule in October 1982. The eight commissioners were selected to be representative of a cross-section of society: the under-secretary of justice, a member of the House and a member of the Senate, one representative each of the armed forces, the labor federation, and the peasants' federation, and

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24. *Id.*
25. There are few references to this commission in any literature, and even within Uganda seems to have been forgotten. A commissioner on the 1986 Ugandan Commission of Inquiry wrote that the new commission was "the second such body in the world, after Argentina." John Nagenda, *The Human Rights Commission, in* Uganda 1986–1991: An Illustrated Review 30 (Fountain Publishers Ltd., n.d.).

one representative from each of two human rights organizations. The commission was well-known within the country at the time and collected testimony about 155 disappearances that took place between 1967 and 1982. In some cases the commission was able to locate the remains of disappeared persons, but in the end, no cases were conclusively investigated, according to Loyola Guzman. Guzman was the executive secretary of the commission and had been appointed to the commission as representative of the human rights organization, The Association of Relatives of the Detained, Disappeared and Martyred for National Liberation (ASOFAMD).[26] The commission was able to hire six technical support staff, and did receive very limited financial support from the government. But, according to Guzman, the commission lacked sufficient resources and political support to complete its work. After two to three years, the commission disbanded without producing a final report. Guzman is now trying to re-open the commission's materials in order to publish a report.[27]

Unfortunately, as with several other truth commissions, the commission's mandate prevented a full investigation of the truth, as incidents of torture, illegal and prolonged detention, and other abuses were overlooked. In general, however, the combination of a truth commission, trials, and private efforts at truth-finding have resulted in what Americas Watch characterizes as a positive process in Bolivia. "A single outcome of the process is that the search for truth and justice has been recognized, not only as a legitimate endeavor of human rights organizations, but as an obligation of the state. Americas Watch wholeheartedly supports the right of the families of victims to obtain full disclosure of the fate of their loved ones."[28]

Argentina

The truth commission in Argentina was the first to receive widespread international attention; due to the efforts of the truth commission, together with trials of military officers, Argentina is often looked to as an example for other countries searching for truth and justice in difficult transitions. As the director of Human Rights Watch wrote in 1989, Argentina was "the most successful effort of the decade anywhere in Latin America, and perhaps worldwide, to hold accountable those who committed gross abuses of

26. Interview with Loyola Guzman, head of ASOFAMD (The Association of Relatives of the Detained, Disappeared and Martyred for National Liberation) (12 Aug. 1994).
27. *Id.*
28. Americas Watch, Bolivia: Almost Nine Years and Still No Verdict in the "Trial of Responsibilities" 1 (Dec., 1992).

human rights."[29] The Argentine transition to democratic rule has been covered at length elsewhere, and thus I will not go into these details here.[30]

As the military retreated from power in 1983, opening Argentina to a rapid transition to democratic rule, the Argentines looked toward Bolivia for the idea of creating a commission to investigate the violence of the seven year Argentine military regime, between 1976 and 1983.[31] The nongovernmental organizations pressured the new president, Raúl Alfonsín, to set up a commission to investigate the past. Alfonsín then unilaterally created the "National Commission on the Disappeared" (Comisión Nacional para la Desaparición de Personas, or CONADEP), appointing ten individuals "who enjoyed national and international prestige, chosen for their consistent stance in defence of human rights and their representation of different walks of life."[32] Both chambers of Congress were also asked to appoint representatives to the commission.[33] The commission was headed up by the well-respected author, Ernesto Sábato.

Nongovernmental human rights organizations turned over to the commission their extensive files on the disappeared. The commission staff inspected detention centers, clandestine cemeteries, and police facilities; exiles returned from abroad to testify, and statements were taken in embassies and consulates outside of Argentina. A powerful two-hour synopsis of the testimony taken by the commission was shown on national television.[34] The commission held regular press briefings, and worked closely with families of the disappeared to try to locate persons who might still be alive.

The report that was published, *Nunca Más*, documented the cases of almost 9,000 persons who had disappeared; published in book form, *Nunca Más* was widely available throughout the country, was enthusiastically received, and soon became a national best-seller.

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29. Aryeh Neier, *An Overview of the Issue and Human Rights Watch Policy*, 4 Human Rights Watch, Dec. 1989, at 2.
30. *See, e.g.*, Carlos S. Nino (advisor to former President Alfonsín), *The Duty to Punish Past Abuses of Human Rights Put Into Context: The Case of Argentina*, 100 Yale L.J. 2619 (1991); Jaime Malamud-Goti (Senior Presidential Advisor to Alfonsín, 1983–1987), *Trying Violators of Human Rights: The Dilemma of Transitional Democratic Governments, in* The Justice and Society Program of The Aspen Institute, *supra* note 2; Americas Watch, Truth and Partial Justice in Argentina: An Update (1991); and Alejandro M. Garro, *Nine Years of Transition to Democracy in Argentina: Partial Failure or Qualified Success?*, 31 Colum. J. Transnat'l L. 1 (1993).
31. Interview with Mercedes Doretti, Argentine Team of Forensic Anthropologists (26 Mar. 1993). She notes that the nongovernmental organizations pushing for a truth commission in Argentina were conscious of following the example of neighboring Bolivia.
32. Nunca Más: The Report of the Argentine National Commission on the Disappeared 428 (1986).
33. Only the Chamber of Deputies complied, appointing three members. Americas Watch, *supra* note 30, at 14.
34. *Id.* at 18.

Uruguay

Following eleven years of military rule, the Uruguayan parliament established the "Investigative Commission on the Situation of 'Disappeared' People and its Causes" in April 1985. After seven months, the commission reported on 164 disappearances during the years of military rule, and provided evidence regarding the involvement of the Uruguayan security forces, which was forwarded to the Supreme Court. The limited mandate of the commission, however, prevented investigation into illegal imprisonment or torture, which were much more common in Uruguay than disappearances. As José Zalaquett notes, "A systematic practice of 'disappearances' as in Argentina, or, on a lesser scale, as in Chile, was not part of the Uruguayan military's repressive methodology."[35] Zalaquett continues:

> Although it is public knowledge in Uruguay and abroad that torture was systematically practiced during the military rule, there is no officially sanctioned record documenting this practice. The military does not publicly admit to it. In private it attempts to justify torture as a last resort and a lesser evil.[36]

Robert Goldman of American University watched the transition closely, and notes that the Uruguayan President opposed any attempt to investigate past abuses.[37] Wilder Tayler, the Executive Secretary of the Institute for Legal and Social Studies of Uruguay, remembers how dissatisfied he was with the commission report. The commission was a political exercise, he says, but "not a serious undertaking for human rights."[38] The commission report, although public, was not widely distributed, and is not well known inside or outside of Uruguay. Many writers reviewing the Uruguayan case have stated that no official investigation of abuses took place, which indicates the minimal impact the commission had.

One of the lessons from Uruguay is clear: any truth telling process must make a fair attempt at being complete, covering fairly the various kinds of abuses that took place. A truth commission's mandate must not exclude abuses that represent a large portion of the victims' experiences.

The nongovernmental project that published their own report on the

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35. José Zalaquett, *Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints*, *in* THE JUSTICE AND SOCIETY PROGRAM OF THE ASPEN INSTITUTE, *supra* note 2, at 59.
36. *Id.* at 61.
37. Interview with Robert Goldman, American University (14 Apr. 1994).
38. Interview with Wilder Tayler, former Executive Secretary of the Institute for Legal and Social Studies of Uruguay (2 Aug. 1994).

abuses of the military regime in Uruguay helped to compensate for some of the parliamentary commission's limitations.[39]

Zimbabwe

As in Uruguay, the work of the Zimbabwe commission is also not well-known, but for a different reason: its report has never been available to the public, and no one outside the government has seen it. Now, almost nine years later, some are demanding that the report be released.

The commission of inquiry was established in Zimbabwe in 1985, two years after the beginning of a period of brutal governmental repression of "dissidents" in the Matabeleland region of the country. The commission worked under the authority of the president and was chaired by a Zimbabwean lawyer; after several months of investigation, it submitted its report directly to the president. Although at the time the commission did not attract much attention inside Zimbabwe, recently there has been increasing pressure from both national and international nongovernmental organizations to publish the 1985 report. While human rights organizations stress the need for accountability for the crimes committed, the victims' families are interested in formal recognition of the killings that took place, in part so that they can receive compensation. This has become a major point of controversy, as the government refuses to recognize the death of some 1,500 civilians killed in the conflict,[40] precluding the widows and other survivors from claiming compensation. The 1980 War Victims Compensation Act (aimed at those who died in the struggle for independence) does not cover their case, and there has been no effort to pass legislation which would include these victims.

The government resists publishing the report. Citing the tensions between the two main ethnic groups in Zimbabwe, the government claims that publication of the report could spark violence over past wrongs. Nonetheless, recent events in Zimbabwe have increased the pressure on the government to publish the report. The 1992 promotion to air force commander of the founder and commander of the military brigade responsible for many of the atrocities of the mid-1980s provoked strong criticism from human rights organizations in Zimbabwe. In response to heated criticism of this appointment and a renewed call for full disclosure of the record, the Defense Minister publicly acknowledged and apologized for the

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39. Servicio Paz y Justicia, Uruguay, Uruguay: Nunca Más: Informe Sobre La Violacion a Los Derechos Humanos (1972–1985) (Elizabeth Hampsten trans., 2d ed., 1989).

40. The number of civilians killed (1,500) is the "conservative estimate" of Africa Watch. Africa Watch, Zimbabwe: A Break With the Past? Human Rights and Political Unity 16 (1989).

killings and torture that took place in the 1980s, but pleaded for the country to let old hatreds lie undisturbed:

> I sincerely appeal to citizens of this country not to open old wounds since it does not do this country any good at all if we are to begin to witch hunt each other over events that took place in Matabeleland, Midlands, Masvingo and Mashonaland West provinces during the dissident era.[41]

In addition, recent discoveries of mass graves while digging for new water sources have intensified the call for truth and accountability. In October 1992, Article 19 called for full disclosure of the 1985 report:

> The public investigation of the Matabeleland atrocities will not only serve the need of families to know the fate of their loved ones but may also provide the basis for lasting reconciliation.[42]

Africa Watch also calls for full disclosure, criticizing the government for its handling of the commission of inquiry report.[43]

Uganda 1986

Uganda is the only country that has instituted two government-sponsored truth commissions in its recent past. Although established only twelve years apart, the commissions developed out of very different political realities, were set up under different governments, and focused on different (although overlapping) periods. The 1974 commission outlined above failed to end the violent practices of the Idi Amin government, and abuses continued through the Milton Obote government that followed.

When the rebel forces led by Yoweri Museveni overthrew Obote in January 1986, the country looked back on over twenty years of terror and brutality at the hands of government forces. Many perceived human rights concerns as playing a central role in the overthrow of the government. Amnesty International noted:

> Ending the abuses of the Idi Amin and Milton Obote periods was widely seen, both within Uganda and abroad, as the principal aim of the NRA's [Museveni's National Resistance Army] struggle. And when it came to power the new government quickly moved to ratify international human rights treaties and

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41. Statement of Defence Minister Movan Mahachi, *Government Regrets Civilian Massacre By Own Army*, Agence France Presse, 6 Sept. 1992.
42. *Rights Group Urges Zimbabwe to Come Clean on Abuses*, Reuter Library Report, 13 Oct. 1992.
43. Africa Watch, *supra* note 40, at 87.

introduce domestic safeguards against human rights violations, thus indicating that it was by these standards that it expected to be judged.[44]

Within months, the Museveni government announced the formation of a "Commission of Inquiry into Violations of Human Rights," set up through the appointing authority of the Minister of Justice and Attorney General and chaired by a High Court judge. This Commission of Inquiry is still in operation today, now in its ninth year of investigations. The commission has often been at the center of public attention in Uganda, initially attracting wide popular support and emotional reactions from the public, and more recently receiving criticism as many have begun to lose faith in the commission's work.

The commission was charged with investigating human rights violations that occurred from Uganda's independence in 1962 up to January 1986, when Museveni came to power. The commission's terms of reference are broad, but focus on arbitrary arrest and detention, torture, and killings by government security forces, and call on the commission "to inquire into . . . possible ways of preventing the recurrence" of such abuses.[45] Most of the hearings of the commission have been held publicly, some broadcast live on state-owned radio and television, attracting a wide following.

The commission has run into major funding constraints which have limited or slowed its work. It completely stopped work for four months in its second year of operation due to a lack of funds; in February 1987 the Ford Foundation provided a $93,300 grant to the Ugandan government, earmarked for the commission, so that the commission could continue its work.[46] But by early 1991, the commission again reported financial troubles that significantly limited its work. In February 1991 the government-owned newspaper *The New Vision* reported, "The Human Rights Commission this week failed to sit due to lack of funds. . . . [The secretary of the Commission] hoped some funds will be made available to enable the Commission to sit next week."[47] It also reported that "the Commission's vehicles are not in good running condition" to make the investigatory trips that it had planned.[48]

After almost eight years of investigation, some in Uganda have lost faith that a report will ever be published, and are cynical about the value of the

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44. Amnesty International, Uganda: The Human Rights Record, 1986–1989, at 1.
45. The Commissions of Inquiry Act, Legal Notice No. 5 of 1986, 15 May 1986, at 17 (Uganda).
46. Listed in Ford Foundation, 1987 Annual Report 47, as a grant under its Human Rights and Social Justice Program.
47. Eva Lubwama, *Human Rights Fails*, The New Vision, 2 Feb. 1991.
48. *Id.*

commission's work. Some claim that the commission serves a political function, to legitimate the current government and promote an image of human rights, but that it has no intention of publishing a report.

The commission has set many target dates for finishing its report, but as of spring 1994, the commission's investigations continued.

The Philippines

A truth commission was set up in the Philippines by the Corazon Aquino government shortly after it took power in 1986. The "Presidential Committee on Human Rights" was given the mandate to investigate both past and present abuses, covering acts that had taken place since 1972, the beginning of martial law in the Philippines. President Aquino appointed a highly respected Filipino lawyer to serve as the chairman, Senator José W. Diokno. Senator Diokno crafted the specific mandate of the committee, which limited its investigation to abuses committed by "government officers or their agents, or by persons acting in their stead or under their orders." This limitation was established in the belief that violence perpetrated by the guerrilla forces constituted common crimes and could be dealt with directly in the courts.[49]

But the seven-person committee was created without a staff or a budget, and was quickly overwhelmed by the large volume of complaints, mostly directed at events of the past. The political context was particularly limiting: some military officers had suddenly become popular heroes for their part in the coup against Marcos, and the armed forces continued their war against armed rebels. Military intransigence and other political constraints slowed down the committee's work, and then the committee chair died from cancer less than a year into its work. In January 1987, virtually the entire committee resigned after a military attack on a peaceful demonstration in Manila killed several civilians.

The committee's work was thus cut short, and nothing definitive was ever produced, despite a year of investigation and the filing of a number of high level cases in court. No governmental efforts to follow up the committee's work, or prosecute past offenders, resulted. As Asia Watch notes:

> For all of these reasons—the unreconstructed military, the stepped up war, the high level of current human rights violations and the series of coup attempts—the will to prosecute past offenders was lost. The Aquino government had its

49. Much of this information on the Filipino experience is from an excellent summary of the commission by Sidney Jones, *Will to Prosecute Past Offenders Lost in the Philippines*, *in* 4 HUMAN RIGHTS WATCH, *supra* note 29, at 4.

> only chance to begin effective prosecutions in the six months after Mrs. Aquino took office, capitalizing on her unprecedented popularity and absolute powers. Now [1989] it is probably too late. . . .
>
> To date, not a single soldier has been punished, and one can only conclude that not past offenders alone but the military as a whole is beyond the reach of the law.[50]

Chile

After taking office in March 1990, President Patricio Aylwin established a "National Commission for Truth and Reconciliation" (Comisión Nacional para la Verdad y Reconciliación) to investigate abuses resulting in death or disappearance over the previous seventeen years of military rule. The mandate of the commission excluded abuses that did not result in death or disappearance, such as torture, a decision which was criticized by international human rights organizations.

Aylwin appointed a well balanced commission headed up by former Senator Raúl Rettig and including persons from the various political sectors of Chile. Nongovernmental organizations had pushed for the creation of the commission and played an active part in providing information as the commissioners began their work. Because of a strong legal tradition in Chile, the vast majority of cases of disappearances were taken to court during the repressive years, leaving detailed records. These records were given to the commission when it opened its doors, allowing it to move quickly into investigations.

The commission worked for nine months to investigate the 3,400 cases brought to it. Of these, 2,920 were determined to fit within its mandate.[51] Unlike many truth commissions, this commission thoroughly investigated each case; with the luxury of over sixty staff members, the commission was able to cover each case by assigning 200 cases to each team of two legal experts (a lawyer and law school graduate). As the commission's report explains:

> As it began to operate, the Commission believed that its primary duty was to determine what really had happened in every case in which human rights had been seriously violated. Only by clearly determining what had happened in

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50. *Id.* at 5.
51. Of these 2,920, 2,025 were determined to be human rights violations by the state security forces, ninety were attributable to the armed opposition. One hundred sixty-four were victims of political violence, such as gun battles, and on 641 cases the commission did not come to a conclusion. 2 Report of the Chilean National Commission on Truth and Reconciliation 900 (Phillip E. Berryman trans., 1993).

> each individual instance would the Commission be able to draw up as complete a picture as possible of the overall phenomenon of the violations of these basic rights.[52]

The commission's final report received wide acclaim by human rights organizations and the public alike ("a landmark worthy of note and congratulation," wrote Americas Watch).[53] In presenting the 1,800-page report to the public in February 1990, President Aylwin formally apologized to the victims and their families on behalf of the state, and asked the army to acknowledge its role in the violence.

Unfortunately, in the three weeks following the release of the Rettig Commission report, there were three assassinations in Chile that caused alarm in political circles. The third, the assassination of a prominent opposition senator, "effectively ended public discussion of the Rettig report."[54] In July 1992, Americas Watch wrote that "the Rettig Report, with its deeply disturbing revelations and conclusions, has not re-surfaced since," and that "tens of thousands of copies of the report" were being held back from circulation, stored in a warehouse, to "avoid the political divisions reflected in the issue of past abuses."[55]

Nonetheless, many of the recommendations in the Rettig report have been implemented. Most importantly, the government followed a recommendation of the commission to establish a "National Corporation for Reparation and Reconciliation" to follow up the work of the commission and oversee reparations to victims. The law creating the corporation introduces it as "a decentralized public service subject to supervision of the President. . . . The object thereof shall be the coordination, execution and promotion of the actions necessary for complying with the recommendations contained in the Report of the Truth and Reconciliation National Commission."[56] In addition to defining the mandate of the corporation, the law also defines the financial reparations and other benefits to be provided to victims and their families. The two-year mandate[57] of the corporation includes searching for remains of the disappeared, resolving cases not closed by the Rettig Commission, organizing the files of the commission, and implementing specified reparations (including medical and education

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52. *Id.* at 1:14.
53. Americas Watch, Chile: The Struggle for Truth and Justice for Past Human Rights Violations 2 (1992).
54. Americas Watch, Human Rights and the "Politics of Agreements": Chile During President Aylwin's First Year 30 (1991).
55. Americas Watch, *supra* note 53, at 2.
56. Law Nr. 19,123, Ministry of the Interior, Chile. Translation by United States Institute of Peace, 3 Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Vol. III: Laws, Rulings, and Reports (Neil J. Critz, ed., Wash. D.C.: U.S. Institute of Peace, 1994).
57. A one-year extension of the corporation is allowed.

benefits and a pension for the survivors of the disappeared or executed). The Chilean Corporation for Reparation and Reconciliation is an excellent model for continuing the work of a truth commission and providing a mechanism for implementation of a commission's recommendations.

Chad

On 29 December 1990, one month after coming to power, the new president of Chad created by presidential decree the "Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, His Accomplices and/or Accessories." The decree called on the commission, among other things:

> — to investigate the illegal imprisonments, detentions, assassinations, disappearances, tortures and practices of acts of barbarity, the mistreatment, the other attacks on the physical or mental integrity of persons, and all violations of human rights and illicit trafficking in narcotics;
>
> — to preserve in their present condition the torture chambers and the equipment utilized.[58]

The commission was authorized to collect documentation, take testimony, and confiscate material as necessary for "elucidating the truth." The decree appointed twelve individuals to serve as members of the commission, including two magistrates, four officers of the judicial police, two civil administrative officers, and other clerks and secretaries, with the First Deputy Prosecutor serving as president. In addition to investigating human rights violations, the commission was also directed to look into the embezzlement of state funds by former President Habré and his associates.

Due to a shortage of office space, the commission was forced to set up its headquarters in the former secret detention center of the security forces, where some of the worst of the torture and killings had taken place, thus deterring many former victims from coming to give testimony.

Like the Ugandan commission, the Chadian commission was handicapped by a lack of resources. The commission report describes some of its challenges—in stark contrast to some of the better-funded commissions elsewhere:

> [L]ack of transport . . . paralyzed the Commission for a considerable time. At the start, the Commission was furnished two small urban automobiles, a 504 and a

58. Decree No. 014/P.CE/CJ/90, Republic of Chad, 29 Dec. 1990. "Relative to the creation of a Commission of Inquiry into the crimes and misappropriations committed by the ex-president, his accomplices and/or accessories."

> small Suzuki, whereas all-terrain vehicles were actually required for travel to the provinces and the outskirts of Ndjamena.
>
> On 25 August 1991 a Toyota all-terrain vehicle was put at the disposal of the Commission. But during the events of 13 October 1991, unfortunately, the Toyota and the little Suzuki were taken off by combatants. A month later the Toyota was recovered, but the Suzuki was not found until 3 January 1992. . . . This is why the Commission was unable to send investigators to the interior of the country during the entire initial period.[59]

The commissioners received threats from former security personnel who had been rehired into the new intelligence service. Thus, as the report describes:

> Within the Commission, some members judged the task too hazardous and disappeared altogether. Others reappeared only at the end of the month to pick up their pay and vanished again.[60]

At the end of the six-month mandate, they received a four-month extension, and had to replace three-fourths of the original commissioners.

The publication of the report in May 1992 surprised many in its detail, and in its proof of the involvement of foreign governments in the funding and training of the worst violators. The Director of the Human Rights Program of the Carter Center was at the ceremony where the report was released, and describes the response:

> The findings were shocking: at least 40,000 were killed by the security forces during Habré's regime. Detailed evidence was presented about Habré's personal involvement in the torture and killing of prisoners. The diplomatic corps present at the ceremony was shocked to hear that the investigation uncovered the fact that members of the security service, the DDS, who carried out all the killings and other abuses, were trained until the collapse of Habré's regime in December 1990 by U.S. personnel both in the USA and N'Djaména. The DDS received a monthly payment of 5 million FCFA from the U.S. government. This amount had doubled since 1989. Iraq also was named as a contributor to the DDS budget, along with France, Zaire and Egypt. A U.S. advisor worked closely with the DDS director at the DDS headquarters where political prisoners were tortured and killed daily.[61]

US involvement in Chad had been discovered by Amnesty International several years earlier, according to Benomar, but the "large scale of the

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59. *Report of the Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, his Accomplices and/or Accessories*, May 1992, *English translation in* 3 Transitional Justice, *supra* note 56 (original in French).
60. *Id.*
61. Benomar, Coming to Terms With the Past, *supra* note 2, at 13.

genocide" that was going on made US involvement "hard to believe at the time, even for some in the international human rights community."[62]

The Chadian commission was also the first truth commission to name individuals responsible for human rights crimes, and the only commission to date to publish the photographs of those named. Some high officials in the new government were included in the list.

The same government of Chad that created this commission has been accused of human rights violations itself, especially since new rebellions against the government started again in the west of the country. Despite the strong statements and extensive information contained in the commission report, the current abuses have reduced its credibility—or the credibility of the government's purposes in setting up such a commission. Some human rights observers have the impression that the commission was set up to improve the new president's image. Ironically, considering the information divulged about US involvement, a US Department of State official familiar with the commission remarked, when asked about the commission, "Wasn't that just Deby proving that Habré was an SOB?"[63]

Southern Africa: The African National Congress I

In a fascinating case among the array of truth commission models, the African National Congress (ANC) is the only example of a nongovernmental entity—in this case an opposition movement and armed resistance group—that has established a commission to investigate and publicly report on its own past human rights abuses.

As is often true of government truth commissions, the ANC did not set up a truth commission entirely on its own initiative. Reports of abuses in ANC detention camps had spread for years.[64] Then in 1991 a group of thirty-two former detainees of ANC camps, all formerly active ANC members detained under accusation of being agents of the state, formed a committee to confront the ANC on the detention camp abuses. The Returned Exiles Committee, as they called themselves, brought international attention to the issue, forcing the ANC to investigate. In March 1992, Nelson Mandela appointed the "Commission of Enquiry into Complaints by Former African National Congress Prisoners and Detainees."[65] The commission was to

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62. *Id.*
63. Interview with US State Department official (7 May 1993).
64. *See, e.g.*, Amnesty International, South Africa: Torture, Ill Treatment, and Executions in African National Congress Camps (AI Index: AFR 53/27/92, 1992).
65. Also referred to as the Skweyiya Commission, named for its chair, Adv. T.L. Skweyiya S.C.

focus on events at ANC detention camps located throughout Southern Africa, including Angola, Tanzania, and Zambia.

The terms of reference of the Commission of Enquiry were set out by the ANC at the outset, calling for a "full and thorough investigation" of the complaints by former detainees, and recommendations on action that might be taken by the ANC based on the commission's findings.[66] Two of the three commissioners were ANC members, which called the commission's neutrality into question, although the third commissioner and the author of the report was not affiliated with the ANC.

Seven months later, the commission submitted to Mandela a strongly-worded seventy-four page report documenting what it calls "staggering brutality" in ANC camps over the past years.[67] The report detailed torture and other abuses regularly inflicted on detainees. Although stopping short of naming responsible individuals, it recommended that "urgent and immediate attention be given to identifying and dealing with those responsible for the maltreatment of detainees," and that the ANC "clean its own ranks."[68] The commission also recommended that the report be made public and that an independent body be appointed to further investigate disappearances and other acts outside this commission's terms of reference.

As recommended by the commission, the report was immediately issued to the public and to the press, although the ANC later began questioning the report's accuracy and refused to distribute it further.[69] The report attracted significant international attention and forced the ANC to respond publicly to the accusations: Nelson Mandela accepted collective responsibility for the leadership of the ANC, for the "serious abuses and irregularities" that had occurred, but insisted that individuals should not be named or held personally accountable.[70]

Germany

In March 1992, the German parliament founded a commission to investigate human rights violations under communist rule in East Germany,

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66. African National Congress, Report of the Commission of Enquiry into Complaints by Former African National Congress Prisoners and Detainees 6 (1992).
67. *Id.*
68. *Id.* at 72.
69. Upon request, the ANC New York office would not provide a copy, saying that the report was not published because it was "not considered to be complete" due to lack of a full hearing of those accused (although names are not listed).
70. Statement by Nelson Mandela, President of the African National Congress, on the Report of the Commission of Enquiry into Complaints by Former African National Congress Prisoners and Detainees (19 Oct. 1992) (issued by the Department of Information and Publicity, Marshalltown).

between 1949 and 1989, the "Study Commission for the Assessment of History and Consequences of the SED Dictatorship in Germany."[71] Sixteen parliamentary members and eleven private citizens serve on the commission, with a representative from each political party in parliament—including a representative from the Democratic Socialist Party (the PDS), which is the successor to the SED party, the activities of which are the focus of the commission. German human rights activist Rainer Eppelman is the commission's chair. Jamal Benomar describes the commission's mandate:

> [T]he commission will have access to all government records and Stasi files. It will study the methods that the communist regime used to remain in power, and will evaluate whether the policies of past West German governments strengthened communist rule and blocked the growth of the prodemocracy movement. . . . The establishment of this commission has been perceived by many Germans as an alternative to punishment, and it remains unclear whether the findings of the investigation will lead to the prosecution of former communist leaders and Stasi agents.[72]

The commission was established in response to events surrounding the opening of the files of the Stasi secret police. Any citizen can now access his or her file, complete with information on who informed on whom; this has caused the dismissal of thousands of public employees and ruined the aspirations of democratic leaders who have been found to be informers, as well as wrenched apart families and friends.[73] In the face of this difficult and painful process, the parliamentary commission is seen as a way to investigate and provide an accurate record of the events and practices that took place in East Germany under communist rule. The commission is not focused on the criminal activity of individuals, clarifies Helsinki Watch's Holly Cartner, but is an effort to tell the stories of the victims and the impact that the government policies had on people's lives.[74]

El Salvador

The United Nations "Commission on the Truth for El Salvador" was created through the peace accords between the Salvadoran government and the Farabundo Martí National Liberation Front (FMLN) in April, 1991. The

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71. Unofficial translation. Official name of commission is Enquet Kommission Aufarbeitung von Geschichte und Folgen der SED-Diktator in Deutschland. The commission's work did not get underway until mid-1992.
72. Benomar, *Confronting the Past, supra* note 2, at 6–7.
73. *See id.*, at 6, and Stephen Kinzer, *East Germans Face Their Accusers,"* N.Y. Times Magazine, 12 Apr. 1992, at 24.
74. Interview with Holly Cartner, Helsinki Watch (27 Jan. 1994).

commission's mandate, written into the accords, empowered it to investigate "serious acts of violence" that occurred since 1980 whose "impact on society urgently demands that the public should know the truth."[75] The funding for the Salvadoran commission came from contributions by members of the United Nations, the United States and European states being the largest contributors.

The mandate granted the commission six months to write a report, although unofficial preparation and a two month extension gave the commission close to nine months in total. The commissioners, appointed by the Secretary-General of the United Nations with agreement by the two parties to the accords, were highly respected international figures: Belisario Betancur, ex-President of Colombia, Thomas Buergenthal, Professor of Law at George Washington University and ex-President of the Inter-American Court, and Reinaldo Figueredo Planchart, ex-Minister of Foreign Relations for Venezuela. The staff consisted of fifteen professional staff and several administrators; due to neutrality concerns, no Salvadorans were included on the staff.

Because of the United Nation's intermediary negotiating position between the government and the FMLN, and the UN mission then being set up in El Salvador to oversee the demobilization of forces and the elections, and to monitor any continuing human rights violations, it was natural for the United Nations to oversee the truth commission as well. The commission was created at the end of a bitter civil war that left much of the country polarized, such that it would have been extremely difficult to create a national truth commission, staffed and directed by Salvadorans. This was due to the fragile political foundation on which the transition towards peace depended, with the rebels just becoming a legal political party and the government and opposition barely on working terms; a geographically divided country, parts of which had been virtually under FMLN control for many years; and real security concerns for a project certain to anger those parties that might be named responsible. The need for the truth commission to be internationally administered was rarely questioned in El Salvador during the planning and set-up stage. Only after the commission's report was due to be published did certain sectors challenge the validity of international actors involved in the country's internal affairs.

The truth commission report is strongly worded and names over forty individuals found to be responsible for human rights crimes. On the whole, the report has been well-received by human rights activists and organizations in El Salvador and in the United States, although the commission has received criticism for failing to investigate fully certain important aspects of

75. From Madness To Hope; The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador, UN Security Council, U.N. Doc. 2/25500 at 18 (1993).

the violence, such as death squads. The Salvadoran military responded to the report with a long, written statement, presented on national television by the Defense Minister, calling the commission's actions illegal and out of line with its mandate.

Within five days of the publication of the Truth Commission report a general amnesty was passed by the legislature. There is now little chance that further action will be taken against either those named in the report or others involved in abuses during the years of the civil war.

Rwanda

Rwanda gives us an entirely new truth commission model. The Rwandan commission was created, funded, and fully sponsored by international nongovernmental organizations, responding to a request by a coalition of Rwandan human rights organizations. Largely due to the international nature of the commission, its report gained a high level of credibility and attracted wide international support and attention.[76]

Before Rwanda erupted in violence in the spring of 1994, following the death of its president in a plane crash, the country was in the midst of a slow and difficult political transition. In 1992, the president had relaxed his tight hold on power to formally share power with the opposition. However, violence continued in the country, sometimes at quite intense levels, largely resulting from government-controlled forces or paramilitary groups attacking the minority Tutsi populations. The truth commission in Rwanda took place in the midst of this ongoing violence, but grew out of agreements in the initial peace negotiations.

Since 1959, Rwanda has been racked by violence between its three major groups: the Hutu, the Tutsi and the Twa—which are groupings based on a social hierarchy that developed over several centuries, conflict between them exacerbated by colonial rule. The Hutu controlled the political power of Rwanda since the early 1960s; President Juvénal Habyarimana held power from 1973 until his death in 1994. Violence and discrimination have characterized the relationship between the Hutu and the Tutsi, the two largest groups—including rampant atrocities on the part of government officials aimed at driving the Tutsi out of the country.

On 1 October 1990, an armed rebel group, the Rwandan Patriotic Front, invaded Rwanda from Uganda, where most members had been

76. Interview with Alison Des Forges, Co-Chair of the International Commission of Investigation on Human Rights Violations in Rwanda Since 1 Oct. 1990, and member of the advisory board of Africa Watch (24 Mar. 1993). The description here of the commission's work relies heavily on information from Alison Des Forges.

refugees since 1959 or 1960. Egregious human rights violations (the majority, but not all, by government forces) and many unsuccessful attempts at ending the war eventually led to negotiations between the two sides and a ceasefire in July, 1992.

The roots of the Rwandan truth commission lie in an agreement between the government and the armed opposition to establish a commission of inquiry into past atrocities—agreed to in the Arusha Accords negotiated in Arusha, Tanzania, in late 1992.[77] It is this official agreement to set up a truth commission, and the formal welcome that the president gave the commission, that places this within the definition of a truth commission used here, despite its nongovernmental sponsorship. The NGOs in Rwanda had been talking for some time about the need for such a commission. After the agreement was signed, a French organization that was asked by the Rwandan government to set up the commission declined the offer. The five nongovernmental human rights organizations in Rwanda therefore formed a coalition and approached four nongovernmental organizations, based in the United States, Canada, France, and Burkina Faso, to ask that they form an international commission.[78]

Accepting the invitation, these four organizations created the "International Commission of Investigation on Human Rights Violations in Rwanda Since October 1, 1990" (the date specified to cover only the civil war period) and chose ten persons to serve as commissioners: these included several lawyers, a judge, staff members of human rights organizations, a forensic specialist, and others, representing eight different nationalities in total. A few had extensive experience in Rwanda; others had no experience in Africa whatsoever; only two had met previously. Four speleologists (specialists in caves) worked with them for the first week to investigate accusations of mass burials in the many caves of Rwanda. The coalition of nongovernmental organizations in Rwanda raised funds from European organizations to support the project.[79] These Rwandan NGOs also coordinated the logistics of the commission within the country, but otherwise played no part in the commission's operation.

The ten members of the commission traveled to Rwanda for two weeks in January 1993, completing all of their investigations in this time. Their

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77. Alex Shoumatoff, *Rwanda's Aristocratic Guerrillas,*" N.Y. Times Magazine, 13 Dec. 1992, at 42, 48. Later, after the truth commission, in Aug. 1993, a final agreement in Arusha, Tanzania, provided for a transitional government, integration of the armed forces, and eventual elections.

78. These organizations were Africa Watch (New York & London), the Federation Internationale des Droits de L'Homme (Paris), the Union Interafricaine des Droits de L'Homme et Des Peuples (Ouagadougou, Burkina Faso), and the Centre International des Droits des la Personne et du Developpement Democratique (Montreal, Canada).

79. The expenses of the commission totaled approximately $65,000. Interview with Alison Des Forges (24 Apr. 1993).

work included several exhumations—in one extraordinary case, they uncovered a mass grave in the backyard of a government official—as well as interviews, reviewing government documents, and taking testimony. Although the government had not invited them, the president formally welcomed them, and the government did not block their investigations, even though there was evidence of intimidation of some witnesses by government officials. Radio announcements and word of mouth spread the news quickly of their presence in the country, and they received numerous tips and testimony from the public.

Despite the president's public welcoming posture, the government and its armed forces were not happy with the commission's presence. Two days before the commission arrived in the country, there were five attacks in different parts of the country on individuals who would have been expected to speak to the commission. Worse yet, the day after the commission left Rwanda, government forces began killing, and murdered an estimated 300 to 500 people in the following days. Alison Des Forges, co-chair of the commission, says that, while some of those targeted had provided information to, or otherwise helped, the commission, it is not clear that revenge or punishment was the primary impetus for the attacks. "The government has had a policy of terrorizing the Tutsi; this was part of a larger plan."[80] Having just left the country, the commission publicly spoke out against the attacks.

The response to the report was impressive, especially in Europe and within Rwanda. Two thousand copies of the report were printed when the report was released in Europe in March: these copies were gone within a week.[81] In Rwanda, the report was widely dispersed, and is well known throughout the country.

The commission's report had a powerful impact on the policies of France and Belgium—both countries had been enmeshed in the Rwandan conflict, strongly in support of the government. The Belgian government had already begun to reevaluate its position in the war when the commission's report was published. Two hours after the commission report was released, Belgium recalled its Ambassador for consultation. Two weeks later, a Belgian official called in the co-chair of the commission for consultation on its policy towards Rwanda: the impact of the commission's report was clear—he began the meeting by saying, "We accept your report. What should we do?"[82]

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80. Author's interview with Alison Des Forges (24 Mar. 1993).
81. The report has now been published in both English and French. Africa Watch has distributed the report in the United States, titled Report of the International Commission of Investigation on Human Rights Violations in Rwanda Since 1 Oct. 1990 (7–21 Jan. 1993): Final Report (1993).
82. Interview with Alison Des Forges (24 Apr. 1993).

France had been most reluctant to condemn abuses in the past, and its military had been increasingly involved in the Rwandan conflict. Two days after the publication of the report, a ceasefire was reached which called for the removal of French troops. In a surprise to many, France immediately began withdrawing its troops.

After the publication of the report, the government launched a publicity attack to make known the human rights abuses of the rebels. The rebels responded by inviting the commission back in order to examine the charges made against them. (The commission's original report does cover rebel abuses, but concentrates on the government forces.) The commission was considering a second visit to the country when the country erupted in violence in April 1994.

Southern Africa: African National Congress II

Shortly after the first ANC commission finished its work in 1992, Nelson Mandela named a new commission of inquiry to again look into the alleged abuses in ANC detention camps. The first commission had been criticized for its bias (with two of its three commissioners being ANC members), and for not providing sufficient opportunity for accused individuals to defend themselves. The first commission had recommended, in fact, that "consideration be further given to the creation of an independent structure which is perceived to be impartial, and which is capable of documenting cases of abuse and giving effect to the type of recommendations made in this report."[83] The new commission, the "Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuses Against ANC Prisoners and Detainees by ANC Members,"[84] was headed up by three commissioners from the United States, Zimbabwe, and South Africa who were widely accepted as being independent.

The proceedings of the commission were markedly different from the first commission. The commission structured its proceedings much like formal court hearings; it hired counsel to represent the "complainants" and a legal defense team to represent the "defendants," those accused of abuses. The commission held public hearings over a five week period in the summer of 1993, where some fifty witnesses were heard, including eleven alleged perpetrators of human rights abuses. The accused were given the opportunity to confront and question their accusers—their alleged victims

83. African National Congress, *supra* note 66, at 70–71.
84. Also referred to as the Motsuenyane Commission, after the president of the commission, retired business leader Dr. Samuel M. Motsuenyane.

of torture or abuse—and were allowed representation by attorneys of their choice. Although a number of international human rights observers attended the hearings, the commissioners refused to meet with them for what they said were neutrality concerns.

On the whole, says Richard Carver, who observed the hearings for Amnesty International, the commission's approach was "weird and ill-thought-out," and confirmed his conviction that "[y]ou should never mix up these two functions" of disciplinary procedures and a truth inquiry, as they are two very distinct processes.[85]

Despite its awkward procedures, the commission's report has been positively received by most observers, including Carver. The report was submitted in August 1993 and reached conclusions similar to the first commission, citing severe abuses at ANC detention camps over a number of years. In one detention camp, for example, the commission concluded that:

> Quadro was intended to be a rehabilitation centre. Instead, it became a dumping-ground for all who fell foul of the Security Department, whether they were loyal supporters accused of being enemy agents, suspected spies or convicts. All were subjected to torture, ill-treatment and humiliation far too frequently to achieve its purpose as a rehabilitation center.[86]

The format of the report is quite different from that of the first ANC truth commission. In addition to describing events, the type and prevalence of abuse, and the structural causes and patterns of abuse, the report concentrates on a description of each case brought before it, concluding with a list of specific individuals who violated the rights of each "complainant," as well as a list of such rights that were violated.

The ANC responded to the report with a long statement, congratulating the commission for its work, accepting its general conclusions (while denying that "there was any systematic policy of abuse"), and calling for a truth commission to be set up to cover abuses on both sides of the conflict in South Africa since 1948:[87]

> We regard the Skweyiya and Motsuenyane Commission Reports as a first step in a process of national disclosure of all violations of human rights from all sides. We accordingly call for an establishment of a Commission of Truth, similar to bodies established in a number of countries in recent years to deal with the past. The purpose of such a Commission will be to investigate all the violations of

85. Interview with Richard Carver (7 Jan. 1994).

86. Reports of the Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuse Against ANC Prisoners and Detainees by ANC Members ii (20 Aug. 1993).

87. In June 1994, shortly after the inauguration of the new government, South African Minister of Justice Dullah Omar announced plans for a "Commission of Truth and Reconciliation," the terms of which will be established by August, allowing a period of

> human rights . . . from all quarters. This will not be a Nuremberg Tribunal. Its role will be to identify all abuses of human rights and their perpetrators, to propose a future code of conduct for all public servants, to ensure appropriate compensation to the victims and to work out the best basis for reconciliation. In addition, it will provide the moral basis for justice and for preventing any repetition of abuses in the future.[88]

Ethiopia

A Special Prosecutor's Office was created by the Transitional Government of Ethiopia in mid-1992, a year after the overthrow of the government of President Mengistu Haile-Mariam; it officially began work in early 1993. The Special Prosecutor's Office (SPO) was set up to "create a historical record of the abuses of the Mengistu regime and to bring those criminally responsible for human rights violations and/or corruption to justice," according to the SPO.[89] Its mandate covers the full seventeen years that Mengistu was in power. The Vice-Minister of Justice was appointed Special Prosecutor.

Many archival documents from the ministries of defense, internal affairs, and information remained intact with the overthrow of the Mengistu government, providing detailed accounts of abuses at the hands of government forces. One of the first priorities of the SPO has therefore been to sort through these records. In its first public bulletin, the SPO outlined its work plan:

> Given the scope of information available to the SPO, we are implementing an ambitious computerization plan in the hope that we will record for posterity's sake a significant percentage of the information available. Once these archives are computerized, the SPO will have the best available global information regarding the violations of the Mengistu regime. Those most responsible and those most often implicated in abuses will be highlighted. The computerization will provide the SPO with sufficient information to make the necessary policy

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public debate and discussion on the terms. See *infra* note 100. The commission is expected to consist of "eminent respected South Africans and . . . be broadly representative," to operate for eighteen months to two years, and to identify both the victims and the perpetrators, according to Omar. The commission will also be empowered to set up a specialized structure to process individual applications for amnesty, and to make recommendations to President Nelson Mandela in regards to each application. Statement by Minister of Justice, Mr. Dullah Omar, on Amnesty/Indemnity, 7 Jun. 1994. See also John Battersby, *South Africa Creates Commission To Judge Apartheid-Era Crimes*, The Christian Sci. Monitor, 9 Jun. 1994, at 7.

88. African National Congress National Executive Committee's Response to the Motsuenyane Commission's Report 7 (1993).

89. Office of the Special Prosecutor, Transitional Government of Ethiopia, Update #1, at 1 (1993).

decisions to charge and fully commence the proceedings against the target defendants.[90]

The SPO is staffed with approximately thirty legal and support staff, as well as several international legal consultants hired to set up the computer systems and advise the office on international human rights standards. International support has been critical to the SPO's work, including funding from the US Agency for International Development, the Carter Center in Atlanta, and other international sources.[91] The Carter Center has also brought in the Argentine Forensic Anthropology Team[92] to help with exhumations of mass graves.

Human rights organizations criticized the Transitional Government for the lengthy detention of close to 2,000 officials of the former government and armed forces in 1991, after the downfall of the Mengistu government: although these individuals received no formal charge or trial, they were held for almost eighteen months under accusation of human rights violations, war crimes, or abuse of power. When the SPO began work in August 1992, one of its first tasks was to review each of these cases, resulting in the release of over a thousand of those detained, some released on bail to await the results of the SPO's further investigations.

IV. DIFFICULTIES AND DILEMMAS IN FINDING AND TELLING THE TRUTH

Political Limitations

A truth commission is inherently vulnerable to politically imposed limitations. Its structure, sponsor, mandate, political support, financial or staff resources, access to information, willingness or ability to take on sensitive cases, and strength of final report will all be largely determined by the political realities in which it operates and the political forces at play when it is created.

A truth commission can be confronted with many challenges. These

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90. *Id.*

91. In its first public bulletin, the SPO outlines its need for international support: "Presently the SPO is seeking assistance to more promptly gain compliance with our international legal obligations . . . The SPO is seeking assistance to: modernize and systematize our work; requesting legal assistance from both governments and NGOs regarding the numerous complex and novel issues facing our office." *Id.* at 3.

92. The Argentine Forensic Anthropology Team has visited a number of countries, on request, to help establish records and/or train local forensic professionals in human rights forensic exhumations. They also supported the work of the truth commission in El Salvador. The Team is based in Buenos Aires and New York.

may include a weak civilian government with a strong, defiant military; a state structure only beginning to move towards democratic governance; opposition forces emerging from a recent past focused on violent overthrow of the state; ethnic or other population groupings threatening a return to violence; a weak civil society and timid population hesitant to testify on abuses; or, in other cases, an organized opposition or human rights community voicing strong demands for an exhaustive truth commission report and full justice and reparations. In general, the investigations of a truth commission are closely watched, and sometimes challenged, by interested—and sometimes very powerful—parties.

Truth commissions, in brief, do not operate in a vacuum. Every commission works under political constraints, and many of these political constraints or contextual challenges cannot necessarily be averted.

What is the Truth? What Commissions Have Included (and Not Included) In Their Investigations

The most significant limitations to many truth commissions are those written into their mandates, or terms of reference.

The terms of reference of a commission, usually determined by presidential decree, by the legislature, or as part of a peace agreement,[93] can define a commission's investigatory powers, limit or strengthen its investigative reach, define the exact abuses and the perpetrators of abuses that a commission is allowed to investigate, and set the timeline and geographic scope of the commission's investigation. The terms of reference also generally state when and to whom the final report must be submitted, and sometimes state whether certain kinds of recommendations should be included in the report, or whether names may be named.

The terms of reference of a truth commission should be sufficiently broad to allow investigation into all forms of rights abuses, preferably leaving to the commission itself the responsibility to identify the most appropriate cases or practices to investigate.

Many of the truth commissions to date have had terms of reference that significantly limited the scope of the commissions' work. Five commissions were limited in the type of human rights violation that the commission could investigate. For example, a number of commissions have been

93. Fourteen of these fifteen truth commissions operated under a written mandate (the commission in Rwanda did not). Of these fourteen, nine were established by presidential decree, two by the legislature, two by the president of the opposition (ANC) under investigation, and one through an agreement between the government and opposition as part of a peace accord.

restricted to only investigating disappearances. The Uruguayan commission missed the majority of the human rights violations that had taken place during the military regime because of this limited mandate: illegal detention and torture—the bulk of the abuses—were ignored. In Chile, the commission investigated disappearances, executions, and torture leading to death,[94] but its mandate prevented it from investigating incidents of torture that did not result in death, a fact criticized by international human rights observers.

For those commissions with a more flexible mandate, a more complete picture of the truth can be aired. In El Salvador, the commissioners planned their work around the general guidelines given to them in their mandate, which stated that the commission should report on "serious acts of violence . . . whose impact on society urgently demands that the public should know the truth."[95] Although the parties to the El Salvador accord had considered specifying in the mandate exactly which cases should be covered, in the end they left this up to the commission. This allowed the commissioners to select a number of representative cases which portrayed the kind of violence, the perpetrators of violence, and the victims of the violence over the twelve years covered by the commission's mandate.

In addition to explicit limitations in a commission's mandate, commissioners may self-impose restrictions on what the commission will investigate or will report. Due to time constraints, restricted resources or staff for investigations, lack of access to sufficient or reliable information, or in response to political pressure, commissioners may avoid certain topics altogether, or decide to omit certain information from the final report.

A particularly interesting question is the extent to which truth commission reports have included an analysis of, or commentary on, the role of international actors in the political violence within the country. In virtually every case considered here, there were international actors—usually foreign governments—that helped to fund, arm, train, or otherwise aid and assist either or both sides of the conflict. Where government forces have committed ongoing massive human rights violations, the role of foreign supporters in supporting such atrocities should be recognized—especially when the abuses are well known at the time, as is usually the case.[96]

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94. The commission was also empowered to investigate kidnappings and attempts on life by private citizens for political purposes. Executive Branch Supreme Decree No. 355, *reprinted in* 1 Report of the Chilean National Commission on Truth and Reconciliation, *supra* note 51, at 6.

95. From Madness to Hope, *supra* note 75, at 18.

96. Some argue that for some countries, a truth commission that did not address the international role in a "civil war" would hardly be painting the truth. In Mozambique, for example, although no truth commission is immediately planned, the international role in fomenting the war is widely recognized. *See, e.g.*, William Minter, Apartheid's Contras and the Roots of War: An Inquiry in the Modern History of Southern Africa

Most truth commissions do not investigate the international role in the conflict at any depth, and few of them address the issue at all in their final report.

The Chad commission report has perhaps ventured the furthest in this area. While not entering into in-depth investigation, the commission report names the exact amount of external financial backing provided to the regime, as well as the extent of training for the intelligence service responsible for the worst abuses—facts which were not previously well known by the public or the international human rights community:

> The United States of America heads the list of countries that actively provided [the intelligence service] DDS with financial, material, and technical support. America took the DDS under its wing in the very first months of its existence. It trained it, supported it, and contributed effectively to its growth, up to the time of the dictator's fall . . . The American advisers from the Embassy were regular guests of the DDS director . . . . In addition, France, Egypt, Iraq, and Zaire all contributed . . . financing, training, and equipment, or shared information.
>
> Security cooperation between the intelligence services of the above-mentioned states and the DDS was intense and continued right up to the departure of the ex-tyrant.[97]

The Rwandan truth commission report did not address the role of international aid directly in the main body of its report. The report did, however, direct a portion of its recommendations to the international community, suggesting that future development aid be conditional upon improvements in human rights, that all military assistance and intervention should be halted, and that the international community should continue to encourage peace negotiations.[98]

The El Salvador commission report also does not comment on the international role in the war, except for describing how the US government "tolerated, and apparently paid little official heed to" a group of Salvadoran exiles in Miami, Florida, who "directly financed and indirectly helped run certain death squads" in El Salvador, especially between 1979 and 1983. The report continues, "It would be useful if other investigators with more resources and more time were to shed light on this tragic story so as to ensure that persons linked to terrorist acts in other countries are never tolerated again in the United States."[99] Commissioner Thomas Buergenthal

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(forthcoming fall 1994), and KATHI AUSTIN, INVISIBLE CRIMES: U.S. PRIVATE INTERVENTION IN THE WAR IN MOZAMBIQUE (William Minter ed., 1994).

97. *Report of the Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, his Accomplices and/or Accessories*, *supra* note 59, at 45–46.

98. REPORT OF THE INTERNATIONAL COMMISSION OF INVESTIGATION ON HUMAN RIGHTS VIOLATIONS IN RWANDA SINCE 1 OCT. 1990, *supra* note 81, at 54.

99. FROM MADNESS TO HOPE, *supra* note 75, at 137.

notes that if any foreigner had been found to be directly involved in actual violations, then the commission would definitely have stated so. The intent of the commission's mandate was not directed towards a study of international involvement, Buergenthal continues; if the commission had attempted to investigate foreign involvement in the war—which might include Cuba, Nicaragua, the Soviet Union, and the United States—then it would not have been able to fulfill its main mission: clarifying the circumstances and extent of the violence in the country.[100]

The Chilean commission report comments at some length on the reaction of the international community to the military regime, including the suspension of diplomatic relations by a number of governments and the efforts of intergovernmental organizations and international nongovernmental organizations to confront the regime's abuses. It also briefly outlines the continued US economic and political relations with the regime, which remained normal during the worst years of repression.[101]

A Public Mandate?

The public rarely plays a role in crafting the terms of reference of a truth commission. To date, in fact, no truth commission has been founded through a process of public debate on terms.[102] Due to the nature of how truth commissions are created, there is generally no time for public discussion, debate, or referendum on the substance, style, or existence of a commission.

This runs contrary to the position of many human rights advocates. José Zalaquett calls for a popular referendum to approve the government's human rights policy and the creation of such a commission, or, minimally,

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100. Interview with Thomas Buergenthal (22 Apr. 1994).

101. The report states, for example, "Relations with the United States nonetheless remained relatively normal. During the Nixon and Ford administrations, the United States helped Chile renegotiate its foreign debt, and US economic aid during 1974–1976 was several times what it was in 1971–1973. Agreements with the US companies that owned the large copper operations that the previous government had nationalized were improved." 2 Report of the Chilean National Commission on Truth and Reconciliation, *supra* note 51, at 632.

102. The newly-announced truth commission in South Africa is the first example of a process officially opened to encourage public debate and input on the terms of a truth commission. In announcing general plans to establish a commission, the Minister of Justice called on "individuals, organizations, religious bodies and members of the public" to "submit their comments and proposals by 30 June 1994 to the Ministry of Justice before legislation is finalized. Such comments, suggestions and proposals will receive consideration in the finalization of legislative proposals which will then be placed before the cabinet." Statement by Minister of Justice, Mr. Dullah Omar on Amnesty/Indemnity 4 (7 June 1994).

approval by a body of democratically elected representatives.[103] Human Rights Watch takes a similar position:

> Matters of strategy as to how to conduct each exercise in truth and justice are for each democratic society to decide. We believe that those decisions should be made in open and public debate, and that they should never be adopted under pressure. The will of the majority is of course important to consider when it comes to strategy choices, such as whether to conduct a parliamentary, administrative or judicial investigation into the truth of the abuses, and whether to set a time limit on governmental activity.[104]

Unfortunately, time constraints and a generally fragile political environment make a direct public role in approving a truth commission unlikely; moreover, democratic structures may not exist for either a popular or representative vote.

It could be true, however, that as the call for a truth commission becomes more sophisticated and public in some countries (such as is now happening to some degree in Guatemala, in South Africa, and in Malawi) the public debate on terms, and on the need for a truth commission, may take place informally in the pages of the public press.

Timing: When and For How Long?

Timing is of the essence when setting up a truth commission. If initiated by a new president overseeing a fundamentally unchanged military, as is often the case, the initial weeks or months of his or her administration, when presidential power is strong, may be the only chance to establish a truth commission. In the Philippines, for example, there was no attempt to set up a second commission after the first truth commission broke up. President Corazon Aquino had lost the popular support that had enabled her to establish a commission in the face of military resistance; moreover, Aquino's own commitment to human rights had weakened.

Many commissions begin with an explicit time limit written into their mandate, as well as a procedure for requesting an extension. Most truth commissions have been given six to nine months to complete all investigations and submit a report; rarely has a truth commission worked for more than a year. Outlining a work plan, collecting and organizing documentation, receiving and processing testimony, selecting representative cases and

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103. Zalaquett, *supra* note 35, at 34.

104. Juan E. Méndez, Position of Americas Watch, A Division of Human Rights Watch, on the Right of Victims of Gross Violations of Human Rights to Reparations and on Measures to Prevent Such Violations 3 (n.d.).

completing investigations, and finishing a final report within the time allowed is extremely difficult—the time pressure is often the most difficult aspect of a truth commission's work. After all, for most truth commissions, it is impossible to document or investigate everything within its mandate. Despite the limitations of a deadline, however, the alternative is worse. The Commission of Inquiry set up in Uganda in 1986 was given no time limit. It is now in its ninth year, and many Ugandans have lost faith that a report will ever be published.

There is a sense among many human rights organizations that reconciliation will be enhanced with truth-telling, and that this justifies the limitations imposed by a restrictive time limit. Human Rights Watch, for example, argues:

> [I]t is reasonable to expect efforts by the State to conduct aggressive investigations and prosecution *ex officio* to be conducted within a limited period. We are fully conscious of society's need to put the past behind it after a reasonable period of truth and justice. In this respect, time limitations on State-sponsored investigations and prosecutions are reasonable provided they afford a fair opportunity for individuals to come forward with evidence and there is adequate public debate and notice about terms and deadlines. The efforts of the government to redress past abuses can be made in good faith within such a reasonable period.[105]

Under Whose Name?

Of the fifteen cases outlined here, eleven were government sponsored—nine under the authority of the president and two established by the parliament. Pressure from national or international nongovernmental human rights organizations, or from other governments, has often played a role in pushing the president or parliament to set up a commission.

It is generally not easy for the president to establish a truth commission. In many of the eleven government-sponsored commissions examined here, the military has remained largely unchanged and a potentially destabilizing force. If the military perceives a truth commission to be a threat, it often will pressure the president to hold off on investigations.

The commissions set up by the African National Congress are the only examples of a commission sponsored by an opposition political party to investigate its own past record of abuses. And two truth commissions to date have been under international sponsorship, by the United Nations or by nongovernmental organizations.

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105. *Id.*

It is not clear that one model is more likely than another to produce a successful truth commission. The terms of reference, resources and staff provided, and general investigatory powers provided to the commission will have a great impact, and can be stronger or weaker irregardless of sponsor. International sponsorship, however, holds particular characteristics of its own.

International sponsorship has many advantages, but can also have significant disadvantages. For some countries international sponsorship of a truth commission may be absolutely necessary; in other cases it would be unacceptable and inappropriate.

Advantages to UN sponsorship are many:

- Neutrality in a highly polarized environment.
- Legitimacy derived from the international community's strong support of the commission's work, which pressures the parties within the country to collaborate with the truth commission.
- A source of funds to cover the commission's expenses. Some commissions (Chad, Uganda 1986, the Philippines) have been severely limited by financial constraints.
- Access to greater security measures, which in El Salvador included permanent UN diplomatic security personnel assigned to protect the commissioners and the office.
- Greater international attention to the work of the commission and its report, thus increasing pressure for fulfillment of recommendations or the implementation of reforms.
- International sources of information. An important source of information for the El Salvador Commission was information obtained from the US government—the Department of State, Department of Defense, and Congressional sources. Although government sources resisted providing access to such information, in the end information from the US government "was essential to reaching some of the conclusions that we reached" in the truth commission final report, according to staff member Ted Piccone, who worked with Commissioner Thomas Buergenthal in Washington to secure information from the US government.[106]
- Greater leeway to confront powerful forces within the country with less fear of reprisal. The commissioners and staff of the El Salvador commission left the country after the in-country investigation phase was complete, writing the report from New York. Naming senior military officers

106. Interview with Ted Piccone, El Salvador Commission staff member (6 May 1993). Piccone later added that further declassification of US government materials on El Salvador, eight months after the commission finished its work, revealed that a significant amount of information had in fact been withheld from the commission.

could not have easily been done by Salvadorans who wished to continue to live in the country.

• An outsider's perspective. An international commission may see things in the pattern of violence that a national commission might take for granted or overlook, and thus bring out important aspects about the dynamics of the conflict.

• Follow-up pressure. International pressure for implementation of the recommendations of the commission report is more likely to follow an international commission.

Even when not sponsored by the United Nations, an international commission can be very powerful. The independent international commission in Rwanda had a profound impact on Belgium's policy towards Rwanda, and prompted the United Nations to immediately appoint a special rapporteur to investigate the human rights situation in Rwanda. Alison Des Forges, co-chair of the Rwandan Commission, was astonished at the impact of the report that seemed to result from its international character. She has been involved in many nongovernmental human rights missions, she says, but the national and international response to this mission was quite different. "It is quite remarkable: once you have the title of an international commission, things change."[107]

There are also important arguments against international sponsorship of a truth commission:

• International staff may be hired, as in the case of El Salvador, that don't have any experience in the country. Even with intensive research, the understanding by the staff and commissioners of nuances within the country will be limited. This can slow or limit the extent to which a commission can cover certain topics.

• International staff usually leave the country when the commission's work is completed. While this has some advantages, as noted above, it fails to strengthen structures within the country, or to restore faith in the ability of the government to play a leadership role on human rights issues.

• The national character of a country and its attitude towards international involvement in its internal affairs is critical to determining whether an international commission is appropriate. Some countries would reject the suggestion of an international commission, citing national sovereignty concerns.[108]

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107. Interview with Alison Des Forges, Co-chair of the Rwandan Commission (24 Apr. 1993).

108. Colombia, for example, might be such a case. In addition, argues Juan Gabriel Gomez Albarello, a Colombian human rights lawyer who worked on the El Salvador truth commission, the dynamics of the violence in Colombia are far too complex to be covered by an international commission with no experience in the country. Interview with Juan Gabriel Gomez Albarello (17 Mar. 1993).

Staffing and Budget Considerations

The Truth Commission on El Salvador was staffed entirely by non-Salvadorans: mostly Latin Americans, with a few Europeans and North Americans, with the total staff number ranging from fifteen, in the first months, to twenty-five or more.[109] A decision was explicitly made at the outset not to hire anyone who had previously worked on Salvadoran human rights issues, as such work experience was considered to suggest a "bias" that might color the neutrality of the commission. Patricia Valdez, the commission's executive director, argues that this was critical in the politically polarized environment of El Salvador, contending that the military's challenge to the commission report would have been exacerbated if they could point to any hint of staff bias.[110] Others, even among the commission staff, disagree, holding that the commission should have turned more often to international specialists on El Salvador or worked more closely with Salvadoran human rights organizations. Although there was some consultation with outside experts, this was rare. Many of those who knew El Salvador best were kept out of the process.

Other commissions, especially those in Africa, have operated with minimal staff, leaving the great bulk of the work to the commissioners themselves. In Uganda 1986, Chad, Rwanda, Zimbabwe, and the Philippines, the truth commissions were staffed with no more than a few clerks or aides, and perhaps one legal counselor. A number of the Latin American truth commissions, in contrast, have enjoyed a great depth of staff and professional consultants, often including numerous legal specialists in human rights, forensic anthropologists, social workers, and others. The truth commissions in Chile and Argentina have had the largest staffs, with approximately sixty full time staff members each.

In most cases, funding for governmental truth commissions has come directly from the government. An interesting exception is a Ford Foundation grant of $93,300 to the Ugandan government in 1988 to support the Ugandan Commission of Inquiry.[111] The Special Prosecutor's Office in Ethiopia is also supported by international funds.

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109. In addition, over a period of two to three months, up to twenty additional temporary staff were brought on for data processing and data entry. Interview with Ignacio Cano, El Salvador Commission staff member (1 Aug. 1994).
110. Interview with Patricia Valdez (29 Mar. 1993).
111. Ford Foundation, *supra* note 46, at 47.

TABLE II

A Comparison of Resources and Responsibilities
Fifteen Truth Commissions—Listed In Chronological Order

Country	*Total # of Cases Presented to Commission*[1]	*# Cases or Events Investigated in Depth*[2]	*Length of Commission's Work*	*Period of Time Covered by Commission*	*# of Cssners*	*# of Staff*
Uganda 1974	308 disappeared	—	1 year	3½ years	4	—
Bolivia	155 disappeared	0	2–3 years	15 years	8	6
Argentina	8,960 disappeared, unspecified # of victims of torture or prolonged detention	0[3]	9 months	7 years	13	approx. 60
Uruguay	164 disappeared	0	7 months	11 years	approx. 9	—
Zimbabwe	—	—	several months	2 years	—	—
Uganda 1986	*	*	* (now in 9th year)	24 years	6	2–3
Philippines	—	—	1 year (disbanded before finishing)	15 years	7	0
Chile	3,428 disappeared, killed, tortured to death, or kidnapped[4]	2,920	9 months	16½ years	8	60
Chad	3,800 killed, unspecified # of victims of torture, arbitrary detention	0	10 months	8 years	12–16	0[5]

TABLE II, continued

Country	*Total # of Cases Presented to Commission*[1]	*# Cases or Events Investigated in Depth*[2]	*Length of Commission's Work*	*Period of Time Covered by Commission*	*# of Cssners*	*# of Staff*
South Africa (ANC I)	32 survivors of torture and abuse in detention camps	0	7 months	11½ years	3	—
Germany	*	*	* (now in 2nd year)	40 years	27	—
El Salvador	22,000 killed, tortured, or kidnapped	32	8-9 months	12 years	3	15 to 45[6]
Rwanda	2,000 killed, unspecified # of attacks on civilians, kidnappings	20	3 months (2 weeks in country)	2¼years	10	0[7]
South Africa (ANC II)	29 disappeared, 19 "complainants" and 11 "defendants" presented their cases re: detention camp abuses	29 disappeared, 19 complainants, 11 defendants	8 months	11½ years	3	7
Ethiopia	*	*	* (now in 2nd year)	17 years	1	approx. 30

* commission still in process

— not known

1. These numbers provide general indications of the number of cases that were reported to each commission. For some commissions, numbers are not exact. Commission mandates have varied as to the types of human rights abuses each has covered. In most countries, the actual total of cases of human rights abuses is estimated to be far higher than the number reported to the commission.
2. The number of individual cases (such as a disappeared person or victim of torture) or events (such as a massacre) that were investigated at greater depth and reported by the commission.
3. Some reports (such as Argentina, Chad, and ANC I) describe at length the overall nature of human rights violations during the period at hand, including extensive quotes from testimony provided to the commission and back-up documentation, but do not enter into the investigation of any one case in depth.
4. 508 of these 3,428 were determined to fall outside of the mandate of the commission.
5. The twelve (and later sixteen) "members of the commission" include secretaries and clerks.
6. Including approximately twenty temporary staff hired for one to three months for data processing and data entry.
7. The Rwandan Commission hired only translators and two short-term consultants.

Public or Private?

Investigations by a truth commission may legitimately be done privately and confidentially, as long as the final report is released to the public. When fairness and neutrality can be generally assured, which may in some cases require international sponsorship or an international observer, then private, confidential investigations may be preferred.

There is a tendency in Africa to receive testimony and interview witnesses in public, even broadcasting the proceedings live on radio or television. Indeed, international human rights organizations such as Africa Watch have argued that as a general rule, investigations should be public "in order to safeguard their impartiality."[112] But it is not clear that such public demonstrations have not been for political reasons (to discredit the past regime) rather than for the purpose of impartiality and full disclosure.

Public investigations risk scaring away witnesses that otherwise might testify, or putting in danger those that do. Most truth commissions that have held public proceedings have reported that some witnesses hesitated or refused to testify for fear of reprisal. These commissions have generally allowed a small number of private hearings, but have continued to hold the majority of hearings in public.

Of the commissions here, the Truth Commission in El Salvador has sustained the highest level of confidentiality. Despite intense press coverage and high public interest, almost no information was released to the public about the commission's work until the publication of its report, including identification of the cases that were under investigation and the question of whether individuals would be named. The commissioners felt that this confidentiality was essential for the safety and protection of both witnesses and the accused, as well as for avoiding undue public pressure on the commissioners and staff as they pursued sensitive cases.

Naming Names

Few issues have attracted as much controversy around truth commissions as the question of whether a commission should publicly name those individuals found to be responsible for human rights crimes. The debate is between two contradictory principles, both of which can be strongly argued by human rights advocates: (1) Due process requires that individuals receive fair treatment and are allowed to defend themselves before being pro-

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112. Africa Watch, *supra* note 40, at 87. The author of this report, Richard Carver, has since changed his position on this issue. "Always publish" rather than "always public" is a better position, he says. Interview with Richard Carver (16 Mar. 1994).

nounced guilty; due process is violated if a commission report names individuals responsible for certain crimes. Therefore, no names should be named. (2) Telling the full truth requires naming persons responsible for human rights crimes when there is absolute evidence of their culpability. Naming names is part of the truth-telling process, even more so when it is clear the judicial system does not function well enough to expect that they will be prosecuted.

To date, the terms of reference establishing truth commissions have generally not addressed the issue of whether names should be named, which has left the decision to the commissioners.

Until 1992, no truth commission had named names. In Argentina, the commission decided not to include in its report names of those individuals that it knew to be responsible, instead submitting the list to the president for further action. However, the list was soon leaked to the press and was published in full by a national newspaper. In Chile, the commission's mandate prevented the naming of names, directing the commission to submit any evidence of criminal action to the courts.[113]

José Zalaquett, a commissioner on the Chilean Truth Commission, has strongly backed this approach. In the introduction to the English translation of the commission report, Zalaquett writes:

> To name culprits who had not defended themselves and were not obliged to do so would have been the moral equivalent to convicting someone without due process. This would have been in contradiction with the spirit, if not the letter, of the rule of law and human rights principles.[114]

Clearly, truth commissions are not judicial bodies, and those commissions that name names take pains to reiterate this fact in their report, thus attempting to distinguish between a legal judgement and a statement of opinion, however authoritative that opinion may be. The publication of a person's name, regardless, is popularly understood to indicate their guilt.

Four commissions to date have named names. The Chadian report listed names and published the photographs of those responsible for some of the worst human rights abuses. At the time the report was released, many of these individuals were already serving in the new government, mostly in the reconstructed intelligence service or in the army or police. The commission made a strong plea for a purging of those individuals who

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113. The mandate states, "In no case is the Commission to assume jurisdictional functions proper to the courts nor to interfere in cases already before the courts. Hence it will not have the power to take a position on whether particular individuals are legally responsible for the events it is considering." Supreme Decree No. 355 of the Executive Branch of Chile, art. 2, 25 Apr. 1990, at 7.

114. 1 Report of the Chilean National Commission on Truth and Reconciliation, *supra* note 51, at xxxii.

served under the former intelligence service, DDS, well-known for its ruthless practices: "DDS agents were thieves, torturers, and executioners, and as such, they should be excluded from the new special [intelligence] service."[115]

The El Salvador Truth Commission's naming of high military and judicial figures attracted a great deal of attention. Over forty officials were named, the majority of whom were military officers. The Minister of Defense[116] and the president of the Supreme Court were among those named. The report held individuals responsible for planning or executing assassinations and directing massacres of civilians, or preventing investigation into certain acts. All individuals named in the El Salvador Truth Commission report were first interviewed by the Truth Commission and given the opportunity to defend themselves (with the exception of the deceased).

The El Salvador Commission report recommended that those individuals named be removed from their position (either military or civilian), barred from serving in any public position for ten years hence, and permanently barred from the military or security forces.[117]

In the introductory chapter of the El Salvador report, the commissioners explain why they chose to name names:

> It could be argued that, since the Commission's investigation methodology does not meet the normal requirements of due process, the report should not name the people whom the Commission considers to be implicated in specific acts of violence. The Commission believes that it had no alternative but to do so.
>
> In the peace agreements, the Parties made it quite clear that it was necessary that the "complete truth be made known," and that was why the Commission was established. Now, the whole truth cannot be told without naming names. After all, the Commission was not asked to write an academic report on El Salvador, it was asked to describe exceptionally important acts of violence and to recommend measures to prevent the repetition of such acts. This task cannot be performed in the abstract, suppressing information . . . where there is reliable testimony available, especially when the persons identified occupy senior positions and perform official functions directly related to violations or the cover-up of violations. Not to name names would be to reinforce the very impunity to which the Parties instructed the Commission to put an end.[118]

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115. *Report of the Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, His Accomplices and/or Accessories*, *supra* note 59, at 133.
116. The Minister of Defense announced his resignation three days before the publication of the Commission report. However, his resignation was not put into effect until it was officially accepted by the President, some four months later.
117. From Madness to Hope, *supra* note 75, at 176. This recommendation, although obligatory according to the commission's mandate, has not been widely respected. Some individuals named in the report ran for election in the spring, 1994 elections, for example.
118. *Id.* at 25.

The proceedings of the second African National Congress Truth Commission were constructed much like a trial of individuals accused of abuses, and the commission report reflects this approach. Eleven accused individuals appeared before the commission, and the commission report states whether the evidence supports or does not support the allegations against each of them. The report further recommends that "[t]he persons responsible for the human rights abuses—who have been identified in this Report—be subject to disciplinary action and/or penalties in accordance with the Code of Conduct of the ANC."[119]

The Rwandan Commission named dozens of officials, including the President of the Republic and several burgomasters, or chief local officials. Most of the persons cited as participating in or planning massacres, or purposely inciting mass killings, are civilian government officials, not military officials.

Although some individuals listed in the Rwandan report were removed from their positions shortly after the report was published, they were generally removed under pretense of a bad administrative record or some other benign reason, such that the government rarely admitted human rights problems. None of these individuals have been prosecuted.

There can be a danger to being named, however. In Rwanda, of the three Burgomasters named by the commission for some of the worst atrocities, two were killed in the months after the report's publication: one singled out and killed by rebels, the second apparently killed by government death squads to cover up evidence.[120]

It is likely that many truth commissions in the future will choose to name names, especially since the attention given to the El Salvador report has served as an international precedent that others may likely follow. There may be a need for legal scholars and human rights advocates to help outline the standards of proof that a truth commission should abide by to insure fair treatment of individuals, while allowing a full truth telling, outside a court of law.[121] In the end, careful investigations often make painfully clear who the worst offenders are. A full truth-telling should include those names.

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119. Reports of the Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuse Against ANC Prisoners and Detainees by ANC Members, *supra* note 86, at v.

120. Interview with Alison Des Forges (14 Sept. 1993).

121. Standards of proof differ between the commissions that listed names. The commission in El Salvador applied "strict criteria to determine the degree of reliability of the evidence . . . [and] named names only when it was absolutely convinced by the evidence." From Madness to Hope, *supra* note 75, at 25. The second ANC Commission applied "the balance of probabilities" in reaching its conclusions: "In other words, the Commission has found facts where the evidence in support of the facts is more likely to be true than false." Reports of the Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuse Against ANC Prisoners and Detainees by ANC Members, *supra* note 86, at 5. The

V. INDEPENDENT TRUTH COMMISSION-LIKE PROJECTS

There are numerous cases where a government has refused to or simply been unable to investigate the past. In some cases, nongovernmental projects in the country have helped to document the history and acknowledge the past. Unofficial investigations and documentation can in some cases lead to official acknowledgment, or at least can provide the victims with a sense of public acknowledgement and recognition. These are not truth commissions by the definition used here because they are not authorized in some way by the government or other official body. The reports are perceived as a description of the past from an independent organization's perspective, rather than an official statement of the historical record.

There are a number of examples of such nongovernmental projects, providing a variety of models. The classic model is sponsorship by national human rights organizations: *Uruguay: Nunca Más* was produced out of the offices of a national human rights organization, SERPAJ (Servicio Paz y Justicia, or Peace and Justice Service).[122] In Russia, the nongovernmental organization Memorial was set up in 1987 in response to the need for accountability and fact finding regarding past events. It has collected extensive archives on abuses dating back to 1917, and has published several books with lists of victims' names and analyses of state policies of repression.[123] Church backing of such a project is also possible: in Paraguay the *Nunca Más* series was sponsored by the Committee of Churches;[124] in Brazil the Archbishop of São Paulo, in conjunction with the World Council of Churches, supported the compilation of *Brasil: Nunca Mais*.[125] Because the Brazil project was carried out secretly, Church backing not only provided financial support, but also lent legitimacy to the published report.

Rwandan Commission included a name "only when it came up time after time in the investigations," according to commission co-chair Alison Des Forges. The Chad report includes no description of criteria for naming names, although it relies heavily on direct testimony from victims, which often includes the names of torturers or others.

122. Servicio Paz y Justicia, Uruguay, *supra* note 39.

123. *See, e.g.*, Memorial, Links: 1 Historical Almanac (Progress Phoenix, 1991), a collection of historical essays, and Memorial, List of Executed People, Volume 1: Donskoi Cemetery 1934–1943 (Memorial, 1993). All Memorial publications are in Russian (unofficial translation of titles). For an excellent description of Memorial's activities, see *Making Rights Real: Two Human Rights Groups Assist Russian Reforms*, Ford Foundation Report, Summer 1993, at 10, 10–15, and Nanci Adler, Victims of Soviet Terror: The Story of the Memorial Movement (1993).

124. *See, e.g.*, José Luis Simon G., La Dictadura de Stroessner y los Derechos Humanos, 1 Serie Nunca Más, and Guido Rodriguez Alcala, Testimonios de la Represión Política en Paraguay 1975–1989, 3 Serie Nunca Más (1990).

125. Arquidiocese de São Paulo, Brasil: Nunca Mais (Vozes Ltda. ed., 1985).

The military, having just turned over power to elected leaders, was not in a position to attack the Church (as the only identified author) when the report was published.

Despite the limitations to their work, usually including restricted access to information, these unofficial projects have in some cases produced remarkable results. In Brazil, for example, a secret team was able to photocopy all of the official court documents that included prisoners' complaints of abuse; the *Nunca Mais* report is an analysis of the military regime's extensive use of torture over fifteen years' time based on these official records. *Brasil: Nunca Mais* quickly climbed to number one on the country's best-seller list.[126]

VI. COMPARISONS AND CONCLUSIONS

There is not one best model on which to pattern a truth commission, nor a set of universal rules or recommendations to guarantee its success. But the fifteen truth commissions to date do leave us with some important lessons to apply to the future. I would venture the following minimal requirements: a commission must operate impartially and in good faith, independent from political forces, with the resources and free access to information for full investigation as it sees fit; it should be implemented as soon after the resolution of a conflict, a government transition, or other aspects of a political situation allows, and operate for a limited, specified period of time; and it should include in its mandate the power to make recommendations that can be expected to be given serious consideration. The commission report should be published immediately and be readily available to the public.

The agreement to establish a truth commission should coincide with a commitment on the part of the government (and opposition, where relevant) to significant improvements in human rights policies and practices. The mere existence of a truth commission does not necessarily indicate a commitment to real change.

A truth commission should be given a specific time limit to conclude its report. While this period should be extendable by agreement, it should never be open-ended. A truth commission should recognize up front that it is impossible to carry out a complete investigation: a commission must focus on the essential, the most important, or the best cases in order to portray a global truth—in most cases a truth commission cannot hope to

126. For an excellent description of the Brazilian project, see Lawrence Weschler, A Miracle, A Universe: Settling Accounts with Torturers (1990).

document or investigate all cases that might fit within its mandate. The goal of any truth commission should be to establish the overall picture of political violence during the period specified. This likely will include the investigation at depth of some cases that can be seen as illustrative of the perpetrators, victims, or types of violence found, and summary statistics on others.

When possible, it should be agreed in advance that a truth commission's recommendations are obligatory. Only the El Salvador Commission was granted this authority in its original mandate, although it became apparent within a short period of time after the report's publication that many of the recommendations would not in fact be honored, despite a pledge from President Cristiani that they would be implemented.[127]

Regional Comparisons: Implications for Truth Commissions

Most truth commissions to date have been in Africa or Latin America. In general, those in Latin America have been better funded and significantly better staffed, have been less politically biased, have worked with more independence, and have been more likely to publish and widely distribute the final report.

Differences between the nature of political violence in Africa and Latin America point to important implications for truth commissions. In Latin America, the nature of conflicts leading to human rights abuses have tended to be between right and left political sectors: the military, sometimes in conjunction with rightist civilian groups, have engaged in severe, violently repressive tactics against the armed and unarmed opposition. The military has frequently justified its actions on national security grounds, portraying itself as valiantly fighting against the subversives. There are often abuses on both sides of the conflict, although the military and security forces are usually responsible for the great majority of human rights violations. Of the Latin American cases examined here, only in El Salvador did the conflict grow into a clear civil war—with the tactics used by both the guerrilla fighters and the government forces often beyond the acceptable practices of war.

Much of the political violence in Africa, in contrast, has taken the form of conflict between ethnic, religious, or social groups. Violence of this type,

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127. Initially the recommendations were seen by some observers as the impetus needed for significant change. "We never imagined the recommendations would be so broad," commented one US Department of State officer shortly after the report was released. The Truth Commission report and its strong recommendations, he argued, were just what was needed at that point in the transition process. Interview with US State Department official (7 May 1993).

often described as "tribal" by the media, has been responsible for thousands of deaths in Rwanda, South Africa, Zimbabwe, and Uganda, among the countries considered here, as well as in numerous other African countries. Despite the "tribal" label, implying a basis in uncontrollable, ancient rivalries, such massively violent conflict has often resulted from the deliberate manipulation of group identities by political leaders for short term gain. (In Rwanda, for example, Hutu government officials openly admitted to the truth commission that they intentionally inflamed violence in order to drive Tutsis from the country.) In many cases, group or ethnic rivalries or hatreds became entrenched during the colonial period, when colonial systems of indirect rule through "traditional" leaders relied on policies of divide and rule.[128]

Due to these ethnic or group-identity antagonisms, and given historical patterns of regionally-based ethnic groupings, conflicts in African countries also often have important regional overtones. Much of the fighting, and many of the abuses against civilian groups, are often concentrated in certain regions of the country, sometimes not even touching other regions.

These differences between conflicts in Africa and Latin America imply certain consequences for truth commissions, and highlight some of the problems shared between commissions.

In order to be perceived as neutral, commissioners (and staff, in some cases) should be selected to represent a broad and fair range of perspectives, backgrounds, or affiliations. Several of the African truth commissions have been accused of partisanship in the membership of the commissions, with commissioners that are politically beholden to the current administration, unabashedly pro-government, or regionally biased. This easily leads to accusations that a commission exists for political reasons, to discredit the previous government, rather than to change the long term human rights pattern in the country.

In Latin America, in contrast, truth commissions have for the most part not been seriously criticized for being partial to a particular group or to the government—an impressive fact, given that most commissions are appointed in very tense and politically polarized environments. The most widely lauded commissions have been those made up of notables—well-known and respected persons in society—the commission as a whole representing a range of expertise and political views.

In Latin America, the responsibility of the military and security forces in the perpetration of human rights violations is clear, and much of the worst

128. The Rwandan Truth Commission report describes the historical roots of the current ethnic conflicts. Report of the International Commission of Investigation on Human Rights Violations in Rwanda Since 1 Oct. 1990, *supra* note 81, at 5.

repression has been during periods of military rule. Many Latin American truth commission reports depict the anti-communist military zeal that inspired the violence, and name the military brigades or military officials responsible. In the El Salvador report, for example, the bulk of the individuals named are military officials.[129]

In Africa, in contrast, repression and political violence has in a number of cases taken place under civilian leadership, and the reports often reflect this. The Rwandan truth commission, for example, cites local and national civilian political leaders as responsible for inciting both military and civilian groups to extreme violence. Most of the individuals named in the Rwandan report are civilian leaders.

Civilian responsibility for human rights crimes may have a number of implications for truth and justice. Ironically, prosecution of civilian leaders may be even less likely, although the resistance to prosecution takes on an entirely different flavor than that of the military resistance often seen in Latin America.

In addition, the need for measures to promote national reconciliation may be even more critical when a country's violence reflects deep ethnic divisions. A truth commission should consider many of these aspects when writing its recommendations.

Conclusion

Establishing a truth commission is only one of the steps necessary in order to move a nation towards peaceful reconciliation and respect for human rights. A truth commission should go hand in hand with institutional changes—judicial, political, or military reform, for example—that can reduce the likelihood of repetition of such abuses in the future, as well as official measures to promote reconciliation and reparation, as appropriate.

But officially establishing the truth about the past can be critical to a society's coming to terms with a period of widespread abuses. Truth commissions can, in the end, play a powerful role in bringing human rights concerns to the fore. In many conflicts, the demand to end impunity, to recognize the suffering of victims, and to write a fair history of a battered past demands that the global truth be fairly established.

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129. This is not to suggest that civilian run governments in Latin America have been immune to abuses. In Peru, Colombia, Guatemala, and El Salvador, for example, civilian, elected presidents have watched over (or encouraged) military campaigns against the opposition that have been rife with human rights abuses.