

*"The prime thirst of transitional justice is to build
a more democratic, just and peaceful future"*

Study on
**Truth and Reconciliation Regimes:
Reflection and Relevance**
A Case Study of Nepal
2013

**Human Rights Treaty Monitoring Coordination Centre
(HRTMCC)
Secretariat**



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CONFRONTING THE PAST

This report is basically a systematic compilation of various initiatives on truth commissions worldwide. The available literature on truth commissions have been analyzed, synchronized and presented in a more user-friendly manner. Technical parts of some of the texts cited in this report from different sources have been kept intact so as to refrain from jeopardizing the originality of the expression.

On behalf of INHURED International and HRTMCC we wish to express our gratitude for the privilege of bringing this report as a collective campaign to address the problem of deeply ingrained culture of impunity in Nepal.

Before acknowledging the significant contributions that many persons have made to the successful completion of this report, we dedicate this report to the human rights defenders who fought so courageously for human rights during the protracted nightmare of the internal armed conflict in Nepal that resulted in thousands of death, disappearance, displaced and so on.

The Comprehensive Peace Agreement (CPA) concluded between the Government of Nepal and the Communist Party of Nepal (CPN Maoist) has opened up a wide corridor to fight impunity through the establishment of a Truth and Reconciliation Commission in Nepal. The law, policies and procedures of the proposed Commission ought to be in compliance with the international norms and standards that many other truth commissions have followed so that the present

delicate transition from authoritarian regime to democratic order can be conquered peacefully.

Many people generously responded to our requests for advice and assistance regarding difficult questions of transitional justice and the achievability of truth commissions founded on the notion of justice, and we would especially like to commend for their help of the victims, survivors and their families who narrated their stories, plights, pains and pledges with our peace audit team in the field in connection with securing justice of the past violations.

Thanks go to various national and international organizations, authors and columnists that have provided in so many ways to produce this report in a short span of time. Credit goes to the members of the Accountability Watch Committee for their insight and input to further polish the report. We acknowledge that Advocacy Forum's reports and newsletters were of particular help to comprehend the victims' perspectives. Similarly, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study" by Priscilla B. Hayner is the prime source of information for this study.

A token of financial assistance from ActionAid Nepal made it possible for us to undertake the study part whereas AusAid generously supported for its publication. We are confident that the outcome of the study report would add some value towards the efforts of forming a competent Truth and Reconciliation Commission in Nepal.

Gopal Krishna Siwakoti, PhD

President
INHURED International

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ABBREVIATIONS

ALDHU	Latin American Human Rights Association
ANC	African National Congress
ASOFAMD	The Association of Relatives of the Detained, Disappeared and Martyred for National Liberation
AWC	Accountability Watch Committee
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CAVR	Comissão de Acolhimento, Verdade e Reconciliação
CDO	Chief District Officer
CEDAW	Convention on the Elimination on all forms of Discrimination against Women
CEH	Historical Clarification Commission
CELS	Center for Legal and Social Studies
CIPAE	Comite de Iglesias para Ayuda de Emergencia
CONADEP	Commission Nacional para la Desaparicion de Personas
CPA	Comprehensive Peace Agreement
CPN	Communist Party of Nepal
DPO	District Police Office
FMLN	Farabundo Marti National Liberation Front
HRTMCC	Human Rights Treaty Monitoring Coordination Centre
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights



ICJ	International Commission of Jurists
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDPs	Internally Displaced Persons
IER	Instance Equite´ et Re´conciliation
IHL	International Humanitarian Law
INGO	International Non- Governmental Organization
INSEC	Informal Sector Service Centre
KOMNASHAM	Indonesia's National Human Rights Commission
KPD	German Communist Party
LTTE	Liberation Tamil Tigers E-lam
MfS	Ministry for State Security
MOPR	Ministry of Peace and Reconstruction
NHRC	National Human Rights Commission
NRA	National Resistance Army
OHCHR	Office of the High Commissioner for Human Rights
PDS	Democratic Socialist Party
PLA	People's Liberation Army
SERPAJ	Regional Service for Peace & Justice
SPD	German Socialist Party
SPO	Special Prosecutor's Office
TJ	Transitional Justice
TOR	Terms of Reference
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UNICEF	United Nations International Children's Education Fund
UNSC	United Nations Security Council
UML	United Marxist Leninist
UNDP	United Nations Development Program
USIP	United States Institute of Peace
URNG	National Guatemalan Revolutionary Unit

EXECUTIVE SUMMARY

A Truth and Reconciliation Commission (TRC) is basically a non-judicial fact-finding body that investigates into past human rights abuses and crimes, identifies perpetrators, researches on related issues and establishes facts, brings abuses to public view, preserves evidence, recommends reparations, and institutional reform in order to achieve accountability. Over 30 countries in Asia, Africa, Latin America and Europe including Argentina, Chile, South Africa, Peru, Ghana, Congo, Morocco, El Salvador, Guatemala, Timor-Leste, Sierra Leone, Liberia etc have constituted TRCs with varied mandates. Different UN agencies have assisted these countries in creating TRCs and their works. For instance, Burundi established a mixed truth commission and a chamber within the court system of Burundi as requested by the Security Council in its resolution 1606 (2005). The International Center for Transitional Justice (ICTJ) provided expert advice including assistance in vetting and prosecution initiatives¹.

Similarly, the TRC in Liberia was assisted right from the beginning by the UN Mission in Liberia and UN Office of the High Commissioner for Human Rights (OHCHR). Civil Society in that country was also involved in the formation of the TRC or drawing its terms of reference. In Timor Leste, the initiatives for establishing a transitional justice mechanism were taken up by the UN Security Council itself, while United Nations Development Program (UNDP) was involved in Bosnia and Herzegovina in the truth seeking process².

1 <http://www.ictj.org/our-work/transitional-justice-issues/criminal-justice>

2 http://www.ssrc.org/workspace/images/crm/new_publication

TRCs generally take a broad mandate in dealing with serious acts of violence, or gross violations of human rights or humanitarian law. It is not desirable to limit it to specific or events fragmented by time. However, there is no uniform model as to what crimes and abuses are to be covered by the TRCs. For instance, the Truth Commission in Sierra Leone had a mandate to investigate human rights and humanitarian law related abuses and also matters pertaining to economic, social and cultural rights, while the Truth Commission in Peru was limited to investigate matters relating to civil and political rights only. Some Truth Commissions have investigated even economic crimes such as corruptions³.

The common approach of the TRCs is to recommend for prosecution. But the South African TRC was empowered to grant amnesty provided the alleged perpetrator disclosed the details of his or her crime. Similarly, in Timor-Leste the TRC was given the power to extinguish criminal and civil liability for non-serious crimes provided that the alleged perpetrator fully admitted the crime, made an apology and agreed, at least symbolically, to pay the victim or the community. Similarly, in some countries such as Sierra Leone and El Salvador the terms of reference of the Truth Commissions included the power to make mandatory recommendations and also a follow-up procedure. These examples suggest that the mandates of the TRCs are drawn up to respond to specific situations of each country and the result that each wanted to achieve⁴.

The consistency of the work that TJ mechanism can carry out derives from the need felt by the whole of society, which demands some sort of justice through a reliable recollection of what happened, and not simply by those who were victims. TJ is not a complete way of compensating the victims. It is a rather way to start the compensation process, something which aims to re-establish the true historical and social identity of a people that, believe that TJ mechanisms strengthen their legitimacy when they derive from a sense shared by all and are not just a response to demands for truth and justice from those who

3 RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES, Truth commissions <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>

4 *ibid*

were direct victims of abuse. It is difficult to advance TJ mechanism solely as a response to demands from victims. The discourse on TJ arises from an experience shared by society, when the victims include not only those who were directly affected, when the whole of society has been traumatized and the course of normal life has been significantly altered. TJ would provide a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for citizens irrespective of color, caste, class, belief or sex. It is deemed necessary to establish the truth in relation to past events and the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future. TRC is for understanding but not for vengeance; for reparation but not for retaliation, for ubuntu but not for victimization⁵.

Nepal's Ordinance (the two draft bills, namely, Truth and Reconciliation, and Commission on the Inquiry of Disappearance were merged by the then Cabinet which was challenged at the Supreme Court) for the proposed TRC threatens to deny victims of the decade-long conflict their rights to truth, justice and reparation. The Ordinance's provisions on issues like amnesty and the commission's independence from the government do not meet international legal standards. Particularly on the provisions of amnesty against the perpetrators of gross human rights violations and violations of International Humanitarian Law (IHL), including extra-judicial execution, torture and disappearances are of serious concern. The Ordinance fails to reflect the international standards adopted in 2005 by the UN on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law. These standards, known as the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights, are based on international legal obligations, including Nepal's specific treaty obligations.

5 Dina Maria Ferreira, *Society and Culture in South Africa: Contemporary Texts*, Universidade de Aveiro, Departamento de Línguas e Culturas, 2012, <https://ria.ua.pt/bitstream/10773/10515/1/Disserta%C3%A7%C3%A3o.pdf>

The commission's proposed mandate would not address serious violations of international humanitarian law. The Ordinance also fails to clarify that the terms "gross violation of human rights" and "crimes against humanity" must be defined and applied in a manner that meets international standards. In the Ordinance, amnesties could be granted even for gross human rights violations if these acts had a political motivation, if the perpetrator made an application indicating regret, or if victims and perpetrators agree to a reconciliation process. Such a mechanism could result in protection from criminal prosecution for even the gravest of crimes.

Ensuring peace and justice in Nepal requires a comprehensive approach to transitional justice, rather than ad hoc interventions. The proposed commission should be established to determine the truth of what has happened and why, so that the horror will not be repeated in future; and the accounts of atrocities must be revealed. In the process of forming the TRC, victims, survivors and their families and civil society should be widely consulted. Truth seeking commissions, such as the TRC and the Disappearance Commission, should be comprised of commissioners that broadly represent Nepalese society and should maintain their independence. Similarly, public awareness programs should be carried out to inform communities of the transitional justice process and the workings of the TRC and Disappearance Commission. Social and economic support and development, including skills and employment, as well as memorials and other forms of recognition should be given to conflict-affected communities. These commissions should not only seek the truth, but also look at the root causes of the conflict, and make recommendations for future direction.

Study Mission

Nepal has recently emerged from a decade-long internal armed conflict between the government and the Communist Party of Nepal (Maoist) as former rebels. Currently, the country is struggling to consolidate democracy and render justice to the victims of conflict for the violations of human rights and humanitarian law. However, the culture of impunity that permeates this country, as well as the accession to power of many people involved in the conflict, present serious obstacles for the genuine cause of securing justice and instituting the culture of accountability.

Formation of a TRC is an integral component of the Comprehensive Peace Agreement (CPA) signed between the government and the then CPN (Maoist). A draft bill to this effect has been already produced by the government. The establishment of a TRC being a relatively new constructs, it is vital to closely analyze various aspects of such instruments already tested in other transitional societies. Therefore, INHURED International, *coordinator of ICCPR Committee* of HRTMCC undertook a comprehensive study on the formation, mandate, jurisdiction and limitations of key TRCs across the world. The study also includes a thorough study of the various dimensions and viability of truth and reconciliation in the given political, social and other contemporary contexts.

Scene Setting

In 1996, the then CPN (Maoist), formally waged an armed conflict against the state, which lasted for ten consecutive years, and resulted in the violation of massive human rights and humanitarian law perpetrated by both the government and the Maoists. According to evidences collected by various human rights organizations in Nepal, which is not yet complete, 13,276 people were killed during this conflict of which 7,928 by the state and rest from the Maoists⁶. Furthermore, "disappearances" of many Nepalese increased rapidly during this period and have been attributed to both sides of the conflict, resulting in a total of 933 disappeared persons⁷ so far. In addition, Maoists abducted 85,185 persons⁸, and committed atrocities such as torture, maiming, intimidation, forced displacement, persecution and extortion.

In April 2006, seven agitating parties demonstrating against the King's unconstitutional move joined with the Maoists for the restoration of a democratic system in Nepal. The government responded by using force to suppress the opposition to the royal move. The security forces were ordered to shoot demonstrators; this triggered another onslaught of human rights violations during the protest, called the Second Peoples' Movement. Ultimately, in response to the mounting public pressure, the King made a royal proclamation stating his

6 http://www.insec.org.np/victim/candidate_display_user.php?pageno=1

7 *ibid*

8 <http://www.insec.org.np/pics/1332480011.pdf>

handover of power to the people. Following his address, the dissolved parliament was reinstated and a new coalition government of the Seven Party Alliance (SPA) was formed. The new government formed a probe commission to investigate human rights violations during the royal regime and the Peoples' Movement.

The CPA between the government and the Maoists in November 2006 also provides compensation for those affected by the conflict, and promises to “conduct investigation about those who were involved in gross violations of human rights at the time of the conflict and those who committed crimes against humanity.” It also promises to “form a high level Truth and Reconciliation Commission to create an environment for social reconciliation.” However, the CPA does not mention prosecution of violators of human rights and humanitarian law during the conflict. Despite positive developments indicated by the CPA, many Nepalese fear that the culture of impunity that exists in the country will prevent the government from punishing the perpetrators of the conflict, and will hinder its ability to engage in constructive transitional justice.

Study Objectives

The objectives of this project were to:

1. Conduct research and documentation of truth and reconciliation initiatives worldwide particularly in reference to transitional justice;
2. Audit national initiatives in the formation of truth and reconciliation commission in the context of the CPA and open up rigorous discourse on the viability of such a mechanism; and
3. Enhance national and global campaign through "Policy Dialogue" on transitional justice with a particular focus on the formation of an independent, competent and credible transitional justice mechanism (the Truth Commission) to investigate the atrocities committed in the 10-year long armed conflict in Nepal.

Comparative Research

Many post-conflict countries have adopted transitional justice mechanisms to bring peace, reconciliation and justice to their societies. These mechanisms have included the establishment of international

tribunals, truth commissions that offer grants of amnesty in exchange for the truth, special prosecution units, and hybrid international-domestic courts. The success of these various mechanisms has depended on many factors including political will, the local context, and grass-roots and international involvement and support.

Although the current CPA refers to forming a TRC in Nepal, which in accordance with the Ordinance, implies a grant of amnesty in exchange for learning the truth, INHURED International is advocating an appropriate model of truth commission, which also includes the prosecution of the perpetrators of the crimes (if found during the truth-telling and investigation) as a key component of transitional justice mechanism. Given that the political will towards ending impunity in Nepal is uncertain, it is high time to design a model and raise massive public awareness on the viability of transitional justice system to end impunity with a doctrine of zero tolerance. The comparative research on the topic has offered adequate impetus to the painful as well as relatively riskier national efforts of human rights community to accomplish accountability on rights violation.

Study Strategy

INHURED International collected necessary materials and documentation on TRC and explored the possibility to produce an all-inclusive report documenting these particular types of mechanisms at global context. After meticulous analysis of the documents on TRCs, we have offered recommendations about the model of the proposed transitional justice mechanism under the CPA. The study from the transitional justice experiences of South Africa, Peru, Sierra Leone, Cambodia, Timor-Leste and others have been drawn upon. Protocol and profile of major truth commissions around the world has been closely examined regarding their formation, structure and implementation strategy.

The second part of the study consists of information on national process of truth and reconciliation with detailed mapping of events, experiences and ground realities. A model draft law of a truth and reconciliation commission that is country context-specific, gender sensitive, inclusive and addresses the concerns of victims from justice

perspective has been proposed as an initiative of the Accountability Watch Committee (AWC). Various studies, reports and field-tested knowledge and skills have been accumulated in the process of preparing a country specific model.

It took us nearly four months to draft the report and prepare recommendations about the TRC. Upon completion of the draft report, the document has been field-tested at the level of an experts' roundtable. We earnestly hope that the concerned authority will pay due attention towards the outcome of the study while establishing the long-aspired TRC in the country. Another important goal of the study is to engender international community to assist in creating a viable TRC in Nepal.



MAJOR TRUTH COMMISSIONS AROUND THE WORLD

1. Truth Commissions: An Overview

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.

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.¹

1 Reconciliation in Divided Societies: Finding Common Ground, By Erin Daly, Jeremy Sarkin

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.

In fact there are many more examples of truth commissions than is generally realized. Through a description of a number of truth commissions that have existed to date, a comparison of some of the key issues highlighted by these commissions will be made 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.²

2 Fifteen Truth Commissions - The Centre for Human Rights Research, chrr.info/files/Hayner%20Fifteen%20Truth%20Commissions.pdf, P Hayner - 1994



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 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.

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 fair³. 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. Nevertheless, 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 next part of this report will provide detailed description of more than 30 truth commissioners that have been established over the years, with a description of truth commissions in Africa, the Americas, Asia and Europe along with their respective mandate, their charter and other details.

3 Transitional Justice: How Emerging Democracies Reckon with Former ..., Volume 1, edited by Neil J. Kritz

2. Truth Commissions in Africa

2.1 Burundi

In 1995, following fact-finding missions to Burundi sponsored by the UN, the UN Security Council called for the creation of an international commission of inquiry to investigate the assassination of President Melchior Ndadaye on October 21, 1993 and subsequent violent acts in which some 50,000 civilians lost their lives. The August 28, 1995 resolution described the deaths as "genocide," requesting that the commission recommend legal, political and administrative measures to bring to justice those responsible for these acts, prevent any repetition of past violence, eliminate impunity and promote reconciliation in Burundi. Members of the commission appointed by the UN Secretary-General were Abdelali El Moumni of Morocco, Mehmet Guney of Turkey, Luis Herrera Marcano of Venezuela, Michel Maurice of Canada, and Edilbert Razafindralambo of Madagascar. The commission's findings were released in an August 1996 report.⁴

2.2 Chad

The **Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habre, His Accomplices and/or Accessories** published its findings in May 1992. The commission was established on December 29, 1990 to investigate crimes committed during the eight-year rule of Hisssein Habre and was chaired by Chad's chief prosecutor Mahamat Hassan Abakar. The report is reprinted in volume III of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, edited by Neil Kritz and published by the U.S. Institute of Peace Press in 1995.

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 Habre, 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

4 Inter Press Service 8/26/1995; Xinhua News Agency 9/15/1995; S/RES/1012 (1995); Hayner, Priscilla, *Unspeakable Truths: Confronting State Terror and Atrocity*, New York, Routledge, 2001.

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. 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 Habre 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 small Suzuki, whereas all-terrain vehicles were actually required for travel to the provinces and the outskirts of Ndjamena⁵. 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. 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

5 Transitional Justice: How Emerging Democracies Reckon with Former ... Neil J. Kritz - 1995, books.google.com.np/books?isbn=1878379437

and disappeared altogether. Others reappeared only at the end of the month to pick up their pay and vanished again⁶. 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 Habre's regime. Detailed evidence was presented about Habre'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 Habre's regime in December 1990 by U.S. personnel both in the USA and N'Djamena. 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 daily⁷.

US involvement in Chad had been discovered by Amnesty International several years earlier, according to Benomar, but the "large scale of the genocide" that was going on made US involvement "hard to believe at the time, even for some in the international human rights community⁸."

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.

6 *ibid*

7 *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, By Priscilla B. Hayner

8 *ibid*



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 commission⁹. Some human rights observers have the impression that the commission was set up to improve the new president's image.¹⁰

2.3 Côte d'Ivoire

President Laurent Gbagbo inaugurated the country's **Mediation Committee for National Reconciliation** on November 20, 2000. The committee's mandate is to investigate post-electoral violence in Abidjan that claimed the lives of 171 citizens during October 24–26, 2000. Côte d'Ivoire's ombudsman Mathieu Ekra was appointed to lead the committee comprised of 28 politicians, military officers, religious leaders and representatives from civil society. The deaths occurred after the former military ruler, General Robert Guei, claimed victory in presidential elections held on October 22, 2000¹¹.

2.4 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

9 Fifteen Truth Commissions - The Centre for Human Rights Research, chr.info/files/Hayner%20Fifteen%20Truth%20Commissions.pdf, P Hayner - 1994

10 Agence France Presse 05/21/1992; Atlanta Journal and Constitution 05/21/1992; Priscilla B. Hayner, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study," *Human Rights Quarterly*, v. 16, no. 4, November 1994, pp. 597–655; "Chad: Decree Creating the Commission of Inquiry into the Crime and Misappropriations Committed by Ex-President Habre, His Accomplices and/or Accessories. United States Institute of Peace Library: Truth Commissions: Charters: Chad. December 29, 1990. www.usip.org/library/tc/doc/charters/tc_chad.html (August 27, 1999).

11 Africa News 11/20/2000; Abidjan Notre Voie 11/21/2000

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 decisions to charge and fully commence the proceedings against the target defendants. 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. The Carter Center has also brought in the Argentine Forensic Anthropology Team 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 investigations¹².

2.5 Ghana

In December 2001, the Parliament of Ghana passed a law establishing the National Reconciliation Commission to investigate allegations of human rights abuses during times of instability and unconstitutional governments. The law, known as the National Reconciliation Commission Act of 2002 (Act 611), entered into force on January 11, 2002. The nine-member commission, chaired by retired Supreme Court Justice K. E. Amua-Sekyi, was appointed and sworn into office by President John Kuffuor.

The mandate of the Commission, as set forth in Act 611, is to seek and promote national reconciliation among Ghanaians by establishing an accurate and complete historical record of human rights violations and abuses related to the killing, abduction, disappearance, detention, torture, ill-treatment, and seizure of properties within the period of March 6, 1957 to January 6, 1993. The Commission is charged also with making recommendations for redress of victims of human rights abuses and for institutional reforms to prevent such occurrences in the future. To date the Commission has heard approximately 2000 testimonies from witnesses including the former President, John Jerry Rawlings and the former National Security Advisor, Captain Kojo Tsikata.¹³

2.6 Nigeria

On June 4, 1999, President Olusegun Obasanjo appointed a commission to investigate human rights abuses committed from January 1, 1994 until taking office on May 29, 1999. In formally inaugurating the commission on June 14, he extended the inquiry further into the past, to December 31, 1983, when President Shehu Shagari was deposed in a military coup.

12 The synopsis of the various truth commissions was drawn from Human Rights Quarterly, 01-Nov-94 authored by Hayner, Priscilla B with © 1994 Johns Hopkins University Press.

13 The National Reconciliation Process in Ghana, <http://www.nrcghana.org/corporateprofiles.php> (March 9, 2004).

The panel's mandate was:

- ▶ To ascertain or establish, to whatever extent the evidence and circumstances may permit, the causes, nature and extent of human rights violation or abuses and in particular all known or suspected cases of mysterious deaths and assassinations or attempted assassinations committed in Nigeria since the last democratic dispensation;
- ▶ To identify the person or persons, authorities, institutions or organisations which may be held accountable for such mysterious deaths, assassinations or attempted assassinations or other violations or abuses of human rights and to determine the motives for the violations or abuses, the victims and circumstance thereof and effect on such victims or the society generally; to determine whether such abuses or violations were the product of deliberate state policy or the policy of any of its organs or institutions or individual or their office or whether they were the acts of any political organisation, liberation movement or other group or individual, and
- ▶ To recommend measures which may be taken, whether judicial, administrative, legislative or institutional to redress past injustices and to prevent or forestall future violations or abuses of human rights.

Chaired by Justice Chukwudifu Oputa, the panel was constituted by Alhaji Ali Kura Michika, Rev. Matthew Kuka, Elizabeth Pam, Malam Mamman Daura (replaced later by Alhaji Adamu Lawal Bamalli), Tunji Abayomi, Modupe Areda and T.D. Oyelade, serving as its secretary.

The chairman of the panel, Justice Oputa, has requested that enabling legislation be enacted to clarify the commission's status and powers, including by providing it with power of subpoena. Within its first two months of existence, the commission had received thousands of submissions.¹⁴

14 Post Express 07/25/1999 and 06/16/1999. <http://www.postexpresswired.com/>; The Electronic Telegraph, 08/22/1999. <http://www.telegraph.co.uk:80/>; Washington Post 06/08/1999.

2.7 Rwanda

In late 1992, four non-governmental organizations: the International Federation of Human Rights, Africa Watch, the Inter African Union for Human Rights and the Rights of Peoples, and the International Center for the Rights of the Individual and the Development of Democracy, created the **International Commission of Investigation on Human Rights Violations in Rwanda Since October 1, 1990**. The commission had ten members from eight different countries. The commission reported its findings in March 1993 based on investigations of civilian deaths during Rwanda's civil war beginning in October 1990. Africa Watch distributed the commission's final report.

Rwanda gives us an entirely new truth commission model. The Rwandan commission was created, funded, and fully sponsored by international non-governmental 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 attention¹⁵.

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 Juvenal Habyarimana held power from 1973 until his death in 1994. Vio-

15 Transitional Justice: How Emerging Democracies Reckon with Former ... Neil J. Kritz – 1995, books.google.com.np/books?isbn=1878379437

lence 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 country¹⁶.

On 1 October 1990, an armed rebel group, the Rwandan Patriotic Front, invaded Rwanda from Uganda, where most members had been 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. 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 commission¹⁷.

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

16 [www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative Study](http://www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative-Study), May 15, 2012

17 *Transitional Justice: How Emerging Democracies Reckon with Former ...* Neil J. Kritz – 1995, books.google.com/np/books?isbn=1878379437



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. These Rwandan NGOs also coordinated the logistics of the commission within the country, but otherwise played no part in the commission's operation¹⁸.

The ten members of the commission traveled to Rwanda for two weeks in January 1993, completing all of their investigations in this time. Their 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 testimony¹⁹. 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 officials²⁰. 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

18 *ibid*

19 Priscilla Hayner 15 *Truth Commissions Comparative Study*

20 *Transitional Justice: How Emerging Democracies Reckon with Former ...*, Volume 1, edited by Neil J. Kritz

terrorizing the Tutsi; this was part of a larger plan." 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. In Rwanda, the report was widely dispersed, and is well known throughout the country²¹.

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?"²²

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 troops²³.

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.)

21 Transitional Justice: How Emerging Democracies Reckon with Former ... Neil J. Kritz – 1995, books.google.com.np/books?isbn=1878379437

22 [www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative Study](http://www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative-Study), May 15, 2012

23 http://en.wikipedia.org/wiki/Rwandan_Genocide



The commission was considering a second visit to the country when the country erupted in violence in April 1994.²⁴

2.8 Sierra Leone

A peace agreement between the government of Sierra Leone and the rebel Revolutionary United Front calls for the establishment of a truth and reconciliation commission within 90 days after the signing of the agreement on July 7, 1999. The commission was later enacted in 2000 by the President and Parliament. The commission is mandated to produce a report on human rights violations since the beginning of the conflict in 1991 and issue recommendations to facilitate reconciliation and prevent a repetition of past violations. The commission is to "address impunity" and provide a forum for both victims and perpetrators of past abuses. The act provides the Truth and Reconciliation Commission with one year to produce its report and recommendations, with the possibility of an extension. Broad amnesty provisions in the agreement grant pardon and immunity from prosecution to combatants and collaborators for abuses committed during the armed conflict. The final report of the Commission was transmitted to the President of Sierra Leone on October 5, 2004 and presented to the United Nations Security Council October 27, 2004. Three chapters of the report: the overview, findings and recommendations, are available on the U.S. Institute of Peace's web site as part of the Truth Commissions Digital Collection.²⁵

24 Inter Press Service 3/8/93, Reuter Library Report, 3/8/93; Priscilla B. Hayner, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study," *Human Rights Quarterly*, v. 16, no. 4, November 1994, pp. 597-655.

25 The New York Times 07/08/1999; The Truth and Reconciliation Commission Act 2000: Sierra Leone: Charters: Truth Commissions: Library and Links: U. S. Institute of Peace, February 10, 2000, www.usip.org/library/tc/doc/charters/tc_sierra_leone_02102000.html (May 9, 2002); "Article XXVI: Human Rights Violations, Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone." United States Institute of Peace Library: Peace Agreements Digital Collection: Sierra Leone. July 7, 1999. www.usip.org/library/pa/sl/sierra_leone_07071999.html#26 (August 24, 1999); E-mail from Howard Varney, Sierra Leone Truth and Reconciliation Commission Chief Investigator, November 12, 2004; Final Report on ten-year Sierra Leone conflict published; seeks to set out historical record, offer guidance for future, United Nations Press Release, ECOSOC/6140, GA/10287, SC/8227, October 27, 2004, <http://www.un.org/News/Press/docs/2004/ecosoc6140.doc.htm> (February 10, 2005).

2.9 South Africa

The **Commission of Truth and Reconciliation** was set up in 1995 by the South African parliament to investigate human rights violations during the apartheid-era between 1960 and 1994. Anglican Archbishop Desmond Tutu chaired the 17-member body. The commission held public hearings throughout South Africa at which former victims of human rights abuses told their stories. The commission's amnesty committee 7,124 applications by perpetrators of such violations as of December 9, 1998, and is currently continuing to process them. A reparation and rehabilitation committee was established to recommend appropriate forms of compensation for human rights victims. The commission's report was presented to President Mandela in October 1998 and is available online through links on the commission's web site.²⁶

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.

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." The new commission, the "Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuses against ANC Prisoners and Detainees by ANC Members," was headed up by three commission-

26 The Ottawa Citizen 10/30/1998; Priscilla B. Hayner, "Fifteen Truth Commissions--1974 to 1994: A Comparative Study," *Human Rights Quarterly*, v. 16, no. 4, November 1994, pp. 597-655; Truth and Reconciliation Commission Amnesty Committee, <http://www/truth.org.za/amnesty.htm> (April 14, 1999).



ers from the United States, Zimbabwe, and South Africa who were widely accepted as being independent.²⁷

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. 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." The commission was to 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. 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 were 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. 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." The commission also recommended that the report be made public and that an independent body

27 <http://www.irinnews.org/indepthmain.aspx?InDepthId=7&ReportId=62746>

be appointed to further investigate disappearances and other acts outside this commission's terms of reference²⁸.

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. 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 accountable²⁹.

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 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 concerns³⁰. 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 processes³¹.

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

28 *Unspeakable Truths: Confronting State Terror and Atrocity*, Priscilla B. Hayner – 2000, books.google.com.np/books?isbn=0203903455

29 *ibid*

30 *Transitional Justice: How Emerging Democracies Reckon with Former ...*, Volume 1, edited by Neil J. Kritz

31 *Transitional Justice: How Emerging Democracies Reckon with Former ...* Neil J. Kritz – 1995, books.google.com.np/books?isbn=1878379437

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. 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 violated³².

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: 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 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 future³³.

2.10 Uganda

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 investi-

32 *ibid*

33 *Transitional Justice: How Emerging Democracies Reckon with Former ...*, Volume 1, edited by Neil J. Kritz

gate the accusations of disappearances at the hands of military forces during the first years of the Amin government. 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 report³⁴. 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. 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 citizens³⁵.

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

34 [www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative Study](http://www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative-Study), May 15, 2012

35 *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, By Priscilla B. Hayner



employment with the government, another commissioner was framed with murder charges and sentenced to death, and a third fled the country to avoid arrest. As is now well-known, abuses by Idi Amin's forces increased markedly in the following years, earning Amin the nickname the "butcher of Uganda"³⁶.

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. 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 underrated³⁷.

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 practice³⁸.

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 earlier³⁹.

36 Fifteen Truth Commissions - The Centre for Human Rights Research, chrr.info/files/Hayner%20Fifteen%20Truth%20Commissions.pdf, P Hayner - 1994

37 www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative-Study, May 15, 2012

38 *ibid*

39 *ibid*

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) periods⁴⁰. 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 introduce domestic safeguards against human rights violations, thus indicating that it was by these standards that it expected to be judged.

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 work⁴¹.

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, tor-

40 *ibid*

41 *ibid*

ture, and killings by government security forces, and call on the commission "to inquire into ... possible ways of preventing the recurrence" of such abuses. Most of the hearings of the commission have been held publicly, some broadcast live on state-owned radio and television, attracting a wide following⁴².

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. 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...."⁴³ [The secretary of the Commission] hoped some funds will be made available to enable the Commission to sit next week." It also reported that "the Commission's vehicles are not in good running condition" to make the investigatory trips that it had planned.⁴⁴

2.11 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. 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

42 *ibid*

43 *Transitional Justice: How Emerging Democracies Reckon with Former ...* Neil J. Kritz – 1995, books.google.com.np/books?isbn=1878379437

44 BBC Summary of World Broadcasts 06/10/1986; *Inter-Press Service*, 02/21/1990; *Law & Contemporary Problems* 127, Fall 1996; *The Economist* 04/04/98; Priscilla B. Hayner, "Fifteen Truth Commissions–1974 to 1994: A Comparative Study," *Human Rights Quarterly*, v. 16, no. 4, November 1994, pp. 597–655; "Uganda: Legal Notice Creating the Commission of Inquiry into Violations of Human Rights." United States Institute of Peace Library: Truth Commissions: Charters: Uganda. May 16, 1986. www.usip.org/library/tc/doc/charters/tc_uganda.html (August 27, 1999).

report of a commission of inquiry established in 1985 to investigate the killing of an estimated 1,500 political dissidents and other civilians in the Matabeleland region has not been made public to date by the government⁴⁵.

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, there was 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 were 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 refused to recognize the death of some 1,500 civilians killed in the conflict, 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 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

45 [www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative Study](http://www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative-Study), May 15, 2012



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 era⁴⁶.

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. Africa Watch also calls for full disclosure, criticizing the government for its handling of the commission of inquiry report.⁴⁷

3. Truth Commissions in The Americas

3.1 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 human rights."⁴⁸

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. The nongovernmental organizations pressured the new president, Raul Alfonsin, to set up a commission to investigate the past. Alfonsin then unilaterally created the "National Commission on the Disappeared" (Comision Nacional para la Desaparicion de Personas, or CONADEP), appointing ten individuals "who enjoyed national and

46 *ibid*

47 Priscilla B. Hayner, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study," *Human Rights Quarterly*, v. 16, no. 4, November 1994, pp. 597-655.

48 *Transitional Justice: How Emerging Democracies Reckon with Former ...* Neil J. Kritz – 1995, books.google.com/books?isbn=1878379437

international prestige, chosen for their consistent stance in defence of human rights and their representation of different walks of life." Both chambers of Congress were also asked to appoint representatives to the commission. The 16-member National Commission on the Disappeared was created on December 16, 1983 and the ten non-legislative members were writer Ernesto Sabato, Roman Catholic Bishop Jaime de Nevares, Rabbi Marshall Meyer, journalist Magdalena Ruiz Guinazu, Methodist Bishop Carlos T. Gattinoni, Ricardo Colombres, Rene Favarolo, Hilario Fernandez Long, Gregorio Klimovsky, and Eduardo Rabossi. Legislators Santiago Marcelino Lopez, Hugo Diogenes Piucill and Horacio Hugo Huarte sat on the commission⁴⁹.

Non-governmental 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. The commission held regular press briefings, and worked closely with families of the disappeared to try to locate persons who might still be alive⁵⁰.

The commission's report on 9,000 disappearances during the 1976-1983 military rule, issued on September 20, 1984, was commercially published under the title of *Nunca Mas: Informe de la Comision Nacional sobre la Desaparicion de Personas*. Editions of the English language translation of *Nunca Mas* were published by Faber and Faber and by Farar, Strauss & Giroux in 1986. *Nunca Mas* was widely available throughout the country, was enthusiastically received, and soon became a national best-seller.⁵¹

49 Worldwide Truth and Reconciliation Commissions , List of Truth Commissions of 24 Countries , http://www.ncf.org.np/upload/files/782_en_World%20experiences%20of%20TRC-Commissions.pdf

50 www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative-Study, May 15, 2012

51 Christian Science Monitor 01/27/1987; Reuters North European Service 12/16/1983, 11/29/84; Esteban Cuya, " Las Comisiones de la Verdad en America Latina. " <http://www.derechos.org/koaga/iii/1/cuya.html> (March 1, 1999).

3.2 Bolivia

Religious groups, trade and labor unions, the San Simon de la Paz University, human rights advocates and citizens formed a committee that investigated abuses of power by General Garcia Meza and advocated, in the mid-1980s with the Congress and the Supreme Court respectively, bringing him and his accomplices to account for their actions. In 1993, after a six-year trial, General Garcia Meza was sentenced in absentia to 30 years in prison.

On October 28, 1982, President Hernan Siles Suazo issued a decree establishing the **National Commission of Inquiry into Disappearances** to investigate the disappearance of citizens during 1967-1982. The eight-member commission documented 155 cases of disappearances. It disbanded three years after its creation without issuing a final report.⁵²

The first Latin American truth commission was in Bolivia, where the government of President Hernan 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 one representative from each of two human rights organizations⁵³. 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 Rela-

52 Priscilla B. Hayner, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study," *Human Rights Quarterly*, v. 16, no. 4, November 1994, pp. 597-655; Esteban Cuya, "Las Comisiones de la Verdad en America Latina," <http://www.derechos.org/koaga/iii/1/cuya.html> (March 1, 1999).

53 *Transitional Justice: How Emerging Democracies Reckon with Former ...* Neil J. Kritz – 1995, books.google.com/books?isbn=1878379437

tives of the Detained, Disappeared and Martyred for National Liberation (ASOFAMD). 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 report⁵⁴.

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."⁵⁵

3.3 Brazil

A team of 35 investigators sponsored by Cardinal Paulo Evaristo Arns, archbishop of Sao Paulo, with the support of the World Council of Churches, published its findings on human rights abuses based on testimonies of political prisoners and court proceedings of military trials between 1964 and 1979. The Portuguese edition of *Brazil, Nunca Mais*, and its English language version *Torture in Brazil*, is an account of the use of torture during 21 years of military rule in that country.⁵⁶

3.4 Chile

After taking office in March 1990, President Patricio Aylwin established a "National Commission for Truth and Reconciliation" (Comision Nacional para la Verdad y Reconciliacion) to investigate

54 ibid

55 ibid

56 AP Worldstream 08/10/1995; Los Angeles Times 09/21/1986.



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 organizations⁵⁷.

Aylwin appointed a well balanced commission headed up by former Senator Raul Retting and including persons from the various political sectors of Chile. Other members of the commission were Jaime Castillo Velasco, Jose Luis Cea Egaña, Mónica Jiménez de la Jara, Laura Novoa Vásquez, José Zalaquett Daher, Ricardo Martín Díaz, and Gonzalo Vial Correa. 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 investigations⁵⁸.

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. 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 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 rights⁵⁹.

57 Transitional Justice: How Emerging Democracies Reckon with Former ... Neil J. Kritz – 1995, books.google.com/books?isbn=1878379437

58 *ibid*

59 Report of the Chilean National Commission on Truth and Reconciliation, http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report_PartI.pdf

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). In presenting the 1,800-page report to the public in February 1991, 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.⁶⁰

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." 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"⁶¹.

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." 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 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 benefits and a pension for the survivors of the disappeared or execut-

60 [www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative Study](http://www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative-Study), May 15, 2012

61 *Transitional Justice: How Emerging Democracies Reckon with Former ...* Neil J. Kritz – 1995, books.google.com.np/books?isbn=1878379437



ed). 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.⁶²

3.5. Ecuador

On September 17, 1996, President Abdala Bucaram established a **Truth and Justice Commission** to investigate at least 176 cases of human rights abuses in Ecuador over the past seventeen years. Frank Vargas, minister of the presidency, Juan de Dios Parra, secretary of the Latin American Human Rights Association (ALDHU), a representative of the Ecuadoran Bishops' Conference, and members of local human rights groups constituted the commission.⁶³

3.6. El Salvador

The **Commission on the Truth for El Salvador** was mandated by the January 16, 1992 U.N.-brokered peace agreements ending the war in that country. It was set up in July 1992 and composed of former Colombian president Belisario Betancur; former Venezuelan foreign minister Reinaldo Figueredo Planchart; and Thomas Buergenthal, George Washington University law professor. The commission's report on "serious acts of violence" since 1980 entitled "From Madness to Hope: the 12-Year war in El Salvador: Report of the Commission on the Truth for El Salvador," was released on March 15, 1993 at the United Nations.⁶⁴

62 BBC Summary of World Broadcasts 03/06/1991; Los Angeles Times 09/07/1990; Esteban Cuya, "Las Comisiones de la Verdad en America Latina." <http://www.derechos.org/koaga/iii/1/cuya.html> (March 1, 1999).

63 U.S. Dept. of State, Country Reports on Human Rights Practices for 1996; BBC Summary of World Broadcasts 9/20/1996; Hayner, Priscilla, *Unspeakable Truths: Confronting State Terror and Atrocity*, New York, Routledge, 2001.

64 Christian Science Monitor 03/17/1993; "El Salvador: Mexico Peace Agreements-Provisions Creating the Commission on Truth." United States Institute of Peace Library: Truth Commissions: Charters: El Salvador. April 27, 1991. www.usip.org/library/tc/doc/charters/tc_elsalvador.html (August 27, 1999); "From Madness to Hope: the 12-Year war in El Salvador: Report of the Commission on the Truth for El Salvador." United States Institute of Peace Library: Truth Commissions: Reports: El Salvador. March 15, 1993. www.usip.org/library/tc/doc/reports/el_salvador/tc_es_03151993_toc.html (January 26, 2001).

The United Nations "Commission on the Truth for El Salvador" was created through the peace accords between the Salvadoran government and the Farabundo Marti National Liberation Front (FMLN) in April, 1991. The 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." 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 staff⁶⁵.

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

65 [www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative Study](http://www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative-Study), May 15, 2012)



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 affairs⁶⁶.

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 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 war⁶⁷.

EL SALVADOR: MEXICO PEACE AGREEMENTS--PROVISIONS CREATING THE COMMISSION ON TRUTH (Mexico City, April 27, 1991)

...Agreement has been reached to establish a Commission on the Truth, which shall be composed of three individuals appointed by the Secretary-General of the United Nations after consultation with the Parties. The Commission shall elect its Chairman. The Commission shall be entrusted with the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the truth. The Commission shall take into account:

⁶⁶ *ibid*

⁶⁷ Transitional Justice: How Emerging Democracies Reckon with Former ... Neil J. Kritz – 1995, books.google.com/books?isbn=1878379437

The exceptional importance that may be attached to the acts to be investigated, their characteristics and impact, and the social unrest to which they gave rise; and

The need to create confidence in the positive changes which the peace process is promoting and to assist the transition to national reconciliation⁶⁸.

The characteristics, functions, and powers of the Commission on the Truth and other related matters are set forth in the corresponding annex.

3.7 Guatemala

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

The CEH report in Spanish and the conclusion, recommendations and appendices of the report in both Spanish and English are available on the web site of the American Association for the Advancement of Science.⁶⁹

68 COMMISSION ON THE TRUTH FOR EL SALVADOR (1992, EL SALVADOR: MEXICO PEACE AGREEMENTS--PROVISIONS CREATING THE COMMISSION ON TRUTH, Mexico City, April 27, 1991

69 Reuters 02/22/1997; Deutsche Presse-Agentur 07/25/1998; Inter Press Service 08/01/1997; Noti-Sur 06/24/1994; New York Times 02/26/1999; "Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer." United States Institute of Peace Library: Peace Agreements Digital Collection: Guatemala. June 24, 1994. www.usip.org/library/pa/guatemala/guat_940623.html (August 27, 1999).

3.8 Haiti

A December 1994 executive order by President Jean Bertrand Aristide established Haiti's **National Truth and Justice Commission** to investigate human rights abuses over a three-year period. This period spanned from the September 30, 1991 bloody coup that overthrew elected President Aristide until his restoration to power following the September 1994 occupation of Haiti by 20,000 U.S. troops. Led by sociologist Françoise Boucard, the commission was comprised of four Haitians and three foreigners. In February 1996, it delivered its final report and recommendations to the president and the judiciary.⁷⁰

3.9 Honduras

In late December of 1993, Leo Valladares, Commissioner for the Protection of Human Rights, delivered to then-President Rafael Callejas and president-elect Carlos Roberto Reina, a report on 179 disappearances carried out by Honduran military and security forces between 1979 and 1990. The report is entitled "Los Hechos Hablan por Si Mismos." Its English language version was published by the Human Rights Watch/Americas and the Center for Justice and International Law in 1994⁷¹.

3.10 Panama

On January 18, 2001, Panamanian President Mireya Moscoso established a truth commission to investigate human rights violations perpetrated during the military dictatorships of Generals Omar Torrijos and Manuel Noriega between 1968 and 1989. The creation of this commission happened a year after exhumations at a former military base on the outskirts of the capital disclosed the remains of four human skeletons. Led by lawyer and Catholic activist Alberto Santiago Almanza Henríquez, committee members include Protestant Bishop Julio Murray, lawyer Juan Antonio Tejada, Dr. Osvaldo Velásquez, businessman and president of the Panama branch of International

70 Washington Post 09/24/1995, 02/09/1996; Fanny Benedetti, "Haiti's Truth and Justice Commission," <http://www.wcl.american.edu/pub/humright/brief/v3i3/haiti33.htm> (April 12, 1999); République d'Haïti: Rapport de la Commission Nationale de Vérité et de Justice <http://www.haiti.org/truth/table.htm> (January 22, 2001). (Report of the Commission in French does not include the three appendices.)

71 Associated Press 12/29/93.

Transparency Fernando Berguido, human rights activist Otilia Tejera de Coster and Rosa María Britton. The commission has six months to present a report to the attorney-general, with the possibility of a three-month extension if deemed necessary by commissioners to complete their work.⁷²

3.11 Paraguay

From its establishment in 1976, the **Comite de Iglesias para Ayuda de Emergencia (CIPAE)**, with the support of the World Council of Churches, has documented human rights violations in Paraguay during the 1954-1989 military rule of Alfredo Stroessner. The result of its effort was published beginning in 1990 in four volumes under the title of *Paraguay Nunca Mas*.⁷³

3.12 Peru

A commission was set up by then-President Fernando Belaunde Terry to investigate the killing of eight journalists and one peasant guide on January 26, 1983 in Uchuraccay, Peru. The three members of the commission were writer Mario Vargas Llosa, journalist Mario Castro Arenas and lawyer Abraham Guzman Figueroa. The commission's findings were released on March 4, 1983⁷⁴.

Thirteen Peruvian legislators made up a congressional commission of inquiry into the killing of over 250 political prisoners on June 18 and 19, 1986, following the takeover of two prisons. The commission issued a majority and a minority report two years later. Commission members were commission president Rolando Ames Cobian, Jorge del Prado, Javier Bedoya de Vivanco, Oscar Felipe Ventura, Agustin Haya de la Torre, Aureo Zegarra, Romualdo Biaggi Rodriguez, Judith de la Mata, Cesar Delgado Barreto, Miguel Angel Mufarech, Humberto Arenas, Nicanor Asmat Vega, and Jose Barba Caballero.⁷⁵

72 EFE 01/19/2001

73 Esteban Cuya, "Las Comisiones de la Verdad en America Latina". <http://www.derechos.org/koaga/iii/1/cuya.html> (March 1, 1999).

74 https://peaceaccords.nd.edu/matrix/status/4/truth_reconciliation_mechanism

75 Esteban Cuya, "Las Comisiones de la Verdad en America Latina." <http://www.derechos.org/koaga/iii/1/cuya.html> (March 1, 1999).

In December 2000, the caretaker government of Valentin Paniagua approved the establishment of a truth commission to investigate human rights violations committed in Peru between 1980 and 2000. The commission was inaugurated on July 13, 2001 and began its work after President-elect Alejandro Toledo took office later that month. Salomon Lerner Fresnes, philosopher and dean of the Catholic University in the capital city of Lima, heads the commission. In early September 2001, upon the request of the Catholic Church, the commission was renamed the **Truth and Reconciliation Commission**, and its membership was expanded from six to twelve. The original commission members are legislator Beatriz Alva Hart, sociologist Carlos Ivan Degregori, former legislators Enrique Bernales and Carlos Tapia, priest Gaston Garatea and former dean of the University of Ayacucho Alberto Morote Sanchez⁷⁶.

The commission has opened four regional offices and plans to set up 15 offices in total. It is investigating human rights abuses by the Shining Path and the Tupac Amaru rebel groups and the military during the administrations of former Presidents Fernando Belaunde (1980-1995), Alan Garcia (1985-1990) and Alberto Fujimori (1990-2000). It is estimated that such abuses resulted in 30,000 deaths and 6,000 disappearances in Peru over the last two decades.

Representatives from the ministries of justice, defense, interior, and women's issues and human development, the human rights ombudsman's office, the National Human Rights Coordination, the Peruvian Episcopal Conference and the National Evangelical Council of Peru comprised a working group that drafted the legislation creating the body. The Commission presented its final report in Spanish on August 28, 2003.⁷⁷

3.13 Uruguay

In mid-August 2000, a commission established by President Jorge Batelle began its investigation of the fate of the disappeared during

76 www.sourcewatch.org/index.php/Peruvian_Truth_Commission

77 EFE News Service, 2/11/2002, 9/4/2001, 7/7/2001; InterPress Service 1/4/2001; Resolución Suprema No. 304-2000-JUS <http://www.cajpe.org.pe/RIJ/bases/legisla/peru/304-2000.HTML> (February 27, 2001); Comisión de la Verdad y Reconciliación, Press Release 226, www.cverdad.org.pe/ingles/informacion/nprensa/notas.php?idnota=171 (February 15, 2005).

the military regime in power from 1973 to 1985. Archbishop Nicolas Cotungo was appointed as chair of the commission. The six-member body included Jesuit priest Luis Perez Aguirre, labor leader Jose DÕEliã, educator Jose Claudio Williman, and lawyers Carlos Ramela and Gonzalo Fernandez. The commission was granted 120 days, with the possibility of extension, to present a report to the president. Reportedly, of the 164 Uruguayans who disappeared, 127 were living in Argentina, 32 in Uruguay, three in Chile and two in Paraguay⁷⁸.

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 Jose 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." 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.⁷⁹

At the initiative of two political parties in the legislature, two inquiry commissions were set up in April 1985 to study human rights violations related to military rule from 1973 to 1985. The **Commission for the Investigation of the Situation of the Disappeared and Related Events** transmitted its report to the ordinary courts in November 1985, and a month earlier, the **Investigating Commission on the Kidnapping and Assassination of National Representatives Zelmar Michelini and Hector Gutierrez Ruiz** released its findings. None of the commission reports received an official response.

78 www.ncf.org.np/.../782_en_World%20experiances%20of%20TRC-Commission..

79 EFE 08/14/2000.

On March 9, 1989, the religious group SERPAJ released a report based on a survey of 311 former political prisoners that took three years to complete. It received little attention and no response from the government of then-President Sanguinetti, yet reportedly had wide circulation.⁸⁰

Robert Goldman of American University watched the transition closely, and notes that the Uruguayan President opposed any attempt to investigate past abuses. 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." 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 had⁸¹.

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

4. Truth Commissions in Asia

4.1 South Korea

On October 17, 2000, President Kim Dae-Jung inaugurated the **Presidential Truth Commission on Suspicious Deaths** to investigate the death of citizens opposed to past authoritarian regimes in South Korea. Earlier that year, on January 15, the enactment of the

80 Alexandra Barahona de Brito, *Human Rights and Democratization in Latin America: Uruguay and Chile*, Oxford, Oxford University Press, 1997.

81 *Transitional Justice: How Emerging Democracies Reckon with Former ...* Neil J. Kritz – 1995, books.google.com.np/books?isbn=1878379437

Special Act to Find the Truth on Suspicious Deaths created the commission and established its mandate to investigate deaths upon the request of petitioners, to report its findings and recommendations to the president, and to identify human rights perpetrators for prosecution. The commission received 80 petitions by the deadline of January 2, 2001 and has until April 20, 2002 to complete its work⁸².

The commission is composed of nine members led by law professor Yang Seung-Kyu. Appointed as commissioners were Kim Hyoung-Tae, Mun Deok-Hyoung, Lee Suk-Young, Ahn Byung-Ook, Pak Un-Jong, Lee Yoon-Seong, Lee Won-Young, Baik Seung-Hun.⁸³

4.2 Sri Lanka

In November 1994, President Chandrika Bandaranaike Kumaratunga appointed three different **Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons**, each assigned to cover a different geographic part of Sri Lanka. Their identical mandates were to investigate whether individuals had "disappeared" from their abodes since January 1, 1988, determine the fate of the disappeared and bring about charges against those responsible for the abductions. Beginning in January 1995, each commission worked independently. Together they investigated over 16,700 of cases of disappearances, submitting a single final report to the president in September 1997. One of the commission chairs, Manouri Kokila Muttetuwegama, stayed on to pursue cases left unexamined by the commissions. Eventually the final report was made public, compensation paid to the relatives of some of the victims, and over 400 members of the country's security forces were duly charged with human rights violations.⁸⁴

4.3 The Philippines

A truth commission was set up in the Philippines by the Corazon Aquino government shortly after it took power in 1986. The "Presi-

82 Kept Hidden From History, jimstaro, <http://www.boomantribune.com/story/2008/5/18/184331/106>

83 Presidential Truth Commission on Suspicious Deaths, <http://truthfinder.go.kr/eng/index.htm> (February 25, 2002).

84 Hayner, Priscilla, *Unspeakable Truths: Confronting State Terror and Atrocity*, New York, Routledge, 2001; Xinhua News Agency, 7/9/1999, 9/4/1997.



dential 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 Jose 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 courts⁸⁵.

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 civilians⁸⁶.

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 only chance to begin effec-

85 Transitional Justice: How Emerging Democracies Reckon with Former ... Neil J. Kritz - 1995, books.google.com/books?isbn=1878379437

86 *ibid*

tive 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.

4.4 Timor Leste

In October 1999, Indonesia's National Human Rights Commission (KOMNASHAM) created the **Commission for Human Rights Violations in East Timor** to investigate reports of atrocities in East Timor between January and October 1999. On January 31, 2000, the commission's report charged Indonesia's then-security minister and former army chief General Wiranto and other military and civilian officers with responsibility for human rights violations and destruction in East Timor after a pro-independence vote by a majority of East Timorese on August 30, 1999. The report recommends further investigations by Indonesia's attorney general; prosecution of those charged with human rights abuses; protection, rehabilitation and compensation for victims; re-definition of the role of the military; and return of displaced East Timorese.⁸⁷

Reports of atrocities committed by pro-Indonesian militias following a majority vote for East Timor's independence from Indonesia in August 1999 led to the establishment of a UN-sponsored **International Commission of Inquiry on East Timor** in October 1999. The commission's mandate was to "gather and compile systematically information on possible violations of human rights and acts which might constitute breaches of international humanitarian law committed in East Timor" since January 1999⁸⁸.

In their January 2000 report, the commissioners affirmed that there had been "gross violations of human rights and breaches of humani-

87 New York Times 10/10/1999; Washington Post 2/1/2000; Antara 1/31/2000; KOMNASHAM Executive Summary, 1/31/2000, <http://www.easttimor.com/archives/1465.htm> (February 14, 2000).

88 Genocide In East Timor? Calling for an International Criminal Tribunal for East Timor in Light of Akayesu, <https://litigation-essentials.lexisnexis.com>

tarian law," and that the Indonesian army and related militias had been involved in the violations. Moreover, the report called for the rapid return of displaced East Timorese, the demobilization and disarmament of irregular forces, further investigation of the violations and prosecution of those responsible, reparations for victims, and the establishment of an international human rights tribunal for East Timor.

Members of the commission were: Chairperson Sonia Picado Sotela, Costa Rican jurist and legislator, who had served on the Inter-American human rights court; Judith Sefi Attah, a former Nigerian cabinet minister for women's affairs; former Indian chief justice A.M. Ahmadi; Mari Kapa, deputy chief justice of Papua New Guinea; and German parliamentarian and former justice minister Sabine Leutheusser-Schnarrenberger.⁸⁹

A regulation issued on July 13, 2001 by the UN Transitional Administration in East Timor established a **Commission for Reception, Truth and Reconciliation** (<http://www.easttimor-reconciliation.org>) with a three part mandate: (1) to investigate human rights violations committed there between April 1974 and October 1999, resulting in the death of an estimated 200,000 East Timorese; (2) to facilitate reconciliation and reintegration of minor criminal offenders who submit confessions, through local "Community Reconciliation Processes"; and (3) to recommend further measures to prevent future abuses and address the needs of victims. After a months-long public nomination and selection process, seven national commissioners were sworn in on January 21, 2002 in Dilli. They are: human rights activist Jacinto Alves, businesswoman Olandina Caeiro, clergymen Jovito Araujo and Agustinho de Vasconcelos, former civil servant Jose Esteveao Soares, lawyer and human rights activist Aniceto Guterres Lopes, and health practitioner Isabel Guterres. Between 25 and 30 regional commis-

⁸⁹ Press release, UN High Commissioner for Human Rights, 10/15/1999; AFP 12/3/1999.

sioners will be appointed. The commission will operate for two years with a possible extension of six months.⁹⁰

5. Truth Commissions in Europe

5.1 Germany

The **Enquet Kommission Aufarbeitung von Geschichte und Folgen der SED-Diktator in Deutschland**, or **Study Commission for the Assessment of History and Consequences of the SED Dictatorship in Germany**, was set up by members of the German Parliament in March 1992 to investigate human rights violations under communist rule in East Germany from 1949 to 1989. The 27-member body was headed by East German Parliamentarian and human rights activist Rainer Eppelmann. 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. 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..

90 UNTAET Press Office, Fact Sheet 9, December 2001; "Commissioners Sworn in to Lead Reconciliation Body," January 21, 2002, <http://www.un.org/peace/etimor/DB/db210102.htm>, (February 23, 2002); "On the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor," UNTAET/REG/2001/10, 7/13/2001, available at http://www.easttimor-reconciliation.org/Documents.htm#UNTAET_Regs (February 25, 2002); AP Worldstream, 1/29/2002.

U.S. Dept. of State, Country Reports on Human Rights Practices for 1996; BBC Summary of World Broadcasts 9/20/1996; Hayner, Priscilla, *Unspeakable Truths: Confronting State Terror and Atrocity*, New York, Routledge, 2001.



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. 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.⁹¹

5.2 Serbia and Montenegro (formerly Federal Republic of Yugoslavia)

On February 22, 2002, Yugoslav President Vojislav Kostunica inaugurated the country's truth and reconciliation commission to investigate war crimes committed in Slovenia, Croatia, Bosnia and Kosovo over the last decade. The commission members are: Svetozar Stojanovic, Mirjana Vasovic, Rodovan Bigovic, Svetlana Velmar Jankovic, Mihajlo Vojvodic, Djordjije Vukovic, Ljubodrag Dimic, Slavoljub Djukic, Aleksandar Lojpur, Bosko Mijatovic, Radmila Nakarada, Predrag Palavestra, Zoran Stankovic, Darko Tanaskovic and Sulejman Hrnjica. The commission was established in March 2001 and has a three-year mandate.⁹²

91 Los Angeles Times 03/13/1992; Priscilla B. Hayner, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study," *Human Rights Quarterly*, v. 16, no. 4, November 1994, pp. 597-655; "Germany: Law Creating the Commission of Inquiry on 'Working Through the History and the Consequences of the SED Dictatorship.'" United States Institute of Peace Library: Truth Commissions: Charters: Germany. May 14, 1992. www.usip.org/library/tc/doc/charters/tc_germany.html (August 27, 1999).

92 Agence France Presse, 4/8/2001; BBC Monitoring Europe - Political, 2/22/2002.

6. A Select Overview of Truth Commissions

S.N	Country	Name of truth commissions	Years of operation	Dates covered	Created by
1	Argentina	National Commission on the Disappeared (Comisio'n Nacional sobre la Desaparicion de Personas (CONADEP))	Established: 16 December 1983 Report completed: 20 September 1984	1976 – 1983	Decree No. 187 of 15 December 1983 by President Rau'l Alfonsi'n
2	Uganda	Commission of Inquiry into Violations of Human Rights	Established: May 1986 Report completed: 1995	9 October 1962 – 25 January 1986	Legal Notice No. 5 of 16 May 1986 by President Yoweri Museveni
3	Chile	National Commission on Truth and Reconciliation (Comisio'n Nacional para la Verdad y Reconciliacio'n)	Inaugurated: 1990 Report completed: February 1991	11 September 1973 – 11 March 1990	Decree No. 355 of 25 April 1990 by President Patricio Aylwin
4	Chad	Commission of Inquiry into the Crimes and Misappropriations Ex-President Habre, His Accomplices and/or Accessories (Commission d'Enque'te sur les Crimes et De'tournements Commis par l'Ex-Pre'sident Habre', ses co-Auteurs et/ou Complices)	Established: December 1990 Report completed: May 1992	1982 – 1990	Decree No. 014/ P.CE/ CJ/90 of 29 December 1990 by President Idriss De'by
5	El Salvador	Commission on the Truth for El Salvador (Comisio'n de la Verdad para El Salvador)	Inaugurated: 13 July 1992 Report completed: 15 March 1993	January 1980 – July 1992	UN-brokered peace agreements of 16 January 1992
6	Haiti	National Commission for Truth and Justice (Commission Nationale de Ve'rite' et de Justice)	Inaugurated: April 1995 Completed: February 1996	30 September 1991 – 15 October 1994	Executive order of December 1994 by President Jean Bertrand Aristide

7	South Africa	Truth and Reconciliation Commission	Inaugurated: 1995 Primary reports completed: 1998 (commission continued to operate for several more years to complete amnesty hearings)	1960 – 1994	The Promotion of National Unity and Reconciliation Act No. 34 of 1995 by the South African Parliament
8	Guatemala	Historical Clarification Commission (Comisión para el Esclarecimiento Histórico (CEH))	Established: 23 June 1994 Report completed: 24 February 1999	Approximately 1958 – 1994 (no specific dates given in mandate)	Peace agreements of 23 June 1994
9	Nigeria	Human Rights Violations Investigations Commission (aka Oputa Commission)	Inaugurated: 14 June 1999 Report completed: June 2002	31 December 1983 – 29 May 1999	Created through Presidential decree, 4 June 1999, by President Olusegun Obasanjo
10	Sierra Leone	Sierra Leonean Truth and Reconciliation Commission	Established: 2000 Inaugurated: July 2002 Report completed: 5 October 2004	1991 – 2000	Truth and Reconciliation Act, enacted in 2000 by the Sierra Leone Parliament, Implementing Art. XXVI of the Lomé Peace Agreement
11	Ghana	National Reconciliation Commission	Inaugurated: 6 May 2002 Report completed: mid-2004	7 March 1957 – 6 January 1993	National Reconciliation Commission Act 611 of 2002 by the Parliament of Ghana
12	Timor Leste	Commission for Reception, Truth And Reconciliation (Comissão de Acolhimento, Verdade e Reconciliação (CAVR)) ⁶	Inaugurated: 21 January 2002 Report completed: 28 August 2003	April 1974– October 1999	A regulation issued on 13 July 2001, by the UN Transitional Administration in East Timor

13	Peru	Truth and Reconciliation Commission (Comisio'n de la Verdad y Reconciliacio'n (CVR)) ⁷	Inaugurated: 13 July 2001 Report completed: August 2003	1980 – 2000	Supreme Decree No. 065-2001-PCM of 4 June 2001, amended by Supreme Decree No. 101- 2001-PCM of 4 September 2001
14	Morocco	Equity and Reconciliation Commission (Instance Equite' et Re'conciliation (IER)) ⁸	Inaugurated: January 2004 Report completed: December 2005	1959 – 1999	Created through a Royal Decree of King Mohammed VI
15	Liberia	Truth and Reconciliation Commission of Liberia	Inaugurated: February 2006 Expected to conclude mid-2008	January 1979 – 14 October 2003	Truth and Reconciliation Act passed in June 2005 by the National Transitional Legislative Assembly, implementing Article XIII of the Comprehensive Peace Agreement of 18 August 2003

Source: P. B. Hayner – Truth commissions: a schematic overview



A COMPARATIVE OUTLOOK OF TRUTH

1. The Context: Defining the Parameters

Truth commissions 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 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 here¹. By "truth commissions" it is meant only those bodies that fit a fairly defined, limited mold².

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 legitimacy³.

1 <http://www.un.org/en/peacebuilding/pbso/pdf/Reconciliation-After-Violent-Conflict-A-Handbook-Full-English-PDF.pdf>

2 chrr.info/files/Hayner%20Fifteen%20Truth%20Commissions.pdf

3 <http://www.jm.undp.org/content/dam/jamaica/docs/researchpublications/governance/TruthTellingMechanismsInJamaica.pdf>

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 commission⁴. 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 reflected below.

Truth and Reconciliation Commission Standard Setting

1	Introduction		
i	The role of truth commissions in a comprehensive action plan for truth, justice and reparation	<p>Truth: establish the facts about violations of human rights that occurred in the past;</p> <p>Justice: investigate past violations and prosecute the suspected perpetrators;</p> <p>Reparation: provide full reparation to the victims and their families, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition</p>	At the end of its work, the Commission will have to compile a report that "includes a comprehensive account of the activities of the Commission, and its findings, Liberia article IV, section 4, (a), (b) and (f)).
ii	Truth commissions and the right to truth	Individual and a collective Rights, identity of perpetrators causes, facts and circumstances with non-judicial process that complement the role of the judiciary	How can the victims claim for right to truth?

4 [www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative Study](http://www.scribd.com/.../Priscilla-Hayner-15-Truth-Commissions-Comparative-Study), May 15, 2012



2 Mandate of the Commission			
i	Subject-matter mandate	<p>types of violations to be investigated including ESCR violations</p> <p>The TRC is mandated to examine not only the events that are the subject of its inquiry, but also their underlying causes</p>	<p>Liberia TRC massacres, rape, murder, extra-judicial killings and "economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflict" (article IV, section 4(a)).(31)</p> <p>Chilean 1990 TRC cases of "disappearances", executions, and deaths as a result of torture, as well as deaths as a result of violent acts by private individuals on political pretexts. Commission</p> <p>South Africa TRC did not include some of the violations perpetrated by the apartheid regime in particular forced removals, land rights. Sierra Leone TRC was not confined to violations of human rights that might constitute crimes, under either national or international law, nor limited to violations committed by states or governments.</p>
ii	Temporal mandate	period of time under investigation	Liberia any other period proceeding (article IV, section 4(a)). give priority to the period from January 1979 to October 2003.
iii	Period of operation	Fixed (it is important to indicate a time limit for truth commissions to end their operations and report on their findings, it is equally important to make that time limit a realistic one)	It may request Legislature to extend its tenure for an additional period of three months. The request, which must demonstrate a good cause for extension, cannot be repeated for more than four times

3 Functions and powers of the Commission			
i	Investigating human rights violations and abuses	Investigation of human rights violations, the preservation of evidence and recommendation for criminal responsibility. The Commission being a non-judicial body, the TRC assists by judges to issue the legal documents required under law to exercise these powers (including warrants of search and seizure, subpoenas, citations to procure information and testimonies)	Article VII of the TRC Act Liberia, which states that "the TRC shall enjoy and exercise such functions and powers as are relevant for the realization of its mandates" (section 26) and of article VIII.
ii	Ensuring accountability for human rights violations and the prohibition of amnesty under international law	International law does not accept amnesties, pardons and similar measures of impunity that prevent the emergence of truth, a final judicial determination of guilt and innocence and full reparation to victims and their families	<p>Liberia - TRC Act does not expressly state that accountability needs to be intended in the legal sense, i.e. including a determination of individual criminal and civil responsibility. The TRC Act states only that accountability may be "political or otherwise" (article VII, section 26(d)).</p> <p>Article VII, section 26(g) of the TRC Act provides the Commission with the power of recommending amnesty except genocide, crimes against humanity, war crimes and other serious violations of international law</p> <p>South African TRC granted amnesties to perpetrators of serious human rights violations in exchange for public confessions.</p>



iii	Promoting community and national reconciliation	Focus on the truth more than on reconciliation. Forgiveness is a very personal individual process. The Commission cannot compel anyone to forgive. TRC must ensure respect the rights and dignity of both victims and alleged perpetrators. Victims and their families should not be forced to meet alleged perpetrators or to engage in any act of reconciliation. Reconciliation procedures should not be at the expenses of fair trial: they should not involve specific punishment or humiliation of alleged perpetrators.	Liberia an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to create a clear picture of the past to facilitate genuine healing South Africa, have designed their activities, in particular public hearings, to provide victims and perpetrators with a forum for public and private acts of reconciliation.
iv	Establishing an historical record	mandate refer to the establishment of an impartial and complete account of the historical past	
4	Establishment and functioning of the Commission		
i	A competent membership	Strong, independent and effective members with the highest competence in human rights and of proven independence and impartiality Principle 7 of the updated Set of Principles to combat impunity states that truth commissions "must be established through procedures that ensure their independence, impartiality and competence	Liberia Process of public scrutiny based on individual nominations and other petitions from the general public, institutions, and organisations". (article V, sections 8 and 9)(46). civil society be allowed full and active participation in the vetting process
ii	Independence and impartiality	The TRC must be free from political influence and independent from the institutions and agencies	Liberia free of undue influence and political manipulations from any source, governmental or otherwise" (article VI, section 20)



iii	Organizing the Commission's work: setting up the National Secretariat, the regional offices, staff recruitment and training	Sufficient number of experienced, trained and skilled staff. Impartial, expert legal counsel. Adequate technical and administrative staff, and, where necessary, its own investigators expertise in disciplines such as law, medicine, forensic science, psychology or other areas relevant to its investigations. This includes having the power to seek help from the international community of experts in these areas.	Liberia It can also establish county or regional sub-offices, branches or units in other parts of Liberia or even outside Liberia (article III, section 3) Sierra Leone During the first six months of its operations, the Sierra Leone Truth and Reconciliation Commission suffered an administrative crisis, created in part by a poor process of recruitment for the secretariat staff.
iv	Public information and education campaign	undertaking awareness-raising activities throughout country, including a series of meetings in five regions to obtain the views of the general population on the TRC and other transitional justice issues	
v	Ensuring sufficient resources	From National and International level	Accounting for the past and building the rule of law are long-term processes. They require dedicated resources and long-term and targeted development assistance.
5 The Commission's operations and procedures			
i	A victim-centered approach	Principle 10 of the Basic principles on the right to a remedy and reparation states: "Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families	Liberia TRC is mandated to provide opportunities for the victims of human rights violations and abuses, in particular women, children and vulnerable groups, to relate their experiences (article 4, section 4(e)). Most truth commissions provide the first opportunity for victims to come forward and present their testimony. South Africa TRC enabled some 2,000 victims and their family members to describe what happened to them and to tell the committee what they hoped would come out of its work on their case. The hearings were held in major urban centres, small towns and rural areas and were attended by members of local communities.



ii	A fair procedure	<p>Victims, witnesses, alleged perpetrators and other individuals involved should be guaranteed the following rights, among others, at all stages of the procedure before the Commission:</p> <ul style="list-style-type: none"> ▶ The right not to be discriminated against; ▶ The right to a fair and public hearing by a competent, independent and impartial body; ▶ The right to remain silent and the right not to be compelled to testify against themselves or to confess guilt; ▶ The right not to be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment; ▶ The right to have the free assistance of an interpreter if they cannot understand or speak the language used; ▶ The right to be informed promptly and in detail of any allegations made against them; ▶ The right to defend themselves and the right to have legal assistance; ▶ The right to be presumed innocent until proved guilty according to law; ▶ If adversely affected by a truth commission's decision, the right to seek judicial review; ▶ In the case of juveniles below 18 years of age, the procedure should take account of their age and the desirability of promoting their rehabilitation. ▶ The following rights are of particular importance before truth commissions. 	
iii	Collection of evidence and statement- taking	<p>It should pursue all available sources of information, including: statements from victims, witnesses and alleged perpetrators; material evidence from sources such as government records, medical records or reports, and police investigation files; court files; media reports; and information from NGOs, families of victims, and lawyers.</p>	
6 Building the future			
i	Reporting, recommendations and dissemination	<p>The report must provide details of all aspects of the Commission's work, including investigations, hearings, findings and recommendations for prosecution.</p> <p>The final report should be made public and communicated widely through radio, town hall meetings, distribution of books and education materials to schools, etc</p>	<p>Sierra Leone Truth and Reconciliation Commission recommended that the contents of its report should be incorporated into education programs</p>



ii	<p>Providing full reparation to the victims and their families</p>	<p>restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition</p> <p>The Peruvian TRC put forward a Comprehensive Plan for Reparations. This included symbolic reparations, such as the holding of commemorative events and the closing down or renovating for new purposes former detention centres and other places associated with human rights violations. The plan also included reparations in the field of health and education, such as free mental and physical health treatment for victims, a grants program for those who were forced to give up their studies and adult education programs for the communities most affected by the violence</p> <p>South African TRC made extensive recommendations for reparations to victims, including both monetary compensation and various forms of symbolic reparations, ranging from the building of monuments and renaming streets and community facilities, to expunging criminal records for acts committed with political motives.</p>	<p>El Salvador TRC recommended that a fund be set up to provide financial compensation for the victims of past human rights abuses.</p> <p>According to recommendation of Chile TRC, legislation established the Corporation for Reparation and Reconciliation and designed mechanisms for granting initial sums of compensation and regular pensions to relatives of victims officially recognized by the state in either the Commission report or subsequent Corporation investigations. It further guaranteed the right to free medical assistance for families and educational grants</p> <p>The Sierra Leone TRC recommended the implementation of a Reparations program to the needs of victims in the areas of health, pensions, education, skill training and micro credit, community reparations and symbolic reparations.</p>
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iii	Preserving evidence for future prosecutions	<p>Information should be passed to the relevant judicial or law enforcement bodies for investigation without delay, with a view to bringing those individuals to justice. Principle 8(e) of the updated Set of principles to combat impunity</p> <p>Neither reconciliation nor pardon equate with impunity. Impunity is another name for injustice. That's why the TRC understands 'justice' as the foundation of reconciliation, its precondition and effect, its point of departure and arrival. The exercise of justice is indispensable to realize reconciliation.</p>	<p>The Chilean Truth and Reconciliation Commission had no formal powers to recommend prosecutions but transmitted its findings and new evidence on some 220 cases within its mandate to the courts for judicial investigation.</p> <p>The 1996 Truth and Justice Commission in Ecuador was mandated to investigate unresolved cases of human rights violations and file its findings and recommendations before the relevant judicial authorities.</p> <p>The deliberations of the Investigative Commission in Uruguay were held in secret, and the names of the military officers involved were not included in the report, but were later turned over to the courts, together with thousands of pages of testimony and affidavits on which the Commission had based its conclusions.</p> <p>The Truth and Reconciliation Commission in Peru decided to transfer information on fully documented cases to the courts, including the identity of those allegedly responsible for violations.</p> <p>The 1998 report of the Truth and Reconciliation Commission of South Africa also recommended the prosecution of individuals who were denied or did not seek amnesty, where strong evidence had been found of their responsibility for gross human rights violations.</p> <p>Truth and Reconciliation in Timor-Leste was mandated to refer cases, where appropriate, to the Office of the General Prosecutor for prosecution.</p>
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iv	Archives	The UN Commission on Human Rights has declared that "states should preserve archives and other evidence concerning gross violations of human rights and serious violations of international humanitarian law to facilitate knowledge of such violations, to investigate allegations and to provide victims with access to an effective remedy in accordance with international law	
v	Designating a successor body	Provide for a successor body to monitor the implementation of the commission's recommendations, continue investigations, preserve the archives, etc. These functions may be carried out by an ad hoc body, or by existing bodies, such as national human rights institutions	The Chilean TRC recommended the establishment of a successor body. The Corporation for Reparation and Reconciliation Implementing one of the recommendations of the Haitian National Commission of Truth and Justice, a Proceedings and Follow Up Office (Bureau de poursuites et suivi) After the end of the mandate of the Peruvian TRC, the national Ombudsman's office took charge of the archiving of documentation gathered by the Commission and inaugurated an Information Centre In Liberia, the Independent National Human Rights Commission (INHRC) will have the responsibility to ensure that all the recommendations contained in the report of the TRC are implemented
vi	Conclusion and recommendations	TRC must unearth and reveal the whole truth – or as much as is possible to find - in matters relating to violations of international human rights law and international humanitarian law	It should ensure that perpetrators of punishable crimes are prosecuted and that victims and their families receive adequate reparation which would lay the foundation for building a strong and lasting reconciliation

Source: P. B. Hayner – Truth commissions: a schematic overview



2. 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 various truth commissions to date do leave us with some important lessons to apply to the future. The following minimal requirements may be considered as crucial: 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.

TRCs IN NUTSHELL

- ▶ TRCs have been established to officially investigate and provide an accurate record of the broader pattern of abuses committed during repression and civil war.
- ▶ The success of the TRCs is highly remarkable. TRCs are proven to be inescapable tools in establishing the truth of past crimes and a means for victim recompense and instruments to promote peace and reconciliation.
- ▶ TRCs are potentially valuable complementary tools in the quest for justice and reconciliation and restoring public trust in national institutions of governance
- ▶ TRCs, unlike traditional courts, focus primarily on the victims and rely heavily on their accounts and provide a forum for survivors to tell their stories and suffering through private or public hearings.
- ▶ Such accounts form an integral part of the commission's analysis of the broader pattern of abuse, usually in a comprehensive final report, and in many cases have led to criminal prosecutions and dismissal of perpetrators from government positions.
- ▶ No set principles that dictate the nature and scope of the commissions a universally accepted standard model and practice

- ▶ TRCs differ widely, depending on the nature of the conflict and the political will to address past abuses in a specific context.
- ▶ A TRC is determined by political, economic, social, cultural and religious context also guided by history of the magnitude of atrocities and culture of impunity
- ▶ The TRCs in South America, particularly in Argentina and Chile, had a limited mandate to investigate crimes committed during military rule or civil war, including politically motivated detentions and disappearances. They did not have the power to subpoena witnesses and had little or no access to military and police files.
- ▶ Others, like the El Salvadorian and South African commissions that had access to such files, faced non-cooperation from the police and military or found that relevant documentation had been destroyed, thus compromising their investigation.

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 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 Com-

mission 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.

2.1 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 has 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, 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 com-

History of the International Criminal Court

The history of the establishment of the International Criminal Court (ICC) spans over more than a century. The “road to Rome” was a long and often contentious one. While efforts to create a global criminal court can be traced back to the early 19th century, the story began in earnest in 1872 with Gustav Moynier – one of the founders of the International Committee of the Red Cross – who proposed a permanent court in response to the crimes of the Franco-Prussian War. The next serious call for an internationalized system of justice came from the drafters of the 1919 Treaty of Versailles, who envisaged an ad hoc international court to try the Kaiser and German war criminals of World War I. Following World War II, the Allies set up the Nuremberg and Tokyo tribunals to try Axis war criminals.

In 1948, the United Nations General Assembly (UN GA) adopted the Convention on the Prevention and Punishment of the Crime of Genocide in which it called for criminals to be tried “by such international penal tribunals as may have jurisdiction” and invited the International Law Commission (ILC) “to study the desirability and possibility of establishing an international judicial organ for the trials of persons charged with genocide.” While the ILC drafted such a statute in the early 1950s, the Cold War stymied these efforts and the General Assembly effectively abandoned the effort pending agreement on a definition for the crime of aggression and an international Code of Crimes.

In June 1989, motivated in part by an effort to combat drug trafficking, Trinidad and Tobago resurrected a pre-existing proposal for the establishment of an ICC and the UN GA asked that the ILC resume its work on drafting a statute. The conflicts in Bosnia-Herzegovina and Croatia as well as in Rwanda in the early 1990s and the mass commission of crimes against humanity, war crimes, and genocide led the UN Security Council to establish two separate temporary ad hoc tribunals to hold individuals accountable for these atrocities, further highlighting the need for a permanent international criminal court.

In 1994, the ILC presented its final draft statute for an ICC to the UN GA and recommended that a conference of plenipotentiaries be convened to negotiate a treaty and enact the Statute. To consider major substantive issues in the draft statute, the General Assembly established the Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995.



After considering the Committee's report, the UN GA created the Preparatory Committee on the Establishment of the ICC to prepare a consolidated draft text. From 1996 to 1998, six sessions of the UN Preparatory Committee were held at the United Nations headquarters in New York, in which NGOs provided input into the discussions and attended meetings under the umbrella of the NGO Coalition for an ICC (CICC). In January 1998, the Bureau and coordinators of the Preparatory Committee convened for an Inter-Sessional meeting in Zutphen, the Netherlands to technically consolidate and restructure the draft articles into a draft.

Based on the Preparatory Committee's draft, the UNGA decided to convene the United Nations Conference of Plenipotentiaries on the Establishment of an ICC at its fifty-second session to "finalize and adopt a convention on the establishment" of an ICC. The "Rome Conference" took place from 15 June to 17 July 1998 in Rome, Italy, with 160 countries participating in the negotiations and the NGO Coalition closely monitoring these discussions, distributing information worldwide on developments, and facilitating the participation and parallel activities of more than 200 NGOs. At the end of five weeks of intense negotiations, 120 nations voted in favor of the adoption of the Rome Statute of the ICC, with seven nations voting against the treaty (including the United States, Israel, China, Iraq and Qatar) and 21 states abstaining.

The Preparatory Commission (PrepCom) was charged with completing the establishment and smooth functioning of the Court by negotiating complementary documents, including the Rules of Procedure and Evidence, the Elements of Crimes, the Relationship Agreement between the Court and the United Nations, the Financial Regulations, the Agreement on the Privileges and Immunities of the Court.

On 11 April 2002, the 60th ratification necessary to trigger the entry into force of the Rome Statute was deposited by several states in conjunction. The treaty entered into force on 1 July 2002.

Following the completion of the PrepCom's mandate and the entry into force, the Assembly of States Parties (ASP) met for the first time in September 2002.

(Source: Coalition of the International Criminal Court)

mission 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.

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 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.

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.

3. 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.

GENDER, TRANSITIONAL JUSTICE AND RECONCILIATION

1. Understanding Gender-Based Crime

Gender-based crimes are often underrepresented in international tribunals. Most acts of violence against women are never investigated, and perpetrators commit their crimes safe in the knowledge that they will never face arrest, prosecution or punishment. Impunity contributes to a climate where such acts are seen as normal and acceptable rather than criminal, and where women do not seek justice because they know they will not receive it. Nepal also witnessed similar occurrences in the last decade, as both warring parties committed massive breaches of international humanitarian law. The four Geneva Conventions of 1949 and two additional protocols-1977 recognize women's special needs for protection in conflict situations in the following ways:

- ▶ Distinguish sexual violence as a “grave breach” of the Fourth Geneva Convention; and
- ▶ Establish sexual violence, including rape (rape constitutes torture), as a grave breach of international humanitarian law—popularly known as rules of engagement.

2. Protection of Women in Nepal

Given the collapse of the legal system in many post conflict states, justice mechanisms are most likely to fail to protect women at the national level. In Nepal's context, facts and figures demonstrate that sentences on rape and sexual violence are often minimal. Evidence is

nearly impossible to collect, and in some cases, amnesty is granted. Even in peacetime situations, women are often discriminated against by court systems that are influenced by customary or religious norms and laws. Women often face public humiliation and their testimonies are not well-respected. There is ample evidence to indicate that the legal and administrative system in Nepal offers limited protection for women witnesses. There is still no legislation related to domestic violence. However, a technical committee has been formed by the Ministry of Women, Children and Social Welfare, with the inclusion of members from the civil society, to redraft the Bill.

Even when women are willing to come forward, they are often faced with having to relive their worst experiences without having the opportunity to fully tell their plights and pains. Women were never consulted during the past ceasefire dialogues nor brought to any negotiation table. Women are neither considered as key stakeholders in the ongoing peace process, nor in any other transitional endeavors such as arms management and transitional justice mechanism.

3. Women's Voice in Truth Commissions

Women generally tend to focus their testimony on their husbands, children and other loved ones, rather than on their own experiences. As a result, their stories are overshadowed. The South African TRC indicates that in many cases women intentionally came to the TRC to tell the story of their loved ones, as a strategy to generate empathy and compassion with members of both sides of the conflict. In an attempt to make it easier for women to be heard, a special women's hearing was convened. Ironically, the Salvadoran TRC in 1993 did not include reports of rape at all in its final report because they were seen as outside of its mandate to report on "politically-motivated acts." In Guatemala, sexual violence was included in the TRC report as part of the section on torture.

In Nepal, women victims often face a difficult choice since disclosure of sexual assault is risky and can result in estrangement from their family, mistreatment of their children and social exclusion. However, if crimes are not reported, women may be ineligible for reparations. The proposed TRC in the Comprehensive Peace Agreement lacks specific

provision for women's mandatory involvement in the process as stipulated in UNSCR 1325. The recently formed TRC drafting committee is in the process of preparing an Act. The committee has three members out of which one is a woman. The proposed Commission has a mandate to investigate events surrounding the commission of gross violations of human rights and crimes against humanity but the Act does not contain any definition of these crimes. It does not make any reference of women's experiences and also does not state any recognition of gender based violence. There has hardly been any consultation among women's groups or other civil society institutions regarding the mandate and scope of the Act. Women are therefore less likely to be provided leadership positions while designing the TRC. However some initiatives have been taken by the civil society Accountability Watch Committee and National Human Rights Commission. Task forces have been formed to review the Bill and provide amendments and recommendations to the Government. Consultations are being held in this regard.

4. Women in Reparations and Reconciliation

Reparations and reconciliations are generally misunderstood as building and rebuilding of physical infrastructure and blood money compensation. Policies and procedures are often gender-blind, not recognizing the different needs and concerns of men and women. This can leave women without adequate compensation, as was the case in South Africa, where the reparations policy was initially formulated without regard for gender (it was later corrected through a Special Hearing). In East Timor, the Gender Affairs Unit of the UN mission convened 500 women in 2000 to recommend policies also on reparations for women victims of violence during the conflict.

Nepal's Ministry of Peace and Reconciliation in its new definition of 'victims of conflict' for state benefits includes single women (widows) and orphans, those killed and disappeared, those who faced loss or damage of property, those who faced disability or injury and internally displaced persons. While women who faced abduction, illegal detention, gender and sexual violence like rape or torture have been completely excluded. The government is choosing to ignore reports by



non-governmental and international organizations of the occurrence of rape and sexual violence during conflict.

In Nepal, as a post conflict reconstruction and reconciliatory approach, a "Peace and Reconstruction Commission" is proposed and a "Peace Trust Fund" has been established. The Peace and Reconstruction Ministry is responsible in dealing with reparation and reconciliation. The new draft TRC Bill has a provision to offer amnesty even to serious human rights violation and crimes against humanity which also includes rape and sexual violence. Regrettably, such provision is in total non-compliance with various international practices of truth and reconciliation, human rights standards and humanitarian principles. Additionally, gender sensitive reparation policies, are not reflected in these initiatives. There is hardly any debate concerning women's specific roles and need in reparations and reconciliation efforts. In the latest development, the new budget for the fiscal year 2064-2065 BS has emphasized to support the highly-affected women due to conflict in 10 districts. A vocational training package is envisioned for martyrs' families, wounded and the disabled as well as women and conflict affected persons as a reparation measure. Similarly, a rehabilitation, social reintegration, security and treatment program is envisioned for single women, disabled and internally displaced women.

5. Amnesty and its Impact on Women

Since women are the hardest-hit by war-time atrocities, a decision to grant amnesty has a particular impact on women. The decision to 'forgive' violence against women obstructs justice and opportunities for the victims to recuperate. Granting amnesty also may minimize the issue of sexual violence in the eyes of the population, allowing it to be set aside as an individual act or a private concern. In South Africa, crimes of a sexual nature were eligible for amnesty if they were proven to be politically motivated. This can be very difficult for women seeking justice, as the lines between political and personal motivation are blurred and difficult to prove. In Nepal, accountability towards women's rights violation is an important missing link. Due to rampant impunity, violence against women often goes unrecorded and there are hardly any instances where the perpetrators of gender-based violence during conflict have been brought to justice. The Council of Ministers

enjoys prerogative for clemency in the Interim Constitution which may further foster culture of impunity and jeopardizes the efforts of women in quest of justice and reconciliation in the post-conflict era.

6. Women's Contribution to Transitional Justice

- a) **Women as Leaders:** On an international level, over 300 organizations supported the work of the Women's Caucus for Gender Justice during the design of the International Criminal Court and its statutes which led to several advances in international law on issues of transitional justice and women including:
- ▶ Guaranteed witness protection, support and counseling through the establishment of a Victim and Witnesses Unit;
 - ▶ A mandate that judges have expertise on specific issues, including violence against women with a fair representation of men and women among judges; and
 - ▶ A more far-reaching condition whereby states that ratify the Statute "amend their national law and adopt new legislation, if necessary, to ensure conformity with the Statute's provisions."

In Timor Leste's TRC, women's groups have been involved in public dialogues regarding the various options for transitional justice. In the design of Rwanda's transitional justice mechanisms, women parliamentarians played a vital role in moving rape from a "category four," low-level offence to the most serious "category one" level. In Nepal, the Interim Constitution has embodied provision to ensure women's participation in the Constituent Assembly election through proportionate representation. Several women's groups are striving for securing women's space and leadership role in the transitional endeavor.

- b) **Women as Jurors:** In 2003, seven of the eighteen judges elected to the ICC were women, a milestone in terms of the number of women serving on any international tribunal. Five of the fifteen commissioners in South Africa's TRC were women. The UN International Commission of Inquiry for East Timor and the Sri Lankan Commission on the Western and Southern Provinces are headed by women. In Nepal, involvement of women as commissioners in the TRC and other peace initiatives is a long-cherished demand. This is especially important regarding the long absence of officials in the Women's Commission.



- c) **Women as Witnesses:** As victims of direct and circuitous on-slaught, women are also important witnesses, providing information about crimes committed against them and family members to TRCs. In South Africa's TRC, 52.9 percent of witnesses were women. It was accepted that mothers could speak and cry on behalf of their children, whereas men were not as comfortable showing emotions publicly. Many Bosnian women who were raped were afraid to testify out of fear that they would never be able to marry, that they would be shamed by society or that their attackers might seek revenge. After demanding protection before, during and after the trial, some women did come forward despite the risks. In Nepal, in the absence of a witness protect act, women fear to come forward with eyewitness accounts of the atrocities. Thus, the TRC act is expected to incorporate provisions to ensure women's protection-both as victims and witnesses.
- d) **Women as Violators:** Increasingly, women also have been perpetrators in the conflict, though generally on a far lesser scale than men. In Rwanda, approximately 3,000 women (out of more than 100,000 people accused nationwide) are awaiting or have been tried as perpetrators of genocide. In Sri Lanka, a sizable number of LTTE fighters are women. In Nepal, according to a rough estimate, more than one third of the PLA combatants are women. Many of them have been reportedly involved in committing activities in violation of the rules of engagement.
- e) **Women as Conscience-keepers:** Globally, women have been instrumental to initiate and support transitional justice processes and have often organized and advocated for their creation. In Cambodia, a network of 62 women's organizations has worked with the women's ministry to draft a domestic violence law that remains in limbo before the National Assembly. Nepali women's initiatives are mainly focused on the proportionate inclusion of women in civil and political affairs and other state machineries during transition and beyond. Women's rights groups and media have adequately highlighted women's stories during and post conflict period. The "Accountability Watch Committee," a civil society initiative, has been initiated with women's direct involve-

ment to advance the cause of accountability, impunity and justice. Organized advocacy to secure women's space in transitional initiatives, such as women's inclusive coalitions, for both the participation in and monitoring of the constituent assembly election are some of the latest initiatives. Addressing the plight of single women, survivors of violence and trafficking, IDPs, refugees and returnees is vital to ensure gender justice during conflict, transition and beyond.

7. Women and Reconciliation

- ▶ By demanding that women are meaningfully and proportionately involved in the design and proceedings of the proposed TRC;
- ▶ By persuading judges, prosecutors, advocates and commissioners to incorporate women's concerns with regard to transitional justice mechanisms;
- ▶ By engaging with the media to disseminate information in order to inform the public of the importance of transitional justice and the critical role of women in these processes;
- ▶ By providing testimony including direct personal experiences as well as those of friends and family members;
- ▶ By enabling women to come forward to voice their experience and treating them with respect to address the trauma and social stigma in their communities;
- ▶ By designing a gender specific model of reparations to ensure social justice for victims and guaranteeing that there is access to skill, education, care etc. for themselves and their families;
- ▶ By adopting an appropriate reintegration and reorganization program taking into consideration for special needs of women in the process of reintegration;
- ▶ By launching strategic litigation for the adoption of international conventions and customary laws to safeguard women during national trials; and
- ▶ By recognizing and supporting women as true catalyst of peace, justice and reconciliation at all levels¹.

1 The summary of the study has been cited from Media Kit on UNSCR 1325, SAATHI/UNFPA-2007



DILEMMAS IN FINDING AND TELLING THE TRUTH

1. 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 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.

2. Investigations

The most significant limitation 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, can define a commission's investigatory powers, limit or strengthen its investigatory 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 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, 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. 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. 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.

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..

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." Commissioner Thomas Buergenthal 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."

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.

Subject of Investigations: Select Examples

SN	Country	Key languages in Commissions	Principal acts documented by commissions	Significant violations or acts not investigated
1	Argentina	“Clarify the acts related to the disappearance of persons” and, if possible, determine the location of their remains.	Disappearance (kidnapping with no reappearance of body)	Killings by armed forces in real or staged “armed confrontations” Temporary disappearances, when person was released or body was found and identified Forced exile Detention and torture (survivors were interviewed by the commission and their stories were included as witness accounts, but they were not included in list of victims) Acts of violence by armed opposition Disappearances by government forces before the installation of the military government in 1976



2	Uganda	<p>“Mass murders and all acts or omissions resulting in the arbitrary deprivation of human life ... arbitrary imprisonment and abuse of powers of detention; denial of a fair and public trial ... torture, massive displacement of persons ... and discriminatory treatment by virtue of race, tribe, place of origin, political opinion, creed or sex” on the part of public officials.</p>	<p>Murder and arbitrary detention of life Arbitrary arrest, detention or imprisonment Torture, cruel and degrading treatment Displacement and expulsion of peoples Discriminatory treatment by public officials Denial of fundamental freedoms, such as freedom to worship, freedom of the press and freedom of association</p>	<p>Abuses by armed opposition groups Abuses by the government after the date the commission was set up (controversial because the commission continued work for nine years and no other government rights body yet existed)</p>
3	Chile	<p>“Disappearance after arrest, execution and torture leading to death committed by government agents or people in their service, as well as kidnappings and attempts on the life of persons carried out by private citizens for political reasons.”</p>	<p>Disappearances Torture resulting in death Executions by government forces Use of undue force leading to death Death of combatants and non-combatants in the firefight immediately after coup Killings “by private citizens for political reasons,” particularly the armed Left</p>	<p>Torture not resulting in death (torture practices were described, but survivors were not listed as victims) Illegal detention if released and survived Forced exile</p>
4	El Salvador	<p>“Serious acts of violence ... whose impact on society urgently demands that the public should know the truth.”</p>	<p>Massacres by armed forces Extrajudicial executions by agents of the state Assassinations by death squads Disappearances Torture by government forces Killings by armed opposition Kidnappings by armed opposition</p>	<p>(No significant acts excluded)</p>



5	South Africa	<p>“Gross violations of human rights,” defined as “the killing, abduction, torture, or severe ill-treatment of any person,” or the “conspiracy, incitement, instigation, or command” of such acts “which emanated from conflicts of the past ... within or outside of the Republic, and the commission of which was advised, planned, directed, commanded or ordered by any person acting with a political motive.”</p>	<p>Killings by agents of the state inside and outside the country Disappearances Torture and abuse by police and armed forces Raids into neighboring countries by armed forces to attack opposition Killings, primarily by bombs and land mines, by the armed opposition Abuses in detention camps of the armed opposition outside South Africa’s borders Violence by private individuals for political purposes</p>	<p>The forced removal and displacement of millions of people based on race Everyday policies and practices of apartheid that did not result in killings, abduction, torture or severe ill-treatment as defined by the commission</p>
6	Guatemala	<p>“Clarify with all objectivity, equity and impartiality the human rights violations and acts of violence that have caused the Guatemalan population to suffer, connected with the armed Conflict.”</p>	<p>Acts of genocide by government forces against the Mayan population Massacres and arbitrary killings by government forces and by the armed opposition Disappearances and kidnappings by state forces and by guerrillas Acts of violence by the economically powerful (landowners or business people) with the support of state forces Massive forces displacement and militarized resettlement by the state Forced recruitment by the guerrillas</p>	<p>(No significant acts excluded)</p>
7	Sierra Leone	<p>The commission was authorized to investigate “violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone.”</p>	<p>Forced displacement Arbitrary detentions, abductions and killings, amputations of limbs Recruitment of children into armed groups Sexual slavery of girl children</p>	<p>(No significant acts excluded)</p>

8	Ghana	The commission was to establish an “accurate, complete and historical record of violations and abuses of human rights inflicted on persons by public institutions and holders of public office during periods of unconstitutional government.”	Killings, abduction and disappearances Detention, torture and ill-treatment Illegal seizure of properties	(No significant acts excluded)
9	Timor-Leste	“Violations of international human rights standards”; “violations of international humanitarian law” and “criminal acts” committed within the context of the political conflicts in Timor Leste during the period covered by its mandate.	Extrajudicial killings Murder Deaths due to deprivation Disappearances Displacement Arbitrary detention, torture and ill-treatment Sexual violence Violence against children	(No significant acts excluded)
10	Peru	“The Truth Commission shall focus its work on the following acts, as long as they are imputable to terrorist organizations, state agents or paramilitary groups: a) murders and abductions; b) forced disappearances; c) torture and serious injuries; d) Violations of collective rights of the country’s Andean and native communities; e) other crimes and serious violations of the rights of individuals.”	Assassinations and massacres Forced disappearances Arbitrary executions Torture and cruel, inhuman or degrading treatment Sexual violence against women The violation of due process Abductions and the taking of hostages Violence against children The violation of collective rights	(No significant acts excluded)



11	Morocco	To “assess, research, investigate, arbitrate and make recommendations about the gross human rights violations that occurred between 1956 and the end of 1999. These violations include forced disappearances, arbitrary detention, torture, sexual abuse and deprivation from the right to live, as a result of unrestrained and inadequate use of state force and coerced exile.” ⁹	Assassinations and massacres Arbitrary killings in riots and popular uprisings Disappearances, torture and cruel, inhuman or degrading treatment perpetrated by the state Arbitrary detention and long-term imprisonment The violation of due process Sexual violence against women Abductions and the taking of hostages The violation of collective rights Violations against minority populations (people of the Rif and from the Western Sahara)	Insufficient attention to violations against minority populations (people of the Rif and Western Sahara)
12	Liberia	“Investigating gross human rights violations and violations of international humanitarian law as well as abuses that occurred, including massacres, sexual violations, murder, extrajudicial killings and economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflicts.”	In process	In process

Source: P. B. Hayner – Truth commissions: a schematic overview

3. 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. 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. Jose Zalaquett calls for a popular referendum to approve the government's human rights policy and the creation of such a commission, or, minimally, approval by a body of democratically elected representatives. 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. 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.

4. 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 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 and many Ugandans lost faith that a report will ever be published by it.

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.

5. Under Whose Name?

Of the cases outlined here, most 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 com-

mission 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.

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 as below:

- ▶ 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 gov-



ernment 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 Buergethal in Washington to secure information from the US government.

- ▶ 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 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."

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

- ▶ International staff may be hired, as in the case of El Salvador, and they do not 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 leaves 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.

6. 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. 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. 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. The Special Prosecutor's Office in Ethiopia is also supported by international funds.

7. 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." 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

Commissioners, Staff, Number of Cases and Final Report

SN	Country	Commissioners	Staff	Budget	Total # of cases presented	Public Hearings	Final Report
1	Argentina	13 members (all national)	60	NA	8,600 cases of disappearance, unspecified number of victims of torture or prolonged detention	No	Nunca Mas: Informe de la Comisión Nacional sobre la Desaparición de Personas (September 1984; English translation published in 1986)
2	Uganda	6 members (all national)	5 – 10	NA	608 deponents	Yes	The Report of the Commission of Inquiry into Violation of Human Rights: Findings, Conclusions, and Recommendations (October 1994)
3	Chile	8 members (all national)	60	\$1 million	3,428 disappeared, killed, tortured to death or kidnapped	No	The Report of the Chilean National Commission on Truth and Reconciliation, popularly known as the Rettig Report (February 1991)
4	Chad	12 – 16 (including secretaries and clerks, all national)	0 (2 secretaries included in the number of commissioners)	NA	3,800 killed, unspecified number of victims of torture or arbitrary detention	No	Les crimes et de 'tournements de l'ex-président Habré' et de ses complices: Rapport de la Commission d'enquête nationale, Ministère tchadien de la justice (May 2000)



5	El Salvador	3 members (all international)	15 – 45	\$2.5 million	22,000 disappeared, killed, tortured or kidnapped	No	From Madness to Hope: the 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador (15 March 1993 by the United Nations)
6	Haiti	7 members (4 national and 3 international)	50 – 100	NA	Testimony collected from close to 5,500 witnesses regarding nearly 8,600 victims	No	Rapport de la Commission Nationale de Vérité et de Justice (February 1996)
7	South Africa	17 members (all national)	300+	\$18 million/year during height of operation	21,000 statements	Yes	Truth and Reconciliation Commission of South Africa Report (March 2003)
8	Guatemala	3 members (2 national, 1 international)	Up to 200	\$9.5 million	42,275 victims, including those killed, disappeared, tortured and raped	No	Guatemala: Memoria Del Silencio (February 1999)
9	Nigeria	6 members (all national)	Approximately 12 professional staff, borrowed from other government agencies	In-kind support from government, in addition to \$450,000 from the Ford Foundation		Yes	Final report presented to the president in May 2002, but it was never officially released to the public



10	Sierra Leone	7 (4 national, 3 international)	28 core, 70 total	Initially \$10 million, reduced to \$6.6 million	Received more than 8,000 statements from victims, witnesses and perpetrators	Yes	Witness to Truth: Final Report of the Truth and Reconciliation Commission of Sierra Leone (2005)
11	Ghana	9 commissioners (all national)	115, later reduced to 80	Initially \$5 million, reduced to \$1.5 million	The NRC received 4,240 statements from victims and heard testimony in public from 1,866 witnesses and 79 alleged perpetrators	Yes	Final Report of the National Reconciliation Commission submitted to the president in October 2004 and released to the public in April 2005.
12	Timor-Leste	7 members (all national)	6 regional offices, headed by 25–30 regional commissioners	\$5.2 million	Approximately 8,000 statements	Yes	Chegal, released to the public February 2006
13	Peru	12 members (all national)	Up to 500 staff at peak of operations	\$11 million	15,000 statements	Yes	Informe Final de la Comisión de la Verdad Reconciliación (August 2003)
14	Morocco	17 members (all national)	At the height of its activities, the IER employed close to 200 staff working in various capacities	NA	22,000 statements of victims and their families	Yes	Final Report of the Moroccan Equity and Reconciliation Commission, released to the public in December 2005
15	Liberia	9 members (all national), plus 3 international technical advisors ¹⁰	In process ¹¹	In process	In process	Expected	Report expected in 2008

Source: P. B. Hayner – *Truth commissions: a schematic overview*



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.

8. 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: Due process requires that individuals receive fair treatment and are allowed to defend themselves before being pronounced guilty; due process is violated if a commission report names individuals responsible for certain crimes. Therefore, no names should be named. 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.

Jose 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

Stories of Courage and Conviction

- ▶ At the risk of torture and death, the Mothers of the Plaza de Mayo, for instance, marched in central Buenos Aires demanding that the Argentine military junta reveal the fate of their loved ones who had "disappeared."
- ▶ In the Southern Cone, for example, the Chilean Catholic Church-based *Vicaría de la Solidaridad*, the Center for Legal and Social Studies (CELS) and the Mothers of the Plaza de Mayo of Argentina, and Uruguay's office of the regional Service for Peace and Justice (SERPAJ) put pressure on governments before and after their respective democratic transitions, by publicizing the evidence of human rights violations they had collected. This info has often figured prominently in efforts to achieve accountability via trials or truth commissions during the political transition and after.
- ▶ Human rights groups often bring legal expertise and courageous, dogged lawyers who press the judicial system to act upon past human rights violations. In such places as Argentina and Chile, they have crafted innovative legal arguments, such as defining disappearances as kidnappings to get around amnesties and statutes of limitations that had previously obstructed prosecutorial efforts.
- ▶ In Guatemala, the Alliance Against Impunity also worked to ensure that the National Reconciliation Law crafted there would exclude amnesty for gross HR violations such as genocide.
- ▶ In addition, civil society has frequently played a role in the construction of truth commissions. In South Africa, NGOs helped draft the legislation that established TRC.
- ▶ In Guatemala, the Assembly of Civil Society played a crucial role in getting the government and the rebels to agree to a TRC as part of their UN-brokered peace agreement.
- ▶ In designing compensation measures, finally, civil society can help ensure that needs will be met and that compensation will be received in the spirit the government intended. South Africa's reparations program, for instance, was established after extensive consultation with survivors' groups, community organizations, and religious groups, as well as South African and international NGOs.



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. 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 judgment 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 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."

The El Salvador Truth Commission's naming of high military and judicial figures attracted a great deal of attention. Over forty officials were named, and the majority were military officers. The Minister of Defense 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.

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.

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."

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.

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. In the end, careful investigations often make painfully clear who the worst offenders are. A full truth-telling should include those names.

IMPACT OF RIGHTS VIOLATIONS ON FAMILIES

Case Examples of Testimonies from Chile¹

A. LOSS AND GRIEF: "Human beings sometimes kill human beings."

The loss of a loved one is always painful—especially when that loss was deliberately inflicted and is perceived as a punishment meted out to adversaries, an irrational violence inflicted as a punishment. Families are at a loss to explain it. They were unable to experience the grief that goes along with death, because the fate of their loved ones who disappear after arrest remains unclear.

1. DEATH AS PUNISHMENT: "My husband was..."

Most of those killed were officials in the previous government, leaders in organizations, or people identified with an overall political program as leaders, activists, or supporters. Their death amounts to a punishment for their involvement in that political program. The family members experience that punishment, and they impotently communicated it to us when they were telling us about the victims. The relatives of the members of the armed forces and security forces who were killed by political groups have the same feeling of being punished.

- ▶ "My father was a specialist in agriculture and regional secretary of the Socialist party. He was not a criminal or a subversive—he was a professional person, and was highly respected around the world. My father was a simple man who devoted his whole life to his ideals, to what he believed, and to his hopes for all Chileans."

1 Cited from *Shattered Voices: Language, Violence, and the Work of Truth Commissions*, Teresa Godwin Phelps, <http://books.google.com.np>

- ▶ "My husband was a worker; he was president of the Rayonil labor union and active in MIR."
- ▶ "My son was a young doctor, 28 years old. He was married and had two children. He was smart, and people liked him because he was easygoing and unassuming. He was an active Communist. From the time he was little he was concerned about justice for humankind."
- ▶ "My husband was 35. He was a second corporal in the police. He had been in the police for twelve years and had never done anything else."
- ▶ "My son loved being part of the whole military way of life; he felt proud to be serving his country."
- ▶ "He was the youngest one killed in the attack. He was only 26. He served in the infantry."
- ▶ "All the bodyguards killed in the ambush had children, and their lives in the armed forces had been exemplary."

In other cases the relatives feel that they have been punished and are the victims of a senseless or indiscriminate violence. Such is the feeling of the relatives of many workers, peasants, or students who were killed or disappeared in 1973, of those killed during demonstrations, and of those who were killed by bombs or attacks carried out in public places.

- ▶ "He was the only male child. He was 26 years old and worked at the Compañía de Aceros del Pacífico [Pacific Steel Company]. The social worker told me it was a case of mistaken identity."
- ▶ "He was 18 and was studying at the Liceo Industrial. He was on an outing when they arrested and killed him."
- ▶ "He was thirteen and had gone with a friend to watch TV at the friend's sister's house in the same neighborhood."
- ▶ "My daughter was 19 and had gone to set up an appointment to get married at the Civil Registry when the bomb went off at the municipal building."

2. DEATH THAT REMAINS UNEXPLAINED: "How can you believe someone would die this way?"

The human mind cannot fathom, let alone justify, a death inflicted in such circumstances. To accept it is to face horror and dehumaniza-

tion. The family members express this anguishing sensation of finding death meaningless.

- ▶ "My mother had died a year before, and I told myself it would bring her rest. My father died when I was young, and I told myself it would make me mature and responsible. I cannot find any meaning to give this unjust death that defies explanation."
- ▶ "I am coming to believe that they have eliminated him. It is as though they had erased him. He was useful to society. Why should they eliminate him? He was good in sports and at chess."
- ▶ "I had to explain to my five-year-old son that, just like animals and flowers, human beings sometimes kill human beings."
- ▶ "I still do not understand it. He was killed in an attack by a subversive group while he was on guard duty in a shantytown in Santiago."

3. *GRIEF DISTURBED:* "They weren't ours even in death..." Family members were denied not only the possibility of finding out why their loved ones had been killed, but even of seeing their bodies, giving their remains a decent burial, and expressing and sharing their grief. Since they were prevented from participating in any funeral rites, since this death was associated with horror and they then had to survive for years in fear, loneliness, and poverty, these families could not let themselves feel the pain of death.

"They never returned his body to me..."

- ▶ "My wound had to heal without first being cleansed. I know he was killed, but they never returned his body to me. The mourning period is still going on."
- ▶ "I never learned what had happened. They just told me that prisoners of war are buried in common graves."
- ▶ "I learned he had died through the Civil Registry. No one ever told us anything."
- ▶ "When my son turned seventeen, he felt so much that he had to know where his father was that I said to him, 'Son, go down to the cemetery and look for the most abandoned grave. Take care of it and visit it as though it were your father's.'"

"I don't know if it was his body or not..."

- ▶ "They gave me a closed and sealed coffin. I had to bury it by myself, in one hour. What if it wasn't him?"
- ▶ "I don't know if it was my husband's body or not. My father had to identify it, but he wasn't sure either because it was all mutilated."
- ▶ "They allowed my brother-in-law and me to dig up about twenty graves. Finally we came across one whose build was like my husband's but he had no arms and legs. We buried him to put my in-laws at ease. I'm sure we buried someone else."

"There wasn't any wake..."

- ▶ "They shot him on the road near our house. I heard the shots, and I came out and found his body. They yelled at me to go bury the dog that had just been killed. That dog was my only son. They gave me three hours to bury him and get out of town. I had to wrap him in a blanket, get an oxcart, and leave him in the cemetery."
- ▶ "When they told us they had shot them, they forbade us to go into mourning and to have a mass said."
- ▶ "He always said that he wanted a wake with all his friends, a big funeral. That's not how it was; there wasn't any wake, and at the cemetery they beat us with rifle butts."
- ▶ "The dead are buried in their clothes. They buried ours naked, wrapped in a sheet."

4. UNRESOLVED MOURNING: "I don't even know whether he is dead or alive..."

The situation of the relatives of those who disappeared after arrest is one of endless ongoing pain. They cannot rest and their feelings of powerlessness become chronic. As more and more mass graves are discovered, the possibility that their arrest might have ended in death becomes fact. But questions remain: do I have to consider him dead? When did they kill him? Insofar as there is no answer or proof enabling them to resolve such questions, the relatives find themselves in the dramatic situation of having to be the ones who bring matters to a close. Most family members find this unacceptable. That aggravates their feelings of powerlessness and uncertainty.

- ▶ "My children ask questions, and I don't know what to tell them. I can't tell them where he is or even if he is alive or dead."

- ▶ "Every time I see a madman or a hobo in the street I think it may be my husband; or that he might be somewhere in a similar condition."
- ▶ "Luis' disappearance has meant the destruction of our home, of our common plans. It is hard to describe the torment and psychological torture involved in not knowing what happened."

B. TORTURE: "If they had just killed them outright, it wouldn't be so hard..."

Many of those killed were tortured. The family is aware of what happened because they have seen the signs on their bodies or through the accounts of other prisoners. The way they died thus becomes a nightmare harsher than their death itself. Astonishment and incredulity over torture combine to produce a new horror: horror at the cruelty of other human beings.

1. "They hung him from a crane. He was in such bad shape as we were returning to the cell, that we wrapped him up, and helped him down the narrow staircase. He was very much beaten up and traumatized. When no one was looking, he threw himself over into the bottom of a hatchway. He couldn't endure one more day of torture."
2. "I had searched for him so much. I went down to the beach to cry, and there he was, all swollen with bullet wounds. They had pulled out his teeth."
3. "They told me he smoked his last cigarette in handcuffs; he was trembling and couldn't inhale. That's the image that keeps me from dying in peace."
4. "If they had just killed him outright it wouldn't be so hard. But since you know they tortured him and don't know what they did to him, your imagination torments you more than the death itself."

Torture was also inflicted in the presence of family members, or they were tortured to get their

5. "They brought my son to my cell, unconscious and all bruised from torture."
6. "They brought my husband to my house, beaten to a pulp, and asked me to convince him to talk."
7. "I could hear their sobbing and cries of pain. When I couldn't hear it any longer, I felt that they had died."

8. "I took them where my son was because they promised me that they would treat him well. I wanted to save the younger ones from abuse. They killed him just the same."
9. "While they were raping me, my husband was screaming at them to let me go."
10. "When they took my father, they took my husband and me as well. I was raped by a whole group that was guarding me. I never told my husband. That was fifteen years ago."

C. PROLONGED UNCERTAINTY: "...this long nightmare from which I don't know if I'm ever going to awaken..." The families of those who disappeared after arrest have been condemned to live in permanent uncertainty. Over and over in the stories told to the Commission, the unanswered questions and hovering ghosts keep coming back. Such is the uncertainty that becomes chronic and that completely permeates life.

1. WAITING: "The front door of the house was left ajar..."

Waiting is a fact of life painfully experienced by the relatives of those who disappeared after arrest. Many have not changed their house, their city, or their job despite threats and problems; others have kept the clothing and possessions of the absent member just as they were. Many have seen their hope of finding them alive evaporate. All would still like to know where they are and what happened to them. Life transpires as waiting.

- ▶ "For two years I hurried home from work to see if he had returned."
- ▶ "At every party the front door is always left ajar."
- ▶ "On windy nights, my mother thought the creak in the door was him. She used to get up to let him in, and then she would weep."
- ▶ "My mother keeps his room just as it was when they took him away: his clothes, his notebooks and books, and alongside his bed, a devotional shrine where she puts flowers waiting for him to arrive."
- ▶ "I want them to return him to me alive. I talk with him; somehow I see him. My mother's heart tells me he is somewhere."

2. LOOKING FOR THE DISAPPEARED: "We've dug up the entire land looking for them."

One's whole life revolves around looking for the person-nothing else exists. Familiar routines are no longer observed; family members become isolated from one another. The search is unending, but over time the style changes. First came the pilgrimage around jails, detention sites, emergency rooms, the Medical Legal Institute. Then it was a matter of following tips, reports, and rumors leading to secret places and organizations. Today it is the search for remains, for places to dig up, graves to discover. The search for the missing has led family members to become organized, to carry out joint actions, and to act together as a community confronting this challenge that has such power over their lives.

- ▶ "I went everywhere, from Arica to Chillán. We've dug up the whole countryside looking for them."
- ▶ "All these years his mother took part in the Group of Relatives of Disappeared Prisoners and never stopped looking until she died of cancer last year."
- ▶ "When all this happened my mother-in-law paid no attention to anything else. She spent five years devoted entirely to looking for her son; nothing else mattered. After five years she woke up as though she were returning from a long journey. She suddenly realized that my sister-in-law had finished her fourth year in high school and that her son was managing the home."
- ▶ "Until recently we hoped to find them alive. Today we are going around looking for the bones. This is never going to end... this long nightmare from which I don't know if I can wake up, because I've forgotten what it means to live a normal life."

3. THE SEARCH FOR THE TRUTH: "I have to know the truth..."

Contradictory official accounts or complete silence on the part of officials impel relatives to an untiring search for the truth of what happened. Finding out the truth is a way of putting an end to speculation and finding comfort. What happened to them? Why did they kill them or make them disappear? How did they act? What did they do? How did they arrest them? Where did they take them? These questions obsess the mind and prevent people from finding peace.

- ▶ "I have to know what happened to him. I've spent so much time looking, and what happens is that you don't know whether perhaps they need something; whether they might be cold or want a cigarette. How can I live like this! I want to rest and die in peace. That's why I need to know what happened."
- ▶ "Even though it won't do me any good, even though it might look useless, I need to know why they killed him; what happened, what he was doing, how they caught him. Anything to put my mind at ease."

4. DENIAL OF HOPE: "I no longer dare to have hope..."

For long years the relatives have lived with their hope continually frustrated. They have tried to maintain it, partly so as not to betray the missing person, partly out of their own need, but it is ever being denied them.

"We no longer had anything left. We had lost everything looking for him. A fortune teller came to the Araucano Hotel, and my mother sold the last things we had left and went there with my little brother. The fortune teller told her not to worry, that my brother was going to arrive for Christmas. My mother called everyone and cooked up a feast... He didn't arrive that Christmas or ever again." "My husband was under arrest. I went to see the commander of the regiment, and he told me not to worry, that they were going to release him for Christmas, that he was a good person. I went to see him December 31, but they told me he was not being held there any more. I came home. A truckload of soldiers had just left a sealed coffin at my front door a few minutes before." "I no longer dare to have hope. Many people are now happy but not me. And what if they close off all doors?"

D. DAMAGE TO PERSONAL INTEGRITY: "Why did they take away my chance to be happy?"

Statements made to the Commission express the relatives' feeling that they have been wronged in their deepest recesses as human persons. This perception extends to every aspect of the personal life, encompassing their future plans, feelings, attitudes, identity, adaptability and their physical and mental well-being.

1. AMBITIONS RUINED: "I couldn't achieve my life dreams..."

Relatives are nostalgic and sometimes angry over what could have been and was not—over what death or disappearance cut short.

- ▶ "I got married on August 5. By October 5, I was a widow. Why did they deprive me of my chance to be happy with my husband?"
- ▶ "I was six months pregnant when they killed my husband. My little baby was never born; I couldn't hold it back."
- ▶ "My husband was going to retire from the police since he was about to finish twenty-five years of service. We had so many plans, and when we were almost at the finish line, we lost everything—and in such a horrible way."
- ▶ "I was expecting my first child. He was a lieutenant and had been in the army for six years. He saved many lives by deactivating the bomb, but I had to go back home to my parents."

2. GROWING UP PROCESS DISTURBED: "It is their offspring that have continued to suffer..."

Both parents and children express frustration and fear over the impact these events and the overall situation may have had on childhood.

Children's view: "They deprived me of my childhood..."

- ▶ "I was eleven years old. My family fell apart. At fifteen I tried to commit suicide. They deprived me of my childhood. In my house there were never any birthdays, Christmas, or anything."
- ▶ "I was eight, but after they took my father my life never returned to what it was. That day they left my brother and me locked up in the apartment, and cut off our water and electricity. My brother was seven, and he was crying. They had left everything in a mess and had smashed things. Some neighbors came to get us and took care of us for a few days, because my mother was also being held prisoner, along with my twelve-year-old brother."
- ▶ "I was thirteen and they took me to the regiment for questioning so I would tell them where my father was. I didn't continue in school or anything. All I wanted to do was die."
- ▶ "My mother and father never even noticed when I came in the house or left. From the time I was eight, I felt alone. I felt I didn't exist for anyone. I don't blame them. Now that I have children if I had to see one of them tortured and then went to visit them before they were shot, I wouldn't be normal either."

- ▶ "We were six and five years old when they killed my father, who worked as a bodyguard for the intendant."

Parents' view: "Our children are different..."

- ▶ "Our children are different from everybody else. We hid the truth from them so they wouldn't suffer. Later on people pointed to them as children of someone who had been killed by firing squad."
- ▶ "My son tried to stop them from taking his father out of the house. After what happened he became disturbed."
- ▶ "My daughter doesn't talk to me about this issue. I know she's doing it to avoid causing me problems, but she's writing a diary. I've read it, and it's filled with bitterness."
- ▶ "Since Pisagua my son doesn't want to watch TV or read the paper. He doesn't want us to talk about the issue. I had to take him to the psychologist again."
- ▶ "When they came looking for my husband, our little boy grabbed his legs. They knocked him away with rifle butts and fractured his head. The other children were screaming and weeping. They often have nightmares. They don't look like the other children to me; they've been cut short."

3. DISTURBANCES IN MENTAL AND PHYSICAL HEALTH: "My mother let herself die..."

The experience of individual and social trauma has an impact on the physical and mental health of the affected families. The impact of these events goes far beyond specific events and colors their whole future. Their lives seem to revolve around a particular point: the death or disappearance of their loved one. The relatives of both civilians and members of the military experience that reality.

- ▶ "Neither of my two daughters has been able to have children after what they did to them during the raid on our house."
- ▶ "When they shot my father, my mother suffered a facial paralysis."
- ▶ "My mother went blind from crying so much; I can say she died of grief."
- ▶ "When my brother disappeared my father became a little old man; he went crazy. He died wandering through the streets crying out his son's name."
- ▶ "So many years have gone by, and I still have horrible nightmares every night."

- ▶ "I am still weeping from sorrow and a feeling of impotence. Nothing can assuage my suffering as a father; he was a model officer."

4. LOSS IN THE REALM OF FEELING AND SELF: "Life has changed us..."

People's stories reflect many contradictory feelings and attitudes, ranging from resignation over these lives that were cut short to rebellion, and from certainty to doubt. The result has been major changes in people's self-image.

Guilt: "I feel I'm to blame..."

- ▶ "I don't expect anything. I came to present my case because my children despise me for being cowardly and never having spoken out for sixteen years."
- ▶ "I sent word to my son to turn himself in, that nothing was going to happen. I feel I'm to blame."
- ▶ "I had to tell them I didn't remember the date or place where my husband died. I was afraid they would connect the events, and I wanted to prevent them from feeling hatred and wanting revenge. One day one of them told me he didn't understand how I loved my husband so much and yet didn't know where or when he died."
- ▶ "This is the first time I'm doing something; I've probably been a coward, but I wanted to save my children. Do you think I was right?"

Ambivalence and shame: "I asked him to quit many times..."

- ▶ "For a while I hated my husband, since they killed him for getting involved in politics. I blamed him, I felt he had opted for his ideals rather than his family."
- ▶ "He was just beginning in the police. I asked him to quit many times, but he answered that he loved his uniform, and so he wasn't going to quit."
- ▶ "When I felt so many people rejecting me or not understanding, I preferred to keep quiet. I was ashamed to face reality. I didn't know how to answer where my father was. I wasn't sure whether he was dead or had abandoned us."
- ▶ "I was bothered by being questioned about my father. I was convinced that being the child of someone who disappeared after arrest was quite bad."

Hatred: "Hatred is like a disease..."

- ▶ "You feel so much hatred...it frightens me because they rotted my brother's soul. He became so hardened."
- ▶ "It's the calumny that fills me with hatred-this hatred that I passed on to my children and that they are going to pass on to their children."
- ▶ "I have to get rid of all this pain, and also-why not admit it?-all this hatred I have inside; because hatred is like a disease. You can't live when you're full of hatred."
- ▶ "From the moment they found his remains and I knew they had killed him, I have been seized with an enormous hatred. We used to have the hope of finding him alive or dead, but at least his whole body. But now we have to be content with just a bone. It's as though they're laughing at us."
- ▶ "How terrible is human hatred. The evildoer does not elude God's gaze."

Fear: "Fear is not erased..."

- ▶ "We didn't eat, we didn't sleep, we were scared to death. You live as though your forehead were branded."
- ▶ "I don't enjoy life. I'm always afraid. I'm afraid of people."
- ▶ "Everyone was afraid, and I'm still afraid. I think the whole town now knows that we've come to the Commission. Do you think that after this something could happen to us?"
- ▶ "Fear isn't erased in four months. We've learned to live a double life."
- ▶ "I'm afraid to wear my uniform. The only thing I want is to reach my retirement."
- ▶ "None of us remains unaffected."

Impotence: "Why didn't my instinct as a father alert me?"

- ▶ "My son was tortured in the study while I was sleeping. Why didn't my instinct as a father alert me?"
- ▶ "They came by my house and asked us for some chains to put on the truck wheels. Later we found out that they had tied their hands with these same chains."
- ▶ "Justice has not been done in high profile cases like that of Orlando Letelier. What can we expect?"

- ▶ "There was always a climate of tense expectancy in the commander's house. The family was on a state of alert."

Disenchantment and the difficulty of starting over again: "Nothing appeals to me, I don't have any incentive..."

- ▶ "After they killed my brother, my father sat down in an easy chair and waited to die. We went to Argentina, to a two-room apartment. My father sat there in his chair, with my mother hanging up photos of my brother. When my father wanted to die, we returned to Chile, and a few days later, he died, in his chair, exhausted, back in his native land."
- ▶ "I don't do anything because nothing appeals to me. I don't have any incentive. I do things because I have to, but otherwise, I would bury my head like an ostrich."
- ▶ "We were married so few years. I have never managed to fall in love again. I have tried to start over again, but I can't. They screwed up life for me and my children."
- ▶ "Since the day they set fire to the bus I've been invalid and unemployed."
- ▶ "When the bomb went off my right eye was punctured, and I lost my sight...I had to change my life."

Keeping quiet in order to survive: "I buried my husband's death in order to survive with my children..."

- ▶ "When I buried my husband, I buried his death, and I have lived alone with my memory. I buried my husband's death in order to survive with my children and give them the best possible education."
- ▶ "They killed my brother-in-law in Santiago. My husband was in prison on Dawson Island. Meanwhile we women had to work and to try to go on living as though nothing had happened."
- ▶ "I haven't wanted to even think about that whole period. I haven't wanted my daughters to feel hatred. I've never done anything. I've wanted to forget."

E. FAMILY LIFE DISRUPTED: "They didn't sentence just him. They sentenced the whole family..."

While many people say that their family came together in the face of adversity, in most of the accounts people feel both nostalgia and

impotence, as they recall how family ties broke down, family members were scattered, or roles were changed.

1. BREAKDOWN OF FAMILY TIES: "All relationship was broken..."

Individual members of the same family often had different reactions to the death or disappearance of one of its members. Some stood in solidarity with the situation and devoted themselves to efforts to clarify the death or locate the missing member; others did not regard it as such a serious event; others justified it, and others remained silent. Mutual mistrust sprang up among them, and family ties were plainly weakened. The results were greater loneliness, isolation, and a sense of loss and abandonment.

- ▶ "They took us both in the same truck. My in-laws thought I had turned him in. I couldn't go to their house for seventeen years. I remained by myself, hated by those who killed him and despised by those who loved him. What happened in this country if someone could believe that a woman in love is capable of turning in her husband?"
- ▶ "My parents never gave me any support. I'm an only daughter. They applauded the government. They forced me to sell my house so that if my husband came back I wouldn't go back to live with him. My parents said to me: 'It's because of that no good husband of yours that we're mixed up in this.'"
- ▶ "My daughter left home because she thinks we're all cowards for maintaining relationships with those responsible for the death of my oldest son. It's because my other sons went into the armed forces. There's no way to heal this split."

2. FAMILY SCATTERED: "This has broken the family to pieces..."

Economic hardship, exile, or the need to protect the lives of other members after what had happened has scattered families.

- ▶ "In order to work I had to distribute my children. I was left with no husband and no children."
- ▶ "They killed my father. My mother went to Argentina because she couldn't stand the situation. I was left in an orphanage. They beat me a lot, until I got out. Now I live with an uncle. I've never been able to go to school."

- ▶ "After what happened I had to go into exile with my children. I couldn't get used to things elsewhere, and I came back in '81. My three children stayed in Sweden."
- ▶ "I've recently gotten back in contact with my son...After his father's death, we were separated for ten years-I was in jail, and he was with my family outside the country."

3. CHANGE OF ROLES: "I worked year round with no relief..."
 The imprisonment, disappearance, or death of a family member, usually the head of the house or a son, leads to a change in the usual roles within the family: women have to look for the missing person, flee, or get paying jobs with long hours in order to maintain the home; children have to leave school and go to work; the older daughters, closest relatives, and neighbors replace the mothers in taking care of the younger brothers and sisters.

- ▶ "The oldest daughter took care of her brothers and sisters while her mother was trying to locate her father."
- ▶ "My father was the family breadwinner. We were all little. We had to leave school and start working."
- ▶ "My mother was left alone in the countryside with my nine younger brothers and sisters. I had to leave the university and go to work to help her. She has done nothing else but live to help her children get ahead. I gave up my career as a teacher, the thing I most wanted."
- ▶ "When my husband was killed in the attack, I was left alone with my son. He now takes care of my mother so I can work."

4. SOCIAL AND ECONOMIC HARDSHIP: "At dinner time, all my mother could do at the table was cry..."

In many instances deaths and disappearances are connected to being poor. Relatives see the lack of money as an obstacle to the search, to getting things done, having contacts. Because their houses were flimsy a bullet fired during a demonstration could go through the walls. In other instances, death itself has led to a notable lowering in the living standard of the relatives, causing a feeling of abandonment and helplessness, and turning daily life into a matter of survival.

"We were poor..."

- ▶ "When he disappeared I was left with eight little children. I managed to find a sitter for the three youngest, my sister took the girl, and the others went to stay with neighbors and some relatives. I went to work as a live-in maid, and whenever I had some money I bought wheat germ and milk to take to my children."
- ▶ "There were five of us brothers and sisters when they killed my father. We were very little. My mother began to work washing clothes outside the house. She became chronically asthmatic as a result of her weakness and our poverty. She died of her suffering. Everyone called us 'the urchins.'"
- ▶ "My brother left two children. We were poor. My sister-in-law had to go out begging in the streets to feed the children."
- ▶ "We were out in the street when everything happened. We were poor. I still don't understand how that bomb exploded."

"Because we were poor..."

- ▶ "This is the first time we've made a formal accusation. We were afraid, and we didn't have money for the fare."
- ▶ "I have the death certificate, but I'm not sure it's really him. I didn't have enough money to do any more checking."
- ▶ "I went looking for my seventeen-year-old son everywhere. I did it all on foot because I didn't have money to take the bus. I never found out anything about him."

"We got poorer and poorer..."

- ▶ "We had to sell everything we had to go looking for him from one city to another. We went wherever they told us."
- ▶ "There were eight of us brothers and sisters. They threw us out of our house. My mother went out every day looking for him. When she got back at dinner time, we would sit down, and all my mother could do at the table was cry."
- ▶ "One of the many times I was away looking for him, I was robbed of the little I had—even the boards on the floor."
- ▶ "First I sold my poultry. Then because I was alone they robbed my animals, and later they took away my land because my husband had been arrested and disappeared."
- ▶ "We have spent money we didn't have so my daughter could recover from the acid burns the terrorists caused her."

F. SENSE THAT FAMILIAR REFERENCE POINTS HAVE CHANGED: "They changed the country on us..."

Families experience death as part of an overall changing context. The legal framework in force makes people do things that endanger their lives, such as reporting when summoned by a military decree, or going back to work to pass on one's responsibilities. Executions take place without trial; when people disappear there is no investigation, and no one is responsible. The city is no longer the same. It is difficult to distinguish what is safe from what is dangerous. Friends cannot get together. Even words no longer have the same meaning.

1. *DISRUPTION IN THE MEANING OF LEGALITY:* "We believed in the legal order..."

- ▶ "I was 24, and I was taking classes at the university. I took him to report to the authorities myself."
- ▶ "My brother reported voluntarily. Later we found his remains buried in the quarry."
- ▶ "Everything began to happen on the basis of decrees nobody had seen."
- ▶ "They arrested them because they didn't have their identification cards. They were minors and weren't politically active. After all, they were practically illiterate. And they shot them to death."
- ▶ "They didn't die in gun battles. They were murdered while they were in prison and had no chance to defend themselves."

2. *SENSE OF BEING STIGMATIZED OVER THE DIRECTION OF ONE'S POLITICS:* "To them we're all dangerous subversives..."

- ▶ "Our relatives' only crime was to have an ideal and a commitment that was different from theirs."
- ▶ "They hit young people and workers hard, as though killing were a heroic act."
- ▶ "They did away with the poor as citizens; since then the rich have always been running things, and it has been a sin to have aspirations."
- ▶ "They crushed the workers. They didn't have a chance to show that they could be useful to society."



3. LOSS OF SECURITY: "Today you never know..."

- ▶ "After they took him away I went ten days without sleeping, watching over my two babies. I was sure they were going to take them away from me as well. The greatest damage we have suffered is never to have felt secure."
- ▶ "If they killed the mayor and innocent small farmers, how could you know who was going to be next?"
- ▶ "Since '73 when they disappeared there's no way of knowing whether the ocean swept them away - or whether it was the military."

G. BEING STIGMATIZED AND OUTCAST: "We feel like outcasts in our own country..."

Relatives despairingly speak of how, in addition to the sorrow caused by death, they have had to bear the mistreatment that both the victims and they themselves have received from society, the state, and government agencies. The result has been that their relationships with the outside world have been disrupted, and they feel they have been cast aside.

1. DEFAMATION OF THE VICTIMS BY OFFICIALS AND THE PRESS: "They weren't terrorists or criminals..."

In their official statements, government authorities referred to those who were killed or disappeared as criminals and terrorists who were dangerous to society. The press adopted that same kind of language and assumed that such persons were guilty. A segment of society also absorbed those ideas, and so those who were wronged were not seen as victims. The families say that the fact that the government itself was defaming their name and that they were prevented from publicly defending their loved ones harmed them in a way that was very hard to repair. It has had a strong impact on their children and has prevented them from sharing with a community their grief over death or disappearance.

- ▶ "In our first meeting with the governor, he told us our husbands were criminals."
- ▶ "The papers said they were terrorists, and so everyone justified it."

- ▶ "The official press presented the victims as the bad guys and as undesirable characters, and portrayed the perpetrators as heroes for whom anything was justified."

2. ABUSE OF THE RELATIVES: "The thing is, they add insult to the pain you already feel..."

Sometimes whole families were arrested. Persecution was accompanied by raids, theft, security forces occupying homes, people being followed. The families tell of how they were humiliated, lied to, insulted, and threatened as they were searching, visiting detention sites, picking up bodies, and looking for traces of those who had disappeared.

Humiliations: "I don't even want to remember all we've been through..."

- ▶ "I don't even want to remember all we've been through. Those interminable periods of waiting, being followed, being called traitors and criminals."
- ▶ "They told us he was alive. When my mother remarried, they taunted us asking why she had done this if her husband was still alive."
- ▶ "When I went to ask about him, they used to say that since I was so pretty I wouldn't lack for men at night; they even offered to come with me themselves. I would have slapped them, but I didn't say anything, and I was left with their mocking remarks stuck in my heart."
- ▶ "The regiment commander sent me this letter that I've brought to you. In it he tells me that if my husband does not come back even though he has been released, I ought to ponder in my conscience whether we really had a good marriage, and whether he might have gone off with another woman. Now his body has shown up in the common grave."

Lies and mockery: "They made fools of us..."

- ▶ "They told me they had released him. Now we find him in the common grave blindfolded and with his hands tied."
- ▶ "They told me he was fine, watching television. At that moment he was already dead."

- ▶ "They told me to bring lunch for my husband. I left and fixed him rice and a fried egg. When I got back to the police station, he laughed and said, 'Lady, you're crazy. Nobody is being held here.'"
- ▶ "After eight months they handed us over a body, which according to the forensic specialist, was my father's. We held an all night wake. Just before the funeral, the police came by with an order and said there had been a mistake and that this body belonged to another family. We had to hand it over."
- ▶ "I went up and down the country looking for him. When I got back they were laughing at me. Once, when I was coming back from the Dawson Island, as I was getting off the bus in the square, they spit in my face and laughed."
- ▶ "During this period there have even been jokes about our situation."

Threats and persecution: "We have been persecuted..."

- ▶ "The first time they raided our house, they took us out-my mother was pregnant-and put us up against the wall and pretended it was a firing squad. After that outrageous treatment, they grabbed my six-year-old brother and threatened to beat him if he didn't tell where the weapons were."
- ▶ "My sister was disappeared, and they phoned my house and played the song, *Late un corazón*-["Beating Heart"]. You could hear the receding sound of a man whistling and a woman groaning in pain."
- ▶ "They told me to stop looking or otherwise I would suffer the consequences."
- ▶ "They harassed my brother so much that he committed suicide."
- ▶ "One day the investigative police came to the house for questioning. This won't be any problem, I thought, but for the company where I worked it was, and they fired me."

Material losses: "They robbed me of the little I had."

- ▶ "My apartment in the San Borja towers was searched. When I arrived they had left the door open, and people were taking things. So I had the key changed. When I came back, I couldn't get in. The administrator of the building told me the apartment had been taken over by the junta."

- ▶ "They searched the house, and they took all the animals in the yard."
- ▶ "I went to my daughter's apartment after her death. They had destroyed it. They took her TV set, her equipment, her house clothes. They didn't give them back to me because they said they were needed for the trial."

3. *THE SENSATION OF HAVING BEEN CAST ASIDE:* "It was like having leprosy..."

After the death or disappearance of a family member there follows a long history of being outcast. Families encounter discrimination in their job opportunities as do children in access to high schools, universities, and government agencies. The stigma is so strong that when they feel the outside world spurning them, families find themselves sinking into ostracism and enormous isolation. They only feel at ease when they are with those who share their experience.

Discrimination: "You are the daughter of a criminal..."

- ▶ "After they shot my father, the principal called me in and said: "You are the daughter of a criminal and so you can no longer teach in this city."
- ▶ "When I reported for military service, they set me aside with the young men who had criminal records. They didn't let me do my military service because my father had been shot by firing squad. The same thing happened to my brother, and it has affected us when we tried to get work."
- ▶ "I was left with my eight minor children. They only gave me a pension for six of them. They said the oldest was not going to get anything since he had the same name as his father."

Loss of status and social esteem: "My husband was a well-known figure in town..."

- ▶ "My father was alderman. They arrested him and brutally tortured him for three months. He was in very bad shape when he came home. He went from being an official in town to work cleaning offices and washing bottles. He died shortly afterwards."
- ▶ "My husband was a well-known figure in the town. We had a good life. After all this, my children were so undernourished they had to

go to the hospital. I had to work taking in laundry. There came a time when I was so lonely, I took up drinking."

Rejection: "Our friends dropped out of sight, our neighbors never greeted us again..."

- ▶ "At school they said to me, 'Your father got killed for being involved in politics.' They called us little subversives."
- ▶ "My neighbors told me they were happy over what had happened because he was a Communist. I had to ignore them in order to go on living."
- ▶ "So many people had doubts about us and mistrusted us. Our last name was stigmatized."
- ▶ "We were like a dark night; we brought bad omens."
- ▶ "This was like a plague; our family and friends turned their backs on us."

H. POSITIVE FORCES: "I got strength from God, from my wonderful memories of him, and from the support I received from so many people who had gone through the same thing." The individuals and relatives who came to the Commission said that in the midst of all their suffering they always found energy and positive strength from a number of sources. Such encouragement helped many of them avoid death even when that was all they wanted.

1. "I forced myself to come up with the strength despite my suffering. I had to show society that he wasn't a criminal. I had to clear his name."
2. "My greatest strength has been my faith in God."
3. "We're Christians. We believe in the resurrection."
4. "My children made me come up with the strength I had inside me but was unaware of. I had to do everything possible to keep them from being hurt."
5. "It was very important to know I could count on people who had suffered the same thing as I."
6. "I am encouraged that we are able to recognize that this is a problem we all share."
7. "The memory of how wonderful he had been, helped the family react and move forward."
8. "The Vicariate was so welcoming and helpful to us."

I. FEELINGS TODAY: "One phase is ending but a more difficult one is beginning..."

In their testimony, the relatives express disenchantment, rage, and impotence over the way their experience has forced them to reassess social institutions. They also speak of their hopes, yearnings, and fears about the present, and the need for truth and justice so that they and the country may achieve peace.

1. REASSESSMENT OF SOCIAL INSTITUTIONS: "I never thought this would happen in Chile."

The country

- ▶ "I never thought this would happen in Chile. This is the most horrible thing that has ever happened to me."
- ▶ "I am ashamed of my country."
- ▶ "When they started looking, my brother reported to government officials. He said, 'There's no reason for me to leave my country, because I'm a Chilean.'"
- ▶ "We felt like outcasts in our own land."
- ▶ "I wish they would give us a country just for us, because we no longer feel comfortable with people who have had a normal life. They look at us women as though we were crazy, because we still cry after such a long time. They can't understand that these deaths are unlike all the rest, because we were never able to rest from our departed."

The armed forces

- ▶ "The ones who took them and killed them are right there, on active duty. They are still mocking us. When I see them a change comes over me. Just looking at them makes you sin, because so many things come to your mind."
- ▶ "They've made their power felt in everything. And of course that has made fear an everyday reality."
- ▶ "It's frightening to think that you are as human as they are. Where could such evil come from?"

Justice

- ▶ "In the courts they treated us like liars."

- ▶ "We didn't even try to use the legal system because we were not operational. It was a waste of time. We lost confidence."
- ▶ "It makes me angry. Those who ought to end up in jail are still free, and that's partly the fault of the amnesty law."
- ▶ "They could have prevented these things from happening."
- ▶ "We don't want revenge. We just ask for truth and justice."
- ▶ "I don't want them to be killed like they killed my father, but I also don't want them to be out loose in the streets."

2. *THE NEED TO BUILD THE FUTURE:* "For us this is a very painful but very important moment..."

- ▶ "I was both happy and sad when Aylwin won. I knew one phase, that of silence, was ending, but that another more difficult one was beginning, that of the necessity and duty to do something."
- ▶ "For us this is a very painful but very important moment. It's the first time we've been able to speak. We have to speak of this situation with dignity and not keep hiding."
- ▶ "I don't want anyone to help me secretly any more. I want to be able to shout out proudly to the world that my father died for his ideas. Finally, I want society to understand that we children of those who were executed are not a public danger."
- ▶ "Our family wants to know the truth and wants the whole country to know the truth, and wants to end the impunity surrounding the tragedy we have experienced."
- ▶ "Let us hope that everyone in Chile wants the truth, that it's not just a matter of the president appointing a special Commission, but that all Chileans may want and seek the truth."
- ▶ "I am ready to forgive, but I need to know who I have to forgive. If they would just speak up and acknowledge what they have done, they would be giving us the opportunity to forgive. It would be more noble if they were to do that. There will be reconciliation only if there is justice."
- ▶ "I don't want revenge. I only want peace. I want to rest and so I have to know the truth. We don't want to get revenge, and we don't want others to suffer what we've suffered."

TRUTH AND RECONCILIATION IN NEPAL: A VICTIMS' PERSPECTIVE

The following is the excerpts from the “Nepali Voices: Victims’ perceptions of justice, truth, reparations, reconciliation, and the transition in Nepal, jointly published by Advocacy Forum and International Centre for Transitional Justice (ICTJ),2008. The study demonstrates the voices of victims on various issues of critical concern surrounding the truth and reconciliation initiative in Nepal¹.

A. Mandate of the Truth and Reconciliation Commission

In addition to the main objectives, respondents were asked what they would expect a truth commission to look into. Responses included:

- ▶ Inquiring into and revealing the truth about past human-rights violations (27 percent);
- ▶ Making known the whereabouts of the disappeared (7 percent);
- ▶ Investigating past atrocities (7 percent);
- ▶ Separating the guilty from the innocent (4 percent);
- ▶ Studying the culture of impunity in Nepal (0.2 percent);
- ▶ Removing corrupt and abusive officials (0.2 percent).

Almost half of respondents chose the categories “others” (29 percent) and “don’t know” (15 percent). A possible explanation for this is that, even if respondents have heard about the TRC, they were unfamiliar

1 The report can be visited at www.advocacyforum.org and <http://ictj.org/our-work/regions-and-countries/nepal>

with its potential functions and powers. It can be concluded that the government must make a serious effort to inform and consult widely with stakeholders on the formation of a truth commission. 36 In the focus groups, the participants reiterated the objectives of a truth commission that were mentioned in the survey. Most participants called for publicly establishing and acknowledging the whereabouts of the disappeared and guaranteeing non-repetition.

“To make a new Nepal, discourage the recurrence of human-rights violations, and the status of the disappeared persons must be made public” –male participant, Disappearances FGD, Bardiya, September 2007.

“We should form a commission that would prevent the repetition of these incidents in the future. The perpetrators should be strictly punished” –female participant, Disappearances FGD, Bardiya, September 2007.

“The status of those disappeared must be made public; it should be clarified whether they are dead or alive. Because of this dilemma we have not been able to carry out the last rites of our family members” –female participant, Disappearances FGD, Bardiya, September 2007.

According to the focus-group participants, the truth commission should probe a wide range of crimes, such as torture, disappearance, recruitment of child soldiers, rape, abduction, extrajudicial killing, displacement, burning, and looting. In addition, several participants wanted the commission to conduct comprehensive investigations that would identify the perpetrators as well as institutions responsible for human-rights violations.

“The crimes should be probed; the range of crimes committed by the perpetrator should be inquired into; political and institutional links of the culprits should be identified” –female participant, Women’s FGD, Biratnagar, August 2007.

“The commission should investigate the cases of severe torture” –male participant, Madhesi groups FGD, Dhanusa, October 2007.

Expressing his expectations of the truth commission, a former child soldier said:

“The aim of the commission should be to find out what sort of incidents occurred during the conflict, who are the perpetrators, what types of punishment should be meted out to them, how to reintegrate the conflict victims into society, etc.” –male former child soldier, Child Soldiers FGD, Surkhet, September 2007.

Focus-group participants felt that the reasons for the conflict should be investigated. In the discussions with the Dalit community, participants emphasized the need to determine the enabling factors or causes of human-rights violations. Multiple responses during this particular focus group asked for the truth commission to bring to light the causes of the conflict. For instance, a male member of the Dalit community stated, “The elements that produced the conflict should be brought to light” (FGD, Baglung, September 2007). Similarly, other respondents stated:

“The conflict in a society occurs because of contradictions. These should be studied and investigated” –male participant, Dalit FGD, Baglung, September 2007.

“The commission should find out the cause of the conflict” –female participant, Dalit FGD, Baglung, September 2007. “It is essential to understand the reason why the conflict occurred” –male participant, Dalit FGD, Baglung, September 2007.

Responses indicated, that along with investigating physical violations and causes, the commission should inquire into the mental and social effects of the conflict.

There was support for the Truth and Reconciliation Commission to assess the psychological impact of the conflict on the victims, their families, and the community.

“The physical and mental effect on the relatives of those who were killed, disappeared, those made homeless, and the children should

be probed by the commission” –male former child soldier, Child Soldiers FGD, Surkhet, September 2007.

“It must also focus on the psychosocial effects of the conflict. The other issues are rehabilitation and reconciliation. The psychological aspect of all the incidents should be studied” –female participant, Women’s FGD, Biratnagar, August 2007.

“Reconciliation must be carried out when both the victims and the perpetrators have agreed to do so. The commission, unlike similar earlier commissions, should aim at delivering justice to the people” –female participant, Madhesi groups FGD, Janakpur, October 2007.

Overall, participants felt that the mandate of a TRC should be framed to allow it to examine the causes and effects of the conflict in order to establish the truth. They stressed that the TRC should examine the patterns of violations, who was responsible for them, and the impact they had on communities and families. Many said that it should not be modeled on the previous commissions of inquiry. It is interesting to note that no one suggested that the TRC should provide amnesty or actively promote reconciliation.

B. Appointment of the Commissioners

Also discussed in detail at the focus groups were the criteria for selection of commissioners of the TRC. Many respondents said that commissioners should not be affiliated with any political party, and they placed great emphasis on commissioners’ independence and impartiality. Both male and female participants stressed maintaining gender balance within the commission. Historically, women have been marginalized in Nepal, and participants felt that unless specific provisions were made to appoint women commissioners, they would be overlooked by the authorities.

“An impartial and independent person who would perform his or her duty without any political favoritism should be appointed” –female participant, Disappearances FGD, Bardiya, September 2007.

“Independent-minded, uncontroversial figures representing all sectors of the society should be included” –female participant, Women’s FGD, Biratnagar, August 07.

“As declared recently, the presence of 33 percent women is necessary” – female participant, Women’s FGD, Biratnagar, August 2007.

“The commission should be all-inclusive. Dalits and women should be included. They should have the knowledge of the law; have the capacity to impart proper justice” –female participant, Dalit FGD, Baglung, September 2007.

A Dalit woman in Baglung gave a powerful response that underlined the need for genuine consultation: *“It should include both men and women equally. It should be someone who is selected by the people. The process should be people-oriented and not center-oriented, and must include victims of the conflict, castes, ethnic groups, etc.” –female participant, Dalit FGD, Baglung, September 2007.*

The following comment, by a person whose son disappeared a few years ago, summarizes the key issues involved in creating an effective truth-seeking body, including appointing its commissioners. It also suggests the disillusionment of Nepalis with their political leadership. “It is very likely that the perpetrators themselves are going to spearhead the commission, and therefore there is no possibility of authentic truthseeking by the commission. The TRC, therefore, should be an absolutely independent entity run by human-rights activists. The inclusion of political representatives in the commission should be discouraged. The commission should have the power to exert tremendous authority. It should include specialists, so that the corpses can be exhumed and analyzed” –male participant, Disappearances FGD, Bardiya, September 2007. Several other respondents supported the suggestion that the selection of commissioners be public. In the spirit of making the process of selection transparent and inclusive, it was suggested that victim representatives, as well as those with a record of human-rights work, be considered for the position of commissioner. It was also proposed that the candidates be vetted for their human-rights record.

“Members of human-rights organizations, victims, and the leaders of civil society should be included” –male participant, Disappearances FGD, Bardiya, September 2007. “There should be compulsory representation from the victims” –male participant, FGD Nepalgunj, October 2007.

“Unless the victims are represented in the commission, it will turn out to belike the Malik Commission or the Rayamajhi Commission. The same pattern of injustice will continue until the Truth and Reconciliation Commission includes victims as its members” –male participant, Disappearances FGD, Bardiya, September 2007.

Focus-group participants recommended that approximately one-third of the total commissioners represent the victims. Some respondents believed that, although education qualifications were 39 important, they should not be the sole criterion since this might preclude representation of traditionally marginalized groups or victims. Some respondents said that the commissioners should represent a variety of disciplines such as law, social sciences, and academia. Several believed that the commissioners should have a good understanding of the conflict.

C. Justice and Accountability

A set of questions solicited the respondents' views besides their immediate needs and concepts of justice. An overwhelming majority of the respondents (90 percent) wanted trials and punishment for past human-rights violations. Only 6 percent did not want trials for abuses committed during the conflict. Similarly, most respondents stated that it was very important (68 percent) or important (25 percent) to have accountability for past human-rights violations. This corroborates the finding that most respondents wanted trials and punishment for violations during the conflict. Only 1 percent said it was *not* important to have punishment for past abuses.

“Human-rights abusers of all kinds should be punished. All the personal assets either stolen or seized must be duly returned. Justice should be delivered in a peaceful and timely manner. There should not be any obstacle during the process in the courts” –female participant, IDPs FGD, Kathmandu, October 2007.

National or International Trials?

A significant majority (69 percent) supported holding national trials, while 13 percent backed international trials. In the opinion of 1 percent of respondents, both national and international trials were options. Then asked for their views on where trials should take place, 36 percent strongly agreed and an additional 49 percent agreed that trials should be held in national courts. Only 5 percent strongly disagreed of which 3 percent disagreed that perpetrators should be tried before national courts. One explanation for this could be that respondents were more familiar with national courts and not aware of the nature and scope of international mechanisms. Another explanation might be their desire to monitor any process of accountability for human-rights violations. This would be easier if the trials took place in national courts. Many respondents strongly supported national trials but also recognized that the current laws might prove inadequate to ensuring effective prosecution. More than 40 percent agreed and 16 percent strongly agreed that current laws in Nepal were inadequate for trials for serious human rights violations; 18 percent disagreed, and 4 percent strongly disagreed.

The option of criminal accountability was contrasted with the variables of compensation, peace, and reconciliation. When asked to prioritize, 40 percent agreed that compensation was more important than trials, and another 14 percent strongly agreed. More than a quarter of respondents disagreed that compensation was more important than trials, and 14 percent strongly disagreed. A majority of respondents disagreed that putting perpetrators on trial would endanger peace (38 percent disagreed and 13 percent strongly disagreed). However, a significant proportion took the opposite view, that trials would endanger peace (32 percent agreed and almost 4 percent strongly agreed).

Similarly, a slightly larger proportion of respondents disagreed with the proposition that trials would endanger reconciliation (33 percent disagreed and a further 12 percent strongly disagreed). On the other hand, 37 percent agreed and a further 4 percent strongly agreed. Often, opponents of truth commissions argue that peace and justice are mutually exclusive, and that justice may even jeopardize a peace process. How



ever, when asked if holding perpetrators 41 accountable in the near future would contribute to peace, 69 percent agreed; 16 percent disagreed, and 15 percent said they did not know. A comparable percentage (69 percent) agreed that holding perpetrators accountable in the near future would strengthen security, while 15 percent disagreed. Similarly, two-thirds of respondents agreed that holding perpetrators accountable in the near future would strengthen *loktantra* or democracy. Only 9 percent disagreed that accountability in the short term would strengthen democracy.

When asked about the period within which trials should be held, 38 percent agreed they should take place within two years, and 25 percent strongly agreed. More than 10 percent expressed disagreement, and 7 percent strongly disagreed. Fewer respondents either agreed (13 percent) or strongly agreed (5 percent) that trials should be held after two years; 33 percent disagreed and 28 percent strongly disagreed. Aggregating the results showed that a higher percentage of respondents thought trials should be held within two years. Nearly half of respondents did not say anything about the involvement of international actors. When asked whether the international community should help to ensure justice and accountability, respondents made no clear answers. Seven percent supported the idea of international involvement only if national laws were inadequate; 6 percent said a mixture of national and international personnel should lead the process, and 2 percent supported a UN-led process. Respondents supported the proposition that justice also involved identifying the institutions that had failed, either by commission or omission, to prevent massive human-rights violations.

D. General Expectations

The survey asked about expected responses from the following seven institutions: CDOs, the police, the army, human-rights organizations, international non-governmental organizations (INGOs), the media, and the community. 43 More than four-fifths felt the army would not be helpful and would ignore or obstruct their complaint. Eighty percent felt the same about the police. Responses also showed low expectations of CDOs, with 69 percent believing they would be not helpful and would ignore or obstruct complaints. On the other hand, 61 percent of respondents expected that human-rights organizations would be helpful, and half believed that community organiza-

tions would help. Many of those who had filed complaints had been assisted in doing so. Those who had helped were relatives and friends (26 percent) and human-rights activists (26 percent).

The survey asked those who did not file complaints about their reasons for making such a decision. The largest number (17 percent) said they feared the security forces (army and/or police), and 14 percent feared others, such as family members and/or political parties. When respondents were asked whether they knew which institution provides or delivers justice, 29 percent had no opinion or did not know. The second highest response was human-rights organizations (23 percent), followed by courts (21 percent). The high percentage of responses demonstrating no knowledge of the existing mechanisms for access to justice may indicate the state's lack of presence in the different regions of the country. The recognition of human-rights organizations as institutions that "provide/deliver justice" may reflect their work in areas where the state is weak or absent. When asked their opinion of which institutions *should* be involved in delivering justice, a quarter responded that they had no opinion or did not know. But by far the highest percentage of respondents, 37 percent, believed that human-rights organizations should be involved in delivering justice. More than a third of respondents had been to court. Of these, 58 percent found the process and environment friendly, but only 39 percent felt that the process was easy to understand. Only 37 percent found the experience to be independent and fair and only 28 percent believed that the process was not corrupt. In all, almost three-quarters felt that the process was lengthy and tiresome.

E. Expectations of Court Process

For those who had never been to court, the survey posed a series of questions to gauge their expectations of the court process. When asked whether they would expect the court's process and environment to be friendly to victims, only 49 percent replied yes; 31 percent expected it to be easy to understand; 19 percent felt that it would not be lengthy and tiring; and 40 percent expected it to be a good experience. Only 36 percent of respondents expected the process to be independent and fair; 37 percent believed they could find a good lawyer or representation if they went to court. A mere 9 percent felt they could afford a lawyer or representation.



F. Attitudes toward Amnesty and Forgiveness

Although 64 percent of respondents claimed to know the meaning of the term “amnesty,” more than a third said they had never heard the term before. 44 Further probing the issue of amnesty, researchers asked additional questions of respondents who knew what amnesty meant. A large majority (77 percent) said that human-rights violators and perpetrators should not receive amnesty for their crimes. Other persons who should not be granted amnesty included security forces (7 percent), individuals who continue to pursue unlawful activities (2 percent), Maoists (2 percent), and corrupt officials (1 percent). Responses of the focus groups clearly indicated that most participants did not favor a law providing blanket amnesty to perpetrators.

“Can we revive our husbands? Can our children get their father’s love? Is money the greatest thing? I feel that the method of punishment should be ‘life for life’” –female participant, Women’s FGD, Biratnagar, August 2007.

“The perpetrators should be punished. I don’t care about compensation and all; I want the commission to take stern action against those who killed my son” – male participant, Disappearances FGD, Bardiya, September 2007.

G. Needs, Reforms, and Reparations

-- Immediate Needs and Concerns

When asked about their immediate needs, respondents identified the following priorities:

- ▶ Compensation (24 percent);
- ▶ Education (17 percent);
- ▶ Basic needs, such as food, housing, and clothing (16 percent);
- ▶ Health and medical facilities (12 percent);
- ▶ Employment (8 percent);
- ▶ Publicizing the whereabouts of the disappeared (7 percent);
- ▶ Punishing perpetrators (3 percent);
- ▶ Formation of a republic (1 percent).

The majority of responses concerning immediate needs were related to basic requirements, such as health, education, housing, clothing,

and employment, and less associated with wider issues such as the consolidation of peace. However, when victims were asked to identify future needs, perceptions changed significantly. Aside from compensation and education, respondents emphasized the need to achieve peace and security in the country. Considering that the profile of most of the victims coincides with low levels of education in rural agrarian communities, it is unsurprising that their immediate concerns were related to the satisfaction of basic needs such as food, housing, health, and education. Projecting into the future in light of their experiences of conflict, respondents showed that they highly value stability and peace in their communities.

Institutional Reforms

When asked which government institutions should be reformed, 23 percent of respondents felt the security forces should be given high priority; 13.3 percent said all government organs needed reform; 12 percent prioritized the CDO, and 33 percent had no opinion or did not know. With regard to reform of the Nepali police, 23 percent said the police should be more professional, and 11 percent felt more training was needed. Another 11 percent said anti-corruption measures 46 should be taken. Nine percent believed that the use of torture should be stopped. Only 2 percent of respondents felt that no reforms were necessary in the Nepali police. More than 12 percent had no opinion or did not know. When asked what reforms should be initiated in the Nepali army, 21 percent said it should be more professional; 10 percent said the practice of torture should be eradicated. Only 3 percent felt that no reforms in the army were necessary. Eighteen percent had no opinion or did not know, and 12 percent chose “other.” When asked what reforms were necessary for the judiciary, 21 percent said anti-corruption measures were needed. A significant number of respondents (15 percent) also believed reforms were needed to increase equal access to justice. A significant number (12 percent) felt reforms were necessary to increase victim awareness regarding rights. Almost a quarter of respondents had no opinion or did not know, and 7 percent chose “other.”

H. Trust in Institutions

The survey also attempted to gauge the level of trust people have in governmental and nongovernmental institutions in the country. Respondents were asked how much they trusted the army, the police, the courts, Parliament, the Maoists, political parties, NGOs and the UN. They expressed the lowest amount of trust in the police and army, with 66 percent and 65 percent, respectively, stating they did not trust them at all. Only 6 percent trusted the police fully, and only 8 percent had full trust in the army. Respondents also displayed considerable distrust in other institutions, stating that they had no trust at all in political parties (44 percent), the Maoists (43 percent), and Parliament (37 percent). Respondents displayed the greatest amount of trust in the courts, with 80 percent saying they either trusted them fully or to some extent. The majority trusted NGOs (77 percent) and the UN (57 percent).

I. Reparations

When asked whether victims should receive reparations, more than 99 percent of respondents favored them. However, the percentage of respondents who would pursue reparations if they had the opportunity was lower (84 percent), with 10 percent declaring that they would not pursue any reparations and 6 percent not expressing an opinion. When asked to agree or disagree with the statement, “Reparations claims will not succeed,” more than a quarter of respondents agreed or strongly agreed. However, 53 percent either disagreed or strongly disagreed, thus expressing some degree of confidence that claims would succeed. Around 22 percent did not have an opinion. For the majority of respondents (68 percent), reparations should be for individuals. More than 28 percent said they favored community reparations over individual measures. Only 3 percent did not show any preference. Respondents said that victims’ reparations should comprise a wide range of measures. Most (52 percent) felt compensation should be made available to victims and their families.

“Those who were killed, disappeared during the conflict, physically abused and mutilated should be identified, and compensation should be provided to their families” –male participant, FGD Surkhet, September 2007.

Other types of reparations mentioned included provision of basic needs (12 percent), employment (10 percent), and medical treatment (8 percent). Among those who answered “other forms of reparation” (1 percent), measures included returning land, collective reparations, and construction of memorials. About 1 percent did not know what type of reparations they would like to see for victims.

“Those who have been left injured by the conflict, the state should provide them with adequate medical facilities and psychological treatment” –male participant, FGD Bardiya, September 2007. “Victims should be provided with employment, education, and medical facilities. Peace and security in the villages is necessary” –Female participant, FGD Kathmandu, October 2007.

Reparations are the most tangible form of recognition and redress that states can provide to victims. In contrast to other forms of criminal accountability that primarily deal with perpetrators or long-term institutional changes, reparations constitute very concrete and immediate acknowledgment of the dignity of the victims and their status as citizens. When asked about who should provide reparations, respondents overwhelmingly identified the government as the main entity responsible (77 percent). This response also accords with the 2003 UN international principles on reparations, which highlight the significance of reparations and the responsibility of the state. They affirm: Adequate, effective, and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations,

A State shall provide reparation to victims for acts or omissions [emphasis added] which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. These views were also reflected in the focus-group discussions. Participants identified the government as mainly responsible in providing reparations.

“Facilitating unconditional homecoming of those displaced, returning the land and assets seized, free medical treatment to the ones made physically incapacitated and mentally afflicted by the conflict, paying all the costs accruing during treatment including bus fares and provisions for the caregivers, all the charges of medical treatment of a seriously injured person who might need a longer stay in the hospital—for example, one having problems with bones—should be borne by the government; jobs must be reserved for people mentally and physically disabled during the conflict” –male participant, FGD Nepalgunj, September 2007.

“The children whose fathers were either killed or physically incapacitated during the conflict should have their education supported by the state, since their mothers alone can’t help them for the purpose. Those who were forced to leave their houses because of the Maoists should be especially looked after by the state” –male former-child-soldier participant, FGD Surkhet, September 2007.

“The families of the disappeared, orphans who lost their parents during the conflict, and those who were physically maimed must be taken care of by the state” –female participant, FGD Biratnagar, August 2007.

Others believed responsible for providing reparations included the Maoists (4 percent), the perpetrators of the violation (8 percent), and the army and police (2 percent). Two percent of respondents did not have a clear opinion about who should provide reparations. It was noteworthy that no one identified international actors as responsible for providing reparations.

J. Women, Children, and Marginalized Groups

Women

Of 348 women who responded to the survey, 132 (38 percent) were victims of at least one human-rights violation. However, this percentage only became apparent when women were asked specifically to provide the details of each family member who had suffered a violation, *including the respondent*. Only 24 (18 percent) of these women had identified themselves as victims at the beginning of the

survey. This follows a pattern observed in other post-conflict societies, in which women “generally rely on structures that do not encourage them to think about the ways in which they have been victimized as individuals and as women. Women tend to speak and act more about the victimization of others (usually close family relatives) than of their own.”¹⁰ In comparison with their married and widowed counterparts, single women were more likely to state their condition as victims from the outset (86 percent). Although the sample group here is too small to make accurate generalizations, it shows that when a woman is involved in a relationship or is the head of a family, she will put her family’s needs before her own and her personal experience of violence. The majority of victims of human-rights violations were men (78 percent).

However, it is possible that the women, who participated in this survey, as in many other transitional contexts, did not adequately identify the rights that had been violated, due to their view that human-rights violations involve a direct impact on the human body. The documentation of crimes of individual bodily injury referred to as human rights violations alone may not address the principal dimensions of women’s experiences of human rights abuses. In many contexts, bodily injury provides too narrow a lens into women’s experiences of authoritarian regimes; other aspects of human rights-abusive contexts, such as the extreme vulnerabilities and structural inequalities created by systems of war or repressive rule, affect women in disproportionate numbers and in ways that have far-reaching human rights implications. Any analysis of the conflict in Nepal should include not only the victims of the violations, but those who suffered the consequences in the broader political, social, and cultural settings, as well. One woman from Biratnagar depicts this situation very clearly:

“Our tradition does not allow women to plough land, but they were forced to do that during the conflict. Women had to cremate their loved ones alone. It’s good to perform such works, but our tradition does not allow this. Our patriarchal society directs men to bear financial burdens, but during the conflict women suddenly had to play male roles in addition to their own responsibilities. In the absence and death of male members, women had to bear the financial burden, too” –female participant, Women’s FGD, Biratnagar, August 2007.



Information expressed in the focus groups describes a pattern in which women were forced to radically change their normal roles in order to deal with the social, economic, legal, and political consequences of the human-rights violations suffered by their spouses and male family members. This experience is similar to that reported by women in other situations characterized by mass human-rights violations. During armed conflicts, women are susceptible to marginalization, poverty and suffering, with preexisting inequalities and patterns of discrimination tending to be exacerbated. Whilst the impact of armed conflict on women differs considerably between contexts and between individual women, it is possible to identify common characteristics: widespread sexual violence, the extreme burden which war places on women to ensure their own survival and the care of children and the elderly, and the challenges that war brings to women who decide to take up arms.

“When husbands were displaced, women were the ones who had the responsibility to look after their family. During the conflict, both sides harassed them by seeking food and shelter.... Women had to tolerate behavior ranging from household violence to labor exploitation, trafficking, and rape” –female participant, Women’s FGD, Biratnagar, August 2007.

“It is very difficult for women from both sides to win their position back in the society. For men it is very easy and everything becomes normal for them. But ours is a patriarchal society; society finds it hard to digest similar things about women” –female participant, Women’s FGD, Biratnagar, August 2007.

With regard to gender violence during the conflict, it has been noted that this survey has clear limitations in collecting reliable data on cases of rape and other forms of sexual violence. Among the 1,271 cases of human-rights violations documented, only 15 (1 percent) are related to sexual violence. However, during focus-group discussions with women, they constantly and consistently raised their experiences of discrimination and sexual violence. The main reasons identified by these women for the types of violations they suffered during the conflict were the social oppression and gender discrimination prevalent

in Nepali society. This social oppression has denied women access to education, health facilities, and their own voices in the society.

“Women were forced to shelter themselves during the conflict. Given the social conditioning, women lacked self-confidence, and took their restrictions for granted” –female participant, Women’s FGD, Biratnagar, August 2007.

“Women are the greatest sufferers of the conflict. A male can never be raped, while a woman becomes the victim of an incident of rape. A woman has got the pain of being raped. Our society is such that a victim of rape can’t bring to light the injustice meted out on her. The emotional trauma of the incident leaves the life of that woman in a total shambles. The reason behind women’s inability to express their pain aloud is the current social structure and patriarchal mindset” –female participant, Women’s FGD, Biratnagar, August 2007. “I was cooking food when they entered our house. They raped me, and my husband lost his mind for two to three months” –female participant, FGD Kanchapur, September 2007.

Children

According to UNICEF, “The armed conflict has severely affected children of all ages. Over the last 10 years, over 300 children have been killed in the conflict. Many more have been injured or detained by either the Maoists or the state’s security forces. The conflict has also rendered children more vulnerable to a variety of abuses and rights violations, especially those who were separated from their families or became orphans.”

Of 1,271 cases, the survey recorded 172 human-rights violations with victims 17 years old or less. In 17 percent of these cases, victims were younger than 10 years old. In 83 percent of cases, victims were between 11 and 17 years of age. Among the human-rights violations registered, three were cases of rape of girls between 11 and 17. The majority of the cases that involved child victims related to male children (67 percent), while 33 percent involved girls. Participants identified the perpetrators of violations committed against children as the army (49 percent), followed by the police (24 percent), unidentified

perpetrators (13 percent), Maoists (12 percent), and other groups (2 percent). It is interesting and understandable to note that the percentage of unidentified perpetrators is higher among children than for any other age group (39 percent of the total cases involving unidentified perpetrators). In addition, the conflict has affected children's access to basic services, such as education. In the focus groups, the narratives of former child soldiers and others emphasized the effect of conflict on children, particularly those who served in the Maoist army. "Barring students from going to school, forcibly taking students from schools and homes to participate in their programs, forcibly recruiting child soldiers, beating, and raping girls" –male former child soldier, Child Soldiers FGD, Surkhet, September 2007. "The Maoists forced us to join their party, and after we joined them they coerced us into entering politics or frontline warfare. I joined them when I was a kid of 14, not knowing the ways of the world, and they made me bear a load of 25 kilograms" –male former child soldier, Child Soldiers FGD, Surkhet, September 2007. The children who participated in the focus groups were well aware of the current political situation and the types of human-rights violations that had occurred during the conflict. In addition to their own immediate priorities and concerns, they mentioned the importance of making known the whereabouts of the disappeared. In other words, they had higher levels of awareness than children in general.

Dalits and Other Marginalized Groups

In an armed conflict, people or groups living at the margins of society are most likely to be harmed by human-rights violations. Often there is a correlation between historical marginalization and the effects of the conflict.

In Nepal the Dalits, Janajatis (indigenous groups), and Madhesis (from the plains) form almost two-thirds of the population, but have been kept out of the political process, which traditionally has been dominated by the Brahmins, Chhetris, and Newars. In 1990, with the advent of democracy, it was hoped that the discriminatory practices of institutions and social structures would be reformed to adequately recognize and include the excluded groups. Unfortunately, the demo-

cratic opening thus far has failed to deliver a new Nepal based on equality among castes, ethnic groups, classes, and genders.

“Dalits have been oppressed since the time of the Shah and Rana dynasty. We have been oppressed by the rulers since time immemorial. As a result, the revolution of Dalits and indigenous groups has come to the fore. The conflict in society persists because of the continuing untouchability and discrimination” –male participant, Dalit groups FGD, Baglung, August 2007.

Although there is no agreement on the number from each community who were victims of humanrights violations during the conflict, it is clear that large numbers of Dalits and Janajatis, especially Tharus, were direct victims in both rural and urban areas. For instance, the survey results show that in the category of enforced disappearance, the highest numbers of cases recorded were from the Tharu (49 percent) and Magar (30 percent) communities.

“It is the aboriginal and ethnic groups who have been directly affected by the decade-long violence; we have been oppressed religiously, linguistically, and communally. There was no respect for ethnic and underprivileged groups” –female participant, Janajatis FGD, Pokhara, August 2007.

Strong indigenous and Dalit-rights movements, calling for greater access to resources and social equality, succeeded in having guarantees inserted in the interim Constitution adopted in 2007. However, reversing years of discrimination is a long process that requires sustained political commitment to social inclusion and equality. Participants in this study recognized the exclusion of Dalits and indigenous groups from many benefits and opportunities available to other social groups as one of the major causes of the conflict. The prospect of a continuing peace may depend largely on whether real changes in social structures and institutions can make sufficient progress in redressing historical injustices and these groups’ feelings of exclusion.

PROSPECTS FOR TRUTH COMMISSION IN NEPAL

One of the provisions of the CPA concluded on November 7, 2006 is the creation of the TRC, which has generated much optimism among the human rights activists, especially those working for the cause of victims of the decade-long insurgency. This is a provision that links the peace process with strengthening of justice, reinvigoration of the rule of law and promotion of respect for human rights. As is said by former UN Secretary General Kofi Annan in his report to the Security Council "Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives." The consensus built in the CPA to create the TRC, while supporting this view, indicates that the political leadership is not indifferent to the atrocities committed to innocent people during the insurgency and wants to stamp out impunity by unearthing truth and balm the wounds of the victims who had to face enormous sufferings during the insurgency.

1. Aspiration for TRC in Nepal

TRC is one of the mechanisms to deal with large scale human rights abuses and crimes, bring to justice those accountable for such crimes and abuses, provide reparation to the victims and achieve reconciliation. Other mechanisms employed by countries in transition, depending on specific nature of the conflict, include the creation of inquiry commissions, criminal proceedings or community based proceedings,

reparations, vetting, institutional reforms etc. The TRC does not rule out any of these mechanisms or possibilities.

Given that over 13,000 people have died and thousands of others disappeared, physically or mentally injured, incapacitated and displaced, it is high time the state took into cognizance those abuses, sincerely tried to heal wound of the victims and brought perpetrators to justice. No process can bring about sustainable peace, if serious crimes and abuses are condoned or victims are forgotten. We also need to take note that the international law is against blanket amnesty, especially amnesty to perpetrators of system crimes (war crimes, genocide, crimes against humanity) and also serious violation of human rights. It is in this context that the TRC becomes pertinent helps the society to understand and acknowledge a contested or denied history, and in doing so brings the voices and stories of victims, often hidden from public view to public at large. It takes a victim-centered approach while investigating crimes and abuses.

The creation of the TRC should also be seen in the context of international obligations of the state. International law, including the international human rights law, has evolved at least four obligations of the states they are dealing with issues of transitional justice. First, the states should tell the truth, the whole truth about what happened during the conflict. This is the right of the victim and the society at large. Second, the states must investigate, prosecute and eventually sanction, of course attaching due regard to the principles of fair trial and without resorting to vengeance. A corollary to this is the positive obligation to establish a system of justice that acts fairly, attaches due consideration to the rights of the accused, victims and society at large, punishes every wrong and thereby helps in the prevention of crimes and human rights abuses. So long as the states are capable, fair and willing to bringing to justice alleged perpetrators of human rights abuses, international law does not permit international community to interfere in the domestic affairs of the concerned state.

Third, the state has a duty to repair and compensate the victims for the loss. This includes not only monetary compensation but restitution, resettlement and rehabilitation. While access to justice and fair



treatment, restitution, compensation and assistance towards recovery are the rights of the victims encapsulated in the 1985 UN Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, a more recent UN repertoire used in the context of transitional justice is "reparation" which along with compensation, rehabilitation also includes "satisfaction" and "guarantee of non-repetition". "Satisfaction" comprises full public disclosure of the truth, disclosure of whereabouts of the disappeared, restoration of dignity of victims, public apology, judicial and administrative sanction, and commemorations and tributes.

These measures prepare the victims to forgive perpetrators and create momentum for reconciliation. Effective control of the military and security forces, strengthening of the state institutions including the police, prosecution and the judiciary and protection of human rights defenders, promotion of human rights and humanitarian law education and frequent review and improvement of the legal framework may guarantee the non-repetition of crimes and human rights violation.

Finally, it is also the obligation of the state to cleanse state institutions, especially those directly involved in security operation and to remove the vestiges of the past to ensure non-repetition of similar crimes. This is also necessary for rekindling faith in the state institutions and helping the country to move on.

2. Commissions of Inquiry

In Nepal, many commissions of inquiry have been formed to investigate major human rights violations and political violence. Following the first *Jana Andolan*, under Sections 3 and 4 of the Inquiry Commission Act 1969, the interim government led by Prime Minister K. P. Bhattarai formed a three-member Malik Commission, headed by Janardhan Malik, in 1990. This was to investigate the loss of life and damage to property that had taken place during the People's Movement from February 18 to April 8, 1990; investigate the loss of life and damage to property in Pokhara from February 12 to 17, 1990; establish the causes of and individuals responsible for the incidents mentioned above; and submit a report recommending action to be

taken against those found responsible. The Malik Commission submitted its recommendations to the government and held various police personnel, local administrators, and members of the then-Council of Ministers responsible for suppressing the People's Movement and for the human-rights violations committed at the time. The government never officially made the report public, and until now none of the recommendations of the Malik Commission has been implemented. Another high-level inquiry commission was formed under the chairmanship of Krishna Jung Rayamajhi, to investigate human-rights violations that occurred during the second People's Movement, *Jana Andolan II*, of April 2006. It was asked to name individuals directly or indirectly responsible for these violations. The commission began its work on May 10, 2006, and submitted its report to Prime Minister Girija Prasad Koirala on November 20, 2006. Only after continuous pressure from civil society did the government submit the report to Parliament on August 3, 2007; soon after it was made public. The failure to implement the recommendations of past commissions meant a failure to uphold the rule of law or develop a culture of respect for human rights. Some of the reasons why these commissions have not been successful include lack of political will, the close connections of the principal actors in Kathmandu, political self-interest, and the weak response of civil society.

3. Anatomy of the Draft TRC Bill

After months of eager await the Ministry of Peace and Reconstruction recently floated the bill on TRC but failed to appease not only the human rights activists but also the professionals. The bill has been widely criticized by all professionals: the lawyers, human rights activities and representatives of various national and international human rights organizations. It has also been claimed that the bill being heavily influenced by the South Africa-style truth commission, has raised debate on "peace versus justice". Human rights organizations have laid out clearly that the failure to prosecute human rights violations will create culture of impunity that leads to further human rights abuses and on the other hand will also undermine the establishment of rule of law and the consolidation of democratic governance.



The Landmark Supreme Court Verdict

On 2013-04-02, the Supreme Court stayed the implementation of the Truth and Reconciliation Commission (TRC) ordinance, arguing that some of its provisions contradicted the Interim Constitution.

A single bench of Justice Sushila Karki issued the interim order until another hearing where both the plaintiff and the defendants need to be present to decide on whether a further stay is required. The bench also asked the defendants to furnish a written clarification as to why the ordinance was promulgated.

The court responded to two separate writ petitions filed on March 24, challenging the ordinance. Advocates Madhav Basnet and Bishnu Pokharel took issue with Section 23 (2) of the proposed ordinance, which reads, “Notwithstanding anything contained in Sub Section (1), on serious human rights violation cases, including rape, which lack sufficient reasons and grounds for granting amnesty following the investigation of the Commission, it shall not recommend amnesty.”

The plaintiffs had argued that “...which lack sufficient reasons and grounds for granting amnesty following the investigation of the Commission” should be removed as the remaining wording in the provision still gives it meaning. The ordinance gives prerogative powers to the TRC to grant amnesty to crimes other than rape, they claimed. The petitioners have also questioned a provision that states that those not designated for amnesty following the investigation of the Commission would be recommended for action as per the existing clause. The plaintiffs maintained that even this provision is flawed, given that the ordinance does not clearly state which crime, other than rape, would qualify for prosecution.

The petitioners have sought court orders to defendants to formulate laws as per the previous order of the court on transitional justice until war crimes and crimes against humanity are not declared criminal offences and provision for punishment are not put in place.

The defendants in the petition include the chairman of the Interim Election Government, the Office of the Prime Minister, Minister for Law, Ministry of Law, Minister for Peace and Reconstruction and the

Ministry for Peace and Reconstruction. A group of conflict victims had also moved the apex court, demanding nullification of certain provisions in the TRC ordinance, in addition to demanding the formation of an “independent” TRC. They have also sought the formation of another committee within three months, comprising human rights activists and government officials, to hold consultations with victims to ensure justice.

The ordinance, which was endorsed by the President on March 14, has also come under severe scrutiny from both national and international rights groups, including the UN Office of the High Commissioner for Human Rights (OHCHR) and the International Commission of Jurists.

Nepal’s draft bill for the proposed TRC “threatens to deny victims of the decade-long conflict their rights to truth, justice and reparation”, according to Human Rights Watch and the International Commission of Jurists. The bill’s provisions on issues like amnesty and the commission’s independence from the government do not meet international legal standards.

Particularly on the provisions of amnesty against the perpetrators of gross human rights violations and violations of International Humanitarian Law (IHL), including extra-judicial execution, torture and disappearances are of serious concern. The bill fails to reflect the international standards adopted in 2005 by the United Nations on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law. These standards, known as the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights, are based on international legal obligations, including Nepal’s specific treaty obligations.

The commission’s proposed mandate would not address serious violations of international humanitarian law. The draft bill also fails to clarify that the terms “gross violation of human rights” and “crimes against humanity” must be defined and applied in a manner that meets international standards. In the draft bill, amnesties could be

granted even for gross human rights violations if these acts had a political motivation, if the perpetrator made an application indicating regret, or if victims and perpetrators agree to a reconciliation process. Such a mechanism could result in protection from criminal prosecution for even the gravest of crimes.

While the proposed draft states that amnesty will not be provided to any person involved in “murder committed after taking under control or carried out in an inhuman manner; inhuman and cruel torture; rape,” the vagueness of these terms creates leeway for amnesties for those responsible for murder or torture that the commission defines as not inhuman or cruel. Clearly defined terminology that is internationally accepted, such as “torture and other cruel, inhuman or degrading treatment or punishment,” should be used.

4. Supreme Court Annuls TRC Ordinance¹

The Supreme Court today struck down Truth and Reconciliation Commission Ordinance and told the government to remove the provision of blanket amnesty from the Ordinance and make it comply with international standards.

Special bench of Justices Kalyan Shrestha, Girish Chandra Lal and Sushila Karki issued the verdict stating that the provisions related to general amnesty, executive discretion to prosecute perpetrators of serious human rights cases and prosecution in other cases within 35 days of the incident did not meet international standards and the spirit of the Interim Constitution. The bench ordered the government authorities to review the provisions and issue a modified TRC Ordinance.

The apex court also directed the authorities to set up two separate commissions — Truth and Reconciliation Commission and Commission on Disappearances. It ordered the government to form a panel comprising a conflict expert, a victim representing all the victims, human rights law expert and other stakeholders to suggest what all should be included in the provision to grant amnesty.

1 Ananata Raj Luitel, Himalayan Times, 2 January 2014

On March 14, President had issued the ordinance but the apex court had stayed its implementation on April 1. Section 23 (4) of the ordinance had proposed to grant blanket amnesty to perpetrators of serious human rights violations, including rape, murder, disappearance and abduction. Challenging the provisions, advocates Madhav Kumar Basnet, Bishnu Prasad Pokharel, and Chairman of the Social Justice Committee Ram Kumar Bhandari and Chairman of the Terrorist Victims' Orphans' Society Suman Adhikary had filed the writ.

Stating that Sections 25 and 29 of the ordinance added ambiguity — whether or not to take action against the perpetrators of human rights violations — the petitioners had asked the apex court to declare null and void the contradictory provisions that are against the rights of the victims. They claimed that these provisions were against Articles 12, 13(1) and 24(9) of the Interim Constitution. The SC order is a blow to the UCPN-M, whose leaders had been advocating blanket amnesty for its leaders and cadres involved in cases of serious human rights violations during the 10-year insurgency.

However, rights activists and lawyers have welcomed the verdict, stating that this would address the rights of the conflict victims. Nepal Bar Association Vice-President Tikaram Bhattarai opined that the government and the Parliament were now bound to bring a new bill as per the international standard and the spirit of the Interim Constitution. Subodh Raj Pyakurel, Chairman of Informal Sector Service Centre said the verdict had set a precedent that crime cannot be protected under the political veil.

Other directives

- ▶ The authorities told to set up separate commissions — Truth and Reconciliation Commission and Commission on Disappearances
- ▶ Government ordered to form an expert panel to suggest what all should be included in the provision to grant amnesty

What weighs against it

- ▶ The provision related to general amnesty
- ▶ Executive discretion to prosecute perpetrators of serious human rights cases

Verdict of the Supreme Court

Supreme Court

Special Bench

Honorable Justice Kalayan Shrestha
Honorable Justice Girish Chandra Lal
Honorable Justice Sushila Karki

Order

069-WS-0057

Subject: Including mandamus.

Subject: Issuance of Appropriate Orders including Mandamus Petitioners

General Secretary of Juri Nepal advocate Madhav Kumar Basnet, of Madhyapur Thimi Municipality-16 on the behalf of Justice and Rights Organization (Juri-Nepal).....1

Secretary of Juri Nepal advocate Bishnu Prasad Pokharel, a permanent resident of Okharkot VDC-8 of Pyuthan district and currently staying at Kirtipur Municipality-2 of Kathmandu district on the on the behalf of Justice and Rights Organization (Juri-Nepal).....1

Against

Respondents

Honorable Chairperson, Government of Nepal, Interim Council of Minister, Office of Prime Minister and Council of Ministers, Kathmandu1

Government of Nepal, Interim Council of Minister, Office of Prime Minister and Council of Ministers, Kathmandu1

Honorable Minister, Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, Singh Durbar, Kathmandu1

Government of Nepal, Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, Singh Durbar, Kathmandu....1

Honorable Minister, Government of Nepal, Ministry of Peace and Reconstruction, Singh Durbar, Kathmandu1

Government of Nepal, Ministry of Peace and Reconstruction, Singh Durbar, Kathmandu1

Writ petition No 069-WS-0058
Subject: Including Certiorari Mandamus order

Petitioners

Chairperson of Committee for Social Justice, Ram Kumar Bhandari, of Simpani VDC-3 of Lamjung district1

Chairperson of Conflict Victims Orphan Society Nepal, Suman Adhikari, of Chandreshwor VDC-6 of Lamjung district1

Chairperson of Conflict Victim Society, Bhagiram Chaudhari, of Dhadhwar VDC-8 of Bardia district1

Chairperson of National Network of Families of Disappeared and Missing Nepal (NEFAD) Rupesh Shah, of Dumraha VDC-5 of Sunsari district1

Chairperson of Reena-Arpan Dalit Utthan Munch, Gita Rasaili of Pokharichauri VDC-4 of Kavre district1

Chairperson of National Society for Conflict Victims, Gyanendra Raj Aran, of Puranagaun VDC-5 of Ramechhap district1

Central member of Conflict Victims Society for Justice (CVSJ), Prakash Chandra Shrestha, of Tiplung VDC-9 of Ramechhap district1

Central member of Conflict Victims Society for Justice (CVSJ), Srijana Shrestha Singh, of Kirtipur Municipality-12 of Kathmandu district1



Against

Respondents

Honorable Chairperson, Government of Nepal, Interim Council of Minister, Office of Prime Minister and Council of Ministers, Kathmandu1

Government of Nepal, Interim Council of Minister, Office of Prime Minister and Council of Ministers, Kathmandu1

Government of Nepal, Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, Singh Durbar, Kathmandu ...1

Government of Nepal, Ministry of Peace and Reconstruction, Singh Durbar, Kathmandu1

Honorable President, Office of President, Shital Niwas, Kathmandu1

The Office of President, Shital Niwas, Maharajgunj, Kathmandu1

Details of the Case:

(Not Included)

- ▶ The provision to prosecute perpetrators in other cases within 35 days of the incident

Verdict

Now, while considering about the final question as to whether or not an order as demanded by the petitioners is to be issued, it is evident that the petitioners have demanded that as Sections 13, 23, 25 and 29 of the Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission, 2013, are against Articles 12 (1), 13 (1) and 24 (9) of the Interim Constitution of Nepal 2007, they are to be repealed as per the Article 107 (1) and amended as per the Article 107 (2) of the Constitution.

The conflict of Nepal has a unique feature and the Nepali society is now undergoing through a historical challenge of taking this conflict to a logical conclusion by institutionalizing peace sustainably. The concerned sectors will make specialized analysis and conclusions as to the causes and consequences of the conflict and its outcomes as well. Now the main question before this Court relates to whether or not the procedures and legal provisions as adopted by the disputed Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission, for the purpose of addressing incidents of serious crimes related to human rights that happened during the conflict, have violated Constitution, international human rights law, accepted principles of justice, and if implemented in its present form, whether or not the Ordinance can achieve the goals of transitional justice.

The Interim Constitution of Nepal 2007 appears to have come into existence with a roadmap in relation to conflict resolution. It is urgent to institutionalize and manage transitional justice in Nepal as it continues to remain an important challenge for the establishment of peaceful Nepali society by making it free from the effects of conflict and addressing the causes of conflict. In connection to this, two separate bills on Truth and Reconciliation Commission and Commission on Investigation of Disappearance were tabled in the previous Constituent Assembly (CA) in relation to implementing the Interim Constitution and Comprehensive Peace Agreement; however those bills could not be passed before the dissolution of the CA, and consequently it appears that they could not get the shape of legislation until now. Hence, it appears that an important matter that could not be settled through a regular legislative process was given a form of law through the process of Ordinance. And the Ordinance was blocked from implementation with an interim order of this Court on 1 April 2013.

As peace, justice and development in Nepal have been hampered in numerous ways due to the prolonged transition in the context of management of the conflict in Nepal, it has become imperative that it is addressed as expeditiously as possible through various dimensional approaches. The promulgation, though delayed, of this Ordinance for managing the transitional justice, in itself is positive, however, concerns

have been expressed as to what extent this ordinance will be of help in managing the conflict and institutionalizing justice. It has been observed that, as discussed above, the issues mentioned in the disputed Ordinance have to be reformed as deemed necessary through judicial settlement and to be implemented in a new manner. The process of the search for the disappeared and truth and reconciliation has to be viewed in the context of design and implementation of the project along with policy and capacity that includes various elements of the management of justice including documentation of various incidents that happened during conflict period, truth seeking and truth telling, reparation, delivery of justice, relief and rehabilitation.

For the management of transitional justice, the general viewpoint is mainly to undertake judicial processes relating to serious violations of human rights and to continue peace dialogues between the conflicting parties, create an environment of reconciliation by encouraging friendliness and harmony as regards other matters with a view to maintaining peace. Viewed from this perspective, despite good objectives as mentioned in the preamble of the present Ordinance, fundamental problems are still observed to be inherent in it.

To conclude, as discussed in different issues above, the present Ordinance is in contravention to the approach of the international human rights law which regards incidents of enforced disappearances as serious crimes related to human rights. It is also against the decision and order issued by this Court on the case of Rajendra Dhakal, and against the spirit of the Interim Constitution of Nepal 2007, and the right to life and liberty of individuals as recognized by the previous Constitutions. A separate Commission was to have been formed to implement the decision of the case of Rajendra Dhakal, which has not been complied with. Besides, while the Disappearance Commission was to have been deemed purely related to deal with criminal acts of disappearances, it has not been provided for accordingly in the Ordinance. And acts of disappearances should not have been made matters of reconciliation, whereas, in the present Ordinance, acts of disappearances have been made matters of reconciliation and made part of Truth and Reconciliation Commission. Therefore, as this is against law, and as the provisions related to the act of disappearances

in the present Ordinance are in contravention to the Constitution, law and the principles of legal precedents as set by this Court, it becomes evident that an order of Certiorari requires to be issued in the name of the respondents; and because the said provisions are unacceptable, they should be removed from the Ordinance and that the Ordinance should not be implemented or cause to be implemented in its present form.

As stated above, it thus appears evident to issue an order of mandamus in the name of respondent Government of Nepal to issue, without delay, another Ordinance with necessary legal provisions to establish a separate Inquiry Commission, or to make necessary arrangement for the same, for the investigation of enforced disappearances, in line with Constitution, law and the decision issued by this Court in the case of Rajendra Dhakal and other legal precedents set by this Court.

As mentioned hereunder, among other provisions of the Ordinance, the main constitutional and judicial questions are found in the following Sections; and as the provisions of the Ordinance, in its present form, are not found to be in line with the judicial and constitutional principles, and as it requires to be done as mentioned hereunder, it is hereby issued this order of mandamus in the name of the respondent Government of Nepal, to do as mentioned hereunder and issue the Ordinance only after arranging for its amendment or reform or to make any other necessary legal arrangement for its implementation.

- a) The provision of amnesty in Section 23 of the Ordinance does not appear to have guaranteed not to recommend for amnesty the crimes as mentioned under Section 2 (j). These crimes are made the subjects of amnesty, and instead of making the participation and consent of the victims for the amnesty process primary, it has been made secondary. This makes it evident that this provision is against the victims' fundamental right to justice including their right to life and liberty, right to information, right against torture, and against the accepted principles of justice. Therefore, this provision needs to be reviewed, reformed and amended accordingly.
- b) The provisions under Section 25 and 29 of the Ordinance do not make the criminal prosecution of the persons accused of serious violation of human rights definite, easy and uninterrupted, and

rather they make it a subject of executive's reason and thus indefinite. It thus appears to hinder the prospect of justice and therefore needs to be made as per law and constitution.

- c) A statute of limitations of 35 days has been determined, to file cases, that too once the Commission recommends or once the Attorney General (AG) decides to file a case as per the letter that he receives from the Ministry. No provision has been prescribed regarding accountability for the adverse effect rendered to justice by the AG, if he, because of the 35 days' time limitation, fails to file the case within that time period. Additionally, prescribing such a small statute of limitations in serious crimes will create impunity in the cases of human rights violation. This provision is thus against the provisions of fundamental right and justice of the Constitution and against the accepted principles of justice recognized by the Constitution and therefore requires to be amended accordingly.
- d) In addition to amending the above mentioned provisions, an order is issued also to make legal reforms and adopt practical measures in implementation phases to arrange legal provisions for the criminalization of the criminal acts against serious human rights violations so as to have a comprehensive management of truth finding and reconciliation; to initiate extensive campaigns to promote the spirit of reconciliation; to provide for reparation to the victims and their families with enough economic, legal and institutional arrangement; and to ensure the autonomy and impartiality of the Truth and Reconciliation Commission, by forming such a Commission, constituting only of individuals who, during conflict, were not parties to that conflict or were not involved, in any way, either to repress that conflict or were part of the administration thus being party to the conflict, or who do not have any negative records of human rights violations, and also in line with the internationally accepted standards; to make and implement victim and witness protection programme for them to be able to tell their truth, to be able to effectively defend it, and to protect their individual identity related details; to arrange for, if needed, in-camera hearing or distance hearing by arranging for various means including of audio-visual technique.

- e) In order to prescribe in law itself the fundamental provisions to be adopted by the Commission in issues including on amnesty, amend the Ordinance by taking assistance from an expert team on the issue constituted of conflict experts, organizations representing victims or victims' interest, human rights law experts, and other stakeholders in the matter.

Communicate this order in writing to the respondents Government of Nepal and Office of the Attorney General to effectively execute and manage above mentioned provisions. Communicate this decision also to the respondent Government of Nepal and to the Honorable Office of the President through the Office of the Attorney General. Remove this case from the list of the active cases and submit the case file to the archive section as per law.

Justice

I agree with the above opinion.

Justice

Justice

Dated this on 2 January 2014, Thursday

Bench officer: Shiba Prasad Khanal and Bishnu Prasad Gautam, Under Secretaries

Computer setting: Ranu Paudel, Bikes Guragain

Under the previous draft bill, the Truth and Reconciliation Commission could not even consider any case already decided or being decided before a court in accordance with existing laws. The bill excludes from the commission's mandate all cases of crimes under international law and other human rights violations in respect of which victims and their families had previously sought a remedy before the courts, whether or not an effective remedy was obtained. Protection against double jeopardy is crucial, but the overbroad scope of exclusion could result in denying justice to those who have already been denied it once in the court system. The commission should have the power to express views on the need for judicial review of cases heard in the courts. Nepal has an obligation under international law to ensure measures adopted do not lead to impunity or constitute an impediment to bringing perpetrators to justice.

The international standards adopted by the United Nations also provide that reparations should include: compensation, rehabilitation, restitution, non-repetition and satisfaction. Article 26 of the draft bill fails to provide satisfaction. This should include public apologies, public disclosure of the truth, identification and burial of bodies of victims in accordance with the wishes of the victims, commemorations and tributes. It should also include judicial and administrative sanctions against the persons liable for the violation. Article 23(3) allows reparations to be made available to facilitate reconciliation, following consultations with the perpetrator rather than the victim. In each area, the authorities should ensure that the victims' interests are protected.

Many international human rights groups have expressed their concern that the Truth and Reconciliation Commission does not enjoy clear operational independence from the government. Though the draft bill states the commission will operate in an independent and impartial manner, it contains numerous provisions which could undermine these principles.

Provisions on the appointment process, staffing and funding of the commission reflect direct or indirect government involvement. For instance, the process of nominating members is led by a body open to political influence and does not allow for sufficient consultation with

civil society. Under the bill, the seven members of the commission would be appointed by the government, after receiving recommendations from a three-member committee constituted by the government with the consensus of political parties represented in parliament.

The government's consultation with Nepalese civil society and victims has been insufficient on all issues including the establishment, mandate and powers of the commission. While the government has now committed to consult with civil society, including at the regional level, it should ensure that consultations on the commission are carried out in an open manner not using the draft bill as the only starting point for discussions. It is vital that discussions on the commission take place at the district level, particularly in areas greatly affected by the conflict.

Considering the context of Nepal two processes are needed: this includes truth telling and reparations and finally reconciliation in order to assist the transition from violent conflict to peace. These principles were pre-determined in the Comprehensive Peace Agreement (CPA) and the Interim Constitution for the establishment of TRC.

"The 'peace' which Nepal has so far achieved is temporary, incomplete and extremely precarious and Nepalis were "hungry for justice" after the brutal war.—Amnesty International

The proposed TRC must identify the truth and pass on information and reports to the national prosecution authorities so that, where there is sufficient evidence, those suspected of being responsible can be prosecuted. This approach will expedite and facilitate prosecutions and therefore aid significantly in the achievement of retributive justice which is quite important in the case of Nepal to provide justice to the victims of forced disappearances. Nepal should not make the mistake of granting amnesties by sidelining justice in the concept of Reconciliation, if it happens there will be truth but it will not lead to any reconciliation. Therefore, the commission should allow the prosecutors to prove the security forces responsible for horrendous crimes of disappearing people.

Nepal is in the process of achieving peace and democracy but if the TRC envisaged by the government is not able to find out the truth, prosecute the offender and provide reparation to the victims of forced disappearances, it will be difficult to achieve the fuller democracy. Reparation to the victims of forced disappearance is extremely necessary. Since the disappearance of loved one is an irreparable loss and moral and material reparation seem to be utterly essential to the transition toward a fuller democracy. In the transitional phase, the threat from people, who were responsible for the disappearances - who don't want to see the conviction of its members and the justice to the victims of the disappeared - is high since they still retain significant power. This can impair the pursuit of justice and also limit in prosecuting those involved in the human rights abuses. And despite the commitment of the new government to the reestablishment of the rule of law, pressure exerted by those forces might result in granting amnesty, thus hindering the process of establishing judicial accountability. Therefore the commission which is going to be formed has to be independent and should respond to the challenge of and shouldn't be influenced by those offenders. The commission should move toward acknowledging the truth of what has happened, prosecuting those responsible, restoring the moral dignity of the victims, and achieving a better quality of life for those families most directly affected.

Human rights groups accuse the army and the Maoists of committing abuses such as killings, arbitrary arrests, rape, and torture amid kidnappings during the war. Under the peace agreement, the former guerrillas joined the political mainstream in a provisional parliament. But a row over their demand for an immediate end of the monarchy saw them quit the interim government in September 2007 and force an indefinite postponement of the constituent assembly elections earlier set for November 2007, which were not held until April 2008.

Nepal has suffered not only from violent conflict, but also from a structural violence of pervasive marginalization of ethnic groups, lower castes, and women. And then, for centuries the institution of monarchy has wielded unlimited power at the expense of the rights and freedom of ordinary citizens. These concerns and how to address them have not been discussed or considered in such a way that will

be inclusive of all Nepalese. Without resolving these issues there is a serious threat that Nepal will relapse into conflict.

The argument for blanket amnesty, as it has been given in so many countries, is that justice must be the sacrifice for peace. Such a decision will not offer much solace for those that must live in the same community as those that have killed a loved one or with the knowledge that those responsible for crimes remain free. Without methods of reconciliation, the social fabric will be strained and will become a breeding ground for future conflicts. A system must be developed not only to establish truth, but provide some form of justice for victims. With the judicial system in shambles and filled with monarchist appointees, a truth commission may provide one outlet for justice and reconciliation.

Establishing a truth commission, however, should not limit prosecutions. Both the national justice system (once reformed) and the international justice system should be involved in holding trials for those who committed gross violations of human rights and those most responsible for the continuing conflict. In the case of the Rwandan genocide, there is a three-tier process in prosecutions. The International Criminal Tribunal for Rwanda (ICTR) in Arusha prosecutes those that were the “masterminds” of the genocide or committed large-scale violations of human rights. The national justice system handled cases of individual murders and rapes committed during the genocide. At the community level, the *gacaca* system – an indigenous form of community reconciliation – “tried” individuals accused of looting, property destruction, and smaller forms of violence. The Rwandan example is illustrative of the innovations needed in particular contexts.

The purpose of transitional justice measures is not limited to establishing right or wrong, truth or lie; the concept of acknowledgement is also vital for reconciliation. One such method is for reparations to be conferred – a form of government institutionalized apology. With the dwindling economy of Nepal, this may prove difficult. However, reparations can come in different forms, and are not limited to monetary compensation. In Chile, for example, the families of victims were provided access to healthcare, given pensions, and their children

given scholarships for schooling. These are symbolic reparations that provide more of a holistic approach to compensating victims by providing necessities.

The task of establishing justice through transitional justice is daunting, and will challenge the capacity of Nepal's citizens, civil society, and government. While it remains to be seen whether the days of armed conflict are over permanently or just temporarily, the residual effects of the conflict remain. Discussions on implementing transitional justice systems must begin soon and the civil society should not wait for government and political parties to step in. As intermediaries between citizens and the government, the non-governmental organizations, the community-based organization, and nonprofits that were so vital in the fight for peace, must once again fight for justice and the needs of everyday Nepali people. If Nepal is to move forward and establish a durable, lasting peace, the needs of victims must be addressed adequately and appropriately.

The observation of very concept of TRC and experiences of other countries suggest that the “amnesty” is not a “rule” but just a “rare and exception” in TRC system. And, amnesty is strictly exempted in case of the serious human rights and humanitarian crimes, namely, war crimes, crimes against humanity and genocide. The practice of South Africa is one model of TRC which granted amnesty to the suspect. The TRC set up in terms of the Promotion of National Unity and Reconciliation Act after the end of Apartheid was mandated with bearing witness, recording and in “some cases” granting amnesty to the perpetrators. But, the amnesty was not a rule for Commission. This is a proof that out of 7112 petitioners only 849 were granted amnesty and 5392 were refused amnesty on ground of serious human rights violators.

4. Conclusion

The long-cherished Constituent Assembly (CA) elections are over and the house is being convened in less than two weeks from now. But the victims' long waiting for justice has not ended. Enough is enough! Serious breach of rights committed against them unconditionally deserve action before they see a new constitution. Following all hue and

cry, will they really get justice? That is the question many victims, their families, friends, relatives, neighbors and justice-loving community of Nepal's ten year-long internal armed conflict are ceaselessly asking as the post-conflict Nepal is set to recuperate from the harsh past. Several of the recently elected CA members include who have been accused of heinous crimes and who are yet to be brought to justice. Many security personnel—past or current- and militia commanders-demobilized or converted into Young Communist League (YCL) and political leaders—in all major parties- implicated in serious rights abuses, (some crimes' gravity may amount to war crimes, and crimes against humanity) are beyond the radar screen of transitional justice (TJ). The new constitution-making process is crucial in determining whether the country will have a future as a justice-friendly country or whether the severe breach of human rights and humanitarian law as well the deeply entrenched culture of impunity will go unabated.

Many alleged perpetrators who committed the worst crimes of rights violation and who have managed to grab power are indulged in misinterpreting the doctrine of TJ to get rid of the possible netting and let themselves go scot-free. The incumbent governments have attempted to remove the names of alleged rights violators and criminals from the list by either pardoning or withdrawing their cases. The incidences of conflict era excesses are either being self-pardoned or the violators are enjoying silent amnesty. In the last 10 years' of conflict, many crimes have been committed, but many of those who committed them are in power and in key positions and the interesting part is everyone knows who they are—but nobody knows how can the mindless monsters be brought to justice.

With the growing war fatigue syndrome, threat of renewed violence, frustration among victims, unholy unity of violators, and artificial division among victims, rendering TJ and holding of those responsible for rights violations accountable seems to be a distant reality. A majority, if not all, political leaders and security apparatus have been fiercely opposing the proposal to create a competent truth and reconciliation commission (TRC) together with a commission on disappearance as envisaged by the Comprehensive Peace Agreement (CPA). "You keep quiet: So do I" is the mindset among major political actors that

has eclipsed the process of truth-seeking and rendering justice to the victims. To everyone's surprise, they term the TJ as a 'conspiracy' against the volatile peace process.

A vast number of people are considered as victims of conflict. They have suffered abuse and atrocities, either directly or indirectly. They have become victims of damage, destruction, devastation, and disappearance. The number of displaced people alone was estimated around 200,000 during the conflict and a considerable section of the displaced is yet to be properly restituted. It is impossible to attain peace without taking this into account. If justice is sacrificed simply for the sake of a peace, it will not serve for a genuine reconciliation, rather the peace-dream project will remain fragile. Glaring examples within the region are Afghanistan in Sri Lanka.

The last week's Nepal's Supreme Court decision is a hallmark progress in this front. Organized by Accountability Watch Committee (AWC), dozens of civil society leaders, representatives of victims' groups, media personnel, lawyers and human rights defenders assembled at the open platform of Nepal Academy to assess the Supreme Court verdict and chart out a tangible future direction. The informal mega 'tea assembly' primarily criticized the state's lack of commitment to promoting accountability for past and present crimes. There is a general consensus that the pre-CA dissolution draft bills of May 2012 are to be considered as point of departure for further discourse on TJ endeavor. Non-ratification of the Rome Statute on International Criminal Court (ICC), despite overwhelming promises, is also an issue of critical concern.

The common view here is that even after the election to the new CA, the TJ agenda is unlikely to get priority in the parliamentary business. Maoists' electoral defeat does not mean that a victors' justice should prevail. However, the political top brass must not opt for seeking short-term stability by shielding the perpetrators with a shady past instead of promoting a genuine reconciliation process based on legitimate demands for justice. Underestimating victims' demand for justice and overestimation of the power and consensus of warmongers will lead to a vicious cycle of conflict. The civil society has rightly

warned that justice should not be sacrificed for peace. In fact, currently we have neither peace nor justice. Political leadership is guilty of having protected the wrongdoers in the name of politics of consensus. Such tendency must cease to exist. Rotten tomatoes must be singled out to preserve the rest.

Ignoring the cries for justice would further increase the causes of insecurity, revenge, conflict and even violence. But in the current scenario marred by politics of appeasement, very few think the government or the international community (with some exceptions) will actually live up to their commitment to focus on TJ. Even a section of international community has demonstrated a gradually eroding sign towards effectively moving forward to secure TJ.

Time, if delayed, is an enemy of justice. Thus, it is high time the state takes into cognizance those abuses, sincerely tries to heal wound of the victims and brings perpetrators to justice. No process can bring about sustainable reconciliation, if serious crimes and abuses are condoned or victims are forgotten. We also need to take note that the international law is against blanket amnesty, especially amnesty to perpetrators of system crimes (war crimes, genocide, crimes against humanity) and also serious violation of human rights. The OHCHR "Nepal Conflict Report-2010" vividly demonstrates that the above-mentioned nature of heinous crimes have taken place during the conflict and now silence is not the remedy for rebuilding the shattered lives. It is in this context that the TRC becomes pertinent to help the society understand and acknowledge a contested or denied history, and in doing so brings the voices and stories of victims, often hidden from public view to public at large. Besides the CPA, Nepal also has an international obligation to create the TRC that meets internal criteria with commonly known four pillar approach i.e. truth-seeking, prosecution, reparation and institutional reform.

The statute of the TRC should be drafted in accordance with the international norms and practice in which international human rights instruments to which Nepal is a state party, is the non-negotiable source. The scheme of blood-money compensation is only a temporary measure for instant relief, thus, it must not be implied within the

framework of compensatory plan. In this connection, the recent financial offer of the World Bank and other multilateral/bilateral financial support to assist the victims of conflict must not be catered simply for instant contentment to the destitute that are under tremendous pressure for basic livelihood. Compromising with justice means serious undermining of enduring reconciliation process. Thus, the creation of a national mechanism that affords victims an opportunity to relate the violations they suffered and taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights is vital.

Financial compensation is particularly critical when there is a complexity of survival. However, this must not be the end. Unless a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice is built and a future founded on the recognition of human rights, democracy and peaceful co-existence for all Nepali citizens is crafted, the reconciliation effort would be a mere futile exercise. It is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future.

The government must ensure open and meaningful consultation is carried out with civil society and victims (from all different groups including women, children, marginalized community members, etc.) in the drafting process and clarify that the terms “gross violation of human rights” and “crimes against humanity” are to be applied in accordance with international legal practice to ensure that any serious infringement of Nepal’s international human rights obligations is duly investigated and that no acts that adversely affected civilians during the conflict are left out of the scope of the bill. Similarly, transparent appointment procedures, such as public hearings of the commissioners to ensure the independence and impartiality of the commission must be introduced. International human rights standards must be observed with respect to granting of amnesties for serious crimes. In addition, the Section 25(2) of the bill must be amended to exclude recommendations for amnesty for crimes under international law

such as crimes against humanity, war crimes, and gross human rights violations in general such as extrajudicial killings, enforced disappearances and torture as well as reparation to all victims of human rights violations unconditionally be guaranteed.

Finally, reconciliation does not mean compromise for justice and dignity. With due process of law in place, there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimization. In order to advance true reconciliation and rebuilding lives, the doctrine of ‘forget and forgive’ with blanket amnesty will be counterproductive.



FUTURE DIRECTIONS

The transformation from conflict to lasting peace is a complex and time-consuming process involving a broad range of national stakeholders. Underlying this transformation is recognition that victims of human rights violations, their families and society at large, have a right to truth, justice and reparation. There can be no lasting peace without meaningful accountability for past crimes. Given the gravity and breadth of such crimes, the concept of transitional justice recognizes that multiple, complimentary mechanisms, judicial and non-judicial, will be required to address issues of accountability and broader government reform efforts.

The credibility of any transitional justice mechanism will be determined early on by whether or not the consultation process was genuine. International best practice indicates that decisions on the use of transitional justice mechanisms should be based on extensive national reflection and broad consultation with diverse constituencies, including victim groups: broad support from the general public is essential for the endeavor. Civil society, particularly victims' groups and human rights NGOs, are likely to be the driving force. Consultations will primarily address identifying the content of any bill, including in the context of truth commissions, the appointment of commissioners. It is therefore essential that any transitional justice initiative is designed and conducted with the full participation of civil society groups. Though this may take time, international best practice indicates that such processes should never be rushed.

The mandate of the TRC should be broad and include the ability to examine the background, causes, and impacts of the conflict, as well as to identify institutions and individuals responsible for serious violations. A key requirement is a public process to appoint commissioners who are independent, impartial, and not motivated by political factors

In addition to ensuring consultations is the product of deliberative, inclusive processes, it is also important to consider whether the political conditions for a TRC are such that victims, families and witnesses can testify without fear of retribution. Given the continued violence in the country, serious thought must be given as to whether the time is right for such a process.

A. Recommendations for Policy and Process

- ▶ Ensure open and meaningful consultation is carried out with civil society and victims in the drafting process;
- ▶ Clarify that the terms “gross violation of human rights” and “crimes against humanity” are to be applied in accordance with international legal practice to ensure that any serious infringement of Nepal’s international human rights obligations is duly investigated and that no acts that adversely affected civilians during the conflict are left out of the scope of the bill;
- ▶ Introduce transparent appointment procedures, such as public hearings of the commissioners to ensure the independence and impartiality of the commission;
- ▶ Respect international human rights standards with respect to granting of amnesties for serious crimes. Section 25(2) of the bill must be amended to exclude recommendations for amnesty for crimes under international law such as crimes against humanity, war crimes, and gross human rights violations in general such as extrajudicial killings, enforced disappearances and torture;
- ▶ Guarantee reparation to all victims of human rights violations;
- ▶ Ensure that the preamble, which incorporates the objectives of the commission, should include objectives that fulfill Nepal’s treaty obligations. These would include provisions to bring justice to victims and establish a historical and accurate record of incidents.



B. Recommendation for Creating Groundwork

- ▶ Create an official joint task force on transitional justice comprising representatives from the government, civil society, National Human Rights Commission, victims, and the UN.
- ▶ Establish and publish a timeline for action on transitional-justice mechanisms, including the Commission on Disappearances and TRC, to replace the schedule included in the CPA.
- ▶ With the task force mentioned above, conduct broad-based national consultations on the TRC, to gather stakeholders' views on the Commission's mandate, powers, goals, and timeframe. Such a Commission should not be established until victims are able to participate safely in its proceedings.
- ▶ Ratify international human rights treaties including the Rome Statute on International Criminal Court
- ▶ Establish a team to investigate and implement reforms of the currently dysfunctional system for dealing with complaints by victims of politically motivated crimes and violations.
- ▶ Ensure that prosecution of those suspected of involvement in serious crimes against Nepali law proceeds, irrespective of their institutional positions or political affiliation.
- ▶ Establish a team of legal experts to compile draft laws to deal with the recent history of mass violations, which were not anticipated by current national laws.
- ▶ Request assistance from international reparations experts to draft a comprehensive system of victims' reparations to replace the current ad hoc compensation programs.

C. Recommendations for Civil Society Intervention

- ▶ Eschew one-size-fits-all formulas and the importation of foreign models, and instead base our support on national assessments, national participation and national needs and aspirations.
- ▶ Involve local organizations to assess the needs of a particular post-conflict society and adapt truth commissions to meet that--be it the need for establishing the truth or a means to prosecute perpetrators.
- ▶ Strengthen other peace-building and development measures, including disarmament, demobilization and reintegration programs and micro-financing, to prevent conflicts from surfacing or reoc-

curing, as well as to promote a culture of deliberation and human rights

- ▶ Campaign for operational independence, but at the same time, provide the necessary technical and intellectual support for their work, often including direct advisory support
- ▶ Consider exploring the indigenous mechanisms that may be in place that can help it to counter a painful past, with or without a complementary truth commission process.

D. Recommendation to International Community

- ▶ Increase offers of practical support and assistance relevant to transitional justice to government and civil society.
- ▶ Recognize that transitional justice issues are not short-term but long-term, essential building blocks of sustainable peace that will be part of Nepal's future for many years to come, and therefore formulate programs of assistance and capacity-building accordingly.
- ▶ Increase the level of coordination and cooperation among international actors related to transitional-justice issues.
- ▶ Civil society tends to be closely intertwined with the fate of TJ.
- ▶ NGOs have often been instrumental in documenting human rights abuses during civil conflict or counterinsurgency actions, which justify transitional justice efforts once the conflict is over.
- ▶ In the post-conflict environment, civil society frequently is a prime advocate of accountability for the past.

- ▶ Civil society has often been a powerful critic of the government's pursuit of transitional justice.
- ▶ Where government action has been insufficient or nonexistent, civil society has sometimes conducted its own investigations into past human rights abuses.
- ▶ In the midst of civil war or under government repression, civil society commonly suffers. However, many courageous groups across the world have refused to be cowed.

Finally, political will for an independent and victim-centered process must be increased in the course of setting up of the commission. In Nepal's context, the Disappearance Commission and TRC should

be able to share information and specific provisions for coordination should be established. These commissions should fit within a broader transitional justice process that would include a judicial aspect, possibly a special court to pursue prosecutions. Meanwhile, social and economic support and development, including skills and employment, as well as memorials and other forms of recognition should be awarded to conflict-affected communities. A TRC commission must not only seek the truth, but also look at the root causes of the conflict, and make concrete, time-bound recommendations for necessary reform.

COMMUNIQUE DE PRESSE-COMUNICADO DE PRENSA

For immediate release 20 February 2008, Geneva,
INTERNATIONAL COMMISSION OF JURISTS

Nepal: Disappearances Commission and Truth and Reconciliation Commission should meet International human rights standards

The International Commission of Jurists (ICJ) today urged the Government of Nepal to ensure that laws related to a Truth and Reconciliation Commission and a Disappearances Commission are adopted through regular democratic legislative processes and are not adopted by ordinance. The ICJ also reiterated that adoption of such legislation should follow broad based national consultation and should meet Nepal's human rights obligations.

“In a democratic country legislation of national importance should only be adopted following public debate, including by the country's legislature”, said the ICJ.

“The introduction of laws related to a Truth and Reconciliation Commission and a Disappearances Commission via ordinance violate Nepal's Supreme Court directives and the Interim Parliament's instructions”, continued the ICJ.

While the ICJ welcomes steps taken by the Government to begin consultation with civil society, including victims, the ICJ is concerned that the consultation process has been insufficient in several areas including: the range and depth of issues discussed, the broadness of participation in the consultations, and the number and the geographical location of consultations.

“To ensure national legitimacy legislation establishing transitional justice mechanisms requires broad based national consultation with all stake holders, particularly victims of the conflict and their families, during the drafting process”, said the ICJ.

To combat the culture of impunity in Nepal it will be essential that the legislation addresses past gross violation of international human rights and humanitarian law including crimes against humanity and that the Commission has the necessary powers to recommend that Nepal’s criminal justice system bring the perpetrators identified by the Commissions to justice. The Commissions should also be able to initiate independent and impartial investigations and be mandated to provide reparation to the victims.

“All elements of transitional justice including the truth, justice and reparation need to be addressed by the legislation”, said the ICJ. 33, rue des Bains, P.O. Box 216, 1211 Geneva 8, Switzerland Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 – Website: <http://www.icj.org> - E-mail: info@icj.org

Background

On 1 June 2007, the Supreme Court issued a directive order to the Government of Nepal to enact legislation that would criminalize enforced disappearance and establish a Commission of Inquiry into past disappearance. On 27 November 2007, the Parliamentary Committee on Law and Justice instructed the Government of Nepal to withdraw the amendment proposal to the Civil Code regarding disappearance and draft a new law on enforced disappearance that is in line with the International Convention for the Protection of all Persons from Enforced Disappearance and the 1 June judgment of the Supreme Court.

The ICJ welcomed both the Supreme Court judgment and the instruction by the interim Legislature-Parliament and urged the government to implement the ruling and the instruction accordingly. ICJ also urged the Government to ensure that the mandate of the Commission include serious violations of international humanitarian law and to prioritize establishing the whereabouts of those disappeared during a decade-long armed conflict.

On 23 December 2007 the Government signed a 23 point agreement with the Communist Party of Nepal (Maoist) that required the Government to form a Truth and Reconciliation Commission and Disappearances Commission within one month of the agreement. As Parliament is now prorogued, the ICJ understands that the high-level political task force under the Peace Ministry has recommended the Government to establish such Commissions by an Ordinance or an executive order.

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Annex-2

UN STATEMENTS



Comments and Recommendations on draft Truth and Reconciliation Commission Bill

6 August 2007

Introduction

The Truth and Reconciliation Commission Bill, a copy of which was provided to the Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal), proposes the creation of a truth and reconciliation commission (TRC) with a mandate to investigate events surrounding the commission of gross violations of human rights and crimes against humanity committed during the course of the armed conflict that took place between the Government and CPN-Maoist between 13 February 1996 and 21 November 2006. The Commission, which will consist of up to seven commissioners, will have two years, with a possibility of a twelve-month extension, to complete its work. On the completion of its work, it will provide the Government with a report of its findings, and make recommendations as to reconciliation, prosecutions, amnesty and reparations. The Ministry of Peace and Reconstruction is mandated to implement the Commission's recommendations. The bill also proposes the creation of a Reconciliation and Peacebuilding Fund to finance implementation of the recommendations

The analysis set out below is based on an official translation of the text provided by the Ministry of Peace and Reconstruction. As stated in the summary, further clarification of a number of provisions in the bill will be required from the Ministry of Peace and Reconstruction.

The transformation from conflict to lasting peace is a complex and time-consuming process involving a broad range of national stakeholders. Underlying this transformation is recognition that victims of human rights violations, their families and society at large, have a right to truth, justice and reparation. There can be no lasting peace without meaningful accountability for past crimes. Given the gravity and breadth of such crimes, the concept of transitional justice recognizes that multiple, complimentary mechanisms, judicial and non-judicial, will be required to address issues of accountability and broader government reform efforts.

The credibility of any transitional justice mechanism will be determined early on by whether or not the consultation process was genuine. International best practice indicates that decisions on the use of transitional justice mechanisms should be based on extensive national reflection and broad consultation with diverse constituencies, including victim groups: broad support from the general public is essential for the endeavor. Civil society, particularly victims' groups and human rights NGOs, are likely to be the driving force. Consultations will primarily address identifying the content of any bill, including in the context of truth commissions, the appointment of commissioners. It is therefore essential that any transitional justice initiative is designed and conducted with the full participation of civil society groups. Though this may take time, international best practice indicates that such processes should never be rushed.

In addition to ensuring consultations is the product of deliberative, inclusive processes, it is also important to consider whether the political conditions for a TRC are such that victims, families and witnesses can testify without fear of retribution. Given the continued violence in the country, serious thought must be given as to whether the time is right for such a process.

I. Independence, Impartiality and Competence

So as to ensure it has credibility among the population, the proposed TRC will require clear operational independence so that it can carry out its work without political interference. Thus, it is crucial that the Commission operate free of direct or indirect influence or control by government in relation to the appointment of commissioners, its staffing needs, research and investigations, reporting, recommendations and budgetary decision-making.

Though the draft states the Commission will operate in an independent and impartial manner, the bill contains numerous provisions which are contrary to these principles through direct or indirect Government involvement, including in the *appointment process, staffing, funding, recommendations of the Commission, extension of mandate and removal of a Commissioner/dismissal of the Commission*.

a. Appointment process

Section 4 (2) empowers the Government to form a three-member committee, *with the consensus of the political parties*, to recommend for appointment, the chair and members of the Commission. According to the official translation, the Government *may* appoint persons based on the recommendations, but may have discretion to ignore them. The recommendations for appointment are to include persons from among “inter alia, human rights activists, psychologists, lawyers, civil society activists, victimologists and sociologists,” and include one woman.

Provisions of the bill create a perception of potential political involvement in the appointment process because they open up the possibility for appointments of persons with a close affiliation to the political parties. As stated above, truth commissions will garner the greatest public and international support if their members are selected through a consultative process. Such an appointment process should include a representative selection panel, appointed by a variety of sectors or societal groups (including civil society), to vet the nominations, interview the candidates and then recommend the final commissioners to the appointing authority. All efforts should be made to ensure the Commissioners represent the diversity of Nepalese society, including

based on ethnicity, gender, caste, geographic region and religion. The bill does not address the issue of diversity.

b. Staffing

Sections 11 and 12 relate to the staffing of the Commission. The chief administrative officer will be assigned from the Nepal Judicial Service and all other staff shall be made available by the Government (“Government...shall make available personnel required for the Commission”). If the Government is unable “to provide (the) required number of personnel,” the Commission may appoint personnel on a contractual basis.

The need to ensure independence and integrity of the Commission’s staff is essential. A commission that primarily consists of government civil servants will risk undermining its independence and integrity. Moreover, government civil servants are generally ill-equipped to provide the skills required by truth commissions. International best practice dictates that truth commissions function in an effective manner when staff have a variety of backgrounds, including human rights experts, investigators, statement-takers, legal experts, researchers, therapists or social workers, translators, computer specialists, data-entry staff and security personnel, among many others. The chief administrative officer will require effective administrative and management skills that a member of the Judicial Service may not have. In addition, it is important to bear in mind that the number of staff is likely to vary over the course of the Commission’s work. Recent commissions have typically had up-to 200-500 members at their peak workload.

c. Removal

Section 7 (2) places the authority to remove a Commissioner with a special committee of the Legislature-Parliament or the Constituent Assembly. The grounds for removal include “failing to honestly dispense positional duties, lack of working efficiency or being involved in bad conduct.” In order to alleviate political interference, the Legislature-Parliament/ Constituent Assembly should decide issues around removal of commissioners. Secondly, the current grounds for removal are sufficiently vague to justify removal without proper cause or due process. The *UN Updated Set of Principles for the Protec-*

tion and Promotion of Human Rights Through Action to Combat Impunity (UN Updated Principles on Combating Impunity), state that members of a commission should not be removed during their term in office “except on grounds of incapacity or behaviour rendering them unfit to discharge their duties and pursuant to procedures ensuring fair, impartial and independent determinations.”¹ In addition, members of a commission shall enjoy “privileges and immunities especially in relation to any defamation proceedings or other civil or criminal action brought against them on the basis of facts or opinions contained in the commission’s report.”²

d. Funding

Section 9 (2) states that “remuneration, conditions of service and benefits” of members of the Commission shall be determined by the Government. Section 13 (2) permits the Commission to seek foreign funding if resources provided by the Government are insufficient. In addition, the Government will make arrangements for “building, materials and other resources” required for the functioning of the Commission.

A major challenge for most, if not all, truth commissions is raising sufficient funds for carrying out their work. The budget for a truth commission is typically over \$5 million, with Government usually being the primary provider of financial assistance. The bill’s prohibition on outside funding subject to the consent of the Government is an inappropriate interference with the independence of the Commission.

With regard to salaries for the Commissioners, the bill is silent. In order to engender transparency and respect and a degree of gravity in these positions, many truth commissions pay salaries equivalent to those of senior judicial officials. With regard to the provision of a building and other material resources, Government’s traditionally provide such materials on a *gratis* basis. It is unclear in the provisions of the bill whether such materials will be provided on this basis.

1 Principle 7 (a).

2 Principle 7 (b).

e. Powers of the Commission

The TRC has authority to investigate incidents or events reported by victims or persons on their behalf; from third parties; and, it can conduct *ex officio* inquiries. The Commission does not have authority to investigate where a “matter [has been] already decided in accordance with existing laws.” (Section 15). In addition, complaints that are found “baseless during the course of the inquiry or investigation,” the Commission may reject further consideration of the complaint (Section 22).

Section 15 (a) suggests the Commission would be barred from considering the facts and circumstances surrounding events already deliberated upon by commissions of inquiry,³ the police and courts. Given the inadequacies of some of these processes in holding perpetrators accountable and the lack of transparency with regard to past commissions of inquiry and their reports, it would seem inappropriate to deny the Commission access to materials and witnesses relevant to such processes. The TRC is not a judicial body and thus, will not be making judicial findings. Secondly, such information could be crucial to ensuring a broad and accurate picture of events that led to, and occurred during the armed conflict.

f. TRC and the Office of Attorney General

The Commission’s mandate includes making recommendations for prosecuting perpetrators the Commission has “found guilty” (Section 24). Though the discretion to initiate, investigate and prosecute criminal offences is the sole domain of the Office of Attorney-General, the bill contains a provision that would interfere with such authority.⁴ The Government’s consent is required prior to the Office of the Attorney-General initiating criminal proceedings of those persons identified by the Commission as perpetrators of serious human rights violations or crimes against humanity (Section 28 (2) (a)).

g. Extension of Mandate

Section 36 of the bill places the authority to extend the mandate of the Commission with the Government. The provision raises the po-

³ E.g., the work of the Commission of Inquiry on Disappeared Citizens.

⁴ Section 135 (2) Interim Constitution of Nepal (2007).

tential for government interference with the operations of the Commission. It may unnecessarily place an undue burden on the Commission to mollify any criticism of government actors and/or institutions for fear its operations could be curtailed before it completes its work, including its report and recommendations. Any extension of mandate should be within the domain of the Legislature-Parliament/Constituent Assembly.

h. Dissolution of the Commission

Section 37 permits the Government to dissolve the Commission if it “is unable to accomplish its tasks *for any reason*.” Again, as with the provisions above, in order to alleviate the potential for government interference with work of the Commission, it would be preferable for the Legislature-Parliament/Constituent Assembly to be given this authority.

i. Freedom of speech

The oath of office contained in the bill states that the Commissioners “will not disclose any matter...except in cases of abiding by the existing laws.” This provision is sufficiently vague so as to potentially prevent Commissioners from speaking to the press or public about the operations of the Commission, including commenting on testimony. Such a provision is unduly restrictive. Further clarification of this provision is required.

II. Amnesty Provisions

The draft contains provisions that provide for the Commission to recommend *amnesty* for serious crimes under international law. Such provisions seriously undermine the right to justice, truth and reparation.

Specifically, the draft permits recommending amnesty for crimes that were committed in the course of one’s ‘duty’ or for political purposes during the armed conflict, without further clarification. (Section 25) This overly broad provision could entail most of the unlawful conduct committed by government actors and CPN-M cadres and include grave breaches of the Geneva Conventions and other violations of international humanitarian law that are crimes under international

law; crimes against humanity; and other violations of internationally protected human rights, including torture, enforced disappearance and extrajudicial execution. Provisions that prevent prosecution for these offences are inconsistent with the State's international treaty obligations, as well as under international customary law because they are inconsistent with the State's *primary* duty to undertake prompt, thorough, independent and impartial investigations of such acts.

With regard to perpetrators who are not recommended for amnesty, the central theme of the draft is the primacy of reconciliation over prosecutions, in essence a *de facto* amnesty. As for those perpetrators who have not reconciled with victims or their families, as mentioned above, any recommendation for prosecution is subject to the Government's consent

Perpetrators are ineligible for amnesty if they committed murder in circumstances in which the victim/s were "taking (sic) under control or carried out in an inhumane manner." Perpetrators are also exempt from amnesty for acts that amount to "inhumane and cruel torture" and rape. The bill does not define 'taking under control,' 'inhumane' or 'cruel.' The Commission has absolute discretion to determine whether a set of facts are inhumane or cruel, though all acts of torture are *de facto* inhumane or cruel. The words 'inhumane' or 'cruel' should be removed from the text. In addition, further clarification will be required as to whether those perpetrators who are ineligible for amnesty can avail themselves of the reconciliation provisions.

As stated above, those persons who *are* eligible for prosecution (having not qualified under the reconciliation provision or not recommended for amnesty, or the amnesty recommendation was rejected by the Government), can only be prosecuted with the *approval* of the Council of Ministers (section 28 (2) a).

The content of Section 25 would place Nepal in violation of its obligations under international human rights law and international humanitarian law, and is not in keeping with international standards. The prohibition of amnesties for international crimes goes beyond the prohibition for amnesty for genocide, war crimes and crimes against

humanity. It extends to other gross violations of human rights and serious violations of international humanitarian law (see appendix).

In addition to international law obligations, as stated by the Secretary-General to the United Nations, the UN cannot endorse or condone processes that provide amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights, nor undertake activities to foster them.⁵

III. TRC's and identifying the underlying causes of conflict and patterns of violence.

Provisions of the bill suggest the work of the Commission will be limited to identifying individual responsibility only, and not the underlying causes of the conflict, including the role of the state actors and armed groups. Language contained in the Preamble and Chapters 2 and 3 explicitly indicates that the role of the Commission is to explore individual responsibility for serious human rights violations or crimes against humanity.

In post-conflict states, for peace to be sustainable it is essential to identify the root causes of conflict and those state institutions, armed groups and individuals responsible for past crimes.

In this regard, truth commissions have an important role to play. Unlike prosecutions, they can reach out to thousands of victims in an attempt to understand the extent and patterns of past violations, as well as their causes and consequences. Effective truth commissions can help society understand and acknowledge a contested or denied history, where the voices and stories of victims are heard. TRC's can also examine the economic, social, cultural or religious dynamics that could have contributed to the conflict.

5 See Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies, 3 August 2004 (S/2004/616). See also statement from the new Secretary-General: "...the Organization cannot endorse or condone amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights, nor should it do anything that might foster them." Spokesperson for Secretary-General Ban Ki-moon, 24 July 2007.

Some provisions of the bill do suggest a broader mandate than simply identifying individual responsibility, making reference to the obligation of state institutions to cooperate with the Commission, including the provision of documents and witnesses. In addition, Section 27 requires the Commission to issue a report that makes reference to “social, political, economic, cultural, and other causes underlying the armed conflict”. However, these provisions do not explicitly require the commission as part of its mandate to address issues related to root causes and patterns of violations and abuse.

Any attempt at addressing crimes of the past must ensure that a multifaceted approach is taken. Truth Commissions should see themselves as one part of a comprehensive transitional justice strategy and should be considered together with other initiatives such as prosecutions, reparations, vetting and institutional reform.

IV. TRC's and Prosecutions

Under international law, the State's *primary* duty is to undertake prompt, thorough, independent and impartial investigations of gross violations of human rights (including torture, enforced disappearance and extrajudicial execution) and serious violations of international humanitarian law (including crimes against humanity). National amnesty laws or provisions that prevent prosecution for these offences are inconsistent with the State's treaty obligations, as well as under international customary law because they are inconsistent with the duty to prosecute international crimes.

Truth commissions are *complementary* to prosecutions and not a substitute for a judicial process to establish individual criminal responsibility. Truth commissions should not in any way undermine the prospects of prosecution. Without meaningful accountability for serious human rights violations, with justice for victims and their families, the prospects of replacing a culture of impunity with a culture of peace and respect for the rule of law are slim.

The draft contains provisions that, potentially, could significantly undermine the State's obligation to prosecute. Firstly, it limits the mandate of the TRC to the investigation of *individual* perpetrators, and

not those who may be considered accomplices to the crime, including possible State or CPN-M officials who ordered the perpetrator/s to commit the offence. Thus, the class of perpetrators identified by the TRC will be distorted and not reflective of the events that occurred in Nepal during the armed conflict. International standards state that in addition to focusing on perpetrators of criminal offences, a TRC's investigations should also include other actors, whether they ordered killings or actually committed them, including public officials or armed movements.⁶

Secondly, the bill states that if the perpetrator and victim 'reconcile,' the TRC would recommend against prosecution. Given the primary duty placed on the State, rather than a non-judicial body such as a TRC, to prosecute, it is both ill-conceived and inappropriate from an international human rights law perspective, for the TRC to have such authority.

V. Reconciliation

With regard to possible linkages between the Commission and other processes, the bill is weighted in favour of reconciliation at the expense of ensuring truth and justice for victims and their families. Rather than being a useful tool in identifying potential perpetrators for prosecution, the bill heavily focuses on the role of the Commission in bringing about reconciliation. Though the Preamble states that purpose of the bill is to establish the truth and end impunity, the body of the text makes constant reference to reconciliation, with the implicit suggestion that reconciliation, not truth nor justice, is the primary purpose of the legislation.

Section 23 of the bill suggests the Commission, rather than the parties, will be responsible for 'causing' the reconciliation, by requesting the perpetrator to make an apology to the victim. Such an approach appears inherently coercive. The incentive for the perpetrator to apologize is that it will result in a recommendation to not prosecute (Section 24 (2)). The incentive for the victim is that he/she will receive compensation directly from the TRC. No such compensation is available if the victim rejects the offer of apology. Moreover, it does not

6 Principle 8, UN Updated Principles on Combating Impunity

appear the perpetrator is compelled to be a part to the truth-finding function of the Commission: the perpetrator is not compelled to provide a statement of events surrounding his or her involvement in criminal conduct or other events that may be relevant. If the attempts to reconcile fail, the provisions of the bill will nevertheless permit the commission to recommend amnesty.

VI. Reparations

If the Commission “causes to be made” reconciliation, Section 23 authorizes the provision of “reasonable reparations...to the victim from the perpetrator...in lieu of the loss and damage caused to the victim.” The Commission can undertake a variety of activities “in order to persuade both the victim and the perpetrator for reconciliation,” including organizing workshops, rallies and ceremonies (Section 23 (4)). In addition to the Commission’s own role in directly providing reparations, Section 26 also authorizes the Commission to recommend the Government make similar provision for reparations to victims, but only if the Commission finds it “necessary.” In addition, the bill makes provision for a Reconciliation and Peacebuilding Fund (section 29) that shall be operated by the Ministry of Peace and Reconstruction and used to fund implementation of the recommendations. The bill does not provide a definition of what constitutes reparations to victims.

Contrary to international law and standards, the proposed reparation provisions are founded on a needs-based approach, rather than rights-based. The draft does not provide adequate guarantees to ensure victims are provided full and effective reparation in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In addition, international best practice dictates that the direct involvement of the Commission in the provision of reparations is not consistent with international best practice. Reparation programmes are complex. The design and implementation of such a programme should include victims and other sectors of civil society. They should deliver a variety of benefits ranging from the material to the symbolic, and, provided they address the individual and broader society, are more likely to have a greater reach and be more comprehensive than is suggested in the Bill.



VII. Public Hearings and Reports

a. Hearings

Section 19 (1) states “if it deems necessary to find the truth and facts on matters relating to gross violations of human rights and crime against humanity,” the Commission *may* hold public hearings. In Section 20 (1), the Commission is required to carry out its activities in “an open and transparent manner.” Activities that are “likely to have an adverse impact on dignity or security of any person or to jeopardize law and order or to have an adverse impact on the process of inquiry and investigation may be *carried out in a secret manner*.” In relation to the protection of witnesses appearing before the Commission, the bill provides for witnesses to request confidentiality (Section 18 (5)). According to the official translation, the Commission has no discretion on the matter, and must accede to a request.

International best practice indicates that public hearings should be the norm as opposed to the exception. Public hearings have proven to be a very powerful and effective way to bring a commission’s work to the public. By giving victims and survivors an opportunity to tell their story before a public audience, a commission can formally and publicly acknowledge past wrongs, allow victims the chance to be heard, reduce the likelihood of continued denial of the truth and make the work of the commission more transparent. Public hearings also help to engage the public as an audience, encouraging press coverage of the issues over a longer period and stimulating national discussion about the past.

Where specific populations have been particularly affected by the violence, international best practice suggests the creation of special procedures that would provide a degree of confidentiality. This is especially for cases involving children who were victims or perpetrators of abuse and women and girls who were sexually abused. Though many truth commissions include provisions for ensuring the confidentiality of witnesses, international best practice would dictate that this be in accordance with strict criteria permitting such hearings in exceptional circumstances. Otherwise, such a provision could be open to abuse by perpetrators attempting to shield their responsibility in serious human rights violations.

b. Report

Upon the completion of its work, the Commission is required to submit a report to the Government (Section 27), with recommendations on prosecutions, amnesty and reparation. In addition, the report may provide recommendations in relation to law reform, reconciliation measures and, implicitly, institutional reform. The Government is obligated to present the report to the Legislature-Parliament/Constituent Assembly. The obligation to implement the recommendations is exclusively with the Ministry of Peace and Reconstruction though it is not clear that it has the authority, given that many of the recommendations may relate to other institutions and actors.

The impact of the final report, with recommendations, will, to a significant degree, depend upon when and in what circumstances the report is released and publicized. Most important will be how the political authorities treat the report and whether they have any interest in publicizing and implementing its conclusions and recommendations. Even where there is sufficient political will, there may not be sufficient institutional capacity or funds to undertake the recommended measures.

c. Archiving

Section 37 (2) states that on the dissolution of the Commission “all... documents...” shall be transferred to the Ministry. No provision is made in relation to ensuring preservation of the Commission’s documentation during the course of its work. Moreover, no provision is made for public access to the documents following the conclusion of the Commission’s work, including access by victims and their families. *UN Updated Principles on Combating Impunity* state that, “at the outset of their work, commissions should clarify the conditions that will govern access to their documents, including conditions aimed at preventing disclosure of confidential information while facilitating public access to their work.”⁷ In addition, following the conclusion of the work of the commission, *UN Updated Principles on Combating Impunity* state the government has the obligation to ensure archives of the commission are preserved.⁸

7 Principle 8.

8 Principle 14.

IX. Definitions

Throughout the bill, reference is made to a number of provisions that have significant importance under international law. For example, the role of the Commission is to investigate “*gross violations of human rights*” and “*crimes against humanity*,” and to make recommendations regarding “*reparations*” to “*victims*.” None of the above are included in the definitions section of the bill.

a. Gross Violations of Human Rights

Under international law, “*gross violations of human rights*,” is generally intended to include “violations of internationally protected human rights that are crimes under international law and/or which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution, and slavery.”⁹

b. Crimes against Humanity

The Rome Statute of the International Criminal Court defines “*crimes against humanity*” as certain acts committed as part of a widespread or systematic attack directed against the civilian population. The particular offences include, e.g., murder, extermination, enslavement, imprisonment or severe deprivation of physical liberty, torture, rape and other forms of sexual violence of a grave nature, enforced disappearances, and other inhuman acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health. The Statute defines ‘*torture*’ as the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused.

c. Victims

In the context of gross violations of human rights, international law defines a ‘*victim/victims*’ as:

‘persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where

9 See, e.g., UN Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity.

*appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.*¹⁰

In the context of disappearances, the definition of *victim* has been expanded recently to include relatives of the disappeared. In a decision of the *UN Human Rights Committee*, the Committee stated that the anguish individuals experience as a result of uncertainty about the fate of close relatives who are direct victims of enforced disappearance in itself constitutes cruel, inhuman or degrading treatment and is thus a violation of the ICCPR.¹¹

d. Reparation

The international legal basis for a right to *reparation* is enshrined in international human rights instruments.¹² In addition to treaty obligations, international standards have further elaborated the content of the right. The *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, endorsed by the UN General Assembly in 2005, define the content of reparations as including restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence.

Recommendations

I. Independence, Impartiality and Competence

OHCHR-Nepal recommends the Ministry of Peace remove all provisions of the bill that potentially interfere with the independence, impartiality and competence of the Truth and Reconciliation Commission, particularly those in relation to the *appointment process, staffing, funding, recommendations, extension of mandate and dismissals*. Specifically:

10 See UN Basic Principles on and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law, para. 8.

11 *Quinteros Almeida v. Uruguay*, Communication No. 107/1981 (2003).

12 See Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.



- ▶ In order to ensure the credibility of the appointment process, OHCHR-Nepal recommends the Government replace a potentially politicized appointment process with a representative selection panel, appointed by a variety of sectors or societal groups (including civil society), to vet the nominations, interview the candidates and then recommend the final commissioners to the appointing authority. The bill should ensure that the Government must appoint the Commissioners from a list of the recommended candidates provided by the selection panel.
- ▶ OHCHR-Nepal recommends broadening the category of candidates so as to ensure greater gender participation and representation of the diverse Nepalese society.
- ▶ OHCHR-Nepal would recommend that criteria for staffing recruitment are based upon a variety of skills relevant to the functioning of a truth and reconciliation commission, including independence, integrity and competence.
- ▶ So as to ensure independence and impartiality, OHCHR-Nepal recommends against employing government employees/civil servants as Commission staff.
- ▶ OHCHR-Nepal recommends that the Legislature-Parliament/Constituent Assembly, not a special committee, be empowered with the authority to remove a Commissioner, for cause, based on international best practice. OHCHR-Nepal recommends the authority to dissolve the Commission, for cause, also be placed with the National Legislature-Parliament and in a manner that is consistent with international principles of fairness and impartiality.
- ▶ OHCHR-Nepal welcomes the Government's commitment to provide financial resources to the Commission, but so as to ensure independence and impartiality, OHCHR-Nepal recommends the removal of the provision requiring Government consent for funding from foreign sources.
- ▶ OHCHR-Nepal recommends clarity as to whether "building, materials and other resources," will be provided to the Commission on a *gratis* basis.
- ▶ OHCHR-Nepal recommends the Ministry further elaborate on the content of Section 15 (a) so as to ensure the Truth and Reconciliation Commission is not prevented from considering all rel-

evant events and circumstances that occurred during the armed conflict, regardless of whether there has been a prior commission of inquiry, judicial or law enforcement investigation.

- ▶ OHCHR-Nepal recommends further elaboration of the content of Section 22, particularly regarding complaints that “cannot be implemented.”
- ▶ OHCHR-Nepal recommends the Ministry of Peace to remove provisions of the bill that interfere with the independence and impartiality of the Office of Attorney-General.
- ▶ OHCHR-Nepal recommends clarification of the oath of office so as to ensure it does not prevent the Commissioners from speaking in public, and with the Press, about the operations of the Commission.

I. Amnesty Provisions

- ▶ OHCHR-Nepal urges the Ministry of Peace to remove provisions of the bill that permit the Truth and Reconciliation Commission to recommend amnesty for gross violations of human rights and crimes against humanity.

II. TRC’s and identifying the underlying causes of conflict and patterns of violence.

- ▶ OHCHR-Nepal recommends the Ministry of Peace expand the mandate of the Truth and Reconciliation Commission to incorporate international human rights law principles of truth, justice and accountability.
- ▶ OHCHR-Nepal recommends the mandate of the Truth and Reconciliation Commission explicitly includes an exploration of the root causes of the conflict, including “social, political, economic, cultural, and other causes underlying the armed conflict,” with a view to identifying institutional and policy reforms so as to prevent future abuses.
- ▶ OHCHR-Nepal recommends the terms of reference of the Commission include investigations of all persons alleged to have been responsible for violations of human rights and/or humanitarian law, whether as perpetrators or accomplices, state officials or armed groups.



III. TRC's and Prosecutions

- ▶ OHCHR-Nepal recommends the removal of provisions that undermine the State's primary obligation to prosecute persons who have committed gross human rights violations and serious violations of IHL.

IV. Reconciliation

- ▶ OHCHR-Nepal recommends the Ministry remove the coercive role of the Commission regarding the relationship between perpetrator and victim in enforcing reconciliation.

V. Reparations

- ▶ OHCHR-Nepal recommends the Commission ensures any recommendations regarding reparations are consistent with international standards.
- ▶ OHCHR-Nepal would recommend against the Commission providing reparations directly to victims.
- ▶ OHCHR-Nepal recommends the removal of provisions that link reparations to reconciliation.

VI. Public Hearings, Reports, Archiving

- ▶ OHCHR-Nepal encourages the Ministry to consider effective ways to bring the work of Commission to the public, including a greater reliance on public hearings.
- ▶ OHCHR-Nepal welcomes the provision that permits confidential hearings. This will be particularly important in instances dealing with specific groups of victims such as children and women and girls, but OHCHR-Nepal recommends the Ministry amend the provision relating to confidentiality so as to ensure that there are strict criteria to determine the exceptional circumstances in which hearings can be confidential.
- ▶ OHCHR-Nepal recommends providing for an explicit time-frame for when the Government shall present the report to the Legislature-Parliament/Constituent Assembly.
- ▶ OHCHR-Nepal recommends that the findings of the Commission are made widely available to the general public, and that information concerning human rights violations, including documents and witness testimony, are publicly available.

- ▶ OHCHR-Nepal recommends that the Government of Nepal appoint a monitoring body, rather than a Ministry, to monitor implementation of the recommendations. International best practice indicates the most effective body may be one that consists of government, civil society and donors.
- ▶ OHCHR-Nepal recommends provisions are incorporated into the bill which highlights the importance of preserving documents, including conditions that govern who will have access to them during the life of the Commission.
- ▶ OHCHR-Nepal recommends provisions are incorporated into the bill so as to ensure the Government takes steps to preserve, and provide access to, archives bearing witness to violations.

VII. Definitions

- ▶ OHCHR-Nepal recommends the bill incorporates the terms included in this document so as to ensure clarity and compliance with international standards.

Annex-3

PROVISIONS OF INTERNATIONAL LAW RELATING TO PROSECUTIONS AND AMNESTIES

a. International Human Rights Law

The *International Covenant on Civil and Political Rights (ICCPR)* and the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, both applicable in Nepal, impose a general obligation on all States Parties to provide an effective remedy against violations of the rights and freedoms contained in these core human rights treaties. This includes a duty to investigate and punish those responsible. Especially in relation to violations of the right to life, torture, enforced disappearance and extrajudicial execution, the granting of amnesty would not be compatible with Nepal's treaty obligations and other relevant international human rights standards.

b. Geneva Conventions and International Humanitarian Law (IHL)

The provisions of Section 25 would also be inconsistent with the prohibition of amnesty for international crimes under international humanitarian law, including grave breaches of the Geneva Conventions and other violations of international humanitarian law including crimes against humanity. Article 3 common to the four Geneva Con-

ventions (known as Common Article 3) applies to armed conflicts “not of an international character.” It contains provisions governing the minimum protection of all persons not taking an active part in hostilities, including civilian populations and members of the armed forces in non-combat situations. Additional Protocol II to the Geneva Conventions also applies to non-international armed conflicts.

By virtue of Nepal’s ratification of the four Geneva Conventions, both the Nepalese security forces and the CPN-M are bound by Common Article 3 of the Geneva Conventions. In addition, both parties are also bound by customary law applicable to internal armed conflicts including those provisions of Protocol II which constitute customary law.

With regard to ‘political crimes,’ IHL permits States to adopt amnesties for political offences such as treason and rebellion.¹ (Art. 6 (5)) In the view of ICRC, Art. 6 (5) should not be interpreted to provide an amnesty for those who have violated IHL because serious violations of IHL are international crimes. The Inter-American Commission on Human Rights has confirmed that Art. 6 (5) was not meant to provide amnesty for violations of IHL committed in non-international armed conflicts.² In addition, the International *ad hoc* Court for the Former Yugoslavia has affirmed that serious violations of IHL are international crimes and cannot be subject to amnesty.³

c. UN international principles on impunity and reparation

Principle 4 of the *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law*, adopted by the General Assembly in December 2005, states: “In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have a *duty* to investigate and, if there

- 1 Art. 6 (5) of the 1977 Protocol Additional (No. II) to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts.
- 2 Inter-American Commission on Human Rights, Case 10.480, report 1/99.
- 3 *Prosecutor v. Delalic*, 20 February 2001.



is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations, and if found guilty, the duty to punish her or him.”

Principle 24 of the *UN Updated Principles on Combating Impunity*, endorsed by the UN Commission on Human Rights in 2005, principally states: “Even when intended to establish conditions conducive to a peace agreement or to foster national reconciliation, amnesty and other measures of clemency shall be kept within the following bounds:

“the perpetrators of serious crimes under international law may not benefit from such measures until such time as the State has met the obligations to which Principle 19 refers or the perpetrators have been prosecuted before a court with jurisdiction...outside the State in question.”

Principle 19 refers to the States “...obligation to undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for *serious crimes under international law* are prosecuted, tried and duly punished.” *Serious crimes under international law* are defined in the *UN Updated Principles to Combat Impunity* as including grave breaches of the Geneva Conventions and other violations of international humanitarian law including genocide, crimes against humanity and violations of international human rights such as torture, enforced disappearances and extrajudicial execution.

ICTJ COMMENTS ON THE NEPALI TRC BILL

ICTJ Comments on the Nepali TRC Bill **International Center for Transitional Justice comments on the Nepali Truth and Reconciliation Draft Bill published in August 2007**

The ICTJ welcomes the proposal to establish a truth and reconciliation commission in Nepal that will advance justice and contest impunity. On review of the TOR releases by the MOPR, we are however concerned that the current draft fundamentally compromise the promise of a truth commission process.

These concerns include:

- ▶ The human rights principles that undergird the bill – Reconciliation, reparations and amnesties have been combined in ways that can make reparations contingent on victims forgiving perpetrators and foregoing their right to justice in exchange for reparations. The provision for amnesty risks asking the commission a mechanism for impunity rather than accountability. Moreover, truth seeking is conceived as a narrow case by case investigation of complaints with little attention to the context and patterns of the Nepalese conflict
- ▶ The legitimacy of the process of establishing the commission - the procedures for the appointment and dissolution of the commis-

sioners do not provide for adequate consolation, inclusion of marginalized groups and political independence.

- ▶ Effectiveness in institutional design – the commission’s TOR speaks of investigations of complaint, possible inclusion of public hearings and final report writing but does not cover other functions that have proved critical to the effective functioning of truth commissions, including statement taking, thematic hearings, research, communications and outreach, victim support and advocacy and public release of the final report.

There is no blue-print for how truth commissions should be designed but lessons learned internationally can provide valuable guidance regarding a commission’s mandate and the key elements necessary for a process that advances human rights and enjoys wide democratic legitimacy. The ICTJ’s comments are aimed at contributing to a truth commission process in Nepal that will enhance victim’s rights, contest impunity and enjoy credibility in the human rights movement.

I. The *human rights orientation* of the mandate

We believe that victims have an inviolable right to truth, justice and reparations when they have suffered gross violations of human rights but the draft TRC bill compromises on this right in its current formulation, and inter alia, it also adversely impacts its contribution to reconciliation processes.

Truth:

Truth commissions can be critical instruments in efforts to clarify the legal and historical record; they provide a unique opportunity to balance investigation of individual violations, with analysis of the larger historical backdrop and the factors that enabled and contributed to human rights violations. It is this element that makes truth commissions powerful forums for catalyzing a national dialogue about the past. It comes from a recognition that the historical legacy of a period of atrocity is much more than the sum of individual cases, and indeed that ensuring non-repetition requires not only individual accountability, but a deeper analysis of the root causes of such violations, and recommendations to address the socio-political structures and dynamics that were complicit in those violations. This is particularly

significant in contexts where patterns of human rights violations have been shaped by other injustices such as those based on ethnicity, caste, gender, ideology and region.

The current draft of the bill speaks primarily of individual complaints and makes only minimal mention [in Section 27 (1) (g)] of the broader record that can situate individual cases in their historical context, identify patterns of violations and analyze the enabling and contributing conditions to the violations that took place. There is little emphasis on the need to address the broader picture in clarifying the objectives of the commission (currently the preamble) or its core responsibilities (currently chapter 3). There is also little discussion of public education, communication and outreach regarding the nation's human rights record as a key function and long term goal of the commission.

Justice:

The bill makes provision for amnesties to be granted for gross human rights violations if forgiven by the victim [(Section 24 (2))] or if these acts had a political motivation [Section 25 (1)] and the perpetrator made an application indicating regret [Section 25 (4)]. The exceptions to this are inhuman acts of murder and torture and rape [Section 25 (2)]. This amnesty is therefore sweeping in its reach, and renders the truth commission process a mechanism that entrenches impunity rather than contests it. It excludes only some crimes of torture and killing and thereby violates settled principles of international law that call for investigation and prosecution of gross human rights violations, grave breaches of the Geneva Conventions and crimes against humanity. This provision could render the government in violation of its international treaty obligations, as well as the spirit and letter of recent rulings on enforced disappearance by the Nepali supreme court.

As noted below, in Section 24 (2) the TOR also ties amnesties to victim forgiveness and eligibility for reparations in ways that render reparations as blood money that adds insult to injury for victims who are likely to be dependent on any form of redress they can access.



Reparations:

The bill as it currently stands ties reparations to the amnesty process and forgiveness and reconciliation; in Section 23 (1) and (3) and Section 24 (2) there is suggestion that one's eligibility for reparations is tied to one's willingness to forgive, and allow the perpetrator to escape judicial action and or other sanction.

While a victim's forgiveness may garner respect, a victim's refusal to forgive is also legitimate and no external institution should legislate emotions and coerce a victim to forgive. It is doubly problematic that reparation, which is their right, is made contingent on forgiveness. Additionally, in the context of this "reconciliation" process, reparation also seems to depend on perpetrator payment with the implication that the quantum of reparations depends on the perpetrator's ability and willingness to make a payment. It would be a violation of basic principles of fair treatment if the quantum of reparations received should depend on the contingent accident of whether the perpetrator was or was not wealthy. Moreover, while perpetrator contributions are welcome and to be encouraged, the government's obligation to provide reparations is independent of a perpetrator's ability and willingness to pay.

The relationship between the provision for reparations in this section on reconciliation and the provision for reparation in Section 26 is unclear. In the context of compensation in court cases each individual case can be examined; in contrast, given the sheer number of victims, reparations for mass atrocity are best approached through a holistic policy lens that examines the whole universe of victims and develops a policy that has internal coherence and consistency to ensure fair treatment and enhance reparative impact.

Reconciliation:

While reconciliation is a laudatory goal, many societies have recognized that it is a long term process rather than an immediate, achievable objective. Thus commission processes can contribute to reconciliation, rather than actually deliver reconciliation.

The emphasis on individual reconciliation risks diverting the commission from engagement with macro-socio political dynamics. Moreover, the current draft TOR's emphasis on individual acts of apology and forgiveness, may perform a disservice to victims by placing an unfair pressure on victims to forgive their perpetrators and forego their legitimate right to justice.

While individual acts of reconciliation may occur, commissions are designed to address and engage with the social fabric that has been rent asunder by civil conflict; thus, rather than individual reconciliation, truth commissions may be better positioned to contribute to the macro socio-political reconciliation that is likely to be a long term historical process. Commissions can play constructive roles in that ambitious agenda for reconciliation by catalyzing a national dialogue about legacies of atrocities and the wounds of the past that need to be healed and victims redressed to ensure justice in the future. Thus the afore mentioned goals of truth, justice and reparations, may themselves be key elements for reconciliation, and a truth commission's contribution to those principles will be a major contribution to national reconciliation.

II. The *legitimacy of the process* of establishing and administering the commission

The legitimacy of a truth commission process depends on issues of transparency, civil society participation and political independence. There is concern that the current draft's provisions for appointment and dissolution could compromise these principles.

The appointment process for commissioners is amongst the most important indicators of the democratic legitimacy of the process. The current draft provides for a process of appointment controlled by the political parties rather than one that is open to civil society. There is no open process for nominations and the TOR does not adopt a transparent and consultative process. In choosing commissioners human rights credentials, and representation of different constituencies, particularly marginalized communities, can be an important indicator of the commission's core values in regard to principles of human rights, diversity and inclusion. For instance, many commissions routinely call

for at least a 33% women, and ensure representation of different regions as well as of religious and linguistic minorities.

Relatedly, the provision for the dissolution of the commission “if it is unable to perform its task for any reasons” may provide wide latitude for political interference through withholding of funds, non-cooperation with investigations and other activities that could obstruct the commission’s ability to perform its tasks. The political independence of the commission requires that it be insulated from potential retributive or obstructionist action when it is pursuing an unpopular line of investigation. Further, while the commission is not barred from seeking international funds, the TOR specifies that it has to seek permission from the government every time it does request international aid. This provision also opens the door to funding options being used as a political tool and undermines the independence of the commission.

III. The *efficacy of the operational modalities* elucidated in the current draft

Effective functioning of truth commissions internationally has involved delineation of duties and responsibilities such as statement taking, public hearings, thematic hearings, research, provisions for victim support and advocacy, civil society liaising, communications and outreach. The current TOR says little about the commission’s responsibilities in this regard. In some cases mandates have also called for focused inquiry into issues such as gender dimensions of the conflict, the experience of children during the course of the conflict, economic crimes, civil-military relations and such. In addition some commissions have developed other innovations such as grass roots fora for dialogue, community service options and such. Mandates have also called on commissions to institute special provisions as needed to elicit testimony from women. It is through the discharge of these functions that commissions have been able to operationalize their mandate. Finally, international experience suggests that requiring the commission to release the report to the public and requiring parliament to debate the report’s findings will be critical in ensuring transparency for the commission’s findings, and encourage implementation of its recommendations.

Conclusion

Internationally, communities emerging from civil conflict and authoritarian rule have established independent institutions pursuing truth, justice and reparations to keep faith with victims, embody the democratic principles of the new political order and ensure a sustainable and honorable peace. The Center welcomes the Nepalese government's stated commitment to such a process in Nepal, and appreciates the challenging political context in which it is pursuing these goals. Thus the concerns raised in this submission are advanced in a spirit of dialogue and cooperation with the central goals of a truth commission process. We look forward to working with all stakeholders in the proposed truth commission as this process moves forward.



END NOTE AND REFERENCES

1. 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 and 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 Mendez, 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).
2. The list of fifteen truth commissions mentioned in this report 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.

3. 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.
4. 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.
5. The African National Congress' call for a truth commission in *AFRICAN NATIONAL CONGRESS NATIONAL EXECUTIVE COMMITTEE'S RESPONSE TO THE MOTSUE-NYANE 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.
6. Two sources were particularly important to the development of the list of truth commissions. They are: Priscilla B. Hayner, "Fifteen Truth Commissions--1974 to 1994: A Comparative Study," *Human Rights Quarterly*, v. 16, no. 4, November 1994, pp. 597-



- 655; and Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols., Washington, D.C., U.S. Institute of Peace Press, 1995.
7. 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 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.
 8. In Malawi, party leaders 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.
 9. 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 were calls for an in-depth commission to investigate this event. In South Korea, academics and activists pushed the government to investigate the killings at Kwangju in 1980, where human rights observers estimated 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.
 10. COMISIONADO NACIONAL DE PROTECCION DE LOS DERECHOS HUMANOS, INFORME PRELIMINAR

SOBRE LOS DESAPARECIDOS EN HONDURAS 1980--1993: LOS HECHOS HABLAN POR SI MISMOS (1994) is another significant document in the field of TRC. The commissioner's original report is over 1,000 pages. This published report is comprised of major excerpts from the original report.

11. 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 public debate and discussion on the terms. 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.
12. The Argentine Forensic Anthropology Team 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 was based in Buenos Aires and New York.
13. 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.
14. 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 was 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 (forthcoming fall 1994), and KATHI AUSTIN, INVISIBLE CRIMES: U.S. PRIVATE INTERVENTION IN THE WAR IN MOZAMBIQUE (William Minter ed., 1994).

15. 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.
16. Article 19, Malawi's Past, *supra* note 6; see also Carlos J. Chipoco, *El Derecho a la Verdad: Un Analisis Comparativo*, paper presented at the Latin American Studies Association Conference (12 Mar. 1994).
17. Details of this commission are spelt out in Richard Carver, *Called to Account: How African Governments Investigate Human Rights Violations*, 89(356) AFR. AFFAIRS (1990).
18. REPORT OF THE COMMISSION OF INQUIRY INTO THE DISAPPEARANCE OF PEOPLE IN UGANDA SINCE THE 25TH OF JANUARY, 1971, cited in Richard Carver, *id.*
19. Interview with Loyola Guzman, head of ASOFAMD (The Association of Relatives of the Detained, Disappeared and Martyred for National Liberation) (12 Aug. 1994).
20. Aryeh Neier, *An Overview of the Issue and Human Rights Watch Policy*, 4 HUMAN RIGHTS WATCH, Dec. 1989, at 2.
21. Carlos S. Nino (advisor to former President Alfonsin), *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 Alfonsin, 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).

22. SERVICIO PAZ Y JUSTICIA, URUGUAY, URUGUAY: NUNCA MAS: INFORME SOBRE LA VIOLACION A LOS DERECHOS HUMANOS (1972-1985) (Elizabeth Hampsten trans., 2d ed., 1989).
23. Statement of Defence Minister Movan Mahachi, Government Regrets Civilian Massacre By Own Army, AGENCE FRANCE PRESSE, 6 Setp. 1992.
24. Rights Group Urges Zimbabwe to Come Clean on Abuses, RE-UTER LIBRARY REPORT, 13 Oct. 1992.
25. AMNESTY INTERNATIONAL, UGANDA: THE HUMAN RIGHTS RECORD, 1986-1989, at 1.
26. The Commissions of Inquiry Act, Legal Notice No. 5 of 1986, 15 May 1986, at 17 (Uganda).
27. Eva Lubwama, Human Rights Fails, THE NEW VISION, 2 Feb. 1991.
28. Sidney Jones, Will to Prosecute Past Offenders Lost in the Philippines, in 4 HUMAN RIGHTS WATCH, supra note 29, at 4.
29. REPORT OF THE CHILEAN NATIONAL COMMISSION ON TRUTH AND RECONCILIATION 900 (Phillip E. Berryman trans., 1993)
30. AMERICAS WATCH, CHILE: THE STRUGGLE FOR TRUTH AND JUSTICE FOR PAST HUMAN RIGHTS VIOLATIONS 2 (1992)
31. 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)
32. 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."
33. Report of the Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habre, his Accomplices and/or Accessories, May 1992, English translation in 3 TRANSITIONAL JUSTICE, supra note 56 (original in French).

34. AMNESTY INTERNATIONAL, SOUTH AFRICA: TORTURE, ILL TREATMENT, AND EXECUTIONS IN AFRICAN NATIONAL CONGRESS CAMPS (AI Index: AFR 53/27/92, 1992).
35. AFRICAN NATIONAL CONGRESS, REPORT OF THE COMMISSION OF ENQUIRY INTO COMPLAINTS BY FORMER AFRICAN NATIONAL CONGRESS PRISONERS AND DETAINEES 6 (1992).
36. 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).
37. 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).
38. 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.
39. 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.
40. These organizations were Africa Watch (New York and London), the Federation Internationale des Droits de L'Homme (Paris), the Union Inter africaine 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).
41. REPORTS OF THE COMMISSION OF ENQUIRY INTO CERTAIN ALLEGATIONS OF CRUELTY AND HUMAN

- RIGHTS ABUSE AGAINST ANC PRISONERS AND DE-TAINEES BY ANC MEMBERS ii (20 Aug. 1993).
42. AFRICAN NATIONAL CONGRESS NATIONAL EXECUTIVE COMMITTEE'S RESPONSE TO THE MOTSUE-NYANE COMMISSION'S REPORT 7 (1993).
 43. Report of the Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habre, his Accomplices and/or Accessories, *supra* note 59, at 45-46.
 44. Report of the international commission of investigation on human rights violations in Rwanda since 1 Oct. 1990, *supra* note 81, at 54.
 45. Juan e. Mendez, position of Americas watch, a division of Human Rights Watch, on the rights of victims of gross violations of human rights to reparations and on measures to prevent such violations 3 (n.d.).
 46. REPORT OF THE CHILEAN NATIONAL COMMISSION ON TRUTH AND RECONCILIATION; *supra* note 51, at xxxii.
 47. Report of the Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habre, His Accomplices and/or Accessories, *supra* note 59, at 133.
 48. 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.
 49. REPORTS OF THE COMMISSION OF ENQUIRY INTO CERTAIN ALLEGATIONS OF CRUELTY AND HUMAN RIGHTS ABUSE AGAINST ANC PRISONERS AND DE-TAINEES BY ANC MEMBERS, *supra* note 86, at v
 50. 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 (Meorial, 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)
51. JOSE LUIS SIMON G., LA DICTADURA DE STROESSNER Y LOS DERECHOS HUMANOS, 1 SERIE NUNCA MAS, and GUIDO RODRIGUEZ ALCALA, TESTIMONIOS DE LA REPRESION POLITICA EN PARAGUAY 1975-1989, 3 SERIE NUNCA MAS (1990)
 52. 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.
 53. *Contemporary Conflict Resolution: The Prevention, Management and Transformations of Deadly Conflict* (Cambridge: Polity Press, 2005), Hugh Miall, Oliver Ramsbotham, Tom Woodhouse
 54. Nepal: Truth Commission Bill Disregards Victims' Rights, *Draft Bill Fails to Meet International Human Rights Standards*, Sophie Richardson, Asia advocacy director of Human Rights Watch (Geneva, August 22, 2007)
 55. *Bhimarjun Acharya*, Constitutional Lawyer, Excerpts: Paper presented at a Sancharika Samuha/UNIFEM seminar, 2008.
 56. "Justice is a pre-requisite for peace", Yasmin Sooka, commissioner in the post-apartheid South African Truth Commission
 57. *Confronting the Truth: Truth Commissions and Societies in Transition*, produced by York Zimmerman Inc., in association with USIP and the International Center on Nonviolent Conflict (ICNC), and a discussion on the prospects for transitional justice in Nepal. USIP Rule of Law Advisor Scott Worden, conflict resolution specialist Karon Cochran-Budhathoki, and consultant Shobakhar Budhathoki
 58. Transitional Justice in Nepal: A Look at the International Experience of Truth Commissions, Karon Cochran-Budhathoki and Scott Worden-2007
 59. Accountability Watch Committee's Press Statements released on various occasions

60. Transitional Justice Newsletters, Advocacy Forum, (2007-2008)
61. Transitional Justice in Nepal: Addressing Impunity after Ten Year Conflict, Columbia University, New York-2006, Shree Krishna Subedi, INHURED International
62. Dr. Gopal Krishna Siwakoti, The Kathmandu Post, May 29, 2008

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