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The Truth Commissions of South Africa and Guatemala

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The truth commissions of South Africa and Guatemala were two of the largest and most prominent of recently-completed commissions. This case study is divided into two parts: a broad overview of the context and work of each commission; and a brief review of the main similarities and differences between them.

South Africa

During 45 years of apartheid and almost 30 years of armed resistance by the African National Congress (ANC) and others, tens of thousands of South Africans suffered serious human rights violations and war crimes. The greatest number of deaths took place in the conflict between the ANC and the government-backed Inkatha Freedom Party.

Serious discussions about the idea of a truth commission began after Nelson Mandela was elected president in 1994. After considerable input from civil society and hundreds of hours of hearings, in 1995 the South African Parliament passed the Promotion of National Unity and Reconciliation Act establishing the Truth and Reconciliation Commission (TRC). Following a public nomination and selection process, 17 commissioners were appointed. The act provided the most complex and sophisticated mandate for any truth commission to date. It gave the TRC the power to grant individualized amnesty, search premises and seize evidence, subpoena witnesses and run a sophisticated witness protection programme. With a staff of up to 350, a budget of some USD 18 million each year for two-and-a-half years (plus an additional, smaller budget for another three years) and four large offices around the country, the TRC dwarfed previous truth commissions in its size and reach.

The Promotion of National Unity and Reconciliation Act designed the TRC to work in three interconnected committees. The Human Rights Violations Committee was responsible for collecting statements from victims and witnesses and recording the extent of violations; the Amnesty Committee processed and decided on individual applications for amnesty; and the Reparations and Rehabilitation Committee (RRC) designed and put forward recommendations for a reparation programme.

The TRC took testimony from 23,000 victims and witnesses, 2,000 of whom appeared in public hearings. Media coverage was intense: most newspapers ran a number of stories on it every day, and radio and television news often led with a story on the latest hearings. The TRC also held special hearings focused on sectors or key institutions of society and their response to or participation in abusive practices. Other special hearings looked at important thematic issues, while still others focused on uniquely significant events in the country's history.

The greatest innovation of the TRC, and the most controversial of its powers, was its ability to grant individual amnesty for politically motivated crimes. The amnesty-granting power was the subject of an unsuccessful constitutional challenge early in the life of the TRC, as well as of numerous subsequent court battles. The TRC received over 7,000 applications for amnesty, most of which were ultimately refused. Amnesty was granted only to those who fully confessed to their involvement in

past crimes and showed them to be politically motivated. For particularly serious crimes, the applicant was required to appear in a public hearing to answer questions from the TRC, from legal counsel representing the victims and their families, and from victims themselves. The Amnesty Committee considered a number of factors in determining whether the applicant satisfied the terms for amnesty, including, for example, whether there was proportionality between the crime committed and the political objective pursued. Neither an apology nor any sign of remorse was necessary for amnesty to be granted. However, crimes committed for personal gain or out of personal malice, ill will or spite were not eligible for amnesty.

Given the detailed public disclosure that was required to gain amnesty, it was clear that this “truth-for-amnesty” offer would only be taken up by those who reasonably feared prosecution. It was hoped that a number of early trials would increase the perceived threat of prosecution. A few high-profile trials for apartheid-era crimes did successfully result in convictions and long sentences, which spurred an increase in amnesty applications. However, when another important trial (that of former minister Magnus Malan and 19 others) ended in acquittal, it was clear that the threat of prosecution would not be strong enough to persuade many senior-level perpetrators to apply for amnesty. The TRC then tried to increase the pressure on perpetrators to come forward by holding some investigative hearings behind closed doors. In the end, however, many former perpetrators took the risk not to apply, particularly political leaders of the apartheid government and senior officers of the army.

The TRC’s five-volume final report was released in October 1998 and sparked intense controversy, including an attempt by the ANC to block its release. It was formally considered in parliament several months later, but the government made no commitment to implementing the TRC’s many recommendations, including - most controversially - the recommendations on victim reparation. The Amnesty Committee, which was not able to conclude its review of all amnesty applications by the appointed deadline, continued to hold amnesty hearings for another two years. The full TRC was expected to reconvene in late 2002 to release an addendum to the final report that will incorporate the final investigations and amnesty hearings.

Looking back at the TRC experience, it is difficult not to marvel at its level of ambition and originality. For all the criticisms against it, the TRC marked a decisive turning point in South African history by “narrowing the range of permissible lies”. Like no other commission before it, the TRC had a truly international impact, leading to great interest in this kind of mechanism all around the world. Although the legacy of apartheid continues to haunt South Africa, this cannot be attributed to particular failures of the TRC. Such a legacy cannot be fully addressed, nor the damage rectified, in a few short years. New initiatives - possibly including long-overdue prosecutions of persons implicated by the TRC - will probably be required to fully consolidate democracy and human rights in the new South Africa.

Guatemala

The civil war in Guatemala, fought between anti-communist government forces and leftist rebels Guatemalan National Revolutionary Unit (Unidad Revolucionaria Nacional Guatemalteca, URNG), lasted over 30 years and resulted in some 200,000 deaths and disappearances. Among the most controversial issues on the table during the peace negotiations was the question of how past human rights violations and war crimes would be addressed during the transition to peace. This was resolved in June 1994 when the government and the URNG agreed to establish a Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico, CEH). It would, however, be another three years until the final peace accords were signed and the CEH would begin its work.

The idea of a truth commission attracted intense interest from civil society and victims' groups in Guatemala, which lobbied negotiators hard during the talks. Their main concern was with the short time period the CEH was given (six months, with the possibility of extension for another six months) and with the stipulation that the CEH would be precluded from naming names of perpetrators. Although there was considerable anger that the URNG agreed to these limitations, civil society gradually came to support the commission after the commissioners were appointed and the CEH hired an impressive team of staff. In the end, the CEH was able to operate for a total of 18 months.

The chair of the CEH was a non-national appointed by the UN Secretary-General, while the other two commissioners were nationals selected by the chair with the agreement of the two parties. The CEH operated in several phases, with staff size ranging from 200 at its peak (with 14 field offices) to fewer than 100 for the months of analysis, investigation and report writing. Its staff included both nationals and non-nationals. Its total budget was approximately USD 11 million. The CEH received less than USD1 million from the Guatemalan Government; the remainder of the funding came from the US, Norwegian, Dutch, Swedish, Danish and Japanese governments. The mandate of the commission was to "clarify" the human rights violations and acts of violence committed between 1962 and 1996 and connected with the armed conflict. It was required to prepare a final report based on its investigations, containing conclusions as well as recommendations to encourage peace, democracy and human rights, and to preserve the memory of the victims. The commission's proceedings were required to be confidential; however, it was obligated to publicize its establishment and mandate, and to invite interested parties to offer testimony.

Many Guatemalan villages are very isolated, and CEH staff sometimes had to trek by back roads to reach scattered communities, in some cases walking for six or eight hours through the mountains before arriving at a village to take testimonies. Upon arrival in some locations, staff sometimes discovered that the community was not even aware that the civil war was over, and more than once the commission staff were assumed to be guerrillas themselves. Despite these challenges, CEH staff were ultimately able to visit almost 2,000 communities and register 7,338 testimonies, including 500 collective testimonies.

The CEH also requested the declassification of files from the US Government with the help of the US National Security Archive. This resulted in the successful declassification of thousands of documents. Considerably less information was forthcoming from the Guatemalan armed forces themselves, which claimed to have no records on the events under investigation. The CEH also incorporated the data from two national NGOs, in particular two projects that were established as alternative truth efforts several years before the start of the CEH. Both projects had collected thousands of testimonies, many of them audiotaped and transcribed, leaving behind a detailed database of cases and even published reports.

The CEH completed its lengthy and hard-hitting report in February 1999, releasing it to the public in an emotional ceremony attended by thousands. The report described acts of extreme cruelty and noted that a "climate of terror" permeated the country as a result of these atrocities. The CEH also analysed the economic costs of the armed conflict, concluding that costs of the war, including the loss of production due to death, equalled 121 per cent of the 1990 gross domestic product (GDP). Ninety-three per cent of the violations documented were attributed to the military or state-backed paramilitary forces; three per cent were attributed to the URNG. Perhaps the CEH's strongest conclusion, however, was that, on the basis of the patterns of violence in the four regions of the country worst affected by it, agents of the state committed acts of genocide in the years 1981–1983 against groups of Mayan people. Although the CEH was precluded from naming those responsible, it did

report that the majority of human rights violations occurred “with the knowledge or by order of the highest authorities of the State”. The CEH also submitted a long chapter on recommendations.

Three weeks after the release of the final report, the government responded with a statement that suggested that it considered all relevant matters in the CEH’s recommendations to be sufficiently addressed in the peace accord. However, as a result of persistent pressure from civil society, some of the key recommendations may yet be implemented. For example, the CEH had recommended the establishment of a joint government–civil society council to oversee the follow-up process, and a decree has now been passed authorizing its establishment (although progress on implementing the decree has been very slow). As to the recommendations concerning accountability for the worst abusers, it is also encouraging to note that there have been some judicial investigations into gross human rights violations, albeit at the initiative of victims and human rights groups, not the state.

Despite these minor advances, the realities of life in Guatemala remain largely unchanged. There has not been a renewal of conflict, but most of the root causes of the conflict persist, including pervasive insecurity, lack of justice, racism, and extreme and widespread poverty. Moreover, there has been limited dissemination of the CEH’s final report, so that many of the communities that suffered the worst abuses often know little about the commission’s work.

Similarities and Differences

The differences between the Guatemalan and South African truth commissions are striking. Indeed, there are a number of important features of the South African TRC which stand out in comparison to most other truth commissions to date (such as the unique “truth-for-amnesty” arrangement, its extensive media coverage and its significant powers of investigation).

Table 8A.1 illustrates the differences between the two. The points of similarity were:

- Both had large, multidisciplinary staffs.
- Both had relatively large budgets.
- There was strong involvement of civil society in both.
- Both presented detailed and comprehensive final reports.
- The periods of time they investigated spanned more than 30 years.
- Both received funds from government and from foreign sources.
- The recommendations in their final reports were not binding.
- Both took thousands of statements from survivors and witnesses.
- The selection of commissioners in both cases involved a consultation process.
- Staff travelled long distances to remote areas to take statements from victims.
- Both relied on prior investigative reports done by local NGOs.

The Differences between the Guatemalan and South African Truth Commissions

Guatemala	South Africa
No public hearings	Hundreds of public hearings
Limited media coverage until final report	Extensive media coverage throughout
Mixed national and international commissioners	All commissioners national
Reconciliation not an explicit part of mandate	Reconciliation an explicit part of mandate
Recommendations as to reparation not an explicit part of mandate	Explicit mandate to recommend reparation
3 commissioners	17 commissioners
No amnesty-granting power	Amnesty-granting power
Did not name individual perpetrators	Did name individual perpetrators
Significant UN role	No UN role
Operated for 1.5 years	Operated for 2.5 years plus 3.5 more
100 cases investigated in depth	Corroborated all victim statements
Primarily a "vertical" conflict	Both a "vertical" and a "horizontal" conflict
No simultaneous high-level prosecutions	Some simultaneous high-level prosecutions
Created as part of a peace accord	Set up by legislation
Not subjected to legal challenges	Subjected to several legal challenges
No significant powers of investigation	Powers of subpoena and search and seizure
No formal witness protection programme	An advanced witness protection programme
<i>Working in a context of:</i>	
A weak and corrupt judicial system	A relatively robust judicial system
Over 200,000 persons killed or disappeared	ca 25,000 persons killed or disappeared

References and Further Reading

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