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TRUTH COMMISSIONS AS SITES OF STRUGGLE

Truth commissions appear in places that have experienced intense violence and the systematic violation of human rights. And, in ways related to that history of violence, these societies generally lack justice systems able, or willing, to handle prosecution of perpetrators. Truth commissions are therefore established as a separate space where proper investigation is acknowledged to be impossible through existing national and/or international judicial systems.

A truth commission is a body whose purpose is to investigate human rights violations under a particular system. Such commissions carry various degrees of authority, have varying budgets and staffs, but generally operate for a specific time. There have been more than twenty in the last twenty years. The South African Truth and Reconciliation Commission is perhaps the best known. Truth commissions are being discussed now in several countries, including Cambodia, Nigeria, Ireland and Sierra Leone. Truth commissions are being established at an increasing rate as alternatives to Nuremberg-style trials and, importantly, to silence.

Their advent coincides with the evolution of social movements organised around "the right to the truth". These organizations, such as the Madres de la Plaza de Mayo in Argentina, have provided a vehicle for protest and drew international attention to the charges of state-directed terror.

In Latin America, the principle of "the right to the truth" was a response to practices of repression such as "disappearances", extrajudicial assassinations, and other forms of violence that have been called "deniable forms of repression". Ignacio Martín-Baró, a Salvadoran social psychologist, wrote that the power of this particular form of terror was the state's ability to deny responsibility while simultaneously making the entire society aware that it could kill with impunity. Martín-Baró was one of the six Jesuits killed by the military in San Salvador in November 1989.

Establishing the truth became important, therefore, precisely because the regime was able to carry out its terror by lying, distorting the truth or covering up important information. In the aftermath of massive atrocity, demands for "the right to the truth" rested on the logic that if the truth could be made a matter of open and public record, accountability would replace impunity and future violations would be deterred.

Yet the right to the truth movement collided with the obvious reluctance of those in power to acknowledge the atrocities. Notice that truth commissions occur in nations experiencing political transition, after a period of repression and extreme violence. Negotiated transition involves compromise and accommodation. Perpetrators of human rights atrocities, many of whom still hold or seek positions of power in the new regime, refuse to submit themselves to justice. On the other hand, masses of victims

demand accountability. Truth commissions are therefore born of compromise between two extremes: institutional justice vs. silence and sanctified impunity.

In Chile, during the transition from the 17-year dictatorship of Augusto Pinochet to electoral democracy, President Aylwin established a Truth and Reconciliation Commission (1991). Composed of eight people (four from the left of the political spectrum, four from the right), it investigated 3,000 cases. The families of victims received an official apology and (importantly) pensions from the state. Aylwin's support of the commission distanced his administration from the previous government, even though he had agreed to an amnesty for members of the previous regime.

In South Africa, the Truth and Reconciliation Commission was established during the negotiated transition from apartheid to democracy. Issues concerning amnesty for members of the apartheid regime was one of the most contentious aspects of the negotiation process. The compromise produced a truth commission in South African that goes far beyond any of its predecessors. In particular, the South African TRC created a unique marriage between truth and amnesty: amnesty was only granted when the commission determined that the perpetrator had made full disclosure. Clearly, the relative strength of the South African truth commission comes from the particular balance of power between the parties that negotiated the transition: its sponsor is the government itself.

The Salvadoran Commission for the Truth (1992) was mandated during UN-supervised negotiations between the rebels and the government. Rather than saying a little about a lot of incidents, the Salvadoran truth commission attempted to investigate thoroughly those violations of human rights which were deemed to have had a serious impact on society at large. Its final report, *From Madness to Hope*, is an eloquent and horrifying account of the violence, and by naming names the report went further than any other in attempting to establish individual responsibility. Just days after the report was released, the government granted a general amnesty to all individuals charged with serious acts of violence.

Although established in the name of the "victims", belligerent parties to the negotiations may agree to a truth commission as a way of offering amnesty to each other. The result may be a proposed truth commission that reflects the interests of the perpetrators (seeking amnesty) more than the interests of the civil society that demanded "the truth" in the first place.

Amnesty allows perpetrators of human rights violations (on both sides) to stay in power. This has serious implications for the credibility of the justice system, the public's perception of political accountability, and the future protection of human rights. Truth commissions are therefore sites of struggle: spaces in which battles regarding the meaning of the violence take place.

Guatemala and the Commission to Clarify

In Guatemala, as early as 1984, and despite considerable risk, the Mutual Support Group for Family Members of the Disappeared (GAM) was formed and began visible protests in front of the National Palace, with pictures of missing relatives.

The idea of establishing a truth commission for Guatemala was discussed in 1991 during meetings of civil society organisations, while establishing a position regarding upcoming negotiations between the government and the URNG. At this point, Guatemalans were aware of commissions in other countries, particularly Argentina and Chile, and the ongoing negotiations in El Salvador of which human rights and a truth commission were integral parts.

When the Guatemalan government and the URNG began negotiating in earnest in 1994, human rights was seen as the necessary starting point (as in El Salvador in 1990). The parties failed to agree on the details of a truth commission. Anxious to get the Global Human Rights Accord signed, the issue was separated as a distinct negotiation point. Several members of the negotiating team report that this was one of the most difficult accords to negotiate. The accord mandating the creation of a "Commission for Historical Clarification" was signed in June 1994.

When the accord was made public, it was received with great disappointment and criticism by the popular sector. As mandated, the commission lacked the authority to name or punish offenders, and failed to promise any sort of reparations for the victims. Moreover, it was assigned the task of investigating atrocities during the entire conflict (1960-1996), in six to 12 months. As outlined in the mandate, the truth commission would actually encourage impunity. The military establishment was seen as victor in this particular round of negotiations.

Although the accord was attacked for its failure to dictate a strong, effective commission (one that could name names and contribute to judicial accountability), the language was actually quite vague: A great deal was open to the interpretation of the commissioners. If, indeed, peace negotiations led to the resolution of the armed conflict, it was understood that more detailed agreements regarding the reincorporation of the URNG and amnesty for the military would be covered in later accords and national law.

The negotiations did result in December 1996 in the signing of the Firm and Lasting Peace. As anticipated, amnesty for rebel forces was linked to amnesty for the army. The Guatemalan government promoted and passed a "National Reconciliation Law".

Human rights advocates challenged the legality of the legislation, pointing out that Article 46 of the Guatemalan constitution asserts the pre-eminence of international over domestic law. Indeed, the National Reconciliation Law acknowledges that "torture, forced disappearances and genocide" fall outside the protection of the amnesty.

Following the conclusion of the peace process, the Guatemalan truth commission (CEH) did quickly take on a life of its own, despite the politics of its birth. The February 1997 appointment at its head of Christian Tomuschat, a German law professor with a good reputation as a human rights advocate in Guatemala, was considered the first encouraging step. The CEH sought and received US\$7 million. Fifteen offices were opened throughout the country. At its peak, 187 people were employed, making this a much larger operation than the Chilean or Salvadoran commissions. Between September 1997 and February 1998, the field offices collected more than 9,000 testimonies. Other submissions were received from approximately 35 organizations from civil society.

But the CEH did encounter enormous difficulties. In the countryside, workers faced an incredible workload and challenges of terrain. Realising that many Guatemalans affected by the violence would fail to make the journey to regional offices, field workers quickly became proactive. They made maps, geographies of a violent history. They contacted local authorities and arranged visits to explain the CEH's work. They got into Land Cruisers on loan from the United Nations and drove as far as they could, and then they kept going on foot. The commission's field workers described walking all day with a backpack full of forms and food. They told stories of the mud, the heat, the thirst, the cold church floor where they slept. They returned to the office to spend long hours transcribing the stories of rape and murder and dislocation.

Back in the capital, press reports indicated that the commissioners were engaged in a constant struggle to obtain information from the government and the military. Although the parties had agreed to cooperate with the CEH, the commissioners were less than satisfied with the government's responses to requests for information. Internally, the CEH struggled over the methodology and the ideological framework for the report. What to do with all this information? How to do justice to the dead and the surviving? What was the appropriate analysis to explain the violence?

The intensity of the debate within the Guatemalan truth commission's central headquarters points to the polemics of the United Nations involvement in the process. The United Nations had served as the moderator in the peace process and was responsible for verifying completion of the accords; in the case of the truth commission, the mandate would seem to be to see that the CEH followed the letter of the accord. Yet if the CEH restricted itself to the mandate to "comply with the Oslo agreements", its report might be as weak as the accord conceived by the perpetrators.

Despite this conflict of interests, the UN assumed the role of godfather to the truth commission¹. The UN oversaw the hiring of staff, the design of a research methodology, and the establishment of the CEH's field offices. In some cases the truth commission shared office space, cell phones and vehicles with the UN's satellite offices. This blurring of boundaries contributed to the impression that the truth commission was an

international affair, especially in the countryside. Critics from across the political spectrum questioned whether the truth commission's goals coincided more with the "international community" than local and national objectives.

The public watched the CEH with scepticism and little hope. So on February 25, 1999, when the commission did present its report, the public was shocked at its strength. In addition to more than 3,500 pages of information on atrocities, including more than 600 massacres, the commission found the state responsible for more than 93% of the violations. And they called it genocide.

Consequences of the Guatemalan Truth Commission

Many expected that confining discussions of the violence to this new space of the truth commission would emasculate such knowledge. Yes, there would be a space for "the truth", but it would be a truth without consequences.

And yet the CEH's report could indeed have consequences. As mentioned, even the National Reconciliation Law fails to protect those accused of genocide from prosecution. In building a legal case around genocide, the Guatemalan truth commission has effectively bypassed its built-in weakness: the restriction regarding judicial implications. This is an important instance of the power of international laws contributing to a national struggle.

Given that the CEH was meant to be weak, how did it manage to produce such a strong report? As well as its international constituent parts it occurred within the context of an intense nation-wide desire to deal with the past. The Church's project, Recovery of Historical Memory (REMHI), prepared communities throughout rural Guatemala for the experience of sharing testimonies. REMHI's extensive four volume report, *Nunca Más*, presented in the middle of the CEH's tenure, served as the high standard that the CEH would have to try to match.

Nunca Más also generated a groundswell demand for the truth with an increasing number of exhumations. Occasionally aided by outside organizations, rural communities throughout Guatemala began submitting petitions to the Public Prosecution Service, seeking reburials for the thousands of bodies left buried in pits in the aftermath of the massacres. The process of exhuming the dead has had a profound affect on rural consciousness and power relations within communities. Arguably, this process has greater implications than events in the capital, or the experience of sharing one's story with a foreign testimony-taker. Pandora's box has been opened: a tremendous amount of energy, anguish and anger has been released. The central struggle in Guatemala continues to be the land: who digs it up, who controls the products of the earth.



Procession (exhumed bones)

Marlon García

¹ The United Nations established a Human Rights Verification Mission (MINUGUA) in 1994. As in El Salvador, at the advent of the negotiations in Guatemala in 1994, a UN human rights mission was seen as a necessary condition to allow conditions in the country to improve and therefore negotiations to proceed. Previously, the UN had been present in Guatemala through the UN High Commissioner on Refugees (UNHCR) and the UN Development Program (UNDP).