Part A: Articles

Dealing with a Legacy of Mass Atrocity: Truth Commissions in Uganda and Chile

Joanna R. Quinn

Abstract

After a period of mass atrocity committed at the hands of the State, societies are left trying to find a way to deal with what has taken place. Many States have attempted to utilise a form of the truth commission as an instrument of social learning and political change. Acknowledgement is central to this process. Such commissions in both Uganda and Chile were tempered with societal realities and met with varying degrees of success.

1 Introduction

After a period of mass human rights violations, societies are left with the daunting task of beginning to function again. In many cases, mass atrocity has been coupled with physical destruction and the overall deterioration of social infrastructure; civil wars, for example, take an extreme toll on the society as a whole. Government coffers are empty, and many of those with the expertise to 'fix' such problems have fled.

The process of reckoning with the past is by no means simple. Often, whole segments of the population have become pitted against one another, and those who formerly held the reins of power, have come to live side by side with those against whom they once acted. This paper explores, briefly, the going forward of a society, with an emphasis on acknowledgement. It also examines the role of truth in this process.

One of the mechanisms employed by these societies is the truth commission. Certainly, the different forms which the truth commission will take in a given society depend largely on the cultural specificities of that society. The truth commission, however, is one means by which a society can both come to terms with its past, and might obtain some reasonable measure of truth regarding past events.

What follows, then, is a theoretical discussion of the manner in which societies attempt to move forward after a period of gross human rights abuses. The cases used to explore the theoretical assumptions are provided simply to illustrate much of the discussion, and to provide an account of the state of affairs that resulted in the society's attempting to reckon with its past. The cases also reveal the influence of political and social structures in the process of truth-seeking, and consider the truth commission as an instrument of change. In this regard, the cases selected are Chile and Uganda.

* Ph.D. Candidate Department of Political Science, McMaster University. I wish to thank Dr. Rhoda Howard-Hassmann of McMaster University for her willingness to indulge me in many discussions over the past three years. It is thanks to these discussions that many of the ideas presented here have been developed.

It should be noted at this point that while a significant amount of literature exists regarding the Chilean truth commission, the literature pertaining to the Ugandan commission is difficult to obtain; much of the information initially gathered for the study was found in sources which mentioned the work of the Ugandan commission only in passing. To my knowledge, the report of the Ugandan commission is available only from the Uganda Human Rights Commission and from the Danish Ministry of Foreign Affairs. All other efforts to locate a copy of this document failed. Nonetheless, I was able to obtain copies of both the Ugandan and Chilean reports. This comparison, then, fills a particular void in discussions of reckoning with the past and with issues of restorative justice as it pertains to Uganda. The Chilean situation, on the other hand, provides an example of a commission which operated with the full benefit of the resources and support of its government.

The discussion is situated within the rubric of public policy. It considers the impact of the truth commission on both social learning and political change. It also looks at the role of the truth commission in situations of transitional governance. The process considered here is seen as a type of third order change or paradigm shift, in that the development of instruments like the truth commission often has a catalytic effect within the larger community.

II Truth Commissions Defined

Truth commissions have been variously defined; the literature as yet provides no single cohesive definition or formalisation. Under the guise of trials, tribunals and/or investigatory bodies, all have attempted to address, and in the main also to redress a legacy of human rights abuses in a particular country, in various forms and to varying degrees of success. The literature surrounding truth commissions is itself divided as to which institutions ought and ought not to be included in such a category; truth commissions are seen to range from the Nuremberg Trials in post-war Germany, to the restorative justice proceedings of Papua New Guinea, to the recent Truth and Reconciliation Commission (TRC) in South Africa.

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1 Social learning is defined by Hall as ‘a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information’. See Hall, Peter A, ‘Policy Paradigms, Social Learning, and the State’, Comparative Politics, April 1993, pp. 275-296.

2 A transitional society, as I define it, is one whose regime has, in the past, been corrupt, and whose actions have been negatively upon its citizens, but which has stopped, is attempting to stop or is stopping such behaviour (whether due to a regime change or not), and which is attempting to get back to the business of everyday life, with full inclusion extended to every member of society. This draws loosely upon Ruggie’s definition wherein ‘parametric’ conditions are reestablished; see Ruggie, J.G., ‘International Structure and International Transformation: Space, Time and Method’, Global Changes and Theoretical Challenges: Approaches to World Politics for the 1990s, in: Czempiel, Ernst-Otto, and Rosenau, James N. (eds), Lexington Books, Toronto, 1989, pp. 28-30.

3 Hall, loc.cit. (note 1), pp. 273-301.


5 These include, although not exhaustively: post-war Germany, the former East Germany, the former Yugoslavia, post-war Japan, Brazil, Uruguay, Paraguay, Honduras, Brazil, Argentina, Chile, El Salvador, Nicaragua, Guatemala, Uganda, Zimbabwe, Chad, Rwanda, South Africa, The Philippines, Sri Lanka, and many of the Eastern Bloc countries. This information is compiled from studies by the following: Barahona de Brito, Alexandra, Human Rights and Democratization in Latin America: Uruguay and Chile, Oxford University Press, New York, 1997; Gibney, Mark,
The question remains: is such broad-ranging inclusion warranted? It is my position that it is not. Briefly, I define a truth commission as an investigatory body established by the State or by a dominant (and often dissenting) faction within the State, to determine the truth about widespread human rights violations that occurred in the past, and to discover which parties may be blamed for their participation in perpetrating such violations over a specified period of time. The truth commission may be variously concerned with other aspects of reparation, including property and/or loss of income; truth commissions are, however, effectively inhibited from dealing with aspects other than human rights abuses because of the relative cost associated with other forms of reparation, monies which might better be allocated to other facets of the transitional society.

Clearly, there are great disparities between trials, tribunals, United Nations-sponsored and/or international non-governmental organisation-sponsored tribunals and truth commissions. Many of these bodies have other primary purposes, from assessing appropriate punishments, to awarding reparation monies. The main task of the truth commission, however, is the creation of a common and official – by means of being identified with an official record – truth narrative. This hearing of the experiences of oneself and others might well validate the experience of those involved in past crimes, both victim and perpetrator. I believe that the discussion of group and individual experiences, and the recognition of others’ experiences as valid, however different, is required. And this acknowledgement is central in allowing the entire community to move on. It is thought to be one step in the process of reconciliation between victims and perpetrators. It appears to be influential in bringing a sense of healing to the community.

Contemplative consideration of gravely important issues of the past is by no means a new enterprise. Ancient Israel recognised the value of justice and mercy, and attempted to practice both precepts. The ancient Greeks were also among those who perceived a tremendous value in remembering and in paying the price for similar issues which are today addressed by many truth commissions. Above all, truth was highly valued.

Still, even within such a strictly-defined definition, the truth commission can take particularly different forms, depending on its location. The resident culture of each particular State is rarely replicated across State borders; such characteristics often form the basis of stereotypes perpetuated in the stuff of urban legend. Canadians, for example, are often said to maintain a distinct cultural identity from that of their neighbours to the south, the United States of America. That distinct cultural identity, coming as it does from different experiences with history, forms the basis of influence in the development of the shape and scope of institutions within that State. The East German truth process (occurring as it did

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8 The Old Testament contains many such references. See, for example, Micah, chapters 6, 7.

9 See, for example, The Oresteia, a Greek play in which a legacy of past misdeeds and injustices is dealt with only after years of tumult. Aeschylus, The Oresteia, Translation by Robert Fagles, The Viking Press, New York, 1975.
nearly fifty years after the Nuremberg Trials) was vastly different from that of West Germany; the publication of fifteen volumes of information after a lengthy and intensive process, with support from both the legislature (and, by extension, presumably from the electorate) as well as the bureaucracy, fits well with a stereotypical culture which emphasises rigour, rigidity and discipline. In a similar vein, the Japanese post-war tribunals were very much 'imported' from the West and were not at all well-supported by those Japanese who held the remaining vestiges of power; the response of the Japanese, coming as it was from a tradition of obedience and deference, to the formation of a post-war inquiry, was one of lethargy and torpidity.

The distinct culture of the State, then, appears to play a special role in the determination of the form which all of its institutions (including its truth-telling apparatus) will take. Certainly, some of the cultural idiosyncrasies identified above might be attributed to mere stereotypical assumptions. However, it is fair to say, as others have already done, that culture is one of the most significant determinants in the building of policy instruments like the truth commission. In many States, the government, business and social establishments that develop are simply hybrids of the international model which have been tailored specifically to work in a local situation.

III Reckoning with the Past

It has been said that 'the struggle of man against power is the struggle of memory against forgetting', Recent writings on the subject of memory, forgetting, the effect of silence, and on finding some way to repair the damage done to both individual and community in situations of grave human rights violations, are many. These volumes deal with the most intimate aspects of life after a prolonged period of terrorism, either by the State or its agents and friends when the State finds itself in transition.

Compounding the difficulties in the lives of victims after an episode of human rights violations may be such complexities as the unknown whereabouts of persons who have been ‘disappeared’ at the hand of the State or who have been expelled from schools to face a life made more frustrating without benefit of formal education, and the handicaps presented by each of these discriminations and many others. More often than not, family members, friends and colleagues have been involved; even if the individual herself has not been a direct participant in the fray of mass violence, she is very likely to have been affected in some way.

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6 The Japanese Government had been replaced after 1945 by an army and government of occupation.
10 State terrorism may be divided into three categories: coercive diplomacy, which makes non-compliance simply unbearable; covert behaviour, wherein clandestine services of the State are in operation; and surrogate terrorism, in which the State offers assistance to another state or insurgent organisation to enable terrorist acts. Taken from Stohl, Michael, 'International Dimensions of Terrorism', The State as Terrorist: The Dynamics of Governmental Violence and Repression, Stohl, Michael and Lopez, George A., (eds.), Greenwood Press, Westport, Conn., 1984, pp. 43-55.
The goal of the process undertaken by the truth commission, whether overt or simply understood, is acknowledgement. In the case of South Africa, for example, the intention of the government in setting up the TRC was to encourage and foster the restoration of friendships and the harmonisation of its peoples. Other countries such as Cambodia have made inquiries of the South African Government as to how to set up such a process so as to avoid a national or international tribunal aimed only at prosecution, but still to come to terms with the truth of past events. Others remain more skeptical regarding the possibility of the success of policies of this type of accommodation leading to any positive outcome.

Societies that have lived through political turmoil and social deterioration, however, are struggling to find a way to move forward. Some States choose to try to move forward without attempting even to comprehend what has happened. Others confront past atrocities head-on, and meet with varying degrees of success. Many times, a combination of these approaches is employed.

The ‘going forward’ of a State may involve many different things. A successful reckoning with the past will include some form of coming to terms with the past, a wide range of emotional responses, and memory and remembering, in both its emotional and physical manifestations (e.g. through commemoration). These steps form the basis of what I call ‘acknowledgement’. In all cases, some form of forgiveness or ‘ceasing to feel angry’ must occur in order that any type of reconciliation, social trust, or the rebuilding of democracy and its various institutions, may occur.

It is my hypothesis that the one stage in the theory through which any successful process must pass is acknowledgement. Acknowledgement in and of itself is not a conclusion. Nor is it able to affect any kind of meaningful change. Rather, in the language of the social scientist, it forms a necessary but not sufficient condition.

Acknowledgement, then, appears to occupy a central position in the truth process. Societies in crisis need resolution. Simply ignoring the past will bring no such ‘closure’ for the individuals on both sides of the societal divide which is inescapably created in the midst of the conflict. Rather, the discussion of group and individual experiences, and the recognition of others’ experiences as valid, however different, is required. And the work of the truth commission, in listening and observing, and finally creating a common narrative of truth, is especially important in this regard.

Truth itself is a concept which defies strict definition. There are different types of truth which were developed to serve as standards in the South African case, and which could be used as a benchmark for like endeavours. First is forensic or factual truth, which is often especially helpful in reducing the amount of counter-factual material which may be presented. Another is a personal or normative truth; especially in cases like South Africa, where so many of the written records of the era of abuses may have been destroyed, this oral tradition enables the restoration of dignity and the creation of a narrative truth. Additionally, one must consider sociological or dialogical truth, or the act of an experience as perceived through debate, in which case the act of obtaining the truth is accorded almost as much significance as the truth itself. Finally, through the acknowledgement of the

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activities of the past and a recognition of responsibility for those actions may come a healing and restorative truth. 17

Another means of conceptualising truth divides truths into either subjective or objective meanings. To consider truth from a subjective standpoint, one must understand the entire contextual background from within which the truth comes. 18 Thus, it is the truth as it is perceived to have taken place that is particularly illustrative. Conversely, objective truth is independent of beliefs and opinions. Truth forces the discarding of perceptions and is presented only in fact-like form. 19 Certainly, both of these ‘truths’ must be considered in the course of a TRC, although subjective truth-telling appears to be especially helpful in developing a cohesive and seamless rendition of events as they actually occurred.

That which is developed in the process of truth-telling, therefore, is an established narrative of truth, constructed from the shards of individual truth as relayed to the tribunal. But can there be one single narrative? Each account emerges, ‘talking up’ different facts and particular details of things remembered, and corresponding normative judgments must be made in taking decisions to accept or reject the addition of a particular detail to that narrative. However, it is a steadfast reliance by commissioners on particularly invariant rules as laid out in several international conventions and treaties which ensures a valid interpretation of details as they are added to the collective narrative. 20 Once the ‘truth’ has been given voice, it has entered into the public domain where the existence of such memories may no longer be denied. 21 This is acknowledgement.

Citizens have an inherent right to this truth. Such a right was established in Article 19 of the Universal Declaration of Human Rights; 22 similar sentiments are also contained within Article 9 of the African Charter on Human and Peoples’ Rights. 23 Hayner asserts that States’ duty to try and punish perpetrators of human rights abuses gives others the right to the information turned up in the process. 24 So, for example, Pinochet’s arrest in London in 1998 was a direct result of criminal complaints filed by those victims seeking the truth, who had been denied the opportunity of similar action in their home countries of Chile and Argentina; 25 the principles of international law, as applied in this case, support this right to truth.

19 Ibidem, pp. 145-146.
20 For example, the International Covenant on Civil and Political Rights states that depriving someone of his life is wrong. See ‘International Covenant on Civil and Political Rights’, in: Twenty-Five Human Rights Documents, Centre for the Study of Human Rights/Columbia University, New York, 1994, p. 18.
22 Article 19 of the Universal Declaration of Human Rights reads: ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’. From: ‘Universal Declaration of Human Rights’, in: Twenty-Five Human Rights Documents, Center for the Study of Human Rights/Columbia University, New York, 1994, p. 8.
This quest for the ‘truth’ is no easy task. Many truth commissions in the immediate post-war period have spent countless hours and even more money in the development of institutions and the tracking down of testimony for such a purpose. The cases of Uganda and Chile, below, provide a glimpse of the conditions that led to the establishment of the truth commissions in each case.

IV Uganda

A. Social and Historical Context

Until the late 19th century, the presence of Europeans was largely unknown in the Great Lakes region of Africa. When Europeans began to arrive, it was in waves: first came occasional visits by travelers in the 1860s and early 1870s; next came missionaries in the late 1870s; and, finally, the Imperial British East Africa Company in 1890. Britain formally declared a protectorate over the area which now comprises Uganda in 1894.26

At that time, the country was divided into a series of indigenous kingdoms and chiefdoms, each of which had its own ruler and leadership system.37 Into this already rich tapestry was woven a tense relationship between Muslim traders from the coast of East Africa and Christians; serious conflict between the two groups ensued in the form of war between 1888 and 1889, and also between Christian factions in 1892 from which the Protestants emerged victorious.28 In 1900, the Uganda Agreement29 was signed, a treaty between the British protectorate and the kingdom of Buganda, an attempt to establish indirect rule in the protectorate. This agreement divided Buganda along religious lines, and Ganda chiefs were given pockets of land measured in square miles (called malo lands) as their private property, their rule restricted to a central royal council. During this period, Uganda was held up by Britain as a model of indirect rule.30

B. Government and Politics

Uganda’s political structure continued in much the same configuration, managing to survive through especially violent strikes in Buganda during 1945 and 1949, until 1962. In March of that year, internal autonomy was granted, followed by complete sovereignty on 9 October 1962. A National Assembly was elected, and a semi-federal constitution drafted; for the first time since colonialism and contact with the British, Ugandans were in charge.

The original structure of Uganda’s independence government was established in the form of Legislative and Executive Councils in 1920. Ugandans were not granted access to either of these bodies until 1944 and the early 1950s, respectively.31 Those politicians who entered the fray in 1962, then, were mere novices in the face of Britain’s exported Westminster

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29 The Uganda Agreement of 1900 is also referred to in the literature as the Buganda Agreement, as it significantly changed Bugandan society. See Berg-Schlosser and Siegler, op. cit. (note 27), pp. 97-99.
system, itself an ancient and well-established institution. Even the new prime minister, Milton Obote, who held office from 1962-1971, was relatively inexperienced in the ways of the newly-created National Assembly.

Life under Obote and his successors turned out to be very different from what it had been under the British. From 1962 until 1986, Uganda underwent a series of coups, culminating in a great concentration of power in the hands of the head of State. Obote’s first term in power was characterised by significant numbers of riots and armed attacks. Obote’s term in office, however, was marked by an abrupt halt.

In 1971, General Idi Amin Dada overthrew Obote, suspended the constitution and ruled under a provisional government structure until 1979. To sustain his authority, Amin, who came to be known as ‘the butcher’, carried out a reign of terror, systematically and brutally murdering and torturing those he considered to stand in his way. Asians were expelled in 1972 and their property confiscated, compensation for which has yet to be determined. During this period, violence was rampant, and the military and paramilitary mechanisms of the State conducted brutal campaigns of torture; the butcher’s lasting legacy is one of heinous torture and brutal killings. In 1978, Uganda attacked Tanzania; Tanzania, in support of Amin’s opponents, invaded and defeated Amin. Interim governments were appointed in 1979 and 1980.

From 1980-1985, Obote returned to power. The country was once again beleaguered by ‘rampant human rights abuses’, this time far worse than anything it had experienced during his first term in office. The paramilitary apparatus of the State again began its practice of routinely violating human rights, by means of rape, torture, looting, and destruction of property. The scale of repression and abuse was roughly the same as it had been under Amin; the only difference for many Ugandans was that their former leader (Amin) had been substituted for another (Obote) with a heightened and reinvigorated fury. Obote was overthrown in July 1985.

Yoweri Museveni came to power in January 1986, abolishing all political parties except the National Resistance Movement (NRM) that had made his victory possible. Conditions began to improve in Uganda after Museveni took power. Buganda and some of the other Ugandan monarchies were restored to considerably lower status than they once held. The human rights abuses abated.

Today, the structure of Uganda’s Government remains much the same as it was when Museveni came to power in 1986. The Republic of Uganda is governed by President Yoweri Museveni and Prime Minister Apolo Nsibambi.

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34 Prouet. loc.cit. (note 26), p. 305.
39 For a much more complete account of Uganda’s history from 1971, see Berg-Schlosser and Siegler 97-132.
41 Ibidem, p. 852.
Uganda was left devastated by more than two decades of intense struggle and brutality. It is one of the States in the world most badly affected by HIV and AIDS. Accordingly, NGOs have been forced to assume much of the encumbrance of the provision and contribution of financial support, as the State itself has been financially unable to offer assistance in all areas.

Citizens sometimes still associate ‘government’ with violence and corruption. In an effort to reverse this image, the government annually grants amnesty and pardon to prisoners, as specified in Museveni’s ‘Prerogative of Mercy’. The Government of Uganda has attempted to put forth a new image, through agencies such as the official government daily newspaper, The New Vision, Radio Uganda, and the National Museum, National Cultural Centre and Nnonmo Gallery. All are evidence of what the government boasts of as a ‘forged union of many peoples... [who] live and work together as one people, all proud to be Ugandans, while each cherishes their history and traditions’.

C. Commission of Inquiry into Violations of Human Rights

In fact, the restoration of peace to Uganda did begin under Museveni. A new Constitution was delivered in 1995, and a new system of governance has begun to emerge. One of Museveni’s first actions was the establishment in May 1986 of a Commission of Inquiry into Violations of Human Rights. This commission followed an emerging trend, one that had been attempted by Uganda’s neighbour, Zimbabwe (1985). Uganda had tried and failed with an earlier attempt at a truth commission; although it meets the definition of the truth commission as laid out earlier, it was clearly not meant to uncover any kind of truth. In 1974, Amin instituted the Commission of Inquiry into ‘Disappearances’ of People in Uganda Since the 25th of January 1971. The results and final report were published, but none of the

recommendations was ever carried out and the four commissioners faced retaliation\(^{53}\) at the hand of the State in the wake of their revelations.\(^{54}\)

When Obote returned to power from 1980-1985, he attempted a similar process. A Commission of Inquiry into the Disappearance of Dr. Ibanda established during this period was virtually ignored and eventually abandoned.\(^{55}\) Clearly, the search for truth under Obote was met with resistance.

The *Commission of Inquiry into Violations of Human Rights* (CIVHR) was established by Legal Notice Number 5 of 1986\(^{56}\) ‘to inquire, *inter alia*, into ‘the causes and circumstances’ surrounding the whole range of human rights violations and breaches of the rule of law’\(^{57}\) between 1962 and January 1986 when Museveni and the NRM assumed power. In commissioning the CIVHR, Minister of Justice Joseph Mulenga stated that the government ‘intended first to facilitate the assembling of evidence through which those responsible for the crimes and atrocities committed against the people of [Uganda] and against humanity in general can be identified and brought to book’.\(^{58}\) The Commission was also expected to determine the complicity of various state institutions in both perpetrating and hiding gross human rights violations; the government promised that the results and findings of this Commission would be treated seriously, unlike previous commissions of inquiry. The CIVHR and its Commissioners reported directly to President Museveni.\(^{59}\)

In charge of the proceedings was Judge Arthur H.O. Oder, a veteran of human rights cases from the court system of Uganda,\(^{60}\) and five commissioners, among them two university professors, a lawyer, a writer and a medical doctor. Also participating in the process were private citizens, government dignitaries\(^{61}\) and international NGOs.\(^{62}\) The commissioners were conscious both of the need for a strengthened, permanent structure to ensure respect for human rights in Uganda and of the constitutional hearings and process which were taking place concurrently.\(^{63}\) They also viewed the CIVHR as ‘a necessary post-mortem of the ills of society with a view to finding a permanent cure’.\(^{64}\) Indeed, one of the most important roles filled by the Commission was that of education; prior to the hearings, many of the people of Uganda were unaware of their human rights, and that they had a right to speak up when these rights were violated.\(^{65}\) The extent and legacy of this human rights education is visible today.

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53 All of the Commissioners were targeted by the State. One, an expatriate Pakistani judge, lost his job. Another was framed with fabricated murder charges and sentenced to die. A third fled the country to avoid arrest.
Specifically, the mission of the Commission of Inquiry into Violations of Human Rights was ‘to inquire into all aspects of violation of human rights, breaches of rule of law and excessive abuses of power, committed against persons in Uganda by the regimes in government, their servants, agents of agencies whatsoever called, during the period from the 9th day of October 1962 to the 25th day of January 1986 and possible ways of preventing the reoccurrence of the aforesaid matters’.\textsuperscript{60} In December 1986, the Commission began to identify and choose those who would testify publicly before the Commission, after having carefully examined judicial records detailing the events of the past 24 years.\textsuperscript{67} The Commission’s mandate was widened, in 1987, to allow it to recommend prosecution for those involved in the crimes reported.\textsuperscript{68} The commissioners, in addition to collecting testimony from witnesses, held a three-day workshop and seminar, and consulted with Dr. José Zalaquett,\textsuperscript{69} a Chilean professor and former member of the Chilean truth commission.\textsuperscript{70} The Commission traveled widely across Uganda, and accepted statements regarding ‘the nefarious activities of paramilitary agencies of Uganda (…) [and a] wide range of gross violation[s] of human rights by these paramilitary agencies’.\textsuperscript{71} More than 600 witnesses came before the Commission. Their testimonies included narrative accounts of graphic violence. One woman described the sequential murder of five of her children before she herself was brutally stabbed by soldiers.\textsuperscript{72} On more than two occasions, reports detailed the deaths of women whose breasts had been slashed off and who had been sexually violated with hot irons.\textsuperscript{73} In all cases, the accounts of torture and abuse were horrific.\textsuperscript{74}

The CIVHR was hampered by any number of circumstances. The Ministry of Justice and the Criminal Investigation Division (CID) were consulted as to details about cases recommended for prosecution which were not undertaken, but the departments could provide no satisfactory answers.\textsuperscript{75} As well, the Commission was desperately short of funds, and was forced at one point to suspend public hearings; a February 1988 Ford Foundation Grant enabled the CIVHR to resume those hearings.\textsuperscript{76} Commissioners reporting being limited by serious shortages, including filing cabinets, stationery (at certain stages, those testifying before the Commission were asked to provide their own paper, files, and pens to the Commissioners in order that their testimony might be recorded), staff, and transportation.\textsuperscript{77} Consequently, the Commissioners worked only part-time on the CIVHR.\textsuperscript{78} Such constraints forced the Commission to delay the release of its report, which had initially been expected in June 1992.\textsuperscript{79} The Swedish International Development Agency and the Danish International

\textsuperscript{69} \textit{Ibidem}, p. 6.
\textsuperscript{70} Truth Commissions: A Comparative Assessment, \textit{op. cit.} (note 5), p. 88
\textsuperscript{71} Khiddu-Makubuya, \textit{op.cit.} (note 35), p. 155.
\textsuperscript{74} It is perhaps out of the ordinary to include graphic details such as these in a paper of this nature. However, I believe that without at least a basic understanding of the nature of the cases detailed in the Report, the overall impact of the Commission’s success and failures cannot truly be understood.
\textsuperscript{75} Kakwenzire, \textit{loc.cit.} (note 55), p. 22.
\textsuperscript{76} Ofcansky, \textit{op.cit.} (note 67), p. 66.
\textsuperscript{77} Kakwenzire, \textit{loc.cit.} (note 55), p. 28.
Development Agency made contributions of assistance and funding, including the provision of office equipment and printing services, which allowed the Commission to complete its work. The final report, totaling nearly 700 pages, had only a very limited distribution and is not widely available. It was publicly presented 'at the end of 1994'. In addition, the Commission prepared a pamphlet detailing the results and findings of its work to be distributed to the citizens of Uganda.

The CIVHR began its work in 1986, with what was hoped would be a three-year mandate. However, significant delays were encountered, many of which stemmed from the government’s haste in appointing the Commission. These included the shortage of funds discussed above, the difficulty of ‘the vastness of the exercise’, the amount of preparation required, and the inaccessibility of many parts of the country due to rebellion for long periods of time. The Commission was rebuked for not being more proactive in its search for the ‘truth’, in that it only heard testimony presented before its hearings and did not attempt independently to explore such assertions. It was also criticised by some sections of the populace for not having looked at violations which had occurred after January 1986; this, too, was outside of the directly-stated mandate of the CIVHR. Additionally, the Commission’s reliance on the CID was seen as tainted, as the office of the CID is commonly associated with high levels of corruption.

D. Outcomes

The outcomes of the Commission of Inquiry into Violations of Human Rights were essentially predicated on Museveni’s Ten Point Program, which centred out past violations as important and determined to end them. The Ten Point Program also attempted to revolutionise the rest of Uganda’s political institutions, including the Constitution, reforming old ones and developing new ones, such as the CIVHR. The recommendations of the Commission were effective, and called for many changes to take place to strengthen accountability and proposed certain changes to the protection of human rights within the country.

A permanent Human Rights Commission is another part of the legacy of the CIVHR’s activities. The skeleton of such an Commission had been outlined in the 1995 Constitution. The permanent Human Rights Commission, called the Uganda Human Rights Commission (UHRC) continues the tradition of human rights education begun by the Commission. The purpose of the permanent Human Rights Commission in the era

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51 Peter Bouckaert, Africa Division of Human Rights Watch, Email Interview, 27 July 1999.
52 The precise publication date of the Report is not widely known and/or available, see Oloka-Onyango, loc.cit. (note 51), p. 376.
57 Pirouet, loc.cit. (note 65), p. 207.
following the CIVHR is to act as a warning system, with its main focus on prevention of gross human rights violations, with an eye to the eradication of human rights abuses in general. The UHRC filed its first report in August 1998, and now sits as a permanent human rights court. Its activity, however, is restricted by a lack of intervention power with regard to the courts. Its main reported function appears to be the inspection of prison facilities and the public release of its findings.

In other ways, however, the impact of the Commission has been less significant. The government’s ‘forgive and forget’ attitude has led to continued offers of amnesty for former guerrilla/resistance soldiers. In May of 1999, the NRM even went so far as to invite Obote to return from exile. No such offer appears to have been extended to Armin, who lives in Saudi Arabia and was himself exiled by that government to Mecca in 1998 for his complicity in arranging to send a shipment of arms to Northern Uganda rebels.

The impact of the CIVHR, in the end, has been lasting. Many of those who fled Uganda during tumultuous and dangerous periods of its recent history, have begun to return, some to positions of prominence within the country. The 1995 Constitution reflects many of the recommendations made by the Commission. In the last presidential election, large numbers of voters cast their votes, and electoral irregularities and violence were not reported.

V Chile

A. Social and Historical Context

Prior to Spanish rule, the area which is now northern Chile was ruled by the Incas; the conquest of 1536-1540 brought the area under Spanish control. The country as a whole gained independence from Spain in 1818, after a hard-fought eight years war. This move toward independence came at the beginning of the Latin American movement toward consolidation of independent States. Chile was the scene of several major ‘international’ conflicts and civil wars throughout the 19th century.

Chile had been important to the Spaniards for one main reason: as a colonial servant, Chile supplied the mother country with several primary goods, including precious metals and cash crops. Spain controlled all shipping and production, and much of the land and the populations within the colony. Spain also dominated significant segments of Chilean society; the institutions, political and social structures, including patrón-píon landlord relationships and land distribution, established under the Spaniards were still visible into the mid-1960s.

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90 Khidu-Makubuya, loc. cit. (note 35), p 222.
94 Keesings Record of World Events 45.5 (1999): 42926.
95 Keesings Record of World Events 44.3 (1998): 42111.
When the Constitution was promulgated in 1833, the tradition of strong and dominant executives remained through 1891 and beyond. And as the world became a more export-oriented place, Chile was attractive to both the United Kingdom and United States of America; they invested heavily, making the Chilean economy more and more export-driven. This, in turn, increased the numbers of people in the working class and led to the organisation of workers in the Socialist and Communist traditions, and to a prolonged period of stability.\textsuperscript{100}

**B. Government and Politics**

The ensuing decades in Chilean politics bore the fruits of the changes which had occurred in the late 19th and early 20th centuries. In 1925 a new Constitution was adopted; the houses of power, including a Senate and Chamber of Deputies, a process of proportional representation, and the encouragement of political participation were codified. From that point until 1973, Chile was governed by a stable succession of leaders and law and order were maintained.\textsuperscript{101} That stability had, in fact, been present with two minor exceptions since 1830.\textsuperscript{102}

In 1973, however, that stability came to a crashing halt; Salvador Allende, a Marxist President, had been elected in 1970 and had pursued policies of socialism.\textsuperscript{103} The country was plunged into turmoil when these programs began to fail, causing Allende’s opponents to rebel and to seek retribution.\textsuperscript{104} Allende and his administration were overthrown and Allende himself died in the military coup.

His successor, General Augusto Pinochet Ugarte, was nearly Allende’s opposite in every way: nationalisation was replaced with privatisation and political repression replaced the freedom for the working-class that Allende had intended.\textsuperscript{105} The social cost of Pinochet’s dramatic turn-about plans for Chile was enormous.\textsuperscript{106} In an attempt to legitimise many of his changes, Pinochet turned to legal and physical repression.

Repression under Pinochet came in four waves. During the first era, the mass human rights abuses perpetrated by the State began to be performed in a rigorous and professionalised manner, as the mandate of the Dirección de Inteligencia Nacional (Directorate of National Intelligence or DINA) was sharpened. Human rights abuses became targeted, and disappearances precise. The second era saw the dissolution of the DINA, which was replaced by an equally-repressive counterpart, the Centro Nacional de Información (National Information Centre or CNI). This time, however, in addition to disappearances, banishment and foreign exile, the repression was legalised. A new Constitution in March 1981 ushered in yet another era; this document codified what had been routinely practiced and guaranteed and ensured that Pinochet would remain in power. In the final stage, Pinochet

\textsuperscript{100} Ibidem, pp. 9-11.
\textsuperscript{103} De Brito, op.cit. (note 5), p. 41.
\textsuperscript{104} ‘Chile’, in: Fumighetti, op.cit. (note 40), p. 784.
\textsuperscript{105} Oppenheim, op.cit. (note 108), pp. 27-28.
\textsuperscript{106} Valenzuela, *loc.cit.* (note 102), p. 70.

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was faced with opposition from the populace, showed signs of losing control, lost a plebiscite on his continued rule in September 1988, and eventually lost all power.107

The man who came to power following Pinochet, was Patricio Aylwin Azocar. Aylwin found support among those united in the cause of obtaining justice and truth, and faced opposition from a right-wing coalition. The key to Aylwin’s election platform was an emphasis on four areas: truth, justice, political prisoners, and reparations, causes to which Aylwin himself was personally committed.108 He also espoused a return to democracy, and a reinstatement of international relations with countries around the world.109

Aylwin then served as Chile’s first civilian president since the coup of 1973.110 His term in office was, however, not without opposition. The military was able to retain a relatively high degree of control, and Pinochet himself stayed on as head of the army until early in 1998.111 The hands of Congress were also tied with regard to bringing charges against military perpetrators.112 Such laws were put into place to placate those who had been implicated in the abuses promulgated under Pinochet, whether they chose to retire into civilian life, or to retain positions of prominence and power under the new regime.

The situation as it presently exists in Chile is positive. Chile held free and fair democratic elections in December 1999 and subsequent run-off elections, and President Ricardo Lagos Escobar, Chile’s third successive democratic president since Pinochet, assumed office in March 2000.113 Upon leaving office, as is the Chilean custom, former presidents become eligible for a seat as senator-for-life.114 Former president General Augusto Pinochet,115 interestingly, was also named a senator-for-life, once he retired from the army and assumed a new position within the system of government.110

C. National Commission on Truth and Reconciliation

Of all that the Concertación Government of Aylwin was able to accomplish, what stands as the most pervasive of all of his policies was reconciliation. In his inaugural speech of 11 March 1990, President Aylwin announced that the most important duty of his government would be to confront Chile’s legacy of human rights violations and to pay the ‘social debt’

111 Idem.
112 De Brito, op. cit. (note 5), pp. 105-106.
114 Idem.
115 Pinochet was arrested in 1998 in the United Kingdom, where he had gone for medical treatment, for human rights crimes perpetrated in Chile from 1973-1990, and was detained until March 2000 when psychologists determined that Pinochet was apparently mentally unfit to be brought to trial. See Human Rights Watch, ‘The Pinochet Proceedent’, op. cit. (note 26).
left by the strict economic reforms of Pinochet. The theme of his government would be national reconciliation.

To meet such expectations, in April 1990, a truth commission was established by Aylwin. The establishment of a truth commission followed the earlier examples of Chile’s neighbours: Bolivia (1982-1984), Argentina (1983-1984), Brazil (1981-1985), Uruguay (1986-1989) and Paraguay (1989). The structure of the committee was outlined in Supreme Decree No. 355, as ‘only on the basis of truth will it be possible to satisfy the basic demands of justice and create indispensable conditions for achieving true national reconciliation’. The Commission was charged with telling a ‘global truth’ and investigating all cases of human rights abuses under the former regime. Officially called the National Commission on Truth and Reconciliation, the CNCTR was commonly referred to as the Rettig Commission, after its President, former senator and lawyer Raúl Rettig Guissem. Rettig, another seven members and a secretary which comprised the Commission, were named in Supreme Decree No. 355. These Commissioners were ‘conscientiously selected’ so as to avoid any bias, and even included former members of the Pinochet regime.

The CNCTR itself had a mandate of six months, from 9 May 1990 to 9 November 1990, and required a three-month extension, as laid out in Supreme Decree No. 355, Article Five, which meant that its report was tabled on 9 February 1991. In an internationally-televised ceremony, President Aylwin received the report on 8 February; on 4 March, nearly four weeks after his receipt of the document, Aylwin presented it to the people of Chile, again on live television. In his address, he begged victims of abuses to pardon the perpetrators, asked the perpetrators to ‘make gestures of recognition of the pain caused and cooperate in diminishing it’ and spoke of forgiveness.

During those nine months, the Commission received evidence from victims and their families, considered such evidence, and finally prepared a report. Those cases which the commissioners and their staff heard, totaled approximately 3,400 and were selected after a registration process which took place in regional Commission offices in Chile and abroad at Chilean consulates and embassies in June 1990. Lists of victims and the details of their cases were collected from the various agencies which had already begun to compile testimony from victims and their families. Testimony was heard, evidence gathered and decisions made; in the end, all of the evidence was referred to the courts, except for the testimony of those who had been granted a blanket amnesty. Like the South African model several years later, the Chilean Commission attempted to exchange amnesty for truth-telling. The Spanish-language edition of the report listed the names of the victims and Volume 1 of the report

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118 Hayner, loc.cit. (note 5), pp. 613-614; Weschler, op.cit. (note 5), pp. 4-235; De Brito, op.cit. (note 5), pp. 2-3.
120 De Brito, op.cit. (note 5), p. 152.
127 De Brito, op.cit. (note 5), p. 3.
detailed the situation, cases organised by region, and societal attitudes, a solid acknowledgement and establishment of the truth. Volume 2, organised in the main chronologically, listed both overviews and cases as well as separation proposals and recommendations.128

Notwithstanding a few roadblocks, the Rettig Commission enjoyed relative freedom and met with overall success. This was due mostly to the personal interest in the CNCTR and its work by President Aylwin, who claimed to take ‘personal responsibility’ for both initiating and authenticating the narrative of truth which emerged from the proceedings.129 He is said to have personally written Supreme Decree No. 355.130 Commissioners and their staff enjoyed freedom when moving about to gather and hear testimony and information; Commissioners were able to visit all of the provincial capitals between July and September, and foreigners in exile provided testimony. The opposition in government, the right-wing contingent, was antagonistic to the process at the start, members of the right did, however, agree to participate.131 The military was not always helpful in providing information, often assisted by its own by-laws in being allowed to ‘stall’ or to have destroyed or ‘misplaced’ evidence.132

The CNCTR, however, did not escape criticism. The political right nicknamed the truth commission the ‘Commission of Resentment and Revenge’.133 Very few copies of the report were ever printed in their original Spanish form.134 The names of those involved as perpetrators were never made public, and will not be made public until 2016, a concession to the criticism of the right.135 The Commission had no investigatory or prosecutorial powers. The report answers only questions about famous cases, such as that of the apparent suicide of Allende.136 The same military establishment which had perpetrated many of the abuses, carried on after the release of the report as it had before. The report itself was claimed by the families of the ‘disappeared’ to be ‘biased and partial’.137 That General Pinochet was allowed to remain a particularly vital part of the government, and was appointed a Senator upon his retirement from the military, caused some skepticism as to the purported distance which existed between Aylwin and Pinochet, and as to the continued control long retained by Pinochet.

D. Outcomes

The Chilean National Commission on Truth and Reconciliation has been relegated to its proper place in history. Its report was tabled eight years ago, and the ‘acknowledgement’ by Aylwin’s government of the suffering of the people of Chile appears to have played a vital role in helping Chile to regain democracy. The attitude of the population toward the investigation of human rights abuses is one of everyday-ness.138 Aylwin himself, only six

131 De Brito, op. cit. (note 5), p. 156.
133 De Brito, op. cit. (note 5), p. 156.
months after the completion of the report, announced that the period of reconciliation was over and that the new mandate of the Concertación Government would shift to efficiency.\\(^{139}\) The reconciliation that the Chilean Commission had managed to achieve, was a thing of the past.

Its legacy, however, is not likely to be forgotten. The Concertación also enacted several different pieces of legislation to ensure compliance with the CNCTR’s recommendations. A Special Inter-ministerial Commission was appointed to follow up on the aspects of reparation as laid out in the report. As well, a National Corporation for Reconciliation was proposed to implement those elements of acknowledgement recommended by the commission, and its mandate has, for the most part, been executed.\\(^{140}\) In addition, Aylwin created a Reparations law to ensure monetary reparation, health and education benefits to victims and their survivors. He also created the Office for Returning Nationals to help exiles who choose to return to Chile. Additionally, the Law of the Exonerated provides benefits to those former public service employees whose employment was terminated under Pinochet. Finally, Aylwin freed nearly all political prisoners and made an effort to reform the judiciary.\\(^{141}\) The Commission also recommended the formation of a Foundation for Public Law to continue the work which had been begun by the Commission.\\(^{142}\)

In an ironic turn of events, Pinochet was detained by officials in the United Kingdom in October 1998, to face extradition to Spain for charges of crimes committed during his sixteen years as president.\\(^{143}\) In March 2000, he was declared mentally unfit to stand trial and allowed to return to Chile.\\(^{144}\) The Chilean Supreme Court moved to strip Pinochet of his immunity, and the former charges against him were reinstated.\\(^{145}\) At the time of writing, charges have been dropped for medical reasons, although further efforts at prosecution are underway.

The 2000 presidential election revealed the country’s understanding, discernment and feelings toward the old administration and the new. The election of Lagos ensured, if only temporarily, the continuation of the work of the Concertación.

VI Conclusions

The establishment of the ‘truth’ in such circumstances is necessarily difficult. The role of the truth commission, nonetheless, is to establish this truth and to report on it. Truth commissions, as discussed above, are not at all concerned with the meting out of western-style retributive justice, or even with retribution of any sort. The role that the truth commission plays in the course of dealing with a past legacy of human rights abuses does not stop at establishing the truth. Rather, it plays a crucial role in facilitating the process of acknowledgement which must be present in order for a society to come to terms with its past.


\(^{140}\) Brown, \textit{op.cit.} (note 19), p. 31.

\(^{141}\) De Brito, \textit{op.cit.} (note 5), p. 154; translation of the names of offices and institutions is mine.


\(^{143}\) US Department of State, ‘Chile’, 2. See also footnote 127 for additional explanation.


And this bringing about the acceptance of the occurrence of past events, is what comprises the true spirit of the truth commission.

It must be remembered, however, that truth commissions grow and flourish within a particular society, buffeted by particular trends, beliefs and norms that have been shaped by historical trends and processes; it is not so hard to understand, then, why the shape of these various commissions will be different from place to place. Certainly, the examples provided by Uganda and Chile, as presented above, are two of the more disparate cases which might have been chosen. Their similarities, too, are remarkable.

Can either of these commissions, however, be considered a serious attempt at reckoning with the past? The Ugandan case points to a number of positive outcomes: unlike previous truth commission attempts, none of the truth commissioners was murdered; the Uganda Human Rights Commission exists as a direct result of the work of the CIVHR; witnesses gladly testified; and the crimes committed were finally and officially acknowledged by a body appointed directly by the government. The theoretical conception, outlined above, indicates the importance of acknowledgement, and suggests that acknowledgement can best be accomplished by means of physical monuments and official commemorations. Uganda certainly achieved much of this, in that the narratives given by witnesses were officially heard and recorded, and society did, indeed, benefit; the Ugandan commission and the testimony of witnesses received a significant amount of attention, all of which served to increase Ugandans’ awareness of the changes taking place. Still, the CIVHR was unable to dispense restitutive justice; that Amin and others presently walk free dispels any myth that the commission met with real success.

The Chilean case provides a much stronger example of relative success. The CNCTR faced few of the challenges encountered in the Ugandan case; it was strongly supported by Aylwin and his allies; and Chile went to great lengths to repair damaged relations with programs of reparation, exoneration and repatriation. And yet despite all of the success of the Chilean commission, the process did not manage to deal successfully with the chief perpetrator: Pinochet. This indicates a degree failure initially unanticipated upon the commission’s completion of its mandate. The extent to which Pinochet will face real justice now will reveal just how well the spirit in which the commission was created has fared.

The tradition of democracy in Chile is centuries old. Its systems of governance were well entrenched. And still the egregious events of Pinochet’s regime were allowed to occur, unchecked by those democratic processes that had been entrenched for generations in that country. The truth commission emerged out of these democratic traditions, and used the country’s familiarity with the basic tenets of justice and democratic structure to strengthen its outcomes. Today, it appears that democratic stability has returned to Chile, and that those institutions which once provided democratic authority and justice have been restored.

In the Ugandan case, such traditions of democracy were not nearly as strong. In fact, Uganda had never truly been an independent democracy. The traditions invoked by the truth commission were, in fact, in many ways foreign to the people of Uganda. And so the use of a truth commission in such a ‘political vacuum’ might seem out of place. Yet the CIVHR itself made noteworthy progress in building a fair and equitable, distinctly Ugandan judicial solution. It also contributed to the emerging tradition of democracy in Uganda.

Both Uganda and Chile have seemingly fought an uphill battle; their truth commissions encountered significant difficulties, yet managed to render some kind of impact upon their
respective societies. The public education campaigns that each commission undertook sought to make the population aware, at least, of the work of the commission. Certainly, both were at extremely low points when the truth commissions were established. And yet today, there is some evidence to indicate that each was in many ways strengthened by the process. Democratic institutions in both countries have been built, fostered and strengthened as a direct result of the work of the truth commissions. As an instrument of transitional justice, the truth commission plays a substantial role.

I do not mean to suggest that the truth commissions were in any way successful in bringing to justice every person who committed the crimes in the period under consideration; the on-going case of Pinochet and the remarkable freedom of Amin clearly illustrate the relative shortcomings of such a process. Rather, the truth commissions did provide an outlet for average citizens, those who had suffered at the hands of former regimes, to be heard. The testimonials provided in the reports of the two commissions reveal the horrors which had been bottled up for many years, and which were released and finally acknowledged through the truth commission process. As an instrument of social learning and political change, the truth commission is a key element.

The difficulties encountered, especially in the case of Uganda, were many. The lack of funding, and absence of support from many sides were significant challenges, all of which made the final product (and the process it entailed) that much more credible. The commissions have withstood criticism. They have done something that had to be done: they have established an official and collective narrative of the events which took place under the former regimes. And in engendering a sea-change in the way the society remembers its past, the truth commission is also important.