

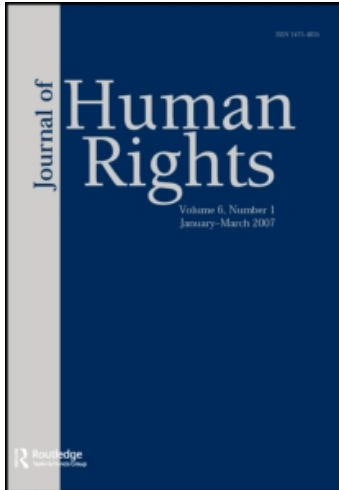
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## Journal of Human Rights

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title~content=t713431618>

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**To cite this Article** Quinn, Joanna R.(2009) 'Haiti's Failed Truth Commission: Lessons in Transitional Justice', Journal of Human Rights, 8: 3, 265 – 281

**To link to this Article:** DOI: 10.1080/14754830903110350

**URL:** <http://dx.doi.org/10.1080/14754830903110350>

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## Haiti's Failed Truth Commission: Lessons in Transitional Justice

JOANNA R. QUINN

*In the period after civil war or mass atrocity, trials and truth commissions have been used in a growing number of societies to try to bring about social repair and acknowledgement. Unfortunately, they often fail. The Haitian commission nationale de vérité et de justice sought to identify instigators, criminals, and accessories to the serious human rights violations and the crimes against humanity that had been carried out during the coup d'état, from September 29, 1991 to October 15, 1994, both inside and outside of the country. However, the Commission was beset by a number of problems that resulted in its ultimate failure to achieve goals including acknowledgement and reconciliation. This article considers those failures, and the lessons that can be learned from its experiences.*

The social impact of civil and political conflict is profound. In the aftermath of such conflict, it is imperative that societies acknowledge the truth about events that have taken place. The *Haitian Commission nationale de vérité et de justice* was established in the aftermath of the violence that shook Haiti from 1991 to 1994, to uncover the details about what had taken place. Yet the Commission faced myriad complications, including a dearth of political will and funding, as well as a number of institutional constraints, including lack of capacity, increasing security concerns, and shortages of time and funding. In the end, it was unable to appropriately acknowledge its conflicted past.<sup>1</sup>

### Social and Historical Context

In 1990, Fr. Jean-Bertrand Aristide was elected President of Haiti (Aristide 1996: 14). Just over six months from the day he took office, when the military engineered a coup against him, Aristide was forced into exile, first in Venezuela, and, later, in Washington, DC.<sup>2</sup> In 1991 and for the next three years, the regime of General Raoul Cédras, who had staged the coup that forced Aristide into exile, waged a campaign of torture against Aristide's supporters. A series of provisional governments, all backed by the armed forces under Cédras, ruled the country. In September 1991, Aristide established a government-in-exile,

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and during this period parallel governments existed: the *de facto* Haitian regime, and the constitutional, democratically elected government-in-exile.

During this period, the country was rocked by violent outbreaks carried out by the military-backed Cédras regime to crack down on Aristide's supporters. Five thousand or more were killed. Thousands more were beaten, tortured, and raped by Haitian military and police officials. More than 50,000 attempted to escape by boat to the United States. As many as 300,000 went into hiding within the country itself (Arthur 1995: 23; Dupuy 1997: 139). The violence was considerably worse in certain regions of the country, where wholesale slaughter ensued (Argentine Forensic Anthropology Team [AFAT] 2000: 50–55). In other cases, Aristide's key supporters were brutally murdered ("Vérité" 1997: 22–40). On July 3, 1993, the United States brokered the Governor's Island Accord, signed by Aristide and Cédras. Cédras and his comrades were awarded handsome settlements in return for their cooperation (Catholic Institute for International Relations [CIIR] 1996: 3).

On October 15, 1994, Aristide was returned to power in Port-au-Prince—with the support of more than 20,000 US troops and uneven support from the international community. Aristide finished serving his one term in office and then stepped aside to cede power to René Préval, as per the terms of the constitution. Aristide was re-elected in 2000 with 92% of the electoral vote and returned to office in February 2001 (CIA 2002).

### **Commission nationale de vérité et de justice**

The *Commission nationale de vérité et de justice* (CNVJ) was appointed by Presidential Decree on March 28, 1995, less than six months after Aristide returned to Haiti and resumed power. The Commission was charged with seeking to identify instigators, criminals, and accessories to the serious human rights violations and the crimes against humanity that had been carried out during the coup d'état, from September 29, 1991 to October 15, 1994, both inside and outside of the country (The Republic of Haiti, 1995, Annexe I: 355–357). The Commission was to establish the overall truth about the gravest violations of human rights during the specified dates, and to aid in the reconciliation of all Haitians, with the potential for legal recourse (*Rapport* 1995: Chapitre 2, Art. 2).

The Haitian commission was to be carried out by the Organization of American States (OAS) and the United Nations Permanent Mission to Haiti (*International Civilian Mission in Haiti* or MICIVIH). Accordingly, four of the appointed commissioners were Haitian nationals, all of whom had then been living in exile (the Chair, Françoise Boucard, Ertha Elysée, and René Magloire), and three others were representatives of the international community (Patrick Robinson, Oliver Jackman, and Bacre Waly Ndiaye). During the tenure of the Commission, the CNVJ carried out 8,650 interviews with people who reported 19,308 violations (Amnesty International [AI] 1998: 8). Initially, the Commission was to complete its work by September 1995, but this period was eventually extended by three months.

The CNVJ presented its final report in December 1995. The Commission was forced to deliver a report that many considered unfinished, simply because Aristide was being forced to hand power over to his elected successor, and the mandate had stipulated that the report must be presented directly to Aristide. The final report was, however, essentially intended for an international audience. Even though the mandate of the commission had been understood as including public enlightenment, time and financial constraints imposed strict limitations on the reporting of what had been uncovered. The report succeeds in revealing the names of

more than 8,700 victims from the period along with a comprehensive and cross-referenced list of the abuses they suffered (*Rapport* 1995, Annexe III: 1–456). Its eight chapters are filled with detailed analyses of the events that took place.

In fact, it was the Haitian diaspora community abroad that first conceived of the idea of establishing a truth commission in Haiti and then assisted in shaping its mandate. Throughout the growing conflict of the Duvalier era, many of the country's intellectuals, including much of the legal community, had fled (*Rapport* 1995, Annexe III: 3). The diaspora community, among other actors including then-US President Bill Clinton and former US President Jimmy Carter, played a role in shaping the policies and conditions under which Aristide could return to power (Laguette 1997: 170–177). These diaspora communities were scattered around North America and the Caribbean, in New York, Boston, Santo Domingo, Miami, and Montreal.

## Acknowledgement

One way of evaluating truth commissions, or any mechanism of transitional justice, is to assess how they were able to achieve the goals set out in their mandate. This approach, however, tells us very little about the societal impact of the instrument itself—information that is critical in advancing scholarship and understanding the benefits of implementing programs of transitional justice at all. And so I have developed a normative framework, centered around the concept of acknowledgement, to evaluate the work of truth commissions and other mechanisms of transitional justice.

As I have written elsewhere (Quinn & Freeman 2003, Quinn 2004), admitting the truth about past events and recognizing the claims of others in this regard, and publicly admitting to and accepting a knowledge of these events, is critical to the process of reckoning with the past. Acknowledgement is not a single, static act but, rather, a process of actively dealing with both personal and social experiences. Throughout the process, both victim and perpetrator must be called to account for past events and engage in a “serious working through of the past” (Adorno 1986: 114), deal with the emotional implications of the weighing up of experiences and engage in the active remembering of past events. Once individuals and communities have engaged in this process of acknowledgement, individuals are more open to ideas of forgiveness. And this may result in the development of social trust and civic engagement, as well as social capital and reconciliation or social cohesion. I argue that acknowledgement, as defined briefly here, forms a necessary but not sufficient condition for the creation of the kinds of goals sought by transitional societies.

Societies, and the individuals who make up those societies, must engage in a process of acknowledgement before any of the other steps, as outlined briefly above, can take place. Rather than leaving atrocities to bubble under the surface, I argue that unless these crimes are both privately and publicly acknowledged by individuals within a society, the society cannot move forward with social rebuilding. Public acknowledgement of past crimes does not often take place spontaneously, outside of some kind of institution designed to bring it about. Truth commissions are ultimately designed with this very goal in mind. And so I sought to examine the events surrounding the actual operation of the CNVJ, and the changes that came about as a result of its work.

Indicators that this kind of acknowledgement has taken place ought to be present once the truth commission has finished its work. One could imagine that a population and successor regime that has acknowledged past crimes would create government agencies to prevent future abuses and to protect the population. Likewise, police and judicial reform

could be strengthened. A society might choose to erect memorials and monuments. Or to produce a lasting public record of what has taken place.

The following evaluation of the activities of the Haitian CNVJ considers its ability to acknowledge past events. Certainly, it encountered many and significant difficulties in its work. These are considered below.

## Political Will

A group of expatriate Haitians located in Montreal was among the most influential of all the Haitian groups outside of Haiti. Working with support and funding from the International Centre for Human Rights and Democratic Development (ICHRDD), an agency funded by the Canadian government, at that time under the leadership of Ed Broadbent, former national leader of the New Democratic Party in Canada, the ICHRDD encouraged the human rights process initiated by the Montreal Haitians. Throughout 1993, and leading up to the Governors Island Accord, in July of that year, the diaspora community worked increasingly to return Aristide to power (Ballard 1998: 48).

In October 1994, the group held a popular tribunal in Montreal, called “The International Tribunal on Rights in Haiti” (*Proposition* 1994: 1–59) to mobilize public opinion surrounding the political issues, by reason of which Aristide remained in exile. The group considered the objectives, mandate, jurisdiction, powers, role of civil society, composition, establishing and financing its activities, duration, and the final report (*Proposition* 1994: i). The results of this effort, outlined in broad strokes in “*Proposition pour une Commission de la Vérité en Haïti: Éléments constitutifs*,” constituted the framework for what would become the Haitian truth commission.

Many of those who eventually became involved in the Haitian CNVJ were involved in this initial attempt at truth commission-style investigation in Montreal. Indeed, the Haitian diaspora community had enormous influence on the commissioners who were finally selected. Two of the commissioners, exiled Haitians living in Montreal, Ertha Elysée and René Magloire, the executive secretary, Jean-Claude Icart, another exiled Haitian in Montreal, and a consultant on judicial reform, Juanita Westmoreland-Traoré, were, in fact, from Montreal. Ed Broadbent, ICHRDD head, played a special role as international advisor to the commission.

Other international government organizations (IGOs) also responded to the burgeoning program of democracy and justice in Haiti and contributed to the CNVJ as an element thereof. The Organization of American States was among the leaders in this regard. Bertha Santoscoy, then the Haiti Director at the Inter-American Commission on Human Rights (IACHR), under the auspices of the OAS, was appointed as Director of the Investigations Unit. Two members of the IACHR were appointed as commissioners: Patrick Robinson of Jamaica and Oliver Jackman of Barbados. Various interns from the OAS were seconded to work as part of the international staff component of the commission. Bacre Waly Ndiaye, a Senegalese lawyer, was seconded from his work as UN Special Rapporteur on Extrajudicial Executions by MICIVIH, the International Civilian Mission in Haiti, run jointly by the United Nations and OAS. In addition, the American Association for the Advancement of Science (AAAS) provided a statistician with experience in other truth commissions, Patrick Ball, to handle the quantitative aspects of the commission’s work. An international team of forensic anthropologists, two from Guatemala, two from Argentina, and one American, was also called in to assist in finding proof to support the suppositions made during the course of data collection.

Indeed, the Haitian diaspora community even participated from abroad, sending written accounts and coming themselves to testify before the Commission. Yet this community, which is especially influential among the Haitian electorate and political establishment (Rotberg 1997: 170), seemed to want to do things its own way. Indeed, although the Haitian community in Montreal had asked the International Centre for Human Rights and Democratic Development (ICHRDD) for assistance, the ICHRDD sometimes felt that the diaspora was not approaching things in the right manner (Broadbent 2002, interview by author). They were concerned, for example, about the number of international commissioners to be appointed and withheld funding until the commission's composition reflected a better balance.

The people who had remained in Haiti responded quite differently, depending on the segment of the population in which they happened to find themselves. The peasant population, however, had been some of Aristide's biggest supporters prior to his time in exile. The implementation of the truth commission, therefore, ought to have been able to count on grass-roots mobilization of support. Instead, the Commission failed to win the popular support of Haitians, by ignoring local nongovernmental organizations (NGOs) and failing to tell ordinary Haitians about the purpose of the Commission (CIIR 1996: 23). Even the media seemed uninterested ("Elements" 1996: 4).

## Government Support

The Government of Haiti appeared to be in support of its truth commission. Aristide's writings while in exile had shown that he was concerned about the need for Haiti to heal. The decree, which established the Commission and came from the Office of the President, continued many of these same themes. It pledged the support of the Ministries of Justice, Interior, National Defence, Economy and Finance, and Coordination of Information (*Rapport* 1995, Annexe I: 355).

Indeed, these Ministries actually seemed willing to assist the Commission. This could have been, in part, because the intellectual community was both small and interrelated. As one international consultant put it, "They were all either friends, lovers, or associates of people in the Haitian government." Françoise Boucard, for example, was married to the Minister of Health ("Truth Commission" 1995). Others involved in the Commission also had ties to those in Aristide's cabinet. The husband of Commissioner Ertha Elysée was at one point Minister of Justice-in-exile. And Commissioner René Magloire left his post at the CNVJ partway through to take up the position of Minister of Justice. As one commissioner said, "everyone knows everyone in the intellectual community." Despite these links, the Commission *appeared* to maintain a discrete distance from the government, which seemed reluctant to press the legal model.

Even so, the commissioners were conscious of their need to remain and to appear independent. This was especially true of the judiciary that was still seen as corrupt. This lack of independence imposed certain limitations on the truth commission. One commissioner reported that "[t]here were those who were sociologists but there were those who were jurists, and they were conscious of limitations in terms of independence of the magistrature and at the same time, the need to convey, the need to reform."

In other ways, however, Aristide's government appeared not to support the work of the CNVJ. For example, when the final report was presented to Aristide, along with lists of details about past crimes and the names of perpetrators, it was decided not to make these details public. There is now some speculation that the proof contained in these pages

was not compelling enough to withstand the intensity of a courtroom proceeding, and, for this reason, Aristide chose not to share the information with Haitians. The subsequent government also failed to provide reparation to those Haitians who had come forward, even though that had been a part of the original idea. As one staffer recalled, “The government just never took ownership.”

In one way, however, the government did finally provide something that many of the Commissioners cited as very important: the creation of the Office of the Public Prosecutor. Over the course of the work of the truth commission, the Commission had repeatedly called for the creation of this office. The corrupt system of judges and police enforcement personnel that had been in place under the Cédras regime was still in place, which almost guaranteed that cases brought before a judicial panel, especially if the alleged crime had been committed in support of Aristide, would be treated harshly. This was particularly unsatisfactory to several of the commissioners. Said one, “I am a bit disappointed because we came, we risked our lives maybe, and nothing happened.” As a result, many of the acts of repression that had occurred under the previous regime went unpunished. “The debut of justice should have a judiciary mechanism capable of bringing about some sort of justice,” said another of the commissioners. As it was, the military was still able to exert some influence on the judiciary, which meant that legal proceedings could not be undertaken. The establishment of the Public Prosecutor finally allowed some of the cases to be taken to court, and to be heard before an impartial officer of the court. In addition, a “follow-up office,” called the *Bureau des poursuites et suivi* (Proceedings and Follow-up Office) was established; although it was not announced until much later, in September 1997 (AI 1998).

Aristide himself looked at the *Commission nationale de vérité et de justice* as an opportunity for healing: “After his return to power, Aristide stressed the importance of reconciliation, the need for his country to bind the wounds and move forward together to build a democracy” (Pastor 1997: 122). In the articles laying out the shape the Commission was to take, Aristide stated: “Reconciliation decreed by the President can never become reality unless the truth is told about those crimes committed, [o]nly the complete and public truth will satisfy the elementary requirements of the principles of justice and create the conditions necessary for a real and effective transition and for national reconciliation” (*Rapport* 1995, Annexe I: 354).

The commissioners, many of whom had been involved in the diaspora’s Montreal process, perceived the purpose of forming a Commission differently than Aristide: “Since the 1980s, it is becoming necessary for the people of Haiti to crystallize their claims for justice. The official statements, moreover, of a decayed judicial system, ossified and inefficient, and the cry of the people are nothing other than a thirst for another new and efficient justice within the framework of the laws of the land” (Jean 1997: 11).

## Opposition

The international community, and particularly the United States, disappointed the Commission and Aristide’s government on several occasions. During the period from 1991 to 1994, the US government seized materials from the Front for the Advancement and Progress of Haiti (FRAPH), the Haitian military government’s principal paramilitary arm, and the Haitian military. They also classified as secret a series of documents implicating various US agencies in various crimes during the same period. Despite numerous requests to the American government by the Commission and through diplomatic channels, the Haitian truth commission was never able to procure any of the more than 60,000 pages from the

seizures and documents for which it asked (Human Rights Watch [HRW] 1996 : 2–3; *Rapport* 1995, Annexe I: 369).

To some extent, the international composition of the Commission also worked against it. Many of the staffers criticized the international officials for being absent throughout long periods of time during which the work of the Commission continued. They were seen as not being particularly involved in the hands-on running of the Commission. Many, including all of the international commissioners and the Director of Investigations were forced to spend a great deal of time in their regular jobs outside of Haiti. They, too, saw it as a great disadvantage. Commissioner Bacre described it this way: “All the internationals [commissioners], you have to be there almost every month or every two months for at least sixteen days. So it was almost half of our time at least ten days or fifteen if not more about two weeks. So I had to combine it with my work as a lawyer and my mandate as a UN official.”

Many ordinary Haitians were likewise ambivalent about the truth commission process. One international staffer surmised that “many Haitians probably didn’t even know the Commission existed.” Others remarked on the degree to which Aristide’s government began to resemble the corrupt regimes of the past, since Aristide was no longer living among the people as he had prior to his exile in 1991.

The Commission was unable to do much to change this image for a variety of reasons. Chief among them was the production of a final report that had an extremely limited distribution, and no form of follow-up among the Haitian population. This focus was something that the organizers had in mind from the beginning. One commissioner reported that “[w]e wanted to prepare a report for the government.” As a result, the entire second volume of the report, which contained the Appendices and long lists of victims’ names, was completely inappropriate for public consumption. The first volume, although it could have been published in condensed form by the commission, was not. Instead, it was assumed that one of the civil society organizations in the country would rise to the challenge. None did, with the exception of a small report published by *Information Libre* in 1997.

The completion of the final report was rushed. Aristide was unable, under Article 134-3 of the Constitution, to stay on for another term in 1996. Because the report had been commissioned by President Aristide, the commissioners felt that the report must be given to him before he left. This meant that the commission staff had little more than one month to put the report together before Aristide left Haiti and stepped down as President on February 6, 1996. A member of the team that drafted the final report remembered: “At best, the report was incomplete.”

The CNVJ’s Final Report was, therefore, the subject of much anxiety. “There were too many competing visions [for how it would turn out],” said one of the senior commission members. Some felt that the report should represent a cross-section of cases that the Commission had looked at. Others wanted to focus entirely on several large cases. In the end, the report looked mainly at the larger cases that the Commission considered. The final version was written only in French (HRW 1996: 8). This decision effectively excludes the vast majority of the Haitian audience, many of whom cannot read, and most of whom speak only Créole. The report, therefore, was aimed mainly at Haitian elites. It was never meant for the consumption of ordinary Haitians.

The report itself is filled with facts and figures and with numerous lists. It is primarily filled with what might be called “trend analysis.” It seems remarkably short on details of actual cases, unlike the similar report issued by the 1986 Ugandan truth commission, for example, and contains no actual testimonies. Neither volume ever included the names of perpetrators. This kind of quantitative study, though interesting, precludes a broad



understanding of what really happened. In other instances, for only a few select cases, detailed accounts are given.

In the end, the presumed success of the Commission was questioned by nearly everyone who was involved in the process. “Unfortunately,” said one commissioner, “it was a very, very disappointing term, we did a lot of work without any, almost no proof, very little.” Others said:

The commission wasn’t really a success. It did what it could do in those times and the conditions that came with the times. Was it smart to have a commission like that? Under those conditions? I don’t know. We simply tried to do our best. One could say that the commission was a success simply because we remitted a report! It was our mandate to remit a report, and we remitted a report! Of course, there were some weaknesses. . . . The commission contributed to the advancement of democracy.

Another reported:

[We] worked really, really hard. It was hard. A lot of tears shed. It was very stressful, we felt like this was the chance the Haitians had and it was blown, and we could see it getting blown, and that was awfully sad.

Almost immediately following the enactment of the truth commission, however, various groups began to react. While some, including the poorest segments of society, as well as government supporters, seem to have felt that the commissions were doing a good job—or at least as good a job as could be expected under the circumstances—others appear to have been discontented with the process as a whole. Among these were opposition groups and elites. The CNVJ, therefore, was the victim of a political will that seemed not to care whether or not it succeeded.

### **Institutional Constraints**

Many, however, discounted Aristide’s ability to support any type of reconciliation and saw the truth commission as merely an opportunity to assign accountability for human rights crimes, modeled as it was on the former truth commissions in El Salvador, Chile, and Argentina (CIIR 1996: 22). In all three cases, truth commissions had offered an open-and-shut introspective on past abuses and reconciled their respective societies. Others believed that the truth commission would balance the need for justice with the need for reconciliation (Pastor 1997: 125). Still others, like a respondent who was in Haiti for several years as part of an international police force said, bluntly, of Aristide: “I don’t think he has a sincere interest.” An international consultant who had been present throughout the Montreal process began to sense that Aristide was distancing himself from the CNVJ.

So, was there ever hope that the truth commission could work? In part, such a question can be answered only in the definition or redefinition of “success.” If the objectives of the truth commission were laid out simply to meet a judicial function or a requirement for speed and efficiency, as posited above, then the CNVJ, operating as it was under Aristide’s return to power and the beginnings of a process of “normalization,” ought to have been able to more than meet the expectations it was given, even accounting for deficient resources and corruption. Certainly, the Commission placed an enormous amount of emphasis on aspects of juridical reform. Yet as an ICHRDD official noted, the Commission “[didn’t] seek to address the structural and systematic nature of inequity and imbalance.”

The weakness in the Commission appeared to start at the top: Françoise Boucard had to assume responsibility for both the internal and external activities of the Commission. Those involved in the commission variously reported that Boucard seemed that she might have been incompetent and never fully in control. Her role comprised many functions, including fund-raising and general management. Perhaps as a result, the Commission itself was disorganized and poorly managed (CIIR 1996: 23). Overall, there seemed to be no coordinated strategy. In the end, each of the commissioners chose to focus on a specific facet, and each of the rest of the investigation team worked within these different lines of questioning. Additionally, because the management of the CNVJ was so chaotic, the commissioners wound up trying to accomplish what were essentially operational tasks.

One IGO staffer on loan to the CNVJ felt that “the perceived need for enlightenment was understood within the mandate.” Although all of the commissioners said that they had hoped simply to do their best, they were very conscious of the limitations they faced. The dangerous political climate meant that public hearings could not be held. “Reconciliation,” one said, “is simply not possible unless one says ‘I did you wrong’—and perpetrators were never forced to appear.” Said another:

Commissions can't do both things, they don't have the resources and they don't have the skill factors. What you are asking people to do is sort of therapy social work on one side versus social science, legal research on the other, completely different skill sets. The one that gets mixed together like in South Africa it doesn't work on either score. Doesn't work either way.

As Françoise Boucard, the head of the Commission, stated, “The commission will expose crimes and make recommendations . . . but truth never replaces justice . . . [With only] truth, truth, truth you won't ever get where you have to get: a justice system with police to carry out inquiries, prosecute and sentence” (“Haiti: Justice and Impunity” 1995: para. 12).

Even so, one commissioner believed whole-heartedly that the Commission could succeed, especially once the regime change had been effected and Aristide was back in power.

Haitian society was not at all the same society [as that encountered between 1991 and 1994, under Cédras]. The UN presence assured that. And many of the military were in exile. It was absolutely a new society because the victims could talk. I saw a willingness on the part of the authorities to recognize what had happened. It's true that in some regions small groups existed—fringe groups, poor people, people without. But they were there even before the *coup d'état*, probably already there under Duvalier. And they haven't yet embraced the future.

Another Commissioner was so certain that the Commission could make a difference that when she was asked to participate, she did not hesitate to join, even though it meant forfeiting the years of doctoral study she had already completed while in exile.

The very structure of the Commission was designed with success in mind. From the beginning, the framers of the truth commission had an international model in mind. Certainly, the appointment of national and international commissioners was meant to combat charges of bias that would inevitably have risen had only Haitians from the diaspora community

been appointed. Their appointments certainly allowed each of the international agencies at least some measure of representation. The fact that each of the international commissioners had a clear and successful track record in a variety of legal fields relating to the Haitian situation only lent the Commission a greater degree of credibility. Indeed, one international NGO representative noted that Haitians appeared to have a special respect for those international commissioners and Commission workers who were themselves black. Above all, as an ICHRDD staffer underlined, the international presence as coordinated from Montreal was designed to tell Haitians, “We care about what you’ve gone through. We want to stop it. And we’ll work with you.”

The staff composition, too, was international in nature. Even the investigation teams comprised national and international staff, selected “so they [Haitians] could be more open,” as one investigator told me. They were sent out in pairs of one national and one international investigator to speak with victims and their families in the completion of the questionnaires that were filled out in each case. “The idea of mixing national and international staff was a good idea in theory,” reported one former investigator, “but hard to coordinate. And it contributed to a highly politicized environment, because each of us had different decision-making styles, different methodologies and different interviewing techniques.” In addition, the staff was paid by the Haitian government, which many criticized for not appearing to take any ownership of the process.

The Terms of Reference of the Commission provided strict guidelines meant to regulate its internal workings. The document laid out the internal power structure of the Commission, warned of the importance of discretion, outlined a consensus model of decision making and discussed the participation of experts and expert organizations. It gave specific rules for the collection of testimony from people living in Haiti, and those who had fled to other countries, and the videotaping of such testimony. The terms of office also gave specific regulations dealing with legal aspects of the CNVJ’s work, including burden of proof. It also gave the Commission ideas regarding translation and confidentiality (*Rapport* 1995, Annexe I: 380–386). Yet it allowed the commissioners a significant amount of leeway in establishing the modalities they thought best in constructing the Commission.

The terms of reference also asked the Commission to focus on a few strategic cases of abuse that had occurred. Yet as one commissioner observed, “We were not able to assess responsibility for these cases, but [the cases] were published in the final report, which was the initial idea.” Even the Commissioners had trouble coming to an agreement on basic legal jurisprudence. Said one, “According to [Commissioner Oliver] Jackman, he thought, for example, that an individual case could be recognized as a crime against humanity. And [Commissioner Ndiaye Waly] Bacre, evidently, his position was the opposite.” In the end, a significant amount of evidence, including reports by forensic anthropologists, was prepared for only a small number of extremely dramatic cases.

## Capacity

The community of Haitians abroad was very influential both in setting up the Commission and in helping to carry out its mandate. This community was made up of many of Haiti’s most educated citizens, including influential judges and lawyers (CIIR 1996: 3). To be sure, the diaspora community, and especially that part of the diaspora community resident in Montreal, was important in getting the Commission off the ground.

The appointment of the truth commission, however, sent ripples of fear through the traditional elites in Haiti (Rotberg 1997: 124). Because of their long-time association with

the government apparatus, many could have been found guilty under such a mechanism. Indeed, "if a serious truth commission was established, most of the Haitian bourgeoisie, most of the Haitian officer corps . . . would be indicted" (*This Week in Haiti* 1995: 2). An Amnesty Law was promulgated in October 1994 in fulfillment of Section 6 of the 1993 Governors Island Accord to pardon members of the regime that had toppled Aristide. But even this was of no real comfort, because it did not protect the perpetrators, as they had hoped it would (CIIR 1996: 23). The perpetrators were still at large. For this reason, the Commission aimed the report "largely at elites."

At a certain point, however, "Aristide, too, began to distance himself from the Commission." These very ties seemed to call into question the commissioners' ability to pursue objectively the truth about Haiti's past. People began to question the legitimacy of the work of the CNVJ.

Partly to blame was the international community. "There was a diversity of international actors throwing around their power, but not talking to each other," reported one IGO consultant. Chief among these groups was the large American contingent that remained on the ground in Haiti. The US Agency for International Development (USAID), for example, offered large sums of money in exchange for the adoption of American-style processes, including 18 million USD for justice programs, including police reform and changes to the judicial system (*Haiti Info* 1996: 3). At the same time, however, the White House and Department of Defense seized records and documents that would have been of significant value to the truth commission (Brody 1998: 231).

International groups, including the joint UN/OAS International Civilian Mission in Haiti (MICIVIH), refused to help the truth commission implement any of its programs, stating that it was not there for these purposes. MICIVIH had been appointed in January 1993, after a request by Aristide for assistance in monitoring violence and establishing dialogue between Haitians. There appears to have been a fairly free flow of personnel between MICIVIH and the truth commission, which may have resulted from the same joint sponsorship by the UN and OAS for the truth commission and for MICIVIH. In fact, many of the CNVJ's investigators were taken exclusively from the ranks of the OAS. At one point, MICIVIH refused to participate in judicial reform projects, stating that these were beyond the mandate of the mission (Brody 1998: 233). MICIVIH personnel had a considerable amount to say about the manner in which the truth commission and many of its programs were run, prompting many respondents to relate their frustration.

This international involvement, moreover, came at a price. "Haiti had once been the centre of attention," one senior IGO member and commission member stated. "But suddenly the attention disappeared, making it seem as though the whole situation was suddenly okay." World attention turned elsewhere. And Haiti was forgotten. There have since been calls for the governments of the United Nations and others to share the obligations of prosecuting those in Haiti who violated human rights (AI 1998: 42).

## Security Concerns

Moreover, nearly everyone realized that the existing police and judicial bodies were inadequate to assist with the work of the Commission. Some even called the political changes brought in by Aristide a "sham reform" ("HAITI: JUSTICE AND IMPUNITY" 1995: 4) because so much of the existing apparatus remained in place. Some of the state apparatus had been replaced by appointees of Aristide's regime; although the "revamping of the judicial system was slow and inadequate" (AI 1998: 11). "The legal system was weak at best,

predatory at worst. . . . Police forces [were still] new and inexperienced . . . and Haitians' confidence in their justice system [was] as low as ever" (Brody 1998: 228–229).

All of the commissioners with whom I spoke noted the presence of militia and paramilitary forces as having been cause for great alarm for their own personal safety. Former soldiers and *tontons macoute* had yet to be disarmed (Brody 1998: 229). One commissioner put it this way: "There was a feeling of impunity and insecurity. There were very strong feelings of that." Another commissioner was more blunt about the experience of serving on the commission, saying, "I can't speak for everybody, but I can say that excessive prudence was the rule. Mme Boucard received many, many death threats. Regularly." Over the course of the life of the truth commission, all of the commissioners received death threats. "Because many Cédras supporters were still around, we received threats, death threats and people calling and shooting the air so you can hear it through the phone, that they are shooting, this kind of thing." Said another, "Prudence was the rule, I would have to say. There were many threats. Especially against Mme Boucard." For this reason, the Commission was careful not to expose the international commissioners to any more danger than was absolutely necessary.

As a result, the public hearings that had been part of the initial proposal put forward at the ICHRDD meetings in Montreal were vetoed. "Public hearings weren't possible because we couldn't guarantee the safety of the victims [in coming forward.]" The CNVJ was greatly affected by these setbacks. Commissioners were not able to investigate significant amounts of information, while those who came forward could not be called upon to testify openly.

## Time

When Aristide returned to Haiti, one of his first acts was the appointment of the Commission. One of the Commissioners described Aristide's sense of the need for a Commission to be appointed:

I think there was a tremendous feeling that Haiti had to confront the past. This was a mechanism that was used. President Aristide had been ousted for three years. There was a period of military rule. In that time the number of atrocities and extra judicial killings rose substantially. I think the establishment of a Commission came at the right time. Yes there was this feeling that they had to confront the past.

At the same time, most of the diaspora community was still living outside the country and had not yet returned.

International experts in the field of transitional justice agree that allowing too much time to elapse between the appointment and conclusion of a truth commission can cause the commission to lose momentum (Hayner 2003). Initially, the work of the Haitian Commission was expected to take six months. Early on, however, there was speculation that this short period would not be enough ("Haiti: Justice and Impunity" 1995: 5). Six months turned into nine. The work of the Commission, minus the final report, was finally submitted on February 5, 1996, despite the numerous delays and constraints detailed above. It had taken 10 months.

Some of the delay was attributable to the difficulties of accommodating the busy schedules of the international commissioners. The external commissioners and international staff admitted that they simply did not have enough time to spend on the work of the

Commission. Two of the Haitian commissioners had returned from their homes in Montreal and held jobs and commitments in both Canada and Haiti at the same time.

The preparation of the final report also took significantly longer than had been planned. But the imminent departure of President Aristide at the expiration of his term as president at the beginning of February 1996 meant that the Commission staff had no choice but to expedite the writing process. The first draft of the report had a circulation of only 75 initial copies. But it was this version of the report that was presented to Aristide on February 6, 1996, as he again left Haiti for exile. Eighteen months later, a second version of the report with additional appendices and other information was prepared.

### **Methodological Problems**

Some within the Haitian NGO community soured on the process, in large part because of the methodological approach chosen by the Commission. Methodological determinations, and how fundamental questions about truth and justice are formulated, will shape a commission, yet this kind of thinking was not done in the Haitian case. "You need first to have a methodology, to know what you're going to do with the information" said Jean Claude Jean, a human rights activist in Haiti (Hayner 2003: 82).

Partly as a result of the international presence on the Commission, partly because the mandate the Commission had so explicitly recommended that the CNVJ make use of truth commission "experts," and partly because the CNVJ had the benefit of the experience of other commissions that had gone before, the Commission was subjected to various experimental techniques that had either been tried elsewhere or were thought to be new and improved. One international consultant said, "[Our first ideas] didn't work. So then we reformulated our plan regarding personnel, funding, the number of investigations, and rights violated. We had to start over." In addition, the Commission called upon the assistance of the Argentine Forensic Anthropology Team to conduct a forensic audit of human rights abuses but then was required to assign some of its staff to assist the forensic team. All of this took resources away from the main focus of the Commission: investigations.

Initially, the Commission attempted to use some methods of data collection that had been employed in the Salvadoran commission, but they simply did not work—in part because many of the country's Créole-speaking citizens were illiterate or were hesitant to reveal their problems to outsiders, and so the CNVJ determined to find a "made-in-Haiti" solution that excluded the meddling internationals. In the end, a questionnaire was developed to allow for the later questioning of victims but would also prove the responsibility of the state in terms of its role and goals in the atrocity under consideration. The investigations, too, took significantly longer than anticipated. The staff of the Commission then meticulously documented the abuses reported by the respondents and prepared a statistical analysis of the observable trends, paid for by the AAAS.

The use of statistics in this way was one of the Commissions' biggest "successes," at least from a social scientific perspective. The creation of a quantitative database allowed the Commission to generate detailed analyses of patterns of abuses that happened in specific geographic areas or to certain types of people. The result was that an analysis of crimes against humanity and other trends could be done electronically. This marked the first time that a truth commission had ever developed a bank of information to be used in the work of the truth commission and in the legal cases that were intended to follow.

## Funding

As are many truth commissions, the Haitian commission was chronically short of funds. Haiti had undergone decades of resource-depleting conflict. The Duvaliers, who had governed from the mid-1950s until 1986, had stolen more than 1 billion USD (CIIR 1996: 4). The people of Haiti remained poor. Amid such conditions, allegations of widespread corruption at the highest levels were rampant. In 1994, the United States brokered the deal that would push Cédras out and allow Aristide to return. To entice Cédras to step down from power and to leave Haiti, the Americans announced a program under which, for example, they would rent the homes owned by Cédras for 5,000 USD per month. They also allowed more than 600 Haitian military officers access to their bank accounts that contained hundreds of thousands of dollars in stolen money. In addition, they planned to pay off those Haitian soldiers who would not be recruited into the “new” police service because of their past record of repression. In all, the United States planned to spend 5 million USD on such initiatives (Dupuy 1997: 160).

It was in this environment that the Haitian Commission was established. The Commission was given a 2.5 million USD operating budget, cobbled together from money given by the United Nations and the OAS, along with donations from members of *La Francophonie*, including Canada.<sup>3</sup> But almost from the beginning, Madame Boucard, the chair of the Commission, complained that she was short of funds (“Haiti: Justice and Impunity” 1995: 3). The task of fund-raising fell first to Mme. Boucard, and later to Jean-Claude Icart, who joined the Commission already in progress.

The Commission had needs that had to be met in order to operate. Certain items, including transportation, phone lines, radios, and equipment had to be found. One international consultant recalled the following scenario:

There are material concerns too. You know, when I arrived at the Commission, the Commission didn't have a photocopy machine, they had been promised a machine from the beginning of the operation . . . I think the Commission arrived, the photocopier arrived while I was there. Then it was a matter of, you know, having it function, because I think a part of [sic] missing for the preparation of several copies of the document and so on. So, I mean, materially, you can imagine if you have to leave your offices to go downtown to make a photocopies [sic] and come back and use the fax to do photocopies. You know, it's really living in another world, you can't be too cheap under those circumstances and meet deadlines.

The Commission had other needs as well. The salaries of staff, both Haitian and international, had to be paid. The salaries and travel expenses for both international commissioners and executive members had to be met. Investigative teams had to be transported to the field to carry out their investigative work. Specialized teams, including the Argentine Forensic Anthropology Team, expected to be paid as well.

Eventually, the Commission was funded by a number of sources. The ICHRDD gave funding and expertise and also helped the CNVJ to procure funding throughout its existence. The American Association for the Advancement of Science (AAAS) and OAS each provided both specialized personnel and additional funding. The AAAS, for example, paid for the work of the Argentine Forensic Anthropology Team. The United States funded its own programs, including justice initiatives and policing (Brody 1998: 233). The United Nations paid some of the salaries.

Between the Commission and the Government of Haiti, the rest of the financial needs had to be met. The CNVJ bore the majority of salary and transportation costs. The government was left to pick up the rest of the costs, from the scant 6 percent of the national budget that was allocated to Justice issues (*Haiti Info* 1996: 3).

## Conclusions

Evaluating the CNVJ through the lens of acknowledgement, it is clear that the CNVJ was relatively unsuccessful in its attempt to uncover the truth about past events. Certainly, it was unable to bring about the kind of societal acknowledgement that I once posited that it might. To be sure, other much more successful commissions had operated in earlier years in neighboring countries, including truth commissions in Argentina and Chile; yet the models they provided were not consulted.

The Commission was able to promote at least a small bit of acknowledgement of past events. The greatest contribution made by the CNVJ to the process of acknowledgement comes in the form of the collection of a great deal of evidence about the abuses that had taken place. The report, as discussed above, managed to establish some elements of truth about these events. In addition to the report, the Haitian commission utilized a specialized team of forensic anthropologists to collect posthumous information about specific killings. Another of the achievements of the Commission was the creation of a sophisticated statistical database into which details of each crime were entered. This information was then used to produce statistical data that revealed correlations and patterns in the crimes committed. From these, reports were produced that allowed the commissioners to determine in great detail facts about the abuses that had taken place. Of added benefit was a relatively high level of participation among Haitians.

Yet the Commission was unable to hold public hearings due to security concerns. The *tonton macoutes* (paramilitary groups) and Cédras' supporters still lived in and among the general Haitian population and regularly engaged in intimidation of Aristide's supporters. Even the judges who ought to have heard evidence in subsequent trials could not be counted on to be fair or impartial. The final report was hurriedly prepared and presented to President Aristide on February 6, 1996, just as he was preparing to leave office. Only 75 copies of the report were printed. More than two years later, a second edition was produced that included the three appendices. Yet not even all of the commissioners ever received a copy. Most Haitians have never seen a copy of the report. The acknowledgement achieved by the CNVJ was not a popular acknowledgement, which is to say an acknowledgement by the grass-roots, by any means.

Lasting outcomes of the CNVJ are difficult to find. A collective memory that stems from the work of the Commission is conspicuously absent. There are only a couple of instances in which any significant form of common memory can be seen. This, therefore, has an extremely negative impact upon the presence of physical memory in Haiti as a whole. The one example of physical memory exists because of the work done in the case of Gonaïves, where a mass murder took place. On April 22, 1994, the slum of Raboteau, in the city of Gonaïves was raided by a group of soldiers and civilian paramilitaries. Between 8 and 15 people died and many more were tortured and forced to lie in open sewers (Greste 2000). The president of the Commission, Mme. Françoise Boucard, conducted a short service of remembrance, after the results of the forensic investigation had been completed, for those who had died. The Commission was also involved in erecting a monument to commemorate the victims of the massacre. A criminal trial was also held in 2000 to determine the guilt of those charged with the crime (Greste 2000). Aside from this case,



Haiti bears no indication of physical memory other than physical scars from the legacy of abuse.

Although a truth commission, in and of itself, cannot hope to bring about social restoration, it ought to be able to foster some level of acknowledgement that could in turn support initiatives toward democracy and justice. Yet it seems that the absence of supportive political will combined with the institutional failures of the Commission have resulted in a failure to properly acknowledge the events of the past.

## Notes

1. Throughout the autumn of 2001, as I prepared to leave for Haiti, reports of escalating violence began to emerge. In late November, the Canadian Department of Foreign Affairs and International Trade issued an advisory stating that travel to Haiti should be avoided. However, because many of the key figures in the Haitian CNVJ had been foreign nationals, many of them had gone on to other projects with their same organizations (i.e., OAS, UN) in North America. In the end, I was able to conduct interviews in Washington, D.C., New York, Geneva, Switzerland, and The Hague, Netherlands, and in the large Haitian diaspora community in Montreal and Ottawa, as well as written interviews with a few people who remain in Haiti, via email. I interviewed 19 people concerning the Haitian Commission. Fifteen of these interviews were conducted in person. Four were conducted via email. I interviewed three of the commissioners, as well as several advisors and consultants to the commission, members of the international investigations team, a pastor, NGO and INGO workers, and one Haitian living in exile. I have chosen, for the most part, to conceal their identities so as not to put them in any danger. Where not specified, direct quotations are those of people who were directly or indirectly involved with the CNVJ, but who wished their interviews with the author, carried out in 2001–2003, to remain anonymous. Many of these interviews were conducted in French and translated by me into English. Any errors in translation are mine alone. This work is based on those interviews, as well as on a number of primary and secondary source documents that have emerged from the Commission and its staff. Where not specified, direct quotations are those of people who were directly or indirectly involved with the CNVJ but who wished their interviews with the author, carried out in 2001–2003, to remain anonymous.
2. In September 1991, Aristide established a government-in-exile, and during this period parallel governments existed: the *de facto* Haitian regime, and the constitutional, democratically-elected government-in-exile.
3. Canada gave 350,000 CAD to the Commission (CIDA 2003).

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