

Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa

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ABSTRACT

The truth commissions of South Africa and Guatemala were important in bringing global attention to the subject of truth-seeking. This article presents some of the key observations and recommendations made by commissioners and staff directly involved in these commissions about the official truth-seeking process which evolved in both countries. These reflections provide practical lessons as to the structure and mandate of the truth commission, data collection and public hearings, information management and reporting to the public, from which future commissions might draw ideas.

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I. INTRODUCTION

In recent years, countries at different stages of political transition have considered establishing what have come to be known, in their generic form, as truth commissions. Today, new commissions are underway in places as diverse as Serbia and Montenegro, Ghana, Peru, and East Timor, to name only a few.

Although a number of commissions were established in the 1970s and 1980s, truth commissions did not come fully into vogue until the mid to late 1990s. This was largely a result of the experience of the South African Truth and Reconciliation Commission (TRC) and, to a lesser extent, that of the Guatemalan Historical Clarification Commission (CEH).

These two commissions brought global attention to the subject of official truth-seeking. The TRC and the CEH were two of the largest, most prominent, and most recent commissions to date. They also constituted the subject of a unique research project that forms the basis for this article.

In the fall of 1999, three experts on truth commissions—Marcie Mersky, a senior staff person from the CEH, and Priscilla Hayner and Paul van Zyl, both currently program directors at the International Center for Transitional Justice (ICTJ)—established what was known as the “Lessons Learned” project (Project). The Ford Foundation provided funding for the Project to New York University’s School of Law, with Mersky, Hayner, and van Zyl jointly coordinating the Project with the assistance of ICTJ staff. The Project was intended to provide targeted, detailed and critical papers on the operations of the TRC and the CEH. The primary purpose of the Project was to commission a set of papers (collectively, papers) that would articulate specific methodological and operational lessons gleaned from inside these commissions that might be of use to future commissions likely to confront many of the same issues. The papers were to offer a window into the challenges of these truth-seeking exercises for the general reader. To that end, a few commissioners and a number of staff from all levels of both commissions, as well as two international experts who have served as consultants to these and other truth commissions, were retained to author the papers (collectively, authors). The papers cover a wide range of topics, though not all aspects of truth commission operations.

The intention of the Project was to have the authors identify some of the key issues, problems, or lessons that they distilled from their work with these commissions, pertaining to the specific area in which they worked. Although it was always understood that future truth commissions would operate in very different environments and would confront their own unique problems, it was equally recognized that some underlying issues and challenges are common to all of these processes. Thus, the authors were asked to think creatively and expansively about what lessons would

most likely be useful elsewhere. In total, the Project comprises nineteen papers. The papers are listed in Appendix 1 to this article, and available upon request from the ICTJ.¹

This article provides an overview of the Project papers, summarizes key points of the collection, draws conclusions and comparisons, and points to key lessons learned. The article is divided into three main sections: first, a basic overview regarding truth commissions; second, a brief summary of the CEH and the TRC; and third, a review of the main “lessons learned” that were articulated by the authors. The latter section will focus on lessons learned in three areas: (i.) mandate and structure, (ii.) data collection and public hearings, and (iii.) information management and reporting to the public.

II. TRUTH COMMISSIONS

Generally, the term “truth commission” refers to bodies that share the following characteristics:²

Truth commissions:

- Are temporary bodies, usually in operation from one to two years;
- Are officially sanctioned, authorized, or empowered by the state, and in some cases, by the armed opposition as well, as in a peace accord;
- Are non-judicial bodies that enjoy a measure of *de jure* independence;
- Are usually created at a point of political transition, either from war to peace or from authoritarian rule to democracy;
- Focus on the past;
- Investigate patterns of abuses and specific violations committed over a period of time, and not just a single specific event;
- Generally complete their work with the submission of a final report that contains conclusions and recommendations; and
- Focus on violations of human rights, and sometimes of humanitarian norms as well.

1. The ICTJ is located at 20 Exchange Place, 33rd Floor, New York, NY 10005. The website is www.ictj.org, the general phone number is 917-438-9300, and the general email address is info@ictj.org.

2. Mark Freeman & Priscilla B. Hayner, *Truth-Telling, in RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK* 122–44 (David Bloomfield ed., 2002).

At least twenty-five truth commissions have been established around the world since 1974, and a fair amount of scholarship about them will be familiar to most readers of this journal.³ Certainly, truth commissions may not be appropriate in every context. They do, however, have the potential to generate many benefits for societies in transition. Under optimal conditions they may:

- Help establish the truth about the past,
- Foster accountability for perpetrators of human rights violations,
- Cultivate reconciliation,
- Recommend victim reparations,
- Recommend necessary legal and institutional reforms,
- Provide a public platform for victims,
- Inform and catalyze public debate,
- Help to consolidate a democratic transition, and
- Serve as a safeguard against revisionism.

At the same time, there are many possible factors that might limit the attainment of these benefits. These include, for example: weak terms of reference, a weak civil society, political instability, victim fears about testifying, a weak or corrupt administration of justice, and so forth. Many of these issues and concerns are discussed in some detail in the papers, and will be taken up in the third section of this article.

III. THE TRUTH COMMISSIONS OF SOUTH AFRICA AND GUATEMALA

As mentioned above, the CEH and TRC were two of the most significant truth commissions to date. They were also, in many ways, quite different—so different, in fact, that it is almost to compare apples to oranges. Below is a brief synopsis of the main features of both commissions.

3. For further reading see, e.g., PRISCILLA HAYNER, *UNSPEAKABLE TRUTHS* (2001); *TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES* (Neil J. Kritz ed., 1995).

A. South Africa: TRC

In 1995 the South African Parliament passed the Promotion of National Unity and Reconciliation Act establishing the TRC. Seventeen commissioners were appointed following an extensive public nomination and selection process. The Act gave the TRC the power to grant individualized amnesty, as well as search and seizure powers, subpoena powers, and witness-protection powers. The TRC had a staff of over 300 persons and a budget of approximately \$18 million each year for two-and-a-half years (the budget for the final three years was smaller).

The TRC was mandated to work in three inter-related committees: the Human Rights Violations Committee (responsible for collecting statements from victims and witnesses and recording the extent of violations); the Amnesty Committee (responsible for processing and deciding applications for amnesty); and the Reparations and Rehabilitation Committee (responsible for developing recommendations for a victim reparations program). The TRC took testimony from 23,000 victims and witnesses, 2,000 of whom appeared in public hearings. The TRC also held special hearings focused on key institutions, special thematic issues, and key events. The most controversial aspect of the TRC was its truth-for-amnesty process: perpetrators were eligible for amnesty provided they could prove that, among other things, their crimes were politically motivated. For particularly heinous violent crimes, amnesty applicants were required to appear at public hearings to answer questions from the TRC and from victims and their families.

The TRC's first report was released in October 1998,⁴ and its final report was released 21 March 2003, following the conclusion of the amnesty applications process. Some of the TRC's recommendations have been implemented, among them the reparations promised by the TRC. At the time of this writing, some 16,500 victims have been awarded "urgent relief" and a one-time grant to be awarded to 22,000 apartheid victims has been approved.⁵ Reflecting on the TRC experience, its ambition and originality stand out. For all the criticisms against it, the TRC marked a decisive turning point in South African history. It also marked a turning point in global awareness about truth commissions—no commission is today better known around the world. At the same time, it is a commission that, most

4. TRUTH AND RECONCILIATION COMMISSION, TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT (Cape Town: The Commission, 1998).

5. Matome Sebelebele, Truth and Reconciliation Commission Reparation Payouts Nears Finality, 27 June 2003, available at <http://allafrica.com/stories/200306270587.html>, visited 24 July 2003.

commentators agree, can or should be emulated only in the most limited of circumstances.⁶

B. Guatemala: CEH

In 1994, during negotiations between the Guatemalan government and leftist rebels under the Oslo Accord process, the parties agreed to establish a Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico). It was not until 1997, however, that the CEH was formally established. The CEH was initially given six months to complete its work, with the possibility of extension for another six months, and was precluded from naming names of perpetrators.

The chair of the CEH was a foreigner appointed by the UN Secretary-General, while the other two commissioners were nationals selected by the chair with the agreement of the two parties. The CEH had a staff size ranging from two hundred at its peak (with fourteen field offices) to fewer than one hundred for the months of investigation, analysis, and report writing. Its staff included both nationals and non-nationals, and the total budget for the CEH was approximately \$11 million. Although access to victims was limited by geography and ongoing fears of reprisals, CEH staff managed to visit almost 2,000 communities and register 7,338 testimonies, including 500 collective testimonies. The CEH also incorporated data from two NGO projects that were established several years before the start of the CEH. Both projects had collected thousands of testimonies, many of them audiotaped and transcribed.⁷

The CEH completed its final report in February 1999, and released it to the public in an emotional ceremony attended by thousands.⁸ The report contained individual testimonies of victims and hard-hitting social and

6. See, e.g., Kader Asmal, Louise Asmal & Ronald Suresh Roberts, *Reconciliation Through Truth* (1997); *LOOKING BACK, REACHING FORWARD: REFLECTIONS ON THE TRC OF SOUTH AFRICA* (Charles Villa-Vicencio & Wilhelm Verwoerd eds., 2000).

7. See OFICINA DE DERECHOS HUMANOS DEL ARZOBISPADO DE GUATEMALA (RECOVERY OF HISTORICAL MEMORY PROJECT/REMHI), *GUATEMALA: NUNCA MÁS* (1998); a summary of the report has been published in English as *GUATEMALA: NEVER AGAIN! THE OFFICIAL REPORT OF THE HUMAN RIGHTS OFFICE, ARCHDIOCESE OF GUATEMALA* (1999). See also *State Violence in Guatemala, 1960–1996: A Quantitative Reflection*, a joint publication of Centro Internacional para Investigaciones en Derechos Humanos (CIIDH) and the American Association for the Advancement of Science (AAAS), available at: <http://hrdata.aaas.org/ciidh/qr/english/qrtitle.html>; HAYNER, *UNSPEAKABLE TRUTHS*, *supra* note 3, at ch. 4.

8. La Comisión para el Esclarecimiento Histórico, *Guatemala: Memoria del Silencio: Conclusiones y recomendaciones del Informe de la Comisión para el Esclarecimiento Histórico* [Guatemala: United Nations Office for Project Services (UNOPS), 1999] available at www.unops.org.

economic analysis. It concluded, among other things, that government agents had committed acts of genocide between 1981–1983 against groups of Mayan people. Since the issuance of the CEH report, there has been very little progress on the main recommendations of the CEH, let alone in the harsh realities of life for most of the citizens of the country.⁹

C. Similarities and Differences

It is worth underscoring the most significant similarities and differences between the CEH and the TRC, beyond the well-known differences in the national contexts of each country and beyond what has already been noted above.

The following similarities between the TRC and CEH are especially salient:

- A relatively broad consultation process in the selection of commissioners;
- The availability of a large, multidisciplinary staff;
- Large budgets;
- Strong involvement of civil society;
- Investigations of violent acts spanning more than 30 years;
- Funding from both government and foreign sources;
- The processing of thousands of statements from survivors and witnesses;
- Reliance on prior investigative reports done by local NGOs; and
- Detailed, comprehensive and powerful final reports.

There are also a number of significant differences worth noting between the TRC and the CEH, including the following:

- The TRC held public hearings, the CEH did not;
- Because it held public hearings the TRC was covered extensively by the media, whereas the CEH received limited media coverage until the release of its final report;

9. See, e.g., *GUATEMALA AFTER THE PEACE ACCORDS* (Rachel Seider ed., 1999); Paul F. Seils, *Reconciliation in Guatemala: The Role of Intelligent Justice*, 44 *RACE & CLASS* 33–59 (July 2002).

- Reconciliation and reparations were an explicit part of the terms of reference of the TRC, but not of the CEH;
- The TRC had an amnesty-granting power, the power to name individual perpetrators, and significant powers of investigation and witness protection, whereas the CEH, for better and worse, had none of these powers;
- The TRC operated for 2.5 years at its peak and then for an additional 3.5 years, while the CEH operated for a total of 1.5 years;
- The TRC investigated and corroborated thousands of victim statements, whereas the CEH thoroughly investigated a total of 100 cases; and
- The TRC operated alongside a relatively robust judicial system, whereas the CEH did not.

All of these similarities and differences are to be borne in mind in the section that follows.

IV. “LESSONS LEARNED”: THE INSIDER PERSPECTIVE

We turn now to the practical lessons learned from the experience of the CEH and the TRC as identified by the authors in the papers. We have grouped the authors’ observations under three general headings: commission mandate and structure; data collection and public hearings; and information management and reporting to the public.

V. MANDATE AND STRUCTURE

A. Establishing a Truth Commission: Framers’ Responsibilities

Once the decision has been made to establish a truth commission, numerous questions remain as to the shape the commission will take. Commission formats and mandates tend to vary according to local social, cultural and political norms. What constitutes a truth commission, therefore, is almost by definition elastic. In its purest form, however, the mandate of the truth commission is simply that which is implied by its name: to establish a common truth and to report on that truth which has been found.

A truth commission requires a clear set of conceptual guidelines. It will be important to know, for example, whether the goal of the commission is simply to collect the testimony of victims or whether the overarching goal also envisions reconciliation activities. The conceptual foundation upon

which the commission is to be based, along with the actual shape it is expected to take and the anticipated impact upon and participation from the broader community, all must be addressed prior to the commencement of the commission's activities.

Typically, the "framers" of the commission will be presidential advisors, government ministers, parliamentary committees, and in some cases UN officers. Richard Lyster,¹⁰ a Commissioner in the TRC, contends that it is the responsibility of these people to provide a clear and detailed outline of their vision of the truth commission, including the theoretical parameters they intend. In doing so, they should bear in mind the expectations created by the vision they articulate. The framers of the TRC initially identified three key areas on which the TRC would focus: documentation of human rights violations, victim reparation and rehabilitation, and amnesty (as a means of getting information from and about perpetrators). In practice, Lyster as well as Paul Haupt¹¹ (who provided psychological support to victims appearing in TRC hearings), assert that national as well as individual reconciliation became the overriding priorities of the TRC. They note that this resulted in confusion between two very different notions of reconciliation, and also raised expectations to unmanageable levels. Lyster goes even further and suggests that truth commissions be limited to uncovering the truth or else risk succeeding at neither truth nor reconciliation. With respect to the CEH, Greg Grandin,¹² who coordinated the CEH's documentation center, argues that its mandate was more rigorous than in any Latin American commission before it: like other commissions it was responsible for examining details of particular cases, but it was also made responsible for clarifying historical events and causes dating back a quarter of a century, including both internal and external factors.

Even with a clear theoretical framework in place, however, the commission will require additional guidance in defining a sub-set of ideas and concepts that will guide it in its work. For example, framers may wish to articulate precise definitions for the violations that are to be the subject of the commission's inquiry, or to clearly articulate whether individuals can be "named" in a final report and according to what evidentiary standard. Many of the authors, including Lyster, Alessandro Preti¹³ (a member of the Investigations and Final Report Teams at the CEH), and Madeleine Fullard and

10. Richard Lyster, A Critical Overview of the Commission, With Emphasis on the Work of the Human Rights Violations Committee, *available upon request from the ICTJ*.

11. Paul Haupt, Psychological Support Services Provided by the Commission, *available upon request from the ICTJ*.

12. Greg Grandin, Challenges of the Documentation Center, *available upon request from the ICTJ*.

13. Alessandro Preti, Crafting Recommendations for the Final Report, *available upon request from the ICTJ*.

John Daniel¹⁴ (both researchers at the TRC) cited this initial clarification of sub-issues as being central to the development of their respective truth commissions. Glenda Wildschut¹⁵ (a Commissioner in the TRC), Ilan Lax (a member of the Human Rights Violations Committee and Amnesty Committee in the TRC), and others maintain that the framers should even go so far as to articulate the precise relationship that must exist between each of the different departments of the commission. This argument is clearly supported by Janis Grobbelaar¹⁶ (an information manager in the TRC), who criticizes the 1995 South African National Promotion of National Unity and Reconciliation Act as being entirely too vague and general to have been of much help to the TRC. What none of these authors notes, however, is that while the vision of the framers must provide guidance to those who will carry it out, it is equally important that the vision is flexible enough to allow for the incorporation of other ideas not initially envisaged. Christian Tomuschat (Chair of the Guatemalan CEH) notes that the restrictions imposed in the terms of reference handed down were so difficult to meet that the commissioners eventually chose to operate under a mandate that they hoped would honor the spirit of their mandate, if not the actual mandate itself.¹⁷ Thus, while a certain amount of guidance is essential, a level of interpretive discretion is also useful.

In addition to the above, the terms of reference will need to set out the commission's functions and procedures. If the commission is to have search and seizure powers or the power to refer specific cases to the courts, this too should be provided for in the legislation creating the commission. The same may be said for the possibility of subpoena powers that would allow for summoning and questioning of both victims and perpetrators. The CEH did not have the power to subpoena witnesses, while the TRC did. Several authors involved in the TRC note that the South African Commission did not utilize its subpoena powers to the fullest extent possible, and a significant body of evidence, along with the testimony of key witnesses, was left untapped as a result. At times, the decision not to call particular witnesses may have been based on legitimate concerns about undermining national reconciliation, but the reluctance to use the power challenged the very nature of the commission and the terms of reference it had been given.

This highlights one of the most difficult issues faced by the framers of a

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14. John Daniel & Madeleine Fullard, *Challenges of the Research Process and Production of the Final Report*, available upon request from the ICTJ.
 15. Glenda Wildschut, *Developing and Implementing a National Reparations and Rehabilitation Policy*, available upon request from the ICTJ.
 16. Janis Grobbelaar, *Information Gathering Methodology and the Final Report*, available upon request from the ICTJ.
 17. Christian Tomuschat, *Clarification Commission in Guatemala*, 23 *HUM. RTS. Q.* 239–40 (2001).

truth commission, namely, how to design terms of reference that can encourage willing and active participation by ordinary citizens, as well as perpetrators, as part of the effort to procure accurate information. Such participation, according to Preti and Denis Martinez¹⁸ (a statement-taker in the CEH), can strengthen the work product of the commission, and is of great social consequence. In the case of the TRC, Themba Khubeka¹⁹ (a staff member in the Data Processing Unit of the TRC, and also a documentation officer) suggests that the TRC process did not, in the end, give rise to high levels of direct civic participation or engagement with the Commission (though victim participation was high). Grobbelaar asserts that many, including Archbishop Desmond Tutu, Chair of the TRC, even imagined that a majority of perpetrators and notorious politicians would come forward—but this turned out generally not to be the case. The Guatemalan army, for its part, refused to cooperate with the CEH in the provision of documents. This is not surprising; individual perpetrators rarely volunteer details of their crimes, and abusive institutions responsible for many of the abuses also tend not to be cooperative.

While the carrot of amnesty may be one option considered for truth commissions to encourage perpetrator cooperation, it will only be effective where there is a credible threat of prosecution. Indeed, most human rights organizations, including the ICTJ, properly caution against even considering amnesty except under the most extraordinary of circumstances. Amnesty can, moreover, undermine both specific and general deterrence, and may run the risk of reducing public and victim support. In South Africa, the TRC, through the Amnesty Committee, was able to offer amnesty in exchange for testimony and subject to meeting various objective criteria set out by the Act that created the Commission. In the end, the Amnesty Committee presided over several thousand amnesty hearings and granted amnesty in a large number of cases (though still a fraction of the total percentage of applications). Whether the amnesty process of the TRC was the necessary measure that many assert will perhaps never be fully resolved. What is clear, however, is that amnesty is far from a necessity for truth commission. Indeed, no other truth commission to date has had an amnesty-granting power, and most truth commissions will be quite effective without it.

At the same time, international models will often prove helpful in the conceptualization process by providing examples of the manner in which other commissions have dealt with similar issues. To be sure, the introduction of new and innovative techniques, some of which may have been

18. Denis Martinez, *Field Office Investigations, available upon request from the ICTJ*.

19. Themba Khubeka, *Challenges to Recording and Analyzing Data Collected by the Commission, available upon request from the ICTJ*.

tested in former commissions, is beneficial in many cases. Jaime Esponda Fernandez²⁰ (head of investigations in the CEH) nevertheless notes that a truth commission must be allowed to develop according to the specificities of the national situation and the objectives of the particular country. Tomuschat (Chair of the Guatemalan Commission) echoes this, remarking that although comparative experiences are valuable, commissions should also seek to develop their own unique methods and approaches.²¹ Dumisa Ntsebeza,²² a Commissioner and head of the Investigations Unit in the TRC, notes that the culture and particular historical circumstance of the country in question may cause its framers and commissioners to be reticent in their use of international models and consultants, but he acknowledges the obvious importance of past commission experience. The reports of the commissions themselves often reveal those details that the commission found either helped or hindered the process, and therefore might also be used in determining the framework of a new commission.

Perhaps the most important task for framers, however, is the appointment of the commissioners. How many people will act as commissioners? Who will they be, and what will be the process for their selection? The TRC was composed of seventeen national commissioners selected through a lengthy rigorous public screening process that set a new and commendable standard for public consultation in commissioner selection. Khubeka (TRC) argues that selecting the wrong person to head the commission will cause the commission to have only mitigated success. TRC Chair Desmond Tutu, considered by most to have been the right (and even only) person for the job, had been a long-time anti-apartheid activist and the leader of a substantial faith community throughout the apartheid era. Grobbelaar and others from the TRC, however, query whether his religious position and demeanor at times perhaps clashed with the secular activities of the truth commission. Lax (TRC) recommends that commissioners should include at least some persons with management backgrounds, given the magnitude of the challenge involved in operating an enterprise as large and complex as a modern truth commission. In contrast to the TRC, the CEH was composed of one international commissioner (the chair) selected by the UN Secretary General, and two national commissioners selected by the chair (in one case, based on a list of names proposed by Guatemalan university presidents) in consultation with the parties to the peace accord. This gave an air of objectivity to the work of the Commission. It also turned out to be useful to have the commitment of the international community to the process, given

20. Jaime Esponda Fernandez, *Legal Challenges*, available upon request from the ICTJ.

21. Tomuschat, *supra* note 17, at 240, ¶ 2.

22. Dumisa Buhle Ntsebeza, *A Perspective on the Work of the Investigative Unit*, available upon request from the ICTJ.

the political and financial support and encouragement it is able to provide over and above national resources.

From the experiences of the CEH and TRC we learn that the selection of commissioners can be particularly challenging where one or more of the commissioners chosen is unwilling or unable to take part in the work of the commission, or if not all of the commissioners are appointed simultaneously. Commissioners are often forced to set aside their former careers and take time away from other commitments in their efforts to achieve the goals established by the commission. And once named, in many instances these commissioners may be unknown to each other, and will have to find for themselves a working dynamic and cohesive relationship. At the same time, the framers often find themselves “working against the clock” in their bid to get the commission off the ground. Alex Boraine, the deputy chairperson of the TRC, notes that those chosen to act as commissioners in the TRC were ultimately selected by President Mandela, but they were not officially notified before a complete list of their names was published in a national newspaper!²³

The period of operation of the commission is another matter that requires significant consideration. A definite time frame must be established, allowing a work plan to be developed that will allow the commission to meet expectations and obligations on schedule. Several of the authors comment on the need for a discrete preparatory phase of a few months for a commission to set itself up. Boraine’s experience in this regard is noteworthy:

As yet we had no budget, no offices, no staff, not even a paper clip. We had nothing. It was decided at the first meetings that I would be charged with the responsibility of getting the logistics in place, drawing up a staff complement, and initiating a search for key staff members. This was an extraordinarily difficult task We stumbled from one vacant building to another, trying to find offices in the centre of Cape Town that would be modest and which would make a spectrum of visitors feel comfortable. We eventually found a building which looked like a vast barn, with no internal walls and not too much flooring or ceiling. We called in a company to draw up plans and to renovate the building without delay. While this work was under way I visited a number of furniture factories and, working from a great deal of ignorance, placed orders so that the commissioners would at least have a desk, a chair, and the bare necessities to assist them with their work.²⁴

Lyster, Fullard, and Daniel echo this point, noting that the TRC was set in motion well before any of the necessary preparations had been made.

23. ALEX BORAINÉ, *A COUNTRY UNMASKED* 76 (2000).

24. *Id.* at 83–84.

Even after the preparatory phase concludes, however, other commission activities can tend to take much longer than anticipated. According to Martinez (CEH), no matter the commitment and enthusiasm of the commission's staff, the task at hand is both important and sizeable and will, accordingly, take a significant period of time to complete. For example, Ntsebeza (TRC) notes that more than six months were required simply to get the Investigations Unit—one of the key units of data collection for the TRC—up and running. Other authors note similar delays in preparing for public hearings and writing up depositions. For the CEH these delays posed especially difficult challenges since it was given a mandate of only six months with an option for an extra six months if necessary; a period that most authors considered inadequate to allow for all of the work that had to be completed. At the same time, it must be recognized that allowing too much time to elapse between the appointment and conclusion of a truth commission can cause the commission to lose momentum. Tomuschat (Chairman of the Guatemalan CEH) suggests that both minimum and maximum time frames are important, recommending that a truth commission be allowed to continue for no longer than five years.²⁵ Five years is probably too long though and, as Martinez suggests, valuable evidence may disappear the longer it is left. Thus, framers must set realistic but not excessively long time frames for the commission.

B. Running a Truth Commission: Commissioners' Responsibilities

Once the commission has been established, the commissioners themselves must develop a formal work plan. This will, in large part, determine the results it obtains. The commissioners must also interpret the conceptual framework presented to them by the framers, and in this way begin to develop a comprehensive methodology that will inform the commission's work. The strategy must be clearly linked to those objectives identified by the framers, such as historical clarification and reconciliation, for example. This methodology must then, according to Martinez (CEH), be clearly presented to and understood by those who will be working within the truth-seeking process. Lax argues that the TRC was beleaguered by a general ignorance among staff as to the conceptual framework upon which the Commission was both appointed and run. Preti reports a similar lack of knowledge among the front-line workers of the CEH.

The strategic work plan, then, must be coherent enough to allow the commission to begin its work and also be clearly communicated to the

25. Tomuschat, *supra* note 17, at 242.

whole commission team. Even so, the procedures and plans at this stage, as with the formulation of the theoretical framework, must be flexible enough for new information and ideas to be incorporated. This is equally true of ideas which emerge later in the process as it is of those ideas which present themselves at the beginning stage. At the same time, the methodology cannot be so flexible as to be swayed by dominant interests later on. The commissioners, then, walk a fine balance.

A central part of the work plan will be to recruit the commission staff. Determining the types of people who will be required to, *inter alia*, conduct investigations, gather testimony, and provide research, must be decided without delay. In the case of the TRC, Lyster states that hiring was done on the basis of racial diversity, and not simply on the basis of merit; in the aftermath, he concedes, the hiring process should have been left to a professional agency. As to the number of staff that can be recruited, financial and time constraints necessarily limit the numbers of staff that can be hired. At the same time, Ntsebeza argues that the nature and scope of the work of the TRC, and presumably for most truth commissions, warranted the hiring of significantly more staff than was possible.

As a general rule, laypersons and professionals possessing diverse sets of skills will be required to carry out the tasks of the commission. Alejandro Valencia Villa²⁶ (a member of the Special Investigations Unit in the CEH), Patrick Njozela²⁷ (a statement-taker in the TRC) and Thembeke Mufamadi²⁸ (a member of the Research Unit in the TRC) all note the importance of hiring those with specialized experience. Those staff members who will have direct contact with victims and their families, for example, must have some familiarity with the language of the communities in which they will work, along with knowledge of past events, and an idea of how their work fits in with the overarching themes of the commission.²⁹ Ntsebeza (TRC) emphasizes the importance of selecting only those who are above reproach, and who are committed to the truth-seeking process. Njozela suggests that personal character is as important as, and perhaps more important than, competency or professional training. Other authors took a different view, emphasizing the need for skills above all else. Nearly all of the authors

26. Alejandro Valencia Villa, *Special Challenges to Investigating the Military and Guerrillas*, available upon request from the ICTJ.

27. Patrick "Lucky" Njozela and Madeleine Fullard, *The Statement-Taking Process*, available upon request from the ICTJ.

28. Thembeke Mufamadi, *The Research Department From a Regional Office Perspective*, available upon request from the ICTJ.

29. In some instances, familiarity with the languages of a region may be difficult or impossible. The CEH staff, for example, did not have the capability to speak each of the languages used in the country, especially those from remote areas. In these cases, it is preferable to work with a member of such communities acting as a translator.

agreed, however, that interdisciplinary teams were able to garner the greatest success, drawing on one another's strengths and creating deeper pools of knowledge from which the truth commission could draw. Other authors also noted the value of hiring some foreign staff. Ntsebeza comments that in many instances those coming from outside of the conflict are not subject to the same criticisms and threats as nationals themselves. Valencia notes much the same in the case of the CEH, and certainly Tomuschat concurs as to the benefit of foreign persons on staff.³⁰

Even with a large staff of nationals and internationals, however, both the TRC and CEH were ultimately forced to seek volunteer help from individuals and organizations working in similar fields. Several authors argue that it was helpful to use the services of local NGOs, traditional leaders, churches and other civil society leaders when such services were offered, particularly for teams working in the field. Haupt (TRC) discusses the contributions of medical and other professionals in handling the overflow that commission staff was unable to address. Wildschut (TRC) points out, however, that in many cases volunteers were turned away or simply stopped participating because no coordination of their services had been put in place. Once hired, the volunteer teams, like the staff of the commission, require extensive training. Lax and Grobbelaar, both of the TRC, recommend that a series of orientation and skill-centered workshops, along with other specialized training, be given to all volunteers and incoming staff members. And throughout, Haupt and Khubeka note the importance of establishing a robust system of administrative oversight and inter-departmental communication.

Another challenge to commissioners comes in the form of geography. In both South Africa and Guatemala, they found it helpful to overcome geographical distances by dividing the work to be done between several regional offices and field stations. This allowed the commissions to focus in greater detail on particular events and communities in virtually all areas and regions, whereas trying to coordinate such efforts from a national headquarters might have become too unwieldy. However, Wildschut and Lyster, both of the TRC, note that extreme variations in procedures and in the type and quality of work conducted across these regions occurred; Lyster argues that this presented an institutional handicap that the TRC found difficult to surmount. Several of the South African authors comment that the organizational structure can be enhanced by a cohesive national strategy that allows staff from the decentralized regional offices to liaise regularly. Concrete arrangements pertaining to reporting and accountability are also crucial; Ntsebeza (TRC) maintains that it is important for each of the regional offices

30. Tomuschat, *supra* note 17, at 237.

to report to a national coordinator. Or as Grandin (CEH) simply suggests, the commission must work actively to maintain effective communication at all levels: local, regional and international. Ensuring uniformity across and among regions must not, however, become the overriding priority. Certainly standardization must never be undertaken at the expense of finding the truth. And while organizing and managing a complicated system of regional offices and staff can be difficult, there are benefits to such an arrangement as well. Indeed, as Boraine, Deputy Chairperson of the TRC, notes, the regional system employed in South Africa was able to “traverse the vast differences in South Africa and to offset logistical difficulties.”³¹

Since the central purpose of the truth-seeking process is to unearth the truth about past events, the participation of the larger community is another important aspect that ought to be considered by commissioners. Preti (CEH) contends that a truth commission can play a special role in fostering cohesion and national unity in countries where divisiveness has become the norm. Broad participation also has the potential to strengthen the credibility of the commission. The active involvement of the people who were directly affected by the events under investigation is, of course, of special importance. Indeed, Martinez (CEH) argues that there is a great deal of social value in allowing people to participate in the reconstruction of their individual and collective past. This involvement can take many different forms, as will be discussed below, but all agree that this participation is essential. To that end, Lyster (TRC) recommends that a commission be extremely proactive in publicizing its planned work at an early stage, and actually go out to visit local communities to hold public information sessions and meetings.

Participation in a truth commission, however, is often fraught with emotion for all involved. Victims are in many ways reliving the horror of their experiences and society as a whole is regularly assailed with the grisly details of what actually happened. Many of the authors relate that the process of truth-telling is necessarily an emotional experience, both for the person telling her story and for the person listening and recording the details. The South African commissioners realized ahead of time the relative emotional strain that would be imposed upon the country throughout the process, and decided that emotional or psychological support mechanisms should be put in place to deal with the trauma that would be experienced. Yet, as Haupt (TRC) argues, this emotional support was left largely to a handful of people called “briefers.” The TRC simply did not have enough resources in place to provide the full emotional support many felt was required.

31. BORAINÉ, *supra* note 23, at 105.

Briefers were chosen on the basis of a general background in counseling, and were assigned to carry out the difficult task of preparing witnesses for the public hearing process. In particular, their job was to prepare those who would testify in a public hearing before the Human Rights Violations Committee, and support them emotionally through the process. Their work was based in large part on the system of critical incident stress management used in treating trauma victims all over the world. Haupt outlines serious limitations to the work that the briefers were able to carry out: they numbered only fourteen across the entire country, they received no specialized training appropriate to the type of trauma they encountered, and they were largely unable to meet the needs of many of those who appeared before the public hearings. In the end, they called for and received some support on a volunteer basis from practitioners in many different communities—professionals and community workers who were able to see to the needs of some of those who badly needed emotional support. However, even these efforts proved insufficient to the magnitude of the challenge.

In summary, then, the structure selected and established for and by the truth commission must take many ideas into consideration. The theoretical direction in which it proceeds as outlined by the framers of the commission itself, will have an enormous impact on public expectations and the potential for success. Similarly, the methodology and work plan devised by the commissioners will guide the manner in which it ultimately proceeds. Early and thoughtful decisions, as a result, will be of the utmost value.

VI. DATA COLLECTION AND PUBLIC HEARINGS

Once the theoretical and operational parameters of the truth commission have been established and staff and offices are in place, the commission can begin the task of establishing the truth about past events. While budgetary constraints and political support may vary by country, one thing that remains constant is the need to collect information that will contribute to the common truth being uncovered. In most cases, it is preferable that those involved in gathering the facts—from those who interview the victims, to investigators and researchers, among others—should work together in an interdisciplinary team approach. This allows for the strengths of each position, and of those carrying out various sets of tasks, to be maximized for the benefit of the commission. At the same time, there are many different possible modalities for the collection of data, and not all of the methods described in this section must necessarily be used by any one truth commission. Rather, individual truth commissions may choose to utilize only some of these methods of data collection, as circumstances and financial considerations come into play.

In both Guatemala and South Africa, as in many commissions before and since, the collection of data was mainly concentrated in the form of statements from victims and their families. Njozela, Fullard, and Daniel, all of the TRC, explain that statement-takers, those who listen to and record such testimony, are often the only part of the commission with which victims come directly into contact. Grobbelaar indicates that the role of the statement-taker in the TRC was conceived of as being little more than a scribe. As such, the statement-takers, at the very least, should have possessed the ability to write well. However, as the TRC process unfolded, Khubeka realized that many of the statement-takers had poor writing skills; this sloppiness, according to Njozela, Fullard, and Daniel, served to hinder both the database being created and the investigations that took such statements as their starting-point. As a result, they lament, much of the statement-taker's time was often taken up in consultation with other members of the truth commission team clarifying the details of the statements they had already collected. Relatedly, Martinez (CEH) suggests that unless commissioners clearly define in advance what types of information are desired, relevant information will simply get lost or go unsought during the statement taking process. Martinez also recommends that statement-takers be instructed to go beyond interviewing witnesses and seek out other key players in each local context, such as mayors and clergy, who can provide key background and contextual information regarding historical antecedents as well as individual cases. Njozela (TRC) recommends that statement takers also receive training regarding the various public services (e.g., health services, pension bureaus, etc.) available for victims outside of the commission so that they can make appropriate referrals at the moment of contact.

In terms of staff backgrounds, in both commissions a majority of the statement-takers were drawn from backgrounds in social science or human rights. Esponda (CEH) and Grobbelaar (TRC), however, argue that it is important for statement-takers to come from a legal background. Whichever the case, the statement-taker must be capable of deciding when and how to approach outside actors for additional help. Several of the authors contend that NGOs, churches and other local organizations can provide many of the skills and languages which some statement-takers may not possess, as well as important access to remote communities. At one point, the TRC implemented a "Designated Statement-Taker Program," whereby people from various communities agreed to supplement the work of commission statement-takers, who were simply overwhelmed. As with many of the volunteer positions in the TRC, however, Njozela, Fullard and Daniel observe that insufficient monitoring, along with low levels of funding and insufficient training, effectively reduced the impact of the program.

Technically, the work of taking statements is relatively straightforward.

The collection of each statement requires 45–60 minutes, according to Njuzela, Fullard, and Daniel (TRC), theoretically leaving the statement-taker free to collect as many as eight statements per day. Patrick Ball,³² an international data consultant with the American Association for the Advancement of Science (AAAS) who has worked with many truth commissions including the TRC and the CEH, instead suggests (and more realistically, in our view) that an interviewer can do no more than three interviews in a day, given that there are always delays in finding deponents and filling out questionnaires, and exhaustion from the emotional stress of every day's work. The details of each statement are recorded onto pre-designed forms, aimed at standardizing the process that will allow the qualitative information gathered to be transferred to a database. Various authors, however, reveal that statements collected in spaces that are not completely private and confidential are unlikely to proceed as quickly or easily, and that caring for the emotional needs of those giving testimony is often time-consuming. Njuzela (TRC) found that describing his own past victimization helped deponents feel more at ease with him and broke down the perception of him as an intimidating official. Martinez (CEH) instead emphasizes other skills. He notes first the importance of asking the right questions in the right way and then respecting the rhythm and logic of the deponent's answer no matter how it comes out. Statement-takers must exhibit respect, concentration and emotional control and not simply focus on filling out the statement forms, because every testimony is unique, even when about the same event.

The statement-taker, then, is very much a front-line commission worker providing a public face for the commission while undertaking an extremely delicate task. Because of this, the statement-taker ought to receive extensive training and, as Njuzela (TRC) asserts, a better salary and a less junior place within the overall commission hierarchy than has usually been the case in past commissions. Various authors also suggest that statement-takers be brought into the process of writing the final report to share more directly the experiences and stories of victims with the report writing team; regrettably, this did not happen in the case of the CEH or the TRC.

Because victims and witnesses cannot provide all of the facts required by the truth commission, their statements need to be complemented by expert information, forensic reports, and official documents, providing that such records were not removed and destroyed under the former regime. Especially valuable in this process is the role of the investigator.³³ Like the

32. Patrick Ball, *Information Management and Quantitative Analysis by Truth Commissions, available upon request from the ICTJ*.

33. In the CEH, the roles of statement-taker and investigator were less defined, and in many cases one person was called upon to fulfill both sets of duties.

statement-taker, the investigator's role is to establish as detailed a picture as possible of past events. Yet an investigator's work will often go beyond simply recording the stories and narratives of victims. The investigator is responsible for following up on details in order to verify facts and establish the nature and extent of the violations revealed in collected statements, corroborating where possible such evidence. Like police detectives, commission investigators also proactively seek out information and sources that will allow cases to be developed in more depth.

In carrying out such inquiries many of the authors stress the importance of consulting a wide variety of sources from various periods and locations, including forensic reports, government records, and intelligence reports from both national and international sources. Valencia (CEH), Paz (CEH), and Ntsebeza (TRC) discuss a particular difficulty encountered by investigators: the disappearance or destruction of official documents. In Guatemala and South Africa, the commissions had to submit a request for documents—and then often stand by helplessly as government and military agencies claimed that the documents were “lost” or had been destroyed pursuant to generic office protocols. Where such documents were obtained, however, the authors emphasize that it helped to paint a clearer picture of the overall context of violations that occurred, as well as helping to make more precise assessments of responsibility. Esponda (CEH) indicates, too, the duty that investigators have to critically evaluate their findings, prior to turning them over to those who will process and manage the information they have amassed.

Investigations tend to be plagued by the same chronic resource deficiencies as other units within a commission. As Wildschut (TRC) notes, this can have a harsh effect on the victims; most victims expect that the commission will provide lots of new information about their cases, but usually it is not possible to discover much more than was already known by the victim. Grobbelaar and Ntsebeza argue that the TRC's investigators were particularly ill-equipped. They identify the shortage of key personnel as having been a big problem, along with the failure to have the Investigations Unit up and running from the earliest stages. Additionally, Lyster and Ntsebeza, both of the TRC, note that problems with regional administration and supervision led to incomplete work, and that the efforts of the investigators would have been significantly enhanced by cooperation from other departments within the Commission.

Often, the resistance encountered by truth commissions in seeking specific details is from a particular segment of society. Groups such as the armed forces, former regime officials, or others who fear that they might be implicated in past crimes are typically reluctant to participate. Certainly, commissions operating without subpoena or search and seizure powers are more likely to have to deal with a lack of cooperation on many fronts. The

CEH in Guatemala sought to ensure greater cooperation with the armed forces and guerrilla organizations by establishing a special liaison team to work specifically with these groups. It was the task of this special team to become familiar with the structure and personnel of the military as well as the tactics employed by the guerrillas, and to assess collective responsibility as mandated by the Oslo Agreement.

Valencia (CEH) provides a unique look at the activities of the special liaison team. As noted above, it was especially important in the case of a military investigation to have an impartial and unfettered expert at the helm; therefore foreign professionals with a comprehensive understanding of the situation were brought in to lead the activities of the special team. Valencia notes, however, that the military, although friendly, was by no means cooperative with the team. Instead, numerous requests for documents were either ignored or rejected. Similarly, the guerrilla group claimed to be unable to provide the information requested. (Ntsebeza discusses these same phenomena in the context of the TRC.) In the end, Valencia notes, the special team resorted to establishing a small volunteer group of former military personnel who provided information and were able to confirm the details of information previously gathered.

Another function that can be important in the process of data collection is research. The researcher is called upon to synthesize information on a given subject area into concise reports relating to a number of questions under consideration by a commission. Many times the researcher will, in effect, continue the work begun by the investigator, in validating many of her findings and assumptions. As Lax (TRC) notes, the researcher can also be used to provide regular reports and briefings pertaining to the ongoing activities of the commission, like public hearings. But many of the authors from both the TRC and CEH argue that the researcher's work goes further, and can be used to provide background information, detailed summaries, and contact information to statement-takers, investigators, and commissioners. And, when incorporated into the diverse mix of talents and skills of an interdisciplinary team, Mufamadi (TRC) adds that the researcher's work becomes more indispensable to the work of the commission.

As with the investigative function, Martinez (CEH) and Paz (CEH) observe that much of the researcher's resource material must be requested from official agencies and government departments. Depending on the situation, however, Ntsebeza (TRC) and Valencia (CEH) note that, as with the investigator, these requests may be denied. Martinez emphasizes that the researcher, therefore, must constantly consult secondary sources for details that will help to reconstruct the situation under review in order to be sure that the case on which he is reporting is not subject to bias or misinformation. Another of the difficulties that researchers encounter, according to Mufamadi (TRC), is the sheer volume of research materials

required and the limited time available to review it all. She notes that researchers do not generally have very long to familiarize themselves with a particular subject area. Time lost in waiting for documents to arrive, as Lax (TRC) notes, can significantly delay the researcher's work. As a result, several of the authors point to the importance of bringing in outside experts who have in-depth personal knowledge of the relevant subjects and sources.

Researchers and investigators, then, perform some of the key functions in a truth commission. They are able to provide important information to staff and commissioners at all levels and in all areas, thereby speeding up the data collection process. They must be creative when it comes to finding the information required to produce their reports, as the experiences of the CEH and TRC indicate that resistance from certain sectors is inevitable. Innovation, therefore, will require them to take advantage of all materials.

Another type of data collection that can add to the compilation of evidence relating to past crimes is forensic anthropology. This hybrid discipline often combines expertise in physical anthropology, forensic archaeology and forensic pathology, along with experts from other disciplines, "to exhume, establish cause(s) of death, and identify skeletal remains of victims of human rights violations."³⁴ In many cases, as in both Guatemala and South Africa, it is the Argentine Forensic Anthropology Team (EAAF) that has been called upon to conduct such work and to train local forensic anthropology teams to conduct such investigations. Martinez (CEH) notes that information gathered by forensic anthropologists can be usefully correlated with concurrent research carried out by other arms of the commission. Similarly, Paz (CEH) sees forensic inquiry as very complementary to the other investigations being conducted.

Mimi Doretto,³⁵ a well-known international forensic anthropologist who worked with both the TRC and the CEH, carefully describes the work that her team usually undertakes for a truth commission. Normally the work is broken down into three distinct phases: a preliminary investigation, an archaeological examination, and lab work. She is quick to point out, however, that the work is not formulaic; rather, it varies by country. In most if not all cases, the team will not be able to examine every burial site. Instead, they will have to spend a considerable amount of time doing research and consulting with the local population in finding suitable sites to examine. This process is extremely important, she argues, but can also be extremely difficult and emotional for the relatives of the victims that are

34. ARGENTINE FORENSIC ANTHROPOLOGY TEAM (EAAF), ANNUAL REPORT 2000, at 2 (2000).

35. Mimi Doretto, *Truth Commissions and Forensic Work, available upon request from the ICTJ*.

exhumed, and of those who are not. Here, too, emotional assistance must be provided.

Although the work of forensic experts can be very valuable, the benefits may be outweighed by the enormous costs associated with the process. Forensic anthropologists employ both physical resources and specialized personnel at each step, which can be very expensive. The resources required to carry out such investigations are sometimes more than the budget of a truth commission can accommodate, and becoming engaged in exhumations and other forensic activity can easily eclipse other, and potentially more important, forms of data collection. Accordingly, in our view each commission must critically evaluate the importance of this type of work to its own particular needs. In the end, not every commission will feel the need to incorporate forensic anthropology into its methods of data accumulation, although a limited amount of forensic work should probably always be considered.

A final means of eliciting information and engaging with victims and the public is via public hearings for victims.³⁶ Generally speaking, the purpose of such hearings is primarily to provide a public platform for victims and bring the truth to the public in an unadulterated form, and not to collect new information. Nevertheless, new information does emerge at public hearings either in response to questions or when the victim is allowed to speak extemporaneously. The CEH in Guatemala did not utilize public hearings in any form, following in the tradition of every other Latin American truth commission which had come before it; as such, the following comments pertain solely to the experience of the TRC, where public hearings for victims were designed to provide a forum in which the stories of victims and their families could be voiced before the nation as a whole. Because of the intense collective reaction to such hearings, John Allen³⁷ (Senior Media Liaison Officer in the TRC) recommends scheduling them in such a way as to ensure a constant stream of news about victims who appear and their stories. Just as importantly, he notes, a commission should draw up guidelines with journalists to help ensure an appropriate balance between public interests and victim needs.

As for the emotional impact of the public hearings, Khubeka (TRC) reported that the white community, in fact, was shocked by the revelations that emerged from the public hearings. Fullard and Daniel, both of the TRC, argue that victim hearings were so compelling that their testimonies

36. The TRC held several different types of public hearings: victim hearings; amnesty hearings; and special hearings focused on key institutions, special thematic issues, and key events. The discussion in this article is focused only on victim hearings.

37. John Allen, Media Relations and the South African TRC—Riding a Tiger, *available upon request from the ICTJ*.

ultimately will have had a far more enduring and profound impact than the final report ever could or would. At the same time, Grobbelaar (TRC) notes that the hearings were cumbersome: hard to administer, organize and focus. Rather than enhance the capacity of the commission for reflection and analysis, she contends that they actually hindered the truth-seeking process by taking on a life of their own and draining limited resources from other important commission work. And instead of providing a means by which to collect new information, Lyster (TRC) argues that the public hearings often only reinforced information that had already been gathered by statement-takers and investigators. What's more, Mufamadi (TRC) comments that in those instances where new information was gathered in the course of the hearings, it was eventually squandered and reports prepared that contained this new information were never used. Lastly, as Haupt (TRC) notes, the process was very difficult from an emotional standpoint for many of the witnesses that did participate.

Public hearings, then, present opportunities for extraordinary public impact, but they also pose challenges. Indeed, the political climate in some contexts may not be conducive to public truth-telling at all. Many victims and their families may still fear retribution and reprisal by the perpetrators of the atrocities that have taken place. Moreover, those public institutions that ought to be available to support victims and the truth commission may not be cooperative, independent, or under civilian control. Also, as discussed above, the participation of perpetrators can further traumatize potential participants, and the financial and logistical burden of public hearings can be extremely high. All these factors must be taken into account, and weighed against the potential benefits of holding hearings.

VII. INFORMATION MANAGEMENT AND REPORTING TO THE PUBLIC

A truth commission must be careful and thoughtful in the way that it organizes information that has been collected, and in the way that it disseminates it. The creation of a cohesive system of mechanisms to organize and handle what will surely be a torrent of evidence, records and statistics is crucial. In addition, the early establishment of such a system could spell the difference between an information management system able to cope with the demands placed on it, and one which becomes a casualty of the truth commission process.

First, in recent years truth commissions have begun to create and utilize sophisticated information management software and databases that are capable of housing the information collected. These are computerized systems that enable commissions to approach the data accumulated

through statements, investigations and research in a rigorous and scientific manner. (Patrick Ball of the AAAS suggests as a general rule of thumb that one data processor can input into the database as many interviews in one day as a statement taker can complete in a week.) Through the use of a database, and with the benefit of quantitative analysis, a truth commission is able to standardize responses and analyze trends and patterns of systemic abuse. This manner of categorization also permits truth commission staff to access information through a simple search process. And database methodology, combined with cross-referencing of data, often allows the commission to make reasonably accurate projections as to total numbers of abuses in all of the different geographic regions.

Ball, who assisted both the CEH and the TRC in information management design, notes that it is very difficult to craft an information management system without deciding on precisely what information is needed and how it is to be organized. It is important, for example, to determine early in the process questions such as whether rape will be counted separately from torture or as a subcategory of torture or both. Such decisions will profoundly impact the “big picture” analysis at the end of the process when a commission needs to portray with precision the broad patterns of past violence. Ball insists on the highest level of social science rigor in this process. He also recommends that commissions, which in most cases cannot record every violation that took place, must explain clearly in their reports that their objective was not to analyze every possible violation but rather to identify the larger patterns and trends. Commissions that are rigorous in their data collection and analysis will, he asserts, be better able to defend their conclusions and make important assertions regarding, for example, the precise ratio of violations committed by one side compared to the other.

In practice, however, the sophisticated database system described by Ball can be difficult to understand and utilize. A few of the authors noted that the commission database system was not user-friendly and that, in the end, it was abandoned by a number of those who were supposed to have relied on it. Lyster (TRC) argues that such difficulties were caused by the design of the database, which was unable to perform functions such as tracking statements as they moved through different stages in the TRC process. Lax (TRC) maintains that the information ultimately collected was too vague to be used at all, and that the system developed for the TRC was not able to adequately allow for cross-referencing. At the same time, Khubeka (TRC) notes that those inputting the actual data were not at all consistent. And Njozela, Fullard and Daniel, all of the TRC, felt that the statement-takers were pressured to conform to the standards set for the data processors even though they had to collect a different kind of data.

Grobbelaar (TRC) comments that the commissioners had hoped that the

database would solve a myriad of methodological problems; instead the process of quantifying essentially descriptive data was difficult. On the other hand, Ball argues that the expectations of the commissioners are often unrealistic, and that they must clearly understand their own reasoning in desiring to use the database to better manage the information collected. He emphasizes that the database is clearly not meant to be a stand-alone remedy for dealing with an overwhelming amount of data, but rather to be used in conjunction with other tools of information management and data collection. At the same time, he argues, without such a system in place the commission simply cannot hope to report on systemic findings of any kind.

Another useful option for enhancing the management of much of the data collected throughout the life span of a truth commission (and often beyond) is the establishment of a documentation center. Throughout the life of the commission, documents are likely to be assembled from among a variety of sources, including national and international research centers, think tanks, private and public libraries, foreign governments, and local and international NGOs. Martinez (CEH) argues that it is important to centrally house the research reports produced by the commission, along with much of the archival material and evidence recovered in the course of the commission's work, and to register all of this in a manner that makes it easy to retrieve. If done properly, Grandin (CEH) explains that access to the database of a documentation center can be made available to all of those employed by the commission, potentially by email or other electronic capacity. And this material, as discussed above, is of enormous value to both investigators and researchers.

Beyond a photocopier, a scanner, and a computer with email capabilities and simple database software, the documentation centre does not require much else, Grandin maintains. He is adamant, however, that the staff of the centre must possess a diversity of skills including computer literacy, knowledge of human rights practices, and some legal knowledge. He estimates that a documentation centre requires at least four staff people, including an administrative assistant. Some of these might even work in a research function, assisting the research team in compiling reports. Because of the enormous potential of the documentation centre to support investigation and report-writing, Grandin suggests that the commission must take care not to underutilize its capacity. At the same time, a repository of this type is good only if it is organized and searchable. The documents it houses must be easy to retrieve and accessible at all levels. This will depend on the skills and foresight of those who operate the centre, but also on the availability of working equipment necessary for them to do their job.

Another challenge for a truth commission is to report and share collected information with the public. The key actor in this process, outside of the commission itself, is the media. If the chief purpose of a truth

commission is to establish the truth about past events and to report on this to the country as a whole, it is important to recognize that the media will play a central role. As in so many other industries, the release of information to the public through the media must be managed; at the same time, a commission should maintain as open a relationship to the media as possible. The TRC placed a great deal of emphasis on the importance of transparency and the ongoing release of information to all South Africans, something that Allen considered especially necessary after decades of official secrecy and cover-ups.

In attempting to assist the media, the TRC established a media liaison department composed of seasoned journalists. Allen notes that the Commission devoted a great amount of resources to establishing strong relationships with different types of media, from print journalists and still photographers to radio and television reporters. He underscores the need for truth commissions to provide the media with access to its public proceedings as they occur. He notes, however, that commissions must be vigilant in monitoring media coverage of the commission and in preventing details from being “leaked” ahead of scheduled releases. Allen emphasizes the particular importance of redressing premature leaks of information that can undermine progress in investigations of accused perpetrators. He also suggests that a sophisticated media strategy can also allow a commission to set the parameters of public debate by being the first to release news—even, or especially, embarrassing news. It can also strengthen its reputation and credibility by, for example, providing comprehensive information and analysis in all official news releases, keeping regular and open lines of communication with media outlets, and coordinating the release of material that affects victims so that they hear about key developments from the commission first and not the media. The CEH, for its part, did not have a strong policy of media management. Their capacity to harness the media for their own purposes was affected by this and, of course, by the absence of public hearings. Yet the CEH publicly thanked the Guatemalan media for their help in keeping Guatemalans informed of the events of the CEH.³⁸

A final task for a truth commission after the data has been collected and in turn sifted into the database is to complete a final report, which in most cases will be made publicly available. In almost every case a truth commission will have as part of its terms of reference, general instructions as to what this final report must contain. Certainly, successful truth commissions will take this directive into account in carrying out each of the

38. La Comisión para el Esclarecimiento Histórico de las Violaciones a los Derechos Humanos y los Hechos de Violencia, “Agradecimientos,” *Memoria del Silencio 1* (Guatemala: La Comisión para el Esclarecimiento Histórico, 1999, available at <http://hrdata.aas.org/ceh/report/spanish/toc.html> (visited 2 Apr. 2002).

phases of their work. At the same time, Fullard and Daniel (TRC) argue that decisions about what is to be specifically included or excluded from a final report must not be taken until the full scope of the project is better understood. Rather, they argue that the format adopted by the commission must represent those things that are discovered to be important in the local context, and must not be imposed remotely in advance by others removed from the local situation.

Fullard, Daniel, and Mufamadi note that the final report of the TRC became a document much more focused on legalities than had initially been expected. This led to the use of a “flat” language, free from emotionally charged terminology or appearance of bias. However, because the bulk of the information that had been collected was historical and analytical, a lexicon of distinct terms and phrases had to be developed. They reveal that this led to much debate over both the amount of detail to be included, and the narrative facility of the final report. They also note that space ultimately became the central criterion for what went into the final report and what was removed, which made a nuanced narrative all but impossible. Others, including Grobbelaar, argue that the TRC report was too descriptive and did not contain enough meticulous explanation. The process, then, is not likely to satisfy everyone. In the end, Fullard and Daniel lament that there simply was not enough time to achieve the quality of writing that was deserved and needed.

With respect to participation in the process of report-writing, as has been noted, many people contribute to the compiling of information throughout the course of a truth commission’s work. Many of the authors argue that all should participate as to the shape of the final report, or even possibly be incorporated into the writing process itself. Grobbelaar contends that statement-takers, researchers, investigators and commissioners should all be consulted, along with the written and transcribed reports and narratives they have prepared. Valencia and Grandin (CEH) see significant value in incorporating investigators and members of the documentation centre as well. Yet, with so many people involved, Mufamadi and Lyster (TRC) note that it is difficult to reach a consensus between the commission’s various units, and also across regions. Indeed, Fullard and Daniel argue that extending the process in so many directions can lead to organizational difficulties, and can mean that little time is, in the end, available for revision and thoughtful review. In their view, just as the time arrived to produce the TRC’s final report, the time for deeper analysis and reflection had only got underway.

After the final report has been prepared, internally accepted, and produced, public debate about it generally continues. Khubeka notes the importance of making the final report widely available, and suggests that victims should have a copy for themselves. Yet properly bound versions of

the report are often expensive. Language can provide another challenge; the TRC, for example, ultimately prepared short versions of the report in 11 of the languages used in South Africa. Also, in many truth commissions, inadequate systems for distribution have been a significant problem.

With respect to the public reception of the reports of the CEH and the TRC, the immediate impact of the release of the CEH's final report was quite profound (at least in urban centres), and so too, albeit to a lesser extent, the 1998 report of the TRC. At the same time, as Fullard and Daniel assert, because of the impact of other public TRC activities (particularly the public hearings), in the end the 1998 report of the TRC was not its crowning glory but rather one among an assortment of commission achievements. Regrettably, a more inauspicious aspect of the legacy of these and so many other commission reports is the non-implementation of many of the recommendations made to government. Wildschut (TRC) suggests starting to lobby for support for anticipated recommendations well in advance of the final report in order to avoid this situation. Her legitimate concern is that in the absence of implementation, the legacy of a commission can quickly turn negative.

VIII. CONCLUSIONS

Knowledge about truth commissions has expanded tremendously in the last decade. Government policymakers and civil society leaders around the world seem, today more than ever, to have a strong awareness of commissions. However, they also tend to have a lot of misperceptions about how such commissions work and what they can achieve. It is not uncommon to hear someone disparage a truth commission because he does not support the idea of amnesties, clearly unaware that the TRC in South Africa is the only commission to date that has had an amnesty-granting power. Equally, one still hears frequent comments suggesting that truth commissions are essential for social and individual catharsis, not appreciating perhaps that commissions can also pose a risk of sharpening social or political differences, or in the case of individuals, causing retraumatization rather than healing. The reality is that truth commissions are not magic elixirs, either for individuals or societies. They have the potential to play an important role at important moments in a political transition, but they are only one among many mechanisms necessary for comprehensively dealing with a legacy of mass abuse.

A lot has been written about truth commissions to date. The objective of the "Lessons Learned" project was to hear and learn from the "practitioners"—the people who actually carried out the commission's work and who bring the uniquely valuable perspective that insiders to any enterprise can bring. What many of them have to say is at times surprising and at times

quite instructive. If one were to summarize in a sentence the common themes that emerge in the papers, it would read something like this: “We needed more time, greater resources, better staff, better training, better internal coordination, and better management; nevertheless, it was an intense and remarkable experience, and we partially achieved some important objectives.” To some, this may sound like a vote against truth commissions, but this is how the TRC and the CEH experience, in fact, were seen and remembered by many of those who lived it every day for 2–3 years. It is not a romantic view, but it is a useful and real perspective and one that ought to be known by those setting up or working in truth commissions around the world today. For not only must public expectations about the benefits of truth commissions be kept in check, so too must those of commissioners and commission staff—at least if the experiences related in the papers in this Project provide any reliable indication.³⁹

Running a large, modern truth commission is not easy. Hopefully with the benefit of initiatives such as the “Lessons Learned” project, those who work in future commissions can learn from the insiders of the past and avoid making some of the same mistakes. The old adage remains persuasive: there is no substitute for experience. As long as the lessons are shared, the future of truth commissions should remain bright.

APPENDIX: LIST OF “LESSONS LEARNED” PROJECT PAPERS

(Available from the ICTJ at info@ictj.org)

South Africa

- Dumisa Buhle Ntsebeza (Commissioner, Head of Investigations Unit): A Perspective on the Work of the Investigative Unit
- Glenda Wildschut (Commissioner): Developing and Implementing a National Reparations and Rehabilitation Policy
- Richard Lyster (Commissioner): A Critical Overview of the Commission, With Emphasis on the Work of the Human Rights Violations Committee

39. In this respect, it is worth noting that a new and potentially significant initiative is underway to build on the idea of exchange and learning between today’s truth commission insiders and those of the past. The ICTJ has just established what it calls the “Transitional Justice Alliance,” one component of which is the creation of a “Truth Commissions Affinity Group.” The Affinity Group will begin as a small network of executive secretaries and senior staff of past and present truth commissions around the world, and plans to organize meetings and exchanges between Group members and staff at new commissions to share specific questions and experiences.

- Ilan Lax (Member, Human Rights Violations Committee and Amnesty Committee): The Amnesty Process
- Patrick “Lucky” Njozela (Statement-Taker) with Madeleine Fullard (Researcher): The Statement-Taking Process
- Themba Khubeka (Data Processing Unit staff, Documentation Officer): Challenges to Recording and Analyzing Data Collected by the Commission
- Thembeke Mufamadi (Research Unit staff): The Research Department From a Regional Office Perspective
- John Daniel (Researcher) with Madeleine Fullard (Researcher): Challenges of the Research Process and Production of the Final Report
- Janis Grobbelaar (Information Manager): Information Gathering Methodology and the Final Report
- Paul Haupt (“Briefer” who worked with victims providing testimony): Psychological Support Services Provided by the Commission
- John Allen (Senior Media Liaison Officer): Media Relations and the South African TRC—Riding a Tiger

Guatemala

- Greg Grandin (Documentation Unit): Challenges of the Documentation Center
- Jaime Esponda Fernandez (Head of Investigations): La CEH: Una Vision interdisciplinaria y supralegal (Legal Challenges)
- Denis Martinez (Statement-Taker): Las investigaciones de la CEH en el campo (Field Office Investigations)
- Claudia Paz (Investigator): Investigación de Casos (Investigations: Illustrative Cases)
- Alessandro Preti (Investigations and Final Report Team): Que Hacer Para Que No Vuelva a Pasar? (Crafting Recommendations for the Final Report)
- Alejandro Valencia Villa (Special Investigations Unit): La Verdad de los Combatientes (Special Challenges to Investigating the Military and Guerrillas)

International

- Patrick Ball (American Association for the Advancement of Science, Science and Human Rights Program): Information Management and Quantitative Analysis by Truth Commissions
- Mimi Doretti (Argentine Forensic Anthropology Team): Truth Commissions and Forensic Work