

Worldwide Truth and Reconciliation Commissions

A Summarised Comparative Fact Sheet – PART ONE

“Reconciliation requires that we work together to defend our democracy and the humanity proclaimed by our Constitution.”

Nelson Mandela, in his speech on receiving the South African TRC Report.

The Fact Sheet uses examples of Truth and Reconciliation Commissions from five countries: South Africa, Sierra Leone, Chile, Guatemala and Peru. Discussion document produced by Peace Secretariat for the help to negotiating parties.

<u>Truth & Reconciliation Commissions</u>	South Africa	Sierra Leone	Chile	Guatemala	Peru
Mandate	<p>The Truth and Reconciliation Committee</p> <p>To establish causes, nature and extent of violations of human rights committed, and determine the fate of victims of such violations. To grant amnesty to persons who make full disclosure of all relevant facts relating to acts committed with a political objective committed during period. To afford victims an opportunity to relate the violations they suffered and taking measures aimed at the granting of reparation and rehabilitation to victims and reporting to the Nation of such violations.</p>	<p>The Truth and Reconciliation Commission</p> <p>To create an impartial historical record of violations and abuses of human rights and international humanitarian law during the period. To address impunity, to respond to the needs of victims, by providing an opportunity for victims to give an account of the violations and abuses, and for perpetrators to relate their experiences.</p>	<p>The National Commission on Truth and Reconciliation</p> <p>To establish as complete a picture as possible of those events caused by serious human rights violations, to gather evidence to help identify the victims by name and determine their fate or whereabouts; to recommend measures of reparation and reinstatement, and to recommend the legal and administrative measures which should be adopted in order to prevent actions such as those mentioned from being committed. To prepare a report on the basis of evidence gathered.</p>	<p>The Commission for Historical Clarification (CEH)</p> <p>To clarify with objectivity, the human rights violations and acts of violence, that have caused the Guatemalan population to suffer, connected with the armed conflict. To prepare a report on the findings of the investigations and to formulate specific recommendations on peace, national harmony, and measures to preserve the memory of the victims.</p>	<p>The Truth and Reconciliation Commission</p> <p>To analyze the political, social, cultural conditions, and behaviours that contributed to the situation of violence, between May 1980 and November 2000. Contributing with the administration of justice, when it corresponds, so that it can clarify the crimes and violations to human rights committed both by terrorist organizations and State agents. To determine the whereabouts and fate of the victims and assuming where possible, the presumed responsibilities. To recommend reforms as an instrument of prevention of future conflict. To elaborate on proposals of reparations for victims and establish the necessary mechanism for follow up of its recommendations.</p>
Quality of Mandate	<p>Mandate is comprehensive and very public, requesting full disclosure. Reports on activity were shown on prime time television.</p>	<p>Mandate addresses violations, but in this case also allows platforms for perpetrators also to share their perspective</p>	<p>Mandate addresses violations and fate of victims, and recommendations.</p>	<p>Mandate is to clarify violations and focuses on national harmony.</p>	<p>Mandate is comprehensive, dealing with the fate of victims, responsibilities, legal aspects, reforms, reparations and national reconciliation.</p>

Page 2. Truth & Reconciliation Commissions	South Africa	Sierra Leone	Chile	Guatemala	Peru
Authority/ Power and Legal Framework	<p>The functions of the Commission shall be to achieve its objectives, and to that end the Commission shall:</p> <p>Coordinate inquiries into violations of human rights; the nature thereof; and accountability.</p> <p>It shall gather information from any person, facilitate the granting of amnesty; determine what articles have been destroyed in an effort to conceal violations; prepare a comprehensive report and make recommendations.</p> <p>The Commission shall establish such offices or Committees necessary and carry out hearings necessary.</p>	<p>The Act provides for the Commission to gather by means it deems appropriate, any information it considers relevant. To visit any establishment without prior notice, and to enter any land for the purpose of obtaining information. To interview any individual, request for statements under oath, request information from relevant authorities of a foreign country, to issue summons and request police assistance. No member of the Commission or staff of the Commission shall be held liable for any acts carried out within the scope of his duties.</p>	<p>The Commission is not to assume jurisdictional functions proper to the courts; To receive evidence from victims; gather and weigh information from organisations; carry out as much investigation as it may determine suitable; the commission will prepare its own bylaws; the Commission may protect the identity of informants of those who assist them; government agencies to offer the Commission all the collaboration it requests.</p>	<p>The Commission shall receive particulars and information from individuals or institutions and be responsible for clarifying these situations fully.</p> <p>The Commission shall not attribute responsibility to any individual in its work nor shall have any judicial aim or effect. The Commission shall be confidential.</p>	<p>The commission does not have judicial capabilities, therefore it does not substitute the judiciary nor the Public Ministry</p> <p>The Commission may interview those whom it considers relevant, including authorities and public officials collecting information it deems relevant. It may access State information or documentation, requesting cooperation from relevant public officials. It may visit or inspect places deemed necessary. Develop public hearings and reserved procedures when necessary. Request security measures for those who require them. It may establish appropriate communications channels and promote participation of the population.</p>
Bargaining Aspects/The Investigation	<p>Amnesty granted as an incentive to come forward with relevant information regarding the work of the Commission</p>	<p>Amnesty granted for a time period. A lot of leeway allowed for the Commission to perform duties.</p>	<p>The Commission may prepare its own bylaws and protect the identity of its informants.</p>	<p>The Commission is not to attribute responsibility to any individual in the course of its work.</p>	<p>The Commission is allowed leeway in its investigations. Allowed free access to State.</p>

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Time Frame	<p>The Commission was set up in 1995. It covered a period from March 1, 1960 to cut-off date decided in the constitution (5th December 1993)</p>	<p>The Commission was set up on the 5th of July 2002. From the beginning of the conflict in 1991 to the signing of the Lome Agreement in 1999. It delivered its report mid-2005</p>	<p>The Commission established in 1990 will have six months to carry out its work. If it cannot do so in that period it may obtain an extension for no more than three months, by passing a resolution to that effect along with providing a justification for so doing. The report was released in February 1991.</p>	<p>The Commission was set up on June 23, 1994, The Commission's investigations shall cover the period from the start of the armed conflict until the signing of the firm and lasting peace agreement. Its report was delivered on 25 February 1999</p>	<p>The Commission was set up in June 2001. The Commission's findings covered a period of 20 years, from May 1980 to November 2000. The Commission carried out its work during a time frame of two years. The report was presented to the public in August 2003.</p>
Amnesty	<p>Amnesty granted to persons who make full disclosure of all relevant facts relating to acts committed with a political objective committed during period. The applicant was released from all criminal and civil liability arising from the incident, an indemnification that also extended to all institutions or persons who incurred vicarious liability for the incident. Successful applicants serving prison sentences in respect of an incident were, there fore, entitled to immediate release and the expunging of any relevant criminal record.</p>	<p>Article IX of Lome Peace Agreement provides: that the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement. No official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations, since March 1991, up to the time of the signing of the present Agreement.</p>	<p>Decree Law No. 2191 was issued in view of "the ethical imperative to make all efforts conducive to strengthening the bonds uniting the Chilean nation, leaving behind hatreds that are meaningless today, and encouraging all those initiatives that might solidify the reunification of Chileans." To that end, this Decree Law granted amnesty to those who had committed criminal actions while the state of siege was in effect from September 11, 1973 to March 10, 1978, or had been accomplices to, or covered up such actions, provided they were not already involved in a legal process or already sentenced when the law went into effect.</p>	<p>- No Provision -</p>	<p>No Amnesty. In fact, amnesty laws that had been established previously by the Fujimori regime were abolished by the government.</p>

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		<p>In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality.</p>	<p>Those whom military tribunals had found guilty after September 11, 1973, also received amnesty.</p>		
Perpetrators/ Prosecution	<p>Should amnesty be denied, applicant and victims were notified, and the law would take its course with the applicant. The applicant would however be protected against disclosure of the amnesty application.</p> <p>Any party aggrieved by the decision of the Committee had the right to approach the High Court for review of the decision.</p>	<p>Amnesty unconditionally granted</p>	<p>If while it is carrying out its functions the Commission receives evidence about actions that appear to be criminal, it will immediately submit it to the appropriate court.</p>	<p>Those acts which are directly attributable to the State include those perpetrated by its public servants and state agencies. Additionally, the State holds direct responsibility for the actions of civilians to whom it delegated, <i>de jure</i> or <i>de facto</i>, authority to act on its behalf, or with its consent, acquiescence or knowledge.</p>	<p>The commission does not have judicial capabilities, therefore it does not substitute the judiciary nor the Public Ministry</p> <p>The Commission contributes to the explanation of the respective judicial organs, where it corresponds, regarding the crimes and human rights abuses committed by terrorist organizations or agents of the state. Prosecutions went on simultaneously.</p>

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				<p>The CEH concludes that the superior levels of the organic structure of the guerrillas hold undeniable responsibility for offences against the lives of individuals and other violations of international humanitarian law.</p> <p>Private individuals also committed acts of violence in defence of their own interests, either instigating these actions or directly participating in them. In general, the perpetrators were economically powerful people at either the national or local level.</p>	
Reparation/ Compensation	<p>There is an individual grant scheme available. The Commission recommended that each victim (or relative/dependant) receive a financial grant to be paid over a period of six years. Symbolic reparation also available, such as tombstones, memorials etc. Community Rehabilitation also available, such as demilitarization of youth and resettlement.</p>	<p>Intra-group reconciliation was fostered on a national and community level, with victims and perpetrators meeting, and traditional methods applied.</p>	<p>Proposals made for publicly repairing the dignity of the victims, symbolic reparation, social welfare, a single reparation pension, and the area of health care.</p>	<p>The Report proposed measures for restoration of material possessions; measures for economic compensation; measures for psychosocial reparation; measures for restoration of the dignity of the individual.</p> <p>All available resources should be utilised to search for the disappeared.</p>	<p>The reparation proposal includes symbolic reparations, the recovery of memory and the return of dignity to the victims, attention to education and mental health, individual and collective economic reparations, including programs for institutional reconstruction, community development, basic services and income generation.</p>

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					<p>The TRC believes that justice is an essential part of the reparation process. Furthermore, the TRC has prepared a National Registry of Burial Sites based on information obtained.</p> <p>The TRC proposed that the great horizon of national reconciliation is full citizenship for all Peruvians.</p>
Comments	<p>Several committees were formed by South Africa to deal with these issues:</p> <p>Truth and Reconciliation Commission, a Committee on Human Rights Violations, a Committee on Amnesty and a Committee on Reparation and Rehabilitation</p>	<p>Although there might be technical arguments about the scope of the amnesty in the Lomé Peace Agreement, the Commission could realistically expect that its constituency – victims and perpetrators alike – would be immune from criminal prosecution for all practical purposes. In this respect, its mandate was therefore significantly different from that of other similar commissions, such as the South African Truth and Reconciliation Commission, where the threat of prosecution hovered over the TRC proceedings, and where amnesty was used to induce cooperation with the TRC process.</p>	<p>A short time period for investigations was given.</p>	<p>The report suggests reparation with respect to material positions, especially land.</p>	<p>Not much was done by the Toledo government in terms of follow up to these recommendations. Less can be expected of Alan Garcia, the current president who was also president during 1985 and 2000.</p>