

**Truth Commissions In Guatemala And Peru:
Perpetual Impunity And Transitional Justice Compared**

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Introduction

Truth commissions are popular mechanisms for assisting post-conflict countries in the transition from violent and divided histories toward democratic and reconciled futures. In the past, the options for addressing gross human rights violations were limited to criminal trials, and in practice, almost no individual trials for human rights violations have proceeded. In such a climate, it would seem that truth commissions offer an acceptable and necessary alternative to leaving the pact of silence and impunity sealed. Advocates of truth commissions view prosecutions of past human rights violations as an inherently flawed method of confronting the past and reconciling a traumatized nation. They argue that trials are expensive, timely and do not achieve the overall analysis that truth commissions accomplish. Moreover, trials are intrinsically focused on the individual perpetrator, whereas conventional truth commissions centre on the victims' perspective.¹

Truth commissions come in varied forms and structures however, at a minimum they all seek to clarify the 'truth', and thereby prevent the violence from being repeated. Discussions abound regarding the inherent value in knowing the truth, and that this is a necessary and basic step toward healing the wounds of the past and setting a nation on the path towards justice and reconciliation.² Through the truth-seeking and investigative phase of a commission, formerly repressed victims of grave human rights violations and other atrocities are finally given the opportunity to be heard. This process is thought to re-dignify the victims through a formal process and acknowledgment that these horrific acts had indeed taken place.

¹ National and international human rights trials are becoming more common. *See generally e.g.*, Jonathan D. Tepperman, *Truth and Consequences*, Vol. 81.2 Foreign Affairs 128 (March/April 2002); *Chile: Trial Against Pinochet in Spain* <<http://www.derechos.org/nizkor/chile/juicio/eng.html>> (accessed Dec. 15, 2002); *Trial of Slobodan Milosevic (IT-02-54)* <<http://www.un.org/icty/milosevic>> (accessed Dec. 15, 2002); *The conviction of two Rwandan nuns* <<http://www.ianpaisley.org/article.asp?ArtKey=nuns>> (accessed Dec. 15, 2002).

² One author notes: "Where lies proliferate and too many victims suffer in silence, airing the truth can be a powerful remedy indeed." Jonathan D. Tepperman, *Truth and Consequences*, Vol. 81.2 Foreign Affairs 128, 145 (March/April 2002).

In some cases, truth commissions may open the door for future prosecutions, though there is little evidence of this proposition.³ Nevertheless, clarifying and making the truth known brings with it a weighty responsibility. The expected result to the truth-telling process is that future generations will be educated and cognizant of their nation's violent history and that these acts will not be repeated. However, truth-telling alone is not an effective deterrent or preventive measure, and it is a feeble substitute for prosecution.⁴

Although Guatemala and Peru have different social and political backgrounds that led to tragic and violent histories, both countries elected truth commissions as an instrument of reconciliation. This paper examines and compares the Guatemalan Historical Clarification Commission's mandate and experience to that of the ongoing Peruvian Truth and Reconciliation Commission's mandate and contends that, although truth-seeking is a valuable process, justice in the form of prosecutions must necessarily follow for there to be any meaningful and lasting reconciliation.

Guatemalan Historical Clarification Commission⁵

A. Armed Conflict

In 1954, a CIA sponsored overthrow of Guatemala's democratically elected President Jacobo Arbenz marked the onset of almost four decades of right wing military rule and civil war. Leftist insurgent groups formed in the 1960s and strengthened throughout the 1970s, finally unifying as the *Unidad Revolucionaria Nacional Guatemalteca* (URNG) in 1982. The height of the violence in the 1980s was marked by the "scorched earth" policy overseen by Generals Romeo Lucas Garcia and Efraín Rios Montt, and largely directed toward the indigenous Mayan population in rural areas. Untold numbers of massacres, killings and disappearances were rumoured and finally confirmed by the countless

³ See *supra* n. 1.

⁴ Aryeh Neier, President of the Open Society Institute stated: "efforts to promote truth commissions have become a way of avoiding efforts to do justice." See Jonathan D. Tepperman, *Truth and Consequences*, Vol. 81.2 Foreign Affairs 128,143 (March/April 2002).

⁵ Hereinafter CEH or Commission. The author worked with the Guatemalan Historical Clarification Commission from September 1997 through February 1999. The observations and comments contained herein are those of the author and not necessarily those of the CEH. The unofficial translations contained herein and any errors are mine.

refugees spilling into Mexico.⁶ Democratic civilian rule returned to Guatemala in the 1990s, and on June 23, 1994 the Guatemalan Government and the URNG signed UN-brokered peace accords signifying the end of the 36-year armed conflict. The Guatemalan Historical Clarification Commission arose as a result of the Oslo Peace Accords.⁷

The CEH's Composition and Mandate

The Commission was composed of three “Commissioners” – two respected Guatemalans, Alfredo Balsells, a lawyer, Otilia Lux de Cotí, an indigenous pedagogue and a German academic, Christian Tomuschat. The field staff consisted of 142 Guatemalan Nationals and 131 internationals from over 31 countries. Regional offices were established throughout Guatemala with the logistical support of the existing United Nations Verification Mission “MINUGUA”.^{8/9} Although the CEH conducted a public information campaign, the country’s poor infrastructure and communications often required staff members to travel into the countryside to disseminate information about the Commission and conduct private interviews in the villages and towns.

The CEH had three general tasks in its mandate:

- *clarify with objectivity, equality and impartiality the human rights violations and acts of violence connected to the armed conflict that have caused suffering to the Guatemalan people;*
- *draft a report containing the results of the investigations and offer an objective assessment regarding what occurred during the time period, looking to all factors internal and external;*

⁶ Naomi Roht-Arriaza & Lauren Gibson, *The Developing Jurisprudence on Amnesty*, 20.4 Human Rights Quarterly 843, 852 (1998) citing Robert E. Lutz, *A Piece of the Peace: The Human Rights Accord and the Guatemalan Peace Process*, 2 Sw.J.L. & Trade Am. 183, 185 (1995).

⁷ See *supra* n. 2 at 136.

⁸ The preparatory phase started in February 1997. The CEH completed its report and presented it to the Government on February 25, 1999. Dr. Julie Guillerot, *Cuadro Sinóptico sobre Algunas Experiencias de Comisión de la Verdad*, APRODEH-FIDH (August 2001).

⁹ Since November 1994, MINUGUA carried out verification activities and institution-building throughout the country. More than 250 human rights monitors, legal experts, indigenous specialists and police were posted throughout Guatemala. <http://www.un.org/Depts/dpko/dpko/co_mission/minugua.htm> (accessed Nov. 15, 2002).

- *formulate specific recommendations with the aim of favouring peace and national peace in Guatemala, specifically, measures to preserve the memory of the victims, to and to cultivate a culture of mutual respect and observance of human rights and strengthening of the democratic process.*¹⁰

The CEH was tasked with investigating those human rights violations and acts of violence that had occurred between January 1962 and 29 December 1996 – 35 years of conflict. It had a very limited timeframe within which to investigate the broad range of human rights violations and acts of violence that occurred over three decades of conflict. The timetable for the CEH to complete its work was set for six months that could be extended by another six, however, it ultimately required 19 months.¹¹

The Commission was highly restricted in what it could do, as it did not possess any subpoena powers, it had no right to grant amnesty and could not name individual perpetrators.¹² However, it “worked on the premise that restoring the dignity of the victims was a paramount need in Guatemala and that national reconciliation would only be possible on the basis of truth.”¹³

¹⁰ See Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer, 23 June 1994, Guat.-URNG-UN, 36 I.L.M. 283 (1997).

¹¹ Christian Tomuschat, Workshop, *The State of the Art of Truth Commissions*, Marga Institute Berghof Foundation for Conflict Studies (23 March 2002, Sri Lanka) <<http://www.fpsl.org.au/Marga.htm>> (accessed Nov. 25, 2002).

¹² After the release of the CEH’s report, one human rights group commented: “Many thought it would be a “toothless” commission. Unable to name names, given no judicial authority and only a year to do its work (it took 18 months), human rights groups wondered if the work of Guatemala’s “truth” commission would contribute a measure of justice and reconciliation after 36-years of civil war and state repression.” Guatemala’s Memory of Silence (February (1999), 19 Central America/Mexico Report 1 (1999) <http://www.rtfcam.org/report/volume_19/No_1/article_2.htm> (accessed Dec. 1, 2002).

¹³ See *supra* n. 11.

(i) *Human Rights Violations and Acts of Violence*

The CEH's task to: "*clarify...human rights violations and acts of violence linked to the armed conflict*" is the broadest aspect of its otherwise narrow and weak mandate.¹⁴ After much debate, the Commissioners agreed to qualify those acts committed by State agents or by individuals with State knowledge and acquiescence, as human rights violations, and those acts committed by URNG members and private persons who took advantage and abused the prevailing situation due to the armed conflict, as acts of violence.¹⁵ Human rights violations and acts of violence documented by the CEH included genocide committed by State forces against the Mayan population; massacres and extra-judicial executions committed by State forces; massacres and killings committed by the guerrilla; forced internal displacement and militarised relocation by the State; forced recruitment by the guerrilla; as well as rape and sexual violence against women and children committed by the State forces and the guerrilla.¹⁶

In its final report, the CEH estimated that approximately 200,000 Guatemalans had been disappeared or extra-judicially executed during the armed conflict. It also found that the Guatemalan army had committed approximately 93% of the total war crimes, and had conducted over 600 massacres. Moreover, the army's counterinsurgency campaign had legally constituted genocide against the Mayan people in some areas of the country between 1981 and 1983. The URNG was responsible for 3% of the violations and 32 massacres.¹⁷ There are arguments that the broad range of violations and the limited time period within which the mandate was to complete its work would weaken the CEH's effectiveness. However, the Commission turned this possible detriment into an advantage and examined the history and effects of the armed conflict from various perspectives,

¹⁴ Original Spanish text reads: *esclarecer con suma objetividad, igualdad e imparcialidad las violaciones a los derechos humanos y los actos de violencia que causaron el sufrimiento de la población Guatemalteca relacionados con el conflicto armado. See supra n. 10.*

¹⁵ Felipe Sanchez, Encargado del Equipo de Casos Ordinarios, *Memorandum: Propuesta de definiciones sobre tipología de violaciones de derechos humanos y hechos de violencia* (unpublished memorandum written for the CEH, April 8, 1998) (copy in author's possession); see also Guatemalan Historical Clarification Commission, *Guatemala: Memoria del Silencio, Mandato y procedimiento de trabajo* (February 25, 1999) <<http://hrdata.aaas.org/ceh>>(accessed Oct. 14, 2002).

¹⁶ Priscilla Hayner, Conference, Truth Commissions: Historical Experiences and Lessons for Peru, *Verdades Nunca Reveladas que Confrontan el terror del Estado y la Atrociadad* (February 2, 2001, Lima, Peru) < http://www.aprodeh.org.pe/sem_verdad/documentos.htm > (accessed Oct. 15, 2002).

¹⁷ Global Exchange Organization <<http://www.globalexchange.org/campaigns/guatemala/history.html>> (accessed Dec. 1, 2002).

analysing economic, social and other factors, such as the role and impact of US foreign policy.¹⁸

(ii) *No Individualization or Judicial Effects*

The weak mandate of the CEH was not a mistake.¹⁹ Post-conflict Guatemala was still under the stronghold of the right wing military legacy of the past and the CEH had to work within this construct. The Guatemalan military had observed the Truth Commission in neighbouring El Salvador six years earlier name individual perpetrators and would not allow this to be repeated in Guatemala.²⁰ Therefore, the mandate specifically prohibited the individualization of alleged perpetrators, as well as stating that the work, recommendations and report of the CEH would have no judicial effect or end.²¹

Although this attribute was criticized, some experts have argued that there was no alternative to the anonymity requirement, and that in effect “naming names” would have undermined the work and credibility of the CEH.²² The National Reconciliation Law (NLR) enacted on December 19, 1996, was a further reflection of the military’s continuing power and influence.²³ The stated aim of the NLR was to reintegrate former URNG combatants into society, and thereby act as a tool of reconciliation, however its practical effect was a blanket amnesty for crimes committed by the State and its agents, as well as the URNG during the armed conflict.²⁴

Although Professor Tomuschat has conceded that the inability to individualize perpetrators restricted the CEH from, “penetrating to the heart of the evil,” it also forced the CEH to have a different approach.²⁵ The CEH utilized illustrative cases to emphasize different types of violence, thereby providing a broader perspective and analysis.²⁶ The

¹⁸ See *supra* n. 16.

¹⁹ See *supra* n. 2 at 137.

²⁰ *Id.* See also Julie Guillerot, *Cuadro Sinóptico sobre algunas Experiencias de Comisión de la Verdad*, APRODEH-FIDH (August, 2001) <http://www.aprodeh.org.pe/sem_verdad/documentos.htm> (accessed Oct. 15, 2002).

²¹ See *supra* n. 10.

²² See *supra* n. 2 at 136.

²³ *Ley de Reconciliación Nacional, Decree 145-96* (Dec. 18, 1996) (Guatemala).

²⁴ The amnesty excluded forced disappearances, torture, and genocide. La Prensa Libre, *Demandarán Guatemala ante los Derechos Humanos por ley de amnistía* (March 1, 1997) <<http://www.laprensahn.com/caarc/9703/c01002.html>> (accessed Oct. 20, 2002).

²⁵ See *supra* n. 2 at 137.

²⁶ *Id.*

end result was that the final report looked to the causes of the armed conflict and denounced an entire system.²⁷ For an ineffectual and ‘toothless’ truth commission, this had a more biting effect than naming the perpetrators.

(iii) *Confidentiality Requirement*

Further reflecting the tenuous situation in Guatemala, the CEH was also confined by a high standard of confidentiality. The objective of this was to safeguard witnesses and informants, but from a practical perspective it also served as an incentive for people to come forward and provide their testimonies. In many instances, victims and witnesses of human rights violations and acts of violence felt that international presence lent legitimacy to the CEH. The mixed national and international field teams dispersed throughout the country were thought to achieve a balance between an intimate cultural, historical and political knowledge possessed by the Guatemalan staff members, and a level of objectivity and impartiality to be achieved by the presence of international staff members. The legacy of the violent conflict and accompanying impunity for alleged perpetrators left an indelible mark of fear and mistrust upon the Guatemalan citizenry and many victims and witnesses were initially reluctant to come forward and provide their testimonies. Therefore, international presence meant they were sometimes more likely to participate and speak openly with a diminished fear of confidentiality being breached.

The Commission itself feared that the national staff members would suffer reprisals for their participation in the CEH. The advantage of having international staff members was clear – most left Guatemala upon completion of the final report and were out of the immediate reach of possible repercussions for their participation in the Commission.²⁸ Signalling that the pervasive power of the military was still intact, the Guatemalan Commissioners took an extended leave of the country after the report had been published.²⁹

²⁷ See supra n. 11; see also Douglass Cassel, *Guatemala: Rewriting the National Myth*, Worldview Commentary No. 23 (March 9, 1999).

²⁸ The Commission’s fears proved to be well founded. In April 1998, two days after the Catholic Church released its own report investigating the armed conflict, Bishop Juan Gerardi was brutally murdered. Jonathan D. Tepperman, *Truth and Consequences*, Vol. 81.2 Foreign Affairs 129, 137 (March/April 2002).

²⁹ Guatemala’s Memory of Silence, 19 Central America/Mexico Report 1 (1999)
<http://www.rtfcam.org/report/volume_19/No_1/article_2.htm> (accessed Dec. 1, 2002).

Another advantage of the confidentiality requirement was that it became a specific incentive for perpetrators of human rights violations and acts of violence to come forward and provide key information. This information helped to clarify certain cases, as well as to provide analysis of the strategies and mechanisms employed that caused the human rights violations. Further, these key witnesses supported the contention that the human rights violations were not merely attributable to the excesses of individual low-ranking officers, but were part of a broader planned State policy and strategy.³⁰

Perpetual Impunity

Healing Truth Found

The CEH's twelve-volume final report, "Memoria del Silencio" was presented on February 25, 1999 during a public ceremony to spectators and the President of the Republic.³¹ Professor Tomuschat described the occasion as follows:

"The handing over of the Report was a glorious moment in the life of the Guatemalan nation. It seemed that something great had been achieved, namely a truly objective assessment of a period of history, which until then had lain buried under the mountains of lies and prejudice."³²

Despite the Commission's weak mandate, it managed to turn these handicaps into some of the strongest attributes of its work-product. It was able to examine the history and effects of the armed conflict without individualizing perpetrators and to condemn the entire system in Guatemala and make recommendations in that regard.³³ In short, the CEH achieved the truth-seeking objective of its mandate and vindicated the victims, if

³⁰ See *supra* n. 10.

³¹ Christian Tomuschat, *Clarification Commission in Guatemala*, Vol. 23 Human Rights Quarterly 233, 253 (2001).

³² See *infra* note 34.

³³ As part of its mandate, the CEH set forth the following recommendations: measures for the preservation of the memory of the victims; measures for the compensation of the victims; measures to foster a culture of mutual respect and observance of human rights; measures for strengthening the democratic process; other recommendations to favour peace and national harmony; and the creation of a body responsible for promoting and monitoring the fulfilment of the recommendations. Guatemalan Historical Clarification Commission, *Guatemala: Memoria del Silencio, Mandato y procedimiento de trabajo* (February 25, 1999) <<http://hrdata.aaas.org/ceh>>(accessed Oct. 14, 2002).

only for a brief period.³⁴ Unfortunately and predictably, the CEH's recommendations have remained well beyond the reach of Guatemalans.³⁵

Justice Remains Elusive

The CEH did not have a justice-seeking component set out in its mandate. In fact, the powers that be in Guatemala made every effort to ensure that domestic prosecutions would not take place.³⁶ However, it was clear from the moment that the truth was made public to Guatemalans that this was insufficient vindication for the silent suffering they had endured for so long. As one reporter noted:

“As the conclusions (of the CEH's report) were read at a solemn ceremony at the National Theatre, rights workers, relatives of victims and others among the 2,000 people broke into standing ovations, sobs, shouts and chants of ‘Justice! Justice!’ ”³⁷

Whereas in 1999 a glimmer of peace for the future and accountability for the past appeared to light the way to a new era, in 2002, it is clear that Guatemala continues on its dark path of state sponsored violence and impunity. None of the Commission's recommendations have been adopted or implemented and there have been virtually no domestic judicial proceedings or convictions for past atrocities.³⁸

In present day Guatemala, state sponsored violence is once again on the rise and aimed at silencing those voices that dare to stand up and fight against the State's tradition of impunity – human rights activists and leaders, as well as victims who seek justice and implementation of the Peace Accords.³⁹ This is not at all surprising considering that General Rios Montt, who was charged with overseeing the most violent period in

³⁴ Helen Mack, sister of anthropologist Myrna Mack who was stabbed to death in 1990, burst into tears during the presentation: "We the victims feel vindicated. No one can tell us we're following lies or ghosts anymore," she said. Guatemala's Memory of Silence, 19 Central America/Mexico Report 1 (1999) <http://www.rtfcam.org/report/volume_19/No_1/article_2.htm> (accessed Dec. 1, 2002).

³⁵ Professor Tomuschat noted: "...the euphoria that the ceremony of 25 February 1999 aroused was no permanent factor, capable of determining the future course of national policies. On 16 March 1999, the Government...made public its first (and only) response to the report and the recommendations by the CEH. In a nutshell, it declared that nothing needed to be done." Christian Tomuschat, *Clarification Commission in Guatemala*, Vol. 23 Human Rights Quarterly 233, 253 (2001).

³⁶ See *supra* n. 23.

³⁷ Mireya Navarro, *Guatemalan Army Waged 'Genocide', New Report Finds*, N.Y. Times, Feb. 26, 1999, at A1.

³⁸ *Guatemala's Lethal Legacy: Past Impunity and Renewed Human Rights Violations*, Amnesty International, AI Index:AMR 34/001/2002. But see Lawyers' Committee for Human Rights, *Trial Begins in Mack Case 12 Years after Killing*, (Sept. 3, 2002) <http://www.lchr.org/media/2002_alerts/0903.htm> (accessed Oct. 30, 2002).

³⁹ *Guatemala: Urgent Action – Threats/Fear for Safety*, AI Index: AMR 34/037/2002, UA 173/02, 11 June 2002.

Guatemala's history as its dictator, dominates the ruling Guatemalan Republican Front party.⁴⁰ His immunity from accountability is further strengthened by the fact that the President of the Republic, Alfonso Portillo, is his son-in-law.⁴¹ Despite the clarification of Guatemala's violent historical truth, one of the worst human rights abusers has been able to consolidate his power domestically and continue the repression initiated over 20 years ago with unfettered impunity. Indeed, it would appear that the CEH fomented this process by publishing the truth in a political climate averse to transitioning into a true democratic state. Hence, publishing the truth diminished international pressure on Guatemala by providing an acceptable alternative to domestic prosecutions and the justice so clamoured for by its victimized citizenry.⁴²

Peruvian Truth And Reconciliation Commission⁴³

Political Violence

In October 1968, Peru suffered a coup that led to two successive military regimes. Military rule lasted until 1980, after which the country enjoyed 10 years of democratically elected government. However, it was during these years of democracy that the Maoist guerrilla group *Sendero Luminoso* (Shining Path), led by Abimael Guzman emerged in Ayacucho and the Marxist *Movimiento Revolucionario Tupac Amaru* (MRTA) began their wrath of terror and violence throughout the countryside and cities that lasted well into the 1990s. The Government reaction to the terrorism was not well co-ordinated and the various strategies used resulted in grave human rights abuses in the context of democracy.⁴⁴ The Shining Path and MRTA were declared defeated in 1998, however, despite this triumph for the State, the costs to the respect for human rights, rule of law and democracy were devastating.⁴⁵

⁴⁰ As Amnesty International notes: "Having committed mass murder with impunity during the conflict years, those responsible see little reason to rein in their activities now." *See supra* n.38.

⁴¹ *See supra* n. 2 at 137.

⁴² *Id.*

⁴³ Hereinafter TRC or Peruvian Commission.

⁴⁴ There were some guerrilla actions in the 60s but not with the characteristics of the Shining Path. Julissa Mantilla, Pontificia Universidad Católica de Perú, *The Truth Commission in Peru: Trying to heal the open wounds* < <http://www.robarts.yorku.ca/pdf/mantilla.pdf> > (accessed Oct. 16, 2002).

⁴⁵ Abraham Lama, *Peru's Truth Commission off to a slow start, say activists*, Digital Freedom Network News < <http://www.dfn.org/focus/peru/truth-commission.htm> > (accessed Oct. 16, 2002).

In 1990, Alberto Fujimori assumed the government and was the self-declared leader of Peru until he fled to Japan due to corruption scandals in 2000. The Congress subsequently voted him out of office in November of the same year.⁴⁶ During his term in power, Fujimori passed several amnesty laws reinforcing the impunity enjoyed by the military and security forces.⁴⁷ Valentín Paniagua was named the interim President of the Republic until July 2001 and took important measures to restore democracy to Peru, including the creation of the Truth Commission by National Decree on June 4, 2001.^{48/49} On June 3, 2001, Alejandro Toledo was elected President and in September 2001, he signed a supplementary decree modifying the Truth Commission to the *Truth and Reconciliation Commission*.⁵⁰ The Peruvian Commission began working in January 2002 and is currently engaged in completing its mandate, having conducted its final public hearing in September 2002.⁵¹

Peru's recent history and the causes of the violence that permeated the country are quite different from the experience that afflicted Guatemala. However, both countries accepted truth commissions as a compromised mode of transition. At first glance, the TRC generally resembles the CEH, as they both were tasked with clarifying the truth and making recommendations. However, given Peru's positive political climate the Peruvian Commission has the vigour that the CEH lacked. Although this is a desirable feature, it necessarily carries a heavier burden and a higher expectation to produce the results it is mandated to achieve.

⁴⁶ Tamara Fienstein, ed., *Peru in: The Eye of the Storm: declassified US documentation on HR abuses and Political Violence*, National Security Archive Briefing Book No. 64 (January 22, 2002).

⁴⁷ El Comercio, *Corte declara inadmisibles leyes de amnistía que daban impunidad*, (September 6, 2001). The Inter-American Court of Human Rights repealed these amnesty laws in the Barrios-Altos decision.

⁴⁸ *Creación de la Comisión de la Verdad en el Perú, Decreto Supremo No. 065-2001-PCM* (June 2, 2001 published June 4, 2001).

⁴⁹ See *supra* n. 46. Interim President Paniagua also: "removed restrictions of freedom of press, replaced the dismissed magistrates to the Constitutional Court...and returned Peru to the jurisdiction of the Inter-American Court on Human Rights." <<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB64/index2html>> (accessed Nov. 15, 2002).

⁵⁰ *Modifican Denominación de la Comisión de la Verdad por la de la Comisión de la Verdad y Reconciliación, Decreto Supremo No. 101-2001-PCM* (August 31, 2001).

⁵¹ Carlos Lozada, *Peru casts light on a dark Chapter from the past*, Christian Science Monitor (October 4, 2002) <<http://www.csmonitor.com/2002/1004/pO7s02.html>> (accessed Oct. 31, 2002).

Peruvian Commission's Composition and Mandate

The TRC was originally to be composed of seven Peruvian nationals designated by the President of the Republic. Further reinforcing the political will to transition from the corrupt and violent past, President Toledo enlarged the TRC to twelve members.⁵² As did the CEH, the TRC has regional offices throughout the country equipped with stationary and mobile teams that are conducting interviews, drafting testimonies, investigating cases and disseminating information about the TRC.⁵³

The Peruvian Commission contains five main objectives in its mandate. Briefly summarized, they are to:

- *analyse the political, social and cultural conditions, as well as societal and State institutional actions that contributed to the political violence that permeated Peru;*
- *support the Courts to clarify the crimes and human rights violations committed by the terrorist organizations or by State agents;*
- *try to determine the fate and situation of the victims, and identify in the manner possible, those presumed to be responsible;*
- *elaborate proposals for reparations and dignifying the victims and their families;*
- *recommend institutional, legal and educational reforms;*
- *and establish mechanisms to follow up the recommendations.*⁵⁴

The TRC is currently investigating the political violence that occurred from May 1980 – November 2000. It has an 18-month time frame to carry out its work, with the possibility of a 5-month extension. The TRC will use its maximum allotted time and is to complete its mandate by July 2003.⁵⁵

The Peruvian Commission enjoys a strong mandate in the very aspects that the CEH's mandate was weak. The most striking strengths of the TRC are: its relationship with the

⁵² *Modifican Denominación de la Comisión de la Verdad por la de la Comisión de la Verdad y Reconciliación, Decreto Supremo No. 101-2001-PCM, 31 August 2001.*

⁵³ Peruvian Truth and Reconciliation Commission <www.everdad.org.pe> (accessed Oct.10, 2002).

⁵⁴ *See supra* n. 48.

⁵⁵ *Id.*

courts, the identification of alleged perpetrators where possible and determining the fate of victims. Whereas, the CEH was forced to turn potentially weak aspects of its mandate into positive results, the TRC has well-defined factors explicitly set forth in its mandate. The TRC's mandate also positively sets out to re-dignify the victims, while this attribute was an underpinning of the CEH and was only verbalized by its foreign Commissioner.⁵⁶

The existence and strength of the Peruvian Commission are a testimony to the political climate of change in Peru. The current political will is the strongest factor in favour of the TRC acting as a catalyst in achieving justice and reconciliation in Peru. The following aspects of its mandate reflect the readiness of the government to clarify and make the truth known. Despite this favourable political environment, the TRC's work risks inevitable and potentially devastating shortcomings if the truth it publishes does not convert into a justice-seeking process as proposed by its mandate.

Acts Imputable To Terrorist Organizations, State Agents Or Paramilitary Groups

According to its mandate, the TRC will focus on the following acts that are imputable to the terrorist organizations, State agents or paramilitary groups:

- Killings and kidnappings;
- Forced disappearances;
- Torture and other grave injuries;
- Violations to collective rights of the Andean communities and indigenous populations;
- Other crimes and grave violations against the rights of persons.

The categories seem to reflect the estimates of the Peruvian Human Rights Ombudsman's Office that the violence resulted in approximately 30,000 deaths at the hands of the guerrilla and State security forces; approximately 4,000-6,000 people were 'disappeared' after being arrested by Security Forces; thousands of people were arbitrarily detained by police and State security forces; and police and army units carried out numerous

⁵⁶ See *supra* n. 13.

massacres and torture. The violence forced approximately 400,000-600,000 people to flee their villages and they were subsequently displaced.⁵⁷

In Guatemala, the results of the CEH's interviews and investigations dictated the categories of human rights violations and acts of violence that were documented and this turned out to be one of the strengths of the report.⁵⁸ The TRC's categories of imputable acts appear to pre-determine the results, despite the broader 'catch-all' category (e). Further, the categories do not uniformly distinguish between human rights violations committed by the State and the security forces and acts of political violence or crime committed by the terrorist organizations.⁵⁹ This disparity in the mandate could leave the TRC vulnerable to attacks about its credibility if it fails to rectify this in its report.

Further, the failure to enumerate human rights violations and crimes such as arbitrary detention and sexual violence may detract from giving victims of these acts the attention they deserve. If the TRC does not properly highlight and analyse the use of arbitrary detention and sexual violence as strategic tools employed during the period of violence, it may detract from the recommendations for educational, institutional and legal reforms. As was the case for the Guatemalan Commission, it will be up to the TRC to transform a potentially weak and vulnerable aspect of its mandate into a strong and positive result through its analysis and recommendations.

Public Hearings

Further reinforcing the political will to clarify the truth, the Peruvian Commission's mandate provides for public hearings to take place. The nationally televised hearings in Peru are the first time in the Americas that a truth commission has conducted its truth-

⁵⁷ Rights and Democracy, International Centre for Human Rights and Democratic Development, *Peruvian experience of battle against terrorists should be considered by international community, says Commissioner Sofia Macher* <[http:// www.serveur.ichrdd.ca/print.iphtml](http://www.serveur.ichrdd.ca/print.iphtml)>; see also Washington Office on Latin America, *Peruvian Government Establishes Truth and Reconciliation Commission, Requests expedited Declassification of Relevant US Documents* (January 04, 2002) <http://www.wola.org/peru-declassification_memo_cong.htm> (accessed Dec. 1, 2002); Sebastian Brett, *Peru Confronts a Violent Past: The Truth Commission Hearings in Ayacucho*, Human Rights Watch, April 8-12 2002 <http://www.aprodeh.org.pe/sem_verdad/14may2002iii.htm> (accessed Dec.1, 2002); Carlos Lozada, *Peru casts light on a dark chapter from the past*, The Christian Science Monitor (October 04, 2002).

⁵⁸ See *supra* n. 16.

⁵⁹ The CEH was criticized as being too focused on the suffering of the Mayan population and not as forthcoming regarding the abuses suffered by the Ladino population. It has also been argued that this

seeking process so publicly.⁶⁰ Since April 2002, the TRC has aired eight hearings on television, marking an important step towards disseminating the truth and re-dignifying the victims. However, unlike the experience in Guatemala where the high confidentiality standard was an incentive for the perpetrators of human rights violations and acts of violence to come forward and provide key information, there is no such incentive in Peru, and perpetrators are not likely to come forward.

In Guatemala, the political circumstances necessitated a high level of secrecy, therefore the silence that accompanied impunity for decades, continued in the quest for truth. Despite indications that 82% of Peruvians supported the creation of the TRC and the military publicly declared its support, the Peruvian Commission is not ignorant of the possible reprisals that airing the horrific truths of the past in public may have.⁶¹ Therefore, there are explicit provisions in the mandate for security measures to be implemented to protect both the victims and witnesses that participate in the TRC, as well as the TRC members themselves.

The TRC is truly a victim-based commission and explicitly holds itself out as a partner of a justice-seeking process.⁶² The government's failure to provide access to justice for the victims through a prosecutorial process after such a public truth-telling process will stunt the reconciliation process. The truth, in and of itself, may heal some of the nation's wounds, but it is not enough – accountability is necessary. One Peruvian human rights activist said, "Once we know the truth, we have to make justice. Only then will reconciliation happen. If not, we'll see pockets of resentment that will eventually explode." The Guatemalan experience is confirmation that making the truth known without a commitment to justice is detrimental to the transitional justice process.

focus, "reflected the genuinely genocidal nature of the war, which affected Mayans far more than Ladinos," Jonathan D. Tepperman, *Truth and Consequences*, Vol.81.2 Foreign Affairs 128,140 (March/April 2002).

⁶⁰ See *supra* n. 51.

⁶¹ Washington Office on Latin America, Peruvian Government Establishes Truth and Reconciliation Commission, Requests expedited Declassification of Relevant US Documents, (January 04, 2002) <http://www.wola.org/peru-declassification_memo_cong.htm> (accessed Dec. 15, 2002).

⁶² See *infra* "TRC's relationship with the Courts."

TRC's Relationship With The Courts

The Peruvian Commission's mandate explicitly sets out that it will have no jurisdictional qualities and therefore, like the CEH, it has no power to prosecute. However, the mandate also states that the TRC is to support the courts to clarify the crimes and human rights violations committed by the terrorist organizations or the state.⁶³ This aspect of its mandate sets it distinctly apart from the Guatemalan experience, and is perhaps the strongest factor the TRC can rely on in order to achieve its stated goal of reconciliation for the Peruvian people.

The fragile state of the judicial system in a post-conflict society is a basic argument against a burdensome trial process, and is therefore supportive of the truth-seeking and reconciliation process found in truth commissions. Peru's criminal justice system has not been immune to the effects that two decades of political violence have had on the country. In addition to clarifying the past violence, the televised hearings have shed light on the lack of faith that Peruvians have in the judiciary and the rule of law.^{64/65} A witness testifying before the TRC in Trujillo expressed: "Justice in Peru is not justice...if there is justice, it is for the rich, not for the poor like me."⁶⁶ The TRC should utilize its intrinsic capacity to broadly analyse the period of political violence and help to release the judiciary from the stigma it carries by examining this institution's role and contribution during the years of violence. Further, the Peruvian Commission should make specific recommendations and create the mechanisms to follow these recommendations to build confidence in the rule of law. Failure to instil some level of confidence in the judiciary will mean the TRC's existence will have been for naught, and the publicized truth will be neatly archived with the Human Rights Ombudsman's Office while Peruvians remain in search of justice.⁶⁷

⁶³ *Id.*

⁶⁴ *See supra* n. 51.

⁶⁵ At the Trujillo Hearings, TRC Commissioner Saloman Lerner remarked: "It is necessary for justice in Peru to be brought before a tribunal of its own. Here we have a great problem." *Id.*

⁶⁶ Carlos Lozada, *Peru casts light on a dark Chapter from the past*, Christian Science Monitor (October 4, 2002) <<http://www.csmonitor.com/2002/1004/pO7s02.html>> (accessed Oct. 31, 2002).

⁶⁷ *See supra* n. 48.

Transitional Justice

On a positive note, it appears that the Peruvian Government is genuine in its support of the TRC's work and has taken concrete steps in that regard. The Attorney General's office has appointed Special Prosecutors to: 1) investigate human rights crimes committed under the Fujimori government; and 2) investigate cases from the 1980s per an agreement with the Inter-American Commission on Human Rights.⁶⁸ Charges have already been filed by the prosecutor investigating crimes committed under Fujimori's reign against the "La Colina" group death squad. The special prosecutor dealing with the cases from the 1980s has the daunting task of investigating and determining criminal responsibility in about 165 cases left pending before the Inter-American Commission on Human Rights.⁶⁹

It would appear that Peru is on the right path and is balancing domestic criminal investigations and prosecutions with its search for truth. Despite the vast amount of work that needs to be done, if the Peruvian authorities approach it in a transparent and inclusive manner, there may be hope for a true transition to a reconciled state that respects the rule of law and human rights.

Conclusions

The question for the victims in countries such as Guatemala and Peru is, what value is there in truth without justice? The failure of any significant progress towards reconciliation and justice is an empty moral promise for the citizens of Guatemala.⁷⁰ Granted, the CEH never set out to achieve justice, and this is reflected in its mandate. However, the Guatemalan Commission primarily sought to re-dignify the Guatemalan people through a truth-seeking process and lay the foundation for national reconciliation.⁷¹ Although the CEH achieved a historical truth, it has fallen far short of re-dignifying the Guatemalan people, and may have inadvertently become an accessory to the continuing repression and impunity against them.

⁶⁸ Sebastian Brett, *Peru Confronts a Violent Past: The Truth Commission Hearings in Ayacucho*, Human Rights Watch, April 8-12 2002 <http://www.aprodeh.org.pe/sem_verdad/14may2002iii.htm> (accessed Dec.1, 2002).

⁶⁹ *Id.*

⁷⁰ Eduardo Gonzalez Cueva, M.A.Soc, *Perspectivas teoricas sobre la justicia transicional*, New School for Social Research < http://www.aprodeh.org.pe/sem_verdad/documentos.htm > (accessed Oct. 15, 2002).

⁷¹ See *supra* n. 11.

The TRC has literally held itself to a higher goal than the CEH and is a fundamental component of the justice-seeking step towards reconciliation for Peru. The Peruvian Commission enjoys a political climate that should transform into a judicial process. However, if not properly addressed, the effects of the political violence on the judiciary and the lack of confidence in the rule of law could result in a similar state of impunity as in Guatemala.

For the international community and advocates of transitional justice, the question is one of ethics and responsibility when crafting policies and mechanisms to aid countries such as Guatemala and Peru in their post-conflict journeys toward reconciliation and respect for the rule of law and human rights. Although the idea of a commission that will investigate, clarify and publish unknown truths and horrors of a nation's past may seem the perfect vehicle to make peace and move toward a reconciled future, it is not a panacea for the post-conflict ills of all nations. The lesson learned from Guatemala is clear – there can be no justice without truth, but truth without justice can be a much more dangerous proposition, as it will only serve to strengthen and perpetuate impunity.

Truth was achieved in Guatemala, and it most certainly will be achieved in Peru. However, the elusive goals of justice and reconciliation are the determining factors in whether a truth commission will become an accomplice to perpetuating impunity or an agent of transitional justice.