

testimony was voluntary and could be made confidentially, and that it was not the Commission's role to determine whether individuals were guilty of crimes, these officers were asked to inform the individual members how important their testimony was considered to be. The Commission requested the testimony of one hundred and sixty members of the armed forces and the police. . . . With the exception of a few cases, . . . those who were on active duty refused to offer testimony to this Commission. . . .

5. *Individual decision on each case*

The first cases were presented to the Commission at the end of October 1990. In sessions lasting until mid-January 1991, the Commission individually examined about 3,400 cases, until it had reached agreement over how it was going to present each case in which human rights had been gravely violated or in which people had been killed as a result of political violence. In other cases it concluded that it had not been able to come to such a determination or that the case was beyond its competence. . . .

D. *Acknowledgement of harm inflicted and proposals for reparation and prevention*

In addition to examining what the relatives of the victims of grave human rights violations had suffered, the Commission consulted with relevant experts and persons who could offer guidance on proposals for reparation and prevention such as the decree had urged it to prepare. The Commission consulted with a large number of national and international organizations. . . . [T]hey were asked about measures that might strengthen the legal order and institutional framework, or promote a culture more respectful of human rights in order to assure that such events never again take place in our country. One hundred and nine organizations were consulted in this fashion, including those of the victims' family members, human rights agencies, the main universities and centers of learning, the political parties, the churches, and other moral authorities. Internationally, the request was sent primarily to those intergovernmental and private bodies with the greatest experience in protecting and promoting human rights. . . .

### VIEWS ON FUNCTIONS AND UTILITY OF TRUTH COMMISSIONS

Consider the following excerpts from the roundtable discussion in Truth Commissions: A Comparative Assessment, p. 1217, *supra*.

Bryan Hehir

I think that truth commissions function at three levels. The first entails catharsis. . . . The second level involves the process of moral reconstruction. . . . Society

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must pass judgment on what has been heard. It must establish a moral account of the historical record. The third level verges on the political—what is done with the process of truth telling? A number of options are available. A society may [even] choose to ‘forget’ or ignore the truth.

Tina Rosenberg

I am struck by how many comments outline the parallels between truth commissions and the therapeutic process of dealing with victims of post-traumatic stress disorder. The similarities are striking. People need to tell their story, but this is not all. Two other levels are important. People need to tell their stories to someone who is listening to them seriously and validating them. This is official acknowledgment. More importantly, victims must be able to reintegrate that narrative into their whole life story.

Lawrence Weschler (Staff Writer, *New Yorker*)

Furthermore, as the victims put their own lives together, they also pull the whole country together.

I detect three overlapping metaphors in our discussion—the realms of law, art and therapy. The most effective truth commissions carry on elements of the theatrical, by being broadcast to the public on television for example. Artfulness of presentation makes the commission more effective. The public responds like an audience of a Greek tragedy. People must organize their lives in an artful way that lends them a cathartic life experience at the end.

[Use of truth commissions in the context of particular international disputes:]

Yael Tamir

Should Israel and Palestine establish a truth commission? . . . I can think of three kinds of justifications, which I have ordered from the most to the least convincing.

The first presupposes that we have a moral obligation to know and remember the wrongs that have occurred. If we ignore the injustice that has been done or forget it, we become in some sense accomplice to it. This implies that we have an obligation to know what has happened regardless of the social effects that this knowledge might produce. A truth commission contributes to our ability to reach this goal and is therefore welcome. It signals that no harm will go unnoticed and that those who bear responsibility will not go unpunished.

The second justification is instrumental. It is grounded in the psychological needs of the victims and their relatives: the need to talk about their harsh experiences and to have their suffering publicly acknowledged. . . . I am skeptical about the ability of truth commissions to serve this goal. I also have a deeper doubt about the psychological assumptions—for example, whether victims are better off if they are allowed to recount their experiences.

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Truth commissions are also seen as instrumental in promoting reconciliation. I find this claim doubtful. In my experiences in Israeli-Palestinian workshops, I have found that an attempt to expose the facts is not particularly useful. It is often better to assume that injustices have been committed by both sides, and then focus on how to solve the conflict.

The most convincing justifications are then of the first kind, for the arguments for commissions that rest on instrumental justifications are very contingent on detailed contexts. I believe that a truth commission is unlikely to be helpful in the Israeli-Palestinian case.

...  
To summarize, if the peace process is to move forward it cannot proceed on the basis of an investigation of the past. Rather, we must disassociate ourselves from the past and build a future based on an abstract acknowledgment of the injustice done by both sides, an injustice grounded in the fact that we share the same small piece of land for which both sides make claims of right. We must therefore reach an agreement regardless of past injustices. Peace cannot be grounded in competition over past suffering.

Fateh Azzam

Basically I agree with Yael Tamir's assessment of the situation and the potential for a truth commission. At the same time, I cannot help but note the urgency of dealing with issues of past injustices.

What should emerge from this strange animal called the peace process? I have some disagreement with Yael. Unless we acknowledge what happened in the past, it will continue to come up. Israelis and Palestinians must redefine their relationship, but not necessarily deny it. We must acknowledge one another in a way that lays a proper foundation for our future. This will take a very long time. The Palestinians need to hear some acknowledgment in order for them to admit that co-existence is possible.

For these reasons, I had thought a truth commission might be a useful exercise. But further reflection has made me realize how much the outcome of the peace process depends on politics and political desires. Our societies need to accept one another, and this has not yet happened. Perhaps it is a question of timing.

### QUESTIONS

1. What do you view as the advantages and disadvantages of a truth commission in the Chilean model as an alternative to prosecutions? Is it always a "second best" to be employed when the political and military context makes prosecutions impossible? Are truth commissions and prosecutions compatible?
2. Some commentators have argued that a decision to name names in a truth commission's report of those (in armed forces, police) accused of committing serious human rights violations, as was done in the Report on El Salvador, is justified in part by

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the fact that the state's justice system is incapable of honest investigation and impartial judgment. Do you agree? Are there other reasons pointing toward including names of violators? What form and methods of investigation would you recommend for a truth commission that intended to publish such names?

3.3 Truth commissions are particularly useful where the people involved—violators, victims, those just standing by—will (indeed must) live in close proximity to each other as members of the same state and society. Hence they are less necessary and less effective in many types of international conflicts where the peoples involved, the violators and the victims, will live separately after some accord and end to the conflict.' Do you agree?

#### ABDULLAH OMAR, INTRODUCTION TO TRUTH AND RECONCILIATION COMMISSION

<http://www.truth.org.za/legal/justice.htm>

[The author, Minister of Justice of South Africa, was active in the planning of the South African Truth and Reconciliation Commission. He wrote this description as the debate in Parliament over the TRC ended and the scene was 'finally set' for appointment of its commissioners. Several provisions of the legislation governing the TRC that are referred to below were subsequently amended.]

... The Commission is based on the final clause of the Interim Constitution which reads as follows:

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future rounded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

... [T]here is a need for understanding but not for vengeance, a need for reparation but not retaliation, a need for ubuntu but not for victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law ... providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

I could have gone to Parliament and produced an amnesty law—but this would have been to ignore the victims of violence entirely. We recognised that we could not forgive perpetrators unless we attempt also to restore the honour and dignity of the victims and give effect to reparation.

The question of amnesty must be located in a broader context and the wounds

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