

The Work of Truth Commissions

Roberta Bacic

Roberta Bacic worked for 20 years with NGOs, and for four years with the National Corporation of Reparation and Reconciliation in Santiago de Chile, the successor of the Truth Commission. She was a university professor in Chile when the anti-Allende coup took place and until 1982. She has been invited by Croatia to advise them on how to set up a Truth Commission there. In her presentation she circulated the texts of two papers she had prepared, and summarised their contents. The texts of the two papers are as follows.

Notes on Truth Commissions

Truth commissions have been set up in countries that have endured violent conditions and where human rights have been systematically violated. In these countries the new political regime, where there has been war, or transitional governments, where there has been a dictatorship, do not have a judicial system capable of dealing with the consequences of the past. The existing systems cannot be relied upon to prosecute those responsible for previous human rights violations, because usually violence has been perpetrated by the state and its institutions, including the Justice Department. At the very least these institutions have been culpable for their silence, ignoring or denying the violence.

So a truth commission is established by the new government as an independent body capable of conducting a proper investigation. It has been acknowledged that the existing regime is unable or unwilling to face its responsibility over what has happened. In most cases it is a fact that the legal system has been part of the ruling system, and many of those who played and may continue to play a part in it supported the politics of the previous political system

Truth commissions are bodies set up to investigate human rights violations under a particular system. Their degree of authority, legal capacity, moral acceptance and support from survivors, the size of their budgets and number of staff, vary. The extent of a truth commission's authority will depend greatly on the strength of the new government and its acceptance by society as a whole, as well as on the people who are called to sit on it. Usually the chair of a truth commission has been a moral figure who has struggled for justice, has international prestige and who has managed to expose human rights violations in the past. A truth commission's legal scope will depend on the mechanisms available to unearth evidence of human rights violations and its ability to link up with the judicial system that will ultimately prosecute the perpetrators. It is recognised that those who suffered most directly should expect the truth commission to represent their interests and be reliable. This is a difficult and controversial point, as during the period of repression it was the State that was responsible, either through itself perpetrating human rights violations directly, or because it had allowed these to happen. There is no real reason to suppose that a new body created by the State would be reliable. Over the past 20 years many truth commissions have been set up, the most famous being those in South Africa and Chile. Of crucial importance is the way they are organised; how they select their staff; their means of co-ordinating with other organisations who are able to provide insights into procedures and information, and how long they have to fulfil their task. These

factors will affect the way they connect with society as a whole and the extent to which they can help build a society where human rights are respected.

As these truth commissions get set up in countries experiencing political transition, following lengthy periods of repression and violence, their establishment has to be negotiated with the very people responsible for the oppression. Negotiated transition involves compromise. Perpetrators of human rights atrocities, many of whom still hold or seek positions of power in the new regime, may refuse to submit themselves to justice. On the other hand, masses of victims demand accountability. "Truth commissions are therefore born out of a compromise between two extremes: institutional justice versus silence and sanctified impunity" (Amy Ross, 1999). Such a starting point should not be interpreted as a concession by the new government, nor as something we have to be grateful for. Their existence arises from the struggle of social movements which have organised around the concept of a right to truth, the right to stop repression and the right to protest against an unfair and brutal society. These movements-often involving the relatives of the "disappeared", victims of extra judicial assassinations, the exiled and displaced-have been both protest groups and also a living testimony to what has been happening in their countries. They have drawn international attention to state-directed terror. But it is important to realise that although these commissions may be said to have been established on behalf of the victims, it is not always clear whether in fact they have been helping them or not. In the majority of cases the negotiation process and amnesty is likely to be of benefit to the perpetrators whose impunity will persist. Often victim's organisations play little or no part in the setting up and procedures of the commissions, and the granting of amnesty may enable many perpetrators of human rights violations to stay in power. In Argentina, Chile and Uruguay people accused of human rights violations have retained their jobs in the armed forces both during and after the transition period.

The aims of most truth commissions are similar. The South African "Truth and Reconciliation Commission" summarised its aims as:

- To return to victims their civil and human rights;
- To restore the moral order;
- To seek the truth, record it and make it known to the public;
- To create a culture of human rights and respect for the rule of law;
- To prevent the shameful past happening again.

Looking at the aims, one can clearly see three levels of action and intervention:

1. Establishment of truth as regards human rights violations;
2. Reparation as a way of acknowledging the offences done by the State and looking for further reconciliation and/or forgiveness;
3. Prevention, so as to learn from the past and build up a society which respects human rights.

The first two points clearly describe how society and the new government is to deal with the past; the third indicates how it should face the future, which is possible only if the past has been dealt with.

Although the aims seem reasonable and feasible, procedural difficulties when dealing

with these aims means that commissions cannot always achieve their aims. For example, the Guatemalan Truth Commission failed to promise any sort of reparations for victims and, as mandated, lacked the authority to name or punish offenders. Viewed from outside, whatever has been achieved seems significant and important, even if it is only as a starting point. From the victim's perspective it is insufficient to merely state the truth - a truth which they already know and which was only denied publicly by the State. There is a need for public recognition, but even more important, for a recognition to generate reparation for what has been done. Lack of recognition actually becomes a new offence in itself, a way of supporting impunity and a reinforcement of the pattern and belief - that the State and your own society can not be trusted. The Chilean Truth Commission made recommendations which became a law (#19.123), creating rules regarding reparations to victim's relatives, state responsibility for the discovery of the bodies of the detained and "disappeared", and the incorporation of human rights as a subject in the educational curriculum. Even though it has been a well-conceived commission, which has made substantial reparations to the relatives of the disappeared, it has not managed to solve a number of urgent problems. Its remit was to deal with the most severe human rights violations - those which ended in "disappearance" or execution. It was not empowered to prosecute the perpetrators of serious violations, and the entire range of other human rights violations remained untouched. Prisoners who had endured years of imprisonment and torture received no compensation. As a result there are many people who are dissatisfied with the way the issues have been dealt with, particularly the fact that only a few perpetrators have been punished.

This discussion paper does not aim to propose solutions, nor does it underestimate the practical and psychological value of truth commissions. It would like to give readers an insight into what they do and what their limitations are, and to enable everybody to appraise them critically in the knowledge that civil organisations, institutions and individuals can contribute in various ways to the search for possible solutions to problems that the State has been unable or unwilling to address. It is an invitation to creatively make use of such an institution and broaden its capacity to link with society as a whole. Make it operational and give it life. If the State starts the process, then we can not expect it to be the process, we have to live it and go through it.

To try and gain insight into what it means to survive human rights violations, and to promote thought, debate, awareness, and understanding, about what could be done to bring about resolution with the past, let us look at a real case.

Blanca Valderas, a young Chilean communist worker who had been appointed Mayor of the city of Entre Lagos (a small southern rural region) was detained, together with her husband and six office colleagues, three days after Pinochet's coup. They were kept for a day at the local police station from where they were taken to an old bridge where they were shot. Blanca was not killed and escaped from the sack she had been confined in. She swam for a long time and asked for help at a peasant's house. She told them a very different story to her real experiences, so as not to be discovered alive. She remained in hiding for six years, under the protection of the Catholic Church. She had to cope with the loss of her husband and close friends. She could not visit her six children who believed she had disappeared and who were surviving in very difficult circumstances. This took place in September 1973. She now lives in a small house in Temuco and receives a pension because of the disappearance of her

husband. She knows who detained them, who shot them and where they live. She submitted the case both in Chile and in international courts without any suggestion that those responsible would be punished. In late 1999 when I met her in Chile we had a short talk and she made two interesting points.

"I ask myself whether we can accept the fact that there is no justice when the facts are so obvious. It is said that there has been reparation. Pensions were necessary, natural and fair, but they cannot be used either as a substitute for justice- which is the main reparation we need- nor as a concession when negotiating with the armed forces."

"The pension we get is just the minimum to keep us going after all the suffering we have endured. If it had not happened I would be earning my living with dignity, my husband would be retired and I would have been able to watch my children grow and live a normal life. I am merely surviving, I have nothing to give thanks for. There is no real truth if it does not result in justice and punishment for the assassins. A country where they can still walk along the street is a country with no chance of social order or peace. If murderers walk the streets with impunity, then anybody can steal, kidnap or rape as this means there is no social sanction showing what is correct and what is not."

Finally she added:

"It is just a farce, Pinochet in London, paid for by our state and the government asking for his return instead of feeling ashamed that he might be prosecuted abroad when this should have happened in Chile. Please, do not go to the protest outside his residence. Don't make him feel a victim." I would add, it made him become a celebrity, spoken about in all the media and the ones who suffered the consequences of his politics and 'war' were not in the place they deserved. The discussion was if he was or was not eligible to be prosecuted in Spain and if he was healthy enough to travel to Spain. All this is part of the euphemistic way we have to use language and describe events. What was not part of the discussion and analysis was whether he had ordered or committed crimes. At the end he was not fit to travel to Spain but he was to travel to Chile, on the other side of the world. In the midst of all these contradictions the case has had an impact in international circles, it has raised the issue that people responsible for human rights violations are not free to wander around the world. The case continues in Chile, he has been treated correctly, hasn't lived anything alike the people who suffered under his regime and there is no sign that he will ever be in jail or pay proportionally to what he caused."

Prepared for Zagreb, Croatia, June 23rd 2001

Highpoints of Truth Commissions

They are capable of contributing to **acknowledgement** of two substantial issues

- the institutional setting up of the country in which they are set up can not deal with the issues concerning human rights violations, so they have to create a body, separate of them, to tackle this concern.
 - the existence of a commission and the outcoming report brings about a public acknowledgement of what has been known all along by victims and perpetrators, and which has been ignored or denied by a big part of society
1. Whilst they are working they are set up to establish an accurate **record of a country's past**, clarify uncertain events and lift the lid of silence and denial of a painful period of history.
 2. It is said that they respond to the needs and interests of victims. As you might know, much of their time and attention is focused on victims. **Story telling** becomes a very important and a substantial part of the task a commission has been requested. This as regards the input given by victims and also of perpetrators. But it would be naïve to think that it is so. Most of the times nor victims nor their organisations are consulted on how to set these commissions, less during their process, beyond being witnesses. What has happened to them is in the political agenda. It empowers the government in power and disempowers the previous one and the suffering becomes a 'negotiable' issue.
 3. By uncovering what happened, a **PROCESS** of dealing with the past is triggered and it becomes essential that grassroot groups as well as NGOs and state institutions deal with it so as to project it into the future and help in the task of prevention of future violations.
 4. The actual stating of facts avoids the extended use of **euphemisms**, so a **crime** becomes a crime and not an abuse, torture is torture and not inadequate and unnecessary use of force, etc.
 5. The existence of the commission and its subsequent report makes the topic which was previously a topic of victims versus perpetrators, a **topic of society as a whole**. The ones who do not belong to any of the 2 named ones, have to take part of the discussion and take responsibility for what they ignored and did not do.
 6. During and after this process there is a strong need of **rebuilding the social net** and here active dialog and participation of individuals and social actors becomes relevant.
 7. In the context of what is happening all over the world, the setting up of these commissions after a war or dictatorship, becomes a **matter of aesthetics**, it looks right to set them up and give them the importance they have in the context of a country as well as internationally.
 8. In the field of **moral behaviour**, they challenge the need of determining **what is and what is not negotiable** and balance, as far as possible, the ethical dilemmas versus the political constrictions.
 9. A few commissions have contributed to **justice and accountability**. Others have put forward the need to link them with processes of justice, which is a basic demand of the victims.
 10. The commissions are supposed **to make recommendations** to overcome the problems of the past. Amongst them: design a reparation program, propose

programs regarding prevention of future abuses, describe the circumstances that made events happen, etc.

11. They are very well positioned to **outline institutional responsibility and recommend reforms**, that means they have an evaluative and prescriptive task as they can base their conclusions and recommendations on a close study of the record, while standing as and independent institution separate from the systems under review.
12. In many cases they have been thought capable of promoting reconciliation and reduce tensions resulting from past violence.
13. They have contributed to give victims, survivors and society as a whole, the right to truth, as confirmed in international law.

Prepared for Croatia by Roberta Bacic (WRI) Saturday 23rd June 2001, and updated 3rd July 2001

Response and Discussion

Paul Oestreicher

I want to commend to you Andrew Rigby's new book *Justice and Reconciliation after the Violence* and share with you some of its contents. Rigby challenges the notion that 'peace' and 'justice' go together. He points out that achieving one must often be done at the expense of the other. He gives due consideration to personal and psychological factors as well as to political ones. He considers how people who have been involved in violence can achieve a state where they can live together in harmony. This is a complex process, with no short cut to solving sin - and, indeed, Christians should not be surprised that this is so. It is not possible to create systems of forgiveness, since forgiveness is a very personal thing, but it is possible to create a climate in which forgiveness can be achieved. The book takes various countries as case studies. The chapter on Spain is entitled 'Amnesty and Amnesia', which exactly describes what happened there in the post-Franco period. The chapter on South America argues that peace and justice have been achieved 'up to a point', but that this is better than nothing. The Russians have made no attempt to tackle the legacy of Stalinism. When you read Rigby's book you might even come to the conclusion that they are wise not to do so, since there is hardly a family in Russia which does not contain both victims and perpetrators. You might of course come to the opposite conclusion; and this just illustrates the complexity of the situation. One way forward, which is possible only for a few, like Nelson Mandela, is to pray for your torturers and forgive them, and then to go one step further and work with them for the achievement of peace and justice.

Discussion

In discussion the question arose as to whether it would be a good idea to set up a Truth Commission to tackle the Jewish-Palestinian problem. Roberta pointed out that Truth Commissions have to be set up on the initiative of the involved parties. Paul

Oestreicher added that their work begins only when a particular conflict has ended; and that moreover the Jewish-Palestinian conflict is to a large extent caused by outsiders, so that the solution does not lie in the hands of those involved. Sidney Shipton noted that an 'Interfaith Coordinating Council of Israel' has been functioning for many years, bringing together Jewish and Palestinian religious leaders for meetings and discussion.