

## TRUTH AND THE RECORDS OF TRUTH COMMISSIONS

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“All these things happened among us”

--Mayan poem used as the epigraph of the  
Report of the Truth Commission of El Salvador

It is early 2004. Haiti is again in rebellion. The President leaves the country, and rebels enter the capital. A new government is named, promising “accountability.”

Meanwhile, in a small room in the Ministry of Justice lay the records of Haiti’s 1994 truth commission. And in those files, including approximately 6000 interviews, morgue records, forensic examinations of mass graves, photographs, and “a dozen area reports, each of which was hundreds of pages long, combining statistics, secondary materials, analysis of interviews, and direct investigations,” is evidence of the prior activities of at least some of the leaders of the rebel movement now in power<sup>1</sup>. How long will the records remain intact?

One of the unique democratic institutions to emerge at the end of the twentieth century is the truth commission. A truth commission is a commission of inquiry, a temporary body established either by a government or by a civil society institution to look at and report on a past pattern of abuses by a repressive regime. Truth commissions usually are established during or immediately after a transition from authoritarian to more democratic rule. About two dozen national truth commissions have been established in the past twenty years, most of them in the past decade. The greatest number has been in South America and Central America, with Africa close behind. Other commissions are or have operated in countries as disparate as Nepal and Germany, South Korea and East Timor.

While some truth commissions have been established by non-governmental organizations and have played important parts in precipitating regime change, their records are private, not public, property. The truth commissions that are established by governments, however, create records that are government property, and citizens have the right to demand preservation of and access to these records. During late 2003 and early 2004 I surveyed twenty governmental truth commissions to determine what happened to their records<sup>2</sup>. I limited my survey to commissions that (a) were established by the government as a whole (by the chief of state or by the legislature) and (b) considered broad historical events. Among the questions I asked were: What kinds of records did the commission create? Where are the records now? Are they divided between several custodians or are they in a single repository? Are the records complete or have some or all been destroyed? Do the national laws on access to government information pertain to these records? Have the records been used since the commission closed and, if so, for what purposes<sup>3</sup>?

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<sup>1</sup> The National Archivist of Haiti, Jean-Wilfrid Bertrand, believes that the records may be split between the Ministries of Justice and Interior. Brian Concannon, a lawyer who worked with the Aristide government, used the records in the Ministry of Justice. For specific citations throughout this article, see “Final Acts: A Guide to Preserving Records of Truth Commissions,” forthcoming on the website of the Woodrow Wilson International Center for Scholars: <http://www.wilsoncenter.org>.

<sup>2</sup> Argentina, Bolivia, Burundi, Chad, Chile, El Salvador, Germany, Guatemala, Haiti, Nepal, Nigeria, Panama, Peru, Philippines, South Africa, South Korea, Sri Lanka, Uganda, Uruguay, Zimbabwe

<sup>3</sup> The study was supported by the Woodrow Wilson International Center for Scholars in Washington, DC. The main body of the study is a guide to assist commissions in the final disposition of their records. Appended to the guide are brief reports on the disposition of the records of the commission in each of the twenty countries.

The first lesson of the study was how hard it is to learn what had happened to the records. I contacted the Washington embassies of all the countries in the study and I wrote to all the national archives. While some embassies were extremely helpful, others were not interested in talking with me. About half of the national archives answered, most of whom told me that the records were not in their custody. Several people whom I interviewed, both inside and outside of government, asked me not to use their names in any report. Former commissioner, commission staffers, and consultants all gave me leads. Human rights activists often provided pointers to people who might know where the records were located, but few of them had seen or used them since the records commission closed.

Not surprisingly, as in the Haitian commission described above, commissions create records of every physical type: paper, electronic, audiovisual. Databases are heavily used; some commissions also have objects submitted as evidence. The records are administrative, programmatic, and investigative, with the latter often the most voluminous. The total quantity of records of a commission is substantial and growing; for example, Argentina, one of the earlier commissions, reports 130 cubic linear meters of records, while Peru, which completed its work in 2003, reports 200 cubic meters of records.

But if the physical and functional types of records are relatively uniform, what happens to the records when the commission closes is not. In four countries (Argentina, Chad, Chile, and Haiti) the records went to the Ministry of Justice or the Ministry of the Interior, where they are available for subsequent actions, including possible prosecutions. In one country, Peru, the records went to the ombudsman's office. In three countries the President's Office or the Cabinet Secretariat controls the records, while in two countries a successor committee or commission has them. In two countries the records are in or destined for the national archives, and in another they are in an archives established by Parliament for the purpose. Three commissions have their records with the United Nations, one commission still has its records, and I was unable to determine the location of the records in three other countries.

What accounts for this variety of custodians? I considered a number of factors: geography, creator, status of final report, whether the country has a freedom of information or privacy or data protection act, and how the country ranked on Transparency International's 2003 rating of the openness of government. Geography made no difference. Creator seems to make some difference: the records of the two commissions created by the legislature (Germany and South Africa) are both in archival custody (special archives and national archives, respectively). The three commissions established by or with the central participation of the United Nations all ended up in the custody of the United Nations in New York. The remainder, those established by presidents and prime ministers, ended up in the variety of hands noted above. The status of the final report also makes some difference: Bolivia's report was never completed and the fate of its records is unknown. In Nigeria and Zimbabwe the report was completed but not published; the custodian of the Nigerian records is unknown, while Zimbabwe's are believed to be among the records of the President's office stored in the records center run by the National Archives. In Uganda and Haiti the commission's report was published but its distribution was severely limited; the Ugandan records are believed to be either with the President (most likely) or with the Uganda Human Rights Commission, while Haiti's are at least in part in the Ministry of Justice.

Comparing the disposition of the records with legislation was more useful. Seven of the twenty countries had freedom of information acts: Nigeria, Panama, Peru, Philippines, South

Africa, South Korea, and Zimbabwe, with Uganda's pending at the end of 2003. (It is a separate question whether the freedom of information act covers the records of the commission in each of these countries, but it is at least a theoretical possibility.) Here we see some consistency: the commissions in South Africa and South Korea designated the National Archives as the successor repository, while in Panama and the Philippines the records are in a successor commission and in Peru they are in the Ombudsman's office. These are institutions whose responsibility includes making information available to the public. Nigeria and Zimbabwe do not fit this pattern of transfer to a designated successor.

Six of the countries have privacy or data protection acts: Chile, Germany, Peru, Philippines, South Africa, and South Korea. This is much like the pattern with the freedom of information acts, and it includes all three of the countries where an archival repository was chosen as the successor for records purposes (Germany, South Africa, and South Korea).

Finally I considered the Transparency International scale, which in 2003 ranked 102 countries for their open government practices. Two of the twenty countries (Burundi and Chad) were not ranked. Of the rest, the highest score was Chile (17) followed by Germany (18), Uruguay (32), South Africa (36), South Korea (40), and Peru (45). The remainder ranked in the lower half. All three countries using an archival repository were in the top half of the open government listing, as was one (Peru) that considered an archival solution but was required by the commission's legislation to turn the records over to the ombudsman.<sup>4</sup> Chile's records are still in the Ministry of Justice for use in prosecution, while Uruguay's commission has extended its life and still has its records.

The conclusion is that the stronger the open government climate, including the enactment of laws such as freedom of information acts, the more likely that the records of a truth commission will be placed with a government entity that has, as part of its regular work, the responsibility of providing access to information.

The question of destruction, dispersal, and duplication of truth commission records was extremely difficult to answer. The most memorable response was from the Philippines, who reported that some records are in the central office of the Commission on Human Rights, while other records were "forwarded to CHR regional offices." The records sent to the regions included investigation reports of regional offices; unfortunately, "some got lost while in transit" and others were "destroyed by termites." Chile reported, in its Memory of the World application for the Presidential records relating to the Commission, that once "the Commission's mandate concluded, the documentation it had gathered and analyzed was transferred to other agencies, many of which have added or eliminated information." In Argentina, some material seems to have been added to the original files. The German records were divided, with the archives created for them holding the majority of the records but the administrative records retained by the Parliamentary archives. In the remaining countries the records either remain complete or no information could be obtained.

Another dispersal takes place as commissioners, staff members, consultants, and contractors leave the employ of the commission. Distinguishing records from personal papers is not easy

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<sup>4</sup> The law establishing the Commission required that the records of the Commission be turned over to the Ombudsman. Unfortunately, the Ombudsman has neither space nor staff to manage the records. Some Belgian cooperation funds were used to lease space for six months, but that did not cover staff or equipment or supplies. Nor are there funds either to preserve the records or to process and screen them for use by researchers.

in the best of circumstances, and commissions work under great pressure and far from ideal conditions. Furthermore, commissions employ contractors and consultants from many countries, and these specialists may do their work in their home laboratories or on their home computer systems. People would not talk on the record about documents and data that found their way outside the control of the commission's successors, but I am aware of a number of these instances.

Much more worrisome than the dispersals by persons connected with the commission are the raids by officials. The worst example is in Panama. The Commission delivered its report in April 2002, but continued to work unofficially for the next year and a half. During that time, on 18 June 2003, agents of the Attorney General raided the Truth Commission's offices in Balboa and seized "skeletal remains, evidence files and financial records" after a criminal complaint was filed by an opponent of the Commission. The Commission in turn filed criminal charges against him<sup>5</sup>. Then, on 15 August 2003, the home of Alberto Almanza, who was the director general of the Commission and president of the follow-up committee, was burglarized. The thieves:

stole three hard drives from computers at a private office he maintains in his home. The hard drives contained information related to the commission's investigation into human rights abuses that took place during the dictatorship. [Almanza] said the intruders also rifled through paper files and took a notebook computer<sup>6</sup>.

An unconfirmed story spread through Zimbabwe that the commission report, unpublished, was stolen from the records center operated by the national archives. Observers in Uruguay worry that that commission's records will not survive intact. And, as reported at the beginning of this article, the current state of the records in Haiti is unknown.

Some commissions have tried to take proactive security steps to protect certain sensitive records. The commission in Argentina microfilmed part of its records and put the microfilm in a safety deposit box. The commission in Peru asked the United Nations if it would hold copies of some of its records, but the United Nations refused, apparently because the United Nations had played no part in the establishment of the Peruvian commission.

The crux of the issue of the disposition of the records of truth commissions is the problem of future access to the records. Some commissions worked very publicly, while others did not. Some commissions named names, others did not. But in all cases a commission acquires information that is highly important to living persons: victims and their heirs, alleged perpetrators, lawyers and journalists and scholars.

Access regimes for records of truth commissions range from no access at all for anyone, through access by the government for official business, to access by the public in accordance with access laws. The best single predictor of how access will be handled seems to be how confident the public, including government officials, is that the change toward a more democratic government and away from the abuses documented by the commission is irreversible. South Africa does not believe that the apartheid regime will return. The East Germans are not going to have another SED dictatorship. South Korea does not think that military rule is coming back. And in these three countries, existing records laws apply to the

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<sup>5</sup> The Panama News, Vol. 9, Nos. 12 and 13, June 22-July 5 and July 6-19, 2003. <http://www.ThePanamaNews.com> (accessed 2004-02-17).

<sup>6</sup> The Panama News, Vol. 9, No. 16, August 17-September 6, 2003, loc. cit.

commission records, providing the possibility of access as well as the obligation to protect the privacy interests of individuals, and all these records have gone (South Africa and Germany) or are going (South Korea) to archival custody.

At the other end of the spectrum are countries where the democracy is manifestly insecure. In addition to Haiti, two instructive examples are El Salvador and Guatemala. The commissions in El Salvador and Guatemala were both facilitated by the United Nations, and ultimately they deposited their records with the United Nations in New York, although not in the United Nations Archives. The El Salvador Commission specifically recognized the importance of its archives. Part I of the Introduction to its report described the documentation the Commission accumulated, and concluded that “all of this material constitutes an invaluable resource—a part of El Salvador’s heritage because (despite the painful reality it records) a part of the country’s contemporary history—for historians and analysts of this most distressing period and for those who wish to study this painful reality in order to reinforce the effort to spread the message ‘never again’.” The Commission then asked:

What is to be done with this wealth of material in order to make it available to those around the world who are seeking peace, to bring these personal experiences to the attention of those who defend human rights? What is to be done when one is bound by the requirement of confidentiality for documents and testimony? What use is to be made of this example of the creativity of the United Nations at a time in contemporary history which is fraught with conflict and turmoil and for which the parallels and the answers found in the Salvadorian conflict may be of some relevance<sup>7</sup>?

What happened, ironically, is that the records are closed indefinitely, in New York, a location far from the reach of most El Salvadorians.

The situation with the Guatemala Commission’s records is scarcely better.<sup>8</sup> All materials transferred to the United Nations in New York are sealed, except any records “specifically designated in writing by the Coordinator of the Commission as being for the public domain” (no such designation appears to have been made). Written authorization of the Secretary-General “signed by the Secretary-General in person” is required to open a sealed container prior to 1 January 2050 “or until such date thereafter as the Secretary-General may specify.” The decision to open the records requires the Secretary-General to consider the stipulation in the 1994 agreement that “[t]he Commission’s proceedings shall be confidential so as to guarantee the secrecy of the sources and the safety of witnesses and informants<sup>9</sup>.”

The idea of removing records created in a country and directly pertinent to the history of that country is troubling. Several prominent human rights activists concurred with that disposition in El Salvador and Guatemala, however. They pointed out that the situation in both countries was too dangerous to keep the materials there and safe. And they believed that the records could be destroyed with complete impunity.

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<sup>7</sup> “From Madness to Hope: The 12-Year War in El Salvador,” Report of the Commission on the Truth for El Salvador (United Nations Publication, S/25500, 1993), excerpt in Neil Kritz, ed., Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Volume III, Laws, Rulings, and Reports, Washington, DC: United States Institute of Peace Press, pp. 177-215.

<sup>8</sup> Some data created by the Commission was made publicly available on the internet; see Audrey R. Chapman and Patrick Bell, “The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala.” Human Rights Quarterly, 23.1 (2001), pp. 1-43

<sup>9</sup> United Nations Secretary-General’s Bulletin ST/SGB/1999/6, 8 June 1999.

This takes us to the heart of the question of the utility of history and records. Oppressive regimes try to impose a selective amnesia on society. The purpose of a truth commission is to break through that wall of silence and restore knowledge of the hitherto hidden hands in history. Destroying the records ensures that only those things that made their way into a published, final report will be officially remembered; destroying records ensures that the persons opposed to the commission and its work will win.

The distinguished legal scholar Louis Joinet wrote an influential report to the United Nations Commission on Human Rights on the question of impunity of perpetrators of human rights violations. In it he pointed out that the right to know

is not simply the right of any individual victim or closely related persons to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a “duty to remember,” which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people’s national heritage and as such much be preserved<sup>10</sup>.

Joinet proposed two series of measures to protect the right to know. One of the two was to preserve the “archives relating to human rights violations.” While Joinet focused on the records of the government during the period of human rights violations, a logical extension of his argument is that the records of the commissions that investigated these violations must also be preserved and made available to succeeding generations.

Each commission is unique and so are the records that it generates. Consequently, there can be no single pattern for handling the records after a commission ceases to exist. The public must trust in the integrity of the successor repository and must accept the uses to which the records will be put. Particularly in governments where reforms are just beginning to take hold, the issue of trust is very difficult to resolve. As Rudolfo Mattarollo, the former Deputy Executive Director of the United Nations Civilian Mission in Haiti, writes, “Safeguarding the evidence of the acts committed—one of the primary objectives of a truth commission—means safeguarding the circumstantial, documentary and material evidence, as well as testimony obtained from victims and witnesses<sup>11</sup>.”

If the records are going to be used for future prosecutions, they must be in a repository where the prosecutors and the defense counsels can have access. If the records of particular cases are to be available to the victims or their families, the repository must have facilities to make that possible and should not be intimidating to these people who have already been traumatized by the actions of the state. And if any part of the records is to be available for academic research, now or in the future, they must be in a facility where they can be described and made available as well as preserved.

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<sup>10</sup> “The Administration of Justice and the Human Rights of Detainees: Question of the impunity of perpetrators of human rights violations (civil and political). Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119,” United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1997/20/Rev.1, 1997-10-02.

<sup>11</sup> Rodolfo Mattarollo, “Truth Commissions,” in M. Cherif Bassiouni, ed., *Post-Conflict Justice*. Ardsley, New York: Transnational Publishers, Inc., 2002. pp. 299.

In a democratic country, where rights of access prevail, an archival repository provides preservation and reference service for the most sensitive records of the government. Some commissions have considered placing the records with a custodian outside the government but inside the country, either an existing institution or one created specifically to handle the records of the commission. Other countries, such as Argentina, have decided to establish archives within the government but outside the national archives. While these may be solutions if the entire government or the national archives is deemed untrustworthy, international opinion, as the archivist of South Africa notes, “is swinging towards the view that sensitive records of repressive regimes should be kept by the national archives of the successor democratic states, not in special institutions<sup>12</sup>.”

Placing the records in a national archives has three important benefits. First, it helps ensure consistency in applying restrictions and access rules to archival records. If truth commission records are in one institution and the national archives is in another, coordinating access policies will be difficult, with the likely result that the public will be able to have access to certain types of documents in one institution and not in the other. This makes the government’s access policy inconsistent, if not inept. Democracy is best served by a public, clear, consistent application of access policy. Second, by placing sensitive bodies of records in the national archives, over time the national archives builds a body of precedent in the handling of these records. Such capacity building in the national archives staff enables them to gain confidence in their ability to handle difficult access problems, and as each succeeding body is deposited, the staff’s expertise increases. This is to the benefit of both the current and future governments. Finally, it is less expensive to manage a single national archives than to operate two institutions. In countries where little money is available for archival institutions (and that includes many of the countries where truth commissions operate) this is a practical consideration.

Whatever repository is ultimately chosen, the fundamental requirements are security for the records, clear access rules, and a trustworthy custodian. With these elements in place, then, as the haunting line from the Mayan poem that served as the epigram for the El Salvadorian report says, people now and in the future will know that “all these things happened among us,” both the violations and the attempt by a commission to uncover the truth.

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<sup>12</sup> Graham Dominy, “A Delicate Balancing Act at the National Archives,” ThisDay, 2002-11-17.