

## **The prospects of a truth commission for Burma, from lessons learned in Chile and Argentina**

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The decision to form a truth and reconciliation commission can drastically affect the future of a society recovering from a traumatic past. The choice cannot be made lightly. There will always be complications when deciding to create a committee that will publicly submit a report concerning egregious and massive acts of violence. Further, a poorly formed commission that creates a mediocre report will damage prospects for true reconciliation as well as add to criticism that these commissions may harm more than help. The specific conditions of the nation, culture and peoples involved must be considered carefully before deciding to form a truth and reconciliation commission. The concept of a truth commission is itself quite new, and more is being learnt each time one is held.

In the wake of the massacre that occurred at Depayin, Burma, on 30 May 2003, some Burmese and international human rights advocates have suggested holding a truth and reconciliation commission to deal with the massacre, as well as the continuing abuse of basic rights across the country. A successful commission might provide some relief for survivors of the massacre and families of those lost, and perhaps lead to better protection of the Burmese and their basic rights. However, were it to be held soon, such a commission would also be a direct challenge to military authority in the country, and would entail considerable risk for those involved.

Any truth commission held in Burma or, for that matter, elsewhere in Asia, should be formed by committed individuals sensitive to the experiences of past truth commissions. The National Commission of Disappeared Persons in Argentina and the National Commission on Truth and Reconciliation of Chile are among earlier commissions that may be studied. While every mass violation of human rights is in some way unique, making direct comparison unhelpful, much can be learned from these two Latin American truth-telling missions that may guide others down their own paths to reconciliation.

### **The truth commissions in Chile and Argentina**

The truth commissions in Chile and Argentina came about in different ways, but in some respects bore many similarities. The Argentine commission was the pioneering truth and reconciliation commission, while the Chilean commission adopted and improved its approach.

In Argentina, under the military junta's 'Dirty War' that lasted from 1976–1983, some 10,000 people were disappeared by the state. The military, led by General Jorge Videla, detained, tortured and executed anyone deemed 'threatening'. Many victims were young liberal intellectuals, but others came from all walks of life. State officers murdered pregnant mothers, threw drugged victims out of aeroplanes, and secretly tortured and killed thousands without even admitting that they had been detained. This secret siege continued for seven years. Throughout that time there was no rule of law; the military had nullified habeas corpus and dissolved the congress, granting itself immunity. However, after its defeat in the Falklands War of 1982, the military's power declined in the face of a growing human rights movement; it was forced from power in 1983.

From the beginning of the military's campaign in Argentina, various groups struggled to obtain information about the victims and stop abuses. While the Catholic Church remained tragically paralysed due to fear and lack of resolve, others fought for answers and organized themselves into what became a highly effective movement for human rights. Of the groups demanding justice, the

Mothers of the Plaza de Mayo stand out as a triumph of people's activism and dedication. Founded in 1976 by a woman who herself eventually disappeared, this group of mothers of disappeared children together mourned their losses and demanded information and change through protests. They gathered each week at the Plaza de Mayo, in front of the presidential palace, and held signs with photos of the disappeared while they demonstrated against the government. As support for the mothers grew, they formed a huge organization of families and friends that found and distributed information concerning the victims, spoke with international agencies, and published evidence of the murders and other abuses. Their partner organization, the Grandmothers of the Plaza de Mayo, was also hugely successful, eventually working with the National Genetic Data Bank and the National Commission for the Right to Identity to reunite children with their families who had been kidnapped and given to military officials. The mothers still come together every Thursday at 3:30 at the Plaza de Mayo, and have received international support for their persistent demands for justice and truth.

Under pressure from these and other concerned people's groups, President Alfonsín formed the National Commission of Disappeared Persons in 1983. It consisted of thirteen Argentines from various walks of life and political backgrounds. After nine months of intensive investigation and documentation, the 1984 *Nunca Más* report was published. The commission received no information or assistance from the armed forces, despite numerous attempts to interview military officials. The final document consisted of some 50,000 pages that formally found 8,960 persons missing, although this number excluded cases that came to the commission after the gathering of testimonies. While the commission was unable to give details on every case, it did mention the names of all known victims, added individual testimony from various witnesses, recounted the history of the repression and made recommendations for future action. The final report sold 300,000 copies, became a national bestseller, and set the standard for the some twenty commissions that have since followed.

In Chile, the disappearances and killings began three years earlier than Argentina, in 1973, when its military overthrew and killed President Salvador Allende, although it attributed his death to suicide. The leader of the army, General Augusto Pinochet, took power with the help of the United States. From 1973 to 1976, some 3,000 Chileans disappeared without a trace, after which domestic and international pressure forced the government to stop widespread torture and murder, although it continued under the authority of the secret police. While at first the country was too confused and shocked to organize any decisive action against the oppression, finally the efforts of various domestic and international human rights organizations brought the disappearances to an end.

Unlike Argentina, Chile gained most of its local support for human rights from organisations linked to the Catholic Church. Leaders from the Church were among the first to speak out against violations, and they gathered the first information, including testimony on the disappeared, that became the foundation for the truth commission's report. The Catholic Church yields enormous power and credibility in Chile, therefore, when it denounced the dictatorial regime, it attracted widespread international attention. It founded the Committee for Peace (Comité pro Paz) immediately after the regime took over, and proceeded to give legal assistance to 15,313 cases and medical assistance to 16,992 people throughout Chile.[1] After Pinochet ordered the Committee for Peace dissolved in 1975, the Vicariate of Solidarity (Vicaría de Solidaridad) of the Catholic Archdiocese of Santiago was founded in 1976 as a replacement. Helping families as best they could, this organization recorded testimony from witnesses and bravely spoke out against the disappearances. In 1975, the Foundation of Social Help of the Christian Churches was also created, and slowly the growing domestic opposition to the government became more confident.

A handful of local organizations worked alongside the Church. In 1974 the Group of Relatives of the Detained Disappeared was among the first of its kind in Latin America. Other groups included the Chilean branch of Amnesty International, and the Committee of Defense of the Rights of the Pueblo.

Starting as a disorganised early reaction to the military regime, these groups built a highly organised movement that became known worldwide. However, General Pinochet remained in office until he was defeated by election in 1989, after which Patricio Aylwin became president and created the National Commission for Truth and Reconciliation in 1990.

Chile had the benefit of hindsight, and could learn from the Argentine truth commission. Its own commission comprised of eight members, four being supporters of Pinochet and four from the opposition. The Chileans believed that the Argentines had erred in not bringing backers of the army into their commission, as it meant that the military simply refused to cooperate, and chances at obtaining genuine reconciliation and learning the truth were therefore diminished. Its composition suggested balance, and increased its credibility, as persons coming before it expected to get a fair hearing. That these eight men all agreed about the fate of the disappeared under the regime demonstrated its legitimacy, and even former military officials accepted that the truth had been told. The Rettig Report (named after the head commissioner), which had nine months to complete its work, was published seven years after the Nunca Más report, and covered sixteen and a half years of state oppression, nearly double the time covered by the Nunca Más report. Chile had a much smaller number of disappearances to investigate and record and therefore the commission produced a much more detailed account of the disappearances, describing with accuracy the location of abuses and biographical information of almost all the victims. Each chapter included references to the relatively small number of victims of leftist guerrillas, in an effort to record all violations committed. However, those who survived torture (estimates are of anywhere from 50,000–200,000 people) were not included in the report.

Neither commission ever mentioned the names of perpetrators, nor had any legal authority to subpoena people to court. Further, neither commission offered amnesty in exchange for information. The South African Truth and Reconciliation later introduced this concept in a successful attempt to improve upon the earlier commissions, which received barely any crucial information from military officials. In Chile, the commission aimed for prevention and reparation, and it had learned from Argentina that it could not solve every problem related to the era of the disappearances. A reasonable course of action could best be sustained by limiting its mandate to fact-finding and truth telling. Neither commission was meant to replace proper criminal trials or political action; rather they were intended to make public records of victim and witness testimony, and produce a written history of human rights abuses. Both commissions made extensive recommendations, urging trials of perpetrators by independent judicial bodies, revisions to criminal procedure codes (both civil and military), reparations for the families of victims, and adherence to international standards of human rights. In the end, it is these suggestions for legal action and political change that are of greatest importance.

A big obstacle for both commissions was that in each country the perpetrators had written impunity into law. General Pinochet had declared himself senator for life, and had granted a general amnesty for any crime committed before 1978. In Argentina, Alfonsín enacted two amnesty laws under pressure from the army. These blocked efforts by the families of disappeared persons to obtain justice, because the military was not obliged to divulge information on the fate and whereabouts of victims. Nonetheless, the two commissions together set a precedent by publicly announcing abuses and condemning the state for its crimes on a domestic and international scale.

### **Prospects for Burma**

In the immediate term, the greatest obstacle to an effective truth commission in Burma is that the military regime that has allegedly committed the gross human rights violations is still in power. In both Chile and Argentina, newly elected leaders created the commissions in response to the

demands of their citizens. In addition, international organizations such as Amnesty International, the United Nations and foreign state officials applied constant pressure on the governments to conform to international human rights standards, publishing their own reports and demanding action. In Burma, the junta will not itself be willing to admit guilt and turn towards reconciliation and reparation. While there is international condemnation of its human rights record, as of yet the demands for truth and reconciliation are not great enough that the military feels a need to act in order to preserve its relationships with other states. Therefore, a truth commission will either have to wait until the military regime is out of power, or find a way to work around it. In either case, a truth commission can only serve its purpose if witnesses are willing to testify and if its members are able to access and distribute information. This can only occur through a combination of international and domestic pressure, and with a courageous effort by the victims to speak out about what happened to them and their fellow citizens.

People in Burma live in fear. Their actions are under constant surveillance, and their liberty to express opinions is curtailed to an extraordinary degree. They would be rightfully afraid to testify against the military, and have few havens in which to seek refuge. A writer on militarization in Burma, Christina Fink, notes that

People in Burma are reluctant to speak up because they are living under the seemingly omnipresent surveillance of military personnel and informers. Those who act out against the regime risk torture, long-term imprisonment and being treated as outcasts for life. To protect themselves and their families, Burmese participate in creating the silence that constrains many aspects of their lives.[2]

While a truth commission can help to break the pattern of systematic repression, it can also only be successful if people have support, and the will to speak out.

In Chile and Argentina, much of the pressure to allow and create a truth commission came from community organizations such as the Mothers of the Plaza de Mayo in Argentina and the Church in Chile, who had already accumulated a large amount of reliable information on the disappeared. The people working in these organisations were motivated not only by the loss of family members or friends, but also by not knowing what had happened to them. Many became obsessed with knowing the fate these persons, regardless of the cost. Even though they feared reprisals, the agony of uncertainty was the incentive for these persons to speak out and demand the truth. International support also helped Chileans and Argentines to speak more freely, particularly when the repressive regimes were no longer threatening.

In Burma, daily life is still subject to extreme militarization, and oppression pervades almost every aspect of daily life. These conditions make prospects for a truth and reconciliation commission far more difficult. Further, most people in Burma are relatively certain of the fate of victims, certainly of those at Depayin, and this may make them less likely to take personal risks as people did in Latin America.

Leaving aside the immediate practical obstacles, were Burma to hold a truth and reconciliation commission it could have enormous benefits for the society, and set an example for countries throughout Asia coming to terms with past gross human rights abuses. The people of Burma have endured unspeakable repression for decades, and the events at Depayin have provided an ideal chance for the truth to be revealed on an international scale, thereby condemning the military regime and providing relief for those who may yearn to tell their stories.

Because "exposure is punishment", truth commissions serve as excellent public mediums for castigating perpetrators of rights abuses.[3] Intensive research is necessary to obtain the most

accurate accounts possible, so that the final report will be credible and taken as fact. If a nation's citizens are in search of truth, then a report that announces this truth should do far more good than harm. When a commission can record and prove that human rights violations have occurred, then the persons accused of wrongdoing must eventually answer. People gain confidence that their voices are being heard, and respond by becoming less fearful. If a truth commission on Burma can submit a thorough report that is read both within the country and internationally, then the military junta will have to respond, and eventually succumb to international and domestic pressure for change.

The main goal of a truth commission is to help heal the victims and their families, and protect future generations. Truth commissions are both preventive and restorative.[4] The findings of a truth commission become a permanent testament to the victims. One member of the Chilean commission noted that, "Most of [the relatives of the victims] stressed that in the end, what really mattered to them was that the truth be revealed, that the memory of their loved ones not be denigrated or forgotten, and that such things never happen again." [5] These feelings are common among the families of victims of human rights abuse, and a widely distributed report detailing the past and providing a guide for the future goes some of the way to meeting their needs. While punishment of perpetrators is also necessary, it does not fulfill all of these needs. Individuals also want their pain and loss to be acknowledged. At present, the prospect that members of the military regime in Burma will be brought to trial seems remote. In the interim, a truth commission would be a useful step, involving systematic collecting of evidence and public condemnation of the regime.

### **How a truth commission for Burma might work**

Ideally, a truth commission is comprised of nationals of the country concerned, encompassing a range of backgrounds and opinions. Both the Chilean and Argentine commissions brought together people from a variety of professions with differing political opinions. However, the deep divisions in Burma, exacerbated by the years of repression, may be cause for greater international involvement. While people of Burma should have responsibility to collect information, organize witness testimony and produce a final record of events, international involvement may be useful, particularly in offering expertise and mediation, and to provide material and financial support.

The availability of resources needs to be seriously considered. In Chile and Argentina,

The commissions were given... adequate resources for conducting and submitting a report that detailed the events in and around the respective time frames in which the abuses were committed. These resources included computer data programming equipment, nine months of time, the permission to question almost anyone, and the rights of final publication.[6]

Without these conditions, both commissions would almost certainly have failed to make much progress. Commission members need access to witnesses as well as the means to organise and publish evidence. If a commission is not adequately funded, then it will not only be unable to write a full report, but will also damage the prospects for future reconciliation by leading people to believe that public truth-telling has no benefit. Therefore, international donors, including the United Nations, would need to be convinced of the benefit of creating and supporting a commission.

Where the Depayin massacre itself is concerned, a commission would have the benefit of the affidavits already compiled by the Ad Hoc Commission on the Depayin Massacre, as well as other information in the preliminary report, including remarks by the military. More broadly, the Chilean and Argentine reports made a point of documenting all abuses committed, not only by state agents, but also by leftist guerilla groups. While in the end the vast majority (more than 90%) of crimes in

each case were attributed to the state, the commissions could never be blamed for concealing crimes by the opposition groups. Any Burmese commission would gain substantial credibility by providing as complete a picture as possible of the crimes by both the state and opposition forces.

Any commission must scrupulously verify information received, and cite any possible discrepancies or uncertainties. In addition, an official truth commission needs to consider, as mentioned by the Ad Hoc Commission, all other possible witnesses to the crimes committed. The main goal of any truth commission is the promotion of societal and personal healing for the victims and their families, and in the case of the Depayin massacre it will therefore be crucial to visit all family members and survivors wishing to speak out. All credible information, including personal tales and eyewitness accounts, will further the legitimacy of the report, whereas unreliable data and incomplete interviews will hinder it. At the moment, almost all of the facts of the massacre are disputed on some level, with varying accounts of the number of people who died and were injured. Accounts of the incident also differ as to the number of attackers and what they were shouting. In such an horrific and sudden event it is not surprising that witnesses remember what happened differently, but if more people speak out and are listened to then the facts will become increasingly reliable, as certain details will overlap.

The Chilean and Argentine commissions were thorough in their search for testimony and meticulous in recording interviews and evidence. Other commissions also concentrated on the details of any testimony offered to them, especially where persons took great risks to tell their stories. Later commissions, such as the South African Commission, allowed anyone wanting the opportunity to speak before them the right to do so. This allowed victims and others to relieve themselves of deep emotional and psychological burdens, and contributed to personal healing. Reconciliation is impeded as long as secrets are kept due to fear of reprisals. Therefore, as mentioned, it is crucial that people in Burma feel secure enough to testify and commissioners have freedom to record and examine information.

Any report on the Depayin massacre must take into account both the past and future, in addition to the event itself. It should include a detailed timeline of events leading up to it, as it will be a crucial opportunity to illustrate the long history of abuse in the country. It must also constantly refer the events at Depayin to prospects for future reconciliation and justice. A chapter of suggestions and recommendations for immediate and future action will set the tone for the next stage. It must balance the telling of facts with specific proposals for action. The recommendations made by the commissions in Chile and Argentina were crucial for the credibility of the reports, and while they were not always followed, they prohibited subsequent governments from suggesting that they did not know how to reconcile their societies with past human rights abuses.

A commission for Burma would also have the opportunity to address the inadequacies of past commissions. The reports that came from the Chilean and Argentine commissions, and especially their recommendations, could have made enormous headway had they been followed with more serious juridical consideration. Instead, the reports were usually viewed as alternatives to legal prosecution, which infuriated those who wanted to see legal justice done as well as truth commission proponents who saw the reports as a first step in dealing with past atrocities. The Chilean and Argentine

Commissions were... limited in their mandates, and a crucial element of their service to society was that these truth commissions [were] meant to function as moral panels, not legal courts.[7]

The commissions were not intended to replace criminal trials and convictions, but rather to supplement them. However, trials did not begin until some time after the reports were published. A

commission for Burma would have to consider how to balance the need for healing through public truth telling with the need to prepare for criminal trials and end the oppressive regime that continues to stifle popular hopes for democracy. Under any circumstances, it cannot become an alternative to other methods of reparation and reconciliation, including the release of political prisoners and criminal prosecution.

The Chilean and Argentine reports contain information that has since been used in court in almost every case against state officials, including General Pinochet, who was arrested in 1997 but escaped trial after being declared incompetent to stand. Within the past year Argentine and Chilean officials have been extradited from various countries to stand trial for their crimes, and prosecutors will base many of their arguments on the facts presented in the *Nunca Más* and Rettig reports.

A truth and reconciliation report for Burma could perhaps also pave the way to prosecution of military officials. While truth commissions have not had the power of subpoena, South Africa demonstrated the benefits of exchanging amnesty for confession for those who were involved with abuses but did not necessarily commit murder or other serious acts of violence themselves. If a truth commission for Burma could use similar techniques with a view to prosecuting military officials later then it will be well worth the effort. Even though the military still holds power, the commission could accumulate enough evidence to begin steps toward prosecutions for crimes against humanity. The indictment of Pinochet that arose out of the work of the commission in Chile began the global trend towards holding heads of state and other officials responsible for violations of international law. The long-term importance of a permanent record of human rights abuse cannot be underestimated. It follows that a truth commission for Burma would be worth the risk. Eventually the military must lose power, and it is only a matter of when and how justice will become a reality for the victims and survivors of human rights abuse in Burma.

## **Conclusion**

Undoubtedly, the truth commissions in Chile and Argentina have had considerable effects on the shape the societies in those countries are now taking. On 21 August 1999, for instance, a 'Mesa de Diálogo' (roundtable discussion) involving human rights activists, military officials and family members of victims was held in Chile. The participants sat together and publicly discussed further plans for reconciliation in their country. The National Commission on Truth and Reconciliation began this work, acknowledging that all parties must be able to communicate for the society to move forward.

What remains to be seen is whether truth commissions will continue to evolve, and contribute towards societies seeking truth and justice. José Zalaquett, one of the eight commissioners in Chile, suggests that the ultimate goal of a truth commissions is

To put back in place a moral order that has broken down or has been severely undermined, or to build up a just political order if none existed in historical memory.[8]

Can a truth commission for Burma help restore or build up this 'moral order'? To build a just society in place of fear and violence requires careful and intricate work. Elizabeth Kiss, a scholar of truth commissions and human rights, has wisely remarked that

Establishing the truth is instrumental to justice in at least two ways. Truth serves justice in a basic sense stressed by the Argentinean truth commission in its report *Nunca Más*: without truth one cannot distinguish the innocent from the guilty. Less directly, truth serves justice by overcoming fear

and distrust and by breaking cycles of violence and oppression that characterize profoundly unjust societies.[9]

By revealing the facts, a truth commission can serve justice by ending confusion and confronting the lies that underpin state repression. If great numbers of citizens are demanding public scrutiny of horribly abusive state behavior, then a truth commission can give answers to the most painful questions. Of course, in the end, “No response to mass atrocity is adequate,”[10] because the damage to human dignity is in many ways unredeemable and permanent. While this may be true in Burma, the histories of other countries such as Chile and Argentina provide compelling proof that a truth commission can help a society to move beyond an era of systematic violence.

Ultimately, the right to truth—of victims, survivors, and the society as a whole—must be honoured. This is the basic right most often demanded by those who have survived massive human rights abuses. The silence of a nation that denies its past only corrupts its future. A truth commission is founded on this right to know what happened. But it will only be a starting point, because its work will end with recommendations that must be implemented and calls for prosecutions based on the information it has compiled. It must be followed by continued efforts to use the truth to find justice. Its deepest value, however, is its focus on the individual victim, because “only those who suffered can forgive”.[11]

[1] Comisión Chilena de Derechos Humanos: Fundación Ideas, *Nunca Más en Chile: síntesis corregida y actualizada del Informe Rettig*, LOM Ediciones, Santiago, 1991, p. 81.

[2] Christina Fink, *Living silence*, Zed Books, London, 2001, p. 5.

[3] Robert I Rotberg, ‘Truth commissions and the provision of truth, justice, and reconciliation’, in *Truth vs. justice: The morality of truth commissions*, Robert I Rotberg & Dennis Thompson (eds), Princeton UP, Princeton, 2000, p. 16.

[4] Rothberg, ‘Truth commissions and the provision of truth’, p. 4.

[5] José Zalaquett, ‘Balancing ethical imperatives and political constraints: The dilemma of new democracies confronting past human rights violations,’ *Hastings Law Journal: The Matthew O. Tobriner Memorial Lecture*, vol. 43, no. 6, Hastings College of Law, San Francisco, 1992, p. 1437.

[6] José Zalaquett, ‘Truth, justice, and reconciliation: Lessons for the international community’, in *Comparative peace processes in Latin America*, Cynthia J Arnson (ed.), Stanford UP, Stanford, 1999, p. 356.

[7] Zalaquett, ‘Truth, justice, and reconciliation’, p. 356.

[8] Cited in Elizabeth Kiss, ‘Moral ambition within and beyond political constraints: Reflections on restorative justice’, in *Truth vs. justice: The morality of truth commissions*, Robert I Rotberg & Dennis Thompson (eds), Princeton UP, Princeton, 2000, p. 80.

[9] Kiss, ‘Moral ambition’, p. 71.

[10] Martha Minow, ‘The hope for healing: What can truth commissions do?’ in *Truth vs. justice: The morality of truth commissions*, Robert I Rotberg & Dennis Thompson (eds), Princeton UP, Princeton, 2000, p. 235.



[11] The Pinochet Case, Patricio Guzmán (dir.), 149 min, First Run/Icarus Films, 2001, videocassette.