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Review

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## BOOK REVIEW

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David Weissbrodt and Paul W. Fraser\*

**REPORT OF THE CHILEAN NATIONAL COMMISSION ON TRUTH AND RECONCILIATION**, by the National Commission on Truth and Reconciliation (Rettig Commission) (Santiago: Secretariat of Communication and Culture, Government General Secretariat Ministry, 1991), 1350 pp.

Chilean President Patricio Aylwin took office in March 1990, ending sixteen and one-half years of military dictatorship under General Augusto Pinochet. The violent military coup on 11 September 1973, which overthrew President Salvador Allende and brought General Pinochet to power, marked the beginning of an era of political repression, human rights violations, and increasing polarization of Chilean society. The military killed thousands of people in the years immediately following the coup.<sup>1</sup> Gross human rights violations, such as arbitrary detentions, disappearances, and torture continued in Chile throughout the period of dictatorship, and the fate of hundreds of *desaparecidos* remains unknown.<sup>2</sup>

One of President Aylwin's first acts upon taking office was to create an eight-member "National Commission on Truth and Reconciliation" which would gather information about, and attempt to clarify, the many allegations of human rights violations during the Pinochet period. "Only on the basis of the truth," stated the Commission's founding decree, "will it be possible to satisfy the basic demands of justice and create the indispensable conditions for achieving an effective national reconciliation."<sup>3</sup>

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\* The authors wish to thank Rachel Neild, Associate with the Washington Office on Latin America, for her comments on an earlier draft of this review.

1. Americas Watch, *Chile Since the Coup: Ten Years of Repression* 47 (1983).
2. See generally Report of U.N. Ad Hoc Working Group on Chile (1975–78), U.N. Doc. E/CN.4/1266 (1978); Reports of the U.N. Special Rapporteur for Chile (1979–90): U.N. Docs. E/CN.4/1428 (1981); E/CN.4/1484 (1982); E/CN.4/1983/9 (1983); E/CN.4/1984/7 (1984); E/CN.4/1985/38 (1985); E/CN.4/1986/2 (1986); E/CN.4/1987/7 (1987); E/CN.4/1988/7 (1988); E/CN.4/1989/7 (1989); and E/CN.4/1990/5 (1990).
3. Preambular Paragraph No. 2 of Supreme Decree No. 355 (April 25, 1990), in 1 *National Commission on Truth and Reconciliation, Report* at vii (1991) (*Informe de la Comisión Nacional de Verdad y Reconciliación*).

The name of the new Commission in itself was cause for concern among human rights groups, particularly among groups of relatives of the disappeared.<sup>4</sup> How could such a commission, created with the purpose of “national reconciliation,” be expected to develop an accurate historical record of conditions during the Pinochet period and fulfill the demands of truth and justice about human rights abuses?<sup>5</sup>

Nongovernmental human rights organizations and international organizations, such as the United Nations (UN) and the Organization of American States (OAS), painstakingly monitored the human rights violations in Chile under Pinochet.<sup>6</sup> The human rights organizations, surviving victims, and relatives of victims insisted upon a thorough investigation by the Commission. Among the most frequent demands of relatives’ groups were establishing the whereabouts of all “disappeared detainees,” the prosecution of the military and security personnel implicated in human rights violations, compensation for relatives of victims, and the creation of a permanent center for investigating disappearances.

President Aylwin’s aims in establishing the Commission were a thorough truth-telling, the pursuit of “justice insofar as possible” and, most importantly, national reconciliation.<sup>7</sup> In the interest of national coexistence, President Aylwin sought repentance by the perpetrators as well as their forgiveness by the victims.<sup>8</sup> Aylwin’s goals were manifested in his selection of commissioners, in the mandate given the Commission, in the way the Rettig Commission was different from commissions in other countries, in the methodology the Commission employed to produce its report, and in the overall

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4. Meeting with members of FEDEFAM (Latin American Federation of Associations for Relatives of Disappeared Detainees and its Chilean affiliate, the *Agrupación* of Relatives of Disappeared Detainees, Caracas, April 1990).

5. *Id.*

6. NGOs like Chile’s Catholic Church *Vicariate of Solidarity* and the Chilean National *Agrupación* (or “Solidarity Group”) of Relatives of Disappeared Detainees labored resolutely and under severe risk throughout the Pinochet years to document and press for an end to the human rights abuses. The human rights situation in Chile also captured the attention of many international NGOs, such as Amnesty International, Americas Watch, and the International League for Human Rights. In addition, the UN and OAS took concerted action for the protection of human rights in Chile. In 1975, the UN Commission on Human Rights established an Ad Hoc Working Group on Chile, which was subsequently replaced in 1979 by a Special Rapporteur for Chile. These fact-finders undertook investigative visits to Chile and presented annual reports to the UN Commission on Human Rights and the General Assembly. The Inter-American Commission on Human Rights of the OAS also vigorously monitored Chile, issuing reports on Chile in 1974, 1976, 1977, and 1985.

7. Americas Watch, *Human Rights and the “Politics of Agreements”*: *Chile During President Aylwin’s First Year* 4–5, 17 (1991). Along with survivors and relatives of victims, senior Chilean government officials have stated repeatedly that reconciliation is not possible without both truth and justice. President Aylwin has clarified, however, that he actually expects *justicia en lo posible* (justice insofar as possible). This limit does not satisfy victims, for whom the Chilean justice system has not provided any remedy for past violations and has often seemed to be an adversary. *Id.* at 5.

8. *Id.* at 4.

content of the 1350-page Rettig Report. This review will examine Aylwin's appointees to the Commission and the influence of other previous political transitions and commissions of inquiry upon the Rettig Commission. The review will also trace the theory underlying the Report and evolving international standards for governments to investigate past human rights abuses. After a discussion of the mandate, methodology, and content of the report, the review will assess the effectiveness of the report and give a prognosis for similar exercises in the future.

## I. SELECTION OF COMMISSIONERS

As President Aylwin formulated his approach to the legacy of the Pinochet period, he was undoubtedly well aware of the obstacles he faced in obtaining a clarification from the Chilean military about past violations. Most notably, General Pinochet remained as Commander-in-Chief of the Army. Aylwin also could study the difficulties experienced by other recent transitions to democracy throughout Latin America and elsewhere, and the problems they faced in dealing with past human rights abuses. President Aylwin knew if he pressed too hard, he would risk a confrontation with the military, further instability, and perhaps even another military coup. Aylwin was determined to formulate an approach based upon consensus and to avoid the shortcomings of other countries in dealing with past human rights violations.

From the outset, Aylwin was careful not to appoint a commission with an apparent political bias. Headed by the lawyer and former Senator Raúl Rettig, the Commission was composed of respected human rights figures—three commissioners had held posts in or were associated with the Pinochet government; another was a personal friend of Aylwin; and the others had various nongovernmental links and political affiliations.<sup>9</sup> Two commissioners were exiles under Pinochet. Chair Rettig, a distinguished lawyer known for

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9. Members appointed to the National Commission on Truth and Reconciliation were: Raúl Rettig Guissen, president; Jaime Castillo Velasco; José Luis Cea Egaña; Mónica Jiménez de la Jara; Ricardo Martín Díaz; Laura Novoa Vásquez; Gonzalo Vial Correa; and José Luis Zalaquett Daher. Mr. Vial was Pinochet's Minister of Education in the late-1970s. Mr. Martín founded a government-sponsored human rights commission. Later Pinochet appointed him a senator as Pinochet prepared to leave office. Mr. Cea is a conservative constitutional law professor who studied in the United States. The remaining commissioners were politically closer to the Aylwin government. Mr. Castillo is a respected jurist who founded the Chilean Human Rights Commission in exile and subsequently returned to Chile in 1983. Castillo is a Christian Democrat who served as Minister of Justice in the administration of President Eduardo Frei. Ms. Jiménez, also a Christian Democrat, headed PARTICIPA, an organization encouraging voter registration prior to the 1988 Chilean plebiscite. Ms. Novoa Vásquez, a lawyer and respected public servant, is a personal friend of President Aylwin. Mr. Zalaquett is a well-known human rights lawyer and former Chair of the International Executive Committee of Amnesty International. Zalaquett had been arrested without charges in the mid-1970s, and Pinochet ordered his exile.

his allegiance to the old tradition of the Radical Party in Chile, had served as his country's Ambassador to Brazil under President Salvador Allende. By appointing a Commission which was more-or-less evenly divided in political terms, Aylwin communicated his desire that the Commission's work should be done in good faith; that the matter was too important to be pursued in partisan terms.<sup>10</sup>

Aylwin's selections earned immediate credibility for the Rettig Commission to consider the human rights issue in Chile. The Commission, laboring intensely with a tight nine-month deadline imposed by its founding decree, submitted its report to President Aylwin in February 1991.<sup>11</sup> The fact that all eight commissioners signed the final report, no small accomplishment for the Aylwin administration, provided the broadest possible endorsement of the report.<sup>12</sup>

## II. RECENT POLITICAL TRANSITIONS AND COMMISSIONS OF INQUIRY

Similar transitions from repressive military dictatorships to democracy in Argentina (1983), Brazil (1985), Guatemala (1985), the Philippines (1986), and Uruguay (1984) offered valuable lessons within differing political circumstances. Several countries, including Greece, Nicaragua, Uganda, Israel, and El Salvador, should also be mentioned for their efforts toward accountability for human rights abuses. A brief examination of these precedents provides an important context for understanding the performance of the Rettig Commission. Incoming governments in each of these countries initially had a popular mandate for a democratically elected president and a diminished role for the military. In all of these countries, the new government faced political constraints due to the continued influence of the military. Not all of these countries managed even to appoint a bona fide commission

10. Washington Office on Latin America, *Human Rights: Truth and Reconciliation in Chile 8* (Issues in Human Rights No. 2, 1991) [hereinafter WOLA].

11. The University of Notre Dame Press has received a grant from the Ford Foundation to translate and publish an English version of the report which is scheduled for release in Fall 1993.

12. In contrast, the Rettig Commission's counterpart in Argentina, the Sabato Commission, see *infra* § II(A) did not represent as broad a political spectrum. The Sabato Commission's original ten members were chosen for their international and national prestige, consistent defense of human rights, and representation of different walks of life. National Commission on the Disappearance of Persons, *Nunca Más* 428 (1986). The Alfonsín government then invited both Chambers in the Argentine Congress to send three representatives to join the Commission. Only the Chamber of Deputies complied, adding three Radical Party members to the Commission. *Id.* Many human rights organizations in Argentina preferred an inquiry by a congressional committee. See José Zalaquett, *Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints, in State Crimes: Punishment or Pardon* 23, 54 (A. Henkin ed., 1989).

of inquiry. Those commissions of inquiry that were appointed offer many lessons in the pitfalls of overly narrow mandates, poor timing, faulty methodology, resistance from the military, and inadequate resources. The Rettig Commission demonstrated through its work that it took many of these lessons to heart.

### A. The Case of Argentina

On 24 March 1976, a military coup overthrew the government of Isabel Martínez de Perón with the objective of stabilizing the economy and suppressing "leftist subversion."<sup>13</sup> Argentina underwent a grave human rights crisis during the period of military rule between 1976 and 1983 and emerged as a democracy in late 1983 with the election of President Raúl Alfonsín.<sup>14</sup> At the end of 1983, President Alfonsín appointed a commission of inquiry,<sup>15</sup> headed by the prominent Argentine novelist Ernesto Sabato, to undertake a thorough accounting of the organization and methods the Argentine security forces used in carrying out their policy which resulted in thousands of disappearances.<sup>16</sup> The Sabato Commission, as it became known, took advantage of the Argentine military's loss of power and prestige in their defeat during the War in the South Atlantic, to produce a detailed report of human rights violations and the related system of repression.<sup>17</sup> The Sabato Commission Report identified 8,961 persons who had disappeared during the period 1973 through 1983 and whose fate had not been ascertained by November 1984, as well as hundreds of clandestine detention centers.<sup>18</sup>

The Sabato Commission forwarded its report to President Alfonsín in September 1984 along with documentation which included the names of over 1,300 military officers implicated by the testimony received and the research done by the Commission. President Alfonsín decided not to make public the names of the officers, on the ground that they should be accused

13. Americas Watch, *Truth and Partial Justice in Argentina* 4 (1987).

14. For a more detailed discussion of the 1976–1983 crisis in Argentina, see David Weissbrodt and Maria L. Bartolomei, *The Effectiveness of International Human Rights Pressures: The Case of Argentina, 1976–1983*, 75 Minn. L. Rev. 1011 (1991).

15. Decree 187/83 established the *Comisión Nacional Sobre la Desaparición de Personas* (National Commission on the Disappearance of Persons, also known by its Spanish acronym CONADEP).

16. There remains a divergence of views as to the number of disappeared. Americas Watch and Amnesty International have accepted an estimate of 12,000–15,000. The Center for Legal and Social Studies, the Mothers of the Plaza de Mayo, and the *Servicio Paz y Justicia* continue to cite an estimate of 30,000. Weissbrodt and Bartolomei, *supra* note 14, at 1012.

17. *National Commission on the Disappearance of Persons (CONADEP), Report* (1985); a summary of this report was published in English under the title *Nunca Más* (Never Again) in 1986.

18. *Nunca Más*, *supra* note 17, at 16.

of criminal acts only by means of formal charges brought against them. The names, however, were leaked to the press and published in the journal *El Periodista*.<sup>19</sup> The detailed Sabato Commission report raised great hopes among Argentine victims, their families, and human rights organizations that the perpetrators would be brought to justice.

During five months in 1985, nine military leaders were tried for the specific offenses of the "dirty war." On 9 December 1985, the court issued its verdict. The tribunal sentenced General Jorge Videla and Admiral Emilio Massera, who commanded the Army and Navy, to life in prison. It sentenced two other participants to a term of years and acquitted the remaining defendants.<sup>20</sup> Although hundreds of other prosecutions were initiated, the Punto Final legislation and the Law of Due Obedience during Alfonsín's presidency ultimately prevented action against almost all of the more junior officers and the perpetrators of the most heinous abuses.

Following President Alfonsín's nearly six-year term, Carlos Menem was elected President on 14 May 1989. On 6 October 1989, he pardoned the military officers and civilians who had been prosecuted, but not convicted, for their role in violating human rights and undermining democracy during the "dirty war." In addition, on 29 December 1990, President Menem pardoned thirty-nine military leaders who remained in prison after the 1985 trial and other high-ranking officers imprisoned for crimes during the "dirty war."<sup>21</sup>

A top advisor to President Alfonsín on human rights policy now admits that Argentina should have moved more rapidly in trying military officers.<sup>22</sup> As time passed, officers became more inclined to protect their comrades, and they closed ranks and covered over distinctions between military personnel who had murdered and tortured and those who had committed less serious offenses. Also, once the euphoria of the new democracy had faded, economic and social problems weakened the administration. Accordingly, an increasingly unified Army grew comparatively stronger and more restless. Alfonsín endured several military coup attempts. As time passed, judges felt less pressure from human rights organizations and progressive politicians to pass judgment on military officers.<sup>23</sup>

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19. Zalaquett, *supra* note 12, at 54.

20. Amnesty International, *Argentina: The Military Juntas and Human Rights, Report of the Trial of the Former Junta Members* 76–81 (1987).

21. Amnesty International, *Argentina: Presidential Pardon to Military Officers Before Trial*, Weekly Update, Jan. 16, 1991, at 8 (AI Index: AMR 13/WU 01/91).

22. Jaime Malamud-Goti, *Trying Violators of Human Rights: The Dilemma of Transitional Democratic Governments*, in *State Crimes: Punishment or Pardon* 74 (A. Henkin ed., 1989).

23. *Id.*

## B. Other Transitional Situations in Latin America and the Philippines

Transitions in Latin America and elsewhere during the 1980s offered examples of the political constraints on governments in pursuing the imperatives of truth and justice. In Uruguay, President Julio Sanguinetti was elected in November 1984 on a platform that included bringing the military to justice for human rights violations under the dictatorship (1973–1984). The military that ruled Uruguay between 1973 and 1984 was responsible for the widespread use of torture and arbitrary imprisonment.<sup>24</sup> Soon after Sanguinetti was elected, the courts received numerous complaints from victims and their families. In September 1986, not long after the opening of hearings in several of the forty criminal cases pending against 180 military officers, Sanguinetti's Colorado Party proposed a blanket amnesty law for the military.<sup>25</sup> The ruling party pushed a bill through the legislature which had the effect of precluding the state from seeking punishment for most of the military's human rights violations before 1985.<sup>26</sup> The *Ley de Caducidad de la Pretensión Punitiva del Estado* (Law Declaring an Expiration of the State's Punitive Authority), amounted to an amnesty of the perpetrators.<sup>27</sup>

Brazil underwent a period of repression between 1964 and 1985,<sup>28</sup> and if not for the efforts of a nongovernmental group, much of the truth about human rights violations might not have been revealed.<sup>29</sup> In Brazil, the transition was accomplished within a framework of consensus that there would be no need for trials of the perpetrators. As in Chile, the worst violations had occurred some fifteen years before the transition to democracy. The violence in Brazil had been aimed at a comparatively small sector of society, and the military managed to leave the government gradually over a period

24. Lawyers Committee for International Human Rights, *Uruguay: The End of a Nightmare?* 4 (1984).

25. Lawrence Weschler, *A Miracle, A Universe: Settling Accounts with Torturers* 167 (1990). It is widely suspected that arrangements were made between future President Sanguinetti and the military during the Club Naval negotiations which led to the 1984 election and assured the military that the executive branch would not launch any prosecutions of human rights violators. *Id.* As the hearings in the criminal cases began, Uruguay's Minister of Defense actually ordered military officers not to testify. Americas Watch, *Uruguay: Challenging Impunity* 18 (1989).

26. Americas Watch, *Challenging Impunity: The Ley de Caducidad and the Referendum Campaign in Uruguay* 13–17 (1989).

27. Weschler, *supra* note 25, at 171. Uruguayan citizens challenged the amnesty law under a constitutional provision allowing a referendum on a law provided that 25 percent of registered voters so request. *Id.* at 176. After a petition drive, marked by repeated government attempts to disqualify voters' signatures, some 634,702 signatures were filed, more than enough to force the referendum. *Id.* In April 1989, however, after a government-backed scare campaign, the referendum was defeated.

28. See generally Arquidiocese de São Paulo, *Projeto "Brasil: Nunca Mais"* (1985), an abridgement of which was published in the United States as Archdiocese of São Paulo, *Torture in Brazil: A Report* (1986).

29. Weschler, *supra* note 25, at 166.



of years. The interests of truth were served by the efforts of a secret team that, working under the auspices of the Archbishop of São Paulo, produced the book *Brasil: Nunca Mais*.<sup>30</sup>

In Guatemala, President Vinicio Cerezo was elected in late 1985, but he refused to capitalize on an initial mandate to investigate and prosecute the military for the human rights violations under previous dictatorships.<sup>31</sup>

In the Philippines, the military played a vital role in the revolution that overthrew President Ferdinand Marcos in 1986; hence, any attempt by the successor Aquino government to inquire into past abuses was tenuous from the start. The People's Power Revolution raised the hope that the military would revert to its role during the premartial law days and that militarization would end. Nonetheless, because then Defense Minister Juan Ponce Enrile, Chief of Staff Fidel Ramos, and elements of the armed forces assisted in ousting Marcos, combatting the New People's Army, and stopping several attempted military coups, the military's role in society became an entrenched part of the administration of Corazon Aquino.<sup>32</sup>

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30. *Id.*

31. In Guatemala, President Cerezo's lack of a human rights policy to deal with past abuses resulted in a growing influence of the Army. Cerezo announced early in his administration that he would not push for an annulment of the military's self-amnesty law. The Presidential Advisory Commission on Human Rights (COPADEH) was ineffective in resolving cases of disappearances under former military governments. There is little reason to believe that COPADEH ever seriously investigated disappearances. Minnesota Lawyers International Human Rights Committee, *Justice Suspended: The Failure of the Habeas Corpus System in Guatemala* at iii (1990). Following a military coup attempt in May 1988, Cerezo complied with Army demands to remove Interior Minister Juan José Rodil, who had proposed reforming the security forces. Cerezo also ended negotiations with the armed opposition, as the Army had demanded. Americas Watch, *Closing the Space: Human Rights in Guatemala* 2, 17 (1988).

32. International Commission of Jurists, *The Failed Promise: Human Rights in the Philippines Since the Revolution of 1986*, at 27, 125, 232–33 (1991). Following the People's Power Revolution which led to President Marcos' departure from the Philippines in February 1986, the government of Corazon Aquino initially set up a Presidential Committee on Human Rights (PCHR) to investigate alleged human rights violations and recommend safeguards to prevent such violations from recurring. Senator José W. Diokno was appointed Chair of the PCHR. Senator Diokno was well known for his untiring commitment to human rights and played a leading role in defending the rights of victims during the Marcos period.

The PCHR had no power to prosecute and could only make recommendations on the basis of its findings. The PCHR initially conducted meticulous investigations of some of the well known cases of human rights violations that occurred under Marcos to establish a strong precedent for investigating and prosecuting cases in the future. This strategy was apparently also adopted to provide the new government time to consolidate itself without upsetting the military establishment. Meanwhile, the military became restive and there were two coup attempts by the end of 1986. The military rebels even referred to the PCHR as an example of the government's leniency towards the opposition New People's Army (NPA) because the PCHR investigated only the military for alleged human rights violations. The military rebels apparently ignored the limited mandate that the President gave to the PCHR, which did not cover NPA abuses.

Following the "Mendiola Incident" in January 1987, during which the military fired without provocation upon unarmed farmers who were peacefully demonstrating near the

The opportunity to begin meaningful prosecutions probably only existed during the first few months after President Aquino took office, when Mrs. Aquino's popularity was at its height. After that, the military was too strong to permit an effective investigation or sanction. The government was engaged in an ongoing civil war which required the help of the military and also resulted in more human rights abuses.

Each transition brought hope among human rights organizations, survivors, relatives of the victims, and others that the true story about human rights violations would be revealed and that the perpetrators would be brought to justice. None of the transitional political situations in Argentina, Brazil, Guatemala, the Philippines, or Uruguay offered an ideal outcome. Each country still faced a formidable military presence and risked a return to military control if it pressed too hard for information about violations and convictions of military perpetrators.

### C. Achievements of Other Countries with Respect to Past Abuses

The experiences of several other countries were not direct antecedents for the Rettig Commission, but Greece, Nicaragua, Uganda, Israel, and El Salvador should be mentioned for their attempts to bring perpetrators of human rights violations to justice. In Greece, for example, after seven years of military rule (1967–1974), the new democratic government brought to trial a significant number of soldiers and officers allegedly responsible for acts of torture. The first trial of fourteen officers and eighteen soldiers of the former ruling Junta's military police (ESA) was held from August to September 1975. The trial resulted in the conviction of sixteen persons with sentences ranging from five months to twenty-eight years. The trial established that ESA practiced torture on a systematic scale and proved that the ordinary criminal process could punish torture.<sup>33</sup>

In Nicaragua, following the revolution which forced the collapse of the government of Anastasio Somoza in 1979, the victorious Sandinistas formed a special court system to try *Somocista* collaborators accused of, among other things, human rights violations.<sup>34</sup> Human rights concerns throughout

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Presidential Palace, all but one of the PCHR members resigned in protest of the use of force against unarmed demonstrators. The PCHR lost its momentum and its credibility among Filipino human rights activists. A new human rights commission was subsequently formed which was even less effective. *Id.* at 232–49.

33. See Amnesty International, *Torture in Greece: The First Torturers' Trial 1975* (1977). A month later, a second trial was initiated resulting in the conviction of 23 persons, who received sentences of up to seven years. In December 1975, a third trial resulted in the conviction of six officers. Buckley, *Apology on Greek Torture*, *Washington Star*, June 25, 1976, at A9.

34. Amnesty International, *Nicaragua: The Human Rights Record 3* (1986).

the Somoza period included arbitrary detention of prisoners of conscience, torture, extrajudicial executions, and disappearances.<sup>35</sup> By the time these special courts were dissolved in February 1981, they had handed down convictions in the cases of 4,331 of the over 6,000 prisoners charged with crimes under the previous government. Serious procedural irregularities impeding the right to fair trial occurred during the special court proceedings.<sup>36</sup> The Sandinista government responded by setting up a National Commission for the Protection and Promotion of Human Rights, wholly separate from the judicial process, to review the sentences that the special courts handed down. The Commission failed, however, to undertake a thorough and systematic review of these proceedings.<sup>37</sup>

In Uganda, the pattern of consistent and gross violations of human rights under the governments of former Presidents Idi Amin (1971–1979) and Milton Obote (1980–1985)<sup>38</sup> were followed in January 1986 by a government headed by the opposition National Resistance Army (NRA). NRA leader Yoweri Museveni appointed a six person commission of inquiry in May 1986 charged with investigating all human rights violations from independence on 9 October 1962 through January 1986. Chaired by Ugandan Supreme Court Justice Arthur Oder, the Commission sat for nearly four years and heard accounts of human rights violations.<sup>39</sup> The Commission wound up its business on a disappointing note since many victims did not come forward with information. Justice Oder, citing apathy, an unwillingness to attract publicity, and uncertainty about the result of the Commission's work, indicated that many believed that what happened in the past should not be recounted.<sup>40</sup> The Oder Commission, nonetheless, provided a sounding board for victims to share their pent-up feelings against their tormentors and demonstrated the Ugandan government's resolve to promote and protect human

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35. See generally Amnesty International, *The Republic of Nicaragua: An Amnesty International Report Including the Findings of a Mission to Nicaragua, 10–15 May 1976* (1976).

36. Amnesty International, *supra* note 34, at 3.

37. *Id.*

38. Throughout these years, Uganda's name was synonymous with unlawful killings, torture, excess by security forces, and expulsion of Asians. See, e.g., International Commission of Jurists, *Uganda: A Lawless State*, 9 *The Review* 18 (1972); Amnesty International, *Memorandum to the Government of Uganda on an Amnesty International Mission to Uganda in January 1982 and Further Exchanges Between the Government and Amnesty International* 5 (1983).

39. *Uganda: Apathy Greets Human Rights Commission*, Inter Press Service, Feb. 21, 1990. The Oder Commission's investigative team inquired into 577 complaints out of 1,478 received throughout Uganda. Some 534 witnesses gave formal evidence of human rights abuses, including about 20 persons who gave testimony *in camera* for fear of their personal safety. *Id.*

40. *Id.* Some Oder Commission members thought that more people would have been willing to testify had the Commission also been investigating abuses committed under the Museveni government. There was considerable cynicism about the government's motives in setting up the Oder Commission, which could be seen as legitimizing its own seizure of power. Amnesty International, *Uganda: The Human Rights Record 1986–1989*, at 10 (1989).

rights. Most Ugandans believe that the Commission served as a warning to those in authority to refrain from misusing their positions.<sup>41</sup>

Following the massacres in the Shatila and Sabra refugee camps of September 1982, in which Israeli troops failed to intervene while members of the Christian Phalange ransacked the camps and killed hundreds of civilians, the Israeli government established a commission of inquiry to investigate the atrocities. The Commission, headed by Supreme Court President Yitzhak Kahan, gathered evidence, interviewed some fifty-eight witnesses, and viewed television footage filmed near the camps at the time of the massacres. Approximately six months after its creation, the Kahan Commission issued a report condemning the Army's conduct and determining responsibility of Israeli officials at the highest levels, including Defense Minister Ariel Sharon, Foreign Minister Yitzhak Shamir, the Chief of Staff, the Director of Military Intelligence, a Major General, and a Brigadier General.<sup>42</sup> At the time the Kahan Commission issued its findings, these officials still held positions in the government and military. The Kahan Commission, in addition to determining the responsibility of these individuals, recommended that several be relieved of their posts.<sup>43</sup>

In El Salvador, the November 1989 assassination of six Jesuit priests, their housekeeper, and her daughter at the *Universidad Centroamericana José Simón Cañas* brought worldwide condemnation and pressure to bear on the Salvadoran government to investigate the alleged connection of the military to that event and other instances of human rights abuses.<sup>44</sup> A trial

41. Amnesty International, *supra* note 40, at 10. The Oder Commission suffered initially from an inadequately-defined mandate. The period of investigation was not fixed in advance, and there was confusion about the connection between the Commission and the prosecution of alleged human rights violators. Eventually the government decided that proper police investigations must be pursued independently of the commission's work. A continuing lack of infrastructure and resources hampered the Commission's efforts. *Id.* at 11.

42. See *Official Translation of the full Kahan Commission of Inquiry Final Report*, The Jerusalem Post, February 9, 1983. In addition to Kahan, the Commission consisted of Supreme Court Justice Aharon Barak and Major General (Res.) Yona Efrat. The Kahan Commission distinguished between the procedures and burden of proof applicable (1) to general factual conclusions and (2) to findings of individual responsibility. The Kahan Commission made its general conclusions by a preponderance of the evidence. The Commission insisted on proof beyond a reasonable doubt for findings of individual responsibility. Furthermore, if the Commission believed that such a finding of responsibility might be made against individuals, it transmitted confidential "notices of harm" inviting them to appear with their lawyers to present testimony and clarify the accusations. The Kahan Commission submitted notices of harm to only nine people, choosing to "limit the question of responsibility [to] those persons whose decisions and actions could have decisively influenced the course of events." Given the short, six-month period allowed for the investigation, the Commission also chose "to deliberate and reach findings and conclusions regarding the major and important things connected with the aforementioned events." *Id.* at 3.

43. *Id.*

44. See generally François Crepeau, *Affaire du Meurtre des Jésuites à la Universidad Centroamericana de San Salvador le 16 Novembre 1989: Compte Rendu Critique du Procès* (1991); International Commission of Jurists, *El juicio por el asesinato de los Jesuitas* (1991).

of nine Salvadoran army soldiers and officers accused of the murders took place in September 1991. International human rights observers were widely critical of the jury's verdict which acquitted seven of the nine defendants, despite their own detailed confessions of participation in the murders.<sup>45</sup>

In December 1991, the United Nations established a "truth commission" to investigate the most notorious human rights abuses in El Salvador as part of the political settlement ending the eleven-year civil war.<sup>46</sup> The truth commission consisted of Belisario Betancur, former President of Colombia; Reinaldo Figueredo, former Foreign Minister of Venezuela; and Prof. Thomas Buerghenthal, a US national and President of the Inter-American Institute for Human Rights. The three-member commission was expected to investigate the Jesuit killings as well as the 1980 assassination of Archbishop Oscar Arnulfo Romero.<sup>47</sup>

### III. THEORIES UNDERLYING THE RETTIG COMMISSION

#### A. The Zalaquett Framework

One member of the Rettig Commission, José Zalaquett, had established a framework for the Commission's work.<sup>48</sup> Zalaquett offered a typology for situations of transition from repressive governments toward democracy and the political constraints faced in addressing past human rights abuses.<sup>49</sup> His first category consists of situations in which there has been a clear victory over the vanquished where there are no significant political constraints. Examples are the Allies' military victory over Germany at the end of World War II or the Sandinistas' successful struggle in Nicaragua after the revolution that ousted Somoza in 1979. The victors, in principle, have had unfettered

45. International Commission of Jurists, *supra* note 44, at 24; Americas Watch, *El Salvador: The Jesuit Trial 1* (1991). The jury found Col. Guillermo Benivides guilty of eight counts of murder for ordering the killings and Lt. Yushy Rene Mendoza guilty on one count for the murder of the daughter of the priests' housekeeper. Each of the two officers was eventually sentenced to the maximum thirty years in prison. Minneapolis Star Tribune, Jan. 25, 1992, at 2A.

46. U.N. Forms Commission on El Salvador Abuses, Minneapolis Star Tribune, Dec. 11, 1991, at A2. Although its specific mandate remained unclear as of the writing of this review, the Truth Commission was expected to commence its work in June 1992 and issue its final report within six months. The Peace Accord of January 12, 1992, between the government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) also established an Ad Hoc Commission to review the records of all members of the Armed Forces in order to remove those individuals who had been responsible for serious violations of human rights.

47. *Id.*

48. José Zalaquett initially presented a paper on this subject to an Aspen Institute Conference in November 1988. See Zalaquett, *supra* note 12.

49. Zalaquett, *supra* note 12, at 23.

powers and need only be guided by their own sense of justice.<sup>50</sup> As occurred in Nicaragua, however, such unfettered powers may in turn be a source of human rights violations.

Zalaquett's second category describes situations where "the defeated forces have lost legitimacy but retain control of armed power."<sup>51</sup> In both Argentina (1983) and Greece (1974), a demoralized military was forced to leave power after an embarrassing military defeat. The Argentine military lost the War of the South Atlantic and the Greek military lost power after the Turks defeated them in Cyprus. In both cases, the civilian successor government pushed for the annulment of self-amnesty laws in which the military tried to relieve themselves from responsibility and brought a number of high-ranking officers to trial.<sup>52</sup>

In his third category, Zalaquett considers situations where "military rulers allow for a civilian government to come to power, following a negotiation or under their own terms."<sup>53</sup> In this situation, the forces that were a part of the former government have not lost control nor suffered from a lack of cohesiveness in their ranks. They are thus a formidable force on the political scene.<sup>54</sup> For example, in Uruguay during August 1984, leaders of the military and the main political parties agreed to a presidential election.

Chile belongs in Zalaquett's third category. It was General Pinochet, after all, who chose to submit himself to the "yes or no" plebiscite of 1988, which he unexpectedly lost. The plebiscite and resulting election caused considerable political damage to General Pinochet and the Chilean military, yet General Pinochet remained as Commander-in-Chief, and the military retained much of its institutional strength. Pinochet also portrayed himself as successful in his two main goals: (1) the defeat of communism and (2) economic growth. Significant political strength remains for the right and its policies in Chile.<sup>55</sup>

Zalaquett's fourth category consists of a gradual transition from dictatorship to democracy and popular forgiveness in a society where human rights violations have ceased or subsided. The transition in Brazil would fit this category in which the subsequent human rights policy emphasized prevention of future abuses rather than investigation and punishment of past violations.

Notwithstanding the different degrees of political constraint, Zalaquett lists three conditions that must be satisfied in dealing with a legacy of human rights violations. First, the complete truth about what happened must be

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50. *Id.* at 45.

51. *Id.* at 46.

52. *Id.*

53. *Id.*

54. *Id.*

55. Pinochet himself garnered more than 40 percent of the vote in the 1988 presidential plebiscite. Americas Watch, *supra* note 7, at 12.

established in an officially sanctioned manner, presenting the historical, authoritative version of events.<sup>56</sup> Second, the policy on human rights must represent the will of the people, and victims of human rights violations must be heard. Third, the policy must not violate international law relating to human rights, *i.e.*, regardless of whether the policy leans toward clemency or punishment, governments must act in accordance with international law and observe, among other things, fair trial provisions.<sup>57</sup>

Zalaquett urges that the successor government should at a minimum insist upon an investigation to reveal the truth of what has occurred under the previous government. Beyond that minimum, he favors an incremental approach, a “get as much as you can” approach. Zalaquett would encourage the successor government to take further steps to the extent that the situation allows. Hence, Zalaquett believes that the extent a country proceeds with prosecutions and punishment will vary depending on country-specific political constraints and the popular will.

Even in countries which lacked an effective commission of inquiry, such as Brazil and Uruguay, the interests of truth were largely served. The Archdiocese of São Paulo compiled a six-volume account of human rights violations during the dictatorship, which was published as *Projeto “Brasil: Nunca Mais.”* Nongovernmental groups and the *Frente Amplio* in Uruguay prepared and disseminated reports on military human rights violations.<sup>58</sup>

The essential dilemma is that prosecuting perpetrators might give full respect for human rights norms but could have undesired political consequences including the possibility that the new government might fall.<sup>59</sup> Fulfilling the maximalist demands of victims and human rights organizations for punishment and even for revenge may not be worth the risk of a military coup, which might result in a return to repression. Zalaquett argues that it serves no purpose for the President to go into exile saying, “I’ve never yielded on my principles, the military attacked.”<sup>60</sup> A leader must devise responsible policies, which means assessing the likely result of his or her actions.<sup>61</sup>

## B. Evolution of International Law Regarding Past Abuses

The Inter-American Court of Human Rights and the UN have set strong precedents in recent years to establish an obligation for governments to deal

56. Zalaquett, *supra* note 12, at 30.

57. *Id.* at 34. See Stanislav Chernichenko and William Treat, *The Right to a Fair Trial*, U.N. Docs. E/CN.4/Sub.2/1990/34 (1990), E/CN.4/Sub.2/1991/29 (1991).

58. Weschler, *supra* note 25, at 245; see *supra* note 28.

59. Zalaquett, *supra* note 12, at 25.

60. WOLA, *supra* note 10, at 7.

61. *Id.*

effectively with human rights violations. Many human rights scholars argue that such standards should be equally applied to past violations for which new governments are not directly responsible. They also argue that the truth about violations is no substitute for the prosecution of the perpetrators.<sup>62</sup> The Inter-American Court of Human Rights, in *Velásquez Rodríguez*,<sup>63</sup> found a duty for the government of Honduras to prevent, investigate, and, if necessary, prosecute those reliably accused of disappearances.<sup>64</sup> The Court reasoned that the government had agreed to "ensure and respect" human rights under the American Convention on Human Rights and therefore had an affirmative obligation to prevent, prosecute, and punish grave violations of human rights.<sup>65</sup> The Court further ordered the Honduran government to pay compensation to the family of victim Manfredo Velásquez.<sup>66</sup>

States possess a duty to prosecute violations of physical integrity under international human rights instruments, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>67</sup> the Inter-American Convention to Prevent and Punish Torture,<sup>68</sup> the draft UN Declaration on the Protection of All Persons From Enforced or Involuntary Disappearances,<sup>69</sup> the Draft Inter-American Convention on the Forced Disappearance of Persons,<sup>70</sup> and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.<sup>71</sup>

62. See, e.g., Diane F. Orentlicher, *Settling Accounts: The Duty To Prosecute Human Rights Violations of a Prior Regime*, 100 Yale L.J. 2537 (1991); Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 Calif. L. Rev. 449 (1990).

63. *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Inter-Am. Ct. H.R. (Ser. C) No. 4.

64. *Id.* at 54–56.

65. *Id.* at 154.

66. *Id.* at 163. The government of Honduras eventually began to pay ninety-day installments on the reparation to the family of Velásquez some two years after the judgment was announced. Due to the delays in payment and high levels of inflation affecting the Honduran currency, the reparation will amount to less than 30 percent of the original sum awarded.

67. G.A. Res. 46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) (entered into force June 26, 1987).

68. Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, OEA/ser.A/42 (1986). 67 O.A.S.T.S., reprinted in 25 I.L.M. 519 (1986) (entered into force Feb. 28, 1987).

69. U.N. Doc. E/CN.4/1991/WG.10/CRP.3/Rev.1/Corr (1991). The draft declaration maintains that states "shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced or involuntary disappearance in any territory under [their] jurisdiction." *Id.*, Art. 3.

70. Inter-Am. C.H.R. 352, OEA/ser. L/V/II.74, doc. 10, rev. 1 (1988). The draft convention would obligate states "to prevent and punish the perpetrators of forced disappearance of persons." *Id.*, Art. 1.

71. E.S.C. Res. 1989/65, U.N. Doc. E/1989/INF/7, at 129–34 (1989), endorsed by G.A. Res. 44/159 and G.A. Res. 44/162 (1989). The investigative provisions of the Principles contain guidelines for adequate investigations into suspected arbitrary or political killings and call for special commissions of inquiry in cases where current investigative procedures are inadequate. See, e.g., Principle 11.



#### IV. MANDATE, CONTENT, AND METHODOLOGY OF THE RETTIG COMMISSION AND REPORT

##### A. Mandate

The Rettig Commission's mandate was four-fold.<sup>72</sup> First, following Zalaquett's recommended approach, the Commission was to describe how the repressive system worked—how the events came to pass, how the secret police operated and how the judiciary, the press, and the church reacted. Second, the Commission was to account for every dead and disappeared person. Third, the Rettig Commission was asked to propose measures of reparation. Fourth, President Aylwin asked the Commission to propose measures of prevention.

The Rettig Commission was limited to considering "grave acts" which consisted of only the most flagrant human rights abuses. "Grave violations" were defined in the founding decree as "situations of disappeared detainees, executed persons, and those tortured to death, in which the moral responsibility of the state appears to be engaged through acts of its agents or persons in its service, as well as kidnappings and attempts on peoples' lives committed by individuals under political pretents."<sup>73</sup>

This directive dramatically limited the scope of the Commission's mandate. As a result, the Commission was not authorized to consider cases of torture which did not result in death for the victim, attacks which caused only wounds to the victims, or cases of arbitrary arrest, detention, or exile. Consideration of such abuses would have increased the Commission's universe of cases many-fold.

The Aylwin government's rationale for limiting the Commission's mandate, in addition to selecting a more manageable number of cases, was that the military government never denied the facts of exile and imprisonment, but they did deny that people were killed and disappeared—among the gravest forms of human rights violations. Indicating that it would have been impossible to document every torture case, the Commission did choose to deal with torture as a phenomenon rather than individually in the Report.<sup>74</sup>

President Aylwin appointed the Rettig Commission by presidential de-

72. In its founding decree, the Rettig Commission was mandated to:

- a) establish the most complete picture possible about the grave acts referenced, their antecedents and circumstances;
- b) gather background material which permits the individualization of victims and establishment of their fate and whereabouts;
- c) recommend measures of reparation and restoration which allow for justice; and
- d) recommend legal and administrative measures which, in its judgment, should be adopted to impede or prevent the commission of acts referred to in this article. Supreme Decree No. 355, *supra* note 3, at Art. 1 (translation of the authors).

73. *Id.*

74. WOLA, *supra* note 10, at 8 (quoting Zalaquett).

cree, which does not allow for subpoena powers to compel testimony from witnesses; only a congressional mandate could have created such a commission. Some believed Aylwin should have attempted to create such a commission and have Congress vote on the proposal. Such a proposal would have undoubtedly failed or been extremely limited, but the positions of all members of Congress on the issue would have been publicly recorded.

Aylwin did not choose this confrontational and potentially divisive path. The founding decree explicitly stated that the Commission could not assume the role of a court of justice, nor could it determine the responsibility of individuals for acts committed. Hence, the decree generally limited the Commission to an information-gathering role.

## B. Content

Because of the efforts of the OAS, the UN, and nongovernmental organizations, the world generally knew about the truth regarding human rights violations during the Pinochet period. The critical purpose of the Rettig Commission was to produce the officially sanctioned version of the truth, to translate knowledge to acknowledgement.<sup>75</sup> Well over half of the Rettig Commission Report is devoted to a systematic and thorough description of the repression of the Pinochet years.<sup>76</sup>

The history is divided into three distinct periods: (1) the period just after the military coup from September to December 1973, when the majority of the human rights violations occurred; (2) the period of 1974 through August 1977, when the intelligence service known as the DINA (*Dirección de Inteligencia Nacional*) was the principal instrument of political repression; and (3) the period of August 1977 to March 1990 when the CNI (*Central Nacional de Informaciones*) succeeded the DINA as the primary means of state repression, until the election of Aylwin. In addition to describing the system of repression and attributing institutional responsibility for human rights violations at each stage, the first volume provides a chronological listing of individual human rights violations under Pinochet. This day-by-day and week-by-week chronology covers violations from all regions of Chile.

The Rettig Commission chose to report on victims of armed opposition

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75. Weschler, *supra* note 25, at 4. Professor Thomas Nagel drew this distinction between "knowledge" and "acknowledgement" at the Aspen Institute conference to which José Zalaquett presented his paper in 1988.

76. Interestingly, the most heated discussion following the Report's publication focused not on a dispute of the facts of the human rights violations, but on the historical interpretation of the Pinochet period. Americas Watch, *supra* note 7, at 33. Among the Chilean Army's objections to the report was the contention that an internal war did exist in 1973, the alleged bias of some of commissioners, and the Report's lack of "historical validity." *Id.*

groups as well as victims of governmental human rights violations. Hence, in addition to the 2,115 individuals described in the report as having been subjected to human rights violations, largely at the hands of the DINA and the CNI, there were 164 "victims of political violence." Included in this category were: killings of uniformed personnel following the 11 September 1973 military coup; shootings of civilians by police or security personnel during peaceful political protest; assassinations of government agents attributed to leftist groups, such as the *Frente Patriótico Manuel Rodríguez*; and the killing of civilians by terrorists, which became more common as violent opposition to Pinochet grew in the 1980s. These victims were recounted to provide a rough balance in the Rettig Commission Report. The Rettig Commission also indicates that there were 642 cases where they could not reach a final conclusion due to insufficient evidence or time constraints.<sup>77</sup>

The size and sophistication of the Rettig Commission's "official truth" are impressive. The Report, in addition to serving as the official truth, also functions as an ethical and educational document aimed at promoting national reconciliation and preventing future human rights abuses.

One important aspect of the Rettig Commission Report is highlighted by a twenty page chapter entitled "Family and Social Effects of the Most Serious Human Rights Violations,"<sup>78</sup> which provides short, unattributed excerpts of the poignant testimony received from the relatives of the victims. These excerpts describe how families live in permanent uncertainty about the fate of relatives, imagining or learning about the torture loved ones were forced to endure, and how families of victims remain marginalized from the remainder of the population. The section reveals the unhappiness, helplessness, and guilt of families whose lives together have irreversibly deteriorated as a result of the human rights violations.

The Rettig Commission served effectively as an official opportunity for victims and their relatives to testify about their suffering and loss.<sup>79</sup> For many years their efforts to complain were met with disdain, mockery, and lies. The Rettig Commission received them gently and offered them a seat and coffee; the Chilean flag was there on the desk and the Commission's stationary read "Presidency of the Republic." The victims and their relatives could allow themselves some measure of relief.<sup>80</sup>

The Rettig Commission devotes the last fifty pages of the primary, substantive volume of its Report to four short chapters entitled: "Proposals for Reparation," "Prevention of Human Rights Violations," "Other Recommendations," and "Truth and Reconciliation." The reparation proposals include both symbolic measures for restoring of the good name of victims, such as

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77. *National Commission on Truth and Reconciliation*, *supra* note 3, at 787.

78. *Id.* at 765.

79. WOLA, *supra* note 10, at 9.

80. *Id.*

monuments identifying each victim, as well as legal measures, such as a monetary compensation and health benefits to relatives of victims. To permit persons with disappeared relatives to collect monetary reparations, the Rettig Commission proposed a procedure for declaring the victim "presumed to be dead."<sup>81</sup>

A subsequent law, which the Chilean Congress adopted in January 1992, granted compensation to families of victims recorded in the Rettig Commission Report and created a National Corporation of Reparations and Reconciliation to clarify the cases in which the Rettig Commission was unable to reach a decision as well as an additional hundred cases presented after the expiration of the Commission's mandate.<sup>82</sup> Chilean relatives cautioned that the reparations and the declarations of presumed death should not prevent efforts to locate disappeared relatives.<sup>83</sup>

The Report's recommendations concerning preventive measures include ratification of international human rights treaties; modifying Chile's national laws to conform with international human rights standards; assuring the independence of the judiciary; fostering a society where the Armed Forces, police, and security forces operate in a manner which respects human rights; and creating a permanent office of "Ombudsman" to protect citizens from future human rights abuses. The concluding essay on "Truth and Reconciliation" emphasizes the Rettig Commission's goal of providing the fundamental truth about events in Chile, which the nation had to assimilate and then use to explore avenues for reconciliation.

The second volume of the Rettig Commission Report is devoted to a comprehensive alphabetical listing of the 2,279 victims identified by the Commission. Each entry lists the date and location of the person's death or disappearance; brief personal information, such as age, profession, and political party or trade union affiliations; and a short description of the circumstances of the victim's experiences.<sup>84</sup>

81. *National Commission on Truth and Reconciliation*, *supra* note 3, at 826.

82. *Senate Approves Compensation to Victims of Human Rights Violations*, *El Mercurio*, Jan. 24, 1992, at 1. An estimated 7,000 relatives of victims will benefit from the reparations law. Beneficiary families were entitled to receive approximately 140,000 pesos (US \$380) per month to be divided in fixed percentages among the spouse, parents, and children, in addition to health benefits. *Reparations Law to Take Effect Soon*, *El Mercurio*, Feb. 4, 1992, at 1.

83. *Human Rights Reparations Meaningless Without Justice*, *El Mercurio*, Jan. 22, 1992.

84. A typical entry reads:

SARA DE LOURDES DONOSO PALACIOS  
Disappeared Detainee. Santiago, July 1975.

Sara Donoso, 25 years of age, single, student of nursing at the University of Chile and worked in a consulting office subordinate to the Ministry of Health. She was an activist in the Socialist Party, where she carried out tasks associated with its Central Directorate. She was detained on July 15, 1975, at her workplace by agents of the *Dirección de Inteligencia Nacional* (DINA). Since that date the whereabouts of Sara Donoso are unknown.

2 *National Commission on Truth and Reconciliation*, Report 129 (1991) (translation of the authors).

Following the Report's release, President Aylwin indicated that the Rettig Commission had transmitted relevant information to the courts and called upon the judiciary to carry out "extensive investigations" for which "the current Amnesty Law cannot be an obstacle." The amnesty law, which President Aylwin mentioned, was passed in 1978, and although it was intended to prevent prosecutions for human rights violations before 1978, the courts have invoked it to block even preliminary investigations into cases.<sup>85</sup>

### C. Methodology

The Rettig Commission, like the Sabato Commission in Argentina, made great efforts to gather information and receive testimony on human rights abuses. Each commission consisted of over sixty staff members. The Rettig Commission even used six social workers to minister to the needs of the victims and their families. The commissions made themselves very accessible to victims, relatives of victims, and human rights organizations; members of both commissions travelled extensively to gather testimony.<sup>86</sup> The Rettig Commission received information from over 4,000 complainants and a few members of the Chilean military who wished to relieve their conscience about human rights violations, as well as from witnesses from abroad.<sup>87</sup>

In addition to individual testimony, the Rettig Commission relied upon many other sources to pursue its mandate.<sup>88</sup> The *Vicaría de la Solidaridad* provided impressive files on most cases. Amnesty International supplied all its relevant information as did the International Committee of the Red Cross, which only transmits information to governments or governmental institutions. The Rettig Commission also had access to official data, such as autopsy reports, travel certificates, and judicial transcripts of any past investigations of cases.<sup>89</sup>

With respect to the reparation and prevention aspects of its mandate, the Rettig Commission consulted widely among international human rights organizations and Chilean political parties, churches, and unions. The Commission sent a questionnaire to these groups and received 150 responses. The questionnaire asked for advice about providing symbolic and legal reparation and about implementing reforms of the judiciary, police, and other institutions in order to prevent future human rights abuses. The ques-

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85. Amnesty International, *Chile: Report of Governmental Human Rights Commission Made Public*, Weekly Update, Mar. 14, 1991, at 11 (AI Index: AMR 22/WU 01/91).

86. *Nunca Más*, *supra* note 17, at 431; WOLA, *supra* note 10, at 9.

87. Speech by José Zalaquett, October 15, 1991, at Hastings College of Law, San Francisco, California.

88. WOLA, *supra* note 10, at 8.

89. *Id.*

tionnaire also solicited suggestions on means of promoting a culture of human rights and preventing a recurrence of violations over the long term.<sup>90</sup>

While the Rettig Commission, like the Sabato Commission, faithfully reached the essential truth about what happened, an important element is conspicuously absent from their respective reports. Both commissions avoided explicit findings of individual responsibility. The Sabato and Rettig Commissions left it to the courts to determine responsibility. The Legal Department of the Sabato Commission prepared files on individual cases for the courts. The Rettig Commission determined the responsibility of certain military units and other institutions without mentioning the names of officers or perpetrators. If there was a will to pursue prosecutions, however, it would be relatively easy to infer responsibility for many officials from the Rettig Commission Report.

## V. ASSESSING THE IMPACT OF THE RETTIG COMMISSION REPORT

The greatest contributions of the Rettig Commission are in establishing the “official truth” with which few argued<sup>91</sup> and in providing an officially sanctioned forum to which victims and relatives could give their testimony. The Rettig Commission reconstructed the collective memory of the Chilean people and produced a broadly endorsed, authoritative version of the history of Chile during the Pinochet period.

To its credit, the Rettig Commission managed to keep its primary focus on the victims. In the preparation of the report, the Commission gathered an enormous number of testimonies from witnesses and constantly solicited input from the relatives of victims. The meticulous chronology of individual violations and the enormous alphabetical listing of victims contained in volume two of the Report are tributes to the fallen.

The Rettig Commission Report’s official truth was not satisfactory to everyone. Some argue that it is not possible to achieve an authoritative version of the facts without the authority to compel testimony from military officials and without revealing the names of the individual perpetrators of human rights violations.

The drawback of vesting such commissions of inquiry with greater investigative authority is the confusion which results when criminal prosecutions of individual perpetrators are subsequently launched. As was demonstrated in the Iran-Contra investigation and resulting trial of Colonel Oliver

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90. *Id.* at 9.

91. While there was heated discussion about the historical interpretation of the Report, no one really disputed the facts—except for Gen. Manuel Contreras, the former head of the DINA, who denied everything. WOLA, *supra* note 10, at 11.

North, a broader investigative mandate for a commission may impair any subsequent criminal prosecution.<sup>92</sup>

If governments cannot provide such commissions with the power to compel testimony, future inquiries might consider the alternative of providing incentives for some members of the military to cooperate more fully with the process of justice, offering less or no punishment in exchange for testimony. Less punishment might include public censure, demotion, or payment of damages rather than prison sentences. The testimony of some officers may help to obtain more direct evidence of the worst violations.

The Rettig Commission might also have taken a stronger stance in favor of the revocation of the 1978 Amnesty Law, which constitutes a major obstacle to prosecution and even investigation of a large number of cases. President Aylwin made only a rather weak request that the judiciary not interpret the 1978 Amnesty Law to block investigations of the cases that the Commission submitted to the courts.

The Rettig Commission's goal of eliciting repentance from the perpetrators of the human rights violations has met with little success. Very few military personnel presented information or testimony to the Rettig Commission prior to the Report's release. Public attention and discussion was insufficient regarding the Rettig Commission's key objectives of justice, forgiveness, and repentance.

The impact of the public release of the Rettig Commission Report in March 1991 was dampened by the 1 April 1991 assassination of right-wing Senator Jaime Guzmán.<sup>93</sup> Unfortunately, after that killing public attention turned to concerns about left-wing violence and undermined the Rettig Commission's objective of seeking political reconciliation. Public events overtook the Rettig Commission Report.

The Rettig Commission Report represents an important step in the evolution of commissions of inquiry about past human rights violations. Governments in other regions, such as Central and Eastern Europe, Mongolia, and South Africa, can learn from the experience of Chile in investigating violations committed by previous officials. Inquiry commissions in countries which have experienced political transitions could successfully model their work on the principles and practices of the Rettig Commission, and depending upon the specific political constraints, modify their approach to achieve the desired truth, justice, and reconciliation.

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92. *United States v. North*, 910 F.2d 843, 872 (D.C. Cir. 1990) (testimony of several witnesses prejudicially influenced by exposure to defendant's compelled testimony before Congressional committee; conviction reversed), *rev'd in other respects* 920 F.2d 940 (D.C. Cir. 1990); *United States v. Poindexter*, 951 F.2d 369, 375, 388 (D.C. Cir. 1991) (same).

93. WOLA, *supra* note 10, at 11.