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## **Abstract**

Truth commissions (TCs) are government-established bodies that investigate past human rights abuses. They address truth, justice and reconciliation in societies that have suffered from systematic human rights violations. The truth commissions in South Korea and Canada address human rights violations that occurred over a generation ago against their citizens. They differ from more traditional TCs in historical scope of the violations, and the difficulty of investigation. Despite their robust mandates, civil society's involvement and stable political situation, neither have been successful in creating reconciliation. South Korea's truth seeking efforts have the potential of reconciliation, but the political culture and continued tensions with North Korea limit the chance of a wider appeasement. Canada's legally mandated truth commission has successfully involved residence school survivors and worked to educate the public. Yet, this addresses only a part of the systematic human rights violations suffered by the indigenous populations since colonization- violations continue. Reconciliation of historical injustices takes a long time since they are not just part of citizens' memories, but part of the culture and education. This paper seeks to demonstrate, with a particular focus on South Korea and Canada, the importance of addressing historical human rights violations, and how despite their ambitious goals, TCs are often hampered by lack of political will to create real change.

## **I. Introduction**

Truth and reconciliation commissions are one of several routes governments choose to address human rights violations. Earlier commissions, such as those in South Africa (1995), Argentina (1983-1984), and Chile (1990), developed methods and best practices to deal with severe violations of civil and political rights after political transitions. From these experiences, methods of addressing truth, justice, and forgiveness in post-transitional societies were applied to later transitions. It is important to study the work of TCs because they are a useful tool in addressing human rights abuses, but their long-term effects are not fully understood. Many studies focus on a few cases, rather than the almost forty commissions that have taken place, which impedes a full understanding of the capabilities and possibilities for TCs.

Unlike the focus of earlier commissions, some of the commissions from the last ten years focus on on-going human rights violations that have influenced contemporary society. The commissions in South Korea (2005) and Canada (2009) look at the legacy of human rights abuses on their societies. What makes these cases different is that they were not founded in the immediate aftermath of conflict or political transition, unlike prior TCs. TCs have gradually developed to address civil and political rights violations, as well as violations of economic, social and cultural rights.

South Korea's second Truth and Reconciliation Commission (2005-2010) investigated political and civil violations during the period starting with Japanese colonialism in 1905 to the political transition of the late 1980s, focusing on civil rights suppression, the Korean War and the resulting social and cultural violations. Canada's on-going Truth and Reconciliation Commission is investigating 122 years of human rights violations against its indigenous population through residential schools that existed from 1874 to 1996 (Hayner, 2011, p.262). These commissions cover different political, societal and historical contexts. Yet, their internal processes share the goal to reconcile and atone for human rights violations from the past.

Though TCs are useful tools for reconciliation, there are limitations on whether policies and actions can be applied to other commissions. The political and historical context, the resources at its disposal, and the human rights violations being investigated all impact success. These commissions also provide new processes and topics to address. Canada's victim-centered approach includes teaching non-indigenous people about the legacy of human-rights abuses. Likewise, South Korea's commission counters an established historical truth. No two TCs are exactly the same, nor can their responses to human rights violations be fool proof.

An effective TC is capable of addressing a wide range of recent and historical human rights violations and must focus on reconciliation at a societal level to move forward. In the previously mentioned cases, the violations have become so deeply rooted in society that discovering the truth is not enough. Measures to repair political and social violations are important. Successful reconciliatory measures for historical injustices are only successful when there is political will and stability.

## **II. Background**

### **a) Truth Commission Defined**

Despite their prevalence, there still is no broadly accepted definition of a TC (Hayner, 2011). Many definitions tend to be more of a description. TC's mandates and powers also vary depending on the needs and political realities of the country and violations suffered, making a singular definition difficult (Hayner, 2011). In general, they seek to establish broader patterns of violations through the social narrative and interpreting that truth (Gloppen, 2005).

Defining a TC too narrowly can limit the ability of countries to develop and adapt a commission. Despite the possibility of limitations, scholars have attempted to define TCs while allowing for a certain degree of flexibility. In general, "truth commissions are commissions of inquiry whose primary function is investigation," and tend to focus on severe acts of violence and repression (Freeman, 2006, p.14). Priscilla Hayner, an expert in the field of TCs, defines them as:

- 1) focused on past, rather than on-going, events;
- 2) investigates a pattern of events that took place over a period of time;
- 3) engages directly and broadly with the affected population, gathering information on their experiences;
- 4) is a temporary body, with the aim of concluding with a final report; and
- 5) is officially authorized or empowered by the state under review (Hayner, 2011, p.11)

For Eric Wiebelhaus-Brahm a TC is also autonomous, victim-centered and used for making recommendations to prevent future abuses (Wiebelhaus-Brahm, 2010, p.3). Mark Freeman (2006) also emphasizes the independence of a TC from the state. Freeman further notes that TCs aim to provide "a measure of impartial, historical clarification to countervail false or revisionist accounts of the past" (2006, p.39). What these definitions have in common is that commissions look to the past, investigate abuses, are temporary, make recommendations and are state sanctioned independent bodies.

A peaceful transition from the previous regime or a pacted transition with perpetrators still in power influences how the past is addressed (Heine, 2007). According to Jorge

Heine (2007), there are three conditions for transitional measures. First, an opening due to pressure allows for greater maneuvering. Second, the actual process where political power is handed over. Lastly is the consolidation of the democratic regime, which allows for investigations to occur (Heine, 2007, p.68). Many TCs are a response to the suffering of past abuses (Lutz, 2006). As Heine (2007) clarifies, political and social changes must occur, but Naomi Roht-Arriaza (2006) points out that transition takes decades, and violations may not be immediately addressed.

An ideal TC has a clear mandate defining the powers of the commission and topics under investigation (Albon, 1993). It is also important to have the support of civil society and the commission leadership appropriate to the social and political context under investigation (Albon, 1993). Having sufficient resources is equally essential, as is transparency, and maintenance of due process (Albon, 1993). However, these goals are rarely politically uncomplicated in implementation.

## **b) Context of Truth Commissions**

TCs are usually established during political or post-conflict transition, but their exact timing varies. A legacy of widespread violence and oppression precede most TCs (Freeman, 2006; Hayner, 2011). The intensity of the conflict and abuses, the status of political institutions and the societal desire to actually acknowledge the past all influence if, when and how a TC comes into existence (Hughes, Schabas and Thakur, 2007, p.1). Remedies for these violations under international law are the responsibility of the state (Zalaquett, 1989). TCs are inherently political enterprises with various motives; having a TC is less expensive than paying compensation to victims, and are perceived as less threatening than trials, thereby protecting politicians and leaders who want to avoid prosecution (Freeman, 2006). All these aspects are taken into consideration before attempting to create a TC.

The establishment of a TC can affect political, military, ethnic and religious power structures (Zalaquett, 1989). With a clear military or political victory, policy decisions are unlikely to endanger positions of power, but if the defeated forces are still in power, it

is unlikely human rights abuses will be addressed (Zalaquett, 1989). Whether a TC exists and accomplishes its mandate is contingent on the availability of civil society and the economic context (Albon, 1992). Generally, many of the economic causes of violations, such as land reform and redistribution, are not addressed (Mani, 2007). Even after significant time has passed since the violations, political and economic perspectives dominate.

TCs are victim-centered and contend with victims' emotional and psychological stress (Hayner, 2011, p.2). Victims and survivors tend to suffer increased rates of general nervousness, sleeplessness, anxiety, paranoia, depression and grief and due to the nature of many violations, victims are distrustful of government institutions- all of which can hamper reconciliation (Kritz, 1995, p.9; Albon, 1992). Some advocate for "social forgetting"- leaving the past alone (Freeman, 2006, p.39). Yet, others argue "after the collective trauma of repressive dictatorships, nations need a moment of 'rebirth' or 'regeneration' of their sense of identity and being" (Heine, 2007, p.72). However it is important that victims' rights are addressed: "[V]ictims are also victims of violations of social, economic and cultural rights because of secular social marginalization, historical neglect, or" lack of services and infrastructure (ICTJ, 2009, p.47). TCs that focus on victims advance societal healing.

Many TCs also have to address the involvement of international actors in human rights violations and how much they should be involved in the TC process (Gloppen, 2005). Whether contributing to monetary reparations or supporting the TC, involvement of the international community can influence the perceived legitimacy of a commission (Hayner, 2011, p.17). Timing can affect the legitimacy of a TC as well. If a TC is created, then disbands, or is unable to carry out its mandate, it becomes more difficult to create another later (Hayner, 2011). If there is a negative experience, politicians and civil society alike are less likely to want another. Sometimes, waiting gives the government time to plan and strengthen institutions in order to create and maintain an effective TC (Hayner, 2011). Timing and international participation influence a TC's future success.

TCs have other goals besides promoting and advancing human rights, yet evaluation of them is an integral part in recognizing the overall pattern of abuses. There is widespread agreement “that truth commissions can and should advance human rights” (Olsen, et al., 2010, p.459). This is important because “[w]ithout guarantees of civil and political rights’, ‘citizen’ has little meaning” (Wilcox, 2009, p.51). Rights to justice, truth, reparation and guarantee of non-repetition are obligations of the state. Recent commissions have begun to address economic, social and cultural rights to broaden the understanding of abuses and their prevention (Hayner, 2011, p.77). Having a TC can also deter future violations, advance protection measures and legitimize human rights culture (Wiebelhaus-Brahm, 2010).

### **c) Components of Truth Commissions**

The main components of a TC consist of a mandate, leadership, funding, civil society participation, activities and final recommendations. A mandate is created through a presidential decree, which is implemented more swiftly, or by the legislature, which can create stronger powers (Hayner, 2011, p.210). A mandate determines the scope and powers of the TC, the subject matter, and defines the truth that is to be documented. It also establishes a timeline with a clear end that allows for thorough investigations and capitalizes on public support (Hayner, 2011, p.215). Public support is also contingent on the transparency of the process and the autonomy of the TC (Freeman, 2006, p.17; Baehr, 2007). The leadership of a TC is comprised of commissioners whose efforts can either strengthen or hinder a TCs ability to work. Time constraints, limited resources and staff, using unreliable information, and dealing with political pressure are all issues commissioners have to contend with (Hayner, 2011). Funding is also important to enable TCs to carry out their mandate effectively. It is important that a significant amount of the funding is provided by the violating state so they are seen to be addressing the wrongs they committed. Civil society can generate pressure for the creation of a TC, and work to hold it accountable. Non-governmental organizations (NGO) also provide important information, local knowledge and contacts, and even detailed files to support a TC’s work. These components are essential to the functioning of a TC.



The activities of a commission are important to truth gathering efforts, legitimacy and legacy. How a commission collects, organizes and evaluates information is important since it influences conclusions made. Whether to hold public hearings or private interviews can influence society's view of the TC. Public hearings encourage greater understanding of the violations and reduce the likelihood of truth denial (Hayner, 2011). On the other hand, private hearings and meetings may be necessary for security and preventing unchecked accusations from being made public (Hayner, 2011). If perpetrators are still in power, TCs will generally not be allowed to identify perpetrators and even if they do, issues of due process often arise. At the very least, a commission can provide names to the president for future prosecutions. Other truth finding activities such as exhumations and historical research also contribute to the legacy of a TC.

The work of a TC culminates with a final report and recommendations for addressing the violations and ensuring non-repetition. Some recommendations focus on changing laws and institutions. In this aspect, there has been a weak record of implementation for most TCs (Hayner, 2011). Other recommendations often include domestic trials, public apology or memorials, reburial, reparations, literary and historical writings and addressing general or individual impunity (Crocker, 2000, p.100). Holding other stakeholders accountable is essential, especially the judiciary and the police (Baehr, 2007). The most difficult part of ensuring a TC's success is implementing the recommendations to ensure improvement in the promotion of human rights.

#### **d) Truth Commission Goals**

TCs work to investigate past abuses in order to rectify them and recommend changes to address their legacy. A main goal of TCs is to ensure non-repetition and improve societal relationships for the future (Zalaquett, 1989; Hayner, 2011). Additionally, TCs aim to rebuild trust between citizens and the government, and among citizens. Discovering the truth is another motivator, though seemingly secondary to the factors above. Michael Ignatieff (1996) notes, "the past is an argument and the function of truth commissions...is simply to purify the argument, to narrow the range of permissible lies" (Hayner, 2011,

p.21). TCs are capable of reaching more people than other transitional measures<sup>1</sup> and resolve institutional shortcomings that led to abuses. In order to achieve a TC's goal, disseminating the truth and providing guidelines to reconciliation are essential.

TCs are complex institutions that address the various political and social barriers to reaching reconciliation. A society composed of perpetrators, victims and bystanders means TCs have to be as transparent and as unbiased as possible to avoid reigniting tensions (Minow, 1998). A TC is also a political enterprise that contends with combating impunity and upholding the truth. A goal for many states is to clearly differentiate themselves from the previous government's wrongdoings. TCs also focus on various human rights violations. Violations to the right to life, torture, trials and legal recognition are many of the rights violated during oppressive regimes or during conflict. More recently, violations of economic, social, and cultural rights have gained attention. Worker rights, social security, health, education, and culture are just some of the rights that have not only been violated by governments, but are consistently used as ways to remedy the original harm. Addressing all human rights can only strengthen the results of TCs' work.

### **e) Traditional Route**

Earlier TCs influenced the development of transitional measures by creating general standards. The more traditional TCs were created immediately after cessation of armed conflict or pacted transitions from an authoritarian regime to a more democratic one. They occurred primarily in Africa, Latin America and Eastern Europe; Argentina, South Africa and Chile had TCs that are regularly analyzed and studied. These earlier commissions focused on what happened during the relatively recent regime or conflict.

Argentina's National Commission on the Disappearance of Persons formed immediately after a pacted transition in 1983, covered enforced disappearance and located remains from authoritarian military rule (1973-1982). The nature of the transition and the continued power of the military limited the commission's capacity to work. Thus, truth-finding efforts had to contend with political realities of strong opposition and a limited

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<sup>1</sup> Other measures include trials, amnesties, reparations, and institutional reforms.

mandate. Civil society, however, was a strong ally, providing statements and records, and pressuring the government for support. The result of the investigations was a report and general recommendations of economic assistance, study grants, social security and employment (Hayner, 2011, p.274). The commission's findings and archives enabled later prosecutions (Hayner, 2011, p.280).

Chile's truth and reconciliation efforts spanned two commissions that were able to make significant changes. The initial TC (1990-1991) occurred after a peaceful democratic transition from the authoritarian rule of Augusto Pinochet. Like Argentina, this earlier TC had to contend with strong opposition to their mandate and amnesty laws that encouraged impunity. The second commission (2003-2005) was able to utilize more favorable political conditions to further investigations- unlike the first. In total, the commissions looked at disappearances, related violations and violations to the right to life. Chile's recommendations and reparations were extensive, covering pensions, education, health and housing benefits and monetary compensation (Hayner, 2011, p.275).

South Africa's Truth and Reconciliation Commission (TRC) (1995-2002), addressed over forty years of apartheid. Gross violations of human rights ranged from killing and abduction to torture. The effects of everyday policies and practices of apartheid were not included (Hayner, 2011, p.268). The South African TRC was robust, with significant powers bestowed by parliament, including the ability to grant amnesty. Reparations included monetary compensation, medical assistance, education and other benefits, which were gradually implemented (Hayner, 2011, p.274). Though prosecutions were also recommended none occurred.

“Traditional” TCs like those in Argentina, Chile and South Africa laid the foundation for future commissions. Although TCs are unique to their country and the conditions they work in, there are lessons to be learned from past attempts. Chile and Argentina especially demonstrate the importance of a favorable political climate and time to the carrying out of justice. Reconciliation does not happen immediately and, if at all possible, requires time and positive circumstances. It is unlikely that an entire society can

reconcile, but between the state and the people, reconciliation looks to be probable in these nations, given the relative calm and development of democratic mechanisms.

Traditional commissions also provide examples of truth mechanisms. Verification procedures, treatment of victims, use of records, the role of history, and influence of politics all developed in the 1990s. These earlier commissions, based on prior investigative bodies, developed organizational models of staff, operating periods, investigative powers and mandates. They set the standard for later commissions who could study the effects of limited powers in certain situations, which activities worked and which were not so successful.

Despite making great strides, these earlier commissions neglected the experiences and involvement of children and gender considerations, and the effects of economic, social and cultural violations on society. The focus of transitional justice, and therefore TCs, is usually on civil and political rights. By neglecting gender and children, these early TCs were unable to gain a full understanding of the variation and complexity of the violations (Hayner, 2011). Along with thematic limitations of earlier commissions, implementation of recommendations remains an issue today.

### **III. Debates**

The rise of transitional justice measures, including TCs, has led to theorizing about the best ways to deal with human rights violations. TCs have to balance memory, forgetting, vengeance and forgiveness (Minow, 1998, p.4). Finding that balance is difficult, and inevitably the responses are imperfect, but provide a way to address significant issues in society and human rights violations.

#### **a) Healing**

A goal of most TCs is the healing of victims and the nation. Healing is heavily influenced by Christian theology, focusing on confession, forgiveness and catharsis (Skaar, Gloppen, and Suhrke, 2005, p.6). In most TCs, healing is a therapeutic goal for victims. Some scholars object to the simplicity of the premise that testifying and learning facts leads to healing (Hayner, 2011, p.153). In many cases testifying once can help, but can also cause relapses of post-traumatic stress disorder (Minow, 1998). The notion that TCs lead to healing may be overstated, as it is not proven that TCs alone cause individual or societal remedies (Hayner, 2011). There is consensus that TCs alone cannot provide individual and societal healing, but when efforts are long-term there may be positive effects.

Proponents instead emphasize the importance of beginning the healing process because unaddressed social and individual wounds may fester and cause future problems (Hayner, 2011, p.145). TCs can also begin to satisfy the victims' need to tell their stories (Hayner, 2011, p.147). Acknowledgement provides the chance to grieve and begin the healing process (Hayner, 2011, p.147). According to Martha Minow, TC workers can provide acknowledgement and validation, and recognize the indignity of the abuses (1998, p.72). A TC can help "by identifying someone's suffering as an indictment of the social context rather than treating it as a private experience that should be forgotten" (Minow, 1998, p.72). Placing the individual harm in its larger context allows the victim to recognize they are not alone, contributing to their psychological healing. Other sources of support in many societies include community organizations, traditional healers, religious institutions and extended family and friends (Hayner, 2011, p.157). Utilizing different healing mechanisms can significantly assist TC reconciliation efforts.

By not addressing psychological and physical abuses, society can become scarred. According to Jamal Benomar, it is necessary for societies “to face the truth about their recent history, but there should then be a process of healing that draws a line between” the past and the future (1993, p.33). This perspective implies that the new government is capable of initiating new policies and practices after human rights abuses have ended. Thus, the effects of human rights abuses and intergenerational transmission should be considered in a TC (ICTJ, 2009). Addressing historical violations encourages a society to improve the future.

Another part of the healing process is forgiveness. As Minow writes, “through forgiveness, we can renounce resentment, and avoid self-destructive effects of holding on to pain, grudges, and victimhood” (1998, p.14). The act of forgiving indicates a “change in how the offended feels about the person who committed the injury” (Minow, 1998, p.17). Initiating public forgiveness can, however, have the adverse effect of signalling the need to forget-the opposite of most TCs’ goals (Minow, 1998, p.17). Ultimately, forgiveness is an individual power victims possess that cannot be forced.

## **b) Reconciliation**

Reconciliation is one of many goals of TCs, yet there is no clear path to reach reconciliation since changes to the political culture take significant time and it is something that cannot be forced upon citizens (Crocker, 2000; Mani, 2007, p.35). Reconciliation may never be fully achieved, but should remain a goal (ICTJ, 2008). According to David Crocker (2005), reconciliation at its simplest is coexistence, democratic reciprocity and reconstruction of social bonds between victims and perpetrators (2005, p.108). Pablo de Greiff considers reconciliation to minimally be “the condition under which citizens can trust one another as citizens again (or anew)” (2008, p.126). Minow also notes that there is individual and national reconciliation (2007). Through empirical research, Priscilla Hayner advances the point that the process is context-specific (Hayner, 2011, p.189). There are many views of what constitutes reconciliation. Crocker identifies three degrees of reconciliation with the aim of

reconciling adversaries and reintegrating them into society: the “thinner” is simply coexistence; the “thin” is reconciliation between individuals; the “thick” reconciliation calls for a shared comprehensive vision, mutual healing and restoration and mutual forgiveness (Crocker, 2005, p.108; Skaar, Gloppen, and Suhrke, 2005, p.4). Rama Mani suggests the need to clarify what reconciliation actually is and if current efforts can achieve it (2009, p.29).<sup>2</sup> Reconciliation is also not always the primary purpose of creating a TC, yet it contributes to restricting future violations (Hayner, 2011, p.23; Minow, 1998). It can also create unrealistic expectations for a TCs ability to address violations (Mani, 2007). Elin Skaar, et al., emphasize that it is an on-going process that may not have an end point (2005, p.10 and p.14). Reconciliation is a societal process, although imperfect, that is important for addressing past human rights violations.

Reconciliation at the individual level is difficult. Everyone has different experiences and different ways of handling stress and abuse. Siri Gloppen defines individual reconciliation as “how people come to terms with each other at the interpersonal level after traumatic events and with their own past experience” (2005, p.20). Minow (1998) suggests redistribution, public acknowledgment, financial redress, psychological or spiritual healing in order to reconcile with others and with society. An issue for some TCs is by not identifying those responsible, victims lacked a focus for their reconciliation, causing ambiguity (Hayner, 2011).

Reconciliation at the societal level can result from criminal justice, truth telling, reparations, apologies and institutional reform (De Greiff, 2008). For John Paul Lederach (1998), reconciliation is a social space in which human rights violations can be addressed to deal with the past pain through truth, forgiveness and justice to build a common future. “Societies have to struggle over how much to acknowledge, whether to punish and how to recover” (Minow, 1998, p.2). The local, regional and national levels all have mechanisms that can be utilized for reconciling (Gloppen, 2005, p.20). Reconciliation in the political realm hinges on mutual respect as citizens with equal rights (Gloppen, 2005).

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<sup>2</sup> see also Hayner, 2011, p.182; de Greiff, 2008, p.120

According to Gloppen, the processes for reconciling at the national level are reinforced at the individual and community levels (2005, p.22). For Peter Baehr, true reconciliation requires a focus on social justice and a concern with socio-economic conditions, rather than truth, to break the cycle of impunity (2007, p.19).

There are certain conditions conducive for reconciliation. Hayner suggests that these are: an end to violence, or the threat of violence, acknowledgement and reparations, addressing structural inequalities and material needs, and time (2011, p.190). Individual civility toward others as civic equals is important in order to work towards reconciliation (Gutman and Thompson, 2000, p.35). Trust is important, and occurs when people expect a certain pattern of behavior and similar moral codes (De Greiff, 2008, p.126). At the societal level, “trusting an institution...amounts to knowing that its constitutive rules, values, and norms are shared by participants and that they regard them as binding” (De Greiff, 2008, p.126). Additionally, establishing an official truth allows competing parties to debate without past issues threatening to exacerbate tensions (Hayner, 2011, p.183; De Greiff, 2008, p.131).

Besides truth and trust, reconciliation also relies on mechanisms to address the past (Skaar, Gloppen and Suhkre, 2005, p.10). Affirming and restoring dignity of those whose human rights have been violated, holding perpetrators accountable and creating conditions in which human rights will be respected create a culture conducive to the success of reconciliation (Kiss, 2000, p.79). There are different transitional strategies capable of encouraging reconciliation. These include “the public and private rituals and narratives that sustain collective and individual memories of the history, causes and course of mass crime, and allow the re-interpretation and re-assertion of the belief systems” (Pouliny, Chesterman and Schnabel, 2007, p.12). Other ways to address reconciliation include establishing a clear rule of law and justice mechanisms, administrative purging, local ownership of processes, instituting reforms, discovering forensic facts and the reasons behind events (Skaar, Gloppen and Suhkre, 2005). It is important that the link between the service, benefit or reparative measure is obvious to the recipients (ICTJ, 2009). The state must acknowledge its role in failing to prevent



abuses or protect their populations (Gloppen, 2005). So that citizens can see how human rights are being addressed, the government must communicate effectively with them.

### **c. Reparations**

Reparations are a restorative justice measure that contributes to reconciliation. Reparation programs, unlike government policy and justice measures can be “the most focused on the rights and welfare of victims and survivors” (ICTJ, 2009). Reparations represent the intent of the state to improve their relationship with their citizens (De Greiff, 2008). Measures aid the victims in managing the material aspect of their loss, constitute an official acknowledgment, and deter the state from future abuses due to the financial cost (Kritz, 1995).

Reparations can be individual, collective, tangible or symbolic measures that include assisting with health issues, restoring property, jobs, building memorials and museums or providing the truth (Zalaquett, 1989; Minow, 1998; ICTJ, 2009). However, “in reality all reparations measures are symbolic because reparations can never really reverse the crimes committed” (ICTJ, 2009, p.49). According to Luc Huyse, monetary compensation for past abuses is the most concrete form of reparation (1995, p.338). Monetary reparations give agency and can be used for self-determined needs rather than services that may not be needed (Hayner, 2011, p.180). Yet, some demands may be directed toward securing the basic elements of survival such as housing, food, healthcare and means of a livelihood (ICTJ, 2009, p.9). Other strategies are rehabilitation of public records, education, acknowledgment through trials, apologies or TCs and peace building efforts (Gloppen, 2005, p.38). These are generally administered by the state, per their obligation (Hayner, 2011, p.165). In order for the measures to be effective, they need to be specific to the national realities (Hayner, 2011, p.179). Eric Yamamoto (1997) in Minow (1998) provides some guidelines for reparations that include not assuming how the reparations will work, considering whether or not reparations will promote reconciliation or worsen social divisions and whether they improve conditions of survivors.

Collective reparations provide services and compensation to not just individuals but to a community or group. Many individual victims are bound by common experiences or identity (ICTJ, 2009, p.10). If rights violations have been systematic and widespread, public trust is destroyed and community wide measures are sometimes necessary to rebuild that trust. One view is that collective reparations avoid the potentially disruptive effect individual reparations can have by perceived favor of certain people over others (ICTJ, 2009, p.10). Others view collective reparations as easily confused with humanitarian aid or development projects that governments are obligated to carry out (ICTJ, 2009, p.11). It is also important that governments clarify the meaning behind projects so victims are aware of it as a response to violations, not a development project. There are harms that have a collective impact by affecting the capacity of the community to maintain communal property, practices or services (ICTJ, 2009, p.44). Collective reparations may also give certain groups advantages over other disadvantaged groups (ICTJ, 2009, p.45). Collective reparations are not easy to implement and may cause resistance because they do not address the personal nature of the human rights violations (ICTJ, 2009, p.11). Collective reparations cannot substitute for individual measures, but can be effective when combined with other measures and addressing widespread violations.

The basic questions of who receives reparations and what types they receive have important implications. Victim participation in the process gives agency and greater acceptance. Survivors are not just victims of human rights abuses, but of historic economic and social injustice (ICTJ, 2009, p.45). In some developing countries, human rights violations are practiced on the economically and socially vulnerable, and addressing their social and economic needs in general overlap with reparative measures (ICTJ, 2009, p.9).

Minow points out that monetary reparations may not be enough to deal with non-monetary issues or be effective at all. It is impossible to distinguish between levels of suffering (Hayner, 2011, p.180). Reparations are more effective if the measures are carried out voluntarily (Gloppen, 2005). However, not all states have the economic

capacity to compensate victims at the necessary levels. In most cases, government responses to recommendations can be slow and incomplete (Hayner, 2011, p.163). Decisions to carry out recommendations tend to be done in the state's best interest, and there is no guarantee of any positive impact (Wiebelhaus-Brahm, 2010, p.147).

#### **d) Apology**

Another tool for bringing about reconciliation is apology. Official apologies can correct the public and historical record and assign responsibility. An apology cannot undo the violations that occurred, but it helps to have the government acknowledge the violations. It can provide some historical consensus regarding violations that occurred in the past (James, 2008, p.138).

An apology is an act of respect. It “is an action performed by an appropriate person saying appropriate words on an appropriate occasion” (Thompson, 2008, p.32). An apology is an important dispute resolution mechanism in hierarchical societies because disputes are seen as challenges to positions in the hierarchy (Renteln, 2008, p.65). An apology “can be defined as a written or spoken expression of regret, sorrow and remorse for having wronged, insulted, failed and/or injured another” (Coicaud and Jonsson, 2008, p.78). An official political apology “is given by a representative of a state, corporation, or other organized group to victims or descendants of victims, for injustices committed by the group's officials or members” (Thompson, 2008, p.31). Matt James outlines the requirements for a legitimate apology: clearly naming the wrong, taking responsibility, expressing regret, promoting non-repetition, refraining from demanding forgiveness, being recorded officially in writing, not hypothetical or arbitrary and engages the wronged community through ceremony, publicity and reparation (2008, p.138; Thompson, 2008). It is far more than a verbal action, but has multiple aspects that influence its effectiveness.

By apologizing, power and agency is given to the victims to decide when and if to forgive. It reverses “the logic of the offense, creating a space in which reconciliation might begin” (James, 2008, p.137). According to Siri Gloppen, “public apologies- even

without full disclosure- are more likely to lead to reconciliation than truth without contrition” (2005, p.36). Apologies also open up dialogue and begin the process of discovering the truth (Coicaud and Jonsson, 2008, p.80). In many respects it is the first step toward addressing past violations.

Despite the power of apology, it is still a political tool. States only apologize when it is within their interests to do so (Freeman, 2008). James (2008) points out how observers overestimate the effect these apologies have on human rights abuses. In the past though, the government “has gotten unseemly political advantage from apologies” (James, 2008, p.137). Ways of apologizing can vary across cultures, with variations within the same society (Renteln, 2008, p.64; Howard-Hassman and Gibney, 2008). It can also be a tool to repair a damaged reputation, which puts into question the sincerity of the act (Renteln, 2008). The sincerity of the apology can be a contentious issue.

### **e. Justice**

Justice is an integral component of transitional measures and accountability for human rights violations. There is debate about what justice measures are appropriate. The role of justice in TCs concerns accountability measures and providing the basis for future justice measures to be taken. There are differing opinions on how justice measures contribute to reconciliation. Justice is defined as the “[e]xercise of authority or power in maintenance of right; vindication of right by assignment of reward or punishment” (OED, 2011a).

Aims include creating a new legal order and ending impunity, establishing the truth and accountability, acknowledging wrongs, recognizing the rights of the victims and providing compensation (Gloppen, 2005). In the case of addressing human rights abuses, restorative or reparative justice is a focus, providing some agency for victims to try to reconcile with the past (OED, 2011b). Some have defined restorative justice as restoring victims to the situation they were in before the injustices took place or receive compensation equal to that level (Thompson, 2008, p.33). Methods include existing transitional justice measures, commemoration, healing, education, apologies, acknowledgment and restitution (Mani, 2007, p.39).

For some, justice as a goal or mechanism is not the answer to resolving human rights abuses. Pursuing justice for past crimes can be politically dangerous or impossible, limiting any future chances of reconciliation or truth collection. Some crimes have a statute of limitations; attempting to seek accountability may not be possible. Neil Kritz (1995) points out that there is also the legal principle of *ex post facto*, which makes prosecution difficult if the violation was legal when it occurred.<sup>3</sup> Freeman (2006) elaborates by noting that amnesty laws and international norms not part of domestic laws guarantee incomplete justice. Besides legal limitations, the trials themselves are not effective. Hayner suggests that judicial limitations are due to a weak judiciary, judges being politically compromised, corrupt or timid, a lack of legal expertise in the country and limited resources (2011, p.9). Using a legal remedy in some situations is not effective.

Trials and justice measures are not inclusive and, for many, limit reconciliation processes. Mani (2007) emphasizes that trials exclude bystanders, beneficiaries and large parts of the population that were structurally and indirectly affected by the violations. In many situations, as Minow (1998) mentions, legal responses are not enough to address the violations due to their scale. By focusing on individual responsibility, trials omit perpetrators who directly or indirectly profited from the abuses, “states outside the area of conflict that may have contributed to” the human rights violations, and “bystanders who did not actively participate in violence, but who also did not actively intervene to stop the horrors” (Fletcher and Weinstein, 2002, p.579). Focusing on individual accountability rather than the participation of society may contribute to the creation of a view of collective innocence (Fletcher and Weinstein, 2002, p.580). Minow (1998) points out that, by taking legal action, it becomes unlikely that the complete narrative will be known.

Trials may also further divide society, create martyrs or fuel collective victimization (Gloppen, 2005). According to Eric Wiebelhaus-Brahm (2010), trials do not promote forward-looking policies, create an adversarial environment and may be inadequate to

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<sup>3</sup> also Zalaquett, 1989; Huyse, 1995, p.344

address extensive crimes or crimes that occurred in the far past. Evidence and witnesses can also be hard to find. Some shortfalls of trials include potential relapse into committing human rights violations, further victimizing survivors through cross-examination, having little evidence due to destruction, general weakness of the judiciary, inability to provide witness protection, corruption of officials and the need for a functioning penal system (Mani, 2007, p.31). It is an imperfect mechanism for addressing widespread human rights violations.

Despite the myriad of critiques and limitations of justice, there are instances where it is important to pursue justice and accountability measures. For Minow, “society cannot forgive what it cannot punish” (1998, p.58). Accountability measures can result in victims feeling empowered and able to reintegrate into society (Mani, 2007). Trials and other justice measures can also act as a deterrent to future human rights violations (Huyse, 1995).<sup>4</sup> Ending impunity by holding perpetrators accountable can contribute to individual reconciliation (Gloppen, 2005). Trials become a symbol of democratic consolidation, and contribute to the perception that the new regime is legitimate (Huyse, 1995). To not punish human rights violations means the crimes are condoned, enabling them to be repeated (Benomar, 1993, p.32). However, in some situations “the guilty ones are often persons who are also needed for the rebuilding of society,” so justice and accountability are not straightforward for long-term development (Baehr, 2007, p.9). Overall, accountability measures are important for legal and social development after human rights violations.

In all efforts to address human rights abuses amnesty policies must be handled and the importance of due process recognized (Baehr, 1993; Gutman and Thompson, 2000). It “requires the individuals accused of crimes to be allowed to defend themselves before being pronounced guilty” (Hayner, 2011, p.121). Hayner suggests that if perpetrators are to be named they be given a chance to offer a defense (2011, p.141). Amnesty is a controversial mechanism in seeking truth and justice. For Minow, it “institutionalizes forgetfulness, and sacrifices justice in a foreshortened effort to move on” (1998, p.15). In

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<sup>4</sup> See also Benomar, 1993, p.33

some cases, amnesty laws were passed by outgoing elites to protect themselves from future prosecution, yet this has not proven to be foolproof; it is also an international norm that there can be no amnesty for the major international crimes of crimes against humanity, war crimes and genocide (Hayner, 2011). TCs must consider amnesty provisions and due process requirements.

Improvements to the legal system can restore faith and trust in the government. It is important to “overturn impunity, to hold all actors including political leaders equal before the law, to hold the state to account, and to develop the capacity within an independent judiciary” for fair trials over time (Mani, 2007, p.28). If the political culture is hostile to traditional justice measures or reconciliation processes, justice reforms create space for tackling accountability issues later when the justice infrastructure is more capable (Mani, 2007). Despite its limitations, justice measures are still influential in reconciliation.

#### **f) Truth**

According to Crocker, “To meet the challenges of transitional justice, a society should investigate, establish, and publicly disseminate the truth about past atrocities” (2000, p.100). Many scholars assume that disseminating the truth to society contributes to reconciliation (See Fletcher and Weinstein, 2002, p.587; Gloppen, 2005, p.33). By keeping the truth hidden, institutions maintain a myth and absorb negative traits and practices from the previous regime that perpetuate the violations (Zalaquett, 1989, p.7). Thus, for the truth about human rights violations to be effective in promoting reconciliation, the truth must instead be as complete as possible (Zalaquett, 1989).

In international law, the UN has recognized the right to truth, and the state’s obligation to provide it. In 2005 and 2006, after investigating if the right to truth had firm basis in law, the UN found:

“The right to the truth about gross human rights violations and serious violations of human rights law is an inalienable and autonomous right, linked to the duty and obligation of the state to protect and guarantee human rights, to conduct effective

investigations and to guarantee effective remedy and reparations” (UNHCHR, 2006, p.2)

The investigation based this right on international humanitarian law that included the right of families to know the fate of relatives and the obligation of armed parties to search for missing persons (UNHCHR, 2006). It also included the right to know the truth in combating impunity, for internally displaced persons to know relatives’ fates, to know the truth in order to provide remedies and reparations, right to access the investigations’ results, and to prompt an effective judicial remedy (UNHCHR, 2006, p.6). The UN identified the right to truth, “in connection with the State’s duty to conduct effective investigations into serious violations of human rights and the right to an effective judicial remedy” (UNHCHR, 2006, p.8). An international norm developed through legal cases and the use of TCs, obligating the state to uncover the truth regarding human rights violations and use proof to counter impunity.

Truth is defined as, “conformity with fact; agreement with reality; accuracy, correctness, verity” (OED, 2011c). For TC activities, one main type of truth investigated is “forensic” truth, or “hard” truths, focusing on facts such as who was violated, by whom, when, where, and why (Crocker, 2000). Exhumations, physical evidence and interviews contribute to such investigations. Even this type of truth can be manipulated; information can be withheld or unavailable due to time passed or witnesses being uncooperative. Another type of truth is “emotional” truths - the psychological and physical impacts on victims and survivors (Crocker, 2000). The actions of the state and their opponents are more “general” truths (Crocker, 2000). Producing a report for wide distribution is a corrective and preventative action to address truth and historical injustices (Minow, 1998; Freeman, 2006). However, for the victim, the “community reasserts the truth of the victim’s value by inflicting a publicly visible defeat on the wrongdoer” (Minow, 1998, p.12). Truth seeking is the central aspect of TC work.

Truth seeking assumes there is a singular truth, which is not always the case (Rhot-Arriaza, 2006; Crocker, 2000). Scholar Erin Daly (2008), as cited in Hayner (2011), expressed how it is “unrealistic to expect one accepted truth to emerge from a TC process



in some contexts” (p.25). The process can also frustrate and re-traumatize victims and have no effect on the local power dynamics (Roht-Arriaza, 2006). In some cases, TCs do not find new truths, but rather break the silence (Hayner, 2011, p.20). One part of truth gathering is interviewing the victims and perpetrators. However, due to time lapse and trauma there could be significant discrepancies. Minow (1998) rightly points out that something will always be missing or left out. Truth seeking is also limited because most TCs are only able to investigate a small number of cases, have limited subpoena or cross-examination powers and are usually unable to do in-depth historical analysis of the causes and effects of violations (Crocker, 2000). Other barriers include restricted access to evidence and not enacting recommendations (Wiebelhaus-Brahm, 2010). Truth can also be dangerous by stirring up animosity and resentment. Mani suggests that it is debatable whether or not truth is central to reconciliation given the potential for multiple truths (2007, p.34). Official truths can be incomplete or too narrow.

Despite the dangers and concerns of truth seeking efforts, it is often worth the risk. For de Greiff, truth telling can foster trust through an institutionalized effort to confront the past, perceived as taking responsibility (2008, p.133). It can also provide some personal healing. As Minow writes, “the potential restorative power of truth-telling, the significance of sympathetic witnesses, and the constructive roles of perpetrators and bystanders” contribute toward reconciliation (1998, p.65). Truth can also restore and affirm the human and civil dignity of the victims (Kiss, 2000, p.71). Discerning the truth can provide an understanding of overall patterns, institutional context and the extent of abuses, and the general causes and consequences of violations (Crocker, 2000, p.101).

### **g) Truth vs. Justice**

For many there is a debate of whether to focus on discovering the truth, or pursuing justice. Some view it as a trade off between the two: if truth finding is carried out, justice is sacrificed; justice measures are taken at the expense of truth. In some situations, truth seeking is the better choice due to judicial systems’ role in tolerating, allowing and perpetuating abuses (Hayner, 2011, p.105). Justice measures are also limited by focusing on individual culpability over system-wide analysis. A TC is “more likely than trials to

yield accounts of entire regimes” (Minow, 1998, p.60). There are different standards of proof. Justice focuses on proof beyond a reasonable doubt, whereas TCs focus on whether there is more evidence to show something to be true than not true (Hayner, 2011, p.142). For either choice- truth or justice- due process is essential (Crocker, 2000). There are situations in which prosecution is not always possible, and TCs are able to “reach a broader group of perpetrators and victims” than lengthy trials (Wiebelhaus-Brahm, 2010, p.14). Using TCs can also weaken rule of law because not having legal procedures avoids the creation of legal precedents (Rentlen, 2008, p.70). If justice is not pursued in exchange for truth initially, such actions need to be justified and other justice measures must be taken (Gutman and Thompson, 2000, p. 23).

By now, a fear of “a ‘trade-off’ between truth and justice has largely receded” (Hayner, 2011, p.92). Experience has shown that having a TC has not damaged or weakened criminal justice efforts (Hayner, 2011; Wiebelhaus-Brahm, 2010, p.24). Hayner further notes, “[m]ost truth commissions do not interfere with or duplicate any tasks of the judiciary” (Hayner, 2011, p.13). Crocker (2000) and Elizabeth Kiss (2000) both support the view that TCs are compatible with trials and that findings can be utilized for prosecutions. For Crocker, “both truth commissions and trials have distinctive and mutually supplementary roles in achieving the multiple goals of transitional justice” (2000, p.105). Kiss notes that truth ultimately is necessary to “distinguish the innocent from the guilty” and to break “the cycles of violence and oppression that characterize profoundly unjust societies” (2000, p.71). TCs are able to incorporate justice measures making them more effective at establishing the truth.

TCs have advantages and limitations compared to justice measures. TCs are able to develop a broader view of accountability, while prosecutions “are slow, partial, and narrow” (Minow, 1998, p.9). For Michael Ignatieff (1997), “public access to a commission’s hearings and reports ‘narrows the range of permissible lies’” (Olsen, et al., 2010, p.460). However, “[i]t is impossible for any short-term commission to fully detail the extent and effect of widespread abuses that took place over many years” (Hayner,

2011). TCs can signal that violence is unnecessary to react to past crimes and there are more peaceful and less threatening ways to address human rights violations.

Freeman (2006) suggests that TCs may not be the best choice if they are biased, have insufficient resources or lack the proper political motivation. Regardless, “elite control and manipulation are widespread” and there is a failure “to address the systems of domination that produced the violations in the first place” (James, 2012, p.182). TCs have a varied track record when it comes to prompting further development in human rights though and can lead to more violations (Wiebelhaus-Brahm, 2010). As for recommendations, “governments are more likely to enact TC recommendations when politicians can be held accountable for failing to do so” (Wiebelhaus-Brahm, 2010, p.147). When TCs are domestic, there tends to be a higher success rate, which directly influences justice mechanisms (Wiebelhaus-Brahm, 2010).

Studies have found that TCs used alone can have a negative impact on human rights, but when combined with trials and amnesties, have a more positive impact (Olsen, et al., 2010, p.457). Collective responsibility acknowledged by TCs makes society more aware of past atrocities and less likely to repeat them (Olsen, et al., 2010). Cited in Olsen, et al., (2010), David Mendeloff (2004) suggests that looking at human rights improvements does not represent an appropriate measure of the success of TCs (p.459). TCs do have many goals besides promoting human rights, such as justice, economic improvement or changing perceptions abroad, which can indirectly affect human rights. For Kathryn Sikkink as cited in Olsen, et al., (2010), there are three explanations for TC success in human rights improvement. TCs outline weaknesses in institutional structures to be changed; promote accountability; legitimize cultures, beliefs and values associated with human rights (p.461). TCs can provide a “blueprint” for reform that could improve human rights protections (Olsen, et al., 2010). Weibelhaus-Brahm found qualitative evidence that human rights tend to improve when TCs are used with other mechanisms. A study concluded, “that truth commissions, when used in concert with trials and amnesties, can help provide a ‘justice balance’ that contributes to human rights improvements” (Olsen, et al., 2010, p. 458). A mixed response is the best remedy.

## **h) History**

TCs have to contend with the constraints of history. According to Tristram Hunt (2004) in Hayner (2011), TCs are historical events, rather than historical sources (p.84). Many view TCs as a useful mechanism to preserve the past and collective memory. However, developing a collective past may not reconcile society (Gutman and Thompson, 2000). History tends to be written by the victors and is often therefore biased. TCs focus on the experience of victims, which can change the focus of history to victimhood rather than rights (Minow, 1998, p.80). It is a political exercise and can become a tool to advance a certain political objective (Minow, 1998). By denying the existence of events and covering up history or blaming others, regime supporters curtail the right to the truth, and manipulate national identities limiting reconciliation (Kritz, 1995). There is competition to control the writing of history (Wiebelhaus-Brahm, 2010). Most scholars stress the importance of forming a historical record that is as complete and unbiased as possible (Zalaquett, 1989). Knowing the past and having consensus over it can uphold national identities (Baehr, 2007, p.6). Developing a historical narrative is a difficult political endeavor and incomplete process.

TCs investigate human rights violations that occurred in the past, covering the period of repression. For Freeman (2006), TCs that investigate a period longer than a generation ago are historical. It is necessary to acknowledge responsibility for past abuses and preserve historical memory (ICTJ, 2009, p.41). If an injustice was done to a group, it becomes a significant part of their historical and group identity. In order to reconcile, perpetrators and governments must respond in a way that respects what that history means to the victims (Thompson, 2008). Victims have a right to decide the means in which their narratives are developed and conveyed (James, 2012, p.192). The history of human rights abuses influences victims and survivors, and can become an essential part to the truth-seeking reconciliation efforts.

TCs must look into the past to address human rights abuses, and sometimes change the historical narrative to rectify them. This is difficult and can have political and social

implications. Dealing with historical injustices is an obligation of citizens, not necessarily descendants (Freeman, 2008). It is difficult to determine the culpability of later generations who had no role in the initial violations (Freeman, 2008). Yet, one way to address historical injustices is through intergenerational justice measures such as apologies (Howard-Hassman and Gibney, 2008). For Kritz, as cited by Thompson (2008), citizens, “should recognize the responsibility of their state, as a transgenerational polity, to recompense victims for a history of injustice and disrespect” (p.40). It is important that historical violations are investigated.

## **IV. Case Studies**

The TCs presented here share some characteristics with the earlier, traditional TCs, but focus on different methods and practices. These recent commissions learned from the experiences of past efforts and created organizations that fit their national context. Scholars of transitional studies tend to focus on the earlier TCs because the passage of time has allowed analysis of effects. This is necessary since many of the changes commissions recommend take years to occur. However, TCs can miss lessons learned and transition efforts by not studying past commissions. At least forty TCs have occurred since 1974, with over half since 1999 (Hayner, 2011, p.xiv). The South Korean and Canadian efforts deal with the historical legacy of human rights abuses on culture and politics. These national processes also show a geographic diversity from Northeast Asia and North America, adding a new perspective to the more studied TCs of Africa and Latin America. Studying the spread of TCs in different contexts can show that TCs in various cultural and political contexts is possible. Reconciliation is a goal of these commissions and how effective they are at reaching that goal depends on their methods, recommendations and relationship with society.

### **A) South Korea**

#### **a. Background**

The politicized historical narrative and the effects of previous regimes had a significant impact on South Korea (Yoneyama, 2010, p.666). Under Japanese colonial control by 1910, Korea later became a stage for Cold War tensions between the USSR and the USA in the post-WWII period. The Cold War anti-communist stance of the South Korean dictatorships was to “indoctrinate its people with an anticommunist ideology and violently enforced through legal means” (Dong-Choon, 2010a, p.527). The crisis of the war and armistice evoked “a sense of insecurity [that] in turn necessitated and justified violent measures taken to restore security” (Suh, 2010, p.511). Military dictatorships lasted until the 1980s and were characterized by coups, massacres and show trials for suspected communists and dissidents (Rowland and Hae-Rym, 2010). It was only after democratization that there was a chance to address the past human rights violations (Suh, 2010, p.511).

The emergence of the Truth and Reconciliation Commission (Committee on Clearing Up Past Incidents for Truth and Reconciliation) (TRCK) in South Korea came after a long period of attempts to challenge the state for information and accountability. The TRCK was not a result of a regime change, but evolved from social and intellectual movements, and pressure from victims associations (Yoneyama, 2010, p.658). There were several opportunities to address the human rights abuses of previous regimes or leaders (Dong-Choon, 2010a). In 1948 a Special Act on Punishing Anti-national Conducts was passed, establishing a committee to investigate pro-Japanese collaborators. This committee did not last long and was undermined by the Rhee government's re-hiring of officials from the colonial period (TRCK, 2009, p.6). When the Rhee regime was toppled, victims' families were able to create the National Association of the Bereaved Families of the Korean War Victims and challenge the official discourse about the war (Dong-Choon, 2010a, p.531). In May 1960, a Special Committee on the Fact-finding of Massacres was created, but only lasted 11 days (Dong-Choon, 2010a, p.532). The 1961 military coup put an end to fact-finding efforts.

Prior to the political transition in the late 1980s, the government granted amnesty to political prisoners and human rights abusers. Despite the death penalty convictions of former dictators Roh Tae Woo and Chun Doo Hwan in 1988 for the 1980 Gwangju massacre, both were pardoned by President Kim Young Sam (Olsen, et al., 2010, p.472). A law was passed to compensate victims of the massacre, but there was no investigation, and mid-level commanders and lower were not held accountable (Dong-Choon, 2010a, p.537). The new democratic regime created a Presidential Truth Commission on Suspicious Deaths of the Republic of Korea in 2000, and other commissions, that showed the need for a more comprehensive settlement of the past (Dong-Choon, 2010a, p.543). All of these incidents led to the eventual formation of the TRCK.

The TRCK addressed the trauma of loss and persecution that prevented families of victims from telling their story or having their suffering acknowledged (Soehendro, 2009; Dong-Choon, 2010a, p.525). Previous efforts to deal with human rights violations show

“that individual human rights abuses and large-scale atrocities all had immense political and historical significance and that civilian mass killings during conflicts can be settled if” there is public support (Dong-Choon, 2010a, p.543). South Korea resembled many Latin America, African and Asian countries that had endured US-backed dictators during the Cold War (Dong-Choon, 2010a, p.527). However, the South Korean situation was unique because of the influence of Japanese occupation, the Korean War and the continued tensions between North and South Korea (Dong-Choon, 2010a, p.527). Experiences in South Africa, Chile, Germany, Spain and Argentina provided some guidance for the TRCK as it attempted to address the past and build a common future, in spite of political divisions (TRCK, 2009, p.5; Dong-Choon and Seldon, 2010).

## **b) TRC Korea**

### **i. Mandate**

The mandate called for the investigation of incidents of human rights abuses, violence, and massacres that occurred from Japanese rule to present (USIP, 2011b). There was a concerted effort to uncover as many state abuses as possible (Dong-Choon, 2010a, p.545). Specifically, the mandate covered illegal massacres before and after the Korean War, “human rights violations due to constitutional and legal violations or unlawful exercise of authority, incidents involving suspicious manipulation of the truth, and other historical incidents” (TRCK, 2009, p.8). The TRCK suggested bringing justice to pro-Japanese supporters from the colonial era, restoring victims honor from massacres and verifying facts from abuses during the democratization process (TRCK, 2009, p.9). Most of the cases covered by the TRCK were from the Korean War (1950-1953). A significant goal was governmental acknowledgement of the truth and for society to accept it (TRCK, 2009, p.3). “The chief task of the Commission was truth confirmation by an objective process of investigations and deliberation” (Suh, 2010, p.521). The TRCK wanted “to create favorable conditions for achieving historical, political and legal justice through revealing long-suppressed truths” and to challenge the mainstream narrative of the Korean War (Dong-Choon and Seldon, 2010). The TRCK also believed that the establishment of a TC would assist in bringing forgiveness and lead to reconciliation



(TRCK, 2009, p.8). There was a clear emphasis is on educating the public about the history of state abuses.

## **ii. Activities**

Of the commissioners, eight were appointed by parliament, four by the president and three by the chief justice- each for two-year terms (USIP, 2011b). The composition of the commission suggested an effort to create a politically independent, unbiased body to ensure legitimacy. The TRCK had limited investigative authority and could summon witnesses, but not force cooperation and had no legal power to obtain documents (Dong-Choon, 2010a, p.546). All conclusions had to be accepted by a majority of the commissioners, which made consensus difficult (Dong-Choon, 2010a, p.548). Applications were divided into three committees: independence movements, human rights abuses and massacres (TRCK, 2009, p.20).

The TRCK carried out various activities to pursue its mandate from December 2005 until December 2010. They screened each petition, investigated and decided on cases and recommended measures to assist in truth and reconciliation (USIP, 2011b). Recommendations were not binding and not enforceable (Dong-Choon, 2010a, p.546; TRCK, 2009, p.32). At the beginning, efforts were taken to focus on raising public awareness and instituting an operational framework, which then led to investigations (TRCK, 2009, p.102). The TRCK had a quarterly newsletter to keep interested parties up to date and a report every six months for raising public awareness (Hayner, 2011, p.65; TRCK, 2009, p.8). The TRCK also did some international networking activities through press conferences, communicating with other truth seeking bodies and holding two international forums (TRCK, 2009, p.43). The committee also confirmed massacres, documented memorial efforts and investigated US troop incidents (Hayner, 2011, p.65). After the confirmation of one massacre, President Roh Moo-Hyun made an official apology for that specific incident (Hayner, 2011). The TRCK also collaborated with other South Korean truth-finding organizations and regional entities, as well as with bereaved families and relevant organizations to increase efficiency and avoid redundancy. They held events including joint memorial services and a reconciliation convention to try and

involve society in the process (TRCK, 2009, p.47). These activities were not widely publicized because cooperation with the media was difficult. There was some reporting regarding massacres. Exhumation work was a significant part of discovering forensic truth and group interviews were recorded and documented (TRCK, 2009, pp.38-39). Fact-finding was an essential component to the TRCKs work since in most cases since petitioners were elders and time was limited (TRCK, 2009, p.28).

By the end of the TRCK's mandate, the political climate had become unfavorable to truth seeking efforts. The newly elected Conservative Party was "uncomfortable with the strong conclusions in the report" and in holding "prior rightist governments to be responsible for abuses" (Hayner, 2011, p.66; Rowland and Hae-Rym, 2010). Some of the new leaders had directly or indirectly benefited from the legacy of authoritarian rule (Dong-Choon, 2010a, p.548). Thus, there was little interest for those in power to investigate the past (Hayner, 2011, p.66). The new chair and standing commissioners "were hostile to the spirit of the commission", even going as far to ban publication of the English text of the 2009 summary report (Dong-Choon and Shelden, 2010).

### **iii. Types of Violations**

Violations to the right to life by the state and armed forces made up a significant number of the human rights abuses investigated. In South Korea, an infringement of human rights is considered death, serious injury or disappearance, while the TRCK added illegal detention and abuse of victims in court cases (TRCK, 2009, p.82). The TRCK emphasized how the victims in South Korea were killed three times: first, in massacres, second, when requests for investigations by bereaved families were disregarded and lastly when family members were branded communists by association (Dong-Choon, 2010b). "The authorities systematically alienated the bereaved families from civil society by placing them under constant surveillance by the police and the KCIA and then leaking the facts to their neighbors," which traumatized survivors and kept civil society from calling for accountability (Dong-Choon, 2010a, p.541). Victims included political prisoners, members of the Bodo League, suspected North Korean collaborators and civilians and refugees caught in the war (Soehendro, 2009). The threat of communism was consistently

used as justification for violating human rights (Dong-Choon, 2010a, p.527). The coup in 1961 led to torture, fabricated espionage charges and suspicious deaths (Dong-Choon, 2010a, p.535). Besides violations of the right to life through massacres, death sentences, torture and assassinations, there were also property rights violations, lack of due process for illegally charged individuals, and blocked educational opportunities (TRCK, 2009, p.30). The violations affected future generations, continuing the violations, which was a significant reason for the TRCK's existence.

#### **iv. Findings**

The TRCK understood the violations as connected to past events. They viewed the Korean War as an outcome of Japanese colonialism, post-liberation dictatorial regimes, anti-communism and the expansion of American power (Yoneyama, 2010, p.658). They worked to identify and classify the shifting political and military conditions that led to various forms of mass civilian killings and human rights abuses in order to understand the conditions in which violations occurred (Yoneyama, 2010, p.656). The TRCK found that mass killings were committed by North Korean military, South Korean military and US Armed Forces (USIP, 2011b). The TRC estimated that as many as 100,000 South Koreans died at the hands of the government (Rowland and Hae-Rym, 2010). The “investigations call into question the very cultural assumptions, intellectual premises, and relations of power, according to which a history of the war and its meaning have been narrated and accepted as truth” (Yoneyama, 2010, p.655).

#### **v. Historical Legacy**

Controlling the historical narrative has kept human rights abuses from being known, thus limiting the truth and healing. The official history, known as *yugio*, portrays South Korea as the victim, North Korea as the aggressor and the US as the savior (Suh, 2010, p.507). The regimes of the 1960s “helped create and spread the new political myth that South Korea was reborn in its fight against international communism”, which has become accepted truth (Dong-Choon, 2010a, p.535). In order to change the historical narrative it is important to understand the political context it was created in (Dong-Choon, 2010a,

p.540). “The historical contention over the Korean War constitutes such a political struggle for the future” and is ongoing (Suh, 2010, p.503).

#### **vi. Recommendations**

The TRC recommended to the state a policy of memorialization, events, establishing historical records and monuments and furthering peace education (USIP, 2011b). Other recommendations were laws for reparations and medical services and that the falsely accused get a new trial (USIP, 2011b). For the massacres, an official state apology, revision of family registers, memorial events, additions or revisions regarding historical records, peace and human rights education, revision of related laws and medical subsidies were suggested (TRCK, 2009, p.32). For victims of US violations, the TRCK recommended an official apology from the US, a memorial event and for the US to provide compensation to the victims’ families (TRCK, 2009, p.32). Due to political realities, it is not feasible for the US to compensate victims since they are not likely to accept guilt. For groups that opposed the Republic of Korea’s legitimacy the TRCK suggested similar measures, including archiving incidents as historical record (TRCK, 2009, p.32). For human rights abuses the TRCK advised a state apology, retrial, medical services, deletion of records and damage reparation (TRCK, 2009, p.33). The recommendations focused on history and the specific violations, rather than wider societal remedies.

#### **c) Reconciliation**

Partial apologies and legal procedures were the main reconciliatory efforts done by the state. In 2008, President Ro Moo-Hyun apologized on behalf of the nation for illegal activities committed by state officials in connection to the Bodo League massacres and for the massacres that occurred during the Korean War (TRCK, 2009, p.102; USIP, 2011b; Dong-Choon, 2010b). Reexamining court cases provided some measure of legal and political reconciliation (TRCK, 2009, p.102). Taking direct legal action was not an option for most violations due to their scale, the amount of time passed and the deaths of most perpetrators (Dong-Choon and Selden, 2010). The Ministry of National Defense presented a floral garland and expressed regret to the families, but did not make any

official efforts to apologize or reconcile, which is ineffective in the long term (TRCK, 2009, p.50). For Dong-Choon, one of the commissioners, “establishing the truth and rehabilitating victims’ reputations was the primary task and the foundation for reconciliation” (Dong-Choon and Selden, 2010). He continued:

By airing the truth of the Korean War, determining what really happened and who were the perpetrators and the victims, I hoped that social awareness about Korean War massacres and atrocities could be enhanced. This would make it possible both to provide a form of social punishment to perpetrators, including those named and those unnamed, while restoring the legitimacy of victims (Dong-Choon and Selden, 2010).

At the time of the negotiations for the TRCK, no naming in the final report was allowed as a compromise between political parties (Dong-Choon and Selden, 2010). The media ignored and even suppressed findings, providing little coverage of activities and focusing on the failures rather than successes (Dong-Choon and Selden, 2010). For some, little reconciliation was achieved and “the TRCK accomplished little: no perpetrators nor any responsible state institution ever apologized for past misdeeds” (Dong-Choon, 2010a, p.547). The TRCK did not specify between whom the reconciliation was supposed to be, which led to a focus on forensic truth to promote reconciliation (Dong-Choon, 2010a, p.547). There was some justice when cases involving the judiciary as the perpetrator were addressed and decisions were reversed where the TRCK had verified the truth (Dong-Choon, 2010a, p.549). The TRCK was able to change the dialogue and direction of discussion about the Korean War and many petitioners were relieved that a government institution was paying attention to them (Dong-Choon, 2010a, p.549). There was a recommendation follow-up board created in 2007 to work on recommendations the TRCK made on individual cases (USIP, 2011b). Implementing recommendations and supporting reconciliation measures is an on-going process.

#### **d) Society’s Response**

Public opinion was divided over the truth and reconciliation process. Korean society was split into three groups; those who saw it as an important process, those who thought it

was bad for democratic development and those who thought the process was started before society was ready (Olsen, et al., 2010, p.473). A division also exists between the victims and survivors who mobilized for justice and truth seeking, and others who credit the military regime for South Korea's development and high standards of living (Olsen, et al., 2010). This division is exacerbated since "[m]uch of the commission's politically charged work has been ignored by the South Korean government, which has rarely issued apologies for past atrocities" (Rowland and Hae-Rym, 2010). Most of the government's concern is focused on the constant tensions with the North. Despite the government's negative perception and lack of action, "the commission's investigations still help[ed] the government build credibility with a public that has had little faith in its leaders" because of the extent of the human rights abuses committed (Rowland and Hae-Rym, 2010). Despite the tense political nature and two different groups of commissioners, the TRC was able to remain politically neutral in its investigations (Rowland and Hae-Rym, 2010).

The studies and information gathered are significant because it supported a different version of history (Rowland and Hae-Rym, 2010). In order to continue the TRCK's efforts, a Forum on Truth and Justice was created by citizens and supported by activists and former TRCK staff (Dong-Choon and Selden, 2010). Many of the TRCK's accomplishments have been put on hold or terminated by the conservative government (Suh, 2010, p.521). Some have questioned looking into past violations when South Korea is now a wealthy democracy (Cain, 2009). Despite these difficulties, Chairperson Dong-Choon suggested that the airing of citizen's grievances is a form of democratization from below and allows for a new opening for achieving human rights in South Korea (Dong-Choon and Selden, 2010). Addressing the legacy of human rights abuses in South Korea was partially effective, but limited by political realities.

## **B. Canada**

### **a. Background**

Canada's Truth and Reconciliation Commission (TRC), begun in 2009 and scheduled to last until 2014, addresses the human rights violations that occurred in the aboriginal schools. The aboriginal school system started in 1874 and did not end until 1996 (Hayner,

2011). The schools were government-funded and church-led, with the goal of assimilating aboriginal children into Canadian mainstream society by removing parental and community involvement in the intellectual, cultural and spiritual development of the children (TRC, 2012). This system is not unique to Canada, as similar schools existed in the United States and Australia. These schools had a profound impact on generations of students.

The legacy of colonization, discrimination and human rights abuses against aboriginal Canadians underlines the residential school system. In 1991, a Royal Commission on Aboriginal Peoples held hearings on how to improve relations with aboriginal people, including the legacy of the schools (TRC, 2012, p.22). In the mid-1990s, thousands of former students took legal action against the church and federal government. In 1998, the government acknowledged the failure of the school policy (Hayner, 2011). This led to the 2007 Indian Residential Schools Settlement Agreement. Under court supervision, this agreement focused on repairing harm done by the schools (TRC, 2012, p.1). There were also “common experience” payments up to \$28,000 for each student (Hayner, 2011). It came about because all parties in the dispute were dissatisfied with the adversarial nature and slow pace of the justice system and shared “the longstanding desire of victims for a broader societal focus on their experiences” (James, 2012, p.189). The TRC is more about conveying the victim’s experience and truth than the victims learning new information (James, 2012, p.200). Like the TRCK, the victims know their truth, and try to convey it to the rest of society.

## **b) TRC**

### **i. Description, Mandate**

The TRC was established by an order-in-council in June 2008, is led by three chairs and is supported by an advisory council of ten former residential school students and an Inuit sub-commission. The head office is in Winnipeg, Manitoba with offices of varying sizes throughout Canada, providing for wide geographical reach that allows for more coverage and wider involvement (TRC, 2012, p.3). The TRC is unique in that it is one of the first commissions to address human rights violations that span over a century and addresses

the abuses against aboriginal children (TRC, 2012, p.10). It is also recognized as the first TC established as part of a judicial agreement rather than by legislation or decree (ICTJ, 2008).

One of the main goals of the TRC is to overturn assumptions of the general population (James, 2012, p.192). The purpose is to reveal the “complex truth about the history and the on-going legacy” of the residential schools through documenting the individual and collective harms, and honoring the survivors, “leading toward reconciliation within Aboriginal families, and between Aboriginal peoples and non-Aboriginal communities, churches, governments, and Canadians generally” (TRC, 2012, p.1). With five years, and a \$60 million budget, the TRC has significant time and resources to work (TRC, 2012, p.2). A limitation is that the TRC cannot associate any individual with conclusions or findings, in events or activities, unless guilt has already been established through legal proceedings or by admission or public disclosure by the individual (Hayner, 2011).

## **ii. Activities**

The commissioners began by attending events planned by survivors and aboriginal groups (TRC, 2012, p.4). Other activities involved public education by attending conferences of aboriginal organizations and churches and speaking at over 200 conferences between 2009 and 2012 (TRC, 2012, p.4). By the end of September 2011, the commissioners had met with former students in every province and territory (TRC, 2012, p.4). The commissioners also attended a forum on Native American boarding schools in the US and met with representatives of the Shiah Foundation in Los Angeles, California to gain insight into recording, preserving and using oral histories for education purposes (TRC, 2012, p.11). The TRC also conducted research into prior reconciliation efforts, such as the 1991 Royal Commission. These activities provided important background for their work.

One of the main priorities for the TRC was to meet with former students. The TRC views statement giving “as a means to restore dignity and identity to those who have suffered grievous harms,” an important part of the truth-seeking efforts (TRC, 2012, p.12). There



were trained statement gatherers that recorded biographies of school survivors to be kept in a planned National Research Centre (TRC, 2012, p.12). The survivors had the option of having a health or cultural support worker or therapist present and a choice of giving an audio or visual recording (TRC, 2012, p.12). They could give testimony in public sharing circles, hearings at a scheduled location or private sessions (TRC, 2012, p.13). In total, the TRC completed 400 outreach and statement gathering initiatives up until 2012 (TRC, 2012, p.14). The TRCs interview techniques are highly supportive and sensitive to the needs of school survivors.

Document collection is another facet to the TRC's work. By 2012, the TRC was in the process of developing a database and assembling a team of historical researchers to review and audit holdings (TRC, 2012, p.13). Despite their efforts, there was significant lack of cooperation by the federal government and historical and church archives (TRC, 2012, p.16). The TRC has been provided with a limited amount of the relevant documents by the government and is not allowed to access documents related to the Settlement Agreement and Dispute Resolution database (TRC, 2012, p.16). Churches have imposed restrictions and conditions in order to access or copy materials as well (TRC, 2012, p.16). The Settlement Agreement says the state and churches must bear the cost for document reproduction, but the government has not provided enough money for the TRC to accomplish this task. There is some political reticence to the aims of the TRC.

The TRC also carried out or plans to carry out several other initiatives. One is the missing children and unmarked grave project to document the unknown fate of children (TRC, 2012, p.17). Another is a national research center to establish a national memory and to be accessible to all (TRC, 2012, p.17). Commemoration is also important to the reconciliation process and requires direct participation from communities. The survivor committee reviews proposals to fund commemoration projects that intend to honor, validate, heal or memorialize the residential school experience. The mandate required seven national events to be held within the first two years of the TRC, along with a closing ceremony at the end in an effort to reach as many Canadians as possible (TRC, 2012, p.18). The TRC also funded documentary films about the schools, conducted

workshops, museum and photography exhibits, quilting projects, group simulation games, teaching modules, wilderness retreats, webcasts, blogs and interactive websites (James, 2012, p.201). These efforts attempt to involve as much of society as possible.

### **iii. Types of Violations**

The human rights abuses suffered by the residential school students were physical, as well as psychological. The Law Commission of Canada, a federal advisory board, concluded that the schools reflected genocidal intent by removing children from the communities and culture, a severe violation (James, 2008, p.140). Most children lost their identity by being separated from their culture and losing their names, which today is recognized as a right to have (TRC, 2012, p.5). There was “deprivation of language and culture, imposition of religious practices, and physical and sexual misconduct by teachers and boarding-home parents or supervisors” (TRC, 2012, p.9). Survivors told the TRC about widespread diseases, suicides and unexplained deaths (TRC, 2012, p.5). The legacy of the abuses suffered by students continued beyond school. Students were unable to develop social or parenting skills and were without community and culture for support. “This legacy from one generation to the next has contributed to social problems, poor health, and low educational success rates in Aboriginal communities today” (TRC, 2012, p.1). For former students, the residential schools “are not part of the past, but vivid elements of their daily life” (TRC, 2012, p.6). Addressing these historical and continuing violations is essential for improving relations with indigenous communities.

### **iv. Interim Conclusions and Recommendations**

Although the TRC is still working, they have come to some interim conclusions. There is a general agreement that the residential school system was “an assault on Aboriginal children, families and culture” and against self-governing aboriginal nations (TRC, 2012, p.25). The abuses had a severe impact on aboriginal peoples and cultures that have been carried through generations (TRC, 2012, p.25). It has also become clear that Canadians have not received a thorough education about aboriginal society, culture, history and the relationship with non-aboriginals (TRC, 2012, p.25).

The recommendations made by the TRC in the Interim Report focused on greater support for the TRCs work, as well as reconciliation efforts. For the functioning of the TRC, more time and more funds were recommended in order to carry out the mandate effectively and the government to provide all relevant documents (TRC, 2012, p.28). The government should establish resources for a sustainable mental health and wellness center in the north where most people have limited access to health facilities, as well as centers throughout the country specializing in the trauma and grief counseling for the treatment of residential school survivors to assist with the healing process (TRC, 2012, p.28). Education was another important part of the TRCs recommendations. They called for a review of curriculum for teaching about residential schools and to develop materials to do so (TRC, 2012, p.28). Educational measures also include a public education campaign for the general population. The TRC recommends the government and churches establish a revival fund for projects that promote traditional spiritual, cultural and linguistic heritage as a reparative measure (TRC, 2012, p.28). The TRC also suggests developing early childhood and parenting programs for school survivors to tackle the legacy of social violations (TRC, 2012, p.28). An important recommendation by the TRC is including survivors who feel excluded from the agreement and process (TRC, 2012, p.29). The TRC also recommends that the government distribute copies of the Statement of Apology, since many of the survivors they talked to were unaware of its content (TRC, 2012, p.29). Lastly, the TRC suggested using the UN Declaration on the Rights of Indigenous Peoples as a framework for working towards on-going reconciliation between aboriginals and non-aboriginals (TRC, 2012, p.29).

### **c. Apology**

In 1998, there was a statement of apology that most native leaders rejected (TRC, 2012; James, 2008). It was not part of the official parliamentary record, and it failed to mention the purpose of the schools or acknowledge the effects on the students or the intentions behind the policy (James, 2008). The first official apology took place in May 2007 in the House of Commons and then on 11 June 2008, the Prime Minister of Canada issued the “Statement of Apology to Former Students of Indian Residential Schools” (Hayner, 2011; TRC, 2012, p.9). Not all the survivors accepted this apology, but many told the TRC that

the apology was important for their healing (TRC, 2012, p.9). There is also limited awareness of the actual wording of the apology, which limits its effects (TRC, 2012, p.9). The apology left out the suffering of parents and was more of “a ‘sorry for what happened to you’ than a ‘sorry for what I did’” (James, 2012, p.203). The apology was important, but still not enough for reconciliation.

#### **d. Reconciliation**

The TRC has moved toward engaging all Canadians in discussions about the importance and meaning of reconciliation. The Canadian government has attempted to use reparations, the TRC, commemoration and an official apology to address the legacy of the residential schools (Jung, 2009). In 2010, the TRC even co-hosted a youth retreat to tackle these issues (TRC, 2012, p.4, p.10). The TRC views former students as “the impetus for bringing forth reconciliation” and that such resolution “will come through the education system” (TRC, 2012, p.6, p.7). Survivors want their languages, traditions and respect. They also desire institutions to invest in restoring their culture and for the history of the residential school system to be taught to all Canadians (TRC, 2012, p.7). Compensation has also been an issue, as it is restricted to former students or residents of schools listed in the Settlement Agreement, which left out many schools (TRC, 2012, p.9). “The exclusion of these students is a serious roadblock to meaningful and sincere reconciliation” (TRC, 2012, p.9). Involving the former students in the process reverses the symbolic power relations, giving them agency and the power to reconcile (James, 2012, p.183). There is a clear need for improved relations between indigenous communities and the government.

The TRC acknowledges that the commission alone is not enough to bring about reconciliation, although it is an essential first step (TRC, 2012, p.26; James, 2012, p.199). It requires the commitment of individuals and the involvement of society (TRC, 2012, p.26). “Reconciliation also will require change in the relationship between Aboriginal people and the government of Canada” (TRC, 2012, p.27). The goals of the indigenous population and the government clash, with different perspectives over the scope of injustices. The government differentiates between the past and present policy, while the

indigenous population uses the present to critique past policy (Jung, 2009). It is also not just the government and the aboriginal communities addressing reconciliation, but churches and their role in abuses (TRC, 2012, p.6). According to Chairperson Sinclair, “the supposed truths of indigenous inferiority and European superiority taught in both systems continue to remain imposing barriers to reconciliation” (James, 2012, p.196). However, “conceptions of reconciliation that emphasize face-to-face understanding, healing and forgiveness may be similarly unable to do justice to the political and economic concerns of the indigenous communities” on issues other than the residential school system (James, 2012, p.199).

#### **e. Society’s Response**

Some see Canada’s use of apologies and reparations as a way to lessen the government’s obligations and limit future indigenous demands (Jung, 2009). Rather than addressing the aboriginal demands for education, housing, social welfare and health, the government’s relationship with aboriginals consists of economic development on reserves and exploitation of resources (Jung, 2009). “From the perspective of indigenous people, transitional justice measures should be designed to open up political space and to extend government responsibility beyond residential school survivors alone” (Jung, 2009). It also provided the chance for the aboriginals to draw on international law, conventions and declarations to make the state take responsibility (Jung, 2009). Now there are three times as many aboriginal children in child welfare agencies care as there were at the height of the residential schools (Jung, 2009). Despite its strengths, the TRC for some “fosters the absence of a more detailed and accountability-promoting examination of the agents and institutions responsible for the injustices” (James, 2012, p.182). The mandate has been identified as weak in regards to political accountability since there is no naming-which, in the Canadian context, would not threaten the stability of the government (James, 2012, p.190). “A more aggressively fault-finding focus on these acts and decisions might serve more effectively to confront Canadians with their historical and on-going complicity in the residential schools agenda” (James, 2012, p.202). It has also been difficult for the TRC to raise awareness despite best efforts (TRC, 2012, p.9). The

different political motives and lack of accountability measures limits the improvement the TRC is capable of promoting.

## **V. Conclusion**

These TCs have focused on changing societal perceptions and knowledge of the past. This can be successful through legitimating practices. Reconciliation also relies on the relationship between the victims, state and society. Earlier traditional TCs covered violations that occurred relatively recently by repressive regimes and focused on violations of civil and political rights.

The reconciliation efforts led by these commissions have employed various ways to address past human rights abuses. They show the importance of the societies' involvement in the process. Civil society organizations played a significant role in establishing South Korea's TRCK, and for providing information. Canada's TRC uses community established events and projects to support its reconciliation initiative. Some of the most successful measures of these TCs have been because they are victim centered. They all recognize the effects of past human rights violations and, through interviews and consultations, make an effort to address them. The two TCs discussed built upon previous reconciliation efforts in their countries, which highlights that reconciliation is a process that takes time. These TCs also contribute to TC study by focusing on historical violations that widen the types of violations addressed. The political and economic stability of these two countries enhanced their commissions' abilities to thoroughly investigate and have legitimacy.

Specifically, each TC contributed a new policy or practice and enhanced previous efforts' transitional justice measures. For South Korea, their historical work focused on violations that occurred during wartime and repressive political rule. The TRCK is important to evolving TC work because it not only addressed violations carried out by its own state, but also by other international actors. The emphasis on changing the historical narrative to change society is also important and shows how the past directly influences the present. Canada's TRC shows that TCs can be established in peaceful, wealthy societies to address past abuses against citizens. The use of events and interviews covering the entire country is important for future TCs to understand the importance of reaching out to as many people as possible for societal reconciliation. They share similar processes with

other TCs, but the historical perspective of human rights violations on society sets them apart.

Despite their contributions to TC development, these commissions are still problematic. It is not possible to have perfect commissions since the effects of their efforts cannot be immediately known. The lack of institutional accountability in these commissions is discouraging. Due to the historical nature of their investigations, one of the only possible ways to redress the past abuses is by having the institutions who perpetrated the violations take responsibility. Besides the government, that has yet to happen from other institutions, such as the military in Korea and federal institutions in Canada. The issue of reconciliation requires significant time to fix. Addressing economic, social and cultural issues needs to also be a priority since they are consistently used in reparative measures. Without considering the violations of these rights, the reconciliation cannot be complete. The nature of the TRCK's and TRC's investigations do to some extent address the social, economic and cultural right violations suffered by communities in their countries.

Canada's narrow focus on the residential school system limits reconciliation since contemporary violations are not addressed. South Korea still retains political divisions and general positive perceptions of past regimes that contributed to economic development despite violations. Proper reconciliation requires the attempted resolution of all issues affecting all parties. In the immediate aftermath of conflict or transitions, there are usually obvious issues that must be addressed. However, with historical abuses, the results and effects of the initial abuses have caused and exacerbated other abuses; not just the current violations need to be acknowledged, but also the initial harms. For all TCs, including these two, carrying out the recommendations made by the TC is important. This may take time to implement, as well as to see the effects, but they cannot be ignored.

By addressing historical human rights violations, these TCs expand the applicability of TC work. The legacy of historical human rights abuses can limit the advancement and development of a society. By not addressing them, states enable the continuation of those violations as well as allowing new abuses. Though it has yet to occur fully in the two



cases discussed above, by encouraging societal involvement, carrying out reparations and recommendations and acknowledging accountability, stable and peaceful societies can address historical human rights violations.

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