

Coping with the Legacy of the Civil War in El Salvador

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Political Background

The history of Central American and South American countries is characterized by recurring conflicts, coups, rebellions and military dictatorships, particularly during the second half of the 20th century. To a major extent, these occurrences were developments of the Cold War and its clashing theoretical doctrines. El Salvador is one country to which these characteristics apply.

Between 1980 and 1991, El Salvador went through a violent civil war which erupted when the introduction of new agricultural and social reforms failed in the late 1970s. The reforms aimed at changing the unequal ownerships on the countryside and at the restriction of the small but mighty “coffee oligarchy”[1] so that the civil war was primarily a social class war fueled by economic inequality and a corrupt political elite. The Salvadorian military suppressed all (preceding) attempts to limit the power of this small elite group. In the late 1980s, it became increasingly clear that the latest striving for a reform had failed. As a consequence, five communist and revolutionary groups joined together in a coalition named “Frente Farabundo Martí para la Liberación Nacional” (FMLN; National Liberation Front Farabundo Martí) which tended to a new Salvadorian society marked by Marxism. In 1981, the FMLN called up the people of El Salvador for an armed rebellion against the Salvadorian regime. The following civil war which lasted 12 years long cost approximately 75.000 lives and led to the displacement and emigration of 1.2 million people out of a population of six million (Paris 2007: 214).

Under the patronage of the United Nations and in cooperation with the Colombian, Spanish, Mexican and Venezuelan Governments, peace negotiations already started between 1988 and 1989. In the following three years of tough negotiations between the FMLN and the Salvadorian Government, several agreements were signed in order to reach peace. The parties agreed on a reformation of the military and the police, the improvement of the legal and electoral system, and the official acknowledgement of Human Rights. By mediation of the United Nation Secretary-General at that time, Javier Pérez de Cuéllar, an extensive peace agreement called “Acuerdos de Chapultepec” (Agreement of Chapultepec) was signed on January 16, 1992. The first post civil war election in March 1994 was won by the Nationalist Republican Alliance with 68% of the votes and Alfredo Cristiani, who was president since 1989, kept his position (Paris 2007: 214 – 16).

Between 1979 and 1993, eleven Latin American countries passed through a transition from authoritarian to democratic governance. But every society that goes through a period of crimes against humanity will sooner or later face the difficult challenge of how to best deal with the past if it enters a phase of transition. Seven of these countries have used a Truth and Reconciliation Commission (TRC) to work through the committed crimes[2].

Based on a proposal of the UN, also in El Salvador the peace agreement included the establishment of a TRC in order to examine the “serious acts of violence that have occurred since 1980 [...] committed by the Government and the FMLN [...] and whose impact on society urgently demands that the public should know the truth” (Report of the Commission on the Truth for El Salvador 1993: 12). The TRC was called the Commission on the Truth for El Salvador (Comisión de la Verdad Para El Salvador, CVES) and operated between July 1992 and March 1993.

This paper examines the main objectives of the CVES and tries to analyze whether it failed in its tasks or whether its

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work resulted in measurable sustainable and positive effects for El Salvador. Subsequent to the provision of some elementary background information about TRCs, this assignment critically reviews the procedures of implementing the recommendations listed in the CVES's final report[3], and discusses especially the reformation of the legislative, executive and judicative branches, the official acknowledgement of the crimes and the victims by the Government and by armed forces, the amnesty law and the implementation of reparations. Based on the assessment of the mode how recommendations of the CVES were implemented, this analysis will elucidate that the CVES indeed partly failed but has also reached significant successes.

Background Information concerning Truth and Reconciliation Commissions

Truth and Reconciliation Commissions were developed during the 1970s as a new instrument for working out atrocities of war. For the first time, a non-judicial justice approach belonging to the field of Transitional Justice (TJ), focused on victims, their experiences, views, needs and preferences.

Even though the first TRC was already implemented in 1974 in Uganda, the concept was not prominent until the mid-1980s (Freeman 2006: 21 – 22). The first globally recognized TRC was set up in 1983 in Argentina for investigating the mass killings and kidnappings that occurred under the previous military dictatorship of the junta Revolución Argentina. Since then, due to an increasing success and the general recognition as appropriate instruments for working through war atrocities, TRCs are nowadays considered key mechanisms within the framework of TJ for “addressing the goals of justice and reconciliation” and as a “prerequisite to announcing the establishment of a new democratic order” (Laplante & Theidon 2007: 228). Probably the most prominent examples are the TRCs[4] in Chile investigating the Pinochet era, and the South African TRC which investigated the crimes committed under the apartheid regime.

Further Characteristics and Objectives of a TRC

Truth and Reconciliation Commissions are defined as state established and authorized independent organs that investigate serious (war) crimes and violations of human rights which were committed during an armed conflict or dictatorship inside of a particular country and within a clearly enclosed and recently ended time period (Freeman 2006: 13, 16). Also, TRCs are no judicial bodies and are generally implemented after or during a period of political transition as a central component aimed at the societal catching up of the past. They usually terminate their work with a concluding report summarizing the incidents of the TRC. Furthermore, a TRC often submits recommendations for the future – concerning, for example, further working through mass crimes, implementation of structural reforms of political and societal institutions and of the military, reparations for victims and other advice for reducing the likelihood of a repetition of an outburst of violence (Hayner 1994: 604). In doing so, they try to be both preventive and restorative. However, their competences are often limited and defined by a general set of laws of a specific state, although they try to operate fairly independently (Freeman 2006; 18).

Popkin and Roht-Arriaza identify four general “overlapping goals: creating an authoritative record of what happened; providing a platform for the victims to tell their stories and to obtain some form of redress; recommending legislative, structural or other changes to avoid a repetition of the past abuses; and elucidating who was responsible and providing a measure of accountability for the perpetrators” (Popkin & Roth-Arriaza 1995: 80). A TRC “can also be used by the new political leaders to demonstrate or underscore a break with the past record of human rights abuses or to obtain or sustain political legitimacy” (Hayner 1994: 604). Thus, the characteristics and objectives of a TRC are often suitable indicators for opening the door toward restoration, retribution and reconciliation in post-conflict situations. But whether a TRC's work is successful and sustainable strongly depends on the respective government and its will to cooperate with a TRC and to support its task. If such framework conditions are not met, the likelihood of a TRC's failure to achieve its tasks strongly rises.

The El Salvadorian TRC: An Analysis of the Entitlement and the Reality

The Findings and Recommendations of the CVES

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After eight months of investigations, the CVES presented its report "From Madness to Hope: The 12-Year War in El Salvador" on March 15, 1993. It documented more than 22,000 complaints out of which 60% involved extrajudicial killings, 25% involved disappearances, 20% involved torture and the balance documented more than one form of violence. Based on the collected testimony, the CVES blamed the Government, the military and their stooges for being responsible for 85% of the committed crimes which predominantly took place in rural areas. Five per cent of them were attributed to the FMLN. Individuals, who were found responsible by the Commission and for whose acts evidence could be documented, were named in the report (Report of the Commission on the Truth for El Salvador 1993: 35 – 36).

Within the scope of its report, the CVES recommended extensive judicial, legal and institutional reforms as well as the dismissal of army officers, Government employees or any other person who was involved and found as being responsible for wrongdoings. However, the TRC did not call for a prosecution of the perpetrators as it doubted the capability of the Salvadoran legal system to execute the prosecutions of persons that were responsible for atrocities.

Concerning the victims, the CVES recommended reparations including material compensation and symbolic measures such as memorials. The TRC considered the establishment of a forum that monitors the implementation of the recommendations as necessary. Moreover and pursuant to the scope of its mandate, the Commission's recommendations were legally binding (Report of the Commission on the Truth for El Salvador 1993: 166 – 177).

The Reform Recommendations

It is important to re-establish public confidence in the administration of justice, politics, police and military after a period of violence as high-level perpetrators are often part of these domains and consequently the populations' confidence in these domains is biased (Minow 1998: 61 f.). One prominent example was the Salvadoran Minister of Defense who was found guilty in the murder of six Jesuit priests. Although a TRC aims at a re-establishment of confidence there is also the danger that it is viewed as a substitute for other actions because it might take human rights violations out of the sphere of judicial actions and thus courts may not pursue any new actions against perpetrators (Popkin/Roth-Arriaza 1995: 289). Due to the high percentage of extrajudicial killings, disappearances and tortures which implied corrupted executive, legislative and judicative branches, the CVES was seeking to "establish and strengthen the proper balance of power among the executive, legislative and judicial branches and to institute full and indisputable civilian control over the military, paramilitary, intelligence and security forces" (Report of the Commission on the Truth for El Salvador 1993: 163 f.).

Based on empirical findings, the TRC notably considered and advised changes in the judicial branch. The CVES proved that especially the Supreme Court (SC) had a monopolistic control over the entire judicial system as it has been responsible for the careers of judges and lawyers. Therefore, both judges and lawyers depended on the privilege of the SC and thus did not criticize its work. For this reason the SC was "well known for its political bias" (Hayner 2002: 165) and actively tried to prevent any investigations concerning war crimes committed by governmental forces. In addition, the pressuring and bullying of judges and lawyers investigating crimes in which governmental officials have most likely been involved, was order of business. As a consequence and beside other smaller reform recommendations, the CVES particularly advised to drastically reduce the powers vested in the SC, especially the President's, to exchange the whole SC and to take away the control over the certification and supervision of judges and lawyers (Hayner 2002: 165). This has only been partially implemented. The new right-winged Government reacted with disdain and ridicule against the CVES and the Commission's proposal for an immediate replacement of the SC and claimed that the recommendations contravened the constitution.

However, the justice terms expired in 1994 and surprisingly an entirely new SC was appointed. The CVES' demand for the exchange of the SC judges can probably be seen as impetus for the new appointments. Professional experience and a clean background were now also significant indicators in the selection process for the newly constituted SC (Popkin 2001: 16).

The CVES also recommended to dismiss all members of the military and civil services whose involvements in acts of violence has been proven, and to keep them away from positions related to public security or national defense for no

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less than 10 years. The Government reacted coldly and claimed that the CVES overstepped its mandate. However, around 200 senior officials were removed from the army, and members of the high command for whose responsibility for crimes the CVES had provided conclusive proof, have been retired (Sanghera 2008: 53).

Official Acknowledgement of Wrongdoing

The final report of the CVES blamed high-ranked militaries and politicians for being responsible for 85% of all committed crimes during the civil war and thus suggested to reform the armed forces, to bring them under civilian control and to reform the national police (Report of the Commission on the Truth for El Salvador 1993: 183). But the military failed to acknowledge the past and to take responsibility for several atrocities documented within the CVES' report. Shortly after the publication of the report, the Salvadoran military presented a long statement on national television condemning the final report as being "unfair, incomplete, illegal, unethical, biased and insolent" (Hayner 2002: 40). The statement was read by the minister of defense who himself was made responsible for certain crimes in the report but who enjoyed the full support of the military high command. Additionally, the minister of defense blamed the Commission for failing to grasp and to document the extent of the communist threat in El Salvador (Hayner 2002: 40). Two years later, the new minister of defense defended this position by saying that "the armed forces have nothing to apologize for, since their conduct was consistent with the principles of a war in which a clandestine enemy attacks regular military patrols" (Kaye 1997: 706).

The political elite as well failed to accept responsibility for at least some of the committed crimes and did not offer an apology to the people of El Salvador. The president at that time, Alfredo Cristiani, even considered it as a mistake to follow the TRC's work and to publish the final report, as a national reconciliation could only be achieved through forgiving and forgetting the country's history and the people of El Salvador would seek such a completion of investigating the past (Hayner 2002: 40).

The reactions of the military and political elite demonstrate that they were full of disdain vis-à-vis the CVES and its recommendations. Without a sense of responsibility for the committed crimes, they instead tried to ignore and cover them, and to seal the past as it happened in post-Francoist Spain. The hasty ratification of an amnesty law only five days after the final report was published represents another parallel to the Spanish case and emphasizes the disrespect vis-à-vis the CVES and the victims. It set the final seal at that time on any further attempts to investigate the past and to reach some form of accountability. This implies that the TRC and its mandate did not enjoy enough power and could not impose its authority. The weak mandate and the poor support provided by the international community (e.g. a rapid lack of funds and a quickly decreasing international attention) to the CVES surely supported the poor position of the CVES.

The Commission's Decision to name Names and further Prosecutions

The naming of names is a controversial issue in the TJ literature (e.g. Freeman 2009, Hayner 2002, Minow 1998, Teitel 2000). Field experts' opinions also differ on this question – the CVES did not make an exception. A member of the Chilean TRC commented that a TRC should never publish names of perpetrators, as doing so would invade the judicial sphere and denies those names their right to do due process protections (Popkin 2001: 15). The former president of the Inter-American Commission of Human Rights (IACHR) argued that a TRC should never publish names if there is a chance of seeking justice in the courts. Hayner (2002: 115 – 120), on the other hand, argues that beside such justified objections, it is, however, a necessity to make the full truth known if the TRC is the only vehicle to address impunity – as it was the case in El Salvador, due to the lack of democratic institutions and unbiased and qualified staff.

When the commission started its work, President Alfredo Cristiani and even the military elites presented themselves as supporters of the identification of those in the Government and the military who are responsible for committed crimes during the civil war. They even reached a consensus to publish the names of proven perpetrators. But when the CVES found evidence against high-level Government officials and militaries such as the minister of defense at that time, General Rene Emilio Ponce, this attitude drastically changed. The CVES found evidence that the minister and most of the High Command militaries ordered the killing of six Jesuit priests and were involved in further

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crimes such as disappearances (Hayner 2002: 115). As a consequence and prior to the publication of the final report, the Government heavily pressured the CVES not to include the names of the perpetrators in its final report. But the Commission saw it as its obligation to name the names of perpetrators if it wanted to fulfill its mandate and to make the complete truth known and thus to counteract the impunity which reigned during the civil war. The CVES found confirmed evidence against over 80 individuals and published their names in the final report (Kaye 1997: 701). In its recommendations, however, and despite the naming of those individuals, the CVES did not call on the justice system to undertake prosecutions although it recognized the need for them. The reason for this was that the CVES considered the judiciary incapable of fulfilling the requirements for fair and impartial court proceedings and thus doubted that justice could be done (Report of the Commission on the Truth for El Salvador 1993: 168). Moreover, the TRC acknowledged public morality demands for a prosecution of responsible persons but commented that the recommended reforms had only been partially implemented and that the judiciary was still run by people who played significant roles during the civil war. Thus, the TRC added that “the only judicial system which the Commission could trust to administer justice in a full and timely manner would be one which had been restricted in the light of a peace agreement” (Report of the Commission on the Truth for El Salvador 1993: 168).

However, the peace agreement was brokered between the Government and the FMLN. Interestingly, the Government's ARENA party won the first democratic election in 1994 with more than two-thirds of the votes despite the fact that it was well known that the Government whose members already ruled during the civil war had no further interest in revealing the crimes of the past since high-level politicians or military officers have actually been involved. The overwhelming number of 68% of the votes with which Cristiani won the election can be interpreted as a support of the Government's position by the population not to further investigate and to reach reconciliation by quickly covering the past. This position seemed to be generally accepted by El Salvador as well as by the international community and the UN, which constantly supervised the peace process. Despite smaller concerns by the latter two, forced tribunals by the UN have never been considered for El Salvador (Paris 2007: 216). Like in post-Francoist Spain, all major players silently agreed upon burying the past, choosing peace over justice. Although the TRC was confronted early with the question whether to follow peace or justice and decided to aim at a compromise, it did not intend to go such a way of impunity despite its concerns regarding the above mentioned lack of judicial capabilities (Reiter 2011). However, the election results indicate that the TRC was not able to widely communicate the necessity of a true working through of a past.

The Amnesty Law

Five days after the publication of the final report and after rumored threats of a military coup, the Salvadorian legislature passed a general amnesty law that covered all crimes that related to the civil war and which also eliminated all civil responsibility for these crimes. As the Government and the military elite tried to cover up the past, they described the amnesty as the embodiment of reconciliation and called for an end to the discussion claiming that the amnesty is the right way for the society to move forward (Rosenberg 1999: 93).

To put the past behind in favor of the future is a common but controversial argument for amnesties, also among the TJ literature in which it is often conceived as the ‘Peace versus Justice’ debate. States but also scholars usually justify the release of amnesty laws by claiming that otherwise (armed) actors, e.g. military officers or high-level politicians, would feel threatened by the reforms as they would need to fear prosecutions in a democracy and thus would try to obstruct the democratization process. Amnesty laws thus act as a carrot to bring such actors to the negotiating table and to de-arm them by making them legally invulnerable to investigations (Reiter 2011, Linz, Stepan 1996).

Although such results are of course welcomed in peace processes and especially contemporary research claims that amnesties can be crucial in securing the political bargains that are necessary for a successful transition (Snyder & Vinjamuri 2003), the problematic is obvious as well. Critics emphasize that the unconditional release of amnesties is also a miscarriage of justice, reinforces impunity and undermines the burgeoning rule of law. Furthermore, amnesties are questionable because they eliminate the potential of legal redress for victims. On more complex and political and legal grounds, this signifies that amnesties are *inter alia* challenged by the argument that there is an individual accountability for atrocities according to international criminal law. Moreover, there is also the right to justice and the duty to prosecute according to human rights law (this is e.g. codified in the Genocide Convention, the Geneva

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Convention 1949, the Convention Against Torture) (e.g. (LaPlante, 2009, 931 – 935; Hayner, 2002: 90; Roht-Arriaza, 1990: 455 ff.; Scharf, 1996: 42 ff.). Also, Minow (2000: 25) argues that “to respond to mass atrocity with legal prosecutions is to embrace the Rule of Law.” He emphasizes the importance of redressing harms with the application of judicial norms, and also the importance of a just and independently acting administration (Nilsson 2005: 11 – 12).

The CVES was not completely against the amnesty and recognized its reconciliation effects, but objected that an extensive amnesty fails to address the victims. Complaints from Salvadorian NGOs about the amnesty to the SC were rejected as the SC termed the amnesty a political question and not a judicial one (Popkin 2001: 13). The Inter-American Court for Human Rights even argued that the amnesty law contravenes the Government’s obligation to further investigate and prosecute perpetrators being responsible for human rights violations and thus explicitly stated that the CVES does not relieve El Salvador of this obligation (Popkin 2001: 13). The UN secretary-general at that time, Boutros Ghali, was not concerned about the amnesty itself but about the hasty passing of it as he would have preferred creating a broader “national consensus” about the amnesty law before releasing it (Kaye 1997: 709). This also indicates that the hasty ratification of the amnesty did not aim for a nationwide reconciliation but rather for a protection of the political and military elite against prosecutions. The international community accepted the amnesty tacitly and relied on the work of the CVES.

It is dubious whether the release of the amnesty law can be reproached to the CVES as a failure in redressing the victims. The CVES would have had the power only if it had enjoyed extensive support by the international community and mandate, which could have applied pressure on the Government. In retrospect, the amnesty had no positive effects regarding the reconciliation of the country. Today, the majority of El Salvadorians believe that it is not possible to do anything more to cope with the past due to the Government’s position of burying the past. Although, they would welcome a new dealing with the past (Popkin 2001: 13). In the year 2000, however, the Salvadoran Supreme Court decided that the amnesty law was not unconstitutional per se, but found that lower courts now must analyze any cases involving crimes that might be in conjunction with the amnesty in order to determine whether the amnesty can constitutionally be applied to the case at issue.

The Implementation of Reparations

Reparations as economic or symbolic acts and as governmental policies can help to reach reconciliation by restoring the dignity of victims and the social relationships which were breached by the atrocities (Minow 1998: 91). This form of redress is usually called restorative justice and aims at emphasizing the humanity of both victims and offenders. It shall rebuild and reunite a community to which perpetrators and victims belong by taking precedence over punishment in order to gain societal reconciliation.

The CVES recommended in its final report to pay reparations for victims, including memorials and monetary compensation. Reparations provide direct moral or material benefits to victims whereas the jailing of perpetrators provides only indirect benefits for victims; therefore, reparations may play a more significant role from the standpoint of the victims. In its final report the TRC recommended as material compensation the establishment of an autonomous and special fund in order to “award appropriate material compensation to the victims of violence in the shortest time possible” (Report of the Commission on the Truth for El Salvador 1993: 176). The CVES suggested an appropriate contribution from the State but also noted that the poor economic condition of the country may prevent such action. Therefore, it advised that the national community, “especially the wealthier countries and those that showed most interest in the conflict and its settlement”, should establish this fund and that it should be endowed with not less than one per cent of all international assistance for El Salvador (Report of the Commission on the Truth for El Salvador 1993: 176). But neither the Government nor the international community created a fund for the payment of reparations to victims and until today no serious attention has been paid to the issue of reparations (Sanghera 2008: 54).

The government later tried to justify its inaction by citing the report that noted that El Salvador lacked the resources to provide reparations and displaced its responsibility on the international community to finance the reparations. But the justification of the government’s effortlessness by citing and using the report as an excuse is not tenable when looking at the post-war economic conditions. It is indeed a fact that the economy suffered under a recession until

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1991. But the liberal economic policy of the government after the end of the civil war led to high growth and low inflation rates so that the Gross Domestic Product climbed between 1992 and 1996 by around six per cent per year, on average. The World Bank called this economic phenomenon a remarkable success story (Paris 2007: 217). The mutual shift of the responsibility on somebody else's shoulders, whether it is the Salvadoran Government or the international community, and the fact that the reparation fund has never been created implies that there was a general lack of willingness to pay reparations at all, although it can be assumed that a budget was even domestically available due to the ten years of high economic growth during the 1990s. Paying reparations would have meant to officially acknowledge victims and their experiences during the civil war, which would have kept the debate about the past and how to further deal with it warm. Presumably, it would have also prevented a rapid oblivion of the past the government, and thus it preferred more to ignore the unresolved questions like how to deal with the victims. The fact that neither the material nor the moral reparation recommendations in order to redress victims have been implemented suggests that the TRC failed although the implementation of such was surely restricted by its weak mandate and authority.

The TRCs Work to Cope with the Legacy of the Past: Assessment and Conclusion

The implementation of the peace accords and within their framework the establishment of a TRC undoubtedly had positive effects on El Salvador. Considering the fact that the Salvadoran CVES has been established and operated although it experienced a rapid shortage of funds and did not receive any material or moral support by the Salvadoran Government and only little support by the international community, can be already considered as a success. After eight months of investigations, it also published its final report which provided an accurate and thorough recording of the conflict and, in accordance to its mandate, made legally binding recommendations. Although the publication of the final report was a success and strengthened the trust in the Commission's work, the report has not been widespread until today, and the majority of the Salvadorians never had access to it. Moreover, the extensive amnesty law prevented judicial measures against those high-level perpetrators mentioned in the report so that there were no further prosecutions or even legal investigations. However, the official and public documentation of responsibility of particular persons did lead to an unprecedented moral condemnation of the armed forces and internationally damaged the reputation of individuals such as the one of minister of defense at that time. It also needs to be emphasized that the CVES was so far only the second TRC in history that published the names of the individuals responsible for crimes and only then if "sufficient evidence" (Kaye 1997: 701) was available. Despite the prevention of judicial convictions which was also due to a dubious separation of powers of governmental institutions, the CVES morally sanctioned individuals who were responsible for committed crimes and governmental institutions and thus brought some consolation to the victims' families (Kaye 1997: 701).

The expressed doubts by the CVES regarding the capability of the judicial branch to guarantee fair and effective trials so that ultimately the CVES did not recommend any prosecutions at all, can also be seen more as a success than a failure as it revealed the injustice, capriciousness and bias of the institutions and thus publicly questioned their legitimacy. This finally resulted in some institutional and staff changes. Furthermore, the publication of the final report resulted in a dismissal and retirement of several military officials and civilians that worked in the public or the judiciary administration and who were responsible for human rights atrocities.

Although the recommendations of the CVES were legally binding for the government, it did not have the expected positive effects on the implementation processes, and due to a lack of willingness of the political leaders, the reforms were not implemented to the extent the CVES suggested. By recommendations that were designed to "satisfy victims' demands for justice and to encourage Salvadoran society as a whole to acknowledge the crimes" (Kaye 1997: 706), the TRC tried to promote reconciliation. The CVES's recommended reparations have never been implemented and the Salvadoran Government even tried to disavow its responsibility. But as Rotberg (2000: 12) writes, the TRC process is complete only "when victims obtain financial redress as well as knowledge ("truth"), and a moral sense of completion". The failed implementation of reparations, which is linked to the denial of an official acknowledgement of wrongdoing by the political and military elite, is especially bitter for the victims when considering that judicial justice has been denied as well due to the release of an amnesty law. It is obvious that with respect to reparations and the armed forces continuing to deny their guilt and to offer an excuse, both the government and the CVES failed.

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In sum, the CVES actually reached some achievements, especially regarding the improvement of the legislative, executive and judicative branches and the spreading of the truth. However, the TRCs aims in terms of fostering reconciliation were only modest. The denial of an official acknowledgement, explanation, reparations and the amnesty law made it difficult for the families of the victims “to simply forgive and forget the crimes” (Kaye 1997: 716). Nonetheless, according to Minow (Rotberg 2000: 17) since truth contributes more to reconciliation than justice, the TRC reached a decisive objective. Yet, it remains open and most likely controversial which aim of a TRC should enjoy the highest priority as the national redressing of victims. In the end, the El Salvadorian politics regarding the cooperation with the CVES and the implementation of its recommendations is exemplary for the behavior of post-conflict governments who did not undergo a true transition. As Hampson says (2001: 48), the unwillingness of post-conflict governments to cooperate and to deny a rehabilitation of victims is often the result of the wrong perspective that a TRC is a “substitute for any other official effort to cope with the consequences of the civil war”.

Benchmarking of Indicators of Success of the CVES

Indicator	Implemented?	Explanation
CVES was established	Yes	Due to the UN brokered peace agreements both the Government and the FMLN agreed on establishing the Commission on the Truth for El Salvador, mandated by January 16, 1992.
CVES actually operated	Yes	Operated between July 1992 and March 15, 1993 (8 months).
CVES published a final report	Yes	The Commission’s report “From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for EL Salvador” was presented on March 15, 1993.
Final report was officially acknowledged and widespread	No	The Government and the armed forces rejected the final report. Until today the report is not widespread.
CVES named names	Yes	Within the report the CVES published the names of over 80 persons found as being responsible for committed crimes.
Political leaders acknowledged the victims and the crimes and apologized	No	The political and military elite failed to acknowledge the victims and to accept responsibility for the crimes. They also did not offer an excuse.
Legally binding Recommendations	Yes	According to its mandate the recommendations of the CVES were legally binding.
Payment of Reparations	No	Neither has been a fund established for the payment of reparations to victims nor have been any memorials built.
Reformation of the legislative, executive and judicial branches	Partly	Judicial reforms were not implemented to the extent the CVES suggested. 200 senior officials were removed from the army and members of the high command named in the final report were retired.
Reconciliation of the Country	Partly	No redressing and official excuse to and acknowledgement of the victims. No payment of reparations. But a spreading of the truth.

Bibliography

Freeman, Mark: *Truth Commissions and Procedural Fairness*, Cambridge University Press, 2006.

Hampson, Fen O.: Conclusion: Assessing the Results of the Peace Process, in: *Studemeister, Margarita S. (ed.): El Salvador: Implementation of the Peace Accords*, United States Institute of Peace, S. 47 – 54, 2001.

Hayner, Priscilla B.: Fifteen Truth Commissions – 1974 to 1994: A Comparative Study, in: *Human Rights Quarterly*, Vol. 16/4, 1994, S. 597 – 655, 1994.

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Hayner, Priscilla B.: *Unspeakable Truths: Facing the Challenge of Truth Commissions*, London, 2002.

Kaye, Mike: The Role of Truth Commissions on the Search for Justice, Reconciliation and Democratization: the Salvadorian and Honduran Cases, in: *Journal of Latin American Studies*, No. 29, p. 693 – 716, 1997.

Laplante, Lisa J.: 'Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes', in: *Virginia Journal of International Law Association*, Vol. 50, No. 1, 2009, pp. 915 – 987.

Linz, Juan and Stepan, Alfred: *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe*, Baltimore: Johns Hopkins University Press, 1996.

Minow, Martha: *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Boston, Massachusetts, 1998

Moreno, Dario: *The Struggle for Peace in Central America*, Miami University of Florida Press, 1995.

Naomi, Roht-Arriaza: 'State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law', in: *California Law Review*, Vol. 78, No. 2, 1990, pp. 451 – 512.

Nilsson, Karl: *Truth Commissions as a tool for consolidating democracy. A case study of the South African Truth and Reconciliation Commission*, Lund University, 2005.

Paris, Roland: *Wenn die Waffen schweigen. Friedenskonsolidierung nach innerstaatlichen Gewaltkonflikten*, Hamburg, 2007.

Popkin Margaret/Roht-Arrizaza, Naomi: Truth as Justice: Investigatory Commissions in Latin America, in: *Kritz, Neil J. (ed.): Transitional Justice: How emerging democracies reckon with former regimes*, Washington D.C., S. 262 – 289, 1995.

Popkin Margaret: Building the Rule of Law in Post-War El Salvador, in: *Studemeister, Margarita S. (ed.): El Salvador: Implementation of the Peace Accords*, United States Institute of Peace, S. 10 – 20, 2001.

Popkin, Margaret/Naomi Roht- Arriaza: Truth as Justice: Investigatory Commissions in Latin America, in: *Law and Society Inquiry; Journal of the American Bar Foundation*, Vol. 20/1, S. 79-116, 1995.

Reiter, Andrew (2011): *'Amnesty for Peace? Analyzing the Impact of Amnesties in Civil War'*, Paper Prepared for the Potential Role of Transitional Justice in Active Conflicts Conference, The Minerva Center for Human Rights, Hebrew University of Jerusalem, Jerusalem, Israel 13 – 15 November, 2011.

Rosenberg, Tina: What Did You Do in the War, Mama?, in: *New York Times Magazine*, February 7, 1999.

Rotberg, Robert I.: Truth Commissions and the Provision of Truth, Justice, and Reconciliation, in: *Rotberg, Robert I.; Thompson, Dennis (ed.): Truth V. Justice: The Morality of Truth Commissions*; Princeton University Press, S. 3 – 22, 2000.

Sanghera, Aman: *Designing A Truth Commission For Post-Conflict Darfur: Lessons Learned From El Salvador and Sierra Leone*; Simon Fraser University, 2008.

Scharf, Michael: 'The Letter of the Law: The Scope of the International Legal Obligation to Prosecute Human Rights Crimes', in: *Law and Contemporary Problems*, Vol. 59, No. 4, 1996, pp. 41 – 61.

United States Institute of Peace: *"From Madness to Hope: the 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador"*, 1993.

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Zinecker, Heidrun: *“El Salvador nach dem Bürgerkrieg. Ambivalenzen eines schwierigen Friedens“*, Frankfurt am Main, 2004.

[1] During this period coffee was the most important agricultural export product but only a few families had access to the knowhow of the cultivation of coffee. Thus only fourteen families controlled and owned the coffee plantations, the coffee's processing and trade. They as well controlled all bigger banks and invested big amounts into the industrial and service sector. Therefore, a middle class or a strong work force could not be established cf. Moreno 1995; Zinecker 2004: 24

[2] Argentina (1984), Bolivia (1984), Uruguay (1985), Chile (1991), Honduras (1993), El Salvador (1993), Haiti (1995)

[3] „From Madness to Hope: the 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador“. The final report is available at: <http://www.usip.org/files/file/ElSalvador-Report.pdf>

[4] Until today 51 TRC's have been established and numerous had positive and sustainable effects for the victims, the society and the country itself. A complete list of all TCs from Uganda 1974 to Kenya 2009 is available at: http://www.usip.org/resources-tools/latest?filter1=**ALL**&filter0=**ALL**&filter2=2222&filter3=**ALL**&filter4=**ALL**

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