

*Investigating Abuses and Introducing Safeguards in the  
Democratization Process*

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### Preface

In the two years that have elapsed since The Carter Center hosted "Investigating Abuses and Introducing Human Rights Safeguards in the Democratization Process," the issues we discussed then have become even more pivotal as our views of governance and the rights of individuals and of state sovereignty itself are being fundamentally transformed. It was our view that, although the Center did not previously publish the seminar proceedings, making them available at this time would serve to further inform those who are working in this field by providing insightful observations by many human rights activists, journalists, and academicians who were involved directly in political transitions in their own countries and by others who studied these events from the outside.

We hope that the information and collective experience represented at the July 1992 seminar will contribute to the important debate concerning the difficulties inherent in coming to terms with legacies of oppression as societies attempt to remake themselves in favor of participatory governance and human rights principles. The work of The Carter Center has benefitted tremendously from the input of those who attended the meeting as is demonstrated by recent developments in our Human Rights Program. In particular, the following two initiatives were discussed and greatly influenced by our esteemed colleagues.

For nearly two years, our staff have been working with various governmental agencies and nongovernmental organizations in Ethiopia toward establishing and strengthening institutions and activities that hopefully will serve to prevent human rights abuses from recurring in that country. Also, we are pleased to announce the establishment of the International Human Rights Council. This body will serve as a collaborative forum for prominent human rights leaders and professionals to develop strategies for making greater advances in the field of human rights as we approach the next century.

In short, the proceedings in this report reflect our commitment at The Carter Center to bring together individuals from various perspectives and disciplines to examine new ways to promote and protect the rights of those among us who are most vulnerable.

## **Foreword**

Many countries throughout the world currently are undergoing a transition from authoritarian rule to multiparty democracy. In these countries, much political debate has centered on two related issues: how to deal with past human rights abuses and how to prevent abuses from occurring in the future. While there are no easy answers to these difficult questions, the international human rights community must begin to develop firm responses and offer practical guidance to newly elected governments that have no choice but to answer them.

In numerous countries undergoing a transition process, human rights activists and journalists have been at the forefront of campaigns to initiate public debate and to inform civil society about these problematic issues. The newly independent press also has begun to investigate past abuses that previously had gone undocumented. These efforts often have created the first forum for discussion about past abuses and represented initial steps in the prevention of future violations. Civil society, therefore, has been a crucial actor within countries

that have emerged from repressive periods. The following conference report is designed both to summarize the thinking of the participants on these issues from a historical and comparative perspective as well as provide information to develop concrete plans to assist governments and civil society in countries beginning a transition process.

Several new governments that either have completed or are in the process of democratic transition have created commissions of inquiry into past abuses in an attempt to cope with the fundamental dilemmas associated with a repressive history. While there still is much debate within the international human rights community about the effectiveness of such commissions, it is clear that their potential impact is significant. A number of these commissions have evaluated whether government and security force officials who committed human rights violations should be held accountable or whether amnesty is the only answer when civilian authority has not been established completely. In addition, new governments also have had to develop and maintain mechanisms for documenting and preventing the occurrence of future human rights abuses. As more governments undertake the process of coming to terms with a repressive past, prevention takes on the utmost importance. Thus, the international human rights community and the press must respond to government initiatives by developing strategies that encourage and support the rule of law and long-term human rights protection.

During the two-day seminar that took place on July 6-7, 1992, at The Carter Center, panelists and other participants attempted to formulate such a response. The Carter Center of Emory University's (CCEU's) Human Rights Program brought together representatives from the press, human rights organizations, academia, government agencies, and commissions of inquiry from such countries as Argentina, Chad, Chile, the Philippines, and Uganda. Also, representatives from other countries currently facing the challenges of

democratic transition as well as U.S.-based human rights leaders, academics, and professionals participated as observers and contributors.

This document is a summary report of the proceedings. Part I of this report contains transcripts of the introductory remarks to the conference. These include a welcome address by former President Jimmy Carter, who opened the proceedings with comments concerning his hopes for the outcome of the seminar and the possible future role of The Carter Center in the field of human rights prevention, and a presentation by Jamal Benomar, then director of CCEU's Human Rights Program, titled "Confronting the Past: Justice After Transitions."

Part II of this report provides summaries of the panelist presentations and the discussion that followed each session of the conference. The three sessions addressed the following topics: (1) the debate over whether to provide amnesty for human rights violators; (2) the successes and failures of commissions of inquiry; and (3) the goals of human rights work in the post-repressive era. Finally, Part III of this report contains specific recommendations for future action proposed by President Carter and a brief description of the follow-up activity undertaken by CCEU's Human Rights Program.

## **Part I: Introductory Remarks**

### **Welcome Address**

*by Jimmy Carter*

*39th President of the United States*

I would like to welcome this distinguished group. I am impressed with the character of the participants, the substantive contributions that you can make, and the past history that you have forged in the human rights agenda throughout the world. It is an honor for us to have you assembled here at The Carter Center.

## **A Commitment to Human Rights**

At The Carter Center, we abide by three basic rules. First, we try not to duplicate what others are doing. Second, we are nonpartisan-bipartisan-in totality. And third, we try to deal only with action programs. Unless we feel that a direct *action* result will be forthcoming from a conference or session, we do not undertake it. So, out of this seminar, we hope there will evolve action that will be of benefit in the human rights field.

When I became president, I announced quite early that a cornerstone of our country's foreign policy would be predicated on human rights. Every one of my ambassadors throughout the world was my personal human rights representative. Every U.S. embassy in the world was a haven for those who suffered human rights abuses from their own governments. And I stayed personally involved in learning the situation concerning human rights in all the countries with which I dealt. There was never a leader who came to the Oval Office or to the conference room to meet with me who did not know that human rights would be on the agenda. Our relationship, and even the relationship between our two countries, was predicated, to a substantial degree, on the human rights situation in that nation. I still have a deep interest in this, of course, and that is the reason that I have been so eager, through the work of the Human Rights Program, to convene this conference.

Obviously the definition of human rights is broad. There is no way to separate the various elements of human suffering, one from another. One of the speeches that I made a couple of years ago when we gave our annual human rights award (*The Carter-Menil Human Rights Prize*) concerned war and the human rights abuses that derive from international conflict, mainly from civil wars. Hunger, deprivation of housing, lack of medical care, and loss of freedom are all just as important as incarceration without trial or torture in prison, and almost as

important as execution of those not guilty of crimes of violence. So the gamut-the definition or the elements-of human rights obviously has to be quite broad.

At The Carter Center we have a limited Human Rights Program. We work in close cooperation with the great human rights organizations that are represented here: Amnesty International, Human Rights Watch, Lawyers Committee for Human Rights, Physicians for Human Rights, and others. This has been a great support for our limited program, and we work intimately with them. We intercede on occasion in key cases of a seminal character. I go directly to the leader of a country within which the human rights abuse is taking place-quite often personally, but more often through direct emissaries or messengers-to try to induce that leader to correct the alleged human rights violation. I do not always claim that I know the facts. But I repeat to him or her that it has been reported to me that human rights violations are taking place in that country, that I am deeply concerned about this, and that I know it is contrary to the laws and principles of the nation. I do not know if it is an accurate report, but I request that the leader investigate the allegation, let me know if it is true or not, what corrective action has taken place and, when appropriate, ensure that Amnesty International or the International Red Cross go in and certify that the human rights abuse has been corrected.

We have had some success. We always do this-without any publicity at all. In a few cases, the leader of a nation has announced that a certain number of condemned prisoners have been released or their execution commuted because of my intercession. But that was their initiative and not mine.

It is very enlightening and somewhat encouraging to realize how crucial it is to a nation to have an acceptable reputation in human rights. When there is a threat of exposure, when there is a threat of focusing worldwide attention on a human rights abuse, it is a devastating threat to that country. Quite often, these nations are dependent upon goodwill from other countries-grants, investments, loans,

tourism-for their very economic life. And silence is what the human rights oppressors want most. They do not want to be exposed; they do not want to be condemned. And, obviously, what those who suffer feel most is silence from the international community and, I'd say, particularly from Washington. That public condemnation, that public exposure of human rights crimes is the most powerful weapon that we have available to us.

### **Shaping a New Pro-Active Commitment**

I have been filled with admiration for what is done by Amnesty International, Human Rights Watch, and others. They are primarily involved in investigation, in reporting, in intercession, in education of the public, and in marshaling support for their programs. That is very good. But in most cases this is a very limited factor on a global scene, because they have limited resources. Quite often their voices are not heard. And, obviously, most of their emphasis has been on reacting to human rights abuses after they take place. I spend a lot of my time dealing with the incarceration of *a* single lawyer in a country or, perhaps, the shutting down of *a* single weekly newspaper in a country, when there may be literally thousands of people who suffer much more serious human rights abuses whose plight is not publicized.

My hope is that out of this conference-learning from you and from your experiences, successes, as well as failures-we can evolve a much more effective international commitment that will not only correct existing human rights abuses, but prevent them. We would like to be pro-active and not just reactive. This has not been successfully done in the past. Quite often, there has been an excessive dependence on individual, often isolated, often inadequate, private organizations to deal with this serious problem. My hope is that we can correct that failure, or that lack of an adequate commitment to human rights. (See Page ??? for Carter Center activities in this area.)

It is not an impossibility. There is a burning interest in the human rights issue. And there are examples of coordinated approaches that have been successful. I will just give you two or three quick examples that relate to The Carter Center. We have the Conflict Resolution Program, which monitors conflicts in various parts of the world. There are now about 130 of them, which we monitor on a daily basis, using mostly undergraduate or graduate students. But we also have the International Negotiation Network (INN), a group of leaders from around the world who are respected and whose voices individually are quite strong but collectively are much stronger. And we try to deal with those conflicts, most of which are civil wars, from that foundation of added strength. And when we have a particular problem, say in Liberia, we can ask the members of our INN Council of eminent persons to go in. Lisbet Palme, Marie-Angélique Savané, and I have been to Liberia to see if there was some way that we could alleviate that war-torn situation and bring about democracy and peace.

*"My hope is that out of this conference-learning from you and from your experiences, successes, as well as failures-we can evolve a much more effective international commitment that will not only correct existing human rights abuses, but prevent them," said former President Jimmy Carter as he welcomed participants to the July 1992 conference organized by The Carter Center of Emory University's Human Rights Program.*

Another example of this type of leadership is the Council of Freely Elected Heads of Government. Robert Pastor is executive secretary of the Council, and we now have 24 members in our group, all of us having been elected freely to lead our governments-some of us still incumbent, some of us no longer in office now. And when there are events like the Panama election or the Nicaragua election, or the election in the Dominican Republic or Haiti, we are able to send in two or three, sometimes even more, leaders who are familiar with democracy and freedom. We have been through the ordeal of the learning process of an election and

collectively can add our stature, our experience, and our backgrounds to bring about some redress of grievances concerning human rights, to guard against dangers to an embryonic, youthful fragile democracy, and to strengthen the processes there. Again, we try to do this with minimum publicity.

### **Collective Prevention of Future Abuses**

This is what I hope might come out of this conference: a small group of advisers who collectively can address the broadest element of human rights. I would like also for us to shift our attention-and this is where you need to give us maximum advice-to the prevention of human rights abuses. We have a new world now with the advent of Mikhail Gorbachev, with the end of the Soviet Union as we knew it, with the end of the Cold War as we knew it, with the emergence of democracy and freedom in Eastern Europe and in the former Soviet Union, with emerging democracies in other places, with the decline of communism. We have an opportunity to build upon those newly formed governments and to embed within their structure-similar to the Constitution and Bill of Rights of the United States and our basic laws, and predicated on the international standards of human rights-protection of citizens that they have never known before.

I think this group could very well put together model bills of rights, model laws, and model organizational structures, including ombudsmen and investigative committees. How do you deal with war criminals? How can a new government prevent future human rights abuses that might have been suffered by those who presently have gained power primarily because of the human rights abuses of the past? How can that happen? This is a very complicated thing. Several of our group from The Carter Center have just returned from Ethiopia where President Meles Zenawi is struggling with the aftermath of the Mengistu regime. At one time, 10,000 people who had committed serious crimes under the previous regime were held as war prisoners. We have been there to help President Meles, at his request, to put together a proper means by which these prisoners might be

released, if possible, and whereby a new judicial system might be established with an independent judiciary.

The point is that can be done in the initial stages, it is much less likely that human rights abuses will take place later. Once it is convenient for a regime that might be doubtful or paranoid to begin to abuse human rights, it is almost impossible to undo the damage that has been done. But in a preemptive way, if we could provide this kind of assistance, it would be very helpful. Obviously, in Eastern Europe and the newly emerging democracies there, there is a need for an international group of stature and sensitivity to be available to give advice of a technical and legal nature on how these kinds of things might be done. How former enemies can be accommodated; how even the guilt of those who are successful might be addressed; and how guarantees of people might be embedded within the constitutional laws, administrative procedures, and institutions of a new government or a new country. These are the kinds of things that we hope might be possible in the future. (See **Page 38** for information on the International Human Rights Council.)

Again, let me express my deep thanks to you for coming. I think that we will share a very interesting couple of days. And I know that I need not urge this group to be frank and outspoken, because if you were not that way, you would not be here. Some of you are human rights heroes for me. I have been filled with admiration for what has happened and what you have done in your own countries. Sharing the mistakes and needs of the past, the successes of recent days, and the hopes and dreams for the future can be an inspiration to us all. I look forward to working with you and hope that we can have a substantive result to this conference that will help to prevent human rights abuses in the future. Thank you very much.

*Part I: Opening Presentation*

**Confronting the Past: Justice After Transitions**

*by Jamal Benomar*

*Director, Human Rights Program*

*The Carter Center of Emory University, 1992-93*

In many ways, human rights have been at the center of the democratic revolution that has touched every part of the globe over the last few years. Although the democratic tide has run very strong, emerging democracies still face formidable challenges in establishing the rule of law and creating solid guarantees for human rights. These democratic governments often are successors to dictatorial regimes that practiced such gross human rights abuses as extrajudicial executions, "disappearances," systematic torture, and secret detention. The problem facing these newly democratized countries is how to treat those who were guilty of perpetrating such abuses under the old regime. The difficulty lies in achieving a just solution that is acceptable to a long-suffering population and that steers clear of both witchhunts and whitewashes. However poignant the victims' demand for justice might be, decision makers must still weigh the risks of starting a process that could frighten the military or other forces linked to the old order enough to jeopardize the democratic transition.

The issue is an old one that haunts all emerging democracies. In January 1793, the French parliament spent three agonizing days debating how to punish King Louis XVI before deciding to send him to the guillotine. Two hundred years later, similar debates continue to rage in many places. The death penalty has been abolished in almost all democracies, but democratic leaders still agonize as the French did at the end of the 18th century over what to do with their former rulers. As we will see from surveying the experiences of various governments who have dealt with this issue, there are no easy answers.

In countries such as Haiti and the Philippines, a de facto impunity has been institutionalized; human rights violations mount as members of the security forces come to believe that they are immune from prosecution. In other countries like Chile, the transition to democratic rule has been by the military's continuing grip on power and the resulting amnesty laws. Situations like this can cause rifts between newly elected governments and a citizenry still outraged at those responsible for past acts of official terrorism and repression. Elected leaders must sometimes make a hard choice between the survival of the democratization process and the principles on which they based their campaign for a return to democratic rule.

### **Retribution vs. Reconciliation**

Advocates of retribution believe that failure to punish the perpetrators of past human rights abuses automatically condones these atrocious crimes, and therefore both constitutes an invitation to their repetition and undermines the rule of law. Proponents of this view, who tend to be human rights activists, find sufficient arguments for their stance in key principles of international law. <sup>1</sup> They also argue that focusing world attention on prosecutions of human rights violators may help to deter the forces of the old regime from attempting to retake power through violence. By highlighting and condemning the repressive policies of the old regime, the new government can help establish real standards for the protection of human rights. The prosecution of violators will also provide an opportunity to rid the armed and security forces of some of their worst elements. Perhaps most importantly, such an exercise can help to heal the wounds of those who suffered from official abuse, restore the lost sense of national dignity, and establish faith in the new government as it attempts to build a democratic system based on respect for human rights and rule of law.

Punishing perpetrators of past abuses can thus serve not only as a symbolic break with the ugly legacy of authoritarian rule, but also as an affirmation of adherence to new democratic values. Failure to prosecute violators, the argument goes, could seriously undermine the legitimacy of a democratically elected government and generate widespread feelings of cynicism toward the new regime. Advocates of punishment for former military rulers also contend that any concession opens the door to a more systematic buildup of military control over the new institutions and gives the military a potential veto over the new government's policies.

On the other side, advocates of a more conciliatory policy stress tactical and prudential considerations, contending that most emerging democracies are still very fragile and may not survive attempts to convict senior officers who still command support within the army. The best way to preserve democracy and human rights, their reasoning goes, is to adopt a policy of national reconciliation and amnesty for past abuses. The Argentina case is often cited in this connection, since prosecution of violators from that country's "dirty war" led to a series of army rebellions that jeopardized the democratization process. Scarred and divided societies need to face the truth about their recent history, but there should then be a process of healing that draws a line between the unfree past and the democratic future. Spain is often cited as an example of a peaceful democratic transition achieved without prosecuting those of Franco's henchmen who conducted terror in that country for four decades.

Many who take this view are from emerging democracies like Chile, while the army is still a dominant force. They point out, correctly, that successful prosecutions of past violators have occurred only in countries where military rulers experienced external defeats and lost most, if not all, of their power. The humiliation suffered by the Greek and Argentine armies in Cyprus and the Falklands, respectively, quickly set in motion the collapse of military rule and a

precipitous decline in military prestige. Even after being so badly discredited, however, the army in Argentina rebelled three times during the 1980s against the prosecution of its generals for human rights violations and President Raúl Alfonsín finally had to back off under pressure from an army officer corps that had managed to regain its balance and cohesion.

Those democrats who oppose prosecution of past human rights violators also point to cases where a democratic transition follows the conclusion of a peace agreement between an oppressive government and an armed opposition that is also suspected of resorting to gross violations of human rights. It is widely believed that the human rights record of many armed opposition movements- e.g., the ANC in South Africa, SWAPO in Namibia, and the SPLA in Sudan-is far from clean. Significantly, during the peace negotiations in El Salvador in 1991, the leaders of the FMLN guerrillas did not argue against the government's intention to declare an amnesty, for they knew that without an amnesty several FMLN commanders would face prosecution for such crimes as the killing of off-duty officers and civilian local government officials.

The responses of transitional or newly elected governments to past human rights violations have ranged from complete refusal even to initiate investigations to vows to bring all violators to justice. The most common step has been the formation of a commission of inquiry charged with the task of establishing the truth about what happened under the old regime. Some such commissions have produced thorough reports complete with detailed recommendations for future human rights protections; others, however, have lacked the independence, impartiality, sound methods, and ample resources needed to do their job. Most worrisome of all is the way that many other new governments have failed to adopt any coherent policy on the issue, thus opening the way for shifting and unpredictable official attitudes toward supporters of the old regime and dangerous tendencies toward arbitrary political vengeance and witchhunts.

## **The Postcommunist Experience**

The legacy of repression that haunts new democracies of Latin America has also beset the emerging democracies in Eastern Europe and the former Soviet Union. In Romania, the summary execution by firing squad of dictator Nicolae Ceausescu and his wife Elena in December 1989, along with the show trial of only four of his close collaborators, convinced many Romanians that communists remain the real masters of the new regime. Elsewhere in Eastern and Central Europe, few other major trials have yet taken place. In the fall of 1992, former Bulgarian communist strongman Todor Zhivkov and some of his subordinates were convicted on charges of embezzlement and sentenced to prison. In Germany, several former border guards have been convicted of killing fleeing East Germans, but the government's effort to try Erich Honecker for his role in establishing the shoot-to-kill policy at the Berlin Wall may yet be thwarted by Honecker's serious illness. German authorities decided to prosecute Erich Meilke, the head of the notorious Stasi secret police, not for the role he played in spying on and repressing his countrymen, but for murdering two policemen in 1931. <sup>2</sup>

The most dramatic event in East Germany has been the opening of the secret files of the Stasi. Citizens are now able to read detailed reports of their activities compiled by the secret police on the basis of information provided by friends, neighbors, and family members. The opening of the files also discredited many East German democratic leaders. Ibrahim Bohme (one of the founders of the Social Democratic party in East Germany), Lothar de Maizière (the first democratic prime minister of East Germany), and Manfred Stolpe (premier of Brandenburg and erstwhile prospective candidate for the federal presidency) are all alleged to have had suspicious contacts with the Stasi. Less publicized cases have led to the dismissal of thousands of public officials, schoolteachers, judges, and academics on grounds of suspected collaboration with the Stasi.

In response to these painful events, the German government established a legislative commission in March 1992 to carry out an exhaustive investigation into human rights violations under the communist regime in East Germany. Sixteen members of parliament and 11 private citizens will serve on this commission, which is slated to conclude its investigation in 1994. All political parties endorsed the initiative and have nominated representative to the commission. Headed by widely respected East German human rights activist Rainer Eppelman, the commission will have access to all government records and the Stasi files. It will study the methods that the communist regime used to remain in power and will evaluate whether the policies of past West German governments strengthened communist rule and blocked the growth of the pro-democracy movement. This will mean, of course, examining the conciliatory policy of *Ostpolitik* that former Chancellor Willy Brandt initiated two decades ago. The establishment of this commission has been perceived by many Germans as an alternative to punishment, and it remains unclear whether the findings of the investigation will lead to the prosecution of former communist leaders and Stasi agents.

In Russia, the constitutional court held hearings to determine whether President Boris Yeltsin's decree banning the Communist Party and confiscating its property was unconstitutional. This much publicized "trial of the Communist Party" frequently degenerated into ideological debates and mutual recriminations, including a new confrontation between Yeltsin and former Soviet President Mikhail Gorbachev. The latter categorically refused a summons to testify, and the court's decision at one point to prevent him from leaving the country until he had given testimony turned this trial into one more chapter in the bitter political competition between the two men. Gorbachev publicly dismissed the court proceedings as a political show orchestrated by his enemies, and his press office announced on Oct. 3 that "the first Soviet president has been turned into the first political *refusenik* of Russia." On Nov. 30, 1992, the court announced a complex

decision that upheld Yeltsin's shutting down of the party's leadership structures and his confiscation of most of its property, but declared unconstitutional his banning of "grassroots communist party cells that were formed on a territorial basis."

In the now sundered Czech and Slovak Federative Republic (CSFR), the controversial *lustrace* or "screening" law has been at the center of political debate. Under this law, all those who are identified as former communist officials and secret police collaborators are banned from high political and economic posts until 1996. The law has been criticized by 99 federal parliamentarians, the Council of Europe, the International Labor Organization (ILO), and numerous Czech and Slovak human rights activists on the grounds that it determines guilt by association and not on the basis of individual acts. The ILO argued that the law discriminates on the basis of political belief and violates international labor and human rights guarantees. The secretary general of the Council of Europe stated in a March 1992 letter: "Restrictions must be unequivocally applied on an individual, not collective basis, and on the basis of a decision by an independent court which discusses each case in the presence of the individual concerned and which honors the principle of the presumption of innocence." <sup>3</sup>

Two days later, then-President Václav Havel voiced hope that such criticisms would encourage parliament to re-examine the idea. He also submitted a proposal to parliament to create an independent commission to investigate past human rights violations and to assume responsibility for the former secret police files. In the CSFR, the procedures established for handling these explosive files have not prevented selective leaks. The careers of many aspiring politicians have thereby been ruined, despite the possibility that some of the information in the secret files is inaccurate.

In Hungary, Parliament passed a law eliminating the statute of limitations on acts of murder and treason during the communist period. Supporters of this law suggested that these were crimes at the time they were committed, but that their perpetrators were not prosecuted for political reasons. The law also assumes that there was not a qualified government to prosecute such criminals during the era of communist rule. President Árpád Göncz refused to sign this law and submit it to the Constitutional Court, which over-turned it because of its vague definition of treason. The court, however, also affirmed that the existence of a statute of limitations on murder and treason was unjustified. Hungarian human rights activists campaigned against the law because of uncertainty about whom it would target (most of the communist leaders who directed the suppression of the 1956 uprising, for instance, are no longer living).

The difficult question East Europeans now face is how deep the purges can go. In 1980, 20 percent of Romanians over the age of 18 were members of the Communist Party. In East Germany at the same time, this figure was 18 percent; in Czechoslovakia 14 percent; in Bulgaria 13 percent; in Poland 12.5 percent; and in Hungary 10 percent. Yet large numbers of East Europeans believe that their entire societies were compromised in one way or another. Those who actively opposed the communist regime were rare, and the irony is that many of those who now advocate punishment and prosecution of communists seem to be people who kept silent during the communist period.

The region's human rights groups, meanwhile, seem to be turning to Latin America for guidance as they struggle to come to grips with the burden of the past, and Chilean-style "truth commissions" are being formed in several countries of Eastern Europe. But has Latin America found a satisfactory way of resolving this most troubling issue, and if it has, does it offer a mode that East Europeans can follow?

## **Chile and Argentina**

In many of the countries of Central and South America, there is a longstanding tradition of official impunity. Soldiers and members of the security forces have tortured and killed thousands with no fear of prosecution; governments have been either unable or unwilling to hold them accountable for their crimes. In Guatemala, Peru, and Colombia, military courts continue to refuse to press charges against fellow officers accused of violating human rights. Many have not only had charges against them dropped but have gone on to promotions. The courts rarely mete out punishment, and when they do it is often not commensurate with the gravity of the offense. Death squads are still active in Guatemala, El Salvador, and Colombia with police and military backing, although squad activity is beyond their control.

In several countries, military juntas anticipating their own ouster from power have managed to arrange general amnesties for past violations. Newly elected governments have been forced by military pressure to uphold such amnesties or sometimes even to declare them where they have not already been imposed. <sup>4</sup> Chile presents the most striking case of a difficult and fragile transition that has been dominated by the dilemma of amnesty versus justice. The constitution drafted under the regime of General Augusto Pinochet protects the power of the army, over which the elected civilian government has no substantial control. Despite his role in the disappearance, torture, and execution of thousands, Pinochet remains the commander of the armed forces and cannot be removed. Former members of the secret police who carried out gross violations in the past now occupy senior positions within the army. In addition, a general amnesty imposed in 1978 covers all human rights abuses carried out by the military and security forces prior to that time.

The new democratic government of President Patricio Aylwin, which took office in March 1990, established a National Commission for Truth and Reconciliation to

investigate abuses resulting in either death or disappearance during the preceding 17 years of authoritarian rule. The commission, working with a staff of 60 for nine months, investigated more than 4,000 complaints, fewer than 3,000 of which fell within the commission's mandate. Of these, 2,025 were classified as cases of human rights violations committed by the security forces; 90 were victims of violations carried out by armed opposition groups; and 164 cases were listed as victims of political violence by both sides. The commission did not reach a conclusion on 641 other cases because of insufficient evidence. In February 1991, the commission submitted its 1,800-page report to the president, who presented it to the public in a televised speech on March 4. President Aylwin apologized on behalf of the state to the victims and their families and implored the army to acknowledge the pain that it had inflicted. His speech emphasized the need for the whole of society to "accept the truth" and turn the page. He made no mention of Pinochet's role in past crimes nor of any possible derogation from the amnesty law.

The commission carried out an investigation that was highly professional, systematic, and impartial. The composition of the commission was well balanced, making for effective cooperation with local human rights groups and victims of violations and their families. Although able to examine official reports of judicial investigations and autopsies, the commission received no cooperation from the police and the armed forces. Its report included detailed recommendations for legal, institutional, and educational reforms to promote the protection of human rights in the future. It also recommended reparations and other relief measures for victims, as well as pensions for the families of those who were killed or "disappeared."

The report did not name any individual violators, although it did mention the culpability of certain army units. Any information implicating individuals was submitted to the courts, but the amnesty law barred any further criminal

proceedings. The Supreme Court has upheld the validity of this amnesty, and only one case was exempted: the assassination of former Chilean ambassador to the United States Orlando Letelier and his colleague Ronnie Moffitt, a U.S. citizen, who were killed by a bomb in Washington, D.C., on Sept. 21, 1976. It should be noted that 63 political prisoners-convicted of murder and other politically motivated crimes under the previous regime-still remain in prison, though others have been released. Many Chileans believe that while "freedom fighters" who fought against the dictatorship languish behind bars, those who committed crimes of genocide against thousands of people are outrageously being allowed to go free.

The establishment of the Truth Commission and the publication of its report were conceived by the government as an opportunity for historical, political, and moral reflection about a terrible chapter in the country's history. The new government, powerless to bring to justice those responsible for the repressions, settled for the hope that the revelation of the truth would initiate a process of healing and national reconciliation. Speaking the truth about past atrocities was conceived of as a therapeutic exercise for the whole society, what commission member José Zalaquett called "a patient process of cleansing the wounds, one by one." But can truth-telling alone bring to an end the suffering and agony connected with the darkest 17 years of Chile's history? Many human rights activists remain doubtful. They assert that abuses have not stopped but have only entered a new phase, citing new reports of torture by the armed forces. Meanwhile, the rightist opposition argues that the commission's report has only contributed to the new wave of terrorism that has emerged in recent years. The whole issue has become a political football, with right-wing pressure groups stepping up their campaign to drop human rights issues altogether, even as many victims of past abuses join with human rights activists to press their demand that the authors of past crimes be brought to justice.

Argentina's experience with this issue has been even more complex than Chile's. Within a month after victorious party candidate Raúl Alfonsín assumed the presidency on Dec. 10, 1983, he formed a similar "truth commission," the National Commission on Disappeared Persons. As in Chile, the commission included representatives from many political parties and civilian groups, and was headed by one of Latin America's most prominent intellectuals, writer Ernesto Sábato. The commission lacked prosecutorial powers, however, and was mandated only to submit its information on individual violators to the relevant courts. The Commission worked closely with human rights groups and had the technical resources and staff to carry out the largest and most difficult and sensitive investigation in Argentina's history. The final product of its labors was a voluminous report, entitled *Nunca Más* ("Never Again"), that detailed the truth about the atrocities committed by the military regime during the "dirty" war that it waged against the domestic left during the late 1970s and early 1980s.

When President Alfonsín presented the report to the public, political parties and human rights organizations started a sizable march outside the Casa Rosada, Argentina's presidential palace. The launching of the report in an official ceremony was felt as a relief after months of high expectations. President Alfonsín's firm commitment to introduce a comprehensive human rights policy had raised tremendous hopes within society. Victims of the "dirty war" and their families were demanding that the perpetrators of the heinous crimes described in the commission's report face nothing less than total justice. With the opposition Peronist party pressing the government to punish violators, President Alfonsín courageously decided to bring the junta leaders to trial, and the generals found the *Nunca Más* report being used against them in court. Still, their sentences did not satisfy the maximalist demands of the Madres de la Plaza de Mayo, the organization representing the victims' families.

It is now widely known that a significant group of officials in the Alfonsín government, including cabinet members, were against trying senior military

commanders. Such trials, the opponents asserted, would create a new rift with the army, and the time and energy they used could be better spent on strengthening the country's fragile new democracy. Eventually, pressure from a regrouped military apparatus forced the Alfonsín government to back off from its earlier policy of punishing violators and to adopt measures of leniency. The Punto Final ("full stop") and Obediencia Debida ("due obedience") laws, enacted on Dec. 24, 1986, and June 5, 1987, respectively, were the manifestations of this retreat from Alfonsín's initial policy. The Punto Final law banned judges from trying officers who had not been indicted within two months of its enactment, and the Obediencia Debida law codified the presumption that officers below the rank of colonel had acted under orders (to which they owed "due obedience") and hence were exempt from criminal responsibility. In 1989-90, Alfonsín's Peronist successor, President Carlos Menem, pardoned and released all the officers convicted of human rights abuses during the Alfonsín's administration. President Alfonsín deserves to be remembered for his unique moral stand against impunity, as well as for the safeguards that his government introduced to protect human rights in the future.

### **African Approaches**

In African countries where a peaceful transition to democratic rule has been initiated, such as Benin, Niger, and Togo, transitional or newly elected governments have granted former rulers immunity from prosecution in an attempt to reduce opposition to a rapid transfer of power to new civilian administrations. Mathieu Kérékou, former president of Benin, was the first African head of state to have formally secured immunity from prosecution before the holding of free elections, in which he was defeated in March 1991. The same scenario is expected in Togo, where a transitional government headed by Prime Minister Koko Koffi Annan, a prominent human rights lawyer, has already been warned by the army against taking steps to punish officials of the dictatorship that had ruled the country since 1963.

Although General Gnassingbé Eyadema has yielded most of his presidential power to Prime Minister Kofiguo, he continues to control the army and still boasts publicly about his role in the January 1963 assassination of Togo's first president, Sylvanus Olympio, which resulted in the first coup d'état among the postcolonial nations of Africa. The question of what to do about human rights violators is likely to pose a difficult problem after upcoming elections. Before 1985, President Eyadema himself was reported to have interrogated, tortured, and jailed or killed scores of his critics. Yet he continues to head the army, which is dominated by members of his ethnic group, the Cabrais of the north.

The challenge is quite different, however, for countries such as Ethiopia, where a change of government occurred following the triumph of rebel arms in a civil war. Ethiopia is the first emerging democracy in Africa to make a firm commitment to prosecute those accused of human rights crimes under the old dictatorship. Following the collapse of President Haile Mariam Mengistu's totalitarian regime in June 1991, the Transitional Government of Ethiopia (TGE) was formed under Meles Zenawi leader of the Ethiopian People's Revolutionary Democratic Front (EPRDF), an armed coalition that fought against Mengistu for 17 years. A National Charter was adopted in August 1991 as a constitutional framework intended to introduce multiparty democracy, ensure respect for the rule of law, and guarantee fundamental human rights and the independence of the judiciary. <sup>5</sup> The National Charter explicitly recognized the Universal Declaration of Human Rights as Ethiopia's "supreme law."

One of the first actions of the new government was to dismantle completely Mengistu's army, security forces, and police, and to arrest more than 10,000 officers from both the army and security forces pending investigations into their role in human rights crimes. The TGE captured detailed security and military intelligence files that are expected to aid in the prosecution of officials who

committed human rights violations. Many of those arrested secured release after passing investigations, but several hundred remain in detention. Although the TGE has come under some criticism both at home and abroad for failing to process these cases, the prisoners have been treated well and have access to family members, medical care, and legal counsel. Indeed, families of prisoners have freely organized numerous public demonstrations to proclaim their view that the TGE is violating the detainee's human rights. The government respects the rights of these citizens to protest, but counters that most of those incarcerated have the financial means to flee the country and escape from punishment should they be released on bail.

The TGE's primary task regarding these detainees is to ensure that their trials are fair and open proceedings conducted by an independent judiciary. By bringing human rights offenders to justice, the new government has an opportunity to create a precedent of accountability for human rights abusers. It already has taken practical steps to process these cases. A special prosecutor's office is being created to speed up the required investigations. The TGE has also made a firm commitment to introduce safeguards to protect human rights in the long term. <sup>6</sup>

### **Punishment and Prevention**

As can be seen from the experience of emerging democracies throughout the world in dealing with the legacy of the past, there are no hard and fast rules or easy answers about how to resolve the dilemma of bringing violators to justice. Official policies on this issue have been dictated not only by strict principles of justice, but also by the need to balance ethical and legal concerns with the hard realities of politics. The balance of power between the forces that represent the past and the democratic forces that lead the transition has proven to be the determining factor in the policy of many governments on this issue. It is clear that amnesty laws grant impunity and prevent accountability before the law, while

bringing violators to justice sends a clear message to all that human rights violations will not be tolerated or allowed to continue. Yet the governments of many emerging democracies may lack the necessary strength and popular support to follow the precedent being set by President Meles Zenawi of Ethiopia, who has won a decisive military victory and hence finds himself in a position to build a completely new military and security apparatus.

East Europeans may be disappointed to observe that there is no sure model to follow in Latin America or elsewhere. The past experiences of various countries can certainly provide guidance to nations that are now facing their hour of trial, but no set rules can dictate precisely how to navigate the complexities of the issues at stake. The struggle will continue between those who invoke strict legal and moral principles and those whose primary concern is the survival of the democratic process.

Nonetheless, the governments of emerging democracies can learn from the Chileans how to organize an independent, impartial, and systematic investigation, and how a truth-telling operation can help to exorcise the ghost of a dark past. They also can learn from the Argentinians and others how to introduce human rights safe-guards to prevent the recurrence of state-sponsored human rights violations. As President Alfonsín put it, his chief aim was to prevent rather than to punish, and thus "to guarantee that never again would an Argentinian be taken from his home at night to be tortured or assassinated by agents of the state." <sup>7</sup>

## **Part II: Session Discussions**

***Session A: The Reconciliation Debate: Amnesty vs. Justice***

***Panel moderated by Dr. Robert Pastor***

***Monday Afternoon, July 6, 1992***

On Monday afternoon, following the introductory remarks of President Jimmy Carter and Dr. Jamal Benomar, the first panel discussion of the conference opened with an address by **Robert Pastor**, professor of political science at Emory University, and fellow and director of the Latin American and Caribbean Program at The Carter Center of Emory University. Dr. Pastor established a framework for discussing the problems many new governments face when managing the transition from a repressive to a democratic era. Namely, achieving a successful transition requires coming to terms with past human rights abuses and, specifically, with the perpetrators of that abuse. This concept known as "national reconciliation," in turn, involves a choice which most often tends to look like one between amnesty and justice.

Here *amnesty* refers to a pardon for all those responsible for past human rights abuses, and *justice* to the concept of "bringing to justice" or punishing violators. In an attempt to reduce the conceptual gap between the two options which are often viewed as opposites, **Dr. Pastor** encouraged panelists and participants to see this choice not as one between right and wrong, but as one between two "rights." If amnesty is seen as a type of justice and not merely its opposite (injustice), the panelists could better decide whether national reconciliation as an ultimate goal is desirable, and if so, whether it is also attainable.

### **Panelists' Presentations**

The session continued with presentations by each of four panelists. First, **Jorge Correa** (professor of law at the University of Diego Portales Law School and former chief of staff of the National Commission on Truth and Reconciliation in Santiago) discussed Chile's relatively peaceful transition to democracy following a brutal dictatorship. **Charles Onyango-Obbo** (journalist, Nieman Fellow at Harvard University, and deputy editor of the *Weekly Topic* in Uganda) contrasted this to Uganda's more dramatic transition by means of a violent civil war. **Horacio Verbitsky** (journalist for *Página 12*, Buenos Aires) spoke about Argentina's

experience and addressed the continuing disrespect for a broad spectrum of human rights despite the democratic transition there. From an academic perspective, **Herman Schwartz** (professor of law at the Washington College of Law, American University, Washington, D.C.) emphasized the difference between social and individual justice and the critical need to balance these two sides of the same coin.

### **National Reconciliation**

Following **Dr. Pastor's** lead, the panelists and participants came to agree that, given a goal of national reconciliation, amnesty and justice merely represent different means of achieving that goal. In fact, the choices available to new governments represent more of a continuum of options from which each country must choose the one best suited to achieve reconciliation in its particular situation. Other options along the continuum include such measures as purification laws or investigation and public disclosure of the truth. In choosing a path to national reconciliation, however, two different faces of reconciliation must be recognized: first, the **collective** society must be reconciled with its history, and secondly, **individual** members of that society-both victims and violators-must find reconciliation through fair treatment.

### **The Political Reality of Collective Reconciliation**

Nearly all new governments facing democratic transitions from dictatorship face a political reality: the fear of losing power. Because of this ever-present fear, the decision as to how to confront human rights offenders cannot, according to some participants, be based purely on human rights considerations. Economic and political stakes are high, and it is nearly impossible to make politically neutral decisions. Depending on the country, either amnesty or justice (or anything in between) potentially could threaten the stability of the new government. Amnesty may serve to condone impunity of the military and thus circumscribe civilian authority; while the pursuit of justice for offenders, on the other hand, may

polarize society and thus renew the appeal of authoritarianism. Collective reconciliation, thus, may well require political compromise.

Sharing the experiences of their own countries, the panelists agreed that most new governments face external political pressure of some kind to choose a certain reconciliation policy. As **Jorge Correa** illustrated, Chilean President Aylwin did not have the luxury to choose justice over amnesty. Because the Armed Forces did not suffer a complete defeat, the new government lacked the strength to move beyond the confines of Pinochet's 1978 Amnesty Law and the 1980 Constitution. Therefore, the metaphoric tiger that is the Chilean military still looms in the corner creating an ill-balanced situation. Also, middle-class Chileans viewed a return to democracy as a threat to the peace and economic prosperity they enjoyed. As a result, the Aylwin government sought to minimize polarization and maximize pacification through non-confrontational policies. It should be noted, however, the Aylwin became a staunch supporter of a policy that called for full investigation and disclosure of human rights abuses in advance of granting "amnest" to proven violators. In fact, this policy came to be known as the "Aylwin doctrine." Argentina, on the other hand, was able to undertake trials of key military personnel responsible for human rights violations, in part, because of the defeat the military suffered during the Falklands-Malvinas war. According to **Horacio Verbitsky**, that, in conjunction with the failed economic policies of the dictatorship, allowed political figures to translate civil society's concern for justice into actual policy involving prosecution of offenders. **Charles Onyango-Obbo** noted that in Uganda, the transition was quite different still. The government of the National Resistance Army came to power after staging a civil war and, therefore, depended on the support of a large popular base. This base, in turn, largely favored bringing violators to justice rather than granting an amnesty as a means of reconciliation. In all three countries, the new governments felt the pressure to compromise for the sake of political security and the "stability dividends" it allegedly/ostensibly reaps.

**President Carter** agreed, noting the experiences of former President Alfonsín of Argentina and President Meles Zenawi of Ethiopia who, despite citizens' demands for justice, searched for moderate policies to ensure their political security. Because a completely thorough punishment would be impossible given the scope of past violations, some degree of moderation is arguably necessary for society as a whole to heal, and heal as quickly as possible. However, there exist significant drawbacks to political compromise. For example, amnesty laws—the ultimate compromise—interrupt the legal process and thus discredit the rule of law. As **Winston Nagan** noted, when violators of non-derogable, internationally recognized human rights are pardoned, the entire legal foundation of human rights law is compromised. As a result, the central democratic tenet of the division of powers, and most importantly the judicial system, is ignored. In addition, there was an overwhelming sense among participants that amnesties fall far short of preventing the future recurrence of human rights abuses, which obviously constitutes the most important goal of human rights work. For example, **Graciela Fernández Meijide** warned that amnesty was the potential equivalent of national amnesia and, as a result of the impunity bestowed upon the military in Argentina, recurrence is all the more likely.

More importantly, amnesty laws and political compromise in general inevitably frustrate the needs of individuals who have suffered violations of their rights. According to the reasoning of political compromise, the good of the whole morally justifies the sacrifice of the good of the individual. As a result, individual reconciliation or justice for crimes committed fall victim to the "greater good" of social reconciliation. Therefore, many participants urged a re-examination of past experiences in order to refocus attention on individual reconciliation.

### **Individual Reconciliation**

Many participants refused to agree with either the necessity or morality of political compromise. **Edward Broadbent**, for example, argued that such compromise in the spirit of social reconciliation is inherently unjust, and urged participants to acknowledge that the "political good" is not a substitute for justice. Because political compromise is earned at the expense of individual reconciliation, "when we abandon morality for political good, we should say so." **Jorge Correa** agreed that, when faced with conflicting demands of the collective and individuals, the first moral obligation of any government is to the individual, to both compensate victims for past abuses and prevent future violations from occurring. However, he disagreed that a second-best option, such as exposing the truth, constitutes an abandonment of morality. Instead he sees it as a type of morality that better fits reality. Unfortunately, new governments-and especially coalitions such as Aylwin's-almost always must make decisions based upon political considerations, yet their decisions may still be characterized as moral ones.

Most participants generally agreed that justice, though difficult to implement, was preferable to amnesty. **Herman Schwartz** added that although there is an element of revenge which is sometimes confused with the administration of justice, such an approach is necessary to repair the moral order of society. Some form of sanction or prosecution must be imposed to undo past wrongs and ensure that violators do not benefit from their actions. At that point, the challenge then becomes how to sanction human rights violators without provoking further injustice in the process. For example, Czechoslovakia is looking back to 1948 in its purification attempts to restrict participation in public life to anyone associated with past repression. In the process, the careers and reputations of many individuals have been destroyed in rough political campaigns.

In the end, instead of the looking only at amnesty-versus-justice, human rights advocates must attempt to strike a balance along the continuum that is most in

favor of justice. The most important question for human rights advocates is whether, given the inherently political nature of policy choices, individual reconciliation is possible.

### **Options Along the Continuum**

As one means of bridging the gap between amnesty and justice, participants emphasized the potential role of domestic institutions. Instead of choosing between these alternatives, many official commissions of inquiry, for example, have been successful in striking a balance. The National Commission on Truth and Reconciliation in Chile, for one, adopted a policy of public disclosure of the truth to achieve reconciliation. By publicly acknowledging both the responsibility of the government and the dignity of the victims, the Truth Commission succeeded in provoking social mobilization against human rights violations so Chile could then move beyond the stigma of its past. However, commissions of inquiry often are handicapped in their success by limited mandates which may cover only the gravest violations. Because of this, as **Veronica de Negri** poignantly stressed on the sixth anniversary of her son's death, there is no reconciliation or dignity for many of the survivors like herself whose family members' and friends' deaths and disappearances have gone unpunished. She rejects the idea that the Chilean Commission has acknowledged the truth about the majority of atrocities committed.

Other options that have effectively provoked social reaction against violations include purification laws which ban certain categories of people from public life, as mentioned in the case of Czechoslovakia. This option, however, requires a delicate calculation of which categories should be disqualified from which areas of public life. For example, a high level security-related job may require the disqualification of former members of repressive regimes. But, as **Herman Schwartz** asked, should these individuals be banned from exercising the right to vote and run for office? Another option can be as simple as a symbol of

recognition on behalf of victims of human rights violations. A monument or public symbol, such as the Vietnam Memorial, may also help reconcile the society on some level.

Regardless of which method is chosen or which country is concerned, **Jorge Correa** listed several objective standards with which to compare their success:

- do certain measures serve a preventive function?
- do they publicly reveal the fate of victims of violations?
- have they contributed to the destruction of the organs of repression?
- have reparations been made?
- have these measures contributed to reconciliation in both its forms?

In addition to official efforts, some participants emphatically stressed that the best way to guard against political compromise and partial reconciliation is by strengthening civil society. **Charles Onyango-Obbo** insisted that newly elected governments must do more to increase community input about human rights protection, because commissions tend to become bureaucratic and often disregard the wishes of the people. For example, the steps necessary to file grievances of human rights violations can be difficult and time-consuming, thus discouraging many from participating in the process of reconciliation. The dialogue, therefore, must be extended beyond official commissions to all of civil society.

Finally, beyond the domestic arena, participants also supported the view that the international community can contribute effectively to striking a proper balance on the issue of reconciliation. In fact, the international community as a whole has a stake in the promotion of civilian authority over that of the military. As Argentina learned, the driving force behind amnesties comes from a show of strength by the military against the imposition of civil justice. **James O'Dea** raised the extreme example of Uruguay where the military refused even an amnesty because of its implied element of censure and judgment of its own authority.

Emerging democracies could benefit greatly from international support in their efforts to "take the teeth out of the tiger."

## **Conclusion**

In the end, most of the session's participants agreed with a point **Kenneth Roth** made that, despite the desirability of national reconciliation, as a goal it is not identical to achieving respect for human rights. In fact, reconciliation through political compromise may even obstruct the attainment of human rights. In order to guard against future violations, the constitutional guarantees and monitoring procedures are required, as well as public education and social condemnation. In particular, the establishment of a legal system that is able to prosecute human rights offenders, will do much to reduce the chances that abuses will recur. Because the most fundamental goal for academics and activists is preventing future human rights abuses, **President Carter** urged the gathering to continue its dialogue so that political and civil sectors may function in a more complementary way to better prevent the recurrence of human rights abuses.

## ***Session B: Commissions of Inquiry***

### ***Panel moderated by Jaime E. Malamud-Goti***

*Tuesday Morning, July 7, 1992*

Tuesday morning, the second panel discussion consisted of descriptive presentations by panelists concerning the workings of official commissions of inquiry set up by various governments that are managing democratic transitions. This session was moderated by **Professor Jaime E. Malamud-Goti**, MacArthur fellow for peace, professor of law at the University of Buenos Aires, and former solicitor general of the Republic of Argentina.

## **Panelists' Presentations:**

The session began with presentations made by each of five panelists. **Mahamat Hassan Abakar** (president of the Chadian Commission of Inquiry) described the commission which the government of Chad created in 1990 to investigate crimes of the Habré regime after he fled the country. **Jorge Correa** (former chief of staff of the National Commission on Truth and Reconciliation in Chile), in turn, outlined the objectives of the Chilean Truth Commission, or "Rettig Commission." **Graciela Fernández Meijide** (executive secretary of the Permanent Assembly for Human Rights in Argentina) explained the formation and workings of the CONADEP (*Comision Nacional Sobre La Desaparicion de Personas*), otherwise known as the "Sabato Commission." **Augustine Ruzindana** (inspector general of government in Uganda) discussed two government bodies established in Uganda to deal with past and current human rights violations, respectively: the Human Rights Commission of Inquiry and the Office of the Inspector General of Government. Finally, **Paulynn Sicam** (member of the Philippine Commission on Human Rights and former journalist for *The Manila Chronicle* and *Newsweek*) discussed the mandates and relative successes of several of the official human rights organs established in the Philippines in the late 1980s.

### **Variations on a Central Theme**

Governments of panelists' home countries, and of many of the other newly democratic nations represented at the conference, addressed the issue of past human rights violations by establishing governmental commissions of inquiry during the period of transition, either by constitutional mandate or presidential decree. In rare cases, a commission may have been set up by a non-state entity as was the case in El Salvador where the currently-active human rights bodies were established under the auspices of the United Nations. Some countries set up permanent bodies, while others instead chose to investigate human rights abuses within a discrete period of time. Further, the mandate of each commission varied according to a number of factors, including the length of the repressive period, the magnitude of the violations committed, the relative

strength of the military, or the demands of the people. Yet, despite the many differences and recognized limitations of commissions of inquiry, participants agreed that their ability to expose human rights violations and, in particular, to encourage education, was extremely valuable.

Given the different situations in the countries addressed, each government had its own purposes in mind when it established an official commission. The two most distinguishable differences were between permanent and temporary commissions, and between investigating past and current violations. On the one hand, Chile, Argentina, and Chad originally instituted commissions with a limited mandate to investigate only past abuses for a fixed number of months. The Rettig Commission in Chile, Argentina's CONADEP, and the Chadian Commission of Inquiry worked with precise, short-term mandates originally of six months duration, although in each case the mandates were extended. Similarly, each body documented and exposed the crimes of a past regime and made concrete recommendations to the judicial branch to prosecute the known violators. None had prosecutorial powers. In essence, these commissions were charged with publicly disclosing the truth about the country's history in order to foster national reconciliation.

In contrast, the Constitution of the Philippines mandated the establishment of a permanent Commission on Human Rights with a much broader mandate to handle all forms of political and civil rights. **Paulynn Sicam** candidly acknowledged many of the drawbacks of a permanent commission and, in fact, suggested that agencies designed for the purposes of investigating and reporting past abuses ought to have a limited lifespan. For example, employees of the commission, having found relative job security, tended to become less activist in their pursuit of human rights. This sentiment echoes those of other participants who noted that former human rights activists who become a part of the political class upon a change of government often lose their original focus. In addition,

**Paulynn Sicam** warned against the over-bureaucratization which results when large permanent bodies have too broad a mandate. For example, a large percentage of the budget of the Philippine Commission on Human Rights goes to fund overhead and personnel expenses, to the detriment of its witness protection and reparation initiatives.

During the discussion, however, participants' comments seemed to reveal that each type of commission is suited to different ends. In the case of the Philippines, the commission's educational and training program aimed at preventing future human rights violations benefitted from the long-term nature of the mandate. Since 1988, approximately 40,000 mid- to low-level members of the armed forces and police officers have taken courses on human rights, and all training and re-training programs include a human rights element. Ideally, these programs eventually will apply to children at an early age in order to incorporate human rights into the country's value system and create a "culture" of human rights. In Uganda as well, **Augustine Ruzindana** acknowledged the benefits of both permanent and temporary commissions. The new government set up two separate government bodies: the temporary Human Rights Commission of Inquiry, which investigates past abuses, and the permanent Office of the Inspector General of Government, which looks into the abuses of the current government.

### **Exposing the Truth: "What"**

With respect to those emerging democracies discussed on the panel, each has chosen to investigate and reveal the truth about a country's past. Each produced a report upon termination of its mandate which was made widely available to the public, in addition to making extra efforts to publicize the findings. The exposure of the truth had two primary effects. First, as participants recognized during Session A, the accurate and objective disclosure of past events serves the valuable and necessary purpose of fostering national reconciliation. According to

**Horacio Verbitsky** and **Jorge Correa**, the truth marshals social condemnation and activates the public consciousness necessary to move beyond the past.

Secondly, and as a result, exposure of the truth plays a critical social role as an educational tool, a role of inestimable value. This educational function has been further bolstered by the efforts of civil society through the work of human rights organizations and the press, both of which continue to play an important role in educating the public. For example, many governmental commissions have been able to utilize evidence gathered by the media and non-governmental organizations both during and after the repressive years.

However, participants agreed that the ability of a commission of inquiry to expose the entire truth about a repressive regime is limited. For one thing, the military—the primary target of investigations—often times intimidates witnesses or refuses to cooperate with investigators. In addition, the sheer number of even the most grave violations, and the manner in which they were carried out, leaves much of the truth concealed. For example, the Rettig Commission in Chile was unsuccessful in its attempts to determine the whereabouts of disappeared persons, nor did it identify violators by name as the Chadian commission did.

### **The Factors Contributing to Human Rights Abuses: "How" and "Why"**

Because every government has the potential to repress human rights, the *how* and the *why* of human rights violations, in addition to the *what*, is also of primary importance to prevent future abuses. Some commissions—especially the Ugandan Human Rights Commission and CONADEP in Argentina—dealt directly with this issue. **Augustine Ruzindana** explained the commission's objective in Uganda to examine 30 years of past repression in order to better understand why violations became worse in spite of a rising level of education and improving general conditions in that country. In the Ugandan case, the intensity of war correlated positively with the incidence of human rights violations.

Similarly, **Graciela Fernández Meijide** of CONADEP described and denounced the rationale behind the Argentine dictatorship's national security doctrine. Sadly, she and many other Latin American experts have found that Argentina's repressive methodology, procedures, justifications, and overall discourse correspond closely to patterns throughout the rest of Latin America. The repression which Argentina suffered in 1976 under the guise of "national security" was not unlike what occurred in Guatemala in 1954, Brazil in 1964, and Uruguay and Chile in 1973. She commended **Horacio Verbitsky's** analysis of what he termed the "rationality" inherent in authoritarianism, a rationality which is evident in the form of repressive policies designed to restructure the political and economic make-up of a country, for the benefit of those in power.

The ensuing discussion throughout Session B raised another compelling question about democracies like those today in Peru and Colombia. The policies of yesterday's repressive governments were characterized by secret police forces and agendas, but is today's "open policy of war" against terrorism-as **Jorge Correa** labeled it-any different? Does the increased degree of transparency under a democratic government adequately guard against the dangers of the doctrine of national security? In fact, situations of internal terrorism may be no different from the threat of subversion of the past, and they may even be worse because of their so-called legitimacy. Today in Chile, for example, **Juan Pablo Cárdenas** noted that the sprouting of terrorist activity may be related to the 30 new cases of torture which have been reported since the transition period began. **Horacio Verbitsky** also seemed to fear that President Menem of Argentina would not stop short of instituting a thorough counter-insurgency campaign, which would likely result in human rights violations. Interestingly, **Jorge Correa** asserted that, under these circumstances, the disclosure of truth may not be an appropriate response since the government policy is not a secret, but instead an open policy of war.

While still looking at the doctrine of national security, **Veronica de Negri** fervently urged participants to address the global ramifications of human rights violations which have thus far been ignored. Namely, what are the origins of this doctrine which has been institutionalized in the military by international training and example? There is a need to investigate why society accepts the rationality of the national security doctrine which is perpetuated within the policies of the armed forces. It may be necessary, therefore, for governmental institutions to look at the social, cultural, and political truths which gave rise to gross violations of human rights in each country. Or, according to others, civil society may bear the responsibility of picking up where government leaves off. **Jorge Correa**, for one, asserted that, once the truth has been disclosed, the social process of acknowledgement which occurs outside the sphere of government will serve to build the strongest barrier to recurrence.

### **Structural Reform and Civil Society**

It follows that structural changes within society-like public disclosure of the truth-are a prerequisite to prevent future violations of human rights. For example, a common obstacle noted by nearly every panelist was the inadequacy of the judicial system in post-repressive governments. Without substantial structural reforms, especially within the judiciary, most criminal cases brought against human rights violators die in the prosecutor's office. The necessary level of follow-up once commissions of inquiry establish the truth is also insufficient. **Jorge Correa** admits that after the publication of the Rettig Report, the cases forwarded to the civil courts have not been investigated adequately. And the governmental commissions, usually without prosecutorial powers, are not capable of undertaking such large-scale reform on their own. By going beyond documentation and cataloging, by prosecuting and following-up initial exposure, new democracies may help avoid the extremely frustrating position of the individuals whose demands have not been met by governmental commissions. For instance, **Jamal Benomar** pointed to Chad as one country which set an

example by establishing a permanent commission to train personnel and investigate abuses under the current government.

With respect to civil society, much of the responsibility of social activation and condemnation falls primarily upon members of the press, non-governmental organizations, and academics. Perhaps more than any other sector of civil society (and perhaps more than the judicial system) the press, in particular, can shed light on the many facets of the truth. For example, economic and social rights have been ignored by most commissions (despite the fact that some have addressed issues of corruption). Nevertheless, inequality is perpetuated during the transition. For example, there can be no effective political and civil rights in a country like Guatemala where 2 percent of the population owns 80 percent of the land. **Edward Broadbent** described the link between military violence and economic and social inequality as one which continues well after the repressive era ends. The political classes seek to maintain the *status quo* by maintaining a strong military.

## **Conclusion**

Despite the successes of governmental organs established to address past human rights violations, emerging democracies cannot rely on these commissions of inquiry to single-handedly complete the process of national reconciliation or keep human rights abuses from taking place in the future. Therefore, civil society, in particular the press and non-governmental organizations, must not only focus on its ability to establish the truth and advocate real justice for the human rights violations which have been ignored, but it must also embrace its responsibility to educate and inform the public so as to ensure against renewed repression.

## ***Session C: Human Rights Work in the Post-Repressive Period***

*Panel moderated by Jamal Benomar*

*Tuesday Afternoon, July 7, 1992*

Later Tuesday afternoon, the third and final panel discussion commenced with remarks by **Jamal Benomar**, then-Human Rights Program Director of The Carter Center of Emory University. As a framework through which participants could channel their thoughts and contributions, Dr. Benomar suggested that the current methodology of human rights organizations-reliance on reporting and publicizing abuses-be reevaluated in the context of emerging democracies. There is a greater need to identify and respond pro-actively to the unique needs of these countries. Therefore, the human rights community must refocus its attention from reporting abuses exclusively to also introducing the much needed safeguards to prevent the occurrence of future abuses. For example, in countries like Togo today and Czechoslovakia a few years ago, human rights activists have assumed positions of political power, with the corresponding ability to effect real changes in government. Thus, international, and especially domestic, human rights organizations must seize these new opportunities to turn their attention toward prevention in addition to simply reporting and monitoring.

**Panelists' Presentations**

The session continued with the presentations of four panelists. **Juan Pablo Cárdenas** (professor at the University of Chile and journalist for *Revista Análisis* in Chile) addressed Chile's current "state of impunity" and Pinochet's continuing political presence. Likewise, **Horacio Verbitsky** (see Session A) spoke of Argentina's new oligarchy of economic power which has replaced, but not necessarily distinguished itself from, the dictatorship. **Charles Onyango-Obbo** (see Session A) warned of the dangers of state-sponsored "human rights management" and of allowing political power to concentrate in the hands of the state. And **Kenneth Roth** (deputy director of Human Rights Watch in the United States) stressed the need to redefine the human rights movement in the post-repressive era so as not to lose the clarity of purpose which it formerly boasted.

## **Dangers of the Transition**

Although new opportunities certainly exist for today's human rights activists, the fact that they also carry the potential for new difficulties cannot be ignored. For example, **Kenneth Roth** stressed that during transitions toward democracies, the clarity of purpose which allies shared during the repressive era often dissipates in the post-repressive years. Once a dictatorship is overthrown, third party governments may lose interest, election monitors usually leave, and international human rights organizations shift their focus to other countries and oppressors. In addition, politics becomes an option for former domestic human rights advocates. Such an extensive change of roles within the milieu of human rights protection destroys what may be the only effective system of checks and balances in a country against absolute rule. For example, **Charles Onyango-Obbo** spoke of directors of Ugandan newspapers who have joined politics, shifting their support away from civil society and toward the political, ruling class. All of this leaves a temporary void in the human rights community which must be addressed in a redoubled effort to keep the broadest human rights alliance intact.

At the outset, and building upon the results of Session B, the participants stressed unequivocally the primary role of civil society in this process of creating safeguards for the prevention of future abuses. Because political parties pursue their own agendas, they cannot be relied upon to promote human rights and civil liberties in the long run. Furthermore, governmental institutions and commissions of inquiry, though they have proven their limited usefulness, do not help civil society to develop its capacity to influence government. They, too, eventually may have a stake in legitimizing their new government. Thus, "civil society"- which includes the press, human rights activists, academics, the church, families, and communities-carries the responsibility of acting as an independent, countervailing pressure against government and its potential to abuse its power.

## **Freedom of the Press and Other Essentials**

As a result, **Vivian Vahlberg**, of the McCormick Tribune Foundation, and other participants urged the group to include freedom of the press as an absolute, rock-bottom requirement in a nonstate solution. As official commissions of inquiry have demonstrated, the cleansing power of information is obvious. Even prior to the end of repressive regimes, the success of the media in shedding light on human rights violations is undeniable. In the case of CONADEP and others, the information gathered by the press was later used by governmental commissions to reveal the truth. **Juan Pablo Cárdenas** noted the situation in Chile where the government has taken control, both directly and indirectly, over many organs of the free press. As a result, the Chilean press has been stripped, in part, of its ability to foster democratization and prevent the recurrence of abuses through social communication and elucidation of the truth. Similarly, in Argentina, **Horacio Verbitsky** noted that 20 members of the press have been tried for committing libel against the government by raising allegations of corruption. Therefore, if it hopes to protect human rights both now and in the future, the international community must support freedom of the press unequivocally.

However, the participants recognized that, in addition, structural changes are also necessary. In countries where the military tribunals remain stronger than civilian courts, human rights will be in jeopardy. Thus, although a vigorous society can act as a check on the power of government, the structural system of checks and balances still must be modified and strengthened. Some more skeptical participants noted accurately that good laws do not necessarily make for good governance. **Charles Onyango-Obbo**, for one, stated that a bill of rights is not as important as developing civil society. Nevertheless, legal changes are still mandatory. Legally guaranteed freedom of the press and participatory democracy are prerequisites for civil society to function freely and effectively. For instance, **Horacio Verbitsky** noted the preference of President Menem of Argentina to legislate by decree over Congress, in an attempt to stifle the press

on issues of corruption. Without strong structural checks and balances to complement the ability of civil society to put pressure on government, the door is left open to absolutism.

### **Social and Economic Rights Revisited**

Finally, panelists from Latin America added one more requirement for the successful prevention of human rights abuses in the future. They drew attention to the nature of democratic transition, primarily in Chile and Argentina where economic and social inequality has become the root of the worst human rights offenses. Even though such countries have moved beyond their politically repressive pasts, repression continues in the form of poverty, unemployment, and inflation. Thus, the weight of economic domination today is comparable to the repression of past regimes. In response, the international community must reinsert economic and social rights into the current dialogue. Education and health are rights recognized by international conventional law, which can no longer be ignored. Today's "other victims" suffer from the disproportionate distribution of land and wealth. These have become a matter of profound importance and, in fact, the reality of people throughout the world.

### **Proposal to Form an Independent Human Rights Task Force**

In order to keep with The Carter Center's mandate to undertake action programs, **President Carter** sought to focus the discussion on achieving a concrete result from the seminar. After the panelists completed their presentations, he presented participants with a number of tentative suggestions for action. First, he proposed the formation of a human rights task force much like the Council of Freely Elected Heads of Government or the Task Force for Child Survival and Development, which was sponsored by the World Health Organization and UNICEF, among others. The human rights task force would comprise of a small group of advisors who collectively could address the issue of human rights and emphasize preemptive or preventive measures which then could be undertaken

in anticipation of future violations. Such a collective effort would have the capability to magnify and concentrate strong voices on behalf of human rights that would otherwise be heard only individually. **President Carter** envisions the task force as not only a means of complementing the work of the leading human rights groups, such as Amnesty International and the Watch Committees, but also as a transforming force to refocus their attention specifically on the future. To this end, the group of experts could delineate a number of generic criteria or standards with which to measure or "rate" adherence to all forms human rights, including freedom of the press, multi-party democracy, and economic rights. In addition, the task force might also prepare and make available a set of principles or models for state constitutions and laws. In support of such an idea, **Herman Schwartz, Lloyd Cutler** and other participants mentioned their successful work with the seminar that took place recently in Salzburg, Austria, to address legal reforms which might assist Eastern European countries undergo transition periods. Then, perhaps on a bi-annual basis, the proposed task force would publish a concise report on the performance of all nations in protecting human rights. As a collective effort, this would serve as a profound tool of condemnation with strong economic consequences for violators. **Fatima Shafii** suggested that a handbook aimed at helping non-governmental human rights committees or organizations organize themselves might also be of use, especially in the area of funding, reporting and collaboration. Lastly, **President Carter** proposed that this group actively work to encourage and influence the United Nations' human rights bodies to strengthen the effectiveness of their machinery.

### **Response from Participants**

The seminar participants overwhelmingly supported **President Carter's** primary suggestion that human rights organizations collaborate to create a task force or board of experts. Some raised specific suggestions; however, most incorporated the general idea of a task force into the earlier discussion concerning the development of civil society. For example, **Diane Orentlicher** suggested that the

task force might bring pressure to bear upon newly elected governments in such a way as to stiffen their resolve, for example, in bringing the army under the rule of law, or to check power of new governments which are curtailing the freedom of the press or multi-party politics. Others believed that because the task force represents a non-state approach, it could function as an international guidance mechanism, unconstrained by the usual limitations states encounter when policing themselves. Finally, **Charles Onyango-Obbo** suggested that such a task force, whether as a whole or merely in part, could strengthen regional organizations in an attempt to move away from the "top heavy" approach of the United Nations. The informal and regular contacts which the international human rights community has forged do not necessarily exist among third world neighbors. Thus, with the support of the task force members, regional organizations could fill the communication gap felt among developing nations.

## **Conclusion**

Notwithstanding agreement that activists must proactively address the prevention of human rights violations, **Kenneth Roth** and others emphasized that they must not abandon the bread and butter of their work: coming to the defense of victims through documentation and exposure, even at the expense of the "political good." For example, the democratic experiment that began a few years ago in Haiti and the transition in the Philippines clearly demonstrated the human rights community's unwillingness to criticize the new governments or to come to the defense of past oppressors who may have been treated unfairly. **Dan Brumberg** pointed out that reversals from democratic transitions are not only possible but also likely, especially given the economic conditions in which new democracies are struggling in Eastern Europe. In countries such as Algeria, for example, many constitutions leave governments able to invoke emergency laws which serve in effect as *coup d'états* against democracy. Thus, human rights organizations must maintain a counter-majoritarian perspective and continue to criticize even democratically elected governments.

The most significant opportunity available to us today, however, is the chance to coordinate our efforts on an international level to build a new culture of human rights throughout the world. Given the recent experiences of many countries in Latin America and Africa, for example, newly formed Eastern European countries will benefit from the lessons already learned. In this area, most participants felt that the United Nations human rights machinery in its present form lacks the coherent, proactive approach with which to channel the requisite international effort. As **President Carter** recognized, those gathered at the conference cannot fail to act specifically because victims of human rights violations cannot depend on the White House, the United Nations, nor their respective governments to protect them. By default, the responsibility falls on those gathered at The Carter Center and their colleagues to use the past, and the knowledge gained by it, to build a better future.

### **Concluding Remarks**

Democratic transition in any given country cannot truly be considered complete until a society has been offered the opportunity to, in some way, respond to the tremendous implications of a past where basic human rights were trampled. New governments-with the assistance and support of the international community-must take responsibility for ensuring that the societies they govern have this opportunity. Groups and individuals outside of the government, and especially the press, also have a specific responsibility and role in the evaluation of the past and the building of a new social and civil structure that respects human rights.

The Human Rights Program of The Carter Center of Emory University together with the McCormick Tribune Foundation sought by sponsoring this conference to begin this process by bringing together journalists and people who have lived through such experiences, and others who have studied them extensively, to

discuss the multi-faceted issues involved in coping with a repressive past and preventing future repression. The conference sought not only to foster a deeper understanding of what already has happened, but also to serve as a forum for developing practical suggestions for those governments that still face the ominous tasks of establishing the truth about past state-sponsored human rights violations, assigning responsibility for these atrocities, and ultimately bringing guilty parties to justice.

The aim of the conference was to give policy makers and human rights activists in emerging democracies a new perspective on how to cope with a history of past abuses. In particular, President Carter hopes the discussion generated will lead to the establishment of international standards for conducting large scale investigations into past abuses and also enhance the debate on the role of both the government and civil society in introducing human rights safeguards into newly democratic societies.

Ultimately, President Carter and the Human Rights Program hope to sustain and act upon the enthusiasm generated at the conference by establishing a core group of distinguished human rights experts who have particular expertise in the field to offer advice, background information, and support to newly established commissions engaged in investigating past abuses and government institutions charged with introducing human rights safeguards.

### **Part III: Recommendations**

#### **From Jimmy Carter: A Handwritten Note with Tentative Suggestions**

Former President Jimmy Carter jotted down these suggestions during the July 1992 conference, "Investigating Abuses and Introducing Safeguards in the Democratization Process," held at The Carter Center.

## *The Human Rights Program of The Carter Center of Emory University*

### **Follow-Up Activities**

#### **The International Human Rights Council**

The Carter Center is now forming an International Human Rights Council composed of eminent individuals and experts who have shown strong leadership in their efforts to promote human rights. The Council will not duplicate work of other human rights bodies but will seek to enhance their effectiveness through collaboration and high-level leadership.

The Council will aim to promote human rights worldwide by working to strengthen international safeguards and the recognition of early warnings of potential human rights violations. Activities of the Council in this area might include developing human rights mechanisms for incorporation into peace/ceasefire agreements, or promoting adoption of national legal and institutional mechanisms to restrict the scope of impunity for human rights violators. In addition, the Council will serve a unique function in devising strategies for dealing with exceptional situations of severe human rights crises that call for imaginative and concerted international efforts.

Members of the International Human Rights Council include: **Philip Alston**, Chair, U.N. Commission on Economic and Social Rights, Australia; **Dr. Hanan Ashrawi**, Founder, Independent Commission for Citizen Rights, Jerusalem; **Florence Butegwa**, Coordinator, Women in Law and Development, Zimbabwe; **Radhika Coomaraswamy**, U.N. Special Rapporteur on Violence Against Women, Sri Lanka; **Patricia Derian**, Former Assistant Secretary for Human Rights, U.S.A.; **Clarence Dias**, President, International Center for Law in Development, India; **Walter Echo-hawk**, Senior Attorney, Native American Rights Fund, U.S.A.; **Felice Gaer**, Executive Director, Jacob Blaustein Institute for the Advancement of Human Rights, U.S.A.; **Stephanie Grant**, Director of Program and Policy,

Lawyers Committee for Human Rights, U.K.; **Thomas Hammarberg**, Former Secretary General, Amnesty International, and Former President, Radda Barnen (Save the Children), Sweden; **Hina Jilani**, AGHS Law Associates, Pakistan; **Elaine Jones**, Director-Counsel, NAACP Legal Defense & Educational Fund, U.S.A.; **Sia Kaxinawa**, Co-Founder, Alliance of the Peoples of the Forest, Brazil; **Teddy Kollek**, Former Mayor of Jerusalem; **Ewa Letwoska**, First Ombudsman in Eastern Europe, Poland; **Gay McDougall**, Executive Director, International Human Rights Law Group, U.S.A.; **Bacre Waly N'Diaye**, U.N. Special Rapporteur for Extrajudicial, Summary, or Arbitrary Executions, Senegal; **Pedro Nikken**, Former U.N. Special Rapporteur on El Salvador, Venezuela; **Jacqueline Pitanguy**, Head of CEPIA, a national educational organization, Brazil; **Michael Posner**, Director, Lawyers Committee for Human Rights, U.S.A.; **Nigel Rodley**, U.N. Special Rapporteur on Torture, U.K.; **Mohammed Sahnoun**, U.N. Secretary-General's former representative to Somalia, Algeria; **Wole Soyinka**, Nobel Prize for Literature, Nigeria; **Dorothy Thomas**, Director, Women's Rights Project, Human Rights Watch, U.S.A.; **Andrew Whitley**, Former Director, Human Rights Watch/Middle East, Journalist/Writer, U.S.A.; **Laurie Wiseberg**, Executive Director, Human Rights Internet, Canada; and **Mona Zulficar**, Lawyer and Member of the New Civil Forum, Egypt.

### **Summary of Human Rights Program Involvement in Ethiopia**

The Human Rights Program of The Carter Center of Emory University has worked since January 1988 to strengthen institutions engaged in human rights monitoring and advocacy, promote their collaborative interaction, and assist in the development of strategies that discourage human rights violations. In addition to conducting traditional activities in individual case interventions and public education, the Program has instituted preventative measures through technical assistance projects in developing democracies. The largest and most effective of these initiatives has been the Program's work in Ethiopia. In 1992 Meles Zenawi, president of the Transitional Government of Ethiopia, requested President's

Carter's help to incorporate strong mechanisms for the protection of human rights into the structure of the Ethiopia state. To achieve this end, The Human Rights Program launched in November 1992 a technical assistance project to strengthen key institutions in Ethiopia-specifically the police force, judiciary, educational curricula, constitution, and Special Prosecutor's Office.

One important aspect of the Program's work has been organizing human rights training for police officers in conjunction with the head of the Ethiopian national police, Hassan Shewfa. The first of these workshops was held Nov. 16 and 17, 1992, and was facilitated by Ron Hampton of the National Black Police Association and Julian del Gado and Jaime Guardia of Spain's police department. The workshop was an important first step in the process of initiating new police officers to the field of human rights and human dignity. The workshop also addressed accountability issues as they relate internally and to other branches of government. Participants included the national police commissioner, Hassan Shewfa, regional police commissioners, and officials from the Ministry of Internal Affairs. The following October Ron Hampton returned to Ethiopia to conduct further training; he was joined by his colleague Preston Gilstrap, a veteran Dallas, Texas, police officer, and Sabra Desai, a human rights activist and professor of sociology at the University of Toronto. The October workshop provided a more intensive training session on the development of a code of conduct and core curriculum for the police force nationwide. Session participants were trained in instructing new recruits in standards of conduct and respect for human dignity; in addition, they were introduced to a particularly successful model of community policing developed by the facilitators and implemented in numerous communities. As these workshops were so well received by Commissioner Shewfa and others, there now exists the possibility of expanding the training program into a month long segment of the police academy's core curriculum.

*Carter Center staff prepare the Atlanta statement.*

The Human Rights Program also has organized human rights education for the judiciary. On Feb. 24 and 25, 1993, the Program, in conjunction with the minister of justice, conducted a two-day workshop for members of the judiciary, legal professionals and government officials. The workshop focused on the independence of the judiciary as an institution, insulating individual judges from undue influence, and increasing awareness within the judicial system of human rights issues. To expose a larger section of the judiciary to these issues, an agreement was reached between CCEU and the Ethiopian Human Rights and Peace Center to jointly organize and conduct a series of human rights training workshops for lay judges of the lower courts. The first session was carried out in June 1994, and more are currently being planned. These workshops have been crucial to the development of the judiciary, as lay judges have little legal training. Another important initiative has been to evaluate how human rights education could be incorporated into the schools and media. In November 1992, a two-day workshop was organized by The Carter Center for education officials. In attendance were the minister of education, the vice minister of education, heads of various ministry departments, teachers, and senior ministry staff in charge of teacher training. This workshop was facilitated by Audrey Osler, from the University of Birmingham, and Ellen Moore from Amnesty International USA, and it focused on familiarizing participants with international human rights documents and how these documents applied to the lives of Ethiopian citizens. In December 1993, a Human Rights Program assessment team travelled to Ethiopia to evaluate the impact of this workshop. The team was composed of Human Rights Program Coordinator Karin Ryan, DANICOM media specialist Inge Petersen, and Audrey Osler, a facilitator of the 1992 workshop and education specialist. The team also assessed possible future efforts to incorporate human rights materials into core school curricula, and explored the possibility of using the media, particularly the radio, as a the judiciary. On Feb. 24 anvehicle to further human rights education.

One of the strongest ways the Human Rights Program has been able to strengthen the protection of human rights is through our relationship with the Constitutional Drafting Commission. CCEU has provided the Commission with a small library on human rights and constitutional developments throughout the world as well as much needed computer resources. The Center also identified and funded a small group of international constitutional scholars who provided expert advice to the Commission. In addition to these resources, the Center provided the Commission with training on the concept of the Ombudsman. In May, The Program sent a delegation of four ombudsman/inspector generals of government-Arne Fliflet of Norway, Hans Gammeltoft of Denmark, Florence Mumba of Zambia, and Augustine Ruzindana of Uganda-to present a workshop for the Constitutional Drafting Commission as well as for other legal professionals and students on the structure, mandate and accountability of the ombudsman. Specifically, the workshop addressed how the office of ombudsman can be used by ordinary citizens to address grievances without fear of retribution and with the expectation of fair, impartial treatment. The workshops were a success: the current draft constitution contains a provision establishing a parliamentary ombudsman as well as a Human Rights Commission. The parliamentary ombudsman would be the first African institution of its kind-answerable to an elected body as opposed to the executive. The Carter Center will continue to monitor the progress of Ethiopia's constitutional development process as the draft constitution continues to be publicly debated.

Although the Ethiopian people look forward to the future, they cannot fully abandon the past abuses carried out under the Mengistu regime. A Special Prosecutor's Office was thus mandated by the transitional charter to investigate and record past abuses for posterity and to bring to justice those responsible. To help them carry out this daunting task, The Carter Center provided the SPO with substantial assistance and advisory support. Specifically, the Center provided for

Todd Howland, a human rights lawyer, to work with the SPO on developing concrete work plans for investigating more than 2,000 cases. The Center also facilitated the assistance of Rudolfo Mattarolo, who successfully prosecuted members of the Argentine military junta in the early 1980's. Most importantly, the Center provided the SPO with the assistance of the Equipo Argentino de Antropologia Forense (Argentine Forensic Anthropology Team) to exhume mass graves, collect forensic evidence for prosecution and train Ethiopian medical students in the methods of mass grave exhumation.

### **1993 U.N. Colloquium To Improve Human Rights Mechanisms**

In January 1993 the Human Rights Program brought together some of the world's foremost human rights experts for a colloquium which focused on improving the human rights mechanisms within the United Nations. Participants included Ibrahim Fall, U.N. under secretary-general for human rights; Prince Hassan of Jordan, and Jean Bertrand Aristide, president of Haiti. The gathering generated a very productive dialogue on the weaknesses and strengths of the U.N. human rights system. The group produced the "Atlanta Statement," which outlined specific recommendations on how to improve this system.

To foster support for the recommendations, they were presented to the secretary-general of the United Nations, Boutros Boutros-Ghali. They were also distributed to the participants in the U.N. World Conference on Human Rights, which took place in June 1993, the international media and international human rights nongovernmental organizations (NGOs) As a result of the Program's work on this subject, President Carter was invited by the U.N. secretary-general to play a prominent role at the World Conference.

President Carter addressed both the U.N. World Conference and the Nongovernmental Organization Coalition meeting, where he stressed the importance of improving the United Nation's ability to monitor and quickly

address human rights issues by adopting such recommendations as the creation of a high commissioner for human rights. This recommendation was put forth in the "Atlanta Statement" and strongly supported by many human rights NGOs and governments, including the United States.

It was decided at the World Conference that further discussions on the proposed resolutions would take place at the U.N. General Assembly (UNGA) meeting in October 1993. Human Rights Program staff attended preparatory meeting prior to the UNGA meeting, promoting such resolutions as the creation of a High Commissioner for Human Rights. Also, President Carter made many public as well as private appeals to U.N. member states for support of this post. He wrote letters to the presidents of numerous countries including Madagascar, Oman, Swazi-land, Ghana, Mozambique, Singapore, Algeria, and Venezuela. These efforts helped secure the adoption of this resolution in December 1993.

The Program continues to contribute to discussions within the NGO community and with government officials on implementation of the resolution to create a U.N. High Commissioner for Human Rights, including the allocation of adequate resources for the effective operation of the post. Program staff will continue to monitor NGO follow-up to the U.N. World Conference. NGO follow-up activities include strategizing and organizing to facilitate U.S. ratification of U.N. human rights treaties such as the Race Convention and the Convention on the Elimination of All Forms of Discrimination Against Women.

## **Part IV: Appendices**

### **Appendix A**

#### **Investigating Abuses and Introducing Human Rights Safeguards in the Democratization Process**

A seminar organized by the Human Rights Program  
of The Carter Center of Emory University,

July 6-7, 1992

*Schedule*

**Monday, July 6, 1992:**

1 p.m.

Bus departs Wyndham Hotel lobby for The Carter Center

1:30-2:30 p.m.

**Introductory remarks:** President Jimmy Carter

**Opening Presentation:** Jamal Benomar, Human Rights Program Director,  
The Carter Center of Emory University, "Confronting the Past: Justice  
After Transitions."

2:30-2:45 p.m.

**Break**

2:45-4 p.m.

**Session A:** *The Reconciliation Debate: Amnesty vs. Justice*

**Moderator:** Robert Pastor, Fellow and Director of Latin American and  
Caribbean Program, The Carter Center of Emory University

**Panelists:** Jorge Correa, Chief of Staff, National Commission on Truth and  
Reconciliation, Chile

Charles Onyango-Obbo, Deputy Editor, *Weekly Topic*, Uganda

Herman Schwartz, Professor, Washington College of Law, The American  
University, United States

Horacio Verbitsky, Columnist for *Pagina/12*, former Editor-in-Chief,  
*Opinion* and *Noticias*, Argentina

4:00-4:15 p.m.

Break

4:15-5:45 p.m.

**Session A, Discussion**

6:00-7:45 p.m.

**Dinner, Upper Rotunda**

8 p.m.

Bus departs The Carter Center for the Wyndham Hotel

**Tuesday, July 7, 1992:**

8 a.m.

Bus departs Wyndham Hotel lobby for The Carter Center

8:30-9:45 a.m.

**Session B:** *Commissions of Inquiry*

**Moderator:** Jaime E. Malamud-Goti, MacArthur Fellow for Peace and Professor of Law, Universidad de Buenos Aires; former Solicitor General, Argentina.

**Panelists:** Mahamat Hassan Abakar, President, Commission of Inquiry, Chad

Jorge Correa, Chief of Staff, National Commission on Truth and Reconciliation, Chile

Graciela Fernández Meijide, Executive Secretary, Permanent Assembly for Human Rights, Argentina

Augustine Ruzindana, Inspector General of Government, Uganda

Paulynn Sicam, Member, Commission on Human Rights, former reporter; *The Manila Chronicle, Newsweek*, the Philippines.

9:45-10 a.m.

Break

10-11:30 a.m.

**Session B, discussion**

11:45-12:45 p.m.

Lunch, Upper Rotunda

1:00-2:15 p.m.

**Session C: *Human Rights Work in the Post-repressive Period***

**Moderator:** Jamal Benomar, Human Rights Program Director, The Carter Center of Emory University

**Panelists:** Horacio Verbitsky, Columnist for *Página/12*, former Editor-in-Chief, *Opinion* and *Noticias*, Argentina

Juan Pablo Cárdenas, Reporter, *Revista Análisis*, Chile

Charles Onyango-Obbo, Deputy Editor, *Weekly Topic*, Uganda

Kenneth Roth, Deputy Director, Human Rights Watch, United States

2:15-2:30 p.m.

Break

2:30-4 p.m.

**Session C, Discussion**

4:00-4:15 p.m.

Break

4:15-5:15 p.m.

**Conclusion and follow-up activities:** Jamal Benomar

5:15-5:30 p.m.

**Closing remarks:** President Carter

## **Country Profiles: How Governments Investigate Past Human Rights Abuses**

*Prepared by the Human Rights Program of The Carter Center of Emory University*

### **The Argentine Republic**

#### **Background**

Argentina entered a seven year period of severe repression and military rule in March 1976 when General Jorge Rafael Videla led a coup d'état against the government of Isabel Perón. The two preceding decades had been marked by rising political violence perpetrated by several guerrilla organizations which faced state-authorized repression. Under the military dictatorship, the "dirty war" against subversion was marked by wide-scale disappearances, torture, and extrajudicial execution. The special targets of abuse were members of political organizations, students, lawyers, journalists, and trade unionists who opposed the dictatorship.

The Malvinas/Falkland war in 1982, combined with the economic crisis that preceded it, undermined the military's ability to maintain power. Democratic institutions were reinstated when civilian President Raúl Alfonsín was inaugurated in December 1983. President Alfonsín took immediate action to protect human rights by signing various international human rights treaties. President Alfonsín promised to fully investigate the question of the disappeared and publicize the results of that inquiry. Within the first month of his presidency, President Alfonsín set up the National Commission on Disappeared Persons (CONADEP) to investigate the thousands of human rights violations committed by the military from 1976 through 1983 and bring the perpetrators of these crimes to justice.

rights in Argentina. President Alfonsín appointed ten prominent citizens to serve as members of CONADEP and directed the Chambers in Congress to appoint another six, though only the Chamber of Deputies complied by electing three members. Ernesto Sabato, a leading Latin American novelist, was chosen by the Commission to be its chair. The Commission was instructed to investigate the fate and whereabouts of the disappeared and to report its findings to the president. The Commission was not given prosecutorial powers, although it did have access to all government facilities and the security forces were ordered to cooperate with it. Instead, evidence the Commission uncovered was to be provided to the relevant courts for legal action.

Throughout the investigation, the Commission received invaluable assistance from human rights organizations which provided it with personnel assistance, technical resources, extensive documentation, and experience acquired from working under the difficult conditions of military rule. CONADEP hired staff and consultants to take testimony throughout the country from relatives of the disappeared and survivors of the camps where the disappeared had been held. In addition, Argentine diplomats abroad took the depositions of exiles who had left the country during the period of repression. The Commission also unsuccessfully appealed to members of the military and security forces for information on their role in the repression.

CONADEP completed its investigations and presented its report, entitled *Nunca Más* (Never Again), to President Alfonsín in September 1984. Published at the end of November, this report documented 8,960 cases of disappearance, including 1,300 cases of persons who remained missing but had been seen in secret detention centers. The Commission estimated that the actual figure of those who disappeared between 1976-1983 was considerably higher, since many of the victims had no relatives or witnesses who felt secure enough to provide information on the circumstances surrounding disappearances or were

able to travel to provincial centers to offer this information. CONADEP submitted over 1,800 cases to the courts to investigate the possibility of bringing criminal charges against military and security force personnel for human rights violations.

### **Aftermath of the Commission's Report**

*Nunca Más* disclosed the truth about what had happened during the "dirty war," but it did not fulfill President Alfonsín's promise of justice for the Argentine people. The issue of whether civilian or military courts would have jurisdiction to hear the cases stalled judicial proceedings. After the Supreme Council of the Armed Forces established control over all of the complaints, the judicial process became slow and inactive. Human rights activists petitioned the Federal Court of Appeals to take jurisdiction over the case of General Jorge Rafael Videla, the first president of the dictatorship, and eight junta members (this Court was empowered to take such jurisdiction because of the length of time that had elapsed since the start of the judicial process). The inactivity and stalling of the Armed Forces' Supreme Council led the Court of Appeals to take action by sending the nine junta members to trial before a civilian court in April 1985. The *Trial of the Military Commanders* symbolized Argentina's ability to deal with the egregious abuses of the past in a court of law. Of the nine defendants, five were found guilty of numerous acts of homicide, torture, and false arrest and were given lengthy jail sentences; two of these defendants, including General Videla, were sentenced to life imprisonment. Although four of the defendants were acquitted, this trial nevertheless stands as an extremely significant landmark—the Argentine people were able to hold their past leaders accountable for abuses of authority. In the process, the judiciary asserted its independent role, taking important steps toward establishing the rule of law in Argentina. The CONADEP report and earlier statements by human rights organizations were validated by the authority of an independent civilian court.

The trial of the junta members was a victory for the victims of the "dirty war," despite the fact that only a handful of officers were imprisoned and 2,000 or more additional criminal complaints remained on file against security forces for human rights violations. Government officials were concerned, however, that if no limit were placed on the remaining trials, the armed forces would threaten disobedience and create a strained coexistence between the military and the democratic government. President Alfonsín eventually conceded to military pressures and enacted the *Punto Final* ("full stop") legislation, which placed a time limitation on prosecutions and created extraordinary procedural requirements. Because of the diligent efforts of human rights organizations, however, new complaints and additional evidence to support complaints already pending were submitted to the courts before the deadline set by the *Punto Final* legislation. As a result, more than 100 officers continue to face charges.

These events did not improve relations between the government and military, and Alfonsín faced criticism for seemingly acceding to military demands. Government/military relations deteriorated further and in April 1987, a group within the Armed Forces led an unsuccessful rebellion against the president. Soon after, President Alfonsín submitted to Congress the Due Obedience Law which declared all officers under a certain (high) rank to be innocent, without possibility of judicial review. Officially enacted on June 5, 1987, this law absolved a large number of potential defendants, including many generals and colonels, of any guilt for orders they carried out during the "dirty war." The Due Obedience Law extended to all military personnel except chiefs of security forces and security areas. President Alfonsín justified his enactment of the *Punto Final* and Due Obedience laws by saying that such laws were necessary to preserve democracy.

### **Current Human Rights Situation**

President Carlos Saúl Menem succeeded Alfonsín in July 1989 and terminated the process of determining accountability for past human rights abuses. He issued pardons for those whose prosecutions remained standing after the passage of the Due Obedience and *Punto Final* laws. Despite domestic and international protest, President Menem also issued a pardon on December 29, 1990, for the five junta members and other military and government officials convicted of human rights crimes. President Menem repeatedly justified the pardons by calling them a gesture of reconciliation. In contrast, former General Videla, one of the nine convicted and pardoned junta members, publicly referred to the pardons as a step toward vindication from society for being wrongly accused.

CONADEP dissolved itself after issuing *Nunca Más*. After this dissolution, the Directorate of Human Rights, a unit within the Ministry of the Interior, was created by Alfonsín in 1984. This Directorate presently is headed by Alicia Pierini, a prominent human rights lawyer and Menem appointee. As established by its mandate, the Directorate maintains CONADEP's files, allowing public access to them, in addition to following up on previous individual cases and receiving new complaints.

Although the Directorate is neither a prosecutorial nor investigatory body, it has been instrumental in drafting legislation to compensate the victims of arbitrary arrest from 1976-1983 who were held in administrative detention, without trial, by virtue of "state of siege" powers. In January 1992, a law was enacted which provides compensation to the families and victims of arbitrary arrest, torture, and disappearance. In addition, the Directorate is proposing a study to establish the fate of some 300 disappeared persons and provide this information to the relatives of these victims. *Nunca Más* provided an explanation of the systematic repression under the military juntas, but did not include results of individual case

investigations. A detailed report such as the one proposed by the Directorate will help to more fully establish the truth and account for past human rights abuses.

## **The Republic of Chad**

### **Background**

From 1982 to 1990, the government of Chad, led by President Hissein Habré, was responsible for gross human rights violations, including arbitrary arrests, secret detention, long-term detention without charge or trial, torture, and extrajudicial execution. Before fleeing the country, President Habré ordered the extrajudicial execution of over 300 prisoners, the majority of whom were secretly detained at his headquarters. Reportedly, the Presidential Guard then threw most of the corpses into the Chari river. Several hundred political prisoners that were held in various secret detention centers in the capital of N'Djaména were freed following the armed takeover on 1 December 1990. Many reported having been held in a converted swimming pool situated in the center of the capital, directly across from USAID headquarters and near a United Nations office. The extremely harsh prison conditions resulted in many deaths from starvation and neglect. Several thousand political prisoners who disappeared shortly after their arrest are now known either to have been killed secretly or to have died as a result of torture, severe malnutrition, or illness in the absence of basic hygiene and medical care. Those who did not die languished in prison, as no political prisoners held by the Habré regime were ever brought to trial or even charged with specific crimes.

Following the military victory of the *Mouvement Patriotique du Salut (MPS; Patriotic Front for Salvation)* on 1 December 1990, President Habré fled Chad along with other senior officials. The MPS, a coalition of armed opposition groups, drew most of its support from the Hadjerai and the Zaghawa ethnic groups. Idriss Deby, the leader of this coalition, became president and formed a broad-based government. For the first time in Chad's history, no reprisals were

carried out against supporters of the previous regime. Most of those supporters fled the country following the MPS takeover and now have returned; several currently serve as government ministers or presidential advisors, and many have been integrated into a new secret service organization. As a result, the new government has received criticism for being too lenient with senior officials of the previous administration, some of whom were involved in carrying out human rights abuses.

The MPS formed a transitional government with a 30-month mandate to draft a new constitution and lead the country towards multi-party democracy and free elections. Laws were introduced to legalize political parties and, on March 4, 1991, the new government adopted a National Charter as a provisional constitutional framework for the transition period. This framework includes governmental guarantees for fundamental rights and freedoms, including freedom of opinion and association, the right to organize labor unions, freedom of the press, freedom of movement, and the right to own property. Additionally, the National Charter ensures respect for the fundamental principles set forth in United Nations and OAU human rights instruments and charges the Court of Appeals with protecting fundamental rights.

### **The Governmental Commission and Its Record**

The armed opposition's takeover marked the end of the most brutal period of repression in Chad's history. It was widely believed that Hisssein Habré was directly involved in running the day-to-day operations of the secret police and in making decisions about the torture and execution of prisoners. One month after coming to power, President Deby established by presidential decree the *Commission D'Enquête*, or Commission of Inquiry, to investigate abuses committed under the Habré regime and the embezzlement of state funds by President Habré and his associates. In addition, the government formed a special high court to try Hisssein Habré, if necessary *in absentia*, after the

Commission concluded its investigations. Former President Habré currently is living in exile in Sénégal.

The Commission interviewed 662 former political prisoners, 786 families of victims of extrajudicial executions, 236 former prisoners of war, and 30 former members of the security forces, the *Direction de la Documentation et de la Sécurité* (DDS; Directorate of Documentation and Security). Written testimonies were gathered to determine the relevance and veracity of the witnesses. In addition, confidential archives which survived looting after President Habré's downfall have provided valuable information about the structure and activity of the DDS. Despite intimidation from former Habré government officials which caused some members of the Commission to resign, the Commission as a whole showed considerable courage by interviewing the majority of security officers who had been reinstated, as well as other high ranking officials from the previous administration who have since been appointed to senior posts in the new government.

The Commission was handicapped in its work, however, by a lack of basic resources. For example, a shortage of vehicles prevented the Commission from gaining access to many rural areas where wide-scale massacres of civilians had occurred. It also faced difficulties in gathering witness testimony. In one ironic twist, the Commission had no choice but to use as its headquarters the former secret detention center in central N'Djamena. Because of the history of this site, many victims of the former regime hesitated in coming forward with information that would have been useful to the Commission's investigative efforts. Further, when President Habré regrouped his supporters and resumed armed attacks in the Lac-Chad region at the end of 1991, many witnesses refused to give evidence fearing his possible return to power.

## **Results of the Inquiry**

In May 1992, the Commission announced the publication of its report in a public ceremony in N'Djaména to which the entire diplomatic corps was invited. Its findings were staggering: at least 40,000 were reported killed by the security forces during Habré's regime (Chad's current population is approximately 5 million). Moreover, detailed evidence was presented about President Habré's personal involvement in the torture and killing of prisoners. Additional shocking evidence ascertained that the DDS, which carried out most of the killings and other abuses under Habré, was trained by United States personnel both in the U.S. and Chad as recently as late 1990. The Commission uncovered evidence indicating that the U.S. government funded DDS operations, providing CFA 5 million per month in 1989 (US\$15,675.00 equivalent) and twice that in 1990. Iraq also was named as a contributor to the DDS budget, while France, Zaire, and Egypt made financial contributions in addition to organizing training sessions. A U.S. advisor was determined to have worked closely with the DDS director at the same DDS headquarters where political prisoners were tortured and killed on a daily basis. The Commission's report went on to name individual violators and to publish their photographs; some of these violators currently occupy official positions in the new government. It remains unclear whether President Deby's government, which has a limited power base and is confronting a new rebellion of former Habré supporters, will initiate criminal proceedings against the named members of the DDS who carried out human rights abuses in Chad.

Finally, the Commission's report included various recommendations about introducing safeguards for the protection of human rights in the future, including a proposal to create a new human rights commission with a mandate to educate the public and to investigate new abuses that have occurred since the change of government in December 1990. In the coming weeks, these recommendations will test the present government's commitment to introduce substantive measures to protect human rights.

## **Current Human Rights Situation**

Although the new government criticized the massive violations of human rights under the previous regime, it still has not taken concrete action to introduce safeguards and procedures to prevent similar violations from recurring. The new security force under President Deby, which is comprised primarily of former rebel groups, has received no formal training and apparently has little knowledge of legal procedures. Dozens of people suspected of being involved in a pro-Habré rebellion in the west of the country are believed to be victims of extrajudicial killings by members of the new security force. Although President Habré supporters did not face reprisals when Idriss Deby's forces occupied N'Djaména in December 1990, many abuses have been committed since.

## **The Republic of Chile**

### **Background**

On 11 September 1973, Chilean President Salvador Allende was overthrown in a violent military coup d'état led by General Augusto Pinochet Ugarte. Immediately thereafter, General Pinochet established a military junta and declared himself President of the Republic of Chile. He then dissolved the National Congress, declared illegal all parties with Marxist or similar tenets, suspended activities by all other political parties or groups, and established the *Departamento de Inteligencia Nacional* (DINA; Department of National Intelligence), an agency that functioned as Pinochet's security police force. DINA and its 1977 successor *Central Nacional de Inteligencia* (CNI; Central National Intelligence), were responsible for carrying out political arrests and disappearances while they also routinely detained people without warrant, systematically tortured them, and often killed them.

Under General Pinochet's dictatorship, human rights violations among the most savage in the hemisphere were perpetrated against "enemies" of the new regime. The military targeted representatives of political parties and labor unions,

but it also persecuted a large number of workers and *campesinos* with no political affiliations. Abuses included summary executions, disappearances, systematic torture, individual and mass arrests, forced exile, and violations of labor rights. After more than 16 years of military rule by General Pinochet, democracy was restored when Patricio Aylwin was elected president in March 1990. Today, President Aylwin continues to lead the multiparty coalition *Concertación de Partidos por la Democracia* in Chile.

### **The Governmental Commission and Its Report**

In an attempt to disclose the truth about the massive number of human rights violations that occurred under General Pinochet's rule, President Aylwin established the Presidential *Comisión Nacional de Verdad y Reconciliación* (CNVR; Commission on Truth and National Reconciliation). The CNVR also was known as the Rettig Commission, since it was chaired by former Senator Raúl Rettig. It was comprised of eight members, including both supporters and opponents of the old military regime in an effort to elicit broad-based confidence among the Chilean population. Formally established on May 9, 1990, the Commission was directed to complete its work within six to nine months.

The Commission's primary task was to investigate human rights violations that occurred between Sept. 11, 1973, the date of the coup against President Allende, and March 11, 1990, the date that the current government came to power. The CNVR investigated abuses committed by security force personnel which ended in the death, disappearance, or physical injury of the victim, as well as a smaller number of killings committed by armed opposition groups. The Commission gathered information to determine the fate and, when possible, the whereabouts of victims of these abuses and recommended individual reparation to victims and their families. The CNVR received lists of victims from both national human rights groups and the military, and also placed advertisements in newspapers around the world to solicit information from exiles and international

non-governmental organizations. In June 1990, the CNVR conducted more than 4,000 interviews throughout Chile, gathering first-hand information from victims, their relatives, and representatives concerning approximately 3,400 cases. The Commission was restricted in its efforts because it had no power to compel testimony or initiate prosecution. Yet, despite such restraints on its activity, the CNVR did name specific government agencies as organs of repression and presented its findings to the proper civil and judicial authorities for prosecution. The CNVR submitted its final report to President Aylwin on Feb. 8, 1991.

President Aylwin studied the report, assessed the information, and then presented it to the nation in a televised speech on March 4, 1991. Copies of the Rettig report were distributed immediately to government officials and foreign embassies. The report also was printed in Chilean newspapers and eventually was distributed widely to families of victims as well as the general public. And, despite the report's narrow focus, its findings were impressive in their scope and gained the approval of nearly all sectors of Chilean society.

The Rettig report implicated General Pinochet's security forces in 2,279 killings and disappearances and supported these findings with meticulous detail and documentation. The Commission recommended a one-time reparation payment to victims' families in addition to health, education, and housing benefits. It called for further investigation into 641 cases on which it could not reach a conclusion and, in addition, submitted information to the civilian courts on some 230 cases, along with requests that those cases to be reopened. President Aylwin promised to pursue all legal cases that involved human rights violations, while General Pinochet rejected the accuracy of the report's findings and refused to allow an investigation of the military. Because an amnesty law adopted by General Pinochet's military junta in 1978 remains in force, the government cannot prosecute military personnel for any of the crimes described in the report committed prior to the enactment of the law. Furthermore, the courts have made

few significant advances because they-in particular the Supreme Court-are comprised primarily of Pinochet appointees. In prosecuting some military personnel for human rights abuses that occurred after 1978, the courts have used information from the Rettig report. These courts have not, however, convicted anyone of a human rights crimes.

### **Obstacles to Reconciliation**

President Aylwin's present and continued ability to promote human rights appears to be limited by several factors. First, the 1980 Chilean constitution drafted by the Pinochet government continues to protect the power of the conservative right and defenders of the military. Under this constitution, civilian control of the military remains incomplete; for example, civilian authorities cannot remove General Pinochet or military commanders-in-chief until 1997. Second, former secret police and human rights abusers now occupy command positions within military regiments. Third, the electoral system established in the constitution is not fully representative; at least one-fifth of the Senate is appointed, including former President Pinochet, now a life-time senator. This results in strong congressional opposition that supports General Pinochet and is able to block the governing party's initiatives. Finally and most importantly, the 1978 Amnesty Law mentioned above protects all military personnel from any liability relating to abuses occurring prior to 1978. It has even forced many investigations initiated by the CNVR to be abandoned and has absolved the military of nearly every violation mentioned in the Rettig report, with the exception of the Letelier/Moffitt killing. On Sept. 21, 1976, Chilean exile Orlando Letelier and a colleague, Ronni Moffitt, were killed by a car bomb in Washington, D.C. allegedly on orders from Chile's DINA. Chile's Supreme Court has reopened the investigation into these killings and two men have been charged and await trial. This case has become an important symbol for many Chileans who were denied legal justice because of the Amnesty Law.

## **Current Human Rights Situation**

In recent years, the escalating rate of crime and political violence by armed leftist groups has reinforced rightist opposition and further polarized Chilean society. As a result, promotion of human rights has become more costly politically. Some on the extreme right allege that the Rettig Commission report indirectly contributed to the new wave of terrorism sweeping the nation. After the April 1, 1991, murder of Senator Jaime Guzmán, the former chief ideologue of General Pinochet's military regime, the right attempted to link this crime to the release of the Rettig report. Because of Senator Guzmán's assassination and the general state of increased violence, the government has come under increasing pressure to drop human rights issues from its agenda and instead turn its attention toward combatting terrorism. As mentioned above, the governing party's congressional initiatives have been thwarted in several instances by opposition from the right. This occurred when Congress vetoed one proposal to abolish the death penalty and another to grant clemency to security-related prisoners. More serious developments include the recent allegations of abuse and torture of persons detained by the military in the so-called "war against subversion" which the military insists has not ended, but merely entered a new phase. As of February 1992, 63 people detained under General Pinochet remain in prison and the death penalty remains the sentence for 37 different crimes.

To continue the Commission's laudable work in establishing the truth about past human rights abuses, the Chilean Congress recently approved President Aylwin's proposal to create an office to follow-up investigations of cases not fully concluded by the Rettig Commission and to compensate the families of murder and disappearance victims. Because of the nature of the transfer of power in 1990 and the Amnesty Law, General Pinochet and many of his appointees remain in positions of power, and many fear that these individuals may try to return to power if pushed too far. This fear motivates some to suggest that attempts by President Aylwin to push more vigorously for prosecution of military

personnel might endanger Chile's new democracy. Others argue that true reconciliation must include full enforcement of justice. Given the current balance of power between civilians and the military and Chile's still fragile democratic order, it is likely that reconciliation be a difficult and protracted process.

## **Republic of the Philippines**

### **Background**

The reign of President Ferdinand Marcos (1965-86) was marked by wide scale government-sanctioned violence directed against his political opponents. Human rights violations attributable to the regime and the military ranged from extrajudicial executions and disappearances to arbitrary arrest, prolonged detention, and torture. Among the most common victims were students, union leaders, political dissidents, human rights workers, journalists, Muslim secessionists, and church members whom the government suspected of being leftist sympathizers or members of the New People's Army (NPA), the armed wing of the outlawed Communist Party. Following President Marcos' ouster, the new government established various commissions of inquiry to investigate past and present human rights violations. These bodies include, in order of formation, the Presidential Committee on Human Rights, the Commission for Human Rights, and the Presidential Human Rights Committee. Despite recent progress, however, evidence indicates that government-backed forces continue to perpetrate abuses. Human rights organizations assert that between 1988 and 1991, the Filipino government-through the actions of the military and paramilitary groups-was responsible for at least 550 extrajudicial killings. In addition, both insurgents and civilian vigilantes continue to violate the human rights of Filipino people.

### **Establishment of Governmental Commission**

After the victory of the "People Power Revolution," Corazon Aquino was sworn in as President on Feb. 25, 1986. In an effort to align domestic human rights policy

with international standards, she released all political prisoners, reinstated *habeas corpus*, and repealed decrees that permitted indefinite detention. President Aquino also ordered the drafting of a new Constitution, including a forceful Bill of Rights, to better prevent human rights violations. More importantly, on March 18, 1986, President Aquino appointed a Presidential Committee on Human Rights (PCHR) to investigate human rights abuses by government agents, to advocate prosecution of violators, and to recommend to the Executive branch safeguards to prevent further violations. To head the PCHR, President Aquino nominated former Senator José Diokno, founder of the Free Legal Assistance Group and outspoken Marcos critic, and selected other Committee members both from the military and nongovernmental human rights groups. During its early days, the PCHR developed an effective strategy of investigating "test cases" involving the most serious human rights violations against political detainees and other victims. Some PCHR legislative proposals to prevent further abuses became law; for instance, instruction in fundamental human rights became mandatory for all personnel with authority to arrest and investigate. The PCHR had no prosecutorial powers, however, and the Executive branch failed to initiate action on cases referred to it. After Senator Diokno's untimely death, the PCHR fell into decline and, in May 1987, was replaced by the Commission on Human Rights (CHR).

The constitutionally mandated CHR is an independent government body comprised of a national office in Manila, 13 regional branches, and five provincial suboffices. The CHR is charged with investigating all alleged human rights violations, including those brought to its attention by complaint and those that it must take pro-active steps to investigate. The CHR has no prosecutorial powers but, like its predecessor, it can recommend prosecution when appropriate. Given the CHR's potential for independent action, early activity was promising.

### **Record of the Commission**

According to many human rights activists, the CHR's performance has been disappointing. Its record has been clouded by incidents of apparent appeasement and accommodation to the military, possibly stemming from the fact that, until recently, one member of the Commission and others from regional offices were former military officers. The independence of the CHR is rendered even more suspect by the presidential practice of appointing its chairperson and four commissioners to seven-year terms without congressional review or confirmation. Moreover, the CHR occasionally has taken action that indirectly encourages rather than discourages human rights abuses. For example, Chairperson Mary Concepción Bautista has challenged publicly the credibility of human rights organizations, implying that Amnesty International and other NGOs may be leftist sympathizers, which in turn increases the likelihood that human rights workers will become targets of the military and other paramilitary groups. In addition, the CHR produced extensive guidelines for "Civilian Volunteer Self-Defense Organizations," an action which some activists felt may have validated the existence and proliferation of vigilantism. Poorly disciplined and ill-trained vigilante groups have since functioned as military surrogates and apparently have been responsible for repeated, gross human rights violations. Problems also have arisen because the CHR's mandate to investigate "all forms of human rights violations involving civil or political rights" is overly broad and unwieldy. The Commission has accepted complaints that cannot be called human rights violations, such as defamation and breach of contract claims. Such action seems to overwhelm the CHR's resources and detract attention from the most serious violations, thereby diluting the Commission's effectiveness.

Moreover, the CHR accepts complaints filed by the military against non-state entities to ensure that it protects the human rights of all individuals, including soldiers and police officers. The PCHR, in contrast, had flatly rejected the practice of investigating human rights complaints against insurgents, referring these instead to other governmental prosecutory agencies. Finally, although the

broad mandate of the CHR is matched by one of the largest budgets of any human rights commission, some claim that almost three-quarters of its budget since inception has been spent on personnel and overhead. In comparison to the number of violations occurring in the Philippines, the number of victims and witnesses receiving aid and protection is negligible. Responding to criticism of the CHR in 1988, Chairperson Bautista stated that she needed more investigators and lawyers to expedite field studies. However, the number of CHR field staff had not increased by September 1991. Additionally, investigators reportedly have been recruited on the basis of personal connections; appropriate training was not considered and regional directors often have been reluctant to dismiss employees for fear of retribution from political sponsors.

The CHR continues to successfully use its powers to delay the scheduled promotions of military officers who are the subject of pending CHR complaints. As a result, some officers who supervised alleged offenders have been denied promotions. On the other hand, however, the Commission has been criticized for failing to fully use powers of equal potential value, such as instituting contempt proceedings against military officials unwilling to cooperate, subpoenaing official records, and visiting jails and other places of detention.

Human rights groups have suggested that the CHR's regional branches have been somewhat more effective than the Manila office. One branch has provided successful witness and victim protection, and regional staff in general have displayed more independence in promoting human rights than Commissioners. Nevertheless, these offices have not escaped what many see as the primary obstacle to protecting human rights: repeated obstruction and harassment by military and police forces. Even the president has faced such impediments, often exhibiting an unwillingness to antagonize the military. Furthermore, she failed to adhere to the terms of the February 1987 Constitution, under which private armies and paramilitary groups should have been outlawed. Instead, a new

paramilitary group called Citizens' Armed Forces Geographical Units (CAFGU) was established by Presidential decree in 1987. According to Asia Watch, these official militia forces received active encouragement from President Aquino and her government. And despite the fact that the repeal of Presidential Decree 1850 now allows members of the police force and military accused of human rights violations to be tried in civil courts, such prosecutions have been impeded by recalcitrant police officials who have refused to serve warrants and subpoenas. In addition to the debilitating effects of intimidation by the military, the CHR also appears to suffer from "bureaucratic intimidation" as a result of the formal, often discouraging complaint system which in practice may serve to transfer the burden of proof to the complainants.

### **Current Human Right Situation**

In December 1989, President Aquino formed a new body to promote human rights in the Philippines, the Presidential Human Rights Committee (PHRC). The role of the PHRC is to monitor the status of human rights, provide assistance in locating the disappeared, and counsel the president accordingly. The secretary of justice was nominated to head this body, with other members drawn from NGOs, the Department of National Defense, and the CHR. The broad composition of the PHRC was designed to enhance cooperation and trust between these groups. The PHRC has conducted fact-finding missions, developed the Guidelines on the Visitation of Detainees by Private Physicians, formulated a Memorandum of Agreement between the Department of Defense and the Medical Action Group to provide health services to remote areas, and focused more criticism on counter-insurgency operations. Although the PHRC was not established to replace the Commission, recent friction between the two groups has created doubt about whether the PHRC will be able to effectively fulfill its mandate.

## Romania

### Background

During the 25 years that Nicolae Ceausescu ruled Romania, he constructed an extremely repressive totalitarian regime which sought to exert control over all aspects of life in the country. After the December 1989 revolution that overthrew President Ceausescu and the Communist Party, the new government controlled by the National Salvation Front (NSF) began dismantling most of the existing repressive structures and institutions to create a more democratic society. Serious human rights problems remain in Romania, however, and the current government has not fully committed itself to address them.

Prior to the 1989 revolution, the government's main instrument of control over society was the Department of State Security, or Securitate, which had developed a machinery that effectively and often brutally suppressed all forms of dissent or opposition to the state, the party, and President Ceausescu. Similar to the secret police in other Eastern European countries, the Securitate utilized extensive networks of informants, wire and phone taps, and undercover agents. Unlike most other countries in the region, however, the secret police in Romania were successful in preventing the formation of any organized opposition groups, underground press, or human rights organizations in the country. This void has caused leadership problems for opposition groups since the revolution. Despite constitutional provisions, and Romania's adoption of most international human rights instruments, under President Ceausescu the Romanian people enjoyed few civil and political rights. In addition, members of minority groups, particularly Hungarians and Gypsies, were discriminated against in areas such as housing, education, and cultural expression.

The uprising that brought down the Communist regime began in response to a civilian massacre by the army and security forces in the city of Timisoara on Dec. 17, 1989. By Dec. 22, the army had joined the people in rebellion, a new

government had taken other cities, ending only after the Ceausescus were tried and executed on Dec. 25, 1989. The new government was formed by a group of dissidents that called itself the National Salvation Front. While this group included a few intellectuals and religious leaders, the majority of the members were former communists who had been dismissed or purged by President Ceausescu.

### **Confronting the Past**

Soon after the revolution, the government promised to hold elections in April 1990 (they actually were held on May 20, 1990) and eliminated the majority of the previous regime's repressive practices, such as foreign travel and emigration restrictions, and restraints on freedom of speech, assembly, religion, and the press. While there have been great improvements in these areas since the revolution, the government has not adequately addressed many serious human rights problems, including continuing violence against demonstrators, judicial system deficiencies, and increasing violence against ethnic minorities.

Perhaps the most problematic issue facing the new government has been how to confront the abuses of the previous regime, and in particular the role played by the Securitate both during the Ceausescu period and also after the revolution. Unlike several other countries undergoing transition from a repressive past, the Romanian government has not formed any type of commission to investigate past human rights abuses. The legislature did create investigatory commissions after ethnic violence in Tirgu Mures in March 1990 and violent riots in Bucharest in June 1990, but their reports did not establish clear responsibility, contained conclusions that were divided along party lines, and have had little or no demonstrable effect on preventing subsequent incidents of violence.

Soon after the revolution, the government began conducting trials of high-level government officials, Ceausescu associates, and Securitate members, with both

military and civilian personnel being tried before military tribunals. In investigating and prosecuting these officials, the NSF government has distinguished between their actions during the December revolution and their actions during the 25 years of President Ceausescu's rule. In all cases, the charges and the evidence have been strictly limited to events during the period of Dec. 17-22, 1989. The only exception has been a handful of trials in which individuals close to President Ceausescu were charged with embezzlement during his regime.

Although the trials of Securitate agents and government officials generally have ended in convictions, most have dragged on for long periods of time, which has greatly diminished their political impact. The trials have failed to build confidence in the judicial system among the Romanian public. For example, 21 members of the Politburo were arrested in the aftermath of the revolution and brought to trial in July 1990. The trial began with great interest and expectation-a "new Nuremburg"-but as time passed, interest waned and the charges of "complicity in genocide" were lessened to negligence and other smaller offenses. The officials were convicted in March 1991, but their sentences were overturned on appeal the following December. Finally, in April 1992, the Supreme Court reversed the acquittal and sentenced all 21 to terms ranging from 8-16 years in prison. Despite the eventual outcome, the case seemingly has done little to increase confidence that the courts and the government are institutions committed to seriously addressing the abuses of the communist period.

The government has continued to resist calls by the opposition and other groups to investigate the role of the Securitate both prior to and after the December 1989 revolution. Most of the personnel who worked for the Securitate were removed when the Romanian Information Service (SRI) was created to replace the Bureau of State Security. In the transition, however, there has been no public explanation of what happened to the former agents who were "compromised," and neither Securitate names nor files have been made public, although the SRI repeatedly

has promised to do so. In addition, despite the major role played by the security forces during the December revolution and their pervasive influence under the Ceausescu regime, very few agents have been brought to trial, and the few trials that have occurred have focused strictly on actions during the revolution. Finally, although the SRI is now legally prevented from conducting surveillance inside Romania and its director consistently claims that SRI personnel are not involved in any invasive practices, there have been numerous reports of continued wiretapping and other surveillance activities against Romanian citizens.

Former Securitate officials allegedly have been involved in instigating the violence that has occurred during several demonstrations in Bucharest, particularly the incidents that took place on June 13-15, 1990, when the military, assisted by bands of miners called in by the government, forcibly broke up demonstrations in the capital. In addition, because the identity and present status of Securitate members have not been disclosed, it is widely suspected that former agents still maintain connections with the military and the SRI.

### **Current Human Rights Situation**

One indication of Romania's improving human rights situation was the February 1992 decision of the United Nations Commission on Human Rights to terminate the special rapporteur assigned to that country. The commission established the rapporteur in February 1989 in response to increasing international concern about abuses committed by the Romanian government. While acknowledging many improvements in overall human rights conditions in the country since 1989, several human rights groups are worried that the change in international perception is based more on decreasing media attention and lessening international interest than on a genuine transformation of the actual human rights situation.

As Romania prepares for national elections, currently scheduled for Sept. 27, 1992, polls indicate that the NSF government is losing popular support primarily because President Ion Iliescu and other leaders continue to be perceived as communists who are more interested in retaining power than fully establishing democracy. These leaders also refuse to allow a full investigation of the Ceausescu regime. The NSF deserves credit for making considerable strides toward a rights-based, democratic system, and creating a society free from much of the repression and abuse that existed under the communist regime. The revolutionary government's inability or unwillingness to confront Romania's past, however, continues to be a major stumbling block in the transition toward democracy.

## **The Republic of Uganda**

### **Background**

Since gaining independence in 1962, Uganda has suffered through appalling human rights abuses perpetrated by a series of brutal dictatorships led by Milton Obote, Idi Amin, and Tito Okello. Human rights organizations estimate that over 800,000 people were killed or disappeared between 1966 and 1986. The human rights practices of the Obote, Amin, and Okello regimes both emerged from and exacerbated the deep ethnic divisions that were fostered by the British during the colonial period. Each change in regime brought favor to a different collection of ethnic groups and revenge and repression on most others. Through Uganda's repressive period, the military and security forces were the main agents of repression and abuse, and they held almost unlimited powers of detention and summary justice.

In January 1986, the National Resistance Movement and Army (NRM/NRA) led by Yoweri Museveni came to power after a five-year civil war. The new government inherited a country that was economically devastated, devoid of infrastructure, rife with governmental corruption, and challenged by armed

opposition in the North and East. To address this situation, the NRM devised a ten-point program that emphasized the establishment of democracy, elimination of ethnic conflict, rebuilding of the economy, and reestablishment and protection of human rights. To achieve this last goal, the government created two institutions: the Human Rights Commission (HRC) and the Office of the Inspector General of Government (IGG). Despite the work of these two bodies, the problems that plague the country have inhibited human rights progress thereby maintaining Uganda's troubled human rights situation.

### **The Human Rights Commission**

The Human Rights Commission was formed in May 1986 to investigate all aspects of human rights violations committed from independence through Museveni's ascension to power and to suggest ways for preventing recurrence of abuse. The HRC has no prosecutorial powers, however, and can only relay information it collects to civil authorities with a recommendation to prosecute the case. The Commission has served an important educational function by providing the Ugandan people a forum in which to openly describe human rights violations, learn about their basic rights, and gain confidence in the government. Former Chief Justice Arthur Oder heads the commission, which has five other commissioners, a legal counsel, and an investigative team.

To date the Commission has embarked upon a laudable program in which illustrative "test cases" from the years 1962-1986 are selected for public trials. The HRC has solicited both complaints from residents of every administrative district and responses from those accused. As of May 1991, the Commission had received over 1,600 complaints and had interviewed 500 witnesses in 39 of Uganda's 41 districts. Even President Museveni gave testimony in June 1988 in response to his alleged involvement in the killing of Muslims in western Uganda in 1979, when he led a rebel group during the war that eventually ousted Idi Amin.

Observers increasingly have questioned the effectiveness of the HRC. After six years of work, it still has not issued its report, thereby losing much political impact and momentum. The HRC has, however, been greatly frustrated in its ability to carry out its objectives. The major problem has been the Commission's lack of power to prosecute individuals for human rights violations. Although it has uncovered evidence to implicate many individuals in past abuses, very few of these cases have been prosecuted because of the inability or reluctance of the courts to take action. The HRC also has suffered because it lacks resources. Inadequate fuel and transportation initially confined investigative hearings to Kampala, and funding shortages temporarily halted such hearings in 1987.

### **The Inspector General of Government**

The mandate of the office of the Inspector General of Government (IGG) is to investigate human rights practices in Uganda since 1986. The IGG began working in 1987, but was not formally created and given funding or staff until 1988. A permanent government office, the IGG is charged with inquiring into allegations of human rights violations, upholding respect for the rule of law among law enforcement agencies, and detecting and preventing government corruption. The inspector general is appointed by and answers to the president and has broad powers of investigation including summoning witnesses, seizing documents, and conducting searches. Despite its wide mandate and authority, however, the IGG is subject to considerable limitations. The president may prevent IGG investigations on matters that threaten national security or disclose cabinet secrets. The inspector general also must obtain presidential approval to investigate cabinet members. In addition to these limitations, the IGG has no powers beyond investigation. The inspector general reports periodically to the President, who then determines what action will be taken, if any, against a public officer accused of a violation in an IGG report.

While the inspector general has made some progress in promoting human rights in Uganda, his office has been impeded by a variety of difficulties that have greatly limited its effectiveness. First, the structural constraints of the office prevent the IGG from initiating or influencing the actual prosecution of human rights abusers. The evidence gathered by the IGG can result in trials, but the inspector cannot have any direct involvement in the case. Second, although abuses committed by the NRA have been the primary human rights problem for the current government, the IGG has been unable or unwilling to confront the army to ensure that action is taken in cases of abuse and to gain army compliance with requests and orders from the IGG or the courts. Finally, the current Inspector has focused primarily on cases of government corruption rather than human rights violations. He claims that the office does not have sufficient personnel to carry out both responsibilities adequately. In the last year, however, the deputy inspector general has begun a campaign against torture using media channels to publicize cases.

### **Current Human Rights Situation**

Since the NRM took power, the human rights situation in Uganda has improved significantly. Basic freedoms have been expanded, local political participation has increased, and there is less ethnic discrimination and persecution (except in the areas of insurgency). In addition, there has been gradual improvement in the administration of justice, but serious problems remain in this area primarily because the judiciary lacks resources and the military frequently refuses to abide by civil court decisions.

Human rights violations committed by the NRA remain the single greatest problem in Uganda. The previous regimes based their authority on brutal repression of dissent, and the military served as the means to carry out that policy. As a result, the armed forces perpetrated human rights abuses while enjoying almost total immunity from prosecution. Although the NRA remains a

marked improvement over previous militaries, it continues to be responsible for numerous human rights violations, including arbitrary detention, summary execution, and the relocating and killing of civilians in zones of insurgency. While many soldiers have been arrested for such actions and the government has established commissions of inquiry to investigate several of the worst violations, very few prosecutions have taken place for crimes committed during combat operations. Unlike previous periods, however, soldiers charged with abusive crimes in noncombat situations are prosecuted regularly.

Despite the best intentions and efforts of the NRM, the human rights situation in Uganda remains precarious and many observers express concern that it has deteriorated along with the withering enthusiasm and commitment brought by the revolution. Neither the HRC nor the IGG have fully addressed the country's past and present human rights violations, and both appear to lack sufficient resources and legal authority to do so effectively. In addition, despite some improvement in establishing the rule of law and strengthening the judicial process, the NRA still frequently ignores court orders and provides only inconsistent support to the criminal justice system. Finally, though political participation has grown at the local level, and the government has formed a commission to draft a new constitution, partisan political activity remains illegal and the government has postponed until 1994 the elections it promised to hold in 1990. Unless changes occur in these areas, and the NRM shows a renewed commitment to human rights, human rights activists that the situation will not improve and likely will deteriorate further.

## **Final Participant List**

**Mahamat Hassan Abakar**

Président de la Commission D'Enquête

B.P. 426

N'Djamena

CHAD

235-51-5225

fax: 235-51-6109

**Cesar Fernando Alvarez Guadamuz**

Adjunct Procurator for Human Rights

Procurator's Office for Human Rights

12 Ave. 12-72, zona 1

Guatemala City

GUATEMALA

502-2-510850/514426

fax: 502-2-81734

**Professor Naseer H. Aruri**

Political Science Department

University of Massachusetts/Dartmouth

North Dartmouth, MA 02747

508-999-8373

fax: 508-999-8901

**Jamal Benomar**

Director, Human Rights Program

The Carter Center of Emory University

One Copenhill

Atlanta, GA 30307

404-420-5188

fax: 404-420-5196

**Edward Broadbent**

President, International Centre for Human Rights and Democratic Development

63 Rue de Brésolés  
Montréal, Québec  
CANADA H2Y 1V7  
514-283-6073  
fax: 514-283-3792

**Charles D. Brockett**  
Professor of Political Science  
735 University Avenue  
The University of the South  
Sewanee, TN 37375-1000  
615-598-1294  
fax: 615-598-1145

**Daan Bronkhorst**  
Amnesty International, Dutch Section  
Keizersgracht 620  
1017 ER Amsterdam  
THE NETHERLANDS  
31-20-626-4436  
fax: 31-20-624-0889

**Karen Ramey Burns**  
Forensic Anthropologist  
University of Georgia  
105 Tamarack Drive  
Athens, GA 30605  
706-353-1389

**Martin Butora**

Adviser to the President for Human Rights

Office of the President

119 08 Praha-Hrad

Prague

CZECHOSLOVAKIA

**Juan Pablo Cárdenas Squella**

Journalist and Professor

University of Chile

Viollier 8 Ap. 5-A

Santiago, CHILE

56-2-222-3709

fax: 56-2-222-997

**Susan Casey**

Program Associate

Human Rights Program

The Carter Center of Emory University

One Copenhill

Atlanta, GA 30307

404-420-5188

fax: 404-420-5196

**Jorge Correa**

Universidad Diego Portales

Escuela de Derecho

Av. Republica 105

Santiago

CHILE

56-2-698-7928

fax: 56-2-698-6403

**Kerry Kennedy Cuomo**

Executive Director

Robert F. Kennedy Center for Human Rights

12 East 33rd St.

New York, NY 10016

212-679-4120

fax: 212-279-2517

**Lloyd N. Cutler**

Wilmer, Cutler, and Pickering

2445 M St. N.W.

Washington, DC 20037-1420

202-663-6000

fax: 202-835-0819

**Drew S. Days III**

Professor of Law and Director

The Orville H. Schell Jr. Center for International Human Rights

Yale Law School

401A Yale Station

New Haven, CT 06520

203-432-4948

fax: 203-432-8260

**Tobi P. Dress**

Deputy Director

Office of Mediation & Conflict Resolution

Commission on Human Rights, City of New York  
40 Rector St.. 10th Floor  
New York, NY 10006  
212-306-7570  
fax: 212-306-7568

**Ann Eisenberg**

Coordinator  
Holocaust/Human Rights Research Project  
Boston Collge Law School  
Newton, MA 02159  
617-552-8285  
fax: 617-552-2615

**Graciela Fernández Mejjide**

Asamblea Permanente por los  
Derechos Humanos  
Ciudad de la Paz 515  
1426 Buenos Aires  
ARGENTINA  
54-1-553-9501  
fax: 54-1-361-8549

**Anne Marie Gallagher**

Center for Human Rights Legal Action  
1601 Connecticut Ave. N.W.#612  
Washington, DC 20009  
202-265-8712  
fax: 202-483-6730

**Dennis Gallagher**

Executive Director

Refugee Policy Group

1424 16th St. N.W., Suite 401

Washington, DC 20036

202-387-3015

fax: 202-667-5034

**Larry Garber**

Senior Associate for Electoral Processes

National Democratic Institute

1717 Massachusetts Ave. N.W.

Suite 503

Washington, DC 20036

202-328-3136

fax: 202-939-3166

**Paige Otwell Haines**

Georgia Civil Justice Foundation

1250 The Hurt Building

50 Hurt Plaza S.E.

Atlanta, GA 30303-2916

404-522-2744

404-525-7458

**Graham Hand**

Head, Human Rights Policy Unit

Foreign and Commonwealth Office

King Charles Street, Room K150

London SW1A 2AH

ENGLAND

4471-270-3992

fax: 4471-270-3884

**Steven H. Hochman**

Associate Director of Programs

The Carter Center of Emory University

One Copenhill

Atlanta, GA 30307

404-420-5187

fax: 404-420-5196

**Todd Howland**

Directing Attorney

El Rescate

1340 South Bonnie Brae St.

Los Angeles, CA 90006

213-387-3284

fax: 213-387-9189

**Richard Joseph**

Fellow and Director

African Governance Program

The Carter Center of Emory University

One Copenhill

Atlanta, GA 30307

404-420-5186

fax: 404-420-5196

**Judith R. Kaufmann**

Deputy Director

Office of Bilateral Affairs

Bureau of Human Rights and Humanitarian Affairs

Department of State, Rm. 7802

2201 C St. N.W.

Washington, DC 20520

202-647-1451

fax: 202-647-9519

**Neil Kritz**

Associate General Counsel for Rule of Law Initiative

United States Institute of Peace

1550 M St. N.W., Suite 700

Washington, DC 20005

202-457-1700

fax: 202-429-6063

**Jennie K. Lincoln**

Associate Professor

School of International Affairs

Georgia Institute of Technology

Atlanta, GA 30332-0345

404-894-3195

fax: 404-395-6337

**Jaime E. Malamud-Goti**

Professor of Law

MacArthur Foundation Peace Program

Faculty of Latin American Studies

610 W. 113th St., #6C  
New York, NY 10025  
212-316-6088  
or 54-1-802-9038

**Jennifer McCoy**

Senior Research Associate  
Latin American and Caribbean Program  
The Carter Center of Emory University  
One Copenhill  
Atlanta, GA 30307  
404-420-5175  
fax: 404-420-5196

**Eduardo Molina Olivares**

Member  
Ad Hoc Commission  
Ave. Olimpica 2838  
San Salvador  
EL SALVADOR, C.A.  
503-24-3500/3144  
fax: 503-24-3399

**Tommie Sue Montgomery**

Professor, Latin American Studies  
Agnes Scott College  
141 East College Ave.  
Decatur, GA 30030-3797  
404-469-6469  
fax: 404-371-6213

**Winston Nagan**

Professor, College of Law

Center for Governmental Responsibility of the University of Florida

Gainesville, FL 32611

904-392-2211

fax: 904-392-8727

**Carole Nagengast, Chair,**

Amnesty International, USA

26410 Ironwood Ave.

Moreno Valley, CA 92555

714-242-2791

fax: 714-242-7402

**Veronica de Negri**

AIUSA, & Rodrigo Rojas Fund

1616 S St. N.W.

Washington, DC 20009

202-797-8495

**James O'Dea**

Director

Amnesty International USA

Washington Office

304 Pennsylvania Ave. S.E.

Washington, DC 20003

202-544-0200

fax: 202-546-7142

**Charles Onyango-Obbo**

Deputy Editor

*Weekly Topic*, Uganda

13A Ware St. Apt #3

Cambridge, MA 02138

617-547-8976

fax: 617-495-8976

**Kathleen Openda**

Chief Reporter

Kenya Television Network

P.O. Box 30958

Nairobi

KENYA

254-2-333559

**Diane F. Orentlicher**

Professor of Law

Washington College of Law

4400 Massachusetts Ave. N.W.

Washington, DC 20016

202-885-3630

fax: 202-885-3601

**Benny Ben Otim**

Visiting Scholar

Yale Law School

401AA Yale Station

New Haven, CT 06520

203-432-1616

fax: 203-432-4604

**Robert Pastor**

Fellow and Director

Latin American and Caribbean Program

The Carter Center of Emory University

One Copenhill

Atlanta, GA 30307

404-420-5151

fax: 404-420-5196

**Timothy Phillips**

Co-Chair, Project on Justice in Times of Transition

87 Etna St.

Boston, MA 02135

617-466-6607

fax: 617-890-5965

**Margaret L. Popkin**

Independent Researcher and Consultant

VIP #663, P.O. Box 52-5364

Miami, FL 33152-5364

310-454-2834 (USA)

503-74-2643 (El Salvador)

fax: 310-459-4128

**Veronica Rentmeesters**

Director, Research and Information Provisional Government of Eritrea (EPLF)

Mission to the United States and Canada

P.O. Box 65685  
Washington, DC 20035  
202-265-3070  
fax: 202-462-2355

**Oussama Romdhani**

Director  
Tunisian Information Office  
1515 Massachusetts Ave., N.W.  
Washington, DC 20005  
202-466-2546  
fax: 202-466-2553

**Sonia Rosen**

Legal Director  
Minnesota Lawyers International Human Rights Committee  
400 Second Ave. S. #1050  
Minneapolis, MN 55401  
612-341-3302  
fax: 612-341-2979

**Tina Rosenberg**

2220 20th St., N.W., #33  
Washington, DC 20009  
202-332-0652  
fax: 202-387-6315

**Kenneth Roth**

Executive Director  
Human Rights Watch

485 Fifth Avenue  
New York, NY 10017  
212-972-8400  
fax: 212-972-0905

**Kristi L. Rudelius-Palmer**

Co-Director  
University of Minnesota Human Rights Center  
Law School, Room 437  
229 19th Ave. South  
Minneapolis, MN 55455  
612-626-0041  
fax: 612-625-5011

**Augustine Ruzindana**

Inspector-General of Government  
1st Floor, U.P. & T.C. Building  
P.O. Box 1682  
Kampala  
UGANDA  
256-41-259-723

**Karin Ryan**

Program Coordinator  
Human Rights Program  
The Carter Center of Emory University  
One Copenhill  
Atlanta, GA 30307  
404-420-5188  
fax: 404-420-5196

**Joaquin Samayoa**

Assistant to the Rector

Universidad Centro Americana "Jose

Simeon Cañas"

P.O. Box (01) 168

San Salvador

EL SALVADOR, CA

503-734451

fax: 503-731010

**Sandra Saseen**

Coordinator

Interest Group on Communities and Minorities

The American Society for International Law

c/o The American University Law School, #217

4400 Massachusetts Ave. N.W.

Washington, DC 20016

202-885-2621

fax: 202-885-3601

**Herman Schwartz**

Professor

Washington College of Law

The American University

4400 Massachusetts Ave. N.W.

Washington, DC 20016

202-885-2648

**Paulynn Sicam**

Commissioner

Philippine Commission on Human Rights

IBP Building, Julia Vargas Ave.

Pasig, Metro Manila

PHILIPPINES

632-631-30-15

fax: 632-631-30-15

**Smiljan Simac**

Assistant Minister

Ministry of Foreign Affairs

Republic of Croatia

Zagreb, Visoka 22

CROATIA

38-41-443-489

fax: 38-41-427-594

**Charles D. Smith**

General Counsel

United States Institute of Peace

1550 M Street N.W., Suite 700

Washington, DC 20005

202-457-1700

fax: 202-429-6063

**Dayle E. Spencer**

Fellow and Director

Conflict Resolution Program

The Carter Center of Emory University

One Copenhill  
Atlanta, GA 30307  
404-420-5185  
fax: 404-420-5196

**Daniel J. Socolow**

Senior Adviser and Director of Programs  
The Carter Center of Emory University  
One Copenhill  
Atlanta, GA 30307  
404-420-5173  
fax: 404-420-5196

**Felix Ulloa-hijo**

President  
Institute of Legal Studies (IEJES)  
Condominio Nobles de America Local  
2 Primer  
Piso, Alameda Juan Pablo II  
San Salvado  
EL SALVADOR  
503-23-4998  
fax: 503-25-4016

**Vivian Vahlberg**

Director of Journalism Programs  
McCormick Tribune Foundation  
435 N. Michigan Ave.  
Suite 770  
Chicago, IL 60611-4041

312-222-3507

fax: 312-222-3523

**Horacio Verbitsky**

Journalist

*Pagina/12*

Lavalle 1282 - 1st of 14

(1048) Buenos Aires

ARGENTINA

54-1-358-194

fax: 54-1-358-194

**Mark Walton**

Broadcast Journalist

1506 Thornhill Court

Atlanta, GA 30338

404-394-1141

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**Notes**

**Note 1:** Both the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment clearly underline the act that their signatories have an obligation to criminalize certain conduct and to prosecute those responsible. Government responsibility to punish violators has been reaffirmed in more recent international instruments, including the Inter-American Convention to Prevent and Punish. torture as well as the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions that were adopted by the United Nations Economic and Social Council in 1989. Conventional international law tends, therefore, to reiterate the obligation of governments to investigate and punish gross violations of human rights.

**Note 2:** The evidence that led to the murder charges against Mielke apparently dates from investigations run by Nazi-era prosecutors who used torture to obtain confessions.

**Note 3:** Unpublished letter from the secretary general of the Council of Europe to the chairman of the Federal Assembly of the Czech and Slovak Federative Republic.

**Note 4:** Uruguay presents the unusual case of an amnesty confirmed by popular referendum. See Juli María Sanguinetti, "Present at the Transition," *Journal of Democracy* 2 (Winter 1991): 8-9.

**Note 5:** See J. Stephen Morrison, "Ethiopia Charts a New Course," *Journal of Democracy* 3 (July 1992): 125-37.

**Note 6:** A collaborative effort between the TGE and The Carter Center of Emory University has been developed to bring international expertise to bear on the following projects: a) creating an independent ombudsman institution; b) providing advice to the constitutional drafting commission about human rights safeguards to be included in the new constitution; c) planning a human rights orientation program for the new police force; d) developing a human rights education program for the general public; and e) instituting a human rights training program for government officials and the judiciary. The implementation of such programs will enhance the protection of human rights, promote the rule of law, and help to create a new culture of rights and constitutionalism in the country.

**Note 7:** See Raúl Alfonsín, "Never Again in Argentina," *Journal of Democracy* 4 (January 1993): 15-19.

