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## TRUTH AND RECONCILIATION COMMISSION: AN ALTERNATIVE NON-JUDICIAL SETTLEMENT OF ALLEGATIONS OF GROSS HUMAN RIGHTS VIOLATIONS

By

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**Abstract:** *Difficulties and concerns over the inability of the formal legal process to deal with past humanitarian crimes, plus the concern that this road could lead the nation back to an authoritarian regime, is a strong impetus for the need for other mechanisms, or alternative solutions, which are then generally known as "truth commissions and reconciliation". Resolving allegations of gross human rights violations through non-judicial / non-judicial channels with the TRC mechanism can be an alternative for a country in its efforts to resolve various cases of gross human rights violations. Being able to reveal the facts or the truth and court proceedings on incidents of gross human rights violations committed by the old government regime. So that it can break the politics of impunity and usher in a new regime towards a democratic system and a rule of law as a large system for upholding human rights.*

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## INTRODUCTION

The Truth and Reconciliation Commission (TRC) is a commission that is tasked with discovering and disclosing past violations by a government, with the hope of resolving conflicts left from the past. Under various names, these commissions are sometimes formed by countries emerging from periods of internal upheaval, civil war, or dictatorial rule (Nasution, 2018). Since its first appearance in Argentina and Uganda in the mid-1980s, TRC has become an international phenomenon. More than 20 countries have chosen the path of establishing TRC as a way of being accountable for the serious human rights crimes that occurred in the past. Some of them were successful even though some also experienced failures (Nasution, 2018).

Successful legal processes bring perpetrators of past crimes to justice, during and after transitional governments are essential. This process has a major role in eliminating impunity or other "preferential treatment" that has always been enjoyed by state leaders and high-level state officials who have violated human rights in the past. According to the above argument, the court as a legal process to end the practice of "impunity" has become the main condition for success in upholding justice in the future. The new regime or new democracy needs legitimacy as the basis for political stability. The court is considered by many legal practitioners to be important in demonstrating the supremacy of democratic values and norms so that people's trust can be won. Failure to prosecute, on the other hand, can lead to



popular cynicism and distrust of the political system. Some analysts believe that the courts can promote long-term democratic consolidation. One of the arguments is that if no crimes are investigated and tried, there will be neither a sense of trust nor democratic norms in society, and therefore no real consolidation of democracy. But can it be resolved through formal legal procedures that are procedural, bureaucratic and normative, which require the availability of formal and material evidence? Can the judges stand up and work under the pressure of the regime or agents of the past regime, for the sake of law and justice, given that the resistance of the past regime to any attempt to uncover crimes that they have committed in the past is quite potential? Military leaders who feel threatened by the courts may try to change the situation with a coup, rebellion, threat or other confrontation that will weaken the power of the civilian government. In this condition, the courts are finally able to strengthen the tendency of the military to challenge democratic institutions. Apart from that, the legal mechanism as an alternative solution has limitations, namely: First, the requirements for legal evidence for a legal process are difficult to fulfill because generally the evidence has disappeared or has been deliberately eliminated. Second, victims or witnesses were afraid to take the risk of testifying. Third, the judiciary is generally weak and distrusted, especially the judiciary that has been an instrument of the previous authoritarian regime, fourth, the available legal instruments are not sufficient to capture organized state crime, because the construction of articles in public law is more on individual crimes. ; and fifth, members of the military, the remnants of the power of the authoritarian order, including the civilian bureaucracy that had been part of past humanitarian crimes openly or secretly opposing and threatening any legal process that will reveal the crimes of the past regime (Huntington, 1993).

Difficulties and concerns over the inability of the formal legal process to deal with past humanitarian crimes, plus the concern that this road could lead the nation back to an authoritarian regime, is a strong impetus for the need for other mechanisms, or alternative solutions, which are then generally known as "truth commissions and reconciliation".

### **Context and Significance of the Truth and Reconciliation Commission**

The formation of the TRC, as experienced by many countries, is of course in the context of a transitional government, namely from a totalitarian government to a democratic government. In such a transition, questions arise regarding the attitude and responsibility (responsibility) of the state against crimes against humanity by the previous regime. According to Mary Albon, this question contains two important issues, namely: acknowledgment and accountability. Confession has two options: "remember" or "forget". Accountability exposes us to a choice between "prosecution" or "forgiveness". The problem is, quoting Hannah Arendt (1958), how can we forgive what cannot be punished? "Men are not able to forgive what they cannot punish" (we cannot forgive what we cannot punish). Likewise, how can we forget what was never opened for us to remember together? In this controversy, the significance of establishing a KKR is not just an alternative to the Ad Hoc Human Rights Court, but also as a companion. It is a key effort that is strong in using a human rights perspective and a humanist paradigm that puts the interests of victims on the one hand and saves the lives of the general public on the other. It is a vehicle for applying the concepts of restorative and reparative justice on the one hand and constructive on the other. He implies the concept of justice that comes out of the classical Aristotelian standards (commutative / contractual, distributive, corrective, and punitive justice) and the Rawlsian-



Habermasian rule that foster justice above equality (justice as fairness) which can only be applied in increasingly remote normal situations. roast from the fire now. He introduced the concept of progressive justice that prioritizes criminal justice (criminal justice), historical disclosure (historical justice), prioritizing and respecting victims (reparatory justice), reforming and cleaning up the state administration system (administrative justice), and reforming the constitution (constitutional justice) which enforced on the principle of rule of law, people's sovereignty or democratic legitimacy that prioritizes law, and not just ruled by law, the rule of law that is not necessarily democratic. So, it is a misconception that the formation of this commission only increases the list of commissions in this country. It is also wrong to suspect that it is only a partial and making it up. It is even more wrong if there is cynicism it will only prolong the chain of impunity or vice versa, it will only drag and fill the prison with all the guilty people in the past. Following Luc Huyse (1995), truth is both retribution and deterrence, truth always means a punishing and deterrent strike. In addition, in the levy-reconciliation spectrum, the responsibility or ideal attitude we take is selective punishment, a model that promotes selective collection of formal or legal responsibility. Therefore, our type of transition is a replacement initiated by the people themselves, which fits this selective model. Although it refers to the handover of power from Suharto to Habibie, it seems that we have a transformation (government initiative) typology, but this change was based on the pressure of the people, especially students. Examples that follow this model are Greece and Ethiopia.

Truth Commissions cannot and should not replace the function of courts, because they are not judicial bodies, they are not judicial proceedings, and they do not have the power to send someone to prison or convict someone of a particular crime. However, the TRC can do several important things that generally cannot be achieved through the prosecution process in criminal courts. Truth Commissions can handle a relatively larger number of cases than criminal courts. In a situation where there were widespread and systematic gross human rights violations under the previous regime, the Truth Commission could comprehensively investigate all cases or a large number of cases and were not limited to handling a small number of cases. The TRC is also in a position to provide practical assistance to victims by specifically identifying and proving which individuals or families are victims of past crimes, so that they are legally entitled to receive reparations in the future.

TRC can also be used to try to answer big questions such as how a human rights violation occurred; why did it happen and what factors exist in our society and country that made it possible for it to occur; what changes we must make to prevent acts of violence and human rights violations from recurring, and so on.

### **Definition and Elements of the Truth and Reconciliation Commission**

There is no one generally accepted definition of what a TRC is? KKR is the general name for commissions that are formed in situations of political transition in order to deal with serious violations or crimes against human rights in the past. Until now, there have been no less than 20 KKR in various countries. Each of these commissions has a different name, mandate and authority. However, according to Priscilla Hayner, there are five elements that can be said to be the general character of the KKR, namely: (1) the focus of its investigation on past crimes, (2) it was formed sometime after the authoritarian regime collapsed, (3) the goal is to get a comprehensive picture. regarding human rights crimes and violations of international law at a certain time, and does not focus on a single case, (3) its existence is for



a certain period of time, usually ends after the final report has been completed, (4) it has the authority to access information to any institution, and apply for protection for those who testify, and (5) generally established formally by the State either through a Presidential Decree or by law, or even by the United Nations such as the El Salvador TRC (Hayner, 1994).

Apart from being characterized by these elements, an institution can be called KKR, if it has published a comprehensive report on past crimes. The public believes it and considers it a sincere attempt to reconstruct what actually happened in the context of patterned and systematic cases of human rights crimes

### **Purpose of the Truth and Reconciliation Commission**

The TRC has features in its scope, size and mandate as mentioned above. Many Commissions strive to achieve some or all of the following objectives: (1) Give meaning to the voice of individual victims by allowing them to give statements to the Commission in hearings regarding the human rights violations they suffered; (2) Historical rectification relating to major incidents of human rights violations which are usually denied by authorities or are the subject of disputes or controversies, and the TRC can help resolve these problems by disclosing past events in a credible manner and calculating data; (3) Public Education and Knowledge. In doing so, increase general awareness regarding social and individual harm due to human rights violations. This public education process also contributes to public knowledge about the suffering of victims and helps mobilize the community to prevent similar incidents from happening in the future. (4) Examining systematic human rights violations towards institutional reform, especially the consequences and nature of institutional and systemic forms of human rights violations. Once the Commission has identified a pattern of human rights violations or the institutions responsible for these violations, it may recommend a series of social or institutional programs and legislative reforms designed to prevent the recurrence of human rights violations. (5) Providing an assessment of the consequences of human rights violations on victims, in which the Commission can recommend several ways to help victims face and overcome them. (6) Accountability of perpetrators of crime. The Commission collects information relating to the identity of individual perpetrators of crimes who violate human rights, and may also promote a sense of accountability for abuse of power by publicly indicated individuals and institutions responsible for such abuse, recommending that the perpetrators the crime needs to be dismissed from public office, or provide facts or evidence for prosecution.

### **Experience of Several Countries**

The KKR's growth since it first appeared in the 1980s has been very rapid. In the period 1980–1999, no less than 21 countries formed TRCs, and since the beginning of 2000 a number of countries have also considered establishing TRCs (Hayner, 2005). The following table is a list of countries that have used the TRC.

Table 1. Findings by Country, Year, Name of Commission.

No.	Country	Year	Name of Commission
1	Uganda	1974	Commission of Inquiry for Enforced Disappearances
2	Bolivia	1982-1984	Commission of Inquiry for Enforced Disappearances



3	Israel	1982-1983	Commission of Inquiry for Murder in Sabara and Chatila
4	Argentina	1983-1985	Commission for Enforced Disappearances
5	Guinea	1985	Commission of Inquiry
6	Uruguay	1985	Parliamentary Commission of Inquiry on Enforced Disappearances
7	Zimbabwe	1985	Commission of Inquiry
8	Uganda	1986-1994	Commission of Inquiry for Violations of Human Rights

No.	Country	Year	Name of Commission
9	Filipina	1986-1987	Presidential Committee on Human Rights
10	Nepal	1990	The country has formed a commission twice. First, the Commission to Investigate Torture, Disappearances and Extrajudicial Executions, between 1961-1990, but this commission failed. Then a second commission was formed, named the Commission of Investigation to Find Missing Persons.
11	Chili	1990-1991	Truth Commission for Reconciliation
12	Chad	1990-1992	Commission of Investigation on Crime and Abuse of Power
13	Republik Czechnia	1991	Parliamentary Commission on the Law of Lustration
14	Sri Lanka	1991	Presidential Inquiry Commission
15	Jerman	1992	Parliamentary Inquiry Commissions to study the effects of the communist party, ideology and security apparatus
16	Polandia	1992	Investigation by the Minister of Home Affairs
17	Bulgaria	1992	The Temporary Commission of Inquiry for the Communist party
18	Rumania	1992	Parliamentary Commission of Inquiry
19	Albania	1944-1991	Commission for the killings by the security apparatus in Shkoder



20	El Salvador	1992	Ad hoc Commission for Military
21	El Salvador	1992	United Nations Commission for Truth
22	Brazil	1992	Human Rights Council
23	Meksiko	1992	National Human Rights Commission
24	Nikaragua	1992	National Human Rights Commission
25	Togo	1992	National Human Rights Commission
26	Nigeria	1992-1993	Human Rights Commission for National Conferences
27	Ethopia	1992	Special Public Prosecutor
28	Sudan	1992-1994	Commission of Inquiry
29	Thailand	1992	The Defense Minister's Inquiry Commission into killings and disappearances during demonstrations in May 1992
No.	Country	Year	Name of Commission
30	Burundi	1993	Commission on Human Rights and Administrative Judiciary
31	Honduras	1994	Crime Office Commission
32	Guatemala	1995	Explanation Commission
33	Haiti	1994	National Commission for Truth and Justice
34	Ekuador	1996	Truth and Justice Commission
35	Serra Leone	2000	Truth and Reconciliation Commission

## CONCLUSION

Resolving allegations of gross human rights violations through non-judicial / non-judicial channels with the TRC mechanism can be an alternative for a country in its efforts to resolve various cases of gross human rights violations. Being able to reveal the facts or the truth and court proceedings on incidents of gross human rights violations committed by the old government regime. So that it can break the politics of impunity and usher in a new regime towards a democratic system and a rule of law as a large system for upholding human rights.

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