

Second Edition

ROUTLEDGE

# unspeakable truths

Transitional Justice and the  
Challenge of Truth Commissions

Priscilla B. Hayner

Foreword by Kofi Annan



## Praise for the Previous Edition

“At last Priscilla Hayner has come along, supplying the first detailed survey of national and individual experiences with truth commissions. Hayner offers a stirring, trenchant, and nuanced account of the complex range of issues faced by those attempting to move forward while also looking backward.... Hayner writes about unspeakable truths, and herself is not afraid to utter them, as she challenges some of our core assumptions about truth, forgiveness, justice and healing.”—**Samantha Power**, author of *A Problem from Hell: America and the Age of Genocide*

“Priscilla Hayner has written a curiously ambitious book. It is part history, part policy analysis, part field guide and handbook. What is even more unusual is that it succeeds famously on all scores. This is quite simply a tour de force, as useful in the field as around the negotiating table and as helpful in the boardroom as in the classroom.” —**Patrick G. Coy**, Kent State University

“Hayner writes in an accessible, straightforward style that is at once comprehensive, compassionate, and utterly candid. She challenges many widely held assumptions about the ends and means of truth commissions. She points to the tendency to expect more from them than they could ever possibly deliver.” —*Christian Science Monitor*

“As she explores the inner workings of these commissions, Hayner uncovers heart-wrenching stories about the pain, as well as the enormous power, of bringing past atrocity to light. For those concerned with the fate of democracy and freedom on the international stage, *Unspeakable Truths* is essential reading.” —**Trial.org**

“... offers essential insight into how truth commissions might serve human rights and justice.” —**Richard Goldstone**, in *The American Prospect*

“... provides a wealth of information and insights on truth commissions, much of it previously inaccessible except to specialists . . .” —*Washington Times*

“... [a]n indispensable text in classrooms and practitioners’ offices. . . . [T]his book is the best empirical study to date of the issues confronting truth commissions and of the dilemmas facing participants in designing, implementing, and assessing these relatively new tools for dealing with the past.” — **Charles T. Call**, Brown University

“[*Unspeakable Truths*] weave[s] theory with practical examples . . . providing richness to the material contained within it, and, as the only comprehensive collection of information on all these institutions, it is a critical addition to the burgeoning literature on transitional justice.” —**Jeremy Sarkin**, University of the Western Cape, South Africa

“As the most comprehensive analysis of truth commissions to date, this book is essential for anyone interested in these bodies or in transitional justice more generally. Hayner presents a balanced account of truth commissions and their potential contribution to transitional societies.” —**Eric Brahm**, Conflict Research Consortium

“*Unspeakable Truths* is the most up-to-date, comprehensive and comparative study of truth commissions, providing to governments and human rights organizations interested in official truth-telling a complete guide to the many topics that need to be kept in mind in establishing a truth commission. Also, *Unspeakable Truths* is very useful to academic research, yet it is written in a way that is both understandable and easy to read for the general public.” —**Juan E. Méndez** and **Javier Mariezcurrena**, in *Human Rights Quarterly*

“Priscilla Hayner . . . offers us the most authoritative book to date—and in all likelihood the most authoritative until her next edition—on this significant new mechanism in the human rights arsenal. . . . Hayner has written not only an extraordinarily informative account of the promises and pitfalls of truth commissions, but a gripping one as well. More than a reference work for students of transition, it tells a powerful story of victims, perpetrators, truth commission staff members, and other actors faced with the challenge of uncovering and then revealing the extent of previous human rights atrocities.” —**Steven R. Ratner**, University of Michigan Law School

“ . . . [a]n invaluable book for both general readers and specialists interested in human rights and post-conflict reconciliation. Its insights and conclusions continue to provide an essential interpretive key for developments in areas of the world undergoing transition from civil strife to peaceful coexistence and democracy.” —**Valeria Severini**, in *Journal of International Affairs*

“ . . . an extraordinarily comprehensive and thorough examination of all recorded truth commissions. . . . *Unspeakable Truths* goes beyond the valuable work of documenting a diverse history to analyze a set of critical issues in the design and impact of human rights investigations.” —*Research Review*

“A society considering forming a truth commission would find Hayner’s book the best guide available. She offers some surprising details of lessons learned alongside her nuanced analysis and thoughtful suggestion for criteria concerning the establishment of a commission, the general form it should take, and necessary supplemental institutions.” —**David A. Crocker**, University of Maryland

“ . . . essential reading to anyone interested in the process of how a state rebuilds in the wake of atrocity.” —*New Jersey Star-Ledger*

“Broad in scope, yet rich in detail, *Unspeakable Truths* is a masterly survey of a new phenomenon which combines an informed discussion of the legal complexities and ethical dilemmas involved in establishing truth commissions with a compassionate regard for the victims of human rights abuses.” —**Desmond M. Tutu**, Archbishop Emeritus of Cape Town, South Africa

“A compelling account . . . no one has examined these bodies more closely and more perceptively than Priscilla Hayner.” —**Aryeh Neier**, author of *War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice*

“Hayner has written a thoughtful and illuminating book that deepens our understanding of the perils and possibilities of a contemporary dilemma—how to judge the heinous crimes of the past without compromising a country’s future. *Unspeakable Truths* needs to be heard. And read.” —**Robert A. Pastor**, American University; former National Security Advisor for Latin America

“ . . . not only communicates a wealth of knowledge on the phenomenon of truth commissions, but also knowledge that can be directly employed by those who are involved in devising strategies of transitional justice . . . we have to hope that those in a position to make decisions on future truth commissions have a copy of *Unspeakable Truths*.” —*Human Rights and Human Welfare*

# Unspeakable Truths

In a sweeping review of forty truth commissions, Priscilla Hayner delivers a definitive exploration of the global experience in official truth-seeking after widespread atrocities. When *Unspeakable Truths* was first published in 2001, it quickly became a classic, helping to define the field of truth commissions and the broader arena of transitional justice. This second edition is fully updated and expanded, including twenty new commissions formed in the last ten years, analyzing new trends, and offering detailed charts that assess the impact of truth commissions and provide comparative information not previously available.

Placing the increasing number of truth commissions within the broader expansion in transitional justice, *Unspeakable Truths* surveys key developments and new thinking in reparations, international justice, healing from trauma, and other areas. The book challenges many widely-held assumptions, based on hundreds of interviews and a broad review of the literature. This book will help to define how these issues are addressed in the future.

**Priscilla B. Hayner** was a co-founder of the International Center for Transitional Justice and served as program director and director of its Geneva office. She has assisted truth commissions in well over a dozen countries, working with the United Nations, the Ford Foundation and others, and has been featured in *Newsweek*, the *New York Times*, the *Christian Science Monitor*, and *Le Temps*. She is currently writing on the subject of justice in peace negotiations.



# Unspeakable Truths

Transitional Justice and the  
Challenge of Truth Commissions

Second Edition

Priscilla B. Hayner

First published in 2001  
Paperback edition published 2002  
by Routledge

This edition published 2011  
by Routledge  
270 Madison Avenue, New York, NY 10016

Simultaneously published in the UK  
by Routledge  
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

This edition published in the Taylor & Francis e-Library, 2010.

To purchase your own copy of this or any of Taylor & Francis or Routledge's collection of thousands of eBooks please go to [www.eBookstore.tandf.co.uk](http://www.eBookstore.tandf.co.uk).

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*Library of Congress Cataloging-in-Publication Data*  
Hayner, Priscilla B.

Unspeakable truths : transitional justice and the challenge of truth commissions / Priscilla B. Hayner. – 2nd ed.  
p. cm.

Includes bibliographical references.

1. Truth commissions. 2. Human rights. 3. Political atrocities. 4. Political persecution. 5. Amnesty. 6. Reconciliation. I. Title.

JC580.H39 2010

323'.044–dc22

2010023488

ISBN 0-203-86782-3 Master e-book ISBN

ISBN 13: 978-0-415-87202-7 (hbk)

ISBN 13: 978-0-415-80635-0 (pbk)

ISBN 13: 978-0-203-86782-2 (ebk)

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# Foreword to the Second Edition

When Kenyans agreed to negotiations to end the intensifying post-election violence in 2008, they set out a list of core issues to be included on the agenda for the talks. Among the specific elements included from the start was the formation of a Truth, Justice, and Reconciliation Commission. When the time came to turn to that issue, a first request from the parties was to receive a copy of Priscilla Hayner's book *Unspeakable Truths*, which had originally been published in 2001.

This was a sensible request, for Hayner's book not only sets out the reasoning behind these exercises—why undertake an inquiry into the truth? what should be expected?—but also explores the numerous practical issues in establishing and running such a body, and the real human impact of opening up such painful chapters of the past.

During my ten years as United Nations secretary-general, we often confronted the challenges of national transitions after horrendous rights abuses. We watched with fascination as the South African Truth and Reconciliation Commission unfolded, and later I found my own country, Ghana, taking a similar path. In other countries, such as Sierra Leone and Timor-Leste, and earlier in El Salvador and Guatemala, the United Nations was closely involved as an advisor to truth commissions.

It is thus with pleasure that I introduce the second edition of this book, which captures the voice of those who have closely struggled with these important processes, particularly so as I believe there are still misconceptions about the role and impact of truth commissions. The updated analysis presented here, for example in the chapters on truth and justice, on the International Criminal Court, and on the question of naming perpetrators, will help correct these misunderstandings.

This book sets out the contradictions as well as the successes of a very wide range of experiences. It is clear that national healing can be a halting and painful process. But ultimately, it seems that many of our natural instincts are confirmed: while the truth is painful, burying the past is much less likely to lead a country to a healthy future.

I commend this book to all those hoping to understand the difficulties of justice after transition, and especially those with an interest in seeing processes of transitional justice, and especially truth-seeking exercises, continuously improved.

Kofi Annan  
April 2010

# Preface

I approached the updating of this book with trepidation. It was no mystery that there were many new truth commissions. But I also knew that many of these were complex, fascinating, and often extraordinary (sometimes extraordinarily difficult) processes—and these would surely open up new horizons in this field. There has also been a large amount of new literature published over the past ten years, from many different angles and disciplines.

When the first edition of this book went to press, in early 2000, legislation to establish a truth commission had just been approved by the Sierra Leone Parliament. Peru and its president, Alberto Fujimori, were fighting a war against the Shining Path. East Timor, later renamed Timor-Leste, was recovering from the violence and destruction that followed a recent vote for independence, but there was no thought yet of a truth commission. A long-reigning king had just died in Morocco, and his son, taking the throne, was suggesting a different posture towards human rights. Liberia was entering several more years of war, before a final peace agreement was signed, President Charles Taylor would depart and, eventually, a truth commission would be formed.

In the past ten years, all of these countries, and quite a few more, have not only created and concluded truth commissions, and quite significant reports, but have carried them out as very prominent—and often highly politically contentious—initiatives that have attracted intense national press and public attention. Many of these have caused waves in the national and sometimes international conversations pertaining to the politics, security, stability, development, or rule of law in the country.

This book documents forty truth commissions that were in operation from 1974 to the end of 2009.<sup>1</sup> Twenty-one of these were created in the past ten years. These twenty-one most recent commissions span all regions of the world and a wide range of political contexts: eight in the Americas, seven in Africa, five in Asia, and one in Europe. The first truth commission was concluded in the Arab world, featuring televised public hearings and leading to extensive reparations. Two of these commissions were created in North America. Three of the five commissions that I judge to be the strongest to date have operated in this decade.

## **The Book**

This second edition follows, generally, the structure of the first. There is one new chapter (Chapter 7), two prior chapters that merged (Chapter 15), and two new charts at the back that attempt to assess the impact of truth commissions to date (joining five other updated comparative charts). In Chapter 4, I describe the five strongest truth commissions to date—in South Africa, Guatemala, Peru, Timor-Leste, and Morocco. A further twenty illustrative truth commissions follow. To lighten the core text, the descriptions of other commissions are in Appendix 1. Generally these are the smaller or weaker commissions, or those that concluded prematurely without a report—but these experiences also tell an important part of the story, and should not be missed. To locate the main overview description of each of the forty commissions, there is a reference list following the table of contents. Of course, many of these experiences are returned to in various thematic chapters.

To keep the book accessible, my intention has been to keep it short, or at least succinct. This has necessarily resulted in brevity on some topics. I thus urge the interested reader to turn to the often excellent literature that addresses many of these issues at greater depth. I also recommend the extraordinary primary documents—that is, the truth commission reports themselves—most of which are riveting, both substantively and methodologically, and many of which are conveniently available online (see the “Bibliography and Other Resources” section at the end of the book for a full list and website addresses).

Throughout the text, all amounts are in US dollars, using the exchange rate in effect at that time.

## **The Field**

As truth commissions multiplied and transitional justice took shape as a separate field of work and study, particularly since the late 1990s, institutions responded, and new institutions formed. The International Center for Transitional Justice (ICTJ) is often cited as the most prominent. I was a co-founder of ICTJ in 2001, and have worked with the organization through early 2010. (For full transparency: I have also provided technical assistance to a number of the truth commissions documented in this book.<sup>2</sup>) ICTJ has offered assistance to most truth commissions that have existed since 2001, providing comparative information and often bringing practitioners from one country to share experiences with similar exercises elsewhere. ICTJ is not alone, as a number of other organizations or networks have been formed, many at the regional level, providing expertise generally on transitional justice or in specific technical areas.

The ready availability of this comparative information and international assistance is the biggest change in the transitional justice field generally, and in the arena of truth commissions specifically, since 2001. Most truth commissions created in the past decade have received intensive training, advice,



policy guidance, and other input from experts who have worked with truth commissions globally and are well aware of the potential pitfalls. Needless to say, each national process and commission must take its own decisions and craft its own unique model. Much can be learned from other experiences, but little can or should be exactly copied or imported.

Ultimately, this book cannot be complete. The topic is now far too large. But I hope that it opens new questions, and suggests some of the answers—or the avenues by which to find the answers—that may be useful to practitioners and scholars alike. And in the process I hope that the richness of some of these extraordinary experiences comes through.

Priscilla Hayner

January 2010

## Notes

- 1 The first edition covered twenty-one commissions. Several inquiries that I counted as truth commissions in the first edition are not included here, as I explain in Chapter 2.
- 2 Specifically, I provided assistance during the planning or operational periods of the truth commissions in Canada, El Salvador, Ghana, Greensboro, Kenya, Liberia, Morocco, Nigeria, Panama, Peru, Sierra Leone, South Africa, and Timor-Leste.

# Acknowledgments

## *Unspeakable Truths: 2001*

Many individuals and organizations throughout a range of countries contributed to this book.

First, the simple idea of writing a book was launched into an actual book project with a terrific research and writing grant from the John D. and Catherine T. MacArthur Foundation in 1995. A year later, I received additional support from the U.S. Institute of Peace. These two grants made this book possible, and in particular supported the extensive travel that was necessary to fully grapple with the issues at hand. The views expressed in this book do not necessarily reflect those of either of these institutions.

Second, this book was dependent more than most on the willingness of many individuals around the world to sit down with me to describe their experiences and perspectives. I am indebted to the many human rights advocates and survivors of violence, as well as government officials, academics, journalists, church officials, and many others, scattered throughout over a dozen countries, who were so generous with their time and provided such rich and detailed information in response to my queries. This book could not have been written without them.

I was further assisted in my travels by a number of terrific interpreters and guides. In South Africa, Wally Mbhele, S'Kumbuzu Miya, Lucky Njozela, Joseph Dube, and Lebo Molete provided guidance and interpretation in unforgettable visits to the environs of Johannesburg, Durban, and Cape Town, and to Soweto and Daveyton, respectively, during my various visits to the country. Nancy Bernard in Haiti, Hannes Michael Kloth in Berlin, Sören Asmus in Bonn, and Conor Christie and Roberto Luis in Mozambique also provided terrific interpretation and guidance.

As I made my way through foreign lands, I was graciously housed by old friends and new in many cities around the world. I am grateful for the hospitality provided by Roberto Petz in Maputo, Mozambique; Sergio Hevia, Carla Pellegrin Friedman, and Roberto and Valentina Hevia in Santiago; Patricia Bernardi and Luis Fondebrider in Buenos Aires; and Andrew Russell and Judy Kallick in Guatemala City. In South Africa, my warm thanks go to

John Daniel and family in Durban, Janet Cherry in Port Elizabeth, and Jeanelle de Gruchy and Madeleine Fullard in Cape Town.

A number of people have read chapters of the book and provided terrifically useful input. I would like to especially thank Bronwen Manby, Mimi Doretti, Peter Rosenblum, Helen Duffy, Alex Vines, Jim Ross, Lisa Inman, Brandon Hamber, Debi Munczek, Michael O'Brien, and my sister Anne and brother John, all of whom made important contributions. A handful of people—Richard Carver, Douglass Cassel, Margaret Crahan, Ron Kassimir, Naomi Roht-Arriaza, and Paul van Zyl—commented in some detail on the full manuscript, in a near-final draft, which improved the final product considerably. Of course, I am solely responsible for any errors that may remain.

The editors at Routledge have been a great pleasure to work with. I especially would like to thank Eric Nelson, my editor, both for his dedication and for his clear understanding of the intentions of this book. I also thank Krister Swartz, my production editor during the greater part of the book's production, and Amy Shipper and T. J. Mancini, who played critical editorial and production roles at the beginning and end of the process. I am indebted also to my agent, Malaga Baldi, for her guidance and assistance throughout.

Many friends and colleagues provided support, enthusiasm, and input which I have greatly valued, perhaps much more than they realized. First I must thank Mimi Doretti, who provided support and good ideas throughout, and George Lopez, the two people who first encouraged me to write a book on this subject, certainly before the idea had occurred to me. Bronwen Manby instinctively understood the questions I was grappling with, and offered critical input into my endeavor to clarify and fairly present my thoughts. I thank Amie Dorman for her early research assistance, and Jonathan Klaaren, Paul van Zyl, Bill Berkeley, Belinda Cooper, Monroe Gilmour, Gwi-Yeop Son, and many others—I cannot name them all—who offered assistance, contacts, or welcome enthusiasm for the project at critical points along my journey. My appreciation also goes to the World Policy Institute, at the New School University in New York, where my project was based for over a year.

Particular thanks go to Anthony Romero, Mary McClymont, and Larry Cox at the Ford Foundation, who have been strong supporters of my work on this subject. In the course of my consulting for the Foundation, they have provided the flexibility essential to making my own travels and writing possible. I would also like to thank Robert Crane, the president of the Joyce Mertz-Gilmore Foundation, for providing the leeway for me to undertake a more serious inquiry into this subject while I was still employed with the Foundation through the first part of 1996.

It is unlikely I would have ventured into this subject of inquiry without a fellowship grant in 1992 from the Center for the Study of Human Rights at Columbia University's School of International and Public Affairs, which allowed me to work closely with the truth commission in El Salvador for close to three months. I especially want to recognize the Center's director, Paul Martin, for his constant support and interest. At Columbia University Law

School, Alejandro Garro provided early assistance in my first efforts to tackle this subject.

Finally, I want to thank the members of my family for their interest and encouragement throughout. In addition to Anne and John, mentioned above for their editorial input, I want to acknowledge the support of my sisters Marji and Kate Hayner and Irena Hayner Stammer. I warmly dedicate this book to my parents, Norman and Margaret Hayner, whose abundant support, interest, and active concern for the world's affairs have played such an important role in setting me down this path.

### ***Unspeakable Truths*, second edition: 2010**

The research necessary to bring this book up to date was dependent on a team of terrific program interns throughout 2009, who provided consistently high-quality briefings and analysis. I could not have taken on the project without their help—and their enthusiasm, always willing to go the extra mile in hunting down information and sources. Some of them brought specific areas of expertise as well as intrepid research skills. My many thanks to the entire team: Annika Aberg, Lyna Comaty, Marie Reine Bayiha Bamseck, Joelle Dek, Léonard Graf, Annikki Herranen, Beth Lehner, Caroline Mathuri, Lucie Monney, Mugiyanto, Anaïs Neyrat, Mariya Nikolova, and Victoria Vasey.

I also very warmly thank Marie-Laure Schaerer, program associate at the International Center for Transitional Justice (ICTJ) in Geneva, who was a terrific colleague throughout. I am greatly appreciative of her unwavering support, research, coordination, and always perceptive intuition on the wisest path forward.

I turned to other colleagues at the ICTJ for their expertise in many areas, and was each time impressed with the quality of people and the depth of expertise across the organization. My thanks in particular to those who spent time exploring some of these thematic and country-specific issues, some of whom also read and commented on sections. These include Mirna Adjami, Ruben Carranza, Javier Ciurlizza, Cristian Correa, Eduardo González, Paul James-Allen, Naomi Kinsella, Lisa Magarrell, Kelli Muddell, Habib Nassar, Sonia Paredes Palma, Mohamed Suma, Galuh Wandita, Aaron Weah, and Marieke Wierda.

I also thank those outside researchers—the real experts on some of the country cases I was researching—who were willing to respond to my queries and send me so much wonderful new and forthcoming literature. This has, I hope, helped me to more accurately represent each of the cases.

My editor at Routledge, Michael Kerns, persuaded me to take on the updating of this book. He and his colleague, editorial assistant Mary Altman, have been a great support, for which I am most appreciative. I would also like to thank my agent, Malaga Baldi in New York, for her assistance and consistent interest in my work over many years.

I have friends and advisors who have made key inputs at critical moments: George Lopez, Lars Waldorf, and a terrific network of supportive friends in Geneva and New York. Thank you.

Any errors that may remain, despite all the valuable input, are mine alone.

# 1 Introduction

“Do you want to remember, or to forget?” I asked the Rwandan government official in late 1995, just over a year after the genocide in that country had left over 500,000 dead.

He had lost seventeen members of his immediate family during the three and one-half months of slaughter. By chance, he was out of the country when it started, and was therefore the only member of his family left alive. When he described the events, he had said with a palpable sense of relief, “With each day, we are able to forget more.”

So I asked, “Do you want to remember, or to forget?”

He hesitated. “We must remember what happened in order to keep it from happening again,” he said slowly. “But we must forget the feelings, the emotions, that go with it. It is only by forgetting that we are able to go on.”

I was sitting with the official as we traveled with a group of international visitors to visit a massacre memorial site, where the bones and decaying clothes of thousands lay strewn in a church. As I observed this site and others over the next days, and tried to fully comprehend the horror of what he and others had experienced, I realized that there was no other answer to my question. One must remember, but one must also sometimes very much want to forget.

I had much the same sensation several months later, while speaking with a weathered farm worker in the far reaches of El Salvador. A United Nations truth commission had, three years earlier, investigated the abuses during the country’s twelve-year civil war, and I was visiting his village, in an area known to have been politically active and heavily battered by the war, to ask whether the commission had reached there, and what impact it might have had. When I asked about the war, he described the killings he saw at the hands of the army: how his father’s throat was cut, how a neighbor who was pregnant was brutally killed. Had he spoken with the truth commission? I asked. Had he given his testimony? He hadn’t. “It’s difficult to remember this, it’s painful to remember,” he said, and you could feel it in how he told his stories. “Oh, how they killed the guerrillas,” he said. “I don’t like to remember these things. What good would it do to go to the truth commission? I would lose a day of work, and nothing would change.” He paused. “It’s painful to remember. But it is important to fight for the rule of law.”

## 2 *Introduction*

Remembering is not easy, but forgetting may be impossible. There are a range of emotional and psychological survival tactics for those who have experienced such brutal atrocities. While some victims, such as this Salvadoran man, pleaded to forget, other victims I spoke with were clear that only by remembering could they even begin to recover. Only by remembering, telling their story, and learning every last detail about what happened and who was responsible were they able to begin to put the past behind them. In South Africa, time and again I heard survivors say they could forgive their perpetrators only if the perpetrators admitted the full truth. Almost incomprehensibly, hearing even the most gruesome details of the torture and murder of loved ones seemed to bring some peace. In South Africa, many survivors were able to hear these stories through the public hearings of those seeking amnesty for their crimes. One condition for receiving a grant of amnesty was full disclosure of all details of the crimes, including answering questions directly from victims or surviving family members.

In a township outside of Port Elizabeth, on the south coast of South Africa and in the center of what was fervent anti-apartheid activity in the 1980s, I spoke with Elizabeth Hashe, an older black woman whose activist husband disappeared thirteen years earlier with two colleagues. In contrast to what happened in much of Latin America and elsewhere, “disappearing” political activists (kidnapping and eventually killing them, and disposing of the body without a trace) was uncommon in South Africa, and thus the fact that these three men were missing had received a great deal of attention. There was an official investigation when they disappeared, and the police vehemently denied knowing their whereabouts. It was only through the work of the South African Truth and Reconciliation Commission that their fate was finally uncovered. I spoke to Mrs. Hashe at a tea break in the midst of a grueling two-week public hearing, after listening for four days as former security police testified in great detail about how they kidnapped and killed her husband and the two other men, roasted their bodies over a fire for six hours until they turned to ashes, and dumped the remains into the Fish River. What did she think of the hearing? I asked. What did it mean to her? “At least now I know a bit of the story. It’s better to know, to know how they killed him,” Mrs. Hashe said.

Monica Godolozzi, another of the three widows, was less forgiving. Like most of the audience in the boisterous and crowded hearing room, she was sure that the policemen were not telling the full truth, and were in fact covering up torture that likely took place before the men were killed. As the police officers denied any torture or abuse, the audience hissed loudly; many of the hundreds in attendance had probably once been victims of these same policemen. Mrs. Godolozzi told me, “I won’t forgive them. There’s nothing they could do to make me forgive them—except, if they told the truth, then yes. Anybody who tells the truth, I can forgive them. But not someone who tells lies.”

Mrs. Hashe disagreed. “Don’t we want peace for South Africa? How are we going to find peace if we don’t forgive? My husband was fighting for peace

for all of South Africa. How can you correct a wrong with a wrong?” A year earlier, Mrs. Hashe had looked tormented as she gave testimony to the commission at one of its first public hearings. Learning what happened to her husband—or at least who killed him, where the ashes of his body were discarded, and many of the details of how he died—changed her; but for Mrs. Godolozzi, this was not enough.

Despite the efforts of the Truth and Reconciliation Commission, many South Africans still demanded strict justice and punishment for their perpetrators. Where justice was not possible, the minimal requirement for forgiveness, most insisted, was to be told the full, honest, and unvarnished truth.

These South African widows, the Salvadoran peasant farm worker, and the Rwandan government official reveal the difficulties faced by individual victims and by entire nations after a period of brutal political repression. I had gone to South Africa, El Salvador, and Rwanda, as I was to travel to a number of other countries, to understand how a country and its people might recover from a period of widespread atrocities. Specifically, I was interested in the impact of official truth-seeking, where past horrors are publicly documented and investigated by a special commission, such as was done in El Salvador and South Africa. I heard similar voices everywhere, similar agonizing tales of brutality, pain, struggle, and survival. The details of repression differed widely, as did the range in individual and national response. Yet I soon saw firsthand what anyone might imagine: that such widespread abuses by the state leave behind a powerful legacy. The damage goes far beyond the immediate pain of loss. Where there was torture, there are walking, wounded victims. Where there were killings, or wholesale massacres, there are often witnesses to the carnage, and family members too terrified to grieve fully. Where there were persons disappeared, there are loved ones desperate for information. Where there were years of unspoken pain and enforced silence, there may be a pervasive, debilitating fear and, when the repression ends, a need to slowly learn to trust the government, the police, and armed forces, and to gain confidence in the freedom to speak freely and mourn openly.

The world has been overturned with political change in recent years—and especially reaching back to the end of the Cold War in 1989—as many repressive regimes have been replaced with democratic or semi-democratic governments, and a number of horrific wars have been brought to an end. At these transitional moments, a state and its people stand at a crossroads. What should be done with a recent history full of victims, perpetrators, secretly buried bodies, pervasive fear, and official denial? Should this past be exhumed, preserved, acknowledged, apologized for? How can a nation of enemies be reunited, former opponents reconciled, in the context of such a violent history and often bitter, festering wounds? What should be done with hundreds or thousands of perpetrators still walking free? And how can a new government prevent such atrocities from being repeated in the future? While individual survivors struggle to rebuild shattered lives, to ease the burning memory of torture suffered or massacres witnessed, society as a whole must find a way



to move on, to recreate a livable space of national peace, build some form of reconciliation between former enemies, and secure these events in the past.

Some argue that the best way to move forward is to bury the past, that digging up such horrific details and pointing out the guilty will only bring more pain and further divide a country. Yet can a society build a democratic future on a foundation of blind, denied, or forgotten history? In recent years, virtually every country emerging from a dark history has directly confronted this question. In some countries, this has been debated during peace negotiations, where “the past” may be one of the most contentious items on the agenda. The countries addressed in this book have come out of a wide range of repressive regimes or civil wars, and experienced very different types of transitions. Change may come through negotiations, or through the downfall of an undemocratic regime, perhaps as a result of popular revolt and shifting winds of international support. But in each of these and other very different types of political transitions, very similar questions and difficulties arise.

This book explores the difficult underside of these questions. Its aim, ultimately, is to better understand how states and individuals might reckon with horrible abuses of the past, and specifically to understand the role played by truth commissions—the name that has been given to official bodies set up to investigate and report on a pattern of past human rights abuses. In the late 1990s, the South African Truth and Reconciliation Commission succeeded in bringing this subject to the center of international attention, especially through its public hearings of both victims and perpetrators outlining details of past crimes. But there have been many other truth commissions, before and since, in some ways similar but in some ways very different.

### **What Does the Truth Bring?**

I am often surprised by the way in which notions of truth, and notions of truth commissions, are initially understood and talked about, and the assumptions that are often held about what a process of truth-seeking is and what it might lead to. Many comfortable assumptions have been restated over and again in untested assertions by otherwise astute and careful writers, thinkers, and political leaders. Some of the most oft-repeated statements, and those that we perhaps most wish to be true, are due careful scrutiny. Indeed, they do not always hold up well even with anecdotal evidence.

For example, does truth lead to reconciliation? Or, to state it another way, is it necessary to know the truth in order to achieve reconciliation? It is possible to point to evidence and to quote survivors to show that it is true; sometimes it is, for some people or in some circumstances. Yet it is easy to imagine that the opposite might sometimes also be true, and also that reconciliation, as hazy a concept as that can be, may be more affected by other factors quite apart from knowing or acknowledging the truth about past wrongs.

It is also often suggested that digging into the truth and giving victims a chance to speak offers a healing or “cathartic” experience. Again, this turns

out to be a questionable assumption, at least in some cases. Though little scientific evidence is available on this question, it is clear that this notion of healing may be overstated.

But along with any dose of skepticism—or realism, anyway—in what these bodies accomplish must also come an appreciation for the sometimes remarkable but little-known contributions that they have sometimes made. In Argentina, Chile, and Morocco, largely on the basis of the findings of these countries' truth commissions, the state has paid significant reparations to thousands of victims or families of those killed or disappeared. A number of significant prosecutions have followed from truth commissions. Important judicial reforms were put in place in El Salvador following the truth commission recommendations. In South Africa, very few people will now defend or try to justify the system of apartheid, or question the fact that egregious practices such as widespread torture were used to sustain apartheid. In many countries, the commission's work and report have received a great amount of attention.

Perhaps most underappreciated is the sheer difficulty of undertaking these endeavors, of fairly documenting and representing a "truth" in the course of a short and intensive period of investigation, when the issues under exploration often remain the most sensitive of the day and when the commission's task is to reach and fairly represent the stories of thousands upon thousands of victims. It is clear that truth commissions are of a fundamentally different nature from courtroom trials, and function with different goals in mind. It is also clear that many methodological questions that are central to truth commissions cannot be answered by turning to any established legal norms or general principles, nor can they be well addressed by universal guidelines. Instead, these questions require a consideration of the specific needs and context of each country. The questions that come up—how a commission should best collect, organize, and evaluate the many accounts from victims and others; whether to hold public hearings or carry out all investigations confidentially; whether it should name the names of specific perpetrators in its report; and many others—will be answered differently in different countries. The task is made even more difficult by the fact that many of these questions are unique to these kinds of broad truth inquiries and do not usually come up in relation to trials, for example, where standardized procedures have long been established.

Official truth-seeking, it turns out, is a cumbersome and complicated affair. In the course of my many interviews around the world, where I have had the chance to speak in detail with the commissioners and staff of many past commissions, as well as with victims, advocates, and policymakers who have watched or participated in these processes, a few general points have stood out. All of these issues are addressed in much more detail throughout the following pages.

First, the expectations for truth commissions are often much greater than what these bodies can in fact reasonably achieve. Some level of disappointment

is not uncommon as a truth commission comes to an end (or as a government accepts but then does not implement a commission's report). While there is certainly room for improvement, some of these expectations are simply not realistic in circumstances where there were very large numbers of victims, where democratic institutions remain very weak, and where the will of perpetrators to express remorse or participate in reconciliatory exercises is tenuous, at best. However, these grand expectations and the resulting disappointment sometimes prevent people from appreciating the significant contributions that these bodies do sometimes make.

Second, many of the most difficult problems confronted by truth commissions seem to be almost universal to these kinds of inquiries, as each new commission stumbles on many of the same questions and false assumptions. There is no reason to have mistakes repeated, if these lessons can be made available.

Third, these bodies can have significant long-term consequences that may be entirely unexpected at the start. This seems to be particularly true in the realm of criminal justice. The archives and reports of several truth commissions have been relied on, years later, in efforts to prosecute accused perpetrators in international (and sometimes domestic) courts. Suddenly, the usefulness of having a well-documented record of crimes becomes clear, even where domestic trials do not at first seem possible.

At the beginning of 2010, seven truth commissions were in operation (Canada, Ecuador, Kenya, Mauritius, the Solomon Islands, South Korea, and Togo), and another had just concluded (Liberia). Five of these were inaugurated in 2009, the largest number that have begun in any one year to date. Two other countries have agreed in general terms to establish a national truth commission and are currently drafting their terms of reference (Brazil, Nepal), and in half a dozen more countries there is serious discussion or planning toward creating such a body. Over the past decade, the creation of new truth commissions has been fairly steady.

While the number of truth commissions is now fairly significant, we should be sober in our assessment of what this means. The numbers do not tell the greater part of the story. A few of the forty truth commissions that have existed to date have not been successful, by any measure; others have had some but relatively limited impact. The reasons for this differ widely. Even many of the strongest truth commissions have met with frustration from victims and activists, who have sometimes pushed for more robust inquiries. Another problem remains: the weak record of implementation of the often very strong recommendations of truth commissions.

The desire for the truth, however, is powerful, and seemingly almost universal, to judge from the wide range of contexts where these same demands have emerged. While the decision to dig into the details of a difficult past must always be left to a country and its people, there is much that can be learned from those who have taken this step before.

## 2 Confronting Past Crimes

### Transitional Justice and the Phenomenon of Truth Commissions

The 1986 publication of *Transitions from Authoritarian Rule*, a major four-volume work focused on Latin America and Eastern Europe, helped to define the terms of a still-new field, that of studying how (and under what constraints) democratic transitions take shape after a period of repressive rule.<sup>1</sup> While the question of “settling past accounts,” as the authors call it, is not the central focus of the study, they note a difficult tension between the desire to bury the past, in order to avoid provoking the ire of powerful wrongdoers, and the ethical and political demand to confront the crimes of the prior regime. The authors highlight this dilemma as one of “immense difficulty” for which they have no satisfactory resolution, and posit in a footnote that an essential difference between this and other transitional problems is that this dilemma is one that “simply cannot be avoided and one that the leaders must attempt to resolve.”<sup>2</sup>

The writers then suggest that the “worst of bad solutions would be to try to ignore the issue,” and that the least worst strategy, based on ethical and political considerations, is to hold trials for the wrongdoers. Leaving aside questions of international law, which the writers are silent on but which today often frame these issues, what is most interesting in this discussion is the narrow scope of options presented to respond to such crimes. When the book was completed, the National Commission on the Disappeared in Argentina was just getting under way. There was still virtually no international recognition of non-judicial truth-seeking as a transitional justice tool, nor was there much recognition of other non-judicial strategies now commonly considered during post-authoritarian transition. Within ten years, by the mid-1990s, this had already changed dramatically. Now, almost twenty-five years since the publication of this first collection, the new field of “transitional justice” is widely referred to, there is extensive literature on almost every aspect of the subject, and questions of justice for past crimes help to frame most major political transition the world round.

Countries are confronting questions of justice and accountability in a wide range of political contexts, following the end of a military regime or repressive government, or after a civil war. It is now perfectly clear that there are many needs arising out of these circumstances that cannot be satisfied by action in the

courts—even if the courts function well and there are no limits placed on prosecuting the wrongdoers, which is rare. Thus, complementary approaches to criminal justice have slowly taken shape. Many needs of victims and communities that were damaged by the violence will not be addressed through such prosecutions, except perhaps in providing some solace if the perpetrators are successfully convicted. The institutional or societal conditions that allowed the massive abuses to take place—the structures of the armed forces and the judiciary, or the laws that should constrain the actions of officials, for example—may remain unchanged even as a more democratic and less abusive government comes into power. Many questions may remain open about exactly what took place during the years of repression, and tensions between communities may fester, or deepen, if these are left unaddressed.

It is with these many and multifaceted issues and problems in mind that the field of “transitional justice” has taken shape over recent years. The basic question, that of how to reckon with massive past crimes and abuses (either by the state or by the armed opposition), raises a wide range of difficult issues. The field has developed in response to the demands and differing circumstances of many transitional states around the world, and the increased expectation that accountability is due after atrocity. It is now widely believed that the legacy of these massive crimes cannot simply be buried, and must somehow be addressed.

A state may have a number of objectives in responding to past abuses: to punish perpetrators, establish the truth, repair or address damages, pay respect to victims, and reform institutions to prevent further abuses. There may be other, larger aims as well, such as promoting national reconciliation and reducing conflict over the past, or highlighting a government’s concern for human rights and thus gaining the favor of international partners. Likewise, there are a variety of mechanisms or policies to reach these objectives: holding trials; purging perpetrators from public or security posts; creating commissions of inquiry; providing individualized access to security files; providing reparations to victims; building memorials; or implementing military, police, judicial, or other reforms.

Justice in the courts is usually the first and most prominent of demands, but also the most difficult. Many attempts to prosecute and punish those responsible for severe abuses under a prior regime have seen little success. Sometimes the political transition has involved political compromise, and these compromises have included some form of immunity from prosecution for the repressors of old, perhaps even preserving some of their power or incorporating them into the new government. These immunities, however, have not always held over many years, as the international reach of the law—and the global understanding of acceptable national law—has turned against immunity for the most serious crimes. However, even where there is no legal bar to prosecutions, and despite what are sometimes the best intentions of the new authorities, post-transition justice in the national courts is not easy and is not common. Where there are trials, they are usually few in number and sometimes

fail to convict even those who everyone “knows” are guilty. The judiciary may be in shambles: judges politically compromised, corrupt, or timid; expertise lacking; and resources few. The numbers of accused perpetrators can be overwhelming and investigations time-consuming, leaving many perpetrators untouched.

Trials in international courts have also been limited. Again, a relatively small number of persons have been prosecuted in the various international or “hybrid” tribunals that have been created since the early 1990s. These tribunals hope that prosecuting the “most responsible” might have a significant deterrent effect. But the challenges have been great and the impact of these courts at the national level has been mixed.

Some Eastern European states employed a strategy of “lustration,” which removed persons from public employment because of their affiliation with the prior regime. Yet this practice has been criticized for lacking due-process guarantees and for relying on the sometimes faulty intelligence files of the prior regime. Many lustration policies were implemented without much consideration of how to best protect those wrongly accused, or those whose affiliation with the prior regime was very limited or brief.<sup>3</sup> Such lustration policies—removing people from their positions solely on the basis of past political affiliation—has been rare outside of Eastern Europe. In most circumstances, this would not be possible, because it is unusual for a regime to keep such detailed records of collaborators, and the records that do exist are destroyed during the course of a transition, and because negotiated transitions sometimes include an agreement that civilian employees of the former regime will not be punished or purged.

Some other states have, however, tried to purge those with a record of human rights abuses from security forces and other public positions, generally referred to as a program of “vetting.” El Salvador set up a special commission on this matter, the Ad Hoc Commission, as part of the peace accord that brought its twelve-year civil war to an end. This commission recommended that over one hundred senior members of the armed forces be removed; after considerable pressure from the international community (and with the support of the truth commission report that followed), they were all eventually retired from their posts.<sup>4</sup> When Haiti abolished its army and created a new civilian police force, it made an effort to screen applicants and exclude those from the previous force who were known to have been abusive. Liberia was assisted by the United Nations in individually screening all members of the police force, and a similar vetting program was implemented in creating the new national army.

Only in Eastern Europe has individual access been granted to former state security files (the best-known such program is in Germany, in relation to the East German Stasi files). Because the repression in Eastern Europe was dependent on vast networks of informers, accessing these files revealed many unexpected collaborators with the former regime. Individual victims were able to find and personally confront those who informed on them, all too often their own friends or family members.<sup>5</sup> But again, either because such files are

not available or because the nature of the repression and the transition has been different in other regions, such a system of providing individualized access to intelligence and security files has rarely been considered in transitional states outside of Eastern Europe.

Reparations programs for victims, or for communities disproportionately affected by violence, have increased in number and in sophistication in recent years. In some countries, these programs have resulted from the work of truth commissions, as explored in Chapter 12. Transitional justice may also focus on robust programs to reform institutions that were involved in abusive practices, or the laws that allowed such practices to take place. Finally, in many contexts symbolic measures such as official apologies or the construction of memorials offer an important sense of acknowledgment of wrongs.

The field of transitional justice has also begun to address a broader array of issues, such as more careful attention to specific groups of victims, as well as the impact more generally on society beyond direct victims. For example, children may be perpetrators as well as direct victims in a war, raising complex questions of responsibility, accountability, and recovery. There has been greater attention to this issue by scholars and practitioners alike, as seen in the criminal charges brought against commanders for the use of child soldiers, by those working to reintegrate former combatants, and in truth commissions that have designed special procedures for children's participation.<sup>6</sup> Truth commissions and those designing reparations programs have also begun to address the economic impact of conflict and even the much broader question of economic rights.

## **The Emergence of Truth Commissions**

### *Defining Parameters*

The first widely known truth commission was set up in Argentina in 1983, but this body was not referred to as a "truth commission" at that time. Rather, it was and still is referred to as CONADEP, the National Commission on the Disappeared. "Truth commissions" as a term of art did not emerge until almost ten years later, after the National Commission on Truth and Reconciliation in Chile and the Commission on the Truth in El Salvador, which concluded in 1990 and 1992, respectively.<sup>7</sup> Classifying all these specialized truth investigations as similar kinds of exercises allowed a comparison between them, a means to assess their success, and the possibility of setting standards for such inquiries in the future.

But given the variation between these many inquiries, it is not always clear which bodies should be considered within the group for comparison. There is still no single, broadly accepted definition of what constitutes a truth commission. Thus, published lists and databases of truth commissions differ, with some researchers liberally including a broad range of inquiries, and others insisting on a more rigorous and narrow definition and thus a smaller number of commissions.<sup>8</sup>

The definition that I first suggested in 1994 is still often cited, though it has some limitations.<sup>9</sup> Slightly modified here for clarity, this defined a truth commission as (1) focused on the past; (2) set up to investigate a pattern of abuses over a period of time, rather than a specific event; (3) a temporary body, with the intention to conclude with a public report; and (4) officially authorized or empowered by the state.

But this is somehow insufficient. Perhaps the greatest difficulty is that this definition may simply be too broad, potentially including so many commissions of inquiry—set up in a wide range of countries but not perceived at the time as “truth commissions”—that the very meaning begins to be lost. Some analysts have also criticized the simplicity of this definition as missing key elements. Legal analyst Mark Freeman suggests a much more detailed set of qualifiers: that the definition should also explicitly state that (1) a truth commission focuses on severe acts of violence or repression; (2) the acts occurred during recent periods of abusive rule or armed conflict; (3) these commissions describe the causes and consequences of the violations; (4) they investigate violations that occurred in the sponsoring state and (5) the commissions themselves are based in that state; (6) these bodies are “victim centered”; and, finally, (7) they operate relatively independently from the state.<sup>10</sup> Freeman offers a definition that includes these elements.<sup>11</sup> While most of these elements are accurate most of the time, these may be descriptive rather than definitional points, and in some cases would exclude commissions unnecessarily; further, the length and complexity of such a definition makes it unwieldy for common usage.

Freeman also suggests another point of analysis for determining whether a commission is a truth commission: that of the perception by the local (and sometimes global) population. This is useful, though subjective, and may also be too limiting. Other analysts have emphasized adding just one element to the original 1994 definition: that a truth commission always engages broadly with victims and survivors. Finally, some have suggested that all truth commissions have the explicit intention to advance reconciliation or even democracy-building.

Thus, there remains a need for more careful delineation, to provide some parameters to the phenomenon under study. I suggest the following: what is special about truth commissions is their intention of affecting the social understanding and acceptance of the country’s past, not just to resolve specific facts. While there is increasingly a focus by truth commissions on promoting “reconciliation,” this was not always the case for early truth commissions and should not be a definitional element. It does seem, however, that the intention of truth commissions is part of what defines them: to address the past in order to change policies, practices, and even relationships in the future, and to do so in a manner that respects and honors those who were affected by the abuses. This can be captured in the following slightly revised definition:

A truth commission (1) is focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time;



(3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review.

Thus, a truth commission can easily be distinguished from a governmental standing human rights body, or from a judicial commission of inquiry that aims to clarify the facts of one narrow event. On the other hand, there are truth commissions that are established, may work for some time, but fail to accomplish their objectives—ending before completing their report, or failing even to begin to collect information from victims and others. This may be due to financial or political constraints, or a lack of know-how or commitment on the part of the commissioners, given the extraordinary challenge and the evident risks and resistance they may meet. Such weak examples (or outright failures) must be included in our tally of experiences, as they may suggest important lessons.

For purposes of comparison and learning, it is also important to avoid defining the concept too rigidly. The interest of this book is to explore and understand the increasing use of this form of inquiry, the differences and similarities between such bodies working in very different contexts, the challenges they confront, and, ultimately, the impact that they have. I am aware therefore that I include in my comparative inquiry (and in my list of truth commissions) some commissions that fall outside certain aspects of the above definition. This is important to do for two reasons: First, some of these are extremely interesting new models, examples of the way that “truth commissions” are being relied on in new ways and new contexts, and it is likely that similar kinds of inquiries may be created elsewhere. Second, some of these bodies that strictly fall outside of this definition were nonetheless set up very self-consciously as “truth commissions,” using this name and looking to other prominent truth commissions around the world for lessons and guidance. The Truth and Reconciliation Commission in Greensboro, North Carolina, in the United States, is such an example. It was largely (but not entirely) an unofficial process, and focused largely (but not entirely) on a specific event in 1979. But as I shall explain, it is important to include it here.

Truth commissions have been established under many names. For example, there have been “commissions on the disappeared” in Argentina, Uganda, and Sri Lanka; “truth and justice commissions” in Ecuador, Haiti, Mauritius, Paraguay, and Togo; a “truth, justice, and reconciliation commission” in Kenya; a “historical clarification commission” in Guatemala; and, of course, “truth and reconciliation commissions” in South Africa, Chile, Peru, and other countries. Others have been created in Germany, El Salvador, Chad, Timor-Leste, South Korea, Morocco, and elsewhere. While there is much in common between these various bodies, their specific investigatory mandates and powers have differed considerably, reflecting the needs, possibilities, and political realities of each country.

On the other hand, the term “truth commission” is now being applied to many kinds of inquiries that do not seem to fit the general model we are looking at here. In 2009, Scotland’s faith community created a Poverty Truth Commission,<sup>12</sup> and in the same year Colombia concluded a quite serious Truth Commission on the Palace of Justice.<sup>13</sup> While the Colombian inquiry comes close to fitting into our scheme, its single-event focus makes it seem closer to a classic commission of inquiry, especially given that Colombia’s broader history of violence was excluded. Three bodies that I list as truth commissions in the previous edition of this book are not included here. The two inquiries by the African National Congress are fascinating and well deserving of study, but ultimately the fact that these were undertaken by a non-state armed opposition group sets them apart. Further, the International Commission of Inquiry in Burundi that was established by the UN Security Council was not a national endeavor sponsored by the state under review, even if a request for its establishment formally came from the government. It was an important effort at the time, but is not a good fit with the parameters of truth commissions that we are studying here.<sup>14</sup>

### *Truth, Justice and Peace*

Because truth commissions cover many events that could also be subject to trials, their relationship to the criminal justice system is sometimes misunderstood. But they should be seen as quite separate and independent. On one level, truth commissions clearly hold fewer powers than do courts. They cannot put anyone in jail, they cannot independently enforce their recommendations, and most have not had the power even to compel anyone to appear for questioning. To date, the South African commission has been the only one to offer individualized amnesty, whereby some perpetrators provided detailed accounts of their abuses. Most truth commissions do not interfere with or duplicate any tasks of the judiciary. Yet despite their more limited legal powers, their broader mandate to focus on the patterns, causes, and consequences of political violence allows truth commissions to go much further in their investigations and conclusions than is generally possible (or even appropriate) in a trial. Indeed, the breadth and flexibility of a truth commission are its strength. For example, truth commissions are usually able to outline the full responsibility of the state and its various institutions that carried out or condoned repressive policies—including not only the military and the police, but also the judiciary itself. Truth commissions’ focus on victims, usually collecting thousands of testimonies, and honoring these truths in a public and officially sanctioned report, represents for many the first acknowledgment by any state body that their claims are credible and that the atrocities were wrong.

As will be explored in Chapter 8, the relationship between truth commissions and criminal prosecutions has varied, but most commissions have had every intention of strengthening prosecutions. In some cases, these truth

inquiries have worked in the context of an amnesty that is already in place, or where a biased and corrupt judiciary makes trials unlikely, and the commission itself has been considered at least a minimal step toward accountability.

Meanwhile, at the broadest international policy level the increasing emphasis on justice during difficult political transitions has met with some concern. Insisting on accountability for past crimes may upset a fragile peace, or make a peace agreement impossible, some say. These concerns are not entirely unreasonable, given the strong reaction and reverberation that have resulted from a number of truth commission reports, or, more precisely, from the prospect that speaking the truth may lead to criminal accountability. Whether emerging from army generals or recently disarmed rebel warlords, tough truth has sometimes (though rarely) brought open threats of breaking the peace, as well as, ominously, death threats against commissioners. This classic “peace versus justice” tension has been present in the context of many post-war truth commissions, as well as in many post-dictatorship contexts if the powers of old still hold sway. These tensions must be recognized.

On the other hand, the proposal for a truth commission has generally not upset peace negotiations, and it has been common for both rebel and government negotiators to agree with relative ease to such a proposal.<sup>15</sup> True, they may be looking for a weak inquiry, or one that they hope to control; there are certainly examples of this. But once agreed, such a commission may become one of the most prominent initiatives of a transition, unexpectedly prying open public space to address long-hushed topics, and intent on pushing for serious reforms.

### **Other Kinds of Official Inquiries: Underappreciated?**

There are a range of other kinds of official inquiries into past human rights abuses that have not been understood as truth commissions, but they have served a very important role and indeed may be a better approach than a truth commission, in some moments and in some contexts.

In Australia, for example, the government asked its permanent human rights monitoring body, the Human Rights and Equal Opportunity Commission, to look into the record of state abuse against the country’s population. Its year-long investigation documented decades-long state policies of forcibly removing Aboriginal children from their families and placing them with white families in order to assimilate them into mainstream Australian society. These practices continued until the early 1970s. With the release of the commission’s report, *Bringing Them Home*, in 1997, the story became a national scandal and ultimately a central issue in national elections, as the Australian public was outraged by this previously little-known practice, while the government refused to offer a formal apology in the name of prior governments.<sup>16</sup> Sixty thousand copies of the report were purchased in the first year after its release. An annual “Sorry Day” was created, as recommended by the commission, and “sorry books” were made available for signature by the public. Within a

year, over 100,000 Australians had signed these books, filling hundreds of volumes.

Canada was also moved to review its policies and relationships with indigenous communities, also long based on forced assimilation through mainstreaming children in “residential schools.” After an initial five-year commission of inquiry, resulting in significant reparations to survivors, Canada ultimately decided to establish a full-fledged truth commission to further address this legacy (described in Chapter 5).

The United States has also established various inquiries that aim to acknowledge a history of government abuse. In 1994, the energy secretary appointed an Advisory Committee on Human Radiation Experiments to look into the experiments conducted on unknowing medical patients, prisoners, and communities in the United States from the mid-1940s to the mid-1970s. The report of this committee provided an “unprecedented insight into a murky area of American history,” according to one observer.<sup>17</sup>

In another case, with the intention to finally provide reparations, the U.S. Congress created a Commission on War-Time Relocation and Internment of Citizens in 1982 to study the policies and effect of placing Japanese Americans in internment camps during World War II. Many of the recommendations of this commission’s report were implemented, including a formal apology from the government and the passage of legislation providing \$1.2 billion in compensation to survivors.<sup>18</sup>

There have been other U.S. government practices for which reparations or apologies were offered many years after the fact, though without a formal government inquiry. For example, decades after the press reported on a secret syphilis study done on unknowing black men in Tuskegee, Alabama, which began in 1932 and continued into the 1970s, President Bill Clinton offered a formal apology in 1997. The experiments had been well documented by independent writers and the media, and the government had already paid the men and their families over \$9 million in an out-of-court settlement, and thus no government inquiry was seen as necessary.<sup>19</sup>

There are other examples of official or semi-official inquiries into past human rights violations that serve some truth-commission-like functions. Some of these are undertaken during political transitions and served important roles in their respective political contexts, but were limited in authority or scope, or were undertaken only as a precursor to a possible full-fledged truth commission to follow. For example, after receiving pressure from the families of victims and from the press, Leo Valladares, the national commissioner for the protection of human rights in Honduras, a government-appointed ombudsman, independently undertook an investigation into 179 disappearances caused by the armed forces in the 1980s and early 1990s. Yet Valladares worked under his own initiative, received no assistance from the authorities, and based his investigations primarily on press accounts and other public information. He continued to call for a full truth commission even as he published his report in 1994 documenting the disappearances.<sup>20</sup>

Several years before the 1994 genocide in Rwanda, ethnic-targeted violence led to an agreement for a commission to investigate past atrocities, part of a negotiated peace accord between the government and the armed opposition. When the government took no action to set up the commission, Rwandan human rights groups invited four international human rights organizations, from the United States, Canada, France, and Burkina Faso, to undertake such an inquiry. Despite the president's public statement welcoming this non-governmental commission and the assistance provided by some government ministries, it was clear that the president and armed forces resented these investigations, and some witnesses were attacked, possibly in retaliation for their cooperation with the inquiry. The commission's report, released in 1993, had the greatest impact on European governments, especially France and Belgium, which were actively supporting the Rwandan government.<sup>21</sup> Yet the report and its recommendations failed to prevent the genocide that came just one year later.

There are other interesting models of international inquiries that have an official or semi-official flavor and overlap with the work that is typical of truth commissions. For example, an International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events was created by the Organization of African Unity in late 1998, completing its report in 2000. Its research was focused on the history and circumstances of the conflict in Rwanda that led up to the genocide of 1994 and the resulting impact of the violence, basing its conclusions in part on research papers commissioned from experts. The Rwandan government cooperated with the inquiry.

Finally, there have been a number of war crimes investigations, often referred to as international commissions of inquiry, war crimes commissions, or commissions of experts, which can also be distinguished from truth commissions. These bodies, such as those established to look into events in the former Yugoslavia, Rwanda, and Timor-Leste, have been set up by the United Nations for the purpose of evaluating the evidence available for possible international prosecutions.<sup>22</sup> These commissions collect evidence, sometimes including testimony from victims, and submit a report, but they have not been authorized by the state under investigation, nor are they aimed at studying the overall patterns, causes, and consequences of the violence. Rather, they evaluate evidence of criminal wrongdoing and violations of international law. In a number of cases, these commissions have led to the creation of an ad hoc international tribunal, such as in the former Yugoslavia and Rwanda.

### **Unofficial Inquiries That Result in Broad Truth-Telling**

The authorization by the state, which partly defines a truth commission, may provide better access to official sources of information, increased security, and a greater likelihood that a commission report and recommendations will receive serious attention. However, there are many examples of significant non-governmental projects that have documented the patterns of abuse of a prior

regime. In some cases, these projects have taken on considerable proportions, gathered significant information, and concluded in sweeping and nearly authoritative reports, despite limitations such as restricted access to government records.

In Brazil, for example, a team of investigators was able to secretly photocopy all of the official court papers documenting political prisoners' complaints of torture—some one million pages in total. Working quietly, and with the support of the archbishop of São Paulo and the World Council of Churches, the team relied on this material to produce *Brasil: Nunca Mais*, a report analyzing the military regime's torture practices over a fifteen-year period.<sup>23</sup> In Uruguay, the non-governmental Servicio Paz y Justicia (SERPAJ) published *Uruguay: Nunca Más*, a far stronger report than that resulting from an earlier parliamentary inquiry, which had worked under a very limited mandate and with little political support.<sup>24</sup> The Human Rights Office of the Archbishop of Guatemala undertook an extensive project to document decades of abuses and massacres in advance of the official truth commission.<sup>25</sup> In Russia, the non-governmental organization Memorial was set up in 1987 to promote accountability and fact-finding around past events. Its staff gathered extensive archives on state abuses going back to 1917, and published several books with lists of victims' names and an analysis of state policies of repression.<sup>26</sup>

## National Context

Many different factors may shape a country's transitional possibilities and constraints, and thus its post-transition reality. These include the strength of those groups or individuals who were responsible for the abuses and their ability to control transition policy choices; how vocal and organized is a country's civil society, including victims' and rights groups; and the interest, role, and involvement of the international community. In addition, the transitional choices will be affected by the type and intensity of the past violence or repression and the nature of the political transition. And finally, the national political and social culture—an indefinable set of preferences, inclinations, beliefs, and expectations—will help shape the parameters of whether and in what manner the past is confronted.

But the actual number of victims does not seem to determine how heavily the past will weigh on the future, or the intensity of interest in accountability. In some countries, the existence of a very small number of victims of government abuse has resulted in serious political repercussions and a strong emotional response from the public. Even with such relatively small numbers, the pressure for full truth and justice can be as great as in those countries where hundreds of thousands were killed.

The term "truth commission" is uncomfortable for some. But it has now become a term with a generally understood meaning: an official investigation into a past pattern of abuses. It is certain that more countries will be turning to official truth-seeking in the coming years, and that these inquiries will be shaped

in many different ways, with powers, mandates, and expectations determined by local circumstances and priorities. In virtually every state that has recently emerged from authoritarian rule or civil war, and in many still suffering repression or violence but where there is hope for a transition soon, there has been interest in creating a truth commission—proposed either by officials of the state or by human rights activists or others in civil society.

The task of these truth bodies will never be easy. Truth commissions are difficult and controversial entities; they are given a mammoth, almost impossible task with usually insufficient time and resources to complete it; they must struggle with rampant lies and denials to uncover still-dangerous truths that many in power may resist. At the end of a commission's work, a country may well find the past still unsettled and some key questions still unresolved. Yet despite the inherent limitations, both the process and the product of a truth commission can make a critical contribution in the midst of a difficult transition, fundamentally changing how a country understands some of the most contentious aspects of its recent history.

### 3 Why a Truth Commission?

“Why do we want a truth commission?” I was speaking with a woman who lost a family member during the dictatorship in Brazil, and she seemed puzzled by my question as she repeated it back to me. Her answer was quick and articulate, and effectively took any question on the matter off the table. “To harness political forces, to have an inquiry with significant powers, and to get to the many truths which are still missing.” It suddenly seemed simple.

This conversation took place in October 2009 in São Paulo during an international conference to consider a truth commission for Brazil. Several current and former government ministers spoke eloquently in favor of the idea. Brazil is not a country that has entirely buried its past: there have been several official commissions of inquiry since the end of the dictatorship in 1985, with substantial volumes published about the several hundred disappeared or killed. Significant reparations have been paid to family members, and to those who suffered economic loss due to the dictatorship. In 2009, the 1979 amnesty law was being challenged in the Supreme Court, and the Inter-American Court of Human Rights was soon to decide a key case on the right to the truth in Brazil. Perhaps most interestingly, the government had just begun a prominent media campaign to highlight cases of those disappeared thirty-five years earlier, asking, “Do you know where these people are?”

Despite these efforts, there was near-universal support among those involved in these initiatives for creating a truth commission. Even the chair of the major government commission on the disappeared insisted on the need for a truth commission: “Too much truth is still not known,” he explained.

It is true that critical elements are missing. The armed forces will not release records, saying they were destroyed. Other files have been sealed by the government. The army continues to insist that it won the “war,” that its actions during the 1964–1985 dictatorship were necessary, and that there is no need for remorse or apology. A truth commission may force engagement by the military, may gain access to pertinent archives, and may help to locate remains of the disappeared. Additionally, as was true in Chile, little has been documented about the number of people who were detained, tortured, and survived, or who were forced into exile, which could be an important contribution.

Brazil highlights the tendency to build up quite high expectations for a proposed truth commission, hoping that such a body will hold the power and



the authority to accomplish what has not been possible before. With careful crafting, strong membership, and the right mandate—and perhaps with a bit of luck—Brazil may see some of these hopes met, but it will be a difficult task, regardless. The crafters might begin by clarifying the precise intentions of this particular commission.

## **The Aims**

Far beyond simply finding and stating the truth, truth commissions may be given wide-ranging responsibilities. In many contexts, they have become the most prominent government initiative to respond to past abuses, and the starting point from which other measures for accountability, reparations, and reforms may be developed.

Truth commissions are typically tasked with some or all of the following goals: to discover, clarify, and formally acknowledge past abuses; to address the needs of victims; to “counter impunity” and advance individual accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past. Some of these issues are addressed in some detail in later chapters, and thus only briefly outlined here.

The first and most straightforward objective of a truth commission is sanctioned fact-finding: to establish an accurate record of a country’s past, clarify uncertain events, and lift the lid of silence and denial from a contentious and painful period of history. The great number of interviews with victims, typical of these commissions, allows a detailed accounting of the patterns of violence over time and across regions, literally recording a hidden history. The detail and breadth of information collected by a truth commission is usually of a kind and quality far better than what is available in any previous historical account, resulting in a well-documented report on oft-disputed events. Beyond outlining overall patterns, some truth commissions have also resolved a number of key cases, even naming the perpetrators or the high-placed intellectual authors of major unsolved crimes. The official and public recognition of past abuses serves to effectively unsilence a topic that might otherwise be spoken of only in hushed tones, long considered too dangerous for general conversation, rarely reported honestly in the press, and certainly out of bounds for the official history taught in schools. In effect, the report of a truth commission reclaims a country’s history and opens it for public review.

In some countries, rights activists insist that a truth commission does not find new truth so much as break the silence about widely known but unspoken truths. Firm denial may be strongest where the repressive government depended on the active or passive support of the public, or certain sectors of the public, to carry out its policies and maintain power. Anti-apartheid activists in South Africa insist that it was impossible not to know that torture and killing were commonplace under apartheid, but that some South Africans chose to ignore the truth. They suggest that the commission’s most important

contribution was simply to remove the possibility of continued denial. As writer Michael Ignatieff has said, "The past is an argument and the function of truth commissions, like the function of honest historians, is simply to purify the argument, to narrow the range of permissible lies."<sup>1</sup>

Indeed, black South Africans were generally not surprised by the evidence of abuse by state forces: they were victims and witnesses to these abuses themselves. In many situations that warrant a post-transition truth commission, the victimized populations may already have a good idea of what took place, and the truth inquiry might only confirm this. Few victims who provide testimony to a truth commission are able to learn new information about their own case. Because of limited time and resources, truth commissions can only thoroughly investigate a small number of cases. For some victims and survivors, therefore, a truth commission does not so much tell them new truth as formally recognize and acknowledge what has before been denied. In some cases, the report has been followed by a presidential apology. This distinction between knowledge and acknowledgment was articulated at the first major conferences on transitional justice in 1988.<sup>2</sup> "Acknowledgment implies that the state has admitted its misdeeds and recognized that it was wrong," wrote Aryeh Neier, then executive director of Human Rights Watch.<sup>3</sup> Juan Méndez, a prominent rights lawyer, has written that "[k]nowledge that is officially sanctioned, and thereby made 'part of the public cognitive scene' . . . acquires a mysterious quality that is not there when it is merely 'truth.' Official acknowledgment at least begins to heal the wounds."<sup>4</sup>

Official acknowledgment can be powerful precisely because official denial can be so pervasive. Some measure the need for official truth, and therefore the appropriateness of a truth commission, by the degree to which a government tried to disguise the true nature of its regime. This was particularly true in the early days of truth commissions, when they were more likely to have been created after a repressive regime that depended on hiding its crimes—the practice of "disappearances" being the clearest example. But even large massacres have gone uncoun­ted in some countries, or have been vehemently denied even in the face of clear evidence to the contrary. Hundreds of massacres took place throughout the highlands of Guatemala in the early 1980s during the campaign to wipe out armed guerrillas and their supporters. But access to these areas was blocked, preventing these events from being more widely known. Even many survivors of the atrocities did not know that similar killings were taking place elsewhere: in isolated villages and prevented by the military from traveling, many concluded that their village alone was targeted.

Even in those circumstances where the events seemed to be well recorded as they took place, basic facts may still be passionately disputed later, sometimes intentionally misrepresented for political purposes. Despite close reporting of the Bosnian war, there are three contradictory versions of official truth in Bosnia about what really happened in the war, each version being taught in different schools to different communities—Muslim, Croat, or Serb—and reinforcing fundamental points of conflict that could well flare up in future violence.

Bosnians have been discussing for many years the possibility of a truth commission in order to establish one agreed-upon and well-documented historical account.

Second, truth commissions often have a separate and distinct aim of hearing, respecting, and responding to the needs of victims and survivors.

A fundamental difference between trials and truth commissions is the nature and extent of their attention to victims. The function of the judicial system, first and foremost, is to investigate the specific acts of accused perpetrators. During a trial, victims are invited to testify to back up the specific claims of a case, usually comprising a very narrow set of events that constitutes the crime charged. Usually, very few victims are called to testify, and their testimony is likely to be directly and perhaps aggressively challenged by the defense attorneys in court. (In some systems, victims can also play a critical role in actively moving a case forward for prosecution.)

Most truth commissions, in contrast, focus primarily on victims. Although commissions may investigate the involvement of individual perpetrators in abuses, and may receive critical information from perpetrators and others from within the system of repression, much of their time and attention is focused on victims. They usually take statements from many witnesses, victims, and survivors, and consider all of these accounts in analyzing and describing the greater pattern of events. By listening to victims' stories, perhaps holding public hearings and publishing a report that describes a broad array of experiences of suffering, commissions effectively give victims a public voice and bring their suffering to the awareness of the broader public. As the South African commission hearings progressed, for example, therapists who worked with torture survivors saw a marked increase in the public's understanding and appreciation of victims' needs.

Commissions may assist victims in other ways, such as by designing a reparations program and providing the necessary information to the government to allow rapid implementation. Further, on a very practical level, many family members of the disappeared seek clarity on the legal status of their loved ones. Many civil matters—such as processing a will or accessing money in the disappeared person's bank account—cannot be settled without a death certificate. In Sri Lanka, Argentina, and elsewhere, these very practical considerations added significantly to the suffering of survivors. In Argentina, the state created a new legal status of “forcibly disappeared,” functionally equivalent to a death certificate, allowing the processing of civil matters without it being declared that the person was dead, which was politically and psychologically important to family members. This status was applied to all those documented by the truth commission.

Third, beyond establishing the facts and focusing on victims, a truth commission may be directed to help counter impunity, and typically will make clear recommendations to advance criminal accountability. Many commissions pass their files on to the prosecuting authorities, and where there is a functioning judicial system, sufficient evidence, and sufficient political will,

trials may result. A number of commissions have named names of perpetrators, thus providing at least some sense of accounting. Some have recommended other sanctions that might be instituted without a full trial, such as removing abusers from positions in security forces where they might do further harm.

Fourth, truth commissions are well positioned to evaluate the institutional responsibility for abuses, and to outline the reforms needed to prevent further abuses. These typically focus on the police, military, and judicial system. The recommendations in this area have sometimes been extensive and detailed, and often result in considerable implementation efforts by the donor community as well as the government. Successful implementation of truth commission recommendations, however, continues to be weak.

Fifth, truth commissions may be given the mandate to “promote reconciliation,” and they often struggle with how exactly to do so. Common wisdom holds that the future depends on the past: one must confront the legacy of past horrors or there will be no foundation on which to build a new society. Bury your sins, and they will reemerge later. Stuff skeletons in the closet, and they will fall back out of the closet at the most inauspicious times. Try to quiet the ghosts of the past, and they will haunt you forever—at the risk of opening society to cycles of violence, anger, pain, and revenge. If the conflicts of old are confronted directly, it is surmised, these conflicts will be less likely to explode into severe violence or political conflict in the future. Certainly, resolving disagreements and airing latent conflicts can help ease tensions. Yet, as noted above, in the midst of a delicate transition, truth-telling can also increase tensions. A government must enter this arena with care.<sup>5</sup>

In a similar vein, many proponents of truth-seeking assert that forgiveness and reconciliation will result from airing the full truth. How can victims forgive without knowing whom to forgive and what to forgive them for? The goal of reconciliation has been so closely associated with some past truth commissions that many casual observers assume that reconciliation is an integral, or even primary, purpose of creating a truth commission, which is not always true. Whether and how national, political, or even individual reconciliation might result from clarifying the truth, and what other factors are likely to affect this elusive goal, remain questions for much further consideration.

## **A State Obligation to Provide the Truth**

Investigating and making public the truth about past abuses has been found to be a general state obligation by international courts, and restated in policy papers and resolutions passed by the United Nation and other inter-governmental institutions. The first clear legal ruling on this was by the Inter-American Court of Human Rights in the *Velásquez Rodríguez* case of 1988, where it was confirmed that the state has a duty to investigate the fate of the disappeared and disclose the information to relatives.<sup>6</sup>

A report by the UN Independent Expert on Impunity summarized the international law and state practice as of 2005. This report, which was approved

by the UN Commission on Human Rights, states that “[e]very people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes” and specifically that “victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate.”<sup>7</sup>

While the report notes that societies may benefit from a truth commission, it makes clear that any decision to establish such a commission, or to define its terms and composition, “should be based upon broad public consultations in which the views of victims and survivors especially are sought.”<sup>8</sup> Regardless of whether a commission is created, it says, a state has an obligation to preserve and ensure access to any archives pertaining to past violations.<sup>9</sup>

Soon after this report, the UN Office of the High Commissioner for Human Rights commissioned another expert paper, this time specifically on the right to truth. The report, released in 2006, outlines a right that is “recognized in several international treaties and instruments as well as by national, regional and international jurisprudence and numerous resolutions of intergovernmental bodies at the universal and regional levels.”<sup>10</sup> It concludes that victims have a right to,

the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them. In cases of enforced disappearance, missing persons, children abducted or during the captivity of a mother subjected to enforced disappearance, secret executions and secret burial place, the right to the truth also has a special dimension: to know the fate and whereabouts of the victim.<sup>11</sup>

The UN human rights policy body has passed several resolutions reiterating this right to truth, most recently with a consensus resolution by the UN Human Rights Council in October 2009.<sup>12</sup> All of these documents, resolutions, and judicial decisions outline the same general principles, which are now clearly accepted in general terms. It is more difficult, however, to stipulate how this right, and the resulting state obligation, must be implemented. Indeed, it is evidently unrealistic to expect full and complete information about all violations where the number of victims is very high and state resources are very limited, as is true in many of the cases considered here. However, a good faith intent to provide as much information as possible, and to preserve and make publicly available any existing state archives, can be expected. There are many ways in which this obligation could potentially be met: laws to declassify documents, exhumations of mass graves, parliamentary investigations, other kinds of state inquiries, and other strategies. But it is often this right and obligation that advocates of truth commissions cite in pushing their government to set up a broadly focused and well-empowered truth commission.

## **Assessing Impact**

Do truth commissions have the impact hoped for? One answer to this, providing an overview of specific cases, can be found in Charts 5 and 6 in Appendix 2, which attempt to summarize the direct impact of a number of truth commissions in specific areas: criminal justice, vetting, apologies, reforms, and victim reparations. These charts suggest that the answer is: sometimes, yes, and in some ways. The case studies in the following chapters will detail this further.

Several writers have questioned some of the more sweeping claims and assumptions about truth commission. Scholar Erin Daly, for example, believes it is unrealistic to expect that one accepted truth will emerge from a truth commission process in some contexts. She writes:

Where the population is deeply divided on even the most basic questions, as in the Balkans, between Israel and Palestine and perhaps in Iraq, the unvarnished truth is unlikely to reconcile the competing points of view and the people who hold them.<sup>13</sup>

She outlines the Serbs' refusal to accept well-founded reports of abuse by Serbian forces as a powerful example.

Political scientist David Mendeloff has questioned another idea: that truth commissions necessarily promote peace and help to prevent further violence. Mendeloff outlines eight claims about the peace-promoting effects of truth-telling in the aftermath of civil war, and seventeen core assumptions that he finds throughout the literature (for example, the assumptions that personal healing promotes national healing; truth-telling promotes reconciliation; and forgetting, suppressing, or distorting the past leads to war).<sup>14</sup> He concludes that many of these claims and assumptions are "flawed or highly contentious" and that truth-telling advocates "claim far more about the power of truth-telling than logic or evidence dictates."<sup>15</sup> He makes clear that he is not judging other broad aims of truth commissions, focusing narrowly on the question of conflict prevention.

However, scholars have rightly noted that there is still a lack of data on the impact of these bodies more generally, something beyond broad critiques, anecdotal accounts, or single-country case studies. Little work has been done to assess impact in a scientific, quantitative manner, and especially providing a comparison across many countries and commissions.<sup>16</sup> Two of the first studies that attempt this are being published in 2010. Both of these quantitative studies try to measure the effect of truth commissions (and other transitional justice measures) in two areas: the impact on future human rights practices in each country, and the impact on "democracy." Thus, these studies are not directly assessing the impact in the specific areas that truth commissions usually define as their aims (establishing truth, assisting victims, promoting justice, advancing reforms, and facilitating reconciliation, as described earlier). Improvements in democratic indicators and in the respect for human rights are

of course often linked to some of these goals, though perhaps as a secondary effect. The choice of researchers to measure these specific areas is presumably because of the availability of independent data sets that track these two indicators over time, for numerous countries.

The results from these two quantitative studies are mixed. The first study, undertaken by Tricia Olsen, Leigh Payne, and Andrew Reiter, concludes that transitional justice generally has a positive effect on democracy and human rights, but that it seems to matter in what order and combination things are done. For example, truth commissions that are employed alone, with no other transitional justice initiatives, have a negative impact on human rights and on democracy, according to their data, but truth commissions “contribute positively when combined with trials and amnesty.” They believe that “new democracies relying solely on a truth commission tend to exacerbate social problems, rather than ameliorate them.” Reasonably, they thus urge a holistic approach to transitional justice policymaking.<sup>17</sup>

In a separate study, but relying on similar data sources, scholar Eric Wiebelhaus-Brahm concludes that a statistical analysis suggests that truth commissions have an overall negative impact on human rights practices, and have no significant impact on democracy. However, he also presents a close and nuanced study of four case studies which shows the opposite result: he describes specific examples where truth commissions have had a direct and positive impact in both of these areas. In grappling with this contradiction, he suggests that the impact of these processes often follows a winding route, is affected by many contextual factors, and may take some years before it can be seen.<sup>18</sup> He also notes, logically, that there may be a problem in treating all truth commissions alike in these empirical comparisons—only asking whether a country had a truth commission or did not have a truth commission, rather than distinguishing those commissions that were stronger and more effective from those that were clearly ineffective.

These initial studies are useful. However, the possibilities for empirical statistical analysis are limited by the availability of quantitative data sets, and also limited by the number of truth commissions. It is much harder to measure some of the other hoped-for effects in the same statistical manner. It is also difficult to ensure that all of the many different contextual issues are taken on board in making these comparisons and conclusions. For better or worse, our assessments of the impact of truth commissions will have to continue to include qualitative, case-specific comparisons in order to fully understand the dynamics, the possibilities, and the limitations of these often contentious bodies.

## 4 The Five Strongest Truth Commissions

### **South Africa: Truth and Reconciliation Commission, 1995–2002**

After forty-five years of apartheid in South Africa, and thirty-odd years of some level of armed resistance against the apartheid state by the armed wing of the African National Congress (ANC) and others, the country had suffered massacres, killings, torture, lengthy imprisonment of activists, and severe economic and social discrimination against its majority non-white population. The greatest number of deaths took place in the conflict between the ANC and the government-backed Inkatha Freedom Party, particularly in the eastern region of the country that is now KwaZulu-Natal.

The idea for a truth commission was proposed as early as 1992, but it was not until after Nelson Mandela was elected president in April 1994 that serious discussions began about what form a national truth commission would take.<sup>1</sup> The most contentious issue during the negotiations toward an interim constitution in late 1993 was whether an amnesty would be granted to wrongdoers, as the government and military insisted. In the final hour of negotiations, the parties agreed to a “post-amble” to the Constitution which stated that “amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past.” Only later was this amnesty linked to a truth-seeking process.

After considerable input from civil society, including two international conferences to explore the transitional justice policies instituted in other countries, and after hundreds of hours of hearings, the South African Parliament passed the Promotion of National Unity and Reconciliation Act in mid-1995. Following a public nomination and selection process, seventeen commissioners were appointed, with Archbishop Desmond Tutu as chair. The commission was inaugurated in December 1995, although several months of setting up delayed its first hearings and investigations until April 1996.

The commission’s empowering Act provided the most complex and sophisticated mandate for any truth commission to date, with carefully balanced powers and an extensive investigatory reach. Written in precise legal language and running to over twenty single-spaced pages, the Act gave the commission the power to grant individualized amnesty, search premises and seize evidence,



subpoena witnesses, and run a sophisticated witness-protection program. With a staff of three hundred, a budget of about \$18 million each year for its first two and a half years, and four large offices around the country, the commission dwarfed previous truth commissions in its size and reach.

The Act designed the commission to work in three interconnected committees: the Human Rights Violations Committee was responsible for collecting statements from victims and witnesses and recording the extent of gross human rights violations; the Amnesty Committee processed and decided individual applications for amnesty; and the Reparations and Rehabilitation Committee was tasked with designing and putting forward recommendations for a reparations program.

The commission took testimony from over 21,000 victims and witnesses, 2,000 of whom also appeared in public hearings. Media coverage of the commission was intense: most newspapers ran a number of stories on the commission every day, and radio and television news often led with a story on the most recent revelations from the commission's hearings. Four hours of hearings were broadcast live over national radio each day, and the *Truth Commission Special Report* television show on Sunday evenings quickly became the most-watched news show in the country.

The commission also held special hearings focused on sectors or key institutions of society and their response to or participation in abusive practices. These institutional hearings focused on the religious community, the legal community, business and labor, the health sector, the media, prisons, and the armed forces. Other special hearings looked at the use of chemical and biological weapons against opponents of the apartheid government, compulsory military service, political party policies, and how youth and women were affected by the violence. The commission also held hearings to address the involvement of specific individuals; the best-known of these was Winnie Madikizela Mandela, who insisted that her hearing be held in public session rather than in private, as the commission had first planned. The two weeks of intensely covered hearings of Madikizela Mandela sparked several police investigations into her involvement in criminal acts and effectively ended her pursuit of a prominent political post.

Unfortunately, the commission did not often use the strong powers that it had at its disposal, and was sometimes criticized for holding the mission of reconciliation above that of finding the truth. It employed its subpoena and search and seizure powers only a handful of times; to avoid upsetting various parties, the commission delayed issuing or decided not to issue subpoena or search orders against several key individuals or institutions, among them the headquarters of the South African Defence Force and the ANC, both of which were either slow (in the latter case) or resistant (in the former) to turn over requested information. The commission was also strongly criticized by human rights organizations for not issuing a subpoena against the minister of home affairs and Inkatha Freedom Party president Mangosuthu Buthelezi, a decision based largely on the commission's fear of a possible violent reaction.

The greatest innovation of the commission, and the most controversial of its powers, was its ability to grant individual amnesty for politically motivated crimes committed between 1960 and April 1994. The commission received 7,115 applications for amnesty. For gross violations of human rights (in contrast to politically motivated crimes against property, or gun running, for example), the applicant was required to appear in a public hearing to answer questions from the commission, from legal counsel representing victims or their families, and directly from victims themselves. Just under 25 percent of the applications pertained to such gross violations, requiring a hearing. Ultimately, the Amnesty Committee denied 4,500 applications for amnesty after administrative review, mostly on grounds that they lacked a political objective.<sup>2</sup> Thus, some suggest, the real number of credible applications was about 2,500.<sup>3</sup>

Amnesty was granted only to those who fully confessed to their involvement in past crimes and showed them to be politically motivated. The Amnesty Committee considered a number of factors in determining whether the applicant satisfied these terms. Among them, the committee was directed to consider the relationship between the act, omission, or offense and the political objective pursued, and in particular whether there was “proportionality” between the act and the political objective pursued.<sup>4</sup> Any crimes committed for personal gain, or out of personal malice, ill will, or spite, were not eligible for amnesty. Neither an apology nor any sign of remorse was necessary to be granted amnesty.

Given the detailed public disclosure that was required to gain amnesty for the most brutal crimes, it was clear that this truth-for-amnesty offer would only be taken up by those who reasonably feared prosecution. It was hoped that a number of early trials would increase the perceived threat of prosecution. A few high-profile trials for apartheid-era acts did successfully result in convictions and long sentences, and spurred an increase in amnesty applications. However, when another important trial—that of the former minister of defense Magnus Malan and nineteen others—ended in acquittal, it was clear that the threat of prosecution would not be strong enough to persuade many senior-level perpetrators to take advantage of the amnesty process. The deadline for applying for amnesty was set for a year before the commission was scheduled to end, with the intention that perpetrators would fear they would be fingered in later amnesty hearings. As well, in order to further increase the pressure on perpetrators to apply for amnesty the commission held some investigative hearings behind closed doors, keeping secret the names mentioned and the crimes detailed. Yet in the end, many former perpetrators took the risk not to apply, particularly political leaders of the apartheid government and senior officers of the army.

A number of key amnesty decisions attracted particular attention. The admitted killers of anti-apartheid activist Steve Biko were denied amnesty for the crime on the grounds that the killers claimed his death to be accidental. The panel rejected the argument that an “accidental” killing could be associated with a political objective, and noted that because none of the applicants

was admitting to a crime, logic would hold that they could not receive amnesty for it.<sup>5</sup> The panel also questioned whether the applicants had told the full truth.<sup>6</sup> In other cases, the committee ruled that abuses resulting from simple racism could not receive amnesty, in that they lacked both a political motive and the expressed or implied authorization from a political or state body—although there were inconsistencies in the committee’s rulings on this and other issues.<sup>7</sup>

Another very controversial ruling was the granting of amnesty to thirty-seven ANC leaders who applied together in a joint application but with little detail on events referenced.<sup>8</sup> However, it was clear that the acts included gross human rights violations, and the committee’s consideration of the application in chambers, with no hearing and requiring no further details, was widely seen as a violation of the rules set out in the Act. The committee, which worked relatively independently of the rest of the commission, refused to explain its decision, but ultimately the commission as a whole asked for judicial review. The thirty-seven amnesties were overturned by the High Court.<sup>9</sup>

The committee struggled to operationalize the meaning of “full disclosure” of “all relevant facts.”<sup>10</sup> When applicants testified with incorrect information, the committee sometimes accepted that this was faulty memory, rather than deceit. But observers were skeptical that all applicants were being truthful. Jeremy Sarkin, a South African lawyer who has undertaken the most in-depth analysis of the amnesty process, notes that “[i]n identifiable cases . . . applicants limited their revelations to what they believed was in the public domain or was likely to emerge after further investigations.” They knew the TRC had limited investigative capacities, and also “the fact that many files and other documentation were shredded by the apartheid regime before it handed over power, was surely a source of comfort.”<sup>11</sup>

Ultimately, 1,167 people were granted amnesty by the TRC, and another 145 were granted partial amnesty. Despite the difficulties and frustration, it seems clear that significant and detailed information emerged from the amnesty process that contributed to the broader goal of revealing the truth.<sup>12</sup>

This truth commission was the first to have its powers, and its decisions, challenged in a court of law, and it was involved in numerous legal battles throughout the course of its work. Perhaps most important, three prominent victims’ families challenged the constitutionality of the commission’s amnesty-granting power. The case was decided in favor of the commission by the South African Constitutional Court.<sup>13</sup> Another suit was filed to force the commission to notify in advance those who were to be accused of wrongdoing in a public hearing; the court mandated that the commission must provide reasonable notice to those expected to be named. Charges were brought against former president P. W. Botha after he refused to comply with a subpoena to appear before the commission. His trial turned into an opportunity for the commission to lay out in public its extensive evidence against him, including his knowledge or approval of a long pattern of state crimes. Against this barrage of information, Botha’s public support withered. He was convicted, fined \$2,000,

and given a one-year suspended prison sentence. On appeal, however, the conviction was overturned on a technicality.<sup>14</sup>

While the amnesty process would continue for several years longer, the commission released the first five volumes of its final report in October 1998, sparking controversy in the days before its release. Former president F. W. de Klerk successfully sued to block the commission, at least temporarily, from naming him in the report.<sup>15</sup> In addition, the ANC, unhappy with the commission's conclusions about its past actions, attempted to block publication of the entire report with a clumsy, last-minute court challenge; the court ruled in favor of the commission just hours before the report was due to be released.

The report was formally considered in Parliament several months later, during which Deputy President Thabo Mbeki, speaking in his capacity as president of the ANC, said that the ANC had "serious reservations" about the truth commission's process and report, and in particular that they found that "the net effect of [the commission's] findings is to delegitimise or criminalise a significant part of the struggle of our people for liberation."<sup>16</sup> After days of debate and comment, the government made no commitment to implement the commission's many recommendations.

The intensity and time required for all amnesty applications to be individually processed were not foreseen. Analyst Jeremy Sarkin notes that public amnesty hearings "were heard on 2,548 incidents, which took place on 1,888 days at 267 venues around the country, using 1,538 interpreters who interpreted for 11,680 hours."<sup>17</sup> The Amnesty Committee continued to hold amnesty hearings for another two and a half years after the release of the commission's 1998 report, finally concluding in 2001. The commission also worked during this time to corroborate a list of victims who would be eligible to receive reparations, and to put an initial reparations program in place. The sixth and seventh volumes of the commission's report were concluded in March 2002 and released in 2003, over six years after the commission began. (The delay in release was due to another lawsuit, this one by the Inkatha Freedom Party and Mangosuthu Buthelezi.<sup>18</sup>)

The lack of political commitment to make the suggested reforms and reparations was confirmed in the years that followed. Many were disappointed with the government's stance toward apartheid-era crimes. Just two months after the commission's final volumes were released, President Mbeki used his constitutional powers to pardon thirty-three convicted prisoners, mostly ANC and Pan-African Congress members who had tried but failed to obtain amnesty through the commission's process. Later, the government proposed an expanded amnesty program, but a lawsuit by victims and civil society blocked this action.

The impact of the TRC on reconciliation and race relations has been the subject of debate. Some surveys have indicated that views were divided along racial lines, with the black community being much more supportive of the commission's work than whites. What remained clear to all, however, was that

coming to terms with decades of abuses would take much longer than a few years, and much more than speaking the truth.

### **Guatemala: Commission for Historical Clarification, 1997–1999**

The civil war in Guatemala, fought between anti-communist government forces and the leftist Unidad Revolucionaria Nacional Guatemalteca (URNG), lasted for over thirty years and resulted in some 200,000 deaths and disappearances. The counterinsurgency strategies of the state were brutal, particularly in the early 1980s, when hundreds of villages were razed and tens of thousands of civilians were killed, many in large massacres. The war continued at a lower level into the 1990s, when United Nations-moderated negotiations finally brought the war to an end.

Among the most controversial issues on the table during the negotiations was the question of how past human rights abuses would be addressed during the transition to peace. The Guatemalan negotiations were already under way when the El Salvador truth commission report was released in early 1993, and that example served as Guatemala's main reference point as a truth commission was being considered. Most significant was that the Guatemalan armed forces leadership insisted that the Salvadoran model of naming perpetrators would not be repeated in Guatemala. The agreement to establish a Historical Clarification Commission (its full name was actually the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan People to Suffer) was signed in Oslo in June 1994 by the government and the URNG. However, it would be another three years until the final peace accords were signed and the commission would begin work.

The idea of a truth commission attracted intense interest from civil society and victims groups in Guatemala, and they lobbied negotiators heavily in an attempt to influence its terms, but the final terms of reference included several restrictions that these groups strongly opposed. Specifically, they opposed the stipulations that the commission could not "attribute responsibility to any individual in its work, recommendations and report"; that its work "would not have any judicial aim or effect"; and that it was given only six months to conclude its work, with a possible extension of six additional months.<sup>19</sup> The civil society groups directed their anger over the accord at the URNG for agreeing to sign it; the strong reaction to the truth commission agreement came close to derailing the peace talks altogether.<sup>20</sup>

In time, however, after the commissioners were appointed and the commission hired an impressive team of talented staff, civil society slowly gained confidence in the commission and came to strongly support its work. The inquiry also earned the continued support and trust of the parties to the accord, and it was ultimately allowed to operate for a total of eighteen months, in part by interpreting its twelve-month deadline as pertaining only to its investigative phase.

As designated in the accord, the chair of the commission was a non-Guatemalan, while the remaining two members were Guatemalans. UN Secretary-General Kofi Annan appointed Christian Tomuschat, a German law professor who had served as an independent expert on Guatemala for the United Nations several years earlier, to serve as chair.<sup>21</sup> The remaining two commissioners were appointed by Tomuschat with the agreement of the two parties; the commission mandate directed that one would be “a Guatemalan of irreproachable conduct,” and the other would be selected from a list proposed by Guatemalan university presidents.<sup>22</sup> Otilia Lux de Cotí, a Mayan scholar, and Edgar Alfredo Balsells Tojo, a lawyer, were appointed. After a three-and-a-half-month preparation period, the commission was formally installed on July 31, 1997. It operated in several phases, with staff size ranging from two hundred during peak operation (with fourteen field offices) to fewer than one hundred for the months of analysis, investigation, and report writing. Its staff included both Guatemalans and non-Guatemalans, though for security reasons and to project a clear signal of neutrality, none of the field office directors or heads of departments were nationals.

The field offices were open for four to five months to receive testimony. Many Guatemalan villages are very isolated, located far up in the mountains and far from any road. Commission staff sometimes had to trek through back roads and footpaths to reach scattered communities—in some cases walking for six or eight hours through the mountains before arriving at a village to invite testimony from the community. On occasion, staff told me, they arrived to speak with villagers who did not know there had been a peace agreement and that the civil war was over—especially in villages close to Mexico and on the side of the mountains, unable to receive radio signals from Guatemala. In a few cases, during the community meeting where the commission staff introduced themselves, they were accused of being guerrillas—“the guerrillas always come and talk about human rights,” it was argued—despite the fact that generally two of the three visiting commission staff were foreigners. Although the accusations seemed to come from persons who probably had something to hide, they were effective in deterring some from giving testimony.

The commission requested the declassification of files from the U.S. government, with the assistance of a non-governmental organization in Washington, DC, the National Security Archive. This resulted in the successful declassification of thousands of documents, including detailed information sufficient for the National Security Archive to build a database outlining the structure and personnel of the armed forces in Guatemala over many years’ time. Considerably less information was forthcoming from the Guatemalan armed forces itself, which claimed to have no records on the events under investigation.<sup>23</sup>

The commission also incorporated the data from non-governmental organizations, in particular two projects that were established as alternative truth efforts several years before the start of the official truth commission. The first, the Recovery of Historical Memory Project of the Catholic Church’s Human Rights Office (REMHI), collected thousands of statements by training

over six hundred local interviewers and working through church networks. Most of this testimony was audiotaped and then transcribed, leaving behind a rich and detailed record in addition to a database of cases and a published report.<sup>24</sup> The second non-governmental project, the Centro Internacional para Investigaciones en Derechos Humanos (CIIDH), which worked through mass-based, largely indigenous organizations, also collected thousands of testimonies. Its report was completed shortly before the release of the official truth commission's report.<sup>25</sup> The databases from both of these projects were given to the Historical Clarification Commission, which used them to help estimate the total numbers of persons killed or disappeared and to confirm overall patterns.

The commission completed its lengthy and hard-hitting report in February 1999, releasing it to the public in an emotional ceremony attended by thousands of persons in the National Theater in Guatemala City. The report described acts of "extreme cruelty . . . such as the killing of defenseless children, often by beating them against walls or throwing them alive into pits where the corpses of adults were later thrown; the amputation of limbs; the impaling of victims; the killings of persons by covering them in petrol and burning them alive" and noted that a "climate of terror" permeated the country as a result of these atrocities. "The State resorted to military operations directed towards the physical annihilation or absolute intimidation" of the opposition, such that the "vast majority of the victims of acts committed by the State were not combatants in guerrilla groups, but civilians."<sup>26</sup> In addition to rape, killings, and disappearances, the commission described the military's scorched-earth operations in which civilians suspected of providing support to the armed guerrillas were targeted indiscriminately, and whole villages were burned to the ground. For example, in one region the commission reported that between 70 and 90 percent of villages were razed. The commission also analyzed the economic costs of the armed conflict, concluding that costs of the war, including the loss of production due to death, equaled 121 percent of the 1990 gross domestic product.<sup>27</sup> The commission registered a total of over 42,000 victims, including over 23,000 killed and 6,000 disappeared, and documented 626 massacres. Ninety-three percent of the violations documented were attributed to the military or state-backed paramilitary forces; 3 percent were attributed to the guerrilla forces.

The commission's strongest conclusion, perhaps, based on the patterns of violence in the four regions of the country worst affected by the violence, was that "agents of the State of Guatemala, within the framework of counter-insurgency operations carried out between 1981 and 1983, committed acts of genocide against groups of Mayan people."<sup>28</sup> Finally, although the commission was restricted from naming those responsible, it concluded that the "majority of human rights violations occurred with the knowledge or by order of the highest authorities of the State."<sup>29</sup>

The commission's mandate also directed it to "analyze the factors and circumstances" of the violence, including "internal as well as external" factors.<sup>30</sup>

In unflinching language, the report points to racism, structural injustice, and the “anti-democratic nature of institutions” as contributing to the underlying cause of the armed confrontation, as well as the anti-communist national security doctrine of the Cold War, and particularly the United States’ support for the repressive policies of the Guatemalan state.<sup>31</sup>

Three weeks after the report’s release, the government responded with a long statement suggesting that the commission’s many recommendations were already sufficiently addressed in the peace agreement.<sup>32</sup> A year later, however, Guatemala’s incoming president, Alfonso Portillo, committed in his inaugural speech to implementing the Clarification Commission’s recommendations, and brought former commission member Otilia Lux de Cotí into his cabinet. Few advances were made in implementing these changes over the next years, though a key security force was eventually disbanded, as recommended by the commission.

Shortly after the report was released, indigenous leader Rigoberta Menchú Tum filed a case in Spain against the president of Congress in Guatemala, José Efraín Ríos Montt, for his involvement in atrocities in the early 1980s. She submitted the full report of the Historical Clarification Commission to back up her case. (This eventually led to an international arrest warrant and extradition order for Ríos Montt by the Spanish courts, but the Guatemalan courts refused to enforce the extradition order.) Very few prosecutions have taken place at the domestic level in relation to the crimes of the civil war, and most of these were in relation to low-level perpetrators.<sup>33</sup> Of the 626 massacres documented by the commission, 3 were successfully prosecuted by 2009. The first conviction for enforced disappearance was in August 2009, for an event in the early 1980s. This was possible owing to a ruling by the Constitutional Court that established the permanent character of the crime of enforced disappearance.<sup>34</sup>

Meanwhile, illegal criminal networks gained increasing control throughout the country in the decade following 2000, with high levels of targeted killings. Here also, impunity is rampant, with very few of the many homicides investigated and brought to justice. Many saw these illegal armed groups as rooted in the counterinsurgency forces established during the civil war.

### **Peru: Truth and Reconciliation Commission, 2001–2003**

The government of President Alberto Fujimori collapsed in November 2000 as evidence emerged of massive corruption at the highest levels of government. The end of the Fujimori regime opened the possibility of addressing accountability for two decades of abuses. Since 1980, the armed conflict between the government and armed subversive groups (the Shining Path and the Túpac Amaru Revolutionary Movement, MRTA) had been marked by extrajudicial killings, disappearances, torture, and other serious violations of human rights



and international humanitarian law. During the 1990s, executive control of judicial and electoral systems further eroded rights.

Pressure from civil society for an official inquiry into rights abuses led to a fairly extensive process of reviewing possible terms of such an endeavor, and in July 2001 the interim president, Valentín Paniagua, issued a decree establishing a Truth Commission (later renamed the Truth and Reconciliation Commission). The commission's mandate directed it to investigate human rights abuses and violations of humanitarian law attributable to the state or to "terrorist organizations" between May 1980 and November 2000. Seven members were appointed in July 2001, and newly elected president Alejandro Toledo added five additional members to the commission shortly thereafter (a thirteenth member, the head of Peru's Episcopal Conference, was appointed as an observer). Perhaps the most controversial appointments were those of a retired air force general, who was also the national security advisor to the president at the time of his appointment, and a former Member of Congress who was a member of Fujimori's party. Only one member spoke fluent Quechua, the primary indigenous language. The commission was chaired by Salomón Lerner Febres, president of the Catholic University of Peru and a philosopher by training.

Including a preparatory period and two extensions granted by the government, the commission had a total of twenty-four months to undertake its work, submitting its final report in August 2003. Its terms of reference directed it to determine the conditions that gave rise to the violence, contribute to judicial investigations, draft proposals for reparations, and recommend reforms. Among other specific abuses, it was directed to look at violations of the "collective rights of the native and Andean communities," though this aspect was never developed as a central component of its research.

The commission was the first Latin American truth commission to hold public hearings, and indeed held compelling hearings throughout the country. The hearings were especially powerful for those living in the capital, Lima, which was less affected by the war's violence and, perhaps, less aware of the nature and extent of the terror that had raged elsewhere in the country. One former head of state, Alan García, appeared in a public hearing; two others were interviewed privately. In addition, videotaped statements were shown from imprisoned former members of the Shining Path and MRTA, some of whom offered an apology to their victims.

With a two-year budget of over \$13 million, the commission staff reached over five hundred at its peak, and maintained regional or zonal offices in thirteen towns and cities across the country for much of the commission's operations. The commission also entered into an unusual collaborative arrangement with the International Committee of the Red Cross, the Human Rights Ombudsman's Office, and the Human Rights Coordinating Committee of NGOs in an effort to locate disappeared persons or their families.

The commission collected approximately 17,000 statements—a remarkable undertaking considering that statement-takers averaged just one to two

statements per day in some areas, allowing detailed and nuanced record-taking. Eleven hundred of these were taken from persons in prison. The commission set up a sophisticated database system for careful tracking and analysis which allowed clear conclusions on the total numbers and specific characteristics of the violence. Based on statistical projections grounded in this database and other supporting documentation from state and non-state sources, the commission concluded that some 69,280 people were killed or disappeared during the course of the conflict.<sup>35</sup> As the president of the commission noted in a powerful speech upon presentation of the report, this number is 35,000 more than any previous estimate of the number killed. In addition, hundreds of thousands were displaced from their homes or otherwise victimized.

The commission's other statistical conclusions further revealed the nature of the violence: 75 percent of the victims spoke Quechua or another indigenous language as their mother tongue, the key indicator in Peru of indigenous identity. One of the commission's main findings was in fact the role that deep-seated racism and discrimination played in the nature of the violence. The war did not have the same impact on different geographical areas and different social strata in the country. The majority of the victims were from the poorest regions of the country: 40 percent were documented to be from one single region, Ayacucho. In addition, 12 percent were authorities of the state, often from the local level: mayors, governors, magistrate court judges. The commission was surprised to find, based on its database projections, that the Shining Path was responsible for 54 percent of the deaths and disappearances, and state forces responsible for 37 percent. Because rights activists had focused their monitoring on government abuses during the war, given clear state obligations to safeguard rights, they had not fully realized the extent of the atrocities committed by the insurgents.

The commission's research department undertook seven in-depth regional studies in order to reconstruct what happened in the most affected areas of the country, and nineteen in-depth thematic studies. These documented, for example, how certain sectors were either involved in, targeted by, or responded to the atrocities (self-defense committees, unions, universities, etc.), as well as examining other central developments or themes of the war.

The commission documented 4,600 clandestine burial sites throughout Peru—again a number that greatly surprised even the commissioners. It was able to exhume only three of these sites, undertook preliminary investigation of another 2,200, and helped to draw together a coalition of state and non-governmental organizations to develop a long-term exhumations plan. The commission spent over a year designing a reparations plan, based on broad consultations.

The commission submitted its final report first to the president, with full national media coverage, and then to the public in a ceremony in Ayacucho, at the heart of the most-affected area. In addition to its nine-volume final report (plus an annex of another twelve detailed volumes), the commission submitted a confidential report recommending criminal investigations in relation to dozens of accused perpetrators.

The reaction to the commission, and to its report, was powerful.<sup>36</sup> In its last months, the commission, then appearing prominently in the daily news, was increasingly under attack by those who opposed its work or charged it with favoring the “terrorists.” While not directly limiting the commission’s work or independence, these accusations and the threats against it caused the commission to take careful measure of its final conclusions and increase its security measures.

This political maelstrom also made the commission’s negotiations for an extension to its work much more difficult, given a weak government and little political support for its work. Ultimately, the commission won a four-month period for a very minimally staffed handover committee to close out the commission’s offices and produce summary versions of the report, including a bilingual 40-page popular version and a 470-page book-length version. While many observers warmly welcomed the report, a group of retired military officers published a statement challenging some of the commission’s conclusions pertaining to the systematic nature of military abuses. One of the signatories to this statement was a member of the commission itself—the controversially appointed retired air force officer, who had distanced himself from some of the commission’s work in its final stages.

Some important advances have been made in the implementation of the report’s recommendations, including in the area of reparations.<sup>37</sup> A “High Level Multisectoral Commission in Charge of Follow-up of State Actions and Policies in the Fields of Peace, Collective Reparations, and National Reconciliation” was created through presidential decree in February 2004.<sup>38</sup> This body began to design a reparations plan following up from the commission’s recommendations. The Peruvian Congress worked in parallel fashion to address outstanding issues of the commission’s report, in part through the establishment of a special Congressional subcommittee to focus on its recommendations.<sup>39</sup> In 2004, the legislature created a National Registry for Displaced People, and also put into law the concept of “absence due to forced disappearance” during the period 1980–2000.

The truth commission transferred its archives, consisting of many hundreds of boxes of materials, to the human rights ombudsman’s office, which had been identified in the commission’s terms of reference as the depository. In 2004, the ombudsman’s office opened a historical documentation center based on this material.<sup>40</sup> In 2006, discussions began for a large exhumation plan involving the Ministry of Justice, the Ombudsman, the National Coordinator of Human Rights, and the International Committee of the Red Cross.

There was slow progress in the investigation and prosecution of the cases recommended for prosecution by the truth commission.<sup>41</sup> Trials began in 2005 pertaining to a death squad connected to the former government, and in this context Peru’s Constitutional Court confirmed the right to truth and the inapplicability of statutes of limitation in cases pertaining to disappeared persons. Also in 2005, former President Alberto Fujimori was detained while visiting Chile from his new home in Japan; he was extradited from Chile to

Peru to face charges of serious human rights violations and corruption, and in 2009 was convicted and sentenced to twenty-five years. Vladimiro Montesinos, Fujimori's former chief of national intelligence, was convicted of corruption and also faced charges of extrajudicial killings. A special human rights court was established in 2004 as per the commission's recommendation, and many cases have been prosecuted, but the great majority have resulted in acquittals.

In 2006, Alan García was elected again to the presidency. García had been president during many of the worst abuses by government forces in the 1980s, and oversaw a brutal counterinsurgency campaign. The alternative candidate, Ollanta Humala, was also directly implicated in murder and torture during this same period, and indeed was indicted on such charges shortly after he lost the election.

The Peruvian truth commission remained controversial long after it ended. Two years after the commission's report was released, the chair of the commission began to receive death threats that were explicitly linked to his work with the commission. These threats continued for years. Other members of the commission also received threats. Many understood this to be in reaction to the effectiveness of the report, and the fact that criminal prosecutions recommended by the commission were then beginning to make progress in the courts.

### **Timor-Leste: Commission for Reception, Truth and Reconciliation, 2002–2005**

After twenty-five years of harsh rule by Indonesia, Timor-Leste (then known as East Timor) was finally granted the opportunity in August 1999 to vote for independence or autonomy. The pro-independence vote won by a large majority, despite intimidation and threats of violence by Indonesian-backed militias. When the results of the referendum were announced, the militias reacted violently, looting and burning many towns and cities, killing an estimated 1,400 people, and forcibly moving many persons across the border to West Timor, a part of Indonesia. It became clear that the Indonesian army fomented and directly backed the militia violence. An estimated 10,000 militia members who fled to West Timor feared retribution if they were to return to their communities in Timor-Leste.

The United Nations governed Timor-Leste during the transitional period through the United Nations Transitional Administration for East Timor (UNTAET). When a proposal for a truth commission was put on the table by the main coalition of political parties, the Human Rights Office of UNTAET facilitated a process to incorporate lessons learned from the experiences of truth commissions worldwide.<sup>42</sup> A national consultative process, led by a steering committee of representatives of human rights, women's and other civil society groups, political party representatives, and religious leaders, helped to refine the terms of reference to respond to the challenges of Timor-Leste. The resulting Commission for Reception, Truth, and Reconciliation (CAVR, for its acronym

in Portuguese: the Comissão de Acolhimento, Verdade e Reconciliação) incorporated a number of unique elements.

The commission was created in law through an UNTAET regulation in July 2001. In December 2001, after another consultative process, seven national commissioners were selected. The commission was formally launched, and the commissioners sworn in, in late January 2002.

The CAVR was directed to inquire into human rights violations committed within the context of political conflict in Timor-Leste between April 25, 1974, and October 25, 1999. It had full powers of subpoena and, with the assistance of the police, the power to search and seize information from any location in the country. It was given an initial two years to complete its task (after a two-month preparatory period), plus an extension of six months.

It received 7,669 individual statements, representing close to 1 percent of the total population of Timor-Leste, and held many public hearings and community reconciliation meetings throughout the country. It had a staff of over 300, mostly nationals, and gained considerable public and international support and attention. About a dozen international advisors worked with the commission to offer technical and legal assistance. In addition to the CAVR's recognizable truth-seeking functions, the commission was also crafted to facilitate the return of low-level perpetrators and reincorporation into their communities. The commission offered a bargain: those persons involved in less-serious crimes could admit to and apologize for their crimes, and agree to undertake community service or make symbolic reparatory payments or public apology, as a means of facilitating their return. Grounded in the indigenous East Timorese process of *adat*, these arrangements were facilitated and monitored directly by the commission, and brokered through community-based panels organized by regional commissioners with the involvement of traditional leaders, the injured community and victims themselves. The final agreements were approved by a court, and full compliance with the agreement resulted in a waiver of criminal and civil liabilities flowing from the crime.<sup>43</sup>

Persons responsible for murder, sexual offenses, organizing or instigating the violence, or undertaking other serious crimes could not enter into the community reconciliation process. Perpetrators' applications were reviewed by the office of the prosecutor of the Serious Crimes Unit, which had the power to remove the person from the community reconciliation process if there was evidence that they took part in a serious crime.

The CAVR also led a range of special initiatives. For example, the commission undertook a retrospective mortality survey, done in conjunction with the National Statistics Office, which interviewed 1,200 randomly chosen households in order to assess the number of deaths they had suffered as a result of the conflict. Simultaneously, the commission carried out a graveyard census, counting graves and noting the years of deaths in each of 1,600 public cemeteries across Timor-Leste. The combined results of the statement-taking database and these studies would help the commission estimate the total number of deaths due to political conflict.

The commission also carried out an in-depth community profiling process in order to better document exactly how the violence and repression were experienced over time in different parts of the country. This directly involved local townspeople in mapping out the timeline of relevant events in the community for the years of the mandate.

The commission also developed an urgent reparations scheme, providing a payment of \$200 to some of those victims who had suffered severe injuries as a result of human rights violations, reaching about 10 percent of the total number of persons who provided statements to the commission. This program, funded by the World Bank as part of a program to reach vulnerable populations, was implemented together with a coordinating group of partner NGOs. About a third of the recipients were also invited to a three-day healing workshop. In addition to individual grants, the program also provided support to some non-profit organizations to provide direct services to survivors. However, after the commission concluded, progress was slow in efforts to put a broader reparations program in place.

Finally, the commission undertook an intensive research project focused on women, working with the main women's rights organization in Timor-Leste, Fokupers. In addition to intensive research, this project helped to design a successful women's hearing which took place early in the commission's work.

The CAVR's lengthy report was submitted to Timorese president Xanana Gusmão in October 2005. Despite months of pressure from national and international observers, the government resisted officially releasing the report to the public. In January 2006, the report was independently placed on the internet by the International Center for Transitional Justice in New York.

The Commission found that at least 102,800 Timorese (over 10 percent of Timor-Leste's population) died as a direct result of the twenty-four-year Indonesian occupation, 1974–1999. The CAVR also concluded that Indonesian security forces committed rights violations that amounted to crimes against humanity and war crimes, and that serious violations were “massive, widespread, and systematic.” The great majority of rights violations reported to the commission (85 percent) were attributed to Indonesian security forces or their proxies. Indonesian forces used starvation as a weapon of war, committed arbitrary executions, and routinely inflicted horrific torture on anyone suspected of sympathizing with pro-independence forces, the commission concluded. These practices included organized sexual enslavement of Timorese women. In addition, approximately 10 percent of reported violations were committed by pro-independence forces led by the Front for an Independent East Timor (FRETILIN).

The commission also concluded that the crimes committed in 1999 constituted a systematic campaign orchestrated at the highest levels of the Indonesian government. The report details the names and command responsibilities of key Indonesian military leaders who had jurisdiction over areas of Timor-Leste where massive atrocities were committed.

The report has not been widely distributed in Timor-Leste. Sadly, those who knew the CAVR report well were painfully aware that some of its conclusions, if more widely disseminated, might have helped to diminish the tensions that boiled into violence and an armed stand-off between different sectors of the security forces in May 2006. Those tensions were partly rooted in divisions that formed between persons from the east and the west of Timor-Leste, based in part on a belief that those in the east suffered and struggled more than those in the west during the Indonesian occupation. In fact, the information in the CAVR report shows that this perception is false: the west, central, and eastern regions suffered similar intensities of violence and atrocities, but were affected at different times (as the Indonesian forces moved across Timor-Leste, and then again as they retreated in 1999) and with some differences in the means of repression employed.<sup>44</sup> Furthermore, the CAVR had recommended (though without naming names) that those responsible for abuses in the past should no longer remain in the security forces.

On the international level, the reaction to the report was to refocus on the need for effective criminal accountability for the crimes of 1999. For their part, the Indonesian and Timorese governments responded by announcing the creation of a second truth commission—a Truth and Friendship Commission—that would be jointly created between them. This commission will be described in the next chapter.

Attention to the many recommendations in the CAVR report developed slowly. Over the next years, and especially after the friendship commission reported, Parliament began to look at the possibility of implementing some of the recommendations, and in late 2009 was considering a resolution on the matter. Broad political support for implementation seemed to be lacking, however, especially in relation to criminal justice. Political leaders were reportedly more interested in bringing the issue of justice for past crimes to a close.<sup>45</sup>

### **Morocco: Equity and Reconciliation Commission, 2004–2006**

The first truth commission in the Arab world was created in a constitutional monarchy, under the sanction of a new king who was effectively uncovering the significant abuses that took place under the reign of his father and grandfather. Many observers were doubtful whether Morocco represented a real “transition,” as the government and power structures did not change—only the king changed.<sup>46</sup> But the repressive policies of the state had begun to ease several years earlier, thus opening the path to a firmer change in policy and practice.

The father, King Hassan II, ruled Morocco for almost forty years—referred to as the “years of lead”—leading a policy of harsh repression that included the imprisonment, torture, and forced exile of political opponents and rights activists. Some opponents were “disappeared” for nearly two decades, kept in secret detention centers, alive but unknown to anyone outside; others were

imprisoned and then killed. In addition, Morocco repressed independence advocates in the Western Sahara after conflict broke out in 1975. As late as 1989, the king vehemently denied the existence of political prisoners, but in response to internal and international pressure, in 1990 he began to ease these practices. He appointed an Advisory Council on Human Rights (CCDH) to investigate reports of human rights abuse and to make recommendations to bring Moroccan law and practice into line with international standards. Within a few years, Morocco released almost 300 “disappeared” persons and ratified several international human rights conventions.

After King Hassan II’s death in 1999, his son, King Mohammed VI, strengthened these efforts, and was more open to addressing past abuses. The new king set up an Independent Arbitration Panel in 1999, operating under the auspices of the CCDH, to determine compensation to the families of the missing. This panel awarded the equivalent of nearly \$100 million to close to 7,000 recipients, both direct victims and their families. This panel was seen as a significant advance, but it was also criticized for inconsistencies and lack of transparency. Many thousands of applicants were left out of that program after missing a short deadline, raising calls for an additional program for reparations.

National human rights groups began lobbying for a truth commission in 1999, with considerable efforts and preparation, including a major national conference that brought together a wide range of official and unofficial actors as well as international experts. In 2003, the CCDH finally recommended to the king that a truth commission be created. This met with the king’s approval, and after receiving nominations for commissioners from human rights organizations and others, he inaugurated an Equity and Reconciliation Commission (Instance Équité et Réconciliation, IER) in January 2004.<sup>47</sup> Its seventeen members included former political prisoners, prominent rights advocates, academics, and others, although only one woman. Its chair, Driss Benzekri, had been a political prisoner for seventeen years in the 1970s and 1980s and was among the country’s most prominent human rights advocates.

The commission spent its first months drafting its own mandate, which was made official through a royal decree, or *Dahir*, in April 2004. The body was mandated to investigate forty-three years of events, from independence in 1956 to the founding of the Independent Arbitration Panel in 1999. An informal agreement was brokered between the commission leadership and the king as they constructed the mandate, according to close participants, resulting in a prohibition of “invoking individual responsibility,” and making clear that the commission should play no role in criminal prosecutions.<sup>48</sup> The IER lacked powers such as subpoena or search and seizure, but public authorities were legally obliged to cooperate. The commission noted in its final report, however, that cooperation was lacking from some security agencies and former officials.

The commission worked for twenty months, with a staff of over three hundred persons at the height of its operations. It called for written submissions



from victims, receiving 13,000 submissions in its first months. In addition, thousands of files were transferred from the Independent Arbitration Panel, thus totaling over 20,000 cases that were under its charge.<sup>49</sup> In addition to research and investigations, it held a number of victim hearings, which were well attended and broadcast throughout the Arab world on Al-Jazeera television. This was unprecedented in the region.

National human rights organizations and victims monitored and tried to assist the commission, but this relationship was strained throughout the commission's work, a point often noted as a weakness of the process. The commission was also criticized for its limited investigative powers, the lack of emphasis on criminal accountability, and its prohibition on naming the names of accused persons, even in public hearings. In response, the Moroccan Association for Human Rights organized alternative public hearings where victims were allowed to name perpetrators, but these were perceived as politically biased and did not receive the same media coverage. The strongest disappointment expressed by human rights and victims groups was the limited information they were provided about the fate of missing persons and the location of burial sites. In its final report, however, the IER established clearly that 742 disappeared persons had died, leaving the fate of 66 victims unknown. They recommended further investigation into these cases by the state.

The commission submitted its report to the king in December 2005. He authorized its public release in January 2006, and asked the CCDH to carry out its recommendations.<sup>50</sup> However, many rights advocates were critical of the decision to leave the implementation to the CCDH, since it plays only a "consultative" role, able to make recommendations to the political authorities but with no powers itself to implement changes. The report sets out the responsibility of the state for disappearances, arbitrary detention, torture and excessive use of lethal force. It recommends that Morocco guarantee certain rights by enshrining them in the Constitution, that it abolish the death penalty, ratify the Rome Statute of the International Criminal Court, and commit to other specific security and justice sector reforms. It also recommended the creation of an institute of contemporary history as part of a memory policy, and a gender-sensitive approach to all reforms. Civil society hailed the proposed reforms as "a manifest for a new Morocco."<sup>51</sup> Unfortunately, as of late 2009, most reforms proposed by the commission remained unimplemented, with seeming resistance from the government.<sup>52</sup>

The commission also recommended extensive individual and communal reparations and a public apology by the prime minister. While there has been no apology, Morocco stands apart in the speed and efficiency with which the state has implemented the commission's recommendations for reparations. In the following eighteen months, the equivalent of \$85 million was distributed to 9,000 individual victims or family members, and community-based reparations were in advanced development.

## 5 Other Illustrative Truth Commissions

### **Argentina: National Commission on the Disappeared, 1983–1984**

The armed forces seized power in Argentina in 1976 and went on to rule the country, in several successive military juntas, for the next seven years. During this time, in a vicious anti-communist campaign to eliminate “subversives,” between 10,000 and 30,000 people were disappeared at the hands of the military—arrested, tortured, and killed, the body disposed of so as never to be found, and the fate of the victim never known by agonized family members. It was only after Argentina’s war with Great Britain over the Malvinas/Falkland Islands, and the resulting disgrace and public outrage suffered by the armed forces over their loss, that the military acquiesced to popular elections and a return to civilian rule in 1983. Before leaving power, in fear of being held accountable for its crimes, the military junta granted itself immunity from prosecution and issued a decree ordering the destruction of all documents relating to military repression.

The newly elected president, Raúl Alfonsín, addressed this issue immediately upon taking office. An investigative commission on the disappeared was discussed the very first morning of Alfonsín’s presidency, according to a key presidential advisor, and within a week the National Commission on the Disappeared (generally referred to by its acronym in Spanish, CONADEP) was created through presidential decree.<sup>1</sup> Alfonsín appointed ten commission members, “who enjoyed national and international prestige, chosen for their consistent stance in defense of human rights and their representation of different walks of life.”<sup>2</sup> Both chambers of Congress were also asked to appoint representatives to the commission, although only one complied. The commission was chaired by the widely respected author Ernesto Sabato.

Non-governmental organizations had lobbied for a parliamentary commission, which could be given much stronger powers, and were initially resistant to cooperating with Alfonsín’s commission because it lacked power to compel the production of information from perpetrators and from military institutions. Most human rights organizations eventually decided to assist the inquiry, turning over great numbers of files on the disappeared, although ultimately

their concerns were confirmed: the commission received almost no cooperation from the armed forces, despite repeated requests for information from the commission's investigators.

Although the commission held no public hearings, it maintained a prominent public profile. The commission took over 7,000 statements over a nine-month period, documenting 8,960 persons who had disappeared. Exiles returned from abroad to testify, and statements were taken in Argentine embassies and consulates around the world. The commission worked with family members to try to locate persons who might still be alive, but it found none. Among those interviewed were over 1,500 people who had been detained but survived, who gave detailed descriptions of conditions and methods of torture used in the detention centers. The commission's primary investigations focused on identifying the former detention centers, often visiting locations with survivors to assist in confirmation. There were often attempts to block these visits, given that "in most cases, the authors of the violations being investigated were still among the personnel of the facilities," according to researcher Emilio Crenzel.<sup>3</sup> A list of 365 former torture centers is included in the commission's final report, with accompanying photographs of many.

After nine months, the commission submitted its full report, *Nunca Más* (Never Again), to the president.<sup>4</sup> A shorter, book-length version was published by a private publishing house in cooperation with the government. The report was an immediate best-seller: 40,000 copies were sold on the first day of its release, 150,000 copies in the first eight weeks. It has now been reprinted well over twenty times, and by 2007 had sold more than 500,000 copies, standing as one of Argentina's best-selling books ever.

Meanwhile, the amnesty that the military regime had granted itself was quickly repealed by the civilian government, and the commission turned its files directly over to the state prosecutor's office. The information collected by the commission, and especially the great number of direct witnesses identified in its case files, was critical in the trial of senior members of the military juntas, succeeding in putting five generals in jail.<sup>5</sup> Under threats from the military, however, further trials were prevented with the passage of quasi-amnesty laws, and even those convicted were soon pardoned by incoming president Carlos Menem in 1989.

In the twenty years since these pardons—and over twenty-five years since the military regime ended—efforts have continued toward establishing further truth and obtaining justice, efforts that have quickened in pace over time. Public admissions in 1995 by a key perpetrator revealed the extent of "death flights," where live, drugged detainees were dropped from airplanes into the sea. In the same year, the commander in chief of the army publicly acknowledged crimes of the dirty war. In 1998, criminal trials began for cases of child kidnapping, which were excluded from the amnesty. The following year, the judiciary began "truth trials" in earnest: carrying out full investigations and publicly identifying the individuals responsible, before applying the amnesty. In 2001, the highest court declared the amnesty provisions uncon-

stitutional; and finally, in 2003, Congress formally overturned the amnesties with retroactive effect. By late 2009, a remarkable 1,400 persons had been charged or were under formal investigation for crimes of the dirty war, and 68 had been convicted to date.<sup>6</sup> Many more trials were under way. Argentina (together with Chile) was now referred to globally as proof that criminal justice, which may at first appear impossible, may become possible over time.

### **Chile 1: National Commission on Truth and Reconciliation, 1990–1991**

A military coup in Chile in September 1973 led to seventeen years of repressive rule under General Augusto Pinochet during which anti-communism was used to justify extreme measures. The worst of the violence was in the first year after the coup, when some 1,200 people were killed or disappeared, and many thousands more were detained, tortured, and eventually released. The judiciary remained in place, though it did little to challenge the regime's actions. Meanwhile, independent organizations, including a Church-based human rights project, challenged virtually every case of illegal detention or disappearance in court, thus establishing a clear record of each case, even if rarely winning the release of those detained. Pinochet instituted an amnesty law in 1978 that covered most crimes since the coup.

Despite the widespread abuses, Pinochet retained the support of a significant number of Chileans, particularly those on the political right, and when he consented to a plebiscite on his continued rule in 1988, he only narrowly lost. Patricio Aylwin was elected and assumed the presidency in March 1990, though with certain restrictions on democratic rule. Pinochet had amended the constitution in 1980; among these changes was the stipulation that he would remain commander in chief of the army until 1998, and would thereafter serve as senator for life.

The amnesty constrained Aylwin's options for responding to Pinochet-era abuses. Deciding that it would not be possible to nullify the amnesty, Aylwin instead turned to a policy of investigating and establishing the truth about the past. Aylwin created a National Commission on Truth and Reconciliation through presidential decree just six weeks after his inauguration, in what became one of the most prominent initiatives of his administration. He appointed eight members, intentionally selecting four who had supported Pinochet, including former officials of the Pinochet government, and four who had been in opposition. This strategy proved particularly powerful when the final report emerged with the backing of all eight members. The commission was chaired by former senator Raúl Rettig.

The mandate of the Chilean commission directed it to investigate "disappearances after arrest, executions, and torture leading to death committed by government agents or people in their service, as well as kidnappings and attempts on the life of persons carried out by private citizens for political reasons."<sup>7</sup> Its mandate excluded cases of torture that did not result in death.

Thus, although the commission describes practices of torture in some detail in its report, those who were tortured and survived were not listed as victims, nor their cases investigated.<sup>8</sup> Thirteen years later, Chile formally acknowledged that an important part of the truth was missing, establishing another national commission in 2003 to focus specifically on torture survivors.

The 1990 commission, given nine months to conclude, began with the extensive records of non-governmental organizations. But no matter how good the previous documentation was, the commission took testimony again from the families of the missing or killed. Its limited mandate and relatively small number of cases allowed it to undertake a thorough investigation of each case, relying on a staff of sixty. "As it began to operate," the report explains, "the Commission believed that its primary duty was to determine what really had happened in every case in which human rights had been seriously violated. Only by determining what had happened in each individual instance would the Commission be able to draw up as complete a picture as possible of the overall phenomenon of the violations of these basic rights."<sup>9</sup> The commission placed advertisements in newspapers worldwide asking for information from exiles. It had no power of subpoena, however, and received little cooperation from the armed forces.<sup>10</sup> Of the 3,400 cases brought to it, 2,920 were determined to fit within its mandate.<sup>11</sup>

The commission's eighteen-hundred-page report was completed in February 1991. It is a powerful indictment of the practices of the Pinochet regime, describing both the brutality that took place and the response by domestic and international actors. Over 95 percent of rights violations were attributed to state agents, and 4 percent to leftist armed groups. However, the report debunks one of the central arguments of the military to justify its violent tactics, that the country had faced an "internal war" that thus demanded significant force against opponents. The impact even on the commissioners was powerful. One member, who had led an ineffective human rights commission under Pinochet, noted, "What I know now, I would not have imagined."<sup>12</sup>

After reading the report, President Aylwin released it to the public with an emotional statement on national television. On behalf of the state, he begged forgiveness from the victims and stressed the need for forgiveness and reconciliation, and asked the armed forces to "make gestures of recognition of the pain caused."<sup>13</sup> Pinochet responded with a long statement expressing "fundamental disagreement" with the report and insisted that the army "had saved the freedom and sovereignty of the homeland" with the 1973 coup. But he did not question any specific aspect of the report.<sup>14</sup>

Relatively few copies of the report were printed, although the full text was reproduced in a daily newspaper. There were plans to hold national reconciliation events to follow up the report, but several leftist attacks on prominent members of the rightist political elite, in the weeks following the report's release, "effectively ended public discussion of the Rettig report."<sup>15</sup> Most importantly, the assassination of Senator Jaime Guzmán, Pinochet's close associate and confidant, focused attention instead to the threat of "leftist

terrorists.” All plans for social reconciliation exercises were soon dropped. A year later it was reported that “the Rettig Report, with its deeply disturbing revelations and conclusions, has not re-surfaced since.”<sup>16</sup>

Despite the limited public attention to the report, the commission’s conclusions led to a significant reparations program for families of the killed or disappeared. A National Corporation for Reparation and Reconciliation was created to search for remains of the disappeared, resolve cases still left open, organize the commission’s files so that they could be made public, and institute the reparations program.<sup>17</sup>

Despite the work of the truth commission, the issue of past abuses was not often comfortably discussed by the public or press in Chile for a number of years following. As one torture survivor told me in 1996, to bring up the subject of the abuses under Pinochet in any social context was considered to be “in bad taste.” It was not until Pinochet stepped down as commander in chief of the army to take up his post in the Senate in early 1998, and was then arrested in London in late 1998 on an extradition request from Spain, that the issue of past human rights violations began to be widely discussed and debated in Chile. While some domestic efforts toward justice had been building, Pinochet’s arrest in London fundamentally shifted the political landscape in Chile regarding past rights crimes, leading to increased domestic judicial activity on a number of past cases, particularly in reference to the disappeared.<sup>18</sup> Meanwhile, the Spanish judge who asked for Pinochet’s extradition relied heavily on Chile’s truth commission report and archives in building and presenting his case, even citing the report directly in Pinochet’s arrest warrant. Significant judicial action soon began domestically as well: by the end of 2009, 779 former officials had been charged with human rights crimes, and over 200 had been tried and convicted, with 59 serving sentences in jail.<sup>19</sup> National prosecutorial authorities also relied on the commission’s records in building their cases.

### **El Salvador: Commission on the Truth, 1992–1993**

With the assistance of \$4.5 billion in military and other aid from the United States in the 1980s, El Salvador fought a twelve-year war against leftist guerrillas known as the Farabundo Martí National Liberation Front (FMLN), beginning in 1980 and ending with a United Nations-brokered peace accord at the end of 1991. The war was marked by tens of thousands of political killings and disappearances, as well as many large-scale massacres of unarmed civilians; it was estimated that 1.4 percent of the Salvadoran population was killed during the conflict.<sup>20</sup> Among the most prominent cases was the killing of six Jesuit priests in 1989, which helped spur international pressure for a negotiated solution.<sup>21</sup> Throughout the war, reports of human rights violations were a point of intense controversy, especially in the U.S. Congress and within the administration of Ronald Reagan, which vehemently denied the extent of abuses by Salvadoran government forces.

An agreement for a Commission on the Truth for El Salvador was included in the UN-brokered peace accord, initially agreed to in April 1991—just over a year after the Chilean commission concluded its report, which served as the point of reference (and the origin of the idea) for the peace negotiators. The signatories to the accord considered specifying which cases should be investigated, but they were unable to come to an agreement on which events were most important, and thus left its mandate open, indicating only that it should investigate “serious acts of violence” that had occurred since 1980 whose “impact on society urgently demands that the public should know the truth.”<sup>22</sup> The commission was administered by the United Nations and funded through contributions from UN member states (with the largest contributions coming from the United States and several European states), though it had full operational independence in its work.

The commission was given just six months to complete its work, later receiving a two-month extension. The commissioners, appointed by the UN secretary-general with the agreement of the two parties to the accords, were respected international figures: Belisario Betancur, former president of Colombia; Thomas Buergenthal, former president of the Inter-American Court of Human Rights; and Reinaldo Figueredo Planchart, former minister of foreign relations for Venezuela. The commission was supported by approximately twenty staff for its collection of testimony and investigations, with another twenty-five short-term staff added in the last months for data entry and information processing. Because of objectivity concerns, no Salvadorans were included on the staff.

The commission took testimony from some two thousand victims and witnesses, reporting on over seven thousand cases of killings, disappearances, torture, rape, and massacres. It also collected information from secondary sources, including national and international human rights groups, relating to over twenty thousand additional victims. It investigated several dozen prominent or representative cases, and brought in the Argentine Forensic Anthropology Team to exhume the remains of a major massacre in the town of El Mozote, which had been at the center of international controversy. Although the armed forces provided little official assistance, a number of senior members of the security forces were willing to meet quietly and confidentially with the commission to provide critical inside information—sometimes, in fear for their safety, agreeing only to meet with the commission outside the country.<sup>23</sup> Despite intense pressure to soften its report, the commission came to strong conclusions on dozens of controversial cases, naming over forty senior members of the military, judiciary, and armed opposition for their role in the atrocities. The commission concluded that 95 percent of the abuses were committed by government forces.

The publication of the final report, *From Madness to Hope*, was “a major political event in El Salvador,” according to the Lawyers Committee for Human Rights. In the days leading up to its release, speculation about who would be named in connection with key cases “reached a level of mass

hysteria.”<sup>24</sup> The report was well received by human rights advocates in El Salvador and in the United States, but the commission was criticized for failing to report fully on certain important aspects of the violence, such as the operation of death squads and the role of the United States. The Salvadoran military high command responded to the report with a long statement read on national television by the defense minister, who was himself named in the report. Flanked by the full military high command, he blasted the report as “unfair, incomplete, illegal, unethical, biased, and insolent” and complained that “the commission does not recognize in its report the nature and origins of the communist attack against El Salvador.”<sup>25</sup> The civilian president, Alfredo Cristiani, meanwhile, said that the report failed to meet the Salvadoran people’s “yearning . . . to forgive and forget this painful past.”<sup>26</sup>

Five days after the report’s release, Parliament passed a sweeping amnesty law.<sup>27</sup> The naming of high-level perpetrators did lead to the removal of human rights violators from the armed forces, especially those who had been previously named by the Ad Hoc Commission, a body established by the peace accords with the task of cleaning human rights violators from senior posts in the armed forces. Otherwise, there were minimal consequences for those named. Four months after the report’s release, for example, Salvadoran minister of defense René Emilio Ponce and a number of others named as having participated in major atrocities were retired with full military honors, having completed thirty years of service. In the retirement ceremony, President Cristiani praised the men for performing with “merit, efficiency, and loyalty to the highest duties that the nation can demand.”<sup>28</sup>

Under strong international pressure, several of the report’s key policy recommendations were gradually put in place over the next years, particularly in the area of judicial reform. Some observers believed at the time, however, that the impact of the truth commission report may have been greater in the United States than in El Salvador. The U.S. government responded to the truth commission report by appointing a panel to examine the implications for foreign policy and the operations of its Department of State, although the panel’s report was criticized as too narrow. President Bill Clinton also ordered the review and release of more classified documents pertaining to the U.S. role in the war.

Over the next seventeen years, little progress was made towards justice, reparations, or official acknowledgment of past crimes in El Salvador. However, in 2009 the country elected the first president from the former armed opposition. On the eighteenth anniversary of the peace accords, in January 2010, President Mauricio Funes announced the creation of special commissions to address reparations, to search for children disappeared in the war, and to assist injured war veterans. On behalf of the state, he pleaded forgiveness for the crimes of the war.<sup>29</sup>



**Germany: Commission of Inquiry for the Assessment of History and Consequences of the SED Dictatorship in Germany, 1992–1994, and the Commission of Inquiry on Overcoming the Consequences of the SED Dictatorship in the Process of German Unity, 1995–1998**

There were two separate commissions established by the German Parliament, the first leading into the second, but scholars generally refer to them together as one, and they are seen as part of the same review process.<sup>30</sup>

In March 1992, the German Parliament created a commission to investigate and document the practices of the German Democratic Republic (East German) government from 1949 to 1989, the Commission of Inquiry for the Assessment of History and Consequences of the SED Dictatorship in Germany.<sup>31</sup> The SED, or Socialist Unity Party, was the ruling party of East Germany and tightly controlled the country for over forty years. The commission structure and operation followed the established guidelines for parliamentary commissions of inquiry in Germany, with political parties represented equivalent to their representation in Parliament as a whole. The successor party to the SED, the Democratic Socialist Party, was represented on the commission with one member. Eleven of the twenty-seven members of the commission were experts from outside of Parliament, primarily historians. Former East German human rights activist Rainer Eppelman served as the commission's chair.

The repression under the East German system was different from the extensive violence seen in other regions under study here. Although there certainly was physical repression against dissidents,<sup>32</sup> many of those who expressed opposition to the system suffered less violent consequences: they were barred from universities, prohibited from working in their chosen profession, or continually harassed by authorities, for example. The commission's mandate thus reached beyond a focus on gross human rights violations to a broader inquiry into government policy and practice. It was directed to "conduct political-historical analysis and make political-ethical assessments" of the structure and practices of the SED party; the human rights violations and environmental degradation that resulted; violations of international human rights conventions and norms, including political, mental, and psychosocial repression; the role of ideology in education, literature, and daily life; the role of the opposition movement; Church–state relations; the independence of the judiciary; and relations between West and East Germany.

The commission was largely research based, commissioning over one hundred papers on a wide range of topics, mostly written by academic historians who made use of files opened since the fall of East Germany. The commission held numerous public hearings where these papers were presented. It also heard "harrowing accounts" from victims, though not in great numbers.<sup>33</sup> The commission held no subpoena power, and most former government officials who were invited to give testimony declined, in part fearing their testimony could be used against them in court.

Many of the functions that are typical of truth commissions were already being addressed through other processes. For example, files of the East German Stasi, the omnipresent secret police, were made accessible for individual review.<sup>34</sup> These files allowed those who had been victims of Stasi informers to confront them directly—either privately or in front of television cameras.<sup>35</sup> Significant trials took place of those accused of serious abuses. This context helped to define the commission's operations and the focus of its findings. Scholar Andrew Beattie closely studied this commission's work, and he provides a fascinating comparison with other truth commissions. Beattie writes:

Certainly, the commission did not need to negotiate the dilemmas of pursuing truth as an alternative or precursor to justice, as such decisions had already been taken. It also was not concerned with “naming names” of perpetrators or helping victims and their families establish basic facts such as “who did what to whom,” as such functions were being performed by the courts, the Stasi Records Authority and the media. The commission was thus free to adopt a broader agenda.<sup>36</sup>

This explains why, indeed, “it was not a ‘fact-finding’ mission but a more discursive, analytical, evaluative and symbolic undertaking. It dealt with topics, not with ‘cases.’”<sup>37</sup> Beattie's analysis of this commission effectively challenges the assumed role of a truth commission. Because this commission was created before South Africa's, it shaped its own path without the undue influence of a model that later became dominant. For example, Beattie argues that “the commission demonstrates that a victim-centered examination and discussion of the past and its legacy is possible without large-scale testimony collection.”<sup>38</sup> It was also more focused on the “daily experiences of ordinary East Germans,” which ironically was an area that the South African truth commission was criticized for missing.<sup>39</sup>

The first inquiry's report, released in 1995, is over 15,000 pages in length, published in eighteen volumes, and includes all the research papers and testimony from the commission's hearings.<sup>40</sup> As this commission recommended, a follow-up inquiry was instituted by the incoming Parliament, the Commission of Inquiry on Overcoming the Consequences of the SED Dictatorship in the Process of German Unity. In addition to continuing investigations into many of the same topics, this body was also mandated to look into areas such as the economy, education, and the impact of unification policies from 1990 to 1995. It concluded similar hearings and research reports, submitting another multi-volume report in 1998. The inquiries' reports, writes Beattie, “still serve as a benchmark for parliamentary debate” over ten years after they were completed.<sup>41</sup> In particular, the reports have helped frame the highly controversial question of how to memorialize this period of history.<sup>42</sup>

### **Haiti: National Commission for Truth and Justice, 1995–1996**

Three years after Haitian president Jean-Bertrand Aristide was overthrown in a *coup d'état*, he returned to power in 1994 with the backing of international troops, a mandate to finish his term, and a public call to address the crimes of the three-year de facto military government.

Foreseeing Aristide's return, a group of Haitians in exile, together with international rights advocates, met to propose terms for a truth commission. Prompted in part by this work, Aristide announced the creation of the National Commission for Truth and Justice a few months after his return to the country, naming four Haitian and three international members.<sup>43</sup> From the start, however, the commission suffered administrative and organizational problems, and especially insufficient funds to undertake its work effectively. It was faulted for failing to engage the many human rights groups that had been very supportive of a truth commission, thus earning criticism from those who should have been its main backers, and also for failing to gain the broad attention and interest of the general public. Despite these challenges, the commission was able to send staff to the field for several months and to collect testimony from 8,000 witnesses, pertaining to some 8,600 victims. It also undertook a creative study, with the assistance of forensic experts, of the patterns of deaths recorded in local morgues during the time of heightened violence, which helped in estimating the number and cause of deaths due to political violence.

After ten months, the commission finished its report in February 1996 and handed it to President Aristide just a day before his term ended. Staff reportedly were frustrated at the rushed preparation of the report (said to be written in just one month), which was forced by the timing of Aristide's departure and the requirement that the report be submitted during his term.<sup>44</sup> Aristide passed the report to the incoming president, but it was not made public until a year later, after considerable pressure from rights groups. Reasons for the delay were never well explained, although the Justice Ministry cited the expense of printing the report.<sup>45</sup> The report was never distributed widely in Haiti. There were also no signs that the government was seriously acting on its wide-ranging recommendations, many of which pertained to reforming the country's judicial system.

The commission's most surprising recommendation was to the international community, urging that the UN Security Council set up an international tribunal for crimes of the de facto government, since the commission held no confidence in the national justice system. The commission submitted to the president a list of accused perpetrators, recommending that it not be made public until appropriate judicial action had been taken against those named.

### **South Korea 1: Presidential Truth Commission on Suspicious Deaths, 2000–2004**

Korean history in the twentieth century saw periods of extensive human rights violations, especially under the authoritarian governments that followed a coup in 1961, through to the early 1990s. During this time, government authorities were suspected of many targeted killings in the name of protecting South Korea from the communist North. Opposition leaders and democratization activists were found dead under suspicious circumstances, and the families were forced to remain silent, in fear. With the beginning of democratization in 1987, families began pushing for the truth about these cases. A Presidential Truth Commission on Suspicious Deaths was finally formed in October 2000. The commission was mandated to focus on the resolution of specific deaths, rather than undertake a broader historical review of patterns, causes, and consequences. Out of hundreds of expected cases, just eighty were presented to the commission in the three-month period stipulated for victims to submit claims, reportedly because many families felt too discouraged or distrustful to ask for further investigations. The commission added another five. Cases could only be taken up by the commission if the victim had been part of the democratic movement.

In addition to clarifying the circumstances of the deaths, the commission was directed to name persons who should be prosecuted. Over close to four years, the commission interviewed almost 10,000 witnesses and requested over 3,000 documents from the government.<sup>46</sup> It held only weak subpoena power, and some requests were not respected, resulting in a fine. It was also able to offer financial awards to persons who provided information, evidence, or documentation that significantly advanced its investigations. Victims advocated for a witness protection program, public hearings, and even for an amnesty-for-truth arrangement that might have brought forth more information, but these elements were not included. The victims' families also urged that the government waive the fifteen-year statute of limitations to allow prosecutions in more cases. The commission included this in its recommendations, but this has not been implemented.

The commission was able to resolve just over half of the cases presented to it before submitting a report in October 2002. Surviving family members protested that the commission was closing with cases unresolved, and the government ultimately relented, providing an eighteen-month extension.<sup>47</sup> The six volumes of its report added up to 4,300 pages in total, including an analysis of the overall causes of suspicious deaths, policy recommendations, and a report on each of the eighty-five cases investigated.<sup>48</sup>

There were a number of other government inquiries to look into other specific aspects of past abuses, all established under Presidents Kim Dae Jung and Roh Moo Hyun, from 1998 to 2008. According to scholar Hunjoon Kim at St. Olaf College, some fourteen to eighteen independent investigatory bodies were established, several of which might qualify as truth commissions.<sup>49</sup> In particular, a Truth and Reconciliation Commission, with a much broader

mandate, was established a year after the commission on suspicious deaths concluded (described below). There was also a commission operating from 2000 to 2003 to look into the killings of at least 15,000 people on the island of Jeju, South Korea, between 1948 and 1954. The work of this fascinating commission has been well documented elsewhere.<sup>50</sup>

### **Ghana: National Reconciliation Commission, 2002–2004**

Ghana suffered four military coups in the thirty-five years after achieving independence in 1957, each leading to significant human rights violations and periods of military rule. Jerry Rawlings was responsible for two of these, and the most abusive regimes. However, Rawlings led a gradual return to democracy in the early 1990s. A new Constitution was approved in 1992; this included a broad amnesty for past crimes, so well entrenched that it was later seen as virtually impossible to overturn. National elections returned Rawlings to power, and he remained president until 2000.

The first post-Rawlings government, led by President John Kufuor, addressed the legacy of human rights abuses almost immediately. Seeing no possibility for criminal prosecutions, it proposed a National Reconciliation Commission, and undertook national and international consultations to shape its mandate. After considerable controversy in particular about the period of time to be investigated, legislation passed that directed the commission to focus on the periods of unconstitutional government, but opened the investigation to all abuses between March 1957 and January 1993, including during periods of democratic government.<sup>51</sup> In practice, the commission did not differentiate abuses committed during civilian or military rule, treating all statements equally.

Nine commissioners were inaugurated in May 2002, and set up four regional offices in addition to the headquarters in Accra. The commission received over 4,200 statements from victims, surprising the skeptics, who had argued that the small number of human rights violations in Ghana did not justify a truth commission. Public hearings began in January 2003, bringing the commission ever more attention; the hearings were aired on television and radio, with testimony from 1,866 victims or witnesses and 79 alleged perpetrators.<sup>52</sup> Many victims named their perpetrators in the public hearings, and the Commission invited all those accused to appear before it to cross-examine their accusers, and to be represented by legal counsel of their choice. The sometimes aggressive questioning of victims by their accused former perpetrator raised questions about the intent and impact of the entire process—but the commission insisted that this procedure was necessary. Very few of the alleged perpetrators who appeared admitted wrongdoing or asked forgiveness; most denied the allegations.<sup>53</sup>

In early 2004, former president Rawlings appeared before the commission under subpoena, regarding two pieces of evidence believed to be in his custody

(a video recording of executions, and a recorded confession of someone convicted for murdering three High Court judges and an army officer). Although Rawlings acknowledged once possessing the material, he denied knowing its current location. The commission was criticized for asking him only very few, narrowly focused questions.

There were other unexpected challenges. One witness died of a heart attack while testifying in a hearing; the commission thereafter instituted a system to screen for blood pressure before witnesses could take the stand, and kept an ambulance on stand-by. The commission's projected budget of \$5 million had to be reduced to \$3 million owing to limited financial support, especially from projected international sources. The Ghanaian government provided \$2 million, with the remainder from foreign governments and foundations.<sup>54</sup> Finally, despite its outreach efforts, some experiences were under-represented in statements: incidents of rape and public flogging, for example, were not reported at the levels expected, presumably because of the stigma associated with these events.

The commission was initially given one year from the start of hearings to complete its work, with an additional period to finish its report. With a six-month extension, the hearings finally concluded in July 2004; the five-volume final report was submitted to the president in October and released to the public in April 2005 together with the official government response. In this white paper, the government accepted the report in its entirety, offered an apology to all those who suffered, and called on national institutions to review the report and to begin implementing its recommendations.

The report outlines specific recommendations for reparations to victims, including financial reparations ranging from \$120 to \$3,500, depending on harm done; symbolic measures such as apologies and memorials; and health and education benefits, pensions; and the restitution of confiscated property. The report emphasized women as a primary beneficiary group for reparations, given the economic and physical damages they suffered.<sup>55</sup> At the same time, the commission intentionally recommended relatively small amounts in financial reparations, hoping that this would lead to rapid implementation by the government.

Indeed, the government implemented a reparations program within a year, allocating \$1.5 million to compensate over 2,500 victims. Some two thousand Ghanaians received between \$217 and \$3,300, although there was confusion in the criteria for inclusion and for determining the amounts awarded. Further, most non-financial and symbolic aspects of the recommended reparations were not implemented.<sup>56</sup>

The commission held the military to be responsible for 66 percent of the documented human rights violations and recommended significant reforms of the military, prison system, and police. But these recommendations were never prioritized, and in 2008 the non-governmental Ghanaian Centre for Democratic Development noted a lack of political will to implement further reforms. The minister of justice cited other government priorities.<sup>57</sup> The report

also suggested a national referendum on the amnesty provisions entrenched in the Constitution. But proactive measures toward criminal accountability seemed remote, and even more so after the election in December 2008 of John Atta Mills as president. Mills had served as vice president in a previous Rawlings government.

### **Sierra Leone: Truth and Reconciliation Commission, 2002–2004**

An agreement for a Truth and Reconciliation Commission was included in the Lomé peace accord that ended the Sierra Leone civil war in July 1999, and signed into law through the Truth and Reconciliation Act in February 2000.<sup>58</sup> Plans for the commission were slowed after fighting between the rebels and the government reignited in early 2000. As peace became more secure and the disarmament of the rebel forces advanced, preparations for the truth commission began again in late 2001. A public nomination process resulted in over sixty nominations for commissioners; a representative selection panel chose four. The UN High Commissioner for Human Rights selected three international members. The commissioners were inaugurated in July 2002, given three months for preparation, and formally launched operations in October.

The TRC Act called on the commission to undertake research, receive statements, and hold public sessions toward the aim of establishing,

an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.<sup>59</sup>

In fact the commission extended the period that it covered to January 2002, in order to cover the continued conflict.<sup>60</sup> The Act calls on the commission to give special attention to victims of sexual abuse and to children who were either victims or perpetrators. It also refers to the possible use of paramount chiefs or other traditional or religious leaders in undertaking its work.

The TRC Act declared the commission to be a fully independent body, but it was later decided that the commission would be administratively managed as a project of the UN Office of the High Commissioner for Human Rights (OHCHR). The OHCHR helped with fundraising and administrative support, but some questions were raised as to the commission's independence in taking operational decisions, and this was not in the end considered the most advantageous administrative structure. The TRC's operating budget totaled less than \$5 million, reduced from an initial plan that projected almost \$10 million.

Limited funds, as well as a tight timeline, narrowed its reach, reducing its period of statement-taking and public hearings to four months each, and limited its staff size. To extend its reach, it trained staff of national human rights organizations to help take statements.

An interesting study undertaken early in the commission's work showed that ex-combatants from all sides of the conflict generally supported the commission's work—and that they became more supportive as they learned more about it.<sup>61</sup> The Commission received a total of 7,706 statements, many of these—estimated at over 10 percent—directly from perpetrators, with many admitting to their acts in some detail.

The Commission hosted public hearings across the country. Outside Freetown, the Commission engaged traditional leaders in “reconciliation ceremonies” at the end of some of the week-long hearings, where victims and perpetrators would sometimes come together, or, in a few cases, where those who admitted to crimes went through a cleansing ritual to be reaccepted into the community. Then President Ahmad Tejan Kabbah testified in the closing hearing in Freetown, but refused to apologize for abuses committed by state forces.<sup>62</sup> However, in various commission events the main political parties and representatives of the military and the police publicly apologized for the various roles they played before and during the conflict.

Shortly after the TRC Act was signed into law in early 2000, and ten months after the Lomé peace agreement was signed, further political violence led the government to make a request to the United Nations that a hybrid tribunal—with both international and national judges, prosecutors, and staff—be created. This Special Court for Sierra Leone was established in 2002 through an agreement between the United Nations and the Sierra Leone government, with a mandate to prosecute those “bearing the greatest responsibility” for crimes after November 1996.

The time covered by the Special Court and by the truth commission thus overlapped by several years, as did the subject matter of interest, but there were no provisions that governed what their relationship should be. There was concern that information collected by the commission, including from perpetrators, might be accessed by the Special Court prosecutor, and could have a chilling effect on the work of the commission. This was resolved by clear statements from both bodies that confidentiality granted by the commission would be respected. The commission later requested that indicted detainees held by the Special Court be allowed to participate in the commission's public hearings, but the court declined this request.<sup>63</sup>

The four-volume commission report was concluded in late 2004, as well as a one-hour video summary and a “child-friendly” version.<sup>64</sup> The report found that “the central cause of the war was endemic greed, corruption and nepotism” and that “Government accountability was non-existent” over many years.<sup>65</sup>

Sierra Leone hoped to escape the problem that has been common to other commissions: that of the government failing to act on the recommendations



of the final report. The TRC Act committed the government to fulfilling the commission's recommendations, and set out specific follow-up procedures to track implementation. The president was to appoint a follow-up committee, including both national and international members, which would submit quarterly public reports on the status of implementation of the recommendations. The government was also required to submit public quarterly reports on the actions it had taken to fulfill the recommendations.<sup>66</sup> These mechanism and procedures were not ultimately implemented.

The government prepared a white paper assessing the report and its wide-ranging recommendations, but this paper provided little commitment to implementing the recommendations, and was widely criticized as being weak. Civil society then drafted an omnibus bill that would address aspects that required legislative action. This draft bill was presented to Parliament in late 2005, but was not acted on by legislators.

Nevertheless, the government did make slow progress in implementation. In 2006, the UN Peacebuilding Commission in New York selected Sierra Leone as one of its first countries of special focus, and the UN Peacebuilding Fund committed \$3 million for a reparations program, specifically citing the truth commission recommendation as the incentive for the program.<sup>67</sup> The September 2007 election of Ernest Bai Koroma as the new president of Sierra Leone also raised hopes. In his campaign and in his inaugural speech, Koroma committed to the recommendations of the truth commission. The government did initiate many reforms recommended by the TRC over the next years, although generally without making specific reference to the commission. These included judicial and security-sector reform, and initiatives on children's and women's rights. The new Constitutional Review Commission also outlined a number of reforms suggested by the TRC. In late 2008, four years after the truth commission had reported, its "imperative" recommendations were described as "suspended in a partial state of implementation."<sup>68</sup>

Meanwhile, an important critique of truth commissions emerged through an ethnographic study of this commission, and in particular how local communities responded to public hearings. Anthropologist Rosalind Shaw suggested that the truth commission ran counter to the local understandings of healing and reconciliation. In some parts of Sierra Leone, "social forgetting is a cornerstone of established processes of reintegration and healing," and the insistence on publicly speaking about the past was disrupting local practices of reconciliation. She suggests that future truth commissions might design their operations to fit more closely with existing grassroots practices.<sup>69</sup>

## **Chile 2: National Commission on Political Imprisonment and Torture, 2003–2005**

Twelve years after the conclusion of the National Commission on Truth and Reconciliation in 1991, Chile created another commission to address a group of victims who were largely left out of the first effort: those who had been

imprisoned, most of them tortured, and survived. Estimates varied greatly, but some believed there could be as many as hundreds of thousands of such survivors. Since most victims were young adults at the time of the worst of the repression in the mid-1970s, many were expected to still be alive.

President Ricardo Lagos established this National Commission on Political Imprisonment and Torture through presidential decree in September 2003, a result in part of a campaign by civil society organizations. Sergio Valech, a bishop known for defending human rights during the military regime, was appointed chair of the eight-person commission. It was directed to determine who had been illegally detained and tortured for politically motivated reasons between September 11, 1973, and March 10, 1990, the period of military rule. The commission was also mandated to propose a reparations program.

The commission took statements from 35,000 people, including those who provided written submissions through Chilean consulates in more than forty countries. They found that many survivors had never before spoken about their experience in any detail.

The commission's 1,200-page report was completed in November 2004 and presented to the nation by the Chilean president in a televised speech. The president asked the commission to continue investigations on outstanding cases; a complementary report was then published in June 2005.

The commission identified fourteen main forms of torture that were employed in Chile, and concluded that during the dictatorship, especially in the early phase, "torture was a policy of the state, meant to repress and terrorize the population." It recognized 28,549 persons as victims of political imprisonment. Of these, 1,244 had been younger than 18, and 176 younger than 13. One of the most common methods of torture, reported in more than a third of the cases, was the use of electrical shock. Two-thirds of the reported cases of torture took place in the few months immediately after the coup in 1973, when many thousands were indiscriminately rounded up. The commission found that 94 percent of those detained during the months immediately following the coup were subject to torture.

The commission identified 1,200 places where detention and torture took place, including schools and hospitals, expanding on the initial list of 300 documented by the 1991 truth commission. The report specifies which military, police, and intelligence units were involved in incidents of torture, but withholds the names of those responsible. The commission published the names of victims, but not the full details of their testimony, which was to be sealed for fifty years. The commission was explicitly intended not to play any role in advancing criminal justice, including handing any information to prosecutors. However, victims quickly realized they could directly repeat their testimony in individual judicial complaints, thus leading to numerous criminal investigations.

Days before the 2004 report was released, the commander of the army acknowledged institutional responsibility for "punishable and morally unacceptable acts in the past." His comment received lukewarm support from his active

and retired colleagues in the military, and the heads of other branches of the armed forces did not join him in making such a statement, remaining silent.

As the report was released, President Lagos committed to reparations for all victims of torture identified by the commission. This was quickly put in place: within a year, about 20,000 victims identified by the commission began to receive a lifelong pension of \$190 per month.

### **Greensboro, North Carolina, United States: Truth and Reconciliation Commission, 2004–2006**

A Truth and Reconciliation Commission was established in the city of Greensboro, North Carolina, in 2004 to look into the events around November 3, 1979, when a peaceful march for racial and economic justice was attacked by racist groups, leaving five dead and ten seriously injured in what became known as the “Greensboro massacre.” The Ku Klux Klan and American Nazi Party were directly implicated in the shootings, as the event was caught on several television cameras. It was long believed that local or federal authorities were also somehow involved. Criminal and civil trials that followed the event were largely unsuccessful, although some damages were awarded.

The Greensboro commission was established through a largely private effort of civil society and Church groups, working closely with victims and survivors of the 1979 event. The city council discussed and gave consideration to formally backing the initiative, but a vote on the matter fell short. However, the mayor of Greensboro appointed the chair of the selection panel, upon being invited to do so.

Seven persons were chosen to serve on the commission through a wide consultative process, coordinated by a representative selection panel. It looked to other truth commissions globally while setting out its work plan, bringing in experts from the commissions in Peru, South Africa, and elsewhere. It received statements from some 150 people and held a number of public hearings, in addition to conducting research and investigations. The commission released its report in a well-attended high-level public ceremony in May 2006.<sup>70</sup> While it did not find the City of Greensboro or its police force to be directly implicated in the 1979 killings, it criticized the police for its handling of events at the time. It recommended apologies, community reflection, and the creation of citizen review committees to monitor the police.

The commission attracted considerable media attention throughout its work as an innovative approach to applying an international model to a localized context, and especially attracted interest from other states and communities throughout the United States as a possible model to follow. Several other U.S. communities considered such a model over the following years, in relation to periods in recent history where significant racist or other targeted violence remains largely unrecorded.

## **Paraguay: Truth and Justice Commission, 2004–2008**

With active support from the national human rights community, the Paraguayan legislature passed legislation in late 2003 to establish a Truth and Justice Commission to look into abuses over a total of forty-nine years: the thirty-five years of authoritarian rule under Alfredo Stroessner, from 1954 to 1989, as well as the years of democratic rule that followed, through to the date when the commission was founded, in 2003. The post-1989 period was added at the insistence of a rightist political party, and was necessary to gain its support in Parliament, but in the end no cases from this period were reported to the commission. The legislation called for its members to be appointed by different sectors: four chosen by victims groups, three by civil society organizations, and one each by the executive and legislative powers. However, this procedure for appointment led to complications and disagreements, delaying the commission's start-up.

The commission suffered weak political support, resulting in limited funding from Parliament, which it relied on for much of its funds. Furthermore, operational disagreements in its first year resulted in the loss of some commissioners and staff, and a distant relationship with civil society. In mid-2005, the Swiss government and later the United Nations provided assistance for international advisors to assist the commission.<sup>71</sup> At that time, the commission had done little public outreach and it was still little known by the public.

The commission was first granted eighteen months to complete its work, but received several extensions, finally concluding after four years in 2008. It received over 2,000 statements directly, and also analyzed thousands of cases registered by NGOs and those appearing in a police intelligence archive. Including these independent sources, the commission database included a registry of 9,923 direct victims, pertaining to 14,338 violations, although the commission estimated a far higher number of total victims.<sup>72</sup> It found that 95 percent of political prisoners were tortured, and that at least half were threatened with death. The commission worked with the Argentine Forensic Anthropology Team to undertake six exhumations, attempting to identify the remains through DNA. It also presented a number of cases to the attorney general in the course of its work, recommending prosecutions.<sup>73</sup>

In 2007, the commission became much better known as a result of its public hearings, which it held in Paraguay as well as in Argentina, where many Paraguayans were exiled. In one hearing that took place in Argentina, the ambassador of Paraguay to Argentina was unexpectedly named as having collaborated with the Stroessner regime. As a direct result, he was quickly dismissed from his post.

The matter of past crimes did not end with the commission. Soon after the report was published, some prosecutions advanced, including the arrest of the eighty-six-year-old former interior minister under Stroessner, Sabino Montanaro. Exhumations continued through 2009 and into 2010, again with the assistance of Argentine forensic specialists. And finally, in late 2009, military

archives were opened to victims and human rights activists for the first time, on the order of the defense minister.<sup>74</sup>

### **Indonesia and Timor-Leste: Commission of Truth and Friendship, 2005–2008**

After the truth commission in Timor-Leste concluded its report in 2005, the United Nations announced an intention to establish an International Commission of Experts to assess progress on criminal justice in relation to crimes of 1999, when Indonesian-backed militias killed over one thousand and displaced hundreds of thousands of Timorese. In what many viewed as an attempt to pre-empt this UN inquiry, the governments of Indonesia and Timor-Leste announced plans for a Commission of Truth and Friendship to be created through bilateral agreement. The friendship commission was established in August 2005, with four members appointed from each country (including several former members of the Timorese truth commission).

The commission was criticized by human rights advocates from the start, who saw it as an attempt to dilute the strong and well-founded conclusions of the Timor commission. While some advance consultation took place, civil society felt that independent views were not seriously incorporated in the planning. The commission's mandate included a number of critical flaws, some of which were exacerbated by operational decisions taken by the commission itself. It was mandated to seek the "conclusive truth" about events before and after the 1999 population consultation, but not to recommend prosecutions, and was also prohibited from identifying perpetrators. Rather than taking statements directly from victims, the commission was directed to review and assess the records from previous investigations, including the Timor truth commission but also including judicial investigations in both Timor-Leste and Indonesia.<sup>75</sup>

The commission's hearings effectively granted accused persons—including prominent Indonesian officials—a public platform to broadly deny what had taken place and their role in it. This was made worse by weak questioning by the commissioners, and a failure to link the findings of the commission's investigations to the substance of the hearings. Observers feared that the commission's hearings only succeeded in confusing and obfuscating the public's understanding of what happened, rather than providing any truth and clarity.<sup>76</sup>

The commission's terms of reference gave it the power to recommend amnesty, including for serious crimes. This aspect of its mandate resulted in the United Nations refusing to cooperate with the commission, since such an amnesty would violate UN policy. In the end, the commission did not recommend amnesty.

The unique nature of this commission was its two-country representation, as it was created through a joint act by the presidents of neighboring countries. This led to unusual dynamics: the Indonesian and Timorese members considered themselves to be two "delegations" to the commission, rather than

individual and independent members in one seamless body. Indeed, one member described the merging of the two groups as impossible, since the interests and perspectives of the two “sides” were so different.<sup>77</sup> As the first example globally of a two-state truth commission, this operational model is not an ideal precedent.

After a contentious and highly criticized process, the report ultimately drew conclusions and recommendations very similar to those of the Timorese truth commission. It concluded that Indonesian security forces and civilian authorities committed crimes against humanity, saying that the “consistent patterns . . . were so clear that there could be no doubt” of Indonesian institutional responsibility, and that “viewed as a whole, the gross human rights violations . . . constitute an organized campaign of violence.”<sup>78</sup> Analysts ultimately concluded that the commission’s review of key (and often contradictory) documents was useful, in that it questioned the conclusions of some, while confirming others. The materials from the Serious Crimes Unit in Timor-Leste was seen as particularly valuable, as these had not been accessible previously.<sup>79</sup>

The president of Indonesia, Susilo Bambang Yudhoyono, endorsed the report’s findings at the formal presentation ceremony. This “provided Indonesia’s first official recognition that its state institutions had systematically violated human rights in East Timor,” according to the International Center for Transitional Justice.<sup>80</sup>

## **South Korea 2: Truth and Reconciliation Commission, 2005–present**

After the conclusion of the first commission on suspicious deaths in 2004 (described above), a new and much broader Truth and Reconciliation Commission was established by Parliament a year later. It was given a sweeping mandate of one hundred years: this included a forty-year occupation of Korea by Japanese forces; a brutal four-year civil war with heavy engagement of U.S. troops; and three decades of authoritarian rule that lasted until the early 1990s. Most of its cases, however, pertained to events during the 1950–1953 Korean War: the period of Japanese occupation had been investigated previously, and the commission received fewer than 650 reports of abuses during the later period of authoritarian rule.<sup>81</sup>

The commission documented and publicly verified many cases during the course of its work. Its quarterly newsletter has reported many massacres that it confirmed from the Korean War, as well as documenting the numerous memorials being held by communities in remembrance. A number of these events involved U.S. troops, with the commission reportedly investigating several dozen cases of errant attacks by U.S. forces during the Korean War, resulting in an estimated several hundred casualties.<sup>82</sup> It received over 11,000 petitions, many relating to mass killings, and by late 2009 had completed investigations in 75 percent of these cases. It also initiated a number of

exhumations of mass graves. A survey undertaken by the commission suggested that the reports it received of 8,000 civilians killed during the Korean War represented only 5 percent of the actual number.<sup>83</sup>

In November 2009, the commission captured international headlines when it publicly confirmed large-scale killings by South Korean authorities of their own citizens at the start of the Korean War in 1950. The killings individually targeted many thousands of unarmed South Korean civilians who were suspected of possible sympathies with the North. The commission identified almost 5,000 killed in this particular nationwide operation but said that it expected the real number to be as much as ten to twenty times higher.<sup>84</sup> After the confirmation of one massacre, in 2008, South Korean president Roh Moo-Hyun made an official apology on behalf of the state for the massacres of the Korean War.<sup>85</sup>

The commission is composed of fifteen members—eight appointed by Parliament, four by the president, and three by the chief justice of the Supreme Court. A new chair was appointed to lead the commission in December 2009 after the previous chair's term expired. As one of his first acts, he banned any further distribution of the commission's interim English report, which had been released earlier in the year. While he claimed concerns over the quality of translation, many suspected political motivations. The head of the commission was appointed by the new Korean president; the now ruling Conservative Party was said to be uncomfortable with the strong conclusions in the report and the fact that it holds prior rightist governments to be responsible for abuses. Many noted that the new government, which took power in 2008, was not interested in detailing past events.<sup>86</sup> While families pushed for an extension of the commission's work, as foreseen in its mandate, it was expected that the commission would conclude its final report by the end of 2010.

### **Liberia: Truth and Reconciliation Commission, 2006–2009**

After fourteen years of civil war, a Comprehensive Peace Agreement signed in August 2003 brought Liberia back to peace. The peace agreement, between the government of Liberia and two rebel groups, included provisions for a Truth and Reconciliation Commission “to provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences.”<sup>87</sup>

A first set of commissioners was appointed by the head of state of the transitional government with little consultation, and long before an Act was passed that set out the commission's terms, resulting in strong objections and then a difficult process by which these members agreed to be vetted by a selection panel.<sup>88</sup> Meanwhile, after extensive civil society involvement in drafting legislation, the commission was finally signed into law in June 2005. Only two of the original appointees remained in the final membership of nine.

The commissioners were inaugurated in February 2006. After several months, the commission selected a chair from among them, choosing one of the commission's two lawyers and the member with the strongest civil society human rights background, Jerome Verdier. Other members included three religious leaders, a security specialist, a nurse, and a journalist.<sup>89</sup>

Newly elected president Ellen Johnson Sirleaf spoke at the formal launching of the commission, and her government provided strong financial support to the process throughout, providing the greater part of its \$7.5 million budget.<sup>90</sup> The TRC Act granted the commission powers of subpoena, indicating that a special magistrate would be appointed to handle affairs of the commission as needed, and directed it to look into economic crimes as well as human rights abuses. It also had a limited power to recommend amnesty, which could not apply to crimes against humanity and violations of international humanitarian law.

The commission's operations were troubled throughout much of its tenure. The donor community, initially quite supportive, was concerned about the significant time lost in operational planning and in the hiring of senior staff. Further, relations between commissioners were difficult, and major differences between them often spilled into the public press.<sup>91</sup> Once the commission began public hearings, it was criticized for providing a platform to persons accused of serious crimes while asking few probing questions. In most of these hearings, which were broadcast live on the radio, persons who were widely known for their involvement in the war's abuses simply denied any wrongdoing. There were some exceptions, however. A former rebel known as General Butt Naked, who had since become a priest, claimed in a public hearing that he had personally killed 20,000 people.

This was the first truth commission to arrange a formal partnership with an organization overseas in order to receive statements from the diaspora. It worked with the Advocates for Human Rights, a non-profit organization based in Minneapolis, Minnesota, which is home to a large Liberian community. This project trained American pro bono lawyers in a number of U.S. states to support statement-taking, ultimately receiving more than 1,600 statements in the United States, the United Kingdom, and in a refugee settlement in Ghana. It also organized several public hearings in the United States, with commissioners traveling from Liberia to take part. The project published a separate report from the Liberian commission report, including research that was requested by the commission; some sections were also incorporated into the truth commission's final report.<sup>92</sup>

The commission took statements from 20,560 Liberians, including those overseas. With the assistance of the California non-profit organization Benetech, the commission was able to code and register the great majority of these: these collected stories accounted for 93,322 reported victims and 163,615 violations (for example, over 58,000 forced displacements, 28,000 killings, 6,000 rapes). The report includes long lists of massacre sites, quite a number of them showing several hundred persons killed. As much of the



country had been inaccessible during the conflict, much of this information was simply unknown previously.

The commission's final report was politically explosive. The TRC Act gave it powers to make recommendations of a near-mandatory nature, and it used this to make sweeping recommendations across many areas of public and political life. The most controversial by far was in the area of individual accountability, where it named over 150 individuals to be prosecuted, and another several dozen persons who should be barred from public office for thirty years. Among these were President Johnson Sirleaf and many other prominent members of the political class, most of them known for their central involvement in the war. The report also named three dozen people whom the commission determined should not be prosecuted, based on their cooperation with the commission and their having expressed remorse—among them the infamous General Butt Naked.

The report captured headlines for weeks after its initial release in June 2009.<sup>93</sup> A group of former warlords named for prosecution gathered to denounce the report, implicitly threatening to retake up arms. The report and its recommendations for accountability were “intended to destabilize the country” and would bring “another round of chaos,” they warned.<sup>94</sup> The president made minimal but fairly supportive remarks. Many raised questions about the constitutionality of the “binding” nature of the recommendations, and soon a bill was put to the legislature to retroactively amend this portion of the TRC Act; legal challenges were also brought in court. Other commentators, including foreign experts, skewered the report for “moral confusion” and charged that the lists of names seemed to be “utterly arbitrary.”<sup>95</sup> The international diplomatic community, including the United Nations, refused to take a position on the report, clearly uncomfortable with the politically sensitive recommendations. The Liberian public, meanwhile, was largely supportive, some reportedly enthusiastically so, welcoming a glimpse of accountability in a sea of deep historical impunity.<sup>96</sup>

However, the uproar over the names, and the dilemma of proposed vetting of publicly elected officials, robbed attention from a much broader array of recommendations, including reparations, apologies, memorials, and “changing the political culture,” as well as other conclusions and findings in the lengthy report. In January 2010, weeks after the submission of the final, edited version of the commission's report, the president announced an intention for national public consultations on the report and its recommendations. She also announced that she would run for re-election, implicitly setting aside this specific aspect of the commission's recommendations.

## **Ecuador 2: Truth Commission, 2008–2010**

Ten years after a first Ecuadoran Truth and Justice Commission prematurely ended (see Appendix 1), a new Truth Commission was established through presidential decree, in mid-2007. The commission's work began with the first

funds being made available in January 2008. The commission was mandated to investigate several hundred unsolved cases of disappearance, torture, and political assassination committed during the 1980s, with a particular focus on 1984–1988, during the government of León Febres Cordero. The decree also called on the commission to investigate other relevant cases in following years, and the commission thus interpreted its mandate to continue through at least part of its own operating period. The membership comprised a lawyer, a bishop, and two human rights activists—one of these a victim himself, his two sons having been forcibly disappeared in the 1980s. It was initially granted nine to twelve months to conclude, but its deadline was extended several times, after a slow start.

The mandate also stated that the commission's structure would include a "support committee," to include members of a victims association and human rights organizations, as well as a government representative. The lack of clarity about the role and decision-making powers of this support committee, as against those of the commission members, resulted in confusion, difficulty, and lost time.

The commission received 700 statements, both in Ecuador and abroad. Because its temporal mandate did not stipulate a clear end point, the commission received and investigated a few cases that occurred even while the commission was under way, which some observers felt confused its role. On at least one occasion, the government referred a current human rights case to the commission, involving a death at the hands of state forces, thus stretching the bounds of its mandate. However, close to 60 percent of violations that it documented occurred between 1984 and 1988, including killings, forced disappearance, torture, rape, and arbitrary detention. The commission also received extensive information from human rights and victims organizations.

In early 2009, the commission made a public call, printed in newspapers, naming over two hundred persons, including from the army and national police, to present themselves to the commission to provide information regarding alleged abuses. About forty complied; others replied through a lawyer, saying that the commission must provide more specific details of the accusations against them.<sup>97</sup>

The work of the commission was strongly resisted by the political right and by former members of the armed forces in Ecuador. Former President Febres Cordero, who had presided over the most abusive period, refused to recognize the competence of the commission.<sup>98</sup> The former chief of special investigations of the national police, who was implicated in abuses in the mid-1980s, published a book in late 2009 accusing the commission of being biased and collaborating with terrorism.<sup>99</sup>

The final report was published in early 2010. Before releasing the report, the commission waited for Congress to pass an immunity law to protect the commission and staff from any repercussions.

### **Mauritius: Truth and Justice Commission, 2009–present**

A Truth and Justice Commission was established in Mauritius in 2009 to look at abusive practices that began 371 years earlier, changed in nature after two hundred years, and whose impact on society was still felt to the present day. The commission was directed to document this colonial and post-colonial history, understand its current impact, and recommend reparations for descendants.

Specifically, the mandate of the commission in Mauritius is to document both slavery (which began in 1638 and was abolished in 1835) and the practice that developed after slavery: indentured labor. This latter practice brought close to half a million laborers to Mauritius, primarily from India, on contracts that left them indebted to their employers. The contract terms of these “indentured servants” left them close to the conditions of slaves. Prime Minister Navin Ramgoolam explained the need for such a commission when he presented it to the National Assembly:

Years have passed since slavery and indentured labor were abolished. The horrors of such brutality and bondage no longer exist today. But such treatment meted out to human beings does have its psychological impact, which can be permanent and as destructive if not more so, compared to physical slavery.<sup>100</sup>

The commission was also directed to investigate complaints of the dispossession of land, and to “determine appropriate measures to be extended to descendants of slaves and indentured laborers.”<sup>101</sup> The question of whether the commission should recommend individual or community reparations was controversial from the start, with political leaders reportedly holding clear preferences for one or the other.

The Truth and Justice Commission was inaugurated on February 1, 2009. After the chair stepped aside for health and other reasons, a South African, Alex Boraine, who had been the deputy chair of the South African Truth and Reconciliation Commission, assumed the chairmanship beginning in January 2010. The commission was given twenty-four months to conclude, in addition to a preparatory period, with the possibility of an extension of a further six months.

### **Solomon Islands: Truth and Reconciliation Commission, 2009–present**

Tensions in the Solomon Islands peaked in 1998 with fighting between rival armed factions. The fighting, which many saw as a result of competition over land, jobs, political power, and status, resulted in at least 100 deaths and more than 20,000 displaced. A peace agreement in 2000 failed to end the fighting, which was finally quelled by regional peacekeepers in 2003.

Five years later, in August 2008, the national Parliament created a Truth and Reconciliation Commission to look into these events. The commission is empowered to examine “the nature, antecedents, root causes, accountability or responsibility for and the extent of the impact on human rights violations or abuses” between January 1, 1998, and July 23, 2003, “including the destruction of property, deprivation of rights to own property and the right to settle and make a living.”<sup>102</sup> But an amnesty was already in place for crimes during this period, and the Act states clearly that the commission is not intended to affect criminal accountability.<sup>103</sup> Rather, the main focus was to advance reconciliation and to facilitate a “consensual collective memory” of the past.<sup>104</sup>

The three national members were inaugurated in April 2009, with the South African Archbishop Desmond Tutu in attendance, but its work did not formally begin until its two international members arrived late in that year. It was granted one year in which to operate, plus a preparatory period and a possible extension of a second year. The international members were from Fiji and Peru; its vice president was Sofia Macher, who had previously served as a commissioner with the Peruvian truth commission. The commission began public hearings in March 2010.

### **Togo: Truth, Justice and Reconciliation Commission, 2009–present**

After thirty-seven years in power, President Gnassingbé Eyadéma died in February 2005, and his son, Faure Gnassingbé, seized power. Opposition protests were violently suppressed, and as many as 500 killed, especially after questionable elections in April 2005 which formally granted the young Mr. Gnassingbé a victory. The continued political crisis finally produced a Comprehensive Political Agreement in 2006, in which the main political parties and civil society organizations agreed, among other measures, to the establishment of a truth commission. The commission would cover forty-seven years, from the first post-independence election in 1958 through to 2005.

But the language of the agreement was not detailed, and there was need for national consultation to set out the terms. The UN Office of the High Commission for Human Rights led an impressive, large-scale consultation, administering close to thirty thousand questionnaires over six months. A team of sociologists helped to analyze the results, submitting a detailed report to the president. The government used these results to draft a decree setting out terms of reference. For example, most respondents felt that a religious figure should be the chair, and over 90 percent also said that the membership should exclude politicians and military officers.

President Faure Gnassingbé met with civil society to ask for names of commissioners, and selected eleven from these submissions. The commission was inaugurated in May 2009, and formally began operations in September. It is chaired by a Catholic bishop, Nicodème Barrigah, joined by academics, rights

advocates, traditional leaders, and businessmen. It was given eighteen months to conclude, with the possibility of a six-month extension. The government and the United Nations committed funding from the start, with a projected \$4 million budget.

### **Canada: Truth and Reconciliation Canada, 2009–present**

A truth commission was established in Canada in relation to abuse of its indigenous population, after a significant reparations program had been implemented and after formal apologies from the religious and state institutions complicit in the abuses. It will address over a century of forced assimilation policies toward the indigenous population of Canada.

In 1874, the government of Canada worked in conjunction with Protestant and Catholic churches in Canada to put in place a nationwide system of “residential schools” that aimed to forcibly assimilate Aboriginal children across the country. These policies remained in place for more than one hundred years; the last residential school closed in 1996. Attendance was compulsory, and Aboriginal languages and cultural practices were prohibited. The schools were also known for sexual, physical, and psychological abuse. There were some 86,000 residential school survivors in Canada as of 2007.

Canada began to address the legacy of the residential schools in 1991. It established a Royal Commission on Aboriginal Peoples, which recommended a full public inquiry into the origins and effects of these policies. In 1998, the government formally acknowledged the failure of the residential school policy. In addition, the residential schools have been the subject of extensive litigation, with several persons prosecuted for abuse as well as thousands of civil suits and a number of class action suits against the government and churches. In 2003, the government of Canada began a dispute resolution program to compensate and offer therapeutic services to survivors. But these efforts were seen as insufficient.

In order to settle pending civil claims, and after extensive consultation between the government, churches, and aboriginal communities, in 2006 the government approved an Indian Residential Schools Settlement Agreement at an estimated cost of \$2 billion. Close to \$60 million of this amount was stipulated for a Truth and Reconciliation Commission. The agreement provides for extensive reparations for former residential school students, with “common experience payments” for which all former students are eligible, averaging about \$28,000 per student.<sup>105</sup> There is also an adjustment process by which former students can make claims for specific abuses.

The truth commission was first established with the inauguration of three members in mid-2008, but internal problems and disagreements led to their resignation. Three new commissioners were inaugurated in July 2009.<sup>106</sup> The commission will work for five years, but is mandated to complete national events and to deliver a report on historic findings and recommendations after

two years. The commission is also mandated to create a national archive of testimonies.

The commission is prohibited from making findings or conclusion in relation to any specific individual, or naming names in its events, activities, statements, or report, “unless such findings or information has already been established through legal proceedings, by admission, or by public disclosure by the individual.”<sup>107</sup> The commission holds no subpoena power.

The Canadian House of Commons provided the first official apology for the residential schools policy in May 2007, and the prime minister followed in 2008, saying that he recognized that “the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language.”<sup>108</sup>

### **Kenya: Truth, Justice, and Reconciliation Commission, 2009–present**

A truth commission was debated in Kenya for a number of years before it was finally created. President Daniel arap Moi was voted out of power in December 2002 after decades of repressive policies, including targeted assassinations. Shortly after taking office, President Mwai Kibaki appointed a task force to consider a truth commission for Kenya. After public hearings across the country, the task force submitted a report which recommended that a Truth, Justice, and Reconciliation Commission be established as soon as possible, suggesting that its mandate should go as far back as independence in 1963 and that it should also cover corruption and economic crimes.<sup>109</sup> Other political developments soon took priority, however, and the proposed commission did not move forward.

After presidential elections in December 2007, Kenya was engulfed in intensifying violence for two months, with political differences quickly turning into ethnically targeted attacks. Many believed that the violence was at least initially provoked from above, with arms and militias organized for political gain. In mediated talks led by former UN Secretary-General Kofi Annan and a Panel of Eminent African Personalities, the two major political parties agreed from the start that there would be a truth commission. A framework of principles and powers for such a Truth, Justice, and Reconciliation Commission (TJRC) was agreed during the final agenda of the talks in March 2008.<sup>110</sup> The parties also agreed to a Commission for the Investigation of Post-Election Violence, which would be established more quickly and work for three to four months, focusing on the most recent events; this commission could make recommendations to the following truth commission.

The draft legislation to establish the TJRC, put forward by the Ministry of Justice, was criticized by rights advocates for confusing language in relation to amnesty (with the power to recommend amnesty, but not clearly stipulating which crimes were excluded), as well as the strength of the commission’s

operational independence.<sup>111</sup> It was also resisted by Members of Parliament, many of whom were uninterested in accounting for past crimes. The legislation was passed, after some revisions, in early 2009.

Six national and three international commissioners were appointed after a selection process that worked under tight time constraints, thus limiting the time for consultation. A parliamentary committee considered a shortlist, forwarding names to the president, who selected the final members. The three international members were nominated by the Panel of Eminent African Personalities. The greatest criticism as the commission began work was in the appointment of its chair, diplomat Bethuel Kipligat, who had held senior political posts under President Moi for many years.

The commission was inaugurated and began its three-month preparatory period in August 2009. It would have two years to undertake its work, covering events from independence in 1963 through February 28, 2008, including economic crimes. The commission (and the Kenyan public) understood “economic crimes” to include violations of socioeconomic rights more generally, and the mandate also makes specific reference to the illegal acquisition of land. As the commission began its work, it thus recognized an opportunity to address human rights violations more holistically, beyond classic violations of bodily integrity.<sup>112</sup>

Meanwhile, the Kenyan political class was overtaken by the likelihood that the International Criminal Court might engage in Kenya in relation to the post-election violence. The government cabinet released a statement suggesting that the TJRC could offer an alternative route, perhaps taking on prosecutorial powers through an expanded membership and mandate. As one of its first acts, the commission responded with a statement rejecting any suggestion that the commission could take the place of criminal justice. The government soon backtracked, accepting that the commission’s mandate would not change.<sup>113</sup>

## 6 What Is the Truth?

Regardless of the specificity of their terms of reference, all truth commissions have to make many decisions about what will be recorded, investigated, and what they will ultimately report.

### **Interpreting the Commission Mandate**

Truth commissions are obliged to fulfill their specific mandate, or the terms of reference upon which they are founded. The mandates of some have been explicit about what abuses they were to document and investigate, but many provide only general guidance about the acts or violations to be investigated. These terms of reference, usually created by presidential decree, national legislation, or as part of a peace accord ending a civil war, can define a commission's powers, limit or strengthen its investigative reach, and set the timeline, subject matter, and geographic scope of a commission's investigation, and thus define the truth that will be documented.

Where the guidelines have been set out very clearly and specifically, some commissions have found themselves restricted to looking at only a portion of the abuses that took place. For example, a number of the truth commissions have been directed to look only into disappearances, such as those in Argentina, Uruguay, and Sri Lanka; but such explicit restrictions risk excluding a significant portion of the truth. The two Uruguayan commissions missed the majority of the human rights violations that had taken place during the military regime because of such a limited mandate; illegal detention and torture, which constituted the bulk of the abuses, were ignored. The first commission in Chile investigated disappearances, executions, torture leading to death, political kidnappings, and attempts on life by private citizens for political purposes,<sup>1</sup> but its mandate prevented it from investigating incidents of torture that did not result in death, a fact that was criticized by international human rights observers and kept the total count of victims relatively, but unrealistically, low. This ultimately led to the creation of a second commission to address all those cases that had been left out.



For those commissions with a more flexible mandate, a fuller picture of the truth may emerge. The crafters of the terms of reference in El Salvador, deliberating under the pressures of UN-negotiated peace talks, considered specifying which specific cases the commission should look into, but finally left the mandate fairly open, indicating only that the commission should report on “serious acts of violence . . . whose impact on society urgently demands that the public should know the truth.”<sup>2</sup> The commission, reading this language, decided to take testimony from thousands of victims, summarize the overall patterns of violence, and report on some thirty cases in depth, all of which went much further than what the crafters originally envisioned. The cases chosen for in-depth investigation were intended to be representative of typical victims, perpetrators, and types of abuse over the twelve years of civil war. The language of the El Salvador commission is a good model: as a general rule, terms of reference should be sufficiently broad and flexible to allow investigation into all forms of rights abuses, leaving to the commission the decision of what specific cases or practices to investigate and report. (See Chart 4 in Appendix 2 for examples of the acts included and excluded in the investigations of a number of past commissions.)

In addition to explicit limitations in a commission’s mandate, commissioners may self-impose restrictions on what the commission will investigate or report. Owing to time constraints, limited resources or staff, or insufficient or unreliable information, or in response to political pressure, commissioners might avoid certain topics altogether or decide to omit information from their final report. In Argentina, the commission’s primary goal of persuading the general public about the abuses that had taken place, and trying to prevent any question as to whether these might be justified, had two consequences for its report. First, the commission excluded the political affiliation of victims, so as not to allow a calculation by readers of some measure of political justification; the commission instead presented them simply as “human beings whose rights had been grossly violated.”<sup>3</sup> Second, the commission decided not to describe certain abuses that took place “because of their extreme cruelty, fearing that this might undermine the credibility of the report.”<sup>4</sup>

In South Africa, the commission was directed to investigate gross human rights violations, defined as “killing, abduction, torture, and severe ill-treatment,”<sup>5</sup> but this was not understood to include all abusive practices of apartheid. The commission was particularly criticized for excluding from its inquiry the practice of “forced removals,” the apartheid policy that forcibly relocated millions of blacks to barren lands. Excluding this practice from its inquiry may have been justified on grounds of the commission’s overwhelming workload and because the forced removals policy was instituted through law and already well documented, but it prevented many South Africans from seeing their own personal experience reflected in the commission’s work. Ugandan scholar Mahmood Mamdani, based at the University of Cape Town during the years of the commission’s work, claimed that the commission was creating “the founding myth of the new South Africa” by putting forth a

“compromised truth” that “has written the vast majority of victims out of history” in excluding such prominent apartheid practices.<sup>6</sup> The truth commission, however, noted that there was a constitutionally established Land Commission that was addressing these issues, and that it did cover the issue of forced removals, in general historical terms, in its report. Nevertheless, it could have been quite effective for the commission to hold at least one televised hearing that highlighted legal but abusive apartheid practices.

A commission’s interpretation of “truth” will also be determined by the personality and personal priorities of its leadership. For example, in Sri Lanka the president created three geographically distinct commissions to investigate disappearances over the previous seven years. The commissions were created on the same date and were given identical mandates, but each worked independently on its assigned third of the country, and each implemented its mandate slightly differently. Rights monitors who observed these commissions in operation described how one of the commissions was clearly oriented toward identifying perpetrators and recommending prosecution; another focused more on the financial loss to each family and their reparations needs; and the third took on a more academic tone aimed at reconciliation and the psychology of national healing.<sup>7</sup> One of the three commissions initially chose to hold public hearings, while the other two held all hearings in private (the public hearings ended early after some deponents received threats). And although the commissions’ mandate was to investigate disappearances, one of the three commissions also included victims who were killed outright in its list of the disappeared—interpreting the term as meaning something closer to “disappeared from this world”—though this was clearly not intended in the language of the mandate, according to observers.

Some truth commissions have investigated abuses both by state forces and by the armed opposition. After a civil war, or armed conflict, it is almost unquestioned that both or all sides should be investigated. This was of course essential in Sierra Leone, Liberia, El Salvador, Guatemala, and South Africa. On the other hand, in Chile the armed left was small and its abuses considered fairly insignificant compared to violations by state forces. There, many human rights advocates opposed the decision to include killings by the armed opposition in the commission’s mandate, as they saw this as detracting from the more important issue: that of killing, torture, and disappearances by the state.

Finally, recent truth commissions have begun to grapple with a broader range of rights, asking how and whether to address economic, social, and cultural rights as well as the civil and political rights that are more standard to these inquiries. Should corruption and economic crimes be investigated by a truth commission? What about broader issues of poverty, whether as a causal factor or a consequence of a conflict? These issues have naturally emerged in the conclusions of many commissions. But it is not clear how the full range of economic rights might be addressed in this kind of inquiry. Some provocative ideas on these questions are beginning to emerge.<sup>8</sup>

## Investigating the Role of International Actors

Truth commissions have varied considerably on the question of whether and how to address the role of international actors in past political conflict and abuses, though the trend is definitely toward covering this question in some depth and sophistication. In virtually every case looked at here, there were international actors—usually foreign governments, sometimes private actors—that helped to fund, arm, train, or otherwise aid government or other forces that were known to be extremely abusive. The role of foreign entities in supporting such governments or armed groups is often an important part of the story, and thus should be investigated, or at least formally recognized, in a truth report.

Most of the earliest truth commissions did not investigate this international role at any depth. Despite a long record of international support for parties to the El Salvador civil war, especially the extensive assistance from the United States to the Salvadoran military, the El Salvador truth commission report did not address the role of international actors, except for describing how the U.S. government “tolerated, and apparently paid little official heed to” a group of Salvadoran exiles in Miami, Florida, who “directly financed and indirectly helped run certain death squads” in El Salvador, especially between 1979 and 1983. The report states:

It would be useful if other investigators with more resources and more time were to shed light on this tragic story so as to ensure that persons linked to terrorist acts in other countries are never tolerated again in the United States.<sup>9</sup>

Commissioner Thomas Buergenthal told me that if any foreigner had been found to be directly involved in actual violations, the commission would definitely have stated so. The intent of the commission’s mandate was not to study the extent of international involvement, Buergenthal continued; if the commission had attempted to investigate foreign involvement in the war—which might include involvement by Cuba, Nicaragua, and the Soviet Union, as well as the United States—then it would not have been able to fulfill its main mission: to clarify the circumstances and extent of the political violence in the country.<sup>10</sup> The release of the truth commission report did, however, spur the U.S. government to review its past policies on El Salvador and to release thousands of classified documents to the public.

The commission in Chad was the first early truth commission to confront this issue with some breathtaking rigor: its 1992 report names the exact amount of external financial backing provided to the regime, as well as the extent of training for the intelligence service responsible for the worst abuses—facts that were not previously well known by the public or even the national or international human rights community.

Many of the truth commissions since have grappled with this issue relatively honestly and directly. The Guatemalan Historical Clarification Commission

pointed to the context of the Cold War, including the national security doctrine fervently backed by the United States, as one of the factors behind that country's brutal civil war. In presenting the report to the public, commission chair Christian Tomuschat noted that,

until the mid-1980s, the United States Government and U.S. private companies exercised pressure to maintain the country's archaic and unjust socio-economic structure. In addition, the United States Government, through its constituent structures, including the Central Intelligence Agency, lent direct and indirect support to some illegal state operations.<sup>11</sup>

In a visit to Guatemala shortly after the report was released, U.S. president Bill Clinton acknowledged the important work of the commission, said that it was "wrong" for the United States to have supported such abusive forces, and avowed that "the United States must not repeat that mistake."<sup>12</sup>

Many West African conflicts are interlinked, with funds, arms, and fighting forces crossing borders easily. The Liberian commission report outlines with some specificity the role of Côte d'Ivoire, Burkina Faso, and Libya in fueling and directly aiding the fourteen-year civil war.<sup>13</sup> However, the commission gives greater emphasis to the role of the United States in allowing or supporting abusive governments throughout Liberia's history, as well as failing to intervene to stop the recent civil war, tracking this "special relationship" between the United States and Liberia back to Liberia's independence in the mid-1880s. The United States, the report says, "alternately supported, exploited, welcomed, and abandoned Liberia and Liberians. While the relationship over time has been complex, during several key periods the United States' actions and omissions have led to disastrous results for Liberians."<sup>14</sup>

The Sierra Leone Commission was directed in its mandate to look into the "role of external actors" in the war.<sup>15</sup> In its detailed findings, it holds Liberian president Charles Taylor to be "primarily responsible for initiating the conflict," but also concludes that the war cannot be largely blamed on outsiders, in that the "overwhelming majority of atrocities were committed by Sierra Leoneans against Sierra Leoneans."<sup>16</sup> It also documents how the war worsened because the country was "abandoned by the international community," with the exception of an underfunded regional peacekeeping force.<sup>17</sup>

The truth commission of Timor-Leste was reporting on a conflict fundamentally shaped by its neighbor (and former occupier), Indonesia. The commission unflinchingly reports that Indonesia is "primarily responsible and accountable for the death from hunger and illness of between 100,000 and 180,000 East Timorese civilians" during the twenty-five years of Indonesian occupation, detailing practices for which "the only logical conclusion" is that Indonesian forces used starvation as an intentional weapon of war.<sup>18</sup> It also sets out extraordinarily brutal acts that showed a "strategic use of terror to force the population into submission."<sup>19</sup>

### **Defining Truth: What Information Is Collected?**

Besides the mandate given to a commission, its report will also reflect the methodology employed in collecting and analyzing information. The factor that will most fundamentally affect the kind of truth that a commission will document is the information management system that it uses to collect, organize, and evaluate the huge amount of information that may be available to it. In recent years, larger truth commissions have employed sophisticated databases to record and analyze the details collected in thousands or tens of thousands of testimonies from victims and witnesses. Experts argue that a powerful database is essential to a truth commission's task. It is true that many kinds of analysis cannot be done without the use of such a program, especially if thousands of cases are being documented. However, less attention has been given to how a database focus in information-gathering can also have a limiting effect on how the information is collected as well as the final truth that is told.

Some participants in past truth commissions have a critical perspective of the information management system used by modern truth commissions, and have begun to ask whether this approach allows a commission to answer some of the questions that it may want to ask. Janis Grobbelaar, who was an information manager for the South African truth commission, was one of the first sociologists to staff a truth commission. When she came to the commission in April 1996, as it was just beginning its work, one of her first questions was about the commission's research or investigation methodology, and she found that the commission had not thought about this issue in much depth. The database-driven approach, she said, reflects a perspective of "acontextual logical positivism, where one focuses on acts, names of perpetrators, and names of victims, but does not ask why and how." She continued:

For practical reasons, this is the right model. Commissioners can buy into value neutrality and positivism. But I'd be more interested in more qualitative variables: looking at the narratives of people's stories, looking at the why questions. Do we know why all of this happened? We're only interested in showing what happened."<sup>20</sup>

The wider context around specific truths may go unaddressed by a close focus on specific acts. Grobbelaar undertook her own informal survey in order to understand some of these dynamics, interviewing many of the commission's statement-takers who had direct contact with the victims. "Who came to the commission?" she asked. "That's an important question. The answer is: less resourced people, materially and psychologically less resourced. Their experiences and their interest in giving testimony were connected to material deprivation." And, Grobbelaar concluded, most victims were saying to the commission, "'Reconciliation must be materially linked. Give me something that enables me to go on.' How did people experience apartheid in this country? As poverty-stricken people, with very little opportunity to change that.

Anything outside of that was white,” said Grobbelaar. So, the commission’s focus on acts, victims, and perpetrators missed a greater reality: how was apartheid experienced, and from what is it that people were trying to heal?

Daniel Rothenberg, a U.S. anthropologist who worked with the Guatemalan truth commission in its first months, considered some of these same questions. He was struck by the fact that no other social scientists were initially on the staff of the commission, and how the commission’s information management and field research methodology was crafted by people who, outside of the database consultants, had no experience in field research or large interviewing and data-collection projects. “You realize how much social science has to offer to any inquiry when you see how it’s not included in truth commission work,” he said. The model employed by the commission has its advantages, said Rothenberg, but there is something questionable about deciding on your methodology before deciding on what you want to achieve. Those fundamental questions that should shape the very nature of a truth commission—what kind of truth, and for whom—were perhaps not sufficiently grappled with at the start of the Guatemalan commission. Those shaping the methodological questions approached their task with a legal mindset, which defined a set of questions on the basis of documenting specific acts of human rights violations. Instead, Rothenberg argued, a truth commission should define its goals first, before bringing in experts to design a database that will shape the final output.<sup>21</sup>

I heard similar questions being asked elsewhere. Over a three-hour conversation in Port-au-Prince, Haiti, Jean Claude Jean, then director general of the Karl Leveque Cultural Institute and former director of a human rights coalition in Haiti, explained how his vision for a truth commission was very different from what ultimately took shape there. He was part of an initial effort by non-governmental organizations to craft terms for a proposed Haitian truth commission, and supported the idea of creating such a body for Haiti, but after the commission had been set up and in operation for a few months, he published a paper that was critical of its work, and particularly of its methodological approach. He told me:

You need first to have a methodology, to know what you’re going to do with the information. Just to produce a technical report on cases is not very useful, nor is it accessible to the population. In order to get to the truth, fight impunity, keep memory alive, and obtain justice, the main condition would be that the population participate in the research and production of the commission’s work.

More than specific information about cases, the public wanted to know how the repression worked, how different groups operated, and who the masters were behind the repression, he said. “The truth commission should be a public affair. I wanted people to see the process and to locate themselves in the process. I wanted to use the commission to encourage public debate.”<sup>22</sup>

Ultimately, these questions come down to what purpose a commission is intended to fill. As already explored, a truth commission's many specific goals may be multilayered: to reach out to victims, to document and corroborate cases for reparations, to come to firm and irrefutable conclusions on controversial cases and patterns of abuse, to engage the country in a process of national healing, to contribute to justice, to write an accessible public report, or to outline needed reforms. Each of these goals may suggest a different approach to its work. Yet because any process that is rooted in detailed testimony-taking and the use of a sophisticated database requires so much focused energy, this approach tends to define the very nature of a truth commission process and, through its coding and data entry sheets, the truth that the commission will collect. It is not clear exactly what the other possible information-collection models are, but it would be worthwhile for future truth commissions to consider the question seriously before simply following the path taken by commissions in the past. Could a commission document the truth without taking thousands upon thousands of detailed testimonies? Might a commission focus on the sociological, physical, and even psychological effects and tools of repression that fall outside of gross human rights violations, perhaps through a number of case studies on the broader impact of the repression? Some commissions have done this effectively through descriptive chapters on the consequences of the violence.

The Guatemalan commission's impressive approach is typical of the more robust truth commissions to date. The language of the Guatemalan Historical Clarification Commission's mandate called for an investigation into the "factors and circumstances" of the violence and human rights violations, including "internal as well as external" factors.<sup>23</sup> Staff research teams were established to address causes and origins of the armed conflict, strategies and mechanisms of the violence, and consequences and effects of the violence. This included an analysis of refugee flows, the economic impact of the armed conflict, and other effects of the three-decades-long war. Likewise, some investigators in its field offices undertook extensive interviews with community leaders and others who had no specific case to report, but who could provide detailed contextual information about how their community was impacted by the violence, or the growth and dynamics of the armed opposition in the region over the years. The director of one of the commission's field offices described taking at least one six- to eight-hour statement from a knowledgeable member of a community who was able to set out the history and development of the conflict in the region over many years. The researcher took down the whole testimony directly onto his laptop computer. In addition, from its headquarters in Guatemala City the commission developed a list of "key witnesses" whom they invited to the office to give testimony not about specific cases, but about the larger context of the war and atrocities. These included former presidents, senior members of the armed forces, Church leaders, Mayan community leaders, and others. Not all accepted the invitation to come to the commission to give testimony and not all who came were willing to

answer all of the commission's questions. But many provided useful contextual information.

But there was still something restrictive about the parameters of the commission's work, which is seen better in contrast. Another truth-seeking effort in Guatemala, the Recovery of Historical Memory Project (REMHI), undertaken by the Human Rights Office of the Archbishop of Guatemala in advance of the official truth commission, suggests an alternative approach to collecting information about past atrocities. The standard interview format used by this project included qualitative, rather than just quantitative, questions, focusing on the context and impact of the event, and was structured to be emotionally and psychologically supportive. Beyond gathering the facts pertaining to the specific human rights violation, the interviewer would ask the deponent to describe the victim, including the person's personality (was he a good father? was he cheerful or fun?); to describe how the event affected the deponent and the community as a whole; and to talk about why it happened and what the deponent or the community would like to do now. "Clearly, the complexity and depth of what happened went far beyond violating individual rights," said Marcie Mersky, a senior staff member on the project, noting that it was often the destruction of cultural or religious symbols, or the forced participation by an entire community in the mutilation of the corpse of a community member, for example, which were the most painful and destructive events, although they would not have fitted into a traditional inquiry into human rights violations. To ease the flow of the interview, each session was tape-recorded, and many were transcribed, which allowed extensive quotations from victims and survivors to be included in the REMHI report. "The main idea was to get people to talk," said Mersky.<sup>24</sup> Relying on members of the community to take testimony, after receiving training by the national office, the REMHI project was focused much more on the process and impact of collecting testimony than on the final production of a report.<sup>25</sup>

The question of what kind of information a commission should collect can sometimes have great political and emotional significance. The Argentine commission decided not to ask survivors about the physical characteristics of the disappeared that could help identify remains, a decision that some regretted later as unidentified skeletons were unearthed. Commission members acknowledge that they were resistant to taking down such information, a reflection of the political and emotional position of many human rights organizations and victims' families at the time, which extended to the commission staff. "This is explainable and justifiable," one commissioner told me, when asked about the commission's decision. "This was precisely the argument of the Madres [the mothers of the disappeared]: 'They took them alive and we want them back alive; we're not going to recognize anything that would presuppose that our children are dead.'"<sup>26</sup> The implied position of the commission, that the disappeared should be presumed to still be alive, had at least one startling consequence: in the list of the 8,960 disappeared that was printed as an annex to the commission report, the age of each victim is



listed not as the age at which the person was disappeared, but the age he or she would have been in 1984, the year the commission report was published—an age, it is now accepted, that none of those on the list ever reached.

### **One Truth?**

Finally, some historians and legal experts have questioned the idea of establishing “official truth,” through either tribunals or truth commissions. Historian Tristram Hunt, for example, argues that historians should consider truth commissions to be historical events—rather than historical sources. In part because of “a degree of naiveté but also a shade of arrogance,” he writes, the legal profession tends to believe that “what is recorded within the court room or inquiry hall can constitute the irrefutable history of the past. This is both intellectually circumspect and historically dangerous.”<sup>27</sup>

Defining truth is contentious. It is impossible for any short-term commission to fully detail the extent and effect of widespread abuses that took place over many years, or, for most, to investigate every single case brought to it. However, it can reveal a global truth of the broad patterns of events, and demonstrate without question the atrocities that took place and what forces were responsible. If it is careful and creative, it can also go far beyond simply outlining the facts of abuse, and contribute to a much broader understanding of how people and the country as a whole were affected, and what factors contributed to the violence. This cannot be the whole truth—that is impossible to provide in one report. But it can hope to represent a broad—and specific—truth that will be accepted across society.

## 7 The Truth about Women and Men

To simplify things: in the greater pattern of events, women and men experience war and repression differently. Of course both men and women are direct victims of similar kinds of abuses, but those killed and imprisoned are in greater proportion men, and those forced to move from their home and left in abject poverty as a result of the conflict are in greater proportion women.

Refugee flows caused by war disproportionately comprise women, children, and the elderly. The loss of the primary breadwinner in many thousands of families, in societies that largely rely on men to provide a family's financial support, can have a profound impact on women and children, and ultimately on the fabric of the community.

When women come into contact with fighting forces, they may suffer physical violence of a different nature than that perpetrated against men and boys, often extraordinarily cruel and degrading. Sexual violence has been perpetrated at extremely high levels in some conflicts, and sometimes done intentionally to inflict brutality, physical damage, and terror, including gang rape, deliberately injurious rape such as with objects, and mass rape in public in order to shame and devastate the entire community. While women in most wars are not the main combatants, some count them as the main victims—despite the fact that, usually, more of those who die in conflict are men.

These generalities should not mask the many other important details about the possible roles and experiences of women and men. Women may be combatants, sometimes in significant numbers. They have held leadership roles in fighting forces and in political entities engaged in war and decision-making. Women sometimes play a critical role in trying to settle differences that are at the root of festering conflict. They may take up powerful leadership roles in communities torn asunder by the conflict, and may suffer as a result when the conflict returns. On the other hand, the crime most associated with women is also suffered by men: sexual violence against men and boys may be less documented and even more difficult to speak about, but it does appear in many conflicts and can equally terrorize and traumatize both individuals and entire communities.

Truth commissions have been criticized for missing this story: for missing the variation and complexity of the violence and its impact, for failing to analyze

the record from a “gendered” perspective. A commission may emphasize “serious crimes,” and thus prioritize torture, killings, and disappearances—but fail to look into the economic impact, the effect on families torn apart, or the deep damage to the psyche and trauma of a population as a result of widespread rape. Few truth commissions, also, have examined the economic and social factors that allowed or even encouraged serious abuses to take place.<sup>1</sup>

A major study of truth commissions and gender, published in 2006 by Vasuki Nesiah at the International Center for Transitional Justice, concludes that “many truth commissions have failed women—the crimes they have suffered are under-reported, their voices are rendered inaudible, their depiction in commission reports is one-dimensional, and their needs and goals are deprioritized in recommendations for reparations, reform, and prosecutions.”<sup>2</sup> Truth commissions have tried to improve in this respect, and many commissions now have specialized staff and training, explicit language in their mandate, and a chapter in their final report on gender-related issues.

## **Sexual Abuse**

Until recent years, sexual abuse was often unreported (or significantly under-reported) in human rights investigations and reports, including those by truth commissions. Many commissions have received much less information about sexual abuse than what experts believed took place.<sup>3</sup>

This under-reporting is due to a number of factors. In many cultures, rape carries great social stigma, embarrassment, and shame for the victim, and women are understandably uncomfortable providing testimony about sexual abuse in public hearings, or even in private hearings if the details would then be released in a public report. There can be a tendency for women to down-play their experiences, emphasizing instead the stories of the men in their families.<sup>4</sup> Commissions may unconsciously encourage this tendency: some abuses suffered by women are reported as “secondary experiences,” said Beth Goldblatt, a researcher at the Centre for Applied Legal Studies at the University of Witwatersrand in Johannesburg, South Africa, who studied how the South African commission responded to testimony from women. “Women who spoke to the commission were often portrayed as mothers and sisters and wives,” Goldblatt said.<sup>5</sup> The Guatemalan truth report also describes how, in most testimony that it received, “rape of women is mentioned as a secondary or ‘added on’ aspect in relation to other violations.”<sup>6</sup> Many of the earlier truth commissions were not very proactive in seeking out, encouraging, or facilitating testimony from women.

The hesitancy by women to speak about their own sexual abuse is understandable, and can make statement-taking a challenge. A description of the experience of statement-takers in Peru may be typical:

In some testimonies, women do not clearly say whether they were actually raped or were the victims of attempted rape. They often make reference to

a rape attempt or threat, or use confusing terms when describing the acts of sexual violence; in particular, they make reference to their “dignity” or say that other women, and not themselves, were raped.<sup>7</sup>

While many women may choose not to speak out, the record of sexual crimes should be reported by a commission where it is known, so that it does not remain shrouded in silence and hidden from the history books—and so that educational and reparatory measures may follow.

The Guatemala truth commission report includes a long and very powerful chapter that describes, with searing quotations from witness testimony, incidents of gang rape and other widespread practices of extreme sexual violence against women. On the basis of the evidence before it, the commission came to the conviction that “these were not isolated acts or sporadic excesses, but part of a strategic plan” that especially targeted Mayan women.<sup>8</sup> The extent of sexual abuse in Guatemala had not been previously known. During the Guatemalan peace negotiations several years earlier, no one raised the subject of sexual violence, including the civil society organizations that were providing input.<sup>9</sup> The negotiating parties were unaware that sexual violence had been a major element in the civil war’s abuses, according to Luz Méndez, a member of the negotiation team of the armed opposition.<sup>10</sup> It was only when the truth commission began to collect testimony that these significant patterns emerged.

In at least one early case, a truth commission had information about sexual abuse against women but chose not to report it, judging that rape did not fall within its mandate of politically motivated crimes. Reporting on a prominent 1980 case, the truth commission in El Salvador opted not to mention in its report that three U.S. nuns and one lay worker had been raped by soldiers before they were killed. Although the commissioners had concluded that rape took place, it reported only that the women had been abducted and killed. A commission member told me that since there was no evidence that the rapes resulted from orders from above, and it was assumed that the rapes were at the initiative of the soldiers, they were not considered to be politically motivated acts and were therefore left out of the report.<sup>11</sup>

This question of when sexual abuse is politically motivated, and thus falls within the ambit of a truth commission, has challenged many truth commissions. The South African TRC struggled with this. Vasuki Nesiah explains:

[T]he TRC’s mandate provided a partial and conditional amnesty for *politically motivated* violence, so the Commission had to grapple with whether rape was a political act. . . . Eventually, the Commission determined that rape was not political in terms of mandate interpretation. While this conclusion was motivated by an interest in heightened accountability for rape, it offers a rather ambivalent and problematic message regarding South African feminist struggles to gain greater recognition of the politics of sexual violence.<sup>12</sup>

For some commissioners in South Africa, this was not a difficult question, as they could not imagine classifying rape as politically motivated. Commissioners serving on the TRC Amnesty Committee told me that they threw out an application to receive amnesty for rape, after giving it virtually no consideration, because it was impossible, in their logic, that such a crime could be political. In fact, they cited this as an example of one of the most far-fetched amnesty applications they had received. “How can someone claim that they raped someone just because she was from another political party? That makes no sense,” a commissioner told me, with nodding from his colleagues.<sup>13</sup>

But this is not so obvious—and, in fact, the opposite conclusion may be more sound—when considering the question from the perspective of how, by whom, against whom, and in what contexts this sexual violence is taking place. Like many aspects of violence, these individual acts are best understood when seen in the broader context: how often, in what manner, and in what circumstances was sexual violence occurring? In the case of South Africa, if the Amnesty Committee members had reviewed the thousands of testimonies received from victims, they would have found many reports of rape clearly understood by the victims as conflict related and in some way “politically motivated.”

Rape is of course sometimes a purely individual crime unrelated to the broader political context. But there is no question that rape may also be used as a weapon of terror and a tool of repression. When sexual violence is happening on a widespread basis by fighting forces, the pattern would suggest that it is allowed or even encouraged by the command authorities. Similarly, when rape takes place regularly in prisons, or against political opponents, or when rape extends to brutal mutilation and intentional public shaming, it simply must be understood to be more than an individual crime.

The logic employed by the Salvadoran and South African commissions, which suggests a lack of understanding of the nature and intent of sexual violence in the context of armed conflict, would be less likely today. There has been rapid progress since the late 1990s in the legal as well as the political or sociological understanding of sexual abuse in the context of war. In 1998, the Rome Statute establishing the International Criminal Court defined rape and other forms of sexual violence as crimes against humanity or war crimes, under certain conditions.<sup>14</sup> International tribunals have rendered key decisions confirming this, and have also established that rape may be an element of genocide.<sup>15</sup>

There has also been a heightened appreciation generally of the importance of more fully describing women’s experiences in any historical record of abuses. The UN Security Council passed a resolution in 2000 which raised the attention paid to women as regards war and peacemaking, and in 2008 the Security Council returned again to the subject with a resolution specifically focused on sexual violence.<sup>16</sup> This second resolution confirmed the legal requirements for criminal accountability under international law, but also called for urgent action to stem sexual violence in conflict.

## Uncovering Women's Experiences

Many recent truth commissions have been proactive in addressing these challenges. Commission reports from Liberia, Timor-Leste, Peru, Sierra Leone, and Morocco, as well as the South African and Haitian commissions in earlier years, have included major chapters on gender-specific crimes or on the experience of women in the conflict. These commissions' methodologies of investigation, statement-taking, and staffing have attempted to foresee the challenges in this arena and ensure a gender-sensitive perspective in their conclusions.

But despite these well-meaning efforts, commissions sometimes conclude that they somehow missed something. In South Africa, women's advocates provided intensive workshops for the truth commissioners early in the commission's tenure, assisting in the design of policies to best receive and be respectful of women's experiences. The South African commission organized several special hearings for women, with a women-only panel of commissioners and, in one case, allowing deponents to give testimony from behind a screen, avoiding television cameras. But because some of the economic impacts and broad, discriminatory policies of apartheid were not covered by the truth commission, this also limited the full story in relation to women's experiences. In its final report, the commission acknowledged that "the definition of gross violation of human rights adopted by the Commission resulted in a blindness to the types of abuse predominantly experienced by women."<sup>17</sup>

The very makeup of the commission—specifically, the balance of female and male commissioners and staff—is a place to start in improving commissions' policies. Some commissions are required by their mandate to include a certain number of women in their membership. But it would be wrong to assume that all female commissioners will bring expertise in addressing crimes against women—or that male commissioners will not. Many commissioners do not at first understand the impediments to documenting women's experiences, or understand the "gendered" dimension of political violence. A proactive effort is necessary to allow commissioners to understand and grapple with these realities early in a commission's tenure.

It is now common for the mandate of truth commissions to explicitly indicate that the experience of women should be given special attention. One of the first truth commissions that included such specific language in its mandate was in Haiti, which was directed to pay particular attention to "crimes of a sexual nature against female victims that were committed with political ends." This resulted in focused attention on the subject throughout its work and a section of its report dedicated to sexual crimes.<sup>18</sup> However, while such language is helpful, much more important are the perspectives and strategies led by the commissioners themselves.

Experts have outlined a range of other operational suggestions for future commissions: appoint a senior gender expert on staff, but also mainstream these

issues throughout the commission. Look carefully at special procedures for public hearings. Offer specific skills training, such as for statement-takers to handle reports of sexual abuse. All deponents who approach the commission should have the choice of a male or female statement-taker. Work closely with women's organizations, which bring useful expertise and contacts. Consider proactively undertaking intensive interviews with a select number of women.<sup>19</sup> These and other ideas are detailed in a number of recently published handbooks and policy papers.<sup>20</sup> Where there is interest and commitment from a commission, the truth-seeking process and its final report may help to advance the understanding of these difficult issues.

## 8 Truth and Justice

### A Careful but Critical Relationship

During the negotiations to end the civil war in Guatemala, the Guatemalan armed forces supported the idea of official truth-seeking. In a meeting with international human rights advocates in 1994, Mario Enriquez, then minister of defense, made his position clear. “We are fully in support of a truth commission,” he said. “Just like in Chile: truth, but no trials.”

This story was relayed to me in the late 1990s by the director of the Americas Division of Human Rights Watch, José Miguel Vivanco, to illustrate the risk that a truth commission may be employed to avoid trials for rights abusers. Indeed, during this period of the 1990s, when truth commissions seemed to suddenly gain prominence, there was considerable worry from human rights advocates about the intention and the impact of these bodies, particularly in contexts where criminal justice was unlikely and political resistance to accountability was high. There was, simply, a suspicion that truth commissions were likely to weaken the prospects for proper justice in the courts, or even that commissions were sometimes intentionally employed as a way to avoid more serious accountability.

Guatemala was not the only such example. In the peace talks of Sierra Leone in 1999, the Democratic Republic of the Congo in 2002, Liberia in 2003, and in many other contexts, there has been either an explicit or an implicit link between an agreement for a truth commission and an agreement, understanding, or hope that there would be no trials. In 2009, Kenya continued to resist accountability for those who instigated the post-election violence of early 2008. Mixed messages from the political leadership in Kenya and the apparent squirming by the cabinet made clear that some leaders hoped the Kenyan truth commission could take the place of criminal justice in court. (The newly installed truth commission helped to stop this speculation by publicly stating that it would play no such role.)

Thus, it is true that we continue to see powerful perpetrators around the world (and even some well-intentioned policymakers, in the search for “reconciliation”) suggesting that a truth commission is a useful compromise solution to the demand for justice during a fraught political transition. But even while this continues to frame the political conversation in some places—or the unspoken political dynamic—the concerns within the international



human rights community have significantly diminished. This is because the facts on the ground—the actual role and impact of truth commissions, no matter the original intention—have shown that these commissions have not had the effect of damaging or weakening criminal justice. On the contrary, many truth commissions have made significant efforts to try to advance prosecutions, including by providing to prosecutors the names of suspects and clear evidence on which to build a case. But even beyond the possibility of providing information for trials, many human rights advocates now see truth commissions generally as a positive step toward accountability. Among those advocating for criminal justice, the fear of a “trade-off” between truth and justice has largely receded.

“This false duality has become obsolete,” noted Wilder Tayler, a leading legal mind in the international human rights community, in 2009. “We’ve come a long way,” he said, remembering the “hot debate” about these issues ten years earlier. “When I hear of a new truth commission now, I first think that it’s good in principle, and I then immediately think about standards that should inform the commission. But I don’t think about how it might negatively affect justice. This is no longer an internal debate in the human rights community—that worry of a ‘trade-off’ between truth and justice.”<sup>1</sup>

José Miguel Vivanco, who had recounted the concerns ten years ago about the Guatemalan defense minister trading justice for truth, says that his views have changed significantly on this issue. While he still prioritizes criminal justice, he suggests that when prosecutions are not possible, owing to political constraints, “one of the smartest options, strategically, may be to start with a truth commission. Normally this is going to create conditions for accountability.” It does this, he suggests, by naturally opening up the subject to further questions. When a credible body lays out the facts of what happened,

the next question, in any normal person’s mind, is: what do we do? It’s not “this is over,” but rather “Are we doing enough? Where are these people who have been disappeared? Are they alive? Is there any chance to do some justice? Are criminals still working in the police and the military?”

And possibly, he noted, you might then get extra resources for a judge to concentrate on these cases, as has happened in Chile.<sup>2</sup>

There is also now an acceptance among knowledgeable policymakers, such as within the United Nations or many in the peace mediation community, that non-judicial truth-seeking cannot legitimately be considered an “alternative” to replace criminal justice—and in particular for those perpetrators seen as most responsible for large-scale crimes. Indeed, prosecuting serious crimes is usually a legal obligation on the part of the state, grounded in both international and national law. Many UN documents and policy statements echo the complementary nature of non-judicial and prosecutorial approaches. In brief, this idea is now accepted.

But an “obligation” to prosecute certainly does not mean that prosecutions necessarily take place, or are successful and free of political influence if they do happen. Fair and decent trials are rare in post-atrocity countries. The reasons for a lack of prosecutions are plentiful, often recounted, and far too common in most countries addressed in this book. In such contexts, a truth commission can be a refreshing—and seemingly even quite bold—first step in the direction of accountability. Meanwhile, the relationship between truth commissions and the justice sector can be complex. It is not just that trials might be based in part on information from a truth commission, but also that truth commissions sometimes have access to the current, active files of prosecutors, and, additionally, commissions often investigate and reach strong conclusions about the judiciary’s failings during the years of repression. Finally, while the South African amnesty-for-truth arrangement has not been employed elsewhere, there has been flirting with other modified forms of immunity, appearing either in the mandate or in the final recommendations of some commissions, which call for close scrutiny.

Several truth commissions—in Morocco, the second Chilean commission, and in the Solomon Islands, for example—have been explicitly prohibited from either naming perpetrators or playing any role that may lead to prosecutions. But even where this is explicit (such as the Guatemalan mandate, which indicated that the commission would have no “judicial aim or effect”), the information produced by a truth commission may well be useful in judicial proceedings later, or its proceedings may indirectly prompt prosecutions. For example, those pushing for international prosecutions for crimes in Guatemala submitted the Guatemalan truth commission report to support their case, and in Chile, victims quickly realized that they could independently take their claims to the courts, even if the commission would not.

There remains, therefore, much to consider about what the relationship is—and should be—between these two parallel and sometimes overlapping processes for investigating massive crimes.

## **A Priority for Truth Commissions**

Most truth commissions have recommended or even passionately urged in their final reports that there be prosecutions, and many have provided specific names and evidence to support legal action. A commission’s mandate may make this aim explicit, emphasizing the need to “counter impunity,” for example. In some cases, these recommendations have been received grudgingly by the government or prosecutorial authorities, ignored or only slowly acted on. However, in other cases a truth commission’s information has contributed directly and successfully to prosecutions, even resulting, in rare cases, in the conviction and jailing of top commanders or political leaders. Only one of the forty commissions documented here has expressed support for a broad amnesty for serious perpetrators.<sup>3</sup> Even the South African commission, known for its amnesty-granting powers, urged in its report that prosecutions take place

where there was evidence of a serious crime, in those cases where the accused had not sought or had been denied amnesty.

Whether trials result from the work of the commission is usually decided by many factors outside of a commission's control: the strength and independence of the judiciary; political will to challenge powerful perpetrators; the strength of independent entities to push for accountability or block or overturn an amnesty; and the skill, experience, and resources of a prosecutor to move on big cases. While there is certainly a mixed record on results, there is no inherent reason why a commission cannot directly strengthen criminal justice. Below are only some of the examples of the many attempts by truth commissions in this arena, as well as the great difficulties these efforts have met.

### *Argentina, Peru, and Chad: Evidence for Prosecutions*

The National Commission on the Disappeared in Argentina played a critical role in the trials against members of the former military junta leadership in the mid-1980s, serving as a model for the positive relationship that can exist between truth commissions and later prosecutions. But the commission did not assume this role from the start. After an internal debate about the appropriate relationship with criminal justice, the commission finally announced that it intended to identify presumed perpetrators and pass this information to prosecutors, "so that these individuals could explain the events in court. Thus the construction of the truth took on a fully legal purpose."<sup>4</sup> The commission asked the president to bar certain suspected officers from leaving the country, which was agreed.<sup>5</sup> It then handed its case files directly to the prosecutors—even while the commission was ongoing—allowing them to quickly build cases against nine of the most senior members of the military regime, and providing access to a large number of primary witnesses.

According to Luis Moreno-Ocampo, who was the deputy prosecutor in Argentina, the timing and nature of these trials would have been "impossible" without the information from the commission, known as CONADEP. "Perhaps it would have been possible to carry on a trial without CONADEP's files, but we never could have prepared it in such a short time, nor gathered that number of solid cases to present," he told me.<sup>6</sup> In just over five months, the prosecution reviewed the commission's nearly nine thousand case files to choose over eight hundred witnesses to be presented in trial, covering some seven hundred individual cases. The trial began just eighteen months after the military junta left power, when the momentum for accountability and public interest was still strong. The proceedings captivated the nation; because the commission took testimony in private, this and following trials were the only opportunity for the public to hear direct accounts from victims.

In the end, five of the nine accused were convicted of homicide, torture, and other acts of violence, with sentences ranging from four and one-half years to life in prison. While Argentineans were initially angry at the light sentences and acquittals, the world community applauded one of the first successful domestic

trials of former rulers in a newly returned democracy. Many other trials were planned, also relying on CONADEP's files, but these trials were soon cut short. Under pressure from the military, restrictive laws were passed that limited prosecutions for abuses during the "dirty war."<sup>7</sup> When President Carlos Menem came into office in 1989, he soon pardoned those few who had been convicted.

But demands for justice continued. A combination of constant pressure, new governments, a weakened military, and a changed political context resulted in these amnesty laws being fully annulled just fifteen years later. Prosecutions began in earnest, and by 2009 several hundred trials were under way, with over fourteen hundred suspects identified in relation to crimes that took place during the dirty war. Again the prosecutors turned to the CONADEP files as a key source of information.<sup>8</sup>

If there was still doubt as to the very assertive role a truth commission can play in trying to urge national prosecutors to act, the Peruvian commission put this to rest. The commission in Peru was the first to create a quasi-independent unit within the commission specifically dedicated to preparing cases for prosecution. This Special Investigations Unit was established after the first public hearings, when the commissioners heard victims repeatedly demand justice for their perpetrators. But despite the strong work by this team, the commission met resistance from the prosecutor's office, and found its intentions to advance prosecutions frustrated.

The commission signed a formal agreement with the prosecutor's office early in its work, intended to help coordinate joint exhumations, information-sharing, and witness protection.<sup>9</sup> Unfortunately, the agreement turned out to be too generic to address many of the problems that arose, according to senior staff member Eduardo González.<sup>10</sup> Joint exhumations, for example, were "hindered by confrontation and hostility" between commission and prosecution staff.<sup>11</sup> While the agreement addressed information-sharing, "little attention was given to the issue of when to share info, or the criteria for sharing it, particularly in those investigations considered confidential," writes González.<sup>12</sup> This was tested when the prosecutor's office demanded access to files while an investigation was under way, and the commission resisted. This was finally decided in court, where a judge ruled that the commission qualified as an executive branch agency and thus retained confidentiality privileges, and could wait until its work was completed before sharing the information.<sup>13</sup> González noted:

This information-sharing capacity obviously begs the question of what to do regarding those investigative steps that are carried out confidentially, which is the case of the vast majority of the Commission research. However, given the fact that the Peruvian amnesty laws are void, the Commission should be aware not to interpret confidentiality in any way that would amount to hiding information from the Attorney General's Office.<sup>14</sup>

Since the commission ended, therefore, the prosecutor's office has been given virtually unrestricted access to the commission's archives.<sup>15</sup>

In public statements and its final report, the commission made clear that criminal justice was a prerequisite for reconciliation. The commission forwarded the first four cases to the prosecutor while the commission was still under way, publicly urging prompt legal action and hoping that the support of public opinion would increase the chance that the prosecutors would act. In its final report, the commission recommended forty-three additional cases for prosecutions, pertaining to over sixty accused perpetrators, with detailed files provided with the intention to make a compelling case for prosecution.

But the prosecutor's office showed no enthusiasm for these cases, casting doubt on the evidence, questioning the validity of the testimonies and other information from the commission, and generally showing "formidable unwillingness" to take action.<sup>16</sup> "This reluctance only increased with time and became actual hostility after the [commission] released its final report," senior commission staff reported.<sup>17</sup>

In 2005, a year after the truth commission ended, Peru created a new National Criminal Court to handle human rights cases, as recommended by the commission. Over the next years, dozens of accused perpetrators were tried, but with limited results: fifty-two have been acquitted, and twelve convicted.<sup>18</sup> In 2008–2009, the ratio of convictions worsened, with only two convictions out of thirty-one verdicts—and one of these convictions was overturned on appeal by the Supreme Court. Of greater concern was the reasoning employed in the judicial decisions. The court has not been willing to accept that the violations constitute "crimes against humanity," which would suggest a systematic pattern of violations; instead, they are treated as isolated incidents. In some cases, the court questioned whether a crime had actually taken place, insisting that a disappearance, for example, must be substantiated with a written record by the military at the time that it happened, an argument that rights observers found preposterous. The court also never accepted the idea of command responsibility, instead "consolidating a dangerous jurisprudence" that delinks military commanders from the crimes perpetrated in the zones under their control, according to an analysis by Peruvian legal experts. Fundamentally, these analysts noted, the decisions were "not only acquitting the accused, but were questioning and denying the truthfulness of the truth commission's conclusions."<sup>19</sup>

In Chad, a truth commission report directly supported criminal justice efforts in a way that was initially unforeseen. The 1992 truth commission report recommended that accused perpetrators be removed from their government posts and prosecuted, but this resulted in little response from the government (which had incorporated many serious perpetrators from the former regime into the new government). However, eight years later the commission report was submitted as a "main piece of evidence" in charges against the former president on the international level.<sup>20</sup> This case, brought in the courts of

Senegal and Belgium by Chadian victims groups and Human Rights Watch, was quietly prepared by using the truth commission report as background and for guidance to witnesses. Almost nothing else was available at that time that documented these abuses. Reed Brody of Human Rights Watch recalled that the commission report was especially important for his own organization's understanding of what had happened as they first considered a legal case. "It gave us the confidence that the things that victims told us fit into a pattern, a system," he said.<sup>21</sup> The report also provided significant testimony from regime insiders—critical information that the human rights advocates were not able to obtain directly.

### *Uganda and Haiti: Frustrated Efforts*

Other truth commissions have forwarded their information to a prosecutor's office with a recommendation for judicial action, but with less success. In Uganda, the truth commission that operated from 1986 to 1995 forwarded many cases to the police investigation unit when the evidence seemed sufficient to warrant prosecution. After investigation, the police were to send each case to the director of public prosecutions. But very few of these cases ever made it to a courtroom.

According to the Ugandan commission chair, Supreme Court judge Arthur Oder, the commission forwarded about two hundred cases for further investigation; the public prosecutor eventually prosecuted about fifty, and gained convictions in perhaps twelve, mostly for minor offenses such as attempted kidnapping or conspiracy. The commission's report recommended that all those who were implicated in abuses should be prosecuted, but commission members acknowledged that this was unrealistic. Justice Oder told me:

There are perhaps fifty thousand people responsible for these crimes. Perhaps ten thousand can be identified. There are some two to three thousand pointed out in the commission documents. But at most, one to two thousand could really be taken on."<sup>22</sup>

Yet it was clear that one or two thousand was far more than the number that would ever go to court. This was a reflection of a number of problems, including infrastructural, political, and psychological, and serve as an example of the kinds of challenges often confronted by countries struggling with an ill-functioning justice system.

I asked a former director of public prosecutions in Uganda, Alfred Nasaba, why so few of the commission's cases went to court. He claimed that only one to three of the commission's cases came to him from the police during the five years that he was public prosecutor, 1991–1995. And in each of those cases, his office was unable to find witnesses willing to give testimony. "The witnesses or the complainants reconcile, and then they don't want to come to prove the

case,” he explained. In other cases, witnesses died or disappeared, or were simply unwilling to cooperate for unexplained reasons.<sup>23</sup>

Uganda’s presidential adviser on human rights and former attorney general, George Kanyeihamba, gave the same reason. “It’s not a capacity question. It’s an evidentiary question. It’s difficult to prove these cases in court. Witnesses feel intimidated and are too scared to give testimony.”<sup>24</sup> There is a widespread fear of revenge for testifying against someone in court in Uganda. Even the commission found that witnesses would sometimes return after a hearing to withdraw their testimony, sometimes flatly denying what they had said even when it was recorded on video- or audiotape. It was clear they had been pressured to recant their story, particularly if they named perpetrators. Certainly, witnesses felt even more hesitation to go to court to help put someone in jail.

In a country known worldwide for the brutality of the Idi Amin and Milton Obote regimes, it is surprising that prosecutions in Uganda could falter for lack of evidence. The minister of justice, Bart Katureebe, told a story to explain how this could be true. When he was a young lawyer in the 1970s, under the government of Idi Amin, he began as a junior employee in the Ministry of Justice. One day, he and his colleagues watched out of their fourth-floor window as soldiers below stuffed a man into the trunk of their car to take him away—almost certainly to suffer serious torture, and probably to be killed. He said:

But if you had taken me into court as a witness, I wouldn’t be able to point out who the soldiers were; I couldn’t recognize them from where we were. And everyone else in the area ran away. If people see that happening, they’re going to run in the other direction. So there’s no eyewitnesses to say exactly who was doing it.<sup>25</sup>

Justice Minister Katureebe continued, saying that even the most guilty, and often those high up in the hierarchy, are sometimes the most difficult to bring to justice. “If you brought Idi Amin back to Uganda today, you probably couldn’t convict him under our law. He wasn’t personally involved in most acts. You need a specific case, and evidence that hasn’t been destroyed, to prove the case.” Do you dispense with the normal, strict rules of evidence to convict former despots? he asked. They decided in Uganda that for the sake of a fair and just rule of law, they would not. “The evidence before the commission is so believable you expect people would be convicted. But when you bring them before a court, with different rules of evidence, they are acquitted on a specific offense. That discourages others from bringing cases,” Katureebe continued. Idi Amin’s former vice president and minister of defense was living as a free man in Uganda since his acquittal in a trial. “Our policy in Uganda is: If you have a case, charge him. If there is no case, then he can live as a normal citizen. This policy has paid off.”

The argument of Justice Minister Katureebe, that leaders can only be brought to trial if they were personally involved in specific crimes, is not exactly correct. In fact, under the theory of “command responsibility,” well accepted in international law, a civilian or military superior may be held responsible not only for his (or her) own unlawful orders, but for acts of his subordinates if (1) he knew or had reason to know that the subordinate had committed, or was about to commit, such acts; and (2) he did not take necessary and reasonable measures to prevent those acts or to punish the subordinate. (The successful prosecution of the junta leadership in Argentina, for example, relied on this principle.)<sup>26</sup>

Prosecutions, however, also require political will. Commission members in Uganda tell stories of clear-cut cases where written documentation alone should have been enough to convict, but where the accused would be arrested only briefly, released on bail, and the case never seriously investigated. There are many known killers walking free in Uganda, as the commissioners were all too aware. “I just ran into one of them in the bank,” commission chair Justice Oder said to me. “A high-up official in the Muslim community here. There was clear evidence against him, but he is living freely.”<sup>27</sup>

And there are other challenges. The police investigation unit in Uganda is woefully understaffed, under-resourced, and short on expertise, partly stemming from massive purges of the police in the 1970s under Idi Amin’s reign. Whether or not there is evidence, with few witnesses eager to put a neighbor in jail, overworked and undertrained investigators, and little interest by officials in more trials focused on events of a prior regime, any legal justice relating to events prior to 1986 became less likely in time. Other factors soon overshadowed the efforts of the truth commission.

In Haiti, it was also intended that the information from the truth commission would be used to prosecute those accused. The commission’s mandate called for information to be sent to the Ministry of Justice. As the commission was finishing its work, Minister of Justice René Magloire (a former member of the commission who stepped down to become the justice minister) said that his office was preparing to receive the files.<sup>28</sup> Yet there was little progress in the following years. International lawyers working on some of these cases described intense fear of retaliation on the part of witnesses, lawyers, judges, and even the police, especially as armed groups associated with past abuses were still active in the country.

### *South Africa: Granting Amnesty and Recommending Prosecutions*

Only in South Africa has a truth commission had amnesty-granting powers pertaining to serious crimes such as murder and rape. Yet this amnesty was granted on an individual basis only to those who told all they knew about their past crimes and could show that the crimes were politically motivated. While considerable new information emerged from amnesty hearings, overall it was a



challenged process with few high-level amnesty applicants, and resulting in the commission recommending prosecutions for many accused perpetrators.

When the first post-apartheid government came into power in 1994, it worked under an interim Constitution which stated that “amnesty shall be granted in respect of acts, omissions and offences associated with political objectives.” But this left open how the amnesty would be put into operation. The new minister of justice, Dullah Omar, spent his first months in office struggling with the problem of how it should be implemented, or, as he said, “how to deal with the amnesty requirement in a way that would be morally acceptable to the people.” The amnesty was soon linked with the quickly developing proposal for a national truth commission: amnesty would be given only in exchange for the truth. A grant of amnesty would be the carrot to get perpetrators’ cooperation in the process, and the threat of prosecution would be the stick.<sup>29</sup>

In the amnesty hearings, it was intended that the applicants would provide information about exactly how operations were planned, why certain targets were chosen, what forms of torture victims suffered before they were killed, and who in the line of command—and how far up—gave orders or knew about the acts. But many observers were concerned that the full truth was not in fact being provided. When granted, the amnesty exempted individuals from criminal prosecutions for the acts applied for, and barred civil suits for damages. It also indemnified the state from any liability that might flow from these acts.

A few key prosecutions took place as the commission was under way. Two special investigation teams were set up soon after the elections in 1994 to take up prominent cases of political violence. As those targeted for prosecution felt the heat of the investigations, and as they heard their names come out in the amnesty hearings of their former colleagues, they quickly submitted applications for amnesty. The relationship between the truth commission and the offices of the attorneys general was sometimes strained. Criminal investigations and near-arrests by the attorney general’s office were brought to a halt when those accused applied for amnesty with the truth commission. In the view of one senior prosecutions investigator, his team served to “chase all the sheep into the corral of the truth commission. . . . Without us, a lot wouldn’t have come out. The ‘big breakthroughs’ of the commission were because we started chasing these people.”<sup>30</sup>

The flow of information, such as it was, went from the prosecutor’s office to the truth commission. The official policy of the offices of the attorneys general was to allow the commission staff to look at their files and take notes from their documents, but the commission found that access was sometimes delayed or important documents held back. The commission had the power to subpoena the files but chose not to, for lack of time and to avoid straining the relationship further. Meanwhile, the prosecutorial staff attended some of the commission’s amnesty hearings, but were generally not interested in receiving commission files, fearing that the possession of such information could jeopardize future prosecutions.<sup>31</sup> Analyst Jeremy Sarkin concludes that,

despite instances of collaboration, by and large, the relationship between the TRC and the criminal justice system was limited, with negative consequences for both parties. Had there been a cooperative relationship that was supportive of each other's mission, the overall goals of both would have been better served.<sup>32</sup>

Over 7,000 individuals applied for amnesty, but many applications came from persons already in prison, and 4,500 were denied for lack of political motive. In its final report, the commission noted with disappointment that the majority of applicants were "triggerpullers" and that "one of the most shameful aspects" of the process was the failure of the political leadership to "stand by those who committed violations at their behest and in their name," through supporting their amnesty applications and, indeed, owning up to the state policies that sanctioned abuse.<sup>33</sup> The commission also concluded that perpetrators applied for amnesty only when they saw it as being in their own self-interest.<sup>34</sup>

But many perpetrators did not apply for amnesty. Not a single application was received from members of the former national intelligence service, for example, a point the commission emphasizes in its report.<sup>35</sup> Throughout its report, and especially in the "Findings" chapter, the commission names many specific individuals whom it finds "accountable" for specific abuses. It then recommends that "[w]here amnesty has not been sought or has been denied, prosecution should be considered where evidence exists that an individual has committed a gross human rights violation." The commission was turning over all relevant information to the authorities, it said.<sup>36</sup> It particularly urged that "[a]ttorneys-general must pay rigorous attention to the prosecution of members of the South African police service who are found to have assaulted, tortured and/or killed persons in their care."<sup>37</sup>

The commission indicated that it would hand a list of suspected perpetrators to the prosecuting authorities, but did not disclose who was on the list. In January 1999, shortly after the submission of the first five volumes of the commission's final report, several commissioners met with the National Prosecuting Authority and provided a list of three hundred cases with specific names indicated for criminal investigation. The commission recognized that it had not had the resources and capacity to investigate each case in depth, but its list represented "those names that came up constantly" in its investigations, and which called for much more rigorous attention by prosecuting authorities.<sup>38</sup>

One or two former commissioners—working in their individual capacity—continued to follow this over the next years, meeting with the prosecutor's office on a regular basis to urge action on the list. A special unit of the national prosecutor's office was assigned responsibility for "matters emanating from the TRC process." After an audit of the 300 cases, the unit concluded that 167 could not be prosecuted.<sup>39</sup> The head of the unit later indicated that only 21 of these cases were "worthy of investigation."<sup>40</sup>

In the ten years since the list was submitted, however, little action has resulted. Few cases have been prosecuted for apartheid-era crimes—about half a dozen in total, including the early, high-profile cases that overlapped with the commission. Some of these have ended in acquittals. Not one person on the list provided by the TRC has been prosecuted, according to former commissioner Yasmin Sooka.<sup>41</sup> The political will for further prosecutions was clearly limited, perhaps in part because of the legal vulnerability of the leadership of the African National Congress. In 2005, the government attempted to amend the National Prosecution Policy to allow further individual amnesties to be quietly negotiated, but without the participation of victims and outside any truth commission framework. This was challenged in court by victims' families, and struck down in 2008 as unconstitutional.<sup>42</sup>

Meanwhile, Desmond Tutu introduced the final volumes of the TRC report, published in 2003, with a stinging critique of the judicial system's ability to establish either justice or truth. The wisdom of the TRC was confirmed, he writes, by the trial of Wouter Basson, the former head of South Africa's chemical and biological weapons program, who was charged with being responsible for hundreds of deaths; Basson was acquitted in 2002 despite strong evidence against him, resulting in widespread anger. Tutu continues:

The case has shown clearly how inadequate the criminal justice system can be in exposing the full truth of, and establishing clear accountability for what happened in our country. More seriously, we have seen how unsuccessful prosecutions lead to bitterness and frustration in the community. . . . For the sake of our stability, it is fortunate that the kind of details exposed by the Commission did not come out in a series of criminal trials, which—because of the difficulty of proving cases beyond reasonable doubt in the absence of witnesses other than co-conspirators—most likely would have ended in acquittals.<sup>43</sup>

### *El Salvador: Prompting a Blanket Amnesty*

El Salvador is the clearest case to date of a blanket amnesty passed into law as a direct response to a truth commission report, but the details of this story make conclusions from the case far from clear.

The El Salvador truth commission's strongly worded report included the names of over forty high-level officials responsible for serious abuses, despite strong pressure from the Salvadoran government not to publish names. In response to the report (and also to rumored threats of a coup by an angry military), the president of El Salvador immediately introduced a bill in Parliament to award "a broad, absolute, and unconditional amnesty" to "all those who in one way or another participated in political crimes, [or] crimes with political ramifications." Just five days after the truth commission report was released, Parliament passed this sweeping amnesty proposal into law, with the support of the former armed opposition.<sup>44</sup>

In fact, the truth commission report had not called for the prosecution of those who, it concluded, were involved in horrendous crimes, which was a surprise and disappointment for rights advocates. Nor did it recommend against a blanket amnesty, which could have made an amnesty law more difficult, since the recommendations of the commission were mandatory by prior agreement. Many believe that an explicit violation of a commission recommendation so soon after the report's release would have received a sharp rebuke from the international community.<sup>45</sup> According to a senior staff member, the commissioners even considered recommending that an amnesty be passed, given the extremely biased state of the judicial system. Instead, the report emphasizes the incapacity and bias of the courts, arguing that fair trials would be impossible until after significant judicial reforms. The head of one international rights organization felt that this argument "undid everything else good in the report" by taking away the expectation and obligation of the judicial system to work.<sup>46</sup> The report states:

One painfully clear aspect of [the] situation is the glaring inability of the judicial system either to investigate crimes or to enforce the law, especially when it comes to crimes committed with the direct or indirect support of State institutions. . . . We must ask ourselves, therefore, whether the judiciary is capable, all things being equal, of fulfilling the requirements of justice. If we take a detached view of the situation, this question cannot be answered in the affirmative. . . .

The question is not whether the guilty should be punished, but whether justice can be done. Public morality demands that those responsible for the crimes described here be punished. However, El Salvador has no system for the administration of justice which meets the minimum requirements of objectivity and impartiality so that justice can be rendered reliably. . . .

That being the current situation, it is clear that, for now, the only judicial system which the Commission could trust to administer justice in a full and timely manner would be one which had been restructured in the light of the peace agreements.<sup>47</sup>

The commission was sharply criticized for its silence on the question of amnesty. One expert wrote:

In all likelihood, the Truth Commission could not have prevented the government from passing a sweeping amnesty immediately after issuance of its report. Yet the Commission did not urge prosecutions, gave no opinion about amnesty, did not call for follow-up efforts to determine the fate of victims or identify those responsible, and contributed little to the discussion of possible avenues for compensation. Had the Truth Commission delineated the kinds of crimes that cannot be amnestied

under international law or urged that amnesties be contingent upon full revelation of the facts (as in South Africa), it would have upped the cost to the government of such an amnesty.<sup>48</sup>

Despite the strong criticism, commissioner Thomas Buergenthal defended the commission's position, arguing that to recommend prosecutions when serious trials were out of the question would have made things worse. "They would have gone through the motions and acquitted the accused," he says, giving the government an opportunity in effect to retry the commission's findings. He asks:

And how would you expect anyone to testify against these people? Who would testify against Defense Minister [René Emilio] Ponce, for example? Trials would have had the opposite effect of what people expect, I am sure. Nobody would have given testimony, and everybody would be acquitted, except those on the left. People were almost too scared to talk to *us*.<sup>49</sup>

Yet Buergenthal acknowledged that the commission might have taken a different approach. It may have been a mistake not to say something about an amnesty, he said in retrospect—perhaps, for example, to have required a referendum or some kind of national process or public debate before an amnesty was considered in Parliament.

It is quite possible that the Salvadoran Parliament would have awarded an amnesty for past crimes even if the truth commission had not named perpetrators, and regardless of the commission's recommendations. The 1991 peace accords left the subject unresolved, agreeing only that the issue of amnesty would be considered six months after the completion of the truth commission.

As described earlier, members of the high command who were named in the report were retired from the armed services several months later, with full honors. Although it was never stated publicly, some observers saw the amnesty as a package deal by which military officers received an amnesty in exchange for their agreeing to step down. While such vetting is not sufficient, at least there was some direct effect from the commission's firm conclusions.

## **The Amnesty Confusion**

Because of South Africa, there has been misunderstanding of the relationship between truth commissions and amnesty.<sup>50</sup> Most truth commissions have no formal or informal relationship to amnesties. Those that have the power to recommend amnesty usually are proscribed from doing so for serious international crimes (war crimes, crimes against humanity, or genocide). In Timor-Leste, for example, where the commission had the power to facilitate a waiver of prosecution for persons taking part in local reconciliation processes,

the waivers were granted after a review by the Serious Crimes Panel; cases pertaining to serious crimes were turned over to the prosecutor.

Some commissions have certainly operated in contexts where an amnesty is already in place (Sierra Leone, Ghana), or in rare cases have seen a blanket amnesty passed after the commission's report was released (El Salvador). In many more examples, as seen in several cases above, there is no amnesty in law, but there is resistance or unwillingness (or sometimes lack of capacity and insufficient evidence) to move forward on prosecutions. However, it is not correct to say that most truth commissions provide political cover for amnesties, as some analysts have suggested, or that most truth commissions are established along with an amnesty.

The United Nations has since 1999 prohibited its representatives from backing amnesties for serious international crimes (war crimes, crimes against humanity, or genocide). Other international bodies take a similar position, sometimes based on their commitment to the Rome Statute of the International Criminal Court, if not including this proscription explicitly in policy documents.<sup>51</sup> In those rare cases since 1999 where truth commissions verge on recommending amnesty for serious crimes, the United Nations has refused to cooperate (such as with the Truth and Friendship Commission jointly sponsored by Timor-Leste and Indonesia, and also threatened by the United Nations in relation to the Kenyan truth commission, while it was in formation).<sup>52</sup> Amnesties for international crimes are increasingly frowned upon and widely considered to be a violation of international law, and thus generally not considered to be an option for modern-day truth commissions.<sup>53</sup>

## **Judging the Judiciary**

An important contribution of many truth commissions is to analyze the role of the judicial system in tolerating, allowing, or even perpetuating abuses that took place during the period under review. In some countries, the judiciary continued to operate relatively independently even during the worst years of repression. In Chile, for example, the military pointed to the courts' independence in an attempt to legitimize its rule and deny rights problems; meanwhile, judicial authorities used none of their powers to stop abuses. South Africa, El Salvador, Guatemala, and other countries have seen similar patterns: judges have either looked the other way or actively supported the abusive policies and practices, discounting, ignoring, or covering up evidence, or simply refusing to move on cases involving abuses by the state. The Guatemalan truth report describes how "[i]mpunity permeated the country to such an extent that it took control of the very structure of the State."<sup>54</sup> Truth commissions can analyze these patterns and fully document the judiciary's role in allowing repression: while it is the military, police, or intelligence officers that may have carried out the physical abuses, it is the judiciary that failed in its duty to provide a check on their authority. If the judiciary had worked well and functioned

independently, patterns of violence and abuse by the authorities might have been significantly reduced.

The Chilean truth commission report dedicates a whole chapter to “the behavior of the courts toward the grave human rights violations that occurred between September 11, 1973, and March 11, 1990,” spelling out the weaknesses of the judiciary under military rule. The report states that “legal oversight was glaringly insufficient” despite the fact that “the court system continued to operate normally in almost all realms of national activity whose conflicts reached the courts,” and that “the judicial power was the only one of the three powers or branches of government that continued to operate.”<sup>55</sup> The report goes on to lay blame on the courts for the depth of repression that was reached, saying, “This posture taken by the judicial branch during military rule was largely, if unintentionally, responsible for aggravating the process of systematic human rights violations,” thus offering “the agents of repression a growing assurance they would enjoy impunity for their criminal actions, no matter what outrages they might commit.”<sup>56</sup>

The Argentina report, *Nunca Más*, also dedicates a long chapter to “the judiciary during the repression,” highlighting the failure of habeas corpus, the irregular burial of corpses by the judicial mortuary, the judges’ authorization of police searches of human rights organizations’ offices, and other anomalies. “Instead of acting as a brake on the prevailing absolutism as it should have done, the judiciary became a sham jurisdictional structure, a cover to protect its image.”<sup>57</sup> In contrast to what happened in Chile, the top levels of the Argentine judiciary were replaced at the time of the coup, including the entire Supreme Court, and the remaining judges had to swear to uphold the objectives of the military junta. The report describes how this newly formed judiciary “condoned the usurpation of power and allowed a host of judicial aberrations to take on the appearance of legality.”<sup>58</sup>

The Ugandan commission report includes a chapter on the “denial of fair and public trial before independent and impartial courts of law” that outlines the illegal and unfair practices of military and regular courts, providing detailed examples taken directly from court records. It concludes, for example, that the military tribunal “was not independent and impartial. It acted more as a part, and in the interest and service, of the Military Regime than for the purpose of dispensing justice.”<sup>59</sup>

The El Salvador report points to problems in the judiciary throughout its analysis. It notes, for example, how judges covered up evidence, rather than acting on it, and the unwillingness of judges to cooperate with the commission’s investigations. In one major case, the massacre at El Mozote in December 1981, the report concludes that the president of the Supreme Court, Mauricio Gutiérrez Castro, “interfered unduly and prejudicially, for biased political reasons, in the ongoing judicial proceedings of the case.”<sup>60</sup> Finally, the commission concludes that “[t]he situation described in this report would not have occurred if the judicial system had functioned properly.”<sup>61</sup> In further detail, it explains:

None of the three branches of government—judicial, legislative or executive—was capable of restraining the military’s overwhelming control of society. The judiciary was weakened as it fell victim to intimidation and the foundations were laid for its corruption; since it had never enjoyed genuine institutional independence from the legislative and executive branches, its ineffectiveness steadily increased until it became, through its inaction or its appalling submissiveness, a factor which contributed to the tragedy suffered by the country.<sup>62</sup>

Finally, the South African commission held specialized public hearings to analyze the role of the judiciary in supporting or allowing state repression. When most judges declined an invitation to participate in the hearing, the commission considered the idea of compelling their participation through subpoenas. It ultimately decided against doing so, but strongly criticized the judges for the failure to take part and to face this tainted past, saying in its report that “[h]istory will judge the judiciary harshly.”<sup>63</sup>

### **Truth from Trials?**

Prosecutions are focused on proving a high level of certainty that certain crimes took place and that specific individuals were responsible—that the criminal standard of proof has been satisfied on specific charges. Of course, the truth about events should presumably emerge in this process, but even the best of trials are limited in the truth that they are able to tell. Rules of evidence, for example, may exclude important information.

As noted earlier, South Africans saw the limitations of prosecutions as a means of getting the clear story, in the few high-profile cases that went to trial shortly after the end of apartheid. Several trials running concurrently in South Africa in 1996 brought regular press reports of the workings of the government hit squads and conspiracy by the government to foment political violence in townships. One case accused the former minister of defense, Magnus Malan, and nineteen others of carrying out a massacre of thirteen people in the mid-1980s. After a difficult trial, with the prosecution led by an attorney general who himself had worked with the former apartheid government, all defendants were acquitted. They left the courtroom to declare their innocence to the world, to the delight of the previous government and its supporters.

The second trial was more successful: Colonel Eugene de Kock, the former head of a secret police assassination unit, was convicted on eighty-nine charges, including murder, conspiracy, gun-running and fraud. His conviction was confirmed just as the South African truth commission was beginning its work, and he was one of the first to apply for amnesty. The commission reported that this led to “a stream of applications from co-perpetrators” who expected they would be named. In fact, the commission reported, 48 percent of all Security Branch amnesty applications pertained to de Kock-related incidents.<sup>64</sup> The coincidence of timing therefore assisted the truth commission’s efforts.



But the conviction of de Kock—who was a mid-level operative with no control over political decision-making—may have had the effect of removing a sense of broader responsibility.

Some observers note the limited explanatory value of trials. “They’re about individual culpability, not about the system as a whole,” one South African lawyer noted, watching the de Kock trial.<sup>65</sup> Ronald Slye, who studied both the South African commission and the judicial system, writes that “there is no doubt that the quantity, and probably also the quality, of information elicited from the amnesty hearings was higher than what would have been elicited from criminal trials.”<sup>66</sup>

Despite the political resistance and slow movement on any trials, South Africa’s judicial system is stronger and more impartial than that of most post-authoritarian transitional countries. There are numerous examples elsewhere in which trials have seemed to obscure rather than clarify the truth about significant politically motivated crimes.

Trials do not document well the global truth of historical events.<sup>67</sup> But there are now many examples of very well-resourced and intensive judicial efforts, often by special or international courts, that gather significant documentation, witness statements, and other information that could tell a much larger story than can be presented in trial. This naturally raises the question of whether some of this information should be made available beyond the relatively narrow constraints of the courtroom and in the final judgments on specific cases. Early in the work of the International Criminal Tribunal for the former Yugoslavia (ICTY), one set of experts suggested that the ICTY prosecutor’s office should also take on the function of a truth commission.<sup>68</sup> This specific recommendation never gained support, but it serves to highlight this sense of a missed opportunity.<sup>69</sup>

A similar proposal might be put forward for the International Criminal Court. For a number of reasons, it would be unwise for the ICC to try to fill such a generic truth-telling role. The Court is not in a position to fill many of the functions of a truth commission. It would be unfair and unrealistic to ask a prosecutor’s office to release a report that makes conclusions on broad events if its own prosecutions around these events are still under way. Given that such prosecutorial action could continue for many years, or could be taken up years after an event if new evidence is discovered, the prosecutor’s office would not likely be willing to publish conclusions about the evidence it had in hand. In addition, the prosecutor’s office must operate under the evidentiary standards and with the intense individual case focus that is necessary for a trial. It might not be in a position to draw broad conclusions about patterns in the manner of a truth commission. A prosecutor surely would be uncomfortable putting forward policy recommendations on the national judiciary, political system, or armed forces, or designing a reparations policy to reach all victims. Further, there is no clear way to integrate pertinent information from the defense which may challenge these charges. Placing truth commission-like responsibilities onto an international court during the course of its prosecutions

would strain the court's abilities and resources, weaken its focus, and unfairly limit the kind of truth that would be reported.

However, the Court's prosecutor's office is likely to collect much information over the course of its work that will never be revealed in court. To take advantage of this wealth of information, and to contribute to a broad public understanding of a conflict or a period of authoritarian rule, it could be useful for the office of the prosecutor to release a summary report of its findings after it has concluded all cases pertaining to a particular country or situation—perhaps even excluding accused perpetrators' names, if they have not been indicted or tried. This follows the model of independent prosecutors in the United States, who submit overview reports at the conclusion of their work. Such report-writing is neither prescribed nor prohibited in the Court's statute. Adding such a responsibility to the prosecutor's duties would require a dedication of resources and time, and, if undertaken at all, should be employed only on a case-by-case basis and at the discretion of the prosecutor. However, given the many years before the Court would be likely to conclude all cases relevant to a particular situation, a prosecutor's final report will not be a good replacement for a quickly enacted and independent truth commission.

This approach was in fact attempted in Mexico, where a special prosecutor was established early in the administration of Vicente Fox, in 2001, and included within its responsibilities certain overall truth-telling tasks, such as declassification of archives and producing a summary report. It was an interesting model, but its results suffered from the overall weakness of this office. The special prosecutor only succeeded in prosecuting a few cases, but did produce a report titled "Historical Report on Mexican Society," which was the first official recognition of abuses by state forces from 1964 to 1982.<sup>70</sup>

Finally, the narrow focus of trials—establishing individual responsibility—can sometimes be an advantage in establishing the truth. Argentina employed a creative understanding of its amnesty laws, beginning in 1999, to bring accused perpetrators to court: the amnesty could not be applied until it was clear to whom it should be applied, judges said. In processes known as "truth trials," prosecutors and judges carried out full judicial investigations, publicly identifying the perpetrator before applying the amnesty.

## 9 Truth Commissions and the International Criminal Court

Spurred by the increasing calls for justice for heinous crimes, 120 countries agreed in 1998 to the formation of an International Criminal Court to try individuals accused of crimes against humanity, genocide, and war crimes. The Court came into operation as of July 1, 2002, after sixty nations had ratified its statute, and has jurisdiction over crimes that took place after this date.

Given the nature of the crimes that fall under the Court's jurisdiction, it is logical that states in the midst of or emerging from war (or other violent conflict or repressive rule) will be the main target of the Court, and indeed this has been true in its first years. It is therefore likely that its investigations will overlap with those of truth commissions. This could raise some delicate legal and policy questions. These issues are not directly addressed in the Court's founding statute or rules of procedure. In the preparatory meetings to create the ICC, South African delegates—at a time when the TRC was still operating in South Africa—raised questions about how the future Court would treat an amnesty that was granted by a truth commission, and thus, implicitly, whether the Court would respect national, “alternative” solutions to accountability. This was ultimately left unanswered, to be worked out in the future. Other than the question of amnesty, no other potential issues of overlap with a truth commission were raised.<sup>1</sup> In any regard, it is highly doubtful that all the possible issues and concerns could have been foreseen, much less resolved, through a general discussion.

Since the signing of the Rome Statute, observers have thus pondered what such an ICC-truth commission relationship might be, what operational and legal issues might arise, and how they could best be resolved. Until 2009, this had been explored as largely a theoretical discussion, as no serious truth commission had been under way in a country where the ICC had been engaged.<sup>2</sup> With the overlap foreseen in Kenya, there is now a real case that could address some of these questions. Meanwhile, the experiences of other international or hybrid courts, such as the International Criminal Tribunal for the former Yugoslavia or the Special Court for Sierra Leone, are instructive as to the issues that may arise in the context of the ICC.

Two ideas in circulation should be dispensed with from the start. First, quite a number of observers—usually commenting from a distance—have suggested that any potential conflicts emerging in the simultaneous operation of a truth

commission and the ICC (or other special tribunal) can be resolved through separating out the level of responsibility that would be targeted by the two institutions. A simple proposal has sometimes emerged: a special court should go after those most responsible, and a truth commission should handle “everyone else.” Unfortunately, this makes no sense at the operational level, and misunderstands the role of a truth commission. It would be nonsensical for a truth commission to write the history of a conflict without analyzing and commenting on the role of senior officials, whether political or military, even if specific names are omitted. It would be unfair to avoid interviewing those senior officials who wish to speak with the commission, or disallow them from taking part in public hearings. It is also impossible to know which persons will be considered by a prosecutor to be the “most responsible,” and indeed only a few are likely to be prosecuted at the international level. Ignoring the upper ranks—with the idea that some of them might be targeted for prosecution—would be extraordinarily shortsighted, as well as impossible on a practical level, as their names will naturally come up in any regard in investigations and statement-taking.

Second, some have argued that possible tensions could be avoided by “sequencing” the work of a truth commission and prosecutions. In Liberia, it was understood that the TRC would be allowed to conclude its work before consideration was given to any prosecutions—a lesson the commission (and other authorities) said they learned from Sierra Leone. Elsewhere, as with the tribunal for the former Yugoslavia (described below), prosecutors may prefer that no truth commission is created until prosecutions have been completed, to avoid any complications of overlap. But neither of these approaches is a fair resolution. Asking either prosecutors or a proposed truth commission to hold off by several years risks both losing the momentum of transition (when there may be more political space for such investigations) and weakening the evidence base that is available, which is best assessed and protected as early as possible, before information might be corrupted. It would also not solve the potential problems at hand. Some of the difficult questions, such as whether a court can access confidential records of a commission, would remain even if a commission had concluded its work and boxed up its archives. Finally, prosecutions naturally carry on for many years (and generally do not have a clear ending point), so there is no reasonable way to undertake a truth commission “after” prosecutions. Instead, it must be acknowledged that in some cases a national truth commission will operate simultaneously with either domestic or international prosecutions, and a reasonable working relationship will have to be found.

Some of the troublesome issues that might arise were seen very early, in the discussions around a truth commission that was proposed for Bosnia in the mid-1990s, and especially in the strong response from the International Criminal Tribunal for the former Yugoslavia (ICTY), which opposed the idea of any commission that would overlap with its own investigations.

The idea for a truth commission in Bosnia was rooted in the recognition that three contradictory versions of history were being taught by the three ethnic

communities of Bosnia—the Serbs, Muslims, and Croats—and that such radically different understandings of the war could well lead to future violence. The Tribunal’s work, based in The Hague, the Netherlands, did not seem to be impacting these local perceptions. Those backing the idea of a truth commission argued that only by taking an assertive step toward reconciling such different conceptions of truth and history would Bosnians be able to find common ground and the relations between the three groups improved. The commission’s supporters saw such a body as complementary to the Tribunal, and argued that a truth commission might enhance the Tribunal’s reach by making more information available to it. For example, the commission could review and summarize thousands of local-language documents and videotapes that had been out of reach of the Tribunal.

But the leadership of the Tribunal was worried that a Bosnian truth commission could weaken the Tribunal by creating a parallel structure with overlapping interests, and the Tribunal’s president and prosecutor openly opposed the idea of a truth commission while the Tribunal’s work was under way. The concerns of the Tribunal’s chief prosecutor and president were first outlined in November 1998.<sup>3</sup> They argued that the existence of a truth commission could undermine the Tribunal’s work by allowing individuals to cooperate with the commission while continuing to default on their obligations to the Tribunal; that the commission’s findings of political responsibility might not be distinguished in the public’s eye from those of criminal responsibility, thus leading to unreasonable demands for prosecutions; that there would be a danger that the commission and the Tribunal could arrive at contradictory findings of fact, given the commission’s lower standards of evidence; that evidence could be contaminated by the commission, especially through repeated interviewing of witnesses; and that the Tribunal already was providing the historical truth, so that such a commission was unnecessary. They also argued that Bosnia was not ready for a truth commission and that the process would likely be manipulated by local political factions. In addition, advocates feared that a truth commission, which would have depended on international funding, could pull resources away from the Tribunal.<sup>4</sup>

While these are legitimate concerns, they were not insurmountable, many observers insisted at the time.<sup>5</sup> Whether political actors would try to use the truth commission as a means to avoid compliance with the Tribunal is not something the commission could control, except by making public statements to try to deter this ploy. Many countries work under different standards of evidence for different kinds of trials (criminal versus civil), and after mass crimes the public must appreciate that not all of the accused can be tried. The problem of a “contaminated” witness pool is also commonly confronted by prosecutors, and many argue that this should not be a formidable issue for the Tribunal; the commission could perhaps lessen this problem by avoiding taking testimony under oath. And finally, while the Tribunal’s decisions include long descriptions of the historical context of each case, these decisions are not easily accessible or widely read, especially within the country.

The perspective of the ICTY changed over the next years, and it ultimately relaxed its position to accept that there may be a role for a truth commission. But this conflictive beginning seems to highlight the potential for the interests of a truth commission to clash with those of an international court. The overlap between a truth commission and the ICC is likely to raise similar kinds of questions.

But there are not only problems: the overlap between a truth commission and the ICC (or other international tribunal) could also result in benefits for both bodies. A commission report's outline of the broad pattern of crimes could help focus the court's investigations, especially if the commission concludes its work before the court's prosecutor begins investigations in the country. If information can be comfortably shared by the commission, its report, supporting materials, and interviews with thousands of victims could help identify witnesses and evidence for the prosecutor. Finally, a truth commission's detailed assessment of the strength and independence of the judiciary could help the Court determine whether the state is "unwilling or unable" to investigate and prosecute a case, a key test for the Court to gain jurisdiction over a matter.<sup>6</sup>

Meanwhile, a truth commission is likely to appreciate the existence of an international court that could have jurisdiction over the crimes it is investigating. While some victims may request confidentiality, others will feel encouraged that information they provide might feed into criminal justice. Prospects that its documentation could be used for international prosecutions could add weight to a commission's work, focus its targeted investigations, and help shape or clarify its evidentiary standards. But regardless of these potential benefits, certain questions or tensions remain.

## **Complementarity**

Perhaps the most fundamental question that is often raised is whether a national truth commission might sometimes satisfy the "complementarity" test of the ICC, which would suggest that the Court would then not have jurisdiction. One can imagine a government insisting that the national preference in its country is for a truth commission instead of trials, that they feel this will bring sufficient accountability (if not prosecutions and punishment), and that respecting this "national solution" would mean that the ICC should not be involved.

The ICC operates on the principle that a national judicial response is preferable to—and takes precedence over—its own involvement. If a country's judiciary is genuinely investigating or prosecuting a case, the ICC is prohibited from proceeding with this case. On the other hand, if the domestic authorities are either unwilling or unable to prosecute, or if national proceedings are not deemed to be "genuine," then the ICC prosecutor could act.<sup>7</sup> This arrangement is referred to as complementarity.

Would the investigations undertaken by a truth commission satisfy the requirement for national authorities to “investigate or prosecute,” as set out in the ICC Rome Statute? In short, the answer will usually be no: most truth commissions would not meet this test, as the intention of the Rome Statute is for such “investigations” to be for criminal justice, and not only to establish the truth.<sup>8</sup>

But depending on the powers and intentions of a truth commission (or of the relevant national prosecutorial authorities), it is possible that a truth commission might qualify. There are at least two plausible scenarios, both pertaining to the intention or likelihood of a commission’s investigations leading to prosecutions.

Paul Seils, a former senior analyst with the ICC prosecutor’s office, has outlined one possible approach. If the national prosecuting authorities were legally required to give consideration to a truth commission’s recommendations, and to take a clear decision whether to prosecute, this might be considered a sufficient link to the criminal justice system to meet the complementarity test. Seils noted that such powers are embedded in the national human rights commissions in Uganda and Kenya, and in the police ombudsman of Northern Ireland, providing a useful model. “This would be one step further than the Peruvian truth commission’s ‘judicialization team,’ whose strong recommendations were largely ignored by the prosecuting authorities,” notes Seils.<sup>9</sup>

Second, a truth commission might be created with the explicit intention that prosecutions will follow. This could be clear even if there is not a legal requirement for the national prosecutors to act on the commission’s information (if, for example, a commission is created by presidential decree, such a requirement may not be possible). Argentina was such an example. The government viewed the commission as a step toward prosecutions, and files from the truth commission were handed to the prosecutor—and acted on—even while the commission was under way. Of course, as we have seen, many other truth commissions have had a stated intention to counter impunity, or have been given the explicit task of recommending prosecutions, but this has not often resulted in serious judicial action. It would thus be necessary for the ICC prosecutor (or Pre-Trial Chamber) to assess whether the state’s stated intentions toward criminal accountability are genuine and realistic. One would expect to see clear prosecutorial action or preparation, such as the appointment of a special prosecutor, the request by the prosecutor for information from the commission, or other signs of serious intention—not simply a statement in a truth commission’s mandate of the desire to counter impunity.

Meanwhile, in the one country where the ICC and a national truth commission are both currently active, namely Kenya, there is no intention by either body to get in the way of the other. The ICC prosecutor has explicitly argued for a “three-pronged response” to ensure accountability for the 2007–2008 post-election violence: a special tribunal at the national level, the ICC, and the truth commission.<sup>10</sup>

## **Amnesties**

Many of those who have pondered the possible relationship between the ICC and national truth commissions have presented the issue as a question about amnesties—that is, would the Court respect a national amnesty granted through a truth commission’s conditional amnesty regime? Or, analysts have asked, would it intervene and effectively overrule these delicate national decisions?

As should be evident, this question is largely framed around the example of South Africa, with commentators mistakenly assuming that this TRC’s truth-for-amnesty model is typical of truth commissions. As noted above, such amnesty-granting powers are unlikely in future truth commissions—or at least unlikely to apply to very serious crimes. There are, however, other flirtations with immunity arrangements that raise similar questions. Liberia’s truth commission listed several dozen perpetrators that it recommended should not be prosecuted, because of their cooperation with the commission and their expressions of remorse; it also recommended that no one should be prosecuted for crimes they committed as a child. In Sierra Leone, the TRC’s final report defended the national amnesty included in the peace agreement. In Sudan, the Mbeki Panel suggested in October 2009 that a truth commission be formed with the power to grant pardons—although the meaning of pardon, as against amnesty, was not spelled out. If the intention is that perpetrators could receive a pardon after a trial and conviction (and in exchange for cooperation with the truth commission), this would raise the question of whether the ICC has a view on whether persons tried and convicted actually serve a sentence, as well as on the length of the sentence. This question is not addressed in the Rome Statute, and has not yet been formally put to the Court. Finally, the Colombian Justice and Peace Law provides reduced sentences in exchange for truth-telling. In this case, the ICC prosecutor has watched carefully to assess whether this will meet the complementarity test.

Thus, the question of the ICC’s stance toward national immunity arrangements, sometimes linked to a truth commission or other truth-telling process, is relevant. The way in which these arrangements, recommendations, or powers are actually implemented will differ in each national context. However, it is clear from both the ICC statute and its practice to date that national immunity arrangements which prevent prosecution will not be respected by the ICC, regardless of any argument of national “preference” for an “alternative” approach.

But there are caveats. The ICC intends to prosecute those “most responsible” for serious crimes, and thus might not have any impact on an amnesty that applies to the vast majority of perpetrators.<sup>11</sup> The prosecutor is also instructed in the statute not to prosecute if it would not be in “the interests of justice” to do so; one can imagine scenarios where an alternative accountability regime, including some form of amnesty or conditional amnesty, could be deemed to meet this test and to persuade the ICC prosecutor to stay away. In



general, however, the ICC prosecutor has to date read the requirement for genuine criminal investigation or prosecution fairly literally and narrowly—and most observers assume that a national amnesty for the most serious crimes would simply not be accepted by the ICC.

### **Access to Truth Commission Records**

Where the ICC's engagement overlaps with a truth commission, will the Court have access to the information collected by the commission? This question of "information sharing" also arose in some national contexts, as outlined in Chapter 8, where commissions often provided information to prosecutors. Similar issues arise with the ICC, but there are also specific peculiarities to this different legal context.

Many truth commissions welcome the opportunity to pass information to a prosecutor, hoping to see justice done. But most truth commissions receive some information with a promise of confidentiality, and their governing mandate may even indicate that the commission "shall not be compelled to disclose any information given to it in confidence."<sup>12</sup> If a commission cannot guarantee confidentiality—and indeed if its information might be passed directly to a prosecutor—surely there may be a chilling effect on the public's engagement with the commission, in particular by perpetrators who might be weighing the possibility of providing information to the commission.

Meanwhile, the Rome Statute requires state parties to cooperate fully with the Court, and to "comply with requests by the Court to provide . . . assistance in relation to investigations or prosecutions," including "the provision of records and documents, including official records and documents."<sup>13</sup> Would a truth commission's information fall within the category of "official records and documents"? What about its archives, which are often handed to a government agency for safekeeping after the commission concludes?

This question was first raised in the context of the overlapping jurisdiction of the Special Court and the truth commission in Sierra Leone, which operated simultaneously from 2002 to 2004. There were a number of early, detailed proposals made by international NGOs and even the United Nations as to how and whether information sharing could take place between the two bodies.<sup>14</sup> Meanwhile, there was public confusion about the difference between the two processes, and a rumor circulated that testimony given to the TRC would be passed directly to the Special Court.

What first appeared to be a dilemma was largely resolved through early decisions taken independently by the two bodies. The prosecutor of the Special Court made clear that he had no intention of using the commission's information in his investigations. And the truth commissioners took a position early on that "information given to it in confidence will remain confidential" and that such assurances were necessary for it to fulfill its objectives.<sup>15</sup> It had no interest in an elaborate agreement of information-sharing with the Special Court.

William Schabas, who served as a member of the Sierra Leone truth commission, has written at length on this question of interrelationship and possible sharing of information. He concludes that information provided to a truth commission under a promise of confidentiality should be treated as “privileged,” and consequently not subject to disclosure—equivalent to other respected categories, such as information shared between a lawyer and client, or doctor and patient.<sup>16</sup> The ICC rules of procedure explicitly respect such privileged information. It would seem reasonable that much of the confidential information held by a truth commission would be dependent on a “professional or other confidential relationship” for which “confidentiality is essential to the nature and type of relationship between the person and the confidant,” and thus protected under the ICC Rules of Procedure and Evidence.<sup>17</sup> However, this has never been tested before the Court, and there is something inherently different between an exercise explicitly designed to collect thousands of testimonies about major crimes, and other commonly accepted privileged relationships.

On the other hand, Schabas identified the “most difficult issue” in the relationship between the two bodies in Sierra Leone as the question of admissibility in prosecutions of self-incriminating evidence produced before a truth commission. Some perpetrators were admitting to serious crimes in Sierra Leone, even in public hearings, and the legal framework or restrictions on the use of this information was unclear.<sup>18</sup> (In other contexts, truth commission legislation allows deponents to receive “use immunity” such that information they provide cannot be used against them.)

In addition to the interest by a prosecutor, the defense counsel may have a strong interest in having wide access to truth commission records. It is possible they could find information in the commission records that directly challenges the accusations against their defendant (such as another person admitting to the crime, or other details which shed doubt on their client’s involvement). More typically, defense counsel would be interested in analyzing the testimony given to the TRC by persons who are later witnesses in court. If there are inconsistencies in the witnesses’ accounts, the defense might use this to try to discredit their testimony. This is a classic problem that is presented not just by truth commissions, but by other prior accounts given by the witnesses. However, if testimony was given under oath, as it often is to a truth commission, this could make things more complicated.

The potential difficulties that could arise in making use of confidential truth commission information can also be seen in the extraordinary difficulties encountered when the ICC prosecutor attempted to rely on information obtained from the UN mission in the Democratic Republic of the Congo. Only when the trial began did it become clear that these were largely confidential documents and had not been screened or redacted for possible wider use or disclosure. With a request from the defense to view these documents, the trial came to a halt. The inability of the prosecution to share these documents, which were seen as central to the case, nearly led to the judges releasing the defendant. An uneasy resolution was found: the United Nations agreed to

painstakingly review each and every document to redact names and other sensitive information. It was an extraordinarily time-consuming process, though in this case it ultimately pertained to only some two hundred documents—not the many thousands that make up the files of a truth commission.

The ICC prosecutor clearly appreciates the limitations of using confidential information. His 2009–2012 prosecutorial strategy states an explicit goal of “reducing reliance on confidential information.”<sup>19</sup> However, the assumption even here is that the office of the prosecutor will first have access to such documents, and then decide whether to make use of them, saying that it will be “developing an approach whereby the Office initially screens the [confidential] documents for relevance.”<sup>20</sup>

### **Might a Truth Commission Access Detainees?**

Another question that has not yet come to the ICC, but seems very likely to arise in the future: once arrested and in detention, can an accused perpetrator take part in a truth commission process? Again, there is a fascinating set of experiences to turn to from the truth commission and Special Court for Sierra Leone which hint at how this might be addressed.

The Special Court was asked by two different truth commissions for access to interview its detainees. The Sierra Leone commission wanted to feature Hinga Norman (the former head of a militia aligned with the government) in a public hearing, but the Special Court disallowed such a hearing, suggesting that any questions from the commission instead be answered by the detainee in writing, or perhaps in a meeting in the detention unit.<sup>21</sup> Ultimately, Norman backed out of any arrangement other than a public hearing. Another detainee also expressed interest in speaking with the Sierra Leone Commission in a public hearing, but met with the same limitations.<sup>22</sup> Several years later, the Liberian truth commission requested an interview with former president Charles Taylor, then waiting trial by the Special Court in The Hague. The Special Court left the decision up to Taylor, and he declined. The Liberian commission had hoped to record their interview with Taylor and broadcast it publicly in-country, but the decision by Taylor effectively prevented the Court taking a formal decision on this.<sup>23</sup>

It is understandable why any truth commission would be interested in interviewing someone of enough significance to be detained by an international court. Ideally, a satisfactory solution may be found for similar situations in the future so that a detainee can provide information to a commission, including in confidence, without raising a risk for an ongoing or imminent trial. It seems doubtful that a court would allow a defendant to appear in a non-judicial public hearing while a trial is under way, however, given the very different procedures, evidentiary standards, and levels of control for such an event.

Of course, even if allowed a private interview, any commission would have to be cautious about information provided by an accused person on trial. But

such a meeting could be important nonetheless: while the defendant may not admit their own involvement in events, they might provide useful details about context, political developments and decisions, and the actions of others.

## **Proposed Solutions**

Various proposals have been put forward to address the kinds of complications that may emerge in the relationship between a truth commission and a judicial system, whether this be the ICC, national courts, or some form of special tribunal. Lawyer Howard Varney, who staffed the Sierra Leone commission, concludes that a consensus on core principles should be reached between the two bodies and that this be “reflected in a written agreement or enshrined in law to provide enforceable protection.” Apparently on the basis of his experience in Sierra Leone, he argues that, most importantly, “the rights of detainees and prisoners . . . to participate in a truth and reconciliation process should be enshrined in law” and that a mechanism for binding dispute resolution should be set out in advance.

But it is hard to envision such an advance agreement necessarily resolving the range of potential conflicts that may arise, or that either body would give up its rights or interests in an advance generic agreement. In Peru, the commission reached such an agreement with the national prosecutor’s office, but this had limited effect, as outlined in the previous chapter. It is also not clear with whom such a more universal agreement should be reached—given the varied interests of defense counsel, the prosecutor’s office, and judges. The ICC prosecutor has signed memorandums of understanding with various non-governmental organizations, and thus such an agreement with a commission seems feasible on a practical level. But this would have no effect on defense counsel, for example.

The Sierra Leone truth commission argued in its final report that problems with the Special Court were compounded by a “mutual failure of the institutions to harmonise their objectives.”<sup>24</sup> In Peru it was suggested that the commission’s relationship with the prosecutor’s office “suffered from the lack of a commonly agreed-upon prosecutorial strategy.”<sup>25</sup> Perhaps more and better advance planning and discussion would be useful.

To protect confidentiality, some suggest, a commission could redact sensitive information, particularly the names of sources, when it ends operations and before sending its files to an archive. But in some cases, the source will be clear on the basis of the information provided, and this will hardly provide protection.

If an ICC member state is establishing a truth commission, should the founding legislation or decree clearly specify that there is no intent to violate state obligations under the Rome Statute? Should these terms of reference provide much greater clarity on the final status of the commission records, the legal meaning of “confidential,” and whether documents in the commission’s possession would be considered “privileged”?

Ultimately, there may be no clear or simple path by which to foresee and avoid any possible conflicts. Perhaps most importantly, both a truth commission and judicial authorities should be aware of the issues that may arise, and try to plan their own work in such a manner as to avoid any unexpected pitfalls. A commission will need to be clear what is promised when “confidentiality” is granted. Judicial authorities should be aware of the great difficulties presented (and possible damage to a commission process) if they would try to gain unrestricted access to such files.

Finally, judicial authorities—and judges in particular—may need to learn much more about how truth commissions work, what their aims are, and what issues relevant to the court might arise. The Special Court for Sierra Leone’s decision disallowing a public hearing for its detainees has been criticized for its narrow understanding of truth commissions, thus reaching simplistic conclusions. Perhaps judges—and prosecutors—will find it in their interest to watch these non-judicial processes closely, as surely questions of overlap will arise.

## 10 Naming Names of Perpetrators

Few issues around truth commissions have attracted as much controversy as the question of whether a commission should publicly name those individuals it finds to be responsible for human rights crimes. This question has been hotly debated by many past commissions and remains a point of tension for those crafting new bodies.

The disagreement is between two contradictory principles, both of which can be strongly argued by rights advocates. The first of these is that due process requires that individuals accused of crimes be allowed to defend themselves before being pronounced guilty. Due process is violated if a commission, which does not represent a court of law and does not have the same strict procedures, names individuals responsible for certain crimes. The second principle is that telling the full truth requires the naming of persons responsible for human rights crimes when there is clear evidence of their culpability. Naming names is part of the truth-telling process, and is especially important when the judicial system does not function well enough to expect trials.

The terms of reference for many truth commissions have not addressed this question, neither prohibiting nor requiring commissions to name perpetrators, thus leaving the decision to the commissions themselves. While most commissions have had the power to name perpetrators, however, only a few have done so. Behind virtually every truth commission there has been turbulence, debate, and disagreement on this issue between the commissioners, between commissioners and their staff, or between the commission and the government to which it is to report.

More recently, as understanding of truth commissions has grown, the mandates of new commissions have been more likely to spell out their powers explicitly. For example, the South African Truth and Reconciliation Commission was mandated to inquire into “the identity of all persons, authorities, institutions and organizations” involved in gross human rights violations, and to “prepare a comprehensive report which sets out its activities and findings,”<sup>1</sup> which was clearly understood to include the names of perpetrators where known. In contrast, the Guatemalan commission’s mandate stated that it could not “attribute responsibility to any individual in its work, recommendations, and report,” a stipulation that sparked loud protest from

disappointed human rights and victims groups, who saw this as an unacceptable constraint on its work. Several other recent commissions, such as those in Morocco and Canada, have also been explicitly prohibited from naming perpetrators, sometimes, as in the case of Morocco, resulting in great disappointment for victims.

Where this has been left up to a commission, the decision whether to name names has been affected by a number of factors far beyond concerns for due process, as the examples that follow will show. In some cases, there are explicit or implicit political pressures on a commission to keep names out of the report. Some commissions have been especially concerned about the security risks in naming perpetrators—concerned either for the safety of witnesses who provided the names, for the security of commission members or staff, or about the possibility of revenge (in the form of street justice) taken against those named, especially where there is no chance that justice will be found in the courts. Commissioners must also gauge the quality of their information, the depth of their investigations, and the sources on which they have based their conclusions, and whether there is any risk that their conclusions could be wrong. Those truth commissions that have identified perpetrators in their reports have tried to state clearly that the commission report is not a legal judgment and does not determine the persons' criminal liability. Yet regardless of such a caveat, those named in a truth commission report are popularly understood to be guilty, period; the distinction between criminal or legal guilt and a commission's finding of responsibility for a crime will be lost on most readers. Thus, past commissions have struggled with whether and how to state their findings on individual responsibility, under what standards of proof and procedures of due process, and whether the potential fallout of naming names in the midst of a delicate political transition may represent too great a risk.

## Decisions by Past Commissions

### *Argentina*

The first to struggle with this issue was the 1983–1984 National Commission on the Disappeared in Argentina. Over one thousand perpetrators were named in the testimony given to this commission, primarily by witnesses to kidnappings and survivors of detention camps. But its mandate stipulated that “the Commission cannot take judgment on acts and circumstances that constitute material exclusive to the judiciary.”<sup>2</sup> As a result, some commission members now argue that they did not really have the option of publishing any perpetrators' names. “According to the presidential decree that established the commission, we had no powers to produce formal statements regarding the responsibility of certain individuals,” commissioner Eduardo Rabossi told me. “We were only empowered to inquire into the fate of the disappeared and into the procedures or system of disappearances. We were to leave the rest to the judiciary.”<sup>3</sup>

Others tell a more complex and difficult story. The ultimate decision not to make the list of names public was intensely debated within the commission. Senator Graciela Fernández Meijide, then a senior staff director of the commission and later a prominent political figure in Argentina, sat at the table at each of the commissioners' meetings, though as a staff member she had no voting power. Fernández Meijide's own son was disappeared during the "dirty war," and his smiling picture sat on the table next to her in her office when I met with her, a constant reminder of her loss. Fernández Meijide played an active part in the debate about naming names, and disagreed with the commissioners' final decision.

The commission had no power to subpoena officials and no capacity to undertake in-depth investigation into individual cases, but Fernández Meijide insisted then, as she insists now, that there was considerable objective information based on official sources that could have and should have been published.<sup>4</sup> Through testimony from over six hundred survivors of detention camps, and visits to many of these sites that confirmed their existence, the commission had solid proof of 340 torture centers. It was then simple to gather official records, published in the newspaper at the end of each year, that listed the military command of each area. There is a strict hierarchical and geographical structure to the Argentine military, and thus it is a reasonable assumption that those in command of each area, subarea, zone, or subzone were ultimately responsible for the abuses that took place there. Fernández Meijide argued that these names should be published, which would provide at least some moral sanction against abusers.

"The discussion was difficult, it lasted for hours; and it was a discussion that I lost," said Fernández Meijide on the commission's debate. "But as I conceded my loss, I said to them that everyone knew that I was losing despite being right." Not all commissioners were against publishing the names, and the decision was ultimately taken by majority vote.

The commission therefore took no position on the responsibility of specific individuals for specific crimes, but its report does include names of some accused of being perpetrators, appearing in the passages of victim and witness testimony that is heavily quoted throughout the text. "We decided that if, in a chosen quotation, names appeared, then we wouldn't erase them. But we wouldn't release the whole list," Commissioner Rabossi explained. For example, in a typical passage, one survivor testified:

The next day I was again beaten up by several people. I recognized the voice of Chief Inspector Roselli . . . and I was able to recognize the voice of the adviser to the Chief of Police, a lieutenant-colonel who also hit me. . . . In the early hours of the 16th I was taken to the toilet by the officer on duty, Francisco Gontero, who, from a distance of four or five meters, loaded his 45-caliber gun and fired three shots, one of which went through my right leg at the height of my knee.<sup>5</sup>



Another testified:

I was hooded and tortured, and later transferred to the officers' mess of the 9th Infantry Regiment, where they set up simulated executions and also tortured people. One of the visitors I saw myself and was even interrogated by was the then Commander of the 7th Brigade, General Cristino Nicolaides. Another of the visitors was the then Commander of the 2nd Army Corps, General Leopoldo Fortunato Galtieri, who was there in mid-November 1976.<sup>6</sup>

Most prisoners were kept blindfolded for their full period of detention, however, and could neither see nor recognize the voices of their assailants, and thus many passages contain only descriptions of the number of assailants present during torture, or the nicknames that the perpetrators used among themselves.

In an author's note at the beginning of the report, the commission tries to distance itself from any implication that those persons named in testimony should be presumed guilty, stating:

As regards any person named here according to the function they were carrying out, or who are included in the transcription of statements which implicate them in events that may have legal consequences, the National Commission in no way seeks to imply their responsibility for any of the cases mentioned. The Commission has no competence in this respect, since authority for this belongs to the judicial power, in accordance with the statutes of the constitution of Argentina.<sup>7</sup>

Meanwhile, the commission attached its own conclusive list of persons responsible for rights abuses to the confidential copy of the report that it submitted to the president. Just after the commission report was made available to the public, someone inside the commission leaked the entire list of perpetrators to the press. "There Are 1,351 Guilty," read the blazing headline, and each of these 1,351 military, civilian, and religious leaders were listed by name, with their position or rank noted.<sup>8</sup>

For many years, this list resulted in no concrete effect for the great majority of the 1,351 named (outside the handful who were prosecuted), but a number of former torturers or senior officers in the military regime were often recognized in public, sometimes by those who survived torture at their hands, and they suffered from living in a society that will not forgive them. As international human rights lawyer Juan Méndez described more than twelve years after the end of military rule:

Hundreds of known torturers are free from prosecution and even free from civil actions for damages. But many of them are well-known to the public,

and if the state must consider them innocent by operation of the laws and decrees of impunity, society frequently makes clear that their crimes are not forgotten. Whenever they venture into the streets or public places, Videla, Massera, Camps, and several others have experienced spontaneous though nonviolent acts of repudiation: waiters refuse to serve them, other patrons leave the place or sit far away from them, some actually defy their bodyguards and confront them with the opinion that most Argentines have of them.<sup>9</sup>

According to the *New York Times* in 1997, retired navy captain Alfredo Astiz, particularly well known for his brutal acts and widely recognized for his baby-faced good looks, “has suffered dozens of assaults in recent years by strangers on the street or people who say he tortured them or their relatives.” The same article also notes, however, that many perpetrators “now walk the streets without fear or incident, mainly because few people can identify them.”<sup>10</sup> This changed just a few years later, however, as legal restrictions were lifted, leading to the prosecution of hundreds.

### *Chile*

In Chile, the commission also decided to withhold names of perpetrators from its final report. The Chilean commissioners describe a decision based on prudence and lack of sufficient investigation into each case. As in Argentina, however, this decision was taken with considerable disagreement within the commission from those who knew these cases well.

The Chilean commission’s mandate was somewhat clearer on this question than its Argentine predecessor, stating that the commission shall not “assume jurisdictional functions proper to the courts. . . . Hence it will not have the power to take a position on whether particular individuals are legally responsible for the events it is considering.”<sup>11</sup> The presidential assistant who drafted the mandate for President Aylwin, Gisela von Mühlenbrock, told me that their intent was to prohibit the naming of perpetrators.<sup>12</sup> The commission itself, however, read this to mean that they were neither prohibited from naming nor obliged to name perpetrators, as long as any decisions of legal culpability were left to the courts, but it did not address the question until six months into its nine-month mandate.

“The question that the commissioners put to me,” said then chief of staff Jorge Correa, “was, ‘Do we have enough information to say publicly that such-and-such person is the perpetrator of a specific act?’ That question was a strong argument: I would have needed another three years of investigations to name with certainty. And it wasn’t part of the clear role of the commission.”<sup>13</sup>

“Often, we knew who tortured,” Correa continued, “but not who pulled the trigger on those who didn’t survive. We probably could have said who some were, but it would have required further investigation to track each accusation back to the primary source, the primary witness, and to validate its

accuracy. It is much more easy to say, 'This person was disappeared,' than to say, 'This person was disappeared, and this is exactly who did it.'"<sup>14</sup>

Some prominent international rights advocates suggest that not naming the perpetrators in Chile was simply a reflection of the power that those perpetrators still held, which left the commission little room, or little desire, for pointing fingers.<sup>15</sup> Indeed, when commissioners in Chile discussed their decision years later, the political pressures were clear. "It was an implied must" not to name names, said one commission member, Laura Novoa. "The commission mandate grew out of a political compromise, and we worked under those restrictions."<sup>16</sup> Nonetheless, there was a very long and heated debate when the commissioners met to take their decision on this issue. One commission member remained strongly opposed to omitting the names, but, recognizing that he was in the minority, finally accepted the consensus on excluding names.

The commission staff, who knew exactly what information the commission had in its hands, did not take well to this decision. There was a "near revolt" by the staff, said Commissioner Novoa, when the commission announced that it would not publish the names of perpetrators. "We met with the staff and had to calm them down. We were older and, maybe, wiser, so we thought we knew better."

Staff members concur with this description of events, but they make it clear why they felt so strongly. "When we started our work, we never dreamed we would obtain the kind of information that we did," says one senior staff member, a practicing lawyer when I met him in 1996. "We investigated every case, and built up thick folders of evidence on each one."<sup>17</sup> As part of their investigations, the staff employed something sounding like a police lineup in a criminal investigation. He explained:

There were often witnesses to a kidnapping. A neighbor, a spouse, someone else who was detained in the same detention camp and survived. We had obtained photos of those in the armed forces known to be implicated in abuses, and we would show these photos to the witnesses. Witnesses could very often identify the person from the photos.

The commission also received firsthand confessions in some cases. Although there was no official collaboration by the armed forces with the work of the commission, a number of retired officers, about twenty, came forward to testify confidentially. Most who spoke lived outside of Chile (as those in the country feared the consequences of breaking the military's code of silence, I was told). One staff member told me his trip to Europe to take testimony was "life-changing."<sup>18</sup> He continued:

One case we covered was that of a man who was kidnapped off a bus while taking his two small children to school, holding each of their hands in his. The last memory these two children have of their father is that of him being dragged away, literally pulled out of their hands, never to be seen

again. When they came to the commission over fifteen years later, it was the first time that they had told their story, and the first time they had talked about how this had affected their lives, carrying this memory for all those years. They had never even talked about it among themselves. It was very emotional. I think we all ended up crying.

Then, when we went to Europe, by chance I was the one to take the testimony of the very person who kidnapped that person off the bus. You can only imagine the kind of impact that had on me.

I'll give you another example: one person, also in Europe, came to give testimony and described how he took people up in helicopters and threw them into the sea. They would be drugged first, but sometimes they would wake up during the flight, so they would just bludgeon them over the head, kill them probably, and then throw them into the sea.

The very next week, I took the testimony of the daughter of one of those victims, which this guy had just described throwing into the sea. The daughter was just sure her father was still alive—on an island somewhere, or kept in some secret prison, in another country, somewhere.

I couldn't say anything. It wasn't for me to effectively kill her father, then, at that moment, after eighteen years of her living with the absolute certainty that he was alive. It came out later in the report, but I couldn't tell her what I knew at that time.

"He knew the identity of each person he killed?" I asked, knowing that in other countries, such as Argentina, this was not the case; but this staff member was uncomfortable telling me more.

"This is still confidential information," he said. "It isn't supposed to come out." Six years had passed since the commission ended, over twenty years since most of these acts took place. I realized that much of this information might never come out.

"How many perpetrators' names did you have, how many about which you were sure?" I asked. Again, he would not be specific, except to say, "many, many more than forty" (which was approximately the number of perpetrators named by the commission in El Salvador).

Armed with this information about individuals responsible for such heinous crimes, the staff was frustrated that the names of the perpetrators would be suppressed. This staff member said:

We very much wanted to publish the names, for a social sanction at least, if there wasn't going to be a judicial sanction. But the decision by the commissioners was not to. We even suggested that the report say that "so and so was contacted regarding his involvement in a certain case," without stating that the commission had clear evidence of guilt. But the commissioners wouldn't go for that.

In many cases, we had the first and last name of the person who killed someone. It doesn't appear in the report, but if you ask me who threw that man out of the helicopter, I can tell you exactly who.

In contrast to what happened in Argentina, this list of names compiled by the Chilean commission has never appeared in public. In fact, most Chileans probably do not know there is such a list, but some insiders say that it is quietly used by the president in his review of senior officers proposed for promotion. No one has been removed from their post for involvement in past abuses, but since 1991, I was told, no one on the truth commission's list of perpetrators has been approved for a high-level promotion.<sup>19</sup>

### *El Salvador*

In the spring of 1993, exactly two years after the Chilean commission was completed, the El Salvador commission was finishing its report, based in its final weeks out of UN headquarters in New York. The commission had gathered significant information on the involvement of senior members of government, the armed forces, and the judiciary in serious abuses of the past, and word leaked out that it planned to publicly name names. As the deadline for completion neared, the commission came under intense pressure from the Salvadoran government to omit those names from the report. Rumors spread about an impending coup if senior military officials were singled out, and the issue captured the attention of the press and the public in San Salvador. Various levels of the United Nations and the international diplomatic community became involved, conferring with or even pressuring the commission on the issue.

The commission was surprised by the Salvadoran government's position on the subject. Commissioner Thomas Buergenthal writes that when they first met with then president Alfredo Cristiani and members of the Salvadoran military high command at the beginning of the commission's work, they had been supportive of the commission's identifying the "rotten apples" within the military who were guilty of abuses, thus protecting the sanctity of "the institution."<sup>20</sup> However, Buergenthal notes, "the attitude of the government began to change dramatically as it became known that the Commission had gathered incriminating evidence against high-ranking government officials, particularly General René Emilio Ponce, the Minister of Defense, and General Juan Orlando Zepeda, his Vice Minister."<sup>21</sup>

The government then began to "mount a fierce diplomatic campaign to force us to omit names from the Report," Buergenthal continues. "President Cristiani led the campaign by urging various Latin American leaders, the United States, and the UN Secretary-General to use their power and influence to prevent the publication of names," as well as sending a government delegation to meet with the commission in New York. "The arguments against publication ranged from the danger to the peace process and national reconciliation, to intimations of imminent coups, and claims of the government's inability to prevent retaliation against those who provided information to the Commission."<sup>22</sup>

Some in the Farabundi Martí National Liberation Front (FMLN) agreed with the government's position and considered joining the government to amend the commission's mandate, which together they had the power to do. But after a "lengthy and apparently acrimonious debate within the FMLN high command," according to Buerghenthal, the FMLN chose to leave the mandate as it was, leaving the decision on names up to the commission.<sup>23</sup>

Despite the intense pressures, the commission proceeded with the evidence before it, naming over forty persons in its report from both sides of the conflict, the majority of them Salvadoran military officers. The report holds individuals responsible for planning and executing assassinations, carrying out massacres of civilians, and obstructing judicial investigations, describing the precise involvement of each person named. On the killing of the Jesuits, for example, the report states:

The Commission on the Truth makes the following findings . . . :

1. There is substantial evidence that on the night of 15 November 1989, then Colonel René Emilio Ponce, in the presence of and in collusion with General Juan Rafael Bustillo, then Colonel Juan Orlando Zepeda, Colonel Inocente Orlando Montano and Colonel Francisco Elena Fuentes, gave Colonel Guillermo Alfredo Benavides the order to kill Father Ignacio Ellacuría and to leave no witnesses. . . .
2. There is evidence that, subsequently, all these officers and others, knowing what had happened, took steps to conceal the truth. . . .
3. There is full evidence that (a) That same night of 15 November, Colonel Guillermo Alfredo Benavides informed the officers at the Military College of the order he had been given for the murder. When he asked whether anyone had any objection, they all remained silent.<sup>24</sup>

Reporting on the killing of the archbishop of San Salvador, Monsignor Oscar Romero, while he celebrated Mass in 1980, the report reads as follows:

The Commission finds the following:

1. Former Major Roberto D'Aubuisson gave the order to assassinate the Archbishop and gave precise instructions to members of his security service, acting as a "death squad," to organize and supervise the assassination.
2. Captains Alvaro Saravia and Eduardo Avila, together with Fernando Sagrera and Mario Molina, were actively involved in planning and carrying out the assassination.
3. Amado Antonio Garay, the driver of former Captain Saravia, was assigned to drive the gunman to the Chapel. Mr. Garay was a direct witness when, from a red, four-door Volkswagen, the gunman fired a single high velocity .22 calibre bullet to kill the Archbishop.

4. Walter Antonio “Musa” Alvarez, together with former Captain Saravia, was involved in paying the “fees” of the actual assassin.  
...
6. The Supreme Court played an active role in preventing the extradition of former Captain Saravia from the United States and his subsequent imprisonment in El Salvador. In so doing, it ensured, *inter alia*, impunity for those who planned the assassination.<sup>25</sup>

The minister of defense and the president of the Supreme Court were among those named in the report. In expectation of being named, the minister of defense submitted his resignation on the Friday prior to the Monday release of the report (although the president kept him in his post for another four months).

The commissioners described the decision to name names as simple logic. As they explained in the report’s introductory chapter:

It could be argued that, since the Commission’s investigation methodology does not meet the normal requirements of due process, the report should not name the people whom the Commission considers to be implicated in specific acts of violence. The Commission believes that it had no alternative but to do so.

In the peace agreements, the Parties made it quite clear that it was necessary that the “complete truth be made known,” and that was why the Commission was established. Now, the whole truth cannot be told without naming names. After all, the Commission was not asked to write an academic report on El Salvador, it was asked to describe exceptionally important acts of violence and to recommend measures to prevent the repetition of such acts. This task cannot be performed in the abstract, suppressing information . . . where there is reliable testimony available, especially when the persons identified occupy senior positions and perform official functions directly related to violations or the cover-up of violations. Not to name names would be to reinforce the very impunity to which the Parties instructed the Commission to put to an end.<sup>26</sup>

Describing his own assumption that names would be included, right from the beginning of the commission’s work, Buergenthal explains:

Until the issue became the subject of a heated debate in and outside of El Salvador towards the end of our investigation, it had certainly never occurred to me that the Report would not name names. On first reading of the Commission’s mandate, I concluded that one of our tasks was to identify those who had committed the serious acts of violence we were required to investigate. My colleagues, as I learned later, had reached the same conclusion. . . . How could we make known “the complete truth”

about a murder or massacre, for example, without identifying the killers if we knew their identity?<sup>27</sup>

The commissioners' sentiment was strengthened by the fact that the judiciary was weak and politically biased. According to Buergethal,

If there had been an effective justice system in El Salvador at the time of the publication of our Report, it could have used the Report as a basis for an independent investigation of those guilty of the violations. In these circumstances, it might have made some sense for the Commission not to publish the names and, instead, to transmit the relevant information to the police or courts for appropriate action. But . . . the Salvadoran justice system was corrupt, ineffective, and incapable of rendering impartial judgments in so-called "political" cases.<sup>28</sup>

Recognizing that there would not likely be justice or punishment from the courts, and that those named would likely continue to wield power in El Salvador for years to come, the report recommended that those named be removed from their position of employment with the state (either military or civilian), barred from serving in any public position for ten years hence, and permanently barred from the military or security forces. According to the commission's terms of reference, its recommendations were binding, but the government resisted the recommendation to bar persons from running for public office, arguing that such a restriction would be a violation of their constitutional rights. The UN secretary-general agreed, allowing that recommendation to be ignored.<sup>29</sup> The report also recommended that the entire Supreme Court resign immediately, to leave room for new members. This was rejected out of hand, with the president of the Supreme Court retorting that "only God" could remove him from his post.<sup>30</sup>

The commission was criticized for naming unevenly and for not explaining its decisions about why it included some names and apparently omitted others. Rights observers were particularly unhappy with the fact that no civilian leaders were named in connection with the death squads, which were widely believed to be financed by the right-wing economic elite, especially after rumors spread that the commission had in fact identified some of those individuals. "Because the Truth Commission for El Salvador was widely seen as having received many more names than it published, the duty should have been incumbent upon it to be more clear and forthright as to the criteria by which some names were published while other names were suppressed," wrote Juan Méndez, calling this one of the commission's major weaknesses.<sup>31</sup>

The fact that the commission named people from only one of the five sectors of the FMLN had considerable fallout, probably contributing to the breakup of the FMLN shortly thereafter. "The report had the result of unifying the Right and fragmenting the Left," said George Vickers, then head of the Washington Office on Latin America, a policy and advocacy group.<sup>32</sup> Yet Vickers and others



acknowledged that the split in the FMLN was already in the making, and the commission report probably only accelerated the process.

Buergenthal defends the commission's decisions. Speaking of the FMLN group whose leaders were named, he told me:

We knew it would look like we were after them [the People's Revolutionary Army], but we didn't have evidence to name others. It would have been nice to get a nice balance—both between the FMLN and the government, and between the FMLN groups—but we couldn't. We had no choice: we couldn't name people we didn't really have solid evidence on and weren't sure about, and we didn't want to leave out others that we did have the goods on. Unfortunately things don't fall out evenly.<sup>33</sup>

What was the impact of naming names? Some people were removed from their positions, particularly those who had also been named by the earlier Ad Hoc Commission that was set up to purify the armed forces of rights abusers. The president had resisted removing some senior officers named by the Ad Hoc Commission, but did so after they were named again by the truth commission. At least one person was passed over for a prominent appointment because he was named by the commission.<sup>34</sup> When the new Supreme Court was elected a year later (through a new, less-politicized procedure), no members from the old court were reelected, including the court's president, despite his lobbying for reappointment. On the whole, however, those named have seen few repercussions. Some were proposed for senior government posts: the president of the Supreme Court, named in the report for having covered up evidence and blocked investigations in cases of serious abuses by government forces, was appointed just a few months later to represent the government on the Inter-American Legal Committee, a sub-body of the Organization of American States. In his review of the progress in implementing the truth commission's recommendations, the UN secretary-general called this appointment "inconsistent with the spirit, if not the letter, of the Commission's recommendations."<sup>35</sup> There was certainly a sense among Salvadorans that those purged from the armed forces did not suffer any serious consequences. As one local activist said bitterly, those purged "were retired with applause and congratulations, with full honors and full benefits. They were all paid off with golden handshakes; they didn't suffer a bit."<sup>36</sup>

### *Haiti*

The Haitian commission was perhaps the first to turn to the record of other truth commissions in working out its own decision on what to do with the many names of perpetrators it had collected, although the experiences of earlier commissions gave it few answers to its own difficult dilemma. Given the evidence it had before it and the volatile political and social environment,

including the danger that there could be retaliation against anyone named, the commission struggled into its final days with the question of whether and how it might name perpetrators in its report.

Commission staff in Haiti told me that many perpetrators were repeatedly named in testimony by victims or witnesses. Of the five thousand testimonies taken, perhaps half named perpetrators, according to one staff member who helped to compile and tabulate information for the central database. It was common for one person to be named in twenty or twenty-five different testimonies; one individual was named seventy different times by independent witnesses. When the commission staff printed out all of this information, they ended up with a two-hundred-page list of names, each line listing the accused perpetrator, the case reported, and the witness or victim who provided the testimony. Staff hoped that the commissioners would rely on this list to conclude that the names of some accused perpetrators should be published.<sup>37</sup>

In a meeting with the commissioners, the staff suggested that the persons who appeared repeatedly on this list, perhaps those that appeared over twenty times, for example, should be named in the commission report. "Some things were for sure, it was not an issue of proof," said a staff member after the commission's work had ended. She continued:

In every region, there were three or four or five names that were absolutely clear, perhaps fifty names in total. When everybody tells the same story, when the whole community is pointing at one man, what else do you need? The proof was overwhelming.<sup>38</sup>

The commission did not have the time or resources to investigate each accusation, so the list produced from the database was based entirely on testimony from victims or witnesses. Staff argued that the report could include the names without implying their definitive guilt, by saying that "these people were named in testimony from victims." They also argued that the commission could rely on the internationally recognized "command responsibility" principle, in which the commander of each district can be held responsible for abuses within his district if he could or should have known about the abuses and did nothing to stop them.<sup>39</sup>

The commissioners felt that due process must be respected, and they attempted to question those persons named who happened to be in jail, to give them a chance to respond to charges, but they did not attempt to find others; some did not have a fixed address, and many of those named were probably still armed. The commission feared that there could be retaliation against named perpetrators. In the end, the commissioners decided to include names only in a confidential annex to be submitted to the president. Hoping that there would be trials following the commission's report, the commissioners reasoned that justice would best be served by handing the evidence to the judiciary and recommending prosecutions. The report recommends that the names in the confidential annex be made public "after the competent authorities have made

the judicial and administrative measures required”—that is, after those on the list had been duly prosecuted.<sup>40</sup> Yet few trials took place, and the likelihood of the list being released became increasingly remote over time.

### *Chad*

Other commissions have dealt with this issue in yet different ways. The truth commission report in Chad, published in 1992, listed names and published the photographs of those it concluded were the worst human rights abusers. When the report was released, many of these individuals were already serving in the new government or its armed forces, mostly in the reconstructed intelligence service or in the army or police. The report makes a strong plea for purging all those who served under the former intelligence service, the Directorate of Documentation and Security (DDS), which was well known for its ruthless practices. “DDS agents were thieves, torturers, and executioners, and as such, they should be excluded from the new special [intelligence] service,” says the report<sup>41</sup>—but there were neither purges nor trials after the report’s release, and few repercussions for those named. (However, as the report was released, those named reportedly fled across the river to neighboring Cameroon, fearing repercussions.<sup>42</sup>)

### *Guatemala*

The terms of reference of other commissions, such as in those in Guatemala, South Africa, and Morocco, addressed the question of naming names directly and seemingly unambiguously, but the commissions still had to interpret the exact intent of the language, and establish operationally how they would handle names of perpetrators that emerged in their investigations or, for some commissions, in public hearings.

As Guatemalans negotiated a peace accord in 1994 to establish the Historical Clarification Commission, the government and the military did not want to follow the path of their neighbor to the south, El Salvador. “We didn’t want what they did in El Salvador,” the former chief of the government’s negotiating team, Héctor Rosada, told me, saying there was nothing they liked about that commission, but the fact that it named high-level perpetrators was probably the most unattractive aspect.<sup>43</sup> Rosada, who described his own role at the negotiating table as “discussing matters with the military and finding out what they wanted,” said that the negotiations around a truth commission were very difficult and tense. The final language agreed to prohibited the Guatemalan commission from attributing “responsibility to any individual in its work, recommendations and report,”<sup>44</sup> a stipulation, as noted earlier, that angered rights advocates and victims groups. But even this restriction was open to interpretation. During the course of the commission’s work, the commission chair, Christian Tomuschat, wrote that

the final report, although it shall not attribute responsibility to any individual, may have to mention the names of a considerable number of persons who, during the worst years of the conflict, held high positions in the Government or within the structures of the URNG [the armed opposition]. Clearly, the report itself will not charge those persons individually with having committed human rights violations, but any attentive observer will be in a position to draw the requisite conclusions from the facts displayed in the report.<sup>45</sup>

It was also possible that the commission could have described the perpetrators by the positions that they filled, leaving to the press or non-governmental organizations the task of linking together who filled those positions at the time described. Rosada suggested that the commission would have some flexibility in its interpretation of the mandate. As he told me:

It can't say, "The responsible person was X," but it can say that this particular event happened and persons from such and such unit were there. It just can't put names in the report. But the commission's archives will surely have names, and the mandate doesn't say anything about what will happen to that material.<sup>46</sup>

Another member of the government negotiating team, Antonio Arenales Forno, who drafted the commission's terms of reference, acknowledged that the exact meaning of "not individualizing" abuses was unclear. He thought that this language clearly allowed the commission to say that "the head of this particular battalion at this time and in this place" was responsible. "If they don't say at least that, then you wouldn't have anything," he said.<sup>47</sup>

Yet in the end, the commission chose not to identify individual positions of responsibility. The closest it came to identifying individual responsibility for rights crimes was to state that the massive human rights violations had "occurred with the knowledge or by order of the highest authorities of the State."<sup>48</sup> Guatemalan rights activists were satisfied that, armed with this statement and the other evidence presented in the report, they had a strong case to bring charges against those persons who headed the government during the worst period of violence.<sup>49</sup>

### *South Africa*

In contrast to many other truth commissions, names of the accused were publicly broadcast on a regular basis during the work of the South African Truth and Reconciliation Commission, primarily through its public hearings. Victims, witnesses, other perpetrators, and commissioners themselves named individuals whom they knew or suspected were responsible for crimes; some of those named later came forward to testify in an amnesty hearing, or were subpoenaed by the commission to answer questions.

Section 30 of the Act that created the commission set down that “[i]f during any investigation by or any hearing before the Commission, (a) any person is implicated in a manner which may be to his detriment; or (b) the Commission contemplates making a decision which may be to the detriment of a person who has been so implicated,” then the Commission must “afford him or her an opportunity to submit representations to the Commission within a specified time with regard to the matter under consideration or to give evidence at a hearing of the Commission,” under procedures to be determined by the commission.<sup>50</sup> Early in its work, the commission was taken to court by two retired policemen who challenged the interpretation of these provisions. Specifically, they challenged how much advance notice and information the accused must receive from the commission before a public hearing. The South African Appeals Court upheld a ruling in favor of the two policemen, holding that the commission had to provide reasonable notice of such allegations, and sufficient documentation by way of witness statements, affidavits, and the like to enable the alleged perpetrator to identify the incident and respond.<sup>51</sup> Thereafter, the commission established operating procedures that gave twenty-one days’ notice in writing to those persons who were expected to be named in a public session.<sup>52</sup> This requirement placed a huge burden on the commission and slowed down its operations considerably.

The commission used the same procedures for those that it planned to name in its report. Commission member Richard Lyster later described the process as follows:

This took the form of sending a letter to them, advising them of the contemplated finding that the Commission was making against them . . . in effect, sending to them the allegations of their involvement in gross human rights violations, annexing sufficient supporting documentation to enable them to properly answer the allegations, and to admit, deny, rebut, justify, etc. the allegations, by way of a written response. Thereafter, the response would be examined by the Commissioner who had made the contemplated finding and one other Commissioner, and they would decide whether the written response contained anything to persuade them to change the contemplated finding. If not, the finding would be made final, and was then ratified by the full Commission.

If the written response from the (alleged) perpetrator did contain material or information which tended to change the contemplated finding, this was done, and in a number of instances, the person’s name was dropped from the list of perpetrators.<sup>53</sup>

Given the amount of administrative work and the advance time required to notify the accused, these procedures considerably limited how many persons the commission was able to name in its final report.<sup>54</sup> One staff member estimated that she omitted up to 80 percent of the names in her original draft of a section of the report just to ease the administrative burden of sending

notices and supplying corroborative evidence. A team covering another region suggested they delete perhaps 10 percent of the names from their original draft, for the same reasons.<sup>55</sup> Commissioner Richard Lyster estimated that perhaps six hundred names were pulled from the report either because the commission was unable to contact the accused in advance, or, in some cases, because amnesty proceedings were still pending. In such cases, neither the applicant nor anyone implicated in the amnesty application could be named, because applicants had until the date of their personal appearance before the amnesty committee to withdraw or amend their application.<sup>56</sup> Lyster says:

On top of this, because information was being fed to us literally up to the time of the publishing of the report, we were deprived of the opportunity of sending section 30 notices to about 500 alleged perpetrators, because we wouldn't have had the time to prepare the notices, trace the whereabouts of the perpetrators, send the letters, and formulate our final finding. This was for me one of the most distressing and frustrating aspects of the Commission's work. We knew that we were literally letting thousands of serious perpetrators of human rights violations walk free. This also fed into the ongoing perception about the Commission that it was perpetrator-friendly, and that it bent over backwards to accommodate perpetrators in its dealings with them.<sup>57</sup>

In the end, the commission named hundreds of persons for taking part in or condoning and encouraging gross human rights violations, including former president P. W. Botha, Winnie Madikizela Mandela, and members of the State Security Council, the inner cabinet of the apartheid government, and recommended prosecutions for those cases where amnesty had not been sought or had been denied.<sup>58</sup> On the day prior to the scheduled release of the commission's report in 1998, former president F. W. de Klerk filed a suit in court to prevent the commission from naming him in the report, arguing that the commission had acted in bad faith.<sup>59</sup> Rather than risk a court hearing, and with no time to read and respond to de Klerk's two-thousand-page complaint, the commission omitted those paragraphs from the report and received a four-month postponement of the court date to review his petition. The commission also provided a confidential list of many names to the prosecutor's office, urging criminal investigation, but, as was described in Chapter 8, this resulted in very little action by the authorities.

### *Peru*

Investigations by the truth commission in Peru uncovered the names of many perpetrators. To support its investigations, the commission obtained from the Ministries of Defense and the Interior the payroll lists for the full twenty years of its mandate, helping to confirm names, dates, and locations of where persons

implicated in crimes had been based. The commission was able to confirm the identity of 189 perpetrators. The commission invited 56 of these persons to respond to the evidence against them; close to 40 came, and in three or four cases the information that was provided resulted in the commission removing their names from the list. As the commission's former executive secretary noted, "In certain cases, these individuals—particularly the generals—came with lawyers and the press, thus turning public an inquiry that was supposed to be secret."<sup>60</sup>

The Peruvian commission asked an administrative tribunal to provide a legal opinion on whether it could publicly name perpetrators; the tribunal determined that the commission could describe facts and had a duty to forward information about crimes to the prosecutor, but that it could not publicly identify individual responsibilities for crimes. This was based on a constitutional protection of the "good name," reputation, and presumption of innocence of those accused. The commission ultimately held back most names from the report, instead listing the position that the perpetrator held. It did include names of those persons who were well known for their senior positions, such as commanders of each branch of the military. In submitting a confidential list to the president, the commission recommended that the list be made public if prosecutions had not begun within six months. However, the human rights ombudsman (who also received the list) concluded that the release of the names would not be legal. Regardless, the list soon leaked to the press, causing a political storm.

### *Liberia*

Finally, and most recently, the Liberian truth commission has been by far the most controversial in the manner in which it named names. Its 2009 final report named 116 "most notorious perpetrators" that it recommended for prosecution by a new, hybrid special tribunal (for which it provided a detailed proposal) and another 44 to be prosecuted domestically. It provided a separate list of 26 persons responsible for large-scale economic crimes. It also named 49 more whom it recommended should be barred from serving in public office for thirty years: among these named was the current president, Ellen Johnson Sirleaf, who had been lauded internationally not only for being the first female African president, but for making significant progress in governance and reforms. She had come before the commission to admit to early involvement in the war.<sup>61</sup> Members of the legislature and Supreme Court were also named. The report recommended that those elected should serve out their term (to avoid the cost of new elections) but be barred from reelection, and those in appointed positions be replaced immediately. Without recommending amnesty as such, the report also lists 38 persons who it deemed should not be prosecuted because they had cooperated with the TRC process and shown remorse—including at least one person who had openly admitted to killing thousands.

The commission described its decision to publish these names as a requirement of its empowering Act, which called on the commission to counter impunity and to report fully on its findings. The commission was strongly criticized for the manner in which it named names, and in particular the lack of specificity as to what acts each person was being held responsible for. Rather than naming perpetrators in the context of specific cases, the report only provides general lists of perpetrators, with a brief indication of the crimes committed (i.e., “massacre, torture, rape”). When asked, the commission suggested that the files were available for prosecutors to obtain further details.<sup>62</sup>

The Liberian public, however, were not focused on such details, but, rather, enthusiastically welcomed an official report that finally “named and shamed” many whom they considered to be widely known perpetrators, according to Liberian analyst Aaron Weah, who describes a fascinating public engagement with the commission’s findings. “This is a feeling held very dear by ordinary Liberians. The list [of perpetrators in the commission’s report] has engendered a certain degree of intimacy: it’s carried in individual wallets; posted in houses along calendars, making it a permanent feature in ordinary households; and it’s also carried in taxi cabs,” resulting in ongoing public debates on accountability and the possibility of prosecutions.<sup>63</sup>

### **Due Process and the Question of Whether and How to Name Names**

Most human rights experts argue that a commission should name names of perpetrators whenever there is sufficiently convincing information for it to do so, especially if the courts in the country are hardly functioning, but that it should always respect appropriate due-process standards before doing so. For example, the well-respected human rights lawyer Juan Méndez argues that if there are to be no trials in a country, then it is especially important that a commission name names. He discounts the argument that a commission is overstepping its non-judicial powers in doing so:

We name people all the time for acts before they are proven. The press often names people. The police give out names all the time. If someone is alleged to have stolen a car, their name is put in print. It’s an allegation; it’s not a pronouncement of guilt.<sup>64</sup>

Many other human rights advocates agree with Méndez, arguing that it can be an important step in counteracting impunity, and that due-process guarantees can be established relatively easily.<sup>65</sup>

In contrast, José Zalaquett, a prominent international rights advocate, former member of Amnesty International’s executive board, and member of the truth commission in Chile, takes a more restrictive position, warning of the dangers of a non-judicial body apportioning guilt. In the introduction



to the English translation of the Chilean commission's report, Zalaquett writes that in Chile,

To name culprits who had not defended themselves and were not obliged to do so would have been the moral equivalent to convicting someone without due process. This would have been in contradiction with the spirit, if not the letter, of the rule of law and human rights principles.<sup>66</sup>

More recently, Zalaquett is quoted as saying that truth commissions "must not trespass that fine line between an ethical commission and a kangaroo court. The moment they start apportioning individual blame, they violate the basic principles of the rule of law."<sup>67</sup>

In an interview, Zalaquett made clear that he accepts that some truth commissions may in fact appropriately name names. He is not in disagreement with the naming of perpetrators by the commission in South Africa, for example, because of that commission's screening and due-process procedures. For most other cases, however—including the commission in El Salvador—Zalaquett argued that naming just a few perpetrators was inherently unfair, leaving perpetrators to "the luck of the draw" since no commission can investigate all accused wrongdoers, and thus only a few perpetrators will be singled out.<sup>68</sup> In correspondence, he stated further:

My own position about naming names is based on rights and procedure. . . . Official truth commissions may investigate moral responsibilities of governments, concentrating on victims, which is usually the case. In some cases, as in South Africa, they may come close to touching on legal responsibilities of individuals as well.

When they do concentrate on moral responsibilities, their official character, the solemnity of the whole exercise, etc., means that if they name names, the persons so named would be painted with a brush of guilt, outside due process. This is wrong in legal terms and also in moral terms. The possibilities of failure in judging individual cases outside due process are great. Second, the principle of a bilateral audience, meaning both sides have to be heard, is a sacred one. Third, in reconstructing a society after a major trauma, human rights must be upheld. This means that justice must be sought through just means. It is important that the lesson given by the precedent of truth commission work is that rights were scrupulously respected, despite the fact that others might not have respected them at all in the past.

All that having been said, if procedural safeguards like in South Africa are introduced, I have no qualms about the process. My problem is not with rights or justice. It is with easy righteousness and facile justice.<sup>69</sup>

While due process is important, it is widely agreed that the guarantees required for a commission are less than those of a criminal trial. In a trial, certain

minimal requirements are almost universally accepted: the accused must be informed in advance of the charges, and must be given adequate time and opportunity to defend him- or herself, including the right to counsel and the right to call and confront witnesses. But due-process requirements are in part determined by the severity of punishment that may result. The consequences of being named by a commission are far less severe than the consequences of being found guilty in court. While they are perhaps damaging to a person's reputation, a commission has no power to punish the named. It may recommend prosecutions or other civil penalties, but these generally would require yet another review before being implemented.

Past commissions have been well aware of these differences in due-process standards. Douglass Cassel, a senior advisor to the El Salvador commission, wrote that the commission

made no pretense of affording all the usual elements of due process of law. While the accused were generally advised of the cases in which they were suspected, and given an opportunity to deny or explain their involvement, they were not informed of the identities of witnesses against them, let alone allowed to confront and cross-examine them in a public trial.

The commission's chosen procedures, Cassel wrote, were based on "the Salvadoran reality that witnesses are not safe from reprisals and do not perceive themselves to be safe. Given this reality, the only way the Commission could arrive at the truth was to deny these usual procedural safeguards."<sup>70</sup>

Each commission that plans to make findings about individual responsibility must establish its own basic due-process requirements and set up a system to ensure that these are respected. The standards and procedures will vary between commissions, though the general outline of these requirements is fairly clear. Most legal experts agree with three basic guidelines. First, individuals who may be named in a report should be informed of the allegations against them and told that the commission intends to name them in a public report. Second, these persons should be given the opportunity to respond to the evidence against them and to offer a defense, either in writing or in an appearance before the commission, in a procedure determined by the commission. However, this right does not necessarily extend to confronting their accusers or even being informed of the source of the allegations, if the commission believes such information could put persons at risk. Zalaquett suggests that a report should note that the persons named have denied the allegations against them, when they have, and perhaps provide a brief account of each person's own version.<sup>71</sup> Yet this would surely dilute the commission's conclusions, and most commissions may reasonably choose not to do so, standing by their own judgment. Third, the commission should state clearly that its own conclusions about individual responsibility do not amount to criminal guilt, which must be left to the courts.

The New York-based Human Rights Watch, in a long submission to the South African Truth and Reconciliation Commission, concurred with these due-process standards: it encouraged the commission to “name those whom it believes on good evidence to be responsible for gross abuses, especially those responsible for devising policy at the highest level,” and argued that “the full due process protections of the type that are required in criminal trials are not necessary for the purposes of public identification.”<sup>72</sup> Human Rights Watch has also suggested other useful guidelines for naming names, saying that “there should be a careful distinction drawn between the different kinds of responsibility involved—for example, if the person directly ordered or carried out specific abuses, or if he or she implemented or devised policies that foreseeably resulted in gross violations,” and that, in addition to allowing a response on the substance of the allegations, the commission should “afford each person an opportunity to make representations as to why they should not be named, for example because of concerns as to their own safety, and take those representations into account in its final decision.”<sup>73</sup>

While simple in principle, the implementation of these procedural safeguards can be difficult and cumbersome. It is very difficult to do this well.

### **Consideration of Evidence**

In addition to due-process considerations, a commission must also establish how much evidence is required for it to make a finding, and what standard of proof must be met. For example, the El Salvador commission established a two-source rule, requiring two credible and independent sources as confirmation of a fact. In contrast, the South African commission required only one source, both for corroborating victims’ accounts and for deciding the culpability of perpetrators, provided that the source was sufficiently compelling.

The judicial standard for convicting someone of a crime is to establish a level of proof “beyond reasonable doubt.” Truth commissions generally do not seek to meet that high level of proof. While there is no uniform practice, the emerging standard for commissions is to rely on a “balance of probabilities” standard (in some countries called “preponderance of evidence”), which means that there is more evidence to show something to be true than not to be true.<sup>74</sup> For example, the South African commission described its methodology, saying:

Given the investigative nature of the Commission’s process and the limited legal impact of naming, the Commission made findings on the identity of those involved in gross violations of human rights based on the balance of probabilities. This required a lower burden of proof than that required by the conventional criminal justice system. It meant that, when confronted with different versions of events, the Commission had to decide which version was the more probable, reasonable or likely, after taking all the available evidence into account.<sup>75</sup>

The El Salvador commission established three levels of certainty according to whether there was overwhelming, substantial, or sufficient evidence to back up a finding, and stated its degree of certainty for each of its findings throughout the report. It applied “strict criteria to determine the degree of reliability of the evidence . . . [and] named names only when it was absolutely convinced by the evidence.”<sup>76</sup> According to a senior advisor to the commission, no one was ever named on the basis of the lowest-level test, that of having only sufficient evidence. Some other commissions that have named perpetrators have not stated what evidentiary standards they used, which is ultimately unfair both to the reader and to the persons named. Future commissions should state clearly in their reports the amount or quality of evidence that backs up their findings (such as one or two primary or secondary sources), as well as what level of certainty their findings represent.

### **Detailed Summaries versus Assignment of Responsibility**

There is an alternative means of including the names of the accused in a commission report that should be considered, short of a commission stating firm conclusions about the responsibility of specific individuals. Rather than being presented as the commission’s equivalent of a court verdict, a commission’s report might be equated with a summary of the testimony given in court, the commission playing a role closer to that of reporter than of judge or jury. A commission might summarize the evidence before it, including names mentioned by witnesses where they hold credibility, without stating firm conclusions on each individual’s culpability. In cases where the commission has investigated further and has drawn its own firm conclusions, it could state these clearly, reverting to the standards and safeguards suggested above. This model is close to the suggestion of the Haitian truth commission staff, who pushed for their commission to state names “as reported to the commission by witnesses,” especially those names that appeared repeatedly in testimony. It is similar also to the approach used by the Argentine commission, which printed names of accused perpetrators when they happened to appear in passages of quoted testimony (although that commission’s approach was unbalanced, since these excerpts covered only a few of the names that arose in testimony, and thus it was only chance that determined which names were mentioned in the report).

Notwithstanding the important considerations that must be given to the danger of falsely accusing individuals, and the importance of allowing those accused some manner to respond to accusations, a truth commission should seek to tell as much of the full truth as possible, including the names of persons responsible for the abuses. The names of low-level perpetrators might be left out of the report if there is a threat to their safety or to the safety of those who named them, especially when they remain in the community where the crimes took place. A commission should focus attention on those who organized or authorized massive abuses, including those in senior political or military

positions who knowingly allowed such acts to take place on their watch. Where justice is unlikely in the courts, a commission plays an important role in at least publicly shaming those who orchestrated atrocities. A commission should also consider recommending non-judicial sanctions against those named, such as banning them from public positions of authority or from posts in the security or intelligence service, prohibiting them from working in a private security firm, and taking away their right to bear arms. While such recommendations could not be implemented by the commission itself, they could guide lawmakers toward establishing a strategy for accountability and reducing the threat of further abuses by these individuals in the future, outside of the limited possibilities of successfully prosecuting them in court.

# 11 Healing from the Past

“People always ask, ‘Why reopen wounds that have closed?’” Horacio Verbitsky, a prominent Argentine journalist, said to me. “Because they were badly closed. First you have to cure the infection, or they will reopen themselves.”<sup>1</sup>

With these words, Verbitsky summed up one of the central tenets of those who insist on the need for digging up the truth. Verbitsky lost many friends among the disappeared in the Argentine “dirty war.” In 1996, he helped to reopen this subject in Argentina through reporting the confessions of Francisco Scilingo, a retired naval officer who admitted to throwing live political prisoners out of airplanes and into the sea.<sup>2</sup> When Scilingo’s stories hit the press, Argentina discovered how much of its difficult past was still unresolved, both emotionally and factually. Despite the work of the National Commission on the Disappeared thirteen years earlier, the issue was once again the center of attention, with articles appearing almost daily in the newspapers for months, and thousands in the streets in demonstrations demanding more truth from the government and armed forces about what happened to the disappeared.

Unhealed wounds of society and of individual victims may continue to fester long after the cessation of fighting or the end of a repressive regime.<sup>3</sup> A country may need to repair torn relationships between ethnic, religious, regional, or political groups, between neighbors, and between political parties. In short, societal healing might be called reconciliation—a society reconciling itself with its past, and groups reconciling with each other, the topic of a later chapter. Individuals, though, suffer most from the intense psychological trauma that may result from extreme events. Many survivors of violent political repression suffer a painful psychological and emotional hell for years. It is true that some survivors of trauma are remarkably resilient: in dire circumstances, or forced by the necessity of daily survival, they effectively suppress their memories and continue to function day to day, or even seem to recover from the experience in sound mind and spirit. But many others are not so lucky, and suffer fiercely from the memory of torture or of witnessing the brutal murder of a loved one.

Many argue that an important function of truth commissions is helping victims heal through providing a forum for them to tell their story. When

I asked the chief mental health specialist of the South African truth commission whether talking led to healing, he quoted his grandmother: “Better out than in,” she would say.<sup>4</sup> There is a multitude of studies showing that repressing intense emotional pain leads to psychological trouble. Indeed, one of the cornerstones of modern-day psychology is the belief that expressing one’s feelings, and especially talking out traumatic experiences, is necessary for recovery and for psychological health. It is often asserted that following a period of massive political violence and enforced silence, simply giving victims and witnesses a chance to tell their stories to an official commission—especially one that is respectful, non-confrontational, and genuinely interested in their stories—can help them regain their dignity and begin to recover.

Psychologists universally confirm this basic logic. South African psychologist Brandon Hamber, in an early paper about the expected impact of the truth commission in his country, writes:

Past traumas do not simply pass or disappear with the passage of time. . . . Past trauma can always be expected to have emotional consequences for an individual. Repressed pain and trauma generally block emotional life, have psychologically adverse consequences and can even lead to physical symptoms.

Summarizing the psychological literature and the opinions of specialists, Hamber continues, “Psychological restoration and healing can only occur through providing the space for survivors to feel heard and for every detail of the traumatic event to be re-experienced in a safe environment.”<sup>5</sup> Survivors of intense trauma who try to repress their memories may see the effects play out in physical or psychological symptoms, or in damage to their family or social relationships.

Judith Herman, a professor of psychiatry at Harvard Medical School, points to a tension between victims’ desire to speak and their instinct to bury their memories:

The ordinary response to atrocities is to banish them from consciousness. Certain violations of the social compact are too terrible to utter aloud: this is the meaning of the word unspeakable. Atrocities, however, refuse to be buried. Equally as powerful as the desire to deny atrocities is the conviction that denial does not work. . . . Remembering and telling the truth about terrible events are prerequisites both for the restoration of the social order and for the healing of individual victims.<sup>6</sup>

Truth commissions or other means of honoring the past may also help to counter what psychologist Yael Danieli calls a “conspiracy of silence” that often develops around political violence and tends to intensify survivors’ “already profound sense of isolation, loneliness, and mistrust of society.”<sup>7</sup> The official

acknowledgment of previously denied events, especially by a state-sponsored body such as a truth commission, can thus be extremely powerful.

Yet those who suggest that “talking leads to healing” are usually making assumptions that do not hold true for truth commissions. Most studies of healing from political violence measure the positive effects of psychological support over a period of time; these studies show that when victims are given a safe and supportive environment to talk about their suffering, most eventually see positive results. Typical symptoms of repressed trauma, such as nightmares, emotional problems, and sleeplessness, often recede.<sup>8</sup> Truth commissions, however, do not offer long-term therapy; they offer survivors a one-time opportunity to tell their story, usually to a stranger whom they will most likely not see again.

There have still been very few scientific studies of the impact of truth commissions on survivors of trauma. However, the evidence available, including anecdotal accounts and reports based on in-depth interviews with small groups of victims, all point in the same direction: for some victims, the opportunity to engage with a truth commission can be quite positive; for others, the impact is very worrisome. More work in this area is still needed.

### **The Need to Tell One's Story**

Truth commissions seem to satisfy—or at least begin to satisfy—a clear need on the part of some victims to tell their stories and to be listened to. It may take some months for victim communities to gain trust in a truth commission, but when this trust develops, it is common for long lines to form outside truth commission offices—lines of victims eager to report their stories. In some towns in Haiti, for example, lines of a hundred people or more formed when truth commission staff arrived to take testimony, despite the fact that former perpetrators often lived close by and could see their victims lining up to report their crimes. Many people put themselves at considerable risk in coming forward, in Haiti and elsewhere. They would often wait for hours, returning the next day if necessary. In some countries, survivors have traveled many miles, sometimes on foot, to reach commission offices.

It is not always clear what motivates victims and witnesses to come forward. Despite efforts by commission staff to be clear about their purpose and powers, for example, some deponents have expected that a commission would take legal action against known perpetrators, and others have hoped the commission would grant them compensation for their suffering.

Many human rights workers and journalists report what seems to be a very basic need by victims to recount their stories of violence and survival, entirely independent of any commission or official process. Anecdotes abound that make this point: years before the truth commission began work in Guatemala, a Guatemalan forensic anthropology group, which exhumes bones from massacre sites, called a public meeting in a region known for political violence in order to release one of its reports. They expected fewer than one hundred



people to attend, but five hundred showed up. The forensic team was amazed to watch the meeting quickly turn into a long series of testimonials. As two of its members explained:

We asked for questions after our presentation, and a long line of people formed—and everyone in line wanted to give testimony about their experiences. All they wanted to do was relate their story—and this was in front of five hundred people, where you didn't know who might be listening—surely someone would report back to the military about who was saying what.<sup>9</sup>

One U.S. citizen living in Guatemala told me that past violence always seemed to crop up unexpectedly in conversation when she visited the highlands. “You could be talking about anything—the price of corn, the weather—and people will suddenly start telling you about the atrocities they suffered.”<sup>10</sup>

From South Africa, a similar story: when legislation for the truth commission was being discussed and debated in 1994 and 1995, a small group of victims organized to lobby for a stronger bill. Yet this victims' lobbying group quickly turned into a victims support group, and suddenly many dozens of people were attending their meetings. “Everybody got up and told their story—some forty people at one of the first meetings,” said psychologist Brandon Hamber, then at the Centre for the Study of Violence and Reconciliation, who assisted in the group's formation. “A central part of the group's function quickly became giving people a chance to tell their story.”<sup>11</sup>

Truth commissions can offer victims a safe environment in which to relate their experiences. A year into the South African truth commission's work, Hamber was critical of some aspects of the commission, but wrote, “Providing space for victims to tell their stories, particularly in public forums, has been of use to many. It is indisputable that many survivors and relatives of victims have found the public hearing process psychologically beneficial.”<sup>12</sup>

This was also true in Chile, although without public hearings. Elizabeth Lira, a Chilean psychologist who works with victims of political violence, said that the simple act of recognizing a person's traumatic experience could be extremely important to their psychological healing. She continued:

In Chile, going to the truth commission was like entering into a family: there was a sense of security, a national flag standing on the table, a mandate from the president, and there was the commission saying, “We want to hear what you have to say.”

For over fifteen years, the state had cast them aside, telling the world that these claims of persons disappearing were all lies. Suddenly, a state commission was ready to listen to their accounts and publicly acknowledge that disappearances had indeed taken place. Because human rights groups had provided the commission in Chile with details on most cases of disappearances, the testimony

taken from the families did not provide much new information, according to Lira: “The symbolic aspect of taking testimony from the families was much more important.”<sup>13</sup>

### *A Sense of Relief*

A South African Reverend, S. K. Mbande, coordinated the effort to collect statements for the truth commission in the township of Daveyton, an hour outside of Johannesburg. I visited him in his home to ask about his experience in taking statements from so many victims. He said:

When some people tell their story they stand somewhere between truth and dishonesty, because coming up with the whole truth is still not safe. Some give their statements because they’ve been told to do so by the government or by their church. But some people are traumatized and fearful, and they feel it’s not safe to talk about it. If a woman had been gang-raped by the South African Defence Force or the police, it’s not easy for her to tell the story, especially in front of her husband or children. So you have to search for what this person is trying to say. Some people have forgotten what happened, or due to trauma, they may tell different stories, or keep changing their story, because they can’t remember clearly. From my point of view, telling stories is some sort of healing process, but not for everyone. For some, it makes them feel worse.

“How is it healing?” I asked. He continued:

After telling their story, they relax. They’ve said what’s in their hearts, in their chests, what was closed up. After telling their stories, they want to know where the person’s been buried, who killed them—the whys, wheres, and hows. But they are able to open their hearts to a statement-taker, and they often say they feel much better.

Another local statement-taker who joined the conversation, Boniwe Mafu, very much agreed.

“Some people don’t want to even come to us, to tell their story again. It reminds them, and they feel hurt,” said the Reverend Mbande. “Some people come, but they don’t talk, they just cry—sometimes for thirty minutes. Or they start talking and in the middle they just start crying.”

He paused to think about what he was saying. “In the past, you know, you didn’t know you had sick people in this society, traumatized. Only now people are being identified as traumatized, and it’s clear that some people need help. It’s true that the truth commission is a healing process—if not a hundred percent, then sixty percent.”

“Sixty percent are healed, or people are healed sixty percent?” I asked.

“Both. Perhaps sixty percent feel better, but those people are only healed sixty percent.”<sup>14</sup>

South African Sylvia Dlomo-Jele’s teenage son was killed in 1988, and she went to the truth commission to tell her story. I visited her in Soweto, outside of Johannesburg, to ask how she felt about her experience with the commission. “Giving testimony is different for everybody,” she told me,

but when I testified at the public hearing, it was very good. It was the first time I’d told what had happened to me. After the death of my son, I stayed many years not talking about it. It was killing me inside. I thought, “Why me, Lord?” It gave me quite a problem. We depended on our son, as young as he was. Giving testimony, telling the whole world what happened to me . . . It was painful, but also a relief. The way they listened to me, the interest they showed in my story, that was good for me. But yes, it’s true, a lot of people feel worse. One woman I know said, “I don’t want to talk about it; my son won’t come back.”<sup>15</sup>

Sadly, Sylvia Dlomo-Jele died just over a year after I spoke with her, shortly after the amnesty hearing for the killers of her son, Sicelo Dlomo. Unexpectedly, it came out in the hearing that her son had been killed by his ANC colleagues, though for reasons and in circumstances that were unclear. Although she had been a strong proponent of the right to know the truth, one memorial noted that “[i]ronically, in the end, it was the stress of [her son’s] death and the partial truths about him being killed by his fellow comrades that was too much for her.”<sup>16</sup> Her son’s killers were granted amnesty a year later, in February 2000, with a decision by the Amnesty Committee that was strongly criticized by observers.<sup>17</sup>

I met up with another South African survivor, Simpson Xakeka, in the Johannesburg truth commission office. He was shot during a march in 1991 in Daveyton. I asked how he felt when he gave his statement to the commission, which he had done some time before. Speaking in his native Zulu, he said:

As I was giving a statement, the actual pains came back. I was made to relive the experience. But as I proceeded into the interview, they eased. It was difficult to talk about it. But it was easier for me to speak out because the statement-taker could empathize; he went along with everything I said.

Emotionally it helped a great deal. It helped me to come to terms with it. But physically it hasn’t helped. I still have bullets in my chest, I’m still in pain. But emotionally it has helped a great deal.

I asked him how it helped. He said:

There’s a saying in our culture that “coughing it out relieves everything.” I’m not going to forget what happened to me, but talking about it

provides emotional relief. When I get together with others and talk about it, it helps. But I must stress that I won't forget what happened.<sup>18</sup>

Commission staff in many countries talk about how powerful and cathartic the process is for those who give testimony. Telling one's story can be very emotional, especially for those who have never told their story before. But psychologists question the idea of a one-time catharsis resulting in real psychological healing. In clinical counseling settings, in fact, most therapists would avoid pushing someone to address the worst of their pain too quickly, especially if it is rooted in events of extreme trauma.

The central aim of a truth commission is not therapy. It is, instead, to gather as much detailed information from the greatest number of victims as possible to allow an accurate analysis of abuses over a period of time. Guided by these informational needs, victims and witnesses who come to a truth commission are asked to tell their full, horrid story in one relatively short meeting, typically lasting about an hour (although there are exceptions: in Peru, some statement-takers averaged one to two statements per day). The interview is focused on recording specific details of events witnessed or experienced, going to the heart of the deponent's most painful memories. The deponent may show obvious signs of emotional distress by crying, sobbing, wailing, but most interviewers—perhaps lawyers, human rights advocates, or other laypersons hired to take testimony—have little or no training in responding to this level of trauma. In contrast, other deponents may come across as emotionally removed, which may also be misinterpreted by the statement-taker.

One staff member in El Salvador, who said she received no training in how to respond to traumatized victims, said:

My recollection is that most people dealt with their loss by becoming almost clinical and detached from what had happened, no matter how horrible it was. I only remember one case of a middle class woman whose son had disappeared in the early eighties and who came with her husband, and was still hysterical as though it had happened yesterday. She still seemed devastated by the loss. I remember someone commenting that she had not been able to deal with what had happened. I think I may have reached out and put my hand on her arm, but it was more from instinct.<sup>19</sup>

Given the great number of victims who provide statements and the short deadline they have to complete their work, truth commissions are not well placed to offer serious psychological support services. Most have not even responded well to the occasional follow-up phone calls of distress or requests for information, such as on the progress of investigation on a particular case. In South Africa, the truth commission attempted to set up a system to refer distressed victims to independent agencies for support, but this referral system never functioned well and was not widely used. In addition, many victims live far from any city where such services might be available.

Commissions typically investigate only a few cases in depth, using the vast majority of testimonies only for a statistical analysis of patterns. In those relatively few cases where a commission is able to investigate thoroughly and establish conclusive facts, and perhaps even, rarely, locate and identify the remains of a disappeared person, survivors seem to find a considerable measure of closure. In those amnesty hearings in South Africa where perpetrators spelled out the brutal details of torture and killings, for example, survivors seemed to find some closure—although in other cases survivors accused the perpetrators of hiding a good part of the truth and failing to show any remorse, thus worsening their pain.

### **The Danger of Retraumatization**

“As long as there is crying going on, there’s an assumption that healing’s taking place,” said psychologist Brandon Hamber. “For some people, it’s the first step; for others, it’s the last step, a completion. But there are a lot of people that feel devastated afterwards.”<sup>20</sup> Likewise, Harvard psychiatrist Judith Herman told me that

anyone showing interest and providing an opportunity for someone to tell their story can have a therapeutic effect. Some victims may be ready to take advantage of the slightest opportunity in a positive way. For others, it opens them up and leaves them with nowhere to go.<sup>21</sup>

As psychologists readily recognize, and as can clearly be seen by speaking with some of those who have given testimony to truth commissions, victims and witnesses can in effect be retraumatized by giving testimony to a commission, an event that may be so severe as to result in a multitude of debilitating physical symptoms, such as confusion, nightmares, exhaustion, loss of appetite, and sleeplessness. This set of symptoms may first appear immediately following a traumatic event, but can then come back again years later upon recalling the details of the event. In the field of psychology, this set of physical symptoms is referred to as post-traumatic stress disorder (PTSD).<sup>22</sup> Recovery from political violence may be more complicated by the basic economic and social challenges, perhaps exacerbated by the event in question, such as the death of the family breadwinner. Sometimes the trauma may have led to other problems such as substance abuse and the breakdown of personal relationships.

Michael Lapsley, an activist priest in South Africa, has talked with many victims struggling to understand their response to the truth commission. Lapsley lost both hands as a result of a letter bomb sent from the South African authorities in 1990, when he was living in exile in Zimbabwe. He recovered from the bomb and now lives with metal grips in the place of hands. Since the bombing he has counseled many victims of political violence, and while he made clear that he supported the truth commission’s work, he stressed the danger of a truth commission approaching healing too simplistically:

If you have a physical wound, you take off the bandage, clean the wound, and re-bandage it. But people take their clothes off in front of the truth commission and don't get an adequate opportunity to put their clothes back on. . . . It is naive to think that it takes five minutes to heal. We'll spend the next hundred years trying to heal from our history.

When the truth commission arrived for a few days in a town to take testimony, it did give people the chance to come forward to speak, and it brought their suffering to the nation's attention, but Lapsley saw that the hearings often left the townspeople at a loss: "The circus comes to town and the circus leaves—and then what?" they would ask him.

The assumption that knowing the facts about what happened will always contribute to healing is too simplistic, and is sometimes simply not true, Lapsley said. In fact, the burden of knowing can be great. "Now that you know who did something—perhaps a loved one was involved in an act, for example—what do you do with that? Now you have to learn to deal with the knowledge that you have."<sup>23</sup>

Marius Schoon, a South African whose wife and daughter were killed by a bomb sent by state security forces, said:

I never really wanted to find out who sent or planted the bomb. I would prefer to hate a system rather than people, and as far as I was concerned the security forces of the National Party government were responsible. That was enough for me.

Twelve years after the killings, through the work of the truth commission, he learned exactly who did it:

From March of last year, when I heard [Craig] Williamson [a spy for the apartheid government] was involved, it has been anything but reconciliatory for me in that things I had come to terms with, however ineptly, are suddenly very much in the forefront of my mind again. Now it's personal. There is a good chance that perhaps I might actually shoot him.<sup>24</sup>

Research has shown that many victims and survivors in South Africa perceived the truth commission to be "perpetrator friendly." This is due in part to its amnesty-granting powers, but perhaps also in part to a difficulty of translation: in several South African languages, the closest word to "amnesty" is "forgiveness"—thus affecting victim perceptions and leading to frustration.<sup>25</sup>

South of Johannesburg, in the black township of Sebokeng, I met a mother and son who had survived the killing of thirty-eight people in their house in the mid-1980s, an event widely known as the "night vigil massacre." I visited them in their home in 1996, two weeks after they had gone before the Truth and Reconciliation Commission to tell their story in a public hearing. A Tracy Chapman poster hung on their living-room wall, just to the side of the

television, just across from the bullet holes that were still in the ceiling from the attack nine years before. My interpreter and I were crowded into their small living room with the mother, Margaret Nangalembe. Her son was not home. My interpreter and I only knew that they had recently given testimony, and we were curious about the mother's impressions. She spoke only in general and polite terms about the commission, until I asked her if she thought the truth commission was a good thing.

"I can't say if the truth commission is good or bad, but for me personally, it's made things much worse. My life has deteriorated since the hearing," she said. She described a litany of classic symptoms of PTSD. "It's made me think about these things again. The day that we went to the commission, I started thinking about all of this again, and now all I can think about is the day of the massacre and what happened."<sup>26</sup>

At the public hearing of their case, the mother broke down in such fits of emotion that she had to be taken from the room; her son, Albert "Mandla" Mbalekelwa Nangalembe, finished the presentation of their case. The staff of the truth commission tried to console them afterwards in the debriefing session that is offered to all who give testimony, but they both went home emotionally distraught. Her physical symptoms started the next morning, and then when she saw clips of the massacre on the following Sunday's *Truth Commission Report* on television, she became much worse. "I feel dizzy. I have a constant headache. I can't walk far without getting tired: my feet and knees don't work right. I'm not sleeping at night."

After the massacre, she said:

[I]t took me a long time to come to my full senses. I was always confused; it was like everything was dark. My son took me to a specialist doctor in the city and he gave me pills and an injection, and I started getting better. I've gone to the local clinic to ask for treatment again. I was given tablets, but they haven't seemed to work.

I asked if she was sorry she had gone to the truth commission. "I had really wanted to go to the commission to tell the story," she said. "I can't say that I'm sorry. I still would have seen it on TV, since others were going to present the case."

It still was not clear, however, what she and her son would get from the truth commission in concrete terms. They wanted assistance in fixing things that were damaged during the attack: the roof still leaked from the bullet holes and the front door had not locked well ever since it had been forced open, but the commission had not promised anything, not even an investigation.

Her son Mandla arrived home and joined the conversation. He was young, bright, articulate, and impressive, perhaps thirty-something in age. He described many of the same symptoms as his mother: he was not sleeping, he suffered nightmares, he was having trouble eating. "There's a lot of damage, it's very serious," he said. He had called the truth commission a week after the

hearing to find out whether any progress had been made in the investigation. The commission still had not called back. "The truth commission has started something that I'm not sure they're going to be able to finish," he said. "There's a lot of investigation needed. How to heal people, I don't know, but something's got to be done." He also feared retaliation from their perpetrators for speaking to the commission: "We're put in a very dangerous situation. There's a danger we'll be attacked for speaking. They might just say, 'let's eliminate them.'" <sup>27</sup>

He had helped form a local support group of victims after the massacre, called the Vaal Victims of Violence. Now the group was focused largely on the truth commission, and most were unhappy with its slow pace. "We're not going to act against the truth commission, but we're in the dark; we don't know what's happening," Mandela said. But the group helped to hold them together. "We meet once a month to see what the truth commission is doing and if there are threats against anyone."

Despite his suffering, he refused to criticize the commission. "We thought it was worth it. We don't say it's worthless; I don't want to be negative. I'm positive. The world should know the truth of the matter."

When he walked us to our car, he thanked us for stopping by. "Maybe I'll be able to sleep tonight, now that I've had a chance to talk about it."

Later, on a visit to Soweto, I heard another worrying story. My guide and interpreter in Soweto worked part time as a statement-taker for the truth commission and told me about a victim who had been severely tortured while in detention a number of years earlier. He was left quite disturbed from the torture, barely functioning from day to day, but he chose to give his statement to the truth commission, describing his torture in detail. After giving his statement, he suffered a severe breakdown and was immediately admitted to a mental hospital. He remained there for three months before recovering from his memories sufficiently to be released. <sup>28</sup>

The Trauma Centre for Victims of Violence and Torture in Cape Town estimated, judging from the hundreds of victims it has worked with, that 50–60 percent of those who gave testimony to the commission suffered difficulties after testifying, or expressed regret for having taken part (though recognizing that it had not undertaken a scientific study or survey on the question). <sup>29</sup> The chief mental health specialist at the South African truth commission, Thulani Grenville-Grey, acknowledged these risks, but defended the process. "It's better to be in touch with your grief. . . . You have to get worse before you get better, in order to heal. It's horrible, but that makes it a real transformation." <sup>30</sup>

## **Briefers, Referrals, and Other Forms of Support**

The potential for retraumatization is not a surprise to those who counsel victims of political violence. Six months before the South African truth commission began, a South African psychologist warned of the dangers:



It is imperative that the Truth and Reconciliation Commission does not unearth painful memories or cause people to re-live difficult times without ensuring that appropriate support services exist for these people. It is far more likely that the truth commission will lead to feelings of revenge, bitterness and anger if people who come into contact with it do not receive appropriate counseling and adequate support and service.<sup>31</sup>

The South African truth commission gave these concerns serious attention and went further than any other commission at that time in incorporating psychological support into its operational structures. The commission hired four mental health professionals, who saw their role as helping to “insure that the commission was psychologically sensitive to trauma,” according to the lead mental health specialist. He organized his work with the recognition that “a psychologically sensitive or supportive approach to statement-taking is equivalent to a doctor with a good bed-side manner; it makes a huge difference if you do it well, but it’s not actually necessary to your primary task.”<sup>32</sup>

Realizing these risks, the South African commission provided at least some basic training for statement-takers on how to respond to signs of trauma. The commission also hired “briefers,” as the commissioners called them, who had the job of providing constant support to those giving testimony at public hearings. The briefers would introduce the procedure of the hearing and answer questions in a morning meeting, sit next to deponents as they testified, and then debrief them afterwards, offering them words of support and encouragement. A number of other truth commissions have incorporated similar support structures. In both Chile and Argentina, psychologists and social workers were included on the commissions’ staff and attended some of the interviews with victims. In Morocco, Peru, and elsewhere, public hearings have included commission staff dedicated to emotionally supporting those testifying.

Of course, formal psychological counseling may not be the appropriate model for helping victims in most countries that are likely to have truth commissions. In many of these countries, there are few formal psychological services available, very few people with the culture or custom to reach out for formal counseling, and few resources available for such relative luxuries. This is true even in relatively developed South Africa. In the entire Northern Province of South Africa, for example, a mostly rural area with a population of over five million people, there were only three private mental health practitioners, and no clinical psychologists employed by the state health department.<sup>33</sup> In neighboring Mozambique, there were only nineteen psychologists and one psychiatrist in the entire country, years after the war, and only a few of those were practicing.<sup>34</sup> In Sierra Leone, there was only one psychologist in the entire country after the war. Perhaps more important than the lack of personnel or resources, however, is the point that Western psychology may not be the appropriate means of response. The impact of culture on how people respond to and recover from extreme trauma is not yet well understood. “In the case of

post-traumatic disorders, cultural variability is just starting to be investigated,” two psychiatrists, Cécile Rousseau and Aline Drapeau, wrote in the late 1990s. As a starting point, they noted that “culture provides the tools for grieving. When it comes to trauma, culture, which is obviously involved in the reparative process, may be equally involved in determining how, and how intensely, trauma is relived.”<sup>35</sup>

Thus, given resource restrictions and cultural variability, the ideal source of support for victims in many societies may be community organizations, traditional healers, religious institutions, or extended families and friends. Yet after years of silence and fear, many people who make up these support structures hesitate to talk openly about political violence, and may be uncomfortable taking on such a role. Furthermore, some kinds of violence, such as rape, are not easily discussed with community leaders or within a victim’s family. Thus, continued silence about past traumatic events may be the norm, even within a victim’s own home, and even after the victim breaks through this silence by giving a statement to a commission.

Recovery may depend in part on reparations awarded, and many commissions have played an important role in recommending reparation programs. Rather than monetary compensation from the state, according to Harvard psychiatrist Judith Herman, victims may prefer some form of restitution from the perpetrators. Victims want to have

a sense that the people who did the damage are made to give something back, or to try to clean up the mess that they made. People are so desperate for those people responsible to be made to face the consequences of their action, and do something about it. It is that sense of justice that they are looking for, which is different from punishment.<sup>36</sup>

In the absence of formal structures to help survivors, self-help groups have developed. In Argentina and Chile, families of the disappeared organized even during the dictatorships, first focused on demanding that the disappeared were returned alive. In Argentina, the Mothers of the Plaza de Mayo organization is famous for its weekly marches in front of the presidential house. Two decades after disappearances began in Argentina, Children of the Disappeared groups formed, made up of youths trying to come to terms with missing parents.

In South Africa, the largest group, Khulumani (“speak out” in Zulu), began around shared concerns about the truth commission process, such as access to information and reparations and amnesty policies. It also educated local communities about the truth commission, and many local Khulumani groups met simply to talk and offer support, sometimes holding symbolic memorial services for those killed. Members stress the importance of these meetings in their recovery. Some describe a common “I’m not as bad off as them” phenomenon, when some survivors first start coming to meetings and find others who suffered more. The founders of Khulumani realize that the group never would have formed without the truth commission, though it quickly took on

a life of its own. Those who work closely with victims have seen the positive effect of Khulumani and similar organizations, and a much lower likelihood of retraumatization symptoms for those who are involved with such groups. Many maintain that Khulumani's support provided a much greater sense of healing than the commission itself.<sup>37</sup>

Reverend S. K. Mbande, in Daveyton, described these support groups as "one of the fruits of the commission. People coming together and healing themselves—that never would have happened before. Fear was the order of the day. Since the truth commission, things have come out, and it's made people come together."<sup>38</sup>

### **Psychological Trauma Affects the Information Gathered**

Commissions should be prepared for the discrepancies that may result from collecting information from traumatized witnesses. "People who have survived atrocities often tell their stories in a highly emotional, contradictory, and fragmented manner which undermines their credibility," Judith Herman writes.<sup>39</sup> Exactly when did something take place? What happened first? Who was present? Exactly what did you see? Such details that fade over time become even more confused in the haze of psychological trauma. Faced with a barrage of detailed questions, witnesses' answers may be unclear or contradictory.

A staff member of the truth commission in Haiti described how testimony from some victims was just one sentence: "My mother was killed." That was all the deponent could say. The interviewers did not always know why, but the deponents either did not know or could not say more. Many other statements began strangely, apparently out of order: "[T]hey'd start with the last thing first, or they'd begin with the story of their goat being stolen, which seemed irrelevant. It was very common, and very confusing to try to figure out what the story was."<sup>40</sup>

Indeed, the standard American psychiatric reference manual describes one of the common symptoms of PTSD as the "inability to recall an important aspect of the trauma." Furthermore, it continues, "The person commonly makes deliberate efforts to avoid thoughts, feelings, or conversations about the traumatic event. . . . The avoidance of reminders may include amnesia for an important aspect" of the event in question.<sup>41</sup>

Operational choices made by a commission will help determine its psychological impact. Some of these choices are fairly concrete, like the selection of office space. In Chad, the newly installed commission faced a short supply of space, so it set up offices in the empty building that had just been evacuated by the former intelligence service—and which had served as the torture center under the just-departed government. Victims were understandably wary of coming to the office to give testimony. As the commission wrote in its report:

It must also be conceded that the location of the Commission headquarters itself was not such as to encourage victims to come forward with

depositions. . . . [I]t took a great deal of tactful persuasion to reassure and allay the anxieties of hesitant, frightened people.<sup>42</sup>

In El Salvador, the commission set up offices in the heart of the capital's wealthiest neighborhood. The great majority of those who came to give testimony were not comfortable there. In the socioeconomic breakdown of politics and war in that country, the neighborhood was known to house many on the political right, including supporters of the death squads and the military. Many victims came anyway, but with great hesitation. A priest who offered to drive people to the commission from a nearby city described the dynamics in the car as they approached the commission's office:

The three or four people in the car were terrified that they'd be seen coming to the commission and there'd be retaliation against them. They were really very scared. Even when we left the commission's offices, they all kept saying "They saw us, they took pictures, they were watching." The fear of that neighborhood was intense.<sup>43</sup>

### **"Sponges of Trauma": Secondary Traumatization of Commission Staff and Journalists**

Thulani Grenville-Grey, the mental health expert in the South African commission, described commission staff as "sponges" absorbing the grief, pain, and trauma of the stories they heard. "They responded with classic post-traumatic stress symptoms, which is why we have encouraged them to go for weekly debriefing sessions to talk things through."<sup>44</sup> The impact of this trauma was well acknowledged at the commission, manifested in short tempers, aggression, sleeplessness, nightmares, paranoia, headaches, ulcers, substance abuse problems, and other physical and behavioral problems. Staff and commissioners from other truth inquiries provide similar accounts. Truth commissions have recognized the need to formally address the psychological burden on their own members, sometimes offering regular debriefing sessions for their staff.

Typically, a truth commission statement-taker might take five to ten statements in one day, but the number can be higher. In Guatemala, staff told of taking as many as twenty-seven in a day, working fourteen-hour days, seven days a week—though they hesitated to tell me this, since they were under UN contracts and such hours are against UN regulations. After the field offices were closed in Guatemala and the commission realized the toll on its staff, it organized a debriefing session with a mental health expert, but it was perhaps too late. The most positive accounts that I heard were from directors of field offices in Guatemala who created outlets to reduce stress, forcing the staff to take breaks from the rhythm of the brutal testimony. Typically, however, staff do not know how to process the pain they are witnessing. A commission

staff member in El Salvador, American lawyer Lauren Gilbert, described one experience that stood out in her mind:

I remember one time (only one time) when I totally fell apart in an interview and had to leave the interview room and go to the rest room. It was the case of a young woman who was the partner of a member of the FMLN [the Salvadoran armed opposition], who was picked up and tortured by the *Policía de Hacienda*. She was horribly tortured for nearly three weeks (they beat her; they put acid on her blindfold so that when she cried it burned her eyes; they broke her wrist and her teeth; they raped and impregnated her). She couldn't have an abortion because it was "against the law," and she ended up rejecting her baby and becoming grossly obese. Her mother, who gave the testimony, had also lost her son to the death squads. The mother, like so many others, was almost clinical in the way she gave the testimony; very aloof and detached. I guess that at some point I must have connected with this woman and was grieving for her lost identity, the destruction of her identity by the police. I think it was the first time I really understood the meaning of torture.

I wanted this case to be included in our report. I tried to find the woman, but we were unable to find her home. I went to the prison where she had been held, but they kept only minimal records, so that there was no real way of "corroborating" her testimony to the commissioners' satisfaction. Ultimately her case was not included.<sup>45</sup>

Despite the pain of hearing the stories, however, staff often describe a process that is ultimately positive and rewarding. In El Salvador, for example, Gilbert noted:

In terms of how we dealt with it, or at least how I dealt with receiving all those testimonies, I always felt in each interview that I was writing that person's story, and that by writing the story during our interview at the computer, and reading it back to them for edits and for them to sign, I had done something cathartic for both of us. That feeling of having captured what had taken place was very powerful.<sup>46</sup>

A number of commissions have found that the staff who are the most disturbed by the harrowing tales of torture and abuse are not those taking statements directly from victims, but are instead data entry staff charged with coding and entering the information into the database. Perhaps this is because the statement-takers can see signs of resilience as the victim tells the story, and can put the account in context, thus easing the horror. In addition to having no direct contact with the victims, the coders and data entry staff also process a greater number of statements than do statement-takers, and the data that they are working with are harsh. In South Africa, for example, the three-and-one-half-page, single-spaced list of data entry codes spelled out hundreds of

different types of violence, torture, and abuse. The list begins with forcible abduction, amputation, and beating of head against a wall, and continues on to pulling out of teeth, removal of fingernails, being dragged behind a moving vehicle, being buried alive, and being burned with chemicals—and that's all just on the first page. Another 150 terms follow on the next pages: deprivation of sleep, head submerged in water, intentional spreading of disease, being forced to watch the torture of others, genital mutilation, gang rape, suspension of weights from genitals, decapitation, burning of body parts, and disembowelment. The data coders and processors spend their days reading statement forms, assigning codes, and entering the codes into the computers, often working under considerable time pressure.

Where there have been public hearings and intense media coverage of a commission's work, the journalists that follow a truth commission have also shown signs of secondary traumatization. This was especially true in South Africa, where dozens of print, radio, and television reporters covered the commission full time. A year into the commission's work, journalist Antjie Krog, who led a five-person radio team covering the commission, wrote of the intense and near-debilitating toll the job had taken on her and her colleagues. When the commission began, she writes, a mental health specialist from the commission addressed the group of journalists working on the truth commission beat, warning them to watch for signs of stress. "You will experience the same symptoms as the victims," they were told. "You will find yourself powerless, without help, without words."

"I was shocked to be a textbook case within a mere ten days," Krog writes; she continues:

Reporting on the truth commission had indeed left most of us physically exhausted and mentally frayed. . . . Week after week, from one faceless building to the other, from one dusty godforsaken town to the other, the arteries of our past bleed their own peculiar rhythm, tone and image. One cannot get rid of it. Ever.

. . . We develop techniques to lessen the impact. We no longer go into the halls where the hearings take place, because of the accumulated grief. We watch on provided monitors. The moment someone starts crying, we start writing/scribbling/doodling.

. . . My hair is falling out. My teeth are falling out. I have rashes . . . I can talk about nothing else. Yet I don't talk about it at all.<sup>47</sup>

## **Conclusion**

Studies in recent years have confirmed the early indications and the warnings from experts not to hold simplistic assumptions about the healing power of these processes.<sup>48</sup> The impact of a truth-telling experience will clearly differ from person to person. Some victims, survivors, and witnesses will feel much better after giving testimony, will be glad for having had the opportunity to

speak, and will feel acknowledged and supported by the commission's work. Some will feel an initial rush of adrenaline and relief, especially if they speak in a public hearing, a process often described by participating commissioners and other observers as a powerful and apparently cathartic event. Yet some of these same deponents may feel much worse later, especially if they had hopes that their cases would be investigated. In South Africa, researchers have concluded that the majority of deponents had either a negative or an ambivalent reaction. One study notes that "a significant deterioration of the overall physical and psychological health after testifying" was common.<sup>49</sup>

Two limitations remain in this field. First, most of the studies have interviewed only a small number of victims, and more rigorous analysis is needed, tracking a larger number of survivors over time. Second, most of this work has been done in South Africa. Because that commission is significantly different from others, these conclusions should not be too quickly extended elsewhere. With those caveats, however, there is clear consistency between the findings of many researchers.

Of course, besides the direct impact on those who engage with the process, there can be a power in publicly recognizing a long-denied truth. In Guatemala, the ceremony to release the commission's report to the public, attended by over two thousand people, was an enormously emotional event, with most in the audience in tears from the impact of hearing the truth finally and authoritatively spoken. Even hardened human rights activists referred to the event as "cathartic."

A commission may also have other, secondary benefits for victims. By bringing historical events and their associated trauma into the open, the process can help to identify the need for basic services for victims. A trauma counselor in Cape Town told me that the truth commission had changed the public understanding of the issue. "Now, if I say 'services for victims,' people understand it," he said. "Before the truth commission, there were just blank stares. The commission is creating a climate where healing can take place. It's a powerful message to say, 'It's OK to start processing this stuff.'"<sup>50</sup>

Future truth commissions might—and certainly should—improve on the past practices in relation to individual trauma. But the commissions, policy-makers, and society at large must also recognize that this contribution will only be one step in a much longer process of national and individual recovery.

## 12 Truth and Reparations

Most truth commissions recommend reparations for victims. These recommendations are increasingly detailed, specific, and a result of months of inquiry, reflection, debate, and sometimes (in the best cases) broad consultation by the commission with victim communities. Commissions have made an effort to be realistic and policy-relevant, grappling with the economic realities and the true numbers of deserving victims and survivors.

A number of countries have implemented reparations following a truth commission, in a few cases implementing a substantial program, fairly quickly, that is very close to the recommendation of the commission. But in more cases, the government has responded slowly or with tepid interest, and if a program is developed it is more limited in size and reach than envisioned by the commission. Typically, it takes a number of years before a reparations program is put into place, and often these years are filled with frustration and even anger from victim communities. In many countries, however, it seems unlikely that a reparations program would be created without the prior work of a truth commission, which can provide not only detailed recommendations on the form and nature of a reparations policy, but also a foundation of information (such as lists of victims) on which to build.

The process of the truth commission itself—not only hearing the victims' stories, but also realizing how many have been left destitute—has helped build the political and public support for the government to respond positively. In other cases, the political incentive to create a broad-scale reparations program resulted from court cases decided at the regional level (in particular in the inter-American human rights system), with large individual awards that were clearly not replicable for all victims.

Those countries that have implemented strong, significant programs quickly (such as Morocco and Chile) had the political will to do so from the start, and policymakers took the lead in crafting significant programs. Where there was little political will or policymakers simply did not view victim reparations as a priority (as in South Africa, El Salvador, Haiti, or Sierra Leone), the possibility of a significant program for victims was limited even with strong pressure from organized civil society and victim groups. Of course, some countries with very large numbers of victims have very limited financial resources. But this is not a



sufficient reason to ignore the issue completely, as there may be creative, non-financial reparations measures that could be considered.

National reparations programs have been shaped less by international standards or guidelines than by domestic notions of who is a “victim” and by national understandings of what is possible and what is important. In Chile, the great majority of victims—those who survived torture—were initially left out, partly because of concerns regarding financial limitations; over ten years later, this gap was repaired. In Peru, the government has decided that those tortured, disappeared, or otherwise abused will not receive reparations if they were members of the armed opposition. Some countries, such as Liberia or Sierra Leone, struggle with a more basic question of defining who the “beneficiaries” of reparations should be, as the great majority of the country’s people were direct victims of the war.

There has been a significant expansion in the literature on the subject of reparations since the early to mid-2000s. When the first edition of this book was published in 2001, little was available that either analyzed specific national reparations programs, compared between them, or offered a conceptual foundation to this area of work. The UN had been working on defining the principles and parameters of reparations since 1989, with useful interim documents released in the 1990s. The final result of this effort was finally approved by the UN General Assembly in 2005 as *The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. The second major contribution to this field emerged in 2006 with *The Handbook of Reparations*, edited by Pablo de Greiff at the International Center for Transitional Justice, a tome of over one thousand pages, with country and thematic studies and extensive excerpts of primary documentation.<sup>1</sup> These publications have been joined by numerous other studies that deeply enrich the field.<sup>2</sup>

Among the most interesting and challenging analytical contributions has been the critique of reparations programs from a gender perspective. This refreshing critique, found in two edited volumes and in other recent articles, not only looks at how reparations programs have responded to gender-specific crimes such as sexual abuse, but also challenges many assumptions about the preferred benefits and the appropriate manner to define beneficiaries.<sup>3</sup>

What is clear in this collection of writings is how difficult it is to “repair” the damage from horrendous, violent crimes committed against a seemingly uncountable number of victims. But there have been good attempts to offer respectful and significant reparations despite the inherent limitations. There have also been many political battles fought between former victims and the state, in those cases where the government is unenthusiastic about addressing these needs.

Those offering a conceptual foundation to the field have explored, first, the fundamental purpose or intention of reparations. If the vast needs of victims cannot be met, and the extent of harm really cannot be repaired, what then is

the aim? Further, how does one's purpose help to shape the new program?<sup>4</sup> Writers have also explored the parameters to judge the fairness and success of reparations programs, suggesting that their "coherence" and "integrity," among other factors, must be assessed.<sup>5</sup>

International law establishes, generally, an obligation on the part of the state to provide redress for past abuses. This is stipulated in many foundational human rights documents, including regional and international human rights treaties, and confirmed in decisions by international courts.<sup>6</sup> However, governments have "a good deal of discretion and flexibility" in implementing this obligation, which is "in essence a matter of domestic law and policy," according to the main UN guidance note on the subject.<sup>7</sup>

The classic notion of reparations today is focused on direct benefits, usually through specific financial support (or direct services) to individual victims. The UN *Basic Principles* document proposes a much broader arena, suggesting that reform measures that intend to prevent future violations ("guarantees of non-recurrence") are equally a form of reparations, as are efforts to disclose the truth or hold perpetrators to account. In this conception, a truth commission is itself a form of reparations. However, this very broad definition seems to blur the notion of reparations that is most commonly understood by victims: that of responding to the specific harms and damages suffered. Indeed, in many cases the damages may continue to affect the victims long after the event, whether physically, psychologically, or economically. The focus here, therefore, is on this more direct understanding of reparations. This may take a number of forms that go well beyond financial support to victims.<sup>8</sup>

With the increasing attention to this arena of policymaking, several additional fundamental questions have begun to be broached. They are linked, but distinct. The first is whether a reparations program is in fact best instituted at an individual level, targeting and providing benefits to many specific victims, or whether these programs should not be implemented at a community or collective level, especially in those contexts where virtually everyone was a victim (such as with large-scale forced displacement and the destruction of entire villages), or where the financial and logistical capacity of a country simply cannot sustain a program that responds individually to massive numbers of direct victims. There have now been good examples of community-based programs, sometimes partnered with individualized programs for certain victims (such as in Morocco, described on p. 172). The difficulties and challenges that arise should not be underestimated, but this is clearly the wiser approach in some contexts.<sup>9</sup>

A separate question is whether the focus on individual violations is not masking the greater set of challenges around "structural violence" and marginalization: systematic discrimination, poverty, the lack of access to services and exclusion from democratic processes. These may point to the real causes of conflict and to continuing difficulties for victims. Given the possibility of making use of potentially significant resources through a reparations program, it makes sense to ask whether a violations-focused approach will be the most

effective in changing these structural dynamics. Should reparations not focus on the economic, social, and cultural rights of those so badly affected by the violence? The Peruvian truth commission has perhaps explored these possibilities most closely, with a fascinating set of conclusions (detailed below).

Finally, taking this question further, beginning in 2008 a number of publications have begun to explore the link between economic development and transitional justice, including specifically the question of linking reparations programs with development policies.<sup>10</sup> For example, a government might repair the infrastructure—roads, schools, water systems—in an area destroyed by a war. Some rights advocates worry that a state may escape its obligations to recognize and provide redress for the harms done to specific victims if their reparations programs are incorporated within a general development scheme. Governments have an obligation to provide such social services anyway, they insist. On the other hand, there may be a way to link the service delivery capacity of the economic development field with a community-based approach to reparations, presuming that this link is made explicit and that the “acknowledgment” aspect of reparations is not lost. There may be a natural increase in community development resources in those areas worst affected by violence; these resources could be dedicated in part to reparatory measures such as memorials or naming of buildings in honor of past events.

The increased attention to reparations reflects a positive development in the field of human rights. The greater focus following grave violations has historically been on perpetrators—how to best prosecute and punish those responsible. This criminal justice-focused response has left rather little attention to the victims, as even successful trials do not provide a role for the majority of victims, and little in the form of repair. Likewise, a truth commission, while certainly more victim focused than trials, is not a sufficient response.

Thus, the recent focus on conceptual, operational, and financial aspects of reparations, and the attempts—some quite impressive—to institute national reparations programs, are important. The range of difficulties and quandaries confronted at the national level provides a virtual menu of the challenges that future policymakers should expect to meet. However, even the few cases described here suggest a trend toward increasing sophistication and better understanding of the complexity of these programs, and the need to approach such programs holistically—combining individual with community programs, symbolic with material benefits, and financial payments with clear statements of recognition or apology. The link to truth commissions is also striking. Those countries that have crafted a reparations program independent of a broader truth-telling exercise have found a much cooler reception from victims. Furthermore, truth commissions are developing more progressive and detailed proposals than before. While some commission recommendations have gone unheeded, a respectable number of them have had a direct impact on national reparations programs that follow. See Chart 5 in Appendix 2 for an overview of these results.

## Early Truth Commissions Leading to Robust Reparations

### *Chile: Substantial Reparations to an Initially Limited Pool of Victims*

The reparations program in Chile was extensive but initially limited, and expanded significantly over time. The details of the program suggest some of the challenges in defining the parameters of such a program.

As of 1997, 4,886 Chileans received a check in the mail every month from the government, and most would continue to receive monthly checks for the rest of their lives as part of the government's "pension plan" for family members of those killed or disappeared under the military dictatorship. The size of the check depended on how many immediate family members were alive: sole survivors received the equivalent of \$345 per month; if there was a surviving spouse, parent, child, and parent of the victim's children, the total monthly allotment split between them would total \$482 or more per month. In addition, family members of those killed and disappeared received generous educational and health benefits and a waiver of mandatory military service. Victims' children receive full coverage of all university or professional education, up to age thirty-five, and an additional monthly stipend to cover the costs of living and school supplies. The total cost to the state for the full reparations program, in the years when the greatest number of survivors were still alive and eligible, was close to \$16 million each year.<sup>11</sup>

This reparations pension program is a direct result of the National Commission on Truth and Reconciliation in Chile, which concluded its report with recommendations for symbolic and financial reparations. A follow-up body, the National Corporation for Reparation and Reconciliation, was put in place to investigate the cases it was not able to close and to implement the commission's recommendations, including reparations.<sup>12</sup> The victims listed in the truth commission's final report were established as comprising the official list of beneficiaries, in addition to any further persons determined to be victims through the investigations of the follow-up body.

The reparations payments were slightly higher than the monthly minimum wage in Chile, and some Chileans clearly depended on them for daily survival. For the more wealthy, the checks were not a significant addition to their income but still seen as very important for their symbolic value. "Every time a check arrives, it's a recognition of the crime," the daughter of one victim told me. "After so many years of denial, month by month, it's a recognition that we were right."<sup>13</sup>

Another survivor, Carla Pellegrin Friedman, lost her brother to the violence of the Chilean army. He took up arms against the regime of Augusto Pinochet in 1988, but his group did not get far before he was captured, tortured, and summarily killed. For her, she told me, the monthly checks from the government represented a "recognition from the state of its own guilt" in

killing her brother. Like others, she tried to identify the perpetrator through court action, but the amnesty law was applied and the case closed before it was determined who was responsible. “Our family has only three things,” she told me: “A check that arrives every month, my brother’s name in the Rettig truth commission report, and his name on the wall of the memorial at the national cemetery.”<sup>14</sup>

However, the reparations program in Chile was initially limited, excluding survivors of torture or illegal imprisonment. The program was constrained by the same definitional boundaries of Chile’s first truth commission; just as the commission could not investigate individual cases of torture or include survivors of torture in its list of victims, so the reparations program provided almost no assistance to such persons. Only the families of those killed and disappeared were eligible to receive pension payments, education benefits, full medical coverage, and a waiver of mandatory military service. The only assistance for torture survivors was free access to a state-run medical program.<sup>15</sup>

Those who staffed the follow-up commission implementing the reparations could see the injustice in excluding torture victims from the reparations program. The chief of staff of the Corporation for Reparation and Reconciliation, Andrés Domínguez Vial, told me:

One woman came into my office and sat down to say, “The tragedy of my family is that they didn’t kill my father. He’s destroyed, but they allowed him to live. It would have been better if they had killed him.” Her father is completely destroyed, but her family gets no reparations.<sup>16</sup>

Other staff described distraught visitors to the office whose family members had been seriously injured or physically handicapped and in dire need of assistance, such as one person who had been blinded in political violence.

Chile repaired this hole in its reparations programs over a dozen years later with its second truth commission, which was focused specifically on torture. A reparations law was passed quickly after this commission’s report was released, and put in place within a year. Approximately 20,000 persons who had been identified by the commission began receiving monthly pensions of \$190 (close to the minimum wage), as well as health, education, and housing benefits.<sup>17</sup>

In February 2010, the Chilean government announced its intention to reopen its two truth commissions for a period of six months, in order to receive any cases of either disappearance or detention and torture that had not been previously registered. This would, in particular, allow these victims or their families to benefit from reparations. Victim representatives estimated that it could amount to thousands of newly registered cases of detention and torture, and hundreds of cases of disappearance.<sup>18</sup>

*Argentina: A More Inclusive Program*

In a small back room on the second floor of the aging building that housed the governmental Human Rights Office in downtown Buenos Aires, when I visited in 1996, there were twelve four-drawer filing cabinets crowded along the walls, a small table in the middle, and a few shelves lined with human rights reports to one side. Eleven of those file cabinets contained the complete collection of the files from the Argentine National Commission on the Disappeared: one file for each of the 8,960 people that the commission reported had disappeared under the military regime. In most of these files, there were just two or three pieces of paper, which constituted the original statement of the victim's family. Whereas the Chilean commission investigated each case in depth, and some of its case files grew to an inch or two thick, the Argentine commission only took testimony from family members or friends of the disappeared, as well as from those who survived "temporary disappearance" and who witnessed others imprisoned. The commission then compiled its victims list solely on the basis of this testimony. It generally did not investigate individual cases, except to try to find disappeared persons who might still be alive. Moreover, many of these files, about one-third of the total, only contain information given to the commission from non-governmental organizations—information based on reports made to these organizations at the time of the disappearances but never repeated directly to the commission.<sup>19</sup>

These 8,960 files served as the informational heart of the reparations program set up to reach families of the disappeared. The relatives of anyone listed as disappeared by the commission could easily claim reparation, although these cases were never formally corroborated. Since there was no expectation at the time that the commission's work would lead to financial reparations, there was little concern that these files contained false claims. Rather than a monthly pension, as in Chile, family members of the disappeared in Argentina were entitled to receive a lump sum of \$220,000, paid in government bonds and distributed among surviving family members.<sup>20</sup>

The twelfth file cabinet in this back room held records of new cases collected by this governmental Human Rights Office, cases that were never included in the commission's count of the disappeared. The day I visited, I found several elderly men and women sitting in the reception area of the office, waiting to give statements in order to begin the process of claiming reparation. A well-worn copy of the *Nunca Más* appendix, which lists each of the 8,960 cases recorded by the commission, lay on the reception counter; the first question asked of visitors is whether their case was listed by the commission. Newly reported cases must be corroborated through either a mention in the press or a report to a national or international human rights body at the time, or evidence that a habeas corpus petition had been submitted to the courts when the person disappeared, in an attempt to establish the person's whereabouts or gain their freedom.

The reparations law for families of the disappeared was not put in place in Argentina until 1994, ten years after the truth commission finished its report,

and it was implemented under the administration of the same president, Carlos Menem, who had pardoned the convicted military officers and tried to quiet any further discussion about crimes of the past. There had not been great public demand for reparations, since survivors' priorities were finding the disappeared persons, establishing the full truth, and prosecuting the guilty, and the idea of being paid for the loss of loved ones was distasteful to some. So, it is curious that such a significant reparations program was established at this time.

The reparations program was apparently prompted in part by cases brought to the Inter-American Commission of Human Rights, an organ of the Organization of American States, by a number of former political prisoners demanding compensation for their time in jail. After three years of litigation before the Inter-American Commission, in 1991 the Argentine government reached a friendly settlement with the petitioners.<sup>21</sup> For each day in prison, each petitioner was paid the equivalent of the daily salary of the highest-paid Argentine civil servant: \$74.00 per day, \$2,200 per month, \$26,400 per year, up to a maximum of \$220,000 (equal to 100 months at this salary). These petitioners were awarded their compensation through executive decree, but the Argentine Congress soon passed a law extending the same reparations to all former political prisoners.<sup>22</sup>

This reparations program was later extended to those forced into exile after arrest—those who, after a period of imprisonment, were literally taken to the airport, put on a plane, and told not to return.<sup>23</sup> For each day in forced exile, these people received the same daily rate as those imprisoned. Juan Méndez, now a well-known international human rights lawyer, is among those who received compensation for forced exile, in addition to his time in prison. He notes that not everyone who was exiled could claim compensation, saying:

Bear in mind that when we talk about forced exile we refer to a very precise legal category: those of us who were held in administrative detention under the state of siege and allowed at some point to go into exile rather than remain in prison. My guess is that the number is about 1,000 total. Many others were released in Argentina and, if they later went into exile, the government does not pay for that period of exile, since they were nominally free to return. It also does not cover the other, much more frequent form of exile: going abroad a step or two ahead of those bent on arresting, killing or disappearing you.<sup>24</sup>

In 1994, three years after beginning the program for those imprisoned, the Argentine Congress passed a law which extended reparations to the disappeared and killed.<sup>25</sup> This was partly in recognition of the unfairness in providing monetary compensation to those jailed but not to the families of the disappeared, but also a response to national court decisions awarding sums of \$250,000 to \$3 million in "moral damages" to families of the disappeared.<sup>26</sup> In 1998, the government committed to spending up to \$3 billion to cover the projected costs of these reparations programs. In 2004, an additional law was

passed, to provide between \$25,000 and \$50,000 to persons who were victimized as children—including, for example, those born in prison and given away to other families.<sup>27</sup>

For many in Argentina, more important than monetary compensation was the creation of a new legal status of “forcibly disappeared.”<sup>28</sup> This new legal category satisfied a number of key demands of surviving families. “Forcibly disappeared” is considered the legal equivalent of death for purposes of civil matters, allowing families to process wills, distribute inheritance, close a disappeared person’s estate, and other matters, but it stops short of declaring the person dead. Indeed, the legislation officially holds open the possibility of the person’s reappearance—a measure insisted upon by the surviving families. Prior to 1994, in order to process the person’s will, sell her (or his) apartment, and close her bank account, a family was forced to declare that the person was “presumed dead,” a legal mechanism in Argentine law for those whose whereabouts remained unknown for a long period of time. Such a declaration, which provided no recognition of state responsibility or military involvement, was a psychological and political compromise that many families were unwilling to make (although some were forced to, out of economic necessity).<sup>29</sup> The new law allowing families to obtain a “certificate of forced disappearance” came to be known as the “law on historical sincerity.” Argentina was the first state to create this new legal status; other states have since followed suit.

In the process of implementing the reparations laws in Argentina, the government human rights office has been able to document many more cases and a wider array of victims than the truth commission could. The commission was tasked only to document the “disappeared” victims, generally excluding those who were known to be killed outright or those who died in detention and whose bodies were later found and identified. It also did not attempt to count those who survived detention and torture. The 8,960 documented by the commission were those kidnapped by the military or police and never seen again, either dead or alive. In the process of implementing the reparations programs, the Human Rights Office of the Ministry of the Interior began the first full count of the number of non-combatants killed under the military regime (in addition to those disappeared), which they estimated to number in the thousands.<sup>30</sup>

Reparations for families of the disappeared are far more controversial in Argentina than in Chile. In the political maelstrom that continued around the disappeared in Argentina over fifteen years after the end of military rule, one group representing victims’ families denounced state reparations as “blood money,” and its members refuse to accept it. “Life doesn’t have a price. The reparation only buys your conscience and sells your blood. The president is likely to say to us, ‘You can’t talk, we paid you,’” Mercedes Meroño of the Mothers of the Plaza de Mayo told me when I visited the organization in downtown Buenos Aires. “Some things don’t have a price, especially dignity.”<sup>31</sup> Yet with time, the majority of families of the disappeared accepted the reparations, as have former political prisoners.



## Other Experiences: A Mixed Record

### *Morocco: A Truth Commission Premised on Reparations*

Ironically, it was the frustrations around a quite significant government reparations program in Morocco that led to demands for a broader truth inquiry and ultimately led to lobbying for the creation of a truth commission. A reparations-granting “Arbitration Panel” was created in 1999 and ultimately awarded \$100 million to 7,000 victims over four years of work. But it did not hold public sessions or release any information about the cases on which its awards were based, leaving beneficiaries of the program unsatisfied. The panel was criticized on many grounds, in addition to its general failure to investigate and reveal the truth: its mandate covered only arbitrary detention and disappearance (leaving out cases such as executions); its awards were purely monetary; there was great disparity between awardees (ranging from \$600 to \$300,000); and the administrative process showed a general lack of empathy for victims. It was also criticized for allowing only a four-month window for applications (rejecting the 6,000 that arrived late) and undertaking little public outreach.<sup>32</sup>

Strong lobbying by civil society and victims organizations, in response to the weaknesses of the Arbitration Panel, finally resulted in the creation of the Moroccan truth commission in 2004. This commission was thus created with a much stronger link to the implementation of a reparations program than is typical of truth commissions. It was explicitly mandated to rule on all those requests that remained pending from the Arbitration Panel.

The Moroccan truth commission (Equity and Reconciliation Commission, IER) took a wholly different approach to reparations as compared to the Arbitration Panel. On the basis of the IER’s broad truth investigations, the commission presented a comprehensive proposal that included individual, collective, material, and symbolic forms of reparation, including the conversion of former detention centers into cultural centers, and other community-based programs. Before finalizing their proposal, the commissioners presented it to the public for discussion and feedback in a three-day National Forum, widely attended by state and non-state representatives, victim groups, and human rights organizations.<sup>33</sup>

The commission’s reparations proposal was set out in the IER report released in late 2005. First, in relation to direct financial compensation the report made determinations on each individual case, whether compensation should be granted, and at what level. Implementation was rapid: families began receiving checks a year after the report was released, in December 2006, and payments were concluded by August 2007, providing a total of \$85 million to some 9,000 victims or family members.<sup>34</sup> Second, the Commission recommended medical and psychological reparations, including urgent care for some, and long-term medical assistance for all victims. This was also quickly put in place: in June 2007 the implementing agency signed an agreement with the relevant government offices (the ministries of finance and health and the

social services office) to provide free, long-term medical care to victims and their families, as well as vocational training. Finally, eleven regions particularly targeted with repression and marginalization (or where secret detention centers were located) were identified for communal reparations. Local coordination committees were set up to decide how these funds should be used. The European Union provided a grant of \$4 million toward these communal reparations programs.

The IER's reparations proposal was particularly groundbreaking in how it handled women victims and family members. Rather than following the Moroccan inheritance law, which would provide daughters with half the amount granted to sons, the Commission instead recommended equal payments to female and male family members. In addition, the commission recommended extra compensation for female victims to take into account the unequal suffering resulting from the stark discrimination against women victims of detention, rape, and other serious abuses. These recommendations were accepted by the state and implemented as proposed.

### *Peru: Thorny Questions*

Six years after the conclusion of the TRC in Peru, several substantial reparations program elements are in place, and others are in process of finalization. While these programs are connected directly to the TRC's recommendations, the process of designing and finally agreeing to such programs has been fraught with controversy and difficulty, both within the commission and by policy-makers (and in public opinion) after the commission ended. The Peruvian reparations policy has been perhaps the most widely consulted and deeply considered of all reparations programs around the world to date—although still showing weaknesses in design and still underfunded. In the process of this great reflection and debate, Peruvians tackled several of the thorniest issues in the sphere of reparations policy: the quandary as to the fundamental purpose of such a program, whether members of armed groups can also be victims, and the difficulty presented by parallel court awards at significant levels.

At the start, the TRC considered two radically different conceptual approaches to reparations. It spent a year preparing a detailed proposal, holding over forty workshops with victims and studying reparations programs in other countries. Lisa Magarrell, a reparations expert with the ICTJ who advised the Peruvian truth commission, closely documented this process. "One of the most difficult conceptual hurdles . . . was the question of whether the starting point for design of a reparations plan should be the consequences suffered or the violations committed," she explains.<sup>35</sup> The answer to this question changed over time.

The first model developed by the commission tried to address broad social needs that resulted from the violence, in part because victims—most of them very poor—were articulating such general needs in the consultative workshops. But this approach to reparations was ultimately deemed "unworkable," says

Magarrell, stretching the aims of the reparations program too broadly and making it difficult to define beneficiaries clearly. The Commission realized that a program crafted in this way would need to reach an estimated two million people, 7 percent of the Peruvian population. This seemed to place “the burden of preventing future violence on the reparations program and charging reparations with large, long-term goals of sustainable peace, democratic strengthening, and development,” Magarrell noted. The commission thus reworked its proposal to a narrower concept of reparations that left the underlying structural problems to the commission’s other policy-focused recommendations.<sup>36</sup>

The commission thus ultimately recommended an approach that emphasized the civil and political rights of victims, and the “concrete acknowledgement of the State that these rights were violated,” writes Magarrell.<sup>37</sup> It thus recommended financial reparations for relatives of the dead and disappeared, victims of rape, and those disabled, and other forms of reparation for other victims, such as those displaced.

Ironically, in the first years after the TRC concluded, the state implementing agency was emphasizing its aim to address “the after effects of the armed conflict” within communities as a whole, rather than respond to specific violations suffered by specific victims—in fact, taking the approach the TRC had first considered and decided against. The first major reparations program was community focused rather than individual focused, targeting dozens of the most affected villages. This approach was criticized by victims, creating “confusion and tension,” as they felt this obscured the difference between reparations and general economic development, which they saw as an independent obligation on the part of the state, writes analyst Lisa Laplante.<sup>38</sup> After summarizing a complicated array of reparations initiatives that the state was trying to implement, Laplante wrote in 2007 that “[i]n sum, most of the government’s reparations efforts to date closely resemble development measures, and do not necessarily correspond to specific damage caused by the war.”<sup>39</sup>

This began to change with the efforts by the government to create an individualized program. However, this could not avoid yet another thorny question: the fundamental question of who could be considered a “victim” deserving of reparations. In particular, what about those who had been part of the brutal armed opposition—whom the public regularly referred to as “terrorists”? The TRC debated this at length and ultimately recommended that victims of serious abuses by state forces were due reparations regardless of their association with an armed group, applying international laws of war and the jurisprudence of the Inter-American Court. However, after considerable public controversy and debate, this recommendation was rejected, and the government’s final reparations program explicitly excludes members of illegal armed groups and their families. The law establishing the reparations program even states that “[m]embers of subversive organizations are not considered victims” and thus are not to be beneficiaries of the program.<sup>40</sup>

As the process of registering victims began, it was not clear how it would be determined who had been a member of a subversive group, a fraught question both politically and operationally. By late 2009, the victims registry had recorded more than 60,000 victims (about a third of these being dead or disappeared) as well as 5,000 communities that were affected by the violence, but had not yet taken decisions on individual exclusions. The registry estimated there were 280,000 victims of all categories, including close to 100,000 displaced from their homes.<sup>41</sup>

Over six years after the truth commission report, individual reparations payments had not yet begun. The government announced in 2009 that it would prioritize the elderly and those in extreme need. Of the 5,000 affected communities, 1,400 were selected for communal reparations, consisting of infrastructure projects costing up to \$33,000 each. The government provided almost \$38 million from 2007 to 2009 for this program; \$5 million of this came from funds recovered from stolen assets of corrupt former officials.

Finally, the development of a reparations policy in Peru was complicated from the start by a parallel process under way at the Inter-American Court and Commission, where a number of cases of torture and disappearance had been brought by victims. The resulting awards averaged between \$100,000 and \$200,000 per victim, to be paid by the state. These amounts could never be sustained for the estimated 69,000 whom the TRC determined to be direct victims. As noted by reparations expert Pablo de Greiff, this would have consumed more than the total annual budget for Peru. The urgency of crafting a more general policy thus became clear early on.<sup>42</sup>

### *Sierra Leone: An Important Start with Limited Funds*

The TRC in Sierra Leone recommended a broad program that included physical and mental healthcare, pensions, provision of education until senior secondary school level, skills training, and micro-credit projects for victims. For several years after the report's submission, there was no progress in implementation, and indeed little attention was paid to this aspect of the commission's proposals. Some national human rights and victims groups tried to focus particularly on the possibility of reparations for amputees—the approximately 1,200 surviving victims whose limbs were cut off as a terror tactic of the war. The government, however, showed little interest in prioritizing reparations for war victims, perhaps overwhelmed by other demands. As one of the poorest countries in the world by many measures, and in the context of such huge numbers of massive atrocities during the war, many officials in Sierra Leone felt that a reparations program was simply not feasible.

Four years after the release of the TRC report, momentum began to pick up in this area, although in a comparatively limited way. With the UN Peacebuilding Commission choosing the country as a primary country on which to focus its work (along with the complementary UN Peacebuilding Fund), funding for reparations and other recommendations of the TRC was

seen as more possible. In 2008, the Peacebuilding Fund provided \$3 million to a Sierra Leone social services agency for a one-year program that would form a Reparations Task Force, develop a program strategy, identify victims, and provide “the necessary support or social services.”<sup>43</sup> The program was explicitly framed as responding to recommendations by the TRC.

The one-year deadline prevented the design of a more comprehensive policy approach. However, in this short period the program was able to register almost 30,000 victims, and provided direct payments of \$100 to almost 22,000 direct victims, prioritizing the war wounded, amputees, and victims of sexual violence.<sup>44</sup> The steering committee advising this program recommended that the government fund additional years with a percentage of proceeds from the mineral extraction sector, which had helped fuel the war. This recommendation remained open at the time of this writing.<sup>45</sup>

### *South Africa: Frustrated Promises*

The South African truth commission left detailed recommendations for a reparations program, including financial, symbolic, and community or development recommendations. But long before it published its report, the commission met with the government to extract a commitment to its proposed plan. It was on this basis that the commission then signaled to victim communities what the expected program would be.

The commission proposed that each victim, or the family of those killed, would receive approximately \$3,500 each year for six consecutive years, with a greater amount for families with many dependents or those in rural areas where services are more expensive. This would require a government commitment of \$600 million for an expected 25,000 victims. In announcing this proposal publicly, the commission made clear that only those victims who were on the commission’s list—those who had given a statement to the commission—would be eligible to receive reparations. This resulted in a significant increase in statements in some regions. Still, in its final report the commission acknowledged that many thousands of victims are not included on its list as they were not able to access the commission for some reason, and recommended that this “closed list” policy be reviewed.<sup>46</sup>

Meanwhile, the government provided funds for “urgent interim reparations”—small amounts for those who gave a statement and had pressing medical or other needs.<sup>47</sup> However, the first allocation for this program did not take place until 1998, just months before the commission concluded its core work. Much of the administration of the interim program was done by the commission itself, in the several years after the main report was submitted and while the Amnesty Committee was concluding its outstanding matters. It was an intensive process: each victim who had given a statement to the commission had to be located again to fill in reparations forms; the commission hired field workers to find each deponent and assist them with the procedures. The commission even assisted many to open bank accounts so that they could

process their payments. In the first year, some 2,500 payments ranging from 2,000 to 6,000 rand (\$330–\$1,000) were made.

The government, however, failed to implement the full recommendations from the commission, and only with great delay instituted a much smaller program. Five years after the commission's first report, the government provided a final reparations payment for those on the TRC list, but this was less than one-sixth of the recommendation from the commission: a one-time payment of approximately \$3,000 per victim or family, with none of the additional recommended services. The government's lack of commitment to a more serious reparations program was a source of great bitterness and anger, and for some was an indictment of the entire truth commission process. In 2008, an overall assessment of the commission's impact concluded that "[t]he most pressing concern and frustration among survivors have been the failure of the government to implement the TRC recommendations on reparations," noting that the program was seen by many as "too little, too late."<sup>48</sup> Despite considerable lobbying efforts, further reparations were not expected.

### *Haiti and El Salvador: Recommendations Ignored*

Elsewhere, the recommendations from truth commissions have been less warmly welcomed, being either ignored altogether or implemented only slowly and to a fairly limited degree. The reparations question was of central concern to the Haitian commission, since the majority of victims who came to the commission expected or hoped for some form of assistance, many of them living in abject poverty, some injured and unable to work. The commission recommended the creation of a follow-up body to determine the "legal, moral, and material obligations" due to victims, suggesting that funds come from the state, from national and international private donations, and from voluntary contributions by UN member states.<sup>49</sup> This recommendation was never seriously taken up by the Haitian government, however, nor have foreign governments shown much interest in making contributions.

The El Salvador truth commission report called for the creation of a special fund, recommending that 1 percent of all international assistance to El Salvador be set aside for reparations.<sup>50</sup> Neither the Salvadoran government nor the international community was enthusiastic about this proposal, however, and the fund was never created. No serious discussions on reparations have taken place since. The former armed opposition, the FMLN, did not see it as a priority interest. Critics felt that the truth commission erred by saying that the government did not have the resources for a reparations program.<sup>51</sup>

## **Reparations without Truth-Telling: Possible but Precarious**

Of course, there are many reparations programs created without a truth commission first. However, even where quite substantial, such reparations payments alone generally do not satisfy victims' needs for broader acknowledgment of what happened, and in some cases only raise more demands for full investigations. Some feel a lack of respect in the presumption that a cash payment might be sufficient to make up for their pain. Not surprisingly, the manner in which the program is carried out, and whether it is felt to be both fair and respectful, will help determine how it is received.

Germany has instituted the most far-reaching and comprehensive reparations programs to date anywhere in the world, a package of both domestic legislation and agreements with foreign states to compensate victims of Nazi crimes. In the past sixty years, over \$60 billion has been paid by the German state in cash payments to surviving victims and to families of those killed.<sup>52</sup> Despite the great sums, however, the individualized program for concentration camp survivors was criticized for its administrative procedures that were "intimidating and degrading," cast suspicion on claimants, and resulted in "retraumatization and a sense of injustice."<sup>53</sup>

Ten years after the end of military rule in Brazil, in 1995, the Brazilian government set up a reparations commission to provide approximately \$100,000 to each family of some 135 disappeared persons in Brazil.<sup>54</sup> The commission also had powers to investigate disappearances, and oversaw a number of exhumations. The commission thus resulted in the acknowledgment of important facts, and in the end "rescuing historical truths and collective memory was deemed by many as the most relevant contribution of the process," according to analysts.<sup>55</sup> But this and another reparations programs that followed did not seem to lessen the demand for the full truth, such as where the remains of the disappeared could be found. As was noted above, in 2009, almost twenty-five years after the end of the dictatorship, victims' families and rights activists were actively pressing for a national truth commission.

In Malawi, the end of a repressive regime in the early 1990s led to no official truth-telling, no trials, and no vetting. Instead, the government set up a National Compensation Tribunal to assist former victims. But with its decision-making "shrouded in secrecy," "humiliating" procedures, and with unequal payments that seemed to favor the well connected, the compensation program only led to "more dissatisfaction, frustration, and bitterness" on the part of victims, writes Malawi expert Diana Cammack.<sup>56</sup> Many claimants emerged from the process "demanding more personal consideration and respect, a more transparent and speedy process, and an honest apology."<sup>57</sup>

The human rights community in Malawi was equally frustrated. One activist asked, "What is the point of giving all these people money if we do not know what happened? What is the truth? Who caused what?"<sup>58</sup> Meanwhile,

the compensation tribunal released no information or analysis based on the extensive testimonies it received from victims, and many known perpetrators—presumably named in many testimonies—remained in government. But the very existence of the compensation tribunal has allowed “politicians to counter periodic public demands for a truth commission by asserting that the compensation tribunal is addressing the past and nothing more is needed,” writes Cammack.<sup>59</sup>

### **The Difficulties of Designing and Implementing a Reparations Program**

The decisions in designing a reparations policy are numerous, complex, and often wrenching for those with a good-faith intent to put in place a fair and just program. The “discretion and flexibility” allowed in international law place the burden of creative programming on domestic policymakers. The considerable literature and country studies that have emerged in recent years begin to provide some practical guidance, or at least a critique of programs to date, but the guidance proffered is focused more on principles than on providing specific guidelines of any detail. In fact, it may be that universal guidance of any detail is not feasible—that, just as with truth commissions more generally, reparations programs must be designed in response to quite specific national realities.

Logically, the questions that must be tackled—even identifying the key decisions that must be taken in a particular country—are best handled by a group of people who have had close contact with numerous victims and survivors, understand the global picture of the total numbers, have a good sense of the types of harm suffered, and can design a program that will fit within a range of other reform and recognition policies. In short, a truth commission is well placed to craft a clear set of recommendations for a victim reparations program.

Those setting out to define individualized benefits quickly encounter basic choices that must be made. Should cash or a package of services be offered to those who suffered? How is it possible to quantify the loss of a loved one, or a severe physical injury, in monetary terms? Should all victims receive equal compensation, even if some clearly suffered more? Should a victim who suffered one day of torture, for example, receive the same benefit as those jailed and tortured for many years? But if there are distinctions made between victims, by what measure can one categorize degrees of suffering or loss?

Truth commissions have also grappled with other, broader dilemmas that pertain to impact. Some commission, such as in Peru, have been conscious of the divisiveness that might result in poor communities if individual victims received significant cash benefits. Commissions have struggled to recognize a “culturally appropriate notion of family” in identifying beneficiaries. Incorporating victims of rape into a reparations plan has also been difficult for many commissions. Some, such as Sierra Leone, have prioritized this group; others have placed victims of sexual abuse at the bottom of the list of priorities,



concluding that the impact on their “future income potential,” for example, was not significant. Needless to say, this has been strongly criticized.

Many who have designed reparations programs have concluded that it is not possible to distinguish between levels of suffering, although, as seen above, some programs provide different amounts of compensation according to the number of days for which the victim was imprisoned or whether a serious injury was sustained. Some have concluded that it is more effective to provide direct cash payments to victims and allow them to determine their priority needs—be they medical, educational, or other basic services, a tombstone for the person killed, or covering daily living costs—rather than the state predetermining and parceling out services. Programs elsewhere provide a mix of cash and services.

The implementation and administration of a reparations program can be intense, and even if the political will exists, the basic capacities for follow-through may be insufficient. An individualized approach requires direct contact with thousands of victims or survivors and some system for corroborating claims. Where truth commissions have been given the responsibility of establishing the list of beneficiaries, as they were in South Africa, Chile, and Morocco, they have had to individually corroborate each victim statement. This is enormously time-consuming and, at least in the case of South Africa, distracted the commission’s attention from broader investigations of patterns of crime and responsibility. In Argentina, the Human Rights Office of the Ministry of the Interior undertook this administration, while in Chile the follow-up body to the truth commission took on the task. In the end, some government body must dedicate significant time and resources to administering an individualized program.

Ideally, given the amount of time and personnel that are necessary to corroborate and administer claims, and because the reparations program should be open to those who do not testify to the truth commission, the implementation of a reparations program should not be done by a truth commission itself. Furthermore, the truth-seeking function of a commission may be skewed if the commission’s mandate includes the job of awarding reparations, or if there is a direct relationship between the commission’s victims list and reparation recipients. The possibility of money following from testimony could provide an incentive for people to give false statements, and thus increase the commission’s burden of verifying every statement before the information is used to make general conclusions about events. Despite these difficulties, a number of commissions have been able to grant “urgent interim reparations” to a small group of victims, trying to assist those in particularly dire need as a result of abuses suffered. Such payments or services are usually much less than what is proposed for the long-term program.

Ultimately, establishing a broad reparations program will depend on the political interest in formally acknowledging and apologizing for past crimes, and on a commitment from the state toward repairing its wrongs. Certainly not all reparations need be monetary. In addition to community-oriented reparations, symbolic measures such as memorials and days of remembrance

might be appropriate. However, for those left destitute from the loss of a breadwinner in the family, or left emotionally or physically shattered, financial reparation, basic medical benefits, and other support services will be necessary in order to begin to repair the damage.

## 13 Reconciliation and Reforms

Perhaps the most important aim of any truth commission should be to prevent further violence and rights abuses in the future. It may hope to do this by breaking the cycle of revenge and hatred between former enemies, somehow encouraging reconciliation between opposing groups who may feel they have much to hate or fear in the other, or a history to avenge. More concretely, most commissions recommend reforms in the military, police, judiciary, and political systems in the hope of preventing further abuses.

Both of these aims—advancing reconciliation and promoting institutional reforms—have presented significant challenges to past truth commissions, and while some important contributions have been made, they have often fallen short of obtaining the results initially hoped for. This has been disappointing to those who have held high hopes for the transformational power of individual truth commissions, but in retrospect this should hardly come as a surprise. Both of these goals are dependent on any number of outside actors or elements—political will, legislative or presidential initiatives, and societal and individual readiness to change, among others—such that even heroic efforts by any one commission cannot alone ensure change.

Reconciliation is often cited as a goal in national peace processes, but it is rarely clear exactly what is meant by the term. The *Oxford English Dictionary* defines “reconcile” as “to bring (a person) again into friendly relations . . . after an estrangement. . . . To bring back into concord, to reunite (persons or things) in harmony.”<sup>1</sup> In the context of political conflict or violence, reconciliation has been described as “developing a mutual conciliatory accommodation between antagonistic or formerly antagonistic persons or groups.”<sup>2</sup> Many have asserted that knowing the truth about the past is necessary for reconciliation to take place. In some places, this has been a fundamental tenet in the call for a truth commission. Not all commissions have been built around an assumption or priority of advancing reconciliation, but many of those that have—such as in Chile, Morocco, Peru, and South Africa—have found it to be a difficult mission.

More attention has been given to the subject of reconciliation as the field of transitional justice has expanded.<sup>3</sup> Many independent analysts note that there

is still confusion about the meaning of the term (which differs according to context), and many begin and end with some skepticism toward the sometimes exaggerated hopes and claims by truth commission proponents. That is fair, and the questions raised are useful. But, as on other truth commission subjects, the writing in this area is still dominated by the South African case, the conclusions of which cannot necessarily be extended elsewhere, given the specificity of that case.<sup>4</sup>

We must distinguish between individual reconciliation and national or political reconciliation. The strength of a truth commission process is in advancing reconciliation on a national or political level. By speaking openly and publicly about past silenced or highly conflictive events and by allowing an independent commission to clear up high-profile cases, a commission can ease some of the strains that may otherwise be present in national legislative or other political bodies. An official accounting and conclusion about the facts can allow opposing parties to debate and govern together without latent conflicts and bitterness over past lies. This is not to suggest that the knowledge or memory of past practices should not influence current politics, but if basic points of fact continue to be a source of conflict and bitterness, political relationships may be strained. In a negotiated transition out of civil war, these latent tensions may be of special concern, as opponents can move quickly from the battlefield to the floor of Congress.

On an individual level, however, reconciliation is much more complex, and much more difficult to achieve by means of a national commission. There certainly are examples of truth commission processes leading directly to healing and forgiveness for some individuals, but knowing the global truth or even knowing the specific truth about his or her own case will not necessarily lead to a victim's reconciliation with the perpetrators. Forgiveness, healing, and reconciliation are deeply personal processes, and each person's needs and reactions to peacemaking and truth-telling may be different.

### **Is Reconciliation Possible?**

From even before its inception, the Truth and Reconciliation Commission of South Africa was presented as a means to reconcile a fractured nation and heal the wounds of its troubled soul. The message from the commission was clear and unwavering, encouraging an expectation among the public that reconciliation could and would actually be reached in the course of the commission's expected two and a half years of operation. At its public hearings, a huge sign hung behind the panel of commissioners that read "Truth: The Road to Reconciliation." Posters promoting the commission coaxed, "Let's speak out to each other. By telling the truth. By telling our stories of the past, so that we can walk the road to reconciliation." In some of its first hearings, Archbishop Desmond Tutu would sometimes ask victims if they were ready to forgive and reconcile after telling their story (at least one deponent respectfully responded that she could not—and that the commission could not and should

not ask her to do so, nor offer forgiveness for her). Even the commission's Amnesty Committee, responsible for deciding the fate of those admitting to wrongs, was influenced by this overarching interest in reconciliation: one Amnesty Committee member told me that the commission based its decisions in part on its judgment of "what is likely to promote reconciliation" since, members reasoned, that aim was clearly spelled out as the fundamental goal of the commission's work.<sup>5</sup>

As could be expected, the commission's success was thus judged in part on whether and how much "reconciliation" was perceived to have resulted from its work. As it was close to finishing its report in mid-1998, the press and public were overtaken by the realization that widespread reconciliation had not in fact been won. Many, in fact, argued that relations between groups had worsened rather than improved. Market Research Africa released a national poll showing that two-thirds of the public believed that revelations resulting from the truth commission process had made South Africans angrier and led to a deterioration in relations between races. "Among those questioned, 24 percent expected people to feel more angry and bitter, 23 percent said the TRC would cause more hurt and pain. Only 17 percent predicted people would become more forgiving," it was reported.<sup>6</sup> These poll results were referred to in articles worldwide, with the inference that the truth commission in South Africa was not in the end much of a success.<sup>7</sup>

By this time, the commission realized that its initial claims of achieving full reconciliation had been unrealistic. Archbishop Tutu began to argue that a more reasonable goal for the commission was to "promote" reconciliation, rather than to achieve it, as indicated in the name of the Promotion of National Unity and Reconciliation Act that created the commission. Yet despite a general sense of disappointment, there was little serious reflection in the press or public about what reconciliation might really mean, or what might be required to attain it, in a society such as South Africa, where communities had long been separated not only by race and physical space, but also by economic conditions and opportunity.

The commission did not shy away from these frustrations and disappointments in its report. For example, it quoted at length from an outside researcher's report on the community of Duduza, a black township of about 100,000 people, which was perhaps representative of feelings elsewhere:

The publicity around the establishment and functioning of the Commission, as well as its operation within Duduza, has, at the very least, forced people to examine their own understanding of what reconciliation and forgiveness means to them and their community. . . . While some victims still find the idea of reconciliation, and especially forgiveness, insulting, it appears that for most the Commission has contributed to a greater commitment to the process of reconciliation. . . . It is seen as a forum that provides a platform for storytelling, for revealing the truth, for holding the perpetrator accountable, for reparations, remorse, and

forgiveness. These are steps in a process that people now understand and accept as legitimate. . . .

Reconciliation is not an event. People cannot simply one day decide that they want to forgive and forget. Most of the victims in this community are committed to a process of reconciliation. They are not necessarily demanding vengeance. They are, at the same time, not simply willing to move ahead as if nothing happened. They demand to hear the truth and to be given time to consider it. They are often not willing to forgive unless the perpetrators show remorse and some form of reparation is offered. . . .

Victims are not ready to engage in a reconciliation process unless they know more about what happened. They often say they are willing to forgive, but they need to know who to forgive and what they are forgiving them for.<sup>8</sup>

Where case-specific information was made known, and where perpetrators showed sincere remorse, there were powerful examples of forgiveness and reconciliation that did result directly from the work of the truth commission. This took place at both the individual and the community level, especially in exchanges between amnesty applicants and victims. One lawyer described hearings that he participated in at Richards Bay, where Inkatha Freedom Party members were seeking amnesty for having killed African National Congress members. The victims' supporters were initially angry and aggressive toward the amnesty applicants. The dynamics changed radically over the course of the hearing:

Each day there were several hundred people attending the hearings, filling the hall to capacity. As time went on they began to warm to the applicants, as did the committee members, who asked fewer and fewer questions as they realized that the applicants were telling everything that they could remember and were committed to having the whole truth told.

On the penultimate day there was an informal meeting between the community and the applicants at which many questions were asked about specific incidents. Then one by one survivors came forward and forgave the applicants and thanked them for telling everything, allowing them to know what had happened and also telling them who else had been involved and who had given instructions. At the end of the meeting a resolution was taken to forgive the applicants and to tell the committee that the community accepted that the applicants were telling the whole truth within the bounds of the failings of human memory, that the attacks were launched with a political motive and that they would not oppose amnesty.

We then all sang *Nkosi Sikelele* together, with the applicants tentatively raising their fists, and then Mkhize led everyone in prayer at the request of the community. At the end of the meeting people rushed forward to hug the applicants.<sup>9</sup>

While most amnesty hearings certainly did not end on such a tone, there were a number of other similar examples of community or individual reconciliation that were a direct outcome of the official truth-seeking process.

Reconciliation took place on other levels as well, such as in the back room of a large corporation that had never before formally discussed the issue of race. One large sugar-producing concern that participated in the commission's sectoral hearings on the business community used the event to undertake a serious internal review of the company's record. A racially mixed group of about twenty senior company executives met eight times over several months to prepare a company statement to be presented to the truth commission. Yet first, as a senior white executive who took part in the process told me, the group had to come to an agreement on language:

The first meeting was very intense: we spent an hour and a half just on what to call each other: we weren't supposed to say "black," which is what the whites thought, but rather "African." We wanted to call those of Indian descent "Asiatic," but they said "No, call us Indian." Thus, we came to understand, "black" included African, Indian, and coloured. We'd never talked about this before, nor talked about the past. . . . It's really about values, what should and shouldn't have been done. In the end, we were successful in putting together a consensus statement to present to the commission.

As the South African commission was coming to an end, analyst James Gibson undertook the closest study of this basic, still open question: "whether the truth commission in South Africa helped to reconcile the country." On the basis of representative samples of South Africans and a comparison of impact across racial groups, he concludes with "a cautious and qualified yes."<sup>10</sup> In brief, he states, "those who accept the 'truth' about the country's apartheid past are more likely to hold reconciled racial attitudes."<sup>11</sup>

During my visit to Chile in 1996, five years after the National Commission on Truth and Reconciliation had concluded its work, I found many Chileans insisting that national reconciliation had been achieved. The director of the follow-up body to the truth commission, Alejandro González, defined reconciliation as "respecting the rules of the democratic game. There is a civilized dialogue between the government and opposition, and no sector wants to take over anti-democratically."<sup>12</sup> Others suggested much the same. Yet even while insisting that national reconciliation had taken place, many Chileans described personal relationships that remained strained by past events. Former victims and supporters of the regime of Augusto Pinochet worked and lived side by side, but with an unspoken agreement to never bring up the past or their strong differences of opinion. When issues about the past did arise, it was with considerable discomfort.

When Pinochet was arrested in London in late 1998, the depth of these rifts in society was revealed. As the country grappled with these tensions, it became

ever more clear that there was no consensus about basic facts of right and wrong in the country's past. The breadth and depth of continued support for the former Pinochet regime were in sharp contrast to South Africa's post-apartheid view of its past. This form of reconciliation—coming to a generally agreed understanding of a country's history and its wrongs—had been so thoroughly won in South Africa that it is hardly a point of discussion. In contrast to the Chileans supporting Pinochet, very few in South Africa would admit to past support for apartheid—although the white minority kept the apartheid government in power for decades. In this widespread, even if clearly dishonest, denial can be found a measure of success in South Africa's reconciliation, for which the South African truth commission should be given considerable credit. Almost no one today would try to boast about the benefits of apartheid, just as no one would try to deny that torture took place on a wide scale in South African police stations and jails.

Many inside and outside of the truth commission in Morocco understood "reconciliation" to be the ultimate objective of that commission. Interestingly, this was not referred to as reconciliation between groups—such as between the king and the former opposition—but as "reconciliation of the Moroccans with their past." Indeed, this was the phrase used by the king when he created the commission. As researcher Lyna Comaty has documented, victims found the notion of reconciliation to be ambiguous, as they did not know whom to reconcile with, given that the commission avoided identifying perpetrators. Others understood reconciliation to be "a dynamic that would be created by the commission as a result of its work. For example, that the public would no longer fear a police vehicle." Others referred to economic development, or to other democratic reforms.<sup>13</sup>

In Timor-Leste, a central component of the truth commission's mandate was to facilitate Community Reconciliation Processes, which directly incorporated traditional authorities and conflict resolution procedures at the community level to help reintegrate persons accused of crimes in 1999 (the most serious crimes were excluded from this process). Many participants, including victims, community leaders, and the perpetrators seeking reacceptance, described a positive process whereby the wrongdoer could earn back his good standing, and social forgiveness, by undertaking community service or making symbolic amends. These arrangements were negotiated by truth commission representatives with direct involvement of the entire community and, in particular, all those affected by the person's actions.<sup>14</sup>

Other truth commissions have held no presumption of achieving reconciliation in the course of their work. For example, reconciliation was not assumed in Argentina, and there was a resistance even to the suggestion. As journalist Horacio Verbitsky responded when I mentioned the word:

Reconciliation by who? After someone takes away your daughter, tortures her, disappears her, and then denies ever having done it—would you ever want to "reconcile" with those responsible? That word makes no sense



here. The political discourse of reconciliation is profoundly immoral, because it denies the reality of what people have experienced. It isn't reasonable to expect someone to reconcile after what happened here.<sup>15</sup>

Patricia Valdez, former director of the El Salvador truth commission and involved in many democracy and memory projects in Argentina, said, "Nobody talks of reconciliation in Argentina, nobody touches it. It's not that anybody is actively opposed to it, it's that the word has no meaning here. Nobody has seriously put that question on the table."<sup>16</sup> Argentine human rights expert Juan Méndez said that reconciliation in Argentina "was a code word for those who wanted nothing done. Reconciliation in Argentina was understood by victims to mean, 'We are being asked to reconcile with our torturers, and they're being asked to do nothing.'" Non-governmental organizations were painted into a corner, while the military or the government was allowed to define what it meant, said Méndez.<sup>17</sup>

Indeed, few public figures talked of reconciliation in Argentina. One was President Carlos Menem, who cited it as the reason for granting pardons in 1990 to the military leaders then serving time in jail for their crimes. The reconciliation justification was a politically convenient claim that had little popular support, as could be seen in the spontaneous reaction of tens of thousands of people who took to the streets to protest the presidential pardons. "Reconciliation is, of course, a worthy goal, but it cannot be imposed by decree on a society," wrote Human Rights Watch in response to Menem's pardons. It continued:

It would be easier to understand the reconciliation rationale if there were any sign that the military is genuinely contrite about its role during the "dirty war," and is ready to seek reconciliation with their victims. In fact, the opposite is true: the armed forces view the pardons as a step in the direction of full vindication for their victory in "defeating subversion." On the date of his release, [the first president of the military regime, General Jorge Rafael] Videla wrote a public letter to the high command stating that the Army had been wrongly accused and that it deserved an apology and vindication from society.<sup>18</sup>

Similarly, the commissions on the disappeared in Sri Lanka did not suggest that reconciliation or forgiveness would result from their work; they saw their task as documenting who had disappeared and recommending which families should receive reparations.<sup>19</sup> To suggest individual reconciliation would have been unreasonable, rights advocates say, since not one perpetrator in Sri Lanka had stepped forward to express regret or acknowledge their responsibility. Instead of suggesting forgiveness, the commissions called for justice in the courts.

## What Does Reconciliation Look Like?

There is no one, single way to achieve reconciliation; it must be context-specific. Yet how might the progress of reconciliation be gauged? What would be the signs of such a process or result? In short, what does reconciliation look like? To assess whether reconciliation is taking root, I would propose three questions:<sup>20</sup>

1. *How is the past dealt with in the public sphere?* Is there a lack of bitterness over the past in political and other public relationships? Have past conflicts and past abuses been processed or absorbed in such a way that people can talk about these events—if not easily, then at least in a civil manner—even with former opponents?
2. *What are the relationships between former opponents?* Specifically, are relationships based on the present rather than on the past? A constant reference to past wrongs may be a sign of continued antagonism. Examples are plentiful of long and bitter memories that help to foment new violence or are intentionally used by leaders to create tensions between communities.
3. *Is there one version of the past, or many?* To reconcile means not only reestablishing friendly relations but reconciling contradictory facts or stories, “to make (discordant facts, statements, etc.) consistent, accordant, or compatible with each other.”<sup>21</sup> As a set of South African writers has noted, reconciliation “is the facing of unwelcome truths in order to harmonize incommensurable world views so that inevitable and continuing conflicts and differences stand at least within a single universe of comprehensibility.”<sup>22</sup> These writers continue, “Reconciliation, in this its rich and meaningful sense, is thus a real closing of the ledger book of the past. A crucial element in that closing is an ending of the divisive cycle of accusation, denial and counter-accusation; not a forgetting of these accusations and counter-accusations, but more a settling of them through a process of evaluation—like the accountant’s job of reconciling conflicting claims before closing a ledger book.”<sup>23</sup>

In countries where simmering conflict and violence have returned in cycles over many years or generations, a root problem has sometimes been a fundamental difference in perceptions of the past. Such stark differences in understanding may keep reconciliation superficial. There is never just one truth: we each carry our own distinct memories, and they sometimes contradict each other; but debunking lies and challenging dishonest denial can go far in allowing a country to settle on one generally accurate version of history. There are some facts that are fundamental enough that broad acceptance of their truth is necessary before real reconciliation can take place.

If the above questions help identify where reconciliation exists or is under way, what specific factors or elements might contribute to its development?

This question should be considered from the perspective of victims, as perpetrators are more likely to assume that reconciliation has been achieved before victims feel the same. The following elements are favorable, and sometimes necessary, for reconciliation to take root—and only some of these can be affected by a truth commission:

- *An end to the violence or threat of violence.* Political violence sometimes continues long after a cease-fire or a signed peace agreement.
- *Acknowledgment and reparations.* Official recognition of the facts of the past, either by perpetrators themselves or by political leaders, can be critical.
- *Binding forces.* Projects that bring differing parties together for joint gain, such as development projects, can be helpful, in part by simply building relationships between former opponents.
- *Addressing structural inequalities and material needs.* Where gross inequalities are a product of past oppression, reconciliation cannot be considered simply a psychological or emotional process. In South Africa, many have stressed the importance of addressing the economic disadvantages suffered by blacks if there is to be any hope for national unity. The truth commission report noted that “Reconciliation requires a commitment, especially by those who have benefited and continue to benefit from past discrimination, to the transformation of unjust inequalities and dehumanizing poverty.”<sup>24</sup>
- *Time.* Coming to terms with the past, and some form of true reconciliation, may simply take time, perhaps decades. An expectation that this can be achieved quickly will sometimes be unreasonable.

### **Recommending Reforms and Other Follow-Up Measures**

Serious political or institutional reforms are dependent on the will of the political leadership and, sometimes, the armed forces. Despite the evident difficulties, some truth commissions have made important contributions in this area.

For example, if you were arrested in El Salvador before the mid-1990s, any confession you offered could be used against you in a trial—including any confession that might have been obtained through torture. Rights advocates long insisted that the use of such “extrajudicial confession” is problematic since it can encourage abusive interrogation and because there is often no recourse to retract a forced confession. Yet in El Salvador, the use of such confessions was common.

Furthermore, if you were a Salvadoran judge or lawyer, you depended entirely on the good graces of the Supreme Court, and particularly the president of the Supreme Court, to obtain and retain your position or your

authorization to practice law. The Supreme Court was well known for its political bias, actively preventing any investigation into abuses by government forces. The president of the Supreme Court, Mauricio Gutiérrez Castro, was especially notorious for his unabashed pro-government stance and his judicial bullying. The Supreme Court controlled virtually the entire judicial system, and thus few judges or lawyers were able or willing to take a position that challenged the Supreme Court's rightist stance.

In 1997, extrajudicial confessions were invalidated through a constitutional amendment. The process of appointment and review of judges was also overhauled to make it independent. A number of other judicial reforms were also put in place. A new Criminal Procedures Code was passed in late 1996 to better protect the procedural rights of defendants and victims.<sup>25</sup> These reforms were a direct outcome of recommendations made by the El Salvador truth commission, although they did not come easily. According to its terms of reference, the recommendations of the truth commission were mandatory, but the Salvadoran legislature balked at many of the proposed reforms and it took three years of internal debate, deadlock, international pressure, and, finally, mediation by a senior UN representative sent from New York for a compromise agreement that would put in place many of the suggested judicial reforms.<sup>26</sup> Conservative legislators blocked some of the changes, such as outlawing extrajudicial confessions, because they believed that such confessions were an important tool in fighting rising crime. The final agreement allows for such confessions to be admissible in court only if taken in the presence of a lawyer.

In the years following the truth commission's report, the United Nations paid close attention to the commission's recommendations, applying significant pressure for their implementation. The UN Mission in El Salvador held monthly meetings with representatives of the two parties to the peace accords to review which recommendations had been put in place and to push for the implementation of those outstanding. The UN secretary-general's office in New York analyzed the recommendations closely, releasing a detailed report on what institution was responsible for which specific recommendation, with additional reports that periodically noted which recommendations had been fully implemented.

According to Jeff Thale, then a researcher on El Salvador for the Washington Office on Latin America, the new Criminal Procedures Code, which incorporates many of these basic reforms, "wouldn't have happened without the truth commission's recommendations. It was the truth commission's calling for these judicial reforms which gave the UN the mandate to push for them."<sup>27</sup> Many of these reforms had been suggested before, but the truth commission report focused attention and pressure on them. However, many others were not implemented. U.S. scholar and rights advocate Margaret Popkin, who watched El Salvador closely, noted that "[u]nquestionably, more effort has been made to implement the structural and institutional reforms proposed than to implement measures intended to impose administrative sanctions or

ban individuals named in the report, or measures intended to contribute to national reconciliation.”<sup>28</sup>

While some of the earlier truth commission reports provided only very brief and general recommendations, later commissions have been much more extensive, usually including a full and detailed chapter outlining specific reforms across many sectors of government and public life. The El Salvador report’s recommendations ran to fifteen pages, South Africa’s to forty-five pages, Chile’s to fifty-five pages, and Liberia’s to sixty-two pages. The Sierra Leone report includes over eighty pages of recommendations, plus a useful twenty-page summary table. In Morocco, the recommendations ran for over one hundred pages, and in Peru the recommendations section reached almost two hundred pages, including a proposed draft law for a follow-up committee. A commission will ideally gather input from a broad array of advocates and legal scholars in preparing its recommendations, and hold a range of public consultations. The Guatemalan commission, for example, held a conference on the subject, and over four hundred Guatemalans participated, including legislators and key civil society leaders from across the political spectrum, and together they drafted long lists of proposed policy recommendations.

Commission reports have recommended specific reforms in the judiciary, armed forces, and political sector; the prosecution of perpetrators or their removal from the military, police, or political posts; reparations; measures to instill a human rights culture, including through human rights education; the ratification of international human rights treaties; and apologies from officials. Some commissions have recommended reforms so basic that they serve as sharp reminders of how weak the country’s political and human rights foundations are. For example, the report of the 1986 Ugandan commission, completed in 1995, recommends that the new Constitution provide for a “system of peaceful change of Presidents and governments through regular elections”; that there be a “prohibition of over-staying by Presidents in office after their terms have expired”; and that a system of checks and balances should be set up between different branches of government.<sup>29</sup>

In addition to El Salvador, the Sierra Leone commission was also given the power to make mandatory recommendations.<sup>30</sup> The Sierra Leone Act also obligated the government to establish a follow-up committee to monitor and report on actions taken by the government and others. Trying to remain realistic about implementation, the commission in Sierra Leone put forward three levels of recommendation: “imperative,” “work towards,” and “seriously consider.” In relation to the third category, the commission said, the government was expected to thoroughly evaluate the recommendations, but was under no obligation to implement them.<sup>31</sup>

After the truth commission report was released in Liberia in 2009, there was some confusion as to the legal obligation for implementation. The Act states fairly clearly that “All recommendations shall be implemented” and that the national human rights commission shall be seized with the responsibility

to “ensure that all the recommendations contained in the Report of the TRC are implemented.”<sup>32</sup> The only possible suggestion of flexibility, which seems quite within reason, is the provision that “[w]here the implementation of any recommendation has not been complied with, the Legislature shall require the Head of State to show cause for such non-compliance.”<sup>33</sup>

Many legal experts find great discomfort with an investigative commission having “mandatory” powers of recommendation, which implies that it can force actions by independent entities such as the judiciary, legislature, or executive. To account for this concern, empowering mandates could be crafted with more subtlety and allow for flexibility—such as by requiring, perhaps, that a decision not to implement a recommendation be explained. That would be a useful improvement, but in practice this is largely a misplaced concern. The real problem, still, is that recommendations put forward by these bodies, whether “mandatory” or not, are not receiving anywhere near the attention that they deserve.

Most commissions have not had this power to make binding recommendations, and have hoped that the momentum of the political transition and the goodwill of the democratic leadership will result in action on their suggested measures. If done well, a truth commission’s recommendations can serve as a road map for domestic actors, advocacy groups, foreign governments, or funding agencies to push for change. A number of commissions have also recommended that a specific follow-up body be created to oversee the implementation of their recommendations.

No one has yet analyzed how many of the thousands of recommendations by truth commissions have been implemented, but it is clear that implementation generally remains weak. With no direct power of enforcement, and sometimes with no official body to watch over and promote the recommendations of a truth commission after it submits its report, many commissions have seen a fine list of recommended reforms receive very little governmental attention. There should be ways to improve this record in the future.

Specificity seems to help. General, broadly sweeping recommendations are difficult to implement, awkward as an advocacy tool, and hard to measure in terms of implementation. Commissions that have provided very specific suggestions are more likely to see success. Of course, this expectation must be within reason, given the complexity of some of the reforms that may be necessary, and the process should also allow for further consultation and expert input after the commission concludes.

The role of the international community is also key. It seems that there has been a weakening of the willingness of international institutions to push national authorities to implement truth commission recommendations. After the United Nations played such a robust role in pushing for implementation of the report in El Salvador almost two decades ago, its stance elsewhere (including in Sierra Leone, with equally “mandatory” recommendations) has been considerably less assertive, despite the important role that the United Nations often plays in assisting the actual operations of a truth commission.

At a time when international donor and development agencies are emphasizing the value of national ownership in major reform and restructuring plans, a map of reforms put forward by an indigenous truth commission might be considered of particularly high value.

## 14 Leaving the Past Alone

Why is it that some countries emerge from terrible civil wars or massive state violence and show no interest in digging into the details of their recent past? After seeing victims and family members in so many countries demand the full truth, one might assume that a detailed accounting is a universal good, a universal desire.

Indeed, there remains a sentiment in some international advocacy circles that official truth-seeking should always be recommended for countries emerging from authoritarian rule. From the early 1990s, policy statements of both Amnesty International and Human Rights Watch, two of the largest international human rights groups, called for investigation into the truth about gross violations of human rights wherever such violations have taken place.<sup>1</sup> Many cite the international right to truth, and the corresponding obligation of the state to investigate (as explored in Chapter 3). Some of these positions are unbending. The senior legal counsel at Human Rights Watch argued in 1999 that, as a matter of principle, this international obligation to investigate the truth allowed no case-by-case exceptions.<sup>2</sup> Amnesty International's position on accountability stressed three principles: the need to uncover the truth, the need to restore the honor and reputation of the victims, and the need to individualize the guilt and bring perpetrators to justice. However, Amnesty International's legal director explained, aspects of this policy will be emphasized or deemphasized in response to the expressed desires and needs of victims in any specific situation.<sup>3</sup>

These various policy recommendations are founded on a desire to combat impunity, build a culture of accountability, and show full respect for victims. In the majority of countries and transitional circumstances, these recommendations can be helpful in pressuring intransigent authorities who may prefer to hide their crimes. Indeed, there are some examples that seem to confirm the danger of allowing a country or its government the option of simply ignoring the legacy of past state crimes. African rights expert Richard Carver argued in the mid-1990s that the consequences of failing to come to terms with the past were evident in some countries. For example, in Malawi some of the repressive patterns of the past, such as laws allowing censorship, have received support from those who used to oppose them under the old regime. If these laws



and their effects “were properly exposed to public view, the repressive tendencies would still be there, but there would be greater public will to resist them,” said Carver.<sup>4</sup>

Yet there may be cases in which a “truth always” recommendation is not appropriate, or at least in which a recommendation for an official truth commission might be inappropriate. Digging into the details of past conflicts can feel dangerous and destabilizing, and may disrupt fragile relationships in local communities recently returned to peace. Truth inquiries usually require the active involvement and emotional investment of victims, as well as significant resources when there are many urgent priorities. None of these are reason enough not to confront past crimes, but they do point to reasons beyond politics to explain why there may be resistance to a robust inquiry.

We must ask, therefore: should a society’s right to know the truth be turned into an unbending obligation? That is, if those persons most directly affected, the victims themselves, are not interested in revisiting or not yet prepared to revisit these horrors, should they be obligated to do so? Could there sometimes be aspects of a conflict, a transition, or a people’s culture and history that would make such truth-seeking unattractive and unhelpful? The cases of Mozambique and Cambodia provide useful perspectives on these questions. Both of these countries have suffered horrific political violence, but in both countries, for different reasons, there was a rejection, at least initially, of broad-scale truth-seeking. When I visited Mozambique in the mid-1990s, I spoke with people across the political spectrum, including victims, academics, government officials, and others, and heard eloquent statements that, in sum, said:

No, we do not want to reenter into this morass of conflict, hatred, and pain. We want to focus on the future. For now, the past is too much part of the present for us to examine its details; we prefer silence over confrontation, over renewed pain.

Likewise, in Cambodia, while the dynamics are very different, there has also been some resistance to digging up past horrors.

What would account for this lack of desire to formally establish the truth? Four elements seem to be common in such countries: First, there is a fear of negative consequences: a perception that violence would increase, war could return, or that the current violence or war would not end if old crimes were revisited. Second, there is little or no interest by the political leadership in truth-seeking, and a lack of significant independent actors pushing them to do so. Third, there are other urgent priorities: extensive destruction resulting from the war or violence, widespread popular sentiment to focus on survival and rebuilding, and a lack of basic institutional structures that could support a truth-seeking process. Finally, some societies have alternative mechanisms that they to turn to, which make national, official truth-seeking unnecessary or undesirable, or a culture that eschews confronting conflict directly.

The desire for truth-seeking may also be a function of time, as institutions are strengthened and as the tensions that might spark conflict are eased. A country might wait years or even decades before it is able to confront and honestly record some events. This is not to dispute the benefits of undertaking investigations at the moment of transition, as is most common. But in some circumstances this may not be possible or may not fit the needs of a country or its victims.

The establishment and effective operation of a truth commission sometimes requires the encouragement and oversight of the international community, especially to combat resistance from former perpetrators who may still hold power. But ultimately, the decision to institute broad truth-seeking should be made by the country itself. The question of how the international community can and should judge national interests, and when and how to support local calls for a truth commission, is addressed further below. First the case of Mozambique and then that of Cambodia suggest that a country may legitimately choose to forgo official truth-seeking at the time of transition. In neither case does the legacy of the past disappear; rather, it may be addressed, slowly and unevenly, in a different manner and over a much longer period of time.

### **Mozambique: Alternative Means of Confronting the Past**

South Africa's northeastern neighbor, Mozambique, reached a negotiated peace at about the same time that apartheid ended in South Africa. The peace agreement in 1992 ended sixteen years of war and led to national elections in 1994. As in South Africa, "reconciliation" was a central focus of the transition and of the new political order. But reconciliation was understood very differently in these two countries. If in South Africa there was a widely accepted position, at least at the beginning of its truth commission's operations, that "the more truth, the more we talk about the past, then the more reconciliation," in Mozambique the accepted, though largely unstated, belief was "the less we dwell on the past, the more likely reconciliation will be." There has been almost no focus in Mozambique on accountability for past crimes. In a country where some one million civilians were killed, thousands tortured, and some of the most gruesome acts of mutilation and barbarism documented, there have been virtually no calls on the national level for justice, accountability, punishment, or banishment from public office—which is where many of those responsible for orchestrating past crimes now sit, in Parliament or in the armed forces.

A general amnesty for "crimes against the state" was passed by the Mozambique Parliament ten days after the peace accord was signed in 1992, although many senior members of government and the opposition did not seem to know there was an amnesty even several years after the fact.<sup>5</sup> It is not a point of reference or a point of discussion; the thought of prosecuting

individuals for past atrocities was never seriously considered. Fair trials in Mozambique would be very difficult. Alex Vines, then the Human Rights Watch expert on Mozambique, explained that the conflict there was “tremendously complicated,” that it would be extremely difficult to place clear blame on any one individual, and that there are “few firm facts in Mozambique, and documentation about the big fish has been tampered with.” As a result, he says, if there had been trials, people could have easily pointed blame on the innocent for personal revenge or economic gain.<sup>6</sup>

### *Atrocities Too Numerous to Count*

Some people say there is no interest in looking at the past in Mozambique because the past is just too horrible. Those who followed the Mozambican war describe it as one of the most brutal wars the world has seen. Gruesome tactics were used, particularly by the guerrilla forces, known as Renamo (the Portuguese acronym for the Mozambican National Resistance). “From beginning to end, you couldn’t count all the terrible things that happened in Mozambique,” Ken Wilson, then Ford Foundation program officer and international expert on Mozambique, noted.<sup>7</sup> A journalist told me that he had tried to make a list of massacres in the country. “You couldn’t keep up. It was pages and pages. Every week you’d hear of another fifty people killed somewhere,” he said. Some say the idea of a truth commission is unrealistic because it would be simply impossible to fairly document the totality of what happened.

The violence was “very confusing at the local level, and difficult to understand what was happening,” said Ken Wilson, continuing:

How on earth would you get anywhere near to understanding what really happened in Mozambique? It was enormously complicated. The nature of war would change dramatically year to year. And who would you hold to account for what took place? On the government side, how do you establish the accountability of soldiers whose names were never recorded and who were never salaried, when the commander was never there, and where there are no records anyway? And many acts were done by quasi-independent bandit groups. . . . It would be inconceivable to work out who did what.

Renamo was founded by Rhodesia in 1977, and upon Rhodesia’s independence (becoming Zimbabwe), support for Renamo was taken over by South Africa, with additional support from private right-wing elements in the West who were intent on overthrowing the Marxist Mozambican government. While the guerrillas gained internal support after some years, the war was fueled from the outside. The objective of South Africa was to destabilize Mozambique (which they saw as a base of operations for the African National Congress and its armed elements, groups that opposed white rule in South Africa), and its

white rulers thus used Renamo to terrorize the population and destroy the country's economic infrastructure.<sup>8</sup>

Renamo's tactics included abducting children into the guerrilla army and then forcing them to commit atrocities in their own village to prevent their returning home. Renamo often mutilated its victims in order to spread terror, cutting off ears or lips of the living or the dead. The Mozambique government, known as Frelimo (the Mozambique Liberation Front), was also responsible for serious abuses, although not of the number or severity of those of Renamo. Frelimo's practices included interning thousands in brutal "reeducation" camps, and killing traditional leaders when they were seen as a threat. The numbers were enormous, the details horrid. Every single family in Mozambique is said to have been directly affected by the war: family members were killed, abducted, forced to fight, or uprooted from their home. It was not uncommon for siblings to be fighting on opposite sides of the war.

Perhaps the idea of truth-seeking is of little interest because if people started pointing fingers, they would be pointing too close to home. It may be for this same reason that there has been no evidence of retaliation or revenge after the war ended. Roberto Luis, a Mozambican development specialist who worked closely with rural communities, put it succinctly:

Who would retaliate against whom? There wasn't one group against another. Families and communities were put against each other. If it was one ethnic or language group against another, then maybe you could see it. But it's hard to think of how retaliation would be mobilized. It was the Browns vs. the Smiths—but then even families were split up. The conflict is so intricate; no revenge factor is possible.

The head of the African-American Institute in Mozambique, Célia Diniz, called the Renamo–Frelimo conflict "a domestic affair. It was the same families, same villages, same tribes, on both sides. At the end of the war, you can't say, 'We won't accept you anymore.' They're part of our lineage."

In the years immediately following the war, Mozambicans were terrified that the conflict would return. There was a palpable sense that if you talked about the war, it might come back. "At the grassroots level, I'm not seeing any signs of trying to remember," said João Paulo Borges Coelho, a professor at the Eduardo Mondlane University in Maputo who studied the war and its aftermath. "Maybe people are too busy trying to recover, and they know that the price to pay for peace is to forget."

The resistance to remembering the past seemed to cut across all levels of society. In preparation for the 1994 presidential elections, some Brazilians traveled to Mozambique to provide assistance to the ruling party's electoral campaign. A former senior government minister, José Luís Cabaço, told me:

When I met with them, I asked what electoral strategy they were thinking of. They said they thought the campaign should focus on the abuses of

Renamo during the war. “No, don’t do that,” I said immediately. “That would only create conflict. It would be seen on the ground as ‘trying to bring back conflict into our village, when we’ve solved it already’; of bringing back the spirits of evil to the village.”

One man did try such an approach. A candidate from a new political party went to the town of Gaza, organized a big meeting, and denounced Renamo and Frelimo, trying to win support for his new party. He said that Renamo and Frelimo were to blame for the war and for all the atrocities. The response of the crowd was intense anger, and as the speaker continued, passions became heated and the crowd began to attack him, for he was trying to stir up hatred and cause problems in the community after Renamo and Frelimo members had reconciled. “This is the way that the people were saying they’d accepted the reconciliation between Frelimo and Renamo,” said Brazão Mazula, rector of the Eduardo Mondlane University and former head of the Mozambique electoral commission, who recounted the story. “Today, if we did a truth commission, if we opened up the issue of the past, it would restart the hate.”

Peace and reconciliation, on the basic level of living together without ongoing conflict, came remarkably quickly to Mozambique. Stories abound of how soldiers of the two warring sides put down weapons and greeted their opponents as brothers. When the peace agreement was signed in Rome, “word came from the top, and the war just stopped. Not another shot was fired,” described one observer. The war just “went out,” like a fire goes out, said another.

People often described this easy peace with a sense of wonder. The Mozambican academic who studied the post-war transition most closely, João Paulo Borges Coelho, was amazed at what he saw. He described the lack of rancor over past abuses among former enemies now serving together in Parliament, and the ease with which soldiers from opposing sides joined together to demand benefits from the government. He noted:

There have been no reservations toward each other. This is all to say, in a few words, that I don’t know what is going on. . . . Recently, I had both the son of a Renamo commander and the son of a general in the army who served in the same area, as students in the same class. They discussed this heatedly in class, but after class they went for coffee together, they gave each other rides . . . as if nothing had happened. It’s not clear what to think about all this.

As the war ended, national and international organizations were concerned with creating mechanisms to reinforce peace at the local level, but found that their initiatives were not needed. “We were all thinking about how to increase peace and reconciliation, but when we came to the grassroots, they were reconciling already,” commented José Luís Cabaço, the former Frelimo government official. “Our ideas were only confusing and stirring up trouble.”

### *A Political Agreement*

On the elite political level, a different kind of process was taking place. Neither party to the peace talks was interested in airing their crimes in public. Instead of accountability, truth, or justice, the buzzword that framed the talks was reconciliation, and reconciliation was understood to mean “we will talk, and we may govern together, but we will not bring up the past.”

This issue was in fact one of the first to be aired before negotiations could begin. “The first condition of the negotiations was ‘reconciliation,’ that the parties would not use the negatives of the past in the future,” said Brazão Mazula, who edited an authoritative book on the Mozambican peace process. He explained to me:

Frelimo first asked Renamo to recognize their crimes as a condition to holding peace talks. Renamo responded by saying Frelimo also had to acknowledge their own past crimes. It took five or six very difficult months before this issue could be worked out, with the Church acting as mediator. It was almost impossible to get beyond this issue to get the negotiations started. Eventually, a policy of “reconciliation” was agreed to, which was understood to mean that there were crimes, that they were forgiven, and that there would be a general pardon. After this agreement, neither party was obliged to admit their crimes. But it was not easy getting there.

I asked Raul Domingos, who was a senior leader of Renamo for many years, attended the peace negotiations, and then headed the Renamo party in Parliament, whether in the negotiations reconciliation meant “silence about the past.” He agreed:

The word “reconciliation” is a word used to mean forget the past and be tolerant. We killed each other, but we forget this because we are sons, brothers, and we have to live together. Without this, the war would never have ended.<sup>9</sup>

### *Healing by Other Means*

If that agreement served the obvious political interests of politicians, it seems to have coincided well with an apparently natural process of reconciling and healing at the local level. Traditional healing mechanisms remain deeply rooted throughout the country. At the end of the war, most soldiers returned home, thus mixing together perpetrators and victims in each community and village, and in many families. They turned to traditional healers to help repair their wounds.

*Curandeiros*, traditional healers, are in every town and village, and are widely relied on and respected. They played a powerful role in reintegrating combatants into their communities through the use of traditional ceremonies. These ceremonies were also used where there were massacres. “Where many

people have died, they do a ceremony to wash away all the blood which has fallen on the land. This represents a spiritual reconciliation between the living and the dead. It is a very powerful force, or structure, within any community,” explained Roberto Luís.

When I visited a village ninety minutes north of the Mozambican capital, these descriptions were confirmed. One man who lost his father in a battle with Renamo now lives next door to a former Renamo soldier who he thinks took part in the killing, but he has never brought it up with this neighbor, and has no desire to. “Even if I wanted to confront him, the rest of the community would turn against me if I tried. They’d say, ‘We’ve also suffered the same thing,’” he explained. “It’s a community issue, not an individual issue.”

My two village hosts pointed across a grassy field to two men walking by, and explained:

There are two of those who committed Renamo atrocities, walking there. They moved here freely; everybody knows them. But they didn’t go back to their home village, so they haven’t received the “washing” that can only be done by their home communities. They’re not quite normal, not quite right.

I tried to get my hosts to explain how the two men were different. “You can see it in their attitude, in the way they talk,” they said, unsure of how to answer my question.

In this community of 13,000 people, there are no police. It would take half a day to wait for a bus and travel to the nearest town to find a local police officer. The structure of the community is held together by the power of the traditional leader and his advisors. I asked about the idea of a national commission to investigate the atrocities. One of the men, the headmaster of the school, responded:

If a commission would start, unless it was heavily rooted at the community level, and with proper safety and security to make people feel safe, people would be very reluctant to come forward. People would be harassed afterwards. It’s important to keep things local. If there was such a commission without security, and you gave testimony, your house would be burned down.

William Minter, a U.S. scholar who closely followed the Mozambique war and peace process, has concluded that

many of those guilty of atrocities committed them as part of military machines they entered during duress. There will be no Nuremberg trials in Angola or Mozambique, or formal Truth Commission with the impossible task of tracking down responsibility for hundreds of poorly recorded or undocumented incidents stretching over almost two decades of war. The individual truths will emerge, if they do, piecemeal. Historical reflection,

however imperative, cannot and will not take priority over the difficult struggle for individual and national reconciliation.<sup>10</sup>

In the end, perhaps Mozambique's process is not about forgetting or denying the past, but about accepting it in its fullness and complexity. One of the top investigative journalists in Mozambique in the 1990s, Carlos Cardoso, spent years trying to dig up hidden truths. And yet he told me:

I don't believe in truth commissions. To "reconcile with the past"—people need the right to their own interpretation of the past. I don't want to reconcile myself with the horrendous crimes against the people. Why should I accept it? I want to be able to have contradictions about the past.

Four years after I interviewed Cardoso, he was murdered by gunshot in central Maputo while in the process of investigating a massive bank fraud case. After a fraught investigation, the son of Mozambican president Joaquim Chissano was ultimately charged with "joint moral authorship" in the killing, but an arrest warrant for the young Mr. Chissano was withdrawn, allegedly because of political pressure.<sup>11</sup> Many commentators noted that this shocking death reflected the lack of fundamental change in the country.

As I heard over and again in 1996 that digging into the past made no sense for Mozambique, I began to pose a simple question: in much of the rest of the world, there is an adage that "if you don't study your past, you're bound to repeat it." Is Mozambique somehow the opposite? Most said yes. José Luís Cabaço, former member of government, strengthened my supposition: "The past cannot exist in this country," he said. He then thought for a moment and softened his stance:

It must be taught in schools, yes, to not repeat it. But the past is still part of the present, so it's difficult to teach. In five or ten years' time, historians will be able to write a proper history, to unveil the framework and ideologies. But not before five or ten years. It's still about journalism; it's not yet history.

### *Looking Back at Mozambique: Many Years Later, the Past Is Still Present*

Researchers following this issue in recent years confirm that the public, victims, and the political leadership continue to support the decision not to officially confront past crimes, whether through prosecutions or through official truth-seeking.<sup>12</sup> But the legacy of these events does emerge in other ways: at the community level in response to continued psychological trauma, and at the elite political level, where past atrocities continue to be used as a political weapon.<sup>13</sup>



By 1999, seven years after the end of the war, a new “spirit” was arising in war-affected communities, known as *gamba*. Uncontrollable symptoms afflicted traumatized victims, demanding community attention. “The unbearable experiences of the war could apparently no longer be relived and processed in silence. The accumulative effects of these traumatic experiences gave rise to the emergence of *gamba*,” say researchers who closely documented this phenomenon.<sup>14</sup> Ceremonies developed which involved all those directly or indirectly involved in the atrocities: accusations were aired, and reparations demanded and negotiated, facilitated by *gamba* healers.

Meanwhile, in electoral campaigns and in Parliament, the past is still a powerful weapon. There are frequent accusations of complicity in past atrocities. Frelimo, holding the majority, is successful at controlling the debate, according to Victor Igreja, who studied the patterns in parliamentary debate in 2008 and 2009. Frelimo uses a “selective cultivation of memory . . . to perpetuate the image of a cursed Renamo and an immaculate Frelimo,” says Igreja. This is also reproduced in history texts and official documents.<sup>15</sup>

This has resulted in Renamo—long considered to be the more abusive party in the war—repeatedly making a call for an investigation into the actions of both sides during the war, and even calling for a truth commission. Constantly painted by Frelimo as a party founded on atrocities, Renamo insists that Frelimo also committed serious abuses, and that a fair and balanced inquiry will set the record straight. One Renamo Member of Parliament argues that “if we had created a truth and reconciliation commission, today we would not talk about the war anymore.”<sup>16</sup>

### **Cambodia: Thirty Years after the Khmer Rouge**

Cambodia is known for its killing fields of the late 1970s, when the Khmer Rouge government killed between one and two million people, up to one-fifth of the country’s population. Whether and how Cambodians want to remember this past has been less clear, however, and has evolved and changed over the years.

In the early 1980s, immediately after the Khmer Rouge was driven from power, there was initial interest in recounting stories and letting the world know what had happened, according to David Hawk, who headed the Cambodia Documentation Commission, a non-governmental organization then advocating for prosecution of Khmer Rouge leaders under the Genocide Convention.<sup>17</sup> There were spontaneous efforts to record survivors’ experiences, and a number of Cambodians wrote autobiographies of their experiences. But interest in digging up these events lessened after a few years. By the early 1990s, it was often reported that Cambodians wanted to simply forget the past, and that they showed no interest in speaking about that period.<sup>18</sup>

Outside observers concluded that this was due to both a fear of talking about a still contentious period and the result of the Cambodian and Buddhist tendency not to confront conflict. In 1994, Stephen Marks, who worked with

the United Nations Mission to Cambodia in 1992 and 1993, outlined a number of reasons why the Cambodian government seemed unlikely to prosecute the Khmer Rouge for its atrocities. These included the fact that many political, military, and financial elites could be implicated, since many in the current government had at one time been affiliated with the Khmer Rouge; Cambodians preferred accommodation with the Khmer Rouge rather than continued fighting; the judiciary was too weak to expect serious trials; the Cambodian king, held in high esteem, had proposed a policy of reconciliation with the Khmer Rouge; and Cambodian Buddhism teaches that reconciliation does not require justice or retribution.<sup>19</sup>

The hushed treatment of the past resulted in ignorance of this history by the younger generation. By 2000, half the population had been born after the period of the Khmer Rouge, and they did not fully believe elders' accounts about the atrocities. One observer argued:

A thorough and accurate accounting is extremely important to avoid the possibility of a twisted version of history gaining credence among Cambodians, particularly in the absence of any serious presentation of contemporary Cambodian history in Cambodian schools. . . . More information about what really happened is the best and perhaps only antidote to this potential plague.<sup>20</sup>

There was more focus on accountability for Khmer Rouge crimes at the international level.<sup>21</sup> In 1994, the U.S. Congress passed a Cambodian Genocide Justice Act, providing funds for research and advocacy through an Office of Cambodian Genocide Investigations at the U.S. Department of State. This initiative had little support from Cambodians, however. In time, this U.S.-funded initiative made an important contribution to the preservation of documentation. A project that it funded at Yale University succeeded in preserving significant documents that were previously unknown. The 50,000–100,000 pages of documentation, most discovered in a warehouse in Phnom Penh, according to the project director, Ben Kiernan, detail the surveillance practices of the Khmer Rouge secret police and help to outline the structure of the regime. The project placed extensive documentation online, including photographs of 16,000 people who were killed in prison, and extensive data about victims and perpetrators. Yale helped set up a documentation center in Cambodia where the documents are stored and processed, and helped the center become an independent Cambodian organization.

As some of the last active Khmer Rouge leaders surrendered in late 1998 (and were warmly welcomed into civilian life by the prime minister) and the Khmer Rouge virtually ceased to exist as a fighting force, increased attention was paid to these matters. "The country seems to be embarking, spontaneously, on a long-delayed national conversation about its traumatic past," the *New York Times* reported.<sup>22</sup> One poll showed that 80 percent of respondents wanted the surviving Khmer Rouge leaders to be prosecuted; but there was also fear of

prosecuting them.<sup>23</sup> “People are so traumatized. They just want to get on with what’s left of the rest of their lives,” noted an observer.<sup>24</sup>

In early 1999, Cambodian prime minister Hun Sen suggested that Cambodia might consider a truth commission in tandem with any trials, and was considering inviting Archbishop Desmond Tutu for a visit.<sup>25</sup> A UN group of experts also recommended that a truth commission be considered as a possible complement to prosecutorial endeavors.<sup>26</sup> But most close observers felt that a classic truth-seeking process would be considered too dangerous, given that many former Khmer Rouge members were still scattered throughout society. One analyst wrote that it was

unlikely that average Cambodians, severely traumatized by unbroken decades of war, mass killings and continuing political repression, would risk playing an active role in a truth commission. There would simply be too much to lose, and too little to gain.<sup>27</sup>

### *A Tribunal, but Sufficient Truth?*

In 2003, the Cambodian government and the United Nations signed an agreement to create a special tribunal to try senior members of the Khmer Rouge.<sup>28</sup> By 2006, the tribunal was in operation, and within a year, five suspects were in custody, with trials beginning shortly thereafter. This mixed tribunal has brought new attention to the history of the Khmer Rouge period, even while struggling against accusations of undue political influence by the Cambodian government.

At the same time, the tribunal was not expected to satisfy the apparently strengthening desire for truth about the past. By the mid- to late 2000s, Cambodians’ views seemed to have changed. One 2006 survey noted that virtually 100 percent of those asked said they “want to know the truth, why Khmer killed Khmer and how this happened.”<sup>29</sup> But many Cambodia experts (and tribunal experts) do not expect the tribunal to meet these needs, and say that a complementary process will be needed. While Cambodians remain largely unaware of what a truth commission is, few international observers have recommended such an approach. Rather, as expert Laura McGrew concludes, while a truth commission is unlikely, “some sort of national or community-based truth-telling mechanism is needed.”<sup>30</sup> Writer Jaya Ramji proposes a “quasi-traditional truth and healing process” as part of a larger reparations program, but feels that the commonly understood model of a truth commission “would require serious revision and amendment in order to confirm to the Cambodian cultural context.”<sup>31</sup>

Cambodians have expressed an interest in knowing the truth about the past, even while recognizing that this truth will be painful. “Almost every [survey] participant said that talking and thinking about the Khmer Rouge makes them feel worse,” McGrew wrote, but that they equally wanted to understand why things had happened, and wanted the world to know.<sup>32</sup> “Remembrance must

be balanced with forgetting, so that . . . memories of the past don't overwhelm the present and the future."<sup>33</sup>

### **What Role for the International Community?**

Countries like Cambodia and Mozambique, where for at least a period of time there is a widespread resistance to digging into the past, are unusual. Where this reflects a broad consensus, a policy of reconciliation through silence should be acceptable and accepted by the international community. Yet how does one determine a "broad consensus," especially where victims have lived in fearful silence, and rights groups have been suppressed for years? In the great majority of cases, there are some sectors of society that do very much want the full truth revealed and others whose interests are better served either by silence or by allowing only a narrow portion of the truth to come out.

In a number of countries, the international community has played an important role in encouraging a serious truth-seeking effort and provided the funds and sometimes key personnel to make it happen. Where former perpetrators hold too much power in peace negotiations or in the new government, the international community might appropriately push for accountability, including a truth inquiry. Where sectors within the country demand an accounting, it is important for those outside—the United Nations, bilateral partners, international non-governmental organizations—to back them up and to put pressure on the government where national actors may not have the power or political space to do so. And where official truth-seeking does take place, the international community should watch that it is done fairly and in good faith. Yet how can outsiders distinguish between politically self-serving motivations to avoid the truth and a legitimate claim that such an exercise is inappropriate for a country at that particular time? What might be looked to that would indicate the usefulness and appropriateness of such an official truth body?

I would rule out certain factors. As was noted earlier, neither the quantity nor the type of human rights abuses, nor whether the abuses have already been documented by previous efforts, will determine the suitability or prescribability of official truth-seeking. The existence of only a relatively small number of cases does not lessen the urgency of the issue.

Instead, the primary measure to determine the importance of a truth commission is found in the desire for such a process within the society under question. It is hard to measure these sentiments in concrete terms. Opinion polls are unrealistic in most countries, and fear of speaking publicly about government abuses may continue long after the end of a war or the departure of a repressive regime. Although there may be no means of formal measurement, foreign advocates and governments should look carefully to and be guided by expressed national preferences, especially those of the victims or groups that represent them. In those countries where there is a generalized lack of interest in or resistance to digging up the past, this is likely to be

reflected at all political and societal levels: a preference for letting go, a discomfort in talking of the past, an exhaustion with the violence, and a passion for peace and rebuilding. Elsewhere, the demand for truth and accountability is made clear through public demonstrations, lobbying from victims or human rights organizations, or in the negotiating position of the parties to peace talks. There is a striking difference between Mozambique, with its hushed discomfort with talking about the war, and Argentina, where mothers of the disappeared marched weekly on the public square demanding information; or Guatemala, where NGOs organized in advance of the peace negotiations to lobby for a strong truth commission and compiled a great amount of information to present to the commission when it began.

It is true that in some countries there is not a strong civil society to push this issue, with few human rights advocacy organizations or victim support groups. If civil society is so tenuous, or has been so thoroughly stifled, then the passage of time may well strengthen the public voice, making truth-seeking more possible and more reflective of the public's desires later. While there is a risk in postponing an inquiry—primarily in the loss of transitional momentum—it may be worth waiting for security conditions to improve, or until the influence of key perpetrators is reduced.

Yet even where there is no expressed interest, some might ask: Why not push for official truth-seeking as a standard obligation following widespread abuses? First, if a commission is instituted and fails—if it is disbanded before finishing, fails to complete a report, is given an extremely weak and politically compromised mandate, or fails to gain the attention and interest of victim communities—it is more difficult to create another inquiry later, when the timing is better. Second, if a truth-seeking mechanism is instituted without the support, capacity, resources, or freedom of movement for it to be done reasonably well, or for it to articulate its mission clearly to the public, it may not succeed even in its most straightforward areas of inquiry, and thus lead to disappointment. And third, there is a potential to do harm—either in mishandling and retraumatizing victims, or in further inflaming tensions. The fear that accompanies these processes may be an indication of real danger, and the national assessment of how serious these risks are should be respected.

A broad official truth-seeking process is different from trials, which should appropriately be pushed as an international obligation wherever there were serious rights crimes. Even while recognizing the limited possibilities for full and fair prosecutions in many transitional societies, it is appropriate to push for criminal justice and to push the judiciary to function.

Even though the international community should avoid dictating the exact terms or tools of a transition, there are important roles for it to play in contributing to accountability. In many transitional countries, there is a lack of basic knowledge about transitional policy options. Comparative information can assist domestic actors consider their choices. Outside actors can also help protect or preserve documentation, especially during a tumultuous political transition.

The credibility of international efforts to promote accountability will depend in part on these foreign governments reviewing and acknowledging their own role in having supported an abusive regime. The record of the international community is not strong here. Few governments are eager to reveal the dark side of their foreign entanglements or to admit wrongs. However, efforts to promote accountability overseas may be viewed with skepticism if advanced by governments that resist accounting for their own complicity in these or similar abuses.

# 15 When, How, and Who

## Basic Questions of Methodology and Operations

Truth commissions are almost never smooth, pleasant, well-managed, well-funded, politically uncomplicated bodies. On the contrary, most struggle daily with a barrage of methodological, operational, and political problems, and operate under extreme pressures of time and under the heavy moral and emotional weight of their task and the risk of damaging error in their conclusions. They may be threatened by those who feel at risk from an honest investigation. They are confronted with hundreds of difficult operational questions that will determine the kind and quality of truth that will emerge, questions for which there are often no clear right answers. Even in the best of circumstances, with top-notch managers and sufficient resources, the problems are many and the stress intense.

Many of the fundamental methodologies and definitional questions that determine a commission's reach and effectiveness are usually left entirely to the discretion of a commission itself, even though they may be of great political significance. Even the most basic of these questions may well result in controversy and disagreement inside and outside a commission. Many of these issues are quite similar from commission to commission, and while they must be carefully and differently answered for each different circumstance, much can be learned from past experience.<sup>1</sup>

### **Sponsorship: Who Creates and Empowers a Commission?**

Many of the early truth commissions were established by presidential decree, with the president appointing the commissioners and setting out the commission's mandate without necessarily conferring with others. Presidentially appointed commissions can be established quickly and avoid political infighting by a weak or split legislature. In Argentina and Chile, for example, the new civilian presidents decided that passing national legislation in Congress would either take too much time or would require too many compromises, so among their first official acts they independently each created a truth commission, taking advantage of the initial wave of public support for the civilian governments and, in the case of Argentina, the reduced power of the armed forces.

The commissions in Haiti, Sri Lanka, Chad, and Uganda were also put in place through presidential action, with little public debate on their terms. It is now more common for a truth commission to be created through legislation, usually allowing the possibility of stronger powers such as subpoena or search and seizure powers.

There are several examples of truth commissions created through a negotiated peace accord. In El Salvador, the peace negotiations worked out the terms of the mandate and gained the support and signatures of the parties to the talks before most outsiders even knew it was being discussed. In contrast, four years later the parties to the Guatemalan peace talks were under intense pressure from human rights and victims groups, which organized far in advance to push for a strong truth commission. Both the Salvadoran and the Guatemalan commissions were administered by a UN office and had members appointed by the United Nations, but they operated independently and were not UN bodies *per se*.<sup>2</sup> The Guatemalan commission, especially, embodied a peculiar legal identity that was “located in a no man’s land between domestic and international law,” according to the commission’s chair, Christian Tomuschat, a German professor of international law.<sup>3</sup> The truth commissions in several other countries—Sierra Leone, Liberia, the Democratic Republic of the Congo, and Kenya—were also agreed, in general terms, in a national peace accord, but their detailed terms were then spelled out in national legislation.

The founding terms of reference, often referred to as the commission’s mandate, might therefore be extensive, detailed legislation, on the one hand, or a short decree released by the president, on the other. Ideally, however, this should result from broad consultation with human rights and victims organizations and other independent actors. There has been a suggestion of the need for a generic truth commission template, which could be adopted in societies where national capacity to undertake detailed drafting may be lacking.<sup>4</sup> But this would risk violating a core principle on which a truth commission should be based: that each is nationally rooted, unique to each place, and reflects a process of national ownership. In some countries, the lengthy truth commission drafting process has been one of the first inclusive processes of policymaking in a more democratic era, engaging both civil society and the public more broadly. Given the wide diversity in options that might be included in a commission’s mandate, it would be unwise to promote one standard model.

## **Management and Staffing Considerations**

Most truth commissions employ an executive director (sometimes called executive secretary) to manage staff and operations, as well as departmental or regional directors, depending on staff size and structure. Perhaps more than any other single factor, the person or persons selected to manage a truth commission will determine its ultimate success or failure. Several commissions have run into serious problems due to weak management, leading to staff divisions, misdirected or slow-to-start investigations, and limited donor support.



The directorship of a truth commission stands apart from other governmental or non-governmental posts because of the great public and political pressure under which the person must work, the intense time constraints requiring strong administrative leadership and creative organizational skills, and the range of overlapping activities that the commission must direct. The director must offer strong leadership in overseeing investigations, logistics, recruitment and management of a large and diverse staff, and raising and administering funds.

In contrast, while commissioners may be less involved in day-to-day administration, they must decide commission policies and determine the final content of the commission report, and in some cases are directly engaged in investigations or overseeing research. As the public face of the commission, the members' personal and political authority is critical in dealing with recalcitrant authorities and in persuading the public to trust and engage with the process.

### *Selection of Commissioners*

The members of some commissions have been chosen independently by the president, with little consultation, but it is now more common, and more advisable, to engage the public broadly in a slightly more elaborate selection process.

The South African commission was the first to design a process based on an independent selection panel and public interviews of finalists. The empowering legislation indicated only that the commissioners should be "fit and proper persons who are impartial and who do not have a high political profile." A selection panel, including representatives of human rights organizations, called for nominations from the public. It received three hundred nominations, which it then trimmed to fifty people for interviews, which took place in public session and were closely followed by the press. It then forwarded a list of twenty-five to President Nelson Mandela for the final appointment of seventeen. To provide geographic and political balance, Mandela included two members who did not go through the full screening process.

In Sierra Leone, the Act creating the truth commission set out a similar model. The special representative of the UN secretary-general in Freetown was appointed as "selection coordinator," and a panel was formed (including members appointed by the former armed opposition, the president, the religious community, and human rights groups). The inclusion of the former armed opposition was important to gain its support for the process. This panel identified four national members based on public nominations and interviews. The UN high commissioner for human rights nominated three international members. Both national and international members were formally appointed by the president.<sup>5</sup>

Liberia discovered the risk of appointing members too hastily. The head of state in the transitional government appointed commissioners after little

consultation, and even while the legislation empowering the commission was still being drafted. After much controversy and criticism of the process, it was finally agreed that the appointees would be vetted by a broad selection panel. The final membership included only two of the original appointees.

There are other useful examples of engaging independent voices in the selection process. In Ecuador, a number of the commissioners were selected directly by non-governmental organizations such that human rights activists served on the commission alongside military representatives. In Guatemala, one of the three commissioners was selected from a list proposed by the presidents of Guatemalan universities. In Togo, the president asked for nominations from a number of civil society organizations, and chose from among them, resulting in a strong and independent body.

As with the drafting of the commission's terms of reference, a commission will have greater support if there is public input on its membership. Those making the selection should also consider specific areas of expertise that may be useful, and should ensure fair representation of various views and backgrounds, as well as gender.

### *Who Should Staff a Truth Commission?*

The truth commission in Argentina began its work with staff seconded from the Ministry of the Interior, but these civil servants did not last. They had no experience of working in human rights and had never listened to the kinds of horrific stories that the commission was to collect. When they began to take testimony, many broke down.<sup>6</sup> Seeking staff with the experience and the emotional wherewithal to handle the subject matter, the commissioners hired persons directly from national human rights organizations, a decision that they say was critical to the commission's success.

Yet human rights experience does not begin to cover the skills needed by such a truth body. A commission may need social workers or psychologists, computer and information-systems specialists, data coding and data entry staff, logistical coordinators, and interpreters. Outside expert groups might assist in specific areas. The Argentine Forensic Anthropology Team assisted the truth commissions in El Salvador, Haiti, and South Africa, and the Guatemalan Foundation for Forensic Anthropology worked with the Guatemalan commission. Many commissions also contract out for information management and database expertise.

While a few truth commissions have operated with minimal staff, leaving much of the work to the commissioners themselves, the trend is in the direction of employing a large and professional staff. The truth commissions in Chile and Argentina had approximately sixty full-time staff members each, making them considerably larger than other commissions before 1995. South Africa employed some three hundred staff in four offices; the Guatemalan commission employed two hundred people at its high point; the Peruvian commission as many as five hundred (see Chart 4 in Appendix 2 for a

comparison of resources and responsibilities of past commissions, including staff and budget size).<sup>7</sup>

It would have been unthinkable to hire members of the military or police as truth commission staff in much of Latin America, since these groups have been so thoroughly implicated in the abuses under investigation. This will be true in most countries emerging from authoritarian regimes, as independence, impartiality, and confidentiality are essential to the task. Yet in South Africa, the commission did place members of the police force on its investigative staff and was generally supported in doing so, as the police were not so thoroughly corrupt as in Latin America. Police investigators on the commission staff—as on South African prosecutorial teams—offered knowledge of the inside workings of the forces under investigation.

Special training may be necessary even for the most experienced staff members, and especially for internationals. For example, former statement-takers suggest that it is important to know some detail about the history of the conflict, the forms of torture that were used (and the varying terminology), the likelihood and flashpoints for further violence, and how to comfort deponents who show signs of trauma.

### *National or International?*

Most truth commissions are predominantly national, in both commission members and staff. El Salvador was the one exception. Set up under the administration and oversight of the United Nations, the three commissioners and the twenty-five staff members were all foreign.<sup>8</sup> The commission generally avoided hiring anyone with previous experience of working on Salvadoran human rights issues, as such experience might have suggested a bias that could have colored the neutrality of the commission. Many who knew El Salvador best were thus kept out of the process. Those who backed this approach argued, probably correctly, that in the politically polarized environment of El Salvador the armed forces' and right-wing challenge to the commission would have been exacerbated if they could point to any hint of staff bias.<sup>9</sup>

Nonetheless, some observers felt that the commission should have turned more often to the existing international expertise on El Salvador and worked more closely with Salvadoran human rights organizations, and these critics would later point out weaknesses in the report that they say resulted from a lack of in-depth understanding of the country and its politics. International human rights advocates also argued that a national commission and staff would have left behind Salvadorans who were invested in the report, and thus its impact might have been deeper.<sup>10</sup> But most Salvadorans, including top human rights advocates, insist that a Salvadoran-staffed truth commission was impossible. There were no Salvadorans with the authority and political neutrality to head the commission, they argued, and it is unlikely that a domestic commission would have been able or willing to come to the same strong conclusions. Witnesses would probably have been intimidated from giving their testimony

to fellow Salvadorans, unsure of the confidentiality of the process and the political orientation of the statement-taker—a problem met by a follow-up commission looking into death squads. Furthermore, the experience of the parallel Ad Hoc Commission, which named members of the armed forces whom it recommended should be removed from their positions as a result of human rights abuses, made the risks clear. The three members of that commission were highly respected and politically centrist Salvadorans, but after submitting their confidential report recommending that over one hundred persons be removed from service, they each received death threats. Two members were forced to leave the country in fear for their safety.

A number of commissions have crafted a “mixed” model of both national and international staff and commissioners.<sup>11</sup> Some countries may appropriately choose to exclude foreigners altogether—for reasons of national preference, because the situation under investigation is considered too complex for outsiders, or because the domestic pool of qualified persons from which to draw commissioners and staff is sufficient for the needs.

### **Timing: When, and for How Long?**

As a general rule, a truth commission should begin as soon as possible after a political transition, should work for two to three years, and should always be given a deadline for completion, even if this is extendable.

#### ***How Soon to Start?***

There are advantages to a quick start. The political momentum and popular support for such an initiative are generally highest at the point of transition, as a new government takes power or a civil war has just ended, and there may be a narrow window in which to transform this momentum into serious reforms, purges of human rights abusers, or reparations for victims. Launching a truth commission early can also have the secondary effect of holding off pressure for immediate reforms and other measures of accountability, giving the government time to take stock, plan, and strengthen institutions as necessary to further its other transitional justice initiatives. The former chief of staff of the Chilean commission describes one of the main contributions of that commission as “giving President Aylwin one year of grace, allowing democratic institutions to work for a year before having to deal with the issue of past abuses.”<sup>12</sup>

In an odd way, a quickly established truth commission can be the centerpiece of a newfound peace; as an early transitional body, it often tests the boundaries of the new political dispensation and the willingness of the authorities to cooperate with a serious and independent probe. This, of course, suggests possible limitations on how far a commission might be able to push, as well as a concern for the safety and security of staff and members, but these are unfortunate by-products of an otherwise advantageous strategy of beginning early.

There are important exceptions to this “the sooner the better” rule, however. Consultations may take some time—perhaps over a year—and this can be critical to broad political as well as public backing, as well as ensuring the quality of the empowering legislation. And of course if further armed conflict continues, or is seriously threatened, it may be wise to wait. Sierra Leone passed its legislation for a truth commission fairly quickly, but held off for over two years before starting, while the country teetered on the edge of further war.

### *How Long to Carry On?*

For a variety of reasons, it is important to keep a truth commission’s tenure relatively short. Few modern truth commissions are shorter than two years, but extending longer than three risks losing momentum, focus, and political and public attention. Outlining a work plan, collecting and organizing documentation, receiving and processing testimony from thousands of victims, selecting representative cases and completing investigations, and finishing a final report will be difficult even in a two-year period. But it is useful for the report to come out while there is still the momentum of transition under way, when a spirit of reconciliation may still be in the air, and recommended reforms are more likely to be implemented. Most truth commissions cannot hope to document or investigate everything that might fall within their mandate; they must choose a number of sample cases for in-depth investigation and summarize the rest.

Despite the difficulties of a short deadline, the alternative is worse. The Commission of Inquiry set up in Uganda in 1986 was given no time limit: it concluded more than nine years later, by then having lost the public’s interest. On the other extreme, the Salvador commission found that finishing its work in its stipulated six months was impossible, and was fortunate to obtain a two-month extension.

Many truth inquiries have suffered a major challenge in setting up, and have lost much time in administrative and logistical preparations, cutting into their stipulated operating time. Essential activities such as renting and furnishing an office, hiring staff, and creating or adapting a database program, as well as larger tasks such as raising funds and designing a public outreach program, can easily consume months of a commission’s time before it even begins to take testimony or start investigations. Such delays have led to considerable concern on the part of observers frustrated by a commission’s slow start. It is thus now common, and wise, for truth commissions to be mandated a preparatory time of at least three months before the commission’s operations formally begin.

### **Money Matters: Budgets and Funding**

It has been common for truth commissions to run short of funds or struggle under a tight budget—including South Africa’s, which cost close to \$18 million a year at the height of operations (the fact that it was “insufficiently resourced”

was one of the top complaints from observers of that commission). A shortage of funds was also a problem, at least in the initial stages, for the commissions in Guatemala, with an eighteen-month budget of \$9.5 million, El Salvador, with an eight-month budget of \$2.5 million, and many others.

Ideally, full funding for a commission should be committed and available at the start of its work, although this has rarely been feasible. It is important to avoid any perception that the government may use its continued financial support as leverage to influence the commission's work. Some commissions have been almost crippled by major cash-flow problems. The nine-year commission in Uganda began in 1986 in plush offices, and in its first years was at the center of the public's awareness. As the years wore on, however, it lost its hold on the public's attention, repeatedly ran out of funds, and moved offices four times until, when I visited, it was in a back-alley third-floor walk-up in a rundown part of town. The commission had to cease operations several times while it sought further funding. In 1987, the Ford Foundation awarded it a grant of \$93,300 to finish work, but it later had to raise yet further funding from the Danish and Canadian governments before finally completing its report in 1994.<sup>13</sup>

The Haitian commission ran into serious problems as well. It suffered from apparent administrative and management troubles and the lack of a clear work plan when it began, and few foreign governments or private foundations were willing to offer support. These funding problems delayed the commission's start-up, prevented it from offering staff contracts of more than one month (which resulted in the loss of the majority of its staff halfway through its work, some of whom were rehired when funds became available), and created a central point of stress and uneasiness throughout its work. In the end, the government of Haiti covered the bulk of the commission's cost, falling considerably short of the original projection that over half of its budget would come from foreign donors.

As the size, complexity, and expense of these commissions have increased over time, the source of their funding has also changed. While some of the earlier commissions were more likely to be fully funded by the national government, as happened in Chile and Argentina, many have received considerable financial support from the outside, primarily from foreign governments. The Salvadoran commission's \$2.5 million budget was fully funded through voluntary contributions by UN members, including \$1 million from the U.S. government and much of the rest from Scandinavian countries, and received no funds from El Salvador itself. More commonly now, the national government provides a portion of the funds, and the international community follows, as was true in Guatemala, South Africa, Liberia, and other countries. The Guatemalan government contributed over \$800,000 to support the work of the Guatemalan commission, toward its budget of \$9.5 million. The remaining funds came from thirteen countries and two foundations.<sup>14</sup> Similarly, the South African commission received financial support from a wide range of international donors, although the South African government paid for the bulk

of the costs. The Liberian government paid for almost 60 percent of the \$7.5 million budget of its truth commission, committing \$1.5 million per year—a remarkable 1 percent of the total national budget.<sup>15</sup> Charts 4 and 7 in Appendix 2 provide an overview of the budgets of truth commissions to date and suggest, generally, the preferable size, budget, powers, and mandate of a truth commission.

## **How to Do It? Basic Questions of Methodology**

Confronted with thousands, tens of thousands, or sometimes hundreds of thousands of victims, a commission must design a system to gather, organize, and evaluate a very large amount of information. In the process, each commission must establish its own operating rules and procedures regarding what cases it will cover; how it will collect data; whether it will use a database and, if so, what kind; due-process rules and procedures; on what basis it will make its findings; what its relationship will be with the public and press during the course of its investigations; and a range of other questions. Three of the most difficult questions of methodology are addressed here.

### ***The Commission Stage: Public or Private?***

Whether a truth commission holds hearings in public for victims to recount their stories, or instead receives testimony only privately, will largely determine the level of engagement by the public during the course of its work.

There are persuasive reasons for a truth commission to hold public hearings. By giving victims and survivors a chance to tell their story before a public audience, a commission formally acknowledges and can symbolically offer an apology for past wrongs. By bringing the victims' voices directly to the public, especially if the hearings are aired on television or the radio, a commission can encourage public understanding and sympathy for the victims, reduce the likelihood of continued denial of the truth by large sectors of society, and increase public support and appreciation for the commission's work. Public hearings help to shift a truth commission's focus from product (its final report) to process, engaging the public as audience and encouraging press coverage of its issues over a longer period of time. A transparent process also helps to assure the public that there is no cover-up of evidence, nor a political bias in the commission's work.

In South Africa, the Truth and Reconciliation Commission will be remembered primarily for its hundreds of public hearings, which captured the news every evening with the day's revelations. Media coverage was intense throughout its tenure: a pool of several dozen journalists followed the commission's hearings around the country, and every newspaper carried numerous stories about the previous day's events. The hearings were aired live on the radio for several hours each day, and videotape clips were replayed on the evening

television news. The *Truth Commission Special Report*, an hour-long Sunday night television show, had the largest audience of all South African news or current affairs shows.<sup>16</sup> Yet because the commission already had detailed statements from each deponent, which had been taken in advance by commission staff, most victims' hearings provided little new information for the commission. Their primary purpose was to provide a platform on which victims could speak publicly, to offer formal and public acknowledgment of the events reported, and to bring the victims' stories to the public. (The amnesty hearings, in contrast, took much longer, looked closely at the details of each case, and did turn up a good amount of new information.)

Since the South African commission, and very much influenced by that experience, most other substantial truth commissions have held public hearings. Peru's was the first Latin American truth commission to do so, taking the decision for public hearings only after looking carefully at the experience of several other truth commissions, including watching video footage. In Peru, however, the commissioners chose not to ask any questions in the victim hearings, with the idea that it would offer respect by only listening to the testimonies.

The Commission on Truth and Friendship for Indonesia and Timor-Leste provides an example of quite problematic public hearings methodology. The hearings were perceived as friendly to perpetrators and intimidating to victims, especially the hearings that took place in Jakarta. Several commissions, including this "friendship" commission as well as the truth commission in Liberia, have been strongly criticized for their seeming unwillingness to ask challenging questions of those who came before it, in particular those accused of serious abuses. Similarly, the Ghana commission missed an opportunity to put questions to former president Rawlings when he appeared before the commission, instead staying on a narrow issue regarding a particular piece of evidence. In Nigeria, the commission allowed accused perpetrators to appear and to directly challenge their accuser (their presumed former victim), something that made many international observers uncomfortable.

Perhaps the biggest weakness of a number of truth commissions, in relation to hearings, has been the failure to link the results from their ongoing research and investigations with the line of questioning that they undertake with witnesses before them in hearings—not only accused perpetrators, but also political leaders who helped shape events. While the reason for this is clear—simultaneous operations of multiple activities, and a short time frame—it is a problem that should be better addressed in the future.

Despite the many challenges, those truth commissions that have held hearings have produced some remarkable and memorable scenes. The thematic hearing in Timor-Leste that addressed the brief civil war of 1974 turned out to be a stunning political feat. It brought together present-day political leaders who in 1974 played pivotal roles during a period of violence, roles that they had never publicly reviewed. Several of them offered heartfelt apologies for wrongs that they committed at the time.



A number of analysts have suggested that all truth commissions should hold public proceedings. However, there are legitimate reasons why a commission may choose not to, and this decision should be left to those designing the procedures of each commission. Security is the first concern of most commissions that opt out of public sessions. The continued presence and impunity of known perpetrators, the intense fear of witnesses, and the impossibility of providing protection to deponents can make public hearings risky. In Sri Lanka, some victims who appeared in public hearings received death threats, forcing the commission to change plans and to close its doors to the public and the media. Where victim hearings are not possible, other kinds of public sessions might be considered, such as community leaders and rights advocates describing the nature of the violence and how communities were affected.

Beyond concerns for security, commissions may be hesitant to air unchecked accusations in public, given the possibility of causing injury to innocent persons through unsubstantiated allegations. Ideally, persons accused of wrongdoing should be given the opportunity to formally respond, perhaps in another hearing. Given these procedural and due-process demands, and the great number of victims who may wish to be heard, public hearings can be extremely time- and resource-intensive.

In South Africa, for example, the two thousand victims and witnesses heard in public hearings of the Human Rights Violations Committee required close to eighty separate hearings, totaling almost two hundred days of public sessions spread across the country. Each was held before a panel of several commissioners, taking their time from other commission matters. The commission's many victims' hearings seemed to consume its energies for most of its first year, making in-depth case investigations difficult, a frustration clearly felt by the commission staff. Instead of investigating, investigators were asked to cull victim statements to select witnesses for the next hearings, organize logistics, and prepare summary material for the commissioners on each panel. In the end, fewer than 10 percent of the victims who gave testimony privately to the commission also appeared in a public hearing. As is true for most truth commissions, many more wished to appear in a public hearing than time and resources allowed.

### *Defining the Parameters: What Truth Is to Be Recorded, and How?*

Most truth commissions ground their work in the collection of testimony from thousands of victims, witnesses, and even perpetrators. Some form of information management system will be needed to standardize how this testimony is recorded and to assist in evaluating the great detail of information received. Such a system can point to trends and patterns that are otherwise difficult to distinguish.

However, the investment necessary to create and oversee a successful database and information management system is greater than most commissions

expect when they begin. Few commissioners have had prior experience in data management and analysis, and they may misgauge the task. Also, while they are a great asset, such systems can consume a great amount of a commission's time and staff energy. Many truth commissions have run into serious technical or methodological challenges that have pulled significant attention from the rest of their work. Fine definitions must be discussed and carefully outlined in order to assure accuracy in coding; even the question of exactly what information should be collected and what questions should be asked of deponents will fundamentally shape the results of the commission. A good amount of staff time can be taken up with the detailed work of coding and entering information into a database. Yet if done well, an exacting information collection and management system will serve as a strong foundation to a commission's final conclusions.

The commission in El Salvador worked for months with only minimal computer know-how on the part of its staff, borrowing personnel from the UN mission in El Salvador to help design a database. After several months, they hired an information specialist, and later still, dozens of information coders and temporary data entry staff, none of which were originally planned for. The El Salvador commission turned out to be the turning point in truth commissions' taking information management seriously. No previous commission had used a sophisticated data management system; the earlier good-sized commissions in Argentina and Chile kept simpler records that allowed them to carry out basic counts of victims by region, age, occupation, and other characteristics. The larger commissions that followed El Salvador, in Haiti, South Africa, and Guatemala, and later in Peru, Timor-Leste, Sierra Leone and Liberia, all used more complex relational databases and hired dozens of staff to code and input information from the victim statements collected.

Most truth commissions have turned to outside consultants for help in designing these systems. The Science and Human Rights Program of the American Association for the Advancement of Science assisted the commissions in South Africa, Haiti, and Guatemala. In the process, the program's deputy director, Patrick Ball, developed a methodology for data management for large human rights projects.<sup>17</sup> Ball suggests a four-step process: information collection (statement-taking), data processing (coding each statement), data entry, and analysis. Consistency and standardized methodology are critical. A California-based NGO, Benetech, where Patrick Ball is now the director, has assisted many of the recent truth commissions.

### ***Reaching Conclusions: What Level of Proof?***

While resulting in no fine, imprisonment, or other judicially imposed punishment, a truth commission's findings may negatively affect the persons or institutions that are named as responsible for abuses. In Chapter 10, I outlined the due process and evidentiary standards for naming names of perpetrators in a commission's report. Some of the same issues are relevant to a commission's

overall findings. To assign responsibility for killings or torture to one sector of the military or police might (and should) have implications for the future of that force and the culpability of the commanding officer, even if the person is not named specifically. Outlining wide-scale abuses by an armed opposition group, which may have converted into a political party post-conflict, might dampen the group's credibility with the international community or its popular support at home. Likewise, conclusions about who the victims were—apolitical civilians caught up in the web of repression, or politicized supporters of armed rebels, or perhaps members of certain ethnic, regional, or political groups—could affect reparations and other programs. Finally, the commission risks putting its entire report in question if any serious error is discovered in its report. Thus, a commission should establish clear internal guidelines about what its evidentiary standards and levels of proof will be, and articulate them clearly in its report.

Usually, the picture painted by thousands of victim statements speaks for itself, laying out undeniable patterns. A commission should begin by drawing conclusions from this primary information, and often can make many basic findings simply by studying the patterns that emerge there. In reaching conclusions in specific cases, however, a more precise methodology is needed.

The standards of proof of past commissions have varied considerably, as seen, for example, in the El Salvador and Chilean commissions. The Salvadoran commission set out the “degree of certainty” for each of its findings. It defined these as:

1. Overwhelming evidence—conclusive or highly convincing evidence to support the Commission's finding;
2. Substantial evidence—very solid evidence to support the Commission's finding;
3. Sufficient evidence—more evidence to support the Commission's finding than to contradict it.<sup>18</sup>

In addition, the Salvadoran commission required more than one source before making a finding, including at least one primary source.<sup>19</sup> This two-source policy kept some important information out of the report. One of the more controversial questions before the Salvadoran commission was that of who were behind the country's death squads, which were widely believed to be controlled and financed by members of the Salvadoran right-wing civilian elite. The commission staff members tasked to investigate this issue reported to the commission that this was true, listing names of civilians who were implicated in the death-squad operations, but they could cite only one source for the information, and despite its best efforts, the commission was unable to confirm the allegations with a second source. The commission thus deleted from the report the information on death squads that depended on this single source shortly before the report went to press—but not before rumors had spread that this subject would be covered in the report, with names attached. To make up

for its lack of attention to the matter, the commission recommended the creation of a follow-up commission to look into the death-squads issue more closely.<sup>20</sup> The truth commission's silence on the power and funding behind the death squads was criticized as a major weakness of the report. The commission, for its part, insisted that it could not publish allegations that it could not confirm absolutely to be true.

In Chile, the first truth commission's narrower mandate, limiting its cases to fewer than three thousand killings and disappearances, allowed the commissioners to review and make a decision on each case individually. This commission was also able to collect more case-specific documentation than most truth commissions, resulting from staff investigation into every case. As its report describes:

The Commission reached a reasonable and honest conviction about each case based on the testimony of the victims' relatives, of eyewitnesses to relevant events, of current and former government agents, uniformed and civilian, including statements by now-retired high and mid-level ranking officers of the armed forces and police and by former agents of state security; press reports; expert testimony and opinion; some visits to the places where events took place; documentation from human rights organizations; official documents and certificates such as birth certificates, death certificates, autopsy reports, voter registration rolls, criminal records, immigration service records about entry into and departure from the country and many other official documents.<sup>21</sup>

The commission "made an effort to always have proof of each specific case. In cases of disappeared prisoners it obtained proof of arrest or that the person was in one of the secret detention sites where the disappeared were often kept."<sup>22</sup>

As was explored in Chapter 10, truth commissions now typically rely on a "balance of probabilities" standard to make their findings. (The same standard is used in U.S. courts in deciding civil claims, for example.) Balance of probabilities was the lowest level of proof used by the El Salvador commission, which it described as "Sufficient evidence: more evidence to support the Commission's finding than to contradict it." The commissions in Guatemala, Liberia, Sierra Leone, South Africa, and Timor-Leste also relied on this evidentiary standard. The Haitian commission, however, followed the "three degrees of certainty" approach that was employed by the Salvadoran commission.

### **Civil Society: The Essential Ingredient**

The strength of civil society in any given country—how many and how well organized the non-governmental advocacy, community-based, research, and faith-based organizations are—will help determine the success of any truth

commission. Because of their ability to generate public pressure to push for a strong commission, and because of their information, contacts, and expertise in human rights monitoring, the contribution of non-governmental organizations (NGOs) can be critical.<sup>23</sup> Yet despite the evident opportunities, the relations between commissions and NGOs have sometimes been strained.

The truth commission in South Africa would have looked much different without the active involvement of civil society during the period in which it was shaped and throughout its tenure. The minister of justice asked the Legal Resources Centre in Johannesburg, a non-governmental rights organization, to help draft the bill that would establish the commission; the Centre helped to work through some of the difficulties in the draft legislation and to turn suggestions for changes into legal language before submitting it to Parliament for further drafting, debate, and public hearings. The final draft that came out of Parliament included plans for confidential, closed-door amnesty proceedings, with only the final decisions on amnesty to be announced publicly, a provision that rights groups vehemently opposed. Human rights, church, and victims' organizations mounted an intense lobbying campaign to lift this mask of secrecy, initially without success. Two dozen of these groups—including virtually every human rights organization in the country—joined forces and submitted a letter to Parliament: if the legislation was not changed to make the amnesty proceedings public, the commission should expect no cooperation from any of the signatory groups, they warned. Finally, the legislation was changed, allowing confidential amnesty hearings only when “it would be in the interest of justice” or “there is a likelihood that harm may ensue to any person as a result of the proceedings being open.”<sup>24</sup>

NGO lobbying should continue during the course of a commission's work. Organizations may push the commission to expand its reach or change its operating policies, press the government to release files and cooperate fully with investigations, and encourage potential donors to provide support. Pressure for the implementation of a commission's recommendations may also fall to independent actors. In addition, some governments have printed only a small number of copies of commissions' reports. The production of more accessible versions of the report, or wider distribution of the full report, is often left to private actors.

Human rights organizations have also been an important source of information, local knowledge, and contacts for truth commissions, and many commissions realize this from the start. When the Argentine NGOs lost their battle to have a legislated commission rather than a presidentially appointed commission, the NGOs, disappointed at the weaker model, initially refused to cooperate with the commission. But the commissioners lobbied hard to gain their support. “Without the assistance of the NGOs, our work was impossible,” said one Argentine commissioner, Eduardo Rabossi. He continued:

We spent the first three weeks of our nine-month mandate trying to convince NGOs to collaborate. We went to NGOs to try to talk to them,

visiting each at their offices. Finally, some key individuals agreed to collaborate. They came on as senior staff, bringing others with them. So two or three weeks after the commission officially began, we were able to begin our work.<sup>25</sup>

Not all Argentine NGOs agreed to work with the commission. Mothers of the Plaza de Mayo, the most prominent organization representing families of the disappeared, continued to actively oppose the commission throughout its tenure, refusing to cooperate or provide information. In addition to their disappointment that the commission was presidentially appointed, rather than created through Congress, the Mothers remained firm in their insistence that the disappeared be brought back alive, and opposed almost any initiative to locate the remains of those killed. Even ten years later, one branch of the organization continued to oppose exhumations. They did not want their movement of thousands of family members to be divided into individual families with the discovery of each person's remains, they explained.<sup>26</sup>

In addition to trained staff, the NGOs in Argentina handed over copies of their case files on the disappeared, each of which was counted in the commission's final list of victims even if the testimony was not taken again by the commission. As a result, even the cases of many of those families who chose not to cooperate with the commission were included in the commission's report, based on testimony they had previously given to an NGO.<sup>27</sup> In Chile, the Vicaría de la Solidaridad, the human rights office of the Archbishop of Santiago, closely tracked every reported case of disappearance throughout the years of dictatorship. When the Chilean truth commission opened its doors, the Vicaría handed its well-organized files to the commission, and these files served as the backbone of its information base. While the commission chose to confirm each reported case by retaking the testimony directly from the families of the disappeared, its members knew from the start who to reach out to and what the approximate total number would be. NGOs in El Salvador, Guatemala, South Africa, and elsewhere have submitted records to their respective truth commissions. Even if a commission chooses not to use this secondary information in its report, this case information can offer an important map of where the abuses have taken place and other patterns, helping to target the allocation of staff and field offices and to highlight special patterns and key cases that call for further investigation.

Commissions often must maintain strict secrecy about the cases under investigation. While this may be justifiable, it can also rob the commission of outside expertise. In some contexts, commissions have worried that a close working relationship with human rights groups could suggest a political bias, and thus maintained formal and fairly distant relationships. This has led to frustration on the part of NGOs.

South African commissioner Mary Burton said that the South African TRC initially "thought they'd work in partnership with NGOs, but that didn't work." NGOs suffered significant funding cuts from international donors when

apartheid ended, and there was “a lot of hostility from NGOs towards this well-funded commission. They felt that they were being asked to do on a voluntary basis what the commission was being paid to do,” such as taking statements from victims to be turned over to the commission and providing trauma counseling in follow-up to commission hearings. The commission sought grants from donors to support the NGOs’ assistance to the commission, but these grants took time to come through. In addition, said Burton, some commissioners worried they might be seen as favoring some groups over others if they established close working relationships, which led them to keep a distance from most of organized civil society and turn down offers of assistance. “That set us back a lot,” Burton explained.<sup>28</sup> As a result of all this, the psychological referral networks and other collaborative partnerships originally envisioned in South Africa were never well established.

Greater involvement of NGOs would also have facilitated a longer-lasting impact of the commission on the local level in South Africa. Tlhoki Mofokeng of the Centre for the Study of Violence and Reconciliation, who worked closely with local community groups interested in the commission, noted that,

[i]f the truth commission had invested more in bringing NGOs on board who are connected to victims, it would have been much better. The commission’s impact is on the macro level, but at the micro level its impact is very limited.<sup>29</sup>

Frustrated with poor communication and limited access to the commission, Khulumani, a prominent South African victims organization, suggested that truth commissions should have a victims’ liaison on staff. Such a person could provide legal referrals, assist families in gaining access to a disappeared person’s bank account, for example, or assist them in obtaining a death certificate.<sup>30</sup> Legal clinics at South African universities provide only minimal support in this respect. While such individualized legal assistance may be beyond the capacity of most overworked truth commissions, it would be wise for commissions to appoint a staff member as liaison with victims, families, and broader civil society.

Many of the more recent truth commissions have seen similar dynamics and difficulties, as well as sometimes important partnerships, in their work. A number of commissions that began with strong backing from civil society, such as those in Liberia and Morocco, had a more distant relationship with the same groups as they undertook their work. In Morocco, some human rights organizations chose not to assist the commission because of the explicit limitations in its mandate in relation to naming names and criminal accountability. While other organizations did collaborate, the limited relationship with the traditional human rights community was seen as a weakness in the process. In Liberia, some human rights and church-based organizations became disillusioned when the truth commission failed to engage them in any sustained manner. This weakened the public support the commission might

have relied on, and also robbed the commission of useful expertise and community contacts.

### **Access to Official Information**

Many truth commissions have struggled to gain access to government or military documents in the course of their investigations. In El Salvador, the commission had the right, spelled out in its mandate, to enter any office or compound in search of documents, as well as a formal commitment from the parties to the peace accord to cooperate fully with any request for reports, records, or documents.<sup>31</sup> But the commission found that relatively little official documentation was made available to it, as requests to both the government and the opposition for service and personnel records and other documentation “tended more often than not to be answered with explanations that the files had been destroyed, could not be found, or were incomplete,” according to commissioner Thomas Buergenthal.<sup>32</sup>

In many countries, the most important or incriminating information is destroyed long before a commission is created. In Argentina and Chile, the armed forces kept a distance from the commissions, and most requests for information about specific cases were either ignored or turned down with a claim that no information was available.<sup>33</sup> The response from the military to the Chilean commission’s requests for information was often that the material sought had been burned or destroyed as soon as its destruction became legal. The South African commission dedicated a whole chapter of its report to outlining the problem of destroyed files. In its investigations, it found that the destruction of documents was undertaken “on a massive scale” in the 1990s, and that some departments were still destroying records as late as 1996, some two and one-half years after the first democratic elections and a year into the truth commission’s tenure. “The mass destruction of records . . . has had a severe impact on South Africa’s social memory. Swathes of official documentary memory, particularly around the inner workings of the apartheid state’s security apparatus, have been obliterated,” the report states.<sup>34</sup>

The resistance to surrendering information may continue long after a truth commission has ended and well into the tenure of a new democratic government. Some well-intentioned government agencies, working under a strong civilian government and with more time to pursue the subject, have had difficulty gaining access to information from other branches of the government or from the armed forces. In Argentina, the Human Rights Office of the Ministry of the Interior continued to collect testimony about abuses during the military regime, expanding the files of the Commission on the Disappeared. After a retired captain publicly admitted to throwing prisoners live into the sea from airplanes, there was a public cry for official lists to be released from the files of the armed forces. “The information probably exists, but where?” said Mercedes Assorati, a staff member at the Human Rights Office who oversaw the commission archives. “Judges won’t get into it. And we can only write



a nice letter to branches of the armed forces and say, ‘Dear Sirs, please tell us if you have something.’ We can’t enter their archives or go to the ESMA,” she said, referring to a military school that was known to operate as a torture center during the dirty war. She continued:

We do know that lists existed of everything: who was kidnapped, who was released, and, if someone was killed, where and when. There were orders to burn all the files before the military left power, and that was thoroughly done. But this information probably does exist in private hands; there are always some people who like to keep this kind of information. But it’s probably not in the institutions themselves.<sup>35</sup>

### *Gaining Access to Foreign Government Documentation*

Given the limited access to documentation in domestic files, the records kept by foreign governments can be an important source of information. For a number of reasons, the U.S. government is generally the most important source of such documentation. First, it has maintained strong relations with many abusive governments, especially in Latin America, and its embassies report at great length on activities and political developments. In a number of countries that have had truth commissions, including Guatemala, El Salvador, and Chile, the United States backed or directly funded the governments and militaries responsible for the vast majority of abuses that the commissions were charged with investigating. U.S. military, intelligence, and diplomatic personnel maintained regular contact with many of the worst abusers, commenting on their activities in daily cables to Washington. All of these cables are still on file. Second, since President Jimmy Carter mandated the U.S. Department of State to produce an annual country-by-country report on human rights conditions, the U.S. government has collected extensive information on human rights conditions around the world. While this annual report is public, much of the background intelligence on which the reports are based generally remains classified. And third, it is easier (though certainly not easy) to gain the declassification of official information in the United States than in many other countries because of the U.S. Freedom of Information Act (FOIA), which allows private individuals to request the declassification of information.<sup>36</sup>

The National Security Archive, a non-governmental organization based in Washington, DC, has considerable expertise in how to apply for declassification of U.S. government material. Through many thousands of FOIA requests, the archive has gained access to a wealth of historical material and published collections of declassified records that document U.S. relations with many foreign states over the past decades.<sup>37</sup>

The government’s response to a FOIA request can take anywhere from eight months to eight years—not very useful for a short-lived truth commission. Nonetheless, some past commissions have found ways to make use of this

declassification system. Because of the National Security Archive's experience with declassification procedures, both the Salvadoran and the Guatemalan truth commissions turned to the organization for help—and many others have done so since. To confirm some of its initial findings, the Salvadoran commission relied primarily on the files of already declassified documents that the archive had collected over the previous years. It also applied for the declassification of additional documents, but met considerable resistance from some departments of the U.S. government. With the inauguration of President Bill Clinton in January 1993, cooperation from the government improved, although the commission then had just two months left to complete its investigations and report.<sup>38</sup>

The Guatemalan commission made much more extensive use of U.S. documentation, and relied much more heavily on the assistance of the National Security Archive. Beginning years in advance of the commission's start-up, and in consultation with rights groups focused on Guatemala, the archive submitted FOIA requests for information on over three dozen key cases that it expected the commission would investigate.<sup>39</sup> In addition, once the commission was established, the commission made a direct request to President Clinton for the declassification of specific information pertaining to its investigations. The United States set up an interagency group to process its request, which pertained to materials from the Department of State, Department of Defense, Central Intelligence Agency, National Security Council, and the Agency for International Development. In accordance with the commission's request, copies of the documents released were first given to the National Security Archive for processing.<sup>40</sup>

The director of the Guatemala Project at the National Security Archive, Kate Doyle, was responsible for gathering and processing this material over a five-year period, beginning with the submission of the archive's FOIA requests in 1994. At any given time, two to six people were working on the project at the archive, reading and organizing released documents and helping to interpret them for the commission. When Doyle traveled to Guatemala, she provided detailed instructions to the commission on how the documents should be read. "It is important to remind researchers that declassified documents are fallible. In addition to often richly detailed and valuable information, they can also contain factual errors, misinformation, or lies," said Doyle. She and her staff also sought documents from the presidential libraries of John F. Kennedy, Lyndon Johnson, Richard Nixon, Gerald Ford, Jimmy Carter, and Ronald Reagan, and searched through the already declassified material in the governmental National Archives and military archives (such as the holdings of the Army War College), looking for information about events dating back to the early 1960s. They then handed the material over to commission investigators and a team of twenty-five leading Guatemalan historians that the commission had gathered in Guatemala to assist in writing the historical account of the Guatemalan conflict (this group was later reduced to a few key historians for the purposes of writing the report). The U.S.

documents provided much new information, as well as confirmation of already developing conclusions. Doyle commented:

They explain the nature of the violence, U.S.–Guatemalan relations, and military and insurgent operations. Many of the issues that the commission is concerned with are addressed in these documents. The documents from the 1960s and 1970s are very frank and filled with previously undisclosed details about the war. It makes for riveting reading.<sup>41</sup>

Doyle and her staff also used this material to create a database of military information, the first non-governmental compilation of detailed information about the Guatemalan armed forces. She continued:

There is a dearth of information on the military in Guatemala, and we knew the U.S. worked very closely with the militaries of foreign countries, especially friendly countries, and that the U.S. keeps meticulous records. If you know how to ask for it and where it is, you can get information about military officers, units, operations, et cetera.

With this strategic approach, the Archive gained the release of thousands of documents from the U.S. Defense Intelligence Agency and elsewhere. Entered into a database, they added up to eight thousand pieces of data, including military budgets, force size, personal biographies of military commanders, and other details, providing a map of the military structure that was previously unknown. The Guatemalan commission was able to use this database to help determine where officers were based at any given time, what units were in the region when massacres took place, and many other similar details between 1960 and 1996.<sup>42</sup>

Despite the wealth of information that can be obtained through the U.S. declassification process, the FOIA system is not well suited for most truth commissions, owing to the considerable time needed for the processing of requests. With an early start, assistance from NGOs, a supportive U.S. administration, and a direct commission request to speed up the process, however, a truth inquiry in any country where the United States was closely involved may find this to be a very important source of information.

### **Threats of Violence and Intimidation**

Many truth commissions have operated under a constant threat of violence. Although few if any truth commissions' members or staff have actually been attacked or seriously injured as a result of their investigations, there is much reason for concern. Certainly, many unofficial efforts to dig up the truth about abuses have met with violence. Two days after the Church-based truth project in Guatemala released its report documenting years of atrocities in that country's civil war, the project director, Bishop Juan Gerardi Conedera, was

brutally bludgeoned to death in his garage. The police work investigating the killing was shoddy, but it was widely assumed that the killer was connected to the armed forces and had acted in response to the rights report.<sup>43</sup>

The very nature of these processes is inherently risky: truth commissions generally start work at the very beginning of a democratic opening, often before the public is sure the political change is certain. One truth commission secured an executive director only after three people turned down the offer, fearing for their safety. In El Salvador, the armed conflict did not officially end until December 1992, six months into the commission's operations. (Until then, the peace process was operating under a cease-fire agreement.) Throughout the commission's tenure, as is true in a number of countries, the senior military officers that the commission was investigating still maintained very powerful positions, and the civilian government that backed them had not changed. The judiciary was still unreformed, and the rightist president of the Supreme Court tried his best to block the commission's work, especially exhumations of mass graves.

The truth commission in Chad received a number of threats from former members of the security forces who had been rehired by the new intelligence service, which hampered its work. As the commission described in its final report, "Within the Commission, some members judged the task too hazardous and disappeared altogether. Others reappeared only at the end of the month to pick up their pay and vanished again."<sup>44</sup> When the commission received a four-month extension to its original six-month mandate, it had to replace three-fourths of its original members.

After the Liberian truth commission submitted its report in June 2009, which named over 150 perpetrators and recommended prosecutions, commissioners received serious and repeated death threats—by phone, by text message, by notes left at their homes. Several commissioners left the country for their safety. In Peru, the most serious threats began two years after the commission concluded, apparently linked to the cases recommended by the truth commission that were beginning to make progress in the courts. Two patterns begin to emerge: the most intense threats against commissioners sometimes begin after a truth commission concludes; and these are often linked to the commission's role in making strong recommendations for criminal accountability.

Truth commissions also confront the equally hazardous and troublesome problem of terrified witnesses who fear putting themselves in danger by giving testimony—even when that testimony is given in confidential, closed-door sessions. In Uganda, victims sometimes returned to the commission after giving testimony in public hearings, desperate to retract what they had said. It was clear to the commission that they had been threatened by someone implicated in the testimony.

***Witness Protection***

Very few truth commissions have had the power and resources to develop a strong witness protection program. South Africa was the first.

When former South African deputy attorney general Chris MacAdam was hired to lead the commission's witness protection program, he went first to the Italian consulate for its manual on the Italian witness protection program for Mafia trials. "Mafia crime is similar to political violence. Their witness protection system covers lots of witnesses at low cost. It was the right model for us," he told me.<sup>45</sup> To safeguard threatened witnesses, the commission employed the Italian tactic of "witness camouflaging," which placed people in safe houses outside of their communities while still living under their own name. When a witness expressed concern for his or her safety, either before or after a hearing, the regional commission office would immediately place the person in a safe house for temporary protection and then begin a formal evaluation of the level of risk. For some, the risk level was determined not to be high enough to justify the person entering the witness protection program, but the commission would instead help arrange increased community and visible policing, asking the police to make regular contact with the witness. Under the lowest risk level within the protection program, the person would be moved between different safe houses in their home area, accompanied by close police monitoring, making use of one of the one hundred safe houses that the commission maintained around the country. Those under medium risk were placed in another community altogether but were allowed to leave during the day, staying in a safe house only at night. High-risk cases, those considered to be at risk anywhere in the country, were placed in safe houses outside of their own communities and put under guard. No one would know of a high-risk-case person's whereabouts (including the person's family), and all contact with the family or others would be channeled through the commission. The witness protection staff were investigators seconded from the police, ranging from four to seven people. The commission estimated there would be one hundred witnesses to be protected, all told, and budgeted \$400,000 for its work. In the first eighteen months of its work it had already processed more than 230.<sup>46</sup>

"It could be easy to try to fool us by spinning a fancy tale," MacAdam told me. He continued:

A lot of people are trying to do that. So we do a full security check, taking their fingerprints, et cetera. One chap is in prison for a year for making false statements to the commission. It took us five thousand rand [\$1,000] and a week's investigation to realize his whole story was a lie.

It was illegal to make a false statement to the truth commission, even if not in a public hearing. After just six months, there had already been "three or four plants; people trying to get into the system to see the safe houses and meet the

witnesses under protection—and then sell the information to the highest bidder,” said MacAdam.

Other commissions, while lacking the capacity to set up formal witness protection programs, have only been able to provide security through providing strict confidentiality. In El Salvador, for example, some members of the security forces would only agree to meet with the commission outside the country and with full assurances that the interview would be kept secret. A traditional witness protection program such as that used in South Africa would not have been useful to such witnesses, because even the knowledge that they had cooperated with the commission would have put them at risk.

### **Other Considerations**

There are many other difficulties that a truth commission itself may have little control over, but which could significantly impact its work. The rainy season in some countries makes travel virtually impossible for several months, halting hearings and statement-making. Multiple national languages may require extensive use of interpreters, and some of the core terminology may have subtle but important differences in meaning between the languages. In South Africa, for example, the commission estimated that 80 percent of statements were given in a language other than English; some multilingual statement-takers took testimony in as many as six languages. All public hearings in South Africa were equipped with simultaneous translation capacities—an expensive process, but it allowed deponents to speak in any of eleven national languages. These and other external factors can add significantly to the difficulties of a commission, making its short timeline and the many thousands of cases that it aims to record even more daunting.

As is true with many processes, the success of a truth commission will be determined largely by the quality of the people who carry out the process. There is little time for error, false starts, or lengthy preparation; unfortunately, there is also no one map to guide a commission through treacherous shoals. If done well, however, and if given the necessary resources and support, a truth commission can change how a country understands and accepts its past, and through that, if it is lucky, help to fundamentally shape its future.

# 16 Reflections

## Looking Forward

Shortly after U.S. president Barack Obama was inaugurated in early 2009, a senior senator, Patrick Leahy, called for a truth commission to investigate the many abuses of the Bush years, and in particular the reports of abusive detention and torture. This would represent “a middle ground” policy “to get to the bottom of what happened—and why—to make sure it never happens again,” Leahy said. If necessary, he also suggested, it could grant immunity in order to get the truth.<sup>1</sup> U.S. human rights groups also pushed for a full investigation, preferring a “commission of inquiry” rather than “truth commission” for semantic reasons only. But the Obama administration showed little interest. Late in 2009, as the attorney general appointed a special prosecutor to undertake a limited inquiry into whether crimes had been committed, the momentum seemed to wane for a fuller truth inquiry or more robust criminal accountability.

The United States was, however, pushing for a truth commission elsewhere—in particular, Honduras. A U.S.-backed accord in October 2009 between the deposed and the de facto presidents included an agreement for a truth commission to look into events around the June coup.<sup>2</sup> The deposed president, Manuel Zelaya, then sheltered in the Brazilian embassy in Honduras, backed out of the accord when its full terms became clear, but the creation of a truth commission remained a priority for the United States.<sup>3</sup> A newly installed president, Porfirio Lobo Sosa, appointed a truth commission in early February 2010, ten days after signing an amnesty law for these same acts. The opposition protested a feared whitewash. Meanwhile, the scope of the inquiry was narrowly focused on the June events. In a context where there were many violations against the opposition in late 2009, as well as a longer history of serious abuses going back to the 1980s, the proposed inquiry seemed to many to be far too narrow.

In December 2009, the president of Brazil announced plans to create a truth commission to investigate abuses of the military dictatorship from 1964 to 1985. The minister of defense and commanders in chief of the armed forces threatened to resign in protest over the wording of the announcement, and specifically because acts of the former armed left would apparently not be included in the inquiry. The president promised to revise the text.<sup>4</sup> Preparations

began in early 2010, with a government working group created to establish its terms. The commission was expected to begin sometime after the October 2010 national elections.

Nepal agreed to a truth commission in its 2006 peace accord. After several years of consultations and drafting its terms, as of early 2010 proposed legislation was completed and was expected to be considered by Parliament soon. In the same peace accord, the parties agreed to a disappearances commission, which would have a stronger focus on criminal accountability; this was also pending consideration by Parliament.

Burundi agreed to a truth commission in a 2000 peace agreement. However, conflicting views between the government and the United Nations on its powers (in particular in relation to a proposed special tribunal) slowed developments. In late 2009, Burundi was in the midst of a formal process of national consultations on how the commission and tribunal might be shaped.

Other possible truth commissions were in discussion elsewhere. Indonesia passed legislation for a truth commission in 2004, but it was soon overturned by the Constitutional Court, responding to a complaint that the legislation unfairly linked reparations to victims' forgiveness. It remains unclear whether a revised national truth commission bill will be passed. Meanwhile, the 2005 peace agreement for Aceh, Indonesia, stated that an Acehnese truth commission would be created by the national Indonesian truth commission. This remains in limbo, given the lack of a national commission.

And there are others. There will be more truth commissions. The question, as always, is how strong and effective they will be—and what might be done to improve their impact.

What does it all mean? Why is there so much interest in creating new truth commissions? In one sense, it is a reflection of a simple desire to see at least a minimal accounting, and acknowledgment, for atrocious crimes. Creating a truth commission responds to a desire from victims for recognition and for justice. It also reflects the increasing acceptance internationally that massive past crimes cannot be simply swept away—and that efforts toward criminal justice are not enough. Finding and recognizing the truth seems the simplest and most straightforward step, a minimal commitment to changing past practices.

But truth commissions are also changing over time. Early truth commissions largely focused on what happened, and usually on why it happened—in Argentina, Chile, El Salvador, Guatemala, Sri Lanka, Uganda. This moved to a period of commissions that not only concentrated on what and why, but also included a strong push for reconciliation, usually through public hearings: South Africa, Sierra Leone, Timor-Leste. Several bodies emerged that included a greater focus on perpetrators, giving the accused a more prominent platform in hearings but also usually naming those responsible in their reports: Ghana, Nigeria, Liberia, in addition of course to South Africa. A deeper analysis of historical and societal factors and consequences, such as racism and economic discrimination, and including robust research as well as legal analysis, seemed



to set a new standard, in Peru and Guatemala. While some of the very early commissions included a prosecutions and reparations emphasis—and successfully influenced what followed—this emphasis has been even more pronounced in more recent bodies, such as those in Morocco and Peru. The inclusion of economic crimes (and possibly economic rights, more broadly) in the Kenyan commission is hinting at a new and challenging realm. The first bilateral truth commission emerged—that between Indonesia and Timor-Leste—and, like that in Germany before it, relied more on documents and less on listening directly to victims. And, most recently, we are seeing the creation of truth commissions that reach back many generations and tackle fundamental historical issues that help define community relationships of today, in Mauritius and Canada.

Some of the lesser-known truth commissions may offer some of the most interesting and surprising models, but also a suggestion of what some truth inquiries could look like in the future. It is worth looking closely at the South Korean and German commissions. In one case, the commission is looking into massacres during a war of almost sixty years ago that included large numbers of foreign troops, including the direct responsibility of U.S. forces. The other body focused more closely on the broad impact of a system, rather than a highly individualized approach to violations. And the historically rooted inquiries of Mauritius and Canada, addressing the legacy of slavery, colonialism, and abuses against indigenous populations, naturally raise questions about whether and how such an approach might be applied elsewhere.

The trend is toward broader inquiries with multifaceted mandates, covering longer periods of time. There is a greater use of public hearings, and higher public expectations for a commission's results. There has been some concern that the greater awareness of truth commissions, and an increase in the availability of international expertise and assistance, might be producing a standardized (and less nationally rooted) model, but in fact the opposite seems to be true. There is little tendency to copy or import models. There has been, rather, a healthy practice of closely studying other experiences, incorporating some of the more useful elements, while crafting something new and different, basing the new inquiries in national needs and historical context.

Thus, I am less worried about the increased use of truth commissions, the apparent quickening in pace of new commissions being created. Most of these seem to spring from national intention, and strong local demands for a recognition of the truth. Rather, my concern would be elsewhere: in the risk of the inquiries being weakened through rushed setting up, badly construed procedures for selecting members, or terms of reference that cut short their potential reach.

If the period of creation is the highest risk point, the second concern is in how to make the work of these commissions more effective at the policy level, after they conclude. Certainly more can be done to strengthen the implementation of sound recommendations for reform, for example. The preservation of commission records has also been sorely lacking in many countries.

I come away from this reflection—this re-submersion in so many fascinating, quirky, painful, sometimes impressive truth commissions—with one overall impression: that this story is being missed. These processes are often intensively watched at the national level, often commanding attention from the public and press for a year, two years, or more. They often have a direct impact in the national political realm, in sometimes fragile countries where the peace or newfound democracy is tentative, while offering a bold possibility of reshaping the future.

But it is surprising how little some of these bodies are known at the international level. The academic and policy research on truth commissions is still somewhat skewed toward a few of the better-known commissions, while the greater attention from the international human rights advocacy community continues to be more focused on criminal justice, including international tribunals and the ICC. The dominance of this legal perspective may be missing the complexities and importance of parallel, non-judicial initiatives. After all, as should now be abundantly clear, truth commissions impact directly on thousands upon thousands of victims, as well as on the possibility of future criminal justice, reforms, reparations, and, with luck, perhaps reconciliation and future peaceful community relations. It would be valuable to pay much greater attention to assure they are done well.

Transitional justice as a broader field has virtually exploded as a field of study and work, especially since 2001, and this deepening expertise has been a great help to truth commissions. But it should be strengthened and deepened further. The field of transitional justice has successfully engaged a broad and diverse range of disciplines and professions. This interdisciplinary attention is a great asset, with important contributions from psychologists, sociologists, anthropologists, political scientists, archive specialists, economists, statisticians, historians, regional specialists, and others. But more research is needed: closer case studies, over longer periods of time; deeper legal analysis of the link with courts; broader studies across more countries that evaluate the impact on trauma and healing; and many other areas. What has been the impact, and what might it be?

The search for truth does seem a simple idea. It is, instead, usually very difficult and contentious, but worth the many efforts to try to get it right.



# Appendix 1

## Other Truth Commissions Described

### **Uganda 1: Commission of Inquiry into the Disappearance of People in Uganda, 1974**

The Commission of Inquiry into the Disappearance of People in Uganda since 25th January, 1971 was established by President Idi Amin Dada in Uganda in June 1974, with a mandate to investigate the accusations of disappearances at the hands of military forces during the first years of the Amin government.<sup>1</sup> The commission was created in response to increasing pressure to investigate the disappearances, especially from the international community, and was composed of an expatriate Pakistani judge as the chair, two Ugandan police superintendents, and a Ugandan army officer. Established by a presidential legal notice under the Commissions of Inquiry Act of 1914, the commission had the power to compel witnesses to testify and the power to call for evidence from official sources, although access to information was blocked by many sectors of the government, including the military police and military intelligence. The commission heard 545 witnesses and documented 308 cases of disappearances; hearings were generally public unless requested otherwise.

“In view of the considerable practical difficulties it faced and the highly unfavorable political climate in which it operated, the Commission’s achievement was remarkable,” writes Richard Carver, then research director of the African division of Human Rights Watch, continuing:

The Commission concluded that the Public Safety Unit and the State Research Bureau, special security bodies set up by Amin, bore the main responsibility for the “disappearances.” It also criticized army officers for abuse of powers, as well as the activities of the military police and intelligence.<sup>2</sup>

The commission concluded with specific recommendations for reform of the police and security forces and training for law enforcement officials in the legal rights of citizens.

As a commission that worked under and made recommendations to the same government that it was investigating, its first priority was likely to try to

prevent future abuses by government forces. Yet the commission was set up without the political will for, or commitment to, real change in human rights policy or practice, and the commission report had little impact on the practices of the Amin government. President Amin did not publish the commission report (nor was he required to under the commission's terms of reference), and none of the recommendations of the commission was implemented. Abuses by Amin's forces increased markedly in the following years, earning Amin the nickname "the butcher of Uganda." There is only one known copy of the report in the country.<sup>3</sup>

Carver asks, "So was the whole exercise a waste of time?" He argues that it was not, on three grounds. He cites the importance of the commission report in refuting later revisionist views of the 1970s in Uganda; the fact that disappearances decreased, in the short term, during the period of the commission's investigation; and the fact that this early knowledge of the atrocities places clear responsibility on Amin's international supporters, who continued to back him well into the 1970s.<sup>4</sup>

The 1974 Ugandan commission was all but forgotten in history: in setting up the Ugandan Commission of Inquiry into Violations of Human Rights in 1986, there was no reference made to the similar commission that had operated there just twelve years earlier.<sup>5</sup>

### **Bolivia: National Commission of Inquiry into Disappearances, 1982–1984**

The first Latin American truth commission was in Bolivia, where the government of President Hernán Siles Zuazo created a National Commission of Inquiry into Disappearances just days after the return to democratic rule in October 1982. The eight commissioners, selected to be representative of a cross section of society, were the undersecretary of justice; one member each of the House and of the Senate; one representative each of the armed forces, the labor federation, and the peasants' federation; and one representative from each of the two national human rights organizations. The commission was well known within the country at the time and collected testimony on 155 disappearances that took place between 1967 and 1982. In some cases, the commission was able to locate the remains of disappeared persons, but in the end no cases were conclusively investigated, according to Loyola Guzmán, who was the executive secretary of the commission and was one of the commission's representatives from a human rights organization.<sup>6</sup> Unfortunately, the commission's mandate prevented a full investigation of the truth, as incidents of torture, illegal and prolonged detention, and other abuses were not covered. The commission hired six technical support staff and received limited financial support from the government, but lacked sufficient resources and political support to complete its work, according to Guzmán. After two years, the commission disbanded without producing a final report; Guzmán later

attempted to gain access to the commission's materials in the hopes of publishing a report.<sup>7</sup>

The commission was quickly overshadowed by trials that began in the mid-1980s of forty-nine former officials and paramilitary agents of the government of Luis García Meza Tejada (an army commander who seized power in 1980 and ruled the country, with severely repressive tactics, for over a year). In the end, the combination of a truth commission, trials, and private efforts at truth-finding resulted in what Human Rights Watch and others characterized as an overall positive process.<sup>8</sup>

### **Uruguay 1: Investigative Commission on the Situation of Disappeared People and Its Causes, 1985**

Following eleven years of military rule, in April 1985 the Uruguayan Parliament established the Investigative Commission on the Situation of Disappeared People and Its Causes. As in Bolivia, the limited mandate of the commission prevented investigation into many repressive tactics, especially illegal imprisonment or torture, which were actually much more common in Uruguay than disappearances. As Chilean rights advocate José Zalaquett wrote in 1989, "A systematic practice of 'disappearances' as in Argentina, or, on a lesser scale, as in Chile, was not part of the Uruguayan military's repressive methodology."<sup>9</sup> He continues:

Although it is public knowledge in Uruguay and abroad that torture was systematically practiced during the military rule, there is no officially sanctioned record documenting this practice. The military does not publicly admit to it. In private it attempts to justify torture as a last resort and a lesser evil.<sup>10</sup>

The president of Uruguay generally opposed any attempt to investigate past human rights abuses, as noted by Robert Goldman of American University, who watched the transition closely.<sup>11</sup> Wilder Tayler, then executive secretary of the Institute for Legal and Social Studies of Uruguay, remembers how dissatisfied he was with the commission report. The commission was a political exercise, he says, "not a serious undertaking for human rights."<sup>12</sup> After seven months, the commission reported on 164 disappearances during the years of military rule, and provided evidence on the involvement of the Uruguayan security force, which it forwarded to the courts. However, neither this nor a parallel commission investigating the assassinations of two Members of Parliament was "able to find conclusive proof of the institutional decision-making process leading to these crimes," wrote analyst Alexandra Barahona de Brito.<sup>13</sup> "Although the coordination of repressive actions between the Argentine and Uruguayan armed forces and the institutional responsibility of the Uruguayan military had been 'proven' by the testimonies of a number of people," Barahona de Brito writes, the commission changed its final report at

the last minute, under political pressure, and claimed that these “irregularities” did not necessarily reflect policy or institutional responsibility.<sup>14</sup>

The commission’s report, although a public document, was not widely distributed, nor were its findings ever officially announced to the public. The investigations “failed to produce a national truth” and “their limited coverage elicited no official explanation or response from the previous government and military authorities,” concludes Barahona de Brito.<sup>15</sup> In response to the limited reach of this parliamentary inquiry, a non-governmental project soon took up its own truth project, leading to the publication of a much more thorough account of abuses under military rule.<sup>16</sup> Fifteen years later, Uruguay made another attempt at an official truth commission, also with a limited result (see p. 251).

### **Zimbabwe: Commission of Inquiry, 1985**

As in Uruguay, the work of the Zimbabwe Commission of Inquiry is also not well known, but for a different reason: its report has never been available to the public, and no one outside of the government has seen it.

The commission of inquiry was established in Zimbabwe in 1985 to investigate governmental repression of “dissidents” in the Matabeleland region of the country. The commission worked under the authority of the president and was chaired by a Zimbabwean lawyer; after several months of investigation, it submitted its report directly to the president. While the government initially promised to release the commission’s findings to the public, over a year after its completion the minister of justice announced without explanation that the commission report would not be made public.<sup>17</sup> Although at the time the commission did not attract much attention inside Zimbabwe, there was increasing pressure from both national and international non-governmental organizations to publish the report in the years following its completion. While human rights organizations stressed the need for accountability for the crimes committed, the victims’ families were interested in formal recognition of the killings, in part so that they could receive compensation. This issue became increasingly controversial as the government refused to recognize the deaths of several thousand civilians in the conflict.<sup>18</sup>

The government continued to resist publishing the report, claiming that it could spark ethnic violence. Twelve years after the end of the Matabeleland violence, a senior government spokesman told me that “if you don’t talk about it, it may die a natural death, so that we can build the society we’re trying to build.”<sup>19</sup> Meanwhile, there were no signs of accountability for these crimes. In 1992, the commander of the military brigade responsible for many of the atrocities was promoted to head the air force, provoking strong criticism; many others involved in the repression also continued to hold senior government posts.

To counter the government’s silence on the matter, two major Zimbabwean human rights organizations published a report in 1997 that thoroughly

documented the repression of the 1980s on the basis of extensive interviews with victims.<sup>20</sup> Before publishing their report, they submitted it to the government for response, but never received a reply.

## **Uganda 2: Commission of Inquiry into Violations of Human Rights, 1986–1995**

When the rebel forces led by Yoweri Museveni overthrew the government of Milton Obote in January 1986, the country looked back on over twenty years of terror and brutality at the hands of government forces. Human rights issues were announced as a central concern of the new government, and within months the Museveni government appointed a Commission of Inquiry into Violations of Human Rights to look into past abuses. Set up through the appointing authority of the minister of justice and attorney general and chaired by a High Court judge, the commission was charged with investigating human rights violations by state forces that occurred from Uganda's independence in 1962 up to January 1986, when Museveni came to power (though excluding any abuses by Museveni's rebel force).

The commission's terms of reference were broad, including arbitrary arrest and detention, torture, and killings by government security forces, and called on the commission "to inquire into . . . possible ways of preventing the recurrence" of such abuses.<sup>21</sup> The commission held public hearings around the country, some broadcast live on state-owned radio and television. It was at the center of public attention in its early years, attracting wide popular support and an emotional reaction from the public. Yet the commission was set up without a deadline for finishing its work, and as time wore on, it repeatedly ran out of funds and found its work stalled. As abuses took place under the new government that the commission could not cover, the public lost interest.

In just its second year of operation, the commission completely stopped work for four months due to a lack of funds; it turned to the Ford Foundation for financial support to continue.<sup>22</sup> By early 1991, the commission was again reporting financial troubles, and received funds from the Danish government to finish its investigation and produce a report.<sup>23</sup> In 1995, after nine years of investigation, the commission of inquiry submitted its report to the government. One thousand copies of the report were printed (and 20,000 copies of a more accessible ninety-page summary), but as of late 1996, when I visited the country, very few people inside or outside of Uganda had seen the report or knew that it might be available. The many boxes of printed reports sat in storage at the commission's former headquarters. The given reason for not distributing the report was that the new human rights commission, which would cover current human rights issues and complaints, first had to be appointed in order to oversee the distribution.<sup>24</sup> But three years later still, after the new commission was appointed and well under way, the thousands of copies of the report and summary still had not been distributed.<sup>25</sup>



### **Philippines: Presidential Committee on Human Rights, 1986–1987**

A Presidential Committee on Human Rights was established in the Philippines by the Corazon Aquino government shortly after it took power in 1986.<sup>26</sup> It was mandated to investigate both past and present abuses, covering acts that had taken place since 1972, the beginning of martial law in the Philippines. President Aquino appointed a highly respected Filipino lawyer to serve as its chairman, Senator José W. Diokno. Senator Diokno crafted the specific mandate of the committee, which limited its investigations to abuses committed by “government officers or their agents, or by persons acting in their stead or under their orders.” This limitation was established in the belief that violence perpetrated by the guerrilla forces constituted common crimes and could be dealt with directly by the courts.

But the seven-person committee was created without a staff or a budget and was quickly overwhelmed by the large volume of complaints, mostly pertaining to events of the past. The political context was particularly limiting: some military officers had become popular heroes for their part in the coup against Marcos, and the armed forces continued their war against rebels. Military intransigence and other political constraints slowed down the committee’s work, and then the chair sadly died from cancer less than a year into its work. In January 1987, much of the rest of the committee resigned after the army attacked a peaceful demonstration in Manila, killing several civilians. The committee’s work was thus cut short and nothing definitive produced, despite a year of investigation and the committee’s filing a number of high-level cases in court.

### **Nepal: Commission on Inquiry to Find the Disappeared Persons during the Panchayat Period, 1990–1991**

The interim government of Prime Minister Krishna Prasad Bhattarai established two commissions of inquiry for Nepal in 1990 to inquire into allegations of torture, disappearances, and extrajudicial executions that had taken place under the Panchayat System from 1961 to 1990. The first commission was dissolved soon after it was appointed; the chair of the commission was seen as a collaborator with the prior regime and was not accepted as credible, leading the other two members, representatives of human rights groups, to resign. A second commission was then appointed, the Commission on Inquiry to Find the Disappeared Persons during the Panchayat Period, which also included prominent human rights representatives.

The commission was given the mandate of investigating and identifying the final places of detention of those who disappeared, and of identifying the victims. It succeeded in investigating about one hundred cases, although it had no powers to name perpetrators or subpoena officials, and the police were generally unresponsive to the commission’s requests for information.<sup>27</sup> The commission completed its two-volume report in 1991. Over the next few years,

Amnesty International and local human rights groups repeatedly urged the government to publish the commission's report and ensure that any persons implicated in human rights violations be brought to justice.<sup>28</sup> The report was finally released to the public in 1994, although few of its recommendations have been implemented.

Also in 1990, the government created a separate and better-known commission to specifically investigate the abuses against the popular movement that took place during two months in early 1990. Widely known as the Mallik Commission after the judge who headed it, it concluded that 45 people were killed and 23,000 injured during this fifty-day movement.<sup>29</sup> Neither of these two commission reports led to trials for the alleged perpetrators.

### **Chad: Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, His Accomplices and/or Accessories, 1991–1992**

On December 29, 1990, one month after coming to power, the new president of Chad, Idriss Déby, announced by presidential decree the creation of a Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, His Accomplices and/or Accessories. The decree called on the commission, among other things, “to investigate the illegal imprisonments, detentions, assassinations, disappearances, tortures and practices of acts of barbarity, the mistreatment, other attacks on the physical or mental integrity of persons, and all violations of human rights and illicit trafficking in narcotics” and “to preserve in their present condition the torture chambers and equipment utilized.”<sup>30</sup>

The commission was authorized to collect documentation, take testimony, and confiscate material as necessary for “elucidating the truth.” The decree appointed twelve individuals to serve as members of the commission, including two magistrates, four officers of the judicial police, two civil administrative officers, and other clerks and secretaries, with the first deputy prosecutor serving as president. In addition to investigating human rights violations, the commission was also directed to look into the embezzlement of state funds by former president Hissène Habré and his associates.

Owing to a shortage of office space, the commission was forced to set up its headquarters in the former secret detention center of the security forces, where some of the worst of the torture and killings had taken place, thus deterring many former victims from coming to give testimony. The commission was handicapped by a lack of resources. The commission's report describes some of its challenges:

[L]ack of transport . . . paralyzed the Commission for a considerable time. At the start, the Commission was furnished two small urban automobiles, a 504 and a small Suzuki, whereas all-terrain vehicles were actually required for travel to the provinces and the outskirts of N'Djaména.

On 25 August 1991 a Toyota all-terrain vehicle was put at the disposal of the Commission. But during the events of 13 October 1991, unfortunately, the Toyota and the little Suzuki were taken off by combatants. A month later the Toyota was recovered, but the Suzuki was not found until 3 January 1992. . . . This is why the Commission was unable to send investigators to the interior of the country during the entire initial period.<sup>31</sup>

The report, published in May 1992, surprised many as regards its detail, and in its proof of the involvement of foreign governments in the funding and training of the worst violators. Jamal Benomar, then director of the Human Rights Program of the Carter Center, was at the ceremony where the report was released, and described the response:

The findings were shocking: at least 40,000 were killed by the security forces during Habré's regime. Detailed evidence was presented about Habré's personal involvement in the torture and killing of prisoners. The diplomatic corps present at the ceremony was shocked to hear that the investigation uncovered the fact that members of the security service, the DDS [Directorate of Documentation and Security], who carried out all the killings and other abuses, were trained until the collapse of Habré's regime in December 1990 by U.S. personnel both in the USA and N'Djaména. The DDS received a monthly payment of 5 million FCFA from the U.S. government. This amount had doubled since 1989. Iraq also was named as a contributor to the DDS budget, along with France, Zaire and Egypt. A U.S. advisor worked closely with the DDS director at the DDS headquarters where political prisoners were tortured and killed daily.<sup>32</sup>

U.S. involvement in Chad had been discovered by Amnesty International several years earlier, but the fact that the United States was directly involved in this scale of abuse was "hard to believe, even for some in the international human rights community," according to Benomar.<sup>33</sup>

The government in place since Habré, under President Déby, continued to commit serious abuses, and from the start the government's motivation for establishing a truth commission was questioned. Despite the many years of U.S. support for the Habré regime, one U.S. State Department official, when asked about the commission, said, "Wasn't that just Déby proving that Habré was an SOB?"<sup>34</sup>

The Chadian truth commission was the first to name names of perpetrators and the only one to date to publish photographs of those named. Some high officials in the new government were included in the list. However, the report's recommendations, including vetting and prosecution of those named, were largely ignored by the government. Only in 2005, following a report by Human Rights Watch, did the government suggest they would take some action. Meanwhile, the government declared a lack of resources to publish the

report, and the former commission chair arranged for publication with a French publishing house.<sup>35</sup> While very few people in Chad have read the report, some of its main findings—such as the number of persons killed—are widely cited by victims groups and others.<sup>36</sup>

Years after its release, the commission report unexpectedly took on new importance as rights advocates turned to it as a primary source of information in an effort to prosecute Habré at the international level. It was still the only detailed record of rights crimes under Habré, and was thus critical in providing leads to witnesses for a trial.<sup>37</sup>

### **Sri Lanka: Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons, 1994–1997**

In November 1994, the newly elected president of Sri Lanka, Chandrika Bandaranaike Kumaratunga, appointed three Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons with the mandate to investigate “whether any persons [had] been involuntarily removed or [had] disappeared from their places of residence” since January 1, 1988. These commissions were also directed to inquire into the present whereabouts of the disappeared persons and to judge the evidence available to bring charges against those accused of involvement. These three commissions were given identical mandates, but each covered a different area of the country, and each operated independently in their assigned area. With little collaboration between them, each interpreted its mandate slightly differently, and established different operational and methodological guidelines for its work.

The period covered by the commissions referred to both the armed conflict between government forces and the People’s Liberation Front in the South from 1987 to 1990, and the conflict between the government forces and the Liberation Tigers of Tamil Eelam in the Northeast, which began in June 1990. Human rights organizations objected to the 1988 start date, as it excluded many disappearances that took place earlier.<sup>38</sup> In addition, the conflict with the Tamil Tigers resumed during the course of the commissions’ work, with many further disappearances reported, but these too were excluded.<sup>39</sup> Commission access to the Northeast to investigate past disappearances was limited, as a result of the ongoing conflict.

The three commissions together documented over 27,000 disappearances, with a panel of commissioners listening to each complaint brought forward. After submitting their cases in writing, each deponent was called before a panel for a five- to fifteen-minute interview to answer basic questions about his or her case.<sup>40</sup> The commissions operated with the equivalent of subpoena power and called a number of officials to testify, primarily from the army, but most of these officials flatly denied accusations of involvement in abuses and insisted that all the records from the period had been destroyed.

The three commissions’ final reports were submitted to the president in September 1997. Partly in response to pressure from Amnesty International

and other rights groups, the three reports were eventually released in full to the public.<sup>41</sup> Again, the differences between the three commissions were apparent: the most substantial of the three reports, that covering the western and southern provinces, is 178 pages long, with an additional 300 pages of appendices. In contrast, the final report of the commission on the central and northwestern provinces totals just 5 pages. The third was of a quality and length between these two.<sup>42</sup> A follow-up commission was established to process those cases left unaddressed by these three commissions, headed by the chair of the commission on the western and southern provinces, Manouri Kokila Muttetuwegama.

The ongoing war weakened the impact of the commissions, especially as the president was dependent on the support of the military as the war continued and thus apparently unwilling to criticize or confront the armed forces' human rights record. As a result, she failed to publicly comment on the commissions' reports, did not push for prosecution of perpetrators who were identified, and was slow to address the commissions' recommendations. Financial reparations have been awarded to the families of a number of the victims listed in the commissions' reports, although victims' advocates were frustrated with the small sums paid and the slow implementation of the program.

Over time, the work of the commissions did contribute to the prosecution of some alleged perpetrators. Amnesty International reported in 1999 that

[i]nvestigations into . . . past human rights violations, including cases recommended for further investigation by the three presidential commissions of inquiry . . . continued. According to the Attorney General's department, investigations into 485 of the 3,861 such cases had been completed by mid-October [1998] and 150 alleged perpetrators had been charged in the High Court.<sup>43</sup>

### **Ecuador 1: Truth and Justice Commission, 1996–1997**

There were repeated calls for investigations, prosecutions, and reparations for abuses in Ecuador that took place after a civilian government replaced a military regime in 1979. Responding to these demands, the Ministry of Government and Police created a Truth and Justice Commission in September 1996.<sup>44</sup>

The commission was composed of seven members: one was a representative of the Ministry of Government and Police, three were representatives named by international human rights organizations then working in the country, and three were named by national human rights organizations. The commission was authorized to receive testimony pertaining to human rights violations since 1979, carry out investigations, and, as appropriate, submit evidence to the judiciary. It was given one year to conclude its investigations and report, with the possibility of an extension.<sup>45</sup>

After three months, the commission had received information on almost three hundred cases, and had investigated scores of unmarked graves.<sup>46</sup> Yet

despite the government's initial commitment to provide the necessary support, commission members expressed frustration in the lack of resources and personnel.<sup>47</sup> In February 1997, just five months after it was established, the commission ceased operations. Amnesty International wrote that the failure of the commission to publish any findings "consolidated the impunity surrounding hundreds of cases of torture, disappearances and killings."<sup>48</sup>

### **Nigeria: Human Rights Violations Investigation Commission, 1999–2002**

After fifteen years of military rule, Olusegun Obasanjo was elected president of Nigeria in early 1999. Shortly after taking office, he created a Human Rights Violations Investigation Commission in June 1999. Its members were appointed by President Obasanjo, with a highly respected retired judge, Chukwudifu Oputa, serving as chair.

The commission started off with a very broad mandate and initially was given just ninety days to complete its task. Its mandate called on it to

ascertain or establish the causes, nature and extent of human rights violations or abuses with particular reference to all known or suspected cases of mysterious deaths and assassinations or attempted assassinations committed in Nigeria between the 1st day of January 1984 and the 28th of May, 1999.<sup>49</sup>

The Commission first interpreted "human rights violations or abuses" very widely, including cases of dismissal from employment without due compensation. When it first began to accept statements, in just a few weeks' time the commission received close to 10,000 written submissions complaining of violations; it was estimated that 9,000 of these pertained to labor disputes.

After due reflection by the commission, however (and after hosting a retreat with former members of the truth commissions of Guatemala, Chile, and South Africa), the commission reevaluated its plan, refocusing its work on gross violations of human rights.<sup>50</sup> At the commission's request, President Obasanjo also extended its working period, allowed it several months for preparation, and extended the period that it would cover back to 1966, the date of the first military coup in Nigeria. (The commission's initial cutoff date of 1984, the year when the country was last under a civilian government, had been criticized by human rights organizations for excluding the three years that President Obasanjo himself had been the military head of state in the late 1970s.) President Obasanjo expressed strong support for the commission's work and pledged to appear before the commission to respond to allegations if he was called upon.

The commission was also mandated to "identify the person or persons, authorities, institutions or organizations which may be held accountable" for

the abuses under investigation, and to “determine whether such abuses or violations were the product of deliberate State policy or the policy of any of its organs or institutions or—whether they were the acts of any political organization, liberation movements or other groups of individuals.”<sup>51</sup>

In time, the panel gained an extraordinary level of public interest and support, largely through its closely watched public hearings. Broadcast live on television daily and watched by a great percentage of the Nigerian public, the panel’s work seemed to reach all levels of society. It held hearings almost full-time for over a year, traveling around the country and calling forward victims and accused persons in a wide range of events. While the commission held subpoena power, it rarely used it, and most of those accused came forward voluntarily to answer to the charges against them. In a big disappointment regarding the commission’s work, it was not able to question three former heads of state, two of whom obtained court injunctions to block subpoenas.

The panel’s success was especially striking given the limited resources it had at its disposal: just \$450,000 in grants from the Ford Foundation, which covered the cost of the hearings. Its small number of professional staff, totaling about a dozen persons, were on loan from government agencies; the commission also turned to non-governmental organizations for expertise and assistance in strategic planning. Its limited resources prevented it from undertaking investigations or corroborating cases other than the questioning that took place at the hearings. In response to some of the reports it was receiving, it asked the inspector general of the police to create a special unit to investigate cases in which evidence suggested that prosecution might be warranted. Approximately thirty-five cases were forwarded to this unit by the commission for further investigation.

The commission submitted its report to the president in May 2002, but the president refused to officially release it to the public, despite pressure to do so over the next several years. Meanwhile, the case brought by two former military heads of state, challenging the right of the commission to compel them to testify, resulted in a Supreme Court decision in January 2003 that some read as questioning the constitutionality of the commission’s creation and its work as a whole. Many used this decision to argue that the government could not officially release the report or act on its recommendations. In fact, the decision was more narrowly focused on its subpoena powers only, and legal scholars have insisted that the decision should not prevent the report from being officially released, distributed, and acted on.<sup>52</sup>

Finally, in January 2005, after pushing for the release of the report for over two and a half years, several civil society organizations independently released the report by placing it on the internet.<sup>53</sup> These groups, the Nigerian Democratic Movement, based in Washington, DC, in conjunction with the Civil Society Forum in Nigeria, noted that the report was already technically in the public domain, but that the government was only unwilling to make it more widely available.

## Uruguay 2: Peace Commission, 2000–2003

A Peace Commission was created in Uruguay by the newly elected president, Jorge Batlle, in August 2000. It was directed to “receive, analyze, classify, and gather together information regarding the forced disappearances that occurred during the *de facto* regime” that was in power from 1973 to 1985. The commission was at first seen as representing a new opening into the issue of the disappeared after years of neglect and official denial, but interest in it lessened when it became clear that its work would be fairly confined. With six commissioners and only one administrative secretary as staff, the commission had few powers or resources to investigate individual cases in depth.

The commission released its final report in April 2003, with details of thirty-eight persons who had been disappeared, including thirty-two Uruguayans and six Argentinians. Of these, twenty-five were reported as having been killed, their remains burned and disposed of in a nearby river. After the publication of the report, the government sent proposals to Parliament on the commission’s recommendations, including a plan for reparations. However, the armed forces’ leaders refuse to acknowledge abuses or to apologize.

The Peace Commission was given no role in recommending or providing evidence for the prosecution of accused perpetrators. In the years since, some slow progress has been made in this area, although hampered by a 1986 amnesty law. In September 2007, the courts approved the trial of former president Juan María Bordaberry and his foreign minister, accused of involvement in the deaths of four political opponents in 1976. In February 2010, Bordaberry was convicted of these crimes and sentenced to thirty years in prison.

## Panama: Truth Commission, 2001–2002

Ten years after the fall of the government of Manuel Noriega and the U.S. invasion of Panama, the legacy of years of authoritarian rule remained unsettled in the country. In late 1999, unmarked graves were discovered on the site of an old army base near Panama City’s main airport. These graves, believed to contain the remains of opposition activists murdered during the period of military rule, were uncovered after three soldiers confessed to their priests about their existence.

In response to growing public calls for an investigation, in January 2001 President Mireya Moscoso established a Panama Truth Commission through executive decree. The commission was mandated to examine human rights violations in Panama that were “committed during the military regime,” from the *coup d’état* of October 1968 to late 1989. National and international human rights organizations provided assistance and information about human rights violations, with a particular focus on disappearances. While initially given a six- to nine-month mandate, the commission received a six-month extension, releasing its report in April 2002. After the commission submitted its report, it was effectively converted into a non-governmental organization, still called the



Panama Truth Commission, in order to continue its investigations and undertake additional exhumations of remains.

### **Federal Republic of Yugoslavia: Commission for Truth and Reconciliation, 2002–2003**

After years of war in the Balkans that resulted in the breakup of the former Yugoslavia into several independent states, the death of as many as 200,000 persons and the displacement of millions, the president of the Federal Republic of Yugoslavia, Slobodan Milošević, was voted out of office in late 2000. Several months later, he was arrested and charged with abuse of power and corruption, and then, in July 2001, transferred to The Hague to face charges of crimes against humanity, war crimes, and genocide before the International Criminal Tribunal for the former Yugoslavia (ICTY).

In March 2001, newly elected president Vojislav Koštunica announced the creation of the Commission for Truth and Reconciliation. This pertained to the Federal Republic of Yugoslavia, which was constituted of the republics of Serbia and Montenegro. With little consultation on the mandate or membership of the commission, President Koštunica directed the commission to outline its own terms of reference. Although the commission publicly circulated a draft work program for comment, there was little sense of ownership or support from the public or civil society groups. The commission formally began its work in February 2002, with three years to complete its investigations and submit a report. From the start, the commission said that it would be committed to fully cooperating with the ICTY, and discussed the idea of holding regional hearings and taking statements from throughout the former Yugoslavia, given that most victims of the war were outside of the now much smaller Federal Republic's borders.

The commission met with controversy from the start, however, as two of its members resigned soon after appointment, and civil society organizations throughout the former Yugoslavia questioned whether it would undertake a serious investigation. The commission was generally perceived as being too close to President Koštunica. National and international organizations pushed it to expand and diversify its membership, which it eventually did, but not to the satisfaction of its critics. The commission did hire initial staff and receive indications of interest by independent international donors, but in the end it achieved very little. It did not take statements from victims, hold hearings, or undertake any investigations, as far as is known. The general perception of observers was that neither the commission nor the government had the political will for a serious inquiry into past truths, and opposition by human rights organizations made the possibility of a fruitful truth-seeking endeavor ever more remote. Finally, when the Federal Republic of Yugoslavia was transformed into Serbia and Montenegro in early 2003, the commission was effectively annulled, since its existence relied on a mandate from the Federal Presidency, an office eliminated with the end of the Federal Republic. The

commission was not reinstated by the new government, thus officially ending this relatively weak and ineffective exercise in truth-seeking.

Over the following years, a number of other initiatives to document the truth of events in the former Yugoslavia were undertaken. In particular, a civil society initiative to create a regional truth commission gained momentum and considerable interest throughout the former Yugoslavia.

### **Democratic Republic of the Congo: Truth and Reconciliation Commission, 2004–2006**

The Inter-Congolese Dialogue, a peace conference that took place in Pretoria, South Africa, brought together hundreds of participants representing the Congolese government, the political opposition, rebel groups, and civil society. The final agreement, referred to as the Sun City Accord and signed in December 2002, included provisions for a truth commission.<sup>54</sup> This was further enshrined in the April 2003 Transitional Constitution, which explicitly mandates the establishment of a Truth and Reconciliation Commission. While this included a stipulation that the commission should be created within thirty days, disagreements on its mandate slowed the process. Although continued violence raised doubts about whether the commission could undertake a serious inquiry, legislation creating the commission was finally passed on July 30, 2004. The commission was given two years, until the end of the transitional government on July 30, 2006, to conclude its work.

Unfortunately, the commission's work, membership, and reach were limited or problematic from the start. Before the commission's terms of reference had been agreed, commissioners were selected in 2003 by the respective parties that signed the accord. Unfortunately, they were selected without consultation and without any agreement on criteria for membership, according to observers. The commission was chaired by a civil society representative, as was indicated in the peace accord, with thirteen other members appointed from civil society. But five members were directly appointed by the belligerent groups, another by the government, and one by the unarmed opposition. While the commission set up representation throughout the country and held many trainings and meetings with local organizations, it never embarked on a serious truth-seeking effort, focusing instead on advancing a notion of reconciliation and conflict resolution. Furthermore, as the commission's temporal mandate extended from 1960 through to the end of its own operating period in 2006, the commission was sometimes asked to resolve ongoing disputes, such as between political parties, and even joined a public education campaign to promote free and fair elections.<sup>55</sup>

When the commission concluded its work at the end of June 2006, an assessment meeting was held to review its work. The meeting resulted in unanimous agreement that a new truth commission should be created after the 2006 elections, presuming that the Congolese public agreed. In February 2007, a proposal for a new Truth and Reconciliation Commission was drafted,

led primarily by the former chair of the first truth commission, but it met a lukewarm response from donors and policymakers, perhaps seeming too similar to the first commission. Conflict has continued in eastern Congo, and the many other demands on the country—including other transitional justice initiatives, such as security sector reform—have not seen a new truth commission as a priority.

## Appendix 2

### Charts

*Chart 1 Forty Truth Commissions (in Chronological Order)*

<i>Country</i>	<i>Name of truth commission</i>	<i>Title of report and publication date<sup>1</sup></i>	<i>Years of operation</i>	<i>Dates covered</i>	<i>Created by</i>
Uganda 1	Commission of Inquiry into the Disappearance of People in Uganda since the 25th January, 1971	<i>Report of the Commission of Inquiry into the Disappearance of People in Uganda since the 25th January, 1971</i> (1975)	1974	January 25, 1971–1974	President
Bolivia	National Commission of Inquiry into Disappearances	Did not complete report	October 1982–mid-1984	1967–1982	President
Argentina	National Commission on the Disappearance of Persons	<i>Nunca Más (Never Again)</i> (1985)	December 1983–September 1984	1976–1983	President
Uruguay 1	Investigative Commission on the Situation of Disappeared People and its Causes	<i>Final Report of the Investigative Commission on the Situation of the Disappeared People and Its Causes</i> (1985)	1985	1973–1982	Parliament
Zimbabwe	Commission of Inquiry	Report was not released	1985	1980–1985	President
Uganda 2	Commission of Inquiry into Violations of Human Rights	<i>The Report of the Commission of Inquiry into Violation of Human Rights: Findings, Conclusions, and Recommendations</i> (October 1994)	1986–1995	December 1962–January 1986	President

Philippines	Presidential Committee on Human Rights	Did not complete report	1986–1987	1972–1987	President
Chile 1	National Commission on Truth and Reconciliation (Rettig Commission)	<i>Report of the National Commission on Truth and Reconciliation</i> (1991)	May 1990–February 1991	September 11, 1973–March 11, 1990	President
Nepal	Commission on Inquiry to Find the Disappeared Persons during the Panchayat Period	<i>Report of the Commission of Inquiry to Find the Disappeared Persons during the Panchayat Period</i> (1991)	1990–1991	1961–1990	Interim government
Chad	Commission of Inquiry into the Crimes and Misappropriations Committed by the Ex-President Habré, His Accomplices and/or Accessories	<i>Report of the Commission of Inquiry into the Crimes and Misappropriations Committed by the Ex-President Habré, His Accomplices and/or Accessories</i> (May 7, 1992)	1991–1992	1982–1990	President
Germany	Commission of Inquiry for the Assessment of History and Consequences of the SED Dictatorship in Germany; Commission of Inquiry on Overcoming the Consequences of the SED Dictatorship in the Process of German Unity	<i>Bericht der Enquete-Kommission</i> (1995 and 1999)	1992–1994; 1995–1998	1945–1995	Parliament

*Chart 1 (continued)*

<i>Country</i>	<i>Name of truth commission</i>	<i>Title of report and publication date<sup>1</sup></i>	<i>Years of operation</i>	<i>Dates covered</i>	<i>Created by</i>
El Salvador	Commission on the Truth for El Salvador	<i>From Madness to Hope</i> (March 1993)	July 1992–March 1993	January 1980–July 1991	Peace agreement
Sri Lanka	Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons (three geographically distinct commissions) <sup>2</sup>	<i>Final Reports of the Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons</i> (September 1997; three distinct final reports, plus interim reports from each)	November 1994–September 1997	January 1, 1988–November 13, 1994	President
Haiti	National Commission for Truth and Justice	<i>Si M Pa Rele . . . (If I Don't Cry Out . . .)</i> (February 1996)	April 1995–February 1996	September 29, 1991–October 15, 1994	President
South Africa	Truth and Reconciliation Commission	<i>Truth and Reconciliation Commission of South Africa Report</i> (Vols. 1–5: 1998; Vols. 6 and 7: 2003)	December 1995–2002	1960–1994	Parliament
Ecuador 1	Truth and Justice Commission	Did not complete report	September 1996–February 1997	1979–1996	President

Guatemala	Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan People to Suffer (Historical Clarification Commission)	<i>Guatemala: Memory of Silence</i> (February 1999)	August 1997–February 1999	1962–1996	Peace agreement
Nigeria	Human Rights Violations Investigation Commission (Oputa Panel)	<i>Human Rights Violations Investigation Commission Report</i> (Submitted May 2002; unofficially published 2005)	June 1999–May 2002	January 19, 1966–May 28, 1999	President
Uruguay 2	Peace Commission	<i>Final Report of the Peace Commission</i> (April 2003)	2000–2003	1973–1985	President
South Korea 1	Presidential Truth Commission on Suspicious Deaths of the Republic of Korea	<i>A Hard Journey to Justice: First Term Report</i> (2004)	2000–2004	1975–1987	President
Panama	Panama Truth Commission	<i>Final Report of the Panama Truth Commission</i> (April 2002)	January 2001–April 2002	October 1968–December 1989	President
Peru	Truth and Reconciliation Commission	<i>Final Report of the Truth and Reconciliation Commission</i> (August 2003)	July 2001–August 2003	May 1980–November 2000	President



*Chart 1 (continued)*

<i>Country</i>	<i>Name of truth commission</i>	<i>Title of report and publication date<sup>1</sup></i>	<i>Years of operation</i>	<i>Dates covered</i>	<i>Created by</i>
Federal Republic of Yugoslavia	Commission for Truth and Reconciliation	Did not complete report	March 2001–2003	1980–2000	President
Ghana	National Reconciliation Commission	<i>The National Reconciliation Commission Report</i> (October 2004; released April 2005)	January 2002–October 2004	March 1957–January 1993	Parliament
Timor-Leste	Commission for Reception, Truth and Reconciliation	<i>Chega! The Report of the Commission for Reception, Truth and Reconciliation</i> (October 2005)	February 2002–October 2005	April 25, 1974–October 25, 1999	Created through regulation of the UN mission in East Timor
Sierra Leone	Truth and Reconciliation Commission	<i>Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission</i> (2004)	July 2002–October 2004	1991–2002	Peace agreement followed by national legislation
Chile 2	National Commission on Political Imprisonment and Torture (Valech Commission)	<i>Report of the Commission</i> (November 2004); <i>Complementary Report</i> (May 2005)	September 2003–June 2005	September 11, 1973–March 10, 1990	President

Paraguay	Truth and Justice Commission	<i>Final Report: Anive baguã oïko (Never Again)</i> (August 2008)	October 2004–August 2008	1954–2003	Parliament
Morocco	Equity and Reconciliation Commission	<i>Final Report of the Equity and Reconciliation Commission</i> (January 2006)	January 2004–January 2006	1956–1999	Royal decree by king
Greensboro, North Carolina, USA	Greensboro Truth and Reconciliation Commission	<i>Greensboro Truth and Reconciliation Commission Report</i> (May 2006)	June 2004–May 2006	Events around November 3, 1979	Civil society, with mayoral involvement in member selection
Democratic Republic of the Congo	Truth and Reconciliation Commission	Administrative report only: <i>Final Report of Activities from July 2003 to February 2007</i> (February 2007)	July 2004–June 2006	1960–2006	Peace agreement followed by national legislation
Indonesia and Timor-Leste	Commission for Truth and Friendship	<i>From Remembering Comes Hope: Final Report of the Commission for Truth and Friendship</i> (July 2008)	August 2005–July 2008	Events prior to and immediately after the popular consultation in 1999	Bilateral agreement between governments of Indonesia and Timor-Leste
South Korea 2	Truth and Reconciliation Commission, Republic of Korea	Expected 2010	December 2005–present	1905–2005	Parliament

*Chart 1 (continued)*

<i>Country</i>	<i>Name of truth commission</i>	<i>Title of report and publication date<sup>1</sup></i>	<i>Years of operation</i>	<i>Dates covered</i>	<i>Created by</i>
Liberia	Truth and Reconciliation Commission	<i>Consolidated Final Report</i> (June 30, 2009)	February 2006–December 2009	January 1979–October 2003	Peace agreement followed by national legislation
Ecuador 2	Truth Commission	<i>Without Truth there is no Justice</i> (May 2010)	January 2008–2010	1984–2008	President
Mauritius	Truth and Justice Commission	Ongoing	February 2009–present	1638–present	Parliament
Solomon Islands	Truth and Reconciliation Commission	Ongoing	April 2009–present	January 1, 1998–July 23, 2003	Parliament
Togo	Truth, Justice and Reconciliation Commission	Ongoing	May 2009–present	1958–2005	President
Canada	Truth and Reconciliation Canada	Ongoing	July 2009–present	1874–1996	Parliament
Kenya	Truth, Justice, and Reconciliation Commission	Ongoing	August 2009–present	December 12, 1963–February 28, 2008	Peace agreement followed by national legislation

**Notes**

1 Reports are generally listed here in English, but in some cases the full report is only available in Arabic, French, German, Korean, or Spanish. In most cases, at least some sections, or a shortened version of the full report, are available in English. For further information, see “Bibliography and Other Resources: Truth Commission Reports.”

2 In Sri Lanka, there were three geographically distinct commissions that operated simultaneously and with identical mandates. When these three commissions ended, a follow-up body was formed to close the cases outstanding, called the Presidential Commission of Inquiry into Involuntary Removals and Disappearances.

Chart 2 Examples of Other Official or Semi-official Inquiries into the Past<sup>1</sup>

	<i>Name of investigative body</i>	<i>Title of report; publication date</i>	<i>Years of operation</i>	<i>Period investigated</i>	<i>Description of investigative body</i>
United States	Commission on Wartime Relocation and Internment of Civilians	<i>Personal Justice Denied</i> (1982; reprinted 1992)	1981–1982	1942–1945	Created by Congressional Committee on Interior and Insular Affairs
Canada	Royal Commission on Aboriginal Peoples	<i>Looking Forward, Looking Back</i> (November 1996)	1991–1996	Pre-1500–1996	Created by government to recommend improved policies towards indigenous communities; included historical inquiry
Rwanda	International Commission of Investigation on Human Rights Violations in Rwanda since October 1, 1990	<i>Report of the International Commission of Investigation on Human Rights Violations in Rwanda since October 1, 1990</i> (March 1993)	1993	October 1990–1993	Composed of four international non-governmental organizations; given quasi-official status and some cooperation from authorities
Honduras	National Commission for the Protection of Human Rights in Honduras	<i>The Facts Speak for Themselves: Preliminary Report on the Disappeared in Honduras 1980–1993</i> (January 1994)	1993	1980–1993	Inquiry undertaken at initiative of government human rights ombudsman

*Chart 2 (continued)*

	<i>Name of investigative body</i>	<i>Title of report, publication date</i>	<i>Years of operation</i>	<i>Period investigated</i>	<i>Description of investigative body</i>
United States	Advisory Committee on Human Radiation Experiments	<i>Report of the Advisory Committee on Human Radiation Experiments</i> (1995)	1994–1995	1944–1974	Established by U.S. energy secretary to inquire into radiation experiments on unknowing patients and prisoners
Australia	Human Rights and Equal Opportunity Commission	<i>Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families</i> (May 1997)	1996–1997	1910–1975	Special inquiry undertaken by government's permanent human rights monitoring body

Notes

1 See discussion of these inquiries in Chapter 2.

Chart 3 What Rights Violations Do Truth Commissions Cover? A Selected List

	<i>Focus of investigation: Key language in terms of reference</i>	<i>Principal acts documented by the commission (selected list)</i>	<i>Significant acts or aspects not investigated by commission, or not included in its report</i>
<b>Argentina</b>	“Clarify the acts related to the disappearance of persons” and, if possible, determine the location of their remains.	<ul style="list-style-type: none"> <li>disappearances (kidnapping with no reappearance of body)</li> </ul>	<ul style="list-style-type: none"> <li>confirmed killings, with body found and identified</li> <li>temporary disappearances, when person was released</li> <li>forced exile</li> <li>acts of violence by armed opposition</li> </ul>
<b>Chile</b>	“Disappearance after arrest, execution, and torture leading to death committed by government agents or people in their service, as well as kidnappings and attempts on the life of persons carried out by private citizens for political reasons.”	<ul style="list-style-type: none"> <li>disappearances</li> <li>torture resulting in death</li> <li>executions by government forces</li> <li>use of undue force leading to death</li> <li>death of combatants and non-combatants in the firefight immediately after coup</li> <li>killings by armed opposition groups</li> </ul>	<ul style="list-style-type: none"> <li>torture not resulting in death (torture practices were described, but survivors were not counted as victims)</li> <li>illegal detention, if released</li> <li>forced exile</li> </ul>
<b>El Salvador</b>	“Serious acts of violence . . . whose impact on society urgently demands that the public should know the truth.”	<ul style="list-style-type: none"> <li>massacres by armed forces</li> <li>extrajudicial executions by agents of the state</li> <li>assassinations by death squads</li> <li>disappearances</li> <li>torture by government forces</li> <li>killings by armed opposition</li> <li>kidnappings by armed opposition</li> </ul>	<ul style="list-style-type: none"> <li>structure of death squads</li> <li>international involvement in war</li> </ul>

*Chart 3 (continued)*

<i>Focus of investigation: Key language in terms of reference</i>	<i>Principal acts documented by the commission (selected list)</i>	<i>Significant acts or aspects not investigated by commission, or not included in its report</i>
<p><b>South Africa</b></p> <p>“Gross violations of human rights,” defined as “the killings, abduction, torture, or severe ill-treatment of any person,” or the “conspiracy, incitement, instigation, or command” of such acts “which emanated from conflicts of the past . . . within or outside of the Republic, and the commission of which was advised, planned, directed, commanded or ordered by any person acting with a political motive.”</p>	<ul style="list-style-type: none"> <li>targeted killings by the state inside and outside the country</li> <li>torture and abuse by police</li> <li>raids into neighboring countries to attack opposition</li> <li>killings, primarily by bombs and land mines, by the armed opposition</li> <li>abuses in detention camps of the armed opposition outside South Africa</li> <li>violence by private individuals for political purposes</li> </ul>	<ul style="list-style-type: none"> <li>the forced removal and displacement of millions of people based on race</li> <li>everyday policies and practices of apartheid that did not result in killings, abduction, torture, or severe ill-treatment as defined by the commission</li> </ul>
<p><b>Guatemala</b></p> <p>“Clarify with all objectivity, equity and impartiality the human rights violations and acts of violence that have caused the Guatemalan population to suffer, connected with the armed conflict.”</p>	<ul style="list-style-type: none"> <li>massacres and arbitrary killings by government forces and armed opposition</li> <li>disappearances and kidnappings</li> <li>acts of violence by landowners or business persons with the support of state forces</li> <li>massive forced displacement and militarized resettlement by the state</li> <li>forced recruitment by the guerrillas</li> </ul>	<p>(No significant acts excluded)</p>
<p><b>Peru</b></p> <p>The following acts by “terrorist organizations, state agents, or paramilitary groups: a) murders and abductions; b) forced disappearances; c) torture and serious injuries; d) violations of collective rights of the country’s Andean and native communities; e) other crimes and serious violations of the rights of individuals.”</p>	<ul style="list-style-type: none"> <li>arbitrary executions, disappearances, and massacres</li> <li>sexual violence</li> <li>abductions and the taking of hostages</li> <li>the violation of collective rights</li> </ul>	<p>(No significant acts excluded)</p>

**Ghana**

Establish an “accurate, complete and historical record of violations and abuses of human rights inflicted on persons by public institutions and holders of public office during periods of unconstitutional government.”

- killings, abductions and disappearances
- detention, torture and ill-treatment
- illegal seizure of properties

(No significant acts excluded)

**Timor-Leste**

Violations of international human rights standards, violations of international humanitarian law, and criminal acts committed within the context of the political conflicts in Timor-Leste.

- deaths due to deprivation
- extrajudicial killings
- disappearances
- displacement
- arbitrary detention, torture and ill-treatment
- sexual violence

(No significant acts excluded)

**Sierra Leone**

“Violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone.”

- forced displacement
- killings and massacres
- amputations of limbs
- recruitment and use of child soldiers
- sexual slavery of girls and women

(No significant acts excluded)

**Morocco**

“Assess, research, investigate, arbitrate and make recommendations about gross human rights violations . . . (including) forced disappearances, arbitrary detention, torture, sexual abuse and deprivation of the right to life, as a result of unrestrained and inadequate use of state force and coerced exile.”

- assassinations and torture
- arbitrary killings in riots and popular uprisings
- arbitrary detention and long-term imprisonment
- the violation of due process
- sexual violence against detainees
- the violation of collective rights
- insufficient attention to widespread violations in Western Sahara
- criticized for not sufficiently investigating a major political killing in 1965



*Chart 4 A Comparison of Resources and Responsibilities<sup>1</sup>*

<i>Country</i>	<i>Total number of cases or statements presented to commission<sup>2</sup></i>	<i>Number of cases investigated in depth<sup>3</sup></i>	<i>Length of commission's work</i>	<i>Period of time covered by commission</i>	<i>Number of commissioners (all national members unless indicated)</i>	<i>Number of staff<sup>4</sup></i>	<i>Budget (in U.S. dollars)</i>
Uganda 1	308 disappeared	N/A <sup>5</sup>	1 year	3.5 years	4	N/A	N/A
Bolivia	155 disappeared	0 <sup>6</sup>	2–3 years	15 years	8	6	N/A
Argentina	7,000 statements received. Including NGO records, documented 8,960 disappeared	0 Confirmed location of 365 former torture centers	9 months	7 years	13	60	N/A
Uruguay 1	164 disappeared	0	7 months	11 years	9	N/A	N/A
Zimbabwe	N/A	N/A	Several months	2 years	1	N/A	N/A
Uganda 2	608 deponents	0	9 years	24 years	6	69	Approx. \$700,000
Philippines	N/A	N/A	1 year (disbanded before completion)	15 years	7	N/A	N/A
Chile 1	3,428 disappeared or killed, or kidnapped by opposition	2,920	9 months	16.5 years	8	60	\$1 million
Nepal	N/A	Approx. 100	Approx. 1 year	30 years	3	N/A	N/A
Chad	3,800 killed, unspecified number of victims of torture or arbitrary detention	0	10 months	8 years	12–16	N/A	N/A

Germany	Did not take individual statements or count victims; thematic focused	0	2 + 3 years	50 years	24–27	Approx. 20	N/A
El Salvador	2,000 statements received pertaining to 7,000 cases. Secondary sources identified 20,000 additional victims	32	8 months	12 years	3 (all international)	45	\$2.5 million
Sri Lanka	27,000	0	3 years	5.5 years	3 for each of three commissions	5–20 per commission	N/A
Haiti	Received 8,000 statements in relation to 8,700 victims	0	10 months	3 years	7 (4 national and 3 international)	100	\$2.5 million
South Africa	Received over 21,000 victim statements	Thousands of amnesty applications investigated, numerous special case investigations	2.5 years for most core activities; additional 3.5 years to complete amnesty hearings	34 years	17	300	\$55 million over 6 years (\$17.5 million/year at height of operations) (over 85% from government)
Ecuador I	N/A	N/A	Disbanded after 5 months	17 years	7	N/A	N/A
Guatemala	Received 7,300 statements; documented 42,000 victims (including 30,000 killed or disappeared) and 626 massacre sites	100	1.5 years	34 years	3 (international chair plus 2 national members)	200	\$9.5 million

*Chart 4 (continued)*

<i>Country</i>	<i>Total number of cases or statements presented to commission<sup>2</sup></i>	<i>Number of cases investigated in depth<sup>3</sup></i>	<i>Length of commission's work</i>	<i>Period of time covered by commission</i>	<i>Number of commissioners (all national members unless indicated)</i>	<i>Number of staff<sup>4</sup></i>	<i>Budget (in U.S. dollars)</i>
Nigeria	Received thousands of written submissions	Approx. 150 cases in public hearings	3 years	33 years	6	Approx. 12, on loan from other government offices	\$450,000 from Ford Foundation; core costs covered directly by government
Uruguay 2	N/A	38	3 years	12 years	6	1	N/A
South Korea 1	85 suspicious deaths	Made findings on 56 cases	4 years	12 years	9	97	\$9.3 million
Panama	Approx. 150	110	1.25 years	21 years	7	N/A	N/A
Peru	17,000 statements received, pertaining to 24,000 killed or disappeared	Over 50 in-depth investigations to support prosecutions, plus many others	2 years	20.5 years	12	500 staff at peak of operations	\$13.5 million (57% from government)
Federal Republic of Yugoslavia	0	0	Disbanded after 1 year	20 years	15–19	N/A	N/A
Sierra Leone	7,700 statements received, reporting 15,000 victims and 40,000 violations	Thematic research and findings	2 years	11 years	7 (4 national and 3 international)	250	\$4.7 million

Ghana	4,200 statements received	1,800 testified in public hearings, including 79 alleged perpetrators	2 years	36 years	9	115	\$3 million (66% provided by government)
Timor-Leste	7,700 statements reporting 38,000 victims and 60,000 violations	Many thematic investigations	3.5 years	25.5 years	7 (plus 28 regional commissioners)	Over 500	\$5.2 million
Chile 2	35,000 statements received	Confirmed 28,549 victims of torture or political imprisonment and 1,200 clandestine detention centers.	1.5 years	17 years	8	60 core staff; up to 100 at peak	\$3 million
Paraguay	2,059 statements received directly, including cases received by NGOs and in police archives, commission registered 9,923 victims in relation to 14,338 violations	A number of cases investigated for referral to attorney general for prosecution, and several exhumations completed.	4 years	49 years	9	140 including volunteers	Approx. \$1 million
Morocco	20,046 statements received	Investigated 742 cases of disappearance	2 years	43 years	17	Over 300	N/A
Greensboro	5 killed and 10 wounded, and contextual and historical incidents	One primary event	2 years	Events in relation to November 3, 1979	7	8	\$425,000

*Chart 4 (continued)*

<i>Country</i>	<i>Total number of cases or statements presented to commission<sup>2</sup></i>	<i>Number of cases investigated in depth<sup>3</sup></i>	<i>Length of commission's work</i>	<i>Period of time covered by commission</i>	<i>Number of commissioners (all national members unless indicated)</i>	<i>Number of staff<sup>4</sup></i>	<i>Budget (in U.S. dollars)</i>
Democratic Republic of the Congo	0	0	2 years	46 years	21	Approx. 125, mostly members of "provincial committees"	\$2 million
Indonesia and Timor-Leste	Did not receive victim statements directly; reviewed documents in relation to forced displacement and approx. 1,400 killed	0	2.5 years	Events around referendum in Timor-Leste in 1999	10 (5 Timorese, 5 Indonesian)	60	N/A
South Korea 2	11,017 cases	Ongoing	4 years, possible 2 year extension	100 years	15	240	\$15–\$20 million annually
Liberia	20,560 statements received, pertaining to 93,000 victims and 163,000 violations (forced displacement, killings, rape, other)	0	3.5 years	24.5 years	9 (all national, plus 1 to 3 international "advisors")	300	\$7.6 million (58% provided by government)
Ecuador 2	700 statements received	N/A	2.5 years	25 years	4	60	\$1.7 million

Mauritius	Ongoing	Ongoing	Expected 2–2.5 years	370 years	5 (international chair plus 4 national members)	65	N/A
Solomon Islands	Ongoing	Ongoing	Expected 1–2 years	5.5 years	5 (3 national, 2 international)	Projected 125	Projected \$5 million over 2 years
Togo	Ongoing	Ongoing	Expected 1.5–2 years	47 years	11	N/A	Projected \$4 million over 2 years
Canada	Ongoing	Ongoing	Expected 5 years (investigations and main report in first 2 years)	122 years	3	N/A	U.S.\$57 million committed by government over 5 years
Kenya	Ongoing	Ongoing	Expected 2–2.5 years	44 years	9 (6 national, 3 international)	Projected 500 (including 300 temporary statement-takers and 130 core staff)	Projected \$28 million over 2 years

Notes

- 1 Sources: commission reports, current and former commission members and staff, and secondary material.
- 2 The total number of victims is usually higher than the number reported to the commission.
- 3 The number of individual cases (such as a disappeared person or victim of torture) or events (such as a massacre) that were investigated in more depth and reported by the commission.
- 4 Number indicates maximum number during course of commission. For some commissions this includes many statement-takers employed for a shorter statement-taking period, typically three to nine months. Core staff throughout the full period may thus be less than the number indicated here.
- 5 “N/A” indicates that information is not available; the commission did not complete or did not publish a report, or information is unknown.
- 6 Some commissions focus on the overall nature and patterns of violations, but do not investigate specific cases in depth.

*Chart 5 Assessing Impact I: Reparations Following Truth Commissions: A Selected List (all amounts in U.S. dollars)*

<i>Country; year of report</i>	<i>Recommendation by truth commission (TC)</i>	<i>Reparations awarded by TC ("urgent interim reparations")</i>	<i>Reparations implemented within 3 years after TC report</i>	<i>New reparations implemented 4-6 years after TC report</i>	<i>New reparations implemented 7 or more years after TC report</i>	<i>Was reparations program a result of TC?</i>	<i>Total reparations provided and number of victims reached</i>	<i>Other comments</i>
Argentina 1984	Very general recommendation for economic assistance, study grants, social security and employment for relatives of the disappeared.	None	—	—	1991: awarded \$74 for each day in prison for all former political prisoners; later extended to those forced into exile.  1994: awarded \$220,000 to each family of nearly 9,000 disappeared.  2004: awarded \$25,000 to \$75,000 for persons victimized as minors, such as those born in prison and given to another family.	Families of all disappeared listed by TC are eligible, and its archives are a primary reference for program.  Additional victims later added.	Over \$3 billion paid by government, reaching over 16,000 former political prisoners or families of those killed or disappeared.  Additionally, approximately \$66 million for minors who were victims.	Reparations program was prompted by case in the Inter-American Court as well as large sums awarded in national court cases.

Chile 1991	Specific and detailed recommendations for pensions; education, health and housing benefits; waiver of military service.	None	1992: Lifetime monthly pension of \$345-\$482 per family, for the 4,886 total family members of the 2,723 persons disappeared or killed. Also educational and health benefits and waiver of military service.	—	2004: A second truth commission was created to address survivors of torture, resulting in new reparations program. See below.	Yes. Direct role in establishing victims list.	\$16 million per year for 4,886 family members.	Commission excluded survivors of torture in final tally of victims.
South Africa 1998, 2003	Recommended \$3,500 per year for six years to 21,000 victims; also health, education, and other benefits.	Yes: TC administered urgent interim reparations program providing \$300 to \$1,000 to many victims who had given a statement to TC.	—	2004: Single, final payment of \$3,000 to each of 21,000 victims named by TC. No additional services or benefits.	—	Yes. Reparations program only reached those on TRC list. Program was clear response to TRC, though amount much lower than recommended.	\$103 million for 21,000 victims, including urgent interim payments.	The slow implementation and low amount of reparations was one of the most contentious and strongly-criticized issues following TC.



*Chart 5 (continued)*

<i>Country; year of report</i>	<i>Recommendation by truth commission (TC)</i>	<i>Reparations awarded by TC ("urgent interim reparations")</i>	<i>Reparations implemented within 3 years after TC report</i>	<i>New reparations implemented 4–6 years after TC report</i>	<i>New reparations implemented 7 or more years after TC report</i>	<i>Was reparations program a result of TC?</i>	<i>Total reparations provided and number of victims reached</i>	<i>Other comments</i>
Peru 2003	Extensive recommendations for individual and collective reparations.	None	2005: Community- based reparations targeting dozens of the most affected villages.	2007–2009: Selected 1,400 affected communities to receive \$33,000 for infrastructure; 300 completed.	N/A <sup>2</sup>	Yes. But extensive reconsideration of TC recommenda- tions.	\$40 million from 2006 to 2009, for collective reparations only. \$5 million of this is from funds recovered from corrupt former officials.	Victims who were members of armed opposition groups are excluded from receiving reparations. Government to prioritize the elderly and those in extreme need.

Chile 2004	Specific recommendations for individual pension benefits (as implemented). In addition, recommended that children of victims receive university scholarships, and family members of victims who have since died also receive benefits.	None	2005: Lifetime monthly pension of \$190 for each of 20,000 torture survivors identified by commission. Also health, education, and housing benefits.	—	N/A	Yes. Immediate implementations of reparations program based on list of victims provided by commission.	Approx. \$45 million per year for pension benefits for 20,000 survivors of torture.
Sierra Leone 2004	Broad recommendations for healthcare, pensions, free education through secondary school, skills training, and micro-credit projects targeting victims.	None	—	2008: UN Peacebuilding Fund provided \$3 million for one year reparations program: \$100 provided to approx. 22,000 victims.	N/A	Yes. UN grant made explicit reference to TC recommendation.	\$3 million (25% of this for administration costs). Future funding for program is not clear.

*Chart 5 (continued)*

<i>Country; year of report</i>	<i>Recommendation by truth commission (TC)</i>	<i>Reparations awarded by TC ("urgent interim reparations")</i>	<i>Reparations implemented within 3 years after TC report</i>	<i>New reparations implemented 4–6 years after TC report</i>	<i>New reparations implemented 7 or more years after TC report</i>	<i>Was reparations program a result of TC?</i>	<i>Total reparations provided and number of victims reached</i>	<i>Other comments</i>
Ghana 2004	Financial reparations ranging from \$120 to \$3,500, depending on harm done; health and education benefits; pensions; the restitution of confiscated property; and symbolic measures such as apologies and memorials.	None	2006: \$1.5 million to compensate 2,500 victims, each receiving between \$200 and \$3,300.	—	N/A	Yes. Direct response to commission report.	\$1.5 million, reaching 2,500 victims.	Government was criticized for failing to implement the non-financial aspects of the recommended reparations, and for lack of clarity in who would receive reparations.
Timor- Leste 2005	Recommended collective, material, and symbolic reparations.	TC provided \$200 to those who suffered severe injury due to rights violation;	Efforts to establish the "most vulnerable" victims.	—	N/A	—	Interim reparations of \$200 to 700 survivors: total approx. \$140,000.	Interim reparations program was funded by World Bank.

Timor-  
Leste  
(cont'd)

reaching 10%  
of those who  
gave statements  
to commission.  
Also supported  
non-profit groups  
to provide direct  
services to  
survivors.

Morocco 2005	Detailed recommenda- tions and lists of qualifying recipients.	None	2006–2007: Individual reparations payments to 9,000 victims.  2007: Began free medical and psychological care for all victims.  2008: Communal reparation program instituted.	—	N/A	Yes. Reparations were a central component of TC mission, with pre- sumption that reparations would result.  Over \$4 million for communal projects, ranging from \$6,000 to \$62,000 each.  In addition, a prior panel had awarded \$100 million to over 5,000 victims, but was criticized for inequalities.	Largely funded by government. \$4 million provided by the European Union for communal reparations.
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Notes

- 1 This chart presents those commissions that have had the greatest impact on the creation of a reparations program. Other truth commissions have made recommendations for reparations, but have seen little result.
- 2 N/A (not applicable) indicates a period of time in the future, at time of writing.

*Chart 6 Assessing Impact II: Prosecutions, Vetting, Apologies, and Reforms: A Select List*

<i>Country; year of report</i>	<i>Recommends prosecutions?</i>	<i>Prosecutions result?</i>	<i>Recommends vetting?</i>	<i>Vetting results?</i>	<i>Apology or acknowledgment result from results?</i>	<i>Other initiatives or reforms result from commission?</i>
Argentina 1984	Yes. Transferred files to prosecutor.	Yes, resulting in conviction and imprisonment of five generals. Archives also support prosecutions years later.	No	No	Not immediately, but army chief acknowledged wrongs eleven years later.	Created legal category of “forcibly disappeared.”
Chile 1 1991	Yes, generally recommended prosecution and punishment for those who “transgressed the law.”	Commission report and archives used by prosecutors years later.	No	Commission’s lists quietly used to screen future high-level promotions in the military.	Yes, immediate apology by president. Five years later, apology by army chief.	Minimal implementation other than reparations: ratified some international rights treaties.
Chad 1992	Yes. Named and provided photos of military and intelligence officers to be removed from position and prosecuted.	Not domestically, but report served as critical evidence for internationals prosecutions eight years later.	Yes	No. Many of those named had joined the new government.	No	No

El Salvador 1993	No	No. Blanket amnesty passed by legislature five days after report's release.	Yes. Those named should be barred from military posts, and political positions for 10 years.	Gave support to Ad Hoc Commission recommendations for removal of many high-level military officials. Proposal to bar candidates for election was set aside.	No. Strong rejection of report by armed forces. Sixteen years later, incoming president apologizes for crimes of the civil war.	Some reforms resulted in the areas of the judiciary, police, and elsewhere, in part owing to truth commission recommendations.
South Africa 1998, 2003	Yes. TRC gave prosecutors a list of accused perpetrators, in relation to 300 cases, and urged prosecutions.	Very few prosecutions took place after TRC report; none recommended by the TRC were prosecuted.	No. Respect for "sunset clause" in transition agreement.	No	No. All parties, especially the ANC and IFP, resisted those findings which implicated them.	Parliament initially declined to commit to the recommendations. After several years, additional exhumations took place.
Guatemala 1999	No. Mandate prohibited the commission from having a "judicial aim or effect" but the commission's legal and case analyses could make prosecutions easier.	Report submitted to support international prosecutions. Few domestic prosecutions have taken place.	Not directly. Recommended a review of officers' conduct and appropriate administrative measures be taken.	No	A year after report, incoming president apologizes, five years later, next president also formally apologizes and admits state responsibility for several key massacres and assassinations.	Eventual disbandment of an abusive security force as recommended by commission. But most recommendations remain unimplemented.

*Chart 6 (continued)*

<i>Country; year of report</i>	<i>Recommends prosecutions?</i>	<i>Prosecutions result?</i>	<i>Recommends vetting?</i>	<i>Vetting results?</i>	<i>Apology or acknowledgment result from results?</i>	<i>Other initiatives or reforms result from commission?</i>
Peru 2003	Yes. 47 fully developed cases presented to prosecutor's office.	National court established for human rights cases, as recommended. Dozens prosecuted, but few convicted.	No	No	In direct response to the commission's report, president apologized for suffering caused by the state, November 2003. But military and rightist parties reject report's conclusions.	Legal recognition of "forcibly disappeared"; registry of displaced; further exhumations.
Sierra Leone 2004	No	No	No	No	In commission hearing, president refused to apologize. But some political parties and military and police representatives apologized at commission events.	Many key recommended reforms are in the process of implementation, though not always with reference to commission.
Ghana 2004	Recommends review of existing amnesty, imbedded in constitution.	No	No	No	Yes, government apology for those wronged by state actions.	Some police, military, and prison reforms slowly being addressed.

Timor-Leste 2005	Yes. Identified priority cases for prosecution and provided list of alleged perpetrators to president. Creation of international tribunal should be considered.	No	Yes. Recommends that those responsible for abuses should no longer remain in the security forces.	No	In a public hearing, apology by Timorese leaders for actions in 1974. Also, creation of second commission, which ultimately results in acknowledgement by Indonesian president for 1999 events.	Still under consideration.
Morocco 2006	No	No	No	No	No formal apology, despite recommendation. Acknowledgment in the form of reparations and general acceptance and release of report.	Other than reparations, most recommendations have not been implemented.
Paraguay 2008	Yes. Provided files to attorney general recommending prosecutions.	Yes. Several prosecutions following commission's report, including former interior minister.	Yes, recommends that those responsible for abuses should be removed from office.	Paraguay's ambassador to Argentina, who was named in a hearing, was dismissed.	Yes. President apologized in name of the State, August 2008.	Further exhumations under way; files opened to victims.



*Chart 6 (continued)*


<i>Country; year of report</i>	<i>Recommends prosecutions?</i>	<i>Prosecutions result?</i>	<i>Recommends vetting?</i> <sup>1</sup>	<i>Vetting results?</i>	<i>Apology or acknowledgment results?</i>	<i>Other initiatives or reforms result from commission?</i>
Liberia 2009	Yes. Names 44 persons to be tried domestically and 116 persons that it recommends be tried by a new special tribunal.	**	Yes. Names 49 high-level officials to be barred from elected or appointed positions, including sitting president.	One named person was allowed to run in Fall 2009 election. In early 2010, president announced candidacy for reelection. Legal force of recommendations is unclear.	**	**

## Notes

\*\* Report recently released; too soon to assess.

- 1 “Vetting” refers to a procedure to screen and remove accused perpetrators from public positions, including military, political, or judicial, or a procedure to bar persons from running for election.

Chart 7 What Works Best?

					= Ideal in most circumstances
Italics: projected					
Large/Strong/Broad			Small/Weak/Narrow		Comments
					
BUDGET (IN U.S. DOLLARS)					
More than \$25 million	\$10–\$25 million	\$5–\$10 million	\$1–\$5 million	Less than \$1 million	
Canada S. Africa S. Korea 2	Peru	Guatemala Liberia S. Korea 1 Timor-Leste	Chile 1, 2 Ecuador 2 El Salvador Ghana Haiti Paraguay Sierra Leone	Chad Greensboro Uganda 2	
SIZE OF STAFF (AT HIGHEST POINT)					
More than 400	201–400	101–200	51–100	50 or less	
<i>Kenya</i> Peru Timor-Leste	Liberia Morocco Sierra Leone S. Africa S. Korea 2	Ghana Guatemala Paraguay Sierra Leone	Argentina Chile 1, 2 Ecuador 2 Haiti	El Salvador Greensboro Uganda 2	
OPERATING PERIOD OF COMMISSION					
4 years or more	3 years, less than 4 years	2 years, less than 3 years	1 year, less than 2 years	Less than 1 year	
<i>Canada</i> Paraguay S. Africa S. Korea 2 Uganda 2	Liberia Nigeria Timor-Leste	Ecuador 2 Ghana Greensboro Kenya Indonesia/ Timor-Leste Morocco Peru Sierra Leone	Chile 2 Guatemala Panama <i>Solomon Isl.</i>	Argentina Chad Chile 1 El Salvador Haiti	Commission should always be given a deadline, even if extendable
PERIOD OF TIME TO BE INVESTIGATED					
40 years or more	30–39 years	20–29 years	10–19 years	<10 years	
Canada Germany Kenya Mauritius Morocco Paraguay S. Korea 2 Togo	Ghana Guatemala Nigeria S. Africa	Liberia Peru Timor-Leste Ecuador 2	Chile 1, 2 El Salvador Sierra Leone	Argentina Chad Haiti Indonesia/ Timor-Leste Sierra Leone Solomon Isl.	Must be determined by national context

continued

*Chart 7* (continued)

POWERS OF INVESTIGATION (SUBPOENA, SEARCH AND SEIZURE, WITNESS PROTECTION)				
Strong		Some Powers	Limited Powers	
S. Africa Sierra Leone		Sri Lanka El Salvador Uganda 2	Argentina Chile 1, 2 Haiti Germany Guatemala Canada Morocco	
POWER OF REPORTING (NAME PERPETRATORS, MAKE MANDATORY RECOMMENDATIONS)				
Very strong	Strong	Limited	Explicit Restrictions	
El Salvador Sierra Leone Liberia	S. Africa	Argentina Chile 1	Canada Chile 2 Guatemala Morocco	
BREADTH OF SUBSTANTIVE INQUIRY				
Very broad mandate	Some abuses excluded	Limited or specific mandate		
Ghana Guatemala Kenya Liberia Nigeria Peru Sierra Leone S. Korea 2 Timor-Leste	Haiti Morocco S. Africa	Argentina Canada Chile 1, 2 Greensboro Indonesia/ Timor-Leste Mauritius	Sometimes necessary and appropriate to narrow mandate	

# Interviews by the Author

This is not a complete list of persons interviewed, as some asked not to be identified. In most cases, persons are listed showing the position that they held at the time of the interview, and in the location where the interview took place.

## Argentina

December 1996

### *National Commission on the Disappeared*

Commissioners: **Eduardo Rabossi**, former Undersecretary of Human Rights; **Hugo Piucill**, Asamblea Permanente de Derechos Humanos; **Gregorio Klimovsky**. Staff: Senator **Graciela Fernández Meijide**, commission's staff director.

Human Rights Office of the Ministry of the Interior: **Mercedes Assorati**, **Dolly Scaccheri**, **Gudelia Araoz**, **Rita Haydee Tanuz**, **Carlos Gonzalez Gartland**, **Analia Lanza**, **Lita Abdala**.

### *Non-governmental Organizations*

**Martin Abregú**, Centro de Estudios Legales y Sociales; **Enrique Pochat**, Movimiento Ecuaménico por los Derechos Humanos; **Alejandro Inchaurregui** and **Luis Fondebrider**, Equipo Argentino de Antropología Forense; **Nora Cortiñas**, Madres de la Plaza de Mayo—Linea Fundadora; **Mercedes Meroño**, Asociación Madres de Plaza de Mayo; **Horacio Lynch**, Foro de Estudios sobre la Administración de Justicia; **Patricia Valdez**, Poder Ciudadano.

### *Media, Academics, and Other*

**Horacio Verbitsky**, *Página/12*; **Luis Moreno-Ocampo**, former deputy prosecutor; **Maria del Carmen Feijoó** and **Elizabeth Jelin**, sociologists; **Juan Carlos Olivera**, Editorial Universitaria de Buenos Aires; **Jorge Reinaldo Vanossi**, former member of Congress; **Juan Carlos Volnovich** and **Fernando Ulloa**, psychoanalysts; **Marcela Scilingo**.

## Chile

November–December 1996

### *National Commission for Truth and Reconciliation*

Commissioners: **José Zalaquett**; **José Luis Cea**; **Laura Novoa**; **Mónica Jiménez**. Staff: **Jorge Correa**, Diego Portalis University, chief of staff of commission.

National Corporation for Reconciliation and Reparation: **Alejandro González**, President; **Andrés Domínguez**, Chief of Staff; **Sergio Hevia**, legal counsel.

### *Government, Judicial, and Armed Forces*

**Francisco Cumplido**, University of Chile, former Minister of Justice; **Carlos Cerda**, judge and professor, Diego Portalis University; **Gonzalo García Pino**, Political Advisor to the Minister of Defense.

### *Non-governmental Organizations and Human Rights Advocates*

**Sola Sierra**, Group of Families of the Detained and Disappeared; **Veronica Reyna**, Fundación de Ayuda Social de las Iglesias Cristianas; **Pamela Pereira** and **Hector Salazar**, lawyers representing families of the disappeared; **Sebastian Brett**, Human Rights Watch.

### *Media, Academics, and Other*

**Felipe Portalis Cifuentes**, sociologist; **Elizabeth Lira**, psychologist; **Tomás Mouliou**, Center for Social Investigation, Arcis University; **Mónica González**, Political Editor, *Cosas* magazine; **Patricia Verdugo**, author and television anchor; **Nissim Sharim**, actor and director; **Augusto Varas**, Ford Foundation; **Carla Pellegrin Friedman**.

## El Salvador

April 1996

### *Non-governmental Organizations and Academics*

**Benjamín Cuéllar**, Instituto de Derechos Humanos de la Universidad Centroamericana; **Alicia de García**, CoMadres.

*Government, Judicial, and Peace Accords Implementation  
Commission*

**Antonio Aguilar Martínez**, Procuraduría para la Defensa de los Derechos Humanos; **Mirna Perla de Anaya**, Juvenile Court Judge; General **Mauricio Vargas**, Peace Accords Trilateral Commission; **Antonio Álvarez**, FMLN, Peace Accords Trilateral Commission.

*International Community*

**Martha Doggett**, UN Mission to El Salvador; **William Duncan**, Human Rights Officer, U.S. Embassy.

*Other*

**Rufina Amaya**, **Pedro Chicas**, and other current and former residents of El Mozote.

**Germany**

July 1997

*Enquete Kommission*

Commission members: **Rainer Eppelmann**, chair, Member of Parliament, Christian Democratic Union Party; **Gerd Poppe**, MP, Alliance 90/Green Party; **Gerald Häfner**, MP, Alliance 90/Green Party; **Karl Wilhelm Fricke**, Historian. Staff: **Rolf Eising**, Director; **Marlies Jansen**, Deputy Director; **Martin Georg Goerner**; **Thomas Ammer**.

*Government and Judicial*

**Joachim Gauck**, Director, Federal Authority on the Records of the former Ministry for State Security of the German Democratic Republic (the Gauck Authority); **Johannes Legner**, Press Spokesperson, Federal Authority on the Records of the former Ministry for State Security of the German Democratic Republic; **Christoph Schaeffgen**, Special Prosecutor for GDR and Unification Crimes; **Manfred Kittlaus**, Director, Office of Police Investigations into Stasi and Unification Crimes; Dr. **Falco Werkentin** and **Gebhard Klenz**, Office of the State Commissioner on Stasi Files; **Wolfgang Wiemer**, Head of Office for Wolfgang Thierse, MP, SPD; **Christa Seeliger**, Judge, Bonn.

*Media, Academics, Non-governmental Organizations, and Other*

Dr. **Gabriele Camphausen**, Director, Berlin Hohenschönhausen Memorial; **Barbara Distel**, Director, Dachau Museum and Memorial; **Jörg Drieselmann**,

Director, Normannenstrasse Stasi Museum; **Peter Alexander Hussock**, Director, Help for Victims of Political Violence in Europe; Dr. **André Brie**, PDS Party; Dr. **Ulrich Schröter**, Lutheran Church; **Ulrike Poppe**; **Roland Jahn**, television journalist; **Richard Schröder**, Professor of Theology, Humboldt University of Berlin; **Uwe Wesel**, Free University of Berlin; **René Schiller** and **Wolfram Theilemann**, History Department, Technical University of Berlin; **Hans Michael Kloth**, journalist; **Wuf Gruner** and **Sandra Gruner-Domic**, history students.

## Guatemala

April 1996, May 1998

### *Historical Clarification Commission*

Commissioners: **Christian Tomuschat**, Coordinator; **Otilia Lux de Cotí**. Staff: **Fernando Castañón Alvarez**; **Marcie Mersky**; **Roberto Rodríguez**; **Felipe Sanchez**; **Brigitta Suhr**; **Joanna Crandal**; **Jesús Peña**; **Sonia Zombrano**; **Alessandro Preti**; **Jaime Esponda Fernández**; **Ramiro Ávila**; **Greg Grandin**; **Manuel Oviedo**; **Melisa Stappers**; **Liz Oglesby**; **Jan Perlin**.

### *Non-governmental Organizations*

**Helen Mack**, Myrna Mack Foundation; **Ronald Ochaeta**, Human Rights Office of the Archbishop of Guatemala; **Marcie Mersky**, Recopilación de la Memoria Histórica Project, Human Rights Office of the Archbishop of Guatemala (1996); **Hugo Cabrera** and **Orlando Blanco**, Center for the Investigation of International Human Rights; **Frank La Rue** and **Helen Duffy**, Center for Human Rights Legal Action; **Fernando Moscoso** and **Juan Alberto Charnele**, Guatemala Forensic Anthropology Team; **Mario Polanco**, Director, Mutual Support Group (GAM); **David Holiday**.

### *Government, Government-affiliated, Opposition, and International Community*

**Julio Balconi**, Minister of Defense; **Carlos Maldonado**, Human Rights Ombudsman's Office; **Hector Rosada**, military sociologist, and **Antonio Arenales Forno**, former members of government's peace negotiating team; **Jim Benson**, First Secretary, U.S. Embassy; **Ana Maria Tello**, UN Mission to Guatemala; **Ricardo Ramírez de León**, URNG.

## **Haiti**

December 1995

### *National Commission on Truth and Justice*

Commissioners: **Freud Jean**; **Bacre Waly N'Diaye**. Staff: **Françoise Boucard**, Director; **Jean Claude Icart**, Executive Secretary; **Wanita Westmoreland**.

### *Government*

**René Magloire**, Minister of Justice, former member of the truth commission; **Roger Pereira**, Chief of Staff, Minister of Culture; **Camille de Blanc**, Coordinator, Legal Assistance Bureau.

### *Non-governmental Organizations*

**Jean Claude Jean**, Institut Culturel Karl Lévéque; **Necker Dessables**, National Peace and Justice Commission; **Daniel Roussière**, Justice and Peace Commission, Gonaïves; **Bobby Vaval**, Ecumenical Center for Human Rights.

### *United Nations Mission to Haiti*

**Rodolfo Mattarollo**, Deputy Director, Legal Unit; **Javier Zúñiga**, Director, Human Rights Division; **Denis Racicot**, Legal Department; **Javier Hernández**, Director of Investigation.

### *Other International Community and Miscellaneous*

**Louis Gary Lissade**, former president of the Bar Association; **Mike Levy**, International Liaison Office for President Aristide; **Indiana González**, United Nations Development Programme; **Michelle Schimpp**, Project Officer, U.S. Agency for International Development; **Kathy Hoffman** and **Julie Wynne**, U.S. Embassy; **Dieuseule Louisejuste**, **Ludy Lapointe**, and **Thomas Joseph Wills**, victims of political violence.

## **Mozambique**

September 1996

### *Government, Frelimo, and Renamo*

**Aguiar Mazula**, Minister of Defense; **José Ibraimo Abudo**, Minister of Justice; **Antonio Matonse**, Press Advisor to the President; **Jorge Rebelo**, Frelimo Party, former Minister of Information; **Louis Cabaco**, Frelimo Party, consultant; **Raul Manuel Domingos**, Head of Renamo in Parliament.



*Non-governmental Organizations*

**Alice Mabota**, Mozambican League of Human Rights; **Roberto Luis**, ActionAid Mozambique; **Elisa dos Santos**, War-Torn Societies Project; **Ilidio Silva**, Mozambican Institute of Psychotrauma; **Celia Deniz**, African-American Institute; **Santos Alfredo**, Link.

*Academics and Media*

**Brazão Mazula**, President, Eduardo Mondlane University; **João Paulo Borges Cuelo**, History Department, Eduardo Mondlane University; **David Hedges**, History Department, Eduardo Mondlane University; **Louis de Brito**, Social Science Department, Eduardo Mondlane University; **Carlos Cardoso**, Editor, Mediacoop; **Iain Christie**, Radio Mozambique; **Fernando Lima**, Media Institute of Southern Africa and Mediacoop; **Noe Dimande**, *Demos* weekly; **Leite de Vasconcelos**, journalist; **Ne Afonso**, Radio Mozambique.

*Residents of the Village of Três de Fevereiro*

**Mr. Timane**, Curandeiro; **Carlos Ubisse**, advisor to the traditional leader; **Bernardo Chavo**, headmaster of the school; **Salvador Mahachane**.

*Other*

**Sam Barnes**, consultant; **João Ribeiro**, filmmaker, Ebano Company; **Jon Danilowicz**, Political Affairs Officer, U.S. Embassy.

**South Africa**

August and September 1996, October and November 1997, June 1999, January 2000

*Truth and Reconciliation Commission*

Commissioners: Archbishop **Desmond Tutu**; **Alex Boraine**; **Mary Burton**; **Chris de Jager**; **Richard Lyster**; **Wynand Malan**; **Hlengiwe Mkhize**; **Wendy Orr**; **Fazel Randera**; **Yasmin Sooka**; **Glenda Wildschut**. Committee Members: **Russell Ally**; **Ilan Lax**; **Hugh Lewin**; **Judge Hassen Mall**; **Tom Manthata**; **Bernhard Ngoepe**; **Ntsikie Sandi**. Staff: **Vanessa Barolski**; **Robin Brink**; **Janet Cherry**; **Martin Coetzee**; **John Daniel**; **Madeleine Fullard**; **Glenn Goosen**; **Thulani Grenville-Grey**; **Janis Grobbelaar**; **Patrick Kelly**; **Jan Kyellberg**; **Jan Lueks**; **Chris McAdam**; **Biki Minyuku**; **Lebo Molete**; **Themba Mzimela**; **Gerald O'Sullivan**; **Piers Pigou**; **Sekoati Pitso**; **Paul van Zyl**; **Wilhelm Verwoerd**; **Charles Villa-Vicencio**; **Barbara Watson**; **Wendy Watson**. Designated statement-takers and others: **Rev. S. K. Mbande** and **Boniwe Mafu**, Daveyton; **Joseph Dube**, Soweto; **Lars Buur**; **Michelle Parlevliet**.

*Government, Parliament, and Judicial*

**Dullah Omar**, Minister of Justice; **Kader Asmal**, Minister of Water and Forestry; **Nicholas “Fink” Haysom**, Legal Counsel to President Nelson Mandela; **Johnny de Lange**, chair, Parliamentary Committee on Justice; **Phillip Powell**, Member of Parliament, Inkatha Freedom Party; Justice **Richard Goldstone**, Justice **L. W. H. Ackerman**, and Justice **Albie Sachs**, Constitutional Court; **Howard Varney** and **Melanie Lue**, Investigative Task Unit.

*Non-governmental Organizations*

**Graeme Simpson**, **Brandon Hamber**, **Tlhoki Mofokeng**, and **Hugo van der Merwe**, Centre for the Study of Violence and Reconciliation; **Ntombi Mosikare**, **Thandi Shezi**, **Rose Everett-Mudimu**, **Duma Kumalo**, **Mavis Kumalo**, **Ntombe Mosikare**, and **Rudy Mphela**, Khulumani; **Eddie Makue** and **Teboho Sejake**, South African Council of Churches; **Jody Kollapen**, Lawyers for Human Rights; **Steve Kahanovitz**, Legal Resources Centre; **Janet Levy**, Institute for Democracy in South Africa; **Scott de Klerk** and **Theo de Jager**, Foundation for Equality before the Law; **Tom Winslow**, Trauma Centre for Victims of Violence and Torture; **Paddy Kearney**, Diakonia; Rev. **Danny Chetty** and staff, Practical Ministries; **Jenny Irish** and **Selvan Chetty**, Network of Independent Monitors; **Steven Zintel**, National Association of Democratic Lawyers.

*Academics*

**Andre du Toit**, University of Cape Town; **Jonathan Klaaren**, Witswatersrand University Law School; **Beth Goldblatt**, Centre for Applied Legal Studies, Witswatersrand University; **Pamela Reynolds** and **Fiona Ross**, Anthropology Department, University of Cape Town; **Mahmood Mamdani**, University of Cape Town; **Jeremy Sarkin**, Faculty of Law, University of the Western Cape; **Steven Robins**, Department of Anthropology and Sociology, University of the Western Cape.

*Victims, Survivors, and Family Members*

**Sylvia Dlomo**, Soweto; **Pauline Mbatha** and **Johannes Mbatha**, Boipatong Township, Slovo Park squatter camp; **Flora Mkhize**; **Albert “Mandla” Mbalekelwa Nangalembe** and **Margaret Nangalembe**, Sebokeng Township; **Chris Ribiero**; **Simpson Xakelka**; **David Alcock**, Durban; **Elizabeth Hashe** and **Monica Godolozzi**, Port Elizabeth.

*Media*

**Max Du Preez** and **Jann Turner**, *Truth Commission Special Report*; **Claire Keeton**, *The Sowetan*; **Kenneth Makeitis**, SABC Radio; **Wally Mbheli**, City Press; **S’Kumbuzu Miya**, *UmAfrika*.

*Other*

**Dirk Coetzee**; **Phyllis Naidoo**, ANC Truth Commission desk; **Carole Baeky**, consultant; **Ken Wilson**, Ford Foundation.

**Uganda**

October 1996

*Human Rights Commissions of Inquiry*

1986 commission: Commissioners: Justice **Arthur Oder**, Chair; **John Nagenda**. Staff: **John Ssekandi**, Legal Counsel; **Alex Okello**, Executive Secretary; **Baker Wairama**, Senior Consultant. 1974 commission: Staff: **Joseph Mulenga**, Legal Counsel to the commission (and later Attorney General/Minister of Justice).

*Government, Judicial, and Opposition*

**Bart Katureebe**, Attorney General/Minister of Justice; Abu Mayanja, former Attorney General/Minister of Justice; **George Kanyeihamba**, Senior Presidential Advisor for Human Rights and International Affairs, former Attorney General/Minister of Justice; **Lucian Tibaruha**, Human Rights Officer, Ministry of Justice; **Fred Egonda Ntende**, Justice of the High Court; **Alfred Nasaba**, Director, Law Development Centre, Former Director of Public Prosecutions; Cecilia Ogwal, Uganda People's Congress.

*Non-governmental Organizations, Church, and Academics*

Rev. **John Mary Waliggo**, Uganda Catholic Secretariat, former Secretary-General, Constitutional Commission; **Miriam Mwangi**, Foundation for Human Rights Initiative; **Twesigye Jackson Kaguri**, Human Rights Concern; **John Mugisha**, President, Uganda Law Society; **Solomy Bossa**, former President, Uganda Law Society; **Joe Oloka-Onyango** and **Fred Jjuuko**, Makerere University School of Law.

*Media*

**Amos Kajoba**, Editor, *The People*; **Charles Onyango-Obbo**, Editor, *The Monitor*; **John Kakande**, *New Vision*.

*International Community*

**George Colvin**, Political Affairs Officer, U.S. Embassy; **Daniel Iga**, Program Officer, DANIDA; **Albrecht Bossert**, Resident Representative, Konrad-Adenauer-Stiftung.

## United States

### *Non-governmental Organizations*

**Kenneth Roth**, Bronwen Manby, Wilder Tayler, Reed Brody, José Miguel Vivanco, and Anne Manual, Human Rights Watch; **Michael Posner**, Lawyers Committee for Human Rights; **Mercedes Doretti**, Argentine Forensic Anthropology Team; **George Vickers**, **Rachel Garst**, **Rachel Nield**, **Jeff Thale**, and **Colletta Youngers**, Washington Office on Latin America; **Tom Blanton** and **Kate Doyle**, National Security Archive; Patrick Ball, American Association for the Advancement of Science, Science and Human Rights Program; **Margaret Popkin**, Robert F. Kennedy Memorial Center for Human Rights; **Javier Miranda**, FEDEMAN, Uruguay.

### *Academics*

**Thomas Buergenthal**, George Washington University Law School; **Robert Goldman**, American University Law School; **Steve Marks**, Columbia University; **Ben Kiernan**, Yale University.

### *Other*

**Álvaro de Soto** and **Jean Arnault**, United Nations; **Juan Méndez**, Inter-American Institute for Human Rights; **Judith Lewis Herman**, Harvard Medical School; **Aryeh Neier**, President, Open Society Institute; **Margaret Burnham**; **Genoveva Hernandez**; **Peter Cleveland**, Office of U.S. Senator Chuck Robb; **Yael Danieli**.

## Zimbabwe

September–October 1996

### *Government*

**Emmerson Mnangagwa**, Minister of Justice; **Y. Omerjee**, Secretary for Justice, Legal and Parliamentary Affairs, Ministry of Justice; **Bornwell Chakaodza**, Director of Information, Ministry of Information.

### *Non-governmental Organizations*

**Eileen Sawyer**, National Director, Legal Resources Foundation; **Tony Reeler**, Amani Foundation; **David Chimhini**, Executive Director, Zimbabwe Human Rights Association; **Elizabeth Feltoe**, Legal Officer, Catholic Commission for Justice and Peace; **Judith Todd**, Board Member, Mafela Trust; **David Coltart**, Legal Resources Foundation, Bulawayo; **John Stewart**, Director of Southern Africa Office, American Friends Service Committee; **Sharry Apple**,

Coordinator of Special History Research Project of the Legal Resources Foundation and the Catholic Commission for Justice and Peace, Bulawayo.

*Media*

**Pat Made**, InterPress Service; **Edwina Spicer**, independent filmmaker.

**London and Other**

**Alex Vines**, Human Rights Watch; **Ingrid Massagé**, **Ignacio Saiz**, **Nicholas Howen**, **Mary Rayner**, **Martin Hill**, and **Tracy Ulltveit-Moe**, Amnesty International; **Chidy Odinkalu**, Interights; **Richard Carver**; **JoAnn McGregor**, Oxford University; **Pedro Nikken**.

Interviews for the updated edition, 2008–2010, are indicated in notes to the text.

# Notes

## 2 Confronting Past Crimes: Transitional Justice and the Phenomenon of Truth Commissions

- 1 Guillermo O'Donnell, Philippe C. Schmitter, and Laurence Whitehead, eds., *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: Johns Hopkins University Press, 1986).
- 2 Ibid., 75.
- 3 On the experience of lustration in Eastern Europe generally, see Herman Schwartz, "Lustration in Eastern Europe," *Parker School Journal of East European Law* 1 (1994): 141–171, and Vojtech Cepl, "Ritual Sacrifices: Lustration in the CSFR," *East European Constitutional Review* 1 (1992): 24–26. On the role of lustration in revealing truth, see Maria Lo's "Lustration and Truth Claims: Unfinished Revolutions in Central Europe," *Law and Social Inquiry* 20 (1995): 117–161. See also case-study chapters on Poland, Hungary, the Czech Republic, and Germany in Alexander Mayer-Rieckh and Pablo de Greiff, eds., *Justice as Prevention: Vetting Public Employees in Transitional Societies* (New York: Social Science Research Council, 2007), available in full at [www.ictj.org](http://www.ictj.org).
- 4 See Rubén Zamora with David Holiday, "The Struggle for Lasting Reform: Vetting Processes in El Salvador," in *Justice as Prevention*, ed. Mayer-Rieckh and de Greiff.
- 5 For further exploration of this subject, see Tina Rosenberg, *Haunted Lands: Facing Europe's Ghosts after Communism* (New York: Random House, 1995), and Timothy Garton Ash, *The File: A Personal History* (New York: Random House, 1997).
- 6 For an exploration of some of these issues, see Sharanjeet Parmar, Mindy Jane Roseman, and Saudamini Siegrist, *Children and Transitional Justice: Truth-Telling, Accountability, and Reconciliation* (Cambridge, MA: Human Rights Program, Harvard Law School, 2010); International Center for Transitional Justice and UNICEF, *Children and Truth Commissions* (New York: UNICEF, 2010); and Cecile Aptel, "Children and Accountability for Grave Crimes: The Role of the ICC and Other International and Hybrid Jurisdictions," UNICEF Innocenti Expert Paper Series on Children and Transitional Justice (and other papers in this collection), 2010.
- 7 The first two articles looking comparatively at truth commissions appeared in the same volume of *Human Rights Quarterly* in 1994. See Mark Ensalaco, "Truth Commissions for Chile and El Salvador: A Report and Assessment," and Priscilla B. Hayner, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16, no. 4 (1994): 597–655. The first major compilation on transitional justice, published in 1995, includes only two comparative excerpts

- on truth commissions, including Margaret Popkin and Naomi Roht-Arriaza, "Truth as Justice: Investigatory Commissions in Latin America," *Law and Social Inquiry* 20, no. 1 (1995): 79–116. See Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. 1: *General Considerations* (Washington, DC: US Institute of Peace, 1995).
- 8 See Eric Brahm, "What Is a Truth Commission and Why Does It Matter?" *Peace and Conflict Review* 3, no. 2 (2009): 1–14. Brahm analyzes seven different definitions of truth commissions provided in the literature. See also Geoff Dancy, Hunjoon Kim, and Eric Wiebelhaus-Brahm, "The Turn to Truth: Trends in Truth Commission Experimentation," *Journal of Human Rights* 9 (2010): 45–64.
  - 9 Priscilla B. Hayner, "Fifteen Truth Commissions."
  - 10 Mark Freeman, *Truth Commissions and Procedural Fairness* (New York: Cambridge University Press, 2006), 14–22. Mark Freeman and others have also suggested that truth commissions should be understood in the context of the practice, long common in Commonwealth countries, of establishing commissions of inquiry.
  - 11 The definition of a truth commission suggested by Freeman is as follows: "A truth commission is an ad hoc, autonomous, and victim-centered commission of inquiry set up in and authorized by a state for the primary purposes of (1) investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict, and (2) making recommendations for their redress and future prevention." *Ibid.*, p. 18. This proposed definition leaves out one critical element: investigating patterns of abuse, not just the causes and consequences.
  - 12 Scotland's Poverty Truth Commission took the South African Truth and Reconciliation as its model, with the intention of providing a platform for victims of poverty to tell their stories and help shape policymaking, toward lessening the stark economic divide particularly found in Glasgow. See [www.povertyinitiative.org/tcscotland](http://www.povertyinitiative.org/tcscotland).
  - 13 The Colombian Truth Commission on the Palace of Justice reported that over 100 people were killed or disappeared during a military operation to re-take the Palace of Justice, after its seizure by guerrillas, in November 1985. For further information and the final report, see [www.verdadpalacio.org.co](http://www.verdadpalacio.org.co).
  - 14 The previous edition of this book also categorized some bodies as "historical truth commissions." Ultimately, this phrase seems to confuse rather than clarify the matter at hand, and I have not used the term here. Some truth commissions, such as those in Canada and Mauritius, have every intention of serving as truth commissions in the classic sense; classifying them into a different category due to the time frame they are covering does not seem useful, given that they are also looking into the consequences of the events under study, which are still felt today.
  - 15 Elsewhere, I have documented the dynamics around negotiating justice in the peace negotiations of the Democratic Republic of the Congo, Liberia, Nepal, and Sierra Leone. These papers have been published or co-published by the ICTJ and are available at [www.ictj.org](http://www.ictj.org), peace and justice page.
  - 16 *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney: Human Rights and Equal Opportunity Commission, 1997).
  - 17 Danielle Gordon, "The Verdict: No Harm, No Foul," *Bulletin of the Atomic Scientists* 52, no. 1 (1996): 32–40. See also Michael D'Antonio, "Atomic Guinea Pigs," *New York Times Magazine*, August 31, 1997, 38–43.
  - 18 The first checks to the surviving internees were not distributed until 1990. Each internee who was still alive on the date that the legislation was passed (or the heirs

- of those who died in the interim) received \$20,000. See Leslie T. Hatamiya, *Righting a Wrong: Japanese Americans and the Passage of the Civil Liberties Act of 1988* (Stanford, CA: Stanford University Press, 1993).
- 19 Carol Kaesuk Yoon, “Families Emerge as Silent Victims of Tuskegee Syphilis Experiment,” *New York Times*, May 12, 1997, A1. The Tuskegee Syphilis Study was first made public in 1972 through investigative reporting by the Associated Press, and only then was the experiment stopped. This media exposure eventually led to the promulgation of the National Research Act of 1974, which created oversight boards to approve all federally funded research involving human subjects.
  - 20 Leo Valladares, in conversation with the author, September 1995, Washington, DC. See Comisionado Nacional de Protección de los Derechos Humanos, *Los hechos hablan por sí mismos: Informe preliminar sobre los desaparecidos en Honduras 1980–1993* (Tegucigalpa, Honduras: Editorial Guaymuras, 1994); also published in English as *The Facts Speak for Themselves: The Preliminary Report on Disappearances of the National Commissioner for the Protection of Human Rights in Honduras*, trans. Human Rights Watch and the Center for Justice and International Law (New York: Human Rights Watch, 1994).
  - 21 Human Rights Watch, *Report of the International Commission of Investigation on Human Rights Violations in Rwanda since October 1, 1990 (January 7–21, 1993)* (New York: Human Rights Watch, 1993). The four organizations that jointly sponsored this commission were Human Rights Watch (New York), the International Federation of Human Rights (Paris), the International Centre for Human Rights and Democratic Development (Montreal), and the Interafrican Union for Human Rights (Ouagadougou, Burkina Faso).
  - 22 For example, the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992) to Investigate Violations of International Humanitarian Law in the Former Yugoslavia, chaired by M. Cherif Bassiouni.
  - 23 *Brasil: Nunca Más* (Rio de Janeiro: Editora Vozes, 1985); published in English as *Torture in Brazil: A Shocking Report on the Pervasive Use of Torture by Brazilian Military Governments, 1964–1979*, trans. Jaime Wright (Austin: University of Texas Press, 1998). For a fascinating description of the Brazilian project, see Lawrence Weschler, *A Miracle, A Universe: Settling Accounts with Torturers* (New York: Penguin, 1990; reprint with postscript, Chicago: University of Chicago Press, 1998). Because the Brazil project was carried out secretly, Church backing not only provided financial support, but also lent legitimacy to the report.
  - 24 Servicio Paz y Justicia (SERPAJ), *Uruguay: Nunca Más: Informe Sobre la Violación a Los Derechos Humanos (1972–1985)*, 2nd ed. (Montevideo: SERPAJ, 1989). The parliamentary commission was mandated to investigate disappearances only, which missed the great majority of abuses in the country: illegal imprisonment and torture.
  - 25 The Archbishop of Guatemala’s Office of Human Rights project (the Recovery of Historical Memory Project, REMHI) resulted in a four-volume final report published in 1998. See *Guatemala: Nunca Más*, 4 vols. (Guatemala City: Oficina de Derechos Humanos del Arzobispado de Guatemala, 1998). An English summary has been published as *Guatemala: Never Again!* (Maryknoll, NY: Orbis Books, and London: Catholic Institute of International Relations, 1999).
  - 26 See, for example, *Links: Historical Almanac*, vol. 1 (Moscow: Progress Phoenix, 1991) and *List of Executed People*, vol. 1: *Donskoi Cemetery 1934–1943* (Moscow: Memorial, 1993), both in Russian.

### 3 Why a Truth Commission?

- 1 Michael Ignatieff, “Articles of Faith,” *Index on Censorship* 25, no. 5 (1996): 110–122 at 113.



- 2 This conference resulted in the book *State Crimes: Punishment or Pardon* (New York: Aspen Institute, 1989). Professor Thomas Nagel of New York University is credited with first articulating this distinction between knowledge and acknowledgment.
- 3 Aryeh Neier, “What Should Be Done about the Guilty?” *New York Review of Books*, February 1, 1990, 34.
- 4 Juan Méndez, review of *A Miracle, A Universe*, by Lawrence Weschler, in *New York Law School Journal of Human Rights* 8 (1991): 8.
- 5 The question of the relationship between truth-seeking and conflict resolution, including the possibility of a truth commission’s sparking further violence, is addressed in Priscilla B. Hayner, “Past Truths, Present Dangers: The Role of Official Truth Seeking in Conflict Resolution and Prevention,” in *International Conflict Resolution after the Cold War*, ed. Paul C. Stern and Daniel Druckman (Washington, DC: National Academy Press, 2000).
- 6 An early overview of these developments is provided in Juan Méndez, “Accountability for Past Abuses,” *Human Rights Quarterly* 19 (1997): 255–282. More recently, see Juan E. Méndez, “An Emerging ‘Right to Truth’: Latin-American Contributions,” in *Legal Institutions and Collective Memories*, ed. Susanne Karstedt (Oxford: Hart Publishing, 2009), 39–62.
- 7 “Report of the independent expert to update the set of principles to combat impunity, Diane Orentlicher: Addendum,” UN Doc. E/CN.4/2005/102/Add.1, February 8, 2005, Principles 2 and 4.
- 8 *Ibid.*, Principle 6.
- 9 *Ibid.*, Principle 5.
- 10 “Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights,” UN Doc. E/CN.4/2006/91, February 8, 2006, para. 55.
- 11 *Ibid.*, para. 59.
- 12 “Resolution Adopted by the Human Rights Council: Right to the Truth,” UN Doc. A/HRC/RES/12/12, October 12, 2009.
- 13 Erin Daly, “Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition,” *International Journal of Transitional Justice* 2 (2008): 23–41.
- 14 The eight primary claims made about the peace-promoting effects of truth-telling, according to Mendeloff, are that truth-telling (1) encourages social healing and reconciliation, (2) promotes justice, (3) allows for the establishment of an official historical record, (4) serves a public education function, (5) aids institutional reform, (6) helps promote democracy, and (7) preempts as well as (8) deters future atrocities. David Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?” *International Studies Review* 6 (2004): 355–380.
- 15 *Ibid.*, 355.
- 16 A study published in early 2008, reviewing all major research then available on the impact of transitional justice, concluded that so little rigorous or empirical research had been done that it was difficult to draw any firm conclusions about impact. See Oskar N. T. Thoms, James Ron, and Roland Paris, “The Effects of Transitional Justice Mechanisms: A Summary of Empirical Research Findings and Implications for Analysts and Practitioners,” *CIPS Working Paper*, Centre for International Policy Studies, University of Ottawa, April 2008.
- 17 Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, “The Justice Balance: When Transitional Justice Improves Human Rights and Democracy,” *Human Rights Quarterly* 32, no. 4 (forthcoming 2010). See also Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington, DC: United States Institute of Peace Press, 2010).

- 18 Eric Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy* (Abingdon, UK: Routledge, 2010), esp. 138–142.

#### 4 The Five Strongest Truth Commissions

- 1 Kader Asmal, a leading ANC member, was the first to argue for the importance of truth in a key public lecture at the University of the Western Cape in 1992. See Kader Asmal, “Victims, Survivors and Citizens: Human Rights, Reparations and Reconciliation,” *South African Journal on Human Rights* 8, no. 4 (1992): 491–511.
- 2 Many of these amnesty applicants—well over half—were already in prison, many for what were determined to be non-political common crimes.
- 3 See Jeremy Sarkin, *Carrots and Sticks: The TRC and the South African Amnesty Process* (Antwerp: Intersentia, 2004), 115.
- 4 The most controversial criteria for amnesty was the “proportionality” test, but in the end, lack of proportionality was rarely the reason for denying amnesty.
- 5 On a related issue, persons who were wrongfully convicted of a crime had no recourse through the commission; it had no power to grant amnesty for something that someone did not do.
- 6 Suzanne Daley, “Officer Is Denied Amnesty in the Killing of Steve Biko,” *New York Times*, January 11, 1999, A8, and Suzanne Daley, “Panel Denies Amnesty for Four Officers in Steve Biko’s Death,” *New York Times*, February 17, 1999, A4.
- 7 For example, in the case of Amy Biehl, an American who was killed in a black township in a random anti-white attack, the applicants were granted amnesty, which seemed to suggest that some race-motivated acts would be accepted by the committee as political. Analysts have noted similar discrepancies in other rulings.
- 8 Among the thirty-seven was the chief executive officer of the truth commission, Biki Minyuku.
- 9 Sarkin, *Carrots and Sticks*, 18.
- 10 The Commission’s 2003 report states that “[t]he interpretation adopted by the Committee required that applicants give a full and truthful account of their own role, as well as that of any other person, in the planning and execution of the actions in question.” *TRC Report*, vol. 6 (2003), section 1, chapter 1, paragraph 23.
- 11 Sarkin, *Carrots and Sticks*, 274.
- 12 As Sarkin notes, “Much was learnt about the overall picture of gross human rights violations . . . and about particular events.” However, “that was not the main concern of the amnesty process, as is evidenced by the limited line of questioning that the Committee often permitted.” *Ibid.*, 272.
- 13 This case most fundamentally challenged the work of the South African truth commission by challenging the constitutionality of granting amnesty (and waiving both civil and criminal liability) for gross violations of human rights. The decision of the Constitutional Court was criticized by some legal experts, not because they viewed the decision as wrong, but because it failed to grapple with important questions of international law that were raised in the case. See John Dugard, “Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question: *Azapo v. President of the Republic of South Africa*,” *South African Journal on Human Rights* 13 (1997): 258–268.
- 14 For a full description of these and other legal battles fought by the commission, see *Truth and Reconciliation Commission of South Africa Report*, vol. 1, chap. 7, “Legal Challenges.”
- 15 The commission wanted to name de Klerk for having known about several bombings, after the fact, and failing to report them. The question of whether the

commission could name de Klerk in an addendum report was resolved in court at a later date.

- 16 “Statement of the President of the African National Congress, Thabo Mbeki, on the Report of the TRC at the Joint Sitting of the Houses of Parliament, Cape Town,” February 25, 1999.
- 17 Sarkin, *Carrots and Sticks*, 108.
- 18 This lawsuit was resolved by including in the TRC report a statement summarizing the IFP disagreements with the findings of the commission.
- 19 “Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer,” UN Doc. A/48/954/S/1994/751, Annex II, June 23, 1994.
- 20 Conversations by the author with participants in the Guatemalan peace negotiations, 1994 and 1995. An op-ed in the *New York Times*, after the truth commission was agreed, suggested that “Guatemala has opted for ignorance” because the commission could not investigate and identify wrongdoers. “The agreement is not a peace treaty, it’s a surrender. And what has been surrendered, after a fruitless and horrifying war, is the truth.” Francisco Goldman, “In Guatemala, All Is Forgotten,” *New York Times*, December 23, 1996. In the end, most of the restrictions built into the commission’s mandate were seen to be open to interpretation.
- 21 “Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer,” UN Doc. A/48/954/S/1994/751, Annex II, June 23, 1994. This clause states that the moderator of the peace talks, Jean Arnault, would be appointed by the secretary-general to head the commission, but he was appointed to head the UN Mission to Guatemala and was therefore unavailable.
- 22 Ibid.
- 23 The commission also requested documents from the governments of Argentina, Taiwan, and Israel, but received none.
- 24 *Guatemala: Nunca Más*, 4 vols., Oficina de Derechos Humanos del Arzobispado de Guatemala (Guatemala City, 1998). A summary of the report has been published in English as *Guatemala: Never Again! The Official Report of the Human Rights Office, Archdiocese of Guatemala* (Maryknoll, NY: Orbis Books, and London: Catholic Institute for International Relations, 1999).
- 25 The CIIDH project also undertook an extensive analysis of the press coverage of the violence, which showed a sharp decline in the reporting of killings and disappearances in the very months when they were the greatest, in the early 1980s. See Patrick Ball, Paul Kobrak, and Herbert F. Spier, *State Violence in Guatemala, 1960–1996: A Quantitative Reflection* (Washington, DC: American Association for the Advancement of Science, 1999).
- 26 *Guatemala: Memory of Silence: Report of the Commission for Historical Clarification (Conclusions and Recommendations)*, 22.
- 27 Ibid., 32.
- 28 Ibid., 41. The commission’s conclusion that genocide had taken place was particularly important in that genocide was excluded from an earlier amnesty law.
- 29 Ibid., 38.
- 30 “Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer,” UN Doc. A/48/954/S/1994/751, Annex II, June 23, 1994.
- 31 For example, the report states that the “structures and nature of economic, cultural and social relations in Guatemala are marked by profound exclusion, antagonism and conflict . . . violence was fundamentally directed by the State against the excluded, the poor and above all, the Mayan people, as well as against those who

- fought for justice and greater social equality.” See *Guatemala: Memory of Silence*, 17.
- 32 Government of Guatemala, “Posición inicial del Gobierno de la República ante el informe y las recomendaciones de la Comisión de Esclarecimiento Histórico,” March 16, 1999.
  - 33 For further analysis of the impact of the Guatemalan commission and its report, see *Justice and Impunity: Guatemala’s Historical Clarification Commission 10 Years On* (London: Amnesty International, February 2009); Jonathan Sisson, ed., *Dealing with the Past in Post-conflict Societies: Ten Years after the Peace Accords in Guatemala and Bosnia-Herzegovina* (Berne: Swisspeace, 2007); Susan Kemp, “The Inter-relationship between the Guatemalan Commission for Historical Clarification and the Search for Justice in National Courts,” *Criminal Law Forum* 15 (2004): 67–103; and Paul Seils, “The Limits of Truth Commissions in the Search for Justice: An Analysis of the Truth Commissions of El Salvador and Guatemala and Their Effect in Achieving Post-conflict Justice,” in M. Cherif Bassiouni, ed., *Post-conflict Justice* (Ardsley, NY: Transnational Publishers, 2002), 775–795.
  - 34 See Human Rights Watch, “Guatemala,” in *World Report 2010* (New York: Human Rights Watch, January 20, 2010).
  - 35 The margin of error on this number is 5 percent, with lower and upper limits of 61,007 and 77,552, respectively.
  - 36 For the full text of the Peruvian commission report, including some sections in English, and for analysis of the commission process and a compilation of press coverage, see the website for Asociación Pro Derechos Humanos at [www.aprodeh.org.pe](http://www.aprodeh.org.pe). The truth commission’s own site, which includes extensive organizational and background information, is maintained at [www.cverdad.org.pe](http://www.cverdad.org.pe).
  - 37 In tracking the implementation of the commission’s recommendations, an important oversight role is played by the national ombudsman’s office, the Defensoría del Pueblo, which has published annual reports on the follow-up to the TRC report. In addition, the Inter-American Commission on Human Rights has assisted by receiving general reports during its sessions, which have addressed reparations, prosecutions, and other matters relating to the TRC’s recommendations. A detailed analysis of the progress in implementation of the commission’s recommendations was undertaken by a former TRC commissioner and published in 2007: see Sofia Macher, *Recomendaciones vs Realidades: Avances y Desafíos en el post-CVR Peru* (Lima: Instituto de Defensa Legal, September 2007). For a comprehensive overview of reparations policies through 2006, see Julie Guillerot and Lisa Magarrell, *Reparaciones en la Transición Peruana: Memorias de un proceso inacabado* (Lima, Peru, and New York: Asociación Pro Derechos Humanos and the International Center for Transitional Justice, 2006).
  - 38 The Multisectoral High Level Commission in Charge of the Follow-up of State Actions and Policies in the Fields of Peace, Collective Reparation and National Reconciliation (CMAN) was broadened in 2006 to include a range of government ministries, including those for justice, finance, the interior, and women and social development.
  - 39 This Subcommittee Charged with Follow-up on the Conclusions and Recommendations of the TRC was subordinate to the Congressional Committee on Justice and Human Rights. It was made up of eight members of Congress and operated from November 2003 to July 2004.
  - 40 The full name of this historical documentation center is the Centro de Información para la Memoria Colectiva y los Derechos Humanos.
  - 41 For further information about judicial proceedings in relation to the truth commission in Peru, see Lisa Magarrell and Leonardo Filippini, eds., *The Legacy of Truth: Criminal Justice in the Peruvian Transition* (Lima and New York:

- International Center for Transitional Justice and the Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Perú, 2006).
- 42 I traveled to East Timor at this time, as a consultant to the United Nations, to contribute to this process.
  - 43 See Patrick Burgess, “A New Approach to Restorative Justice: East Timor’s Community Reconciliation Process,” in Naomi Roht-Arriaza and Javier Mariezcurrena, eds., *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge: Cambridge University Press, 2006), 176–205.
  - 44 Because the East–West tensions were not so prominent when the CAVR concluded its work, the report does not address this issue directly. However, the statistical chapters make this part of the history clear.
  - 45 Correspondence with Naomi Kinsella, International Center for Transitional Justice, Dili, Timor-Leste, January 2010.
  - 46 See, for example, Holger Albrecht and Oliver Schlumberger, “‘Waiting for Godot’: Regime Change without Democratization in the Arab World,” *International Political Science Review* 25 (2004): 371–392.
  - 47 On the founding and first period of the commission’s work, see Veerle Opgenhaffen and Mark Freeman, “Transitional Justice in Morocco: A Progress Report,” International Center for Transitional Justice, November 2005.
  - 48 Based on interviews with IER commissioners by Lyna Comaty, February to April 2009. See Lyna Comaty, “Adaptation locale d’une politique globale dans la réforme de l’autoritarisme marocain: Le cas de l’Instance Équité et Réconciliation,” unpublished master’s thesis, Graduate Institute of International and Development Studies, Geneva, 2009.
  - 49 About 16,000 of these 20,000 cases qualified for further investigation, and 58 percent of these 16,000 ultimately were granted compensation in some form. The remainder fell outside of the mandate or were cases reported twice.
  - 50 The complete report is available in Arabic, with English and French summaries; these can be found on the commission’s website, [www.ier.ma](http://www.ier.ma).
  - 51 Comaty, “Adaptation locale d’une politique globale.”
  - 52 The specific recommendations mentioned here, for example (abolishing the death penalty, ratifying the Rome Statute), had not yet been instituted as of late 2009.

## 5 Other Illustrative Truth Commissions

- 1 Jaime Malamud-Goti, interview, December 1998, Geneva. Argentines were conscious of following the example of neighboring Bolivia in proposing a commission of inquiry on past rights crimes (the Bolivian commission is described in Appendix 1). Interview with Mercedes Doretto, Argentine Forensic Anthropology Team, March 26, 1993, New York.
- 2 *Nunca Más, Report of the Argentine National Commission on the Disappeared*, 428.
- 3 Emilio Crenzel, “Argentina’s National Commission on the Disappearance of Persons: Contributions to Transitional Justice,” *International Journal of Transitional Justice* 2 (2008): 173–191 at 184.
- 4 The full report included over 50,000 pages of documentation. See *Truth and Partial Justice in Argentina: An Update* (New York: Human Rights Watch, 1991), 18.
- 5 For early reflections on these trials and other issues of transitional justice in Argentina, see Carlos S. Nino (former advisor to President Alfonsín), “The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina,” *Yale Law Journal* 100 (1991): 2619–2640; Jaime Malamud-Goti (former senior presidential advisor to Alfonsín), “Trying Violators of Human Rights: The Dilemma of Transitional Democratic Governments,” in the Justice and Society

- Program of the Aspen Institute, *State Crimes: Punishment or Pardon* (Queenstown, MD: Aspen Institute, 1989), 71–88; Alejandro M. Garro, “Nine Years of Transition to Democracy in Argentina: Partial Failure or Qualified Success?” *Columbia Journal of Transnational Law* 31 (1993): 1–102.
- 6 The best source for updates on these trials is the Centro de Estudios Legales y Sociales, [www.cels.org.ar/wpblogs/](http://www.cels.org.ar/wpblogs/).
  - 7 Decree Establishing the National Commission on Truth and Reconciliation, Supreme Decree no. 355, Chile, April 25, 1990, reprinted in Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. 3 (Washington, DC: U.S. Institute of Peace Press, 1995), 102.
  - 8 The decision to exclude surviving torture victims from the commission’s mandate was based on two factors: first, to avoid opening the commission to thousands of cases that could not be fully investigated; second, according to the person who drafted the mandate, to limit the cases to a reasonable number that could receive compensation, as it was assumed a reparations program would follow. Conversation by the author with Gisela von Mühlenbrock, March 13, 1997, Washington, DC.
  - 9 *Report of the Chilean National Commission on Truth and Reconciliation*, 14.
  - 10 Under Chilean law, the power of subpoena is reserved for the courts.
  - 11 Of these 2,920 cases, 2,025 were determined to be human rights violations by the state security forces; 90 were violations attributable to the armed opposition; 164 were attributed to political violence, such as gun battles; and on 641 cases the commission did not come to a conclusion.
  - 12 Human Rights Watch, *Human Rights and the “Politics of Agreement”: Chile during President Aylwin’s First Year* (New York: Human Rights Watch, 1991), 17, citing *La Epoca*, February 9, 1991.
  - 13 “Discurso de S.E. El Presidente de la República, Don Patricio Aylwin Azocar, al dar a Conocer a la Ciudadanía el Informe de la Comisión de Verdad y Reconciliación,” March 4, 1991; published in English as “Statement by President Aylwin on the Report of the National Commission on Truth and Reconciliation,” in Kritz, *Transitional Justice*, vol. 3, 169–173.
  - 14 Human Rights Watch, “*Politics of Agreement*,” 32–33.
  - 15 *Ibid.*, 30. The first killing, of an army doctor who had been censured for participating in torture sessions, took place just as Aylwin was releasing the report. Human Rights Watch describes: “On March 5, photographs of the doctor’s funeral, attended by Pinochet and other senior army officials, competed for front-page space with photographs of Aylwin presenting the Rettig report.” *Ibid.*, 29–30.
  - 16 *Human Rights Watch, Chile: The Struggle for Truth and Justice for Past Human Rights Violations* (New York: Human Rights Watch, 1992), 2.
  - 17 Law Creating the National Corporation for Reparation and Reconciliation, Law no. 19, 123, Chile, January 31, 1992; reprinted in Kritz, *Transitional Justice*, vol. 3, 685–695.
  - 18 A useful analysis of the factors that led to domestic trials—including, but not limited to, the Pinochet arrest—can be found in Cath Collins, “Human Rights Trials in Chile during and after the ‘Pinochet Years,’” *International Journal of Transitional Justice* 4, no. 1 (2010): 67–86. For a good overview of the issues and impact of this case, see Sebastian Brett, *The Pinochet Effect: Ten Years On from London 1998*, report of a conference at the Universidad Diego Portales, Santiago, Chile, October 8–10, 2008, Cath Collins, ed. (2009).
  - 19 See Human Rights Observatory, Universidad Diego Portales, “Human Rights in Chile, Summary of Court Cases for Past Human Rights Crimes, to end December 2009,” Bulletin no. 3, January 2010. Useful monthly updates provided at [www.icso.cl/actividades](http://www.icso.cl/actividades).
  - 20 This percentage is based on an estimate of 70,000 deaths and a population of five million. See Martha Doggett, *Death Foretold: The Jesuit Murders in El Salvador*

- (New York: Lawyers Committee for Human Rights, and Washington, DC: Georgetown University Press, 1993), 22.
- 21 For further information on the killing of the Jesuits, see Teresa Whitfield, *Paying the Price: Ignacio Ellacuría and the Murdered Jesuits of El Salvador* (Philadelphia: Temple University Press, 1995), and Doggett, *Death Foretold*.
  - 22 *From Madness to Hope: The 12-Year War in El Salvador*, 18.
  - 23 Interestingly, there were some early discussions in El Salvador of employing an “amnesty for truth” strategy, as was crafted in South Africa several years later. Some staff on the commission discussed the idea with commissioners, but it was never developed further. Later, Jesuit priest José María Tojeira responded to the truth commission report by suggesting that in order to receive a pardon, persons should admit their crimes and ask Salvadoran society for forgiveness. He proposed that there be “two routes: confess and ask society for forgiveness, or stand trial” and emphasized the need for “legal forgiveness.” See Doggett, *Death Foretold*, 273.
  - 24 Doggett, *Death Foretold*, 258. The postscript to this book provides an excellent summary of the reaction to the truth commission report both in El Salvador and in the United States.
  - 25 *Ibid.*, 264.
  - 26 *Ibid.*, 266. Eight years later, an analysis of the truth commission in El Salvador noted that “[a]lthough the report did not constitute an official Salvadoran acknowledgment of the truth, it still must be considered an authoritative document, the value of which is not determined by the immediate acceptance or rejection of its findings. . . . [T]he truth commission’s report stands as a powerful indictment of the kinds of violations committed during the war and of the active and passive complicity of state institutions.” See Margaret L. Popkin, *Peace without Justice: Obstacles to Building the Rule of Law in El Salvador* (University Park: Pennsylvania State University Press, 2000), 159–160.
  - 27 As has been noted by international legal scholars, however, there is no statute of limitations for crimes against humanity; further political and judicial changes in the future could open the door to legal action against perpetrators.
  - 28 Doggett, *Death Foretold*, 277.
  - 29 Speech of Salvadoran President Mauricio Funes on the eighteenth anniversary of the signing of the peace accords, January 16, 2010.
  - 30 Andrew H. Beattie, “An Evolutionary Process: Contributions of the Bundestag Inquiries into East Germany to an Understanding of the Role of Truth Commissions,” *International Journal of Transitional Justice* 3, no. 2 (2009): 229–249. A more detailed account can be found in Andrew H. Beattie, *Playing Politics with History: The Bundestag Inquiries into East Germany* (New York: Berghahn Books, 2008).
  - 31 The commission’s name in German is the Enquete-Kommission Aufarbeitung von Geschichte und Folgen der SED-Diktatur in Deutschland.
  - 32 For example, in 1953 hundreds were killed in a violent crackdown on a popular uprising. Between 1961, when the Berlin Wall was built, and 1989, when the wall came down, at least 260 people were killed trying to cross the border from East to West Germany, shot by border guards or killed by land mines. Political prisoners were harshly interrogated; some were tortured, and many were forced into exile. In the 1950s, hundreds of West Germans who fought to change the East German government were kidnapped by East German authorities and imprisoned (and some executed) in the East.
  - 33 Beattie, “An Evolutionary Process,” 240.
  - 34 Access to the files is administered by the Federal Authority on the Records of the Former Ministry for State Security of the German Democratic Republic, known in its first years as the Gauck Authority, named for its founding director, Joachim Gauck.

- 35 For a description of these televised scenes of reckoning between victim and informant, see Tina Rosenberg, *The Haunted Land: Facing Europe's Ghosts after Communism* (New York: Random House, 1995).
- 36 Beattie, "An Evolutionary Process," 247.
- 37 Ibid., 238.
- 38 Ibid., 239.
- 39 Ibid., 241.
- 40 Interviews with commission staff, June 1997, Berlin.
- 41 Beattie, "An Evolutionary Process," 245.
- 42 Andrew Beattie, interview, October 2009.
- 43 There has been little published about the Haitian truth commission. For further information, see Fanny Benedetti, "Haiti's Truth and Justice Commission," *Human Rights Brief* (Washington, DC: Center for Human Rights and Humanitarian Law, Washington College of Law, American University) 3, no. 3 (1996), and Joanna Quinn, "Haiti's Failed Truth Commission: Lessons in Transitional Justice," *Journal of Human Rights* 8, no. 3 (2009): 265–281.
- 44 Quinn, "Haiti's Failed Truth Commission."
- 45 Human Rights Watch, *Thirst for Justice: A Decade of Impunity in Haiti* (New York: Human Rights Watch, September 1996), 18.
- 46 Hunjoon Kim, "Presidential Truth Commission on Suspicious Deaths," in *The Encyclopedia of Transitional Justice*, ed. Lavina Stan and Nadya Nedelsky (Cambridge and New York: Cambridge University Press, forthcoming).
- 47 Donald MacIntyre, "Secrets and Lies," *Time Asia*, October 14, 2002.
- 48 A summary of the commission's first-term four-volume report was published as *A Hard Journey to Justice: First Term Report by the Presidential Truth Commission on Suspicious Deaths of the Republic of Korea* (Seoul: Samin Books, April 2004).
- 49 Some of these were committees or commissions established within existing agencies, such as the intelligence service, department of justice, or national police. Correspondence with Hunjoon Kim, February 2010.
- 50 See, for example, the excellent article: Hunjoon Kim, "Seeking Truth after 50 Years: The National Committee for Investigation of the Truth about the Jeju 4.3 Events," *International Journal of Transitional Justice* 3, no. 3 (2009): 406–423.
- 51 The periods of unconstitutional rule were from February 1966 to August 1969; January 1972 to September 1979; and December 1981 to January 1993.
- 52 Witnesses could also request in-camera hearings. Approximately forty such hearings were granted in cases where a public appearance could threaten national security or risk the security of the petitioner.
- 53 Nahla Valji, "Ghana's National Reconciliation Commission: A Comparative Assessment," International Center for Transitional Justice and the Centre for the Study of Violence and Reconciliation, September 2006, 13.
- 54 Financial support came from the Open Society Initiative for West Africa, the U.S. Agency for International Development, the South African High Commission in Ghana, and others.
- 55 For example, the commission estimated that the recommended amount of reparations would be sufficient to start a new business, thinking of the many women traders whose businesses were seized, according to commissioner Henrietta Mensa-Bonsu. See Mensa-Bonsu, "Gender, Justice and Reconciliation: Lessons from Ghana's NRC," paper presented at workshop of Coexistence International and the Ghana Centre for Democratic Development, June 7, 2007, 17.
- 56 Abena Ampofoa Asare, "The Ghanaian National Reconciliation Commission: Reparations in a Global Age," *The Global South* 2, no. 2 (Fall 2008): 31–53 at 35.
- 57 Valji, "Ghana's National Reconciliation Commission," 26.



- 58 I served as consultant to the United Nations in advising the implementation of the TRC provision in the Lomé Accord, together with legal expert Peggy Hicks. For more detailed background on the Sierra Leone commission, see Priscilla Hayner, “The Sierra Leone Truth and Reconciliation Commission: Reviewing the First Year,” International Center for Transitional Justice, January 2004. For information on the Lomé peace talks and the inclusion of a truth commission, see Priscilla Hayner, *Negotiating Peace in Sierra Leone: Confronting the Justice Challenge*, Centre for Humanitarian Dialogue and International Center for Transitional Justice, December 2007.
- 59 Truth and Reconciliation Act of Sierra Leone, 2000, Article 6(1).
- 60 The commission final report states that “the Commission has not felt itself to be particularly constrained by the time frame. . . . The Commission’s mandate is to consider the ‘conflict’. It could not do this in an accurate and faithful manner if it were to begin mechanically with 23 March 1991 and to conclude in an equally mechanical manner with 7 July 1999.” *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, 2004, vol. 1, chap. 1, para. 71.
- 61 Post-conflict Reintegration Initiative for Development and Empowerment (PRIDE), “Ex-Combatant Views of the Truth and Reconciliation Commission and the Special Court in Sierra Leone,” September 12, 2002.
- 62 A riveting transcript of the public hearings is included as appendix 3 of the final report.
- 63 See discussion of these matters in Chapter 9.
- 64 The video version was produced by Witness, an NGO based in New York; the child-friendly version was produced in collaboration with UNICEF.
- 65 *Witness to Truth*, vol. 2, chap. 2, paras. 13, 15.
- 66 Truth and Reconciliation Act of Sierra Leone, 2000, Article 18.
- 67 For a detailed evaluation of the Sierra Leone reparations program, see Mohamad Suma and Cristián Correa, “Report and Proposals for the Implementation of Reparations in Sierra Leone,” International Center for Transitional Justice, December 2009.
- 68 Mohamad Suma, “The Sierra Leone Truth and Reconciliation Commission,” presented at the Transitional Justice Training Workshop, December 17, 2008, El Fasher, Darfur, Sudan, 11.
- 69 See Rosalind Shaw, “Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone,” United States Institute of Peace, *Special Report* 130, February 2005.
- 70 A detailed account and analysis of the Greensboro commission can be found in Lisa Magarrell and Joya Wesley, *Learning from Greensboro: Truth and Reconciliation in the United States* (Philadelphia: University of Pennsylvania Press, 2008).
- 71 Carlos Beristain, who has assisted numerous truth efforts in Latin America, worked closely with Alejandro Valencia, of the Office of the UN High Commissioner for Human Rights, to assist the commission over several years.
- 72 Because half of the 2,000 cases the commission registered were unrecorded in the police intelligence archive (known as the Archive of Terror), and because that archive holds 10,000 cases, the commission estimated that there were 20,000 total victims of human rights violations. (Correspondence with Carlos Beristain, January 2010.)
- 73 Upon receipt of the first two cases from the commission, pertaining to torture, the prosecutor decided that they pertained to crimes of “injury” rather than “torture,” and thus the statute of limitations applied. This caused much outcry, and the commission appealed the ruling.
- 74 The commission had had access to some of these archives during the period of its work, in addition to the Archive of Terror, which was discovered in 1993

- and is accessible to the public. (Correspondence with Carlos Beristain, January 2010.)
- 75 Specifically, the commission was directed to review the records of the Indonesian National Commission of Inquiry on Human Rights Violations in East Timor in 1999; the Indonesian Ad Hoc Human Rights Court on East Timor; the Special Panels for Serious Crimes; and the Timor-Leste Commission for Reception, Truth, and Reconciliation. The commission reported that it also took statements as well as led its own investigations.
  - 76 See Megan Hirst, *Too Much Friendship, Too Little Truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste* (New York: International Center for Transitional Justice, January 2008).
  - 77 Interview with commission member Agus Widjojo, December 2008, Bali, Indonesia.
  - 78 *Per Memoria ad Spem: Final Report of the Commission of Truth and Friendship*, Denpasar, Indonesia, March 31, 2008, xv–xvi.
  - 79 Megan Hirst, *An Unfinished Truth: An Analysis of the Commission of Truth and Friendship's Final Report on the 1999 Atrocities in East Timor* (New York and Jakarta: International Center for Transitional Justice, National Commission on Violence Against Women, and the Working Group on Truth Recovery, March 2009), 6.
  - 80 *Ibid.*, 6.
  - 81 For further information on this commission and its historical reach, see Dong-Choon Kim, "Uncovering the Hidden Histories of the Korean War: The Work of South Korea's Truth and Reconciliation Commission," Korea Policy Institute, Los Angeles, March 27, 2009; and Hunjoon Kim, "Truth and Reconciliation Commission, Republic of Korea," *The Encyclopedia of Transitional Justice*, ed. Lavinia Stan and Nadya Nedelsky (Cambridge and New York: Cambridge University Press, forthcoming).
  - 82 Ashley Rowland and Hwang Hae-rym, "Verifications of Errant Attacks Fail to Lead to U.S. Acknowledgement," *Stars and Stripes* (Pacific edition), January 19, 2010. Numbers of cases confirmed by correspondence with the commission, January 2010.
  - 83 Press conference by commission president Ahn Byung-Ook, October 2009.
  - 84 See Choe Sang-Hun, "South Korea Admits Civilian Killings during War," *New York Times*, November 26, 2009.
  - 85 Hunjoon Kim, "Truth and Reconciliation Commission."
  - 86 Bae Ji-sook, "Translators to Sue Truth Commission," *Korea Times*, January 17, 2010; Ashley Rowland and Hwang Hae-rym, "Time Running Out on South Korea's Truth and Reconciliation Commission," *Stars and Stripes* (Pacific edition), January 19, 2010; Hamish McDonald, "Truth in Danger in South Korea," *Sydney Morning Herald*, January 23, 2010.
  - 87 Comprehensive Peace Agreement of Liberia. For a detailed account of how the truth commission and other justice issues were addressed during these peace talks, see Priscilla Hayner, *Negotiating Peace in Liberia: Preserving the Possibility for Justice* (Geneva and New York: Centre for Humanitarian Dialogue and the International Center for Transitional Justice, 2007).
  - 88 A selection panel was established that included representatives of political parties, civil society, a human rights representative from the United Nations, and the ambassador of ECOWAS, as chair. The panel received over 150 nominations from the public.
  - 89 For an excellent treatment of the background, start-up, and membership of the Liberian truth commission, see Aaron C. Sleah, Samuel G. Toe, and Aaron B. Weah, *Impunity under Attack: The Evolution and Imperatives of the Liberian Truth Commission* (Monrovia, Liberia, and Silver Spring, MD: Civic Initiative, 2008).

- 90 Financial support also came from the United Nations Development Programme, the European Union, the Open Society Institute of West Africa, Denmark, Sweden, and the United States. See *Truth and Reconciliation Commission Consolidated Final Report* (Liberia), vol. 2, 40.
- 91 By the end of the process, two of the commissioners had been publicly accused of having played a role in the war. The commission also accused two of its members of “systematically and consciously” undermining the commission’s work. See *Truth and Reconciliation Commission Consolidated Final Report* (Liberia), vol. 2, 325.
- 92 The Advocates for Human Rights, *A House with Two Rooms: Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project* (St. Paul, MN: DRI Press, 2009).
- 93 The commission released an “unedited” version in June 2009, believing that it was required by law to do so. It released a final “edited” version in December 2009 (but also dated June 2009), which included some substantive changes, including the names recommended for prosecution. The substantive differences between the two versions raised concerns.
- 94 This group of nine former warlords was particularly striking in that they represented four different former fighting factions who were otherwise rarely in agreement and rarely worked in collaboration. Unpublished report by the International Center for Transitional Justice, Monrovia, February 2010. On file with author.
- 95 Jonny Steinberg, “Liberia’s Experiment with Transitional Justice,” *African Affairs*, 109, no. 434 (2010): 135–144.
- 96 Ibid.
- 97 Correspondence with Carlos Beristain, advisor to the commission, January 2010. See the commission website, [www.coverdad.org.ec](http://www.coverdad.org.ec), to view the “Convocatorios” with the names listed.
- 98 Febres Cordero passed away while the commission was under way, in December 2008.
- 99 Edgar Vaca Vinuesa, *Terrorismo y Subversión* (Quito: Comisión de Defensa Jurídica e Institucional de la Policía Nacional, 2009).
- 100 Address of the prime minister, Navin Ramgoolam, at the second reading of the Truth and Justice Bill, National Assembly of Mauritius, August 5, 2008.
- 101 Truth and Justice Commission Act, Mauritius, August 22, 2008, Art. 4.
- 102 Truth and Reconciliation Commission Act (Solomon Islands), 2008, Art. 5(b).
- 103 Ibid., Art. 20.
- 104 Communication with Sofia Macher, vice president of the commission, November 2009.
- 105 Former students are eligible for a payment of \$10,000 for the first year (or part of a year) and \$3,000 for every year thereafter.
- 106 To mark its new beginning, the commission formally changed its name in late 2009 from the Indian Residential Schools Truth and Reconciliation Commission to “Truth and Reconciliation Canada.”
- 107 Article 2 (f) of Schedule N, *Mandate for the Truth and Reconciliation Commission*, Indian Residential Schools Settlement Agreement, May 2006.
- 108 “Prime Minister Harper offers full apology on behalf of Canadians for the Indian Residential Schools system,” Canadian Parliament, June 11, 2008.
- 109 *Report of the Task Force on the Establishment of a Truth, Justice and Reconciliation Commission*, August 26, 2003, Nairobi, Kenya.
- 110 See “Kenyan National Dialogue and Reconciliation: Truth, Justice, and Reconciliation Commission,” March 4, 2008, agreement between the parties.
- 111 See, for example, Human Rights Watch, “Kenya: Proposed Truth Commission Bill Seriously Flawed,” May 13, 2008.
- 112 Correspondence with Commissioner Ron Slye, January 2010.

- 113 “TJRC Mandate Will Not Be Expanded, Says Mutula,” *Daily Nation* (Kenya), August 12, 2009.

## 6 What is the Truth?

- 1 Executive Branch Supreme Decree no. 355, reprinted in *Report of the Chilean National Commission on Truth and Reconciliation*, 6.
- 2 *From Madness to Hope: The 12-Year War in El Salvador*, 18.
- 3 Emilio Crenzel, “Argentina’s National Commission on the Disappearance of Persons: Contributions to Transitional Justice,” *International Journal of Transitional Justice* 2, no. 2 (2008): 173–191 at 189. Crenzel has undertaken extensive interviews of CONADEP commissioners and staff, providing a detailed account of the commission’s methodology and strategic decisions.
- 4 The abuses that were excluded, according to interviews of commission staff by Emilio Crenzel, included prisoners being skinned alive, as well as the gang rape of a female prisoner “who was even raped after she had been murdered.” *Ibid.*, 187, note 74.
- 5 Promotion of National Unity and Reconciliation Act, Act no. 34 of 1995 (South Africa).
- 6 Mahmood Mamdani, participation on the panel “Legal, Moral, and Political Implications of the South African TRC” at the conference Evaluating South Africa’s Truth and Reconciliation Commission, University of Sussex, September 18–19, 1998, Brighton, England (notes on file with author). See also Mamdani, “Reconciliation without Justice,” *Southern African Review of Books* 46 (1996): 3–6.
- 7 One rights observer even wondered whether the president of Sri Lanka created three commissions as an intentional strategy to allow herself more flexibility in responding to the commissions’ reports, knowing that they would each make different recommendations, especially on the subject of reparations to victims.
- 8 For example, see the discussion on pp. 165–166 and 173–175 in relation to reparations, in particular in Peru. The Kenyan commission is also planning to explicitly address a broader set of economic crimes and economic rights.
- 9 *From Madness to Hope*, 137.
- 10 Thomas Buergenthal, interview, April 22, 1994, Washington, DC.
- 11 “The Atrocity Findings: ‘The Historic Facts Must Be Recognized’” (excerpts of statement by Christian Tomuschat in presenting the report), *New York Times*, February 26, 1999, A8.
- 12 “Remarks by the President in Roundtable Discussion on Peace Efforts,” National Palace of Culture, Guatemala City, March 10, 1999; statement released by the White House Office of the Press Secretary, Washington, DC.
- 13 *Final Report of the Truth and Reconciliation Commission of Liberia* (2009), vol. 2, 308–312.
- 14 *Ibid.*, 303.
- 15 Truth and Reconciliation Commission Act of Sierra Leone (2000).
- 16 *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (2004), vol. 2, chap. 2, 84, 34.
- 17 *Ibid.*, vol. 2, chap. 2, 84.
- 18 *Chega! The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste* (2005), part 8, 6.
- 19 *Ibid.*, 18.
- 20 Janis Grobbelaar, interview. Patrick Ball also identifies his approach as logical positivism, which he says “assumes that we can classify the world into categories, and can make sense of these categories.” Patrick Ball, “Who Did What to Whom:

Planning and Implementing a Large Scale Human Rights Data Project,” lecture at Columbia University, April 15, 1998.

- 21 Daniel Rothenberg, telephone interview, November 30, 1998, and comments on a panel at the Latin American Studies Association conference, September 26, 1998, Chicago.
- 22 Jean Claude Jean, interview, December 5, 1995, Port-au-Prince, Haiti; French interpretation by Nancy Bernard.
- 23 “Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer,” UN Doc. A/48/954/S/1994/751, Annex II, June 23, 1994.
- 24 Marcie Mersky, interview, April 19, 1996, Guatemala City.
- 25 For a description of the REMHI project and methodology, see Carlos Martín Beristain, “The Value of Memory,” *Forced Migration Review* 2 (1998): 24–26.
- 26 Eduardo Rabossi, interview, December 11, 1996, Buenos Aires.
- 27 Tristram Hunt, “Whose Truth? Objective Truth and a Challenge for History,” *Criminal Law Forum* 15 (2004): 193–198 at 193, 198. See also Martti Koskeniemi, “Between Impunity and Show Trials,” *Max Planck Yearbook of United Nations Law* 6 (2002): 1–35.

## 7 The Truth about Women and Men

- 1 See Kelli Muddell, “Capturing Women’s Experiences of Conflict: Transitional Justice in Sierra Leone,” *Michigan State Journal of International Law* 15, no. 1 (2007): 85–100.
- 2 Vasuki Nesiah, *Truth Commissions and Gender: Principles, Policies, and Procedures* (New York: International Center for Transitional Justice, 2006), 41.
- 3 In South Africa, for example, this was evident in relation to KwaZulu Natal. See Ashnie Padarath, “Women and Violence in KwaZulu Natal,” in Meredith Turshen and Clotilde Twagiramariya, eds., *What Women Do in Wartime: Gender and Conflict in Africa* (London: Zed Books, 1998). Padarath writes that “while the sexual nature of prison torture is the focus of much attention, the sexual brutalization of women believed to be supporters of opposing political parties has received very little emphasis or even acknowledgment” (64). Also described in interviews with Janis Grobbelaar, information manager, and Vanessa Barolsky, researcher, South Africa TRC, November 10, 1997, Johannesburg, and with Beth Goldblatt, researcher, Gender Research Project, Centre for Applied Legal Studies, University of the Witwatersrand, October 24, 1997, Johannesburg. See also Beth Goldblatt, “Evaluating the Gender Content of Reparations: Lessons from South Africa,” in *What Happened to the Women? Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006), 48–91.
- 4 The South African TRC describes this phenomenon in its report; see vol. 4, chap. 10, sec. 36–43, 293–294.
- 5 Interview, Beth Goldblatt, 1997.
- 6 *Guatemala: Memoria del Silencio: Informe de la Comisión para el Esclarecimiento Histórico*, vol. 3, chap. 2, para. 37.
- 7 Julie Guillerot, “Linking Gender and Reparations in Peru: A Failed Opportunity,” in *What Happened to the Women?*, ed. Rubio-Marín, 166.
- 8 *Guatemala: Memoria del Silencio*, vol. 3, chap. 2, para. 49.
- 9 In conversation with Luz Méndez, June 2009, New York.
- 10 Ibid.
- 11 On the other hand, the Salvadoran report lists many incidents of rape in its appendix, which documents all victims who provided testimony and the violations that they suffered.

- 12 Nesiah, *Truth Commissions and Gender*, 24.
- 13 As stated in a meeting by the author with three members of South Africa's Amnesty Committee, November 1997, in reference to the violence between the African National Congress and the Inkatha Freedom Party.
- 14 Rome Statute of the International Criminal Court, July 17, 1998, Articles 7 and 8.
- 15 For an overview of legal developments in this area, see Kelly D. Askin, "Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles," *Berkeley Journal of International Law* 21 (2003), 288.
- 16 UN Security Council Resolutions 1325 (October 31, 2000) and 1820 (June 19, 2008).
- 17 *Truth and Reconciliation Commission of South Africa Report*, vol. 4, chap. 10, sec. 144, 316.
- 18 *Si M Pa Rele . . . (If I Don't Cry Out . . .): Report of the National Commission for Truth and Justice, Haiti*, 1996, 40–46.
- 19 In Timor-Leste, for example, the commission understood that standard statement-taking was not capturing the experiences of women. They thus reached out to 200 women for in-depth interviews, reflecting a wide range of experiences and backgrounds.
- 20 In particular, see Nesiah, *Truth Commissions and Gender*; Rubio-Marín, ed., *What Happened to the Women?*; and World Bank, *Gender, Justice, and Truth Commissions* (Washington, DC: World Bank, June 2006).

## 8 Truth and Justice: A Careful but Critical Relationship

- 1 Wilder Tayler, Acting Secretary-General, International Commission of Jurists, interview, November 23, 2009, Geneva.
- 2 José Miguel Vivanco, Executive Director, Human Rights Watch Americas, interview, December 2009.
- 3 The Sierra Leone truth commission was of the opinion, and stated in its report, that the amnesty granted in the Lomé peace agreement was necessary to achieve peace (and felt the establishment of the Special Court for Sierra Leone was a breach of this agreement). The amnesty was still considered to be in effect at the domestic level, however, and the commission's view had no effect on either immunities or prosecutions, domestically or internationally. See *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, vol. 3B, 364–369.
- 4 Emilio Crenzel, "Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice," *International Journal of Transitional Justice* 2 (2008): 173–191 at 181.
- 5 Ibid. This was in relation to about forty military officers.
- 6 Luis Moreno-Ocampo, interview, December 11, 1996, Buenos Aires. Moreno Ocampo would later become chief prosecutor of the International Criminal Court.
- 7 The first, the "Punto Final" (Full Stop) law, set a cutoff date for initiating prosecutions for events during the period of military rule; a later "Due Obedience" law prevented the prosecution of those who claimed to be acting under a superior's orders. See *Truth and Partial Justice in Argentina: An Update* (New York: Human Rights Watch, 1991), 47–52.
- 8 At the beginning of a new investigation in Argentina, a judge will routinely request any relevant information from the Archivo Nacional de la Memoria, where the CONADEP files are housed. The CONADEP conclusions can be admitted by the judge with probatory status—stipulating facts about events, dates, names, etc. However, the testimonies in these files are not given the same force as statements taken directly by the investigating judge. Instead, the statement-giver would have to be found and the testimony repeated, which is of course not always possible. An

Argentine human rights organization, the Centro de Estudios Legales y Sociales (CELS), has been working to change the legal status of the CONADEP testimonies. Information provided by CELS and Cath Collins, February 2010.

- 9 “Institutional Cooperation Agreement between the Prosecutor’s Office and the Truth and Reconciliation Commission,” August 15, 2002.
- 10 Eduardo González Cueva, “The Peruvian Truth and Reconciliation Commission and the Challenge of Impunity,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 85.
- 11 Ibid., 84.
- 12 Ibid., 83.
- 13 Ibid., 84.
- 14 Eduardo González Cueva, “The Contribution of the Peruvian Truth and Reconciliation Commission to Prosecutions,” *Criminal Law Forum* 15 (2004): 55–66 at 60.
- 15 Eduardo González Cueva, telephone interview, November 16, 2009, and correspondence with Javier Ciurlizza, February 2010.
- 16 González Cueva, “The Peruvian Truth and Reconciliation Commission,” 91.
- 17 Javier Ciurlizza and Eduardo González, “Truth and Justice from the Perspective of the Truth and Reconciliation Commission,” in *The Legacy of Truth: Criminal Justice in the Peruvian Transition*, ed. Lisa Magarrell and Leonardo Filippini (New York: International Center for Transitional Justice, 2006), 52.
- 18 Through October 2009, sixty-four accused were tried in relation to fifteen cases, most of them cases of forced disappearance. See Coordinara Nacional de Derechos Humanos (Peru), “Los retrocesos del proceso de judicialización de graves violaciones a los derechos humanos: Las sentencias de la Sala Penal Nacional,” October 2009.
- 19 Ibid. This document provides an excellent analysis of the National Criminal Court (Sala Penal Nacional) through October 2009. Translation by author.
- 20 Reed Brody, interview, November 18, 2009, Geneva. For a detailed account of these efforts, see Reed Brody, “The Prosecution of Hissène Habré: International Accountability, National Impunity,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 278–300.
- 21 Reed Brody, interview, 2009.
- 22 Arthur Oder, interview, October 10, 1996, Kampala.
- 23 Alfred Nasaba, interview, October 14, 1996, Kampala.
- 24 George Kanyeihamba, interview, October 11, 1996, Kampala.
- 25 Bart Katureebe, interview, October 13, 1996, Kampala.
- 26 For further description of the principle of command responsibility, see Steven R. Ratner, Jason S. Abrams, and James L. Bischoff, *Accountability for Human Rights Atrocities: Beyond the Nuremberg Legacy*, 3rd edition (Oxford: Oxford University Press, 2009), 146–148. For an overview of sixty-seven former heads of state who have been brought to trial since 1990, see Ellen L. Lutz and Caitlin Reiger, eds., *Prosecuting Heads of State* (Cambridge and New York: Cambridge University Press, 2009).
- 27 Arthur Oder, interview.
- 28 René Magloire, interview, December 6, 1995, Port-au-Prince, Haiti.
- 29 Dullah Omar, interview, August 27, 1996, Cape Town.
- 30 Interview, November 7, 1997, South Africa.
- 31 Former South African commissioner Dumisa Ntsebeza recalls an attorney general insisting that “he was not able to receive any statement from [the TRC] in relation to anything that he was investigating” as it could compromise future trials. Dumisa Ntsebeza, “The Role of the Investigative Unit in the South African Truth and

- Reconciliation Process: Success and Failures: A Critical Assessment,” unpublished paper for the University of the Western Cape LLM Transitional Law course, as cited in Jeremy Sarkin, *Carrots and Sticks: The TRC and the South African Amnesty Process* (Antwerp: Intersentia, 2004), 128.
- 32 Sarkin, *Carrots and Sticks*, 131.
  - 33 *Truth and Reconciliation Commission of South Africa Report*, 2003, vol. 6, sec. 3, chap. 1, 183, 263.
  - 34 *Ibid.*, vol. 6, sec. 3, chap. 1, 263. An interesting aspect is that perpetrators found no legal incentive to apply for crimes that took place abroad. The TRC reported: “Because an amnesty granted in South Africa has no validity in international law, the former [South African Defence Force] leadership advised its members not to apply for amnesty for actions outside South Africa.” *Ibid.*, vol. 6, sec. 3, chap. 1, 185.
  - 35 See, for example, *ibid.*, vol. 5, chap. 6, sec. 34, 202.
  - 36 The commission noted, however, that it would not provide “privileged information such as that contained in amnesty applications.” *Ibid.*, vol. 5, chap. 8, sec. 14, 309. Some analysts conclude that the South African commission was not enthusiastic in its recommendation for prosecutions, despite urgings from victims. See Audrey R. Chapman and Hugo van der Merwe, eds., *Truth and Reconciliation in South Africa: Did the TRC Deliver?* (Philadelphia: University of Pennsylvania Press, 2008), 266–267.
  - 37 *Truth and Reconciliation Commission of South Africa Report*, vol. 5, chap. 8, sec. 14, 309.
  - 38 Information provided by Yasmin Sooka, telephone interview, January 18, 2010. Yasmin Sooka was a member of the South African commission and has since met regularly with prosecuting authorities to urge investigations.
  - 39 South African Department of Justice, “Profile of PCLU cases,” as cited in Carnita Ernest, ed., “Reconciliatory Justice: Amnesties, Indemnities and Prosecutions in South Africa’s Transition,” Centre for the Study of Violence and Reconciliation, October 2007, 13.
  - 40 *Ibid.*
  - 41 Yasmin Sooka, interview.
  - 42 See Jeremy Gordin and Angela Quintal, “Amnesty Door Slammed,” *Sunday Independent* (South Africa), December 14, 2008, 1.
  - 43 Desmond Tutu, foreword to *Truth and Reconciliation Commission of South Africa Report*, vol. 6.
  - 44 Legislative Decree no. 486 (El Salvador), March 20, 1993.
  - 45 UN secretary-general Boutros Boutros-Ghali expressed his concern that the amnesty law was passed so quickly, saying that “it would have been preferable if the amnesty had been promulgated after creating a broad degree of national consensus in its favor,” but most other governmental or intergovernmental observers remained silent. See “Report of the Secretary-General on All Aspects of ONUSAL’s Operations,” UN Doc. S/25812, May 21, 1993, 2. For a broader discussion of these developments, see Martha Doggett, *Death Foretold: The Jesuit Murders in El Salvador* (New York: Lawyers Committee for Human Rights, and Washington, DC: Georgetown University Press, 1993), 271–276.
  - 46 Michael Posner, Lawyers Committee for Human Rights, interview, March 13, 1996, New York.
  - 47 *From Madness to Hope: The 12-Year War in El Salvador*, 178–179.
  - 48 Margaret Popkin, “Judicial Reform in Post-war El Salvador: Missed Opportunities” (paper presented at the Latin American Studies Association conference, September 28–30, 1995), 6–7.
  - 49 Thomas Buerghenthal, interview, June 14, 1996, Washington, DC.
  - 50 For an exploration of these misconceptions versus the practice of truth commissions, see Francesca Pizzutelli, “Moving Away from the South African



Model: Amnesties and Prosecutions in the Practice of 40 Truth Commissions” (paper presented at the conference “Taking Stock of Transitional Justice,” Oxford Transitional Justice Research, Oxford University, June 26–28, 2009, publication forthcoming).

- 51 For a description of European Union and U.S. policies on amnesty in a specific context, for example, see Laura Davis and Priscilla Hayner, *Difficult Peace, Limited Justice: Ten Years of Peacemaking in the DRC* (New York: International Center for Transitional Justice, March 2009). For a longer treatment of this subject, see Priscilla Hayner, *Negotiating Justice: Guidance for Mediators* (ICTJ and the Centre for Humanitarian Dialogue, February 2009).
- 52 As Kenya began drafting a bill to create its Truth, Justice, and Reconciliation Commission, the UN Office of the High Commissioner for Human Rights wrote that “[p]erpetrators of gross human rights violations should under no circumstances be recommended for amnesty. The United Nations rejects such amnesties and is therefore unable to provide support to institutions and mechanisms recommending or granting amnesties for gross human rights violations.” See “Report from OHCHR Fact-Finding Mission to Kenya, 6–28 February, 2008,” 17, available at [www.ohchr.org/Documents/Press/OHCHRKenya-report.pdf](http://www.ohchr.org/Documents/Press/OHCHRKenya-report.pdf).
- 53 See, generally, Office of the United Nations High Commissioner for Human Rights; *Rule-of-Law Tools for Post-Conflict States: Amnesties*, 2009.
- 54 *Guatemala: Memory of Silence: Report of the Commission for Historical Clarification (Conclusions and Recommendations)*, 18–19.
- 55 *Report of the Chilean National Commission on Truth and Reconciliation*, vol. 1, 117–118.
- 56 *Ibid.*, 119.
- 57 *Nunca Más: Report of the Argentine National Commission on the Disappeared*, 387.
- 58 *Ibid.*, 386–387.
- 59 *Report of the Commission of Inquiry into Violations of Human Rights: Findings, Conclusions and Recommendations (Uganda)*, 1994, 234.
- 60 *From Madness to Hope*, 121.
- 61 *Ibid.*, 178.
- 62 *Ibid.*, 172–173.
- 63 *Truth and Reconciliation Commission of South Africa Report*, vol. 4, chap. 4, para. 46, 107. See also a close description of this internal commission debate in Alex Boraine, *A Country Unmasked: Inside South Africa’s Truth and Reconciliation Commission* (Oxford: Oxford University Press, 2000), 183–186. At the time, Boraine argued against subpoenas for judges, but in retrospect concluded that the judges’ participation should have been required. Given their role under apartheid, the failure of judges to appear was “unfortunate and tragic,” writes Boraine.
- 64 *Truth and Reconciliation Commission of South Africa Report*, vol. 6, sec. 3, chap. 1, 184.
- 65 Paul van Zyl, interview, November 1997, Johannesburg.
- 66 Ronald C. Slye, “Amnesty, Truth, and Reconciliation: Reflections on the South African Amnesty Process,” in Robert I. Rotberg and Dennis Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton, NJ: Princeton University Press, 2000), 177.
- 67 For a fascinating exploration of the difference between “legal truth” and “historical truth,” and the limitations of trials in providing the latter, see Martti Koskeniemi, “Between Impunity and Show Trials,” *Max Planck Yearbook of United Nations Law* 6 (2002): 1–35.
- 68 In 1997, three international experts recommended that “[t]he Office of the Prosecutor should be provided with an additional mandate and staff to serve as a high-level truth commission responsible for the purpose of creating an accurate

and unbiased historical record of the ethnic cleansing and genocide which occurred in Bosnia.” Marshall Freeman Harris, R. Bruce Hitchner, and Paul R. Williams, *Bringing War Criminals to Justice: Obligations, Options, Recommendations* (Dayton, OH: Center for International Programs, University of Dayton, 1997), 25. These authors cite the example of the Special Prosecutor’s Office in Ethiopia as fulfilling both a prosecutorial and a truth commission role.

- 69 Indeed, when Slobodan Milošević, the former president of the Federal Republic of Yugoslavia, died before his trial had concluded at the ICTY, there was a question of whether the wealth of information collected by the prosecution could be made available for public scrutiny and for the historical record. But the court was generally uncomfortable with this idea.
- 70 *Informe histórico a la sociedad Mexicana* (Mexico City: Fiscalía Especial para Movimientos Sociales y Políticos del Pasado, 2006). Ironically, the Mexican special prosecutor’s office was created as an alternative to “a politically sensitive truth commission,” calls for which were gaining momentum. See Kate Doyle, “Impunity’s Triumph: The Failure of Mexico’s Special Prosecutor,” June 8, 2006, at [www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB180/doyle\\_impunity\\_triumph.pdf](http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB180/doyle_impunity_triumph.pdf), and Human Rights Watch, *Mexico: Lost in Transition*, May 16, 2006.

## 9 Truth Commissions and the International Criminal Court

- 1 Interviews in late 1998 with persons who took part in these negotiations: Helen Duffy, counsel for the ICC Campaign, Human Rights Watch, New York; Jelena Pejic, senior program coordinator for Europe, Lawyers Committee for Human Rights, New York; and Christopher Hall, legal advisor, Amnesty International, London.
- 2 The TRC in the Democratic Republic of the Congo technically overlapped with the ICC engagement there, but that commission accomplished little before closing down.
- 3 These points were outlined in remarks by Ian Martin, relaying the views of ICTY prosecutor Louise Arbour and president Gabrielle Kirk McDonald, on the panel “The Need for and Possibility of Truth and Reconciliation Commissions in the Territory of the Former Yugoslavia,” Conference on War Crimes Trials, Belgrade, November 7–8, 1998.
- 4 The costs of the two mechanisms were markedly different: the fiscal year 1999 budget of the Tribunal (while these discussions were under way) was nearly \$100 million, with a staff of nine hundred. The proposed truth commission was projected to require \$15 to \$20 million total over two years.
- 5 Interviews with a range of legal and tribunal experts, 1998–1999. The former ICTY chief prosecutor also supported a truth commission. See Richard J. Goldstone, “Ethnic Reconciliation Needs the Help of a Truth Commission,” *International Herald Tribune*, October 24–25, 1998, 6.
- 6 Rome Statute of the International Criminal Court, Article 17.
- 7 This determination by the ICC prosecutor must then be confirmed by the ICC Pre-Trial Chamber.
- 8 This intention is made clear in the Preamble to the Rome Statute of the International Criminal Court.
- 9 Paul Seils, interview, October 27, 2009, Geneva.
- 10 Efforts to establish a special tribunal at the national level in Kenya, which could have had special powers and protections to address post-election violence, met with frustration. It now seems unlikely that this will be put in place.
- 11 From the Court’s perspective, it would consider any amnesty on an individual, case-by-case basis: if an amnesty were granted domestically to someone of interest to the Court, it would likely find that the state is unwilling or unable to prosecute, and thus that the case is admissible before the Court.

- 12 This, for example, was the language in the Sierra Leone Truth and Reconciliation Act 2000, 8(3).
- 13 Rome Statute of the International Criminal Court, Article 93, para. 1. A state party may deny such a request if it concerns “documents or disclosure of evidence which relates to its national security”; Article 93, para. 4. While the Statute states that the Court will “ensure the confidentiality of documents and information, except as required for the investigation and proceedings described in the request,” and that the state can request that information transmitted to the Court be used “solely for the purpose of generating new evidence,” these subtleties are likely to be lost on those who would be concerned with information being shared. Rome Statute, Article 93, para. 8(a) and (b).
- 14 Some suggested that an agreement be reached in advance by the two bodies to resolve this issue. See Marieke Wierda, Priscilla Hayner, and Paul van Zyl, “Exploring the Relationship between the Special Court and the Truth and Reconciliation Commission of Sierra Leone,” International Center for Transitional Justice, June 24, 2002; Human Rights Watch, “Policy Paper on the Interrelationship Between the Sierra Leone Special Court and the Truth and Reconciliation Commission,” April 18, 2002. Others argued that the Special Court’s subpoena power gave it full access to all TRC records.
- 15 William A. Schabas, “The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone,” *Human Rights Quarterly* 25 (2003): 1035–1066 at 1050.
- 16 See, for example, Schabas, “The Relationship between Truth Commissions and International Courts,” 1063.
- 17 Rules of Procedure and Evidence. Adopted by the Assembly of State Parties, September 2002, Rule 73.
- 18 Schabas, “The Relationship between Truth Commissions and International Courts,” 1049. Another recent analysis concludes that the lack of clarity on the ICC respecting confidentiality granted by truth commissions will make it difficult for commissions to retain this power, and also suggests that truth commissions should no longer compel self-incriminating testimony. See Alison Bisset, “Rethinking the Powers of Truth Commissions in Light of the ICC Statute,” *Journal of International Criminal Justice* 7 (2009): 963–982.
- 19 Office of the Prosecutor, ICC, “Prosecutorial Strategy: 2009–2012,” section 34(b), February 1, 2010.
- 20 Ibid.
- 21 See decision by the president of the Special Court, Geoffrey Robertson: *Prosecutor v. Sam Hinga Norman* (case no. SCSL-2003-08-PT) November 28, 2003. See also “Practice Direction on the Procedure following a Request by a State, the Truth and Reconciliation Commission, or Other Legitimate Authority to Take a Statement from a Person in the Custody of the Special Court for Sierra Leone” (adopted September 9, 2003, amended October 4, 2003).
- 22 For a detailed account of the Sierra Leone TRC’s attempt to interview Hinga Norman, and the steps and legal decisions taken by the Court in response, see William A. Schabas, “A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone,” in *Truth Commission and Courts: The Tension between Criminal Justice and the Search for Truth*, in William A. Schabas and Shane Darcy, eds. (Dordrecht, the Netherlands: Kluwer Academic Publishers, 2004), 41–54.
- 23 Correspondence with Liberian truth commission chairman Jerome Verdier, November 11, 2009.
- 24 *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, vol. 3b, chap. 6, para. 224.
- 25 Eduardo González Cueva, “The Peruvian Truth and Reconciliation Commission

and the Challenge of Impunity,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 71.

## 10 Naming Names of Perpetrators

- 1 Promotion of National Unity and Reconciliation Act, Act no. 34 of 1995, South Africa.
- 2 Decreto 187/83, Argentina.
- 3 Eduardo Rabossi, interview, December 1996, Buenos Aires.
- 4 Graciela Fernández Meijide, interview, December 1996, Buenos Aires.
- 5 Testimony of Luis Alberto Urquiza, in *Nunca Más: Report of the Argentine National Commission on the Disappeared*, 27–28.
- 6 Testimony of Martha Álvarez de Repetto, in *Nunca Más: Report of the Argentine National Commission on the Disappeared*, 53.
- 7 *Nunca Más: Report of the Argentine National Commission on the Disappeared*, 7.
- 8 “Los culpables son 1351,” special supplement of *La Voz*, November 4, 1994. This list was first printed in the weekly *El Periodista*, November 2, 1984. See also “Conadep Decries Publication of ‘Oppressors’ List,” Foreign Broadcasting Information Service, November 5, 1994.
- 9 Juan Méndez, afterword to Horacio Verbitsky, *The Flight: Confessions of an Argentine Dirty Warrior* (New York: The New Press, 1996), 165. General Jorge Rafael Videla, Admiral Eduardo Massera, and General Ramon Camps, senior officials in the military regime, had all been convicted for abuses and served some years in prison before being pardoned.
- 10 Calvin Sims, “Retired Torturer Now Lives a Tortured Existence,” *New York Times*, August 12, 1997, A4. For a fascinating and detailed account of Alfredo Astiz and other perpetrators in Argentina, see Marguerite Feitlowitz, *A Lexicon of Terror: Argentina and the Legacies of Torture* (New York: Oxford University Press, 1998), esp. 227–228.
- 11 Supreme Decree no. 355 of the Executive Branch of Chile, April 25, 1990, Article 2.
- 12 Gisela von Mühlenbrock, in conversation with the author, March 13, 1997, Washington, DC.
- 13 Jorge Correa, interview, November 26, 1996, Santiago, Chile.
- 14 Because the commission’s mandate empowered it to investigate killings and disappearances but not cases of torture if the victim survived, testimony from survivors was primarily used to try to determine the fate of those imprisoned with them who did not survive, as well as to understand the general practices in the detention centers. Survivors could sometimes identify their own torturers but could generally not identify others’ killers.
- 15 The constraints on the new democracy were made explicit when General Augusto Pinochet warned the new government not to “touch a single hair of a single soldier,” nor ignore the 1978 amnesty, lest he repeat the events of September 1973, when he took over in a coup. “Chile: Editor’s Introduction,” in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil J. Kritz, vol. 2 (Washington, DC: U.S. Institute of Peace Press, 1995), 454.
- 16 Laura Novoa, interview, December 2, 1996, Santiago, Chile.
- 17 Interview, December 3, 1996, Santiago, Chile.
- 18 Ibid.
- 19 Approval by the minister of defense or president is required only for promotions to the most senior levels of the armed forces in Chile.

- 20 Thomas Buergenthal, "The United Nations Truth Commission for El Salvador," *Vanderbilt Journal of Transnational Law* 27 (1994): 497–544 at 520.
- 21 Ibid., 520.
- 22 Ibid., 520–521.
- 23 Ibid., 521.
- 24 *From Madness to Hope: The 12-Year War in El Salvador*, 53.
- 25 Ibid., 127.
- 26 Ibid., 25.
- 27 Buergenthal, "The UN Truth Commission," 519.
- 28 Ibid., 522.
- 29 See "Report of the Secretary-General on the Implementation of the Recommendations of the Commission on the Truth," UN Doc. S/26581, Annex, para. 5, October 14, 1993, stating, "The United Nations analysis found that only one of the Commission's recommendations, that concerning disqualification by law from holding public office, could not be implemented as it was at variance with fundamental provisions of the Constitution and conflicted with another recommendation made by the Commission concerning the ratification of international human rights instruments under which citizens cannot be deprived of their political rights in the manner recommended by the Commission."
- 30 Martha Doggett, *Death Foretold: The Jesuit Murders in El Salvador* (New York: Lawyers Committee for Human Rights, and Washington, DC: Georgetown University Press, 1993), 266.
- 31 Juan E. Méndez, "Accountability for Past Abuses," *Human Rights Quarterly* 19 (1997), 255–282 at 265.
- 32 George Vickers, in conversation with the author, June 1995, Washington, DC.
- 33 Thomas Buergenthal, interview, June 14, 1996, Washington, DC.
- 34 See William Stanley, *Risking Failure: The Problems and Promise of the New Civilian Police in El Salvador* (Cambridge, MA: Hemispheric Initiatives, and Washington, DC: Washington Office on Latin America, 1993), 15. According to this report, Lt. Col. Manuel Antonio Rivas Mejía, who was a candidate for subdirector of the new civilian national police, was "dropped from consideration after the Truth Commission released its findings." The commission report found Rivas Mejía, then head of the Commission for the Investigation of Criminal Acts, to be responsible for "concealing the truth" and recommending the destruction of incriminating evidence against senior military officers involved in the Jesuit murders. See *From Madness to Hope*, 46–47.
- 35 "Report of the Secretary-General on the implementation of the recommendations of the Commission on the Truth," U.N. Doc. S/26581, Annex, para. 3, October 15, 1993.
- 36 Author interview with local activists in Suchitoto, El Salvador, March 1996.
- 37 Fanny Benedetti, former staff member of the Haitian truth commission, interview, March 25, 1997, New York.
- 38 Ibid.
- 39 See Chapter 7 for more on the principle of command responsibility.
- 40 *Si M Pa Rele . . . (If I Don't Cry Out . . . ): Report of the National Commission for Truth and Justice, Haiti*, 1996.
- 41 *Report of the Commission of Inquiry* (Chad), as translated and excerpts reprinted in Kritz, *Transitional Justice*, vol. 3, 91.
- 42 Reed Brody, "The Prosecution of Hissène Habré: International Accountability, National Impunity," in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 283.
- 43 Hector Rosada, interview, April 18, 1996, Guatemala City.
- 44 "Agreement on the Establishment of the Commission to Clarify Past Human

Rights Violations and Acts of Violence That Have Caused the Guatemalan People to Suffer,” UN Doc. A/48/954/S/1994/751, 23 June 1994.

- 45 Christian Tomuschat, “Between National and International Law: Guatemala’s Historical Clarification Commission”, *Festschrift Jaenicke* (Heidelberg, Germany: Springer, 1998).
- 46 Hector Rosada, interview, April 18, 1996, Guatemala City.
- 47 Antonio Arenales Forno, interview, April 19, 1996, Guatemala City.
- 48 *Guatemala: Memory of Silence: Report of the Commission for Historical Clarification (Conclusions and Recommendations)*, 38.
- 49 Frank LaRue, telephone interview, February 28, 1999.
- 50 Promotion of National Unity and Reconciliation Act, Act no. 34 of 1995, South Africa, section 30.
- 51 *Truth and Reconciliation Commission of South Africa Report*, vol. 1, chap. 7, sec. 21–76, 179–190, regarding the case of *Van Rensburg and Du Preez v. Truth and Reconciliation Commission*.
- 52 In some cases, persons were named in hearings without the commission’s advance knowledge; notices were then sent after the fact.
- 53 Commissioner Richard Lyster, correspondence with the author, November 23, 1998. One senior staff member estimated that perhaps thirty to forty names were deleted in response to the replies from the alleged perpetrators, out of the several hundred who were notified, in most cases because the commission’s evidence was weak or was based in part on untested hearsay, and the commission chose to err on the side of caution.
- 54 Commissioner Richard Lyster explained exactly why these requirements were so limiting: “This placed a huge burden on the TRC. Anyone who was mentioned in the text of the report, even if in passing, was now entitled to receive a section 30 notice, setting out in some detail exactly what it was he was alleged to have done (he need not have been accused of committing a gross human rights violation, he just needed to have been mentioned to his detriment), with supporting affidavits and statements, etc. Let us say that one was drafting a section of the report which dealt with, for example, the abduction of ANC activists from Swaziland. There was an incredibly detailed and rich amount of material about this sort of thing, from askaris [turncoats or spies] who had come clean, and from amnesty applicants. . . . They mentioned in their statements a wide range of people who they relied on in Swaziland for information and assistance: Swazi citizens, policemen and conservative politicians, ANC activists who were corrupted and shopped their colleagues. . . . Simply put, the story of an abduction of a leading ANC activist, her return to South Africa, her subsequent torture over a lengthy period of time and her final murder and secret burial, involved a host of bit part players, all of whom in their own way cooperated with the police, willingly or under duress, to achieve the primary aim of duping someone, abducting them, transporting them illegally across the border, hiding them on a secret farm destination, torturing them, killing them, and burying them. In some cases, we had 30 names of these bit players. All of them were mentioned to their detriment, and therefore were entitled to a notice, with information attached. In most cases we hadn’t any idea where they were, and accordingly their names were taken out of the report.” Lyster, correspondence with the author, November 29, 1998.
- 55 John Daniel, correspondence with the author, November 18, 1998.
- 56 After the Amnesty Committee has completed its work, the commission will submit a supplemental report to summarize the information from these final proceedings.
- 57 Lyster, correspondence, November 29, 1998.
- 58 *Truth and Reconciliation Commission of South Africa Report*, vol. 5, chap. 8, sec. 14, 309.
- 59 The commission had concluded that de Klerk was an accessory after the fact to a

- crime because he failed to report it to authorities when he knew about it. De Klerk did not deny he was informed of the crime, but held that he was not obliged to report it because the perpetrators were soon to apply for an amnesty.
- 60 Javier Ciurlizza, correspondence with author, January 19, 2010.
  - 61 The commission does not explain why they include the president's name on the list to be barred from office. They have suggested elsewhere that they had access to confidential information showing that her involvement in the war was more extensive than she has admitted. See Jonny Steinberg, "Liberia's Experiment with Transitional Justice," *African Affairs*, 109, no. 434 (2010): 135–144.
  - 62 Correspondence by author with TRC chair Jerome Verdier, January 2010.
  - 63 Aaron Weah, "Hopes and Uncertainties: Liberia's Journey to End Impunity," forthcoming.
  - 64 Juan E. Méndez, interview, March 22, 1996, Notre Dame, IN.
  - 65 In interviews, for example, the executive director of Human Rights Watch, Kenneth Roth, and the president of the Open Society Institute, Aryeh Neier, agreed that names should be named by a commission, given basic precautions.
  - 66 *Report of the Chilean National Commission on Truth and Reconciliation*, xxxii.
  - 67 Human Rights Program of the Harvard Law School and the World Peace Foundation, *Truth Commissions: A Comparative Assessment* (Cambridge, MA: Harvard Law School Human Rights Program, 1997), 30.
  - 68 José Zalaquett, interview, November 20, 1996, Guatemala City.
  - 69 José Zalaquett, correspondence with the author, December 2, 1998.
  - 70 Douglass Cassel, "International Truth Commissions and Justice," *Aspen Institute Quarterly* 5, no. 3 (1993): 83–84.
  - 71 José Zalaquett, correspondence with the author, October 29, 1998.
  - 72 Human Rights Watch, "Recommendations to the Truth and Reconciliation Commission," January 1998, 4. This report was written by Human Rights Watch researcher Bronwen Manby.
  - 73 *Ibid.*, 5.
  - 74 *Black's Law Dictionary* defines preponderance of evidence as the "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Black's Law Dictionary* (St. Paul, MN: West Publishing, 1991).
  - 75 *Truth and Reconciliation Commission of South Africa Report*, vol. 1, chap. 4, sec. 155, 91.
  - 76 *From Madness to Hope*, 25.

## 11 Healing from the Past

- 1 Horacio Verbitsky, interview, December 10, 1996, Buenos Aires.
- 2 Horacio Verbitsky, *The Flight: Confessions of an Argentine Dirty Warrior* (New York: The New Press, 1996).
- 3 Some people prefer to use the term "survivor" in the place of "victim," in order to reflect a less passive position to those who survived extreme violence. I tend to use the word "victim," with no intent to imply a negative, but rather to mirror the language most commonly used by these commissions themselves, as well as to avoid the confusion with the use of "survivor" as meaning a family member of someone who was killed.
- 4 Thulani Grenville-Grey, interview, October 28, 1997, Johannesburg, South Africa.
- 5 Brandon Hamber, "Do Sleeping Dogs Lie? The Psychological Implications of the Truth and Reconciliation Commission in South Africa," seminar presented at the Centre for the Study of Violence and Reconciliation, Johannesburg, July 26, 1995, 4–5.

- 6 Judith Lewis Herman, *Trauma and Recovery* (New York: Basic Books, 1992), 1.
- 7 Yael Danieli, "Preliminary Reflections from a Psychological Perspective," in Theo van Boven, Cees Flinterman, Fred Grünfeld, and Ingrid Westendorp, eds., *Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms* (Netherlands Institute of Human Rights, Maastricht, March 11–15, 1992), 198. See also Yael Danieli, ed., *International Handbook of Multigenerational Legacies of Trauma* (New York: Plenum Press, 1998), 4–6.
- 8 For example, for some of the early writings in this area, see Patricia K. Robin Herbst, "From Helpless Victim to Empowered Survivor: Oral History as a Treatment for Survivors of Torture," *Refugee Women and Their Mental Health* 13 (1992): 141–154; Adrienne Aron, "Testimonio: A Bridge between Psychotherapy and Sociotherapy," *Refugee Women and Their Mental Health* 13 (1992): 173–189; and Ana Julia Cienfuegos and Cristina Monelli, "The Testimony of Political Repression as a Therapeutic Instrument," *American Journal of Orthopsychiatry* 53 (1983): 43–51.
- 9 Fernando Moscoso and Juan Alberto Chamale Gómez, Guatemalan Forensic Anthropology Team, interview, April 18, 1996, Guatemala City.
- 10 Marcie Mersky, Human Rights Office of the Archbishop of Guatemala, interview, April 19, 1996, Guatemala City.
- 11 This lobbying group became Khulumani. Brandon Hamber, interview, August 1997, Cape Town.
- 12 Brandon Hamber, "The Burdens of Truth: An Evaluation of the Psychological Support Services and Initiatives Undertaken by the South African Truth and Reconciliation Commission" (paper presented at the Third International Conference of the Ethnic Studies Network, Derry, Northern Ireland, June 26–28, 1997, section 4.2).
- 13 Elizabeth Lira, interview, November 20, 1996, Santiago, Chile.
- 14 Reverend S. K. Mbande, Anglican Church of Christ the Redeemer, interview (together with Boniwe Mafu and Lebo Molete), October 25, 1997, Daveyton, South Africa.
- 15 Sylvia Dlomo-Jele, interview, October 26, 1997, Soweto, South Africa.
- 16 Sylvia Dlomo-Jele died on March 13, 1999. Memorial by the Centre for the Study of Violence and Reconciliation, Johannesburg.
- 17 Piers Pigou, "Amnesty for Sicelo Dlomo's Killers," *Mail and Guardian* (South Africa), April 14, 2000.
- 18 Simpson Xakeka, interview, October 27, 1997, Johannesburg; interpretation from Zulu by Lebo Molete.
- 19 Lauren Gilbert, correspondence with the author, December 22, 1997.
- 20 Brandon Hamber, interview.
- 21 Judith Lewis Herman, telephone interview, August 2, 1996.
- 22 The standard psychologists' reference work, the *Diagnostic and Statistical Manual*, points to PTSD symptoms that include "recurrent and intrusive distressing recollections of the event"; "diminished responsiveness to the external world, or 'psychic numbing'"; difficulty sleeping; difficulty concentrating or completing tasks; aggression; and other symptoms. See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th edition (Washington, DC: American Psychiatric Association, 1994), 424–429.
- 23 Michael Lapsley, interview, May 1, 1997, New York.
- 24 Marius Schoon, quoted in Tony Freemantle, "Confession Reignites a Smoldering Pain: Anger Flares as Man Learns Identity of Assassin Who Killed His Family," *Houston Chronicle*, November 18, 1996, A13. Marius Schoon planned to formally oppose the amnesty application of Craig Williamson, but Schoon died of cancer just



before the amnesty hearing began. Friends believed the stress from the case worsened his condition.

- 25 Nina K. Thomas, "Obliterating the Other: What Can Be Repaired by "Truth" and Testimony?" *International Journal of Applied Psychoanalytic Studies* 6, no. 4 (December 2009): 321–338.
- 26 Margaret Nangalembe and Albert "Mandla" Mbalekelwa Nangalembe, interview, August 18, 1996, Sebokeng, South Africa; interpretation from Zulu by Wally Mbhele.
- 27 The fear of revenge is in the context of the intercommunity political violence between the African National Congress and the Inkatha Freedom Party, a conflict that continued long after the end of apartheid and the onset of democratic elections.
- 28 This account was relayed by Joseph Dube, October 26, 1997, Soweto, South Africa.
- 29 Suzanne Daley, "In Apartheid Inquiry, Agony Is Relived but Not Put to Rest," *New York Times*, July 17, 1997, A1.
- 30 Grenville-Grey, interview, 1997.
- 31 Brandon Hamber, "Dealing with the Past and the Psychology of Reconciliation: The Truth and Reconciliation Commission, a Psychological Perspective" (paper presented at the International Symposium on the Contributions of Psychology to Peace, June 27, 1995), 6.
- 32 Grenville-Grey, interview, August 13, 1996, Cape Town.
- 33 Hamber, "The Burdens of Truth," sec. 4.1. Numbers cited refer to 1997.
- 34 Ilídio Silva, interview, September 19, 1996, Maputo, Mozambique.
- 35 Cécile Rousseau and Aline Drapeau, "The Impact of Culture on the Transmission of Trauma: Refugees' Stories and Silence Embodied in Their Children's Lives," in Yael Danieli, *International Handbook*, 465–486.
- 36 Herman, interview.
- 37 Tlhoki Mofokeng, Centre for the Study of Violence and Reconciliation, interview, October 28, 1997, Johannesburg. Many others echoed this point.
- 38 Reverend S. K. Mbande, interview.
- 39 Herman, *Trauma and Recovery*, 1.
- 40 Fanny Benadetti, interview, March 25, 1997, New York.
- 41 American Psychiatric Association, *Diagnostic and Statistical Manual*, 424–425, 428.
- 42 *Report of the Commission of Inquiry*, Chad, as translated and excerpts reprinted in Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. 3 (Washington, DC: U.S. Institute of Peace Press, 1995), 54. At least one other truth commission had this same problem. When the Chilean commission traveled outside of the capital, the commission met with victims and families of the disappeared in municipal buildings, places that had often served as detention and interrogation centers during the dictatorship. See Human Rights Watch, *Human Rights and the "Politics of Agreements": Chile during President Aylwin's First Year* (New York: Human Rights Watch, 1991), 20.
- 43 Jon Cortina, in conversation with the author, April 12, 1996, San Salvador.
- 44 "TRC Leaves Deep Scars on Staff," *Mail and Guardian* (South Africa), December 12, 1997.
- 45 Lauren Gilbert, correspondence with the author, December 22, 1997.
- 46 Ibid.
- 47 Antjie Krog, "Overwhelming Trauma of the Truth," *Mail and Guardian* (South Africa), December 24, 1996, 10. For a fuller exploration by Antjie Krog, see *Country of My Skull* (New York: Random House, 1999).
- 48 See, in particular, Brandon Hamber: *Transforming Societies after Political Violence: Truth, Reconciliation, and Mental Health* (Dordrecht, Netherlands: Springer, 2009), and David Mendeloff, "Trauma and Vengeance: Assessing the Psychological

and Emotional Effects of Post-conflict Justice,” *Human Rights Quarterly* 31 (2009): 592–623.

- 49 Ruth Picker, “Victims’ Perspectives about the Human Rights Violations Hearings,” *Research Report*, Centre for the Study of Violence and Reconciliation, February 2005.
- 50 Tom Winslow, Trauma Centre for Victims of Violence and Torture, interview, August 27, 1996, Cape Town.

## 12 Truth and Reparations

- 1 Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford and New York: Oxford University Press, 2006).
- 2 One of the best brief overviews of the subject precedes the UN and the de Greiff studies by one or two years: see Naomi Roht-Arriaza, “Reparations in the Aftermath of Repression and Mass Violence,” in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004), 121–139.
- 3 Ruth Rubio-Marín, ed., *What Happened to the Women? Gender and Reparations for Human Rights Violations* (New York: Social Science Research Council, December 2006), and Ruth Rubio-Marín, ed., *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge: Cambridge University Press, 2009). See also Kelli Muddell, “Limitations and Opportunities of Reparations for Women’s Empowerment,” ICTJ Briefing, September 2009.
- 4 Pablo de Greiff, who has led the writing in this area, suggests that a reparations program should contribute to “recognition, civic trust, and solidarity.” For further explanation, see *The Handbook of Reparations*, 460–466.
- 5 De Greiff suggests the following parameters for evaluating a reparations program: scope, completeness, comprehensiveness, complexity, integrity or coherence, finality, and munificence (i.e., the ampleness of benefits). See *The Handbook of Reparations*, 6–13.
- 6 For a succinct overview of reparations in international law, see United Nations Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-conflict States: Reparations* (New York and Geneva: United Nations, 2008), 5–8. See also Richard Falk, “Reparations, International Law, and Global Justice: A New Frontier,” in *The Handbook of Reparations*, 478–503.
- 7 United Nations, *Rule-of-Law Tools: Reparations*, 7.
- 8 “Reparations” is a general term that encompasses a variety of types of redress, including restitution, compensation, and rehabilitation. Restitution refers to reestablishing to the extent possible the situation that existed before the violation took place; compensation relates to any economically assessable damage resulting from the violations; and rehabilitation includes legal, medical, psychological, and other care that responds to damage done. Victim surveys have shown that victims’ concerns are often not just for the consequences of violations, but also for the need to address the conditions they suffered before, which often made them more vulnerable to the violations, and thus restoring them to the previous state is not appropriate or just.
- 9 This issue is explored well in Roht-Arriaza, “Reparations in the Aftermath of Repression and Mass Violence.”
- 10 Pablo de Greiff and Roger Duthie, eds., *Transitional Justice and Development: Making Connections* (New York: Social Science Research Council), 2009, in particular Naomi Roht-Arriaza and Katharine Orlovsky, “A Complementary Relationship: Reparations and Development,” 170–213. See also the *International Journal of Transitional Justice*, special issue on transitional justice and development, December 2008 (Rama Mani, guest editor).

- 11 Details of the Chilean reparations program, and the total costs, are reported in Corporación Nacional de Reparación y Reconciliación, *Informe sobre calificación de víctimas de violaciones de derechos humanos y de la violencia política* (Santiago, Chile: Corporación Nacional de Reparación y Reconciliación, 1996), 595–602.
- 12 Law Creating the National Corporation for Reparation and Reconciliation, Law no. 19,123, Chile, January 31, 1992, Article 17, reprinted in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. 3, ed. Neil J. Kritz (Washington, DC: U.S. Institute of Peace Press, 1995), 685–695.
- 13 Patricia Verdugo, interview, November 30, 1996, Santiago, Chile.
- 14 Carla Pellegrin Friedman, interview, December 3, 1996, Santiago, Chile. Reparations payments are not paid to siblings of the victim; in the case of the Pellegrin family, a monthly check will be paid to the victim's daughter, Carla Pellegrin's niece, until she reaches the age of twenty-five.
- 15 This Program of Reparation and Integral Health Care (known by its Spanish acronym, PRAIS), run through the Ministry of Health, received little attention; many victims told me they were not aware of it. As of 1995, after five years in operation, only 693 persons had made use of its services, including family members of the disappeared and survivors of detention and torture. See *Corporación Nacional de Reparación y Reconciliación*, 601.
- 16 Andrés Domínguez Vial, interview, November 27, 1996, Santiago, Chile.
- 17 The reparations package fell somewhat short of that recommended by the commission. For example, direct victims received university scholarships, but not their children, as was recommended. Furthermore, the program did not provide reparations to the widows or other surviving family members of torture victims who had since died. For further information on this and the earlier programs, see Elizabeth Lira, "The Reparations Policy for Human Rights Violations in Chile," *The Handbook of Reparations*, 55–101.
- 18 Veronica Smink, "Chile: Reabren comisiones de DD.HH.," *BBC Mundo*, February 19, 2010.
- 19 The number of cases that were given to the commission from non-governmental organizations, rather than through direct testimony, can be seen in the final victims list published as an appendix to the Argentine *Nunca Más* report. Those individuals listed without a case number were given to the commission indirectly; those with case numbers (about two out of three) were taken through direct testimony to the commission.
- 20 Law no. 24,411, Argentina, December 7, 1994, which instituted this program.
- 21 Decree 70/91, Argentina, January 10, 1991. This and following decrees authorized payment to approximately two hundred former political prisoners who had instituted legal proceedings prior to December 10, 1985 (i.e., within the first two years of democratic government). The cases brought to the Inter-American Commission and the friendly settlement with the government of Argentina are described in the Annual Report of the Inter-American Commission of Human Rights, 1992–1993, OEA/Ser.L/V/II. 83, doc. 14, corr. 1, March 12, 1993, 35–40. Information also obtained in telephone interviews with Alejandro Kawabata, Human Rights Office of the Argentine Ministry of the Interior, February 20, 1998, and Alejandro Garro, legal counsel to petitioners before the Inter-American Commission, Columbia University School of Law, February 16, 1998. See also María José Guembe, "Economic Reparations for Grave Human Rights Violations: The Argentinean Experience," *The Handbook of Reparations*, 21–54.
- 22 Those eligible for reparation were (1) those held in custody under the National Executive Authority (political prisoners held without trial); (2) civilians who were imprisoned on orders of a military court; and (3) those who were temporarily disappeared (imprisonment unrecognized by the authorities) whose case was

- reported at the time or who later gave testimony to the Argentine truth commission. The period covered extended two years before the coup of 1976, from the beginning of a state of siege under the previous government. See Law no. 24,043, Argentina, November 27, 1991, reprinted in Kritz, *Transitional Justice*, vol. 3, 667–669.
- 23 Provision for reparations to those forcibly exiled was not explicit in the law, but resulted from an administrative interpretation made by the government's Human Rights Office and the legal advisor to the Ministry of the Interior. Juan Méndez, correspondence with the author, February 13, 1998. This was later confirmed by a Supreme Court ruling in 2004.
  - 24 Ibid.
  - 25 Law no. 24,411, Argentina, December 7, 1994.
  - 26 In April 1992, for example, a court awarded \$250,000 for "moral damages" to the father of a young Swedish student, Dagmar Ingrid Hagelin, who disappeared in Argentina during the "dirty war." See "Fuerte indemnización por una desaparición," *Clarín*, April 4, 1992. In November 1994, a federal district court awarded \$3 million to the only survivor of a family of five who disappeared at the hands of the government (\$2 million to be paid by former navy admirals previously convicted of causing the disappearances, and \$1 million by the state). See "Condenan al Estado, a Massera y a Lambruschini pagar 3 millones," *Clarín*, November 18, 1994, 15. After five years of appeals, the award was finally set at \$1.25 million, to be split between Emilio Massera and the state of Argentina; Armando Lambruschini was dropped from the suit. See Noga Tarnopolsky, "The Family That Disappeared," *New Yorker*, November 15, 1999, 48–57.
  - 27 The amount provided to persons victimized as children was the same, in Argentine pesos, as that provided to families of the disappeared. However, the change in exchange rate with the U.S. dollar reduces the amount reflected here.
  - 28 Law no. 24,321, Argentina, May 11, 1994.
  - 29 Law no. 24,321 also allowed those families who had declared a family member "disappeared with the presumption of death" to change their status to "forcibly disappeared."
  - 30 Interview with staff of the Human Rights Office of the Ministry of the Interior, December 11, 1996, Buenos Aires, Argentina.
  - 31 Mercedes Meroño, Madres de la Plaza de Mayo, interview, December 1996, Buenos Aires.
  - 32 See Veerle Opgenhaffen and Mark Freeman, "Transitional Justice in Morocco: A Progress Report," International Center for Transitional Justice, November 2005.
  - 33 Ibid.
  - 34 See International Center for Transitional Justice fact sheet, "Truth and Reconciliation in Morocco," 2009.
  - 35 Lisa Magarrell, "Reparations for Massive or Widespread Human Rights Violations: Sorting Out Claims for Reparations and the Struggle for Social Justice," *Windsor Yearbook of Access to Justice* 22 (2003): 85–98 at 91.
  - 36 Ibid., 93.
  - 37 Ibid., 98.
  - 38 Lisa J. Laplante, "On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development," *Yale Human Rights and Development Law Journal* 10 (2007): 141–177 at 159.
  - 39 Ibid., 164.
  - 40 Law no. 28,592, Peru, Art 4, "Exclusions," July 29, 2005. See also Lisa Laplante, "The Law of Remedies and the Clean Hands Doctrine: Exclusionary Reparation Policies in Peru's Political Transition," *American University International Law Review* 23, no. 1 (2007): 51–90.
  - 41 Cristián Correa, ICTJ, correspondence with author, January 4, 2010.

- 42 See, for example, Pablo de Greiff, “Justice and Reparations,” in *The Handbook of Reparations*, 456–457.
- 43 See United Nations Peacebuilding Fund, “Sierra Leone Peacebuilding Fund: Project Summary.” Seventy-five percent of the \$3 million was allocated directly to reparations payments; 25 percent for administration of the program.
- 44 For a detailed assessment of this program, see Mohamad Suma and Cristián Correa, *Report and Proposals for the Implementation of Reparation in Sierra Leone*, International Center for Transitional Justice, December 2009.
- 45 John Caulker, Forum of Conscience, interview, The Hague, September 17, 2009.
- 46 *The Truth and Reconciliation Commission of South Africa Report*, 2003, vol. 6, sec. 5, chap. 7, 732.
- 47 In addition to funds from the government, the governments of Denmark, Switzerland, and the Netherlands each contributed between \$150,000 and \$250,000 for the interim reparations fund.
- 48 Audrey R. Chapman and Hugo van der Merwe, *Truth and Reconciliation in South Africa: Did the TRC Deliver?* (Philadelphia: University of Pennsylvania Press, 2008), 285.
- 49 *Si M Pa Rele . . . (If I Don’t Cry Out . . . ) : Report of the National Commission of Truth and Justice, Haiti*, 1996, 285.
- 50 *From Madness to Hope: The 12-Year War in El Salvador*, 186.
- 51 See Alexander Segovia, “The Reparations Proposals of the Truth Commissions in El Salvador and Haiti: A History of Noncompliance,” in *The Handbook of Reparations*, 154–175.
- 52 For an exploration of Germany’s reparations programs for World War II victims, see Christian Pross, *Paying for the Past: The Struggle over Reparations for Surviving Victims of the Nazi Terror*, trans. Belinda Cooper (Baltimore: Johns Hopkins University Press, 1998).
- 53 Roht-Arriaza, “Reparations in the Aftermath of Repression and Mass Violence,” 124. See also Ariel Colonos and Andrea Armstrong, “German Reparations to the Jews after World War II: A Turning Point in the History of Reparations,” in *The Handbook of Reparations*, 410–411.
- 54 Law no. 9,140, Brazil, December 4, 1995.
- 55 Ignacio Cano and Patrícia Salvão Ferreira, “The Reparations Program in Brazil,” *The Handbook of Reparations*, 133.
- 56 Diana Cammack, “Reparations in Malawi,” in *The Handbook of Reparations*, 242–243.
- 57 *Ibid.*, 218.
- 58 Emmie Chanika in *Understanding the Past to Safeguard the Future: Proceedings of a Conference Convened by the University of Malawi and the Robert F. Kennedy Memorial Center for Human Rights, October 1996*, 42, as cited in Cammack, “Reparations in Malawi,” 243.
- 59 Cammack, “Reparations in Malawi,” 219.

### 13 Reconciliation and Reforms

- 1 “Reconcile,” *The Oxford English Dictionary*, 2nd ed., vol. 13 (Oxford: Clarendon Press, 1989), 352–353.
- 2 Louis Kriesberg, “Paths to Varieties of Inter-communal Reconciliation” (paper presented at the Seventeenth General Conference of the International Peace Research Association, Durban, South Africa, June 22–26, 1998).
- 3 For a useful exploration, see David Bloomfield, Teresa Barnes, and Luc Huyse, eds., *Reconciliation after Violent Conflict: A Handbook* (Stockholm: International Institute for Democracy and Electoral Assistance, 2003).
- 4 See, for example, Tristan Anne Borer, “Reconciling South Africa or South Africans?

- Cautionary Notes from the TRC,” *African Studies Quarterly*, 8, no. 1 (Fall 2004): 19–39; Jeremy Sarkin and Erin Daly, “Too Many Questions, Too Few Answers: Reconciliation in Transitional Societies,” *Columbia Human Rights Law Review* 35, no. 3 (Summer 2004): 101–168; James L. Gibson, “The Contributions of Truth to Reconciliation: Lessons from South Africa,” *Journal of Conflict Resolution* 50, no. 3 (2006): 409–432; James L. Gibson, *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?* (New York: Russell Sage Foundation, 2004); and Brandon Hamber, *Transforming Societies after Political Violence: Truth, Reconciliation, and Mental Health* (New York: Springer, 2009).
- 5 In conversation with Amnesty Committee member, November 1997, Port Elizabeth, South Africa.
- 6 “Only Half of People Feel TRC Is Fair and Unbiased: Survey,” South Africa Press Association, March 5, 1998.
- 7 Some analysts, however, noted that the poll showed that public attitudes were deeply divided along racial lines. While close to 90 percent of whites “strongly disagreed or tended to disagree” that the commission would bring the races closer together, 54 percent of blacks “strongly agreed or tended to agree” that the races could now interact more harmoniously, with another 24 percent neutral. See Drew Forrest, “Body Has Served National Reconciliation,” *Business Day* (South Africa), August 3, 1998.
- 8 *Truth and Reconciliation Commission of South Africa Report*, vol. 5, chap. 9, sec. 130, 423–428. This passage was excerpted from a report by Hugo van der Merwe, *The South African Truth and Reconciliation Commission and Community Reconciliation* (Johannesburg: Centre for the Study of Violence and Reconciliation, 1998).
- 9 Angus Stewart, in correspondence with Howard Varney, April 1998, in reference to the Esikaweni incidents in Richards Bay. On file with author.
- 10 Gibson, ““The Contributions of Truth to Reconciliation,” 410.
- 11 James L. Gibson, “Does Truth Lead to Reconciliation? Testing the Causal Assumptions of the South African Truth and Reconciliation Process,” *American Journal of Political Science*, 48, no. 2 (2004): 201–217 at 201. For a more in-depth review, see Gibson, *Overcoming Apartheid*.
- 12 Alejandro González, interview, November 1996, Santiago, Chile.
- 13 Based on interviews by Lyna Comaty with a range of participants and observers in the truth commission process in Morocco, 2009.
- 14 For a useful overview of the Community Reconciliation Process in Timor-Leste, see Patrick Burgess, “A New Approach to Restorative Justice: East Timor’s Community Reconciliation Process,” in Naomi Roht-Arriaza and Javier Mariezcurrena, eds., *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge: Cambridge University Press, 2006), 176–205.
- 15 Horacio Verbitsky, interview, December 10, 1996, Buenos Aires.
- 16 Patricia Valdez, interview, December 13, 1996, Buenos Aires.
- 17 Juan Méndez, interview, March 22, 1996, Notre Dame, IN.
- 18 Human Rights Watch, *Truth and Partial Justice in Argentina: An Update* (New York: Human Rights Watch, 1991), 69.
- 19 Manouri Kokila Muttetuwegama, chair of the Commission of Inquiry into the Involuntary Removals and Disappearances of Persons in the Western, Southern, and Sabaragamuwa Provinces of Sri Lanka, interview, September 18, 1998, Brighton, United Kingdom.
- 20 The ideas in this section were first published, in longer form, in Priscilla B. Hayner, “In Pursuit of Justice and Reconciliation: Contributions of Truth Telling,” in *Comparative Peace Processes in Latin America*, ed. Cynthia J. Arnson (Washington, DC: Woodrow Wilson Center Press, and Stanford, CA: Stanford University Press, 1999), 363–383.

- 21 *The Oxford English Dictionary*, 2nd ed., vol. 13 (Oxford: Clarendon Press, 1989), 353.
- 22 Kader Asmal, Louise Asmal, and Ronald Suresh Roberts, *Reconciliation through Truth: A Reckoning of Apartheid's Criminal Governance* (Cape Town: David Philip, 1996), 46.
- 23 *Ibid.*, 47.
- 24 *Truth and Reconciliation Commission of South Africa Report*, vol. 5, chap. 9, sec. 152, 435.
- 25 For an early description of this process of implementing judicial reforms, see Jack Spence, David R. Dye, Mike Lanchin, Geoff Thale, and George Vickers, *Chapultepec: Five Years Later* (Cambridge, MA: Hemisphere Initiatives, 1997), 19–20.
- 26 The terms of reference for the El Salvadoran commission stated simply that “The Parties undertake to carry out the Commission’s recommendations.” See “Annex to the Mexico Agreements: Commission on the Truth,” UN Doc. S/25500, April 27, 1991, Article 10.
- 27 Jeff Thale, Washington Office on Latin America, interview, February 4, 1998, Washington, DC.
- 28 Margaret L. Popkin, *Peace without Justice: Obstacles to Building the Rule of Law in El Salvador* (University Park: Pennsylvania State University Press, 2000), 161.
- 29 *Report of the Commission of Inquiry into Violations of Human Rights: Findings, Conclusions and Recommendations* (Uganda), October 1994, 584.
- 30 The Truth and Reconciliation Commission Act in Sierra Leone states that “The Government shall faithfully and timeously implement the recommendations of the report that are directed at state bodies and encourage or facilitate the implementation of any recommendations that may be directed to others.” Article 17.
- 31 *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (2004), vol. 2, chap. 3, 120.
- 32 Truth and Reconciliation Act of Liberia (2005), Sections 48, 46.
- 33 *Ibid.*, Section 48.

#### 14 Leaving the Past Alone

- 1 The Policy Statement on Impunity of Amnesty International states that “there should be a thorough investigation into allegations of human rights violations” and that “the truth about violations must be revealed.” The Policy Statement on Accountability for Past Abuses of Human Rights Watch said that there is a “duty to investigate” and argues that “the most important means of establishing accountability is for the government itself to make known all that can be reliably established about gross abuses of human rights . . . ” See Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. 1 (Washington, DC: U.S. Institute of Peace Press, 1995), 217–219.
- 2 Wilder Tayler, interview, New York, 1999. In practice, according to staff, Human Rights Watch also generally takes into account local preferences and would be unlikely to press for a policy on a particular country that was opposed by local rights groups.
- 3 Nick Howen, then legal director of Amnesty International, interview, July 9, 1997, London.
- 4 Richard Carver, telephone interview, August 17, 1999.
- 5 Among those who told me there was no amnesty was the head of opposition in Parliament, Raul Domingos, and the minister of defense, Aguiar Mazula. Domingos explained that the government had offered an amnesty to Renamo, but as Renamo did not believe that it had broken any laws, “we refused it.” All

interviews in Mozambique cited in this chapter were undertaken in September 1996.

- 6 Alex Vines, interview, August 1996, London.
- 7 Ken Wilson, Ford Foundation program officer for Mozambique, interview, September 1996, Johannesburg, South Africa.
- 8 For a description of the history and politics of Renamo, see Alex Vines, *Renamo: From Terrorism to Democracy in Mozambique?* (London: James Currey, 1996, revised and updated edition; first published 1991).
- 9 Renamo did submit a letter to Mozambican president Joaquim Chissano at some point during the negotiations, asking that a truth commission be set up, but never received a reply. Observers who were aware of this letter considered it only to be posturing and not a serious request.
- 10 William Minter, *Apartheid's Contras: An Inquiry into the Roots of War in Angola and Mozambique* (London: Zed Books, and Johannesburg: Witwatersrand University Press, 1994), 282.
- 11 Mozambique News Agency AIM, May 11, 2006.
- 12 This is explored in depth, based on extensive interviews through 2005, in Helena Cobban, *Amnesty after Atrocity? Healing Nations after Genocide and War Crimes* (Boulder, CO: Paradigm Publishers, 2007). See also Lyn S. Graybill, "Pardon, Punishment and Amnesia: Three African Post-conflict Methods," *Third World Quarterly* 25, no. 6 (2004): 1117–1130.
- 13 See Victor Igreja, "Memories as Weapons: The Politics of Peace and Silence in Post-Civil War Mozambique," *Journal of Southern African Studies* 34, no. 3 (September 2008): 539–556.
- 14 Victor Igreja, Beatrice Dias-Lambranca, and Annemiek Richters, "Gamba Spirits, Gender Relations, and Healing in Post-Civil War Gorongosa, Mozambique," *Journal of the Royal Anthropological Institute* 14, no. 2 (2008): 353–371 at 358.
- 15 Igreja, "Memories as Weapons," 554.
- 16 Ibid., quoting Member of Parliament Luis Gouveia.
- 17 David Hawk, telephone interview, August 8, 1997.
- 18 See, for example, Crocker Snow, Jr., "From the Killing Fields, Compassion," *The WorldPaper*, July 1995, 16, and Seth Mydans, "Side by Side Now in Cambodia: Skulls, Victims and Victimiziers," *New York Times*, May 27, 1996, A6.
- 19 Stephen P. Marks, "Forgetting 'the Policies and Practices of the Past': Impunity in Cambodia," *Fletcher Forum of World Affairs* 18, no. 2 (1994): 17–43 at 37–38.
- 20 Brad Adams, "Snatching Defeat from the Jaws of Victory?" *Phnom Penh Post*, January 23, 1999.
- 21 For an overview of international response to Khmer Rouge crimes and proposals for international accountability measures, see Balakrishnan Rajagopal, "The Pragmatics of Prosecuting the Khmer Rouge," *Phnom Penh Post*, January 8, 1999, and Adams, "Snatching Defeat."
- 22 Seth Mydans, "20 Years On, Anger Ignites against Khmer Rouge," *New York Times*, January 20, 1999, A1.
- 23 "Most Cambodians Want Trial for Khmer Rouge: Poll," January 27, 1999, Reuters News Service.
- 24 Mark McDonald, "Cambodians Brace for UN Trial Proposal: Most Want Leaders Punished, but Resist Opening Old Wounds," *San Jose Mercury News*, February 8, 1999.
- 25 "Tutu Will Help Cambodia," *Daily Mail and Guardian* (South Africa), January 18, 1999.
- 26 Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135, UN Doc. A/53/850/S/1999/231, Annex, March 16, 1999, 54.
- 27 Adams, "Snatching Defeat."



- 28 For analysis of the Extraordinary Chambers in the Courts of Cambodia, as this tribunal is called, see *Justice Initiatives: The Extraordinary Chambers* (New York: Open Society Justice Initiative, 2006). See also the website *Cambodia Tribunal Monitor* at [www.cambodiatribunal.org](http://www.cambodiatribunal.org).
- 29 Laura McGrew, “Transitional Justice Approaches in Cambodia,” in *Justice Initiatives: The Extraordinary Chambers* (2006), 139–150 at 142.
- 30 Ibid., 147.
- 31 Jaya Ramji, “A Collective Response to Mass Violence: Reparations and Healing in Cambodia,” in Jaya Ramji and Beth van Schaack, eds., *Bringing the Khmer Rouge to Justice: Prosecuting Mass Violence before the Cambodian Courts* (Ceredigion, UK, and New York: Edwin Mellen Press, 2005), 371.
- 32 Laura McGrew, “Truth, Justice, Reconciliation and Peace in Cambodia: 20 Years after the Khmer Rouge,” unpublished paper (February 2000), 2.
- 33 McGrew, “Transitional Justice Approaches in Cambodia,” 140.

## 15 When, How, and Who: Basic Questions of Methodology and Operations

- 1 Detailed analysis of methodological and operational challenges can also be found in Joanna R. Quinn and Mark Freeman, “Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa,” *Human Rights Quarterly* 25 (2003): 1117–1149, and Mark Freeman, *Truth Commissions and Procedural Fairness* (New York: Cambridge University Press, 2006).
- 2 In Guatemala, only the chair was appointed by the United Nations; in El Salvador, the commissioners were appointed by the UN secretary-general after consultation with the parties to the peace accord.
- 3 Christian Tomuschat, “Between National and International Law: Guatemala’s Historical Clarification Commission,” in *Festschrift Jaenicke* (Heidelberg, Germany: Springer, 1998). This article offers a fascinating analysis of the tension between the international and national legal foundations to the Guatemalan commission.
- 4 “Lessons to Be Learned: Interview with Howard Varney,” *Transitions*, International Center for Transitional Justice, January 2009, 1.
- 5 For a detailed description of the selection process in Sierra Leone, see the Truth and Reconciliation Act of Sierra Leone, 2000, “Schedule.”
- 6 Interviews, Buenos Aires and New York. This is also described in *Nunca Más: Report of the Argentine National Commission on the Disappeared*, 429–430.
- 7 The Guatemalan commission had the greatest number of people during the five to six months when it had a dozen field offices open around the country. After those offices closed, the staff size shrank to the number needed for data processing, research, and drafting the report.
- 8 In addition, over a period of two to three months, up to twenty additional temporary staff were hired for data processing and data entry.
- 9 Patricia Valdez, then executive director of the Commission on the Truth for El Salvador, interview, March 29, 1993, New York.
- 10 See, for example, Lawyers Committee for Human Rights, *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador* (New York: Lawyers Committee for Human Rights, 1995), 141–142.
- 11 In Haiti and Guatemala, staff and commission members were approximately half national and half international. In South Africa, the commission staff was predominantly South African, but included a number of others, including professionals on loan from European governments.
- 12 Jorge Correa, former executive secretary of the Chilean National Commission on Truth and Reconciliation, interview, November 29, 1996, Santiago, Chile.

- 13 Interviews, October 1996, Kampala.
- 14 Funding for the Guatemalan Historical Clarification Commission came from Norway and Switzerland (approximately \$1.2 million each); Sweden and the United States (\$1 million each); Japan (\$750,000); Germany and Denmark (\$500,000 each); and Austria, Belgium, Canada, Italy, the Netherlands, and Switzerland (\$250,000 or less each). The Ford Foundation and the Open Society Institute also supported the commission with grants or logistical support. Funding details were made available on the commission's website.
- 15 The Liberian government's total national budget in 2006–2007 was \$120 million. It grew in the following years, reaching \$371 million by 2009.
- 16 Max Du Preez, host of *Truth Commission Special Report* (South African Broadcasting Company), interview, October 24, 1998, Johannesburg.
- 17 See the useful short book that outlines this approach: Patrick Ball, *Who Did What to Whom? Planning and Implementing a Large Scale Human Rights Data Project* (Washington, DC: American Association for the Advancement of Science, 1996). See also Herbert F. Spirer and Louise Spirer, *Data Analysis for Monitoring Human Rights* (Washington, DC: American Association for the Advancement of Science, 1993), which focuses on statistical analysis and presentation of data.
- 18 *From Madness to Hope: The 12-Year War in El Salvador*, 24.
- 19 Ibid.
- 20 This follow-up commission was eventually created, but it had difficulty gaining the cooperation of witnesses and was not able to come to firm conclusions about responsibility. See *Report of the Joint Group for the Investigation of Politically Motivated Illegal Armed Groups in El Salvador*, UN Doc. S/1994/989, Annex, October 22, 1994.
- 21 *Report of the Chilean National Commission on Truth and Reconciliation*, 41.
- 22 Ibid., 42.
- 23 See ICTJ and the Ghana Centre for Democratic Development, *Truth Commissions and NGOs: The Essential Relationship (The "Frati Guidelines" for NGOs Engaging with Truth Commissions)*, April 2004, available at [www.ictj.org/images/content/1/0/106.pdf](http://www.ictj.org/images/content/1/0/106.pdf). This report provides detailed examples and assessments of NGO engagement in truth commission processes.
- 24 Promotion of National Unity and Reconciliation Act, Act no. 34 of 1995, South Africa.
- 25 Eduardo Rabossi, interview, December 11, 1996, Buenos Aires.
- 26 Mercedes Meroño, Mothers of the Plaza de Mayo, interview, December 13, 1996, Buenos Aires.
- 27 Several of the disappeared family members of the Mothers of the Plaza de Mayo whom I spoke with were listed in the report, for example, including that of Mercedes Meroño. Ibid.
- 28 Mary Burton, interview, October 29, 1997, Cape Town.
- 29 Tlhoki Mofokeng, interview, October 28, 1997, Johannesburg.
- 30 Interview with members of Khulumani, October 28, 1997, Johannesburg.
- 31 See "Annex to the Mexico Agreements: Commission on the Truth," UN Doc. S/25500, April 27, 1991, Art. 8.
- 32 On the other hand, Buergenthal notes that "[o]n the whole, the Commission encountered few difficulties in interviewing any individual it wished to have appear before it. Most civilians, former FMLN combatants, and military personnel presented themselves at the Commission after being summoned by it." (He notes, however, that appearing for questioning did not always lead to telling the truth or providing the information requested.) See Thomas Buergenthal, "The United Nations Truth Commission for El Salvador," *Vanderbilt Journal of Transnational Law* 27 (1994): 497–544 at 506–507.

- 33 *Nunca Más: Report of the Argentine National Commission on the Disappeared*, 252–254. The Chilean commission also contacted members of the armed forces and the police to request testimony, but most refused, often claiming that all records had been destroyed. *Report of the Chilean National Commission on Truth and Reconciliation*, 17–20.
- 34 *Truth and Reconciliation Commission of South Africa Report*, vol. 1, chap. 8, sec. 104, 236.
- 35 Mercedes Assorati, interview, December 9, 1996, Buenos Aires.
- 36 A few other countries, including Canada, Sweden, and Australia, also have freedom of information laws, though they are structured somewhat differently.
- 37 Gaining access to this classified material is not easy. The National Security Archive stresses the importance of a targeted approach to any declassification request: the requester should provide as much information as possible not only about the event in question but about the exact U.S. government division or office where such documents might be archived. See [www.gwu.edu/~nsarchiv](http://www.gwu.edu/~nsarchiv).
- 38 As described by commission member Thomas Buergenthal, “The UN Truth Commission,” 507–10.
- 39 The commission was agreed to in 1994, but did not begin work until mid-1997, after the final peace accord was signed, which gave NGOs over three years to prepare.
- 40 Meanwhile, documents were also being released on Guatemalan affairs through other parallel processes. Two lawsuits against the U.S. government were brought by U.S. citizens whose husbands were killed in Guatemala, and a parallel government review of U.S. intelligence policy in the country led to the declassification of an additional 7,000–8,000 documents.
- 41 Kate Doyle, interview, March 31, 1998, Washington, D.C.
- 42 For further information, see Kate Doyle, “Getting to Know the Generals: Secret Documents on the Guatemalan Military” (paper presented at the Latin American Studies Association Conference, Chicago, September 24–26, 1998).
- 43 See, for example, Jo-Marie Burt, “Impunity and the Murder of Monsignor Gerardi,” *NACLA Report on the Americas*, May/June 1998, 5.
- 44 *Report of the Commission of Inquiry* (Chad), as translated and excerpts reprinted in Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. 3 (Washington, DC: U.S. Institute of Peace Press, 1995), 55.
- 45 In comparison, the United States was spending over \$50 million each year on witness protection in the context of its judicial proceedings. “There’s no way to apply that to South Africa,” MacAdam said. Chris MacAdam, interview, October 22, 1997, Cape Town, and September 4, 1996, Durban, South Africa.
- 46 Ibid.

## 16 Reflections: Looking Forward

- 1 Patrick Leahy, “The Case for a Truth Commission,” *Time*, February 19, 2009.
- 2 The accord states, “For the purpose of clarifying the events occurring before and after June 28, 2009, a Truth Commission will also be created to identify acts that led to the current situation and provide the people of Honduras with elements to avoid repetition of these events in the future.” Tegucigalpa-San José Accord, October 31, 2009, Art. 6.
- 3 “US Presses for Truth Commission on Honduras Crisis,” Reuters, January 6, 2010.
- 4 “Don’t Look Back: The Army Blocks a Truth Commission,” *The Economist*, January 7, 2010.

## Appendix 1 Other Truth Commissions Described

- 1 Details of this commission are spelled out in Richard Carver, “Called to Account: How African Governments Investigate Human Rights Violations,” *African Affairs* 89, no. 356 (1991): 391–415.
- 2 *Ibid.*, 399.
- 3 Amnesty International also has a copy on microfiche in London.
- 4 Carver, “Called to Account,” 400.
- 5 There are few references to the first commission in any literature, and even within Uganda it seems to have been forgotten. A commissioner on the 1986 Ugandan Commission of Inquiry into Violations of Human Rights wrote that the 1986 commission was “the second such body in the world, after Argentina.” John Negenda, “The Human Rights Commission,” in *Uganda 1986–1991: An Illustrated Review* (Kampala: Fountain, 1991), 30.
- 6 Loyola Guzmán, head of the Association of Relatives of the Detained, Disappeared and Martyred for National Liberation, telephone interview, August 12, 1994.
- 7 *Ibid.*
- 8 Human Rights Watch, “Bolivia: Almost Nine Years and Still No Verdict in the ‘Trial of Responsibilities’” (New York: Human Rights Watch, December 1992), 1.
- 9 José Zalaquett, “Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints,” in *State Crimes: Punishment or Pardon*, in Justice and Society Program of the Aspen Institute (ed.) (Queenstown, MD: Aspen Institute, 1989), 59.
- 10 *Ibid.*, 61.
- 11 Robert Goldman, telephone interview, April 14, 1994.
- 12 Wilder Tayler, interview, August 2, 1994, New York.
- 13 Alexandra Barahona de Brito, *Human Rights and Democratization in Latin America: Uruguay and Chile* (New York: Oxford University Press, 1997), 146.
- 14 *Ibid.*
- 15 *Ibid.*
- 16 Servicio Paz y Justicia (SERPAJ), *Uruguay: Nunca Más: Informe Sobre la Violación a Los Derechos Humanos (1972–1985)*, 2nd edition (Montevideo: SERPAJ, 1989). For a description of this project, see Barahona de Brito, *Human Rights*, 145–148.
- 17 *Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands, 1980 to 1988* (Harare: Catholic Commission for Peace and Justice in Zimbabwe and the Legal Resources Foundation, 1997), 61.
- 18 In contrast, those who died in the struggle for independence received compensation through the 1980 War Victims Compensation Act. No similar law covered the victims of the Matabeleland violence. Generally, see Human Rights Watch, *Zimbabwe: A Break with the Past? Human Rights and Political Unity* (New York: Human Rights Watch, 1989).
- 19 Bornwell Chakaodza, director of information in the Ministry of Information, interview, September 30, 1996, Harare.
- 20 See *Breaking the Silence, Building True Peace*.
- 21 Legal Notice no. 5 of 1986, established under the Commissions of Inquiry Act (Cap. 56), Uganda.
- 22 The Ford Foundation provided a \$93,300 grant to the Ugandan government, earmarked for the commission, in 1988. *Ford Foundation Annual Report, 1987* (New York: Ford Foundation, 1987).
- 23 In February 1991, the government-owned newspaper *The New Vision* reported that “[t]he Human Rights Commission this week failed to sit due to lack of funds. . . . [The secretary of the commission] hoped some funds will be made available to enable the Commission to sit next week.” It also reported that “the Commission’s

- vehicles are not in good running condition” to make the investigatory trips that it had planned. Eva Lubwama, “Human Rights Fails,” *The New Vision*, February 2, 1991. The Danish governmental aid agency DANIDA awarded a grant for the commission equivalent to approximately \$437,000 in 1992. Over half of the grant was directed toward the printing and publication of the report.
- 24 Interviews, Kampala, October 1996.
  - 25 For further detail on this commission, see Joanna R. Quinn, “Constraints: The Un-Doing of the Ugandan Truth Commission,” *Human Rights Quarterly* 26 (2004): 401–427.
  - 26 I listed this as a truth commission in a 1994 *Human Rights Quarterly* article which documented fifteen truth commissions, but because of its limited tenure and impact I left it out of the 2001 edition of *Unspeakable Truths*. For assessment of the Philippines commission within a broader review of commissions and definitions, see Geoff Dancy, Hunjoon Kim, and Eric Wiebelhaus-Brahm, “The Turn to Truth: Trends in Truth Commission Experimentation,” *Journal of Human Rights* 9, no. 1 (2010): 45–64 at 51.
  - 27 Sushil Pyakurel, executive director, Informal Sector Service Sector, Nepal, telephone interview, March 3, 1999.
  - 28 *Amnesty International Report 1993* (New York: Amnesty International USA, 1993), 220.
  - 29 For more information on the Mallik Commission and context, see Binod Bhattarai, Mohan Mainali, Jogendra Ghimere, and Akhilesh Upadhyay, *Impunity in Nepal: An Exploratory Study* (Kathmandu: The Asia Foundation, September 1999), 9–11.
  - 30 “Relative to the creation of a Commission of Inquiry into the crimes and misappropriations committed by the ex-president, his accomplices and/or accessories,” Decree no. 014 /P.CE/CJ/90, Republic of Chad, December 29, 1990, reprinted in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil J. Kritz, vol. 3 (Washington, DC: U.S. Institute of Peace Press, 1995), 48–50.
  - 31 Report of the Commission of Inquiry (Chad), as excerpted in Kritz, *Transitional Justice*, vol. 3, 54.
  - 32 Jamal Benomar, “Coming to Terms with the Past: How Emerging Democracies Cope With a History of Human Rights Violations” (Atlanta: Carter Center, July 1, 1992), 13.
  - 33 Ibid.
  - 34 Official of U.S. Department of State, telephone interview, May 7, 1993.
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  - 36 Reed Brody, interview, November 18, 2009, Geneva. The commission had deployed an unusual methodology in reaching the conclusion that 40,000 had been killed: it had identified 3,780 victims, and estimated that this represented 10 percent of those killed. See Reed Brody, “The Prosecution of Hissène Habré: International Accountability, National Impunity,” in Naomi Roht-Arriaza and Javier Mariezcurrena, eds., *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge: Cambridge University Press, 2006), 297.
  - 37 Telephone interviews with Genoveva Hernandez, December 3, 1999, and Reed Brody, Human Rights Watch, December 10, 1999. See also Brody, “The Prosecution of Hissène Habré.”
  - 38 Amnesty International documented 680 cases of disappearance between 1983 and 1988, for example. Ingrid Massage, Amnesty International, interview, July 9, 1997, London.
  - 39 In one particularly bad month, July 1996, 365 persons were reported to have

disappeared, according to Home for Human Rights, a Sri Lankan human rights organization.

- 40 Human rights organizations also submitted cases to the commission that were documented in their files. Cases were not included in the commissions' reports if the families did not come forward to give testimony.
- 41 *Final Report of the Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces; Final Report of the Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Central, North Western, North Central and Uva Provinces; and Final Report of the Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces* (Colombo: Sri Lankan Government Publications Bureau, 1997; released to the public in January 1998).
- 42 In addition, each commission published interim reports, some of them quite substantial. The shorter length of the final reports may be explained by the more substantial interim reports, one human rights advocate noted, especially as the commissioners became disillusioned in the lack of action by the government on their interim recommendations.
- 43 *Amnesty International Report 1999* (London: Amnesty International, 1999).
- 44 Ministerial Accord no. 012 (Ecuador), September 17, 1996.
- 45 This commission is described in *Report on the Situation of Human Rights in Ecuador* (Washington, DC: Organization of American States, 1997), 9–10.
- 46 *Amnesty International Report 1997* (London: Amnesty International, 1997), 140.
- 47 *Report on the Situation of Human Rights in Ecuador*, 10.
- 48 *Amnesty International Report 1998* (London: Amnesty International, 1998).
- 49 Instrument Constituting a Judicial Commission of Inquiry for the Investigation of Human Rights Violations, published in the *Federal Republic of Nigeria Official Gazette* 86, no. 56 (1999), Lagos (Statutory Instrument 8 of 1999), 1.
- 50 This retreat, which took place in September 1999, was co-hosted by the International Institute for Democracy and Electoral Assistance in Stockholm and the Centre for Democracy and Development in Lagos. Participants from the commissions in South Africa, Chile, and Guatemala attended this meeting. I also attended to provide an overview of lessons learned from past truth commissions.
- 51 Instrument Constituting a Judicial Commission of Inquiry for the Investigation of Human Rights Violations, 2.
- 52 See, for example, an article by the President of the West African Bar Association, Femi Falana, "The Oputa Panel Report," *Guardian*, 8 January 2005, available at [www.nigerianmuse.com/nigeriawatch/oputa/](http://www.nigerianmuse.com/nigeriawatch/oputa/).
- 53 The full report of the Nigerian Human Rights Violations Investigations Commission can be found at [www.dawodu.com/oputa1.htm](http://www.dawodu.com/oputa1.htm).
- 54 See Laura Davis and Priscilla Hayner, *Difficult Peace, Limited Justice: Ten Years of Peacemaking in the DRC* (International Center for Transitional Justice, March 2009).
- 55 The commission submitted a final administrative report as it closed. While it lists its many meetings, it provides no substantive conclusions or commentary about human rights abuses in the Democratic Republic of the Congo. See Commission Vérité et Réconciliation, République Démocratique du Congo, *Rapport final des activités de juillet 2003 à février 2007*, February 2007.

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