

# 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>