



Comparative Study on the Impact of Truth Commissions

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(This paper aims at providing in succinct form systematized information about the accomplishments of a dozen best-known truth commissions in the area of truth recovery, reparations, criminal prosecutions, search for the missing persons, and institutional reforms. It is not meant to be an exhaustive and authoritative study reflecting the position of the ICTJ).

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Introduction

The literature on transitional justice contains little comparative analysis of the effects of truth commissions. Writers have directed the analytical focus on the structure and operation of the commissions, and on the content of their final reports. There is comparatively little analysis about achievements of short- and long-term goals.

This paper aims at providing, in succinct form, systematized information about the accomplishments of a dozen best-known truth commissions. The inquiry was undertaken in early 2009 in response to a request by the regional coalition of nongovernmental organizations which advocates establishment of a multilateral commission on truth-seeking and truth-telling about war crimes committed in the period 1991-2001 in the former Yugoslavia. A number of victim associations, human rights groups, and youth organizations from the region have by now joined the initiative. Many others are taking part in an ongoing consultative process in all parts of the former Yugoslavia. The purpose of this paper is to inform the discussion in the consultations by providing information about contributions of past truth commissions to truth recovery, reparations, criminal prosecutions, search for the missing persons, and institutional reforms. The paper was written by Bogdan Ivanisević, ICTJ consultant for the countries in the territory of the former Yugoslavia.

The commissions analyzed in the paper are the following:

Country	Name of the commission	Years of operation	Period covered by the mandate
Argentina	National Commission on the Disappeared (CONADEP)	1983 - 1984	1976 – 1983
Chile	- National Commission on Truth and Reconciliation (<i>Rettig</i> Commission)	1990 - 1991	1973 - 1990
	- National Commission for Political Imprisonment and Torture (<i>Valech</i> Commission)	2003 - 2004	1973 – 1990
El Salvador	Commission on the Truth for El Salvador	1992 - 1993	1980 – 1992
Ghana	National Reconciliation Commission (NRC)	2002 - 2004	1957 – 1993
Guatemala	Commission for Historical Clarification (CEH)	1994 - 1999	1958 – 1994
Morocco	Equity and Reconciliation Commission (IER)	2004 - 2005	1959 – 1999
Peru	Truth and Reconciliation Commission (CVR)	2001 - 2003	1980 – 2000
Sierra Leone	Sierra Leonean Truth and Reconciliation Commission	2002 - 2004	1991 – 2000
South Africa	Truth and Reconciliation	1995 - 2003	1960 – 1994

	Commission (TRC)		
Timor-Leste	Commission for Reception, Truth and Reconciliation (CAVR)	2002 - 2005	1974 – 1999
Timor-Leste & Indonesia	Commission on Truth and Friendship (CTF)	2005 - 2008	1999

Around 35 truth commissions have been established so far in various parts of the world. The main reason for focusing on the twelve commissions in this paper is the relative abundance of literature about them, although the literature largely addresses issues other than impact.

Truth commissions are temporary, official non-judicial bodies mandated to investigate and report patterns of serious human rights violations committed during periods of authoritarianism or institutionalized abuse. Their constitutive functions are to provide an authoritative account of abuses and to acknowledge the experience of victims, whose testimonies are the most important source for the inquiry. To these core functions, most truth commissions have attached additional ones, such as providing an explanation about the causes or contexts of the violations examined and the presentation of proposals for prevention. Some commissions have been mandated, additionally, to contribute to national reconciliation, although such a concept has been interpreted in different ways.

Two sets of limitations make the task of assessing achievements of a truth commission daunting. Firstly, it is often difficult to establish a cause-and-effect relationship between the work of a commission and the subsequent developments in areas such as criminal trials, institutional reforms, or reconciliation. Secondly, assessment of what constitutes “progress” in any given area can be highly subjective. Even where changes can be numerically expressed, it is rarely clear from the numbers – of individuals receiving reparations; of resolved cases of disappearance; of criminal trials; etc. – whether they tell a success story or not. Well-defined criteria for judging achievements of truth commissions do not exist.

With the above caveats in mind, it is nevertheless submitted that the best-known truth commissions have had positive impact on the countries in which they operated. In the past fifteen years, truth commissions have increasingly given a *public platform to victims* of human rights abuses to tell their stories. Most observers agree that the hearings have been fairly effective in restoring victims’ dignity, awakening solidarity within broad sectors of the society, and fostering wider debate about issues previously excluded from the public sphere. It has been said that after the hearings before the South African Truth and Reconciliation Commission no one could ever again deny the reality of that nation's past atrocities.¹ Similar assessments accompanied the hearings before the truth commissions in Morocco, Peru, and in other places. In fact, public hearings have become a chief source of strength of truth commissions and a key reason for their proliferation. However, the present paper does not include a chapter on the effects of public hearings, because it is focused on more measurable forms of impact. There is little empirical research on the effects of public hearings on the participants and the society at large.

Perhaps the strongest effect of truth commissions has been on *establishing an authoritative account* of past human rights abuses. This is the most obvious and direct objective of any truth commission. Other potential impacts are indirect. Implementation of the relevant recommendations by a truth commission depends much more on other institutions or actors – the government and, to a lesser extent, the civil society – than on the commission itself.

Among other objectives of the truth commissions, public *acknowledgment* of crimes from State representatives and their *apology* occupy an important place. Most commissions have been reasonably successful on that count. The record is more mixed with regard to effect on *criminal trials*, *search for the disappeared*, and *material reparations*. Progress on these issues has often been slow and uneven.

As a rule, truth commissions, make recommendations on *reforms of institutions* whose malfunctioning led to widespread human rights violations. In most countries, some of the key institutions – the military, the police, and the judiciary – have undergone significant reforms, while others have barely changed. Where the reforms have taken place, the causal link with the work of the truth commissions was often difficult to establish. In most of the cases, the reforms had been conceptualized by other actors, before the given truth commission completed its work.

Although many truth commissions include “*reconciliation*” in the mandate, this analysis does not include a chapter on possible impact of truth commissions on reconciliation. An attempt to assess such impact would confront several fundamental difficulties:

- The very notion of “reconciliation” is subject to differing interpretations and uses. The term can denote direct relationship between individuals in local communities, relationship between citizens and the state, rapport between ethnic, political or social groups at the national level, or relationship between nationals of different states. It could mean absence of manifest hostility and conflict, but other observers would assume that more – including active communication and even amity – is required.
- Clear criteria for determining whether reconciliation has been achieved are lacking. One way to making the determination would be through surveys of public opinion, but only one such survey, conducted in 2000-01 in South Africa, is known of. The poll presented a mixed picture: a minority of Blacks (37 percent) and a majority of Whites (57 percent), “Colored” (71 percent), and people of Asian origin (59 percent) were racially reconciled.²
- Victims may not even consider reconciliation as a goal to strive for. The victims’ community in Latin American countries, for example, is suspicious of the term after its spurious use by governments to grant amnesties for grave crimes,.
- Even if reconciliation is accepted as a goal by all members of a given society and clearly defined, it would be very difficult to isolate the work of a truth commission from other contributing factors and establish the extent to which the commission played a part. The opinion of the members of society could help to find the link. According to the polls in Chile (from December 2004) and Sierra Leone (July 2007), 70 percent of the public in the two countries believed that the

respective truth commissions contributed to reconciliation.³ However, in the numerous sources consulted for this paper there were no references to similar polls possibly taken in other countries.

In the former Yugoslavia, the name of the initiative for the establishment of a Regional Commission for Truth-seeking and Truth-telling about War Crimes Committed in the former Yugoslavia does not include the term “reconciliation”. The working documents laying out the objectives of the initiative do not include references to reconciliation either.

Any assessment of the achievements of the past truth commissions should not overlook the importance of time passage. Progress in prosecutions, institutional reforms, and other areas sometimes comes years after the commission ended its work. Progress therefore requires a long-term commitment by civil society and policymakers. The examples of Argentina and Chile, which on most indicators have had successful truth commission experiences, illustrate the point. In both countries, it took decades for progress in some of the key areas to materialize. More than half of the commissions analyzed in the present paper ended their work in the past five years, so the assessment of their impact should be understood as provisional only.

1. Providing an Authoritative Account of Past Abuses

The first indicator of a truth commission’s success or failure is the extent to which it manages to establish facts – including those not previously in the public domain – about human rights violations, to educate the general public and reduce the capacity of powerful perpetrators to deny their crimes. Truth recovery by effective truth commissions involves, among other things, findings about patterns of violence and institutional responsibility, examination of certain exemplary cases, identification of victims, and reliable estimates of their number, temporal, and territorial distribution. Most truth commissions have succeeded in fulfilling these tasks.

While it is not realistic to expect that the entire population of a country will comprehensively review the findings of a truth commission, the press can convey a sense of their findings’ accuracy and their work’s integrity. In several countries, the general soundness of a commission’s inquiry has impacted public opinion positively. In countries like Chile, El Salvador, Peru, Sierra Leone, and South Africa, opinion surveys show approval for the performance of commissions and their findings.

Half of the commissions examined for this paper (El Salvador, Ghana, Peru, Sierra Leone, South Africa, and Timor-Leste) were mandated to make findings on individual responsibility as part of full truth recovery. While “naming names” can be a contentious issue from the standpoint of due process, commissions have incorporated basic guarantees of procedural fairness towards persons whose names could be mentioned, including the right to reply.

Truth commissions in Argentina, Chile, Guatemala, and Morocco were not authorized to disclose the names of alleged perpetrators in their reports. Concerns about due process or political factors resulted in mandates focused on generic institutional responsibility. However, in the cases mentioned above, the absence of names did not render the reports ineffective. Establishing the responsibility of abusive institutions created a favorable environment for comprehensive reforms and, in the cases of Guatemala and Morocco, resulted in strong findings on structural causes of violence and ambitious proposals for national reforms.

Argentina – The report of the National Commission on the Disappearance of Persons, is widely respected for its detailed description of the nature and scope of the complex crime of enforced disappearance which required a specialized system of cooperation among many State actors. Its publication, describing abductions, clandestine detention and torture, arbitrary executions, and denial of information to desperate relatives, had an “electrifying impact on Argentine society”.⁴ An annex to the report contained names of 8,961 victims of forced disappearance, recorded by the Commission, while recognizing that the proper number could be higher.⁵ In a book-form, the report became a national best-seller.⁶ The report did not include names of the alleged perpetrators.

Chile – The Truth and Reconciliation Commission (1990-1991) and its follow-up body, the National Corporation for Reparation and Reconciliation (1992-1996), established 3,197 cases of disappearances after arrest, executions, and torture leading to death.⁷ The Commission’s report named each of the victims killed by government forces or left-wing militants.⁸ The report received wide acclaim by human rights groups and the public.⁹ In 1991, in an opinion poll about the *Rettig* report, 63 percent of the respondents assessed that the publication of the report would be beneficial for Chile, while 13.5 percent thought the report would be detrimental.¹⁰ The report did not include names of the alleged perpetrators.

Since the *Rettig* report covered only cases resulting in the death or disappearance of the victim, the Chilean government established later a complementary body to deal with cases of torture. More than 35,000 persons submitted statements to this second truth commission – the National Commission on Political Imprisonment and Torture (2003-2004), which made extensive findings on the extent and forms of torture during the military dictatorship.¹¹ In December 2004, 74 percent of those polled had a positive opinion about the commission’s report, while 15 percent rejected it. Among those who familiarized themselves with the content of the report (66 percent of the respondents), 71 percent said that they believed it contributed to the search for truth, justice, and reconciliation, while 26 percent held opposite view.¹²

El Salvador – The Commission on the Truth for El Salvador, established as part of a UN-mediated peace process between the government and the left-wing guerrilla, received 22,000 complaints about serious acts of violence during the three months of gathering statements.¹³ (The general estimate of the number of those killed during the civil war is 75,000). The names of victims recorded by the Commission were published in an extensive annex,¹⁴ as well as the reconstruction of about thirty paradigmatic cases of

violations committed by both sides.¹⁵ Contrary to expectations that the investigation would find an equal number of serious acts of violence attributable to both sides, the report concluded that government forces and death squads fighting on their side were responsible for 95 percent of the violations.¹⁶ Local human rights groups received the report with satisfaction.¹⁷ International commentators found it “powerful”,¹⁸ despite the scarce time and the uncertain security conditions in which the commission conducted its work. Even though certain important aspects of the violence, such as death squads, were not fully investigated¹⁹ and the right-wing government rejected the commission’s findings, public reception of the report was positive: a public opinion poll from June 1993 found that 45 percent of Salvadorans were satisfied with the report, while 27 percent were dissatisfied.²⁰

Ghana - The National Reconciliation Commission (NRC) collected 4,240 statements and heard publicly 1,866 witnesses. The final report is highly critical of the human rights abuses committed by seven consecutive Ghanaian governments, in the period 1957 – 1993, marked by instability and military coups. The mandate covered a wide range of abuses: killings, abductions, disappearances, maiming, torture, detentions without trial, ill-treatment, invasion of property rights, wrongful dismissals, hostage-taking, abuse of judicial process, and violation of the right to die in dignity.²¹ Although the NRC was in general considered as a positive example of truth-seeking, its critics perceived it as a tool used by the government to tarnish the reputation of General Jerry Rawlings, former ruler of Ghana and opposition leader at the time when the commission was established, and his party.²²

Guatemala – The final report of the Commission for Historical Clarification was the result of an 18-month investigation into more than 42,000 human rights violations, including 658 massacres committed against Maya aboriginal populations during the internal conflict between a succession of authoritarian Guatemalan governments and left-wing guerrillas. The report estimated that more than 200,000 people had been killed or disappeared during the armed conflict (1960-1996), a number higher than most previous estimates.²³ More importantly, independently from the shocking number of victims, the report established that the absolute majority of them were ethnically Maya and that the military juntas conducting the violence committed actions of genocide.²⁴ The report identified a total of 42,275 named victims.²⁵ Names of the individuals allegedly responsible for the crimes were not mentioned, but the report assigned institutional responsibility to the extent that some sectors of the security forces expressed a preference to have the individual culprits exposed. The Guatemalan civil society, including victims’ representatives, reacted positively to the report and has utilized it as a comprehensive platform for the empowerment of the Maya population.²⁶

Morocco – The commission carried out valuable work in shedding light on numerous cases of arbitrary detention, torture, forced disappearance, excessive use of force against protestors, sexual violence, and forced exile. The Commission reviewed and organized approximately 22,000 cases.²⁷ While the commission worked in a challenging political context, marked by the continuity of the monarchical system, it has been credited with implicitly or explicitly recognizing the responsibility of the State for human right abuses

in the past.²⁸ However, some critics contend that the report failed to fully address the hierarchical structures behind the repression and to tackle in systematic way human rights abuses committed in Western Sahara.²⁹

Peru – The final report of the Peruvian Truth and Reconciliation Commission, released on August 28, 2003, revealed that the marginalized indigenous population was the principal victim of the violence and abuses during the period of internal conflict and authoritarianism between 1980 and 2000, and that the estimated number of casualties (69,000) exceeded by far all previous assessments. An annex to the Final Report lists all the victims of killing and forced disappearance reported to the commission. Among the Peruvians who were aware of the commission's work, the level of approval was significant – 53.7 percent in August 2003, against 38 percent of those who disapproved, according to an opinion poll conducted by the University of Lima.³⁰ Immediately after the report's release, 46 percent of those who had at least some knowledge of its content said that they approved of it, against 40.3 percent who disapproved.³¹

Sierra Leone – The Truth and Reconciliation Commission, established after the conflict between the Sierra Leonean government and rebel groups, gathered 7,706 statements, held countrywide public hearings, and submitted an extensive final report to the government.³² The names of the victims appear in a list in Volume 2 of the Report.³³ In a nationwide survey carried out in July 2007, 66 percent of the respondents answered that the contribution of the commission to creating an accurate account of what happened during the conflict in Sierra Leone had been good or excellent.³⁴

South Africa – The commission's hearing and report brought to light numerous human rights abuses committed by the apartheid regime, as well as those caused by the anti-apartheid groups, including the African National Congress. The Truth and Reconciliation Commission (TRC) made findings on more than 36,000 alleged gross violations of human rights and took 20,300 statements from victims.³⁵ One volume of the report contains a list of all registered victims.³⁶ In a major poll conducted in 2000/01, 85 percent of black South Africans said that the TRC provided a true and unbiased account of the country's history; the percentage among South Africans of Asian origin was 72 percent, and among the so-called colored people – 48 percent (against 14 percent who thought that the commission did a poor job). Only among white South Africans was the percentage of those who valued the commission negatively on this count (48 percent) higher than the percentage of those who valued it positively (34.5 percent).³⁷ The South African commission is usually considered to have made a valuable contribution to the country's transition. Among the criticisms it has received, figures the charge that its focus on gross violations was detrimental to a historical and sociological description of the structural injustices of Apartheid.

Timor-Leste (CAVR) – The Commission for Reception, Truth and Reconciliation (CAVR), established by the UN shortly after the referendum on independence in Timor-Leste, collected a total of 7,669 victim statements and 1,541 perpetrator statements about human rights violations in Timor-Leste from 1974 to 1999, covering the period of the civil war and the Indonesian occupation.³⁸ The CAVR also conducted public hearings,

facilitated activities designed to assist victims' healing, and community reconciliation processes for about 1300 perpetrators of lesser crimes. In 2005, the CAVR produced a final 2,500-page comprehensive report on the context and details of the violations is generally considered as a document of great worth and integrity.³⁹ A key contribution is the report's estimation of the number of people who died during the conflict. About 18,600 people were unlawfully killed or disappeared, and a minimum of about 84,200 more people died from hunger and illness than would have been expected to have died from these causes under peacetime conditions.⁴⁰ The CAVR found that Indonesian security forces were responsible for crimes against humanity and war crimes; and while the resistance army also committed crimes in a much lesser scale.

Timor-Leste – Indonesia (CTF) – Towards the end of the CAVR's mandate, the Timorese and Indonesian governments established the bilateral Commission on Truth and Friendship anticipating a UN-led evaluation of the justice process relating to the 1999 crimes. The CTF was tasked to review previous mechanisms including the human rights inquiry by the Indonesian national human rights commission, the *ad hoc* human rights trials in Jakarta, the serious crimes process and the CAVR that dealt with human rights violations committed in Timor-Leste in 1999. Non-governmental organizations in Indonesia and abroad, as well as the United Nations, took a negative stance vis-à-vis the commission prior to its establishment and in the course of its work. The chief reasons were the amnesty provisions in the Commission's mandate, the restrictions against recommending prosecutions for those most responsible for serious human rights violations, as well as the lack of victim participation and disregard for their protection.⁴¹ During its hearings, the CTF allowed indicted persons to provide self-serving statements without any rigorous cross-examinations. However, despite the deficiencies in the commission's work, the CTF report exceeded the low expectations.⁴² It concluded that crimes against humanity occurred in Timor-Leste in 1999, attributed institutional responsibility to the Indonesian military, police, and government,⁴³ and refrained from recommending amnesties.⁴⁴ However, the report abstained from pointing at specific individuals as responsible for the violations.

2. Official Acknowledgment and Symbolic Reparations

Complete, public, and unreserved acknowledgment of crimes by state representatives accompanied the work of a majority of the truth commissions examined in this paper, although such gestures were often delayed or incomplete. Apologies, particularly if coupled with promises of reform and prevention, usually suggest that the government is willing to confront results of the truth commission's work. They also reduce the space for denial of the crimes registered by the commission. While the apologies are directed at the victims, it must not be expected that they will automatically respond with an expression of forgiveness. Apologies should be offered without an expectation of automatic resolution of past conflicts or oblivion of past atrocity.

Immediately after the release of the reports in Chile, the president of the State apologized for human rights abuses. In Guatemala, it took eleven months and a change of government for the president of the country to apologize, while in Argentina and Chile years passed between the release of the report and the apologies by representatives of the military, key institution in the history of human rights abuses in both countries. In Peru, South Africa, Guatemala, Ghana, and Morocco, some representatives of the State acknowledged the sufferings and apologized, but others have not (the army representatives in Peru, one of the former presidents under the apartheid regime in South Africa, army representatives in Guatemala, the former president of Ghana, and the primer minister of Morocco). There have been no apologies in El Salvador or Sierra Leone, and no credible apologies by the Indonesian officials for crimes committed against East Timorese population.

The focus of this section is on acknowledgments and apologies by State officials, but it should be mentioned that before some commissions, perpetrators themselves had an opportunity to participate in public hearings and acknowledge their own wrongdoings. In the first four months of the work of the Sierra Leonean commission (April-August 2003), more than 13 percent of the 8,000 individual statements came from perpetrators, and a third of those who appeared in hearings admitted to their own wrongs, often in great detail.⁴⁵ In Timor-Leste, a successful community reconciliation program of the truth commission made it possible for around 1,300 perpetrators of politically related lesser crimes to receive immunity from prosecutions after they admitted their actions and completed an agreed act of reconciliation, usually in the form of community service.⁴⁶ In South Africa, however, the majority of the alleged perpetrators who appeared before the Truth Commission's Amnesty Committee failed to reveal information about many of their crimes, although full disclosure was a precondition for amnesty.⁴⁷ In Ghana, only a few of the approximately 80 alleged perpetrators who gave statements in public admitted to wrongdoing or asked for forgiveness.⁴⁸

In Argentina, Chile, South Africa, and Morocco the governments made significant efforts to turn the sites of human rights abuses described in truth commissions' reports into places for remembering. Progress in creating memorial sites has been slow in most of the remaining countries.

Argentina - In April 1995, the Head of the Argentinean Army, General Martín Balza, assumed responsibility for the illegitimate methods, including the suppression of life, employed by members of the Army to obtain information during the military dictatorship. To those who lost family members, Balza offered "respect, silence before their pain and the commitment of all my efforts to a future that does not repeat the past".⁴⁹ This was the first unambiguous institutional apology issued by a Latin American military.⁵⁰

The first national monument to the disappeared was built in the city of La Plata.⁵¹ In March 2004, President Nestor Kirchner announced that the naval base *Escuela de Mecánica de la Armada* (ESMA) would be turned into a "Museum of Memory" to honor the disappeared.⁵² On the same occasion, Kirchner apologized on behalf of the State for the silence regarding the atrocities, during two decades of democracy.⁵³

Chile – On March 5, 1991, one month after receiving the report by the National Commission on Truth and Reconciliation, then-President Ailwyn presented its findings in a televised speech and sought pardon for the crimes committed by the State.⁵⁴ The army and the police (*Carabineros*) rebuffed the report, refusing to be “put on the accused’s bench, for having saved the liberty and sovereignty of the fatherland”.⁵⁵ However, at the time of the release of the report of the National Commission for Political Imprisonment and Torture, in November 2004, the army and the police acknowledged that their members took part in the human rights abuses and condemned such conducts.⁵⁶

The government has undertaken a series of important steps to commemorate the victims of dictatorship in Chile. *Villa Grimaldi*, former prison camp at the outskirts of Santiago de Chile, in which an estimated 4,500 persons were held and tortured between 1973 and 1978, and over 220 of them “disappeared” during the detention, was transformed into a memorial in 1997.⁵⁷ The Human Rights Program of the Ministry of Interior financially supported the creation of eighteen memorial centers in the period 2002-2006.⁵⁸ In December 2008, President Bachelet laid the foundation stone for building the National Museum on Memory and Human Rights.⁵⁹

El Salvador – There has been no official acceptance of responsibility for abuses committed by government forces during the armed conflict between 1980 and 1992.

A recommendation in the final report concerns the construction of a national monument in memory of the victims of the armed conflict in El Salvador. The national government never supported the initiative. In 2003, the leftist-run city government of San Salvador, the capital, erected a Monument to Memory and Truth in the Parque Cuscatlán. The initiative came from the victims’ families and the civilian organizations in El Salvador. The 85-meter wall of black granite has nearly 39,000 engraved names of civilians killed or disappeared during the conflict.⁶⁰ Another important memorial exists in the village of El Mozote, with engraved names of over eight hundred people killed by government forces in 1981.⁶¹ Other small memorials exist elsewhere throughout the country.

Ghana – The National Reconciliation Commission recommended in its final report (2005) a series of symbolic reparations, including letters of apology signed by the President, apology (radio and television broadcast) by heads of public institutions that are identified as main actors in the violation of the rights of individuals, and “a special apology from the President to the Ghanaian woman for the indignities and the atrocities she has endured”.⁶² These recommendations have not been implemented.⁶³ Only the Ghanaian Attorney General issued a statement with an apology to those who had been wronged in the past period.⁶⁴

The recommendations from the National Reconciliation Commission Report pertaining to other symbolic reparations (monuments and commemorative events) have not been implemented either.⁶⁵

Guatemala – On February 25, 1999, during the ceremony at which the commission presented the final report, President Álvaro Arzú chose not to take his seat at the podium.⁶⁶ Four months later, Arzú said that the commission was wrong to conclude that genocide had been committed.⁶⁷ Subsequent presidents have taken a different path. Alfonso Portillo said in his inaugural speech in January 2000 that he accepted the report and sought pardon on behalf of the State for the abuses committed in the conflict.⁶⁸ On February 25, 2004, President Berger (2004-2008) asked forgiveness from the victims of the civil war.⁶⁹ The current president, Álvaro Colom, asked forgiveness in August 2008, at a ceremony in which he handed over financial reparations to victims in the Quiché area, in the northwest,⁷⁰ and again on the occasion of the tenth anniversary of the release of the truth commission’s report, in February 2009.⁷¹ Even the president of the United States, Bill Clinton, apologized in March 1999 for United States support for Guatemalan “military forces and intelligence units which engaged in violence and widespread repression”.⁷² However, the Guatemalan army has not acknowledged the findings of the commission.⁷³

The Catholic Church and the rural communities have created memorials for civilian victims in a number of places in Guatemala. The government-erected monuments commemorate the peace treaty and those who died during the conflict; they are few in numbers and hardly noticeable.⁷⁴

Morocco – According to the late president of the Equity and Reconciliation Commission, Driss Benzekri, the King of Morocco, Mohamed VI, apologized to victims of the human rights abuses at a closed meeting with them in January 2006, one month after the Commission submitted the final report to the King. There has been no public apology from the Prime Minister, despite the recommendation of the truth commission. The victims have received letters in which the State asked forgiveness for the human rights abuse they suffered.⁷⁵

The truth commission in Morocco has recommended the transformation of former detention centers into sites of memory.⁷⁶ Implementation of the recommendation has started in 2007.⁷⁷

Peru - In November 2003, in a speech made in response to the CVR’s report, President Alejandro Toledo supported the Commission’s work and apologized on behalf of the State “to those who have suffered”.⁷⁸ Prime Minister Jorge del Castillo (2006-08) also expressed respect for the work of the Commission.⁷⁹ However, the Army has refused to apologize for crimes committed by the military forces during the conflict.⁸⁰

Memorial sites have been created across the country.⁸¹ Chief amongst them, *La Alameda de la Memoria* (Memory Avenue) in Lima, was inaugurated in August 2005, on the second anniversary of the release of the final report by the Truth and Reconciliation Commission.⁸² The establishment of the memorial was result of a joint effort by a coalition of human rights organizations and the municipality of Jesús María, a neighborhood in Peru’s capital.⁸³

Sierra Leone – The Commission recommended in its final report that “individuals, groups, bodies and organizations who bear any responsibility for the abuses and violations committed during the war” apologize publicly.⁸⁴ Leaders of the rebel forces, which bore the brunt of responsibility for human rights violations, have never apologized. During the final closing hearing, in early August 2003, President Kabbah declined an invitation to apologize on behalf of the State for the many abuses suffered in Sierra Leone.⁸⁵

In 2007 the government designated the National Commission for Social Action (NaCSA) as the official implementing agency. NaCSA has submitted the reparations project to the National Steering Committee of the Peace Building Funds, which approved the project in July 2008. The program includes the form of symbolic reparations such as memorials, reburials and remembrances.⁸⁶

South Africa – It is important to note that the South African TRC, in spite of public perception, did not include expressions of remorse as a precondition to receive an amnesty. Doing so would have encouraged – in the opinion of several leaders – meaningless theatrics. However, many perpetrators did offer apologies when they took the stand before the Commission.

The highest officials in the apartheid government have failed so far to offer credible apologies during or after the work of the TRC. Former President Pieter Botha did not make an apology. In the testimony before the commission, in August 1996, South Africa's last apartheid president Frederik W. de Klerk apologized for the pain and suffering caused by the system of racial separation. He said, however, that neither he nor his party authorized the human rights abuses.⁸⁷ Klerk's apology, unlike his denial, is little remembered in today's South Africa. In contrast, there has been little doubt about the sincerity of the apology of the former deputy minister of law and order, Leon Wessels, before the commission and in a statement in August 2006.⁸⁸

The South African government has inaugurated several memorials honoring victims of apartheid. In June 2000, Freedom Park was established in Pretoria in response to the TRC, as a monument to democracy and to honor the victims of the anti-apartheid struggle.⁸⁹ The Sharpeville Memorial and precinct was opened in March 2002 to honor those who lost their lives in the Sharpeville Massacre, in 1960. The memorial is located in Seeiso Street in Sharpeville, opposite the police station where the shootings took place.⁹⁰ Other prominent sites include the Women's Monument in Pretoria, commemorating the march of thousands of women in protest against apartheid in 1956, as well as Robben Island Museum, a former prison for liberation activists, including Nelson Mandela, the first post-apartheid President of South Africa.⁹¹

Timor-Leste (CAVR) – During its public hearing on the civil war, leaders from political parties involved in the internal conflict in 1975 apologized to the people of Timor-Leste. This included the then sitting President, Prime Minister and Minister of Defence, as well as other political leaders.⁹²

Timor-Leste – Indonesia (CTF) – In July 2008, after the release of the CTF report, Indonesian President Susilo Bambang Yudhoyono responded to it by expressing “deep regret at what happened in the past that has caused the loss of lives and property”. Yudhoyono stopped short of an apology.⁹³ The value of the president’s gesture was further diminished by the fact that he expressed the regret jointly with Jose Ramos Horta, the president of Timor-Leste, which created an appearance of artificial even-handedness.

3. Material Reparations

Virtually all of the commissions examined in the paper recommended measures of material reparation for the victims. In Argentina, Chile, Morocco, South Africa, and Ghana, reparations have been paid to a wide range of individual beneficiaries. Some segments of the victim population received reparations in Guatemala and Timor-Leste. In Sierra Leone and Peru, five years after the truth commissions completed their work, authorities have been unable to begin the payment of individual reparations, although they have established procedures for the future payments. In El Salvador, reparations have never been paid.

A number of the countries under review are economically weak, which makes provision of reparations difficult even for governments committed to improving the status of victims. Sierra Leone, Guatemala, and Timor-Leste, for example, are among the world’s poorest countries. At the same time, the poor countries were theaters of especially vicious and long-lasting conflicts, a consequence of which is a high number of victims entitled to reparations. Even where the governments have provided individual material reparations, the amounts paid to the victims have been modest, with the exception of reparations in Argentina, Chile, and Morocco.

A few countries (Guatemala, Morocco, and Peru) have also implemented measures of collective (community) reparations, in the areas affected by the human rights abuses during the period examined by the respective truth commission. These measures include programs of socio-economic and cultural development.

Argentina - As of February 2004, around 8,000 claims for reparations for cases of forced disappearance and assassination had been approved, while an additional 7,800 persons were receiving benefits on account of arbitrary detention (including the cases that resulted in death).⁹⁴ The families of the victims of disappearance and assassination received bonds with a face value of US\$224,000, while the value for the cases of death during detention was US\$136,000.⁹⁵ These amounts are higher than in any other reparation programs in the countries under examination, but the downside of the practice consists in the payment in debt bonds, rather than in cash.

Chile – Reparations programs in Chile have been grounded on the work of two truth commissions. The first, commonly known as the *Rettig* Commission (1990-91), after its chairman, investigated disappearances, executions, and torture leading to death. The Institute of Provisional Normalization, responsible for administering the system of

allowances, granted thousands of applications for allowances, including cases which had not been assessed by the *Rettig* commission due to lack of time. As of September 30, 1997, 5,726 beneficiaries had been paid their allowances.⁹⁶ The payments were somewhat higher than the monthly minimum wage.⁹⁷ The original worth of the monthly pension was US\$537 in preset percentages among the different members of the family.⁹⁸ The government also provided medical services and educational benefits to the victims of the dictatorship.⁹⁹

The second truth commission (*Valech* commission, 2003-04) dealt with torture cases not resulting in death. The commission issued the report in 2004. Until that year, the surviving victims of torture and political detainees were excluded from most reparations programs.¹⁰⁰ A month after the report was made public, a law was passed establishing a reparations program that included a pension, educational benefits and access to health care for these categories of victims. However, in this case, the amount of the pensions was equivalent to the minimum salary.¹⁰¹

El Salvador – El Salvador’s Truth Commission made a few concrete recommendations on reparations, including dedicating 1 per cent of foreign assistance to these purposes. However, there has been no payment of economic reparations on the part of the State.¹⁰²

Ghana – During 2006 and 2007, the government paid individual reparations to some 2,000 persons.¹⁰³ The once-off sums ranged from an equivalent of \$217 to \$3,300. The individualization of the amount was based on the type of violation suffered.¹⁰⁴ Some victims felt that the compensation they received was inadequate given the extent of economic losses and emotional distress they had suffered.¹⁰⁵

Guatemala – Between 2003, when Guatemala created a National Reparations Program, and the beginning of 2008, the government paid financial compensation to some 17,000 victims.¹⁰⁶ By October 2008, under the new president Alvaro Colom, an additional 7,145 people received reparations.¹⁰⁷ The overall number of victims, as estimated by the Commission for Historical Clarification, exceeded 200,000. The amount paid revolved around US\$3,000: at a ceremony in August 2008, President Colom handed over checks to victims in the Quiché region, with amounts ranging from an equivalent of US\$2,660 to US\$3,200.¹⁰⁸ In October 2008, the government also began carrying out infrastructure works in the remote areas inhabited by Maya population, as part of the implementation of the National Reparations Program.¹⁰⁹

Morocco - The Equity and Reconciliation Commission (IER) submitted the final report to the King in December 2005. By the end of 2007, the government paid financial compensation to most of the victims whom the Commission identified as entitled to reparation. A total of US\$85 million had been distributed to approximately 9,000 individuals.¹¹⁰ By June 2008, close to 2,100 victims received health insurance, and the government planned to extend the benefits to and additional 10,000 victims.¹¹¹ Also in June, the Ministry of Employment and Vocational Training signed a partnership and co-operation agreement with the government-founded Advisory Council on Human Rights whereby victims identified by the IER would gain access to vocational training and

professional development services.¹¹² The government has also implemented the program of collective reparation in eleven regions which suffered from repression and marginalization in the past. The material dimension of the operation includes programs of capacity building, socio-economic development, environmental preservation, improvement of educational and social services, and basic infrastructure.¹¹³

It should also be added that, several years before the establishment of the IER, the government had provided material reparations to thousands of other victims. The recommendations were ordered by an Independent Arbitration Panel, established in 1999 to determine compensation for cases of arbitrary detention and enforced disappearance that occurred between 1956 and 1999. The Panel operated under the auspices of the Human Rights Advisory Council. The Panel issued positive decisions concerning 3,681 applications and awarded a total of nearly US\$100 million. The amounts ranged from US\$600 to approximately US\$300,000.¹¹⁴

Peru – Implementation of the recommendations in the truth commission’s report concerning reparations has been slow. While 69,000 people had been killed in the conflict, and the estimation of all victims and their relatives entitled to reparations done by the special Reparations Board is 280,000, the board had registered only 23,668 individual applicants, as of January 2009.¹¹⁵ The low number of applications has been explained by the displacement and migration caused by the past violence,¹¹⁶ and the lack of sufficient funds for the work of the Reparations Board.¹¹⁷ The board also registered 3,560 communities by September 2008, from an estimated 9,000 seriously affected by the violence, for implementation of collective reparations.¹¹⁸ Only collective reparation measures have been implemented so far, in 210 communities during 2007 and 2008.¹¹⁹ The reparations most frequently consisted in creation of a community center, school buildings, or irrigation projects.¹²⁰

Sierra Leone – Implementation of reparations program for civilian victims stands out as a key recommendation from the truth commission’s report that is yet to be implemented.¹²¹ In 2007, the official implementing agency National Commission for Social Action (NaCSA) created a reparations project which includes a one-year (August 2008 – July 2009) catalytic fund to kick start the reparations program.¹²² In December 2008, NaCSA began the registration process for those who would be eligible.¹²³

South Africa - The South African Truth and Reconciliation Commission had recommended that victims should receive a yearly grant of around US\$2,700 for six years. However, the government decided to make one-time payments of less than US\$4,000 (at February/March 2009 exchange rates) to the victims who gave statements to the TRC.¹²⁴ In November 2008, over 2,000 people, of the 18,000 recognized by the TRC as victims, were still awaiting payment, while 16,000 had been paid.¹²⁵

Timor-Leste (CAVR) – As part of the CAVR-administered Urgent Reparation Program, 516 men and 196 women received cash grants, and 156 victims participated in a total of six healing workshops.¹²⁶ Funding for the program were obtained from the World Bank’s program for vulnerable persons.¹²⁷ The number of victims who benefited from the

program was miniscule when compared to the estimated number of victims as established by CAVR (about 18,600 unlawfully killed or disappeared, and thousands of victims of other crimes). CAVR's recommendations concerning reparations have not been implemented.¹²⁸

Timor-Leste – Indonesia (CTF) - The final report by the Commission for Truth and Friendship did not recommend compensation as a form of individual reparation; instead, the commission recommended trauma counseling, educational scholarship, and other forms of non-pecuniary reparation. The report also recommended implementation of collective reparation programs.

4. Criminal Prosecutions

There are two distinct aspects of the relationship between the work of a truth commission and the criminal prosecutions in the countries under review. One concerns the potential of a commission to help initiating criminal prosecutions in the period in which they are still absent, while the other pertains to truth commissions' contribution to prosecutions once the judiciary has begun to grapple with the legacy of widespread human rights abuses.

In the countries under examination, prior to the establishment of the truth commissions there had been no prosecutions before domestic courts for the past human rights abuses. ("Hybrid" war crimes panels, sponsored by the United Nations, existed in Sierra Leone and Timor-Leste when the truth commissions in those countries started their work.) In most of the countries, structures and individuals responsible for the past abuses continued to play a role in the political life or were perceived as too powerful to become subject of criminal probe. Under such circumstances, truth commissions could not immediately open space for prosecutions. In a few other countries (South Africa and Sierra Leone), the small number of prosecutions reflected the strong preference of the new governments for reconciliation, which they deemed scarcely compatible with a broad use of criminal justice mechanisms.

After the forces responsible for the abuses lost their grip on the political elites or security apparatus in Argentina, Chile, and Peru, information gathered by the truth commissions was frequently used by the prosecutors and courts. The truth commission in Sierra Leone did not make a direct contribution to the prosecutions before the "hybrid" war crimes tribunal, while the so-called serious crimes panels in Timor-Leste were able to build cases and use truth commission's documentation as evidence against the individuals who unsuccessfully applied for immunity before the commission.

Truth commissions in El Salvador, Ghana and Morocco refrained from recommending criminal prosecutions. They assessed that the balance of power or the weakness of the judiciary made such prosecutions unlikely in the foreseeable future.

Argentina – The truth commission was under an obligation to submit evidence of criminal conduct to prosecutorial authorities.¹²⁹ At the end of its work, the commission

handed 1,086 cases to the judiciary.¹³⁰ Nearly 500 individuals were charged soon thereafter.¹³¹ After the trials of the top leaders of the military regime, in the face of the threat of military coup, the parliament passed two partial impunity laws, in 1986 and 1987, to stop further trials taking place. President Carlos Menem (1989-1995) pardoned 277 persons who had already been convicted or indicted.¹³² Only in August 2003 the Argentine Congress rescinded the amnesty laws,¹³³ and in June 2005 the Supreme Court ruled that these laws were unconstitutional which opened the door for a new round of prosecutions.¹³⁴ As of July 2008, according to the Center for Legal and Social Studies in Buenos Aires, 36 people had been convicted for abuses committed during the dictatorship. Around 440 people, most of them in pre-trial detention, were facing charges for these crimes.¹³⁵ The evidence gathered by the Commission in 1983-84 has been a key resource for the prosecution in the trials against the military juntas, as well as in the more recent prosecutions.¹³⁶

Chile – Like the Argentinean truth commission, the *Rettig* Commission in Chile (1990-1991) had an explicit obligation to send evidence of criminal conduct to relevant authorities, for potential prosecution.¹³⁷ Up to July 2008, 256 former military personnel and civilian collaborators had been convicted for forced disappearances, killings, and torture.¹³⁸ The progress was mainly made during the last decade: as recently as in 1999, only 19 cases addressed by the *Rettig* Commission had resulted in convictions.¹³⁹ The surge in prosecutions followed the arrest of the former Head of State, General Augusto Pinochet, in October 1998 in the United Kingdom, on charges of torture raised by Spain on the basis of its universal jurisdiction.¹⁴⁰

Statements given to the *Valech* commission (2004) have been classified and cannot be used in trials concerning human rights violations.

El Salvador – The report by the truth commission did not recommend the trial of the individuals it named, because the Commissioners did not believe that the justice system of El Salvador was capable of doing justice.¹⁴¹ In March 1993, five days after the publication of the report, the National Assembly of El Salvador passed a law granting complete amnesty to any person charged with “political crimes”.¹⁴² In September 2000, the Supreme Court of Justice delivered a judgment in which it stated that, although the Amnesty Act was constitutional, judges may decide not to apply it when giving judgments on specific cases.¹⁴³ Only in June 2008, for the first time since the promulgation of the amnesty law, a member of the Armed Forces was summoned in an investigation into a crime addressed by the truth commission. General Rafael Flores Lima, former Chief of State of the Armed Forces, was summoned to testify at the Attorney General’s office in Chalatenango, in compliance with the investigation ordered by the Inter-American Court for Human Rights in March 2005.¹⁴⁴

Ghana - The National Reconciliation Report’s report did not include prosecutions in its recommendations. The commission took cognizance of the transitional provisions of the 1992 Constitution which amount to amnesty for any criminal offence committed before that year. The commission recommended the indemnity clauses to be subjected to a referendum.¹⁴⁵ It has been argued that, because of the continued strength of General Jerry

Rawlings and his political party, attempts to adjudicate crimes committed during Rawlings' reign would have destabilized Ghana's ongoing transition to democracy.¹⁴⁶

Guatemala - Of the 626 massacres documented by the truth commission, only three cases have been successfully prosecuted in the Guatemalan courts. The judgments were pronounced in 1999, 2004, and 2008.¹⁴⁷

Morocco – The Equity and Reconciliation Commission stopped short of recommending prosecutions for the abuses it dealt with. Some victims' organizations and human rights groups have criticized the commission's final report on that count.¹⁴⁸

Peru – As of May 2008, forty-six criminal trials proceedings had been instituted in Peru for human rights violations, half of which had been referred by the Truth and Reconciliation Commission.¹⁴⁹ The commission had an in-house *judicialización* team, which investigated certain individual crimes and named alleged perpetrators.¹⁵⁰ In total, it transferred 47 case files to the *Fiscalía de la Nación*, Attorney General's Office, and sent 18 cases directly to the *Sala Nacional de Terrorismo*, National Terrorism Court.¹⁵¹ As of May 2008, seventeen former military officers and civilians had been convicted for abuses attributed to state actors by the truth commission.¹⁵² Investigation of other cases has been slowed down,¹⁵³ due to lack of cooperation by the armed forces.¹⁵⁴ However, efforts to bring justice to victims of human rights abuses received an important boost with the trial and sentencing of former President Alberto Fujimori, following his extradition from Chile in 2007.¹⁵⁵ A three-judge panel of the Peruvian Supreme Court sentenced Fujimori on April 7, 2009 to a 25-year imprisonment for the killings of 25 people in two separate massacres, in 1991 and 1992, carried out by a specialized squad, and two kidnappings in 1992. The court admitted into evidence the truth commission's contextual findings which pointed at the systematic and generalized nature of the numerous forced disappearances and arbitrary executions in Peru in the relevant period.¹⁵⁶

Sierra Leone - Four war crimes trials have taken place at the United Nations-backed Special Court for Sierra Leone, where thirteen individuals have been indicted. The court was set up in 2002 to bring to justice those “who bear the greatest responsibility” for atrocities committed during the civil war. As of February 2009, proceedings against eight persons had been completed, all resulting in convictions. Three defendants died since being indicted (two while in custody), one is fugitive from justice, and trial against one person – former Liberian president Charles Taylor – is ongoing.¹⁵⁷

There have been no trials of low-level perpetrators, before the national courts. This arguably corresponds to preference among most people in the country for a “forgive and forget” approach and for reintegration of ex-combatants to their original communities.¹⁵⁸ More importantly, the Lomé peace accord (signed on July 7, 1999) that ended the conflict granted a general blanket amnesty to all combatants. This provision did not oblige the United Nations and the court it created together with the Government of Sierra Leone. However, the Special Court focused only on a small number of alleged perpetrators, while the Sierra Leonean judicial system could not initiate prosecutions given the blanket amnesty.

The Special Court and the Truth and Reconciliation Commission did not coordinate their work. The commission did not submit information given to it in confidence to the Prosecutor's Office.¹⁵⁹ The two institutions assumed diametrically opposite stance with respect to the amnesty clause in the Lomé Peace Agreement: the Court rejected it, while the TRC believed that the amnesty was necessary in the circumstances that prevailed at the time and needed to be respected.¹⁶⁰

South Africa – After the completion of the work of the Truth and Reconciliation Commission, the South African judiciary could try cases of human rights abusers who did not seek amnesty before the commission, or whose request for amnesty was denied. The commission had given a list of more than 300 names to the National Prosecuting Authority (NPA) for further investigation and prosecution.¹⁶¹ However, the NPA has not pursued these cases with any vigor. According to the Authority, it has brought charges in 10 cases.¹⁶² Since 2005, the NPA has granted immunities from prosecution for “political crimes” committed during the apartheid era to those who failed to apply with the TRC or were denied the request. The criteria for NPA's decisions were similar to those applied by the commission,¹⁶³ but, unlike with the TRC, the procedure occurred behind closed doors. On December 12, 2008, the High Court in Pretoria struck down this prosecutorial policy as unconstitutional.¹⁶⁴ On May 4, 2009, the North Gauteng High Court in Pretoria upheld the High Court's ruling and confirmed the obligation of prosecutors in South Africa to investigate cases from the apartheid era, especially those involving persons who had been denied amnesty.¹⁶⁵

Timor-Leste (CAVR) – The Commission for Reception, Truth and Reconciliation (CAVR) in Timor-Leste began its work in January 2002, a year after the United Nations-sponsored Serious Crimes Unit and the Special Panels for Serious Crimes had been established within the District Court in Dili. While the activities of the CAVR covered the period 1974-1999, the so-called serious crimes process only dealt with crimes committed in 1999. The Panels had no power to compel Indonesian authorities to cooperate. The Panels produced 84 convictions and 3 acquittals, before they ceased functioning in May 2005. As of June 2008, three hundred and thirteen people of Indonesian and Timorese ethnicity, who were indicted through the serious crimes process, remained at large.¹⁶⁶ In 2004 and 2005, President Xanana Gusmao granted clemency to some of the individuals convicted of serious crimes, resulting in reduction of their sentences.¹⁶⁷ In May 2008, President Jose Ramos Horta issued a decision on partial pardon of nine persons sentenced for crimes against humanity.¹⁶⁸ Some of them had their sentence reduced sufficiently that they were entitled to parole.

The CAVR sent the written statements by perpetrators who applied for the so-called Community Reconciliation Process to the Office of the General Prosecutor (OGP) to assess whether the case should be dealt with by the OGP or the underlying crime was relatively minor and thus subject to immunity if they successfully completed the community reconciliation process.¹⁶⁹ After the perpetrator gave statement at the community hearing and entered into a Community Reconciliation Agreement, the nearest District Court reviewed and approved the agreement. Of more than 1500 statements

forwarded to the General Prosecutor, 111 remained with the OGP for possible future action.¹⁷⁰

At the end of its mandate, the CAVR submitted a list of alleged perpetrators to the President of Timor-Leste and recommended that it should be referred to the Office of the General Prosecutor for further investigation and action.¹⁷¹ The final report of the Commission, from October 2005, also recommended that the United Nations should renew the mandates of the Serious Crimes Unit and Special Panels and that the United Nations should be prepared to establish an International Tribunal if other measures were deemed to have failed to deliver a sufficient measure of justice and if Indonesia persisted in the obstruction of justice.¹⁷² The United Nations Integrated Mission in Timor-Leste (UNMIT) has in the meantime re-established an investigation team to complete investigations of crimes committed in 1999, although without the mandate to indict or prosecute.¹⁷³

Violations of human rights in Timor-Leste were also subject to limited criminal trials in Indonesia. By mid-2008, however, courts had acquitted all 16 Indonesian military and police defendants, and both defendants of Timorese origin.¹⁷⁴ The trials have been widely denounced by international commentators as flawed.

Timor-Leste – Indonesia (CTF) – The mandate of the Commission on Truth and Friendship encompassed only events immediately prior to the popular consultation in Timor-Leste in 1999 and in its wake. Although the CTF had power to recommend amnesty for the established crimes, it declined to do so. The report's findings and the evidence collected by the commission have been interpreted as a step toward accountability and criminal justice in Indonesia.¹⁷⁵ After the time of the release of the report (August 2008), however, the highest state officials in both countries suggested that there would be no criminal proceedings against those responsible for the abuses described in the report.¹⁷⁶

5. Resolving Cases of Forced Disappearance

Forced disappearances are a tragedy outliving the conflict or the abusive regime. A process of reconciliation is doomed to fail if families of the disappeared do not know what happened to their loved ones. On such a massive scale of abuses, a TC might be the only way to find out about the fate of the victims of forced disappearance.

The truth commissions in Morocco, Peru, and South Africa included within the scope of their work determination of the fate of the forcibly disappeared. More frequently, commissions had a more limited goal – to receive reports about disappearance cases and on that basis create a register that could serve as basis for future work of specialized agencies.

In most of the disappearance cases reported to the truth commissions in South Africa and Morocco, the commissions established the fate of the victims and located the sites of their

burial. In Peru and Guatemala, significant work on exhumations and identifications has been done, although a majority of the cases have yet not been resolved. There has been little progress in Argentina, Chile, El Salvador, and Timor-Leste. The number of cases of disappearance in Ghana and Sierra Leone has been relatively low, and the issue did not figure prominently in the work of the two truth commissions.

Argentina – An annex to the report by the Truth Commission included the name of 8,961 persons established as disappeared.¹⁷⁷ The list was understood as open, and it has been updated in the following years. An Under-Secretariat for Human Rights (SDH), established within the Ministry of the Interior in September 1984, continued with investigations of all cases not reviewed by the commission. The SDH has confirmed about 3,000 new cases.¹⁷⁸ Estimates about the actual number of the victims of forced disappearance vary from 15,000 to 25,000.¹⁷⁹

The remains of only 300 victims have been exhumed and identified.¹⁸⁰ In November 2007, the Argentine Forensic Anthropology Team (EAAF), a nongovernmental organization in charge of exhumations and identifications of the disappeared, initiated a public campaign exhorting relatives of the disappeared to provide blood samples for a nationwide DNA database, to facilitate identification of the approximately 600 bodies recovered by the EAAF. The government supported the campaign.¹⁸¹

Chile – The National Commission on Truth and Reconciliation (*Rettig Commission*, 1990-91) and the National Corporation for Compensation and Reconciliation, a follow-up body in operation until 1996 to implement the recommendations, verified information about 1,102 cases of disappearance after detention.¹⁸² Between 1990 and 2004, Chilean forensic experts identified 220 of the remains with traditional forensic methods.¹⁸³ However, in 2005 Chile's Medico-Legal Service reexamined 95 cases by conducting mitochondrial DNA analyses, and the procedure produced contradictory identification results on 48 cases.¹⁸⁴

El Salvador - More than 5,500 complaints of serious acts of violence, or 25 per cent of the total of over 22,000 complaints registered by the commission in El Salvador, concerned cases of forced disappearances.¹⁸⁵ Salvadoran NGOs estimate that more than 8,000 individuals disappeared during the Salvadoran armed conflict.¹⁸⁶ The government has made little effort to determine the fate or whereabouts of the disappeared.¹⁸⁷ By October 2007, the United Nations Working Group on Enforced or Involuntary Disappearances has received information about 391 cases which have been clarified.¹⁸⁸ There is no comprehensive plan or program for searching for disappeared persons,¹⁸⁹ and the relationship between the government officials and the civil society organizations involved in the investigation of cases of forced disappearances has suffered from mistrust and lack of cooperation.¹⁹⁰

Ghana –The report by the National Reconciliation Commission does not contain an estimate of the number of disappearances, nor do the report's recommendations include a call for search for the disappeared. It transpires from the description of the specific

incidents in the report that a negligible number of bodies was recovered during the work of the commission.

Guatemala – The Commission for Historical Clarification (CEH) registered 6,159 cases of disappearance.¹⁹¹ It is estimated that up to 45,000 people actually disappeared during the conflict, but many families did not report the cases to the Commission.¹⁹² Dozens of mass graves were exhumed prior and during the work of the CEH, on the initiative of local communities through Guatemala.¹⁹³ Teams of forensic scientists, linked to NGOs and the Catholic Church and in coordination with the public prosecuting authority, worked to identify victims.¹⁹⁴ These efforts continued after the completion of the Commission's work. As of the end of 2006, the remains of fewer than 5,000 victims had been returned to their families.¹⁹⁵

Morocco – The commission shed light on the fate of 742 persons reported to it as victims of forced disappearance.¹⁹⁶ In most cases the commission encouraged families not to request exhumations since documentary evidence was sufficient to establish the identity of the victim.¹⁹⁷ Only 66 cases remained unresolved.¹⁹⁸ The names of these individuals have not been published. In the subsequent years, the authorities claimed that they have resolved some of the remaining cases. Nongovernmental organizations and victims' organizations have criticized the lack of transparency around the issue and disputed the claim by the Advisory Council on Human Rights that around 20 cases remained unresolved as of December 2008.¹⁹⁹

Peru - The Truth and Reconciliation Commission (CVR) received reports about 4,414 cases of forced disappearance, attributable to State agents.²⁰⁰ Based on its investigations, the CVR created the National Registry of Burial Sites, with information about 4,644 sites. The commission itself made preliminary visits to 2,200 of them.²⁰¹ Many of the victims buried at these sites have been identified by cross-referencing dates and testimonies.²⁰² Still, when the commission completed its work in 2003, nearly two-thirds of the reported cases of disappearance (or 65 percent) remained unresolved.²⁰³ An additional 3,301 new cases have been reported to the National Coordinator for Human Rights after the conclusion of the CVR work, along with 1,255 cases reported to the Office of the Ombudsperson.²⁰⁴ Between 2003, when the Commission published its final report, and May 2008, the Peruvian government recovered 505 bodies and identified 269 of them.²⁰⁵

Sierra Leone – At the end of the armed conflict in Sierra Leone, there had been few cases of individuals who had disappeared and whose whereabouts continued to be unknown. Among the most widespread abuses in the conflict were abductions, usually resulting in forcible recruitment or sexual enslavement.²⁰⁶ That status ended with the cessation of hostilities.

South Africa – The Truth and Reconciliation Commission received more than 1,500 statements concerning victims of forced disappearance.²⁰⁷ Although the Commission did not have the resources to establish a unit solely dedicated to investigating disappearances,²⁰⁸ it managed to locate and exhume bodies of a number of the victims buried in secret graves.²⁰⁹ When the commission ended its work, 477 cases remained

unresolved.²¹⁰ However, the actual number of cases still in need of solution may be as high as 2,000, because many cases were not reported to the commission.²¹¹ Pursuant to a recommendation from the final report (1998), but with a six-year delay, a Missing Persons Task Team was established in 2004, as part of the National Prosecuting Authority.²¹²

Timor-Leste (CAVR) – The CAVR received information about 835 counts of forced disappearance, along with 5,120 cases of non-combatant killings.²¹³ The overall estimate for the number of those unlawfully killed or disappeared was about 18,600,²¹⁴ which implies that the actual number of disappearances may have been three times higher than the number of the reported cases. The CAVR recommended that a systematic inquiry should be undertaken to establish their whereabouts and fate.²¹⁵ However, the authorities in the two countries did not create specialized bodies to investigate the fate of disappeared persons and provide information to their families. The establishment of such a bilateral commission was eventually recommended by the Commission on Truth and Friendship in its final report published in August 2008.²¹⁶

6. Institutional Reforms and Democratization

Truth commissions have in practice played a less vital role in spurring institutional reforms than in generating changes in other areas of transitional justice – truth recovery, prosecutions, and reparations. Almost all institutional reforms are shaped during the negotiations accompanying the transition, when truth commissions are established at a later stage. Implementation of the reforms could usually be linked to the transitional arrangements, while the negotiating parties attached lesser urgency to the core issues of transitional justice. The gaps in these areas were effectively left to truth commissions to fill, with subsequent inquiries and recommendations.

As the survey by countries shows, some truth commissions have contributed to the process of institutional reforms, but more often it is difficult to discern a direct cause-and-effect relationship. The instances in which reports of truth commissions clearly impacted the institutional reform have been relatively rare; examples include the reshuffling of the judiciary and the military in El Salvador, the so-called *impugnaciones* in Argentina, the enactment of a law in Peru that obliges military members to disobey orders that are contrary to human rights standards, and the establishment of a human rights commission in Sierra Leone.

However, it could be persuasively argued that truth commissions have indirectly shaped the reforms by exposing responsibility of key institutions for wrongdoings in the past. Such exposure presumably creates pressure on the institutions to reform in order to regain legitimacy. The examples of gradual changes of the militaries in Argentina and Chile can be used to bolster this argument.

When examining the extent of democratization in the countries under review, it is imperative to keep in mind that a majority of them have a recent history of armed

conflict, little or no democratic tradition, and a high level of poverty. Against that background, progress achieved in most of these countries has been notable. A recent observation by two leading scholars of democratization - “Had someone said [in 1980] that [E]l Salvador and Guatemala would be democracies two decades hence, [o]ne might have suspected delirium”²¹⁷ – is similarly applicable to countries such as Sierra Leone, South Africa, and Ghana. All have been functioning democracies since the end of conflicts or authoritarian governments, in spite of the widespread poverty.

The notion of democracy is understood here to include two components: electoral democracy, in which free and fair elections, with universal suffrage, are the basis for the formation of the government, and their outcome is accepted by the participants; and, respect by the government of basic civil and political rights and freedoms, most notably freedom of expression and assembly.²¹⁸ Taken together, they should serve to establish the basis for accountable government.

a. Argentina – It took a decade after the completion of the truth commission’s work to put the armed forces under full civilian control, and another decade to achieve essential reforms in the judiciary and the police. Direct contribution of the truth commission to the reform processes can be traced in relation to the changes in the military.

Military – Due to the economic hardships during the military dictatorship and the defeat in the Falklands war against the United Kingdom, the military was demoralized and kept low profile in the initial period of transition. In the second half of the 1980s, however, the military turned into a disruptive factor with political influence.²¹⁹ Since the 1990s the military has had no role in the politics,²²⁰ and it has been under effective civilian control.²²¹

Soon after the end of dictatorship, human rights organizations and members of the parliament tried to prevent promotions of military officers suspected of having committed crimes in the previous period. These efforts were undertaken within a parliamentary procedure (*impugnación*) allowing challenges to promotion or staffing proposals. From early on, the competent committee in the parliament used the report of the truth and reconciliation commission, along with information received from human rights groups, to verify whether individuals proposed by the Argentinean president for promotions had committed human rights abuses in the past.²²² It was assumed that in those instances in which officers failed to gain the promotion because of the abuses, military careers would come to an end.²²³ It is not known, however, how many promotions from 1983 to date have been successfully impugned.²²⁴

Police – After 1983, a series of reforms concerning police powers were initiated at the federal and provincial levels. Police powers were restricted immediately after the restoration of democracy. The efforts to curb abuses by the police intensified after the amendments to the laws on criminal procedure and internal security were introduced in 1991. After 1999, however, a new trend emerged, with amplification of the police powers.²²⁵ In the second half of the 1990s, numbers of reported police abuses increased.²²⁶ The reversal of this negative trend began only under President Nestor

Kirschner (2003-2007), who launched an overhaul of the police force.²²⁷ However, there has been no improvement regarding examination of their responsibilities for human rights abuses during the dictatorship.²²⁸

Judiciary – Reform of the judiciary has been slow. Raoul Alfonsín, who was the president from 1983 to 1989, persuaded the Supreme Court justices who had served under the military to resign. The newly appointed court had five respected members and acted independently from the government.²²⁹ During the two mandates of the Peronist president Carlos Menem (1989-1995, 1995-1999), however, the president launched an effective assault on the independence of the judiciary, backed by firm parliamentary majority. The parliament adopted legislation increasing the number of Supreme Court justices from five to nine, and during his first mandate Menem appointed six loyalists in the expanded Court.²³⁰ Although Argentina's 1994 constitutional reform created a judicial council vested with the power to intervene in the appointment of judges, Menem and his government delayed the creation of that body. The council was established only in 1998, following the defeat of the Peronists at the 1997 legislative elections.²³¹ In the words of one commentator, Menem's policies "reinforced the previous pattern of executive subordination and manipulation of the courts".²³² A positive change occurred during the mandate of Nestor Kirchner (2002-2007). He nominated qualified and independent justices to the Supreme Court and in 2006 the parliament reduced the number of justices from nine to five, consistent with numerous demands by legal professionals and human rights groups.²³³

Democratization - Elections in Argentina are free and fair, and civil liberties are broadly protected.²³⁴ The constitutional order has not been in peril in the past 25 years, including the hyperinflationary crisis in 1989-90 and the financial collapse in 2001-2002.²³⁵

b. Chile - Transition to democracy in Chile, which began in 1990, developed within the institutional framework designed by General Pinochet and embodied in the 1980 Constitution. As a consequence, institutional reforms unfolded at slow pace.

Military - From the beginning of the transition in Chile in 1990 until the constitutional changes in 2005, the military remained largely out of civilian control and continued to play a significant role in the political life. It held half the seats in the National Security Council (*Cosena*),²³⁶ a body vested with the authority to discuss threats to national security, ask government institutions to address the alleged threat, and solicit any information it deemed necessary in national security matters from any government agency.²³⁷ *Cosena* could also nominate four persons – from each branch of the armed forces – in the Senate (the upper chamber of the legislature).²³⁸ The system of military justice continuously allowed for prosecution of civilians by military courts,²³⁹ and civilians made a substantial majority of those convicted.²⁴⁰ There were no attempts to vet the armed forces from perpetrators of human rights violations.²⁴¹ On May 28, 1993 soldiers of the Army's Special Forces, surrounded the armed forces headquarters in a gesture of warning to the government not to initiate judicial proceedings against the military and the son of General Pinochet.²⁴²

In September 2005, the constitutional amendments came into force limiting the role of *Cosena* to a purely advisory one and allowing the sole president to convening it. The amendments also stipulated that the appointed senators, including the four appointed by *Cosena*, would not be replaced after the expiration of their mandate (in 2006).²⁴³ However, military courts retain wide jurisdiction over civilians.²⁴⁴

Police – The report by the *Rettig* Commission contained elaborate recommendations aimed at preventing human rights violations by the police, including recommendations on laws governing the act of arrest, treatment of people in prisons and jails, and increase of the punishment for coercion and torture.²⁴⁵ While the Chilean police are today considered to be among the least corrupted in Latin America, there have been constant reports about police violence since the restoration of democracy.²⁴⁶ The response of the uniformed police (*Carabineros*) to the allegations of violence has lacked transparency. For example, the police stated that 27 percent of the formal complaints during the period 1999-2001 resulted in some kind of sanction, but the precise outcomes of the proceedings have rarely become public.²⁴⁷ The Investigation Police (the other police force in Chile), has created a division specialized in investigating human rights violation cases and it has been commended for doing an excellent job that has led to improvement in prosecutions.

Judiciary – Between 1988, when General Pinochet lost the referendum on extension of the period of his power, and the change of government in March 1990, Pinochet's government appointed several loyalists as justices of the Supreme Court and the Constitutional Tribunal.²⁴⁸ In August 1990, the Supreme Court ruled that the controversial 1978 amnesty decree, which freed military offenders from criminal wrongdoing, was constitutional.²⁴⁹ In reaction to the *Rettig* report (March 1991), the Supreme Court issued a statement condemning the report as “passionate, reckless, and biased”.²⁵⁰ The Supreme Court's unwillingness to rule in favor of human rights continued until 1998, when several new justices took office. Earlier, in March 1997, the democratic government had managed to change the composition of the Constitutional Tribunal.²⁵¹ By the beginning of the current decade, the above developments, coupled with improvements in the criminal procedure and in the performance of the independent public prosecutor service led most observers to consider Chile's judicial reforms as successful. The achievement has been limited by the continued jurisdiction of military courts over civilians for offences committed against the military and the uniformed police.²⁵²

Democratization – Elections in Chile since the restoration of democracy have been free and fair. However, the popular sovereignty of the Chilean people remained significantly restricted years after the beginning of the transition in 1990, due to the provision (Article 45) on appointed senators in the 1980 Constitution. The National Security Council, the Supreme Court, and the President of the Republic could name individuals to the Senate; 9 posts were filled in that way, out of 35.²⁵³ The presence of designated senators prevented the winners of the elections from becoming a commanding majority in the Senate.²⁵⁴ This provision in the constitution was derogated with the enactment of constitutional amendments in September 2005.²⁵⁵

Since the nineties, the general respect for civil liberties and political rights in Chile has secured the country high post in the ranking of the Latin American democracies, next to Costa Rica and Uruguay.²⁵⁶

c. El Salvador - Among the countries reviewed in this paper, El Salvador represents one of the rare examples in which a direct link between the truth commission's work and the ensuing institutional reforms can be established. Effects of the commission's work were manifest in the transformation of the judiciary and the military.

Military – The truth commission called for the dismissal from their position of individuals named in the report. Indeed, not long after the report was issued, 103 military officers were removed from active duty.²⁵⁷ This outcome was a result of the work both of the truth commission and the *Ad Hoc* Commission, which had been established earlier (in May 1992) by the peace accords, and whose role was to vet the military. The *Ad Hoc* commission made recommendations for dismissals in 1992, but the then-president Alfredo Cristiani delayed compliance. The publication of the truth commission's report in March 1993 and intense international pressure left him no maneuvering space, and by June 1993 the officers were removed.²⁵⁸ Some were retired from active duty, some initially took leave with pay and retired later, and some were sent abroad to diplomatic posts.²⁵⁹

The military has had little influence in governance or within the main political parties, and its size, budget, and mandate have been significantly reduced.²⁶⁰ However, the military intelligence-gathering agency continues to collect information and advise the president on internal security, and military officers continue to be appointed as defense ministers.²⁶¹

Police – Progress in the reform of the police stemmed from the implementation of the peace accords, with little direct impact of the truth commission. In the early nineties, two infamous security forces, the National Guard and the Treasury Police, as well as the National Police, all of whom had been under military control, were abolished. The police power was transferred to a newly-established National Civil Police (PNC).²⁶² The PNC included an equal number of former policemen and insurgent combatants, in addition to a significant number of former civilians.²⁶³ There have been no major tensions among the former enemies factions who now make up the integrated police. The major problem concerning the police force is its low efficiency.²⁶⁴

Judiciary and criminal justice reform - The truth commission called for the immediate replacement of the judges of the Supreme Court. The report of the Commission is believed to have helped to ensure that an entirely new Supreme Court was selected in June 1994, when the former Court's term expired.²⁶⁵ The Truth Commission also recommended a complete overhaul of the judiciary, but that recommendation has not been implemented.²⁶⁶ While the judicial performance (independence, efficiency, and accessibility) in El Salvador has improved,²⁶⁷ the judiciary continues to suffer from a high level of corruption.²⁶⁸ Also, party affiliation has continued to impact on judicial appointments, including that of the Supreme Court justices and the ombudsman

(Procurator for the Defense of Human Rights).²⁶⁹ Another reform stemming from the work of the truth commission was the change (in April 1998) of the criminal justice system, with greater protection for individual rights.²⁷⁰

Democratization – Electoral process in El Salvador has been competitive, and the results of the elections have been accepted by all parties.²⁷¹

d. Guatemala - Contours of the institutional reforms in Guatemala were delineated in the Agreement on Strengthening of Civilian Power and the Role of The Armed Forces (the Civil–Military Accord), signed on September 19, 1996.²⁷² The literature about military, police, judicial and parliamentary reforms in Guatemala links the progress achieved to the Civil-Military Accord, while making little or no reference to the impact of the Commission for Historical Clarification. The reforms have been greatly impeded by the proliferation of the so-called “parallel powers” (*poderes paralelos*) within the state structures. They allegedly cooperate with the clandestine groups of men, often former members of specialized military units or police forces, who carry out acts of violence and intimidation for the organized crime network.²⁷³

Military – The military has retained its grip on political and economic power in Guatemala, a consequence of the effective victory over the leftist URNG guerrilla army in the decades-long civil war.²⁷⁴ Under the constitution, it has the responsibility to maintain internal security in addition to the external one, and the defense minister must be an active-duty officer. The proposal to remove these provisions was turned down in a referendum in May 1999.²⁷⁵ The truth commission recommended in the report issued in February 1999 that vetting procedures should be introduced in the armed forces, but the government implausibly contended that such process had already taken place.²⁷⁶ Legislative oversight of the armed forces is limited.²⁷⁷

On the positive side, the army had been reduced to two-thirds of the original size by 1997.²⁷⁸ Amendments to the constitution, adopted in 1993, removed police forces from army control.²⁷⁹ As an expression of an increasing confidence of the civilian authorities in its stance vis-à-vis the military, President Oscar Berger (2004-2008) replaced several military leaders associated with past human rights abuses and appointed by former President Alfonso Portillo (2000-2004) on basis of their loyalty to Portillo’s political grouping.²⁸⁰

Police – In accordance with the 1996 Civil–Military Accord, a National Civil Police force was established by 1997. The police numbers were rapidly expanded, without any in-depth screening of the candidates.²⁸¹ As result, more than half of the police cadres came from the old National Police, in spite of its reputation for corruption, inefficiency and abuses.²⁸² The police service is considered weak and corrupt.²⁸³ Guatemala is plagued by high crime rates, making the country one of the most dangerous in the world.²⁸⁴

Judiciary – Formal judicial reforms have been implemented to a large degree, but they have not resulted in systematic investigation and punishment of past human rights abuses.²⁸⁵ Many judges lack required professional skills.²⁸⁶ Operation of justice is

additionally impeded by links between clandestine groups and *poderes paralelos* in the judicial system, with the resulting practice of evidence tampering, intimidation and physical elimination of witnesses, as well as bribing and intimidation of prosecutorial and judicial officials.²⁸⁷

Democratization – In the post-conflict Guatemala, parliamentary and presidential elections have been regularly held, and election losers have accepted the validity of official results.²⁸⁸ However, the elections have been marred by intimidation and bribery of voters, particularly in rural areas.²⁸⁹ None of the major political parties represents interests of the Mayan population, which leaves 60 percent of Guatemalans “effectively disenfranchised” by the party system.²⁹⁰ At the same time, political parties have fallen prey to organized crime infiltration.²⁹¹

The institution of the Human Rights Ombudsman, which had been created by the 1985 Constitution, lost a great deal of credibility during the initial five-year period after the signing of the 1996 peace accords, when the human rights groups withdrew their support from the then-ombudsman and when government structures ignored decisions of the office.²⁹² The Office regained prestige and government’s cooperation during this decade, under the leadership of Sergio Morales Alvarado. Investigators of the Office discovered in July 2005 the complete files of the former National Police, which hold evidence of the abuses committed by the police in the previous decades.²⁹³

e. Morocco - Morocco’s civil society has placed great hopes on the implementation of the truth commission’s recommendations and its potential to contribute to reforming Morocco’s key institutions and the democratization of the country.²⁹⁴ However, implementation of the commission’s institutional reform recommendations remains in embryonic form. Observers conclude that, although substantial reforms have yet to be made, the truth commission has expanded possibilities for them, by creating expectations to that effect among sectors of the society and opening up a debate on the question.²⁹⁵

Security Sector – Morocco’s Truth Commission made a detailed set of recommendations with respect to security sector reform including:

- Developing a public national security policy;
- Clarifying and publishing the legal framework regulating the institutional attribution, the decision-making, the mode of operation and mechanisms for supervision and evaluation of all the security forces and administrative authorities in charge of maintaining public order;
- Obliging the government to inform the public and Parliament on the facts of any event having required the intervention of the security forces and reveal in detail its circumstances, the operations undertaken, their results, as well as the responsibilities and coercive measures envisaged;
- Strengthening parliamentary oversight of the security sector through capacity building within parliamentary committees and by empowering the Parliament to summon and question all members of all the security forces and government officials;
- Establishing just and transparent internal control mechanisms within the security forces; and

- Enhancing civil society's oversight capacity by making accessible the legal framework governing the security forces.²⁹⁶

However, domestic and international human rights groups continue to regularly document some bad practices and violations by security sector agencies.²⁹⁷ The responsible are rarely held accountable for the alleged abuses.²⁹⁸ The reforms listed above have yet to be implemented.

Judiciary – The truth commission put a particular emphasis on the need to constitutionally prohibit any interference of the executive power in the functioning of the judiciary and to reinforce the principle of separation of powers.²⁹⁹ The Advisory Council on Human Rights, which is officially in charge of the implementation of the recommendations of the truth commission, has initiated efforts to address the lack of independence of the judicial power.³⁰⁰ However, a lot of work remains to be done in order to fully implement the truth commissions' recommendations on the judiciary. Indeed, in cases with political overtones, courts often deny defendants a fair trial, ignore requests for medical examinations lodged by defendants who claim to have been tortured, refuse to summon exculpatory witnesses, and convict defendants on the basis of coerced confessions.³⁰¹

Democratization – The truth commission made a series of recommendations on constitutional reform which, if implemented, would transform Morocco's monarchy where the King currently retains unrestricted powers into a parliamentary monarchy.³⁰² The truth commission called for reinforcing the principle of separation of powers, diminishing executive powers and extending parliament's prerogatives. These ambitious recommendations have yet to be implemented.

International observers of the legislative elections in September 2007 considered the actual process of voting and the final counting of the votes transparent and fair.³⁰³ However the weak position of the parliament and the fact that key decisions are made by the King have led to popular disenchantment with the democratic process. The turnout in the 2007 elections was record-low – 37 percent (down from 51 per cent in 2002 and 58 per cent in 1997).³⁰⁴

Despite the weakness of Morocco's elected constitutional bodies, the country has made important headways in some areas of human rights. The new family code of February 2004 improved the status of women, by rescinding the legal obligation that the wife should obey her husband, increasing the minimum age for marriage from 15 to 18 years of age, relaxing rules on divorce, and enabling the woman to retain custody of her children.³⁰⁵ These improvements preceded the completion of the work of the truth commission in November 2005. On a negative side, Morocco continues in some cases to prosecute those who peacefully express criticism of the monarchy.³⁰⁶

f. Peru – Many of the institutional reforms initiated during the work of the Truth and Reconciliation Commission and in its aftermath have been abandoned or watered down.³⁰⁷ The positive exception is the set of reforms in the military. Electoral democracy and fundamental civil and political rights have been largely respected.

Military – Since the fall of President Fujimori from power in 2000, the reform of the military has been oriented toward establishing a greater civilian control over the Armed Forces and fighting against corruption.³⁰⁸ The decline of internal security threats facilitated the reform.³⁰⁹ In 2001, the then-President Toledo appointed Peru’s first civilian minister of defense and retired more than a thousand officials, partly to remove those sympathetic to Fujimori.³¹⁰ In the second half of the decade, the government retained control of the military. In 2007, Congress passed a law recommended by the Truth and Reconciliation Commission that obliges military members to disobey orders that are contrary to human rights standards.³¹¹ The continued problem remained the lack of clarity of the Armed Forces’ rules of engagement when acting in a law enforcement capacity.³¹²

Police – The police continues to be widely distrusted. Although state security forces no longer practice torture in a systematic way, instances of torture are occasionally reported. Prosecutions for the reported cases are rare and affect only low-level officers.³¹³

Judiciary – The judiciary shares with the police the low respect among a majority of the Peruvians, because of its perceived lack of independence from the executive, corruption, and inefficiency.³¹⁴ The first post-Fujimori government of Prime Minister Alejandro Toledo implemented a broad anticorruption campaign and reduced the number of judges appointed by his predecessor, and the current Supreme Court president Francisco Tavera has demonstrated considerable will to confront entrenched interests.³¹⁵ These efforts notwithstanding, the reforms have remained largely incomplete.³¹⁶

Democratization – The presidential election in Peru in April 2006 was characterized as free and fair. The results were accepted by the losing parties, in spite of the narrow margins in both the first round and the runoff.³¹⁷ Freedom of the press and freedom of association are generally respected.³¹⁸

g. Sierra Leone - The Truth and Reconciliation Commission opted against recommending “lustration” in the public services and the security forces, fearing that such an approach would be detrimental for the pursuit of reconciliation between the people of Sierra Leone.³¹⁹ Reforms of the military and the police were assisted by substantial financial support and expertise provided by the United Kingdom. The impact of the truth commission was primarily reflected in improvements of human rights legislation and Sierra Leone’s institutional makeup.

Military – The focus of the reform of the military was on integrating the former rebels (RUF) in the Republic of Sierra Leone Armed Forces (RSLAF), depoliticizing the army, and creating a national-oriented force, in contrast with the former region- and ethnic-based forces.³²⁰ The reform has been reasonably successful. A recent report by Human Rights Watch suggests that the RSLAF leadership demonstrated its commitment to penalize and sanction members of the army for abuses and indiscipline.³²¹ However, parliamentary oversight of the security sector remains weak.³²²

Police – The Sierra Leone Police (SLP) is more approachable than in the past, but most Sierra Leonean perceive it as inefficient.³²³ However, the police force has been hailed for providing safe environment for conducting the presidential and parliamentary elections in August 2007.³²⁴ Although reduced in number, instances of bribe-taking, extortion at checkpoints, and requiring victims of crimes to pay the police to file reports or conduct investigations, persistently appear.³²⁵

Judiciary – An overwhelming majority of Sierra Leonean seeks redress for violations of rights or law before the so-called local courts, which apply rules of the traditional (customary) law. Less than 30 percent of the population has access to the formal system based on English common law.³²⁶ The formal system suffers from lack of qualified judges, magistrates, and prosecuting attorneys, because of the “brain drain” in the past four decades.³²⁷ As of 2005, courts had operated only in the main towns of Freetown, Bo, Kenema, Port Loko and Makeni.³²⁸ In 2008, there were 10 state prosecutors in the whole country.³²⁹

In 2007, in recognition that the formal justice system was inaccessible to the vast majority of the population, the government published a Justice Sector Reform Strategy which prioritized strengthening primary justice.³³⁰ Although the TRC recommended that the local courts should not be supervised by the executive, the courts have not been placed under the supervision of the judiciary.³³¹

Extortion and bribe-taking, along with inadequate remuneration for judiciary personnel and extended periods of pre-trial detention mar both sectors of the judiciary.³³² In 2008, according to Human Rights Watch, some 90 percent of prisoners lacked any legal representation; hundreds of people – over 40 percent of the country's detainees – were held in prolonged pre-trial detention.³³³

Democratization [& Human Rights] – The only general elections held so far after the completion of the TRC's work, in August 2007, were orderly and peaceful.³³⁴ In the period leading to the elections, a few violent incidents and clashes between political party members took place.³³⁵ The election commission earned broad respect and praise for its determination and integrity.³³⁶

The truth commission called for the change or enactment of laws to improve the status of women and children.³³⁷ The gender bills and the Child Rights Act have been passed since then, although the pace of implementation has been slow.³³⁸ The TRC report also called for the implementation of a provision in the 1999 peace agreements for the establishment of a national Human Rights Commission.³³⁹ The commission has been established and began its work in January 2006.³⁴⁰

h. South Africa - South Africa has chosen to reform the security sector and judiciary through processes of affirmative action and integration of the apartheid-era public services, while forgoing vetting.³⁴¹ In a similar vein, the Truth and Reconciliation Commission (TRC) argued that vetting would be “inappropriate in the South African

context".³⁴² Institutional reforms were well under way by the time the TRC recommendations were made.

Military – Reform of the military consisted primarily in integration of the former adversary armed forces into the governmental ones. Between 1994 and November 2002, a total of 42,020 names of former guerrillas were submitted for integration into the new South African National Defense Force (SANDF). During that period, 21,212 former guerrilla combatants integrated into the SANDF, but only 13,557 of them were still serving in 2004. The others left for various reasons, including dismissals, expiration of contracts, resignations, retirement and voluntary severance packages. The SANDF has been based mainly on the infrastructure and personnel of the former South African Defense Force (SADF). A total of 42,635 former defenders of the apartheid regime (SADF and so-called TBVC forces) were in the SANDF in 2004, down from 93,744 in 1994.³⁴³ Although the institutional transformation has been successful on balance, racial tensions continued to exist within SANDF, frequently leading to resignations by the former guerilla members who complained of discriminatory treatment by the predominantly white officer cadres.³⁴⁴ The SANDF now plays a leading role in peacekeeping operations in trouble spots throughout Africa.

The post-apartheid South Africa has successfully maintained democratic control over the military.³⁴⁵ The Chief of SANDF is subject to direction of the civilian Minister of Defense.³⁴⁶ The Defense Intelligence is banned from collecting non-military intelligence.³⁴⁷

Police – Integration in the police demanded merging of eleven separate agencies. The restructuring followed the reshaping of the territorial and political map of South Africa, i.e. creation of eight provinces in lieu of the previous four ones and the various "bantustans" comprising the self-governing territories and so-called "independent states". A Public Order Police Service under national command was established in 1996, and in November 1999 five new national divisions of the Service were created. By the end of the nineties, approximately 70 percent of the police were black officers, but 70 percent of the senior positions were held by white officers. The police also suffered from racial tensions, but these have receded with time.³⁴⁸

Judiciary – At the end of the apartheid era, in 1994, there was only one black judge in South Africa.³⁴⁹ The transitional authorities did not mandate any vetting and reappointment of judges as a means to increasing the pool of black and other non-white judges. However, a newly created Constitutional Court included several black judges. By 2003, out of 214 judges of the superior courts, 50 were Black (8 of them women), 13 were Asiatic and 9 were Coloured.³⁵⁰ By 2008, most heads of courts and a majority of judges were non-white.³⁵¹

The superior courts, including the Constitutional Court, have been independent, and on numerous occasions such courts have ruled against the government.³⁵² While the rule of law which was established in post-apartheid South Africa remains intact there have been recent troubling developments. These include the suspension and dismissal of the

National Director of Public Prosecutions who insisted on proceeding with the prosecution of the National Commissioner of Police on charges of corruption and fraud; and the disbanding of the elite investigation unit that investigated corruption charges against ANC leader and President elect, Jacob Zuma.

Democratization – Parliamentary elections in the post-apartheid South Africa have been free and fair. The electoral commission has been impartial and effective to such extent that the United Nations, the Commonwealth, and the European Union have ceased to send observer missions.³⁵³ The African National Congress won all four parliamentary elections (1994, 1999, 2004, and 2009), with the percentage of votes ranging from 63 (in 1994) to 70 (in 2004)³⁵⁴ declining to just below 66% in 2009.

i. Timor-Leste – After gaining independence from Indonesia in 2002, Timor-Leste was faced with the task of creating new institutions, rather than reforming the existing ones.

Military – The army was established during the period of the United Nations Transitional Administration in East Timor (UNTAET) rule (1999-2002). In addition to protecting external borders, the army has been deployed for internal security purposes, such as guarding key institutions, because of the weakness of the police force.³⁵⁵ This goes against the grain of the truth commission's calls for prohibition of the use of the military to control perceived internal threats.³⁵⁶

Between February and May 2006, tensions within the armed forces led to a serious crisis in the country. The deep structural problems underpinning the unrest were poverty and unemployment,³⁵⁷ as well as a regional division between the Easterners and the Westerners in the country.³⁵⁸ A group of soldiers from the West went on strike in February, claiming discrimination in the army and mismanagement by senior officers, who were primarily from the East.³⁵⁹ The soldiers refused to return to barracks, angered by the lack of response to their complaints. By the end of May, the crisis deteriorated into armed clashes between army and police units, and among the wider population. Significant violence continued through the early part of 2007, but subsided around the time of the presidential and parliamentary elections (April – June 2007).³⁶⁰ In February 2008, rebel soldiers seriously wounded President José Ramos-Horta and shot up the car of Prime Minister Xanana.³⁶¹

Police – The Timor-Leste police, also established during the UNTAET mandate, went through a certification and training process supervised by the United Nations between 2006 and 2008. The impetus for the ambitious reform program was the breakdown in the police forces in 2006, when many police in the capital Dili deserted their posts and engaged in fighting against their former colleagues.³⁶² Poor respect for human rights in the performance of the police continued to be a major concern during the reform period.³⁶³ According to a confidential UN report leaked to the press in December 2008, “tremendous institutional gaps persist, including weak management, command and control, lack of core capacities (e.g. investigations), and an almost total absence of logistics and systems maintenance capacity.”³⁶⁴

Judiciary – East Timor's judicial system is weak, with a huge backlog of cases (including in criminal matters), acute shortage of judges and defense lawyers.³⁶⁵

Democratization – The political process in Timor-Leste is dominated by an intense rivalry between two political groupings, CNRT and *Fretilin*, both led by former allies in the struggle for independence.³⁶⁶ While the presidential and parliamentary elections between April and June 2007 were free, fair, and peaceful, riots broke out in August in some areas of the country, in reaction to the invitation by the country's president's to a coalition led by the CNRT to form a government.³⁶⁷ By early fall, candidates elected on the *Fretilin* list took their seats in the parliament.³⁶⁸

Conclusion

In the deliberations about the potential contribution of RECOM to truth and justice in the post-Yugoslav countries, there are important lessons to be drawn from the experience of the dozen truth commissions analyzed in this paper. Most of the commissions have been effective in establishing compelling accounts of past abuses. As a rule, such an account has been widely accepted in the given society and in the international context. In that sense, the commissions have been successful in dispelling distorted depictions of the past. The record is an indicator that a future commission in the territory of the former Yugoslavia could significantly weaken today's dominant one-sided portrayals of the past and propose a safe and respectful environment for societies, and particularly victims, to build a better understanding of the conflict, as well as an objective assessment of its human costs. A comprehensive and credible finding about the patterns of violence and institutional responsibility, might amount to a removal of a significant obstacle to normalization of the relations between the countries and the peoples in the region.

The commissions were able to make reliable estimates of the overall number of victims, and to draw lists of individual victims. The latter were incomplete in those countries in which the underlying violence was of enormous proportions, or were complemented with scientific statistical projections. This could be the case in the region formerly part of Yugoslavia. However, the planned regional commission could draw upon the lists already compiled by credible human rights organizations in the region and the International Committee of the Red Cross, new testimonies from victims, and other sources, with the realistic end of providing an authoritative compilation and scientific estimates.

Another area in which truth commissions have been fairly successful is official acknowledgment and apology for the past abuses. The issue of apology has given rise to frequent controversies in the former Yugoslavia. Several current and past presidents of the states in the region have apologized on behalf of the states they represented, but most of the utterances suffered from perceived lack of sincerity. More importantly, such statements lacked meaningful context, in that they had not been preceded by worthwhile efforts by the given State to address the past abuses by means of truth recovery, criminal prosecutions, or just reparations. A credible truth commission, established by the

governments and benefiting from their commitment, would constitute such an effort and provide a meaningful context for apologies and other forms of symbolic reparation.

Most truth commissions have been effective as public platforms for victims to tell their stories and have their dignity restored. The contribution of the regional truth commission in the territory of the former Yugoslavia could be particularly important in this regard, because the commission would offer the first and unique opportunity for victims from one ethnic group or country to be seen and heard by members of other ethnic groups and the public in other parts of the region. For the first time after the end of the conflict, space for building solidarity with victims from other groups would be open.

Criminal trials in the former Yugoslavia have been ongoing for a number of years, which makes the context in the region entirely different from that in all countries examined in the paper. The difference works to the advantage of the post-Yugoslav countries. The whole issue of possible contribution of a truth commission to setting off prosecutions is moot in the region. When trials are already under way, a truth commission is likely to make valuable contribution, as the examples of Argentina, Chile and Peru demonstrate.

Not many lessons can be drawn from the past experiences about the possible impact of the regional truth commission on the search for the disappeared in the post-Yugoslav states. These countries already have governments' commissions for missing persons, which none of the countries analyzed in the paper had. It stands close to reason that the valuable achievements by the truth commissions in Morocco and South Africa resulted in part from the publicity accompanying their work, and that individuals in the territory of the former Yugoslavia with knowledge about the location of mass graves could also be prompted by the work of the truth commission to communicate that information. In the absence of any systematic research into the issue, however, this remains a hypothesis.

As shown in the paper, progress in the provision of material reparations has been uneven in different countries. The economic strength of the countries in the former Yugoslav region makes them comparable to Argentina, Chile, and Morocco, where most victims have received individual reparations of significant value. On the other hand, the number of victims is comparable to the numbers in the countries which have struggled with providing reparations, individual or material. In any event, the regional commission would be in a unique position to contribute to the reparations policies by creating a comprehensive list of victims. The list would in itself make it harder for the national governments to continue to carry out the current reparations policies which are largely based on inclusion or exclusion of the victims depending on their ethnicity.

The relationship between the work of the truth commissions and the reforms of institutions has been tenuous in most of the countries analyzed in the paper. This experience mandates caution in the thinking about the possible contribution of the regional commission to the reforms.

In sum, the record of the truth commissions in Argentina, Chile, El Salvador, Ghana, Guatemala, Morocco, Peru, Sierra Leone, South Africa and East Timor, suggests that

effectiveness of a regional truth commission in the former Yugoslavia would depend on the creativity and commitment of the commission itself, the governments' commitment, and the civil society groups' capacity to build wide social alliances. While nothing in the past record guarantees success of the future regional commission, nothing in that record forecloses its highly successful and long-lasting contribution either.

Introduction

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h. South Africa

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i. Timor-Leste

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