



UNIVERSIDAD DE
SAN BUENAVENTURA

Get the truth out of truth commissions

Lessons learned from
five case studies



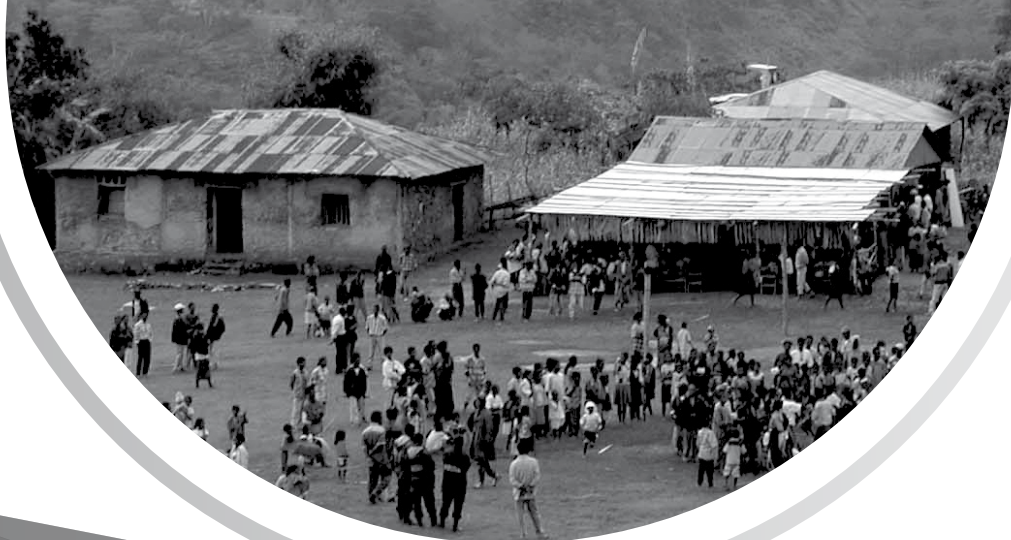
Edited by Johannes Langer



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Abbreviations

ACBIT	<i>Associação Chega ba Ita</i> Timor-Leste
AJAR	Asia Justice and Rights
APC	All People's Congress (Sierra Leone)
ASDT	Timorese Social Democratic Association
CALDH	<i>Centro de Acción Legal en Derechos Humanos</i> (Guatemala)
CAVR	Commission for Reception, Truth, and Reconciliation (Timor-Leste)
CBO	Community-based organization
CDF	Civil Defense Forces (Sierra Leone)
CEV	Commission for the Clarification of Truth, Coexistence and Non-Repetition
CEH	Historical Clarification Commission (Guatemala)
CHCV	Historical Commission of the Conflict and its Victims (Colombia)
CNC	National Center <i>Chega!</i> (Timor-Leste)
CNMH	National Center for Historic Memory (Colombia)
CNRT	National Council of Timorese Resistance

CRA	Community Reconciliation Agreement (Timor-Leste)
CRP	Community Reconciliation Process (Timor-Leste)
CSO	Civil society organization
CVA	Commission of Truth and Friendship (between Indonesia and Timor-Leste)
CVR	Truth and Reconciliation Commission (Peru)
DDR	Disarmament, Demobilization and Reintegration
ECOWAS	Economic Community of West African States
EGP	<i>Ejército Guerrillero del Pueblo</i> (Guatemala)
ELN	National Liberation Army (Colombia)
Falintil	Timorese National Liberation Army
FAR	Rebel Armed Forces
FARC	Revolutionary Armed Forces of Colombia
FBO	Faith-based organization
Fretilin	Revolutionary Front for an Independent Timor-Leste
GAM	Group of Mutual Support
GMH	Historic Memory Group (Colombia)
HRC	Human Rights Commission (Sierra Leone)
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
IREC	Independent Review Committee (Kenya)
JEP	Special Jurisdiction for Peace (Colombia)
JPL	Justice and Peace Law (Colombia)
KACC	Kenya Anti-Corruption Commission
KANU	Kenya African National Union
KSH	Kenyan Shillings

LRN	National Reconciliation Law (Guatemala)
MINUGUA	United Nations Verification Mission in Guatemala
MoU	Memorandum of Understanding
MRTA	Revolutionary Movement Tupac Amaru (Peru)
NaCSA	National Commission for Social Action
NARC	National Rainbow Coalition (Kenya)
NCIC	National Cohesion and Integration Commission
NGO	Non-governmental organizations
NPRC	National Provisional Ruling Council
NSC	National Steering Committee on Peace Building and Conflict Management
ODM	Orange Democratic Movement (Kenya)
ODPP	Office of the Director of Public Prosecutions (Kenya)
OGP	Office of the General Prosecutor (Timor-Leste)
OHCHR	UN Office of the High Commissioner for Human Rights
ORPA	<i>Organización del Pueblo en Armas</i> (Guatemala)
PAC	Civilian Self-Defense Patrols
PEV	Post-election violence
PGT	Communist Party of Guatemala
PNR	National Reparation Program (Guatemala)
PNU	Party of National Unity (Kenya)
REMHI	Recovery of Historical Memory Project (Guatemala)
RUF	Revolutionary United Front (Sierra Leone)
SCIT	Serious Crimes Investigation Team (Timor-Leste)
SCIU	Serious Crimes Investigation Unit (Timor-Leste)
SCP	Serious Crimes Process (Timor-Leste)

SCSL	Special Court for Sierra Leone
SIVJNRN	Comprehensive System of Truth, Justice, Reparation and Non-Repetition
SLA	Sierra Leonean Army
STP-CAVR	Post-CAVR technical secretariat (Timor-Leste)
TJRC	Truth, Justice, and Reconciliation Commission (Kenya)
TC	Truth commission
TNI	Indonesian National Armed Forces
TRC	Truth and Reconciliation Commission (Sierra Leone, South Africa)
UDT	Timorese Democratic Union
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNAMSIL	UN Assistance Mission to Sierra Leone
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNMIT	UN Integrated Mission in Timor-Leste
UNSC	UN Security Council
UNTAET	UN Transitional Authority in East Timor
URNG	Guatemalan National Revolutionary Unity
U.S.	United States of America
USD	U.S. Dollar

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Johannes Langer
Bogotá, July 2017

Introduction

Johannes Langer

Dealing with the past is always a complex endeavor, particularly when it involves gross human rights violations and armed conflict. However, there have been an increasing number of countries around the world that have opted to address their problematic past and deal with the legacy of collective violence and patterns of abuse. This move reflects a demand, or even a 'yearning for historical justice' (Neumann, 2013)—particularly from victims—to obtain redress for severe human rights abuses. Multiple interests are at stake and various actors, from civil society to the government, are in a mnemonic battle about what, whom, and how to remember. These divisions are difficult to overcome but different tools can help to address the past. In this context, transitional justice mechanisms are set up and operate with the objective to provide justice, create memory, and repair victims—namely with truth commissions, tribunals, reparations, and institutional reform. In short, transitional justice is a promise that the country is dealing with its past to overcome the deep divisions within society.

The international community has promoted the use of transitional justice since the end of the Cold War, and has urged countries to implement transitional justice mechanisms, not least truth commissions, to set the historical record straight. There has been a "growing consensus [...] that the truth commission can be an effective tool in the construction of a post-conflict society that is

more democratic and more respectful of human rights" (Wiebelhaus-Brahm, 2010, p. 3). However, for many human rights defenders, truth commissions have been the second-best option to trials, as trials, unlike truth commissions, focus on punitive justice. After the South African Truth and Reconciliation Commission (TRC) in the late 1990s, truth commissions shed the perception that they are "inferior substitutes for prosecution" and are, by now, widely recognized as a standard mechanism of the transitional justice tool box to address past abuses (Bisset, 2012, p. 1).

Truth commissions establish the facts of grave human rights violations, such as who suffered and who perpetrated them. In general, a truth commission is an extrajudicial body that listens to victims; at the same time, it gives space to perpetrators to recognize their wrongdoings. Thus, it often sets the ground for acknowledging the past, providing recommendations to the state, and allowing for punitive justice for high-level perpetrators of severe human rights violations. Due to these reasons, and the fact that truth commissions are a relatively inexpensive tool, contributed to the popularity of this transitional justice mechanism in the 21st century. Truth commissions have been particularly useful when there has not been a decisive victory after armed conflict (like in Ivory Coast, Liberia, and Togo), or to confront the legacies of an authoritarian regime (like in Brazil, Morocco, and South Korea).

Despite the 'justice cascade' in the 1990s (Lutz & Sikkink, 2001), many countries continue to face difficulties or show lack of political will to set up tribunals that systematically deal with gross human rights violations. Truth commissions are a popular option to address human rights violations that occur during conflict. For instance, The Gambia and South Sudan announced that they want to install this mechanism in 2017. In addition, Colombia is currently in the process of implementing its own truth commission and it is this specific commission that was the inspiration to compile this book in the first place and learn from other cases.

Academic literature and public discussions have a bias towards punitive justice as seen with the International Criminal Court (ICC) in The Hague and other international criminal tribunals like the ones for the former

Yugoslavia, Sierra Leone, and Cambodia. It is the human rights community, particularly legal experts, who focus their attention on punitive justice, and sideline truth commissions (Langer, 2015). What is often missed in these discussions is that the ‘other wing of justice,’—restorative justice—not only examines the guilt of perpetrators, but also focuses on victims and aims to re-establish relationships. It also satisfies victim’s rights, including the right to truth, reparations, and non-repetition. Truth commissions can also provide a space for victims to be heard, which was often not possible due to intimidation or repression during armed conflict or a dictatorship. Hence, the different sides can start a conversation that was not possible beforehand. Truth commissions can therefore be a first step towards reconciliation and co-existence, while simultaneously supporting the transition of a country to peace and a more inclusive democracy.

Today, there is consensus that tribunals and truth commissions do not exclude, but rather complement each other (Bisset, 2012, p. 2). This is evident, as people understand that human rights violations often cannot be swept under the carpet, and that solely implementing punitive justice measures limits the space to deal with the past. As a result, parties look for alternative solutions to ending conflict; establishing a complex truth about the abuses—such as providing historical analysis, root causes and societal factors—should lead to a change of institutional practices (Hayner, 2010, p. 235).

Case studies on truth commissions have been significantly broadened, and yet there is still a strong bias towards a few examples. It is particularly the South African TRC that is taken as the gold standard of a truth commission, even though it is in many ways an outlier. Other case studies have received attention as well, principally the South American examples of Argentina and Chile. This volume examines five different case studies that have, in relative terms, not received that much scholarly attention: two in Latin America (Guatemala, Peru), two in Africa (Kenya, Sierra Leone), and one in Asia (Timor-Leste). These examples provide lessons learned, and particularly highlight the ‘enormous chasm’ of elaborate recommendations within truth commissions’ final reports and their dismissal by those in power (Kritz, 2009).

Do truth commissions matter?

Whether transitional justice mechanisms actually matter in a post-conflict or post-authoritarian setting is still hotly debated (Bakiner, 2016; Nauenberg, 2015). Research on the topic has not resolved this question and, “we know surprisingly little about the consequences of conducting a truth commission. In general, existing studies have concluded that truth commissions are beneficial, or at least not harmful. However, the evidence to support these conclusions is remarkably weak” (Wiebelhaus-Brahm, 2010, p. 6). Nauenberg (2015) speaks of ‘rationalized myths’ that the international community has constructed about truth commissions without having the necessary evidence that they work. Yet, the assumptions that truth commissions help to (re)establish trust, accountability, and a culture that respects human rights have been strong without delivering the evidence (Mendeloff, 2004). In short, the debate about truth commissions is still mostly based on normative assumptions, by supporters as well as critics (Wiebelhaus-Brahm, 2010, p. 15). This volume aims to contribute to the debate by providing further insights into truth commissions by examining five case studies that follow the same structure. The final report and its recommendations are critically evaluated, taking into account their impact on truth, reconciliation, memory, and justice.

After the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) signed the *Teatro Colón* Peace Agreement on the 24th of November 2016, Colombia became the most recent country that is in the process to install a truth commission within a transitional justice framework known as the Comprehensive System of Truth, Justice, Reparation and Non-Repetition (SIVJRN). SIVJRN was made law in the first half of 2017, and will be—if implemented—the most ambitious and holistic transitional justice project ever realized. Similar to other countries, the public discourse in Colombia has focused on punitive justice and on the Special Jurisdiction for Peace (JEP).¹ In comparison, the truth commission, which was also part of the peace accords, has hardly received attention on social media and in public debates.

¹ The JEP is a temporary tribunal that is part of Colombia's transitional justice framework and represents the punitive aspect of justice, even though it has a more restorative approach in comparison to other tribunals so far.

The disparity is noteworthy as both mechanisms, the tribunal and truth commission, will work side by side to implement justice.

The search for truth and the attempt to bridge gaps between ideological, social, religious, racial, and ethnic divides can help transition a deeply fragmented society into a country where its citizens can peacefully coexist. Setting up a truth commission can be an important step towards reconciliation, as it enables a reparation framework for victims, and brings about institutional reforms to the judiciary and security sector. These are assumptions, however, that have proven to be difficult to materialize in many settings. With many possible pitfalls along the way, the experience of other countries can help to identify the challenges in the different areas and appreciate the diversity of approaches that have been adopted in the past. Therefore, the truth commissions of Kenya, Sierra Leone, and Timor-Leste are of particular interest as they had a criminal tribunal working on its side. In cultural terms, Guatemala and Peru are much closer to Colombia and have been the only truth commissions in Latin America after armed conflict.²

Truth commissions have impacted countries and government policies to various degrees. It is necessary to look behind the veil and discuss relevant cases that include the afterlife of truth commissions. This allows analysts to determine their success and impact. This volume focuses on truth commissions to provide a deeper understanding of this specific transitional justice mechanism and to 'get the truth out of truth commissions.'

Structure of the volume

This volume contains eight chapters that analyze the role of truth commissions. In these chapters, the authors draw lessons from five case studies that can be applied to Colombia and other transitional justice processes that include truth commissions. Chapter 1 is an introduction to truth commissions, how they operate, and under what normative assumptions they are typically created. After the discussion of three different generations of truth commissions,

2 The only other truth commission in Latin America after armed conflict was established in El Salvador (1992) but it was part of the first generation of truth commissions (see Chapter 1).

four different dimensions relating to the impact of truth commissions are discussed—truth, reconciliation, memory, and justice. The methodological approach of the analysis is also included. Each of the five case studies has its own chapter, organized in chronological order.

Chapter 2 discusses Guatemala's Historical Clarification Commission (CEH, 1997-1999), formed after a three-decade civil war. It was the first truth commission that had an emphasis on its indigenous population, traditionally excluded from Guatemala's elite. The findings mobilized civil society when they revealed that the military campaign had inflicted genocide against indigenous people. The second Latin American case study follows suit with Peru in Chapter 3. The Truth and Reconciliation Commission (CVR, 2001-2003) discusses the first case in Latin America where reconciliation was included in the mandate of its work. Despite differences, Peru resembles Colombia more closely than any other case on the continent. In both cases, the human rights community has endorsed the final report, while the political elite has largely ignored the findings and defends the armed forces.

Chapter 4 is about Timor-Leste, the only Asian case study in this volume. The country is located on a small island in maritime Southeast Asia that only received its full independence in 2002. The United Nations promoted and set-up the Commission for Reception, Truth, and Reconciliation (CAVR, 2002-2005) that functioned next to an internationalized tribunal. CAVR's most interesting approach was its program on community-based reconciliation that adopted traditional approaches to reintegrate low-level perpetrators into their communities.

Chapter 5 deals with Sierra Leone, a West African country that suffered a decade-long civil war. The Truth and Reconciliation Commission (TRC, 2002-2004) promised to uncover the atrocities during the violence, as well as the root causes of the conflict. Although one may assume that different transitional justice mechanisms work together for the same cause, Sierra Leone stands out for the strained relationship of the truth commission with the Special Court for Sierra Leone. Particularly interesting is finally that Sierra Leone is the first commission to focus on children.

Chapter 6 tackles a much more recent case: Kenya. In this East African country, the Truth, Justice, and Reconciliation Commission (TJRC, 2009-2013) sought to learn from nearly 40 earlier truth commissions. However, the TJRC not only struggled with its own chairman, but lacked civil society support and political will. Kenya's commission serves as a warning that not only the conception, but also the implementation is key to a successful outcome.

Chapter 7 discusses the five case studies and provides relevant technical lessons obtained from the different commissions. The chapter also includes specific reflections on the four dimensions—truth, reconciliation, memory, and justice. Chapter 8 establishes specific lessons for the Colombian truth commission. This chapter also evaluates the current state of truth commissions in Colombia. The findings in Chapter 7 and 8 do not imply that policies can be transferred from one context to the other, as each experience is unique. Acknowledgement of the challenges, however, that other commissions have faced can strengthen the implementation and execution of future truth commissions.

Ultimately, this volume aims to be a readable and practical source for policy makers and students of transitional justice, with a particular focus on Colombia. This volume is not a toolkit that provides easy answers for complex challenges, but instead offers insights and critical reflections on truth commissions. Inevitably, the public's high expectations towards truth commissions are challenged. This generates reflections of other truth commissions, which ultimately learn from their work and apply it to their own case. The critical discussion of the case studies does not imply that transitional justice mechanisms are unwelcomed. Contrarily, on a moral basis, truth commissions can be very attractive for victims, policy makers, and the international community. Yet, key lessons from the work and impact of former truth commissions should be kept in mind in the context-specific environment where the truth commission is envisioned.

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1 Truth commissions: What do we know?

Johannes Langer

Transitional justice at a glance

In the past two decades, transitional justice has evolved as a field of research, including multiple disciplines like law, anthropology, political science, psychology, and philosophy. It originally focused on Latin America in the 1980s, and Eastern Europe after the Cold War; it has since expanded to a truly global reach. According to the United Nations (UN, 2010), transitional justice is defined as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (p. 3). The first two major volumes on the topic of transitional justice were published by Roht-Arriaza (1995) and Kritz (1995). Teitel’s book, *Transitional Justice* (2000), however, has shaped the concept. She looks back to the Nuremberg and Tokyo trials after the Second World War as the first examples of transitional justice and established a genealogy of the field. A plethora of authors have published material on transitional justice and specialized journals have been established; among the classics from the early phase of the literature it is Minow (1998) as well as Rotberg and Thompson (2001) that stand out.

A decade ago, transitional justice had its 'local turn' and shifted its focus from the national level to the community level (Hinton, 2010; McEvoy & McGregor, 2008; Shaw, Waldorf, & Hazan, 2010; Sriram, García-Godos, Herman, & Martín-Ortega, 2013). Recently, the field has given special attention to measuring the impact of transitional justice mechanisms, as will be discussed below. Several authors criticize the term transitional justice as misleading; in contrast, they argue 'justice during transition' would better embrace its objectives because it does not represent modified or altered justice, but a broad understanding of justice (Bisset, 2012, p. 10). Another suggestion is the term 'transformative justice', which stresses the importance of including everyday violence, processes, and the local community level (Gready & Robins, 2014). However, the term 'transitional justice' has persisted.

The West has traditionally promoted a liberal understanding of justice with a legalistic approach to human rights violations. This approach is based on punitive or retributive justice, which concentrates on the prosecution and imprisonment of perpetrators. In contrast, transitional justice has a broader understanding of justice that puts a stronger emphasis on restorative justice. The primary aim is to repair past harms through various mechanisms that catalyze reconciliation and pave the way for a common future. The normative power of transitional justice does not ask "whether something should be done after atrocity but how it should be done" (Nagy, 2008, p. 276). At transitional justice's core, policy circles maintain the normative assumption that a transition from dictatorship or armed conflict should lead to a liberal Western democracy and a neoliberal market economy (Franzki & Olarte, 2014), with a focus on liberal peace that is based on top-down approaches (Gready & Robins, 2014).

Four main mechanisms of transitional justice can be identified: trials, truth commissions, victims' reparations, and institutional reforms. Some authors also include amnesty and lustration as additional forms of transitional justice. States or international organizations establish these mechanisms to legitimize political transitions and (re)build trust with citizens. As a first mechanism, trials or tribunals seek to investigate and punish those most responsible for gross human rights violations. In most countries, criminal tribunals receive the majority

of the public's attention. This mechanism aims to bring about punitive justice and focuses on the victims' right to justice.

Truth commissions, in contrast, aim to determine the complex truth after armed conflict. Their attention centers on the structural root causes of human rights abuses. Testimony is commonly provided by thousands of witnesses who contribute to a better understanding of what happened—not in individual cases but rather outlining the root causes of violence. This right to testimony is given to society as a whole. Victims' reparations are differentiated between individual and collective reparations. Reparations can also be material, like restitution and compensation, and symbolic, like museums, monuments, and commemorations (de Greiff, 2006).

Lastly, institutional reform gives special attention to the judiciary, which is often compromised during conflict or dictatorship. Reforms also put the security sector under scrutiny as it is often involved in human rights abuses. Other countries opt to alter or rewrite the constitution, which allows for a more decentralized system that guarantees minority rights. Within institutional reform, the overall aim of transitional justice is to establish liberal Western institutions that are inclusive, transparent, and critical to their own past. Ultimately, this should guarantee non-repetition, preventing future violations.

These four mechanisms can stand on their own, be established simultaneously, or be implemented in a sequential manner. Often, these mechanisms overlap in their reach. For instance, trials not only deliver justice, but also establish truth. Truth commissions also contribute to justice by 'naming names' of potential perpetrators that the ordinary justice system can pursue. Moreover, truth commissions often recommend reparation schemes and institutional reforms. Finally, the mechanisms can also contribute to larger aims, such as promoting national reconciliation.

Governments are motivated to establish transitional justice mechanisms for various reasons: the conviction that only by dealing with the 'dark past,' a

country can move forward, or signaling concern for human rights in order to gain favorable support from international partners and donors, among others.

The field of transitional justice is still grappling with several unresolved issues. For example, the transition from dictatorship to democracy is often confused with the transition from armed conflict to peace, even though they are different processes. Another significant issue is that critical perspectives speak of the “global gospel of forgiveness and reconciliation” (Castillejo, 2014, p. 63), but often overlook the structural causes, like socio-economic inequalities. This approach ignores the recognition of main drivers of violence. Others have argued that in the transitional justice field, and particularly in truth commissions, authors frequently consent to actions implemented by proponents of these mechanisms, instead of critically questioning them and examining the empirical evidence (Mendeloff, 2004).

Other authors are concerned that many new issues have been added to the field of transitional justice in the last two decades, resulting in an overly vague concept of the field (Bell, 2009). Issues like curbing corruption, establishing an inclusive society, or socioeconomic rights might be out of the scope of transitional justice. As a consequence, transitional justice models can be overloaded with unrealistic expectations from the policy world, the academic community, and civil society. During the last couple of years, several advances have moved the field forward as reflected in the latest book published by ICTJ (Duthie & Seils, 2017) that further aims to help overcoming the age-old dilemma of peace versus justice (Langer, 2015b). In other words, transitional justice continuously tries to refine its methodologies and tools to allow for peace with justice instead of seeing it as a contradiction.

The basics about truth commissions

Defining a truth commission

Truth commissions holistically aim to contribute to transitional justice objectives by uncovering the truth, furthering justice, suggesting reparations, and preventing further human rights violations. They do so by publishing a final

report that includes the main findings of truth-telling exercises, detailing the patterns of human rights abuses, and providing recommendations to the state. In the beginning, truth commissions were mostly set up after dictatorships. Today, almost every country coming out of violent conflict considers establishing a truth commission. The definition of a truth commission is often convoluted, as the context and set-up of each truth commission has varied so much. Nonetheless, there is general agreement that truth commissions, in the simplest terms, are official investigations into a past pattern of abuses. Yet, such a definition is too broad and a more precise characterization is necessary.

According to the most cited authors on truth commissions, several factors should be kept in mind in order to define truth commissions: 1) focus on the past; 2) investigate patterns of abuses that occurred over a period of time, as well as causes of structural violence; 3) provide a voice to, and focus attention on victims by gathering their experiences; 4) exist temporarily and not over a longer time period; 5) be independent, but set-up or authorized by the state; and 6) must aim to establish a final report that includes recommendations for the state related to redress and future prevention (Bakiner, 2016; Freeman, 2006; Hayner, 2010; Wiebelhaus-Brahm, 2010). Having this definition in mind, at least 46 truth commissions have been established worldwide since the 1980s, mostly in Latin America and sub-Saharan Africa.³

Others, however, have established a much wider definition of truth commissions in order to allow for a larger sample size in their statistical models (e.g. Olsen, Payne, & Reiter, 2010). They include inquiries or other projects that can be labelled as 'unofficial truth projects' (Bickford, 2007), like historical commissions that focus on specific historical events, or bodies that focus on certain ethnic or racial groups, like in Canada (Freeman & Hayner, 2003, p. 123). In contrast, the definition of this volume does not include informal or independent NGO truth-telling projects, as the one led by the Catholic Church in Guatemala nor

3 The first truth commission was actually established in Uganda but it is with Argentina (1983) that the idea of truth commissions took off. Following Nauenberg (2015), 39 truth commissions have been established until 2009. Ever since, at least an additional six truth commissions were established in Honduras (2010-2011), Thailand (2010-2012), Brazil (2011-2014), Ivory Coast (2012-2014), Tunisia (since 2014), Mali (since 2015) as well as Nepal (since 2015).

are permanent institutions that deal with human rights issues. Differentiating of what a truth commission constitutes or not is important to allow for a meaningful comparison.

Truth commissions face several limitations. A nagging issue for truth commissions has been their relationship to trials because they tend to compete for power and influence. As extra-judicial bodies, truth commissions do not have the same powers as courts; instead, truth commissions tend to uncover structural patterns of violence. Spoilers also constrain the work of truth commissions who do not want the truth come to light. As a result, truth commissions strongly depend on the support of civil society for credibility, and to hold politicians accountable. In turn, the truth commission can establish victim-centered narratives that allow for a new understanding of past events and thus provide a complex narrative about a country's recent history.

Three types of truth commissions

Bakiner (2016, pp. 34–42) identifies three types of truth commissions: a first generation of transitional truth commissions, or those created before the end of the Cold War in 1991. They focused on technical processes to establish a factual account of forced disappearances and deaths. Typically, they were set up within the democratic transition, and represented the need to uncover the gross human rights violations, even though many issues like sexual violence, forced exile, and torture were excluded. In the fragile process of transitioning to democracy, truth commissions were a way to investigate and acknowledge the past, while not pursuing individual criminal accountability. In other words, truth commissions represented an internal compromise within society to address past transgressions; however, they also led to accusations from the human rights community that they would foster a culture of impunity (Bisset, 2012, pp. 26–27).

According to Bakiner (2016, pp. 35–37), the second generation of truth commissions dates from the 1990s to the 2000s. These commissions were usually set up after internal armed conflict, and commonly as a result of international

pressure, especially from the United Nations and international NGOs. The South African Truth and Reconciliation Commission (TRC) particularly influenced the thinking about truth commissions due to the media attention it received. Until today, and based on normative convictions, the international community assumes that the uncovering for what happened during armed conflict or dictatorship is key to transition to a peaceful and democratic society. The second generation also included the introduction of a hybrid transitional mechanism. To complement criminal justice, in 2002, Sierra Leone and Timor-Leste established the first truth commissions alongside prosecutorial institutions. However, with the exception of Kenya (discussed in Chapter 6), this set up has remained the exception rather than the rule. Moreover, this generation also took into account new issues of investigation, which accounted for historical context and root causes, unlike the first generation.

Finally, Bakiner (2016, pp. 37–38) identifies a third type of truth commission that he calls 'non-transitional' commissions, because they are established in consolidated democracies—like Brazil, Canada, Morocco, or South Korea—and are created a decade or so after the transgressions in question. These commissions often expanded the mandate from a relatively narrow set of violations to a broad range of injustices. In comparison to the first two generations, the non-transitional commissions also are not so much linked to center or leftist governments but have also been created by conservative governments.

All five case studies within this book have been established after armed conflict and are part of the second generation of truth commissions. This is done purposefully so as to provide the most appropriate context and insights for another second generation truth commission: Colombia's.

A truth commission in the making

Establishing a truth commission

A truth commission can only act within the boundaries of its mandate, which the state or the international community provides. Often, the man-

date only provides general guidance, outlining the patterns of abuse to investigate, but it should respond to victims' needs. Typically, several issues are included, like the scope of investigative reach, truth-telling methodologies, time and issues under question, as well as geographical limits. In addition, specific issues may be addressed like amnesty, community service, reintegration for perpetrators, as well as restoring dignity to, and financial compensation for victims. The mandate also typically demands that the truth commission writes a final report, which is made public and includes recommendations to the state (which ideally contains a framework to implement recommendations, and the necessary oversight to ensure that they are fulfilled).

Truth commissions often find themselves confronted with several challenges and its mandate can be one of them. One that includes specific details can restrict the actions of a truth commission. Consequently—and to the chagrin of victims' groups—only certain abuses can be considered. On the other hand, a very broad mandate makes it difficult to comply with its broad scope, and nearly impossible to meet the high expectations that are created. In general, a flexible mandate has the power to decide its own focus because it affords itself the leniency to probe all kind of cases of violations of the first and second generation of human rights. The truth commissions in Liberia and Kenya included the second generation of human rights, particularly economic crimes and corruption but also the question of poverty.

Most truth commissions in the last decade have received increasingly longer time frames, but influential consultants like Hayner (2010) continue to argue that “extending [the mandate] longer than three [years] risks losing momentum, focus, and political and public attention” (p. 216). The assumption is that the work needs to be done quickly and the job needs to get done. A primary concern from this point of view is that not all human rights violations can be investigated, particularly when dealing with years or even decades of abuse. Consequently, commissioners usually decide to focus on certain issues and regions, referred to as ‘window cases.’ The cases in this book will provide examples of this challenge.

Moreover, truth commissions face constraints related to time, budget, human resources, political pressure, and political will. To save time and resources, commissioners may decide to avoid certain topics or omit them from the final report. Along this vein, in the last decade practitioners and experts have debated whether to only address the first generation of human rights—civil rights and liberty.

During second generation of truth commissions—in many ways overlapping with the creation of the South African TRC—some commissions saw an expansion of investigative powers, like search and seizure, witness protection, the ability to subpoena, conduct questioning under oath, and hold public hearings (Bisset, 2012, pp. 32–33). Some of these powers, like witness protection and public hearings, have become standard practice, while subpoena and search and seizure powers remain rare. Many truth commissions have received the power to grant confidentiality to those who offer testimony. This allows perpetrators to acknowledge wrongdoing without being identified in the final document, and makes it possible for final reports to produce a more representative past.

A crucial moment during the set up of truth commissions is the selection of commissioners. A controversial point is whether to select foreign commissioners, who might project more credibility than national commissioners, especially after a long and brutal civil war within a deeply divided society. Most important is the choice of chairman, as this person is the public face of the truth commission and must be seen as impartial, and possessing integrity, and leadership. If victims, civil society, and public authorities do not trust the chairman, it is usually very difficult for the truth commission to have the necessary allies to ensure public participation and consequently legitimize the final report (Hayner, 2010, pp. 211–212).

Other challenges include the gender balance of commissioners. Men traditionally dominate commissions, and, in particular, the position of chairperson. In recent years, women made strides thanks to gender mainstreaming policies. An additional challenge is that due to time constraints, statement takers are not well-trained. When they received limited training, the collection

of testimonies from witnesses and victims remained severely constrained. Finally, witness protection programs should be standard practice for truth commissions; however, they are rarely provided due to resource and capacity limitations.

As the truth commission concludes, data management and analysis become key. As a result of coding the responses and analyzing collected statements, patterns of the conflict emerge and form a single narrative. Ultimately, this is the basis for the final report, and it is a process that takes months to finish. Each part of the report needs to be checked extremely carefully, because any major error will call into question the integrity of the whole document.

Phases of a truth commission

Typically, there are three phases of a truth commission: set-up and preparation, implementation of truth-telling methodologies, and production of the final report (Freeman & Hayner, 2003, pp. 132–138). During the first phase, the concentration is on the hiring of staff and the selection of commissioners. Another primary concern is the acquisition of necessary financial resources—usually from the state or international donors. During this phase, the exact methodologies to seek the truth are established in detail, particularly regarding public hearings and statement-taking. Not only does staff need to be trained, commissioners should be trained, as they typically have not worked for a truth commission. In the past, truth commissions had little, if no time to prepare—certainly insufficient to produce a successful mechanism. This has changed in the last decade as more time is dedicated to the set-up phase.

The second phase starts with the implementation of truth-telling methodologies. The commission needs to be committed to outreach to inform people about this mechanism. Strategic partnerships with the media, as well as civil society—particularly on the local level—are key to involve victims and witnesses.

Following outreach, truth commissions take statements, collecting thousands of testimonies and interviews with victims. This process allows it to establish

patterns of abuse and obtain detailed accounts of events that were hidden from the collective conscious. Interviews focus on specific details of the events, digging up painful memories for the victim. Due to its limitations of time and human resources, truth commissions pick 'window cases' that serve as examples of wider patterns of abuse. This can be disappointing for victims and their families who expect to have their specific case publicized and considered. For others, they are content to have the commission expose the truth and have the state acknowledge it.

Since the South African TRC, truth commissions have organized public hearings to provide an audience for victims and survivors. The power of TV and radio makes it possible for hearings to reach a national audience. This outreach can create empathy towards victims, helping to undermine myths, and bring the truth out to the open. It is often more difficult to motivate perpetrators to participate in public hearings as they fear legal consequences; sometimes they lack incentives like amnesty provisions, which are rarely offered. While many truth commissions promise confidentiality, there is often not enough trust in the institutions after years of repression. Another challenge is that political leaders lack any motivation to come forward and are often not persuaded to take any responsibility. Therefore it is difficult to hold these individuals, at least symbolically, accountable in public hearings as long as there are no incentives for them to do so.

Truth commissions also carry out their own research and investigation. To do this, it is necessary to have political support to get access to reports, archives, and undisclosed documents. However, governments do not always grant this permission to truth commissions, especially in instances where there is little to no external or internal pressure. Without access to crucial documents, it becomes more difficult to validate findings from statements. Yet, even when commissioners are able to obtain access to documents, they often fail to include this research while conducting public hearings (Hayner, 2010, p. 219).

Finally, the last phase is 'writing the final report.' The commissioners can easily underestimate this part; indeed, it takes an enormous effort to compile hundreds of pages. It is even more difficult when the country has several

official languages or significant minority languages. Based on the findings of the final report, truth commissions generally have recommendations for the state. Particularly controversial are mandatory recommendations (as outlined in the mandate of the truth commission), in which commissions can supposedly force state institutions to implement the changes. In reality, this is rarely the case, as state institutions tend to ignore these recommendations.

When the truth commission concludes after commissioners have handed over the final report to the president or parliament, a follow-up institution typically is set-up to ensure that the recommendations are implemented. A primary problem has been that many governments and legislative bodies have ignored the recommendations and have failed to follow up with the required actions. Potentially, recommendations can provide a path forward for the country, particularly for victims and institutional reform. These aims are furthered when the follow-up mechanism pushes for the implementation of recommendations and pressures government or parliament to fulfill them.

Truth commission politics

Assumptions about truth commissions

Truth commissions are built upon many assumptions that sometimes seem closer to wishful thinking than reality. Truth commission advocates typically present several arguments for the necessity of this process that are summed up in eight points. First, supporters contend that burying the past and hiding unspeakable atrocities will eventually undermine a country's democratic development. History needs to be addressed and cannot be forgotten. Actively dealing with these violations will heal wounds, as public and official acknowledgement is key to a society's reconciliation. Second, advocates note that truth commissions empower victims by taking their statements and allowing them to address the public in hearings. This focus on victims permits them to finally be heard. Their accounts, made visible through the media, create a watershed moment in the post-conflict process, which might otherwise focus on armed actors. Third, as the public becomes aware of victims' stories, society learns to respect them. This leads to a

conducive environment to advocate for reparation schemes that otherwise would not receive that level of compassion.

Fourth, truth commissions, in contrast to the judicial system, permit a much more structural response to human rights violations. Even though they are not able to address all stories, truth commissions show patterns of abuse and help identify perpetrators, particularly in the security sector. On the other hand, the judicial system would only tackle individual cases that do not show broader levels of violations. Moreover, the aggressive nature of courts does not permit reconciliation, whereas truth commissions provide a space for healing and forgiveness. Fifth, truth commissions often fight against impunity as they commonly recommend punishment for perpetrators. When the names of these alleged abusers are mentioned, victims can feel a sense of accountability. Recommendations may also include lustration, removing perpetrators from their position, particularly in the justice and security sector.

Sixth, truth commission proponents also assert that reconciliation is a key part of transition. They argue that forgiveness is possible only when perpetrators acknowledge their violations. Thus, when commissions provide a space for perpetrators to air the full truth, and victims to share their suffering, the ground for reconciliation is planted. Seventh, it is commonplace to assume that truth commissions are a process of catharsis for everyone to get involved. Victims get a space where healing is possible and sharing the horrors of the past is a psychological necessity to move on. Truth commissions create a safe space for victims and give them back their dignity. Finally, advocates believe that the findings of a truth commission are the only way to create a reparation framework for victims. These eight points will be further examined in the case studies.

Reasons why truth commissions should not be established

What is often dismissed are the risks of a truth commission. Critics argue that truth commissions can divide a society. The painful dealing of a past littered with torture and violence ultimately traumatizes many if not everyone. Instead of moving forward, the country and its people are lost in the past. A truth commission might positively affect a few individuals and

communities and bring about closure but the big majority of people who participate in its activities do not experience healing. To overcome trauma, long-term psychological treatment is needed; truth commissions, by and large, do not provide this. Rather, the statement taker visits the victim only once and has a long interview with them—without any psychological guidance—and never returns.

Freeman and Hayner (2003, pp. 127–128) point out that some governments may want to establish a truth commission for the wrong reasons. For instance, the mandate may only include certain aspects of violations that are directed towards one group, instead of a holistic approach. Moreover, truth commission can be used as fig leaves, which allow governments to show donors that they are dealing with the past, when in fact, the commission is weak and ineffective. Commissioners can also have their own bias that favors one side over the other. When this is the case, setting up a truth commission might not be advisable, as commissioners may be perceived as illegitimate. An additional challenge can be that truth commissions may face a lack of national ownership if the process is pushed by the international community, rather than by local politics (Wiebelhaus-Brahm, 2010, p. 152). This will result in lack of support for the commission.

The critical role of civil society

Civil society's participation (whether from non-governmental organizations (NGOs), faith-based organizations (FBOs), or community-based organization (CBOs)) is an important factor to the success of a truth commission. Through the involvement of civil society, several important points are tackled: outreach, advocacy, accountability, monitoring, and participation of communities. Whether they are able to pressure the government to create political will, or the truth commission to do the work more effectively, depends on their level of organization and strength. However, we still know comparatively little about how civil society organizations (CSOs) influence decisions and when they can be successful (Olsen et al., 2010, p. 95). Often, international NGOs, like ICTJ, can influence governments during the set up

of a truth commission, and pressure them to implement recommendations laid out in the final report (Bosire & Lynch, 2014; Langer, 2015a).

The consultation of governmental bodies with local and international CSOs is key to the success of truth commissions. This holds true for both the mandate and the selection of commissioners. The input from governmental bodies and CSOs can facilitate the process that the needs of victims are heard and commissioners are properly chosen. The more the president or parliament—or in some cases the UN—consult with society at large, the more engaged the public will be during the process and allow for more ownership (Hayner, 2010, pp. 211–213). In some countries consultations took place, as recommended by international advisors. Yet, these consultations are often predetermined and provide little input in the actual set-up of the truth commission.

During the work of truth commissions, CSOs can push the body to adopt their policies, pressure the government to open archives, allow the commission to access key documents, advocate for additional funding from donors, and distribute the final report among local communities. Additionally, local CSOs know how to access victims and perpetrators, which enables broad participation in statement taking and public hearings. While truth commissions recognize the essential role that CSOs play, commissioners do not want to appear to be too close to civil society to ensure neutrality. This can be a source of frustration for CSOs that see themselves as representatives of victims (Hayner, 2010, p. 225). However, it would also be misleading to assume, as it sometimes happens, that civil society is always a ‘force for good’, as CSOs can turn against the truth commission in order to defend the political elite or perpetrators who sponsor them.

Effects of truth commissions

The search for truth

Truth is hard to find amid dictatorships and armed conflicts because oppressive regimes and armed actors seek to blur reality. The oppressor usually influences or controls the media and official narratives, while silencing the voices of

victims. The task to establish truth regarding human rights violations in order to transition towards democracy and peace is herculean.

The expectation of truth commissions is to uncover truth and debunk myths (Buckley-Zistel, 2014; Chapman, 2009b; Chapman & Ball, 2001, 2008; Dimitrijevic, 2002; Wilson, 2001). In the last decades, and particularly in Latin America, there was a push towards the 'right to know' what violations happened as a human right of victims (Méndez, 1997; Minow, 1998). This means that victims and survivors have the right to be informed about human rights violations that affected them or their loved ones. It could be a huge step forward for society to clarify uncertain events, remove myths that exist in society, and have an accurate version of history.

The process of seeking the truth includes several components, most notably: access to archives and secret documents, investigations of enforced disappearances and murders, as well as statement-taking and testimonies public hearings from victims, survivors, and in some cases perpetrators. The latter is particularly important because it sets up a historical record that is mostly based on the voices of victims and has a performative function next to clarifying the truth for the public.

As truth commissions conclude, a final report is produced. In general, commissioners try to establish a discourse that unites the country; however, they run the risk of being perceived as 'one-dimensional,' because they are not able to include all voices. The final report tries to reflect the entire exercise of truth-telling efforts and by that support the process of future coexistence. Typically, the truth commission does not aim for a single, objective truth in its final report but a complex truth (Bisset, 2012, pp. 34–36).

Chapman and Ball (2001, pp. 10–12) discuss the typology of truth as introduced by the South African TRC: factual or forensic truth, as well as personal, social or dialogue, and restorative truth. Some expect to get forensic or factual truth out of a truth commission, yet this kind of truth corresponds to court. Whether or not absolute truth actually exists, beyond the relativist postmodern critique, is something that is not questioned by international

NGOs that strongly push for commissions to uncover the truth. In fact, it is a social construction that truth commissions establish truth. In reality, “[e]vents belong to the past, narratives about them to the present” (Buckley-Zistel, 2014, p. 144). These narratives of victims, with their testimonies and witness accounts ultimately construct knowledge and some form of oral history. The overarching narrative is therefore an agreed record of various truths (Lambourne, 2009).

Another way of seeing truth is by dividing it into structural and individual truth. This notion differentiates between general patterns and the more subjective experiences of a single person (Méndez, 2006). In other words, there is macro and micro truth, as presented by Chapman (2009b), who envisions truth commissions as fit to channel both. The ultimate challenge for truth commissions is that they are based on the narratives of victims but they are typically not able to establish the individual truth of victims. In its final report, truth commissions can portray the overall picture of human rights violations or the structural macro truth, while the individual victim will not find his or her story in the document that can be a source of frustration.

Ultimately, a truth commission will not be able to establish a ‘perfect’ truth. Most likely, social forces that want to defend their own interests will contest it. Regardless, truth commissions can help to clarify the different truths, and thus recognize the various narratives of the conflict. It is crucial to truth-telling exercises to allow and foster spaces which permit the critique of one’s personal view and to develop empathy for other perspectives (Aiken, 2014). Conclusively, the whole truth cannot be established in the final report, but ultimately truth commissions aim “to represent a broad—and specific—truth that will be accepted across society” (Hayner, 2010, p. 84).

Reconciling deep divisions

Reconciliation can happen on different levels. The most common differentiation is made between individual and national reconciliation. A major issue of reconciliation is that no common definition exists. For some, it is about healing; for others, particularly, for those who stress the origins of reconciliation as a

religious concept, the goal is forgiveness. In general, there is a consensus in the academic community that reconciliation needs to be long-term, multidimensional, and transform the relationships of former adversaries, without ignoring human rights (Chapman, 2009a). From a conflict transformation perspective, reconciliation is a process of relationship-building that demands acknowledgment (truth), healing and inner peace (mercy), equality (justice), and harmony and respect (peace) (Lederach, 1997, 1999, 2005).

A truth commission typically focuses at the national level. It establishes space to address gross human rights violations in public. In contrast to political institutions, commissioners can rise above political or ideological turf fights. However, the extent to which reconciliation is possible remains unclear. Therefore, truth commissions are a catalyst for social and psychological processes that can create conditions for sustainable peace; however, they will not achieve reconciliation on their own.

Individual reconciliation is even more complex to achieve. Each person's needs for personal healing, forgiveness, and reconciliation are different; a truth commission cannot easily meet them. Some people find forgiveness easier than others. For these cases, the commission helps by reconciling stories that contradict each other, and turning them into compatible and consistent narratives that are more inclusive (Abu-Nimer, Said, & Prelis, 2001; Bloomfield, Barnes, & Huyse, 2003; Daly & Sarkin, 2007; Lederach, 1997).

Due to the South African TRC, there is often an assumption that all truth commissions promote reconciliation (Minow, 1998). Indeed, truth-telling exercises can lead to acknowledgement and admission of responsibility that can (re) establish a moral order and civil trust in society as well as state institutions (Du Toit, 2001). While reconciliation was more often included as an objective after South Africa, truth commissions are not required to focus on it. Moreover, the issues of healing or trauma redress are not adequately addressed by a truth commission, despite the therapeutic discourses that many truth commissions establish (Zolkos, 2014). This can be part of a broader critique of restorative justice that forces victims to reconcile (Acorn, 2004).

The assumption that ‘revealing is healing’ is hardly supported anymore because obviously many other measures need to go along with it, like reparations, no repetition, dialogue, and punitive justice. In fact, “the exact causal connection thought to exist between truth and reconciliation remains largely underexplored by transitional justice” (Aiken, 2014, p. 52). A particularly difficult issue for reconciliation is when victims and perpetrators belong to different socio-economic classes. These inequalities continue even after truth commissions, as commissions are unable to provide social justice. Considering this, the nexus between justice and development is therefore a key point that is often neglected in the discussion on reconciliation (de Greiff, 2009; Mani, 2008).

Amstutz (2005) proposes the concept of ‘political forgiveness’ where both victims and perpetrators need to disclose and acknowledge the truth, be accountable, and forgive. Instead of hatred and revenge, a truth commission can break the cycle as an element to bring about reform and prevent further abuses. Finally, reconciliation ideally brings together a bottom-up process with a top-down one, merging political policies with local community initiatives. For a truth commission, it is therefore important to think about community-level initiatives as well as meaningful local rituals. Additionally, truth commissions can come up with new symbols, images, and educational policies (Chapman, 2009a, pp. 161–164).

Establishing a collective memory

Memory enables the past to impact the present. The state and social elites can reconstruct past events and establish a collective memory through rituals, museums, history books, and monuments. Transitional justice in general, and truth commissions in particular, work with memory to establish a relationship between the past and present. The acts of remembrance negotiate and interpret the violent past. As they do so, they allow the country to address injustices, and contribute to the creation of a collective memory that includes multiple truths. These processes include many contradictions, not least because social environments influence how we remember the past (Zerubavel, 1996).

These mnemonic battles can become controversial. Commissioners often try to use their personal and procedural authority to influence the reconstruction phase of human rights violations. If a truth commission actively includes the voices of victims, it becomes more difficult for perpetrators to deny crimes. Survivors and victims, as well as their families, often want to see their discourse represented in the final report and may be disappointed when their story is not included. Truth commissions aim to inhibit perpetrators' efforts to erase human rights violations. They also try to stop 'abuses of memory,' or, as Ricoeur (2004) would state, they seek to end the manipulation and instrumentalization of memory.

Furthermore, Todorov (2001) reminds us that memory is an interaction between disappearance (forgetting) and preservation, and it is impossible to remember everything. The important difference for him is between the recovery of memory and its subsequent use. While perpetrators often dominate the discourses in the public space, the final report of a truth commission can establish a counter narrative in the public discourse (Oettler, 2006). Therefore, truth commissions are part of the social struggle over memory and history; their final report is an attempt to create a shared account of the past.

Most historians harshly criticize memory. They perceive it as fiction with ideological layers, in contrast to their positivist and fact-based approach of 'objective' and archival research (Klein, 2000; Olick & Robbins, 1998). In truth commissions, with the exception of the archival work, historians are not needed to interpret and retell the past; they do not use history, but rather historicize the past. Society at large, however, does not judge commissioners on whether they are good historians, but rather weighs whether the narratives in the final report are perceived to be truthful and accurate.

The memory established in the final report can be transformative, as it brings previously unacknowledged violations to light. Already during the truth-telling process, truth commissions heavily rely on individual's memories that have been influenced from collective memory, particularly when a lot of time has passed since the violations. Moreover, as the structural causes of violence are revealed, new narratives and explanations can help to explain violent patterns

of the past and demand structural change (Bakiner, 2016). However, as Mamdani (2002) critically points out, the South African TRC was decontextualized and dehistoricized from Apartheid and actually perpetuated existing hierarchies. Others have been able to set up museums, temporary and permanent exhibitions and influenced history text books for schools. Other forms have been documentaries as well as comics to get the message across.

Allowing for justice

Truth commissions are generally considered to contribute to justice. However, they focus on restorative justice—with an aim to rehabilitate society—rather than on traditional punitive justice. In other words, they emphasize victims rather than perpetrators. Instead of anger and revenge, restorative justice concentrates on the underlying issues and the enabling conditions of conflict. The findings of the commission are meant to serve victims. As truth commissions uncover the nature and extent of patterns of abuse, their final report can often contribute to punitive justice as well. Nonetheless, the practice of naming perpetrators in the report is questionable as responsibility is assigned without rigorous analysis and collected evidence might not hold in court (Bisset, 2012, p. 137).

Very few truth commissions have judicial powers—like South Africa's TRC. In general, truth commissions are extrajudicial bodies that can recommend amnesties or prosecution, but have no power to sanction or subpoena. This is important because the majority of commissioners do not have judicial experience. Rather, commissions focus on truth-telling and provide the context of human rights violations on the systemic level, instead of becoming second-tier prosecutorial bodies that could face legal challenges. Governments could also misuse this interpretation of a truth commission as a fig leaf not to establish a tribunal. In fact, the human rights community perceived truth commissions in the 1990s as weakening the possibility of punitive justice (Hayner, 2010, p. 91).

The experience of the last 15 years has shown that the fear of a 'trade off' with punitive justice is unfounded. In fact, truth commissions aid justice as they

reveal crimes in the final report (Collins, 2012). When the time is ripe, and structures in the country have changed, the final report and the archives of the truth commission can be the basis to build a case against perpetrators. Counter to previous beliefs, truth commissions and trials are complementary and interconnected mechanisms in times of transitions. Yet, as we live in an 'age of accountability' (Sikkink, 2012), a tendency towards punitive justice remains. Truth commission may consent to amnesty provisions, particularly when a tribunal is not established. However, with the ratification of the Rome Statute, any truth commission created within the last 15 years needs to consider that the ICC could potentially intervene (Bisset, 2012, pp. 70–71).

Although truth commissions encourage the participation of perpetrators, it is rarely compulsory. Thus, perpetrators need incentives to come forward. Typically, granting confidentiality results in higher participation rates. Therefore, tribunals or courts should not have access to the information that truth commissions collect, as this would deter perpetrators' participation. On this matter, Hayner, questions if real confidentiality can be achieved, because even if the commission omits names, perpetrators can be identified by context (Hayner, 2010, p. 119).

For victims, truth commissions do not stress the rights of individual entitlement, but rather the duty to the collective. While individuals recount their story and experience, they are united as one in the final report. What a truth commission typically intends to do is to come up with a reparations framework that includes individual as well as collective reparation efforts. Instead of a pure legal approach, based purely on rules, commissions provide a greater possibility of a political solution that more effectively addresses victims' demands.

Methodology for the five case studies

How do we know that a truth commission has done its job well? In the simplest terms, finishing its work can be a success. A next step is the release of the final report. In the last decade the debate has moved further and several scholars attempted to measure the impact of truth commissions, or, more broadly, of transitional justice. Methodologically, different attempts have been

taken to measure success: qualitative studies (Bakiner, 2014; Fletcher, Weinstein, & Rowen, 2009; Langer, 2017; Skaar & Wiebelhaus-Brahm, 2013), quantitative studies (Kim & Sikkink, 2010; Olsen et al., 2010; Taylor & Dukalskis, 2012), and mixed-method approaches (Dancy, Kim, & Wiebelhaus-Brahm, 2010; Skaar, Malca, & Eide, 2015; Van der Merwe, Baxter, & Chapman, 2009; Wiebelhaus-Brahm, 2010). These studies typically focus on the political impact of a truth commission; thus tackling the question of whether and how recommendations have influenced policies (in qualitative studies) and have improved the standard of human rights and democracy in a country (in quantitative studies). The problem with these studies is that they yield very different results. The most cited study finds that truth commissions 'have a significant, negative effect' on democracy and human rights, but yield positive outcomes when combined with trials and amnesties (Olsen et al., 2010). Another quantitative study argues that truth commissions have a positive independent effect on human rights that increases if accompanied by trials (Kim & Sikkink, 2010). A major mixed methods study finds that truth commissions have a weak negative impact on democracy and human rights (Wiebelhaus-Brahm, 2010). These results are contradictory and reflect several weaknesses in the research—not least lacking a standard definition of a truth commission.

What is typically not assessed is the behavior, attitude, and understanding of society at large about the truth commission which is much more complicated. In trying to assess the impact of transitional justice mechanisms, one challenge has been isolating the effect of a specific tool—like a truth commission—in comparison to other factors (that can be totally unrelated but easily conflated). The point at which researchers assess a truth commission is also pivotal; major changes in the commission or on the ground can be a game changer (see chapter about Timor-Leste). Moreover, it is important to consider the 'direct' and 'indirect' impacts of a truth commission, as they may translate into government actions and pressure from civil society, respectively (Bakiner, 2014).

The recommendations of truth commissions can have a positive influence on new and accountable institutions (Brahm, 2007, p. 21) our understanding has been hampered by a number of empirical problems. Specifically, most studies focus on a small biased subsample of cases, rely on anecdotal evidence and

normative conviction, and fail to follow the truth commission's legacy beyond its immediate reception. What is more, although a range of purposes have been put forward for truth commissions, there is little consensus on what criteria might be used to assess them. These issues are further compounded by a growing chorus of critics who see truth commissions as either ineffectual or dangerous. This article fleshes out the nature of these problems and outlines how a multimethod strategy might be effective in addressing them. Furthermore, it suggests two potential means of assessing the impact of truth commissions, specifically their effect on subsequent human rights practices and democratic development. The article concludes by suggesting how some problems with this strategy can be overcome by further iterations of a multimethod approach." (Brahm, 2007, p. 21). Specifically, they can elicit several responses: 1) acknowledgement of wrongs; 2) some form of healing in a divided society; 3) improved democracy to strengthen the rule of law; and 4) a stronger commitment to human rights. It is still unclear, however, how much time needs to pass before it is possible to see these positive influences after the final report has been presented. In the five case studies discussed in this book the development until June 2017 is kept in mind, thus a little bit less than twenty years passed in Guatemala, a little more than a decade transpired after the truth commission published its final report in Peru, Sierra Leone, and Timor-Leste, while three years went by in Kenya.

The truth commission process is a constant struggle between forces that seek to delimit and predetermine a commission's capabilities and the commission's striving for autonomy and transformative agency. As a result of this interplay between mandate and agency, various decision makers and civil society actors endorse, reject, mobilize around or ignore a truth commission's findings and recommendations. The commission's impact is constituted by the content of the final report and, equally importantly, by the process itself. It is shaped, but not predetermined, by the mandate limits.

Evaluators still do not know which criteria best assesses truth commissions. The impact of truth commissions can be summed up in three steps: "were recommendations made, were they enacted, and have they influenced the behavior of actors?" (Wiebelhaus-Brahm, 2010, pp. 23–24). Certainly, numerous

interesting case studies have been carried out. One noteworthy example is Ferrara's book (2015) that assessed the Chilean truth commission's long-term impact. She concludes that the final report's enduring influence can be significant; even if it appears to be forgotten, it may be crucial in bringing perpetrators to justice. This is in line with earlier discussions of Collins (2012) about the changes in Latin America from 'the permissive 1980s' to the 'domino effect' after Pinochet's arrest in 1998 and a turn towards justice. The latest book on the topic is moving away from the broad goals of transitional justice—democracy, peace, or the rule of law—and looks into nine Latin American cases from a comparative qualitative perspective and 'thick descriptions' (Geertz, 1973); it can be considered as the new classic for the continent (Skaar, García-Godos, & Collins (2016)). Additionally, within Colombia various case studies from around the globe are discussed to obtain insights for the country's new framework of transitional justice (Barreto, 2016).

This book includes five case studies to understand how the truth commission in each country has affected society at large. In comparison to quantitative approaches that often face the problem of endogeneity, broad definitions that increase the sample size, and rely on different databases that are often limited, this book uses a qualitative approach with a 'thick description' of case studies that allows the researcher to illuminate the complex ways in which one or more variables brings about an outcome. In this book, four dimensions are at play: truth, reconciliation, memory, and justice. Each dimension has four variables and, in turn, four criteria of how to measure the impact. However, it is key to keep the general context in mind (Skaar et al., 2015). Thus, the first part of each case study has a context of the armed conflict followed by a description of the truth commission's work—particularly its creation and mandate—the selection of commissioners, the duration, and the final report.

The other four parts of each case study discuss truth, reconciliation, memory, and justice. The variables of truth are methods of truth-telling, inclusion of victims and perpetrators, selection of 'window cases,' and truth-telling impact on reparations. The second dimension is reconciliation, which looks at the instruments used, the participation of various actors, support, and changes of perceptions. The third dimension is memory that is produced by the final

report, its socialization, and the short- and mid-term attempts to create collective memory. Finally, the fourth dimension is justice, which includes a normative discussion about what justice means in the transitional context, its relation with the tribunal (in case there was one), achieving punitive justice, and bringing about institutional reform.⁴

The selection of the five truth commissions—Guatemala, Kenya, Peru, Sierra Leone, and Timor-Leste—that are discussed in the next chapters was based on two common points that they share with Colombia's forthcoming truth commission: all cases were initiated after violent conflict (not after dictatorship), and are part of the 'second generation' of truth commissions (Bakiner 2016). In the three case studies outside of Latin America, the truth commissions operated alongside to a tribunal or court. For this research project, it also was important to consider punitive justice, as Colombia will implement a Special Jurisdiction for Peace (JEP) to collaborate with the truth commission. All five cases in this book are covered by the transitional justice literature, yet they do not have the same prominence as Chile, Argentina, and South Africa's TRC.

While all five truth commissions produced a final report that was used for the evaluation of each case study, secondary literature was also reviewed. In addition, the author carried out 17 semi-structured expert interviews via Skype between June 2015 and February 2016: eight interviews in Timor-Leste, five in Sierra Leone, and four in the Kenyan case. Moreover, Miguel Barreto, the author of Chapter 3, conducted 11 semi-structured expert interviews in Lima, Peru (December 2015). Interviews typically lasted between one to two hours. People interviewed included commissioners, former staff of the truth commission, civil society representatives, and academics.

The following chapters discuss five truth commissions that shall provide insights for future truth commissions and, in particular, for the Colombian truth commission.

4 This matrix was established with the help of Miguel Gomis and Johanna Amaya.

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2 The legacy of Guatemala's Commission for Historical Clarification

Pedro Valenzuela

Introduction

Between the beginning of the 1960s and the mid-1990s, Guatemala experienced one of the longest and bloodiest internal wars in the Latin American context. After almost 35 years of a cycle of violence that left thousands of dead and disappeared, forced the displacement of thousands more, and destroyed entire communities, the conflict came to an end with the Agreement for a Firm and Lasting Peace, signed by the Guatemalan National Revolutionary Unity (URNG) and the Guatemalan government in December 1996 in the country's capital.

In this context, the Commission for Historical Clarification (CEH) was created, with the objective of investigating the events that took place during the years of armed conflict, and recommending actions to guarantee a sustainable peace and prevent a reoccurrence of violence. This chapter will analyze various aspects of the CEH, from its inception and work, to its impact on Guatemalan society. The chapter ends with some brief reflections on lessons derived from this important experience.

The Armed Conflict

Origin and dynamics

After the fall of Jorge Ubico's dictatorship, the governments of Juan José Arévalo (1945–1951) and Jacobo Árbenz (1951–1954) attempted to modernize the country's archaic structures. The military coup that overthrew the Árbenz government—sponsored by civilian and military elites and the U.S. Central Intelligence Agency—frustrated the project of democratization and ushered in decades of military governments that overturned the reforms and repressed social protest and political dissent.

Since then, the country experienced “two large cycles of insurgency (1962–1967; 1973–1982) and three big waves of terror (1954; 1966–1972; 1978–1983)” (Figueroa, 2007, p. 80). The first wave originated immediately after the overthrow of Árbenz, before the emergence of the insurgent movement. The second, after the creation of the first guerrilla organization—the Rebel Armed Forces (FAR)—and lasted until FAR's defeat in an army offensive accompanied by systematic death-squad attacks against leftist leaders and intellectuals (Padilla, 2016).

The third wave (1978–1983) coincided with increased social mobilization and a new phase of the insurgency war.¹ The guerrillas abandoned the *Foco* theory in favor of the strategy of Prolonged People's War, incorporated indigenous interests to their agenda, and established links with mass organizations repressed by the regime (Figueroa, 2007; Padilla, 2016). In the context of the Cold War, in some sectors the Sandinista revolution in Nicaragua generated expectations of change, and in others, a profound fear of a 'communist takeover' of Central America (CEH, 1999).

1 After the debacle, two new organizations joined a regrouped FAR: the Ejército Guerrillero del Pueblo (EGP), and the Organización del Pueblo en Armas (ORPA). In 1982, these guerrilla groups and the armed branch of the Communist Party (PGT) formed a military and political alliance, the URNG, which would wage the confrontation until the signing of the peace agreements.

By then, the URNG had recruited many Mayans in their ranks; exercised influence over peasant organizations, labor unions, and the student movement; and generated sympathy in Catholic sectors, NGOs, and organizations abroad (Padilla, 2016). It has been estimated that between 6,000 and 8,000 people were up in arms, backed by a support network of around 500,000 throughout the country (Costello, 1997). In the exact opposite way to the guerrillas' strategy, the army's repression began in the center and expanded to the periphery (Falla, 2013). Initially, the popular struggles were violently repressed, and once the urban movement was disarticulated, the focus changed to the insurgent groups (Figuerola, 2007).

Civilians increasingly became the target of mass and indiscriminate violence. Some of the worst massacres of the conflict took place during the last months of General Romeo Lucas García's government. The 'scorched earth' policy of his successor, General Efraín Ríos Montt, led to the destruction of villages, property, and Mayan sacred places, the massacre of entire communities, and the rape of women (CEH, 1999).² The army operated through 'death-squads' and illegally incorporated thousands of young men into the counter-insurgent effort, forcing them to join the Civilian Self-Defense Patrols (PAC) (CEH, 1999; ODHAG, 1998).³ As a strategy to establish social control, isolate the guerrillas, and use the communities in the war effort, it created 'strategic hamlets,' 'model villages,' and 'development poles.' It is estimated that close to 500,000 Mayans were subjected to this type of social reorganization (ODHAG, 1998).

2 However, repression and counterinsurgent terror alternated with efforts at legitimation. The army adopted the '30%-70%' strategy, according to which, instead of eliminating 100%, food would be provided to 70%, and the remaining 30% would be killed (Falla, 2013). This strategy of 'beans and bullets' implied the elimination of communities perceived as the guerrillas' support base, while rewarding communities considered loyal to the regime (Oettler, 2006).

3 The PAC began to operate at the end of 1981. It is estimated that between 1982 and 1983 they had 900,000 members, or close to 80% of the male population in rural Mayan areas. Between 1986 and 1990 they had 500,000 members, and by the time they were dismantled, 375,000 (ODHAG, 1998).

The transition

The weakening of the guerrillas led to a reduction of mass terror and the military's strategic decision to begin an incipient process of liberalization, or 'authoritarian transition' to democracy, under their tutelage (Benítez, 2016, p. 152). With elections to a Constituent Assembly, the adoption of a new Constitution in 1985, and the government of Vinicio Cerezo, the dictatorship came officially to an end in 1986. Changes in the international and regional contexts, international pressure, and the mediation of the United Nations helped negotiations to move forward, finally concluding in 1996 during the administration of Álvaro Arzú.

The Commission for Historical Clarification

Creation

The effort to establish a truth commission goes back to the mid-1980s, with the creation of the Catholic Church's Human Rights Office and the Group of Mutual Support (GAM), made up of relatives of the disappeared. Two short-lived commissions for the search of the disappeared (*Comisión Pro Paz* and *Comisión Tripartita*) were also created at that time. The establishment of a truth commission was proposed once again in 1990 in a meeting between the URNG and social organizations (Rosal, 2012). The precedent of the CEH was the Comprehensive Agreement on Human Rights, signed in Mexico City on 19 March 1994; later, the National Reconciliation Law (LRN), passed by Congress in 1996, endorsed its establishment (Impunity Watch, 2013).

The proposal did not have a generalized enthusiastic reception. Sectors of the army rejected it as an expression of revenge that would polarize society. Others were more willing to accept it, as long as it was conceived as "a fair and impartial mechanism" with "equality in the parties' situation" (Rostica, 2011). The Commission was finally created by the URNG and the Guatemalan state, through the Agreement on the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer (hereafter, the Agreement) of 23 June 1994.

Composition

The Agreement determined that the Commission would have a mixed composition of two nationals and a foreigner. It would be coordinated by Jean Arnault, moderator of the peace negotiations, who, in turn, with previous approval by the parties, would designate the remaining two members: a “Guatemalan of irreproachable conduct,” and an academic proposed by the universities’ presidents (Agreement). Given the impossibility of appointing Arnault,⁴ on 8 February 1997 the United Nations Secretary General designated as coordinator, the German lawyer Christian Tomuschat, who had worked as an independent expert for Guatemala of the Human Rights Commission. Toward the end of that month, after a ‘relatively broad’ process of consultation with indigenous and social organizations and the universities’ presidents, Tomuschat designated the two Guatemalan members: Otilia Lux de Cotí, a K’iche’ indigenous educator, and the lawyer Edgar Alfredo Balsells Tojo (CEH, 1999).

The Commission had a Support Office in which 273 people, between professionals, support, and security personnel participated—142 Guatemalan and 131 of 31 different nationalities (CEH, 1999). It is estimated that, at its peak, the number of collaborators was 200, and less than 100 during the phases of investigation, analysis, and drafting the report (Quinn & Freeman, 2003). As criterion for selection, the Agreement only demanded that they should have the necessary qualifications to carry out their tasks.

Mandate, resources, and duration

The main purpose of the Commission was “to clarify with all objectivity, equity, and impartiality” human rights violations and acts of violence connected with the armed conflict (Agreement). The Commission should investigate the events that took place between the beginning of the conflict in 1962 and the signing of the Agreement on a Firm and Lasting Peace. With the objective of preventing a repetition of events and strengthening the democratization process, it

4 Arnault became the head of United Nations Verification Mission in Guatemala (MINUGUA).

should also elaborate a report with “objective elements of judgment about what took place,” and “formulate recommendations to encourage peace and national harmony,” preserve the memory of victims, and “foster a culture of mutual respect and observance of human rights” (Agreement).

The CEH had a budget of around USD \$11 million. In the words of its coordinator, this amount was only enough to finance the field research phase, and thus “Throughout its operation, the CEH was under the threat of financial collapse” (Tomuschat, 2001, p. 248). Since the CEH was created without any resources, it functioned initially with limited infrastructure and personnel, thanks to assistance provided by MINUGUA. Financial support was later secured by the Scandinavian countries, the United States, Canada, and the Guatemalan government (Tomuschat, 2001).

The Agreement stipulated that the Commission would start to work as of the day of the signing of the Agreement on a Firm and Lasting Peace. However, the first months were devoted to hiring personnel, establishing offices in the capital and rural areas, organizing, and searching for resources. The real work began toward the end of July 1997, and investigation in rural areas began on 1 September 1997 (Tomuschat, 2001). Thus, the CEH began its main work three years after the Agreement, and seven months after the signing of the final peace agreement (Simon, 2002). The CEH should work for six months after its installation, although this period could be extended for six additional months (Agreement). The Commission completed its work in two years, and submitted the report on 25 February 1999, seven months after the agreed date (Tomuschat, 2001).

The search for truth

Strategies and methods

Given that the task of investigating all events that took place for 35 years was impossible to achieve in the agreed period, the CEH decided to document *mainly* crimes against life and personal integrity (Simon, 2002; Tomuschat, 2001).

In consonance with its Latin American predecessors, the CEH did not hold public hearings. Information was mainly gathered through the testimony of victims, relatives, and witnesses (Quinn & Freeman, 2003), and was preceded by an intense publicity campaign to let people know of its existence, objectives, location of the offices, and the importance of clarifying the events (CEH, 1999; Tomuschat, 2001).

The division of labor in branches and regional offices located in the most affected and remote areas, combined with the mobility of personnel, allowed the CEH to collect information in practically the entire national territory (CEH, 1999; Tomuschat, 2001) and to concentrate more deeply on specific events and communities (Quinn & Freeman, 2003). In a period of seven months, the CEH visited close to 2,000 communities, interacted with more than 20,000 people, and gathered more than 7,000 testimonies, 500 of which were collective (CEH, 1999).

To guarantee the security of witnesses, testimonies were only taken in the presence of the interviewer and were confidential (Tomuschat, 2001). Finally, the CEH relied on projects established before its creation. The most important was the Catholic Church's Recovery of Historical Memory Project (REMHI), which, unlike the CEH, identified the perpetrators.⁵ Information was corroborated by combining multiple sources and field research. In addition, the value of testimonies was assessed by considering the character of the witness, the credibility of the event, and the existence of additional evidence and "circumstantial elements of judgment", so as to become conscientiously convinced (CEH, 1999, p. 415).

Obstacles

Gathering the facts mainly through the testimony of victims, relatives, and witnesses was not simply due to a strategy or a mandate that "emphasized,

5 Through the Catholic Church's extensive network in rural communities, REMHI identified 55,000 victims and more than 300 clandestine cemeteries (Rosal, 2012; Rostica, 2011). A team of more than 600 multilingual interpreters, known as *animadores*, conducted over 6,500 interviews (Hatcher, 2014).

above all, the victims' suffering" (Tomuschat, 2006/2007, p. 11), but also to the unwillingness of perpetrators to testify. The national government and the armed forces refused to cooperate with the CEH, or collaborated reluctantly and in a limited way. The Commission could not force anyone to testify, and did not have the capacity to incentivize participation by offering amnesties (Simon, 2002; Tomuschat, 2001).⁶ The incapacity to force institutions and persons to provide information, and the practice of hiding or destroying documents, denied the CEH full access to official information (Quinn & Freeman, 2003). The guerrillas cooperated more decidedly, recognizing their responsibility in various incidents. The U.S. government provided numerous documents useful to confirm some of the conclusions, although no other government gave information about their respective countries' role (Tomuschat, 2001).

The Commission's composition and the time allotted to gathering information in the rural areas posed additional challenges. The mixed composition of the interviewing teams sought to balance the "intimate cultural, historical and political knowledge" of the Guatemalan personnel with the perception of "objectivity and impartiality" of the international personnel. However, although the international presence possibly stimulated the participation of victims and witnesses in an environment still characterized by fear and distrust (Crandall, 2004, p. 8), critics have argued that the training of the foreign personnel focused on the mandate and functions of the Commission and not on the context in which work would be carried out or the difficulties of gathering information in dangerous and multicultural conditions (Impunity Watch, 2008). It has also been argued that the participation of rural victims was "generally brief and superficial," given the incapacity of a group almost completely unknown to the communities to generate enough trust in such a limited period (Seils, 2002, p. 36).

6 The names were given to the United Nations, which will keep them secret until 2050 (Simon, 2002).

Presentation of the Final Report

On 25 February 1999, a little over two years after the beginning of its work, the CEH presented the final report (hereafter, the Report) in a ceremony at the National Theater Miguel Ángel Asturias in Guatemala City. In general terms, the Report was positively received, especially by victims' organizations and human rights defenders (Rosal, 2012). Contrary to civil society, which received the Report with "tears and a deafening applause" (Grandin, 2005, p. 66), the government's reaction was of total rejection. In fact, during the ceremony of presentation, the President refused to receive it, commissioning instead the Secretary of Peace (Corntassel & Holder, 2008; Rostica, 2011).

The government tried to minimize its importance, the army referred to it as biased and partial, and subsequent governments did not acknowledge it publicly or spoke out on justice for past crimes (Paniagua, 2012). The interpretation of the Report and the implementation of its recommendations became "arenas of struggle" (Oglesby & Ross, 2009, p. 30).

Findings

The Report identifies exclusion, repression of social and political movements, state incapacity to generate social consensus, and institutionalized racism as structural causes of the violence. It also reveals that acts of violence throughout the conflict were as varied as brutal. The CEH identified 622 massacres attributable to state forces, often accompanied by acts of extreme savagery. Forced disappearance and arbitrary executions were systematically practiced, with the aim of generating terror in communities and disarticulating their organizations.

The Report has 7,143 'registered cases.' In an annex, it presents 85 'illustrative cases,' selected for pointing out strategic changes, having had an impact on the national conscience, or explaining patterns of violations or violent acts in certain regions and periods. The CEH blames the armed forces for 93% of human rights violations, and the URNG for 3% of acts of violence (CEH,

1999).⁷ Almost 25% (9,411) of registered victims are women. In several categories of crimes, female victims constitute about a third of men, except for forced disappearance (88% men), sexual violence (99% women), and deaths by displacement (51% women) (CEH, 1999).

Rape was the most common type of sexual violence (84% of all cases). The fact that 70% of the cases are attributed to the military, and that only 11% took place after 1984, when the guerrillas had been practically defeated, shows that sexual violence was an integral part of the state's war strategy (Leiby, 2009). One of the most significant assertions in the Report is that, in the framework of counterinsurgent operations between 1981 and 1983, agents of the Guatemalan state, committed *acts of genocide* against groups of Mayans (CEH, 1999, p. 51, emphasis added). The systematic effort to destroy Mayan culture has led to the claim that an "ethnocide" took place in Guatemala (Oettler, 2006).⁸

Reconciliation

The Agreement does not allude directly to reconciliation as one of the tasks of the Commission, although it is possible to infer it from some of its objectives. Reconciliation is understood in macro-societal terms more than in individual terms—unlike the South African Commission, the CEH did not offer meeting

7 *Guatemala: Nunca Más*, the final report of the REHMI Project, reaches similar conclusions. It identifies the army, the police, the PAC, the military commissioners, and the death-squads as responsible for 90.53% of violations, and the guerrilla organizations for 9.3%.

8 This claim, however, has not been unanimously accepted. Figueroa (2007), for example, denies that the objective of the Guatemalan genocide was to eliminate the Mayan peoples. Instead, he argues that the fundamental objective of terror was to "disarticulate the forces that opposed or sought to subvert the order reproduced by Guatemala's military dictatorship [...] The counterinsurgent terror targeted relentlessly all sectors that disagreed with such order; opposed it, criticized it, conspired or subverted it, independently of whether they were indigenous or *ladinos*, men or women, young or old, poor or well-off, urban or rural dwellers. If the genocide had ethnocidal consequences, it was above all because in the third wave of terror a good part of those who joined the subversion of the military and exploitative order came from the Mayan people" (pp. 82–83).

spaces for victims and perpetrators—, with a ‘minimalist’ approach, associated to broad collective transformations (Gibson, 2001). Thus, its main purpose would be to promote ‘vertical reconciliation’ between citizens and the State (De Greiff, 2009), privileging a ‘level’ of reconciliation—the national—and a ‘substantive component,’ truth (Van der Merwe, 1999).

In general terms, this perspective, which, starting from the past, aims at the present and the future (Lederach, 1999), is appropriate for a commission whose purpose is to promote reconciliation at the national level, bringing to light and debating publicly a silenced conflictive past, without assuming that this knowledge will necessarily guarantee reconciliation at the individual level (Hayner, 2001).

This emphasis on truth does not mean that other dimensions identified by several perspectives as essential to reconciliation have been cast aside. Besides the justice processes discussed earlier, measures for the reparation and restoration of the dignity of victims have been adopted. The National Reparation Program (PNR) contemplates measures of material restitution, economic compensation, psychological reparation and rehabilitation, restoration of the dignity of victims, and cultural reparation. With time, the types of violations that must be repaired, and the categories of beneficiaries, have been expanded (Fletcher, 2014), and victims of advanced age, women, and the departments most affected by violence have been given priority (Impunity Watch, 2008).

However, its impact on reconciliation is weakened by the emphasis on individual economic payments over measures of comprehensive reparation requested by most victims (ICTJ, n.d.; Impunity Watch, 2013),⁹ and the clash with local norms and values (Fletcher, 2014). On the other hand, despite recognizing collective victimization, reparations that benefit the entire population of a given geographic area ignore particularities of the indigenous people. The absence of substantive restitution and recognition of autonomy has not helped

9 Payments for sexual violence and torture have oscillated between USD \$1,370 and \$2,750, and USD \$3,300 are recognized for a deceased relative. The PNR has also built houses for the victims (Fletcher, 2014).

to reconsider the relationship between the State and the indigenous people. The insistence on “national unity” emphasizes forms of reparation conducive to state building and overshadows efforts to achieve intergroup justice. It is a kind of “affirmative reparation” that seeks to redress harm, rather than a “transformative reparation” to change the relations that allowed harm to take place (Corntassel & Holder, 2008).

Something similar occurs with measures to dignify the victims,¹⁰ especially the apologies offered by various presidents. Contrary to the CEH’s recommendations, these measures have been selectively applied, and until 2008 no president had apologized publicly for the acts of genocide documented in the Report (Impunity Watch, 2008).¹¹ In consequence, they are fruitless, as many sectors do not perceive them as genuine apologies (Corntassel & Holder, 2008).

The same occurs with exhumations and the creation of a DNA bank for the identification of remains and delivery to relatives.¹² Even though the PNR has reinitiated work with exhumations, most efforts are undertaken by organizations of victims of forced disappearance. The indifference or open hostility of state institutions to processes of exhumation, the search for the disappeared, and the investigation of these crimes minimize their contribution to reconciliation (Impunity Watch 2013).

An aspect with a high potential for the reconciliation process was the CEH’s discussion on institutionalized racism and the break with exclusive models of citizenship. However, the idea of national unity *per se* was not questioned,

10 The state declared February 25 as National Day of the Dignity of Victims of the Internal Armed Conflict, and 2011 as the year of institutionalization of memory.

11 President Arzú apologized for the responsibility of the state in the violation of human rights, but he did it before the submission of the Report, that is, before the magnitude of the brutality was made public. In 2001 President Alfonso Portillo also apologized in the act of reparation of the victims of the Dos Erres massacre. And in 2004, President Óscar Berger, besides apologizing, accepted responsibility for some of the worst massacres and advocated the implementation of the Commission’s recommendation.

12 By December 2012, more than 1,900 exhumations sponsored by civilian forensic organizations had been documented, and 7,276 skeletal remains had been exhumed. 18.3% of all bone remains exhumed until December 2012 were found in military installations (Impunity Watch 2013).

but only its expression in the form of a European inspired monoculturalism (Corn tassel & Holder, 2008). The alternative model proposed by the CEH aimed to foster inter-racial reconciliation (Gibson, 2001),¹³ but did not question the presumption of national unity in terms of “vertical integration;” this has contributed to reproduce the perception that the existence of Mayan communities is a problem to be solved. Thus, in the multicultural model, the Mayan identity is not necessarily viewed as problematic, if it is incorporated into the state in “terms compatible with democratic constitutionalism” (Corn tassel & Holder, 2008).

On a different level, the conceptions of reconciliation and their implications have been problematic, because of the imposition of elements thought to be essential for reconciliation, among them, forgiveness. In work with communities, four different positions regarding this demand have been found (Duffey, 2010). Some victims refuse to forgive, and look for some type of punishment, either through the judicial system or through sorcerers. Others, have expressed willingness to ‘tolerate’ the perpetrators. The importance of the cultural context is well illustrated by the remark of an Achí Maya woman that the word forgiveness does not exist in her language and that “that idea of forgiveness comes from the NGOs.” A third group was willing to forgive, on condition that the perpetrators recognize their guilt and repair the victims. Finally, another group expressed a Christian view of forgiveness, not conditioned to the punishment or the contrition of the perpetrators.

Considering the etymological roots of the word reconciliation (*re*: ‘again,’ and *conciliare*: ‘make friendly’) (Brounéus, 2003), as well as the history of relations between the Guatemalan state and the Mayan peoples, it is perhaps inappropriate to speak of reconciliation. But even if the term is accepted, understanding that reconciliation implies rebuilding relations “not haunted by the conflicts and the hatreds of the past” (Hayner, 2001, p. 161), Guatemalan society is far from achieving reconciliation. Sectors of the elites still deny what

13 Along the lines of what Van der Merwe (1999, pp. 476–480) has called “ideology of intercommunal recognition, understanding and partnership,” as opposed to “reconciliation as building non-racialism.”

took place or have difficulties recognizing their role in the violence, and the “preparedness of people to anticipate a shared future” and to move “forward collectively to decolonize existing relationships” (Cornassel & Holder, 2008) still have a long way to go.

Memory

Socialization of the Report

The CEH has been presented as “the most visible example” of Guatemala’s success in its approach to the preservation of collective memory (Hinan, 2011, p. 17). However, the Report’s role has been questioned because of its “minimal” use, the fact that it “remains inaccessible to most people” (Oglesby, 2007, pp. 79–83), and its negligible effect (Seils, 2002, p. 36).

Some copies were initially distributed among interested organizations, and for the presentation ceremony thousands of copies of a summary of the findings and of the complete text of recommendations were printed in English and Spanish. Months later, the summary and the recommendations were translated into various Mayan languages (Tomuschat, 2001). At the end of 1999, the government financed the publication in Spanish of 285,000 copies of the document conclusions and recommendations, which was distributed as a supplement in the main newspapers of the country. The administration of Álvaro Colom undertook some initiatives of diffusion, mainly to comply with sentences or because of friendly solutions in the Inter American system of human rights (Paniagua, 2012).

In contrast, organized civil society, the Catholic Church and UNESCO, among others, have undertaken efforts in this direction. The Myrna Mack Foundation elaborated 296,000 copies of a summary of the Report, and 30,000 of a popular version, and rights organizations distributed the reports *Guatemala Never Again* and *Guatemala Memory of Silence* to spread awareness among the population, especially among children and youth (Impunity Watch, 2013). Some documentaries on specific cases were also produced for television, and even a 31-episode radio show was broadcast for rural youth. However, these efforts have been criticized for not reflecting fully the magnitude of repression (Pan-

gua, 2012), and for the absence of historical context of the structural causes of violence (Oglesby, 2007). A generalized socialization of the Report demands a clear policy of diffusion that the State has been slow to define (Paniagua, 2012).

Education

Although the CEH recommended the inclusion of the causes, development, and consequences of the armed conflict in the curricula of primary, secondary and higher education, the results have not turned out as expected. The Ministry of Education and the Advisory Commission for Educational Reform—created as part of the peace agreements—elaborated the curricular reform for primary, basic, and diversified levels. But even though the Master Plan for Curricular Transformation incorporates the concepts of peace culture, peace agreements, and human rights, it does not explicitly contemplate the teaching of the causes, development, and consequences of the armed confrontation in the terms recommended by the CEH (Impunity Watch, 2008, 2013). In 2002 the Ministry sponsored the development of a textbook and a teaching guide based on the Report, but the reaction of a sector of Congress forced the recall of thousands of printed copies (Oglesby, 2007).

Nevertheless, individual teachers, some private schools, mainly Catholic, and the Rafael Landívar University, have incorporated the study of the peace agreements and the Report in their programs (Impunity Watch, 2013). The lack of institutional will ruled out the implementation of the National Curriculum for the basic cycle. And although the Peace Education Board¹⁴ drafted the Guidelines for Curricular Development, which incorporate the topics of internal armed conflict and historical memory, references to REMHI and the Report are practically nonexistent (Impunity Watch, 2013). Since the peace process, school textbooks include a discussion of the conflict, and the most recent ones include very limited references to the Report. But just as with the socialization of the Report, the main problem is that “there is no national project to address the teaching of historical memory” (Oglesby, 2007, p. 83).

14 Made up of civil society organizations, UNESCO, and the Ministry of Education, with the objective of working on topics of historical memory, interculturality, and peaceful coexistence.

With the aim of contributing to solve, at least partially, this problem, the *Centro de Acción Legal en Derechos Humanos* (CALDH) founded in 2014 the *Casa de la Memoria* (House of Memory) 'Kaji Tulam,' with the slogan "so as not to forget." In the House, it is possible to take a tour of Guatemala's history in chronological order, including the armed conflict and the genocide. Through a variety of resources, the exhibitions "show the new generations and teachers the history of the Guatemalan people and the resistance, with the goal of keeping memory alive, understanding the present, and being able to build a better future" (Voces Nuestras, 2015).

Monuments

Public monuments built by the military tend to exalt sacrifice, service to the nation, and power. In the only military museum in a town severely affected by the conflict, there are photographs of captured rebels and guns, battle scenes, and pictures and lists of fallen soldiers (Steinberg & Taylor, 2003). A large part of the monuments built by the government have been neglected, forgotten, or dismantled (Impunity Watch, n.d.). Often, people are unaware of these initiatives or perceive them simply as 'hollow gestures,' aimed at improving the international image of the government (Gidley & Roberts, 2003). In some villages, the only monuments are found in the churches, normally as murals or crosses with the names of the victims and the dates of their death or disappearance. In contrast, they are not found in Evangelical churches (Steinberg & Taylor, 2003).

Contrary to official monuments, those built by communities are "highly valued and meaningful" because they involve the community in all phases of their development and "allow people to address their own spiritual needs and make a political statement," besides rescuing practices that were distorted or suppressed during the conflict (Gidley & Roberts, 2003, pp. 149-155). Often, these monuments have been erected after exhumations, with some information about the lives of the victims, their origin, and the circumstances of their death (Gidley & Roberts, 2003). There have also been photographic exhibitions about the exhumations and the delivery of the remains to their families (Paniagua, 2012).

In some parts, the monuments have been destroyed by the security forces or by former members of the PAC, and in others, people perceive them as “symbols of revenge” (Impunity Watch, n.d.). Sometimes, the initiative of building monuments is frustrated by the fact that victims and perpetrators live side by side, or by the perception that “remembering is to repeat the past as a nightmare” (Steinberg & Taylor, 2003, p. 454). The lack of public investment in monuments of remembrance has also been interpreted as proof of how difficult it is for many members of civilian and military elites to acknowledge their role in the violence (Steinberg & Taylor, 2003).

Justice

The Report recognizes the generalized clamor for “the rule of justice [...] as a means to create a new State” and as the basis for reconciliation (CEH, 1999, pp. 16–17), and recommends punishment for those responsible of human rights violations and acts of violence, especially their promoters. However, this dimension has been affected by the dissociation between the CEH and the criminal justice system. As already mentioned, the findings of the Commission would not have judicial objectives and effects, and the Commission could not impose sanctions (Tomuschat, 2001). On the other hand, the National Reconciliation Law (LRN), adopted just before the signing of the Final Agreement, granted amnesties for political and related crimes to “authors, accomplices, and accessories,” both of “state authorities, members of its institutions, or any other force established by law,” and of the URNG (LRN, arts. 2, 5, 7). Finally, no special national, international, or hybrid tribunal was created to try crimes related to the conflict.

Despite this, some possibilities remained open. Although the LRN took good care of not mentioning extrajudicial executions (Popkin, 1996, p. 174), it expressly excludes from the benefit of amnesty “the crimes of genocide, torture, and forced disappearance, as well as crimes that cannot prescribe or do not accept the extinction of criminal responsibility” (LRN, art. 8). In addition, the Agreement stipulates that the content of the Report may be used by the justice system or private citizens to undertake actions as victims or relatives of victims (Tomuschat, 2001). In fact, the Report has been used as “contextual

precedent” and “key source” in cases in Guatemala and abroad (Oglesby & Ross, 2009).¹⁵

Perhaps more importantly, changes in the political-legal context and in the human rights institutions after the transition have generated “structures of opportunity” that allowed the consolidation of local and international alliances to present claims and activate the mechanisms of justice, as well as an environment more receptive to judicial processes (Benítez, 2016). As a result, in the last few years some sentences have been issued for crimes that would have been “unthinkable to investigate and sanction during the years in which they were committed” (Benítez, 2016, p. 145).

However, despite progress in normative terms and the modernization of institutions, the criminal system still confronts serious obstacles. There is little disposition to investigate and try crimes that took place during the armed confrontation. The Public Ministry has not opened investigations on its own initiative, but because of denunciations by victims or human rights organizations; three years after its creation, the prosecution unit in charge of investigating crimes during the conflict had not presented a single accusation before Guatemalan courts for serious crimes during the armed confrontation (Impunity Watch, 2008).

Only a handful of cases have been tried, and many are languishing because of delaying tactics, indifference, and corruption (ICTJ, n.d.).¹⁶ Given the lack of

15 Well known is the case presented by Rigoberta Menchú in 1999 before a Spanish court, in which three former presidents and high civilian and military authorities were accused of genocide, torture, terrorism, summary executions, and arbitrary detentions (Scott, 2009; Oglesby & Ross, 2009). The Court issued a warrant for the arrest of the accused, although none were extradited or sent to prison (Sanford, 2008).

16 The criminal justice system has only sentenced the perpetrators of three of the more than 600 massacres documented by the Report (Impunity Watch, 2008). In September and December of 2009 the first condemnatory sentences for disappearance were issued against a former member of the PAC and a former army colonel, respectively. In 2011, four ex-members of the *Kaibiles*, the Guatemalan army's elite group, were sentenced to 6060 and 6066 years in prison for the *Dos Erres* massacre. On 20 March 2012, a former military commissioner and four former members of the PAC were sentenced to more than 7000 years of imprisonment. And on 13 May 2010,

interest and/or the incapacity of the system, many cases have been taken to the regional system of justice or to courts in other countries. By 2009, more than 100 human rights cases had been presented to the Inter-American Court of Human Rights, which cannot determine individual criminal responsibility, and it is not always clear if the state accepts responsibility for obstruction of justice or for crimes committed (Oglesby & Ross, 2009, p. 32).

Nevertheless, these cases have a significant impact. In the case of the Plan de Sánchez massacre, the Court ordered the Guatemalan state to acknowledge publicly its responsibility and to rehabilitate the 317 survivors, to investigate the facts, and to bring charges against the masterminds and perpetrators (Goldstein, 2006). It must be highlighted that, “for the first time in its history,” the Court ruled that a genocide had taken place, and that the Guatemalan government, also for the first time, admitted that there was a “genocidal policy” in the campaign against the Mayan people (ICTJ, n.d.). In the case of Myrna Mack, the Court’s verdict led to the confirmation of the sentence against colonel Juan Valencia Osorio, the only case up to that moment in which a high-ranking army officer had been found guilty of human rights violations during the war (Goldstein, 2006). Very probably, the process in Spain influenced the decision to try Ríos Montt in Guatemala.

Despite the obstacles, progress in judicial human rights cases has generated confidence and encouraged groups of victims to strengthen their own expectations of justice. The number of cases investigated and imputations have increased in recent years, although the same is not necessarily the case with the number of indictments and sentences (Impunity Watch, 2013).

Conclusions

The experience of the CEH provides some valuable lessons. First, it is important to not focus exclusively on documenting crimes, but to examine also the systemic causes and structures that allowed the brutality to occur. Second,

General Ríos Montt was found guilty of genocide and crimes against humanity by a Guatemalan court and condemned to 80 years, although ten days later Guatemala’s Constitutional Court revoked the sentence (FIDH, 2013).

lacking incentives such as the granting of amnesties or sentence reduction in exchange for truth, perpetrators will seldom be willing to cooperate, revealing their role in or knowledge of the events. This ethical and political dilemma is almost unavoidable in transitions controlled by power holders. Third, given the difficulties in documenting what took place during so many years, it is important to rely on the work of organizations that have been registering the facts. Fourth, even in the most optimistic scenario, a truth commission, by itself, cannot generate a culture of respect for human rights or produce the necessary transformations to safeguard them. Fifth, it cannot generate either a unified version of the truth or impede the circulation of versions that contradict the interpretation of the report, especially regarding the causes of the conflict. Thus the need to develop a consistent process of socialization of the findings and recommendations. Seventh, it is necessary to support local initiatives of reconciliation. Finally, it is imperative to promote processes that are sensitive to social and cultural contexts.

In the final balance, the CEH had differentiated impacts on various levels of Guatemalan state and society. Without any doubt, the most important were allowing victims to talk about their suffering, and producing a record of facts that, while dignifying the victims, contradicts the military's official version. In the end, the CEH provided an important point of departure for transformations conducive to a peace based on justice, recognition of differences, and respect for human rights.

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3 Peru: A glass half empty or half full of truth and reconciliation?

Miguel Barreto Henriques¹

Introduction

The Truth and Reconciliation Commission of Peru (CVR), carried out between 2001 and 2003, stands out in Latin America, as it incorporated several relevant elements that reflect not only the specificity of the Peruvian social and conflict scenario, but also some of the characteristics of a new transitional justice and truth commissions (TC) paradigm in the world.

This chapter aims to analyse the conception, implementation, and impact of the TRC, particularly in what concerns truth, memory, reconciliation, and justice. It will be argued that, despite the TRC's valuable work in terms of research and the presentation of a new truth on the armed conflict and on the abuses committed in the country, the Commission faced obstacles that prevented it from acquiring a public and popular dimension. It was also unable to promote reconciliation processes.

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Methodologically, it is based on secondary sources, as well as on fieldwork conducted in the city of Lima in December of 2015, composed of eleven interviews with former commissioners, academics, members of human rights organizations, and other key players linked to the CVR. The Information Centre for Collective Memory and Human Rights, which collected the CVR archives, was also consulted.

The conflict context

At the time when the country was beginning a process of democratic transition, the shadow of late Maoism fell on Peru in 1980, at the hands of the Communist Party of Peru-Shining Path. Its first political action—hanging dead dogs at various streetlights in the city of Lima, with slogans such as ‘Long live the Cultural Revolution’—already showed the violent and terrifying characteristics that were iconic of this armed group, whose purpose was to apply a notion of prolonged popular war against the State in Peru.²

The state's response, although initially was insufficient and uncoordinated (Theidon, 2004, p. 28), ended up being equally violent. A wave of counterinsurgent repression was sown in much of the Peruvian national territory that would plunge the country into two decades of armed conflict (1980–2000), which would leave 69,000 dead, half a million displaced, and serious violations of human rights that are attributable to both the Shining Path and the armed forces (CVR, 2003).

Two players were then added to this panorama. First, there was a second guerrilla group, the Tupac Amaru Revolutionary Movement (MRTA), that was less violent in nature and inspired by guevarist ideals. Secondly, there was the so-called *Comités de Autodefensa* or *Rondas Campesinas Contrasubversivas*, which were paramilitary groups that were allegedly charged with protecting communities from insurgent violence, but they were also responsible for serious violations of human rights. However, we should also interpret this conflict within the framework of structural causes, as it fed on the deep inequities ex-

2 In 1988 they announced that “the triumph of the revolution will cost one million dead” (CVR, 2003).

perienced in Peru at the socioeconomic, ethnic and territorial level, and which have been visible since colonial times in the asymmetries between whites and Indians, and between the capital of Lima and the provinces.

Despite its limited social base, the Shining Path managed to fill some of the power gaps in the rural territories, where there was a precarious state presence. These areas became the main conflict scenario, with its epicentre in the Ayacucho region (CVR, 2003, p. 129). However, although this guerrilla group conceived the conflict in Peru as a peasant war against the state, in practice what was at stake was widespread violence between peasants and their communities (CVR, 2003). In fact, the conflict had a differentiated impact and presence, not only at a social level, but also at a territorial one. According to the CVR (2003, p. 169), 79% of reported victims lived in rural areas, and 75% spoke indigenous languages such as Quechua. Regarding the cities, violence would come mainly through terrorist bombings, but also of targeted assassinations and sabotage.

In the 1990s, two events significantly changed the dynamics and direction of the conflict. Firstly, Alberto Fujimori came into power and established an authoritarian and repressive government, which applied a ferocious counter-subversive strategy, particularly through military support for the *rondas campesinas*. However, this policy was not limited to insurgent groups, and was extended to social organizations and leftist movements, resulting in serious violations of human rights. Following that, the leader of the Shining Path was captured in 1992. The centralism and verticality of the organization, headed by Abimael Guzmán, proclaimed itself to be “the fourth sword of communism”—after Marx, Lenin and Mao Tse Tung—resulted in a gradual collapse and disappearance of the guerrilla.³

Thus, contrary to what has been the global trend in the last three decades (Fisas, 2013), the outcome of the conflict was the result of a military victory

3 However, in some remote areas of the country there are still active cells of the Shining Path, which have carried out several armed actions in the last decade, although without the capacity to defy public order (CVR, 2003). A similar situation occurred with the MRTA, particularly through the capture in 1992 of its leader Víctor Polay Campos (González, 2006).

and not of a negotiated political solution. The Shining Path was defeated by the military and police response from the State, but also by its inability to mobilize political and social sectors for its cause (CVR, 2013). Likewise, the end of the conflict was due to the dismissal of President Fujimori in 2000, which allowed democracy to be restored, stopping the violence and repression with which the government was associated.

Context of the TRC

The creation of the Truth and Reconciliation Commission in Peru in 2001, one year after the formal end of the armed conflict, is a relatively atypical case at the international level. It was not the result of a negotiation process and a peace agreement, but of a military defeat of the insurgency with imprisonment for its main leaders, a factor that conferred very specific dynamics to the process.

Furthermore, the establishment of the commission must be understood in the context of a change in the political scene in Peru, motivated by the departure of President Alberto Fujimori, in 2000 who was involved in a corruption case. This opened a political window that was used by interim President Valentín Paniagua (2000–2001) to launch a truth commission, later renamed the Truth and Reconciliation Commission (CVR), during the Alejandro Toledo administration.⁴ This body was created in order to turn the page of the armed conflict in the country and to clarify the facts of violence and human rights violations perpetrated in the previous 20 years.

Civil society organizations, such as the *Coordinadora Nacional de Derechos Humanos*, also significantly contributed to this process, as it had placed the human rights violations committed during the conflict on the country's political agenda. In fact, various social organizations actively participated in the conception of the CVR and in the discussion of its mandate. The Commission had a two-year term (2001–2003) and was based on a broad mandate, which included the main aspects and objectives developed by truth commissions over the last twenty years: truth finding, analysis of the causes of the conflict, and the

4 In addition, the number of commissioners was enlarged from seven to twelve.

proposal of recommendations that would guarantee its non-repetition. Thus, the following aspects were formally defined in the CVR mission:

to clarify the nature of the process and the facts of the internal armed conflict in the country, and to determine the responsibilities resulting from the multiple violations of fundamental rights that occurred between 1980 and 2000, perpetrated by the terrorist organizations [sic] – Communist Party of Peru – Shining Path and the Tupac Amaru Revolutionary Movement, and by agents of the State. (CVR, 2003, p.19)

The violent acts that were investigated included killings, abductions, enforced disappearances, torture, as well as violations of the collective rights of indigenous communities (Degregori, 2014, p. 126).

The CVR exhibited a commitment to “analyse the political, social and cultural conditions” that contributed to the situation of armed violence, as well as “elaborate proposals for reparation and dignification of the victims and their families” and to “recommend institutional, legal and educational reforms” (CVR, 2003, p. 26). However, compared to other commissions in the world, its objectives and mandate in terms of promoting justice and reconciliation were relatively tenuous.

Regarding its composition, the CVR was composed of twelve Peruvian commissioners from different academic, social political and ideological backgrounds (such as the Church, Armed Forces, universities, and NGOs). The selection process was based on technical, ethical, and political criteria valuing a recognized trajectory within the Peruvian society.⁵ These elements conferred a multidisciplinary nature to the CVR, with balance and complementarity in its work team, as well as technical and academic rigor in its research.⁶

5 Although social participation was decisive in the genesis of the CVR, the choice of commissioners was fundamentally located at the governmental level.

6 However, some sectors of Peruvian society, such as the Army, perceived the Commission as largely a left-wing organism. For that reason, they criticized its composition alleging that its conclusions reflected an ideological bias.

The population's access to the commission was promoted through different instruments. In the first place, inspired by the Guatemalan truth commission experience (see Chapter 2), a model of decentralization and territorial approach was applied, so that testimonies could be collected in the field. To achieve this, the CVR diversified into five regional and ten subregional headquarters, which allowed its scope not to be restricted to the macrocephaly of Lima and to reach the territories where the armed conflict was truly felt with greater intensity. In addition to that, mobile teams were set up to collect testimony from victims on the ground. Secondly, public hearings were implemented, an instrument replicated from the TRC experience in South Africa, which was applied for the first time in Latin America in Peru (Hayner, 2011, p. 219).

The research dynamic was based on a broad definition of victim and violent facts, not excluding any significant dimensions or acts of the armed conflict (Hayner, 2011, p. 266). These included killings, extrajudicial executions, internal displacement, massacres, abductions, enforced disappearances, torture, inhuman treatment, but also violations of collective rights, especially of the indigenous communities (Degregori, 2013). Thus, the direct, structural, and cultural dimensions of violence were somehow reconciled and interconnected (Galtung, 1996). In regards to its human and financial resources, the CVR had a team of 800 people (Amnesty International, 2004, p. 5) and a relatively modest budget of USD \$13.5 million, partly derived from international cooperation (Hayner, 2011, p. 270).

The final report of the CVR, composed of nine large volumes, was published on 28 August 2003 and included the main findings in terms of truth investigation, as well as recommendations for reparations to victims and to guarantee the non-repetition of violence and abuses.

It especially emphasized the importance of addressing the needs of the most affected and vulnerable social groups, through institutional reforms, the promotion of the presence of the State and its services throughout the national territory, respect for cultural diversity, citizen participation, protection of human rights, and better access to the justice and education system (CVR 2013, p

112). Likewise, a comprehensive reparation plan for the victims was proposed, as well as a National Anthropological-Forensic Investigation Plan in order to conduct a search for more than 7,000 people who disappeared during the armed conflict.

However, the level of implementation of the recommendations was not extensive. According to a study by the Legal Defence Institute in Peru, only 17% of the CVR's proposals were satisfactorily met (Notimérica, 2007). With the exception of the reform to the military forum, few proposals were taken into account.⁷ Although monitoring mechanisms were proposed, such as an Inter-Institutional Workgroup and a National Reconciliation Council, the work of the CVR was hampered by its inability to promote or implement its recommendations after the end of its mandate.

Truth: an academic success, a political failure

One of the primary functions of a truth commission is to provide a space for giving the victims a voice, from which truth emerges and its pain and dignity are recognized. During the two years of its activity, the CVR collected 17,000 testimonies (most of them being victims, but also members of the Shining Path, MRTA, the armed forces and the different political parties). It also organized a number of public hearings, in which more than 400 testimonies relating to serious human rights violations were openly broadcast through some media outlets, as well as thematic hearings on specific issues such as 'anti-terrorist' legislation, internally displaced people and women. However, this instrument, which had its origin in the South African experience, was readapted to the Peruvian context. Sofia Macher, a former commissioner, stresses that "its religious and trial dimension" was removed.⁸

The results of this truth investigation process were remarkable. The CVR's final report identified more than 69,000 dead or missing during the armed conflict, 54% of whom were attributed to the Shining Path and 37% to state

7 Interview with Felix Reategui, Lima, 07.12.2015.

8 Interview with Sofia Macher, Lima, 10.12.2015.

security forces (Hayner, 2011, 37). This data largely shaped the construction of a new 'truth' and narrative about the armed conflict in Peru. On one hand, the report identified the doubling of victims estimated and counted so far. On the other hand, the novelty offered by the CVR was to categorically reveal the role of public forces in the perpetration of violence during the conflict, a situation that had never been publicly recognized and even today is a very sensitive issue in Peruvian society.

The work of the CVR contributed to the production of a more balanced and less manichean view of the armed conflict in Peru. Even if it blames the Shining Path for the outbreak of war, it did not conceal the serious human rights violations committed by state agents. Besides, the term 'terrorists' was not systematically used to characterize subversive groups, as it is still common in Peru to this day.

Moreover, the CVR conclusions showed a socially and regionally differentiated incidence of the armed conflict: 40% of the dead and disappeared were concentrated in the Andean region of Ayacucho (CVR, 2003). Likewise, the vast majority of the victims belonged to very poor and disadvantaged socioeconomic strata, 75% of them being indigenous, peasant, and Quechua speakers (CVR, 2013).

Therefore, as the CVR underlined, the armed conflict must not be understood exclusively by the analysis of its agents, but also through the structural conditions that generated it, reflected in the state's precariousness and neglect in significant parts of the country and in the deeply rooted racism in Peruvian society. The direct violence of the armed conflict was significantly intertwined with the structural and cultural violence of the country.

The case studies presented in depth by the CVR in its final report revealed this panorama of violence, enclosing a symbolic representativeness in sociological and regional terms, by making the fundamental issues of the conflict visible—drug trafficking, for example—as well as those most affected by violence social groups and territories, such as indigenous communities and the Ayacucho region. However, even if the

CVR's work in the field of truth was very positive, its impact on Peruvian society was limited.

As Gabriel Arriarán (2011) points out, there was a gap between an academic success and a political failure. The CVR's narrative on the armed conflict challenged the 'official truth' portrayed by public institutions and the armed forces, as well as the widespread popular perception in Peru, which is why its work was not able to create roots in the collective memory.

Nevertheless, in a country where the majority of the population lived the armed conflict through the distant window of their television screens, there was a reality that was rediscovered that had been hidden for many.⁹ It functioned, in a way, as a bridge and mechanism of reconciliation between what the Peruvian writer Vargas Llosa called the 'two Perus,' referring to those very different countries that did not know each other.

Moreover, the work of the CVR contributed to the creation of a comprehensive reparation plan for victims, which has been considered by many as an international benchmark. This plan assumed unique characteristics in its conception, as it sustained on a multidimensional approach, that integrated reparation and support to victims in different areas, such as mental healthcare, education, housing access, and restitution of citizens' rights (Macher, 2014, p. 113). It also included both collective and individual, economic and symbolic reparations.

Reconciliation: more of a TC than a TRC

The TRC in South Africa conveyed the idea that truth is the path to reconciliation. However, the experience of the CVR in Peru shows us that this path is neither linear nor simple and it's full of stones and obstacles. Peru's CVR

9 Peruvian researcher Giselle Huamani says "no one in Lima knew that there was an armed conflict in Peru until a bomb exploded in Miraflores (upper class neighborhood)" (interview with Giselle Huamani, Lima, 09.12.2015). This urban, racist and classist bias in the perception of conflict not only concealed the true dimension of armed violence but also contributed to the lack of understanding of its causes, dynamics, problems, and actors.

functioned as a truth commission, but manifested many shortcomings in its work for reconciliation. The limitations of the CVR at this level are visible in the fact that, according to a survey, 61% of Peruvians maintain that the country has not been reconciled (La Republica, 2013).

In fact, the Peruvian commission was more of a TC than a TRC. Its focus and mandate concentrated primarily on the topic of truth, which is evident in the very fact that its original designation was only 'Truth Commission,' having subsequently added the term reconciliation.

Although the Council of Ministers supreme decree of 2001 that gave birth to the CVR established as one of its essential objectives "to lay the foundations for a profound process of national reconciliation," the conception of reconciliation that it conveyed was minimal and could easily be confused with the same notion of truth. It focused essentially on the clarification of violent acts and their causes as a basis for the reestablishment of justice and a prelude to reconciliation (CVR, 2003, p. 27).¹⁰ The primary emphasis of the CVR was not to reconcile armed actors, or victims and perpetrators. Nor did the Commission direct its efforts toward the notion of forgiveness, as did Desmond Tutu in South Africa's TRC. Proving this to be evident was the public hearings methodology that was put into practice. Contrary to the South African case, at no time in the public hearings in Peru did the victims confront their perpetrators, or were they questioned whether they would be available to forgive and reconcile with their offenders.¹¹

The CVR conveyed a structural conception of reconciliation essentially, which emphasized the need to address the structural, political, institutional, socio-economic and cultural conditions that generated and fuelled the armed conflict. Salomón Lerner, director of Peru's CVR, portrays reconciliation as the "re-foundation of the social pact." Similarly, former commissioner Carlos Tapia

10 The TRC report stated that "The process of reconciliation is made possible, and it is necessary, through discovering the truth of what happened in those years - both recording violent acts and explaining the causes that produced them, as well as by the means of reparative and sanctioning justice" (CVR, 2003, Volume IX.1).

11 Interview with Sofia Macher, Lima, 10.12.2015.

argues that the main dimension of reconciliation that Peru needs “is between the state and the peasant, isolated and victimized.”¹²

For the CVR, as it was emphasized in the recommendations of its final report, to generate conditions of social, racial and gender equality across the national territory is the fundamental precondition for national reconciliation (Amnesty International, 2004, p. 6). The CVR defined reconciliation as “overcoming the forms of discrimination that permanently victimize large sectors of the population and prevent Peruvians from recognizing and celebrating our diversity” (CVR, 2017).

This notion converges with one of the most famous testimonies collected by the CVR in a public hearing in Huanta. Abraham Fernández Farfán, a peasant leader from Ayacucho, expressed his expectations regarding the work of the CVR as follows: “May this Commission of Truth, this investigation, in the long run lead us to a life of equal rights; hopefully ten or fifteen years from now, we too will be considered as Peruvians” (CVR, 2016). To a large extent, what was at stake in this meaningful and symbolic speech was the reconfiguration of Peru’s political community.

Thus, the reconciliation instruments proposed by the CVR were essentially to repair the victims and to address their needs at an economic and social level. Some of their recommendations were integrated in the *Plan Integral de Reparación* (Comprehensive Reparation Plan), whose specificity was precisely its economic and collective reparations model.

However, according to Sofia Macher’s (2014) study on the level of implementation of the CVR’s final report recommendations, the level of compliance was unsatisfactory in all reparation areas. Actually, many victims in Peru did not feel that there was true reparation and perceived the state program as development measures that did not specifically target their status as victims of human rights violations (Laplante, 2014, p. 22).

12 Interview with Carlos Tapia, Lima, 11.12.2015.

Another important instrument in this area was the creation of a National Council for Reconciliation, designed to promote and monitor the CVR's recommendations. In the non-material field, President Toledo's apology was politically symbolic, assuming the State responsibility in the abuses committed during the conflict. Former President Fujimori also apologized to the victims during his trial (ABC, 2007), as well as Peter Cárdenas, former MRTA leader (El Comercio, 2015). However, these were relatively isolated cases, with no similar positions being embraced among the main players in the violence, whether on the side of the State or the subversive groups.

Memory, a place of dispute

The truth commission in Peru was itself a highly symbolic and meaningful instrument of memory. Likewise, its final report constitutes a historical document of great importance, as it presented, rigorously and in depth, an official narrative on the history of the armed conflict that exposed its dynamics, roots, and abuses.

However, memory, like truth, is a place of dispute. The search for truth and the reconstruction of memory are not a mere academic exercise, they depend on the commission's ability to position itself in society and on the political debate, to raise awareness in public opinion and implement its recommendations. Without a comprehensive communication strategy, without the active involvement and compromise of the media and political power, the commission can be reduced to little more than the publication of a document, failing in its political and social purposes.

One of the major limitations that we can identify in the work of the CVR was its reduced media impact, which translated into little impact on the Peruvian society itself. The CVR failed to position itself at the centre of the country's political and social debate, nor to attract the attention of the media¹³ and public

¹³ However, Sofia Macher underlines that, contrary to what happened at the national level, the local press, especially in the regions most affected by the armed conflict, had a closer and significant coverage of the Commission's activities, particularly, the public hearings. Interview with Sofia Macher, Lima, 10.12.2015.

opinion. The CVR's financial resource constraints hampered its ability to be broadcast in the media, especially on private TV channels,¹⁴ while public channels were unable to cover their work in prime time. These elements became an anathema to the CVR, as they left a bitter taste to its work. A national survey by Ipsos Peru acknowledged that only 34% of the Peruvian population heard about the CVR (La Republica, 2013).

But, fundamentally, several political and institutional obstacles restrained the CVR's impact in Peru. Its narrative about the armed conflict, which made visible the abuses committed by the different parties, generated multiple 'antibodies.' The Armed Forces, in particular, suspiciously viewed the work of the CVR from the beginning, so they tried to block the visibility of the abuses committed by the Army in the anti-subversive struggle. An example of this dynamic is the fact that Marciano Rengifo Ruiz, defence minister during the presidency of Alejandro Toledo (2005-2006), boycotted the inclusion of the CVR conclusions in the school curricula.

In fact, to this day there is a dispute in Peru over the memory of the armed conflict. The CVR's narrative did not prevail in Peruvian society and its collective memory, as it conflicted with the institutional narrative of the State and the Armed Forces, with great presence in public opinion and in the common sense.¹⁵

A recent case is deeply revealing this reality. The so-called "Place of Memory, Tolerance and Social Inclusion"—a space in Lima inaugurated in 2015, dedicated to the history of the armed conflict—was the scene of conflict and controversy (Luna, 2014). The government of Alan García initially vetoed the construction of this museum of memory and documentation centre, and later intended to dedicate it only to the victims of terrorism, that is, the victims

14 Interview with Felix Reategui, Lima, 07.12.2015.

15 This panorama is visible in both political and colloquial scenarios. When I took a taxi in Lima during the last presidential elections and the taxi driver told me that he was going to vote for Keiko Fujimori, I confronted him with the human rights abuses committed by Fujimorism. His response was: "No, that's the left-wing people who say that; they committed 1% of what happened." Years after the work of the CVR this is still the widespread perception in the urban centres in Peru.

of the insurgent groups, once again seeking to manipulate the truth and the historical memory of the conflict. Likewise, there were negative reactions to the content of the expositions, which, according to some, equated the Shining Path violence to the role of the Armed Forces, the same 'sin' previously committed by the CVR.

Thus, many difficulties have been experienced in transmitting historical memory from generation to generation. As ex-commissioner Beatriz Alva Hart points out, "if you ask a young man who Abimael Guzmán was he does not know. Why? Because it is not in the history of Peru, it's as if there was a hole."¹⁶ Although some monuments were erected in honour of the victims, the Ombudsman's office constituted a national archive with the CVR documents, and the CVR promoted some memory processes (for example, the Yuyanapaq photographic exhibition), there has not been in Peru a national policy regarding collective memory (Correa, 2013, p. 25). These have been predominantly isolated processes, many of them originating in civil society or local government contexts.

Justice: the thin line between a relative impunity and a "snowball" of justice

Truth, justice, and reconciliation were considered the three pillars of the CVR mission in Peru. The truth-finding process was conceived as an antechamber to walk towards justice and reconciliation. Therefore, the CVR's work contributed to both retributive and restorative justice processes. However, the mandate of the CVR lacked jurisdictional powers and could not replace the judiciary system in its functions. Moreover, contrary to other commissions in the world, particularly in South Africa, the CVR was not conceived to guarantee or propose amnesties. In fact, it was sought to make a difference vis-à-vis the recent past embodied in the amnesty laws promulgated by the Fujimori government in 1995 (annulled in 2001), which were perceived as promoting impunity in the face of state crimes.

¹⁶ Interview with Beatriz Alva Hart, Lima, 09.12.2015.

However, the impact of the CVR on the issue of justice is not negligible. In this area, it is important to emphasize the inclusion within the commission of a unit dedicated to preparing cases for prosecution. Although it is not a unique element at the international level, this measure assumes some relevance in the Peruvian context. Based on its research, the CVR recommended in its final report, albeit in a confidential form, judicial action in 47 individual cases, in which there were strong signs of abuses and violations committed. To this end, several detailed files were directed to the Public Ministry and to the courts.¹⁷

This element is, in theory, a good example of articulation and complementarity between the forms of justice, the work of a commission and the courts. In 2005, trials were launched to address extrajudicial executions, enforced disappearances, and death squads. However, the results were not very convincing. Despite the emblematic condemnation of two high-ranking state officials, Alberto Fujimori and Vladimiro Montesinos; and of the leadership of the Shining Path and the MRTA, few judicial proceedings were opened and even fewer convictions against State agents (Hayner, 2011, p. 38). Among the 47 names mentioned by the CVR, only seven were convicted (Galvis, 2010, p. 16). The armed forces' lack of political will and collaboration with justice blocked the progress of these processes (Laplante, 2007, p. 135), resulting in a panorama of relative impunity.

Nevertheless, the work of the CVR opened a path, generating a snowball in the field of justice. Since 2004 the Peruvian judicial system has issued more than 40 sentences that have condemned approximately 50 members of the army (rightsperu.net, 2016). Thus, there has been progress in this area for which the work of the CVR was fundamental, as was the case of the Inter-American Court of Human Rights. However, for Cano and Ninasquipe (2006, p. 44), the greatest legal contribution of the CVR was not the identification of individual criminal responsibility, but to point out that human rights violations and war crimes were a systematic policy of the State in some regions of the country.

17 Interview with Salomon Lerner, Lima, 09.12.2015.

In addition, there was an institutional response to the recommendations by the CVR concerning the reform of the judiciary, although, according to some, it did not translate into a real improvement of the justice system (Guembe, 2007, p. 216). Moreover, its work was a trigger for a boom in victim organizations,¹⁸ an element that strengthens the human rights landscape in Peru as a guarantee of non-repetition. Likewise, it can be affirmed that there have been significant advances in terms of restorative justice promoted by the CVR. As noted above, the recommendations included in CVR's final report emphasized the need to provide full reparations to victims. This was the basis of a process that, despite some shortcomings and problems, also had its benefits.

Conclusions

The CVR did outstanding work researching and raised awareness of the nature and dynamics of the armed conflict in Peru. It placed the issue of the victims on the political agenda, promoting a 'new truth,' of a more plural, balanced, and nuanced nature in relation to the scope and impact of violence and those responsible for it. It also served as an impulse for processes of justice and social mobilization in the field of Human Rights, sowing seeds that have left fruits and a path in Peruvian society.

However, the remarkable work the CVR did in favour of historical truth did not fully materialize into a political and social truth. Its technical and academic successes were up against a relative political and public failure. It did not fully achieve the intended outcome where Peru would look at itself in the "mirror of truth" (Beristain, 2002, p. 100), as a collective exercise of catharsis rediscovering its history and its victims. Although the CVR put its finger on the wound, it faced obstructions, particularly the armed forces, as well as a limited media exposure, which mitigated its political and social impact. Part of the population in Peru lives in denial, rejecting the political responsibilities of the State in armed violence and human rights violations, which perpetuates a manichean and one-dimensional narrative of the armed conflict. The fact

18 Interview with Sofia Macher, Lima, 10.12.2015.

that Keiko Fujimori was so close to winning the 2016 presidential election is evidence of that.

Likewise, its impact is also mitigated in terms of reconciliation. The opposite political poles in Peru were not brought closer and the majority of the population did not reconcile with its history. But the message that the CVR conveyed in this field was deeply significant: reconciliation as a redefinition of the political community in which all Peruvians were entitled to equal rights regardless of their geographical location, socioeconomic status and ethnicity.

Thus, assessing the CVR could lead us to the old image of the glass half full or half empty. On the one hand, we can value the great contribution that the Commission made in favour of truth, the processes it fostered in terms of justice and historical memory, as well as the proposals for national reconciliation that it put on Peru's political agenda. But on the other hand, it is possible to underline its uncharted territory: its limited impact on different social and political scenarios, its great difficulty in passing on its message, the reduced influence of its work in favour of reconciliation, and the obstacles the CVR faced in the Peruvian society.

The fact that the Peruvian CVR was created in the context of a moderate political transition and a military victory over the insurgency—not the product of a peace process—contributed to the perpetuation of the instituted powers, particularly of the Armed Forces, which tied down the CVR. To this day, this factor structures a post-conflict scenario in Peru, in which the processes of truth, historical memory, justice and reconciliation are subject to constraints, limitations, disputes, advances, and setbacks. But, undoubtedly, there is a before and after with the CVR. Its work left a mark and a legacy in the country over the last two decades, contributing to a deeper and more balanced understanding of the armed conflict, to giving voice and visibility to the victims and to strengthening the human rights panorama.

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4 Timor-Leste: The power and limitations of traditional reconciliation

Johannes Langer

Introduction

After the 1999 violence, Timor-Leste established a system of complementary transitional justice mechanisms, namely a tribunal and a truth and reconciliation commission that worked side by side. The United Nations (UN)—while administrating Timor-Leste (1999–2002)—pushed for a truth commission and the new East Timorese complied. The Community Reconciliation Process (CRP) inserted a strong restorative justice component into the truth commission based on traditional justice at the grassroots level. This chapter focuses on the Commission for Reception, Truth and Reconciliation (CAVR) in its Portuguese abbreviation), and does not include the bilateral truth commission that was set up with Indonesia after CAVR concluded. Eight expert interviews inform this chapter, namely from Susana Barnes, Hugo Maria Fernandes, Lia Kent, Ben Larke, Piers Pigou, Kathryn Robertson, Simon Robins, and Pat Walsh.

Context

Timor-Leste became a trading post in the 16th century at the periphery of the Portuguese colonial empire. With the exception of the Japanese invasion during WWII, Portugal continuously controlled the eastern part of Timor, while the Netherlands ruled the western part of the island. After the 1974 Carnation Revolution, Portugal agreed to hand over its part of the territory and allow for self-determination. As a result of this new freedom, Timorese political parties were rapidly established. One of these parties was the Timorese Democratic Union (UDT), which was conservative and sought gradual transition to independence from Portugal. In opposition to the UDT, the socialist Timorese Social Democratic Association (ASDT) wanted immediate independence, and soon changed its name to Revolutionary Front for an Independent Timor-Leste (Fretilin). The political differences between the two parties led to violent tensions, and in August 1975, a short civil war erupted that caused 1,500–3,000 deaths (CAVR, 2013a, pp. 163–188).

In the civil war, Fretilin quickly gained the upper hand and declared Timor-Leste's independence on 28 November 1975. This signal towards independence was a desperate but futile effort to gain diplomatic support from the international community. Indonesia invaded the new republic nine days later and Timor-Leste became the 27th province of Indonesia in May 1976, arguing that all Timorese were now united and that the artificial separation of the island was finally over (Strating, 2014a, p. 483). The international community, and particularly the West, remained silent because of Indonesia's strategic importance to its anti-communist policies. Indonesian occupation therefore became accepted, despite some UN condemnations (Simpson, 2005, pp. 288–290).

The main actors in the violence that followed were Fretilin—and its military wing, the Timorese National Liberation Army (Falintil)—and the Indonesian National Armed Forces (TNI). Falintil withdrew to the mountains due to its relative military weakness and continued its armed resistance with guerrilla tactics against the Indonesian occupiers. The first four years of occupation were particularly bloody and oppressive, resulting in forced starvation, massacres, bombing raids, and military operations. Despite its Marxist ideology, the

Timorese resistance did not receive much support from other Communist states. With Xanana Gusmão as a leader, Fretilin changed its ideological outlook and unified the Timorese opposition around a more inclusive nationalist platform (CAVR, 2013a, p. 246). They organized student protests in the 1990s, which the Indonesian military brutally suppressed, such as the 1991 Santa Cruz massacre.

The economic recession of 1998 led to the fall of the Indonesian dictator Suharto, who had been in power for 31 years. His successor, B.J. Habibie, drastically changed the government's strategy towards Timor-Leste, and he promised that the East Timorese would decide their future in a popular referendum. However, the security situation in Timor-Leste deteriorated and pro-Indonesian paramilitary groups (trained and armed by the TNI) increased their violent activities (CAVR, 2013a, pp. 290–297). On 30 August 1999, 78.5% of East Timorese voted in favor of independence (Sebastian & Smith, 2000). When the results were announced, a new wave of violence spread through Timor-Leste, destroying large parts of the infrastructure, and displacing three quarters (550,000) of the total population—including the exodus of 250,000 people to Indonesia (Pushkina & Maier, 2012). A total of 1,500–2,000 East Timorese were killed throughout 1999, but direct military conflict was avoided because of the Timorese resistance's ability to corral its troops.

The situation became so dire, that the international community forced the Indonesian government to accept an Australian-led peacekeeping operation. Soon afterwards, the UN Transitional Authority in East Timor (UNTAET) was established, the largest UN operation in history at the time.¹ UNTAET was tasked to administer a country with no pre-existing institutions (Chawla, 2001). In August 2001, Timor-Leste held elections to convene a Constitutional Assembly, and in May 2002, it gained its independence, the last step to overcoming the 24-year-long Indonesian occupation.

1 A critical discussion of the UN in Timor-Leste is provided, among others, by Richmond and Franks (2008).

Setting up the truth commission

After the 1999 violence in Timor-Leste, the international community asserted that transitional justice mechanisms would be necessary for the new country. Although the transitional East Timorese resistance umbrella, the National Council of Timorese Resistance (CNRT), formally agreed, it was UNTAET that pushed for a tribunal and a truth commission. For the UN, the transitional justice measures legitimized Timor-Leste's 'linear transition' towards a liberal democracy (Kent, 2013, p. 49).

Demanding retributive justice, setting up a truth commission

In 2000, CNRT called for an *ad hoc* international criminal tribunal, similar to the ones for the former Yugoslavia and Rwanda. Indonesia's Human Rights Commission, key international NGOs, and experts working for the UN also appealed for an international tribunal. The UN and the Timorese leadership, however, did not welcome the calls. This reaction was due in part to international fatigue about expenses and the slowness of the tribunals, but primarily to concerns about antagonizing Indonesia, whose military still maintained significant power, including the capacity to destabilize Timor-Leste. The UN was also interested in using Timor-Leste as a testing ground to understand how a tribunal and a truth commission could work alongside each other, similar to the set up in Sierra Leone (see chapter 5). The tribunal was an internationalized hybrid model. Two international judges and one East Timorese judge headed the Special Panels of the Dili District Court (Reiger & Wierda, 2006).

The Human Rights Unit of UNTAET established and coordinated the Steering Committee—including leaders from CNRT, the Catholic Church, and CSOs—responsible for setting up CAVR. This process included consultations with Timorese civil society in all 13 districts over four months, which found widespread community support. With the help of the UN, the transitional government organized a workshop in October 2000 in the East Timorese capital, Dili. The International Center for Transitional Justice (ICTJ) helped set-up the Commission for Reception, Truth and Reconciliation (CAVR)

(Roosa, 2007/2008b, p. 570) and brought in Priscilla Hayner—one of the foremost international advisors on truth commissions—and Paul van Zyl, the former executive secretary of the South African Truth and Reconciliation Commission (TRC). These international advisors were key in setting up and shaping CAVR.

CAVR was ‘unusual,’ as Roosa points out, due to the absence of the occupying power (Indonesia), whose troops withdrew following the 1999 referendum on Timor-Leste’s future. In contrast to other truth commissions that focus on actors within a country, CAVR inquired into human rights violations committed by the Indonesian military. Consequently, the main perpetrators—Indonesian army officers—did not testify, thus reducing the reach of CAVR; however, they were not able to spoil the process either (Roosa, 2007/2008a, pp. 564-565).

Participation in setting up the truth commission

The Timorese political leaders were initially skeptical about a truth commission. President Gusmão stated in an interview in March 1999 that he was against a possible truth commission because it would be “too divisive” (Gorjão, 2001, p. 149), stressing the need for his country to move on and foster reconciliation. Some civil society organizations (CSOs) argued that justice should be emphasized and not reconciliation.² Yet, civil society in Timor-Leste after the Indonesian occupation was very weak and sparse, mostly based in Dili.³ In the wake of the violence following the referendum, Gusmão changed course and backed a South African-like commission with an emphasis on amnesty (Gorjão, 2001, p. 150).

In July 2001, UNTAET created CAVR with the unanimous support of CNRT, making it the first truth commission where the UN not only provided assistance to a commission, but also set one up (Stahn, 2001). The actual operations of CAVR started in April 2002 with a time frame of two years. However, the

2 Skype interview with Lia Kent, 29 June 2015.

3 A general discussion of the role of Timorese CSOs can be found in Wigglesworth (2012) and the relation of civil society to CAVR I have discussed elsewhere (Langer, 2015).

East Timorese parliament later extended CAVR mandate to 42 months. The choice of the former Comarca prison as CAVR national office was symbolic because East Timorese political prisoners were kept there during Indonesian occupation (CAVR, 2013a, p. 49). Within its operations, CAVR committed to victim-friendly policies. The truth commission was completely dependent on foreign aid because the East Timorese government was not operational when CAVR was established and later did not have the resources to financially support it. Throughout CAVR's existence, outreach programs aimed for widespread community participation. It produced a weekly radio program and broadcast its national public hearings live on radio and TV (Kent, 2013, p. 92).

Mandate and commissioners

The CAVR mandate included eight tasks with a focus on truth seeking, the facilitation of reconciliation, and writing a final report with recommendations that covered the period of political conflicts between April 1974 and October 1999, including the intra-Timorese violence of 1975. In its truth-seeking exercises, the commission was mandated to identify 1) the extent, nature, and causes of human rights violations; 2) persons and organizations involved; 3) whether violations were the result of deliberate planning, policy, or authorization; and 4) accountability for violations (CAVR, 2013a, pp. 73–74). The process included elements of legal practices and traditional conflict resolution practices, linked with lessons learnt from the South African TRC. This work compromised four operational stages: 1) preparation and program initiation; 2) peak field operations; 3) scaling down and finalization of field operations; and 4) report writing (Pigou, 2004, p. 40).

In January 2002, six months after an interim office began operations, seven national CAVR commissioners were sworn in.⁴ In addition, in May 2002, 29 regional commissioners were appointed to six regional offices across the country. The selection process, which was led by a special committee and

4 Aniceto Longuinhos Guterres Lopes (chairperson), Jovito Rego de Jesus Araujo (vice-chairperson), Maria Olandina Isabel Caeiro Alves, Isabel Amaral Guterres, Jose Estevao Soares, Agostinho de Vasconcelos and Jacinto das Neves Raimundo Alves who represented a diverse spectrum of views and were recognized for their independence. Two out of the seven commissioners were women.

involved many NGOs, was perceived as fair (or at least no active criticism was raised).⁵ Nonetheless, some of the commissioners were viewed as lacking motivation and energy, and two regional commissioners were controversial.⁶

At the beginning of its operation (between April and July 2002), CAVR finalized its operational methodologies and recruited staff. The vast majority of staff was Timorese, often drawn from CSOs. International advisors and consultants had considerable influence on the hiring process, which often led to internal discrepancies.⁷ Moreover, local staff—many of them just high school graduates—was only trained for three months. Some critics considered this brief period of instruction to be very basic and “completely unrealistic” for the work ahead.⁸ While outside technical help came from other truth commissions, local staff did not have enough time to absorb their knowledge.⁹

The final report and its reactions

The final report entitled *Chega!* (Portuguese for ‘no more,’ ‘stop,’ or ‘enough’) contained over 2,500 single-spaced pages. It was completed on 31 October 2005, but made public only in early 2006.¹⁰ *Chega!* was written under pressure, not least because of the challenges of translating the text into Portuguese for presentation to parliament, which allowed limited consultations with CSOs and the government about recommendations.¹¹ The final report was published in English, Indonesian, and Portuguese, but not in the local language, Tetum.¹² In November 2005, *Chega!* was presented to parliament; President Gusmão welcomed the report, but he called its recommendations ‘idealistic.’ The 2006–2007 crippling political crisis and violence effectively shut down

5 Skype interview with Lia Kent, 29 June 2015.

6 Skype interviews with Hugo Fernandes, 23 June 2015 and Ben Larke, 23 June 2015.

7 Skype interview with Piers Pigou, 30 June 2015.

8 Skype interview with Piers Pigou, 30 June 2015.

9 Skype interview with Susana Barnes, 26 June 2015.

10 The new English version of *Chega!*, printed in November 2013, even has 3,200 pages. It is also available online at <http://chegareport.net/Chega%20All%20Volumes.pdf>.

11 Skype interview with Lia Kent, 29 June 2015.

12 Tetum is an Austronesian language spoken on the island of Timor and one of two official languages (next to Portuguese) in Timor-Leste.

the government before a significant debate regarding the report could begin. Parliament did not return to the report until 2008 and subsequently failed to act on most of its recommendations until the government took up the final report in 2016.

While CAVR held six stakeholder workshops at the national level, some would argue that civil society and politicians were not sufficiently consulted on the recommendations in the final report.¹³ CAVR's final report includes 204 recommendations that addressed many issues, among them accountability for perpetrators. The report recommended that the UN should institute an international tribunal if Indonesia did not pursue justice. The report also recommended that countries that supported Indonesia militarily during the occupation should apologize and provide reparations (CAVR, 2013a, p. 2576). Arguably, having so many recommendations in *Chega!* turned out to be counterproductive, as it was difficult to focus on any one of them. CAVR seemed to be aware of this problem, and recommendations were directed to specific target groups. However, parliament's preoccupation with the politically challenging recommendations on justice and reparations, and a failure to address other less challenging recommendations, let all target groups off the hook. A post-CAVR technical secretariat (STP-CAVR) was established by the Office of the President as a follow-up institution to CAVR in December 2005.

Getting the truth out in Timor-Leste

For many East Timorese, it was vital to uncover the truth of what happened during the Indonesian occupation.¹⁴ CAVR used several methodologies to reveal the truth, namely hearings, testimonies, oral interviews, household surveys, and a graveyard database. CAVR's approach to truth is a mix of factual and personal truth (CAVR, 2013a, pp. 14–15). In the following, the different ways to get the truth in Timor-Leste are discussed, as well as the narratives that the final report established and how various actors received them.

Multiple methodologies to get the truth

13 Skype interview with Lia Kent, 29 June 2015.

14 Skype interview with Simon Robins, 30 December 2015.

CAVR conducted eight national hearings as well as sub-district and village-level hearings, all of which facilitated testimony from victims. In total, CAVR staff collected 7,824 statements from victims, witnesses, and some perpetrators across the country in all 13 districts and 65 sub-districts (CAVR, 2013a, p. 34). Moreover, six healing workshops were organized in Dili providing space for those victims most severely affected (CAVR, 2013a, pp. 2526–2536). While an impressive number, CAVR did not project how many statements they would actually need.¹⁵ Victims provided their statements to a member of the district team who recorded their stories. The statements varied a lot in quality and duration, some lasting less than an hour while others took many hours.

Most interviewers (known as statement takers) were not well-trained, and many had very basic education. While some statement takers transcribed the whole interview, others only wrote summaries due to the stressful conditions in which they worked.¹⁶ Statements were not cross-checked and CAVR did not conduct any follow-up interviews (Roosa, 2007/2008b). Moreover, statements were not representative, either in age, gender, or ethnicity of Timor-Leste's population. Rather, many statement takers simply talked with those close to them. Yet, CAVR actively used the statements to generate quantitative data in their final report without critically reflecting on it.

Furthermore, CAVR conducted some 1,000 oral interviews with people who held leadership positions, played important roles in events, or were experts on Indonesian and East Timorese history. Additionally, the commission undertook community mapping exercises—referred to as community profile workshops—to tell stories collectively about what had happened in the community over the course of the conflict (CAVR, 2013a, pp. 2544–2560). This profiling exercise started quite late in CAVR's work and was praised as “the most interesting and innovative method of the CAVR's research” (Roosa, 2007/2008b, p. 578). Instead of a meta-narrative, the community mapping focused on the trajectory and experience within the community.¹⁷

15 Skype interview with Piers Pigou, 30 June 2015.

16 Skype interview with Piers Pigou, 30 June 2015.

17 Skype interview with Piers Pigou, 30 June 2015.

Finally, CAVR made extensive use of social science surveys (developed by Patrick Ball and his non-profit Benetech) to tackle the thorny question of how many people were killed during the Indonesian occupation. Benetech surveyed 1,396 households (0.8% of East Timorese households) across the country with the challenge that in some villages no witnesses remained and killings were not evenly distributed. Thus, probability samples do not reflect the events. The graveyard database had its limitations because not all people were buried in proper graves and only half of the sampled grave markers included the name and date of the dead (Roosa, 2007/2008b, pp. 574-576).

Difficulties of getting heard

CAVR actively encouraged and assisted victims to testify in public hearings. Although some victims expected to receive something in return for their statements—as occurred in the government program for Falintil veterans—the truth commission did not have a valorization program for participants.¹⁸ Moreover, victims often did not see the value in sharing their story and experience because they did not anticipate material recognition from the commission in the form of material reparations. During the CRPs, the Victim's Support Unit of CAVR accompanied victims. Sometimes there were also follow-ups by NGOs or religious groups contracted by CAVR to focus on the psychological well-being of victims, although resources were insufficient (Kent, 2013, p. 96).

Despite these efforts, at least four groups had difficulties being heard. First, some victims of Fretilin were ambivalent about participating because they did not want to be accused of being 'traitors' (Kent, 2013, p. 151). Second, CAVR reached out to East Timorese refugees in West Timor. However, it encountered considerable resistance because the pro-autonomy community felt—wrongly—that CAVR would conduct a 'witch hunt' to blame them for the violence of 1999 (Walsh, 2011, p. 181).

Third, some members of the resistance movement who were tortured or imprisoned during the Indonesian occupation did not consider themselves

18 Skype interview with Simon Robins, 30 December 2015.

to be victims, but rather as national heroes (Kent, 2013, pp. 152-153). Consequently, their self-image led them to not participate. Finally, women were not heard as much as men because they are traditionally marginalized in East Timor's patriarchal society. To counter the structural difficulties, CAVR required an 'appropriate' gender representation among its staff and at local panels; yet, women did not participate on the same level (only around 30%) in the truth-telling exercises due to the lack of information and resistance from their family and community (Stanley, 2009, p. 117).

Getting the message across

While CAVR's mandate focused principally on the decolonization and Indonesian occupation period (1974-1999), *Chega!* included a section in its report on Portugal's damaging colonial practices in East Timor. Remarkably, CAVR broke the taboo over intra-Timorese violence between Fretilin and UDT in the 1970s by organizing a special public hearing with key actors who were still alive. According to the truth commission, the hearing allowed the parties to clarify what happened and heal wounds from the past (CAVR, 2013a, p. 186). President Gusmão played an important role on this front, as he pushed other political actors of his generation to participate as well. However, few participants in the public hearing admitted personal responsibility for human rights violations with the exception of João Carrascalão, the instigator of the civil war, who announced that he took personal responsibility for the killings, detention and mayhem of the period.¹⁹ *Chega!* critically analyses Fretilin's role from both the point of view of human rights violations committed by its members and its involvement in building national identity and leading the resistance (CAVR, 2013a, pp. 417-471).

CAVR took a holistic approach to studying the Indonesian occupation from 1975 to 1999, in which it analyzed the structural patterns of abuse, inequality, and discrimination. It focused on grave violations of human rights, how Jakarta set up pro-Indonesian militia groups, and the militarization of East Timorese society (CAVR, 2013a, pp. 363-389). The commission also addressed social

19 Written comment of Pat Walsh, 28 June 2017.

and economic rights, like the misuse of education as a propaganda tool and the lack of socio-economic opportunities (CAVR, 2013a, pp. 2191–2197, 2237–2243). This kind of public truth is of interest to academics, and to some degree the international community. However, for most East Timorese victims it was not the priority; rather they wanted a more personal truth. CAVR—as any other truth commission—was not able to fulfill that desire with *Chega!* as it focused on the structural patterns. While *Chega!* recounted some personal stories, not all of them could be included in the final report.²⁰

Based on the two Benetech surveys, *Chega!* attributes some 84,200 deaths to hunger and illness, while some 18,600 non-combatants lost their lives to unlawful killings or disappearances. In total, the number of civilians who died as a result of war from 1974 to 1999 “could be 103,000 with a possible (but improbable) high-end estimate of 183,300” (CAVR, 2013a, p. 502). This number significantly challenges the previously assumed and widely cited claim that 200,000 East Timorese were killed during the Indonesian occupation (Cribb, 2001).

CAVR did not aim to write a new or authoritative history, but rather to present multiple voices. The commission included non-elite perspectives and addressed the complexities of the past; this sometimes opposed the search for a ‘useable past’ that would account for past human rights violations but not incite revenge. Roosa (2007/2008b, p. 578) criticizes *Chega!* because, instead of an analysis, the report provided long lists of events without explaining why and how they happened. While *Chega!* is certainly a very detailed and comprehensive account of Timor-Leste’s history, more stories can be uncovered of how ordinary East Timorese survived the conflict and the complexities of roles that shifted over time between perpetrator and victim.²¹

The final report and its impact

20 Skype interview with Simon Robins, 30 December 2015.

21 Skype interview with Lia Kent, 29 June 2015.

CAVR needed more time to write the final report and therefore asked parliament to extend its mandate. A major cause of the delay was that no outline had been written early on in the process, “having missed” this advice from ICTJ.²² While Gusmão and José Ramos-Horta contributed in various ways to CAVR (Kent, Kinsella, & Rodrigues, 2016, p. 7), both were critical of CAVR recommendations for reparations because they favored a discourse of heroism instead of victimhood. Moreover, they rejected the recommendation that Western countries that gave military support to Indonesia should pay reparations, as it would be ‘ungrateful’ to ask for that on top of the considerable donor money and diplomatic support given to Timor-Leste during the 1999 crisis.

Although CAVR worked with local CSOs in a number of ways, the commission could have done more to mobilize them throughout the course of its work. If CAVR would have engaged grassroots organizations more thoroughly, CSOs might have had a more complete ownership of *Chega!* after its release.²³ Although local organizations have been the main advocates for action on the truth commission’s findings and recommendations over the past decade, they are just a handful of organizations.

Chega!’s demand regarding Indonesia’s accountability presented a highly political and sensitive challenge. In short, these recommendations clashed with the agenda of the political leadership²⁴ with the exception of international forums where both Gusmão and Ramos-Horta occasionally presented CAVR as an example of successful peacebuilding (Kent et al., 2016, pp. 7–8).

The UN portrayed Timor-Leste as a success story, ignoring underlying tensions in the country. The liberal peace agenda promoted by the international community did not reflect the needs of Timor-Leste. In mid-2006, the UN

22 Skype interview with Hugo Fernandes, 23 June 2015. *Chega!* notes that the structure of the final report was debated in May 2003 after having an initial discussion in January 2002 (CAVR, 2013a, p. 45). This would mean in turn that the structure of the report was not discussed for 16 months.

23 Skype interview with Susana Barnes, 26 June 2015.

24 Skype interview with Lia Kent, 29 June 2015.

was taken by surprise when the capital Dili experienced serious violence triggered by unrest in East Timor's military (International Crisis Group, 2006). Waves of displaced people sought security and shelter while the political parties engaged in a severe power struggle. The upheaval only came to a halt when international forces returned (Brown, 2009, p. 143). Prime Minister Ramos-Horta called for the lessons and recommendations in the new *Chega!* report to be studied to spare the country further violence and unrest. In the short-run, however, the final report did not have an impact of peace in the newly formed country.

Traditional grassroots reconciliation

The reconciliation process in Timor-Leste was called 'unique' thanks to its bottom-up approach based on traditional conflict resolution mechanisms (Pigou, 2004, p. 6). The Timorese leadership favored reconciliation over retributive justice. The Community Reconciliation Process (CRP) combined traditional and modern transitional justice elements that included the power to facilitate reconciliation for low-level perpetrators, a mechanism celebrated in Timor-Leste and the international community. While CAVR was a victim-centered institution, the CRP focused mostly on reintegrating low-level perpetrators.

The Community Reconciliation Process

The local hearings of the CRP followed customary law called *lisan* in Tetum or *adat* in Indonesian. More specifically, the traditional reconciliation ceremony known as *nahe biti boot* (or 'spreading of the mat') is the basis of CRP.²⁵ The ceremony of *nahe biti boot* looks to acknowledge the source of the problem and reestablish the social order of the community (Horne, 2014, p. 26). During the process, the community publicly shames the perpetrator. Afterwards, the victims must be compensated to allow for harmonious relationships and justice (Hohe & Nixon, 2003). However, despite the best efforts of CAVR to

25 A detailed account of CAVR's reconciliation program, its mechanics, the role of *lisan*, and CAVR's reflections on the process can be found in *Chega!* (CAVR, 2013a, pp. 2421–2483).

include disadvantaged groups like women and ethnic and religious minorities, it has upheld traditional power groups.²⁶

The East Timorese leadership very much promoted the discourse of reconciliation. Accordingly, CAVR adapted the *nahe biti boot* process to the CRP, which dovetailed well with many Timorese.²⁷ After a period of socialization in the communities where CAVR looked for grassroots support, statements were taken and then checked by the Office of the General Prosecutor (OGP) to go ahead with the CRP. After the OGP's approval, the CRP organized a public hearing in specific communities to achieve local reconciliation and re-integration of low-level perpetrators who committed 'less serious crimes' like looting or theft.²⁸ CAVR regional commissioners oversaw the hearings that were conducted by a community panel consisting of local leaders, including at least one woman and a youth representative to overcome hierarchical and patriarchal structures.

The panel listened to perpetrators, requiring them to fully admit to their involvement in crimes. This obligation to make a confession was the "opening bid," whereby the community subsequently demanded more information to be revealed until the point where everyone agreed.²⁹ The CRPs therefore produced a "negotiated truth" between the perpetrator and the community.³⁰ The panel brokered the Community Reconciliation Agreement (CRA), which decided the act of reconciliation the perpetrator had to fulfill, such as community service and a public apology; the agreement was followed by a feast or traditional ceremonies. Ultimately, it is impossible to determine whether the apologies were sincere. Nonetheless, deponents had to satisfy the community that they were remorseful and that they would not re-offend.³¹

26 Skype interview with Lia Kent, 29 June 2015.

27 Skype interview with Ben Larke, 23 June 2015.

28 *Chega!* describes in detail the procedure of the CRP (CAVR, 2013a, pp. 2445–2449).

29 Skype interview with Ben Larke, 23 June 2015.

30 Skype interview with Lia Kent, 29 June 2015.

31 Skype interview with Ben Larke, 23 June 2015.

Reconciliation and the reacceptance of perpetrators into the community were the driving ideas for the CRA (CAVR, 2013a, pp. 2427–2428). When the agreement was completed, the perpetrator received an official notification of immunity to prosecution for the acts declared during the CRP. As an adaptation of the traditional *nahe biti boot* process, some former CAVR staff criticized the process as “superficial” because of the time pressure.³² Usually, more time would have been necessary for the reconciliation procedures, particularly for confessions and providing reparations to the victims.³³

Participating in the CRP

A total of 1,541 statements of deponents were collected and 1,371 cases of ‘less serious crimes’ were successfully completed within the CRPs across the country in 216 hearings.³⁴ After a slow start during the first months, the CRP became widely accepted as it carried out its activities. The number of people who took part in the CRP is impressive: some 40,000 people from local areas between August 2002 and March 2004 (CAVR, 2013a, pp. 43–44). After the hearings, even more perpetrators wanted to come forward but time and resource constraints did not permit it.³⁵ For the local communities, the reconciliation hearings were an important social event towards peaceful coexistence. Attendance at the hearings varied “from several dozen to many hundreds” (Pigou, 2004, p. 10).

Curiously, CAVR was not ‘only’ a truth and reconciliation commission, but also added the word ‘reception’ to its title, which is unique for a truth commission (CAVR, 2013a, pp. 2498–2511). This aspect addressed the East Timorese who fled to West Timor in the chaos of the independence referendum and were worried about returning home, as many of them belonged to pro-Indonesia militia families or came from well-known militia areas. CAVR was the tool and

32 Skype interview with Susana Barnes, 26 June 2015.

33 Skype interview with Lia Kent, 29 June 2015.

34 The final report has two different numbers: in the actual discussion of the CRP it is stated that 1,371 were successfully completed (CAVR, 2013a, pp. 2460–2461), while in the introduction the number provided is 1,379 (CAVR, 2013a, p. 44).

35 Skype interview with Ben Larke, 23 June 2015.

symbol that Timor-Leste would receive back those that had been involved in less-serious crimes.

Support for reconciliation

The CRP was welcomed in general, particularly among low-level perpetrators. Some victims, however, resented that a panel decided outcomes—as opposed to them—and that their active consent was not necessary to reach a completion of the reconciliation process. The reintegration of perpetrators was the main focus. This was confusing for some victims, and was reflected in statements like “I reconciled on the outside, but I don’t feel reconciled on the inside.”³⁶ Moreover, the CRP panels were usually quite ‘lenient’ toward deponents, and a public apology and some kind of community service were usually sufficient to complete the process. While victims most likely also desired social harmony, community stability trumped the interests of the individual victim who were often not able to tell their full story in the hearing.³⁷

In general, victims were not always well prepared for the CRPs, were sometimes persuaded during the CRP to accept the apology of the deponent, and usually received no individual reparation. Some victims who participated in the CRP thought that perpetrators did not share the whole truth because in the Timorese context, there was the expectation that the perpetrator would address all wrongdoing (Larke, 2009). For victims, healing workshops were also organized in Dili, accompanied by a small reparation fund that provided a one-off payment of USD \$200 for the ‘most vulnerable’ (Kent, 2013, p. 92). A reparations program targeted the most urgent cases—some 712 in total—but was limited by the amount of funding available to CAVR. The program was deliberately kept low-profile to avoid more demands on the limited available resources (CAVR, 2013a, pp. 2536–2544).

The CAVR regulation specifically provided that the CRP should prioritize acts committed in 1999 in order to short-circuit the real possibility of revenge

36 Skype interview with Lia Kent, 29 June 2015.

37 Skype interview with Ben Larke, 23 June 2015.

and payback for offenses still fresh in people's minds. As a consequence, less serious offenses from the years preceding 1999 were not addressed and the perpetrators who remained in East Timor have not been held accountable. CRPs also did not address issues related to land or other conflicts that fell outside the scope of CRP.³⁸ In one or two cases, the presence of CAVR staff whose families were participating as perpetrators created a conflict of interest (Stanley, 2008, p. 185). Because the CRP aimed to stabilize divided communities, it focused on East Timorese. Indonesian perpetrators, in any case, had repatriated to Indonesia outside Timor-Leste's jurisdiction.

Changes thanks to reconciliation efforts

According to the final report, the CRP made a "significant contribution" to reconciliation (CAVR, 2013a, p. 44). Interviews with 150 people (victims, perpetrators, and community members) in five districts found that 96% agreed that "the CRP had achieved its primary goal of promoting reconciliation in their community" (Horne, 2014, p. 27). In general, little monitoring has been done of the CRPs and no long-term assessment has been carried out, which makes it impossible to have an informed analysis. Thus, it is unclear if any deponents have re-offended or whether any reprisals took place when inconvenient truths were declared. Most perpetrators were pleased with the outcome of their hearing and on being accepted by the local community. In contrast, some victims were more critical of the process.³⁹ A general challenge for CAVR was stressing 'outcomes over process.' The focus on results led to "an emphasis on narratives of reconciliation and closure over retribution, unfinished business and *unreconciled* outcomes" (Kent, 2013, p. 95).

Although local communities embraced the CRP and received back low-level offenders, reconciliation remains unfinished business in Timor-Leste at two levels. First, there has been no process to reconcile Timorese guilty of pre-1999 crimes. Second, there has been no process to address crimes committed

38 Email conversation with Pat Walsh, 28 June 2017.

39 Skype interview with Lia Kent, 29 June 2015.

by Indonesian military who were responsible for the big majority of offenses. Decisions not to proceed on these fronts were dictated by the politics of power relations within the country and between Timor-Leste and its powerful Indonesian neighbor. In brief, Timor-Leste and the international community have chosen to leave the pursuit of justice to Indonesia. This has frustrated victims who feel that the 'big fish' ultimately responsible for their suffering have not only not been held accountable but have gone on to enjoy advancement and privileges that they can never have.⁴⁰

One of the main problems for CAVR remains that reconciliation is not clearly defined and is mostly referred to as healing and restoring dignity (Nevins, 2007, p. 599). As a result of this lack of clarity, it was difficult for CAVR to contribute to 'nation building,' as expected by some. For the East Timorese government, the CRP was also an opportunity to show results to the international community while not recognizing victims (Kent, 2013, p. 105). Moreover, and despite their hard efforts to empower marginalized groups, critics pointed out that the CRP cemented power relations on the local level. Thus, vulnerable groups continued to have no or little political influence (Stanley, 2008, p. 185). Despite the criticism, the CRP is widely seen as a very positive contribution and maybe the most successful activity of CAVR. Therefore it is regrettable that CRPs have not been used after 2005 as an official tool for reconciliation as suggested by *Chega!* (CAVR, 2013a, pp. 2483–2484).

Great efforts, little results, and new hope to establish collective memory

Many survivors welcomed a truth commission and the opportunity to contribute to an 'official' narrative of the conflict. East Timorese from across the country participated in an inclusive process that received contributions from witnesses, not just leaders. Victims who gave statements to CAVR also appreciated the sense of recognition the process offered them.

40 Email conversation with Pat Walsh, 28 June 2017.

Reactions to the final report

As *Chega!* bravely criticizes all parties, its final report is uncomfortable reading for those who are mentioned, including some members of the international community (CAVR, 2013a, pp. 740–744). Apart from early criticism from its military, Indonesia has largely ignored the report, thus continuing its long-standing position of denial. Although Western countries funded CAVR, they have not debated or promoted the final report. Some believe that this is because CAVR recommended that countries that provided military assistance to Indonesia should pay reparations (Kent, 2013, pp. 64–65); however, it is also attributable to President Gusmão's criticism of the report when he presented it to the UN in New York and Geneva. This censure of *Chega!* suggested to many that Timor-Leste was officially distancing itself from the report and did not expect others to act on it. Apart from Brazil and Cuba, which voted to recognize Timor-Leste during the war, countries in Latin America have not yet engaged with *Chega!*.⁴¹

The Timorese leadership's criticism of the final report was based on pragmatic concerns that recommendations on justice and reparations conflicted with their 'forward-looking' concerns. Their main worry was that a focus on the past would create internal conflict in Timor-Leste and destabilize the country's vital relationship with Indonesia and donor countries.⁴² The leadership's response generally shaped the views of the political elites, some of whom used the report to serve their interests, for example at the outbreak of the 2006–2007 crisis (Kent et al., 2016, p. 8).⁴³

Even though Gusmão criticized the report as 'grandiose idealism,' he did not challenge CAVR's findings that Indonesia had committed crimes against humanity and war crimes in Timor-Leste. According to him, the call for retributive justice would lead to chaos and violence. Gusmão also noted that Timorese already knew the contents of the final report because they had lived the

41 Email conversation with Pat Walsh, 28 June 2017.

42 Skype interview with Susana Barnes, 26 June 2015.

43 Skype interview with Kathryn Robertson, 20 June 2015.

conflict. While his assessment might apply to specific aspects that individuals experienced, nobody would have known the full story without *Chega!*.

The failed efforts to make Chega! popular

STP-CAVR distributed *Chega!* to churches, donors, political parties, and the international community, and followed up with public forums and workshops in local communities from April to September 2006. Its limited mandate comprised disseminating the CAVR report and caring for the commission's archives and Comarca heritage site until parliament decided its response to the *Chega!* report. The lack of parliamentary action on *Chega!* and the absence of effective oversight allowed STP-CAVR to drift aimlessly for 11 years without a sense of mission—much to the frustration of local CSOs.⁴⁴ With “low energy about work,” its own director—a former CAVR commissioner—blocked initiatives from third parties and did not permit STP-CAVR to monitor the implementation of recommendations.⁴⁵ Furthermore, even though the former CAVR chairman was elected to parliament, former commissioners did not defend the final report and its recommendations. Instead of promoting *Chega!* throughout the country, they largely ‘disappeared’ after the truth commission ended—some of them continuing as commissioners for the Commission of Truth and Friendship (CVA)⁴⁶—instead of being the ‘face’ of the report and promoting it across the country.⁴⁷ Most efforts went into the actual work of CAVR, not into the follow-up of implementing recommendations.⁴⁸

44 Email conversation with Pat Walsh, 28 June 2017.

45 Skype interview with Kathryn Robertson, 20 June 2015.

46 Timor-Leste set up the first bilateral truth commission in the world with Indonesia in 2005, the Commission of Truth and Friendship (CVA in Portuguese). It reflected the dominant reconciliation discourse of the East Timorese government instead of demanding retributive measures of Indonesians. When the CVA completed its final report *Per Memoriam ad Spem* (‘From Memory to Hope’) in March 2008, the majority of observers, who were very critical of its set-up, was surprised because Indonesia acknowledged that systematic and organized violence took place. Another surprise was the endorsement of the final report by Indonesian president Yudhoyono, even though he never followed-up on it in terms of justice (Hirst, 2008; Strating, 2014b). In general, neither *Per Memoriam ad Spem* nor *Chega!* left its mark on Indonesia because Timor-Leste as an issue has been marginalized in the public debate (Hernawan & Walsh, 2015).

47 Skype interview with Kathryn Robertson, 20 June 2015 and Hugo Fernandes, 23 June 2015.

48 Skype interview with Lia Kent, 29 June 2015.

STP-CAVR published three different language editions of the complete *Chega!* report. It was carried out in collaboration with Indonesia's largest publishing house, making the exercise a unique contribution to mutual cooperation between former enemies.⁴⁹ The volumes include a summary called *Plain Guide to Chega!*, which is intended for journalists and others interested in a shorter version of the report (CAVR, 2013b). An important initiative of STP-CAVR was the development of a permanent exhibition highlighting the findings of *Chega!*. It is housed in Comarca, the former prison and CAVR and STP-CAVR headquarters, and schools and tourists visit it. However, STP-CAVR and its tour guides could make the exhibit more dynamic.⁵⁰ *Associação Chega ba Ita Timor-Leste* (ACBIT, in English Association 'Chega is ours'), a local CSO, has built on this project by developing a mobile version of the exhibition to circulate throughout the country.⁵¹

STP-CAVR also produced a weekly radio program, and revised and distributed a Tetum language documentary called *Dalan ba Dame* ('Road to peace') that includes unique historical footage of the armed and diplomatic struggle.⁵² The video has been widely screened in Timor-Leste, demonstrating the utility and impact of video over print in the Timor-Leste context.⁵³ It also includes subtitles in English, Indonesian, and Portuguese to reach a broader audience. Other tools created by CSOs and STP-CAVR include a comic book version of *Chega!*—illustrated by an Indonesian artist—for schools and illiterate Timorese.⁵⁴ When some international NGOs, like ICTJ, pressed for more joint creative socialization efforts, the STP-CAVR director rejected their proposal in the (mistaken) belief that STP-CAVR alone was mandated to act on these matters. This rebuke of further cooperation with the international community negatively affected relations with local CSOs. In addition to these challenges,

49 Email conversation with Pat Walsh, 28 June 2017.

50 Email conversation with Pat Walsh, 28 June 2017.

51 Skype interview with Pat Walsh, 4 August 2015.

52 This documentary is available as a DVD and on the web at <https://www.youtube.com/watch?v=MdXHFan6TK0>.

53 Written comment of Pat Walsh, 28 June 2017.

54 The comic is available in English, Indonesian, Portuguese, and Tetum.

the Timorese government and CSOs failed to assess the impact of these products and the manner in which they were socialised.⁵⁵

After many years of inactivity, the Ministry of Education has finally taken steps to incorporate *Chega!* into the school curriculum. For now, lessons are limited to primary school, but the Ministry's curriculum developers are expected to apply the program to the secondary level. Timorese academics have also been slow to utilize the report. However, this is slowly changing, particularly in peace studies and law, with the availability of the 2013 version of the report that has edited the whole report and is easily accessible. These matters reflect the difficulty in general terms to have an official history of Timor-Leste, and slow public policy processes. As Timor-Leste has a high illiteracy rate, the dissemination of *Chega!* has been a challenge from the outset, compounded by a top-down style of pedagogy that does not engage listeners or take advantage of the learning potential of materials.⁵⁶

Institutional approaches to establish collective memory

Although CAVR wrote a massive report, the impact of *Chega!* has been fairly weak. The call for reparations in the report has not yet been fulfilled as of this writing. The commission's impact outside of Timor-Leste has also been limited. To increase its global influence, the government of Timor-Leste has distributed new multi-lingual editions of the report to the international community and established the *Centro Nacional Chega!* (CNC). Moreover, in Indonesia the NGO Asia Justice and Rights (AJAR) has actively worked to increase CAVR's impact through advocacy efforts around *Chega!* and its recommendations.⁵⁷

Additionally, the Timor-Leste government has sponsored a range of memorials and events to commemorate and honor sacrifices during the war, giving special attention to the Falintil, as reflected in public holidays and the the Museum of Resistance in Dili (Leach, 2008). Veterans, rather than civilian victims, have been

55 Written comment of Pat Walsh, 28 June 2017.

56 Written comment of Pat Walsh, 28 June 2017.

57 On the website <http://www.chegareport.net/download-chega-products-2/> all three documents can be downloaded for free.

the beneficiaries of awards, pensions, and other official recognitions. However, some memory initiatives are dedicated to civilians, such as the memorial to victims of the 1991 Santa Cruz massacre in Dili, and the planned memorial and museum to mark the same event at the Santa Cruz cemetery.⁵⁸ Human rights groups also erected monuments, such as the memorials in Suai and Liquiçá, which were constructed to remember the 1999 massacres (Kent, 2013, pp. 176-177). Notably, the state has not erected monuments to recognize the intra-Timorese violence that occurred between 1974–1975. UDT victims have a graveyard in Aileu, but it is largely neglected and only visited by family members (Kent, 2013, p. 120). The differences within the Timorese leadership have been addressed in recent years in an attempt to replace the ‘history wars’ with ‘consensus politics’ that include the reinterpretation of the resistance against Indonesia (Leach, 2016, pp. 214–220).

Creating a collective memory

In 2009, a draft law included the idea of an ‘Institute for Memory’ that would implement CAVR recommendations and set up a human rights documentation center to search for missing persons. In 2009 and 2010, three ‘National Consensus Dialogues’ were organized in a bid to achieve progress on *Chega!* and its recommendations (as well as the CVA). The political elite offered nominal support but it did not result in real progress; President Ramos’ rejection of retributive justice particularly complicated the effort to implement recommendations (Kent, 2013, p. 135).

In a few places, the truth-seeking activities have led to memory initiatives. One example is in Muapitine, where a monument was erected as the result of an idea that emerged during the CAVR truth-telling activities (Kent, 2013, pp. 178, 182).

Thanks to a University of California–Los Angeles (UCLA) initiative and a European grant, STP-CAVR has collaborated with the British Library in London to preserve, digitalize, and make accessible a number of documents from CAVR’s

58 Written comment of Pat Walsh, 28 June 2017.

archives.⁵⁹ However, due to the tradition of oral culture and STP-CAVR's decision to allow access to documentation only on a case-by-case basis, victims have been hesitant to seek available information.⁶⁰ The CNC should have a major focus on the preservation and use of the CAVR archives for research, education, and publishing, and ensure that the Timorese receive adequate in these areas.

In October 2016, the Timor-Leste government took a major step forward on *Chega!* when it adopted Decree Law 48/2016 to establish *Centro Nacional Chega!* (Chega National Center, CNC). The following year the Government and Prime Minister funded the CNC and made it a public institute. The CNC's role includes 1) to promote the implementation of recommendations made by CAVR and the CVA (with the important exception of those on justice and reparations); 2) to preserve and learn from Timor-Leste's history to ensure that the violence of the period 1974–1999 does not recur; 3) to engage in solidarity with the most vulnerable survivors of past human rights violations; and 4) to administer the archives of CAVR and CVA. This is a major breakthrough considering the slow progress in response to *Chega!* and it has the potential to spur more political will as well as offer a platform for CSOs that have been engaged in the process. Additionally, it is a chance to provide more comprehensive knowledge about *Chega!* and its recommendations to CSOs, journalists, and other important societal actors.

Justice for the 'small fish,' impunity for the big ones

UN circles favored the idea to institute retributive justice measures after the 1999 violence. As with CAVR, the UN played a key role in setting up the Serious Crimes Process (SCP) as a tool to fight impunity and restore human rights. The UN promoted the SCP as part of its 'success story' (Kent, 2013, pp. 80–81). On the surface, the 'hybrid' Special Panels for Serious Crimes, attached to the Dili District Court, and the Serious Crimes Investigations Unit (SCIU) reflected a commitment to local ownership and to strengthening the

59 Written comment of Pat Walsh, 28 June 2017.

60 Skype interview with Kathryn Robertson, 20 June 2015 and Pat Walsh, 4 August 2015.

newly created justice system in Timor-Leste. CAVR represented the attempt to provide restorative justice to East Timorese.

Normative debates

The SCP did not have local ownership—as it was a UN-run initiative—nor did it fulfill the demands of human rights groups for an international criminal tribunal (Kent 2013, pp. 46-47). The chance to strengthen local capacities was not used and Timorese judges felt disenfranchised. Indonesia refused to cooperate with the SCP and no high-ranking members of the Indonesian military were tried; moreover, Indonesia's government ignored information requests and did not provide witnesses (Stanley, 2008, p. 168).⁶¹ The Timorese government gave little political support to the SCP as President Gusmão had a reconciliatory approach towards Indonesia. As with CAVR's reconciliation program, and for the same reasons, SCP's attention focused mainly on the violence perpetrated in 1999. Public outreach was limited, leaving many Timorese outside the capital unaware of trials and victims' experiences (Kent, 2013, p. 85).

CAVR had semi-judicial powers to address 'non-serious crimes,' while the SCP was responsible for 'serious crimes.' Metaphorically, CAVR was seen as 'the other wing of a bird,' referring to its restorative justice emphasis in contrast to SCP's punitive justice approach. These dual institutions supposedly allowed Timor-Leste and the UN to focus their efforts on prosecuting those who committed serious crimes.⁶² However, Indonesia effectively sabotaged the process by refusing to surrender those accused in its jurisdiction. The United Nations shut down the SCP before they left the island in 2005, and declared its mission a 'success,' even though others described it as 'justice on the cheap' (Jeffery, 2016). Of 391 indicted subjects, only 87 were brought to trial—mostly low-level Timorese perpetrators (Cohen, 2006).

61 The belief of a new human rights discourse in Indonesia turned out to be too optimistic. Indonesia rather established its own Ad Hoc Human Rights Court, that only tried 12 people and six who were found guilty were later acquitted.

62 Skype interview with Simon Robins, 30 December 2015.

Difficulties between CAVR and the tribunal

CAVR had several points of interaction with the Office of the General Prosecutor (OGP) and signed a memorandum of understanding (MoU) in June 2002 with the aim to efficiently cooperate and clarify the relationship regarding the CRP, underlining that both institutions had the legal obligation to exchange information (CAVR, 2013a, p. 60). One of the contradictions of the prosecution process was that the CRP was much faster in comparison to the SCIU and it did not sufficiently establish what constitutes 'serious crimes.' Ironically, hundreds of alleged perpetrators of 'serious crimes' were more likely to receive immunity because of SCP's severe time and resource constraints, which led to frustration among those participating in the CRP (Hirst & Varney, 2005, pp. 13–15).

Before the CRP started, the relationship between the OGP and CAVR was discussed in detail in front of the community. This was intended to convince perpetrators to be open about their human rights violations as it would grant them amnesty, framed as 'conditional forgiveness.' When a CRA was reached, the OGP needed to approve whether the perpetrator complied to the obligations defined in the agreement (Pigou, 2004). At the beginning, CAVR faced some opposition because a few religious and human rights organizations argued that the truth commission would take away resources from the tribunal (Kent, 2013, p. 48). In fact, CAVR had more financial means available and attracted more donors thanks to its work on local reconciliation. UNTAET never pursued the SCP on a serious basis due to a lack of political will, under-staffing, and poor management.

The results of justice

CAVR's final report includes the names of those responsible for the most serious patterns of violations. CAVR identified and listed other perpetrators by code (CAVR, 2013a, pp. 81–82). While a list of the names coded in the report has been provided to the OGP there has been no investigations to date of this information.⁶³ On the surface, there is agreement in Timor-Leste

63 Skype interview with Pat Walsh, 4 August 2015.

that perpetrators who committed ‘serious crimes’ should face retributive justice and accountability. However, in the Timorese context there was also the expectation that justice implies that the perpetrator faced the victim and acknowledging wrong-doing, rehabilitate the family name, and bring an end to potential vengeance (Kent, 2013, pp. 160–161). These ideas reflect customary justice but not the Western model of retributive justice. Kent (2013, pp. 146–148) criticizes the assumption that truth-telling is always ‘therapeutic’ for victims. An unforeseen problem occurred in victim’s public hearings where perpetrators’ presence disturbed victims. Another problem was that the Timorese cultural approach towards justice—public shaming and full disclosure of the perpetrator—was not fulfilled. Finally, just admitting what happened would have been justice for many; however, the political elite largely did not show remorse in the public hearings nor admitted their wrongdoings.⁶⁴

Almost all Timorese perceive themselves as victims of colonization and occupation. However, only veterans received generous pensions in contrast to victims who did not receive material reparation. This looked as if it would change in 2009 when the parliament decided to set up a parliamentary committee to address the implementation of CAVR and CVA recommendations. Two draft laws were prepared to provide symbolic and material reparations to persons considered as ‘vulnerable victims,’ and to establish an ‘Institute for Memory.’ When the laws were tabled in September 2010 in parliament, they were constantly delayed. Nonetheless, local CSOs, such as ACbit, HAK Association, NGO FORUM, La’o Hamutuk, and the NGO coalition ANTI, continued to push for justice and reparations (Kent et al., 2016, p. 16). So far, recommendations have generally not been implemented. This might be related to the high number of recommendations and to the weakness of civil society in Timor-Leste.⁶⁵ However, the situation may change once Law Decree 48/2016 is installed and the CNC begins its work.

64 Skype interview with Simon Robins, 30 December 2015.

65 Skype interview with Lia Kent, 29 June 2015.

The non-impact of justice

The CAVR final report called on the UN to hold Indonesia accountable for the events of 1999, and reminded them of UN Security Council resolutions on the matter. Specifically, CAVR called upon the international community to establish an international tribunal to pursue justice despite Indonesia's resistance (CAVR, 2013a, p. 2601). Although Timorese human rights CSOs continue to call for an international tribunal, it has not yet been established. The Indonesian Ad Hoc Human Rights Court on East Timor established in 2002 was boycotted by the UN and widely criticized as a 'whitewash.' Even though some East Timorese leaders have pushed for amnesty, including through the CVA, the Catholic Church, parliament, and other key players have consistently opposed it.⁶⁶

The UN Integrated Mission in Timor-Leste (UNMIT)—created after the 2006-2007 violence—installed a new Serious Crimes Investigation Team (SCIT). The team was limited to an investigatory role and had no prosecutorial powers. Some 400 arrest warrants, left by the previous SCIU, were referred to the Timorese authorities; only some have been acted on due to inadequacies in the system and a large backlog of caseload. SCIT finished in 2012 when UNMIT completed its mission. Only a handful of prosecutions have been carried out since (Kent, 2013, pp. 70–71). Several CSOs continue to lobby for the prosecution of 'serious crimes.' While some of these groups were critical of CAVR, they realized the potential of the final report, especially because it called for retributive justice (Kent, 2013, p. 194).

CAVR was limited in providing justice for the Timorese people. Timor-Leste has not acted on its recommendations to bring about accountability. Furthermore, the CRP as an adaptation of traditional Timorese justice did not sufficiently include the victim's views. The restorative justice model employed in the CRP has not been incorporated into the Timorese justice system, which is still based on punitive justice.⁶⁷

66 Written comment of Pat Walsh, 28 June 2017.

67 Skype interview with Ben Larke, 23 June 2015.

Conclusions

CAVR, like so many other truth commissions, focused most of its energy and attention on truth-telling and reconciliation. The recommendations of its final report on reparations and justice clashed with significant aspects of Timorese policy and were opposed by Timor's leadership, limiting the report's impact domestically and internationally. The creation of the CNC in the course of 2017 has injected new hope into implementing the work of CAVR and its legacy. CNC could potentially create new momentum around *Chega!*, and is evidence that a considerable amount of time may be needed to create political will and favorable circumstances.

Timor-Leste as a case study provides several lessons for other countries. First, the focus on traditional reconciliation efforts with the CRP stands out. Though it has its own limitations, the CRP can be a model for other societies with traditional belief systems to allow for reintegration of low-level perpetrators. Second, the relationship between CAVR and SCP offers an example on how a truth commission and a court system can successfully cooperate; yet it needs to be kept in mind that their MoU did not foresee the loopholes that were used by many middle-rank perpetrators to enjoy impunity.

Third, the establishment of the STP-CAVR following the dissolution of CAVR was an important step to ensure the dissemination of the *Chega!* report. However, due to the limits of its mandate and structure, and to lack of oversight, the Secretariat did not fulfill its potential. The mere existence of such a body is therefore no guarantee of successful follow-up. The new CNC however, offers new prospects for the implementation of significant, though selected, CAVR and CVA recommendations.

Fourth, better and more training for statement takers is necessary to obtain higher quality statements. A more targeted approach of the number of statements is also important. Fifth, CAVR would have benefited from reaching out more to civil society and government in the course of its work. This might have generated more momentum and political will for follow-up to *Chega!*'s recommendations, including those on reparations and accountability. Sixth,

the community mapping exercise or community profile workshops allowed participants to focus on the community itself and provided a space to share their story and reflect on the past. This local grassroots approach methodology, that includes the mapping of one's village, turned out to be particularly popular.

Seventh, the STP-CAVR used some creative efforts to present the final report, exemplified by the comic version, video documentary, exhibition and other productions. However, producing innovative material is one thing; it is also necessary to effectively disseminate and socialize the material. The latter was a particular challenge for STP-CAVR, which relied on indoctrination style presentations inherited from Indonesia that failed to engage or relate to contemporary issues. A more active role by former commissioners as the 'face' of the follow-up body might have also lifted the Secretariat's profile and impact.

Overall, CAVR was able to do its work quite successfully, despite its many challenges. Though belated, the successful implementation of its recommendations and legacy now rests on the incoming CNC and the continued financial and political support from future East Timorese governments.

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5 Sierra Leone: The troubles of the commission with the tribunal

Johannes Langer

Introduction

Sierra Leone is the first country where a truth commission operated alongside a tribunal. The Truth and Reconciliation Commission (TRC) was installed after a decade-long civil war, and modelled after the South African commission. The Sierra Leone Commission served as a test of how a TRC could work in a country with much less financial and technical resources available. This chapter discusses the efforts and challenges of the TRC to find a complicated truth that incorporates all sides and bring about reconciliation. There was an attempt to allow for collective memory initiatives based on the TRC even though it turned out to be minimal. Also the TRC's contribution to justice has been very limited. For this chapter, six expert interviews have been carried out with Thijs Bouwknecht, John Caulker, Thierry Cruvellier, William Schabas, Susan Shepler, as well as a high-level TRC staff member who does not want to be identified.

The civil war in Sierra Leone

In 1787, the British Crown founded a settlement called the 'Province of Freedom' in today's Sierra Leone to resettle thousands of freed African slaves. After independence from the UK in 1961, internal power struggles between the two leading parties soon tore the country apart. The All People's Congress (APC) ruled Sierra Leone from 1968 to 1992, a period marked by growing repression and corruption, leading to a deterioration of trust in state institutions that did not deliver basic services in many parts of the country (Zack-Williams, 1999). By the end of the 1980s, disillusion and anger among young people were widespread. In March 1991, the Revolutionary United Front (RUF) invaded the eastern parts of Sierra Leone from Liberia. Led by Foday Sankoh, the RUF was a small force supported by the influential Liberian warlord Charles Taylor (Abdullah, 1998; Krech & Maclure, 2003). Initially, the RUF claimed to be a political movement calling for revolution and promising liberation and democracy; however, it soon ended up terrorizing civilians (Richards, 1996; Zack-Williams, 1997).

In April 1992, Valentine Strasser, a 25-year-old army captain successfully led a coup that established the National Provisional Ruling Council (NPRC). Despite some initial economic success, the new government proved incapable of gaining ground against the RUF. The NPRC reluctantly relinquished power after democratic elections, and the civilian-led Ahmad Tejan Kabbah government took over in March 1996 (Zack-Williams, 1999, pp. 149–150). Peace negotiations started with the RUF, resulting in an agreement. However, the 1996 Abidjan Peace Accord did not last for long as several army officers defected from the Sierra Leonean Army (SLA). Together, with the RUF, they took over control of Freetown in May 1997. Within a year, they lost power and Kabbah was reinstated as president.

The SLA was accused of severe human rights violations. SLA members became known as 'sobels'—soldiers by day and rebels by night (Alie, 2008, p. 124). As discipline within the army deteriorated, the government became more reliant

on the Kamajor militia,¹ eventually forming the Civil Defense Forces (CDF). Regional intervention led by the Economic Community of West African States (ECOWAS) not only failed to bring an end to the fighting, but also committed human rights abuses. The United Nations (UN) established the UN Assistance Mission to Sierra Leone (UNAMSIL) in October 1999 to cooperate with the government and help implement the 1999 Lomé Peace Agreement, which the government and the RUF signed due to international pressure. When the rebels started to attack the capital again, the UK, as the former colonial power, intervened militarily following a UN mandate and quickly defeated the RUF. In January 2002, president Kabbah officially declared an end to more than a decade of fighting.

In Sierra Leone, neither ethnic, regional, nor religious divisions played a central role in the conflict. It was rather a power struggle embedded in a long history of structural violence that fuelled the civil war. The brutality of the war has often been characterized as 'senseless' in the West, usually emphasising that the violence revolved around the diamond trade (Keen, 2005). The primary victims were civilians. In total, the war killed an estimated 50,000–75,000 civilians, displaced approximately 2.5 million and left thousands of amputees, victims of gang rape, and assault (Evans, 2012, p. 169; Evenson, 2004, p. 733).

Putting the truth commission in context

Signed on 7 July 1999, the Lomé Peace Agreement stipulated the creation of the Truth and Reconciliation Commission (TRC). Originally foreseen as the only transitional justice tool, the TRC mandate covered the time from the start of the civil war in 1991 to Lomé.

UN push for the truth commission

The UN Office of the High Commissioner for Human Rights (OHCHR) drafted a statute for a truth commission mandate and circulated it among local and international actors. In the end, parliament passed the implemen-

¹ The Kamajor are traditional hunters from the Mende ethnicity and backed president Kabbah.

ting legislation in February 2000 with the TRC Act. The TRC had five main objectives: 1) create an impartial record of human rights violations during the civil war; 2) address impunity; 3) respond to the needs of victims; 4) promote healing and reconciliation; and 5) prevent repetition of the violations (TRC Act, section 6.1). In other words, the TRC had the task to: 1) investigate the causes and extent of violations of all parties; 2) help restore human dignity to victims and promote reconciliation through truth-telling; and 3) create a climate of constructive interchange between victims and perpetrators, with special attention to children and victims of sexual abuse.

In general, the mandate was perceived as “ambitious,” creating expectations that “were impossible to fulfil” (Evans, 2012, p. 169). There were three phases of the TRC’s work: 1) the deployment stage that included statement-taking and investigations; 2) the hearing phase (individual, thematic, institutional, and event-specific); and 3) the writing of the final report. However, these stages did not meet the deadlines originally envisioned, primarily because the commissioners were appointed more than two years after the TRC Act was approved. The South African TRC was the general model adopted for Sierra Leone and many influences have been identified (Hayner, 2007, p. 19). However, in practice the South African spirit was hardly felt in Sierra Leone.²

Changing perceptions about the commissions

Local civil society actors had already called for a truth commission in early 1999, producing their own material in support of a TRC.³ Some Sierra Leonean civil society actors promoted the concept of ‘justice,’ which was not considered in the end (O’Flaherty, 2004, p. 53) because of an agreement between the negotiating parties to establish an unconditional amnesty for all combatants. This led to the perception that the TRC was an attempt to “shield off prosecutions.”⁴ Nonetheless, the RUF was critical to the idea of a TRC, because they feared that the Commission would work like a court (Hayner, 2007, p. 19).

2 Skype interview with Thierry Cruvellier, 18.01.2016.

3 Skype interview with with former TRC staff, 28.01.2016.

4 Skype interview with Thijs Bouwknegt, 30.01.2016.

While the TRC was a national institution, there was widespread perception that the international community pushed for its existence.⁵ Some Sierra Leonean civil society organizations (CSOs) called for a truth commission, but they were mostly part of the 'elite' civil society in Freetown that received funding from abroad. These CSOs played an important role in the set-up of the TRC, together with the government and international consultants. In fact, CSOs basically wrote the TRC Act and played a key role in the sensitization campaigns across the country.⁶ In contrast, many grassroots NGOs neither showed interest in a TRC, nor were included in its creation.⁷

The perception of the TRC completely changed when the UN established the Special Court for Sierra Leone (SCSL) in Freetown, after a request from president Kabbah. This represented the general good-will of the international community "to do something" about impunity, at least in theory.⁸ The TRC and the SCSL started to work in the summer of 2002. Sierra Leone was the first country where a truth commission and a tribunal worked simultaneously, both under the auspices of the UN (Tejan-Cole, 2003, p. 143). The SCSL contradicted the amnesty clause of the Lomé Agreement, which engendered a bitter relationship between it and the TRC.⁹

Challenges from the start

When the process of selecting commissioners started, the OHCHR nominated three international commissioners, two of them with significant transitional justice experience.¹⁰ The international commissioners were praised to be impartial, but they played a "marginal role" (SLWGTR, 2006, p. 6) and did not spend a lot of time in the country. A public nomination process identified

5 Skype interview with Susan Shepler; 18.01.2016.

6 Skype interview with John Caulker; 20.01.2016.

7 Skype interview with Susan Shepler; 18.01.2016.

8 Skype interview with Thijs Bouwknecht; 30.01.2016.

9 Skype interview with Susan Shepler; 18.01.2016.

10 The three international commissioners were Ajaratu Satang Jow (Gambia), William Schabas (Ireland), and Yasmin Sooka (South Africa).

four national commissioners;¹¹ however, critics questioned the transparency and fairness of the selection process as the nominees allegedly had “strong and direct ties” to the ruling party, raising concerns about their independence (International Crisis Group, 2002, p. 18). Moreover, TRC president Bishop Joseph Humper lacked “dynamism and energy” (SLWGTR, 2006, p. 5), was “not Desmond Tutu at all,”¹² and was perceived by some as the “chaplain of the ruling party.”¹³ Furthermore, commissioners received minimal training which was problematic when they interacted with witnesses (Kelsall, 2005, p. 382).

For the TRC it was difficult to differentiate among perpetrators and victims as war so often blurs the line of the various actors’ roles (Shaw, 2010, p. 124). The TRC focused explicitly on obtaining statements from women and on exploring the role of children as both victims and perpetrators (Sooka, 2006). There were no formal TRC witness protection programs to assure women and children’s security, and witnesses had to rely ‘on good faith.’ The Commission depended on the legitimacy of their statement takers and regional coordinators as intermediaries with communities. Luckily, there were no attacks on participants that testified or participated in TRC hearings.¹⁴

The budget of the TRC also presented a challenge. Estimates of USD \$10 million for each year of operation resulted in a budget of only USD \$4.5 million over a time period of two years.¹⁵ Sierra Leone itself only donated USD \$97,000 and a building for the Secretariat (Dougherty, 2004, p. 43) the 1999 Lome Peace Agreement granted a full amnesty to all sides. The TRC was established as an accountability mechanism, and tasked with investigating and reporting on the causes, context and conduct of the war and with offering both victims and perpetrators a public forum in which to relate their experiences. During a multiphase process in 2002-2003, the TRC collected over 9,000 statements and

11 The four national commissioners were Bishop Joseph Humper, Professor John Kamara, Justice Laura Marcus-Jones, and Sylvanus Torto.

12 Skype interview with Thierry Cruvellier, 18.01.2016.

13 Skype interview with John Caulker, 20.01.2016.

14 Skype interview with former TRC staff, 28.01.2016.

15 In contrast, it is estimated that the SCSL had overall up to USD \$300 million available (Graybill, 2017).

conducted reconciliation activities. However, the TRC lacked adequate funding and suffered from serious mismanagement and staff recruitment problems. Its relationship with the contemporaneous Special Court for Sierra Leone ran into difficulties at the end of 2003 that bruised both institutions. The TRC successfully gained the participation of major stakeholder groups - women and girls, children, amputees and ex-combatants - but its larger impact on society remains to be seen. The TRC's contribution to peace and reconciliation in Sierra Leone rests on its final report, which is months overdue." (Dougherty, 2004). The lack of funding was related to 'donor fatigue' as well as to the leadership crisis and mismanagement of the TRC. In fact, the TRC "was more working trying to save itself at the beginning than anything else."¹⁶ This had drastic consequences for its work: hearings only took place in the district capitals, several processes and activities of the TRC were delayed or simply cut short, and regional offices "were often run on a shoestring" (Kelsall, 2005, p. 381). In short, the TRC was under-resourced in terms of human and financial resources. It also had a 'reluctance' to work with CSOs (SLWGTR, 2006, p. 8) as international consultants of the TRC ignored localized processes.¹⁷

Getting a final report

Due to a lack of funding and expertise to write a report of such magnitude, the TRC struggled to produce a final report. After a delay of ten months, the final report was presented in October 2004 and publicly released in mid-2005 (Hayner, 2007, p. 27). In general, there was not much interest in the findings of the TRC because 1) the media focused on the tribunal; 2) the report was very long or not available; and 3) Sierra Leone has an oral culture and high illiteracy rates.¹⁸ Furthermore, the report is in English and no attempts have been made to translate it to Creole, the language commonly spoken in the country.

The recommendations in the final report are numerous and include structural issues, institutional reforms, traditional justice mechanisms for perpetrators, and a reparations program for victims. They were 'ranked' according to importance

16 Skype interview with Thierry Cruvellier, 18.01.2016.

17 Skype interview with John Caulker, 20.01.2016.

18 Skype interview with Thijs Bouwknegt, 30.01.2016 and Susan Shepler, 18.01.2016.

and urgency between 'imperative,' 'work towards,' and 'seriously consider.' The general reactions to the report were very positive, probably related to the low expectations due to the many problems of the TRC. The government only accepted the report and its recommendations in principle in mid-2005 with a White Paper. Afterwards, however, the government showed no commitment to implement the recommendations and never seriously followed-up the White Paper.¹⁹ The best discussion about the implementation of the recommendations can be found in Graybill's (2017) recently published book.

Getting the truth out

After the civil war, many people had their own theories of what happened during the conflict, but no accurate or non-partisan source was available for consultation. The TRC used two methodologies to establish what happened during the civil war: testimonies and public hearings (thematic, event-specific, and institutional). Despite the slow start, scarce resources, and rushed time frame, the TRC collected about 8,000 statements and a local NGO collected 1,500. In total, 90 public hearings were held where some 450 people gave evidence as individual witnesses (Kelsall, 2005, p. 364).

Hearings and testimonies

The first public hearing opened on 14 April 2003 in Freetown with the testimony of President Kabbah. In the hearing, President Kabbah did not recognize any responsibility, nor apologized for his role during the civil war (Schabas, 2006, p. 25). The official opening of the TRC was well attended, but public and media interest in Freetown dwindled as the hearings proceeded over the next four months.²⁰ It was a rushed process leading to a general sense of frustration for local communities and commissioners alike (Dougherty, 2004, pp. 43–44) the 1999 Lome Peace Agreement granted a full amnesty to all sides. The TRC was established as an accountability mechanism, and tasked with investigating and reporting on the causes, context and conduct of the war and with offering both victims and perpetrators a public forum in which to relate

19 Skype interview with Thijs Bouwknecht, 30.01.2016.

20 Skype interview with Thierry Cruvellier, 18.01.2016.

their experiences. During a multiphase process in 2002-2003, the TRC collected over 9,000 statements and conducted reconciliation activities. However, the TRC lacked adequate funding and suffered from serious mismanagement and staff recruitment problems. Its relationship with the contemporaneous Special Court for Sierra Leone ran into difficulties at the end of 2003 that bruised both institutions. The TRC successfully gained the participation of major stakeholder groups - women and girls, children, amputees and ex-combatants - but its larger impact on society remains to be seen. The TRC's contribution to peace and reconciliation in Sierra Leone rests on its final report, which is months overdue." (Dougherty, 2004).

Only the twelve district capitals were visited, and many people in remote areas were not able to tell their story or attend the hearings (SLWGTR, 2006, p. 8). In contrast to Freetown, the hearings in the district capitals were well attended. They lasted for five days: three days were available for truth-telling and the first and last day were used for opening and closing remarks. The closed hearings, organized in the middle of the week, were offered to victims of sexual violence, children, and ex-combatants who feared to speak in public. In theory, every witness had the assistance of a counsellor before, during, and after the hearings; however, in reality, this was not the case (Dougherty, 2004, p. 46). The 1999 Lomé Peace Agreement granted a full amnesty to all sides. The TRC was established as an accountability mechanism, and tasked with investigating and reporting on the causes, context and conduct of the war and with offering both victims and perpetrators a public forum in which to relate their experiences. During a multiphase process in 2002-2003, the TRC collected over 9,000 statements and conducted reconciliation activities. However, the TRC lacked adequate funding and suffered from serious mismanagement and staff recruitment problems. Its relationship with the contemporaneous Special Court for Sierra Leone ran into difficulties at the end of 2003 that bruised both institutions. The TRC successfully gained the participation of major stakeholder groups - women and girls, children, amputees and ex-combatants - but its larger impact on society remains to be seen. The TRC's contribution to peace and reconciliation in Sierra Leone rests on its final report, which is months overdue." (Dougherty, 2004).

Many questioned whether people who testified were actually honest (Sriram, 2013, p. 170), even though the process was “quasi-judicial [...] designed to elicit truth” (Kelsall, 2005, p. 386). Another criticism was that speaking the truth in such a formal setting was culturally not appropriate; at least some ritual practice would have been necessary (Kelsall, 2005). Many Sierra Leoneans prefer to avoid such sensitive material in a public forum, and therefore the hearings may not have been an appropriate setting to reveal the truth.²¹ The hearings also focused more on perpetrators and their reintegration instead of caring about victims and their suffering. In fact, sometimes “victims were interrogated in public in a court-like manner” (Evans, 2012, p. 171).

Next to the hearings, the TRC rolled out the process of statement-taking that lasted four months but started late due to administrative delays. Consequently, it overlapped with the SCSL’s work which led to confusion, particularly among ex-combatants (Shaw, 2005, p. 4). Thanks to well-placed insiders, the TRC conducted many interviews with all warring factions. The TRC actively reached out to prisons for additional information and got “substantial amounts of material” from government archives and in particular the archives of the Criminal Investigation Department.²²

The TRC staff developed a database with the Analyzer software of Benetech, which allowed the commissioners to get a general idea about the civil war and its patterns. While statement takers received basic instructions, the time and depth of the training was not extensive enough. However, as many of them were members of CSOs in their community, they were not seen as outsiders, and were therefore trusted by witnesses.²³ It is important to note that the term ‘statement taking’ was criticized as confusing because in the Sierra Leonean context it refers to a legal matter and was thus perceived as an equivalent to court. The term testimony was seen as a better option, as it did not have any legal implications in the country.²⁴

21 Skype interview with Thijs Bouwknegt, 30.01.2016.

22 Skype interview with former TRC staff, 28.01.2016.

23 Skype interview with former TRC staff, 28.01.2016.

24 Skype interview with John Caulker, 20.01.2016.

Participation in truth-telling

Participation in the TRC had various challenges, particularly 1) an illiteracy rate of about 80%; 2) the lack of a common language; and 3) focus on radio outreach without visiting the community to establish trust (Dougherty, 2004, pp. 45–46; SLWGTR, 2006, p. 8) (Dougherty, 2004; The Sierra Leone Working Group on Truth and Reconciliation, 2006). Moreover, the TRC used the same outreach strategies as NGOs, which led it to be perceived as commonplace, and as yet another program among many.²⁵ When the TRC started its statement-taking phase, it had to acknowledge that more outreach efforts were necessary because of the lack of public participation (Dougherty, 2004, p. 46).

Due to the high numbers of child soldiers, the TRC was the first truth commission to have a focus on children and to allow their participation (Shaw, 2014). With the help of UNICEF, rules were developed to govern children's participation. Cook and Heykoop (2010) provide an in-depth discussion of child participation in the TRC, discussing the complexities of well-meaning attempts and the difficult realities to involve children in truth-telling. The assumption was that children (under 18 years old) are innocent, and thus had to be treated as victims and not as perpetrators. However, Shaw (2014, p. 317) criticizes that the TRC removed the agency of the children.

Women's participation in the testimonies was around 35–45%. Many even participated in a public testimony, which included discussions about female genital mutilation as well as the stigma of rape victims (Dougherty, 2004, p. 47). In contrast to other post-conflict projects in Sierra Leone, the TRC was gender sensitive both in design and perception of locals.²⁶

Another important group were amputees, the most visible victims of the conflict. Some victims only participated reluctantly in the hearings, often with the hope of receiving something in return rather than having the intrinsic motivation to share their personal stories (Evans, 2012, p. 171). One challenge

25 Skype interview with Susan Shepler; 18.01.2016.

26 Skype interview with Susan Shepler; 18.01.2016.

was that horrific stories from victims were often met without public emotion. This may be related to the fact that testimonies were “delivered in a rather detached and clinical way” (Kelsall, 2005, p. 368).

As ex-combatants received a blanket amnesty (with the exception of the few individuals tried at the SCSL), there was no obvious incentive to testify. Many perpetrators were worried that their testimony would be used against them in a criminal prosecution. Nonetheless, more ex-combatants came forward over time, mostly with the hope of returning to their community. They also wanted to record their version of the truth for posterity, avoiding that history might be told on somebody else’s terms.²⁷ In the end, 13% of individual statements came from perpetrators, about a third of whom admitted their wrong-doing publicly in the hearing (Dougherty, 2004, pp. 47–48).

The final report and its impact

The TRC mandate demanded that the final report provide a national narrative of what happened during the civil war. For many, the mere fact that the report was published came as a ‘big surprise,’ and is considered to be ‘valuable’ due to its high quality and comprehensiveness.²⁸ There was some discussion whether the TRC could actually establish an “impartial historical record.” Although the TRC was able to document much of the war’s history, the final report nevertheless admits that it is ‘illusory’ to create a complete historical record (Evans, 2012, p. 170). Integrating more local practices would have allowed a more forensic or confessional truth. Particularly rituals would have been powerful because “they have their own form of truth” and is coherent with the local population (Kelsall, 2005, p. 390).

The TRC final report challenged several basic assumptions about the civil war. It counters the popular narrative in the West that diamonds are the central factor of the civil war. Instead, it identifies the lack of socio-economic opportunities as the trigger. Moreover, sexual violence and not amputations was the

27 Skype interview with former TRC staff, 28.01.2016.

28 Skype interview with Thierry Cruvellier, 18.01.2016.

most prevalent crime during the civil war (Sooka, 2006, p. 319). The report also contradicts the widespread narrative of the ruling elite in Freetown of the 'just war' theory that demonized the RUF. It rather points out that all sides committed atrocities. The somewhat depressing conclusion of the final report is that many people who carried out atrocities are still part of the ruling elite, and that no real political change has taken place (Schabas, 2006, p. 39). One of the problems of the final report is that it does not include the number of victims of the civil war (Evans, 2012, p. 181).

Traditional reconciliation or Western imposition?

The idea to include reconciliation in the TRC's mandate clearly stems from the South African influence. Instead of being influenced by the Christian faith, reconciliation for Sierra Leoneans in rural areas means communal harmony and a peaceful reconstruction of their lives.²⁹ Anthropologists criticize TRC's emphasis on national reconciliation, with all its religious undertones, and the assumption that public hearings would allow for healing (Kelsall, 2005; Shaw, 2005). The TRC tried to use traditional ways of reconciliation, although it was more of a 'symbolic moment' than a profound experience.

Remembering or forgetting?

As stipulated in the TRC Act, the Commission was encouraged to engage with traditional and religious leaders about different ways of reconciliation. The mixture of Christian, Islamic, and traditional forms of repentance and forgiveness resonated with Sierra Leoneans during the reconciliation ceremony (Kelsall, 2005, p. 363). As the TRC was established later than originally foreseen, it missed the opportunity to synergize reconciliation efforts with the DDR process (Dougherty, 2004, p. 48). Yet, the Commission did not want to actively integrate existing reconciliation initiatives into their methodology³⁰ and largely ignored local reconciliation practices (Shaw, 2005).

29 Skype interview with Thijs Bouwknecht, 30.01.2016.

30 Skype interview with Susan Shepler, 18.01.2016.

The TRC built its truth-telling exercise of perpetrators on public confessions, even though it did not resonate with most people. It would have been culturally more appropriate to 'forgive and forget,' because discussing the past violence is seen as inadequate and people did not want to dig up past troubles (Sriram, 2013, p. 170). Only in close circles has the war been remembered (Mieth, 2015, p. 52). One such example of this is secret societies that are popular in rural areas, where people believe that the "power of the bush" will punish perpetrators. However, recounting war stories in public is against cultural norms because people perceive that "only bad can come of it."³¹ Silence is therefore encouraged in the public space.

The TRC actively and publicly wanted to remember the past assuming that it would be universally beneficial. However, it did not consider the needs of the local culture (Shaw, 2005). The confessions that were asked of perpetrators reflected a Western experience and influences of psychotherapy with an individualistic perspective in a collectivist cultural setting. However, in Sierra Leone it is more common to be evasive, secretive, and indirect about the acts that happened (Kelsall, 2005, p. 383). More ritualized processes would have allowed for more healing instead of recounting the wartime experiences without adequate psychological support (Lahai & Ware, 2013, p. 71).

The role of the perpetrator in reconciliation efforts

TRC commissioners stressed during the reconciliation hearings that perpetrators should acknowledge the atrocities they had committed and apologize to their victims (Kelsall, 2005, pp. 372–373). Yet, neither the victim's family nor community were invited to hear the public apology, a requisite in the cultural context of Sierra Leone.³² Some victims were disappointed that perpetrators did not show up to their hearing; others were critical that perpetrators were just playing a role at the hearing, failing to satisfy victims' needs for closure (SLWGTR, 2006, p. 9). When it became clear that the SCSL would only concentrate on prosecuting a few top leaders, many

31 Skype interview with Susan Shepler, 18.01.2016.

32 Skype interview with John Caulker, 20.01.2016.

perpetrators expressed their remorse with the hope to reintegrate in the community (Schabas, 2003, p. 1051).

While many perpetrators apologized, they were not ready to provide reparations (often because they did not have the means), nor did the TRC have the mandate to materially repair victims. In contrast, ex-combatants who participated in the DDR process received stipends of USD \$150, while victims did not receive a single cent for participating in the TRC. Victims hardly received psychosocial counselling and support due to the lack of resources of the TRC (Evans, 2012, p. 170). While the perpetrators had to accept responsibility and ask for forgiveness from victims, it was often a superficial process. In fact, the genuineness of apologies was questioned (Sriram, 2013, p. 170).

There was criticism of CSOs that the reconciliation mechanism was quickly and superficially 'customized' for the hearings, but not enough time was devoted to the reconciliation aspect. Moreover, reconciliation mechanisms like handshakes or hugs have been criticized as not appropriate for the local context (SLWGTR, 2006, p. 8). In general, there was little space and time to allow for reconciliation. Few 'specific instances' brought victims and perpetrators together that could allow them to confess, reconcile, and forgive.³³

During the reconciliation ceremony, one perpetrator after the other was invited to publicly apologize in front of the community. Perpetrators were often shaking, on their knees, or in tears (Kelsall, 2005, pp. 379–380). It was much more important for the audience to see the transformation of ex-combatants than to hear a verbal account of the past (Shaw, 2005, p. 11). Yet, the reconciliation ceremony was a ritual that produced an emotional effect thanks to the presence of the community and the authority of the TRC and therefore some of the perpetrators showed remorse. At the same time, the community through its participation also implicitly accepted the reconciliation process, which was not based on truth-telling but rather on the performative act of the perpetrator (Kelsall, 2005, p. 388).

33 Skype interview with former TRC staff, 28.01.2016.

Reconciliation efforts on the surface

On a national level, the TRC was hard-pressed to resolve long-standing political divides between the political parties. However, the TRC did not succeed in bringing them together. The TRC might have been a factor to inculcate peaceful values into society in a way that did not exist during the war.³⁴ These values were the focus of the national reconciliation ceremony held in Freetown at the close of the hearings. During the procession, participants marched to the National Stadium, where speeches and apologies were made. Then the procession continued to Congo Cross Bridge, which was renamed Peace Bridge (Dougherty, 2004, p. 46).

A large part of society was capable and willing to commit itself to meaningful reconciliation; it did not need a central institution to support them. It used its own local mechanisms: chiefs or elders. They helped the country to quickly reunite, as opposed to other processes elsewhere. In contrast, the TRC only operated at the surface and mostly went along with what the community was already capable of doing.³⁵

The impact of reconciliation

The process of reconciliation in Sierra Leone would not have been very different without the TRC.³⁶ Reconciliation efforts faced at least four challenges: 1) they were imposed from the top and lacked genuine grassroots support;³⁷ 2) the focus on truth-telling instead of rituals (Kelsall, 2005); 3) the living conditions of victims did not improve afterwards; and 4) the TRC did not achieve reconciliation (or at least not how Sierra Leoneans understand it: harmony in their community). The assumption that sharing wrongdoings in a public hearing would pave the way towards future reconciliation turned out to be too optimistic.³⁸

34 Skype interview with former TRC staff, 28.01.2016.

35 Skype interview with Thierry Cruvellier, 18.01.2016.

36 Skype interview with Thierry Cruvellier, 18.01.2016.

37 Skype interview with Susan Shepler, 18.01.2016.

38 Skype interview with Thijs Bouwknecht, 30.01.2016.

Only a small number of perpetrators apologized for their wrongdoings; even less were prepared to help reconstruct their communities; and virtually none were ready (nor able) to provide reparations to victims. Therefore, Sriram (2013, p. 169) argues that the state should coerce perpetrators to apologize and provide reparations by either threatening them with prosecution or excluding them from their communities. Of the ex-combatants who did apologize, many believed that their participation in the TRC allowed them to start a civilian life again and be accepted in the community (Bolten, 2012, p. 501). The president himself did apologize in March 2010 to Sierra Leonean women and fulfilled a TRC recommendation, but he was not using the chance to make a broader apology to Sierra Leoneans in general.³⁹

For Kelsall (2005, p. 389), the lasting effect of the reconciliation act proves that people desire forgiveness and reconciliation. Ten years after the end of the civil war, many people find it difficult to coexist with ex-combatants. However, although people have negative feelings towards ex-combatants, they nevertheless regard collective peaceful coexistence as more important. Thus, they prioritize communal relations over their own feelings, as a sense of community trumps the suffering from the past (Mieth, 2015, p. 50).

Memory efforts in Sierra Leone

The TRC final report is described as 'remarkable,' an extraordinary legacy that today remains a valuable resource. The elite and civil society can refer to a document that is of good quality and reliable. In that sense, the TRC did its job. Having a bigger impact might have been too much to ask.⁴⁰ The major problem is that very few people know about the final report and even less have read it. This might not be a surprise because the document is very long, and when one is preoccupied with survival, there are many other problems that are more important on a daily basis.

39 The text of the apology can be found at: <http://news.sl/directwebsite/exec/view.cgi?archive=6&num=14972>.

40 Skype interview with Thierry Cruvellier, 18.01.2016.

Receiving the final report

Despite being seen as a potential tool for advocacy, civil society has used the report only sparingly.⁴¹ As the TRC lacked the active support of ordinary people and local CSOs, the Commission misses the base that promotes its work. Some people claimed that the final report was not necessary because they already knew the truth. Thus, the TRC was not necessary because it would just tell what is already known.⁴² However, the final report is certainly the best as well as the most comprehensive and impartial resource about the civil war.

However, there was a lack of political will from the government and the international community to distribute the final report. When the TRC finished its work, donors did not care much about the aftermath as they had already accomplished what they wanted. The government also focused on other post-war reconstruction projects and did not bother to deal with the report. Consequently, little outreach about the final report was done and most Sierra Leoneans are not aware of the document.⁴³

In general, Sierra Leoneans do not refer to the final report. Some newspapers, like *Premier Media*, regularly publish extracts from it to show that it is a valuable document that should be more known.⁴⁴ Historians and scholars have used the final report, but mostly abroad and not in public discussions in Sierra Leone. The document momentarily became more popular in 2012 when Julius Maada Bio ran for president. The TRC report describes how Maada Bio was present when the NPRC committed extrajudicial killings, and people consequently referred to it.⁴⁵

41 Skype interview with Thijs Bouwknecht, 30.01.2016.

42 Skype interview with Susan Shepler, 18.01.2016.

43 Skype interview with Thierry Cruvellier, 18.01.2016.

44 Skype interview with Thierry Cruvellier, 18.01.2016.

45 Skype interview with Susan Shepler, 18.01.2016.

Trying (or not) to establish collective memory

In Sierra Leone, a physical copy of the final report can hardly be found. The document was online, but the server was eventually closed. Thanks to the Open Society Initiative, there is again a website where one can read the report, even with slow internet access.⁴⁶ Four additional versions of the final report have been produced for popular consumption: a video, a child-friendly version, a high-school version, and a comic. The NGO *Witness* organized a follow-up project to disseminate the report with its video version that is available in local languages. The video was shown in local districts, in parliament and on television, and is thus the best-known version of the TRC. The child-friendly and high school versions of the final report have been developed for schools. However, many teachers are not using them because there was no guidance from the Ministry of Education about how to teach the civil war.⁴⁷

The TRC established the 'National Vision for Sierra Leone,' which comprised an exhibit of artwork, sculptures, and paintings from ordinary Sierra Leoneans. This exhibit was shown in district capitals and around the world, and was publicized by local radio stations and television programs. However, the exhibition in Sierra Leone has not been very well-attended due to lack of publicity.

The general idea was to encourage Sierra Leoneans to embrace a national vision. Vision 2020 was established, and that has become the governments' flagship initiative for legislative reform, restructuring, and infrastructural development. This national vision was one thing that sets the Sierra Leonean TRC apart from other truth commissions.⁴⁸

Memory initiatives

Many initiatives have been set up in Sierra Leone that work on peace education and other related issues. Fambul Tok (Creole for 'family talk'), a local NGO,

46 Skype interview with Thijs Bouwknegt, 30.01.2016. The website is available at: <http://www.sierraleonetrc.org/>

47 Skype interview with Susan Shepler, 18.01.2016.

48 Skype interview with former TRC staff, 28.01.2016.

started by *Forum of Conscience* and U.S. NGO *Catalyst for Peace*, has initiated community-based ceremonies for reintegration. The ceremonies are a space for societal reconciliation based on traditional conciliation practices (Sriram, 2013, pp. 168–169). This work at the local level allows CSOs to evaluate the readiness for reconciliation. *Atunda Ayende* is another initiative, which broadcasts radio soap operas that deal with multiple issues, including truth-seeking (Lahai & Ware, 2013, pp. 78–84).

As early as the hearings began, the TRC encouraged communities to establish monuments and memorials, particularly at grave sites (Alie, 2008, p. 131). Although Basu acknowledges the well-meaning of the TRC, it ultimately failed to “properly identify what form local ‘methods of memorialization’ might take” (2007, p. 247). However, the TRC does not reflect whether memorialization projects are appropriate for Sierra Leone (Shaw, 2005, pp. 2–3). This has been criticized as ‘essentializing’ memory practices in the West and in Sierra Leone (Basu, 2007, p. 234). As a result, Sierra Leoneans have been suspicious and indifferent to the TRC memory efforts (Basu, 2007, p. 239).

The TRC recommended the use of the National War Memorial Committee to design memorials in Freetown, as well as in the cities of Bo, Kenema, and Makeni (Basu, 2007, pp. 242–246). Outside the capital, however, the only official memorial—a simple placard—was erected in Bomaru, the village where the civil war started in 1991. The TRC also encouraged the renaming of an intersection from ‘Soja Kill Rebel Corner’ to ‘Peace Junction.’ However, the junction is still referred to by its war name (Basu, 2007, p. 244). Additionally, the TRC identified mass graves but was not mindful of local memory practices and rather suggested to build monuments or shrines on top of these mass graves (Basu, 2007, pp. 249–251).

What is there for collective memory?

There is no central place in Sierra Leone where the work and findings of the TRC are actively promoted. Only two sites stand out that somewhat remember the TRC: the Peace Museum and the Peace and Cultural Monument. The Peace Museum, located in the former building of the SCSL, is quite different than

originally envisaged, as it is small and hardly accessible to the public. There is very little information about the TRC; just some artwork of the national vision project.⁴⁹ The museum houses several artefacts, pictures from the conflict, art by children about the conflict, as well as a library that the museum tries to fill.⁵⁰ Accessing the archives of the TRC is also very difficult. The Human Rights Commission (HRC) is in charge of digitalizing the archives but has lacked any serious consideration to meet public interest.⁵¹

When president Ernest Bai Koroma came to office in 2007, the use of public spaces became more important (Basu, 2013, p. 13). In 2011, the government opened the Sierra Leone Peace and Cultural Monument, originally designed as the 'Monument in Remembrance of Our Fallen Heroes and Heroines,' and dedicated to the armed forces. It opened a second time and was transformed into a civilian park with monuments in the center of Freetown to promote a common history and culture. The message on the monument is 'unity in diversity,' whereby the civil war is incorporated into a "shared, triumphalist national history" (Basu, 2013, p. 10). While it tries to meet "Sierra Leone's post-conflict political rhetoric of reconciliation, attitudinal change, and social and economic transformation" (Basu, 2013, p. 24), it is a rather abstract monument that few Sierra Leoneans visit.

The struggle with the tribunal

As the Lomé Agreement included a blanket amnesty, some CSOs perceived the TRC as a 'fig leaf,' or a nominal effort to produce some accountability.⁵² However, the Sierra Leonean government requested a special court (SCSL) that was approved by UNSC resolution 1315 (2000) and set up in August 2002 to try those individuals who 'bear the greatest responsibility' for serious human rights violations. Only 13 individuals were indicted, while CSOs de-

49 Skype interview with Thijs Bouwknecht, 30.01.2016.

50 Skype interview with Susan Shepler, 18.01.2016.

51 Skype interview with Thierry Cruvellier, 18.01.2016.

52 Skype interview with Thierry Cruvellier, 18.01.2016.

mandated that other high-level and mid-level perpetrators should have been prosecuted as well.⁵³

The relation between the Court and the Commission

The TRC was one of the first truth commissions in the world that worked alongside a tribunal. As the commission tried to generate a national catharsis, addressing impunity, and responding to the needs of victims in order to prevent a repetition of the crimes, there existed a 'synergistic' relationship with the court, as a former commissioner notes (Schabas, 2003). The main problem, however, was that the two institutions were not set up by design but rather by accident. In practice there were no clear rules or mechanisms to govern their interactions, in particular regarding information sharing (Evenson, 2004). The relationship was never clarified, leading to a lack of cooperation. In general, Sierra Leoneans mixed up the role and responsibilities of the two institutions.⁵⁴

While at the beginning the working relationship between the TRC and the SCSL was 'cordial and working' (Schabas, 2004), it was disrupted in October 2003 with the TRC's request for the testimony of chief Sam Hinga Norman, the CDF leader during the war. For some, the incident was indicative of the perceived superiority of the SCSL and while the TRC wanted to show its muscle, it was not able to strengthen its own credibility because it appeared as toothless (Dougherty, 2004, pp. 44–45). Moreover, in the SCSL's rulings, the Court did not refer to the TRC's final report although it would have been in its authority to do so.⁵⁵

The TRC trying to bring justice to Sierra Leoneans

The final report that 'named and shamed' the perpetrators was a step towards accountability despite the amnesty clause in the Lomé Agreement. The TRC includes a list of faction members, among them the most senior members who were not indicted by the SCSL. Although individuals were mentioned

53 Skype interview with Thierry Cruvellier, 18.01.2016.

54 Skype interview with Thijs Bouwknecht, 30.01.2016.

55 Skype interview with Thijs Bouwknecht, 30.01.2016.

in the final report, they did not face any judicial consequences.⁵⁶ Therefore, it can be concluded that the SCSL did not indict those who bore the greatest responsibility.⁵⁷

The Sierra Leonean elite would have been much more comfortable blaming outsiders and portraying themselves as victims. The TRC confirmed that the RUF rebels were mostly responsible for human rights violations, but also mentioned the human rights violations of the CDF militia and the government, therefore debunking their 'just war' theory (Schabas, 2004, p. 12). The general impression of many observers of the TRC is that the final report has been crucial to understand the civil war in its breadth, including issues like structural gender inequality and inequity going back to the colonial period. Therefore, it goes beyond simply providing a timeline of what happened.⁵⁸

Implementing final report recommendations

In order to implement recommendations, any truth commission depends on its follow-up mechanism. In the case of Sierra Leone, the HRC—generally perceived to be responsible for monitoring TRC recommendations—did not show a serious commitment to lobby for the implementation of the final report, even though it should provide quarterly updates as well as an annual report about the implementation (Graybill, 2017). With the help of the UN, it published an update in 2008 on the implementation of recommendations.⁵⁹ However, lacking pressure, political will, and financial resources, the government was reluctant to implement recommendations.⁶⁰ Moreover, the liberal peacebuilding recommendations were not in line with how the elite in Sierra Leone wanted to build a modern state.⁶¹

56 Skype interview with Thijs Bouwknecht, 30.01.2016.

57 Skype interview with former TRC staff, 28.01.2016.

58 Skype interview with Susan Shepler, 18.01.2016.

59 A document with an overview from the level implementation of recommendations in the year 2010 is available at <http://www.sierraleonetr.org/index.php/resources/recommendations-matrix>.

60 Skype interview with Thijs Bouwknecht, 30.01.2016.

61 Skype interview with Susan Shepler, 18.01.2016.

It took the government until 2006 to actually set up the HRC (although it should have been created after the Lomé Agreement). The HRC has made submissions to the Constitutional Review Committee that should allow it to implement the TRC's 'imperative' recommendations (Hayner, 2007, p. 27). However, this has yet to be realized. According to UNIOSIL, by 2008, only 20 out of 56 overall recommendations had been fully or partially implemented (Evans, 2012, p. 181). Nonetheless, it is unclear how many recommendations have actually been implemented. None of the national commissioners are visible personalities today. This may not come as a surprise, because they were unknown personalities in the first place. After the TRC was over, they remained inferential and were not present in public debates.⁶²

A truth commission is generally not able to provide reparations for victims, but it typically recommends that the state do so. In Sierra Leone, the TRC recommended the establishment of the National Commission for Social Action (NaCSA) to implement a reparation program for victims. It took five years for the Special Fund for War Victims to make reparation payments in December 2009. The UN Peacebuilding Fund provided USD \$3 million for the program called 'Year One,' focusing on women and amputees, providing health assistance, some educational grants, and micro-grants. 20,000 out of 30,000 victims have received such grants that equal some USD \$100 per person. Yet, victims needed to wait for years to receive compensation, in contrast to perpetrators who received financial assistance in the DDR program (Sriram, 2013, pp. 171–172).

The impact of the TRC

In general, it is difficult to identify a clear legacy of the TRC in Sierra Leone. No court ruling took place with those named in the final report. In the area of women's and children's rights, parliament eventually passed bills in 2007 (Evans, 2012, p. 181). In the security sector, although some members came forward, no sustained influence can be identified.⁶³

62 Skype interview with Thierry Cruvellier; 18.01.2016.

63 Skype interview with Thierry Cruvellier; 18.01.2016.

Improving human rights standards and having a culture of accountability are one of the main challenges to change the culture of policing. Some superficial, cosmetic changes might have happened but no deeper changes can be identified. The question whether or not the TRC contributed to peace is difficult to evaluate. In terms of individual reconciliation, it is unclear if the TRC was able to make a contribution.⁶⁴ A nation-wide initiative called *Team up for Justice*, which includes some former TRC staff, applies a dispute resolution approach to justice outside of the formal court mechanism, thus providing a restorative justice legacy.⁶⁵

The recommendations to engender social and legal reform would be key for the Sierra Leonean state to be more accountable to its citizens and bring the culture of impunity to an end (Alie, 2008, p. 131). The Sierra Leone Poverty Reduction Strategy (PRSP) has picked up on the TRC recommendations and points out that their implementation is a key priority (Evans, 2012, p. 182). Sierra Leoneans may have more knowledge and understanding about human rights now, but the overall situation has not improved.⁶⁶

If those who were conscious of the quality of the final report are bitter, it is due to how little was made of it. There was no direct impact on the country's leadership in the 15 years that followed the conflict. The recommendations provided the leadership with a set of guidelines and a framework for a number of policies, but the government did not use the opportunity. The post-war political reforms were largely implemented during the time the TRC was operating. Therefore, these changes cannot be linked to the TRC report. The question remains whether the TRC was worth its money, and many Sierra Leoneans who were struggling with reconstruction needs thought that the resources could have been used for development instead.⁶⁷

64 Skype interview with Susan Shepler, 18.01.2016.

65 Skype interview with former TRC staff, 28.01.2016.

66 Skype interview with Thijs Bouwknecht, 30.01.2016.

67 Skype interview with Susan Shepler, 18.01.2016.

Conclusions

Sierra Leone—as well as Timor-Leste—were the first countries to establish a truth commission alongside a tribunal. The creation of a tribunal severely weakened the TRC. The first lesson that is learnt from this case study is that two transitional justice mechanisms working alongside of each other need a well-defined relationship. Institutional differences must also be clear for the local population, otherwise it is easy to mix up the two institutions. Second, there was no enthusiasm or momentum for the commission because it was mostly driven by ‘elite’ CSOs, and missed grassroots support in remote areas.

Third, the TRC faced severe challenges during its work and lacked of financial support. Therefore, the host country and the donor community need to have a financial commitment from the beginning to the end. Fourth, the chairman of the Commission must have charisma and be perceived as impartial, otherwise the overall perception of a truth commission suffers. Fifth, in case international commissioners are selected, they should not have other work commitments at the same time.

Sixth, the follow-up institution needs political support from the government and financial support from donors to be an effective watchdog and recommendations should be implemented. Seventh, while it is a positive step that school material about the findings of the TRC were produced, they have not been adequate in pedagogical terms. Eighth, truth commissions need to revise whether truth-telling is culturally appropriate and how it contributes to reconciliation efforts in a public setting.

In short, the TRC did not have much of a contribution, although it did not do harm either. For a few who “really participated in the process,” the process might have been helpful, but “only very few people were real participants.”⁶⁸ Today, the TRC final report, which does represent an impartial account of Sierra Leone’s civil war, is a document that is hardly used in public discourse.

68 Skype interview with Susan Shepler, 18.01.2016.

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6 Kenya: Ambitious aims but shelved report

Johannes Langer

Introduction

Kenya is the latest truth commission of the six case studies discussed in this book. It was set up in 2009, and the final report was delivered in May 2013. Although the truth commission included many lessons from around the globe, the lack of political will severely hampered the outcome and the final report has not been approved by the Kenyan parliament. This chapter includes the input from four expert interviews: Lucas Kimanthi, Tom Onzere, Salah Sheikh, and Ron Slye.

Context

After overcoming the British colonial yoke in 1963, Kenya's leaders were not able to establish an inclusive state for all of its 40 ethnicities. The first president Jomo Kenyatta and the Kenya African National Union (KANU) party opted for a strong centralist state based on repressive policies already known from the colonial era. An informal clientele network that was set up around Kenyatta divided the country along ethnic lines, grabbed much of the land and became very rich (Kanyinga, 2009). Due to high population growth, the land question has become ever more important and overlaps with ethnic issues (e.g. the

Kikuyu community in the Rift Valley). Many Kenyans are frustrated about the high levels of corruption (Branch, 2011).

Before the 2007 election, Kenya was widely perceived as a stable country; an “island of peace in the volatile Great Lakes region of Africa” (Klopp & Kamungi, 2008, p. 11) and “perhaps the one African country that was ‘a little different’” (Kiai, 2008, p. 162). During the Cold War, the West saw Kenya as an ally. Since the 1990s, the country has been a darling of the international development community. However, state violence is deeply rooted in Kenya. Since the 1960s, the Kenyan government has been involved in state violence. Examples of this include the Shifta War against a Somali insurgency (Anderson, 2014), the oppression of political rivals who were tortured in the 1980s, and the killing of hundreds in the Mount Elgon area in 2008 (Klopp & Kamungi, 2008).

In December 2007, the country conducted its fourth general election since the reintroduction of multiparty democracy in 1991. While elections have experienced violence, the 2007-2008 post-election violence (PEV) exceeded previous incidents in magnitude and intensity. The international community was not prepared to act and was surprised by the violence (Langer, 2011). When the Electoral Commission of Kenya, widely described as incompetent, announced the result of the presidential elections, many Kenyans did not trust the outcome. This resulted in chaos, destruction, and violence over a time period of two months. More than 1,000 were killed and some 600,000 Kenyans displaced in clashes between the Orange Democratic Movement (ODM) and the Party of National Unity (PNU). The violence was largely fuelled by a strong underlying layer of ethnic hatred (Klopp, Githinji, & Karuoya, 2010).

Numerous factors led to the 2007–2008 PEV: elite fragmentation, populism, growing ethnic nationalism, and disputed elections; the diffused violence overwhelmed the state, eroding its capacity to protect its citizens during the 2008 crisis (Kagwanja, 2009). Different types of violence can be identified during the PEV: 1) spontaneous violence between different ethnicities; 2) organized violence, particularly in the Rift Valley; 3) state violence and repression imposed

by state security agencies; and 4) opportunistic crimes that took advantage of the anarchy (Ashforth, 2009, pp. 11–14). For all actors in Kenya it was clear that the PEV led the country to the brink of the abyss.

Several mediation efforts tried to end the violence and find an agreement between the two opponents. Eventually, former UN Secretary-General Kofi Annan, together with other African leaders, successfully closed a deal on 28 February 2008. The agreement was signed four days later (Juma, 2009). The National Accord established a power-sharing government as well as transitional justice measures to address the underlying causes of the PEV, including special temporary commissions. Overall, four points were agreed upon: 1) immediately stop the violence; 2) address the humanitarian crisis and start a national reconciliation process; 3) overcome the political crisis; and 4) deal with the long-term causes of the crisis (Naughton, 2014, p. 63).

Background of the truth commission

Since independence, Kenya established several commissions of inquiry to investigate assassination and corruption scandals. Yet, their final reports were often not published for the public and shelved, ultimately “leading to a culture of impunity” (KTJN, 2013, p. 18). In 2003, the new National Rainbow Coalition (NARC) government set up a task force to decide whether a truth and reconciliation commission was needed. The task force found that Kenyans supported the initiative.¹ Regardless, president Mwai Kibaki ignored the recommendation to set up a truth commission to protect his cronies. During the 2007–2008 PEV, the political will turned in favor of establishing a truth commission, not least due to the pressure of civil society and the international community.

Setting up the truth commission

Civil society organizations (CSOs) responded actively to the 2007–2008 PEV. Nonetheless, a split was seen between ‘moderates,’ who insisted on peace and the *status quo*, and ‘progressives,’ who wanted to see accountability for

1 A critical discussion about the task force is provided by Bosire and Lynch (2014, pp. 259–264).

violent crimes, as well as structural reform, and a tribunal. This first camp was mostly linked to the PNU and was the main driver for a truth commission. The progressives represented a coalition of human rights groups which became linked during the PEV with ODM (Bosire & Lynch, 2014; Kanyinga, 2011). This split inside civil society is linked to the perceived dilemma of peace versus justice; the looming question of how to address violent conflict to allow for an inclusive development and democracy (Langer, 2015).

The truth commission project had an overly ambitious timeframe that did not reflect political realities. Therefore, it took months—not weeks—to pass the Truth, Justice and Reconciliation (TJR) Act. CSOs criticized the first bill, drafted in May 2008, due to its amnesty provisions, fearing that the truth commission would whitewash perpetrators (Musila, 2008). The Ministry of Justice changed course and listened to CSO demands. In the meantime, however, members of government expressed the view that the truth commission could replace a tribunal for PEV perpetrators. This caused another outcry among human rights organizations that viewed the idea as a ‘fig leaf’ that provided impunity for perpetrators. When government found out that this would not be possible, CSOs were pleased but political support for TJRC dwindled (Hayner, 2010, p. 91).

The TJR Act was finally passed unanimously in October 2008. The Act aspired to address the underlying root causes of human rights violations and historical injustices from independence in 1963 until the signing of the 2008 peace accord. The truth commission therefore assessed the structural issues while the Waki Commission focused specifically on the PEV.² One year after signing the National Accord, the Truth, Justice and Reconciliation Commission (TJRC) was implemented in March 2009. In a time period of two years the TJRC established its work. This was a significant delay considering the Commissioners were inaugurated half a year after the signing of the Act, in

2 In total four commissions were set up with the National Accord. For three months each, two commissions of inquiry were established: the Independent Review Committee (IREC), which investigated the conduct of the disputed 2007 elections, and the Commission of Inquiry into the Post-Election Violence (CIPEV), also known as the Waki Commission, sought to establish the facts around the presidential election results and the PEV. Next to the TJRC, the National Cohesion and Integration Commission (NCIC) was set up as a permanent commission to promote ethnic and national integration.

August 2009. Overall, it took four years to deliver the final report in May 2013. The hope was that TJRC would help overcome deep-seated divisions and contribute to national unity, reconciliation, and healing.

An over-ambitious mandate

TJRC's mandate was "by far the broadest of any truth commission ever established" (Naughton, 2014, p. 67). It covered 45 years and included violations of civil and political rights. Additionally, it was the first truth commission to cover socio-economic rights and economic crimes, such as grand corruption schemes, illegal land transactions, and marginalization of some ethnic communities (Lanegran, 2015b). It incorporated three aspects: 1) truth seeking to establish a complete and accurate history of human rights violations and abuses; 2) reconciliation, including suggestions about how to treat victims and identify perpetrators; and 3) justice, with recommendations for prosecutions and limited amnesty power. TJRC's mandate "produced an intricate, unrealistic [expectation], complicated by the country's legalistic traditions, which raised difficulties from the start" (Naughton, 2014, p. 70). Despite considering many best practices from other countries, the mandate turned out to be too ambitious for TJRC.

In addition to the headquarters in Nairobi, TJRC established four regional offices in different parts of the country (Eldoret, Garissa, Kisumu, and Mombasa) to decentralize the process of truth-seeking. Nine commissioners³ comprised the TJRC. The Panel of Eminent African Personalities⁴ chose the three internationals who were perceived as 'more objective' by some ethnic groups.⁵ The six Kenyan commissioners were selected in a four-step process that demanded

3 Ambassador Bethuel Kiplagat was the chairperson with Tecla Namachanja Wanjala being the vice-chairperson (acting chairperson during the time Kiplagat was not in office). There were an additional four national commissioners: retired Major General Ahmed Sheikh Farah, Betty Murungi (who later resigned and was not replaced), Tom Ojienda, and Margaret Shava. The national commissioners represented a range of different ethnic and religious groups. The three international commissioners were Judge Gertrude Chawatama from Zambia, Berhanu Dinka from Ethiopia, and professor Ronald Slye from the U.S.

4 Chaired by former UN Secretary General Kofi Annan and Jakaya Kikwete, president of Tanzania and chair of the African Union.

5 Skype interview with Salah Sheikh, 15.01.2016.

‘good character and integrity,’ impartiality, independence, fairness, and non-involvement in violation of TJRC’s mandate (Lanegran, 2015b). The selection procedure followed a process of consultation, but there was insufficient time to review the suitability of all the shortlisted candidates. This resulted in the selection of Ambassador Bethuel Kiplagat as chairman.⁶

Scandals and lack of trust

Within a week of appointing the commissioners, the first lawsuit was filed against the TJRC, arguing that it was illegitimate and unconstitutional. Even though the Kenyan High Court rejected the legal action, it showed the hostility against the TJRC. The history of its chairman Kiplagat particularly undermined the legitimacy of the commission. Kiplagat was allegedly involved in gross human rights violations, particularly the 1984 Wagalla massacre. His selection divided the CSOs over the TJRC; some continued to be supportive and engaged, while others tried to shut down the process. TJRC commissioners were divided on how to go about Kiplagat. While commissioner Tom Ojienda defended him, others did not want to have a public fight, fearing that the TJRC’s reputation would further deteriorate.⁷ As the TJRC’s final report concludes, Kiplagat “adversely affected the operations of the Commission throughout its life. The controversy diverted and distracted the attention and energy of the Commission from executing its core mandate” (TJRC, 2013a, p. 141).

When Kiplagat stepped down in November 2010, the perception was that TJRC was finally able to get their work done and also win back the confidence of CSOs. However, Kiplagat came back in March 2012 as a chairman and trust was lost again. The Kiplagat affair also led to a difficult relationship with the media that mostly focused on the controversy and brought negative publicity. Consequently, the TJRC was reluctant to engage with the media, afraid that the engagement would not be useful. However, this strategy led the TJRC to miss out on more positive reporting.

6 Time was so limited that no proper vetting of possible candidates was possible and the selection committee only relied on an affidavit swearing “that their past was clean” (Lanegran, 2015b).

7 Skype interview with Ron Slye, 12.07.2015.

The final report

With considerable delay, and five paragraphs of the land chapter changed, the final report was handed over to the new president, Uhuru Kenyatta, on 22 May 2013. In fact, the final draft of the land chapter was adjusted in the Office of the President so that the president's family would not be accused of wrongdoing. The three international commissioners submitted their dissent of the changes but it was not included in the hand-over.⁸

For the TJRC, its final report represented “in some cases literally, the blood, sweat and tears of the stories that were told to us [the TJRC] as we travelled the country” (TJRC, 2013a, p. iii). The final report with its 2,000 pages is accessible online, but not on official government websites. It has not been printed on a large scale. While the TJRC proposed a follow-up mechanism, such body was never created due to troubles with the Kenyan parliament. An amendment to the TJR Act passed in December 2013 allowed parliamentarians to change the final report and remove their names from the document.⁹ Even though no changes have been carried out to date, the Kenyan parliament could be the first to make amendments to the final report (Ndungú, 2014, p. 10). These changes could water down the document.

Revealing the uncomfortable truth

The TJRC clearly focused on the truth component in its work. Through statement-taking and hearings, the commission allowed many Kenyans to tell their story; in fact, more people spoke out than in any other truth commission. Additionally, the TJRC carried out its own research, such as on the Wagalla massacre, and discovered information that was not public knowledge beforehand.¹⁰

8 Skype interview with Ron Slye, 12.07.2015.

9 The amendment can be checked at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2013/TruthJusticeandReconciliation_Amendment_Act2013.pdf.

10 Skype interview with Ron Slye, 12.07.2015.

Highest number of statements

The TJRC had four phases: 1) statement-taking; 2) research and investigation; 3) hearings; and 4) report writing. In total, the TJRC recruited 304 statement takers—63% of them women—from across the country. Furthermore, CSOs provided more than one hundred additional statement-takers. From September 2010 to November 2011, 42,465 testimonies were collected, as well as 1,828 memoranda from public hearings. These numbers are, by far, the highest collected by any truth commission. However, it is questionable in statistical terms why dozens of thousands of narratives are necessary to write the final report. Instead of quantity, better quality statements should have been required. However, statement takers only received very basic training sessions over a two-week period, even though many of them only had basic education.

The hearings lasted from April 2011 until April 2012. There were three different types of hearings: individual, thematic, and for women. The TJRC allowed for confidentiality to encourage unfettered testimony, which permitted witnesses to give evidence freely (Asaala & Dicker, 2013). Individual hearings were organized for those who experienced gross human rights violations. Additionally, 14 thematic hearings took place that covered different aspects and periods under investigation. This was done to better understand the causes and the context of violations and to prevent their occurrence in the future. Finally, women had their own hearings to establish a safe space. Many female victims welcomed these hearing because they felt encouraged to speak up.¹¹ Therefore, the TJRC acknowledged the tendency for women to participate less than men in the hearings, and took actions to prevent it.

Hearings were held in all regions of the country. The TJRC came to areas that no other commission had been to before. Other than the provincial capital, the commission visited two or three additional to show presence in areas that the state traditionally neglected.¹² However, the commission was still criticized for limiting participation of people living in remote areas (Asaala & Dicker, 2013).

11 Skype interview with Tom Onzere, 20.01.2016.

12 Skype interview with Ron Slye, 12.07.2015.

National media outlets, TV and newspapers covered the hearings. Media coverage was important for local communities.¹³ Yet, the TJRC criticized the extent of the coverage in its final report, as public hearings were only broadcasted live two times (TJRC, 2013a, pp. 111-112).

It was also a concern for the TJRC that they had limited capacity to provide witness protection. The government took awhile to establish a witness protection program, and did not take into account that the state was perceived as the perpetrator among some communities. Those presenting information about government complicity in human rights violations were concerned about their security. Some victims agreed to speak to the TJRC only as part of in-camera hearings, and others would only speak to individual commissioners and senior staff off the record.¹⁴ In general, there was scarce psychological support for victims, with few exceptions, like for survivors of gender based violence (TJRC, 2013a, p. 99).

Focusing on marginalized groups and areas

Due to the entrenched culture of state-led impunity, the TJRC promised Kenyans an opportunity to uncover human rights violations and economic crimes committed since the country's independence. Even Kenyans who fled abroad due to the PEV and lived as refugees in camps in Uganda were included (Ngari, 2012). However, outreach was a big challenge. A survey carried out among victims across the country at the end of the statement taking phase, showed that 23% of the respondents had not heard of the TJRC, while only 37% knew it well (Robins, 2011, p. 43). Another challenge was accommodating people with disabilities, as it was sometimes difficult for them to access the venues (CRECO, 2012, p. 39).

In general, few perpetrators came forward. They primarily lacked the incentive to do so, as coming forward could have judicial consequences. The same happened with representatives of government who hardly testified in public

13 Skype interview with Salah Sheikh, 15.01.2016.

14 Skype interview with Ron Slye, 12.07.2015.

hearings.¹⁵ In Northeastern Kenya, more perpetrators participated in hearings. However, these individuals usually did not apologize, but rather defended themselves. Many refused to answer difficult questions and spoke quite arrogantly. This was difficult for many victims who felt that the truth-telling exercise did not change anything.¹⁶

Gender equality was very important for the TJRC, which actively tried to challenge the patriarchal culture, including forced marriages and female genital mutilation. The TJRC intended to fill staff positions on an equal basis: commissioners included four women (44%), while there were even more female statement-takers (63%) than men. Moreover, the commission provided 'gender sensitivity training' to statement-taking staff, even though the training was only one-day long. Despite this focus on women, only 39% of the testimonies came from women, something that the final report remains silent about.

Unfulfilled expectations of truth-telling

Officially, the TJRC had access to public documents in the national archives. Yet it was not easy to obtain these reports because the Kenyan government often failed to cooperate. The final report emphasizes the 'consistent lack of cooperation,' which forced the TJRC to acquire relevant documents through 'unofficial and informal means' (TJRC, 2013a). At the same time, the "TJRC relied too heavily on [former] reports [...] without adding any additional value or originality of findings" (Asaala & Dicker, 2013, p. 162) and lacked a critical reflection about former reports.

As in other truth commissions, the hearings were centered on so-called 'window cases' to demonstrate patterns of human rights violations. While this strategy was of use for some areas traditionally ignored, other regions and episodes of violence were not considered (Naughton, 2014, p. 67). Two important cases were the ethnic Somali region and the 1984 Wagalla Massacre that was often forgotten in the national discourse. Local CSOs in Northeastern

15 Skype interview with Ron Slye, 12.07.2015.

16 Skype interview with Salah Sheikh, 15.01.2016.

Kenya actively supported the TJRC's efforts to uncover human rights violations. Truth-telling and hearings were meaningful for ethnic Somalis because for the first time many were able to voice their suffering to Kenyans. However, their expectation that legal action against their perpetrators would follow was not fulfilled and led to frustration.¹⁷

The limited impact of truth telling

One of the most innovative parts of the TJRC's mandate was to investigate economic crimes, especially corruption and land. The latter is deemed particularly important in the Kenyan context because it is seen as one of the root causes of violence. It also found resonance among Kenyans who were fed up with economic injustices. Identifying indicators of economic marginalization, like lacking access to education, agriculture, or land, was used to operationalize economic crimes (Lanegran, 2015a). However, the mandate has been criticized for not precisely defining economic crimes and economic rights, thus acting in "muddled waters" (Sharp, 2014, pp. 101–103). The TJRC also put a lot of emphasis on children and youth, even though they did not have a specific focus in its mandate. It estimates to have collected almost 2,000 statements from children and organized two thematic hearings with in-camera testimonies. It specifically references the Sierra Leonean and Liberian truth commissions as examples to integrate children, learning from their benefits and risks (TJRC, 2013b, pp. 163–171).

In terms of truth, the TJRC captured and communicated in its final report a detailed account of past human rights abuses committed in Kenya. Yet, this truth might be described as 'incomplete' due to the intervention of President Kenyatta in the land chapter (Asaala & Dicker, 2013). Despite having a sub-chapter on extrajudicial killings, the ICTJ criticized the commission for not sufficiently including earlier reports on the topic. While recognizing how difficult it is to directly link perpetrators to these crimes, the TJRC should have been more insistent (Ndungú, 2014, pp. 4–5).

17 Skype interview with Salah Sheikh, 15.01.2016.

Reconciliation: No impact at all

While the TJRC made notable inroads in establishing the truth about past violations, its impact on reconciliation has been limited and confused with its justice objective (Asaala & Dicker, 2013).

Outlining a pragmatic approach

One of the main drivers for violence and hatred in Kenya can be attributed to ethnicity. Therefore, the TJRC's mandate promoted ethnic harmony that provided a wide range of possibilities regarding reconciliation. In fact, three of the five major goals of the TJRC are related to reconciliation, national unity, and healing. More specifically, the TJR Act stipulated four points when it came to reconciliation: 1) 'non-retributive' truth-telling would achieve reconciliation; 2) perpetrators of gross human rights violations should have a forum to confess their actions; 3) understand the causes of ethnic tensions that should allow for healing, reconciliation, and coexistence; and 4) any other possibility to bring about national reconciliation (TJRC, 2013b, p. 82).

As the TJRC points out in its final report, there were "two competing interpretations regarding the Commission's reconciliation work" (TJRC, 2013b, p. 83). While some expected that the TJRC would engage in active reconciliation between ethnic communities and individuals, others saw the role of the commission in a much more limited way to promote and contribute to reconciliation. Ultimately, the TJRC decided to go for the latter approach arguing that reconciliation is a long-term process and not a single event. While certainly reflecting the academic literature on the topic, this limited interpretation of the mandate was a missed opportunity to push existing reconciliation initiatives across the country and create new ones. In general, the TJRC introduces reconciliation as a rather abstract concept of the West, based on concepts of forgiveness from Christian or Muslim traditions, but ignoring possibilities to refer to existing traditional methods in Kenya.

Few and late incentives for reconciliation

Inside the TJRC, the Reconciliation Committee at Commissioners' level and the Department of Civic Education and Outreach were responsible for reconciliation initiatives. On a practical level, the TJRC's public hearings failed to provide victims and perpetrators with a forum for reconciling with each other at the individual or community level (Asaala & Dicker, 2013). Addressing this weakness, ten reconciliation forums were organized across the country to understand what reconciliation meant in different parts of Kenya.

More concrete workshops were organized between December 2012 and March 2013, where in five different localities actors discussed trauma healing and strategy formulation to explore approaches to recovery and reconciliation (TJRC, 2013c, p. 89). While well-intentioned, this process took place within the last months of the Commission's existence. Due to its timing and exploratory nature, it lacked a bigger impact. According to the TJRC, it was a relief for victims to finally talk about their experience in public, in particular for those cases that happened decades ago. However, the TJRC also readily points out that for some victims it was too painful as they did not want to re-live the horrors of the past (TJRC, 2013c, pp. 91–92).

During some of the workshops, victims actively forgave their perpetrators (TJRC, 2013b, p. 93). While some were able and willing to talk about forgiveness, others wanted to see certain conditions attached. These conditions included public confessions and acknowledgment of wrongdoing, monetary compensation, justice for victims, and sincere apologies from perpetrators (TJRC, 2013c, p. 95). Others, however, felt that perpetrators did not deserve an opportunity to apologize and should face punitive justice (TJRC, 2013c, p. 98). It is not known if perpetrators provided victims with any form of compensation as a result of the TJRC's work. Perpetrators did not take personal responsibility for human rights violation or other crimes, and there was no evidence of repentance or restoration of relationships. The fear of prosecution, related to the ICC cases, contributed negatively to the participation of perpetrators (Asaala & Dicker, 2013).

Weak reconciliation efforts and effects

The TJRC worked with some local peace groups to engage in issues of ethnic tensions, conflict, reconciliation, and peacebuilding. Commissioner Tecla Wanjala, who had engaged in peacebuilding work in the past, participated in some short-term peacebuilding activities. The reconciliation work mostly concentrated on two regions: Mount Elgon because of the recent military operations in the area; and the Rift Valley, where most of the PEV took place. Part of the reconciliation process was also carried out in Nairobi and in Northeastern Kenya, even though not systematically.¹⁸ Following a strategy of denial, alleged perpetrators often did not respond when confronted by the TJRC. The TJRC chairman employed this strategy and only responded when confronted with evidence. In other cases, perpetrators confirmed their participation in crimes, but defended and justified their actions or blamed others (TJRC, 2013c, p. 98).

For the TJRC, the state has contributed a major effort to bring about reconciliation, primarily through the new constitution that was approved in the 2010 referendum. The TJRC established formal relationships with the National Cohesion and Integration Commission (NCIC) and the National Steering Committee on Peace Building and Conflict Management (NSC) hoping to establish a long-term process for reconciliation. Although a joint taskforce was formed with the NCIC, the planned activities never took off due to tensions. Despite several efforts, the TJRC did not provide a forum where repentant perpetrators could confess human rights violations to bring about reconciliation.

Reconciliation aims to restore relationships, promote harmony, as well as healing. The process of reconciliation occurs at multiple levels and is a moral reconstruction in politics, governance, and cultural values. The short life span of a truth commission cannot allow for a profound reconciliation attempt, but it can foster the conditions for reconciliation to occur by recommending constitutional, institutional, and political reforms intended to restore the confidence

¹⁸ Skype interview with Ron Slye, 12.07.2015.

of citizens in their government. With these structural reforms, governance structures should symbolically show that they are breaking with the past and have different policies. None of this happened with the TJRC. Only 30 pages are dedicated to reconciliation in the final report (TJRC, 2013c, pp. 81–110).

Unfulfilled promises

There have not been any initiatives of reconciliation created as a result of the TJRC;¹⁹ however, several have emerged at the state level. Among them is the promise to create a victim's fund, which has not yet been fulfilled. Additionally, the government has given two public apologies that stand out. President Uhuru Kenyatta made a big step forward in his televised state of the nation address in March 2015 where he apologized on behalf of the government "for all past wrongs," including assassinations and the Wagalla massacre. Moreover, Kenyatta called for a 10bn Kenyan Shillings (about USD \$100 million) reparations fund for victims. However, it is unclear who the money is for; whether it is only for PEV victims or, for all victims since the country's independence. As of June 2017, the Kenyan government had not followed up on this promise. Moreover, while both measures were key recommendations of the TJRC, Kenyatta did not explicitly refer to the truth commission. The president directed parliament to table the TJRC report, yet the report still needs to see debate and approval by the legislative power. Finally, Chief Justice Willy Mutunga apologized in March 2015 on behalf of the Kenyan judiciary for all misdeeds that happened, fulfilling a TJRC recommendation.

Significantly, in terms of reconciliation, healing and peacemaking, none of the people named in the report have accepted responsibility. Rather, the majority of those named have now threatened to file defamation cases, claiming not to have been given opportunity to be heard by the TJRC. After the PEV, there was an outburst of initiatives to heal the nation, often supported by international donors. An example is the television talk show, *Fist to Five for Change* that aired in 2009. The program demonstrates how peace journalism creates reconciliation, where each side is able to tell their story, and offers community-based

19 Skype interview with Salah Sheikh, 15.01.2016.

solutions (Tully, 2014). However, the TJRC did not use these kinds of methods, nor did it inspire these methods as a result of its findings or recommendations. In short, the general perception of reconciliation was that it was not high on the government's agenda, and lacked political will.²⁰

No report in the public realm, no support for memory

The final report was delayed due to structural problems inside the TJRC, the large time span of 45 years in question, and the broad mandate, which included corruption. Moreover, very few copies of the final report were printed. Only government authorities and a few selected donors received them, and therefore the findings of the report are not widely known in Kenya. As parliament has not approved the TJRC final report, it is not pushing for its recommendations either. While writing the final report is an achievement in itself, the report has basically been shelved.

Public reception of the final report

In comparison to many other truth commissions, the TJRC did not come up with an inspiring title for its final report and simply called it 'Report of the Truth, Justice and Reconciliation Commission.' The document is divided into four volumes, whereby 1) volume I centers on the commission itself, including its challenges; 2) volume II is separated into three parts: part IIA covers major human rights violations, part IIB focuses on historical injustices, including land, and corruption, and part IIC contains violations against children, gender, and minorities; 3) volume III covers reconciliation and national unity; and 4) volume IV discusses the major findings and recommendations to the Kenyan state. The report is outspoken about the crimes committed by British colonial rule, but it also harshly criticizes the three presidents since independence (Kenyatta, Moi, and Kibaki). Particularly, it condemns their inability to bring about structural change for ordinary Kenyans, their autocratic practices, and the attempt to cover up crimes from which Kenya's 40 ethnic communities suffered from

²⁰ Skype interview with Tom Onzere, 20.01.2016.

“physical and physiological wounds, and remained divided along ethnic and regional lines” (KTJN, 2013, p. 30).

Due to the broad mandate, it was difficult for the TJRC to cover the whole period with all its pertaining issues. Even under the best of circumstances—which was not the case for most of the TJRC’s existence—it would have been difficult to comply with its mandate. Therefore, the TJRC tried to use synergies as much as possible with existing information or commissions. However, CSOs that wanted to be actively engaged in the final report—particularly when it came to the issue of reparations—were mostly blocked by the TJRC, which was not open to suggestions.²¹ It soon became clear that the commission would focus on subjects that were not in the public light, like the Shifta War and the Wagalla massacre. It also focused on topics that concerned all parts of the country, like police abuse. Therefore, the TJRC focused on window cases instead of pretending to write a complete history of Kenya.

Compromised memory efforts

The report is seen as balanced and acceptable, with the exception of the adapted land chapter.²² The Land Chapter implicated Jomo Kenyatta, Kenya’s first president (and father of Kenya’s current president, Uhuru Kenyatta), in irregular land dealings. This draft was leaked to individuals with ties to the State House (the Office of the President) who subsequently rewrote the chapter. In internal debates, the majority of commissioners allowed for the change. However, the three international commissioners published a dissenting opinion that was not handed over to Kenya’s president as it should have been under the TJR Act. Even worse, Commissioner Ronald Slye was offered a bribe—in coded language—to remove certain paragraphs in the land chapter, particularly about land grabbing and land acquisition.²³

The legitimacy in society was therefore even further compromised. Any truth commission relies on the perception to provide a just, fair, and transparent

21 Skype interview with Tom Onzere, 20.01.2016.

22 Skype interview with Tom Onzere, 20.01.2016.

23 Skype interview with Ron Slye, 12.07.2015.

process. Yet, the TRC faced allegations of corruption (as the Ministry of Justice allegedly embezzled money), allegations of human rights violations made against the TJRC chairman, and the lack of political will. Donors and CSOs were very cautious about a TJRC that lacked the necessary support to put pressure on the Kenyan government (Asaala & Dicker, 2013).

A good report that was shelved

CSOs welcomed and considered the report to be very good.²⁴ As one activist put it, “I think [the TJRC] wrote the history of Kenya.”²⁵ Victims, survivors, and their families feel that some good work was done, even though there is a lot of frustration that there was no follow-up in the form of reparations or justice.²⁶ Particularly important in the final report was the discussion of economic crimes. Five regions were identified that have been systematically marginalized by the national government: Northeastern and Upper Eastern, Coast, Nyanza, Western, and North Rift. The identification of these regions also helped many ethnic groups to feel represented, as they did not perceive an ethnic bias in the analysis. When it comes to corruption, some lesser-known cases were discussed. Most important, however, was the land issue. More than 40% of statements and memoranda referred to land grievances and disputes, reflecting the enormous importance of land injustices in Kenya (Lanegran, 2015a, pp. 68–70).

The Kenyan government never printed the final report, even though the German government offered to print around a thousand copies. Nonetheless, in the end, some one hundred copies were printed and distributed among parliament, chief justice, and president. However, the government never distributed the final report to the general public.²⁷ Even though an electronic copy can be easily found on the internet, few Kenyans have expressed interest in it. In comparison to the TJRC, it is other publications like *Kenya Burning* (Mboya & Ogana, 2009), which includes pictures with a narrative text about

24 Skype interview with Salah Sheikh, 15.01.2016.

25 Skype interview with Salah Sheikh, 15.01.2016.

26 Skype interview with Ron Slye, 12.07.2015.

27 Skype interview with Ron Slye, 12.07.2015.

the 2007–2008 PEV, that have caught the attention of Kenyans. This book also seemed to have more impact, at least in the bigger cities, than the final report.

No collective memory possible

As Robins (2011, p. 44) shows in his report about ethnic Somali and torture victims in Nyayo House in Nairobi, victims expected memorialization efforts. Thanks to international donors, ICTJ published a booklet of some 70 pages for children and youth (Murphy, Wray, & Ramírez-Barat, 2015). It adopts the methodology used by the U.S.-based NGO *Facing History and Ourselves*, and appears to be pedagogically very useful, engaging its readers with many questions and exercises. Importantly, the booklet also has an official letter from the Chief Justice Willy Mutunga. In it, Mutunga expresses the hope that this effort will “make Kenya a better, more united, equal, and safer country for everyone” (Murphy et al., 2015, p. 2). The booklet contains teaching tips for adults and teachers, although it is limited to three basic educational activities.

It is unclear if any memory initiative has been created as a result of the efforts of the TJRC. However, several CSOs actively refer to the final report. An example is the Kenya Human Rights Commission (2016), which discusses the land injustices and heavily relies on the findings of the final report to lobby for changes in legislation. There is hope among civil society activists that with political changes at the top level, the final report could regain the attention of government and parliament.²⁸

The unfulfilled promise of justice

No punitive justice can be established without having the necessary evidence against perpetrators. While the TJRC used its power to recommend individuals and organizations for prosecutions in its final report, there was no follow-up. The commission also suggested reparations for victims. Yet, so far, no reparations framework has been established. Theoretically, the final report is promising, however, in reality, it has not yielded tangible gains.

28 Skype interview with Tom Onzere, 20.01.2016.

Framing justice and the amnesty issue

The TJRC is the first truth commission to include 'justice' in its title (TJRC, 2013c, p. iv). In comparison to the ICC, the TJRC saw itself as "a more victim-centered institution" (TJRC, 2013c, p. 2). In contrast to the ICC, which had a much narrower mandate limited to the 2007–2008 PEV, the TJRC had a broader mandate that dealt with human rights violations and economic crimes from 1963 to 2008. Moreover, the TJRC tried to offer some kind of amnesty to those admitting to corruption and for others who returned payments received from the pertaining illicit activities. The TJRC reached out to the Kenya Anti-Corruption Commission (KACC) in the hope that this permanent body could be of help to fulfill its mandate with a more sustained effort. In the end, this collaboration did not bear any fruit and the KACC has been plagued with allegations of corruption.²⁹

The original draft of the TJR bill proposed an amnesty scheme that directly copied some parts of the South African TRC.³⁰ The suggested broad amnesty powers caused an outcry among CSOs that were afraid that the truth commission would be a tool for the government and its cronies to receive impunity.³¹ Parliament took into consideration the strong criticism and consequently limited the amnesty powers to cases that did not qualify as gross violations of human rights. Thus, amnesty turned out to be a "false issue,"³² as the TJRC could not guarantee that the attorney general would approve its recommendations for amnesty. Yet, the public perception continued to be that the TJRC had robust amnesty powers, which caused suspicion and negative publicity. However, any perpetrator who was aware of the limited amnesty powers did not have much enticement to come forward in the truth-telling exercises. In short, the amnesty power available to the TJRC turned out to be unhelpful at best, and might even have been counter-productive.

29 Skype interview with Ron Slye, 12.07.2015.

30 Skype interview with Ron Slye, 12.07.2015.

31 Skype interview with Salah Sheikh, 15.01.2016.

32 Skype interview with Ron Slye, 12.07.2015.

The lack of a tribunal and money

In its October 2008 report, the Waki commission recommended the establishment of a local tribunal to foster Kenya's democratic transition and go against impunity (Asaala, 2010). As Kenya's government did not establish a tribunal, Kofi Annan handed over a sealed envelope to the ICC in July 2009 to provide for punitive justice, as foreseen in the Waki report. However, the six individuals charged with crimes against humanity pointed out that the ICC intervention was a Western conspiracy and represented neocolonial policies. Two of the accused, Uhuru Kenyatta and William Ruto, formed a coalition alliance and successfully won the March 2013 general elections, making them president and vice president. In September 2013, the Kenyan parliament voted to withdraw from the Rome Statute and all six cases in The Hague ultimately collapsed (Corradetti, 2015).

The TJRC suffered budget constraints that severely affected its operations, particularly during its first year. The TJR Act promised a fund that would provide the necessary support for operations but, contrary to its mandate, Kenya's Ministry of Justice ran the TJRC budget and kept the commission on a shoestring during the first year. Commissioners did not receive their salary for months. In the end, only 16% of the KSH1.2 billion was provided in the first year, and KSH650 million for the second. Thus only around half of the proposed money was received. This financial shortage severely delayed the TJRC's work, consequently preventing the implementation of hearings in some parts of the country (TJRC, 2013a, p. 145). In short, the TJRC was not able to act independently and there was suspicion that the Ministry of Justice misused the funds allocated to the commission. Due to these problems, the TJRC 'wasted' one year of its operation without having much progress.³³

Naming perpetrators, but no follow-up

The final report includes the names of perpetrators. Overall, 297 individuals or businesses are listed as 'adversely-mentioned persons' with the recommen-

33 Skype interview with Ron Slye, 12.07.2015.

dation to investigate them (TJRC, 2013d, pp. 128–160).³⁴ In addition, another 191 individuals are mentioned in other reports of inquiries but the judiciary has not followed-up (TJRC, 2013d, pp. 161–180). TJRC Chairman Kiplagat was among the individuals to be investigated. This episode drew a lot of media attention, while discussions about other human rights violations were largely ignored; ultimately, the Kiplagat affair played into the hands of those seeking to delegitimize the commission's conclusions and recommendations.

The people mentioned in the final report had the opportunity to present their point of view in interviews, hearings, or in writing. When alleged perpetrators were mentioned but did not respond to the consequent invitation, the TJRC “presumed the allegations as levelled against them to be truthful” (TJRC, 2013c, p. 2). As a result, the TJRC recommended their prosecution or further investigation by the Office of the Director of Public Prosecutions (ODPP), or appropriate action to be taken by the relevant body (such as the National Land Commission). However, those publicly named were adversely affected and their rights to a full due process were limited, as the majority of those mentioned were never heard by the TJRC (Asaala & Dicker, 2013).

No follow-up mechanism, no reparations

The TJR Act insured that the TJRC had the power to recommend a follow-up commission to oversee the swift implementation of its own recommendations, report to Kenya's public, and coordinate among the relevant actors involved. The follow-up commission was named the Implementation and Monitoring Mechanism. This approach recognized the major challenge of a lack of political will that had been faced by so many truth commissions beforehand. While this elaborate scheme of reporting was developed in the TJR Act, this implementation mechanism never came into practice. Since the presentation of the final report to President Kenyatta in May 2013, neither the Minister of Justice, nor

34 It is confusing that it is 255 individuals or businesses that are mentioned in total, however an additional 42 individuals are included in number 29, 30, 39, 40, 231 and 232 in the final report. Moreover, at least one individual is mentioned twice, TJRC chairman Bethuel Kiplagat (in number 40 and 166).

the Attorney General have reported to parliament about the progress of the report's implementation.

In its fourth and final volume of the final report, the TJRC suggested that the Kenyan government should put aside an initial KSH500 million for reparations (TJRC, 2013c, p. iv). Robins (2011) carried out a study among victims across the country in 2010 that found that the highest priority for reparations was financial compensation, with 56% stating it as their preference. Housing and access to land followed, with 34% and 33%, respectively. This is in line with the TJRC findings, where compensation was demanded in approximately 70% of the cases (TJRC, 2013d, p. 100). While justice and public apologies are not that high on this list, Robins (2011) points out that basic needs need to be fulfilled first, and that priorities of victims would change over time. The final report largely lacks a detailed reparations framework. The two pages devoted to reparations in the final report do not provide sufficient information on the matter, particularly on the institutional set-up (Ndungú, 2014, p. 10; TJRC, 2013d, pp. 123–124).

The TJRC hoped that CSOs and other interested stakeholders would push the government to implement the reparation framework with a focus on individual, as well as on community-based and symbolic reparations.³⁵ However, there was never a strong alliance standing up for the final report. While CSOs have demanded the implementation of the report, the relationship between them and the TJRC was weak. Some of these CSOs even demanded that the TJRC should be disbanded, or that victims should not cooperate with the truth commission. On 3 December 2015, Member of Parliament Mohamed Diriye demanded in the National Assembly to debate the TJRC report; however, to no avail. In 2016, former Prime Minister Raila Odinga and his party called several times for the implementation of the TJRC, but no action followed. However, he did so from the opposition bench, and it is unclear how much he would change if he is elected to office.

35 Skype interview with Ron Slye, 12.07.2015.

The TJRC's impact on justice

Independent of the truth commission, Kenya adopted a new constitution in August 2010, as foreseen in the National Accord to end the PEV. It includes a bill of rights, an independent judiciary, and a decentralized political system. In 2011, the National Police Service Act reformed the police force. NGOs like ICTJ have been training police officers to serve their people instead of confronting them, as well as promoting a vetting process, particularly regarding sexual violence. The number of policemen found unsuitable as a result of this process was very small in comparison to the existing allegations (ICTJ, 2015). (Nanauughton, 2014)

As the ODPP failed to follow-up investigations of individuals and organizations as recommended, the TJRC's impact on punitive justice has been very limited. Since the final report's release, lawsuits have been filed challenging the report's content, operations, and recommendations. Moreover, the government institutions themselves have not changed; they have not become more transparent, less corrupt, or victim-friendly. Also, there are no indications that the TJRC changed perceptions or institutions regarding the advancement of restorative justice.

Conclusions

As one of the most recent truth commissions, Kenya had the chance to learn from many other cases around the globe. However, throughout its lifetime it faced enormous challenges. As of now, the TJRC final report is facing the same fate as any commission of inquiry beforehand in Kenya: it is shelved and ignored by parliament. Several lessons can be learned from the Kenyan truth commission. First, expanding human rights violations from civil and political rights to socio-economic violations was an innovative idea. While well-intentioned, with Kenya's many grand corruption schemes in mind, covering economic crimes was well beyond the scope of the TJRC. Second, and related to the first point, mandates need to be realistic and cannot include too many issues that will overwhelm the truth commission. Expectations towards a truth commission need to be reasonable, and this needs to start with the very mandate on which it is based.

Third, selecting commissioners needs its due time. Otherwise, candidates can be selected that are deeply detrimental. At first glance, TJRC Chairman Kiplagat was a highly qualified peacemaker with international experience. Yet his alleged involvement in a massacre made him wholly unfit and undermined much of the TJRC's work.³⁶ Fourth, civil society needs to put pressure on the government, so that the government takes truth commissions seriously. In the Kenyan case, many CSOs had a very ambivalent relationship with the TJRC, and thus lacked the necessary ownership of the final report.

Fifth, political will and ownership needs to be sustained. The Kenyan government often refused or undermined the work of the truth commission instead of supporting it. None of the political leaders in the higher echelons participated, which led to a missed opportunity to foster reconciliation. Sixth, the TJRC's focus on women, demonstrated by hearings exclusively for women, was an important step forward and is an example for future truth commissions.

In conclusion, when the 2008 peace accord mandated the creation of the TJRC, there were high hopes that Kenya's contested history would finally be tackled from a victim's perspective, shedding light on structural injustices. From the beginning, however, the TJRC was constrained by Kenya's government, which lacked political will, was overextended by its mandate, and lost the trust of many Kenyans due to its controversial chairman. While the TJRC came up with a good and solid final report, the document is basically unknown among Kenyans and has not brought about concrete changes since it was handed to Kenya's president in 2013.

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36 Ambassador Kiplagat passed away in July 2017 aged 81 after a long illness.

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7 Lessons learned from the five case studies

Johannes Langer

Introduction

Truth commissions have become a standard practice to address patterns of abuse and legacies of violence. The international community continues to actively promote this transitional justice tool even though the academic literature is still very much divided about the effects of truth commissions. This chapter presents a comparative discussion of the effects of the previously analyzed truth commissions. This section further evaluates general lessons from the truth commissions, and critically reflects on the four dimensions that are discussed in each case study—truth, memory, reconciliation, and justice. These discussions should not be interpreted to be a toolkit about how to set up a truth commission. Rather, these are reflections that should lead to more critical thinking in practical terms about the role of truth commissions.

General lessons learned from the five case studies

The following fourteen lessons are drawn from the five case studies discussed in this volume—Guatemala, Kenya, Peru, Sierra Leone, and Timor-Leste. While several policy guides for truth commissions have been written (e.g. Freeman & Hayner, 2003; González & Varney, 2013; UNHCR, 2006), they present a gene-

ral discussion that does not necessarily include the challenges at hand. When discussions are held within UN circles (e.g. Human Rights Council, 2013), they are rather short and ignore several points. Taking this into account, this chapter starts with several 'technical' points that are useful lessons from the five case studies. It further focuses on the four variables discussed in each chapter. The following points are not just general lessons but ultimately allow for the basis of a successful truth commission and a final report.

Political will and ownership

The five case studies clearly show that it is vital to have political support and ownership from the government's side. This is necessary to secure before the set-up of the truth commission, particularly when there is international pressure from the UN (Guatemala, Sierra Leone, Timor-Leste) or the AU (Kenya). The tide of support can turn against the truth commission in the set-up phase (Kenya) or when the final report is presented (Timor-Leste), which constrains the work of follow-up mechanisms. The five truth commissions produced solid final reports. Nonetheless, it is difficult to share the content of the document with the rest of society when the government does not provide financial and political support (Sierra Leone). The sense of ownership is strongly linked to the need for political will. It is essential that the country is behind a truth commission, especially when the commission resulted from international pressure.

The mandate does not need to be extensive but realistic

The scope of the mandate for truth commissions has broadened over time. The Guatemalan truth commission exemplifies this trend. Its mandate was limited and straightforward, and did not include reconciliation; only a couple years later, and following the South African example, other truth commissions began to include reconciliation in their mandate (Peru, Sierra Leone, Timor-Leste). A decade later Kenya's truth commission expanded to include second generation human rights violations, such as economic crimes—like corruption and land grabbing. While the inclusion of socio-economic crimes was an innovative and appealing idea—particularly for a country facing substantial inequality—the Kenyan truth commission was overwhelmed with the task of handling these crimes. This experience shows that a realistic and flexible

mandate can be too broad, and instead, must focus on its core functions: truth-telling and reconciliation. Expectations towards a truth commission need to be realistic, and this needs to start with the mandate.

Selection of commissioners

The selection of commissioners requires time and a standardized and transparent process; otherwise selected candidates can be detrimental to the commission's work. In general, consultation with civil society allows for better representation (Kenya, Sierra Leone, Timor-Leste) than directly appointed commissioners (Guatemala, Peru); however, this method does not guarantee success. An example is Kenya's TJRC Chairman Kiplagat, who was initially perceived as a qualified peacemaker. Nonetheless, his alleged involvement in a massacre made him wholly unfit to lead the TJRC, and the public's distrust of him, undermined the truth commissions' integrity.

The selection of international commissioners is often well received because of their perceived neutrality (Guatemala, Kenya) but should not have other work commitments (Sierra Leone). Moreover, the commission's chairman must be perceived as impartial and charismatic, in order to bond with people and disseminate the truth commission's message. Finally, there is an implicit assumption that former commissioners should continue to be the 'face' of a truth commission, like Desmond Tutu in South Africa. However, commissioners can easily 'disappear' and do not publicly demand the implementation of the final report (Sierra Leone, Timor-Leste).

Selecting statement takers

Statement takers are essential to the success of truth commissions, as they interact with victims and perpetrators on a daily basis. In many cases, statement takers received limited and insufficient training, which hampered the quality of the interviews. This is particularly concerning when many statement takers have a low level of education (Kenya, Sierra Leone, Timor-Leste). A common dilemma for truth commissions is whether to include statement takers from rural areas; the commission recognizes the importance of including a neglected segment of the population, but their low levels of education can negatively affect the quality of statements.

From the outset, truth commissioners should clarify statement objectives. This includes establishing a standard of quality, and setting a target for the number of statements taken (Kenya). A more targeted approach enables commissioners to obtain the number of statements needed for statistical purposes, while also taking victims' needs into account. Such an approach should permit a range of statements from the regions particularly affected by violence. It should also facilitate follow-up psychological services for those who participated in the statement taking process.

Involving civil society

One of civil society's major roles is to put pressure on the government. During the implementation of truth commissions, CSOs advocate for a mandate with an inclusive policy, and for the selection of independent commissioners. Moreover, their active involvement and work with local communities, as well as their ability to follow-up with victims who participated in the truth commission can help to distribute the final report. CSOs can also apply pressure to the truth commission if they feel it is not on track—and turn against the commission if they oppose its work (Kenya). This may result in reluctance to take ownership of the final report. A different reason for not having a broad coalition of CSOs can also be related to the general weakness of civil society in a country coming out of violence or oppression (Sierra Leone, Timor-Leste). Issues may also result between 'elite' CSOs that received international funding and grassroots CSOs in remote areas.

Financial support

A truth commission can only operate successfully with sufficient resources. The support for the five truth commissions in question varied widely. For instance, a two-year operation in Sierra Leone cost USD \$4.7 million, whereas in Peru, it cost USD \$13.5 million. This is very little money in comparison to the international tribunals that operate on USD \$100 million per year.¹ Truth commissions can completely depend on international donor money (Sierra Leone, Timor Leste) or can be funded by the national government (Peru). If a truth commission is largely dependent on outside funding, donor fatigue

¹ The spending of criminal tribunals is visually well prepared by McLaughlin (2013).

can compromise its methodology and lead to an incomplete investigation due to the lack of available funds (Sierra Leone). For the commission to be successful the agreed funding needs to be guaranteed and the government cannot meddle in the truth commission's independence. Any disregard for these principles can severely limit a truth commission's work and negatively affect its staff (Kenya).

Witness protection program

In the five case studies discussed, programs to protect the people who participated in truth commissions were either weak and ineffective, or non-existent. Having said that, in four cases, there were no reports of attacks on either victims or perpetrators who came forward in the statement-taking process or the public hearings. However, what is not known is how many people did *not* come forward due to the inadequate protection of those participating. Guatemala did not have public hearings, not least to avoid revenge attacks. Witness protection is a principal concern. To address this concern, and in the absence of witness programs, commissions can employ on-camera hearings or off-the-record conversations with individual commissioners and senior staff, as was the case in Kenya.

Psychological support for victims

In truth commissions victims share their most intimate stories, yet, as seen in the previous case studies, they rarely receive psychological support. While Timor-Leste and Kenya tried to provide some basic services, ultimately they were insufficient. Despite the attempts of Timor-Leste and Kenya, the previously discussed countries largely lacked essential psychological support for victims, especially for those in rural areas (Peru). Truth commissions need to honestly assess their capability to offer support and understand how to mitigate the psychological effects victims that victims may experience by sharing their stories.

Accessing armed groups' archives and documents

While the implicit assumption of policy makers is that both the state and rebel groups open their archives and share internal documents with the truth commission, the five case studies show that this not necessarily

the case. In Kenya, the government was reluctant to turn over its documents and the TJRC depended on leaked reports. Obtaining documents from rebels also turned out to be difficult. An additional layer to obtain information is from third parties, particularly other countries that were directly or indirectly involved in the conflict. The collaboration of the truth commission with other countries was quite successful in the Guatemalan case (with the U.S.) while Indonesia refused to collaborate with Timor-Leste during the time of CAVR.

Decentralized approach

In many armed conflicts, the over-centralization of the country can be an important structural cause of violence. A truth commission can perpetuate the already existing centralized structure (Guatemala). To avoid this, truth commissions can appoint regional commissioners, which, in turn, can lead to more in-depth relations with victims (Kenya, Peru, Timor-Leste).

Media outreach

While the five truth commissions attempted to reach out to the media, the media's coverage of the work was rather mediocre. Considering the success of the South African experience with the media, many policy makers assumed that the respective truth commissions would generate the same public interest. However, none of the evaluated case studies matched the South African media success. Although, some newspapers printed parts of the final reports, or included the reports in their printed editions (Guatemala, Sierra Leone), the media's attention towards the above-mentioned truth commissions was short-term and limited in scope.

Discussion on development

As long as the structural inequalities are not tackled, it is likely that the truth-telling exercise will not result in reconciliation (De Greiff & Duthie, 2009; Mani, 2008). The structural inequality and policies that exploit natural resources can severely affect the transitional justice effort. Kenya addressed this issue by including socio-economic rights and poverty in its TJRC, which empowered victims.

Women's involvement

The five truth commissions tried to include an active policy towards women. Over time, more women participated as commissioners and statement-takers. Gender equality has become a major issue and concern for truth commissions (particularly in Kenya and Timor-Leste). While none of the commissions achieved gender balance, Kenya came close (44%) and had a majority of women statement takers (63%). Gender balance is not only about numbers, but about the dedicated commitment to gender issues in general. Sierra Leone and Timor-Leste gave a lot of attention to women's inclusion; this was reflected in the final report. Peru was the first truth commission to establish a special gender unit. Kenya went a step further as the TJRC's focus on women was demonstrated by the creation of hearings exclusively for women, an example to follow in future truth commissions.

Follow-up institution

After truth commissions end, a follow-up mechanism is necessary to monitor and push for the implementation of recommendations in the final report. As seen in the previous case studies institutions in charge of follow-up need the government's political backing, funding from donors, and support from civil society to be effective watchdogs. While each of the five countries foresaw the need for follow-up mechanisms, they largely failed to implement them. In Guatemala and Kenya, no body was established, and in Sierra Leone, the responsibilities were unclear. In theory, the most successful case should have been the STP-CAVR in Timor-Leste, as it was established right after the work of CAVR, had a clear mandate, operated out of the President's Office, and had its own budget. However, the results were more than mediocre because they lacked political will and failed to engage employees. The new CNC could potentially change this legacy and be a watchdog for, finally, implementing the recommendations of *Chegal*.

The fourteen points discussed can allow future truth commissions to reflect on their own work before they start. Lessons from the five case studies are by no means complete or claim to ensure success when applied. Rather, it is an attempt to present several points that can potentially strengthen the work of a truth commission.

Specific lessons for the four dimensions

After the discussion of the general lessons that can be learned from the five case studies, a further in-depth discussion continues with the four dimensions that are at the heart of the aforementioned case studies: truth, reconciliation, memory, and justice. As argued in Chapter 1, these dimensions can allow for a comprehensive overview of truth commissions.

Not one single truth

Following the South African TRC and the discussion of Chapman and Ball (2001, pp. 10–12), there are four types of truth: factual, social, restorative, and narrative. All truth commissions discussed in this book established factual or objective truths, attempting to impartially represent severe human rights abuses. In contrast, no social or dialogue truth can be identified because there was not enough interaction between a wider audience despite attempts to include the media. When it comes to restorative and narrative truths, it is more difficult to say. With the exception of Guatemala, the attempt to establish narrative truth only resulted from victims' participation in public hearings. On the other hand, restorative truth implies reconciliation; although limited in Kenya and Peru, restorative truth was more pervasive in Sierra Leone and Timor-Leste.

In cases where perpetrators lacked incentives, it was difficult to motivate them to participate (Guatemala, Sierra Leone). The situation was quite different in Timor-Leste where the Community Reconciliation Process gave amnesty to low-level perpetrators in return for the truth. In the case of Kenya, an amnesty process would have been feasible but was never used. As a result, very few perpetrators came forward.

When the mandate is initially established, the truth commission needs to decide whether it wants to hear the voices of perpetrators. If they decide to do so—considering that more can be learned about the crimes' motivation, and lead to a public acknowledgement of wrongdoing—it is necessary to provide incentives for perpetrators. If the truth commission and the tribunal

are working together (Sierra Leone), it is important that the two institutions provide a guarantee to the defendant that shared information will not be used against him or her.

In truth commissions, public hearings have become common standard. However, this was not always the case. Peru was the first country in Latin America to use them. Of the cases evaluated in this book, Guatemala was the only commission that did not hold public audiences. The power dynamics within public hearings are not usually reflected in truth commissions (Sierra Leone). Even though in some cases the dynamics are represented, commissions can fail to overcome traditional power roles that exclude women and young people (Timor-Leste). This can be addressed by including special hearings for women (Kenya) and children (Kenya, Sierra Leone).

While all commissions in question produced final reports, they were not able to reach wider audiences. Even though the academic quality can be celebrated a large part of the countries' civil society remains in ignorance about the documents. When the final report challenged the official narrative of a country (Guatemala, Kenya, Peru), governments were reluctant to disseminate the findings. Thus, in Peru, the commission put forward an 'historic truth,' but it did not materialize into a 'social truth,' in other words, it established in academic terms an interesting final report but was not able to get the message across to the public. This implies that certain sectors in society continue to deny a narrative about crimes committed by their side. In Timor-Leste, a more active approach of dissemination would have meant policy changes within the government. In Sierra Leone, there was no resistance to the distribution, but due to the lack of resources, they did not succeed. A key challenge persists for truth commissions to get the word out and, simultaneously, to court support from the government and civil society. Argentina successfully implemented this strategy, and today, the final report, *Nunca Más*, remains the country's most sold book.

Reconciliation

After the South African TRC, truth commissions have tended to include reconciliation in their mandate. With the exception of Guatemala, this was evident in

all case studies discussed in this volume. However, it is questionable whether they achieved real reconciliation. The Community Reconciliation Process's (CRP) focus on traditional reconciliation efforts is a particularly interesting model of reconciliation among the five cases and it has been celebrated as a success in the international community. While the chapter shows that it had its own limitations, the CRP can be a role model for other societies with traditional belief systems to reintegrate low-level perpetrators, including indigenous communities.

Truth commissions proponents work on the assumptions that truth-telling is a cathartic exercise. However, anthropologists suggest (Kelsall, 2005; Shaw, 2005, 2007) that truth commissions need to revise whether truth-telling is culturally adequate to foster reconciliation (Sierra Leone). This concern has been addressed with other efforts that follow much more traditional approaches in Sierra Leone, particularly *Fambul Tok*. This critique surely questions the universal appeal of public hearings that is taken as a given within the international community. Context-sensitive approaches can include the community profiling workshops, a mapping exercise that allowed participants in Timor-Leste to focus on the community itself and provided a space where they could share their own story and reflect on the past.

Communities in Kenya and Timor-Leste used healing workshops as another intimate way to achieve reconciliation, even though in both cases they were very limited. In Kenya, these workshops were set up late and exploratory in nature. Other truth commissions may think about an active strategy regarding such promising initiatives to allow for the growth of reconciliation across the country, and be the seed for other movements. *Fambul Tok* would be such an example, even though it was a local civil society initiative and used as a response to the perceived failure of Sierra Leone's TRC. Otherwise, truth commission can fail to understand reconciliation as a long-term concept and, consequently, not give it the attention it deserves. The unique advantage of a truth commission that includes a mandate on reconciliation is to lay the foundation for healing.

In the case of Peru, reconciliation was a key part of the mandate and also part of the truth commission's name. However, in practice most of the work

focused on truth-telling. This implied that victims and perpetrators did not come together and no space was provided to forgive and reconcile. For many, reparations and the perception that they are fully-fledged citizens with equal rights, is a promise that has not been fulfilled yet.

Public apologies can be very powerful; the perception of whether or not they are coming from the heart and are genuine is equally important. In the case of Peru, several presidents offered a public apology, but many other actors—may it be from the military or from the insurgency—failed to do so. In Kenya, it came as a surprise when President Kenyatta and the Chief Justice apologized in 2015 “for all past wrongs.” While he declared that he did not do so because of the TJRC recommendation, it was in any case a step forward for the country. However, more than two years later, the promise to follow-up with a victims’ fund has not been realized, which would be an implicit expectation after a public apology to guarantee non-reoccurrence.

In the case of Guatemala, reconciliation was not explicitly included in its mandate. Although it could have had the potential to bring about a reparation scheme that would have allowed for a more transformative basis, a better balancing act between individual and collective reparations would have been necessary. Additionally, a public apology for the genocide from Guatemala’s president is still missing, as well as a better recognition of the Mayan community within Guatemalan society. Public apologies were also heard in Kenya and Peru, while in Sierra Leone the president refused to do so in general terms, and only did so to women in the name of the state. Yet, these apologies did not come with a compensation for victims (Kenya, Sierra Leone). In Timor-Leste, the main perpetrator was Indonesia and it was the bilateral truth commission that addressed this issue. Peru established arguably the strongest reparation program of the five cases, yet all sides criticize it for its weaknesses.

Memory

All five case studies produced a final report, which is the basis for creating collective memory. Four of them are publicly available, while in Kenya the final document can only be accessed online through a U.S. university website.

Observers have praised the final reports as very good documents that help to understand the history of the country, clarify root causes of violence, and identify possible perpetrators. However, it is not only about the academic quality of the final report, but also about the dissemination of the document that enables the findings to enter the collective memory of a country. In this sense, none of the countries were able to place the final report as a *lieux de mémoire* in the consciousness of the people. This was achieved in the two popular examples of Argentina and South Africa—that are often cited in the truth commission literature,—but these five cases have not been able to achieve that (as of yet).

Creating memory is difficult due to the lack of a sustained effort of the final report and its different versions. To instill memory, the ministries of education must actively incorporate the final report into textbooks. Although some efforts have been made in Guatemala, Kenya, Sierra Leone, and Timor-Leste they are hardly worth noting. Peru has pushed some efforts but to no avail, as the final report is seen as controversial. The problem in all of the five countries is a general lack of quality and quantity of teaching history, which hinders the diffusion of memory.

Truth commissions had a hard time to have a direct impact on the construction of monuments (Kenya, Sierra Leone, Timor-Leste). While informal or local initiatives have been established after the final report was published, there is usually no direct connection between the construction of monuments and recommendations in the final report. In contrast, in Peru, the state established an important memorial, *El ojo que llora*, in a central district of Lima. In Guatemala, civil society established local monuments thanks to the findings of the final report.

A major problem for all countries is the media's lack of interest in hearings and in the truth commission's work. This lack of attention makes it more difficult to garner notice in the aftermath. Therefore, the assumption that the public at large would actively follow coverage of truth commissions—like in South Africa—needs to be questioned and more innovative strategies are necessary to engage the public.

As the final report usually contains several hundreds—if not thousands—of pages, the document is too long for the general public. An executive summary is therefore necessary to have a more readable text—as happened in all five cases. The inclusion of the TRC findings in school material can be a positive step (Kenya, Sierra Leone), even if teachers have not been adequately trained on how to use this information in the class room. While comics have become popular to present the work of the final report to the illiterate population (Sierra Leone, Timor-Leste), it has often been difficult to widely distribute these products. Documentaries are also popular (Peru, Sierra Leone, Timor-Leste), and while it is possible to watch them on Youtube today, there has not been a sustained effort of dissemination. In the case of Sierra Leone, however, the documentary has been shown several times on national TV.

Several countries *do* have a permanent exhibition that is linked to the truth commission's final report (Sierra Leone, Timor-Leste), or even a museum (Guatemala, Peru). These initiatives can take a long time to be established. The controversies about the museum in Peru continue with the allegation that the crimes of the insurgency are equated to those of the military. In Guatemala, it took 15 years for the *Casa de la Memoria "K'aj T'ulam"* to open in 2014. In Timor-Leste, after 12 years the new CNC also brought life to the final report and actively engaged the Timorese people. In all case studies, besides Kenya, the truth commission allowed for a push of collective memory, although with limited outcomes (so far).

Another challenge emerges when the armed forces are under suspicion and have the power to suppress the truth commission's work (Guatemala, Peru). The narrative of having fought an heroic war to defend the motherland against terrorists continues, despite the fact that the final reports elucidate numerous human rights violations. For instance, in Kenya, the government of Uhuru Kenyatta does not have the interest to promote the final report because it implicates the president's family in corruption. The opposition, however, could change the policy to ignore the final report, depending on the outcome of the August 2017 elections. Whether it is rhetoric from the opposition, or the actual wish to deal with the final report and its recommendations will need to be seen.

Justice

Very different outcomes can be seen regarding the effect of the five truth commissions on justice. The biggest impact, arguably, is seen in the two Latin American cases, Guatemala and Peru. Even though still insufficient, the work of the truth commissions and the recommendations in their final reports helped to bring some perpetrators to trial, including former presidents. In the other three cases, however, very little if anything has been achieved regarding punitive justice (in Kenya, names were named, and in Timor-Leste, an international tribunal was demanded). However, in these three cases (Kenya, Sierra Leone, Timor-Leste), the truth commissions worked next to a tribunal, thus potentially diminishing the demand for punitive justice. In the Latin American cases, the truth commissions felt the necessity to express in percentages which armed group was mostly responsible. How useful that is can easily be questioned, but it directs people to an overall tendency of responsibility and seems to be easier to “sell” to the media.

In the case of Peru, the truth commission followed up with a few cases that were prosecuted—including those of three generals and an intelligence advisor—but many people named in the final report have never faced trial or been indicted. Courts are working very slowly and there is a lot of pressure from the military and conservative political elites that strongly disagree with the findings of the Peruvian CVR. In Guatemala, former president Ríos Montt was charged with genocide in 2013, however the verdict was overturned on procedural grounds and continues as of mid-2017. As of late, members of the special forces and a former guerrilla were convicted, turning the tide in favor of more accountability.

While, according to popular perception, the justice system has not markedly improved in any of the five countries, ideas of restorative justice have been introduced into society. Nonetheless, punitive justice continues to reign. At least in three countries (Guatemala, Peru, and Timor-Leste) human rights NGOs have been strengthened thanks to the work of the truth commissions. In Kenya civil society was already relatively strong but did not receive a boost from the TJRC.

With regard to reparations, the Latin American cases permitted them (Guatemala, Peru), while the other three cases did not follow the recommendations of the final report. In Sierra Leone, the UN Peacebuilding Fund made small payments to victims but there has not been a sustained effort for a reparation fund. While the Kenyan president announced the establishment of a victim's fund in March 2015, more than two years later nothing has happened. In Timor-Leste, even the new Center does not include the issue of reparations.

Three of the five truth commissions in this volume worked next to a tribunal (Kenya, Sierra Leone, Timor-Leste). The Kenyan TJRC was an outlier due to the fact that it was the ICC and not a temporary criminal tribunal. In Timor-Leste, the memorandum of understanding with the Special Penals worked quite well as it did not constrain the participation of low-level perpetrators in the CRP. However, many people perceived injustice, as the tribunal in Timor-Leste was so weak that many mid-level perpetrators were not prosecuted. In any case, those most responsible would be in Indonesia, and Jakarta has not moved on that issue. In the case of Sierra Leone, the relationship between the Special Court and the TRC was particularly problematic because, despite the attempt to cooperate, they ignored each other and both lost out as a consequence (the TRC did not receive potential witnesses while the Special Court did not refer to the final report). Institutional differences must also be clear for the local population, otherwise it is easy to mix up the two (Sierra Leone).

Conclusions

The discussion in this chapter provides a comparison of the five case studies in this volume. The first part discussed fourteen general lessons learned on technical issues based on the findings of the experience in the five countries. The second part presented a comparative discussion regarding the four dimensions that have guided the case studies: truth, reconciliation, memory, and justice. The critical lens on the case studies allow for a more in-depth picture and show the complexity of the work of truth commissions.

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8 Lessons learned for Colombia

Johannes Langer

Introduction

Colombia is the latest country in the process of setting up a truth commission. For that reason, this chapter is specifically dedicated to provide lessons learned from the five case studies for Colombia. Already in the middle of peace negotiations between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC), the parties announced their first breakthrough in the negotiation on the agenda point no. 5 'Victims': the agreement to create a truth commission with the complicated name "Commission for the Clarification of Truth, Coexistence and Non-Repetition" (CEV).¹ This commission was included within the integral transitional justice system and should be established in late 2017 and start its operation in 2018. This chapter provides reflections about the challenges and achievements from the five case studies discussed in this volume.

¹ Whether or not coexistence is the best translation of *convivencia* is open to debate. Even though the peace agreement refers to the truth commission in its full abbreviation – CEVC-NR – the common term that quickly has been used in the public debate is CEV. That might imply a bias towards an emphasis on truth-telling.

Establishing a truth commission in Colombia

The 2016 peace agreement between the Colombian Government and the FARC ended one of the longest armed conflicts (52 years) in the world.² The war caused more than 220,000 deaths—80% of them civilians—and has displaced more than seven million people.³ While it should not be forgotten that the armed conflict with the National Liberation Army (ELN) continues—its insurgency also started in 1964—the main rebel group is now in the process of disarming and demobilizing.⁴ Despite many decades of armed conflict, Colombia has much more institutional capability and available resources than the five cases had when they set up their truth commission. Although some U.S. policy makers labelled Colombia as a ‘failed state’ in the second half of the 1990s (McLean, 2002), the U.S.’s ‘Plan Colombia,’ which strengthened the Colombian military, contributed to mass human rights violations (Rosen, 2014).

On 4 July 2015, the delegations of the Colombian government and the FARC issued Communiqué No. 53 in Havana, Cuba, where they outlined in nine pages the three fundamental objectives for the truth commission: 1) clarify the human rights abuses related to the armed conflict, particularly the elements still unknown; 2) appreciate victims as full citizens, perpetrators voluntarily acknowledge wrong-doing, and recognize human rights abuses as a society; and 3) promote peaceful coexistence of Colombians that includes dialogue, accountability, and social justice. The text that was included in the final agreement is very similar to the one signed in the Teatro Colón in Bogotá on

2 An enormous amount of books have been published about the armed conflict in Colombia (e.g. Bergquist, Peñaranda, & Sánchez, 1992; Oquist, 1978; Palacios, 2012; Pécaut, 2006; Richani, 2002; Rojas & Meltzer, 2005; Simon, 2004) as well as about the peace process (e.g. Bouvier, 2009; Chernick, 2012).

3 The Victims’ Unit constantly updates its numbers at <http://rni.unidadvictimas.gov.co/RUV> and in June 2017 more than 7,175,000 people are registered as displaced and according to the UNHCR has the highest figure of IDPs around the world (<http://www.unhcr.org/figures-at-a-glance.html>).

4 Also other illegally armed groups continue to be active in Colombia, mostly neo-paramilitary groups or *bacrim* as well as narco groups. The armed conflict is therefore certainly not over and therefore the term post-accord instead of post-conflict would be more appropriate for Colombia in 2017.

24 November 2016; both documents promised to set up the Comprehensive System of Truth, Justice, Reparation, and Non-Repetition (SIVJRNR)⁵, a tribunal—the Special Jurisdiction for Peace (JEP)—, and the Search Unit for the Missing. Next to these three bodies, also the 2011 Victim's Law should be strengthened within the transitional justice framework and guarantees of no-repetition should be fulfilled. Therefore, Colombia aims for a holistic approach that includes justice, truth-telling, reparations, and no-repetition. In fact, it appears to be the most ambitious transitional justice system ever established.

The nine pages of the final agreement explicitly envision the truth commission as a victim-centered institution. The truth commission is supposed to have a progressive outlook that considers the needs of women, the LGBTI community, and ethnic minorities. Particularly important is that the CEV will have a territorial focus, thus focusing its work on the diverse regions of Colombia. It is unclear though what such a focus on the regions means in practice. Although the commission particularly seeks to include victims, all actors who were directly or indirectly involved in the armed conflict can testify (Gómez-Suárez, 2015). In contrast to the JEP, the SIVJRNR permits *bacrim* and *narcos* to participate (the final agreement speaks of 'other relevant actors' of the armed conflict (Acuerdo Final, 2016, p. 132)) although it is unclear what incentive they would have to do so.

The original proposal in Communiqué No. 53 foresaw that nine individuals would be part of the selection committee—three from the government, three from the FARC, and three from civil society—to choose eleven commissioners of high integrity. In the final agreement, however, the selection procedure changed, and the selection committee for the JEP will also select

5 While the United States Institute of Peace decided to translate *sistema integral* to integrated system, the High Commissioner for Peace in Colombia went along with comprehensive system.

the commissioners for CEV.⁶ Like in Kenya and Sierra Leone, it is possible that three commissioners can be internationals. The commission must be gender inclusive, and have an interdisciplinary background and regional representation (Acuerdo Final, 2016, p. 137). Having in mind how the twelve members of the Historical Commission on the Conflict and Its Victims (CHCV) were selected, this selection committee is a step forward.⁷ Decree 588 that passed on 5 April 2017 clarified further questions like the competencies of the president of the CEV (Art. 21) as well as its Secretary General (Art. 22). Of particular importance is that CEV should have full access to the archives of state institutions, even though under special conditions. The mandate of clarifying the past includes 13 vast points (Art. 11) that might easily overwhelm the CEV in the three years of its mandate. Otherwise, the final agreement is reflected in the Decree that will guide the CEV.

The time frame in question is still unclear, but the truth commission will likely include the entire armed conflict between the government and the FARC, thus covering at least 52 years (1964-2016). If it does account for the totality of the conflict, it would be the longest period ever covered by a truth commission

6 The Cartagena Agreement that was rejected at the *plebiscito* on 2 October 2016 is almost identical to the Teatro Colón Agreement of 24 November 2016 with the exception of changing the word 'gender' to 'equality between men and women,' as demanded by the opposition. An overview of all changes that took place between the two agreements, this website is helpful: <https://draftable.com/compare/ljypTOKnaBktqvc> (pp. 130–139). The five members of the selection committee are Claudia Vaca, selected by the Standing Committee of the State University System in Colombia; José Francisco Acuña, selected by the Criminal Chamber of the Supreme Court of Colombia; Diego García Sayán, selected by the UN Secretary General; Álvaro Gil-Robles, selected by President of the European Court of Human Rights; and Juan Méndez, selected by the Colombian office of the International Centre for Transitional Justice (ICTJ). The selection committee for the JEP include five well-known personalities: Claudia Vacca, Juan Méndez, Álvaro Gil, Diego García, and José Acuña. They need to have a majority of four out of five to appoint the judges of the JEP as well as the CEV commissioners.

7 In the case of the CHCV, six members were selected from the government and six from the FARC without the need of a majority. In addition, two rapporteurs discussed the twelve contributions that varied enormously in size and quality. Most of the members include well-known experts on Colombia's armed conflict, but their work was constrained by the fact that they had only six months available and no field work was possible. While laudable that they worked for honor and without compensation, the quality of their products might have suffered as well. In total, the final report that was published in February 2015 has more than 800 pages and is available for free at http://www.altocomisionadoparalapaz.gov.co/mesadeconversaciones/PDF/Informe%20Comisi_n%20Hist_rica%20del%20Conflicto%20y%20sus%20V_ctimas.%20La%20Habana,%20Febrero%20de%202015.pdf.

(the 45 years in Kenya are currently the longest period). In general, the final agreement outlines that the CHCV would be the basis for the historic perception of the conflict and the structural causes. However, the CHCV has not settled on a date for the start of the armed conflict; some authors state that it began in 1964 (e.g. Vicente Torrijos⁸) when the FARC started its insurgency; others claim that it began in 1948 (e.g. Alfredo Molano), the 1920s (e.g. Javier Giraldo), or even the 19th C. (e.g. María Ema Wills). CHCV members have also reminded us that it is difficult to write about the armed conflict as if it were in the past, while it continues in the present (Daniel Pécaut). The CHCV final report is an 800-page document that proves, in short, that historians do not agree on the root causes of Colombia's violent conflict.

Even before CHCV, commissions of inquiry had been set up in Colombia. In fact, Jaramillo argues that at least 13 commissions can be identified (Jaramillo & Torres, 2015, p. 31), and he provides an in-depth discussion on three of them (Jaramillo, 2014). In 1958, the military junta set up the first in Colombia, called *Comisión para el Estudio de las Causas de la Violencia* ('Commission for the Studies of the Causes of the Violence'). Although the government did not publish a final report, Colombian academics produced a study called *La Violencia en Colombia* based on the report's findings. Additionally, in 1987 the *Comisión de Expertos*—known as *violentólogos*—presented a report about the multiple levels of violence and provide recommendations to the government of Virgilio Barco. Other commissions were set up, like the ones that covered the massacres in Trujillo and Barrancabermeja, both linked with sentences of the Inter-American Human Rights Commission (García, 2014).

In 2005, the *Comisión de la Verdad sobre los hechos el Palacio de Justicia* ('Truth Commission about the Events of the Justice Palace') attempted to uncover the truth about what happened during the 1985 siege—interestingly, it was the country's Supreme Court and not the government that set up the commission. In 2009, the *Comisión* published its final report. Even though it was titled the '*Comisión de la Verdad*,' it was not a truth, but rather an historic commission.

8 This CHCV member was the only one who decided to basically ignore Spanish-speaking sources in his contribution as well as the literature in general about the conflict in Colombia.

A particularly important truth-telling exercise in Colombia was the 'Truth Commission and Memory' that was an NGO-led project of *Ruta Pacífica de las Mujeres* and published its 2014 final report 'The Truth of the Women: Victims of the Armed Conflict in Colombia'. Both commissions have received little public attention in Colombia even though the informal truth commission on women had specifically interesting methods of disseminating its final report. The National Center for Historic Memory (CNMH) more closely reflects the work of a truth commission. The 2005 Justice and Peace Law originally created it as Historic Memory Group (GMH). In 2013, the GMH produced a final report ¡Basta Ya! Colombia: Memorias de Guerra y Dignidad ('Enough! Colombia: Memories about war and dignity') that was very similar to an actual truth commission report.

In addition to ¡Basta Ya!, the GMH has been very prolific. Between 2008 and 2013, it produced 30 publications, and by June 2017 almost 50 reports about different aspects of Colombia's armed conflict were published. It is currently creating more texts based on the accounts of victims.⁹ All the work that has been carried out leads to the question whether a truth commission is actually necessary, as so much is already known (García, 2014, p. 17). For the sake of clarity, no truth commission has ever been established in Colombia and CEV will be the first of its kind.

The work of CEV has a big advantage over other countries, because Colombia already has a strong reparation system for victims, at least in theory. The Victims and Land Restitution Law (Law 1448 of 2011) has been dubbed the 'most ambitious' reparations system in the world (Sikkink, Marchesi, Dixon, & D'Alessandra, 2014). Although the system faces major challenges, it has clarified what constitutes a 'victim' and provided a holistic regime of reparations (Rettberg, 2015). More than eight million Colombians have been registered as victims, thus every sixth citizen is in the database of the Victims' Unit (Firchow, 2017).¹⁰

9 All of these publications can be downloaded for free at <https://www.centrodememoriahistorica.gov.co/informes>.

10 The academic literature within Colombia has mostly focused on land restitution (Chávez, Chaves, & Vargas, 2014; Plata, 2012; Rodríguez, 2014; Uprimny & Sánchez, 2010) but there is also an emphasis within Los Andes University on public opinion about reparations (Nussio, Rettberg, & Ugarriza, 2015; Rettberg & Ugarriza, 2016) (e.g. Nussio, Rettberg & Ugarriza, 2015). Regarding symbolic reparation, the article of Alcalá and Uribe (2016) is particularly insightful.

Like in all other armed conflicts, there are multiple versions about the patterns of violence in Colombia. They often openly contradict each other and try to establish hegemonic as well as counter-narratives of the conflict. Castillejo (2014) points out that violence can include different meanings and definitions for the different groups. Victim groups across the country have collected their own sources of evidence about their beloved ones who were tortured, killed, or disappeared. The CNMH, in turn, is comprised by intellectuals that are strongly influenced by the *violentología*, which represents its own field of scholarship in Colombia focusing on historical analysis of contemporary violence, with academics led by Gonzalo Sánchez. They especially focus on the narrative of victims to provide them with dignity and empowerment. CNMH faces a challenge, as the reality of people who contribute to reports often does not change, primarily because material reparations do not arrive, or intimidation from illegally armed groups continues to be a threat.

Discussion of academic literature in Colombia

The academic production on transitional justice in Colombia has surged in the last 15 years. The volumes of Rettberg (2005), de Gamboa (2006), as well as Lyons and Reed (2010) stand out next to the book of Orozco (2009). The contributions of Rodrigo Uprimny are the most reflective and outstanding examples from a juridical perspective (Uprimny & Lasso, 2004; Uprimny & Saffon, 2005, 2006, 2008). Another interesting volume has recently come out including ten case studies from around the world that are typically ignored in Latin America, with lessons learned for Colombia (Barreto, 2016). Recently, the Colombian armed forces sponsored four volumes on transitional justice in an attempt to influence the academic discourse (Bernal, Barbosa, & Ciro, 2016a, 2016b, 2016c, 2016d).

Sobre la verdad en los tiempos del miedo (Springer, 2002) was the first book in Colombia regarding truth commissions. It is, however, Ceballos (2009) who wrote the 'classic' and often cited book about truth commissions in Colombia comparing three case studies (El Salvador, Guatemala and South Africa) to extract lessons learned for a possible truth commission in Colombia. According to her, the case studies provide four main lessons: 1) truth commissions needs

the support of the government and civil society; 2) necessity to acknowledge severe human rights violations, particularly from the state; 3) the truth commission needs to go along with a reparation program and the definition of 'victims' needs to be clarified; and 4) reconciliation should be understood as a long-term measure, but should not be the commission's main aim (Ceballos, 2009, pp. 113–115). Although Ceballos (2009) has a similar project like this volume, she does not engage much with the canon of transitional justice literature in general and truth commissions in particular. Perhaps the best contribution to truth commissions has been the book about the South African TRC from Castillejo (2009); it includes many insights for Colombia. Two more recent reflections provide insights about truth commissions from a decolonial perspective (Castillejo, 2014, 2015).¹¹

The *Centro de Memoria Paz y Reconciliación* (2014a, 2014b) published reflections about a possible truth commission and former commissions of inquiry in Colombia. A particularly interesting example is the contribution of Movice (2014), which carefully delineates recommendations for the truth commission. Among the points, they demand that the scope of human rights violations begins in 1945, to have a mandate of at least five years, and that TV and radio broadcast public audiences during prime time. Bernal (2016) discusses the 2015 proposal of the Colombian truth commission from a legal and 'critical' perspective. He includes several valid concerns about the interaction of the JEP with the CEV and argues that the truth commission would "sacrifice" (p. 74) retributive justice for the sake of discovering the truth.

Lessons for Colombia

Colombia is ranked as an upper-middle-income country by the World Bank¹² and is in the process to become a member of the Organisation for Economic Co-operation and Development (OECD). However, Colombia is

11 Decolonial thought is questioning the established postcolonial literature (Fonseca & Jerrems, 2012).

12 The latest World Bank list can be found at <http://eco2017.easo.org/wp-content/uploads/sites/11/2016/10/World-Bank-Country-List.pdf> (September 2016).

good at coming up with documents that look great on paper, but the state has severe challenges in implementing its targets on the local level, particularly in rural areas. There is a certain tendency to be so ambitious that it is difficult to uphold the promises (Gutiérrez, 2010; Kalmanovitz, 1997). Colombia will likely face enormous challenges to implement its holistic transitional justice system, particularly with the institutional weaknesses at the local and regional level.

Initially, it will be important to choose impartial commissioners: while it is clear who selects the members of the truth commission, it is extremely difficult to find people that the majority of the country will see as acceptable. The *plebiscito* of 2 October 2016 that rejected the Cartagena agreement proved the deep divisions within Colombian society. Moreover, in May 2017, four out of five Colombians believed that it will not be possible to uncover the truth and repair victims. Additionally, three out of four Colombians do not think that the FARC will comply with the peace agreement (Invamer, 2017, p. 86). While the truth commission was a non-issue in the public debate before and after the referendum, the selection of its members can potentially be very controversial. The work of the GMH, and today CNMH, shows that their leadership is well received among victims of the armed conflict; on the other hand, hardly any connections exist to conservative forces in the military or to Uribeistas.

Another recommendation drawn from the case studies is to create a more decentralized truth commission with strong regional headquarters. The final agreement speaks of an *enfoque territorial* ('territorial focus') with the specific aim to understand the regional dynamics and include IDPs (Acuerdo Final, 2016, p. 135). While several truth commissions discussed in this book had offices in the region, Colombian victims demand for the creation of regional reports to better represent their experiences. While it is appealing to have a more concentrated and specific focus, it might be useful to have both: First, a coordinated nation-wide approach from Bogotá that allows for an overall national narrative. Afterwards, however, the regional offices of CEV could come up with regional versions to allow for a more in-depth discussion of local dynamics.

Truth

Colombia has produced many reports on atrocities, massacres, and the underlying structural causes of the violence that the country has faced in the last decades. Since the 1980s, local organizations have established informal truth-telling exercises as a way to resist the conflict. These exercises documented massacres against civilians, as well as official investigations and initiatives, which culminated in the creation of the CNMH in 2011. None of the five case studies discussed in this volume had such an extensive history of truth-telling. In contrast to Colombia, the final reports are often not publicly available or cannot be accessed by its citizens. Although prior to the CEH, Guatemala already a civil society-led truth commission with the Recovery of Historical Memory Project (REMHI), Colombia's reports are significantly more detailed.

Even though CVCH's final report is mentioned as the only basis for the truth commission's work (Acuerdo Final, 2016, p. 135), CEV needs to consider earlier research as well, particularly the work of CNMH. In the 13 points, CEV receives the specific mandate to clarify grave human rights violations and mentions all actors, including the state (specifically the government, and, implicitly, the armed forces), FARC, paramilitaries and "any other group, organization or institution, national or international, that participated in the conflict" (Acuerdo Final, 2016, p. 134).

Despite the many truth-telling efforts in Colombia, there has hardly been any access to the state archives so far. As a result, the GMH and CNMH have had difficulties obtaining documents. The Kenyan example is a warning that if there is a lack of political will, the government may hardly provide the necessary access to its archives. One of the main struggles for the Colombian truth commission will likely come when researchers try to access state documents. Nonetheless, the government has clearly stated its commitment to providing information required by the CEV (Acuerdo Final, 2016, p. 138). It is of concern, however, that not more specific information was included regarding the access the archives, particularly when it comes the documents of the security sector.

There are several other truth-telling methodologies that Colombia's truth commission could look into. Timor-Leste's community mapping or profiling workshops may provide a good lesson to help communities remember the past. Colombia's CNMH has already implemented similar activities in their work with victims and populations at risk. Although a lot will depend on the CEV's methodology, the 2016 peace agreement seems relatively open and inclusive about potential truth-telling methods (Acuerdo Final, 2016, pp. 135–136). In addition to the 'classic' statement-taking and public hearings, the CEV could learn from Kenya to include specific hearings for women to guarantee their safety. What the truth commission may consider when setting up its working methodologies are the many child soldiers that were recruited particularly by the FARC. Having in mind the inclusive approach of the peace agreement, with a progressive outlook on groups like women, ethnic minorities, as well as the LGBTI community should allow for a broad participation, at least in theory (Acuerdo Final, 2016, pp. 131–134).

Reconciliation

The second paragraph of the final agreement points out the importance of addressing multiple dimensions of truth and history within conflict in order to foster reconciliation (Acuerdo Final, 2016, p. 130). After the South African TRC and, as evident in Kenya, Peru, Sierra Leone, and Timor-Leste, Colombia operates under the assumption that truth-telling supports reconciliation. As seen in Sierra Leone, this assumption is questionable, as perpetrators who came forward were often perceived as non-repentant. In addition, due to cultural reasons, victims did not feel that the public realm was an appropriate space to disclose the atrocities committed against them. Timor-Leste's positive experience employing traditional mechanisms to work with perpetrators can lend itself as an example to Colombia as it engages its indigenous communities.

Of the four case studies in this volume that had mandates that included reconciliation, Kenya and Peru had most difficulties to materialize reconciliation efforts into practice. Nonetheless, late in its process, Kenya turned to a successful healing workshop methodology that could be useful for Colombia. Considering the CEV's mandate, it is foreseen to play a very active role re-

garding reconciliation. It is important to note that the word used within the 2016 peace accord is not 'reconciliation,' but 'coexistence,' which is defined as "not simply sharing the same social and political space but the creation of a transformative environment that allows for the peaceful resolution of conflicts and the construction of a more open culture of respect and tolerance" (Acuerdo Final, 2016, p. 131).¹³ This definition, although ambitious, promises a more realistic approach for a truth commission.

Offering space for reconciliation has been challenging for many truth commissions due to a lack of incentives for perpetrators to move forward. In Kenya, Peru, and Sierra Leone was little space for reconciliation efforts possible because perpetrators did not see the possibility to take the risk of making themselves vulnerable without any clear gain. In contrast, in Timor-Leste, amnesty provided an incentive for low-level perpetrators to come forward. In the Colombian commission, reconciliation is *not* mentioned in the accords; yet, the final agreement includes a classic understanding of acknowledging responsibility and asking for forgiveness for damages and suffering (Acuerdo Final, 2016, p. 136). Therefore, the Colombian truth commission raises the expectations of offering a space of reconciliation. Ultimately it will depend on the relation of the commission with the tribunal. If the tribunal provides incentives for perpetrators to participate in the processes of CEV, there could be more space for reconciliation as well.

The 2016 final agreement promotes coexistence by creating dialogue, acknowledging responsibility, and establishing trust. It also mentions social justice, solidarity, tolerance, democratic culture, and *buen vivir* ('living well'). While it is certainly laudable that these structural conditions are included in the agreement, it is difficult to see how it will unfold in practice (Acuerdo Final, 2016, pp. 131–132).

13 Translation by the author: The original text goes the following: "en el entendido de que la convivencia no consiste en el simple compartir de un mismo espacio social y político, sino en la creación de un ambiente transformador que permita la resolución pacífica de los conflictos y la construcción de la más amplia cultura de respeto y tolerancia en democracia."

Memory

While Colombia has exerted an enormous amount of energy towards its truth-telling effort, it is currently striving to create a narrative of conflict to unite the country. Criticism from both sides of the aisle has presented a challenge for the CNMH as it has been accused of bias, particularly with its final report, *iBasta Ya!*. In some parts of Latin America (Guatemala and Peru) conservative forces and the military consider memory efforts to be leftist. This is often a self-defense mechanism of the security sector and its allies to continue implementing a policy of amnesia. On the other end of the spectrum, demobilized FARC forces will need to be much more open about the atrocities they have committed. As a first step, the FARC has already publicly apologized for a massacre that it committed (Bojayá). The CEV will provide the space for more specific apologies as well for all armed actors and its accomplices.

Colombia's CEV will have the herculean task to satisfy the needs of the victims from all sides and allow different actors to be heard. Taking into account the split within Colombian society, the CEV needs to work with the business sector and the military instead of pushing them aside. It is a thin line to walk because the truth commission needs to work with the armed forces without exonerating them. In this sense, Colombia could learn from the Kenyan example, in which Kenya's Parliament prohibited the implementation of the final report because the document went against the interests of the ruling elite. Although Colombia's final agreement promises to set up a follow-up mechanism (Acuerdo Final, 2016, pp. 138–139), something similar to Kenya could happen.

As it is common with other truth commissions, the CEV needs to write a final report and implement a strategy to widely distribute it; this plan should include cultural, artistic, and educational means to reach Colombians in all their diversity. An example is that the findings of the final report should be represented in the National Museum of Memory, an institution that should be established in 2018 within the framework of CNMH. As of yet (June 2017), however, CNMH has not even started with the construction of the building for this museum and it is doubtful that the deadline can be met. Also the archives of CEV are mentioned. It is the commission who can decide who is going to

take care of the documents, as long as they are accessible for the public and particularly victims (Acuerdo Final, 2016, p. 136).

Justice

Colombia's CEV is an extrajudicial mechanism. The information entrusted to it cannot be used by judicial authorities; however, documents that the truth commission obtains do not lose their value in court (Acuerdo Final, 2016, pp. 133–134). The commission therefore has the basis for a clear and good relationship with the JEP. However, despite the seeming harmonization between the two bodies, many details still need to be determined. If the two institutions are not able to clarify this relationship, they might work against each other instead of collaborating, as it happened in Sierra Leone. Considering the constant power struggles within the Colombian state, this is a real possibility. From the East Timorese case can be learned that a good relationship between tribunal and commission is not sufficient because the tribunal needs to be able to do its job to be recognized.

Colombia's truth commission has the advantage that it has been aware from the beginning that it is part of a comprehensive transitional justice system. Timor-Leste's truth commission was also cognizant of its cooperative relationship with the country's transitional justice system. In Sierra Leone and Kenya, in contrast, perpetrators were afraid that the Special Court respectively the ICC would use information that they shared with the TRC against them. While the final agreement in Colombia attempts to directly address such concerns by having a one-way street of informing each other due to the extrajudicial character of CEV, it might be difficult to convince perpetrators to come forward and providing a clear incentive for them.

As already mentioned in the reconciliation section, some form of amnesty or a preferred treatment in the JEP should increase participation in the CEV, and allow for a deeper understanding of human rights violations. However, incentives to participate may be seen as failure to provide justice. In Colombia, the many critics of the peace process will invariably condemn any enticements the commission offers to perpetrators—at least to FARC members—as 'impunity.'

Having in mind the debates about paramilitary perpetrators with the Justice and Peace Law, however, there could potentially be an outcry from other sectors that the armed forces or neo-paramilitary groups would get unjustifiable advantages. To conclude, the tense atmosphere within Colombia can present difficulties for the implementation of the truth commission. However, the potential also exists to promote restorative justice, as defined within the JEP (Acuerdo Final, 2016, pp. 172–174), and for the JEP to collaborate with the truth commission.

Conclusions

Colombia's truth commission will have the advantage of basing its work on past truth-telling efforts, particularly the work of the GMH and the CNMH. No other truth commission has had the chance to build upon such a legacy of work. While this is a big advantage, it is also a challenge; the CEV needs to prove that it can make its own contribution. A major challenge will be the interaction with the JEP. Despite the fact that the peace agreement has set out some key points for their relationship, in reality several contentious points may arise that can undermine both institutions. Overall, the CEV can set new standards regarding minorities; it will also be interesting to see how their interpretation of coexistence can foster reconciliation and 'territorial peace' across the country. Finally, one of the major challenges for the truth commissions will be to implement regional and local approaches to satisfy the demands of victims.

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9 Conclusions

Johannes Langer

Truth commissions have become a standard response in countries that are transitioning out of violent conflict or authoritarian leadership. This volume has provided critical reflections about the role of truth commissions in their aftermath, and analyzed their effect on society and their overall usefulness. Moreover, this volume intended to show how truth commissions are contested within society and the challenges that are faced in various contexts.

As recognized from the beginning of this volume, dealing with the past is enormously difficult. In the process of coming to terms with the past, truth commissions inevitably enter a contentious space where multiple narratives try to obtain dominance. With its focus on listening to victims, truth commissions give a voice to those who were ignored during the conflict, and help to establish new narratives that can potentially challenge the discourse of the perpetrators. By establishing a comprehensive account of the time in question, truth commissions may construct not *one*, truth but rather a *complex* truth. Instead of amnesia and impunity, truth commissions start to question myths that perpetrators successfully established.

Truth commissions do not have general solutions because each context is varied and unique. However, there are certain principles that can be identified

as important considerations for other truth commission. Chapter 7 and 8 provided reflections for policy makers on challenges that can be faced during and after a truth commission. Among these reflections are examples from which Colombia, and other countries that want to establish truth commissions, can learn.

Truth commissions raise awareness of severe human right abuses. The five truth commissions in question were able to empower local NGOs to a certain degree. Nonetheless, parts of the political elite, if not the majority, continue to ignore or deny what happened. The official recognition by the president and the parliament are therefore important steps. Whenever parliament blocks a discussion of the final report, and particularly its implementation (Kenya, Timor-Leste), it is easier for perpetrators to continue with their discourse of denial. It therefore depends on the influence of civil society to lobby political actors in favor of the final report. In addition to the need for strong CSOs in order to shape political discourse, civil society's ownership of the accords is necessary; otherwise, not enough pressure and momentum can be built. The case of Timor-Leste has shown that on occasion, more time is needed to see results, as Ferrara (2015) discussed in the Chilean case. Even though the two main demands of victims and CSOs continue to not be addressed—reparations and punitive justice—the new initiative with the CNC, a follow-up institution, should embolden a more general debate about the final report and its recommendations.

The idea that truth commissions can create further discussions on past violence, instead of leading to an end in themselves, is undoubtedly positive. Nonetheless, the extent to which this was apparent in the five cases is limited. Peru and Guatemala had some advances, e.g. museums, Timor-Leste might have a push in the next couple of years, while Kenya and Sierra Leone did not see much further debate. It might be that expectations from policy makers, victims, and the general public are set too high but the five truth commissions in question were actually not able to improve human rights, democracy, institutional reform, or peace. This clearly limits the power of truth commissions. From a different perspective, those truth commission proponents who argued that this would be the case, might need to be more reflective.

One of the most difficult discussions is about the participation of perpetrators. Usually, a concrete incentive is needed because otherwise perpetrators may not have an interest in coming forward (Kenya). Linking it to a return to their community is a first step (Sierra Leone) but having an additional promise of amnesty is even more powerful (Timor-Leste). Ever since the creation of the ICC, it is also clear that such amnesties would need to be tied to 'political crimes' and cannot include war crimes, crimes against humanity, and genocide. The challenge with the invitation to perpetrators is that some victims might be intimidated. Providing a sincere apology or showing forgiveness is nonetheless difficult for many perpetrators and their motives have been questioned (Sierra Leone, Timor-Leste).

The focus of truth commissions should be on those who have no voice. The commission and its statement-takers should be aware of the different forms of exclusion—may it be race, religion, ethnicity, or language—to avoid marginalization of vulnerable populations. Truth commissions can, and do actively incorporate victims as all five cases successfully showed; the discussed commissions provided a space in society for victims to express themselves, particularly when the media covered public hearings.

Truth commissions are temporary bodies and in all cases had a hard time establishing a follow-up mechanism. This implies that the transformative character of truth commissions is often limited, as changes may not endure. Implementing reparations and the acknowledgement of crimes by perpetrators could be a further step forward. This rarely transpired in the five cases, and when reparations were paid, they were limited (Guatemala, Peru). In other cases, few perpetrators publicly apologized, but the final report did not include any specific references, which limited the impact of the apology (Kenya). In other cases, only part of the population received an apology; this often results in the questioning of political motives, as happened with the women of Sierra Leone.

Colombia should have a truth commission by the time this book is published. As discussed in Chapter 8, the truth commission will have the enormous advantage of relying on a wealth of pre-existing work. However, expectations to

get more information and a more complete narrative will be highly contested between the different actors from both sides of the political spectrum. Particularly the efforts of the military to establish their own historical memory in the last years show a clear attempt of the Colombian army to 'defend' its role in the armed conflict.

Colombia's truth commission will have the benefit of potentially learning from 46 cases from around the globe. However, as the most recent case study in this book shows (Kenya), if there is no political will, there is no guarantee that the truth commission will benefit from former examples. This certainly will be a challenge in the Colombian context, especially as the 2018 elections approach, which could potentially undermine the implementation of the transitional justice system. Colombia's system smartly and ambitiously aims for a very holistic approach to deal with the armed conflict even though the violence continues. If the new president does not touch to the truth commission but would weaken the scope of the special tribunal, also the truth commission would be affected because it would ultimately undermine its credibility as well.

When this research project started in late 2014, I was worried that I would not finish it in time for the Colombian truth commission. While this project took more time than originally envisioned, as it is so often the case, this book should be ready by the early stages of the truth commission. It should therefore serve as a timely reflection for policy makers, practitioners, and students of the Colombian peace process and the transitional justice system. Hopefully, this volume goes beyond the Colombian realm and is useful for other future truth commissions—there seems to be no end in sight for them.

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Dealing with the past is always a complex endeavor and it is particularly difficult when gross human rights violations are involved that are carried out during war or armed conflict. Truth commissions have become a standard response to address such a difficult past in the hope to provide voice to victims and provide a path to a non-violent future. Being part of the transitional justice toolkit, truth commissions are aimed to satisfy the rights of victims to truth and symbolic reparation. This book analyzes five case studies: two in Latin America (Guatemala, Peru), two in Africa (Kenya, Sierra Leone), and one in Asia (Timor-Leste). The final report and its recommendations are critically evaluated, taking into account their impact on truth, reconciliation, memory, and justice. The aim of the book is to get learning for other truth commissions and specifically for the truth commission in Colombia that is currently in the process to be set up. Written for students of transitional justice and policy makers, this book hopes to contribute to a more critical reading of this transitional justice body while recognizing the contentious space they are operating in.



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