

## TRUTH COMMISSIONS: A CASE SUMMARY

### INTRODUCTION

As the GOC-FARC peace process progresses, the attention of the transitional justice sector is increasingly being directed towards the possible use of a truth commission (TC) to clarify the facts and various historical memories of the conflict. Given the recently approved Legal Framework for Peace, which specifically mandates the creation of a TC, it is worthwhile to consider international examples of this type of mechanism, and corresponding lessons learned. This document examines three such cases.

#### Truth Commissions: definition and use

Transitional justice expert Priscilla Hayner provided what is often considered the fundamental definition of TCs as temporary “bodies set up to investigate a past history of violations of human rights in a particular country.”<sup>i</sup> In another book, she complements this definition with further details, including the TC’s investigation of patterns of human rights violations, not specific events, and their nature as state-authorized entities.<sup>ii</sup> By focusing on the testimony of victims, TCs give a voice to those most affected by conflict and other periods of human rights violations, and legally recognize their suffering and survival. TC titles often include the words “reconciliation”, “human rights”, or “justice” (for example the Peruvian Truth and Reconciliation Commission discussed below). This recognizes their function in contributing investigative findings to the design and implementation of reparations programs, justice initiatives, and institutional reform, thereby facilitating the reconstruction of divided societies and renewed trust between victimized societies and the perpetrators of crime. TCs are therefore important components of transitional justice and reconciliation strategies that aim to both redress past damages and create the conditions for a peaceful future.<sup>iii</sup>



### EL SALVADOR

#### Truth Commission: 1992–1993

The UN established a TC in El Salvador in 1992 to investigate human rights abuses that took place during the civil war (1980 – 1992) and recommend measures to promote reconciliation. The TC was mandated by the Chapultepec Accords, signed by the Salvadoran government and the Frente Farabundo Martí para la Liberación Nacional. It was comprised of three UN-appointed international officials led by Colombian ex-President Belisario Betancur.<sup>iv</sup>

The TC received testimony from primary and secondary sources related to 27,000 victims. Thirty-two emblematic cases were chosen to illustrate patterns of violence. The TC’s

1993 report attributes the majority of human rights abuses to the State. Complaints involved extrajudicial killings, forced disappearances, torture, and other forms of violence.<sup>v</sup>

#### TC Report Recommendations & Implementation

El Salvador’s 1993 TC report recommended the dismissal of various members of the armed forces and government for their responsibility for crimes against humanity in the war. The TC also called for judicial reform (especially to stop the use of forced confessions in trials) and reparations for victims. Finally, the report mandated that a working group be formed to implement its recommendations.<sup>vi</sup>

The Salvadoran government rejected the TC report. No working group was created nor was the judicial sector reformed. High-ranking officers named in the report were retired with honors, and no reparations programs have been established. This provoked outcry from national and international human rights organizations among others, with little response from the Salvadoran government.<sup>vii</sup>

#### International Transitional Justice Intervention

Due to lacking follow-through on the recommendations, attempts at implementation have been made by international actors. In 2011, ICC Judge Baltázar Garzón issued 20 arrest and extradition orders for members of the Salvadoran military responsible for the massacre of six priests in 1989, considered a crime against humanity. El Salvador has not yet arrested or extradited these individuals.<sup>viii</sup>

In December 2012, the Inter-American Court of Human Rights found the Salvadoran State guilty of crimes against humanity in the 1981 El Mozote massacre. The Court ordered the State to return the bodies of more than 1,000 victims to their families.<sup>ix</sup> This decision was praised by international human rights groups as progress towards the fulfillment of the TC report’s recommendations. However, the Salvadoran State has yet to return the bodies.<sup>x</sup>

### PERU

#### Truth & Reconciliation Commission: 2001 – 2003

The Truth and Reconciliation Commission (TRC) was established by the Peruvian State in 2001 to investigate crimes committed in the 1980 - 2000 civil conflict between the State and the guerrilla groups Sendero Luminoso and Movimiento Revolucionario Túpac Amaru, and to make recommendations for reform and institutional responses to findings. The TRC’s twelve Peruvian commissioners were appointed by the President and various ministers.<sup>xi</sup>

This TC held public hearings that received 16,917 testimonies and contributed to the reconstruction of 11,582 victims’ cases. The 2003 report estimated that more than 60,000 people were killed. The State and Sendero Luminoso were the main agents of violence.<sup>xii</sup>

#### TRC Report Recommendations & Implementation

The TRC’s report made recommendations for reparations with a focus on rural development, noting that historically

marginalized rural indigenous people were worst affected by the conflict. Victims' participation in designing reparations programs was also encouraged. Other recommendations included education, health, and other public institutional reforms to facilitate access in rural communities. Prosecutions of those responsible for the violence were suggested but not required. Reconciliation initiatives were also recommended, with a special emphasis on celebrating and unifying Peru's diverse ethnic and language groups.<sup>xiii</sup>

A state apology was issued in 2003 and prosecutions were made against Sendero Luminoso high commanders in 2006. There is also an ongoing case against members of the military being held responsible for the disappearance of 50 people. A High-Level Multi-sectorial Commission with experts on topics such as ethnicity and gender was formed to coordinate implementation of the TRC report's recommendations. Institutional reform to facilitate rural access to social services has been implemented in some areas. However, ten years after the report was published, tens of thousands of beneficiaries are still awaiting six of the eight planned reparations programs. The eligibility criteria for these programs have been changed multiple times, complicating access and limiting the scope of benefits. Communication between the State and the victims has dwindled, hindering their participation in reparations planning.<sup>xiv</sup>

### SOUTH AFRICA

#### Truth & Reconciliation Commission: 1995 - 1998

The South African TRC was created by the 1995 "Promotion of National Unity and Reconciliation Act" to investigate violations of human rights by the State and liberation movements during apartheid from 1960 to 1994. Seventeen commissioners were selected in a countrywide nomination process, and were led by Archbishop Desmond Tutu. The body was granted the right to hold special hearings to investigate specific cases, sectors, individuals, groups, or acts. The TRC was also allowed to issue amnesty to those who told the truth about their crimes, causing great controversy.<sup>xv</sup>

The TRC received testimony from 21,000 victims, 2,000 of whom spoke at public hearings. It found that the State was responsible for extra-judicial killings and other human rights violations. The 1994 TRC report specifies that the motivation behind these violations was based on the white minority's desire to stay in power and its racist attitudes and treatment of the black majority. The report also details the crimes for which certain individuals were responsible.<sup>xvi</sup>

#### TRC Report Recommendations & Implementation

The TRC report emphasized the need for reconciliation for South Africa to move past the apartheid era. Recommendations included a range of reparations for victims and their families, and the return of victims' bodies to their relatives. Prosecutions were suggested for cases that did not request amnesty. Another significant recommendation was that political, social, economic, and other reforms be made to form a more inclusive and democratic society.<sup>xvii</sup>

By the early 2000s, South Africa had established a body to monitor the implementation of recommendations. However, the State has failed to distribute funds originally destined for

economic reparations. Some exhumations and prosecutions have been conducted, but the courts were given discretion not to prosecute cases as they see fit. This discretionary policy was revoked in 2008 as it was unconstitutional, but little has been done to carry out prosecutions since then.<sup>xviii</sup>

#### International Transitional Justice Intervention

Attempts by international actors to intervene in South Africa's transitional justice system focused on preventing amnesty for those responsible for human rights violations. Such blanket amnesty would probably not have been allowed by current, more developed, international law.<sup>1</sup> Other foreign involvement included the United States Court of Appeals' ruling that it could hear a case against multinational corporations accused of "aiding and abetting" apartheid.<sup>xix</sup>

#### CONCLUSION AND LESSONS FOR COLOMBIA

Many important points arising from these cases should be considered in the design and implementation of a truth commission in Colombia. El Salvador's decision to choose emblematic cases that illustrate patterns of crime is significant to Colombia, especially given that this practice is already in effect in other transitional justice mechanisms. El Salvador's lack of accountability to international bodies has contributed to its damaged human rights reputation – something that Colombia should consider closely. The Peruvian TRC's emphasis on social inclusion in rural areas previously virtually abandoned by the State is also relevant to Colombia. Here, rural areas have also been most affected by violence and suffer similar state absence and need for reconciliation and renewed trust in the State.

Both South Africa and El Salvador's lack of follow-through on TC report recommendations has drawn criticism and intervention by the international community – an important lesson for a Colombian TC that could have similar objectives and confront similar issues to these cases. It is therefore essential that Colombia take into account these and other cases in the design and implementation of a TC.

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Image source: South Africa TRC logo.

<http://www.wcl.american.edu/humright/center/2002/maryburton.cfm>

<sup>1</sup> Hayner, P. (1994). 15 Truth Commissions - 1974 - 1994. *Human Rights Quarterly*, 16(4), p. 558.

<sup>ii</sup> Hayner, P. (2001). *Unspeakable Truths: Confronting State Terror & Atrocity*. NY: Routledge. p. 14

<sup>iii</sup> International Center for Transitional Justice (ICTJ). *Truth Commissions*. <http://ictj.org/gallery-items/truth-commissions>

<sup>iv</sup> Accountability & human rights: The report of the UN Commission on the Truth for El Salvador (1993).

<sup>v</sup> Ibid.

<sup>vi</sup> Ibid.

<sup>vii</sup> United States Institute for Peace. "Truth Commission: El Salvador." <http://www.usip.org/publications/truth-commission-el-salvador>

<sup>viii</sup> Inter-American Court of Human Rights Case of the Massacres of El Mozote and Nearby Places vs. El Salvador. Judgment of October 25, 2012.

<sup>ix</sup> Committee in Solidarity with the people of El Salvador. *Human Rights Court Finds El Salvador Guilty Of El Mozote Massacre*. December 11, 2012.

<sup>x</sup> Mallinder, L. *Amnesty, Human Rights, and Political Transitions*. *Studies in Int. Law*: Vol.21 (2007)

<sup>xi</sup> United States Institute for Peace. "Peru Truth and Reconciliation Commission."

<http://www.usip.org/publications/truth-commission-peru-01>

<sup>xii</sup> Peru TRC Report, "Introduction", p. 42 & Vol. IX, Appendix 4, "Cases & Victims recorded by the CVR"

<sup>xiii</sup> Defensoría del Pueblo (2013). "A Diez Años de Verdad, Justicia, y Reparación: Avances, retrocesos y desafíos de un proceso inconcluso". Defensoría del Pueblo: Lima.

<sup>xiv</sup> Ibid.

<sup>xv</sup> South Africa Truth and Reconciliation Commission Final Report (1994). 'Volume 2'

<sup>xvi</sup> Ibid.

<sup>xvii</sup> South Africa Truth and Reconciliation Commission Final Report (1994). 'Volume 5'

<sup>xviii</sup> United States Institute for Peace. "South Africa Truth and Reconciliation Commission."

<http://www.usip.org/publications/truth-commission-south-africa>

<sup>xix</sup> Ibid

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<sup>1</sup> This point is dealt with in detail in the spotlight "Amnesty and Political Participation: Case summary."