

Experiences of civil society participation in truth commissions in Latin American

South-South Dialogues:
Commissions of South Africa
and Sierra Leone

MEMORIA
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Introduction

The work at hand has its roots in the accompaniment of the peace process in Colombia, defined in 2017 as one of the Latin American and Caribbean Network of Memory Sites (RESLAC in Spanish) main strategic goals, after the peace negotiations between the Colombian Government and The Revolutionary Armed Forces of Colombia-People's Army (FARC-EP in Spanish) ended with the Final Agreement for the Termination of the Conflict and to Build a Stable Enduring Peace in November 2016.

Given its intensity, duration, and severity, the conflict in Colombia has been a focal point of instability in Latin America and the Caribbean. Since it began in the 60s it has caused a staggering number of deaths, forced disappearances, displacements, and exiles, and it has been a breeding ground for military intervention in internal security matters, the proliferation of paramilitary forces, expansion of violent groups linked to illegal economies, and foreign intervention. Peace in Colombia is vital not only for Colombians but for the whole region.

The organizations that make up the RESLAC will be, due to their commitment to the construction of peace and memory in Colombia, key to the future of the work done by the organizations created during the peace agreements (in particular the Commission for the Clarification of Truth, Coexistence and Non-Repetition, CEV in Spanish). Therefore, we believe that their strengthening is also the strengthening of the peace process.

The memory initiatives within those spaces that, even in the middle of a conflict, victims, their families, and society have undertaken are a sign of their capability. The Colombian Memory Sites Network (RCLM in Spanish),

part of RESLAC since November 2017, has become a national benchmark for the role of Memory Sites and their contribution to symbolic reparation and social truth construction processes. Before the RCLM joined the RESLAC, the National Center of Historical Memory, Memory, Peace, and Reconciliation Center from Bogotá and the Museum-House of Medellín were a part of it and all of them contributed to the construction of truth.

In that context, our goal with this work is to build knowledge about the role and contributions that civil society and, particularly, victims' organizations, have had in previous experiences in the region. It is not a research or academic work, nor it attempts to be exhaustive, but to bring to light some of the experiences of truth commissions in our continent, emphasizing the possibility and potential of civil assistance to the construction of memory and truth. To complete the Latin American and Caribbean context, two relevant experiences in Africa were added through our bonds with organizations in South Africa and Sierra Leone, also part of the International Coalition of Sites of Conscience, that took part in the last gathering of our Network and shared how civil society was involved in both their truth commissions.

This work is proof, again, of the possibility of shared construction of knowledge about the region, and within the framework of the South-South exchange, that the International Coalition of Sites of Conscience promotes as a unified collective of memory sites in the world.

Institutional Information RESLAC:

The Latin American and Caribbean Network of Memory Sites (RESLAC for its initials in Spanish) is made up of 45 institutions in 12 countries (Argentina, Brazil, Chile, Colombia, El Salvador, Guatemala, Haiti, Mexico, Paraguay, Peru, Dominican Republic and Uruguay). It is part of the International Coalition of Sites of Conscience, comprising seven regional networks around the world: Africa, Asia, Europe, Latin America and the Caribbean, North America, Middle East and North Africa, and Russia.

The institutions that are part of the RESLAC work in the recovery and construction of collective memory of the grave human rights violations that occurred in the recent past, during periods of state terrorism, internal armed conflicts, and impunity, with the goal of promoting democracy and guarantee that the atrocities perpetrated will not be repeated. The Network develops projects, initiatives, and joint training with the intention of strengthening integration between institutions with similar goals.

The members of the RESLAC and of the International Coalition of Sites of Conscience include museums, commemorative monuments, historic sites, public parks, memory initiatives and organizations, all connected by their commitment with the operational principles of the Sites of Memory, that establish that they:

- Interpret history through the site
- Involve the public in programs that promote dialogue about current social issues.
- Promote opportunities for citizen participation and positive action in relation to the problems the site represents
- Promote justice and global human rights culture

For more information go to

<http://sitosdememoria.org> or <https://www.sitesofconscience.org>

Experiences of civil participation in truth commissions in Latin America

Truth commissions¹, as fundamental tools to transitional justice, have mostly been used in Africa and Latin America, with a few exceptions in other continents². In Africa maybe the most well known of those commissions is the one in South Africa, however they also functioned in Congo, Chad, Rwanda, Ghana, Uganda, Nigeria, Morocco, Sierra Leone, and Liberia.

The first truth commissions in Latin America emerged in countries of the Southern Cone and Bolivia. Countries that went through dictatorships in the sixties and seventies and, in almost all cases, became a democracy in the eighties. The commissions in Bolivia (1982-1983)³, Argentina (1983-1984) and Chile (1990-1991) started working immediately after

¹ According to the Updated Set of principles for the protection and promotion of human rights through action to combat impunity (Doc. ONU:E/CN.4/2005/102/Add.1, 8 February 2005, in Definitions, page 6) Truth Commissions are “official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a number of years.”

² Between 1974 and 2007 33 truth commissions were created in 28 countries, more than half between 1997 and 2007 (AI, 2007: 1).

³ The commission stopped before they could complete the work.

the end of the dictatorships⁴. On the other hand, Uruguay creates its Peace Commission⁵ (2000-2003) fifteen years after restoring democracy, Paraguay starts the investigation (2004-2008) fourteen years after the end of Alfredo Stroessner's dictatorship and, in Brazil, National Truth Commission (2012-2014)⁶ began working twenty seven years after the military dictatorship ended.

The context in which the commissions in Bolivia (1982) and Argentina (1983) arise is characterized by the struggle of the families of the disappeared that, in the Southern Cone and Central America, demanded an investigation on the whereabouts and the return of the disappeared. that, in the Southern Cone and Central America, demanded an investigation on the whereabouts and the return of the disappeared. In 1982, Latin American Federation of Associations for Relatives of the Detained-Disappeared (FEDEFAM in Spanish), proposed a project, a Convention about forced disappearances, that was presented before the United Nations. In 1986, when the democracies in Bolivia, Argentina, Uruguay, and Brazil were recent, organizations of families of the victims, gathered in La Paz, expressed their concerns regarding the "new democratic governments that, since they were not responsible for what had happened, could opt for an exhaustive investigation and apply justice, or try to forget the issue after making a formal response". The two commissions created at that time, in Bolivia and Argentina, focused specifically on the disappeared.

Comisión Nacional de Verdad y Reconciliación (The National Commission for Truth and Reconciliation in English), also known as "Retting Commission", in Chile was limited to the situation of the detained-disappeared and the victims of political executions. What later led to the creation of "Valech report" officially titled Comisión Nacional sobre Prisión Política y Tortura

⁴ In Chile, The National Commission for Truth and Reconciliation Report ("Rettig Report") was established in 1990 and reported on the forced disappearances and political executions. However in 2003-2004 and 2010-2011 The National Commission on Political Imprisonment and Torture Report ("Valech Report I and II respectively) and in 2014 The Advisory Commission for the Detained-Disappeared and Victims of Political Execution, Imprisonment, and Torture.

⁵ Created by the resolution of the Presidency of Uruguay N° 858/000, August 9 2000. Report: https://www.usip.org/sites/default/files/file/resources/collections/commissions/Uruguay-Report_Informal.pdf

⁶ http://cnv.memoriasreveladas.gov.br/index.php?option=com_content&view=article&id=571

(The National Commission on Political Imprisonment and Torture in English) in 2003 to complement the work of Rettig Commission. In line with its name and taking into account the trials in Argentina, the Rettig Commission would have reconciliation as one of its mandates.

Reconciliation is also an explicit objective for the Salvadoran commission (1991) and it appeared also in the name and mandate of the Peruvian commission (2001). In both cases, this emphasis is a response to the end of a civil armed conflict. However, in Guatemala, the Civil Society Assembly did not allow this concept to be included in the name or mandate of their commission. Paradoxically, the law that gave Guatemala's Commission for Historical Clarification its juridical status was called Reconciliation Law.

The dictatorships in the Southern Cone and the armed conflict in Peru ended with a process of economic and political burnout of the regimes allowing, after different transitional periods, a democratic process. In all those cases, the commissions were created by congressional or presidential orders and in response to the demand of organizations that, during the dictatorships and afterward fought for human rights and democracy, societal condemnation, and international pressure.

In some cases, the time that passed between the end of the dictatorships and the creation of the commissions meant not only new difficulties but also some new opportunities. Comisión de la Verdad y la Justicia -CVJ (Truth and Justice Commission in English), established in 2003 in Paraguay, even after the commissions in Peru and Central America, is the only one that highlighted the need for justice as a core element.

In Brazil, the time that passed between the end of the dictatorship (1988) and the creation of the truth commission (2012) allowed for the widening of the tasks that by law were adjudicated to the commissioners. Besides promoting the clarification in cases of torture, death, forced disappearances, and concealment of corpses, it was requested that the names of the perpetrators and the places where the crimes occurred were made public as well as to identify the ramifications they had in the different sectors of the state and society. It was also asked that in their recommendations was the adoption of measures and public policies to prevent

the violation of human rights, guarantee the non-repetition, and promote effective national reconciliation.

On the other hand, the truth commissions in Central America and Colombia have been the result of agreements between the two sides in conflict during peace negotiations, always as an answer to the demands of civil society, victims, and human rights' organizations, and after overcoming many difficulties. The work of these commissions was conducted in, despite the end of the armed conflict, unsafe conditions.

The commissions in El Salvador and Guatemala were the first to include international commissioners and personnel and to have the active involvement of the United Nations System⁷. The mediation role of this international organization was also important for the Colombian negotiations. "Choosing a national, international or mixed commission is determined by the need for independence, impartiality, and competence"⁸.

The Salvadorian truth commission (1991-1993)⁹ investigated human rights violations that happened during the 12 years of armed conflict and focused, like the Peruvian commission, in establishing conditions for reconciliation. In Guatemala, Comisión para el Esclarecimiento Histórico – CEH (Commission for Historical Clarification in English)¹⁰ investigated 36 years of military dictatorships and armed conflict. But it didn't just focused on this period. It worked to seek truth about the human rights violations and violence that had occurred during the "internal armed conflict". The commission also had to investigate the situation that had led to that conflict and contribute to non-repetition, specifically "eliminate all

⁷ In El Salvador, the team was made up of three commissioners and 60 support personnel, all foreigners. In Guatemala the coordinator of the commission was foreign and the other two commissioners were Guatemalan. The team was made of 142 citizens and 131 foreigners.

⁸ AI, 2007: 23.

⁹ Report of the Salvadorian Truth Commission. "From madness to hope: the 12 year war in El Salvador" available at <http://www.derechoshumanos.net/lesahumanidad/informes/elsalvador/informe-de-la-locura-a-la-esperanza.htm>

¹⁰ Report of the The Commission for Historical Clarification. "Guatemala, memory of silence". Conclusions and recommendations available at <http://www.derechoshumanos.net/lesahumanidad/informes/guatemala/informeCEH.htm>

kinds of revenge” and “push for a mutual respect culture”. Those phrases were meant to avoid naming the concept of reconciliation as a goal.

Clarifying the facts, investigating the causes of the conflict and the severe human rights violations were also part of the CEV’s mandate. The CEV started its investigation in November 2018, and defined itself as a temporary, extra judicial organization working to clarify patterns of violence. “The commission is not a mechanism to administer justice but to contribute to truth and recognizing the rights of the victims” and on that same line “it cannot prosecute, the information produced or gathered will not have probative value (...) it cannot be used to attribute responsibility during judiciary processes and judicial authorities cannot require it.” The CEV aims to “contribute to guaranteeing the reconciliation and the non repetition of the conflict and therefore ensure the transition from armed conflict to peace”¹¹.

At the same time that the CEV in Colombia was working, a new commission in Bolivia was adding to the work of the CNID (1982). This commission was created in December 2016 (Law No. 879)¹² but the commissioners only started working in August 2017. The commissioners were two women and three men, all Bolivian, all part of civil society organizations that were victims of the de facto governments between 1964 and 1982. They were also human rights activists with solid experience to take on the work of the commission. President Evo Morales picked them from a list presented by organizations that were demanding the creation of the commission. After the coup against Morales’ government the commission has continued working and is due to present its final report to the Legislative Assembly in May 2020.

In Bolivia’s case the time that has passed since what is being investigated happened (1964-1982) entails certain limitations. Nevertheless, the archives and the report created by the first commission (1982-1983) are a very valuable starting point for the investigation. However, and taking

¹¹ <http://www.altocomisionadoparalapaz.gov.co/Documents/informes-especiales/abc-del-proceso-de-paz/preguntas-respuestas-victimas.html>.

¹² Available at: <http://senado.gob.bo/sites/default/files/leyesdiputados/LEY%20N%C2%B0%20879-2016.PDF>

into account the time passed, the new commission has a goal to not only investigate human rights violations and their causes, but also the long-term structural change. The truth commission aims to clarify and explain the ways in which the military governments and dictatorships, the rupture of democracy and state terrorism, has reconfigured the state. One of its goals is understanding how the debilitation of state structures caused by the dictatorships continues to operate as a constraint for democratic processes, explaining how the Bolivian state itself has been affected by what happened.

In countries like Ecuador, Uruguay, or Mexico, where truth commission could not meet, for a variety of reasons, the goals of the organizations that contributed to their creation, the societal need for truth was also manifested and continues to do so.

The demand for truth in the continent also endures in the Caribbean. Human rights organizations and memory sites in Haiti and Dominican Republic keep demanding an investigation into the severe human rights violations committed by Duvalier's and Trujillo's dictatorships respectively, while perpetrators maintain key positions of economic and political power in both countries. The National Commission for Truth and Justice created during the government of Aristide (1995) in Haiti focused specifically in the 1991-1994 period, excluding the duvalierism period that has yet to be investigated. The human rights violations in Dominican Republic have not been investigated despite the demands of organizations.

It is also important to consider that Latin America not only had experiences with official commissions but also with ad hoc ones. For example, in Guatemala Proyecto Interdiocesano de Recuperación de la Memoria Histórica - REMHI (Interdiocesan Project for the Recovery of Historical Memory in English); in Argentina the reports of provincial parliamentary associate commissions were then added to the CONADEP's (acronym of the Argentine truth commission); or the case of Brazil that had over a hundred state, municipal and sectorial commissions.

Different commissions and investigative groups that had specific objectives and limits, that aimed at writing reports about particular human rights violations and/or events had been created before some official

commissions (in the case of Colombia, Bolivia, and Uruguay) and afterward, like in the case of Chile where truth commissions investigated particular crimes that had not been investigated by their predecessors. Certainly, in different ways, the reports of these commissions, used or systematized by the official ones, were fundamental and complementary truth building efforts, with different degrees of social participation.

In this document, the experience of the REMHI in Guatemala will be analyzed, alongside the official commissions' ones, because of the value community participation had in their methodological process. On the other hand, this project that was propelled by the Human Rights Office of the Archbishopric of Guatemala (ODHAG in Spanish) had a national reach, similar to the one of the official commission.

Bolivia: The National Commission of Inquiry Into Disappearances 1982-1983

In 1982, in the frame of the return to democracy and by presidential decision, Comisión Nacional de Investigación de Desaparecidos – CNID (Bolivia’s National Commission of Inquiry Into Disappearances in English) was created to perform “an exhaustive investigation into the cases of the disappeared in the past [1964-1982] that had occurred in national territory to give answers to the Bolivian families that (still) feel pain and sadness for their loved ones, to punish those who were responsible for those disappearances”¹³. This was happening in a Latin American context in which more than 90,000 people were being recognized as disappeared and while the Latin American Federation of Associations of Relatives of the Detained-Disappeared (FEDEFAM in Spanish) drafted a project of Enforced Disappearances Convention to present it to the United Nations.

¹³ The Constitutional President Dr. Hernán Siles Zuazo expressed this sentiment in a letter to the III Congress of The Latin American Federation of Associations of Relatives of the Detained-Disappeared (FEDEFAM), celebrated in Lima, Peru, November 1982.

The CNID was created through the Supreme Decree N°19241 on October 28th, 1982, and it was the first truth commission in the continent to consider “the participation of the most important organizations and institutions in the country”¹⁴ as one of the criteria to elect its commissioners.

Thus, bodies related to justice and human rights in the executive and legislative branches, were represented. Also, the Church, the Armed Forces, the Bolivian Workers’ Union, the Human Rights Commission, the Bolivian Red Cross, the Federation of Press Workers, and The Association of Relatives of the Detained, Disappeared and Martyred for National Liberation (ASOFAMD in Spanish), that was created afterward in a complementary decree.

“The families of the disappeared and the people of this country have demanded clarification about the crimes and have permanently denounced them.”

Therefore, the organization of the National Commission of Investigation of the Forced Disappeared Citizens is an answer to the continuous struggle and brings hope of finding out what happened to those who were lost.

The existence of the Commission marks the desire the Bolivian people have of investigating, judging, and punishing those responsible for the crimes.

It is a positive and stimulating example for all the countries that have suffered and still suffer crimes against humanity: FORCED DISAPPEARANCES and, at its core proves the attitude of the people of this country not willing to FORGIVE or FORGET the terrible human rights violations.

The work is not easy. The interests of the people involved with said crimes are still present, but the commitment to further this fight is strong, and it is a fight in defense of LIFE” (CNID report, 1983).

¹⁴ CNID report, October 28th, 1983.

The original decree gave 90 days to complete the objectives but when the report was presented, the term was extended indefinitely¹⁵ and the Unified Syndical Confederation of Rural Workers of Bolivia was added to the previously mentioned organizations. However, the work of the commission during this second stage was interrupted. By 1985 the commission was not working regularly and had no economic support from the government, that prioritized the economic situation and the general wellbeing of workers¹⁶, in crisis after hyperinflation caused by the loans that the military dictatorships had taken in previous years.

Despite the short period in which it functioned, the commission had some interesting methodological definitions that deserve mention. Initially, the CNID had its offices in the Internal Affairs Ministry, but later it changed its location to the Federation of Bolivian Press Workers. The commission also had offices in two cities, Oruro and Cochabamba, where the local Workers Union, the local University Federation, the Local Permanent Assembly for Human Rights, the Federation of Rural and Factory Workers, and Families of the disappeared could participate.

When the Commission stopped working, they gave all the documentation collected during the investigation to ASOFAMD, which still manages it today. Even the furniture used by the Commission was donated to this organization and it is still currently being used.

¹⁵ Decree N° 19734.

¹⁶ According to ASOFAMD in its intervention during the Meeting “the disappeared: truth, justice and democracy” in La Paz, July 1986

Argentina: National Commission on the Disappearance of Persons -CONADEP 1983-1984

The second commission created in Latin America, was the Comisión Nacional sobre la Desaparición de Personas – CONADEP (National Commission on the Disappearance of Persons in English), in Argentina. Larger and with a broader scope than its predecessor, it was created by the executive power Decree N°187 of December 15th, 1983, five days into Raul Alfonsín's presidency. The CONADEP, unlike the Bolivian commission, was integrated by a group of "notables" or "public figures" that had a recognized track record in different aspects of public life.

When the commission was created its initial mandate was: 1) receive reports and evidence and hand them to the courts, 2) reveal the fate of the disappeared, 3) find the children that had been separated from their parents or guardians and, 4) relay to the courts any attempt to hide or destroy the evidence, 5) issue a detailed report within 180 days (later extended an additional 90 days).

Since 1975, human rights organizations in Argentina had been accumulating a “painful experience and knowledge of the forced disappearances, supported by the interaction with thousands of family members and the study of the evidence that organizations had received from them”¹⁷. In 1983 six civil society organizations¹⁸ created a technical commission for data collection that gathered all the material that different human rights organizations had. The idea was to potentially create a bicameral commission that would work within Congress. The organizations of victims, relatives, and human rights, claimed that this commission had to be integrated by “Congresspeople and Senators, with extraordinary powers to aid in the collection of documentation and witness reports”¹⁹. The Executive’s refusal to accept this proposition meant that most of the organizations that were part of the human rights movement objected, at first, to the creation of the CONADEP.

Finally, the commission was made of twelve people, all Argentinian, picked by the President. However, “some of the people asked to be a part of the commission declined as a response to the refusal of the Bicameral commission proposal”²⁰.

The initial work of the CONADEP was organized around the testimonies and documents that survivors and relatives had given to the organizations and which the Technical commission for Data Collection had systematized. Lorena Balardini says “when inquiring into this time in the history of Human Rights Organizations and the production of information, there is a clear link between their work and the CONADEP. In the first place, related to the technical teams that were part of the commission:

¹⁷ Document of the Permanent Assembly for Human Rights (APDH), “Presence of the APDH in the CONADEP”, July 1st 1985.

¹⁸ Relatives of Detained-Disappeared for Political Motives, Permanent Assembly for Human Rights (APDH), Center for Legal and Social Studies (CELS), Ecumenical Movement for Human Rights (MEDH), Peace and Justice Service (SERPAJ), and Grandmothers of the Plaza de Mayo.

¹⁹ The document “Technical Commission for Data Collection” is available in Memoria Abiertas Archives, in Buenos Aires. <http://archivos.memoriaabierta.org.ar/index.php/comision-tecnica-de-recopilacion-de-datos>

²⁰ Crenzel, Emilio. *La historia política del Nunca Más: la memoria de las desapariciones en Argentina* [The political history of Nunca Más: Memory of the disappearances in Argentina]. Siglo Veintiuno editores, Buenos Aires, 2008. According to Crenzel, Alfonsín rejected the proposal because he was afraid that congress would push for harsher convictions for the Armed Forces which would up the tensions. Therefore, he decided to move forward with a commission of “remarkable” people in civil society.

most were made up of members of the organizations. In some way, it meant that the way of thinking about the information within the organizations was transferred to the State, a clear influence over the production of state truth”²¹. The commission would later widen the scope of the investigation, go to the detention centers, and open a space for more people to give testimony. The work developed gathered the information that was collected by the human rights organizations during the dictatorship official documentation status, and gave the victims a legal status.

“The success of the commission was not only a result of it being an organization of the state, or of the people that integrated it, it is due to the alliance and shared effort of the State and the Human Rights movement. Even though the organizations asked for a bicameral commission, most of the movement contributed to the work of the CONADEP. Members of the Permanent Assembly for Human Rights and the Ecumenical Movement for Human Rights were part of its leadership. Other organizations contributed with personnel to the delegations the Commission allocated to certain provinces, and with offices in provinces where the local governments were uncooperative; collected testimonies in territories where the commission had no delegations; and contributed with recommendations that, for the most part, were included in the final report”²².

Civil society had access to an edited version of this report that was published with the title “Nunca Más” (Never Again) by the University of Buenos Aires. The publication offered a new public truth about the state terrorism that had previously been systematically denied and/or justified by its perpetrators; it established the State involvement in the disappearances as well as their systematic nature. The reconstruction of the way in which the system of disappearances worked was possible as a result of the testimonies of survivors and the relatives of the victims. As Emilio

²¹ Balardini, Lorena. “Estrategias de producción de información de las organizaciones de derechos humanos en argentina. Los usos de la sistematización y la estadística en la búsqueda de verdad y justicia”. Master’s Thesis, Buenos Aires, 2015.

²² Chillier, Gastón y Torras, Verónica. “Strategies against impunity in relation to crimes of state terrorism in Argentina”. Eradicating impunity for atrocities committed in dictatorships, authoritarian regimes and armed conflicts in Latin America: challenges and good practices in Argentina, Chile, Colombia, Guatemala and Peru. Comisión Mexicana de Defensa y Promoción de los derechos humanos, A.C. March, 2018.

Crenzel²³ has said, “both in the investigation and in the report, the voice of the State, and the voice of the victims and the Human Rights movement interweave and make, we could say, a shared truth about this system of disappearances”.

The robustness of the knowledge accumulated by this commission about the inner working of state terrorism was the foundation of the prosecution during the Trials of the Juntas and their influence still extends to the current Trials. It has also been a big help to the different reparation policies that have been implemented since the 90s. Finally, its contribution to memory politics has also been valuable: the “Nunca Más” report has been included in the educational curriculum and has been utilized to create the script used by some memory museums around the country.

²³ Crenzel, Emilio, op.cit.

Truth Commissions in Chile

1991, 2004
and 2010

Chile is a particular case; three official commissions investigated State Terrorism during the period of Pinochet Dictatorship. Comisión Nacional de Verdad y Reconciliación (The National Commission for Truth and Reconciliation in English), also known as “Retting Commission”, published a report in 1991 about the Detained-Disappeared and the political assassinations. Comisión Nacional sobre Prisión Política y Tortura (The National Commission on Political Imprisonment and Torture in English), also known as “Valech Commission”, investigated former detainees and survivors of torture and published its report in 2004. Finally, in 2010, Comisión Asesora para la Calificación de Detenidos Desaparecidos y Ejecutados Políticos y Víctimas de Prisión Política y Tortura (The Advisory Commission on the Classification of the Detained-Disappeared, Victims of Political Executions and Victims of Political Imprisonment and Torture in English), recognized other cases of human rights violations that the previous commissions had not.

The commissions, however, did not work in coordination with civil society organizations or doing direct work supporting the victims and their families during their investigations.

“From the point of view of the investigation of the Detained-Disappeared in Chile, this work had been on the hands of the victims’ relatives, through the Association of Relatives of the Detained-Disappeared and the Vicariate of Solidarity of the Archdiocese of Santiago, and similar groups across the country, for in Concepción”²⁴. By 1986, before the end of the dictatorship but when the organizations already had certain margin to investigate, the Association of Relatives of the Detained-Disappeared was talking about the need for the truth-seeking to involve the whole of society (political organizations, unions, professional associations, etc) since this was the only way to ensure the acknowledgment of the truth and the punishment of the people responsible²⁵.

An important link between the truth commissions in Chile and the human rights organizations is that the former used the archives already built by the organizations for their investigation. Particularly the holding of the Vicariate of Solidarity, the representative of which, Sergio Valech, a priest, preceded The National Commission on Political Imprisonment and Torture (2003). The Cristian Social Aid Foundation (FASIC in Spanish) created in 1975 and currently a member of the RESLAC, also collaborated.

The Rettig Commission, created on April 25th, 1990 only a month after the first transitional government, announced that it had “national reconciliation” as its goal. The government had started a truth-seeking process but with the objective of reconciliation. As Fernando Camacho said, “the way in which the Rettig Commission looked at the past limits its own existence (...) certain concessions, sacrificing part of the truth, but in favor of the perpetrators”²⁶. At the same time, investigate

²⁴ FEDEFAM, 1986: 16.

²⁵ Ibid. pp 18.

²⁶ MATAROLLO, RODOLFO. Camacho, Fernando. “An Agreed Upon Memory: The Rettig Report”. Available at: <http://www.divaportal.org/smash/get/diva2:522430/FULLTEXT02.pdf>

the measures that the Chilean State could take to restore and repair, to the extent possible, the damage caused to the victims and their families.

Not only did it investigate the dead and disappeared that had opposed the military regime but also the people that were part of the military and were murdered by extremist leftist groups. Although this was not well received by the families of the victims of the dictatorship, President Aylwin considered it necessary for national reconciliation. The president also selected the commissioners, including people that had supported or been part of the regime, as well as, people that had been part of the opposition, but excluding both victims and old members of the Armed Forces to avoid any suspicion about the impartiality of the commission.

The commission redefined the concept of “Human Rights violation” to include not only the responsibility of the state but of individuals²⁷. Furthermore, it chose to not identify the individuals that were responsible. Some human rights lawyers believe that this decision is a sign of the hold the Armed Forces still had over the Government

Regarding civil society’s involvement, it summoned relatives of the victims to request a hearing with the commissions and promoted this initiative in Chile and internationally; it received information from families, and human rights organizations. It conducted hearings with the families of the victims, in Santiago and anywhere else in the country where someone was willing to testify; to this objective, they created a calendar that allowed them to visit every province capital in the country.

The Final Report was not very well disseminated by the government. The Ministry of Education proposed that it had to be added to the Educational Curriculum but a right-wing party opposed this.

²⁷ It was a main point of contention for human rights and victims and families organizations because they considered it a way of trying to put state responsibilities and acts committed by particular groups or people in the same bag.

Furthermore, the report was not registered in the intellectual property registry, and was, therefore, not available in public libraries²⁸.

Civil society organizations reacted to the contents of the report in two different ways: the human rights organizations and the Catholic Church mostly supported the work, while organizations of victims and their families were dissatisfied. They considered it was not enough to acknowledge the deaths, they wanted to know where the remains of the victims were and they highlighted the need to take judicial action against the people responsible, which was not possible without a reform of the Judicial Branch, and the democratization of the Armed Forces. Regarding the latter, there was no acknowledgment of their responsibility.

In 2003, Comisión Nacional sobre Prisión Política y Tortura (The National Commission on Political Imprisonment and Torture in English), the “Valech Commission”, was created and most victims were able to testify about what had happened to them. This initiative made it possible to collect first-hand testimonies of the atrocities perpetrated by the state against 28.459 people. In 2010, the investigation was reopened (Valech 2) and 38.254 people were recognized as victims of political imprisonment and torture.

Although progress has been made, human rights organizations recognized the problems with state policies that restrict and limit the right to truth, peace, and reparations:

- According to Chilean Law No. 19.992, the Valech Commission records are to be kept secret for 50 years, which means that until 2053 nobody has access to the information as reported by the victims regarding the places where they were held, what kinds of torture they suffered and, most importantly, who committed the crimes.

²⁸ PORTALES, FELIPE. 2005. The inexistence of democracy in Chile. Revista Latinoamericana Polis. Available at <http://polis.revues.org/7493>

- The commissions never investigated imprisonment and torture outside of police and military premises. For example, the widespread raids in the 80s where vulnerable populations of the biggest cities in Chile were the victims. In recent studies, some NGOs estimate that around 500.000²⁹ people were affected.
- The reparations pensions are equivalent to half the minimum monthly wage³⁰ and the health benefits are, in practice, the equivalent of qualifying those people as indigents.
- According to The National Institute of Human Rights³¹ data, out of the 38.254 officially recognized cases where the names of perpetrators are known, less than 1.200 have been brought to court and only 261 have definitive sentences.

²⁹ <http://www.memoriachilena.gob.cl/archivos2/pdfs/MC0033345.pdf>

³⁰ <https://www.ips.gob.cl/servlet/internet/content/1421810870289/preguntas-frecuentes-ley-valech>
As of January 2010: Under 70: \$ 139.663; 70-74: \$ 152.712; 75 and over: \$ 159.844
Minimum salary value 2020: \$ 319.000
https://www.cnnchile.com/economia/sueldo-minimo-alza-319-mil-pesos-marzo_20200214

³¹ 2017 Annual Report: <https://bibliotecadigital.indh.cl/handle/123456789/1073?show=full>

Guatemalan Commissions

1995-1998 and 1997-1999

Since 1986, ten years before the peace agreement was signed and after the worst years of generalized repression, some victims and families organizations, like the Mutual Support Group (GAM in Spanish), the National Coordination of Widows of Guatemala (CONAVIGUA in Spanish), started demanding the creation of a truth commission that, to start, would focus on finding the people that had disappeared during the most violent period of the war, between 1979 and 1984.

In 1987, the peace negotiations between The Guatemalan National Revolutionary Unity (URNG in Spanish) and the Government of Guatemala started. In 1991, the mediator Monsignor Rodolfo Quezada Toruño put forward the demands of organizations. However, given the stagnation of the peace process, in January 1994 an agreement was signed which included the creation of an Assembly of Civil Society (ASC in Spanish) that would develop proposals to be considered by both delegations. The ASC was an active player during the peace agreements, being part of the conversation and making their proposals in each of the agreements that were negotiated between 1994 and December 29th, 1996, when the peace agreement was signed.

The Commission for Historical Clarification (1997-1999)

The creation of a truth commission as part of the peace agreements was one of the most difficult points in the negotiations, which had happened in El Salvador. The army and the security forces were strongly opposed to it - they were concerned that something similar to what had happened in Argentina, where the heads of the military were tried, would happen.

However, the Assembly of Civil Society made the demands of the organizations part of the negotiations and they were key to one of the most important agreements of the peace negotiation process: the agreement on the establishment of the Comisión para el Esclarecimiento Histórico - CEH (Commission for Historical Clarification in English) that incorporated the right to truth as the main basis for its mandate. Nevertheless, the commission would not name those responsible for the crimes against humanity and would not have any judicial effect. The social organizations were not happy with the agreement but they persevered with their truth building efforts.

The CEH had to wait three years to begin its work, despite it being part of the first agreements that should have been implemented immediately, even if the peace agreements had not been signed yet. Finally, surrounded by controversies about its creation³², it was the National Reconciliation Law³³, a partial amnesty law, enacted by Congress in December 1996, a few days before the peace agreement was signed, that, in its 10th Article, facilitated its juridical existence. It is a partial amnesty law that excludes from these crimes against humanity and legally makes the CEH viable, in Article 10:

Article 10. The Commission for Historical Clarification of Human Rights Violations and Acts of Violence that has Caused suffering to the Guatemalan Population was created in accordance with the agreement to the Oslo Accord of the 23rd of June 1994. It will be responsible for

³² Its creation was questioned because it was “just” an agreement between the two sides, no judicial support.

³³ Decree N° 145.96 of the Congress of the Republic of Guatemala, December 18th 1996. Available at <http://biblio3.url.edu.gt/Publico/Libros/Acuerdos-de-Paz/47.pdf>.

designing the means necessary to make possible the knowledge and acknowledgment of the historical truth about the period of armed conflict with the objective of avoiding the repetition of these events. To that effect the bodies and entities of the State should support the commission must they require it. (National Reconciliation Law, 1996)

In this polarizing environment, the active participation of the United Nations was agreed upon and since 1994 its Verification Mission in Guatemala (MINUGUA in Spanish) was functioning in the country. The election of the commissioners was handled by the UN Secretary-General and responded to the criteria that were established by the Negotiating parts³⁴. It was a hybrid institution, of both national and international law, as what had happened in El Salvador

On July 31st, 1997, seven months after the peace agreement was signed and three years after the agreement in Oslo, the CEH was formally created and started its work. By then, Proyecto Interdiocesano de Recuperación de la Memoria Histórica - REMHI (Interdiocesan Project for the Recovery of Historical Memory in English) with support from the Human Rights Office of the Archbishopric of Guatemala had been working for a year and a half in communities all over the country collecting and analyzing testimonies. The “Guatemala Nunca Más” (Guatemala Never Again) report elaborated by the REMHI, was presented on April 24th, 1998, The CEH report “Guatemala, Memoria del Silencio” (Guatemala, Memory of Silence), on February 25th, 1999.

The REMHI Project, an ad hoc commission in Guatemala (1995-1998)

In 1995, uncertainties about the CEH as well as contradictions and risks in the peace process pushed the Human Rights Office of the Archbishopric of Guatemala (ODHAG in Spanish) to start a project to gather testimo-

³⁴ Dr. Christian Tomuschat a professor of international law and a German citizen was assigned as president of the CEH. He later assigned two members from Guatemala

nies. Almost every bishop in the country, except for two dioceses, agreed to let the project run in their jurisdiction. It was an inter-dioceses but not a national project.

“The REMHI project wanted to start the work that the CEH would later do, contributing to making it more efficient in a multicultural and plurilingual country”.³⁵

The REMHI conducted more than 6000 interviews and more than 100 community analysis of relevant towns or villages. The work was done in the native language of each area. More than 600 people, most of them also victims, and community leaders, conducted the personal and facilitated the collective interviews and workshops.

The REMHI interviewers were dubbed “Reconciliation Animators”.

“We requested an adult that was already involved in the community before REMHI and that kept its connection to the parish. Those were the requirements to be an “animador”, we never considered their formal education (...) if I’m not mistaken there were three that could not read or write, they recorded the interviews and then asked someone to write them down”(ODHAG s/t; 143).

“The strategy was to use people from within the communities, people that also knew what had happened. This was done to guarantee the purity and authenticity of the information that was given” (Interview to Edgar Hernández, REMHI coordinator in Huehuetenango, in ODHAG s/t; 145).

“in some of the workshops(...), we discovered that most or all the interviewers were victims. Taking that into account we work with them about the importance of being able to listen to others without being hurt themselves, and we practiced how to interview and how to actively listen” (Interview to Edgar Hernández, REMHI coordinator in Huehuetenango, in ODHAG s/t; 145).

³⁵ Report by Carlos Martn Beristain, coordinator of the Guatemala Never Again report

The REMHI was considered an ad hoc commission that established a high standard of investigation for the CEH. Its results socially validated the results of the CEH, both arrived at the same conclusions with a high level of conscience. On the other hand, the testimonies collected by the REMHI, because they did not have the limitations the official commission did, can be used in trials for crimes against humanity and genocide.

Even though the REMHI was completely autonomous it proved the value of recognizing the capacity of the communities in the different affected areas in a truth building effort that also aided with the reconstruction of those communities, the strengthening of the victims, and their rights to testify. Their work helped the CEH officials who worked in territories they had information about and with populations that were familiar with testifying.

Two days after the REMHI report was made public, Bishop Juan José Galdámez, the driving force of this ad hoc commission, was brutally murdered when returning to his home in the San Sebastián parish house, in Guatemala. Three military personnel and Mario Orantes, a priest, all involved with the murder were convicted.

Truth and Reconciliation Commission in Peru

2001-2003

In 2000, Alberto Fujimori was fraudulently and unconstitutionally re-elected for the third time, this caused civil unrest that culminated in the “Marcha de los Cuatro Suyos”, a massive protest, on July 26th, 27th, and 28th of 2000. The protestors marched towards Lima from all regions of Peru. On the 28th the crowds gathered in front of the Government Palace and Congress building to try to prevent the swearing-in of the illegitimate president. The protests were violently repressed but “La Marcha de los Cuatro Suyos” weakened the unconstitutional regime.

On September 14th of that year, Mr. Montesinos, main advisor and right-hand man of the president, fled. Fujimori called for new elections —and later, in a presidential trip to Brunei, and via fax, he resigned and fled to Japan.

The Peruvian Congress rejected Fujimori’s resignation and instead removed him on the basis of “moral incapability”; Valentín Paniagua was then appointed President of the Transitional Government. On July 4th,

2001, the Decree that created the Comisión de la Verdad y Reconciliación – CVR (Truth and Reconciliation Commission in English)³⁶ was signed.

The NGOs and the Catholic and Evangelical pastoral networks supported the victims and “represented” them in legal, social assistance, and health matters. These same organizations were asked by the commissioners to support the work that the CVR was doing, while the victims and their organizations were identified in each region through the National Coordinator for Human Rights (CNDDHH in Spanish).

From Supreme Decree N° 314-2000-JUS:

(...)

Article 6. The Commission of truth will be given the following attributes to perform its functions:

(...)

d. Hold public hearings or what they deem necessary to keep the identities of those who contribute with information or aid the investigation private.

e. Organize the security measures to ensure the safety of the people that the commission considers are at risk.

f. The Truth Commission will establish channels of communication and mechanisms for public participation, especially those who have been affected by the violence.

The CVR hired ONGs to aid with systematization and training, among others, depending on its needs and the profiles of the organizations to help cover those demands. To this effect, the commission made different agreements that can be consulted on its website³⁷, for example, those

³⁶ Supreme Decree N° 314-2000-JUS. Available at <http://www.cverdad.org.pe/lacomision/cnormas/normas01.php> (Consulted: January, 2020)

³⁷ <http://www.cverdad.org.pe/lacomision/cnormas/index.php> (Consulted: March 2018)

signed with the CNDDHH, and with the Association for Human Rights (APRODEH in Spanish), both in 2001, the same year the CVR was created.

The commission used information that was already collected and organized by the Human Rights Organizations. The agreements also expressed that the commission was interested in aiding the coordinators of Human Rights Organizations that already were established in different areas that had been affected by the conflict. Those coordinators could provide contact with the victims, their families, witnesses, community leaders, among others. The agreements also highlighted the need for the organizations to contribute with the dissemination of information about the commission, its objectives, how it worked, its goals; and especially important was their collaboration with the training of local leaders, authorities, and of the population. Human Rights organizations had legitimacy and had built trust with the communities, something that could pave the way for the commission's work gathering testimonies. The agreements did not guarantee financing but they made it easier for both parties to ask for the financial support that was needed, public or private, national or international.

INSTITUTIONAL COOPERATION AGREEMENT BETWEEN THE NATIONAL COORDINATOR FOR HUMAN RIGHTS AND THE TRUTH AND RECONCILIATION COMMISSION (2001)³⁸

(...)

The National Coordinator for Human Rights (CNDDHH) is a collective of non-governmental organizations for the defense, promotion, and education on human rights. Currently, 61 organizations across the country are part of the CNDDHH, all with the same democratic aspirations and under the common goal of fighting for human rights. The CNDDHH is an example for our society, it has Special Consultative Status at the United Nations Economic and Social Council and it can take part in the Organization of American States.

³⁸ <http://www.cverdad.org.pe/lacomision/cnormas/convenio12.php> (Consulted: March 2018).

(...)

1. Delivery of information.

The National Coordinator for Human Rights will collaborate with the systematizing and delivery, either directly or through the organizations that are part of it, of all the information within its powers that is relevant to the facts the commission has set up to clarify in agreement with the Supreme Decree N° 065-2001-PCM.

The information includes accusations, documentary evidence and other kinds of material about human rights violations or other criminal acts, bibliographical material connected to the commission's work, and any other information that might be useful for the investigation.

INSTITUTIONAL COOPERATION AGREEMENT BETWEEN ASSOCIATION FOR HUMAN RIGHTS AND THE TRUTH AND RECONCILIATION COMMISSION (2001)³⁹

(...)

Since 1983 APRODEH has been working in the investigation of human rights violations on a national level through its legal team, and testifying in organizations like Inter-American Commission on Human Rights, and the United Nations Human Rights Committee.

As a product of this work, APRODEH has created a centralized archive where all the investigations are collected. The basis of the documentation are police forces, judicial and non-judicial cases. The Documentation Area is in charge of this archive which also counts with a library that specializes in Human Rights topics.

(...)

³⁹ <http://www.cverdad.org.pe/lacomision/cnormas/convenio01.php> (Consulted: March 2018).

THIRD: ABOUT THE AREAS OF COOPERATION:

In agreement with this document the areas of cooperation referred to the following:

1. Documentation

APRODEH will make the following items available to the commission:

APRODEH experience (including data records, controlled vocabulary, lists of authorities, etc.)

The system (software) of data with the objective that the commission might use this experience to implement the databases that it deems necessary for its work

Access to its Bibliographical Collection, special exhibition for the members and operative team of the commission

Access to the Press Archive. Special priority service of a retrospective search function.

Access to the Photography Archive, including emailing scans of the photos when needed.

Access to the UN-OAS Archive, chosen documents will be included in the Bibliographical exhibition.

Special service of internet searching for the members of the team

2. Investigation

APRODEH is committed to:

Make available to the Truth and Reconciliation commission the investigations that have been made, documentation, and testimonies of human rights violations that are part of the commission's jurisdiction.

Support the work of the commission particularly in the places of institutional work (Apurímac, Ayacucho, Huancavelica, Huánuco, Junín, Lima, Ucayali y San Martín) through APRODEH's Legal Team and its local promoters.

3. Communications

APRODEH, with the purpose of promoting and spreading the reach of the work to be done by the commission and ensuring that it takes a central place in national life so that it can reach as many sectors as society as possible, is committed to:

Raise public awareness, prioritizing the work with sectors with which it has an ongoing relationship (relatives of the victims, populations affected by political violence, social organizations, and unions).

Truth and Justice Commission in Paraguay 2004-2008

Comisión de la Verdad y la Justicia – CVJ (Truth and Justice Commission in English) was created in 2003 and began working in 2004, 14 years after the end of Alfredo Stroessner’s dictatorship. The time that had passed made the task more difficult but also gave victims and civil society the time to organize. The CVJ (2008) recognizes that its creation was “due to the initiative of civil society and the victims’ organizations. The governments that followed the fall of the dictatorship (1989) had no interest in examining the past and even less in condemning it”⁴⁰.

In 2002, when commemorating ten years since The Archives of Terror⁴¹ were found, and the coordinating committee “Historical Memory and Archives of the Repression” was created. It was proposed that Congress should declare 2003 the “Year of Historical Memory”, pass the Truth and

⁴⁰ CVJ, 2008: 84.

⁴¹ Currently in the Supreme Court’s Center of Documentation and Archives for the Defense of Human Rights, they were an exceptional starting point for the creation of the CVJ.

Justice Commission Law, and create the Museum of Memories⁴². The Committee then drafted a bill and chose the commissioners⁴³.

The bill was passed by the Senate in June 2003, and the Truth and Justice Commission was created. The 2225/03 Law defined that the commission would investigate all forms of human rights violations, forced disappearances, executions, torture, exiles, among others, and would identify, when possible, those responsible. The commission could promote judicial processes to the perpetrators of crimes committed against human rights in the period of investigation.⁴⁴ Its legal area moved forward with the judicialization of concrete cases of crimes against humanity. On the other hand, the commission actively pushed Congress to make Paraguay sign the UN Convention “on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity”.

The commission was made of one representative of the Executive Branch, one of the Legislative Branch, four members selected by the Commission of Victims of the Dictatorship, and three members chosen by civil society organizations. The participation of civil society and victims organizations made the creation of an extremely detailed, fair, and truthful report of the crimes against humanity committed between 1954 and the date in which the Law was passed (35 years of Stronism and 14 of the so-called “democratic transition”)

The collaboration of civil society in the CVJ allowed them to counterbalance the state organizations and therefore created a report that brought up some of the atrocities that were not recognized by a few state organizations and arrived at a historical truth more in line with what had happened in the country.

⁴² El Museo Memorias, Dictaduras y Derechos Humanos, is a member of RESLAC

⁴³ To select the commissioners they made a public call, with certain criteria, and received 33 applications. The applicants argued their intentions and proposals in a public hearing. Of the seven members that were later chosen four were chosen by the victims’ organizations and three for human rights organizations. The commission, even though most of the commissioners were chosen by civil society organizations, the CVJ is a government organization and is financed by the state. (CVJ, 2008).

⁴⁴ After the trials in Argentina caused by the CONADEP report (1984), the truth commissions took different approaches to the judiciary persecution and public identification of the individuals responsible. “The public knowledge of the perpetrators was subject to the decisions made by the commissioners, and also to the pressure to silence them”(Espinoza, 2003: 65).

Since the final report was published in 2008, it has been recognized by the Attorney General's Office as an unquestionable proof of the human rights violations that happened during the regime. On the other hand, the Ombudsman's Office created the Truth, Justice, and Reparations General Directorate, whose main objective is to monitor that the final recommendations of the report are being fulfilled. Finally, as a result of the work of the victims' organizations and civil society, the report was declared of national interest.

The participation of civil society and the involvement of victims and their families, allowed the CVJ report to compile, in the most objective way possible, the human rights violations committed during the investigated period. The Committee of Historical memory (of which several victims' and relatives' associations are part) works with the Truth, Justice, and Reparations Directorate General to follow through with the recommendations of the commission.

National Commission of Truth in Brazil

2014-2015

Comissão Nacional da Verdade – CNV (National Truth Commission in English) was created through a law approved by Congress after a year of discussions, during the government of Dilma Rousseff (Law No.12.528). The commission started its work in 2012, 27 years after the return of democracy in Brazil. Given the time that had passed, the commission conducted its investigations but also used previous evidence collected by both public and civil society organizations.

Although the commissioners of the CNV were chosen exclusively by the Executive Branch. The truth process in Brazil led to the participation of all sectors of civil society that had already been involved with the search for truth for many years. In 2011, before the Law to create the commission was passed, state commissions for the right to memory and truth were created, many with the support of social organizations, and some with the incentive of the Special Ministry for Human Rights, within their Right to Memory and Truth Project, created in 2008. The committees were not only a good element to pressure the Legislative Branch into passing the

bill but also a practical way of explaining to the people what the role of the truth commission was.

The establishment of the CNV created an ideal stage for the creation of state, municipal, collegial, and union truth commissions across the country. More than 100 institutions were created, with different legal statuses that constituted an active network that worked to help CNV in the search for documents, testimony gathering, etc.

To promote the creation of new commissions in different states (provinces or departments), on October 3rd, 2012, the CNV asked the governors and the local Legislative Branches to commit to themselves help with the creation of new commissions. As a result of this and the mobilization of different sectors of Brazilian society, commissions of truth were created in most states and municipalities, and, in many cases, their work has continued after CNV's was completed.

This project was extended with the addition of unions and universities that created commissions to investigate what had happened to workers during the dictatorship (1964-1985). On the other hand, a connection was established with the Brazilian University Network of Observatories for the Right to Truth, Memory, and Justice, created the year before by the Human Rights Department with the collaboration of public and private institutions across the country was established⁴⁵. Another strong working link was established between the CNV commissioners and the Amnesty Commission of the Ministry of Justice which, created in 2001, is responsible in Brazil for the reparation system in place since that year.

To formalize all these agreements between the different other truth commissions and the CNV, 43 technical cooperation agreements were signed. The main points of those agreements concerned the exchange of information and documentation. All these documents were finally duly organized in the National Archive, where it constituted a special collection regarding the works of the CNV, at reach of all interested parties. The

⁴⁵ In: http://memoria.telam.com.ar/noticia/brasil--ya-funciona-la-comision-de-la-memoria_n1080. Consulted May, 2018.

collective work of the different truth commissions allowed to multiply efforts in a country as big and diverse as Brazil, widening the reach of CNV.

The final CNV report, consisting of six volumes and more 3.800 pages, about human rights violations committed by the Brazilian State between 1946, when the Vargas dictatorship began, and 1988 when the new constitution passed, was published on December 10th, 2014, International Human Rights Day.

SOUTH-SOUTH Dialogues. Social participation in two Truth Commission experiences in Africa.

The following expositions were part of an experience and exchange about truth commissions between two representatives of the African Memory Sites Network, that are part of the International Coalition of Sites of Conscience, and the members of the RESLAC, during the XII Gathering of the Latin American and Caribbean Network of Memory Sites in São Paulo, Brazil, in October 2019. Doctor Shiley Gum from the Human Rights Media Centre (South Africa) and Bernadette French from Campaign for Good Governance (Sierra Leone), focused during their presentations on how civil society participated in their countries' experiences with truth commissions.

South Africa: Truth and Reconciliation Commission (1995-1998-2003) ⁴⁶

The brutal methods used by the apartheid regime were similar to those used against resistors by South American dictatorships. The brutality of apartheid is similar to what is seen in Chile today.

“Amandla: Ngawethu” means power to the people. We have similar struggles now in South Africa, for improved service delivery and against crime and corruption, to what we had then against the brutality of apartheid ideology. The possibility that any person was seen as superior only because of the color of their skin is unbelievable; every law in South Africa favoured the minority of people who were white, and denigrated people of colour and indigenous people as second and third class citizens. Apartheid was declared a crime against humanity by the United Nations in 1966, yet the regime was respected by its allies in the west and the south too; the apartheid government had good relations with many South American dictators. As the apartheid government became weaker, it became more brutal.

A year after our first democracy election in 1994, the South African Truth and Reconciliation Commission (TRC) was established to investigate human rights violations committed from 1960 to 1994, covering the period when the Nationalist Party came to power and the year of our first democratic elections. The periods of colonial oppression (under Dutch and British rule) were excluded.

We are still dealing with the trauma of apartheid. Our struggle for truth and justice was not yet over.

Came 1994, we were battle worn and exhausted – it had been a bitter struggle to arrive at democratic elections that saw the African National Congress (ANC) come to power. We had high hopes for our new democratic government and the TRC was an important instrument of transi-

⁴⁶ Transcript of the conference offered by Shirley Gunn in the framework of the XII RESLAC Meeting held in São Paulo, Brazil, in October 2019.

tioning from a regime of violence to a government that would promote equality, peace and justice.

The mass democratic movement was an essential component of our struggle. The other pillars of our struggle were also important namely, the political underground, underground military resistance, and international solidarity and sanctions. Many people thought that by voting for the ANC, they take a break from struggle. But things have gone horribly wrong. South Africa has a dual economy with one of the highest inequality rates in the world. Many of the people who were involved in resistance inside the country were not included or taken into account in government programmes, and in economic programmes post-apartheid. Yet they had fought for a different economic system: one that would benefit the majority not a few.

The implementation of the TRC was initiated under Nelson Mandela's leadership as president. He chose the commissioners, although there was a public process: names of the commissioners were published in the newspapers and people had the opportunity to object to those selected. Most of the commissioners were activists who had respectable struggle backgrounds.

Although the commission was gender balanced, two men were at the helm: Archbishop Desmond Tutu was the TRC's chairperson and the deputy chairperson was Dr Alex Boraine. Forgiveness, as one finds in Christianity, was very present. Archbishop Desmond Tutu described the South African people as forgiving and humble. He prescribed forgiveness but one can not reach forgiveness without the truth.

Our TRC got going very quickly in 1996. Offices were established in the then four provinces in South Africa. It was difficult to reach the whole country, especially rural areas and small villages.

At some point in 1986, ANC female comrades summoned me to a meeting at the regional ANC office in Cape Town. They were critical of the TRC because women's testimonies to the TRC were as witnesses, wives, lovers, mothers, and not as activists and militants.

I went away from the meeting and thought long and hard and I decided to testify to the TRC. I wrote my statement, it took me a week. I don't think I've cried so much as I did during that period of writing my testimony. When I was done, I had a meeting with my lawyer and the person with whom I co-commanded our detachment, Aneez Salie, to show them my statement. They agreed I should submit my testimony to the TRC. We were not individuals but part of units or detachments so it was necessary to get their approval. I didn't feel comfortable writing as an individual as the TRC required because we were part of something bigger. I handed over my statement to the TRC.

A week later, I was summoned to a TRC Women's Hearing at the University of the Western Cape, held in a large auditorium, in front of a sea of unfamiliar faces. It was impersonal. The camera lights were blinding, and made me sweat. While the cameras and microphones pointed at me, the commissioners listened to my testimony about how I used my breast milk as a weapon against the security police during interrogation when I was held in detention in solidarity confinement in 1990 with my baby.

You can read my story on the South African Department of Justice's website. I broke the stereotype: we women have our own voice, our stories, we are not just innocent victims.

Testifying to the TRC changed my life 360 degrees. It was traumatic. Each 'victim' had to prove their status as a victim to the TRC through documentation, for example, by producing death certificates and hospital records.

The final report of the TRC was handed over to President Nelson Mandela on 29 October 1998. It was a special day for us, because part of the truth had been revealed, and the report contained recommendations regarding reparations (individual, community, symbolic) that victims in South Africa expected because it was our right: we had forfeited our right to litigate against our tormentors because of the amnesty clause.

In Johannesburg, there was Khulumani (a Zulu word meaning 'to speak out') initiated by an NGO called CSV (Center for the Study of Violence and Reconciliation). Very soon, however, Khulumani branched out on its

own and started to mobilize nationally. The Expolitical Prisoners and Torture Survivors group that I was part of joined Khulumani in 2001.

We were very active in our protest, demanding that the government listen to victims and not close its doors prematurely because the Gross Human Rights Committee's work had a short life of one year that was extended to 18 months.

It is a travesty that twenty-one years later we continue to fight for the implementation of all these recommendations. Khulumani continued to mobilise and grow in membership. Every October 29 we held demonstrations at Parliament: 1999, 2000, 2001, 2002, 2003 claiming our reparations. Every year we used the same posters because our demands were the same. Reparations is a right, why must we wait and "Justice Delayed is Justice Denied .

And eventually, near Christmas in 2003, reparations were finally paid to victims by the government. Individual reparations approved by the President Thabo Mbeki (Nelson Mandela's successor) and parliament, was R30 000 which was equivalent to less than \$2000 each. The Presidency Fund was established solely for reparations. Today there is R3,567 billion in that fund that can only be used for reparations, and the community reparations programme has yet to get off the ground. We continue to fight for community reparations.

The Department of Justice has a dedicated Unit that is responsible for delivering the recommendations and unfinished business of the TRC, which includes paying out individual reparations and overseeing the community reparations programme. The TRC also handed over many cases for further investigation and prosecution of perpetrators by the National Prosecuting Authority (NPA). Many documents between 1960 and 1994 and during the time of the TRC were destroyed by securocrats who were skeptical of the Justice process and feared prosecution. There was a massive loss of documents and evidence that could have contributed to the legal cases. This is another of our ongoing struggles post our TRC. We want the truth to be heard and justice to be achieved.

But I believe that the truth always comes to light: three months ago, the inquest into the death of Achmat Timol, who was killed in detention in 1969 in Johannesburg, was reopened. This allowed the courts to bring to court one of the policemen, who is still alive, which was hidden during the first inquest during apartheid held soon after Timol's death and by the TRC. Evidence led in this inquest revealed that President Thabo Mbeki actively interfered with the work of the NPA to investigate TRC cases. Now each of these many cases must be re-opened and properly investigated, one-by-one, at great costs, including cases of the disappeared and deaths in detention.

In 2010, we formed the South African Coalition for Transitional Justice when the president at that time was driven to provide pardons to criminals convicted of so called political crimes. The process was flawed and we opposed it. Our advocacy included speaking to parliamentarians, who did not have the appropriate information about these criminals. That was our first action and victory as a Coalition. The pardons process was stopped in its tracks.

Meanwhile, Khulumani continued to grow. Its strength is that it is the only survivor group in the country. Regretfully, we have had problems with the national director who made decisions and acted without consulting and being accountable to the Board of Directors (of which I am one). She was suspended following an investigation by a committee of Khulumani members and officials, that eventually held a Disiplinary Hearing chaired by an independent Chairperson, who found the national director was found guilty of most of the offenses for which she was charged. The Disiplinary Hearing Chairperson recommended that the national director be dismissed; the Board duly dismissed her, but she ignores the finding and her dismissal and continues. It's unfortunately that this has happen to Khulumani; it's very sad but we are continuing to do our best to rescue the organization.

We continuing to fight for the unity of victims and survivors because our work is very important and it is not yet done.

Social Participation in the Sierra Leone Truth and Reconciliation Commission⁴⁷

Sierra Leone is a country geographically located in the west of sub Saharan Africa. Having gained independence in 1961, it suffered a few coups and counters coups since the 1960's which later ushered in the one-party republican regime under the All People's Congress party (APC) when the Revolutionary United Front invaded Sierra Leone in 1991. The APC government was ousted in 1993 by the National Provisional Ruling Council (NPRC). With intense activism by Civil Society demanding for multi-party elections even in the face of conflict, Sierra had its first Multi-party Democratic Elections in 1996 but that was short-lived as yet another coup was staged ushering in a merger between the Revolutionary United Front (RUF) and the Sierra Leone Armed Forces, forcing the legitimate government led by President Ahmed Tejan Kabbah to seek refuge in Neighboring Guinea till 1998 when (ECOMOG) ousted the AFRC and reinstated the ousted government.

The country suffered the emergence of a civil war in 1991 which lasted for 11 years. Sierra Leone's war was of a unique character that has been described by many scholars and citizens as senselessly brutal. A conflict which also brought a marriage between the rebels and the very soldiers who were fighting to defend the territory at some point thereby ushering a new local militia which were termed "Kamajors". This senseless war took the lives of over 100,000 people and having also all hit almost all of the geographical district, it was characterized by brutal murders, conscription of young boys as young as 7years, forced marriage, rape, an estimated 4,000 people amputate, destruction of properties beyond human imagination. An insurgence which was sold to the people to the people as a revolution aimed at liberating them from the misrule of a one party system now became a terror entity unleashing its atrocities on innocent civilian rather than its opposing forces. As the conflict intensified it became a vicious cycle of violence even between citizens.

⁴⁷ conference offered by Bernadette French in the framework of the XII RESLAC Meeting held in São Paulo, Brazil, in October 2019".

Having explored the Abidjan and Conakry peace talks that failed Civil society became quite robust in ensuring that the cessation of hostilities on innocent civilians is achieved. The civil disobedience of August 1996 when citizens came out in their numbers to demonstrate against the junta *inter regnum*, Civil society had already played a key role in making their position known and taking a firm stand against military rule and had called for the ushering of multi-party democracy in the BINTUMAN 1 & 11 conference in 1995. Civil society was also very instrumental in most of the behind the scenes and formal negotiations in and out of Sierra Leone to bring the rebels on the negotiating table and getting them to commit to the agreements. Hence it was welcomed when civil society suggested the idea of the establishment of a truth and reconciliation commission to the exiled government in Conakry in 1996, and later brought to the table for discussion at a meeting led by the national Forum for Human Rights and the National Commission for Democracy and Reconciliation.

No doubt once the president was reinstated in 1998, civil society was on the platform again to broker peace between the rebels and the government with the help of the international community: UN and ECOWAS. In all of this, the role of women cannot be overlooked. Women activist mobilized and risked their lives to engaged the rebels in their stronghold. It was these negotiations that ushered in the Lomé Peace Accord in 2000 between the Revolutionary United Front led by Corporal Foday Sankoh and the Sierra Leone government led by Dr. Ahmed Tejan Kabba. Even in these talks civil society had a place.

The political challenges that were embedded within the conflict itself had triggered citizens activism and prepared a platform for movement building and networking for achieving a common agenda; citizens stands on the need for elections before peace, the August 18 demonstration against the joint rebel and military coup plotters all in a bid to uphold and preserve democracy in Sierra Leone. This strength and capabilities was recognized by the government then hence confidence and trust for civil society to take a lead role in the TRC became quite significant to the point that CSO representative were among the delegation that was sent to South Africa to study the TRC process and to develop a road map for

the Sierra Leone TRC with obviously the support of the international partners who provided the funds and the technical support where needed.

The Sierra Leone TRC itself was borne out of one of the conditions of the Lomé Peace accord and this was followed up by the enactment of the TRC act of 2000. The TRC mandate was to “create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered

The commission operated from (2002 to 2004) and the Sierra Leone TRC was designed along the patterns of the South African Truth Commission despite the difference in the nature and character of two conflicts. This formation has left scholar questioning the one size fits all syndrome approach to TRC’s and its implication for national ownership of the process.

Seven commissioners were appointed; four nationals and three internationals with a strong gender representation because there was a deep sense of recognition that the majority of victims of the war were women and children.

The structure of the commission was such that commissioners were selected by a panel that included civil society and other interest groups like religious leaders, international partners who then recommended individuals that met the criteria that had been set by the panel for selection of the commissioners but it was the president who appointed from the list of recommended names submitted. The TRC had its secretariat in the capital city with provincial offices in the three regions and district focal outfits to support their work in the rural areas. Decisions were taken by consensus and where they struggled to agree they resort to individual voting and where there was a tie the chairman would cast the deciding vote. In all of this arrangement civil society were provided the space to make their input and support the process from the initiation stage to implementation and dissemination of the report contents. Unfortunately, the recommendations of the TRC has never taken centre stage in subsequent

governance agenda but yet still CSO's continued to draw governments attention to its significance to national building and national cohesion

Civil societies support to the statement taking process and the identification of victims and victims mapping cannot be over emphasizing. Psycho social and trauma healing for victims was key on the statement taking agenda. Civil society became a solid rock for victims to lean on throughout this process and this itself made the process quite unique. In recognition of the sensitive nature of some of the atrocities that the rebels perpetrated on innocent civilians. The need for citizens to make a decision about whether they want to testify publicly on in camera became a critical issue for attention and yet again CS championed the advocacy which was granted.

Civil society ensured that the identities of women and girls especially Sexually abused victims and children even if they were perpetrators were protected throughout the process and measures were taken to ensure that identities would not be shared with any institution or persons or be used to indict them at the special court in Sierra Leone. As a result of this, sexually abused victims and children were able to testify in camera. It was critical that women and children were to be heard in a manner that ensures their safety and dignity and prevent any traumatization and that all proceedings should take into account the provisions enshrined in CEDAW and CRC and other international and regional human rights instruments

Technical capacities of Civil societies capacity through training to support their critical role in the statement taking process and guidelines were developed through the support of UNICEF and other child protection agencies to ensure that statements were taken by individual who were trained in children and gender sensitivities as well as providing the right environment depending on the individual testifying so for example it was important for statement taken for children whether victims or perpetrator be taken in a child friendly environment. Voluntary participation in the TRC was a must and civil society ensured that no victim or perpetrator were forced to testify in the hearings whether public or confidential.

In addition to the formal TRC process, there was a deep sense of recognition of local traditional mechanisms for promoting reconciliation and spiritual cleansing of the land. It was key that perpetrators in the midst of the amnesty agreement be able to reintegrate within their communities without cause for revenge. Again, civil society through the traditional and religious groups played a key role in ensuring that public ceremonies of reconciliation and spiritual cleansing were done. These ceremonies gave perpetrators the opportunity to ask for forgiveness to the families and the communities for the atrocities they had perpetrated. In the absence of this, it would have been difficult for perpetrators to go back to their communities without being harmed.

Also it is worth noting that civil society again was key to the dissemination and communication of not just the process as it unfolds but also educating citizens about the outcome of the commissions and the content of the report: the report was translated into various levels of communication materials to suit the various categories of citizen noting the bulky nature of the report. Reader friendly version, local language translations into audios and child friendly versions of the report were developed and communicated through public outreach activities. There were efforts made to ensure that the process was televised and recorded so that citizens could be informed and follow the process from wherever they are.

Despite the successes the TRC was not without challenges: the commission was under resourced resulting in a six months extension of its one-year original timeframe, the commission operation itself started much later than was originally agreed upon in Lone. The mandate was quite broad, with very little staff to be able to complete such a critical task so documentation of the process and research into the historical antecedent narrative became a serious challenge for the commission since none of the commissioners had the expertise in carrying out this task. In Yasmine sooker's reflection of the process she highlighted how the commission struggled to produce the quality of data that could be relied upon as a result of lack of resources to employ such the quantity of expertise they needed in this area. At some point the commission had to resort to hiring personnel of inadequate pedigree to complete such a critical task. Yet in the midst of this challenge one would want to wonder how such a

comprehensive and well researched narrative was produced in the end with some schools of thought also believing the report was skewed to only researching into the role of the African countries in fueling the war leaving out western super powers such as Britain, USA, France and many more. One would want to jump to the conclusion that “we cannot bite the finger that feeds you” since the process itself was single handedly funded by international partners.

The establishment of the special court in the middle of the TRC process also became a key threat to the work of the commission.

One of the key recommendations amidst many more which has clamored for governments genuine commitment and to be given priority is the issue of reparation; both symbolic and material. Article 9 of the Lome Peace Accord provided for a special fund to be establish for war victims and that symbolic measures to acknowledge the sufferings of victims should be taken. This was a much expected and expressed demand from victims who had called for some compensation packaged to be provided for them to make up for their losses and sufferings. The reparations process started five years after the submission of the TRC report. The National Commission for Sicla Actions implementing the process recorded 27, 998 victims across the different categories. Symbolic reparations were conducted in fourth out of the then 149 chiefdoms. Medical and monetary support of \$ 100 was provided for victims at the time but like every other donor funded initiative the reparations process ended with the end of the funds.

Whiles there are many resource materials about the TRC and its operations there has been very little documentation has been done to capture local stories on the active role civil society played to ensure that TRC became a reality.

There is a lot that countries can take from the Sierra Leone TRC experience but also bearing in mind that focusing on context realities and adaptation of the process to suit its unique political context and historical background for lasting reconciliation is key. What works for South Africa could never have worked for Sierra Leone if copied and pasted.

In the case of Sierra Leone, the commission worked very closely with civil society. They recognized the additional value that CS can bring into the process while also acknowledging their understanding of the context reality on the ground and their links with citizens.

Women, girls and children experience were given special attention.

Efforts were made to ensure that citizens were informed and educated about the processes as it progressed. There were community outreaches across the country and the public hearings were done in full view of citizens through live broadcasts. Also noting that confidential hearings were not televised especially for sexual abused victims and children whether they were victims or perpetrators.

Civil society accompanied the process, right from the beginning to the end, providing solidarity and support to victims testifying at the hearings. This gave most victims the confidence and strength they needed to narrate the horrible experiences they suffered during the war.

Managing expectation of the victims: Citizens expectations of the TRC also included provision of material resources which was way outside the mandate of the TRC.

Many schools of thought have continuously opined that the TRC was heavy on International support because the government could not provide the funds to support the process, hence it became an internationally driven process through civil society, hence the commission met the expectations of the international community who funded it, government and civil society who believed it was the appropriate approach to healing and reconciliation at the time but the TRC to an extent did not meet the expectation of the victims nor did it meet the expectation of the citizens.

Forgiveness and reconciliation were prioritized over justice and accountability leaving victims and communities with no choice but to chose the lesser evil which was to just move on with their life's whiles having to watch their perpetrators live side by side under the ideology of amnesty.

Preserving the memory of the war has been nonexistent except for the Sierra Leone peace museum which was part of the legacy initiative of the

Sierra Leone Special Court. This is even been hardly used by national. One would imagine that despite its deficiencies, it will be a useful resource for especially the younger generation who did not witness the war. Archiving of the materials has been a challenge.

Almost 15 years on, despite the progress that have been made in building institutions adopting policies and laws, Sierra Leone continue to deal with many of the very challenges that the TRC emphasized were the primary causes of the war; injustice, neglect of vulnerable groups – women and youth, corruption, the list goes on. Implementation of the TRC recommendation is still a challenge, as a matter of fact the steering committee for the follow up of the recommendation has not been set up, the constitutional review process is at a standstill even though it was an imperative recommendation of the TRC.

There was a lot that was achieved in the Sierra Leone's TRC in terms of achieving its mandate but TRC's are only a means to an end, civil society's idea of a truth commission was one that would commence a new era of political, economic and social transformation.

Conclusions

The experiences of the truth commissions in Latin America and the Caribbean have become landmarks. The states' decision of investigating severe human rights violations previously silenced and/or denied as well as the international support received in many cases, worked alongside the struggle for truth and justice by victims, survivors, relatives, and human rights organizations as we have discussed in this document.

This "bottom-up" approach that has been, in general, less known and recognized, was a crucial element of the actuation of the commissions, their possibilities of development and performance, and their long term impact.

We recover three key moments of civil society intervention:

1. The period before the creation of the commissions, in which the organizations led the demands for memory, truth, justice, and peace, and even began investigations of their own (as it is the case of REMHI, in Guatemala, and CNV, in Brazil, but also in all cases where the gathering and systematizing of information was a task the organizations had already started).
2. The period in which the commissions were working, when organizations got involved in different ways (providing documents, archives, testimonies; participating in the direct work of the commission; working with the communities to spread awareness; lending their spaces, among others).

3. The period during and after the publication of the reports with the collectives educational work divulging its conclusions and recommendations, the development of memory exercises alongside with the continuation of demands for justice and memory.

One of the goals of this work is to bring to the forefront the mechanisms of effective participation of civil society organizations in the previous experiences of the truth commissions in Latin America and the Caribbean, the importance of their contributions not only to the investigations themselves but also to their long term legitimacy and sustainability. The experience of the commissions in Sierra Leone and South Africa makes the importance of social activism in Africa clear. The involvement of these organizations is not only a contribution to the quantity of information collected in the reports but to the quality of the constructed truth. The defense and transmission of this truth become a collective, and shared responsibility.

The truth commissions are short term benchmarks that are part of longer processes of construction of truth and memory where the protagonists are often the victims, relatives, and survivors. The strength of the commissions depends on the will of governments and on international involvement, but also, and that is reflected in these experiences, in the involvement local organizations have with the processes and their ability to link them to their own demands and developments, strengthen, and protect them, and to widen their reach.

The different ways in which civic society was involved with the truth commissions and their challenges and victories are, in all cases, unique. The characteristics of the conflict, how they work though, and arrive at their truth construction processes, the forces at play before, during, and after the creation of the truth commissions, the strength, and weaknesses of each society, among others, are some of what factors into this uniqueness. There is no universal model for the experiences of truth commissions nor for the relationship each commission had with their countries' civic society. This work tells some of how this happened in Latin America and Africa.

We must continue to build connections that allow us to think about these experiences from the perspective of civil society. Instead of putting the diverse experiences against each other as if they were mutually exclusive, we think they are complementary cases capable of offering mutual exchange and learnings, especially when it comes to the intersection between civil society and the commissions. This is the horizon that we want to strengthen given the challenges that the Colombian institutions, created after the Peace Agreements, and the Colombian organizations fighting for the construction of memory, justice, and peace must face.

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