

# Latin American Truth Commissions: Confronting the Past

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A comparative assesement of  
truth and reconciliation commissions in  
Argentina, Chile, Colombia, Guatemala and Peru



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# Truth and reconciliation in Latin America



**Jonathan C. Hamilton**

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We live in a multipolar world, where development and investment alike require reliable mechanisms for conflict resolution—to confront past problems and neutrally resolve future disputes.

Latin America is a vibrant participant in the multipolar world. In the two decades since a wave of economic and policy changes swept the region, most Latin American countries have embraced and even pioneered new international dispute mechanisms.

International dispute systems matter for Latin America. The systems used to address conflict and resolve controversies, both internally and internationally, drive development, investment, stability, security and peace. They reflect an era of advocates and tribunals, focused on the future.

At the same time, most Latin American countries have created systems for confronting the past, with enhanced transparency and examination of alleged prior abuses. The common mandate of these commissions: truth and reconciliation.

Collaborating with the Cyrus R. Vance Center for International Justice, White & Case undertook a comparative study of truth and reconciliation processes in five Latin American countries. The project was originated to provide analysis relevant to the Brazilian National Truth Commission and established to investigate human rights issues related to the 1964 – 1985 military regime in Brazil.

The report examines the work of Latin American commissions and found lessons, and cautionary tales, for countries grappling with similar issues. The report thus fills a critical gap in information available for policymakers, lawmakers and affected citizens across the Americas.

The report focuses on the methodologies and findings of truth commissions in five key areas:

- Public hearings
- Media coverage
- Transparency and civil society participation
- The relationship between present and past violations
- Violence affecting rural areas and/or indigenous groups

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The report focuses in particular on Argentina, Chile, Colombia, Guatemala and Peru. In each country, albeit in distinct ways and with differing outcomes and degrees of acceptance, the commissions recommended reparations for the victims, as well as improvements in the rule of law to strengthen human rights as a foundation for economic and social progress. Some of the findings of the report include the following:

- The Argentina commission, for instance, issued proposals to reform the legal framework in recognition of human rights and adherence to human rights norms.
- The Chile commission recommended legal and institutional measures, including the harmonization of national laws with international human rights standards, and advocated for the creation of public law foundations.
- In Colombia, in addition to proposed judicial, administrative, economic and social changes, the commission's findings became the basis for a new Victims Law, including the possibility of land reclamation.
- Land redistribution was also a focus of the Guatemala commission, which proposed measures to strengthen the democratic process.
- In Peru, a series of institutional reforms was presented to address social and economic consequences of conflict, further strengthening the country's commitment to democracy and the rule of law.

These and other findings are summarized in an infographic in the report spanning the themes and countries identified above. The infographic facilitates discussion and analysis of the more detailed information in the country chapters of the report.

This report is the result of an intense effort by a team of lawyers from nine White & Case offices in the Americas and Europe, in close collaboration with the Vance Center. It reflects a joint commitment to the rule of law and pro bono work in Latin America.

Ultimately, this report underscores how truth and reconciliation form a part of the Latin American conflict resolution system that can serve to strengthen the rule of law in today's multipolar world.

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# La verdad y reconciliación en Latinoamérica



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Vivimos en un mundo multipolar, donde el desarrollo y la inversión igualmente requieren mecanismos confiables para la resolución de conflictos—para confrontar a los problemas pasados y neutralmente resolver disputas futuras.

Latinoamérica es un participante dinámico en el mundo multipolar. En las dos décadas desde que una ola de cambios económicos y políticos pasó por la región, la mayoría de los países de Latinoamérica han adoptado e incluso han sido pioneros en nuevos mecanismos para la solución de controversias internacionales.

Los sistemas de resolución de conflictos importan para Latinoamérica. Los sistemas que se utilizan para hacer frente a los conflictos y resolver las controversias, tanto a nivel interno como a nivel internacional, apoyan al desarrollo, la inversión, la estabilidad, la seguridad y la paz. Esos reflejan una era de abogados y tribunales enfocados en el futuro.

Al mismo tiempo, la mayoría de los países de Latinoamérica han creado sistemas para enfrentar el pasado, con mejor transparencia y un examen de los supuestos abusos anteriores. El mandato común de estas comisiones: la verdad y la reconciliación.

En colaboración con el Cyrus R. Vance Center for International Justice, White & Case emprendió un estudio comparativo de los procesos de verdad y reconciliación en cinco países de Latinoamérica. El proyecto se originó para proporcionar un análisis pertinente a la Comisión Nacional de la Verdad brasileña creada para investigar los asuntos de derechos humanos relacionadas con el régimen militar 1964 – 1985 en Brasil.

El informe examina el trabajo de las comisiones de Latinoamérica y encontró lecciones e historias de advertencia, para los países que se enfrentan a problemas similares. Por lo tanto, el informe llenó un vacío en términos de la información disponible a los políticos, legisladores y ciudadanos afectados por las Américas.

El informe se centra en las metodologías y las conclusiones de las comisiones de verdad en cinco áreas clave:

- Las audiencias públicas
- La cobertura por la prensa
- La transparencia y la participación de la sociedad civil
- La relación entre violaciones presente y pasado
- La violencia que afecta a las zonas rurales y/o grupos indígenas

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El informe se centró en particular en Argentina, Chile, Colombia, Guatemala y Perú. En cada país, aunque de maneras distintas y con distintos resultados y grados de aceptación, las comisiones recomendaron reparaciones para las víctimas, así como mejoras al estado de derecho para fortalecer los derechos humanos como una base para el progreso económico y social. Algunos de las conclusiones del informe incluyen lo siguiente:

- La comisión en Argentina, por ejemplo, emitió propuestas para reformar el marco jurídico en el reconocimiento de los derechos humanos y el cumplimiento de las normas de derechos humanos.
- La comisión en Chile recomendó medidas legales e institucionales, incluyendo la armonización de las leyes nacionales con las normas internacionales de derechos humanos, y abogó por la creación de fundaciones de derecho público.
- En Colombia, además de los cambios judiciales, administrativos, económicos y sociales propuestas, conclusiones de la Comisión se convirtieron en la base para una nueva Ley de Víctimas, incluyendo la posibilidad de recuperación de tierras.
- Redistribución de la tierra también fue un foco de la comisión de Guatemala, que proponía medidas para fortalecer el proceso democrático.
- En Perú, se presentó una serie de reformas institucionales para enfrentar las consecuencias sociales y económicas del conflicto, y dio un mayor fortalecimiento del compromiso del país a la democracia y el estado de derecho.

Estas y otras conclusiones están resumidas en una infografía en el informe que incluye los temas y países identificados arriba. La infografía facilita el debate y el análisis de la información más detallada en los capítulos sobre cada país en el informe.

Este informe es el resultado de un esfuerzo intenso por un equipo de abogados de nueve oficinas de White & Case en las Américas y Europa en estrecha colaboración con el Vance Center. Refleja un compromiso compartido con el estado de derecho y el trabajo pro bono en Latinoamérica.

Finalmente, el informe subraya la manera en que la verdad y la reconciliación forman parte del sistema latinoamericano de resolución de conflictos que hoy en día pueden servir para fortalecer el estado de derecho en el mundo multipolar.

**Jonathan C. Hamilton**

# Latin American truth commissions in comparative perspective

“Truth and reconciliation processes not only look back at history—they form a part of the Latin American conflict resolution system that can strengthen the rule of law in today’s multipolar world.”

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	ARGENTINA	CHILE	COLOMBIA	GUATEMALA	PERU
Public hearings	Hearings were not public, but Commission had a prominent public profile	Hearings were not public, because public hearings were considered the prerogative of the courts	Public judicial hearings subject to protection of victim	Hearings were not public because the Commission was prohibited from naming perpetrators	14 public hearings across the country with television, radio and Internet broadcasting
Media coverage	National and international press coverage; publication of Commission mandate and final report	National and international press coverage; publication of Commission mandate and final report	National and international press coverage; multiple published reports	National and international press coverage of the final report, but limited coverage of the Commission’s work	Significant and coordinated involvement with the press across mediums through an internal committee
Past/ Present	Investigation focused on past events and proposals to prevent them in the future	Investigation focused on past events and proposals to prevent them in the future	Investigations in the midst of ongoing conflict	Some measures were taken to address and reform ongoing issues, such as military culture and racism in the judicial system	Institutional reform recommendations regarding government authority and displaced communities
Transparency	Civil society representation in leadership and assistance in information gathering	Regular contact with civil society organizations for information gathering	Commission members from civil society and coordination with civil society organizations for information gathering and victims’ services	UN financial and logistical support; civil society organizations assisted in information gathering, and monetary and in-kind donations	30 institutional cooperation agreements; volunteer program; coordination with civil society groups
Targeted violence	Not targeted or disproportionate	Not targeted or disproportionate	Disproportionate effect on rural and indigenous populations, especially land displacement	83% of victims from indigenous communities	75% of victims from indigenous communities; 79% from rural communities

This table is for summary purposes only and not intended to be a complete representation of the work of any individual truth commission.

# Argentina

“Y, si bien debemos esperar de la justicia la palabra definitiva, no podemos callar ante lo que hemos oído, leído y registrado; todo lo cual va mucho más allá de lo que pueda considerarse como delictivo para alcanzar la tenebrosa categoría de los crímenes de lesa humanidad.”

Prologue de *Nunca Más*, Informe de la Comisión Nacional sobre la Desaparición de las Personas

“And while we wait for the final word of justice, we cannot remain silent before what we have heard, read and recorded, all of which goes far beyond anything that could be considered to meet the shadowy criminal category of crimes against humanity.”

**Prologue from *Nunca Más*, Report of the National Commission on the Disappearance of Persons**

# Argentina



This country brief summarizes the work of the National Commission on the Disappearance of Persons (CONADEP) and its report entitled *NUNCA MÁS* regarding events in Argentina between 1976 and 1983.

## A. History and context

After a military coup in March of 1976, a series of military juntas exercised power in Argentina, while an opposition movement grew.<sup>1</sup> A seven-year power struggle between the military dictatorship and opposition “subversives” resulted in the systematic, yet secret, disappearance, torture and death of thousands of individuals suspected by the government of supporting a left-wing agenda.<sup>2</sup>

During the military dictatorship, the State committed acts of repression through the military and Armed Forces. As detailed in the National Commission on the Disappearance of Persons’ (Comisión Nacional sobre la Desaparición de Personas) (CONADEP or “Commission”) final report, *NEVER AGAIN* (*NUNCA MÁS*), such acts were executed with a precise timing and methodology, from abductions, disappearances, torture and, in some cases, murders.<sup>3</sup> During abductions, Patotas (paramilitary groups) had a police “green light,” in which the area where the abducted lived was deemed a “liberated area” and the police would intentionally not respond to complaints in such areas during the abduction operations.<sup>4</sup>

Approximately 340 clandestine detention centers operated during this period. Such clandestine centers were established around the country either in abandoned properties or in state properties, such as military facilities. These centers were set up for torture, imprisonment, interrogation and administrative functions.<sup>5</sup> Although the majority of citizens were aware of these centers, by speaking out against them an individual risked being abducted, tortured and even killed by state forces. Moreover, the government denied their existence.<sup>6</sup>

During the fourth and last military junta, general elections were held in 1983 and Raúl Alfonsín was elected as president. In his first week in office, he created CONADEP and repealed the military auto-amnesty that had protected its members from investigation and prosecution.<sup>7</sup>

CONADEP, created by presidential decree 187/83 (the “Decree”), published in the Official Gazette on December 15, 1983, was to report to the executive branch and legislators from both chambers. Though it was discussed, CONADEP was ultimately not a bicameral commission that would conduct an inquiry and sentence those responsible for the violations.<sup>8</sup> It was instead given a

1 All the references, unless otherwise stated, are from CONADEP’s final report, *NEVER AGAIN* [hereinafter *NUNCA MÁS*].

2 Mario Rapoport, *Modelos Económicos, Regímenes Políticos y Política Exterior Argentina*, 198 (2004) (“El 24 de marzo de 1976 se implantó la dictadura militar autodenominada Proceso de Reorganización Nacional, la más sangrienta de la historia argentina”).

3 See, e.g., Una Duda Histórica: No Se Sabe Cuántos Son Los Desaparecidos, CLARÍN, Oct. 6, 2003.

4 *NUNCA MÁS*, Ch. I, El Secuestro, section B. La Luz Verde, available at [http://www.desaparecidos.org/nuncamas/web/english/library/neveragain/neveragain\\_007.htm](http://www.desaparecidos.org/nuncamas/web/english/library/neveragain/neveragain_007.htm).

5 *NUNCA MÁS*, Ch. I, El Secuestro, section D. Centros Clandestinos de Detención, available at [http://www.desaparecidos.org/nuncamas/web/english/library/neveragain/neveragain\\_017.htm](http://www.desaparecidos.org/nuncamas/web/english/library/neveragain/neveragain_017.htm).

6 María Seoane, Vicente Muleiro, *El Dictador: La Historia Secreta y Pública de Jorge Rafael Videla*, 227-228 (2001).

7 See United States Institute of Peace Website, “Truth Commission: Argentina,” available at <http://www.usip.org/publications/truth-commission-argentina>.

8 Sikkink, K. *From Pariah State To Global Protagonist: Argentina And The Struggle For International Human Rights*, LATIN AMERICAN POLITICS AND SOCIETY (2008), available at <http://www.jstor.org/discover/10.2307/30130837?uid=3738664&uid=2129&uid=2&uid=70&uid=4&sid=21102992830137>.

period of six months to receive reports of disappearances (after which it would immediately refer them to the courts), inquire into the fate of the disappeared, locate abducted children, report to the courts any attempt to conceal or destroy evidence, and issue a final report.<sup>9</sup>

## B. Commission methodology

According to article 2 of the Decree, the specific functions and objectives of CONADEP were the following:

- Receive complaints and factual evidence, and send them immediately to the competent authorities if they are related to the alleged commission of crimes
- Locate the whereabouts of the disappeared persons, as well as any other circumstances concerning their location
- Determine the location of children taken away from their parents or guardians due to actions undertaken to suppress terrorism and permit intervention of the child protection agencies and courts, if necessary
- Denounce any attempt of concealment, subtraction or destruction of evidence related to the facts that conadep aims to clarify and

- Prepare and issue a final report with a detailed explanation of the facts investigated within the one hundred and eighty (180) days following the date of its creation

CONADEP had several methods to achieve its objectives, including the power to request governmental authorities (including the army and entities related to security matters) to produce all reports, data and documents related to its mission, as well as to permit access to places of interest. It could also request written depositions from the public officers, including members of the army and security entities.<sup>10</sup> Notwithstanding the foregoing, CONADEP could not issue any judgment on facts and circumstances that remained within the purview of the judiciary.<sup>11</sup>

### 1. Public hearings

While many truth commissions host public hearings, CONADEP did not. Nonetheless, it did have a prominent public profile, taking more than 7,000 statements including 1,500 statements from survivors.<sup>12</sup>

### 2. Media coverage

As further evidence of its public profile, the work of the Commission received national and international press coverage. This included coverage of CONADEP's creation and the scope of its powers, chronicles of certain appearances and statements of important political figures. Additionally, there were public reports on its operations related to the search and discovery of certain missing persons (including children),<sup>13</sup> as well as on the location of illegal prisons,<sup>14</sup> and articles describing the use of forensic techniques used by CONADEP for its work in order to identify and determine the cause of death of missing persons,<sup>15</sup> among others.

While the media did cover the Commission's work extensively, CONADEP hearings in 1984 and later also showed how editors of national media, particularly newspapers, had practiced self-censorship and established informal procedures with government officials and church leaders to "clear" sensitive stories. These same media also failed to cover the investigations and subsequent report of the United Nations Human Rights Commission on the "disappeared."<sup>16</sup>

<sup>9</sup> Decree No. 187/83, Art. 2.

<sup>10</sup> Decree No. 187/83, Arts. 3,4.

<sup>11</sup> Decree No. 187/83, Art. 2.

<sup>12</sup> See United States Institute of Peace Website, "Truth Commission: Argentina," available at <http://www.usip.org/publications/truth-commission-argentina>.

<sup>13</sup> *La Comisión Nacional Ya Habría Encontrado y Devuelto Once Niños*, LA NACIÓN, Dec. 28, 1983.

<sup>14</sup> *Córdoba: reconocen un centro de detención*, CLARÍN, May 17 1984; *Reconocen en Quilmes una cárcel clandestina*, CLARÍN, May 19, 1984.

<sup>15</sup> *Forenses de EE.UU. y la Identificación de NN*, CLARÍN, June 16, 1984.

<sup>16</sup> Byron T. Scott, Carolina Escudero & Anya Litvak, *Media, Memory and Forgiveness: Case Studies in South Africa and Argentina's Conflict Resolution Process*, 1 J. DISP. RESOL. 205, 206 (2007). However, independent publications, such as the US-owned English-language daily *Buenos Aires Herald* and *The Mail and Guardian*, were exceptions to the general "go along to get along" media behavior. Nevertheless, publishers and editors protested that their first consideration was survival, both commercial and personal.

### 3. Relationship between past and present

The military dictatorship began in 1976 and ended in 1983; CONADEP was created in December of 1983. CONADEP's creation, soon after the end of the period of crimes it was investigating, led it to focus on the violations committed during the military regime (past) and on issuing a series of recommendations applicable to the current system (present). This was intended to give the new Government guidance to issue the appropriate legislation and the corresponding actions to mend the violations committed during the military dictatorship. In this regard and as discussed further below, CONADEP's Final Report issued recommendations for the legislative and executive branches to enact laws in support of a reparations program for the families of the disappeared, as well as social welfare, academic support and other means to address social or familial issues as a result of the disappearances. Proposals were also made to reform the legal framework in recognition of human rights, punishment of crimes against humanity, adherence to international human right organizations and derogation of repressive laws.<sup>17</sup>

### 4. Transparency and civil society participation

The inclusion of representatives from human rights organizations in the leadership of CONADEP had symbolic and political importance for the Commission and its work. This presence was strengthened when, at the first meeting, CONADEP requested from the Asamblea Permanente por los Derechos Humanos (Permanent Assembly for Human Rights or "APDH") all the reports of disappearances it had gathered during the dictatorship.<sup>18</sup> Civil society organizations also contributed testimonies of survivors; however, only approximately 70 testimonies were available. Given the limitations, the Commission decided to travel throughout the country and create local delegations.<sup>19</sup> With the help of the civil society organizations, the delegations were able to collect testimonies around the country.<sup>20</sup>

The Commission also gathered new testimonies from people who had been involuntary witnesses to the disappearances. These witnesses included neighbors who had seen abductions, people who had seen military or police officers at the clandestine

centers, and doctors and nurses who had assisted pregnant disappeared women. Notable among these was a group of morgue workers from Córdoba who submitted contemporaneous evidence to the Commission.<sup>21</sup>

After compiling conclusive testimonies, the Commission decided to inspect the clandestine detention centers, sketch maps of the centers based on the memories of former captives, and draw up lists of disappeared persons and perpetrators seen in such facilities. These inspections received wide coverage in the press, covered almost 50 centers throughout most of the country and, for the first time, involved former captives. The results of each inspection were compiled with other evidence about the detention center, forming a "dossier" to be submitted to the courts. In them, CONADEP classified the crimes committed, attaching the testimonies, the documentary evidence and the list of the "victims" and "personnel involved" (identified by at least three concurring witnesses).<sup>22</sup>

17 CONADEP, *NUNCA MÁS*, Ch. VI, Recomendaciones y Conclusiones.

18 Emilio Crenzel, *Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice*, 2 INTERNATIONAL JOURNAL OF TRANSNATIONAL JUSTICE 173, 179 (2008) (citing CONADEP Minutes 1 (Dec. 22, 1983), at 2).

19 *Id* at 182 (citing CONADEP Minutes 19, 10 (Apr. 1984), at 74 and CONADEP Minutes 7, 17 (Jan. 1984), at 20).

20 Emilio Crenzel, *Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice*, 2 INTERNATIONAL JOURNAL OF TRANSNATIONAL JUSTICE 173, 182 (2008) (citing CONADEP Minutes 12, 21 (Feb. 1984), at 36, CONADEP Minutes 18, 3 (Apr. 1984), at 67 – 69 and CONADEP Minutes 19, 10 (Apr. 1984), at 75 – 76).

21 See *id* at 183 (referencing the morgue workers letter and citing *Revelan carta de sepultureros a Videla*, CLARÍN, Feb. 8, 1984, at 8). For an analysis of the import of the letter, see Emilio Crenzel, *Cartas a Videla: Una exploración sobre el miedo, el terror y la memoria*, in MIEDOS Y MEMORIAS EN LAS SOCIEDADES CONTEMPORÁNEAS (Córdoba: Programa de Estudios de la Memoria, Universidad Nacional de Córdoba, Núcleo de Estudios sobre Memoria IDES, Editorial Comunicarte, 2006) (analyzing the importance of the letter).

22 Emilio Crenzel, *Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice*, 2 INTERNATIONAL JOURNAL OF TRANSNATIONAL JUSTICE 173, 185 (2008) (citing CONADEP Minutes 1 (Dec. 22, 1983), at 2).

## 5. Targeted violence

Unlike in many countries, the violence in Argentina did not target a specific population.<sup>23</sup> In fact, the military juntas declared that the target of the repression was “terrorism,” but the meaning of this concept could reach virtually any person as needed by the Government.<sup>24</sup> Disappeared, tortured and murdered persons came from all social strata. Victims included guerilla members, police and military forces. CONADEP gathered information about the victims, establishing that approximately 25.9 percent of these were people between the ages of 26 and 30 years.<sup>25</sup>

## C. Findings and justice

On September 20, 1984, CONADEP issued its final report (*Nunca Más*). In this report, CONADEP reached the following conclusions and recommendations:

### Conclusions<sup>26</sup>

The Commission reported and found evidence for at least 8,960 forced disappearances during the 1976 – 1983 military rule. But this number was not definitive, as the Commission found that there were many cases not yet reported.

There were also some isolated cases of reported disappearances before the military coup of March 24, 1976, but disappearances became a systematic practice starting with this date.

The methodology used by the State consisted generally of kidnapping the victim and transferring him or her to one of the approximately 340 clandestine detention centers. These centers were run by high-level military officers. The detainees lived in inhumane conditions and were subject to torture and humiliation.

Many detainees were killed in these centers; however, the real circumstances of their deaths were hidden by governmental officers, sometimes even pretending that combat occurred between guerrilla groups and the armed forces. In many cases, the bodies of the detainees were destroyed in order to avoid identification, and failure to give information to the relatives of these people was an intentional strategy.

The repressive practices of the military were planned and ordered by the highest levels of military command, but the last military junta ordered the destruction of documentation that could have proven responsibility within the chain-of-command before the democratic regime took office in 1983.

### Recommendations<sup>27</sup>

CONADEP recommended establishing the following actions and programs:

- That the Commission or organization that succeeded CONADEP file, as soon as possible, before judicial authorities, the evidence gathered during the investigation
- That the judicial branch focus on investigating and punishing the claims received by CONADEP
- That the legislative and executive branches enact the necessary laws or rulings that would support a reparation program for the families of the disappeared including social welfare, academic supports and any other measures to address social or family problems that were the consequences of the disappearances
- A reform to the legal framework to implement the recognition of human rights, the punishment of crimes against humanity, the adherence of Argentina to international human rights organizations and the derogation of repressive laws

23 See e.g., PAUL H. LEWIS, *GUERRILLAS AND GENERALS: THE DIRTY WAR IN ARGENTINA*, 2002. (“Between 1969 and 1975, 687 members of the security forces perished, from which 105 were Army members.”).

24 General Videla declared in 1978 to *The London Times* that “a terrorist was not only a person with a gun or a bomb, but a person that spreads ideas against the occidental and Christian civilization.” *The London Times*, January 4, 1978.

25 *NUNCA MÁS*, Ch. II, Las Víctimas.

26 *NUNCA MÁS*, Ch. VI, Conclusiones (1984).

27 *NUNCA MÁS*, Ch. VI, Recomendaciones (1984).

## D. Lessons and the way forward

The Argentinian Commission greatly affected the society in general and was part of a broader restructuring process initiated by the Government with the support of the civil sector of Argentina. Many of the detailed results below would not have been possible without CONADEP's work.<sup>28</sup>

### Legal framework and government modifications

In 1992, the National Commission for the Right to Identity was created, centralizing the search for missing children who disappeared during Argentina's "Dirty War."

In 1994, Argentina reformed its Constitution to enhance democracy and to raise international treaties ratified by the Congress to the status of constitutional law. The reformed Constitution obliges the state to adopt positive measures to ensure the full enjoyment of human rights.

### Prosecutions and amnesty laws

Several trials were opened against the military juntas and guerilla factions, on December 15, 1983, President Alfonsín enacted laws 157/83 and 158/83. These laws ordered (1) the trials of the guerilla factions of Ejército Revolucionario del Pueblo (ERP) and Montoneros for the crimes committed prior to the coup de état and (2) the trial of the first three military juntas.

On December 9, 1985, the Judicial Branch condemned five former members of the military juntas. Jorge Rafael Videla and Emilio Eduardo Massera were condemned to prison for life; Roberto Eduardo Viola to 17 years of prison; Armando Lambruschini to 8 years in prison and Orlando Ramón Agosti to 4 years in prison. The condemnation of the military juntas by a democratic and civil government constituted an unprecedented event in the country.<sup>29</sup>

However, despite the strong support by the public and the international community of the trials against the military juntas, the government remained threatened by a new coup by the Armed Forces that still refused

to accept the trials.<sup>30</sup> This situation led the government to enact the Full Stop Law in 1987, which set forth a 60-day term to prosecute the persons involved in crimes during the military dictatorship.<sup>31</sup> However, shortly thereafter the government enacted the Due Obedience Act, which ordered the end of the criminal prosecutions against military forces and that no new prosecutions would be initiated.<sup>32</sup>

In 1989 and 1990, President Carlos Menem declared amnesty for crimes against humanity committed by persons that did not benefit from the Full Stop and Due Obedience Laws, such as military and guerrilla leaders and former high-level government officials. However, in August 2003, the Congress approved law 25.779, which declared Final Stop and Due Obedience Laws null, and, in 2004, the Judicial Branch declared several amnesty orders unconstitutional. This caused several judicial cases to be reopened, including "mega-causes," which are collective actions against the crimes committed in different clandestine detention centers.<sup>33</sup>

28 See, e.g., K. Sikkink, *From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights*, LATIN AMERICAN POLITICS AND SOCIETY (2008) (Stating that, "Some people who approve of the work of CONADEP say that it started the "justice cascade" trend, which is the implementation of new norms and practices that provide more accountability for human rights violations").

29 El País, *Alfonsín decreta estado sitio*, Oct. 26, 1985, available at [http://www.elpais.com/articulo/internacional/LATINOAMERICA/ARGENTINA/Alfonsin/decreta/estado/sitio/Argentina/dias/elpepiint/19851026elpepiint\\_10/Tes](http://www.elpais.com/articulo/internacional/LATINOAMERICA/ARGENTINA/Alfonsin/decreta/estado/sitio/Argentina/dias/elpepiint/19851026elpepiint_10/Tes).

30 LA NACIÓN, *Falleció el expresidente Raúl Alfonsín*, Mar. 31, 2009, available at [http://www.lanacion.com.ar/nota.asp?nota\\_id=1113830](http://www.lanacion.com.ar/nota.asp?nota_id=1113830).

31 Full Stop Law/Law No. 23.492, Art. 1 (ordering a termination of criminal proceedings for alleged involvement of any kind in crimes as defined by Article 10 of Law No. 23.049 and those linked to the use of violent forms of political action).

32 Due Obedience Law/Law No. 23.521, Art. 1 (establishing presumption of impunity for crimes committed by members of the armed forces and police while acting out of obedience to superiors).

33 CENTRO DE INFORMACIÓN JUDICIAL, ESPECIAL LESA HUMANIDAD, (2008), available at [http://www.cij.gov.ar/nota\\_127\\_Ciudad-de-Buenos-Aires.html](http://www.cij.gov.ar/nota_127_Ciudad-de-Buenos-Aires.html).

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## Truth-finding trials

While the Full Stop and Due Obedience Laws and the amnesty orders granted by President Menem were in force, practically all prosecutions and investigations of crimes committed during the military dictatorship ceased. This meant that these crimes were unpunished but it also prevented finding victims and their remains, especially child victims in the hands of their captors and unaware of their true identities.<sup>34</sup>

As a result, some family members of disappeared children initiated truth-finding trials, which constituted a novel solution devised by the Argentine judicial system to cope with crimes committed by the military dictatorship.<sup>35</sup> The mechanism was unique because it was based on the use of criminal courts, as well as on criminal procedures and methods, to achieve a goal that was different from that typically pursued in criminal trials. Truth-finding trials were convened to investigate the truth about the dictatorship's crimes and the victim's respective fate; their aim was neither to establish criminal responsibility, nor to sanction the perpetrators of the crimes.<sup>36</sup>

## Economic reparations

In 2004, US\$3 billion was provided for reparations to victims of unlawful detention. To be eligible for compensation, victims had to prove that they had been detained without trial between 1976 and 1979. Some reports assert, however, that the military was uncooperative and did not provide much of the needed documentation.<sup>37</sup>

It is clear that the work of CONADEP continued on well after its mandate ended, as its recommendations were implemented. As one of the first truth commissions in the region, its work and process would also go on to influence later truth commissions, which learned from and expanded on its methodologies.

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34 *Los juicios por la verdad reconstruyen la memoria de Argentina*, NOTICIAS III, May 18, 2004.

35 Ministerio de la Educación, *La lucha por los DDHH en a Argentina actual: Los juicios por la verdad*, [http://www.educ.ar/recursos/ver?rec\\_id=14427](http://www.educ.ar/recursos/ver?rec_id=14427).

36 Elena Maculan, *Prosecuting International Crimes at National Level: Lessons from the Argentine 'Truth-Finding Trials'*, 8 UTRECHT L. REV., Issue 1, 106 (Jan. 2012), available at [www.utrechtlawreview.org](http://www.utrechtlawreview.org).

37 See United States Institute of Peace Website, "Truth Commission: Argentina," available at <http://www.usip.org/publications/truth-commission-argentina>.

# Chile

“Que sólo sobre la base de la verdad será posible satisfacer las exigencias elementales de la justicia y crear las condiciones indispensables para alcanzar una efectiva reconciliación nacional.”

*Decreto Supremo No. 355, Creación de la Comisión de Verdad y Reconciliación*

“That only upon a foundation of truth will it be possible to meet the basic demands of justice and create the necessary conditions for achieving true national reconciliation.”

*Supreme Decree No. 355, Creation of the Commission on Truth and Reconciliation*

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# Chile



This country brief summarizes the work of the Chilean National Commission on Truth and Reconciliation (CNRR) and its final report on events between 1973 and 1990.

## A. History and context

As part of its work, the Chilean National Commission on Truth and Reconciliation (Comisión Nacional de Verdad y Reconciliación) (the “CNRR” or “Commission”) synthesized the political climate leading up to the military government’s human rights violations as a sharply polarized political crisis turned armed confrontation.<sup>38</sup>

On September 11, 1973, Chilean armed forces attacked the presidential palace, resulting in the death of elected president Salvador Allende and displacing his administration with a military junta led by General Augusto Pinochet. This led to 13 years of dictatorial rule which included torture, killings, disappearances and political repression.<sup>39</sup>

On April 25, 1990, President Patricio Aylwin Azócar signed Supreme Decree No. 355 (the “Decree”) establishing the CNRR. The Commission was officially formed on May 9, 1990.<sup>40</sup>

The Commission was a result of compromise. In 1978, upon dissolution of the secret police during the early years of the military dictatorship, the military government

had decreed an amnesty law providing that all human rights violations committed prior to that date, with the sole exception of one crime (a bomb assassination of Orlando Letelier in Washington, DC, in September 1976)<sup>41</sup> would have impunity. However, the coalition that helped Aylwin ascend to the presidency upon the fall of the dictatorship had made the repeal of the amnesty law a part of its platform.<sup>42</sup> The political climate after the election was fragile and Aylwin faced stiff resistance from the military in any effort to repeal. Furthermore, the Chilean Supreme Court had upheld the decree’s validity, and Aylwin did not have constitutional authority to override the decision.<sup>43</sup>

Recognizing these existing legal and political realities, the administration sought other solutions. It looked to the examples of its neighbors Argentina and Uruguay, which had similarly been ruled by military regimes following a period of political polarization and had experienced similar human rights violations.<sup>44</sup> The Aylwin administration relied on these examples to determine that while it would not fight the amnesty law, the law did not prevent judicial investigations into the fate of disappeared prisoners.<sup>45</sup> Accordingly, the government adopted the position that

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38 Report of the Chilean National Commission on Truth and Reconciliation (Notre Dame, Indiana: University of Notre Dame Press, 1993) [hereinafter CNRR REPORT], 64. All references are to English Edition by José Zalaquett.

39 CNRR REPORT, Introduction to the English Edition by José Zalaquett, at 7.

40 CNRR REPORT, *Supreme Decree* No. 355 supra note 1 at 24 (including the full text of Supreme Decree No. 355).

41 CNRR REPORT, Introduction to the English Edition by José Zalaquett, at 15.

42 See CNRR REPORT Introduction to the English Edition by José Zalaquett, at 10.

43 CNRR REPORT, Introduction, at 9–10.

44 See CNRR REPORT, Introduction to the English Edition by José Zalaquett, at 14.

45 See CNRR REPORT, Introduction to the English Edition by José Zalaquett, at 10.

the judiciary should investigate the fate of the disappeared persons, even if the cases were covered by the amnesty. In addition, it sought to establish other measures of justice, such as reparations and restitution of the victim's good name.<sup>46</sup>

Nevertheless, as the Decree stated, the administration believed that it was "unlikely that the judiciary [would] quickly provide the country with an overall sense of what has happened" and that delaying reconciliation would further harm the country.<sup>48</sup> Accordingly, President Aylwin established the Commission.

The Commission was composed of eight members from across the political spectrum (including former members of the Pinochet regime)<sup>49</sup> and was charged with (and limited to) investigating "serious violations"<sup>50</sup> of human rights, defined as "disappearance after arrest, "executions and torture leading

to death committed by government agents or people in their service, as well as kidnappings and attempts on the life of persons committed by private citizens for political reasons."<sup>51</sup>

The Commissioners were unpaid and were given six months to complete their work, with the possibility of extending the term for no more than three additional months, which they did.<sup>52</sup> The Commissioners chose a team of certified lawyers and law school graduates to investigate the initial cases.<sup>53</sup> Each lawyer, assisted by a law school graduate, was responsible for approximately 200 cases. Meanwhile, the secretary hired a group of social workers to aid the Commission's understanding of the effects of the events on victims' families, a computer team to properly store and retrieve data, and a documentation unit.<sup>54</sup> Together, the staff comprised more than 60 people, not more than 10 percent of whom had prior

experience with human rights organizations.<sup>55</sup> They were hired on a contract basis, with expenses paid by the Ministry of Justice.<sup>56</sup>

The Commission prepared its own by-laws and its activities were confidential.<sup>57</sup> It had no power to assume jurisdictional functions belonging to the courts and was expressly prohibited from taking a position on whether particular individuals were legally responsible for the events investigated.<sup>58</sup> However, upon receiving evidence about actions it believed to be criminal, it was obliged immediately to submit it to the appropriate court.<sup>59</sup>

The result of the Commission's work was a report, presented to the president, who would then release it to the public and adopt the decisions or proposed initiatives that he deemed appropriate.<sup>60</sup> Upon issuance of the report, the Commission automatically dissolved, per its mandate.<sup>61</sup>

46 CNRR REPORT, Introduction to the English Edition by José Zalaquett, at 15.

47 CNRR REPORT, Supreme Decree No. 355, Rec. 5, at 24.

48 CNRR REPORT, Supreme Decree No. 355, Rec. 6, at 24.

49 See Joanna R. Quinn, *Dealing with a Legacy of Mass Atrocity: Truth Commissions in Uganda and Chile*, 19 Neth. Q. Hum. Rts. 383 2001, at 398.

50 CNRR REPORT, Introduction, at 15.

51 CNRR REPORT, Supreme Decree No. 355, Rec. 9, at 25.

52 CNRR REPORT, Supreme Decree No. 355, Art. 5, Art. 9, at 27.

53 CNRR REPORT, at 31.

54 *Id.*

55 *Id.*

56 *Id.* See also CNRR REPORT, Supreme Decree, No. 355, Art. 9, at 27.

57 CNRR REPORT, Supreme Decree, No. 355, Art. 7, at 27.

58 CNRR REPORT, Supreme Decree, No. 355, Art. 2, at 25 – 26.

59 *Id.*

60 CNRR REPORT, Supreme Decree, No. 355, Art. 4, at 26.

61 *Id.*

## B. Commission methodology

With the Commission, the Aylwin administration aimed both to repair the damage caused by human rights violations and to prevent such events from happening again.<sup>62</sup> The Commission's stated purpose was "helping to clarify in a comprehensive manner the truth about the most serious human rights violations committed in recent years in [Chile] in order to help bring about the reconciliation of all Chileans, without, however, affecting any legal proceedings to which those events might give rise."<sup>63</sup>

The Decree defined the Commission's objectives as follows: "(1) to establish as complete a picture as possible of those grave events, as well as their antecedents and circumstances; (2) to gather evidence that may make it possible to identify the victims by name and determine their fate or whereabouts; (3) to recommend such measures of reparation and reinstatement as it regards as just; and (4) to recommend the legal and administrative measures that in its judgment should be adopted in order to prevent actions such as those mentioned in this article from being committed."<sup>64</sup>

The Commission perceived its task "as being moral in character" and sought "to examine as much evidence as possible about the most serious human rights violations of this period."<sup>65</sup> The Commission hoped that in passing along that information to the country and government, greater decisions could be made toward reconciliation.

However, the Commission's mandate was limited by a number of features set out in the Decree. Most notably, the Commission's investigation was limited to the period between September 11, 1973 and March 11, 1990.<sup>66</sup> Its geographic scope was limited to Chile, but it could also look at events that took place outside of the country if they were connected to the Chilean government or Chilean politics.<sup>67</sup> Another noteworthy limitation in the Commission's mandate concerned its relationship with the judicial branch. The Decree noted that the judiciary had exclusive responsibility to properly sanction perpetrators of crimes committed during the period being examined by the Commission.<sup>68</sup> Accordingly, it established that "[i]n no case is the Commission to assume jurisdictional

functions proper to the courts nor to interfere in cases already before the courts. Hence it will not have the power to take a position on whether particular individuals are legally responsible for the events that it is considering."<sup>69</sup> However, the Decree stated that the Commission was to immediately submit to the courts any evidence it received about actions appearing to be criminal.<sup>70</sup>

Finally, the Decree established the manner by which the Committee would perform its task:

1. "Receive the evidence provided by alleged victims, their representatives, successors or relatives within the time period and in the manner that the Commission itself will determine;
2. Gather and weigh the information that human rights organizations, Chilean and international, intergovernmental and non-governmental, may provide on their own initiative or upon request about matters within their competence;
3. Carry out as much investigation as it may determine suitable for accomplishing its task, including requesting reports, documents or evidence from government authorities and agencies; and

62 CNRR REPORT, Introduction to the English Edition by José Zalaquett, at 6.

63 CNRR REPORT, Supreme Decree No. 355, Art. 1, at 25.

64 CNRR REPORT, Supreme Decree No. 355, Art. 1, at 25.

65 CNRR REPORT, at 29.

66 See CNRR REPORT, Supreme Decree No. 355, Rec. 1, at 24. See also CNRR REPORT, at 29.

67 CNRR REPORT, at 29.

68 CNRR REPORT, Supreme Decree No. 355, Rec. 4, at 24.

69 CNRR REPORT, Supreme Decree No. 355, Art. 2, at 26.

70 See CNRR REPORT, Supreme Decree No. 355, Art. 2, at 26.

4. Prepare a report on the basis of the evidence it has gathered in which it is to express the conclusions of the Commission with regard to the matters mentioned in Article One in accord with the honest judgment and conscience of its members.<sup>71</sup>

Although the Commission did not have the authority to compel testimony from anyone,<sup>72</sup> the Decree provided that government agencies were to collaborate upon the Commission's request, including through providing documents and access to physical locations.<sup>73</sup> In the end, the Commission used its authority to analyze more than 3,400 cases.<sup>74</sup>

## 1. Public hearings

While many truth commissions involve public hearings, the Chilean Commission's mandate and the country's political climate prevented the use of public hearings in Chile. Particularly, the Commission could not express an opinion about the responsibility of those whose names appeared in the private meetings held with the victims. The Commission also determined that it could not

publish the names of those who appeared to be involved in criminal acts as this would violate the right of due process; there was no Commission-related process through which those named would have been able to contest the accusations. However, if during its investigations, potential criminal acts became known to the Commission, it was empowered to immediately pass the information on to the courts so that they could consider whether a judicial investigation should commence.

The Commission's lack of authority to prosecute was negotiated among the political parties and seen as a political compromise. Instead of public hearings, the Commission arranged individual and personalized meetings with the victims in the presence of a lawyer, a member of the Commission and a social worker. The purpose of these meetings was to obtain as much information as possible, including the current status of the claims and the previous involvement of any human rights organizations. These meetings were also critical for determining appropriate reparations because it allowed the Commission to better understand how the offenses had impacted the lives of the victims.

## 2. Media coverage

Due to its private hearings, the Commission's relationship with the media was very limited. The Commission's work consisted mainly of meeting privately and individually with each victim, establishing the events that transpired and suggesting appropriate compensation. The Commission established a fruitful dialogue with human rights organizations and other associations but there is no suggestion that, as far as the Commission's work is concerned, the media played a major role during the nine months that the Commission spent fulfilling its obligations.

Nevertheless, the Commission was created by the president of the Republic and constituted a landmark in recent Chilean history, thus the media was involved indirectly. The Commission received widespread press coverage in Chilean newspapers upon its creation and upon the submission of its final report to President Patricio Aylwin. When President Aylwin received the final six-volume Report at the La Moneda Palace before a live press corps and the attending public, he declared that the Report "constitutes, without a doubt, the fundamental and definitive basis for the solution of the grave problem to which it is addressed."<sup>75</sup>

71 CNRR REPORT, Supreme Decree No. 355, Art. 4, at 26.

72 CNRR REPORT, at 29.

73 CNRR REPORT, Supreme Decree No. 355, Art. 8, at 27.

74 See CNRR REPORT, at 36. See also at 58–60 ("The Commission had to come to a reasonable and honest decision on every case presented to it as well as on the overall truth that could be drawn from these cases and from other events. For that purpose it was able to gather a vast body of information on the events and the Commission reached a reasonable and honest conviction about each case based on the testimony of the victims' relatives, of eyewitnesses to relevant events, of current and former government agents, uniformed and civilian, including statements by now-retired high and mid-level ranking officers of the armed forces and police and by former agents of state security; press reports; expert testimony and opinion; some visits to the places where events took place; documentation from human rights organizations; official documents and certificates such as birth certificates, death certificates, autopsy reports, voter registration rolls, criminal records, immigration service records about entry into and departure from the country and many other official documents; copies of court records and responses to official requests that the Commission sent to institutions under the authority of the executive branch, including the armed forces and security forces. Furthermore, the Commission made an effort to always have proof of each specific case. In cases of disappeared prisoners it obtained proof of arrest or that the person was in one of the secret detention sites where the disappeared were often kept, particularly starting in 1974. In a few cases, relying on the power and agreement of convincing circumstantial evidence, the Commission concluded that the person had suffered forced disappearance even though it did not have proof.").

75 Jaime Valdés Concha, *Entregado al Presidente de la República 6 tomos con 3 mil casos tiene el informe de Comisión Verdad*, LA NACIÓN, Feb. 9, 1991.

### 3. Relationship between past and present

The Commission was created specifically to address the period of dictatorial rule and violence from 1973 to 1990. To the extent that there may have been any violations after 1990, the Commission's mandate did not permit it to investigate them.

### 4. Transparency and civil society participation

While the Decree provided for confidentiality of the Commission's work, its functions were transparent. From its inception, the Commission made publicly available its objectives and procedure in the Decree that created it. The President of the Republic himself presented publicly not only the Commission but, also nine months later, its conclusions.

The Commission was in regular contact with virtually every human rights organization in the country. This dialogue was critical for gathering and corroborating information. All of these organizations made their archives

available to the Commission. National and international institutions were also involved in providing information to the Commission. Each of these contributions was essential for the work of the Commission.<sup>76</sup>

In order to produce a list of victims that was as comprehensive as possible, the Commission sought and received information from family associations, different branches of the military, professional associations, political parties and trade unions. Additionally, a number of volunteers helped with research and administrative tasks.

Along with establishing an accurate historical record, a significant task of the Commission was to determine adequate compensation for each of the victims. To this end, it sought multiple opinions from national and international organizations in order to obtain advice on how to approach this aspect of the Report. In total, 109 organizations were contacted, including universities, academic centers, political parties, the Roman Catholic Church, other churches, organizations of victims and human rights organizations.<sup>77</sup>

### 5. Targeted violence<sup>78</sup>

The violence that occurred in Chile was politically motivated and therefore there was not a disproportionate impact, for example on indigenous or rural populations, as was the case in other countries. Nonetheless, there was significant politically motivated violence that did involve rural and indigenous groups. In this context, peasant leaders such as Manuel Maldonado, Mauricio Cea, José del Carmen Orellana and Óscar Arismendi, who were seen as opposition sympathizers, were targeted for assaults and execution.<sup>79</sup> In another example involving rural and indigenous groups, in the present-day provinces of Malleco and Cautín, with a large rural population and a high number of Mapuche Indians, there were 115 confirmed cases of serious human rights violations.<sup>80</sup>

## C. Findings and justice

The Report covered human rights violations during the Pinochet dictatorship from 1973 to 1990 committed by government agents or private citizens against both individuals of opposing political views and individuals assumed to be criminals during

76 CNRR REPORT, at 21 – 22.

77 CNRR REPORT, at 39.

78 Apart from the CNRR, in 2001 Chile formed the Historical Truth and New Deal Commission which operated until 2004 and studied the historical relationship between indigenous peoples and the Chilean State, including recommendations for more inclusive government policies. For a summary, see *Study on the rights of indigenous peoples and truth commissions and other truth-seeking mechanisms on the American continent*, United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, Twelfth Session, Feb. 14, 2013.

79 CNRR REPORT, at 323, 324, 493, 581.

80 CNRR REPORT, at 507.

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“clean-ups.”<sup>81</sup> These violations consisted of (1) round-ups,<sup>82</sup> (2) imprisonment in camps,<sup>83</sup> (3) abuse and torture,<sup>84</sup> and (4) deaths and disappearances.<sup>85</sup> The report also covered instances of people killed in mass protests, as well as the use of undue force and abuses of power tolerated by authorities.<sup>86</sup>

Additionally, upon taking control of the government on September 11, 1973, the junta declared a state of siege and established war tribunals to prosecute rebel fighters. Defendants were acquitted, sentenced to prison or sentenced to death.<sup>87</sup> The Commission found, however, that the work of war tribunals was marked by serious flaws in procedure, evidence, legal basis for conviction, and sentencing<sup>88</sup>—all in violation of fundamental legal norms and essential ethical principles.<sup>89</sup>

The Commission also found that during the period in question the judicial branch did not respond vigorously enough to human rights violations.<sup>90</sup> Thus, the Commission concluded, the posture taken by the judicial branch was largely responsible for aggravating the process of systematic human rights violations.<sup>91</sup>

## D. Lessons and the way forward

The Commission made proposals for the reparation of past violations and the prevention of future violations. Proposals for reparation included (1) restoring the good name of people and making symbolic reparation (such as public monuments and participating in National Human Rights Day); (2) legal and administrative recommendations (such as for pronouncing dead those who had disappeared); (3) recommendations in the area of social welfare (including pension, healthcare services, housing and education benefits for the relatives of victims).

Proposals for the prevention of human rights violations fell into three areas: (1) institutional and legal measures (such as harmonizing national laws with international human rights standards); (2) consolidating a culture truly respectful of human rights; and (3) truth, justice and reconciliation as preventive measures. The Commission further recommended the creation of a public law foundation and the application of sanctions for concealing information.<sup>92</sup>

The Report itself and the reparations that resulted from it were perceived as helping to move the country forward. Notably, the information gathered by the Commission was used in numerous prosecutions and the reparations assisted in decreasing the economic vulnerability felt by many families due to disappeared loved ones. The Report is thus seen as having contributed to national solidarity and building a sense of justice and reconciliation across the country.

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81 CNRR REPORT, at 164.

82 CNRR REPORT, at 155.

83 CNRR REPORT, at 156.

84 CNRR REPORT, at 158.

85 CNRR REPORT, at 161.

86 CNRR REPORT, Part Three, Ch. Three.

87 CNRR REPORT, at 134.

88 CNRR REPORT, at 136.

89 CNRR REPORT, at 123.

90 CNRR REPORT, at 140.

91 CNRR REPORT, at 142.

92 CNRR REPORT, at 1115, 1117.

# Colombia

“ [L]os espacios judiciales son lugares de memoria, pues en ellos se ejerce un poder ritualizado que le permite a la sociedad reconocerse.”

*Informe del Centro de Memoria Histórica, Justicia y Paz:  
¿Verdad Judicial o Verdad Histórica?*

“Judicial spaces are places of remembrance, for in them one exercises a ritualized power that permits society to know itself.”

Report of the Historical Memory Center, *Justice and Peace:  
Judicial Truth or Historical Truth?*

# Colombia



This country brief summarizes the work of the National Commission for Reparation and Reconciliation (CNRR) and the Unit for Attention and Integral Reparation of Victims (UARIV) regarding past and present conflict in Colombia.

## A. History and context

For more than 50 years, Colombia has experienced a series of conflicts between civilians, armed private groups (paramilitary groups, guerrillas and drug cartels) and the government. In 1948, a cycle of violence, known as the La Violencia, began.<sup>93</sup> It is estimated that during La Violencia (1948 – 1958), nearly 300,000 Colombians were killed and 2 million others were removed from their properties (a phenomenon known as desplazamiento) and deprived of their way of life.<sup>94</sup> In the last phase of La Violencia, both political parties signed an alternating power agreement called the Frente Nacional. Although this agreement dramatically reduced violence, violence has continued.<sup>95</sup>

From these historical roots conflicts continue between the following actors: (1) two primary guerrilla forces, Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP) and Ejército Liberador Nacional (ELN); (2) other paramilitary groups;<sup>96</sup> and (3) armed forces of the State of Colombia (primarily Army, national police and security forces).<sup>97</sup> It should also be noted that the drug cartels are another important perpetrator of violence in Colombia.

Crimes and acts of violence were committed by both public and private entities and include massacres, murders and forced disappearances. Additionally, the displacement of people has been a historical and continuing problem. As of 2011, Colombia had had more than 3.7 million internal displacements, though some organizations believe the number of displacements since the 1980s is beyond 5 million people.<sup>98</sup> As a result, land restitution has been an integral part of the Colombian transitional justice program.

In the midst of ongoing conflict, in 2005, the National Commission for Reparation and Reconciliation (Comisión Nacional de Reparación y Reconciliación) (CNRR) was created by Article 50 of the Justice and Peace Law (Ley de Justicia y Paz, Law No. 975 of 2005) to address truth, justice and reparation stemming from Colombia's ongoing armed conflicts.<sup>99</sup>

Subsequently, in 2011, Colombia passed the Victims and Land Restitution Law (Ley de Víctimas y Restitución de Tierras, Law No. 1448 of 2011) ("Victims Law"), which implemented a new transitional justice

Translations to English from the Spanish original are unofficial.

93 See Alexander González Chavarría, *Justicia transicional y reparación a las víctimas en Colombia*, in 4 REVISTA MEXICANA DE SOCIOLOGÍA 72 (Oct. – Dec. 2010), at 629-58.

94 Rafael A. Prieto Sanjuán, *Conflicto Armado en Colombia y desplazamiento forzado: ¿Qué protección?*, in REVISTA INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS 28 (Jul. – Dec. 1998), at 39-67.

95 Rafael A. Prieto Sanjuán, *Conflicto Armado en Colombia y desplazamiento forzado: ¿Qué protección?*, in REVISTA INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS 28 (Jul. – Dec. 1998), at 39-67.

96 Paramilitary groups are illegally armed civilians with an army-like structure, funded by the government to fight against guerrillas. Most paramilitary groups explain that their target is defeating guerrillas and thus avoiding perpetrations of kidnappings, extortions and other crimes. Alexander González Chavarría, *Justicia transicional y reparación a las víctimas en Colombia*, in 4 REVISTA MEXICANA DE SOCIOLOGÍA 72 (Oct. – Dec. 2010), at 629-58.

97 See Alexander González Chavarría, *Justicia transicional y reparación a las víctimas en Colombia*, in 4 REVISTA MEXICANA DE SOCIOLOGÍA 72 (Oct. – Dec. 2010), at 629-58.

98 Alto Comisionado de Las Naciones Unidas para los Refugiados, "Desplazamiento interno en Colombia" available at <http://www.acnur.org/t3/operaciones/situacion-colombia/desplazamiento-interno-en-colombia/>.

99 Law No. 975/05, Justice and Peace Law, Diario Oficial No. 45.980 (July 25, 2005).

framework and created the Unit for Attention and Integral Reparation of Victims (La Unidad de Atención y Reparación Integral a las Víctimas) (“UARIV”).<sup>100</sup> The law is effective until 2021.

The following sections will address the work of the CNRR, and the work of the UARIV is addressed in the final section, “Lessons and the way forward.”

## B. Commission methodology

The purpose of the Justice and Peace Law, which created the CNRR, was twofold: (1) “to facilitate peace and incorporation of the members of the illegal armed groups into civilian life” and (2) “guarantee the victims’ rights to truth, justice and reparation.”<sup>101</sup> The law defines “victims” as those who have suffered direct harm (physical, psychological, financial or legal) as a “consequence of actions that were in violation of the criminal law, by illegal armed groups” as well as immediate family members or partners in case of death or disappearance.<sup>102</sup>

The CNRR’s mandate was to monitor, report, recommend and coordinate the actions of other state organs. It did not, however, have a mandate to investigate or prosecute the members of the illegal armed groups. These

responsibilities were placed with the National Prosecutorial Unit for Justice and Peace created by the Justice and Peace Law.<sup>103</sup>

The CNRR’s objectives were to:<sup>104</sup>

- Guarantee the victims their participation in proceedings for judicial clarification and the realization of their rights
- Submit a public report on the reasons for the rise and development of the illegal armed groups
- Monitor and verify the processes of reincorporation and the work of the local authorities to ensure the full demobilization of the members of illegal armed groups and the proper functioning of the institutions in the relevant territories (for which purposes, the CNRR may invite the participation of foreign entities)
- Monitor and periodically evaluate the reparations provided for in the Justice and Peace Law and make recommendations to ensure they are properly made
- Submit, within two years of the effective date of coming into force of the Justice and Peace Law, to the National Government and the Committees on Peace of the Senate and the House of Representatives, a report on the process of making reparation to the victims of the illegal armed groups

- Recommend the criteria for reparations addressed by the Justice and Peace Law, charged to the Fund for the Reparation of Victims
- Coordinate the activity of the Regional Commissions for the Restitution of Assets and
- Carry out national actions of reconciliation that seek to impede the recurrence of new acts of violence that disturb the national peace

### 1. Public hearings

As indicated, the CNRR did not have a mandate to investigate or prosecute the members of the illegal armed groups. Instead, the Justice and Peace Law provided a judicial mechanism for this purpose led by the National Prosecutorial Unit for Justice and Peace and the Chamber of the Superior Judicial District Court.<sup>105</sup> Eventually, in addition to judicial reparation, a Decree was issued to provide for administrative reparations.<sup>106</sup>

The process for judicial reparations began with a preliminary hearing to address matters such as the collection of evidence, measures to protect the victims and witnesses and formulation of the charges.<sup>107</sup> When a member of an illegal armed group

<sup>100</sup> Law No. 1448 of 2011, Art. 170.

<sup>101</sup> Law No. 975/05, Justice and Peace Law, Art. 1.

<sup>102</sup> Law No. 975/05, Justice and Peace Law, Art. 5.

<sup>103</sup> Law No. 975/05, Justice and Peace Law, Arts. 12-32.

<sup>104</sup> Law No. 975/05, Justice and Peace Law, Art. 51.

<sup>105</sup> Law No. 975/05, Justice and Peace Law, Art. 12.

<sup>106</sup> Decree No. 1290/2008 (Apr. 22, 2008) (providing for administrative monetary reparations for events prior to April 22, 2008).

<sup>107</sup> Law No. 975/05, Justice and Peace Law, Art. 13.

voluntarily confessed and agreed to the procedures and benefits of the Justice and Peace Law, a public hearing was scheduled in the Chamber of the Superior Judicial District Court.<sup>108</sup>

The first public hearing was to determine whether the confession and acceptance of the charges were in compliance with applicable law.<sup>109</sup> At the same hearing, the judge would call for an interlocutory proceeding for comprehensive reparation, open to the public and within five days.<sup>110</sup> In the interlocutory hearing, the victim would assert the request for reparation, along with evidence to be provided to support the claim and then the Chamber would determine whether to dismiss the claim or accept it.<sup>111</sup>

If the claim was accepted, the Chamber would inform the accused of its decision and then the parties would enter a conciliation period to reach an agreement that would be incorporated into the ruling in the interlocutory proceeding.<sup>112</sup> If no

agreement was reached, the Chamber heard arguments in order to make a decision in the interlocutory proceeding. A final public hearing would then be scheduled to issue the verdict and penalty.<sup>113</sup>

Civil organizations could play a role in the public hearing, and it was the duty of the Office of the Procurator General to promote mechanisms for the participation of the civil organizations that assist the victims.<sup>114</sup> However, an exception to the general openness of the hearings was provided, if needed, to protect the victims and especially in cases of sexual assault of children.<sup>115</sup>

## 2. Media coverage

The CNRR received attention in both the international and local media.<sup>116</sup> The references to the CNRR, however, sometimes did not provide any context regarding its function, role and responsibility and whether its operations were national or local.<sup>117</sup> Some of these issues were inherent

in the design of the truth and reconciliation process in Colombia. For example, as discussed above, the search for truth was not the responsibility of the CNRR but the judicial process. This factor drew attention away from the CNRR and complicated access to information on the part of the media because the judicial process tended to prioritize the rights of the victims and the accused over the public's right to information.<sup>118</sup>

Media coverage was often mixed as to its assessment of the CNRR, at times critical and at other times complimentary.<sup>119</sup> For example, the International Center for Transitional Justice (ICTJ) applauded the CNRR for the reduction of a pattern of violence against civilians, but also noted that it was flawed because "[t]here is no meaningful participation by victims or their representatives. Perpetrators of state crimes and their victims are excluded from the process. The reduced prison sentences mean

108 Law No. 975/05, Justice and Peace Law, Arts. 17, 19.

109 Law No. 975/05, Justice and Peace Law, Art. 19.

110 Law No. 975/05, Justice and Peace Law, Art. 23.

111 See Law No. 975/05, Justice and Peace Law, Art. 23; see also Alexander González Chavarría, *Justicia transicional y reparación a las víctimas en Colombia*, in 4 REVISTA MEXICANA DE SOCIOLOGÍA 72 (Oct. – Dec. 2010), at 629-58.

112 Law No. 975/05, Justice and Peace Law, Art. 23.

113 Law No. 975/05, Justice and Peace Law, Art. 19.

114 Law No. 975/05, Justice and Peace Law, Art. 36.

115 Law No. 975/05, Justice and Peace Law, Art. 39.

116 See generally Fundación Ideas Para La Paz, Semana, Centro Internacional para la Justicia Transicional, *Cuadernos del Conflicto: Verdad, Memoria Histórica y Medios de Comunicación* (2008).

117 Fundación Ideas Para La Paz, *Cuadernos Del Conflicto, Verdad, Memoria Histórica Y Medios De Comunicación* (2008), at 29.

118 Fundación Ideas Para La Paz, *Cuadernos Del Conflicto, Verdad, Memoria Histórica Y Medios De Comunicación* (2008), at 39.

119 See Morena Camila Moreno, *Seis años bajo la Ley de Justicia y Paz: logros, limitaciones y expectativas de la justicia transicional en Colombia*, RAZÓN PÚBLICA (Aug. 1, 2011) available at <http://www.razonpublica.com/index.php/politica-y-gobierno-temas-27/2260-seis-anos-bajo-la-ley-de-justicia-y-paz-logros-limitaciones-y-expectativas-de-la-justicia-transicional-en-colombia-.html>; María Elvira Bonilla, *La comisión fantasma*, EL ESPECTADOR (June 22, 2008) available at <http://www.elespectador.com/opinion/columnistasdelimpreso/maria-elvira-bonilla/columna-comision-fantasma>.

that those who committed mass atrocities will serve a token sentence—often shorter than one for robbery.”<sup>120</sup> However, other outlets gave positive coverage of the CNRR’s work for publicly reprimanding violent acts,<sup>122</sup> preventing increasing violence or generally to promote the work of the CNRR.<sup>123</sup>

The CNRR also created its own media department (Área de Memoria Histórica de la Comisión Nacional de Reparación y Reconciliación) (MH). Premised on the CNRR’s mandate “to build a narrative of violence through a public report on the origins and evolution of illegal armed groups,” MH sought to “identify the different ‘memories of violence’ and give a voice to the victims and other actors who had no voice during the conflict.”<sup>124</sup> To that end, MH published and made available to the public various reports and documentaries regarding these events.<sup>125</sup> Its reports are available online, along with additional information, at the MH website.<sup>126</sup>

### 3. Relationship between past and present

Under both the CNRR and the UARIV, the Commission sought to address (and is seeking to address in the case of the UARIV) ongoing as well as historical occurrences of violence and displacement.

Pursuant to the Justice and Peace Law, the CNRR was specifically tasked with the preparation of a public report on the reasons for the rise and development of the illegal armed groups and monitoring and verifying the processes of reincorporation and the work of the local authorities to ensure the full demobilization of the members of illegal armed groups.<sup>127</sup> In August 2007 the Demobilization, Disarmament and Reintegration arm of CNRR prepared and submitted a report pursuant to this mandate, keenly focused on confronting the ongoing issues of conflict facing the country (“Report No. 1”).<sup>128</sup>

Report No. 1 developed a series of recommendations for the Colombian Government and for the Police and Armed Forces.<sup>129</sup> The CNRR recommended that the government undertake the following:

- Redefine its strategy of combating illegal armed groups and Mafia-type organizations
- Put into practice a restructured plan of reintegration as soon as possible
- Identify and implement methods that will improve the security of victims and witnesses
- Emphasize investigations of gender-based and sexual abuses and
- With the participation of civil society organizations, design and implement a plan to prevent the interference of illegal armed groups in the October 2007 elections

Similarly, the CNRR recommended that the Police and Armed Forces:

- Sanction quickly and seriously the collaboration with illegal groups or criminal organizations

120 See International Center for Transnational Justice, “Colombia,” available at <http://ictj.org/our-work/regions-and-countries/colombia>.

121 See e.g., Verdad Abierta, “La CNRR pide exclusión de ‘Carecuchillo’ y ‘Tribilín’ de Justicia y Paz” (Feb. 25, 2010) available at <http://www.verdadabierta.com/justicia-y-paz/legislacion/2245-gobierno-expulsa-de-justicia-y-paz-a-carecuchillo-y-tribilin>.

122 See e.g., Verdad Abierta, “La CNRR prende alarmas sobre líos en desmovilización de las Auc” (Nov. 25, 2010) available at <http://www.verdadabierta.com/victimarios/2826>.

123 See e.g., Semana, “¿Está el país preparado para saber toda la verdad sobre el fenómeno del paramilitarismo?” (Aug. 29, 2006) available at <http://www.semana.com/portada/articulo/esta-pais-preparado-para-saber-toda-verdad-sobre-fenomeno-del-paramilitarismo/80705-3>.

124 See Alexander González Chavarría, *Justicia transicional y reparación a las víctimas en Colombia*, in 4 REVISTA MEXICANA DE SOCIOLOGÍA 72 (Oct. – Dec. 2010), at 629–58.

125 See Alexander González Chavarría, *Justicia transicional y reparación a las víctimas en Colombia*, in 4 REVISTA MEXICANA DE SOCIOLOGÍA 72 (Oct. – Dec. 2010), at 629–58.

126 Centro de Memoria Histórica available at <http://www.centrodememoriahistorica.gov.co/#>.

127 Law No. 975/05, Justice and Peace Law, Art. 51.

128 See Comisión Nacional de Reparación y Reconciliación, *Disidentes, Rearmados y Emergentes: ¿Bandas Criminales o Tercera Generación Paramilitar?* (Aug. 2007).

129 See Comisión Nacional de Reparación y Reconciliación, *Disidentes, Rearmados y Emergentes: ¿Bandas Criminales o Tercera Generación Paramilitar?* (Aug. 2007), at 12–15.

- Strengthen inter-institutional collaboration regarding investigations with the public prosecutor's office
- Strengthen the inter-institutional collaboration with rural security forces and the national police and
- Develop preventive activities in regions at risk to become zones of influence for illegal organizations

The reality of ongoing conflict and the need for present-day peace with justice in the midst of a reconciliation process have been cited as some of the greatest challenges to truth and reconciliation commissions in Colombia.<sup>130</sup>

#### 4. Transparency and civil society participation

The CNRR had 13 commissioners appointed by the office of Vice President (one commissioner), civil society (five commissioners), victims' organizations (two commissioners) and various state organs (Prosecutor General's office, Ministry of Interior and Justice, Ministry of Finance and Public Credit, People's Ombudsman and

Presidential Agency for Social Action and International Cooperation (each, one commissioner).<sup>131</sup> Thus, civil society represented more than a third of the CNRR commissioners.

The Justice and Peace Law also provided for the establishment of regional commissions responsible "for giving impetus to the procedures related to claims over property and possession of goods in the framework established in the [Justice and Peace Law]."<sup>132</sup> The regional commissions were designed to "deal with the proceedings and claims over property ownership, through orientation and other support of victims in their claims."<sup>133</sup> By 2010, there were 13 regional commissions operating throughout Colombia and three pilot projects in victimized communities in Mampujan, Chengue and Turbo.

Civil society organizations also played an information gathering role that regularly assisted the CNRR. For example, in its 2009 publication *Memorias en Tiempo de Guerra, Repertorio de Iniciativas*, a number of non-governmental organizations contributed

to the work of the CNRR, including *Asociación Madres de la Candelaria*, *Asociación de Mujeres del Oriente Antioqueño (AMOR)*, *Asociación Provincial de Víctimas a Ciudadanas (APROVIACI)*, *Asociación de Víctimas Unidas de Granada, Antioquia, Proyecto Colombia Nunca Más (PCNM)*, among many others.<sup>134</sup> Civil society was thus integral in collecting and preserving the historical memory of events in furtherance of justice and reparation.

#### 5. Targeted violence

Much of the violence in Colombia has centered in rural areas and has disproportionately affected indigenous populations that inhabit these areas.<sup>135</sup> This is true not only in terms of violence, but also deprivation of land and displacement.

Under the Justice and Peace Law, the CNRR recommended that the government initiate "an institutional program of collective reparations that includes actions directly aimed at recovering the institutional framework intrinsic to the Social State and the Rule of law, particularly in the areas

130 See, e.g., Eduardo Pizarro Leongómez, *Victims and Reparation: The Colombian Experience* (June 2010), available at: [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/Stocktaking/CNRR-Pizarro.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Stocktaking/CNRR-Pizarro.pdf).

131 Law No. 975/05, Justice and Peace Law, Art. 50; see also Eduardo Pizarro Leongómez, *Victims and Reparation: the Colombian Experience* (June 2010), available at [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/Stocktaking/CNRR-Pizarro.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Stocktaking/CNRR-Pizarro.pdf).

132 Law No. 975/05, Justice and Peace Law, Art. 52.

133 See Law No. 975/05, Justice and Peace Law, Art. 50; see also Eduardo Pizarro Leongómez, *Victims and Reparation: the Colombian Experience* (June 2010), available at [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/Stocktaking/CNRR-Pizarro.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Stocktaking/CNRR-Pizarro.pdf).

134 CNRR Grupo de Memoria Histórica, *Memorias en Tiempos de Guerra, Repertorio de Iniciativas* (2009), at 10 – 12.

135 CNRR Programa Institucional de Reparación Colectiva Informe PIRC Report, at 136 ("The indigenous and black communities have been permanent and disproportionate victims on a grand scale of the effects of the armed conflict").

hardest hit by violence; to recover and promote the rights of the citizens negatively affected by the acts of violence and to recognize and dignify the victims of the violence.”<sup>136</sup> The Institutional Program for Collective Reparation was prepared and presented in 2011 (the “PIRC Report”).

In addition to general considerations, the PIRC Report focused on indigenous and rural communities due to the particular effect on these communities. The PIRC Report highlighted the “serious violations of the rights of the communities and towns of the indigenous, Roma and black, Afro-Colombian, Raizales and Palenqueras”<sup>137</sup> and concluded that “without a doubt the armed conflict has been the factor that has most produced violations of the rights of these ethnic communities, both on the individual level as on the collective.”<sup>138</sup> The CNRR also noted the real risks of cultural and physical extinction of these communities.

With these considerations in mind, the PIRC Report set out the following specific objectives for the program:<sup>139</sup>

- Recognition and dignity of the collective victims
- Reconstruction of the collective life project and/or ethnic development projects
- Psychological recuperation of the affected populations and affected groups
- Institutional recuperation of the social-legal, pluriethnic and multicultural State and
- Promotion of reconciliation and peaceful coexistence

The PIRC Report even had a specific “Ethnic Differences Focus” that sought to recognize the rights of the “ethnic, tribal and black communities, jurisprudence and international standards” in order to “highlight free and informed consent as to the decisions that affect their development.”<sup>140</sup> Additionally, in analyzing victims of violence and displacement, the

PIRC Report separately assessed victims of rural communities, indigenous communities and black communities.<sup>141</sup>

Likewise, the PIRC Report included tailored recommendations for the collective reparation of indigenous, Roma, black, Afro-Colombian, Raizales and Palenqueras communities that specifically took into account ethnic considerations in addition to general reparation recommendations.<sup>142</sup>

## C. Findings and justice

The CNRR’s mandate was varied and complex, requiring coordination to address and repair past violations and preserve the truth of the past, while also confronting ongoing conflict and investigating means to disarm and end such conflict.

From its inception, the authors of the Justice and Peace Law were cognizant of present-day realities in Colombia as well as potential future ones and contemplated the passage of additional laws to address the issues of truth, peace, reconciliation and reparation.<sup>143</sup> Indeed, the CNRR only had a mandate of eight years.<sup>144</sup>

<sup>136</sup> Law No. 975/05, Justice and Peace Law, Art. 49.

<sup>137</sup> PIRC Report, at 26 – 27.

<sup>138</sup> *Id.*

<sup>139</sup> PIRC Report, at 36 2 38.

<sup>140</sup> PIRC Report, at 42.

<sup>141</sup> PIRC Report, at 65 – 70.

<sup>142</sup> PIRC Report, at 136 – 151.

<sup>143</sup> Law No. 975/05, Justice and Peace Law, Art. 63.

<sup>144</sup> Law No. 975/05, Justice and Peace Law, Art. 50.

In 2010, the CNRR published a report on a Property Restitution Program (the “PRB Report”),<sup>145</sup> which became the basis for the Victims Law, which, in turn, followed a number of the recommendations of the PRB Report.<sup>146</sup> The PRB Report found that the primary causes of displacement were attacks by guerrilla and paramilitary groups.<sup>147</sup> The PRB Report proposed that eligibility for restitution extend to claims originating since 1980<sup>148</sup> through a contentious restitution proceedings whereby a judge would determine whether a particular property can be restored and, if not, what alternative remedy might be available.<sup>149</sup> The PRB Report, as implemented in the Victims Law, is treated in the next section.

## D. Lessons and the way forward

Further to Colombia’s transitional justice, the 2011 Victims Law, along with its regulating decrees (Decree 4800 and 4829 of 2011),<sup>150</sup> provided the framework for “establishing a set of judicial, administrative, social and economic means, individual and collective, to benefit the victims of violence.” The UARIV, created by the Victims Law, views its work as “an irreversible path to peace and justice” and that it will accomplish the goals of reparation and national reconciliation by the end of its mandate in 2021.<sup>151</sup>

In addition to the UARIV, the Victims Law created the National System of Integral Attention and Reparation to Victims (Sistema Nacional de Atención y Reparación Integral a las Víctimas, or SNARIV), a comprehensive network of 32 national governmental entities in conjunction with local governmental units across the country.<sup>152</sup> It is estimated that the costs of running the programs contemplated under the Victims Law will be between US\$550 million to US\$800 million per year.<sup>153</sup>

To implement their mandate, after the first year of operations the UARIV and SNARIV distilled their goals into five components and five cross-cutting aspects:<sup>154</sup>

Components		Cross-Cutting Aspects
1	Truth	Registration and information system
2	Justice	Returns and relocations
3	Prevention, protection, guarantee of non-repetition	National links
4	Assistance and attention	Participation
5	Integral reparation	Diversity focus

145 See Comisión Nacional de Reparación y Reconciliación, *Programa de Restitución De Bienes* (July 2, 2010), available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/006B86436CDDC863C12577C100358343/\\$file/PRB+\(02JUL10\)-1.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/006B86436CDDC863C12577C100358343/$file/PRB+(02JUL10)-1.pdf).

146 For a comparison between the 2011 Report and the Law of the Victims see David L. Attanasio & Nelson Camilo Sánchez, *Return Within the Bounds of The Pinheiro Principles: The Colombian Land Restitution Experience*, 11 WASH. U. GLOB. STUD. L. REV. 1 (2012).

147 David L. Attanasio & Nelson Camilo Sánchez, *Return Within the Bounds of The Pinheiro Principles: The Colombian Land Restitution Experience*, 11 WASH. U. GLOB. STUD. L. REV. 1 (2012), at 17.

148 David L. Attanasio & Nelson Camilo Sánchez, *Return Within the Bounds of The Pinheiro Principles: The Colombian Land Restitution Experience*, 11 WASH. U. GLOB. STUD. L. REV. 1 (2012), at 13.

149 David L. Attanasio & Nelson Camilo Sánchez, *Return Within the Bounds of The Pinheiro Principles: The Colombian Land Restitution Experience*, 11 WASH. U. GLOB. STUD. L. REV. 1 (2012), at 33 – 34.

150 Decree Nos. 4633, 4634 and 4635 of 2011 were also passed shortly after the Victims Law to specifically address indigenous, Roma, black, Afro-Colombian, Raizales and Palenqueras communities.

151 See UARIV Website, available at <http://www.unidadvictimas.gov.co/index.php/en/acerca-de-la-unidad>.

152 Law No. 1448, Victims Law, Arts. at 159 – 60.

153 *Colombia’s Victims Law: Feeling their pain*, THE ECONOMIST, June 2, 2011.

154 UARIV Annual Report 2012, at 13, available at [http://www.unidadvictimas.gov.co/images/docs/2013/Informe\\_Gestion\\_Unidad\\_Victimas.pdf](http://www.unidadvictimas.gov.co/images/docs/2013/Informe_Gestion_Unidad_Victimas.pdf).

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Given the number of people affected by displacements, a core focus of the Victims Law reparation program established a claims mechanism for reclaiming land. The Victims Law incorporated several novel features to facilitate this process, including the creation of a registry of dispossessed and forcibly abandoned lands,<sup>155</sup> and inversion of the legal burden of proof, thereby forcing the defendant to disprove the victim's claims to land.<sup>156</sup>

As of 2012, the UARIV had attended to 919,131 requests regarding displacements and 10,138 non-displacement requests. It also responded to 1,108 humanitarian emergencies. Six regional attention centers were being constructed in addition to the already functioning regional center in Bogota.<sup>157</sup> Nevertheless, the ongoing conflict in Colombia continues to be cited as a challenge to the work of implementing the Victims Law.

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<sup>155</sup> Law No. 1448, Victims Law, Art. 76.

<sup>156</sup> Law No. 1448, Victims Law, Art. 78.

<sup>157</sup> UARIV Annual Report, at 2.

# Guatemala

“ Uno de los testigos muestra a la Comisión de Esclarecimiento Histórico restos de huesos de una de las víctimas. Lleva los restos en su morral, envueltos en un plástico: ‘Me duele mucho cargarlos...es como cargar la muerte...no voy a enterrarlos todavía. Si quiero que descansa, descansar yo también, pero todavía no puedo... Son la prueba de mi declaración...No voy a enterrarlo todavía, quiero un papel en el que diga a mí: “lo mataron...no tenía delito, era inocente...” entonces vamos a descansar.’”

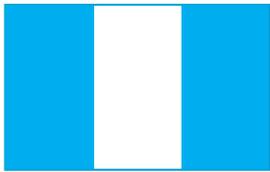
Testimonio dado ante La Comisión para el Esclarecimiento Histórico, citado en su informe, *Memoria del Silencio*

“ A witness showed us the remains of one of the victim’s bones. He had these remains wrapped in plastic in a string bag: ‘It hurts so much to carry them...it’s like carrying death...I’m not going to bury them yet...I do so want him to rest, and to rest myself, too. But I can’t, not yet...this is the evidence for my testimony...I’m not going to bury them yet, I want a piece of paper that will say to me “they killed him...he had committed no crime, he was innocent...” and then we will rest.’”

**Testimony given before the Commission for Historical Clarification, quoted in its report, *Memory of Silence***

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# Guatemala



This country brief summarizes the work of the Historical Clarification Commission (CEH) and its report entitled “Guatemala: Memory of Silence” regarding events during Guatemala’s decades-long civil war.

## A. History and context

Beginning in 1960 and lasting over three decades, Government forces, right-wing paramilitary groups, and left-wing insurgents engaged in a bloody civil war across Guatemala, resulting in some 200,000 deaths and disappearances.<sup>158</sup> Eventually, many of the insurgent groups merged to form the Guatemalan National Revolutionary Unity (URNG), which ultimately negotiated for peace with the government.

It was not until 1994 that peace negotiations began with the signing of the Oslo Accord, in Oslo, Norway, in June 1994.<sup>159</sup> Among other things, the Accord established the the Historical Clarification Commission (Comisión para el Esclarecimiento Histórico) (“CEH” or “Commission”),<sup>160</sup> “in order to clarify, with objectivity, equity and impartiality, the human rights violations and acts of violence connected with the armed confrontation that caused suffering among the Guatemalan people.”<sup>161</sup> Interestingly, both sides prioritized establishment of the CEH even before the civil war had officially ended in 1996. “It was their hope that truth would lead to reconciliation.”<sup>162</sup>

Much of civil society was concerned that the six months the CEH was given to operate would be too short and that the prohibition on naming perpetrators would be too limited.<sup>163</sup> In the end, however, the CEH operated for a total of 18 months.<sup>164</sup>

Per its mandate, three commissioners were chosen for the CEH: Otilia Lux de Cotí, a Guatemalan woman of Mayan descent and expert in indigenous affairs; Alfredo Balsells Tojo, a Guatemalan jurist; and Commission chair, Christian Tomuschat, a German law professor who was appointed by the United Nations.<sup>165</sup>

Throughout its 18 months of operation, the CEH total budget was roughly USD\$11 million—most of which came from the United States, Norwegian, Dutch, Swedish, Danish and Japanese governments. The number of field offices and staff size varied throughout the CEH’s operation peaking at 14 field offices and some 200 staff members.<sup>166</sup>

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158 Commission for Historical Clarification Guatemala Memory of Silence, report of the (“CEH”), Conclusions and Recommendations (1999). In this paper, the term “CEH report” will be used to refer both to the full report of the CEH and the summary of the CEH’s main findings and recommendations.

159 Commission on Historical Clarification—Guatemala, Track Impunity Always (Jan. 11, 2013), available at <http://www.trial-ch.org/en/resources/truth-commissions/america/guatemala.html>.

160 Mark Freeman & Priscilla B. Hayne, *The Truth Commissions of South Africa and Guatemala* in RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK, 141 (International IDEA, 2003), available at [http://www.idea.int/publications/reconciliation/upload/reconciliation\\_chap08cs-safrica.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_chap08cs-safrica.pdf).

161 CEH REPORT, Prologue.

162 CEH REPORT, Prologue (emphasis added).

163 Mark Freeman & Priscilla B. Hayne, *The Truth Commissions of South Africa and Guatemala* in RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK, 142 (International IDEA, 2003), available at [http://www.idea.int/publications/reconciliation/upload/reconciliation\\_chap08cs-safrica.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_chap08cs-safrica.pdf).

164 *Id.*

165 Truth Commission: Guatemala, United States Institute of Peace, (February 1, 1997), available at <http://www.usip.org/publications/truth-commission-guatemala>.

166 Mark Freeman & Priscilla B. Hayne, *The Truth Commissions of South Africa and Guatemala* in Reconciliation After Violent Conflict: A Handbook, 142 (International IDEA, 2003), available at [http://www.idea.int/publications/reconciliation/upload/reconciliation\\_chap08cs-safrica.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_chap08cs-safrica.pdf).

## B. Commission methodology

The main objective of the CEH was “to clarify with objectivity, equity and impartiality, the human rights violations and acts of violence connected with the armed confrontation that caused suffering among the Guatemalan people.”<sup>167</sup> In doing so, the Commission prioritized violent human rights violations such as extra-judicial killings, disappearances and sexual violations.<sup>168</sup> It is important to note that the Commission was not established to prosecute or even achieve specific accountability, which remained the function of the courts of law, but rather to clarify the events that occurred in more than three decades of fratricidal war.<sup>169</sup> Making the truth public, according to the Commissioners, would dignify the victims and the perpetrators and make it easier to achieve national reconciliation.<sup>170</sup>

In addition to cataloguing the events that occurred during the war, the Commission’s report was also to include “specific recommendations to further peace in Guatemala, including measures to preserve the memory of the victims, to foster a culture of mutual respect and observance of human rights and to strengthen the democratic process.”<sup>171</sup>

### 1. Public hearings

Unlike some other truth commissions, Guatemala’s CEH did not hold public hearings. Moreover, it was prohibited from naming perpetrators. In fact, prior to the CEH formation, Guatemala passed “a blanket amnesty that offered immunity for all but the most serious human rights crimes.”<sup>172</sup>

Although the CEH did not have a subpoena power for records or witnesses, through the help of the US National Security Archive, it did request classified files from the

US Government. This resulted in the successful declassification of thousands of documents. It was unable to gather similar information from the Guatemalan government.<sup>173</sup>

The CEH also benefitted from data gathered by two national [NGOs] that had established similar truth gathering expeditions prior to the Commission’s formation. The thousands of testimonies, including audiotapes and transcriptions, gathered by these organizations were able to greatly contribute to the Commission’s mandate.<sup>174</sup>

### 2. Media coverage

Until the CEH Report, which received considerable national and international media coverage, the CEH itself had limited media coverage.<sup>175</sup> The Commission held a press conference upon issuance of the report and answered questions from the press, including questions regarding genocide.<sup>176</sup>

167 CEH REPORT, Prologue.

168 Leah Barkoukis & Charles Villa-Vicencio, *Truth Commissions. A Comparative Study* (Georgetown University & IJR, Aug. 2011), available at <http://www.ijr.org.za/img/trc/Guatemala.pdf>.

169 CEH REPORT, Prologue.

170 CEH REPORT, 50.

171 Commission on Historical Clarification—Guatemala, *Track Impunity Always* (website title in small caps) (Jan. 11, 2013), available at <http://www.trial-ch.org/en/resources/truth-commissions/america/guatemala.html>.

172 Elizabeth Oglesby, *Historical Memory and the Limits of Peace Education: Examining Guatemala’s “Memory of Silence” and the Politics of Curriculum Design* 8 (June 2004), available at [http://www.carnegiecouncil.org/publications/articles\\_papers\\_reports/4996.html/\\_res/id=sa\\_File1/](http://www.carnegiecouncil.org/publications/articles_papers_reports/4996.html/_res/id=sa_File1/).

173 Mark Freeman & Priscilla B. Hayne, *The Truth Commissions of South Africa and Guatemala* in *Reconciliation After Violent Conflict: A Handbook*, 142 (International IDEA, 2003), available at: [http://www.idea.int/publications/reconciliation/upload/reconciliation\\_chap08cs-safrica.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_chap08cs-safrica.pdf).

174 Mark Freeman & Priscilla B. Hayne, *The Truth Commissions of South Africa and Guatemala* in *Reconciliation After Violent Conflict: A Handbook*, 142 (International IDEA, 2003), available at: [http://www.idea.int/publications/reconciliation/upload/reconciliation\\_chap08cs-safrica.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_chap08cs-safrica.pdf).

175 Mark Freeman & Priscilla B. Hayne, *The Truth Commissions of South Africa and Guatemala* in *Reconciliation After Violent Conflict: A Handbook*, 140 (International IDEA, 2003), available at [http://www.idea.int/publications/reconciliation/upload/reconciliation\\_chap08cs-safrica.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_chap08cs-safrica.pdf).

176 United Nations Press Briefing, *Press Conference by Members of Guatemalan Historical Clarification Commission* (Mar. 1, 1999), available at <http://www.un.org/News/briefings/docs/1999/19990301.guate.brf.html>.

International coverage of the report itself tended to focus on the candidness of the report and Guatemala's path to reconciliation moving forward.<sup>177</sup>

More than a decade later, the trial and conviction of ex-president General Efraín Ríos Montt has received considerable national and international attention, highlighting intense national debate over the events investigated by the CEH.<sup>178</sup>

### 3. Relationship between past and present

Several aspects of the CEH work focused on the present-day situation in relation to past violations. For example, one of the key high-level recommendations of the CEH was to strengthen the judicial system to combat the "weakness and dysfunction... [that] contributed decisively to impunity and the misapplication of criminal law during the period."<sup>179</sup> According to an Inter-American Commission on Human Rights (IACHR) report in 2011, many acts of post-conflict violations in the judicial system were linked to the events of the civil war.

[I]mpunity for serious violations to human rights committed during the internal armed conflict, against the members of the Mayan population, reaches levels of such magnitude, that it is concluded that what is left of a racist and discriminatory culture continues to affect large sectors and areas of Guatemala society, reflected especially in the justice administration system.<sup>24</sup>

In another example, at the time the report was issued, the CEH recommended a "drastic and profound" revision of the special forces training programs in Guatemala (the "Kaibiles"), which the CEH cited as an example of the "extreme cruelty...used to intentionally produce and maintain a climate of terror in the population."<sup>180</sup> Changing the current culture, in light of past atrocities, was seen as an important step forward.

### 4. Transparency and civil society participation

While the Commission's proceedings were confidential, its mandate required publication of its establishment and public invitations for interested parties to offer testimony.<sup>181</sup> Even

though the CEH Report was also made public, its distribution in Guatemala was somewhat limited due to financial constraints, the lack of translation into Mayan languages and the difficulty of distribution to rural areas.<sup>182</sup>

The CEH confirmed that civil society groups were targeted in the State's repressive action during the war, which left civil society weak to participate in the reconciliation process.<sup>183</sup> Nevertheless, civil society, including the international community, did contribute to the work of the CEH.

The United Nations System was engaged through contribution of experts and in-kind donations to offset financial needs. Experts came from numerous UN organizations including the Secretary-General of the United Nations, the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Office for Project Services (UNOPS), the United Nations Development Program (UNDP) and the International Criminal Tribunal for the former Yugoslavia. Likewise, the United Nations Verification Mission in Guatemala (MINUGUA) gave logistical support for the CEH's work.<sup>184</sup>

177 Guatemala 'genocide' probe blames state, BBC NEWS, Feb. 25, 1999, available at <http://news.bbc.co.uk/2/hi/americas/286402.stm>; Larry Rohter, Searing Indictment, NEW YORK TIMES, Feb. 27, 1999, available at <http://www.nytimes.com/1999/02/27/world/searing-indictment.html>; Guatemala's Nightmare Past, NEW YORK TIMES, Feb. 28, 1999, available at <http://www.nytimes.com/1999/02/28/opinion/guatemala-s-nightmare-past.html>;

178 See e.g. *Guatemala, dividida ante la petición de anular la condena a Ríos Montt*, CNN México, May 13, 2013, available at: <http://cnnespanol.cnn.com/2013/05/14/guatemala-dividida-ante-la-peticion-de-anular-la-codena-a-rios-montt/>.

179 CEH REPORT, 58.

24 Inter-American Commission for Human Rights, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, 241 (2011), available at <http://www.cidh.oas.org/countryrep/Guatemala2003eng/Chapter-IV.htm>.

180 CEH REPORT, Conclusions § I ¶ 46.

181 Mark Freeman & Priscilla B. Hayne, *The Truth Commissions of South Africa and Guatemala in Reconciliation After Violent Conflict: A Handbook*, 142 (International IDEA, 2003), available at: [http://www.idea.int/publications/reconciliation/upload/reconciliation\\_chap08cs-safrica.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_chap08cs-safrica.pdf).

182 Leah Barkoukis & Charles Villa-Vicencio, *Truth Commissions. A Comparative Study* (Georgetown University & IJR, Aug. 2011), available at <http://www.ijr.org.za/img/trc/Guatemala.pdf>.

183 CEH REPORT, Conclusions § I ¶ 58.

184 CEH REPORT, Acknowledgements § I Page 14.

International NGOs also contributed significantly to the CEH's work particularly in acquiring documents from foreign governments. Specific examples of assistance from foreign NGOs include the appointment of an expert from the American Association for the Advancement of Science; a financial contribution from the Ford Foundation; and the loan of vehicles from the Soros-Guatemala Foundation.<sup>185</sup>

NGOs were also crucial in supporting the CEH Report's call for the exhumation of the remains of those who were killed or had disappeared. With financial support from the government, NGOs helped carry out the exhumation work. As of 2009, local NGOs estimated 5,350 victims have been recovered by such programs, allowing the return of their remains to living relatives.<sup>186</sup>

## 5. Targeted violence<sup>187</sup>

Out of 200,000 documented victims, the CEH report found that 83 percent were indigenous.<sup>188</sup> This was, in part, because Mayans throughout the country were often

"identified by the Army as guerrilla allies."<sup>189</sup> However, this identification was often mistaken and found to be exaggerated, resulting in excess violence against unaffiliated indigenous communities.<sup>190</sup>

Not only did the CEH conclude that the Guatemalan military was responsible for the overwhelming majority of violence, but it concluded that the army was responsible for the genocide of Guatemala's indigenous peoples in four parts of the country. For example, five massacres were carried out in the Achí village of Río Negro, Rabinal municipality, Baja Verapaz Department, between 1980 and 1982. One of these raids left 177 women and children dead. Local human rights groups believe that between 4,000 and 5,000 people were killed during that period in the wider Rabinal area and that 444 of the 791 inhabitants of Río Negro were extra-judicially executed.<sup>191</sup> Overall, the CEH documented 669 massacres, 626 of which the Commission attributed to state security forces.<sup>192</sup>

## C. Findings and justice

The CEH issued its final report entitled "Guatemala: Memory of Silence" (the "CEH Report") on February 25, 1999, to representatives of the Guatemalan government, the Guatemalan National Revolutionary Unity political party (the URNG became a legal political party in 1998) and the UN Secretary General.<sup>193</sup> The CEH's primary factual and legal findings were as follows:

The CEH estimated that more than 200,000 people were killed or forcibly disappeared as a result of the internal armed confrontation in Guatemala from the start of the armed conflict in 1962 to the signing of the *Agreement on a Firm and Lasting Peace* in 1996.<sup>194</sup> The CEH registered a total of 42,275 victims, of which 23,671 were victims of arbitrary execution and 6,159 were victims of forced disappearance.<sup>195</sup>

The CEH found that 83 percent of the registered victims were Mayan and 17 percent were Ladino.<sup>196</sup>

185 CEH REPORT, Acknowledgements Page 14.

186 Amnesty International, *Justice and Impunity: Guatemala's Historical Clarification Commission 10 Years On*, (Feb. 2009) available at <http://www.refworld.org/pdfid/49a651682.pdf>.

187 For additional summary information on how the CEH addressed indigenous issues, see *Study on the rights of indigenous peoples and truth commissions and other truth-seeking mechanisms on the American continent*, United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, Twelfth Session, Feb. 14, 2013.

188 CEH REPORT, Conclusions § I ¶ 1, 2.

189 CEH REPORT, Conclusions § I ¶ 31.

190 CEH REPORT, Conclusions § I ¶ 32.

191 Amnesty International, *Justice and Impunity: Guatemala's Historical Clarification Commission 10 Years On*, (Feb. 2009) available at <http://www.refworld.org/pdfid/49a651682.pdf>.

192 Amnesty International, *Justice and Impunity: Guatemala's Historical Clarification Commission 10 Years On*, (Feb. 2009) available at <http://www.refworld.org/pdfid/49a651682.pdf>.

193 Commission on Historical Clarification—Guatemala, *Track Impunity Always* (Jan. 11, 2013) <http://www.trial-ch.org/en/resources/truth-commissions/america/guatemala.html>.

194 56 ¶ 148, available at <http://www.guatemalaaun.org/bin/documents/timetable%20for%20peace.pdf> Annex II (Dec. 23, 1996)

195 The CEH ultimately combined its data with the results of other studies of political violence in Guatemala to establish that more than 200,000 people were killed or forcibly disappeared during the relevant period. CEH Report, Conclusions § I ¶ 1.

196 CEH REPORT, Conclusions § I ¶ 1.

The CEH found that 85 percent of the human rights violations and acts of violence were attributable to the Army, acting alone or in collaboration with another force, and 18 percent were attributable to the government-controlled Civil Defense Patrols (Patrullas de Autodefensa Civil or “PAC”), which were established by the Army.<sup>197</sup> In all, the State itself (including its public servants and state agencies) perpetrated 93 percent of the human rights violations and acts of violence registered by the CEH.<sup>198</sup> Insurgent groups were responsible for 3 percent of the registered human rights violations and acts of violence.<sup>199</sup>

The CEH thus concluded that the State was responsible for “grave violations of international human rights law” and international humanitarian law, specifically Common Article III of the 1949 Geneva Conventions.<sup>200</sup> The CEH also concluded that the State violated the rights guaranteed by the various iterations of the Constitution of Guatemala in existence during the relevant period.<sup>201</sup>

More specifically, the CEH concluded: “Between 1981 and 1983, the State committed acts of genocide against groups of Mayan people which lived in the four regions analyzed [by the CEH].”<sup>202</sup> The acts of genocide were “the killing of members of [ethnic] Mayans, [the infliction of] serious bodily or mental harm and [the subjection of this group] to living conditions calculated to bring about its physical destruction in whole or in part.”<sup>203</sup> The CEH concluded that the genocidal acts were “the product of a policy pre-established by a command superior to the material perpetrators.”<sup>204</sup>

Faced with these realities, and in order to promote peace and international harmony in Guatemala, the CEH recommended measures for (1) the preservation of the memory of the victims; (2) the compensation of the victims; (3) the fostering of a culture of mutual respect and observance of human rights; (4) the strengthening of the democratic process; (5) other recommendations to favor peace and

national harmony; and (6) a body responsible for promoting and monitoring the fulfillment of the recommendations.<sup>205</sup>

### **Measures to preserve the memory of the victims<sup>206</sup>**

- Issuance of a solemn declaration reaffirming the dignity and honor of the victims and restoring their good name and that of their relatives
- Designation of a day of commemoration for the victims (National Day of Dignity for the Victims of Violence)
- Construction of monuments and public parks in memory of the victims at national, regional and municipal levels
- The assigning of names of victims to educational centers, buildings and public highways

197 CEH REPORT, Conclusions § II ¶ 82.

198 CEH REPORT, Conclusions § II ¶ 82.

199 CEH REPORT, Conclusions § I ¶ 21.

200 CEH REPORT, Conclusions § II ¶¶ 98, 100.

201 CEH REPORT, Conclusions § II ¶ 104.

202 The four geographical regions studied by the CEH were: (1) Maya-Q’anjob’al and Maya-Chuj, in Barillas, Nentón and San Mateo Ixtatán in North Huehuetenango; (2) Maya-Ixil, in Nebaj, Cotzal and Chajul, Quiché; (3) Maya-K’iche’ in Joyabaj, Zacualpa and Chiché, Quiché; and (4) Maya-Achi in Rabinal, Baja Verapaz.

203 CEH REPORT, Conclusions § II ¶ 122.

204 CEH REPORT, Conclusions § II ¶ 124.

205 CEH REPORT, Recommendations § I.

206 CEH REPORT, Recommendations § II.

## Reparatory measures<sup>207</sup>

The CEH considered “that truth, justice, reparation and forgiveness are the bas[is]s of the process of consolidation of peace and national reconciliation.”<sup>208</sup> It thus considered it the responsibility of the Guatemalan State to provide reparations for the victims and their relatives. The primary objectives of the reparations were to dignify the victims, to guarantee that the human rights violations and acts of violence connected with the armed confrontation would not be repeated, and to ensure respect for national and international standards of human rights.<sup>209</sup>

On this basis, the CEH recommended the National Reparation Program including the following: (1) “the restoration of material possessions so that, as far as is possible, the situation existing before the violation be re-established, particularly in the case of land ownership”; (2) “the indemnification or economic compensation of the most serious injuries and losses resulting as a direct consequence of the violations of human rights and of humanitarian law”; (3) “psychosocial

rehabilitation and reparation, which should include, among others, medical attention and community mental healthcare and likewise the provision of legal and social services”; and (4) “the satisfaction and restoration of the dignity of the individual, which should include acts of moral and symbolic reparation.”<sup>210</sup> Although the government at the time the report was issued, argued that many of the recommendations had already been addressed in the peace accord, a year after the release date, the newly elected President Azru recommitted the government to implementing the CEH’s recommendations.<sup>211</sup> Implementation of the recommendations has been an ongoing process ever since.

## D. Lessons and the way forward

It has been 15 years since the CEH issued its report, and its recommendations have been implemented to varying degrees. To promote and monitor implementation, and per the CEH’s recommendation, the state created the Peace Secretariat (La Secretaría de la

Paz Guatemala or “SEPAZ”). Examples of progress in implementing the recommendations includes the creation of the National Reparation Program, which began in 2003.<sup>212</sup> The UN Human Rights Committee reported in March 2012 that as many as 24,084 victims of human rights violations during the conflict had received reparations.<sup>213</sup>

Progress also appears to have been made with respect to exhuming the remains of victims and returning them to their families, with support from the Government.<sup>214</sup> The Government had also announced that an archive had been established to organize, file and preserve documents from military files relating to the conflict, but it has since been reported that this archive has been closed.<sup>215</sup>

Possibly the biggest critique has been the failure to prosecute the individuals responsible for the human rights violations and acts of violence.<sup>216</sup> This is the result of the National Reconciliation Law, passed before the CEH began its work. The law empowered the Guatemalan courts to grant

207 CEH REPORT, Recommendations § III.

208 CEH REPORT, Recommendations § III, Page 50.

209 *Id.*

210 CEH REPORT, Recommendations.

211 Leah Barkoukis & Charles Villa-Vicencio, *Truth Commissions. A Comparative Study* (Georgetown University & IJR, Aug. 2011), available at <http://www.ijr.org.za/img/trc/Guatemala.pdf>.

212 UN Human Rights Committee, *Third Periodic Report: Guatemala*, Report No. CCPR/C/GTM/3 at 11 (Oct. 20, 2009), available at [http://www.bayefsky.com/reports/guatemala\\_ccpr\\_c\\_gtm\\_3\\_2009.pdf](http://www.bayefsky.com/reports/guatemala_ccpr_c_gtm_3_2009.pdf).

213 UN Department of Public Information, *Major Progress Made in Human Rights Protections since Guatemala’s Peace Accords 15 Years Ago, Although Much Work Remains, Human Rights Committee Told* (Mar. 19, 2012), available at <http://www.un.org/News/Press/docs/2012/hrct744.doc.htm>.

214 Amnesty International, *Justice and Impunity: Guatemala’s Historical Clarification Commission 10 Years On*, (Feb. 2009), available at <http://www.refworld.org/pdfid/49a651682.pdf>.

215 Guatemalan Human Rights Commission, *GHRC Denounces Closure of Peace Archives Directorate in Guatemala* (June 4, 2012), available at <http://ghrcusa.wordpress.com/tag/sepaz/>.

216 Amnesty International, *Justice and Impunity: Guatemala’s Historical Clarification Commission 10 Years On*, (Feb. 2009), available at <http://www.refworld.org/pdfid/49a651682.pdf>. It is noted that since publication of Amnesty’s report, five military officers have been sentenced for crimes against humanity in relation to the Dos Erres massacre, one of the examples of Guatemala’s failure to prosecute individuals responsible for the human rights violations and acts of violence that took place during the conflict. See US State Department 2012 Human Rights Report available at [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dld=204454#\\_wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dld=204454#_wrapper).

amnesty for crimes committed during the conflict with the exception of cases involving forced disappearances, torture or genocide. As noted by the CEH, this legislation resulted from the Peace Accords and was intended to be a “basic instrument for the reconciliation of those people involved in the internal armed confrontation” by facilitating the reintegration of those people directly involved in the conflict into society.<sup>217</sup> This was not a blanket amnesty law, and the CEH strongly recommended that “[t]hose crimes for whose commission liability is not extinguished by the said law, should be prosecuted, tried and punished.”<sup>218</sup>

Until very recently, the prosecutions that have taken place have targeted only low-level soldiers and paramilitaries,

rather than their commanders.<sup>219</sup> The Inter-American Commission for Human Rights (IACHR) reported in 2009 that impunity for the crimes connected to the conflict remains “near-total.”<sup>220</sup> However, in January 2012, a specialized court in Guatemala (El Tribunal de sentencia de Mayor Riesgo A) charged General Jose Efraín Ríos Montt, the de facto president of Guatemala from March 1982 to August 1983, with genocide, along with his chief of military intelligence at the time, Jose Mauricio Rodríguez Sanchez.<sup>221</sup>

On May 10, 2013, Ríos Montt was found guilty of genocide and crimes against humanity and sentenced to 80 years in prison.<sup>222</sup> This was the first time that a former head of state has been found guilty of genocide in his or her own country,

and human rights groups have hailed the verdict as a major victory in the fight against impunity in the region.<sup>223</sup> Rodríguez Sanchez was acquitted of all of the charges against him.<sup>224</sup>

In response to the ruling, the current president of Guatemala, Otto Pérez Molina, stated that he respects the independence of the judiciary and its rulings and that the court’s verdict shows that democratic processes in Guatemala have been strengthened.<sup>225</sup>

217 CEH REPORT, Recommendations § V.I.a., Preamble, Page 58.

218 CEH REPORT, Recommendations § V.I.a. ¶ 47.

219 *The Trial of Efraín Ríos Montt & Mauricio Rodríguez Sanchez*, Open Society Justice Initiative (2013), available at <http://www.riosmontt-trial.org/trial-background/> (citing sources from the full version of the CEH report).

220 *The Trial of Efraín Ríos Montt & Mauricio Rodríguez Sanchez*, Open Society Justice Initiative (2013), available at <http://www.riosmontt-trial.org/trial-background/> (citing sources from the full version of the CEH report).

221 *The Trial of Efraín Ríos Montt & Mauricio Rodríguez Sanchez*, Open Society Justice Initiative (2013), available at <http://www.riosmontt-trial.org/trial-background/> (citing sources from the full version of the CEH report).

222 *Former Guatemala dictator Ríos Montt convicted of genocide*, REUTERS, May 11, 2013, available at <http://www.reuters.com/article/2013/05/11/us-guatemala-riosmontt-idUSBRE9490V420130511>.

223 Amnesty International, “Historic conviction brings long-awaited justice in Guatemala” (May 10, 2013), available at <http://www.amnesty.org/en/news/historic-conviction-brings-long-awaited-justice-guatemala-2013-05-10>; Human Rights Watch, “Guatemala: Ríos Montt Convicted of Genocide: Landmark Ruling against Impunity, Judicial Control Needed in Handling Appeals” (May 10, 2013) available at <http://www.hrw.org/news/2013/05/10/guatemala-rios-montt-convicted-genocide>.

224 *Former Guatemala dictator Ríos Montt convicted of genocide*, REUTERS, May 11, 2013, available at <http://www.reuters.com/article/2013/05/11/us-guatemala-riosmontt-idUSBRE9490V420130511>.

225 Secretaría de Comunicación de la Presidencia, “Presidente respeta decisión de tribunal” (May 10, 2013), available at <http://www.guatemala.gob.gt/index.php/2011-08-04-18-06-26/item/3745-presidente-resp>.



# Peru

“ La CVR [Comisión de la Verdad y Reconciliación] interpreta la voluntad del pueblo peruano de conocer su pasado como una consecuencia del principio primordial de afirmar la dignidad de la vida humana y, por lo tanto, entiende la tarea que le ha sido asignada como un elemental acto de justicia y un paso necesario en el camino hacia una sociedad reconciliada.”

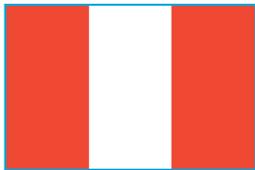
**Informe Final de la Comisión de la Verdad y Reconciliación**

“ The TRC [Truth and Reconciliation Commission] interprets the will of the Peruvian people to know their past as a consequence of the primordial principle to affirm the dignity of human life, and therefore, understands the work it has been assigned as an elemental act of justice and a necessary step on the road to a reconciled society.”

**Final Report of the Truth and Reconciliation Commission**

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# Peru



This country brief summarizes the work of the Peruvian Truth and Reconciliation Commission (CVR) and its final report detailing the events of an internal conflict from 1980 to 2000.

## A. History and context

From May 1980 through November 2000, Peru experienced a period of internal conflict, resulting in thousands of crimes, abductions and other serious wrongdoings and leaving behind an estimated 69,280 people dead or disappeared.

These acts were perpetrated in the context of an internal armed conflict triggered by the Peruvian Communist Party—Shining Path (Partido Comunista del Peru Sendero Luminoso or “PCP-SL”), the Revolutionary Movement Tupac Amaru (Movimiento Revolucionario Túpac Amaru, or “MRTA”), and the response of the Peruvian police and Armed Forces (Fuerzas Armadas or the “FFAA”)<sup>226</sup> under the authority of a 1981 Emergency Law.<sup>227</sup> Additionally, civilians participated by organized self-defense committees (rondas campesinas contrasubversivas or “SDCs”), some of which acted with the FFAA.

The most common acts of violence perpetrated during the conflict period were (1) murders and massacres; (2) abductions; (3) arbitrary executions; (4) torture and cruel, inhumane or degrading treatment; (5) sexual abuse against women; (6) due process violations; (7) kidnapping and holding of

hostages; (8) violence against children; and (9) violation of collective rights, such as forced displacement and slavery of Andean and Amazonian native communities (the “Native Communities”).<sup>228</sup>

Throughout the conflict period, civil society groups, organized around the Human Rights National Coordinator (Coordinadora Nacional de Derechos Humanos), demanded justice for the acts of violence perpetrated. However, the investigations carried out were often frustrated due to threats and lack of political will at the time.<sup>229</sup> In addition, in 1995, the government of Alberto Fujimori enacted an amnesty law that limited accountability for human rights violations perpetrated by the military and government agents.<sup>230</sup>

In 2000, after President Alberto Fujimori fled the country, a transitional government was put in place. Responding to demands from civil society organizations dating back to the conflict period, the transitional government created a multi-institutional working group (Grupo de Trabajo Interinstitucional) in December of 2001, in charge of proposing the creation of the Truth and Reconciliation Commission (Comisión de Verdad y Reconciliación) (“CVR” or “Commission”) to address the two decades of mass human rights violations.<sup>231</sup>

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Translations to English from the Spanish original are unofficial.

226 FINAL REPORT, Truth and Reconciliation Commission of Peru, Tome II (Aug. 27 2003) [hereinafter FINAL REPORT].

227 FINAL REPORT, Tome VIII, at 250.

228 FINAL REPORT, Tome VI, Chapter 1. The most dramatic example of slavery was the case of the Ashaninka people living on the border of the river Ene, thousands of whom were forced out of their territory to PCP-SL “retreats,” where they lived in conditions of slavery, although the PCP-SL also displaced and enslaved communities from the *campesino* population of Ayacucho. FINAL Report, Tome IX, at 299 and Tomo V at 26.

229 FINAL REPORT, Tome I, at 34-35.

230 FINAL REPORT, Tome I, at 38.

231 FINAL REPORT, Tome I, at 35.

The CVR was created on June 4, 2001 by means of an executive decree (Decreto Supremo No. 065-2001-PCM) issued by interim President of Peru Valentín Paniagua Corazao, with the approval of its Board of Ministers (the “Creation Decree”).<sup>232</sup>

According to the Creation Decree, the CVR’s mandate was to (1) investigate the responsibility for the acts of violence perpetrated by the terrorist organizations and government agents during the conflict period; and (2) propose initiatives aimed at promoting peace, national reconciliation, justice and the strengthening of the democratic regime.<sup>233</sup> Article 5 of the Creation Decree sets forth the Executive Branch’s obligation to support and help the Commission to fulfill its mandate.<sup>234</sup>

In addition, Article 3 of the Creation Decree clarified that the work of the CVR should focus on the following acts of violence perpetrated by terrorist organizations, governmental agents or paramilitary groups: (1) murders and kidnapping; (2) abductions;

(3) torture and other serious injuries; (4) violations of the rights of Andean and other native communities; and (5) other crimes and serious human rights violations. Investigation into the acts of violence toward the native communities was expressly within the CVR’s mandate.<sup>235</sup>

Pursuant to the final report issued by the CVR (“Final Report”), the CVR considered that its mandate derived not only from the Creation Decree, but also from the human rights provisions contained in the Peruvian Constitutions in force during the conflict period (Peruvian Constitutions of 1979 and 1993) and from the international human rights and international humanitarian legal framework.<sup>236</sup>

The CVR was composed of seven qualified commissioners (“Commissioners”), appointed by the Peruvian President with the approval of its Board of Ministers.<sup>237</sup> Internally, the CVR was divided into two working bodies: (1) the Final Report Nucleus (Núcleo del Informe Final); and (2) the Public

Participation Group (Grupo de Actoría Pública). The Final Report Nucleus was a technical and administrative body led by an Editorial Committee of three CVR commissioners and six members of the technical team; it was in charge of coordinating the investigation teams that prepared the CVR Final Report. The Public Participation Group was in charge of CVR public relationships with social and political actors throughout Peru, and oversaw the Commission’s communication with the media. It also focused on creating awareness of its workings. The Public Participation Group was, itself, divided into five working areas in charge of (1) communications and media; (2) coordinating agreements with the public; (3) civil organizations and institutions to help in the implementation and follow-up of the Commission’s recommendations of its final report; (4) production; and (5) international outreach.<sup>238</sup> The CVR was granted 18 months (with an extension of five months) to perform its mandate and deliver a final report.<sup>239</sup>

<sup>232</sup> FINAL REPORT, Annex I, at 19, Decreto Supremo No. 065-2001-PCM.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*, Annex I, at 20.

<sup>235</sup> *Id.*

<sup>236</sup> FINAL REPORT, Tome I, at 151.

<sup>237</sup> See FINAL REPORT, Annex I, at 20; Decreto Supremo No. 065-2001-PCM, Art. 4. The TRC’s members were: Dr. Salomón Lerner Febres, Dr. Beatriz Alva Hart, Dr. Rolando Ames Cobián, Monsignor José Antúnez de Mayolo, Air Force Lieutenant General Luis Arias Grazziani, Dr. Enrique Bernales Ballesteros, Dr. Carlos Iván Degregoru Caso, Father Gastón Garatea Yori, Minister Humberto Lay Sun, Ms. Sofia Macher Batanero, Engineer Alberto Morote Sánchez and Engineer Carlos Tapia García.

<sup>238</sup> *Work Areas*, Truth and Reconciliation Commission (last visited Nov. 8, 2013), available at <http://cverdad.org.pe/ingles/lacomision/nlabor/index.php>.

<sup>239</sup> FINAL REPORT; Decreto Supremo No. 065-2001-PCM, Art. 7, Annex I, at 20. The Commission’s mandate was extended until August 31, 2004 by means of and additional executive decree issued by former President of Peru Alejandro Toledo Manrique, with the approval of its Board of Ministers, Supreme Decree No. 063-2003-PCM, Art. 1, FINAL REPORT, Annex I, at 26.

## B. Commission methodology

Pursuant to Article 2 of the Creation Decree, the CVR's objectives were "(1) to analyze the political, social and cultural conditions and behaviors of the society and governmental institutions that contributed to the tragic violence that Peru experienced; (2) to contribute, with the judicial system, in addressing the acts of violence perpetrated by the terrorist organizations and by some governmental agents, seeking to identify the whereabouts and the situation of the victims and to those presumed responsible; (3) to propose reparation to the victims and their families; (4) to recommend institutional, legal, educational and other reforms as preventive measures to be carried out by legislative, political and administrative initiatives; and (5) to establish mechanisms to enforce its recommendations."<sup>240</sup>

According to the Final Report,<sup>241</sup> the CVR's investigation methodology was a balance between an impartial approach and an approach that allowed expressing understandable indignation towards the acts of violence. The CVR's investigation was not only an effort to clarify the acts of violence, but also to reach an ethical judgment focused on reparations.

Several different disciplines and methodologies were used in order to understand the acts of violence in their complexity and to bridge the testimonial data, the legal analysis and the historical reconstruction in a coherent way. In particular the CVR's analysis was based on the intersections of the legal and social sciences. As a result, the victims were not treated as passive actors, but as individuals capable of reacting to and challenging the acts of violence.<sup>242</sup>

Also, the CVR examined its own activities and identified early in the process the need to focus on historically neglected groups, such as women, native communities and rural populations. For instance, the CVR staffed its regional offices with professionals familiar with the native languages and cultures. Also, the CVR dedicated a great number of its human resources to collecting testimonials in rural areas.

Article 6 of the Creation Decree authorized the CVR, when exercising its mandate, to "(1) interview and collect from any person, authority, employee or public official, information it may deem relevant; (2) request cooperation from any public official or

employee in order to have access to any official document or information; (3) conduct visits, inspections or any other diligence as it may deem necessary (to this extent, the CVR could be assisted by experts); (4) hold public hearings (keeping the identity of the sources confidential, as it may deem necessary); (5) take safety precautions as to threats to life or serious injury; (6) establish communication channels with the public and public participation mechanisms, especially for those affected by the acts of violence; and (7) to pass internal rules and resolutions for the fulfillment of its objectives."<sup>243</sup>

Accordingly, the CVR benefited from public hearings, media coverage, participation of civil society and other methods to carry out its mandate. The CVR's first method of investigation was the use of case studies as a fact-gathering method. The case studies were taken in different geographical locations and were aimed at obtaining representative and transparent results.<sup>244</sup> The CVR's Final Report contained the results of 73 case studies investigated by the Commission throughout different regions of Peru and from different times during the 20-year period investigated by the CVR.<sup>245</sup>

240 FINAL REPORT, Annex I, at 20; Decreto Supremo No. 065-2001-PCM.

241 FINAL REPORT, Tome I, at 45-51.

242 FINAL REPORT, Tome I, at 47.

243 FINAL REPORT, Annex I, at 20, Decreto Supremo No. 065-2001-PCM.

244 Wendy Coxshall, *From the Peruvian Reconciliation Commission to Ethnography: Narrative, Relatedness and Silence*, POLAR 203, 208-209.

245 FINAL REPORT, Tome I, at 149.

In order to identify the individuals who should be considered as victims or beneficiaries of damages programs, the CVR took into account cultural differences among the Andean and jungle communities vis-à-vis the rest of the Peruvian population affected by the violence during the investigated period. Cultural criteria helped to identify groups of victims for example, by broadening concepts such as “family.”<sup>246</sup>

## 1. Public hearings

### The goals of the public hearings

As set forth in the Regulation of Public Hearings of the Truth and Reconciliation Commission (“Regulations”), the goals of the public hearings were (1) to enrich the CVR’s investigation by providing the victims’ stories; (2) to convert the information gathered into a teaching tool for Peruvian citizens in support of a national reconciliation process, “overcoming forms of discrimination that permanently victimize large sectors of the population...”;<sup>247</sup> and (3) to dignify and express solidarity with the victims.<sup>248</sup>

Testimony presented at the hearings and the subsequent report, as a whole, were to be used in future judicial proceedings.

### Frequency and location of the public hearings

A total of 14 hearings were held from April 8 to September 26, 2002, in cities across the geographical region of conflict.<sup>249</sup> The decision to hold the first of the series of public hearings in the cities of Huamanga and Huante, located in the Andean region of Ayacucho, was significant, considering the significant impact of the conflict in this region. The report found that 40 percent of the total deaths and disappearances throughout the 20 years of the conflict occurred in Ayacucho.<sup>250</sup> As Chairman of the CVR, Dr. Salomón Lerner Febres noted in his opening address, “[a]lthough we address all of Peru, we wanted to begin this program of public hearings here, in Ayacucho, because the country as a whole recognizes that this region is emblematic of the deep suffering caused by the blindness, intolerance and arrogance of some.”<sup>251</sup>

### The methodology for holding public hearings

Victims provided testimony before a minimum of four of the 12 Commissioners, the public and approved members of the media.<sup>252</sup> The structure and procedure

of the public hearings were intended to provide a respectful and egalitarian audience for declarants and victims, many of whom were members of poor, rural and indigenous communities who had long been marginalized in Peruvian society. According to Eduardo Gonzalez of the International Center for Transitional Justice, who helped to organize the CVR, organizers had studied videos of earlier truth commissions and rejected the courtroom structure used by those previous commissions, preferring a more victim-centric approach. For example, Commissioners stood up when the victims entered, rather than vice versa, and victims and Commissioners shared a single table. In addition, victims were not subject to interrogation, but rather provided their stories in narrative form with little intervention from the Commissioners.<sup>253</sup>

The guiding principles of the public hearings included (1) informed consent of the declarants; (2) respect for diversity (demonstrated, for example, by the fact that Quechua-speaking participants were able to provide testimony in Quechua, accompanied by a translator); (3) nonhierarchization (public testimony was not to be prioritized by the Commissioners over other testimonies);

246 César Rodríguez-Garavito & Yukyan Lam, *Addressing Violations of Indigenous People’s Territory, Land, and Natural Resource Rights During Conflicts and Transitions in Strengthening Indigenous Rights through Truth Commissions; A Practitioner’s Resource*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE 19, 31 (2012).

247 Public Hearings: Introduction, Truth and Reconciliation Commission, available at <http://cverdad.org.pe/ingles/lacomision/nlabor/index.php> (last visited Nov. 8, 2013).

248 FINAL REPORT, Annex I, Appendix I, at 35; Law No. 6, Art. 5 Regulation of Public Hearings of the Truth and Reconciliation Commission.

249 FINAL REPORT, Annex X, Transcripts of the Public Hearings.

250 FINAL REPORT, Tome I, at 120.

251 FINAL REPORT, Annex X, Inauguration of the Public Hearings: Words from the President of the CVR, at 15 – 16.

252 FINAL REPORT, Annex I, Appendix I, at 36-37; Law No. 6, Regulation of Public Hearings of the Truth and Reconciliation Commission, Title III, Arts. 7, 11, 12.

253 Nathan Schneider, The right to truth: An interview with Eduardo Gonzalez, THE IMMANENT FRAME BLOG, SOCIAL SCIENCE RESEARCH COUNCIL (Apr. 19, 2010, 10:58AM) <http://blogs.ssrc.org/tif/2010/04/19/the-right-to-truth/>.

(4) emotional and social sustainability (including protection of the declarants, as well as their right to be accompanied by members of their family or community at the hearings); (5) protection of the life and physical integrity of the declarants; (6) collaboration with the work of judicial bodies (meaning that testimony might be used in subsequent judicial cases); and (7) right of clarification for those who may potentially be accused or implicated by the testimony.<sup>254</sup>

In addition to the right to be accompanied by their families and communities, victims were accompanied by a mental health professional before, during and after their testimony, except where such support was refused by the victim. This measure was intended to minimize the potentially traumatic impact of testifying.<sup>255</sup>

### **Social actors involved in the public hearings**

In organizing the CVR, a decision was made that only victims of the conflict would provide testimony and that victims would not be confronted with the accused perpetrators, as was the case in some other truth commissions.<sup>256</sup> Commissioners selected

in advance the victims who would give testimony at public hearings. This resulted in the CVR prioritizing public testimony from indigenous witnesses over stories of other victims.<sup>257</sup>

The Regulations provided that, in addition to the victims, special guests from national and international human rights organizations could be invited to testify before the CVR.<sup>258</sup>

As noted above, one of the goals of holding public hearings was “[t]o convert the information received into a pedagogical instrument for citizens in general, nurturing a permanent dialogue towards national reconciliation.”<sup>259</sup> In fact, prior to the CVR, many urban Peruvians had been unaware of the extent of the human toll of the conflict, since a majority of deaths and disappearances occurred in the rural areas of the country.<sup>260</sup>

### **2. Media coverage**

The CVR’s internal organization was initially divided into five action areas, including a Communications and Education Area (CER), which was in charge of designing and creating social communication, civil society participation and education programs.

The activities promoted by the CER were (1) awareness and outreach campaigns, both national and regional; (2) workshops and seminars; (3) cultural and artistic events; and (4) the PROVER Truth Promoters Volunteers Program (“Programa de Voluntariado Promotores de la Verdad de la Comisión de la Verdad y Reconciliación”).

For example, on December 10, 2001, the anniversary of the Universal Declaration of Human Rights, the CVR held a public event in the San Martín plaza in Lima, Peru, aimed at publicizing the text as well as the objectives of the CVR and the nature of its work.

Educational communication tools were necessary not only to inform the population of the CVR’s activities, but also of the extent of its authority and mandate. Many people (especially victims of acts of violence) did not know that the Commission did not have judicial authority, but only the mandate of coordinating with public authorities of the Executive and Judicial Branch.<sup>261</sup>

254 FINAL REPORT, Annex I, Appendix I, Law No. 6, Regulation of Public Hearings of the Truth and Reconciliation Commission, Title II, Art. 3.

255 FINAL REPORT, Annex X, at 7 – 8, The impact of public hearing on participants.

256 FINAL REPORT, Annex X. *The impact of public hearings on participants*, at 4.

257 Wendy Coxshall, *From the Peruvian Reconciliation Commission to Ethnography: Narrative, Relatedness and Silence*, 28 POLAR 203, 211 – 212 (2005).

258 FINAL REPORT, Annex I, Appendix I; at 36, Law No. 6, Regulation of Public Hearings of the Truth and Reconciliation Commission, Title III/Art. 11.

259 FINAL REPORT, Annex I, Appendix I; Law No. 6, Regulation of Public Hearings of the Truth and Reconciliation Commission, Title II/Art. 5.

260 See, e.g., Peru support group, *Truth and Reconciliation: The Findings of Peru’s Truth and Reconciliation Commission* (2004), at 11, available at [http://www.perusupportgroup.org.uk/files/fckUserFiles/file/TRC\\_booklet.pdf](http://www.perusupportgroup.org.uk/files/fckUserFiles/file/TRC_booklet.pdf).

261 Gloria Cano & Karim Ninasquique, *The Role of Civil Society in Demanding and Promoting Justice*, THE LEGACY OF TRUTH CRIMINAL JUSTICE IN THE PERUVIAN TRANSITION 43 (2006).

## TV coverage

Because of the cooperation agreement signed between the CVR and Peru's National Institute of Radio and TV (Instituto Nacional de Radio y Televisión de Peru or "INRTP"),<sup>262</sup> the CVR's public hearings were broadcast live nationwide by Channel 7 while the daily work of the Commission was reported on Channel N.<sup>263</sup>

Also, an agreement was reached with INRTP for a 30-minute weekly TV show describing the CVR's activities plus a series of 32 five-minute episodes explaining the Commission's mandate, purposes and objectives.<sup>264</sup>

Furthermore, the CVR signed an agreement with the Instituto de Diálogo y Propuestas, an NGO specializing in democratic studies in Peru and the Asociación TV Cultura, a nonprofit association that promotes media communications for the least privileged people in Peru. The purpose of the agreement was to support the Commission with the recording of audiovisual evidence of its investigations and activities (providing logistical and technical assistance) and to

help organize communication and dialogue seminars in the regions that were affected by acts of violence. A national contest for filmmakers and scriptwriters was also held to further these objectives.<sup>265</sup>

## Press releases and publications

The CVR had a Communications and Public Impact Office in charge of issuing press releases regarding the Commissions' activities from September 2001 through August 2003.

During 2001 and 2003, the CVR published eight Bulletins describing the Commission's activities, the results of the testimonies collected and the public hearings conducted, details about its volunteers program and details about its national and regional offices.<sup>266</sup>

The CVR also signed an agreement with the Consejo de la Prensa Peruana, a nonprofit association that includes many high-distribution newspapers in Peru (such as *El Comercio*, *Gestión*, *La República*, *El Popular*, *Liberio*, *Ojo*, *El Norteño*, *Correo*, *El Bocón*, among others) as well as other

media such as Channel N and CPN Radio. The purpose of the agreement was to provide advice to the Commission regarding its press releases and media communication and to provide information regarding national and international media coverage of the Commission's activities.<sup>267</sup>

The CVR's information-gathering activities, as well as the work of forensic anthropologists in exhuming mass graves, received coverage in the Peruvian press.<sup>268</sup> However, some observers argued that the CVR did not have a sufficient political strategy with regarding the press and modes of communication, which jeopardized its legitimacy as a political actor.<sup>269</sup> This was due, in part, to disagreements among the Commissioners and other professionals involved in the CVR's work. Some of those involved took a wary approach to press coverage during the investigation for the Final Report because of the sensitive nature of the CVR's work, while others opted for a more public approach as a way of legitimizing and acknowledging the CVR's findings and recommendations.<sup>270</sup>

262 The INRTP is a decentralized public entity.

263 Convenio de Cooperación Institucional entre el Instituto Nacional de Radio y Televisión del Perú—INRTP y la Comisión de la Verdad y Reconciliación—CVR available at <http://cverdad.org.pe/lacomision/cnormas/convenio19.php>.

264 *Id.*

265 Convenio de Cooperación Institucional entre IDS—TV Cultura y La Comisión de la Verdad y Reconciliación, available at <http://cverdad.org.pe/lacomision/cnormas/convenio20.php>.

266 See Bulletins, available at <http://cverdad.org.pe/informacion/boletines/index.php>.

267 Convenio de Cooperación Institucional entre La Comisión de la Verdad y Reconciliación y el Consejo de la Prensa Peruana, available at <http://cverdad.org.pe/lacomision/cnormas/convenio10.php>.

268 See, e.g., Press Release 13, 15 and 29, available at <http://cverdad.org.pe/informacion/nprensa/index.php>.

269 Iris Jave, *The TRC and means of communication, 2003 – 2007. An investigation of political communication*, 5 (Jan. 10, 2008).

270 Iris Jave, *The TRC and means of communication, 2003 – 2007. An investigation of political communication*, 2 (Jan. 10, 2008).

## Internet and online outreach

In order to better exercise its mandate, the CVR signed an agreement with Terra Networks Perú, S.A. for the online transmission of all the public hearings conducted by the CVR, the organization of Internet video chats with the Commissioners and the organization of online surveys and opinion forums regarding the Commission's workings.<sup>271</sup>

## Documentaries

The CVR entered into an agreement with the nonprofit association Tramas for the production of a documentary about the workings and findings of the Commission.<sup>272</sup> Skylight pictures also produced an award-winning documentary called "*State of Fear*," which was produced by filmmakers Pamela Yates, Paco de Onis and Peter Kinoy, based on the findings of the CVR.<sup>273</sup>

## Visual legacy

The CVR prepared three projects of visual images to create a visual memorial of the violence that occurred in Peru during the conflict period. The first project was an

Images Bank with 1,700 pictures collected from public and private archives (images from public authorities, human rights researchers, families and media). The second project was the photographic installation *Yuyanapaq: Para recordar*, inaugurated in the National Museum on August 9, 2003, which displayed 200 images from the Image Bank,<sup>274</sup> and was visited by more than 200,000 Peruvian citizens, including victims, their families and perpetrators.<sup>275</sup> Since then, it was used in several temporary exhibitions throughout Peru. The third project was a photograph book also called *Yuyanapaq: Para recordar* containing approximately 100 images from the photographic installation.<sup>276</sup>

In addition, citizens and nonprofit organizations created the online "Museum of Art and Memory" (Museo Virtual de Arte y Memoria), which shares a diverse catalog of artistic projects and creations related to the violent period investigated by the CVR.<sup>277</sup>

It should be added that unlike conflict situations in other countries, the internal conflict of Peru was largely covered by the local media, which benefited from freedom of the press.

## 3. Relationship between past and present

Pursuant to the Creation Decree, one of the CVR's objectives was to recommend institutional, legal, educational and other reforms. Accordingly, the CVR's Final Report assessed the sociopolitical and economic consequences of the internal conflict and proposed, among its recommendations, a series of institutional reforms to address those consequences.

One of the most problematic effects of the conflict period was the forced displacement of certain communities. The victims of displacement suffered from violations of their individual and collective rights, which are still at issue today.

Hence, among the sociopolitical consequences, the CVR noted (1) the destruction and weakening of the communities' structure due to forced displacements; and (2) the disturbance of the governmental system and hierarchy due to the murder of political leaders and the disturbance of the community participation system.<sup>278</sup>

271 Convenio de Cooperación Institucional, available at <http://cverdad.org.pe/lacomision/cnormas/convenio29.php>.

272 Convenio de Cooperación Institucional entre la Organización No Gubernamental Tramas y La Comisión de La Verdad y Reconciliación, available at <http://cverdad.org.pe/lacomision/cnormas/convenio34.php>.

273 *State of Fear: the Truth About Terrorism*, SKYLIGHT (last visited Nov. 8, 2013), available at <http://skylight.is/films/state-of-fear/>.

274 See Image Bank, available at [http://cverdad.org.pe/el\\_publicas/p-fotografico/index.php](http://cverdad.org.pe/el_publicas/p-fotografico/index.php).

275 See Museo Virtual de Arte y Memoria, available at <http://www.museoarteporlasmemorias.pe>.

276 See details of these projects, available at <http://cverdad.org.pe/apublicas/p-fotografico/index.php>.

277 Museo Virtual de Arte y Memoria, available at <http://www.museoarteporlasmemorias.pe>.

278 FINAL REPORT, Tome VIII, Part Three, Ch. 2, at 210 – 219.

As to the socioeconomic consequences, the CVR highlighted (1) the impact on human capital; (2) the destruction of assets and agriculture, and their impacts on the social and community infrastructure; and (3) the deterioration of economic institutions and development.<sup>279</sup>

The CVR proposed institutional reforms to address those consequences, with the purpose of reinstating the rule of law and democracy and to prevent further acts of violence. The proposed institutional reforms were grouped into four broad areas of recommendations with respect to (1) securing democracy throughout the country, respecting communal diversity, and promoting citizen participation; (2) securing democratic institutions in order to promote national defense and maintain internal order; (3) reforms of the judicial system, to adequately enforce civil rights and follow the constitutional order; and (4) educational reform to promote high-quality education that fosters democratic values and respect for human rights and diversity, especially in the rural areas.<sup>280</sup>

#### 4. Transparency and civil society participation

Public hearings were an integral part of the Peruvian CVR and were open to the public and the press, with the understanding that members of the press were not to ask questions of the declarants or Commissioners during the hearing. Instead, the Commissioners held press conferences for this purpose following the hearings.<sup>281</sup> The hearings were also broadcast live on Peruvian television and radio. Three of the 12 Commissioners and another observer were religious leaders, a presence that was viewed as positive by many of the victim declarants.<sup>282</sup>

The CVR also signed 30 institutional cooperation agreements throughout Peru<sup>283</sup> with governmental authorities, non-governmental institutions for philosophical, ethical and theological studies, human rights associations, anthropological institutions, legal and social sciences institutes, public and private health institutions (including mental health and psychosocial research institutions), telecommunications companies and media organizations (TV, radio, press, Internet), filmmakers, anthropological studies organizations, academic institutions and pro-indigenous and environmental institutions.

#### PROVER volunteers program

The CVR issued the Regulations Regarding the Organization and Functions of the Volunteers Program (Reglamento de Organización y Funciones del Programa de Voluntariado Promotores de la Verdad de la Comisión de la Verdad y Reconciliación) (“PROVER Regulations”) in order to regulate and foster citizen participation in the Commission’s work. The Volunteers Program, known as PROVER, was led by the Education and Communications area of the CVR with the purpose of coordinating activities with universities, social networks and NGOs.

The PROVER Regulations established how the institutions and the CVR would recruit and select volunteers among civil society organizations, senior students, college professors, social leaders and members of human rights defense organizations. The PROVER Regulations established the volunteer requirements, obligations and commitments. Examples of those activities were (1) interviews; (2) reports of the information obtained from the interviews; (3) records of the interviews; (4) fact gathering and information analysis; (5) gathering suggestions and complaints from the population regarding the CVR’s

279 FINAL REPORT, Tome VIII, Ch. 3., at 225-242.

280 FINAL REPORT, Tome IX, at 86-87.

281 FINAL REPORT, Annex I, Appendix I, Law No. 6, Regulation of Public Hearings of the Truth and Reconciliation Commission Title III, Art. 13.

282 FINAL REPORT, Annex X, at 8.

283 See the text of the specific agreements, available at <http://cverdad.org.pe/lacomision/cnormas/index.php>.

mandate; (6) outreach and awareness activities; and (7) the organization of local actions to foster civil society's participation.<sup>284</sup>

The PROVER Regulations also established CVR's obligation to provide the volunteers with the necessary training, financial and logistical resources to perform their work, as well as the issuance of "Acknowledgement Certificates."<sup>285</sup>

### The human rights movement

During the 20-year conflict period, human rights groups gathered information and documented cases, which served as a very important source for the CVR's Document Center.<sup>286</sup> In addition, public hearings throughout Peru were made possible, in part, due the human rights organizations' national network of affiliated entities. The human rights organizations provided legal advice to declarants, helped increase the public's awareness of the CVR's work and provided advice to the CVR during the years in which its mandate was being executed.

The human rights organizations also helped the CVR in the investigation of cases. The Asociación Pro Derechos Humanos (APRODEH) and the International Center for Transitional Justice, for example, helped the CVR in its investigation of systematic and widespread violations in Peru during the period of conflict, specifically in the *Los Cabitos Case*. In this case, the CVR found that the military base of Domingo Ayarza in Ayacucho was one of the principal centers for detention, torture, extra-judicial executions and forced disappearance during 1983 – 1984. The case set forth a "pattern" method of investigation for human rights violations, where cases were grouped by "pattern" for prosecution.<sup>287</sup>

The human rights movement also played an important role after the CVR delivered its Final Report, when it began to monitor the implementation of the Commission's recommendations, and then handled "the demands for truth and justice revealed by the [CVR] in the [47] cases presented to the [Peruvian] justice system for prosecution."<sup>288</sup>

### 5. Targeted violence<sup>289</sup>

The PCP-SL targeted the peasant and indigenous population of Peru. The PCP-SL adopted a Maoist ideology and converted rural and indigenous areas into the principal setting for the conflict, such that the war would gradually reach the cities. Second, their mentality was that there were only classes, not individuals. The CVR concluded that PCP-SL proclamations a potential for genocide with notions of racism and ethnic superiority over the indigenous population.

During the conflict period, the rural population, comprised almost exclusively of native communities, suffered the most from the acts of violence. The CVR findings concluded that for every four victims, three were from native communities.<sup>290</sup> Although the CVR found no basis to assert that the acts of violence towards the native communities constituted an ethnic conflict, the CVR concluded that such communities would not have been so affected by the acts of violence if they were not socially marginalized.<sup>291</sup>

284 See Arts. 4- 8, 13 of the PROVER Regulations, available at <http://www.datosperu.org/tb-normas-legales-oficiales-2002-Abril-27-04-2002-pagina-34.php>.

285 Published in the Official Gazette April 27, 2002. See Arts. 15, 17 of the PROVER Regulations, available at <http://www.datosperu.org/tb-normas-legales-oficiales-2002-Abril-27-04-2002-pagina-34.php>.

286 Gloria Cano & Karim Ninasquipe, *The Role of Civil Society in Demanding and Promoting Justice*, THE LEGACY OF TRUTH CRIMINAL JUSTICE IN THE PERUVIAN TRANSITION 43 (2006).

287 *Id.* at 45. FINAL REPORT, Tomo VII, Ch.2, at p. 52 – 62, *Desapariciones, Torturas y Ejecuciones Extrajudiciales en la Base Militar de los Cabitos* (1983-1985).

288 *Id.* at 43. The numbers of cases are as of 2006. However, the Peruvian state had assumed, as early as 2001, responsibility before 150 cases of human rights violations committed during the period investigated by the CVR. See e.g., Jo Marie Burt, *Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations*, 3(3) INTERNATIONAL JOURNAL OF TRANSITIONAL JUSTICE, 348, available at <http://intl-ijl.oxfordjournals.org/content/3/3/384.full.pdf+html>.

289 For additional information on how the CVR addressed indigenous issues, see *Study on the rights of indigenous peoples and truth commissions and other truth-seeking mechanisms on the American continent*, United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, Twelfth Session, Feb. 14, 2013.

290 FINAL REPORT, Tome I, at 29.

291 FINAL REPORT, Tome I, at 29.

Of the marginalized victims, the peasant population (campesinos) was the principal target, consisting of 79 percent of the total victims reported. According to testimonies received, the CVR concluded that 75 percent of the victims who died in the internal armed conflict spoke Quechua or another native language as their mother tongue. The CVR found that these victims should receive preferential treatment from the state in the form of reparations.<sup>292</sup>

### C. Findings and justice

The CVR Final Report contained all aspects of the CVR's work. The majority of the Final Report focuses on the factual conclusions regarding the 1980 – 2000 internal conflict in Peru. In the General Conclusions to the Final Report, the CVR divided its findings into eight sections: (1) the dimensions of the conflict; (2) responsibilities for the conflict; (3) responsibility of state entities; (4) the political process and the governments; (5) the role of social organizations; (6) the consequences of the internal conflict;

(7) the need for reparation; and (8) the process of national reconciliation. The Conclusions can be broken down into (1) factual findings and conclusions; and (2) consequences and reparation.

The findings and conclusions of the Final Report are of crucial importance to the CVR's purpose since they enable the first step of reparation: an understanding and recognition of the conflict in all of its dimensions.

#### Contextual conclusions

Part of the CVR's investigation focused on uncovering the conflict's true dimensions, including statistical data relating to the facts of the internal conflict, as well as the political situation at the time.

The factual conclusions included information on victims (such as death tolls, disappearances and targeted victims). It was determined that the conflict was the most extensive and intense period of violence in Peruvian history.

#### Responsibility and recognitions

One of CVR's key contributions to the administration of justice was the identification of crimes and their respective perpetrators. As mentioned above, the two principal subversive organizations involved in the conflict were the MRTA and the PCP-SL. The Final Report notes that the MRTA had a smaller presence in the conflict than the PCP-SL, with the CVR estimating that the MRTA was accountable for approximately 1.5 percent of the deaths in the conflict, while the PCP-SL was responsible for more than half of all deaths<sup>293</sup> and held the gravest responsibility for the entire conflict.<sup>294</sup> The CVR also found that responsibility lay with state entities; the CVR concluded that the former governments should be held accountable for human rights violations carried out by the military police and armed forces.<sup>295</sup> Finally, the CVR analyzed the actions of various civil society groups during the years of the conflict, including popular resistance parties, churches, media and trade, education and human rights organizations.<sup>296</sup>

292 FINAL REPORT, Tome VIII, at 265.

293 FINAL REPORT VIII, at 246, 248.

294 This conclusion was based on the CRV's findings that leaders of the PCP-SL "(1) initiated the violence in opposition to the wishes of the overwhelming majority of the population; (2) formulated their fight against Peruvian democracy with a bloody strategy; (3) violently practiced occupation and control of rural and peasant areas, with a high cost in lives and human suffering; (4) had a genocidal policy that involved acts to provoke the state; and (5) decided to proclaim the so-called strategic equilibrium that stressed the terrorist character of their actions." FINAL REPORT Tome VIII, at 248.

295 FINAL REPORT Tome VIII, at 253.

296 FINAL REPORT Tome VIII, at 261 – 264.

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## D. Lessons and the way forward

As part of the Final Report, the CVR submitted a Comprehensive Plan for Reparations.<sup>297</sup> Planned reparations include (1) symbolic reparations, such as acts of public recognition and creation of memorials; (2) health reparations; (3) educational reparations; (4) restitution of citizens' rights (including legal advice and regularization of the legal situation of the disappeared); (5) economic reparations to victims; and (6) collective reparations to communities affected by the conflict.<sup>298</sup>

Implementation of the various reparations programs is currently carried out by the Reparations Council (CR) and the High Level Multisectoral Commission (CMAN), state institutions created in the wake of the CVR. The collective reparations program entered its implementation phase in June 2007 and since then, has been implementing measures in different Peruvian communities

to identify and help those victims who should be beneficiaries under the reparations program. For instance, the collective reparations program has focused on the Ayacucho region, since it suffered greatly during the conflict period.<sup>299</sup>

As of that date, two NGOs—the International Center for Truth and Justice (ICTJ) and the Peruvian Pro-Human Rights Association (APRODEH)—have monitored the progress of implementing collective reparations.<sup>300</sup> The individual economic reparations program began in July 2011 and benefitted 1,878 victims as of November 2012.<sup>301</sup>

More generally, the Final Report proposed a process of national reconciliation, based on renovation of the Peruvian state and society, in building a country “that is positively identified as multiethnic, pluri-cultural and multilingual.”<sup>302</sup>

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297 FINAL REPORT, Annex IX, Comprehensive Plan for Reparations.

298 FINAL REPORT, Annex IX, at 3-5, Comprehensive Plan for Reparations.

299 *Cuanto se ha reparado en nuestra comunidad*, at 10.

300 INTERNATIONAL CENTER FOR TRUTH AND JUSTICE, *Cuanto Se Ha Reparado en Nuestras Comunidades? Avances, percepciones y recomendaciones sobre reparaciones colectivas en Perú* (2007 – 2011).

301 Office of the High Commission of Human Rights, Universal Periodic Review—Media Brief (Nov. 1, 2012), available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights1November2012am.aspx>.

302 FINAL REPORT, Tome VIII, at 266, Conclusions.

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