

**EXECUTIVE SUMMARY by Claudia Gerez Czitrom
TRUTH COMMISSIONS: AN UNCERTAIN PATH?**

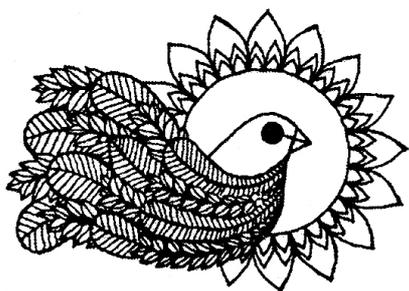
Comparative study of truth commissions in Argentina, Chile, El Salvador, Guatemala and South Africa from the perspectives of victims, their relatives, human rights organisations and experts.

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Table of contents:

Foreword

Introduction

Chapter 1. Truth Commissions: a general comparison

Chapter 2. Truth Commissions: reparation measures

Chapter 3. Truth Commissions : victims' feelings and interpretation

Chapter 4. Truth Commissions: recommendations

Concluding remarks

Foreword

The idea for this comparative study on truth commissions emerged towards the end of the 1990's from the Corporación de Promoción y Asociación for the Prevention Defensa de los Derechos del Pueblo (CODEPU), an organisation founded to defend human rights in Chile under the Pinochet regime. Given their own country's experience with the National Truth and Reconciliation Commission – created in 1990 to “contribute to clarifying the truth about the most serious human rights violations committed during the previous years in order to contribute to the process of reconciliation of all Chilean people” – CODEPU recognized the need to analyse and evaluate the impact of the process from a comparative perspective. Furthermore, they sought to understand what significance the establishment of truth commissions has had for those most directly affected by their countries' violent past: victims of human rights violations and their relatives.

As an international organisation involved in preventing torture and other ill-treatment world-wide, the Association for the Prevention of Torture (APT) took an interest in the project in order to study the potential of these extra - judicial investigative bodies to stop these abuses from happening again. We therefore decided to support the initiative proposed by CODEPU to conduct an in-depth comparative study on truth commissions in five countries: Argentina, Chile, El Salvador, Guatemala and South Africa. These countries were selected given the prominence of the process at a domestic as well as international level, and due to the revealing differences amongst them, despite their apparent similarities.

Since one of the most significant aspects of truth commissions' efforts has been to give victims back the voice that had been officially silenced and denied, the study sought again to modestly recover this voice, by listening to their views and opinions on the impact of truth commissions in their own lives, communities and societies. Thus, over one hundred interviews were conducted with victims, their relatives and human rights groups from the five countries indicated, as well as with some international experts.

With the completion of the study, a follow-up seminar on truth commission is scheduled to take place in Mexico City from 18 – 20 July 2002. In addition to discussing and expanding on the findings of the study, participants will explore how truth commissions have specifically addressed the practice of torture, particularly in relation to aspects of prevention and reparations. From these discussions, we hope to point to some practical recommendations useful for the work of future commissions. Furthermore, the event will provide the opportunity to advance the current public debate in Mexico regarding ways of dealing with past human rights violation – including the perspectives of a truth commission – by learning about other countries' experience with such bodies.

We hope that the study and seminar on truth commissions will contribute to broadening and deepening the understanding of the role of truth commissions in societies during periods of transition, in confronting a past marked by violence and abuse and moving towards a future characterised by respect for human rights.

Association for the Prevention of Torture, Geneva, June 2002

Introduction

Despite significant efforts made by the international community to safeguard peace, numerous societies continue to undergo periods of institutionalised violence, characterized by grave human rights violations. These wide-spread abuses not only contravene the internationally agreed human rights framework, but also signify the profound erosion of democracy and the rule of law. In numerous countries emerging from such a past, truth commissions have been established in an effort to seek solutions to the profound institutional and social problems generated. In particular, commissions were established in order to seek the truth, repair the damage and initiate a reconciliation process in profoundly divided societies.

In accordance to international human rights law, truth commissions were part of a moral obligation to victims and their relatives to acknowledge that these abuses could not ever be justified. Indeed, perhaps one of the greatest contributions of these bodies has been to recover the “historical memory” by investigating violations that had been officially concealed and denied. Notwithstanding the serious limitations of truth commissions for resolving some of the political, ethical and legal problems arising from violations, they were the first signal of States assuming their responsibility and attempting to seek solutions.

As a Chilean human rights organisation involved in our own country’s process of transition, we became interested in learning more about the impact of truth commissions in other countries. Furthermore, we wished to learn more about the perception of victims and human rights groups, keeping in mind the growing tendency of international human rights law to develop State obligations with respect to the rights of victims and in particular, the recognition that their needs and opinions should be the point of departure for reparations’ policies. We perceived that discussions and decisions about truth commissions were generally taken without the victims’ participation, as well as a marked tendency to emphasize the achievements of truth commissions, sometimes as an evasion of other State obligations.

In light of these concerns, and given that truth commissions are more and more frequently the first mechanism proposed following periods of violence, we felt moved to make a contribution from our position as human rights defenders by suggesting ways to improve their practice. We begun through a consultation process and by selecting the countries, with the criteria of the international expectations and repercussions raised by their respective truth commissions. We then designed the questionnaires and began interviews *in situ* (except for South Africa, where interviews were conducted with the help of a local human rights organisation) with the support of a network of collaborators. Eighty-two interviews were conducted, of a total of 102 people. Of these, 70 had suffered some sort of human rights violation, particularly torture. The interviews were complemented by a broad bibliographical review for the elaboration of the final text.

We hope that analysis and reflection of the study will help recover the voices of those excluded from the official discourse and where many of us feel identified.

Corporación de Promoción y Defensa de los Derechos Humanos
Santiago de Chile, January 2002

Chapter 1. Truth Commissions: a general comparison

1. a) Origin / context

The truth commissions included in this study were established during a thirteen year period: Argentina in 1983; Chile in 1990; El Salvador in 1991; Guatemala in 1996 and South Africa in 1995. In all countries, their establishment was due largely to mounting international and national pressure. Their creation also marked an official recognition of obligations under international human rights and humanitarian law, as well as the need to establish a sound and legitimate basis for a new democratic order. All five commissions emerged in contexts characterised by winning and losing political forces after a period of conflict, although many of those responsible for violations still had strong presence within the ruling power.

Notwithstanding these similarities, each truth commission was marked by a particular historical and political context, influencing all aspects of its development. In Chile and Argentina, the truth commissions constituted one of the first measures adopted during the democratic transition. Both were established by presidential decree shortly after the new head of state assumed power, in response to demands for “truth and justice” initially put forth by human rights groups and later adopted by the candidates during their presidential campaigns. In El Salvador and Guatemala, the commissions formed part of the negotiated peace accords between the government and the armed opposition forces after prolonged periods of civil war. The South African commission was the only one established by legislative decree, approved by an overwhelming majority after a relatively open public debate.

In **Argentina**, the military junta, severely weakened by an economic crisis, mounting social mobilisation, international pressure and the military defeat in the *Malvinas* (Fakland Islands), negotiated a transition to civilian power in 1982. Raúl Alfonsín assumed the Presidency on 10 December 1983 with 52% of the vote. A few days later, he announced a series of measures including the trials of former members of the military junta and the armed opposition groups, as well as the establishment of the National Commission on the Disappearance of Persons (CONADEP) to investigate the whereabouts of the disappeared and to present a report. Nonetheless, a behind-the-scene military-civilian pact was being negotiated, which included an amnesty. Human rights groups had been pushing for a parliamentary truth commission, leading many of them to initially refuse to collaborate with the CONADEP.

Those interviewed emphasized the tension between democracy and the powers of the dictatorship during this period, noting that the military still exercised a “*subtle direct and indirect pressure ... the dictatorship did not really go away*”. While the measures taken by the new government led to expectations that truth and justice was possible, many were highly aware of the “*high level of connivance of the military structures and norms... making it impossible to obtain trials and punishment... CONADEP was a product of this connivance with State terrorism under the guise of democracy*”. The power still exercised by the military eventually led to the promulgation of amnesty laws in 1986 and 1987, paving the way towards impunity. The CONADEP “*was part of the [bargaining process] of diverse mechanisms that led*

eventually to impunity... CONADEP... and the impunity laws were part of a State policy to avoid ... dismantling the apparatus of repression". Despite these critical views, many felt that "when the constitutional government assumed power, it could not avoid taking certain measures".

Negotiating the transition to democracy in **Chile** also involved making certain concessions to the military forces, including an amnesty and the acceptance of the 1980 Constitution, the pillar of the Pinochet regime. The triumph of the "no" vote in the 1988 referendum to determine whether Pinochet should remain in power, finally led him to step down, although he would remain at the head of the armed forces and life-time senator. In the context of mounting public disapproval of the military regime, one of the key demands of the human rights movement - to derogate the Amnesty Law - was adopted as part of the political program of the transitional government, only to become one of the main points of the program not implemented. One of the first measures taken by President Patricio Alwyn, after assuming power in 1990, was to address human rights violations through the establishment of the National Truth and Reconciliation Commission (CNVR), generating strong tensions between Pinochet supporters and the democratic government.

Despite its restrictive mandate, which only included the investigation of violations resulting in death, its creation was generally welcomed by victims' and human rights groups. The CNVR *"was the Alwyn government's first response to the drama of human rights violations, indicative of a common will to confront the issue".* Nonetheless, criticisms about the concessions were also expressed, *"it was a solution which met the particularities of the transition... this was the easiest path, the easiest for the executive power, which was confronting a series of restrictions which conditioned its actions... "*. These pressures were evident during Alwyn's first presidential address, which minimized the right to justice and their political clout could be heard through rumblings and troop movements in response to legal demands for justice presented to the tribunals.

The Truth Commission in **El Salvador** was established as part of the peace accords that put an end to over a decade of violent civil conflict. The lengthy and complex peace negotiation process, characterised by numerous advances and regress, particularly regarding land issues, was initiated in 1989 after the five Central American presidents requested the intervention of the UN Secretary General. The final Accords of Chapultepec were finally signed between the Salvadoran government and the Farabundo Martí National Liberation Front (FMLN) armed opposition group in January 1992.

The Truth Commission in El Salvador was established in 1991 by a previous accord dealing specifically with reforms to the armed forces, the electoral system, the judiciary and human rights. As with the general negotiation and pacification process, the United Nations played a central role in establishing, running and funding the Truth Commission, established to investigate the grave acts of violence which had occurred since 1980. While the establishment of the commission raised expectations amongst the population most directly affected by the conflict, there was also a recognition of the limitations due to structural problems of justice and impunity. As one relative expressed, *"The relatives were happy that this was done... we had very high expectations of seeing not an economic reparation, but a moral one. But we*

also knew that in El Salvador it wouldn't go that far, because those who have power in their hands were never going to say they were sorry, they are the ones in control of the laws and they are too protected“.

The pacification process of the Central American isthmus also helped bring an end to the 36 year civil war in **Guatemala**, characterized by the systematic repression directed primarily against the indigenous population and leading to over 100,000 deaths and disappearances, one million internally displaced people and 50,00 thousand refugees. A former commander of the Guatemalan National Revolutionary Unit (URNG), the main armed opposition groups, relates that *“the first significant step to negotiating the Firm and Lasting Peace was the signing of the Esquipulas II Accord in 1987. The President then promised a negotiation to respond to the international community, although he was not really in a position to do so... the abrupt change in the international context ... [led to] the beginning of the negotiations which were blocked numerous times due to the resistance of the Military...”*

The Commission for Historical Clarification of Guatemala was established by the 1994 Oslo accords, although it did not begin its work until after the signing of the final peace accords in December 1996. According to one of those interviewed, *“this was one of the most complicated agreements and each side had to make important concessions... representatives of the military found it difficult to accept the establishment of a commission to investigate human rights violations because, as the commission itself later found, more than 90% of the violations had been committed by the military”*. Despite the limitations inherent to a negotiation between two sides of an armed conflict, the Commission was established, as its name indicates, so that the population of Guatemala could learn about its own history.

In **South Africa**, the “negotiated revolution” which put an end of the political system of apartheid, which had constitutionally subordinated and restricted the rights of the black population since 1948, began during the 1980's when South African leaders began making confidential visits to Nelson Mandela, leader of the African National Congress (ANC), in prison. The systematic repression of the liberation movement against apartheid had led to an ever mounting cycle of violence, until leaders were finally pressured into taking some measures to move towards changing segregation in the political system. In 1990 political prisoners, including Mandela, were liberated, the ANC legalized and formal negotiations begun in 1993 once the condition for the liberation movement to abandon its armed struggle was met. Given the continued presence of key officials from the apartheid regime until 1999, a general amnesty became one of the sticking points of the negotiations.

The new parliament was therefore given a mandate to adopt an Amnesty Law, as well as to create the Truth and Reconciliation Commission (TRC), which was created by a constitutional act in December 1995. A member of a human rights group points out that *“a key point in the creation of the Commission [is]... the amnesty process.”* An anthropologist further notes that it is a *“political myth to consider the TRC the result of a negotiated accord to end hostilities. In fact, the agreement about an amnesty was the result of a negotiation and the origin of the TRC was in the interest of a small part of the population”*.

In summary, those interviewed in the five countries generally agreed that one of the most urgent tasks following a period of prolonged conflict was to investigate human rights violations, a task dealt with through the truth commissions. Nonetheless, given the political context, truth commissions were greatly limited by the remaining grip on power of those largely responsible for the violations. *“None of the governments that created commissions were democratic. They did it under international pressure. And the international pressure was a response to the struggle of human rights organisations... the commissions were created as a means to avoid justice or as a mechanisms that was easier to deal with...”*

1. b) Mandate / objectives

The commissions’ mandates generally defined their scope of action, although when the mandate was ambiguous the commissioners themselves had a wide scope for interpretation. The purpose of all five commissions was to **investigate and establish the truth about certain violations** with their mandate **in order to contribute to the national reconciliation process**. The South African and Chilean commissions even included these objectives – truth and reconciliation – in their names, while the Salvadoran commission explicitly states “stimulating the transition towards national reconciliation” as one of its objectives. The Guatemalan Commission emphasizes the aspect of truth as one of its fundamental principles: “the right of the Guatemalan people to know the truth... with the hope that knowing the past will ensure that these sad and painful episodes of the history of Guatemala will not be repeated”. The Argentine Commission emphasized that investigating the whereabouts of the disappeared would be a contribution to developing a democratic system. **The right to justice, was not included as an objective, in any of these commissions.**

1. c) Crimes investigated

The crimes to be investigated were sometimes clearly established in the mandates, while in other cases the commissioners themselves had to define them. In **Argentina**, the mandate set out that only cases of disappearances would be investigated. The mandate of the **Chilean** commission also clearly limited the object of investigation: disappearance; torture resulting in death; politically motivated executions and deaths under both State and individual responsibility. The fact that the mandate left off torture not resulting in death was one of the aspects most criticised by victims, their relatives and human rights groups. The **South African** law established that the Commission investigate “gross human rights violations”, while the mandate further clarified: massacres, kidnapping, torture and ill-treatment, as well as conspiring and instigating acts related to the past conflict for political reasons.

As the mandate of the **Salvadoran** Commission made reference only to “grave acts of violence”, the commissioners decided not to exclude any crime, but rather to establish criteria based on magnitude and severity of the violations. They investigated individual acts that had moved Salvadoran society and the international community, as well as those showing a systematic pattern of violence. Similarly, the **Guatemalan** commissioners interpreted their mandate to investigate human rights violations and acts of violence to include all types of crimes, establishing the following categories: genocide against the maya population committed by government forces;

massacres by the government and armed opposition groups; kidnappings and disappearances by either side; forced displacement; acts of violence by the economic powers; and forced recruitment.

1. d) Legal framework

The legal framework of the commissions was also not always explicitly stated, leaving this and the corresponding responsibilities to be determined by the commissioners. The report of the **Argentine** Commission is the only one not to make reference to the legal framework of its investigations.

All the other commissions explicitly mention international human rights and international humanitarian law as their legal framework, with varying interpretations of the norms. The **Chilean** Commission expanded the notion of human rights violations to include responsibility of individuals acting with political motives, an interpretation highly criticised by human rights organisations. In **El Salvador**, the commissioners determined that, where the armed opposition forces had *de facto* government control over a territory, they held obligations in accordance to international law. The **Guatemalan** Commission defined two fundamental concepts: human rights violations as those committed by State agents or with their knowledge and acquiescence; and acts of violence as those committed by the armed opposition groups and by private persons without the collaboration or consent of the State. It also made reference to its own constitution and legislation. The report of the **South African** Commission acknowledges the controversial issue of applying humanitarian law to armed liberation movements, particularly when they opposed a system, apartheid, which was internationally defined as a crime against humanity.

1. e) Period of investigation / period of functioning

While the need to limit the investigations to a set period was necessary, the criteria had more to do with political and historical events, than by the period that the violations actually took place. Few explanations were provided about the reason for selecting a particular period for the commissions' attention. The Commission in **Argentina** investigated disappearances which occurred between the military coup on 24 March 1976 and the elections for a constitutional president on December 1993, leaving out the escalation of repression previous to the coup. In **Chile** by contrast, few violations occurred before the 11 September 1973 military coup, the initial date covered by the commission until the end of the military regime in March 1990. In **Guatemala** and **El Salvador**, rather than emphasize precise dates, general periods during which the respective armed conflicts and the spiralling escalation of violence took place were considered. Despite the long history of institutional violence and exclusion in **South Africa**, the Commission limited its period of investigation to only 23 years: from the 1 March 1960 when the Afrikaner nation became a Republic to 15 December 1993, the year when negotiations for the transition began.

The time that the commissions were given to investigate was always insufficient given the magnitude of the violations. As a result, the investigations were not exhaustive and many cases were left out. The South African and Guatemalan Commission were provided with an extension of their initial mandate, while the others

finalized their investigations within the time period initially established of eight to nine months.

1. f) Composition

Credibility, objectivity and impartiality were the shared criteria for selecting members of the Commissions. Furthermore, given the social and political polarization, in most cases supporters of both the outgoing and incoming regime were named, as well as some people with a commitment to human rights and, in some cases, international experts. With the exception of the initial selection process in South Africa, the process was never public and, in most cases, depended on the discretion of the President or the UN Secretary General.

The **Argentine** Commission was comprised of 12 nationals named by the President. Some people declined the invitation in protest for the legislative commission not being established. The final nominations were highly criticized by human rights groups given that some of the members had either participated directly or lent public recognition to the military rulers and that no one with links to the struggle to locate the disappeared was nominated. In contrast, human rights groups in **Chile** were satisfied with the selection of 8 Chilean commissioners by the President, given the representation of people from different political sectors and two with a recognized background in human rights.

In **El Salvador**, three foreign commissioners were named by the UN Secretary General, as a way of dealing with the acute level of fear and polarization of the Salvadoran people. However, the exclusion of the Salvadorans also led to the opinion expressed by one of those interviewed that the commission was imposed "*from the outside and from above*". In **Guatemala**, the commission was comprised of both Guatemalan and foreign nationals, with the coordinator, the former UN Special Rapporteur for Guatemala, named by the UN Secretary General. Learning from the Salvadoran experience, civil society in Guatemala made a series of recommendations regarding the integration of the commission, including, surprisingly, that a victims should not be named, due to the need for objectivity. While not all of these recommendations were heeded, an indigenous woman was designated and the commission generally enjoyed a high level of credibility.

The **South African** experience was markedly different from the rest: a public notice calling for candidates was made, several candidates were then selected to give public interviews and from this short-list, 17 commissioners were named by the President. There were nonetheless, a series of practical difficulties in the process. As one Commission member explains, after a series of misunderstandings, "*one day I came home and my neighbour said that he heard over the radio that I had been elected commissioner*". One of the main criteria was to have been involved in the struggle against apartheid, as this was a key element to their credibility.

1. g) Procedures

The Commissions were granted attributions to enable them to conduct their investigations, including access to documents, files, interviews and sites. While most commissions clearly stated that their role was separate from the courts, some had

the power to call on public officials to declare. And while State officials were under an obligation to provide information, most refused to do so, by alleging documents had been destroyed, providing incomplete or misleading accounts and sometimes outright refusing to collaborate. **By far the greatest barrier to effective investigations was the failure of the security and armed forces to disclose relevant information.**

This was clearly the case in **Argentina** and **Chile**, where the latter was not granted legal power to call on people to declare. In **El Salvador** and **Guatemala** both parts to the conflict made a commitment to collaborate with all relevant information. However, the armed and security forces provided an incomplete and insufficient response and the armed opposition group of El Salvador also notably did not disclose all information. The continued atmosphere of violence in this country was also an obstacle to investigations, which sometimes were not conducted with the sufficient guarantees of confidentiality. In **South Africa**, although the Commission had the authority to call on those responsible to declare, very little information was actually disclosed.

Most commissions established a central office in the capital city and regional offices in some of the provinces, while many also made on-site visits to other regions of the country and were supported by the consulates which took testimony from exiles. They publicized their objectives through the press, particularly to encourage people to come forward with testimonies. Human rights organisations played a particularly important role for channelling information and cases to the truth commissions and informing victims and relatives about the commissions' work.

In **Chile**, where no regional offices were established, testimony in rural areas was taken by municipal authorities, many of whom had been public officials during the dictatorship. This of course, impeded many relatives from providing information "*... testimony was taken by a lawyer who had been here during the dictatorship... and this provoked a lot of distrust in me...*". Complaints were in fact not received from many rural areas. The atmosphere of fear and suspicion was particularly difficult to overcome in **El Salvador**, "*remember that it is one thing to be armed, your weapon gives you courage and without arms it's something else... to come and give a declaration... of course there was fear... the soldier was still standing there with his weapon and I had my hands empty... of course, this made me shake...*". This was also an obstacle in **Guatemala**, particularly amongst indigenous communities, "*the situation of fear to which the Guatemalan people has been submitted, has made it very difficult to obtain testimony*" said another person interviewed.

The **South African** Commission was again distinctive, given the public character of many of the testimonies and the mass dissemination of the hearings through the mass media. While criteria were established to determine who would get a public hearing, many of those not chosen felt let down. As one victim explained, "*I don't think it was a problem to talk about this, it was a good way of making it go away...*" **One of the requirements of the amnesty process was for perpetrators to also give public testimony.**

The creation of a truth commission was always a top-down decision emanating from those with political power or the parts in a conflict. As a person interviewed in Chile expressed, "*the creation of a commission, the way in which it was constituted, its*

competencies, its work were all a governmental decision". Usually only after the decision was made was the process opened up to consultation, particularly with human rights organisations, which were always recognized as the main source of information and link to victims and relatives. The reports mention that the call for collaboration was extensive to other sectors including the armed and security forces, guerrilla groups, government institutions, etc.

1. h) Identification of the perpetrators

The identification of the perpetrators of human rights violations in the commissions' reports was in most cases stipulated in the mandate. Otherwise it was left up to the discretion of the commissioners who were subjected to pressure not to reveal the names. The Commission of El Salvador and South Africa identified and published the names, while in Argentina the names were presented confidentially to the executive. In Chile and Guatemala the names were not revealed.

Those interviewed almost unanimously agreed on the importance of including the names, since this is part of the truth and the first step towards justice. **For most victims and relatives, justice is not only tied to criminal sanctions, but also to public recognition**, *"It was seen as a form of justice when the name of the perpetrators was known. In most cases, those responsible are not known. The names of victims are always included... but not the perpetrators. And for the victims, this is like not having justice"*.

In **El Salvador**, despite very strong pressure by the executive and the armed forces, the commissioners never doubted that they should reveal the names the perpetrators, as they all agreed that this was the only way to know the entire truth. Furthermore, they reasoned that the lack of an independent and effective criminal justice system to initiate investigations was lacking. Those interviewed expressed unanimous support for this decision, although many criticized that the report had not sufficiently condemned the responsibility of the United States government, as one person explained, *"It is missing perhaps one of the greatest violators of human rights that has existed, the government of the United States..."*.

The mandate of the **South African** Commission stipulated that the investigation should include the identification of both people and organisations responsible for abuse. In the conclusions of their report they identify six groups primarily responsible, although they recognize that they do not share the same level or responsibility, placing most on the State and its allies. Part of the process of identification, where those who appeared before the Amnesty Committee. While most of those interviewed in South Africa found out about the perpetrators through the amnesty process or in the report, some noted that many had still not been identified.

The report in **Argentina** does not include names, stating that the judiciary is responsible for proceeding with investigations to determine guilt or innocence. The Commission presented a list of 1,351 perpetrators confidentially to President, which has still not been made public to this day.

With similar reasoning, that only the tribunals have competence to determine individual criminal responsibility and the presumption of innocence as a basic principle, the **Chilean** Commission did not include names perpetrators in its report. While most of the human rights organisations agreed with this legal argument, because “... *this is the responsibility of the courts*”, victims and their relatives tended to disagree with this approach because it only revealed a partial truth. As one person elaborated, “... *the historical truth tells us that there are victims and perpetrators. They can not stay anonymous, those responsible for the crimes committed can not be forgotten, because this is part of the truth...*” .

In **Guatemala**, one of the conditions negotiated was not to determine individual criminal responsibility. The report makes specific reference to this issue, mentioning that its role was not to act as a criminal proceeding, but rather as a means for historical clarification. Despite this exclusion, human rights organisations were generally supportive of the exhaustive investigations carried out by the Commission, “*Even though the mandate limited them... the fact that they did not give names does not mean that people could not find out who was the commander of that base.. this was positive because it was as way of working around the silence that was imposed on them*”. The official recognition of the role of the US government in the conflict was also highly significant for the population of Guatemala.

1. i) Results

Reports with the results of the investigations were presented by all of the commissions. The Chilean and South African reports had the same name as the commission, while the others tried to reflect the dramatic magnitude of its content: “from Madness to Hope” in El Salvador; in Guatemala the “Memory of Silence”; and in Argentina “Never Again”.

The **Argentine** report registers **8,690 cases of disappearances**, noting that the number could be much greater, and refers to the existence of approximately 340 detention centres. It describes in detail the methodology of the repression and includes numerous testimonies, commenting on the role of the church and the judiciary. It includes a special chapter on the coordination of repression in Latin America and on the disappearance of children and pregnant women, but does not have an extensive analysis of the origin or the historical context of the conflict, which is referred to only briefly in the Prologue as part of the State response to acts of terrorism (known as the “theory of the two devils”).

The **Chilean** report documents **3,400 people disappeared, executed or killed as a result of torture** including those in foreign countries, as part of a policy of systematic extermination of the leftist political opposition, placing most of the responsibility of the abuses on the intelligence apparatus and also making reference to the omissions of the judiciary. Detention centres and torture methods are described in great detail. A special chapter on the political context gives an analysis of the grave crisis and polarization of society preceding the military coup, emphasizing that this is no way should be seen as a justification of the violations.

The report of **Guatemala** is comprised of 12 volumes, registering more than **42,000 victims, of which 29, 000 were executed or disappeared**, noting that the State and

paramilitary forces were responsible for 93% of the violations. Of those victims who could be identified, **83% were indigenous**. The report also describes the evolution of the conflict and the violations during different periods, referring to the changing patterns of geographic areas and victims targeted. A chapter, written by the Guatemalan members of the Commission, gives an in-depth historical analysis of the causes of the conflict, making reference to the historic concentration of economic and political power and the racist and discriminatory character of society.

The **Salvadoran** report describes in detail 34 of the **22,000 cases investigated**, illustrating the magnitude of the violence during the 12 year civil war, pointing out that 95% of the complaints were in rural areas. The annexes include forensic information, the texts of the peace accords, statistical information and the list of victims. A special chapter develops the “chronology of the violence” and a special mention is made of US economic and military support to the counterinsurgency measures.

The first volume of the South African report includes **21,000 victims, of which 2,400 gave public testimony**, recognizing that the majority of the crimes were committed by the white minority. The volume on the context points to the role of racism, colonization and the Cold War as determining factors of the conflict. Volume three describes the violence from the perspective of the victims. The report also includes over 7,000 requests for amnesty, although the Amnesty Committee would later conclude its work and draw up a special volume.

Upon their conclusion, the **reports were presented to the authorities in a public act** and then disseminated. The only **exception** was **El Salvador**, where the report was presented to the UN Secretary General and the parts of the conflict at the UN headquarters in New York. The report was not distributed until one month later, although no personal distribution to victims and family members and even less public dissemination of the report took place. When the interviews for the study were conducted in the year 2000, most of those interviewed did not have a copy of the report.

The President of the **Argentine** Commission, Ernesto Sábato, presented the report to the President of Argentina on 20 September 1984 with thousands of people congregated outside. One of the sectors of the Madres de Plaza de Mayo did not participate because they did not want to “*sign a blank check*” since they did not trust what the President would do with all the information he had, but they did know he had given his backing to the judges who were accomplices to the military regime. A month later the publication of the report was presented in a public act and later the report translated to five languages with over 25 editions.

In **Chile**, the mass media covered the presentation of the report to the President of Chile in the Presidential Palace on 8 February 1991. A month later, the President gave a public summary of the document, calling on society to fully assume the truth and asking forgiveness from the victims on behalf of the State. Each family that presented testimony to the Commission was given a copy of the report, which was also published in its totality in a government newspaper.

Approximately 10,000 people attended the public presentation of the **Guatemalan** report on 25 February 1999. The Commissioners emphasized that they could never

have imagined the dimension of the tragedy and made reference to the structure of economic, social and cultural relations in the country. Both the representative of the government and the guerrilla forces spoke and made a commitment to assume their responsibilities and take the recommendations into account. In his intervention, the Minister of Defence said that, while the actions of the armed forces were to defend national sovereignty, if any errors or excess had been committed, he asked forgiveness of the Guatemalan people. He went on to say that he also forgave all those who had committed any harm to soldiers.

The President of the **South African** Commission, Bishop Desmond Tutu, presented the report to President Nelson Mandela in a public act on 29 October 1998. Many leaders of political parties did not attend the act, since the report mentioned that those responsible for violations were both those within power who applied apartheid, as well as those who opposed it.

The reactions to the report were fairly similar in all countries. Once the results of the investigations were known, many of those who had previously supported it, but were somehow implicated in the responsibility, now gave it less importance or ignored the results. While the victims were also very critical of the contents of the reports, they nonetheless valued the importance of having recognition of the official truth.

The way in which the reports were presented generated different reactions. Those who attended the act in **Guatemala** were highly moved by the magnitude of the genocide against the indigenous population and its recognition by the President and the armed forces. Some of those interviewed remarked, *“for those of us who were there it had the effect of revindication, especially since we did not think they would go that far, we thought it would be much more limited”*.

Argentine society felt horror before the acts contained in the report and accepted it as a historic truth. The armed forces rejected and discredited the report, justifying their actions and claiming that the deaths had occurred in combat, but that they were nonetheless sorry for some “excesses”. Years later, in 1995, this pact of silence and negation was broken with the testimony of Captain Scilingo who described in detail how political prisoners were thrown into the sea during weekly flights. Shortly thereafter, a General surprised the country by publicly recognizing the crimes committed, stating that the dictatorship had violated military norms, expressing solidarity with the victims and committing to taking steps to clarify the whereabouts of the disappeared. While most human rights groups were pleased with the official recognition of the facts, they absolutely rejected the “theory of the two devils” which in their view puts the actions of the opposition groups on the same level as those practiced by the repressive apparatus of the State.

Chilean human rights groups also welcomed the official recognition of the truth about grave and systematic human rights violations committed during the military regime. Nonetheless, three main criticisms were underlined by CODEPU at the time: that many violations were left out (including generalized practice of torture when it did not result in death); including political violence at the hands of individuals as a human rights violation when legally only States are responsible for violations; no individuals were named as responsible for violations, which would have been at least a symbolic

punishment. The political right had an ambiguous reaction. On one hand they accepted the findings and condemned the actions and on the other hand they justified the actions and inevitable excesses during the social conflict. The armed forces and the police did not apologize, but rather justified and vindicated their actions as patriotic. They also declared that the report lacked historical and legal validity and rejected the recommendations.

In **El Salvador** the reactions were immediate and categorical. In contrast to the other countries, the President, Alfredo Cristiani, rejected the report and instead of condemning the horror, he immediately gave an amnesty to all those named in the report. He attempted to try to not make the report public and two days after it was presented through the media he called on people to "*forgive and forget*". During this televised speech to the nation he declared it was necessary to do everything possible to "*erase, eliminate and forget the totality of the past*". The armed forces, after being granted an amnesty declared that the report was "*unjust, incomplete, illegal, unethical, partial and bold*" and was an affront to national sovereignty. The Supreme Court of Justice also "energetically rejected the conclusions and recommendations" which included the resignation of all members of the Court. They further declared "*... there is no mechanism, no way, no legal system that can make this period of the Court finish sooner*". The FMLN on the other hand recognized and valued the report and made a commitment to carry out the relevant recommendations. The Human Rights Commission of El Salvador reacted to these statements by noting the importance of the recognition that the violations committed against thousands of Salvadorans were not isolated acts of some individuals, but part of an institutionalised policy of the State, which to build a more just society had to undergo important transformations, although the amnesty demonstrated that there was no will to put an end to impunity.

All the social and human rights organisations in **Guatemala** agreed that the report was far beyond their expectations as a non refutable historical document and emphasized the need to implement the recommendations. The business sector disclaimed the report as "unnecessary" and partial, while the URNG asked the Guatemalan society for forgiveness for any "*excess, error and irresponsibilities...*" The government published its reactions in the newspaper recognizing the work carried out by the commission and claiming that many of the recommendations made by the Commission were already being carried out, although it refused to create any other institutions to help implement the peace accords. Two months before the report was presented, and on the second anniversary of the signing of the Peace Accords, the President of the country asked for forgiveness on behalf of the State.

The reaction to the report in **South Africa** was divided. The ANC disapproved of the content, since the report put the violations committed by apartheid regime on the same level as those of the opposition. Even before the report was made public, the ANC had presented a claim to the courts, which was refused to try to block its publication. The African National Party in turn presented a claim to exclude the name of Frederick De Klerk from the report, which was excluded given that the tribunals had not yet given their decisions at the time of publication. These tensions were in the air when the report was presented and President Mandela accepted it despite its "imperfections". The black population generally accepted the report, but without being fully satisfied with the results or the process. The majority of the white

population received the report as a scandal, not assuming responsibility or guilt. According to one analysis, these divisions led to a process of political, but not social, reconciliation.

In conclusion, the majority of the reactions could be described as: *“the political sectors have the same opinion as they had during the conflict”*. The reports were generally accepted by victims, human rights organisations and the political opposition in countries where the regime in power was responsible for violations. Those in opposition who were singled out as responsible generally accepted the report, but had some reservations about content and did not commit to implementing the recommendations. In Guatemala, *“the URNG publicly apologized... and said they were willing to give all the information about some people who had been detained and disappeared... but this has not been carried out...”* Another person in El Salvador stated, *“The FMLN has turned their back because they were also singled out...”* A person who participated in the South African Commission mentioned, *“... another sad thing was the ANC reaction... this reflects a paranoid attitude to criticism.”* The international support of the investigations was also an important aspect pointed out by those interviewed.

Many noted that after the report was published, there was a lack of interest, either voluntary or imposed for political reasons. In Guatemala, the report *“had a very strong public impact, it was something really important, but here that lasts for one week and a week later that ends.”* In contrast to other countries, in Chile the value of the information in the report was increased with time, in part due to the detention of Augusto Pinochet in London. A family member of victims points out, *“after a time it has been recognized by some sectors that had initially rejected it... they have come to recognize that the truth it establishes is the official truth.”*

1. j) Recommendations

Since these are recommendations, rather than obligations, their implementation has depended always on political will. While in countries where the commissions were established as part of the peace accords, the recommendations were seen as binding, in practice this has not been the case. The El Salvador Peace Accord clearly establish the commitment of both sides of the conflict to implement recommendations, no mechanism was established to put this into practice. In Guatemala, where this obligation can be deduced from the commitment assumed to do everything necessary to ensure the commission could carry out its mandate, no mechanism was established either. The President and Parliament of South Africa is to decide if and how recommendations are implemented. In Argentina and Chile the recommendations have depended on the political will of the respective governments and legislative power, and as in the rest of the countries, this is not obligatory in character.

1. k) Analysis of the Commissions' recommendations

All of the commissions, with the exception of CONADEP of Argentina, included the elaboration of recommendations as part of their mandate. The objectives of the recommendations are in every case to obtain reparations for victims, to promote reconciliation and to prevent future violations.

Only the Argentine commission makes no mention to the issue of **purging the armed forces**. The Salvadoran commission recommended the purging of the armed forces, as well as the public administration and the judiciary, while the South African and Guatemalan commission recommend also a change of military doctrine and submitting the armed forces to civilian power. While the Chilean Commission makes no specific mention of purging the armed forces, it recommends redefining the functions of the intelligence services and the armed forces.

With regards to the **judiciary**, in Chile, El Salvador and South Africa recommendations were made to carry out profound reforms and modifications. In South Africa and Guatemala the Commissions recommended that those responsible and not covered by the amnesty should be brought the justice, while the Argentine Commission recommended that the judiciary should act more promptly. The Commission in El Salvador pointed out that the situation of the judiciary was such that it could not actually punish those responsible and went on to recommend that the Supreme Court judges resign immediately. Further recommendations were made generally to make legislative and constitutional changes in accordance to international norms and standards and the ratification of relevant treaties.

Recommendations regarding **prevention and reconciliation** usually put the emphasis on human rights education and promotion in society and the need to disseminate the reports.

One of the aspects that received most criticism from those interviewed was the establishment of **mechanisms to follow-up** on the recommendations. The Salvadoran and Guatemalan Commission included proposals to create such mechanisms, giving an important role to the international community. The South African Commission also proposed the creation of a government mechanisms to follow-up on recommendations. In Chile and Argentina the focus was on mechanisms to carry out some of the tasks mentioned in the recommendations, in Argentina particularly for transmitting the investigations to the judiciary and in Chile to continue carrying out the investigations and to help the family members seek reparations. In Chile a National Corporation for Reparation and Reconciliation was established by law to this effect.

With regards to the **participation of civil society** in the elaboration of recommendations, the commissions usually had a process of consultation of the expectations in the commissions and particularly as regards aspects of reparations. The process was particularly participative in Guatemala, where all those who gave testimony were asked for their suggestions and a public forum on recommendations, with the participation of over 400 people and 139 organisations, was convened. A person from the commission mentioned, "... *I believe that, in general terms, the recommendations we made correspond to the ideas and proposals give by society...*", while someone from a human rights organisation said, "*we felt ourselves reflected*".

Chapter 2. Truth Commissions: measures of reparations

Under international law, States have an obligation to provide reparations to victims of human rights violations, as well as investigate and bring those responsible to justice and prevent future violations. Given that Commissions had investigated international crimes, the recommendations included measures of reparation. This chapter aims to review the reparations that were implemented by States and how those interviewed view these measures. The concept of reparations that emerged during the interviews was imprecise and ambiguous, but always based on the premise that the loss or the damage done was irreparable. These complexities were manifest during the interviews when concepts of truth, justice, reconciliation, prevention and promotion emerged in the interviews when discussing reparations and are therefore included in this chapter.

2. A The concept of reparation

2. A. a) *In the reports*

All of the Commissions make reference to the concept of reparation in their reports. However, they give the concept an imprecise and mistaken in meaning, by combining or relating reparation to truth and justice. The concept is therefore open to interpretation depending on the political, institutional and economic concept of each country. It is important to point out that reparations continually appear as one of the principal objectives of the commissions and are seen as a way to regain the Rule of Law and give back legitimacy to institutions and as such, to the democratisation process of a country.

The **Argentine** Commission does not adopt a clear definition of reparations, but gives it a social meaning by stating that reparation is one the great tasks of the transition to democracy and that the first great reparation is for society to recover the truth and in the recommendations assumes reparation as an obligation of the State.

The Commission in **Chile** also recognized moral and material reparation as necessary for the democracy. It defined reparation as a series of acts which express the recognition and responsibility assumed by a State and they should be oriented towards recognizing the truth, the moral dignification of victims and to improve the quality of live of families directly affected. It also establishes a series of principles to orient the measures which focus on effectiveness and creating conditions for reconciliation by assuming wrongdoing and adopting an attitude of forgiveness.

In **El Salvador**, the Commission's report explained that one of the consequences of uncovering the truth was to ensure justice and that justice includes both punishing those responsible and repairing the damage to victims. It further notes that reparation is a duty of the FMLN but it is an obligation for the State, but that this obligation can not ignore the country's financial limitations.

The **Guatemalan** report clearly states that the pillars for the consolidation of peace and national reconciliation are truth, justice, reparation and forgiveness. The State

therefore has the obligation to establish a reparations policy in order to dignify the victims and guarantee that violations are not repeated.

The **South African** Commission proposes reparation as a counter-weight to amnesties, since victim's are denied their right to justice, then the government must assume responsibility for repairing the damage. Furthermore, the report states that without reparation, reconciliation and rehabilitation are not possible.

2. A. b) For those interviewed

During the interviews a number of certainties and contradictions about reparations emerged. Although nobody interviewed had a precise definition of reparation, many had very integral ideas of the concept. A person interviewed in Chile expressed, "***the human rights problem is not resolved, it is repaired. There is a wound there, a very deep trauma... that is repaired with truth, justice and specific policies to repair the damage...this is an historical process that begins with the Commission...***" Another person interviewed suggested that reparation is very complex because "***many questions arise, is moral reparation only symbolic?... are historical monuments and festive days enough?... individual reparations depend on the cultural and economic context of every situation... When we speak about reparation, justice, truth and reconciliation, we are speaking about radical transformation of a situation, of structures, of a value system...***"

Despite the complexities questioning if reparations that do not make profound changes in social structures are enough and if this is not done, how much time will have to pass before the violations recur, those interviewed recognized a number of moments in the Commission process that had a reparatory connotation for them. A victim in South Africa points out, "***just being able to talk about my case before the Commission was a form of reparation, because ... this will provide a relief.***"

Nonetheless, when reparations were not carried out, this was a double aggravation. On the one hand because States were not meeting with their international obligations to repair and on the other because it shows the lack of priority that they give to the damage done to victims. **Without reparation, the condition of victim persists and the strategic value of forming a commission is lost.**

2. A. c) Truth

According to the Commission's mandates and reports, truth is at the basis of the process. **Given the negation and the distortion of violations it was necessary for commissions to reconstruct the truth as the first step based on their investigations and on the recognition of responsibility.** Truth would be the fundamental basis for reconciliation, which is even reflected in some of the Commission's names. **They all shared the conviction that peace, reconciliation and democracy could not be built on the basis of silence.** Given this central place in the reconciliation process, truth could be seen as superior to a reparation measure or as the ultimate reparation measure, as it is the first act of restitution and recognition of a right. Furthermore, with the recognition of the truth the victim is given back his /her dignity, while the perpetrator has the possibility of recovering his/hers. Nonetheless, given that reconciliation is seen by many as a far-off dream that is

difficult to achieve, this significance given to truth could be interpreted as rhetoric of the commissions.

The report of the Commission in **El Salvador** explains its name since its aim and essence is to search, find and publish the truth, both at an individual and at a social level in order to contribute to reconciliation and the abolition of patterns of abuse. The **Guatemalan** Commission report also established that truth is a prerequisite for reconciliation and for building democracy. It recognizes that despite *“the shock that a nation might suffer when it looks at the mirror of its past”*, it will benefit both the victims and the perpetrators. The South African Commission similarly recognizes that *“while bringing the truth to the surface might initially cause divisions, it is the only way to reach reconciliation.”*

2. A. d) Truth for those interviewed

Those interviewed question this link between truth, and reconciliation and democracy. When analysing the impact that the truth established by the commissions had on the reconciliation process, a South African expert explained, *“little or nothing, we are asking too much of truth commissions when we expect them to reconcile. The argument of Michael Ignatieff that **a minimum level of truth is a bastion against negation**, is the maximum we can expect from a commission.”*

However many referred to the reparatory impact of having the truth officially recognized and publicly known. One person explained the impact for victims, *“.. it starts to unravel a psychotic mechanism that officially denied what we lived everyday.”* Another person notes that in Guatemala it was *“**the official recognition of the truth was fundamental ... especially violations committed against the maya people ... because this had never happened in their history and now dignified them**”*. Another person mentioned the reparatory impact on society of the Commissions' process for reconstructing the truth, *“,,, it investigates and mobilizes people and makes them conscious of their problem as a whole, not only of the community or the family directly affected, socializing a problem which is of the society, but has for many years been lived in an isolated way”*.

Those interviewed coincided that the principal achievement of commissions was the establishment of the truth. One activist in Chile stated, *“one of the main contributions of the CNVR is that cases were registered, it is the revindication of the name of the victim, because they are no longer considered terrorists, but victims of human rights violations.”* For many rural victims there was practically no other achievement. **A South African victim said, “the TRC has helped us be able to talk about our tragedies, that people will start to think about the other.”** **A victim in rural area in El Salvador stated: “What does help is knowing what happened, that is all, that it is written.”**

Human rights organisations emphasised the social value of knowing the truth. A person from Chile explained, *“the Commission makes the truth official...permitting it to be accepted by the collective consciousness... it then becomes the framework for all State decisions to confront reparations and the moral debt”*.

The public dissemination of the truth is also of primary importance. A South African Commissioner mentioned *“one of the most important aspects was for the truth to be known through the testimonies. All testimonies were shown through the mass media... it was educational for all of society... if there must be an amnesty (which is never desirable) one of the conditions should be disseminating the truth.”* In **Argentina** a victim mentioned the important fact that the report was reedited no less than 25 times, *“it is the most read book in the history of Argentina. I feel that CONADEP is still having an impact on new generations.”*

Some considered that the commission report itself was a form of reparation. This impact was that much greater when it was disseminated and socialized. While most of those interviewed had read and appreciated the report, *“we have the report put away in a special place in the house”*, others, particularly in rural areas and due to illiteracy, had not. In Guatemala a person interviewed said *“we heard the summary of the report and we liked it, but I do not have a copy”* while another said *“I have not seen it.”*

2. a. e) Observations, objections and criticisms to the reconstruction of the truth

Some of the **main criticisms** to the process of reconstructing the truth were the following:

In South Africa, the amnesty process that was meant to provide an incentive to those responsible for revealing the truth. However this failed because they revealed the minimum possible information, in particular regarding line of command and individual responsibilities. A member of a human rights organisation described the process, *“...they excused themselves saying that they had not instructed anyone to kill...they said they were sorry, but always added that ... they had not given the orders. This was a way of avoiding the truth”*. In a self-criticism, a member of the Commission recognized, *“**Finding the truth is where the Commission failed in terms of what could have been done... two parallel processes did not adequately interact: truth and amnesty... The main investigative tool was the amnesty process, but ... we were unable to understand how the basic structure worked...on this basis they simply denied everything.**”*

The limitations of the commissions to obligate those responsible to testify was also a limitation to the investigations. This was particularly the case in Latin America, where the truth was *“constructed with the information given by human rights organisations”*, *“Those responsible for human rights violations are always going to try to hide the truth at any cost... the truth was always provided by those directly affected”*.

Some interpretations of the context and facts were questioned. In **Argentina**, most of those interviewed strongly criticized the *“theory of the two devils, that tries to justify State as a response to political violence. You can never accept that... we do not accept it.”* In **Chile** there was a rejection of the inclusion *“on the same level of victims of human rights violations to military personnel that died in confrontations with armed political groups”*.

The reports do not register all the violations committed. A Chilean victim said, *“the truth that was investigated reduces the magnitude of the human rights violations*

to only those resulting in death and I was furious that it did not include many of my friends and colleagues that had fought against the dictatorship.” A Guatemalan rural worker notes, “I don’t have much to say about the Truth Commission because they were told about many of the great massacres and they are not included”. **This was particularly problematic when the methodology for investigation was to establish a general pattern of gross violations, rather than investigate every case.** This formula, “excluded many small or minor cases... I recognize that in terms of giving victims the truth we did not do such a good job... everyone of the victims wanted to know about his / her case...” said a member of the South African Commission.

Some reports were also criticised for not transmitting the magnitude of the violations. While most victims were pleased to be heard, some were also sorry that their history was published in a summarized without transmitting the significance for them. “... what was published was a very poor synthesis which was limited to: date, name, civil status, the institution that detained and why we considered ourselves a victim. But all the information that we had to tell once again to the Commission is put away somewhere, it is meant to be secret information.”

The time limitation was also seen as an obstacle to having more in-depth investigations. In South Africa, “... the task was gigantic. The investigative unit collapsed and time ran out...they were unable to review and digest all the information they had before them. Although the result of the work is very strong it is not very rigorous”, said a member of the South African Commission.

Another problem was that the **truth established in the reports did not adopt the criteria of legal investigations.** Although the commissions were meant to hand over the investigations to the tribunals, **the reports were mostly narrative and did not gather sufficient evidence necessary in a court.** A Chilean public official said “... the establishment of the truth for crimes corresponds only to the courts... the only official truth for crimes is the judicial truth” going on to note that the reports only established a social truth. **A Chilean survivor of violations was also critical, “the truth was only to establish that a violation had occurred, but it did not investigate how it happened why and how: it is therefore just a truth for impunity.”**

The truth was not sufficiently disseminated or socialized. Many of those interviewed had the impression that, “I feel that although things are said, they are then filed and not made known to the people.”

In conclusion, while truth had a reparatory role for victims on an individual level and for society in general, it does not in an end of itself lead to a reconciliation and democratisation process of a society deeply fractured by crimes against humanity. **One way to broaden the value of the reconstruction of truth would be to elevate it to the category of evidence in pending judicial processes.**

2.A. f) Justice

Justice, alongside truth, was seen in the reports of all five commissions as one of the fundamental conditions to achieving reparations and reconciliation. It is also seen as

social demand that must be met to move on from the past and prevent the repetition of violations. **The need for justice is intimately linked to reparations, as most of the victims noted. Despite this general recognition of the role of justice, with the exception of South Africa, justice was not explicitly in the mandate as a reparatory measure and was not deemed one of the responsibilities of the Commissions.** A human rights activist explains, *“definitely one of the greatest problems... is the need to resolve the problem of innocent victims and their need to have justice done. The fact that Commissions do not assume this, as an essential element in their path, does not allow for social reconstruction.”*

In the **CONADEP (Argentina)** report, justice was seen as a recognition of the truth. Furthermore, it noted that reconciliation was not possible unless the perpetrators accepted their responsibilities and were sorry for what they did. Truth and justice were also a way for those members of the armed forces who had not participated in violations to clear their name and honour. In the recommendations, the report stated the need for a serious judicial investigation under the responsibility of the tribunals.

The report of the **Chilean** Commission notes that the process of reparations implies the courage to confront the truth and do justice and that this requires the generosity to admit mistakes and to have an attitude of forgiveness. It also mentions the preventive element of justice, that in order to avoid the repetition of these acts it is necessary for the State to exercise its punitive functions.

The **Guatemalan** report clearly states that “reconciliation for those of us who are left behind is not possible without justice. The report in **El Salvador** notes that in order to reach the objective of forgiveness, it is necessary to take on the consequences of knowing the truth and one of these is justice. It goes on to note that justice has two elements: punishment of perpetrators and reparations for victims.

2. A. g) Justice for those interviewed

In analysing the opinion of those interviewed with respect to justice and reparations, three main tendencies could be identified. A survivor in Argentina expresses the most radical of these opinions, *“for us the only reparation is justice, we do not accept any other type of reparation.”* Others see justice as the most fundamental form of reparation with all the other types falling behind. One of those interviewed in Chile noted, *“the greatest reparation to which families of victims aspire is justice. So any other sort of reparation is a reparation of less importance if there is no justice... which means punishing those guilty of these crimes...”* Finally there were those who had lost all hopes for justice, particularly prevalent in rural areas, *“justice does not exist for the poor”*. Those interviewed understood justice to mean investigating and then punishing the perpetrators.

Nonetheless, the persistence of impunity generated a strong consciousness of a system that had historically denied people their right to justice and those interviewed frequently expressed a feeling of disillusionment. This was particularly acute in El Salvador, where practically no advances have been made in the administration of justice. *“People have lost all hope... the greatest disillusionment is that no justice was ever done...”* A member of a human rights organisation in the country noted, ***d“about the assassins that appear in the Truth Commission report... nothing***

was ever done...in this country the only ones that ever go before the courts are those that steal chickens... The perception that the administration of justice system only protects those with power was also very prominent in Guatemala.

While the amnesties were rejected by most of those interviewed, some accept under certain legal conditions, particularly the identification of perpetrators. An international expert notes, ***"I am not completely against an amnesty, but only after having identified what happened. I think for the victim, the most important thing is for the perpetrator to be identified and for him / her to be recognized as a victim."*** However in most of the countries the amnesty was applied without a proper investigation to identify those responsible and what happened to the disappeared. South Africa is a particular case, where amnesty applications were individual and were meant to have a reparatory role with perpetrators recognizing responsibility publicly. However, in practice they did not show their regret. A member of the Commission recognized, ***"... one of my greatest disappointments with the amnesty process is that there was not a nice attitude towards the victims... the amnesty process was rarely reparatory"***. The report recognizes that the amnesties deny the victims their right to justice and therefore there is an even greater need to implement reparations. The fact that these have not been fully implemented is therefore a double aggravation.

The amount of justice that has been done is minimal compared to the magnitude of violations and the number of victims. A survivor in Argentina expressed, "justice, if we can speak of justice... the government of Alfonsín... held trials for only nine military officials." In El Salvador, a human rights lawyer notes, ***"to this day the authors have not been brought to justice, only in the case of the nuns... and the Jesuits... without the intellectual authors."***

Some of those interviewed remarked on the role that justice has in the democratisation process. A Chilean remarked, ***"... the process of justice has been extraordinarily slow, but also incredible how spaces have been opened in the semi-democratic institutional framework of Chile."*** **Where justice has been done, it has helped society regain confidence in State institutions.** Again in Chile, ***"... what has happened with justice has had a reparatory effect for the victims."***

2. A. h) Reconciliation

All of the commissions studied has as one of their principal objectives to contribute to the process of reconciliation. This was seen as something that could be achieved once the truth was investigated, justice was done and reparation was given. In Argentina, the Commission considered that reconciliation was possible only when perpetrators repented and justice was done. Similarly in Chile, reconciliation would be built on the basis of truth and justice for which identifying the perpetrators was necessary. The Salvadoran Commission included measures for reconciliation in its report setting out basic conditions which included recognition and forgiveness. The report of Guatemala emphasised that the conditions for reconciliation were truth and justice. In the South African Commission on the other hand, the emphasis for reconciliation was truth and reparation, not justice.

Nonetheless, in practice, the cause-effect relation of these concepts are much less clear. A South African academic pointed out, “... **truth, national unity and reconciliation are long processes and there is no proof that these are linked and much less that Truth Commission can achieve them.**” An international human rights activist agreed, “... *truth commissions are important... but they are only one part. They are not a recipe to re-establish the social peace and reconciliation of a people. I don't even see it as... the solution ... because it leaves out the element of justice.*” Others noted that reconciliation is a long-term process. A South African human rights advocate noted, “...*the truth commission is just the start of the process to look at our past, **two years can not reconcile a Nation.***”

2. A. i) Reconciliation for those interviewed

During the interviews, it was clear that there were diverse interpretations of the meaning of reconciliation. A member of a human rights organisation in Chile remarked, “*the concept of reconciliation or social peace is very complex for two reasons: one because there is no consensus over the concept and two because it is a concept that has been used for political purposes with arguments from the church...*” Somebody else noted, “*we must think about what we mean when we talk about reconciliation, I think that here everyone is talking about something different.*”

Reconciliation is seen as one of the most difficult objectives to reach, particularly in countries with **deep social inequalities** such as Guatemala and South Africa. A member of an NGO explains, “***this was not a reconciliation but rather a conciliation, because in Guatemala society has never been together... there have always been deep divisions...***” Others explained it in these terms, “*no reconciliation is possible until the fundamental causes of the fracture have been resolved... without a radical transformation of the system of power .*”

Reconciliation should not be seen as a necessary consequence of truth commissions because it must be a debate that runs through society as a whole. A victim in Chile remarked, “*you can not obtain reconciliation by creating truth commissions... Reconciliation is a living, very dynamic process...*”

Although the return to the regular functioning of basic public institutions is used as an argument by the government to claim that reconciliation has been achieved, many in society perceive that this does not affect all sectors. A South African NGO member stated, “the politicians feel that at a national level there is reconciliation... the victims say that there is no reconciliation in the community or on an individual level.” A member of the Commission in that country agreed, “... *this reconciliation process has been top-down... it has not been consolidated within society*”.

The responsibility for reconciliation has been put largely on the shoulders of the victims, demanding that they abandon their right to truth and justice in order to forgive the perpetrators. This demand for forgiveness takes precedent to the State obligation to administer justice and the recognition of responsibility of the perpetrator. A member of a human rights organisation explains, “*what is understood as reconciliation is that the victim has to accept a certain degree of impunity...*”

For victims and human rights groups a basic condition to begin the process of reconciliation is the recognition of the truth and responsibility and the application of justice. Those interviewed were very emphatic on this point. An Argentine member of a human rights group said, *“we under no circumstance accept dialogue or reconciliation: here we want truth and justice and nothing more.”* A Chilean victim reiterated, *“I don’t think there is reconciliation or that there will ever be while the criminals are still free and those who protect them are also free.”*

A particular obstacle to reconciliation and forgiveness was that the perpetrators refusal to accept responsibility and ask forgiveness. Many Guatemalan victims emphasized that reconciliation was not possible because, *“the perpetrators have not admitted anything” “they have not assumed their responsibility.”* A victim in Chile explained that reconciliation was not possible *“while those men keep justifying their crimes... while they remain loyal to their pact of silence.”* While the Commission report was seen as a first step to an official recognition of responsibility on behalf of the State, this was not enough. The South African Commission incorporated a traditional African notion of reconciliation: *“in African beliefs the word reconciliation does not exist as such. It is something that can only be achieved if the other asks for forgiveness... therefore **if nobody ask for forgiveness, no reconciliation is possible.**”* It became clear that those who requested amnesty did so only for this benefit and not so that they could be forgiven. In fact, many felt that **they asked forgiveness from the Commission, not from the victims.**

The implementation of the recommendations and reparations measures could be a factor for reconciliation. Therefore their lack of implementation in practice can be seen as an obstacle to the process. This was especially evident in El Salvador, where the recommendations were abandoned all together. A member of a human rights group said, *“in a way it is like the classical electoral promise that is not met...”*

2. A. j) Prevention and Promotion

Prevention of violations and promotion of human rights **imply the radical transformation of the institutional structures and social values that permitted the violations to take place in the first place.** This also signifies a policy of education and promotion of human rights so that people can realize their full potential based on the recognition and exercise of their rights. Therefore the non repetition of the violations of the past, the Never Again that was the basis of the Commission’s reports **requires a State policy of promotion and prevention.** The recommendations of the Commissions’ reports could all be interpreted as having a preventative and promotional aspect.

2. A. k) Prevention and Promotion for those interviewed

Those interviewed emphasized risk factors that had to be dealt with for prevention to be a reality. The first of these is the persistence of institutional factors that were responsible or accomplices to the violations. A member of the Commission in Guatemala pointed out, *“nor the Commission nor the report are enough to prevent; we are living with the same people in power. That requires a change of structure, a change of process. And here nothing has changed.”*

An exception was the policy of purging in El Salvador, although it was applied insufficiently. One of those interviewed remembers that, *“the purging of the Supreme Court of Justice also was not met, some things have changed, but not enough.”* Furthermore, the fact that no comprehensive policy to socially re-integrate those that were purged has been one of the causes for the rise of crime. Three victims pointed out, *“those soldiers that were fired did not get any orientation or psychological treatment in order to return to civil society, therefore it is easy for what they learned during the war to come back to them.”*

The persisting economic inequality is another risk factor. A rural victim in El Salvador observes that things won't change *“while the demands of the people are not met... that is why there was a war.”* A member of the South African Commission also warned, *“in the beginning the violence was political and it increased, but then it wasn't only political, they are economic crime. But there is a relationship between the two.”*

Education and dissemination are needed to have a wide social impact for prevention. This is most evident in South Africa. A rural victim relates, *“the Commission has helped because many white people that used to kill people have stopped doing it... this is because their crimes were seen on television.”* A member of a human rights organisation remarks, *“we must take these testimonies and images to the schools through our new school curriculum so that new generations know what happened so that history will not be repeated.”* Therefore the lack of such promotion policies were seen as a risk factor. A person from a rural community in Guatemala represented the opinion of many victims, *“at any moment the conflict could heat up again”.*

Those interviewed unanimously agreed that the main preventative measure was to ensure that the law was applied. A torture survivor said, *“the only thing that can prevent is justice... while impunity persists there is the latent possibility for these crimes to be committed again.”* A human rights defender from Guatemala noted, *“part of the guarantees of non repetition are for the punishment of crimes and with the absolute climate of impunity that persists in Guatemala, this will never be possible.”*

2. B. Implementation of Reparations Measures

The recommendations for reparations set out by the commissions were so broad and implied such profound changes that they were almost impossible to implement. Those interviewed tended to give a very negative evaluation, stating that the majority of the measures had not been implemented, and whenever they had, it was usually economic reparations. Most symbolic and moral measures that were achieved were due to the efforts of relatives and human rights groups. Furthermore, those measures implemented by the State were usually not in accordance to the procedures recommended by the commission or in accordance to the cultural realities.

2. B. a) Support and obstacles for reparations

In **Guatemala**, most agreed that the measures recommended by the Commission **had not been implemented**. A victim stated, *“of reparations, we don’t have anything, reparations are stuck to the peace accords”*, while a member of a human rights organisation states, *“moral, spiritual, material, economic reparations, monuments, commemorative activities and all of that has not been implemented. There have been only some isolated and disperse efforts.”* The absolute lack of implementation is ever more evident in **El Salvador**, *“the actions that should have come from the report were not possible, or have not wanted to be possible...”*

In **Argentina** the reparations measures that were achieved were not a result of the CONADEP but of the **regional human rights system**. *“The reparation does not come from the Never Again Report. The reparations is an imposition of the Inter-American Commission on Human Rights... where in response to our claims,,, the Commission recommends that the Argentine government compensate the victims”*. A member of a human rights organisation points to the issue of timing, *“about reparation, this issue did not come up during the CONADEP period... it was afterwards... I think ... because it would have been incorrect to bring this up during the historical moment of knowing the truth and the trials,... the debate would have gotten side-tracked, it would not have been convenient.”*

Chile has been the exception with an important level of reparations implemented. Nevertheless, these have still been insufficient (mostly limited to economic and social welfare) and leaving out many categories of victims. A human rights defender notes, *“ reparatory policy ... only takes into account the families of those who did not survive... there was no reparation for victims of torture, even those with marks, for exiles, for prolonged administrative detention without trial...”* Some also criticised the procedures of the reparations law, *“I think it has been very poorly managed.”*

In **South Africa** the perception of the lack of implementation is even stronger given that it was meant to compensate in some measure . **As a victim notes, “I am surprised because we did not get reparation, but the perpetrators did get their amnesty”**. When this commitment was broken the weight of the responsibility to move forward was once again put on the victim. A member of the Commission notes, *“I haven’t seen that those who were given an amnesty have lost anything other than their public image. They still have their pensions, land, cars and families. Why do we expect those who don’t have the same access or the same opportunities have to again sacrifice.”*

The main reason for the lack of implementation in all countries is the lack of political will. The commitments assumed come in second place to political interests. *“The main problem in Guatemala is the political will of those in power.... We are now witnessing a problem of discourse, of promises, but in practice absolutely nothing...”* In El Salvador the problem is similar, *“We have presented documents to the legislative assembly...but there is no political will, not even of the left, because they have done nothing.”* Again, the same criticism in South Africa, *“ They do not have the will to spend money, for example on exhumations or on scholarships for children whose parents were killed.”*

Many people pointed out that the minimal level of implementation is due to the efforts of human rights groups and relatives. In Guatemala, *“In our case the steps towards reparation are the fruit of our own struggle: 10 exhumations... 3 monuments for the victims of massacres and the creation of a community museum.”* A South African interviewed recommends, *“It will have to be the beneficiaries or someone like the NGOs who can push this. I don’t think the government will do it motu proprio...”*

2.B. b) Symbolic reparation

Symbolic justice, alongside justice, is the type of reparations most demanded by relatives and human rights groups, but the least implemented by the State even though it is mentioned in all the reports. In Chile, where there has been some level of reparation, those interviewed still felt it was insufficient or inadequate. A human rights activists notes that the measures have not been able to count on the support or understanding of society, *“... moral reparation should not just be centralized acts, it should have its origin in society, in the community where the person lived and worked...”*

The publication of the report was seen to many as an act of symbolic reparation in itself. In Chile a person noted, *“the reparation had in some small way to do with the publication of the report... the memorial to the detained and disappeared in the national cemetery is also a cultural reference point in our country”*. In Guatemala the report itself and its presentation had symbolic value. A member of the Commission in that country notes, *“the relatives wanted a book, not a picture book... even if they could not read... For them this book has a meaning, the book is the law.”* The day that the report was presented was declared a national holiday, but even here the State demonstrated its lack of will, *“... the Congress declared that day for the dignity of victims, but it was not a law, only a declaration, it should be law, even here the State has not met its obligations...”*

And again, where they have been implemented it is due mostly to the efforts of families and human rights groups, while the State has been unwilling to assume its own responsibility. In Chile a victim notes, *“except for the publication of the report, nothing more... I would have hoped that the government, of its own initiative would put up a monument with the names of the victims in the centre of Santiago... because the monument in the cemetery is ours”* Another remarks, *“the moral reparations we do ourselves, here amongst the relatives.”* And in El Salvador, *“the effort that is now going into making the monument that we want to build is an effort of civil society, without the support of the State.”*

2. B. c) Economic and social welfare reparations

The issue of accepting economic and social welfare reparations has created been problematic, particularly in Latin America. A European expert points out that the growing tendency to equate all reparations to financial criteria *“bring into question ethical questions. Can you buy off suffering... ? This is especially problematic when it is people coming from humble origins.”* Many with scarce economic resources had little choice but to accept. A South African victim notes, *“...they never gave us what they promised. We should have known, this is only because we are poor, if we were not poor we would not have accepted this temporary reparation.”*

Although most have rejected receiving purely monetary compensation. A person in Chile points out, *“there is always the problem for relatives of not letting themselves get bought off, or not selling their victims”*. Although some, particularly in Chile and South Africa, recognize that it compensates, in part, the damage done by the State. *“This is a conquest in social terms, while it does not repair even a fraction of the damage done... it allows many relatives to become incorporated to the social security network...”*

Finally some considered that the amounts offered were very low and that the administrative requirements were overly burdensome. In Chile and South Africa there was agreement that, *“The State gives me the sum of a beggars...”* In El Salvador the bureaucracy impeded many people from having access to the benefits. *“The European Union had a national census and for the parents and children of ex-combatants, with a terrible level of evidence and documentation, were given a pension for life.”*

While economic compensation has not been one of the principal demands for reparations, many have requested education, health and other services to improve their living conditions. A victim from South Africa states, *“It is not money, but reparation that can console us. If they could give me a house or a provision that I could use to start a business”*. A particular emphasis in all countries is given to education for the children. But only in Chile is there recognition that this reparatory measure was given, *“I think the greatest reparation I have received from the report and this democratic transition is that they pay for my daughter’s education”*.

Even in Chile, where there has been a greater level of implementation of reparations, they have been inadequate. A leader of a human rights organisation refers to the health measures, *“it is the worst type of reparations measures... it is a system to subscribe relatives of victims to the public health system and we know how that system works in this country, it is not a system of special attention for them.”* With regards to public health, a Salvadoran human rights activist notes, *“in order to permit mental health reparation there has to be another climate... it is not sufficient to create centres with psychologists... these people are still afraid.”* In Guatemala, *“the fundamental aspect... of mental health, of support for communities to get over the trauma they lived, this has not been seen in any way...”*

2. B. d) Community reparations

The issue of community reparations was especially common in Guatemala, particularly since the indigenous communities were most severely affected by the war. The Commission report specified that the beneficiaries should participate in the definition of reparatory measures. A member of the UN mission in the country described the types of measures implemented in some communities, *“... the community that suffered a massacre was given electricity, a bridge, pavement of a road, they built a school..”* pointing out that, *“the conception and the characteristics of these programs were in practice different from those recommended by the Commission... there is no type of individual reparation, no community participation in the conception, in defining what they need, how they would like to be repaired. And the basically consist of infrastructure , in other words, they are measures that the*

State should be taking anyway, independently of this being part of a reparation program.”

2. B. e) Exhumations

Again in Guatemala, exhumations constituted a measure of reparation of primary importance to the indigenous communities themselves, particularly for cultural and religious reasons. *“It is very significant for people to receive a proper religious burial”* explained a person interviewed, while another added, *“exhumations are what people most feel, what they most want.”* This aspect of community reparations was therefore given a particular emphasis in the Commission’s report.

Nevertheless, there was once again the problem of implementation, *“this exhumation program is being carried out, but it is not in line with the exhumations included in the recommendations.”* And as with other forms of symbolic reparation, the initiative did not necessarily come from within the government itself. *“Only now... did the government start to give some signs of wanting to take on this issue... before it was an issue due to the initiative of victims and those groups of NGOs or forensic anthropologists...”*

2. B. f) Procedures

The Commissions proposed the creation of mechanisms to implement the recommendations referring to justice and to reparations. In general, with the exception of Chile, the mechanisms instituted were not those proposed by the Commission. In Argentina, *“After the CONADEP is dismantled, they create a Human Rights Office... and then after this a Sub-Secretariat for Human Rights inherited all the investigations, the archives and documents, to receive new claims, new testimonies...”* In Guatemala, the mechanism proposed by the Commission to follow-up on its recommendations was not created as such, but rather an institution to follow-up on the implementation of all the peace accords. In the opinion of one of those interviewed, *“it has been watered down a bit, but it still functions, it has had some results.”*

Chapter 3. Truth Commissions: victims' interpretation

This chapter analyses the feelings and significance that the creation and work of truth commissions had for victims of violations from a psychological perspective. A basis premise for this analysis is the recognition that the victims were part of and affected by an external situation, which was impossible to escape, to be indifferent. Their opinions and reasoning are necessarily linked to the profound trauma they survived. Before understanding these feelings, it is necessary therefore to know about these actions, which, were in all five countries studied constituted crimes against humanity, where the power of the State was used intentionally to paralyse and destroy through the imposition of terror: torture, forced disappearance, extra-judicial executions, torture, war, apartheid, genocide. These all left an indelible mark on the existence of the victims.

3. A. The victims interviewed

This analysis is necessarily qualitative. Seventy victims were interviewed, of which thirty-two were men and twenty-six were women. They were not selected beforehand, but were interviewed according to the possibilities for access. Twenty-five of those interviewed were from rural areas and the rest for urban zones and during the course of the interviews, it was found that approximately 20% were illiterate. All were victims of crimes against humanity, humanitarian law, genocide and apartheid. Most of those interviewed, in addition to being victims, were members of a human rights organisations.

3. B. Previous knowledge of and participation in the creation of Commissions

It is important to point out that only eleven of those interviewed knew about the Commission before they were established. Three women who had been political prisoners and were active in a human rights group of relatives knew about the commission in Chile. The rest found out about the Commission once it began working, most of them through human rights organisations. The sister of a disappeared person stated, *"They did not inform me of anything, they did not ask for my opinion... I found out from other sources that they had opened a Commission."* Similarly in El Salvador, three relatives of victims, all women, accompanied the negotiation process and accompanied other victims to give their testimonies. In Guatemala only one person, a medical doctor of one of the guerrilla groups, participated in the process of the peace negotiations and establishment of the Commission, while the rest were unaware of its creation. In Argentina on the other hand, they all knew as they were members of human rights groups. Those interviewed in South Africa pointed out that they found out about the Commission months after it was established and were prompted by third persons to give their testimonies.

3. C. Giving testimony

Of the seventy victims interviewed, only thirty-five gave testimony to the Commissions. The majority of those who did not do so were in Guatemala and El Salvador mostly because coming from rural communities of extreme poverty they did

not know about the commission or have access. In Argentina, some relatives did not declare for ideological reasons. *“All those commissions are just to pardon the assassins. We did not collaborate, it was just a waste a time, they had left over 90% of the judges from the military regime in power... Also the Commission members were people that were not at all interested in what had happened to our children.”*

For the majority of those who did give testimony, this signified a very painful process of remembering, *“this was extremely hard for me, it was difficult, I did not feel prepared.”* Many were still afraid and lacked confidence, particularly in places where the security apparatus for repression was still in place. For some it was also a form of catharsis, leading some to suffer from severe psychological decomposition with symptoms including crying and fainting. Despite this, the majority felt a temporary relief, particularly in feeling that it was members of official bodies that were for once listening to them.

A majority of those interviewed were pleased with the conditions in which the testimonies took place: they were usually treated with respect and understanding and there was no time limit to narrate what had happened to them. Only one person complained, *“there was no privacy, through the wooden walls you could hear what everyone said.”* In El Salvador the interviewed persons lamented the presence of foreign commissioners, *“they could not know and they understood very little of what had happened in our country and least of all could they imagine the magnitude of the conflict and drama.”* In a rural region in Chile, a lawyer close to the military regime was to take the testimonies.

3. D. General opinion about the impact of Commissions and their reports

Even those who did not give testimony knew about the report, either through oral transmission, summaries (as in Guatemala and Chile) and through the mass media (particularly in South Africa). El Salvador is the country where there was least knowledge about the report and many had not even seen it. Nonetheless, everyone had an opinion about the Commission.

In **Chile** most of the opinions were negative and critical, mostly because it was seen as non-comprehensive, leaving a feeling of frustration and deception. *“The Commission did no investigate. The truth given was only partial. Important crimes were left out”*, said a torture survivor. The sister of a victim criticized the way it was presented to them, *“... I received it with a card from the President, but I didn't like that either. It just had his signature and nothing more. It didn't even say 'I'm sorry'.”* Nonetheless there was appreciation of the importance of the official acknowledgement of the truth. A former political prisoner pointed out, *“It is important because it brought out in the open that the crimes were a State policy”*.

In **Argentina** the positive opinions refer to the *“historic value... it transmits a message to society... A message that I think was very important, almost of a magical character... It allowed contact to be made with those who denied reality, of which many had been accomplice. Reality stood before the eyes of Argentines.”* Despite this recognition, many were critical of certain aspects. *“Nonetheless, and even though they had the names of the perpetrators, they did not give them.”* Another recognized the good work but lamented that *“it did not function for enough time”*.

Another wide-spread criticism was expressed by a mother of the disappeared with indignation, "... *in that book, what they come up with is the theory of the two devils, in other words, the military saying that they had no choice but do what they did because there were terrorists in the country.*"

In **Guatemala**, positive opinions about the Commission predominate, particularly regarding the recovery of the history of the people. A member of the guerrilla forces notes, "*it permitted the people of Guatemala to know their own history and to create different basis for consciousness*". The indigenous population expressed their recognition in terms of feeling that they could now be heard and their history recovered. A relative of a victim from a rural area notes, "... *now we are emerging to the light*" while a displaced woman says, "*I like the report, because this way so much pain and blood is not lost.*" Four indigenous men interviewed expressed their opinion even in terms of pride, "*Our pain and our word was honoured.*" Most critical opinions had to do with the lack of implementation of the report's recommendations, as well as lack of access from some rural communities. A widow notes, "*nothing happened, the perpetrator is still around and they say that my husband is running around lost and crazy*".

In **El Salvador**, more than any other country, a strong feeling of impotence, abandonment and being deceived prevailed. In a group interview with Salvadoran victims, someone noted, "*There was no time for everyone, to express what we had suffered and lived... And this is in part because the government has abandoned us and we mean nothing to them. It's like we are not human beings...*" **A member of a rural human rights organisation expresses a similar feeling, "I was not satisfied, I knew who the perpetrator was, but the report says only that the Guard was responsible... This outraged me because the Commission deceived us, it was like a smoke screen, a big circus..."** Three relatives, active in a human rights organisation recognized the merits, stating that the most important aspect was that it "*silenced the arms*" and "*detained death*" and also the fact that "***What we said turned out to be true, we were no longer seen as liars.***" Nonetheless, they remained critical, "*It is a very poor report, there are things missing that should have been said with greater force*".

The opinion in **South Africa** is mostly positive in terms of accompaniment, support and providing a channel to express pain and recover dignity. A person wounded during the conflict even points to a possible preventative role, "*the TRC medically helped me to cure my wounds... If it had existed before, maybe these terrible things would not have happened*". A woman who survived a massacre said, "*I never thought that these secrets would come out in the public. I thought the world was coming to an end... The TRC did good work.*" One person noted that "*the Commission was important because it made people see others as humans*", while another remarked, "***Now I feel like a person again.***"

3. E. Truth, Perpetrators, Justice and Impunity

The **prevailing level of impunity in all five countries** studied implies additional feelings of trauma on top of the violations suffered, which include feelings of impotence, anger, fear as well as shame and disbelief. The fact that the truth was partial, because the perpetrators did not reveal all the truth and were not held

accountable for their acts brought feelings of being lied to and laughed at, *“this is the pain in the soul of Chile, a disgrace”* perhaps summarizes the feelings in all five countries. The impunity also caused a collective feeling of insecurity and even fear because *“the assassins are still present”, “you may even run into them in the street”* and *“they can come back and act again”*. Another prevalent feeling is of injustice and inequality: *“Justice does not exist. It is only the privilege of some”* and *“this is all a lie, a farce”*. The lack of integral truth and justice according to one person *“led to a situation of social and moral deterioration, because impunity wiped out the report”*.

In **Chile**, where the report did not name the perpetrators and very few were taken to the courts, a person expressed the nature of impunity, ***“The impunity did not start with the 1978 Amnesty Law, it began since the beginning of the regime. The executions and disappearances had in themselves the aspect of misinformation and occultation of the facts...”*** A survivor of torture explains, ***“the Commission met its objectives and then gave this critical problem back to civil society to take charge. We have given the name of the assassins... and they still leave them in liberty”***.

In **Argentina**, where some of the perpetrators were taken to the tribunals and then given amnesty, the sentiments were somewhat different. A torture survivor explained, *“the great majority of the testimonies and investigations were channelled to the tribunals”*. Nonetheless, because of the amnesty, the mother of a disappeared person found, *“Total impunity. In the report there is the name of our children, but not a single name of a repressor. After the dictatorship, there was a civil-military accord. The politicians agreed with pardoning all of them”*. Regarding the truth trials, where the perpetrators had to give their version without any judicial implications, a mother of a disappeared person explains, *“you have to listen to him and then he goes home with peace of mind because he spoke”*.

In **Guatemala**, a member of the guerrilla forces notes, *“The Commission did no respond to what the people expected... They wanted to find those responsible...but there is resistance to accept errors and even more to be tried”*. In a collective interview, the weight of the impunity was dramatically present. *“They did not name those responsible, we are worse off than before”*. There was also a sentiment of rights not being recognized, *“there must be justice, without justice we are worth nothing”*. In another rural interview, somebody noted, *“There is a lot of protection of those responsible. The perpetrators do not recognize anything. Maybe some of the guerrilla, but none of the military”*.

In **El Salvador**, many link the impunity to the current social deterioration. *“If there is no possibility for justice, then what were the peace accords for ? ... there are now robberies, a lot of violence. And we say that it is the military, because they were never investigated”*. Many make reference to the impunity for the cases of high symbolic value, *“Of Monseñor Romero it is clear that they killed him and nothing has been done, as we say here, money pays of everything. After the report, they gave amnesty to those responsible for the death of the Jesuits”*.

Due to the particular characteristics of the procedure and public dissemination in **South Africa**, the responses were somewhat different and taking different views, although there was still an over-all feeling different and marginalized as a victim. An

ANC member noted, *“Many don’t understand what it is like to become a victim, it is very painful, because they are given amnesty and we are still harassed... if they want to be forgiven, I need to see them”*. Several noted this need of recognizing the perpetrator, *“I only want to see him. I don’t know who he is... I will never have the exact image of him.”* Some also expressed the need for forgiveness., *“I think that the perpetrators should be pardoned, because the war is over and we can not go back in time.”*

3. F. Reparations

This sections seeks to analyse the **impact** of the reparations measures on the feelings and lives of the victims, based on the premise of the principles of reparations establishes by the UN Special Rapporteurs. The prevalent lack of justice, seen by most victims as the basic form of reparation, combined with the partial implementation of purely economic reparation measures causes a feeling and offence it is not combined with some other form of reparation. While social reparations, such as health and education, have been seen as insufficient, they are more appreciated. Moral and symbolic reparations are the most significant.

In **Argentina**, the issue of accepting reparation, has led to a polemic moral debate and the division between groups of relatives. One group of mothers of the disappeared sustains, *“We are the only organization that does not accept anything, not even exhumations... The took them alive and how can we accept that they return them to us as corpses ? ... our children did not die to become monuments. They pay you for every person disappeared... life does not have a price, they are not going to buy the life of our children. Capitalism thinks that everything can be bought and sold”*. The feeling of injustice and impotence has led to the adoption of inflexible slogans and principles. On the other hand, another mother notes, *“It was extremely painful when we decided to take that money... but one thing was clear, if we did not get it, it would stay with the State... so some mothers that did not have the need, donated it ... we do not feel we have prostituted ourselves with this money... because there is no enough money to silence us. We are still fighting and demanding... but I repeat, it was very painful”*.

The predominant feeling in **Chile** was negative, of rage and frustration and sometimes even a feeling of shame, *“I feel like I am selling myself”*. Some noted the attempt to make reparations a way to silence the human rights movement. *“... to the extent that impunity persists, reparations are plying a silencing and demobilizing role”* They also refer the dilemma of accepting the measures, *“There were a lot of people who in the beginning did not want to accept a single cent for their loved ones... “A torture survivor elaborates *“In my opinion there is no reparation possible, so it is better to refer to reparatory measures... I accompanied a woman to recover her pension and she left the bank crying and that is what happens every month... it is something that is still very painful.”* The greatest reparation was for symbolic measures: *“they put up a monument in the cemetery. This moves me, I honestly feel that this is the place where I can go and communicate with him... At least I have a place...”* A torture survivor elaborates, *“One aspires to more reparation first, and for reparation in terms of society taking on the process that we live... that society in a unified and firm way, commits so that this never happens again”*.*

In **El Salvador**, where most of the victims interviewed lived in poverty and burdensome administrative obstacles had to be overcome, most felt that reparation was that it had been absent or insufficient, leaving a feeling of inequality and of being marginalized. *“The poor person always remains with nothing”* and *“the death squads to everything. They are very comfortable in their communities, with good credit, they have their animals, and I fought for years and I didn’t even get a kilo of salt”*. There was also a feeling of lack of respect and being mocked, *“There were some wounded people that had to stand in line all day and then they turned them away at four in the afternoon when the offices closed... it’s a lie, a lack of will.”* There was also an element of fear, *“many people did not go to the census because they did not have confidence to give their testimony”*. Some people did not have access because of lack of resources, *“We didn’t even have fifty pesos to come and give the form, to stand in line all day”*.

In **Guatemala**, there was almost unanimous consent that nothing had been received and some were not even familiar with the reparation work. In collective interviews with human rights groups and indigenous communities, the opinion was unanimous, *“we have received nothing”* and two indigenous women asked *“what is reparation?”* Some people saw the end of the conflict as a form of reparation, *“Reparation is part of the peace accords. The fact that they were signed has given us more space, the war has ended, there is no direct persecution.... But as far as the direct victims having some sort of support, we do not have it.”*

The bitterness and sense of bewilderment of in **South Africa** for having received really inadequate reparation or nothing at all, was evident. In the interviews, the desire to have some sort of resource to be able to work and get ahead, as well as care for their children, was always expressed. *“I want them to bring up my children, for them to go to school... I have never received anything.. had I known that things were like this, I would never have had children.”*

3. G. Psychological harm

The feelings expressed by those interviewed emerge from the traumas suffered as a result of grave violations. In addition to this the impunity and the lack of reparation has created a sense of frustration, of being lied to and marginalized. The experiences suffered has left many without words and what predominates is disbelief and silence. The trauma, impunity and lack of reparation has fixed negative emotions, with the destruction of principles and beliefs. This led to a profound and chronic moral pain, with victims feeling that they are stigmatised, feelings of guilt shame and fear.

To deal and overcome these feelings, many victims have recovered their sense of pride and self-esteem from belonging to human rights groups and being part of a struggle. This sense was particularly prevalent in Argentina. A mother of a disappeared explained, *“we say no to death and we give it life. We give it life through a conference, in every place, in every young person. We established a book store, a university...”* A member of the Grandmothers, whose grandchildren or pregnant daughters were disappeared, explains how she and others have devoted, *“their time, their patience to searching for their possible grandchild from during the detention of the mother”*, demonstrating throughout the interview confidence in their work and

pride of the results, *“the Grandmothers have trials for kidnapping, we achieved the legal recognition of disappearance and its now in legislation... it’s the only country where we have tried those with maximum responsibility”*. They can not even mention the depth of the pain. A former detainee states, *“I am proud to have been one of the survivors who gave most information about the concentration camps – the plans and locations – and the name of the perpetrators”*. We also found a sense of rage because of the classist nature of the dictatorship, *“the military coup was against the people, 60% of those detained were workers...”*

In **Chile**, the negative feeling were more prevalently expressed. A former detainee explained, *“As a survivor of torture, a crime that was not recognized, I myself do not recognize my torture... it’s like a stain, as if I were guilty, not a victim”*. Another survivor expresses, *“I am still a stigmatised victim, the harm continues. I am different from the rest. This social discrimination slowly destroys you... It is a permanent harm, almost chronic, of low self-esteem, insecurity, fear and living permanently with your guard up. I try to be normal, but I am still a victim.”* The fear is also present, *“I feel absolutely without protection because I have no father, no mother and my brother was executed. This is very painful, very terrible... I think society needs to recover the world solidarity, humanity, because in this country, that has been lost”*. Furthermore, there is a sense of unfinished mourning, *“One can not assume that they are dead... finally all that is left is pain”*.

In **El Salvador** the most prevalent feeling was the extent of the social violence and deterioration of the country as a consequence of the lack of truth and justice. *“There is a lot of violence, the people were afraid then and they are afraid now...”* said one person, while another commented, *“The war with bullets is over, but there is another one now, a stronger one, because there is crime, there are violations, there is ill-treatment, there is injustice, there is hunger...”*. There is also a sense of timelessness, that the harm has no past and no future because time has erased none of the harm.

In **Guatemala**, there was an absence of pride, *“now I don’t even have the courage to talk to people”* and the prevalence of fear and anger, *“I say they are wretched ! They are the great cowards of Guatemala, and they are also crooks... Everything is misery and on top of it there is fear”*. Humiliation stemming from inequality was also prevalent, *“They did this to use because we are poor, because we don’t know how to read and because we don’t understand much”*. Special significance is paid to finding the proof of reality, *“I think that the excavations to find people are very positive... That makes it possible to bury people in cementaries. They are taken out and put in a place where one can take them a flower. There also one realizes what they were capable of doing”*.

Similar feelings could be found in **South Africa**, *“I am still afraid because I know they are close, many people don’t understand what it is like to become a victim because they want you dead and if they know you belong to the ANC, you are dead !”*. Another victim reflects how the fear and pain are still very present, *“I don’t like to watch television, I don’t like to see the horrors they show. It moves me to see how people are dying and this also reminds me of what I lived. You hear a shot and you lose your head and for them it’s like a game...”*

3. H. Reconciliation

From the interviews conducted, it can be concluded that there was no reconciliation. Only in South Africa was there some suggestion that *“maybe, if they asked forgiveness, one could reconcile”*. But this brings into question the entire concept of reconciliation which implies the restoration of harmony and forgiveness. But before this can occur, **in theological terms we can speak of repentance, but in legal terms we must speak of a confession to give admit the facts and recognize responsibility**. However, in none of the countries, except of South Africa to a certain extent, was there a process of recognition. Furthermore, reconciliation requires reparation, which, as we have seen, has not been accomplished in most countries.

A single response in **Argentina** summed up the feelings encountered, *“We are not going to be reconciled with the assassins, we are going to continue denouncing and telling what happened to us, we are going to keep pointing our finger to perpetrators and the executors of the deadly policy, because in order to save the future, it is necessary not to forget our past, to conserve our memory and to do justice to punish the criminals”*.

In **Chile** there was no sense of reconciliation because *“this country is more divided than ever”*. Another person agrees that *“in the country there are still two views. And anyway, reconciliation is something very personal and Christian”* Another person adds *“We are not a reconciled society and we are very far from being so. Reconciliation can not be achieved through presidential decrees”*. One of those interviewed does concede, *“If I could forgive, then maybe I could reconcile”*. In **Guatemala** the sentiment is summed up, *“it would be wonderful to reconcile but only if they keep their promises”*, while in **El Salvador**, **“the people lost hope because there was no justice and there could therefore be no reconciliation”**.

Only in **South Africa** was there some indication, although a minority view, of a possible reconciliation. *“The TRC brought peace. If they came to tell me what they did, I would have to forgive them and reconcile”*. Although again, many link reconciliation to recognition of responsibility and forgiveness. *“I don’t know how we are going to reconcile... they don’t even ask forgiveness from us, they ask it of the Commission”* and **“in order to talk about reconciliation, the white community needs to stop denying”**.

3. I. Synthesis of impact on victims

While the relatively small sample of interviews, as well as the fact that they were not preselected does not allow us to come to any definitive conclusions, we can still point to some general feelings that were prevalent throughout. Truth commissions were usually recognized as having the merit of *“putting an end to the conflict”* and *“revealing a silenced history”* and having what they had lived recognized as an official truth. However, these results were not sufficiently socialized, almost 50% of those interviewed did not know about the content of the reports.

The most severe consequence of the conflicts is the trauma produced and compounded by the denial of responsibility. Therefore the suffering initially produced intentionally by those directly responsible has continued through the imposition of

impunity by those currently in power during times of democracy. This situation can produce mental disorders of the same magnitude of even worse than torture.

Chapter 4. Truth Commissions: recommendations

In this chapter we have tried to systematize and classify some recommendations which we hope will serve to correct or improve some of the deficiencies that were identified by those interviewed.

Before the establishment of a commission, which in a very brief period must search for the truth about human rights violations, it is important to clearly understand the **political context**. The commission “*corresponded to the characteristics of the political transition in our country*” and “*I am not convinced that a truth commission is a good idea in every context*”. Another important aspect is to determine **and make clear the realistic possibilities and reach of a commission**.

And given the political negotiations from which these commissions emerge, it is important to have recognized their limitations and that they are not the sole solution. A member of an NGO summarises, “*I don’t think that a Commission that is a product of the negotiation of two sides of an armed conflict is going to be the best mechanism to respond to the needs of society*”. Furthermore, these negotiations should be clear and transparent in order not to create any false expectations. And where justice is sacrificed as part of these negotiations, a parallel strategy to the truth commission process must be designed to ensure both truth and justice.

4. A. General Criteria

- The **historical analysis** should be as complete as possible, “*It is very important to give a context that is broader than just knowing the date that the conflict started, in order to understand what happened... they should work from a historical – sociological perspective, not a legal one*”.
- The context should be evaluated before establishing the Commission, “*... a Truth Commission can not be an adequate initiative in all contexts, in all countries*”.
- A Commission should not emerge exclusively because there is a democratic government, “*... there should be before it a **consultative process with civil society** and not just emerge because there is an election*”.
- The establishment should entail a broad **consultation process with the participation of those affected**, “*They should consult first of all with the human rights movement about the objectives of a Commission*”.
- Commissions are not the exclusive solution to human rights problems, “*They can not be created on the assumption that they are the solution to the human rights problem... if so, they will resolve nothing*”.
- The **process should be public** and receive wide dissemination in the mass media, “*If we consider the South African experience, the important thing was its public character, because it was a great lesson for society. During three years there were human rights debates on television and South Africans learned a lot.*”

4. B. Procedures

- According to one Commissioner from South Africa it is important to have a trial period in order to “*think clearly about logistics, what resources are really necessary, what are the objectives and how they will be achieved... Not to start from scratch*”.
- Although the UN recommends that the commissions exist for brief periods, most of those interviewed felt the contrary, “*It **should have a lengthy period of existence** in order to carry out the work and design a process of investigation, dissemination of the truth and also to do some sort of follow-up*”.
- In addition to the necessary resources, there should be a “*clear strategy for investigation, the elaboration of the report, **clarity of objectives**, the impact it will have in the country and what it wants to do...*”
- With respect to methodology, “*the **political and social effects of identifying the victims should be considered in detail**... this should receive special and careful attention...*”
- The State’s willingness to address human rights violations should be clear. “*The **State should express its political will**, giving precedence to a neutral composition... giving them ample mandates and faculties...*”

4. C. Composition

- A basic demand is that the commissioners should be “*people with recognized respectability, autonomy and independence*” and especially that they should have a recognized track-record in the defence and promotion of human rights.
- The commissioners, as well as the hired staff, should, “*represent a diversity of opinions, professions and sectors*” including the representation of victims, “*not that we should all be represented, but we should find a way to represent victims*”.

4. D. Public reach and participation

- The Commission should not limit its work to urban capitals. “*I would like a **Commission that moves towards the community**, towards the population...*”
- Basic conditions of security should be guaranteed, both in general, “*There should be a cease fire. A **fundamental primary condition is that the hostilities in the conflict have ended***” and for individuals affected, “*there should be a way to create conditions of security for the population who is going to narrate the truth*”.
- The Commission should have, “***Basic guarantees to function, financial resources, guarantees for mobility and security***”.

4.E. Integral Truth

- **Individual cases should be placed within the wider pattern of violations.** “*Society needs to know the truth during a long period... to know the*

dimension and the dept of the policy of State terrorism suffered by the people”.

- **All social actors should be called upon to give testimony and get a wide vision of what occurred.** *“The Commission should have a period of awareness raising of the population, to break the ice, that fear... to have more contacts and be able to communicate with its people.”*
- The Commission should have the power to call on people to testify. For this, **“the Commission should have quasi-judicial faculties to be able to investigate with absolute independence... and to obtain, as a obligation, the presence of all those that it needs to consult”.** This is important to avoid a truth built only on *“the truth given by victims groups and human rights organisations who have been investigating”.*
- The State and all public institutions should turn over all relevant information regarding violations they committed, *“the will of the State should be expressed by the first gesture of having the death squads speak, or a particular paramilitary, for the people that gave the order... because the State knows... since it is the principal perpetrator”.*
- Victims demand that a **mechanism to receive new cases should be established after the publication of the report,** *“... if the CONADEP no longer exists, what can you do ? How can you include new cases” ?*

4. F. Dissemination

- There should be ample public dissemination in the mass media of the investigative process and the report, *“Even though it is very painful, uncovering the truth is fundamental for learning about history, to heal our wounds, for reconciliation”.*
- Every victim and relative should receive a copy of the report, *“it has a place of honour in our house”, “it is the most read book in Argentina, it is a contribution to the collective memory.”*
- Dissemination should be guaranteed through educational programs and in particular, human rights education should be incorporated to the national curriculum, *“reading the report should form part of a national policy,, it should be an institutional policy., in the municipalities, in the schools and universities, in the community there should be a policy of human rights education”.*
- **Clear policies and programmes should be developed “to support survivors,** to help them reconstruct their lives and to help contain their rage and the pain of their extremely violent history”.
- The report should be presented as an official truth, *“it should be fully backed by the government, with its absolute political will...”*
- Public dissemination and social recognition of the truth should take into account the repercussions in the lives of individual victims who need to feel that society is interested in what happened to them, *“I wanted to talk but nobody wanted to hear about it, some of them said you have suffered so much, it’s not worth while to talk about that, but they were protecting themselves, not me”.*

4. G. Justice

- It is not sufficient to recognize the truth, there must be investigations for justice to be done, *“the truth in the report stopped at recognizing that there was a crime, but not on how, why, why, there is no answer to that”*. Nonetheless some felt that the reports was also important for the tribunals, *“from the perspective of evidence, as an instrument that has serves as evidence in many legal proceedings”*.
- The Commission should ensure that the **information they have gathered is adequately channelled to the judiciary**, *“the product of the investigations should be the competence of the tribunals, because public officials recognized and identified acts and those acts are crimes and crimes must be investigated and the authors of crimes tried in the courts of justice”*.
- International support and pressure should be mobilized to *“establish a sort of barrier against possible impunity through international mediation against impunity and for justice”*.
- Although amnesty is never advisable, should it happen as in South Africa, it should be done under certain conditions: the perpetrator should have to explain in detail what happened and show regret, as well as provide for some sort of reparation, such as a public service in the community, etc. so that reparations are not assumed entirely by the State, *“You killed someone, you must explain who you killed, you must say publicly who you killed; someone sent you to kill, you must give the name of that person publicly; you should ask the victims for forgiveness publicly”*.

4.H. Recommendations

- The recommendations should respond to the demands and expectations of those who suffered, which means the **participation of victims and civil society in the elaboration of recommendations**. It should not be that, *“the people who have most benefited from this are the torturers”*.
- The primary mechanisms to ensure pressure for the implementation of recommendations is the international community and national civil society., *“there is a responsibility to continue until we are sure that the recommendations are implemented, it is necessary to have international pressure on governments”*, *“the more participation from society, the more likely the recommendations will be implemented”*.
- There should be concrete initiatives to reflect the recommendations and how they will be implemented, *“.. they should be backed up by draft laws or executive decrees which reproduce the meaning of the recommendations”*.
- **Mechanisms to follow-up** and monitor the implementation of the recommendations should be instituted, *“The same Commission should think about the creation of an organ or that it itself takes on the follow-up of recommendations... or social organisations should coordinate to monitor and demand implementation.... But it definitely has to be part of the process”*.

4. I. Prevention

- A national policy to create awareness and respect for human rights should be developed with a broad-based participation and institutions given the

mandate and resources for its implementation. The broad dissemination of the report should be part of this policy to avoid what happened in El Salvador, *“the report was not disseminated on a mass scale to the population... many people have not seen it, the new generations have never seen the report, there is no effort on the part of the State to disseminate the report.... on the contrary, there is more of an effort... for some of the things that are said there to be forgotten”*.

- Generate a national campaign against violence with the participation of all political and social actors, *“After recognizing the atrocities, we should understand that this is not the way out of our problems, because there are always victims”*.

4. J. Summary of principal dilemmas

- How to resolve the problem of social participation in the process when there are limitations in terms of time and resources? Furthermore, the political circumstances usually require pragmatic decisions. Only *“an ideal situation would allow you to think about a broad consultation process, but in the majority of circumstances this is not going to occur, we should be realistic”*. It is therefore important not to create false expectations.
- How to strike a balance when negotiating and conceding to “political realism” according to the specificity of the context? *“You can not establish objective rules for commissions. In a country where the armed forces still have a lot of power you can not act with the same level of frankness and intensity as in a country where democracy is under way. For example the issue of amnesty, if it should be applied, to what extent... you can not respond in general terms. It will depend on the concrete circumstances of each country”*.
- How to resolve the need to establish the truth with the lack of political will to do justice, particularly in countries emerging from an armed conflict where there are now clear victors? *“It will be very difficult that in a country with an armed conflict, the process of a truth commission is negotiated - not by those in conflict who will particularly seek to benefit and protect themselves – but from society as a whole”*.
- How to resolve the fact that while justice is the principal expectation and demand of victims and a State obligation under international law, the Commission’s mandates are limited in this respect? They do not have judicial powers as they are not a tribunal and it should not identify the perpetrators, unless there is an acceptance of amnesty or impunity.

Concluding Remarks

The principal source of information to analyse the complexities of truth commissions were the protagonists in the struggle to defend and promote human rights. From the expectations and frustrations that truth commissions generated to the complex political, social and cultural dynamics generated, we can conclude that the general evaluation of these processes was critical, in contrast to the official discourse to legitimise their creation and the balance of their work. The general atmosphere of frustration is due to the expectations and the legitimate hope for integral reparation generated by the official promises, which were very superior to what commissions were actually able to accomplish. And the main reason for these short-comings were not intrinsic to the commissions but rather due to the lack of political will.

Despite this over-all evaluation, there was also recognition of the accomplishments of the Commissions. The very fact that they were created as seen as a first step to State's assuming their responsibilities and addressing the issue of human rights problems. The most significant accomplishment by far is the reconstruction of the truth that had been hidden and denied, and the recognition that victims had suffered violations. The fact that it was an official truth, to which society could refer and which could also be the basis of legal claims, was also highly valued.

But even this recognition has been over-shadowed by questioning of substance which vary according to the political realities of each country, but usually linked to the prevailing situation of impunity. While most governments put the establishment of a democratic order as their first priority, which has been difficult due to the fact that those linked with the previous regime continue to hold considerable influence and power which appear as a threat to the new ruling power. Despite this delicate balance to be struck, due to the nature of the crimes that had been committed, and the ethical and legal need to respond, justice should not have been seen as an issue of less priority which could be postponed indefinitely.

In these contexts, the creation of a commission was the easiest mechanism to deal with the human rights problem. While this form of extra-judicial investigation responded to the strong social demand and international pressure to confront the past horror, it was also a way of postponing the internal conflict that the initiation of legal proceedings. In other words, the creation of truth commission formed part of a political strategy responding to State needs to postpone justice. And while commissions were meant to forward any evidence of crimes to the courts, they were under no obligation to do so and no specific mechanisms for this were contemplated. As a result there were normally no legal investigations or there was simply an amnesty. This led to an important rupture between the State and the human rights community, which continued its struggle for justice through other means and through the initiatives of victims. In contemplating the issue of justice only to a minimum extent in their policies, the States ignored the international concepts that a stable and lasting reconciliation must be built on the principles of truth and justice.

Furthermore, while those interviewed without exception appreciated the fact that the truth had been acknowledged and revealed, many were also critical of its form and content. Some mentioned that the general description of the violations did not take

their specific case sufficiently into account. A more severe criticism is that it was a half truth, given that the principal source of information was that given by the victims human rights groups themselves, but that it was unable to reflect the information held by the perpetrators given their refusal to collaborate. These constitute the most important sources, but the Commission had no power to obligate them to declare and reveal what they knew. Finally, some Commissions also excluded an important group of violations, for example torture, which was the main method of repression used against political opponents.

The procedures adopted by the Commissions were usually highly valued by those interviewed, and the integrity and capacity of the members, was recognized. Criticism in this regard centred around the lack of participation and consultation in the process of those most affected by it, ignoring international standards that the victim should be the centre of reparations initiatives. When a consultation process did take place, it was usually at the initiative of civil society. The role of human rights organisations in providing a platform and link between victims, society and the Commissions was very important, particularly in societies with a persisting fear and lack of confidence of authorities. The groups tended to disseminate the importance of the process, facilitate testimony and defend the interests of the victims.

The categorical finding regarding was that there had been no reparation. Where some measures had been implemented, they tended to be insufficient and limited to monetary remuneration, leaving victims with strong feelings of frustration. Victims and human rights groups had to take the initiative to promote measures of symbolic and moral reparation.

The implementation of recommendations in general fell well below expectations. One of the main challenges once the work of truth commissions is concluded is to develop a strategy to follow-up and monitor recommendations. This should not be a task limited to civil society, but rather something that the State must assume with a strong commitment, backed by adequate resources and political support. Nothing worse for victims than to feel again that this is their problem and not one assumed by society. This strategy of follow-up should incorporate the aspect of justice in its broadest sense, so that the domestic normative structure corresponds to international human rights norms.

Truth Commissions should not be considered or accepted as the only solution to human rights violations. They should be seen as part of a much broader process of seeking peace and reconciliation, which should involve the maximum citizen participation and a solid political consensus. In the middle of this process, victims should play a central role. In the countries studied, the creation of commissions did not translate into the implementation of an integral reparation policy or to substantive changes in political structures. The current political, social, economic and cultural reality of these countries, speaks for itself about the fragile democracies that have been instituted.

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