

# The Role of Transitional Justice Processes in Building Peace in Latin America

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### **What Has Been the Role of Transitional Justice Processes in Building Peace in Latin America? Include a Series of Cases in Your Answer.**

Human desires for truth and justice are not new, yet since the 1980's, in the wake of the collapse of the Soviet Union and the end of the Cold War, states emerging from severe internal armed conflicts are increasingly employing transitional justice mechanisms in order to achieve sustainable peace through a combination of retributive and restorative methods.[1] Such an approach includes a wide array of mechanisms, including truth commissions, trials, reparations programs, and historical memory initiatives such as oral history projects.[2] The application of such mechanisms seeks to:

“contribute to emancipatory peacebuilding by addressing and redressing grievances of civil and political rights, in tandem with those rights that speak to the socio-economic and structural roots of conflict.”[3]

In order to allow a more thorough analysis, this essay will specifically discuss the role of *truth commissions* as a key feature of transitional justice and their contributions to the peace-building process. “For many, truth commissions are emblematic of transitions from state repression and domestic rights abuses to democracy,”[4] and in Latin America, truth commissions and other transitional justice mechanisms formed part of the ‘Third-Wave’ of democratization,[5] constituting a major focus of international and national government attempts at peace-building. Firstly, the theoretical potential of truth commissions to contribute to peacebuilding will be discussed, namely through their capacity to initiate national reconciliation, to address structural violence[6] as a root cause of the conflict, and to contribute to a wider engagement of civil society in democratic political participation. The barriers to the potential contributions of truth commissions will also be discussed in general terms. Following this, the focus shall be placed upon the impact on peacebuilding of the Peruvian national commission, the ‘*Comisión de la Verdad y Reconciliación*’ (CVR), and Guatemala’s two reports, the official report, the ‘*Comisión para el Esclarecimiento Histórico*’ (CEH) and the informal report commissioned by the Catholic Church, ‘*Proyecto Interdiocesano de Recuperación de la Memoria Histórica*’ (REHMI). It will be argued that it is vital for truth commissions to address underlying structural violence and to contribute to the success of additional justice mechanisms if they are to play an effective role in the peace-building process. It will also be acknowledged that to take full advantage of the transitional justice approach, society must steer itself away from asking too much from truth-telling processes, and instead understand that peace cannot (and has not) come from truth alone.

### **Truth Commissions as Peacebuilding Instruments**

Priscilla Hayner defines a truth commission as being a temporary body authorized by an appropriate authority which is focused on the past and which seeks to document the greatest number of human rights violations possible.[7] The choice to employ a truth commission marks a distinct desire to choose a particular type of response to the preceding conflict and is often seen as an appropriate response to the types of violations committed during the period of violence. Widespread human rights violations committed during the Latin American internal armed conflicts included disappearances and killings by state-sponsored death-squads[8] and were shrouded in secrecy and official denial,

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giving the revealing of the 'truth' a heightened importance. The choice to move away from an exclusively retributive approach is in some cases a response to the public perception of the national justice system as incompetent and unable to adequately call to account perpetrators of serious human rights violations. In this key transition period, truth commissions offer an alternative or complementary method of addressing public concerns, focusing on transforming broken relationships between the state and the people, and in restoring communities devastated by the violence.[9]

The idea that peace cannot be sustainable without reconciliation underpins the relationship between truth commissions and peacebuilding in a post-conflict setting. Charles Lerche III notes the following:

"Reconciliation is currently essential to the construction of sustainable peace. It can be defined as a profound process of dialogue between conflicting parties, leading to a recognition of the "other", and respect for his or her differences, interests and values." [10]

If a truth commission is able to stimulate such a dialogue successfully, there is a strong argument that the new political structure will be validated on a domestic level and amongst the international community. He posits that:

"Truth commissions can be seen as important milestones on the road toward democracy. The extensiveness of a commission's mandate, the thoroughness of and public support for its inquiries and the impact of its report (if any) are all indicators of the relative strength of the new political order." [11]

A key criticism of other forms of retributive transitional justice such as human rights trials and war crimes tribunals is their inability to address the root causes of the conflict, an aim that is crucial to securing a permanent cessation of violence and a *sustainable* peace. Truth commissions offer a unique opportunity to investigate the structural violence that is pervasive in post-conflict societies. Perhaps the clearest goal of a truth commission is to provide a method of "coming to terms with the past" [12] and to help victims and the general population to understand *why* the repression and atrocities of the former regime occurred. [13] The idea is that with knowledge, comes protection from the reoccurrence of former violations [14] and the ability to establish a "collective memory" [15] of the conflict. The recollection of memory which is encouraged by truth commissions collecting testimonies of war-time experiences has both a psychological and practical benefit, in that "recovering memory of "the way it was" facilitates understanding and eventually reconciliation" [16] and also provides a sense of safety for the transitioning population. [17] Often in post-conflict countries, truth commissions may uncover what Carole Crumley calls a "social memory," "referring to the "means by which information is transmitted among individuals and groups and from one generation to another." [18] Discovering this allows the commission to understand and reveal false social realities internalized within the wider population such as racist attitudes towards certain sectors of society—for instance, the indigenous population, who have often been disproportionately affected by state and insurgent violence.

It is incredibly important in a peace-building process that civil society is actively engaged and can locate a sense of ownership over the proceedings, and truth commissions offer this directly to those affected by the armed conflict. Laplante argues that a significant contribution of truth commissions to peace-building is their ability to transform marginalized individuals into active agents within society [19] and can be utilized as important vehicles to use those who were previously silenced to build, as Laplante puts it, "an ethnic of free expression, a tool of resistance used to confront avoidance or denial of the truth." [20]

## The Limitations of Truth-Seeking in Peacebuilding Projects

Despite the apparent potential of truth commissions to contribute to the peace-building process, they have come under serious criticism regarding their effectiveness in delivering peace. The most glaring obstacle to a truth commissions' effectiveness is that they themselves are powerless to implement any of the initiatives or policies that they recommend. [21] The success of the truth commissions' recommendations is entirely dependent on the:

"extent to which local authorities are willing and able to take difficult but necessary political and economic decisions and to participate in the establishment of processes and mechanisms to manage internal armed disputes and pre-empt violence or the reemergence of conflict." [22]

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Without the political will to equip the truth commission with a comprehensive mandate and with powers such as subpoena and seizure, the report may have no tangible impact. "One way to provide some measure of individual accountability for past violations is to publicize the names of those thought to be responsible for organizing or executing the crimes committed,"[23] and if those names are not allowed to be published, in favor of some kind of blanket amnesty, accountability is voided. This commitment is important in allowing it to have the maximum impact since, as it will be later explained, without government cooperation, little can be achieved. These potential limitations have led to the common indictment of truth commissions that they represent a trade-off between justice for victims and national healing.[24]

To argue that truth commissions are undoubtedly effective in addressing structural violence is also disputed, notably on the grounds that they fail to adequately address the real issues surrounding the origins of the conflict, namely the indigenous rights issue that remains debated in Latin America. Jeff Corntassel and Cindy Holder argue that the very idea of a truth commission fails to grasp the nature of indigenous peoples' demands for collective rights. They argue that a state-initiated reconciliation and forgiveness project is set up to fail since it neglects "an opportunity for transforming existing relationships that go beyond hollow, symbolic gestures." [25] There is an insistence (that is often taken for granted) in the idea of a truth commission that civil and political and individual rights are privileged over collective rights. The argument is that truth commissions are engaged in a 'politics of distraction' which shifts the attention away from the rights of indigenous populations to autonomy and to their indigenous homelands, and towards individuals' legal and political rights.[26] This focus on the reconciling of perpetrators of atrocities to individual victims may lead commissions to misrepresent the extent to which institutions may be complicit in broader human rights violations.[27] This does not invalidate the work of a truth commission, but it presents an opportunity to reassess our approach to truth-telling in transitional justice.[28]

## The Peruvian and Guatemalan Truth Commissions: An Evaluation

Before this essay looks at the cases of Peru and Guatemala, it is useful to briefly note what many credit with setting the example for a successful Latin American truth commission, Argentina's *Comisión Nacional sobre la Desaparición de Personas* (CONADEP). A response to the cessation of the violence of the 1970's under the military regime, CONADEP (in conjunction with other transitional justice mechanisms) is widely regarded as contributing to Argentina's relatively successful post-conflict transition and to the maintenance of a sustainable peace. The first to receive widespread international attention,[29] CONADEP enjoyed support and assistance from non-governmental organizations and the state in compiling their findings.[30] This resulted in a comprehensive and well-received final report, *Nunca Más*,[31] which was able to present evidence to the courts, name perpetrators, and identify many killed and disappeared victims of the conflict.[32] These attributes may act as a model by which to measure the efforts of the truth commissions in Peru and Guatemala in building peace in the wake of armed conflict.

### *Peru: The Comisión de la Verdad y Reconciliación*

The Peruvian armed conflict took place between 1980 and 2000 and was framed by a highly ethnically diverse national environment.[33] During this time, the Peruvian people experienced serious human rights abuses resulting from a politically motivated internal armed conflict between the extremist Communist party, Sendero Luminoso (Shining Path), and the government and security forces.[34] Following the capture of the Shining Path's leader Abimael Guzmán, and during the leadership of President Alberto Fujimori, violence "shifted from the massive violations against life typical of an internal conflict, to selective crimes against civil liberties perpetrated against peaceful dissenters." [35] In 1998, a group of Peruvian human rights organizations initiated a movement to campaign for a national truth commission to expose the human rights violations committed over the past twenty years,[36] and when Fujimori eventually fled office as a result of a corruption scandal at the heart of his government, the interim President Valentin Paniagua elected to form the *Comisión de la Verdad y Reconciliación* (CVR) in 2001 to seek the truth about the country's violent past.[37]

Through the recollection of memory and individual experiences, the CVR's focus was to "promote a model of 'political reconciliation'" that included "efforts to reintegrate the...marginalized"[38] and moved towards the creation of a new 'social pact' between the people and the state which was destroyed during the violence.[39] As a result of this victim-

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centered approach, it became inescapably clear to commissioners that the conflict had disproportionately affected certain sectors of society, namely the rural indigenous population. This identification and the construction of a new 'collective memory'[40] based on victim testimonies is incredibly important in determining the contribution of a truth commission to the peace-building process. The reversal of the deep-seated mistrust between the public and the state is crucial in moving past the conflict and in encouraging the development of a true participatory democracy.[41] The desire to challenge the structural violence and racism which were central to the Peruvian conflict has, however, focused on the restitution of individual rights leading to concerns over its real impact on the structural causes.[42] The focus was diverted from the real issues that needed addressing to build a sustainable peace—not pushing for criminal prosecutions for individual redress, but for the recognition of communal grievances and the restoration of communal independence.[43] Even today, Peruvian society has not adequately addressed these pervasive racist attitudes,[44] and increased education is required if the CVR's findings are to have consequence in reality.[45]

One role of a truth commission in peace-building is to aid the justice process through the restitution of what was lost to victims of the violence. Among the recommendations of the CVR, a comprehensive reparations scheme *Plan Integral de Reparaciones* (PIR)) was proposed to the national government with a view to restoring justice and a resulting peace; yet, here, the potential of a truth commission is limited by political will. The process of implementing the recommended reparations plan is, to this day, an ongoing project and, despite various advancements, has experienced serious setbacks over the years. "Although many of its components were passed into law in 2005, the implementation of the plan has suffered from delays, changes in policies, and competing narratives,"[46] resulting in many victims still not having received reparations for violations committed over 25 years ago.[47] President Toledo established the *Comisión Multisectoral de Alto Nivel* (CMAN) as a response to the CVR's recommendations, yet its impact was limited, with no medium- or long- term strategy ever being implemented.[48] The situation continues to worsen with the expansion of the exclusion clause in January 2013,[49] exposing the lack of political will as a key weakness in the CVR's ability to affect real change in the justice sector.

The CVR's greatest impact on the peace process in Peru may be identified as its contribution towards criminal justice proceedings through prosecutions and convictions of human rights violators. It was made clear in the infancy of the report that this was one of the CVR's main goals,[50] and it has been relatively successful in its contributions. Although it was made clear by the government that the commission had no direct judicial powers,[51] its mandate to complement the court's work was significant. It was able to "identify the perpetrators by name to end impunity,"[52] thus allowing their final report to have maximum impact. The Commission could investigate anyone and anywhere it deemed of relevance and it was able to request the cooperation of civil servants and government officials.[53] It could not, however, subpoena institutions to give evidence, causing their authority and negotiating power to be based mainly on a moral grounding.[54] The CVR's recommendations and investigations did, therefore, have an impact on convictions of the perpetrators of violence during the conflict, aiding other transitional justice mechanisms (human rights trials) and the overall peace-building process.

The restoration of the agency of formerly marginalized individuals victimized during the armed conflict was one of the aims of the CVR, as it should be in truth commissions in general. The process of truth-telling itself seeks to be transformative of an individual's identity as the immobilized victim and can be illustrated through the high-profile case of Mama Angelica Mendoza and the Peruvian women searching for their loved ones who disappeared during the conflict. The group of women had campaigned relentlessly for information and action on the cases of their disappeared family members and had consequently faced ridicule and threats throughout the conflict. The CVR recommended state-sponsored exhumations across the country in order to help family members of the disappeared draw a line under their wartime experiences, and a particular exhumation in the community of Cabitos (formerly a site of execution, detention and disappearance) allowed Mama Angelica to have her voice finally heard and acknowledged. In other words:

"Mama Angelica faced the military currently working there in the barracks and boldly challenged, 'tell us now that it was a lie.' Here, we see evidence of how the TRC helps embolden formerly silenced witnesses of State abuse."[55]

*Guatemala's Official Truth Commission: The Comisión para el Esclarecimiento Histórico*

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The Guatemalan experience of truth commissions is diverse and complex, and a heightened focus has been placed on the utilization of truth-telling in recovering from the decades of brutal conflict. “The internal armed conflict in Guatemala, lasting from 1960 to 1996, has been the longest and bloodiest war ever in the Central American region”[56] and was characterized by extreme human rights violations against the civilian population,[57] especially its indigenous Mayan population. The Guatemalan government’s violent repression of the *Unidad Revolucionaria Nacional de Guatemala* (URNG) guerrilla forces throughout the conflict period was carried out in alliance with right-wing militias and so-called ‘death-squads’ in an attempt to neutralize what was seen as the ‘communist threat’.[58] This policy of repressing all forms of dissent enabled the Guatemalan government to consolidate total power “over all the institutions of the state, gaining almost total control by the early 1980s.”[59] The most shocking aspect of the conflict is the finding that during the presidencies of General Romeo Lucas García and General Efraín Ríos Montt (1978-1983), acts of genocide against the Mayan population were committed.[60]

The peace accords of 1996 ended thirty-six years of armed conflict and led to the establishment of an official truth commission, the *Comisión para el Esclarecimiento Histórico* (CEH), which sought to:

“clarify with all objectivity, equity, and impartiality the human rights violations and acts of violence that have caused the Guatemalan population to suffer, connected with the armed conflict.”[61]

Unlike the Peruvian or Argentinian commissions, the CEH went on to add that it would *not* enjoy the wide array of powers afforded to its contemporaries. The mandate acknowledged “the right [of the Guatemalan people] to know the whole truth concerning these events, clarification of which will help avoid a repetition”[62]; however, “the commission is not mandated to name individual perpetrators, nor will the report have “judicial aim or effect.”[63] Additionally, the CEH had no search and seizure power, no ability to subpoena, and no right to hold public hearings.[64] To the dismay of human rights organizations, the Commission was preceded by thirteen blanket amnesty laws,[65] shielding perpetrators from prosecution and leaving only the highest-profile cases open to the courts. The lack of government support for the Commission is also notable in understanding why it had such a limited impact. If the assumption is that the newly instated government is central to the peace process, then it seems obvious that their involvement in and support of efforts designed to build peace (like truth commissions) is extremely important. Christian Tomuschat (himself a coordinator of the commission)[66], commenting on the CEH’s cooperation with the Guatemalan government, notes that “On the whole...one may characterize the contribution made by the Government of Guatemala to the process of clarification as next to nothing,”[67] adding that the armed forces deliberately obstructed its investigations[68] by refusing to hand over the addresses of officers to the commission.[69] These weaknesses in the CEH’s possibility to contribute to the peace process in a judicial manner are undeniable and, therefore, we cannot easily say that it played a significant role in peace-building from this sense. If anything, its encouragement of impunity contributed to the shortfalls of the overall peace-building process.

Nevertheless, considering these failings, are we to write off the relevance of the CEH in building peace in Guatemala entirely? Acknowledging its limitations, the Commission’s focus was instead placed on investigating the root causes of the conflict, with a view to create an understanding of the past and thus a place to move forward from towards a sustainable peace. More specifically:

“The CEH report underlines the causes of war in these terms: ‘Parallel phenomena such as structural injustice, the closing of political spaces, racism, the increasing exclusionary and anti-democratic nature of institutions...are the underlying factors which determined the origin and subsequent outbreak of the armed confrontation’.”[70]

The most notable and unique finding of the truth commission was its allegation of genocide against the Guatemalan government, understood as part of the wider issue of internalized structural racism[71] at the heart of the state. The Commission stated, “agents of the State of Guatemala, within the framework of counter-insurgency operations carried out between 1981 and 1983, committed acts of genocide against groups of Mayan people.”[72] This made the CEH different from its contemporary truth commissions. By focusing on the structural violence that underpinned the conflict and that caused the atrocities, it sought to construct a new social memory, discarding the corruption of the previous. Some, however, remain critical of its impact in this regard, arguing that despite the revelations of genocide against the Mayan population, the state has continued to deliberately disregard calls for Mayan nationhood

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and identity by focusing the peace-building approach on ideals of 'national unity and citizenship'.[73]

## *Guatemala's Unofficial Truth Commission: The Proyecto Interdiocesano de Recuperación de la Memoria Histórica*

Guatemala's experience of truth commissions is also an interesting case study due to the presence of another informal truth commission, initiated by the Catholic Church in Guatemala, the *Proyecto Interdiocesano de Recuperación de la Memoria Histórica* (REHMI). In the run up to the establishment of the CEH, human rights organizations voiced concerns that without the power to name perpetrators, the report would lack purpose, leading the Catholic Archbishop's Human Rights Office (ODHA) to establish their own commission.[74] Entitled '*Guatemala: Nunca Más*', the Commission compiled reports of over 55,000 instances of reported human rights violations during the period of armed conflict and claimed that 150,000 people died, 50,000 disappeared, and one million became refugees.[75] Filling in the gaps left by the official commission, REHMI "named both perpetrators and victims on both sides of the civil war,"[76] simultaneously highlighting its failures and serving to proactively address them.[77] REHMI clearly represents a contrast in approach to peace-building through truth commissions and perhaps presents a model for the future combination of civil society-based[78] and government-initiated attempts at effective truth-telling. Whereas the CEH sought to address the structural root causes of the conflict (albeit as a result of its imposed limitations), REHMI pursued a victim-centered approach, seeking to redress individual experiences and traumas[79] through testimony and local exhumations.[80] The CEH and REHMI together have consolidated an undeniable historical truth and can be said with some confidence that the current political actors in Guatemala are very unlikely to resort to violence to exert control over the population. Therefore, we may be able to assert that the efforts of both truth commissions together may have been at least partially successful in contributing to the peace-building process.

## Concluding Remarks

Truth commissions are vital in allowing the marginalized to become active agents in the political life of their country's post-conflict recovery and represent key public spaces in which to voice grievances and to hold to account the efforts of their legal systems in protecting human rights.[81] Considering the range of successes and limitations of the truth commissions in Peru and Guatemala, it seems fair to say that to question their role in the peace-building process must be analyzed from two perspectives: their ability to address the root causes of the conflict, with a view to constructing a new collective memory, and their contribution to other retributive forms of transitional justice like trials and prosecutions. Whereas the CVR's success lies primarily in its contribution to the wider retributive aim of the Peruvian peace process (primarily through prosecution and reparations recommendations), Guatemala combined a civil society approach (REHMI) with the official commission (the CEH) to identify the deeper causes of the conflict through an investigation into the structural violence underpinning the decades of conflict. Having discussed both of their contributions, we can establish that it is indeed possible for truth commissions to play a role in peace-building; however, we may identify that for a truth commission to have maximum impact, it must seek to combine both a structural violence focus and efforts to further a victim-centered approach through naming perpetrators of human rights violations and encouraging reparations for victims. In order to positively impact the peace process, truth commissions must shed the common indictment that they discard justice in favor of truth alone. It appears as though the way we are to respond to how effective truth commissions are in aiding the national peace process is dependent upon how we judge their core purpose. They are not capable of "addressing every aspect of a transition process nor can they solve all of the dilemmas facing societies undergoing change." [82] If this is what we expect, then surely we will be disappointed. But, if we judge them on their ability to advance political tolerance, create a collective memory of a violent past, and contribute to societal transformation, then our conclusions may be more favorable.[83]

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