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INTRODUCTION

The Role of Truth Commissions Under Debate

Maria Fanlo / Sandra Martínez

International Catalan Institute for Peace

After a period of extreme and systematic violence characteristic of dictatorial or authoritarian regimes, armed conflicts and civil wars, and characterized by serious violations of human rights and of international humanitarian law, many societies claim that states have a political and moral duty to provide information and activate mechanisms to clarify the truth of the events and those responsible, and the corresponding obligation to guarantee non-recurrence of violent acts through the construction of a narrative thread and subsequent reparation for victims. Additionally, victims must be recognized as subjects with rights and given a voice to transmit to the rest of society what the events were and the magnitude thereof.

Clarification of the truth is one of the demands that victims share and, in this transitional justice framework, the establishment of a Truth Commission can respond to this need to cope with a painful past and activate the beginning of a long process of reestablishment of the rule of law, on the road to reconciliation, in societies fragmented by violence.

Truth Commissions have become a powerful tool to investigate serious human rights violations and there is currently a legacy of over 40 commissions worldwide. They are set up as officially authorized investigative bodies that are temporary and non-judicial. These commissions have a predetermined period of time to take statements, conduct investigations through testimonies and the compilation of documents, and hold public or private hearings before finalizing the process with the publication of a report. Although they are not structured as a substitute for judicial action, they offer a

possibility to explain the past and reduce a possible loophole of impunity since the resulting reports can be used for subsequent prosecutions, reparation processes and to undertake institutional reform.

“ The establishment of a Truth Commission can respond to need to cope with a painful past and activate the beginning of a long process of reestablishment and reconciliation ”

However, Truth Commissions are also instruments of transitional justice that are tinged with significant weaknesses and challenges and that often presuppose ambitious goals that can call into question their effectiveness as peacebuilding tools. The ongoing debate on how to reconcile peace and justice and, in the end, how to hold those who have committed crimes and human rights violations accountable, is one of these controversies that demonstrate how Truth Commissions can be created with strong limitations on their actual scope.

To reflect on some of these issues we present a new monograph in the e-magazine *Peace in Progress*. In the first article researcher Cath Collins questions the very idea of truth and looks into what its specific social purpose is. In this regard, she stresses the importance of defining the limits of what is considered the narrative of truth in order to avoid a war of words and meanings, and to make of this narrative a real opportunity for new paths of peace.

Additionally, with the aim of looking into the real impact of Truth Commissions, Carlos Fernández Torné wrote the second article, where he reviews the academic literature that has evaluated, both quantitatively and qualitatively, the consequences of commissions by means of performance indicators in terms of democracy and human rights. The researcher explains that the evaluation must be done through the analysis of the process, of government accountability, since it is necessary for the state apparatus to display a genuine openness that will enable a greater sensitivity toward the demands of

civil society, in general, and toward those of the victims, in particular.

“ Truth Commissions are also tinged with weaknesses and challenges due to the ongoing debate on how to reconcile peace and justice ”

However, sometimes the search for truth fails to materialize and is reduced to an unmet need for victims and their relatives when government agencies explicitly refuse to investigate the crimes committed. This is the case of Spain, as set forth by Jaime Ruiz, president of the Platform for a Truth Commission on the Crimes of the Franco Regime. The articles that follow look at the development of two very different cases. First, lawyer and human rights consultant Alejandro Valencia comments on the challenges posed by the composition, structuring and functioning of the recently created Truth Commission in Colombia, provided for in the peace agreement between the government and the FARC that was signed last autumn. Then, journalist Ricard Gonzalez presents the contributions that Tunisia's current Truth and Dignity Commission has made to the doctrine of transitional justice. At the same time, though, he also describes an uncertain scenario regarding the fulfillment of the ambitious goals that were initially set.

Finally, in an interview, we discover the view of human rights activist Helen Mack with regard to what the Truth Commission of Guatemala has meant for the victims of the conflict. Her testimony brings us closer to the struggle of thousands of people around the world who are suffering secondary victimization by an unchanging state model that has failed to provide needed reparation and that, on the contrary, has consistently ignored them.

This monograph seeks to offer a variety of perspectives regarding the use, limitations and opportunities of truth commissions through the eyes of people with different personal and professional backgrounds who have analyzed and become acquainted with contexts or commissions that have unique characteristics. It is for this reason that

the collection of articles aims to become a tool for reflection on the ability of truth commissions to transform a conflict; clarify past events; recognize responsibilities; rebuild confidence in state structures; work in favor of forgiveness, reconciliation and peaceful coexistence; and advance toward the fairest and most effective option in response to the voices and countries that demand it.

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INTERVIEW

Helen Mack, president of the Myrna Mack Foundation

Eugènia Riera

International Catalan Institute for Peace

Helen Mack, president of the Myrna Mack Foundation

Helen Mack has become an international referent in the defense of human rights and the fight against impunity in Guatemala. Since the murder of her sister Myrna, in an intelligence operation in 1990, she has fought for justice to be done and for the truth in the case to be revealed. It is a struggle full of obstacles that continues to this day.

What did the creation of the Truth Commission in Guatemala entail for the victims?

When we began to talk in South America about the concepts of what is now known as transitional justice – truth, justice, reparation and guarantees of non-repetition – expectations were raised. And, with the creation of the Truth Commission in Guatemala, victims and their families saw a direct opportunity to give their testimony and for the truth to be really heard. This was very important because many people do not relate what happened until they are given this opportunity. In addition, the methodology was good and the Commission approached victims in the most remote villages, where there is no development and travel is almost impossible. However, a number of recommendations came out of the Commission that unfortunately have not been implemented because they are not binding.

Has there been a lack of political will?

Exactly. The President of the Republic – Álvaro Arzú – did not receive the Commission's report when it was presented, which symbolically was interpreted to mean that it was

not accepted. There is a written truth, which is in the texts of the Commission, but there has been a rejection, a refusal, to accept this truth. And it is a truth that remains largely unknown by the majority because it is not included in our education system. They want to impose their truth, not the truth that is written and has been related by the victims.

Who are you referring to when you say “they”?

As the Commissioner of the International Commission Against Impunity in Guatemala (CICIG), Iván Velázquez, said recently the Guatemalan State was designed to preserve the impunity of the political, military and economic elite that has controlled the country and that is not interested in development or in the truth, but in benefiting from the protection of their own interests. There has been impunity for white-collar criminals, of this elite, and that is how the State has been co-opted. In the transition to democracy corruption was democratized, and the impunity of the past is the impunity of the present. The same actors implicated in human rights violations in the past are being charged with corruption today, and they are the ones who are impeding justice from being served on the victims. The army in Guatemala won the war – unlike, for example, what happened in Argentina – and therefore the fight for justice and truth continues.

**“ The Guatemalan State was designed to preserve
the impunity of the political, military and
economic elite that has controlled the country ”**

The truth in the case of the murder of your sister, Myrna Mack, has not been entirely clarified either.

My sister was killed in September 1990. The first time we were able to secure the conviction of a direct perpetrator was in 1993 and it wasn't until 2014 that we received the sentence against a colonel, a higher ranking officer. We proved that Myrna's case had been a special intelligence operation and how, for the crime to go unpunished, it became necessary to kill the police officer in charge of the investigation who had identified the main suspect, Beteta Álvarez. Together with this policeman, Mérida

Escobar, two civilians were captured and tortured; one was killed and the other one disappeared. Now, in April, 27 years later, we received the sentence in the case of Mérida Escobar. I was hoping that at the end of this process I would be able to bring closure to the grief I have carried for the past 27 years. And what was the sentence? They acknowledge the existence of a plan but they absolve the chief of police and only sentence three agents to 25 years. This presumably legal truth is not the truth; the truth according to the justice system is not the whole truth due to the system of impunity that exists. We are at a 97 percent rate of impunity in Guatemala.

In this scenario, is the work against impunity being carried out by the CICIG useful?

The CICIG is playing an important role in the fight against corruption and it is revealing the injustices of the impunity of the present, which is the impunity of the past. Its work has been a contribution but, as Commissioner Velázquez said, this State is designed to ensure the impunity of the elite. And the judges – though not all of them – are there to guarantee this impunity.

Without truth or justice, can there be reconciliation?

There can be no reconciliation when truth is not brought to light, when the roots of the conflict are not addressed and without institutional reform. Besides, here there is another debate: it is said that we cannot talk about reconciliation because we had never been conciliated, which is the previous step. And that is also in the conclusions of the Truth Commission: the exclusion and discrimination, which persist today. This is one of the three most prominent conclusions of the report, together with the concentration of power – which also continues to this day – and the fact that citizens cannot direct our petitions due to this concentration of power that is only at the service of this political-economic-military pact; what the CICIG has called “illicit political and economic networks.” Here is where you realize that the Truth Commission’s report was very useful for the victims but not for the country due to this lack of political will.

“ The truth according to the justice system is not the whole truth; it is not the truth of the victims

”

During the armed conflict repression was especially harsh against indigenous populations and women. Is the protection of these communities still a challenge twenty years later?

There has been no reconciliation for indigenous populations and, once again, the State has failed to honor the commitments of the Peace Accords whereby investments were to be made in the areas most affected by the conflict, in the western part of the country. And this has again triggered the crisis of the “unaccompanied children” [minors who flee violence and try to cross the United States border], which has become a national security problem for the United States. Now the demand for greater investments in the areas inhabited by indigenous communities comes from the American government, not because they are interested in human rights, but because they have a problem with immigration.

Is the absence of a historical memory law also an obstacle to move towards peace?

This is another battle for the victims, the fact that the State has ensured that it not be implemented. Once again, if we look at the Commission’s recommendations, a commission to investigate forced disappearances has not been set up and the memorials haven’t been created either. And what has been done in this respect has been thanks to the efforts of the victims, with the support of the international community, or because there are several Inter-American Court rulings that prescribe it be done.

However, the discovery of the National Police archives was a significant development in the recovery of historical memory. What did this entail for the victims?

It was an accidental discovery and, in effect, it provided information about the victims that confirms that the police were an operational appendage of the army and a source of information. It confirms how the police detained and handed over people to the authorities to be tortured and killed. From an institutional perspective, the police department is not recognized in the Constitution because the army wants to maintain control to use it in their own interests.

“ Peace processes are carried out because they entail an economic advantage, not because of a real interest to end the conflict ”

What lessons can be drawn from the post-conflict situation in Guatemala?

Every country has its own different circumstances but what we can see is that peace processes are carried out because they entail an economic advantage, not because of a real interest to end the conflict. If peace isn't economically profitable, why should I make peace? At an international level the objective of peace is the exploitation of natural resources and economic agreements with multinational corporations.

Are you hopeful that the situation might change?

No, because there doesn't seem to be an alternative of a more just economic system. In Guatemala the newer generations have a more critical way of thinking, and this is positive, and they see that the continuation of the state model we have affects them as a whole. They are tired of the corruption and they have taken a more active role where they are demanding change. But those of us who belong to the older generations must accompany them and we are barely starting to walk through the storm; we haven't even reached the eye of the storm. The resistance of this concentration of powers hasn't been undermined yet.

Do you still have strength to keep on fighting?

We are going to appeal the sentence in the Mérida Escobar case, of course, although you realize that nothing changes. And then there is the criminalization of the victims, with claims that we want to live in the past, to keep on stirring things up, and that we don't want reconciliation. For the State people were a file; for us they are our loved ones. How do you conciliate that?

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The Many Faces of Truth

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The term 'Truth Commission' usually describes time-limited, official (state) 'committees of notables', appointed to investigate some period of recent violence or atrocity and report on it for public edification. The end product has an indeterminate but powerful status, as some approximation to an official history. Neither journalism nor mere storytelling; not evidence nor verdict, the Truth Commission report seems to say that these things happened – these particular, terrible, dreadful things did, demonstrably happen – at this time, and on this place, and on this day; and this is how, and this may be why. Michael Ignatieff famously claimed that this kind of truth-telling 'narrows the space of acceptable lies'. To refute propaganda, to outlaw denial or the rewriting of history, to expose and overturn the lies and silence of perpetrators, their organisations, and their regimes... surely these are noble aims? And yet the very idea of truth, let alone, of a single, state-sanctioned truth, may be in trouble if we really do now live in a 'post-truth' age.

The first Truth Commission of modern times convened in Argentina in 1985, in the aftermath of a military dictatorship that killed and disappeared upwards of 10,000 people. In the three decades since, dozens more commissions, held in other parts of Latin America and around the world, have added to the tragic compendia of human loss. Their reports run to hundreds or thousands of pages: compelling accounts of inhumanity, resistance and courage. They are often compiled by a mix of searing first hand testimony, and the patient collecting and piecing together of documents, records, and fragmentary accounts. More recently, they have made praiseworthy efforts to be sensitive to hidden harm, to the experiences of collective, not only individual, subjects, to gender violence, and to the whole gamut of insidious, relentless damage that human beings inflict upon one another.

“ To refute propaganda and overturn the lies of perpetrators are noble aims. And yet the very idea of truth may be in trouble ”

Whether they document, historicize, explain, or just describe, the weighty tomes of commission reports add an air of gravitas and seriousness to state assurances that everything will be known, discovered, taken seriously, laid bare. But how does this help us? Can it save us? At what cost? Can it, strictly speaking, even be done? Many of Latin America's Truth Commission reports chose their opening words from the Christian gospel of St. John: "the truth will set you free". And yet the experience, and the aftermath, of these same commissions suggests that truth can be an elusive, never-ending, and maybe even an impossible, challenge.

Why is this so? For one thing, the very act of mediating, weighing, and testing the truth of what is told to the commission –essential for giving solidity to its findings– can do violence to the notion of welcoming, embracing, and acknowledging what victims, relatives and survivors want to say. Witnesses may be wrong, they may misremember, they may also –unpopular as it is to say so– distort, select or appropriate the truth. It's easier, of course, to imagine that perpetrators will do those things. Of course, we might reason, those who held the gun, gave the orders, and dug the graves, will have an interest in self-justification, self-exculpation or outright falsification. Why would they want the truth to come out, much less take part in its telling? But if they are not present, as often they are not, surely the story is incomplete. If they are, new violence may be done to the memory of their victims, if they want to celebrate or justify what was done. And what of those communities or societies, such as Northern Ireland or many more, where violence travelled side to side, not just up and down the social scale? Where old scores were settled; neighbour fought neighbour; yesterday's victim became tomorrow's perpetrator, and the bomber died alongside his or her targets? These are the messy, untamed truths that surround conflict, and the revealing of some of them genuinely can be as poisonous to peace as can silence or denial. Do we want truth at

any price? All of the truth, all of the time?

**“ Do we want truth at any price? All of the truth,
all of the time? ”**

If so, do we know with clarity what truth consists of, and how to go about getting it? Guatemala's official, UN-sponsored Truth Commission found in 1999 that the army's counter-insurgency scorched earth violence had amounted to genocide against the Mayan indigenous people. In the same year, Rigoberta Menchú, the Nobel peace prize-winning indigenous leader whose autobiography famously first brought the slaughter to the attention of the wider world, was challenged about the factual accuracy of her account of key episodes in her own lifestory. She eventually acknowledged some discrepancies, claiming, however, that hers was another way of telling truths. Her 'testimony', she said, was not and did not claim to be Western forensic facticity. It was a poetic invocation of solidarity, an appeal for affective, rather than cognitive, understanding.

The South African Truth Commission, for its part, introduced the notion of at least four coexisting modes of truth: factual or forensic; personal narrative; social truth, and healing or restorative truth. The typology has been critiqued, but there is a larger underlying question about whether and how we can live with the indeterminacy of these layered categories. What is being said or claimed, with what standards or safeguards of accuracy, veracity, and completeness, is quite simply too different, across these categories, to be meaningfully compared. It is often claimed that one of the strengths of the Truth Commission format is that it gives victims a platform and a voice. Shorn of the inquisitorial or accusatorial procedures of the courtroom, so the story goes, survivors and relatives can take the stage and be heard, acknowledged, believed, even broadcast to the nation. Assertions about the cathartic or therapeutic potential of these encounters abound, but they are often voiced by people who have little in-depth knowledge of the individual or social psychology of healing and trauma. In practice, survivors and witnesses differ widely. Some find giving testimony to be empowering

and dignifying; others, the opposite. Still others would like their truth(s) to have the kinds of consequences that only a court of law can impose. They may feel cheated, or worse, when their tormentors are allowed, as in South Africa, to receive secular absolution, in the form of amnesty, in return for reciting a litany of sometimes dispassionate, or even triumphant, confession.

“ The difficult news, for societies starting out on the long, hard road of dealing with the past, is that the Truth Commission may be not an endpoint but a staging post, the first skirmish in a new war of words and meaning ”

What, after all, is the specifically social purpose of a commission? Is it solely an arena for encounter of survivor and perpetrator, or should it seek to tell a larger tale of causes and consequences, collusion, and collective wrongdoing? Perhaps uniquely among the panoply of narrative vehicles and platforms for denunciation, claim and counter-claim, commissions can endeavour to help entire societies understand how they could have come to this pass, and how they might avoid ever coming close to it in the future. This is the ‘never again’ motif that also appears time and time again in the mandates, purposes and collective hopes that are invested in commissions. Many include sweeping and often laudable recommendations in their final reports, to just this end. The Salvadoran commission of 1993 was even invested up front with the power to make supposedly binding recommendations –although many are still unfulfilled more than two decades later. The Peruvian commission of 2003 laid bare the centuries-old racial, class and ethnic fault lines that underlay both Shining Path guerrilla violence and the state’s unspeakable responses to it. It was also intelligent, sensitive and far-reaching in its treatment of gender-based harms, including sexual violence, but that does not mean to say that things have changed for the better. Indeed it can sometimes seem, with Truth Commissions as with human rights governance, that the more hard-hitting commissions choose to be, the more they risk. The messengers are attacked, to

distract from or deny the message. Certainly in Peru, the commission and its members were vilified, their integrity and good faith questioned, in a concerted campaign orchestrated by still-powerful vested interests unhappy about being exposed. The very fact that a commission is not a court of law is seized on, often cynically, to discredit or downplay its findings.

These outcomes undermine more ambitious claims about the power of commissions to heal, change, and correct the course of post-authoritarian and post-conflict societies. This will only happen insofar as societies are willing to own, accept and act upon the portion of the commission's diagnosis and prescription that feels true, workable, and practicable. This essentially circular logic brings us back, of course, to the initial question about how we define and police, collectively and severally, the boundaries of what counts as the telling of truth. The difficult news, for societies starting out on the long, hard road of dealing with the past, is that the Truth Commission may be not an endpoint but a staging post, the first skirmish in a new, and hopefully less deadly, war of words and meaning.

* This article was completed during a 2017 Logan NonFiction Residency at the Carey Institute for Global Good, New York State, USA.

Photography : UN Photo/Mark Garten

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Truth Commissions' Impact Assessment

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Truth commissions (TCs) have become a recurrent mechanism for states to deal with and address past human rights violations in the aftermath of conflict or state repression under authoritarian rule. Transitional justice experts and the United Nations estimate that more than forty commissions have been established in different countries and regions in the past forty years. Often these commissions are established with high expectations. According to the 2004 report of the United Nations Secretary General, TCs are expected to help post-conflict societies establish the facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and recommend reparations and institutional reforms. Despite these expectations, literature of the past decade has raised doubts regarding the impacts of TCs, pointing at the need for more empirical research. Research has focused, mainly, on the impacts at a societal and state level, and specifically their impact on outcomes such as human rights and democracy. More recently, literature has started focusing on the impact as processes. In this brief article, first, I review some of the literature assessing the impacts of TCs on human rights and democracy. Second, I reflect on the avenues that an assessment of impact of TCs as processes could open.

TCs' impact on democracy and human rights

Studies assessing these impacts have reached very different conclusions. One of the earliest quantitative studies finds a significant positive relationship between post-authoritarian regimes in Latin America that have established a TC since 1979 and their level of electoral democracy¹. In another study, the authors arrive to very different conclusions when they assess the impacts of trials, TCs and amnesties on democracy and human rights. With regards to commissions, they find there is no evidence to suggest TCs improve democracy and they even find a negative relationship between TCs

and human rights². These results coincide with a separate study by Brahm who finds that TCs have had negative consequences on human rights and they have no impact on democracy³. Kim and Sikkink reach very different results. Their study assesses the impact of human rights trials and TCs in “repression”, defined as torture, summary execution, disappearances, and political imprisonment. Their findings suggest that the use of human rights prosecutions and TCs contribute to lessening repression⁴. The previous analysis shows disagreement among these studies. These differences could be the result of lack of consensus on the overall number of TCs due to divergences on what constitutes a TC.

“ There is strong disagreement among studies assessing the impacts of Truth Commissions in outcomes such as democracy or human rights ”

Qualitative studies have also researched the impacts of TCs on democracy and human rights. Barahona de Brito et al. find no direct correlation between TCs and trials and democratic improvement⁵. Another study finds that TCs have had a positive effect on democracy in countries where a prodemocracy coalition holds power in a fairly well institutionalized state⁶. This study also claims that TCs are most likely to be useful ‘when they provide political cover for amnesties and when they help a strong, reformist coalition to undertake the strengthening of legal institutions’⁷. In his assessment of TCs’ impacts on democracy and human rights in South Africa, Chile, El Salvador, and Uganda, Brahm finds that TCs are relatively ineffectual in promoting democracy although they have positive influence on human rights in the four cases⁸.

As is the case with quantitative studies, there are disagreements among these qualitative studies. A challenge to assess impacts of TCs is that most studies end with the immediate aftermath of the release of the commission’s final report and hence we have little sense of the longer-term effects of TCs⁹. Another challenge qualitative studies face is how to isolate the effects of TCs from an ongoing transition. In a context of transition from authoritarianism to democracy or from war to peace a decrease in

human rights violations would be expected even if a TC had not existed. To isolate the effects of TCs, recent studies have started to trace causality between a commission and its alleged impacts. Particularly, through tracing whether or not TCs' recommendations have been implemented. Recommendations appear as the causal chain that link a TC with a variation in an outcome of reference, such as democracy or human rights.

The impact of commissions as processes: taking into account civil society participation

Recent critiques to research on the impacts of transitional justice mechanisms emphasize an excessive focus on preconceived outcomes rather than on the process and how this process links to an outcome. Simon and Gready join others in advocating for a change from transitional to transformative justice. Transformative justice would propose, among other measures, a focus on civil society participation in the design and implementation of transitional justice mechanisms¹⁰. For Gready and Robins, transformative justice and transformative participation require more focus on process, on the interface between process and outcomes and on mobilization, and less focus on preconceived outcomes. Such mobilization can take place around court proceedings, truth commissions or reparations advocacy, or simply around the needs of victims and citizens. It can seek to support, shape or contest such mechanisms¹¹.

Considered as processes, TCs allow for sustained mobilization and participation from victims and broader civil society. If we examine TCs as processes, we can clearly distinguish three different chronological stages with different degrees of public engagement. This public engagement generates relationships and interactions among different groups within society, particularly, among those groups that were affected by the armed conflict.

“ The vertical relationships TCs generate between victims and civil society with the governing regime are particularly important ”

The first stage would comprise the time before the establishment of a TC and it includes the period of discussions, negotiations and consultations leading to its establishment. Consultations with victims and civil society on the characteristics of a future TC has been a persistent aim of the United Nations and human rights organizations working in transitional settings. Here victims and civil society can play a very important role in advocating for a commission with a concrete mandate, a transparent and public process to appoint commissioners or any other relevant aspects. During this stage, TCs generate vertical relationships between civil society and the governing regime. Much less explored is the relationship between TCs and victims and civil society during the two following stages. The second stage would comprise the time since the commission starts its work and up to the submission of its final report, when it ceases to exist. During the time of operations, victims, representatives from civil society interact with the TC providing information about violations that have taken place. The third stage, starts with the period after the submission of a TC's final report, which contains the recommendations. Here TCs generate a vertical relationship between civil society and the governing regime, when civil society pressurizes the government to implement TCs' recommendations.

The relationships TCs generate should allow a broad range of participants to feel being part of a process and not just observers. Particularly important are the vertical relationships TCs generate between victims and civil society with the governing regime. Lederach identifies the lack of connection between grassroots and high-level political processes of negotiation, what he calls the vertical gap, as the single most significant weakness in peacebuilding processes¹². A TC can fill this gap by empowering people in their interaction with state representatives and generating meaningful relationships. This entails the need for the governing regime to be responsive to the citizens' demands. The transition from the old regime, which has lost legitimacy, to a new regime, entails opening up the state apparatus to the citizens, specifically to those who suffered violations from the state.

To conclude, there is strong disagreement among studies assessing the impacts of TCs in outcomes such as democracy or human rights. Recent literature has started emphasizing the need to integrate a focus on the impacts that TCs have as processes. Such an approach would take into account victims and civil society participation in

TCs. Specifically, whether or not victims and civil society are empowered in their interactions with the government before the establishment of a TC, during its work and as a result of the recommendations compiled in a TC's final report. Before, its establishment, victims and civil society would be empowered if governments establish a TC with a mandate, powers and commissioners according to their demands. During the time of operations, victims would be acknowledged and empowered if a TC collects their statements about violations they have suffered. After the submission of the report, victims and civil society would be empowered if their mobilization leads the government to implement the commission's recommendations. Overall impact would be assessed on the basis of whether or not a TC has rendered governments accountable to victims and civil society demands.

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Spain: Truth, Justice, Reparation and Guarantees of Non-Recurrence

Jaime Ruiz

President of the Platform for a Truth Commission on the Crimes of the Franco Regime

Until it attained a democratic constitutional framework in 1978, Spain endured a military uprising, a coup d'état and a civil war which led the victorious side to impose a dictatorship supported by Nazism and fascism. This illegal and illegitimate dictatorial regime remained in power for forty years. Today, as we approach the fortieth anniversary of democracy, there are still a vast number of mass graves in our land which hold the remains of the first men and women to rise up in defense of the legitimate and democratic government of the Second Republic, and against fascism, which spread throughout Europe and prevailed in our country.

The numbers speak for themselves: over 150,000 forced disappearances, over 30,000 kidnapped children and over 2,300 documented mass graves, with human remains, of which only 390 have been opened. And along with these data it is important to note that there are no ongoing judicial proceedings in our country, not because those affected, whether family members or concerned citizens, have shown no interest. Justice still awaits the tens, hundreds, thousands of victims that the dictatorship detained, tortured, forced into exile, deported, executed, subjected to forced labor, etc. Justice that, almost four decades after the end of Franco's regime, is still denied again and again by the state and the courts.

The first initiative was the filing of several complaints by victims, victim associations and other organizations with Central Magistrates' Court No. 5 of the *Audiencia Nacional* (Spanish National High Court) in 2006. On 16 October 2008, the judge admitted the case and ordered an investigation of the various crimes against humanity committed in the Franco era, calling for the identification of those responsible, various exhumations and

other measures. The second chamber of the Supreme Court, in its decision of 27 February 2012 in the case against Judge Baltasar Garzón, who was acquitted, decided that the crimes of the Franco regime could not be criminally investigated and claimed that they were amnestied and unprosecutable. It also considered that the principles of international criminal law could not be applied to these crimes. This is an explicit renunciation of the investigation and punishment of these crimes, as well as the search for truth.

“ The tens, hundreds, thousands of victims of the dictatorship are still awaiting justice; it is a disgrace to us that the crimes of the Franco regime are not being investigated ”

It is a disgrace to us all in our country that the crimes committed during the Franco dictatorship are not being investigated or prosecuted, although it is important to note that there are some exceptions in the judiciary domain: “In a society with a criminal law system that advocates giving victims and their families a greater role, victims should be supported so that they can heal their wounds. These people, irrespective of the time elapsed, should have the opportunity to receive reparations or compensation.” (Judge in Salas de los Infantes, Burgos); “A democratic state should not tolerate the continued existence of tens of thousands of victims of a dictatorship in mass graves or ditches.” (Association of Judges for Democracy); “The victims of the Franco regime, many of them elderly, are entitled to adequate reparation for their suffering.” (Association of Judges for Democracy).

Government institutions, on the other hand, are not only far from advancing in the development of a legislative framework that protects victims and their relatives and puts an end to the situation described above, but they have been closing the door to possible positive interpretations. The current government, led by Rajoy, has decided to strip the already limited Historical Memory Law of its substance, closing the office for victim assistance, ending the gathering of information and access to certain archives,

and allocating zero euros to the budget to fulfill the obligations established in said law.

In light of the desolate situation that still exists for the victims of Franco's dictatorship, the Platform for a Truth Commission on the Crimes of the Franco Regime was created in September 2012. We believe that the rights to truth, justice and reparation of the victims of crimes against international human rights – including torture – committed during the Civil War and under Franco are still being denied in our country. And most of the associations of victims, historical memory and human rights in our country agree.

“ We call for the implementation of the principle of international legality that obliges the Spanish State to investigate and prosecute the crimes of the Franco regime ”

Spain has a stable democratic institutional framework that is under virtually no risk of collapse or failure forced by groups or organizations that encourage hatred in our society. We are members of the European Union and we participate in UN agencies, including the Security Council, where we currently hold a seat. As the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, rightly stated, “The strength of democratic institutions is better reflected in the way they positively address the petitions of their citizens than in their ability to leave certain issues off the public agenda.”

The Platform's call for the establishment of a Truth Commission on the crimes of the Franco regime in our country ([see statement](#)) is based on international law, the experience of more than 40 countries, and the resolutions and recommendations of the UN, the Human Rights Committee, the Working Group on Forced Disappearances and the Council of Europe regarding our country. We believe that these recommendations can facilitate the resolution of the demands of victims and relatives, fulfill the duty of memory and be an instrument for democratic coexistence.

The Platform calls for the application of the principle of international legality enshrined in many international treaties and conventions. This principle obliges the Spanish State to investigate and prosecute crimes that would be categorized as such under the general principles of law recognized by the international community even though they may not receive this consideration under Spain's own internal legislation. We also demand that the State cooperate with the Argentine justice system regarding persons allegedly involved in the commission of crimes under international law, and adopt the recommendations contained in documents issued by the UN which imply possible interpretations that conform to the requirements of the law and which allow the judicial system to be accessible to the demands of justice of its citizens; that the demands of the victims, their organizations and a concerned civil society be promptly addressed so that the development of the measures that these reports present for our country may be implemented as State policies and in all institutions, with as much agreement as possible, in order to ensure that the victims, their relatives and the whole of society are aware of the history and memory of the generations that endured crimes repudiated by humanity; and to establish guarantees of non-recurrence, the basis on which new generations can be educated and a future in freedom can be built for all.

Photography : Enrique Pratas

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Challenges Facing the Truth Commission of Colombia

Alejandro Valencia Villa

Lawyer, consultant and professor in human rights, humanitarian law and transitional justice

Item 5 of the final agreement to end the armed conflict and build a stable and lasting peace, signed by the Colombian Government and the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP) on 24 November 2016, concerns the victims of the armed conflict. This point establishes a comprehensive system of truth, justice, reparation and non-repetition, including a special jurisdiction for peace and a commitment to human rights. The objectives of this system are to achieve the realization of victims’ rights, to ensure accountability, non-repetition, a territorial-based approach, legal security, coexistence and reconciliation, and legitimacy. Its components are the Truth, Coexistence and Non-Repetition Commission (hereafter the Truth Commission or the Commission); the special unit for the search for persons deemed as missing in the context of and due to the armed conflict; the Special Jurisdiction for Peace; the comprehensive reparation measures for peacebuilding purposes; and the non-repetition guarantees.

The Truth Commission provided for in the agreement will have a duration of three years and a preliminary phase of six months to prepare everything necessary for its operation. A precise investigation period has not been established; the Commission itself will establish it, possibly determining a longer contextual period and a shorter clarification period. Its main objectives are to contribute toward the historical clarification of what happened, promote and contribute to the recognition of the victims, and to promote coexistence across the country. It will consist of eleven commissioners, no more than three of whom can be foreigners. The efforts of the Commission will focus on guaranteeing the participation of the victims and it will be able to hold public hearings;

it will clarify the practices and actions that constitute serious human rights violations and serious breaches of international humanitarian law; it will include territorial, differential (a reference to indigenous peoples) and gender perspectives, as well as the impact of sexual violence; it will establish voluntary recognition of individual and collective responsibilities; it will be an extrajudicial mechanism but it will ensure due process and non-discriminatory treatment; it must implement a strategy of dissemination, education and relations with the media; it will prepare a final report and take measures to preserve the archives once its work is done; and it will create a committee to follow up and monitor the implementation of the recommendations.

“ The victims must be the protagonists of the Commission; no one can speak on their behalf and no one can keep them from speaking ”

The presidential decree creating the Truth Commission was issued on 5 April, transcribing the objectives, guiding principles, mandate and functions outlined in the peace agreement. The most novel aspect of the decree is related to access to information, particularly with regard to classified information, and the functions to be fulfilled by the president, the secretary-general and the plenary of the commissioners.

Several challenges are emerging in the short term for the formation, structuring and operation of the Truth Commission. The first one is the designation of the eleven commissioners, who must guarantee not only their independence, autonomy and impartiality, but also demonstrate great sensitivity to prioritize the demands of the victims and a commitment to the respect for and guarantee of human rights. And the personnel working on the Commission must also have these same profiles. The process of nominations, selection and appointment of the commissioners is expected to be carried out during the second and third quarter of 2017 in order for the Commission to begin its work as soon as possible. Hopefully, in early 2018, the Commission will open its doors, which would mean that it had previously completed its preliminary stage in which it will have to define its methodology, its territorial deployment in the various

regions of the country, and initiate an extensive educational campaign to summon the many victims of the Colombian armed conflict to come and testify.

The centrality of the victims is a priority for the work of the future Commission. They must be the protagonists. Above all, it is they who must be listened to because those who speak are the ones who end up making history; that is why the victims must be the ones who tell their story. The taking of testimonies, both individual and collective, and public hearings, are key methodological tools for this process. No one can speak on behalf of the victims and no one can keep them from speaking.

“ It is to be expected that those who committed acts of violence contribute effectively by telling the truth and asking for forgiveness ”

The period of years under investigation should be long enough to be in accordance with the seriousness of the political violence. Although the period framing human rights violations and breaches of international humanitarian law for the taking of testimonies may be less than that of a more general context, such a period should be extensive enough to include as many victims as possible. A period of time that does not meet the expectations of clarifying as many acts of violence as possible would not be in accordance with the country's violent past. Furthermore, the most serious crimes committed during the armed conflict that violated the rights to life, personal and sexual integrity, personal dignity and personal freedom should be investigated. And the most paradigmatic cases which, due to their large-scale nature and impact, have become part of the recent history of Colombia, should also be analyzed.

Guaranteeing the various approaches that the Commission must have is not an easy task in a country that for decades has seen thousands of victims throughout the land, where gender, age, race, ethnicities and political opinions, among other things, have not been respected. These approaches must not only be circumscribed to the facts, but also to the impacts and to the different forms of coping with them, as well as to the

inclusion of a differential methodology.

Although the Commission is an extrajudicial mechanism, this should not be an obstacle to establishing the accountability of perpetrators. Hopefully, the Commission will make more progress in unraveling the truth of the perpetrators than other official commissions that Latin America has had. Institutional, individual, collective, national and international responsibilities are part of this clarification function. It is to be hoped that those who committed acts of violence will contribute effectively by telling the truth, assuming their responsibility and asking for forgiveness if they think that they will be favored by the justice measures brought about by the peace agreement.

“ The Truth Commission reduces at least a significant number of lies that exist in contexts of gross violations of human rights ”

The final report must be sufficiently comprehensive so that it can provide an official truth of what happened in Colombia during the armed conflict. Its content cannot be reduced simply to the armed confrontation between the national government and the FARC-EP, but must include the clarification of crimes committed by other actors such as paramilitary groups and other guerrilla organizations. Furthermore, the Commission's work does not end with the final report; it should also offer an accompaniment process to the victims in order to promote coexistence across the country, which is precisely the third objective stated in the agreement. The follow-up to its recommendations will be key to helping rebuild the social fabric of the affected communities. Moreover, the different components of the integral system of truth, justice, reparation and non-repetition must be sufficiently balanced and coordinated, and implemented in a coherent way so that they all fulfill their purposes and do not generate imbalances in each of its components.

It is to be hoped that this mechanism will contribute significantly to the building of a public framework of a memory discourse that establishes a new official paradigm of

truth, since the current standards of transitional justice point out that it is one of the mechanisms that more effectively satisfies the right to the truth. If justice is to be administered through a system of penalties where penalties of imprisonment will not be so crucial, high doses of truth are required for transitional justice to be more in line with international standards. As Michael Ignatieff has written, a truth commission at least reduces a significant number of lies that exist in contexts in which serious human rights violations or serious breaches of international humanitarian law have occurred. It would be advisable for the Commission that will soon start to work in Colombia to eradicate some of these lies and establish a truth that contributed more decisively to peace among Colombians.

Photography : Lowfill Tarmak

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IN DEPTH

The Tunisian Experience in Transitional Justice

Ricard Gonzalez

Journalist

One of the priorities of the first democratically elected government in Tunisia after the Revolution of 2011 was to carry out a process of transitional justice. This was one of the main demands of a highly mobilized civil society in the months that followed the uprising. During the first two years, the government made discretionary gestures in this area while Parliament, in talks with civil society, discussed the creation of a Truth Commission in order to provide the process with a coherent and transparent framework. Thus, through an organic law promulgated at the end of 2013, the Truth and Dignity Commission (TDC) was created. The law conferred an ambitious mandate and extensive powers on the TDC, guaranteed by the country's first democratic Constitution: to investigate abuses committed by the state between 1955 and 2013 in order to reconstitute the country's historical memory, to compensate victims, and to hold accountable those responsible for such abuses.

For this difficult task, Parliament granted the TDC a four-year period, extendable to five, and promised to provide the necessary budget. From then until June 2016, the deadline for submission of dossiers, the institution received more than 62,000 in the 45 offices that it has around the country. Of these thousands of petitions, approximately eight percent have been dismissed after it was considered that they did not meet the requirements of the law. Almost 6,000 were presented by organizations, such as political parties, trade unions and regions that consider they were victims of systematic persecution, either by the regime of independence leader Habib Bourguiba, who governed between 1956 and 1987, or that of Ben Ali.

“Our philosophy falls within the framework of transitional justice. In other words, the main objective is not to jail offenders, but to achieve reconciliation throughout society. The country must confront and know its past so that it won’t repeat it,” says Sihem Bensedrine, a Tunisian journalist and historical human rights activist who was living in exile in Barcelona when the Revolution broke out in the cradle of the so-called Arab Spring. “We do not want to scapegoat the persecutor; we want to go up the chain of command and dismantle the repressive system,” adds Bensedrine, sitting in her office in a new building in the center of the capital. Tunisia is the only country shaken by the revolts of 2011 that has been able to conclude its transition, and therefore the only one where it has been possible to launch a real process of transitional justice.

“ “The main objective is not to jail offenders, but to achieve reconciliation throughout society. The country must confront and know its past so that it won’t repeat it” ”

According to the established system, once the victim has filled out and submitted a form, a committee evaluates the abuses reported to see if they correspond to the period and nature of the crimes included in the mandate of the TDC. This is followed by a hearing that usually lasts several hours, in which the victim explains the case in detail in the presence of a psychologist. Then a committee investigates the facts and tries to identify the offender. Cases of corruption are dealt with by an arbitration committee. In the most serious cases of human rights violations, if the TDC lawyers –who have the status of public prosecutors– believe they have sufficient evidence, they can initiate criminal proceedings and transfer the case to a special court operating under the principles of transitional justice. For example, prison is reserved only for cases of crimes against humanity, while alternative sentences may include the loss of employment as a civil servant or disqualification to hold public office. Unlike the Truth Commission in South Africa, there are no fixed rules that allow perpetrators to avoid jail in exchange for revealing the truth. However, according to the statutes of the

Commission, their cooperation will result in a lighter sentence. The perpetrators themselves may submit a dossier to the TDC, which results in the suspension and subsequent filing of any cases pending before ordinary justice. In fact, there are dozens who have done so, especially in corruption cases.

“We have a group of judges working in the special chambers added to the ordinary legal system who have received specific training abroad in transitional justice and who never participated in political legal cases during the dictatorship,” says Bensedrine, convinced of the commitment of these judges with the principles of her institution. It is a question of not repeating what has happened to many victims who, in the last five years, have seen how the courts have shelved their complaints, declaring themselves unable to find the perpetrators of the abuses, even though sometimes the victims have provided sufficient evidence to identify them.

While those responsible for the TDC maintain that every transitional process is unique and corresponds to a particular local context, they have kept previous experiences in mind. “We have closely studied the experiences of the 42 truth commissions created in other countries to avoid repeating the same mistakes,” said Bensedrine, citing the example of South Africa, where the televised broadcast of all the hearings led to a process of retraumatization of some of the victims and subsequent suicides. In Poland, for example, since there was no ad hoc judicial system, recycled judges of the dictatorship shelved many of the investigations conducted by the truth commission.

“ The Tunisian model has contributed some innovations to the doctrine of transitional justice ”

In addition to extracting lessons and correcting defects, the Tunisian model has contributed two innovations to the doctrine of transitional justice: it has included the possibility of presenting collective complaints, not just individual ones; and it has created a mechanism to penalize corruption cases which take place within the

institution. Specifically, about a quarter of the dossiers submitted relate to violations of economic and social rights, while the rest relate to human rights violations. With more than 10,000 cases, torture is the most reported offense. Among the most serious offenses, 603 intentional homicides and 355 rapes have been reported. In fact, sexual violence was a common weapon used against opponents of the dictatorship, and the real figure could be much higher since many victims fail to report this type of violence due to the stigma attached to it.

The Commission has a fund for the compensation of victims or to finance treatments to mitigate the effects of torture, but it also coordinates with other ministries, such as the Ministry of Social Security, for cases that merit monthly pensions. Although monetary reparations are vital for victims to rebuild their lives, they are often not their main demand. Numerous petitioners particularly demand moral reparation, such as the annulment of unjust convictions or the naming of a street or school after the victimized individual or group.

“First of all, we want to know the truth. There are people with relatives that have been missing for years or decades who still don’t know where they are, and simply want to bury them. What our family wants is the annulment of the conviction against my brother. In other words, moral reparation and an official rectification by the State,” declared Laila Yahyahoui. Her brother Zouhair, a pro-democracy activist and blogger, died in 2005 as a result of the abuse suffered during years in prison. Among those politically persecuted, there are members of all of the country’s political organizations –socialists, trade unionists, communists and Islamists– but also many citizens with no political affiliation.

**“ Since its establishment, the Commission has
been a victim of the political parties’
politicization ”**

One month before the sixth anniversary of the Revolution, one of the most symbolic moments of the beginning of the Commission's work took place: the holding of the first public hearing, in which victims of the dictatorship recounted their painful stories live before the cameras of the national public television station. The venue chosen for the event also carried a strong emotional charge: "Club Elyssa," a luxurious villa owned by Ben Ali's hated wife, where the former president used to hold lavish receptions. "The selection of victims has been based on several different criteria. The main one is to strike a balance among all the persecuted political organizations, as well as among geographical regions, gender and the different time periods covered. We also have to take into account people's psychological strength," says TDC spokesman Seif Soudani, who adds that a team of psychologists attends the hearings to assist the victims. Indeed, to avoid the risk of retraumatization of the victims, as often happened in South Africa, only a representative sample will present their testimony publicly. According to Commission officials a public hearing is expected to be held every month this year, each one dedicated to a different topic.

With a little over a year remaining until the end of the TDC's mandate, it is still unclear whether or not it will be able to meet the ambitious objectives that were set. Since its establishment, the Commission has been a victim of the politicization of the political parties, as well as the disappointment of a part of society with the democratic transition. In fact, several public figures linked to the Ben Ali dictatorship are members of the current ruling party, Nida Tunis, winner of the second elections in 2014, and the party has tried to obstruct the process. In addition, there are state institutions -mainly the Interior Ministry- that are not cooperating with the investigations, hindering the identification of perpetrators, and therefore, the exercise of justice. For this reason, the TDC runs the risk of ending up as little more than a compilation of abuses during six decades of dictatorship, without accountability of those responsible, and therefore without achieving genuine national reconciliation.

Photography : Amine Ghrabi

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RECOMANEM

Materials and resources recommended by the ICIP

Web

International Center for Transitional Justice

We can't talk about truth commissions and transitional justice without mentioning the International Center for Transitional Justice (ICTJ), an international organization specializing in transitional justice, which has recently celebrated its fifteenth anniversary. Since its inception in 2001, the goal of the center has been to help societies in transition address human rights violations of the past and build confidence in new institutions that must ensure their protection. To achieve this objective the ICTJ provides technical assistance and knowledge to governments and institutions at local, state and international levels and works with victims, activists and civil society organizations. It also has a powerful research team that regularly analyzes the progress made in terms of transitional justice worldwide and publishes the results.

Much of the work done by the organization can be found on its website, which is available in English, Spanish and Arabic. Information is provided in five sections, including "News," "Our Work," "Publications" and "Multimedia." The first section, in addition to providing information about the center's activities, contains a large number of current articles about cases of human rights violations and experiences in transitional justice. Most of them are written by experts in the field in language that is easy to understand and in great depth.

The issues the center deals with are defined in "Our Work": Criminal Justice, Reparations, Truth and Memory, Institutional Reform, Gender Justice, and Children and Youth. The importance of each issue with regard to transitional justice is explained here

and the actions taken by ICTJ are listed as well. Finally, the “Publications” section is a huge catalog with more than 400 entries where you can find information from books and studies, while “Multimedia” contains interactive and audiovisual material such as interviews and photographic reports.

The ICTJ has offered assistance to truth commissions in several countries and has participated in subsequent implementations of reparations. Drawing on their experience they have produced numerous materials, such as:

Truth Seeking: Elements of Creating an Effective Truth Commission. Together with state partners in Brazil and UNDP, the center published this handbook in 2013 to guide truth commissions in the main aspects of their activities. It addresses issues related to objectives, operations, witness protection, etc.

Strengthening Indigenous Rights through Truth Commissions: A Practitioner’s Resource. This is a synthesis of lessons learned in contexts such as those in Canada, Côte d’Ivoire, Guatemala and Nepal to strengthen the rights of indigenous communities. It also provides resources for future processes in this field.

Peru: Un espejo doloroso. This is a report which analyzes the impact of the work of the Commission for Truth and Reconciliation in Peru ten years after the publication of its final report.

Document

Bibliography on Truth and Reconciliation Commissions

In [this dossier](#) the Library of the International Catalan Institute for Peace recommends some of the most significant publications on Truth and Reconciliation Commissions available in our library stock. They are all at your disposal and available on loan.

The Library, specializing in issues of peace culture, security and conflicts, and a benchmark in this field in Catalonia, is located on Carrer Tapineria 10, 1st floor, in Barcelona.

Book

***Verdades silenciadas*, by Priscilla B. Hayner**

The book *Verdades silenciadas* (Unspeakable Truths) originated from Priscilla Hayner's in-depth research into truth commissions. Hayner is co-founder of the International Center for Transitional Justice (ICTJ) and is known for her extensive experience in official measures to search for truth in political transitions.

The book is an important contribution to the understanding of the new horizons of human rights protection and is a guide to action for those societies that decide to confront historical legacies of mass atrocities, as it gathers a broad exploration of various truth commissions from around the world. The case studies include nearly all the experiences of searching for the truth of the past three decades, from South Africa to Canada, by way of Chile, Guatemala or El Salvador. The methodology used is that of a comparative analysis of historical experiences, based on interviews with key players and the examination of documents.

Throughout the pages of her book, Priscilla Hayner develops a rigorous and thoughtful analysis of the dilemmas, different options and concessions that are sometimes necessary on the road to confronting the past. Far from justifying oblivion, denial or impunity, the book presents, in a realistic manner, the difficulties, risks and obstacles that the demand and achievement of the "right to the truth" may present.

The book has become an essential publication on transitional justice which, in its original version in English a few years ago, had already become a reference manual on truth as an ethical imperative in the face of human rights violations.

Verdades silenciadas is [available for loan](#) at the ICIP Library.

Report

La verdad de las mujeres

The report entitled *La verdad de las mujeres. Víctimas del conflicto armado en Colombia* (The Truth of Women: Victims of Armed Conflict in Colombia) is a collective effort to assemble a memory and a truth of the victims of the armed conflict in Colombia. The report recounts an experience. It is an investigation in the field of human rights that focuses on the experience of the victims. It describes a process carried out by over a thousand women and coordinated by the Ruta Pacífica de las Mujeres. The report puts

the voices of these women at the center of the process of building a truth told by them and that is part of the recent history of Colombia.

The initiative to create this report was spearheaded by the Ruta Pacífica de las Mujeres, a feminist movement comprising more than 300 women's groups and organizations in Colombia that emerged in 1996. This movement works toward a negotiated settlement of the armed conflict in Colombia; to increase the visibility of the effects of war on the lives of women; and to demand the right to truth, justice, reparation, non-recurrence, and reconstruction of individual and collective historical memory.

Documentary

Long Night's Journey into Day

Long Night's Journey into Day (2000) is a documentary that takes us to post-apartheid South Africa, a country that seeks to reconcile itself through the search for truth and that is trying to forge a lasting peace after 40 years of racial segregation.

The documentary, directed by Frances Reid and Deborah Hoffman, analyzes the development of the Truth and Reconciliation Commission in South Africa and the actions of the democratic government aimed at considering an amnesty for perpetrators of crimes committed under the apartheid system. The film was shot over two and a half years and portrays the testimonies of various actors and the encounters between relatives of the victims and perpetrators in four different cases: the murder of anti-apartheid activist Amy Biehl, the murders of four activists in the town of Cradock, the Magoo's Bar bombing and crimes committed in the township of Guguletu.

The Truth Commission and the stories reflected in the documentary review and highlight some of the most profound moral and ethical issues related to justice, truth, forgiveness and resilience in the pursuit of a harmonious coexistence between victims and the perpetrators of violence.

This film was awarded the Grand Jury Prize for Best Documentary at the Sundance Film Festival.

Film***La teta asustada***

Fausta is a girl who suffers from the disease of “the milk of sorrow” (“la teta asustada”) a condition that is contracted through the breast milk of women who suffered abuse or were raped during the years when Peru was shaken by terrorism. This condition causes Fausta to be continuously afraid and makes it difficult for her to relate to the people around her, but after her mother’s death she must face her fears to get ahead.

The story of the protagonist of *La teta asustada*, a film directed by Claudia Llosa, is closely related to one of Peru’s darkest periods. It refers to the period of terror the country went through from the 1980s to the 2000s, with thousands of killings and human rights violations. In 2001 the country established a Truth and Reconciliation Commission in order to investigate the internal armed violence that occurred during that period.

Documentary***Guatemala. Rescatant la memòria***

Guatemala experienced a long armed conflict, with military dictatorships included, from the 1960s until 1996, when peace agreements were signed. Military repression against students and urban leftist activists and against the mostly indigenous rural population caused hundreds of thousands of deaths. The country had two truth commissions, one launched by the UN and the other, by the church.

Guatemala. Rescatant la memòria (Guatemala: Rescuing Memory) portrays the permanent battle against oblivion and for justice that, still today, sixteen years after the peace accords, is being fought in the country. According to the Commission for Historical Clarification (CEH), the total number of dead and missing is over 200,000. Human rights associations claim that the army organized and carried out a genocide of the indigenous Mayan population, with thousands killed, a million and a half internally displaced and 450,000 refugees in Mexico. It is estimated that 92 percent of the victims were civilians.

The documentary, produced by the Fora de Quadre Association of Journalists and the Contrast journalist collective, explains, through the testimonies of victims and experts, how the process of recovering memory is being carried out. Against the tide and without state support, institutions such as the Historical Archive of the National Police, the Center for Legal Action on Human Rights and the Forensic Anthropology Foundation work to provide reparations for victims who are still searching for a clue, the remains or those responsible for the disappearance of a family member.

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TRIBUNA

We, the Cities

Sabina Puig

International Catalan Institute for Peace

More than 70 years ago, with the intention to rebuild a new world on top of the ruins of World War II, the governments came together in San Francisco to sign the United Nations Charter. All of them – “we, the peoples of the united nations” – showed themselves determined, among others, to save the world from the scourge of war, to reaffirm faith in fundamental rights, dignity and the worth of the human person, and to promote social progress and better standards of life in larger freedom. In the wake of these foundational commitments followed the Universal Declaration of Human Rights and a set of international treaties and conventions to which States have been subscribing progressively, thereby accepting to be bound to human rights obligations.

If, admittedly, this regulatory framework has not always been respected, until today, there was at least an attempt to conceal the human rights violations from the public opinion and the international community. Lately, though, there are increasingly more voices from political representatives – also from supposedly democratic countries – who justify, or even promote them, undermining a whole system of rights and guarantees after it took centuries to build it. It is no coincidence that, in just a few months’ time, up to three countries – Ukraine, France and Turkey – have (temporarily) derogated from the European Convention on Human Rights.

The agreements between the European Union and third countries on the matter of refugees and migration, the xenophobe rhetoric in the media and in the programs of political parties which, at each election, receive more votes, the contempt for the human lives at the gates of our fortresses, the attacks on the environment, the *laissez-faire* in front of serious abuses committed by transnational organisations, uncontrolled

arms trade or the dismantling of our freedoms in the name of a militarised security are worrying signs of the decadence that alienates us from the ideals that should mark the path that was taken in 1945.

**“ Amidst all this chaos, the city of Madrid offered
a small oasis of exchange, dialogue, creativity
and hope ”**

Amidst all this chaos, the city of Madrid offered, for some weeks, a small oasis of exchange, dialogue, creativity and hope. Invited by the mayors of Madrid, Manuela Carmena, and Paris, Anne Hidalgo, representatives of many municipalities, big and small, from around the world, and a well-nourished representation of organisations from the social fabric participated in the World Forum on Urban Violence and Education for Coexistence and Peace, held in Madrid from 19 to 21 April 2017. Close to 3,500 persons from around 70 countries did not want to miss out on this event.

This gathering has given the opportunity, on one hand, to listen to speeches and reflections that are very remote to the miserable trends mentioned earlier. Speeches and reflections where people were talking about solidarity, sustainability, democracy, social justice, gender equality and which remind us that, at the centre of all priorities, we need to place the dignity of the all human beings, without any kind of discrimination. In the present situation, organising international meetings with the participation of institutional representatives of the highest level and the media coverage we saw during the Forum in Madrid is fundamental. Without any doubt, initiatives of this kind help to highlight these principles, give them visibility and put them on the political agenda.

On the other hand, the Forum has been a magnificent occasion for the mayors of many cities to send the world this message: against the culture of violence, we, the cities, call upon the culture of peace. If governments cannot come to an agreement to solve international conflicts in a pacific way, if they lack commitment to improve the people's

living conditions, fight against corruption, protect the environment and educate in the spirit of peace, we, from our mayor's offices, will keep moving forward.

“ It gives hope to see that the highest municipal authorities call upon the culture of peace to solve conflicts ”

And it is very encouraging to see that mayors commit themselves in this sense, because it is precisely at the urban level that expressions of violence are most visible. By violence, we don't just mean the crime level. Beside physical attacks against persons and acts of interpersonal violence, we also refer to more structural forms of violence, as inequalities, poverty, shortage in access to housing, education or healthcare, lack of job opportunities, corruption, discrimination, etc. We also need to keep in mind the most symbolic (or cultural) forms of violence that perpetuate structural and/or direct violence: those messages – more or less subliminal – that are still very present in our daily language, customs, media, entertainment, public opinion, creating and aggravating prejudices, exclusions and marginalisation.

Before these multiple situations of violence, it gives hope to see that the highest municipal authorities take time to reflect with the intention of finding an integral response, not exclusively based on “securing” measures, but calling upon the culture of peace to resolve conflicts and promote the education in coexistence.

The debates, held during the Forum, have been very useful to address, with direct testimonies, conflicts arising in the cities in all their diversity: from the challenges found in Montreal (Canada), a city of 4 million inhabitants, to the way refugees are hosted in a relatively small town like Ventimiglia (Italy), as well as the outbursts of violence the mayoress of Banganté (Cameroon) tries to manage despite limited local powers.

They have also helped to raise awareness on several initiatives led by public institutions or civil society organisations, which have had positive results. And even if

there is no universal formula for the promotion of proper coexistence and peacebuilding in urban surroundings, the Forum – with its formal and informal scenes – was helpful in giving publicity to projects in progress and getting to know them more in detail, showing their capacity of adaptation to and implementation in other locations. Because, if the cities are spaces for conflicts which can derive in violence, they are also spaces for encounters, for shelter, for creativity, for knowledge, for personal and collective growth, for leisure, for culture, that can help us to move forward towards a more fair and sustainable world. You only need to know how to identify and promote them.

“ If the cities are spaces for conflicts which can derive in violence, they are also spaces for encounters, for shelter, for creativity, that can help us to move forward towards a more fair and sustainable world. ”

In this connection, the Forum did not find itself short of theatre, dance, music,... because art as well, especially urban art, has claimed its place as a tool for social transformation. This has been brilliantly exposed by the philosopher and dancer Miguel Ballarín, and illustrated by our friend Jeihhco from Casa Kolacho, Medellín, who managed to move an entire auditorium with his rap.

The opponents of initiatives like this one can detect naivety or even demagoguery in every project aiming at peacebuilding. Even so, putting serious problems that affect the well-being and life of millions of people on the table and looking for a way to solve them is exactly what political leaders ought to be doing, whether on the national, regional or local level. Creating platforms for dialogue, for exchanging experiences, for building alliances to confront those problems, according to principles which unite the entire humanity, is no eccentricity. On the other hand, what we do have to demand from our leaders is coherence and exemplarity in rhetoric and practice. Despite the lucidity,

solidarity and sensitivity, expressed during the Forum by their respective mayors, Madrid, Paris and many other cities are not exempt from evictions, exclusions, gender-based violence, police abuse or racism. The final statement of the Forum could be considered a road map to stand firm on the commitments, while waiting for a political agenda for peace in municipalities: “Madrid’s commitment to peaceful cities”.

A three-day lasting forum is definitely not enough to change the wrong course events are taking, but it can give wings to all those people who are working for peace and human rights, often in very hostile situations. It opens the door so that more municipalities may feel themselves challenged to tackle urban conflicts from a culture of peace. The announcement of the organisation of another worldwide gathering in two years from now is very positive news. Hopefully, more local governments join in and more organisations from civil society can attend. Peace capitals are needed all around the planet.

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TRIBUNA

Mexico and the Missing 43+

Carlos Martín Beristain

Doctor, specialist on the care of victims of violent conflicts

The case of the 43 missing students of the Escuela Normal Superior in Ayotzinapa, Mexico, the homicide of three others as well as that of three more persons in the night between 26 and 27 September 2014 in the city of Iguala (Guerrero), together with many more people wounded – some of them severely – has been a wake-up call for the country's conscience and that of the world. The pain and suffering of the relatives who, since the very beginning, have mobilised for the search and the investigation of the facts, together with the initial negotiation and opening of Mexico before the Inter-American Commission on Human Rights (IACHR), have led to the creation of a new mechanism of technical and legal assistance, appointed by the IACHR with a threefold mandate: support in the investigation of the facts, the search for the missing persons and support for victims and their relatives. The so-called *Grupo Interdisciplinario de Expertos Independientes* (GIEI, or Interdisciplinary Group of Independent Experts), to which five people have been assigned, has been created as a consequence of this painful situation and carried out its task of assisting in the healing process during two six-months periods (from March 2015 to April 2016).

Part of the Group's work included the publication of two extensive reports, relating on the investigation, searches and victim support. The GIEI pointed out that empathy constitutes a fundamental tool in the support of the relatives going through this tragedy, and for the investigation of the facts itself. For this reason, the relatives' voices and experiences have been included in the reports.

“What I can tell right now, wherever my brother may be, is that I have strength and that I have the hope to find him back soon. And if my brother comes back to us alive, I will be very happy,

together with my son, my wife, my whole family. I will be grateful to God and to all the people who have supported us. And even if he lost his life, I will still be grateful to all these people. But I have to stay positive, as long as there is no proof. And this is where I have to be with the parents and fight, to find them”.

On the other hand, the reports revealed that there was no basis for what was called the “Historical Truth” in the evidence and the investigation that was performed. This version had been claimed by the Attorney General of the Republic, Murillo Karam, stating that the youngsters had been mistaken for drug dealers, murdered in a garbage dump, burnt and carbonised in open air, and their remains thrown into a river by a drugs traffic cartel.

“ The cases of forced disappearances are continuous legal offences which cannot be closed, in the same way the pain of the victims and relatives cannot be healed ”

Our investigation led to the conclusion that these young people did not have the intention of boycotting any political act, nor did they belong to or were infiltrated by any organised crime group, as was said. There is no evidence of any such thing. These youngsters had planned to travel by bus to attend the commemoration of the 1968 Tlatelolco massacre in Mexico City. The events of the night in Iguala made around 180 direct victims, including the 43 people missing, and occurred in nine different locations with gun shots and violence, lasting for 4 to 5 hours, and with direct involvement of the three municipal police forces of Iguala, Cocula and Huitzuco. Authorities of different levels possessed information on the arrival of the students, first to the region, and later to the city of Iguala, including state, ministerial and federal police, as well as the military, so they could not be mistaken for drug dealers. The arrests of the students were made while two officers of military intelligence were monitoring the events.

The official version states that the youngsters had taken four buses, but the investigation of the GIEI has demonstrated that the existence of a fifth bus had been omitted; this was concealed, and the investigation on this bus was later distorted. Based on public information from the United States' Justice Department, we discovered a case in which heroin was trafficked from Iguala to Chicago with previously modified passenger buses. For the GIEI, the only hypothesis that could explain an attack of such scale would be if the youngsters, without their knowledge, took something much more important than some buses. Probably, they took the fifth bus, loaded with heroin or money, which would explain the severity of the operation, aiming at preventing the buses to ride out, and the growing aggression against them.

“ The truth can be uncomfortable, but it is also healing ”

Another key element was the explanation of the final fate of the students, given by the State. After a scientific study had been carried out by doctor Torero on the dynamics of the fire, the GIEI claimed that the massive burning of 43 bodies in this aforementioned setting, in open air and within 16 hours, could not have taken place. That the scientific data of the quantity of firewood, level of impact on the location, time, pyre type, satellite pictures, fire tests, eyewitnesses, etc. demonstrated that, what was described in the declarations of some of the defendants, was impossible. This conclusion was later supported by another expert report, carried out by the prestigious *Equipo Argentino de Antropología Forense* (EAAF, or Argentine Forensic Anthropology Team). As a consequence of this, the need to reopen some lines of investigation was claimed. The defendants, accused of being part of organised crime and whose declarations were the basis on which this version had been built, all showed serious indications of torture, according to a study, carried out by the GIEI and endorsed by the International Rehabilitation Council for Torture Victims (IRCT) from Denmark.

And finally, the GIEI, reviewing video recordings made during those days, discovered that the bag, found in the San Juan river with remainders of a bone, belonging to one of

the missing students, Alexander Mora, had been manipulated, that other bags had been moved and that the scene of the river had been tampered with, the day before its official “discovery”; the GIEI also discovered the involvement of Tomás Zerón, the head of the *Agencia de Investigación Criminal* (Agency for Criminal Investigation), in these actions which had no legal basis whatsoever, nor could they be found in the records.

As the GIEI investigation progressed and the first report was made public, a campaign was started against the Group by some Mexican media channels and famous people. When it is not possible to question the reports, as in this case, the method of discrediting people is normally used. These attempts, in spite of their failure, brought along strong pressure on the group, and show the interest of very powerful people and groups in concealing the truth.

In April 2016, after the exit of the GIEI, a mechanism was created by the Inter-American Commission on Human Rights to supervise the compliance with the twenty recommendations and lines of investigation the Group had described in its second report. This mechanism will probably be operational, with periodic visits, until November 2017.

“ Resolving this case can help Mexico to break the spiral of corruption-violence-human rights violations in which the country has been caught over the last decade ”

The GIEI had a mandate to assess and give recommendations on the support for victims and relatives. This part is very new and, at the same time, easily forgotten in many cases. Our experience shows that it is possible to carry out an investigation and searches with scientific methodologies as well as adequate support and centrality for the victims in the investigation, without whom we would not have discovered some key elements of evidence, like the message of one of the students to his mother in the early morning of the 27th: “Please, mum, I urgently need a recharge”, time after the moment

when, according to the declaration in the official version, he had been killed.

The group helped to establish areas for relations between the victims and the State, to build bridges where there was abyss, which was very important for both sides. Nevertheless, the obstacles to the investigation and the lack of effective response to the Group's recommendations have led to a higher level of mistrust on behalf of the victims today. The GIEI brought to the attention of the State and the Mexican civil society that the case can be solved, that the suggested lines of investigation are clear and that an effective commitment for the resolution and the search for the missing persons needs to be demonstrated. Also, that the cases of forced disappearances are continuous legal offences which cannot be closed, in the same way the pain of the victims and relatives cannot be closed during a permanently open process of searches, anguish and suffering. And that resolving this case can help Mexico to break the spiral of corruption-violence-human rights violations in which the country has been caught over the last decade.

The truth can be uncomfortable, but it is also healing. Against the despair of resignation, brought along by impunity, the GIEI has shown a possible path for other relatives and cases. What it means for a small group to lay their hands on this pain, support the victims, promote more effective strategies of investigation, following the international standards, has been related in the two extensive reports Ayotzinapa I and II of the GIEI. In search of a language, capable of giving an account of the depth of this story, I later wrote a book, in an attempt to digest this experience, because writing is also a way of living experiences at the time they want to be lived in. The book *El tiempo de Ayotzinapa* is an account of the process in first person that wants to establish a dialogue, along the lines of the quote by John Berger: "The promise is that language has acknowledged, has given shelter, to the experience which demanded, which cried out".

Photography: Sarah-ji

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SOBRE L'ICIP

News, activities and publications about the ICIP

ICIP

International Catalan Institute for Peace

Call for nominations for the 7th edition of the ICIP Peace in Progress Award

The ICIP has announced the call for nominations for the seventh edition of the ICIP Peace in Progress Award. This prize aims to publicly recognize individuals, entities or institutions that, in an outstanding and extensive manner, have worked and contributed to the promotion and building of peace.

The deadline for submitting nominations is Thursday July 6th both electronically or in paper format, delivering it to the ICIP office at Carrer Tapineria 10, 3a planta, 08002 Barcelona, Spain.

The ICIP Peace in Progress Award is granted by agreement of the Governing Board of ICIP and consists of public recognition, a sculpture created by the Nobel Peace Prize winner, artist and activist Adolfo Pérez Esquivel, called *Porta del Sol*, and a financial prize of 4,000 euros.

Last publications

- *Pau. Una molt breu introducció*, by Oliver Richmond. Published by ICIP and Líniazero (in Catalan, available also in pdf and ePub).

- ICIP Activity Report 2016. This report wants to account for the work carried out throughout 2016 and is structured in the three work axes, established in the Strategic Plan 2015-2018.

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