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Truth Commissions and Reparations: A Framework for Post-Conflict Justice in Argentina, Chile Guatemala, and Peru

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Abstract

This paper seeks to gauge the effectiveness of truth commissions and their links to creating material reparations programs through two central questions. First, are truth commissions an effective way to achieve justice after periods of conflict marked by mass or systemic human rights abuses by the government or guerilla groups? Second, do truth commissions provide a pathway to material reparations programs for victims of these abuses? It will outline the conceptual basis behind truth commissions, material reparations, and transitional justice. It will then engage in case studies and a comparative analysis of truth commissions and material reparations programs in four countries: Argentina, Chile, Guatemala, and Peru. From the case studies and analysis, I will argue that truth commissions are an effective way to achieve comprehensive justice because they are victim-centered mechanisms that create a legitimate basis from which governments can build prosecutions and reparations programs. Next, I will argue that truth commissions provide a more favorable political condition for the creation of reparations programs and that truth commissions and reparations programs reinforce each other's effectiveness.

Keywords

truth commissions, material reparations, reparations, transitional justice, argentina, chile, guatemala, peru, post-conflict justice, human rights, justice, prosecutions, human rights abuses

Disciplines

Comparative and Foreign Law | Comparative Politics | Human Rights Law | International Law | International Relations | Latin American History | Latin American Studies | Law and Philosophy | Law and Politics | Models and Methods | Other Political Science | Political History | Political Theory

**Truth Commissions and Reparations:
A Framework for Post-Conflict Justice in
Argentina, Chile, Guatemala, and Peru**

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*Submitted to the Philosophy, Politics and Economics Program at the University of Pennsylvania
in partial fulfillment of the requirements for Honors.*

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ABSTRACT

This paper seeks to gauge the effectiveness of truth commissions and their links to creating material reparations programs through two central questions. First, are truth commissions an effective way to achieve justice after periods of conflict marked by mass or systemic human rights abuses by the government or guerilla groups? Second, do truth commissions provide a pathway to material reparations programs for victims of these abuses? It will outline the conceptual basis behind truth commissions, material reparations, and transitional justice. It will then engage in case studies and a comparative analysis of truth commissions and material reparations programs in four countries: Argentina, Chile, Guatemala, and Peru. From the case studies and analysis, I will argue that truth commissions are an effective way to achieve comprehensive justice because they are victim-centered mechanisms that create a legitimate basis from which governments can build prosecutions and reparations programs. Next, I will argue that truth commissions provide a more favorable political condition for the creation of reparations programs and that truth commissions and reparations programs reinforce each other's effectiveness.

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INTRODUCTION

Truth commissions have become an important tool in helping governments investigate, document, and overcome past human rights abuses, especially after mass or systemic human rights abuses. The most well-known truth commission has been South Africa's Truth and Reconciliation Commission of 1995, where South Africans were widely held to have traded legal justice for truth – full statements to the commission earned those that gave them amnesty for the human rights abuses to which they confessed. The Commission documented the human rights abuses committed by both the apartheid government and resistance groups and published a set of recommendations and reparations programs. However, South Africa was not a pioneer in the use of truth commissions. They have been in operation for nearly 50 years since Uganda's first commission in 1974, and Bolivia and Argentina's commissions in 1982 and 1983, respectively.

From these beginnings, there have since been over 40 truth commissions around the world, growing in popularity with governments in countries emerging from conflict marked by mass or systemic abuses and among those involved in international conflict resolution. They have arisen as an alternative or complementary tool to the prosecution of perpetrators, as truth commissions approach the question of justice from a victim-centered approach. Truth commissions fit into the broader category of transitional justice, judicial and non-judicial strategies of addressing past systemic human rights abuses at the hands of a government or non-state group. Recent scholarship has begun to catalog truth commissions and engage in large-scale quantitative and qualitative comparative studies to gauge their effectiveness, building from early descriptive scholarship of individual cases.

While punitive reparations began becoming mainstream international legal tools in the early 1900s, especially after World War I, domestic and international reparations for victims of

human rights abuses became more widely supported in the decades after World War II. These reparations pay compensation or restitution to victims as an acknowledgment of the gross human rights abuses committed against them. Reparations do not achieve full justice for victims, but they have a unique ability to directly impact the lives of victims. From their inception, truth commissions often issue recommendations for reparations programs in their final reports, and these recommendations have varying degrees of implementation and success. This link between truth commissions and reparations programs presents interesting questions that have not been fully answered.

This paper will seek to gauge the effectiveness of truth commissions and their links to creating material reparations programs. It will ask two central questions. First, are truth commissions an effective way to achieve justice after periods of conflict marked by mass or systemic human rights abuses by the government or guerilla groups? Second, do truth commissions provide a pathway to material reparations programs for victims of these abuses?

The first section of this paper will explore the conceptual basis of truth commissions and transitional justice. The second section will explore the conceptual basis of at reparations and connect this to practical reparations programs. The third section will conduct case studies of truth commissions in Argentina, Chile, Guatemala, and Peru and the material reparations programs that followed. The fourth section will engage in a comparative analysis of the case studies. Finally, the fifth section will draw conclusions from the concepts and case studies to advocate for truth commissions and their ability to lay the practical foundations for material reparations programs.

SECTION I: TRUTH COMMISSIONS

Truth Commissions: Definition and Theory

While truth commissions have varied widely in their mandates, designs, and reports, it is important to define the parameters of truth commissions to be able to compare specific cases and differentiate these commissions from other mechanisms of governmental investigation. Priscilla Hayner defines a truth commission as follows:

A truth commission (1) is focused on past, rather than ongoing events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review.¹

This paper will use this broad definition of truth commissions because while commissions over time have varied in their mandates, designs, and outcomes, a broad definition allows one to identify common features and unique factors that can create successful outcomes.

Seeking justice after human rights abuses traditionally focuses on criminal prosecutions, which hold perpetrators responsible and seek justice for victims by punishing these perpetrators. While criminal prosecutions are the most powerful and important step in seeking justice, they alone cannot address the comprehensive needs of a society after emerging from conflict. From their inception, prosecutions in post-conflict contexts may have very limited information and data to begin from – many mass or systemic abuses are conducted clandestinely, either without any records or with records that are inaccessible to judicial systems because the regime still holds power. For abuses committed by guerilla groups, records may be more rare. Estimates about the total scale of conflict and abuses made by civil society and international organizations

¹ Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed. (New York: Routledge, 2011), 1.

may be inaccurate due to the lack of access to these primary sources and records. Moreover, because they focus on individual cases, prosecutions are usually unable to seek broader, systemic information about human rights abuses and their victims. Legal rules about the gathering and permissibility of evidence for criminal trials may limit the events and actions investigated and the information that is revealed to the public. Placing the burden of proof in a criminal prosecution as beyond a reasonable doubt means that conviction rates may be especially low, specifically in cases of crimes of clandestine disappearances and murders of victims, where the clear documentation and physical evidence to back up prosecutorial claims is often rare. This failure to convict may leave victims and societies feeling that comprehensive justice has not been achieved.

Critics of truth commissions assert that prosecutions are still the best option compared to second-best truth commissions because of the strict accountability and deterrence that prosecutions can bring.² However, using these mechanisms is not a binary decision. The victim-centered focus of truth commissions is unique compared to perpetrator-focused prosecutions and can fill in some of the conceptual and political voids that prosecutions cannot. Often, truth commissions serve as fact-finding bodies where a baseline of information has not been established or is not accurate. They can determine the scale and scope of abuse in ways that individual prosecutions cannot and can provide information for future prosecutions. Politically, the challenge of dealing with those who committed past human rights abuses and those who suffered is compounded because the abusers negotiated their departure from power and may still hold significant power and influence or may have granted themselves amnesty from prosecution.

² Eric. Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy* (London: Routledge, 2010), 5.

While the concept of reconciliation from truth commissions may be imprinted on the international memory, stemming from South Africa's Truth and Reconciliation Commission, it is important to note that truth commissions are not necessarily meant to create reconciliation, though they can create conditions for reconciliation and healing. As defined, truth commissions are tasked with investigating and documenting abuses. Recommending reconciliation measures may be mandated from the inception of a truth commission and its findings may be used to launch reconciliation programs and policies. By focusing on giving an official platform to the stories of the victims of human rights abuses and memorializing their words through recordings or reports, truth commissions can build individual and collective memories of abuses.³ Ultimately, in a post-conflict society, reconciliation is highly dependent on the context of the country and what reconciliation means for political leaders and the public.

The concept of reconciliation is a deeply subjective topic, often stemming from religious notions. This paper will not focus on truth commissions and their ability to promote reconciliation because reconciliation is not the same as justice for victims of mass abuses, which should be the focus when examining the use of commissions. It would be unreasonable to expect victims to reconcile with the perpetrators of abuse. The narrative of reconciliation must not be used as a tool to distract from the important task of achieving justice for victims and society through mechanisms such as prosecutions, truth commissions, and reparations programs. When analyzing truth commissions, one must understand that they are necessarily political – a battle over material, historical, and symbolic resources. As Onur Bakiner notes:

³ Wiebelhaus-Brahm, 4

Commissioners and the staff constantly make choices when they define such basic objectives as truth, reconciliation, justice, memory, reparation, and recognition, and decide how these objectives should be met and whose needs should be met. Inevitably, there will be winners and losers in a truth commission process.⁴

Due to the political nature of truth commissions, they cannot be analyzed in isolation as legal mechanisms, but rather as political bodies in the broader political contexts they exist in. They may also be subversive – while new political leaders may sanction the creation of truth commissions to legitimate their governance and give the country a mechanism to achieve justice, the commission’s findings may not only taint the image of the previous regime, but also the image of those who are currently in power. This possibility can have significant effects on the implementation and reception of a truth commission’s work.

Table 1 is a compiled list of all truth commissions that have occurred, providing a reference point to situate discussions of commissions.

⁴ Onur Bakiner, *Truth Commissions: Memory, Power, and Legitimacy* (Philadelphia: University of Pennsylvania Press, 2016), 3.

Table 1: List of All Truth Commissions ⁵

Country	Dates of Operation
1. Uganda 1	1974
2. Bolivia	1982-1984
3. Argentina	1983–1984
4. Uruguay	1985
5. Zimbabwe	1985
6. Philippines	1986–1987
7. Uganda 2	1986–1995
8. Chile 1	1990–1991
9. Nepal	1990–1991
10. Chad	1991–1992
11. El Salvador	1992–1993
12. Germany	1992–1998
13. Sri Lanka	1994–1997
14. Haiti	1995–1996
15. South Africa	1995–2002
16. Ecuador 1	1996–1997
17. Guatemala	1997–1999
18. Nigeria	1999–2002
19. Uruguay 2	2000–2003
20. South Korea 1	2000–2004
21. Panama	2001–2002
22. Peru	2001–2003
23. Federal Republic of Yugoslavia/Serbia and Montenegro	2001–2003
24. Ghana	2002–2004
25. Sierra Leone	2002–2004
26. Timor-Leste	2002–2005
27. Chile 2	2003-2005
28. Democratic Republic of the Congo	2004-2006
29. Morocco	2004–2006
30. Paraguay	2004–2008
31. Indonesia and Timor-Leste	2005–2008
32. South Korea 2	2005-2010
33. Liberia	2006-2009
34. Ecuador 2	2008–2010

⁵ Operating from Patricia Hayner’s definition of truth commissions stated above, the following chart categorizes all truth commissions identified by scholars, to date. This chart includes a compilation of all commissions listed by: Bakiner, *Truth Commissions*, 27-29; Hayner, *Unspeakable Truths*, xi; and “Truth Commission Digital Collection,” United States Institute of Peace, 2011, <https://www.usip.org/publications/2011/03/truth-commission-digital-collection>. The exact number of truth commissions to date is not of utmost importance for this paper. Rather an idea of the scale of proliferation, time periods, and regions where truth commissions have been implemented will inform my analysis.

35. Mauritius	2009-2011
36. Solomon Islands	2009-2012
37. Togo	2009-2013
38. Kenya	2009-2013
39. Canada	2009-2015
40. Honduras	2010-2011
41. Thailand	2010-2012
42. Brazil	2011-2014
43. Côte d'Ivoire	2012-2014

Truth Commissions and Transitional Justice

Truth commissions fall into the broader category of transitional justice – a variety of mechanisms used after a political transition to address wrongdoings of the previous regime, including mass or systemic human rights abuses. The modern transitional justice toolkit includes punishing perpetrators through prosecutions, establishing truth commissions, implementing reparations programs, purging bureaucracies or security forces of abusers, promoting reconciliation measures, and reforming institutions, but can include many other mechanisms and institutions.⁶

I will first outline a few conceptual mechanisms that are useful when analyzing transitional justice institutions and I will place truth commissions and reparations programs into this broader conceptual framework.

John Elster categorizes transitional justice into three institutional forms – legal justice, political justice, and administrative justice – with legal and political justice forming two sides of a continuum.⁷ Pure political justice occurs when the executive branch of the government unilaterally identifies wrongdoers and decides their fate without the presence of juridical standards for evidence or appeal.⁸ Examples of this include sending officials into exile, summary executions, or show trials with preordained outcomes. On the other end of this spectrum, pure legal justice is characterized by four aspects: unambiguous laws, an insulated and independent judiciary, unbiased judges and jurors interpreting the law, and the presence of due process.⁹ Striving towards pure legal justice is a key foundation for transitional justice tools. Finally,

⁶ Hayner, 8-10.

⁷ Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004), 84.

⁸ Elster, 84.

⁹ Elster, 86-88.

administrative justice includes purges in public administration and lies somewhere along the political-legal spectrum based on the ability of those purged to appeal to legal entities.¹⁰

Elster also identifies levels of transitional justice: supranational institutions, nation-states, corporate actors, and individuals.¹¹ Supranational institutions include international tribunals, such as the International War Crimes Tribunals for Rwanda and the former Yugoslavia and the Nuremberg Trials after World War II, which are generally considered exogenous because they were created by international bodies. Nation-state level transitional justice institutions refer to generally endogenous institutions initiated by actors within the country where said justice measures are implemented. Corporate actors may be targeted either as dispensers of justice or as targets of justice mechanisms and can include political groups, religious organizations, or private companies.¹² Individual or private justice mechanisms are carried out without the purview or sanction of the political or legal system, such as extrajudicial killings or social ostracism.

Ruti Teitel proposes a three-phase genealogy of transitional justice that is helpful to situate different phases of the subject and its manifestations. Teitel traces the origins of modern transitional justice, Phase I, to the post-World War II phase beginning in 1945 with the Nuremberg Trials.¹³ This phase generally fits into Elster's conception of supranational transitional justice, which Teitel argues is a unique and triumphant phase of transnational collaboration in transitional justice given the unique political conditions of the postwar world.¹⁴ Teitel associates the beginning of Phase II of transitional justice with the weakening and ultimate collapse of the Soviet Union and mass democratization trends, beginning in the late 1970s with

¹⁰ Elster, 92.

¹¹ Elster, 95.

¹² Elster, 94.

¹³ Ruti G. Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 15 (2013: 69–94), 70.

¹⁴ Teitel, 70.

the withdrawal of support for guerilla forces in Latin America, facilitating the end of military rule in the region.¹⁵ These transitions were followed by regime transitions in Eastern Europe, Africa, and Central America, fueled by the Soviet collapse and the end of the Cold War.¹⁶ These transitions were mostly endogenous political transitions focused around the nation-state level of Elster's classification. Phase III of Teitel's genealogy begins at the end of the twentieth century and is associated with globalization and transitional justice mechanisms becoming the standard means to approach transition.¹⁷ Notably, this phase returns to the international approaches identified in Phase I, involving mechanisms that are both supranational and nation-state focused.

These categorizations help refine the focus of this paper. Under Elster's categorization of political, legal, and administrative justice, truth commissions fall on the spectrum of political and legal justice, often closer to the legal justice end of the spectrum, though this does vary. Truth commissions, through their actions or the use of information from their reports, can also act as tools of administrative justice. Similarly, the use of reparations falls somewhere on the political and legal justice spectrum, often landing closer to the political justice side, again varying based on different cases. Neither of these tools of transitional justice encompasses either pure political justice or pure legal justice, and analyses of specific cases can paint a better picture of where to situate these institutions along Elster's spectrum. Elster's levels of transitional justice are also important. This paper will mostly focus on truth commissions and reparations from a nation-state level, and the result of these nation-state mechanisms often affect corporate and individual actions. It will also address the role of supranational institutions as current international organizations are encouraging the implementation of transitional justice measures.

¹⁵ Teitel, 71.

¹⁶ Teitel, 71.

¹⁷ Teitel, 71-72.

Teitel's genealogy of transitional justice, specifically Phase II and Phase III, will encompass the four country case studies of this paper. Phase II encompasses the proliferation of truth commissions beginning with the earliest truth commission in Uganda (1974), and the increased use of commissions in Bolivia (1982-1984), Argentina (1983-1984), Uruguay (1985), Zimbabwe (1985), Uganda (1986-1995), Chile (1990-1991), and more.¹⁸ These commissions largely focus on nation-state institutions including truth commissions and reparations. Phase III provides the opportunity to apply nation-state approaches from Phase II, combined with revived interest from international institutions to refine mechanisms of transitional justice.

¹⁸ Hayner, *Unspeakable Truths*, xi.

SECTION II: REPARATIONS

A Theory of Reparations

In international law, transitional justice, and philosophy, reparations have numerous meanings. Pablo de Greiff puts reparations in two categories: juridical reparations and reparations programs. Juridical reparations programs under international law can include restitution (reestablishing the victim's original job, property, citizenship, etc.), compensation (for economic, physical, mental, moral injuries), rehabilitation (social, media, psychological, legal), and satisfaction and guarantees of nonrecurrence (a broad category that can include apologies, exhumations, sanctioning perpetrators, etc.).¹⁹ While these juridical reparations can manifest in a variety of ways, reparations programs refer concretely to large-scale reparative measures to provide benefits to victims of specific crimes.²⁰ Reparations programs can deliver symbolic or material reparations through individual or collective means.²¹ Symbolic individual reparations can include personal letters of apologies, copies of truth commissions, or the proper burial of victims, while symbolic collective reparations can include public acts of apology, commemorative days, or establishing museums, monuments, and public places in honor of victims.²² Material individual reparations can include individual grants or payments, while material collective reparations can include medical, educational, and housing service packages.²³

This paper will focus its analysis of reparations on this second, more narrow category of reparations – reparations programs and not juridical reparations. Furthermore, it will specifically focus on material reparations programs, not symbolic reparations programs. Material reparations

¹⁹ Pablo de Greiff, "Justice and Reparations," in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006, 451–77), 453.

²⁰ de Greiff, 453.

²¹ de Greiff, 453.

²² de Greiff, 468.

²³ de Greiff, 468–469.

programs are unique because they directly benefit victims of abuses through both depth and breadth. While trials focus on punishing the perpetrator, reparations programs focus on directly and materially addressing the needs of victims, filling the gap in other victim-centered justice measures, such as truth commissions. This is because reparations programs individually address every victim, while truth commissions may focus on examining larger-scale systems and practices, and individual interviews during the truth process often cannot cover every single victim. Additionally, reparations programs operate at a mass scale, addressing systemic abuses committed against victims – the reach of which cannot be matched by adding singular trials together.

Ernesto Verdeja asserts that reparations programs achieve the following goals:

[Reparations] publicly reassert victims' moral worth and dignity; make a society reconsider its notion of the 'we' when faced with reintegrating as equals those who were violated, injured, and marginalized in the past; foster the development of public trust in state institutions (important where the state is a primary violator of rights); contribute to undermining the justificatory narratives given by perpetrators by resituating victims as moral agents; and generate a public, critical interpretation of history, a careful reappraisal that moves away from monumental and unreflective understandings of the past.²⁴

If the goal of reparations programs is to center victims in the justice process, then evidence of victim preferences is crucial, and these preferences support reparations programs. In a survey of Nepali victims who suffered abuses during the 1996 to 2006 civil war between the Kingdom and the Communist Party of Nepal, 90% wanted the prosecutions of perpetrators who committed crimes such as torture, disappearances, and extrajudicial killings.²⁵ Notably, 54% of victims indicated that they felt compensation for crimes, material reparations, was more

²⁴ Ernesto Verdeja, "Reparations in Democratic Transitions," *Res Publica* 12, no. 2 (2006: 115–36), 135.

²⁵ Simon Robins, "Nepali Voices: Perceptions of Truth, Justice, Reconciliation, Reparations and the Transition in Nepal," *Journal of Human Rights Practice* 1, no. 2 (2009: 320–31), 321.

important than trials.²⁶ When asked about their immediate needs, 24% of victims chose compensation, 17% chose education, 12% chose basic needs, 8% chose employment, 7% chose finding the disappeared, and 3% chose punishing perpetrators.²⁷ This data lends weight to the importance of reparations programs for victims of abuses, for whom monetary reparations may achieve a type of justice and closure that trials cannot. As will be demonstrated by the case studies, many of those disproportionately impacted by conflict are poor, and often macro-level institutions such as trials or truth commissions have no material impact on their livelihoods, which the abuses committed against them deprived them of.

Under Elster's political-legal spectrum of transitional justice institutions, reparations programs are not pure legal justice because they necessarily satisfy aspects of political justice. De Greiff notes that legal systems operate fundamentally from the position that breaking the law is an exceptional circumstance that has to be punished through trials.²⁸ However, mass reparations programs address systemic abuses committed against significant portions of the population, where widespread violations were the norm, not the exception. The systemic nature of reparations programs also allows them to address political questions beyond individual compensation, using collective reparations as a tool to address systemic political concerns, including rebuilding perceptions of the legitimacy of state institutions after the state committed abuses.

²⁶ Robins, 324.

²⁷ Robins, 325.

²⁸ de Greiff, "Justice and Reparations", 454.

Practical Reparations

While reparations should conceptually and from a victim's point of view, be prioritized in a project of transitional justice, there are significant impediments to the realization of reparations programs. As reparations programs are carried out on behalf of victims, who as a group do not generally have significant political power, the political will to implement reparations programs is often low.²⁹ Financing these programs is hard as well. For new political leaders coming out of a transition process, it may be more appealing to invest funds into policies and development projects that are future-looking, rather than reparations programs, which seem more rectificatory and focused on the past. Though not implementing reparations programs may seem politically smart to politicians, victims are left feeling that nothing has been done for them, creating future opportunities for the reignition of conflict.

Growing support from victims, civil society, and international organizations means that reparations programs are becoming more common in countries around the world. Internationally, various United Nations treaties have enshrined the right to reparations in international law, particularly through the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which was adopted in 2005. International human rights courts have ruled in favor of reparations for human rights abuses. Many countries around the world have created reparations programs for various abuses, including illegal internment, forced sterilizations, and historical oppression.

²⁹ Lars Waldorf, "Anticipating the Past: Transitional Justice and Socio-Economic Wrongs," *Social and Legal Studies* 21, no. 2 (2012: 171–86), 177.

SECTION III: CASE STUDIES

Methodology

This paper will engage in case studies of truth commissions and material reparations programs in four countries, Argentina, Chile, Guatemala, and Peru, examining their political contexts, operational characteristics, final reports, broader impacts, and material reparations programs. These case studies will form the basis of the conclusions in the following sections in examining the degree to which truth commissions can provide the basis for substantive material reparations programs. Most truth commissions have been concentrated in Latin America and Africa. Given the 43 truth commissions listed in Table 1, 72.09% have occurred in Latin America and Africa (31 commissions). 37.21% of commissions have occurred in Latin America (16 commissions) and 34.88% of commissions have occurred in Africa (15 commissions). Scholarship about truth commissions also follows these broad trends, as substantial amounts of academic scholarship has built up around specifically analyzing Latin American and African truth commissions, and many present-day commissions take lessons from Latin American and African designs.

I will narrow the geographic focus of the case studies to truth commissions and material reparations programs in Latin America, specifically in Argentina, Chile, Guatemala, and Peru. These cases provide variation in the nature of the conflict before transition, the design of truth commissions, the material reparations programs implemented, and the relative wealth of each nation. Though two truth commissions have occurred in Chile, each investigating different types of crimes, they both investigated the same conflict and period, and therefore will be studied together. The nature of the conflicts in Argentina and Chile can be characterized as class conflicts, while the nature of the conflicts in Peru and Guatemala can be characterized as ethnic

conflicts. This variation in the nature of conflict can inform if truth commissions and material reparations programs operate differently given class or ethnic conflicts and how a country's wealth impacts the scale of material reparations programs.

Truth commissions in other parts of the world, particularly Africa, have been extremely influential in the design and impact of commissions, and a comprehensive study should incorporate geographic diversity into its analysis. However, for the scope of this paper, focusing on an area that has many early truth commissions and a concentrated number of commissions, Latin America, will produce focused conclusions that can be examined on a global scale. Additionally, the existence of material reparations programs in each of these four countries after the commissions can inform the links between commissions and material reparations programs.

While the first truth commission was held in Uganda in 1974, it investigated the wrongdoings of the same government that had created it and was still in power, and its finished report was never published by the President. The next truth commission in Bolivia in 1983 suffered from a similar lack of political support and resources, and was disbanded before it could complete or publish its findings. Therefore, Argentina's truth commission in 1984 was the first commission that completed and published its report. Consequently, it has been highly influential in studies of truth commissions. The Argentine and Bolivian truth commissions catalyzed the use of truth commissions in countries across Latin America, and their use would then spread around the world.

The four countries covered by the case studies were tasked with investigating abuses committed before democratization movements swept through Latin America. Placing them within the frameworks of Elster and Teitel brings out the broader trends of these commissions. Under Teitel's genealogy of transitional justice, the case studies are mostly situated within Phase

II, though they also straddle the transition into Phase III of transitional justice in the late 1990s and early 2000s, where international collaboration began to influence truth commissions and reparations programs. This transition into Phase II will be clear especially in the case study of Guatemala. Under Elster's levels of transitional justice, these commissions were nation-state level investigations focused on establishing abuses carried out by both the state and guerilla groups, identifying legal and political processes that facilitated these abuses, and estimating the scale and demographics of the people victimized. Given that these cases fit together into the same frameworks established by Teitel and Elster, in terms of phase and level of transitional justice, they provide a baseline of similarity to begin analyses.

While the commissions and their reports in the case studies were all conducted and written in Spanish, the sources used in this paper will be limited to English language sources. This obstacle means that I will not get as much nuance and detail into the administrative records and minutes of commissions, court records, and new laws passed, as much of this information has not been translated into English. English language scholars who engage in individual or comparative case studies of truth commissions in Argentina, Chile, Guatemala, and Peru through Spanish use records to inform a more nuanced picture of the deliberative processes and legal implementation of truth commissions and their impacts, and the findings from these scholars will be used to least partly account for the obstacle.

This type of administrative information would be especially important if one were analyzing the specific design of various mechanisms of truth commissions and the ideological and intellectual priorities of commissioners. However, the lack of this type of information does not detract as much from an analysis of the more general effectiveness of truth commissions in these countries and their ability to deliver material reparations programs. Given the questions

that this paper asks and the existence of substantial English language scholarship on these truth commissions and translations of commission final reports, laws, and other Spanish language scholarship, this obstacle can be overcome.

The sequence of case studies will be Argentina, Chile (both the first and second truth commissions), Guatemala, and Peru. The case studies will follow a “chronological” order based on the date of the commissions, except for the second Chilean commission, which will be analyzed together with the first Chilean commission. As established earlier, the second Chilean commission investigated the same conflict as the first commission but focused on victims who were not killed by the regime and can therefore be analyzed through a single case study of Chile. This “chronological” order of analysis also means that the first two case studies, Argentina and Chile, will be focused on conflicts that are characterized by class, while the second two case studies, Guatemala and Peru, are characterized by ethnic conflict.

Each case study will detail the specific material reparations programs in each country, but Table 2 below provides an overview of the total amounts of money, in United States dollars, paid by each country and the percent of the population of each country that material reparations reached.

Table 2: Case Studies and Material Reparations

Country	Years Active	Years Investigated	Amount of Material Reparations Paid	% Total Number of Reparations Beneficiaries to Population
Argentina	1983-1984	1976-1983	Over \$3 billion paid to over 16,000 victims or families of victims of those disappeared/killed Additional \$66 million for minors who were victims ³⁰	.036%
Chile I	1990-1991	1973-1990	\$16 million per year for 4,886 families of victims—about \$460 million since 1992 inception.	0.13% impacted by both the first and second Chilean truth commissions
Chile II	2003-2004	1973-1990	\$45 million per year for 20,000 survivors of torture – about \$720 million since 2005 inception	see above
Guatemala	1997-1999	1960-1996	Between \$50-\$100 million to about 33,000 individuals.	0.20 %
Peru	2001-2003	1980-2000	About \$88 million to 86,000 individuals ³¹	0.26%

³⁰ Hayner, *Unspeakable Truths*, 274.

³¹ Julie Guillerot, “Reparations in Peru: 15 Years Of Delivering Redress,” Queen’s University Belfast: Reparations, Responsibility, and Victimhood in Transitional Societies, 2019, <https://reparations.qub.ac.uk/assets/uploads/Peru-Report-ENG-LR-2.pdf>, 30.

Argentina: National Commission on the Disappearance of Persons

Background of Conflict

Though Argentina's truth commission focused on investigating the period from 1976 to 1983, Argentines had experienced systemic political violence and human rights abuses beginning in 1930. Under the culture of military interventionism in political and civil society and Catholic fundamentalism, the use of violence and torture became common tools of punishment and repression for the state.³² Instability was a hallmark feature of Argentine politics – between 1928 and 1983, Argentina had nine elected governments, only two of which served out their terms.³³ Donald Hodges characterized this period of rule as, “waver[ing] between authoritarian or exclusionary regimes and populist-corporatist ones, all highly unstable.”³⁴ The one exception in this unstable period was the presidency of Juan Perón from 1946 to 1955, known as the Peronist decade. Political parties commonly used armed forces to intervene when they lost power. The Radical party initiated coups against Perón in 1945 and 1955, and Peronists initiated a coup against the Radical government in 1966.

Perón, who drew populist power from organized labor and the military, won two democratic elections in 1946 and 1951 but was forced to flee the country in 1955 after a coalition of military generals and Catholic nationalists, concerned about “moral degradation”, Peron’s unwavering support for organized labor, authoritarian abuses, and economic stagnation led a coup against him.³⁵ Perón’s staunch support for organized labor groups clashed with the economic interests of the military and religious elites who led the coup, signaling the class-based

³² Emilio Crenzel, “Argentina’s National Commission on the Disappearance of Persons: Contributions to Transitional Justice,” *International Journal of Transitional Justice* 2, no. 2 (2008: 173–91), 174.

³³ Donald Hodges, *Argentina’s “Dirty War: An Intellectual Biography*, (Austin: University of Texas Press, 1991), 8.

³⁴ Hodges, 8.

³⁵ Hodges, 37.

nature of the conflict and instability in Argentina. In 1973, Perón returned to the presidency after winning a democratic election, with his wife, Isabel Perón, as his Vice President. When Juan Perón died in 1974, Isabel Perón became president but was deposed in 1976 by a military junta.

The 1976 coup began an era of Argentine history termed the Dirty War, characterized by the mainstream emergence of forced disappearances that significantly deviated from the violent tactics used by previous regimes. Emilio Crenzel argues that the prominence of forced disappearance signaled a desire by the state to silence and exterminate its rivals and critics clandestinely.³⁶ Using clandestine detention centers, the regime kidnapped, tortured, and disposed of "subversives" with the goal of leaving no evidence of the acts that occurred. The regime mainly targeted those who spoke out against the government and those involved in two left-wing guerilla groups, the urban Montoneros, and the rural Revolutionary People's Army.³⁷ Crenzel argues that these clandestine practices were aimed at avoiding the international denunciation that other regimes had incurred, specifically Pinochet in Chile.³⁸ Over this period, relatives of disappeared victims filed over 5,000 reports to the Argentine Permanent Assembly for Human Rights and thousands of other reports to international bodies and human rights organizations.³⁹

In 1982, within days of losing the Malvinas/Falklands War, the junta removed the president from office, and among widespread protests about the regime and its human rights abuses, signaled the return to democratic elections in 1983.⁴⁰ In April of 1983, the regime issued a document called the Final Document of the Military Junta on the War Against Subversion. It

³⁶ Crenzel, "Argentina's National Commission", 174-175.

³⁷ Michael Newman, *Transitional Justice: Contending with the Past* (Cambridge: Polity Press, 2019), 3.

³⁸ Crenzel, "Argentina's National Commission", 175.

³⁹ Crenzel, 175.

⁴⁰ Crenzel, 175.

stated that all of the regime's actions were legitimate because they were carried out under Isabel Perón's 1975 executive order to the military to "annihilate all subversion."⁴¹ Before the election in September 1983, the regime passed the National Pacification Act through its puppet legislative advisory committee, where it granted itself amnesty from future prosecution for crimes committed during their "antibversive war."⁴²

After Raúl Alfonsín won the 1983 election, he needed to meet the demands of justice that formed the basis of his campaign. He pursued a strategy of limited sanctions against the military while also attempting to incorporate them into the democratic state.⁴³ He proposed the repeal of the amnesty law and ordered seven guerrilla leaders and the members of the first three military juntas to be prosecuted.⁴⁴ Trials of military officials formed a key part of Alfonsín's strategy, and a truth commission would be used to establish public support, the scope of crimes, and the fate of victims.

Human rights groups and activists demanded a bicameral investigation into the regime by the Argentine Congress. Fearing that legislators would compete with each other to impose harsher punishments on perpetrators, which could create more tension with the military and increase the risk of instability, Alfonsín instead decided to create a truth commission, the National Commission on the Disappeared (CONADEP).⁴⁵ CONADEP can be viewed as a mediating political tool to balance the demands of human rights groups and the military and right-wing politicians in opposition groups.

⁴¹ Crenzel, 175-176.

⁴² Crenzel, 176.

⁴³ Carlos H. Acuña, "Transitional Justice in Argentina and Chile: A Never-Ending Story?," in *Retribution and Reparation in the Transition to Democracy*, ed. Jon Elster (Cambridge: Cambridge University Press, 2006, 206-38), 208.

⁴⁴ Crenzel, "Argentina's National Commission", 177.

⁴⁵ Hayner, *Unspeakable Truths*, 45.

Truth Commission

CONADEP was created through a presidential decree on December 15, 1983, and instead of drawing influence from the previously failed commissions of Uganda and Bolivia, architects of the Commission drew influence from civil society commissions set up by the United States Congress to address specific issues.⁴⁶ CONADEP was given six months to receive reports of disappearances and refer these cases to courts, investigate the fate of the disappeared, locate kidnapped children, report any activity aimed at destroying evidence, and issue a final report.⁴⁷ CONADEP was comprised of thirteen members. Ten members were chosen by Alfonsín “for their consistent stance in defense of human rights and their representation of different walks of life.”⁴⁸ Both houses of the Argentine Congress were asked to appoint members, but only the lower branch, the Chamber of Deputies, appointed three members to the Commission. Ernesto Sábato, a widely known author, was chosen as the chair. While human rights organizations and activists wanted a bicameral investigation that could legally compel perpetrators and the military to testify and produce justiciable information, the Alfonsín government’s choice to create a truth commission instead limited the investigatory power of the body.

Many human rights organizations resisted CONADEP, arguing that nothing but a bicameral investigatory body could bring justice. However, the Permanent Assembly for Human Rights gave all of the complaints it had gathered during the conflict to the Commission, and a prominent member of the Permanent Assembly for Human Rights was appointed to lead the depositions department of the Commission, where she brought staff members from various human rights organizations into the Commission’s work.⁴⁹ The Commission did not hold public

⁴⁶ Crenzel, “Argentina’s National Commission”, 177.

⁴⁷ Crenzel, 179.

⁴⁸ Hayner, *Unspeakable Truths*, 45.

⁴⁹ Crenzel, “Argentina’s National Commission”, 179.

hearings but created local delegations throughout the country to take over 7,000 statements over the course of nine months from over 1,500 survivors, families of the disappeared, those involved in disappearances, and involuntary witnesses of abuses.⁵⁰ Additionally, Argentine embassies and consulates were opened to accept testimony, and exiles were encouraged to return and testify.⁵¹ The Commission then decided to tour clandestine detention facilities with survivors of disappearances where perpetrators often still worked. These tours were well-covered by the media and served as a political and investigatory tool for the Commission, which used media attention and popular sentiment to gain more access to sites. The Commission compiled site investigations with testimony into dossiers that they then passed on to the courts, outlining perpetrators, victims, and evidence at specific sites.⁵²

As it neared the end of its investigation, members of CONADEP debated on whether to send the evidence it had collected to civilian or military courts – the initial mandate had indicated it should send evidence to military courts. While Commission members aligned with the government stuck to the official policy of referring evidence to military courts, members aligned with human rights organizations wanted evidence to be sent to civilian courts to send a signal that the military would be accountable to Argentine civilians. Ultimately, the Commission decided to send evidence to civilian courts.⁵³ If military courts requested evidence, the Commission would only send testimony from victims or the family of victims who consented to the information-sharing, demonstrating the substantive role of victims in managing the judicial outcomes of the Commission.

⁵⁰ Crenzel, “Argentina’s National Commission”, 181-183; Hayner, *Unspeakable Truths*, 46.

⁵¹ Hayner, 46.

⁵² Crenzel, 184.

⁵³ Crenzel, 186.

Report

In 1984, after nine months of work, CONADEP issued its final report to the public, named *Nunca Más* (Never Again). It identified 8,960 people who had disappeared and were never seen again from its interviews and it listed 365 clandestine torture centers, though it noted that the total number of victims was probably in the tens of thousands.⁵⁴ The prologue of the report begins by saying, “During the 1970s, Argentina was torn by terror from both the extreme right and the far left.”⁵⁵ Greg Grandin argues that Alfonsín’s strategy of a truth commission and trials was to paint an image of past transgressions to get Argentines to commit to a set of social and legal values, staying careful throughout this process to not reach conclusions that were too divisive and dangerous. Similarly, Grandin argues that the jurists and scholars who made up CONADEP saw their role as, “mediating between dangerously volatile social groups that had competing yet equally passionate investments in assigning historical meaning to the term ‘dirty war’.”⁵⁶ The careful wording of the prologue of the report was meant to mediate between guerilla groups and the military and hold both groups accountable for the violence, though further in the prologue the report identifies victims as:

Trade union leaders fighting for better wages; youngsters in student unions, journalists who did not support the regime; psychologists and sociologists simply for belonging to suspicious professions; young pacifists, nuns and priests who had taken the teachings of Christ to shanty areas; the friends of these people, too, and the friends of friends.⁵⁷

The report almost exclusively documents crimes committed by the state against these victims, and not many crimes committed by leftist groups. While the rest of the report details these

⁵⁴ “Nunca Más (Never Again): Report of CONADEP (National Commission on the Disappearance of Persons),” The Disappeared Project, 1984,

http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_000.htm, Part II.

⁵⁵ “Nunca Más (Never Again),” Prologue.

⁵⁶ Greg Grandin, “The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala,” *American Historical Review* 110, no. 1 (2005: 46–67), 52.

⁵⁷ “Nunca Más (Never Again),” Prologue.

crimes and the victims, the prologue to the report demonstrates the political nature of conveying concepts of truth and history and shows how the authors strategized their conclusions.

The report details repression, outlining the use of abduction, torture, and extermination as political weapons and describes the use of clandestine detention centers and coordination with other Latin American countries.⁵⁸ It found that almost 60% of victims were between 21 and 30 years old, 70% of victims were men, and that children, pregnant women, families, clergy, journalists, and trade unionists were specifically targeted to instill fear in others.⁵⁹ The doctrine behind the crimes of the regime was identified as the Doctrine of National Security, which sustained totalitarian abuses in service of an ideology of defending the nation from subversive leftists who were trying to overthrow the state.⁶⁰ The last part of the report outlines the Commission's recommendations, including recommending the swift transfer of deposition materials to courts, passing laws such as declaring forced abduction a crime against humanity, strengthening the power of the courts to investigate human rights abuses, and mandating human rights education in all civilian and military educational institutes.⁶¹ The final recommendation is for a reparations program, which says that the state should ensure that:

[T]he appropriate laws be passed to provide the children and/or relatives of the disappeared with economic assistance, study grants, social security, and employment and, at the same time, to authorize measures considered necessary to alleviate the many and varied family and social problems caused by the disappearances.⁶²

This reparations clause was not expanded further – it did not specify the restrictiveness of kinship ties, the degree of economic assistance, or the targeted social and economic programs it

⁵⁸ “Nunca Más (Never Again)”, Part I.

⁵⁹ “Nunca Más (Never Again)”, Part II.

⁶⁰ “Nunca Más (Never Again)”, Part V.

⁶¹ “Nunca Más (Never Again)”, Part VI.

⁶² “Nunca Más (Never Again)”, Part VI.

recommended. The Commission saw the importance of its work as providing a basis of information to operate from and advocated for the impact of its work to be rooted in prosecutions, new laws, strengthened legal systems, and education. Given the continued political instability in Argentina, Commission members may have not felt that they were the body to propose a detailed and systemic reparations program, but rather that their findings and recommendations could form the basis for future movements for these programs.

Privately, a list of accused perpetrators was sent to the president to use at his discretion and the Commission sent 1,086 cases to the judiciary.⁶³ Hayner argues that the information collected by the Commission was critical in the trials of members of the juntas, helping to put five generals in prison.⁶⁴ Though instability after the Commission's work, including threats from the military, new amnesty laws, and pardons, slowed the pace of other transitional justice mechanisms, by late 2009, over 1,400 people had been charged or were under investigation for their role in the Dirty War, and 68 had been convicted.⁶⁵

The report was also published as a shorter book – 150,000 copies were sold in the first eight weeks of publication, and it has now sold more than 500,000 copies in numerous languages, demonstrating the literary and cultural impact that truth commissions may have.⁶⁶

Reparations Program

After CONADEP issued its final report and before it was dissolved, the president, through executive decree, created a new body that would continue compiling information gathered by the Commission and present it to the courts. It established the Office of the

⁶³ Crenzel, "Argentina's National Commission", 188.

⁶⁴ Hayner, *Unspeakable Truths*, 46.

⁶⁵ Hayner, 47.

⁶⁶ Hayner, 46.

Undersecretary for Human and Social Rights, which after numerous name and department changes, is currently known as the Secretariat of Human and Social Rights.⁶⁷ Though the Commission issued a recommendation for a reparations program for victims of forced disappearances and their families, no program came to fruition in the years following the its report because of a variety of factors, including a focus on other objectives, including trials and continuing to look for missing people and abducted children. In 1987, a group of human rights organizations and jurists came together to form the Initiative Group for the Convention Against the Forced Disappearance of Persons to Advocate for an International Convention Against the Crime of Forced Disappearances and also begin the process of pursuing a reparations program for victims through international law.⁶⁸

In Argentina, reparations programs prompted resistance from some human rights groups and family members of victims who saw these payments as a type of blood money that was paid instead of pursuing justice through prosecutions.⁶⁹ Reparations payments officially symbolize that the disappeared person had died. However, the framework of international law and obligations to pay reparations advocated by the Initiative Group provided a sound basis to fight for reparations, and all major Argentine human rights organizations supported the creation of a reparations program, except for the influential Mothers of the Plaza de Mayo Association, which still maintained that reparations payments were blood money from the state.

Major reparations programs began under Alfonsín's successor, Carlos Menem, who entered office in 1989. Argentina was still reckoning with the Dirty War as Alfonsín began to

⁶⁷ María José Guembe, "Economic Reparations for Grave Human Rights Violations: The Argentine Experience," in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006, 21–54), 23.

⁶⁸ Guembe, 23.

⁶⁹ Guembe, 24.

stop most prosecutions of military officials.⁷⁰ Menem pursued a strategy of moving forward through forgiving past crimes by pardoning both military officials and guerilla leaders and beginning to acquiesce to reparations programs.⁷¹

Reparations programs began during the Alfonsín administration when former political prisoners brought and lost cases in Argentine courts which sought compensation for their time in prison, which were mostly rejected based on statutes of limitation.⁷² These prisoners then brought their cases to the Inter-American Commission on Human Rights, an organ of the Organization of American States.⁷³ As these cases began to be tried and won by victims in this international court, Carlos Menem came to power and decided to accommodate the demands of these prisoners. As a former political prisoner of the regime, Menem wanted to implement a policy that could redress people like him and earn the respect of the Organization of American States by implementing its mediated solution of creating a reparations program.⁷⁴

In 1991, a reparations program was agreed upon. For each day of detention, a victim would be paid the highest equivalent salary of an Argentine government employee, \$74. This works out to \$26,400 per year and the maximum payment would be \$220,000.⁷⁵ The period encompassed by this program began with Isabel Perón's 1975 declaration to eliminate subversion to the end of junta rule in 1984. The program was then expanded to those who were forced into exile, with the same payment structure.⁷⁶ Victims could use evidence or testimony in the CONADEP report as proof to seek reparations.⁷⁷

⁷⁰ Guembe, 27.

⁷¹ Acuña, "Transitional Justice in Argentina and Chile", 214-215.

⁷² Guembe, "Economic Reparations", 29.

⁷³ Guembe, 29.

⁷⁴ Guembe, 29-30.

⁷⁵ Hayner, *Unspeakable Truths*, 170.

⁷⁶ Hayner, 170.

⁷⁷ Guembe, "Economic Reparations", 32.

Then, in 1994, ten years after CONADEP's final report, the Argentine Congress passed a law that created an economic reparations program for victims and families of victims of forced disappearances and killings.⁷⁸ Hayner argues that not only was this program implemented in recognition of the injustice of providing reparations for those who were jailed but not to the family of the disappeared, but was also a response to national and international court cases where families of the disappeared began to win monetary settlements for moral damages.⁷⁹ This law provoked more debate and resistance than the previous reparations programs. People were concerned that the state was paying off families instead of pursuing justice against perpetrators and that it would have to label disappeared people as legally dead.⁸⁰ The state made clear that reparations did not satisfy other forms of justice, and importantly, created a new legal status, "absence by forced disappearance" in 1994. This status "forces the State to accept that the person was illegally kidnapped by its agents and that he or she never appeared again, dead or alive."⁸¹ While in the past, families would refuse to claim their relative as dead on principle, making processes of inheritance, benefits, and lawsuits almost impossible, this new legal definition created a classification that allowed families to pursue other forms of legal justice.

Under this reparations program for the family of victims of forced disappearances, families were entitled to a single lump sum of \$220,000, paid in government bonds.⁸² If a family brought a case to the Secretariat of Human and Social Rights that was among the 8,960 cases in the CONADEP report, they could easily claim the reparations payment.⁸³ If a case was not included in the 1984 report, a family would need to corroborate its claim through a previous

⁷⁸ Hayner, *Unspeakable Truths*, 170.

⁷⁹ Hayner, 170.

⁸⁰ Guembe, "Economic Reparations", 35.

⁸¹ Guembe, 35.

⁸² Hayner, *Unspeakable Truths*, 169.

⁸³ Hayner, 169.

report submitted to another human rights body, mention in the press, or other legal proceedings that tried to establish the whereabouts of the disappeared person.⁸⁴ In 2004, another reparations law was passed that provided victimized children who were born in prison and taken to other families a payment of between \$25,000 and \$50,000 and has paid out around \$66 million.⁸⁵

Through the administration of Argentina's reparations program, CONADEP's successor, the Secretariat of Human and Social Rights, has been able to contribute a fuller picture of political violence in Argentina. While CONADEP focused specifically on forced disappearances, cases and evidence brought to the Secretariat for other forms of political violence to claim reparations, such as unjust detention and exile, have painted a fuller picture of a regime whose abuses were characterized by their clandestine nature. Through reparations programs for political prisoners, those forced into exile, and the families of victims of forced disappearance, the Argentine state has paid out more than \$3 billion in reparations payments to more than 16,000 people.⁸⁶

In Argentina, the truth commissions and material reparations programs reinforced each other. CONADEP's work documenting the nature of conflict, identifying victims and perpetrators, and providing courts evidence for prosecution helped catalyze other tools of transitional justice. The numerous reparations programs implemented helped to collect more evidence to inform the nature of all political violence in Argentina, strengthening historical understandings of the conflict. The reparations programs used CONADEP's findings as an important legal reference point and the campaign to create the new legal classification of

⁸⁴ Hayner, 169.

⁸⁵ Hayner, 274.

⁸⁶ Hayner, 274.

“absence by forced disappearance” would not be possible without a detailed and large-scale investigation of clandestine forced disappearances.

Chile: National Commission for Truth and Reconciliation/National Commission on Political Imprisonment and Torture

Background of Conflict

While Chilean politics from the 1930s to 1970s has been characterized by a higher degree of stability than many of its neighbors in Latin America, there have been two key turbulent eras that have transformed the political system. First, in 1891, a civil war broke out over opposing agrarian and mining interests and conflicts between the executive and legislative branches. The Congress, which was supported by the navy, defeated the President, who was supported by the army. The Congress changed Chile's political system from a presidential system into a parliamentary system.⁸⁷ After the victory for the Conservatives in the civil war, foreign companies were given a considerable scope of autonomy to invest and operate copper and nitrate mines. This export-driven mining began to create the class stratifications that would define Chilean politics and conflict in the next decades. Peasants occupied the bottom of the social structure and operated under an agrarian peonage system, called the *patron-peón* system, which began under Spanish colonialism.⁸⁸ The working classes in mines and cities began to grow in size, political influence, and militancy as they demonstrated and fought for labor rights, organizing through the Radical Party, then the Socialist Workers' Party, founded in 1912, which would become the Communist Party.⁸⁹ A large middle class emerged and organized through the Democratic Party, and new business and industrial elites acquired money and power through the export-driven mining economy. This tripartite system of political organization that emerged – the

⁸⁷ Lois Hecht Oppenheim, *Politics in Chile: Democracy, Authoritarianism, and the Search for Development* (Boulder: Westview Press, 1993), 10.

⁸⁸ Oppenheim, 11.

⁸⁹ Oppenheim, 11.

socialist and communist aligned working-class, liberal middle class, and conservative elites would form the basis for future conflict.

Second, Arturo Alessandri won the presidency in 1920 during an economic downturn and an increase in working-class militancy as a representative of middle-class interests, challenging the traditional power of elites in Chilean politics.⁹⁰ The weak presidency meant that Alessandri's desires to implement social reforms were blocked by the conservative legislature, so in 1924, he proposed a new constitution to restore the power of the presidency by bringing in military support.⁹¹ Though the military partnership gave Alessandri the political power to begin passing his reforms, he felt that his independence had been compromised by the military and went into exile in September of 1924. This began a turbulent 1920s era of politics in Chile – a military junta took over, Alessandri was recalled in 1925 and passed the 1925 Constitution which gave the presidency more power, and then resigned later in 1925. Democratically elected Emiliano Figueroa Larraín won the presidency in 1925 but was overthrown by Carlos Ibañez in the same year, who ruled as a dictator from 1925 to 1927. This instability continued in 1932 when Arturo Alessandri won the presidency again and began governing under the 1925 Constitution, ushering in an era of stable politics from 1923 to 1973.

The 1925 Constitution created a strong executive and two-chamber legislature that was elected through proportional representation. Importantly for future conflict, the strong executive gave the president the power to issue executive decrees that would effectively have the force of law.⁹² The use of proportional representation maintained the important tripartite political divisions between Chileans into Left, Center, and Right, meaning that coalition politics were

⁹⁰ Oppenheim, 11.

⁹¹ Oppenheim, 11.

⁹² Oppenheim, 13.

essential and that presidents were often elected with a plurality of votes. Through most of the 20th century, the Left, Center, and Right consistently polled around one-third of the popular vote, and the class-based nature of these divisions became entrenched.

After decades of a stable political system and Left, Center, and Right parties competing for political power, Salvador Allende's 1970 election to the presidency would upset this stability. Allende, a Marxist and member of the Socialist Party of Chile, was the candidate of Popular Unity (UP), a coalition of leftist parties whose stated goal was the peaceful transition of Chile into a socialist state.⁹³ Allende campaigned to use constitutional processes to transform Chile into a socialist state through land expropriation and redistribution and the nationalization of key sectors of the economy.⁹⁴ Two parties in the UP, the Communist Party and Socialist Party, formed its base of support – Communist Party support came from industrial workers and miners across the country, while Socialist Party support came from rural and urban lower and middle-class Chileans.⁹⁵ Beginning in 1960, members of the Communist Party who felt that it was too conservative left and joined guerilla groups committed to armed struggle, the most significant of which was called the Movement of the Revolutionary Left (MIR).⁹⁶

Allende won 36.2% of the vote, while Jorge Alessandri, a former president and son of Arturo Alessandri, running as an independent, won 34.9% of votes, and Radomiro Tomic, a Christian Democrat, won 27.8% of the vote. Alessandri represented a traditional conservative elite class. Tomic's Christian Democratic Party (PDC) was defined by a progressive Catholic theology and commitment to a communitarian system that sought to find a "third way" between

⁹³ Mark Ensalaco, *Chile under Pinochet: Recovering the Truth* (Philadelphia: University of Pennsylvania Press, 2000), 5.

⁹⁴ Ensalaco, 5.

⁹⁵ Oppenheim, *Politics in Chile*, 17-19.

⁹⁶ Ensalaco, *Chile under Pinochet*, 7.

Marxist and laissez-faire capitalist systems and became the main party for middle-class Chileans – professionals, students, bureaucrats, and white-collar workers.⁹⁷

After winning a plurality of votes, Allende needed Congress to confirm his election, and the PDC controlled the key votes that would decide his fate. The PDC decided to support Allende's confirmation if he signed a Statute of Guarantees that would guarantee the rights of all political parties, the right to private education, and the non-political nature of the military – concepts which fit into Allende's pledge to transition the country to socialism legally and peacefully.⁹⁸ After signing this statute, Allende ascended into the presidency.

Allende's partnership with the PDC quickly broke down – they felt that he was violating the Statue of Guarantees through his use of executive decrees, and increasing violence from militant leftists created the perception that Allende tolerated violence. Facing the regular use of veto powers in Congress from conservatives and Christian Democrats, Allende used the aforementioned executive decrees established under the 1925 Constitution to requisition factories and push through legislation to begin nationalization. The clash between the executive and legislative branches characterized the tensions of 1970 and 1971, but by 1972, these tensions spilled out to the general public. This era moved away from the tripartite political split of the past and towards polarization between those who supported the UP and those who did not. A key event that characterized this polarization was the October 1972 strike, which lasted for more than a month. As Allende moved to nationalize trucking in a small province, the National Trucking Association, fearful of Allende nationalizing the entire industry, declared a national strike.⁹⁹ Small shop owners also began closing across the country to support the truckers and were backed

⁹⁷ Ensalaco, 13.

⁹⁸ Ensalaco, 14.

⁹⁹ Oppenheim, *Politics in Chile*, 71.

by the conservative National Party and the PDC.¹⁰⁰ While the Allende government requisitioned strikers' trucks to transport goods, mobilized their supporters to help in the effort, and encouraged workers to take over factories that tried to close during the strike, consumer supplies were severely limited.¹⁰¹ This mobilization against the government began with grassroots small business owners and white-collar workers and was then supported by political parties, signaling an important shift in the nature of polarization in Chile. To end the strike, the government agreed that it would not take over small private trucking businesses. This agreement was enforced by the military entering Chilean politics – the leaders of the army, navy, and air force entered into Allende's cabinet to guarantee the agreement and the neutrality of the upcoming 1973 congressional elections.¹⁰²

By the 1973 March congressional election, the PDC and conservative national party allied together into an opposition coalition named the Democratic Confederation (CODE) to try to defeat UP. The UP won 43.5% of the popular vote and gained six seats in the lower Chamber of Deputies and two seats in the Senate, while CODE won 56.5% of the popular vote.¹⁰³ Though CODE claimed victory with over 50% of the popular vote, UP's win signaled their growing base of support and meant that President Allende could not be impeached in Congress.

Without any way to oust Allende from power through constitutional measures, both the National Party and Christian Democratic Party committed themselves to overthrowing the president through a military coup. By claiming election fraud, blocking UP programs in Congress, organizing and supporting protests and strikes from copper miners and bus drivers, and partnering with foreign powers, chiefly the United States, the opposition sought to

¹⁰⁰ Oppenheim, 71.

¹⁰¹ Oppenheim, 71.

¹⁰² Oppenheim, 74.

¹⁰³ Oppenheim, 78.

destabilize Chile and create the conditions for the military to intervene.¹⁰⁴ The Chilean Supreme Court ruled in May of 1973 that Allende had improperly interfered with judicial processes in the country, and this charge was reiterated through resolutions in Congress.¹⁰⁵ Next, senior army leaders forced out the constitutionalist head of the army, General Carlos Prats, whom they painted as closely aligned with the UP, given the military joining Allende's government, and replaced him with General Augusto Pinochet.¹⁰⁶ In July and August of 1973, the UP, led by President Allende, and the PDC, led by Patricio Aylwin, negotiated the UP's plan to socialize key sectors of the economy but failed to find agreement as the PDC kept coming back with more demands.¹⁰⁷ As strikes continued and right-wing groups committed acts of terrorism and sabotage, Allende turned to his last alternative and planned to announce a plebiscite on his government on September 11, 1973, which he informed General Pinochet about. With tensions rising, Allende refused to arm his supporters and stayed committed to the constitutional process while the opposition was waiting for the military to intervene and hand power to them.¹⁰⁸

Finally, on September 11, 1973, the day of the planned plebiscite, Allende was alerted to a naval rebellion and left for the presidential palace. He initially announced over the radio that the navy had rebelled, without any knowledge that any other branches of the military were also a part of the coup.¹⁰⁹ However, the next radio broadcast by the entire military and police force made clear that it was a coup – they demanded that Allende surrender the presidency, and Allende's cabinet members began to be arrested – many were jailed, tortured, or disappeared.¹¹⁰ During his second, and last radio broadcast, Allende refused to resign from the presidency

¹⁰⁴ Oppenheim, 79-82.

¹⁰⁵ Ensalaco, *Chile under Pinochet*, 2.

¹⁰⁶ Oppenheim, *Politics in Chile*, 82.

¹⁰⁷ Oppenheim, 84.

¹⁰⁸ Oppenheim, 86.

¹⁰⁹ Ensalaco, *Chile under Pinochet*, 3.

¹¹⁰ Ensalaco, 4.

despite the military guaranteeing a safe flight out of the country if he did. The military began bombing Allende's presidential palace, and Allende was later discovered dead with a self-inflicted gunshot wound.¹¹¹

The junta gave the public a mixed message about its goals during its first public broadcast. As the senior commander, Pinochet began by saying that patriotic duty had led the junta to save the country from Allende's chaos and that he had no personal ambitions for power – instead, the members of the junta would switch off occupying the presidency.¹¹² General Leigh, the Air Force Commander, spoke about the military's decisions to intervene after three years of the “Marxist cancer” and its mission to “fight communism... [and] extirpate it, whatever the cost.”¹¹³ When the director general of the national police spoke, he said that the police joined the junta to “return to the path of true legality” and “returning the country to the path of obeying the constitution, and the laws of the Republic.”¹¹⁴

A month later, Pinochet confirmed that the military would not rule for a brief transitional period, but instead would engage in a long battle to “extirpate evil from Chile at the root”, echoing the statements of General Leigh.¹¹⁵ While the PDC expected to emerge as the new governing party of Chile after the coup, the military junta suspended Congress and made clear that the PDC's leader would not lead the junta.¹¹⁶ It gave itself, the four-person junta, supreme rule over the nation through the executive and legislative powers, put political parties in indefinite recess, banned leftist parties, and installed military officers to most governmental posts. The junta declared a state of siege that had been created under the 1925 Constitution,

¹¹¹ Ensalaco, 4.

¹¹² Ensalaco, 49.

¹¹³ Ensalaco, 49.

¹¹⁴ Ensalaco, 50.

¹¹⁵ Ensalaco, 50.

¹¹⁶ Ensalaco, 20.

which was renewed until 1978 and gave it the basis to wage its fight against leftists. The courts were kept open and acquiesced to the junta – military and police claims were accepted as truth and judges were fearful of ruling against the junta.

Lois Oppenheim argues that the Chilean military had a two-phased project – first, to rid the country of leftist political groups and institutions which had fomented class-based antagonism in Chile, and next, rebuild economic, political, and cultural institutions along capitalist and anti-Marxist lines.¹¹⁷ Declaring a war of extermination and neutralization against Marxism and Socialism meant that the regime had declared war against more than 40% of the Chilean population that had supported Allende and leftist groups. At the end of 1973, the junta created the Directorate for National Intelligence (DINA), its branch of secret police whose mission was to interrogate and eliminate leftist leaders and UP supporters from Chile. DINA engaged in kidnapping, torture, disappearances, and exiles with a key focus. In the first two years of junta rule, DINA targeted MIR, the left-wing paramilitary organization that had previously engaged in armed conflict against the state and the military, then in 1976, it targeted members of the Socialist Party, and in 1977, it targeted members of the Communist Party.¹¹⁸ DINA also worked with landowners and the fascist right-wing paramilitary group, Fatherland and Liberty, to target peasants who had sought land reform or engaged in land takeovers.¹¹⁹ Dissidents were often forced into exile – kidnapped and let go on the Argentine side of the Andes Mountains or forced onto flights out of the country. The scope of state violence was reduced in 1977 after DINA, facing American pressure after assassinating a former Allende minister in the United States in 1976, was disbanded by Pinochet. He replaced it with the National Center for

¹¹⁷ Oppenheim, *Politics in Chile*, 117-118.

¹¹⁸ Oppenheim, 125.

¹¹⁹ Oppenheim, 125.

Information (CNI), which carried out a similar mission. To protect itself from future retribution, the junta implemented a law in 1978 that gave the military amnesty for any crimes committed from 1973 to 1978 during the aforementioned “state of siege” in Chile.¹²⁰

While the junta had planned to rule Chile as a collective body, Pinochet consolidated his singular power as the dual leader of the armed forces and the executive.¹²¹ By 1974, Pinochet had named himself the supreme head of the nation, leader of the junta, and President of Chile.¹²² He used DINA to eliminate opponents and potential challenges to his power from both the Allende government and his own – he ousted General Leigh from the junta in 1978 after he had called for a transition to civilian rule in five years.¹²³ Once he had consolidated power, Pinochet wanted a new constitution that would keep himself and the military in power, prohibit any leftist groups, and outline a slow transition to civilian rule. In 1980, Pinochet unveiled this new Constitution to the public, which included both transitional and permanent articles. The transitional articles meant that the Constitution would not become permanent until eight years after its introduction. These transitional articles stated that Pinochet would remain president until 1989, when the junta would propose a candidate, most likely Pinochet, to be approved through a plebiscite.¹²⁴ The candidate who won would rule for eight more years, until 1997. During this transitional period, there would be no Congress and no political parties – the junta would continue making laws until a new Congress in 1990. The permanent articles entrenched members of the military into the government by creating a National Security Council that had oversight over civilian government, giving the National Security Council the power to install

¹²⁰ Oppenheim, 127.

¹²¹ Ensalaco, *Chile under Pinochet*, 20.

¹²² Oppenheim, *Politics in Chile*, 129.

¹²³ Oppenheim, 129.

¹²⁴ Oppenheim, 134.

leaders of the branches of the military, establishing a Congress that included nonelected members from the military and national police, and banning speech about class struggle.¹²⁵ Additionally, the Constitution stated that Pinochet would remain the Commander in Chief of the army until 1998 and subsequently would be a senator for life.¹²⁶ After 30 days of introduction and with repressed opposition from the Christian Democratic Party, the new junta announced that the Constitution was approved by two-thirds of the public and rejected by 30% under suspect electoral conditions.¹²⁷

In 1981, Pinochet took the presidential oath for an eight-year term and faced an economic crisis from 1981 to 1982, where laissez-faire economic policy created severe unemployment and bankruptcies, creating an opening for democratic opposition to emerge. In 1983, the national copper mining union declared a Day of Protest and began to find support among political parties, which began a period of protest until 1986.¹²⁸ Grassroots groups, unions, women, and young people began attempting to protest during this period from 1983 to 1986 but were severely repressed by Pinochet. Though they were unsuccessful, this signaled growing opposition to the regime among working and middle-class Chileans. Political parties began to mobilize to beat Pinochet through the constitutional plebiscite scheduled for 1988. If more than half of voters voted no in the plebiscite in support of Pinochet, he would be forced to hold a competitive presidential election.¹²⁹ When 55% of voters voted no on the plebiscite, a coalition of sixteen parties named the Coalition for Democracy ran Patricio Aylwin, the President of the Christian Democratic Party as their candidate, and faced Hernán Büchi, the regime's candidate, and

¹²⁵ Oppenheim, 134-136.

¹²⁶ Hayner, *Unspeakable Truths*, 47.

¹²⁷ Oppenheim, *Politics in Chile*, 136.

¹²⁸ Oppenheim, 139.

¹²⁹ Oppenheim, 140.

Francisco Errázuriz, and populist right-wing candidate.¹³⁰ Aylwin won a majority of votes and became Chile's first democratically-elected leader since 1973.

Truth Commission 1

When Aylwin ascended into the presidency in 1990, he faced a tense political situation and the constitutional limitations established by the 1980 Constitution – Pinochet remained the commander of the armed forces and had made clear that any step too far would result in military action. In response to Aylwin's campaign rhetoric of truth and justice, Pinochet responded, "the day they touch any one of my men, the state of law is ended."¹³¹ Additionally, the 1978 amnesty law shielded officials from prosecution, and courts were still occupied by judges loyal or afraid of the military. In 1990, the Supreme Court rejected a motion that requested the inapplicability of the 1978 Amnesty Law against military leaders, cementing the military's impunity during Aylwin's presidency.¹³² Aylwin decided to proceed cautiously, aware of the politics of an unstable democratic transition and the possibility of another military coup, and without feasible options to pursue prosecutions.

Aylwin established a truth commission, the National Commission on Truth and Reconciliation a month into his presidency in April of 1990. The Commission is known as the Rettig Commission because of its chair, Raúl Rettig. The Rettig Commission was established through presidential decree and was tasked to investigate "disappearances after arrest, executions, and torture leading to death committed by government agents or people in their service, as well as kidnapping and attempts on the life of persons carried out by private citizens

¹³⁰ Oppenheim, 140.

¹³¹ Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies*, 53.

¹³² Acuña, "Transitional Justice in Argentina and Chile", 226.

for political reasons” from the coup on September 11, 1973, to Pinochet's last day in office, March 11, 1990.¹³³ Cases that did not result in death were left out of the mandate and therefore the scope of the Commission was narrow. The Commission needed:

- a. To establish as complete a picture as possible of those grave events, as well as their antecedents and circumstances
- b. To gather evidence that may make it possible to identify the victims by name and determine their fate or whereabouts
- c. To recommend such measures of reparation and reinstatement as it regards as just; and
- d. To recommend the legal and administrative measure which in its judgment should be adopted in order to prevent actions such as those mentioned in this article from being committed.¹³⁴

The Commission’s power was also limited as it could neither subpoena any witnesses nor divulge the names of any perpetrators because it was not a judicial body, and instead would refer its findings to the courts, which could take legal action.¹³⁵ It was composed of eight members, four of whom had supported Pinochet and four of whom had been in opposition, and was chaired by Raúl Rettig, a former liberal senator and ambassador under Allende who represented a non-threatening form of liberalism.¹³⁶ It was given nine months, and later a three-month extension, to produce a final report and had a staff of 60 people.¹³⁷

Seven of the eight members of the Rettig Commission had law degrees and prioritized a legalistic notion of truth that privileged documentary information as evidence over testimony.¹³⁸ The Commission relied heavily on the human rights archive of the Vicariate of Solidarity of the Catholic Church, which helped document reports of human rights abuses during the regime’s

¹³³ “Report of the Chilean National Commission on Truth and Reconciliation,” United States Institute of Peace, 1991, https://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf, 6.

¹³⁴ “Report of the Chilean National Commission on Truth and Reconciliation”, 7.

¹³⁵ Ensalaco, *Chile under Pinochet*, 184.

¹³⁶ Hayner, *Unspeakable Truths*, 47.

¹³⁷ Alejandro Chavez-Segura, “Can Truth Reconcile a Nation? Truth and Reconciliation Commissions in Argentina and Chile: Lessons for Mexico,” *Latin American Policy* 6, no. 2 (2015: 226–39), 235.

¹³⁸ Bakiner, *Truth Commissions*, 124.

rule.¹³⁹ The Commission then sought to corroborate evidence from numerous other human rights organizations that had gathered information during the conflict, including the Chilean Human Rights Commission and Foundation for Social Assistance of the Christian Churches.¹⁴⁰ It also reached out to military, business, labor, and professional organizations, as well as political parties, to submit lists of victims. The national police, military, MIR, Communist Party, and other pertinent groups all were asked to provide information. Though many of these groups responded, the national police and military evaded answering by declaring that records had been destroyed, they did not have information, or that they could not divulge intelligence information.¹⁴¹

The Commission interviewed victims by publicizing their work and opening government offices at the provincial and regional level and consulates and embassies abroad to any person who wanted to testify about an individual case.¹⁴² Given that the Rettig Commission was not judicial, it was not required to divulge the identities of victims or families who testified, which was important in a country where Pinochet and his loyalists held considerable power.¹⁴³

Through corroborating documentary information from civil society and government and taking victim testimony, the Rettig Commission received 3,428 cases of death and disappearances.¹⁴⁴

¹³⁹ Bakiner, 124.

¹⁴⁰ Ensalaco, *Chile under Pinochet*, 196.

¹⁴¹ Bakiner, *Truth Commissions*, 125.

¹⁴² Ensalaco, *Chile under Pinochet*, 197.

¹⁴³ Ensalaco, 196.

¹⁴⁴ Bakiner, *Truth Commissions*, 127.

Truth Commission 1: Report

The Rettig Commission issued its 1,800 page report in February of 1991, with President Aylwin releasing it to the public on national television, asking for forgiveness from victims and asking the military to make amends.¹⁴⁵ Aylwin sent the cases to the Supreme Court and urged that prosecutions should begin, both ignoring the 1978 amnesty law and focusing on abuses that had happened after 1978.¹⁴⁶ Pinochet responded that he had a “fundamental disagreement” with the report and stressed the necessity of the 1973 coup.¹⁴⁷ The report was well circulated through prints in newspapers but was not widely printed into books.¹⁴⁸ While the report did not release the name of perpetrators, the Communist party newspaper, *El Siglo*, acquired this list and published the names of perpetrators.¹⁴⁹

Of the 3,428 cases submitted to the Commission, it found that of the cases that fell under its mandate, 2,115 people had been killed by the state while 164 had been killed by armed opposition groups, meaning that 92.8% of victims had been killed by the state while 7.2% of victims had been killed by armed opposition groups, which was not solely restricted to leftist groups.¹⁵⁰ About 4% of killings were attributed to leftist groups.¹⁵¹ Most of the violence carried out by the state was under DINA from 1973-1977, when it was tasked with the systematic extermination of leftist leaders and supporters.¹⁵²

Importantly, the balance of violence meant that the military's central argument – that the country suffered a state of siege at the hands of leftist groups and needed to fight a brutal

¹⁴⁵ Hayner, *Unspeakable Truths*, 48.

¹⁴⁶ Ensalaco, *Chile under Pinochet*, 214.

¹⁴⁷ Hayner, *Unspeakable Truths*, 48.

¹⁴⁸ Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies*, 54.

¹⁴⁹ Elster, *Closing the Books*, 65.

¹⁵⁰ Bakiner, *Truth Commissions*, 126.

¹⁵¹ Hayner, *Unspeakable Truths*, 48.

¹⁵² Chavez-Segura, “Can Truth Reconcile a Nation”, 235.

campaign against them, was demonstrably false. However, the report did not directly blame the regime for abuses committed, keeping with Aylwin and Rettig's strategy of trying to create a neutral document that would not spark conflict. It said that the military was drawn away from its role as a neutral constitutionalist and into the conflict.¹⁵³ Those on the left criticized the report for trying to establish a moral equivalency between the right and the left before and during 1973, ignoring Allende's commitment to constitutionalism and negotiation, and for being "more sympathetic to the fears that motivated opposition to Allende in defense of private property than those of the 'extreme left political groups' that spread an 'ideology of armed struggle'."¹⁵⁴

The report recommended a symbolic, legal, and material reparations program as a way for the state to assume responsibility for the abuses committed. It recommended symbolic reparations in the form of memorials, monuments, a National Human Rights Day, and organizing campaigns geared toward reconciliation.¹⁵⁵ In terms of legal reparations, it proposed the creation of legal status, "arrested and disappeared to be dead", similar to the forcibly disappeared status in Argentina so that families could proceed with the relevant estate and administrative necessities for a presumed dead person.¹⁵⁶ The report also proposed reparations through social programs for families. Finally, a material reparations program was proposed for families of those who were killed by the state, and the Commission recommended that lawmakers codify this program into law and provided guidances for this codification, chiefly that recipients should be paid no less than the monthly average family income in Chile each month in reparations.¹⁵⁷

¹⁵³ "Report of the Chilean National Commission on Truth and Reconciliation", 22.

¹⁵⁴ Grandin, "The Instruction of Great Catastrophe", 57.

¹⁵⁵ "Report of the Chilean National Commission on Truth and Reconciliation", 1059.

¹⁵⁶ "Report of the Chilean National Commission on Truth and Reconciliation", 1060-1061.

¹⁵⁷ "Report of the Chilean National Commission on Truth and Reconciliation", 1063-1065.

Though the report initially enjoyed support from Congress, in the weeks following the release of the report, militant leftists assassinated a close Pinochet confidant and advisor, Senator Jaime Guzmán, and discussions about the political impact of the report subsided as the threat of militant leftists was raised again.¹⁵⁸

Truth Commission 1: Reparations Program

When the Rettig Commission finished its work, Congress created a National Corporation for Reparation and Reconciliation to continue the Commission's work and "search for the remains of the disappeared, resolve cases still left open, organize the commission's files so that they could be made public, and institute the reparations program."¹⁵⁹ President Aylwin sent Congress a draft reparations bill to create a material reparations program for the families of victims of abuse, and Law 19.123, passed on February 8, 1992, established a monthly pension reparations program for the families of victims included in the Rettig Commission's report and those established by the National Corporation for Reparation and Reconciliation.¹⁶⁰ The law created an overarching monthly pension value, of which different family members would be entitled to certain percentages of this value – in 1996 currency values, this was 226,667 Chilean pesos or \$537.¹⁶¹ There was no limit to the number of family members who could claim reparations under this program, as each victim was not divided into percentages. Rather, the overarching pension value provided a point to calculate individual reparations from. Each month, the surviving spouse would receive 40% of the total value, the mother (and in her absence, the

¹⁵⁸ Hayner, *Unspeakable Truths*, 48-49.

¹⁵⁹ Hayner, 49.

¹⁶⁰ Elizabeth Lira, "The Reparations Policy for Human Rights Violations in Chile," in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006, 44–101), 59.

¹⁶¹ Lira, 59. Adjusted for present-day values, this would be about 526,000 Chilean pesos, which converts to about \$730.

father) of the victim would receive 30%, the mother or father of a victim's out-of-wedlock children would receive 15%, and each of the children of the victim would receive 15% until they reached age 25, unless they were mentally ill, in which case they were entitled to the 15% for the rest of their lives.¹⁶² Each recipient was also entitled to a lump-sum bonus payment equal to 12 months of reparations payments.¹⁶³

The initial number of beneficiaries was 5,794 in 1992 and dropped to around 3,200 beneficiaries in 2001.¹⁶⁴ Additionally, the program gave the children of victims full scholarships for higher education and a stipend to cover food and supplies while in school until the age of 35.¹⁶⁵ The highest yearly cost of these programs was close to \$16 million per year.¹⁶⁶ In 2021, 29 years after the implementation of this reparations program that paid a maximum of \$16 million per year, the total amount paid would be at most \$464 million, though the decreasing number of beneficiaries each year means that this total figure is lower in reality.

Truth Commission 2

While the Rettig Commission's report documented cases of human rights abuses, political debates about these abuses and forms of remedy other than a truth commission and reparations were severely limited while Pinochet remained as commander-in-chief of the army until 1998. After he transitioned to become a Senator for life in 1998, Pinochet was arrested in London on an extradition request from Spain – Spanish judges had used the Rettig report as part of their evidence against Pinochet.¹⁶⁷ Chilean and international activists and lawyers had been

¹⁶² Lira, 59.

¹⁶³ Lira, 59.

¹⁶⁴ Lira, 59.

¹⁶⁵ Hayner, *Unspeakable Truths*, 167.

¹⁶⁶ Hayner, 167.

¹⁶⁷ Hayner, 49.

organizing for Pinochet to be arrested under a principle of universal jurisdiction for human rights abuses and succeeded.¹⁶⁸ Pinochet was placed under house arrest in London until he was released in 2000 on medical grounds, not extradited to Spain, and returned to Chile. This began a legal battle in Chile with Pinochet intermittently placed under house arrest under various indictments. The Supreme Court ruled in favor of an indictment in 2000, which it then dismissed in 2002 on medical grounds, and finally, it overturned this dismissal and ruled in favor of an indictment in 2004, paving the way for prosecutions against Pinochet. Pinochet died in 2006 before being convicted of any crimes, but he had been implicated in more than 300 cases of human rights abuses and corruption.¹⁶⁹

Pinochet's arrest shifted the political landscape in Chile, where the judiciary was more inclined to pursue prosecutions and politicians were more open to accepting the abuses of the past regime and reconciling. By 2010, 779 officials had been charged in Chilean courts with human rights abuses, over 200 had been tried and convicted, and 59 were serving sentences in jail – many of these cases used the Rettig Commission's records.¹⁷⁰

From the beginning of the 1990 transition to democracy until the 2000s, victims of abuses from the state who had survived had been fighting for their inclusion in the truth process and a reparations program. Amid the growing demand for a new commission from human rights groups, President Ricardo Lagos established the National Commission on Political Imprisonment and Torture in September 2003, which became known as the Valech Commission, named after Bishop Sergio Valech, the chair of the Commission. The Commission was tasked with determining the victims of political imprisonment who had been detained and tortured by the

¹⁶⁸ Amnesty International, "How General Pinochet's Detention Changed the Meaning of Justice," 2013, <https://www.amnesty.org/en/latest/news/2013/10/how-general-pinochets-detention-changed-meaning-justice/>.

¹⁶⁹ Amnesty International, "How General Pinochet's Detention Changed the Meaning of Justice".

¹⁷⁰ Hayner, *Unspeakable Truths*, 49.

state between 1973 and 1990 and was mandated to propose a reparations program.¹⁷¹ The Valech Commission operated between 2003 and 2005 and operated under a 50-year secrecy law wherein any materials shared with the Commission could not be directed to the judiciary for 50 years in efforts to maximize the number of victims that would testify.¹⁷²¹⁷³ However, victims could directly bring their testimony to the judiciary and seek prosecutions. Cath Collins argues that the Valech Commission was regressive, under a legalistic view, compared to the Rettig Commission in two ways – first, it was more secretive and less publicly accessible, and second, it did not connect to judicial mechanisms.¹⁷⁴

The Valech Commission’s testimony and document collection through government office, consulates, and embassies was more popular than expected – deadlines for submissions had to be pushed back as the Commission realized that the scale of political imprisonment and torture was more widespread than had been estimated.¹⁷⁵ By the end of the Commission, it had taken more than 35,000 statements. Importantly, the scale of abuses was so immense that the Valech Commission reopened again in 2011 to process even more cases.¹⁷⁶

Truth Commission 2: Report

The Valech Commission’s report was published in 2004, with an additional report published in 2005. It identified 28,549 people who had suffered political imprisonment by the state.¹⁷⁷ The 2011 reopening of the Commission added almost 10,000 people to this number,

¹⁷¹ Hayner, 61.

¹⁷² Cath Collins, “Truth-Justice-Reparations Interaction Effects in Transitional Justice Practice: The Case of the ‘Valech Commission’ in Chile,” *Journal of Latin American Studies* 49, no. 1 (2016: 55–82), 67.

¹⁷³ Collins, 67.

¹⁷⁴ Collins, 71-72.

¹⁷⁵ Collins, 64.

¹⁷⁶ Collins, 65.

¹⁷⁷ Hayner, *Unspeakable Truths*, 61.

bringing the total number who had suffered political imprisonment as identified by the Commission to almost 40,000 people.

The report said that “torture was a policy of the state, meant to repress and terrorize the population.”¹⁷⁸ Two-thirds of the reported cases of torture took place in the months following the 1973 coup, and 94% of people detained in the months following the coup were tortured.¹⁷⁹ Of the initial 28,549 victims, 1,244 were younger than 18 at the time of the abuses, and 176 were younger than 13.¹⁸⁰ The Commission identified fourteen main forms of torture – electric shock was the most common, but the state also used, “the setting of dogs on naked female prisoners, the torture of children to make their parents talk, or the ‘collateral damage’ of miscarriages induced through sustained beating and sexual assault.”¹⁸¹

As mandated, the report outlined a system of symbolic, educational and health, and material reparations programs.¹⁸²

Truth Commission 2: Reparations Program

In 2005, the Chilean government implemented a reparations program similar to what it had done for the families of victims identified by the Rettig Commission. Victims identified by the Valech Commission were paid a lifelong monthly pension of about \$200 in 2005 prices and were entitled to similar health care and educational expense programs as the families of victims.¹⁸³ The maximum yearly cost of this program is about \$45 million. In 2021, 16 years

¹⁷⁸ Hayner, 61.

¹⁷⁹ Hayner, 61.

¹⁸⁰ Hayner, 61.

¹⁸¹ Collins, “Truth-Justice-Reparations Interaction Effects”, 64-65.

¹⁸² “Commission of Inquiry: Chile 03,” United States Institute of Peace, 2003, <https://www.usip.org/publications/2003/09/commission-inquiry-chile-03>.

¹⁸³ Hayner, *Unspeakable Truths*, 62. Adjusted for present-day values, this would be about \$275.

after the implementation of this reparations program that paid a maximum of \$16 million per year, the total amount paid would be at most \$720 million, though the decreasing number of beneficiaries each year means that this total figure is lower in reality.

Guatemala: Commission for Historical Clarification

Background of Conflict

In 1944, members of the working and middle classes forced right-wing military dictator Jorge Ubico, who had ruled since 1931, to resign, ushering in what became known as “ten years of spring”, the first period of democratic rule in the country. In his place, Ubico appointed a three-member military junta to govern, which was overthrown in October 1944 by a coup launched by army officers, among them Jacobo Árbenz, the future president.¹⁸⁴ This began the Guatemalan Revolution and in 1945, democratic elections for president were held. From 1945 to 1950 Juan José Arévalo governed as Guatemala’s first democratically elected president, and his successor, Jacobo Árbenz was the second democratically elected president from 1951 until he was deposed through a coup in 1954. Arévalo and Árbenz were committed to capitalism and pursued social and political reforms in a country where power was disproportionately held by large landowners and foreign interests, specifically the United States-based United Fruit Company, which under Ubico, who was backed by the United States, owned 42% of Guatemala’s land.¹⁸⁵ Arévalo and Árbenz guaranteed political liberties and democratic elections, abolished forced labor which most of Guatemala’s indigenous population was subjected to, and instituted social welfare programs and workers’ rights laws that facilitated unionization.¹⁸⁶

One of the most important policies pursued by Árbenz was agrarian reform, one of his main campaign platforms. In 1950, about 2% of people controlled 72% of arable land in

¹⁸⁴ Jim Handy, “Reimagining Guatemala: Reconciliation and the Indigenous Accords,” in *Dilemmas of Reconciliation : Cases and Concepts*, ed. Carol A.L. Prager and Trudy Govier (Waterloo: Wilfrid Laurier University Press, 200), 279–306), 283-284.

¹⁸⁵ Jennifer L. Burrell, *Maya after War: Conflict, Power, and Politics in Guatemala*, 1st ed. (Austin: University of Texas Press, 2013), 24-25.

¹⁸⁶ Susanne Jonas, *Of Centaurs and Doves: Guatemala’s Peace Process* (Boulder: Westview Press, 2000), 18.

Guatemala, 12% of which was being cultivated.¹⁸⁷ Notably, indigenous Guatemalans, who made up about 54% of the population in the 1950s, more than 90% of whom were Maya, had been historically exploited and lived in extreme poverty.¹⁸⁸ Árbenz sought to reorient the Guatemalan economy towards capitalism by focusing on peasant proprietors. Árbenz's Agrarian Reform Law, passed in 1952, gave the government the power to expropriate non-cultivated land, pay landowners in government bonds, and redistribute the land through ownership and leasing structures to peasants.¹⁸⁹ The law redistributed land to over 100,000 families, and workers and peasants organized in support of the program.¹⁹⁰ Historians and economists argue over the benefits of the agrarian reform law – many argue that it considerably benefitted Mayans, while others hold that discriminatory distribution gave most land to *Ladinos*, people of mixed Hispanic and indigenous backgrounds.¹⁹¹

Agrarian reform and peasant organization angered large landowners, military elites, and the United Fruit Company, who with the help of the United States, orchestrated an “anticommunist” coup against Árbenz in 1954, and installed Carlos Castillo Armas into power.¹⁹² Armas was assassinated in 1957 and after an irregular election in 1958, Miguel Ydígoras Fuentes came into power. During this period, many of the reforms from the 1944-1954 democratic era were rolled back, including the agrarian reform programs of Árbenz.

In 1960, after a group of left-wing army officers orchestrated a failed coup against Fuentes, they established a guerilla insurgency against the state that would begin the Guatemalan civil war, which would last for 36 more years. The 1960s and early 1970s of the conflict between

¹⁸⁷ Douglas W Trefzger, “Guatemala’s 1952 Agrarian Reform Law: A Critical Reassessment,” *International Social Science Review* 77, no. 2 (May 3, 2002: 33–46), 32.

¹⁸⁸ Trefzger, 39.

¹⁸⁹ Trefzger, 35.

¹⁹⁰ Jonas, *Of Centaurs and Doves*, 18-19.

¹⁹¹ Trefzger, “Guatemala’s 1952 Agrarian Reform Law”, 33.

¹⁹² Burrell, *Maya after War*, 24-25.

the state and guerillas has been characterized as a “Gentleman’s War”, fought between members of urban middle classes and Ladino peasants in the Eastern region of the country. During this period, Maya in the rural areas of Guatemala began to organize for local community development through partnerships with the Catholic Church and for political reform by taking power against local Ladino elites, but Maya did not have a significant presence in local politics.¹⁹³ In the 1970s, insurgency groups, including the Guerilla Army of the Poor (EGP) and the Organization of People in Arms (ORPA), began to expand into the Western indigenous highlands, and as Mayan peasants continued to suffer from immense economic inequality, they were forced to move around the country for seasonal work and to cities to find work, catalyzing the formation of a distinct Mayan and indigenous political identity that would form the basis of the resistance to the state.¹⁹⁴

For the government, the possibility of the political uprising of the Maya would threaten the basis of Guatemala itself – since its founding, the Maya and other indigenous people had been systematically excluded from political or economic power, and their left-wing ideologies and popular participation would alter the course of the country. In the late 1970s, the government began killing community and peasant leaders, and from 1981 to 1983, engaged in systematic massacres of indigenous communities to eliminate the base of support for the insurgency through a scorched-earth policy.¹⁹⁵ From 1980 to 1981, the guerilla insurgency reached its peak, with estimates of 6,000 to 8,000 fighters and 300,000 to 500,000 collaborators across the country, and in 1982, groups united together to form the Guatemalan National Revolutionary Unity (URNG), a coalition of guerilla and leftist groups to fight against the state, including the EGP and

¹⁹³ Handy, “Reimagining Guatemala”, 285.

¹⁹⁴ Jonas, *Of Centaurs and Doves*, 19-22.

¹⁹⁵ Handy, “Reimagining Guatemala”, 288.

ORPA.¹⁹⁶ The Maya were identified by the state as a distinct ethnic group that needed to be systematically targeted to fight the insurgency.¹⁹⁷ Mayan communities were classified according to suspected guerilla activity, and violence was committed that corresponded to the level of guerilla activity – communities that extensively supported the insurgency were fully destroyed.¹⁹⁸ The most violent phase of this period was presided over by Efraín Ríos Montt, who was in office from March 1982 to August 1983.

After Montt's rule and the declaration of victory against the insurgency, military institutions were imposed throughout the countryside, including forced resettlements, the militarization of government positions, and mandatory paramilitary defense patrols.¹⁹⁹ After Montt was overthrown in 1983, the military guided a return to democracy in 1985 by drafting a new constitution and instituting elections where only right-wing and centrist parties were allowed to run candidates. In 1986, Vinicio Cerezo, the most progressive candidate in the race, won the presidency and governed until 1990 in what critics called a “civilian counterinsurgency state”, where the military continued committing abuses against insurgents under the guise of democracy and civilian rule.²⁰⁰ During the 1980s, civil society groups, Mayan political and human rights organizations, and the Catholic Church began to pressure the government to begin negotiating for peace with the URNG, and in 1994, the Guatemalan government formally entered into peace talks with the URNG, brokered by the United Nations, signing four peace accords that year.²⁰¹ The last of these four peace accords was the Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence, which would

¹⁹⁶ Jonas, *Of Centaurs and Doves*, 23.

¹⁹⁷ Burrell, *Maya after War*, 26.

¹⁹⁸ Burrell, 26.

¹⁹⁹ Jonas, *Of Centaurs and Doves*, 24.

²⁰⁰ Jonas, 26.

²⁰¹ Handy, “Reimagining Guatemala”, 291.

establish a truth commission named the Historical Clarification Commission to investigate crimes from the civil war.²⁰² In December of 1996, the Guatemalan government and URNG signed its final peace accord, and the Historical Clarification Commission (CEH) began its work in 1997, three years after it was agreed upon.

Truth Commission

A truth commission in Guatemala appealed to civil society and victim advocacy groups during peace talks, and they lobbied heavily the URNG and government to institute one. However, the context of negotiations in Guatemala was distinct compared to Argentina and Chile because they started while a civil war was ongoing, rather than a truth commission beginning under a newly established democratic government. The 1994 Agreement to establish a commission was constrained by these political factors and dictated that “the Commission shall not attribute responsibility to any individual in its work, recommendations and report nor shall these have any judicial aim or effect” and did not give the Commission subpoena powers.²⁰³ However, this restriction on naming individuals and restricting judicial capacities left the Commission’s mandate broad – it was tasked with investigating “the human rights violations and acts of violence that have caused the Guatemalan population to suffer, connected with the armed conflict” and did not specify a concrete period to investigate, but rather the period from the start of the conflict to the end of peace agreements.²⁰⁴ Civil society felt that this agreement was weak given the restraints on the Commission, and Hayner notes that these objections, directed toward

²⁰² Handy, 292.

²⁰³ “Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused Guatemalan Population to Suffer,” United Nations Peacemaker, 1994, https://peacemaker.un.org/sites/peacemaker.un.org/files/GT_940623_EstablishmentCommissionClarifyPastHumanRightsViolations.pdf, Operations, III.

²⁰⁴ “Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused Guatemalan Population to Suffer”, Purposes, I.

the URNG, almost derailed the peace process in 1994.²⁰⁵ The Commission was given six months to finish its work, with the ability for a six-month extension. The chair would be appointed by the United Nations Secretary-General, and the chair would appoint one Guatemalan academic and another Guatemalan from any sector as the other chairs.²⁰⁶ Finally, the Commission's recommendations would aim to "preserve the memory of the victims, to foster a culture of mutual respect and observance of human rights and to strengthen the democratic process."²⁰⁷

The CEH began its work in 1997 with three commissioners. The chair, Christian Tomuschat, was a German law professor and United Nations Guatemala expert who was appointed by the United Nations Secretary-General.²⁰⁸ The other two commissioners, Edgar Alfredo Balsells Tojo, a lawyer, and Otilia Lux de Cotí, a Mayan scholar, were appointed by Tomuschat.²⁰⁹ Tomuschat notes that the CEH decided to focus its investigation mainly on "attacks on life and personal integrity, in particular extrajudicial executions, forced disappearances, and sexual violations... its center of gravity focused on violations of basic human rights, where questions of life and death were at issue."²¹⁰

During its peak phases, the CEH had more than 200 staff members and 14 field offices around the country. Only non-Guatemalans directed field offices and departments to show neutrality, but Guatemalans worked as staff members on the Commission.²¹¹ Interviews were conducted in private to protect the identities of victims, many of whom feared reprisal from the

²⁰⁵ Hayner, *Unspeakable Truths*, 32.

²⁰⁶ Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused Guatemalan Population to Suffer", Composition.

²⁰⁷ Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused Guatemalan Population to Suffer", Purposes, III.

²⁰⁸ Hayner, *Unspeakable Truths*, 33.

²⁰⁹ Hayner, 33.

²¹⁰ Christian Tomuschat, "Clarification Commission in Guatemala," *Human Rights Quarterly* 23, no. 2 (2018: 233–58), 239-240.

²¹¹ Hayner, *Unspeakable Truths*, 33.

state if they gave testimony. Paul Seils argues that the investigative portion of the CEH was “unparalleled in the history of truth commissions in Latin America” compared to other commissions because of its proactive interview structure that went to communities and sought out people rather than waiting for people to come to regional offices.²¹² CEH staff visited more than 2,000 communities, conducted over 500 collective testimonies and more than 7,000 individual testimonies, and estimated that over 20,000 people participated in their investigatory process.²¹³

In addition to individual and collective interviews, the Commission requested files from the Guatemalan military, the United States government, and various civil society and victim groups. While the Guatemalan military claimed to have no records of violence during the civil war, the Commission successfully requested thousands of files from the United States government to be declassified, which gave them an outline of the Guatemalan military's personnel and organization and United States support for various military dictatorships in the country.²¹⁴ Civil society and victim advocacy groups that had collected information during the conflict provided the Commission with thousands of cases and background information. The Catholic Church's Recovery of Historical Memory Project and the International Center for Human Rights Research, which worked through indigenous organizations throughout the country, collected thousands of testimonies that were given to the Commission – these two organizations also published their own reports.²¹⁵

²¹² Paul Seils, “The Limits of Truth Commissions in the Search for Justice: An Analysis of the Truth Commissions of El Salvador and Guatemala and Their Effect in Achieving Post-Conflict Justice,” in *Post-Conflict Justice*, ed. M. Cherif Bassiouni (Ardsey: Transnational Publishers, 2002, 775–95), 786.

²¹³ Seils, 786.

²¹⁴ Hayner, *Unspeakable Truths*, 33.

²¹⁵ Hayner, 34.

Report

In February 1999, the CEH released its final report. Its investigation documented a total of 42,275 victims – 23,671 were victims of arbitrary execution and 6,159 were victims of forced disappearance.²¹⁶ Unlike more legalistic reports of other countries, the CEH report, given its constraints, approached the conflict through lenses of history and social sciences to detail a broader context within which conflict occurred. The CEH identified the underlying anti-democratic conditions of conflict rooted in severe economic inequality, structural injustice, and racism against Mayans, where elites tried to create an authoritarian racist state that sought to exclude the majority of the population and consolidate the power and wealth of elites.²¹⁷ It stated that “the violence was fundamentally directed by the State against the excluded, the poor and above all, the Mayan people, as well as against those who fought for justice and greater social equality” – 83% of the victims were Mayan and 17% were Ladino.²¹⁸ Using estimates from its database, comprised of its findings and those of other civil society groups, it estimated that more than 200,000 people were killed or disappeared.²¹⁹ 93% of the violations documented were committed by the state, while 3% were committed by guerilla groups.²²⁰ The report found that abuses were carried out against civilians:

Faced with widespread political, socioeconomic, and cultural opposition, the State resorted to military operations directed towards the physical annihilation or absolute intimidation of this opposition, through a plan of repression carried out mainly by the Army and national security forces. On this basis the CEH explains why the vast majority of the victims of the acts committed by the State were not combatants in guerrilla groups, but civilians.²²¹

²¹⁶ “Guatemala - Memory of Silence: Report of the Commission for Historical Clarification, Conclusions and Recommendations,” American Association for the Advancement of Science, 1999, https://www.aaas.org/sites/default/files/s3fs-public/mos_en.pdf, 17.

²¹⁷ “Guatemala - Memory of Silence”, 17.

²¹⁸ “Guatemala - Memory of Silence”, 17.

²¹⁹ “Guatemala - Memory of Silence”, 17.

²²⁰ “Guatemala - Memory of Silence”, 86.

²²¹ “Guatemala - Memory of Silence”, 22.

The Commission documented a total of 669 massacres of defenseless civilian communities – 32 massacres were committed by guerilla groups and 626 massacres were committed by the state in Mayan villages – their people, animals, and agricultural land, were entirely exterminated by the military.²²² The geographic component of abuses was also important – for example, in the Ixil region, 70 to 90% of villages were razed.²²³ The Commission documented extreme acts of cruelty common to state massacres of Mayan communities:

Acts such as the killing of defenceless children, often by beating them against walls or throwing them alive into pits where the corpses of adults were later thrown; the amputation of limbs; the impaling of victims; the killing of persons by covering them in petrol and burning them alive; the extraction, in the presence of others, of the viscera of victims who were still alive; the confinement of people who had been mortally tortured, in agony for days; the opening of the wombs of pregnant women, and other similarly atrocious acts, were not only acts of extreme cruelty against the victims, but morally degraded the perpetrators and those who inspired, ordered or tolerated those actions.²²⁴

Throughout the report, the CEH traced institutionalized racism against Mayans, their organizing and increased political power, and how this created the conditions that targeted them for destruction by the state. From these patterns of civilian massacres and specific targeting of Mayan people, the Commission determined that the state had committed genocide against the Mayan people from 1981 to 1983 through its counterinsurgency operations.²²⁵

In the recommendation section of the report, the CEH recommended measures to preserve the memory of victims, ensure human rights compliance, strengthen democratic processes, and other measures to promote peace, and proposed a reparations program. The report recommended a National Reparations Program for the victims and relatives of victims of human rights violations, including a material reparations program for victims, health and social policies,

²²² “Guatemala - Memory of Silence”, 34, 43, 83.

²²³ “Guatemala - Memory of Silence”, 40.

²²⁴ “Guatemala - Memory of Silence”, 34.

²²⁵ “Guatemala - Memory of Silence”, 41.

territorially based collective reparations programs, a legal designation for absence due to forced disappearance, a program to find disappeared children, and a program to exhume graves.²²⁶ The report made clear that Mayans should be central in developing the reparations programs most important to their communities. The material reparations program proposed by the CEH focuses on restoring previous property taken during the conflict and compensating victims or families of victims who suffered “the most serious injuries and losses.”²²⁷

After the report’s release, the Guatemalan government released a statement claiming that the report’s recommendations had already been implemented during the peace process, but a year later, the new president, Alfonso Portillo, committed to implementing the CEH’s recommendations.²²⁸ Otilia Lux de Cotí, a former commissioner of the CEH, joined Portillo’s cabinet, but few of the recommendations proposed by the CEH were implemented. Prosecutions were notably absent after the peace process. In 1999, indigenous activist Rigoberta Menchú filed a case in Spain to extradite Efraín Ríos Montt, president during the most violent period of the conflict that the CEH determined constituted genocide, including the full CEH report as evidence.²²⁹ In 2006, a Spanish court issued an extradition order, which Guatemala did not comply with. In 2012, Ríos Montt was tried in a Guatemalan court and was convicted of genocide and crimes against humanity and sentenced to 80 years in prison, though the conviction was overturned by the Constitutional Court in 2012, and Ríos Montt died in 2018 while his case was being retried.²³⁰ As of 2009, only 3 of the 626 massacres documented by CEH had been successfully tried in court by 2009.²³¹

²²⁶ “Guatemala - Memory of Silence”, 50-54.

²²⁷ “Guatemala - Memory of Silence”, 50-54.

²²⁸ Hayner, *Unspeakable Truths*, 35.

²²⁹ Hayner, 35.

²³⁰ Hayner, 35.

²³¹ Hayner, 35.

Reparations Program

Though the CEH recommended a reparations program in its report in 1999, a program was not created until 2003. In the early 2000s, numerous cases were brought before the Inter-American Court of Human Rights seeking reparations from the Guatemalan state for human rights abuses. One of the most influential of these cases was the 2004 judgment regarding the 1982 Plan de Sánchez massacre, where government forces massacred a Mayan village of over 250 people – the Court ruled that almost \$8 million in compensation needed to be paid.²³² Given this context of international rulings about compensation and advocacy from human rights and victim groups in Guatemala, the president created the National Program for Reparations (PNR) through executive decree in 2003, and as of now, it has been renewed until 2023.²³³ From 2003 to 2005, the PNR paid almost no reparations as a reparations policy was being designed.²³⁴ In 2005, after negotiating with victim groups, the PNR instituted a reparations policy with five parts: restitution measures to reestablish or compensate for material losses (land, houses, etc.), monetary reparations for abuses committed by the state, psychosocial measures, measures to dignify victims (memorials, helping to exhume bodies), and cultural restitution measures for indigenous people.²³⁵ Victims or their families are required to present testimony and identification documents and birth certificates, which can be difficult given the state's historical inability to register all Guatemalans, the fact that many land ownership records were destroyed

²³² Christine Evans, "Case Study: Reparations in Guatemala," in *The Right to Reparation in International Law for Victims of Armed Conflict*, ed. Christine Evans (Cambridge: Cambridge University Press, 2012, 146–63), 158.

²³³ Evans, 156.

²³⁴ Denis Martínez and Luisa Gómez, "A Promise to Be Fulfilled: Reparations for Victims of the Armed Conflict in Guatemala," Queen's University Belfast: Reparations, Responsibility, and Victimhood in Transitional Societies, 2019, <https://reparations.qub.ac.uk/assets/uploads/Guatemalan-Report-ENG-LR.pdf>, 26.

²³⁵ Martínez and Gómez, 22-23.

during the civil war, and that the PNR will not help victims who do not speak Spanish work with the state to obtain records.²³⁶ Guatemala never established a national database for crimes committed during the civil war, aside from the CEH's database and those of civil society organizations, so each case is processed individually.

The PNR's monetary reparations program makes a one-time payment for specific crimes committed by the state. Families could claim payment, but the single payment would be split among the family.

- a) For enforced disappearances, extrajudicial killings, and death resulting from internal armed conflict, the state pays 24,000 quetzals, about \$3100.
- b) For torture and sexual violence, the state pays 20,000 quetzals, about \$2600.
- c) For attempted extrajudicial execution, serious human shield injuries, serious injuries from indiscriminate attack, serious mine injuries, serious crossfire injuries, serious persecution injuries, and attempted arbitrary execution, the state pays 12,000 quetzals, about \$1550.²³⁷

From 2005 to 2015, the PNR has provided 32,802 reparations payments to victims or their families.²³⁸ Though no total figure has been established by the Guatemalan government, the total number and range of payments suggest that the PNR has paid between about \$50 million and \$100 million between 2005-2015. In 2015, the PNR had more than 38,000 pending applications to process, which includes more claims to monetary reparations and other reparations.²³⁹ The Guatemalan Human Rights Ombudsman has noted that the greatest success of the PNR has been its payment of monetary reparations.²⁴⁰

The future of the PNR is unclear – due to its history of creation through the executive branch, its budget and priorities are dependent on the president. For example, during social-

²³⁶ Martínez and Gómez, 24.

²³⁷ Martínez and Gómez, 27. Adjusted for present-day values, a) would be 52,000 quetzals, \$67001 b) would be 43,000 quetzals, \$5500; c) would be 26,000 quetzals, \$3400.

²³⁸ Martínez and Gómez, 26.

²³⁹ Martínez and Gómez, 24.

²⁴⁰ Martínez and Gómez, 25.

democratic President Álvaro Colom's administration from 2008 to 2012, compensation to victims was at its maximum, letters of apology from the state accompanied payments, housing reparations programs began, and symbolic apologies for genocide were common.²⁴¹ However, from 2012 to 2015, during President Otto Pérez Molina's pro-military administration, individual compensations decreased, symbolic reparations disappeared, and the PNR instead spent money on community development grants and supporting burial costs.²⁴²

²⁴¹ Martínez and Gómez, 28.

²⁴² Martínez and Gómez, 28.

Peru: Truth and Reconciliation Commission

Background of Conflict

After oscillating between democratic elections and coups for previous decades, Fernando Belaúnde of the centrist Popular Unity party was democratically elected President in 1963 on a revolutionary promise that would impose state intervention to the capitalist economy to correct injustices. His presidency was marked by political stalemate – Belaúnde clashed with his own party, which did not hold a majority in Congress, and Congress censured many of Belaúnde’s cabinets.²⁴³ In his first few years in office, Belaúnde tried to pursue agrarian, education, housing, and other reform programs, but was largely unsuccessful due to resistance from the APRA-UNO coalition in Congress, composed of the left-wing American Popular Revolutionary Alliance (APRA) and the right-wing Odriist National Union (UNO).²⁴⁴ In 1968, amidst growing frustration against Belaúnde’s presidency and rumors that the military would stage a coup, APRA aligned itself with Belaúnde, whom they preferred over a military coup.²⁴⁵

Throughout Belaúnde’s presidency, the dispute between the International Petroleum Company (IPC) and the Peruvian state about ownership rights of oil and mineral rights was constant. Concessions to the American oil company were painted as forms of economic imperialism. In September of 1968, Belaúnde’s government came to an agreement with IPC, which claimed ownership rights for the Peruvian state but gave substantial and complex concessions to the oil company, including millions of dollars in tax forgiveness and ownership of lucrative refining processes.²⁴⁶ When the final contract was made public, one of its pages was missing and could not be found. These two factors gave credibility to accusations of corruption

²⁴³ David P. Werlich, *Peru: A Short History* (Carbondale: Southern Illinois University Press, 1978), 292-296.

²⁴⁴ Werlich, 281-285.

²⁴⁵ Werlich, 288.

²⁴⁶ Werlich, 295-296.

and fraud, and Popular Unity attempted to dissociate itself from Belaúnde, who then began a fight to keep control of his party, while APRA stood behind Belaúnde.²⁴⁷ This event gave the military cover to seize power from a president they believed was ineffective in delivering reform for Peru. The military, led by Juan Velasco Alvarado, mounted a coup against Belaúnde on October 3, 1968, and ousted him from office.

From 1978 to 1975, Alvarado ruled as the leader of a radical left-wing military junta that characterized itself as neither capitalist nor communist and delivered sweeping reforms to poor peasants and working-class people. Alvarado engaged in agrarian reform, committed to eliminating all large private estates by 1975 by expropriating land from large landowners and redistributing it to peasants.²⁴⁸ His government nationalized or took large stakes in the financial, telecommunications, transportation, oil, and mining industries, and instituted systems of worker control in firms.²⁴⁹ Though the junta did not engage in the scope of repression as other right-wing juntas across Latin America and stated its goal as developing a plural and democratic society, it was still a military dictatorship that was not accountable to its people.

In 1975, as the economy stagnated and Alvarado was suffering health problems, Francisco Morales-Bermúdez, a moderate within Alvarado's government, launched a coup against Alvarado and seized control of the government. Alvarado began to eliminate more left-wing members of the government, instituted more right-wing economic policies, and committed to bringing Peru back to democratic governance in a few years.²⁵⁰ In 1980, Peru returned to democratic elections and Fernando Belaúnde was re-elected as President in July.

²⁴⁷ Werlich, 296.

²⁴⁸ Werlich, 306.

²⁴⁹ Werlich, 311-320.

²⁵⁰ Werlich, 369.

However, before the election, the Communist Party of Peru – Shining Path (Shining Path), a revolutionary Maoist party committed to armed struggle for communism, refused to participate in the democratic electoral process and staged acts of violence to destabilize the leftists that decided to participate in the electoral process. On the night before election day in May of 1980, in the village of Chuschi, in the region of Ayacucho in south-central Peru, a group of Shining Path members took ballot boxes and ballots for the elections and burned them in the public square – signifying the start of what they called the “people’s war”, the armed conflict between the Peruvian state and Shining Path.²⁵¹

This obscure act did not have much influence on the election. Shining Path was founded in 1970 by Abimael Guzmán, a philosophy professor, and began with about 51 members, confined largely to intellectuals and students in the university.²⁵² In 1980, at the beginning of the conflict, Shining Path had about 520 members, concentrated around Ayacucho.²⁵³ Shining Path claimed to fight for rural peasants in Peru, and expanded its base of support and violence from 1980 to 1982 in Ayacucho, a rural area with mostly peasants, though many peasants did not support the organization. In 1983 and 1984, the democratically elected president tasked the military with a counterinsurgency offensive against Shining Path in Ayacucho, which marked one of the most violent eras of the conflict.²⁵⁴ As both sides engaged in mass abuses against civilians, Shining Path kept control of Ayacucho, appearing as a lesser of two evils to many across the country, and began expanding to control Lima, the capital city. By 1989, Shining Path had about 10,000 members.²⁵⁵

²⁵¹ Carlos Iván Degregori, *How Difficult It Is to Be God: Shining Path's Politics of War in Peru, 1980-1999* (Madison: The University of Wisconsin Press, 2012), 21.

²⁵² Degregori, 22.

²⁵³ Degregori, 22.

²⁵⁴ Degregori, 22.

²⁵⁵ Ernesto García Calderón, “High Anxiety in the Andes: Peru’s Decade of Living Dangerously,” *Journal of Democracy* 12, no. 2 (2001: 46–58), 48.

This war between the state and Shining Path brought a crisis to Peru as it neared the 1990 presidential election – 32% of the territory and 49% of the population was under military control and it was suffering from an economic crisis.²⁵⁶ Alberto Fujimori, a neoliberal candidate of the right-wing Cambio 90 political party, won the election. During this era, Shining Path decided to increase the intensity of their violence in hopes that the government would engage in further violence against peasants, which could build more support for Shining Path. However, in the late 1980s and early 1990s, the military redirected its methods towards more "selective repression" of Shining Path members and worked with peasant communities to create Self-Defense Committees that fought back against Shining Path.²⁵⁷ In 1992, violence from Shining Path reached peak levels – numerous peasant Self-Defense Committees were massacred by Shining Path, community and political leaders were assassinated, terror attacks and bombings were carried out in Lima, and more than 100,000 people were displaced.²⁵⁸

In April of 1992, Fujimori claimed obstruction from Congress and initiated a self-coup where he suspended the Constitution and Congress, dismantled the judiciary, and gave himself the power to rule through decree during an emergency.²⁵⁹ As the government prepared for an all-encompassing war to erupt, the leader of Shining Path, Abimael Guzmán, was caught in September of 1992. Violence began to decrease as more members of Shining Path were caught and prosecuted, and in 1993, Guzmán began to write letters from prison urging Shining Path to engage in peace talks and argued that Fujimori's 1992 self-coup was justified.²⁶⁰ This marked the

²⁵⁶ Degregori, *How Difficult It Is to Be God*, 24-25.

²⁵⁷ Degregori, 25.

²⁵⁸ Degregori, 25.

²⁵⁹ Calderón, "High Anxiety in the Andes", 48.

²⁶⁰ Degregori, *How Difficult It Is to Be God*, 30-32.

end of Shining Path's influence and violence campaign as they fought for survival – though no peace deal was ever reached and Shining Path still exists today.

In 1995, Fujimori was reelected to his second term in the presidency and continued ruling as an authoritarian – he became more repressive towards dissent, exercised enormous control of the military, and engaged in a forced sterilization program of almost 300,000 people.²⁶¹ In 1999, Fujimori announced that he would run for a third term, which was illegal under the Constitution. However, in 1996, Fujimori was able to make Congress rule that his second term in 1995 was his first under a new Peruvian constitution.²⁶² In 2000, Fujimori was elected to a third term, despite numerous allegations of fraud and corruption by using control of the media, electoral boards, intimidation, and more.²⁶³ As Peruvians began large-scale protests, tapes of Fujimori bribing numerous politicians leaked, and in November 2000, he fled to Japan and resigned from the presidency.²⁶⁴

In July 2001, with civil society pressure, interim president Valentín Paniagua issued an executive decree establishing a truth commission.²⁶⁵

Truth Commission

The Peruvian Truth and Reconciliation Commission (CVR) was mandated to investigate murders and massacres, forced disappearances, arbitrary executions, torture, inhumane or degrading treatment, sexual violence against women, violations of due process, kidnapping and hostage-taking, violence against children, and violation of collective rights from 1980 to 2000

²⁶¹ Calderón, “High Anxiety in the Andes”, 52; “Peru Forced Sterilisations Case Reaches Key Stage,” BBC, 2021, <https://www.bbc.com/news/world-latin-america-56201575>.

²⁶² Calderón, 51.

²⁶³ Calderón, 52.

²⁶⁴ Calderón, 53.

²⁶⁵ Hayner, *Unspeakable Truths*, 36.

committed by the Túpac Amaru Revolutionary Movement (MRTA), Shining Path, agents of the state, official civilian defense groups (the Self-Defense Committees), and unofficial civilian self-defense groups.²⁶⁶ The CVR was made of 12 members, all of whom were Peruvian. The government collaborated closely with human rights groups to appoint members – the chair, Salomón Lerner Febres was the President of the Catholic University of Peru, and additional members included social scientists, human rights activists, clergy, a retired general, a former Member of Congress in Fujimori’s party.²⁶⁷ There were only two lawyers, unlike many other commissions made of a majority of lawyers, only one member spoke Quechua, the most widely spoken indigenous language in Peru, and there were no indigenous people appointed to the Commission.²⁶⁸ It was given 2 years to complete its work.

The CVR was directed to address abuses of “collective rights of the native and Andean communities”, refer its cases to the justice system for prosecutions, draft a reparations proposal, and recommend future reforms.²⁶⁹ It did not have subpoena power but was the first Latin American truth commission to hold public hearings, and held 14 public hearings.²⁷⁰ At its peak, the CVR had over 500 staff members and 13 regional offices across the country and collected about 17,000 statements, 1,100 of which were taken in prisons.²⁷¹ It collaborated with human rights groups by processing testimony the groups had collected in their archives.

²⁶⁶ Bakiner, *Truth Commissions*, 122. MRTA was a Marxist-Leninist group less violent than Shining Path, with a peak membership of a few hundred members.

²⁶⁷ Hayner, *Unspeakable Truths*, 36.

²⁶⁸ Bakiner, *Truth Commissions*, 122.

²⁶⁹ Hayner, *Unspeakable Truths*, 36.

²⁷⁰ Lisa J. Laplante and Kimberly Theidon, “Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru,” *Human Rights Quarterly* 29, no. 1 (2007: 229–50), 233.

²⁷¹ Hayner, *Unspeakable Truths*, 36-37.

The commissioners found that victims wanted foremost for prosecutions of those who committed abuses.²⁷² Therefore, the CVR decided to use juridical standards of fact-finding in investigations and referred all information to the attorney general.

Report

In August 2003, the CVR released its 8-volume, 8,000-page final report. It identified 18,397 dead or disappeared people and used statistical estimation to estimate that 69,280 people had been killed or disappeared during the course of the conflict.²⁷³ New testimonies and information may place the death toll at more than 100,000 people.²⁷⁴ Indigenous Peruvians, who make up only 25% of the population, comprised 75% of the total victims.²⁷⁵ 75% of the victims were rural, illiterate, poor farmers.²⁷⁶ 40% of victims were from Ayacucho, and 12% of victims were state authorities, such as mayors, judges, or other officials.²⁷⁷ The CVR report addressed gendered and sexual violence as well, finding over 531 cases of sexual violence committed against women and men.²⁷⁸ The CVR argued that the indifference that other Peruvians felt towards the violence and atrocities as they were committed stemmed from discrimination against Peru's indigenous people, who have historically been marginalized.²⁷⁹ Shining Path was

²⁷² Bakiner, *Truth Commissions*, 129.

²⁷³ Bakiner, 130.

²⁷⁴ Bakiner, 259.

²⁷⁵ Bakiner, 130.

²⁷⁶ Laplante and Theidon, "Truth with Consequences", 233.

²⁷⁷ Hayner, *Unspeakable Truths*, 37.

²⁷⁸ Bakiner, *Truth Commissions*, 259.

²⁷⁹ Javier Ciurlizza and Eduardo González, "Truth and Justice from the Perspective of the Truth and Reconciliation Commission," in *The Legacy of Truth Criminal Justice in the Peruvian Transition*, ed. Lisa Magarrell and Leonardo Filippini (International Center for Transitional Justice, 2006, 5–38), 5.

responsible for 54% of the murders and disappearances, while the state was responsible for 37%.²⁸⁰ The Commission found 4,600 clandestine burial sites across Peru.²⁸¹

The CVR sent 47 specific cases to the attorney general to be prosecuted.²⁸² Though the report was signed with unanimity, the retired air force general commissioner added a reservation, claiming that the military had carried out their duty and that some facts in the report were not fully proven.²⁸³

The recommendations section of the report contains 85 items – mainly programs for political reforms and reparations. At the political level, the report argues that Peru needed a “new social contract” that would recognize all Peruvians as first-class citizens. Through consultation with victim groups during the drafting process of the report, the CVR and civil society groups developed a Comprehensive Reparations Program (PIR) composed of six forms of reparations: symbolic reparations, health programs, education programs, restitution of rights, economic reparations, and collective reparations.²⁸⁴ Lisa Magarrell, an adviser for the CVR, notes that the Commission decided to use the PIR as a program to acknowledge and address the crimes committed against individuals by the state, while other recommendations would address the structural issues of inequality and racism identified by the report.²⁸⁵ In terms of economic reparations, the CVR recommended a lump sum of \$10,000 to be distributed to family members of victims – 2/5 to widows or partners, 2/5 to all of the children, and 1/5 to the parents of the victim, and a pension of about \$5,000 to be given to surviving victims.²⁸⁶

²⁸⁰ Hayner, *Unspeakable Truths*, 37.

²⁸¹ Hayner, 37.

²⁸² Ciurlizza and González, “Truth and Justice”, 15.

²⁸³ Bakiner, *Truth Commissions*, 131.

²⁸⁴ Guillerot, “Reparations in Peru”, 12.

²⁸⁵ Hayner, *Unspeakable Truths*, 173-174.

²⁸⁶ Cristián Correa, “Reparations in Peru: From Recommendations to Implementation,” International Center for Transitional Justice, 2013, https://www.ictj.org/sites/default/files/ICTJ_Report_Peru_Reparations_2013.pdf, 8.

In 2004, a human rights court was established, as was recommended by the report, and has obtained about 46 convictions of 88 cases tried.²⁸⁷ Most of these cases have focused on abuses carried out during Fujimori's presidency, and not the presidencies of his predecessors. In 2009, Fujimori was convicted of human rights violations and corruption, and was sentenced to 25 years in prison.

Reparations Program

In early 2004, preliminary steps were taken to implement the PIR, when President Alejandro Toledo set up the High Level Multisectoral Commission (CMAN) to follow up on the CVR's report. CMAN was only given a supervisory role, so its impact was limited.²⁸⁸ In early 2005, a law was passed that created the legal categorization of "absence by reason of disappearance" to address forced disappearances during the conflict.²⁸⁹ In late 2005, a full version of the PIR was passed by the Peruvian Congress, which was detailed further through a 2006 presidential decree.²⁹⁰ The law and decree assigned CMAN to coordinate the implementation of the PIR, which included both individual and collective reparations programs, while the Reparations Council was established to create a single registry of all victims of the conflict.²⁹¹ While the CVR's report recommended that members of "subversive" groups should be eligible to receive reparations by the state for crimes committed against them, the law passed by Congress excluded all members of "subversive" organizations who were victimized by the state from receiving any reparations.²⁹²

²⁸⁷ "Peru: Events of 2004," Human Rights Watch, 2005, <https://www.hrw.org/world-report/2005/country-chapters/peru>.<https://www.hrw.org/world-report/2005/country-chapters/peru>.

²⁸⁸ Correa, "Reparations in Peru: From Recommendations to Implementation", 5.

²⁸⁹ Correa, 5-6.

²⁹⁰ Correa, 6.

²⁹¹ Correa, 6.

²⁹² Correa, 6.

The PIR program was based on the CVR recommendation but included a seventh reparations program: restitution of civil rights, education, health care, collective reparations, symbolic reparations, access to housing, and economic reparations. Those eligible for economic reparations were defined through the 2006 Presidential decree as victims who had suffered rape or injury that resulted in disability, or families of victims that were murdered or disappeared.²⁹³ Economic reparations payments began in 2011, and CMAN determined that victims should receive 10,000 soles, about \$2700, while families of victims would split the 10,000 soles.²⁹⁴

As of April 2018, the Reparations Council had registered 226,727 people, not all of whom were eligible for economic reparations under the program. 141,540 of the registrants were victims and 85,187 of the registrants were family members of victims.²⁹⁵ By the end of 2019, the Peruvian government had paid out 324,601,932 soles, about \$88 million, in economic reparations to 85,975 individuals, who comprised 96.3% of those eligible for reparations.²⁹⁶

²⁹³ Correa, 8.

²⁹⁴ Guillerot, "Reparations in Peru", 35. Adjusted for present-day values, this would be about 15,000 soles, which converts to about \$3900.

²⁹⁵ Guillerot, 30.

²⁹⁶ Guillerot, 32.

SECTION IV: CASE STUDY ANALYSIS

Truth Commissions in Comparison

The truth commissions in Argentina, Chile, Guatemala, and Peru were created after conflicts that had diverse origins, but they all produced reports that influenced the creation of material reparations programs for victims who suffered human rights abuses from the state and guerilla groups. For country comparisons, I will broadly examine the two Peruvian commissions together, as the Valech Commission can be seen as an extension of the Rettig Commission. I will compare these truth commissions and the reparations programs that followed through the analysis of prosecutions, the context of the emergence of these commissions, the involvement of international bodies, the importance of victim, civil society, and religious groups, initial mandates during the creation of these truth commissions, commission approaches and demographics, final reports, and material reparations programs.

Emergence of Truth Commissions – Political Contexts, Prosecutions, Civil Society

In all four countries, prosecutions of the perpetrators of crimes were a central desire for victim and civil society groups. However, all four of these countries' governments and people lacked information about the conflict in their country, and its perpetrators and victims. Political contexts also constrained the ability to engage in systematic or key prosecutions when they were creating their commissions. Due to these factors, judicial systems in each country could not function fully and properly as the sole tool to address the decades of conflict and violence that had preceded the moment of transition or peace. The bulk of prosecutions occurred after these truth commissions issued their reports. These prosecutions that followed commissions

used the findings of the reports and the testimony gathered during the commission process, either juridically or as background information.

In Argentina and Chile, commissions emerged after a transition to democracy from right-wing military dictatorships in the context of highly unstable societies, where fears of future military coups and violence committed by state institutions were very credible. While in Argentina prosecutions formed a key part of the strategy, amnesty laws passed by the regime significantly slowed the pace of prosecutions, and the clandestine nature of the Dirty War meant that an investigatory body was necessary to detail the individual and systemic patterns of abuses committed during the conflict. The truth commission emerged as a compromise measure between a Congressional investigation demanded by civil society groups and the fear from the president that opposition interests in Congress could inflame future conflict. In Chile, the transition to democracy in the executive branch did not mean that Pinochet was out of power: he remained Commander in Chief of the army and his supporters were in the legislative branch, shielded from prosecution by amnesty laws. When judicial bodies upheld amnesty laws, prosecutions were almost impossible. The Chilean case stands out in comparison to the others: the previous regime that had committed the majority of abuses held the most power, so the threat of a backlash against prosecutions was palpable.

In Peru, the commission emerged after a return to democracy after Fujimori fled. It was therefore a case of democratic transition, like Argentina and Chile. However, the origins of the Peruvian commission differed from these two countries because the conflict still technically existed when the commissions began –guerilla groups never officially surrendered but were weakened to a point of inconsequentiality. The threat of future violence was not a constraint on creating transitional justice mechanisms. The truth commission emerged amid widespread

protests and outrage against the increasingly dictatorial Fujimori regime and was created by an unelected interim president responding to popular sentiment rather than by a democratically elected leader fulfilling their mandate to voters. The scale of the conflict and the balance of crimes perpetrated by the state and guerilla groups was not known, so a truth commission could provide this information and create a basis for prosecutions.

In Guatemala, the United Nations-backed peace negotiations to end the civil war did not focus on prosecutions, but rather on ending conflict, and the state has failed in many other ways to implement the reforms outlined in the final peace agreement. The commission was created by the same people who had committed abuses – the government and guerilla groups, which explains the opposition of many civil society leaders who felt the commission would not be effective. While the commission could not identify individual perpetrators and was given a vague but broad task of investigating the causes and effects of the conflict, the commissioners used this mandate to look at the historical and systemic nature of the conflict where the confluence of ethnic and class oppression against Mayans led to genocide. United Nations involvement in the peace process and the truth commission makes the Guatemalan case stand out from the other three countries as the other commissions were created internally, without international involvement. Other commissions tried to balance the partisanship of commissioners from their countries to create credibility, but the Guatemalan truth commission appointed non-Guatemalans in key positions. Given the emergence of the Guatemalan truth commission as an agreement between two sides of the conflict, mediated by the United Nations, and a commission chair and department heads who were not citizens, its findings could in theory hold more credibility and legitimacy.

Victim groups (including victims and the family of victims), civil society, and religious groups in all four countries were crucial driving forces for creating truth commissions, contributing to their investigation processes, following through on report recommendations, and keeping the government accountable. Notably, for these four countries in Latin America, Catholic affiliation rates support the claim about the cultural and political role that institutions of the Catholic Church and other religious groups played during conflict, in the truth commission process, and in advocating for further measures. In 2014, 71% of Argentines, 64% of Chileans, 50% of Guatemalans, and 76% of Peruvians identified as Catholic.²⁹⁷ This correlation gave religious institutions a powerful cultural and political role in the transitional justice process in each country – its approval and participation could legitimate the findings of the commission. In Chile and Guatemala, testimonies and databases gathered during the conflict by various religious and human rights groups became the starting point for building a database of victims, while in Peru, civil society and religious groups were consulted extensively in developing a reparations program and other recommendations. More generally, the role of religious organizations in transitional justice may differ significantly depending on religious organizations and the religiosity of a country's people.

Truth Commission Design and Reports

The initial mandates impacted the trajectory of each truth commission's work and final report. A legalistic mandate in Argentina led to the investigation of cases for prosecution and fact-finding. Without a clear mandate for reparations and reform programs, the final report only briefly mentioned the need for reparations. In Chile and Peru, investigative mandates also

²⁹⁷ Michael Lipka, "A Snapshot of Catholics in Mexico, Pope Francis' next Stop," Pew Research Center, 2016, <https://www.pewresearch.org/fact-tank/2016/02/10/a-snapshot-of-catholics-in-mexico-pope-francis-next-stop/>.

existed, but political support for reparations at the inception of the truth commissions and express mandates to propose reparations programs meant that the commissions proposed detailed reparations programs that formed the framework of the programs implemented in each country. In Guatemala, a broad mandate to investigate the conflict and propose recommendations gave the commission broad agency in outlining the historical and political sources of the conflict, identifying systemic abuses carried out, and proposing reparations and reforms to transform society.

The demographics of the commissioners in each country also impacted the way that the commissions functioned. In Argentina, Chile, and Guatemala, most of the commissioners were lawyers – and many operated investigations and interviews through juridical processes. Guatemala’s truth commission is unique in this group given the role of internationally appointed commissioners and non-Guatemalan heads of commission departments. The Guatemalan truth commission took an approach that was informed by the large numbers of social scientists it employed – and used disciplines such as sociology, history, political science, and psychology to identify systemic trends, while also focusing on individual cases. In Peru, most commissioners of the truth commission were not lawyers, but operated under a detailed mandate. The Peruvian truth commission’s report satisfied the mandate but also drew from other disciplines to identify the ethnic and class-based discrimination against indigenous people.

None of these commissions had subpoena power to summon witnesses or get evidence. They relied on voluntary participation from victims, civil society, guerilla groups, government, and the military. These cases were characterized by proactive programs of interviewing victims, partnerships with civil society and religious groups, and some compliance from governments that had initiated the truth commissions. General patterns of noncompliance from the military in all

four countries was expected – in Argentina and Chile, which emerged from military dictatorships, the military had a vested interest in keeping its crimes secret in order to continue staying in power, while in Guatemala and Peru, the militaries that had committed abuses did not experience any type of transition or democratic accountability. While none of the commissions studied were able to name individual perpetrators, often to appease perpetrators still in power and maintain stability, this feature is tempered by the fact that the commissions were not judicial bodies that could charge individuals with crimes. However, commissions did build lists of individual perpetrators that were forwarded to the government or the judicial system for prosecutions, and in the case of Chile, the list of individuals was published in a newspaper, probably through a leak by someone in the commission. This pattern demonstrates that even strictly prohibiting naming individual perpetrators publicly does not necessarily prevent public disclosure. Truth commissions may identify individual perpetrators and pass this information on privately, but members of the commission may make a political decision to leak the names of individual perpetrators to influence public opinion.

The final report of each case demonstrates the political constraints that the commissions felt they were operating under and the political choices each truth commission made in writing its narrative of conflict. In Argentina and Chile, though the overwhelming majority of abuses were committed by the state, the commissions identified the origins of violence as stemming from conflict on both sides while carefully blaming the right-wing military juntas, knowing the possibility of future violence. These political choices to avoid unequivocally and overwhelmingly allocating blame on right-wing regimes give weight to critiques that truth commissions can be exploited to keep the same elites in power and not address the economic and political disparities between different groups in the country. In Guatemala and Peru, the

commissions identified the urgent need to address the historical economic and political oppression of indigenous people, who had been disproportionately harmed during the conflicts. These two commissions made more direct statements about the perpetrators and the victims of conflict.

Material Reparations Programs in Comparison

This paper looks specifically at material reparations programs that pay victims and their families reparations through monetary payments, which constitute only one part of the broader concept of reparations outlined in Section II of the paper. In all four cases, monetary reparations programs were combined with other reparations programs, including symbolic reparations, health and education services, collective community grants, and new legal classifications. Therefore, comparing the monetary payments of reparations programs in the case studies cannot provide a full picture of the efficacy of reparations, but can show how countries prioritized monetary reparations by the percent of GDP that the reparations would consume and what percent of the population would be impacted.

Table 3 below calculates two percentage figures as points of comparison between the monetary reparations programs in each of the four countries. These figures are useful in comparing the countries with each other but are not as helpful in gauging the realistic annual economic impact from each program. Because each country's reparations program took different forms, including lump-sum payments or pensions to victims, and payments to families that were split or given in fixed amounts, it is difficult to compare the absolute payments given to various groups in each country. Rather, the "% of Reparations Payment to Country GDP Year of First Reparations Program" column calculates the impact that the total reparations spending of a

country had on its GDP the year that the first reparations payment was paid. Governments could forecast the costs of the reparations program, so looking at the percent of annual GDP that the total program would cost gives a rough idea of how much economic commitment each government was willing to give. The “% Total Number of Reparations Beneficiaries to 2019 Population” column shows how much of the 2019 population of each country was impacted through reparations payments, either through payments to victims or their families.

TABLE 3: Reparations Analysis, GDP, and Population

Country	Total Amount of Material Reparations Paid (from inception to present)	Year of First Reparations Program Payment	Total Country GDP First Reparations Program Payment²⁹⁸	% of Total Reparations Payment to Country GDP Year of First Reparations Program	% Total Number of Reparations Beneficiaries to 2019 Population²⁹⁹
Argentina	\$3.066 billion	1991	\$189.72 billion	1.62%	.036%
Chile I	\$460 million	1992	\$45.964 billion	1.0%	0.13% from first and second Chilean truth commissions
Chile II	\$720 million	2004	\$122.965 billion	0.59%	see above
Guatemala	\$50-\$100 million	2005	\$27.211 billion	0.18% - .37%	0.20 %
Peru	\$88 million	2006	\$88.643 billion	1.0%	0.26%

²⁹⁸ 2019 GDP values taken from the World Bank, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=GT-PE-AR-CL>

²⁹⁹ 2019 population figures taken from the World Bank, <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=GT-PE-AR-CL>

While Argentina paid out the most monetary reparations in terms of its GDP, the monetary reparations benefitted a much smaller percentage of the population than in other countries. The two Chilean commissions and their reparations programs together paid the next most in monetary reparations, but the two programs again benefitted a smaller percent of the population than in Guatemala or Peru. The Guatemalan and Peruvian reparations programs impacted more than six to seven times the percentage of their populations than the Argentine program, and around twice the percentage of their populations as the Chilean program, though the total impact on GDP was less than in Argentina or Chile.

Argentina and Chile were and still are the wealthier two countries of the group, with GDPs per capita of about \$9,900 and \$15,000, respectively.³⁰⁰ From 1989 to 2001, Argentina had a higher GDP per capita than Chile, and Chile overtook Argentina from 2002 and onwards. From the 1990s and on, Peru has been poorer than Argentina and Chile, and Guatemala has been the poorest of the four countries. Peru has a GDP per capita of about \$6900 while Guatemala has a GDP per capita of about \$4600.³⁰¹ These trends in GDP and reparations payments may suggest that in poorer countries, the percent of GDP that monetary reparations take may be hindered due to the lack of total funds available or because priorities are different. In Guatemala and Peru, material reparations payments perhaps did not have as much impact on the material factors of victims' lives, but the broader reach may signal the government acknowledging to indigenous people the historical harms that it had caused them, creating an opportunity for these groups to take more power in politics.

³⁰⁰ GDP trends over time taken from the World Bank,
<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=AR-PE-GT-CL>

³⁰¹ GDP trends over time taken from the World Bank,
<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=AR-PE-GT-CL>

SECTION V: CONCLUSIONS

Ethnic and Class Conflict

The instances of class and ethnic conflict discussed by the case studies demonstrate how truth commissions can be particularly helpful in achieving justice in cases with a dimension of ethnic conflict. In Guatemala and Peru, the conflict and its victims demonstrate that ethnic conflict is the defining feature, not class. Though ethnicity and class were closely linked, as is common in many societies, the lens of ethnicity fully captures the fact that abuses were disproportionately committed against specific ethnic groups.

Truth commissions can more easily remedy the class-based characteristics of conflict through general economic policies or laws, as is common in most commission recommendations. The impact of ethnic conflict is much harder to remedy. In Guatemala and Peru, the historical ethnic and economic discrimination against indigenous people was only intensified by the conflict – with genocide against the Maya in Guatemala and the disproportionate murder of indigenous people in Peru.

Truth commissions are particularly helpful in identifying the systemic forms of societal and governmental racism and discrimination. They are uniquely positioned to give a mouthpiece to historically oppressed groups and influence public opinion about these forms of historical systemic discrimination and racism. With this basis of knowledge and narrative of the past, countries are more likely to address the root causes of conflict and create conditions for the amelioration of the marginalization of specific ethnic groups.

Effectiveness of Truth Commissions

The case studies have demonstrated that truth commissions are an effective means of achieving justice after mass or systemic abuses. This is not to say that truth commissions are perfect tools or that they should be used in all contexts. One must examine mechanisms of transitional justice by their abilities to deliver justice to victims and society, address the systemic foundations of conflict, and build a more just future. No single mechanism can effectively achieve closure of conflict, but individual transitional justice mechanisms each contribute to this goal.

In most cases of conflict, new regimes, victims of abuses, and legal thinkers agree on the necessity of prosecuting perpetrators — but prosecutions cannot often deliver comprehensive justice in conflicts marked by systemic abuses. This is because prosecutions can be constrained in multiple ways. If legitimate information about abuses does not exist, prosecutions cannot proceed. In other cases, prosecutions cannot feasibly be the first approach if abusers still retain the power to reignite conflict and abuses. If prosecutions do proceed, they may be extremely long, which can leave victims and the public feeling unfulfilled by mechanisms of justice years after a conflict ends.

Truth commissions emerge as a powerful tool to address these barriers to prosecution and the comprehensive structures of conflict due to the flexibility in their designs, allowing them to adapt to the political circumstances they exist in. Truth commissions can position themselves in unstable transitions or peace agreements to mediate between different sides and begin the process of studying and documenting the abuses that took place. Their findings can be the foundation for justice through other mechanisms, including prosecutions and symbolic and material reparations programs. Choices in truth commission design through initial mandates

about the scope and role of reparations and recommendations in the final report, the demographics of commissioners appointed, subpoena power, private versus public interviews, juridical or social science frameworks, and other mechanisms of design can be adapted to fit best into the conflict and context of each country. This choice in design, not held back by strict juridical standards and procedures, not only allows truth commissions to identify cases of abuses for future prosecutions and reparations programs, but also highlight the systematic forms of abuses. A truth commission's final report can give the government legitimacy in pursuing reform and prosecution based on the findings and recommendations of the report and gives victim groups, civil society, and international organizations a basis from which to push for more comprehensive reform and legislation.

It is impossible to know the counterfactual of using or not using a truth commission after conflict. However, the case studies of Argentina, Chile, Guatemala, and Peru have shown that their work has left the countries they operated in more peaceful and closer to achieving comprehensive justice for victims and society, which is better than inaction. If commissions had not been created in these countries, a legitimate source identifying the systemic nature of abuses and conflict would not have existed, and the various political and legal reforms, reparations programs, and successful prosecutions that came from commission recommendations may not have been possible.

Referring to the conceptual foundations of truth commissions discussed in Section I after analyzing the case studies better informs these foundations. Under Elster's institutional forms of transitional justice – administrative, political, and legal justice, the cases have shown that truth commissions are a useful tool that can enable the effective use of other political, legal, and administrative transitional justice mechanisms. The findings of truth commissions give

recommendations and legitimacy to the political and administrative reforms that a government wishes to undertake. The documentation of individual cases of abuse and the identification of systemic abuses provides the basis for legal justice through both domestic and international courts. Under Teitel's genealogy of transitional justice, future truth commissions will fall into Phase III, where transitional justice mechanisms and international collaboration become the standard approach to achieving justice after conflict. The cases have shown that involvement from the United Nations can build the legitimacy and impact of truth commissions by creating commissions and appointing commissioners as neutral investigators. International courts, international human rights groups, and other international institutions can work with victims and activists domestically to pressure the implementation of the recommendations of truth commissions. While there is a risk of international involvement being labeled as an intrusion into domestic affairs, previous cases have shown how these bodies are becoming important partners in individual countries.

Limitations

This support for truth commissions must not be made idealistically, and the enthusiasm of those advocating for and designing truth commissions must be tempered by a realistic understanding of the constraints of their work and impact. A truth commission's strength lies in its ability to adapt to a political context, but it is also constrained by this same political context. As demonstrated in the case studies, high degrees of political support from the executive, legislative, or the public can lead to truth commissions that are effective in delivering more concrete reform or reparations programs. Weak political support, either during a commission's inception or after the release of its report means that even if a commission's work and report are

extremely comprehensive and significant, there is nothing compelling a government to follow through with the findings or recommendations. In these cases, however, victim groups, civil society, and international organizations have shown their power in using a truth commission's work and report as a basis to pressure governments to implement its recommendations.

Truth commissions must be careful in placing blame in their findings. Because they often serve as mediating tools between multiple sides, their reports also try to mediate placing blame on different sides. Commissioners, aware of these political dynamics, often are careful to not fully and directly acknowledge the crimes and abuses of those who are still in power, but this tendency can be detrimental for victims and society. Even when conflicts are overwhelmingly committed by one side, often the state, the narrative of placing blame on both sides can reinforce injustices suffered by victims and hinder the creation of more comprehensive reforms necessary to ameliorate the very systemic injustices that led to the pattern of abuse committed against poor and marginalized ethnic groups.

Truth commissions usually cannot document every single victim, abuse, and perpetrator, and their tendency to not be given the power to subpoena means that they cannot paint an all-encompassing picture of what happened, often only collaborating with those willing to cooperate. This is an important feature that can often limit the details of a commission's findings. However, other mechanisms such as prosecutions may be able to identify individual details of cases but are limited by their ability to identify and address the systemic nature of abuses. Establishing a truth commission is also not a zero-sum decision – they can be and have been combined with other transitional justice mechanisms to create more effective means of achieving justice.

Truth Commissions and Reparations

The case studies have demonstrated that truth commissions do provide a basis for practical material reparations programs. In each of these cases, if a truth commission and its final report had not been published, material reparations programs as comprehensive as the ones implemented in each country may not have been possible. These commissions identified victims and the abuses committed against them, put this information into a database, and proposed reparations and other recommendations that often became the framework for reparations laws. Without the findings of a truth commission, supporters of reparations programs would not have a starting point of information.

In situations of a lack of political will after a truth commission finishes its work, as described above, reparations programs can lose priority with governments. This does not mean that truth commissions play any role in directly preventing the implementation of a reparations program. A commission's findings can become the cultural, political, and legal tools that victim groups and civil society use to pressure the government to create a reparations program.

Truth commissions and reparations programs can provide more comprehensive justice together than if each mechanism was used individually. This is because truth commissions and reparations programs reinforce the effectiveness and legitimacy of one another. A truth commission provides the informational basis to launch a reparations program with lists of victims and abuses and estimates of the scale of abuses. A reparations program legitimizes itself by using the findings of the truth commissions. As the reparations program registers new cases of victims not documented by the commission and begins paying reparations to signal the wrong of

abuses carried out against victims, it continues to legitimize the recommendations of the truth commission and adds further dimensions to its findings.

Together, truth commissions and reparations programs achieve unique types of justice for victims and society. These two mechanisms deliver victim-centered justice by establishing the truth, telling victims' stories, providing reparations as one type of acknowledgment of abuse from the state, and facilitating prosecutions. For a society, the identification of systemic abuses and perpetrators of violence helps it understand its history to build a more just future. Though the expectations of these two mechanisms must be tempered by reality, one can justifiably be optimistic about their ability to bring a society closer to achieving comprehensive justice.

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