

Commissioning Truth: An Exploration and Assessment of an  
Alternative Approach to the Production of Truth in the Aftermath of Violence

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## Abstract

### *Commissioning Truth: An Exploration and Assessment of an Alternative Approach to the Production of Truth in the Aftermath of Violence*

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The first chapter of this thesis presents a review of the literature on the meaning of truth in the aftermath of violence. There, I argue that, historically, scholars have tried to justify the quest for truth in such circumstances (1) by reference to the benefits it brings, which is a type of instrumental justification; and (2) for its own sake, a type of intrinsic justification. Following my description and analysis of these two ideal typical accounts, I present my own alternative approach to truth in the aftermath of violence, which is a middle point between the two ideal types. This alternative approach provides a synthesis between knowing facts and telling testimonies; showing how the instrumental and intrinsic justifications of truth are actually closer than they appeared to be at first glance. The second chapter explores how this alternative approach could be materialized through a particular truth seeking mechanism such as a truth commission. The third chapter presents a methodological matrix, which systematizes my own vision of a bona fide truth commission. The matrix is made up of a series of considerations that are illustrated by analyzing two international experiences: the Truth and Reconciliation Commissions (TRCs) of South Africa and Sierra Leone. The fourth and last chapter seeks to demonstrate the utility of the proposed matrix by applying it to a particular case: the nascent truth commission of Colombia.

Para Felipe, con quien hemos hecho de todos nuestros sueños, proyectos familiares.

## Contribution of Authors

Chapter 3 Co-Authors: Eduardo Gutierrez

Contributions: Eduardo Gutierrez helped to conceive and implement the study design and collected and analyzed data. He also wrote the first draft of the South Africa and Sierra Leone section and provided feedback on early drafts of the methodological matrix.

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## Abbreviations

Truth Commission	TC
Truth and Reconciliation Commissions	TRC
South Africa Truth and Reconciliation Commissions	SATRC
Sierra Leone Truth and Reconciliation Commissions	SLTRC
South Africa Amnesty Committee	AC
National Commission for Disarmament, Demobilisation and Reintegration	NCDDR
Reparation and Rehabilitation Committee	(R&RC)
Historical Memory Initiatives.	HMI
The Commission for the Clarification of Truth, Coexistence and Non-Repetition	CVCR in its Spanish acronym
Historical Memory Group	GMH in its Spanish acronym
Single Victims Registry	RUV in its Spanish acronym
Special Jurisdiction for Peace	JEP in its Spanish acronym

## Introduction

Beginning in the early 1980s, many Latin American countries underwent a change from authoritarian to democratic regimes. This change was far from peaceful. In some instances, it was a decades long, bloody contest, with many casualties, and it would take a peace agreement to bring an end to the hostilities between the state and various insurgent groups (e.g. Argentina, Chile, Peru, among others) (Teitel, 2003, p. 75). In these transition processes, the question of impunity constantly cropped up among parties seeking to strike an unattainable balance between the former oppressors' desire for everything to be forgotten and the victims' quest for justice (Joinet & Rights, 1996). At the time, it was discussed whether disclosing a violent past in divided societies emerging from violent conflict would inflame passions, instill resentment, and provide grievances to be exploited (Mendeloff, 2004, p. 355). There was the thesis that forgiving perpetrators and forgetting the past were the most effective ways of minimizing immediate threats to peace and further human rights abuses.

Currently, there is no longer room for this sort of proposition. The right of the victims to know the truth has achieved the status of a customary international law norm as it is recognized as a key aspect of a robust doctrine to put an end to impunity (Cassel 2001: 409). Likewise, truth commissions have become *de rigueur* state-institutional tools for countries that emerge from long periods of oppression (Grunebaum, 2011, p. 3). These commissions have proliferated worldwide (Nauenberg, 2015) becoming a standard component of the transitional justice repertoire (Heine & Turcotte, 2015). In the post-soviet world, the quest for truth has become so fashionable “that one can readily recognize what might be called a *truth cascade*”(Daly, 2008, p. 24). Currently, truth seeking is considered a central component in the strategy to respond to past atrocities (Hayner, 2011, p. 14).

The literature on this topic has been dominated by a discussion about which truth seeking mechanisms are the most effective in order to address mass

atrocities: *ad hoc* international criminal courts (such as former Yugoslavia and Rwanda), national criminal courts (Argentina), hybrid criminal trials (East Timor, Sierra Leone, Kosovo, Darfur and North Uganda) or truth commissions (South Africa, Peru, El Salvador). The various authorities of these topics agree with the necessity to create proper conditions for a full exploration of the truth especially in areas where denial reigns and where violent facts are deliberately hidden (Mendez, 2007: 198). However, they disagree with the process by which information should be disclosed and the purpose behind the disclosure. Non-prosecutorial mechanisms (truth commissions) focus more on restorative goals such as healing for victims, reconciliation across social divisions and so on. For instance, Martha Minow declares that responding to mass atrocities with legal prosecutions is simply embracing the rule of law, and that truth commissions are the preferred form because they offer more extensive therapeutic assistance and relief than prosecutions (Minow, 1999, p. 63). By the same token, Priscilla Hayner asserts that in criminal trials, victims are invited to testify only advance specific claims, and, during this process, are aggressively challenged by defense attorneys. In contrast, truth commissions “effectively give victims a public voice and bring their suffering to the awareness of the broader public”(Hayner, 2011, p. 22).

On the contrary, prosecutorial mechanisms (criminal courts) focus more on goals such as promoting respect for human rights, preventing future violations, and punishing perpetrators. In that sense, Mark Osiel argues that criminal law is the most effective means to address the problems that new democratic rulers face in reconstructing some measure of trust, social solidarity, and collective memory. Trials present moments of transformative opportunity by highlighting official brutality and public complicity, and “often make people willing to reassess their foundational belief and constitutive commitments, as few events in political life can do”(Osiel, 1997, p. 2). Likewise, Raquel Aldana-Pindell asserts that victims prefer the truth to be revealed through a criminal process because alternative forums, such as truth commissions, compromise *justice*. The importance of this *justice* is that the state prosecutes and punishes “the perpetrators in a manner

commensurate with the grave nature of the violations" (Aldana-Pindell, 2002, p. 1437).

Recent times have seen a move away from the traditional 'either/or' approach to the establishment of these bodies (Bisset, 2012, p. 8). The United Nations (UN), non-governmental organizations (NGOs) and academics alike have affirmed the theoretical compatibility and complementary nature of these mechanisms<sup>1</sup>.

Although academics, the international community and civil society have broadly addressed different truth-seeking mechanisms, the nature of the truth that is being sought and its justification has scarcely been discussed. The concept of truth seems to be implicit and assumed within the discussion between those who defend the importance of truth commission as being closely related to a form of social constructivism and those who defend the possibility of satisfying the right to truth, through criminal courts, arguing a realism approach to the notion of truth. Social constructivists defend the thesis that all facts are description-dependent, that is, we construct a fact by accepting a way of talking or thinking that describes it (Boghossian, 2007). Therefore, the truth is dependent on the historical context: the possibility of truth and falsehood is conditioned by styles of reasoning (Rabinow, 1986). Hence, there are multiple and contending truths (Payne, 2008), all of which are malleable and contradictory (Milton, 2007). Following this epistemology, Hayner, who argues in favor of truth commissions, equates the truth with the type of abuses selected and documented through a consensus among the commissioners. In this sense, the personalities of the commissioners, the methodology used and the questions asked in collecting and analyzing information

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<sup>1</sup> Naomi Roht-Arriaza and Javier Mariezcurrena (eds.), *Transition al Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge University Press, 2006); Charles Villa-Vicencio, 'Why Perpetrators Should Not Always Be Prosecuted: Where the International Criminal Court and Truth Commissions Meet' (2000) 49 *Emory Law Journal* 205; Charles Villa-Vicencio, 'The Reek of Cruelty and the Quest for Healing: Where Retributive and Restorative Justice Meet' (1999-2000) 14 *Journal of Law and Religion* 165; UN Security Council, *Report of the Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616, 23 August 2004; Amnesty International, *Truth , Justice and Reparation: Establishing an Effective Truth Commission*, 11 June 2007.

define the very nature of the truth that truth commissions will collect (Hayner, 2011). By the same token, other authors define the facts that victims seek to know as socially constructed and equate the truth to the “victims’ story” (Van den Wyngaert, 2006). In other words, the true value of the facts related by the victims does not depend on whether they describe the crimes as they really happened in the past, rather “faith is given to their testimony by their words breaking the silence and asserting their right to speak out against the genocide they survived”(Sanford, 2009, p. 47). The multiplicity, subjectivity and mutual incompatibility that are intrinsic to the constructivism concept of truth, render the goal of truth commissions to establish a single official record (Daly, 2008, p. 25).

On the contrary, realism recognizes the social relativity of descriptions and refuses the idea that a description can be dependent of the facts (Boghossian, 2007). The schemes we adopt to describe the world depend on which ones we find useful, and they therefore depend on our contingent needs and interests as social beings. Nevertheless, it does not follow that the facts are description-dependent, or that we construct a fact by accepting a way of talking or thinking that describes it (Boghossian, 2007). Facts are mind-independent. In this sense, the truth is objective because what matters is the way the world is and not what we believe about the world (Lynch, 2005). What makes our beliefs true is always their relationship to real physical objects. Following this epistemology, legal documents that support the right to the truth assert that victims and their next of kin are entitled to know the reality about certain facts, the reality of what has happened (Rights, 2000). Thus, the *nature* of the truth that victims are interested in knowing refers to what really happened.

My dissertation seeks to offer a new theoretical approach to discuss the importance of one truth seeking mechanism in particular (truth commissions). Rather than discussing the strengths and weaknesses of establishing this mechanism and its merits over others, I suggest to discuss the very concept of truth that this mechanism is seeking to find. In that sense, the first chapter

provides a review of the literature on the meaning of *truth in the aftermath of violence and how it has been justified*. There, I argue that *historically*, scholars have tried to justify the idea that truth matters in the aftermath of violence (1) by the benefits it brings, which is a type of instrumental justification; and (2) by its own sake, a type of intrinsic justification. This chapter explains how these approach to truth have emerged in particular historical contexts and have been materialized into different symbols. To end this chapter I present my own approach to truth in the aftermath of violence (i.e. military dictatorship, authoritarian rule, ethnic, religious or civil conflicts, etc).

The second chapter explores how this alternative approach to truth could be materialized through a particular truth seeking mechanism such as a truth commission. My approach to truth moves beyond the typical way of justifying the importance of truth commissions: the approach to truth I propose denies that the victim should be the protagonist of an isolated account (victim-centered character), on the contrary, the testimonies of the suffering must create bridges between victims and audiences who are reluctant to acknowledge their suffering. At the same time, my approach to truth denies that these Commissions have the capacity to deter future atrocities. These commissions attempt to understand the past in order to project a possible future which is not exempt from the repetition of already suffered violence.

The third chapter presents a methodological matrix, which systematizes my own approach to a truth commission. This matrix proposes the main themes to be documented by a nascent truth commission and suggests a list of objectives that can serve as criteria for learning from previous international experiences and / or for a dialogue with current local experiences. Both international experiences and local initiatives can provide relevant input for defining the mandate of a future truth commission. The matrix synthesizes the historically traced tension between telling and acknowledging between narrating experiences of suffering and acknowledging criminal facts (documented in Chapter 1). It seeks to demonstrate that, in fact, such

tension between telling and knowing do not exist, telling testimonies and knowing facts are two sides of the remedy victims claim: victims' experiences of suffering must be counted and listed but their questions about the factual circumstances surrounding their suffering must also be answered. The design of a truth commission should attend to both of these claims without postponing one to privilege the other. The matrix is made up of variables and dimensions that are explained by analyzing two international experiences: the Truth and Reconciliation Commissions (TRCs) of South Africa and Sierra Leone.

The fourth and last chapter seeks to demonstrate the utility of the proposed matrix by applying it to a particular case: the nascent truth commission of Colombia. The "Final Agreement for the Ending of the Conflict and the Building of a Stable and Durable Peace" (2016) assigned to the future Commission for the Clarification of Truth, Coexistence, and Non-Repetition (CVCR) has three main goals; eleven functions and a mandate that includes 13 aspects to be clarified and recognized. This last section seeks to systematize these objectives, functions and mandate in light of the methodological matrix, in order to analyze what could be the pending damages to be diagnosed and the possible remedies that the CVCR should explore.

This exercise seeks to contribute to the definition of a well-crafted mandate focused on addressing the country's truth deficits, avoid duplicating objectives that have already been satisfied in other instances, and to take advantage of local expertise to achieve the remaining goals.

In sum, my dissertation begins suggesting a particular approach and justification of truth in the aftermath of violence, after that it uses this approach to define what a truth commission is (Chapter 2) and what it should do (Chapter 3). The definition of truth emerges from a theoretical discussion between those who associated it with the victim's possibility to give their testimonies and those who defend the victim's right to know facts. The novelty of this theoretical framework is

make the implicit, epistemological tension between giving testimonies and knowing the facts explicit. My alternative notion of truth in the aftermath of violence seeks to overcome this tension in a methodological matrix. This matrix suggests three issues to document: the first two issues (Context and background; and Criminal acts and implicated actors) are focused on satisfying the victims' right to know the facts, whereas the third one (Impacts) is focused on giving victims' the opportunity to tell their testimonies. Each one implies different sorts of speech situations.

The most immediate contribution of this dissertation will ideally be to support the definition of a well-crafted mandate for the Colombian Truth Commission. Having clear and concise objectives might ensure that all participants of this particular truth commission have realistic expectations about what impact their contributions could have (González, 2013, p. 5) and controlling such expectations might save future truth commissions from generating cycles of high hopes and bitter disappointments (Minow, 1999, p. 82).

# Chapter 1. Approaches to Truth in the Aftermath of Violence

The purpose of this chapter is to introduce a literature review on ideas of truth, truth commissions and the right to know the truth, by answering the following question: *How has the importance of truth been defined and justified in the aftermath of violence?*

To answer this question I use two *ideal types*, drawing inspiration from Max Weber's concept. According to Weber, "an ideal type is formed by the one-sided accentuation of one or more points of view" according to which "concrete individual phenomena ... are arranged into a unified analytical construct" (Weber, 1904). In this chapter, I suggest two ideal types which accentuate two different approaches to truth in the aftermath of violence: (i) truth as telling testimonies and (ii) truth as knowing testimonies. These approaches are not clearly separated in reality – indeed, none of them can be found empirically in reality. However, as ideal types, they contribute to making explicit some epistemological tension I wish to overcome in a methodological matrix (chapter 3). My own approach consists of a middle point between the two ideal types.

Table 1. How has the importance of truth been defined and justified in the aftermath of violence?

	<i>Instrumental justification</i>	<i>Intrinsic justification</i>
<i>Approach to truth</i>	Telling testimonies	Knowing facts
<i>Context</i>	Exaltation of extra-judicial truth-finding mechanisms	Impossibility of finding truth through judicial mechanisms
<i>Tensions between truth and justice</i>	Settled at the national level	International and mandatory standards
<i>Genesis</i>	South Africa TRC	Fight against impunity (Latin America)
<i>Initial symbol</i>	Public hearings	Right to know
<i>Power attributed to truth</i>	Promoting <i>healing</i> for victims	Offering a <i>remedy</i> for victims

If the justification for processes such as truth-telling commissions is instrumental, the nature or the very definition of truth is irrelevant. What is important is the practical benefits of providing victims the opportunity of telling their own experiences of suffering and their testimonies; what matters “is not so much *what* is told, but rather *that* telling occurs” (Sanders, 2000, p. 18). Testimonies recounted by victims, and to which empathic audiences listen, are accepted in some sense, not because they exactly correspond to the way events happened in the past, but because the process of recounting what is said to be a fact serves many present and ongoing interests, e.g., promoting healing for individual victims, promoting reconciliation across divisions created by the collective violence, restoring dignity to victims, etc. For this approach, the very notion of truth is irrelevant but that doesn’t mean truth doesn’t exist; in that sense, it is possible to associate this sort of justification with a particular approach to truth, which I call *truth as telling testimonies*. The public hearings of the South African Truth and Reconciliation Commission (TRC) are a symbol of this approach to truth, where it was assumed that truth-telling was a healing and cathartic experience for victims and public hearings materialized these therapeutic powers of telling (See Table 1).

Ruti Teitel suggests three phases to determine the genealogy of transitional justice<sup>2</sup>: phase I emphasises international judicial mechanisms (the Allied-run Nuremberg Trials, 1945); phase II is related with national extrajudicial mechanisms and the third phase is characterized by the international trend to standardize the synthesis between judicial, extrajudicial and social transitional mechanisms. The genesis of *truth as telling testimonies* and its justification can be located in Phase II, which is characterized by the collapse and disintegration of the Soviet Union and led to concurrent transitions throughout much of the world. During this phase, the tension between punishment and amnesty were settled at the national level taking

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<sup>2</sup> Teitel defines transitional justice as a conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes (Teitel, 2003, p. 69).

into account the political and social contingencies, including the requirements of the predecessor regime. In that sense, South African TRC was the political compromise reached between the former elites and their desire to gain amnesties and the sectors that wanted to bring them to trial (Hazan & Stadelhofen, 2010, p. 33). This local agreement was supported by a discourse which hailed the benefits of extra-judicial truth-finding mechanisms and condemned the judicial truth as fragmentary and contrary to reconciliation aims (Uprimny & Saffón, 2006, p. 15).

Yet another viewpoint has claimed the importance of truth as intrinsically justified—that truth is worth caring about for its own sake, independent of whatever therapeutic or other benefits the truth brings to people. The Inter-American Court of Human Rights and the European Court of Human Rights assert that victims and their next of kin have the right to “know the truth regarding the violations to the fullest extent practicable” (OAS, 1987). These tribunals likewise assert that “every society has the inalienable right to know the truth about past events in order to prevent repetition of such acts in the future”(OAS, 1987). Truth is the ideal standard of satisfaction of the right to know. Statements made by victims, revealed by perpetrators, or discovered by judges or commissioners are accepted as true insofar as they correspond to and describe the way events actually happened in the past. I call this approach *truth as knowing facts*.

I relate the genesis of the approach to *truth as knowing facts* with the “fight against impunity” undergone in Latin America, which sought to overcome the obstacle of uncovering the truth through judicial mechanisms<sup>3</sup>. Following Teitel’s way of thinking, the genesis of *truth as telling testimonies* and its justification can be located in Phase III. Amnesty laws addressed exclusively at the national level, were replaced by international and mandatory standards. As a result, the new international status of victims’ legal rights made amnesty laws globally illegal and

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<sup>3</sup> Surely this notion of truth has played roles in many judicial settings for millennia, however, because I am talking specifically about truth in the aftermath of violence and truth as response to mass atrocities, I relate this genesis specifically with the “fight against impunity” undergone in Latin America.

the right to truth a safeguard against its illegality. This right materialized the approach to *truth as knowing facts* and the power attributed to this truth was the possibility to offer a remedy to victims of human rights violations (see Table 1). The notion of remedy is inspired by the universally recognized “right to an effective remedy” which holds that harm must be remedied partially or integrally. There is a broad consensus between primary international human rights tribunals (Inter-American and European) in considering truth, in itself, as an effective remedy in the wake of gross human rights abuses (Antkowiak, 2001). The rationale of this right would appear to lie in the right of victims or of their families to be informed about the events in question in order to offer a sense of closure, enable their dignity to be restored and provide a remedy and reparation for violations of their rights and/or the loss suffered (Naqvi, 2006, p. 249). The notion of remedy will be explained in detail in Chapter 3.

Literature reviewed on the instrumental and intrinsic justifications of truth with their respective approach to truth (historic approaches) are introduced in the first part of this chapter and the second part illustrates the risk that implies both historical approaches of truth. The last part of the chapter suggests how an alternative notion of truth can overcome these risks. My own approach is a middle point between the two ideal types. It provides a synthesis between knowing facts and telling testimonies; showing how the instrumental and intrinsic justifications of truth are actually closer than they appeared to be at first glance.

## 1. Historical Approaches and Justifications of of Truth in the Aftermath of Violence

### 1.1 Truth as Telling Testimonies

The genesis of this notion of truth might be located in the creation of the South African TRC. After more than twenty years of increasing ethnic exclusion

and abuses, an official racial segregation policy —the Apartheid<sup>4</sup>— was established in South Africa. Most of the organized protests and active oppositions of curtailed groups were silenced with violence and abuse. At the end of the Cold War, between 1990 and 1993, and after some international sanctions, a series of negotiations started between the government party and the African National Congress (ANC). Democratic elections were held in 1994 and an interim constitution was passed. The dichotomy between truth and justice was settled on the national level. The former elite was determined to gain amnesty and the ANC initially sought to go to trial; however, the ANC did not want some of its own powerful militants to be judged. The TRC was formed in 1995 to investigate 34 years of conflict<sup>5</sup> and it fulfilled the political compromise reached between these two conflicting demands (Hazan & Stadelhofen, 2010, p. 33).

The TRC accomplished its mandate through three committees: The Amnesty Committee; the Reparation and Rehabilitation Committee; and the Human Rights Violations Committee. The Amnesty Committee considered and revised the applications for amnesty. Conditional amnesty in exchange for confession did not seek to foreclose truth-seeking, but rather to promote it as amnesties motivated perpetrators to reveal themselves and opened cycles of betrayal. This sort of dynamic secured the statements and explanations of violent acts otherwise unavailable, especially because outgoing authorities destroyed records and closed ranks (Minow, 1999, p. 56). Indeed, families of the victims obtained information and confessions from hundreds of state agents that could never have been obtained through a trial (Hazan & Stadelhofen, 2010, p. 34).

The Human Rights Violations Committee investigated human rights abuses that took place between 1960 and 1994, based on statements made to the TRC and once victims of gross human rights violations were identified they were

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<sup>4</sup> *Apartheid* is a word in Afrikaans, an official language spoken mostly by Dutch descendants in South Africa. The word means something like «aparthood», *i.e.*, the characterization of something which is kept away (Clarkson and Worger 2013).

<sup>5</sup> The final report was officially published on 1998 but was unable to finish all of its work; thus, it was given until 2003 to finish its investigations and publish a codicil that included its final results.

referred to the Reparation and Rehabilitation Committee. The Human Rights Violations Committee organized public hearings where victims and witnesses were invited to give testimony in their home language. The hearings were non-adversarial and supportive forums, which were not accorded with the rules of evidence such as those required in criminal proceedings. The commission took testimony from over 21,000 victims and witnesses, 2,000 of whom also appeared in public hearings (Hayner, 2011, p. 146).

The South African message was, in essence, that restorative justice is more effective and more morally correct than criminal justice (Hazan & Stadelhofen, 2010, p. 34). The TRC's final report states that "even if criminal prosecution has been politically feasible ... strengthening the restorative dimension of justice" helped to build a bridge between "the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice and a future founded on the recognition of human rights, democracy and peaceful coexistence and development opportunities for all South Africans, irrespective of color, race, class, belief or sex." (Hazan & Stadelhofen, 2010, p. 34).

Instead of defining crime in terms of breaking the law and focusing on the abstract violations, the restorative justice<sup>6</sup> approach defines it in terms of the harm done by one person to another and focuses on the problems of the persons directly involved: victim and offender (Trenczek, 2015). In its conventional understanding, restorative justice is concerned with responding to a particular (violent) incident on the micro-level, however, it is possible to understand this kind of justice in the context of large-scale conflicts. The process contributes to relational aspects between members of the opposing collectives due to its communicative process and the development of a consensual agreement (Rohne, Arsovská, & Aersten,

<sup>6</sup> Johnstone, G., & Van, N. D. W. (2007). *Handbook of restorative justice*. Cullompton: Willan; Sullivan, D., & Tifft, L. (2006). *Handbook of restorative justice: A global perspective*. London: Routledge; Monterosso, S., & Curtin University of Technology. (2007). *Restorative justice: A new paradigm?*. Perth, W.A: School of Business Law, Curtin Business School, Curtin University of Technology. Johnstone, G. (2003). *A restorative justice reader: Texts, sources, context*. Cullompton, UK: Willan Pub.

2008, p. 15). Its major challenge in the context of large-scale conflict is “the fact that the incident at the micro-level cannot be isolated from its more general – historical, political and social – context” (Rohne et al., 2008, p. 19).

Although victims are popularly viewed as vindictive , seeking retribution above all else, research now indicates that many victims place considerable – in some cases predominant weight on other values, including information, participation, material reparation, and symbolism (Nancy Amoury Combs, 2007, p. 137). In that regard, victims participating in restorative-justice programs are more likely to feel that their needs and views have been taken into account (Nancy Amoury Combs, 2007, p. 137).

Indeed, the South African victim’s experience of testifying before people who seemed to understand and believe their pain was a new experience, sharply contrasted with many instances in which victims were treated as a source of annoyance or inconvenience:

“On being asked by the TRC chairman to sit down before and during a testimony, a woman remarked that in all the years that she had dealt with officialdom around issues of her victimization, she had never been asked to sit down. It made a lot of difference to her and to her sense of dignity”. (Rotberg & Thompson 2000, 161)

Additionally, echoing the assumptions of psychotherapy and religious confessions, the slogan of the TRC was “revealing is healing”. Some authors have asserted that the action of telling could be considered a therapeutic instrument (Cienfuegos & Monelli, 1983, p. 43) by allowing for 1) testimonial acts that restored affective ties; 2) the orientation of aggression in a constructive manner; and 3) the integration of fragmented experiences. This experience of testimony has been found to be effective in providing symptomatic relief for certain patients, as it

facilitates the integration of the traumatic experience and restoration of self-esteem (Cienfuegos & Monelli, 1983, p. 43).

In the South African TRC, the therapeutic process was explained through the metaphor of the injured body whose festering wounds can heal only by being painfully re-opened and cleansed through (Shaw, 2009, p. 6). Archbishop Desmond Tutu, Chair of the TRC, set forth these ideas in the Commission's final report:

"There were others who urged that the past should be forgotten—glibly declaring that we should 'let bygones be bygones'. This option was rightly rejected because such amnesia would have resulted in further victimisation of victims by denying their awful experiences... The other reason amnesia simply will not do is that the past refuses to lie down quietly. It has an uncanny habit of returning to haunt one. 'Those who forget the past are doomed to repeat it' are the words emblazoned at the entrance to the museum in the former concentration camp of Dachau. They are words we would do well to keep ever in mind. However painful the experience is, the wounds of the past must not be allowed to fester. They must be opened. They must be cleansed. And balm must be poured on them so they can heal. This is not to be obsessed with the past. It is to take care that the past is properly dealt with for the sake of the future" (Shaw, 2009, p. 8).

#### 1.1.1 The Instrumental Importance of Truth: Building Narratives of the Past.

As it was seen in the TRC case, telling testimonies was justified by its power to heal and overcome the peripheral status of victims. However, recent ethnographic and psychological studies have challenged the claim that truth telling is healing, arguing that the experience of testifying can be traumatic, rather than

healing or cathartic<sup>7</sup>. Testimony in therapy often is seen as an important ritual for individual healing (Agger & Jensen, 1990; Skaar, Gloppen & Suhrke, 2005 in Brounéus, 2008). Nonetheless, the long-term ability of a once-off statement or public testimony to address the full psychological impact of the past is questionable (Hamber, 2003a, p. 160): “In South Africa the revealing of the truth and the reopening of wounds have been extremely painful. Some survivors and families of victims only began to experience a range of psychological problems months after their testimony” (Hamber, 2003a, p. 160). Broneus points out similar effects for women in Rwanda who testified in the *Gacaca*, village tribunals created to enhance reconciliation after the 1994 genocide, as traumatization, ill-health, isolation, and insecurity dominated the lives of these women (Brounéus, 2008, p. 57).

Likewise, a 2009 psychological study which analyzed fifteen trials<sup>8</sup>, concluded that single sessions of psychological “debriefing” are insufficient in reducing psychological distress and preventing the development of post-traumatic stress disorder (PTSD) after traumatic events. The study asserts that despite debriefing being used as a grassroots type of intervention that has face value and popular support amongst many health and allied practitioners... “the practice of

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<sup>7</sup> Bernard Rimé et al., “The Social Sharing of Emotions in Interpersonal and in Collective Situations: Common Psychosocial Consequences,” in *Emotion Regulation and Well-Being*, ed. Ivan Nyklíček, Ad Vingerhoets, and Marcel Zeelenberg (Springer New York, 2011), 147–63; Catherine C. Byrne, “Benefit or Burden: Victims’ Reflections on TRC Participation,” *Peace and Conflict: Journal of Peace Psychology* 10, no. 3 (2004): 237–56; James C. Ballenger et al., “Consensus Statement Update on Posttraumatic Stress Disorder from the International Consensus Group on Depression and Anxiety,” *Journal of Clinical Psychiatry* 65 (2004): 55–62; Brandon Hamber, “Does the Truth Heal? A Psychological Perspective on Political Strategies for Dealing with the Legacy of Political Violence,” in *Burying the Past: Making Peace and Doing Justice after Civil Conflict*, ed. Nigel Biggar (Washington, USA.: George Town University Press, 2003), 155–177; Linda Alcoff and Laura Gray, “Survivor Discourse: Transgression or Recuperation?,” *Signs* 18, no. 2 (1993): 260–90; Brandon Hamber, Dineo Nageng, and Gabriel O’Malley, “Telling It like It Is Survivors’ Perceptions of the Truth and Reconciliation Commission,” *Psychology in Society* 26 (2000): 18–42; Allan Maretjie, “The South African Truth and Reconciliation Commission as a Therapeutic Tool,” *Behavioral Sciences & the Law* 18, no. 4 (2000): 459–77; Trudy De Ridder, “The Trauma of Testifying : Defendants’ Difficult Healing Process,” *Track Two* 6, no. 3&4.

<sup>8</sup> Most trials involved those admitted to hospital following trauma , or attending trauma clinics (Sijbrandij 2002; Campfield 2001) ) or recruited subjects via the local police and medical services. One study (Litz 2004) involved soldiers deployed on a peacekeeping mission.

compulsory debriefing should cease pending further evidence"(Rose, Bisson, Churchill, & Wessely, 2002, p. 42).

I completely agree with Hamber in that telling testimonies might be only one component of the victim's typically lengthy and painful healing process, that in itself is insufficient to meet an individual's myriad of psychological needs (Hamber, 2003a, p. 160). In my opinion, it is naïve to believe that one session of remembering and telling affords that individual with the ability to come to terms with the pain and trauma of the past and resume the course of the victim's life. Testimony can be a part of the therapeutic process, but the idea of *process* implies something broader and more comprehensive than what could be achieved in one single session. For instance, during the 1970s, the use of testimony as a therapeutic tool was developed in Chile in the underground work carried out to help victims of the military dictatorship. However, the method employed for such therapy usually had a duration of 12-20 weekly sessions, depending on the client's situation (Cienfuegos & Monelli, 1983, p. 119).

Besides the discussion about the healing power of telling, there are authors who have explored alternative benefits: the opportunity to tell multiplies equally valid versions of the past, raises consciousness of a more tolerant and democratic society (Laplante, 2007, p. 441) and embodies "a tool for the empowerment of the hitherto powerless"(Rappaport, 1990, p. 18).

Cynthia Milton, exploring alternative truth narratives to official initiatives, and Leigh A. Payne, analyzing perpetrators' confessions, come to the same conclusion as Erin Daly that "a new regime that is truly democratic and open, must tolerate continued efforts to challenge the dominant view of history" (Daly, 2008, p. 29). Milton's concept of a "fractured past" recalls that history remains contested and unresolved in the present, far from any kind of consensus or single version (Bilbija, Fair, Milton, & Payne, 2005, pp. 3, 5). Art, music, film, humor, performance, and memory try to push the frontiers of the discussion about the past and help to

achieve a fuller expression and better understanding of a difficult and contested past. Official truths rely on the alluring fiction that carefully managed processes can yield an objective consensus. They forge a shared understanding of the past to move forward quickly and to put the nation's difficult past behind it. Yet, unofficial accounts, reflecting the messy subjectivity of lived experiences, have staying power. A traumatized society, comprising so many stories, does not put the past quickly behind it (Bilbija et al., 2005, pp. 3, 5). (Payne, 2008)

For Payne, consensus, harmony, and equality are unlikely outcomes. Nevertheless, contentious coexistence offers a more realistic understanding of dialogical practices in democracies, as well as a better alternative to reconciliation processes that suppress political talk. Contentious coexistence emphasizes the reality and importance of competition over ideas, and conflict over values and goals (Payne, 2008, p. 3).

From this approach, there is no “superior framework” to judge or evaluate between different understandings of the past. That does not matter. What matters is the freedom of expressing different (and even contradictory) testimonies. For McAdams this process not only preserves democratic institutions and the rule of law, but also, nurtures and educates active citizen participation (McAdams 1997).

The democratic impact of the telling process is also related with “the possibility of empowering where the formerly silenced become protagonists” (Sanders, 2000, p. 20). Kirk Simpson argues that the history of political “terror has exacerbated the isolation of victims, quarantining their narratives of experience and grief, and silencing and alienating them from the societal mainstream” (Simpson, 2007, p. 335). The legacy of violence has “seal[ed] victims off from mainstream public and political participation” (Humphrey, 2003, p. 173). Silence can make a human rights violation all the more degrading since it implies that the person does not even deserve to complain, making them less human than the rest (Rappaport,

1990, p. 18). Silence denies victims their humanness, their status as a speaking subject.

Thanks to telling initiatives, what was unthinkable during the authoritarian regime became possible (Laplante, 2007, p. 448): victims emerge as citizens from behind the wall of silence imposed by violent conflict (Simpson, 2007: 339). So the audience validated the individual subjective experiences of people who had previously been silenced. Finally, marginalized individuals were respected and taken seriously in public and empathic spaces.

## 1.2. Truth as Knowing Facts

Truth as knowing testimonies might be related with the fight against impunity undergone in Latin America between 1990s and 2000s<sup>9</sup>. While in South Africa conditional amnesty promoted truth seeking, in Latin America granted amnesties foreclosed truth-finding processes. Before leaving power, in fear of being held accountable for their crimes, the dictatorships granted themselves immunity from prosecution. These sorts of amnesties laws were addressed exclusively at the national level, taking into account the local and political conditions. Prior to this, in the 1970s and 1980s, the international community agenda was interested in the significant socio-economic difficulties of developing countries and not in impunity or disclosure of the truth (Dykmann, 2007, p. 60). Liberal Western policymakers and political scientists did not speak of “transitions to democracy,” but rather of socioeconomic modernization as a precondition of an evolutionary process of political development (Arthur, 2009, p. 338).

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<sup>9</sup> The Inter-American Court of Human Rights held that Peruvian amnesty laws did not apply (*Barrios Altos v. Peru*) because international conventions required prosecution in such human rights crimes. Former Chilean president Augusto Pinochet was detained in London (1998) using the principles of universal jurisdiction. The Argentine Supreme Court struck down the country's amnesty laws which blocked the prosecutions of crimes committed under the country's military dictatorship.

Nevertheless, during the second half of the 1980s, United Nations and the Inter-American Human Rights System completely changed the approach to past abuses and gave a new mandatory status to the victims' legal rights. Both authorities developed a broad energetic doctrine to put an end to impunity (Cassel, 2001, p. 409) and set up the right to the truth as a safeguard against it.

Victims and organizations fighting against impunity resorted to international law to support their case. Since the end of World War II, even though no clear prohibition had been formulated against amnesties or pardons, law and the international community showed a clear tendency to prevent the impunity of certain crimes considered morally repudiable. Given that this trend required elaboration and systematization, the Inter-American Commission on Human Rights, consistent with previous pronouncements against the self-amnesty laws issued by the dictatorships of Chile, Argentina and Brazil, challenged The Law on the Expiration of the Punitive Claims of the State (Uruguay) and the laws of the Final Point and Due Obedience (Argentina), finding these laws to be incompatible with the American Convention on Human Rights (Méndez, 1997).

For its part, the United Nations Human Rights Committee, which is the interpretative body of the International Covenant on Civil and Political Rights, ruled the laws contrary to the right of victims to justice and to knowledge of the truth (Méndez, 1997). The United Nations General Assembly adopted a set of principles for the protection and promotion of human rights through actions to combat impunity. Following this recommendation, Mr. Louis Joinet prepared a set of principles (1996) for this purpose.<sup>10</sup> He justified these principles in reference to victims' legal rights: (a) the victims' right to know; (b) the victims' right to justice; and (c) the victims' right to reparations. In his report, the UN (1996) indicated that

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<sup>10</sup> Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect to the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations (UN, 2005, Principle 1).

the truth of the events should be known in order to find those who are responsible and punish them for their atrocities. Since then, the right to truth has become increasingly visible in international human rights legal discourse, as it has been progressively recognized as a binding legal obligation.

Both the Inter-American Human Rights System and The United Nations have defined the right to know the truth in two dimensions. In its individual dimension, it asserts that victims and victims' next of kin have the right to "know the truth regarding the violations to the fullest extent practicable, in particular the identity of the perpetrators, the causes and the circumstances under which they occurred."(OAS, 2009). In its collective dimension, this right establishes that "every society has the inalienable right to know the truth about past events . . . in order to prevent repetition of such acts in the future."(OAS, 1987). In both cases, the right to truth implies "the same – or a very similar – consideration: to know the reality about certain facts." (Rights, 2000)

Additionally, the victims' right to know the truth has been considered one of several remedies suggested for victims of human rights violations: "knowing the truth about the circumstances and the treatment or death of the victims is considered part of any remedy accorded to victims or their families" (Pasqualucci, 1994, p. 332) The notion of *remedy* emphasizes the universally recognized «right to an effective remedy» which holds that human rights violations produced damages that must be remedied (Rights, 2000, p. 42).

The origin of the right to truth explains quite well why knowing facts is considered a *remedy*. This origin may be traced to the right under international humanitarian law of families to know the fate of their relatives, as well as the obligations incumbent on parties to armed conflicts to search for persons who have been reported missing, as recognized by the Geneva Conventions of 1949. To properly mourn their losses, loved ones need to confirm their death, how they died, why they disappeared, where their remains are buried, etc. (Aldana-Pindell, 2002,

p. 1428). In absence of these answers, the uncertainty of what happened is more painful than the truth itself. Knowing the fate or whereabouts of a missing victim offers a sense of closure to the next of kin (Aldana-Pindell, 2002, p. 1440).

### 1.2.1. The Intrinsic Importance of Truth: Knowing Criminal Acts

For instrumental justification (telling testimonies) the nature or definition of truth is irrelevant; it focuses on the practical benefits of processes that provide victims with the opportunity to tell their own narratives of suffering (their own “truth”). Conversely, for knowing facts, truth is worth caring about for its own sake (Lynch, 2005, p. 15). It focuses on the relevance to know the truth about criminal acts because it reduces the “power of the unknown”; the descriptive and evaluative dimension of the associated notion of truth seeks to describe criminal acts as they happened in the past to condemn them as morally wrong; and the materiality of past acts allows confronting ideological thinking with reality.

For purposes of clarity, I define *criminal acts* as core factual matters that happened in the past and produced an ongoing *illegal harm* that should be remedied in different dimensions (legal, moral, financial and psychological, among others). This sort of damage has a dialogic structure, which refers to two opposite but related components: the damage committed by someone finds its other half in the damage suffered by someone else (Ricoeur, 1995, p. 259).

A *criminal act* is mind-independent in the sense that it exists even if no one had asked about it (i.e. international community) or everyone had denied it (i.e. dictator). The clandestine nature of the act, closely linked with tyrannies or dictatorial regimes explains well the mind-independent character of criminal acts: the damage of this criminal act does not disappear because the criminal act is denied or ignored, on the contrary, the more unknown criminal acts are, the more harmful the power to damage becomes. The clandestine nature of torture and

abuse doubles the pain of those experiences with the disbelief of the community and even jeopardizes the victim's own memory and sanity (Minow, 1999, p. 67):

“When loved ones were missing, those left went first to the local police station and were treated in many instances as nuisances, and in many more as people who were of no consequence. When they went to state hospitals looking for sons and daughters and fathers and mothers, they received similar treatment. It was no better when they went to the mortuary in a final attempt to find a missing person.”(Rotberg & Thompson 2000, 154)

Knowing the truth about criminal acts seeks to reduce the “power of the unknown”. To unveil what was hidden or denied is a remedy to the ongoing damage. To reveal what vanished without a trace and became invisible to the public reduces the power of the damage caused.

Additionally, truth is worth caring about for its own sake because of its *descriptive* and *evaluative* dimension: describing criminal acts as they happened in the past implies at the same time a judgment that they are morally wrong. Statements such as “x killed y”, “a disappeared b”, “c raped d”, “massacre x happened”, etc.” implicitly contain both *characterizing* and *appraising evaluation*. The very factual description of these criminal acts asserts that they are an undesirable condition.

In the same vein, the materiality of past acts is the criterion to distinguish between facts and fiction, between reality and ideologies. Arendt, searching for the nature of totalitarian government, explains how ideology implies an arrogant emancipation from reality and experience: “Insofar as ideological thinking is independent of existing reality, it looks upon all factuality as fabricated, and therefore no longer knows any reliable criterion for distinguishing truth from falsehood” (Arendt, 2011a, p. 350).

For Arendt, total domination requires that man be fit into the ideologically determined, factitious world of totalitarianism. A good example of that is Adolf Eichmann, one of the principal organisers of Holocaust. During his trial in Jerusalem, he never admitted that he did something wrong, his mind was filled with effective lies: “that the war was no war; it was started by destiny and not by Germany; and, third, that it was a matter of life and death for the Germans, who must annihilate their enemies or be annihilated”. German society, which at that time consisted of eighty million people, had been shielded against reality and factuality by these lies as the practice of self-deception had become commonplace (Arendt, 1994, p. 52).

Likewise, dictatorships in Latin America justified their crimes as a “War Against Subversion”, thereby holding that armed forces had done nothing more than annihilate this subversion. Similarly, in South Africa, racism was a systematic ideological doctrine which created the ‘other’ as essentially different: “blacks... were essentially different from the more civilised, developed people of European origins” (Truth and Reconciliation Commission of South, 1998, pp. 5, 7, 83).

The importance of truth-as-knowing-facts in the aftermath of violence is that it allows ideological thinking to be confronted with reality. For Arendt, the stability of the totalitarian regime depended on the isolation of the fictitiousness of the movement from the outside world. Thus, once the ideological thinking is confronted with reality, its stability is in danger:

“The real danger is the fact that the factitious, topsy-turvy world of a totalitarian regime cannot survive for any length of time if the entire outside world does not adopt a similar system, allowing all of reality to become a consistent whole, threatened neither by the subjective unpredictability of man nor by the contingent quality of the human world which always leaves some space open for accident” (Arendt, 2011a, p. 352).

The ideas of a “War Against Subversion”, “the battle of destiny for the German people”, and Apartheid as “a white counter-revolution”, were masks and lies which justified criminal acts and thereby exacerbated the brute facts of the victims’ affliction.

## *2. Risks of Historical Approaches to Truth in the Aftermath of Violence*

In sum, truth in the aftermath of violence has been historically justified in two senses: (i) by the benefits it brings (instrumental justification) and (ii) by its own sake (intrinsic justification). First, for instrumental justification the nature or very definition of truth is irrelevant; it focuses on the practical benefits of processes that provide victims with the opportunity to tell their own narratives of suffering. Facts recounted by victims and listened to by an empathic audience are accepted as true, not because they exactly correspond to the way the events happened in the past, but because the process of recounting facts serves many present and ongoing interests. There is no parameter to establish which narrative of the past is “right” or “wrong”. Even the very distinction of “right” or “wrong” is nonsensical in this context because all versions should be equally accepted. There are many versions of the past, however there is no reliable criterion that one can or should appeal to in order to judge or evaluate them.

Second, for intrinsic justification, truth is worth caring about for its own sake. The very notion of truth is relevant because it allows for a description of criminal acts as they happened in the past, which also implies that they may be judged as morally wrong. The mind-independent character of the criminal act is the reliable criteria with which to judge and evaluate different versions of the past and determine which one is “right” and which one is “wrong”. The descriptive and evaluative dimensions of the notion of truth allow one to confront ideological thinking with reality and reduce the “power of the unknown”.

The differences between the instrumental and intrinsic importance of truth seem to suggest an irreconcilable opposition between past approaches to telling testimonies versus knowing criminal acts. It would then seem that the notion of truth must be defined and justified taking into account either the instrumental approach or the intrinsic approach, as they are mutually exclusive. For instance, Priscilla Hayner doubts the importance of the perspective which focuses on specific facts, such as the names of perpetrators and victims as “this approach misses a greater reality: how were the violent acts experienced, and *from what* is it that people were trying to heal?” (Hayner, 2011, p. 81).

From my own perspective, it is possible to offer an alternative notion of truth in the aftermath of violence which defeats this opposition and makes a synthesis between the benefits of telling testimonies AND knowing facts. For that purpose, it is necessary to be wary of the risk of each historical perspective. I warn against the risk of focusing exclusively on the instrumental importance of truth in that this (1) could reproduce the victim’s isolation, which is precisely what the victim seeks to overcome and (2) does not resolve the ambiguity between narratives of the past that serve “good” purposes and those serving “bad” purposes. Likewise, I caution against the risk of focusing exclusively on the intrinsic importance of knowing facts as this can result in fact-finding impediments which impair the tribunals’ ability to determine who did what to whom. This risk is exacerbated when high standards are set in order to recognize victims as legitimate sources of truth. This risk has been widely criticized from those who defend the superiority of truth commissions over criminal trials.

Table 2. Risks of Historical Notions of Truth

<b>Instrumental Justification</b>	<b>Intrinsic Justification</b>
Victim's isolation	Past facts, ephemeral knowledge
Truth as subordinated power (not as subversive power)	Unbelievable victims, skeptical audience

## 2.1 The Risky Side of the Instrumental Importance of Truth

In my opinion, there are two potential risks that arise from focusing exclusively on the instrumental importance of truth and disregarding the notion of truth. I call the first risk "victim's isolation". If the very distinction of "right" or "wrong" makes no sense, and all the testimonies should be equally accepted, these testimonies become incommensurable and this incommensurability fails to leave room for channels of communication among different testimonies. When someone says "this is true for me," it is not "a matter of fact" but "a matter of experience". Likewise, when someone says "it is true for me but not for you" it is more often than not a roundabout way of saying: "I believe it, you don't, so let's talk about something else." These are conversation-stoppers which prevent us from having reasoned discussions about the issues that matter the most (Lynch, 2005, p. 35).

Arendt's concept of logicality refers to mere reasoning without regard to facts and experiences: "logicality is what appeals to isolated human beings, for man, in complete solitude, without any contact with his fellow men and therefore without any real possibility of experience, has nothing else he can fall back on but the most abstract rules of reasoning" (Arendt, 2011a, p. 358). Logicality is the risk of ideological thinking. The same risk also arises in the aftermath of violence if a victim's testimonies are isolated reasonings that disregard facts and experiences; in this sense telling testimony becomes a new excuse for emancipation, for not permitting any type of dialogue.

Human plurality, the basic condition of both action and speech, has the twofold character of equality and distinction:

“If men were not equal, they could neither understand each other and those who came before them nor plan for the future and foresee the needs of those who will come after them. If men were not distinct, each human being distinguished from any other who is, was, or will ever be, would need neither speech nor action to make themselves understood”(Arendt, 1998, p. 175).

The process of telling testimonies currently overestimates the importance of distinction and underestimates the importance of equality. I think the process of telling testimonies should shift the perspective to overestimating equality and underestimating diversity, in order to overcome the victim’s isolation by strengthening the human bond. The point is not to turn victims into protagonists of their own narrative, but to build bridges with empathic audiences who come before them to listen.

The second risk, I call “truth as subordinated to power (not as subversive power)”. The instrumental importance of truth and disregarding the very notion of truth is related with the ambiguity between narratives of the past that serve “good” purposes and those serving “bad” purposes. The “good” practical interests that truth might serve are to overcome the peripheral status of victims and to recover civil and human dignity. Yet, there are some scholars who warn that truth might serve “bad” interests as well. They warrant that the significance of the axiom that “history is written by the victors” has not been sufficiently explored in the context of the current mode of transitional justice: “The concept of victor’s truth often lies in the shadow of victor’s justice” (Daly, 2008, p. 7). From this approach the version of the past that is defined as true and official is the version which best fits to enhance the legitimacy of the current regime (Daly, 2008, p. 7). Likewise, other scholars support that truth seeking initiatives might be significantly influenced by external

factors such as international donors that tend to implement programs to insert poor countries emerging from conflicts into the world economy, promoting a pattern of development based on neo-liberal economic policies, instead of actually responding to the ravages of past human rights abuses (Lundy & MacGovern, 2017, p. 276).

These sort of arguments are shared in Foucault's assertion that "truth" is nothing more than an expression of power through societal structures (Naqvi, 2006, p. 23). Truth can be produced exclusively by virtue of multiple forms of constraint:

Each society has its *regime of truth*... that is, the types of discourse it accepts and makes function as true: the mechanisms and instances that enable one to distinguish true and false statements; the means by which each is sanctioned, the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true (Foucault, 1980, p. 207).

The idea of a 'regime of truth' shows how truth is subordinated to power (Taylor, 1991): "truth isn't outside power or lacking in power, truth isn't the reward of free spirits, the child of protracted solitude, nor the privilege of those who have succeeded in liberating themselves" (Foucault, 1980, p. 207). For Foucault, power does both, *represses* and *produces*: *repression* prohibits and restrains, setting limits to what agents do and might desire, in that sense repression is negative; on the contrary, *production* is positive; power produces things, forms of knowledge, discourses, etc (Lukes, 2005, p. 91). More specifically, power produces subjects, "makes up people" (Hackins, 1986.) The development of this idea falls into two phases of Foucault's works: (i) his work on discipline and Volume I of the History of Sexuality, and (ii) the subsequent writings, from 1978 to his death in 1984, on what

he called “governmentality”; in most of his life, Foucault never ceased to affirm that power excludes both freedom and truth (Lukes, 2005, p. 91).

I agree with authors who warn that the risk of Foucault’s notion of truth is that it implies exclusively a unidirectional account of power. He abandons the “emancipatory ideal of society in which individuals are free from negative effects of power, and the conventional view that power can be based on the rational consent of its subjects” (Hindees 1996: 149-58 in Lukes 92). For Foucault, “the relation of power is fixed in such a way that it is perpetually asymmetrical and the margin of liberty is extremely limited”. There can be no liberation from power, either within a given context or across contexts (Lukes, 2005, p. 91). Within a given context, if truth is nothing more than an expression of power there is no room for criticism from the powerless. A belief passes for true, when those in power believe it (Lynch, 2005, p. 40). If the powerless have a belief that is contrary to the beliefs of the powerful, they are simply deemed wrong (Lynch, 2005, p. 40). Likewise, if the powerless move from one context to another this cannot be seen as a liberation because there is no common measure between the impositions of the one and those of the other. They will be confined to a new model of control. There is no way of judging between ways of life, since each one imposes its own rules of judgment, and there are no other rules to go by, according to Foucault.

In opposition of Foucault’s approach, and I completely agree with them, there are authors who assert that power does not make sense without the notion of liberation and the notion of truth (Taylor, 1991, p. 81). Lukes for instance, asserts that humans have a two-way power: one way is the ‘power over’ others, this is power as domination (Lukes, 2005, p. 95). The second way is ‘power to’, power as the capacity or the potential to resist, reject or make a change (Lukes, 2005, p. 95). He/She who has the power to dominate is imposing a restraint over others who cannot fulfil their desires/purposes. This imposition proceeds by foisting illusion on us, by disguising and masking, and by falsehood as well. In certain situations,

certain impositions cannot simply be lifted, yet, in other circumstances, he/she who is dominated could resist the imposition, lift the mask and remove the restraint in order to fulfil their desires/purposes (Taylor, 1991, p. 91).

From my own perspective, the “fight against impunity” shows how the powerless resisted imposition and moved on to a less oppressive regime. Although Argentina’s dictatorship officially denied any responsibility for the systematic practice of forced disappearance, the relatives of the disappeared for many years only demanded to know the truth about the fate of their loved ones<sup>11</sup>. Ideological thinking (supported by dictatorship) asserted that “War Against Subversion” had done nothing but “annihilate subversion”, however, relatives of the disappeared had to lift their ideological masks and show how those masks sought to blind society from reality. The subsequent transition from military dictatorship to democratic regimes that aspires to respect human rights might be thought of as a movement towards greater freedom. However, this sort of comparison is only possible because repressive and democratic regimes are considered commensurable and because human rights are a relevant criteria in comparing and tracking the path forward to a less oppressive regime.

According to Foucault, this “movement towards a greater freedom” does not make sense. The transition only serves as a substitution for another system of power (Foucault, 1980, p. 207). In other words, the human-rights pretension of universality is an illusion produced by Western hegemony, and the idea of comparability between authoritarian and democratic regimes is just a moral petulance disguise of ‘cultural imperialism’(Nickel, 2007, p. 57).

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<sup>11</sup> In Argentina, over 5,000 reports were filed with the *Asamblea Permanente por los Derechos Humanos* (Permanent Assembly for Human Rights, or APDH) and thousands of complaints were submitted to the Organization of American States’ Inter-American Commission on Human Rights (IACHR), the International Committee of the Red Cross, the United Nations Human Rights Division, Amnesty International and organizations of various religious denominations. These reports prompted country visits from Amnesty International and IACHR.

Consequently, I caution against placing too much emphasis on the instrumental importance of truth as this denies the victim the possibility to resist and remove the imposition, thereby allowing for a transition to a less oppressive context.

## 2.2 The Risky Side of the Intrinsic Importance of Truth

In my opinion, there are two potential risks that arise when one exclusively focuses on the intrinsic importance of truth: first, the difficulties in knowing the ephemeral facts that happened in the past and second, how these difficulties turn victims into subjects of doubt.

Regarding the first risk, the right to know is based on the notion of "fact". In her book, *A Culture of Fact: England, 1550-1720*, Barbara Shapiro analyzes the processes by which *fact* became the most important feature of the English intellectual landscape in the early modern era, and how its method of fact-finding produced a well-accepted and widely admired epistemological framework (Shapiro, 2003).

From the mid-16<sup>th</sup> to the early 18<sup>th</sup> century, English legal systems possessed an underlying epistemology, that is, a set of beliefs concerning the human ability to arrive to "true" and "just" decisions; then also found in other fact-oriented genres and disciplines (Shapiro, 2003, p. 86). Although law deals with "transient things" of no "constant being" that had to be retrieved by memory (Shapiro, 2003, p. 30 y 208), this legal system was pervaded by the belief that ephemeral facts of human action could be established with a high degree of certitude. It required faith in the possibility of reaching adequate and reasonable beliefs about such events and a mode of thinking about what is knowable, about whom can achieve such knowledge, and under what conditions it is knowable, as well as the institutional arrangements and processes for knowing. Historians, like

lawyers, assumed it was possible to know something about events that had taken place in the past (Shapiro, 2003).

Proponents of the right to know the truth share this belief about the human ability to arrive to “true” and “just” decisions. Yet, there is a shadow of doubt regarding the feasibility of this epistemology: serious fact-finding impediments impair a tribunal’s ability to determine who did what to whom. I call this risk “past facts, ephemeral knowledge”

After reviewing thousands of pages of transcripts from various international criminal tribunals, Nancy Amoury Combs concludes that international criminal tribunals purport a fact-finding competence that they do not possess and, as a consequence, base their judgments on a less precise, more amorphous method of fact-finding than they publicly acknowledge (Nancy A. Combs, 2010).

These tribunals do not regularly receive forensic evidence relevant to the charges in the indictments. In the aftermath of violence, some of the times, forensic experts are not able to perform autopsies and exhumations. Equally, the architects of more recent atrocities have left few written records, which often are not made available to prosecutors. Consequently, the vast bulk of evidence presented to the current international tribunals comes in the form of witness testimonies, which are frequently inaccurate.

Tribunals have not always recognized the negative impact of stress on memory and perception. According to (Nancy A. Combs, 2010, p. 15), conducted studies have proven that those who witness (or are victims of) violent events have a higher tendency to misperceive these events than witnesses of nonviolent events because their ability to perceive what is real diminishes when they experience stress. A substantial proportion of witnesses testify inconsistently with their written statements or with their in-court testimony in previous cases (Nancy A. Combs, 2010, p. 15).

Judicial mechanisms to overcome these limitations of eyewitness testimonies, such as the standards of proof and evidence, imply obstacles for victims to be recognized as legitimate sources of truth, a matter that has been widely criticized by those who defend the superiority of truth commissions over criminal trials (Du Toit, 2000, p. 136). I call this second risk “unbelievable victims, sceptical audience”. The most distinctive element of truth commissions, in comparison with a trial, is the tone of caregiving and sense of safety, which allow victims to tell a broad array of experiences of suffering. Trials focus on consulting victims only to illustrate the fact or scope of the defendants' guilt. Judges and lawyers interrupt and challenge victims' testimonies with cross examination and listen to them with scepticism tied to the presumption of the defendants' innocence (Minow, 2000, p. 238). Trials are also usually only designed to cover a very narrow set of events that constitute the crime for which the defendants are being charged. (Hayner, 2011, p. 22). On the contrary, a truth commission creates a welcoming setting and offers a friendly listening environment (Minow, 2000, p. 246).

Despite the criticisms, I recognize the importance for victims' testimonies to be subject to cross-examination and to the minimum rules of evidence, in some scenarios; this cross-examination is an alternative to dealing with the difficulties that a trial might present in knowing the truth about the elusive criminal acts that happened in the past. To illustrate my point, I would like to introduce the case of the *Mapiripán* Massacre before the Inter-American Court of Human Rights.

### 1.2.1 The Mapiripán Massacre

The massacre took place in July 1997 in the small town of Meta, located in central Colombia. An notoriously armed paramilitary group called the United Self-Defense Forces of Colombia (AUC in Spanish) in collaboration with the Colombian military deprived, tortured and deprived civilians of their liberty, others were mutilated and their remains were tossed into the Guaviare river(I/A & H.R, 2005)

The Mapiripán case involved various domestic judicial actions and proceedings in Colombia. Despite these actions and proceedings, the Inter-American Commission first noted that widespread impunity remained intact, “insofar as the truth of all the facts had not been established and not all the masterminds and direct perpetrators of those facts had been identified” (I/A & H.R, 2005, p. 236). For that reason, on September 5, 2003, the Commission petitioned the Court to declare the case admissible. On September 15, 2005, the Court held Colombia responsible for having violated several of its obligations under the American Convention on Human Rights ( I/A & H.R, 2005).

At the time of the Judgment, more than eight years had passed since the massacre and the remains of some of the victims had yet to be identified or even located, therefore the Court ordered the State to take the necessary actions to search and individually identify the victims and their next of kin and to also keep a record of the next of kin as they were identified (ICHR, 2205: paragraph 305). Despite these difficulties, the Court set the following amounts for pecuniary damages for the following identified victims<sup>12</sup> (ICHR, 2205: paragraph 278):

Antonio María Barrera Calle	US \$ 350.000
Jaime Riaño Colorado	US \$ 35.000
Enrique Pinzón López	US \$ 80.000
Jorge Pinzón López	US \$ 80.000
Luis Eduardo Pinzón López	US \$ 90.000
José Alberto Pinzón López	US \$ 90.000
Gustavo Caicedo Rodríguez	US \$ 60.000
Diego Armando Martínez Contreras	US \$ 100.000
Hugo Fernando Martínez Contreras	US \$ 100.000

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<sup>12</sup> According to the information supplied by the State in its brief with final pleadings and in an April 6, 2005 document signed by the Attorney General's Office, those persons were individually identified in the criminal proceeding as victims of the events in *Mapiripán*.

The following chart represents compensation for non-pecuniary damages for the victims who were individually identified and their next of kin (ICHR, 2205: paragraph 290):

<b>Sinaí Blanco Santamaría</b>	<b>US \$80,000</b>
Nory Giraldo de Jaramillo (spouse)	US \$50,000
Carmen Johanna Jaramillo Giraldo (stepdaughter)	US \$55,000
<b>Alvaro Tovar Muñoz</b>	<b>US \$80,000</b>
<b>José Rolan Valencia</b>	<b>US \$80,000</b>
<b>Gustavo Caicedo Rodríguez</b>	<b>US \$80,000</b>
<b>Diego Armando Martínez Contreras</b>	<b>US \$90,000</b>
<b>Hugo Fernando Martínez Contreras</b>	<b>US \$90,000</b>
Mariela Contreras Cruz (spouse)	US \$150,000
Yur Mary Herrera Contreras (stepdaughter and sister)	US \$67,000
Zuli Herrera Contreras (stepdaughter and sister)	US \$67,000
Maryuri Caicedo Contreras (stepdaughter and sister)	US \$72,000
Gustavo Caicedo Contreras (stepdaughter and sister)	US \$72,000
Rusbel Asdrúbal Martínez Contreras (stepdaughter and sister)	US \$72,000
<b>Enrique Pinzón López</b>	<b>US \$80,000</b>
<b>Jorge Pinzón López</b>	<b>US \$80,000</b>
<b>Luis Eduardo Pinzón López</b>	<b>US \$80,000</b>
<b>José Alberto Pinzón López</b>	<b>US \$80,000</b>
Teresa López Triana de Pinzón (mother)	US \$200,000
María Teresa Pinzón López (sister)	US \$34,000
Sara Paola Pinzón López, (sister)	US \$34,000
Esther Pinzón López, (sister)	US \$34,000
Luz Mery Pinzón López (sister)	US \$34,000
<b>Jaime Riaño Colorado</b>	<b>US \$80,000</b>
Luz Mery Pinzón López (spouse)	US \$50,000
<b>Antonio María Barrera Calle</b>	<b>US \$80,000</b>
Viviana Barrera Cruz (daughter)	US \$50,000
<b>Omar Patiño Vaca</b>	<b>US \$80,000</b>
<b>Eliécer Martínez Vaca</b>	<b>US \$80,000</b>
<b>Manuel Arévalo</b>	<b>US \$80,000</b>
<b>Edwin Morales</b>	<b>US \$80,000</b>
<b>Raúl Morales</b>	<b>US \$80,000</b>
<b>Jaime Pinzón</b>	<b>US \$80,000</b>
<b>Ana Beiba Ramírez</b>	<b>US \$80,000</b>
<b>Uriel Garzón</b>	<b>US \$80,000</b>

Six years after the Inter-American Judgment, in November 2011, the Justice

and Peace Unit<sup>13</sup> of the Colombian legal system managed to get 16 paramilitaries to accept responsibility for the massacre of *Mapiripán*. The hearing in which this occurred has been the most controversial among the many procedures initiated by the Attorney General's Office in order to reconstruct and judge the crimes committed by paramilitaries who were demobilized between 2002 and 2005.

In this hearing, Mariela Contreras testified that she had lied and thus fraudulently benefited from the monetary compensation paid by the Colombian State as a result of the historical ruling in this case. Following the Inter-American Court's decision, the State had given her US \$150,000 for the death of three of her relatives in *Mapiripán*: her husband and her two sons. However, the Justice and Peace Unit found that her husband, Gustavo Caicedo, had in fact been killed by guerrillas eight months before the *Mapiripán* massacre. Her son, Hugo Martínez appeared in 2008 as a demobilized FARC soldier and her other son, Diego Martínez, was found obtaining his citizenship identification card in December 2001, four and a half years after the massacre (Semana.com, 2011). As a result, she is currently part of Colombia's witness protection program.

In the same hearing, Colombia's Prosecutor concluded that only ten people could be confirmed dead and affirmed that 9 out of the 20 victims identified by the Inter-American Court and who received more than 3 million U.S. dollars in reparations, were not in fact actual victims (Semana.com, 2011).

Colombia's Defense Minister visited the Inter-American Court of Human Rights (ICHR) in Costa Rica to ask for a reconsideration of its ruling concerning the events in *Mapiripán*. ICHR denied the Colombian State's request to recover the

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<sup>13</sup> The Justice and Peace Unit of the Office of the Attorney General was created by Law No. 975 of June 25, 2005 (Art. 33). According to Article 15 of that Law, "The Justice and Peace Unit will investigate, through the attorney delegated to the case, and with the support of the specialized group of the judicial police, the circumstances of time, mode and place in which the punishable acts took place; the social, familiar and individual life conditions of the latter and his previous behavior; the judicial and police background and the damages that he might have individually or collectively inflicted directly on the victims, such as physical or psychological, emotional suffering, financial loss or substantial detriment of fundamental rights".

compensation paid to the false victims and confirmed its original ruling. The ICHR recalled that the sentence established the state's duty to fully identify the victims.

The *Mapiripan* case illustrates the risky sides of the Intrinsic Importance of Truth: first, the difficulties in knowing the ephemeral facts that happened in the past and second, how these difficulties both turn victims into subjects of doubt and justify the importance for victims' testimonies to be subject to cross-examination and to the minimum rules of evidence. I call the first risk "past facts, ephemeral knowledge" and second one "unbelievable victims, sceptical audience". In my opinion, both risks do not undermine the Intrinsic Importance of Truth: to admit that international or national judges can make mistakes by knowing facts happened in the past or that victims are capable of lying is tantamount to accepting that one's thought can be objectively true or false (Lynch, 2005, p. 43). The very distinction of "right" or "wrong", "true" or "false" makes testimonies commensurable, leaving sufficient room for channels of communication between different narratives of the past. If those sort of distinctions make no sense, and all the victim's testimonies should be equally accepted, these testimonies become incommensurable, locking up the victim into their own isolated testimony and preventing us from having reasoned discussions about the issues that matter the most (Lynch, 2005, p. 35).

### *3. Conclusion: Telling and Knowing as Alternative Approach to Truth in the Aftermath of Violence*

I would like to conclude this chapter by introducing my alternative notion of truth to answer the central question I suggested at the beginning: *What could be the meaning of truth and why does it matter in the aftermath of violence?* The answers to this question should take into account the risky aspects of both historical notions of truth and suggest a synthesis between knowing facts and telling testimonies.

While knowing facts is a mandatory attempt to reduce the power of the unknown, describe and judge past acts as morally wrong, and confront the lies of

ideological thinking with reality, it contains inherent limitations. Here, inherent limitations refer to the idea that “all efforts to remedy past violations are inherently limited by the inability to recuperate irretrievable losses of life, human dignity, and social relations” (Onur Bakiner, 2016), meaning that no possible response to mass atrocities can be adequate or proportional. The mere implication of adequacy is itself potentially insulting (Minow, 2000, p. 235). The poem “Unchopping a tree”—written by Merwin—expresses man’s powerlessness when facing the effects of radical evil. The poem examines “step-by-step how one would reassemble a tree that has been destroyed so completely that its leaves, branches and twigs have come apart. After the painstaking steps to reassemble the tree part by part, it stands, but the breeze still can touch only dead leaves”. Attempts to redress what has been destroyed is an absurd or even obscene notion for those who have died (Minow, 2000, p. 2).

As previously sated, despite being a seemingly unachievable goal, knowing facts is a mandatory attempt, because the clandestine nature of the harm, through the disbelief of the community, may aggravate the pain of those experiences and even jeopardize the victim's own memory and sanity (Minow, 1999, p. 67). Knowing facts has the power to reduce the power of the unknown, a typical feature of tyrannical or dictatorial regimes, because criminal acts has a mind-independent character. The harm of these acts does not disappear because the criminal act is denied or ignored; on the contrary, the more unknown criminal acts are, the more harmful the power to damage becomes.

The mandatory attempt to know facts not only seeks to describe criminal acts as they happened in the past, but also to attach to them a judgment that they are morally wrong. The importance of truth-as-knowing-facts in the aftermath of violence lies in confronting ideological thinking with reality. For instance, the slogan of “War Against Subversion” was a mask and a lie used to justify imprisonment and torture in Chile; thereby holding that armed forces had done nothing more than annihilate this subversion. On the contrary, the description of these criminal acts,

included in the Final Report of the ‘The Valech Commission’ asserts that they are an undesirable situations. Statements such as “27,153 persons in Chile were victims of political imprisonment and torture” implicitly contain both *characterizing* and *appraising evaluation*. This statement not only describes criminal acts, it also ensures that the majority of the population condemns the violations of the past and does not support what happened on the basis of past justifications.

However, it is important to underline that dealing with the harm of criminal acts implies much more than purely factual knowledge.

However, dealing with the damage of criminal acts implies much more than knowing some factual information. In that sense, telling testimonies seeks to deal with the myriad of injuries and harms that knowing facts cannot. On the other hand, the process of telling testimonies runs the risk of being an excuse to isolate even more victims. Thus, the process of telling testimonies makes sense if we are correct about some core criminal acts. These core acts allow the commensurability between narratives of the past and strengthen the channels of communication between them.

In sum, my alternative approach to truth asserts that truth in the aftermath of violence means getting core facts straight about *some* criminal acts in order to deal with the antecedent damages (those which triggered a criminal act) and consequent damages (the ongoing damages suffered by the victims).

Ephemeral acts of human action could or could not be established with a high degree of certitude, perfect truth lies beyond human reach, but the unattainability of the ideal is no excuse for shirking the effort in order to get core facts straight about *some* criminal acts (intrinsic importance of truth) (Frank, 1973, pp. 109-112). Knowing the truth about criminal acts is an uncertain but necessary attempt, otherwise the clandestine nature of such acts will only serve to exacerbate the damage they have caused (Minow, 1999, p. 67). Additionally, truth in the

aftermath of violence also matters by the process related to it (instrumental importance of truth). These processes do not seek to know the criminal acts as they happened in the past; their purpose is to deal with the antecedent and consequent damages. These processes open the door for broad participation during the lifespan of the truth commission and guarantee associated participation of different understandings will emerge and confront each other. Paine's concept of contentious coexistence rests merely on open and democratic debate. Yet, from my own perspective the purpose of broad participation is not just a competition over ideas and a conflict over values and goals to present the past as irresolvable. On the contrary, truth commissions seek to create dialogical encounters to recover the ability to resolve conflicts peacefully (Simpson, 2007). During truth commissions, members of society (victims and non-victims) debate the past, exchange information and perspectives, externalize grief, loss, and anger and attempt to reach some form of consensus as to a way forward (Simpson, 2007, p. 329).

For my alternative approach to truth in the aftermath of violence, the main character is the victim who suffered the damage. Perpetrators can confess their responsibility as a way to satisfy the victim's right to know; or judges might punish those who caused the harm as a means of satisfying the victim's right to justice. Saying that victims are the protagonists does not necessarily mean the truth commissions are provided for the exclusive benefit of the victims, as these commissions can likewise be a service that victims perform for society as a whole (Smyth, 2007, p. 16). The synthesis between telling facts and knowing facts sheds light on this point.

Telling is neither a monologue nor an isolated experience. There is an audience listening to victims' testimonies, listening to their singular and unique experience of suffering. In that sense, telling might imply knowing. Beyond the singularities and subjectivities of each single narrative, it is impossible to overlook an undeniable pattern that the testimonies read together reveal; human rights

violations were not isolated events, but part of a larger and systematic pattern, suggesting a policy rather than an exception (Laplante, 2007, p. 443) When individual narrative is situated within the larger political context, it could be a service provided for the victim's benefit as well as that of society. (Smyth, 2007, p. 16):

"One mother in Chile felt guilty about the death of her young son, who was shot by police after she had let him cross the street to watch television with neighbors. In therapy with professionals committed to acknowledging the context of political terror in Chile, the woman learned that her son was shot as part of mass political repression. The process helped her attain "an emotional understanding of the fact that the police, and not she, had killed her son."(Minow, 2000, p. 243)

In conclusion, the interwoven relation between knowing-telling is a step forward towards overcoming the "victims' isolation" in an atomized society and opening channels of communication and building bridges between victims and their audience.

## Chapter 2. Truth Commissions: Definition and Justification

As it was presented in chapter 1, truth in the aftermath of violence has been historically justified in two senses: (i) by the benefits it brings (instrumental justification) and (ii) by its own sake (intrinsic justification). Both historical approaches to truth have been established through different mechanisms. An enormous variety of unofficial truth projects have emerged<sup>14</sup> (Bickford, 2007; Bilbija et al., 2005; Erica, Cynthia, & Monica Eileen, 2011); but the most common ones have been the official “initiatives” such as truth commissions and criminal trials. Today, discussions over which mechanism is better alternative to deal with the past have been overcome. The tendency of international trends is to make a complementary synthesis among judicial, extrajudicial and social truth-seeking mechanisms. This has been the case in Sierra Leone (2002) and Colombia (2016).

Whereas the Sierra Leone Truth and Reconciliation Commission made historical findings and documented what happened in Sierra Leone during the conflict, the Special Court of Sierra Leone had a very narrow and focused mandate geared toward designating criminal responsibility to individuals involved in the commission of crimes during the conflict (Alpha Sesay 2014, 489). Similarly, an integral system of truth, reparations and non-repetition was approved in Colombia. This system is composed of different, interconnected judicial and extra-judicial mechanisms: (i) The Truth, Coexistence and Non-Repetition Commission; (ii) The Special Unit for the Search for Persons Deemed as Missing in the Context of and due to the Armed Conflict; and (iii) The Special Jurisdiction for Peace. Whereas the Truth Commission in Colombia will be an extra-judicial mechanism to contribute to

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<sup>14</sup> For example, the Brazilian NGO *Nunca Mais* Project; The non-governmental *Truth and Community Reconciliation Project* in Greensboro, North Carolina (USA, 1979); The Recovery of Historical Memory Project (REMHI) led by the Catholic Church in Guatemala; The Peace and Justice Service (SERPAJ) (Uruguay, 1981), guided by team of lawyers, doctors, and human rights activists; The report “Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands 1980–1989” (1997) organized by the Legal Resources Foundation (LRF) and the Catholic Commission for Justice and Peace (CCJP); and The Ardoyne Community Project (ACP), coordinated by members of the small Northern Irish community of Ardoyne (Bickford, 2007) among others.

the realisation of the right to truth for victims, and for society as a whole, the Special Jurisdiction for Peace will exercise judicial functions, and will fulfil the duty of the Colombian state to investigate, prosecute and sanction the main perpetrators of crimes committed in the context of the armed conflict.

The international trend toward complementary support between different mechanisms to find truth is invaluable. However, in what follows I focus particularly on the official truth commissions (TCs). These commissions move between both poles: offering a complete picture of what happened (objective and general information) and dealing with the singular nature of human suffering (subjective and particular information). This tension is quite useful to materialize my alternative approach to truth in the aftermath of violence.

Scholarly disagreement on the definition of a TCs makes it difficult to establish accurately the number of countries that have created TCs since the seventies. For example, while the Transitional Justice Data Base Project estimates that about 60 TCs were established between 1970 and 2007, this figure fluctuates between 30 and 40 in most other studies. (Bakiner, 2014, p. 9). Despite the disagreement on data, it is undeniable that TCs have proliferated worldwide (Nauenberg, 2015) and have become a standard component of the transitional justice repertoire (Heine & Turcotte, 2015).

In the past, the first TCs were designed merely for knowing facts. They were investigative mechanisms with the primary aim of publishing an authoritative and factual report on human rights violations committed in a country (Hamber, 2003b, p. 1074). For instance, Argentina's National Commission on the Disappeared (more commonly known by its Spanish acronym, CONADEP) was created specifically to clarify “the acts related to the disappearance of persons and, if possible, determine the location of their remains” (Crenzel, 2010, p. 33).

Currently, the scope of TCs is much broader (societies and individuals advance in healing, promoting a process of reconciliation, assisting in reparation programs, etc.) and seems to have a greater focus on the possibility of telling testimonies: “For truth telling, public acknowledgment of what happened, and attention to survivors, a truth commission, actually may be better than prosecutions” (Minow, 2000, p. 57). This emphasis on telling testimonies is defined by its victim-centered character:

“Most TCs focus mainly on victims... much of their time and attention is focused on them... By listening to victims' stories, perhaps holding public hearings and publishing a report that describes a broad array of experiences of suffering, commissions effectively give victims a public voice and bring their suffering to the awareness of the broader public” (Hayner, 2011, p. 22).

Despite the current emphasis on telling testimonies, the first and most straightforward objective of a TC is still knowing facts by conducting descriptive fact-finding and producing an impartial, historical report on human rights violations (González & Varney, 2013). Thus, what seems interesting about current TCs is the expectation of offering a complete picture of what happened in the past (establishing factual and objective information), while dealing with the singular nature of human suffering (attending experiential and individual experiences).

In that sense, the TC's challenge is two-fold. On the one hand, a TC cannot reduce the systematic nature of violence to single and isolated cases of violence, those commissions are concerned not only with sorting out the facts of individual cases but also with “providing an account of the patterns of severe violence or repression” (Freeman, 2006a, p. 15, 2006b). On the other hand, a TC is challenged by the fact that it must offer objective and general information without ignoring or reducing the individual suffering to numbers or cold facts (Wilkinson, 2005, p. 40), which would not serve any purpose other than to depersonalize the victims (Smyth, 2007, p. 20).

This chapter seeks to offer a definition of a TC that moves beyond its typically victim-centered character and deals instead with the tension between identifying general patterns of violence and listening to particular narratives of suffering.

The definition (chapter II) and activities to be conducted by TCs (chapter III) offer a broad picture with enormous possibilities for new TCs. The purpose of this is not to raise, even further, the expectations about TC capabilities, on the contrary, the aim is to offer a wide spectrum of alternatives to be chosen for each new TC, according to local priorities and political context. My definition focuses exclusively on state-based TCs because I concur with Freeman that, “A truth commission has an inherent self-assessment or self-investigation character; it involves a state or society trying to repair or regenerate itself in some way” (M. Freeman 2006, 16). A TC focuses on violations committed in the sponsoring state, with this investigation acting as a proof of the state’s willingness to regenerate itself. When TCs’ reports reveal the crimes committed by political institutions, or their past negligence, the former place the latter under public scrutiny and in a position where the latter feels to need to change their tarnished reputation and hereby regain political and social legitimacy (Ferrara, 2015). State-based TCs might therefore prompt fundamental changes in relations between state institutions and society. According to Ferrara, TCs play a key role as a means by which ethical and institutional transformation can occur within countries where commissions are set up. Commissions can change the political discourse as well as popular and elite perceptions on the issues of the past, generate awareness across society regarding the extent and magnitude of the crimes committed, and attribute political and moral responsibility (Ferrara, 2015). It is possible to conclude that the moral and social pressure generated by a state-based truth commission, can, in the long term, make political institutions more responsive to the demands of victims - and of society in general – and gradually trigger a positive cycle, which may produce deep social and political change (Ferrara, 2015).

## 1. What is a truth commission?

In general terms, I define a TC as a (i) temporary and democratic (ii) forward-looking and backward-looking enterprise, the main purpose of which is to establish a (iii) diagnosis of the past (iv) and suggest feasible remedies. This enterprise implies different speech situations for a dialogic exchange. In what follows, I explain each of its components in turn and the speech situation that my definition of TC implies.

### 1.1 Components of the definition

#### 1.1.1 TCs as temporary and democratic enterprises

TCs are not permanent institutions. They are not part and parcel of the regular institutional arrangements of "normal" democracies (DuToit, 2000, p. 124). They begin with a *mandate* which specifies the details of their objectives, lifespan, procedures and compositions; and they end with the submission of a *report* containing findings (Freeman, 2006a, p. 10). In the past, the primary aim was publishing a final report and the social process during the TC lifespan was given little attention. Currently, however, the process (during the TC), regardless of the outcome, has become as important as the report (Hamber, 2003b, p. 2).

Guthrey defines a TC as a participatory process because it "embodies the victim's greater opportunity to be a part of the post-conflict process" (Guthrey, 2015, p. 20). Within TCs victims are the key source of information about the past, which sharply contrasts with the status quo of periods of mass violence where state or military leaders may be the dominant purveyors of information, thus further repressing populations (Guthrey, 2015, p. 21). For him, TCs have progressively opened the door to a strong presence of victims inspired by public hearings held in the South African TRC.

This definition of participation focuses exclusively on the possibility of giving a public voice to those who suffered, yet it excludes other important features of participation. For instance, Argentina Commission (CONADEP) did not hold public hearings, but rather was the result of a shared effort by the constitutional government, the majority of Argentine human rights organizations and other civil society organizations, which participated and contributed in many different ways. Additionally, this Commission strengthened its legitimacy making its results and findings known to the public (the report was an immediate best-seller) (Crenzel, 2008; Hayner, 2011).

Conversely, the establishment of South Africa's TRC was uniquely preceded by an extended public debate concerning its general objectives, and its specific mandate and procedures were fashioned through a process of parliamentary hearings and debates with the participation of all major political parties (DuToit, 2000, p. 129). Additionally, it is worth mentioning the Commission's efforts to carry the TRC process through various special and institutional hearings (DuToit, 2000, p. 131).

In my opinion, participation in public hearings is one aspect of the TC implementation, but a TC's lifespan is broader and the victim's role cannot be reduced to giving testimony. Likewise, the process of giving testimony cannot be an isolated experience exclusively for victims. It is desirable to (1) involve victims in more TC scenarios (*i.e.* in the design and implementation of a TC) and (2) foster reflection among different ex-perpetrators, political parties, and sectors of civil society, many of whom were passively or actively complicit in past wrong-doings (Smyth, 2007, p. 17).

From my own perspective, for a TC to be a democratic enterprise, it should define *who* should be involved in the conceptualisation and implementation of a TC, as well as *how* and *why*. The literature about bottom-up truth mechanisms illustrates well *who* shall be part and in which way (*how*). The "Habermasian Model

of Truth Recovery" (Simpson, 2007) illustrates the purpose of this democratic character (*why*), which will be explained in section (1.4.) of this chapter.

As TCs have become more of a global and international trend rather than a local claim, there is a risk in designing a TC as a top down intervention. However, TCs are not a discrete tool that can be applied with the same effect in any setting, considering victims and local people as mere receptors of policy makers' knowledge (Sesay, 2007). A TC's needs to shift away from the top-down "one-size-fits-all" approach to allow "voices from below" to be heard and heeded (Lundy & MacGovern, 2017, pp. 266, 279). They must pay greater attention to concerns and interests of local civil society organizations, which have the power to either bolster or undermine such a project (Bosire, 2014, p. 256).

Some international experiences show the importance of this sort of design. Despite the considerable efforts of external actors to create a Truth, Justice and Reconciliation Commission (TJRC) for Bosnia, the project floundered for, among other reasons, its lack of legitimacy, notably among Bosnia's victim associations. The alleged greatest beneficiaries rejected the TJRC, for its inadequate manner of including them in the process while "professionalized" NGOs with strong links to international actors had a prominent role in the design of the TJRC. In the end, the victims considered it an "elitist lucrative project pushed by large NGOs and wealthy individuals"(Dragovic-Soso, 2016, p. 14).

When looking at the same case, Bosire and Lynchy assert that civil society plays a critical role along the entire process in any TC (Lynchy & Bosire, 2014). While prominent civil society organizations (CSOs) embraced and advocated for the idea of the TJRC in 2003, their demands were ultimately weakened by the failure of their own organizations to mobilize mass public support. In contrast, the TC that was ultimately established from 2008 to 2013 received very limited support from key CSOs and faced heavy criticism. The key CSOs' inability to build a

strong constituency for the TJRC led to its non-implementation, undermining the TC's potential political impact (Lynch & Bosire, 2014).

Conversely, during the conceptualization and planning phases of the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR - the Portuguese acronym by which it is commonly known), the importance of accessing and utilizing a range of traditional, local and community systems was acknowledged by external actors who were in charge of implementing the CAVR. This experience recognized that

"accountability concerns and reconciliation needs at the community level could only be meaningfully addressed through a process of reception and reintegration, and that these were best achieved with the assistance of processes that were familiar, and above all, legitimate for most ordinary Timorese" (Pigou, 2004, p. 7)

In conclusion, in my view, international experiences and global standards could make a positive contribution to the debate about "bottom-up" approaches. This "bottom-up approach" requires the broadest participation possible. Ideally, local communities, civil society, or any other form of organization could take part at every stage in the process, including conception, decision-making, management, implementation and evaluation.

#### *1.1.2 Forward and backward looking*

DuToit argues that it would be "misleading to conceive of truth commissions as backward-looking only... they are primarily aimed at establishing a new moral and political order" (DuToit, 2000, p. 125). For him, TCs are historical founding projects that they primarily deal with the past not for its own sake but in order to establish a new and improved moral and political order, going forward. They clear the way for a "new beginning" (DuToit, 2000, p. 125).

Similar to this line of thought, Heine and Turcotte defend the TC's popularity arguing their ability to investigate the underlying causes of democratic failures, which is indispensable to lay the foundations for a lasting and sustainable peace (Heine & Turcotte, 2015, pp. 344, 347). Likewise, the Inter-American Commission of Human Rights assumes that knowing past wrongdoings has important benefits for the entire society as it embodies a safeguard or antidote for society to prevent the repetition of such acts in the future (I/A Commission H.R. 1987).

Regarding these TC potentialities, there is no evidence to support the claim that knowledge of one genocide has prevented, or indeed could prevent, others. For example, Daly states that the truth about the atrocities that occurred during the Third Reich "did not save the victims of Pol Pot or, for that matter, the people dying today in Darfur. Nor is it generally possible to say that a truth commission report prevented future abuses in the same country" (Daly, 2008, p. 29). Similarly, Saskia Nauenberg asserts that the increasing number of TCs around the world is not because of their success in dealing with past atrocities and strengthening emerging democracies, but because of the influence of "rationalized myths" about the benefits of truth telling (Nauenberg, 2015). These "rationalized myths" might be defined as "socially constructed cultural logics legitimated by actors in the global environment to guide the practices, policies, and operations of state institutions, independent of their actual efficiency" (Meyer & Rowan, 1977). Nauenberg argues that TCs have increasingly relied on four rationalized myths about the value of truth telling, despite inconclusive evidence of their effectiveness: i. Truth telling leads to reconciliation; ii. Future violence can be prevented if it is known how human rights violations occurred; iii. Establishing the truth is a form of justice; and iv. Truth commissions are tools able to give complete and objective accounts of the truth (Nauenberg, 2015, p. 651).

From my own perspective, previous critics have been mistaken because they state that the inability of TCs to provide guaranteed antidotes against future

atrocities implies that we ought not to use TCs in order to prevent them from happening. This statement is incorrect as nobody would be audacious enough to claim that TCs can provide guaranteed antidotes. It is true that TCs cannot do such a thing and it is also the case that such an assertion is irrelevant when deciding whether to use TCs as a prevention mechanism (and for other reasons as well). The question is not whether TCs are *by themselves a silver bullet*, but rather whether they can (more modestly) *help*, in some contexts and in combination with *other tools* as well, to reduce the *probability* of some future atrocities and increase the *probability* of improved moral and political order. In other words, once we clarify the more modest nature of the forward-looking aims of TCs, then it is much more plausible that the backward-looking aspects of TCs can at least *help* to meet the forward-looking goals. TCs are just one among various components that work together to accomplish their aims, but they cannot guarantee success.

My proposed attention to both forward and backward looking damages and remedies seeks to overcome the current TC tendency of spending disproportionate efforts and time on diagnosing damages and leaving the recommendations for the last pages of the report. A TC should look both ways with the same commitment. It should attend equally to the tasks of identifying damages and suggesting remedies. I will return to this topic in next chapter.

### 1.1.3 *To diagnosis damages*

The purpose of setting up a diagnosis through a democratic process is inspired by my alternative approach to truth in the aftermath of violence, which involves getting the facts straight about some core criminal acts in order to deal with the damages which triggered them and the ongoing harm suffered by the victims. Regarding the damages, and following my alternative approach to truth in the aftermath of violence, TCs seek to identify both: (i) the antecedent damages and (ii) consequence of those damages. Because TCs appear in contexts where

criminal acts have an important social and collective dimension<sup>15</sup>, damages refer to the interwoven relations between individual transgressions and institutional shortcomings. Diagnosing the damage implies both identifying the breeding ground for singular criminal acts as well as the impact that these acts produce. Looking backwards, then, seeks to establish the historical antecedents and ongoing institutional shortcomings that made individual criminal acts possible, but also shows how a criminal act changed, harmed and impacted the victim's way of life. The backward-looking function of a TC is to clarify both the *causes and effects* of damaging events.

The aim of "getting the core facts straight about some criminal acts" points out three important aspects of the diagnosis. First, the diagnosis implies a mandatory selectivity; it is impossible to know the whole truth about all criminal acts; only some criminal acts will be known properly and in the worst case scenario, a TC can only set up a "global truth" about some criminal acts. Second, for victims, one of the benefits of taking part in a TC is not that their testimonies will become an official truth, rather, their benefit is the possibility of reconstructing the facts of some criminal acts that oppressive regimes sought to deny or hide. Third, the diagnosis implies a redefinition of the TC's victim-centered character, which has been defined by locating the victim's testimonies of suffering as the centerpiece of how the TC proceeds.

The aim of dealing with the antecedent damages (which triggered a criminal act) and consequent damages (the ongoing damages suffered by the victims) means that individual suffering is one part of the diagnosis, but not the cornerstone. The victims could participate by telling testimonies not only of their

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<sup>15</sup> Some authors who study the systemic nature of mass atrocity crimes: Hannah Arendt, *Eichmann in Jerusalem: A Report of the Banality of Evil* (New York: Viking Press, 1963). Daniel Jonah Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (New York: Knopf, 1996). Peter A. French, «Unchosen Evil and Moral Responsibility» in *War Crimes and Collective Wrongdoing*, ed. Aleksandar Jokic (Malden, MA: Blackwell, 2000), 32-34. David Luban, «Intervention and Civilization: Some Unhappy Lessons of the Kosovo War» in *Global Justice and Transnational Politics*, ed. Pablo de Greiff and Ciaran P. Cronin (Cambridge, MA: Massachusetts Institute of Technology Press, 2002).

suffering but also of their resistance or resilience, and also as citizens with plans and ideas for future discussion. Non-victims groups would play a key role as well, which would go beyond a passive empathetic audience who listens to the victim's testimony of suffering. The process of setting up a diagnosis seeks to create dialogical encounters between victims and non-victims to suggest feasible remedies.

#### 1.1.3.1 Mandatory selectivity, global truths.

"Getting core facts straight about some criminal acts" implies a mandatory selectivity. Although the extent of this information should be as broad as possible, the possibility to learn the whole truth about criminal acts is limited to the means and resources at the TC's disposal. In the next chapter, I will introduce and evaluate some criteria used by previous TCs to select which criminal acts should and should not be documented.

This mandatory selectivity implies not only excluding some criminal acts and prioritizing others, it also means deciding to what extent selected criminal acts should be investigated and documented. In the worst case scenario, a TC *can* just reveal "global truths" (Hayner, 2011, p. 84) about some criminal acts by demonstrating with some degree of certainty the broad patterns of the events that took place. "Global truth", as consolation for the impossibility of "whole truth", implies a long-term process to make it broader and more precise. This ongoing research process could make TC findings "temporary" as long as "it remains subject to amendment as new evidence is found to cast doubt on the accounts of a fact" (Evans, 1997: 79).

However, although the truth-knowing process may be partial, it could establish a basis on which victims and society could rely. These records are both authoritative and provisional: the legitimacy and credibility of the truth-finding process as an authoritative account of the past rests profoundly on a demonstrable objectivity and impartiality. This process "establishes what for broad segments of

opinion can be accepted as a plausible narrative" (Maier, 2000: 275). Nevertheless, it is also provisional in as much as "it remains subject to amendment as new evidence is found to cast doubt on the accounts of a fact" (Evans, 1997: 79).

Omissions and mistakes during the *Mapiripan* case show why it is necessary to attempt to gather more truth, even if only partially and incrementally. The Inter-American Court of Human Rights' judgment, while imperfect and incomplete, created a point of departure to establish with some degree of certainty the broader aspects of the *Mapiripán* massacre. This point of departure was continued by the Prosecutor's research, which did not deny the broad patterns established by the first judgment, but instead helped to make the details and facts of this "global truth" more precise. Beyond the details that should be clarified in the future, this "global truth" has gained a growing public consensus against paramilitary violence and the complicity of governmental armed forces with these actions.

Chile's experience is also useful to understand how a TC can be used to gather more truth. The Chilean Truth and Reconciliation Commission ('Rettig Commission') was created in 1990 by the first democratically elected government of Chile to investigate and report on the worst human rights violations committed during the Pinochet dictatorship (Ferrara, 2015). This first Chilean TC documented 3,197 cases of people who were killed or forcibly disappeared under Pinochet. Torture under the military regime was only discussed in general terms in the Report, but the commission was not mandated to draw a list of torture victims. The 2003 National Commission on Political Imprisonment and Torture was set up in reaction to its shortcomings (Onur Bakiner, 2016). This second TC was created by former socialist president Ricardo Lagos in 2003 and certified, in 2004, the existence of 27,153 victims of political imprisonment and torture. It reopened in 2010 and in its final report the number of victims of torture and political

imprisonment had dramatically increased (Ferrara, 2015). This third commission documented 32,000 new cases.

This long and constant process revealed an increasing progress in truth knowledge. With each step, a more complete image of what happened became visible. The reports form different chapters of the same history and offer a gradual reconstruction of the truth (Ferrara, 2017). However, these limited and strategic acts of acknowledgment fall short of initiating a more comprehensive process of addressing past wrongs (O. Bakiner, 2013). In Bakiner's words, "coming to terms with the past is not a success story, but rather a solemn working and reworking of an irretrievably lost past" (Onur Bakiner, 2016).

The examples of the cases of Mapirirpan and Chile confirm the mandatory selectivity that a TC implies, a TC cannot reveal the "whole truth", it can only teach "global truths" and these "global truths" imply a long-term process.

#### 1.1.3.2 Benefit for victim: materiality of the past vs. turning their testimony into official truth

One purpose of "getting core facts straight about some criminal acts" is to challenge the power imbalances between the personal stories of survivors and the institutionalized versions of "how things happened" from political leaders, armed groups, state officials, or the media (Riaño-Alcalá, 2010), as forgotten and denied crimes have always been clear demonstration of political power. Thus, the diagnosis set up by a TC, seeks to enable victims to reconstruct the "materiality" of the criminal act in order to be acknowledged by a public that denied, ignored or disregarded the truth of what happened (Crenzel, 2008).

Under this approach, a TC's task can be both to supply relevant factual knowledge and to lift the lid of denial from crimes already known. The first aim (knowing) seeks to discover new truth to respond to unanswered questions (DuToit, 2000, p. 132) and the second attempts to break the silence about widely

known but unspoken truths (acknowledging) (Hayner, 2011, p. 20). Priscilla Hayner is sceptical in regard to the first option:

"Few victims who provide testimony to a truth commission are able to learn new information about their own case. Because of limited time and resources, truth commissions can only thoroughly investigate a small number of cases.... A truth commission does not so much tell them (victims) *new truth* as formally recognize and acknowledge what has before been denied" (Hayner, 2011, p. 21).

Under Hayner's approach, victimized populations already have a good idea of what took place, and the role of a TC is only to confirm or acknowledge this information (Hayner, 2011, p. 21). I disagree with Hayner's distinction. In my opinion, both the task of knowing and acknowledging imply expanding the information available, as both might imply finding *new truths*. For the victims' sake their testimonies cannot be weighed separately and as such a TC's task is not to turn victims' testimonies into official truths. Rather victims' testimonies and all the information already known by the victims, must be seen as part of the full body of evidence in each case, thus allowing their testimonies to expand knowledge and understanding of what happened (Crenzel, 2010, p. 201). Breaking the imbalances between survivors' personal stories and the institutionalized versions of the past which justify violence, imply more than just illustrating the public account with personal narratives. For instance, CONADEP used victims' testimonies to give materiality to the disappearances and expand the information available in order to identify the perpetrators (Crenzel, 2010, p. 183). The CONADEP TC received testimonies of the survivors who disappeared for days or weeks, others who had spent years in captivity in the same place, and still others who had been in several different clandestine detention centers. Because of its heterogeneity, this body of testimonies enriched the existing evidence, confirmed other testimonies and generated new ones.

CONADEP decided to classify this vast material from the clandestine detention center. This decision translated into the presentation of evidence and the preparation of a legal case, which allowed the TC to “fully invert the nature of the strategic space of the disappearances. The non-place that the detention centers had been, became the focal center around which the materiality of the disappearances was reconstructed” (Crenzel, 2010, p. 183).

In conclusion, from this perspective, the distinction between knowledge and acknowledgment does not make much sense: to supply missing relevant facts and to lift the veil of denial about crimes already known imply the same forensic effort and both require reconstructing the materiality of the criminal act. Thus, the diagnosis set up by a TC, rather than turning their testimony into official truth, seeks to enable victims to reconstruct the “materiality” of the criminal act in order to be acknowledged by a public that denied, ignored or disregarded the truth of what happened (Crenzel, 2008).

In the last part of this chapter I will discuss the difference between treating suffering testimonies as *sincere* narratives and as *true* evidence.

#### 1.1.3.3 Defining the victim-centered character of TC

What defines the TC’s victim-centered character is the location of the victim’s testimonies of suffering as the centerpiece of how the TC proceeds. The diagnosis I suggest challenges this approach.

Because diagnoses attempt to identify damages as *antecedent* and as *impact*, victims might participate as somebody who suffered the impact of a criminal act in the past, but also as citizens who already resumed their lives after criminal acts, citizens capable of suggesting remedies to deal with the antecedents and context which made the atrocities possible. Both the victims’ capability of telling their experience of suffering, resistance or resilience and their capability of proposing possible futures must be equally attended.

A democratic diagnosis requires more than the over identification with victims' suffering by non-victims' groups (ex combatants, state and/or society). Thus, these groups should not participate in a TC merely as passive listeners of victims' testimonies of suffering, but rather must have a comprehensive understanding of how such suffering is an inherent result of greater historical social and political processes stemming from an armed conflict. Gonzalo Sanchez argues that it is crucial to extend the gaze beyond the solidarity for the victims. While he agrees that indignation towards someone else's suffering is important, it is insufficient. What is really needed is that citizens understand the armed conflict as a result of social and political processes against which it is possible and it is essential to react (Sánchez G, 2013).

Peter Novick, quoted by Hamber, asserts that non-victims are inclined to identify with the victims' experience, rather than that of the perpetrator and that such an inclination devalues the notion of historical responsibility and the complicity of community members. This approach, Novick argues, "precludes people from thinking of themselves as potential victimizers"(Hamber, 2009, p. 19) 19. Novick writes that there is:

"an article of faith in these encounters [that is, visiting museums, being taught about the event] that one should identify with victims, thus acquiring the warm glow of virtue that such a vicarious identification brings . . . And it is accepted as a matter of faith, beyond discussion [that it] is going to be morally therapeutic, that multiplying such encounters will make one a better person"(Novick, 2001, p. 13).

Non-victims groups participating in the elaboration of the diagnosis should express their will in order to regenerate themselves in some way (Freeman, 2006a) and explain their reason for taking part in the restoration of the human and civic dignity of victims and society (Du Toit, 2000, p. 135). A brief episode of Antjie

Krog's *Country of My Skull* illustrates well these ideas. She recounts that six young black men went to the Cape Town office of the TRC and applied for amnesty, stating that their crime was apathy, explaining that: "The act says that an omission can also be a human rights violation. And that's what we did; we neglected to take part in the liberation struggle. So, here we stand as a small group representative of millions of apathetic people who didn't do the right thing" (Krog, 1999, p. 159).

In conclusion, from this perspective, a TC's main feature is not its victim-centered character, in the sense that the victim's testimonies of suffering are located as the centerpiece of how the TC proceeds. Both the victims' capability of telling their experiences of suffering, resistance or resilience and their capability of proposing possible futures must be afforded equal attention. Victims might participate as somebody who suffered the impact of a criminal act in the past, but also as citizens who already resumed their lives after criminal acts and who are capable of suggesting feasible remedies.

#### *1.1.4 Suggesting feasible remedies*

While the aim of "getting core facts straight about some criminal acts" is focused on identifying the damages, the aim of "dealing with the antecedent damages (which triggered a criminal act) and consequent damages (the ongoing damages suffered by the victims)" is focused on the possibility of suggesting, recommending, and designing feasible remedies.

Regarding the notion of *remedies*, my definition of a TC steers away from the psychological concept of *healing*. "Healing", as psychological notion, refers to the process of becoming sound or healthy again, it implies the restitution of something lost or stolen from the victim (Dictionaries, 2017). "Remedy", as legal notion, is much more modest, it emphasizes the universally recognized "right to an effective remedy"; whoever causes the damages must amend them partially or

totally, according to the circumstances (Shelton, 2006). There are two aspects to this notion of remedy: procedural, the procedures through which relief may be obtained, and substantive, the substance of relief (Shelton, 2006). The majority of the remedies suggested by TCs are only procedural; they suggest the measures through which relief may be obtained. Substantive measures are fewer and uncertain. So, in a context where violence has been systematic and massive, remedies could merely be compensations, rarely, remedies become complete restitutions.

The notion of *feasible* refers to the necessity to establish probable and realistic remedies and to avoid high and ambiguous expectations such as those that seek to “help to heal a nation”; “reconcile victims with their torturers”; “ensure the rule of law”; and/or “establish a culture of human rights”. These sort of remedies might generate cycles of high hopes and bitter disappointments (Minow 1999).

A TC looks at the past to identify the damages and looks to the future to suggest remedies, with the awareness that the effectiveness of these remedies is uncertain and limited. The remedies available from a TC are heavily limited by material and/or political conditions, which fall beyond the TC’s scope and control and the task of suggesting remedies does not imply the execution of these suggestions. Rather, the scope is very precise as a TC’s job is to recommend suggestions that others will make effective once the TC finishes its job. Despite those restrictions, it would be wrong to deal with the past only for its own sake, rather a TC should use the identified past damages to suggest and recommend steps towards a new moral and political order.

#### 1.1.4.1 Debating for reaching some form of consensus

One feature of the TC’s democratic character, explained in section (1.1.), is the design of grass-roots initiatives and bottom-up truth mechanisms based on broad participation. However, it is necessary to define the purpose of gaining broad

participation not only during the conceptualization of the TC, but also during the implementation. Along a TC's lifespan, different understandings will emerge and confront each other resulting in a struggle to interpret the facts and their implication on contemporary politics. (Payne, 2008, p. 4). Paine's concept of contentious coexistence rests merely on an open and democratic debate. Yet, in my opinion the purpose of a democratic character is not just the competition over ideas and conflict between values and goals. On the contrary, a TC is a democratic enterprise in the sense that it seeks to create dialogic gatherings to recover the ability of resolving conflicts peacefully, to encourage overcoming division with dialogue (Simpson, 2007). Remedies suggested by a TC materialize both the ability of resolving conflicts peacefully and the way in which consensus is reached.

Kirk Simpson suggests that the Habermasian model of truth recovery is quite useful to explain this point. For Simpson, "post-conflict societies' victims of political violence should be enabled to engage in meaningful truth recovery through a Habermasian process of public democratic deliberation and communication that involves direct dialogue with perpetrators of political violence" (Simpson, 2007, p. 325). This process, which he labels 'communicative justice', is framed within the context of Jurgen Habermas' theory of communicative action, which is oriented toward reaching an understanding (Habermas, 1990, p. 136). In Communicative Action we coordinate our plans with each other in a consensual way, by making or invoking claims that everyone concerned accepts as valid or binding: "I hope to harmonize my plans with yours on the basis of our having, or coming to have, a common understanding of the situation we are in" (Habermas, 1990, p. 146). In that sense, reaching an agreement is a mechanism for coordinating actions (Habermas, 1990, p. 134). Specifically, for Simpson, truth recovery is about creating a "new public space in which people (often those previously liminal in the context of political transition, such as victims) are allowed to debate the past, to exchange information and perspectives, to externalize grief, loss, and anger, and to try to reach some form of consensus as to a way forward" (Simpson, 2007, p. 329).

In the case of my own definition of a TC, remedies suggested for the future should be voluntarily accepted by all of the individuals who will be affected by them. Victims shall accept suggested remedies not because they fear reprisals from the perpetrators, nor because perpetrators expect to gain some advantage from those remedies, but because all parties involved recognize the validity of the agreement, and for all of them, remedies are the appropriate response for the damages identified (Moon 1995, p. 146). Not all people involved might agree on the remedies suggested, but what is expected is for them to be in agreement that they participated in a fair and inclusive dialogic exchange.

## 1.2 Speech situations during Truth Commission implementation

My own definition of a TC requires different sorts of speech situations: (i) for giving and knowing testimonies, (ii) for getting core facts straight about certain criminal acts and (iii) for suggesting remedies. These moments are not completely separate; there is an interwoven relation among them. This classification is just an exercise to identify and respect the purpose of each dialogical encounter and the validity of each of the claims. For instance, during the phase of giving testimony, such testimonies must not be challenged by cross-examination as they are considered truthful narratives. Conversely, in the moments for getting facts right about criminal acts, victims' testimonies should be weighed as part of the full body of evidence, as these testimonies seek to become part of the body of true evidence. To define these three speech situations, I follow Kirk Simpson's stages of truth recovery process and define them in Habermasian terms.

For Habermas, in a speech situation actors take turns playing the communicative roles of speaker, addressee, and bystander. A *situation* denotes a segment of a "life-world" that has been delimited in terms of a specific theme. A

theme arises in connection with the interests and objectives of actors (Habermas, 1990, p. 134). A competent speaker has the choice between (i) a cognitive; (ii) an interactive; or (iii) an expressive mode of language use. Three different types of speech acts correspond to each of these three language uses: (i) constative acts; (ii) regulative acts; and (iii) representative acts. Thus, the speaker has a choice among three basic attitudes, each entailing a different perspective on the world (Habermas, 1990, p. 136). For instance, a constative (fact-stating) speech act attempts to (i) represent the *external world*; (ii) establish a communicative relation with a listening audience (and thus relates to a *social world*); and/or (iii) express an *inner world* (an intention to communicate a belief) (Philosophy, 2007) (Habermas, 1990, p. 136). This triadic structure suggests that many speech acts involve a set of tacit validity claims, thus, a speech act, in order to be acceptable, must satisfy the demands connected with three basic validity claims: truth, rightness and/or sincerity.

In sum, first, an objective (constative) speech act, using cognitive language can be considered “true” when it accurately refers to existing objects, or accurately represents actual states of affairs. The speaker makes reference to something in the objective world, so it implies a formal concept of the world (as the sum total of existing states of affairs). Secondly, a normative (regulative) speech act is considered to be correct (right) whenever it fits within a complex array of competing social values and norms. Speech acts serve not only to represent states and events in the objective world; they serve to produce interpersonal relationships as well. In this case, the speaker makes reference to something in the social world of legitimately ordered interactions. Thirdly, evaluative (representative) speech acts are considered to be truthful when sincere communicative actors make them. Speech acts serve to express lived experiences, that is, they serve the process of self-representation in which case the speaker makes reference to something in the subjective world to which he has privileged access. Thus, a speech act might fulfill one of three functions: to present the state of affairs, to maintain an interpersonal relationship, or to manifest a lived experience. (Habermas, 1990; Simpson, 2007)

Kirk Simpson, analyzing the Northern Ireland case, examines what a model for Habermasian truth recovery might actually look like in practice, and how it could be implemented. An appropriate security apparatus for dialogues must be afforded in order that victims and perpetrators are provided with a “safe and secure space”. It must be protected from the potential intrusion of vigilantes; or from the potentially malign influence of those political groups who might seek to disrupt the process for selfish political reasons (Simpson, 2007). This envisaged Habermasian model of truth recovery would be mediated by Truth Recovery Panels. These Panels would be comprised of independent experts on conflict resolution and would be invited to visit localities where there was a clear demand from individuals and communities for truth and reconciliation (Simpson, 2007).

The dialogic exchange itself would be ‘tripartite’ in composition. Stage One would involve uninterrupted storytelling by victims, thereby providing victims with a much-needed platform from which to narrate their experiences. At Stage Two, victims would discuss their story and their experience with the Truth Recovery Panel, who would be empowered to ask victims relevant questions. These stages would be integral to the process of providing communicative dialogical capacity building and creating an atmosphere of trust. Stage Three of the process would involve victims in direct dialogue with perpetrators, a dialogic exchange that would be mediated and controlled by the Truth Recovery Panel (Simpson, 2007).

**Table 1.** Stage for Dialogic exchange: Kirk Simpson.

	<b>Purpose</b>
<b>Stage I</b>	Uninterrupted storytelling by the victim
<b>Stage II</b>	Truth Recovery Panel would be empowered to ask victims relevant questions
<b>Stage III</b>	Direct dialogue with perpetrators, mediated and controlled by the Truth Recovery Panel

For Simpson, the social world and the subjective world are particularly relevant to processes of truth recovery (Simpson, 2007). For my own definition of a

TC, all three different validity claims are equally relevant: factual truth (true or false); normative rightness (right or wrong); and sincerity (sincere or insincere). Together they help to deal with the tension between the TC's objective of establishing factual information and the objective of giving priority to experiential and subjective voices, in other words, identifying general patterns of violence and listening to particular narratives of suffering.

During speech instances for giving and knowing testimonies, victims are the speakers, a commissioner addresses the speech situation, and non-victims are bystanders. The purpose of this moment is to express a lived experience of suffering, resistance and/or resilience. This speech act does not necessarily aspire to be true, it is truthful because the speaker is sincere. These sorts of moments are appropriate to identify the damages as impact and to understand how criminal acts affect the victim's life course.

Speech situations for "getting core facts straight about *certain* criminal acts" change the communicative roles: victims, ex-perpetrators and witnesses are the speakers, and the commissioner is the addressee. Bystanders are people who have not been touched directly by those criminal acts but live in a society that is affected by them. The purpose of this stage is to gain information or confirm knowledge of particular events, to reconstruct the materiality of the criminal act, to give an accurate description of the criminal act as it happened in the past and therefore, to judge them as morally wrong. In this case, the validity claim is truth.

During moments for suggesting remedies the communicative roles remain the same. The entire society, which aspires to establish a new beginning, is the speaker; the commissioner is the addressee; and there is no bystander (everyone interested should be able to participate). The aim is to recover the ability to resolve conflicts peacefully, to resolve the past and dream of the future with dialogue (Simpson, 2007). In these instances the broader the participation, the better. Victims can participate as citizens with suggestions and recommendations; non-

victims' groups might materialize their will to restore the victim's dignity, ex-perpetrators might ask for forgiveness. The goal is for participants in communicative actions to reach an understanding in order to carry out their plans on a consensual basis with some jointly defined actions.

Table 2. My own speech situation (motivated by one of the three Habermasian functions of communication).

<i>Speech situation</i>	<i>Speaker</i>	<i>Addressee</i>	<i>Bystander</i>	<i>Relation to the world</i>	<i>Mode of language use</i>	<i>Class of speech act</i>	<i>Validity claim</i>
<b>Giving and knowing testimonies</b>	Victims	Commissioners	Non-victims	Subjective	Expressive	Representative	Honesty
<b>Getting facts right about certain criminal acts</b>	Victims, ex-perpetrators and witnesses		Members of society not affected directly by the criminal act as such.	Objective	Cognitive	Constative	Truthfulness
<b>Suggesting remedies</b>	Society, which aspires to establish a new beginning		NA	Normative	Interactive	Regulative	Rightfulness

In sum, my speech situations clarify the purpose of each dialogical encounter and its validity claims: (i) “giving and knowing testimonies”, seek to allow the manifestation of a sincere lived experience (personal or narrative truth); (ii) “getting core facts straight about certain criminal acts” seeks to represent the state of affairs, and consequently it can be considered “true” when it accurately refers to existing objects (factual or forensic truth) and, (iii) “suggesting remedies” aim to carry out correct plans on a consensual basis, assuming that those remedies are right insofar they serve to reinforce interpersonal relationships (social truth and healing and restorative truth).

## 2. Conclusion

In general terms, I define truth commission as a (i) temporary and democratic (ii) forward-looking and backward-looking enterprise, the main purpose of which is to establish a (iii) diagnosis of the past (iv) and suggest feasible remedies. This enterprise implies different speech situations for a dialogic exchange.

A TC is a forward-looking and backward-looking initiative not because knowing past facts is an effective antidote for future violence or because TCs are a “safe bridge” to leave behind a past of human rights violations and start a new democratic future. A TC looks both ways at the same time, because it seeks to identify damages and suggest certain remedies, knowing that the effectiveness of these remedies is uncertain and limited.

A TC is a temporary enterprise; it begins with a *mandate* and ends with the submission of a *report* containing findings (Freeman, 2006b). Currently, the social processes undergoing the TC lifespan, independent of its final accomplishments, have become as important as the final report itself (Hamber, 2003b, p. 2). In that sense a TC should be a democratic enterprise, setting up grass-roots initiatives. International experiences and global standards could make a positive contribution, but a TC should be a “bottom-up” intervention with the broadest participation possible. The purpose of gaining broad participation during the TC’s implementation is not just to open a democratic debate and to present the past as irresolvable. On the contrary, a TC is a democratic enterprise in the sense that it seeks to create dialogic encounters to recover the ability to resolve conflicts peacefully and reach common understandings (Habermas, 1990)

A TC’s final attainment is a diagnosis based upon identified damages and suggested remedies. The process of establishing this diagnosis implies a mandatory selectivity: certain criminal acts will be priorities, while others will be excluded and not all selected cases will be fully and completely investigated and

documented. In some cases, TCs are simply unable to reveal “global truths” (Hayner, 2011, p. 84).

In three ways, my own definition of a TC is not a victim-centered one. First, the diagnosis determined by a TC does not seek to turn victims’ testimonies into official truths. Rather, it seeks to enable victims to reconstruct the “materiality” of the criminal act so that it can be accepted by a public that did not recognize the reality of what had happened (Crenzel, 2008). Second, victims’ suffering is not the cornerstone of how a TC proceeds. Victims might participate in a TC as people who suffered the damage of the criminal acts (damage as impact), but also as citizens capable of suggesting remedies to deal with the context which allowed the atrocities (damage as antecedent). Third, non-victims groups (ex-perpetrators, the State, bystanders, beneficiaries of the violence, etc.) play a key role in the elaboration of the diagnosis by expressing their will to regenerate themselves in some way (Freeman, 2006a, p. 16) and suggesting remedies for a better future.

Chapter 3 presents two international experiences of TRCs, which reflect the importance of my own definition of a TC. South Africa and Sierra Leone TRCs were a temporary enterprise, which spent great efforts on backward looking and not on forward looking. Those Commissions were quite democratic as they invited victims to diagnose the damages of the past through public hearings, but these TCs put the onus of providing suggestions of remedies exclusively on the Commissioners, who raised expectations and recommend implausible remedies. Thus, both TRCs spent disproportionate efforts and time on diagnosing damages and left recommendations for the last pages of the report, which might explain, partially, why the impact of these remedies was so insignificant.

Regarding the speech situations suggested in this chapter 2, South Africa’s case shows why this classification is quite useful. The TRC’s final *report* defined four notions of truth, which guided the Commission:

“*Factual or forensic truth* was ‘the familiar legal or scientific notion of bringing to light factual, corroborated evidence’. *Personal or narrative truth* referred to the individual truths of victims and perpetrators, attaching value to oral tradition and story-telling. *Social truth* was established, in the words of Judge Albie Sachs, through interaction, discussion, and debate. *Healing and restorative truth* sought to repair the damage done in the past and to prevent further recurrences in the future” (Wilson, 2001, p. 36).

In this plural model of truth, it is unclear how the elements are meant to relate to one another: “The report gives no guidance about how the four categories of truth might be connected, integrated and synthesized” (Wilson, 2001, p. 36).

From my perspective, the mistake was defining these four truths instead of distinguishing between sincerity, truth and rightness. In the next chapter both TRCs, South Africa and Sierra Leone, will be explained in detail.

## Chapter 3. What should a TC do?: Possible objectives to accomplish<sup>16, 17</sup>

In this chapter I use the previous conceptualization of an alternative approach to truth in the aftermath of violence and my own definition of TC in order to design a methodological framework for a future truth commission to precisely define their aims. This framework will allow future truth commissions to establish clear and achievable goals, as it seeks to plainly define the nature and scope of the type of *damage* that a truth commission should identify and the *remedies* it should offer. To do this, I introduce the methodology used in the first part of the chapter in order to construct the matrix; the second part of the chapter introduces this matrix by looking at two international cases: the South African and Sierra Leone Truth and Reconciliation Commissions.

The matrix is a means of assembling a list of objectives to be chosen and prioritized for any new truth commission. It is composed by two main variables: (1) the main actions TCs are to perform, and (2) the main issues they need to document. Each variable contains different dimensions that were developed in the two previous chapters. Following my own definition of a TC (Chapter 2), the principal actions a TC should perform are: (i) diagnosing the damages suffered (backward looking) and (ii) recommending the necessary remedies to deal with them (forward looking). Thus, the TCs' main actions are to establish a diagnosis of the past and suggest feasible remedies.

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Following the alternative approach to truth in the aftermath of violence (Chapter 1), the main issues that a TC should document are: (i) the background and context of the crimes (that which triggered a criminal act), (ii) the criminal acts as such and the implicated actors, and (iii) the impacts caused by such atrocities (the ongoing damages suffered by the victims). Consequently, the truth established by TCs should (i) get core facts straight about *critical* criminal acts in order to deal with (ii) the harms as an antecedent and (iii) the damages as impacts.

Table 1. Variables and their dimensions

<b>Variables</b>	<b>Dimensions</b>
1. Actions to perform	<ul style="list-style-type: none"> <li>i. To diagnose the damages suffered during recent periods of abusive rulers or armed conflict.</li> <li>ii. To recommend remedies to deal with those damages.</li> </ul>
2. Issues to document	<ul style="list-style-type: none"> <li>i. To identify the background and the context of the crimes.</li> <li>ii. To identify the criminal acts and the implicated actors.</li> <li>iii. To identify the impacts of the criminal acts.</li> </ul>

## 1. Methodology

I drew simultaneously on theoretical and empirical literature to build framework. Meanwhile, I reviewed academic discussions on evil, suffering, memory and archives, the research assistant analyzed two international experiences: the South Africa and Sierra Leone Truth and Reconciliation Commissions (hereinafter SATRC and SLTRC, respectively). As the revision was advancing, the *variables and dimensions* were changing. To see the evolution of the framework, see the annexes of this chapter.

Once the bibliographic revision was completed for theoretical issues and international experiences, the research focused on the Colombian case (Chapter 4). The first step was to determine the then current situation of Colombia's peace negotiations (end of 2014 and beginning of 2015). This involved looking at the

laws, which had already been passed regarding truth seeking initiatives, and then studying the advances of some of these initiatives (specifically the *National Center of Historical Memory*).

During this stage, the research assistant and I asked ourselves whether a TC was truly required, taking into account the numerous and admirable efforts that already were taking place in the country with the purpose —among other things— of satisfying the right to know the truth (e.g. *National Center of Historical Memory*, *The Justice and Peace Unit*). Once the agreement of creating the TC was published in June 2015, we studied it and participated in a special seminar (*Center of Memory, Peace and Reconciliation*) to discuss the strengths and weaknesses of the agreement with national and international experts.

Once the Colombian context was reviewed, we prepared a draft of the matrix to review it with strategic actors. To do that, we made an alliance with different universities such as *Universidad de Antioquia* (Medellín), *Universidad CES* (Medellín), and *Universidad del Valle* (Cali), to share our findings. The result was a series of two events: one in Cali on Nov. 27, 2015 and another in Medellín on Dec. 11, 2015. Each event had two working sessions, one with scholars and another with victim organizations and local authorities. After presenting and explaining our matrix to them, we used a group methodology —previously discussed with a hired expert— to listen to their comments. The findings regarding the Colombian case will be presented in Chapter 4.

## 1.1 Why South Africa and Sierra Leone TRCs?

After almost 10 years of conflict and political turmoil, a peace agreement was signed in 1999 between the government of Sierra Leone and the Revolutionary United Front (RUF) in Lomé, Togo. Article XXVI of the Lomé Peace Agreement ordered a TRC to “be established within 90 days after the signing of the [... Agreement] and [should], no later than 12 months after the commencement of

its work, submit its report to the Government for immediate implementation of its recommendations" (1999, V, XXVI, 3)<sup>18</sup>.

In response to the Lomé Peace Agreement's requirements, the Sierra Leone's Parliament ratified the *Truth and Reconciliation Commission Act* in 2000, which officially created the TRC and specified, among other things, the importance of the report which the TRC was expected to submit:

The report shall summarise the findings of the Commission and shall make recommendations concerning the reforms and other measures, whether legal, political, administrative or otherwise, needed to achieve the object of the Commission; namely the object of providing an impartial historical record, preventing the repetition of the violations or abuses suffered, addressing impunity, responding to the needs of victims and promoting healing and reconciliation. (2000, V, 15, 2),

The context of the SATRC is somewhat different as it was established after more than twenty years of increasing ethnic exclusion and abuses under the official racial segregation policy of the Apartheid. Most of the active opposition by disenfranchised groups were answered with a governmental crackdown involving extreme levels of violence and human rights abuses. However, after a series of international sanctions and the end of the Cold War a mostly peaceful transition away from the Apartheid system began with a series of negotiations between the governing party and the African National Congress between 1990 and 1993. Democratic elections were held in 1994, and an interim constitution was passed. The TRC was set up by the newly elected parliament to address the evils of the

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<sup>18</sup> It is important to clarify that the SLTRC Report mentions the Abidjan Peace Agreement as a relevant antecedent of the final SLTRC: "The Abidjan Peace Agreement of 30 November 1996, which initially offered the hope of an end to the conflict but which did not succeed, for reasons detailed elsewhere in this Report, made no provision for a Truth and Reconciliation Commission or for any similar process. Yet article 14 of the Abidjan Agreement granted an amnesty to members of the Revolutionary United Front, allegedly so as '[t]o consolidate the peace and promote the cause of national reconciliation'" (2004b, 1,1,2). According to Hirsch, the structure of the entire Lomé Agreement was simply a modification of the original Abidjan Agreement (Hirsch 2001, 83).

apartheid , which was endorsed by president Nelson Mandela and other prominent South African figures (USIP, 2016).

These two TRCs (SLTRC and SATRC )were selected because they both meet two important criterions. First, a reasonable amount of time has passed since both TC finished their work —SA finished on 2003 and SL on 2004— , so there is an adequate number of assessments and studies to have been published for these two cases; this helped us to ensure that we would be able to study not only the official TRC documents, but also the posterior expert assessments.

Second, and most importantly, the two selected commissions provide important features that could be compared in the framework of this research. These two TRCs, then, have complementary features that suggest their utility as representative cases of two poles of the wide spectrum of possible TRCs:

Table 2. Comparative table between South African and Sierra Leone TRC

	<b>South Africa TRC</b>	<b>Sierra Leone TRC</b>
<b>Judicial Functions</b>	Yes, Amnesty Committee	No, such functions were assigned to the SCSL
<b>Working time period</b>	3 years, plus 4 additional years	2 years
<b>Years of conflict investigated</b>	34 years	9 years

The SATRC had several important judicial functions, such as granting amnesty to perpetrators who confessed their crimes truthfully and completely. Because the time period covered by the SATRC was broad (it worked for three years and was later granted four additional years to investigate thirty-four years of conflict), the report documented a wide and varied list of acts. Despite the fact that the final report defined four notions of truth that had guided the TRC: factual or forensic truth, personal or narrative truth, social truth, and healing and restorative truth (2004b, 1, 3, 21), this Commission was widely criticized for offering an over-

legalistic view and not contributing to an improved understanding of the context, patterns and causes of past violations (Wilson, 2001, p. 33)

Conversely, the SLTRC did not have any legal functions because it worked simultaneously with the Special Court for Sierra Leone, a different organism in charge of assigning criminal responsibility. Because the SLTRC covered a narrower period of time than the SATRC (two years to investigate nine years of conflict), the report paid special attention to the experience of children and victims of sexual abuse. Additionally this report has been praised for providing a crucial framework for debates on violence and repression.

In sum, these two TRCs (SLTRC and SATRC) were selected because they both meet important criterions. First, there is an adequate number of assessments and studies published on these two cases. Second, the two selected commissions provide important features that could be compared in the framework of this research. African models might raise some issues for Latin American TCs, however, the experience of the South African TRC was the first TC attained worldwide prominence (Freeman, 2006:22) and this help us to ensure that we would be able to study not only the official TRC documents, but also the posterior expert assessments for different and complementary approaches.

## 2. Methodological Matrix

The purpose of my methodological matrix is to set up a list of objectives to be chosen and prioritized for any new TC. These “potencial objectives” are a set of criteria that commissioners can use to learn from previous TC experiences from all over the world, as well as to dialogue with local truth-seeking experiences. On the one hand, the comparisons of international experiences will enable the identification of the challenges that previous TCs have faced in their efforts to achieve their so-called objectives. On the other hand, the local approach helps to

shed light on understanding how and to what extent these ideal objectives have been met in the regions and localities in which future TCs will work. Taking into account both international and local experiences, more feasible objectives might be established for future TCs so that the commissioners might undertake their task more effectively.

While there are some practical tools to draft the mandates in general (González & Varney, 2013) (González, 2013), none specifically help in the important task of defining a TC's objectives. Having clear and concise objectives ensure that all participants [of a TC] have realistic expectations about what impact their contributions could have (González, 2013, p. 5). Whether the TC is expected to help heal a nation, or reconcile victims with their torturers, or ensure the rule of law, or establish a culture of human rights, etc., a sense of disappointment frequently emerges in the aftermath of a TC process (Freeman, 2006a, p. 38). A proper definition of a TC's objectives can help control such expectations and save TCs from generating cycles of high hopes and bitter disappointments (Minow, 1999, p. 82).

To define these objectives, the matrix is composed of two main variables: (1) the main actions TCs are to perform, and (2) the main issues they need to document. Each variable contains different dimensions. The actions a TC should perform refer to: (i) diagnosing the damages suffered and (ii) recommending the necessary remedies to deal with those damages. The main issues that a TC should document refer to: (i) the background and context of the crimes, (ii) the criminal acts as such and the implicated actors, and (iii) the impacts caused by such atrocities.

Once both variables —actions to perform and issues to document— were integrated into a matrix, different possible objectives were established and organized into groups:

Table 3. Possible objectives to accomplish for the new TC

	<b>Context and background</b>	<b>Criminal acts and implicated acts</b>	<b>Impacts</b>
<b>To diagnose damages</b>	<ul style="list-style-type: none"> <li>Identify and document the <i>structural causes</i> of violence.</li> <li>Identify the <i>criminal acts</i> that led to the atrocities.</li> <li>Identify the <i>social frameworks</i> that led to violence.</li> <li>Identify the <i>international context or relations</i> which triggered the atrocity.</li> </ul>	<ul style="list-style-type: none"> <li>Identify and document the most relevant criminal acts.</li> <li>Identify the victims implicated in the criminal acts.</li> <li>Identify the responsible actors involved in the criminal acts.</li> <li>Identify the different degrees of responsibility for the criminal acts.</li> </ul>	<ul style="list-style-type: none"> <li>Identify and document different impacts on individual/collective and/or indirect/direct victims.</li> <li>Identify the impact of the violence on human relations and document their manifestations.</li> </ul>

<b>To recommend remedies</b>	<ul style="list-style-type: none"> <li>• Recommend the necessary reforms to deal with the structural causes of violence.</li> <li>• Reinforce the shared understanding that certain violent behaviors and acts are wrong and unacceptable (confront social frameworks).</li> <li>• Suggest the necessary reforms to change the criminal architecture of the State.</li> <li>• Recommend the necessary reforms to deal with the <i>international context or relations</i> which triggered the atrocity.</li> </ul>	<ul style="list-style-type: none"> <li>• Produce an impartial and official report which describes the relevant criminal acts. The report must include all the recommendations made by the TC.</li> <li>• Recommend alternative ways to deal with the different degrees of responsibility for the criminal acts.</li> </ul>	<ul style="list-style-type: none"> <li>• Design processes to assess to the impacts on direct and indirect victims.</li> <li>• Design a mechanism to facilitate victims' access to reparation programs.</li> <li>• Design mechanisms and establish processes to repair broken relations.</li> </ul>
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These three sets of objectives offer a broad picture with enormous possibilities for new TCs. The purpose of this is not to further raise the society expectations about TC capabilities; the point is to offer a wide spectrum of alternatives to choose from for each new TC, according to local priorities and political context.

The following explains each variable and each dimension of the matrix looking at the SLTRC and SATRC. The purpose is not to present an exhaustive comparative exercise between both TRCs, but rather to illustrate each objective

suggested for the matrix, analyzing how it was or was not accomplished for each Commission.

### *2.1 Variables. Actions to perform: diagnose damages and recommend remedies.*

As the notion of “damage and remedy” has been broadly discussed in previous chapters, this introduction provides only a brief summary. Criminal acts can be defined as core factual matters that happened in the past and gave rise to an ongoing damage that should be remedied. This sort of damage has a dialogic structure, which refers to two opposite but related components (implicated actors): the damage committed by someone finds its other half in the damage suffered by someone else (Ricoeur, 1995).

Finding damages is a descriptive, analytic and explanatory —not propositional— task; therefore, all the objectives related to damage begin with verbs like “identify” and/or “document”. The notion of damage cannot be reduced to an individual transgression because, due to the nature of the context in which a TC emerges, criminal acts also imply institutional shortcomings: the notion of *background* refers to the historical institutional antecedents which precede the atrocity, while *context* refers to ongoing institutional failures. Additionally, the damage goes beyond the effect that the criminal act had on victim, so the criminal act has an *impact* on the victim that continues through time.

The notion of remedies is inspired by the universally recognized “right to an effective remedy”, which holds that damages must be remedied partially or integrally, according to circumstances. TC suggested remedies are based on identified damages, thus these remedies usually come in the form as compensation since remedies can rarely fully restore victims with what they have lost. The majority of TC suggested remedies are of a procedural nature in that they

suggest the measures through which relief may be obtained. Substantive remedies for relief are fewer and uncertain.

The task of “recommending remedies” suggests a propositional assignment. Thus, the goals related to remedies begin with verbs like *suggest*, *recommend*, and *design*. It is important to note that this propositional task does not imply the execution of the suggestions. The scope is very precise: a TC’s job is to recommend some suggestions that others will make effective once the TC finishes its job.

## 2.2 Dimension. Issues to document: Context and background, Criminal acts, Implicated actors, and Impacts.

### 2.2.1 *Context and background: Damage as Antecedent*

Andre DuToit asserts that truth commissions typically give priority to gross human rights violations rather than to systemic injustices, and thus diagnose the primary moral needs of victims and perpetrators rather than of beneficiaries and bystanders or collaborators (DuToit, 2000, p. 127). Likewise, Priscila Hayner argues that it is not clear how a TC might address a full range of injustices. For Hayner, it seems that TCs tend to focus more on human right violations than economic and social injustices (Hayner, 2011, p. 77).

Lisa Laplante, on the contrary, proposes that TCs should expand their mandates to include a legal framework that examines the socioeconomic root causes of violence in terms of violations of economic, social and cultural rights. In her opinion, if the underlying socioeconomic structures that lead to violence are not addressed, sustainable peace will remain beyond our reach. The overarching aim of prevention rests on the basic premise that postconflict recovery entails a holistic

approach that should include economic, political and social structural reform (Laplante, 2008)

The matrix I suggest agrees with Laptante's theory of confronting underlying social issues as a forerunner to sustainable conflict resolution. TCs appear in contexts where human rights violations cannot be reduced to individual transgressions; criminal acts cannot be explained by ignoring the context from which they emerged. In that sense, the notion of *damage* refers to the interwoven relation between individual transgressions and institutional shortcomings. Thus, to diagnose the damage implies establishing the historical antecedents, which precede the atrocity (background) and/or the ongoing institutional failures (context), which made it possible. Depending on the country, the background and context might be explained by the existence of the structural causes of the violence, the criminal state, the social frameworks, or the international context of relations, among other reasons. In any case, each TC must identify the most important social aspect that triggered criminal acts; each Commission should define the scope of the damage as antecedent according to TC resources, to the local requirements and to the political conditions. In what follows, I suggest some dimensions as for what could be identified.

#### 2.2.1.1 Structural causes of violence

Iris Marion Young asserts that structural injustice occurs when social processes that put large groups of persons under systematic circumstances of vulnerability simultaneously enable others to derive significant benefits: "structural injustice occurs as a consequence of many individuals and institutions acting to pursue their particular goals and interests, for the most part within the limits of accepted rules and norms." (Young, 2011, p. 52).

A good example for this can be found in Sierra Leone where the country's administrative and judicial structures made it possible for the country's capital

(Freetown) to accumulate all the political and financial power, leaving the remaining portions of the country in poverty and misery. The SLTRC pointed to the State as an inefficient and eroded structure (Shaw, 2010, p. 115) that inherited a series of problems from British rule, especially because “the [inherited] duality of the country’s administrative and judicial structures made them vulnerable to manipulation” (2004b, 2, 1, 19). According to the SLTRC Report, the political system inherited from the days of British rule left space for a very immature and corrupt democracy (2004b, 2, 2, 40) and, in the end, “provided a context conducive for the interplay of poverty, marginalisation, greed and grievances that caused and sustained the conflict” (2004b, 2, 1, 16ff). The SLTRC reviewed the record of post-independence governments and found a series of critical indicators, that is, a group of items that were seriously problematic within the political edifice of the country: “separation of powers; decentralisation; political participation; independence of the judiciary; the rule of law; and the existence and effective operation of oversight bodies and institutions of accountability” (2004b, 2, 1, 18). Further, the crisis regarding such indicators was found not only because of the investigations undertaken by the TRC, but because “the perceptions adduced by the Commission during its hearings indicate that Sierra Leoneans yearn for a principled system of governance” (2004b, 2, 1, 17).

The Report mentions two important initiatives the SLTRC suggested as remedies for the structural causes of the violence in the country: *National Vision for Sierra Leone* and *Vision 2025*. The first was intended to sense the peoples’ expectations for the future (2004b, 2, 1, 89), while the latter was established to design a government development policy (2004b, 2, 1, 93). Sadly, these recommendations were inefficient in themselves, inasmuch as national resources are still centralized and economic inequalities persist: “in practice, almost everything is still centralized around the President and the ruling party; access to economic and political resources and other benefits is still dependent upon how close an individual is to political power” (Sesay, 2007, p. 52).

### 2.2.1.2 Criminal State

In other cases, individual criminal acts could be strongly related to the existence of a *criminal state*. Isaacs and Vernon assert that “regimes do not pull triggers, but they collectively create circumstances in which triggers get to be murderously pulled” (Isaacs & Vernon, 2011, p. 9). Atrocity requires the members of a regime to “act jointly, although none of them individually might commit atrocious acts” (Isaacs & Vernon, 2011, p. 9).

The difference between the structural causes of violence (explained in section 2.2.1.1) and the *criminal state* is that the first one refers to an inefficient State while the second refers to “joint criminal enterprise”, according to international law. Inefficient States are unable to manage the wider socio-economic and political challenges, so they place a large number of their population in circumstances of vulnerability and pursue their particular goals (Young, 2011, p. 52). A criminal state might also be inefficient, but also becomes a “joint criminal enterprise” (see, Statute of the International Tribunal for the Former Yugoslavia, at Art. 7 (1) and Statute of the International Tribunal for Rwanda, at Art. 6) with a “common criminal plan or purpose” pursued by a plurality of persons (Gulyayeva, 2007). If this is the case, a TC must document how the criminal state created an administrative architecture to obtain the degree of cooperation and coordination necessary to commit crimes in a systematic manner.

The South African Apartheid is a case in which an administrative architecture of atrocity played a key role in the explanation of the country’s conflicts. The SATRC Report states the National Party considered Apartheid as “a white counter-revolution” which promoted at least seven official legislative strategies within the administrative architecture —the Population Registration Act of 1950, the Group Areas Act of 1950, the 1949 Prohibition of Mixed Marriages Act, the 1950 Immorality Amendment Act, the 1950 Suppression of Communism Act, the 1953 Separate Amenities Act, the 1953 Bantu Education Act and the 1959

Extension of University Education Act (1998, 1, 2, 26–40)—, all of which were racism-driven (Cobban, 2007, pp. 83-88). As a whole, all of these Acts grew into “a social engineering project of awesome dimensions” thanks to which, “from about the mid-1950s and for the next thirty or so years, the inherited rural and urban social fabric of South Africa was torn asunder and recreated in the image of a series of racist utopias” (1998, 1, 2, 42).

There were many transformations needed in order to remedy the administrative architecture of atrocity in South Africa. All the recommendations were issued and entrusted to a Secretariat that had the responsibility of overseeing them (1998, 6, 5, 7, 2). A very significant remedy was the demand for the President of South Africa to apologize. After decades of silence and denials, the SATRC urged “that, as head of state, the President of the Republic of South Africa [apologize] to all victims on behalf of those members of the security forces of the former state and those armed forces of the liberation movements who committed gross violations of human rights” (1998, 6, 5, 2, 16).

By the time the TRC started its investigations, the core of the Apartheid architecture had already been dismantled. However, a considerable portion of such administrative architecture remained the same; the hegemony of the security forces, for example, remained intact “during the period of preconditions for negotiations and the negotiations process itself” (De Lange, 2000, p. 19) and, although some consider that the SATRC might have helped in the breaking of such a hegemony (*Ibid.*, p. 19), others note that the courts kept their missions before, during and after the TRC period (*Ibid.*, p. 28), and that, in general (*Ibid.*, p. 29), there was a high degree of continuity in the structure and organization of state institutions, especially with regard to personnel. This problem manifests itself in two ways. In the first place, “a lingering ‘apartheid memory’ continues to restrict the development of trust and allegiance in the new political dispensation and its institutions. [...] In the second place, the whole legal order, especially the criminal justice system, suffers from a serious crisis of credibility, legitimacy and efficacy”

(De Lange, 2000, p. 28). In a way, this might show that an important aspect of the South African antecedents demanded more satisfactory remedies than the ones the SATRC suggested.

### 2.2.1.3 Social frameworks

Ordinary criminals act outside the prevailing moral framework, violating social norms by committing crimes; in contrast, individuals who are swept up in mass violence do not step outside the prevailing moral framework – they succumb to intense social pressure (Aukerman, 2002, p. 59). These sorts of social frameworks “turn the world upside down and make a crime against a whole category of people an accepted behaviour” (Bernstein, 2002, p. 221); in such conditions, criminals effortlessly may come to believe that murdering is morally acceptable. The concept of social frameworks is closely related to Arendt’s concept of ideological thinking; both seek to reduce the monstrosity and the magnitude of the criminal acts, justifying them through lies and through emancipation from reality.

The SATRC points out three important social frameworks that later facilitated Apartheid’s racial segregation as an accepted phenomenon in the country: the Cold War, the anti-colonial context and the Apartheid itself. The first refers to a “virulent form of anti-Communism and anti-Marxism that took root after the 1948” (1998, 5, 7, 67) that resulted in a demonization of the liberation movements. In the same passage, the TRC quotes a former Minister of Law to illustrate its point:

The mother organisations of the liberation movements, the ANC-PAC, were seen with justification as fronts and tools of the Marxist-Communist threat against the country ... I believed and still believe that if the forces of Communism and Marxism since the 1950s were allowed to take over South Africa, our country would today be

destroyed, impoverished and a backward country with an atheist communist ideology as the government policy ... I saw it as part of my duty to fight against such thoughts, programmes or initiatives and to ensure that these objectives were not successful (1998, 5, 7, 67).

The second framework refers to the anti-colonial resistance movements in South Africa. Although “the liberation movement was dominated by the non-racialism of the ANC and anti-racism of other movements such as Black Consciousness, some organisations interpreted it as a struggle against whites” (1998, 5, 7, 69), and some even explicitly stated that “the local struggle was part of the wider anti-colonial movement in Africa” (1998, 5, 7, 70). The Report mentions all of this as a social framework in which South African atrocities found important support in both black and white groups.

The third and final framework refers to fundamental racism elements of Apartheid. Knowing that the obvious problem underlying Apartheid politics is the intense racism it entails, the Report goes on to explain how such racism was ideologically understood at the core of Apartheid:

Racism is a systematic ideological doctrine which creates the ‘other’ as essentially different. In South Africa this was the rhetorical basis for apartheid and ‘separate development’: blacks required development, but at their own, slower and different pace, since (as the argument went) they were essentially different from the more civilised, developed people of European origins (1998, 5, 7, 83).

Unfortunately, it seems that not enough recommendations were made to remedy the strong racism by white South Africans, a factor that served as an important part of the framework of the atrocity. Evidence of such gaps left open can be seen in ongoing racial differences in political (Cobban, 2007, p. 131) and economic levels (Cobban 2007, 132; Chapman 2008b, 188); even after the end of

Apartheid, subsequent economic problems revived old interracial problems, where the Whites accused the Blacks for the crime rates and the Blacks accused the Whites for having most of the country's wealth still in their hands (Cobban 2007, 133). In some way, this suggests that the problem of changing into an equal-race mindset was not wholly confronted and that racism still lurks beneath the surface. Cobban quotes Mongezi Goma, a South African activist, who is of the same position:

So, did [Goma] feel that the TRC had succeeded in bringing about a recognition by most Afrikaners of the equal humanity of their non-White compatriots? 'No, they mostly don't recognize that yet,' he said. 'The average Afrikaner would still see the transformation of 1994 as a sellout' (Cobban 2007, 122–123).

#### 2.2.1.4 International context

In other cases, international institutions and/or foreign States could facilitate tools to execute genocides and provide the means to industrialize crimes (Drumbl, 2011). In those cases, atrocities begin "with the devious kindling of conflict entrepreneurs, who seek to inflame and exacerbate communal tensions"; this is the case of Sierra Leone.

The SLTRC did identify the major role played by Charles Taylor's political administration in the neighboring country of Liberia. Having taken over, Taylor established a dictatorial regime that officially fueled the entire Sierra Leonean conflict throughout (Dugal, 2009, pp. 34-36). In fact, the SLTRC report mentions how, as leader of the National Patriotic Front of Liberia —the position from which he seized power in his country—, "Taylor warned in a BBC radio interview in 1990 that Sierra Leone would 'taste the bitterness of war' because of the country's membership and backing of the West African Intervention Force (ECOMOG) that was attacking his bases in Liberia" (2004b, 2, 1, 7, footnote 1).

However, the Liberian administrative architecture was not the only one to play a central role as an antecedent for the conflict; the SLTRC's regional analysis also showed how Taylor could not have sparked the Sierra Leonean conflict if he had not become the protégé of Muammar Gaddafi (Economist, 2007). According to the SLTRC Report, Gadaffi's government not only trained Sierra Leonean would-be revolutionaries in the late 1980s, while the country was still in a pre-conflict stage (2004b, 2, 1, 24), but also encouraged and trained Taylor in Libya (2004b, 2, 2, 375) and even helped him to meet Foday Sankoh —the future leader of the RUF guerillas—, with whom Taylor established an alliance that later proved decisive for the future Sierra Leonean conflict (2004b, 2, 1, 63).

As part of its recommendations, the Report emitted two suggestions regarding several external actors that contributed to the Sierra Leonean conflict. Mentioning Taylor's role in the conflict, and how he received enormous benefits out of the blood diamond trade, the SLTRC suggested the following:

The Governments of Sierra Leone, Liberia and the International Community [should] spare no efforts to trace the material and financial assets of Charles Taylor and the NPFL and to take measures to recover such assets. Any recovered assets or parts of them should, subject to negotiations with the government of Liberia, become part of the War Victims Fund proposed under the Lomé Peace Agreement and used for financing the comprehensive reparations programme recommended by the Commission (2004b, 2, 3, 429–430).

Along the same lines, the Report also insisted on the promotion of regional integration and unity, calling on involved regional governments to acknowledge the role they played during the conflict and publicly commit to ECOWAS's principles of regional cooperation (2004b, 2, 3, 412). Specifically regarding the aforementioned case of Libya, "the Commission [called] upon the government of Libya, in recognition of the training and financial support it supplied to the insurgents, to

provide monetary support to the War Victims Fund and to support reconciliation initiatives within Sierra Leone" (2004b, 2, 3, 413).

## 2.2.2 Criminal Acts and Implicated Actors

The matrix aims at identifying the different actors involved while avoiding the assignment of fixed and homogenous roles to victims and perpetrators. In the sort of conflicts where TCs emerge, the victim of a given criminal act might be the perpetrator in another (i.e., child soldiers); or someone may be unable to recognise him/herself as a victim (i.e., victims of sexual violence); or someone may even deny the status of victim given to him/her by others (i.e., for fear of stigmatization) (Selim, 2017).

With respect to the task of "suggesting remedies", it may happen that those who were victims in the past now claim other identities such as survivors or resilient subjects, indicating that the status of victim has been overcome. It is equally possible that overcoming misfortune and passivity, conditions commonly associated with victimhood, indicates that those who have suffered in the past can now participate in TCs as citizens who have resumed their lives and who can suggest feasible remedies for the future.

On the other hand, the potential indignation felt by the empathic public ("those who are not victims") as a reaction to victims' suffering needs to be taken into account(Sanchez G., 2013).. However, it is not sufficient to provide a forward looking Peter Novick, contends that the public feels more easily inclined to identify with the victims than with the perpetrators, and that such inclination tends to undervalue the notion of historical responsibility and the involvement of community members in the commission of atrocities (Novick, 2001, p. 13). This approach elides the possibility of generating morally important discussions in which the different actors can express their willingness to transform and participate in

restoring the human and civic dignity of both victims and society (Du Toit, 2000, p. 135).

The suggestion of identifying the different actors involved questions the traditional focus of TCs on victims, along with questioning the identity and role of 'victims' and 'non-victims'. If TCs focus on victims, how does one decide who is a victim and who is a 'non-victim', what can be expected from 'non-victims', should bystanders, those who benefitted from the violence and aiders and abettors be lumped in the same category, should a TC expect the same things from them?

Eric Bourine advocates for the concept of 'complex political victim'. He argues that the concept of victim expresses a specific position within a specific context and relation. It is a concept that determines a partial identity, one among several. Hence, a 'complex political victim' is not fully subsumed in the victimized subject, he/she is not reduced to the status of victim, since other components make up his/her identity (Bouris, 2007).

Following in Bourine's footsteps, Baines suggests a 'complex political perpetrator' to describe extremely marginalized persons, in situation of chronic crisis, and who use violence as an expression of political agency (Baines, 2009). This concept is particularly used to conceptualise the responsibility of child soldiers. This group of 'perpetrators' cannot be defined solely by the acts of violence they commit, regardless of how serious they are. Doing so would disregard the various levels of responsibility that led to the victimization of the child (Baines, 2009, p. 22). A contextual analysis allows the understanding of the various layers of responsibility of national and international actors, thereby revealing the true complexity of the conflicts that come before TCs (Nagy, 2017, p. 279).

In sum, TCs are highly participatory temporal spaces, which seek to perform both retrospective and prospective examinations. This aim displaces victims as the main focus of TCs because their objectives require the participation of a wider

range of actors. This participation cannot be reduced to public statements in which (i) victims share their testimonies and (ii) those ‘who are not victims’ listen empathically, but passively. The different actors involved in the conflicto require different spaces representing both the complexity of the conflicto and dynamics of identities. For instance, victims may participate as human beings who suffered harm in the past, but also as citizens who have resumed their lives and are able to propose viable solutions for the future. Perpetrators may provide factual information to shed light on the past, while also expressing and materialising their remorse and desire to contribute to the construction of a peaceful society. Other citizens may be an empathic audience to testimonies of suffering, but also reflect on their responsibility as bystanders.

#### 2.2.2.1 Victims implicated in the criminal acts.

Another objective suggested by the matrix is to identify the victims implicated in the criminal acts. In broad terms, the notion of *victims* might refer to the *direct victims* who have suffered the direct effects of violations, but also to *indirect victims* who are linked to direct victims in such a way that they too suffer by virtue of that link (International Institute for Democracy and Electoral, 2003, p. 54). Simultaneously, those who have suffered the direct or indirect effects of the damage might be identified as individual victims (individual persons) or as collective victims (groups, communities, entire nations, etc.). This collective notion of victimhood recognizes that atrocities damage us all- simply by virtue of our being part of a common humanity. Each new TC must define what the notion of victims means, what its scope will be and, specifically, if there would be specific groups of victims which require special attention. Additionally, it implies how the victims’ information will be presented: a general list of victims, emblematic cases, thematical categories, etc.

Chapter 5 in volume 7 of the South Africa TRC Report is a list of all the victims identified throughout the investigative process of the TRC. The SATRC used the list to focus on each of the victims, not the perpetrators (2002, 7, 1, p. 3)<sup>19</sup>; because it was also meant as a tribute to the thousands of victims, the list is considered the SATRC's richest legacy for the future (2002, 7, 1, p. 9) and was handed to South Africa's National Archives for future access by the general public (2002, 7, 1, p. 2). The list "contains the stories of those who came forward to speak of their suffering" (2002, 7, 1, p. 1) and those whom the TRC corroborated to have been victims of gross human rights violations (2002, 7, 1, pp. 3 and 5). Nevertheless, several victims were left out of the process —with no hope of reparation— because they came forward after the cut-off date of December 1997 (2002, 7, 1, p. 2). Overall, the "Commission received statements from 21,290 people, of whom more than 19,050 were found to be victims of gross violation of human rights. In addition, more than 2,975 victims emerged from the amnesty process" (2002, 7, 1, p. 1). The list of 926 pages indicates the names of the victims arranged in alphabetical order, the victims' age, the time in which the violation occurred and a brief summary of the crime (2002, 7, 1, p. 4).

Some consider the Report to be limited because of its focus *against persons*, thus leaving out abuses such as those committed against communities (Cobban, 2007, p. 97). Similarly, the Report itself recognizes the summaries of the crimes do not always do justice to the wider picture of the abuses to black people (2002, 7, 1, p. 6), especially to the "thousands of women in South Africa who were left behind to fend for themselves and who experienced the brutality of the Apartheid system" (2002, 7, 1, p. 9). This was mainly due to the fact that, although the TRC was "obliged by statute to deal even-handedly with all victims" (1998, 1, 3, 60), the principal victims of the conflict were males:

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<sup>19</sup> Up to this point, all of the quotes from the official SATRC documents have used the numerical reference system each of the documents offer; in this case, due to the lack of such numbering in the Foreword of the Codicil's Volume 7, Part 1, sections of the text are quoted referencing the pages in which the selected passages appear.

Males dominate as victims within the narrow mandate of violations examined by the Commission – killings, torture, abduction, and severe ill treatment. The gender profile of those killed inside South Africa, those shot in street protests, the MK operatives arrested, imprisoned, tortured and killed is largely male (2002, 7, 1, p. 9).

The Sierra Leone TRC Report gathered a list of war victims “as an acknowledgement of those who suffered in the war and as a poignant reminder of the vital need to ensure that the events described herein never happen again” (2004b, 2, 5, 5). A grand total of 13,003 victims were presented in two lists; answering to the requirement in its mandate to pay specific attention to subjects of sexual abuse and to children (Parliament of Sierra Leone 2000, III, 6, 2b), “the Commission [...] devoted its first list [of 1,012 names] to victims of sexual violence and forced conscription [...] the second list [of 11,991 names<sup>20</sup>] excluded those in the first” (2004b, 2, 5, 1). The 230 pages of the list include the name of each victim, his or her age, the year and district in which the crime took place and a brief description of the violation.

#### 2.2.2.2 Responsible actors implicated in the criminal acts

The matrix suggests that TCs should identify both the responsible actors involved in the criminal acts and the different degrees of responsibility for the criminal acts. Likewise, TCs should recommend alternative ways to deal with the different degrees of responsibility for the criminal acts.

Regarding the responsible actors, the matrix suggests that TCs should focus on the complex lines of collective responsibility and complicity. Focusing “only on the most notorious killers and senior leaders may falsely bestow collective innocence among the majority, who never shot a gun, but who have been

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<sup>20</sup> Of these 11,991 victims, only 10,404 are explicitly mentioned in the list; the remaining 1,587 were individuals named in confidential statements (2004b, 2, 5, 7).

passively or actively complicit with atrocity" (Isaacs & Vernon, 2011, p. 37) . Even though a TC assumes that criminal acts are, in a way, a product of vices in context, it is also true that responsible actors are to be held morally responsible. Their actions are wrong, and must be judged, even if their character was shaped in a collapsed context (French, 2001, p. 41). The point is that, criminal trials —*ad hoc* or permanent— are better suited to deal with individual criminal responsibility; indeed, tribunals are set up to judge the innocence or guilt of the defendant. In that sense, this objective is excluded from the TC's scope.

Once a TC focuses on collective responsibility, it should be careful to realize that not all citizens bear the same relationship to the wrongdoing (Isaacs 2011). In that sense, the different degrees of responsibility must be identified in order to avoid that which Arendt warns about when she explains that, where all are guilty, nobody in the last analysis can be judged (Arendt, 2011b, p. 126). Arendt establishes a distinction between *guilt, responsibility (moral and causal)* and *shame*. Likewise, Jaspers suggests distinguishing between *criminal, political, moral* and *metaphysical* guilt (Jaspers, 2001). Each TC must establish the most adequate way to classify and deal with collective responsibility and design alternative forms of accountability and non-criminal sanctions.

A significant element of the Sierra Leonean conflict is the fact that the civilian population suffered attacks from all sides (Dugal, 2009, p. 37). The Special Court of Sierra Leone (SCSL) had jurisdiction over "those with the greatest responsibility for international crimes during the conflict" (USIP, 2016) and were tasked with the responsibility of assigning criminal responsibility. It is an enormous achievement for the SLTRC to have held all criminally responsible warring groups to the same standards (Cobban, 2007; Stovel, 2010, p. 218) and to have been able to uncover complexities about the war that were not known before; for example, that the havoc was not produced only by the RUF (Stovel, 2010, p. 203), or that the Civil Defense Forces, specifically the Kamajors, who were thought of as heroes, turned out to be criminals too (Dugal 2009, 38). Overall, the SLTRC Report stated

the most significant criminals were the RUF —especially youths between 18 and 35 years (2004b, 2, 1, 62)—, the AFRC and the CDF (2004b, 2, 1, 34). However, the Report also considers several external actors in the Sierra Leonean conflict who were involved and should have been held responsible, namely the international diamond industry for not being able to filter blood diamonds; the country's neighbors, especially Liberia, for not sanctioning diamond piracy; the Taylor regime for trading blood diamonds with the RUF; the Sierra Leonean government for not controlling diamond mining and exporting; Libya, for training RUF members; Burkina Faso, for serving as a weapons conduit for the RUF; Liberia (especially, Charles Taylor and his NPFL) for sparking the first battle and fueling the conflict all along; the UN, for abandoning Sierra Leon in time of need; the UK, for delaying its intervention; the ECOMOG, for failing to protect Freetown in 1999 (although its positive battle contributions are undeniable); and the Executive Outcomes' victory over the RUF as an important aspect to bear in mind in terms of its contribution to the Peace Accords (Dugal 2009, 362; 2004b, 2, 2, 106ff).

Despite these clear identifications, there are very few suggestions of how to deal with those responsibilities; a notable example is an imperative recommendation regarding the State as a principal perpetrator of the conflict. The Report suggested that:

The President, as the 'Father of the Nation' and as the Head of State, should acknowledge the harm suffered by women and girls during the conflict in Sierra Leone and offer an unequivocal apology to them on behalf of the government and preceding governments in Sierra Leone (2004b, 2, 3, 317).

The South African TRC relied, to a large extent, on a different form of submission – amnesty applications (1998, 5, 6, 31). It was the possibility of amnesty in the Amnesty Committee (AC), —but especially, according to the

SATRC Report, the disclosures of Mr. Eugene de Kock— that motivated perpetrators to reveal themselves (1998, 5, 6, 32).

Although the AC's output was vast, by September 1997 the AC had already received 7,127 submissions (1998, 1, 10, 3), the SATRC Report itself recognizes that the individual responsibility of “the leaders and voters of the nation, and the varying degrees of moral responsibility that should be adopted by all South Africans, have (both by design and default) not been given sufficient emphasis by the Commission” (1998, 1, 5, 106), mainly because “the greater part of the Commission’s focus has been on what could be regarded as the exceptional – on gross violations of human rights rather than the more mundane but nonetheless traumatising dimensions of apartheid life that affected every single black South African” (1998, 1, 5, 107). It is for this reason that the Matrix suggests leaving the determination of individual/criminal responsibilities to criminal courts. Extraordinary violence usually results in crimes that can be punished, as they are considered crimes. However, there are other forms of violence, everyday, mundane cases, that are not considered crimes, but are nonetheless traumatic and painful. This second type of violence, which cannot be properly defined as a crime, must be dealt with in particular by TCs.

Overall, Chapter 6 of Volume 5 of the SATRC Report describes the role of the State, its allies, the liberation movements and civil society. Later on, as part of the Codicil, Section 5 of Volume 6 dedicates 117 of its 151 pages to view more closely what the 1998 Report had said regarding some of the most important actors of the conflict —in general, it confirms the most important statements of the original Report—: the State, the ANC, the Inkatha Party, the Pan African Congress and several right wing groups (2002, 6, 5). Thus, all warring groups were held to the same standards (Stovel, 2010, p. 218); this provided “a single, recognizable, and politically neutral benchmark for the TRC as it investigated acts committed by all parties”(Cobban, 2007, p. 98) .

Of all the different actors, the SATRC Report clearly points to the State as the principal perpetrator during the South African conflicts:

The predominant portion of gross violations of human rights was committed by the former state through its security and law-enforcement agencies. Moreover, the South African state in the period from the late 1970s to early 1990s became involved in activities of a criminal nature when, amongst other things, it knowingly planned, undertook, condoned and covered up the commission of unlawful acts, including the extra-judicial killings of political opponents and others, inside and outside South Africa. In pursuit of these unlawful activities, the state acted in collusion with certain other political groupings, most notably the Inkatha Freedom Party (IFP) (1998, 5, 6, 77).

Sadly, like in Sierra Leonean case, the SATRC left a gap when it came to suggesting remedies for collective responsibilities. As part of the Institutional Hearings, there were side mentions of the sectors' role in the future of South Africa, but they did not include very significant concrete suggestions, or limited themselves to *share* the different sides of debates regarding such roles – for example, on what businesses that benefited from Apartheid should do to help change the situation in the country (1998, 4, 2–7, esp. 4, 2, 149ff). There are two recommendations that are also noteworthy in this sense, one referring to the liberation movements and the other to the business sector. The SATRC suggested liberation movements should help with symbolic reparations, especially with apologies and the investigation of missing victims (1998, 5, 8, 109–111). Also, the SATRC suggested that the business sector should be involved in restitution initiatives that might help repair the victims of the conflict and empower the poor (1998, 5, 8, 39). Such recommended initiatives included the audit of underused lands, the creation of special funds for victims and the abolition of child labor in all sectors, among others (1998, 5, 8, 40ff). Nonetheless, when compared with other suggestions, these recommendations seem rather timid.

Regarding non-criminal responsibility, some consider the TRC's work, as a whole, to have caused a considerable change in the white South African Population:

White South Africans can no longer say 'I don't know'. The truth can no longer be avoided. A remarkable feature of the Commission was the media coverage of its progress. Newspapers and electronic media routinely covered the work of the Commission, every day of the hearings. Hearings were broadcast live throughout South Africa for four hours a day (Boraine, Niacro, Victim Support Northern, & South Africa Truth and Reconciliation, 2000, pp. 10-11)

Likewise, as it was said before, there was an episode where six young black men went to the Cape Town office of the TRC and applied for amnesty, stating that their crime was apathy, explaining that: "The act says that an omission can also be a human rights violation. And that's what we did; we neglected to take part in the liberation struggle. So, here we stand as a small group representative of millions of apathetic people who didn't do the right thing" (Smyth, 2007, p. 17)

Despite these events, the challenge that the SA Report set is that "ordinary South Africans do not see themselves as represented by those the Commission defines as perpetrators", and its suggestion that "only by recognising the potential for evil in each one of us [are we able to] take full responsibility for ensuring that such evil will never be repeated" (1998, 1, 5, 108).

#### 2.2.2.3 The most relevant criminal acts to be documented.

The matrix suggests that TCs should select the most relevant criminal acts to be documented. As was said before, the extent of criminal acts documented should be as broad as possible, however, the possibility to learn the whole truth

about criminal acts is limited to the means and resources at the TC's disposal (mandatory selectivity). Even though it was recognized both for judicial and extrajudicial mechanisms, it is naive to attempt to investigate, prosecute and, if appropriate, punish all criminal conduct that occurred during an armed conflict or during an authoritarian regime. This impossibility has led to the implementation of selection and prioritization criteria. Although there are no internationally accepted parameters to delimit and guide the determination and application of the selectivity criteria, practice has shown that this selection may occur in conjunction with prioritization or independently. There may be an express policy of prioritization or deduction from the given practice within the ordinary and permanent courts or temporary courts that apply the laws of transitional justice; they may be in accordance with the mandate of the judicial mechanism or not necessarily follow it; it can occur in a scenario within all the criminal conduct that occurred during the period of the transition of the State, or only within those that constitute crimes under International Law.<sup>21</sup>

In the Sierra Leone case, the *Executive Summary* of the Report gives a first explanation on the TRC's methodology to investigate and typify the relevant facts that occurred in Sierra Leone (2004b, 2, 1, 29):

The Commission used quantitative and qualitative analytical techniques to shed further light on particular patterns and trends. Areas of analysis included the types and frequencies of the violations committed, the profiles of the perpetrators, the identities and demographics of their victims and any evidence of targeting. The Commission examined sixteen specific categories of violations, although within each of these the scope of analysis was broad.

Later on, in the aforementioned chapter, the Report explains how the TRC

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<sup>21</sup> Acknowledgements to professors Andrea Mateus and Ingrid Rodriguez on their input to this paragraph.

took “violations known to have occurred frequently” (2004b, 3A, 4, 12) and organized them into a framework:

Some violations such as amputation, forced cannibalism and forced displacement stand alone, because of their specific character and the patterns in which they were committed. The remaining violations have been divided into three sections: violations perpetrated in the context of abduction; violations without prior abduction; and economic violations (2004b, 3A, 4, 12).

Following these criteria, the resulting framework was developed to categorize the violations (2004b, 3A, 4, 19):

1. Amputation
2. Forced Cannibalism
3. Abduction and subsequent long term Detention and Mistreatment
  - 3.1 Forced Recruitment and Sexual Slavery with particular reference to children (including the Drugging violation), Forced Labour
  - 3.2 Assault, Torture and Rape of both children and adults that accompany or follow from Abduction
4. Mistreatment without Abduction
  - 4.1 Forced Labour, Assault, Torture and Rape
  - 4.2 Short term Detentions
5. Economic Violations
  - 5.1 Looting and Property Destruction
  - 5.2 Extortion
6. Forced Displacement
7. Killing

In the case of the SATRC, an important debate came up on whether the Commission’s investigative methodology was appropriate or not (Cherry, 2009, p.

255). This was mainly due to the fact that the TRC analyzed various individual cases with the purpose of establishing more general patterns of violence in order to prevent future repetitions (Cole 2010, 168) and, of all the material that was gathered for this purpose and later handed in to the National Archives for public access, only certain emblematic cases were included in the Report (1998, 1, 5, 38). On the other hand, unlike the SLTRC Report, which included a thematic categorization of the crimes committed on a national scale, the South African crimes —listed in Volumes 2 and 3 of the Report— were presented using different criteria: thus, Volume 2 described the crimes committed inside and outside South Africa between 1960 and 1990 and during the 1990s as such (1998, 2, 1–5), while Volume 3 (1998, 3, 1–6) portrayed the gross human rights violations from the victims' perspective, regionally structuring the narrations and thus reflecting the regional structure of the TRC itself (Department of Justice and Constitutional Development of the Republic of South, 2009). In the end, the result was a report that only showed emblematic cases that more or less supported the general explaining narratives which, according to some, did not reflect the expectations of the victims and avoided the complexities of reality (Cherry 2009, 253).

Both the Sierra Leon and South Africa cases —and common sense— show that no TRC can presume to cover all such situations; thus, the selection of cases is a necessary procedure that depends on various factors, including —among others— the resources a TRC has at hand<sup>22</sup>. In that sense, both the SLTRC and the SATRC worked in different ways. The SLTRC (with a budget of \$4.7 million over 2 years) chose to prioritize and select cases based on university studies and without previously going to the regions to hear the victims; it reviewed several university studies and, using such documents, chose a series of *categories* and main themes that were later used as criteria to select the most representative institutional hearings – the chosen cases were the principal material for the Report (2004b, 1, 6). The SATRC (with a budget of \$55 million over 6 years), on the other

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<sup>22</sup> This is mentioned here because inadequate funding was one of three important problems the SLTRC had when it started its investigations (Stovel 2010, 190).

hand, organized its window cases based on the information gathered by its regional offices throughout the country (1998, 1, 6). Both should be methods a future TC should consider to follow, depending on the nature of its conflict and the resources it has at hand for its investigations.

#### 2.2.2.4 Report

An additional TC objective suggested by the matrix is to produce an impartial and official report, which describes the relevant criminal acts and includes all the TC's recommendations. Due to the variety of audiences—policymakers, legislators, educators, researchers, victims, and others—consideration must be given to the different media and venues that could be utilized to maximize the report's impact (González & Varney, 2013, p. 67).

Laura Stovel mentions four important achievements of the Sierra Leone Report: besides providing “by far the most compelling history of the conflict available” (Stovel, 2010, p. 216), the SLTRC Report helped to understand the root causes of the war, held all warring groups to the same standards, recommended on cultural and legal factors of violence and advocated reparations for the victims (Stovel 2010, 217–219). Likewise, in *Witness to Truth: The TRC of Sierra Leone - An Overview*, author Zoe Dugal does not directly assess the Report as such, but widely quotes it in her examination of the Commission, and even seems to — positively— review each of the objectives the TRC Mandate dictates, thus, manifesting an encouraging view of the Report (Dugal 2009).

The official version of the SLTRC Report was widely spread across the country; two additional popular versions of the printed report were published, the first version was published for children and another one for secondary schools (USIP 2015a). The child-friendly version was developed by the TRC itself and later published with the help of UNICEF (Sierra Leone Truth and Reconciliation Commission 2004a).

However, considering that, “with just 4,000 copies for the whole country, only a small percentage of the population [would] have access to these books and fewer [would] have the time to read so many pages” (Trwg, Sheriff, & Bobson-Kamara, 2005, p. 4), the second version was produced outside the TRC by the Truth and Reconciliation Working Group (TRWG) and funded by Germany’s Foreign Office and the Institute for Foreign Cultural Relations for the purpose of making the Report’s contents available to Sierra Leon’s population of secondary students (Trwg et al., 2005, p. 4).

The SATRC Report was presented to President Mandela in October 1998 (USIP, 2016). According to Richard Goldstone, an important figure chairing the fact-finding commission in the last years of Apartheid, the Report represents a major achievement in as much as it is a single historical record of what happened in South Africa, which contributed to establishing a consistent democratic apparatus, even if it was submerged in apartheid ideology (Cobban, 2007, p. 134).

There were some issues regarding the subject of languages and translations. Indeed, the testimonies the TRC received during its investigations were gathered in all eleven official South African languages; however, they were only registered in the Apartheid system’s languages —Afrikaans and English—; in that sense, some consider it an academic duty to finish the translation and analyses of all narrative testimonies in order for the contents of the Report to be available for the entire South African population (Cole 2010, 168–169). However, it must be noted that even before the Report was published, the TRC’s work was given wide publicity in the South African media, especially its Human Rights Violations Committee (HRVC): a Media and Communications Department was established to allow for full TV-coverage of the TRC hearings and a weekly wrap-up, the *TRC Special Report* (Cobban 2007, 101–102; USIP 2016).

### 2.2.3 Impact

The matrix suggests that TCs should identify and document different impacts on individual/collective and/or indirect/direct victims (psychological, mental, physical, economic, etc.), attending with special care to the impact of the violence on human relations and documenting their manifestations. According to these damages, TCs should design processes to assess the impacts on direct and indirect victims and facilitate victims' access to reparation programs, to design mechanisms and to establish processes to repair broken relations.

The Sierra Leone TRC powerfully depicts how the damage greatly impacted upon the victims as well as human relations as a result of the conflict, especially in its attention to severely affected groups, identified by the *Truth and Reconciliation Commission Act* even from before the TRC began its work.

Although the SLTRC was “obliged by statute to deal even-handedly with all victims” (1998, 1, 3, 60), the structure of its report shows it obediently followed the Act’s mandate to give “special attention to the subject of sexual abuses and to the experiences of children within the armed conflict” (2004b, III, 6, 2, b) and to examine “the impact of the conflict on specific groups, particularly on women, children and youths” (2004b, 2, 1, 5). Thus, the Report includes several sections dedicated to illustrate —from diverse standpoints— the impact of the conflict on these three groups of victims.

The Report begins with an *Executive Summary* that highlights, for example, how women’s “vulnerability was deliberately exploited in order to dehumanise them” (2004b, 2, 1, 50), or the fact that children were forcibly recruited to become perpetrators (2004b, 2, 1, 56 and 60). For this reason, both the Lomé Peace Agreement and the TRC Act “directed the Commission to give special attention to the experiences of children in the armed conflict” (2004b, 2, 1, 57; 1999, V, Art. XXX) and the impact this had in them.

Another text that addresses the issue at hand is a chapter in the Report on *Findings*. Here, the text explains how the Sierra Leonean war left youths with three major problems: they are now undereducated, due to the lack of chances they had to study during the 1990s (2004b, 2, 2, 460); many of them —even some of the graduates— have a difficult time finding a job in a country with so many economic and infrastructural problems (2004b, 2, 2, 461); and finally, many had marijuana issues during the war, a serious problem that was left unattended and has now caused countless cases of addiction to harder drugs (2004b, 2, 2, 462). This chapter also talks about children, describing how they were deliberately targeted (2004b, 2, 2, 464) and how “many children have been ‘conditioned’ into accepting violence as the norm”, so that “perpetrating violence became a means of survival” (2004b, 2, 2, 468) and many “have entered adulthood deeply scarred by their traumatic experiences and their feelings of guilt” (2004b, 2, 2, 469). It also mentions other serious impacts, such as girls’ post-rape health problems (2004b, 2, 2, 489), the grave disadvantages of not having received acceptable education (2004b, 2, 2, 490) and the increase in the number of children who, not able to return home, live now on the streets (2004b, 2, 2, 493). Regarding women, this section mentions how, in general, women were wronged “with the deliberate intention of inflicting serious mental and physical suffering or injury on them” (2004b, 2, 2, 526), and how this had various psychological impacts on them, be it because they lost their families and became widows (2004b, 2, 2, 547), or because they developed strong drug addictions (2004b, 2, 2, 529), or because they suffered a double victimization in Sierra Leonean society:

The Commission finds that many women have suffered ‘double victimisation’. First they were compelled against their will to join the fighting factions and today they are victimised by society for having played a combative role in the conflict (2004b, 2, 2, 535).

Further, women also suffered grave physical consequences: many were

forcibly sterilized (2004b, 2, 2, 518), others were mutilated (2004b, 2 ,2, 519) and many of them contracted diseases due to the sexual abuses they underwent (2004b, 2, 2, 543).

The SLTRC recognized that human social relations, as opposed to isolated individuals, also suffered considerable impacts of the country's war. The breakdown of social and cultural values the Report mentions can be better understood in light of the impact the Sierra Leonean conflict had on families, communities and belief systems. Regarding families, the Report considered "the family felt the most impact of the war in Sierra Leone" (2004b, 3A, 4, 127); the targeting of families "was designed to remove all vestiges of respect and dignity in the people abused. Such conditioning makes people very maleable and easy to control. It however led to the break up of families, as the trauma was too great for many to bear" (2004b, 3A, 4, 139). All of these problems were particularly strong when the heads of the families were killed and the community was not able to replace its providing functions (Sesay, 2007, p. 50); they were also evident when the forced recruitment of children included a systematic deracination of family relations, a traumatic transition into new values and an alteration of the initial identity of the children (2004b, 3A, 4, 345ff). Overall, the TRC summarized such impact as follows:

Household heads were targeted, brutalised and killed in the presence of their children. Young girls most of them not yet at puberty were raped and taken away to become "bush wives". Boys, some of them as young as eight years old, were taken away to be trained to fight for the combat groups, some of them never to return. In most cases, their links with their families were deliberately severed through forcing them at the pain of death to commit incest and horrendous atrocities against family members (2004b, 3A, 4, 127)

Regarding communities in general, the SLTRC considered they were attacked mainly in order to replenish the warring groups' resources, and that such attacks were the principal cause of the widespread displacements that Sierra Leonean communities suffered during and after the war (2004b, 3A, 4, 144). This had an important consequence regarding the *forma mentis* of these communities and their tendency to commit violent acts:

Moreover, such acts contributed significantly to the siege mentality prevalent in many communities of the Southern and Eastern provinces.

One of the most direct manifestations of the siege mentality was the subscription to the concept of civil defence and the consequent mobilisation of local militias (2004b, 3A, 4, 145).

Finally, regarding the human relations established around belief systems, the SLTRC discovered that the attack on barries<sup>23</sup> and on local traditional chiefs seriously altered ancestral social relations and had a deep impact on a communitarian level (2004b, 3A, 4, 345ff; 3A, 4, 164). Indeed, the active search for the traditional chiefs and the particular nature of the abuse they were subjected to (2004b, 3A, 4, 165) had obvious consequences on the chiefs and their properties at an individual level (2004b, 3A, 4, 168), but "the impact tended to be more profoundly and enduringly felt by his community than when similar abuses were meted out to less-exalted citizens" (2004b, 3A, 4, 169). Apparently, this was meant by the perpetrators as a way to show their strength and gain popularity in the communities (2004b, 3A, 4, 178), but in the end, these criminal acts "gave the civilian populace the inescapable impression that their attackers had embarked on a calculated programme to destroy the tenets and symbols of their local culture" (2004b, 3A, 4, 177).

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<sup>23</sup> In Sierra Leone, barries "were the community meeting places and served all kinds of purposes including as places for the settlement of disputes" (2004b, 3A, 4, 163).

The SLTRC suggested several recommendations that were meant to attend to the negative impacts of the conflict on the country's victims. Regarding children, for example, an important finding of the TRC was the disordered co-existence of a plethora of organizations that dealt with children in a very ineffective manner; confronting this issue, the Report recommended there should be a government-organized leadership of such initiatives in order for them to work competently (2004b, 2, 2, 495). Another very concrete example: in an effort to address the problems facing youth in Sierra Leone, the Ministry of Youth and Sports was established in 2002 (2004b, 2, 1, 65), as well as the National Commission for Disarmament, Demobilisation and Reintegration (NCDDR) Programme:

NCDDR was established in July 1998 to disarm and demobilize combatants and to support their reintegration into society through the learning of trade skills. Unfortunately, the poor state of the country's economy is hindering the translation of these skills into means of sustaining a livelihood. In addition, many ex-combatants have left their programmes inadequately trained (2004b, 2, 1, 66).

Regarding the reparations programs, the Commission first considered those victims who have become vulnerable as a result of having suffered human rights violations, in order to determine the categories of beneficiaries for the reparations program (2004b, 2, 1, 84). Having determined such categories, the TRC suggested a national reparations program should be established; for such a program, the Report recommended a responsible organization and recommended the means it should have in order to administrate the reparations for Sierra Leonean citizens:

The Commission proposes that the reparations programme be co-ordinated by the National Commission for Social Action (NaCSA), which would also serve as the implementing body for the programme and be entrusted with administering the Special Fund for War Victims. NaCSA should work closely with different ministries in ensuring the

decentralisation of reparations programmes. A dedicated Advisory Committee should assist NaCSA in its task(2004b, 2, 1, 87).

The reparations were supposed to cover various aspects of the victims' lives: health, pensions, education, skills training and micro-credit, community reparations and symbolic reparations (2004b, 2, 1, 43 and 484) and NaCSA was meant to be the implementing body of such reparations (2004b, 2, 1, 483).

While assessing the Sierra Leonean reparation policies, Stovel highlights the satisfactory way in which the TRC chose the victims that were suitable for reparations according to their vulnerability, thus avoiding a reduced scope that limited reparations for civilians, or nationals, for example (Stovel 2010, 219). Others consider the way the SLTRC organized its reparations policy without enough care for material reparations (Amadu Sesay 2007, 27–28) and in some ways prioritized the help given to ex-combatants over non-combatants (Sesay, 2007; Shaw, 2010, p. 112) and how all of this produced considerable frustration in the population (Millar, 2010, p. 491) and other negative effects:

The Commission was too ‘process-oriented’, focusing as it were, on public truth-telling that was expected to lead to forgiveness, while overlooking the need to prioritize the issues of reparations as an important step towards true reconciliation effects (Sesay 2007, 15).

The TRC of Sierra Leone considered reconciliation to be the key to recover the broken relations that the conflict formed as a negative impact in the country. Reconciliation was understood as “a long-term process that must occur at the national, community and individual levels” (2004b, 2, 1, 513). Besides explaining what the fundamentals for such reconciliation should be<sup>24</sup>, the TRC also explicitly

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<sup>24</sup> “The improvement of the socioeconomic living conditions of the people; good governance; strong and functional oversight institutions; the creation of a respected and professional security force; and the implementation of a reparations programme that takes into account the needs of the victims of the conflict” (2004b, 2, 3, 514).

mentioned that certain steps were necessary to facilitate reconciliation in Sierra Leone. “These steps include: truth telling; reconciliation between victims and perpetrators as well as the perpetrator with his or her community; the provision of adequate physical security; and the implementation of a reparations programme” (2004b, 2, 1, 515). Thus, most of the reconciliation activities the TRC suggested were aimed either at promoting reconciliation between the victims and their perpetrators, or between perpetrators and their communities. Some of the activities the TRC promoted were symbolic activities, such as a national peace day, joint projects for community development, traditional activities “to reintegrate victims and ex-combatants into communities and to restore the social fabric in the community. Such activities can include traditional dances, pouring of libation, cleansing ceremonies and cleansing of the bush” (2004b, 2, 3, 522). Other activities included religious activities, sports and competitions, artistic or social and recreational activities, to name but a few (2004b, 2, 3, 523).

In the South Africa Report the description of the psychological and physical consequences on individuals was particularly robust, especially in comparison with the description on human relations that are found throughout the Report. The South African conflicts, whether racial or political in nature —for not all inter-group frictions were racially caused (Cobban 2007, 131)—, had important psychological and physical impacts on the nation’s individual victims. The SATRC considered most individual psychological impacts not as a by-product of the conflict, but as a deliberate effort to discourage future opposition to Apartheid (1998, 5, 4, 13). The different ways in which these psychological damages were inflicted were organized in four types (1998, 5, 4, 16) and had two major traumatic consequences: incomprehension and disrupted attachment. The first refers to the way in which a victim’s worldview changes, as a whole, because of the traumatic experiences; the latter refers to the difficulty in establishing new relationships, thus alternating “between withdrawing socially and attaching themselves impulsively to others” (1998, 5, 4, 31 a–b). Besides these post-traumatic impacts, however, there were other important psychological consequences of the conflict:

Post-traumatic stress disorder is not, however, the only consequence of torture and human rights violations. Other problems include depression, anxiety disorders and psychotic conditions. The effects are multidimensional and interconnected, leaving no part of the victim's life untouched. Exposure to trauma can lead to sleep disorders, sexual dysfunction, chronic irritability, physical illness and a disruption of interpersonal relations and occupational, family and social functioning (1998, 5, 4, 21).

Regarding the physical individual consequences, the SATRC illustrated a survivor's description of them as "a tattoo, a permanent physical reminder of what was done to us, a symbol that in many cases brings shame" (1998, 5, 4, 56). The countless ways in which the South African people were abused obviously produced all sorts of physical injuries: infectious diseases, malignancies, cerebrovascular accidents, heart diseases reported in survivors of torture or prolonged arbitrary detention (1998, 5, 4, 57), etc., all of them altering the victims' lives in numerous ways (1998, 5, 4, 63) and exacerbating psychological problems with pain, loss of independence and dignity (1998, 5, 4, 65), stress-related illnesses like heart diseases and high blood pressure, etc.

Having said so much about the impact on individuals, however, the TRC also acknowledged the South African conflict had serious impacts on a collective level, especially on families and in black, rural and white communities. Concerning the conflict's impact on families, the Report informed of some important impacts:

"Group areas legislation and forced removals have both been linked to disruptions in healthy family functioning, and the migrant labour system also deprived people of family life. Children were denied fatherly guidance and support during their formative years and the fact that women were obliged to take on

domestic work meant that children were denied the care of their mothers" (1998, 5, 4, 74).

The report goes on to describe how the diverse crimes committed against families had consequences for the inner structure of the families (1998, 5, 4, 92–93) and evidently had economic consequences as well (1998, 5, 4, 122ff).

Regarding black communities, the TRC recognized that the Group Areas Act of 1960 had a strong impact on the dislocation of South Africa's black communities (1998, 5, 4, 138). This is considered a central phenomenon that resulted in the death of many of the youths who were in some way thought to be associated with the resistance (1998, 5, 4, 144), but largely, in communities living in townships and residential areas with underservice problems, inadequate roads, lack of schools and general socio-economic depravation (1998, 5, 4, 139).

Finally, referring to white communities, the TRC recognized they were the group most interested in preserving the Apartheid system, as they were its principal beneficiaries; thus, many white youths were militarized at a very early age and many crimes were committed in order to preserve the system (1998, 5, 4, 182–185). The way South Africa's history developed produced a white population that felt its leaders had abandoned them, and consequently, many were afraid of the TRC (1998, 5, 4, 186). Thus, an important collective impact of the conflict was a guilty and fearsome white population (1998, 5, 4, 188), some of whom even fled the country, producing —in turn— more negative consequences:

Fears of an imminent civil war resulted in many white South Africans leaving the country. Emigration, although a voluntary activity, had widespread consequences for families and communities. In some ways, these mirror the experience of exile in that they result in the scattering and dislocation of families. Emigration also had economic consequences for the country, as it was those with skills who were most likely to emigrate (1998, 5, 4, 189).

The SATRC did not talk very much about the way in which the country's conflict altered the human relations of its citizens; however, this was usually done in the same texts that were discussed in the previous section, *i.e.*, texts that primarily addressed the collective impact the conflict had on certain groups and communities. There are scant references scattered throughout the text, but nothing as solid as the information given on individual impacts. Three of such references are about the increased distrust in communities, the increase in inter-family conflicts, and the increase in inter and intra-community violence.

The first reference is to a strategy used by Apartheid to "undermine the unity of resistance through a system of informers (both real and alleged)" (1998, 5, 4, 94); this immediately created a climate of suspicion and distrust amidst the families and communities of the country. The second reference is to the increase of inter-generational conflicts (1998, 5, 4, 99) inside the families themselves, particularly when younger generations challenged the old (1998, 5, 4, 101) and disrupted the *status quo* within the families:

Thus, in many families, even where activism did not generate outright conflict, a shroud of secrecy often affected intergenerational relationships. In some families, political activism was seen as operating in a sphere outside of family life. This was sometimes linked with parents' feelings of helplessness about the public realm of politics. This lack of communication was aggravated by disruptions to family life, caused by the absence of parents who worked as migrant labourers, domestic workers, or because group areas legislation and other apartheid laws prevented them from living with their families (1998, 5, 4, 107).

The third and final allusion refers to the vigilantism and inter-community violence that became a feature in many communities from the late 1980s (1998, 5, 4, 149), inasmuch as rebels organized strategies to destabilize the Apartheid

government and some local authorities were suspiciously seen as collaborators of the State and the oppression (1998, 5, 4, 150–152). As a consequence of this tension, negative relational —particularly political—impacts were soon seen all over the country and, “once again, the abnormal became normal as violence, fear and insecurity engulfed communities in South Africa” (1998, 5, 4, 158).

Regarding the remedies, the South African TRC considered truth-telling and official acknowledgement as the principal means to heal the victims of the conflict and to restore their dignity. Even though the TRC was aware that “not all storytelling heals”, it still bet on “the healing potential of storytelling, of revealing the truth before a respectful audience and to an official body” (1998, 5, 9, 6) as a way of healing (Boraine et al. 2000). In fact, the South African case was paradigmatic in the transition from *truth seeking* to *truth-telling* (Millar, 2010, pp. 480-481). The main advantage of truth-telling as a central nucleus of the TRC’s procedure was the fact that “witnesses revealed far more in oral testimony than they had in their written statements” (1998, 5, 9, 10); in other words, truth-telling as a strategy enabled the TRC to carry out its strong investigative mission in various aspects. The Report mentions, for example, how both the decriminalization and exoneration of unjustly-criminalized people (1998, 5, 9, 20–29) strongly benefited from the advantages of the oral truth-telling that took place in the hearings. Likewise, at least fifty of the requests for exhumation and reburial of missing victims were successful, highlighting the benefits of the intense investigations – and truth-telling as its core (1998, 5, 9, 30).

It is important to note that, “although it was not part of the Commission’s mandate to effect reconciliation between victims, the community and perpetrators, there were a number of significant instances where the Commission directly facilitated the beginning of this complex process” (1998, 5, 9, 62). Having said that, the SATRC’s contributions to this purpose sought to promote reconciliation and recover the broken relations in the country, aiming towards a peaceful and non-violent coexistence. The Report states that, while a weak or limited form of

reconciliation, without apologies by those responsible or forgiveness by victims, may often be the most realistic goal towards which to strive (1998, 5, 9, 94) — some even highlight the benefits of not demanding remorse of perpetrators (Cobban 2007, 129), thus enabling wider declarations and more information to be gathered (Boraine et al. 2000, 27)—, it is also true that sincere and qualified apologies have an enormous impact (1998, 5, 9, 49 and 98) and there were countless cases in which victims showed a remarkable willingness to forgive (1998, 5, 9, 38), even when it meant long processes to overcome feelings of anger and humiliation (1998, 5, 9, 48) or the feeling of being witch-hunted (Cobban 2007, 13). The Report illustrates this by mentioning several cases of well-received apologies coming from religious organizations, the health sector, legal institutions, the business sector, etc. (1998, 5, 9, 56ff.).

Otherwise, there were additional means that the TRC suggested as ways of recovering broken relations. Thus, many of Archbishop Tutu's statements referred to the importance of building a culture of democracy and respect for human life in order to strengthen national unity and achieve reconciliation (1998, 5, 9, 110–113). Similarly, the Report mentioned the far-reaching moral influence of faith communities and how important it was for them to contribute to the recovery of broken relations by organizing ceremonies that helped people to acknowledge and come to terms with their involvement in the conflict (1998, 5, 8, 33) and through the redistribution of their skills and resources (1998, 5, 9, 34), among others. Likewise, giving priority to the needs of children and youth was suggested as an important way of healing the injuries inflicted upon families and helping to reintegrate combatants into a peaceful society (1998, 5, 9, 114–118). Another example is the effort suggested in order to bring veterans together as a way to improve relations among South Africans - the Report quotes Commissioner Mary Burton talking about the issue during a hearing in Cape Town:

There are many, many citizens of South Africa who did their military service and who still view themselves as having fought a good fight, as having

upheld the safety of the State, as having opposed communism in a broad sense and who are still part of our country and who have to be taken into account as we move into a process of reconciliation and unity. Their views also need to be part of the whole stream of coming together. And when we talk about where we go forward we have to be knowledgeable of that view as well (1998, 5, 9, 119).

Regarding the reparation programs, according to the *Promotion of National Unity and Reconciliation Act*, the SATRC was to include a Reparation and Rehabilitation Committee (R&RC); such committee had the mandate to suggest — especially to the President— concrete measures to ensure the victims' access to reparation and rehabilitation programs. The President himself was mandated to establish the President's Fund in order to finance all these initiatives (1998, 5, 5, 7–10; 1995, 4f; 25(b) i; 42), and a Secretariat was suggested in the President's Office as an organism responsible for overseeing the implementation of all R&RC recommendations (1998, 5, 8, 23).

Quoting the Act, the SATRC defined reparation as “any form of compensation, ex gratia payment, restitution, rehabilitation or recognition” (1998, 5, 5, 23; 1995, 1(1) xiv), and understood it as a way to promote reconciliation and to counterbalance the amnesties that denied the victims their right to demand reparations from perpetrators. Thus, the government accepted that responsibility (1998, 5, 5, 3) and proposed a program that included five focal components: urgent interim reparations, individual reparation grants, symbolic reparation/legal and administrative measures, community rehabilitation programs and institutional reforms (1998, 5, 5, 25–32).

Guided by international standards and local studies, the policy developed by the R&RC considered that both victims and their relatives and dependents were entitled to reparations (1998, 5, 5, 33); however, there were several problems the Report identified regarding the recommended reparations. A first problem was the

lack of cooperation from certain sectors; although there were some signs of good faith, it was a challenge to involve large numbers of people in the reparation programs. This was especially true for some who were unjustly privileged in the past (1998, 5, 9, 100 and 102), but there was also “a lack of specific advice and concrete guidelines about how ordinary people could get involved in restitution and reconciliation” (1998, 5, 9, 105). A second important problem resulted regarding material reparations: many victims were left without the material reparations they were entitled to receive (1998, 7, 1), and in general terms, there was a very strong emphasis on political apologies that diverted attention from the commitment towards financial reparations (Moon, 2008, p. 21). Also, there was a lack of strength and authority when it came to demanding the cooperation of highly-privileged companies and financial sectors (Cobban 2007, 124ff.).

Overall, the matter of material reparations turned out to be quite controversial; some suggest the SATRC should not have been limited to government suggestions and should have been given the capacity to compensate victims as part of its processes (Boraine et al. 2000, 26); others pointed out how the TRC’s efforts to change the South African mindset did not necessarily mean the black population received an immediate economic benefit (Cobban 2007, 98). In general, there were those who considered financial reparations as an important complement to amnesty; others did not agree with such reparations because they considered them unfair (Cobban 2007, 108).

### 3. Conclusion

The purpose of my methodological matrix is to set up a set of objectives to be chosen and prioritized for any new truth commission. This matrix seeks to support the creation of new TCs around the world in two ways: (i) by systematizing previous international experiences with TCs (specifically South Africa and Sierra Leone, but it can be used for any TC) and (ii) by looking at local truth and memory initiatives (I will explore this point in Chapter 4). These objectives offer a broad

picture with enormous possibilities for new TCs. The purpose is not to raise the already high expectations of TC capabilities, but to offer a wide spectrum of alternatives to be chosen for each new TC, according to local priorities and political contexts.

In what follows I present the learned lesson in each issue to be documented.

### 3.1 Context and background

This dimension suggests that to diagnose the damages implies establishing the historical antecedents, which precede the criminal acts (background) and/or the ongoing institutional failures (context) which made them possible. Depending on the country and the background, the context can be explained by the existence of the structural causes of the violence, the criminal State, the social frameworks, or the international context or relations, among other reasons. The Sierra Leone TRC was successful in achieving a better understanding of the structural causes of violence and the role of the international context. It identified and rendered clear explanations of how pre-existing problems and the inability of the State to handle them were at the core of the Sierra Leonean war. On the other hand, the SATRC achieved a deeper understanding of the criminal State and social frameworks as the principal elements of the conflict. Future TCs should investigate whether or not particular conflicts feature a significantly inefficient State (as in Sierra Leone) or a criminal State (as in South Africa). This will determine the level of attention that should be given by the Commission to the historical antecedents and/or the ongoing institutional failures.

What international experience shows is that the ability to identify damages is not comparable with a TC's capability to change structural causes of violence, or modify a criminal State or transform international relations or context. In general terms, TCs are incapable of changing the "context or background" of their countries' violence; this goes beyond a TC's capabilities. In the best case scenario,

TCs might modify social frameworks and reinforce a shared understanding that certain violent behaviors and acts are wrong and unacceptable (be it as it may, South Africa did not wholly take advantage of either of these).

What the matrix seeks is for future TCs to be more realistic about their objectives in order to avoid generating unlikely goals. Yet, TCs should make every effort to honestly identify the damages and offer adequate solutions that it can afford to recommend. In that sense, remedies suggested by a TC should aspire to be procedural ones in two ways: first, by suggesting recommendations through which a solution may be obtained (others will make it effective once the TC finishes its job) and second, by ensuring that these recommendations are the result of instances of broad participation. What the SLTRC and SATRC showed is that the remedies they suggested were procedural in the first sense only. In those TCs, the participation of victims (and non-victims) is reduced to identifying damages (especially in public hearings), but to give recommendations is the exclusive task of commissioners at the end of TC's work. My approach to TC's suggests broadening the participation of victims (and non-victims) and making it more complex such that they become involved in the process of suggesting remedies. In Chapter 2, I suggested aiming for speech situations that could generate solutions to recover the ability to settle conflicts peacefully, to resolve the past and suggest feasible remedies with dialogue. In these instances, the broader the participation, the better. The goal is to reach an understanding in order to carry out the plans of some jointly defined actions on a consensual basis. In that sense, the remedy suggested to change context and background seeks not only the capability to impact or to effectively change the identified damages, but to establish a process to recover the ability to resolve differences peacefully and carry out the plans with a shared understanding.

### 3.2 Criminal Act and Implicated Actors

The list of individual victims is considered the TRC's richest legacy for the

future in both the Sierra Leone and South Africa cases. However, these two experiences show that no TC can presume to cover all the criminal acts; thus, the selection of the cases to be heard is a necessary procedure that depends on various factors, including —among others— the resources a TRC has at hand. In that sense, the SLTRC and SATRC have worked in different ways.

The SLTRC chose to prioritize and select cases based on university studies without visiting the actual conflict zones to hear the victims, it selected “violations known to have occurred frequently” (2004b, 3A, 4, 12) and organized them into a framework: some violations such as amputation, forced cannibalism and forced displacement stand alone, because of their specific character and the patterns in which they were committed. These *categories* and main themes (selected using university studies) were later used as criteria to choose the most representative cases to be heard (7,700 statements were received) – the selected cases were the main material for the Report (2004b, 1, 6).

The SATRC received over 21,000 victims’ statements and organized regional hearings all over the country. Unlike the SLTRC, the South African crimes were presented using different criteria: Volume 2 described the crimes committed inside and outside South Africa from 1960 up through the 1990s (1998, 2, 1–5), while Volume 3 (1998, 3, 1–6) portrayed the gross human rights violations from the victims’ perspective, regionally structuring the narrations and hence, reflecting the regional structure of the TRC itself (Department of Justice and Constitutional Development of the Republic of South Africa 2009). In the end, the result was a report that only showed window cases that more or less supported the general explaining narratives which, according to some, were not up to the expectations of the victims and avoided the complexities of reality (Cherry 2009, 253), leaving out cases that were insufficiently analyzed in their own accord (Cole 2010, 165).

Even though Sierra Leone had significantly fewer resources than South Africa, the thematic categorization of the crimes committed on a national scale

helped to get a better understanding of the broad patterns of violence. In order to get this sort of understanding, the SLTRC not only gave priority to groups of individual victims (children, women and youth) but also examined abuses committed against communities and human relations. Therefore, because this TRC not only focused on crimes *against persons*, it did justice to the wider picture of abuses committed in Sierra Leone.

Regarding the perpetrators, it is an enormous achievement for both TRCs to have held all warring criminal groups to the same standards, however it was a failure on the part of these same two TRCs for not carefully exploring the different sorts of responsibility involved. The ideal scenario is to have the TC working together with the judicial mechanisms, which investigate individual/criminal responsibility (i.e. Special Court of Sierra Leone). In that sense, TCs might concentrate on investigating the collective, institutional responsibilities of beneficiaries, accomplices and the indifferent. Likewise, they should explore creative ways to deal with those responsibilities, designing alternative forms of accountability and noncriminal sanctions, such as tort, restitution, public apologies, public acknowledgements, symbolic reparations, etc. In the same way, TCs should work harder on the efficiency of the enforcement of their recommendations, on how to make *the non-criminal sanctions suggested by them legally binding*.

Together with the list of victims, a TC report usually is one of its most significant outcomes of the Commission. As such, the matrix suggests that future TC's must consider creative venues that could be utilized to maximize a report's impact. The example of the SLTRC with regards to the diffusion of the Report issued in that case is quite useful, in that it was a) disseminated throughout the country and b) translated into versions that the different sectors of each society might require (including a children's version). The example of South Africa shows that, even though the diffusion of the report was limited, its impact was still very high because the hearings (the process during TC lifespan) were publicly known.

### 3.3 Impact

Overall, both TRCs show it is possible to assess the impact conflict has on a warring society. In South Africa's case, it is also clear that the descriptions of the psychological and physical consequences on individuals were particularly robust, especially in comparison with the descriptions of human relations found throughout the Report. Conversely, the Sierra Leone TRC powerfully show the damage greatly impacted the victims as well as human relations as a result of the conflict, especially in its attention to severely affected groups. In that sense, it is important to note that the task of identifying impacts is deeply related to how the TC defines the notion of victim. For example, because the SLTRC paid special attention to women, children and youth, the impact of violence on those groups was widely documented.

Regarding the solutions to deal with the impact of violence, the notion of truth-telling held a key position within the remedies suggested by the SLTRC and SATRC. In the midst of this much discussed matter of apologies and forgiveness, it is clear that truth-telling has always been a central piece of any TC recommendations to achieve reconciliation. Several cases, for example, "emphasised the importance of truth in the reconciliation process between victims and perpetrators: in other words, knowing whom to forgive and why the violation(s) took place" (1998, 5, 9, 43) – and it seems this was a generalized rationale frequently used by the TC in which the psychological benefits of forgiving were highlighted (Chapman 2008a, 80–81). However, it seems that "the participation in TC processes didn't always help people to forgive their perpetrators" (Chapman 2008a, 76); further, some victim advocates consider "the act of forgiveness does not necessarily confer benefits, and in some circumstances, especially when imposed on victims, may even be harmful", and thus, "rather than placing pressure on victims to forgive their perpetrators, [...] the TC should have provided space for people to express feelings of anger, sorrow, sadness, and rage" (Chapman 2008a, 81). This problem increases when one takes into account the fact that sincere apologies and sincere remorse are emotions with which the different groups coped

in different ways (Cobban 2007, 120–121).

As discussed in Chapter 1, the advantages of truth-telling in terms of personal therapy and community catharsis have been broadly criticized. Commissions might facilitate the beginning of this complex process (social reconciliation or individual healing) but TCs cannot offer them as remedies. Truth telling is one component of these processes but it in itself is insufficient to meet the myriad of psychological and social needs that healing and reconciliation require. In that sense, TCs have a challenge to offer more appropriate remedies to deal with the impacts of violence; as will be shown in Chapter 4, which addresses how local initiatives in Colombia offer a broad and rich repertoire to fill this gap.

Regarding the reparation program, the matrix suggests that TCs should facilitate victims' access to reparation programs. The South African TRC administered, on its own, an urgent internal reparations program providing between USD\$300 and USD\$1,000 to many victims who had given a statement to the TC (Hayner, 275). The Sierra Leone TRC suggested that a national reparations program should be established and for such a program the Report recommended a responsible organization and recommended the means it should have. In 2008, four years after the SATRC had concluded, the UN Peace building fund provided USD\$3 million for a one-year reparations program: \$100 provided to approximately 22,000 victims (USIP, 2016).

Despite the difference in amounts of money, the economic reparations in both cases were considered insufficient. In South Africa, many victims were left without the material reparations they were entitled to receive (1998, 7, 1), and in general terms, there was a very strong emphasis on political apologies that diverted attention from the commitment to financial reparations (Moon 2008, 21). Some consider that the SLTRC organized its reparations policy without enough care for material reparations (Amadu Sesay 2007, 27–28) and prioritized the help

given to ex-combatants over non-combatants (Shaw 2010, 112; Amadu Sesay 2007, 48).

It is impossible to pretend that a TRC would come up with enough suggestions to solve all economic disparities in a given country, especially when the country has a history of war and conflict. In that sense, both the SRTRC and SLTRC show the enormous challenges that arise when material reparations are discussed, whether because of the debate they open on the justice or injustice of the measures taken or because of the difficulty in getting the government to cooperate. A future TC should be aware of these challenges so that the solutions it recommends regarding material reparations meet the victims' needs, and also, reflect the capacity the country has to meet them. Also, although governments' acceptance of a TC's suggestions is not the TC's direct responsibility, the difficulties faced by the Sierra Leone and South Africa TRCs suggest that all recommendations and initiatives should be as realistic and achievable as possible, so that, in some way, they will help governments to implement them.

This third chapter focused on how a matrix allows to sistematize and evaluate previous TCs, the fourth chaper shows how a matrix might support the creation of new TCs around the world. Focusing on the Colombian case, the next chapter uses a matrix to learn from previous TC experiences, as well as to dialogue with local truth-seeking experiences. The comparisions of the SLTRC and SATRC will enable the identification of the challenges that those Commisions faced in their efforts to achieve the objectives suggested. The local approach helps to shed light on understanding how and to what extent these ideal objectives have been met in the regions and localities in Colombia.

## Annexes

Draft 1: April 2014

### *Evaluation of previous truth commissions with regard to damage*

<b>Dimensions of damage</b>	<b>Suffering</b>	<b>Evil</b>
i. Individual injury/ individual responsibility	<p>How was the subjective experience of suffering addressed?</p> <p>What was the epistemologic standing of the personal or emotional testimonies in the process that provided knowledge about the past?</p> <p>Was there room to express anger, outrage, etc.?</p> <p>Did victims receive an official apology for their suffering?</p> <p>Who (professional team) was in charge of listening to and supporting victims before and after they testified?</p>	<p>How was the existence of violent facts documented and proved?</p> <p>What procedures were used to turn the victims' private experiences into public evidence?</p> <p>How did the commissions deal with criminal responsibility (amnesty, punishment)?</p> <p>Did the commissions name the perpetrators?</p>
ii. Collective injury/ collective responsibility	<p>How was the institutional context in which the violence was perpetrated described?</p> <p>Were the causes, patterns, and historical contexts of the violence identified? How were they documented?</p> <p>How did violence become an acceptable social practice?</p> <p>Was a condemnatory message against the social conditions, which allowed the crimes, sent?</p>	<p>Was the responsibility of the political elite, private companies, media, international actors who approved and/or supported oppressive system identified?</p> <p>How was the participation of bystanders and society in the violence described?</p> <p>Were the beneficiaries of the violence identified?</p> <p>Was the judiciary responsibility for</p>

		upholding oppressive legislation or turning a blind eye to violent acts identified?
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*Table 5. Evaluation of previous truth commissions with regard to remedy*

<b>Remedy</b>	<b>Memory</b>	<b>Archives</b>
For victims	<p>Have the cathartic or therapeutic effects of testifying been assessed? What is the balance?</p> <p>Have the victims' perceptions of hearings been studied?</p> <p>Did victims relieve their suffering through the experience of testifying? Why?</p>	<p>Could victims obtain more information on their cases?</p> <p>Were bodies that had disappeared found?</p> <p>Was the information documented by commissions useful for defining reparation programs or accomplishing a judicial-criminal process?</p>
For society	<p>Has the impact of truth commissions on social reconciliation, democratic development, and HHRR improving peace been assessed? What is the balance?</p> <p>Have truth commissions embodied a closure of the past and/or a bridge to a new democratic regime?</p> <p>Has the report become a widely accepted interpretation of the abuses of human rights?</p> <p>Have the public institutions, political elite, private companies, and international actors involved in the violence undertaken reforms taking into account the truth commissions' reports?</p>	<p>How was the memory of the violence produced by the truth commissions' reports materialized?</p> <p>To what extent were the reports disseminated within the country and abroad?</p>

**Draft 2: November 2014**

	<b>DAMAGE</b>		<b>REMEDY</b>	
	<i>Injury</i>	<i>Wrongdoing (Responsibility)</i>	<i>Symbolic remedies</i>	<i>Legal, institutional remedies</i>

INDIVIDUAL	<p><b>Subjective experience of suffering, material damages of the individual victims Human Dignity (SI)</b></p> <p>How was the subjective experience of suffering addressed? What was the epistemologic standing of the personal or emotional testimonies in the process that provided knowledge about the past? Was there room to express anger, outrage, etc.? Did victims receive an official apology for their suffering? Who (professional team) was in charge of listening to and supporting victims before and after they testified?</p>	<p><b>Facts (wrongdoings) committed by the perpetrator, individual criminal responsibility (EI)</b></p> <p>How was the existence of violent facts documented and proved? How did the commissions deal with criminal responsibility (amnesty, punishment)? Did the commissions name the perpetrators?</p>	<p><b>The victim's possibility of telling testimonies (MI)</b></p> <p>Have the cathartic or therapeutic effects of testifying been assessed? What is the balance? Have the victims' perceptions of hearings been studied? Did victims relieve their suffering through the experience of testifying? Why?</p>	<p><b>The victim's possibility of knowing past facts. The victim's possibility of turning testimonies into evidence in order to aces to reparations and justice (MC)</b></p> <p>What procedures were used to turn the victims' private experiences into public evidence? Could victims obtain more information on their cases? Were bodies that had disappeared found? Was the information documented by commissions useful to define reparation programs or to accomplish a judicial-criminal process?</p>
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COLLECTIVE	<p><b>The existence of collapsed moral framework that made possible the individual suffering (SC)</b></p> <p>How was the institutional context in which the violence was perpetrated described?</p> <p>Were the causes, patterns, and historical contexts of the violence identified? How were they documented?</p> <p>How did violence become an acceptable social practice?</p> <p>Was a condemnatory message against the social conditions, which allowed the crimes, sent?</p>	<p><b>Political responsibility and beneficiaries of violence (EC)</b></p> <p>Was the responsibility of the political elite, private companies, media, international actors who approved and/or supported oppressive system identified?</p> <p>How was the participation of bystanders and society in the violence described?</p>	<p><b>The society' possibility of knowing past facts, changing the collapsed moral framework and embodying a closure of the past and/or a bridge to a new democratic regime (MC)</b></p> <p>Have truth commissions embodied a closure of the past and/or a bridge to a new democratic regime?</p> <p>How was the memory of the violence produced by the truth commissions' reports materialized?</p> <p>To what extent were the reports disseminated within the country and abroad?</p> <p>Has the report become a widely accepted interpretation of the abuses of human rights?</p> <p>Has the impact of truth commissions on social reconciliation, democratic development, and HHRR improving peace been assessed? What is the balance?</p>	<p><b>The society and governments' attempts to make institutional reforms, to accept and repair political responsibility and punish the beneficiaries of violence (AI)</b></p> <p>Have the public institutions, political elite, private companies, and international actors involved in the violence undertaken reforms taking into account the truth commissions' reports?</p> <p>Were the beneficiaries of the violence punished?</p> <p>Was the judiciary responsibility for upholding oppressive legislation or turning a blind eye to violent acts identified?</p>
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## Draft 3: January 2015

	<b><i>Damage</i></b>		<b><i>Remedy</i></b>	
	<i>Victim</i>	<i>Accountable</i>	<i>Symbolic and ritual remedies</i>	<i>Material and legal remedies</i>
<b>Individual dimension</b>	Individual injury which attacked and destroyed the juridical and moral person	Subjects which produced the injury	Actions and practices to recover the moral person and unique identity -Telling testimonies (hearings) - Knowing facts (TC findings)	Means to recover the juridical person of the victim (procedures to turn testimonies into evidence)  Recommendations to make reparations and to deal with criminal liability
<b>Collective Dimension</b>	Social injury that corrupted all human solidarity and produced an atomized society	Structures that made possible the individual suffering.	Process and practices to recover the human solidarity, to mend the broken relationships and build trust. (activities for reconciliation and reinsertion of excombatientes)	Recommendations to make institutional reforms in order to deal with the political responsibility of the State under revision

## Draft 4: Agosto2015

<b>DAMAGE</b> (Diagnosing)	<b>Context which contributed the violence (Collective wrongdoing)</b>	<b>The criminal act</b> (Individual wrongdoing)	<b>Consequences of criminal act (Individual and collective Injury)</b>
	<ul style="list-style-type: none"> <li>• How have the structural causes, and historical contexts of violence in Colombia been documented?</li> <li>• Has the Center identified the violence as acceptable social practice in Colombia? How did it happen?</li> <li>• Has the judiciary responsibility for upholding oppressive legislation or turning a blind eye to violent acts been identified?</li> </ul>	<ul style="list-style-type: none"> <li>• Have the direct perpetrators of the violence in Colombia been identified? How has their responsibility been documented?</li> <li>• Have the beneficiaries of the violence in Colombia been identified?</li> <li>• Has the responsibility of political elite, private companies, media, and international actors who approved and/or supported the violence in Colombia been identified?</li> </ul>	<p><i>Individual:</i></p> <ul style="list-style-type: none"> <li>• How has the subjective and individual experience of suffering been addressed and documented?</li> <li>• Has the subjective experience been granted any epistemological value in the process of creating knowledge about the past?</li> <li>• Who is in charge (professional team) of listening to and attending to victims before and after they testify?</li> <li>• How do commissioners organize and categorize victims' testimonies (individual injuries on victim's juridical and moral person)?</li> </ul> <p><i>Collective:</i></p> <ul style="list-style-type: none"> <li>• How has the collective experience of suffering been addressed and documented (memory)?</li> <li>• How do commissioners organize and categorize the collective injury (corrupted human solidarity, atomized society, etc.)?</li> </ul>

<b>REMEDY</b> (Repairing and preventing)	<b>Structural remedies/reforms (Institutional reforms)</b>	<b>Acknowledgement/knowledge of the criminal act</b>	<b>Reparations (individual/ collective and legal/symbolic /material reparations)</b>
	<ul style="list-style-type: none"> <li>• Has the Center sent a condemnatory message against the social conditions, which allowed the crimes?</li> <li>• Has the Center recommended or suggested the necessary institutional reforms to deal with the political responsibility?</li> </ul>	<ul style="list-style-type: none"> <li>• How have the different degrees of responsibility been dealt with?</li> <li>• Has the Center created an official historical record of criminal acts (report)?</li> </ul>	<p><i>Individual:</i></p> <ul style="list-style-type: none"> <li>• Which processes have been established to recover individual injuries (victim's possibility of telling their testimonies and knowing the facts that surrounded their suffering)?</li> <li>• Which processes have been established to recover the victim's juridical person (cross examination and procedures to validate victims experience as legal evidence which allow them later to re-establishing their violated rights, make the necessary economical reparations and even to access to criminal justice against their perpetrators)?</li> </ul> <p><i>Collective:</i></p> <ul style="list-style-type: none"> <li>• Which processes have been established to recover the human solidarity, to mend the broken relationships and build trust (activities for reconciliation, memory and reinsertion)?</li> </ul>

## Chapter 4. Colombia: A new truth commission

The purpose of this chapter is to use the matrix presented in Chapter 3 to establish precise and achievable goals in support of Colombia's new truth commission. This new TC was approved in the Final Agreement signed by the Colombian Government and the FARC-EP guerrilla group in November 2016 and regulated by Decree 588 of 2017. This Final Agreement approved the creation of an Integral System for truth, justice, reparation and non-repetition. It will be a system made of different judicial and extra judicial mechanisms and measures that will be implemented in a coordinated and simultaneous way. This comprehensive system shall consist of three mechanisms: (i) The Commission for the Clarification of Truth, Coexistence and Non-Repetition (CEV in its Spanish acronym); (ii) the Special Unit for the Search for Persons deemed as Missing in the Context of and Due to the armed conflict; and (iii) the Special Jurisdiction for Peace (JEP in its Spanish acronym).

In this endeavour, the CEV could be linked both to previous institutional efforts and to multiple and varied local initiatives in order to avoid duplicating its tasks or ignoring the valuable experience acquired in Colombia over the last 10 years. Between 1958 and 2012, twelve national commissions for the study and extrajudicial investigation of violence were designed. Three of these twelve initiatives sought to present a global diagnosis of violence in the country: National Commission for the Investigation of Causes and Present Situations of Violence in the National Territory (1958), Commission on Violence Studies II (1987) Historical Memory Area of the National Commission for Reparation and Reconciliation (founded in 2007 and today called the Historical Memory Center) (Jaramillo Marín, 2014). By October 2015, the Historical Memory Center had consolidated a record of 323 Historical Memory Initiatives (HMI). The purpose of this chapter is to show how, based on the methodological matrix, some horizons of articulation between the previous truth seeking initiatives and the future CEV can be proposed.

According to the alternative approach to truth in the aftermath of violence presented here (Chapter 1), new issues for future TCs to document include: (i) the background and context of the crimes (that which triggered a criminal act), (ii) the criminal acts as such and the actors implicated, and (iii) the impacts caused by such atrocities (the ongoing harms suffered by the victims). Consequently, the truth established by TCs should (i) get core facts straight about critical criminal acts in order to deal with (ii) the harm as an antecedent and (iii) the harms as impacts.

In sum, the sixteen «ideal objectives» suggested by the matrix are a set of criteria that commissioners can use to learn from the experience of previous TCs (i.e South Africa and Sierra Leone) , as well as to dialogue with local truth-seeking initiatives: on one hand, the international comparative study will be able to reveal the challenges that previous TCs have faced in their efforts to achieve said objectives; on the other hand, the local approach can shed light on how and to what extent these ideal objectives have been met in the regions and localities in which the future Colombian TC will work. Taking into account both the international and the local experiences, it should be possible for more feasible objectives to be established for the future TC and the commissioners might thereby be able to undertake their task more effectively.

In the first part of this chapter, I present a brief history of the conflict in Colombia. In the second part, I introduce four truth-finding initiatives that have taken place in the country. In the third part, considering the methodological matrix presented in the previous chapter, I weigh some of these truth-finding experiences. The conclusions summarize CEV's pending goals, namely the potential pending damages to be diagnosed and the possible remedies that the CEV should explore.

## 1. The Colombian Conflict: Summarizing Five Stages.

Diverse violent repertoires make Colombia the country with the longest unresolved conflict in the world (Comisión Nacional de Reparación y & Área de

Memoria, 2013b). The General Report, prepared for the Historical Memory Group “*Basta Ya. Colombia: Memorias de Guerra y Dignidad*” (Comisión Nacional de Reparación y, 2013), identifies four main periods in its evolution.

The first period (1958-1982) marked a transition from bipartisan violence to subversive violence. The proliferation of guerrilla groups was related to inequalities arising from the National Front, especially the failed attempts to reform land tenure and the limited influence of the dissident agents who questioned the bipartisan agreement (Comisión Nacional de Reparación y & Área de Memoria, 2013a, p. 118).

The second period (1982-1996) was characterized mainly by the expansion of the guerrilla groups, the attempts at peace policies (President Belisario Betancur, 1982-1986), the emergence of the paramilitaries and the placement of drug-trafficking on the global agenda. The new Colombian Constitution of 1991 was an attempt to respond to the crisis of the State in the midst of the armed conflict (Comisión Nacional de Reparación & Área de Memoria, 2013a, p. 118).

The third period (1996-2005) marked the highpoint in the years of Colombia's humanitarian tragedy. The armed conflict's intensification is explained by the simultaneous expansion of the guerrilla and paramilitary groups. The relationship between these two illegal armed actors and the civilian population shifted: instead of using persuasive tactics, these groups became intimidating and aggressive, committing murder and forcibly displacing millions of Colombians. During this period, violent acts began to be carried out *en masse*; massacres and forced displacement became the most palpable signs of the situation. This period also involved the expansion and reorganization of major drug-trafficking cartels. In response, the political radicalization of public opinion leaned towards a military solution to the armed conflict. Such claims were encourage by international pressures related to the war on drug-trafficking and its interwoven relationship with

the war on terrorism (Comisión Nacional de Reparación & Área de Memoria, 2013a, p. 117).

The fourth period (2005-2012) was a time of readjustment for the armed conflict. The failure of the negotiations between the FARC and the government of Andrés Pastrana, and the subsequent adverse climate for a negotiated settlement to the conflict, led to the second electoral victory of Álvaro Uribe in 2006. During Uribe's second term, the State's military offensive reached its maximum degree of effectiveness in counterinsurgency operations, which weakened but did not defeat the guerrilla groups. Uribe's proposal for a military recovery of Colombia's guerrilla-controlled territory involved a combination of an intensification of the war against the guerrilla forces and the demobilization of the paramilitaries via some controversial negotiations. (Comisión Nacional de Reparación y & Área de Memoria, 2013a, p. 120).

In July 2005, President Uribe signed Law 975, *Ley de Justicia y Paz* (the Justice and Peace Law), which regulated the procedures to be followed for those demobilized members of illegal armed paramilitary groups and established judicial benefits based on their contribution to justice and reparation. Nevertheless, this process failed to achieve its aim of overcoming the paramilitary phenomenon. Rather, it only lead to their rearmament and served to provoked violent internal rearrangements (Comisión Nacional de Reparación y & Área de Memoria, 2013a, p. 117).

The “*Basta Ya*” report does not include the last stage of the Colombian conflict: The peace talks between the Colombian government and Colombia's FARC guerrilla group (2010 - 2016). During this process, the government pledged to set in motion a process of de-escalation of State military actions provided that the FARC suspend their offensives. The talks were held between November 19, 2012 and August 24, 2016, and an agreement was officially signed on September 26, 2016. However, the Colombian people rejected that peace agreement in a

plebiscite on October 2, 2016. Thus, the Colombian government and the FARC went back to the negotiating table to try and strike a new deal which would be acceptable to those who had voted against the peace agreement. The newly revised agreement was submitted to Colombia's Congress for approval, instead of calling for a popular vote. This new agreement was approved on November 30, 2016. Currently, Colombia is struggling to implement this Agreement.

## 2. Colombian Attempts to Find Truth

Due to the prolonged time span of its armed conflict (1958-2015), Colombia represents an unprecedented case in the construction of institutional spaces to clarify the past. None of these initiatives "have been the cause or effect of a transition from conflict to post-conflict or a negotiated way out of war" (Jaramillo Marín, 2014, p. 27) and in a strict sense, have not represented an official truth commission either; they only have been halfway attempts between truth commissions and extrajudicial commissions (Jaramillo Marín, 2014, p. 27).

In this section, I focus on presenting four recent and significant attempts to clarify the Colombian past. The first attempt (Historical Memory Group and National Historical Memory Center) embodies the longer institutional and official attempt undergone in Colombia. This attempt began during the fourth period (2005-2012), which corresponded to Uribe Velez's Government. The second attempt (Historical Commission of the Conflict and its Victims) was a temporary project that emerged during the fifth period, which refers to the peace talks with Colombia's FARC guerrilla group. This temporary Commission was created during negotiations, but once it accomplished its goals, it was disbanded.

The third attempt refers to some Historical Memory Initiatives such as works, actions, processes, or practices which Colombian society has autonomously promoted by civil social since 2012 approximately. The fourth and final truth-

finding attempt presented, in this section, is the future CEV, which was created by the Final Agreement and regulated by Decree 588 of 2017.

## **2.1 Historical Memory Group and National Historical Memory Center**

Since 2005, when Alvaro Uribe Vélez's government negotiated the demobilization of the country's armed paramilitary groups, attempts to know the past and build the memory of the conflict have become institutionalized in Colombia. Within the framework of the Justice and Peace Law (2005), the National Commission for Reconciliation and Reinsertion was created, among other entities, by the Historical Memory Group, whose role was to contribute to the reconstruction of the memory of the conflict, in particular the events associated with illegal armed groups within the framework of the peace process.

The effective implementation of the Justice and Peace Law faced a number of problems. Most victims did not fulfill the requirements of formally reporting the crimes committed against them, the legal processes proved excessively time-consuming and complex, and the institutional mechanisms were weak, thus limiting the number of beneficiaries. By 2008, only 24 victims had received damage payments. Amidst mounting pressure, the Victims' Law was approved and signed by President Juan Manuel Santos Calderón in 2011 with the purpose of providing sweeping rights and protections that departed sharply from legislative precedent (Summers, 2012, p. 223). In 2011, with the approval of the Victims' Law, the National Historical Memory Center took over the work carried out by the National Commission for Reparation and Reconciliation, with the task of centralizing and collecting memory preservation functions and leading the construction of a museum.

The work of the Historical Memory Group was primarily centered around the production and release of reports on emblematic cases. The implementation of each case involved consultations and negotiations with the victims who served as

witnesses and investigators. It also involved the revision of secondary sources, such as local and national archives facilitated by communities and organizations, the research of legal files and media archives, and the collection of academic research, among others (Bello, 2013, p. 19). The emblematic reports cover the historical antecedents, as well as the causes and motivations that led to violence, and the responsible actors (Program, 2012). Through these cases, the GMH sets out to analyze the variety of victimizations provoked by the different forms of violence, groups and social sectors in different regions of the country (Bello, 2013, p. 19).

The "*Basta Ya!*" report, published in 2013 for the Historical Memory Group was the result of the systematization of the 24 emblematic cases that the Historical Memory Group (GMH) had documented since its creation (2002). All the information collected from the 24 cases is presented in the five main themes defined in the "*Basta Ya*" chapters: the dimensions and modalities of war; the origins and transformations of armed groups; the relations between justice and war; the damages and impacts on the victims; and victims' memories. This report embodies the most recent and systematic efforts to account for the last 50 years (1958-2013) of armed conflict in Colombia (Bello, 2013, p. 19).

In general terms, the effort of both the Memory Group and the Memory Center has been significant in their different areas of work. Nevertheless, both institutions have faced different challenges since their creation. First, neither the Justice and Peace Law nor the Victims' Law formalized the connections between memory and justice, or processes by which the two could be linked. Historical memory did not feature in the justice system which led to a separation between the historical truth and the judicial truth; neither institution had a mandate to provide assistance to judicial processes as such they were disconnected from the legal investigations. This also hindered the capacity of the Memory Group and Memory Center to implicate the most responsible actors for the human rights crimes over the years (Program, 2012).

Second, the state-commissioned GMH was to carry out historical investigative work even when strong political interests blocked the scope and impact of their work, “they did not have the national government blessing to operate and investigate freely” (Program, 2012).

Third, structural barriers blocking access to information have limited the Group’s and the Center’s achievements. Such barriers can be largely attributed to Colombia’s unique context, namely the execution of its work while the country is still in the midst of an internal conflict. Physical access is important to the job of both of these institutions, nevertheless, they both had limited access to certain regions due to the increasing activities of criminal gangs and continued paramilitary activities. (Program, 2012).

## **2.2 The Historical Commission of the Conflict and its Victims**

The "Historical Commission of the Conflict and its Victims" (the Historical Commission) was created during negotiations between National Government representatives and FARC delegates. The Historical Commission was composed of twelve experts and two rapporteurs in order to produce a report on the origins and multiple causes of the conflict and the main factors and conditions that had facilitated or contributed to its persistence (Comisión Histórica del Conflicto y sus Víctimas, 2015).

It is curious that the negotiating teams from the Colombian government and the FARC decided to create this Historical Commission in August 2014 when by that date the “*Basta Ya!*” Report had already been available for a year. In my opinion, one of the reasons why this Commission was created was because the FARC guerillas did not approve of the time line covered by the “*Basta Ya!*” Report (1958-2015). Sergio de Zubiria, one of the twelve academics who participated in the Historical Commission, suggests that, it might have been more convenient to

define the time line of the CEV as beginning in the 1930s because, according to him, the government proposed agrarian reform during that time ignored the demands of the peasants and favoured the landowning oligarchy. These reforms defined the capitalist model of development, against which the FARC have always fought (De Zubiria, 2016). Thus, if this future CEV is to adopt the time frame used by the "*Basta Ya*" report, it will make it more difficult for the FARC to justify their political claims.

The report produced by this Historical Commission has been sharply criticized for the fact that the commissioners focused solely on portraying their own point of view, rather than concentrating on collectively elucidating the questions put to them. In his opinion column, Colombian political analyst, León Valencia recalls that the meaning of the word "commission" refers to a "group of people in charge of resolving an issue...it's not about each one summarizing in 50 pages what he had always said about the Colombian conflict." (Valencia, 2015). That was not the task. That was the issue to be resolved. That was the key issue on which the Commission was obliged to establish a minimum consensus that would allow the Habana negotiations and the country to advance in the reconciliation. The weakness of the report is due to the absence of these collective definitions.

### **2.3. Historical Memory Initiatives**

Simultaneous to this institutional and official framework, civilian involved in creating HMIs in Colombia have multiplied and diversified. By October 2015, the Historical Memory Center had consolidated a record of 323 HMIs. These initiatives refer to works, actions, processes, or practices which society has autonomously promoted in order to make their own voices heard, to share what they have had to endure and what they have witnessed in the framework of the internal armed conflict (Histórica, 2016).

Louis Bickford has called these sorts of experiences Unofficial Truth Projects (UTPs), however, UTPs are different from HMIs. UTPs tend to resemble official commissions in their task of clarifying the facts of the past and producing a final report, even though they are not led and promoted by the state<sup>25</sup> (Bickford 2007). Conversely, HMIs are collective actions that can cover different projects simultaneously: reconstructing factual information, remembering experiences of suffering, expressing such memories through art or cultural practices, etc. A fundamental difference between a UTP and an HMI is that the former have a timely character, a defined period of time, while on the other hand, HMIs can be punctual but also collective processes in time, which are transformed, suspended and recapture themselves (Comisión Nacional de Reparación y Reconciliación & Grupo de Memoria Histórica, 2009).

Because of the similar formats they use, UTPs can submit documents, books or reports to the TCs that systematize the results of their efforts, in such a way that it is clear how these texts could represent an input for the investigations carried out by the TCs. This is not the case for an HMI in Colombia. Only a few of the "products" of the HMI are textual, but most of them have materialized in dolls, radio and virtual stations, murals, audio-visual productions, theater productions, massive occupations, pedagogical initiatives, photographic exhibitions, museums, etc. Bickford analyzes nine UTP experiences in nine different countries; one UTP per country. In the case of Colombian, 323 HMIs have been registered (approximately).

The development of these HMIs in Colombia has been *imbalanced* (Comisión Nacional de Reparación y Reconciliación & Grupo de Memoria Histórica, 2009, p. 231). It is possible to suggest a correlation between memory initiatives and areas where demobilization, disarmament and reintegration (DDR)

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<sup>25</sup> In Colombia there are several examples of UTPs, some of these are considered in this chapter: Colombian Women's Truth and Memory Commission' Night and Fog (CINEP); Human Rights and Political Violence Database (CINEP); Project: Never again Colombia (MOVICE).

processes have occurred. The Historical Memory Group hypothetically suggests that the elaboration of memory is in a latent phase in regions where the armed conflict still exists or where there have been no DDR processes or where the results of such DDR processes have been unsatisfactory. On the other hand, victims who live where DDR processes have been more effective and successful have been able to elaborate and express their memories with greater impetus (Comisión Nacional de Reparación y Reconciliación & Grupo de Memoria Histórica, 2009, p. 231).

## **2.4 The Commission for the Clarification of Truth, Coexistence, and Non-Repetition (CEV)**

Decree 588 of 2017, which regulates the creation of the CEV, proclaims that the Colombian TC will (i) be extra-judicial in nature (its findings cannot have any judicial effect) and (ii) be regional in scope(Colombia, 2017). Due to the differential impacts of the armed conflict, the CEV will seek to understand the local dynamics of the armed conflict. The local approach with which the CEV has been designed is due, in part, to the fact that the Colombian war has not been geographically homogeneous, rather "it has had a long and profound impact on the rural world, while cities have been touched in very specific moments, in a less generalized way and with less violent practices, more visible but less lethal" (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 36).

The CEV will have six months to define its mandate and three years for its operation and functioning, it will be composed of 11 commissioners. The Decree establishes that a maximum of three commissioners may be foreigners (Colombia, 2017).

Colombia's new CEV faces challenges that differ from other Truth Commissions. First, both the number of victims and the time line are much broader than what other TCs have included and documented so far (see Table 1). Although

the Decree does not determine from which date the violence should be documented, the investigation carried out by the Historical Memory Group goes back to 1958 and states that from January 1 of that year until December 31, 2012 (54 years of conflict), the conflict killed approximately 220,000 people in Colombian territory.

Table 1. International Comparisons of Truth Commissions (Hayner, 2011, pp. 256-282)

Country	Duration of the TC <sup>26</sup>	Period of time covered by the commission	Total number of cases or declarations presented to the TC <sup>27</sup>	Type of conflict	Transitional system
Argentina	9 months (December 1983 - September 1984)	7 years (1976 – 1983)	7,000 received declarations	Dictatorship	National commission for missing persons, CONADEP + Trials against the Juntas (1984)
Chile	10 months (April 1990- February 1991)	16 years (1973 – 1990)	3,428 disappearance s, murdered or kidnapped by the opposition	Dictatorship	Rettig Commission + Subsequent criminal trials
El Salvador	8 months (July 1992 - March 1993)	12 years (1980 – 1991)	2,000 declarations received of 7,000 cases. Secondary sources identified 20,000 more victims.	Internal armed conflict.	Truth Commission for El Salvador + Amnesties.
South Africa	7 years December 1995 – 2002 (the original mandate ended in 1998 but was extended).	34 years (1960 – 1994)	Received more than 21,000 declarations	Ethnic and racial segregation	Truth Commission which included an amnesty committee

<sup>26</sup> The year in which the TC was established and the year in which the final report was presented.

<sup>27</sup> The total number of victims is usually higher than the number reported to the commission.

Guatemala	2 years June 1997-June 1999	34 years (1962- 1996)	Received 7,300 declarations, documented 42,000 victims and 626 massacres	Dictatorship and armed conflict	Commission for Historical Clarification. No justice guarantees
Sierra Leone	2 years November 2002 - October 2004	9 years (1991-2000)	7,700 declarations received for 15,000 victims and 40,000 human rights violations	Internal armed conflict	Truth Commission + Special Tribunal for Sierra Leone
Colombia	3 years (2016 - ...)	64 years (1958-2015)	1958-2012 220,000 dead; 1985 – 2012 25,000 disappeared 5,712,000 displaced	Internal armed conflict	Integral system of truth, justice, reparation and no repetition

Second, Colombian Commission must face a future in which it advances its functions in the context of the armed conflict. While the FARC and the bilateral cessation had considerably reduced the number of armed encounters in the country, there continues to be a significant presence of important armed actors such as the ELN guerrilla and former demobilized paramilitary groups that have again taken up arms, which could retaliate against those who testify in the Commission. Thus, one of the CEV's challenges is to guarantee the necessary conditions so that those who participate in its activities may find safe places to talk (Jaramillo Marín & Torres Pedraza, 2015, p. 50).

### 3. Colombian Commission for the Clarification of Truth: Setting Precise and Achievable Goals

Decree 588 of 2017, without further distinction and conceptual clarity, has provided for the future CEV three fundamental objectives, two functions and a mandate that includes thirteen aspects to clarify and recognize. This section of my thesis has two goals: (i) to systematically analyze these provisions (i.e. CEV's objectives, functions and mandate) in light of the methodological matrix proposed

in the previous chapter, and (ii) to explore the horizons of articulation between the future CEV and previous truth-finding attempts in Colombia (i.e. National Historical Memory Center, Historical Memory Initiatives, etc.) The exercise shows how the alternative notion of truth suggested in the first chapter allows TC to articulate memory initiatives (focus more on impacts and subjective experiences suffered by victims) and truth seeking endeavours (focus more on establishing factual and objective information). Annex 2 contains a summary of this exercise: CEV's pending goals and significant contributions to examine.

### *3.1 Context and Background*

According to the proposed matrix, a TC should identify and document the structural causes of violence, the social frameworks that degrade and exacerbate violence, the criminal architecture of the State and / or the international relations and context that led to the atrocity. It should also suggest and recommend the necessary reforms and recommendations to modify said causes, frameworks, and architecture.

The Decree, which regulated the CEV, contemplates that the Commission should clarify "the historical context, the origins and multiple causes of the conflict" and the "factors and conditions that facilitated or contributed to the persistence of the conflict" (Colombia, 2017). However, the document does not contemplate the formulation of recommendations or suggestions aimed at overcoming those causes, factors and conditions that led to the conflict.

Faced with the objectives proposed by the matrix, the contributions of HMIs to clarify these contexts and antecedents are nonexistent. Given the fragmentary and local nature of violence in Colombia, HMIs have been more concerned with making particular facts of violence visible rather than constructing national accounts that establish the causes of victims' individual sufferings or identifying the

contexts that made these singular events possible (Comisión Nacional de Reparación y Reconciliación & Grupo de Memoria Histórica, 2009, p. 227).

On the contrary, the institutional, judicial, and extrajudicial contributions are very significant. For many years, in Colombia "justice was incapable of addressing - and understanding - violence beyond individual cases, which prevented it from understanding criminal organizations" (VerdadAbierta.com, 2016). The Context Unit of the State Prosecutors office, within the framework of the Justice and Peace Law, has been correcting this trend, so that nowadays the country has judicial decisions that allow a better understanding of the causes and contexts of the paramilitary phenomenon (VerdadAbierta.com, 2016).

The extrajudicial efforts materialized in the "*Basta Ya!*" Report have been added to judicial mechanisms. This report in particular points out the possible structural causes behind the violence in Colombia's conflict: the agrarian problem, the fragmentation of the State and drug trafficking because of the State's inability to counteract the drug trafficking phenomenon, which contributed to the consolidation of a criminal State and perverse social frameworks. This incapacity allowed drug trafficking to become an ally, financier and promoter of illegal armed groups (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 52).

"*Basta Ya!*" Report also identifies social frameworks that have exacerbated Colombian violence. The arbitrary and permanent indications of communities as "collaborators with the other side", whether by their appearance, their ideas, their origin, or any suspicious traits, justified the atrocities committed against the civilian population:

The detention, disappearance, and assassinations of leaders link these facts to the way villagers were stigmatized through rumors of supposed alliances with armed groups. This stigma extended to social and community organizations, to their collective actions and their companions. It is the stigma

that extends to the roles that mark social and political participation in public life. (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 79)

Regarding the international relations and context that contributed to violence, the Report points to the United States as the country that has most influenced the Colombian conflict: "first with its anti-communist and counter-insurgency doctrine in the context of the Cold War, the war on drugs, and finally with its crusade against terrorism" (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 54). Also mentioned is the Cuban Revolution, the triumph of the Sandinistas, the fall of socialism, the agenda of Human Rights activists and the entry into force of the Rome Statute, among others.

One particular feature of the "*Basta Ya!*" report worth highlighting is that it not only mentions negative traits that explain the conflict, but also highlights positive practices that have been constructive throughout these years of violence. This is the case of good practices of the law and the international context. Thus, it not only mentions the impunity favored by justice, but also highlights the obstacles that have been put before illegality "through key actions such as investigations into parapolitics, constitutional control of states of exception ... or the constitutional revision of legislative decrees that allowed ... the trial of civilians by military tribunals in 1987 to cease" (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 57).

It also highlights the good practices of the international context that have somewhat reduced the harmful effects of the conflict. Since the 1990s, the human rights agenda of the OAS and the UN, the US Department of State and the European Union, as well as international human rights organizations, have been crucial in supporting the victims and making visible the tragedy that war has meant for civilians. "Similarly, the Rome Statute, in force since 2002, and the internationalization of justice have contributed significantly to changes for both the

State and for guerrillas and paramilitary groups" (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 55).

In general terms, some have criticized the lack of novelty of the Report in explaining what many others have already explained: "the social and political reasons that have given rise to more than 50 years of internal armed conflict in the country" (Compaz, 2014, p. 9). It has also been criticized that given the structure of the National Center of Historical Memory and the guidelines of the Historical Memory Group, it lacks investigative autonomy from the State. In particular, the report's silence regarding the State's role in the genocide of members of the *Unión Patriótica*<sup>28</sup> political party and its assassination of left wing leaders in the 1980s and early 1990s, who were not simply victims of the conflict but also victims of State crimes (Compaz, 2014, p. 9).

In my opinion, the push to be novel in the antecedents and contexts of the Colombian conflict is an unnecessary challenge. The enormous amount of judicial and extrajudicial, institutional, and academic information that exists shows that it is an over-documented dimension at the national level. As I see it, a horizon that the CEV could explore, being true to its territorial approach, is the determination of the regional characteristics that these antecedents and national contexts have had. In this sense, the Sierra Leone experience can be useful. In that country, the Commission, relying on academic studies, identified the key issues to be documented and from these themes determined which public hearings to hold with civil society. Likewise, the CEV will be able to use all existing documentation at the national level to prepare regional hearings that allow prioritizing the background and contexts from a local dimension.

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<sup>28</sup> The Patriotic Union was a leftist political party, founded by the FARC in 1985, as part of the peace negotiations that the guerrillas held with the Belisario Betancur administration. During the end of the 1980's, party-members were sought out and exterminated by State-sponsored paramilitaries and security force agents.

Regarding the criticism of the investigative autonomy of the Report, it is important to bear in mind that the Memory Group, the Memory Center and the future CEV are and will be the result of a legal commitment promoted by the State. In light of this argument, the CEV will not have investigative autonomy either. However, it should not be forgotten that most TCs in the world are officially sanctioned (state-sponsored investigations) and do not necessarily lack investigative autonomy. There are different mechanisms to safeguard this independence; in the case of Colombia, the selection processes of the commissioners and the President will be fundamental.

Regarding suggested remedies to address the background and contexts of violence, the "*Basta Ya!*" Report urges the design of public policies aimed at overcoming inequality, discrimination, marginalization and exclusion, and ensuring the effective realization of economic, social and cultural rights (Comisión Nacional de Reparación & Área de Memoria, 2013b, pp. 90-95). It also suggests the design of mechanisms for the "cleansing of public entities" by removing employees from such places who have associated with illegal armed actors or who could be convicted of serious human rights violations (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 91). It is important to remember that international experiences have shown that TCs generally fail to have a significant impact in modifying the structural causes of violence or State criminal structures or dealing with the international contexts that led to the violence. A TC's scope is very limited for the extent of what these modifications entail.

However, it is possible that in the Colombian case the CEV might transform social frameworks that have justified violence. The Commission can create spaces for participation and pedagogy that deny prejudices against social organizations and have been used by armed actors to justify their atrocities (this recommendation was included in the "*Basta Ya!*" report).

Likewise, these spaces of participation could have a more purposeful than descriptive character. Since the damage in this dimension is over documented, it would be of great value to call on victims and non-victims alike to participate in designing the solutions required to deal with the structural causes of violence. Although the impact of such suggestions may be limited, the very exercise of building consensus through dialogue can be very positive in a society as polarized as Colombia's. In the end, ensuring that the given suggestions are not the exclusive product of the work of the commission can give a more inclusive character that allows seeing the CEV as a common project.

### *3.2 Criminal Acts and Implicated Actors*

#### *3.2.1 Victims Implicated in the Criminal Acts.*

According to the proposed matrix, a TC should identify and document the different types of victims who suffered the damage of violence. Likewise, the Decree 588 contemplates within the objectives of the future CEV, to promote and contribute to the recognition of the victims as citizens who had their rights violated and as political subjects of importance for the transformation of the country (Colombia, 2017).

Faced with these objectives, the "*Basta Ya!*" report has made significant progress both in the identification of individual victims and in the definition of categories of victims of high vulnerability at national, regional and local levels. The "*Basta Ya!*" Report presented an extensive and detailed quantitative study of the various types of victimization in Colombia. Likewise, the country has a Single Victims Registry (RUV, in its Spanish acronym) for persons that suffered the actions of illegal armed groups and agents of the State between 1985 and 2011. The RUV was created by the Victims' Law and was open to victims for four years in order for them to register. On June 10, 2015, it was closed with a total of 8,268,758

registered victims. The figures are public, but the names of the victims are anonymous.

These figures allow an understanding of the general patterns of violence in Colombia, and also illustrate victimization trends suffered in a territorial manner. However, the explanatory value of figures and percentages does not replace the symbolic value of the lists of victims constructed and submitted by the Sierra Leonean and South African Commissions. In these two African countries, the list was made public when the conflict was over and the victims saw no danger in that recognition. In the Colombian case, the possibility that the CEV may release a public list with names, biographical data and victimizing facts will be subject to the security conditions and the expressed will of the victims to be recognized publicly.

With regard to the identification of victims' groups, both the "*Basta Ya!*" report and the HMIs have been able to make specific groups visible. "*Basta ya!*" identified and prioritized women<sup>29</sup>, men, boys, girls, adolescents and the LGBTI population. The "*Basta Ya!*" Report states that women "have suffered and have faced the damage caused by violence, mainly as survivors" (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 66). Widows, in addition to dealing with the impacts caused by the violence, must assume all the economic and emotional responsibility involved with now being the sole head of their household. In other cases, some women who at one point held a certain level of social or political leadership have suffered from sexual violence, have been murdered, threatened, persecuted and / or banished in order to truncate their social and community initiatives (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 66).

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<sup>29</sup> The Memory Center has a series of books illustrating the types of victimization suffered by women in different regions of the country: *El Placer - Mujeres, coca y guerra en el Bajo Putumayo* (2012), *Mujeres y Guerra. Víctimas y Resistentes en el Caribe Colombiano* (2011) *Mujeres que hacen Historia. Tierra, Cuerpo y Política en el Caribe Colombiano* (2011) *La masacre de Bahía Portete. Mujeres Wayuu en la mira* (2010) . There are other different efforts to document the violence that women have suffered, one of these is the work carried out by the Colombian Non-Governmental Organization, *Ruta Pacífica Mujeres*, which in 2013 led the formation and implementation of a "Commission on the Truth and Memory of Women". The Final Report of this Commission reflects the first-person experience of over 1,000 women from different regions and ethnic groups in the country

With respect to ethnic groups, the "*Basta Ya!*" Report has an essay that points to Afro-Colombians and Indigenous people<sup>30</sup> as those who have suffered the greatest levels of human rights violations (Comisión Nacional de Reparación & Área de Memoria, 2013a, p. 278). In fact, the harms suffered endanger the very existence of these communities. Their productive systems, their uses of land and ancestral practices that guarantee their daily subsistence and their transmission of knowledge have been seriously threatened.

In addition to the institutional effort, it is worth highlighting some local initiatives that have been advanced from an ethnic perspective in the department of Nariño. The first was an initiative in 2012 entitled "*Memoria histórica desde las voces de las víctimas del conflicto armado en Nariño: cuatro casos emblemáticos reconstruidos con comunidades afrocolombianas de la costa Pacífica y comunidades campesinas e indígenas de la frontera sur andina de Nariño*"<sup>31</sup>. This work documented the acts of violence and made visible the actions of resistance of the Black, Indigenous and peasant communities affected by the conflict (Centro de Memoria Histórica, 2016e). The second initiative was an itinerant exhibition "*¡Ñambi y Telembí viven! Tejiendo memoria y resistencia Inkal Awá*"<sup>32</sup>, which recounted and recalled the victims of a massacre in February 2009, where 17 Awá refugees, including two pregnant women, died (Centro de Memoria Historica, 2016). In 2013 the exhibition won the stimulus for museum projects with an emphasis on historical memory, organized by the Ministry of Culture.

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<sup>30</sup> Books published by the Center of Memory that have identified the mechanisms and motivations of this extermination: La masacre de Bahía Portete. Mujeres Wayuu en la mira (2010) "Nuestra vida ha sido nuestra lucha" Memoria y resistencia en el Cauca indígena (2012) Desafíos para la reintegración. Enfoques de género, edad y etnia (2013) Putumayo: la vorágine de las caucherías (2014) Bojayá: la guerra sin límites (2014) "Nuestra vida ha sido nuestra lucha" Memoria y resistencia en el Cauca indígena (2014)

<sup>31</sup> "Historical memory from the voices of the victims of the armed conflict in: Four emblematic cases reconstructed with Afro-Colombian communities of the Pacific coast and peasant and indigenous communities of the southern Andean border of Nariño"

<sup>32</sup> "*¡Ñambi y Telembí are alive! Weaving memory and resistance Inkal Awá*"

The final initiative is “*La Casa del Saber*” in Boyera (Nariño), which is a place of memory built to strengthen the socio-cultural and economic processes of the indigenous community and to reconstruct the historical memory of the affections suffered in the context of the internal armed conflict (Centro de Memoria Histórica, 2016b).

In my opinion, both women and minority ethnic groups have been able to see their afflictions through the HMI. They also have a privileged place in the “*Basta Ya!*” report and in the work advanced by the Center and Group of Historical Memory. However there are other groups of “victims” which require more attention, for instance the “merchants”<sup>33</sup>. According to merchants who attended the forums organized by the ICTJ and UNDP<sup>34</sup> they wish to participate in the CEV to clarify their links to the conflict. They claim to be recognized as “victims of extortion” and not as entities responsible for collaborating or sponsoring armed groups, which is how merchants have usually been recognized by public opinion. For that, merchants require the Commission to offer not only security in terms of physical integrity, but also in terms of moral integrity, they fear that their names and reputation will be affected by accommodated interpretations. The Commission’s challenge is one of distinguishing merchants between the condition of victims and that of responsible actors or accomplices applies to a large productive sector in Colombia. Demobilized Paramilitaries have said that banana companies had to pay 3 cents for every box of banana exported, similar stories occur with some sugar mills in the Valle del Cauca region and specific accusations have been brought against some oil officials (VerdadAbierta.com, 2015). In these cases, exhaustive investigations are required to look into the conditions in which certain extortions occurred, for example whether payments were made to paramilitaries in order to counter guerrilla extortion. This represents an unexplored horizon that may well be addressed by the CEV.

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<sup>33</sup> The term “merchant” refers to a number of businesspersons and multinational corporations, such as banana companies in the Colombia state of Urubá.

<sup>34</sup> “Dialogues on transitional justice and Mechanisms for clarifying the truth in Colombia”, led by the International Center for Transitional Justice (ICTJ) and the United Nations during the first half of 2015.

### 3.2.2 Responsible Actors Implicated in the Criminal Acts

The matrix recommends identifying those responsible for criminal acts, but also distinguishing between the different degrees of responsibility that may exist. Likewise, it is suggested that the TC should recommend alternative ways to deal with the different degrees of responsibility for the criminal acts. With respect to these points, again, the Decree 588 designates descriptive objectives and excludes proposals. The Decree established for the CEV ascertains that it should only clarify and promote the recognition of the collective responsibilities of the State, including the government and other public powers, the FARC-EP, the paramilitaries, as well as any other group, organization or institution, national or international, that has had any participation in the conflict, for the practices and facts referred to in the previous paragraph (Colombia, 2017).

Regarding the recognition of responsibilities, none of the HMIs analyzed seek to determine the identity of the perpetrators or the degrees of collective or institutional responsibility. This missing analysis can be explained for several reasons. First HMIs have focused more on pointing out particular facts of violence than on building national accounts, (Bickford, 2007) so identifying institutional or collective responsibilities becomes impossible. Second, this can be explained by the degree of powerlessness in which the HMIs are found: it is safer to narrate acts of violence than to identify those responsible for these facts.

For its part, the "*Basta Ya!*" Report warns that the responsibility for violence in Colombia falls differently on guerrillas, paramilitaries and state agents who acted outside their legal mandate. The attack on the civilian population differs in its systematicity, its dimensions and in the forms of violence employed by each of the actors:

Violence against physical integrity is the hallmark of paramilitary violence, while violence against freedom and property characterizes

the actions of guerrillas. In other words, the paramilitaries murder more than the guerrillas, while the guerrillas kidnap more and cause much more destruction than the paramilitaries (Comisión Nacional de Reparación y & Área de Memoria, 2013b, p. 12)

The role of members of the Armed Forces in victimizing civilians is equally condemned by "*Basta Ya!*" Report. The Report presumes their participation in 158 massacres and 2,300 selective murders from 1958 to 2013 (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 12).

Finally, in a section entitled "Memories of Complicity", the "*Basta ya*" Report points to other types of responsibility that evoke a "gray and differentiated universe of collaborations and responsibilities in war"(Comisión Nacional de Reparación & Área de Memoria, 2013a, p. 342), which include state agents, regional powers, entrepreneurs, cattle ranchers and members of the affected communities themselves, among others.

In my opinion, the CEV should be a space used to identify and investigate those "memories of complicity" in greater detail and with more of a regional focus than the "*Basta Ya!*" Report suggests. On the subject of collective and institutional complicities and responsibilities is a deficiency of truth that must be addressed as a priority by CEV. It is necessary to identify civilians who indirectly promoted and maintained violence as well as multinational and/or productive private sectors that could well have been accomplices of armed groups, beneficiaries of violence or the media's complicity with certain crimes and the promotion of speech that allowed the stigmatization of peasant leaders, social organizations, and human rights defenders.

Likewise, the CEV should encourage the responsible actors to define and assume their own responsibilities in the conflict. Merchants' claims to be heard by the Commission can be extended to other groups and private organizations that

feel that they too are victims of the conflict, but whom society in general qualify as accomplices or even perpetrators. The challenge of the CEV will be to mediate these parties so that all voices are heard and preventing these spaces of participation from being manipulated or used to justify the horrors of the past.

Another horizon to be explored by the future CEV is the remedies and alternative ways to deal with the different levels of responsibility that may be assumed and/or identified within the framework of the Commission. The Special Jurisdiction for Peace has a repertoire of measures to deal with the criminal responsibilities, likewise, the CEV must propose suitable measures to deal with perpetrators and accomplices who are indifferent or have benefited from the violence. The "sanctions" that these different types of responsibility imply should be made effective in some way, so that those who express their repentance can channel their desire for amendment.

### 3.3.3 Criminal Acts

According to the proposed matrix, a CEV should identify and document the facts that constituted criminal acts. In this sense, the Decree establishes within the CEV's mandate to clarify and recognize those practices and facts that constitute serious human rights violations and serious violations of International Humanitarian Law, in particular those that reflect patterns or have been carried out *en masse*. The "*Basta Ya!*" Report has extensively documented (quantitatively and qualitatively) the most systematic criminal acts that civilians in Colombia have suffered. Most of the deaths occurred on a daily, selective, and silent basis, in parts far removed from urban centers, and therefore have been overlooked by most of society. In most cases, these deaths were accompanied by cruelty and terror (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 25). In light of these characteristics, the criminal acts that the Report has prioritized are as follows:

- Selective assassinations
- Massacres
- Forced disappearances
- Abductions and hostage-taking
- Forced displacement
- Sexual violence
- Illegal Recruitment
- Acts of War
- Antipersonnel mines, unexploded ordnance and improvised explosive devices
- Attacks on civilian property and sabotage
- Terrorist attacks

Regarding forced disappearance, "*Basta Ya!*" Report made a special where it explains why, despite the extent of forced disappearance in Colombia, this phenomenon has become invisible. The figures presented and the historical evolution explain how forced disappearance was a nationally orchestrated strategy. Additional Memory Center has published the different books and research pieces in recent years<sup>35</sup>.

Some local Initiatives should be added to this institutional effort. For example, the Memory Gallery organized by the *Asociación de Víctimas de Desaparición de Nariño*<sup>36</sup> (AVIDES in its Spanish acronym) in Pasto, a city located in southern Colombia. The exhibition is made up of approximately 20 photographs

<sup>35</sup> Regarding forced disappearance, the Historical Memory Center has published different books: Hasta encontrarlos. El drama de la desaparición forzada en Colombia (2016) Textos Corporales de la Crueldad (2105) Documental "Cuerpo 36" (2105) *Four reports to understand the dimension of forced disappearance in Colombia, prepared by the National Center for Historical Memory* (2014): I. Normas y Dimensiones de la Desaparición Forzada en Colombia II. Huellas y Rostros de la Desaparición Forzada (1970 - 2010) III. Entre la Incertidumbre y el Dolor: Impactos Psicosociales De La Desaparición Forzada. IV. Balance de la Acción del Estado Colombiano Frente a la Desaparición Forzada de Personas. This Centre also prepared a special multimedia report about forced disappearance:

<http://centrodememoriahistorica.gov.co/micrositios/ausenciasQueInterpelan/index.html>;

<sup>36</sup> Association of Victims of Disappearance of Nariño

of the disappeared and pictures of paintings made by relatives. The purpose of this gallery is to make visible the organization's demands to the government and the community for clarification on the circumstances surrounding the disappeared. It also seeks to raise awareness about forced disappearance as a subject of public reflection (Centro de Memoria Histórica, 2016d). Another local initiative is the "*Monumento a las víctimas del Cacarica*"<sup>37</sup> (department of Antioquia), built in 2000, contains the names of the victims of forced disappearance and homicide which occurred as the result of a military confrontation advanced by the Armed Forces in cahoots with the United Self-Defense Forces of Córdoba and Urabá (ACCU) against the FARC (Centro de Memoria Histórica, 2016f). Finally, "*Operación Siriri*"<sup>38</sup> is a private archive created by Fabiola Lalinde, regarding her son Luis Fernando, assassinated and disappeared by members of the Army. Its archival reconstruction was awarded in 2015 by UNESCO to be included within the Documentary Heritage of Latin America and the Caribbean (Centro de Memoria Histórica, 2016g).

It is important to distinguish between this last initiative (Operation Siriri) and the two monuments mentioned above: the private archive of Mrs. Lalinde is an initiative focused on the achievement of evidence and factual information. Monuments, on the other hand, can be defined as "memories without evidence," since they reconstruct past events and identify victims, without having sufficient factual evidence to prove them. These monuments allow us to recall the suffering caused by forced disappearance, but not to prove the criminal act as such; they do not have the necessary resources (they do not even have the pretense) to turn their memories into judicial evidence for official authorities.

In relation to the crimes of sexual violence, both the testimonial memory (chapter 3) and the figures (chapter 1) recorded by the "*Basta Ya!*" report, show the ferocity and brutality with which these crimes were and still are committed

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<sup>37</sup> Monument to the victims of Cacarica

<sup>38</sup> Operation Siriri

(Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 77). Likely, should be added the book “*Crímenes que no prescriben. Violencia sexual del Bloque Vencedores de Arauca*<sup>39</sup>” (2015) and the report documenting in particular the violence suffered by the LGBTI population: “*Aniquilar la diferencia. Lesbianas, gays, bisexuales y transgeneristas en el marco del conflicto armado colombiano*<sup>40</sup>” (2015).

Should the CEV decide to deepen the documentation of sexual violence as a relevant criminal act in the Colombian conflict, it would be of great value for commissioners to articulate their work on the methodologies that have been used locally to approach these crimes satisfactorily. For example, they could look to the case of “*Cocer la memoria*<sup>41</sup>”, a regional experience that has collective sessions for women victims of sexual violence to tell their stories. There is also the valuable methodological experience accumulated by Ruta Pacifica NGO and the Gender Section of the Historic Memory Center.

Contrary to sexual violence or forced disappearance, the “*Basta Ya!*” Report recognizes that while the recruitment of minors is one of the most widely registered crimes by official entities, it is one of the least publicly recognized (Comisión Nacional de Reparación & Área de Memoria, 2013b, p. 84). Although there are general approximations to the phenomenon, the CEV must delve more deeply into this poorly documented problem in Colombia. For this, the international experience of Sierra Leone would be of great value, especially because the case of ex-combatant children represents a gray area between victim and perpetrator, a very difficult subject for society, families and children to approach and overcome.

### 3.3.4 Report

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<sup>39</sup> Crimes that carry no statute of limitation: Sexual Violence by the *Bloque de Vencedores de Arauca*.

<sup>40</sup> To annihilate the difference. Lesbians, gays, bisexuals and transgenderists in the framework of the Colombian armed conflict

<sup>41</sup> This title roughly translates as allowing one's memory to ferment or to stew.

The matrix suggests that the TC should produce an independent and official report, which describes the relevant criminal acts and includes all the TC's recommendations. In this sense, among the functions entrusted to the CEV, ("Functions"), should be the elaboration of "a final report that takes into account the different contexts, reflects the research on all components of the mandate and contains the conclusions and recommendations of its work" (Colombia, 2017).

For their part, both the HMIs and the Memory Center can make a very significant contribution so that the dissemination of the CEV report is more friendly and accessible for both the victims and the general public, which in the end could maximize the impact of the Commission.

Traditionally TCs have privileged textual formats with highly academic content, which are foreign to the common public. In contrast, the HMIs have found creative ways to publicly publicize their findings: photographic samples, digital files, dolls, patchwork quilts, monuments, murals, etc. Likewise, the Memory Center has been involved in the production of various artistic, audiovisual, graphic, interactive formats, etc. It is worth noting the audio-visual resources that were created for the public dissemination of the findings of the "*Basta Ya!*" report: the one-hour documentary "*No hubo tiempo para la tristeza*"<sup>42</sup> and the radio series "*La vida cuenta*"<sup>43</sup> which consisted of 14 micro programs that presented some of the main theses of the Report, and also the "*Cátedra de Pensamiento Colombiano*"<sup>44</sup> to contribute to an exercise of reflection.

There are still no systematic studies that evaluate the impact that the Memory Center has achieved with the creation of these means of dissemination. These studies are necessary to consolidate effective means that bring the production of truth and memory to the indifferent and apathetic Colombian public.

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<sup>42</sup> There was no time for sadness.

<sup>43</sup> Life Counts.

<sup>44</sup> The Pulpit of Colombian Thinking

### *3.3 Impacts*

The proposed matrix suggests that a TC should identify the different types of impacts that violence had on the victims. Based on this diagnosis, it should design processes to address and repair the impacts of violence on direct and indirect victims, mechanisms for victims to access economic and symbolic reparations, and design and / or establish processes and / or mechanisms to recover broken social ties.

The Decree 588 establishes that the CEV must clarify and promote the recognition of:

- The human and social impact of conflict in society, including the impact on economic, social, cultural and environmental rights, and the different ways in which the conflict affected different populations.
- The impact of the conflict on the exercise of politics and the functioning of democracy as a whole, including the impact on political and social parties and movements, in particular those of opposition groups.
- The impact of the conflict on those who participated directly in it as combatants and on their families and their environments (Colombia, 2017).

Within the functions assigned to the CEV, is the task of "guiding the victims and victimized communities that participate in the Commission in the institutional offer to satisfy their rights and mechanisms to demand them." (Colombia, 2017). In general terms, it can be affirmed that the mandate defined by the Decree establishes that the CEV will have to concentrate again on the descriptive objectives (to identify damages), delegating the satisfaction of more proactive objectives (to suggest remedies) to other entities.

The “*Basta Ya!*” Report has categorized the damage caused by violence from the conflict in a very complete and meaningful way. It not only analyzes the psychological and emotional harm that the prioritized group of victims (women, men, children, adolescents and the LGBTI population) have suffered. It also presents moral damages suffered by communities whose religious and cultural practices, phenotypic or ethnic characteristics, and political convictions have been devalued and denigrated by the conflict. It also refers to the socio-cultural damages that spread mistrust, isolation and the devastation of public spaces. Harm done by the political sphere has have silenced and exterminated civic organizations, political movements, unions, peasant associations, and in the end have altered political plurality in Colombia.

Likewise, the Memory Center has documented impacts which are differentiated in the case of women (outlined in the previous section) and in the case of the peasants<sup>45</sup>, among others.

Among the HMIs to be highlighted is "*La Casa Campesina de Sincelejo*"<sup>46</sup> (Sucre), an archival work that has systematized the testimony of serious human rights violations and documented and categorized the individual and collective damages that have impacted the peasant community of the region. Likewise, peasants from communities such as *La Pola* and *La Palizua* (Magdalena) have collected documents and oral testimonies from former community leaders by going door-to-door and speaking with each and every one of them. With this information "they created a file that is composed of minutes of agreements, rights of petition, legal decisions, maps, plans and press archives, dating from the beginning of the

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<sup>45</sup> El orden desarmado La resistencia de la Asociación de los Trabajadores Campesinos del Carare (ATCC) (2014). Dignidad campesina y problema agrario en el Caribe colombiano (2016) La maldita tierra. Guerrilla, paramilitares, mineras y conflicto armado en el departamento de Cesar (2016) *Feature film: Voces de agua y de tierra: desde las memorias de los campesinos de la región Caribe* (2016) Memorias, territorio y luchas campesinas. Aportes metodológicos para la caracterización del sujeto y el daño colectivo con población campesina en la región caribe desde la perspectiva de memoria histórica (2015).

<sup>46</sup> The Peasant House of Sincelejo.

1980s which have been key elements to advance their land restitution processes before the State" (Centro de Memoria Histórica, 2016a).

It is worth highlighting that a really novel contribution for the future CEV is the experience accumulated by the HMIs, in descriptive as well as propositional terms. As seen in the previous chapter, TCs at the international level have reduced their recommendations to the last pages of the final report, without reporting any novelty or effectiveness in terms of remedies. On the contrary, some of the HMIs analyzed, offer a very broad repertoire rich in methodologies and processes that have achieved what no other TC in the world has been able to do: allow the mechanisms used to visualize the impacts of the damage (descriptive objectives) to be in themselves remedies to deal with the damages suffered by the victim, to allow them to restart their lives, and to recover the bonds of trust within their community (purposeful goals).

In the research carried out by the Historical Memory Group (2009), the definition of HMI is broken down into two fundamental aspects. The notion of initiative highlights the "foundational" character of these experiences, highlighting "the way in which, without ignoring the catastrophe, they carry a future, they affirm in the present an open future that at the same time restores and renews forms of community life" (Comisión Nacional de Reparación y Reconciliación & Grupo de Memoria Histórica, 2009, p. 26). Their success lies in the fact that they relate this space, which had previously been destroyed with a space in which the community is once again able to conduct their daily lives, thereby building from the ashes a place where they are, once again able to attain a certain "way of life". This is the case of the Itinerant Cineclub of Montes de María, a region of Colombia heavily impacted by the conflict. Through the screening of films in places devastated by war, it has allowed people to meet friends again and to converse in places where it formerly had been impossible to be (Comisión Nacional de Reparación y Reconciliación & Grupo de Memoria Histórica, 2009, p. 26).

The idea of memory, rather than forgetting an experience, represents the elaboration of that experience. For the Historical Memory Group, all the memory initiatives are indebted to the idea expressed by Jean Paul Sartre, who states "What is important is not what they have done for us, what is important is what we do with what has been made of us" (Comisión Nacional de Reparación y Reconciliación & Grupo de Memoria Histórica, 2009, p. 18). This phrase by Sartre and the HMIs is a tribute to the human capacity to transform adverse conditions. For example, the "Abrazadas"<sup>47</sup> of eastern Antioquia, has over time enhanced community processes to deal with pain, so that those who participate in their initiative manage to experience their grieving satisfactorily (Comisión Nacional de Reparación y Reconciliación & Grupo de Memoria Histórica, 2009, p. 18). This group has given fruit to another group known as "*Tejedoras por la Memoria de Sonsón*"<sup>48</sup> (Antioquia), who elaborate their sorrow through dolls, trees of life, embroidered quilts and paintings (Centro de Memoria Histórica, 2016c). Their works tell their stories so they do not forget the facts of the past and also able to materialize their dreams and hopes for the future:

Each stitch is a tear; it is an unfathomable memory in the immense void of the loss left by the armed conflict. But every piece of cloth sewn is one pain less, one more forgiveness. This is how the weavers of the country go about rebuilding their lives. Today many can already produce stitches of joy, hope and dreams to fulfill (Elmundo.com, 2016).

In my view, it would be redundant for CEV to focus on documenting what many have already documented: the damage suffered. These damages must be recognized and made visible by the future Commission, but the true, creative and significant contribution of the CEV would be to show and recognize the local processes that have allowed the construction of highly significant and efficient solutions. The HMIs should contemplate the potential that the spaces for

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<sup>47</sup> A community group whose name translates to "Embraces".

<sup>48</sup> Weavers of the Memory of Sonsón

discussion can have for dreaming of a possible better future. This accumulated local experience must have a leading role in the future CEV. These initiatives should be made known, strengthened, encouraged and replicated in other areas of the country where memory exercises have not been so significantly consolidated.

#### 4. Conclusion

The ICTJ, which has supported the work of truth commissions and several unofficial truth projects in twelve countries, asserts that drafting the mandate of a truth commission is a critically important step in the truth-seeking process (González, 2013, p. 1):

“Well-crafted mandates enable a commission to undertake its task with effectiveness: they set the stage for productive cooperation among institutions and allow civil society to fully understand the nature and potential of the truth-seeking exercise. A mandate that is incomplete, obscure, or contradictory to fundamental human rights standards can cripple a truth commission in many ways, forcing it to waste valuable time and resources in defining the parameters of its task, causing critical contradictions within the commission, and diminishing the capacity of key stakeholders to cooperate effectively with the commission” (González, 2013, p. 1).

This chapter has aimed to contribute to the first challenge facing the future CEV: to consolidate a well-crafted mandate. For this purpose, CEV’s objectives and functions were systematized in light of the methodological matrix and articulated with national and local input as well as regional expectations. This systematization may be useful for the newly formed CEV to: (i) identify the truth deficits that must be addressed as a priority; (ii) avoid working on objectives already satisfied in other instances; and (iii) recognize and take advantage of local expertise in attaining major objectives. In effect, the systematization allows for a synthesis between judicial efforts to know the truth about criminal acts and the

local experience of offering victims adequate space to present their testimonies. The challenge is to decide how and under which criteria to best incorporate CEV'S work on previous truth seeking initiatives (judicial, extrajudicial, official and unofficial). In light of these criteria, several descriptive objectives contemplated by the Decree can be satisfied through secondary sources. This would enable the Commission to prioritize the identified truth deficits and articulate its efforts with local expertise. This articulation would be highly beneficial in the creation of participatory and purposeful spaces, where those who are responsible for illegal acts may manifest their contrition, and victims may not only tell their testimonies of suffering, but be recognized as political actors with concrete proposals for "effective" future initiatives to deal with the past.

The exercise performed is illustrative, seeking only to show how the matrix could be used in a more rigorous and extensive research. However, in general terms, it is possible to conclude that the Decree foresees a Mandate focused on descriptive objectives, and ignoring the important issues which have the serious risk of investing its effort and time in documenting what is already documented (structural causes of violence and the impact of violence on women, among others), and to postpone Colombia's most sensitive truth deficits (identify collective and institutional responsibilities, identify accomplices, and beneficiaries of violence, and to clarify the phenomenon of forced recruitment, among others).

Facing this landscape, it is suggested that the CEV should decide how and under which criteria to best incorporate its work on previous truth seeking initiatives (judicial, extrajudicial, official and unofficial). In light of these criteria, several descriptive objectives contemplated by the Decree can be satisfied through secondary sources. This would enable the Commission to prioritize the identified deficits of truth and articulate its efforts with local expertise. This articulation would be highly beneficial in the creation of participatory and purposeful spaces, where those who are responsible for illegal acts may materialize their desire for amendment, and victims may not only tell their testimonies of suffering, but be

recognized as political actors with concrete proposals for "effective" future initiatives to deal with the past.

Likewise, it is suggested that the CEV should determine the time frame and / or relevant historical antecedents that is plans to cover as one of its first discussions. If the timeframe is too long, the work of the CEV could become unfeasible; in fact, 58 years represents a comparatively longer time than any other TC has ever documented (See Table 1). However, if that time span is reduced for practical reasons, episodes that are fundamental to understanding the conflict could be excluded. The Decree does not specify the time frame to be documented by the future Commission. The Decree states:

In order to address the different elements of its mandate, the Commission will have the temporal enclosure of the conflict period. As this is an extensive timeframe, it will be necessary for the Commission to establish priorities for its research. However, in order to fulfill the purpose of fully clarifying the origins and multiple causes of the conflict, the Commission may explore historical events prior to the conflict, taking into account as a basic input among others, the reports of the Historical Commission of the Conflict and its Victims (Colombia, 2017)

What follows are the most important conclusions for each dimension to be documented. Annex 2 contains a summary of this exercise: CEV's pending goals and significant contributions to examine.

#### 4.1 Context and Background

On this issue, the Decree foresees a Commission focused on identifying damages but discards the suggestion of solutions. In addition, the Decree cites the report presented by the "Historical Commission of the Conflict and its Victims", as an essential document to be referred to the CEV regardless of the fact that this text

is exclusively academic in nature and has been highly criticized for the absence of collective definitions. In fact it never even mentions the "*Basta Ya!*" Report, which has been the result of a long work between academics from the Historical Memory Group and victims from different regions of the country.

The HMIs lacks significant experience in order to adequately contribute to the documentation of context and background of the Colombia violence. HMIs appear to be more focused on elucidating particular criminal acts than on the contexts that made such acts possible.

In my opinion, the most novel thing that the CEV could provide is to offer a regional and local approach on the information already existing at the national level; to identify on a regional basis, the weight of the variables that have been documented at the national level. The task of the CEV will be to discuss which circumstances can be documented through secondary sources (i.e., university studies reviewed by the Sierra Leone TRC) and which require consulting primary sources and / or public hearings.

In terms of solutions, international experience shows the limited capacity of a TC to modify or transform the structural causes of violence, the criminal architecture of the State and / or the international relations and context that led to the atrocity. However, it is possible that in the Colombian case the CEV can offer two solutions: 1) the creation of pedagogical spaces which seek to modify the social frameworks that justified the violence against the civilian population; and 2) the creation of participatory spaces that allow for the construction of institutional recommendations from a regional and inclusive perspective, thereby preventing the final recommendations from being the result of the exclusive work of the commissioners in the final sessions of the Commission.

## 4.2 Criminal Acts and Implicated Actors

Regarding the identification of victims, both the matrix and the Decree coincide with the proposed objectives. What remains to be resolved is the way in which individual and collective victims are identified. For individual identification, the consolidated figures in Colombia allow for an understanding of the general patterns of violence and also illustrate victimization trends suffered in a territorial manner. However, the explanatory value of the figures and percentages does not replace the symbolic value represented by the lists of victims in the international cases studied. The CEV should consult the opinions of the victims regarding the symbolic value of the construction of public lists with biographical data, and also evaluate the security conditions that such recognition requires.

In the identification of collective victims, both the HMI and the Memory Center have consolidated significant advances (especially with regard to women and ethnic groups). However, there other sort of collective victims which creates a challenging horizon for the future Commission. Both merchants and some productive sectors of the country claim to be recognized as victims of extortion and expect to participate in the CEV as such (UN, 2015), however, society in general has identified them as responsible for sponsoring and financing the armed actors. The CEV will face some of its most difficult challenges when defining its notion of collective victims and determining the criteria for which certain groups may enter that category.

With regard to the identification of responsible actors, both the matrix and the Decree coincide in the objectives that must be fulfilled by the CEV. However, the Decree does not specify the need to design non-criminal sanctions (economic, symbolic, community work, etc.) that may be assumed by accomplices, indifferent bystanders or beneficiaries of violence. Besides, the Decree does not address the need to distinguish between those different levels of responsibility.

The HMIs does not contribute with any experience that helps in the identification of responsible actors. These initiatives are more focused on the

clarification of particular criminal facts than on pointing out those responsible for these events.

In my opinion, a broader notion of responsibility must be established, which, without ignoring the relevance of criminal and individual, can transcend to explore collective and institutional responsibilities. The biggest improvement in this area would be not only the identification of those responsible or their accomplices, but also their participation in the CEV. The CEV should be a space for many agents who have been indifferent bystanders, accomplices or beneficiaries of violence to express their commitment to the dignity of the victims and their desire to amend.

In the identification of criminal acts, both the matrix and the Decree propose similar objectives. The diagnosis made shows that the least recognized and documented is forced recruitment. In this regard, the CEV will have to concentrate their efforts to understand and clarify the dimension of this phenomenon.

Regarding the making of the final report, there are also similar objectives between the matrix and the Decree. Both the HMIs and the Historical Memory Center have significant accumulated experience so that the dissemination of the CEV report could be friendly and accessible to both the victims and the general public, which in the end would maximize the impact of the Commission.

#### 4.3 Impacts

When comparing the objectives of the matrix and the Decree, it can be said that the mandate establishes that the CEV will focus again on the descriptive objectives (identify the impacts suffered), delegating the satisfaction of more purposeful objectives (suggesting solutions) to other entities.

For the matrix, both the goals that describe the harms and those that propose remedies are equally significant. A Commission that ignores what

happened in the past and only focuses on the future would be proposing remedies from a point of ignorance. TCs must recognize the past to project the future. This synthesis between past, present and future has been materialized in a very innovative way by the HMs: the mechanisms that visualize damages simultaneously allow for confronting and overcoming such damages in order to undertake the future in a more positive way. The community processes that some of these initiatives have designed to make current impacts of past harms more visible have in themselves been remedies so that victims can restart their lives and regain the bonds of trust within their community. This is an invaluable experience that the CEV must recognize, visualize, and enhance.

## Annex 1. Map of Colombia (world, 2017)



## Annex 2. Colombian Commission for the Clarification of Truth: setting precise and achievable goals (Executive Summary)

This chart summarizes how the matrix may support the definition of the objectives of the CEV mandate. Below, using the balance between local and national truth-seeking experiences, I set the most important CEV pending goals and suggest some significant contributions that CEV should examine in order to accomplish the goals I propose.

	<b>Context and background</b>	<b>Criminal acts and implicated acts</b>	<b>Impacts</b>
<b>To diagnose damages</b>	<ul style="list-style-type: none"> <li>Clarify factors leading to the conflicts with a more regionalized focus.</li> </ul> <p><b>Significant contribution to examine:</b></p> <ul style="list-style-type: none"> <li>For this task, the Sierra Leone TC should be used for guidance: the CEV will be able to use all existing documentation at the national level to prepare regional audiences that allow prioritizing the background and contexts from a local dimension</li> <li>The Context Unit of the State Prosecutors office: Judicial decisions allow a better understanding of the causes and contexts of the paramilitary phenomenon.</li> <li>Historical Memory Group and National Historical Memory Center and scholarly research indicate possible structural causes of violence,</li> </ul>	<ul style="list-style-type: none"> <li>Extensively investigate the recruitment of minors, a phenomena that has been poorly documented in Colombia</li> <li>Build a public list with names, biographical data and facts surrounding the victimization (it will be subject to the security conditions and the expressed will of the victims to be recognized as such in a public way.)</li> <li>Defining CEV's notion of collective victims and determining under what criteria certain groups may enter that category. It is especially important here to distinguish this category from the collective and institutional complicities and responsibilities.</li> <li>Distinguish between those who indirectly promoted and maintained violence, funded armed groups, beneficiaries of violence, or are responsible for the imposition of violence.</li> <li>Identify and investigate "memories of complicity" regionally and in greater detail.</li> </ul> <p><b>Significant contributions to examine:</b></p>	<p>There is no pending goal related with diagnosing <i>Impacts</i>. It would be redundant for CEV to focus on documenting what many have already been documented.</p> <p>The "Basta Ya!" Report has categorized the damage caused by violence in a very complete and meaningful way.</p> <p>The HMI has a significant amount of accumulated experience. Some HMIs have achieved what no other TC in the world has been able to do: their mechanisms to visualize the impacts of the damage (descriptive objectives) are in themselves remedies to deal with the damages suffered by the victim, to allow them to restart their lives, and to recover the bonds of trust within their community (purposeful goals).</p>

	<p>show how an inefficient state becomes a criminal state, identify social frameworks and international relations that have exacerbated Colombian violence</p>	<ul style="list-style-type: none"> <li>• "Single Victims Registry (RUV, in its Spanish acronym) for persons that suffered by the actions of illegal armed groups and agents of the State between 1985 and 2011.</li> <li>• The "<i>Basta Ya!</i>" Report has extensively documented (quantitatively and qualitatively) the most systematic criminal acts that civilians in Colombia (individuals and groups) have suffered.</li> <li>• The HMI has significant methodological experience, evidence and archives to prove the occurrence of human rights violations.</li> </ul>	
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<b>To recommend remedies</b>	<ul style="list-style-type: none"> <li>• Create pedagogical spaces to modify the social frameworks that justified the violence against the civilian population</li> <li>• Create participatory spaces that allow the construction of institutional recommendations from a regional and inclusive perspective and, in this way, prevent the final recommendations from being the result of the exclusive work of the commissioners in the final stretch of the Commission</li> </ul>	<ul style="list-style-type: none"> <li>• Recognize, visualize, and enhance local and creative ways to publicly publicize truth findings.</li> <li>• Encourage the different responsible and accomplice actors (medias, productive sector, bystanders, etc..) to assume their responsibilities and express their commitment to the dignity of the victims and their desire to amend.</li> <li>• Propose alternative "sanction" corresponding to different types of responsibility to make effective and channel desires for amendment and repentance.</li> </ul> <p><b>Significant contribution to consult:</b></p> <ul style="list-style-type: none"> <li>• HMI have created creative ways to publicly publicize their findings: photographic samples, digital files, dolls, patchwork quilts, monuments, murals, etc</li> <li>• Historical Memory Group and National Historical Memory Center have been involved in the production of various artistic, audiovisual, graphic, interactive formats, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Recognize, visualize, and enhance the invaluable experience of the HMI. These initiatives should be made known, strengthened, encouraged and replicated in other areas of the country where memory exercises have not been consolidated so significantly.</li> </ul>
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## Final Considerations

A summary and significant conclusions of this dissertation can be found at the end of each chapter. The purpose of this final section is to underline the novelty and the most relevant contributions of this thesis in two senses: (i) the theoretical contribution to define the notion of truth and the concept of truth commissions in the aftermath of violence and (ii) the methodological contribution to operate my

theoretical inputs, to compare two previous TCs (South Africa and Sierra Leone) and to suggest some recommendations for future TCs (Colombia).

### Theoretical contribution

Although truth-seeking mechanisms have been broadly discussed, the nature of the *truth* that is sought and its justification has been addressed less broadly. The current dissertation, instead of discussing the strengths and weaknesses of establishing a truth commission and its merits over others, suggests a discussion around the very concept of truth that TCs find. This alternative approach overcomes the perceived tension between TCs' tasks of identifying patterns of violence and hearing out the narratives of victims.

The first and most straightforward objective of a truth commission is to conduct a descriptive fact-finding mission and produce an impartial, historical report on human rights violations (González & Varney, 2013). Nevertheless, in general terms, scholars who have justified the importance of truth commission seem to defend the thesis that testimonies recounted by victims, and to which empathic audiences listen, should be *accepted* in some sense, not because they exactly correspond to the way events happened in the past, but because the process of recounting what is said to be a fact serves many present and ongoing interests, e.g., promoting healing for individual victims, promoting reconciliation across divisions created by the collective violence, and restoring dignity to victims. My own alternative approach to truth and truth commission in the aftermath of violence distance themselves from these approach in three ways: i) it underlines the risk of overestimating the importance of telling testimonies; ii) it highlights the risk of underestimating the value of knowing some factual/objective information; and iii) it suggests a concept which makes a synthesis between knowing facts and telling testimonies.

This distance implies a challenge to the traditional definition of truth-commission, which locates the victim's testimonies of suffering as the centerpiece of how the TC proceeds. From my approach victims shall participate in TCs as people who have suffered the impact of a criminal act in the past, but also as citizens who have already resumed their lives after criminal acts or as citizens capable of suggesting remedies to deal with the antecedents and context that made the atrocities possible. Both the victims' capability of telling their experience of suffering, resistance or resilience and their capability of proposing possible futures must be equally attended to. Likewise, non-victims' groups shall not participate in a TC merely as passive listeners of victims' suffering testimonies. Ex-combatants, state and/or society participating in the elaboration of the past's diagnosis, shall express their will to regenerate themselves in some way (Freeman, 2006a) and explain their purpose for taking part in the restoration of the human and civic dignity of victims and society (Du Toit, 2000, p. 135).

Likewise, my definition of TC underlines the legal notion of "remedy" rather than the psychological concept of "healing". "Healing" refers to the process of becoming sound or healthy again, it implies the complete restitution of something lost or stolen from the victim. "Remedy" is a much more modest notion, it emphasizes the universally recognized "right to an effective remedy"; whoever causes the damages must amend them partially or totally, according to circumstances. For my notion of TC, the idea of remedy implies something which is forward and backward looking; a TC should use the past identified damages to suggest and recommend steps towards a new moral and political order, it would be wrong to deal with the past only for its own sake. My proposed attention to both damages and remedies, seeks to overcome the current TC tendency of spending disproportionate efforts and time on diagnosing damages and leaving the recommendations for the final pages of the report. A TC should look both ways in time with the same commitment in order to offer feasible remedies.

### Methodological contribution

The previous theoretical contribution allows me to design a methodological framework, which sets up a list of objectives to be chosen and prioritized for any new truth commission. It is intended to be flexible, so that it can help in different times and places that vary between each other. These “potential objectives” are a set of criteria that commissioners can use to learn from previous experiences of TCs from all over the world, as well as to dialogue with local truth-seeking experiences. On the one hand, the comparisons with the international experiences will enable the identification of the challenges that previous TCs have faced in their efforts to achieve their so called objectives. On the other hand, the local approach helps to shed light on understanding how and to what extent these ideal objectives have been met in the regions and localities in which the future TC will work. Taking into account both international and local experiences, more feasible objectives might be established for future TCs so that the commissioners might undertake their task more effectively.

The important task of defining clear and concise TC objectives ensures that “all participants [of a TC] have realistic expectations about what impact their contributions could have” (González 2013). Whether the TC is expected to help to heal a nation, or reconcile victims with their torturers, or to ensure the rule of law, or to establish a culture of human rights, etc., a sense of disappointment frequently emerges in the aftermath of a truth commission process (Freeman 2006); a proper definition of a TC’s objectives can help control such expectations and save truth commissions from generating cycles of high hopes and bitter disappointments (Minow 1999).

The challenges that new TCs face are enormous, so the methodological framework attempts only to support their work in two senses: (1) by suggesting two main actions to perform: (i) diagnosing the damages suffered (backward looking) and recommending the necessary remedies to deal with them (forward looking), and (2) recommending three important issues to document: (i) the

background and context of the crimes (what triggered a criminal act), (ii) the criminal acts as such and the implicated actors, and (iii) the impacts caused by such atrocities (the ongoing damages suffered by the victims).

This methodological matrix was built looking at two international cases: the South African (SA) and Sierra Leone (SL) Truth and Reconciliation Commissions (TRC) and once it was finished it was applied to Colombia's future TC. My methodological contribution allows for the comparison and systematization of the enormous variety of issues documented and the rich experience of both (i) the final reports of the SA and SL TRCs and (ii) the local truth-finding experience in Colombia.

The Sierra Leone TRC Report (1,828 pages) is organized in four main volumes, each divided in chapters; five appendices add 3,122 pages, for a total of 4,950 pages. *Grosso modo*, the content of each of the volumes can be summarized as follows:

<b>Section:</b>	<b>Contents:</b>
Vol. 1	<ul style="list-style-type: none"><li>• TRC Methodology</li></ul>
Vol. 2	<ul style="list-style-type: none"><li>• Executive Summary</li><li>• Damages</li><li>• Remedies</li><li>• List of Victims</li></ul>
Vol. 3A, 3B	<ul style="list-style-type: none"><li>• Causes and antecedents of the Conflict</li><li>• Nature of the Conflict</li><li>• Influential factors</li><li>• The TRC itself</li><li>• Principle victims</li><li>• TRC's suggestion for reconciliation and the future SL</li></ul>
Appendices	<ul style="list-style-type: none"><li>• Esp. official documents received or emitted by TRC procedures</li></ul>

On the other hand, and although it does present certain similarities, the general structure of the SA TRC Report is fairly different. The first five volumes are

2,757 pages long, while the two Codicil volumes contribute with 1,764 pages; thus, the whole report is 4,521 pages long. The content can be roughly summarized as follows:

Vol. 1	<ul style="list-style-type: none"> <li>• TRC Methodology</li> </ul>
Vol. 2	<ul style="list-style-type: none"> <li>• Gross violation of human rights</li> </ul>
Vol. 3	<ul style="list-style-type: none"> <li>• Gross violation of human rights (from victims' perspective)</li> </ul>
Vol. 4	<ul style="list-style-type: none"> <li>• Nature of the SA society</li> </ul>
Vol. 5	<ul style="list-style-type: none"> <li>• Conclusions</li> </ul>
Vol. 6	<ul style="list-style-type: none"> <li>• Codicils to the 3 committee reports</li> <li>• Findings and Recommendations</li> <li>• Administration report</li> </ul>
Vol. 7	<ul style="list-style-type: none"> <li>• Victims: names and findings</li> </ul>

The methodological matrix offers valuable criteria to make an easier comparative exercise between these TCs, regardless of how different their reports are in length, complexity, structure and the issues they address. In light of the "potential objectives", the dialogue between these previous TCs allow for the systematization of the challenges and lessons they have faced in their efforts to achieve and accomplish (or not) the said objectives.

The exercise was applied to the Colombian case where the universe of victims and the duration of the conflict are much wider than what other TCs have addressed and documented so far. Specifically, the task of suggesting clear and concise objectives for the future TC in Colombia, faced two important challenges:

- i. The "Final Agreement for the Ending of the Conflict and the Building of a Stable and Durable Peace", the document which created the future Commission for the Clarification of Truth, Coexistence, and Non-Repetition (CVCR) has set up three main goals, eleven functions and a

additional mandate that includes thirteen aspects to be clarified and recognized. Thus, this document cripples the TC's future in many ways by i) forcing the commission to waste valuable time and resources in defining the parameters of its task; ii) causing critical contradictions within the commission; and iii) diminishing the capacity of key stakeholders to cooperate effectively with the commission.

ii. Colombia possess multiple previous institutional efforts and varied local initiatives, for example between 1958 and 2012, twelve national commissions for study and extrajudicial investigation of violence were designed and, by October 2015, the Historical Memory Center had consolidated a record of 323 Historical Memory Initiatives. Ignoring theses previous official and local inputs could lead to the duplication of tasks or the general ignorance of the valuable experience acquired in the last 10 years in the country.

So how does one articulate this Colombian valuable experience with a TC that begins with an obscure mandate? The objectives of the Colombian decrees were incapable of accomplishing what the matrix objectives sought to do, which was to systematise previous institutional efforts and varied local initiatives, while highlighting the country's truth deficits and prioritizing the pending goals of the CEV. In sum, the contribution of the matrix in this thesis is to guide the current CEV in preventing them from duplicating objectives that have already been satisfied in other instances and to allow the CEV to take advantage of local expertise in order to achieve its remaining goals.

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