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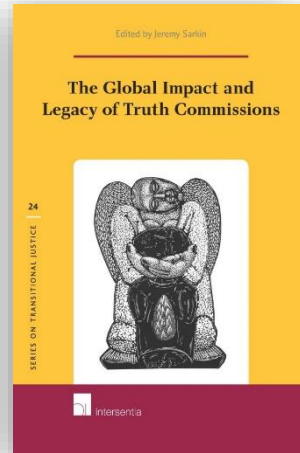


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**Jeremy Sarkin (ed.)**

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# ASSESSING THE LONG-TERM IMPACT AND LEGACY OF TRUTH COMMISSIONS

Anita FERRARA

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## 1. INTRODUCTION

Truth commissions are temporary bodies that aim to disclose the truth about past human rights violations. Drawing on Hayner's widely used definition, truth commissions are created to investigate patterns of human rights abuses over a period of time, to engage directly and broadly with the affected population and to issue a final report recommending reparations programmes and institutional reforms to ensure such abuses do not reoccur.<sup>1</sup>

These bodies have been used in more than 30 countries since the fall of the military regime in Argentina in 1983. From an historical perspective, the first generation of truth commissions included those established in the Southern Cone of Latin America. Despite the limitations of the initial commissions, these represented the baseline and were a source of inspiration for later truth commissions. Since then, 'truth commissions have become a staple of post-conflict or post-authoritarian transitions across numerous and diverse contexts.'<sup>2</sup>

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<sup>1</sup> P.B. HAYNER, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd edn, Routledge, New York, 2011, 11.

<sup>2</sup> N. VALJI, 'Trials and Truth Commissions: Seeking Accountability in the Aftermath of Violence', The Centre for the Study of Violence and Reconciliation, 2004, [www.csvr.org.za/images/f\\_e\\_s.pdf](http://www.csvr.org.za/images/f_e_s.pdf).

Truth commissions have changed considerably since their early establishment and they are no longer regarded as ‘quick-fix’ solutions to overcome complex transitions or as a substitute for criminal justice. These bodies have developed significantly over the past three decades, expanding their mandates and objectives and becoming increasingly innovative in their processes, thus forming very sophisticated and complex enterprises. Therefore, a large amount of literature has been written on the supposed benefits of truth commissions claiming that they provide victims with an opportunity to tell their story, promote accountability and the rule of law, produce an authoritative account of state crimes, recommend institutional reforms, and promote reconciliation. Since truth commissions in the last two decades have become increasingly popular mechanisms for dealing with the past, the trend in recent research has been towards evaluating the impact and merit of these bodies. One of the most active debates in the research on transitional justice is focused on the problem of how to assess the impact and effectiveness of truth commissions and other transitional justice mechanisms. While there has been some attempt made to identify common guidelines in order to evaluate the effectiveness and efficacy of such bodies, the results of the first empirical studies, both qualitative and quantitative, have so far produced mixed and sometimes contradictory results. Several studies have identified a series of conceptual, methodological and epistemological problems related to the assessment exercise and most recent research attempts to explore ways to overcome these challenges.<sup>3</sup>

Other scholars have identified the need to conduct long-term impact assessments of truth commissions, claiming that a long-term perspective can tell us more about the deeper social, political or institutional changes that such mechanisms seek to achieve.<sup>4</sup> Yet studies that examine the effects of truth commissions years after their work has concluded are rare. The few empirical studies that do exist that assess the long-term impact of truth commissions suggest that the consequences and effects of truth commissions are long-lasting and evolve over time.<sup>5</sup> The cases of Argentina and Chile demonstrate

<sup>3</sup> H. VAN DER MERWE, V. BAXTER and A.R. CHAPMAN (eds.), *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, United States Institute for Peace Press, Washington D.C., 2009; O.N.T. THOMS, J. RON and R. PARIS, ‘State-Level Effects of Transitional Justice: What Do We Know?’ (2010) 4(3) *International Journal of Transitional Justice* 1; M. BEN-JOSEF HIRSCH, M. MACKENZIE and M. SESAY, ‘Measuring the Impacts of Truth and Reconciliation Commissions: Placing the Global “Success” of TRCs in Local Perspective’ (2012) 47(3) *Cooperation and Conflict* 386; O. BAKINER, ‘Truth Commission Impact: An Assessment of How Commissions Influence Politics and Society’ (2013) 8(1) *International Journal of Transitional Justice* 6.

<sup>4</sup> THOMS, RON and PARIS, *supra* note 3, at 8; E. BRAHM, ‘Uncovering the Truth: Examining Truth Commission Success and Impact’ (2007) 8(1) *International Studies Perspectives* 6, 17–19.

<sup>5</sup> A. FERRARA, *Assessing the Long-term Impact of Truth Commissions: The Chilean Truth and Reconciliation Commission in Historical Perspective*, Routledge, London, 2015;

that advancements in public acknowledgement and apologies, prosecutions, institutional reforms, reparations and other areas came years after the truth commissions had ended their work. For this reason, a longer-term evaluation of truth commissions is necessary since some of the objectives that truth commissions initially set out to achieve can take many years, if not decades, to materialise.

This chapter aims to provide a possible framework and set of criteria against which to make a long-term impact assessment of truth commissions (see further Sarkin's introductory chapter on the criteria and methods to determine truth commission impact). It defines long-term impact as the ability of truth commissions to 'act as a catalyst for a series of social, political and institutional transformations, which can occur in post-truth commission phases'. Just as the process of dealing with the past is nonlinear, being characterised by advancements and setbacks, so too is the impact of a transitional institution like a truth commission, which is embedded in that process. Three main assumptions are thus put forward to evaluate the long-term impact of a truth commission (see Sarkin's introductory chapter on these and other issues). Firstly, the long-term impact of a truth commission can depend on a multitude of factors, including the evolution of the political context, institutional reforms, external factors, leadership change, sequencing and combination with other transitional justice mechanisms and timing.<sup>6</sup> Moreover, it requires sustained commitment by multiple actors and forces in both society and institutions. Therefore, follow-up mechanisms, state action and engagement of civil society are required in order for the work of a truth commission to be upheld. Secondly, since many variables determine the impact of a truth commission, the researcher should follow up any unexpected findings that could not have been anticipated at the outset. Although this aspect further complicates the search for causality, this chapter argues that having fixed expectations and goals might limit our understanding of the potential of truth commissions. Thirdly, in order to grasp how or to what extent the effects of a truth commission might change, evaluations need to be conducted at multiple points in time after the conclusion of the truth commission's work, rather than at single point. The post-commission process can be divided into a number of different phases. A short-term impact analysis can be conducted in the period immediately following the establishment of the truth commission; a medium-term analysis could be conducted 10 years after the truth commission has concluded its work. For the purpose of this study,

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E. WIEBELHAUS-BRAHM, *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy*, Routledge, London, 2010.

<sup>6</sup> L.E. FLETCHER, M. HARVEY and J.R. WEINSTEIN, 'Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective' (2009) 31 *Human Rights Quarterly* 163; E. SKAAR and C.G. MALCA, 'Conclusions', in E. SKAAR, C.G. MALCA and T. EIDE (eds.), *After Violence*, Routledge, New York, 2015.

a timeframe of 20–30 years after the conclusion of the truth commission is considered the minimum amount of time necessary to conduct an evaluation of its longer-term impact. In order to see the outcomes of truth commissions and to have a clearer understanding of the underlying historical processes at work, one must perhaps be prepared to wait. Whilst several decades appears to be a lengthy timeframe in transitional justice terms, it is certainly not long if truth commissions are regarded as part of the broader, complex historical process.

## 2. A FRAMEWORK FOR EVALUATING LONG-TERM IMPACT

This section examines what stage the current assessment literature has reached and identifies the major challenges of undertaking this type of research. It then suggests a possible framework and set of criteria to conduct a long-term impact assessment of truth commissions.

The first quantitative studies, using large-N regression analysis, have measured the impact of truth commissions mainly on democratisation and human rights practices. Yet, as Hayner noted, the goals of democracy and respect for human rights are not the only goals that are attainable, nor are they the expressed aims of truth commissions.<sup>7</sup> Very few studies have assessed truth commissions against other goals, such as raising public awareness of past atrocities, promoting acknowledgement and apology, aiding institutional reforms and reconstruction, reintegrating victims into society, promoting memory, and building shared narratives.<sup>8</sup>

The decision of researchers to measure the impact of truth commissions on democracy and human rights is based on the fact that more data is now available from different countries. Using a mixed-method approach, Wiebelhaus-Brahm's statistical findings show that truth commissions have a negative effect on human rights practices and a negligible impact on democracy.<sup>9</sup> However, the findings of Wiebelhaus-Brahm's qualitative analysis of four separate case studies (Chile, South Africa, El Salvador and Uganda) suggest that truth commissions have a positive impact on both human rights practices and democracy. Another study by Olsen et al. concludes that the impact of transitional justice measures on democracy and human rights practices depends on the combination of transitional justice mechanisms that are implemented. According to Olsen et al., truth commissions make a positive contribution when combined with trials

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<sup>7</sup> HAYNER, *supra* note 1, at 25.

<sup>8</sup> See Sarkin's introductory chapter on issues concerning the wider goals of truth commissions.

<sup>9</sup> WIEBELHAUS-BRAHM, *supra* note 5.

and amnesty, whereas truth commissions alone tend to exacerbate the problems in a transitional country. Their study suggests that the use of multiple mechanisms is the most effective way to generate positive change.<sup>10</sup> Contrary to Wiebelhaus-Brahm and Olsen et al., Kim and Sikkink's study finds that both truth commissions and human rights prosecutions have a positive impact on democracy and human rights. They argue that human rights trials and truth commissions help to spread an accountability norm, which increases respect for the rule of law.<sup>11</sup> The results from these first quantitative studies suggest that contradictory conclusions are reached even by studies looking at the same outcomes, such as democracy and human rights, and using the same methodology, for example large-N regression analysis. However, Brandon and Wiebelhaus-Brahm further explain the factors that led to such divergent findings, including definitional and measurement issues, different sampling strategies, and construction of diverse statistical models.<sup>12</sup> Finally, all the above quantitative studies rely on Polity IV or Freedom House as the main datasets to measure democracy and on CIRI (Cingranelli-Richards Human Rights Data Project) as the main dataset to measure improvements in human rights. These datasets include several indicators on which truth commissions are unlikely to have an impact, such as public participation, electoral rules, freedom of the press and freedom of religion.<sup>13</sup> While recognising the importance of these quantitative studies, this chapter argues that it is nevertheless the case that the value of empirical quantitative study is limited due to the lack of necessary data and the difficulty of measuring these effects statistically. Transitional justice is a recognised 'hard-to-measure area of social change'.<sup>14</sup> Therefore, the chapter contends that qualitative analysis of specific case studies is still required in order to assess both the limitations and the possibilities of truth commissions. Moreover, the case study offers a better understanding than a quantitative analysis of the complex social and political dynamics, as well as of the interplay between numerous factors that could affect the contributions of these bodies. However, in order to avoid the limitations that would result from analysing one single case, a multiple case study design is required. The multiple case study includes both within-case analysis of single cases and comparisons of several different cases.<sup>15</sup>

<sup>10</sup> T.D. OLSEN, L.A. PAYNE and A.G. REITER, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy*, United States Institute of Peace Press, Washington D.C., 2010.

<sup>11</sup> H. KIM and K. SIKKINK, 'Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries' (2010) 54(4) *International Studies Quarterly* 939.

<sup>12</sup> S. BRANDON and E. WIEBELHAUS-BRAHM, 'The Quantitative Turn in Transitional Justice Research: What Have We Learned About Impact?' (2017) 1(5) *Transitional Justice Review* 97.

<sup>13</sup> BRAHM, *supra* note 4, at 25–26.

<sup>14</sup> C. DUGGAN, 'Editorial Note', Special Issue: 'Transitional Justice on Trial: Evaluating Its Impact' (2010) 4(3) *International Journal of Transitional Justice* 315.

<sup>15</sup> A. BENNETT, 'Case Study Methods: Design, Use, and Comparative Advantages', 2012, <https://pdfs.semanticscholar.org/7d11/098671a75e7b289fd65adab2eb236c5cf580.pdf>.

Furthermore, both qualitative and quantitative studies to date have failed to conduct longer-term impact assessment of these temporary bodies. Even for the most well-known cases, the existing literature on assessment tends to analyse short-term transitional justice outcomes, focusing on the degree to which a commission completed its objectives within a designated period of time.<sup>16</sup> Wiebelhaus-Brahm also distinguishes the ‘success’ of a truth commission from its long-term impact.<sup>17</sup> A book written by the present author represents one of the first efforts to empirically analyse the long-term impact of one of the oldest truth commissions: the Chilean case.<sup>18</sup> She argues that it is extremely important to understand the long-term impact of truth commissions, in order to determine whether or under what conditions these bodies contribute to the transition and/or to other social and political changes within a country. Her study examines the extent to which and how the Chilean truth commission contributed to the development of the transitional justice measures that ensued, and how the relationship with those subsequent developments was established over time. Moreover, she analyses the ability of the truth commission to effect deeper social and political changes over time. She concludes that the Chilean truth commission had unexpected consequences, which are more visible today than they were in the short-term. A long-term impact assessment helps to clarify why certain truth commissions with limited mandates and power have had longer-lasting effect than other truth commissions that were created with far-reaching mandates and better access to resources. Drawing on the conclusions of her previous investigation based on the Chilean case, the author proposes in this chapter a framework, which can be applied to other truth commissions to assess their longer-term impact. The author argues that it is very problematic to measure truth commissions’ effects against pre-established end goals, such as democracy, rule of law and reconciliation. Multiple dynamics and the interaction between many factors, including unexpected ones, determine the long-term impact of a truth commission. Therefore, the author argues in favour of the need to examine the post-truth commission process and trace the role of truth commissions as catalysts for the development of wider transitional justice processes. The chapter argues that the impact of a truth commission over the longer term should be measured according to two main criteria: its impact on other transitional justice mechanisms and its impact on wider society and public institutions.

In particular, truth commissions should be evaluated against their ability to:

1. support, strengthen and interact with other transitional justice mechanisms, including reparations, trials and memorialisation; and

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<sup>16</sup> THOMS, RON and PARIS, *supra* note 3, at 8.

<sup>17</sup> WIEBELHAUS-BRAHM, *supra* note 4, at 17–19.

<sup>18</sup> FERRARA, *supra* note 5.

2. promote a change in attitudes, beliefs and practices at the political, social and institutional level.

The major methodological problem in assessing transitional justice measures lies in the difficulty of establishing a causal relationship between the truth commission and a series of dependent variables that are of interest, such as democracy, human rights protection and the rule of law. Recent studies have found it difficult to treat truth commissions as independent variables, with the result that most of the benefits attributable to truth commissions are instead seen as the outcome of other factors.<sup>19</sup> Proving causal relationships between transitional justice mechanisms and certain outcomes is extremely difficult because transitions are non-linear processes and the changes sought through a transitional justice mechanism will be the result of manifold interactions between numerous factors that are difficult to predict, let alone control. This means that it is highly problematic, if not impossible, to establish causal relationships. Since multiple variables are involved in these complex socio-political processes, it is extremely difficult to assess the impact of a particular cause on future outcomes.<sup>20</sup> Truth commissions take place in the context of broader socio-political, economic and institutional reforms, where factors other than truth commissions may cause certain effects.

The argument presented in this chapter is that the long-term analysis can best be achieved through a qualitative methodology that involves process tracing. Process tracing is a research method for tracing causal mechanisms using detailed, ‘within-case’ empirical analysis of how a causal process plays out in an actual case. Moreover, by establishing explanations that document the intervening variables and processes through which truth commissions bring about certain outcomes, process tracing differs from and complements statistical inferences.<sup>21</sup> Since process tracing is a case-based approach, it needs to be combined with comparative methods in order for the researcher to be able to make generalisations about causal processes. Cross-case comparative evidence has to demonstrate that the population of other positive cases is relatively causally similar to the selected case, thereby enabling generalisations to be made.<sup>22</sup> Finally, the systematic comparison of individual cases could overcome the limitations of a single case study analysis, while at the same time maintaining the focus on context-specific dynamics that allow for the

<sup>19</sup> WIEBELHAUS-BRAHM, *supra* note 4, at 28.

<sup>20</sup> K. SIKKINK and C.B. WALLING, ‘The Impact of Human Rights Trials in Latin America’ (2007) 44(4) *Journal of Peace Research* 427, at 443.

<sup>21</sup> BENNETT, *supra* note 15.

<sup>22</sup> B. DEREK, ‘Process-Tracing Methods in Social Science’, *Oxford Research Encyclopedia of Politics*, Oxford University Press, Oxford, 2018.



identification and tracking of causal processes. Other qualitative methodologies, including public opinion surveys, discourse analysis, focus groups and in-depth interviews, remain the most suitable methodologies to measure changes in public attitudes and beliefs, political elites' discourses and institutional practices over time.

The following sections explore in more detail the interaction between truth commissions and other transitional justice mechanisms, including reparations, trials and memorialisation, in order to gauge the long-term effects of truth commissions. The last section analyses a set of criteria to measure the ability of truth commissions to change attitudes, beliefs and practices of political elites and the broader public over the longer term.

### 3. UNDERSTANDING THE IMPACT OF TRUTH COMMISSIONS ON OTHER TRANSITIONAL JUSTICE MECHANISMS

Many studies have argued that truth commissions should be considered as the beginning of a longer-term process that will provide the foundation for the subsequent establishment of further transitional justice initiatives to deal with past human rights violations. In fact, in many countries, truth commissions either preceded or were established concurrently and in combination with other transitional justice mechanisms, such as reparations, apologies, amnesties, criminal trials, memorialisation and institutional reforms. In such cases, scholars have suggested that it is unwise to assess the effects of a single transitional justice mechanism in isolation.<sup>23</sup> According to Dancy, Hunjoon and Wiebelhaus-Brahm, 'it is irresponsible to assume the independence of events in reference to transitional justice mechanisms.'<sup>24</sup> De Greiff argues that transitional justice mechanisms should exhibit 'external coherence' and be designed in such a way as to bear a close relationship with other transitional justice institutions.<sup>25</sup> While the most prevalent assumption in the literature seems to be that the more transitional justice mechanisms the better, it remains to be seen whether or under what conditions multiple transitional justice mechanisms can truly interact with and support each other in order to better respond to victims' demands. Brandon and Wiebelhaus-Brahm assert that quantitative studies

<sup>23</sup> G. DANCY, K. HUNJOON and E. WIEBELHAUS-BRAHM, 'The Turn to Truth: Trends in Truth Commission Experimentation' (2010) 9(1) *Journal of Human Rights* 45, at 59.

<sup>24</sup> Ibid.

<sup>25</sup> P. DE GREIFF, 'Justice and Reparations', in P. DE GREIFF (ed.), *The Handbook of Reparations*, Oxford University Press, Oxford, 2006.

have rarely investigated the effect of interaction between transitional justice mechanisms, which would allow the researcher to examine their cumulative effects.<sup>26</sup>

In 2007, a dataset was created by Sikkink and Walling to document the emergence and dramatic growth of the use of truth commissions and domestic, foreign and international human rights trials globally. Their data on truth commissions shows that almost two-thirds of the countries that had truth commissions also held trials to deal with past human rights abuses. Furthermore, every country in the Americas region that established a truth commission also held domestic trials.<sup>27</sup> Finally, according to this study, countries that established truth commissions were more likely to choose additional transitional justice measures.<sup>28</sup>

As many countries today have established multiple transitional justice mechanisms, there is a need to further explore how truth commissions have interacted and/or contributed to other transitional justice mechanisms. Given that many truth commissions have proved to be the first step towards other transitional justice initiatives, it is now possible to investigate whether truth commissions can be considered to have acted as a platform for some of the subsequent transitional justice policies and how this relationship or interaction occurred. Given the non-linearity of the transitional process and the impact of other factors on the transition, the relationships between the truth commissions and the transitional justice mechanisms that were implemented at different key moments during the transition and post-transition phases will need to be traced in depth by new studies. This type of analysis, although not necessarily proving causality, aims to find the direct and indirect contributions that the work of a truth commission can have on subsequent measures, even years after the conclusion of its work. This section highlights the links between truth commissions and other transitional justice measures, suggesting what type and degree of relationship can be established.

### 3.1. TRUTH COMMISSIONS' RELATIONSHIP WITH REPARATIONS

Many truth commissions in their final reports have recommended the establishment of reparations programmes. These have been implemented either immediately after the closure of the truth commissions or through a much longer process that has unfolded over many years, if not decades. Some truth

<sup>26</sup> BRANDON and WIEBELHAUS-BRAHM, *supra* note 12, at 123.

<sup>27</sup> SIKKINK and WALLING, *supra* note 20, at 430.

<sup>28</sup> *Ibid.*, at 442.

commissions have recommended the payment of monetary reparations; others have formulated broader reparations programmes, including granting access to land, healthcare or education, or symbolic reparations and rehabilitation measures. Some truth commissions have prioritised individual reparations, while others have also implemented collective reparations.

We still know very little about the status or standards of the reparations policies implemented and the impact they have had on the lives of the victims and their relatives. Most importantly, the nature of the relationship between truth commissions and reparations is yet to be investigated. Does the truth revelation legitimise reparations? Should the implementation of reparations be made compulsory in the recommendations? What is the degree to which victims themselves should participate or their approval be sought in the design of reparations programmes? These and other questions require major investigation. In addition, there is a need for more comparative studies to be conducted on the qualitative and quantitative difference between reparations that follow the establishment of truth commissions and those that are established independently of a truth-seeking mechanism. Without at this stage elaborating on the finer details of this relationship, several reasons are suggested as to why truth-telling strengthens the subsequent reparations and how truth commissions and reparation policies are closely interconnected.

First, in the aftermath of large-scale or systematic violations or more generalised conflict, the number of victims in need of redress may be vast and the harm caused to victims and survivors may be devastating and irreparable. The design of reparations programmes requires a vast amount of documentation on the number of victims, the kind of violations suffered and their immediate consequences. Truth commissions can be invaluable in gathering and delivering this information.

Second, the reparations programmes represent an acknowledgement by the state of its responsibilities for the harm done to the victims, which, as the experience of many cases has shown, is regarded by victims and their families as one of the most important aspects of the reparations. It is therefore crucial to first recognise the victims and what happened to them and then make reparations. Without previous recognition of their status as victims and the harm they suffered, victims would have regarded those reparations as empty measures undertaken by public authorities to buy their silence.<sup>29</sup>

Third, the truth that is revealed, documented and publicly disclosed by truth commissions lays the foundation upon which a social and political consensus can be built to implement a programme of reparations by the state. According to

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<sup>29</sup> L. MAGARREL, 'The Nature and Objectives of Reparations', *Reparative Justice Series*, International Centre for Transitional Justice, New York, 2007.

a renowned Chilean human rights activist and academic, uncovering the truth has an advantage that lies in the fact that it obliges a society to acknowledge the evidence and the evidence itself provides the legitimacy required to deliver reparations to the victims. This is one of the main reasons why truth and reparations are strictly inseparable and why it is so important that the truth-seeking processes engage the broader public as much as possible, so that the extent of the violations committed, and the harm and suffering inflicted on victims, reaches the public consciousness.<sup>30</sup>

Fourth, material and symbolic reparations are necessary in order to facilitate the full reintegration of victims who have been marginalised by society. In fact, the delivery of socio-economic reparations provides concrete financial help, which improves people's daily lives and restores their dignity. A wife of one of the detained-disappeared in Chile affirmed that 'the pension granted by the Chilean TC was crucial and helped to recover some of the dignity we had lost in the previous years, when we had nothing'.<sup>31</sup> Although material reparations are essential, to be effective they need to be accompanied by symbolic measures. The public dimension of symbolic reparations embodies the wider society's recognition of the victims and what happened to them. Victims often seek recognition from both state and society, in order to feel that their stories and experiences have been fully embodied in the dominant discourse. Therefore, the public recognition of the harm done is fundamental to the reintegration of victims into public and civic life. For many victims in Chile, the fact that their relative's name appeared in the final truth commission report, and/or was inscribed on a memorial wall erected in memory of the detained-disappeared, provided them with a sense of healing and restoration.<sup>32</sup> It is also important to note the symbolic dimension surrounding the presidential discourse when presenting the findings of the truth commission report to the nation. His public apology was an important symbolic reparation received by the relatives of the victims.<sup>33</sup>

Finally, and strictly connected to the reintegration of victims into public life, there is a need for active participation in the debates regarding the design and scope of reparations. Truth commissions are established mainly as victim-oriented mechanisms and they should represent a more inclusive process for the victims. This means that a truth commission must pay attention to the needs and opinions of victims and actively involve them in discussions about reparations packages. Moreover, victims know what their priorities

<sup>30</sup> E. LIRA, personal interview, 25 March 2009.

<sup>31</sup> INSTITUTO DE INVESTIGACIÓN EN CIENCIAS SOCIALES (ICSO), 'Reparaciones en Chile: Historias de Vida', Boletines y otras publicaciones, January 2012, <http://www.icsoc.cl/wp-content/uploads/2012/01/Reparaciones-Historias-de-Vida-Obs-UDP-2011.pdf>.

<sup>32</sup> Personal interviews with victims' relatives in Chile.

<sup>33</sup> Ibid.

and expectations are, and excluding them from the design of the reparations packages could jeopardise the entire process.<sup>34</sup> In Chile, the reparation policies were discussed beforehand with the association of the victims' relatives, which actively participated in the formulation of the final proposal. The relatives' association sent a detailed report to the Chilean president outlining the requests that had been made by victims.<sup>35</sup> Even though the final proposal was the result of a political agreement, many of the victims' suggestions were incorporated into it.

It is important to remember that the payment of reparations remains one of the most problematic aspects of a post-truth commission process. Although the revelation of the truth is a form of reparation to the victims, the reparative effect of a truth commission can be dramatically diminished by the lack of implementation of reparations and/or by the failure to include the demands of victims and survivors within the process of design and implementation.

### 3.2. THE RELATIONSHIP BETWEEN TRUTH COMMISSIONS AND TRIALS

The debate on the interaction between truth commissions and trials has entered a new forum, since these two justice mechanisms are no longer viewed as incompatible but rather as complementary and inextricably interconnected. Their complementarity has today been widely acknowledged by the UN, by transitional justice scholars and practitioners, and by civil society.<sup>36</sup> The theoretical focus of the earlier literature has shifted away from defining the supposed benefits of one mechanism over another towards a deeper discussion of the best conditions under which truth commissions could or ought to cooperate effectively with courts, whether at the national or international level. Some countries, such as Sierra Leone and East Timor, have established truth commissions in conjunction with national and international courts that operate according to new models of cooperation. However, while these cases

<sup>34</sup> L. MAGARRELL, 'Outreach to and Engagement of Victims on Reparations, Lessons Learned from Truth and Reconciliation Processes', paper presented at Reparations for Victims of Genocide, Crimes against Humanity and War Crimes: Systems in Place and Systems in the Making, The Hague, 1–2 March 2007.

<sup>35</sup> AGRUPACIÓN DE FAMILIARES DE DETENIDOS-DESAPARECIDOS (AFDD), *Respuesta de Agrupación de Familiares de Detenidos-Desaparecidos a la Comisión Nacional de Verdad y Reconciliación*, Santiago, 1990.

<sup>36</sup> N. ROHT-ARRIAZA and J. MARIEZCURRENA (eds.), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, Cambridge University Press, Cambridge, 2006; UN Security Council, Report of the Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2011/634.

have revealed that truth commissions and trials can happen concurrently, they also demonstrate that the lack of adequate coordination policies and the overlap between the functions of their mandates can produce serious flaws and endanger or jeopardise the entire process.<sup>37</sup>

Therefore, the latest studies are investigating and discussing in more detail how the sequencing and operations of these two kinds of transitional justice mechanism can become more fruitful so that one process does not hamper the effectiveness of the other. Bisset offers a more thorough analysis of the difficult and complicated relationship between truth commissions and trials through an investigation of their operational arrangements at the national and international level.<sup>38</sup> She identifies potential areas of conflicts in their operative mechanisms when a truth commission interacts with national trials, or with the International Criminal Court and/or with third states. Yet her study highlights a number of complications that can emerge as a result of this relationship, especially in cases where these two mechanisms have operated simultaneously. Moreover, the new trend towards complementarity between truth commissions and trials has been coupled with the establishment of truth commissions with broader mandates and greater truth-seeking investigative powers, rendering them, in some cases, quasi-judicial bodies.<sup>39</sup>

Later truth commissions were endowed with the power of subpoena and/or search and seizure, and of witness protection, as well as with the power to grant confidentiality. While this has made truth commissions increasingly more robust, in practice it has also led to a series of operational conflicts with the courts.<sup>40</sup> In her study, Bisset dedicates more attention to the problem of the interaction between these two mechanisms when truth commissions possess quasi-judicial powers. In contrast, earlier truth commissions, including the Chilean and Argentinian truth commissions, had very restricted mandates and did not possess any judicial power. Therefore, earlier truth commissions were established as completely distinct and autonomous processes from trials.

Paradoxically, this helped to facilitate the interaction between earlier truth commissions and the national and international courts, sometimes many years after the work of the truth commissions had concluded. In fact, despite their limited legal mandates and powers, earlier truth commissions managed to publish authoritative and highly valued accounts that provided a

<sup>37</sup> E.M. EVENSON, 'Truth and Justice in Sierra Leone: Coordination between Commission and Court' (2004) 104(3) *Columbia Law Review* 730.

<sup>38</sup> A. BISSET, *Truth Commissions and Criminal Courts*, Cambridge University Press, Cambridge, 2012.

<sup>39</sup> *Ibid.*, at 31–33.

<sup>40</sup> *Ibid.*

comprehensive picture of the human rights violations that had been committed, as well as documentation containing the testimonies of thousands of victims and witnesses. The sharing of this information and evidence is one of the main contributions of the earlier truth commissions to later national and international trials. Finally, as a result of developments in international law and an increase in international prosecutions for international crimes, courts in foreign countries urgently needed to collect a huge amount of information and evidence to build cases against perpetrators who had committed international crimes in other countries. For this reason, the findings of truth commissions have, over time, become useful evidence upon which foreign judges and prosecutors have drawn in order to prosecute the perpetrators of the worst human rights violations.<sup>41</sup> The Pinochet case in Spain is a prime example of this tendency. The Chilean truth commission report was extensively used by Spanish judges and lawyers to build the case against Pinochet in 1998.<sup>42</sup> In other emblematic cases against perpetrators of human rights violations, foreign judges and prosecutors have built cases on the basis of the evidence provided in the truth commission reports. Among the most famous cases are the *Guatemala Genocide case* against former Guatemalan president José Efraín Ríos Montt and seven other high-ranking military officers,<sup>43</sup> as well as the case against ex-Chadian dictator Hissène Habré.<sup>44</sup>

The commission reports provide the contextual elements necessary to prove that the crimes committed were not isolated acts but followed a pattern of widespread and systematic policy directed against the civilian population. In fact, the conclusions of the truth commissions are based on the analysis and collection of thousands of statements from victims, witnesses and perpetrators, as well as on many official and unofficial documents. All this documentation is invaluable for the work of the prosecution.

Moreover, truth commissions offer details about the function, structure and nature of a repressive organisation, and provide prosecutors and judges with evidence to identify the chain of command, the hierarchical structure and the kind of military orders that were being issued from above, all of which are crucial elements in establishing the extent of the responsibility of

<sup>41</sup> Ibid, at 152–157.

<sup>42</sup> R.J. WILSON, 'Prosecuting Pinochet: International Crimes in Spanish Domestic Law' (1999) 21(4) *Human Rights Quarterly* 927, at 950–951.

<sup>43</sup> N. ROHT-ARRIAZA, 'Guatemala Genocide Case' (2006) 100(1) *American Journal of International Law* 207, at 207; N. ROHT-ARRIAZA, 'Prosecuting Genocide in Guatemala: The Case before the Spanish Courts and the Limits to Extradition', Centre for Global Studies Working Paper No. 2, George Mason University, Fairfax VA, spring 2009.

<sup>44</sup> R. BRODY, 'Victims bring a Dictator to Justice. The Case of Hissène Habré, Bread for the World', June 2017, [https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2\\_Downloads/Fachinformationen/Analyse/Analysis70-The\\_Habre\\_Case.pdf](https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2_Downloads/Fachinformationen/Analyse/Analysis70-The_Habre_Case.pdf).

the perpetrators. International jurisprudence generally analyses the key features of the structure of an organisation to determine the level of control that the accused had over an entire organisation, a specific division or over certain individuals. In addition, the consideration of the hierarchical structure is also relevant for determining the existence and extent of the defendant's knowledge about the offences, as well as the level and degree of their involvement in the planning, instigation, issuing of commands, committing or concealment of these offences.<sup>45</sup>

Finally, truth commissions are official bodies established using authorised procedures operating under certain specific legal norms that regulate their public functions. Therefore, although the findings of a truth commission do not provide legal evidence, they constitute the corroboration from a public body of a factual truth, as well as the qualified opinion of respected persons that have been called to comply with a public function.<sup>46</sup> For all these reasons the reports of truth commissions have acquired a probative value in many foreign countries.

As the cases of Argentina, Chile, Peru and Guatemala have shown, truth commissions and their archives are also increasingly used as evidence in many domestic trials against those responsible for the human rights abuses. Argentina was the first country where a successful relationship between the truth commission and the courts was established. The information collected by the *Nunca Más* report of the CONADEP Commission was largely used to condemn some of the most powerful leaders of the military junta,<sup>47</sup> while in Chile this process unfolded many years later. Among the most emblematic examples of this trend in domestic courts, we can mention the *Myrna Mack case* in Guatemala,<sup>48</sup> where the Court valued highly the report of the Guatemalan Commission for Historical Clarification, which was used as evidence of the historical context in which serious human rights violations occurred, as well as evidence of the military operations and tactics used to exterminate those

<sup>45</sup> J. MÉNDEZ et al., *Amicus Curiae* presented at the Supreme Court of Justice during the Fujimori trial from the International Center for Transitional Justice (ICTJ), Expediente A.V. 19-2001 (Acumulado A.V. 45-2003), August 2008, Section no. 4 (Aportes de la experiencia comparada sobre la prueba de la responsabilidad penal del superior jerárquico), available in Spanish at <https://www.ictj.org/sites/default/files/ICTJ-Peru-Fujimori-Amicus-2008-Spanish.pdf>.

<sup>46</sup> INTERNATIONAL CENTRE FOR TRANSITIONAL JUSTICE (ICTJ), 'Consideraciones Técnicas a partir del Derecho Internacional y el Derecho Comparado sobre el Valor Probatorio de Algunas Pruebas Documentales en Procesos Penales'.

<sup>47</sup> E. CRENZEL, 'Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice' (2008) 2(2) *International Journal of Transitional Justice* 173.

<sup>48</sup> *Caso Myrna Mack*, Sentencia de primera instancia, Tribunal Tercero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente, C-5-99, Oficial 3ro. 3 October 2002.



considered as internal enemies, like the anthropologist Myrna Mack. This was the first time that senior military officials were brought to trial or convicted for human rights violations committed during the civil war. In another historic trial, this time against the former president of Peru Alberto Fujimori, the Supreme Court, in its final judgment, highlighted the probative value of the findings and conclusions contained in the final report of the Peruvian truth commission.<sup>49</sup>

There are several reasons why truth commission reports and archives can make a significant contribution to justice. First, the state archives documenting the repression and/or secret agencies' records have been and still are largely inaccessible because they have been destroyed, concealed and/or kept in secret intentionally by former perpetrators.<sup>50</sup> In this context, the value of the truth commissions' archives is enormous, considering that in many countries they represent the only documentary evidence available that reconstructs the history of the repressive periods and provides details on how the authoritarian state structures worked. Secondly, truth commissions usually receive documents and records from a variety of sources, including governmental records such as civil registries, judicial and medical documents, press releases, police and security forces' records, land records, NGOs' archives, investigative journalism reports, radio and television recordings, and international organisations' reports. From the analysis of all this heterogeneous material, it is possible to discover how the repressive state worked, the location and the organisations of the different torture centres, and information regarding the official agents (such as doctors, judges or journalists) involved in the cover-up of human rights violations.<sup>51</sup> Therefore, truth commissions analyse the structure, activities and functions of the repressive organisations that committed the crimes. This information constitutes crucial evidence for judges and prosecutors.<sup>52</sup> Thirdly, truth commissions are able to cross-check all the information they have collected and analysed, which allows them to corroborate its reliability and trustworthiness. Finally, one definite contribution that truth commission

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<sup>49</sup> Corte Suprema de Justicia de la República, Sala Penal Especial, Expediente A.V. 19-2001, 7 April 2009, Parte II.

<sup>50</sup> R.A. I FUGUERAS, 'Rights, Memory, Truth and Justice: Archives for Human Rights', in *Archivos, Memoria y Derecho a la Verdad: Memorias Seminario Internacional*, conference proceedings, Bogotá, 26–28 November 2008.

<sup>51</sup> C.L.G. GUTIÉRREZ, 'Fuentes para el Estudio de la Represión en Iberoamérica: Entre Archivos y Centros Documentales', paper presented at *Actas del XIV Encuentro de Latinoamericanistas Españoles*, Congreso Internacional 1810–2010: 200 años de Iberoamérica, Santiago de Compostela, 15–18 September 2010.

<sup>52</sup> T.H. PETERSON, 'The Role of the Archives in the Strengthening of Democracy', in *Archivos, Memoria y Derecho a la Verdad: Memorias Seminario Internacional*, conference proceedings, Colombia, 26–28 November 2008.

archives have made towards prosecutions is that all the information gathered is centrally organised, which greatly assists in the investigatory process. In the past few years, regional human rights bodies such as the Inter-American Court of Human Rights have also relied on the findings of truth commission reports to support many of their judgments.<sup>53</sup>

Few studies have investigated this trend towards the judicialisation of truth commissions. While this trend was inevitable in the Latin American context, which is highly legalised, it was nevertheless an unanticipated outcome, since truth commissions in that region were initially created as non-judicial mechanisms. This fact certainly raises some questions regarding the desirability of such a practice, and it raises serious concerns about whether or not this trend towards the judicialisation of truth commissions could affect the original aims and objectives of truth commissions. Moreover, there are other important concerns about how this could adversely affect the *modus operandi* of truth commissions, such as the issue of due process or confidentiality, including the disclosure of witness or perpetrator statements. More research is needed to analyse which factors facilitate or constrain the interaction between these two mechanisms, whether at the national or international level. While UN agencies and international NGOs have strongly argued in favour of complementarity, further investigation is needed to discover how the division of labour can be effectively carried out between the two mechanisms and to identify the implications of other factors, such as the legal context, sequencing and timing.

### 3.3. TRUTH COMMISSIONS AND MEMORIALISATION

Since the establishment of the earlier truth commissions, research has started to investigate the contribution of truth commissions to the construction of collective and historical memory. The relationship between truth commissions and memorialisation is a complex one that merits deeper analysis and understanding.

Many truth commissions, including those in Chile, Guatemala, South Africa, Ghana and Sierra Leone, have recommended the establishment of symbolic reparations such as memorials, peace parks, museums and many other forms of commemoration to restore the dignity of those who suffered horrendous crimes. Memory initiatives represent an official, public acknowledgement and recognition of the private suffering of the victims. This is one of the main reasons

<sup>53</sup> A. FERRARA, 'The Inter-American Court of Human Rights and Truth Commissions', in K. FERNANDEZ, C. PENA and S. SMART (eds.), *Chile and the Inter-American System of Human Rights*, Institute of Latin American Studies, London, 2017.

why public memorialisation is linked to the state's reparation policies. Memorials are part of a broader programme of reparation policies, which aim to focus on victim needs, redress the damage inflicted upon the victims and contribute to the victims' healing process.<sup>54</sup> A survey of victims of violence revealed that, for those surveyed, memorialisation initiatives were the second-most important form of state reparation after financial compensation.<sup>55</sup>

Memorials, originally regarded as a soft cultural and artistic phenomenon, have become a primary terrain of contestation where a wide array of actors address the enormous and challenging complexities of a traumatic past. With the passing of time, civil society and victims' groups have increasingly emphasised the importance of memorials, cemeteries and museums as public spaces for civic engagement that provide forums for debate on the controversial issues of the past that can be used to educate the general public about what happened and why.<sup>56</sup> Consequently, memorial projects are acquiring growing importance as a potential educational tool to promote learning and critical thinking, and also to facilitate active participation rather than representing static places, detached from other transitional justice initiatives, that turn visitors into passive observers.<sup>57</sup> Memorialisation initiatives have the potential to help citizens enter into a dialogue about what happened in the past and to construct a more cohesive collective memory of the past.<sup>58</sup> Both truth commissions and memorials share the goal of integrating the victims' stories into the official narrative. In Argentina, Chile, South Africa and Morocco, significant efforts have been made to transform the places where human rights abuses occurred into official sites of remembrance.<sup>59</sup>

These are public spaces where society can try to come to terms with what happened there and learn some of the painful stories suffered by the victims of repression. In this way, memorial projects contribute towards opening up spaces where the voices of those once marginalised and excluded by society can be integrated into the nation's historical memory. Londres 38 (a former torture centre) in Chile, Robben Island Museum (a former prison for liberation activists, including Nelson Mandela) in South Africa, and the ESMA

<sup>54</sup> S. BRETT, L. BICKFORD, L. ŠEVČENKO and M.R. TOBAR, 'Memorialization and Democracy: State Policy and Civic Action', FLACSO, ICTJ and International Coalition of Historic Site Museums of Conscience, Santiago, 2008; see also A. WILDE, 'Avenues of Memory: Santiago's General Cemetery and Chile's Recent Political History' (2008) 5(3) *A Contracorriente* 134.

<sup>55</sup> E. KIZA, C. RATHGEBER and H.-C. ROHNE, 'Victims of War: An Empirical Study on War-Victimization and Victims' Attitudes Toward Addressing Atrocities', Hamburg Institute for Social Research, Hamburg, June 2006.

<sup>56</sup> M. GÓMEZ-BARRIS, 'Witness Citizenship: The Place of Villa Grimaldi in Chilean Memory' (2012) 25(1) *Sociological Forum* 27.

<sup>57</sup> BRETT, BICKFORD, ŠEVČENKO and TOBAR, *supra* note 54, at 5–8.

<sup>58</sup> *Ibid.*

<sup>59</sup> B. IVANISEVIC, 'Comparative Study on the Impact of Truth Commissions', ICTJ, May 2009, at 10.

(the naval base school used as the Clandestine Centre of Detention, Torture, and Extermination) in Argentina are all examples of this trend.

Moreover, to take place, memorialisation requires the documentary evidence that the truth commission records provide, and in this way memorialisation has a close dependency on truth commission records. Documentary evidence, when represented in physical, geographical spaces, stimulates public awareness of the atrocities committed in the past and strengthens the impact of truth commissions. Therefore, memorialisation and truth commissions are mutually reinforcing and extremely interdependent endeavours.<sup>60</sup> For this reason, the relationship between memorialisation and truth commissions is crucial and should not be underestimated.

The above sections have underlined the possible links and kind of interactions between truth commissions and other transitional justice mechanisms, highlighting the need to further explore the inherent complexities and dynamics of such processes. Understanding the complex relationships between truth-seeking, reparations measures, memory and criminal justice can greatly expand and enhance our knowledge about the impact of truth commissions over the longer term.

#### 4. THE TRANSFORMATIVE LONG-TERM ROLE OF TRUTH COMMISSIONS

Van Der Merwe et al. argue that the toughest test of a specific transitional justice mechanism's efficacy is how effectively it builds institutions, policies and practices that will enable the nascent democracy to deal with existing social conflict and violence.<sup>61</sup>

According to this analysis, the second criteria against which truth commissions should be evaluated is their ability to change attitudes, beliefs and practices at the socio-political and institutional level. Three main indicators can be identified to measure this ability, namely the extent to which:

1. multiple actors, including the political elites, state actors and former perpetrators, have acknowledged and recognised past atrocities;
2. society has changed its attitudes and beliefs towards the victims on the one hand, and the perpetrators of human rights violation on the other; and
3. there has been a social repudiation of the institutional practices of the past.

<sup>60</sup> J. BARSALOU and V. BAXTER, *The Urge to Remember: The Role of Memorials in Social Reconstruction and Transitional Justice*, United States Institute of Peace Press, Washington D.C., 2007, at 9–10.

<sup>61</sup> H. VAN DER MERWE, V. BAXTER and A.R. CHAPMAN, 'Introduction', in VAN DER MERWE, BAXTER and CHAPMAN, *supra* note 3.

The above changes are fundamental ingredients of societal transformation, which can take years, if not decades, to occur. The truth commissions may trigger this long-term process of change by facilitating public and official recognition of the crimes committed in the past, engaging the wider society in a debate about the past, legitimising the victims' voices and sending a strong message of repudiation of past practices and ideologies.

Firstly, the aim of the official and public recognition of past human rights abuses is to give satisfaction to the victims, to de-legitimise those responsible for the crimes committed, and to encourage the perpetrators and their supporters to admit and publicly assume responsibility for their past actions. By genuinely recognising the violations as illegitimate and immoral, the institutional actors and the former perpetrators demonstrate their willingness to make compromises and show their respect for a set of norms and values upon which the future political order could be built. This process of recognition, although no substitute for justice, is fundamental to the rebuilding of the moral and normative edifice of an entire society. It is only this process that can restore the dignity of the victims, promote trust among citizens as well as in public institutions, and rebuild a moral order in the country. Therefore, truth commissions can trigger a positive cycle that, in the long term, may produce profound social and political change.

Although President Aylwin issued an apology immediately after the release of the Chilean truth commission report in 1991, in both Argentina and Chile it took years for the representatives of the military – the institution that had committed most of the crimes during the dictatorships – to recognise its institutional responsibilities and apologise. In Peru, the president publicly supported the truth commission's work and apologised on behalf of the state. However, the army has refused to apologise for crimes committed by military forces during the conflict, and the truth commissions' findings and recommendations have been strongly opposed by the Army. In El Salvador, there has been no official acceptance of responsibility for abuses committed by government forces during the armed conflict between 1980 and 1992. However, in some truth commission processes (for example in Sierra Leone), a huge number of perpetrators appeared before the truth commission hearings to admit their crimes. In Timor-Leste, thousands of perpetrators admitted their actions and carried out acts of reconciliation.<sup>62</sup> The official endorsement of the truth revealed by truth commissions may enable a discursive shift to take place, one which strongly challenges previous denials and/or justification of past crimes, thus creating a space where alternative versions of the previously accepted narrative can be legitimised. A truth commission process that is from

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<sup>62</sup> IVANISEVIC, *supra* note 59.

the beginning perceived as impartial and legitimate is likely to be more widely accepted by society in the long term. While acknowledgement and apologies have traditionally been regarded as important objectives of truth commissions, few studies have investigated, across different countries, the time taken or the extent to which the various sectors within society have recognised past crimes, thus contributing to a country's reconstruction after a violent past. In the view of the author, this should be one of the most important indicators to measure the impact and legacy of a truth commission over the longer term.

Secondly, it has been argued that, in order to have a transformative impact on society and its institutions, truth commissions have to be able to engage the wider society as far as possible. The official revelation of the truth to the public is crucial for generating society's awareness of the extent and magnitude of the crimes committed and for exposing the political and institutional failings that caused them. In order to fully develop its transformative potential, a truth-seeking process needs to be sustained by a civil society that is highly mobilised and has strong public engagement with the issues of the past. These are among the most crucial factors that have the capacity to generate social and political condemnation of the crimes committed and to de-legitimise the institutional actors that sustained such violent practices and ideologies. When the process of truth-seeking raises public awareness, the commitment to change past practices from various sectors of society, including the perpetrators and their accomplices, is more likely to happen. Public attitudes towards truth commissions and the degree to which their findings have a social impact should be periodically observed in order to understand how and under what circumstances attitudes might change. Systematic studies that examine public perceptions about policies to deal with the past or shifts in public opinions are, however, rare.

Thirdly, if a high level of social de-legitimation of former perpetrators is achieved alongside a repudiation of past practices, it could indirectly influence institutional change. Institutional actors that are placed under public scrutiny, either for crimes committed in the past or for their past negligence, might embrace more democratic attitudes and values in order to regain social and political legitimacy and salvage their reputation. Although many other factors – including the altered political situation, institutional reforms, power relations and strategic calculations – contribute towards changing institutional attitudes and beliefs, this chapter argues that the public and official disclosure of the truth about the extent and magnitude of past human rights violations also plays an important role. Conversely, an absence of public debates on the issue of the past and a lack of acknowledgement on the part of former perpetrators impedes the process of collective condemnation. Thus, the moral and social pressures generated by a truth commission can, in the longer term, lead to a change in attitude and belief at the institutional level, making those institutions more responsive to the demands of victims and society in general.

In this way, truth-telling efforts and public engagement with the issue of past human rights violations can gradually transform the political, legal and social interactions that take place. Although the exposure of the truth can begin this long process of political and social transformation, it nevertheless requires long-term commitment and effort on the part of multiple state actors, institutions, civil society and the broader society.

Changes in attitudes, beliefs and practices can be measured by qualitative methodologies, including public opinion surveys, discourse and content analysis, focus groups and in-depth interviews. Although it should be borne in mind that not all countries produce much information in the period following the conclusion of a truth commission, this study argues that a considerable quantity of data is crucial in order to understand the long-term impact of truth commissions. Moreover, in order to document a transition, data needs to be gathered over time and in a consistent manner. Finally, if one lesson can be drawn for future research, it is the critical importance of collecting baseline data. Therefore, for ongoing truth commissions and future truth commissions, the collection of data is extremely important, both during and immediately after the truth commission process. In this way, attitudinal and behavioural change in society and political elites will be measured using more reliable sources and databases.<sup>63</sup>

## 5. CONCLUSION

Despite the increasing popularity of truth commissions and their worldwide institutionalisation, there is still little understanding of their long-term effects and consequences. This chapter suggests a framework for evaluating truth commissions over the longer term in order to appreciate the social, political or institutional changes that such processes seek to achieve. As the chapter has shown, truth commissions have in many cases contributed to the development of later transitional justice mechanisms, including trials, reparations and memorialisation initiatives, thus enhancing and strengthening their legacy. While the chapter has indicated the possible links and kind of interactions between truth commissions and other transitional justice mechanisms, it suggests the need to further explore the inherent complexities and dynamics of such interaction processes.

In the previous section, the chapter argued that truth commissions should be evaluated by their ability to change attitudes, beliefs and practices at socio-political and institutional level. Truth commissions have the potential to set the

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<sup>63</sup> See further on these issues Sarkin's introduction to this volume.

stage for a series of transformative processes to unfold, which over the longer term will be able to shift the public discourse on the past, de-legitimise past institutional practices, pave the way for the recognition of wrongdoings and support a more inclusive dialogue on the past. Future longitudinal studies could investigate more thoroughly how and under what circumstances these pathways of impact may develop over time. Experience has demonstrated that truth commissions are complex processes, whose contribution to accountability and transformation efforts in their societies depend on a variety of factors, including contexts, socio-political developments, sequencing with other transitional justice mechanisms and timing.

Today we can start to measure the long-term success of a truth commission by looking at its trajectory. The creation of follow-up mechanisms, the amount and type of reparations paid in the ensuing years, the status of implementation of the recommendations for institutional reforms, the level of social recognition of truth, the preservation of the truth commission archives and the creation of memorialisation initiatives are all crucial indicators of the long-term impact of truth commissions.

This chapter concludes that truth commissions should be seen as one part of a broader political project. Truth commissions are not enough in themselves, but they can constitute the beginning of a slow and protracted process of historical change. They can help a society to rebuild its moral and ethical values, which in turn may create the basis for a more just political order. The truth revealed by a truth commission can be used as evidence in future trials, catalyse the social repudiation of human rights atrocities, sensitise the population to the human rights abuses and finally prompt democratic reform. For this reason, in the years that follow a truth commission, it is fundamental to follow up its work to avoid major setbacks; for if a truth commission is seen as only a temporary measure for addressing the past, and if it is not part of a broader project of democratisation, it will only provide short-term benefits and its achievements will therefore be less far-reaching. It is also essential that the process of democratisation continues, as a new generation of leaders succeeds the old and the fear of past conflicts fades away. For all of this to happen, the passage of time is a crucial factor. The process of reckoning with a burdensome past concerns society as a whole and has to be continuously addressed in the social and public sphere. Thus, in order to see the dynamic process of truth commissions, we may have to wait much longer than transitional justice discourse currently allows. It may be that the work of a truth commission and its legacy will be of significance to future generations.