

# WHEN THE SHOOTING STOPS: HOW TRANSITIONAL JUSTICE TURNS KNOWLEDGE INTO ACKNOWLEDGEMENT

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**O**n June 23, Colombia's President Juan Manuel Santos shook hands with Timoleón Jiménez, the leader of the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, or FARC), at a signing ceremony in Havana. With that simple gesture, the longest-running conflict in the Western Hemisphere was officially over.

Nearly 70 years after its rebellion began, the FARC agreed to demobilize its estimated 6,800 troops and 8,500 militia members. Many details remain unclear, but for the first time since 1948, the FARC seems as committed to peace as the government. Announcing the agreement in Havana, Jiménez said through tears, “May this be the last day of the war.”

The cease-fire agreement was the result of years of negotiations, but another even more difficult challenge now looms: how to ensure peace in the lives of people used to the fear and daily toll of violence. No one claims that dealing with history’s ghosts on the many battlefields of Colombia will be easy, but the country can learn from others who have faced a similar predicament.

Grappling with the past is never straightforward, cheap, or quick, and it won’t prevent every future conflict. But it can help, especially if it can find a balance between retribution and absolution. For Paul van Zyl, who served as executive secretary of South Africa’s Truth and Reconciliation Commission, transitional justice is “a middle path between an uncompromising insistence on prosecution on the one hand, and a defeatist acceptance of amnesty and impunity on the other.”

For all involved, this requires compromise. For former combatants, this can mean giving up status, power, and money for the uncertain life of a civilian. And for civilians, especially those who’ve lost loved ones, it means accepting that murderers, bombers, kidnappers, and the like may never face harsh punishment. These sacrifices can leave many dissatisfied as they must work, shop, and worship with their former mortal enemies.

But you can’t make peace solely with the peaceful. And yet the peaceful are the ones who sacrificed the most and feel the least rep-

resented when negotiations are concluded with promises of some level of impunity. Certainly, we’ve come a long way from the example of Melos, where the Athenians—according to Thucydides—massacred every man and enslaved the island’s women and children. “The strong do what they can, and the weak suffer what they must,” the ancient historian wrote. No negotiation or compromise with the warring party was necessary. Outside of horror shows like Syria, that’s no longer common practice.

Colombia is an excellent example of the challenges of peace, but it’s not the only one. To construct this agreement, Colombia relied on expertise developed in other countries, especially Northern Ireland. While different in many aspects, both deals required making peace with irregular fighters, in the case of the Irish with militants in the Irish Republican Army (IRA) and loyalist paramilitaries.

Between the late 1960s and 1998, when the Good Friday accords were signed, over 3,600 people died during the Troubles. Many more were wounded or lost loved ones. But leaders on both sides rejected punishment for what they’d done. Instead, they negotiated peace in exchange for amnesty.

Colombia has borrowed key elements of the deal. Convicted FARC members will be prosecuted, but will serve only sentences of community service at worst. The FARC will deliver its weapons to the state, subject to international verification. A few leaders may be convicted, but most of the rank and file will be amnestied. FARC troops will concentrate in designated areas, register with the government, and gradually reintegrate into civilian life. Most other details remain subject to negotiation. For the victims, though, vague promises of truth commissions or other mechanisms remain on a to-do list.

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For the Irish, a similar arrangement was good for peace, but remains devastating for the families who can cross paths with their loved one's murderer in the vegetable aisle at the Ardoyne Tesco. The same will be true of Colombians. Among those most outraged by the current peace proposal is former president and current Senator Álvaro Uribe, whose father was kidnapped and killed by the FARC in 1983. Now a leading critic, Uribe has pointed to the guerrillas' well-documented past of profiting from the cocaine trade to claim that the deal is fatally flawed: "With the agreement that those responsible for crimes against humanity like kidnapping, car bombing, the recruitment of child soldiers, and child rape are not going to spend a single day in jail and can be elected to public office, the word peace is wounded."

Uribe has his own critics, who've long questioned his administration's draconian anti-terror laws and unwillingness to robustly investigate and prosecute the military officers who helped paramilitaries kill innocent people. In the 1990s and early 2000s, I documented for Human Rights Watch many cases where military officers cleared the way for paramilitaries to enter populated areas to massacre residents. In multiple meetings with Uribe, I heard him promise action against paramilitaries that never materialized. Meanwhile, the Colombian army would boost its anti-terror credentials by executing civilians and presenting them as guerrillas killed in action, a practice that continues to this day.

But Colombians need to know that no peace negotiation is ever truly final. Transitional justice evolves, and paths open that may lead to stiffer punishments. David Tolbert, executive director of the International Center for Transitional Justice (ICTJ) and a lawyer who has worked with the Special Tribunal for Lebanon, the Khmer Rouge trials in Cambodia, and the International Criminal Tribunal for the former Yugoslavia, has said transitional justice efforts

help close the "impunity gap." With only trials available, human rights advocates have to make painful decisions about where to expend scarce resources, meaning that only a few top-level perpetrators even face questioning. The gap means that other leaders as well as mid-level killers get away without having to answer for any crime.

"Tools like truth commissions give victims a voice and acknowledge their suffering, while signaling to culprits that crimes will not be forgotten. These efforts have also deeply affected, and, in some cases, transformed public discourse for the better," Tolbert said while visiting Duke University in 2015.

## NEVER AGAIN

Colombia's neighbors to the south offer important—and promising—evidence for Tolbert's assertion. Scholars mark the beginning of a transitional justice model with the aftermath of Argentina's dirty war between 1976-1983. During that time, the country's military junta conducted thousands of arrests of suspected Communists and government critics. This is when authorities pioneered the tactic of "disappearance," illegally arresting suspects and placing them in secret torture and execution centers.

Often, the detainees were young people, among them pregnant women. Jailers would wait for the women to give birth and then seize the babies for adoption by military families. Frequently, the Navy pushed drugged prisoners out of planes to their deaths in the Atlantic, preventing any chance of obtaining physical remains. Between 10,000 and 30,000 people "disappeared."

After the junta fell and democratic elections were held in 1983, real consequences for abuses seemed out of reach. But President Raúl Alfonsín created a National Commission on the Disappearance of Persons (Comisión Nacional sobre la Desaparición de Personas, or CONADEP). For its work, CONADEP researchers traveled across

Argentina and the world to interview survivors and collect evidence. Titled the “Nunca Más” (“Never Again”) report, they confirmed the forced disappearance of 8,961 persons, estimating the actual number could be much higher, and they found that over 300 detention centers operated to torture and execute detainees.

At the time, public reaction was mixed. Some worried that the report could exacerbate tensions. Others complained that the report didn’t go far enough, since the rules authorizing it prohibited signers from naming names. Yet as has become clear in the aftermath, the report dramatically asserted the power of truth, by collecting facts and using eyewitness testimonies to reveal killings and torture that largely took place in secret. Prior to 1974, the only other influential example of accountability was the Allied trials of Nazi officials at Nuremberg, held by a victorious army. “Never Again” was the first time a government authorized an independent entity to investigate its former—and sometimes current—employees.

“Never Again” had limitations. Alfonsín, still negotiating an uneasy relationship with a powerful military, did not give investigators the power to compel military cooperation. However, for Juan Méndez, an Argentine lawyer, human rights leader, and a torture survivor, the commission marked the end of “the old business as usual way of dealing with violations by forgiving and forgetting and sweeping the violations under the rug and by essentially yielding to the blackmail of military establishments.”

The report was an immediate best-seller. In his forward, chair Ernesto Sabato wrote that “Never Again” was neither court nor jailer. Yet his conclusion was scathing. “We are convinced that the recent military dictatorship brought about the greatest and most savage tragedy in the history of Argentina. Although it must be justice which has the final word, we cannot remain silent in the face of all that we have heard, read, and recorded.”

Much back and forth ensued, but ultimately Argentina’s civilian leaders overturned amnesty laws and initiated prosecutions of high-ranking officers, many of whom are now in jail. As political scientist Kathryn Sikkink has written, “Never Again” was part of a milestone for the modern human rights movement: “Argentine human rights activists were not just passive recipients of this justice cascade but instigators of multiple new human rights tactics and transitional justice mechanisms, including the trials of the juntas and the 1984 truth commission.”

### TRUTH AND CONSEQUENCES

Chile is a part of that “justice cascade.” After leading a U.S.-backed coup in 1973, President Augusto Pinochet ushered in a decade of violent repression. Like his Argentine allies, he kept both public and clandestine detention sites. One, Villa Grimaldi, has been remade into a

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## PERPETRATORS CAN NO LONGER EVADE JUSTICE, NO MATTER HOW POWERFUL THEY MIGHT HAVE BEEN.

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peace center and sits on the stunning heights between the capital of Santiago and the Andes. Once a bucolic retreat, Villa Grimaldi was where hundreds were beaten, raped, and tortured. Similar to Argentina, many “disappeared” were drugged by the security forces, flown over the Pacific, and dumped.

Chile’s intelligence service tortured Pedro Matta there. He survived and later wrote a terrifying account of his time. He has taken students of mine through the reconstituted camp, and they come out speechless and changed. “It’s important that the story is told,” he said by way

of explanation, “and who better to tell than the people who survived?”

Matta's description is precise and excruciating. After the security forces left the site, they bulldozed the detention buildings, leaving nothing but a lonely pool, once used by government families and their children on weekends. Matta tells the students that detainees remember hearing the sound of splashing and children's voices. Since, a park has been built, with new structures marking sites formerly reserved for raping and electrocuting prisoners. In one, an iron rail is preserved, excavated from the Pacific. In the rust is encrusted a single white button, from the shirt of a prisoner lashed to the metal and thrown out of a helicopter.

In part due to rising internal opposition and external pressure, Pinochet lost a 1988 referendum and was forced to leave the presidency. After Patricio Aylwin won the 1989 election, one of his first acts was to create the National Commission for Truth and Reconciliation.

Given the fragile nature of democracy as well as a 1978 amnesty law that effectively prevented courts from prosecuting military officials involved in torture and killings, Aylwin agreed to limit the commission's mandate and appoint an equal number of Pinochet supporters and opponents. Like *Nunca Más*, this was a first try at truth, without names or public hearings and limited to crimes resulting in provable death.

However, the report created a crack in the wall of impunity, which widened after Pinochet's 1998 arrest in London, provoked by a Spanish prosecutor investigating 94 counts of torture of Spanish citizens, the 1975 assassination of Spanish diplomat Carmelo Soria, and one count of conspiracy to commit torture.

While the general and “senator-for-life” eluded trial prior to his 2006 death, the legal maneuvering opened the door for amnesties of other accused perpetrators to be struck down. Chileans formed a new truth commission in 2003, and now hundreds of former military

and police officers have been prosecuted, convicted, and jailed for human rights violations.

The message Argentina and Chile sends to Colombia is this: Perpetrators can no longer evade justice, no matter how powerful they might have been. In Chile, it took two decades, but according to human rights monitors, most of the security force officers responsible for abuses once have been formally prosecuted. Many are now in jail. In June, a Florida civil court held a former Chilean military official liable for the killing of folk singer Victor Jara in 1973, setting up his possible extradition to Chile to stand trial for the murder.

## SEEKING TRUTH

Truth commissions developed as a way to reveal human rights abuses and investigate patterns of violations. While some commissions also set out a goal of reconciliation between perpetrators and victims, others confine themselves to a pursuit of truth through the gathering of first-hand testimony, documentary evidence, and sometimes human remains. Some commissions are sponsored by states, while others operate independently.

But all truth commissions collect the experiences of people who suffered violence, whether as victims or as their family members. While commissions may invite the participation of perpetrators, in practice this has proved largely ineffective. A number of truth commissions have arranged for public or televised hearings while also holding private meetings with those who wish to speak anonymously. Commissions also produce some sort of report that codifies their work and sets out recommendations for how future governments should deal with the legacy of the past, including through reparations, prosecutions, legal reform, and the building of memorials.

The United States has had its own interesting commissions. I played a very small role (as a contracted writer) on the Greensboro Truth and Reconciliation Commission in North Carolina,

which held hearings on the 1979 killing of five anti-Klan protesters in that city. The TRC didn't solve the problem of racism or inequality, but it allowed an event shrouded in darkness to experience the effects of a bright light. It's not possible any more to deny the role the police department played in the killings or the real and continued presence of the Ku Klux Klan in North Carolina. Other U.S.-based efforts include the Boston Busing/Desegregation Project, the Mississippi Truth Project, and the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission.

All efforts to deal with the past are rightly the subject of critique. There is no one-size-fits-all model. Some have gone terribly wrong (a recent *New Yorker* article examined how one former Liberian warlord, Commander Butt Naked, parlayed his confession of killing thousands into freedom and a lucrative career fleecing American missionaries).

Since the earliest human societies, we've engaged in heated discussions about right and wrong, and how to respond when wrong has been committed, especially against the weak or voiceless. In most late 20th century political violence, the dead are usually men and survivors are women with children. Sexual violence harms all genders, but women are targeted in greater numbers. Often, women are among those who most enthusiastically support facing up to the past since they tend to survive, suffer in silence, and are least able to ensure legal action. Truth commissions can be vehicles for them and other oppressed groups to have a say and help ensure abuses aren't repeated.

Some claim that the only way to achieve real justice is through courts. To them, transitional justice feels soft, especially compared to prosecutions and prison. But trials are imperfect too, especially from the perspective of victims. Courts have limited resources and can only pursue a handful of perpetrators. Evidence can be limited by rules, a real difficulty for victims who often do not possess the high level

of factual evidence needed for convictions. In Argentina, for example, detainees had difficulty figuring out where they were held since they were often blindfolded or kept in the dark. The military also worked hard to confuse them, in one famous case remodeling a stairway prior to an international visit so that the staircase the witnesses remembered would be different from the one visitors saw.

Evidentiary rules also often fail to account for the sweeping powers of states to destroy evidence, threaten witnesses, and keep them from knowing facts about their own torturers or detention centers. And formal justice mechanisms don't always give survivors the truth they crave or the ability to tell broader stories repressed by abusive governments.

Truth commissions are not without their flaws either. Some scholars point out that no transitional justice mechanism has yet examined abuses committed by great powers, especially the United States. American cocaine use gave both Colombian guerrillas and para-

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## WHAT THE TRUTH COMMISSION DID WAS CONVERT KNOWLEDGE INTO ACKNOWLEDGMENT.

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militaries a seemingly endless source of cash to plow into their armies, often better equipped than the state's forces.

And victims themselves can suffer renewed trauma. Some don't find the act of telling their stories "healing." Others have no wish to participate in national efforts, having already found their own truths at the local level.

In Peru, for example, the national truth commission risked creating what anthropolo-

gist Kimberly Theidon calls two categories of “untouchables” beyond “the reach of communal mechanisms of assessing guilt and administering justice: the former Shining Path *cabe-cillas* [commanders] and the soldiers.” In her research, she found that some communities had already come to terms with the past and reincorporated former guerrillas. Villagers she interviewed feared that these fragile efforts at reweaving the social fabric would unravel in the light of national scrutiny. “What may serve national goals,” Theidon wrote, “may unintentionally complicate local processes of social repair.”

Most truth commissions concede these limitations. They’re inherently imperfect bodies tasked with the seemingly insurmountable task of finding a way forward when victims and perpetrators must live together. Somehow, despite all of this, they manage to create a place for people who have experienced deep trauma to not only express themselves but be heard, sometimes for the first time. During South Africa’s hearings, TRC chair Bishop Desmond Tutu said that many times “I have felt we should take our shoes off because we were standing on holy ground.” When the victims finally had their say, “a fuller truth was exposed.”

For many, that’s the real power of finding ways to deal with the past. Albie Sachs, a victim of a bomb that took his arm in South Africa and a former Constitutional Court judge, told *the Guardian* in 2014, “To me, the most important part of the [South Africa] truth commission was not the report, it was the seeing on television of the tears, the laments, the stories, the acknowledgements. As one political scientist put it, what the truth commission did was convert knowledge into acknowledgment.”

Perhaps the most important ingredient of any effort to deal with the past is to realize that successive generations also have to come to terms with the legacy they inherit, much as

young Germans have to do with the Holocaust today. In Northern Ireland, tensions still reliably bubble over in July, when Unionists march to commemorate a 1690 battle. Die-hards in the remaining IRA cells continue to kneecap young people in their former strongholds and occasionally set off fatal explosives. The recent Brexit vote revives worries that tensions will erupt again, since European Union funds, an important part of efforts to bridge the sectarian divide at the root of the Troubles, may vanish.

What this realization means varies with every country. In Germany, the Holocaust is taught in most schools, and cities have memorials often thronged with visiting students. In Northern Ireland, however, memorials remain fiercely partisan. American curricula about events like the civil rights movement are bitterly contested, including by the Republican National Committee, which has claimed that new Advanced Placement U.S. History classes present a “consistently negative view of American history.”

It’s clear that arguing over the past is a given; violence, however, is not. Let’s be frank. In Colombia, neither the government nor the guerrillas want to confront the violence they perpetrated, but their victims do, often desperately. Creating a space for the voice of civil society to be heard and where grievances can be aired can help end cycles of retribution.

Patricia is a Colombian woman whose husband was kidnapped by the FARC. In a conversation with South African psychologist and truth commission member Pumla Gobodo-Madikizela, Patricia said she didn’t want the perpetrators jailed. “That will only lead to more violence; their children will revolt,” she said. “All I want is for my husband to return to us, alive. If peace negotiations are not implemented, if this decades-old problem in Colombia is not resolved, I fear that my children might become vengeful. I pray this does not happen.” ●