

SUMMARY MATERIALS

International Seminar - March 22-23, 2010 New York:
**Indigenous Voices and Truth
Commissions**

Truth and Memory Program

International Center for Transitional Justice

April 23, 2010



Cover Image: **Arches in Fall**. Photographer Justin
Gallagher. Utah, United States. December 17, 2007.
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ICTJ Truth and Memory Program

ICTJ has supported governments, civil society, and the international community to carry out the work of truth commissions in 12 countries as well as several unofficial truth projects, and has identified practices that can contribute to the design and implementation of effective truth-seeking with sustainable legacies. ICTJ conducts precise analysis of the conditions surrounding the launch of a truth-seeking and memorialization process; it engages early with key stakeholders to assess their expectations and identify potential problematic areas. ICTJ provides feedback on the normative framework necessary for the establishment of a commission, in the form of memoranda and expert testimony to policymakers. The center advocates for consultation with victims, in forms appropriate to the political and security environment, as a mechanism to build legitimacy and relevance to any project. While ICTJ strongly supports the international normative progress in regard to the right to truth, it does not believe truth commissions must adhere to a single model, and presents in any given situation a number of options regarding the functions, mandate, powers, and implementation of commissions, as appropriate to local conditions. In all the experiences it has supported, the center has remained involved well after the work of the truth commission, supporting policy follow-up.

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1. What is Transitional Justice?

Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades.

This approach emerged in the late 1980s and early 1990s, mainly in response to political changes in Latin America and Eastern Europe-and to demands in these regions for justice. At the time, human rights activists and others wanted to address the systematic abuses by former regimes but without endangering the political transformations that were underway. Since these changes were popularly called "transitions to democracy," people began calling this new multidisciplinary field "transitional justice."

Governments there adopted many of what became the basic approaches to transitional justice. Amongst these, truth commissions are commissions of inquiry with the primary purposes of investigating and reporting on key periods of recent past abuse. They are often official state bodies that make recommendations to remedy such abuse and to prevent its recurrence.

2. Indigenous Voices and Truth Commissions: Conference Objectives

Over the last two decades, the indigenous rights movement has participated in truth commissions as a justice-seeking mechanism that may contribute to the desire for change of first peoples living in the Americas. In addressing this trend, transitional justice practitioners are overdue in responding to the challenge of adapting the truth commission model to better represent the unique experiences of first peoples. With this objective in mind, this conference seeks guidance on the question: how can truth commissions create and maximize their positive impact when adopted as a mechanism for strengthening indigenous rights?

The next two days will be spent examining the experiences of those indigenous peoples in the Americas that have been equipped with transitional justice instruments. In particular, we will focus on the involvement of indigenous peoples in the proliferation of North and South American truth commissions and other official truth seeking inquiries, which have focused on the investigation of massive human rights violations in an attempt to acknowledge the rights of victims and prevent further violence. The aim of these discussions will be to assess how, and if, past and ongoing truth commission efforts are able to adequately depict the experiences of indigenous peoples; whether they integrate indigenous concepts, methods of participation and principles; and ask in what ways the results of those commissions may help strengthen indigenous claims while also taking account of what remains to be achieved.

Latin America pioneered the use of truth commissions with the publication of *Nunca más*, the groundbreaking report of the Argentine Commission on the Disappearance of Persons in 1983. In Guatemala and Peru, national truth commissions investigated conflicts that had caused pervasive victimization of indigenous peoples, and demonstrated the discriminatory nature of violence in both countries. In Chile, a special commission was established to reconstruct the history of the relationship between the Chilean state and indigenous peoples. In the absence of truth commissions in Colombia and Mexico, official inquiries have focused on massacres and other abuses against indigenous peoples. In North America, Canada now begins a Truth and Reconciliation Commission that will examine the legacy of forced assimilation of Aboriginal children.

The lessons learned in Latin America may be helpful to Canadian Aboriginal activists in helping them design the best possible truth-seeking experience. Equally, the unprecedented mobilization process adopted by Canadian Aboriginal peoples to affirm their rights through litigation for a truth commission is an approach likely to attract attention from indigenous peoples globally. Activists from the North and South, including from the United States, can all learn from the past and set goals and principles for the future.

Indigenous Voices and Truth Commissions Conference Agenda		
Monday, March 22		Tuesday, March 23
9:00 am- 10:30 am	Welcome and Introductions	Truth Commissions and Indigenous Narratives: The Strengths and Challenges of Adapting Transitional Justice to Indigenous Memories Moderator: Graeme Simpson Speakers: Miguel de los Santos & Luis Evelis Andrade
	Transitional Justice and Indigenous Rights: An Overview of a Developing Field and its Challenges Moderator: Paige Arthur Speakers: Eduardo Gonzalez	
11:00am- 12:30pm	Indigenous Rights: A Global View of the State of the Field Moderator: Pablo de Greiff Speakers: Rodolfo Stavenhagen & Ellen Lutz	Truth Commissions and Indigenous Communities: Methodological Needs, Ethical Standards, and Truth-seeking Across Cultures Moderator: Louis Bickford Speakers: Marie Wilson & Nancy Yañez
1:30pm – 3:00pm	Learning from Past Experiences: The Latin American Truth Commissions and Indigenous Peoples Moderator: Eduardo Gonzalez Speakers: Maria Tuyuc & Leslie Villapolo	Truth Commissions and the Voices of Women and Youth in Indigenous Communities Moderator: Virginie Ladisch Speakers: Marcy Mersky & Leslie Villapolo
3:30pm – 5:00pm	Looking Forward: The Canadian Indian Residential School Truth and Reconciliation Commission and Upcoming Initiatives in the USA Moderator: Lisa Magarrell Speakers: Marie Wilson, Kathleen Mahoney Phil Fontaine, Ester Attean & Denise Altvater	Areas of Future Research and Opportunities for Collaboration for the Indigenous Rights Movement and the Transitional Justice Community Moderator: Eduardo Gonzalez & Joanna Rice

3. Indigenous Voices and Truth Commissions: International Seminar Findings

By Eduardo Gonzalez & Joanna Rice

1. Introduction

On March 22-23, the International Center for Transitional Justice (ICTJ) conducted a workshop to explore the possible complementarity between the struggle for the rights of indigenous peoples and the use of truth commissions. Twenty indigenous leaders and experts from Latin America and North America contributed to a rich discussion on a subject that is still developing both from the perspective of indigenous activism and transitional justice.

Both transitional justice and the rights of indigenous peoples are growing fields of intellectual inquiry and activism that have received considerable international attention during the last two decades, a period marked by the overall exponential development of human rights law. Transitional justice refers to the protection of the rights of victims of serious abuse as societies strive to put a period of armed conflict, dictatorship or systematic violations behind them. The rights of indigenous peoples entail the specific legal recognition of indigenous peoples to exist in freedom and equality to other peoples, using their own institutions and enjoying access to the resources necessary to practice and strengthen their traditions and ways of life. While both are global fields, they have significant historical roots in the Americas.

Both fields have evolved without much conscious contact with one another. Transitional justice approaches such as prosecutions, truth commissions, reparations programs and institutional reforms, have been systematized, allowing international institutions to identify legal standards and good practices. In the past, certain transitional justice instruments were used in situations where indigenous peoples suffered abuses while others utilized indigenous traditions, however no principles are yet identified guide transitional justice approaches when it comes to being receptive to the specific claims of indigenous peoples. On the other hand, indigenous peoples have made significant legal gains in national and international legislation and jurisprudence, as well as political advances in the electoral arena in several countries in the Americas. Although the goal of strengthening the current indigenous rights regime lends itself to the practice of examining legacies of historic abuse, the use of transitional justice instruments of truth-seeking and memorialization for this purpose is still a new concept.

However, motivations for further pursuing the linkages between the instruments of transitional justice and the substantive claims of indigenous rights are significant. Transitional justice instruments, in particular truth commissions, are now recognized as fundamental for the construction of the rule of law



Mama Angelica. Alfredo Marquez, Peru, 2007. Mama Angelina was the first speaker to give testimony during the Peruvian Truth and Reconciliation Commission. Used with permission.

and lasting reconciliation. The UN Human Rights Council has recently recognized that victims of mass abuse have a right to know the truth about crimes, including facts, circumstances and responsibilities. Innovative research continues to be conducted to identify appropriate practices to make truth commissions receptive to specific needs of specially vulnerable groups, such as women and children. In regards to the development of a legal regime surrounding indigenous rights, widespread political support and legal consensus have resulted in the approval of the UN Declaration on the Rights of Indigenous Peoples an instrument setting common aspirations and principles for states around the world.

Some examples of the creative application of transitional justice instruments to the advancement of indigenous rights are already visible: notably, Chile's 'New Deal' commission and Canadian Truth and Reconciliation Commission. Similarly, truth commissions have strived to adapt principles of indigenous justice and conflict transformation to advance their mandate, as in the case of East Timor, and South Africa.

To be sure, the encounter of transitional justice instruments and the rights of indigenous peoples is not free of controversy. Transitional justice is typically implemented in contexts where states seek to revitalize and legitimize national unity. This may be problematic in some cases for indigenous peoples who are engaged in activism focused on changing the model of a uni-national state into a plurinational and pluricultural one. Transitional justice has also been utilized in situations of extreme or massive violence such as armed conflict or under dictatorship, while indigenous peoples have often suffered forms of structural violence that are normalized and continue to apply in times of peace, even under otherwise democratic regimes.

However, efforts to connect the potential of transitional justice to the aims of the indigenous rights movement are continuing to spread despite some ongoing challenges. The truth commission model is showing significant flexibility in these situations that go beyond the typical "transitional cases". There is hence much immediate work to be done by transitional justice practitioners so that we might coordinate with indigenous peoples at the local and international level and together reinvent the way truth commissions do their work to fit the needs and expectations of first peoples participating in transitional justice processes.

Our conference findings show many promising opportunities to build the truth commission model into a tool that will strengthen the rights of first peoples and help secure a sense of accountability for the history of rights violations aboriginals have suffered globally. In a preliminary list, conference participants suggest that truth commissions will better serve the justice-seeking objectives of first peoples by listening to the voices of first peoples and remaining flexible to their unique circumstances; by developing new standards of consultation; by incorporating capacity building opportunities into the commission process; by adopting more holistic definitions of rights violations; by rethinking how truth commissions engage

wide constituencies; and by facilitating more complex discussions between indigenous and non-indigenous people about what reconciliation means to them.

The ICTJ wishes to thank the support of the Department of Foreign Affairs and International Trade (DFAIT) of Canada for contributing to the realization of our workshop, and to the Andrus Family Fund, for its ongoing support of the ICTJ on truth-seeking in North America.

2. Experiences in the Americas

Over the last two decades, indigenous peoples in the Americas have participated in truth commissions as a path to recognition, as a justice-seeking mechanism, and as a way to help carve new political space where we might push the indigenous rights movement forward. Notwithstanding, indigenous rights remain an emerging application of transitional justice with many tensions that still need to be thought through. The goal of our conference was to think critically about ways to expand the work of truth commissions such that they might be more effective tools for redressing crimes committed against indigenous peoples.

Given the nature of the internal conflicts in Guatemala and Peru, the TCs established in those countries found that the victims of atrocity were overwhelmingly members of indigenous communities. Even though these commissions' mandates made only passing reference to indigenous peoples, pursuing the truth led inexorably to the recognition of strong discrimination components in the patterns of violence suffered in both countries. The Guatemalan commission (CEH) determined that the government committed acts of genocide against the Maya population, and the Peruvian commission (CVR) established that 75% of the victims spoke a native language and identified the practice of slavery against indigenous peoples in the Amazon region. Consequently, both commissions made specific recommendations on indigenous peoples and collective reparations. In Chile, none of the two truth commissions established to study the abuses of the Pinochet era focused on crimes against indigenous peoples, or treated them specifically. Interestingly, Chile established a commission exclusively to reconstruct the history of the dealings of the State and indigenous peoples, the "New Deal Historical Commission," but it did not receive as much recognition as the best-known inquiries on deaths and torture.

Mexico and Colombia have not established truth commissions, but the protracted nature of the authoritarian PRI regime in Mexico and the internal conflict in Colombia have placed both countries under the attention of the international community. The Inter-American Court and Commission of Human Rights have taken a strong stand, demanding appropriate investigation of abuses against Indigenous peoples following a jurisprudence developed in Latin American and Caribbean countries on issues such as land rights, self-governance and cultural rights to appropriate mourning.

In Latin American countries, the establishment of inquiries has gone hand-in-hand with some political developments that have supported the rights of indigenous peoples. Recognition of multiculturalism in several constitutions and special electoral districts, plus the acceptance of international norms like ILO Covenant 169 are important elements of a legal framework for the protection of indigenous rights. Additionally, in some countries, indigenous movements have made important political gains, strengthening the international recognition and visibility of their rights.

However, the significant development of TJ and indigenous movements in Latin America has – generally speaking – evolved along separate paths, with limited areas of contact. Interestingly, that articulation is taking place in a different region: about five years ago Canadian activists decided to use the TC model as an instrument of redress to deal with the legacy of forced assimilation of indigenous peoples in that country.

This ongoing initiative emerged from organizations representative of the Canadian Aboriginal peoples and –although the result of a local process- it reflects a global trend and may take the experiences of Peru and Guatemala to a new level. As an official body that is independent from government, and complemented by other measures, such as reparations and apologies, a TC could represent a new way to access the public scenario for indigenous peoples; it could also obtain levels of visibility that go far beyond the national arena, establishing transnational indigenous links of learning and action.

The Truth and Reconciliation Commission of Canada retraces the history of the Indian Residential School System through the direct testimony of former students, staff, their families and their communities during a process that will last five years. The truth commission is one component of a wider effort to build a new relationship between Aboriginals and non-Aboriginals in Canada characterized by mutual respect and beneficial co-existence. In this sense, Canada is attempting a transition away from the structural legacies of a colonial past towards a society where the rights of diverse peoples are secured and respected.

The choice to hold a truth commission in Canada is an important moment in the development of transitional justice as a field. Past truth commissions have “stumbled upon” the experiences of indigenous peoples, as many legal mandates did not contemplate specific provisions to deal with the needs of indigenous stakeholders. The TRC of Canada is the first one fully dedicated to the experiences of indigenous peoples as they were subject to systematic abuse. It is also the first commission to focus exclusively in the experiences and memories of children, as the survivors were minors at the time of their victimization.

Finally, the TRC of Canada is the first commission process to grow from a judicially mediated negotiation between Aboriginals, government and churches, rather than from an executive or legislative act. The

commission, then, sets a strong precedent for the affirmation of the right to truth around the world and is a valuable model for all states moving towards just resolutions to the legacy of rights abuses done to indigenous peoples around the globe.

3. Challenges

Despite an appropriate degree of optimism about the overlapping objectives and practices of TJ and indigenous rights, there are some difficult tensions among their aims.

Are Truth Commissions a State-Legitimizing Practice? What State Do They Legitimize?

One of the strongest and most common critiques of past and ongoing attempts to adapt truth commissions to the indigenous rights movement sees TCs as state-legitimizing strategies intended to facilitate a transition out of conflict by recreating a shared sense of nationhood. As ‘national,’ border-limited processes, commissions seem to suggest allegiance to the nation-state, raising doubts on whether effective reconciliation may include the recognition of multiculturalism or multi-nationhood. The mere discussion on ‘reconciliation,’ for some, could soften some of the most important claims of the indigenous rights movement, which may focus on autonomy, rather than unity with non-indigenous groups. As Alfred Taiaiake describes, “[r]econciliation gives Onkwehonwe {original peoples} a place inside of Settler society with no requirement for Settlers to forego any of their ill-gotten gains personally or collectively” (Cirkovic 395).

The Challenge of Negotiating between International, National and Local Political Processes

Within the indigenous rights movement, indigenous peoples’ political identity is both global and local. As a global identity, indigeneity demarks lines of oppression that cut across the modern world on every continent and in nearly every country. Indigenous identity is also local; it signifies a sense of membership that is bound to a community, a location and a distinct culture. As a movement driven by local identities yet one that articulates indigeneity as a globally crosscutting experience, the indigenous rights movement allows many distinct voices to jointly participate in a powerful political dialogue with international scope. There are, however, doubts about this model. As Dr. Jeff Corntassel has emphasized, there is always a worry that focusing on international level agency risks taking activism away from local level engagements (Corntassel 137). As a national level institution that grows out of international influences and trends, a truth commission may strain this tension even further by isolating or taking energy away from those working at the local level (Costa 694).

Mediating between a Human Rights Discourse and Indigenous Rights

Every dimension of the contemporary experience of indigeneity is shaped by a colonial encounter of destructive force, which harmed not only individuals but also language, culture and community. Crimes against indigenous peoples need to be understood and addressed by a holistic approach to justice that responds to multiple layers of harm. This raises the question of whether the human rights framework (historically originated on liberal conceptions of the individual) can adequately reflect that complexity.

Human rights law explicitly includes economic, social and cultural rights, and affirms its indissoluble linkage to civil and political rights. However, for some, it is still an open question as to whether human rights discourse has evolved enough to effectively encompass collective and cultural rights. As Dr. Courtney Jung writes, TJ's history of individualizing violations risks creating a divide between a person speaking before a truth commission and his community (Jung 432, 2003). Such a distinction would likely feel false where indigenous rights are concerned given that culturally targeted violations hurt collectives and individuals at once. While there is a tension here, it is not necessarily an inherent problem for an indigenous rights focused truth commission. As Dr. Jung goes on to explain, truth commissions are flexible justice-seeking institutions that are not restricted to state guaranteed civil rights in their investigations (Jung 434, 2003).

4. Opportunities

As we continue thinking through the linkages between transitional justice and the indigenous rights movement, it is evident that the challenges of this emerging sphere of human rights work are indicative of opportunities for growth in the field as much as they are signs of potential difficulty. Some areas where truth commissions promise a positive impact on the objectives of the indigenous rights movement are catalogued below.

Strengthening Self-Determination

For some, the advances in the recognition of indigenous rights and the upholding of rights through courts and official institutions may be a mixed blessing as utilizing these institutions increases the state's presence and role in indigenous territory, dulling autonomy *de facto* while strengthening it *de jure* (Fulmer, Godoy and Ness 106). Again, the UN Declaration provides useful guidance by clearly recognizing the right to self-determination. A truth commission that complies with an indigenous rights framework must recognize the potential tension between a state-guaranteed transitional justice process and the character of indigenous peoples as autonomous political and cultural communities. The idea that aboriginal peoples live within a state yet maintain a nation-to-nation relationship with governing authorities, while difficult, may be an opportunity to strengthen the character of internal self-determination. Truth commissions,

even if instituted officially by the central state, can be the result of a negotiation pushed for by indigenous communities, like in Canada. Provided appropriate consultations take place, truth commissions can navigate the question of legal pluralism by adopting indigenous wisdom and laws in their design and procedure.

Finding Enforceability in Transitional Justice

ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples codify the development of human rights to establish norms and regulations that help solidify indigenous rights. Constitutional and human rights jurisprudence in the Americas, including decisions of the Inter-American Court of Human Rights and jurisprudence of Canada's Supreme Court are developing precedents. By drawing on conventions and jurisprudence in its mandate and recommendations, a truth commission can integrate the most adequate standards on indigenous rights, and create better condition for the implementation of its recommendations regarding indigenous peoples.

Identifying Patterns of Marginalization

Truth commissions have tended to deal with extraordinary acts of violence in unusual moments (war, dictatorship, Apartheid) rather than looking at wide patterns of marginalization in otherwise 'peaceful' or 'normal' circumstances. However, their methodology for identifying patterns of violation to frame and explain individual abuses has illuminated the understanding of the context and causes of human rights violations.

In so doing, a truth commission can help expand a society's accepted definition of injustice and challenge the permissibility of conducts and situations that erode human rights. This presents a TC with the opportunity to open dialogue with communities about their ideas of justice and redress. In the case of indigenous peoples, truth commissions can open dialogue about more holistic notions of justice including communal loss, ecological rights, opportunities for traditional healing, redress for historic oppression, land rights, and use of traditional territories.

Finding Space for Legal and Cultural Pluralities

Millions of different faces represent the first peoples of the Americas; recognizing this diversity is paramount if transitional justice hopes to coordinate more effectively with the indigenous rights movement. In fact, the term 'indigenous' itself needs to be deconstructed, as it can weaken the specific identities of different nations and their rich plurality. Truth commissions, therefore, can present an opportunity to protect rights (of all indigenous groups) while encouraging and celebrating the diversity of the different peoples and nations. The Chilean New Deal commission, for example, dedicated specific

space to reconstruct the experiences of each indigenous group, recognizing the different histories of relation each had with the State.

Using a more Complex Notion of 'Victim' and 'Perpetrator'

Courtroom proceedings tend to present a strong dichotomy of victims and perpetrators, and do not focus on historical explanations or contexts for the actions of either group. In the case of indigenous peoples, victimized as both collectives and individuals as a result of systemic action and policy, it is imperative to go beyond the formal parameters of criminal law (Jelin 3). Different from a courtroom, truth commissions have the potential to open debate on much more than individual culpability. While commissions maintain a legal and ethical condemnation of abuse, they illustrate the systematic nature of certain abuses, patterns and historical conducts. By doing so, a TC can show how victimization can be communal, inter-generational and long-lasting.

5. Recommendations

On the basis of these experiences, the seminar identified specific challenges and areas of opportunity for a productive crossover between truth-seeking, as an approach of transitional justice, and the indigenous rights movement. Some of the key elements of the discussion were:

The centrality of a human rights framework

Both transitional justice and advances in the rights of indigenous peoples are developments within the sphere of international human rights law and practice. To be sure, both represent challenges for emerging international law. New categories of rights such as special provision for indigenous peoples are only recognized after complex processes of juridical analysis and political negotiation. Also, the formal acceptance of rights does not guarantee in itself their implementation, as state authorities often lack political will and local judiciaries may be slow when it comes to using international principles in domestic decisions.

Human rights principles do provide useful tools for activists at the local level regardless as they demand government take their global commitments seriously. Strategic litigation has defeated instruments of impunity and has protected the rights of indigenous peoples in an ever-growing number of countries where local and regional jurisprudence starts to reflect international principles. Appealing to fundamental principles such as non-discrimination and the indivisibility of human rights helps untangle more complex or ambiguous areas of human rights law. Human rights principles make clear that transitional justice instruments must take into account the specific demands of indigenous peoples by providing guarantees

for the meaningful participation of all groups especially vulnerable to abuse. Conversely, from the perspective of indigenous rights, making the UN Declaration on the Rights of Indigenous Peoples work necessitates inventive activism. Transitional justice instruments, with truth-seeking amongst them, appear to be particularly appropriate for this purpose.

Taking Advantage of the Flexibility of Truth Commissions

Truth commissions are still developing mechanisms that have been used in a variety of settings, including the move away from varied types of conflict and authoritarian rule. Their non-judicial focus allows them to reconstruct patterns of abuse with special attention to historical context in a way that is typically difficult for a regular court of law.

A failure to characterize systematic and longstanding nature of violations would invalidate the work of a truth commission for indigenous peoples; therefore they need to ensure that their methodologies allow them to focus on the distant past as well as the violations of a recent conflict. Truth commissions differ from courts of law regarding the methods used to reach conclusions on facts. Commissions strongly rely on direct victim testimony and oral history rather than in record or judicial evidence. This characteristic may make commissions particularly relevant as instruments for voicing indigenous accounts of abuse, resistance and healing.

Similarly, truth commissions have facilitated debates around the concept of reconciliation. Virtually all past commissions were critical of the use of this concept as the mere restoration of an unjust status-quo, and have instead taken the aim of ‘reconciliation’ as pretext for making recommendations for structural transformation of societal power and relations between groups.

Commitment to the Duty of Consultation

Like any policy that will effect indigenous peoples, the establishment of a truth commission must be based in a meaningful process of consultation at every stage. Consultation is the best form to assess the needs of victims, the functions of the proposed truth-seeking body and the scope of its investigation. Such a process must be conducted in non-discriminatory way, ensuring that participating indigenous peoples and persons are fully informed and enabled to intervene in their own language and according to their own cultural practices, respecting the way communities choose to tell their history and express their interests.

Once a truth commission is established, the duty of consultation entails the effective commitment to share authority so that the commission’s planning, activities and reporting are fully participatory and incorporate the needs of indigenous peoples. Effectively transferring authority to indigenous peoples mitigates the risk of incorporating indigenous practices in an instrumental or superficial way.

Commitment to participatory and consultative policy-making applies also to the follow-up of truth commissions, as reparations policies, criminal justice and institutional reforms must take into account the decisions of indigenous peoples.

Capacity Building

The dynamics of exclusion that characterize the circumstances of indigenous peoples around the world have a damaging effect on the ability of indigenous peoples to participate in transitional justice initiatives. Just as the experience of longstanding marginalization exacerbates the severity and impact of violence against indigenous communities, the same experience of exclusion may impair the ability of indigenous peoples to participate fully in a truth commission process.

An indigenous focused truth commission must include extensive capacity building components in its mandate. These may range from technical support, training and sharing of experiences to contributions to long term development work. As a capacity-building opportunity, truth commissions can have an impact lasting well beyond the mandate period.

A Holistic Understanding of Rights Violations

As a mechanism of accountability for crimes against indigenous peoples, truth commissions need to capture the way violations which target someone for his or her cultural identity manifest as a layered experience of violence that hurts a person, community and culture all at once.

Human rights documentation and litigation is well suited to establishing individual violations, but these modes of documenting abuse face new methodological challenges when it comes to identifying wide patterns of violations of collective rights. A truth commission consistent with indigenous peoples' rights needs to develop research demonstrating how abuses against indigenous peoples have a layered effect hurting individuals, families and communities in interlocking ways.

Categories of violations that affect indigenous peoples specifically, such as damage to land and resources, the destruction of language and culture, the explicit or implicit prohibition of rituals must be reflected in the mandate and investigation of a truth commission.

Engaging the Public Sphere

Truth commissions, particularly after the experience of South Africa, have abandoned the model of cabinet analysis in favor of wide and transparent public activity. Commissions no longer focus solely in

the publication of a final report, but engage in a variety of educational and healing activities, such as public hearings, memorialization, workshops and public opinion polls.

By doing so, commissions reduce the potential for denial or proclaimed ignorance in a society and encourage the state's commitment to implementing reforms. In the case of abuses against indigenous populations, truth commissions need to engage across cultures and make a conscious effort to build new public space for indigenous voices.

Using a Workable Notion of Reconciliation

Every truth commission faces the challenge of deciding how it will address the concept of reconciliation in its specific social and historical context. In a commission consistent with the rights of indigenous peoples, the key normative goals motivating a truth-seeking process need to be built by engaging indigenous and non-indigenous conceptions. Defining 'reconciliation' cannot, therefore, be a unilateral activity.

The concept of reconciliation in past truth commissions usually addressed the context of a nation trying to rebuild. In these cases, reconciliation assumed a "national" character and was associated with ideas of unity. Especially after the South African transition and the Guatemalan peace accords, truth commissions began reflecting concepts of reconciliation more appropriate to the reality of multi-cultural states.

6. Looking Forward

Practical and normative works linking transitional justice and indigenous rights still represent a developing field of inquiry. The list of issues above is just the result of a preliminary examination of the rich experiences of indigenous representatives and indigenous rights experts from the Americas. A larger and more ambitious inter-disciplinary effort is needed to fully build truth-seeking initiatives that are consistent with the needs and rights of indigenous peoples.

As new truth commissions emerge every year, many of them will focus on conflicts that affected indigenous peoples directly, making this area of research is quite urgent. The ICTJ plans to remain at the forefront of thinking happening on this issue and, in that capacity, to develop new potential linkages between indigenous rights and transitional justice.

4. Conference Participant List

Participants

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12. Marie Wilson - Commissioner
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