

COMMISSIONING JUSTICE

TRUTH COMMISSIONS AND
CRIMINAL JUSTICE

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2010 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Copyright Amnesty International Publications 2010

Index: POL 30/004/2010
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publishers.

Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

**AMNESTY
INTERNATIONAL**



CONTENTS

SUMMARY	5
INTRODUCTION	7
PART ONE: TRUTH COMMISSIONS AROUND THE WORLD	8
Truth commissions established between 1974 and 1995	8
Truth commissions established between 1995 and 2001	9
Truth commissions established between 2001 and 2004	9
Truth commissions established between 2005 and 2010	10
PART TWO: TRUTH COMMISSIONS, AMNESTY AND PROSECUTIONS	11
The practice of truth commissions rejects the granting of amnesty for crimes under international law in connection with truth-seeking processes	12
The practice of truth commissions allows the granting of amnesty in connection with truth-seeking processes only when the amnesty excludes crimes under international law	14
The practice of truth commissions strongly supports the prosecution of crimes under international law	16
ANNEX: AMNESTY INTERNATIONAL'S PUBLICATIONS ON TRUTH COMMISSIONS.....	20
Endnotes	23

SUMMARY

States should recognize that “retributive” justice and “restorative” justice (i.e. criminal justice and truth-seeking mechanisms) do not exclude, but supplement each other.

In recent years, a debate has flourished on the possibility to “deal with” crimes under international law using non-judicial mechanisms of accountability, such as truth commissions. Based on the distinction between “retributive” justice and “restorative” justice, some have contended that countries have a choice in deciding “what kind of justice” they may pursue: that they may decide not to conduct criminal investigations and prosecutions of crimes such as genocide, crimes against humanity and war crimes and rather concentrate on truth-seeking and community reconciliation processes. The establishment of truth commissions (commissions of inquiry tasked with the investigation of patterns of past crimes) has often been considered as an alternative to the investigation and prosecution of crimes under international law before national courts.

The paper analyses the practice with respect to criminal prosecutions and amnesty of the 40 truth commissions established around the world between 1974 and 2010. It concludes that:

- **The practice of truth commissions rejects the granting of amnesty for crimes under international law in connection with truth-seeking processes.** The practice of the majority of truth commissions rejects the supposed legality of “conditional” amnesty, when such amnesty covers crimes under international law: of the 40 truth commissions examined in this paper, only three were given the power to recommend or grant amnesty (or immunity) for crimes under international law.
- **The practice of truth commissions allows the granting of amnesty in connection with truth-seeking processes only when the amnesty excludes crimes under international law.** Of the 40 truth commissions examined in this paper, five were allowed to recommend or grant amnesty (or immunity) with the express exclusion of crimes under international law.
- **The practice of truth commissions strongly supports the prosecution of crimes under international law.** The practice of the majority of truth commissions is firmly in favour of investigations and prosecutions of all crimes under international law: more than half of the 38 truth commissions with relevant practice examined in this paper recommended and/or actively contributed to the prosecution of all crimes under international law.

Although there may be different forms of accountability, there is only one kind of justice: the one based on the respect, protection and

promotion of the right of victims to justice, truth and full reparations.

Amnesty International's research shows that "retributive" justice and "restorative" justice (i.e. criminal justice and truth-seeking mechanisms) do not exclude, but supplement each other. Although an effective truth commission can go a long way to satisfying a state's obligation to respect, protect and promote the victims' right to truth, there is no alternative to investigation and prosecution of crimes under international law.

INTRODUCTION

The value of truth commissions is that they are created, not with the presumption that there will be no trials, but to constitute a step towards knowing the truth and, ultimately, making justice prevail.

Inter-American Commission on Human Rights, *Ignacio Ellacuría et al. (El Salvador)*, Case 10.488, Report no 136/99, 22 December 1999, para229, footnote omitted.

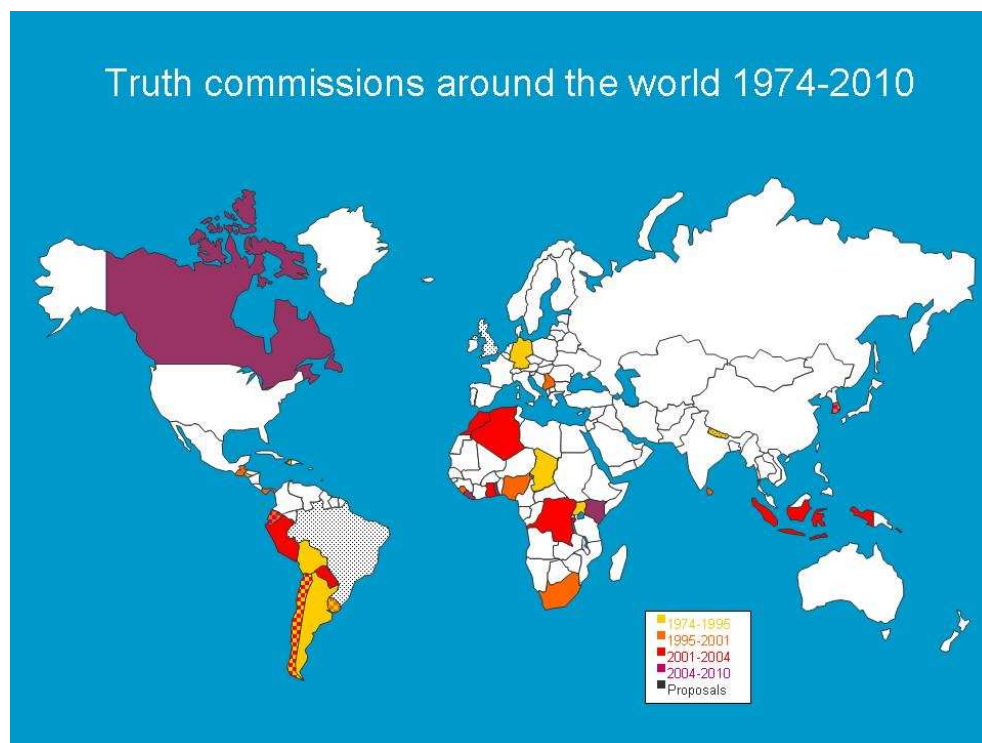
In recent years, a debate has flourished on the possibility to “deal with” crimes under international law using non-judicial mechanisms of accountability, such as truth commissions. Based on the distinction between “retributive” justice and “restorative” justice, some have contended that countries have a choice in deciding “what kind of justice” they may pursue: that they may decide not to conduct criminal investigations and prosecutions of crimes such as genocide, crimes against humanity and war crimes and rather concentrate on truth-seeking and community reconciliation processes. The establishment of truth commissions (commissions of inquiry tasked with the investigation of patterns of past crimes) has often been considered as an alternative to the investigation and prosecution of crimes under international law before national courts.

This paper is based on Amnesty International’s experience and assessment of the work of truth commissions in many countries around the world over the past decades. **Part One** of this paper offers an overview of the 40 truth commissions established around the world between 1974 and 2010. **Part Two** analyses their practice with respect to amnesty and prosecutions. The **Annex** presents a non-exhaustive list of Amnesty International’s publications on truth commissions since 1986.

Amnesty International is publishing this paper in order to contribute to the debate about ‘Truth and reconciliation processes as a complement to criminal justice’, which will take place at the Review Conference of the Rome Statute of the International Criminal Court (Kampala, Uganda, 31 May to 11 June 2010).

This paper is based on ‘Moving away from the South African model: Amnesties and prosecutions in the practice of 40 truth commissions’, a seminar conducted by Francesca Pizzutelli and organized by Oxford Transitional Justice Research and the Centre for Socio-Legal Studies, University of Oxford, January 2010.

PART ONE: TRUTH COMMISSIONS AROUND THE WORLD



Map 1: Truth commissions around the world 1974-2010, © Francesca Pizzutelli 2010. This map is for illustrative purposes only. The boundaries shown and the designations used do not imply official endorsement or acceptance by Amnesty International.

TRUTH COMMISSIONS ESTABLISHED BETWEEN 1974 AND 1995 (12)

Uganda: Commission of Inquiry into the Disappearances of People, 1974; **Bolivia:** National Commission of Investigation of Disappeared Citizens (*Comisión Nacional de Investigación de Ciudadanos Desaparecidos*), 1982; **Argentina:** National Commission on the Disappearance of Persons (*Comisión Nacional sobre la Desaparición de Personas*, CONADEP), 1983; **Uruguay:** Investigative Commission on the Situation of Disappeared People and its Causes (*Comisión Investigadora sobre Situación de Personas Desaparecidas y Hechos que la Motivaron*), 1985; **Uganda:** Commission of Inquiry into Violations of Human Rights, 1986; **Nepal:** Commission of Inquiry to Locate the Persons Disappeared during the Panchayat Period, 1990; **Chile:** National Commission for Truth and Reconciliation (*Comisión Nacional de Verdad y Reconciliación*), 1990; **Chad:** Commission of Inquiry on the Crimes and Misappropriations Committed by the Ex-President, His Accomplices and/or Accessories (*Commission d'enquête sur les crimes et détournements commis*

par l'ex-Président, ses co-auteurs et/ou complices), 1990; **El Salvador**: Commission of Truth (*Comisión de la Verdad*), 1991; **Germany**: Commission of Inquiry on Working through the History and Consequences of the SED Dictatorship in Germany (*Enquete-Kommission 'Aufarbeitung von Geschichte und Folgen des SED-Diktatur in Deutschland'*), 1992; **Germany**: Commission of Inquiry on Overcoming the Consequences of the SED Dictatorship in the Process of German Unity (*Enquete-Kommission 'Überwindung der Folgen des SED-Diktatur im Prozeß der deutschen Einheit'*), 1995; **Haiti**: National Commission for Truth and Justice (*Commission Nationale de Vérité et de Justice*), 1995.

TRUTH COMMISSIONS ESTABLISHED BETWEEN 1995 AND 2001 (10)

Sri Lanka: three regional Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons (Western, Southern and Sabaragamuwa Provinces; Central, North Western, North Central and Uva Provinces; Northern & Eastern Provinces), 1994;¹ **South Africa**: Truth and Reconciliation Commission, 1995; **Ecuador**: Truth and Justice Commission (*Comisión Verdad y Justicia*), 1996; **Guatemala**: Commission for Historical Clarification (*Comisión para el Esclarecimiento Histórico*), 1997; **Nigeria**: Judicial Commission of Inquiry for the Investigation of Human Rights Violations, 1999; **Republic of Korea**: Presidential Truth Commission on Suspicious Deaths, 2000; **Sierra Leone**: Truth and Reconciliation Commission, 2000; **Uruguay**: Peace Commission (*Comisión para la Paz*), 2000; **Panama**: Truth Commission (*Comisión de la Verdad*), 2001; **Federal Republic of Yugoslavia**: Truth and Reconciliation Commission (*Komisija za istinu i pomirenje*), 2001.

TRUTH COMMISSIONS ESTABLISHED BETWEEN 2001 AND 2004 (11)

Peru: Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación*), 2001; **Timor Leste**: Commission for Reception, Truth and Reconciliation (*Comissão de Acolhimento, Verdade e Reconciliação, CAVR*), 2001; **Grenada**: Truth and Reconciliation Commission, 2001; **Ghana**: National Reconciliation Commission, 2002; **Algeria**: Ad Hoc Inquiry Commission in Charge of the Question of Disappearances (*Commission d'Enquête ad hoc chargée de la question des disparus*), 2003; **Chile**: National Commission on Political Imprisonment and Torture (*Comisión Nacional sobre Prisión Política y Tortura*), 2003; **Paraguay**: Truth and Justice Commission (*Comisión de Verdad y Justicia*), 2003; **Morocco**: Equity and Reconciliation Commission (*Instance Équité et Réconciliation*), 2004; **Democratic Republic of Congo (DRC)**: Truth and Reconciliation Commission (*Commission vérité et réconciliation*), 2004; **Burundi**: National Truth and Reconciliation Commission (*Commission Nationale pour la Vérité et Réconciliation*), 2004 (not appointed); **Indonesia**: Truth and Reconciliation Commission (*Komisi Kebenaran dan Rekonsiliasi, KKR*), 2004 (not appointed).

The 2004 Truth and Reconciliation Commission of the Democratic Republic of Congo (DRC) was the first commission to operate in a country where the ICC was conducting an investigation.

[A] Truth and Reconciliation Commission could play an important role in ensuring justice and accountability. Criminal courts, by themselves, may not be suited to reveal the broadest spectrum of crimes that took place during a period of repression, in part because they may convict only on proof beyond a reasonable doubt. In situations of mass crime, such as have taken place in Darfur, a relatively limited number of prosecutions, no matter how successful, may not completely satisfy victims' expectations of acknowledgement of their suffering. What is important, in Sudan, is a full disclosure of the whole range of criminality.

Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, pursuant to Security Council Resolution 1564 of 18 September 2004, 25 January 2005, p156, para 617.

TRUTH COMMISSIONS ESTABLISHED BETWEEN 2005 AND 2010 (7)

Republic of Korea: Truth and Reconciliation Commission, 2005; **Liberia:** Truth and Reconciliation Commission, 2005; **Canada:** Indian Residential Schools Truth and Reconciliation Commission, 2006; **Ecuador:** Truth Commission (*Comisión de la Verdad*), 2007; **Solomon Islands:** Truth and Reconciliation Commission, 2008; **Kenya:** Truth, Justice and Reconciliation Commission, 2008; **Togo:** Truth, Justice and Reconciliation Commission (*Commission Vérité, Justice et Réconciliation*), 2009.

The truth, Justice and Reconciliation Commission of Kenya is the second truth commission to operate in a country where the ICC is conducting an investigation.

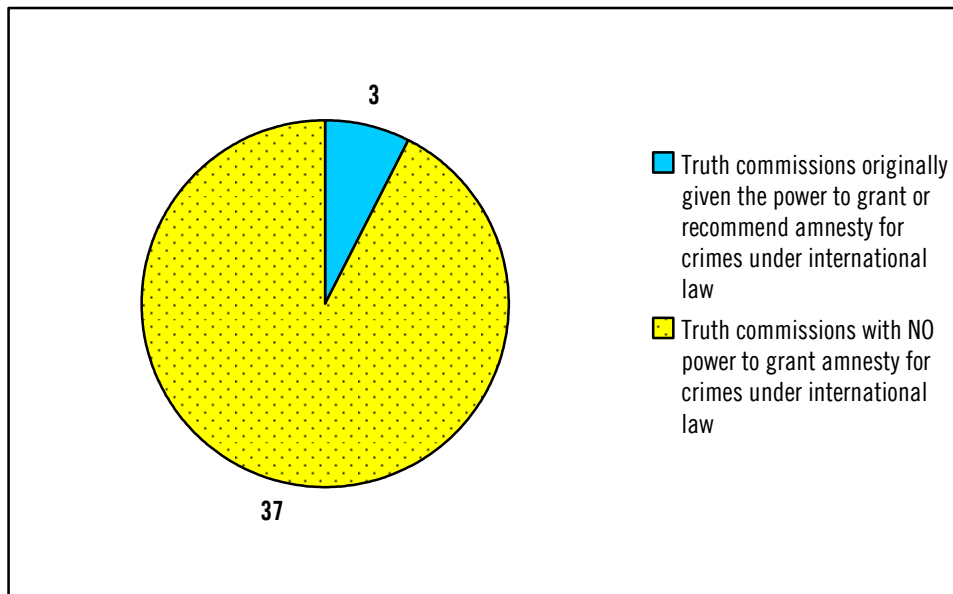
PART TWO: TRUTH COMMISSIONS, AMNESTY AND PROSECUTIONS

Part Two of this paper answers the following questions:

- Does the practice of truth commissions support the granting of amnesty for crimes under international law in connection with truth-seeking processes?
- Does the practice of truth commission support the granting of amnesty for crimes **other than** crimes under international law in connection with truth-seeking processes?
- What is the practice of truth commissions with respect to prosecutions for crimes under international law?

THE PRACTICE OF TRUTH COMMISSIONS REJECTS THE GRANTING OF AMNESTY FOR CRIMES UNDER INTERNATIONAL LAW IN CONNECTION WITH TRUTH-SEEKING PROCESSES

The practice of the majority of truth commissions rejects the supposed legality of “conditional” amnesty, when such amnesty covers crimes under international law.



Of the 40 truth commissions examined in this paper, only three were given the power to recommend or grant amnesty (or immunity) for crimes under international law (South Africa, Grenada and Indonesia).

In the case of South Africa and Indonesia, the power to grant or recommend amnesty for serious human rights violations was considered to be unlawful by either national or international bodies.

In the case of Grenada, the Commission itself expressed doubts about the legality of its powers.

The epilogue to the 1993 Interim Constitution of **South Africa** decided that an amnesty would be granted “in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past”.² In the statute of the 1995 Truth and Reconciliation Commission (TRC) the granting of amnesty was subjected to a full disclosure by the perpetrator of all the relevant facts relating to the criminal act.³ The South African amnesty, which included crimes under international law, such as torture and enforced disappearance, was conditional, that is, it was granted in exchange for the fulfilment of a condition by the perpetrator (the disclosure of information). This became known as the ‘amnesty for truth’ process. In January 2005, the UN International Commission of Inquiry on Darfur considered:

The Commission has looked at several accountability mechanisms that formed part of certain Truth and Reconciliation Commissions (TRC). In one of these, amnesties were granted to perpetrators of serious violations of human rights and

*humanitarian law. Even though these amnesties were granted in exchange for public confessions by the perpetrators, they generally -- and correctly so in the Commission's opinion-- have been considered unacceptable in international law. They have also been widely considered a violation of the accepted United Nations position that there should be no amnesty for genocide, war crimes and crimes against humanity.*⁴

In December 2006 the UN Committee against Torture stated about South Africa:

*While noting with appreciation the remarkable work of the Truth and Reconciliation Commission and its role in the peaceful transition in the State party, the Committee notes that de facto impunity persists regarding persons responsible for acts of torture during apartheid... The State party should consider bringing to justice persons responsible for the institutionalization of torture as an instrument of oppression to perpetuate apartheid.*⁵

The terms of reference of the 2001 Commission of **Grenada** gave it the power "to recommend indemnity to various persons who give what is considered to be truthful evidence at the inquiry".⁶ The Commission considered that any power to grant amnesty would conflict with the constitutional powers of prosecution authorities and determined that its powers were limited to recommending that particular witnesses should be favourably considered for amnesty or exemption from prosecution.⁷

The 2004 Commission of **Indonesia** was given the power to receive confessions and apologies about human rights violations and recommend amnesty to the President.⁸ In December 2006 the Constitutional Court of Indonesia declared that the Commission's statute violated the 1945 Constitution.⁹ The Commission was never appointed.

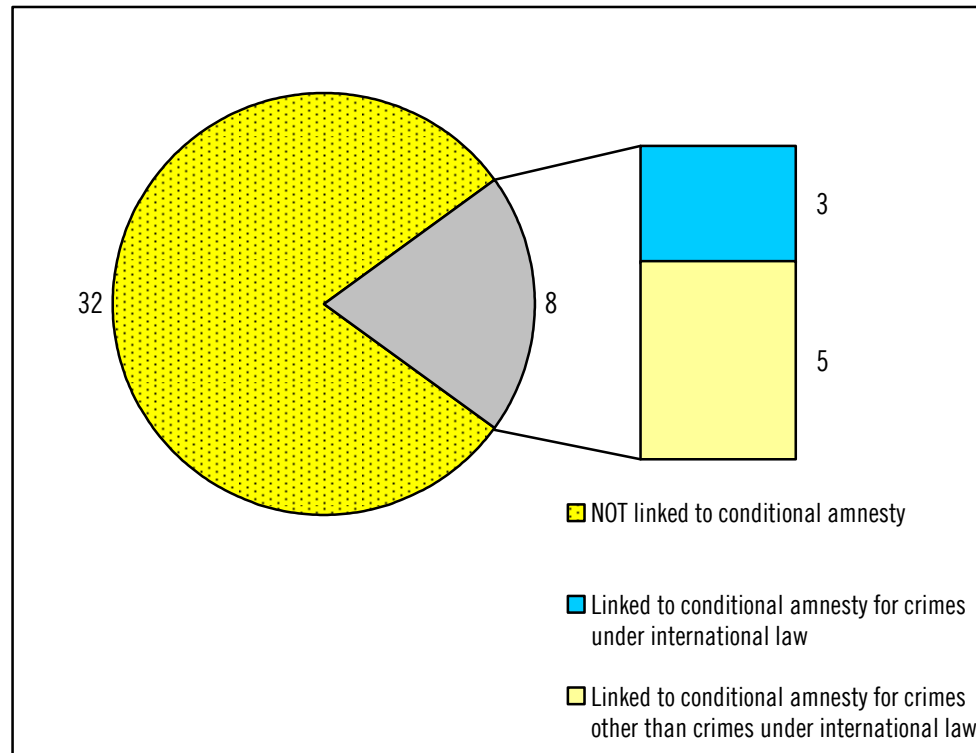
BOX 1: THE INDONESIA-TIMOR LESTE COMMISSION OF TRUTH AND FRIENDSHIP

In October 2005, Timor-Leste and Indonesia agreed to create a joint Commission of Truth and Friendship (CTF) to investigate the events around the 1999 referendum in Timor-Leste.¹⁰ The CTF had the power to 'recommend amnesty for those involved in human rights violations who cooperate fully in revealing the truth'.¹¹

The United Nations refused to cooperate with the Commission because

*the terms of reference of CTF to hold out the possibility of amnesty being recommended for [serious violations of international law, including crimes against humanity, war crimes and other serious crimes] is inconsistent with the requirement of international law.*¹²

THE PRACTICE OF TRUTH COMMISSIONS ALLOWS THE GRANTING OF AMNESTY IN CONNECTION WITH TRUTH-SEEKING PROCESSES ONLY WHEN THE AMNESTY EXCLUDES CRIMES UNDER INTERNATIONAL LAW



Of the 40 truth commissions examined in this paper, five were allowed to recommend or grant amnesty (or immunity) with the express exclusion of crimes under international law (Timor Leste, DRC, Burundi, Liberia and Kenya).

The mandate of the 2001 Commission in **Timor-Leste** included assisting the reintegration of suspected perpetrators into their communities by facilitating 'Community Reconciliation Processes'.¹³ Although, if successful, such processes could result in immunity from criminal and civil liability (the Commission did not have the power to recommend or grant amnesty) they were excluded for 'serious criminal offences' (including genocide, crimes against humanity, war crimes and torture), which the Commission had to refer to the Office of the General Prosecutor for Serious Crimes.¹⁴

The 2004 Commission of the **Democratic Republic of Congo** (DRC) had the power to recommend amnesty for 'facts of war, political crimes and crimes of opinion' subject to the adoption of an amnesty law.¹⁵ When the amnesty law was adopted, it excluded war crimes, crimes against humanity and genocide and did not mention any criteria for conditionality.¹⁶

The 2004 Commission in **Burundi** had the power to determine the 'political crimes' for which an amnesty law could be adopted. Its statute reminded that amnesty could not be granted for genocide, crimes against humanity and war crimes.¹⁷

The TRC believes and consistent with international standards that amnesty for heinous crimes is unacceptable, immoral and promotes impunity. The TRC therefore refrains from granting amnesty to any individual involved in the commission of such crimes in Liberia.

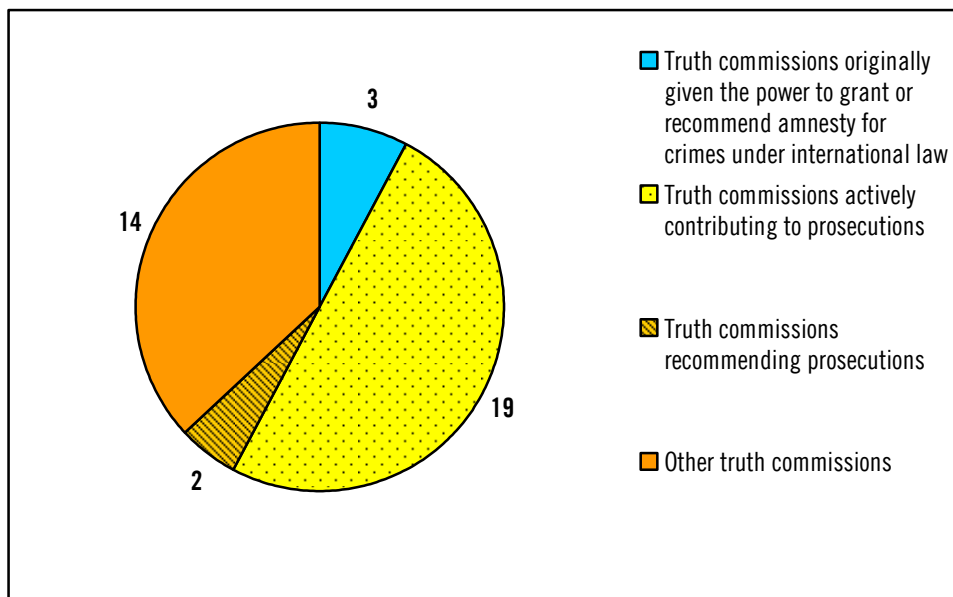
Liberia, Truth and Reconciliation Commission, *Final Report - Volume II: Consolidated Final Report*, 30 June 2009, p288.

The 2005 Commission of **Liberia** had the power to recommend conditional amnesty, with the exclusion of 'violations of international humanitarian law and crimes against humanity'.¹⁸

The 2008 Commission in **Kenya** has the power to recommend the grant of conditional amnesty, with the exclusion of genocide, crimes against humanity and other serious human rights violations.¹⁹

THE PRACTICE OF TRUTH COMMISSIONS STRONGLY SUPPORTS THE PROSECUTION OF CRIMES UNDER INTERNATIONAL LAW

The practice of the majority of truth commissions is firmly in favour of investigations and prosecutions of all crimes under international law.



More than half (21) of the 38 truth commissions with relevant practice examined in this paper recommended and/or actively contributed to the prosecution of all crimes under international law. Nineteen (19) truth commissions actively contributed to the prosecution of crimes under international law, by referring to national authorities names of alleged perpetrators, evidence collected or other information. Two (2) truth commissions did not actively refer information about alleged crimes to national authorities, but recommended the prosecution of crimes under international law.

Unfortunately, the information available on the Commission of Inquiry to Locate the Persons Disappeared during the Panchayat Period, established in Nepal in 1990, is too limited to allow sufficient analysis. The same is true for the 2009 Truth, Justice and Reconciliation Commission in Togo. What follows is based on the remaining 38 truth commissions.

In addition to the three truth commissions that were given the power to recommend or grant amnesty (or immunity) for crimes under international law (South Africa, Grenada and Indonesia):

Nineteen (19) truth commissions actively contributed to the prosecution of crimes under international law, by referring to national authorities names of alleged perpetrators, evidence collected or other information.

The 1974 **Ugandan** Commission referred 40 cases of suspected perpetrators to the Director of Public Prosecutions for possible charges; twenty-six more cases were referred to prosecution authorities for further investigation.²⁰ The 1982 **Bolivian**

Commission directly filed at least one criminal complaint with Bolivian prosecution authorities.²¹ The 1983 Commission in **Argentina** was able to hand over 1,086 files to the courts,²² resulting in the trial of nine former members of military juntas. The 1985 Commission in **Uruguay** collected information involving 64 suspected perpetrators and transmitted thousands of pages to the authorities.²³ The 1986 Commission in **Uganda** transferred 27 case files to prosecution authorities.²⁴ The 1990 Commission in **Chile** passed new evidence to the courts and submitted a confidential list of alleged perpetrators to the President.²⁵ The 1995 **Haiti** Commission submitted a confidential list of alleged perpetrators to the government, urging it to consider establishing a special national tribunal for serious human rights violations; it also called on other states to investigate and prosecute crimes against humanity committed in Haiti on the basis of universal jurisdiction.²⁶

The work of the three regional Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons, established in **Sri Lanka** in 1994, led to the successful prosecution of at least four cases.²⁷ The role of the 1996 Commission in **Ecuador** was to “help the action of the judiciary”: it had to investigate the complaints received and submit evidence to the relevant authorities.²⁸ The 1999 Commission of **Nigeria** forwarded cases to prosecution authorities and recommended that action be taken on them; information on cases that were already being prosecuted was forwarded to the Attorney General.²⁹ The 2000 Commission in the **Republic of Korea** investigated 85 cases, condemned impunity and recommended further investigations and prosecutions; it also recommended lifting statutes of limitations for crimes against humanity and ratifying the Rome Statute of the International Criminal Court.³⁰ The 2001 Commission in **Panama** had to transmit to prosecution authorities any evidence of crimes; prosecutions were started on some of the 110 cases documented.³¹

The 2001 Commission of **Peru** set up a Special Investigations Unit to gather criminal cases for prosecution and concluded a formal agreement with the Public Prosecutor’s Office, which would provide a legal framework for the transfer of fully documented cases to the courts.³² In its final report, the Commission recommended that criminal investigations be opened within 30 days.³³ The Commission established in **Timor Leste** in 2001 had to refer “serious criminal offences” (including genocide, crimes against humanity, war crimes and torture) to the Office of the General Prosecutor for Serious Crimes.³⁴ In **Paraguay**, the 2003 Commission recommended several cases for prosecutions.³⁵ The 2004 Commission in the **DRC** established that it would refer all cases of war crimes, crimes against humanity and genocide to national prosecution authorities, informing the International Criminal Court.³⁶ The 2005 Commission of **Liberia** recommended the establishment of an Extraordinary Criminal Tribunal for Liberia to try serious human rights violations and economic crimes; it also recommended all UN member states, especially those with universal jurisdiction legislation, to assist Liberia in prosecuting crimes under international law.³⁷ The 2007 Commission in **Ecuador** is mandated to ‘stop impunity’ by, *inter alia*, transferring evidence of criminal, civil or administrative responsibility to the relevant authorities.³⁸ The 2008 Commission in **Kenya** is required to make recommendations for prosecutions in its final report.³⁹

Two (2) truth commissions did not actively refer information about alleged crimes to national authorities, but recommended the prosecution of crimes under international law.

The 1990 **Chadian** Commission recommended prosecution and was followed by a law creating a special tribunal to judge Hissène Habré and his accomplices.⁴⁰ The 1997 Commission in **Guatemala** could not share the information gathered with prosecution authorities, but recommended prosecutions for the crimes not covered by a previous amnesty.⁴¹

Of the remaining fourteen (14) truth commissions, seven (7) worked alongside criminal prosecutions or civil litigation; four (4) were prevented from actively contributing to prosecutions by a previous amnesty or by statutes of limitations in their domestic legislation; three (3) were limited by their mandate or by the political situation in their country.

Seven (7) truth commissions worked alongside criminal prosecutions or civil litigation. The commissions established in **Germany** in 1992 and 1995 carried out their work while tribunals were prosecuting former representatives of the East German regime; they provided 'vocal support' for criminal prosecutions and lustrations.⁴² In **Sierra Leone**, the Commission and the Special Court worked as two completely separate bodies; the Special Court's Prosecutor was keen to clarify that he would not use any information gathered by the Commission.⁴³ The 2001 Commission in the **Federal Republic of Yugoslavia** was established during the mandate of the International Criminal Tribunal for the former Yugoslavia (see Box 2). A year before the establishment of the 2004 Commission in **Burundi**, a law had provided that an international tribunal for Burundi would be established to prosecute crimes under international law.⁴⁴ In **Canada**, the work of the 2006 Commission focuses on establishing an historical record and promoting awareness and commemoration; it is separated from legal proceedings.⁴⁵ Government ministers reportedly gave their assurances that the 2008 Commission in the **Solomon Islands** would not interfere with ongoing criminal cases.⁴⁶

BOX 2: THE TRUTH AND RECONCILIATION COMMISSION OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

The truth commission in the Federal Republic of Yugoslavia was initially intended to grant amnesty to those accused of "crimes against the state" in exchange for their testimony.⁴⁷ According to some observers, the Yugoslav authorities had proposed the commission in an effort to justify their refusal to send former president Slobodan Milosevic to The Hague for trial.⁴⁸

In response to these plans, the Parliamentary Assembly of the Council of Europe noted that the commission '*may in no circumstances substitute itself for the [International Criminal Tribunal for the former Yugoslavia]*'.⁴⁹

The Yugoslav Truth and Reconciliation Commission (*Komisija za istinu i pomirenje*), established in March 2001, did not have any power to grant amnesty.⁵⁰ It disbanded in 2003 without producing a report.

Four (4) truth commissions were prevented from actively contributing to prosecutions by a previous amnesty or by statutes of limitations in their domestic legislation. The 2000 Commission of **Uruguay** investigated crimes covered by a 1986 amnesty law; it recommended full reparations for the families of the victims

and legislative reform.⁵¹ The 2002 Commission of **Ghana** could not pass evidence to prosecution authorities because an absolute immunity from civil and criminal proceedings had been granted to officials of past governments; in its final report, it recommended that the amnesty be put to a referendum.⁵² When the 2003 Commission was established in **Chile**, the 1978 amnesty law was still officially in force.⁵³ The 2005 Commission in the **Republic of Korea** has the power to recommend 'immunity' (i.e. exemption from punishment), in addition to mitigation of punishment or pardon, for perpetrators who cooperate with its investigation;⁵⁴ most of the crimes under its mandate, however, cannot be prosecuted because of statutes of limitation (15 years under Korean law).

Just as the Commission may address the 'right to truth' component of the struggle against impunity better than the Special Court for Sierra Leone, the contrary may be the case with respect to the 'right to justice' component.

Sierra Leone Truth and Reconciliation Commission, Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission, 2004, Vol. 1, p45, para80.

Three (3) other truth commissions were limited by their mandate or by the political situation in the country. The 1991 Commission in **El Salvador** named alleged perpetrators and affirmed that those responsible for the crimes it had investigated should be punished; concerned about the shortcomings of the Salvadoran judicial system, however, it did not provide evidence to national courts and stopped short of recommending prosecutions.⁵⁵ Despite its very limited mandate and powers, the 2003 **Algerian** Commission publicly attributed responsibility for more than 6,000 enforced disappearances to the Algerian security forces.⁵⁶ The mandate of the 2004 **Moroccan** Commission was explicitly non-judicial and excluded the determination of individual criminal responsibility;⁵⁷ nonetheless, the Commission reminded victims of human rights violations and their families of their right to file complaints before civil and criminal courts and called for the dismissal of public officials alleged to have committed serious human rights violations.⁵⁸

ANNEX: AMNESTY INTERNATIONAL'S PUBLICATIONS ON TRUTH COMMISSIONS

Thematic publications

Truth, justice and reparation: Establishing an effective truth commission, Index: POL 30/009/2007, June 2007.

Checklist for the establishment of an effective truth commission, Index: POL 30/020/2007, September 2007.

Country publications

Uruguay: Current investigations into "disappearances" under the military government in Uruguay, Index AMR/52/01/86, January 1986.

Letter from Thomas Hammarberg to the President of Uruguay on Amnesty International's position on investigations into past human rights abuses, Index: AMR 52/02/86, August 1986.

Chile: The human rights legacy, Index: AMR 22/01/91, January 1991.

Nepal: a summary of human rights concerns, Index: ASA 31/02/92, June 1992.

El Salvador: Observations and recommendations regarding the Commission of Truth, Index: AMR 29/06/92, June 1992.

El Salvador: Peace without justice, Index: AMR 29/12/93, June 1993.

Sri Lanka: Time for truth and justice, Index: ASA 37/04/95, April 1995.

South Africa: Amnesty International supports call for public role in Truth Commission appointments, Index: AFR 53/10/95, July 1995.

Haiti: A question of justice, AI Index: AMR 36/01/96, January 1996.

Chile: Transition at the crossroads: Human rights violations under Pinochet rule remain the crux, Index: AMR/22/01/96, March 1996.

Ecuador: Amnesty International welcomes Truth and Justice Commission, Index: AMR/28/06/96, September 1996.

Guatemala: The right to truth and justice, Index: AMR 34/26/96, October 1996.

Ecuador: Amnesty International's concerns in Ecuador, Index: AMR 28/01/98, February 1998.

Guatemala: All the truth, justice for all, Index: AMR 34/02/98, April 1998.

Haiti: Still crying out for justice, Index: AMR 36/02/98, July 1998.

Guatemala: The truth: a step towards ending Guatemala's agony? Index: AMR/34/05/99, February 1999.

Guatemala: Words are not enough, Index: AMR 34/08/99, April 1999.

South Africa: No impunity for perpetrators of human rights abuses, Index: AFR/53/10/99, July 1999.

Nigeria: Time for justice and accountability, Index: AFR/44/14/00, December 2000.

East Timor: Justice past, present and future, Index: ASA 57/001/2001, July 2001.

Sierra Leone: Renewed commitment needed to end impunity, Index: AFR 51/007/2201, September 2001.

Peru: AI recommendations to the Truth Commission, Index: 46/020/2001, October 2001.

South Africa: Truth and Justice - Unfinished Business in South Africa, Index: AFR 53/001/2003, February 2003.

Peru: Letter to the President in support of the work of the Truth and Reconciliation Commission, Index: AMR 46/011/2003, July 2003.

Peru: Truth and Reconciliation Commission's report – an essential step towards truth, justice and reconciliation, Index: AMR 46/017/2003, August 2003.

République Démocratique du Congo: Commission vérité et réconciliation: la nécessité de rendre compte, le devoir de rendre justice, Index: AFR 62/005/2004, February 2004.

Peru: The Truth and Reconciliation Commission: A first step towards a country without injustice, Index: AMR 46/003/2004, August 2004.

Chile: The best reparation is justice, Index: AMR/22/013/2004, November 2004.

Morocco/Western Sahara: Amnesty International welcomes public hearings into past violations, Index: MDE 29/010/2004, December 2004.

Morocco/Western Sahara: Increasing openness on human rights, Index: MDE

29/001/2005, January 2005.

Sierra Leone Government urged to implement the recommendations of the TRC,
Index: AFR 51/012/2005, 29 November 2005.

Burundi: Towards what reconciliation?, Index: AFR 16/003/2006, March 2006.

Liberia: Truth, justice and reparation. Memorandum on the Truth and Reconciliation Commission Act, Index: 34/005/2006, June 2006.

Liberia: A brief guide to the Truth and Reconciliation Commission, Index: AFR 34/007/2006, November 2006.

Nepal: reconciliation does not mean impunity - A Memorandum on the TRC Bill,
Index: ASA 31/006/2007, August 2007.

Kenya: Concerns about the Truth, Justice and Reconciliation Commission Bill,
Index: AFR 32/009/2008, May 2008.

Liberia: Towards the final phase of the Truth and Reconciliation Commission, Index:
AFR 34/002/2008, July 2008.

*Guatemala: Justice and Impunity: Guatemala's Historical Clarification Commission
10 years on,* Index: AMR 34/001/2009, February 2009.

Togo: A quand la justice? Index: AFR 57/001/2009, April 2009.

ENDNOTES

¹ This paper considers the Sri Lanka commissions among the truth commissions operating after the Truth and Reconciliation Commission of South Africa, because they published their reports after the establishment of the latter.

² Constitution of the Republic of South Africa Act 200 of 1993, Epilogue "National Unity and Reconciliation".

³ Additionally, the act had to be associated with a political objective. South Africa, Promotion of National Unity and Reconciliation Act 34 of 1995 (26 July 1995) s3.

⁴ UN International Commission of Inquiry on Darfur, Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General Pursuant to Security Council Resolution 1564 of 18 September 2004, 25 January 2005, p156 para618.

⁵ UN Committee against Torture, Conclusions and recommendations: South Africa, 7 December 2006, UN Doc CAT/C/ZAF/CO/1, para18.

⁶ Grenada, "Terms of Reference of the Truth and Reconciliation Commission", in Truth and Reconciliation Commission, *Report on certain political events which occurred in Grenada 1976-1991*, 28 March 2006, <<http://www.thegrenadarevolutiononline.com/trccontents.html>> accessed 3 June 2009, vol2, appA para2. The Commission was established on 4 September 2001 under the Commission of Inquiry Act, Ch 58 of the Revised Laws of Grenada 1990.

⁷ Grenada, Truth and Reconciliation Commission, *Report on certain political events which occurred in Grenada 1976-1991*, vol1, pt7-1.

⁸ Indonesia, Law No 27, 6 October 2004, *Lembaran Negara Republik Indonesia* (State Gazette of the Republic of Indonesia) no 114 year 2004; English translation <<http://hrli.alrc.net/mainfile.php/indonleg/131/>> accessed 25 May 2006, Artt22-23.

⁹ Constitutional Court of the Republic of Indonesia, Decision No 020/PUU-IV/2006, 7 December 2006; English translation <<http://indonesia.ahrchk.net/news/mainfile.php/truth/71>> accessed 8 June 2009.

¹⁰ The CTF was a commission of inquiry, not a truth commission, because its mandate focused on a specific event (the 1999 referendum in Timor Leste).

¹¹ Indonesia and Timor-Leste, Terms of Reference for The Commission of Truth and Friendship, <http://www.indonesiamission-ny.org/issuebaru/IndToday/n031005_tor.htm>, October 2005, accessed 8 November 2006, s14.

¹² UN Secretary-General, Report of the Secretary-General on justice and reconciliation for Timor-Leste, 26 July 2006, UN Doc. S/2006/580, para30; "Secretary-General says UN officials will not testify at Timor-Leste Commission, as terms of reference include possible amnesty for human rights violations", 26 July 2007, Press release UN Doc SG/SM/11101.

¹³ United Nations Transitional Administration in East Timor, Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor, 13 July 2001, UN Doc UNTAET/REG/2001/10, s22.1.

¹⁴ Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth and

Reconciliation in East Timor ss32 and 38.1; sch1(4).

¹⁵ DRC, Law No 04/018, 30 July 2004, Art8(h).

¹⁶ DRC, Law No 05/023, 19 December 2005.

¹⁷ Burundi, Law No 1/018, 27 December 2004, Art 4.

¹⁸ Liberia, An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia, 10 June 2005, ArtVII, s26(g).

¹⁹ Kenya, The Truth, Justice and Reconciliation Act 6 of 2008, 28 November 2008, s34 (2) and (3); as amended by The Statute Law (Miscellaneous Amendments) Act 2009, 23 July 2009.

²⁰ Commission of Inquiry into the Disappearances of People, *Report of the Commission of Inquiry into the Disappearances of People in Uganda since the 25th January 1971*, Kampala, 13 June 1975, p786-788.

²¹ Case *Comisión Nacional C/ René Veizaga et al.*, referred to in Inter-American Court of Human Rights (IACtHR), *Case of Ticona Estrada et al. v Bolivia* (Judgment - Merits, Reparations and Costs) Series C No 191, 27 November 2008, para91.

²² National Commission on Disappeared People, *Nunca Más: A Report by Argentina's National Commission on Disappeared People*, Faber and Faber, 1986, p446 and p449.

²³ Comisión Investigadora sobre Situación de Personas Desaparecidas y Hechos que la Motivaron, 'Informe final y conclusiones' (4 November 1985) in Presidencia de la Republica Oriental del Uruguay, *Investigación Histórica sobre Detenidos Desaparecidos en cumplimiento del artículo 4 de la Ley 15.848*, IMPO, 2007, vol IV, p9-17. See also: Amnesty International, *Current investigations into "disappearances" under the military government in Uruguay*, Index: AMR 52/01/1986, January 1986.

²⁴ Commission of Inquiry into Violations of Human Rights, *The Report of the Commission of Inquiry into Violations of Human Rights: Findings, Conclusions and Recommendations*, Kampala, October 1994, p591, p625-626 and app9.

²⁵ Phillip E. Beryman (tr), *Report of the Chilean National Commission on Truth and Reconciliation*, University of Notre Dame Press, 1993, vol1, pt1, ch1, s C; Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions*, Routledge, 2002, p114.

²⁶ Commission Nationale de Vérité et de Justice, *Si M Pa Rele: Rapport*, 5 February 1996, <<http://www.haiti.org/truth/table.htm>> accessed 20 June 2009, chVIII.

²⁷ US Department of State, 'Sri Lanka' in *Country Reports on Human Rights Practices 2001*, 4 March 2002, <<http://www.state.gov/g/drl/rls/hrrpt/2001/sa/8241.htm>> accessed 15 June 2009.

²⁸ Ecuador, Ministerial Agreement No. 012, 17 September 1996, quoted in: Nelsa Curbelo, "Comisión Verdad y Justicia del Ecuador: La Impunidad en Democracia" *Ko'aga Roñe'eta* (1996) III <<http://www.derechos.org/koaga/xi/2/curbelo.html>> accessed 24 April 2009.

²⁹ Human Rights Violations Investigation Commission of Nigeria (HRVIC), *Report*, May 2002, available at <http://www.nigerianmuse.com/nigeriawatch/oputa/>, accessed 17 August 2009, vol7, ch3 para40-41(i).

³⁰ Presidential Truth Commission on Suspicious Deaths, *A Hard Journey to Justice: First Term Report by the Presidential Truth Commission on Suspicious Deaths of the Republic of Korea (10.2000* –

10.2002), Samin Books, 2004, p454-455.

³¹ Panama, Executive Decree No 2, 18 January 2001, *Gaceta Oficial* no 24224, 22 January 2001, Art2. José Otero, 'Crímenes de la dictadura: MP actúa en caso del abogado Rubén Miró' *La Prensa*, Panama, 31 January 2008.

³² Comisión de la Verdad y Reconciliación, *Institutional Cooperation Agreement between the Prosecutor's Office and the Truth and Reconciliation Commission*, 15 August 2002, <<http://www.cverdad.org.pe/ingles/lacomision/cnormas/convenio25.php>> accessed 1 December 2009.

³³ Comisión de la Verdad y Reconciliación, *Informe Final*, 28 August 2003, <<http://www.cverdad.org.pe/ifinal/index.php>> accessed 14 September 2007, vol I, p215 and vol IX, p107.

³⁴ United Nations Transitional Administration in East Timor, Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor, 13 July 2001, UN Doc UNTAET/REG/2001/10, ss32 and 38.1; sch 1(4).

³⁵ Comisión Verdad y Justicia, *Informe Final: Anive Haguã Oiko*, 28 August 2008, <<http://www.codehupy.org/>>, accessed 11 February 2010, vol 1, p98 ff.

³⁶ DRC, Règlement intérieur de la Commission Vérité et Réconciliation, 19 March 2005, <<http://www.leganet.cd/Legislation/DroitPenal/ReglementInt.CVR.htm>> accessed 5 May 2009, Art 148.

³⁷ Truth and Reconciliation Commission, *Final Report - Volume II: Consolidated Final Report*, 30 June 2009, <<https://www.trcofliberia.org/reports/final>> accessed 7 July 2009, p290 and p321 ff.

³⁸ Ecuador, Executive Decree No 305, 3 May 2007, *Registro Oficial* no 87, 18 May 2007, Artt 1-2.

³⁹ Kenya, The Truth, Justice and Reconciliation Act 6 of 2008, 28 November 2008, s48.

⁴⁰ Commission d'enquête sur les crimes et détournements commis par l'ex-Président, ses co-auteurs et/ou complices, *Les crimes et détournements de l'ex-Président Habré et de ses complices: Rapport de la Commission d'Enquête Nationale du Ministère Tchadien de la Justice*, L'Harmattan, 1993, p98 and 102-110; Chad, Ordinance No. 004/PR/MJ/93, 27 February 1993.

⁴¹ Comisión para el Esclarecimiento Histórico, *Guatemala: Memoria del Silencio*, UNOPS, 1999, volV, p72-73.

⁴² Andrew H. Beattie, "An Evolutionary Process: Contributions of the Bundestag Inquiries into East Germany to an Understanding of the Role of Truth Commissions", *International Journal of Transitional Justice* (2009) 3, p247.

⁴³ David M. Crane, "Dancing With the Devil: Prosecuting West Africa's Warlords: Current Lessons Learned and Challenges" Colloquium of Prosecutors of International Criminal Tribunals, Arusha 25-27 November 2004, <<http://69.94.11.53/ENGLISH/colloquium04/Crane.htm>> accessed 13 July 2007.

⁴⁴ Burundi, Law No. 004, 8 May 2003, Art33.

⁴⁵ Canada, IRSSA - Schedule N: Mandate for the Truth and Reconciliation Commission, 8 May 2006, <http://www.trc-cvr.ca/pdfs/SCHEDULE_N_EN.pdf> accessed 3 May 2009.

⁴⁶ "Solomons Parliament Endorses Establishment of Truth and Reconciliation Commission", *Radio New Zealand International*, 28 August 2008, <<http://www.rnzi.com/pages/news.php?op=read&id=41734>>

accessed 29 August 2009.

⁴⁷ "Belgrade plans truth commission", *BBC World Service*, 10 January 2001, <<http://news.bbc.co.uk/1/hi/world/europe/1109951.stm>> accessed 10 May 2009.

⁴⁸ Richard Goldstone, "The Tribunal's Progress", *IWPR's Tribunal Update*, No. 220, 7-12 May 2001, <<http://groups.yahoo.com/group/balkanhr/message/2220>>, accessed April 2010.

⁴⁹ Parliamentary Assembly of the Council of Europe, 'The Federal Republic of Yugoslavia - recent developments' Res 1237 (2001), 23 January 2001.

⁵⁰ Federal Republic of Yugoslavia, Presidential Decree No 1/2-03-0004/2001-1, 29 March 2001, *Službeni list Savezne Republike Jugoslavije* (Official Gazette of the FRY) no 15/2001, 30 March 2001; amended by Presidential Decree No 1/2-03-0004/2002-1, 28 October 2002, *ibid* no 59/2002, 1 November 2002.

⁵¹ Comisión para la Paz, *Informe Final de la Comisión para la Paz*, 10 April 2003, <http://www.presidencia.gub.uy/noticias/archivo/2003/abril/Informe_final.doc> accessed 18 September 2009, para40 ff.

⁵² National Reconciliation Commission, *The National Reconciliation Commission Report*, October 2004, <<http://www.ghana.gov.gh/NRC/index.php>>, accessed 6 September 2006, vol 1, p184 para8.2.8.

⁵³ Chile, Supreme Decree No 1.040, 26 September 2003, <<http://www.comisiontortura.cl/inicio/legislacion.php>>, accessed 11 November 2004.

⁵⁴ Republic of Korea, Law No 7542, 31 May 2005; English translation <http://jinsil.go.kr/English/Information/legal/read.asp?num=76&pageno=1&styp=&sval=&data_years=2009&data_month> accessed 13 March 2009, Art 38 (1). The exact scope of this power is unclear. The Commission explains it as the power to recommend that perpetrators confessing the 'complete truth' receive no punishment in case of criminal investigations and trial proceedings. The 'immunity' would then be an exemption from punishment, rather than protection from civil or criminal proceedings. In any event, the Korean Commission does not seem to have the power to recommend amnesty for serious human rights violations. See: Truth and Reconciliation Commission of the Republic of Korea, Remedies for Reconciliation, not dated, <<http://jinsil.go.kr/English/Procedure/Remedies.asp>> accessed 18 February 2010.

⁵⁵ The Commission on the Truth for El Salvador, "From Madness to Hope: The 12-Year War in El Salvador", 15 March 1993, annex to Letter dated 29 March 1993 from the Secretary-General addressed to the President of the Security Council, UN Doc S/25500, 1 April 1993, p13 and p177-179.

⁵⁶ Amnesty International, *Report 2006*, Index: POL 10/001/2006.

⁵⁷ Morocco, Dahir No 1.04.42, 10 April 2004, *Bulletin Officiel* no 5203, 12 April 2004, Art6.

⁵⁸ Human Rights Watch, *Morocco's Truth Commission: Honoring Past Victims during an Uncertain Present*, November 2005, p24.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW

www.amnesty.org

**AMNESTY
INTERNATIONAL**

