

# ***Confronting the Truth:*** **A Companion Guide**

“We kid ourselves if we say bygones are going to be bygones. The past remains.”

– Archbishop Desmond Tutu

## **I. Introduction**

The film *Confronting the Truth*, produced by York Zimmerman, Inc., the United States Institute of Peace, and the International Center on Nonviolent Conflict, documents how four countries (South Africa, Peru, East Timor, and Morocco) suffered massive human rights violations during periods of authoritarian rule and later created official, independent bodies known as truth commissions in response. Together, these countries represent a diversity of case studies: from Latin America, Southeast Asia, Middle East/North Africa, and Sub-Saharan Africa. They also represent the legacies of different colonial actors (Britain, France, Netherlands, Portugal, and Spain) and different religions, Christianity, Islam, and traditional spiritual beliefs. The conflicts also differed. Some involved land disputes, fights for independence, and control over the government and its resources, while others involved violence related to ethnicity and race, political repression, ideological differences, and tensions between rural indigenous peoples and urban populations.

The purpose of the video is to illustrate how four societies used truth commissions to help deal with past abuses, and to begin a public discussion about possible ways to confront the painful experiences of the recent past and the massive human rights violations. This guide is a companion to the video and is intended to provide facilitators with additional information on transitional justice mechanisms, truth-telling, and the four case studies shown in the film. It is also intended to help facilitators facilitate discussions on how post-conflict societies can begin to address past traumas and abuses and begin reconciliation and national healing.

## II. Transitional Justice Mechanisms

After a time of violence and repression, anger remains. Many people feel they have lost their power or want revenge. A danger of renewed violence to get even is always a threat. Other people want to forget the past and want to be left alone to find a job or help their family. Some fear being attacked, others just do not want to know. We can understand all of these feelings. However, if nothing is done, people may start to fight again and the violence will continue. It is hard to find peace and security without a transitional justice or peace process.

Many options exist to deal with crimes and abuses of the past:

- *Truth Commissions*: conduct investigations, collect evidence, make recommendations in a report, provide a forum for victims and perpetrators to share their stories
- *Trials*: may be conducted by a domestic court, a hybrid court of foreigners and locals using domestic and international law, or an international tribunal or foreign court
- *Commission of Inquiry*: the government or another authority can establish these commissions to investigate specific events
- *Institutional Reform*: reform justice sector institutions like the courts and police; remove perpetrators from positions of authority (e.g., government officials, police, military)
- *Local Customs*: local leaders may use customary mediation and traditional knowledge and methods
- *Memorials*: build memorials or create an archive or documentation center
- *Compensation*: give money to victims or invest in their communities

Applying criminal law can be one means of punishing perpetrators, often called retributive justice. Trials can help prevent future human rights violations, help calm people who may want revenge, and show fairness under a new regime by demonstrating that even once-powerful abusers can be tried and held to account. Trials can help create peace by showing that no one is above the law by removing hostile leaders or war criminals, and that law is stronger than violence. It also can tell a truthful story about certain crimes so everyone will know what happened. Trials may not happen right away, sometimes only after the people feel secure or when perpetrators are removed from power. Foreign countries or international organizations like

the United Nations may have to create new courts that are fair and to pressure the government to hold trials. Trials are not easy. Some will face prison or possibly execution and that could restart violent resistance or create a feeling of victor's justice. Trials also need planning: resources to hire and train staff, write new laws, and build courts.

Apart from trials, people may want to use their own culture and religion to settle past conflict. Sometimes, religious traditions call for apologies, forgiveness and reconciliation. This 'restorative justice' may try to rebuild social relationships, help former fighters return to society, and heal the wounds people feel in their hearts. This process might include:

- ◆ the return of people who left,
- ◆ taking away the weapons of fighters,
- ◆ public talks, and
- ◆ a forum to resolve these problems without violence where the victims have a voice.

A restorative justice approach could use traditional conflict resolution customs or a truth and reconciliation commission (TRC). A TRC may look beyond the crimes of a few individuals to include the role of media, the judiciary, the medical profession, the educational system, or religious institutions in helping, ignoring, or opposing the abuses. This process allows people to tell their story to a small group of appointed people that care about the issues and to the larger community. A TRC seeks truth by reviewing documents, interviewing victims, perpetrators, witnesses, and consulting scholars and civil society organizations. The commission staff may include a small number of foreign specialists and a professional team of researchers to collect all of this information. The commission may visit mass graves, prisons, and other locations. It may also consider the history that led to the conflict and report the whole story in its final report, not just the story of the powerful. Many may not believe victims' stories of abuse until they are heard in public or perpetrators admit their actions.

The reconciliation component of the TRCs' work is intended to rebuild personal and social relationships through public hearings or small meetings between victims and offenders, sometimes employing traditional mediation or religious customs. Through this process, people can tell of their pain and suffering, and perpetrators can tell why they used violence and how

they felt they had to or needed to do so. In some cases, victims may accept apologies offered by perpetrators.

The final report includes specific details about the information collected and can then be presented to government officials and the public. It should identify the causes and perpetrators of the abuse and how it occurred. Reports offer recommendations for addressing past abuses and preventing their recurrence, such as removing perpetrators from office, compensation and reparations for victims, building of memorials, and improvements in social services.

### *The Trade-Offs*

No transitional justice mechanism is perfect, and choosing which to use, if any, can involve trade-offs between peace and justice, as well as justice and reconciliation. Many argue that to achieve peace (defined as the absence of war or open political violence), people should ignore or forget the past, accept the reality of hostility, and not renew rivalries through public trials or investigations. Some argue that transitional justice processes may destroy a fragile peace in a nation seeking harmony or reconciliation, and that leaders may use violence to avoid accountability. Political elites may not willingly participate if there is a threat of trials. One option in a transitional justice process is to offer amnesty or immunity to persuade some perpetrators to leave power for the sake of long-term stability. Amnesties can help to form a legitimate legal system by facilitating reconciliation and a transfer of power, thus protecting fragile peace accords. Of course, perceived impunity may allow former perpetrators to resume their intimidation and abuse.

The use of truth commissions versus tribunals raises questions regarding the values of peace and justice. Does a truth and reconciliation commission provide societal healing? Or does the lack of a trial process allow perpetrators to escape accountability, thus failing to satisfy the needs of victims? For many, especially victims, TRCs do not satisfy their need for justice, equal punishment or even vengeance. Perpetrators usually see TRCs as an opportunity to avoid serious legal sanction and may hope that cooperation will reduce the chances of future trials.

Other potential drawbacks to truth commissions include:

- ◆ creating false expectations about uncovering all crimes and abuses
- ◆ providing contradictory findings
- ◆ ‘contaminating’ evidence,
- ◆ producing a less accurate ‘truth’ than trials,
- ◆ consuming scarce resources,
- ◆ endangering confidentiality, and
- ◆ creating differing expectations about the consequences or outcomes of the process

It is not always necessary to choose between tribunals and truth commissions, however. In some cases, their work may be complementary:

- ◆ A commission may replace a criminal trial; the threat of trial may pressure some to participate
- ◆ A commission may gather evidence for use in future criminal trials
- ◆ A commission can share information with other legal institutions
- ◆ A commission may recommend investigations by a court for those who do not testify truthfully
- ◆ A commission can hold hearings for minor offenders while trials prosecute major criminals
- ◆ A commission can use public shame as a form of justice

Any attempt to open closed doors risks upsetting a fragile peace, yet the goal of rebuilding personal and group relationships through a transitional justice process and exploration of its painful past offers the hope that a permanent peace is possible.

### **III. How Truth and Reconciliation Commissions Work**

#### *The Decision to Conduct a TRC*

The decision to establish a transitional justice procedure will be affected by

- 1) the degree of public support,

- 2) the risk of antagonizing key constituents (perhaps the armed forces), and
- 3) the nature of the conflict.

A process may occur while the country is being rebuilt following a war, as in East Timor, after a transition to democratic rule, as in South Africa, or from one regime to another, as in Peru; it may even occur under the existing government which has decided to expose one particularly bad period or event like in Morocco. For example, the cases of Peru and Morocco show a desire to cleanse the society of the legacy of a dirty war that operated in secret for much of the population. In contrast, the choice in East Timor and South Africa was to incorporate transitional justice as part of a total transformation of the political system in a complete restructuring of the government. Questions to ask include:

- ◆ Are crimes widespread or focused on one region or ethnic group?
- ◆ Are many perpetrators responsible or only a few?
- ◆ Were the crimes acts of state or those of insurgents, or both?
- ◆ Are the perpetrators still more or less in power or has there been a clean transition to a new government?
- ◆ Does the state have enough resources to implement a justice mechanism?
- ◆ Are the courts credible?
- ◆ Can the state afford individual reparations?

### *The Mandate and Resources*

A truth commission may be established by the executive or legislative branch of a government, or by a peace agreement between combatants. In Morocco, a truth commission was created by royal decree of King Mohammad. International or domestic advisers may conduct interviews among the wider population, including the poor, rural communities, or ethnic and religious minorities to broaden this conversation. By including all parts of society, it is hoped that more actors will participate in and support the process.

Some feel that any transitional justice process should be directed by locals to prevent outside interests from dominating the process. Former colonial occupiers or great powers may give

money for the process, which risks losing public support if the decision-makers are not seen as independent. Often, international advisers guide the development of the process, offering lessons learned from previous cases and helping to train local personnel on how to take interviews, collect evidence, or set up a database. International NGOs provide assistance in many truth commissions around the world and some have a strong reputation for fair and competent advice. Local traditions may still be used to address the domestic political, economic, and social context. In East Timor, for example, village leaders practiced a religious ceremony, and victims and offenders sat together on a bamboo mat to talk.

In designing a truth commission, government officials and major civil society organizations consider:

- ◆ jurisdiction: its authority over people and abuses,
- ◆ mandate: its overall plan,
- ◆ composition: who sits on the commission
- ◆ duration: how long it will last,
- ◆ time period to be covered: what events will be looked at, etc.

The mandate outlines what types of crimes occurred, how they will be addressed, and the length of time the investigation will last. Mandates focus on major atrocities, but may include the time when other parties committed abuses. The time periods examined in the four cases ranged from 20 years in Peru up to 43 years in Morocco. Where trials and TRCs operate concurrently, as in East Timor, less violent crimes such as theft or smaller abuses may be addressed through the reconciliation process, while more serious offenses like murder, torture, and rape may be handled by courts. In South Africa, the threat of trials motivated some perpetrators to testify to the TRC, and those who were not truthful could then face trial. Truth commissions cost \$5-10 million, with international donors and national governments sharing the cost. However, commissions are much cheaper than full legal prosecutions or international tribunals.

### *Selecting Commissioners*

A panel of commissioners (usually three to nine persons, though South Africa and Morocco had seventeen and Peru had twelve) is selected based upon their competence, fairness, and independence. The commission should be diverse based on gender, language, religion, ethnicity, geographic region, relationship to government (collaborated or resisted), and political views. In the cases presented in *Confronting the Truth*, the chairpersons of the commissions included an academic (Peru), a former political prisoner (Morocco), a human rights activist (East Timor), and a religious cleric (South Africa). In South Africa, the commission included whites, blacks, Asians, and mixed-race persons. This is not always the case; in Peru, only one of the twelve commissioners could speak the language of most of the victims, making it difficult to gain the trust of the local residents. Commissioners must also earn the respect of the public based on their moral character, integrity, and objectivity, and it must be clear that they are not only helping their own ethnic, religious, or political group. Some local persons in Peru viewed the commissioners as white, educated elites from the capital and did not trust them; others from the army believed that these same commissioners were too sympathetic to the local persons and too critical of the government. A professional staff supports the commission.

### *Hearings and Interviews*

Telling stories is a major part of a TRC, both for the victim, whose voice is finally heard, and for the commission, which collects these stories, identifies similar patterns across the country, and writes a full report. Even perpetrators may have suffered persecution and poor treatment during a civil war or in a previous era and may tell their story and explain their motives. Similarly, different victims experience different abuses; women are more likely to suffer sexual crimes and may be less willing to tell such stories. Some victims may be unable to overcome the pain and humiliation in order to testify. Thus, testimonies may still be a nervous moment; a victim may be afraid to speak out or feel shame for the humiliation of certain crimes, while a perpetrator may also fear being attacked when they tell their deeds.

Interviews are generally done privately to avoid such problems and to collect information more efficiently. Many people tell their stories: 22,000 in Morocco, 21,000 in South Africa, 17,000 in Peru, and 7,000 in East Timor. Usually commissions investigate violence by more than one side,



such as the government and rebels (Shining Path) in Peru, and the apartheid government and resistance groups in South Africa. In Morocco, citizen groups pushed for the government to be investigated, though no individuals were named. In East Timor, Indonesia refused to participate in the commission; therefore only smaller crimes were included in the mandate. Interviews happen over weeks and months, sometimes in one location like the capital city and other times in sessions around the country or perhaps even in a neighboring country if necessary. In each case, investigators and commissioners traveled to far away parts of the country like Ayacucho in Peru. Local persons are trained to take statements for the commission. The entire process from the opening of the commission until the end usually lasts from six months up to two or three years. In that time, many testimonies are taken and entered into a computer or list to better understand patterns of abuse, to estimate the total number of victims, to identify those victims who should qualify for reparations, and for other reasons.

Though thousands of private interviews are conducted during the process, public testimonies may be used to highlight certain events or types of abuses. For public testimonies, the setting must be comfortable. The Peruvian commissioners asked that witnesses sit with the commission to show solidarity, so they would not face the panel like they were in a superior court of law. Telling these stories, especially when perpetrators admit responsibility, can change society, and did so in each case, perhaps most clearly in South Africa, the only place where amnesty was granted to those who committed political crimes and testified truthfully and completely. In each case, public hearings were televised, allowing the stories to reach a broad audience.

### *The Final Report*

The final report, written by a team of researchers, may be given to the parliament or executive branch before being made public and serves the following functions:

- ◆ presents the facts and patterns of abuse
- ◆ discusses responsibility
- ◆ gives information on the victims
- ◆ examines the overall problems that led to such abuses

- ◆ makes recommendations, directed toward government and society, to address the legacy of abuses and prevent abuses from recurring

The final report may call for real or symbolic reparations to repair damage, restore a victim's dignity, and rebuild trust and solidarity among communities that were torn apart by violence. It may recommend:

- ◆ direct payments of money to an individual or to a community (in each case, recommendations for reparations were put forward, and some money was given in South Africa),
- ◆ the return of property.
- ◆ mental and physical health care for those traumatized or injured in the warfare,
- ◆ the extension of educational benefits and access to jobs or social services,
- ◆ symbolic changes like integrating schools or neighborhoods,
- ◆ building memorials,
- ◆ offering more dignified re-burials or official apologies (in Peru, after digging up mass graves, the commission hosted a symbolic funeral to bury the remains so that people could celebrate their ancestors on the Day of the Dead),
- ◆ public policy changes, such as offering autonomy to a region,
- ◆ granting some groups greater authority over resources,
- ◆ rewriting curricula,
- ◆ government reforms, including those that improve the security forces
- ◆ constitutional or legislative changes.

By itself, offering compensation for victims in the form of money or property may seem wrong, like placing a price tag on a life or buying a victim's silence, while symbolic acts alone may be seen as fake or not serious. Thus, a truth commission may recommend both symbolic and material reparations. It is important to consider both the uses and limits of reparations. These programs divert government resources away from other programs, like building infrastructure, and may upset groups who do not receive aid. However, although financial compensation will not equal the harm done and will not reach every victim, it can show the good faith to redress the

past abuses and help the recovery. If this path is chosen, a truth commission may recommend reparations generally, and then a second process identifies the specific recipients.

### *Implementation of Recommendations*

Some governments may make the changes that the commission recommends; political pressure or limited finances may prevent other governments from doing so. Other institutions may then make the changes, continue the commission's work, or keep an archive for all to see. Local actors may continue to check on progress toward the commission's goals and form groups to promote and defend the reforms. In the end, even if implementation falls short of hopes, the process itself may achieve the goal of seeking reconciliation: naming perpetrators and telling the individual stories of past wrongs, the whole story of what happened, and the relief of telling that story. The simple choice to have any transitional justice process is a major step forward.

## **V. The Case Studies**

### *South Africa*

The Dutch and British arrived in southern Africa around the seventeenth and eighteenth centuries. In 1931, South Africa became an independent country, though it was still dominated by white settlers. Thereafter, the ethnic conflict in South Africa between a white dominated minority government and a marginalized black majority operated under a legalized system of separation and discrimination known as *apartheid*. Until 1991, ethnic characteristics formed the basis for dividing the population into four major racial categories: Native (African), whites, Coloureds, and Asiatic. Of South Africa's forty million inhabitants, Africans constituted approximately 77%, Whites 11%, Coloureds 9%, and Asian 2%. Under this system, Africans could be arrested and detained without charge or trial, faced discrimination in education and employment, were restricted to ethnically-based homelands, and had an overall diminished social status. The African National Congress (ANC) was formed in the 1950s (among its leaders was political prisoner Nelson Mandela) and later adopted an armed struggle against the National Party, dominated by Afrikaaners (descendants of Dutch migrants). By the end of the apartheid

era, South Africa had plunged into economic recession, political violence had peaked, criminal activity was rising, and mutual distrust and contempt were at all time highs. However, following a series of secret contacts and public negotiations, the apartheid system was taken apart and replaced with a multiparty democracy in 1994 that ensured full political access to all of the nation's ethnic groups.

In order to heal the wounds created by apartheid and after eighteen months of debate and preparation, in 1995 the South African parliament passed the Promotion of National Unity and Reconciliation Act, creating a Truth and Reconciliation Commission (TRC) under the chairmanship of Anglican Archbishop Desmond Tutu and co-chaired by anti-apartheid activist Alex Boraine. Its three committees dealt respectively with human rights violations, amnesty, and reparation and rehabilitation, helping to advance the difficult process of building a civil society in South Africa. Constituted in 1996 and having completed most of its work by 1998 (the Amnesty Committee operated until 2001), the TRC provided amnesty to anyone from either side of the conflict who gave a full and truthful testimony regarding apartheid era political crimes he or she had committed from 1960 to 1994. Testimony was taken from more than 23,000 victims and witnesses, of whom more than 2,000 appeared in public hearings. Meanwhile, over 7,000 perpetrators applied for amnesty. Those who refused to testify could be prosecuted for their non-compliance, yet the government did not prosecute those who did not participate in the 'amnesty for truth' deal. One major figure, former Prime Minister P.W. Botha resisted and was only given a suspended sentence and small fine. The commission presented its seven volume final report to President Mandela in 1998; the initial report was published in 1999 and the complete final report was released to the public in 2003. The government made small reparation payments to victims identified by the TRC, causing disappointment among the general population.

Following the closure of the commission, strong public support for trials has continued and victims groups have even sued corporations for their apartheid-era role. Yet the government began to pardon many perpetrators of politically-motivated crimes and some feel impunity has resulted. Some critics felt that too much focus was placed on individual political crimes instead of socio-economic development issues regarding business and redistribution of wealth. More broadly, high unemployment and poverty rates have contributed to surging criminal violence,

murders, and attacks on immigrant job seekers. Overall, with the help of Mandela's charismatic leadership during the transition, South Africa has withstood the end of segregation, the beginnings of democracy, and the process of building a multiracial society while political and ethnic violence has largely disappeared. The threat of retaliatory ethnic attacks was avoided and the secretive story of the apartheid era was fully exposed. After decades as a pariah, South Africa is once again fully represented in the international community.

### *Peru*

Overlying the former Incan empire, modern day Peru gained its independence from Spain in 1821. Although most Peruvians speak Spanish, the indigenous peoples have their own language, Quechua, and remain very separate from the urban areas of the capital, Lima. For much of twentieth century, Peruvian political history saw back and forth periods of both democratic and military rule until democracy was restored in 1979. Between 1980 and 2000, two rebel movements based in the Andean mountains, the Shining Path and the Tupac Amaru Revolutionary Movement, battled the repressive government of Peru. Both organizations were inspired by socialist principles and sought to overthrow the Peruvian government. The Shining Path in particular adopted a violent approach and used narcotics to fund their operations, seeking support among the impoverished rural population. Massacres, extrajudicial executions, forced disappearances, and sexual violence were prominent abuses on both sides. From 1990-2000, President Alberto Fujimori successfully waged a very aggressive campaign using death squads to defeat the rebel groups; in 2009 he would be convicted separately for corruption and human rights violations.

In late 2000, the local human rights community proposed the creation of a truth commission; it was established by a decree of the newly elected president Alejandro Toledo in June 2001. The twelve commissioners of the Truth and Reconciliation Commission (CVR) convened in July 2001, charged with investigating human rights abuses and "terrorist violence" attributable to the state or subversive groups between May 1980 and November 2000. In addition to clarifying events and responsibility, the commission was mandated to determine the conditions that gave rise to the violence, contribute to judicial investigations, draft proposals for reparations, and

recommend reforms. Over 17,000 persons testified to the CVR during its two-year mandate. The final report of August 2003 found that insurgent violence and counterinsurgency tactics had caused an estimated 69,000 deaths and disappearances, mostly in indigenous communities, and that both state and non-state actors were responsible. The commission recommended a comprehensive reparations plan, prosecutions, institutional reforms, and other measures. In August 2006, the government approved around \$5 million for reparations and the mining industry offered another \$10 million. The National Reparations Council began to register over 200,000 individuals in more than 500 communities affected by the violence in 2008.

The truth commission report aided the prosecutions of former perpetrators, though trials of members of the armed forces have been more difficult than for non-state groups. Public pressure did overcome plans for official amnesties, and President Toledo offered an apology for the state actions. While the armed forces still control the flow of information regarding their activities, the commission report effectively informed the public of the atrocities committed by the state which were previously unknown. Some in the public supported the tough policies of President Fujimori in bringing stability and economic growth to Peru. In recent years, the Shining Path has begun to regroup, and violence between the government and indigenous groups grew in 2009 over control of energy resources. Overall, Peru has solidified its newfound multiparty democracy with multiple elections, most recently choosing Alan Garcia as president in 2006.

### *East Timor*

Following Portugal's rapid decolonization in 1975 after 400 years of occupation, Timorese political movements Revolutionary Front for an Independent Timor (FRETILIN) and the Timorese Democratic Union (UDT) competed for power in a civil war before Indonesia forcibly annexed the territory months later. Claiming to end the internal civil war and recognize the 'majority' population's desire to integrate with Indonesia, brutal counterinsurgency tactics and a major forced migration policy led to an estimated 100,000-200,000 Timorese deaths from famine and killings. In 1999, a year after the fall of the authoritarian regime led by General Soeharto, Indonesia allowed a referendum on the territory's future; 78 percent of Timorese voted for independence. In October 1999, Indonesian-sponsored militias ravaged the province; the carnage

cost over 1,000 lives, displaced several hundred thousand East Timorese and resulted in millions of dollars worth of economic damage that ended only because of the intervention of UN-authorized troops and the establishment of a United Nations Transitional Administration in East Timor (UNTAET) leading to Timor's independence in May 2002.

Along with a mixed domestic/international court to prosecute the 1999 violence, UNTAET established a Commission for Reception, Truth, and Reconciliation (CAVR) in 2001 with three main objectives: to investigate the facts about human rights violations committed in Timor between 1974 and 1999, to help reintegrate perpetrators of less-serious offenses into their communities, and to recommend measures to the government that would prevent future abuses. Chaired by human rights lawyer Aniceto Guterres Lopes, the seven-member commission operated until 2005, holding a number of successful public hearings, taking more than 7,000 statements from victims throughout the country, and presenting its final report to then-President Xanana Gusmão in October 2005. It was distributed to the Timorese Parliament and prime minister before it was publicly released. In December 2005, the president established a post-CAVR Technical Secretariat to complete the CAVR's publications work and disseminate its report.

The truth and reconciliation commission assisted the reintegration of villages as refugees returned from abroad, though arrests of major alleged perpetrators failed to materialize as Indonesia refused to extradite any military or civilian personnel to stand trial in the UN-sponsored tribunal. With the end of Indonesia's occupation and full-fledged independence, violence in East Timor has been greatly reduced and multiple democratic elections have been conducted free of violence and a peaceful transfer of power has occurred. On a much lesser scale, persistent outbreaks of violence have continued, including an attempted kidnapping of the prime minister and the shooting of the president in 2008, and limited international forces have returned to patrol the security situation.

### *Morocco*

Morocco gained full independence from France in 1956 and became a constitutional monarchy led by King Hassan II from 1961 until his death in 1999. Most Moroccans are Sunni Muslims and come from an Arab or Berber background. Though Arabic is the official language, 40% of the population speak Berber, and French is the language of commerce. In the 1960s and 1970s, any critic of the monarchy faced repressive security forces, particularly separatists in the Western Sahara region. During the period of King Hassan's reign known as the "Years of Lead," authorities arbitrarily detained, held in secret detention, or "disappeared" tens of thousands of people perceived to pose a threat to the state, including political and religious dissidents, trade unionists, and military officers. By 1990, conditions had improved, and a human rights advisory council was created. The parliament is an elected body, though the king has primary executive power and may dissolve the government.

A commission was established in 1999 to determine compensation for victims of forced disappearances and arbitrary detention after the king's death and the succession of his son, Mohammed VI. The compensation commission operated for 4 years, decided more than 5,000 cases, and awarded a total of around \$100 million in reparations, though thousands of cases remained unresolved. King Mohammed VI established the Equity and Reconciliation Commission (IER) in 2004 to establish the truth about forced disappearances and arbitrary detentions that occurred between 1956 and 1999, identify institutional (not individual) responsibility for such abuses, provide reparations to victims, issue recommendations for reforms to prevent the repetition of violations, and promote reconciliation. Driss Benzikri, a human rights activist and former political prisoner, was appointed to head the IER, along with sixteen other commissioners, though only one woman. The commission took over 22,000 statements before it concluded its official mandate on November 30, 2005 and presented its final report to the king in December 2006. The final report was then released to the public and the Advisory Council on Human Rights (CCDH) was tasked with supervising the implementation of the IER's recommendations. The IER determined the responsibility of state actors and some other parties for abuses including disappearances, arbitrary detention, torture, and excessive use of lethal force, and identified around 600 deaths. It recommended that the prime minister issue a public apology for past abuses and suggested reforms to strengthen the rule of law and increase judicial oversight of the security services. In 2007, the distribution of \$85 million to approximately



16,000 individual victims was almost completed, and the government agreed to provide medical care to the victims and their families at the state's expense. Communal reparations were identified for various regions that had suffered from repression or where secret detention centers were located.

While open discussions of past human rights violations were tolerated as a result of the truth commission's work, lower scale abuses and harassment of journalists has resurfaced and authorities are generally intolerant of exposing current abuses. Critics disapproved of the decision not to name individual perpetrators, and the commission did not recommend prosecutions. Moreover, the liberties of the local population in the territory of the Western Sahara are restricted while negotiations over a final settlement continue apace. Overall, Morocco remains a stable country and has made moderate improvements in democratic reforms, including the most recent multiparty elections to parliament in 2007.

## **VI. Conclusion**

These four cases illustrate the power of truth-telling and the establishment of an indisputable historical record of abuse and the transformative impact of impartial justice and reconciliation in moving post-conflict societies from denial to recognition. They also show the importance of gaining domestic support and using local customs and languages to improve understanding of the process. Each commission is designed for the unique conditions in each society, though general principles can be learned from other commissions that have taken place around the world. Such commissions have occurred in: Argentina, Uganda, Chile, Chad, El Salvador, Sri Lanka, Haiti, Burundi, Ecuador, Guatemala, Nigeria, Uruguay, Sierra Leone, South Korea, Panama, Ghana, and Yugoslavia. While transitional justice alone has not solved all problems and some countries have seen violence return and abuses restart, truth commissions have formed an essential part of the peacemaking process in those success stories.

## **VII. Post-Video Activities**

Below are several different activities that you can use to help explain the issues of transitional justice and truth commissions. You may choose whichever you think will help your participants better understand these issues.

## **A. Discussion Questions**

- ◆ How would you react to being the victim of abuse? How would you expect others to react?
- ◆ How do you think those who may be investigated would react to such a process?
- ◆ Would you favor trials, or a truth commission? Both? Neither? Which one do you think should come first if you favor them?
- ◆ Do you think it is important for victims to tell their stories?
- ◆ Would you expect victims, either individuals or groups, to receive some form of reparations?
- ◆ Would you be willing to tell your story?
- ◆ Would you feel safe to tell that story to anyone? In public?
- ◆ What are trade-offs between justice and reconciliation; i.e. having trials or having truth commissions?
- ◆ Which process would work best for neighbors to resolve their feelings?
- ◆ Which process would work best for the country to resolve its animosities? Are these the same?

## **B. Design a Truth Commission for Your Own Country**

- ◆ What type of transitional justice, if any, do you think is most appropriate here? Think about the options discussed in the guide: prosecutions, truth-telling, reconciliation sessions, government reform, removing public officials, building memorials, etc.
- ◆ Are there any local customs or religious teachings that could be used in the process?
- ◆ Where will the hearings be held?
- ◆ Who will serve on the commission? What groups of people or individuals?
- ◆ Do you think that a commission can be independent and impartial with all of the commissioners from our own country, or do you think that it would be helpful to include any foreign experts among the commissioners?
- ◆ What language(s) should be used?
- ◆ How long should the commission last?
- ◆ What time period should it investigate?
- ◆ Should compensation be granted to victims? others?
- ◆ Would you build a memorial? How would you design it?
- ◆ Do any of the cases described in the film seem appropriate to the situation here?
- ◆ What are the risks or obstacles here to starting a transitional justice process?
- ◆ What kinds of abuses matter most to you that you would like to see a commission investigate?
- ◆ What actors should be investigated?
- ◆ Do you believe that truth commissions can be useful here?
- ◆ What would you hope that a truth telling process could do for you and for your community?
- ◆ Is now the time to start this process?

## **C. Scenarios: Walking in Someone Else’s Footsteps**

### **Scenario #1: A Disappearance**

#### **Purpose**

- to understand one’s own natural human emotions that result from violence, conflict, and loss as well as the feelings of others.
- to understand the ethics of truth and reconciliation commissions and different concepts of justice (retributive, restorative, etc.).
- to avoid labeling persons or groups and maintain the goal of a neutral scenario so that participants can think independently and understand other viewpoints.

#### **Activities**

- Read (or ask participants to read) Scenario #1. The instructor should remain neutral on the subject and seek to listen and understand each participant’s motivations.
- You may ask for participants to give their answer or ask a question: “Did anyone say that they would stop and not pursue this further?”

#### **Scenario #1: A Disappearance**

You are the 45 year old parent of a 20 year old child. Your child has joined with some friends to attend a demonstration in the city center that is criticizing government abuses. That evening, you hear that government security forces broke up the demonstration, but are worried because your son has not returned home. You have contacted the families of his friends, and they do not know his whereabouts; one friend says “everyone was running and there was no place to hide.” After several days of worrying, you decide to visit the local police station and inquire if he was arrested. You are told that he is not at the police station, but that anyone who was arrested had committed crimes against the state. After several more visits to the police, an officer tells you to stop visiting and that this should be a lesson to you, your family, and your neighbors not to protest the government and threatens to arrest you. You begin to wonder whether you will ever see your son again, but you also know that you have two other younger children to raise.

- Ask the participants: “As the parent, what are your choices in this situation?”
- If participants are reluctant to speak, you may say: “I am going to read some common reactions to this scenario.” Then, you may read the following reactions:
  - a) “Revenge: Do you take up arms against the government and seek revenge on the state or the police that may have arrested your son?”
  - b) “Avoidance: Do you decide that the risk is too great and you have the responsibility to take care of your family and choose not to pursue the loss any further?”
  - c) “Truth: Do you continue to visit the police station and demand to know what happened to your son?”
  - d) “Justice: Do you speak to a lawyer and seek a prosecution of the police force captain?”

You may ask the following (you can explain the pros/cons of each choice after the discussion).

- ◆ “Would you select one of these options, a different approach?”
- ◆ “What will happen because of your choice?”

	<b>Pros</b>	<b>Cons</b>
<b>Revenge</b>	<ul style="list-style-type: none"> <li>• A violent response may satisfy your desire for revenge and show a willingness to defend your own community.</li> <li>• It also offers the chance to win a victory by force.</li> </ul>	<ul style="list-style-type: none"> <li>• You may hurt the wrong person since you do not have all of the facts and may not be able to judge.</li> <li>• Your acts may lead to further retaliatory attacks and cause the violence to escalate.</li> <li>• You may be further harmed in the attack or in response.</li> <li>• “an eye for an eye” makes us all blind.</li> </ul>
<b>Avoidance</b>	<ul style="list-style-type: none"> <li>• You may need to spend time finding a job and money to provide food and shelter.</li> <li>• You may be harassed by the police if you continue to speak out</li> <li>• You may feel that the risk of success is greater than the reward.</li> </ul>	<ul style="list-style-type: none"> <li>• Commitment to a family member may be so great that it justifies any risk.</li> <li>• The pain of loss may require action.</li> <li>• Your acceptance may encourage the government to continue their abuses, and conditions could get worse.</li> </ul>
<b>Truth</b>	<ul style="list-style-type: none"> <li>• Knowing the truth could bring some closure.</li> <li>• Victims’ families, maybe those of disappeared, want to find an answer, and want to regain any possessions or bury the remains properly.</li> <li>• Police may not treat others badly if they know people are watching.</li> <li>• Telling the truth is a step toward expressing regret, sorrow, forgiveness, and reconciliation.</li> </ul>	<ul style="list-style-type: none"> <li>• You or your family may be targeted and you may jeopardize your safety, and your family and community.</li> <li>• If no one is punished, or even given amnesties, this may not be satisfactory.</li> </ul>
<b>Justice</b>	<ul style="list-style-type: none"> <li>• A third party advocate may give you support and protection and have the knowledge and skills to help you.</li> <li>• Taking official legal action may lessen the likelihood of being harmed since it is a non-violent approach.</li> <li>• Others may follow this approach and it can show the government is not above the law.</li> </ul>	<ul style="list-style-type: none"> <li>• If you take a public position you may anger the police and the government and risk backlash.</li> <li>• The courts may be corrupt or biased and you may fail.</li> </ul>

## Scenario #2: Thinking About Transitional Justice

### Purpose

- to understand different social actors and to analyze their motivations regarding public policy or a social issue.
- to understand the importance of bargaining and compromise in political decisions.
- to work collectively in a group to problem-solve a challenging situation.

### Activities

- Assign participants to small groups of 5-7 people. Have them sit in a small circle if possible.
- After they are in small groups, explain that each group will discuss the scenario and then report to the class what the feeling in their group was. Tell them to introduce themselves to each other, and decide on who will speak for the group. You may joke that “you can do this democratically or maybe the strong will win.”
- Read Scenario #2.
- Ask them to consider how they would react, and how they would expect each of the following persons to react toward the same choices: a witness, a clerk at the police station, a perpetrator. You should give them how much time they need to discuss, maybe 10-15 minutes.

### Scenario #2: Contemplating Transitional Justice

Several years have passed since your son disappeared, but recently the government has changed to a new leader who is promising more respect for the rights of the people. This new president is promising to do an inquiry into the deaths and disappearances that have occurred over the past 15 years. You are hopeful that this new president will change the country and end the violence, but past presidents have offered change yet have failed to end the killing or ease the poverty; some have even made it worse. This commission is planning to start its work this year and has invited anyone affected by the conflict to participate but you are unsure whether to attend.

In thinking about your choices, you may remember when the disappearance first happened.

- 1) You can retaliate against the person that may have harmed your son. But not knowing exactly who that is, you know that most of the police force lives in the west side of the city. You could show how much the loss of your son hurt by attacking someone from that part of the city.
- 2) You can ignore the loss of your son and focus on finding new work as your job was eliminated last year. You know that those police that threatened you still live and work nearby and may harm you if you speak out against them.
- 3) You can testify at the trial of some local police officers who have been indicted by the court. Your testimony may be the link that connects a victim to the day when the police attacked a crowd and could hold this officer accountable. He may go to prison for his crimes.
- 4) You can speak at the commission and listen to officers testify as to their conduct. You may learn how your son was arrested and murdered; you may hear directly from the perpetrator and he may ask for your forgiveness and you might choose to accept that apology.

- Now tell the participants: “You have imagined yourself as the family member of a victim; you are thus a victim yourself. In thinking about your own decision as a victim, think about what each of the next three persons might choose from their perspectives.”
- Read the ideas of each of the three persons below.
- Have one group report how they think a witness may react. Ask if other groups agree.
- Have a second group report how they think the neutral police clerk may react. Ask if other groups agree.
- Have a third group report how they think the perpetrator may react. Ask if other groups agree.

**Witness:** You were watching the protests from the window of your apartment and saw the attack on the protesters. You are not interested in politics, but you are aware of the political context of the demonstrations.

**Police Clerk:** Your job is to process the arrest of a protester, but you have not harmed anyone. In fact, you have never arrested nor beaten any citizen; your job is to be a clerk who files the police paperwork, though you are friends with officers who committed abuse.

**Perpetrator:** You are a professional police officer who has worked for over 20 years and under several different presidents. You are the officer that arrested the son, and using the same tactics that you have used many times before in your job, you beat and tortured the son in prison. You have not yet been named by any investigation.

- You may ask participants how they would act and ask: “Would anyone say that they would stop and not pursue this further?” The instructor should remain neutral on the subject and seek to listen and understand each student’s motivations.
- Other characters could be added or discussed, including the role of other states, international organizations, or non-governmental organizations (NGOs) that fund or advise such a process.



## **Scenario #3: If You Were the New President?**

### **Purpose**

- to understand the dilemmas of leadership and governance.
- to understand the importance of making priorities and considering the difference between individual preferences and collective desires.

### **Activities**

- Ask participants to imagine that they are the new president of a country facing the following decisions.
- Read Scenario #3

### **Scenario #3: The New President**

Your family and community suffered during the fifteen years of hostilities. Your country is now facing many challenges: poverty, unemployment, divisions worsened by the conflict, mental and physical trauma, and outside pressures. Victims and perpetrators are still present, though the outright violence has largely declined, anger and fears remain. You are responsible for deciding whether to create a transitional justice approach.

- Ask some or all of the following questions:

- 1) “Do you choose to prosecute former perpetrators since they committed so many crimes?”
- 2) “Do you choose to ignore any transitional justice and focus on improving the economy and governing so as to satisfy the population and avoid upsetting former combatants?”
- 3) “Do you seek to attack your former enemies to make sure that they are no longer a threat and pay them back for what you and your people suffered?”
- 4) “Do you offer your former opponents amnesty and allow them an equal share in the new society and an opportunity to share their deeds with a truth commission?”
- 5) “Will you appear strong or weak if this transitional justice idea was created by foreigners who are pressing you to accept this aid?”
- 6) “What are the consequences of this choice?”

## **D. Glossary of Definitions**

**Amnesty:** to be free from punishment, like immunity

**Civil Society:** all the voluntary social groups not part of the state

**Distributive Justice:** sharing things equally and fairly for everyone

**Immunity:** to be free from punishment, like amnesty

**Impunity:** the failure to punish those who committed abuses

**Restorative Justice:** repairing the harm caused by abuse

**Retributive Justice:** punishing who or what caused the abuse