

# COMMISSIONING JUSTICE

TRUTH COMMISSIONS AND  
CRIMINAL JUSTICE

**AMNESTY**  
**INTERNATIONAL**



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# 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.

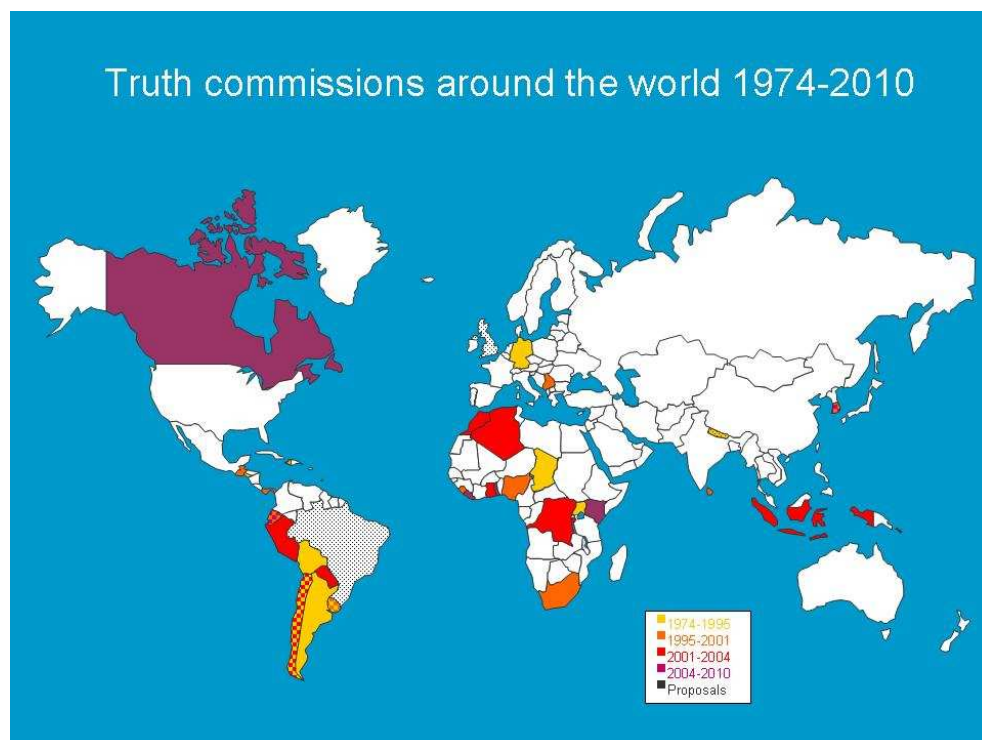
In recent years, a debate has flourished on the possibility to “deal with” crimes under international law using non-judicial mechanisms of accountability, such as truth commissions. Based on the distinction between “retributive” justice and “restorative” justice, some have contended that countries have 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;<sup>1</sup> **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* Commission (*Commission ad hoc*), 2003;<sup>2</sup> **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 and Western Sahara**: 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.**

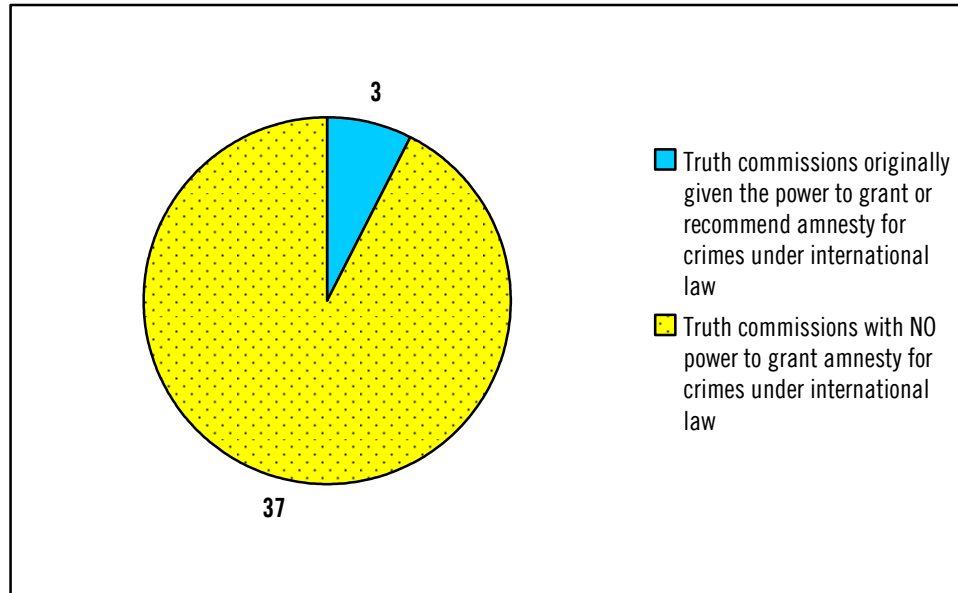
# PART TWO: TRUTH COMMISSIONS, AMNESTY AND PROSECUTIONS

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”.<sup>3</sup> 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.<sup>4</sup> 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.*<sup>5</sup>

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.*<sup>6</sup>

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".<sup>7</sup> 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.<sup>8</sup>

The 2004 Commission of **Indonesia** was given the power to receive confessions and apologies about human rights violations and recommend amnesty to the President.<sup>9</sup> In December 2006 the Constitutional Court of Indonesia declared that the Commission's statute violated the 1945 Constitution.<sup>10</sup> The Commission was never appointed.

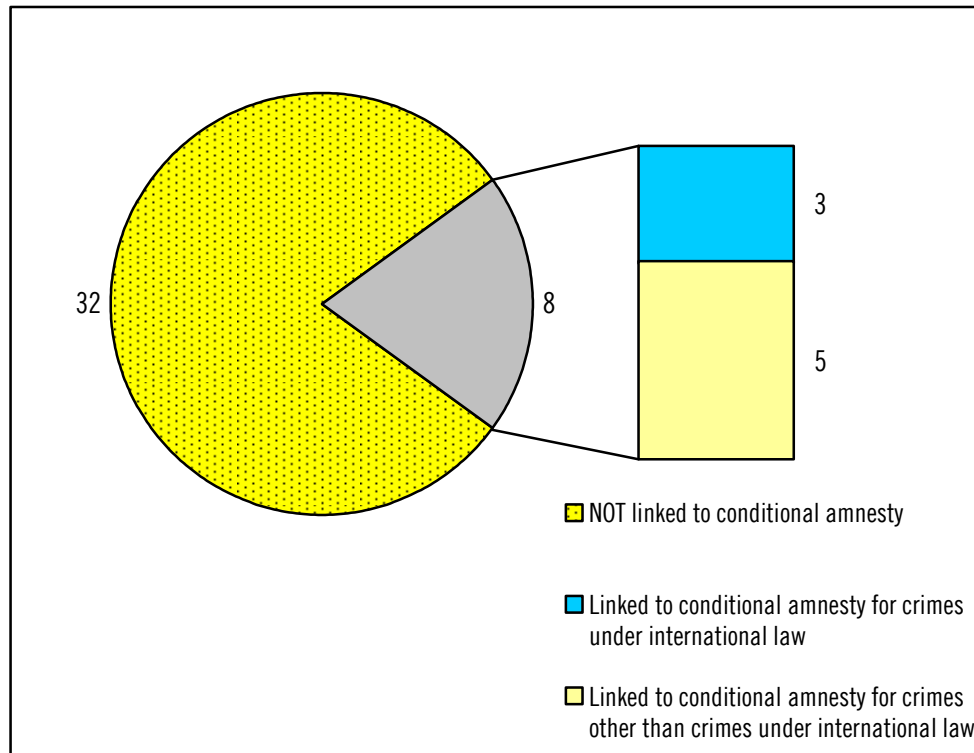
## **BOX 1: THE INDONESIA-TIMOR LESTE COMMISSION OF TRUTH AND FRIENDSHIP**

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.<sup>11</sup> The CTF had the power to 'recommend amnesty for those involved in human rights violations who cooperate fully in revealing the truth'.<sup>12</sup>

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.*<sup>13</sup>

## 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'.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> When the amnesty law was adopted, it excluded war crimes, crimes against humanity and genocide and did not mention any criteria for conditionality.<sup>17</sup>

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.<sup>18</sup>

**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.**

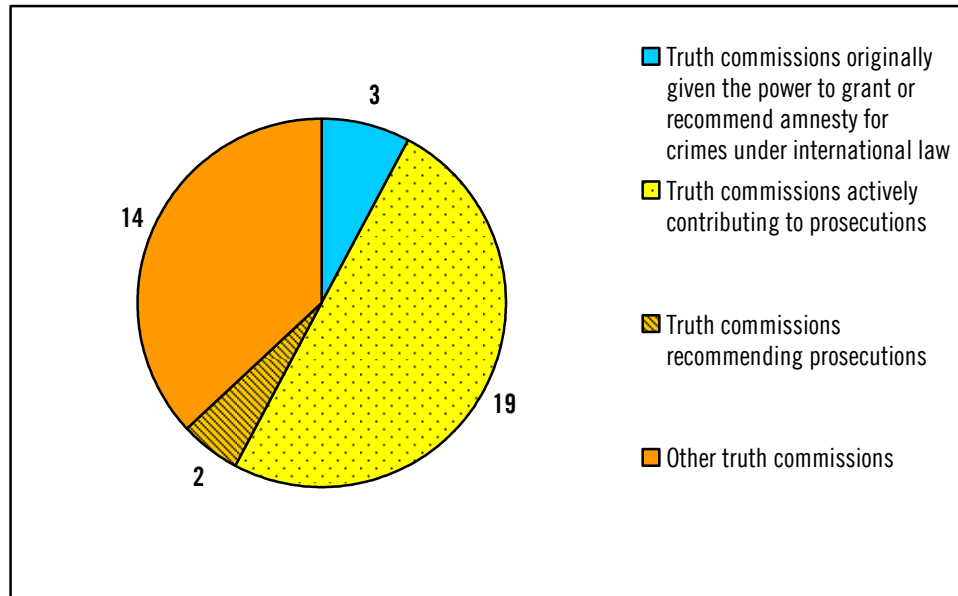
Liberia, Truth and Reconciliation Commission, *Final Report - Volume II: Consolidated Final Report*, 30 June 2009, p288.

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'.<sup>19</sup>

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.<sup>20</sup>

## 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.<sup>21</sup> The 1982 **Bolivian**



Commission directly filed at least one criminal complaint with Bolivian prosecution authorities.<sup>22</sup> The 1983 Commission in **Argentina** was able to hand over 1,086 files to the courts,<sup>23</sup> 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.<sup>24</sup> The 1986 Commission in **Uganda** transferred 27 case files to prosecution authorities.<sup>25</sup> The 1990 Commission in **Chile** passed new evidence to the courts and submitted a confidential list of alleged perpetrators to the President.<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup> In its final report, the Commission recommended that criminal investigations be opened within 30 days.<sup>34</sup> 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.<sup>35</sup> In **Paraguay**, the 2003 Commission recommended several cases for prosecutions.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> The 2008 Commission in **Kenya** is required to make recommendations for prosecutions in its final report.<sup>40</sup>

**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.<sup>41</sup> 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.<sup>42</sup>

**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.<sup>43</sup> 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.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> Government ministers reportedly gave their assurances that the 2008 Commission in the **Solomon Islands** would not interfere with ongoing criminal cases.<sup>47</sup>

## **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.<sup>48</sup> 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.<sup>49</sup>

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]*'.<sup>50</sup>

The Yugoslav Truth and Reconciliation Commission (*Komisija za istinu i pomirenje*), established in March 2001, did not have any power to grant amnesty.<sup>51</sup> 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.<sup>52</sup> 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.<sup>53</sup> When the 2003 Commission was established in **Chile**, the 1978 amnesty law was still officially in force.<sup>54</sup> 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;<sup>55</sup> 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.<sup>56</sup> Despite its very limited mandate and powers, the 2003 **Algerian ad hoc** Commission publicly acknowledged that more than 6,000 enforced disappearances took place in Algeria between 1992 and 1998.<sup>57</sup> The mandate of the 2004 **Moroccan** Commission was explicitly non-judicial and excluded the determination of individual criminal responsibility.<sup>58</sup> Even though it did not recommend in its final report that individual perpetrators be held to account, the Commission did not propose amnesties for crimes under international law. Its late President told Amnesty International that victims of human rights violations were free to file complaints against suspected perpetrators in court.

# 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.

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<sup>1</sup> 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.

<sup>2</sup> The ad hoc Commission in Algeria collected information over a period of 18 months on cases of enforced disappearance, but has not made its findings public to date. Its key recommendation was to provide financial compensation for families. See: Amnesty International, *Algeria: A Legacy of Impunity: A Threat to Algeria's Future*, Index: MDE 28/001/2009, March 2009.

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