Whose Truth? What Kind of Reconciliation?
The Importance of Truth and Reconciliation Commissions for Promoting Democratic Good Governance

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Report by Mónica Treviño, Randy Pinsky and Lorenzo Daieff

Thursday March 13- Setting the Stage: Canada’s Experience

Welcome Address
The conference presenters and participants were welcomed by Dr. Philip Oxhorn, Founding Director of the Institute for the Study of International Development. Elder Sonny Diabo, from Kahnawake, offered opening prayers for the Conference.

Opening Prayers and Greetings

Elder Sonny Diabo
As a residential school survivor, the chief reflected on how he and the other students were punished for speaking their language, and how their culture was continually debased by the teachers and church administrators. In spite of such a traumatic past, he stated, “they didn’t kill my spirit as a Native person- they helped me keep [and strengthen] my language and culture and reinforce the importance it holds for me”.

He noted that many questions remain unanswered about the residential school system, and queried if there is somewhat of a hypocritical stance of the government to now be focusing on efforts for revitalizing and respecting Aboriginal culture fifty years after the fact. As an Elder, he is very involved in ensuring this history is never forgotten. Whenever he speaks in Montreal, he commences his talks with, “I welcome all of you to Montreal, a suburb of Kahnawake”, in order to remind attendants of the integral connection with Aboriginal history. There is a dire need to revive knowledge of the language in communities as it is dramatically being lost. Children and youth need to be taught about their culture to reinforce their pride in their heritage. Elder Diabo concluded by giving thanks to the Mother Earth, the water, trees, Brother Sun, Grandmother Moon and the Great Spirit, for making this gathering possible.

Michael Hawes CEO of Fulbright Canada and Chair of the ISID Advisory Board
The Institute has only been around for six years, yet it has accomplished so much in its stated role to “engage the McGill community and the community in Canada and around the world with important development issues, as an accountable community, as a people”. Not only does this conference bear
significant importance “to us as Canadians, as citizens of this country”, it is extremely timely as it focuses on “issues that are important and still remain unresolved”. He thanked all who had been involved in making the conference possible.

**Prof. Philip Oxhorn, Founding Director of ISID**

Trying to deal with trauma following conflict, and trying to develop new ways of living together in peace, is an ongoing issue in many developing contexts. Truth and Reconciliation Commissions (TRCs) strive to resolve these situations. It is for this reason that TRCs are linked to democratic governance in terms of trying to figure out how to best deal with past traumas in order to prevent future ones. This conference is unprecedented in the array of international specialists, academics and practitioners who are all coming together to address the challenges of TRCs, recording but also applying lessons learned.

The conference is guided by the need to address four main questions:

a) How have different TRCs addressed the possible tension between the goals of reconciliation and justice?

b) How can we understand the contributions of TRCs to overcoming past divisions in favor of greater consensus and mutual understanding?

c) How can the lessons learned from TRCs be used to enhance conflict mediation and even presentation?

d) How should we try to measure or understand the contributions to democratic governance?

To launch this conference, we are fortunate to have all three commissioners of the Canadian Aboriginal Truth and Reconciliation Commission with us.

**Panel: The Canadian Truth and Reconciliation Commission**

*Moderator: Andrew Lee*

**The Indian Residential School System of Canada**

*Justice Murray Sinclair, Chair, Canadian TRC*

As the Chair of the TRC of Canada, Justice Sinclair evoked how “my task is to introduce the TRC to you”. He elaborated on how TRCs are part of transitional justice, a process by which states can move to another period of governance, which entails a change in the structure and the relationship with citizens. Transformative justice takes place on a national and international scale; however, meaningful ‘healing justice’ is essential for there to be a resolution between the relevant actors in order for them to be able to move on.

**An Introduction to TRCs**

Transitional justice developed in response to the failure of the Nuremberg Trials to try all those who had committed crimes and been complicit in the atrocities. TRCs have become a critical means by which to come to terms with the past and move forward.

The South African TRC is perhaps the best known example, although it was not the first TRC, as the first one took place in Argentina. There has been much evolution since then, but the idea of getting people to come to terms with their past has remained consistent.

While there are ‘voluntary’ TRCs, most of them are mandated by law to address the wrongs of a past government, and prevent them from continuing to affect the future. In essence, TRCs are guided by the belief that a community cannot move on until the past has been addressed.
The Creation of the Residential School System
The residential schools were created after confederation in 1867. With the expansion of the Canadian Dominion to the Western provinces, Aboriginal communities wanted to take part in discussions of how they could become equal participants in the new Dominion. The hope was that the Aboriginal communities would be assisted through education, as a means of participating as partners of Canada. As a response to this request from the Aboriginal communities, the treaties of 1871 included a provision for the creation of schools for children from the reserves. Problems developed when the government transformed the purpose of the schools in response to their view that the Aboriginal communities needed to be ‘civilized’. A government official at the time noted: “in order to educate the children properly, we must separate them from the families”. It was believed that the key to success involved the churches and missionary societies, as they would work for free as part of their commitment to their practice. In 1920, Minister of Indian Affairs Dr. Duncan Scott firmly stated, “I want to get rid of the Indian problem...the objective is to continue until there is not a single Indian in Canada that hasn’t been absorbed into the body politic, and there is no Indian question, and no Indian department- that is the whole objective of this bill”. The government also realized that if they took custody of the children, they would be better able to control and subdue potential Indian resistance to expansion. The model of education that would develop was not that which had been initially negotiated or promised. The residential schools would become mandatory, language and cultural traditions would be prohibited, there was rampant abuse and punishment, and siblings were separated.

A Legacy of Negative Effects
In spite of diverse impressions of the residential school system, all those who experienced it faced institutionalized intolerance, saw their culture and beliefs demeaned, and lived in a state of constant fear and oppression. Their language, family, and culture were denied, and European religion and belief systems were imposed on them. Death rates were abominable at 24-42%. There was much abuse and the education provided was inadequate, since there were no standards or curricula to follow, nor were most of the teachers certified. Few of the children learned marketable skills, while also losing their traditional knowledge. Food shortages and unsanitary conditions led them to be susceptible to diseases such as tuberculosis, compounding the abuse and neglect which led to attempted escapes. There were sanctions for those who failed to comply with the system, with regular roundups of children, although some parents were successfully able to hide their children. It was not merely an issue of taking the children away from the parents. As noted in the expression, “it takes a village to raise a child”, all members of the community do play a role in their upbringing. The government set out to destroy the villages and culture by outlawing gatherings and traditions such as Sun Dances and potlatches. In 1885, regulations against wearing ‘Indian garb’ were instituted, and movement was restricted through a ‘pass system’; all designed to prevent the fomenting of resistance. Aboriginals would lose the right to vote in the 1890s and had restricted access to legal advice. The traditional role of women was restricted, and traditional forms of government were banned. From such an experience, the communities were torn apart. They lost respect for themselves, their sense of cultural pride and self-respect, and had little respect for education and the government. This has had a pronounced intergenerational impact, with leadership authority being lost, and economic authority and decision making undermined.

Hope for Change
There *have* been changes in obtaining recognition for the abuses of the past, such as lawsuits and church apologies, with Blackwater vs. Plint being a landmark case. In this ruling, the Supreme Court of Canada held churches and the Federal Government legally liable for the negative effects of the residential school system.

The Indian Residential School Settlement Agreement was reached in 2006, leading to a parliamentary apology which was offered in 2008, and public recognition of the wrong-headedness of the Residential School policy, and instituting the TRC. While this is an important step, only 140 of the schools responsible are being held for liability as the others are claimed to ‘not have been the employees of the government’. As a result, over 1,400 schools remain unlisted in the settlement agreement.

The TRC commenced work in 2008. With the appointment of new commissioners in 2009, with a five year mandate and a budget of 60 million dollars, it is responsible for gathering statements from survivors and school workers, for creating and encouraging public education about the issue, and organising community and national events. It is also mandated to archive documents, create a report on a full and complete history of what occurred, and engage parties in dialogue for reconciliation.

**Remaining Challenges?**

One of the particular challenges faced by Canada’s TRC is that the ‘wrongdoers’ are still in power (as opposed to other TRC experiences which occurred in the wake of regime changes) and they still bear a similar mentality as during the earlier period. There is more to this case than simply ‘moving on’.

Moreover, this is not problem solely shared by the Aboriginal communities, but rather is a problem for all Canadians.

“Reconciliation for us is about changing the history of oppression and allowing communities to relate to one another in a more positive and healthy way”. Aboriginal communities must regain self-respect and self-pride before there can be mutual respect. There is a need for commitment, for forging relations, and engendering mutual respect.

**Dr. Marie Wilson, Commissioner, Canadian TRC**

The main objective of the Canadian TRC is well exemplified in its belief statement: “For the child taken. For the parent left behind”. This evokes the broad impact and ambition for change.

**Whose Truth? Historic Commission, Historic Opportunity**

Why is the Canadian case unique?

- Because the victims took action- this was not something provided by the government
- This was something fought for by the people, and supervised by the courts
- It focuses on harm to children of a specific ethnicity
- It is not an issue of military conflict, but rather state-sponsored institutional harms
- It aims to address a 150-year old history

**Mandate and Purpose**

The mandate of the Canadian TRC is threefold:

1. To document and determine what happened and how, by educating ourselves and one another in order to best inform where we must go from here, and by archiving documents and engaging in independent research into the context of the residential schools.
2. Truth telling and healing, in an act akin to the setting free of spirits and enabling collective and individual reconciliation, by gathering statements from the dwindling number of
survivors, supporting community events and national events, and educating the Canadian public.

3. To ensure the responsibility to remember, by recommending actions to be taken that include commemorative projects, by establishing a ‘living’ National Research Center in Vancouver, and by developing a final report with recommendations that will set the foundations for inspiring and planning for ongoing reconciliation in moving forward.

What Reconciliation?
Reconciliation is a complex notion, understood differently by different actors. This is one of many challenges facing reconciliation in Canada. There is also the challenge of perceived ‘justice’. While some may feel the compensation funds of $10,000 for each first year of residential school and $3000 for each subsequent year are generous, others contend this is insufficient for compensating the loss for their cultural identity.
It is also difficult to encourage members of the community to prepare statements, as this makes them relive feelings of rejection and re-traumatization. Several have stated that this is “trying to make me remember things I have tried to forget- and they still don’t believe me”.
Another challenge revolves around the perpetrators. Beyond stating the government and churches are at fault, are they involved in the process? Do they present a real commitment to this healing process? Is the government apology of 2008 ‘meaningful’, or still just words until followed up by actions”?

Challenge of Public Engagement
There has as yet been little government effort to inform the public about the commission, and about how they and all Canadians were implicated in the system. Perceptions have tended to be more about Aboriginal issues over the crux of human rights and justice. This has been compounded by the fact that there has been minimal media coverage of the TRC in Canada, compared to TRCs that have occurred in other countries.
There has been slow but steady progress. It is critical to reiterate that there is a need for ongoing healing and reconciliation beyond the TRC.
This is imperative for meaningful spiritual and cultural healing, and the ongoing reconciliation of Aboriginal people, the government, churches, and the people of Canada.

Positive Impact of the TRC
The meaningful impact of the TRC is evidenced by survivor testimonies. Almost all have started by stating, “I’ve never told anyone this before”. Survivors note how “the government tried to kill the Indian in the child...and got the churches to do it”, and “we were taught we were second or third class citizens”.
The commissioners are inspired by the people's courage and determination to move on. Many testimonials included statements about feeling ‘lighter’, ‘gaining in self-respect’, with one witness even stating, “I’m beginning to like me”; a testament to the degree of lack of self-pride and respect instilled through reinforced suppression.
50% of participants have stated that they are reconnecting with their culture and identify participating in the TRC as a way of healing and “finding their way home”. 90% have also mentioned being able to move beyond drugs and alcohol. Many have expressed this as “I can now move forward- I have my family to support me”, and “I truly believe it is my birthday today”.

TRC as a Pathway to Democratic Governance
There is still a great distance before there can be meaningful and lasting reconciliation. The TRC recommendations are being drafted to inform future actions, and inspire respectful relations between Aboriginal and non-Aboriginal peoples who share the country of Canada. Reconciliation will require change...change in attitude, in public policy and in the control of families, communities, cultures, lands, and resources. There are major gaps between what we know and what we have yet to learn. There are gaps between what we think of as being an ‘indigenous issue’ and what we understand as being a ‘Canadian’ one linked with responsibility. Much remains to be done, and there are fewer survivors every day. There is a need to teach about what happened, in order to ensure it is never again repeated.

**Chief Wilton Littlechild, Commissioner, Canadian TRC**

When introducing himself, Chief Littlechild noted he is “also known as IRS 365”, indicating he was also a survivor of a residential school.

Where does the Canadian TRC fit within the international TRC process? The interim report on the United Nations Declaration for the Rights of Indigenous Peoples discusses working on a rights-based approach; something Chief Littlechild admits is a daunting task. Out of the approximately sixty-four TRCs which have taken place internationally, around a third of them dealt in some way with indigenous peoples. Chief Littlechild is involved in advising the Human Rights Council at the United Nations, and is part of a study on access to justice for Aboriginal people, with a focus on the TRC. They are planning on doing a study on the right to education, and examining traditional justice systems in terms of how they promote truth and justice, as well as peace and reconciliation.

The UN body on Indigenous issues has produced an extensive report on the residential school system, focused on the impact on children. There is also another study on the TRC process in the Americas. These are critical means for promoting reconciliation, as the Canadian and American experiences with residential schools are very similar. They are asking President Barack Obama to follow Prime Minister Stephen Harper’s example and provide a public apology, and possibly also instate a truth commission.

The United Nations Permanent Forum on Indigenous Issues will examine the violations against indigenous peoples in the United States, as it is “evident there have still not been adequate measures of reconciliation to overcome the history and legacies of oppression. There is still so much healing that needs to be done”.

There is a lot of global interest in the Canadian TRC’s work, as “this is the first and only TRC that focuses on children”. It is for that reason that they are guided by the message of “What happened to the children, and the parents left behind”. There is much work taking place for the TRC report on recommendations, with the interim recommendations being a critical start. This is a valued “framework for ongoing reconciliation between Aboriginal and non-Aboriginal peoples”. Ban Ki-Moon, Secretary-General of the United Nations, has asked for recommendations, for a “Framework for Reconciliation”.

**The Right Honourable Joe Clark, Former Canadian Prime Minister and Foreign Affairs Minister (Discussant)**

When growing up in Alberta, Mr. Clark was unaware of what Aboriginal people were going through. He is now involved as an honorary witness in the commission alongside other actors such as former Governor General Michaëlle Jean.

People need to come to terms with what happened in the residential schools system, and in spite of the work being done, this issue still lacks a public profile. There is a need for action to accompany words.
What can people do about reconciliation? Communities need to come together and heal together in order to move forward. While we are dealing with past injustices, our engagement has to be about the future. Canadians must reconcile with what our institutions did—those institutions that we respect: our government and churches. To ignore this would be to repeat the profound injustices and abuse being increasingly uncovered by the TRC. This was not something that was only about schools, but was an issue affecting the entire system. These were a series of abuses and the human costs of status quo, disrespect of treaties, and a critical debasement of Aboriginal peoples.

It is not only about the past, but there are continual disappointments. There is the danger of raising hopes but providing little tangible improvement. At each occasion where hopes have risen for changes to ensue, none have occurred, which merely adds to the sense of disappointment. In spite of the work of the TRC, there is a sense of public indifference. While there had been a sense of obligation to take responsibility, this has waned over the years. There is a need to create a sense of engagement with the past.

The TRC has raised hopes once again—what will be the consequences if there are more disappointments and little action is taken on the recommendations? The Idle No More movement is an ideal example of a women-driven initiative that focused its energies on producing tangible change and was committed to non-violent response to injustice against Aboriginal peoples.

As Canada is becoming more aware of its vulnerability in terms of its own cohesions, and aspirations and assets to grow, it wants to become an energy superpower. As most energy sources to make this possible go through Aboriginal land, this is an important business proposition: for both justice and human rights, but also economic and national unity reasons, there is a need for collective engagement and the creation of just partnerships.

Andrew Lee (Moderator)

What has been discussed until now demonstrates that attitudes still need to change as aspects from the past are still impacting daily life. This demonstrates how all of us have a role to play in educating others. There are two main messages that can be taken from this.

Firstly, the understanding that TRCs can play an important role in informed policy making. This is important for understanding about respect but also about change. People have called the past forty years an ‘era of self-determination’, where Aboriginal communities have increasingly been able to impact policies affecting them. TRCs can help policymakers figure out what has not worked and where one should focus for the future, with a need to focus on education, parenting, and mental health.

Next is the realisation that it is not just about what the government can do, but rather that First Nations people themselves hold the key to success. In fact, the keys to success are defined by the tribes themselves and have been demonstrated in a variety of success stories. One involves having de facto sovereignty. When a community had been dependent upon an unresponsive US military to take action concerning a project to no avail, they finally took matters into their own hands. This was a critical means of self-empowerment. Breaking free from imposed roles is a critical way of directing one’s own future.

There is also a need for creating effective governing institutions and to really pay attention to culture in meaningful ways. In the 1950s, the government imposed identical ‘cookie-cutter’ constitutions and forms of governance and councils that were uniformly applied across numerous diverse groups. The model chosen could work in certain cases, such as the Apache who have traditionally had strong leaders, but not for others, such as the Pine Ridge Sioux and Iroquois, where there was more focus on communally-made decisions.
For the future, we have the opportunity to create a new narrative about Native people. There are numerous success stories from which we can derive inspiration, such as the Winnebago who successfully were able to lower their unemployment rate. Groups in Alaska have also demonstrated that it is a false choice to believe we can’t have both education and teach culture, since they have been successful at doing both. Tribes can and need to learn from one another; replication is possible. Moreover, by focusing on self-help successes where partnerships are based on mutual respect, we can teach others and challenge stereotypes. The Iroquois believe in the concept of ‘seven generations’- and we would do well to be inspired by the idea that we must think about what we have learned seven generations ago, in order to impact seven generations in the future.

**Discussion**

The discussion following the presentation by the Canadian TRC Commissioners was wide-ranging and included topics such as reports of institutional abuses including scientific experimentation on residential school children, current issues of concern, in particular missing and murdered Aboriginal women, as well as changing and gendered conditions for qualifying for Indian Status.

In broader terms, the question of the factors that enable the conduct of a TRC were discussed and generally agreed to include communal initiatives and the potential support of the court system.

**Friday March 14- Comparing Experiences From Across the Globe**

**Panel: Truth, Reconciliation, and Justice: The Philosophical Debates**

*Moderator and Discussant: Professor Catherine Lu, McGill University*  
This panel explores the question: “what is reconciliation, and why is it morally desirable and justified?” In the aftermath of conflict, some have hailed reconciliation as a great moral ambition. This notion emerged in the aftermath of First World War, with the treaty of Versailles indicating how international actors would be able to live in peace and equality.

The meaning of the concept remains elusive, confusing, and questionable- so much so, that some have advocated abandoning it altogether. What is the desired end of reconciliation? Is it an end to violence? Or a more robust form of social solidarity? An end to oppression and persecution? Or a more secure model of peace? Is it institutional right, or a more egalitarian ethos? Who are the agents and subjects of it? Is it between individuals and perpetrators, or more communal? Between the state and its people?

The moral context of reconciliation as well as its psychosocial indicators must be examined: does reconciliation require forgiveness? How is healing and closure attained? Who is healed?

What about those who claim that reconciliation may not be justified? Many believe it is asking too much of victims, with one Rwandan survivor evocatively stating, “If you ask for forgiveness, I will give it once you have resuscitated the members of my family you have killed”. Reconciliation can serve to compound victim suffering by blaming them for not granting forgiveness and thereby barring progression, but how can one ‘get over’ the wrongs suffered? This may be unduly placing the burden of responsibility on the victims themselves.

This individual model is applied to groups, in the idea that reconciliation is the means for “moving from a divided past to a shared future”. The dream of social unity may be unrealistic, however. Is this therefore an ‘unhelpful’ and unconstructive therapeutic model for healing and forgiveness? Historically, intergroup reconciliation has been a code word for impunity and amnesia, the ‘accommodating of evil’. Hence, some query whether “it may be better to remain unreconciled”. The challenge is therefore: can
reconciliation be progressive as opposed to reactionary, and repudiate evil as opposed to accommodating it?

**Professor David Dyzenhaus, University of Toronto**

**The South African TRC**

The South African TRC was born out of a political compromise between the ruling political elites and the African National Congress (ANC), where perpetrators were offered amnesty for human rights abuses in return for supporting the transitional process. This was not just a political compromise. This was not a blanket amnesty, as individuals had to apply for this and make a full confession; amnesty was conditional upon this. The TRC did involve elements of retributive justice, and the amnesty was conditional as individuals could be tried if they did not comply with regulations or reneged on the agreement.

The Committee on Human Rights Violations heard testimonies from human rights associations so that anyone who claimed to have suffered could go to this committee. People who registered abuses to the committee could potentially receive reparations. They were determined to attain a different and superior kind of justice as opposed to retributive justice. Restorative justice was to be a means of bringing the perpetrators and victims together, where the perpetrators had to confess what they did and the victims, to forgive. Only then was it believed that there could be genuine reconciliation.

The questionable issue is that the idea of reconciliation is highly problematic in the context of South Africa. The idea that this is a ‘re’conciliation implies that society had been together and then became fractured and then reunited, as opposed to the reality of the history of racist supremacy. There is therefore a need for a more modest understanding of this process of reconciliation. There are numerous concerns that placing the responsibility on people to forgive can be an intolerable burden and unrealizable expectation. The worry is also that perpetrators may be able to modify confessions, and avoid implicating those who gave the orders.

**Legacy of Social Injustice**

South Africa is still a deeply unjust society; the transition has not achieved social justice. There is much work being done to educate people about democratic citizenship and the rule of law. This was very effective during the TRC itself because the media recapped each week to inform people of what was taking place.

The South African commission draws attention to the crimes committed, and shows commitment to the rule of law and to demonstrating that all are equally subject to it. The type of justice this TRC offers to the victims is an opportunity to tell their stories regarding the fact of their former exclusion, which is much more than they had before. There is a moral recognition and moral agency of those excluded through “recognizing the injustice of the exclusion that made the abuses possible”. As a result, one can contend that the TRC offers an understanding of justice as recognition.

Is it too much to ask others to forgive, but not too much to ask them to view themselves as free and equal members of the community? There are choices that are made at the expense of other choices, however in spite of potential flaws and shortcomings, is it unlikely that there would have been the progress witnessed in South Africa if this route had not been taken.

**Glenda Mezarobba, advisor to the Brazilian TRC**

**The Brazilian Experience**

Brazil had a military dictatorship (1964-1985) that was created with the Cold War logic of suppressing “internal left-wing subversion”. In a coup
d’état, a dictatorship was established to ‘restore order’, and it considered anyone opposed to it as ‘enemies of the state’. There was much repression, no rule of law or respect for human rights, particularly when the president got powers to close the National Congress. Fifty thousand people were detained, four or five hundred disappeared or were killed, and ships were transformed into prisons.

The third stage of the dictatorship was in 1979 when there were moves to deal with the issues of the past. An Amnesty Law was enacted in order to ensure impunity and have forgiveness in the progress towards democracy. Other measures have been taken to address the human rights violations, such as the Law of the Disappeared, and the Commission on Political Deaths andDisappearances, which was a state commission to deal with the victims of violations that had been carried out during the dictatorship; the first time this was done. In 2002, there were reparations and redress for victims of political persecution, but only for those with financial losses, not if they had experienced abuse.

**Whose Truth? And What Kind of Truth?**

The “Brasil: Nunca Mais” Commission, inspired by the Argentine Truth Commission that shares the same title, operated from 1979 to 1982. It examined files from the High Military Court to document cases of torture and to ensure that such a tragedy never occurs again.

In the early 1990s, the archives of the dictatorship were opened, and the “Right to Memory and the Truth” official report was published in 2007; the first official state document that attributed crimes to those in power. This was a critical moment in the process of settling accounts of the past. In 2009, the project “Revealed Memoires” was initiated, followed by the beginning of the Truth Commission 2012. The TRC is examining victims’ testimony as well as archival material, records kept by foreign organisations and governments, as well as by international organisations.

The Amnesty Law that the military regime enacted in 1979, and which was upheld in 2010, has been an important obstacle in searching for the truth. Since 1978, the state has been held legally responsible for the crimes, yet as of 2014, there has still not been a single perpetrator that has been found guilty of the crimes committed, fifty years after the coup. The legislation that allowed for the investigation of crimes committed by the dictatorship failed to include the notion of ‘victims’ and this is still not included in the relevant legislation. Instead, the terminology refers to ‘affected people’, and the criminal agents have borne no political responsibility for this legacy of human rights violations.

There is selective compliance with the laws, with mechanisms for dealing with some of the violations. The Commission was crafted in order for the state to fulfill the duty of reparations to the victims, yet the state has failed to recognize applicants as being citizens with equal rights.

**Challenges and Lessons**

The commission report is entitled “Comissão da Verdade e Consolidação da Democracia” (Commission of Truth and Consolidation of Democracy). It does not have prosecutorial power, but it can denounce and determine responsibilities, and reveal the names of those responsible for the crimes. The mandate for the commission has been extended to May 2015, and it is completely independent from the government.

While the TRC has received general support, it faces a variety of challenges. These include some difficulties in accessing official documents, as well as being faced with an enormous amount of information in terms of testimonials and public and private archives. This is estimated to represent around sixty million documents. In order to process this documentation, the Commission has created an innovative data analytic system to enable quicker and more efficient searches. Perhaps the major challenge is time, as many of the perpetrators, as well as victims, have passed away. And yet there is a clear awareness that the

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“Ignorance about history leads to resentment, not pacifying society. A lack of knowledge can further intolerance... [Thus] we are moved by the necessity to know the truth... Brazil deserves the truth and the future generations deserve the truth... now the time has arrived”.

- Brazilian President Dilma Rousseff
past must be exposed in order for the country to move on.

**Discussion**

The discussion following this panel focused on the purpose of TRCs, and on the tensions between truth, reconciliation and justice. While it is clear that TRCs cannot in themselves resolve a legacy of violent social relations, it is also important to consider that recognising past abuses and/or inequalities is a necessary step towards building a more just present and future. Indeed, examining the past is critical for revealing and diagnosing what went wrong and what would appear as justice today. We must examine the past and the legacies that remain in order to have change in the present and future. However, it is also important not to have unrealistic expectations of TRCs. The responsibility that TRCs place on victims led the discussion towards the role of forgiveness in the process of reconciliation, which may not be strictly necessary, depending on how we understand reconciliation in a given context.

**Panel: The Trend Setters**

*Moderator and Discussant: Dr Elizabeth Jelin, Instituto de Desarrollo Económico y Social (IDES) and National Council of Scientific Research (CONICET), Argentina*

Truth and Reconciliation Commissions are relatively new institutions “in the way the international community looks at past repression and proposes a way to contributing to settling accounts with the past”. The modern history of Truth Commissions started in Argentina thirty years ago. While there were a few antecedents such as the Argentinean Commission to inquire about disappeared persons, it is important to note that *neither the word ‘truth’ nor ‘reconciliation’ appears* in the commission’s name or the report’s title. What has happened in the international scene since then? The push for reconciliation and forgiveness is relatively new. In the Argentine case, the focus was on *truth*, but also on *justice*. In 1996-97, the organization *Human Rights Watch* presented their first report in Argentina entitled, “Truth and Partial Justice in Argentina”. This started to set the trend for what has happened in this field, but also in terms of the desire for healing and reconciliation- these increasing demands have placed huge expectations on TRCs.

*Dr Emilio Crenzel, National Council of Scientific Research (CONICET) and Faculty of Social Science in University of Buenos Aires, Argentina*

**The Argentinean Experience**

The Argentinean Commission was designed to address the political conflict and the forced disappearances that developed out of the state’s determination to exterminate its opponents. An amnesty law was created in 1983 in order to be able to address past abuses and avoid their recurrence, and also to keep the focus on forgiveness and peace building rather than retribution.

Interestingly, the Commission’s name excludes the word ‘reconciliation’ although it was the first of its kind. It was called the National Commission on the Disappearance of Persons (CONADEP, from its Spanish name Comisión Nacional sobre la Desaparición de Personas) The Report was called “Nunca Más” (Never Again) and developed out of the determination “that the horror should not be repeated”. In addition to the Commission and testimonials, there were trials of some guerrilla and political leaders. Around 9,000 people ‘disappeared’, but there is little information about them. The blame is placed solely on the dictatorship as opposed to the responsibility of the political community. The reports do not
explain the horror, and there is a lack of reference to cultural values or how to ensure this would not be repeated.

Challenges of the Report
The “Nunca Más” report confronts the amnesty law where “reconciliation” was based on impunity. There have been many translations of the report in various languages, and it is seen as a model for other Latin American Truth Commissions regarding their own respective dictatorships. However, various actors have presented differing ideas about justice and criminal actions that are not always in accordance with the objectives of human rights organizations. Many believe what happened “cannot be reduced to a single interpretation”, which results in problems and challenges for genuine change in the society.

Memory and the transmission of memory were part of the movement for advancing for change and an examination of the past in the 1990s, which incorporated a broader framework, as opposed to just the dictatorship period. Although there are testimonies, there is little attempt to historicize the past and little responsibility has been attributed to political actors. The successes that have been made possible in regards to the truth commission and trials, are due to the mobilization and actions of the human rights movement.

Still, there are lessons that can be taken for practitioners of transitional justice. First, it demonstrates the importance of constructing a public truth about the crimes as soon as possible, immediately after the fall of state terrorism, oppressive regimes or the end of civil wars. Second, it illustrates that, despite distrust and problematic institutional and political contexts, governments and human rights organizations can collaborate in this process. Such collaboration can be productive in terms of unearthing new knowledge and can serve as a counterbalance to the tendency of post-dictatorship or post-oppressive regimes to limit the scope of the truth. The presence of the human rights organizations within CONADEP also demonstrates that the possibility of objectively presenting violations is not thwarted by the involvement of those whose principal goal is to advocate for human rights. Third, it reveals that the investigation of the truth may constitute a pre-judicial instance necessary to trying the crimes in court. Fourth, the process reinforces the notion that truth constructed in legal terms tends to exclude the historicisation of violence, the conflicts that triggered it and the political commitments of those who suffered it. Finally, in analytical terms, the Argentina experience sheds light on how the usual classification of official and unofficial truth commissions can eclipse the actual relations established between government and human rights organizations and other civil society organizations.

Dr. Marjorie Jobson, National Director, Khulumani Support Group: South Africa
Trendsetting: The South African Truth and Reconciliation Commission
The year 2014 will be the 20th anniversary of the progress to democracy in South Africa; however, there is concern about the unraveling of this democracy as some of the politicians who had been central to this transition are leaving their posts. As a result, issues of amnesty “have come back to haunt us”. It is for this reason that the Khulumani Support Group was formed, as a reaction against the TRC process which, it was felt, did not fully incorporate the voices of victims. Many women realized that they needed to take part in and lead the change, as opposed to merely being the ‘voices of victims’. It has become apparent that in spite of the TRC, the hopes raised by it have been dashed. However, the TRC was important in opening space and devolving power to the citizens.

Khulumani: A Victims’ Movement
Khulumani is a victims’ movement, and they have built a database on victims’ experiences, as not all who suffered during the crisis period are considered to be ‘victims’ from the perspective of the TRC. This is particularly the case for women and widows. The organization resists the TRC’s limited notion of victimhood and rejected what it saw as then-President Thabo Mbeki’s dismissive approach and contemptuous labels of victimhood. They felt that those who had fought within the country received little reparations, while those who were in exile during the crisis, such as Mbeki, did benefit.

Solidarity with the victims is based on a deepened awareness of human rights frameworks. A start to claiming the right to effective remedies, and granting legitimacy to all who suffered, has been witnessed through deepened and expanded advocacy. There is a need for an expanded understanding of the diversity of suffering and crimes in response to the very narrow and limited one adopted by the TRC.

*South Africa Post-TRC*

In evaluating the TRC from the perspective of victims, these are reactions many share:

- That the TRC has only allowed for a *partial* truth to be uncovered, and that the truth is, in fact, much more complex, nuanced, textured, and is continually constructed by the people
- A failure of justice
- Incomplete, inadequate, and with delayed reparations- what some believe to be ‘unfinished business’
- Incomplete, bifurcated democracy, which works differently for different people/actors

Victim demands are simple:

- For there to be recognition of all victims who meet the TRC criteria
- To not construct or adapt policies regarding victims without their participation
- To create a national archive
- To implement the recommendations made

There is a sense among some of the victims that little has truly changed in South Africa after the TRC. A chairperson of the Representation and Rehabilitation Commission even acknowledged that: “we’re back to where we started- but still I hesitate to present this as a failed project. The TRC has helped us to get an understanding”.

But is this a truly ‘different South Africa’? Gaps include those mentioned and the need for an ‘*indaba*’

1 to generate a common understanding. There is a need for a movement that builds accountability, and “a need to find a way to finish the business of the TRC”. It is critical that the agenda be kept alive, as “locating this responsibility in the department of justice has not been satisfactory”.

*Lessons Learned*

What have we learned from this experience? We have learned that:

- In the transitional justice framework, victims are expected to make sacrifices.
- Truth and justice are mainly driven by states and elites with an eye on the international community.
- There is little opportunity for victim involvement.

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1 A discussion or conference (from Xhosa and Zulu, ‘discussion’). http://www.oxforddictionaries.com/definition/english/indaba
What is important to continually ask is “did we squander these opportunities, or were they stolen from us?” Is this something that has been “lost in transformation”? There are still numerous socioeconomic gaps, inefficiencies and corruption in the political system. In order to retain democracy in the new political authority, some claim the elite sacrificed the interests of the majority. The triple challenges which remain are those of poverty, unemployment, and inequality. There is a need for white adult education about what occurred, and a commitment to social change, otherwise this is but a fragile democracy in South Africa.

We “need to deal with our collective trauma”. The problem is what remains unresolved. True change is necessary as the people are still “searching for a truly post-Apartheid South Africa”, and this will have to involve rebuilding the agency of ordinary citizens.

Beverley Carrick, Executive Director, CAUSE Canada: Sierra Leone

The Sierra Leone Experience

The decades-long civil war took place from 1991-2002, although hostilities continued after 2002. The extent of devastation was massive, with half the population being displaced, and over 75,000 people losing their lives.

Attempts at peace included the Lomé Peace Accord of 1999 which had important provisions such as a campaign to Disarm, Demobilize, and Reintegrate (DDR) former soldiers. Part of DDR entailed collecting weapons, but also opportunities for education and skills training. Reintegration however is incomplete as there remains much unemployment. There were also accountability measures of a Special Court and a Truth and Reconciliation Commission; however victims were not adequately compensated, and it appears that more benefits were granted to the combatants. The DDR was particularly complex in the case of child soldiers, as they were both victims and perpetrators.

The Special Court did lead criminal prosecutions for those deemed to bear the greatest responsibility for crimes committed from 1996 onwards. This included rebel leader Foday Sankoh, and Charles Taylor who was indicted for his involvement in the conflict by the International Criminal Court. Although there were trials and thus some measure of justice, most perpetrators were never tried, casting doubt on the level of justice achieved.

The Sierra Leone TRC

Coming out of the Lome Peace Accords of 1999, the TRC in Sierra Leone followed in the wake of a DDR process and of a special court that aimed to prosecute a narrow group of people. The TRC, for its part, aimed to have an impartial record of violations and abuses that would address impunity, respond to victims’ needs, promote healing and reconciliation, and prevent the recurrence of abuses. This was a broader mandate than for South Africa, and insufficient resources were allocated to it. As a result, the TRC is generally perceived as being relatively successful but lacking in power. Little funding was allocated to the TRC to respond to victims’ needs, with non-governmental organizations (NGOs) working to fill the gap and engaging in acts of restorative justice.

The TRC did have an important impact of on the children, however, when its recommendations included a call to end the recruitment of child soldiers. Furthermore, it promoted attempts to build a culture of peace, with a focus on the reintegration of former soldiers into society.

The TRC did have a number of concrete results, specifically a human rights commission being established within the government in 2004, directly as a result of the TRC’s recommendations. In addition, a new National Child Rights Bill was adopted, based on the International Convention on the Rights of the Child, including the provision of free compulsory education for all children, a promise that has indeed been kept, with many new schools being built and with more girls enrolled in primary school. Another positive
consequence of the TRC has been a focus on business development for youth, as well as a series of recommendations to enhance youth participation in government affairs. Thinking about the effects of the TRC on democratic governance in Sierra Leone, we can see that it has had an impact on human rights, child rights and to some extent women’s rights (in particular with the establishment of equal land ownership rights and the adoption of the Maputo Protocol to end Female Genital Mutilation/Cutting and provide reproductive health services for women). While these gains are important, greater emphasis needs to be placed on effective governance, rule of law and institutions to protect child rights and human rights more generally.

**Discussion**

The discussion following this panel considered whether assessing the success of TRCs as the extent to which they prevent bloodshed is insufficient, and whether they should instead be assessed on the extent to which they engender real societal transformation. The panelists highlighted the fact that the purpose of the TRCs included understanding the causes of past injustice and violence, which should in turn inform societal choices to promote peace in the future. TRCs are thus an important first step: they help to open political spaces, particularly for women, and thus constitute a critical move for addressing gender-specific violence and demanding attention to particular needs and concerns.

Yet we must always be aware of the lingering problem of ‘transitional justice’- are we always in transition? Are there different kinds of justice? When can we say reconciliation has been ‘attained’? Truth and Reconciliation Commissions play a small but critical part in this complex process.

**Panel: The Importance of Civil Society**

**John Tyynela, Moderator and Discussant**

The moderator framed the panel’s purpose as a discussion of the potential and actual roles of civil society in processes of truth and reconciliation, in particular with regards to criticisms of TRCs as being top-down processes, and as a response for a more bottom-up approach.

**Ms Leah Armstrong, CEO, Reconciliation Australia**

Australia

This presentation focuses on what Reconciliation Australia, as a civil society organisation, is doing to inspire and encourage all Australians to contribute to reconciliation, ultimately breaking down stereotypes and discrimination and building a reconciled, just and equitable Australia.

This is a process that has its roots in the early settlement of Australia and what colonialism, dispossession and the subsequent government policies enacted throughout Australia’s development have meant for Aboriginal and Torres Strait Islander people.

Unlike other settler colonial nations, where the British signed treaties with the aboriginal nations, in Australia they signed no treaties and denied Aboriginal ownership of the land under the legal doctrine of *terra nullius* (land belonging to no-one).

It was not until 1992 that this doctrine was overturned, taking the first necessary step towards potential reconciliation. In 1991, the Australian Parliament passed the Council for Aboriginal Reconciliation Act, establishing a statutory authority which aims at improving the relationship between Aboriginal people and the wider community.

"Reconciliation cannot be taken for granted. It is not a feel-good word that can be bandied around lightly, or be co-opted to obscure the need for restorative justice. (...). The past is not going to be forgotten or forgiven. Its reconciliation will come when governments stop trying to make us the same as everyone else."- Prof. Patrick Dodson, Foundation Chair of the council for Aboriginal Reconciliation.
The Council has three main goals:

• To achieve recognition and respect for the unique position of Aboriginal and Torres Strait Islander peoples through a national document of reconciliation and by acknowledgment in the Australian constitution
• To form partnerships to achieve social and economic equality
• To encourage and support people’s movement for reconciliation to achieve justice and equality for all, beyond the life of the council.

The Council’s report included a recommendation to establish an independent non-profit organisation to carry own the Council’s work and in 2000, Reconciliation Australia was founded. It has a simple vision: that everyone should work towards a reconciled, just and equitable Australia. This is to be achieved by working to build an environment for change, bringing down barriers through building strong relationships, building respect, recognition and understanding, and improving the life opportunities for Aboriginal and Torres Strait Islander peoples.

Reconciliation Australia’s key audience is non-indigenous Australians, whom they reach through workplaces, schools and social communities such as sports/arts clubs and churches. A vital tool is the Reconciliation Action Plan (RAP), which helps organisations outline practical actions they will take to build strong relationships and enhanced respect, turning their good intentions into concrete actions. One of the important effects of these action plans has been a significant change in attitudes among non-indigenous Australians in organisations with RAPs – a large survey shows them to be less prejudiced, more likely to trust indigenous peoples and more likely to be proud of indigenous cultures than other Australians.

Australia’s experience shows that reconciliation is not only the responsibility of governments, but of all, with civil society organisations having the opportunity to be trusted independent voices. But we must remember that reconciliation is not a silver bullet, it is only part of a broader process that must include national and local media, as well as political leadership.

**Dr Katy Radford, Institute for Conflict Research**

**Northern Ireland**

Following the Good Friday Agreement of 1998, Northern Ireland has struggled to achieve reconciliation through the Victims Order, a series of cease fires, the Commission for Victims and Survivors, also known as the Victims’ Forum, instituted in 2008, and the Consultative Group on the Past (2009). It is a struggle because people are still killing each other. Furthermore, one of the challenges of truth commissions is that they are mandated only to investigate certain crimes during a particular period of time. In Northern Ireland, a truth recovery program has additional challenges, because political instability is ongoing for many communities, and there is a lack of consensus around the language used to deal with the legacy of violence: Victims or perpetrators? Combatants or paramilitaries? Conflict, War or Troubles? North of Ireland or Northern Ireland?

But there are many other barriers to engagement, beyond the issues of language, as it is unclear to what extent key actors are ready to engage in a complete, sincere and accountable truth or acknowledgement process.

Focusing on the importance of civil society in these processes, Northern Ireland has a strong tradition of an active Third Sector, concentrated on service delivery, providing assistance with health and social care as a gateway to truth recovery mechanisms, as well as acknowledgement. The Institute for Conflict Research provides action-based research, community development, training workshops and site visits. This is intended to address issues of culture, citizenship, memory, identity and commemoration, seeking to support the creation of dialogue spaces, allowing for the discussion of ethics and values in safe and
discursive spaces. A number of different truth recovery initiatives and strategies have been identified outside the legal processes, including storytelling, oral history work, visual and performance arts, as well as inter-community interactions. These processes of truth recovery demonstrate the importance of civil society in the promotion of remembering in a constructive way: “making sense of the past apart”. The remaining challenge is “making sense of the future together”, in a context where such a prospect is not yet clear in the collective imagination.

Dr Marcia Esparza, John Jay College of Criminal Justice
Guatemala

Considering TRCs from a post-colonial studies perspective rather than a transitional justice paradigm, Dr Esparza discussed the case of Guatemala, where heinous atrocities were committed against indigenous peoples. The Truth Commission in Guatemala, notably, did not include the notion of reconciliation. It is important to understand the historical context in that country, where indigenous peoples comprise the bulk of the rural peasantry and continue to survive on the fringes of subsistence economies, tied to the soil by “labor-repressive systems”. Guatemala is ruled by a non-indigenous right-wing oligarchy known as Ladinos claiming European ancestry. During the Cold War, Guatemala experienced a bloody and prolonged civil war from 1962 to 1996, in which the state’s idea of an “internal enemy” expanded to include any group that opposed the government or pressed for change.

As part of the peace process, in 1994 there was an agreement to establish a “Commission to Clarify Past Human Rights Violations and Acts of Violence which have caused the Guatemalan Population to Suffer” – this gave rise to the Guatemalan Truth Commission (TC). Its mandate involved making calls for testimony around the country, while also investigating broader issues such as the crucial land ownership question.

The TC concluded that the state had carried out acts of genocide, with over 200,000 people murdered, 50,000 disappeared and thousands tortured and raped. The TC also found that 83% of the victims (or survivors, as many prefer to be called) were unarmed peasant Maya, and that 93% of all human rights violations were committed by the state.

As part of her work for the TC, Dr Esparza conducted ethnographic work in the region of Chichicastenango. She found that although massacres occurred throughout the region under study, only people living East of the highway testified to the TC, likely because there were more “civil patrols” (so-called “self-control” patrols which have been referred to as paramilitary, although they were arguably directly incorporated into the army) on that side of the road, and they had remained loyal to the military. Those who did testify were mostly poor peasants, usually women, who expressed a desire to break the silence.

Discussion

The discussion following this panel revolved around the continued injustices in Guatemala and Northern Ireland in particular, and the challenges these pose to both acknowledgement and reconciliation. It also highlighted the dual efforts that need to be made to work towards a reconciliation both between society and the state, and among different communities. The role of civil society, and in particular of organised civil society actors in achieving this, was again highlighted by the panelists, as well as the possibility of a role for international civil society to contribute positively to these processes.

Panel: Experiences “without TRCs”

Oskar N.T. Thoms, Moderator and Discussant
While both countries represented in this panel did have TRCs, perhaps this is not widely known because both experiences were imperfect. It is important to consider the debates around transitional justice, its meaning and its potential effects. While some suggest that transitional justice processes have tangible positive impacts, such as promoting psychological healing, improving respect for human rights or constructing the basis for reparations, skeptics argue that such processes can in fact undermine peace and provoke demands for retribution against perpetrators of past injustices. Research on this topic is still emerging, with some evidence that TRCs have the most positive effects when they exist in combination with other transitional justice mechanisms.

Dr Aldo Marchesi, Universidad de la República (Montevideo, Uruguay)

Uruguay

This presentation focused on considering the local context and therefore the local meaning of the notions of truth, justice and reconciliation in Uruguay in the aftermath of the military dictatorship in that country (1973-85). A crucial characteristic of the transition was that it was negotiated – it began with a declaration of amnesty for the political prisoners of the dictatorship in 1985, and was followed by a preemptive amnesty law to protect from prosecution the members of the army who might be accused of committing political crimes. These crimes were not minor – there had been 7000 political prisoners in a country with 3 million inhabitants (in prisons notorious for the practice of torture), 147 people were disappeared, over 50 thousand people went into exile and thousands of public employees were fired from their jobs.

The amnesty laws were adopted under the guise of promoting “reconciliation”. As a result, the notion of “reconciliation” became synonymous with “silence” and “forgetting” and so, in a real sense, it became an antonym for “justice”. The social movements (of students, labour unions, human rights organisations and many traditional leftist parties) who had struggled against the dictatorship saw this law as a betrayal of the democratic transition. The elites, however, were more concerned with ensuring stability.

Two referendum-based attempts to revoke the law (in 1989 and 2009) were defeated, and a 2011 attempt by the legislature was declared unconstitutional by the Supreme Court. Hence the notion of “justice” was also eroded: only about 20 perpetrators were convicted, and that only through the inventive use of certain loopholes in the amnesty law; popular sovereignty (the referenda) rejected efforts to bring the perpetrators to trial, and justice was further limited by the statute of limitations as understood by the Supreme Court, such that crimes committed under the dictatorship are no longer liable to prosecution.

In terms of “truth”, two TCs took place, in 2000-2004 (the Peace Commission) and 2005-2009 (the Historians’ Report). This was also what could be termed a “truth by negotiation”, in response to resurgent social mobilisation since the mid-1990s that demanded truth while accepting the limits of justice. This search for “truth” was focused primarily on understanding what had become of the disappeared, and so did not include the fate of the political prisoners, or torture as a systematic state practice.

Uruguay therefore dealt with a legal, rather than a historical truth. The reports did not assess the political and economic conflicts and transformations that are the legacy of the dictatorship. And there is a case to be made that there is some continuity between the treatment of political prisoners under the dictatorship and the treatment of all prisoners in the present. After the search for truth and the vows of “never again”, the question remains: “never again... for whom?”

Dr. Njonjo Mue, Program Advisor to Kenyans for Peace, Truth and Justice (KPTJ)

“Libertad Penitentiary was an infamous symbol of torture and ill-treatment during the military dictatorship, and 20 years later, with a democratic Government in place, it is renowned for its subhuman conditions, in clear contravention of international standards.”

– Manfred Nowack, UN Human Rights Report on Uruguay, 2009
In February 2008, following widespread violence after a disputed presidential election, Kenya officially joined the ranks of countries seeking to transition from authoritarianism or repression to democracy. Although the debate as to whether Kenya needed to reckon with past human rights violations had been ongoing since 2003, it was the post-election violence which took Kenya to the brink of civil war in early 2008 and claimed the lives of 1,133 people and displaced half a million others that sufficiently concentrated the minds of the political elite to accept a raft of agreements in the name of the Kenya National Dialogue and Reconciliation process. This formed the framework for Kenya’s transitional justice agenda.

This agenda included: the need to stop the then ongoing violence; to address the resulting humanitarian crisis; to overcome the political crisis through a power-sharing agreement, and to address long term issues such as constitutional reform, youth unemployment, poverty, regional inequality and transparency and accountability improvement. There was also an agreement to establish a Commission of inquiry into Post-Election violence (CIPEV) and an Independent Review of Elections Commission. CIPEV found sufficient evidence of crimes against humanity which were eventually taken over by the International Criminal Court (ICC), and the indictment of four prominent Kenyans from both sides.

There was also an agreement to form a Truth, Justice and Reconciliation Commission (TJRC) whose mandate would include investigations of human rights violations dating from independence in 1963 to February 2008, when the Accord was signed. The TJRC is widely seen as the “poor cousin” of the transitional justice agenda, since the focus was mainly on power-sharing, CIPEV and the ICC.

The process establishing the TJRC was widely criticised in large part because it did not allow for the participation of many stakeholders, in particular civil society organisations. Further, the selection of commissioners was plagued by controversy leading to numerous delays, which ultimately eroded public confidence in the Commission’s work.

With a very broad mandate, the TJRC collected over 40 thousand statements during a five month period and received more than 1500 memoranda from individuals, groups, associations and communities. It also held over a one year period and in various parts of the country, in addition to thematic hearings on access to justice; economic marginalization and minorities; land; armed militia groups; prisons and detention centres; torture; ethnic tensions and violence; the 1982 attempted coup; security agencies, extra-judicial killings and massacres; persons with disabilities (PWDs); women; children; internally displaced persons (IDPs); and political assassinations. The TJRC’s mandate was too broad, especially when compared to the resources it could count on.

The final report was submitted in May 2013, and so far nothing has come of it, other than Parliament giving itself the right to amend the report’s findings.

Lessons from Kenya

- There was no ‘transitional moment’: a new constitution was adopted by the same elites that remained in power, and there is therefore little enthusiasm for transitional justice processes.
- The parallel processes of the TJRC and the ICC prosecutions, while not inherently problematic, highlighted the political elites’ desire to shield the accused at the ICC by including their cases in the TJRC, thus tainting the Commission’s reputation by presenting it as a mechanism to whitewash the crimes of the past and other historical injustices.
- The lack of transparency in both the TJRC Act and in the selection of commissioners led to a boycott of the process by civil society organisations, thus robbing it of critical support, expertise and public ownership.

Discussion
The discussion following this panel covered the effects of tribal politics in Kenya and their potential for undermining buy-in for the process, which was considered to be less significant than the elites’ refusal to deal with the past and their purposeful attempts, as a result, to weaken the process of the TJRC. The puzzle of popular support for the amnesty law in Uruguay was also raised. The conversation highlighted the importance of the local meaning of the terms used as a possible explanation, where reconciliation is seen as closing the door on the past.