

From Truth to Reconciliation

The Global Diffusion of Truth Commissions

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On April 14 to 15 in 2011, an international conference took place in Tunis under the topic “Addressing the Past, Building the Future: Justice in Times of Transition”.¹ This conference was hosted jointly by different non-governmental organizations (NGOs) as the Arab Institute for Human Rights, the International Center for Transitional Justice (ICTJ) and the Tunisian League for Human Rights in cooperation with the United Nations Office of the High Commissioner for Human Rights and with support from the Open Society Foundations. Besides discussions on criminal justice and security sector reforms, truth commissions were a major topic. José Zalaquett, a former member of the Chilean National Truth and Reconciliation Commission, gave insights into the Latin American experiences and mentioned the need for implementing measures such as truth seeking. Priscilla Hayner, founding member of the non-governmental International Center for Transitional Justice and currently a Senior Adviser at the Centre for Humanitarian Dialogue, was invited to talk about the Argentine truth commission. Together with Tawfik Boudierbla, the President of the Tunisian “Committee for Investigating the Truth on the Violations During the Last Events”, a commission of inquiry on the human rights violations during the revolution, she discussed the establishment of a truth commission for dealing with the

1 See for the conference report <http://tjtunis.blogspot.com/>, accessed June 2011.

long-lasting dictatorship, highlighting the importance of looking into the broader context of human rights violations.

This recent event demonstrates that truth commissions have obviously become a well-known and widely recognized tool for dealing with past regime crimes after political transitions. With the support from NGOs and even from the United Nations, international experts advise countries in political transition in establishing a truth commission by sharing their experiences with the national political elite and civil society activists.

Yet, truth commissions were firstly recognized as a particular phenomenon in the realm of transitional justice research only a little more than fifteen years ago.² With the breakdown of Latin American military dictatorships, the question of how to deal with past regime crimes drew attention of political actors, NGOs, and the academia. It led to the rapid development of transitional justice as both, practice and research. Besides questions of legal prosecution or amnesty, another emphasis was put on the “right to know” and the acknowledgement of committed crimes via truth commissions.

Since the 1980s, about 40 truth commissions³ have been established worldwide to uncover the truth about past human rights violations in order to bring reconciliation to societies after violent conflict and repression. The definition of a particular practice of dealing with past crimes as a “truth commission” and its establishment in various countries as well as international demands for truth commissions after political transitions demonstrate that truth commissions have become recognized as an adequate solution to national past politics.

In this context, I am addressing truth commissions as a global phenomenon. I will shed light on the question why truth commissions are estab-

2 Priscilla B. Hayner, *Fifteen Truth Commissions – 1974 to 1994: A Comparative Study*, *Human Rights Quarterly*, 16 (1994), 597-655.

3 I draw on data collected by Priscilla Hayner, Mark Freeman, Geoff Dancy et al., and the United States Institute of Peace. Priscilla B. Hayner, *Unspeakable Truths: Facing the challenge of truth commissions* (London and New York: Routledge, 2011); Mark Freeman, *Truth Commissions and Procedural Fairness* (New York: Cambridge University Press, 2006); Geoff Dancy, Hunjoon Kim and Eric Wiebelhaus-Brahm, *The Turn to Truth: Trends in Truth Commission Experimentation*, *Journal of Human Rights* 9, 1 (2010), 45-64; <http://www.usip.org/publications-tools/digital-collections>, accessed June 2011.

lished across the world *although* in every country the political conflict, the level of violence or the cultural environment differ distinctively from the situation in other countries. I draw attention to the institutionalization and global diffusion of a specific cultural practice of coming to terms with the past, which we can find as an empirical fact in many countries all over the world *independent* of a particular cultural background or political conflict. In other words, I will not attempt to answer why sometimes truth commissions are established and sometimes they are not. Nor do I focus on the specific cultural or political context in which a particular truth commission has been set up. Instead, I ask why have truth commissions become globally accepted as a legitimate standard tool in the transitional justice repertoire? This approach differs from most of the extensive research literature on transitional justice and truth commissions, which has focused mainly on questions of national past politics and its effects on national democratic consolidation. In order to answer this question, I will proceed in four steps. First, I will introduce truth commissions as a transitional justice standard as well as an object of transitional justice research. I will provide some insights into what truth commissions are and what they do. Secondly, I will take a closer look on the history of truth commissions, the process of their institutionalization as a well-known standard of transitional justice and their global diffusion. In a third step, I will highlight the formation of an epistemic community as the promoter of truth commissions. I will conclude by discussing the expectations related to truth commissions and the rationale they provide in the context of their institutionalization as a widely recognized answer to gross human rights violations.

TRUTH COMMISSIONS IN TRANSITIONAL JUSTICE RESEARCH

With the breakdown of Latin American dictatorships, the question how to deal with past regime crimes in the context of democratic consolidation became a prominent issue. In the years of military dictatorships in Latin America, a widespread network of human rights activists developed that collect-

ed information in particular about the “disappeared”⁴ and worked on drawing public attention to the massive human rights violations.⁵ Now, after the collapses of the Latin American autocratic regimes, human rights activists, who had already demanded to stop and investigate *current* human rights violations for many years, turned their claims towards the disclosure of and accountability for *past* regime crimes, which in many cases had been committed already years ago.⁶ A new political issue surfaced that became known as transitional justice. With the breakdown of the Soviet Union and its satellite states and, furthermore, with the overcoming of the apartheid regime in South Africa, the geographic scope of transitional justice also expanded beyond Latin America.

Transitional justice comprises a wide range of different practices of dealing with past regime crimes. However, here I will focus on one particular practice of transitional justice that has spread across the world since the 1980s. Along with special courts – such as the International Criminal Tribunal for former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)⁷ or most prominently the International Criminal Court (ICC) in The Hague⁸, truth commissions have become of major interest in the research on transitional justice procedures.⁹ According to Hayner and Freeman, truth commissions are officially established by a presidential or royal decree, a parliamentary decision, or a peace agreement, but exist only for a limited time. They consist of several commissioners who range

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- 4 The “disappeared” are persons who were kidnapped by the regime without any official notice and then never reappeared.
 - 5 Kathryn Sikkink, Human rights, principled issue-networks, and sovereignty in Latin America, *International Organization* 47, 3 (1993), 411-441.
 - 6 Paige Arthur, How “Transitions” reshaped Human Rights: A Conceptual History of Human Rights, *Human Rights Quarterly* 31, 2 (2009), 321-367.
 - 7 Rachel Kerr and Eirin Mobekk, *Peace and justice: Seeking accountability after war* (Cambridge: Polity Press, 2007).
 - 8 William A. Schabas, *An introduction to the International Criminal Court* (Cambridge: Cambridge University Press, 2001).
 - 9 *Truth v. justice: The morality of truth commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000); Freeman, *Truth Commissions*; Hayner, *Fifteen Truth Commissions*; Hayner, *Unspeakable Truths*.

from politicians to human rights activist or even churchmen. They are supported by a staff providing technical support for the investigations and in some cases even psychological assistance to the victims.¹⁰

Truth commissions differ significantly from courts. Instead of judicially proving individual responsibility of single perpetrators,¹¹ truth commissions try to draw as complete a picture as possible of the extent of serious human rights violations and their structural background. By writing up the truth in an end report, truth commissions construct a historical narrative about the past as well as about their own role in overcoming it. This collective narrative shapes the understanding of the past by contributing to the collective remembrance of it.¹² Truth commissions thus take part in the formation of a new collective identity by constructing an “imagined moral community”¹³ which is based on a clear normative demarcation from the past.

Courts legitimate their actions by referring to (international) law; truth commissions as non-judicial organizations do not have this kind of legitimation. Regarding the question of legitimacy, the global acceptance of truth commissions as an appropriate means for transitional justice becomes an empirical puzzle. On which grounds are they expected to be a legitimate answer to gross human rights violations besides the courts? To tackle this puzzle, I will sketch out the historical process in which truth commissions emerged and how they became institutionalized as a widely accepted transitional justice standard.

10 Priscilla Hayner, Truth Commissions, in: *Encyclopedia of Genocide and Crimes Against Humanity*, vol. 3, ed. Dinah Shelton (Detroit: Thomson Gale, 2004), 1045-1047; Freeman, *Truth Commissions*.

11 Every truth commission has found its own way of dealing with the problem of accountability. While some truth commissions collaborated with the courts, others published the names of perpetrators in their final reports. Some truth commissions were not allowed to attribute individual guilt.

12 Molly Andrews, Grand national narratives and the project of truth commissions: a comparative analysis, *Media, Culture and Society*, 25, 1 (2003), 45-65.

13 Tanya Goodman, Performing a “new” nation: The role of the TRC in South Africa, in: *Social Performance: Symbolic Action, Cultural Pragmatics and Ritual*, ed. Jeffrey C. Alexander et al. (Cambridge: Cambridge University Press, 2006), 169-192, here: 176.

THE GLOBAL DIFFUSION OF TRUTH COMMISSIONS

The first official truth commission was established in Bolivia in 1982. It was inspired by an unofficial commission of inquiry in Brazil that had been established by the archdiocese of Sao Paulo under the military dictatorship in 1979 in order to collect information about the disappearances of civilians. In contrast to the Bolivian truth commission, which never published an end report, the first truth commission that finished its work by handing over a final report to the government was held in Argentina in 1983. Although the *Comisión Nacional sobre la Desaparición de Personas* (National Commission on the Disappeared, CONADEP) was contested to some extent, because it was not allowed to publicly name individual perpetrators,¹⁴ its end report called *Nunca más* (Never again) became a national bestseller and founded the “literary genre of truth reports”.¹⁵ In 1985, another Latin American truth commission was established by the Uruguayan parliament. As in the case of its predecessors, it was set up in order to find out the fate of the “disappeared”.

The first African truth commission took place in Uganda after the regimes of Idi Amin and Milton Obote in 1986.¹⁶ With the financial support of the Ford Foundation, which sent the Chilean human rights activist José Zalaquett to assist the commission in 1987, this truth commission finally published an end report in 1994.¹⁷ Already before, in 1974, the Ugandan

14 But the names leaked through and were published by the media. Ruth Fuchs and Detlef Nolte, *Die Aufarbeitung von Regimeverbrechen und der Demokratisierungsprozess in Lateinamerika: Argentinien und Chile in vergleichender Perspektive*, in: *Nach Kriegen und Diktaturen – Umgang mit Vergangenheit als internationales Problem: Bilanzen und Perspektiven für das 21. Jahrhundert*, ed. Alfons Kenkmann and Hasko Zimmer (Essen: Klartext, 2005), 29–48.

15 Anika Oettler, *Einmal „nunca más!” und nie wieder? Die Dynamik der historischen Aufklärung in Argentinien und Guatemala*, in: *Bilder nach dem Sturm: Wahrheitskommissionen und historische Identitätsstiftung zwischen Staat und Zivilgesellschaft*, ed. Christoph Marx (Berlin: Lit, 2007), 36–73, here: 40. All translations in this article were made by the author.

16 Hayner, *Unspeakable Truths*, 239–240.

17 <http://www.usip.org/publications/truth-commission-uganda-86>, accessed June 2011.

president Idi Amin had established a commission of inquiry into the disappearances of people in Uganda. Some refer to this commission as the first truth commission.¹⁸ But the results were neither published nor did Idi Amin have to face any consequences. He was in power before and after the commission took place. Instead, the members of this commission had to face serious consequences afterwards such as trials or even assaults.¹⁹

In the literature, the Nepalese Commission of Inquiry to Locate the Persons Disappeared during the Panchayat Period has also been integrated into the collection of truth commissions.²⁰ Like in the first Latin American and African Commissions, it was set into office in early 1990 to disclose information about the persons who “disappeared” under the Panchayat Regime from 1961 until 1990.

These first cases show that fact-finding about the “disappearances” became a major concern in the political transformation processes of the 1980s. To collect information about this secretly performed practice and to acknowledge its victims became a substantial factor for the credibility of the new political elite. While the consequences of judicial prosecution were discussed controversially, “the right to know” emerged as a widely shared assumption about what should be done about past crimes.²¹

In 1990, another Latin American truth commission, the Chilean *Comisión Nacional de Verdad y Reconciliación* (National Truth and Reconcilia-

18 Hayner, *Fifteen Truth Commissions*; Hayner, *Unspeakable Truths*; Lutz Niethammer, *Wahrheitskommissionen im Vergleich*, in: *Bilder nach dem Sturm*, 15-35. For critical comments, see Freeman, *Truth Commissions*.

19 Hayner, *Fifteen Truth Commissions*, 612.

20 <http://www.usip.org/resources/commission-inquiry-nepal-90>, last accessed June 2011. The United States Institute of Peace (USIP) does not consider the Nepalese commission to be a truth commission but a commission of inquiry. Hayner, *Unspeakable Truths*, Dancy et al., *The Turn to Truth*, and Freeman, *Truth Commissions*, instead define this commission as a truth commission.

21 Gloria Park, *Truth as Justice: Legal and Extralegal Development of the Right to Truth*, *Harvard International Review* 31, 4 (2010), <http://hir.harvard.edu/bigidea/truth-as-justice?page=0,1>. Park talks about the “right to truth”. I will use instead the “right to know” because this term has been used by the United Nations in the Joint-Report on transitional justice. UN document, Economic and Social Council, E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997.

tion Commission), was set into office by a presidential decree of newly elected president Patricio Alwyn. It was the first truth commission that called for “truth” and “reconciliation” already in its title. Human rights activist José Zalaquett was appointed as a member of this commission that was chaired by the politician Raúl Rettig. When the truth commission was established, the country was still in a tense political situation, because former dictator Augusto Pinochet continued to be the supreme commander of the military forces. To underline its credibility and to foster public as well as political acceptance, President Aylwin distributed the appointment of the commissioners equally among the opponents of the Pinochet regime and its supporters.²² In contrast to its predecessors, this truth commission’s mandate included more than disclosing the truth about the “disappeared”. Against this volatile political backdrop, the Chilean truth commission was supposed to reach towards a collectively accepted picture of the past and the origins of the dictatorship.²³

By signing the UN brokered peace agreement in 1991, the government of El Salvador and the guerilla organization *Frente Farabundo Martí para la Liberación Nacional* (FMLN) agreed to establish a truth commission for El Salvador. Referencing the Argentine and Chilean examples, the end report from El Salvador declared that in order to guarantee the commission’s sovereignty only international commissioners should be appointed.²⁴ Against this backdrop, the UN Secretary-General Boutros Boutros-Ghali announced former Colombian president Belisario Betancur, former president of the Inter-American Court of Human Rights Thomas Buergenthal and former Venezuelan minister of foreign affairs Reinaldo Figueredo Planchart as commissioners of the *Comisión de la Verdad para El Salvador* (Truth Commission for El Salvador).²⁵ It was the first time that the United

22 Guido Klumpp, *Vergangenheitsbewältigung durch Wahrheitskommissionen: Das Beispiel Chile* (Baden-Baden: Nomos, 2001).

23 *Decreto Supremo* No. 355 on the establishment of the *Comisión Nacional de Verdad y Reconciliación*, 25 April 1990.

24 UN Security Council, *From Madness to Hope: the 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador*, S/25500, 1993, Annex, 12.

25 Wolfgang Pasternak, *Wahrheitskommissionen: Dargestellt an den Beispielen von El Salvador, Guatemala und Südafrika* (Aachen: Manz, 2003), 58.

Nations took part in the establishment of a truth commission. Their engagement shows that already in the early 1990s an international awareness of this particular practice of coming to terms with the past had emerged. The references to the Argentine and the Chilean example underline that national transitional justice practices had been recognized as being transferable to other countries in transition to democracy. Truth commissions became thought of as a viable solution to assist peaceful and democratic consolidation.

In 1992, the German parliament established the *Enquête-Kommission zur Aufarbeitung von Geschichte und Folgen der SED-Diktatur in Deutschland* (Enquête Commission for the Inquiry into the History and Consequences of the Socialist Dictatorship in Germany). The parliament drew on a pre-existing instrument for advising the parliament in complex political, economic or social affairs.²⁶ Germany was the first country to establish a truth commission although trials had already taken place before. However, the results of these trials had caused disappointment especially among former GDR human rights activists.²⁷ Legal restrictions posed a problem to sanctioning officially committed regime crimes.²⁸ Markus Meckel and Martin Gutzeit, the co-founders of the GDR social democrats in October 1989, initiated an officially sanctioned *Enquête-Kommission*, which was then estab-

26 Christian Heyer and Stephan Liening, *Enquete-Kommissionen des Deutschen Bundestages: Schnittstellen zwischen Politik und Wissenschaft* (Berlin: Deutscher Bundestag, 2004). It is important to note that an *Enquête-Kommission* differs significantly from a commission of inquiry, which is another parliamentary investigation instrument. It has no judicial powers. Instead, besides politicians, external experts are also members of this commission and serve to provide broad knowledge about a particular issue. Commissions of inquiry instead are designed to focus more specifically on singular events. For a further distinction of truth commissions and commissions of inquiry see <http://www.usip.org/publications/truth-commission-digital-collection>, accessed June 2011.

27 Petra Bock, Von der Tribunalidee zur Enquete-Kommission. Zur Vorgeschichte der Enquete-Kommission des Bundestages "Aufarbeitung von Geschichte und Folgen der SED-Diktatur in Deutschland", *Deutschland Archiv* 11 (1995), 1171-1182.

28 Klaus Marxen and Gerhard Werle, *Die strafrechtliche Aufarbeitung von DDR-Unrecht: Eine Bilanz* (Berlin: de Gruyter, 1999).

lished unanimously by all parties in the Bundestag. Like in other countries before, it was mandated to disclose the structural circumstances of the socialist dictatorship and the individual suffering of the victims in order to come to a clearer picture of the communist past, to acknowledge its victims and to strengthen a democratic political culture.²⁹ The establishment of the German Enquête-Kommission thus presents truth commissions not only as an appropriate solution for dealing with the past, but also as an expedient addition to trials.

To date, the South African Truth and Reconciliation Commission (TRC) has been the most prominent truth commission. It was established by the Promotion of Reconciliation and National Unity Act of 26 July 1995 and chaired by Arch Bishop Desmond Tutu. Human rights activist Alex Boraine became the deputy chairperson. Although, the South African concluding report also refers to Argentina and Chile as two examples of truth commissions,³⁰ the TRC had some unique features. It was the first commission that had the power to grant amnesties in cases of an extensive confession. Yet, the underlying mission of the TRC was even more important. Tutu emphasized “reconciliation” achieved by “forgiveness” as the main goal of the commission in reaching for the “rainbow nation”.³¹ The public hearings of this commission were therefore not only designed to educate people about the severe and structural human rights violations during the apartheid regime but also as a public arena for the collective catharsis of the South African people.³²

29 Andrew H. Beattie, An Evolutionary Process: Contributions of the Bundestag’s Inquiries into East Germany to an Understanding of the Role of Truth Commissions, *International Journal of Transitional Justice*, 3, 2 (2009), 229-249; Anne K. Krüger, “Keine Aussöhnung ohne Wahrheit”: Die Enquête-Kommissionen zur “Aufarbeitung” und “Überwindung der SED-Diktatur”, in: *Nach Krieg, Gewalt und Repression: Vom schwierigen Umgang mit der Vergangenheit*, ed. Susanne Buckley-Zistel and Thomas Kater (Baden-Baden: Nomos, 2011), 131-149.

30 Truth & Reconciliation Commission of South Africa, *Report*, Vol. 1 (London and New York: MacMillan, 1999), 111-112.

31 Desmond Tutu, *No future without forgiveness* (New York: Doubleday, 1999).

32 Martha Minow, *Between vengeance and forgiveness: Facing history after genocide and mass violence* (Boston: Beacon Press, 1998).

This brief and only partial overview of first truth commissions demonstrates already that – despite different cultural, political, and societal backgrounds – this transitional justice practice has become widely accepted as a legitimate solution to the problem of how, after political transitions, to deal with systematic human rights violations committed by a former regime or during a civil war. In the initial phase in the 1980s, first commissions emerged defining their goals and their means in a similar way. They emanated from the concern, shared across national borders, about the fate of “disappeared” relatives and friends. In a second phase in the early 1990s, this kind of dealing with past human rights crimes was recognized as a possible option for transitional justice. Truth commissions enlarged their focus from individuals towards the structural and historical background; their task developed into drawing an exhaustive picture of the past crimes and their context. Furthermore, truth commissions were installed via peace agreements under the auspices of the United Nations. Moreover, even where trials had already been held before, truth commissions were established in addition. With the establishment of the South African Truth and Reconciliation Commission, the institutionalization of truth commissions as a recognized transitional justice standard had reached its crucial point. The huge national and international public attention to the TRC and its professionally organized outreach made this commission a referential point or even a prototype for future truth commissions. Today, we can find truth commissions all over the world in Asian countries like South Korea or Timor Leste, in Islamic countries such as Morocco, in ex-Yugoslavian Serbia and Montenegro. And also in Latin America and Africa, further truth commissions have been set into office. Thus, truth commissions have developed from a tool to publicly disclose information about the “disappeared” towards a widely applied practice of dealing with past crimes and their structural background in order to account responsibility to the culprits and to acknowledge their victims.

This brief overview of the global diffusion of truth commissions has also shown that in many cases truth commissions have built on the experiences of earlier commissions. In order to better understand these transnational processes, it is necessary to focus on actors and organizations that have contributed to the worldwide spread of truth commissions.

PROMOTING TRUTH COMMISSIONS

During the military dictatorships in Latin America, relatives and friends of “disappeared” persons organized to gather information on the whereabouts of their loved ones. One of the most prominent examples is the Argentine *Asociación de las Madres de Plaza de Mayo*. After the political transition, they claimed that it was indispensable “to understand the truth, otherwise a shadow of sadness will forever hang over the descendants of this shattered generation”.³³ These NGOs pressured the newly elected governments not to ignore the severe human rights violations of the past. They demanded an officially mandated fact-finding about the “disappearances” in order to publicly acknowledge these secretly committed human rights violations as well as to provide assistance to the relatives.³⁴ Members of these NGOs took part in discussions about the establishment of a truth commission. In Bolivia, Carmen Loyola Guzmán even became the executive secretary of the *Comisión Nacional de Desaparecidos*, representing the Bolivian *Asociación de Familiares de Detenidos Desaparecidos y Mártires por la Libertad Nacional* (ASOFAMD), a NGO committed to finding the whereabouts of the “disappeared”.

This NGO was also among the founders of the *Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos* (FEDEFAM). The FEDEFAM was founded in 1982 as a transnational umbrella organization for the investigation on “disappearances” of civilians. In order to exchange information about the kidnappings, these locally founded and then nationally organized groups had started to cooperate with other such groups in neighboring countries already during the military dictatorships. Nowadays, the FEDEFAM has members in many Latin American states, which in most of the cases have also established truth commissions.³⁵

First academic discussions entering the human rights activists discourse on transitional justice date from the 1980s. They centered on questions of

33 Argentina: Self-Amnesty, *Time*, 3 October 1983, <http://www.time.com/time/magazine/article/0,9171,926231,00.html#ixzz1Mb5inDMR>, accessed June 2011.

34 Veit Strassner, *Die offenen Wunden Lateinamerikas: Vergangenheitspolitik im postautoritären Argentinien, Uruguay und Chile* (Wiesbaden: VS, 2007).

35 <http://www.desaparecidos.org/fedefam/>, accessed June 2011.

punishment versus amnesty.³⁶ The crucial question of the discussions was whether punishing the former elite would jeopardize the political stability of (re)nascent democracies.³⁷ Transitional justice³⁸ had to balance the demands for procedural justice on the one hand and the hope for the consolidation and reintegration of society on the other one. Especially the Argentine laws, which stopped the prosecution of perpetrators in 1986, caused major discussions.³⁹ Yet, besides these debates on legal issues, a new way of granting justice to the victims surfaced. Public knowledge and acknowledgement of the committed crimes became recognized as a new form of justice that could help to build a moral foundation for the consolidating democracies. The “right to know” was seen as a necessary precondition for restoring social trust in political institutions and for reintegrating the victims into society.⁴⁰ Nonetheless, disclosing the truth was not regarded to be

36 For a profound discussion of legal prosecution and its potential benefits and consequences see the collection of articles from Aryeh Neier, Jaime Malamud-Goti, José Zalaquett, Diane F. Orentlicher and Carlos S. Nino (among others) in *Transitional justice: How emerging democracies reckon with former regimes*, 3 vols., ed. Neil J. Kritz (Washington, DC: United States Inst. of Peace Press, 1995).

37 Diane F. Orentlicher, ‘Settling Accounts’ Revisited: Reconciling Global Norms with Local Agency, *International Journal of Transitional Justice* 1, 1 (2007), 12-13.

38 The term “transitional justice” itself became prominent in the late 1990s after the publication of the compendium “Transitional justice” in 1995 by Neil Kritz. See Arthur, *How transitions shapes Human Rights*.

39 See the discussion between the lawyer Diane Orentlicher and Carlos Nino who advised Argentine president Alfonsín in his transitional justice policies in Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, *The Yale Law Journal* 100 (1991), 2537-2615; Carlos S. Nino, *The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina*, *The Yale Law Journal* 100 (1991), 2619-2640; Diane F. Orentlicher, *A Reply to Professor Nino*, *The Yale Law Journal* 100 (1991), 2641-2643; Orentlicher, *Settling Accounts Revisited*.

40 Park, *Truth as Justice*.

a trade-off for procedural justice.⁴¹ It rather became recognized as an additional component of transitional justice.⁴²

These academic discussions about accountability, amnesty, and the “right to know” took place in a number of conferences that were held from the end of the 1980s onwards. One of the most prominent conferences was hosted by the Aspen Institute in 1988 under the title “State Crimes: Punishment or Pardon?” against the backdrop of the resurrection of Latin American democracies.⁴³ After the collapse of the Eastern Bloc and the breakdown of the apartheid regime in South Africa, the Latin American discussions on transitional justice were transferred to these countries in transition and their legacies of a repressive past. These conferences were sought to facilitate a transfer of Latin American experiences of dealing with the past to post-socialist countries.⁴⁴ One important conference in this regard was “Justice in Times of Transition” which was organized by the New York based Charta 77 Foundation in Austria in March 1992 and conceptualized as the inaugural meeting of a new transitional justice organization with the same name as the conference title. In the foreword of his “Transitional Justice” compendium, Neil Kritz summarizes his impressions from this conference that inspired him to compile this book:

“In word spoken and unspoken, in skeptical glances and general body language, the Latin Americans and Europeans seemed to be expressing the same thing to one another: the suffering of our people during the old regime and the difficulties resulting from our legacy is far worse than any hardship you endured. Ours is the greater pain;

41 But there was a debate on “truth vs. justice”. See Rotberg and Thompson, *Truth v. justice; The Politics of Memory: Transitional Justice in Democratizing Societies*, ed. Carmen González Enríquez et al. (Oxford: Oxford University Press, 2001); Ellen Lutz, *Transitional justice: Lessons learned and the road ahead*, in: *Transitional justice in the twenty-first century: Beyond truth versus justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 325-41.

42 Arthur, *How Transitions reshaped Human Rights*, 353.

43 Arthur, *How Transitions reshaped Human Rights*.

44 Timothy Phillips, *The Project on Justice in Times of Transition*, in: *The New Humanitarians*, ed. Chris E. Stout (Westport, Connecticut: Praeger Press, 2008), 2-22.

there is little we can learn from your experience. [...] And yet. By day two of the proceedings, there was a gradual but palpable recognition that many of the details and dilemmas were not so different.”⁴⁵

After the breakdown of the apartheid regime in 1994, another important conference was held by the title “Dealing with the Past” in South Africa. It was organized by the Institute for a Democratic Alternative for South Africa and supported by the Project Justice in Times of Transition. At this conference, experts from Argentina and Chile introduced their experiences of a truth commission to South African politicians and human rights activists. Until today, as the Tunisian conference shows, organizations such as the ICTJ or the Project Justice in Times of Transitions hold conferences in order to transfer transitional justice knowledge and experiences to countries in political transition.

Altogether, these conferences facilitated an exchange of experiences as well as the discussion on a broad range of possible ways how to deal with the past after political transitions. This had a strong impact on the worldwide diffusion of transitional justice and in particular of truth commissions. Based on a collectively shared reservoir of knowledge about different organizational forms, procedures, and practices of transitional justice, an epistemic community,⁴⁶ i.e. a network of professionals consisting of practition-

45 Neil J. Kritz, *The Dilemmas of Transitional Justice*, in: *Transitional justice*, xix–xxx, here: xix.

46 Haas defines an epistemic community as “a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area”. Peter M. Haas, Introduction: epistemic communities and international policy coordination, *International Organization* 46, 1 (1992), 3. In the realm of human rights, Keck and Sikkink suggest to talk about transnational advocacy networks instead of an epistemic community. They define transnational advocacy networks as a network of “actors working internationally on an issue, which are bound together by shared values, a common discourse, and a dense exchange of information and services.” Kathryn Sikkink and Margaret E. Keck, *Transnational Advocacy Networks in International and Regional Politics*, in: *International organization and global governance: A reader*, ed. Friedrich V. Kratochwil and Edward D. Mansfield, 2nd ed. (New York: Pearson Longman, 2006), 162–176, here: 162.

ers from the field, academics, politicians, and policy consultants who advised governments or intergovernmental organizations (IGOs) all over the world, started to form. This epistemic community contributed to institutionalizing transitional justice as a widely shared expectation in the context of regime transitions and introduced this paradigm to the United Nations.⁴⁷ Furthermore, this epistemic community also provided members to following truth commissions. Human rights activists like the Chilean José Zalaquett or the South African Alex Boraine became members of truth commissions in their home countries.

Oettler interprets this process as the development of a “global transitional justice design”, which these experts promote as a “hegemonic truth”.⁴⁸ Through workshops, conferences, and direct support of NGOs and governments, this epistemic community not only spreads its transitional justice expertise. It also promotes its normative assumptions about the right way of dealing with the past. The members of this epistemic community are also members of research institutes, consulting agencies, NGOs or IGOs. The International Center for Transitional Justice (ICTJ) soon became one of the most prominent non-governmental organizations of this kind.⁴⁹ The

While they stress the identification with values as the important factor for cooperation, which are nonetheless also included in the definition of an epistemic community, in this article, I want to stress the formation of expert knowledge and the development of transitional justice standards and their promotion. Thus, I will refer to the term epistemic community.

47 The term “transitional justice” appears in an UN document for the first time in 1997 in the context of the question how to stabilize new governments. While, on the one hand, transitional justice is recognized to be an important factor, the document demands, on the other hand, that “[f]or reconciliation, the actors in a post-conflict society must reach consensus on the issue of transitional justice and a balance must be struck between the needs for justice and for tolerance”. United Nations, Economic and Social Council, E/1997/86, 27 June 1997. From the beginning of the 2000s onwards, the mentioning of “transitional justice” in UN documents increases continuously.

48 Anika Oettler, *Der Stachel der Wahrheit. Zur Geschichte und Zukunft der Wahrheitskommission in Lateinamerika*, *Lateinamerika Analysen* 9 (2004), 93-126, here: 120.

49 <http://www.ictj.org>, accessed June 2011.

ICTJ was founded in 2001 after the experience of the South African TRC. Its foundation members were two transitional justice practitioners, former TRC's deputy chairperson Alex Boraine and TRC's executive secretary Paul van Zyl. Additionally, Priscilla Hayner, a pioneer in the research on truth commissions, became a third founding member. This constellation already demonstrates the twofold mission of the ICTJ. It does not only research on truth commissions. It also advises NGOs and governments all over the world in how to establish a truth commission.

The before mentioned Tunisian conference on "Justice in Times of Transition", which was co-organized by the ICTJ, is thus another example which demonstrates once again the promotion of transitional justice and, in particular, truth commissions as appropriate action after political transitions. Truth commissions are now a commonly shared standard in the transitional justice repertoire. They have become the common enterprise of an epistemic community because they are expected to be an adequate solution for transitional justice. But why could, in particular, truth commissions develop as such a popular transitional justice practice?

FROM TRUTH TO RECONCILIATION

The political, cultural, and social background against which truth commissions have been established has varied across countries. While the Argentine *Comisión sobre la Desaparición de Personas* was set up against the backdrop of the "dirty war" against civilians by the military dictatorship, the *Comisión de la Verdad para El Salvador* tried to account for the gross human rights violations committed during the twelve years of civil war. The Chilean *Comisión Nacional de Verdad y Reconciliación* was introduced while former dictator Augusto Pinochet still remained the supreme commander of the military forces. The German *Enquête-Kommission* was established after a long-lasting socialist dictatorship that had confined its people not only in economic, political, and social but also in geographical terms within the borders of the German Democratic Republic. In contrast to the GDR, the apartheid regime had drawn borders within the country separating and repressing South African people due to their ethnical origins. And the Moroccan *Instance Équité e Réconciliation* was the first truth

commission that was installed in an Islamic country and inaugurated by the former oppressor's son, King Mohammed VI.

Also in terms of their establishment, personnel composition, and competences, truth commissions have differed distinctively from each other. They have been installed by a presidential or royal decree, a parliamentary decision, or a peace agreement. They have been executed by national or foreign human rights activists, churchmen, politicians, or academics. Some have been equipped with the right to name potential perpetrators or to grant amnesties, while others were limited to collecting information about individual suffering and were not allowed to investigate individual accountability. Nevertheless, no matter how much these truth commissions differed in practice, a closer look on their mandates and end reports reveals a striking similarity. The Argentine truth commission claimed: “[W]e are neither motivated by any resentments nor by the spirit of vengeance; we only ask for truth and justice, [...], because we think that there won't be reconciliation without contrition of the culprits and justice based on the truth.”⁵⁰ The report of the Chilean *Comisión Nacional de Verdad y Reconciliación* stated that their “task revolved around two fundamental objectives: truth and reconciliation. As defined for us, our work was to come to a comprehensive grasp of the truth of what had happened, for it was utterly necessary to do so in order to bring about reconciliation among Chileans.”⁵¹ Moreover, the UN brokered truth commission in El Salvador hoped “that knowledge of the truth [...] will be a reasonable starting-point for national reconciliation and for the desired reunification of Salvadorian society”.⁵² The German *Enquête-Kommission* found that “the experiences of the Enquête-Kommission have emphasized the dictum ‘No reconciliation without truth’. Particularly the victims of the former regime have a right to truth. Only when the truth has been disclosed and individual guilt has been admitted, reconciliation

50 *Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas* (Buenos Aires: EUDEBA, 1987), 10.

51 *Report of the Chilean National Commission on Truth and Reconciliation* (Notre Dame, Indiana: University of Notre Dame Press, 1993), 1118.

52 UN Security Council, *From Madness to Hope*, Annex, 176.

can be addressed.”⁵³ And the until now most famous truth commission, the South African TRC, emphasized that “[o]ne of the main tasks of the Commission was to uncover as much as possible of the truth about past gross violations of human rights [...]. The Commission was founded [...] in the belief that this task was necessary for the promotion of reconciliation and national unity.”⁵⁴

Although these quotes result from very different contexts, they all show a similar account of legitimacy. In order to justify their establishment, these truth commissions refer to the same argument. They describe their aim as discovering, documenting, and reporting the truth about gross human rights violations in order to reconcile a fractured society.

In the early 2000s, influenced by the prominent South African truth commission, the establishment of truth commissions increased. In 2003, several truth commissions were at work in countries as different as Sierra Leone, Timor Leste, Peru, and Serbia and Montenegro. These truth commissions show that “truth” and “reconciliation” are key concepts that are not only used to describe and to justify their work across cultural and political differences, but which are even represented in the names of many truth commissions.⁵⁵

The Moroccan *Instance Équité e Réconciliation* presents a further example. Although, reconciliation is often believed to be a Christian concept, this truth commission, inaugurated in 2004 in an Islamic country, referred to the establishment of the truth about gross human rights violations as important “[t]o develop and promote a culture of dialogue and set up the basis of a reconciliation process oriented toward the consolidation of the demo-

53 Bericht der Enquête-Kommission *Aufarbeitung von Geschichte und Folgen der SED-Diktatur in Deutschland*, ed. Der Deutsche Bundestag, Drucksache 12/7820, 31 May 1994, 281.

54 Truth & Reconciliation Commission of South Africa, *Report*, Vol. 1 (Basingstoke: Macmillan, 1999), 49.

55 Translated into the national idiom the commissions were called *Comissão de Acolhimento, Verdade e Reconciliação* (Timor Leste), *Comisión de la Verdad y Reconciliación* (Peru), Truth and Reconciliation Commission (Sierra Leone), *Komisija za istinu i pomirenje* (Serbia and Montenegro).

cratic transition in our country, the strengthening of the rule of law and the propagation of citizenship and human rights values and culture.”⁵⁶

These examples show that starting with the “right to know” about the fate and the whereabouts of victims of human rights violations, a new idea of transitional justice has surfaced. With the establishment of first truth commissions in the early 1980s, a new rationale has become part of the transitional justice practice and discourse. Besides ideas of justice through punishment, establishing the “truth” is related to “reconciling” societies. To publicly acknowledge the individual suffering of victims in the context of its structural and historical background has become recognized as an indispensable contribution to political transitions. This counts for the countries that have yet established a truth commission. But also beyond national boundaries, this practice has gained recognition. International NGOs as well as IGOs as the United Nations are now promoting truth commissions as a reasonable solution for dealing with past human rights violations, thereby contributing to its further diffusion. The rationale that truth leads to reconciliation has been institutionalized.

THE MEANING OF RECONCILIATION

However, truth commissions have also always been contested. Their global diffusion across different countries around the globe as well as their international promotion by a number of national, transnational, and international NGOs or IGOs proves that truth commissions are recognized as one possible way to exercise transitional justice, although, their results are often criticized. Critical evaluations show a lack of actual efficacy in various ways.⁵⁷

56 Approving Statutes of the Equity and Reconciliation Commission, Dahir No 1.04.42 of the 19th of Safar 1425 (10 April 2004), The Kingdom of Morocco, http://www.ier.ma/article.php3?id_article=1395, accessed June 2011.

57 *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*, ed. Deborah Posel and Graeme Simpson (Johannesburg: Witwatersrand University Press, 2002); Rosalind Shaw, *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone*, Special Report 130 (Washington, DC: United States Institute of Peace, 2005); James L. Gibson, *Overcoming apartheid: Can truth reconcile a divided nation?* (New York: Rus-

In Argentina human rights activists also first refused the CONADEP, because they had opted for a parliamentary commission of inquiry with more judicial powers. Some members of the *Madres de Plaza de Mayo* even never accepted it.⁵⁸ They wanted to discover the truth about the gross human rights violations in order to punish the guilty. Hence, they were not interested in reconciliation at all.

However, despite of contestation and critical evaluation, truth commissions have become more and more popular for dealing with past crimes, albeit the urge for accountability never ceased. Initially, truth commissions had not been thought of as a substitute for trials.⁵⁹ However, due to (self-) amnesties, still powerful former elites or an insufficiently working judiciary, in many countries the truth-seeking process was not followed by trials and sentences against perpetrators. As a consequence, the establishment of truth commissions became accompanied by the fear of impunity. In countries where no trials were held before or in the aftermath of a truth commission, they were thus often considered to have facilitated impunity.

In particular, the term “reconciliation” was criticized. Already in the debates about “punishment or pardon”, amnesties had been justified as an important factor for reconciliation. In this context, “reconciliation” became soon to be seen as a “watchword for impunity”.⁶⁰ With the emergence of truth commissions and, at the same time, with the lack of trials, the goal of truth commissions to achieve reconciliation also got a bad aftertaste. Human rights activists as well as victims expressed their concern that the aim of reconciliation could end the search for the guilty and draw a line under the human rights violations of the past, which then would lead to impunity.

sell Sage Foundation, 2006); Audrey R. Chapman and Hugo van der Merwe, *Truth and reconciliation in South Africa: Did the TRC deliver?* (Philadelphia: University of Pennsylvania Press, 2008).

58 Strassner, *Die offenen Wunden Lateinamerikas*, 87.

59 The Argentine mandate insisted on transmitting information to the courts, Decreto 187 “Comisión sobre la Desaparición de Personas, Constitución, Integración y funciones”, 15 November 1983. This also happened until the “full stop law” in December 1986. See Kathryn Sikkink and Carrie Booth Walling, Argentina’s Contribution to Global Trends in Transitional Justice, in: *Transitional justice in the twenty-first century*, 301-324.

60 Orentlicher, *Settling Accounts Revisited*, 13,

It is important to notice though, that the consequence has not been a complete abandonment of this transitional justice practice. Instead, the Ecuadorean truth commission from 2007 explicitly decided not to apply the term “reconciliation”, because it was regarded as opposite to justice. Justice in this case was defined as accountability for committed crimes. Therefore, the truth commission – called *Comisión de la Verdad para Impedir la Impunidad* (Truth Commission to Impede Impunity) – was set up to gather information in order to prosecute the perpetrators of severe human rights violations.⁶¹ Reconciliation was not mentioned at all. But what does “reconciliation” actually mean?

In addition to the debates “in the field” about reconciliation, this term was also discussed in the epistemic transitional justice community. These debates show firstly that reconciliation is not limited to truth commissions. In discussions about retributive versus restorative justice, both sides have claimed to reach for reconciliation.⁶² Furthermore, other transitional justice approaches such as social justice⁶³ are also seen as a means for reconciliation. Nevertheless, no matter whether punishment, reparations or truth were assumed to be the prerequisites for reconciliation, there was a growing awareness that it was necessary to get a clearer picture of what the term reconciliation actually addressed. After all, in post-conflict societies, where the former conflict still latently persists, transitional justice and its justifications are always based on morally loaded concepts. Different interpretations and applications of reconciliation are therefore bound to arise due to political interests and personal needs.

61 Gobierno Nacional de la República de Ecuador, Madato “Se creó la Comisión de la Verdad ‘para impedir la impunidad’”, 3 May 2007, <http://www.usip.org/files/ROL/Mandato%20de%20Ecuador.pdf>.

62 Franklin Oduro, *What do we understand by ‘Reconciliation’? A Review of the Literature on Reconciliation. Emerging Definitions of Reconciliation in the Context of Transitional Justice* (Ottawa: The International Development Research Centre, 2007).

63 Bloomfield adds a third form of transitional justice. Social justice implies that all the “goods” of a society (economic, political and social) are shared in a fair way. David Bloomfield, *On Good Terms: Clarifying Reconciliation*, Berghof Report 14 (Berlin: Berghof Research Center For Constructive Conflict Management, 2006), 21.

Several organizations have actively engaged in clarifying what reconciliation could be. The International Institute for Democracy and Electoral Assistance (IDEA),⁶⁴ the Berghof Research Center for Constructive Conflict Management,⁶⁵ the Institute for Justice and Reconciliation (IJR),⁶⁶ the South African Centre for the Study of Violence (CSVR),⁶⁷ and the Canadian International Development Research Centre⁶⁸ have tried to evaluate the meaning and concept of reconciliation.

Focusing on the South African Truth and Reconciliation Commission, Hamber and Van der Merwe from the CSVR define five different “ideologies” of reconciliation which do not only apply in this specific context.⁶⁹ These interpretations range from restoring individual relationships to rebuilding social bonds and political trust on the national level. Furthermore, they identify religious interpretations of forgiveness with references to human rights and the rule of law as well as the overcoming of racial discrimination for a peaceful co-existence as the content of reconciliation.

Additionally to the distinction between an individual and a collective level of reconciliation, Minow stresses different degrees of reconciliation. On the basis of truth, reconciliation can reach from a “minimal agreement to coexist and cooperate” to “a stronger commitment to forgive and uni-

64 David Bloomfield, Terri Barnes and Lucien Huyse, *Reconciliation after violent conflict: A handbook*, ed. International Institute for Democracy and Electoral Assistance (Stockholm: International IDEA, 2003); Mark Freeman, *Making reconciliation work: The role of parliaments*, Handbook for parliamentarians 10 (Geneva: International IDEA, 2005); Luc Huyse, *Traditional justice and reconciliation after violent conflict: Learning from African experience* (Stockholm: International IDEA, 2008).

65 Bloomfield, *On Good Terms*.

66 Charles Villa-Vicencio, Erik Doxtader and Richard Goldstone, *Pieces of the puzzle: Keywords on reconciliation and transitional justice*, ed. Institute for Justice and Reconciliation (Cape Town South Africa: Institute for Justice and Reconciliation, 2004).

67 Brandon Hamber and Hugo van der Merwe, What is this thing called Reconciliation?, *Reconciliation in Review* 1, 1 (1998), <http://www.csvr.org.za/wits/article/s/artcbb.htm>.

68 Oduro, What do we understand by ‘Reconciliation’.

69 Hamber and van der Merwe, What is this thing called Reconciliation.

fy”.⁷⁰ Villa-Vicencio et al. find that “different kinds of conflict require different forms of reconciliation”.⁷¹ But to talk and to listen are from their point of view the essential capacities on which reconciliation is built.

In order to evaluate the effects of the TRC on the South African society, Gibson operationalizes reconciliation in terms of four dependent variables.⁷² Defined as social (interracial) trust, political tolerance, the acceptance of human rights, and the support of political institutions, these variables focus on the effects of reconciliation on the macro-level and present reconciliation as a goal of transitional justice practices. The outcome of the TRC is measured according to these norms and attitudes in order to draw conclusions about its efficacy.

Bloomfield regards it as important to predefine reconciliation as a harmonious end-state of working social relationships. From his point of view, this future vision could then become a “motivating ideal” for all actors involved.⁷³ However, he also stresses that reconciliation is a process and points to Huyse who describes the process of reconciliation as a three-stage model from “non-violent coexistence” to “building confidence and trust” towards “empathy”. Starting from “looking for alternatives to revenge”, in a second step he sees the “acknowledgement of the humanity of others” as “the basis of mutual trust [which] opens the door for the gradual arrival of a sustainable culture of non-violence”. As a last step towards reconciliation, Huyse defines empathy as the “victims’ willingness to listen to the reasons for the hatred of those who caused their pain and with the offenders’ understanding of the anger and bitterness of those who suffered”.⁷⁴

This brief overview of the term “reconciliation” shows that it comprises many different interpretations. Altogether, these concepts, definitions, and interpretations demonstrate that reconciliation is an umbrella term, which

70 Martha Minow, *The Hope for Healing: What Can Truth Commissions Do?*, in: *Truth v. justice*, 235-260, here: 250.

71 Villa-Vicencio et al., *Pieces of the puzzle*, 3.

72 James L. Gibson, *Does Truth Lead to Reconciliation? Testing the Causal Assumptions of the South African Truth and Reconciliation Process*, *American Journal of Political Science* 48, 2 (2004), 201-217.

73 Bloomfield, *On Good Terms*, 6.

74 Luc Huyse, *The Process of Reconciliation*, in: *Reconciliation after violent conflict*, 19-33, here: 19-21.

contains a wide range of different dimensions. There are individual acts of building relationships as well as societal efforts to reduce conflicts and tensions by constructing a tolerant, peaceful, and inclusive environment. On the political level, reconciliation can stand for (re-)building political trust as well as political tolerance, but it can also encompass even broader ideas of peace-building and democratic reconstruction.

However, while this discussion about the content of reconciliation continues, it reveals some interesting insights that go beyond definitions and typologies. On the one hand, the term “reconciliation” has become part of a symbolic language of transitional justice. To aim for reconciliation is a legitimate goal used to justify transitional justice practices. As there is no explicit definition of what reconciliation implies, many ideas, procedures, and actions have been integrated into various concepts of what reconciliation actually implies. But regarding the efforts to define what reconciliation is about, there is a commonly shared understanding that reconciliation can be understood as restoring social relationships. Nonetheless, the particular demand for reconciliation in terms of who has to be reconciled with whom under which circumstances and by what kinds of efforts is always influenced by political and social pressures. As a consequence, not only the fear of its abuse has increased; sometimes – as e.g. in Ecuador – it has led to the complete rejection of reconciliation.

On the other hand, the goal to restore social relationships and to (re-)integrate victims as well as perpetrators into society can be found even in countries where the term “reconciliation” was opposed. Although the Ecuadorian *Comisión de la Verdad para Impedir la Impunidad* did not refer to reconciliation, the Ecuadorian end report stated that human rights violations, which were discovered by the truth commission, had to become part of a public memory in order to help to restore social relationships.⁷⁵ They did not talk about “reconciliation”, but they nonetheless applied the same

75 Comisión de la Verdad Para Impedir la Impunidad, *Sin Verdad No Hay Justicia*. Informe de la Comisión de la Verdad, Vol. 5, Conclusiones, 2010, <http://www.comverdad.org.ec/informe-final>, 433; “The consequences of the human rights violations, like the pain, the fear, and the suffering of the victims and their families, must be regarded as part of the country’s history; they must be known by the entire society and must be considered in the policies for reparations and for the reconstruction of social relationships which had been fractured by the violence”.

characteristic idea in the truth commissions that truth leads to the reconstruction of society and thus to their reconciliation.

Reconciliation as a symbolic term as well as a concept of restoring social bonds is therefore an integral part of truth commissions. However, it remains quite vague. It does not specify how this rationale of truth and reconciliation is interpreted in a specific context by human rights activists, victims, perpetrators, politicians, or policy consultants.

At the same time, the findings suggest that it is exactly the ambivalence of reconciliation that enables the diffusion of truth commissions and their promotion across the world. Truth and reconciliation are an integral part of truth commissions' legitimacy account that is applied across various contexts. Because the content of the symbolic terms "truth" and "reconciliation" remain vague, the rationale that truth leads to reconciliation facilitates a fictional consensus,⁷⁶ within which various interpretations about what should be done and what should be reached can co-exist. This fictional consensus enables and ensures the formation of truth commissions. Against the backdrop of political and societal pressures to somehow "manage" past human rights abuses, the argument about truth and reconciliation provides the least common denominator for a consensus that allows for the establishment of a truth commission. Every participant can apply his or her own subjective interpretation to these commonly shared and legitimized goals. The ambiguity inherent in this argument, which links fact-finding and the public acknowledgement of its results to the aim of restoring a fractured society, is a necessary precondition for the establishment of truth commissions worldwide. Consequently, it can be applied to various contexts despite political divides and cultural diversity. And as the involvement of the multitude of international NGOs and IGOs shows, this argument is not only applicable in various national contexts, but also at the international level. The United Nations as well as a variety of (I)NGOs are now promoting truth commissions as a legitimate answer for dealing with the problems of

76 The term "fictional consensus" and its underlying concept, that collective action can be based on an unquestioned illusion of mutual understanding, were developed and defined by Roland Eckert, Alois Hahn and Marianne Wolf, *Die ersten Jahre junger Ehen. Verständigung durch Illusionen?* (Frankfurt a.M.: Campus, 1989).

past human rights abuses after political transitions, thereby contributing to their diffusion.

CONCLUSION

In this article, I have shed light on the phenomenon that truth commissions have been installed across the world in spite of different cultural contexts and political situations. From a global perspective, attention is drawn to the fundamental question why truth commissions have been accepted as a legitimate solution to the problem of massive human rights violations after political transitions worldwide. Truth commissions have been established in very different contexts. The political conflict, the level of violence, or the cultural environment always differed distinctively from the context of other truth commissions. Thus, every truth commission has been adapted to the respective conditions regarding its composition or competences. Nonetheless, although there is variation in the political and cultural context as well as in the formal conditions of their establishment, many countries across the world have decided to install this particular practice in an effort to come to terms with the past.

In order to answer this question of the global diffusion of truth commissions, I have taken a look behind their particular context and formal structure. Focusing on the mandates and end reports of truth commissions, I have highlighted the normative expectations on which their establishment is based. While the national context always affects the conditions under which a truth commission is established, the rationale behind their establishment is the same across cultural and political differences. Truth commissions are expected to disclose the truth in order to facilitate reconciliation. The “right to know”, i.e. the public disclosure of human rights violations has become a transitional justice standard. States in political transition are expected to comply with it and thus to establish and publicly acknowledge the severe human rights violations committed by the former regime. Reconciliation as the restoration of society has become prominently linked to this process of fact-finding and acknowledgement. Thus, the “right to know” has prevailed over the fear of “re-opening old wounds”. Instead, it has become positively related to societal restoration. The rationale that truth leads to reconciliation has become a standard assumption in the realm of transitional justice.

This article shows that the global spread of truth commissions comes along with the institutionalization of this rationale. The establishment of truth commissions by national parliaments, presidential or royal decrees or via peace agreements reflects not only a growing awareness that past regime crimes have to be addressed after political transitions even if they have been committed already years ago. Furthermore, their establishment responds to the widely shared assumption that the public disclosure of truth will help to reconcile societies as a precondition for democratic consolidation. A multitude of national and international NGOs, among many others the ICTJ, and intergovernmental organizations such as the United Nations promote and support this rationale based on the expectation that truth leads to reconciliation. Accordingly, they contribute to the global diffusion of truth commissions.

At the same time, I have suggested that the worldwide spread of truth commissions and their promotion are related to the ambiguity of this rationale about truth and reconciliation. The focus of the investigation and hence what part of the “truth” is addressed is always point of debate. But the term “reconciliation” is even more contingent. It comprises a wide array of different interpretations. In the case of Ecuador, where the claim for reconciliation was regarded as providing impunity to the perpetrators, it has even been rejected and replaced by the aim of restoring society. This aspect of restoration is also the least common denominator of the scope of interpretations of the term “reconciliation”. At the same time, it does not define the persons that are sought to engage in this process and the conditions under which reconciliation should be reached. The ambivalence of reconciliation thus allows for the co-existence of multiple meanings and interpretations without the need for addressing the differences among them. It provides a fictional consensus about what should be reached by establishing the truth via a truth commission. This fictional consensus based on the rationale of truth and reconciliation enables the establishment of truth commissions because it provides legitimacy across political and cultural differences. As a result, this rationale bridges not only national divides but also allows for their global diffusion.

The rationale of truth and reconciliation is now a collectively shared normative standard about coming to terms with the past within the epistemic transitional justice community. Based on this assumption, they advise countries in political transition all over the world in how to deal with their

pasts and promote truth commissions as an adequate answer to this problem. The Tunisian conference on “Justice in Times of Transition” is a further but certainly not a last example of this ongoing process.

