

“The Right to Truth-Developing a Truth Commission for Northern Ireland: lessons from the conflict and experiences of Latin America truth commissions.”

Keara Powell
21 February 2012

Right to Truth: Northern Ireland

- Progress

- Bloody Sunday Inquiry (Saville Report)

- Findings hold lessons for broader contemporary truth process
- Significant legal powers: compel evidence and attendance of witnesses
- Unfeasibility of following inquiry structure

- Apology by PM David Cameron

“there is no doubt, there is nothing equivocal, there are no ambiguities. What happened on Bloody Sunday was both unjustified and unjustifiable. It was wrong”

Right to Truth: Northern Ireland

- Lessons to Learn

- Government reaction to Rosemary Nelson Inquiry

- “The combined effect of these omissions by the RUC and the NIO was that the state failed to take reasonable and proportionate steps to safeguard the life of Rosemary Nelson” (Rosemary Nelson Inquiry Report, 23 May 2011)*

- Inquiries Act 2005

- Pat Finucane Inquiry? Investigations into Ballymurphy and Kingsmill massacres?

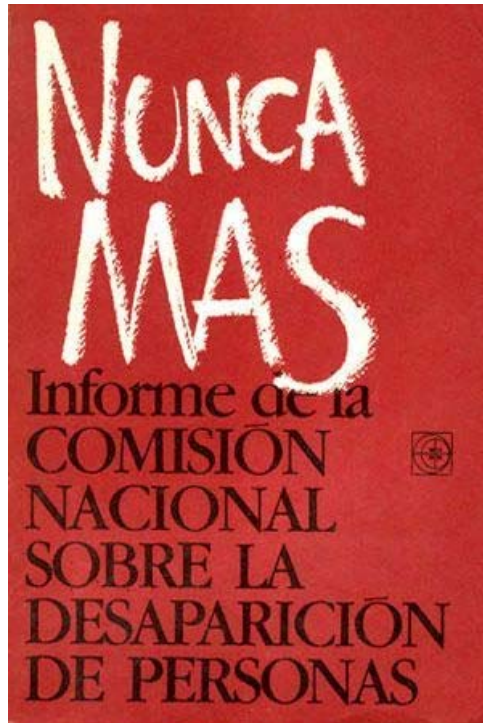
Current Legal Mechanisms for fulfilling RTT in NI

- Development of Art 2 ECHR investigations *Re Jordan* (2003):
 - *practical independence*
 - *effective investigation*
 - *conducted promptly*
 - *transparency*
- Art 2 investigation+Inquests in NI since *Re McCaughey* (2011) UKSC

Current Legal Mechanisms for fulfilling RTT in NI

- Historical Enquiries Team
 - Part of UK's 'package of measures'
 - Does not have degree of independence demanded by ECHR
 - Transfer of cases to Crime Operations (C2) within PSNI
 - Although has been effective in delivering information to victims' families
- Police Ombudsman
 - Investigation of cases has become a burden
 - Controversy over reports issued by OPONI
 - Independence of office compromised

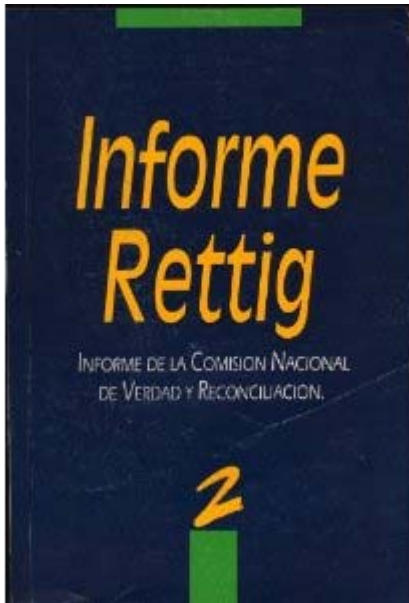
Argentina



'Never Again': Report of the National Commission on the Disappeared

- Creation of CONADEP (National Commission on the Disappeared) 1983
- Controversy over body-rejection by NGOs
- Change in inquiry-began collecting testimonies
- *Nunca Más* produced in 1984
- Recommendations: reparations and judicial investigations
- 1985: Prosecutions
- 1986-7: Passing of amnesty laws
- 1989-90: Pardons to military
- 1995: 'Truth Trials'
- Truth commission files remain key pieces of evidence in current trials in Argentina
- Major current obstacles: disappearances of witness and prosecutors; delays in prosecutions

Chile



Rettig Report: Report of the National Commission for Truth and Reconciliation

- 1) National Commission for Truth and Reconciliation (Rettig Commission)
 - Pinochet still remained head of the military therefore report not scathing of reasons for violent action of military
 - Balanced composition increased legitimacy and credibility
 - Limited mandate
 - Recommendations: reparations and methods of prevention

- 2) National Corporation for Reparation and Reconciliation
 - Administered reparations to victims
 - Examination of unresolved cases
 - Limited mandate: excluded tortured victims who survived

Chile

3) National Commission on Political Imprisonment and Torture (Valech Commission)

- Political imprisonment and torture recognised as institutional practice
- No collaboration with NGOs
- Victims had to prove the political basis of their detention
- Controversy over decision not to disclose victims' testimonies for 50 years

4) Presidential Advisory Commission for the Qualification of Disappeared Detainees, Political Executions and Victims of Political Imprisonment and Torture (Valech Commission)

- Added new torture victims to the list: now set at over 40,000
- Lack of engagement or comment from government



Picture showing political prisoners being brought into the National Stadium

Guatemala

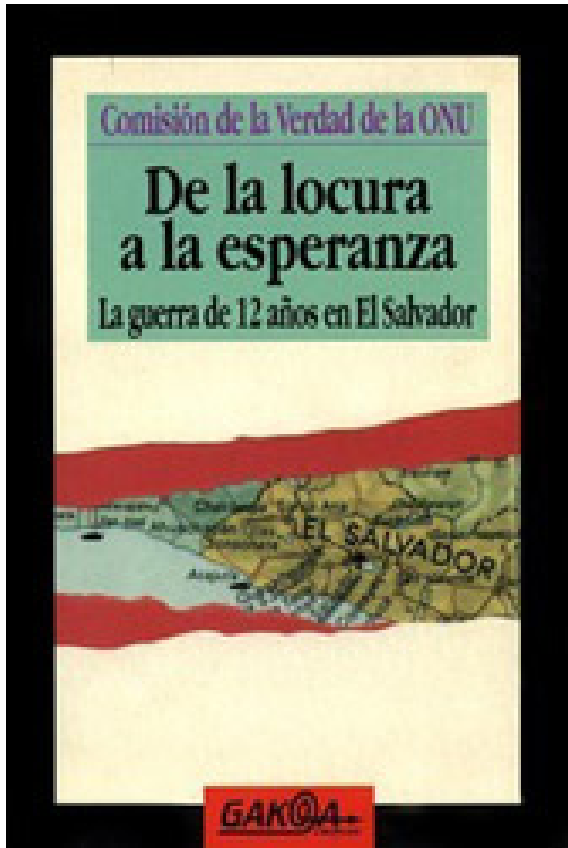


CEH report: 'Guatemala, Memory of Silence'

- Commission for Historical Clarification established in 1994 as result of peace agreement
- Largest number of victims in any conflict in Latin America
- State responsible for genocide of Mayan population
- Independent structure of Commission
- Very broad mandate: successful macro and micro approach
- No public hearings
- Prosecutions now forthcoming

El Salvador

- Commission on the Truth for El Salvador created by UN-brokered peace agreement
- Commission appointed by UN Secretary-General: entirely international composition
- No involvement of NGOs
- Recommendations legally binding on all parties
- Heavy emphasis on IHRL
- Prosecutions not recommended



Report of the UN Truth Commission on El Salvador: 'From Madness to Hope'

A Truth Commission for NI



Composition and Structure

- *“The Commission would be headed by an International Commissioner who should act as Chair”*
- Need for local figures to be involved. Cf: Guatemala, El Salvador.
- Importance of selection of personnel
- Need for some form of permanent legal team

Mandate

- Flexible to allow interpretation by commissioners
- Sufficiently broad to allow micro/macro truth to emerge
- Time frame: need to balance extensive time frame without danger of losing momentum
- Latin America: short time frame, access to less resources

Powers

- Review and Investigation Unit:
 - Effectively a policing body with equivalent powers and support by police expertise
 - Would ensure greater compliance with Art 2 ECHR
- Information Recovery Unit:
 - Heavy involvement of next-of-kin
 - Focus on resolving unanswered questions
 - Powers to compel documents not witnesses
- Thematic Examination Unit:
 - Focus on overall responsibility
 - Cf: Chile, El Salvador, Guatemala

Amnesty

- Need for incentive/‘accountable amnesty’
- Statements made during Information Recovery and Thematic Examination process not admissible in criminal/civil proceedings
- ‘Use immunity’ already in place with work of Independent Commission for Location of Victims’ Remains (ICLVR)
- Need to incentivise testimony from non-State actors given difficulty in establishing accountability

Accountability of State and Non-State Actors

- Concern that paramilitaries will not cooperate/ that State abuses disproportionately focused upon
- Concern that State not held accountable/focus given to 'moving on'
- Ex-combatants at forefront of community-based truth recovery projects in both Unionist and Nationalist communities
- State expected to be held to higher degree of accountability

Consensus and Cooperation

- Need for political/societal will and consensus on truth recovery
- Domination of truth recovery by Nationalist community due to Unionist fear
- Overcome if independence, effectiveness and transparency underpin operation of commission
- Must operate without undue influence or control by either government
- International oversight may be required to ensure compliance

Conclusion

- Successes and weaknesses of attempts at truth recovery
- Piecemeal and fragmented approach
- Need for central and coordinated effort
- SoS moves to initiate party talks on 'dealing with the past'
- Lessons of Latin America