

Truth, Justice and Reconciliation in Chile

By  
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## Table of Contents

Abstract	v
Acknowledgements	vi
Chapter 1	1
Introduction	1
Posing the problem	1
Framing the case study	2
Gaps in the literature	3
Thesis statement and structure of the argument	3
Chapter 2	5
Conceptual Framework	5
Framework of the thesis	5
Definition of transitional justice	6
History of transitional justice	7
Goals of transitional justice	9
Dilemmas faced by regimes in pursuing transitional justice	10
Mechanisms of transitional justice	12
Temporality of transitional justice	21
Methods of evaluation Definition of success and impact	21
Summary	23
Chapter 3	24
Methodology	24
Secondary data sources	25
Advantages and disadvantages of secondary sources	26
Archives	28
Primary data sources Interviewing as method	34
Structured interviews	35
Unstructured interviews	36
Semi-structured interviews	37
Group interviews	37

In-depth interviewing	38
Advantages and disadvantages of interviews	39
Issues of data interpretation	41
Summary	48
Chapter 4	50
Truth, Justice and Reconciliation	50
Truth commissions and truth	50
Aims of truth commissions	50
Critiques of TRCs	58
Summary	65
Justice	66
Retributive justice	68
Limited criminal sanction	76
Amnesty	78
Restorative justice	81
Reparatory justice	85
Reparatory measures and time	88
Summary	89
Reconciliation and forgiveness	90
Recognition	92
Restorative Justice	92
Redress	93
Reconstruction	93
Repentance and forgiveness	93
Summary	97
Chapter 5	99
Introduction	99
The Allende government	102
Internal causes of the coup	103
External causes of the coup	104

Chile's military regime	108
Reasons given for the coup	108
The consolidation of power	110
Implementation of Economic and Political Policies	115
Mobilization against the regime	117
Transition to democratic rule	118
Summary	121
Chapter 6	123
The National Commission on Truth and Reconciliation	123
The Commissioners	123
Goals of the commission	124
Methodology of the commission	125
Content and organization of the report	129
Findings of the commission	130
Recommendations of the report	131
Summary	133
Chapter 7	135
Responses of Chileans to the TRC	135
Immediate impact of the Rettig Report	137
Reactions to the report	138
The armed forces perspective	138
Reactions of the right-wing and the judiciary	143
Reactions of centre and government	144
Leftist political parties	145
Human rights organizations and victims	146
The Church	148
Influence of the Rettig Report	149
Long-term impact of the commission	156
Truth	157
Mesa de Dialogo	157
Valech Commission	160
Reactions of the armed forces to the Valech Report	161

Justice	169
The Pinochet case	172
Reconciliation	176
Evaluation of the Rettig Report	185
Truth	185
Justice	188
Reconciliation	193
Summary	196
Chapter 8	199
Conclusions	199
Bibliography	208
Appendix A	222
Detailed Findings of the National Commission on Truth and Reconciliation (Rettig Report)	222

# Truth, Justice and Reconciliation in Chile

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Priti H K Murbah

## Abstract

The purpose of this thesis is to evaluate the effectiveness of the *Chilean National Commission on Truth and Reconciliation* in bringing about truth, justice and reconciliation. These institutions aim to help states address how to contend with gross violations of human rights under the previous regime. Based on literature and interview data with Chileans on the perceptions of the results and impacts of the truth commission, this thesis concludes that the *Chilean National Commission on Truth and Reconciliation* can be considered an example of a successful commission which, to varying degrees, fulfilled its mandate over the short and long-term.

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# Chapter 1

## Introduction

### **Posing the problem**

This thesis is concerned with the truth commission in Chile. Truth and Reconciliation Commissions (TRCs) are mechanisms of transitional justice which have been implemented by societies as a tool for investigating human rights violations since the 1970s. TRCs have become a popular mechanism by which states address questions of justice and accountability. In Latin America, the first commission was held in Bolivia in 1982 but was disbanded due to a lack of funding to complete its mandate. Following this commission, Argentina held a successful TRC, the *National Commission on the Disappeared (CONADEP)*, in 1983 to investigate the fate of the over 30 000 disappeared under the military government. This commission resulted in a widely distributed and read report, which was later used by the courts to pursue prosecutions against military officers and members of the ruling junta. Other countries in Latin America, such as Chile, followed Argentina's example upon their transitions to democracy.

The central aim of this research was to assess what the Chilean TRC, the *National Commission on Truth and Reconciliation (CNVR)* also known as the Rettig Report), intended to achieve. Did it accomplish its goals and if so, over what period of time? What were the long-term impacts? Can it be considered a successful TRC?

## **Framing the case study**

In 1973, Chile's long history of democracy was disrupted when the military overthrew the socialist government of Salvador Allende in a coup d'état. Allende had been democratically elected in 1970 amidst the changing nature of social and political relationships in Chile. He aimed for a democratic transition to socialism in Chile, but his election and the policies that he implemented went against capitalist elites in Chile and the United States. Soon after his election, the U.S. changed its foreign policy towards Chile, effectively embarking on political and economic destabilization of the country. The result was a collapse of the Chilean economy, which led to wide scale protests across the country and calls for military intervention.

When the military came to power it implemented a set of policies which were found by the Chilean TRC, the Rettig Report, to have led to systemic human rights violations. By the late 1980s, opposition to the military regime began to grow and the military regime held elections in 1991. When the elected government of Patricio Aylwin came into power, it had to contend with addressing the violations of human rights committed under the military government. Since the transition was so tightly controlled and pacts with the military had been made by the opposition prior to the elections, the Aylwin government was limited in its options. Aylwin wanted to pursue traditional legal justice but was unable to take this direction because the military government had enacted an amnesty law. In addition, the judiciary was unwilling to pursue prosecutions. The government, therefore, had to consider alternative forms of justice. Looking to the

example of Argentina, the government chose to implement a truth and reconciliation commission in 1990

### **Gaps in the literature**

The literature on truth commissions falls into the following categories: descriptive literature which examines the value of these bodies as mechanisms of transitional justice, case-study research that is both single-case study and comparative studies that demonstrate strengths and limitations of TRCs, and empirical research that examines these commissions in order to draw out lessons for policy formation. The impact studies that have been conducted consider the societal impact of the commission soon after its completion. What has not sufficiently been examined is the long-term effectiveness of these commissions in bringing about truth, justice and reconciliation. For this reason, it is all the more important to focus on these Latin American cases, such as the Chilean one, as they constitute some of the earliest TRCs from which lessons may be learned. This research will examine the long-term outcomes and impacts of the truth commission in a retrospective manner to determine if the TRC in Chile was actually beneficial or not.

### **Thesis statement and structure of the argument**

The thesis statement of this study is that, based on an examination of the short and long-term impacts of the *National Commission on Truth and Reconciliation* (the Rettig Report), the TRC accomplished its mandate and can be considered an example of successful management and resolution of a deeply rooted social conflict. It was an effective response to the need to redress generated by the gross injustices of the military

government This thesis, which is that the process of establishing the ‘truth’ of actions which occurred under the conflict can lead to justice over time, is argued on the basis of a case study of the Rettig Report and the response to this report from diverse social sectors including human rights organizations, lawyers, academics, politicians, the military, academics, victims and judges The argument is organized as follows Chapter Two discusses the conceptual framework which defines transitional justice and frames TRCs in this framework The ideas developed in this chapter lead to the development of methods for evaluating the framework, namely defining the terms ‘success’ and ‘impact’ to enable an evaluation of the Rettig Report This is followed by a description of the methods used in data collection in Chapter Three, which concludes that the best tools for undertaking this research were an extensive literature and archival search in addition to the primary research carried out in Chile Chapter Four offers a review of the literature to examine the definitions of truth, justice and reconciliation in transitional settings The ideas laid out in this chapter enable an understanding of the multitude of goals post-conflict regimes have and the interests they must balance to achieve truth, justice and reconciliation Chapter Five provides historical case study information to describe the events that occurred in Chile which necessitated the implementation of a truth commission and Chapter Six is an outline of the mandate and findings of the TRC Chapter Seven presents and analyzes the primary data to inform the conclusions made in Chapter Eight

## Chapter 2

# Conceptual Framework

### **Framework of the thesis**

This thesis will analyze TRCs in the Transitional Justice framework as this is the framework in which they are rooted and studied. It is relatively young in the academic tradition but its strength lies in its strong empirical foundation based on historical case study research as well as comparative work.

This framework suffers from certain limitations: it is under-theorized, the comparative studies conducted are based on the most popular cases of countries which have implemented transitional justice mechanisms<sup>1</sup>, and the definitions and concepts used are not always clearly defined by researchers in their analysis.

Further, transitional justice and its associated concepts, truth, justice and reconciliation are not easily quantifiable when one aims to address whether or not they were achieved in a society. This research recognizes these limitations and does not aim to measure these concepts in a quantifiable manner. Thus, the framework has been adapted by defining “success” and “impact” in a qualitative manner, primarily through the perceptions of those who influence the formulation of human rights policy based on their

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<sup>1</sup> These cases are Guatemala, South Africa, El Salvador, Argentina, Chile, Rwanda, Sierra Leon, the former Yugoslavia, and the Nuremberg and Tokyo trials.

understanding of these concepts (truth, justice, and reconciliation) These definitions follow below, but first, transitional justice, its goals and tools will be defined

### **Definition of transitional justice**

There are a few definitions of transitional justice that one encounters in the literature

Teitel has undertaken an extensive study of the concept and defines it as “a conception of justice associated with periods of political change, characterized by legal response to confront wrong-doings of repressive predecessor regimes” (Teitel, 2003, p 69) While

Teitel understands transitional justice as legal justice, the International Center for

Transitional Justice’s (ICTJ) definition is more general and understands the concept as

a response to systematic or widespread violations of human rights It seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse In some cases, these transformations happen suddenly, in others, they may take place over many decades (International Center for Transitional Justice, 2009, p 1)

These two definitions highlight the definitional ambiguity of the concept of transitional justice Some understand the idea to be a new conception of justice, while others see it as regular justice only in transitional times This research takes the view that justice in times of transition, though not necessarily a special kind of justice, is constrained by transitional factors the type of transition and the balance of powers of the actors invested in a transition (politicians, military, civil society, etc )<sup>2</sup> Given this

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<sup>2</sup> Samuel Huntington outlined four different types of transitions The first is transformation which he suggests is initiated by members of the authoritarian regime, a “regime initiated transition” (Huntington, 1991, p 125) and has “minimal accountability” (Lekha Sriram, 2004, p 22) The second, transplacement, is a democracy that has resulted from the actions of the regime in power and the actions of the opposition, it is

definitional ambiguity, scholars such as Anderlini, et al, and the United Nations (UN) have broadened the definition to operationalize the idea, such that there is a focus on mechanisms and tools used by transitional regimes For the UN,

[t]ransitional justice consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations Whatever combination is chosen must be in conformity with international legal standards and obligations (Guidance Note of the Secretary-General 2010, p 2, Anderlini, Conway, & Kays, p 1)

This expanded definition allows for a range of goals and responses that states can pursue to address accountability and the human rights question upon re-democratization These responses will be discussed below following a brief history of transitional justice

### **History of transitional justice**

Transitional justice is an idea that has existed in practice since ancient Greece The modern cases of transitional justice began after WWII with the Nuremberg trials which set the precedent for punishment Post-WWI there was seen as the failure of national and international justice which prevented a transition to democracy At Nuremberg, post-WWII, the primary offence for which individuals were tried was aggression The victors, the Allies, ensured accountability under international jurisdiction Individual responsibility was ascribed because the aim was not to punish the country of Germany (Teitel, 2000, p 31-34)

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a negotiated transition and has slightly more accountability, while the third, replacement is where the old regime is replaced by new through struggle, war, or a coup, and has substantial accountability The fourth, intervention is one in which the old regime is replaced by external forces, and also has substantial accountability (Lekha Sriram, 2004, p 2, Huntington, 1991, p 124-154)

Twenty-two Nazi officials were tried by an International Military Tribunal in Nuremberg led by four powers, the US, England, France and the Soviet Union. Three out of the twenty-two were acquitted, seven were sentenced to prison and twelve sentenced to death. In addition, American, British and French tribunals convicted German officials and the Germans also took on a process of trying Nazi criminals. A denazification, purging of Nazi officials from public offices, was also set in motion. In terms of non-criminal justice, the Germans and other European nations legislated the compensation of victims of the Nazi regime (Elster, 2004, p. 54).

The Nuremberg process accomplished the following: the evidence it collected made it impossible to deny the crimes that were committed (Minow, 1998, p. 48-51). It defined just versus unjust aggression and 'crimes against humanity,' and influenced how accountability was conceptualized in international law (Teitel, 2000, p. 31). The Nuremberg Principles assigned individual responsibilities but expanded criminal liability so that public officials "could no longer avail themselves of 'head of state' defense based on their official positions" (Teitel, 2000, p. 34). It also made the 'due obedience' to orders defense unacceptable and ushered in ideas about national obligations to citizens within the context of international laws such that nations "cannot simply ignore the most barbarous acts of other nations [and perpetrators] cannot neglect 'the ever more real possibility that they will be held accountable and brought to justice under law'" (Minow, 1998, p. 48). Nuremberg resulted in a paradigm shift in the conceptualization of justice as a national to an international process (Teitel, 2000, p. 33). Since Nuremberg, the International Criminal Court (ICC) has been established and other internationally

supported tribunals, such as those in Rwanda and Yugoslavia, have been convened (Teitel, 2000, p 31)

The next wave of transitional justice in Europe came in the mid to late 1970s when transitions to democracy in some southern European countries such as Portugal, Greece and Spain were occurring. Notable transitions in Africa include Ethiopia, South Africa, Rwanda, Sierra Leone, Algeria, Morocco and South Africa. Most transitions in Africa have taken place in the context of returning to a state of peace from a state of civil war with most occurring after a peace agreement of some kind has been signed by the warring parties. Latin American cases were marked by truth commissions sometimes followed by trials in Bolivia, Argentina, Brazil, Uruguay, El Salvador, Guatemala, Chile and Peru. The varying responses these states have adopted in their transitions are reflective of the goals of the transition that each hoped to achieve (Elster, 2004)

### **Goals of transitional justice**

Minow and others (Anderlini et al ) have outlined several goals post-conflict societies have in a transition

- 1) establish peace,
- 2) lay the foundation for democracy through institutional reforms,
- 3) ensure support for the “legitimacy and stability of the new regime,”
- 4) pursue investigations into the violence to establish facts,
- 5) acknowledge the violence under the previous regime,
- 6) punish the offenders of the violence,
- 7) declare to ‘never again’ be embroiled in violence,

- 8) foster healing and reconciliation,
  - 9) “restore victim’s dignity”,
  - 10) restore the rule of law and promote democracy and human rights, and finally
  - 11) “accomplish each of these goals in a way that is compatible with the other goals”
- (Minow, 1998, p 84, Anderlini, et al , p 1)

As will be discussed in chapter four, TRCs can help states meet these goals

Additionally, some argue that the function of transitional law is to set a boundary between the old regime and the new one. In setting a boundary, the law re-establishes the bounds of legitimate state coercion by establishing accountability for violations, and acts as a transformative force that reconstructs and strengthens democracy and the rule of law (Nagy, 2004, p 5)

### **Dilemmas faced by regimes in pursuing transitional justice**

Transitional justice can occur on several levels: the national or supranational level (with international tribunals) and can have many actors. In a transition, several stakeholders have an interest in how the transition unfolds: perpetrators, victims, beneficiaries of wrongdoing, helpers who alleviate the wrongdoing, resisters who resisted the wrongdoing, neutrals, advocates or promoters of transitional justice, and finally, wreckers who oppose transitional justice or obstruct the process. These categories are overlapping and not mutually exclusive (Elster, 2004, p 99). Additionally, armed groups and militaries are often involved in or concerned about the transitional process. Militaries are concerned about the new state’s policy towards the military institution vis-

à-vis military budgets, organization, control and how the state treats human rights violations (Lekha Sriram, 2004, p 29)

As such, the balance of powers between these groups that exist before, during and after a transition can affect the degree to which accountability is possible. Other factors that affect accountability include the following: 1) length, intensity, nature and extent of the conflict, 2) “prior state of civil-military relations, as well as subsequent reform”, and 3) international influence, if any, on the peace process (Lekha Sriram, 2004, p 20-22). Accountability also depends on “will and capacity.” A sheer desire to see justice achieved will not make it so as there may be obstacles which make it impossible. For example, a strong military, large societal involvement in crimes and political obstacles such as whether the state even has the capacity to hold people accountable, make accountability difficult to pursue (Lekha Sriram, 2004, p 20-22).

Since transitions are marked by shifts in regimes, usually from a repressive towards a less repressive regime, what rule of law regimes use in this period is consistently debated (Teitel 2000 6, 241). Teitel notes that the “dilemma is that the “law is caught between past and future, between backward looking and forward looking.” (Teitel, 2002, p 241-2, Nagy, 2004, p 4) and “what is deemed unjust is contingent upon and informed by prior injustice” (Teitel, 2000, p 6). Thus, “although the systemic nature of crimes necessitates collective punishment, liberal legal norms of non-retroactivity, due process and individual accountability” prevent collective criminalization (Nagy, 2004, p 4). Further, transitional justice involves conflict between “predecessor and successor visions of justice” (Teitel, 2000, p 11). Should newly democratic states follow a retrospective or prospective rule of law? Can defenses based on the rule of law of the

previous regime be accepted? The nature of these questions suggests that in dealing with injustices committed by previous regimes, successor regimes must consider several options in their pursuit of accountability—that is, “full continuity with the prior legal regime, discontinuity, selective discontinuities and moving outside the law altogether” (Teitel, 2000, p 14) Moreover, what legal order is used to pursue prosecutions--the military, civilian, national or international order? (Teitel, 2000, p 27-28) Other dilemmas faced by incoming regimes in a transition include Should the past be confronted at all? Should justice or truth be prioritized? If the past is confronted, then how are victims and perpetrators to be defined and treated? Additionally,

how is the social understanding behind a new regime committed to the rule of law created? Which legal acts have transformative significance? What, if any, is the relation between a state’s response to its repressive past and its prospects for creating a liberal order? What is law’s potential for ushering liberalization? (Teitel, 2001, p 3)

To address these questions, a regime has available to it, a range of transitional justice options which it can pursue

### **Mechanisms of transitional justice**

Given the complexity of issues that govern a transition, a variety of tools have been used to address the sometimes competing concerns that arise These tools can be divided into criminal mechanisms such as trials and non-criminal mechanisms such as lustrations, reparations, reforms and truth commissions

## **Criminal justice**

Following Nuremberg, a democratic state was expected, particularly by victims and human rights groups, to treat the violations of out-going regimes through legal justice in the form of trials. Trials to condemn the violence of the *ancien regime* have several functions in a transition, yet present just as many dilemmas to incoming regimes.

Trials meet out punishment to end impunity and promote the rule of law (Fletcher & Weinstein, 2002, p. 586). When a government holds perpetrators responsible, citizens are sent the message that repression has ended. This accountability creates a distinction or a boundary between old and new regimes such that new regime is legitimized by delegitimizing the old regime (Teitel, 2000, p. 30). The establishment of individual accountability is also said to “alleviate [ ] collective guilt by differentiating between the perpetrator and innocent bystanders” (Fletcher & Weinstein, 2002, p. 598).

Trials are also said to respond to the victim’s need for truth, acknowledgement, justice and healing. Thus, there is widespread agreement among intellectuals and victims that a response to massive violence must include some sort of truth telling for the repair of the social fabric to occur. Diane Orentlicher notes that truth telling can only happen in a trial setting, which also creates an authoritative historical record of the wrong-doings (Fletcher & Weinstein, 2002, p. 587). Trials prevent forgetting the past, doing so can further perpetuate inter-group hatreds.

Moreover, most victims prefer judicial mechanisms to deal with crime because, as Martha Minow has suggested, “guilty verdicts afford public acknowledgment of what happened, and its utter wrongfulness” (Minow, 1998, p. 123). In the same vein, Carlos Niño suggests that trials empower victims by enabling them “to recover their self-respect

as holders of human rights” (qtd in Llewellyn & Howse, 1999, p 363) Some suggest there is a cathartic function to trials because suffering in the form of testimony ““ is listened to with respect and sympathy”” (Llewellyn & Howse, 1999, p 363, Fletcher & Weinstein, 2002, p 593) Additionally, prosecutions provide hope and the potential to repair negative associations with places where human rights crimes have occurred For example, the post-WWII trials in 1945, however flawed, presented the possibility of the prosecution of human rights violations (Minow, 1998, p 30) Further, it is argued that trials can foster reconciliation (Fletcher & Weinstein, 2002, p 586, Llewellyn & Howse, 1999, p 362) because they enable society to discuss the painful past and come to terms with it, develop closure and “rebuild a ‘healthy society’” (Fletcher & Weinstein, 2002, p 597) Moreover, they transfer to the state the “individuals’ desires for revenge cools vengeance into retribution, slows judgment with procedure and interrupts the cycle of blame and feud” (Minow, 1998, p 26)

### **Limitations of trials**

Trials also have several limitations A primary limitation is the difficulty of assigning responsibility This can result in selective prosecutions and the enforcement of a statute of limitations on prosecutions, which can make exceptions to try only the gravest cases of violations (Teitel, 2000, p 41)

In situations where violence or repression is systemic, often a large number of perpetrators are responsible for committing crimes The sheer number of cases can overwhelm new judiciaries, which may be unable to handle such large caseloads Thus, selective prosecutions are the norm (Minow, 1998, p 30-33) which can appear to serve

political justice or revenge prosecutions (Teitel, 2000, p 40) Moreover, they present to new states the problem of who to prosecute The line between perpetrators and victims is not always clear In situations where large-scale human rights violations occur, victims who exact revenge on their perpetrators can become wrongdoers themselves, while those taking orders to commit crimes may themselves be victims of the repressive system (Minow, 1998, p 41) Nesiah asks whether the law can properly “identify who is a victim and who is a perpetrator” (Nesiah, 2005, p 281) The legal system is also not adequately set up to deal with those who profited from the violence, by-standers who may not have had direct participation in the violence but did not act to stop it, and the states—first, the state itself that has the responsibility to protect its citizens and second, outside states and (non-state) actors that encouraged or re-enforced the violence (Fletcher and Weinstein, 2002, p 579, Teitel, 2002, p 244-5 2001)

New states must decide as to who should be held responsible for the crimes—those giving orders, the intellectuals of the repression, or those who carried out orders to commit atrocious crimes Under the Nuremberg Principles, due obedience defenses were no longer acceptable, making both leaders and soldiers potentially responsible for state wrongdoing, and command responsibilities (attribution of responsibility to superiors) versus individual and collective responsibilities were questioned The problem with this view is that it gave rise to the question of whether it is fair and legal for a post-dictatorial society seeking justice to assign criminal liability based only on an actor’s official status (Teitel, 2000, p 37) Additionally, “degree[s] of fault” exist (Teitel, 2000 p 41), and it has been asked whether “the attribution of criminal to one [for example the leadership]

apply lesser criminal responsibility to the other [the foot soldiers] ” (Teitel, 2000, p 44)

Furthermore, trials try individuals and not systems or institutions that enabled human rights violations, mass murders, and disappearances. Legal justice individualizes guilt and judges and prosecutors prefer this because collective guilt is hard to determine. It has been suggested that when collective guilt is not dealt with, it “absolves everyone of responsibility for past wrongdoing” and prevents reconciliation (Fletcher and Weinstein, 2002, p 599). However, it should be noted that legal justice, and not reconciliation, is the goal of trials (Minow, 1998, p 26). Yet, if only individual crimes are dealt with, collective innocence may be implied (Fletcher and Weinstein, 2002 p 604).

In terms of revealing truth, proponents of truth commissions argue that the trial system in most countries does not allow for the full disclosure of the truth. Both parties involved in the trial are allowed to manipulate the evidence to make their own case in an adversarial manner, leaving judges or juries to decide between these versions (Shriver, 2001, p 11). Moreover, not all perpetrators will tell the truth in a trial-setting in order that they may avoid punishment, even if they are offered incentives such as amnesty. Additionally, legal objectivity does not allow for narrative truths. Instead it is concerned with facts and the determination of guilt. Even if some truth is revealed as the result of a trial, there is an assumption that people will accept these judicial facts and not reinterpret or distort them “based upon philosophical, moral or political allegiances” (Fletcher and Weinstein, 2002, p 588-589), truth is vulnerable to these allegiances.

Retroactive justice—judging the past on today’s morality is an issue for transitional trials. The successor regime must ensure that these trials adhere to the rule of

law and are fair so that they are not perceived to be perpetuating political justice or vengeance (Teitel, 2000, p 30) Others argue that retroactive justice is unavoidable because sometimes immoral regimes established immoral orders or perverted a previously established moral order In this case, a moral consensus that arises after these crimes are committed means having to contend with retrospectivity or retroactivity Niño contends that “retroactive justice may help protect democratic values” (Villa-Vicencio, 1999-2000, p 174) while others argue that it can put the “legitimacy of the new regime” at stake (Huyse, 2001, p 322-327) To address debate, it has been suggested that impunity may be necessary for social peace Many note that the best kind of justice is one that honors the memory of the events that occurred, not one that brings legal proceedings against every single perpetrator (Huyse, 2001, p 325)

Another criticism of trials is that they do not create reconciliation, collective memory, or healing because they do not consider the underlying or broader socio-political and economic contexts of the violence that occurred (Llewellyn & Howse, 1999, p 363) There is a difference in what reconciliation requires and what justice can offer For example, even if victims want and have the right to punishment, reconciliation may not always require punishment Yet, many argue that it does require repentance on the part of the perpetrators However, the law does not demand remorse or repentance for a sentence to be meted out, and repentance does not negate the responsibility for the crime Data on community rebuilding and the contribution of justice to this process is limited and yet the contribution of trials to reconciliation and community building has been assumed as fact by practitioners and academics (Fletcher and Weinstein, 2002, p 600)

In terms of healing, aspects of a courtroom setting may not be beneficial for all victims. Public accountability also may not be important for healing. In this vein, Judith Shklar and Hannah Arendt noted the “inflated claims about the healing or pedagogical impact of Nazi war criminals trials” (Llewellyn & Howse, 1999, p. 358) and few studies on the contribution of legal process to healing have been conducted.

Finally, trials and tribunals can be expensive, resource taxing and time consuming. The legal process can be slow in a society that does not have adequate judicial or staffing capacity (Othman, 2005, p. 258) and may be dependent on international bodies such as UN and General Assembly for “resources and continued operations” (Minow, 1998, p. 39).

For these limitations of judicial mechanisms, non-criminal methods of accountability have been developed.

### **Non-criminal justice**

Non-criminal mechanisms of justice can include administrative forms such as purges of the public sector or implementation of institutional reforms, reparations and truth commissions.

After a democratic government comes into power, as a way to restore confidence in its institutions, it may implement a policy of purging the public sector of those associated with the prior repressive regime. This process is called lustration and usually results in a large number of purges, which can be problematic because it can appear as collective punishment of a group of people based on their political affiliation. Lustration

may put into question the legitimacy of the new government and its commitment to rules of due process and law (Kirtz, 1995, p xxxiv)

Transitional regimes can also undertake vetting of individuals before they are hired for civil service posts. In this process individuals with integrity—those who have demonstrated a commitment to human rights and democracy are given priority in employment for public service (Duthie, 2007, p 17)

### **Institutional Reforms**

New states may also undertake institutional reforms such as security sector reform, judicial reform, and political reforms. These can include rewriting the constitution in order to remove authoritarian elements and addressing corruption in the judiciary to inspire public confidence in the new government (International Center for Transitional Justice, 2009, p 1-2, (Anderlini, Conaway, & Kays, p 1-7)

### **Reparations**

Reparations are implemented by states to “help repair the material and moral damages of past abuse” (International Center for Transitional Justice, 2009, p 1) Reparations can be monetary or symbolic such as memorial projects and apologies from the head of state

The function of material compensation is the following

it aids the victims to manage the material aspect of their loss. Second, it constitutes an official acknowledgement of their pain by the nation. Both of these facilitate the societal re-integration of people who have long been made to suffer in silence. Third, it may deter the state from future abuses, by imposing a financial cost to such misdeeds (Kirtz, 1995, p xxxvii)

International law has also recognized the state's obligation to provide compensation to victims of human rights abuses (Shelton, 2002)

### **Truth Commissions**

Truth commissions have become the most popular means, often one of the first mechanisms, newly democratic states implement to address questions of accountability. The term 'truth commission' has a young history in transitional justice discourse (Natua, 2002, p 333) but Priscilla Hayner's work on the subject has been central in offering a definition of truth commissions. She, as well a majority of the literature following the release of her book, defines truth commissions in the following manner: they are temporary bodies often having a pre-determined time limit in which to complete their investigation and report, they investigate periods and patterns of human rights violations, and they are officially sanctioned by the state (Hayner, 2002, p 14)

While the mandates, power and level of significance differ depending on which institution has created the report, it is important to note that although Hayner considers truth commissions to be officially sanctioned by the state, they can take other forms. For example, church groups have been fundamental, particularly in Latin America, in collecting testimony from victims and military records (when available) and publishing reports. This was the case in Brazil and Guatemala where the Catholic Church published its own truth commission report. Thus, while Hayner identifies twenty-five TRCs, expanding Hayner's definition to include non-state sanctioned commissions, Dan Bronkhorst identifies forty-five commissions of inquiry (Forsberg & Teivainen, 2004). The aims and critiques of these commissions will be further discussed in chapter 4.

## **Temporality of transitional justice**

One more idea that is of relevance to this research is the idea of the temporality of transitional justice that is elucidated by Elster. He is one of the few in the literature who distinguishes immediate, protracted, and 'second wave transitional justice'.

Immediate transitional justice proceedings begin shortly after the transition and come to an end within, say five years. [where as with protracted transitional justice], the process starts up immediately but then goes on for a long time until the issue is resolved (Elster, 2004, p. 75-6)

Second wave transitional justice starts with immediate justice that leads into a latent period of no action and then years or decades later new proceedings are launched.

Postponed transitional justice occurs when "first actions are undertaken (say) ten years or more after the transition" (Elster, 2004, p. 75-6). This protracted and second-wave justice is important to consider when examining the long-term impacts and successes of TRC.

## **Methods of evaluation: Definition of success and impact**

The existing research evaluating the success and impact of truth commissions is based on short-term impacts. That is, they examine the initial results and reception to the commission's work after a TRC report has been released. Many of these studies define 'success' and 'impact' in various ways. Based on Brahm's review, these include the following: truth commissions can be considered successful "simply by virtue of completing their work" (Brahm, 2007, p. 18). "The extent to which" a commission determines the "fate of individual victims" may also be a criteria for success (Brahm, 2007, p. 18). The problem with this measure of success is that each commission will vary

in the degrees that it does this based on its mandate. Moreover, “the true extent of human rights abuses often remains in dispute. If one would like to assess truth commissions based on how much information they uncovered, it is not clear what the baseline would be” (Braham, 2007, p. 18). Studies that focus on the legal and moral effects of a truth commission determine success on whether, to what extent, and how the truth commission has fulfilled these legal and moral obligations to victims and to what extent they created the conditions for reconciliation. This research uses Braham’s simpler definition of success, which is “the degree to which a commission fulfilled the duties assigned to it” (Braham, 2007, p. 17). This definition allows for the “variation in commission structure and powers, the environment in which they operate and the nature of the crimes they investigate” (Braham 2004: 17). Thus, if a commission is able to fulfill its mandate, “it could be considered a success” (Braham 2004: 17). Following this, impact is defined as the “sort of empirically verifiable effects a truth commission has in the transitional context” (Braham 2004: 19), these effects may be short or long-term.

In terms of this impact, this research examines the degree of truth, justice, reconciliation and awareness of human rights that has been achieved in Chile since the release of the Rettig Report. One measure of this impact is the perceptions of stakeholders that influence policy such as politicians, military, human rights organizations, judiciary, and victim’s groups. A limitation of impact studies based on examining perceptions, including this one, is that there is no baseline data that allows researchers to determine what perceptions were before a truth commission existed. Therefore, to determine whether a change in perception actually occurred because of the TRC is difficult. As a result, this research uses as its baseline initial perceptions and

reactions to the TRC report and then examines how these initial perceptions and reactions have changed over time. It does not purport to examine perceptions of truth, justice and reconciliation 'before' and 'after' a commission as this would be difficult to do in a retrospective study.

## **Summary**

To summarize, while recognizing the limitations of the framework such as being under-theorized, the existence of definitional ambiguities and the difficulty of quantifying philosophical concepts, this research uses a transitional justice framework to contextualize truth commissions because this is how they are contextualized in academic study as well as practice. Transitional Justice, practiced by states since Ancient Greece but modernized by the Nuremberg process after WWII to become the way in which democratic states deal with the abuses of the *regime ancien*, refers to justice that takes place in a politically changing environment. It is characterized by a range of mechanisms, criminal and non-criminal, that states have at their disposal to address issues of accountability.

To study the impact and success of the truth commission in Chile, this research adapts the framework by defining success as whether the duties of the commission were fulfilled and impact as the effects the a commission produced in the transition. These effects are measured in terms of the perceptions of those who influence policy-making in Chile. The methods that will be used to approach this study are discussed in the following chapter.

## Chapter 3

# Methodology

The methods used in this research were a mixture of primary and secondary research. This research relied on a combination of semi-structured in depth interviews and secondary research (archival and literature review) to obtain the data needed for analysis. Primary research examined the truth commission report itself and conducted 30 interviews with scholars on the truth commission processes, representatives from human rights organizations, victims, the military, and government officials to gain insight into what these groups in society thought of the truth commission and the processes of reconciliation and stability it hoped to achieve. Secondary and archival work included making use of the literature on truth commissions, newspaper and magazine articles, in addition to the reports of human rights groups on the truth commission.

Before arrival for research in Chile, it was expected, based on scholarly warnings that research on truth, justice, reconciliation and human rights in Chile would be an extremely difficult undertaking as Chileans are hesitant to discuss the Pinochet era and the topic of human rights. Additionally, this researcher had none of the personal connections, *pitutos* as Chileans call them, that Martz (to be discussed below) mentions and others suggested would be needed to conduct interviews and gain access to archival materials. However, the opposite was found to be true in Chile for this research. It was possible to make direct connections with all of the interviewees and the research only

received one denial of requests for interviews. To maintain the confidentiality of these sources, they have not been named. If available, and consent was given, their political or social affiliation has been cited in the footnotes.

### **Secondary data sources**

Secondary sources are those that exist prior to the researcher having started his/her own research. Thus, these are pre-existing sources of information “that were generated for reasons other than those the current researcher has in mind” (McTavish and Loether 2002: 201). Secondary research is the “use of data that are already available” (McTavish and Loether 2002: 201). These data can be either quantitative such as the use of statistics, or qualitative such as the use of archives that may include newspaper and magazine articles, or transcripts of interviews conducted by others. Use of secondary data requires the researcher to make judgments about what data will be necessary for analysis and whether existing data are appropriate for the study at hand. Existing data are available from public and private archives, and government and university libraries. However, researchers should not formulate a study question based on the availability of secondary data. Research questions should be formulated because they will contribute to scientific knowledge, not simply because data exists which would allow one to study a particular question. Additionally, researchers should avoid trying to substitute data that exist for data they are searching for (Stewart, 1984, McTavish and Loether, 2002).

Following McTavish and Loether (2002, p 207-208, 211-214), what follows is an outline of some of the advantages and disadvantages of secondary data use after which the use of archives will be discussed.

### **Advantages and disadvantages of secondary sources**

The use of secondary data can decrease costs for the researcher since the data are often already available for use. This allows the investigator to save time, money and effort that would normally be expended in trying to collect data anew (Stewart, 1984, p. 13)

Additionally, access costs are often reduced since data is often available publicly. For example, newspaper articles or other media sources may exist in libraries and will be available to researchers at very little cost, if any.

Third, is the sample size, qualitative secondary source databases often contain a significant amount of information. For example, if one is using newspapers, there are several thousand newspapers one might have access to in a National Library. Conversely, researchers must be aware that sometimes secondary sources or research may not have been based on large sample sizes, with the result that limited conclusions could have been made by the research. Fourth, secondary data is often much more representative of the population of interest. If census data are used, North American censuses are quite representative of populations and so can be used rather safely when making “statistical inferences about the population” (McTavish and Loether, 2002, p. 207, Stewart, 1984, p. 13). However, it must be remembered that the target population in one’s own study are not the populations for which the secondary data was collected.

Another advantage to secondary data is that over-time data are often available. Thus, in the case of quantitative secondary data, data may be cumulative such that “similar data are collected periodically from the same number of comparable respondents” (McTavish and Loether, 2002, p. 207). Quantitative data yield historical

data that will make longitudinal studies possible. An additional advantage of secondary data sets is that they are often non-reactive. Since they already exist, there is little room for the researcher to influence the data or bias it in one direction. Biases that are of concern in secondary data sets are those of the original researcher. To minimize these, one would require knowledge as to how the data was collected and what questions were asked of participants.

An important concern in the use of qualitative data is its quality. Although top quality textual data does exist, sometimes the use of personal documents can present the problem of legibility. Documents may not be written clearly or may have faded over time, thus contributing to the loss of information for a researcher using this kind of data. Further, initial data preparation by original researchers may have resulted in errors when information was coded or a diary entry made. It may not be easy for a researcher relying on this source of information to eliminate these errors.

Additionally, secondary quantitative data may not include all the variables initially used, since the original “researcher may [have] decide[d] to drop variable for which there are no data from the conceptual model” (McTavish and Loether, 2002, p 208). Moreover, some secondary sources, such as newspaper articles and personal documents “may not include direct information on the variables the researcher wants to” use because they were originally produced for different purposes (McTavish and Loether, 2002, p 213, Stewart, 1984, p 14). This may lead the researcher to make inferences about the information in the document that cannot be justified. The resources may also contain irrelevant information, called dross, which is higher for secondary qualitative data than

for quantitative data and quantitative responses may not be categorized in the manner in which the researcher requires for his/her own study (Stewart, 1984, p 14)

Another weakness of secondary data is that the researcher may not be aware of how the data were created. The researcher must keep in mind that “documents are created in a social context that may have both desired and biasing effects on the resulting archived data” (McTavish and Loether, 2002, p 213). For example, if using letters and memos as secondary data, one must remember that there were two (or more) parties involved in the transaction and the researcher may only be getting one side of the story.

Finally, the researcher must be mindful that secondary data often yield access to older data as current data are not always available (Stewart, 1984, p 14)

### **Archives**

Archival and historical work often involves the use of primary documents. Archives are a set of records that may be textual documents, or statistical information produced for purposes other than the research at hand (Robson, 2002, p 35). It is important to note that what is found in archives is what others have defined as documents worth keeping for future use. Thus, there are several layers of sedimentation that go on before a researcher has access to a document. First, those that own the documents decide what they will donate to an archive and what they will dispose of, second, if the owner of the material is deceased, it is often archivists or historians who evaluate and decide what is worth keeping and what can be discarded, and third once materials arrive at an archive, archivists decide what they will accept and allow researchers to view. Thus, before a researcher even becomes aware of available secondary or primary documents, several

sorting processes have already occurred (Hill, 1993, p 8-16) There are several issues researchers encounter when undertaking archival work These include access to materials, the unique nature of materials, non-circulation of materials, property rights and the closed-stacks organization of some archives

Often, in order to gain access to materials, permission is required to use the archive This must be negotiated beforehand and sometimes permission to enter the archive is denied If permission to the archive is obtained, then permission to special collections may have to be negotiated Access problems may also result if the researcher is unable to travel to the archive since many archives do not loan out materials Additionally, researchers often have to conform to the times and schedules of archive hours, and this can lead to increased time and expenses being expended on research Moreover, some states, such as Germany, have archival laws that need to be obeyed to ensure access to these resources (Franz, 1995, p 73)

Despite potential problems of access, it is important for researchers engaging in historical work to try to gain access to archives because often the materials contained within these repositories is unique and can provide a new perspective on a research problem However, once access to archives is obtained, researchers may encounter issues of property and copyrights because sometimes, “donors of archival materials retain private property rights over [the] material deposited in archives” (Hill, 1993, p 23) Therefore, the use of archival material may also require the permission of the donor Further, due to these copyrights, there may be “restrictions on the quotation, copying and publication of materials” donated by the donor (Hill, 1993, p 24) Finally, researchers might have to deal with closed stacks in archives because archival materials can only be

found in restricted areas to which they will not have access. In this case “researchers must request or ‘page’ materials for use” and it will be brought down for the researcher to use. However, sometimes archivists may not allow viewing of closed stack materials or may suggest that they do not possess the materials the researcher is searching for. In this case, the researcher has “no way to verify what materials are actually in the stacks or whether their use of materials is hindered by unseen obfuscation” (Hill, 1993, p. 24).

Assuming that one does obtain access to archival materials several issues exist with historical research. The selection of the material used may not be without controversy. Researchers performing historical research may be charged with selectivity bias, which is unavoidable to some degree because what we see is determined by what we are looking at. Selection bias contains two elements: first is the bias that may be inherent in the selection and use of some sources over others. The second is selectivity that is introduced when cases or documents analyzed by a specific historian are selected while others are consciously excluded. Mechanisms to prevent selectivity and bias include the following: one must keep in mind that the sample of documents available may not represent the entire sample of documents that actually exist, documents that seem suspicious in their origins and authenticity should be avoided, documents should be evaluated in their social and historical context and not from the point of view of the present (so as to engage in presentism), one should triangulate the information received from archival sources with other sources of information to ensure validity and reliability, be aware that there is a political culture and intellectual heritage associated with scholarly work that one is using, keep in mind that “facts are interpretations based on implicit or explicit theories” (Thies, 2002, p. 360), and finally, one should start their research with

the most recent sources available on the topic and “work backwards through the literature to see which historical ‘facts’ have stood the test of time” (Thies, 2002, p 362, 358-364) The following will outline archival research in Latin America, where this research was carried out

Bueno de Mesquita (2002, p 2, 5) notes that in international relations the use of the case study method often entails the use of historical methods and he expresses the necessity and value of such studies for advancing knowledge in the field of international relations However, undertaking research abroad is certainly not easy (Martz, 1989) In Latin America, Martz suggest that the researcher’s status is important Institutional or national affiliation can work to benefit or harm the researcher’s ability to conduct research if that affiliation is not viewed in a favourable light For example, he points out that in the 1980s in Latin America, scholars affiliated with the United States (U S ) aroused suspicion because many in Latin America feared that these scholars might be affiliated with the Central Intelligence Agency (CIA) This may have made potential interaction with the scholar difficult or unlikely in some cases (Martz, 1989, p 57-58)

Martz suggests that to do basic archival work in Latin America, one needs an awareness of what (and where) resources are available He suggests that although national libraries are a place to start, in Latin America, they are often not adequate as sole sources of archival information Therefore, it is necessary to turn to university libraries and Catholic seminaries that contain invaluable sources of information However, in the case of Catholic seminaries, women may not be allowed in some of these If documents from family libraries and personal collections are required, then a personal connection is necessary to obtain access However, if access is granted, other problems may result,

such as the unavailability or limited availability of photocopiers to copy material required. Additionally, it may take time to travel between archives that may be located in different cities. This can be extremely time-consuming since travel in the developing world is not often easy.

Although various archival holdings are unique to the region, and some local holdings are complete, various problems exist with archives in Latin America. Damage and loss of archives is a common problem. Damage can be due to climatic conditions, inadequate storage facilities and procedures, and untrained staff that are unable to manage the resources (Hazen, 2003, p. 345). Additionally, material is often acquired for personal collections and copies removed from archives. Material available may be uncatalogued or unsorted due to the lack of resources devoted to preservation of materials. To remedy this problem, several projects have been started by North American universities in partnership with Latin American institutions. The first is the *Latin American Microform Project (LAMP)* started in the 1970s. The LAMP project brought together 42 North American Libraries to work with host institutions in Latin America to microfilm various sources. Another project is the *Program for Latin American Libraries and Archives (PLALA)* project started by Harvard University, which supports over one hundred archival and library projects in seventeen Latin American countries (Hazen, 2003, p. 345-346).

Despite the fact that many Latin American archives may not be as advanced as those in North America, valuable information can still be obtained from those sources that are available. For example, in his research on the Brazilian truth commission report, Weschler found that São Paulo's Catholic Archdiocese had kept extensive records of all

the documents used to create the report. In fact, once he had personal contact with Jaime Wright, a Presbyterian minister in São Paulo, he was able to view over a million documents related to the truth commission (Welsh, 1991)

In his study of *favelas* in Rio de Janeiro, Pino outlines several archival sources that can be used to study these shanty-towns. Although they are unrecognized officially and therefore have no official written history, those who wish to study *favelas* can still rely on other primary archival sources to do so. For example, primary material such as employment history, health reports and land deeds exist that can reveal the social history of a *favela*. Additionally, city archives, records from the Catholic Church that dealt with *favelas* may reveal statistical information on family organization and housing, and records of welfare organizations can be used to show whether individuals in these settlements have been receiving the services they need. Moreover, records of engineers and planners may be important in determining whether housing meets people's needs. However, since these records are not catalogued they can be considered archives only in the loosest sense since they may be missing pages, and may not be in their original condition (Pino, 1997, p 112). Many of the national archives mentioned by Pino require permission from a Brazilian academic authority to be used and require the presentation of an identity card. Photocopying is allowed in some, but not in others, and may result in delays with the material (Pino, 1997, p 113-120)

Finally, Bickford (2000) offers an analysis of archives containing material on human rights and memory in Argentina, Chile and Uruguay.

The main archive in Chile accessed for this research was the Fundación de documentación y Archivo de la Vicaría de la Solidaridad Erasmo. This archive has a

well organized collection of over 80 000 legal documents, victim testimonies, eye witness accounts from the dictatorship period, and published and unpublished materials

Materials are readily available to scholars, researchers and journalists. The archives have computerized indexes, and about “half a million newspaper and magazine clippings on human rights cases from 1973 to the present” (Bickford, 2000, p. 65-166)

The Fundación de Ayuda Social de las Iglesias Cristianas (FASIC) was also another archive used for research in Chile. This archive has a large collection of human rights books and documents, but some are unorganized, and in boxes (Bickford, 2000, p. 167-168, 180)

### **Primary data sources: Interviewing as method**

Method selection is a crucial aspect of researching. Methods should be chosen based on the kind of information required in order to answer the research question at hand.

Interviews are one tool used for such data collection. Charles Booth was the first to use sociological surveys that relied on interviews in his work *Life and Labour of the People in London* in 1902-03 in which he examined the socioeconomic conditions of people in London. He used a combination of survey and unstructured interview methods to ensure the reliability and validity of his results.

Interviewing further came to the fore after a psychological study on soldiers in the Second World War called *The American Soldier*, directed by Samuel Stouffer (Fontana & Frey, 1998, p. 49-50). In the 1970s and 1980s despite the popularity of survey interviews, other qualitative interview techniques also came to be commonly practiced. Interview techniques can be placed in three categories: structured, unstructured, and semi-structured.

interviews They can be done in groups, formal or informal and be long or short The length of the interview should be determined by the nature of the information sought, if the information required “can be obtained by asking only a few questions, then the interview may be quite brief” (Berg, 2004, p 91) However, a long interview may be required if the information needed is to be detailed and extensive If long interviews on a particular topic are used, it may be not be necessary to interview as many individuals since, at a certain stage, the researcher will hit a point of saturation, where new information is no longer being obtained from participants about the research topic at hand (Berg, 2004, p 91-92)

Interviews “are a special form of interaction between people, the purpose of which is to elicit information by asking questions” (Kirby & McKenna, 1989, p 66) Non-exploitive interviews are guided conversations in which information is shared by both parties (Kirby & McKenna, 1989, p 66) Additionally, interviews are described as partnerships in which a listening space is created and meaning constructed through a sharing of viewpoints (Miller & Crabtree, 2004, p 185)

### **Structured interviews**

The goal of structured interviews is to collect “precise data of a codable nature in order to explain behavior within pre-established categories” (Fontana & Frey, 1998, p 56) This type of interview is often characterized by a pre-set list of questions to which responses fit a set of categories chosen by the interviewer The questionnaire is adhered to for each individual interviewed, leaving little room for flexibility in the way the questions are

asked. This standardized nature of the structured interview makes it particularly useful for survey research.

The role of the interviewer in this type of interview is one of neutrality. The interviewer must assume a casual, friendly, yet impersonal attitude to ensure that a “balanced rapport” exists between the interviewer and the interviewee (Fontana & Frey, 1998, p. 52-53, Berg 2004: 79). The interviewer’s role is to direct the interview in a particular direction that is determined by the questions asked. The information sought from the respondent is decided well in advance of the interview.

Errors from three sources can occur in these types of interviews: (a) respondents may try to give socially desirable responses, and (b) the type, wording or technique of questions asked can influence the responses received (Fontana & Frey, 1998, p. 53). Although “the predetermined nature of structured interviews is aimed at minimizing errors, structured interviewers are aware that interviews take place in a social context which can affect the interview” (Fontana & Frey, 1998, p. 53). Structural interviews do not factor in the emotional dimension that plays into answering questions (Fontana & Frey, 1998, p. 53).

### **Unstructured interviews**

These interviews are the opposite from structured interviews. They are open-ended and the interviewer has a list of topics s/he would like to broach with the participants, but allows the participants to speak openly and freely on these topics. These interviews can be in-depth and offer a greater breadth of material. They often take a more conversational tone where the interviewer will also answer questions asked by the participants (Fontana

& Frey, 1998, p 56, Berg, 2004, p 80) Thus, in an unstructured interview, although the interviewer may have a list of topics s/he would like information on, the questions arise from interaction with the interviewee

### **Semi-structured interviews**

These kinds of interviews as the name suggests, are somewhere in between the structured and unstructured interview. The interviewer has a list of predetermined questions but room for digression from these questions is allowed. That is, unlike in a structured interview, the question order and wording may be changed slightly in consideration that each participant may be different or assign a different meaning to words. The “interviewers are permitted (in fact, expected) to probe far beyond the answers to their prepared standardized questions” (Berg, 2004, p 81). By adjusting the language used in these types of interviews to the level of awareness of the participant, researchers are able to “approach the world from the subject’s perspective” (Berg, 2004, p 81).

### **Group interviews**

These can take the form of structured, semi-structured, or unstructured interviews and are often conducted in the form of focus groups. Several individuals are brought together in formal or informal settings and questions are posed to the group. In group interviews, the interviewer is responsible for directing the “interaction and inquiry” (Fontana & Frey, 1998, p 54), yet the “interviewer must be flexible, objective, empathic, persuasive, [and] a good listener ” (Fontana & Frey, 1998, p 54).

## **In-depth interviewing**

The in-depth interview is a qualitative and semi-structured interview. Interviews are verbal exchanges but also consist of “non-verbal and emotional interchanges” (Miller & Crabtree, 2004, p. 187). Interviews are forms of discourse. They contain an actual message as well as forms of messages through verbal gestures, facial expression, and other body language. The purpose of in-depth interviews is to “generate narratives that focus on fairly specific research questions” (Miller & Crabtree, 2004, p. 188). The “emphasis is on ‘depth, detail, vividness and nuance’” (Miller & Crabtree, 2004, p. 189). These interviews “use open, direct, verbal questions that elicit stories and case oriented narratives” (Miller & Crabtree, 2004, p. 189). Before undertaking an in-depth interview, the researcher must do a literature and cultural review. A cultural review is a study of newspapers, radio, and other media to gain an understanding of the various cultural categories and understandings of events. It also enables researchers to perform a personal check for biases and assumptions, thereby facilitating a self-review. The interview process involves selecting respondents so that the appropriate information is received for the study. These interviews are essentially open dialogues and no two interviews are the same. The goal is to seek deep collective interpersonal understanding. The interviewer is the research instrument. The factors that can prevent a respondent from answering questions and providing information include competing demands for time, discussion of sensitive events and poor memory (Miller & Crabtree, 2004, p. 197).

Although the interview may be viewed as a conversation between the interviewer and the interviewee, “it is not a conversation between equal partners” (Berg, 2004, p. 99),

therefore, more time needs to be granted to the interview so that information regarding the topic at hand can actually be obtained. To this end, it is very important for the interviewer to build rapport with the participants.

### **Advantages and disadvantages of interviews**

Although useful tools for data collection, like any tool, interviews have advantages and disadvantages. First, they are flexible information gathering tools, and if the interview is face-face, both verbal and non-verbal behavior can be observed. Further, in the case of semi-structured and unstructured interviews, questions may be modified depending on the answers received to follow up on interesting responses (Robson, 2002, p. 272-273). The interview can provide rich and detailed material not often obtained by some other techniques. However, questions of reliability are raised when using an unstructured interview. One must also be careful of biases that may be in questions asked and responses received. Additionally, interviewing is time-consuming. To yield valuable data, most interviews will last a minimum of half an hour. Interviews, especially if extended over an hour, make demands on the interviewees' time which may limit the number of participants in the study and therefore bias the sample. Additionally, one must keep in mind that the interview does not just consist of the actual interview itself. There is a process that comes before and after the interview: one must prepare questions, arrange meeting times, reschedule appointments, select a desired location, take notes and transcribe interview tapes (Robson, 2002, p. 273).

Other disadvantages include expectations of the respondents. Respondents may assume that the interviewer has some knowledge about the topic being discussed and

therefore provide information they think the interviewer wants to hear, thereby leaving out various, and perhaps important, bits of information. This strategic communication on the part of the interviewee is something the interviewer must keep in mind while conducting and analyzing the interview (Jovchelovitch & Bauer, 2000, p. 65-66). Additionally, respondents may not always answer questions truthfully (Fontana & Frey, 1998, p. 54). One way to minimize these expectations is to be clear about the objectives of the interview and to build rapport and trust with the interviewee.

The problems that can emerge in a group interview include the following: first, there is the danger that an individual or a group of individuals will dominate the group discussion and so the interviewer must ensure that s/he obtains responses from the entire group. Second, there is a chance that the group may consist of one or two headstrong individuals who must be encouraged to participate constructively. Third, the interviewer may have to undertake the role of both moderator and interviewer, roles that entail slightly different responsibilities. The moderator must manage group dynamics while the interviewer must direct questions. This may be a difficult area to navigate for some interviewers. Fourth, the discussion of sensitive topics must be carefully navigated in group interviews. Sometimes these can be difficult to discuss, while at other times some participants may be comfortable with their discussion in which case a greater understanding of the issue can be obtained by the researcher. However, "group think" can be difficult to avoid in focus group interviews (Fontana & Frey, 1998, p. 55).

There are however, several advantages to group interviews as well. These include the fact that these kinds of interviews are "inexpensive, data rich, flexible, stimulating to respondents, recall aiding, cumulative, and elaborative" (Fontana & Frey, 1998, p. 55).

Below some of the issues that arise when using interviews as a method of data collection are discussed

### **Issues of data interpretation**

Recently, postmodernists have begun to bring to the fore various problems related to interviewing. First, is the task of asking questions cross-culturally. Some questions are inappropriate depending on the cultural setting one finds oneself in. In their research on youth migration cross-culturally, researchers found that in Greece, Portugal and the U.K., asking “young people *why?*” in response to questions was not considered problematic and [it] seemed an obvious question to ask” (Redmond, 2003, p. 13). However, for researchers in Sweden, *why?* was a problematic question because it was not seen as a “neutral form of inquiry, nor was it always polite” (Redmond, 2003, p. 13). Swedish researchers felt the use of the question *why?* questioned the “legitimacy of the respondent’s statement, [and instead they proposed asking] ‘what are the reasons for this?’ or ‘tell me more’” (Redmond, 2003, p. 14). Thus, this research demonstrates that concepts are not universal and that experiences may be different even if an event exists across cultures and societies. Thus, when formulating questions researchers must keep in mind the use of neutral language.

The use of affective language also appears to have affected the responses Fletcher and Weinstein received to the question of whether or not genocide occurred in the former Yugoslavia in their study of the perceptions of Bosnian legal professionals on the relationship between criminal trials and social reconstruction. Participants were given a choice to say whether they considered the atrocities that occurred to be genocide or not

(Fletcher and Weinstein 2002 588-589) However, this question did not allow for other options of how individuals may characterize the violence. There may have been individuals who, although they do not consider genocide to have occurred, do acknowledge that grave atrocities did occur. Thus, using a term such as genocide, which evokes such strong emotions, may have been problematic.

Postmodernists also brought to light the issues of language and the use of translators in interviews. Butler and Kapborg and Bertero all found language issues to be of concern in their research. Since language is the way human beings organize their world, different languages present different realities, and cultural understanding is limited if one does not understand the language of the culture one is doing research in. However, impossible it may be to sometimes avoid the use of translators, it must be noted that various problems arise with the use of interpreters in interviews. First, “subtle differences in meaning are lost, [and second] some words cannot be translated into English because of cultural differences or non-equivalent words” (Kapborg & Bertero, 2002, p. 52, Butler, 1983, p. 12). In their study of nursing students in Lithuania, Kapborg and Bertero required translation from responses in Lithuanian into English and then further into Swedish. They note that had they “been able to find an interpreter who was fluent in Swedish, the situation could have been better controlled, thus reducing the threat to validity. With two, rather than three languages in translation, the potential loss of meaning would have been limited” (Kapborg & Bertero, 2002, p. 55). They note that the use of translators limits the questioning style in that it is difficult to use appropriate probes, and it is difficult to assess how the translator interprets the interviewer’s questions. Additionally, “lack of familiarity

with the language can affect the adequacy of a study, since the accuracy of the interpretations may be reduced” (Kapborg & Bertero, 2002, p 55)

In his research on units of collective farming, Butler notes that when interviewing participants on a topic, it is best to phrase questions in the terminology used by the participants to describe the topic at hand. However, this may present problems for translators because some of the terms used may not have equivalents in English or the participants’ language since they may be specialized terms translators are not familiar with. Additionally, translating may strain the translator’s English (if this is the language they are translating to). Although Butler spoke Mandarin, he initially had trouble understanding the local accents, so translation into English was provided for him. He notes that what he would have found more helpful “was to hear an explanation in standard Mandarin” (Butler, 1983, p 12), but as time wore on, his familiarity with the local accent increased and found that translation was no longer required.

As already mentioned, the discussion of sensitive topics can be quite difficult in interviews. If research involves having participants discuss sensitive topics, the interviewer must work very hard to increase the comfort level of participants in the study. If this is not ensured, great emotional distress can result. Kagee, in his study of semi-structured interviews with survivors of human rights violations in South Africa notes that one participant refused to be interviewed because she would have found the re-telling of her experience too painful (Kagee, 2004, p 627). The danger of emotional distress stresses the importance of interviewers having proper training to conduct interviews on sensitive topics. The participants’ comfort level raises the issue of interview location. Where should the interview take place? Kagee suggests that the venue where the

interview takes place should not be “ideologically loaded ” Since he was interviewing former victims of human rights abuse, he suggests that “if interviews had taken place in a clinic or hospital, this may have provided contextual cues as to the interest of the interviewer” (Kagee 2004 630) and ensured that the respondents provided answers they thought were sought by the interviewer To remedy this situation, Kagee agreed to conduct interviews in participant’s homes or the home of a key person in the community

Arendell also faced the issue of interview location, although for different reasons She was interviewing divorced fathers, and had to grapple with whether she should go to a stranger’s home, especially since she was not informing anyone where she was going in order to maintain the confidentiality of her participants She avoided meeting men in their homes because “numerous men used the phrase ‘your place or mine’ implying a veiled analogy to arranging a time and place for a blind date and suggesting a stance of informality ” which she did not want (Arendell, 1997, p 349-350) She largely managed to meet men in more neutral places such as diners and only ended up meeting thirteen participants in their homes because it could not be avoided

On this note, it is pertinent to discuss the issue of gender and interviewing Postmodernists have suggested “that gender filters knowledge [and] the interview takes place within the cultural boundaries of a paternalistic social system in which masculine identities are differed from feminine ones” (Fontana & Frey, 1998, p 64) Arendell discusses this issue at length in her report of her research with divorced fathers in New York She found that gender hierarchies were maintained in her interviews In contrast to her interviews with divorced mothers in a separate study, she found that in her interviews with men, she was constantly questioned throughout the interview on a wide range of

topics Thus, not only was she interviewing the men, they were also interviewing her Additionally, they often gave her directions on matters such as where to place her tape recorder, how to operate it etc , and the men assigned her different identities throughout their interviews These ranged from being the representative object of anger where men would equate her being a woman with the woman they had been 'scorned' by, to being an 'honorary male' with whom they shared their anger, to being a social scientist, a parent or the "token caretaking woman" (Arendell, 1997, p 355-356) She often found it difficult to ensure boundaries were respected as she was sometimes asked out on dates by some of her participants, and some of them expressed familiarity by touching her Some of these physical gestures "conveyed messages of dominance supervisors tend to touch subordinates and men women rather than vice versa" as when many men touched her back or shoulders as if to guide her when walking (Arendell, 1997, p 361) Finally, she notes that she was unsure of whether she should have disclosed her feminist views to men who would often make disparaging remarks about women She decided that since she was not carrying out a feminist study per se, she would only disclose her views when asked

The power dynamics present in an interview setting are also highlighted as problematic by post-modernists For example, often interviews have a hierarchical dynamic to them, whereby the interviewer has more power than the participants being interviewed do (Fontana & Frey 1998, p 64) This hierarchical relationship was reflected in Arendell's work when men assumed a dominant position to her However, this dynamic may be reversed in the case of students interviewing experts or academics that may have more information and power than students doing the interviews may In an

attempt to “minimize status differences,” it has been suggested that a closer relationship between the interviewer and the interviewee be allowed

There is also the issue of reflexivity, the idea that the researcher has influence on the study in terms of “methods of data collection and techniques of conducting interviews” (Fontana & Frey, 1998, p 62) Arendell (1997, p 342) suggests that researchers must be self-aware of the baggage, i.e. personal history and identity that they bring to the interview To minimize the influence of the interviewer Fontana and Frey suggest that interviewers should report assumptions and biases in their reports The researcher should also perform a self-review, that is a personal check for biases and assumptions, and report these when necessary

Another very important issue is the clarity of the research objectives Since both parties, interviewers and interviewees, have expectations of the interview it is very important that researchers are clear about their research objectives Ambiguity about these objectives not only has ethical implications, but it leads to unrealistic expectations on the part of participants For example, in his study of textile and garment entrepreneurs in Zimbabwe, Jackson questioned participants on business policies, and found that his participants (textile and garment producers and informal sector traders) expected a presentation of results “which they did not get ” This may have been a result of Jackson not making clear his research expectations and objectives to his participants (Jackson, 2004, p 774)

A further issue about interviews is sampling Various sampling strategies may be used to locate participants Some studies have used stratified random samples, some have used purposive sampling while others still have used snowball sampling The sampling

mechanism used will depend on the nature of the research question, but one should be careful that the sample size is not too small. A small sample size prevents researchers from making large generalizations. This was the case for a comparative study of truth commissions in Argentina, Chile, El Salvador, Guatemala and South Africa. The researchers wanted to gain insight into victim's perceptions of truth commission processes in the above-mentioned countries. However, out of a sample (that was not pre-selected) of 102 individuals only 82 interviews were conducted. This size prevents generalizable conclusions, which is often one reason comparative studies are done. Since the participants were not pre-selected, it was found that once interviews began, fifty per cent of those interviewed were unaware of the contents of the truth commission reports. This is quite problematic for research that aims to compare and make general claims about victim's perceptions on the truth commissions in their respective countries. Given the numbers of people in all these countries whose rights were violated, and who would be aware of the truth commission reports, the researchers could have increased their sample size in order to increase the validity of their results. No reasons were given in the research report as to why such a small sample size was used (Cuevas, Rojas, & Baeza, 2002, p. 4)

Another problem with sampling and obtaining interviewees is the method used to increase one's sample size. Some researchers have used personal informants or contacts to obtain participants for their research. For example, in his study of Chinese students, scholars and professionals leaving China, Zweig (1997) notes that he and his research team used Chinese contacts in various cities across the United States to gain access to students, scholars, and professionals of Chinese origin who left China to study or work

but then decided to stay in America. However, the problem with using personal contacts or informants is that some informants may have power over the participants s/he is trying to recruit and therefore, participants may feel forced or pressured to participate in the study, thereby affecting the kind of information that is received (Zweig 1997: 110)

Before offering a summary of the methods used for this research, the issue of conducting interviews in Latin America must briefly be mentioned. Martz (1989) suggests that to get an interview in Latin America, a personal introduction is often absolutely necessary. The access to individuals is also dependent on the information being sought, and how open or closed the society is. Additionally, depending on the openness of society and how comfortable individuals may be with the subject matter at hand, the use of tape recorders may not be possible. For example, in the 1970s and 1980s researchers in Latin America would have found that many “interviewees would have prohibited the use of such intimidating contraptions” (Martz, 1989, p. 52). Thus, one must always be prepared to take copious notes.

## **Summary**

To gain an understanding of the effects of the truth and reconciliation commission in Chile, this research used secondary data—archival documents and literature review on truth commissions, and primary data—interviews with Chileans (human rights organizations, victims, lawyers, judges, military officials, academics, government officials and politicians)

The advantage of secondary data in the form of archives was that it made possible this longitudinal retrospective study. This data provided information about reactions of

various sectors to the TRC at the time of its release and was then used as a baseline from which to compare current perceptions and understandings of truth, justice and reconciliation that were obtained through primary research

Primary research involved in-depth semi-structured individual interviews that lasted 45-60 min and allowed for open dialogue between the researcher and interviewees. Interviews were chosen as a research method because it was thought the best method to obtain information on opinions and perceptions of the impact of the TRC as a tool of transitional justice.

The following chapter details the literature debates on TRCs.

## Chapter 4

# Truth, Justice and Reconciliation

In order to answer the question of this thesis, namely what were the effects of the TRC in Chile and was it successful in achieving its aims, it is necessary to have an understanding of the general goals TRCs hope to achieve. Based on a review of the literature, these goals—truth, justice and reconciliation—and the debates surrounding them are defined and discussed in this chapter.

### **Truth commissions and truth**

To review, truth and reconciliation commissions are temporary bodies that investigate and report on periods and patterns of human rights violations. Hayner considers only those commissions created or sanctioned by the state to be truth commissions, while others include non-state sanctioned commissions such as those started by church groups in their definition.

### **Aims of truth commissions**

Truth is a contested concept with multiple meanings and layers. Truth telling in a transitional context is divided into a 'before' and 'after' the conflict. The truth sought

builds on previous historical national narratives and allows societies to build a bridge between the past and the future. It is held that an official truth process enables a shift to a democratic order from one where deception and repression are common (Teitel, 2000, p 69-70). Teitel notes that truth is conditioned by the political and social circumstances of a country at the time that it is being sought (Teitel, 2002, p 256) and “in political contexts, truth is subject to ideological manipulation” (du Toit, 2000, p 132). Official truth is “politically established through public mechanisms” such as in a truth commission. Its validity depends on “the level of legitimacy of the government” (Zamora, 2005, p 177). As a tool of transitional justice TRCs can reduce pressure on a political transition by meeting some of the demands victims and human rights organizations have for truth and justice (Center for Development Research, 2001, p 1).

Furthermore, in a post-conflict society there is not one exclusive truth when referring to the experiences that people were subjected to. There are official and unofficial truths, and the experiences of the victims, perpetrators, judges, and the press must all be dialogued with and respected (Sachs, 2002).

Truth commissions are not in search of an absolute truth of the past. They are an investigation into the past and so seek to establish a publicly arrived at conception of this past. They do not engage a legal space like trials do but a social, political collective space and have brought to the collective space a discussion of “what constitutes truth?” They engage truth in both the ethical and political sphere and have expanded the notion of truth from philosophical, ethical and juridical conceptions to narrative, experiential, ontological and performative ones. Though these conceptions of truth may converge, they also contest each other (Sachs, 2002, p 52-53).

With the above in mind, the South African TRC developed a typology of four kinds of truths that serve the function of truth telling. Other researchers have also followed suit by using similar classifications.

Truth commissions establish “an accurate record of a country’s past, clarify uncertain events and lift the lid of silence and denial from a contentious and painful period of history” (Hayner, 2002, p. 24-25, Nesiiah, 2005, p. 283, Achour, 2002). In this regard, they engage in what the South African TRC called factual, forensic or microscopic truths which are the empirical facts of the crimes that can be verified: numbers of human rights violations, tortures, deaths, and disappearances, patterns of violence and who was killed, where, when, how and by whom? (Crocker, 2000, p. 100, Sachs, 2002, p. 52-53). The state’s actions, repressive structure, abuses by opposition groups and the chain of command responsible for the violence are revealed with this kind of truth. Factual truths enable the pursuit of the other goals of transitional justice: retributive justice if political will and evidence exist to pursue prosecutions, and reparations by the state to victims for their suffering (Crocker, 2000, p. 100-101).

Thomas Nagel distinguishes two senses of truth: knowledge and acknowledgement. By knowledge, Nagel refers to the forensic facts of the abuses the victims and perpetrators have already been aware of but may have been denied by the state and society; this refusal to acknowledge adds to the victimization, reaffirms the power of the perpetrators and permits impunity. Acknowledgement is when the facts that have been known but denied are finally accepted officially. Acknowledgement of the truth can have great significance for victims, especially in societies in which deception was central to the commission of crimes.

The TRC setting is a space in which there is a power shift through the narrative underpinnings of the truth commission witnessing, testimony, memory and archiving. Power shifts from the torture center to a truth commission hearing, from the perpetrator who enforced silence to the victims who testify to foster public acknowledgement (Bester, 2002, p 167). The testimony offered in a truth commission setting is transformative: stories of shame are dignified. Recounting trauma allows it's "integration into a coherent history of events allowing the person to feel the pain of the losses experienced [and] opens up the possibility for grief and mourning" (Minow, 1998, p 66). The TRC commissioners are called upon to be sympathetic witnesses to a crime (Minow, 1998, p 71-72). By focusing on victims, they recognize the citizenship that may have been denied to those subjected to abuses during a conflict or authoritarian regime (Achour, 2002, p 131). This recognition of those who have suffered is victim-centered justice based on truth. An acknowledgement of crimes and an apology especially from heads of states makes denial impossible, reaffirms the dignity of the victims, sends the message that impunity is unacceptable and helps decrease the number of lies circulated in the public discourse (Borraine, 2000).

The epistemology of truth is related to the administrative structures, powers, and processes of the truth commissions. Social consensus and public knowledge is built through a process of engaging victims and perpetrators (Teitel, 2000, p 81). It should be noted that the truth commission reports constituted primarily on victim testimony lack confrontation or challenge as a testimony in a trial. Efforts are made to ensure victims are listened to which is particularly important as they were silenced and their experiences denied by the previous regime. Testifying is said to be a cathartic process.

The second kind of truth that is revealed in a truth commission report allows for an inclusive remembering for the past. It is what was called a social, dialogical or general truth by the South African TRC. This is the “truth of experience” that is based on dialogue (Borraine, 2000, p 152) and because it is arrived at through public deliberation and debate, it may be contentious since it takes into consideration many points of view. This “process is never ending, there [may not be a] finalized truth” (Sachs, 2002, p 52-53) but ideally, it is one that allows a shared historical narrative to be created by and for the nation (Crocker, 2000, p 101).

In a TRC report, victims’ stories are connected so that a comprehensive account for the sake of history is established (Minow, 1998, p 60). Public hearings and the release of reports enables by-standers to become aware of, share in the acknowledgement and practice sympathetic listening. This public broadcasting of testimony has the potential to create a shared experience and change society’s relationship to the past. Through establishment of an accurate record, it attempts to institutionalize and democratize memory. Thus, “neither winners nor losers, neither perpetrators nor victors, have the final word. The right to know about the conditions of life in the past is among the civil rights of a democracy” (Natua, 2002, p 337).

The South African TRC was especially based on dialogue and this enabled it to examine the “social processes, and cultural and institutional systems responsible for the violations” committed under apartheid (Sachs, 2002, p 54). It is hoped that the airing of these social truths will create a collective memory that political and social actors will draw upon. These shared truths that build collective memory are often constructed by cultural transmission based on a set of shared understandings which are often missing in

transitional situations. Therefore, social consensus must be rebuilt and the past reconstructed. Truth commissions are one mechanism of reconstructing these shared truths (Teitel, 2000, p 49, 70, Guttman & Thompson, 2000, p 33)

The third kind of truths identified by the South African TRC are called personal and narrative or what others have called emotional and experiential truths. These are stories that victims and perpetrators are invited to tell. They often convey “the psychological and physical impact on victims and their loved ones of rights abuses and the threat of such abuses” (Crocker, 2000, p 100). They are truths arrived at through experience, the “understanding gained from being inside and part of a phenomenon [requires the ability to examine one’s] subjective experience in a truly unprejudiced way” (Sachs, 2002, p 52-53). The purpose of these truths is to give voice to individual subjective experiences, and restore the memory and humanity of victims. These stories are then communicated to the public via the release of the report and through the media.

Due to the public participation required in establishing this truth, TRCs can be said to have at least two narrators of truth: the victims who tell their stories or the stories of their dead, tortured or disappeared relatives, and the truth commissioners, a group of prominent citizens chosen for their moral integrity, who contextualize and relay the victims’ stories to the larger public and the state in the form of a truth commission report (Teitel, 2000, p 81). If, as in the case of South Africa, perpetrators come forward to testify, then they can also be considered narrators of truth. With the exceptions of Brazil and South Africa, most truth commissions are based largely on victim testimony. Thus, truth in a TRC is constructed on this basis.

Further, where as trials focus on the acts of perpetrators, truth commissions focus on accounting victims' stories, thereby giving victims a public voice and allowing them to be heard and re-dignified formally (Crandall, 2004, p 1, Nesiiah, 2005, p 283) This is different from how victims are given voice in a legal process Victim testimony in a trial is different because

victims are interrupted, [while] in a truth commission, they are listened to respectfully Further when perpetrator testimonies are included in a truth commission the truth commission body attempts to listen to the perpetrators and understand *why* the crime was committed so that political and moral responsibilities can be assigned (Kiss, 2000, p 71)

Fourthly, the South African TRC defined healing and restorative truths These kinds of truths are based on the notion that healing can only occur once knowledge is followed by acknowledgement and accountability (Borraine, 2000, p 152, Minow, 1998, p 245-247) All these truths are intertwined to serve a particular purpose Through the spaces created for dialogue, TRCs aim to reduce social tensions arising from past violence It is argued that they may even foster reconciliation because victims need to know what happened before they can be asked to forgive and reconcile (Forsberg & Teivainen, 2004, p 9 -10, Kirtz, 1995, Borraine, 2000, p 151, Hayner, 2002 p 30) Many commentators have suggested that healing can begin when truth of an experience is acknowledged and validated and people are allowed to speak it without shame (Minow, 1998, p 61) The idea is that once victims are allowed to "recover memories and to speak of atrocities" they can begin the process of dialogue, mourning, take action towards justice, and reconnect with others (Minow, 1998, p 65)

Through the airing of these kinds of truths, TRCs act as non-judicial mechanisms of justice and accountability Truth commissions are concerned with accountability in a

larger, collective sense, whereas trials and courts are concerned with individual responsibilities and proof of responsibilities. Truth commission reports are based on the following kinds of evidence: archives, documents, images, DNA (forensic evidence), and testimonies. Testimonies are subjective experiences and witnesses are often required to corroborate other pieces of evidence. As a witness, one can only speak to his/her own experience of reality and as such can never tell a complete truth. However, if it is sufficient, evidence collected can be passed on to judicial courts if political will exists to hold trials for perpetrators. For example, in Argentina the information from the truth commission report was used in the criminal proceedings of various military officers (Donghi, 1988, p. 14-16, Forsberg & Teivainen, 2004, p. 13). However, with some exceptions, more often than not, significant trials have not resulted from truth commissions and the contribution to acknowledgement, punishment and justice has come in the form of TRCs that have named names of human rights abusers and recommendations that abusers be removed from public positions (Hayner, 2002, p. 29).

TRCs are said to have a preventive function as well. They aim to prevent future abuses in two main ways. First, truth commission reports can evaluate institutional structures and laws that contributed to violence and recommend changes to these institutions and laws. Second, these commissions can contribute to social pedagogy by presenting an accurate report of past or current violence with the hope “that a more knowledgeable citizenry will recognize and resist any sign of return to repressive rule” (Hayner 2001: 29).

However, the possibility also exists that in the process of truth-telling “too much” painful truth may be revealed which can make it difficult for members of opposing sides

to reconnected and therefore, may increase tensions and conflicts among society As a result of this possibility, some question the value of truth commissions

### **Critiques of TRCs**

Several critiques are levied against truth-seeking and TRCs Some argue that truth commissions do not sufficiently recognize the complexity of the categorization of victim, perpetrator and by-stander and the sometimes vague lines between them Minow has suggested that these groups “stand in different relationships to the underlying events and to the prospect of healing” (Minow, 1998, p 61) and it is difficult for a truth commission with a limited mandate to address all of these There is also a “systemic bias in who is willing to testify, who thinks his or her suffering is worthy, who is willing to come forward as a victim, [and] who is willing to accept responsibility as a perpetrator” (Minow, 1998, p 84) Furthermore, these categories are not necessarily mutually exclusive That is, individuals can crossover or occupy these varying categories (Nesiah, 2005, p 282)

In his discussion of the South African TRC, Mamdani suggests that the commission did not adequately identify victims and perpetrators because it focused on individual gross violations and political acts in the context of apartheid instead of treating apartheid “as the *crime* itself” (Nagy, 2004, p 13) Apartheid is a crime against humanity but the TRC did not treat institutionalized racism as a gross violation, nor did the commission consider collective crimes (Nagy, 2004, p 13-14) Moreover, some people do not want to see themselves as victims so the truth commission’s focus on

victim-hood may prevent them from participating in the process of truth-telling (Minow, 1998, p 80)

Additionally, not everyone will identify or be sympathetic with victims. Some of those who supported oppressive regimes may feel that the victims were in fact terrorists and the punishments meted out to them by the regime were justified.

TRCs and particularly the South African one have been accused of forcing forgiveness and reconciliation onto victims due to the religious undertones in the language used by its chairperson Archbishop Desmond Tutu. However, Minow argues that the “healing sought by the TRC did not require apologies or forgiveness. It seeks to establish a baseline of right and wrong to humanize the perpetrator.” (Minow, 1998, p 78) She suggests that there were three levels of operation with the South African TRC: personal catharsis, moral reconstruction, and political consequences (prosecution, reparations, etc.) (Minow, 1998, p 79)

Since the general assumption in the literature and in practice among victims and human rights activists is that retributive justice through prosecutions is the first best option, truth commissions are considered second best options in cases where trials are not possible (Forsberg & Teivainen, 2004, p 17). However, another reason to pursue TRC may be the “inherent limitations of trials” rather than an inability to conduct trials (Minow, 1998, p 58). In an examination of the South African TRC, Llewellyn and Howse also suggest that the TRC was a first best option that “challenge[d] the conception of justice that underlies criminal trials” and proposed restorative justice (Llewellyn & Howse, 1999, p 356). Retributive justice assumes that the crime has disrupted a social equilibrium and that this equilibrium can only be restored by punishment, i.e. righting

wrongs Llewellyn and Howse argue that this is “arbitrary and historically contingent [and it conflates the wrong] with notions of private vendetta and divine or poetic justice” (Llewellyn & Howse, 1999, p 357) Restorative justice rebuilds social bonds, equally rebuild victim and perpetrator Strengths and weaknesses of the TRC must be examined from this perspective

Another criticism of TRCs is that when they offer amnesty in exchange for securing more truth, they compromise justice For example, the South African TRC was seen exactly in this way “‘the amnestied killer immediately walks free’ while his victim must wait for decisions about reparations” (Minow, 1998, p 61) Yet, Minow suggests that this may not entirely have been the case because even applications for amnesty had to wait to see if they were granted amnesty, some applications were rejected

Yet, others have suggested that just like trials TRCs are another form of victor’s justice Those who make this critique note that TRCs are used by victors to tell one side of a story, and that they are a compromise based on political interests present at the time of transition However, proponents of TRCs suggest that indeed, all TRCs “are founded on compromise” because victors realize they do not gain from a total victory and oppressors realize they have lost the war (Achour, 2002, p 133) The political interests in a truth commission are order and peace such that truth is “the instrument of politics” (Achour 133 2001) Truth paves the way for reconciliation, which is forward-looking Further, most examinations of the past are based on a sort of victor’s justice According to Nauta, TRCs are not a form of victor’s justice because people who benefited from the conflict or undemocratic regime are not harmed by the truth commission or its work (Nauta, 2002, p 336)

Proponents of truth commissions emphasize the healing power of telling one's story and suggest that truth is important to remember because amnesia allows social wounds to fester when they are not addressed. Amnesia enables distrust, distortion and disinformation, which were the norms under the repressive outgoing regime. Yet, others advocate forgetting or putting aside the past because it "can become an indulgence, an obsession and play [ ] into what Breytenbach has called our 'scab-picking curiosity'" (Breytenbach qtd in Kiss, 2000, p 71-72, Elon in Kiss, 2000, p 71)

Additionally, although it has been suggested that truth is a means in and of itself, some scholars have questioned the aforementioned functions of truth (healing, prevention, bridge between past and present). Scholars like Nietzsche, for example, asked whether truth and truth-seeking contributes to our well-being at all. It would be a "mistake to assume that participation in the victims' hearings of the truth and reconciliation commission could somehow guarantee the personal healing of traumas due to the human rights violations concerned" (du Toit, 2000, p 134). There are also problems with the psychological and medical metaphors, which are not part of legal (justice seeking) language, that are applied to societies. For example, injustices are called 'wounds' that can fester in society if left untreated and can poison society and truth is the healing mechanism. It is assumed that individual cycles of healing can be applied to political and social life on a collective, national scale, yet little evidence appears to exist for the basis of this assumption.

Moreover, some have noted that we must be careful to overemphasize the "therapeutic" role of hearing stories because this "does a disservice to survivors who

regard themselves not as patients in need of healing but as citizens entitled to justice” (Kiss, 2000, p 72)

Perhaps one of the reasons psychoanalytical and medical metaphors are applied to societies is because psychoanalysis supports the “emancipatory power of bring the repressed truth to the open. Once truth is revealed and acknowledged, its subversive dysfunctional role is supposed to stop” (Margalit, 2002, p 61). Margalit notes that the South African TRCs divisions of truth are “unfortunate” and “clutter the notion of truth relativiz[ing] it beyond recognition” (Margalit, 2002, p 62). He is critical of the TRC process, noting that in its attempts to reenact that past, it forced victims to relive a humiliating past, thereby renewing their humiliation which seemed to undermine the goal of healing. On the other hand, he says that victims have a need “for their suffering to be recognized” and that recognizing their suffering affirms their humanity (Margalit, 2002, p 64). The challenge for post-conflict societies is to establish “the proper balance between remembering and forgetting ” (Simeon, 2002, p 147)

The preventative function of truth is debatable. There are plenty of historical examples to show that even when human beings know better, they do not necessarily do better. Buden suggests that the problem is not that we do not know enough, but that “our knowledge has no political consequences. The common belief that truth can liberate people from the chains of political manipulation is misleading” (Buden, 2002, p 69-70). The idea that people will choose differently once they know the truth is an illusion, one that allows “a kind of political ‘restart’ once a democratic system crashes” (Buden, 2002, p 70), “We the people” become “we the innocent victims” of a system. There is an assumption that people have not made choices to that enabled their participation in

undemocratic regimes. Once the system crashes people are turned into innocent victims and assumed to be passive entities, and once the call for democracy is re-instated these innocent victims are “recast in the role of an agent of democratic change” (Buden, 2002, p. 71). The fantasy of innocence feeds the idea that socio-political conflict in society can be reduced to a dichotomy between victims and perpetrators and the social space in which to resolve this conflict is the court room and not the political arena. Buden suggests that in this regard, “the truth of social antagonism no longer emerges out of collective political action but rather through a juridical procedure along the relation between victims and perpetrators. It is a juridical truth not a political one” (Buden, 2002, p. 71). These juridical truths do not address the complex relations of power and domination in society. Tribunals and courts establish individual responsibilities, but they do not allow for the establishment of political responsibilities.

Further, in politics, the ends justify the means and this may include sacrificing the truth. Truth can be manipulated, contradicted, silenced and masked, and for this reason sometimes it is better not to tell the truth. Further, not all truths are public because they may conflict with collective interests or the social order.

While, Minow does not embrace the idea that there can be too much truth or memory because “‘truth’ can never be full enough or sufficiently embracing enough, to connect profoundly different perceptions of what happened” (Minow, 1998, p. 62), others have suggested that seeking absolute truth is dangerous. Once the truth of what really happened is revealed further conflicts may be aggravated by people taking revenge into their own hands, thereby blurring distinctions between retribution and revenge (vengeance). It has been argued that just as a lack of truth can cause distrust and

polarization so can “excessive truth” so much so that Ariel Dorfman, suggests that “people can die from an excessive dose of truth ” (Nesiah, 2005, p 271) The polarization caused by excessive revelation of the truth may even lead to more violence and authoritarianism Seeking truth can also be dangerous, the spreading of “truth” has often set the stage for violent conflicts to occur

On the other hand, Hannah Arendt has noted that “a deliberate denial of factual truths is an inherent part of political activity the political truth of some historical event can only be grasped if the people involved in it have been recognized as political beings ” (Buden, 2002, p 72) Buden argues that in societies that have suffered a de-politicization, truth and reconciliation is not what is needed What these societies need instead is re-politicization that goes beyond ethnic, cultural and religious identities that can build bridges “No reconciliation, however deep and thorough, can do that instead For every reconciliation is finally reconciliation with the status quo, with the existing power relations ” (Buden, 2002, p 78)

Finally, there is the question of who owns the truth once it is exposed Knowledge has power and can be use as a form of control Information for TRCs may come from many sources, including secret files kept by a repressive state These present dilemmas for victims and states—what do states do with old files, destroy, keep or release them? Some argue that “if repression depended on secrecy, justice depended on exposure” (Teitel, 2000, p 97) However, releasing old security files has consequences For example, in East Germany there was pressure to open the Stasi Files, about six million files and 18 million citizens of which over one third were subjected to surveillance The files were opened but it was not necessarily good for victims to find out who (family,

friends, bosses) spied on them. Moreover, the state still had ownership of the files so even victims had limited access to them. The files also implicated many political actors and the security forces, so they were used in purges to the public administration. The Stasi Files raise the following questions: who do secret surveillance files belong to—the state or the victims who were spied upon? Who should have access to these files and for how long? How long the files should be kept for? Should they be destroyed? What are the implications of destroying files? (Teitel, 2000, p. 98)

### **Summary**

Truth in a transitional setting has many layers, meanings and functions. Truth commissions have expanded the notion of truth from an ethical, moral and factual conception to one that embraces political and narrative or experiential conceptions. Through the airing of these narrative truths TRCs aim to create an officially sanctioned version of the events that occurred under the prior regime to: a) create a boundary between the old regime and the new democratic one, b) create a shared collective memory and history, c) prevent future crimes with the hope that once people are aware of the crimes under the previous regime and how they were committed, that they will never again embark on the same path again, and d) allow victims to have a voice, re-dignify them and acknowledge their pain so that reconciliation and healing can occur.

However, these functions and aims are not without debate. Not only have some questioned the preventive function of TRC, it has also been suggested the truth commissions do not sufficiently recognize the complexity of categorizing victims, perpetrators, by-standers and benefactors of violence and that they have a tendency to

force forgiveness and reconciliation on to victims who may not be willing or ready to do either

Additionally, the healing function of TRCs is questioned there is an assumption by proponents of truth commissions that individual models of psychological healing will apply to the collective political sphere and so much of the language associated with truth-telling uses medical and psychological metaphors There is little empirical evidence to support the assumption that participation in a TRC actually leads to individual healing Some have questioned whether post-conflict societies should even embrace truth-telling projects so soon after the end of a conflict They suggest that a little amnesia might be necessary in order for society to move forward

Finally, while some suggest that TRCs are a form of victor's justice, others note that they compromise justice by offering amnesty and in fact may even be second best options to pursue justice in societies where judicial systems are not able to offer traditional legal justice

## **Justice**

The most common understanding of justice is a retributive conception However, just like truth, justice has multiple notions and sources that include state law and community traditions, and there is a debate over the reach of the law versus the demands of justice

Due to their focus on restorative justice, truth commissions do not offer retributive justice and do not address the question of what a society's expectations of justice are These may differ cross-culturally so it is important to establish what they are before a prescriptive model of truth commissions as a tool of post-conflict reconstruction

is used (Fletcher & Weinstein, 2002, p 584) Howard Zehr outlines three aspects of justice: revenge, retribution and restoration. "Criminal justice tends to be punitive, conflictual, impersonal and state centered. It encourages the denial of responsibility and empathy on the part of offenders" (Zehr, 2001, p 330-331). "Restorative justice assumes that justice can and should promote healing, both individual and societal" (Zehr, 2001, p 330-331). Despite these differentiations, it is generally assumed in human rights discourse that some form of punishment, (whether it be trials, naming perpetrators in the truth commission report, removal of human rights abusers from power and prohibited access to public posts, etc.) is deemed to be important because it serves as "public acknowledgement" that victims were not responsible for the abuses and suffering endured. Holding perpetrators accountable in such a manner can have deep psychological effects that may foster healing (Fletcher & Weinstein, 2002, p 593, (Rotbert, 2000, p 7).

As it is relevant to truth commissions, the debate in transitional justice has been whether to punish outgoing regime members and other perpetrators or grant them amnesty. The prevailing thought is that retributive justice is necessary in the transition to democracy (Teitel, 2000, p 6). Punishment can be seen either as a "backward-looking exercise in retribution or an expression of the renewal of the rule of law" (Teitel, 2000, p 27). Additionally, when a society decides that it wants to pursue punishment, it must also address questions of responsibility. Who should be held responsible for the past repression and to what degree is this responsibility attributed to the individual versus collective society, particularly when the law itself can only be applied to individuals and not collective entities?

The tension that TRCs create between truth and justice is hotly debated. It has been suggested that truth commissions weaken the prospects for justice (especially if justice is expected in its retributive form). Often accountability of low level military or paramilitary operatives is addressed, but those who gave orders to kill are not punished for their crimes.

Truth commissions also create a tension between retributive and restorative types of justice. Retributive models of justice suggest that perpetrators of human rights violations must be punished so that others are deterred from acting in the same horrific manner. The model of restorative justice on the other hand emphasizes that truth telling is a form of justice in itself. The purpose here will be to provide a brief evolution of the thinking and debates on justice as they pertain to truth commissions. These debates center around the question of “what should a society do with those who break the law” or “commit ‘heinous crimes’?” Additionally, do those who suffered as a result of these crimes deserve compensation? (Solomon & Murphy, 1990, p. 4)

In the following paragraphs, retributive justice will be discussed followed by the notions of limited criminal sanction and amnesty in times of transition. Then reparatory justice and restorative justice debates are outlined followed by a short summary of concepts discussed thus far.

### **Retributive justice**

The original meanings of justice date back to the Old Testament, Homer’s *Iliad* and Hammurabi’s legal code. The meaning of justice found in these texts is one which is tied to punishment and retribution—‘an eye for an eye, a tooth for a tooth.’ These texts

explicate a notion of justice that attempts to limit vengeance and retribution to “measure for measure” such that only the perpetrator of the crime is harmed and not “his or her entire family, tribe or city” as in the *Iliad* (Solomon & Murphy, 1990, p 13) Jewish and Christian notions of revenge and atonement still inform popular understandings of justice Christian thought has particularly, influenced the legal tradition Saint Anselm, a Christian, asked “how to respond to repetitive manifestations of incurable evil” (Villa-Vecencio, 1999-2000, p 168) In Christianity, human sin is avenged by punishment through God Martin Luther wrote that rulers had to “carry out their duty as ‘God’s hangmen’” over the rebellious peasantry (Villa-Vecencio, 1999-2000, p 168) Revenge is a way to respond to evil and God is constructed as an entity that will not “forgo his wrath till he has received at least an adequate great equivalent” (Villa-Vecencio, 1999-2000, p 169-170) The Church allowed and often urged “the state to deal with crime in a harsh and retributive manner, [while it] reserved compassion for individual relations and the private response of victim to perpetrator” (Villa-Vecencio, 1999-2000, p 170) Did this reduce or shrink the public space for political forgiveness? It resulted in two worlds the spiritual private world of the church and the real (harsh) world of politics and revenge” (Villa-Vecencio, 1999-2000, p 170) The South African TRC attempted to “reunite these two worlds” (Villa-Vecencio, 1999-2000, p 170)

Primo Levi has said that “evil of an ‘incurable nature’” is “an endemic human reality” (Villa-Vecencio, 1999-2000, p 171) One argument holds that moral condemnation and punishment is “the only appropriate response to criminal behavior” (Villa-Vecencio, 1999-2000, p 171) Jean Hampton notes that punishment “provides a necessary expression of moral outrage in the face of repeated gross violations of human

rights, crimes against humanity, and genocide, evil that can perhaps only be appropriately responded to by an authoritative retributive stance” (Villa-Vecencio, 1999-2000, p 71)

Punishment is an expected part of justice (Teitel, 2000, p 27), it raises debates and tough questions for transitional societies. Some argue that punishment is a backward-looking exercise while for others it is “an expression of the renewal of the rule of law” (Teitel, 2000, p 27). Additionally, how are responsibilities to be assigned and divided among the regime, the individual, and the collective? What legal order should be used, military or civilian if crimes have been committed by the armed forces? A review of transitional societies shows that punishment is in fact rare, especially soon after a transition has occurred (Teitel, 2000, p 28)

What does punishment mean to society and why should post-conflict societies undertake punishment? There are several arguments for pursuing punishment. Following the literature, these have been organized into seven categories: Retribution, deterrence, victim’s rights, social pedagogy, an end to impunity, punishment as a forward looking exercise and the obligation of states to punish.

### **Retribution**

The retributive argument simply holds that wrongs committed must have the consequence of punishment (Lekha Sriram, 2004, p 7). Carlos Niño notes that human autonomy and social responsibility should be a part of justice. Human autonomy means that people must take responsibility for their actions, “either contribute to the common good or accept the consequences of failing to do so” (Villa-Vecencio, 1999-2000, p 172). Retribution is an opportunity to uphold the moral consensus and moral order established

by society through a democratic process. Perpetrators have a moral responsibility and retribution “affirms the individual autonomy and responsibility of the perpetrator as an agent of the common good” (Villa-Vecencio, 1999-2000, p 175). The argument for retribution holds that breaking the law is a demonstration of disrespect for the rule of law and so any violation, no matter how minor, requires punishment. Abuses of the law are unacceptable and in this view, the crime itself is secondary to the action of violating the law. As a result, “punishment represents the sanctions that the state applies to uphold its own authority” (Solomon & Murphy, 1990, p 241). Selective prosecutions are unacceptable and the punishment must fit the crime.

However, there are problems with this approach. It is not always possible to punish all the perpetrators who committed crimes. Some may be blamed while others remain “untouched and by implication innocent” (Lekha Sriram, 2004, p 8). A purely retributivist approach may also create divisions to perpetuate an “us vs them thinking” where all the blame is put on a select few who are punished, the rest go free and the justice system remains suspect” (Lekha Sriram, 2004, p 8). Punishment can also provoke reactions from out-going regime members that may affect how new democracies are able to function (Lekha Sriram, 2004, p 8).

### **Deterrence**

Deterrence argues that punishment is necessary because a “failure to punish invites repetition” (Lekha Sriram, 2004, p 7, Fletcher & Weinstein, 2002, p 591). If crimes are punished future crimes will be deterred, human rights, law, and the democratic process will be reinforced. Punishment sends a message if wrong-doers know they will be

punished, they are less likely to engage in criminal activity Without punishment, “rule of law values” are jeopardized The purpose of punishment is to ensure that the criminal, once having suffered the consequences of his or her actions will no longer have the desire to commit a similar crime The problem with deterrence, however is that it rests on “the assumption that the perpetrator knew or believed her/himself to be wrong ” (Lekha Sriram, 2004, p 8) Many of those involved in ‘dirty wars’ believe that the actions they took were right and justified and they “see such punishments as unjustifiable or simply as punishment of behaviour not analogous to their own” (Lekha Sriram, 2004, p 9)

The literature makes distinction between punishment as having retributive effects and punishment as having deterrence or reformatory effects Kant argues that justice cannot be bartered away, punishment is necessary and it must have retributive effects Deterrence should “not be confused with punishment” (Solomon & Murphy, 1990, p 241) This idea of punishment as retribution is distinguished from vengeance, which is a personal emotion, while “retribution is dictated by reason and by the law or the court” (Solomon & Murphy, 1990, p 251) and must operate on the “principle of equality” (Solomon & Murphy, 1990, p 251) That is, it entails “that the punishment inflicted should be the equivalent of the nature and severity of the crime” (Solomon & Murphy, 1990, p 251) Kant holds that societies must punish to ensure individual accountability and to ensure that guilt is not made collective The failure to punish leads to ongoing collective responsibility He also “distinguishes injury to society as opposed to injury to an individual” (Solomon & Murphy, 1990, p 255) and notes that it is injury to society that deserves punishment

Hegel also distinguishes injury to society vs injury to an individual and agrees that it is injury to society requires punishment. He “accepts retribution and ‘measurement’ in terms of both quantity and quality but the danger to society is the primary concern” (Solomon & Murphy, 1990, p. 255). Punishment does not necessarily always fit the crime because “the seriousness of the injury to the person may have little relationship to the threat to society” (Solomon & Murphy, 1990, p. 255). He gives recognition to the significance of revenge but does not defend or justify it (Solomon & Murphy, 1990, p. 255). “Retribution takes on ‘objective’ form of the law and recognizes itself as not merely personal but as a function of ‘the injured universal’ to the threatened society” (Solomon & Murphy, 1990, p. 255). Punishment erases the crime because it allows the criminal to reconcile with himself. Thus, it benefits the criminal.

For Camus, retribution, particularly in the form of a death penalty is demoralizing, arouses the impulse to murder, it is revenge based on the law of retaliation, a violent emotion and not a principle (Solomon & Murphy, 1990, p. 285). It is related to nature and instinct, not law. Law is not intended to imitate or reproduce that nature, it is intended to correct it, and the death penalty, instead of being an act of deterrence, is an example of premeditated murder.

Robert Nozick attempts to differentiate more clearly the differences between retribution and revenge. He separates revenge from retribution by noting that retribution is essential to justice while revenge is a passionate emotion and an instinct that cannot be associated with justice. Additionally retribution is meted out for a wrong and not simply for personal harm, it does not need to have a personal connection to the victim or wrongdoing and “requires strict limits to punishment while revenge ‘by its nature need set no

limits, although the revenger may limit what he inflicts for external reasons” (Solomon & Murphy, 1990, p 281) He veils the distinction between punishment and deterrence by suggesting that retribution has a communicative function to criminals and others that communicates the wrongness of the act It is hoped that through this message there will be some moral reform of the offender such that he or she will recognize the wrongness of the act and not repeat it

### **Victim’s rights**

The aim of punishment is also to respond to and decrease the victim’s suffering, and to re-assert their human worth (Lekha Sriram, 2004, p 9, Villa-Vecencio, 1999-2000, p 174) The idea is to make victims feel a part of society once again, contribute to the reintegration and reestablishment of citizenship, restore victim’s dignity, allow them to tell their own stories, and have them know that their rights are acknowledged It has been suggested that for some victims public disclosure of the identities of perpetrators is a form of justice It prevents a disregard and downplaying of the victim’s suffering, and gives victim back his/her equality in society (Villa-Vecencio, 1999-2000, p 175) To preserve the human dignity of the victim, retribution must transcend a malicious desire to cause suffering to perpetrators and must defend the moral truth

### **Social pedagogy**

Those who argue for the social pedagogical effects of punishment note that punishment re-establishes the “rule of law and faith in the legitimacy of the [incoming] regime through public accountability ” (Lekha Sriram, 2004, p 9) In this case, punishment

responds to social needs. Society needs to learn the events of the past through trials or truth commission, which “foster a discussion and force [ ] society to face its recent past” (Lekha Sriram, 2004, p 10)

### **Enforce the rule of law and end impunity**

This argument for punishment suggests that because of the conditions of lawlessness under the prior regime, impunity must be prevented, thus, the new regime is under greater pressure to ensure accountability through prosecutions. Impunity encourages other human rights crimes, and “gives rise to frustrations and anguish which may result in renewed cycles of violence” (Othman, 2005, p 254). The law simply must be restored in a society recovering from mass violence. Additionally, prosecutions “strengthen fragile democracies” (Huysse, 2001, p 324-327)

### **Punishment as a forward looking exercise**

Another argument for punishment suggests that societies must punish crimes because punishment contributes to the social good. It “lay[s] the basis of a new liberal order” (Teitel, 2000, p 28). That is, it is important for a state’s political identity as one that is advancing towards democracy to establish a new political order in which the state follows the rule of law (Teitel, 2000, p 29). Public accountability helps break “the myths of the old regime” (Walzer qtd in Teitel, 2000, p 29) and this kind of law allows a normative shift to occur from tyrannous to democratic state identity.

## **Duty to punish**

Finally, some suggest that punishment must be pursued because states are often directly or indirectly (through silent consent given to public and private actors, perpetrators) involved in violence, therefore it is the state's duty to punish and right its wrongs (Teitel, 2000, p 28, Othman, 2005, p 250) In this way, punishment can allow the state to rectify its past wrongs Additionally, several international agreements exist that deplore human rights violations and require that they be punished<sup>3</sup>

## **Limited criminal sanction**

Given the problems with prosecution in a transitional justice setting, punishment must be re-theorized Investigations are often met with few prosecutions and penalties In transitional environments normal understandings of punishment do not apply or are at least detached from the crimes Thus, in transitions there is often limited criminal sanction This is a kind of prosecution that does "not necessarily culminate in full punishment Investigations may or may not lead to indictments" (Teitel, 2000, p 47) This has been illustrated in many cases some cases in WWI and WWII, trials in Southern Europe after military dictatorships, trials of Latin American soldiers and generals, Africa

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<sup>3</sup> The duty to punish is established in the following international agreements UN Charter, UN Declaration of Human Rights, Article 2 of International Convention on Civil and Political Rights, Geneva Conventions 1945 and Additional Protocol I of 1977, Article 3 – 4 of the Geneva Conventions, Protocol II, Article 4 of Statute of ICTR, Jurisprudence of both ICTR and ICTY, Art (2) (e) of ICC Statute, Art I and 6 of Genocide Convention, ICJ in the case concerning the Application of the Convention of the Prevention and Punishment of the Crimes of Genocide, Article 2 and 7(1) of the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment, Preamble of Rome Statute of ICC which states that crimes against humanity should not go unpunished and it is the "duty of every state to exercise its criminal jurisdiction over those responsible for international crimes" (Othman, 2005, p 251-253) Others include International human rights and conventions Nuremberg Precedents, Genocide Convention, Hague Convention, Geneva Convention, 1977 Protocols (x2), International Criminal Tribunal for Yugoslavia (1992), International Criminal Tribunal for Rwanda (1996) (Minow, 1998, p 34)

and Central Europe Sentences of generals and leaders are often commuted In Argentina for example, the generals of the Junta were sentenced and then pardoned by the President, followed by legislative acts which limited jurisdiction and enforced blanket amnesties (Teitel, 2000, p 48) In Chile, military officers were exempt from prosecution if they cooperated in the investigations of crimes under the dictatorship

In fragile peace situations, limited criminal sanction has to be applied carefully because it has consequences If it is seen as too adversarial, it may set off a new round of violence This type of sanction serves an epistemic function It allows the investigation of a crime, the establishment that it happened and its condemnation but not necessarily full punishment It enables the construction of a shared past and though it is not a full sanction, limited criminal sanction operates on the idea that wrong-doing will still be denounced (Teitel, 2000, p 50)

Punishment does not always have to mean a prison sentence—symbolic punishment has also been employed In transition, there is often symbolic punishment where wrong doing and perpetrators are stigmatized in ways such as, disqualifying them from public life, public positions, etc The symbolic punishment “relegates [past wrongs] to a predecessor regime” (Teitel, 2000, p 50), yet for some, limited penalties “suggest [ ] an implied recognition of a diminished blameworthiness” (Teitel, 2000, p )

Since transitional justice in the form of retribution through the avenue of trials is fraught with such problems, amnesties have been considered and quite often implemented as another mechanism of transitional justice

## **Amnesty**

Most transitioning regimes that have adopted a truth commission have also implemented some kind of amnesties for outgoing regimes and their members. These amnesties come in various forms. Blanket amnesties are unrestricted pardons that the outgoing regime may have awarded itself before the transition was allowed. These amnesties are often part of transitions in which the outgoing regime is relatively strong and can afford to stop the transition if blanket amnesties are not agreed upon. Restricted amnesties, on the other hand, offer immunity from prosecution for certain categories of crimes or from crimes committed within a particular time period (Huysse, 2001, p. 322-323). In South Africa, amnesty was offered to perpetrators for only political crimes, while in Chile the Pinochet regime granted members blanket amnesty from prosecution from crimes committed between 1974 and 1978, the most violent period under the Pinochet's rule.

It is not always feasible to punish all wrong-doers because there are so many. The legal system may not be able to handle many cases or may be corrupt. To avoid overburdening the legal system some perpetrators may be amnestied. Moreover, pursuing all violators could create instability. Latin American presidents have often been all too aware of this fact. As the Guatemalan President said in 1985, "we're not going to be able to investigate the past. We would have to put the entire army in jail" (qtd in Lekha Sriram, 2004, p. 11).

In many emerging democracies, justice is sacrificed for peace. Leaders in these democracies have argued that forgiveness is a necessary part of healing and that in post-conflict contexts that are already highly divisive, prosecutions further advance this divisiveness. When past regime members threaten retribution, amnesty might be the best

option New democracies might be fragile and a rebellious or resistive military might end the transition to democracy if prosecutions are pursued

Sometimes even selective prosecutions can create problems as they did in Argentina, where they “split the military, and it generated further resentment against the military regime Many saw the strategy as mere scape-goating and the authority of the judicial system was undermined the courts were seen as an instrument of revenge rather than justice” (Lekha Sriram, 2004, p 11) Amnesties are a tradeoff between political stability and prosecution That is, if the old regime members are given amnesty from prosecution, they will not oppose the new regime and may even offer limited support for it Thus, amnesty is pursued in the name of social peace

However, it is argued that amnesties undermine and limit retributive justice that is important as redress for victims (Othman, 2005, p 256) In fact, a variety of international legal instruments oppose blanket amnesties A UN ECOSOC Resolution 1985/65, endorsed by the General Assembly is clearly opposed to granting amnesty to human rights violators Additionally, the UN Human Rights Committee adopted General Comment 20 in the same vein, suggesting that it is the duty of states to investigate and prosecute acts of torture and grave human rights abuses Amnesties are viewed by critics as a “license to perpetuate the cycle of impunity and violence ” (Rahman-Lamin, 2003) 299-301) The Inter-American Commission has also “held that amnesties for grave human rights actions violated state duties under the American Convention on human rights to protect and ensure human rights as well as the victim’s right to seek justice” (Teitel, 2000, p 55) Some authors have suggested that immunity from crimes suggests on-going collective social responsibility for crimes This failure to hold perpetrators

accountable may affect the legitimacy of the democratic order and its institutions such as the rule of law (Teitel, 2000, p 55)

There are some crimes that cannot be pardoned by amnesty. The prosecution of crimes against humanity has been ratified by the European Convention for Protection of Human Rights and Fundamental Freedoms (Article 7(2)), which makes crimes against humanity exempt from retroactivity constraints that normally apply to criminal judgment (Teitel, 2000, p 61). Crimes against humanity do not have time limits on their prosecutions. The UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity has noted that disqualifying crimes against humanity from statutory limits is justified because of the “‘atrocities’ of these crimes” (Teitel, 2000, p 64).

Another reason that amnesty is implemented is for reconciliation. Nagy argues that amnesty has been drawn “into the reach of [truth,] justice and reconciliation” where as it is traditionally associated with impunity (Nagy, 2004, p 1-2). However, other scholars have established that amnesty has been associated with reconciliation since ancient Greece, when the democrats offered pardon and banishment to those who collaborated with the oligarchs, so that Greek society could move forward in social harmony (Elster 2004). However, in the modern period, amnesty for reconciliation is criticized by victims and supporters of human rights because this claim is often made by former regime members who want impunity. Laws of national reconciliation end up being amnesty laws. Still, some argue that forgiveness is a necessary part of healing and that in post-conflict contexts that are already highly divisive, prosecutions further advance this divisiveness. Thus, those who support such laws of reconciliation argue that

amnesty is a good option that allows societies to focus on the future instead of the past (Lekha Sriram, 2004, p 11)

It has also been suggested, especially in the literature on the South African TRC that without amnesties, perpetrators would not come forward and tell their side of the story, thereby limiting the kinds of truth a commission would be able to achieve. Thus, truth commissions can offer amnesty exchange for testimony. The South African Commission offered amnesty from prosecution to perpetrators in exchange for the full disclosure of the truth that would lead to healing for victims and reconciliation between opposing sides of society. Nagy argues that the “grant of amnesty [did not] produce sufficient ‘truth’ for understanding and overcoming the violence of the past.” (Nagy, 2004, p 3) In fact, “the amnesty process produced a truncated ‘truth’ about apartheid violence that was insufficient to the task of overcoming the past” (Nagy, 2004, p 1-2) Nonetheless, because amnesties prevent and limit prosecutions, truth commissions search for alternative forms of justice (Huysse, 2001, p 323-327). These are reparatory and restorative justice.

### **Restorative justice**

Several proponents of truth commissions suggest that truth telling is a particular kind of justice in itself. Others suggest that truth is “a prelude to another kind of justice” (Teitel, 2000, p 81). This kind of justice is restorative justice. In contrast to scholars of retributive justice, scholars of restorative justice suggest that this type of community justice dates back further than models of retributive justice as community dispute resolution mechanisms (Strickland 2004 2-3, Llewellyn and Howse 2002). Conceptions

of justice that may be considered a prelude to restorative justice include those dating back to Socrates, Jesus and the New Testament. Socratic conceptions of justice and Jesus' teachings in the New Testament marked a shift in the thinking on retributive justice. These two thinkers attempted to infuse conceptions of mercy and virtue into the retributive notions of punishment (Solomon & Murphy, 1990, p. 4, 13, 241-42).

Additionally, Nietzsche defends justice as a noble ideal and extols the idea of 'forgiving and forgetting' as a strength. His

idea is that one should be so self-sufficient and satisfied with one's life that one just doesn't worry about the petty injuries inflicted by others. The noble person does not reject revenge or retribution as wrong, but rather as unnecessary, as 'beneath' his or her dignity (Solomon & Murphy, 1990, p. 261).

For Nietzsche,

justice is 'a stronger power seeking a means of putting an end to the senseless raging or *ressentiment* among the weaker powers --partly by taking the object of *ressentiment* out of the hands of revenge, partly by substituting for revenge the struggle against the enemies of peace and order' (Solomon & Murphy, 1990, p. 261).

However, the term *restorative justice* first gained use in the 1970s. It is a kind of justice that aims to "repair harm that a criminal offense inflicts on victims, that offenders and communities" (Strickland, 2004, p. 1). Restorative justice is concerned not with punishing but with correcting imbalances and restoring fractured relationships with both individual and societal healing and harmony. In order to "repair the harm [caused by] the crime and prevent future harm," this kind of justice requires cooperation and dialogue between all parties to a crime, perpetrators, victims and communities. Crime is contextualized "in a broader context" and its effects on all stakeholders is examined (Strickland, 2004, p. 2-3, Llewellyn & Howse, 1999, p. 372). Further, this kind of justice

aims to empower people by involving them in seeking solutions instead of leaving the solutions to the government. Success is measured not by the numbers of wrongdoers incarcerated but by the quality of repair the process is able to accomplish to relationships. There is a concern with restoring the “equilibrium that has been disturbed by a wrongful act” (Llewellyn & Howse, 1999, p. 373)

For restorative justice equality is defined as “social equality between victim and perpetrator as members of society” (Llewellyn & Howse, 1999, p. 374). Crime is understood as an attack on “the status of the victim as an equal member of society” (Llewellyn & Howse, 1999, p. 374). Punishment does not make “the perpetrator equal with the victim but something less” (Llewellyn & Howse, 1999, p. 374). It is not just juridical equality that has been disrupted and needs to be restored but social equality. Retributive theory aims to reestablish equality through punishment, while restorative asks which set of practices, context specific, can restore equality through dialogue.

It has been noted that the recent interest in restorative justice mechanism stems from recognition of “some limitations associated with the traditional Western legal system” (Strickland, 2004, p. 3). Particularly since the South African Truth and Reconciliation Commission, the model of restorative justice has gained popularity in the field of transitional justice. The TRC placed significant emphasis on this conception of justice. This model of justice the emphasis is not so much on the crime itself but on restoring the victim-perpetrator-social relations (Geula, 2000, p. 74).

This conception of transitional justice sees truth as acknowledgement and justice as recognition. Acknowledging and listening to people’s stories and affirming they were wronged, striving to repair the damage done, it is a victim centered vision of justice.

(Zehr, 2001, p 330) Proponents of restorative justice argue that amnesty is the compromise made to remove an unjust regime and prosecutions would yield less truth and provide fewer opportunities for healing, closure and reconciliation

Restorative justice must first, affirm and restore the dignity of victims, those who have been violated, second, hold perpetrators accountable, emphasizing the harm they have done, third create social conditions where human rights will be respected, and fourth, emphasize reconciliation, restore broken relationships, encourage reintegration, moral reconstruction and dialogue It is important to note that this kind of justice does not preclude punishing the guilty since punishment can also be a way to restore moral order Still forgiveness and reconciliation are privileged over punishment A critique of retributive justice has been that it requires a leap of faith or belief in the possibility of moral transformation and cannot provide easy answers to victims who want retribution (Kiss, 2000, p 79-90)

Perhaps debates between retributive and restorative justice can be settled somewhat by understanding justice in the following manner “Justice demands that the offender be punished, be forced to make amends to the injured party, and be restrained from doing further harm” (Myrick, 1965, p xxxvii) If this becomes our understanding of justice, we can then ask whether restorative justice aims “to make amends to the injured party” or not If it does, then it may have the potential to lead to healing and reconciliation

## **Reparatory justice**

Reparations are part of restorative justice that aims to repair social connections and reintegrate offenders into the community. There are economic and symbolic acts of reparations: monetary payments, health and social services, memorials, restitution and repair, restoring stolen property, money and public apologies (Minow, 1998, p. 91, Teitel, 2000, 119). Reparations do not mean that once amends have been made that the “underlying events need not be discussed again” (Minow, 1998, p. 93). Money cannot mend or remedy non-monetary harm and apologies may restore some dignity but they do not restore lives. “Reparations provide a specific, narrow invitation for victims and survivors to walk between vengeance and forgiveness” (Minow, 1998, p. 106). Restitution “returns the very property, bank account, artifact or work of art wrongly taken from the owner” (Minow, 1998, p. 107). An apology requires full acceptance of responsibility by the wrongdoer (Minow, 1998, p. 112), but it “cannot undo what was done and yet ‘in a mysterious way this is precisely what it manages to do’” (Minow, 1998, p. 114). For some people forgiveness is dependent on an apology and victims must be given the power to accept or reject the apology (Minow, 1998, p. 115).

International law obliges states to repair their wrongdoings through reparation. The right to reparations and restitution is affirmed in several documents, declarations, conventions and documents by the United Nations and other international bodies.<sup>4</sup>

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<sup>4</sup> The UN High Commission for Human Rights 45<sup>th</sup> Session, Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms. Final Report, 2 July 1993. UN doc/E/CN.4/sub.2/1993/8 proposes the responsibilities of the state in this regard. The Study suggests that there should be no statute of limitations on reparations, the

However despite it being an international obligation, reparation, how much, to whom, for how long, etc , is still debated at a national level in many transitional societies. Those who oppose reparation suggest that it is a backward-looking exercise in contradiction to a state's forward-looking political agenda. Reparation also raises the question of whether society bears collective guilt over past injustices or whether guilt should be individualized.

Historically one instance of reparation can be found in the bible. It takes the form of a political shift from oppression to freedom. Israelites in Egypt lived there for 400 years under slavery subject to persecution. In the Exodus story the Israelites found freedom, the Egyptians were punished and the Israelites eventually founded a nation. This story is significant because it is a biblical account of reparatory justice. On the eve of the Exodus the Israelites are told to borrow clothing and objects of silver and gold from the Egyptians. The Egyptians were stripped of their valuables and clothes that the Israelites were to put on their own sons and daughters. This implied that

the freed slaves had assumed the dress of their slave owners, in turn, leaving the owners naked as slaves. The sequence harks back to the very origins of the term redress – the stripping of the Egyptians and the ‘re-dressing’ of the Israelites signifies more than a material settlement, it is a setting straight, a ceremonial redressing, a rehabilitation in the public eye (Teitel, 2000, p 120)

The transitional justice processes after WWI and WWII also implemented reparations. The Versailles treaty assigned to Germany “total war guilt” and made Germany responsible for reparations. Collective responsibility was assigned to the whole

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state must not settle compensation claims without victim consent, and that reparations should be viewed as part of the democratization process to create a just society that protects human rights (Rights, 1993)). The General Assembly also adopted a resolution in 2006 on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (<http://www2.ohchr.org/english/law/remedy.htm> [accessed 2/11/2010])

country and Germany was told it had a 'duty' to repair its wrongs and make reparations to the Allies. Sanctions that were applied to Germany were so heavy that the country could not make its reparations payments (Teitel 2001: 122). The treaty imposed reparations but also recognized that Germany could not and would not pay them.

After WWII Germany was again required to accept financial responsibility for waging war through the 1952 Transitional Treaty (Teitel, 2000, p 122). Victims also demanded reparations because many had been robbed of their finances. In this regard the 1952 Luxembourg Agreements set out that Germany would pay reparations to the victims of Nazi crimes and to the state of Israel and its citizens. These reparations signified that Germany was making amends. These also influenced international law, which began to suggest that states should make reparations even after periods of internal state conflicts under the banner of citizen and civilian rights (Teitel, 2000, p 124).

Latin American states have also been ordered to pay reparations to their citizens. In a case brought to the Inter-American Court of Human Rights against the state of Honduras which failed to investigate the disappearance of a young man named Velásquez-Rodríguez in the 1980s, the Court ruled that states were obligated to investigate and punish human rights violations and to provide moral and material compensation for victims for any violations of the rights guaranteed by the American Convention on Human Rights. The Velásquez-Rodríguez verdict "suggests that when the obligations of investigation and compensation are not fulfilled the violations are potentially ongoing and successor regimes are responsible" for fulfilling them (Teitel, 2000, p 125). In light of the prevalent amnesty laws that impeded investigations in many Latin American countries, the Velásquez-Rodríguez was significant. In light of such

amnesties, reparations—moral, financial or symbolic—force the state to acknowledge wrong-doing where punishment is not possible (Teitel, 2000, p 127)

### **Reparatory measures and time**

Transitional reparations are often easier to obtain or give out after the passage of some time. It takes years after a new regime comes to power for legal justice to be served. As the predecessor regime moves further back into the collective political consciousness, there is greater access to the records of the regime. This allows greater opportunities for legal justice and reparations to be served (Teitel, 2000, p 127). The passage of time “implies change regarding the identities of not only the beneficiaries but also those doing the paying” (Teitel, 2000, p 139). Those doing the paying may not be those implicated in the wrong-doing personally and directly. Dealing with past crimes raises the question of intergenerational justice: “what obligations [do] successor regimes owe victims of earlier generations and whether it is fair to lay this burden on the present or later generations” (Teitel, 2000, p 139). Sometimes, even though present or future generations are not responsible for the crimes, if they somehow benefitted from their ancestors committing the crimes, should they pay the victims? Predecessor policies may have benefitted certain segments of later generations. Reparations are also used to restore a “state’s moral credibility” (Teitel, 2000, p 140). “after the passage of time, reparatory acts become increasingly symbolic, often taking on the form of an apology” (Teitel, 2000, p 140)

## Summary

In a post-conflict situation, it is generally expected by victims and human rights advocates that some form of accountability will be pursued. These groups expect the state to pursue a retributive kind of justice through the courts. The retributivist argument holds that punishment must be pursued to restore the moral order of society, respect the rule of law and send the message that impunity will not be tolerated, deter future crimes by sending a message to perpetrators of the wrongness of their actions, and restore victims' sense of citizenship and belonging by acknowledging their suffering and respecting their right to justice. Additionally, international law has established the duty of states to punish wrong-doers. This becomes not only a forward looking exercise in that it allows society to put the past behind it, but also legal proceedings that are publicized can serve a pedagogical function by educating society on the events of the past.

In a transitional setting, however, legal justice can be difficult to pursue because often judicial systems are compromised—they are either corrupt or unable to handle the large numbers of prosecutions that must be pursued due to insufficient resources. For this reason, amnesties are common, and if justice is pursued, it is more likely that limited criminal sanction—prosecutions or investigations that may not result in indictments, is applied. Truth commissions can offer a similar kind of sanction if they name perpetrators in their reports, but TRCs do not aim to offer retributive justice. These commissions have redefined justice a reparative and restorative notion. Restorative justice seeks to repair the harm caused to the victim, perpetrator and community by the crime. It holds that a crime disturbs the victim's equal status as a member of society and aims to restore this imbalance. This may be done through reparations—monetary or symbolic provided to the

victim by the state or the perpetrators themselves, it is a victim centered notion of justice that rests on establishing truth to serve as acknowledgement of the victim's pain and justice as recognition of the victim's dignity and equality. It does not preclude punishment, but what is emphasized is healing and ultimately reconciliation.

### **Reconciliation and forgiveness**

Reconciliation is a part of a conflict resolution process that involves antagonistic attitudes and relationships between adversaries to be transformed from negative to positive. Like truth and justice, it is also a contested concept with several layers and meanings attached to it. Complete reconciliation is the "mutual recognition and acceptance, invested interests and goals in developing peaceful relations, mutual trust," shared beliefs in human rights and respect for the law (Bar-Tal, 2002)

When it comes to the question of who should be reconciled, Adelman argues that reconciliation between leaders and groups targeted for repression is not required or desired, but there is a "need to reconcile the majority and minority groups" because government wars where a particular group is targeted there are clear cut perpetrators and victims and largely one-sided violence (Adelman, 2005, p 287). For some, modern the goal of reconciliation is to remove violence as an option for resolving conflict and establish a peaceful co-existence (Adelman, 2005, p 288). In TRCs reconciliation is "both an outcome and a process" (Nesiah, 2005, p 273). It is a goal to work towards, is forward-looking and based on truth, and second, it is a path, a "less adversarial public hearings, a greater focus on reparations rather than sanctions restorative justice" (Nesiah, 2005, p 273)

There are several levels and agents of reconciliation. There is collective individual and political reconciliation. The discourse of healing at the individual level is applied to collective political reconciliation, but it may not necessarily apply. "At individual level a strong case can be made for the healing effects of a story telling" (Skaar, Gloppen, & Suhrke, 2005, p. 8). At the individual level the aim is to heal the victim so that s/he can come to terms with horrific violence so that interpersonal healing between the perpetrator and the victim can occur. At the collective level "reconciliation hinges on reintegration which is dependent on reconstruction of democratic institutions and the right of return for refugees and internally displaced people" (Skaar, Gloppen, & Suhrke, 2005, p. 12).

Reconciliation at the community level (the workplace, school, and community groups, etc) is more difficult because it requires healing the social fabric by encouraging a re-integration of perpetrators and victims into the community so that the conflicting groups can coexist. This kind of reconciliation may require a reevaluation of the structures and institutions that make up society. At the structural level there are beneficiaries and losers of the system because "economic disempowerment and political alienation" have often gone hand in hand with human rights violations so there exist groups who were 'losers,' that may have been oppressed but may not have been direct victims. Thus, for collective reconciliation class and social structures and marginalization of minority groups must be re-examined (Skaar, Gloppen, & Suhrke, 2005, p. 274).

At the national level citizenship and nation building may need to be re-established or established from the start. Finally, transnational reconciliation may also be part of states' reconciliatory efforts. These are attempts by nations to gain truth, acknowledgement and accountability on the treatment or involvement in crimes of other

nations For example, when East and South Asian countries tried to get Japan to acknowledge its use of comfort women from these countries during WWII

Successful reconciliation has several requirements recognition, justice, redress, reconstruction, and repentance and/or forgiveness

### **Recognition**

Victims need a space in which they are allowed to tell the truth about the harm they suffered and this harm is acknowledged and recognized Acknowledgement consists not only of what happened to victims but also recognition by conflicting parties of the other, the rival to exist peacefully and to accept its existence Recognition can take the form of public or state apologies, a commitment to never again repeat the violence, reparations, and memorials Recognition turns victims into survivors and reintegrates them back into society (Skaar, Gloppen, & Suhrke, 2005, p 276)

### **Restorative Justice**

The relationship between reconciliation and trials, purges, truth commissions, restitution, reforms, amnesty and amnesia is ambiguous An empirical demonstration of these relationships has not been done Reconciliation is based on the idea of restorative justice which, as established earlier, is focused on mercy, restoring relationships by building interpersonal trust, re-establishing equality and healing (Skaar, Gloppen, & Suhrke, 2005, p 22)

## **Redress**

A focus on the perpetrator in retributive notions of justice keeps victims in the minority and keeps the demands of criminal justice. Restorative justice includes offering redress in the form of reparations to victims. This kind of redress evens the playing field, so to speak and turns victims into beneficiaries which changes the focus to social justice and recognizes the victimhood of the majority (Adelman, 2005, p. 302-303)

## **Reconstruction**

Social justice may require reconstruction in the form of institutional reforms to restructure the justice, political and economic systems so that all citizens have equal rights. Additionally, reconstruction of hearts and minds is also required and this may require repentance and forgiveness.

## **Repentance and forgiveness**

A new relationship between victims and perpetrators is assumed to require forgiveness (Assefa, 2001, p. 340), “[b]ut what does it mean to ‘forgive’?” (Skaar, Gloppen, & Suhrke, 2005, p. 6). Reconciliation is impeded if people do not forgive and rebuild trust and interpersonal security. The idea is to “‘acknowledge the violation, put it behind and not let the violation affect the relationship’” (Skaar, Gloppen, & Suhrke, 2005, p. 6).

Forgiveness is based on a sense of restorative justice. Some suggest that forgiveness is possible and central to reconciliation since it is a “normal practice in private interpersonal relations and has important functions that cannot be achieved via

punishment” (Forsberg & Teivainen, 2004, p 12) While others note that forgiveness is not necessarily required for reconciliation, does not allow justice and entails forgetting (Skaar, Gloppen, & Suhrke, 2005, p 6) Issues such as the readiness of victims to forgive, and the willingness of the perpetrators to admit wrongdoing must be addressed if forgiveness is to be expected Some perpetrators are unwilling to accept guilt for fear of having to compensate their victims However, forgiveness involves a change on part of both the perpetrator and the victim

On a societal level, forgiveness entails moving on from the past without forgetting, and allowing the wrongdoer to re-enter the community so that reconciliation can occur (Forsberg & Teivainen, 2004, p 12) Peter Dingeser talks about political forgiveness He suggests that forgiveness does not necessarily require this change in attitude, it is “an illocutionary act whose point is to relieve one party’s indebtedness to another After the act of forgiving, we refuse to refer to past actions of the other as a justification of our behavior” (Forsberg & Teivainen, 2004, p 12)

Additionally, some argue that forgiveness and mercy are based on non-malicious retribution, that is, justice in the form of an ‘eye for an eye’ is not required for victims to forgive Mercy and forgiveness that enable peace, make political sense and restore the common good may require a lesser punishment or pardon (Villa-Vicencio, 1999-2000)

For pardon to be granted, the perpetrator must first confess his crime The confession is directed both at one’s conscience and at the victim whose “pardon or at least non-vengeance” is sought (Achour, 2002, p 124) The goal is to restore harmony within oneself and between oneself and the victim This must be accompanied by an

admission of regret, which may or may not be followed by pardon (Achour, 2002, p 123) If repentance is shown, punishment is suspended

There is authentic and inauthentic repentance. Authentic repentance is based on sincerity, while inauthentic repentance is “performed under constraint or out of material interest” (Achour, 2002, p 125). Repentance does not necessarily have to be accepted, its acceptance depends on the acceptance of the recognition of the wrong committed, acceptance of responsibility for the wrong committed and the intention and sincerity with which pardon is being sought.

There is a Hebrew term, *tschuva* that captures the above ideas, particularly one of mercy. This is the idea of repentance and forgiveness, repentance and return. That is, the perpetrator sincerely recognizes his/her sin, confesses this sin, corrects wrong caused by sin and is in turn offered forgiveness (Adelman, 2005, p 303). The crime or sin is not erased, and reconciliation is not necessarily achieved, but in empathy and understanding of the perpetrator, the crime is forgiven.

Restorative justice may contradict aims at reconciliation especially where retribution may increase social and political divisions/animosity. Yet, although there is often pressure to forgive, victims cannot be forced to do so. Finally, if retributive justice is not achieved, how else can accountability be ensured and can true reconciliation occur without retributive justice?

Literature on the South African Truth and Reconciliation Commission (TRC) provides insight and furthers the debate on these issues. Forgiveness and reconciliation were intimately linked in the TRC. In fact, its slogan was the “road to reconciliation.” The truth about violence of the apartheid system was told “on the basis of a ‘need for

understanding, but not for vengeance, a need for reparation, but not for retaliation, a need for ubuntu [common humanity] but not for victimization” (Nagy, 2004, p 234)

Reconciliation was encouraged through restorative, not retributive justice. Thus, the restoration of social relations between victims and perpetrators held utmost importance. Truth commissions generally hold that once knowledge and acknowledgement of past abuses is obtained, reconstruction of fractured social relationships can occur. Yet there is debate in the literature as to whether reconciliation in South Africa has occurred or not (Nagy, 2004, p 324-26). One reason for this is the ambiguity surrounding what exactly reconciliation should look like and how it can be measured.

Although reconciliation can take place without forgiveness, the TRC continually evoked the discourse of forgiveness, specifically Christian forgiveness, due primarily to Desmond Tutu’s own religious orientation. As such, the TRC “strove to create conditions for forgiveness, remorse, and apology, but many observers [have noted that] a strong pressure to forgive was exerted upon the victims” (Nagy, 2004, p 332). Yet no burden was placed on the perpetrators to apologize. The imposition of Christian forgiveness is indeed problematic. Not all victims testifying before the TRC were Christian or held such beliefs about forgiveness. Thus, the imposition of this kind of forgiveness suggests that all people must reconcile in the same way. However reconciliation may very well be culturally specific, something not seemingly recognized by Desmond Tutu and the TRC (Rotberg, 2000, p 7).

Truth commissions also suggest that all pain is equal. For example the South African TRC made no distinctions of pain based on class, race, religious or political affiliation. In fact, Desmond Tutu noted during one of the hearings that, “ it is

wonderful for the country to experience—that black or white—we all feel the same pain” (qtd in Wilson, 2000, p 80) The equalization of pain is often done by post-conflict regimes to avoid taking sides in the conflict, yet victims may not feel that their pain is equal to their perpetrators’ pain For example in South Africa, it may be that due to the racial nature of the violence blacks may feel their pain is greater than their white counterparts not only because of the system that oppressed them, but also because economically they are at a disadvantage

Other critiques of the concepts of forgiveness and reconciliation as associated with truth commissions are the following First, since TRCs put unjust “psychological pressure on people who refuse to forgive” (Kiss, 2000, p 84), they fail to recognize the moral legitimacy of their anger Victims cannot and should not be pressured to reconcile with their abusers This may create further conflicts

Further, TRCs do not recognize “moral hatred” or “righteous condemnation of wrong-doers and the refusal to reconcile with them” (Kiss, 2000, p 84) Indeed, the very existence of a TRC, an official mechanism that seeks to facilitate reconciliation is a kind of denial of the legitimacy of such a moral hatred Finally, some ask whether forgiveness is even relevant at the state level Perhaps it is personally helpful but at the social and political level it is irrelevant because individual persons forgive while states seek justice

## **Summary**

Reconciliation is the healing of relationships to establish mutual trust and recognition of the other It has several levels individual, collective (community) and political There are several elements of individual and collective reconciliation recognition—which requires

that victims be given a space to tell their stories and have these recognized through apologies and commitments to ensure the violence is never repeated, restorative justice—repairing relationships between perpetrator and victim through the re-building of trust, redress—symbolic or monetary reparations to victims and/or their families, reconstruction of democratic institutions at the collective level, and finally repentance and forgiveness. While some argue that forgiveness requires repentance from the victim, others suggest that forgiveness is possible without it. However, it is argued that more often than not, TRCs place pressure on victims to forgive while no pressure is placed on the perpetrators to repent. Further, TRCs have been accused of equalizing pain—the pain of victims and their perpetrators in order to avoid being seen as biased.

Ultimately, reconciliation initiatives must balance the demands of truth and justice in a manner that takes into account the socio-cultural and political contexts in which these goals are pursued.

This concludes the discussion on some of the issues associated with TRCs. The following chapter will set the stage for examination of the context in which the TRC was pursued in Chile. A brief overview of the historical background in Chile—the events that occurred that necessitated a TRC—are provided, followed by a discussion of the Chilean TRC and its goals.

## Chapter 5

# The Chilean Context and the Pinochet Regime

### **Introduction**

Recognizing that Chilean history does not begin in 1970 with the election of Allende or even in 1973 with the installation of the military government, this chapter reviews the factors that set the stage for Allende's election and the military's subsequent takeover of power. It is important to have an understanding of the socio-political events that set the stage for the TRC because reactions to the commission and its findings, and ultimately its impact in Chile were influenced by this history.

Chilean society has always been fairly fragmented. It has consisted of several institutional cultures and sectors that played an important part in shaping the social and political landscape, both before and during the military government. Among these were the following: the popular sector composed of lower classes such as peasants, urban and rural working class such as the miners and urban shantytown dwellers, the middle sector made up of professionals such as teachers, bureaucrats, businessmen/merchants and industrialists, and the upper class comprised of landowners and political elites. Intra- and inter-class divisions over wealth distribution, income, control of economic resources and political power were common (Oppenheim, 1999, p. 6-7). This social and economic

fragmentation was mirrored in Chilean politics, particularly post-independence where several parties contested each other in the political arena. The Chilean democratic tradition rested on the alliance between leftist, radical and right-wing parties and negotiations between these actors led to rule without direct military governance for much of Chile's history.

To minimize the social and political fragmentation, Chilean political and economic leaders have attempted various development strategies. Economic development in the nineteenth century was export-driven, based on the growth of the mining sector. During WWI the nitrate and copper exports in the twentieth century led to an increase in foreign investment in the country and by the 1920s there was significant foreign control of Chilean resources, particularly copper. For example, "two US companies owned the three major copper companies in Chile" (Oppenheim, 1999, p. 11).

Politically, in the 1920s a growing middle class in Chile elected Arturo Alessandri as president. Alessandri's presidency was responsible for establishing the 1925 constitution, which created a presidential system in Chile. The 1925 constitution, although modified over the years, was in place until 1973 (Oppenheim, 1999, p. 12). After these changes were put into place Alessandri resigned, ushering in several years of political instability for Chile. This included several elections and eventually a military government from 1927-1930, which was followed by more "revolving door governments including a twelve-day socialist government headed by General Marmaduke Grove" (Oppenheim, 1999, p. 12). In 1932 the 1925 constitution was restored and "Chile maintained a stable, constitutional democracy" until 1973.

In the 1940-1960's, an inward industrialization strategy called inward industrialization, called Import Substitution Industrialization (ISI) was implemented. ISI called for structural changes in the economy, such as changing the pattern of large land owning which were unequal and maintained poverty (Oppenheim, 1999, p 7). ISI called for governments to (1) change unequal land distribution patterns through land redistribution policies, (2) enact protective legislation which would enable industrial development through government oversight, and (3) end economic dependency by taking over the means of production in order to transform the relationships of economic and political power.

During this period, Chile, like many in countries in Latin America, witnessed the insertion of its domestic politics into the superpower struggle, the so-called "Cold War," which, given the impetus of the contending interests and ideologies around the world, by its very nature entailed a polarization. Conflicts between landowners and workers resulted in the development of socialist organizations. Marxist ideology appealed to academics in the 1950s and 1960s as an alternative to the prevailing capitalist status quo and many of them became involved in the Unidad Popular (UP) under Allende (Agger, 1996, p 38).

From 1958-1964 Jorge Alessandri supported by the right, liberal, radical and conservative parties applied an orthodox capitalist model of economic development (Oppenheim 1999 22). Land reform was instituted under the United States (U S ) Alliance for Progress policy, which aimed to eliminate the Communist threat and another Cuban revolution. This land reform was ineffective in re-distributing land and changing the nature of class relations (Oppenheim, 1999, p 23).

During 1964-1979 Frei, with the Christian Democratic Party (PDC) proposed moderate structural reforms by Frei including land reform to provide more land from large landholdings to peasants and changing the government's control over the copper industry (Oppenheim, 1999, p 23-25) The government bought out fifty-one percent of the U S interest in the copper companies in an attempt to give Chile control over its resources, but the biggest copper companies "remained in U S hands (Chuquibambilla, El Salvador, and El Teniente)" (Oppenheim, 1999, p 25)

A popular promotion program was started by the PDC to mobilize the poor, in hopes that mobilizing this sector would gain them the political support of this group, but this program only increased the expectations of the poor (Oppenheim, 1999)

There was also internal discord within the PDC which saw it split into a group that favoured a non-capitalist route to development under the leadership of Jacques Choncol which later aligned with other socialist Communist parties to form the Unidad Popular (UP-Popular Unity) which lent its support to Allende in 1970 (Oppenheim, 1999, p 26)

These are the political, social and economic conditions under which Allende and his Unidad Popular came into power

### **The Allende government**

In 1970, Salvador Allende became the first socialist leader to be democratically elected in the world Allende and his UP (Unidad Popular) government tried to implement various structural reforms such as land reform and nationalization of the economy, which would allow Chile to be transformed from a capitalist to a socialist state Allende's goal was to

create a power shift from the economic elite to the masses (Oppenheim, 1999, p 8-29) However, when Allende's government came into power, the Chilean economy was suffering a slight recession. As such, the goal of the UP government was to decrease inflation, and increase economic growth (Oppenheim 41-42). To do this, worker's salaries were increased and prices for basic necessities were regulated to be low, so that people could afford these basic goods. However, in 1972, problems with this economic policy started to occur because the production of goods decreased, inflation increased and government revenue decreased because the nationalized industries did not make enough profit (Oppenheim, 1999, p 59). These difficulties led to several political problems for the UP, which in turn led to various causes of the 1973 coup. Following Oppenheim, these causes can be divided into internal (those within the UP) and external (those involving other political actors, outside of the UP).

### **Internal causes of the coup**

Since Chile had a tripartite political division, no one group had the majority in legislature or congress, therefore the UP, with less than forty per cent of the seats in congress, was forced to share power with other political parties. This led to various constraints on the UP in terms of what political and economic policies they were able to implement. Furthermore, there were ideological differences within the UP itself. UP moderates in conflict with UP radicals over the best way to achieve a socialized state constrained Allende's ability to make decisions. Finally, Allende's choice of leaders with a lack of knowledge about economics to devise and implement economic policy led to the UP's

mismanagement of the economy, creating dissatisfaction among the Chilean population (Oppenheim, 1999, p 92-98, Falcoff, 1989, p 253)

### **External causes of the coup**

External causes of the coup included actions of the opposition parties, Allende's relationship with the armed forces and the actions of the U S government. The opposition, resisted most UP policies that tried to create structural changes, and as a result, attempted to destabilize the Allende government through strikes and protests, and accusing Allende of not adhering to the Constitution (Oppenheim, 1999, p 97, Falcoff, 1989, p 253)

Allende's presidency was marked by social unrest. Despite their historical relationship to politics, the Chilean armed forces generally saw themselves as apolitical and held themselves in high regard as protectors of Chile because they had played an instrumental role in nation building and had won many of the wars they fought in the nineteenth century (Alexander, 1978, p 288-289). This belief that the armed forces were the guarantors of order, stability and national security when civilians failed in this mission was further reinforced by the social unrest. Allende tried to maintain a healthy relationship with the army and to calm the institution, he tried to involve the armed forces in his government. In November 1972 he appointed General Carlos Prats as Minister of the Interior, a post that dealt with handling internal security and that was akin to the post of vice-president. Prats' appointment came about because of the national truckers' strike in October 1972. The truckers were opposed to the government's attempts to control the trucking industry, and although the strike began as a grassroots movement, it was soon

supported by the opposition. The strike also served to demonstrate large public discontent with the UP government (Alexander, 1978, p. 303-305). The strike and General Prats' post helped further accelerate the military's politicization and strengthened its position within the political arena. The post implied that the military had the power to regulate government policies that it did not agree with (Falcoff, 1989, p. 255, (Kooning & Kruijt, 2002, p. 118). By June 29, 1973, many in the army had lost confidence in Allende's ability to govern (Weeks, 2003, p. 40) but Prats felt that the army should be loyal to the President because any attempt by the armed forces to take over the government would not be without significant bloodshed and would "drag down" the armed forces (Weeks 2003, 40). However, Prats' position and those officers like him were a minority in the army. "By August 1973, Prats no longer had the confidence of the army and was forced out as commander-in-chief. His replacement was General Augusto Pinochet" (Weeks, 2003, p. 40-41).

Finally, a third factor influencing the overthrow of the Allende regime was the influence of U.S. policy in Chile (and the rest of Latin America). The Cuban Revolution in 1959 ushered in an increased concern against the communist 'threat' in Latin America (McClintock, 1985, Petras & Morely, 1975). In this context the U.S. was concerned about Allende's victory and made various attempts to remove him from power. These included plans to prevent him from assuming power, CIA encouragement of right wing elements of the military to orchestrate a coup and withdrawal of loans and credits to Chile (except to the armed forces), which were intended to destabilize the Chilean economy. His policies, particularly the nationalization of copper, in which the Chilean state established control over U.S. owned copper mines, were a threat to the U.S. because they offered a

structural and ideological change which tried to limit U S and foreign capital and control of the Chilean economy and threatened to change trade patterns in the entire Latin American region, therefore posing a challenge to U S economic hegemony, if they had been successfully implemented (Petras & Morely, 1975, p , Petras & Morely, 1975, p 15-16)

Essentially the United States used a four-pronged approach to bring about a break down and the end of Allende's regime in Chile "diplomatic isolation, economic strangulation," covert destabilization and military aid (Kornbluh, 2004, p 87, Petras & Morely, 1975, p 14) The covert action program focused on non-Marxist opposition to the Allende, the armed forces, the Chilean public, media and other Latin American countries to pressure the Allende government The CIA defined a aimed to create a coup climate that would provide the military with the justification to intervene While, economic action included strangulation through a trade and credit squeeze to create economic difficulties for Chile (Petras & Morely, 1975, p 15-16) Since Chile was already in debt before Allende came to power, this economic blockade of the Chile essentially strangled the Chilean economy leading to protests and strikes against the government All aid, except military was cut to Chile The Chilean military received significant amounts of aid in the form of funds and military equipment from 1971 to 1973 <sup>5</sup> Furthermore, the U S government trained the Chilean armed forces in various

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<sup>5</sup> In mid-1971 the Chilean military received "\$5 million in military credits as part of its 'pragmatic policy'" (Petras & Morely 1975 126) and in 1972 the U S began "subsidizing an anti-Allende newsletter aimed at the armed forces" (Kornbluh 2004 95) Pinochet also came on the radar of the CIA but his position in a coup remained somewhat unclear His wife and son were anti-Allende, some observers thought he would not lead a coup while others suggested he said that "Allende has to go, step down or be eliminated" (Kornbluh 2004 96) Pinochet signed on to the coup at the last minute Also in December 1972 Chile also received a "\$10 million credit agreement for the Chilean military" (Petras & Morely 1975 126) The U S

counter-insurgency techniques. They were taught to fight an internal “enemy” which was labeled as anyone who espoused socialist or communist ideologies, in opposition to the western capitalist ideology (Oppenheim, 1999, p. 105-108). For the Chilean military these internal threats were members of the MIR (Movimiento de Izquierda Revolucionaria), a guerrilla group who espoused extreme socialist values, and other armed civilian groups. The military became concerned about these groups who tried to destabilize the armed forces, and the government’s inability to control them gave the armed forces more incentive to stage the September 11, 1973 coup against Allende.

In August General Carlos Prats resigned as commander-in-chief of the army and stopped coup plotters. Declassified documents reveal that by August 31 the army was “united behind a coup” (Kornbluh, 2004, p. 111). At 8 am on September 11, the Navy took over Valparaíso and announced Allende was being over-thrown. The Carabineros did not manage to detain Allende at his home because he escaped and reached La Moneda, the presidential palace, where he broadcasted messages to “workers and students to come and ‘defend your government against armed forces’” (Kornbluh, 2004, p. 113). The army surrounded La Moneda while jets launched rocket attacks, killing his guards. The military also fired at La Moneda and demanded that Allende surrender and “made a perfunctory offer to fly him and his family out of the country” (Kornbluh, 2004, p. 113). Allende was found dead from gunshot wounds at 2 p.m. and at 2:30 p.m., the “armed forces broadcast a statement that the entire country was under military control” (Kornbluh, 2004, p. 113).

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was concerned that Chile had expropriated American company properties (Petras & Morely 1975: 127). In May 1973, Chile was allowed to purchase F-5E military fighter aircraft.

## **Chile's military regime**

### **Reasons given for the coup**

The overthrow of Allende's government was carried out on September 11, 1973. The junta leading the armed forces was composed of General Augusto Pinochet, head of the army, General Gustavo Leigh, head of the air forces, Admiral Jose Torribio Merino, head of the navy, and General Cesar Mendoza, director general of the Carabineros (which were a militarized national police force). There were three ingredients in place for the coup to occur. First, the unity of the right wing opposition under the National Party (Renovacion Nacional), second the statement in Congress in which the opposition declared the Allende regime to be illegitimate and third, the social turmoil due to bad economic circumstances fuelled in part by U.S. policy towards Chile (Kooning & Kruijt, 2002, p. 118).

The coup was quick but violent. Upon the takeover, which was carried out under the *mando supremo de la nacion* (supreme command of the nation) an internal state of war was declared, which allowed the armed forces to carry out brutal forms of violence against UP officials and UP civilian supporters. All those the military thought were subversive and dangerous were arrested, detained and brutalized. Civil liberties were suspended and though Chileans had become accustomed to political strife, many did not expect such high levels of violence. Even politicians were unaware of the military's plans, many believed that after a short takeover, in which they promised to "restore what Allende had disrupted," the military would hand power over to civilian politicians (Weeks, 2003, p. 41). To justify its takeover the military claimed that they had discovered

a plan for a Communist autogolpe, Plan Z, by the Marxists in which the communists planned the assassination of military and police officers and that as protectors of the nation, the coup was a pre-emptive action that was required. As such no political or judicial institution would be respected in order to allow the military to carry out its mission of restoring order. Plan Z is now thought to be a fabrication of the military because no existence of such a plan has been found (Weeks, 2003, p. 167 footnote 42)

In October of 1973, General Arnelo Stark began a campaign called the “caravan of death” in Northern Chile. Under this campaign, political prisoners were found, tortured and killed. The justification given by the armed forces for these activities was that these prisoners were preparing to overthrow the military, and as such, had to be prevented (Oppenheim, 1999, p. 122-123)

Upon takeover the military junta outlined fourteen reasons for the coup in a decree titled “Order of the Day No. 5.” In this order, it stated that the Allende government had “exceeded the bounds of legitimacy by violating fundamental rights of liberty, of speech, the right to a worthy and stable existence” (Loveman & Davies, 1997, p. 182). Further, it accused the Allende government of encouraging hostilities between classes, not adhering to the law, disregarding the congress, abusing its power, its failure to maintain a stable economy, and jeopardizing the country’s internal as well as external security. Finally, in this decree, the armed forces suggested that it was their “moral duty” to depose the government (Loveman & Davies, 1997, p. 182, Alexander, 1978, p. 336) and restore national unity.

The goals of the military regime included eliminating all leftist political groups, thereby de-politicizing the country, and replacing those groups with “new political and

economic institutions [and] different cultural values” (Oppenheim, 1999, p 118) Moreover, to give their takeover a “legal” aura, Decree Law No 1 was issued on September 11. In this decree the junta declared the following three things: first it promised to restore Chilean nationality, second, Pinochet was declared president of the junta, and third they agreed to respect the constitution and laws of the Chilean republic. It should be noted, however, that in this decree, nowhere was the declaration made that the junta would respect the rights of congress. As such, Decree No 29, issued on September 13, declared the national congress dissolved and the announcement of a cabinet dominated by military personnel. The only post not assigned to the military was that of minister of economics. This decree allowed the junta to give itself power to govern and enforce laws (Alexander, 1978, p 340)

### **The consolidation of power**

The consolidation of power phase took place from 1973 to 1977. During these years the armed forces consolidated power through the use of torture and repression. First the junta governed by decree, through which it outlawed all political parties and freedom of press. Anyone suspected of having leftist sentiments was targeted for repression. Thus, people were subjected to arbitrary arrests, deportations, placed in concentration camps, and subjected to extreme torture and death. By 1975, 4300 people were held in concentration camps set up in Northern Chile, and by late 1976, 1400 political prisoners were held by the government (Alexander, 1978, p 344-345). In 1974, the junta established DINA (Dirección de Investigaciones Nacionales), an intelligence and secret police force, responsible only to the president, and that had the power to make arrests and hold people

without warrants. In 1974 the Inter-American Commission of Human Rights reported the existence of five torture centers (Alexander, 1978, p 346). In addition to these tortures, summary executions, mass raids, arrests and disappearances took place in other areas.

The repressive structure established by the regime consisted of the following agencies: DINA – the Intelligence Directorate of the Armed Forces which functioned between 1974 and 1977, the Joint Command, which operated between 1975 and 1976 and consisted of DIFA (the air force intelligence service), DICAR (the armed police), SIN (the navy) and DINE (the army). These four intelligence bodies operated against Communists. The air force had its own intelligence arms, SIFA and DIFA which operated from 1974-1975 and worked against the MIR. The Armed Police, the SICAR was replaced by DICAR in 1974, was in charge of detention and surveillance. The navy had SIN in Valparaiso and SIRE in Concepcion both of which were charged with operating against the MIR. “Each directorate or intelligence service worked independently until late August 1975” when the government decided to co-ordinate and centralize intelligence (Agger & Jensen, 1996, p 52).

By 1974, about 10 000 people had lost their lives and by 1976, an estimated 2000 people were said to be “disappeared” (Alexander 348-349). In 1977, DINA was dissolved due to pressure from the United States, but it was replaced with CNI (National Centre for Information), which performed functions almost identical to those of DINA’s (Oppenheim, 1999, p 127). Since DINA and the CNI were responsible only to Pinochet, some authors have argued that he was able to use these intelligence organizations to help

consolidate his power within the junta <sup>6</sup> These forces were used to eliminate any opponents or officers not supportive of Pinochet and his policies. Moreover, since the army was more powerful than the other three units of the armed forces, Pinochet was able to secure the title of *President of the Junta*, a title that was supposed to rotate between the four members of the junta (Alexander, 1978, p. 341-342)

Two other factors led to Pinochet's strong hold on power. First he took advantage of military commitment to hierarchy and authority. On September 21, 1973, he issued a decree that granted him power to rid the armed forces of any officers who were disloyal to him and promote those who continued to profess their loyalty. Second, he was able to draw upon Chile's respect for the presidential system of government. To this end, the title

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<sup>6</sup> However, Kooning and Kruijt (2002) and Barros (2001) argue, in contrast to other authors that though Pinochet had acquired and consolidated significant amount of power, the regime was not a personalist regime and that Pinochet's hold on power has been overstated. These authors argue that, it was first a military regime because "constitutional and legislative power always rested with the military junta until the very last day" (Kooning and Kruijt, 2002, p. 119). The junta drafted legislation and approved constitutional changes and "functioned under the rule of unanimity, requiring the consent of all top military chiefs" (Kooning and Kruijt, 2002, p. 119). Although the military was involved in all levels of government, civilians were also added to various levels to staff of advisory committees. Additionally, there was still a distinction made between the military as a government and the military as an institution. Most of the military was assigned to traditional national defense role. The commander-in-chief was to lead the military institution while the president was to lead the government. The majority of the officers were part of the institution and defense activities and "only the top chiefs of the armed forces, who constituted the military junta, overtly deliberated on policy and the deliberation of the regime's future" (Kooning and Kruijt, 2002, p. 120). This maintained a "hierarchy discipline and obedience in the armed forces. However, even though such organization attempted to keep internal dissent at bay that did not mean that it did not exist. Barros argues that Pinochet's attempts to personalize powers were resisted by other members of the junta which tried to restrict his ability to influence or control the other branches of the armed forces as he did the military. For example, air force commander General Leigh and Navy commander Admiral Merino "defended their positions in the junta and protected their command structures from any army interventions" and they may have agreed to a limited role in the execute in exchange of autonomy over their own branches (Barros, 2001, p. 12, 22). Members of the junta did not also agree on the political and economic policies implemented by the military regime. For example, in 1978 General Leigh, commander-in-chief of the air force gave an interview to an Italian newspaper in which he called for a return to democracy within five years (Barros, 2001, p. 18) and blocked important economic reforms on privatization.

Given these debates, ultimately, this thesis holds that even though there may have been checks and balances in place and dissent from other branches of the armed forces, since Pinochet occupied both the commander-in-chief role and the role of President, he was able to acquire significant power as evidenced by this direct control over the repressive apparatus, which as previously has been established, led to a significant number of human rights violations.

of “President of the Junta,” worked to his advantage, because eventually, he was named President of the Republic (Valenzuela, 1991, p 41)

Additionally, the armed forces developed a system of rules that defined how the military government operated and laid the groundwork for a new constitution in 1980, which was written by right-leaning intellectuals supportive of military rule and led by Jaime Guzman

There is debate in literature to what degree Pinochet was able to consolidate power. While Kooning and Kruijt (2002) and Barros (2001) argue, in contrast to other authors that though Pinochet had acquired and consolidated significant amount of power, the regime was not a personalist regime because checks, balances and opposition within the junta existed to limit his control, Alexander, Valenzuela, Uggla and others argue that Pinochet was able to acquire a significant degree of power particularly through the 1980 constitution

Pinochet’s political model had three phases of political transition that took place between 1977 and 1985. First, instead of adherence to the constitution of 1925, Chileans would adhere to the junta’s institutional acts. Second, 1981 would see the start of transition to civilian rule with a strong civil-military government, in which the junta would exercise its power, and third, in 1985, “constitutional normality would reign” (Oppenheim, 1999, p 133), and elections would be held every eight years

In 1977 the ‘Chacarillaos Plan’ was outlined by Pinochet. This was a timetable for transition to a civilian rule, “a process that would begin in 1980 and ultimately culminate in a ‘protected democracy’” (Weeks, 2003, p 42). This plan struck a balance between factions of the military that believed there should be a quick return to civilian rule and

those who thought military rule should be indefinite. After this plan was announced, DINA was disbanded and the CNI created. In 1978 an amnesty law which disallowed prosecution for any crimes committed until that year was put into place (Weeks, 2003, p 43)

In 1980 a new constitution was written. This constitution called for Pinochet to remain president until 1989, at which time a plebiscite would be held to keep him in power until 1997. The President had the power to make changes to the legislature, such as “the ability to dissolve the lower chamber and to exercise important prerogatives in the areas of economic and social policy” (Uggla, 2005, p 56). Nine out of thirty-five senators would be named by the armed forces or the supreme court (Uggla, 2005, p 56-57). The Constitutional Court also was given significant powers such as to outlaw groups and political parties that were deemed “totalitarian” and the power to force legislators “out of office” and “censure motions by legislators” (Uggla, 2005, p 57). The military was granted “the most formidable power” (Uggla, 2005, p 57). Under the constitution it was “impossible to dismiss the commanders of the armed forces during their tenure of office” (Uggla, 2005, p 57). It also stated that from 1981-1989, the junta would assume both legislative and judicial functions. A National Security Council consisting of the representatives of the four branches of the armed forces, the President and two civilians, was also created and cemented the idea of the military as the guardians of the nation. The constitution gave soldiers the right to vote, yet limited freedom of speech. The constitution was voted upon by the Chilean people and although there was a great deal of opposition to the constitution, two thirds of the Chilean population voted for it, while only thirty percent voted against it (Falcoff, 1989, p 98-299, (Oppenheim, 1999, p 132-

137) Pinochet also called for a national referendum on his rule and gained 75% of votes in favour of his rule (Weeks, 2003, p 42)

The 1980 Constitution legitimized the regime by providing a legal basis for its existence and ensured the kind of legacy the regime wanted for the political future of the country (Uggla, 2005, p 57) A plebiscite wrought with electoral irregularities was held to ratify the constitution, which was passed with 67 percent of the vote in favour of passing the constitution The Constitutions preserved military influence and autonomy, made Pinochet commander-in-chief of army until 1997, gave Pinochet the power to name the judiciary and stack the senate with military supporters with nine senators

### **Implementation of Economic and Political Policies**

The goal of the military government was to reorganize the political and economic order Phase two of the military regime, lasting from 1977 to 1981, concerned the implementation of these economic and political policies The junta's repressive policies allowed it to implement neoliberal economic policies without any opposition At the time of the coup, the military was faced with high inflation, low production, scarcities of goods, and was unable to make its balance of payments, defaulting on its foreign debt The economic team, often referred to as the "Chicago Boys," because they had all been educated at the University of Chicago in the U S , espoused a free market ideology, which was evident in the economic policy of the junta (Alexander, 1978, p 399-400) The military also increased funding for the armed forces through legislation stating that ten percent or a minimum of \$180 million from CODELCO's copper earnings would go

to the Superior Council of National Defense CODELCO had been nationalized by Allende so this meant that a significant portion of funds went into the military's budget <sup>7</sup>

These economic policies suffered some setbacks and economic decline but on the whole they were successful in establishing the neo-liberal direction of the economy and granted "the military significant domestic and international legitimacy" (Kooning & Kruijt, 2002 121) However, these policies had consequences that had negative effects on the standard of living of working class Chileans and ultimately led to protests against the regime From 1981-1982, the military regime entered its third phase During this time period, it had to deal with the failures (from the point of view of the working class) of its economic policies These policies had several important effects Privatization led to the concentration of wealth (in terms of number of businesses and area of land owned) in a few groups Although government tried to stimulate foreign exchange and investment, it became clear that this strategy left Chile vulnerable to cycles in foreign trade The shock treatment led to increased inflation, increased price levels, frozen wages, unemployment greater than twenty percent, increased interest rates, an increase in the number of bankruptcies of Chile's important banks and a negative GDP for Chile These drastic economic costs also led to severe social costs Due to the high unemployment and increased price levels, people, especially the working classes, could not afford basic goods, leading to a decreasing standard of living (Alexander, 1978, p 400-404) However, since it was government policy not to interfere in the economy, it took the regime more than a year to respond to the crisis During this time opposition to the military regime began to develop

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<sup>7</sup> Personal Interview, Researcher at FLACSO

### **Mobilization against the regime**

The fourth phase of the military regime, lasting from 1983 to 1986, consisted of resistance and mobilization against the regime. This opposition took the form of “Days of National Protest,” during which grassroots organizations tried to protest the military’s rule. These protests were repressed by Pinochet, but they proved that Chileans had a desire for democratic rule. Pinochet, however, continued to conform to the 1980 constitution (Oppenheim, 1999, p. 139-140).

In 1986 there were large demonstrations against Pinochet and even an assassination attempt on his life. This led the military government to declare a new state of siege under which 1500 people were arrested. In January 1987 the state of siege was lifted and in March non-Marxist political parties were allowed to exist again. The opposition to the regime included human rights organizations, labour and civic organizations and political parties such as the Christian Democrats. The political parties realized that the only way to defeat Pinochet in the October 1988 referendum on his continued rule would be to form a coalition. Thus, the *Concertación de Partidos por el No* (Coalition of Parties for No), a centre-left coalition, composed of the Christian Democrats, the Socialist Party and the Radical Party, was formed. This coalition mobilized 55.99 percent of Chileans to vote “No” in the 1988 referendum which called for Pinochet’s continued rule (Government of Chile Plebiscito 1988. Total Totales Nacionales). The rejection of Pinochet’s rule led to democratic elections in December 1989. The parties that contested the elections included the Democracy and Progress Coalition made up of the right-wing parties such as National Renewal (Renovación

Nacional, RN) and the Independent Democratic Union (Unión Democrática Independiente, UDI) parties and headed by Hernán Buchi Buc, the Progressive Union of the Centrist Center, a center-right party headed by Francisco Javier Errázuriz Talavera, and the Concert of Parties for Democracy (the Concertación) headed by Patricio Aylwin Azocar Aylwin and the Concertación won the election with 55.17 percent of the votes in December 1989 based on a platform that promised to address the human rights violations that had occurred under the military regime (Government of Chile, Elección de Presidente 1989 Total Nacional ) This marked the beginning of the transition

### **Transition to democratic rule**

Chile's transition can be characterized by what democratization authors, O'Donnell, Scott and others have called a transition by transaction, or what Huntington called transplacement. These are transitions in which the out-going authoritarian regime loosens hold of political power and one in which the regime and incoming governments negotiate pacts which often include a guarantee of roles for the armed forces and no investigations into prior crimes. The incoming government of Aylwin had several actors and the balance of powers between them to contend with Pinochet and his complete control of the military, right-wing opposition parties, the judiciary that largely supported Pinochet and human rights organizations that demanded justice.

The transition was highly controlled by Pinochet and the military. The conditions of the transition were that the democratic parties had to accept the 1980 Constitution. Since the Christian Democrats and the Concertación could not effectively pursue constitutional reform after pursuing office, they, along with the right-wing party RN

(Renovación Nacional), negotiated changes to decrease the authoritarian nature of the constitution before the election. After the 1988 referendum, Carlos Cáceres was put in charge of the Ministry of Interior, who came to see the reforms “as a means to an end” which “were to ensure that the transition was orderly and to avoid forcing the regime out of power ahead of the timetable. He also wanted to make certain that the constitution would not become an issue in the upcoming elections” (Uggla, 2005, p. 58)

The military’s concerns were that its autonomy, the 1978 Amnesty Law and 1980 Constitution be respected. Negotiations over reform proposals took place and eventually the following reforms were agreed upon: equal civilian and military representation on the National Security Council, respect for political pluralism, constitutional amendments to matters unrelated to the armed forces were allowed a sixty percent majority and articles concerning human rights were rewritten to ensure stronger protection of such rights. In July 1989, the constitutional changes were put to a referendum that garnered 86 percent of votes in favour of the changes (Uggla, 2005, p. 65)

However, the military refused to negotiate over its political role and autonomy, the “destruction of secret police archives,” Pinochet’s role as a senator for life in congress along with eight others, and over representation of the political right in the electoral system (Wilde, 2000, p. 480). The Chilean military, unlike others in Latin America (Argentina, for example), left government in a relatively good standing with its social and political support base intact. Upon its exit from government, the military still had the following powers: Pinochet was head of the army for eight years until 1998, a strong National Security Council (NSC), non-elected senators and an electoral system that gave

Pinochet allies in Congress, the President was not allowed to appoint commanders-in-chief, he had to “choose from among the five most senior generals and admirals only and appointments [were] for a fixed four-year term” (Kooning and Kruijt, 2002, p 124) and dismissal was only for extraordinary reasons and with the consent of the NSC. The military chiefs were allowed to “challenge civilian leadership without fear of punitive action from elected officials – they may convoke the NSC and censure these elected officials, and they may overpower the President in the selection of senators and court members” (Kooning and Kruijt, 2002, p 124). This is the context in which civil-military relations existed in Chile after the transition.

Additionally, the new government also had no control of the Senate,

where nine of the forty-six members were not elected, but rather, were designated to ensure a conservative, majority coalition. Therefore the new government had to compromise with at least one of the right-wing political parties every time it proposed a new legislative or constitutional change (Kirtz, 1995, p 459).

As such it was forced to leave the 1978 Amnesty Law in place because it did not have the political power to pass a change in the legislature. Further, another actor in the transition, the judiciary, was sympathetic to the right and the military, such that “[t]he Supreme Court applied the broadest interpretation possible to the amnesty law, making it difficult even to investigate the truth” (Kirtz, 1995, p 460).

However, since Aylwin’s electoral platform was based on addressing human rights, his government could not avoid dealing with questions of investigations and accountability for the violations of these rights without alienating the sectors which had voted it into power. The only problem was that if the newly elected government was politically constrained. If it pressed too hard on these issues, it feared that because

Pinochet was still in charge of the military, the democratic transition would be threatened by the possibility that the army could break its own rules and interfere in the political process once more. As a result of these competing interests, the Concertación adopted the idea of acknowledgement as its policy. The coalition believed that full disclosure of truth would achieve moral objectives that the government felt would be its basic and unavoidable obligations: prevent future HR violations, compensate survivors and bring about reconciliation in a highly polarized society. It is in this context that the *National Commission on Truth and Reconciliation (CNVR, the Rettig Commission)* was formed in 1991.

### **Summary**

Amidst the changing nature of class and political relations in Chile, Salvador Allende became the world's first democratically elected socialist leader in 1970. Allende's goal was to create a democratic transition to socialism and in this regard he implemented various social and economic policies that led to the social and political polarization of Chilean society. This polarization led to the overthrow of Allende and his socialist government on September 11, 1973. The junta leading the armed forces, led by General Pinochet, declared an internal state of war which allowed the armed forces to carry out brutal forms of violence against UP officials and UP civilian supporters. In October of that year, General Arseno Stark began a campaign called the "caravan of death" in Northern Chile. Under this campaign, political prisoners were found, tortured and killed (Oppenheim, 1999 p, 122-123)

During the 1973-1977 period the armed forces consolidated power through the use of torture and repression carried out by various intelligence agencies. By 1980 the military government had implemented a new constitution which gave the military and the president (Pinochet) great powers. It also helped set the stage for the transition to democracy which Pinochet and the military agreed to after Chileans voted "No" in a plebiscite on Pinochet's continued rule. This resulted in democratic election in 1989 with Patricio Aylwin of the Concertación coalition becoming President. The transition was highly controlled by Pinochet and left the democratic government very little room to pursue its policies, particularly in the area of human rights. Aylwin's election promises included pursuing accountability for the human rights violations carried out under the military government. However, an amnesty law passed in 1978 by the military and the judiciary's lack of willingness to prosecute perpetrators made judicial prosecutions impossible at the time. Constrained by the political circumstances the government decided to pursue accountability in other ways, namely through a truth and reconciliation commission it implemented in 1990.

The following chapter will discuss the commission in terms of its goals, findings and outcomes, followed by a discussion, based on firsthand interview data, of its short and long-term impact on truth, justice and reconciliation in Chile.

## Chapter 6

# The National Commission on Truth and Reconciliation

*The National Commission on Truth and Reconciliation (CNVR)*, more commonly known as the Rettig Commission after its chairperson, Raul Rettig, was formed by Presidential decree in April 1990 to investigate disappearances and torture only if they lead to death. Aylwin had to form the commission by decree because the parliament was controlled by the right wing, which would never have allowed him to pass the formation of the commission by law. As a result, the commission had no legal powers. Some in the human rights community wanted a parliamentary commission, but it has been suggested that a parliamentary commission would have had representation from various parties in Chile, and since the right-wing was a majority in parliament, the report issued would likely have been a watered down, negotiated report (Enscalo, 2000). This chapter reviews the goals, mandate and findings of the commission so that the reactions to it and therefore its success and impact can be understood in the following chapter.

### **The Commissioners**

The commission had eight members with various political persuasions. They included Raul Rettig, the Chair of the Commission, an esteemed jurist and ambassador to Brazil.

under Allende, Jaime Castillo, a human rights activist and prominent Christian Democrat, Jose Zalaquett, a human rights activist, and lawyer, Laura Nova, an attorney associated with the center-right, Ricardo Martin Diaz a former supreme court judge who wrote a seething critique of military court proceedings, Gonzalo Vial Corea, a historian who served as Minister of Education under Pinochet, Jose Luis Cea, a professor of constitutional law who was part of the negotiating team for Renovación Nacional party during negotiations to democratic rule, Monica Jimenez, a grass roots mobilizer for PARTICIPA an organization funded by the National Endowment for Democracy, and Jorge Correa, the executive secretary of the commission whose job it was management of the commission's work. The commission also had over sixty staff members including seventeen lawyers, six social workers to provide support to victims and families during and after the hearings, six support staff, eighteen law school graduates and law students, four researchers and documentation specialists, four computer specialists and four secretaries on its staff. While staff was hired on contract and paid for their work, Commissioners were not paid. Commission expenses, however, were covered by government funds through the Ministry of Justice (Rettig Report, 1993, Enscalo, 2000)

### **Goals of the commission**

Over a period of nine months, the purpose of the commission was to disclose the truth about the human rights violations committed by armed groups between September 11, 1973 and March 11, 1990. The commission investigated "instances of disappearances after arrest, executions, torture leading to death committed by government agents or people in their service as well as kidnappings and attempts on the life of persons carried

out by private citizens for political reasons” (Rettig Report , 1993) It aimed to establish how these violations occurred and “gather evidence that would make it possible to identify the victims by name and determine their fate or whereabouts” (Rettig Report , 1993, p 21)

The goals of the Rettig Commission were in line with what authors such as Hayner, Kiss and Minow have established are goals of TRCs In short it hoped to establish a record of the past, act as a space for victims to voice their truths through testimony which would enable a power shift from focus on perpetrators to focus on victims that could enable them to re-assert their dignity, act as non-judicial mechanisms of accountability in which larger collective responsibilities are determined, serve an epistemic function with the hope that future abuses would be prevented based on the assumption that when people know better they will do better, and finally enable forgiveness and reconciliation

### **Methodology of the commission**

Although the commission had a very specific mandate as to what crimes it could investigate, it was “empowered to carry out whatever inquiry and measures it judged appropriate, including requesting reports, documents, or evidence from government authorities and agencies” (Rettig Report , 1993, p 29 ) Government officials and bodies were required to comply with the investigations carried out by the commission as well In June 1990, the victim’s relatives were given opportunities to “register their cases, and to make an appointment to meet with the Commission” all over the country where regional commission offices were set up for hearings (Rettig Report , 1993, p 30) Offices were

also set up overseas in embassies and consulates so that exiled family members of victims could tell their stories to the commission. The commission collected lists of victims who had died from the armed forces, police, labour unions, human rights groups and other organizations that had collected such data.

Upon registering their cases, family members were asked to provide information on agencies that may have collected information about their disappeared relatives during military rule, evidence was then requested from these agencies on these cases. Over four thousand complaints were received and after eliminating errors and duplicates, over 3,400 cases were examined. Each lawyer was assigned a law school graduate and worked on two hundred cases.

The commission started taking testimonies from victims' family members in Santiago in July 1990. Each session of testimony lasted a minimum of forty-five minutes, was attended by one commissioner, a lawyer, social worker and law school graduate. Information that was gathered at these sessions included names of witnesses, details of court proceedings, the involvement of human rights organizations, and the harm the families had suffered as a result of the crimes (Rettig Report, 1993, p 13-17).

After the interviews with families and human rights organizations had been conducted, the commission also began gathering evidence from government agencies. In this regard, it requested information on births and deaths from the Civil Registrar's Office and the Electoral Registrar, with both agencies offering their full cooperation with the commission. Additionally, whenever it could, it obtained copies of any judicial investigations that had taken place. Hospitals, the Chilean Police, and General Comptroller's office were all contacted to corroborate any evidence mentioned in the

documentary evidence. Of the two thousand plus requests sent out for information the commission “received a response in approximately eighty percent of the cases” (Rettig Report, 1993, p. 33)

The Commission also contacted all branches of the armed forces in cases that implicated their involvement. In cases where the armed forces did turn over information to the commission, “it proved valuable for determining what had happened.” However, in many cases the commission incurred difficulties in obtaining information from the armed forces. In most of its replies the Chilean Army responded that

in keeping with the legislation in force and its own by-laws, the evidence on such events that might have existed had been burned or destroyed when the legal period for doing so had passed. In other cases the response was that the institution did not have any evidence or could not respond unless the Commission provided further information. The Chilean Police almost always responded to such requests by indicating that the documents from that period had been legally burned. In most cases they indicated that they had made some investigation to find the requested information, but these efforts proved fruitless except in a small number of cases. On other occasions, the police answered that the evidence was part of a judicial investigation, and they invoked legal provisions currently in force to justify not sending it. The Chilean Air Force sometimes provided the evidence requested, in other cases, however, it said that it did not have records of the events or that they had been legally burned. The Chilean Navy replied to all the Commission's requests and sent material that proved very useful for the investigations. In some cases, it replied that it did not have evidence on the situations about which inquiries were being made (Rettig Report, 1993, p. 33-34)

There were also attempts to gain access to records from the war tribunals under the military regime. The navy and air force offered their cooperation in this regard by providing copies of sentences or trial records, but the Army claimed that these records had been burned in a fire started by terrorists on army property. None of the branches of the armed forces provided information on the activities of their security agencies on the grounds that they were prohibited from discussing the activities of these organizations.

(Rettig Report , 1993) When asked to provide internal investigation reports about armed forces personnel who had been subjects of terrorist attacks, the navy provided full cooperation by sending all reports, the air force supplemented such reports with their own information while the army sent reports in which rulings had been made in cases where its members had been killed, and the police did not provide such reports at all claiming that such information “had been legally burned or that they had already been sent to the courts” (Rettig Report , 1993, p 34)

When the commission had detailed evidence of unnamed uniformed personnel involved in a case, requests were sent to the armed forces and the police to identify such officers. The police refused to provide such information on the grounds that it was illegal for them to do so, but eventually only provided the names of retired officers, while the navy and air force “responded by giving the requested names of officers in charge of particular units” (Rettig Report , 1993, p 35) When the commission could identify specific individuals by name, they were invited to appear before the commission to provide their version of the events that transpired. One hundred and sixty members of the armed forces and police were invited to testify before the commission. Most officers on active duty refused to testify for various reasons. They claimed they did not have knowledge about the events in question, they had already provided information to the courts, or they simply chose not to give the voluntary testimony. Only “[o]ne member of the police who was on active duty and one in the air force indicated their willingness to offer testimony. A considerable number of policemen and one air force officer agreed to answer questions in writing” (Rettig Report , 1993, p 35) Many retired officers and officers in the investigative police did choose to come forward willingly

From October 1990 to January 1991, the commission made decisions on the 3,400 individual cases by discussion until an agreement had been reached in each case. Cases in which the commission's inquiries or request for information were left unanswered the commission recommended that the government continue investigations into these cases.

Finally, all the evidence gathered by the commission that would aid investigations into the human rights violations was immediately sent to the courts as outlined in the Presidential decree.

### **Content and organization of the report**

The commission released a three-volume report, two of which have been translated into English. The focus of this thesis is the English language version of the report. The two volumes are organized into four parts. The first part details the concepts, methodology and work of the commission.

The second part details the political and historical context of the coup, the legal and institutional framework of the military regime, and the history of the military regime which is divided into three periods: September 1973 to December 1973, 1974-1977 when the security and intelligence services such as DINA and CNI functioned, and 1978-1990 during which CNI operated, the 1980 Constitution was formed, and the preparations for transition occurred. The second part also consists of a discussion on the war tribunals and the behavior of the courts towards human rights violations.

Part three of the report, which is continued in the second volume, consisted of a detailed timeline of the individual human rights violations that occurred in each region of Chile. This section describes violations by the state, private citizens and non-state groups.

and describes reactions to the human rights violations by various sectors in Chilean society

Also examined is the impact of such violations on the families of victims Part four of volume two outlines proposals and recommendations for reparations, and suggestions for preventing future human rights violations and consolidating a human rights culture in Chile (Rettig Report, 1993) Finally, volume three, which was not translated into English, contains the names and details of the disappearance or death of all the victims whose cases the commission examined

### **Findings of the commission**

The commission investigated 3,428 cases and out of these it was able to make a decision on 2,920 cases From these 2,920 cases, 2,115 were named victims of human rights violations, 164 victims of political violence bringing the total number of victims to 2,279 In 641 cases the commission decided it could conclude with certainty that the individuals had been killed for political reasons Further, 508 cases were received which fell outside of the commission's mandate and 449 in which there was insufficient information to carry out an investigation (Rettig Report, 1993, Appendix) Of the concrete decisions made on the 2,920 cases, the commission ruled that government agents were responsible for 95 percent of those disappeared and killed Total killed in war tribunals, protests, alleged escape attempts and executions by torture was 50.5 percent, while total number disappeared after their arrest was 45.2 percent

Patterns of arrest, detainment and torture were discovered by the investigations carried out It was found that specific groups were targeted over various periods of time

Most of those targeted belonged to the Socialist or Communist parties, MIR revolutionary group. Civilians who held no political affiliation were also targeted, sometimes because of their profession—academics and students, or because they held opposing views to the military. The commission noted that the pattern of killings it discovered held the aim of ‘cleaning up’ society. Many of the crimes were attributed to the intelligence services with DINA being held responsible for most of the disappearances and repression. The Naval Intelligence Service (SIN) was held responsible for disappearances in the coastal areas, while the Air Force Intelligence Service (SIFA/DIFA) and the police (Carabineros and Intelligence Police) were held responsible for cooperating with these services. Civilians were also found to be recruited for work in these agencies. Based on its investigations, the commission concluded that torture and disappearance were a matter of state policy. To ensure that such human rights violations never again occur in Chile, the Rettig Report made several recommendations for reform and reparations.

### **Recommendations of the report**

The recommendations for reparations and reforms made by the Rettig Report were fairly comprehensive. In terms of reparations for victims, the report argued that restoration of victim’s dignity and reputation was important because under the military regime victims had been shamed, called criminals and terrorists—accusations that may not have been true. The truth commission was the first step in fulfilling this recommendation because it was the first time victims could tell their stories and have their disappeared family members respected.

Symbolic projects for reparation such as memorials, parks, the creation of a National Human Rights day, monuments commemorating victims on both sides of the conflict were also important so as to build a collective memory of the events that occurred. Exemption from mandatory military service for children of the disappeared was also suggested. The state was called to implement material reparations in the form of pensions for family members, health care to address the physical and mental health needs of family members, housing, and education for children of the disappeared. The development of legal and administrative measures to enable families to deal with the disappeareds' legal status were recommended, so that families could deal with inheritance, property ownership, marital properties and the marital status of the spouse left behind once the disappeared was declared dead. Free legal assistance to families wishing to have their disappeared relative declared dead was recommended.

The establishment of a *National Corporation for Reparations and Reconciliation* to oversee the above functions was recommended. This Corporation was to provide support to victims who had testified before the commission, continue investigations into cases the commission could not solve, as well as register and support victims who came forward to register new cases by providing legal, medical and financial assistance to victims. The Corporation was also put in charge of overseeing the implementation of the symbolic and financial reparations the Commission suggested.

To prevent future human rights violations, the commission recommended many specific reforms in the legal and judicial system. The report suggested that the national legal framework be modified to take into account international legal norms and that Chile should ratify any international agreements on human rights and repeal any laws

incompatible with international law. In particular it suggested a re-examination of the amnesty law and the constitution which it declared flawed, for any legislation that disrespected human rights. Concerning judicial reform, legal training by law schools should provide education on human rights, and the juridical appointment system should be reformed to allow for an independent and impartial judiciary. The military judiciary should be independent, given human rights education and have its jurisdiction limited only to military crimes. Habeas corpus also needed to be improved because this was not at all respected during the military regime.

Reforms to the police, armed forces and security services in terms of human rights education, redefinition of national security with respect for human rights, a re-evaluation of the concept of due obedience, and the integration of the armed forces and police into general Chilean society were suggested. The commission also recommended that an institution such as an ombudsman for human rights be created in Chile to ensure that human rights are respected by the government and its institutions. Finally, the commission noted that it was the government's responsibility to implement human rights education, both formal and informal, so that a human rights culture could be consolidated in Chile (Rettig Report, 1993).

## **Summary**

Formed by presidential decree in 1990, the *National Commission on Truth and Reconciliation (CNVR)*, or the Rettig Commission, after its chairperson the esteemed jurist Raul Rettig was made up of eight respected commissioners representing different political persuasions and academic backgrounds. The commission was given the task of

investigating cases of torture which had led to death and disappearances, but was provided with no judicial powers to compel testimony or assign guilt. It had nine months in which to complete its work which included gathering testimony from victims and their family members from all parts of Chile and abroad. The investigative process included collecting testimony from victims as well as requesting information from human rights organizations that collected evidence of crimes under the military regime and from the security agencies themselves. Although information from human rights organizations was easily obtained the security services—the armed forces and the police were not as forthcoming with their evidence often noting that information had been destroyed legally or that they were prohibited from discussing intelligence activities. Nonetheless, the commission managed to investigate 3,428 cases of disappearances out of which it made decisions on 2,920 cases. Those cases on which it could not come to a decision, the commission recommended that the government continue investigations through an investigatory body to be set up after the completion of the commission's work. The commission discovered a systemic pattern of torture and disappearance in the country and concluded that government agencies were responsible for ninety-five percent of those disappeared and killed. Finally, the commission made recommendations for symbolic and monetary reparations for victims and for the reform of the country's institutions such as the judiciary, constitution and human rights laws.

The truth detailed in the report received varied reactions among Chileans. These and the impact of the report are discussed in the following chapter.

## Responses of Chileans to the TRC

Having reviewed the literature data on truth commissions and their aims in a transitional setting in Chapter 4, the conditions that led to the set up of a TRC in Chile in Chapter 5, and the mandate and goals of the commission itself in Chapter 6, this chapter now turns to an evaluation of the impact and success of the Chilean TRC based on interviews with Chileans. In-depth official interviews (30 interviews) lasting 45-60 minutes were conducted with members of those groups deemed to have influence on human rights policy formation. Interviews were conducted with human rights groups, families of the disappeared groups, human rights lawyers, politicians, and government officials, members of the judiciary, academics, journalists, and the military.<sup>8</sup>

The sample may not be representative of all Chileans, but these actors were interviewed because they are the groups who initially had influence in the Chilean government's decision to pursue a TRC and continue to influence human rights policy, therefore their understanding of truth, justice and reconciliation are important factors in whether they support initiatives support any government policies that favour these goals

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<sup>8</sup> To maintain the confidentiality of these sources, most of them have not been named. If available and consent was given, their political or social affiliation has been cited in the footnotes. The few exceptions to this are cited.

To review, in this research success is measured by whether and to what degree the “commission fulfilled the duties assigned to it (Braham, 2007, p 17) and impact is the “sort of empirically verifiable effects a truth commission has in the transitional context” (Braham, 2007, p 19), these impacts maybe short or long-term It is difficult to quantify and operationalize measurements of philosophical concepts such as truth, justice and reconciliation and this research does not aim to do that Instead, in relation to truth, justice and reconciliation impact will be examined as follows concerning the impact of the TRC on truth, justice and reconciliation this research asks, has there been a change in the understanding and perceptions of these concepts since the TRC report was released to the present? Thus impact is measured in terms of whether a change in attitudes among those in charge of or influence over policy making occurred Additionally, with respect to the impact of the TRC on justice, have judicial prosecutions increased over time? Since baseline data on perceptions before the TRC took place are not available, a retrospective examination is necessary Thus, the perceptions at the time of the commission report’s release are used a baseline in order to measure the change and therefore, impact

The chapter is organized as follows First, the immediate impact of the results of the Rettig Report in terms of the reactions of various sectors is discussed Then, the long-term impacts in terms of the events relating to truth, justice and reconciliation that occurred in the years following the report are detailed Finally, there is an evaluation of what these impacts reveal about the Chilean case in relation to the literature on TRCs and the mandate of the Rettig Report The summary-conclusion to this chapter will then assess whether based on the aforementioned data, the Chilean TRC can be considered a success

### **Immediate impact of the Rettig Report**

As detailed in an earlier chapter, the literature has established several roles of TRCs, one of these is that these commissions can serve symbolic functions in society. This was certainly the case in Chile. For victims to have their stories heard for the first time since repression had become state policy was a very powerful moment for victims because it marked the first time the state took them seriously.<sup>9</sup> This—having their stories heard—was perceived by some as the first reparation for victims. The release of Rettig Report was the first time there had been any acknowledgement of torture, disappearances and repression as a policy of the dictatorship from the state. Those who wanted to deny the facts could no longer deny them.

The report received little public attention and unlike the Argentine or Brazilian reports was not published as a book, instead the full report was published as special excerpts or editions in the state paper, *La Nación* (Hayner, 2002, p. 37). This excerpt was sold out and had to be reprinted. Though there were several reports and debates in the media about the report, public attention to the report was minimal.

Each sector responded to the report differently. The armed forces, judiciary and right wing were all critical of the report, while the left, human rights organizations and the church embraced the report. Families of the victims welcomed the report, but noted the limitations of the truth it offered.

After the commission's report was released on March 28, 1991, it was reported in the Chilean press that the armed forces called a National Security Council meeting to

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<sup>9</sup> Personal interviews with victims and human rights organizations

discuss the report (*Críticas y Elogios a informes del Ejército y Armada, 1991*) The heads of the Navy, Air force, Carabineros and the Military made known their views on the report to the civilian authorities, the Home Minister and the Minister of Defense at the NSC meeting Retired officers called the report a partial and unjust analysis of the events that occurred in Chile and all branches of the armed forces and the Carabineros (Police) published their reactions to the report as statements in the newspapers

### **Reactions to the report**

#### **The armed forces perspective**

The army published its rejection of the report in the newspaper, *La Epoca* (*Ejército respondió al Informe del al Comisión Rettig, 1991*) It was published under Pinochet's name and held that there was a misunderstanding of the coup, which the army understood as an action of national restoration (*accion de restauración nacional*) In a 22-page statement it accused the commission of trying to establish responsibilities without having the legal basis to do so It argued that even without naming names, the commission was so specific in determining locations and circumstances that it was possible for anyone to make assumptions about the people presumably responsible for the acts described in the cases described by the report The statement offered counter-arguments in a point-by-point manner to facts with which the army disagreed

In their version of the truth, the armed forces placed the blame for the entire conflict on the Unidad Popular (UP) and argued that the Commission only considered the violation of human rights during September 11, 1973 to March 11, 1990, but did not consider the violations of human rights (confiscation of properties, land, and businesses)

or the governance problems that took place during 1964-1973, and especially those fuelled by Unidad Popular. The army claimed that the Unidad Popular wanted to install a Communist, totalitarian regime through a civil war fought with a paramilitary army with aid from Cuba. For this reason, the army believed it was fighting an internal enemy and simply defending Chile.

The army denied that any human rights took place during the period 1973-1990. It declared the Rettig Commission irresponsible for presenting a truth based on alleged violations and ignoring the good the military believed it had done for the country. As such it rejected the assumption of responsibilities for the facts detailed in the commission, particularly those which implicated the high command. Pinochet said repeatedly that the army felt no need to apologize for protecting the nation and carrying out its patriotic duty and he would not allow any of the soldiers under his command to be prosecuted for alleged violations.

The army maintained that it was an apolitical institution that did not align with any political sectors to further political aims or agendas. It noted that the only reason it intervened in Chilean politics was because it was asked to do so by civilian authorities and used as evidence statements made by Aylwin and Frei in 1973 stating the coup was necessary in preventing the UP from implementing their political agenda. The army statement denied altering the judicial system but defended introduction of various legal norms as necessary for democratic changes in Chile.

The statement also rejected many of the report's recommendations, particularly those requiring the restoration of dignity to victims because in the army's view these groups were responsible for causing the crisis which polarized Chile. It was also against

providing exemptions for victims children from obligatory military service because this service was legally mandated in a constitution that it held should apply to all citizens equally

On the topic of reconciliation, the Chilean military claimed it supported reconciliation as articulated by the President, but that reconciliation could not occur based on what it considered to be a biased truth. For the military, 'nunca mas' was taken to mean that the military hoped that never again in Chile would there be a socialist-Communist experiment like the Unidad Popular. The army maintained that it re-established social peace and democracy in Chile.

The Navy held a position similar to the Army's, while the Police and Air Force acknowledged the work and general conclusions of the commission, they also refuted the idea that there could be one single truth.

On March 28, 1991, the Admiral Jose Martinez Busch, head of the Chilean Navy published a response to the Rettig Report in the newspaper. Much like the Army's statement, this statement provided the background and justification for military intervention in the violence in Chile. Busch noted that the report was incomplete in some areas of its analysis because it did not take into account the severity and extent of the left-wing violence. Like Pinochet's statement, he also disputed various parts of the report and suggested the country faced an internal war at the time of the military takeover. Although Busch agreed that the loss of human life can cause irreparable damage for society and it is important that Chileans understand the past, they must also understand the role of the navy was to protect security and the homeland.

He further argued that since the commission was not a judicial body it was without rights to determine guilt. Moreover, since the testimony provided to the commission was voluntary, it was not subject to counter-interrogation and could not be challenged in a court of law. Therefore, it was possible it was politicized and possibly motivated by revenge. He rejected the TRC's conclusion that torture had occurred on naval ships, like the *Esmeralda* and maintained that the report was impartial, lacked rigor and did not complete its objective. The military only intervened in politics because the population demanded it put an end to the internal civil war.

The police statement by General Rodolfo Stange acknowledged the hard work of the commission and expressed respect for and the desire to participate in the President's mission for reconciliation. However, he also argued that though the Carabineros were committed to justice and reconciliation for all Chileans, the commission was not objective and one was not bound to accept its truth. Stange suggested the truth it revealed was incomplete because it did not consider that the Carabineros also suffered as victims during the periods from 1970-1973 and from 1990-1991 (Carabineros advirtió que considera inconveniente exponer la institución a "un juicio político", 1991).

Moreover, according to Stange it was impossible to determine the absolute truth about the violations it detailed. He lamented that all the blame for the violence was being placed on the armed forces, which he maintained broke their history of non-interference in politics to protect the nation. Stange also noted that the Carabineros rejected any legislative reforms proposed by the commission that would weaken police ability to function in fighting crime. The Carabineros rejected the acceptance of individual and

collective responsibilities for any of its members, active duty or retired, until criminal liabilities were established by the courts

Finally, the Air Force, like the Carabineros was a little more moderate than the Army in its view of the commission. In his response to the Rettig Report, the commander-in-chief of the air force, General Fernando Matthei, stated that he agreed with the historical analysis of the social, political and economic events leading up to 1973 that the report made because it would be difficult to understand the situation in Chile without such an analysis. Matthei's statement expressed the Air Force's regret at any losses of human life, both civilian and military, and reiterated that as the commander-in-chief of the Air Force he would fully respond to that which happened under his command as required by the law and that he supported the goals of reconciliation established by the president and wanted Chile to be a healthy democracy (General Matthei, 1991)

Additionally, retired General Gustavo Leigh, one of the original members of the Junta and former commander-in-chief of the Air Force also offered his opinion on the report. He broke with other retired generals from the military and navy who had disputed and rejected the report stating that though he felt the report had errors and omissions, he agreed with the remarks made by Aylwin on the research conducted by the commission and that he assumed full responsibility for any actions the air force took under his command (General Leigh assume su responsabilidad, 1991)

The armed forces were not alone in their assessment of the TRC as a biased investigation into the human rights violations. The right wing and the judiciary who had supported the military regime also released statements critical of the TRC

## **Reactions of the right-wing and the judiciary**

In the initial reactions to the report, the President of the Union Demócrata Independiente (UDI), the right-wing party that had supported the military regime, Julio Dittborn, said that although some of the facts described were inaccurate, the UDI accepted them as described, noted the seriousness of the violations. Additionally, Jaime Guzmán, a right wing senator from the UDI appeared to express empathy with the victims stating it was natural for the families of the disappeared to want to know the fate of their detained and disappeared relatives. However, overtime the UDI's position became more hard-line and Guzmán and Dittborn noted that the historical and legal content of the report was partial and biased and as such the report was not the whole truth. According to them that responsibilities for the violent aftermath of September 11, belonged to those in the Unidad Popular (UP) who created conditions for the civil war. The right maintained that the report was far from creating reconciliation and therefore the amnesty law that aimed for reconciliation should be respected (*La Derecha opto por juicios divergentes*, 1991)

The President and Vice-President of the other right-wing party, Renovación Nacional (RN), that had supported the military government, Andrés Allamand and Miguel Otero, noted that the violation of human rights must be condemned since they have no justification. Allamand recognized the validity of the army and navy's opinion but did not agree with the two institutions that the report did not have historical and legal validity. Like the armed forces, however, he agreed that the context of the violence, namely the extreme ideologies which led to the military intervention, needed to be studied. Otero however, argued that the Rettig Report was simply one version of the truth and not the whole truth. He further noted that Chileans must be careful not make human

rights violations synonymous with the armed forces. The two men suggested that the nation should support the armed forces' desire for reconciliation (La Derech opto por juicios divergentes, 1991)

The reactions of the Supreme Court can also be classified with the hard line right positions in that it took on a very defensive approach to the conclusions of the report, but did not deny the facts. The Supreme Court had been stacked by Pinochet with members who were loyal to him and so the institution issued a document outlining its opinions on the report in which it called irregular and biased against the courts. It claimed the commission had a political objective and orientation. The Court held that the report was not the whole truth as it claimed to be (Corte Suprema Redacto Severa Replica a la Comision Rettig, 1991)

### **Reactions of centre and government**

The centre position was defined largely by the government and the Christian Democratic Party (PDC) and laid out in a speech by Aylwin on March 4, 1991 in which he presented the report to the nation and publically apologized to the victims for their suffering. He reiterated that reconciliation and healing of the wounds created by the violence in Chile could only occur based on truth and justice. He noted that the truth revealed by the TRC was impossible to ignore and stressed that it should not be considered an "official" truth because the state did not have the right to impose any particular truth upon its citizens, but that this truth should be recognized, as should the idea that violations of human rights have no justification even during a time of war. He made an appeal to all Chileans to accept the Rettig Report's version of the truth, respect the victims, and asked the armed

forces to cooperate with justice by providing any information they had on the disappeared

Aylwin also spoke of the need for reconciliation and forgiveness but argued that in order to forgive one must know who to forgive. Additionally, he called for the harm done to the victims to be repaired. The first step in this was his apology to the families of the victims. He said, "In my role as President of the First Republic, on behalf of the entire nation, I apologize to the families of the victims" (Translation my own, *Aylwin*, 1991). He asked the armed forces, police and anyone who had taken part in what he called "excesses committed" to recognize the pain of the victims and work to reduce it because reconciliation was a collective responsibility.

Finally, on justice, Aylwin stressed that it was important to determine the whereabouts of the disappeared and identify those responsible for the crimes committed. In this regard, he noted the Rettig Report was incomplete so the task of identification and punishment of perpetrators was up to the courts. He thus requested the courts to open investigations into these crimes before applying any amnesty laws.

### **Leftist political parties**

The left position was comprised of the Communist Party (PC), the MIR, the Socialist Party (PS), and the Party for Democracy (PPD) and the Radical Party (PR). None of these parties disputed or criticized the contents of the report. The Communist Party and the MIR acknowledged the importance of the Rettig Report in informing Chileans about the repressive practices of the military government, but they also criticized the report for its limited mandate, noting that the Report had to be only the

beginning in the search for knowledge about the human rights violations which were not limited to disappearances alone but also torture, political imprisonment, and exile. They suggested that the report's failure to name perpetrators signaled the continuation of impunity. The Left also criticized the continuation of Pinochet as commander-in-chief of the army and the government for allowing key members of the Supreme Court to continue in their posts after enabling the military regime's repression. The socialist party senator Jaime Estevez thought Pinochet's response to the report was insensitive given the suffering many have experienced. The Party for Democracy (PPD), the Socialist Party (PS) and the Radical Party (PR) all fully supported Aylwin and the Rettig Report and hoped that the knowledge gained by Chileans through reading the report would ensure that these kinds of violations and violence never again occurred in Chile (UDI de acuerdo con la Corte Suprema sobre informe Rettig, 1991, (Senadores Opinan Sobre Informe Rettig, 1991))

Among civil society organizations who responded to the report were human rights organizations, groups of the families of the disappeared, and the church.

### **Human rights organizations and victims**

Human rights organizations and Families of the Disappeared and Executed agreed with the findings of the report but felt it was only a first step in bringing out the truth of the human rights violations. The main criticism these groups had about the report and the commission was that the commission had a limited mandate and because of this it only told half of the truth of the events that took place under the military regime. The commission only considered crimes of torture that led to disappearances and deaths, it

did not consider other cases of torture that did not result in death. Victims who had been political prisoners, tortured and released were also expecting an investigation and justice, but did not get it under the Aylwin or Frei governments<sup>10</sup>

Another complaint these groups had was that the Commission was weak because it had no legal powers and because of this the report did not name the perpetrators or compel them to testify.<sup>11</sup> Although some members of the commission had wanted to name perpetrators because it would have been a kind of sanction which would enable courts to open investigations into the cases, Raul Rettig and Jose Zalaquett argued that since the commission was not a judicial one, it had no power to assign guilt—only courts could do this. The commission's adherence to the letter of the law provided it with legitimacy. Further, the government was hesitant to alienate the armed forces and feared that if the commission had been given powers to assign guilt, the Comptroller's Office or Constitutional Court would have rejected the President's decree establishing the commission. Aylwin was concerned that if his decree was rejected the search for truth would be more complicated. It was reported after the report's release that a list of perpetrators names was given to the President in a sealed envelope and were to be released by 2016 to the public. The commission's files in which names are named are held at the Aylwin Foundation and are inaccessible to lawyers.<sup>12</sup>

Families of the Disappeared also argued that the Rettig Report did not provide sufficient information that enabled them to determine the whereabouts of their relatives

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<sup>10</sup> Personal interviews with lawyer from Comité de Defensa de los Derechos del Pueblo (CODEPU) and with lawyer, Hugo Gutierrez

<sup>11</sup> Personal interview with two lawyers, one from CODEPU, and one from the National Corporation for Reparations and Reconciliation

<sup>12</sup> Personal interview with lawyer from CODEPU

and demanded that the armed forces release any information that could help relatives find their loved ones (Interviews with victims, Families of the Disappeared) However, even though the report did not offer enough truth, an official acknowledgement that their loved ones died at the hands of state agents had an important impact on many families

On the topic of reparations, the Families of the Detained and Disappeared Group (AFDD) said that measures of reparation cannot exist without the full truth (Familiares “Nuestra Problema no obtuvo solucion alguna”, 1991) Additionally, they noted that though reparations did not erase the crime or take away the pain many families suffered (AFDD, 1991), they would be accepted by the families because it was a sign that the state recognized the “integrity and personal dignity of the Detained and Disappeared” (AFDD, 1991, p 127) Families also wanted the amnesty law annulled so that investigations could begin in the courts and that reconciliation cannot occur in society until impunity continued to exist

### **The Church**

The Church generally had a less critical view on the Rettig Report The Vicaria de la Solidaridad praised the report as making a positive contribution to truth It noted that the recognition of the violations and the acceptance of responsibility for these acts by the state were important acts of reparation and the first step in helping Chileans understand the past It asked those Chileans, particularly the armed forces, with information about the disappeared to come forward and requested that all Chileans should share in the responsibility to achieve reconciliation Regarding justice, the church pledged support to

the families in obtaining judicial justice, but asked people to forgive and not engage in acts or personal vengeance <sup>13</sup>

### **Influence of the Rettig Report**

After the assassination of right wing, UDI Senator Jaime Gúzman on April 1st, public attention turned to concerns about left-wing violence and the report's release was overshadowed. It also forced the government to put on hold a human rights education program consisting of abridged version of the report that it had planned to go along with the full report <sup>14</sup>. The Guzman assassination effectively allowed the political class in Chile to put a hold on further discussions on human rights violations. In a March 1991 poll, ninety-one percent of those polled viewed Aylwin's speech positively, sixty-nine percent felt that the report did not contain the whole report, while seventy percent felt that the report was not a solution to the human rights problem, eighty percent favoured judicial investigations and only 42.5 percent of the people polled by the El Mercurio news paper felt the report contributed to reconciliation (Kirtz, 1995, p. 474)

The impact of the report on the judicial investigations was that it allowed for open criticism of the judiciary and the Supreme Court which may have helped influence the chances of investigations and enabled lawyers to pursue legal cases with the evidence the commission had gathered indicating that crimes had occurred. Additionally, since all of the evidence the commission gathered was passed on to the courts, many judicial investigations that started in the years following its release were based on the

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<sup>13</sup> Personal interviews with Church leaders at the Vicaria de la Solidaridad and at Fundacion de Ayuda Social de las Iglesias Cristianas (FASIC)

<sup>14</sup> Personal interviews with CODEPU lawyers

investigations of the commission<sup>15</sup> Not only has the Rettig Report's collection of evidence been used in the Chilean courts, it has also been used in international cases against the state of Chile in the Inter-American Court, as well as in the investigation of Pinochet's responsibility for crimes in Spanish Judge Balthazar's case against Pinochet<sup>16</sup> Additionally, the Rettig Report was referenced in a second truth commission that was established by the Chilean state in 2004, the Valech Commission The Valech Report used the Rettig Report as a foundation of the history of the conflict It does not delve into the details of historical and political factors that led to the installation of the military regime, instead, it notes that these details have already been established in the Rettig Report and directs those seeking a more comprehensive understanding of the background of the conflict to read the Rettig Report<sup>17</sup>

For some of the commissioners, lawyers and other staff of the commission, as well as the victims, the commission, particularly the interview process made a large impact One commissioner, Laura Nova described the process as "cathartic" because people had a chance to tell their stories for the first time This not only helped the victims because it gave them a voice and official space in which their stories were dignified and taken seriously for the first time, but also the commissioners who were sometimes surprised at the horror of the stories they heard (Enscalo, 2000, p 198-199)<sup>18</sup>

Chilean academics, lawyers, human rights activists and victims agree that the although it did not garner the sustained interest that it should have, Rettig Report was

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<sup>15</sup> Personal interview with lawyer at National Corporation for Reparations and Reconciliation

<sup>16</sup> Personal interviews with lawyers at CODEPU

<sup>17</sup> Personal interview with lawyer at National Corporation for Reparations and Reconciliation

<sup>18</sup> Personal interview with Chilean academic

extremely important in Chile because it was the first time that the Chilean state recognized that crimes and human rights violations had occurred under the dictatorship. It established that these kidnappings and killings were crimes in accordance with international law and allowed these crimes to come into the public domain and become public knowledge. Before the moment of the report's release, many Chileans did not know or want to believe that such atrocities had occurred in Chile. After the report was released no one in Chile, even if they supported the military regime, could deny that violations of human rights had occurred, the report gave victims an official document which they could refer to at any time that said "this is what happened." Thus, the report prevented society from closing the chapter on and forgetting the past.

One of the most important measures in the release of the Rettig Report was Aylwin's televised apology to the victims. This was significant because, as one human rights lawyer said Chile is a "country where we do not ask for forgiveness for anything"<sup>19</sup>. Thus, hearing the President acknowledge their testimonies was a historic moment and incredibly symbolic for victims because their dignity had been recognized in front of their fellow citizens by the head of state.

Most interviewees for this research agreed and much of the literature on the Chilean commission has established that the mandate for the commission was very strongly influenced by the work of Jose Zalequett's work on how societies should deal with transitions. In both his oft-referenced article and personal interview for this research he laid out a framework that calls for a pragmatic approach to dealing with crimes. That is, societies must take into consideration the balance of powers during a transition and

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<sup>19</sup> Personal interview with lawyer at National Corporation for Reparations and Reconciliation

then examine what means are available to address the problem of human rights<sup>20</sup> (Zalaquett, 1991-1992) Zalaquett is an advocate of human rights policies that allow for complete revelation of truth in a manner consistent with human rights laws and norms prevent future violations and make reparations for the harms suffered He also firmly believes that commissions of inquiry that have no judicial powers should not name names because only courts after a thorough judicial investigation can assign guilt This pragmatic approach of the Rettig Commission made an impact on the Aylwin regime--it gave the Aylwin government an identity with regards to how it would treat human rights "justice and truth in so far as possible" was the phrase often repeated by government officials This is because the government was so worried about threats from the military, particularly Pinochet causing another coup Pinochet is known to have declared that he would not let any of his soldiers be prosecuted<sup>21</sup> (Rosenberg, 1995)

Finally, the Rettig Report's recommendations had a significant impact for victims Though, human rights organizations criticized the Aylwin and subsequent Chilean governments for not fully implementing all of the recommendations made by the Commission, the Aylwin government did implement recommendations about reparations and memorial projects<sup>22</sup> The government created a National Corporation of Reparation and Reconciliation under the Ministry of Interior by decree which was in charge of continuing the investigative work of the Rettig Commission and providing material and symbolic reparations Chile developed a fairly comprehensive program of compensation

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<sup>20</sup> Personal interview with Jose Zalaquett

<sup>21</sup> Personal interview with lawyer at National Corporation for Reparations and Reconciliation

<sup>22</sup> Personal interview with lawyer at National Corporation for Reparations and Reconciliation and with lawyer at CODEPU

for victims which included life-long pensions, compensation for prison time and lost income, educational benefits for victims' children, exemptions from mandatory military service for victims' children, and a national network of medical and psychological services that victims could access (Kirtz, 1995, p xxvii) Through its investigative work the Corporation discovered remains of victims and facilitated their return to their relative<sup>23</sup> The Aylwin government and subsequent governments, particularly the Lagos government created several symbolic memorials in Chile such as Villa Grimaldi, the National Cemetery, the renaming of streets in honor of September 11<sup>th</sup> and others

Some victims and human rights lawyers have noted, however, that though the government provides funding for the creation of these monuments, taking them seriously, thus maintaining memory is left only up to the victims because hardly any politicians or major public officials attend opening ceremonies for these projects<sup>24</sup> Another problem with the commission was that because it took place so soon after the military government left power, fewer people came forward to testify and share their stories than would have if the commission had taken place after some time Many people were afraid to come forward with their stories and testimonies and crimes investigated by other human rights organizations after the commission ended its work were not included or accepted by the commission Further, those victims whose names are not on the Rettig Commission's official list, and who came forward after the commission completed its work often have a more difficult time applying for and receiving reparations<sup>25</sup>

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<sup>23</sup> Personal interview with lawyer at National Corporation for Reparations and Reconciliation

<sup>24</sup> Personal interview with lawyers at CODEPU and interviews with victims

<sup>25</sup> Personal interview with lawyer at CODEPU

On the one hand the report provided an officially recognized list of victims which was absolutely invaluable, yet on the other, this works to the disadvantage of other victims who then have to prove their victim-hood. Thus, the report has become authoritative account of violence but sometimes to the detriment of those who did not come forward in 1991 because they were afraid to do so at the time.

Finally, in terms of and influence on the creation of a human rights culture, the Rettig Report's impact is debatable. Some Chileans interviewed for this research said that it had a strong impact because it came at a critical time and made people aware of what human rights violations were, but that its effects were overshadowed by the assassination of Jaime Guzman shortly after the report. They argue that the Rettig Report has contributed to the consciousness and awareness of human rights violations because even the right wing and the military have embraced the discourse on human rights and point to a December 2004 a military ceremony for new cadets where the keynote speech was on human rights by Jose Zalaquett. Yet, others suggest that at the beginning the report did not have a large impact because even though it was praised by victims and their families, it was not accepted by the military and the authors of the violations.

As mentioned above, the report did not receive as much attention as the government would have hoped. Since the only widespread distribution was through an excerpt in the national newspaper, many Chileans did not read the report—not necessarily because it was too long, but because it was too painful.<sup>26</sup> Hearing and reading about such painful practices and experiences forces one to re-examine relationships—family, friends, colleagues who may have participated in such practices are all put into

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<sup>26</sup> Personal Interview with lawyer at National Corporation for Reparations and Reconciliation

question and people perhaps did not want to acknowledge or re-examine their role or responsibility in the violence and repression. People often do not want to confront such heavy questions, so, although no one could deny that violations and repression occurred, it was easier at the time of the release of the Rettig Report for many people to turn away from the human rights debate.

In general, the development of a human rights culture in Chile has been slow and difficult. It is hard to ignore that many Chileans have a poor understanding of what constitute human rights, they associate having human rights violations with torture, threats to life and unjust imprisonment, and violations of human rights are associated with the military regime and with the past. Thus, in their view, since the Chilean state no longer uses a policy of torture or repression, they feel human rights are being respected and honored by the state. Additionally, at the time of the release of the Rettig Report, any talk of human rights was associated with the left, so many people were hesitant to take on human rights education because they did not want to be labeled “Marxists.” A broad understanding of human rights associated with a democracy has not fully occurred in Chile. Rights to housing, food, healthcare, education, equal treatment under the law, etc., are not necessarily associated with human rights. Though this is changing, it makes the work of human rights organizations working on issues other than those of political repression, very difficult.<sup>27</sup>

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<sup>27</sup> Personal observations of Chilean society

### **Long-term impact of the commission**

The theoretical framework of this thesis defined the temporality of transitional justice. That is, there are several periods of transitional justice: immediate, protracted and second wave transitional justice. To review, with immediate transitional justice, judicial proceedings begin during the initial transition period and end within five years. Protracted justice is that in which proceedings begin immediately but go on indefinitely until a resolution is reached. Finally, second wave justice is that which starts immediately but is followed by a period of inactivity which may be years or decades after which justice proceedings are launched once more (Elster, 2004, p. 75-76). Though Elster limits his notion of temporality to justice—legal proceedings, this research extends his conception to truth and reconciliation efforts in Chile as well. Thus, the term ‘transitional justice proceedings’ here refers to the process of truth, justice and reconciliation seeking as a whole. Based on the research data collected, Chile can be said to have followed a protracted path to transitional justice. The immediate transitional proceedings began with the Rettig Report which started the process of revealing truth which later had consequences for both justice and reconciliation.

This section will examine the long term influence (defined as twenty years later—from the time of the release of the report to the present time) of this report on truth, justice and reconciliation in Chile.

## **Truth**

The successive governments after Aylwin have also had to deal with the human rights issue. Two initiatives have been taken by three different governments over the last 20 years that have propelled the quest for truth further. The first came under President Frei whose government followed Aylwin's

In its early years in power, the Frei government ignored the issues of human rights, even going so far as to announce that the transition was over<sup>28</sup>. It was largely with Pinochet's arrest in London in 1998 that the government began addressing the human rights problem with the Mesa de Dialogo, a round-table discussion between the government, human rights community and the military, which was designed to foster the release of more information from the military.

## **Mesa de Dialogo**

During the early stages of Pinochet's arrest in London, the Frei government initiated a series of roundtable dialogues, the Mesa de Dialogo, in August 1999. The Mesa was a set of roundtable discussions to encourage the military to divulge information on the disappeared. Representatives of each of the branches of the armed forces, human rights lawyers, activists, government officials and academics met, discussed and negotiated the human rights problem. It was given a period of 2 years. One Chilean academic noted in a personal interview that this roundtable had a precedent in Chilean

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<sup>28</sup> Personal Interview, Researcher at FLACSO

history – after periods of political conflict opponents would come together to the table in hopes of reconciliation, which usually meant pardon and amnesties for both sides

The objectives of the Mesa were for the participants to collaborate on truth, justice and reconciliation and dialogue with respect. It was the first time that all sides had come together to discuss the human rights problem. At the Mesa, the armed forces promised to provide information but with the provision that those who were willing to provide it should be protected with confidentiality and immunity from prosecution. The air force and the army also wanted a time frame within which disappearances could be considered deaths and therefore the Amnesty Law applied (because up until this point the courts had started interpreting disappearances as continued kidnappings, therefore as ongoing crimes subject to investigation and arrest). They maintained that abuses were not a policy of the regime, but abuses of power by individuals and even so in the context in which the violence occurred (i.e.) military was dealing with a state of internal war. The military wanted the focus on individuals not institutions.<sup>29</sup>

In March 2000 the Mesa produced a document outlining common agreements made. During this time, Pinochet came home to a ceremonial welcome from the military, and an embrace from General Izurieta, head of the army, which angered the government and other civilian participants in the roundtable discussion process.<sup>30</sup>

In June 2000 the all parties at the Mesa came to a final agreement that the armed forces would provide information on the cases of the disappeared. It was rumored in the media that the air force ordered officers to provide in writing any information about the

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<sup>29</sup> Personal interview with military representative at the Mesa

<sup>30</sup> Personal interview, interviewee requested complete anonymity

cases they remembered and these were sent to the army who was accused of changing the information before handing it over <sup>31</sup>

Additionally, it was later found that the information the military had provided was false, the locations of mass graves revealed remains that turned out to be animal remains. This furthered distrust of the military on the part of the human rights community <sup>32</sup>

Though the Mesa did not lead to greater truth in terms of information about the whereabouts of the disappeared and could be seen as a failure in this regard, the value of the discussions was that for the first time the armed forces were willing to acknowledge that some abuses had occurred. Though they insisted that these were individual cases, it was a step forward in the acknowledgement of the violence and a shift in their position from when the Rettig Report was released in 1991. At that time they had denied that any human rights violations had occurred at all.

The second initiative came under the Lagos government which also had to deal with the Pinochet problem after Frei. Lagos was more proactive in dealing with the human rights issue—his government created the Valech Commission, a second truth commission to investigate those who were politically imprisoned and tortured. There is widespread agreement that under Lagos, Chile “made the most impressive progress on human rights issues as well as justice reform and freedom of expression” (José Miguel Vivanco qtd. in New York Times, 2006)

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<sup>31</sup> Personal interview with lawyer at the National Corporation for Reparations and Reconciliation

<sup>32</sup> Personal interviews with lawyers, victims, and academics

## Valech Commission

The Chilean case demonstrates that reporting and investigating of the truth in Chilean society cannot be completed with one truth commission, especially one that was limited in its mandate. In this vein and in the process of reconciliation, healing and acknowledgement, in September 2003 the Lagos government created, by decree, another truth commission on torture *The National Commission on Political Imprisonment and Torture (Nacional Sobre Prisión Política y Tortura)* or the Valech Commission, was in operation from September 2003 to June 1, 2005. The commission was comprised of six men and two women, María Luisa Sepúlveda who served as the executive vice president of the commission, five lawyers Miguel Luis Amunátegui, Luciano Fouilloux, José Antonio Gómez, Lucas Sierra, Álvaro Varela, psychologist Elizabeth Lira and headed by Bishop Sergio Valech. Its mandate was to record the violations of civil rights and political torture between September 1973 and March 10, 1990 committed by state agents and services. The report identified victims and made recommendations for reparations. It was released in two parts, the first in November 2004 in a televised address by President Lagos, the second part released in 2005 was an investigation of about 1000 cases that had not been covered in the first report due to time constraints.

The response to the commission was significant. In six months, 35 868 persons registered their cases with the commission, which heard 114 to 240 testimonies a day throughout the country (United States Institute of Peace, Bacic & Stanley, 2005). The Valech commission released a 3 volume report and like the Rettig Commission, concluded that torture was widespread in the country so much so that up to 94 % of all those arrested and detained were tortured.

Eight chapters of the report were devoted to testimony detailing the practices of torture used throughout the country. According to the report, torture was state policy and there existed 1,132 detention centers which included police stations, military facilities, schools, hospitals and houses set up for the purpose of torture. Out of the 35,868 cases investigated, “33,221 individuals were proven to have been detained, these victims had spent an average of 180.1 days in prison. Out of this group, 27,255 people were officially registered as victims of torture” (Bacic & Stanley, 2005)<sup>33</sup>. Most (87.5%) of these victims were male while 12.5% were females. Electric shock was one of the most common methods of torture as was sexual abuse for females.

Like the Rettig Commission, the Valech Report also recommended monetary (pensions, education and health benefits) and symbolic reparations. In 2005, life-long pensions of \$200 per month, free education, housing and health care were given to 28,459 victims or their relatives. The Valech Commission’s contribution to expanding the truth of events that occurred under the military government ushered a significant shift in the position of the armed forces, particularly the military, on human rights.

### **Reactions of the armed forces to the Valech Report**

Under General Juan Emilio Cheyre, the Chilean army underwent an evolution in its views on human rights. In 2003, on the 30<sup>th</sup> anniversary of the 1973 coup, Cheyre released a statement on the army’s position on the coup and the human rights problem.

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<sup>33</sup> Additionally, the second report investigated an additional 1,204 cases. Similar to the findings of the Rettig Report, the commission found that “the worst period of torture occurred immediately after the coup, as more than 18,000 (67.4%) people were tortured between September and December 1973. Another 5,266 (19.32%) people were tortured between January 1974 and August 1977 and the remaining 3,625 (13.3%) victims suffered torture between August 1977 and March 1990” (Bacic & Stanley, 2005).

He referenced the army's Mesa de Dialogo statement noting that in that statement the army had already acknowledged that excesses had occurred. He stated that these had no justification and the army would commit to complying with the courts with the condition to respect to who were "condemned without due process" (Cheyre, 2003, translation my own). He expressed the need for social peace, but stated explicitly that he was not and had no desire to be a political actor or have the military involved in politics under his command. Cheyre reiterated that the army was an institution that belonged to and served all Chileans and with this he defined a new mission for the army as one that acts professionally in the matters of defense, international cooperation and the development of the nation. The army, he noted was there to support citizen needs. He also expressed a desire for reconciliation and stated that attacking the military "of yesterday" does damage to the military of today which is a different professional institution.

In November 2004, upon the release of the Valech Commission's report on human rights violations, Cheyre released another statement about the army's position on human rights. In this he noted again that the Chilean army was modernizing and situated the army's past behavior in a particular context: the logic of confrontation in the Cold War. He argued that the Chilean army was drawn into the Cold War ideology and acted in a manner which it believed was just and in the protection of Chile. He did, however state unequivocally that this contextualization of the military's actions provided absolutely no justification or excuse for the violations of human rights. He stated that his aim was not to downplay the army's behavior, but must it be understood in the context of the whole truth which must include historical context. In this statement he noted that the army was instituting a program of human rights education within the force.

He noted the importance of truth and justice in overcoming divisions that affected Chileans. Most importantly, however, on behalf of the military, Cheyre accepted institutional responsibility for the violations of human rights. He said

The Chilean army took the difficult but irreversible decision to assume responsibilities that fall on it as an institution for the punishable and morally unacceptable events of the past. It has also repeatedly acknowledged the faults and crimes committed by personnel directly under its command, it has censured them, publically criticized them and permanently cooperated with the courts so as to contribute whenever possible to truth and reconciliation. At the same time it has expressed its sympathy for the suffering of the victims of these violations, recognizing that the treatment they received is not consistent with the permanent and historic doctrine of the institution. It does not justify these violations with respect to which it has made and will continue to make concrete efforts to make sure they are never again repeated (Cheyre, 2004, translation, my own)

Cheyre referenced the army's cooperation with the Valech Commission and accepted the contents and conclusions of the Valech Report. In his other public lectures and pronouncements, Cheyre recognized that in present day Chile the army is hard-pressed to find any allies who will dissolve it of its responsibilities for its past actions or excuse them. He recognized that the military had to deal with the dichotomy that as a rational manager of legitimate force, it cannot excuse or ignore that some of its members violated the rights of citizens and that this kind of behavior cannot be tolerated.

At the same time, Cheyre denied that an institutional policy of human rights violations and noted that the assumption of institutional responsibility by the army should not be taken as an admission of collective guilt because individual guilt cannot be diluted in the collective. The army as a whole would not accept guilt for individuals within the institution who broke from its doctrine to commit crimes.

Moreover, he argued that there are no legal precedents for establishing collective punishment; responsibility must be individually assumed. However, he did acknowledge

that the institutional heritage of the army was used in the commission of these crimes and that the principles guiding the army and its command structure failed. He admitted that the army takes responsibility for its institutional decisions on September 1973 and the years following, but it should not have exposed its staff to activities of organizations such as the DINA and the CNI, which did not act in accordance with military doctrine for such a long period of time. He noted that truth, justice and reconciliation are necessary but reconciliation does not have to mean impunity or erasing the past. Under Cheyre the army has publically rebuked any of its staff that acted illegally and encouraged any staff that has information about the fate of the disappeared to come forward and contribute to the truth.

The Families of the Disappeared called Cheyre's "Nunca Mas" an important step but noted that it should be followed by the release of information on the disappeared. Despite these important steps in assuming responsibilities, the army continues to insist it has handed over all the information it has "including its admission that more than 150 bodies were thrown into the sea from helicopters, firmly tied to heavy objects such as track rails to ensure they would sink" (Chile Government, Army and Police Take Responsibility for Human Rights Abuses). Other human rights organizations feared that Cheyre's acceptance of responsibility would be "used as an effort to avoid prosecuting offers involved" in human rights violations, but so far this has proven not to be the case as human rights cases continue in the courts (Chile Government, Army and Police Take Responsibility for Human Rights Abuses).

Following the release of Cheyre's statement, the Director of the Investigative Police of Chile, Arturo Herrera Verdugo asked for forgiveness for the human rights

violations committed by his institution. He acknowledged the police's participation in the crimes and said that as the Director he noted that he and his institution had to accept the truth and consequently asked forgiveness from their fellow citizens and said that the Valech Report offered an opportunity for reflection and learning and hoped that never again would his institution repeat the errors of the past. (Investigaciones pide perdón por violación a DD HH durante régimen military, 2004)

However Cheyre's statement was not immune from criticism from some former members of the army for taking institutional responsibility and from other branches of the armed forces who felt that Cheyre's statement forced them to also take a position on the human rights abuses. The Carabineros responded by noting that their institution had been cooperating with the courts for years and as such had made efforts at national reconciliation through transparency, truth and the expulsion of any officers who were involved in human rights cases. (Violaciones a derechos humanos. Policía de Investigaciones pide perdón, 2004)

The navy on the other hand continued their policy of denial. Admiral Miguel Vergara related to the press that although the navy did not rule out the possibility that the events detailed in the Valech Report occurred, as an institution it had no record of these events. He added that if the report was accurate and violations did take place on the Esmeralda naval ship, he acknowledges them and offers his regret, but of the troops under his command, none were involved in human rights violations.

The Air Force found itself stuck between the Navy and Army's position. It did not offer comments on Cheyre's speech, but did note that since 1991 when General Matthei accepted the findings of the Rettig Report and accepted responsibility for the personnel

who committed the crimes, the force has been making efforts towards reconciliation (Fuerzas Armadas marcan sus diferencias, 2004)

President Lagos praised the army for taking responsibility and lauded the step as an indicator of the army's integration into democratic Chilean society. On the Valech Report, he said it was a difficult report to read, but that the report prevents society from sweeping the past under the rug. The right wing, the UDI, "downplayed the significance of the report" (Franklin, 2004). The right, consistent with its position on the human rights question since the transition, noted that the report's conclusions must be understood in the context in which the events occurred (Franklin, 2004). Others, such as former military generals, such as Guillermo Garín feared the report would only "worsen wounds" and not contribute to healing in Chile.

The release of the Valech Report enabled other reforms to be implemented in Chile. One of these was a constitutional reform of the 1980 Constitution in 2005 which removed several restrictive clauses such as one which allowed non-elected senators to become senators for life, and one that prevented "the civilian president from sacking Armed Forces branch commanders" (Reuss, 2001).

Also, in 2005 Michelle Bachelet was elected President. Bachelet's election was significant not only because she was the first female president of Chile but also because she was a survivor of the military's repressive policies against her family. Her father, an air force general under Allende was tortured and killed by the military and she and her mother survived arrest, torture and detention at one of DINA's most notorious prisons, Villa Grimaldi. Bachelet's government had to deal with the issue of Pinochet's death. She ultimately decided that he would not receive a state funeral because it "would violate

[her] conscience," and Defense Minister Vivianne Blanlot was the only member of government to attend" the funeral. She also "reminded Chileans that they should not forget Pinochet's human rights abuses" (Housholder, CHIP website) and as far as human rights were concerned, even though courts are responsible for justice, more could always be done in terms of achieving greater truth and in this vein she created the Institute for Human Rights which would allow other victims to come forward and register their cases of torture and imprisonment (Meneses, 2007). This body was chaired by Bishop Valech and the staff of the Valech Commission and classified 4,000 new cases for reparations. Another follow-up mechanism that was created by Bachelet in January 2010 as a symbolic form of reparation was the Museum of Memory and Human Rights in Santiago (United States Institute of Peace) to commemorate the victims and further human rights education among Chileans.

Also before leaving office, her government also re-opened the Valech Commission in February 2010, to accept new testimony related to torture, detention, executions and killings until August 2010. This initiative combines the domains of both the Valech and Rettig Commission and allowed more cases to be registered. By April 3,000 cases had already been registered by the Commission. The move was lauded by family members of victims with Lorena Pizarro, President of the Group of Families of the Detained and Disappeared noted that " "Without a doubt it's important. It's crucial that the victims of state terrorism, such as the direct family members of those who lost their lives or were made to disappear, have the right to give their testimonies and be recognized by the state as victims of the murders that occurred in this country" (Witte-Lebhar, B (2010). So far, the new right-wing government of Sebastian Pinera, has

decided to allow the work of the Commission to continue, furthering the process of truth seeking

However, no matter how much truth and justice have been achieved compared to what was thought to be possible and compared to other post-transitional societies, for victims there is still and perhaps always will be in Chile, the demand for more truth and more justice. For victims the truth means the whole truth, that is exact information about their disappeared relatives--what happened to them in custody, how they were killed and where their bodies were disposed of. In fact the slogan for the Families of the Disappeared Group is "Donde estan?" (Where are they?) At protests or memorials, family members hold pictures of their disappeared loved ones with this slogan printed on the picture. As mentioned above, though victims appreciated the truth revealed by the Rettig Report, many felt the report was a political project and convenience which revealed a social truth for societal satisfaction. Many victims feel that a more satisfactory truth is revealed in the judicial process which not only reveals facts about the crimes but also offers reparation in the form of punishment. For families of the disappeared, and victims who were tortured truth without justice is not enough, legal justice is the only antidote to their grief and they refuse to table the issue of prosecutions<sup>34</sup>

The military and the Chilean government on the other hand, would like to close the chapter on human rights. Today, military officials hold that the truth is difficult to achieve or discover after 30 years because most of the officers who participated in the events or were on duty during that time of conflict have passed away or are unwilling to talk about the problem. Moreover, getting at the whole truth is not possible, a task which

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<sup>34</sup> Personal interviews with victims and human rights lawyer, Hugo Gutierrez

makes complete justice even more difficult (Interview with General in Charge of Mesa de Dialogo) The military also maintains that though human rights violations are unacceptable and as an institution has taken responsibility for these violations, the conflict which led to them must be examined in the context of history—that is, the Cold War and polarizing ideologies that had taken a hold of political and social life Many in the military’s current generation also believe that information on the arrests, torture and disappearances does not exist because they have been told all such information was destroyed As such, providing victims with the truth of what they want (“donde estan?”) is a difficult task for the institution <sup>35</sup>

## **Justice**

There are several ways in which the Rettig Report has contributed to justice in Chile As with truth, the passage of time has yielded greater justice

First, although the Rettig Report did not name names, it did assign guilt to key figures in the regime in a manner that it is nearly impossible not to know who the commission is referring to For example, though soldiers are not named in the report regiments, barracks and locations are mentioned, so it would be possible if one carried out additional investigations to determine the names of staff at these locations Further, indirect responsibility is assigned to Pinochet and the head of the secret service In discussions of who DINA was responsible to, the report says “Although the DINA was formally under the authority of the junta, in practice it reported only to the president of

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<sup>35</sup> Personal interviews with Lieutenant Colonel at the Chilean War Academy and with the military representative to the Mesa de Dialogo

the junta and later the president of the republic” (Rettig Report, 1993, p 617) or “formally the DINA was under the authority of the junta, but in fact it reported to the president of the junta and the army commander-in-chief The DINA put itself directly under the supreme authority in this fashion so as to be protected from investigation or interference” (Rettig Report, 1993, p 621) The head of DINA is assigned responsibility in the following manner “It is also known that the head of the DINA and other DINA agents visited Colonia Dignidad and seem to have had cordial relations with its leaders” (Rettig Report, 1993, p 640) or “Each week the heads of the various intelligence services met at the building to exchange pertinent information The head of the DINA was present at these meetings” (Rettig Report, 1993, p 629) and “Enclosed with that response was a document signed by the head of the DINA authorizing him to be taken from his prison site” (Rettig Report, 1993, p 725) It is clear who the report is talking about in these two cases because everyone in Chile knew the President of the Republic and commander-in-chief of the military was Pinochet and that the head of DINA was Manuel Contreras This indirect assignment of responsibility angered the army and particularly Pinochet (Ejército respondió al Informe del al Comisión Rettig, 1991)

The report was assigned responsibility for complicity in the human rights violations to the judiciary, media, professional organizations and political sectors which enabled human rights violations to occur by not speaking out against them and in the case of professionals and their organizations chiding professionals such as doctors for participating in torture and lawyers and civil authorities for creating legal mechanisms that made torture possible

Though institutional condemnation of the Supreme Court was, as previously described, met with great hostility, over time the court acquiesced to the government's instance that before the 1978 Amnesty Law be applied, a full investigation be carried out to determine who was being pardoned. The courts eventually bypassed the amnesty law through a re-interpretation of disappearances as on-going kidnappings, which meant that the crimes were current and on-going and could be prosecuted (interviews with lawyers, Judge Guzman). There were approximately 800 trials in the courts in the early years of the Aylwin administration (Hunter, 1998, p. 311).

Initially the military reacted to these trials negatively by showing force in the streets of Santiago in what was called a *Bonazo* where army troops marched in Santiago. Aylwin "interpreted the show of force to mean that the *Concertación* had indeed pushed the military too far" (Hunter, 1998, p. 311) and readjusted his demands for justice for the human rights violations. In this vein he proposed a law in August 1993 called "*Ley Aylwin*" which called for "a speedy conclusion [to the trials] and foreclose the possibility of new ones emerging" (Hunter, 1998, p. 311). Aylwin's own coalition rejected the law for being too "lenient on the armed forces" (Hunter, 1998, p. 311), so the trials continued.

In the early days of the transition, the largest victory against impunity for human rights organizations and victims came on November 13, 1993 when Manuel Contreras, former head of DINA since its inception, was sentenced to seven years in prison for the murder of Orlando Letelier and Ronnie Moffat in Washington, DC, one of the only cases that Pinochet had exempt from the Amnesty Law. He appealed the decision and was released on bail, but in May 1995 Supreme Court Judge Adolfo Banados sentenced Contreras and DINA's former Chief of Operations Pedro Espinoza "to seven and six years of prison respectively" (Derechos Chile – Chronology, 1995). Public opinion supported the sentences, with "65.8 percent of Chileans who were polled in July 1995 agreeing that "the generals should serve time" (Hunter, 1998, p. 312). Pinochet,

determined to protect his officers from prosecutions but aware of public opinion at the same time tried to distance the army and himself from the convictions. However, in June 1995 just before Contreras and Espinoza were going to be arrested and taken to prison, a group of army and naval officers helped the two men escape and refused to turn them over until the Frei government agreed to put a stop to investigations into human rights violations (Hunter, 1998, p. 311).

During this time the Frei government engaged in negotiations with the military in which the armed forces demanded the government close the chapter of human rights trials, but which resulted in a special prison built just for Espinoza and Contreras (Hunter, 1998). Under these negotiations Frei introduced that a special court be created to try human rights cases giving priority to concluding cases of the disappeared within two years. The proposal received harsh criticism from the leftist parties, human rights groups and families of victims and was blocked by the Socialist Party before it even went to the floor in Congress. After this standoff with the military, the Frei government took a cautious approach to the human rights problem and almost allowed it to disappear from its agenda. As much as the administration tried to ignore the issue, it was forced back into the public sphere with the arrest of Pinochet in London in 1998.

### **The Pinochet case**

Based on interviews with Chilean lawyers, judges and academics, what follows is a discussion of the Pinochet case and its impact on justice in Chile.

In January 1998, the secretary of the Communist Party, Gladys Marin filed a case against Pinochet in Chile which came to Senior Judge Guzmán. This shocked to Chileans

because up until this point no one had dared to present cases against him in the courts. This disbelief was further increased when, on October 16, 1998, Pinochet was arrested in London on an arrest warrant issued by Judge Guzmán as part of a case presented by victims against him in Spain. This was a groundbreaking moment in Chile. He was charged with torture, disappearances, kidnapping, and conspiracy to murder. Pinochet was one of 38 Chileans against whom these charges were laid. The arrest demonstrated that Chile was still deeply polarized.

The left, victims and human rights activists were overjoyed because it was exactly what they had been waiting for—if justice could not be done in Chile, it would be done abroad. The right wing was angry that he had been arrested, they felt that other countries had no jurisdiction over Chilean citizens for crimes committed on Chilean soil. Some publicly supported Pinochet while others publicly distanced themselves from him (the presidential candidate Joaquín Lavín, who visited Pinochet in London, but publicly distanced himself from the General in Chile). Generally the reaction on the right was that his arrest was a conspiracy, most people were initially hesitant to believe that he could be a criminal.

The Frei government scrambled to respond to the Pinochet arrest. Government officials stated that it was wrong that he was arrested abroad, that London and Spain were infringing on Chile's legal and political sovereignty. They argued that Pinochet was old, in poor health and should be returned to Chile because justice could be done in Chile—as a Chilean citizen he should be tried in his home country. The government staked its international reputation on the fact that he could and would be tried at home. Margaret Thatcher even issued a statement in support of Pinochet and the Chilean governments.

request to bring him home. In fact, analysts argue that the only option the government had was to say that Chilean courts would try him because it would have been very difficult for England to justify his release based solely on the fact that he was an old man and in poor health<sup>36</sup>

Ultimately he was extradited to Chile by British courts and when he was brought home the cases against him had to go ahead. As such, when he returned to Chile in March 2000 the cases against him multiplied. These included both human rights cases and cases of corruption and fraud. The human rights cases, particularly the one presented by Gladys Marn, fell to Judge Guzmán, who noted that while Pinochet was in London Guzmán sent him a list of seventy-five questions he wanted answered and Pinochet replied to all the questions with one line: that he was not responsible for the crimes that were being attributed to him. Regardless, when Pinochet returned to Chile, his immunity (which he had granted himself by naming himself senator for life and through the amnesty laws) was lifted and after an examination by his doctors (who did not declare him unfit but did declare he had mild to moderate dementia) Guzman decided he was fit and indicted him. The advantage of Pinochet being brought back to Chile in March 2000 was that Chileans started learning about what had or had not done. Judges of their own nationality began investigating him and therefore they could not claim that this was an intervention of foreign states into Chilean affairs, the Pinochet could not be victimized in that way. As a result, over the years Pinochet's reputation was destroyed in Chile. He became politically irrelevant—right wing parties and politicians who once supported him started distancing themselves, even the military (at least publicly under Cheyre) began distancing itself

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<sup>36</sup> Personal interview with Judge Guzman and lawyers from CODEPU

from him. Due to the corruption cases against him people started to doubt him, they thought if he lied about stealing money perhaps he had also lied about the human rights violations. His arrest forced many sectors such as the right, to acknowledge widespread human rights abuses, and forced the right into consider addressing the human rights issue.

Pinochet's arrest was problematic for the military also because it seemed to lift attention from the modernization that the new commander-in-chief, General Ricardo Izurieta, who had been appointed to the high command in March 1998, was trying to implement.

The military was angered by Pinochet's arrest, and all branches of the armed forces made public pronouncements of their support for him and demanded his return. During the first years of the Pinochet case, the army continually proclaimed support for Pinochet, even using the media to make its displeasure of the general's prosecution known. The indictment and order of arrest for Pinochet in December 2000 caused military dissatisfaction so it asked the President to call a National Security Council (NSC) meeting and implied that if Lagos did not do so the military chiefs would. Lagos voiced his opinion that the NSC should not exist and that "the judiciary should not be a part of the NSC agenda" but called (and later delayed) the meeting "until the Supreme Court decide upon an appeal of Pinochet's order of arrest" (Kooning & Kruijt 2002, p 129). Eventually the military accepted Lagos' stance that it let "the judiciary work without interference" (Kooning & Kruijt 2002, p 127).

The arrest and changing public opinion signaled to the army that it was becoming increasingly isolated so Izurieta tried to be more cooperative or at least put forth an image of cooperation. He was willing "to provide courts with the names of all army officers

working in the former CNI” and he accepted the invitation to be a part of Mesa de Dialogo Izurieta also asked one general, General Ramírez to “resign his commission” after he was indicted “for his responsibility in the assassination of a major union leader in 1982” (Kooning & Kruijt 2002, p 129) The military also accepted, albeit “reluctantly, the Supreme Court’s decision to strip Pinochet of immunity from prosecution” (Kooning & Kruijt 2002, p 129)

When Pinochet refused to show up for a medical examination ordered by the court, General Cheyre, by then new commander-in-chief of the armed forces, and other commanding generals visited him and expressed to him that the if he did not cooperate with the courts or the judges’ investigations the army would not support him He often found himself under house arrest and was never declared innocent by the courts

Since Pinochet’s arrest the numbers of other cases in the Chilean courts have increased significantly

The transitional justice literature based on victim needs holds that without justice reconciliation cannot occur In this regard, the following section examines to what degree reconciliation has occurred in Chile

### **Reconciliation**

Reconciliation is still a contested concept in Chile The Rettig Report hoped that the truth would lay the foundation for reconciliation to occur but reconciliation was not its explicit goal, nor was what this reconciliation would look like defined or articulated in any of the policy positions the government took

Victims have always connected reconciliation to justice and particularly to punishment. For victims there will be no reconciliation with the perpetrators until appropriate punishments are meted out.

Reconciliation is hard to measure or quantify, but there are different levels and indicators of reconciliation that we can consider. There is reconciliation between the state and its citizens, the state and victims, the state and military, between political parties, among general society and between perpetrators and victims.

Certainly the latter, reconciliation between perpetrators and victims, has not yet occurred and will most likely not occur until there are one or two generational changes. Even then, the idea of remembered victimhood (where victimhood is passed down through memories among families, much like with Holocaust victims) has occurred to some degree in Chile and blocked this level of reconciliation.<sup>37</sup> For victims reconciliation is associated with impunity and they are hesitant to reconcile with the perpetrators until they have received the full truth about their disappeared relatives and justice for the human rights violations they suffered. How much truth and justice are enough to forge reconciliation is a question that is difficult to answer.

As far as reconciliation between political parties, political reconciliation has occurred in Chile. Political elites on all sides realize and accept that despite their differences, to make democracy work they must work together, the question of human rights has been left to the judicial system and does not occupy political debate (Interview Carlos Huenes and conversations with victims).

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<sup>37</sup> Personal observations of Chilean society and victim-youth interaction

Reconciliation between the state and the military has occurred overtime as evidenced by changes in civil-military relations over the years. The relationship between the military and the Aylwin government from 1990 to 1994, was tense at best because Pinochet was still the commander-in-chief of the army and very adamant that no changes to the constitution he left behind and his soldiers not be prosecuted. The military tried to secure guarantees of the powers they had acquired while in power while at the same time the civilian government tried to assert its authority over the military leading to highly confrontational relations<sup>38</sup>

For the most part, President Aylwin viewed military reactions to civilian challenges not as final ultimatums but as tactical bargaining maneuvers designed to protect the institution's position within the democratic order. Hence, he did not concede immediately to signs of military discontent (Hunter, 1998, p. 309)

Aylwin took several actions to ensure civilian authority over the armed forces. The first confrontation that occurred between Pinochet and Aylwin took place when Pinochet proposed a list of generals to be promoted and Aylwin refused the authorization of a general who had an extremely bad record on human rights. Pinochet took the decision to the Constitutional Court and argued that the President was bound to take the choices into consideration. The Court, however, ruled in favour of the President, which "clearly established limits to the enormous power of the commander-in-chiefs of the armed forces, and restored a minimum bargaining resource for the President" (Kooning & Kruijt, 2002, p. 124, Hunter, 1998, 309). The military's internal security functions were also minimized when the Interior Ministry regained control over the Carabineros who had been under the Ministry of Defense for seventeen years. The government also

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<sup>38</sup> Personal interview with researcher at FLACSO and Lieutenant-Colonel at the Chilean War Academy

limited army participation in a new anti-terrorism agency called the Oficina Coordinadora de Seguridad Pública (Office for the Coordination of Public Security) Defense budgets were decreased from 11.34 percent in 1989 to 8.99 percent of the national budget in 1994. This was a significant achievement since before leaving office the military had secured a law, the Organic Law of the Armed Forces which secured guaranteed the military budgets not fall below 1989 levels and a percentage of the copper earnings be dedicated to military budgets.<sup>39</sup>

The Aylwin government also passed a reform that “confined the National Security Council to an advisory role and eliminated the military’s majority status on the council” (Hunter 309). Constitutional reforms regarding the military, such as Presidential ability to dismiss military commanders, were harder for Aylwin to make because the members of the political right in Congress vetoed his proposals. Before the release of the Rettig Report, Pinochet called his troops to be ready to march in December 1990, however, more professional sectors of the army, the navy and air force dissented and the army was forced to adopt a low-profile approach until and after the release of the Rettig Report. However, by May 1993, Hunter notes that civil-military tensions resurfaced and “on-going trials (approximately 800) distressed the officer corps deeply” (Hunter, 1998, p. 310). Aylwin’s efforts to calm the military by limiting human rights trials were rejected by his own coalition and his government ended on tense terms with the military, particularly where the human rights question was concerned.

Investigations on corruption involving the military and Pinochet’s son also began in Congress. The military felt frustrated with the civilian leadership and by these

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<sup>39</sup> Personal interview with researcher at FLACSO

investigations, but at the same time needed the administration to approve budgets, equipment purchases and international training. Moreover the Minister of defense pressured for Pinochet's resignation. "The army reacted to this perceived hostile environment by staging acts of protest in defiance of civilian authorities, forcing concessions from the government. These acts, supported by the other armed services, consisted of unannounced military exercises, with full billeting of the forces, publically displaying defiance" (Kooning & Kruijt, 2002, p. 126). The government negotiated, reassured the military about budgets and shelving investigations into Pinochet's son's financial connections with the army. Opposition did not allow any reforms to the constitution that the government proposed but the government did not budge on military promotions and human rights investigations.

In 1994 Frei came to power, for the first part of its rule, the Frei administration declared that the transition to democracy was over and that it was time for the government and nation to look to the future. The government followed a policy of accommodation when it came to the armed forces. The defense minister under Frei, Edmundo Pérez-Yoma "developed an excellent relationship with Pinochet, so much so that Pinochet rated him the best minister in the cabinet and awarded him an official army decoration in a special ceremony" (Kooning & Kruijt, 2002 p. 127). This policy of appeasing the military meant "the maintenance of status quo on practically all civil-military fronts" (Kooning & Kruijt, 2002 p. 127). However there was discontent with the policy of appeasement when Pinochet decided to take his senate seat in March 1998, with the right-wing parties in charge of congress.

During this time the government continued decreasing defense expenditure which fell from 8.99 percent in 1994 to 8.65 percent in 1995 and continued a precautionous approach to the human rights issue with tensions arising with Pinochet and the army over the sentencing of Contreras and over the arrest of Pinochet in October 1998. However, once there was a change in the high command of the army, the relationship between the military and the civilian government did shift. Frei appointed General Ricardo Izurieta in March 1998, who had been an undersecretary of war under Pinochet in 1989. He had the lowest seniority of the five officers from whom Frei was allowed to pick a new commander-in-chief. Izurieta's new mission for the army was to professionalize and modernize the institution and move it away from direct involvement in political affairs.<sup>40</sup>

No sooner was he in command, did Izurieta have to deal with the crisis of Pinochet's arrest in London. When Pinochet was first arrested, there were fears of a coup among some sectors of society. Izurieta was quick to quell these fears but still gave the army's support to Pinochet, saying, the army "would use 'all its forces' to bring the captain general (General Pinochet's honorary title) back to our national territory as soon as possible." But he added, significantly, that the military would act "through government channels" (Davidson, 1998). When Pinochet was returned to Chile by British authorities the army organized a reception for him that was attended by several supporters and members of the right wing political parties, the UDI and the RN, an act that was reprimanded by civilian authorities in the Concertacion government. Izurieta also declared, "the Armed Forces would 'lend their permanent support and solidarity' in

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<sup>40</sup> Personal interview with Lieutenant-Colonel at the Chilean War Academy

all eventualities' to their mentor. He openly aligned the military to Pinochet's rightwing supporters in the parliamentary opposition" (Saavedra, 2000)

Raul Troncoso, the Interior Minister under Frei "expressed [the government's] unhappiness with the Army's decision to organise a reception on behalf of Pinochet. It is absolutely rational that Pinochet's supporters go to the airport to receive the general, but it is something else to have an official reception organised by the military. We feel it is inappropriate given the situation" (Saavedra, 2000)

While the government had publicly decried the army's celebration and solidarity with Pinochet, behind the scenes there was closer cooperation with the army on securing Pinochet's release from British authorities. Frei promised the armed forces that Pinochet would be returned to Chile before his term ended and delivered on his promise "with seven days to spare" (Saavedra, 2000). Another sign of cooperation between the military and the government was the ability of the government to get the army to agree to the Mesa de Dialogo.

The government of Ricardo Lagos was more committed to the human rights problems than the Frei government (even though at times there was pressure on Judge Guzman by the Lagos administration to drop his investigations of Pinochet). Lagos expressed his displeasure for the army's lack of respect for civil authorities to Izurieta several times and civil-military relations under Lagos-Izurieta were not always smooth. In 2002, Lagos appointed a new Minister of Defense, Michelle Bachelet, who despite being a victim of the military regime made several positive comments about the military in her first few months in office and established a positive relationship with the armed

forces<sup>41</sup> Lagos also appointed a new commander-in-chief, General Juan Emilio Cheyre who had been educated and lived abroad and was willing to work with the civil authorities. His goal was to develop a professional army, subordinated to civilian authorities. Aside from a few instances where Cheyre was criticized by civilian authorities for criticizing the human rights case proceedings as 'slow' (El Mercurio September 21, 2004), under Cheyre the military largely refrained from commenting on political affairs. For example, the army's publication, the "*Memorial el Ejército* has not published any articles analyzing the military's role in Chilean politics, which was a staple of articles in the 1990s" (Weeks, 2007, 11). In sum, relations between Lagos and Cheyre have been described by many as good.

Civil-military relations under Bachelet were influenced by progress made under the Lagos administration, namely the military's shift in view on responsibilities for human rights violations and the 2005 constitutional reforms which removed several authoritarian elements of the 1980 constitution, (Weeks 2007, 8). This meant, the Bachelet government was "the first that [did] not have to spend a significant portion of its energies in undoing all that was "tightly tied up," which was left by the military regime" (Argentine Ambassador qtd in Weeks, 2007, 9). "The message was that the constitutional reforms had erased the problematic aspects of military autonomy, and consequently the Bachelet government need not get distracted from its core policy goals" (Weeks, 2007, 9). Also, just as Bachelet was entering office, there was a change in command in the army. General Cheyre was replaced by General Oscar Izurieta. There has not been much analysis on relations between Izurieta and the Bachelet government but

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<sup>41</sup> Personal interview with Lieutenant-Colonel at the Chilean War Academy and researcher at FLACSO

what data there is, indicates that there was a cordial relationship between the two institutions. In 2006 Izurieta expressed the desire to see all pending human rights cases come to an end so that the Chilean transition to democracy could be declared complete.

The armed forces have now found civilian support for their desire to see human rights cases completed within a time frame, namely from presidents Aylwin and even Lagos.

Though it sees itself as cooperating with the courts, the army tries to distance itself from these cases as much as possible. This was evidenced in the sentencing of

retired General Raúl Iturriaga, a high profile member of the military regime who was sentenced to five years in prison for kidnapping, but in 2007 issued a statement of protest and went into hiding. He received little public support other than from the Group of Retired Generals and General Izurieta immediately distanced himself and even said publicly the case was problematic for the army (Weeks, 2007, 10).

By all accounts the relationship between the Bachelet government and the military has been one of the best since the transition took place. Though the military still has autonomy in the areas of military justice, intelligence and budgets, it can be said that in general the military leadership is now in a position that is subordinated to civilian authorities.

These changes in civil-military relations ranging from extremely tense to almost complete subordination are indicative that reconciliation at a political level—between the state, political authorities and the military has occurred in Chile.

What do these effects and impacts reveal about the Chilean case in relation to the literature on truth commissions and transitional justice? The following section offers a brief analysis in this regard.

## **Evaluation of the Rettig Report**

To turn now to the central question of this thesis based on the above data this section will evaluate whether the Chilean TRC accomplished its duties and whether it can be considered a successful TRC In this regard what follows is an evaluation how the TRC accomplished its mandate with respect to truth, justice and reconciliation

To review, the mandate of the commission was to establish a truth on the “most serious human rights violations committed” (Rettig Report, 1993, 24) which were defined as disappearances after arrest, executions, torture leading to death and political violence committed by private citizens The commission’s task was to collect evidence that would make it possible to identify victims and their whereabouts, recommend reparations for victims and legal and administrative measures to prevent future violations, prepare a report based on the evidence collected and present this to President and the public

## **Truth**

The TRC did complete its mandate in regards the establishment of truth As the literature on truth and reconciliation indicates, there are varying levels and kinds of truth in transitional societies In Chile, the Rettig Report dealt with historical, narrative or personal and moral truths which detailed one part of the violations that occurred in Chile Moreover, the truth revealed was a truth based on a particular kind of evidence documentation from human rights organizations, testimonies from witnesses and where possible, albeit in a limited manner, documentary evidence from the security services

However comprehensive the commission tried to be in its quest for the historical truth, what was discussed in the report was only a part of the truth. The commission's history largely begins in the 1970s, although it briefly considers a period in the 1950s in which it framed the polarization Chile in the context of the Cold War and the Cuban Revolution's influence in Latin America which was augmented by the adoption of different ideologies for social and political reform by political sectors. With this framework the report essentially implies that Chilean society only became fragmented from the 1950s onwards. It does not consider that politics in Chile had a contentious element since at least the 1920s, when Chile went through a period when new social and economic voices were emerging that made governance difficult without negotiations between the right and left parties.

The Commission also does not examine in any great detail the social and economic fragmentation present in Chile that led to the rise of the working and middle classes and that gave Unidad Popular and a call for an alternate model of social and economic development. Additionally, there is no analysis of how political parties engaged with each other prior to the 1970s, an omission which could lead anyone unfamiliar with Chilean history to believe that prior to the influence of the Cuban Revolution and Cold War ideologies in the 1950s, Chilean politics were harmonious. This was clearly not the case, as evidenced by the revolving door governments and dictatorship in 1931 of General Carlos Ibanez. The report also does not consider why the military government implemented a policy of repression that targeted leftist groups, except to state that the aim of the repression was to eliminate and "clean" society of those who held anti-government views. The analysis does not delve into the possibility that

repression was possibly put in place to remove these opposition voices so that the government could easily reverse Allende's development policies and implement a free-market, capitalist economic policy. Nor does the Commission's historical analysis consider the armed forces' role in Chilean politics prior to the military coup.

Despite this incomplete consideration of history, the historical truth, along with the narrative and moral truths the commissions established were important in Chile because under the military dictatorship's policy of denial, historical facts needed to be brought out into the open. Publicizing this history based on the narrative and moral truths of victims removed the element of secrecy from the crimes of the dictatorship and brought them out into the public domain, re-dignified the victims and re-established their sense of citizenship. These personal truths have been important in Chile because they are transformed into documentaries, memorials, literature, drama and other forms of art that help forge a collective memory for society. What is important, also, is that the moral, personal truths that were the foundation of the Rettig Report allowed factual and legal truths to be established through the courts enabling accountability and justice.

As indicated by the impacts of the report detailed earlier, the TRC turned knowledge of crimes into acknowledgement, it became *the* definitive account of the crimes of the dictatorship and gave Chileans human rights language—it served as the starting point from which Chileans could begin discussing human rights. This is evidenced by the widespread attention the period of the dictatorship receives in literary and scholarly work. One cannot visit a bookstore in Chile without encountering aisles and shelves dedicated to the topic of the Pinochet years, human rights and the transition. However, even though over time it has become the reference point from which almost all

official discussions of human rights take place none of the sectors who vehemently criticized it upon its release have acknowledged that they were wrong in their criticisms and rejection of the report<sup>42</sup> Nonetheless, the judiciary, initially hostile to the report's condemnation of its complicity in the military government's repression, routinely uses the evidence collected by the commission in its judicial investigations

### **Justice**

It was not in the mandate of the Rettig Commission to assign individual responsibilities, but the commission did address the issue of accountability It assigned accountability for the violations to the secret services, professional associations, judiciary, media and indirectly the head of the secret services and the President The release of the report had implications for questions of accountability at a social level Many of the interviewees interviewed in Chile for this research expressed that the events described in the Rettig Report were difficult to face for Chileans because not only were they painful to read about, but acknowledging them meant examining one's own responsibility in enabling a culture of violence which may have included providing support and obedience to an authoritarian regime, spying on neighbors, ignoring violations that occurred and other such responsibilities One person spoke of the idea that there existed "something on the Chilean consciousness"<sup>43</sup> This idea of burdened collective consciousness is similar to Kant's notion of collective responsibility There is a narrow conception of personal responsibility in Chilean culture which has traditionally been a culture of avoidance

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<sup>42</sup> Personal interview with Alex Wilde

<sup>43</sup> Personal interview with lawyer at the National Corporation for Reparations and Reconciliation

There exists an idea that “you are only responsible if you pulled the trigger” this collective personal responsibility is hard for us [to accept]”<sup>44</sup> Kant argues that in order to ease this collective burden guilt must be individualized. All the lawyers interviewed spoke about the importance of establishing individual responsibilities for this very reason. However, establishing these individual responsibilities has been very difficult. Initially, when the Rettig Report sent its evidence to the courts, the courts were overwhelmed with information on over 2000 cases—it was impossible to prosecute all these right away. However, there were judges who received the information and evidence with enthusiasm because the Rettig Report had done for them what they had been unable to do under the dictatorship, that is, investigate crimes.<sup>45</sup>

As previously established, the process of assigning guilt in Chile has had two stages: the first, before Pinochet’s arrest and the second after his arrest in 1998. Before Pinochet’s arrest cases were filed but the process of getting convictions was slow—as the Manuel Contreras case indicates, the Aylwin and Frei governments took an overly cautious approach to these prosecutions, always afraid that they would anger Pinochet and the armed forces. The judicial process was held hostage to the negotiations the governments were so willing to conduct with the army over putting an end to prosecutions. After 1998, however, there was the ‘Pinochet Effect’ and the ‘Garzón Effect’.<sup>46</sup> The Pinochet Effect took hold world-wide dictators and heads of state were no longer immune from prosecution no matter where they travelled, while with the Garzón Effect, named after the Spanish Judge Garzón who issued Pinochet’s arrest warrant in

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<sup>44</sup> Personal interview with lawyer at the National Corporation for Reparations and Reconciliation

<sup>45</sup> Personal interview with Judge Guzman

<sup>46</sup> Personal interview with Roberto Garretón, human rights lawyer

London, judges in Chile discovered that it was possible to embark on the path of justice, thus small changes began occurring in the Chilean justice system and the number of cases filed and thus prosecuted increased in Chile

Judges, particularly Judge Guzmán used the Rettig Report as a starting point and began investigating cases in a different manner. Guzmán realized that the armed forces and police were economically and socially divided—officers were in the middle class, while ordinary soldiers were often from the lower, working classes and it was the soldiers who did the “dirty work”—the killing, burying, and disposing of bodies because they had no other choice but to obey orders in order to remain employed. Guzmán negotiated with these officers and soldiers. He told them that if they revealed the whole truth that he would not indict them under the due obedience principle because they were following orders. What he found was that under this bargain more soldiers and officers were willing to speak to him truthfully and he obtained the most information than he ever had in his previous investigations. He was able to discover information about the mechanics of repression and the crimes that occurred. Guzmán tried not to indict those who had received orders and could not decide to disobey them, only higher officers who the ability choose to disobey orders were indicted.

Guzmán noted the difficulty of obtaining information from the military—the institution often responded to his requests for information by saying that information is destroyed every five years due to safety reasons. Guzmán speculates that it is possible that records of the crimes could be burned but that it is hard to believe that all written material is destroyed so frequently because records are the basis for the history of a

nation, not to mention the fact that the very existence of security and intelligence services depends on gathering and recording information <sup>47</sup>

The military, however, publicly maintains that it is willing to cooperate with judicial proceedings and that under Cheyre officers have been ordered to cooperate with the courts <sup>48</sup> Regardless, Guzmán believes that there is probably no judge in Chile who has been able to obtain any written records from the army

Despite this obstacle, judges have been able to indict many officers, especially under the Caravan of Death cases <sup>49</sup> There are over 400 human rights cases in process in the judicial system and few judges are willing to apply the amnesty law to these cases <sup>50</sup>

Once the impetus and will is there, individual legal responsibility is perhaps one of the easier kinds of accountability to assign because the law can clearly assign guilt However, when it comes to other kinds of guilt such as moral, political, collective and metaphysical guilt, responsibilities are much more difficult to determine Nonetheless it is important to assign these responsibilities because otherwise the message sent to society is that the torturer, victim, beneficiary and the bystander are all equal in their participation in the crimes There cannot be a moral tie if one is to build a society that has a deep respect for human life and human rights for every single citizen regardless of social status <sup>51</sup> The Rettig Report's condemnation of professional associations (lawyers and doctors who supported the regime), civilian technocrats of the regime, the media and

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<sup>47</sup> Personal interview with lawyer at the National Corporation for Reparations and Reconciliation and with Judge Guzman

<sup>48</sup> Personal interviews with Lieutenant-Colonel at the Chilean War Academy and military representative at Mesa de Dialogo

<sup>49</sup> Personal Interview with Judge Guzman

<sup>50</sup> Personal interview with Roberto Garreton, human rights lawyer

<sup>51</sup> Personal interview with Roberto Garreton, human rights lawyer

the judiciary for ignoring and supporting violations was an attempt at assigning political and moral responsibilities

On these collective responsibilities, according to the political right, when there are varying levels of responsibility in society, amnesty is necessary so that reconciliation can occur. The military and the rest of the armed forces also agree pardon and amnesty are essential tools for reconciliation.<sup>52</sup> It is not surprising that the military would hold this view given that a) they were responsible for the large majority of the violations and b) amnesties in the form of agreements for peace have long been used in Chile as a means for moving forward from conflicts.

In 1844 an agreement of peace between the Spanish and the Indigenous communities was enacted to end the conflict between these two groups. The 1897 civil war resulted in the first process of truth seeking after which a 500-page report was published revealing the perpetrators of the war. These perpetrators were charged but amnesty two amnesty laws were enacted in the name of peace to serve reconciliation. Then again, after the 1931 dictatorship of Carlos Ibanez, a commission was set up to investigate the actions of the dictatorship, but again there was a turning of the page no prosecutions or sentences were handed because another amnesty was enacted.<sup>53</sup> The idea behind these agreements was to arrive at a kind of equal impunity for both sides. All other goals (justice and truth) have traditionally been subordinated for the goal of peace. This is mirrored culturally and socially in private relationships among Chileans. Once a conflict occurs and is resolved, all parties agree never to revisit the wrong again. The

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<sup>52</sup> Personal interview with military representative at the Mesa de Dialogo

<sup>53</sup> Personal Interview with Chilean academic

culture in Chile associated peace with impunity or what one academic interviewed called “equitative impunity”<sup>54</sup> This did not mean one forgot the wrong, it simply meant that the wrong was never verbalized again. Given that amnesty, peace and reconciliation have a long history of association, the idea that reconciliation requires truth and justice is a relatively recent one in Chile.

To advance reconciliation, the Rettig Report recommended reparatory justice. The implementation of these reparations as well as the legal justice that has been possible indicates that the Rettig Commission has achieved success over time with respect to its goal of offering victims some measure of justice.

### **Reconciliation**

As a whole, the Rettig Report’s contribution to reconciliation is more difficult to assess based on the data collected in this research. Though political reconciliation has occurred and there have been clear advances in civil-military relations from tense at the time of the transition to cordial at the present time, it is unclear whether the Rettig Report and the truth that it established has contributed to these changes. It may be that even without a TRC civil-military relations would have advanced as democracy became more consolidated in Chile. Certainly at the time of its release the Rettig Report was a contributing factor to increased tensions between the Aylwin government and the military under Pinochet’s command.

What the commission has contributed at the collective and political levels is that it enabled the state to offer recognition to victims. Not only have they been given

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<sup>54</sup> Personal Interview with Chilean academic

reparations—forms of redress which the literature on TRCs establishes are elements of a reconciliation process, but also this official recognition has enabled victims groups to ensure that they are consulted on any policies pertaining to issues of human rights violations from the dictatorship period. This could be seen as recognizing the citizenship of this group, re-integrating them into the social fabric from which they were once excluded and furthering their participation in a democracy.

Some reconstruction, the other element of reconciliation has occurred at an institutional level—the 1980 Constitution underwent reform, judicial reforms have been implemented and the army has adopted human rights education programs in its training. Social reconstruction however is still occurring.

In terms of larger society, twenty years after the transition has occurred, victims, those who were tortured are a relatively small percentage of the population and so the human rights violations that occurred during the military government are largely only the concern of the few groups that continue to focus on this issue.

Among the general population there is now agreement that violations occurred, that the perpetrators should apologize and justice should be meted out, there is not a particular concern with the dictatorship and human rights violations.<sup>55</sup> Given the other more immediate problems like economic inequalities, education reforms, the Mapuche indigenous lands questions, etc., human rights from the dictatorship period are problems that the average Chilean only considers occasionally.

Nonetheless, Chileans are hesitant to discuss the topic of the Pinochet years in everyday personal conversation. This is an indication that the polarization that led to the

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<sup>55</sup> Personal interview with Carlos Huenes

fragmentation of personal and social relationships has not fully healed and inter-personal trust is still low. The psychological effects of repression are not healed just because a generally shared understanding of the past has occurred. Many Chileans remarked in interviews for this research that it is still difficult for Chileans to have genuine friendships with individuals who hold political opinions on the opposite spectrum than one's own. This distrust is even more pronounced among victims who are hesitant to trust anyone outside of their previously established social and political circles.<sup>56</sup> These social tensions also came to the surface during Pinochet's arrest and death when many of his supporters paraded the streets to welcome him home and six years later, mourn his death. These protests and marches sometimes resulted in clashes between those who supported Pinochet and those who did not want to see him being given such reverence in Chilean society. These social tensions have not particularly addressed by the state. What is lacking in Chile in the discourse on human rights violations is discussion and debate on the co-existence of perpetrators and victims. Even the TRC did not adequately address this problem. What is clear from interviews with victims is that even though there has been increasing levels of truth and justice which they appreciate, some are unwilling to forgive and reconcile with perpetrators, for some of these individuals, truth and justice have not cooled a desire for revenge.<sup>57</sup>

Given all this, perhaps the lesson to be drawn from the Chilean case is that reconciliation is a long-term project and cannot directly be achieved with one truth commission or even two, as the case has been in Chile. Most Chileans interviewed

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<sup>56</sup> Personal Experiences with victims

<sup>57</sup> Several personal interviews with victims, families of the disappeared

stressed the idea that reconciliation cannot occur unless some degree of forgetting is involved—many interviewees remarked that only when generations change and wounds are not freshly remembered, will true reconciliation be possible

## **Summary**

The criteria for determining the success of a commission in this paper, as defined in the theoretical framework was whether and to what degree a TRC “fulfilled the duties assigned to it” (Braham, 2004, p 17) Based on the evaluation of primary and secondary data of the impacts—short-term and long-term of the TRC, this thesis concludes that concerning truth and justice the Chilean *National Commission on Truth and Reconciliation*, known as the Rettig Report, did fulfill its duties It was charged with providing Chileans an account of the events which occurred under the military government, thereby establishing factual and narrative truths based on victim testimonies Initial reactions to the release of the report were varied the military, right wing, and judiciary rejected the report while the Church, human rights organizations and victims recognizing its limitations, welcomed the report since it was the first time human rights violations had been acknowledged by the state

The Commission was also decreed to provide recommendations for reparations and institutional reforms, which it did and which the Chilean state then implemented to varying degrees These were the immediate impacts of the commission, which took place relatively soon after the Commission ended its work in 1991 For example, the *National Corporation for Reparations and Reconciliation* was formed in 1992 and the judicial system also began investigating crimes as soon as the Commission turned over its

evidence to the courts and handed out high profile sentences in 1993. Under President Frei, there was a brief period of time when the human rights question was placed on the back burner of politics, but once Pinochet was arrested in London in 1998 due to a case against him in Spain, the long-term impacts of the commission's work became clear. The evidence collected by the Commission was used to build the Spanish case against him and once he was extradited back to Chile, the cases against him and other perpetrators increased exponentially.

Pinochet's arrest brought to the surface the social and political tensions that the Chilean state had not acknowledged adequately since the Rettig Report was released. To decrease the tensions between the human rights community and the armed forces, the government started roundtable discussions, the Mesa de Dialogo, in which the military agreed to provide information about the whereabouts of the disappeared. Though this information turned out to be false, the process resulted in the military acknowledging that violations did occur under the military government.

The military further shifted their stand on human rights violations under General Cheyre in 2004, when under President Lagos the Valech Commission released its report detailing a pattern of torture under the military government. General Cheyre issued a statement in which the military accepted institutional responsibility for the human rights violations and offered the military's cooperation with the courts.

With respect to reconciliation, the commission's mandate was to create the conditions for reconciliation to occur. In this respect, though complete and genuine reconciliation has not occurred at the social level in Chile, political reconciliation,

between political parties and between the state and armed forces, has occurred, thus the commission can claim moderate success in this area as well

In general, since the commission was able to fulfill its duties both immediately after the release of the report and over the last twenty years, the Chilean TRC is considered to be a successful commission

## Chapter 8

### Conclusions

The focus of this thesis has been an evaluation of the Chilean TRC's short and long-term impacts in order to answer the question can the Chilean TRC be considered a success? These commissions are understood in a framework of transitional justice because not only are they tools of transitional justice but the literature also frames them as such

Modern transitional justice theory has been influence largely by the Nuremberg trials which took place after WWII These trials held to account twenty-two Nazi officials for the crime of aggression In addition, non-criminal accountability was assigned through denazification and purges of public officials undertaken by the German state What the Nuremberg process did for international law was to differentiate just from unjust aggression, define crimes against humanity, expanded the notion of criminal liability to limit the impunity enjoyed by a head of state defense, and implanted in the international consciousness and international law questions about the moral obligations of states and the international community to citizens being subject to atrocities Transitions from dictatorships and civil wars in Europe, Africa, and Latin America beginning in the 1970s also forced the international community to confront the question how do

transitional states deal with crimes and atrocities committed under the previous regime?

The concept of transitional justice aims to address this question

Transitional justice has been defined in three major ways. Some authors such as Teitel define it as a kind of legal justice that is implemented during a time of political change (Teitel 2003: 9). The International Center for Transitional Justice does not consider justice during transition a special kind of justice but instead defines it broadly as justice that is adapted to a transition to serve as a response to widespread human rights violations that recognizes victims and aims to promote peace, democracy and reconciliation (ICTJ 2009). The ICTJ recognizes that this kind of justice can take place over many years. The United Nations has an operational definition that focuses on mechanisms which can be used to achieve the goals of justice in a transition. These tools include both judicial and non-judicial processes which states can use: prosecutions, reparations, institutional reforms, and truth commissions (Guidance Note of the Secretary General 2010: 2).

Transitioning regimes hope to address several goals: establish peace and democracy, legitimize the new regime, establish facts about and acknowledge the violence under the previous regime, punish offenders, promote healing and reconciliation, recognize the suffering of the victims and restore their dignity, and restore the rule of law so that such violations can never again occur.

Truth and reconciliations can help states achieve all these goals. Whether a TRC or other transitional justice mechanism is implemented depends on the balance of powers at the time of transition and the kind of transition that occurred. In coming regimes must balance the expectations of many stakeholders in the democratization process: out-going

regime members, the armed forces, perpetrators, victims, and beneficiaries of the wrongdoing. Those opposed to the transitional process or feel threatened by any policies, particularly those regarding judicial accountability that the in-coming government may implement, can threaten the democratization process.

The incoming democratic government of Patricio Aylwin and the Concertacion coalition in Chile in 1990 was exactly concerned about this balance of powers that existed at the time of the transition. Chile underwent a strictly negotiated transition to democracy. Although the Aylwin government was able to secure some changes to the authoritarian 1980 constitution created by the military under Pinochet's control, the right wing still had control of the senate and the military still retained a significant degree of autonomy. Additionally, Pinochet was still head of the military once the democratic government came into power, but before leaving government the military had enacted an Amnesty Law in 1978 which prohibited prosecutions for all crimes up until that point. Pinochet was adamant, some have even said threatening, that no officers and soldiers under his command be tried for any human rights violations. Furthermore, the judiciary had been stacked with supporters of the military regime by Pinochet and was unwilling to pursue prosecutions. The Concertacion was afraid that if it tried to fulfill its election promises of bringing to legal justice human rights violators, the military would stage another coup, putting an end to the hard-won democratic elections. As a result, the government began to consider alternatives to legal justice. As such, Aylwin and his government decided to follow the example of Argentina and implement a TRC.

Truth and reconciliation commissions are temporary bodies set up to investigate patterns of human rights violations. They can be state sanctioned or set up by non-

governmental organizations and have involvement from international actors such as the United Nations. The aim of officially sanctioned TRCs is to create an official record of the past that will serve to acknowledge victims' suffering so as to re-dignify them in the eyes of the public, and lay the basis for a collective history to be established. The hope is that truth will eventually lead to justice and lay the foundation for reconciliation. The Chilean commission was also implemented with these goals in mind.

The Rettig Commission, made up of nine commissioners with varying political associations, was given nine months to complete its investigations into torture and human rights violations leading to death, execution and disappearances. The commission concluded that patterns of arrest, torture and disappearance existed and that the security services were responsible for most of the violence that occurred. The report also made recommendations for reforms and reparations for victims.

Though victims and human rights organizations criticized the Commission's mandate and the fact that the report did not assign responsibilities, they welcomed the chance to tell their stories, have their experiences officially recognized, and accepted measures of reparation that the government implemented. They noted that the Rettig Commissions should be only the first step in the truth telling process and that reconciliation could not be achieved until legal justice assigned individual responsibilities.

The armed forces rejected the conclusions of the report, claiming it to be biased and an incomplete consideration of the past. The military refused to accept responsibilities and denied that violations had ever occurred. The armed forces were supported in their views by the judiciary, which had been criticized in the report for

complicity in the crimes committed under the military regime. Eventually though the judiciary began making use of the evidence sent to the courts by the Commission to prosecute perpetrators to enable legal justice for victims. These proceedings increased after Pinochet's arrest in London. The cases against him in Spain as well as in Chile were also based on evidence collected by the Rettig Commission.

Pinochet's arrest revealed that polarization among different sectors still existed in Chile and that the military was dissatisfied with prosecutions of its personnel. To ease tensions between the military and the human rights community, the Frei government organized a series of round table talks, the Mesa de Dialogo, which brought together members of the human rights community and the military to discuss the human rights issue. The military agreed to provide what information it had on the whereabouts of the disappeared. Though this information turned out to be false, what was significant about the talks is that for the first time the military admitted that human rights violations did in fact occur under its rule. This was a shift from its earlier denials.

Another significant event which caused a shift in the military's position on human rights violations was the publication of the Valech Report in 2004. Under Lagos, a second truth commission was created to investigate the crimes the Rettig Commission did not. All cases of politically motivated arrest and torture that did not result in death. Out of the over 35 000 cases it investigated, the commission concluded that over 27 000 Chileans had been arrested and tortured and that torture was a systematic policy under the military regime. The Valech Report used the Rettig Report as its starting point—referring the reader to this first report for a comprehensive account of the history leading to the

violence which took place in Chile and like the Rettig Report made recommendations for reparations for victims of torture

Human rights organizations generally responded positively to the report, welcoming the expansion of the truth established earlier with the Rettig Report. The military's reaction was also significant. By this time there had been a change in leadership and the commander-in-chief, General Cheyre issued a statement in the press in which he accepted institutional responsibility for the violations which occurred during the Pinochet years of military rule, on behalf of the military and promised that never again would such violations occur in Chile. It took thirteen years from the publication of the Rettig Report for this shift in the military's perspective on human rights violations to occur.

Individual personal reconciliation between victims and perpetrators has not occurred, but within larger society there seems to be less focus and concern with human rights—most Chileans were not victims of arrest or torture are not concerned with the question of human rights in their daily lives. The human rights problem is left to the domain of the victims groups who refuse to reconcile with perpetrators until the complete truth of the whereabouts of their disappeared relatives is revealed and full legal justice is served. At the political level, however, reconciliation has occurred between political parties and the state and military.

The implementation of the TRC in Chile early in the transition served to mark an important distinction between the old (military) regime and the new incoming one. The state shifted from one which denied human rights to its citizens to one which immediately began putting into place policies to respect these rights and offer what measure of justice

that it could do to those who had suffered. While it is difficult to make generalized conclusions about truth commissions based on one case, what the Chilean case demonstrates is the temporality of transitional justice. In the case of a strictly negotiated transition in which truth, justice and reconciliation seem unlikely in the early years, time and distance from the authoritarian regime make truth, justice and reconciliation more likely. It also shows that truth, justice and reconciliation are long-term processes—these goals may not all be accomplished with one commission. As in the case of Chile, more than one commission may be required to achieve a comprehensive truth about past events, particularly since commissions have limited mandates to begin with. Further, even though reactions to it initially varied, the Rettig Report enabled Chilean society to participate in a discourse of human rights. The commission fulfilled its duties and mandate both immediately upon its release and over the long-term by laying the groundwork for future reforms to occur and serving as a continual reference point for these reforms. For this reason, it can be considered an example of a successful TRC.

Given all this, what can this conclusion about the Chilean TRC and the data supporting it tell us about truth commissions in general? There are essentially two conclusions that can be drawn from the data presented in this research. First, the Chilean case reveals that based on the completion of its own mandate which had both short and long-term impacts, the TRC has been an example of a successful management and resolution of social conflict. It was an effective response that enabled the state to redress the injustices of the military regime and enable Chilean society to move forward.

Second, the study reveals that in managing this conflict, the TRC largely served the political class. It provided the government with a tool with which to address the human rights problem and fulfill its election promises to victims to address human rights. The TRC also gave the government a language to discuss human rights in a manner that entailed asking victims to look forward. By implementing a TRC which it hoped would foster victim healing and reconciliation through story-telling that acknowledged their pain and have some measure of reparation offered. However, this was limited to only those who were subject to the crimes the TRC's mandate covered. For those victims whose suffered crimes not part of the mandate, no acknowledgment occurred which limited healing. This created a tension between remembering and forgetting and thereby prevented reconciliation at the individual levels—victims are not ready to forgive and forget and moreover, maintain reconciliation will not occur until full justice is served and there is a generational change in Chile. Given that the aims of TRCs are to address victims' needs for truth, justice and particularly healing, and this did not occur in Chile, what was the utility of the TRC?

The TRC enabled the polity of Chile to depoliticize the violence that occurred to facilitate closure for larger society and enable the polity of Chile to function. In this way the TRC conferred legitimacy to the new regime. The government can be said to have used truth commission to create and maintain stability through reconciliation which asked citizens to look to the future instead of focusing on the wounds of the past. Who did this stability serve? The Chilean state prioritized stability out of fear that out-going regime members, Pinochet and his army, would threaten democracy, This helped perpetuate impunity as perpetrators were initially allowed to escape legal justice name of peace

## **Future research**

Due to the limitations of time, funding and scope—this research having been conducted for a Masters degree, the groups interviewed in this research were limited to those who influence policy making human rights organizations, victims, the military, politicians, lawyers, the judiciary and academics. The impact of the commission and its success was determined based on the perceptions these groups held about the TRC.

Future research on the Chilean case may consider interviewing a larger sample of Chileans—ordinary Chileans to determine their understanding of the impact of the TRC, particularly with regards to whether or not it has been effective in creating a collective memory that these individuals draw on.

Given the definitional ambiguity suffered by the transitional justice framework and this study's conclusion that the Chilean TRC did not fully serve its goal of reconciliation for victims, scholars can question the utility of transitional justice and TRCs. If TRCs do not serve the goals they have set out for victims, what is their value? If it is to serve the political class, create stability and legitimacy, studies can be conducted that examine their function in this regard. For example, researchers can ask, whether and how TRCs actually help states create the stability required for democratization. To make generalizable conclusions about TRCs, comparative research may also need to be conducted over the broad range of cases that have occurred.

Since TRCs have become such popular mechanisms of late for states to address goals of transitional justice, their instrumental value must be understood that so that when implemented it is clear what goals and groups in society they serve.

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## Appendix A

# Detailed Findings of the National Commission on Truth and Reconciliation (Rettig Report)

Many of the deaths in the cases under the commission's mandate that occurred in the period between September and December 1973 were committed by military operations and were of people who had no affiliation with a political organization. Killings in this period were aimed at "cleaning up" society, those who held ideas and participated in activities the regime considered 'dangerous' were targeted for execution. Mass graves of executed individuals, such as those in Pisagua which were discovered by the commission in 1990, were common throughout the country.

The commission placed the responsibility for the polarization before September 11, 1973 on actors on all sides of the political spectrum. In its analysis competing views of social and economic development led to the conflict. The Rettig Report noted that some, on the left, such as the Revolutionary Left Movement (MIR) advocated that a power shift and ideological change in government could only occur through armed actions, and while there were elements in the Unidad Popular (Popular Unity, UP), that maintained armed conflict was inevitable, there were others in the socialist coalition such as the Communist Party, the Worker and Peasant MAPU, most of the Radical party, and

President Allende, who rejected violence and advocated for socialist change through democratic and peaceful means

Similarly, there were groups on the right such as the Tacna group, which advocated armed resistance to the socialist movement. These groups, along with the Fatherland and Liberty Nationalist Movement (*Libertad y Patria*) called for a military coup. In fact, *Libertad y Patria* was responsible for the *tanquezeto*, a failed military uprising which occurred on June 29, 1973. Additionally, the Schneider plot in 1970 which resulted in the murder of army commander-in-chief General Schneider was “intended to provoke a coup” (Rettig Report, 1993, p. 66). Many right-wing leaders seemed to favor a military takeover of government. The report does not ignore, though it is not strong in its condemnation of the role of the United States’ policy towards Chile in creating a climate enabling the failure of Allende’s government. It makes note of the U.S. attempts to prevent Allende from coming to power in 1970 and when that failed destabilized the Allende government through economic policies detailed earlier in this thesis. The Rettig Report notes in its analysis that the economic crisis brought about in part by U.S. policies towards Chile, played a part in bringing about the events of September 11, 1973.

The commission found that in the events following the coup, the armed forces set up temporary detention sites like the Ministry of Defense, the Military Academy, the Tacna Regiment base, Dawson Island, the National Stadium, the Chile Stadium, the Cultural Center in Barrancas (now Pudahuel), Barros Arana National Institute, the San Bernardo Infantry Regiment base, Londres No. 38, Villa Grimaldi, the navy ships

Esmeralda, Maipo, and Lebo, among other detention centers<sup>58</sup> The report detailed the death of Salvador Allende and his aides and concluded that based on the information received by witnesses, Allende took his own life and that the manner and circumstances of his death “mark[ed] the extremes of division in Chilean society” (Rettig Report, 1993, p 186)

The commission also found that there were varying methods and patterns of arrest Sometimes individuals were asked to surrender themselves to the military authorities, at others they were arrested in their homes, workplaces or on the street Raids, searches and roundups were common and generally involved the armed and security forces, while arrests were made by the police, investigative police and civilians “What can be observed of the police is that they generally acted in coordination with, jointly with, or subordinated to the army In Paine and sporadically elsewhere in the region, civilians were significantly involved, either in turning in people, or directly in arresting them” (Rettig Report, 1993, p 178)

The judicial system was also held responsible for its complicity in the violations of human rights Legal advice made available to the prisoners was of poor quality and judges in the war tribunals had a poor understanding of the rule of law As such in some cases, “the war tribunal was simply a way of legalizing or formalizing a decision already made” by military administrators (Rettig Report, 1993, p 166-667)

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<sup>58</sup>Though this list is not exhaustive, some other famous detention sites throughout the country included Cerrillos Park, Tejas Verdes prison camp that was a part of the Military Engineering School, The Artillery School, El Bosque Air Base within the air force, Pisagua, Quiriquina Island, Dawson Island, as the Naval War Academy in Valparaiso, Ritoque, Puchuncaví, the El Belloto naval air base, the Silva Palma garrison at the Naval War Academy, Cuatro Alamos, Jose Domingo Canas, The Discotheque or La Venda Sexy, Cuartel Venecia, Colonia Dignidad

The TRC discovered that between the years 1974 and 1977, the military junta created legal frameworks that enabled the consolidation of power through the violation of human rights by the police and armed forces under the paradigm of national security, and which were met with impunity. The legal system also failed to offer protection to citizens. In fact, the report is highly critical of the judiciary for failing in its duties to respond to violations of law. It found that the chief executive of the state (the president) was able to consolidate power, particular when it came to the security services. Through DINA and the ability to declare states of emergency the president “had the power ‘to arrest persons for up to five days in their own houses or sites other than prisons’” (Rettig Report, 1993, p. 109)

The commission also concluded that during 1974-1977 DINA was “responsible for most of the political repression” and disappearances. Disappearances in this period were coordinated and planned in a centralized manner with the intention to “eliminate particular categories of people, namely those who were regarded as politically dangerous” (Rettig Report, 1993, p. 613). Other agencies also coordinated with DINA. For example, from 1974-1975 SIFA (Air Force Intelligence Service) later known as DIFA (Air Force Intelligence Directorate) operated “in parallel to the DINA, and to some extent, in competition with it” (Rettig Report, 1993, p. 614). Though SIFA/DIFA did not carry out forced disappearances, some of its members were part of the Joint Command, a defacto intelligence gathering group, which operated from 1975 to 1976, and was made up of members from DIFA (Air Force Intelligence Directorate) DICAR (Police Intelligence Directorate), “to a lesser extent agents from SIN (Naval Intelligence Service), DINE (Army Intelligence Directorate), some members of the Chilean

investigative police and civilians who belonged to nationalistic or far right groups ” The agency “coordinated intelligence activities and political repression” and disappearances, mainly of the Communist Party, with the help of the air force (Rettig Report, 1993, p 614) The Joint Command was held responsible for around 30 disappearances by the commission’s investigation The SICAR (Police Intelligence Service) also coordinated intelligence under DINA’s control, and some members were of this service were also part of the Joint Command and focused largely on operations, but was preplaced in 1974 by DICAR, the Police Intelligence Directorate, to undertake intelligence, counter-intelligence, information analysis and public protection activities The DICAR operated in Santiago in the ex-offices of the *El Clarín* newspaper on Calle Dieciocho No 229 Though the DICAR officers were paid by the police, many were also assigned to work for the DINA though few to none formal records of coordination between the agencies were kept

While these agencies worked in Santiago and interior parts of the country, the Naval Intelligence Service, SIN, operated in coastal cities such as Valparaíso and Concepción, where many members of the MIR and socialist party were targeted for arrest and disappearances during 1974-1975 while from late 1975-1976 “most of those who disappeared were from the Communist Party” (Rettig Report, 1993, p 614) DINA also coordinated with security services of other Southern Cone countries such as Argentina, Uruguay, and Paraguay in a plan called “Operation Condor” which sought to arrest, torture and disappear people on government lists The commission held DINA “responsible for the disappearance of hundreds of people after their arrest, for other executions, and for running a number of secret detention sites where torture was practiced

systematically” (Rettig Report, 1993, p 615) SIFA, the Air Force Intelligence Service, from its operational base at the Air War Academy, and composed of air force personnel, members of the investigative police and a close working relationship with the Air Force Prosecutor’s office, was responsible largely for “professional intelligence activities” and repressing members of the MIR through a special operations group SIFA often worked in competition with DINA and the two agencies engaged in conflicts over arrests of key MIR targets, however, although SIFA was held responsible for torture by the commission, the commission noted that the agency have a policy of forced disappearances (Rettig Report, 1993) In 1975, the Air Force chiefs decided the Communist Party As a result SIFA was renamed and re-organized as DIFA Although DIFA was controlled by the high command of the air force, it was often responsible directly to the air force commander-in-chief It also had a section called Special Operations and relied on civilians who had been active in nationalistic or far-right groups to provide intelligence information These civilians were contracted as agents who were given a rank

The Navy’s Intelligence Service, SIN, took on the task of targeting the MIR in coastal areas such as Valparaíso where the Almirante Silva Palma garrison was used to hold and torture prisoners Though the connections between SIN and DINA were unclear to the commission, what investigations did reveal were that once DINA moved its coastal operations to the Maipo Regiment, SIN handed over its prisoners to DINA in 1975 and in 1976 naval officers worked with the Joint Command In Concepción, the Regional Intelligence Service, SIRE, composed of “members from various units,” including army, police, investigative police and navy officers, also targeted the MIR Members of the

MIR were arrested, detained, tortured and killed at various sites. Though on occasion, SIRE conflicted with the DINA's operations in Concepcion, it also "turned over its own prisoners to the DINA" numerous times (Rettig Report, 1993, p. 629)

In 1975 intelligence activities were centralized when DINE, SIN, DIFA, and DICAR began to work out of the same building in Santiago at Calle Juan Antonio Ríos No. 6. The organizations collaborated in staff and training but not necessarily in intelligence operations, though each week the heads of the agencies, along with the head of DINA, would meet to share information. There was competition between DINA and these agencies, particularly the Joint Command, in which DICAR played a large role over intelligence operations.

After the dissolution of DINA in 1977, National Center for Information (CNI) was created. During this period the most serious human rights violations were carried out by the CNI. The commission found that in its first few years, from 1977-1980, the CNI was concerned with political intelligence and as such the "number of fatal human rights violations cases declined dramatically" (Rettig Report, 1993, p. 828). Additionally, in 1979, the MIR and Manuel Rodríguez Patriotic Front (FPMR) later known as MAPU Lautaro also began participating in armed violence which resulted in deaths from terrorist activities against the state. The CNI reacted to the operation of these groups with "intense repression or counterinsurgency from mid-1980" to 1990. The commission concluded that during 1978-1985 the CNI was responsible for 160 "fatal human rights violations" (Rettig Report, 1993, 828).

During the anti-government protests that took place between 1983 and 1985, government agents were responsible for the deaths of 38 people while people killed by

private citizens in politically motivated killings totaled 90. Between 1978 and 1981 disappearances, though they still occurred, were not as systematic and not carried out by the CNI. However, in 1981 the CNI started disappearing people in a selective manner to include members of the MIR, FPMR and the Communist Party. While DINA had focused on elimination potential future threats by targeting all activists associated with anti-government positions, the CNI focused on the aforementioned specific enemies in their counter-insurgency strategy, the number of fatal human rights decreased. This, however, did not stop individuals from being disappeared. Those who were not disappeared were said to have been killed in gun battles and their bodies “were generally handed over to their relatives” or “in some instances were left on different properties, along a road, or in a swamp” (Rettig Report, 1993, p. 841).

The commission also examined killings committed by private citizens during 1977 to March 1990. During this period 93 lives were lost. Fifteen of these were civilians killed by terrorist activities such as bombs in public places. The rest belonged to the armed forces (Rettig Report, 1993) who had been killed in terrorist attacks, “selective assassination attempts,” bombings and attacks on police and armed forces’ units. This terrorist activity took place sporadically during 1978-1979, declined in 1981-1982 and increased exponentially during 1983-1989. The Commission attributed most of this activity to the MIR, FPMR and MAPU Lautaro groups.



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