

volume

2

Indigenous Peoples and the Right to Truth

A Compendium of Case Studies



Indigenous Peoples and the Right to Truth: Volume 2

*This paper is part of AJAR's series on transitional justice in
Australia and the Pacific.*

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Who We Are

Elsham Papua

ELSHAM PAPUA (Institute of Human Rights Study and Advocacy) was formed due to widespread and ongoing human rights abuses in Papua. Established on 5 May 1998, ELSHAM is a continuation of the Irian Jaya Working Group for West Papua (IJWGP) which began work in the 1990s. In a formal sense, it was established by leaders from three churches (GKI/ the Christian Evangelical Church in Papua, KINGMI/ the Tabernacle Christian Church and the Jayapura Diocese) as well as NGO activists in Papua. Since then, ELSHAM has carried out monitoring, investigations and advocacy in various human rights cases in Papua. ELSHAM works upon the principles of human rights with a vision for realising in Papua a society that has a critical awareness of the values and principles of human rights and democracy.

AJAR

Asia Justice and Rights (AJAR) is a not for profit organisation that works to strengthen human rights and alleviate impunity in the Asia-Pacific region. AJAR facilitates learning and dialogue about human rights, documentation, conflict resolution, as well as holistic processes for the reparation, empowerment and advocacy of victims, their families and communities. We believe that the most effective way to reach our goals is to invest in people involved in the long-term struggle for human rights, such as victims, survivors and activists. Our work is focussed on countries that are transitioning from a context of mass human rights violations to democracy.

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Preface

For decades, indigenous peoples in Papua have struggled together to fight injustice and abuse of power which undermines justice, law, and the right to truth. Underlying it all, is the continuing erosion of the right of indigenous communities to their customary land. But when indigenous peoples lose their customary lands, what do they become? Where are they supposed to go?

I recall the words of an indigenous women we worked with in Unurum Guay who explained the deep loss she felt after her traditional lands were converted into palm oil plantations:

“... After the trees were cut down, after we had stood there, it felt as if our hearts had been torn apart. We felt it as if it was our own bodies, it felt like our heads had been shaved bald, all of it had been destroyed. The forest is no more, all of it has disappeared.”¹

Granted as part of Papua’s Special Autonomy Law (2001), special measures to recognise our identity through cultural symbols and the creation of a truth and reconciliation commission continue to be denied decades later. In the face of intimidation, violence and the theft of land, indigenous Papuans continue their fight for fundamental human rights.

It is my pleasure to have worked with AJAR in publishing ‘Indigenous Peoples and the Right to Truth’ which is based on years of experience in the field of human rights and work in solidarity with indigenous peoples carried out in the struggle to enforce human rights in

1. AJAR, ELSHAM (Papuan Women's Working Group), All the Birds are Gone: Indigenous Women Speak out Against Forest Loss in Papua. AJAR, 2021. Pg. 50.

Indonesia, Asia and other parts of the world. Through the collective work of AJAR and ELSHAM Papua, there have been real impacts in the advancement of human rights, particularly the social, economic, cultural and political rights of different communities.

I hope that this book can be a resource for indigenous activists in Papua and around the world, enriching our understanding of movements to recognise and advance indigenous rights, focusing on our right to truth. I also hope that it empowers indigenous people in their ongoing campaigns to fight for, and protect, their fundamental human rights in the face of the many challenges and global changes that continue to arise.

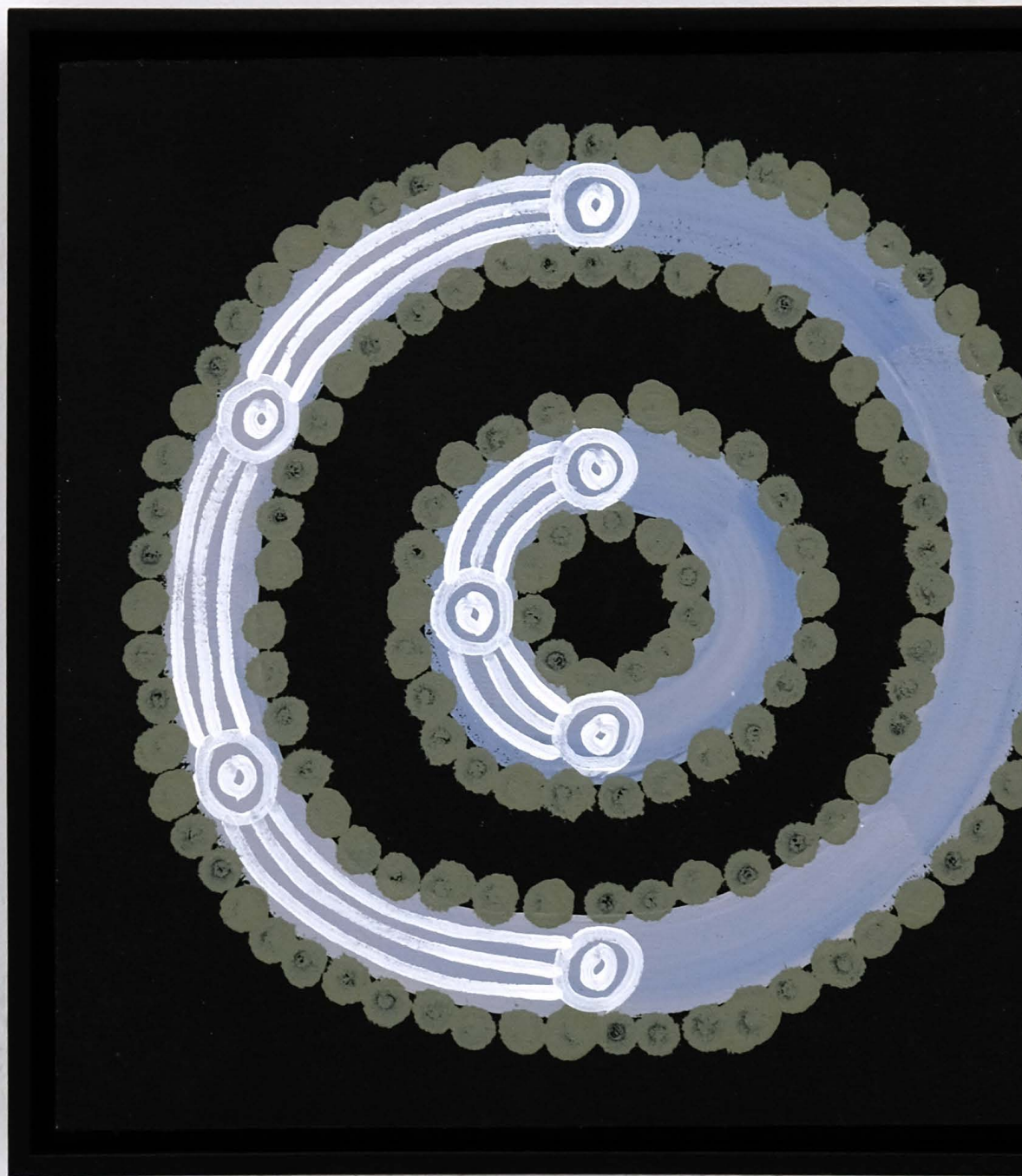
The case studies on indigenous people in Papua, as well as the many experiences of indigenous peoples in the Pacific and Latin America, will certainly be enriching for readers.

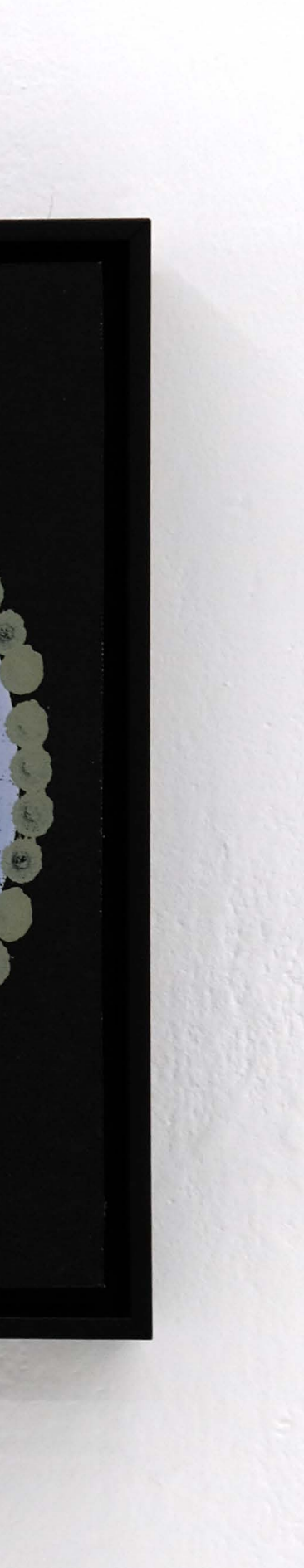
Thank you to all those involved in producing this book which is invaluable in the fight for the existence of indigenous people in Papua and across the world.

Jayapura, January 2022.

ELSHAM Papua

Pdt. Matheus Adadikam.STh.





INTRODUCTION

*Otis Hope Carey, Jagun (Homeland), 2021, acrylic on canvas,
33 h x 33 w cm. Sydney, China Heights Gallery.*

This toolkit offers practical assistance to Indigenous and non-Indigenous human rights organisations and activists, as well as governments, who are considering truth telling processes. The document distils lessons from forty years of truth telling processes around the world, especially those involving Indigenous peoples. The toolkit also outlines the major tenets of the emerging international framework on Indigenous rights, which non-Indigenous organisations may be less familiar with.

Over the past 40 years, a practice of transitional justice has emerged and matured, mostly in post-conflict or post-authoritarian regime contexts. During this same period, the global Indigenous movement has emerged, leading to the development of an international human rights framework on Indigenous rights endorsed by nearly all countries. Cross-fertilisation between the two movements has been limited, though the case studies include notable examples where they have come together, as well as signs of an emerging wave of truth telling led by Indigenous activists. This toolkit aims to foster cross-learning between the fields of transitional justice and Indigenous rights.

AJAR is a regional justice and rights organisation that works with victims of human rights abuses on transitional justice. We approach our work with Indigenous peoples in a number of countries in solidarity, with humility, and knowing that Indigenous peoples lead the struggle to realise their rights. We believe non-Indigenous human rights organisations and governments must do more to uphold Indigenous rights in Asia and the Pacific, home to 70% of more than 476 million Indigenous people worldwide.

This second volume is made up of a wide survey of truth commissions and other truth telling processes that have involved or focused on Indigenous peoples. Concise case studies provide a snapshot of the community involved; background to the process; mandate; methodology; findings and recommendations; follow-up; and lessons learned. Organised by region, these case studies provide examples of different truth telling processes, as well as very different contexts, including:

- Post-conflict truth commissions that examined violations against Indigenous peoples among other groups of victims (Guatemala, Peru, Paraguay, Colombia, Morocco, Kenya, Timor-Leste, Solomon Islands, the Philippines, Nepal).
- Official inquiries into specific thematic violations against Indigenous peoples, either through specially created commissions or standing national human rights institutions (Australia, Canada, Malaysia, Indonesia).
- Official commissions examining the nature and foundation of the relationship between Indigenous and non-Indigenous peoples in a country (Canada, Chile).

- Truth commissions to examine violations against Indigenous peoples, including a number of current and planned commissions and processes (Canada, United States, Greenland, Norway, Sweden, Finland, Australia).
- One example of a standing commission of inquiry into Indigenous rights, operating since 1975 (New Zealand).
- Civil society-led inquiries, in the absence of state action (Papua²/Indonesia, United States, Australia).

A ground-breaking conference in New York in 2011 explored another framework to consider Indigenous truth telling. Convened by the International Center for Transitional Justice, the conference discussed three historic-political contexts:

- Indigenous rights and truth-seeking in early colonization regions (Latin American countries).
- Truth commissions as a new approach to seeking justice in settler societies (Canada and the United States).
- Indigenous rights and truth seeking in the context of post-colonial nation-building (Africa and Asia-Pacific).³

Since this conference, Indigenous communities have initiated a new wave of truth telling to examine and reset the foundations of relations between Indigenous peoples and the nation-state. Three truth commissions related to the Sámi people in the Scandinavian countries of Norway, Sweden and Finland are underway. Greenland completed a Reconciliation Commission focused on its Indigenous people. In Australia there are calls for a national truth telling process and sub-national processes are planned. In the United States there is a new initiative in California, as well as advocacy for a national truth commission that would include Indigenous truth telling. See case studies below.

Framework for case studies

Each case study opens with a brief outline of Indigenous communities in the region and the given country; a summary of their historical relations with non-Indigenous peoples; and a brief overview of the modern nation-state's approach on Indigenous rights. While these notes cover complex issues, they are brief and are aimed especially at assisting non-Indigenous audiences and those from different regions and countries.

2. In this toolkit, we use the word "Papua" as shorthand to refer to both Papua and West Papua Provinces

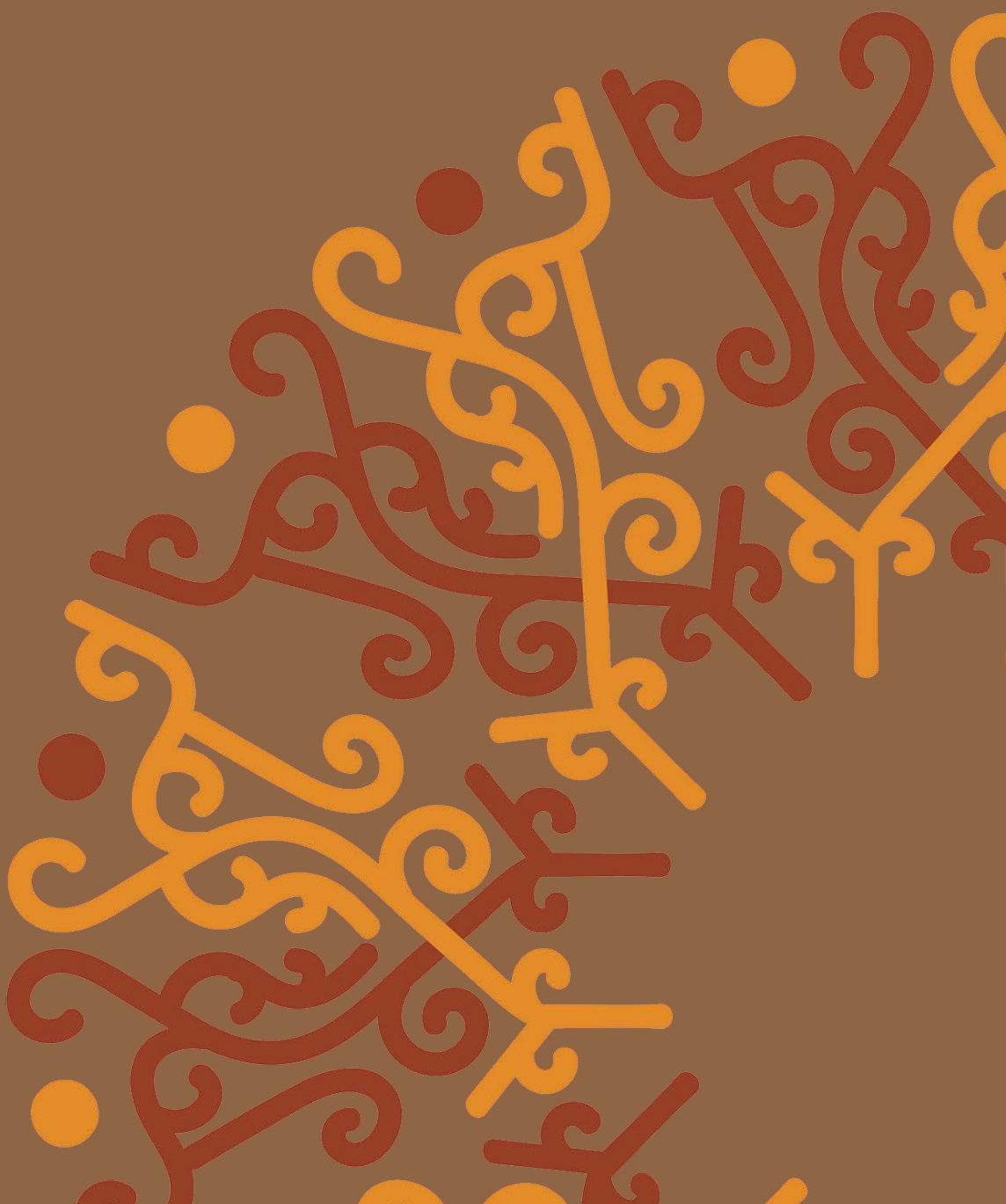
3. Strengthening Indigenous Rights through Truth Commissions. New York July 2011. International Center for Transitional Justice. <https://www.ictj.org/sites/default/files/ICTJ-Truth-Seeking-Indigenous-Rights-2012-English.pdf>

These introductory notes identify related issues of sovereignty and self-determination, which underpin Indigenous identities and rights. These brief historic summaries are important because truth telling processes involving Indigenous people have shown the continuity between the contemporary situation and historical lack of recognition of rights.

Case studies also show a snapshot of Indigenous resistance, activism and the growth of the modern rights movement. Case studies are organised as follows:

- Background to the truth telling process
- Mandate
- Methodology
- Findings and recommendations
- Follow-up
- Lessons and features

Each case study includes links to background reading to enable a deeper analysis.







CHAPTER

01

LATIN AMERICA

*Hundreds of Misak Indigenous people
protest as part of the National Minga
demonstrations in Bogotá, Colombia.
October, 2020.*

*(Photo by Chepa Beltran/VWPics/
Universal Images Group via Getty Images).*

Latin America was home to some of the first truth commissions, following the end of internal armed conflicts and authoritarian regimes in the 1980s. Around a third of the world's truth commissions have taken place in Latin America. While mandates have not solely focused on Indigenous peoples, they made up a significant portion of victims of abuses.

Latin America and the Caribbean is home to 54 million Indigenous peoples. Spain was the main coloniser of this broad region, with Portugal colonising Brazil and various European powers other territories. European explorers had reached the Americas in 1492, and the Papal Bull of 1493 set out the Doctrine of Discovery. Throughout the "Age of Discovery" that followed, European explorers used the Doctrine to claim for their sovereigns land occupied by non-Christians.

From contact, brutal wars of conquest, dispossession, and diseases devastated Indigenous communities across southern, central and north America. Early "conquistadors" sought gold and mineral wealth coupled with a Catholic monarchy aiming to evangelise non-Christians. In many lands, colonisers found densely populated communities of Indigenous peoples. Independence from Spain from the nineteenth century brought little respite for Indigenous peoples, as consolidation of new nations exacerbated dispossession. Towards the end of the century, land for agriculture and livestock expanded through military campaigns that continued to decimate the population of Indigenous peoples, especially in Argentina and Chile. In the mid-twentieth century, colonization of the Amazon and other remote areas led to a renewed cycle of dispossession of Indigenous peoples.

During the twentieth century conflicts across the region, Indigenous peoples were among the most vulnerable groups. The illegal drug industry in rural areas has also greatly impacted Indigenous peoples. More recently, large mining and other extractive industries and major infrastructure projects have led to further Indigenous dispossession and vulnerability.

From the 1960s, Indigenous rights movements began to develop across the region, accelerating in the latter part of the twentieth century. 1992 was a milestone year, when Indigenous activists across the continent resisted government plans to celebrate 500 years of European colonialism. Many Indigenous peoples use the term *Abya Yala* to refer to Latin America, a term of the Guna or Kuna people living in Panama and Colombia.

Most Latin American countries recognise Indigenous peoples in their constitutions, with the exception of Chile, which began drafting a new constitution in 2021. Latin America is the region with the most ratifications of ILO Convention 169 and all countries endorse the UNDRIP. Nevertheless, Indigenous people remain severely marginalised and impoverished in most countries and face major obstacles to

realisation of their rights.

Looking at truth commissions, from the 1990s to the current Colombia commission, it is possible to trace change and improvement in how commissions have engaged Indigenous peoples. The following case studies focus on commissions that examined the experience of Indigenous peoples among other groups of victims of conflict. While countries in the Latin American region may be considered as “early colonization regions”, all but one of these commissions (Chile) examined recent historical conflict without considering in detail the long experience of Indigenous people since the beginning of colonisation.

Commissions that considered violations against Indigenous peoples include:

- Guatemala: Commission for Historical Clarification (1997-1999)
- Chile: Historical Truth and New Deal Commission (2000-2004)
- Peru: Truth and Reconciliation Commission (2001-2003)
- Paraguay: Truth and Justice Commission (2004-2008)
- Colombia: Truth, Coexistence and Non-Repetition Commission (2018-ongoing)

Guatemala

Commission for Historical Clarification (1997-1999)

Background to the truth telling process

From the 1950s to the 1970s, the Government of Guatemala significantly repressed its citizens during a prolonged internal armed conflict. Particularly in the early 1980s, army campaigns against opposition forces had grave consequences for the Mayan populations in the interior, including hundreds of massacres and the destruction of population centres. The 1996 peace accord between the government and the guerrillas established the Commission for Historical Clarification (CHC).

Twenty-four groups of Indigenous peoples, around 6.5 million people, make up more than 43% of the population⁴. Although Guatemala has ratified ILO Convention 169 and endorsed the UNDRIP, Indigenous peoples continue to face major challenges and discrimination.

Mandate

Indigenous peoples (and other interested parties such as victims' groups) were largely excluded from the negotiations leading to the peace accords, resulting in a vague mandate for the Commission.

4. Indigenous Peoples in Guatemala. International Work Group for Indigenous Affairs.
<https://www.iwgia.org/en/guatemala.html>

Intensive mobilization later resulted in a process that did engage Indigenous victims, and one of the three commissioners was from the Mayan community.

The Commission's mandate was to "look into human rights violations and acts of violence that caused suffering among the Guatemalan people." Although the mandate did not mention Indigenous peoples, the Commission investigated crimes committed against Indigenous victims and addressed them separately in its final report.

Methodology and operations

Investigations focused on arbitrary executions, enforced disappearances, rape and forms of systemic violence. Using United Nations reports and fieldwork, the Commission went into areas with large Indigenous populations where many collective rights violations had occurred. It used local Indigenous people and translators to facilitate dialogue, especially with women, using open questions to allow witnesses to tell their stories with respect for the flow of their testimonies.

Findings and recommendations

The Commission found that state agents had committed acts of genocide against the Mayan people in the four regions most affected by violence. It found that the military's perception of the Mayans as allies of the armed opposition, coupled with deep racism, created the conditions that led to the extermination of entire Indigenous communities.

The Commission identified many abuses against Indigenous peoples, including some with deep symbolic significance and a collective impact. These included the extrajudicial killing of elders – custodians of traditional knowledge – and the destruction of cornfields.

The Commission recommended reparations, activities to commemorate and restore Mayan sites, and funding for exhumations. It also recommended structural reform of the military police to enable Indigenous peoples' participation in policing through bilingualism, elimination of discrimination,

Chile

Historical Truth and New Deal Commission (2001–2004)

Background to the truth telling process

The Historical Truth and New Deal Commission was created in 2001 as the initial step in the recognition of Indigenous peoples' rights in Chile. Chile had already had a post-conflict truth commission following the transition from military rule: the National Commission on Truth and Reconciliation (1990–1991).

Indigenous peoples make up around 9% of Chile's population. Nine recognised Indigenous groups mostly live in urban areas, with about a quarter in rural areas.⁵ Chile is the only country in Latin America whose constitution, created during the military dictatorship, does not recognise Indigenous peoples. Chile has ratified ILO Convention 169 and adopted the UNDRIP.

Mandate

The Commission was established by law to advise the Chilean President on the Indigenous peoples' perspectives on historical events in Chile and to make recommendations to build a new relationship between the Indigenous peoples and the rest of Chilean society.

5. Chile, International Work Group on Indigenous Peoples.
<https://www.iwgia.org/en/chile.html>

The Commission was unique in Latin America, appointed to acknowledge violations of economic, social and cultural rights of hundreds of thousands of people for being Indigenous, from the outset of the colonial era and the formation of the modern state. This conflict had not been included in the acknowledged national narrative and history.

Methodology

The Commission was chaired by the former President of the Republic, Patricio Aylwin. It was composed of 25 commissioners, including a number of Indigenous members. The Commission based its assessment on historical investigation rather than victim statements. It met in plenary sessions and in working groups on thematic areas and ethnic groups, and consulted with Indigenous experts.

Findings and recommendations

The government published the report of the Commission in 2008, after it had been completed and pending for four years. The Commission made a broad range of recommendations with legal, social and economic consequences. It recognised Indigenous peoples as the descendants of the first peoples of the current Chilean territory, and stated that the modern Chilean nation was formed to assimilate native peoples, including by denying them their identity and through violence.

The Commission recommended the nation seize an historic opportunity to recognise the cultural diversity of Chile, and the historical and cultural identity of Indigenous peoples as original peoples. It recommended constitutional recognition of the collective rights of Indigenous peoples regarding consultation and participation, lands, natural resources, education, culture, customs and law. It also called to repair the harm inflicted on Indigenous peoples with regard to land, the environment and culture. In order to ensure the participation and consultation of Indigenous peoples, the Commission also recommended creation of an Indigenous peoples' council, an institute for research and promotion of Indigenous peoples, and a fund to finance Indigenous policies.

Follow up

Despite the historic nature of the Commission, governments have done little to implement its recommendations.

Since the Commission, violence has increased against Indigenous peoples seeking to protect and claim their ancestral lands, including murders of ancestral land defenders. Large development projects such as hydroelectric dams, as well as fishing and forestry operations by corporations, routinely ignore Indigenous

rights to ancestral lands. The government has used anti-terrorism laws against Indigenous protesters.

Lessons and features

- The Commission was unique in Latin America, and unusual anywhere, as a state entity aiming to create the conditions for a new relationship between Indigenous and non-Indigenous peoples.
- The profound changes required to achieve this have been very difficult to achieve.
- In August 2017, the Ministry of Social Development started an Indigenous Constitutional Assembly Process to consult Indigenous peoples on a new constitution. Widespread social protests occurred in 2019, largely against inequalities in the country, and the government committed to a process for a new constitution. An assembly elected in May 2021 to draft the new constitution included 17 Indigenous members in the 155-member body. Drafting began in July 2021 - representing an important opportunity to move forward with the issues raised by the Commission.

Peru

Truth and Reconciliation Commission (2001–2003)

Background to the truth telling process

The fall of the authoritarian regime led by Alberto Fujimori in 2000 made it possible to determine responsibility for two decades of abuses during armed conflict. Beginning in 1980, the armed group known as Shining Path had engaged in an armed conflict with the government, giving rise to various illegal armed organizations and massive human rights violations. In 2001, after democracy was restored, the interim Government issued a decree establishing the Truth and Reconciliation Commission.

Around 4 million Indigenous peoples from 55 groups live in Peru, within a wider population of around 28 million.⁶ Peru ratified ILO Convention 169 in 1994, and has endorsed the UNDRIP.

Mandate

The Commission was created to establish the process, facts and responsibilities for terrorist violence and human rights violations between May 1980 and November 2000, and to propose initiatives to reinforce peace and harmony. The Commission focused on enforced disappearances, extrajudicial executions, torture, exile and other grave human rights violations. The mandate explicitly included

6. Peru- International Work Group on Indigenous Affairs.
<https://www.iwgia.org/en/peru.html>

investigating violations of the collective rights of the country's Andean and native peoples.

Methodology

The Commission created a very participatory and public process. It travelled across the country recording 17,000 individual testimonies and held 27 public hearings, the first by a Latin American truth commission. Media covered the hearings extensively, including one national thematic public hearing on abuses against Indigenous peoples. The Commission conducted other in-depth case studies and research. Of the 12 Commissioners, only two spoke Quechua, one of Peru's Indigenous languages.

Findings and recommendations

The Commission concluded that the armed conflict was not an ethnic conflict *per se*. However, the it received so much testimony on violations by the rebel group Shining Path against the Amazonian Asháninka people that it determined that the extermination might have reached the level of genocide.

For example, 75% of those who died spoke Quechua or another native language as their mother tongue. The tragedy was felt mainly by rural populations living in the Peruvian Andes and rainforest, who spoke Quechua or Asháninka. The Commission found that all actors in the conflict had racist views about and feelings of superiority over Indigenous peoples. Public institutions, civil society, the media and the education system all contributed to the perpetuation of violence.

The Commission recommended: reparations, especially to victims of Indigenous ancestry who were poor and marginalized; efforts to achieve national reconciliation, including recognition and acceptance of the multi-ethnic and multilingual composition of the country; and prosecution of the perpetrators to combat impunity.

The Commission stated reconciliation in Peru should be a process of re-establishing basic bonds among Peruvians. The process should respect the country's great diversity and be multi-ethnic, pluricultural, multilingual and multi-denominational.

Follow up

- In 2004, the President established the High Level Multisectoral Commission (CMAN) to supervise follow up on the Commission's report.
- A range of prosecutions followed the findings of the TRC final report. Former

President Fujimori was extradited from Chile and put on trial in 2007, found guilty and sentenced to 25 years in prison and to pay compensation to victims. The Shining Path leader was convicted and imprisoned, along with other senior figures of the movement. More than 50 convictions have been achieved.

- In 2005, a national reparations program was established.

Lessons and features

- Peru's commission did examine and shine a light on the extent of violence against Indigenous peoples during the conflict, including a finding of possible genocide.
- However, some Indigenous communities felt unprepared for the Commission, limiting their effective participation. Further, the process did not provide enough space for intercultural dialogue between the state and Indigenous Amazonian populations.
- The Commission has been criticised for not examining mass forced sterilisation of Indigenous women under the Fujimori government - programs that affected around 200,000 women. Because the program was not directly part of the armed conflict, it did not come under the Commission's mandate.

Paraguay

Truth and Justice Commission (2004–2008)

Background to the truth telling process

In 2003, following a change in government, the Truth and Justice Commission was established by law to investigate violence and crimes by Paraguayan security forces. The focus was on the transnational “Operation Condor” during the 1970s and 1980s, in which political opponents were killed.

Indigenous peoples from 19 groups make up around 2% of the population of Paraguay.⁷ Paraguay has ratified ILO Convention 169 and endorsed the UNDRIP. Despite this, Indigenous peoples represent the country’s poorest, most excluded and marginalised groups and face major human rights challenges.

Mandate

The Commission was designed to promote justice rather than reconciliation. It was mandated to investigate acts that constituted or could constitute human rights violations by state or parastatal agents between May 1954 and 2003. It focused on human rights violations such as enforced disappearances, torture, and exile. It also looked at arbitrary detentions and land seizures, as well as their effects on specific populations, such as women, children and Indigenous

7. Indigenous Peoples in Paraguay. International Work Group for Indigenous Affairs. <https://www.iwgia.org/en/paraguay.html>

populations.

Methodology

There were nine commissioners, including only one woman. Findings were based on 2,050 testimonies, 14,000 documents and eight public hearings, including one on Indigenous peoples.

Findings and recommendations

The Commission found the repression was not limited to a specific group but directed against people of diverse political, social and cultural backgrounds. Rural areas were disproportionately affected by violence. Indigenous peoples, historically the country's most marginalized population, became the group most affected by violence, including massacres and trafficking of Indigenous children. Indigenous lands were systematically seized and unlawfully awarded to allies of the regime. The Commission also concluded that systematic and generalized violations against the Aché Indigenous peoples in the 1970s may constitute a crime against humanity.

The Commission's wide-ranging recommendations included: investigating and analysing environmental damage in Indigenous regions; requesting that the National Human Rights Secretariat and the National Institute for Indigenous Peoples investigate massacres and other abuses of Indigenous peoples and propose reparations; establishing collective memory measures; ensuring that Indigenous peoples participate in proposing and implementing initiatives based on their free, prior and informed consent; and producing texts and promoting radio programs in Spanish, Guaraní and other Indigenous languages. It also strongly recommended that a report on unlawfully seized land be submitted to the Counsel-General of the Republic and the Attorney-General of the State, as a basis for investigation and action for revocation of titles, reassessment, and recovery of ancestral property and lands. It also recommended specialized training on Indigenous rights and culture for public officials and civil society organizations.

Follow up

- The Truth, Justice and Reparations Section of the Ombudsman's Office was established to implement the Commission's recommendations.
- The so-called "Archive of Terror" - the internal records of the security forces during the repressive years - was preserved and the Archive and Documentation Center for the Defense of Human Rights was created house it.
- Efforts to prosecute former President Stroessner failed when he died in exile in 2006.

- The government initiated a program of reparations, managed by the National Commission on Human Rights.
- In 2013, with lack of prosecution follow up, 16 Indigenous Aché people sought to prosecute genocide and crimes against humanity committed between 1954-1989, using universal jurisdiction in Argentina.

Lessons and features

Lack of resources was a major problem throughout the Commission's work, especially in its early days when the Paraguayan parliament cut its budget by half. In December 2007, the government stopped funding of the Commission, suspending investigations for several months.

Colombia

Truth, Coexistence and Non-Repetition Commission (2018–present)

Background to the truth telling process

There are 115 recognised Indigenous groups in Colombia, with a combined population of around 1.9 million people or 4.4% of the population.⁸ They have lived on the highland slopes of the Andes mountains and the coastal areas of the Caribbean for at least 12,000 years. Almost a third of the national territory is categorised as Indigenous reserves, and most face serious environmental conflicts and land grabbing due to extractive activities. The National Indigenous Organization of Colombia plays an important role mediating between the state and communities.

Spain colonised the area from the early sixteenth century, beginning a process of mass violence and dispossession of the Indigenous peoples. In 1810, Colombia declared independence from Spain, a process formalised in 1819. Slavery of Indigenous people and people of African origin took place into the mid-1800s, and even after abolition the practice of forced labour continued.

Following early violent colonisation and independence, Colombia has a history of violent conflicts. Two civil wars cost hundreds of thousands of lives, between 1899 and 1902 and in the 1940s and 50s. Left-wing guerrilla groups then formed to challenge the state, right-

8. The Indigenous World 2020: Colombia. International Work Group on Indigenous Affairs. <https://www.iwgia.org/en/colombia/3618-iw-2020-colombia.html>

wing groups were established to counter them alongside with formal state forces, and violent conflict continued until the 2016 peace accords. Caught between the fighting parties, rural communities suffered the brunt of the conflict. Indigenous peoples and rural peasant communities suffered disproportionately, with mass atrocities committed by all sides of the conflict. More than 50 years of armed conflict killed around 220,000 people, with a further 25,000 disappeared and around 6 million displaced.

Indigenous activists in Colombia and parts of Latin America played an important role in the global Indigenous peoples' movement emerging in the 1980s. The 1991 Constitution recognised the fundamental rights of Indigenous people, the first time the multicultural and multi-ethnic nature of the country was recognised constitutionally, and Colombia ratified ILO Convention 169. These achievements formed a platform for Indigenous activism, including alliances with ethnic minorities such as the Afro-Colombian community. In 2009, Colombia supported the UN Declaration on the Rights of Indigenous Peoples. The Constitutional Court has been one of the most important actors for Indigenous rights and has incorporated the UNDRIP into its jurisprudence.

In 2016, peace accords established a comprehensive approach to transitional justice, including a commission on truth and reconciliation, a missing persons unit, a special tribunal for determining accountability for human rights violations, protection for ex-guerrillas and community leaders, and reparations to victims.

Mandate

The Commission was established by a 2017 act of parliament as an extrajudicial and independent body of the state. Its mandate has four objectives: to clarify and explain the 50-year conflict's complexity; to encourage recognition of victims and of individual and collective responsibilities; to foster coexistence in territories; and to lay the foundations of non-repetition. Beginning operations in late 2018, the Commission has a three-year mandate.

The eleven commissioners include one Indigenous woman and one Afro-Colombian woman. However, Indigenous and Afro-Colombian people were largely excluded from the four-year process of negotiating the peace accords. At the last minute, their concerns were included as the Ethnic Chapter, which required an ethnic-based perspective in implementing the accords. Indigenous communities supported the accords, even when a national referendum temporarily called their future into question.

Methodology

From the start, there was an internal effort to make the Commission more relevant and attuned to Indigenous and ethnic minorities. Led by two women commissioners, one Indigenous and one Afro-Colombian, the Commission grappled with how to base its approach on diversity. It reviewed earlier efforts of Indigenous, black and gypsy peoples who had worked on truth telling and the roots of the conflict. It considered reports from the Ombudperson's Office, the Comptroller General, and the Inspector General on weaknesses in state institutions regarding ethnic peoples, as well as recommendations from the UN special rapporteurs for Indigenous and Afro-Descendent peoples. From these materials, the Commission devised an "ethnic methodology against racism, racial discrimination and other related forms of intolerance." The goal was to ensure Commission staff worked effectively with Indigenous and ethnic minority communities.

Externally, the Commission embarked on consultations with Indigenous and ethnic minority groups before beginning its work. Indigenous commissioner Patricia Tobon Yagari said that it was a challenge for all in the Commission to accept that this step was necessary. She also said that Indigenous leaders told the commission



You can't study the history of the Muslims with the Catholic Bible because it doesn't cut it. And you can't study the history of the Indigenous people with a Western mindset because it doesn't cut it. This is why we need an ethnic chapter with guarantees that we can incorporate our truth freely, so that it becomes part of the national narrative and is not subordinated to a majority culture.⁹

Indigenous leaders wanted to tell the story of the conflict based on their experience. They did not see it as a conflict that started in the 1950s or '60s, but as one that spanned European conquest, colonisation and the full republic period. Afro-Colombian leaders argued that one origin of the conflict was racism.

The Commission began operations in November 2018 with a public hearing. In 2019, it received 10,755 testimonies from 5,988 individual and collective interviews, with 20% from Indigenous and ethnic peoples. Public events provide victims with a platform to share experiences and perpetrators an opportunity to acknowledge their responsibility.

9. Patricia Tobon Yagari's full interview is available online via Justice Info: <https://www.justiceinfo.net/en/75613-patricia-tobon-yagari-legacy-colombias-trc-active-participation-ethnic-peoples.html>

To hear from Indigenous peoples specifically, the Commission held six hearings and events on the subject of #LaVerdadIndigena (The Indigenous Truth) across the Caribbean, Andean, Pacific, Amazonian and Orinoquian regions of Colombia. Indigenous leaders and communities guided the Commission as to which cases they wanted to focus on in these hearings.

The Commission had planned to spend most of 2020 in the field, speaking with communities, holding hundreds of local events and gathering information for its final report. The pandemic threw these plans into disarray as Colombia entered one of the lengthiest lockdowns in the world, and one commissioner died from Covid-19.

The pandemic forced the Commission to reinvent its operations in 2020. It had to cancel or postpone public events such as hearings and an ambitious redress program for Indigenous victims in the Amazon. Instead, the Commission rolled out live-streamed conversations, podcasts, TV shows and concerts.

Final report

The Commission is due to complete activities in late 2021 and issue its final report. There is discussion about an extension, especially due to the impact of Covid-19, but this option may be politically complex. The final report will include a chapter on Indigenous peoples and ethnic minorities.

Lessons and features

- While the participation of Indigenous peoples and ethnic minorities in the peace process was belated, the inclusion of an Ethnic Chapter in the peace accords laid a foundation for the Commission and other transitional justice institutions to engage with these groups.
- Prior to beginning its work, the Commission consulted Indigenous leaders and communities more than any other general truth commission has. This effort led to specific methodologies to engage with Indigenous peoples and ethnic minorities and will likely result in a report that reflects their perspectives in a way otherwise not possible.
- The leadership of Indigenous and ethnic minority commissioners was critical to overcoming internal and external challenges to this innovative institutional orientation.
- A legacy of the Commission will be the participation of Indigenous and ethnic peoples in the construction of the report, selection of cases, methodologies, and corroboration of information.
- Indigenous and ethnic minority understandings of the roots of the conflict are likely to be significantly different, and over a much longer timeframe,

- than other views. Hearings in Indigenous communities demonstrated that the internal armed conflict was a continuation of the racism, violence and abandonment experienced by Indigenous peoples since colonial times. A chapter in the final report on Indigenous and ethnic minority truth telling will be an important contribution to a new national dialogue.
- Indigenous Commissioner Patricia Tobon Yagari explained the role of the Commission in transforming the country's understanding of conflict and society in an interview: "The armed conflict we have endured is also the expression of a long-standing ethnic and identity-based conflict, a result of colonial relations that the country has not overcome throughout the construction of the republic. It is difficult for Colombia to accept this root of the conflict.... It will require institutional efforts and educational policies — from early childhood to university — for the country to become aware of its intercultural nature.... It is very difficult to change this if the perspective of knowledge doesn't change. You cannot relate to something you do not know. The TRC allows us to open up this reflection."¹⁰
 - In public hearings, Indigenous groups presented recommendations on how to ensure their physical and cultural survival, as well as non-repetition. A key point was that a lack of public awareness of Indigenous peoples, traditions and practices contributes to their victimisation and the threat of cultural extinction. Indigenous peoples highlighted the need for an intercultural education system to focus on the richness of Indigenous peoples.
 - Despite the peace accords and ongoing transitional justice initiatives, peace in Colombia is very fragile and Indigenous peoples continue to suffer high levels of violence, including killings. In the four years after the 2016 peace agreement, 250 Indigenous leaders were murdered, and 2019 was marked by a wave of violence across the ancestral territories. As armed groups seek to control their territories, Indigenous peoples in rural communities still cannot live securely despite recognition of their lands in a comprehensive rural reform point in the peace agreement.

10. Ibid





CHAPTER

02

NORTH AMERICA

*People stand around shoes on
Parliament Hill in Ottawa to honour
all missing indigenous children during
the first National Day for Truth and
Reconciliation. September, 2021.*

*(Photo by Lars Hagberg/AFP via Getty
Images)*

For at least 20,000 years, Indigenous peoples have lived across all parts of the North American continent as well as island nations such as Hawai'i. The continent is home to a wide diversity of Indigenous nations and cultures, from the Inuit people of the frozen northern arctic region to numerous Indigenous civilizations of the coasts and mountains of Mexico, and hundreds of nations across what is now the United States of America and Canada.

European contact with Indigenous peoples in the Americas began around the 11th century. Norse explorers moved across the high northern lands of Scandinavia to Iceland and Greenland, eventually arriving on the island of Newfoundland in today's Canada. However, it was not until 1492 that the era of European colonisation began, with the arrival of Christopher Columbus and the conquest of the "New World." Spain and Portugal were early colonising forces, and from the sixteenth century England, France, Spain and the Dutch Republic competed in different parts of North America. Early colonies were focused on the eastern seaboard of the continent.

During this period, no country was dominant and all colonies struggled to survive. Indigenous nations were in a position of relative power and enjoyed a level of co-existence. For trade and military purposes, Europeans made alliances and treaties with Indigenous nations that did not involve land cessions. However, diseases brought by Europeans caused devastation among Indigenous people in these years of first contact.

Britain and France became the dominant forces in what is now Canada and the United States, and over 150 years fought wars, with Indigenous allies on each side. Britain emerged dominant, and in 1763 issued a royal proclamation with important implications for Indigenous nations' lands. The proclamation provided that only the Crown could purchase land from Indigenous nations and established a firm western border, confining all settlement within this border and describing all lands west as Indian Territories. The proclamation was the first public recognition of Indigenous nations' rights to lands and title.

Canada

There are more than 630 First Nation communities in Canada, which represent more than 50 Nations and languages. Nearly 1.7 million people identify as Indigenous, the fastest growing population in the country. They are collectively known as Aboriginal peoples. The Constitution Act of 1982 recognizes three broad groups of Aboriginal peoples: Indians, Inuit and Métis.¹¹

The European fur trade brought contact and trading relations with Indigenous tribes in some of the remotest parts of the country. After the United States gained independence, Britain continued to control its colonies to the north. As more settlers arrived more land was required and Indigenous peoples were increasingly displaced. The British used treaties as a method of land surrender.

From the 1820s, assimilationist policies were implemented with the aim of “civilising” Indigenous peoples. In 1839 legislation made the Crown guardian of all Indian Reserve lands. In 1867 the Dominion of Canada was established by the British, making the territory a self-governing entity within the British Empire. The new national government maintained the centralised approach of the British toward Indigenous peoples.

There are both historical treaties with First Nations and modern treaties, also known as comprehensive land claim agreements. Historical treaties are those signed between the British Crown and Indigenous nations, and those entered into by independent Canada between 1871 and 1921. During this second period a series of land surrender treaties set aside reserve lands for Indigenous nations and granted them annuities and the continued right to hunt and

11. International Work Group on Indigenous Affairs. Canada.
<https://www.iwgia.org/en/canada.htm>

fish on unoccupied Crown lands in exchange for Aboriginal title. Also included were schools and teachers to educate First Nations children on reserves; farming, hunting and fishing equipment; and ceremonial and symbolic elements, such as medals, flags and clothing for chiefs.

In the late nineteenth century Indigenous nations entered treaties in the context of survival in rapidly changing and dangerous situation. In the nearby western United States mass violence was used against Indigenous peoples who were forcibly removed from their lands. Until 1921 Canada entered further treaties to secure natural resources in the vast areas of the north.

In the 1870s Canada passed the Indian Act, which positioned the national government as guardian to Indigenous peoples. Assimilationist policies were implemented, including banning many Indigenous cultural practices. In the 1880s residential schools were expanded as a major way to achieve assimilation and the “civilising” of Indigenous peoples. Christian organisations played a key role in developing and managing a network of more than 130 schools across the country, which more than 150,000 children attended up until the 1990s.

Indigenous activism, especially in the 1970s, helped lead to change in the approach of the national government to focus more on land rights and self-government. Three significant court cases also brought new recognition to the land rights of Indigenous nations. The national government established a comprehensive claims policy for negotiations with Indigenous nations, in what became the new treaty era. Between 1974 and 2015, 26 treaties were completed.

These treaties are implemented through legislation and remain the most comprehensive way of addressing Indigenous rights and title. They set out ownership, use and management of land and resources for all parties and receive constitutional protection.

From the 1990s self-government became a new focus for the state-Indigenous relationship. The 1991-96 Royal Commission was a major national reflection on the relationship between Indigenous peoples and the state and non-Indigenous Canadians.

Two significant national truth telling processes have taken place, regarding the residential schools system and the murder of Indigenous women and girls.

In 2016, Canada endorsed without qualification the UN Declaration on the Rights of Indigenous Peoples, having opposed it in the original 2007 vote. Canada has not ratified ILO Convention 169.

Royal Commission on Aboriginal Peoples (1991–1996)

Background to the truth telling process

The Royal Commission (RCAP) was established in 1991 to examine government policy toward “the original historic nations” of the country. The move followed the Oka Crisis, a 78-day standoff between Mohawk protesters and Canadian authorities over proposed development on a burial ground. At the same time, media was exposing the inequities suffered by Indigenous peoples, including poverty, health and suicide crises. Commissioners noted later in their report that while it was a time of anger and upheaval, it was also a time of hope, when Indigenous people were searching their culture and heritage for roots of their identity. It was a time for change.

Mandate

The Inquiry was established as a Royal Commission, with a 16-point mandate to examine the relationship between Indigenous and non-Indigenous peoples going back 500 years. Commissioners focused their consultations to “one over-riding question: What are the foundations of a fair and honourable relationship between the Aboriginal and non-Aboriginal people of Canada?”¹²

Methodology

The Royal Commission was led by six commissioners, four of whom were Indigenous. Examining 500 years, the RCAP looked at four stages:

- The time when Aboriginal and non-Aboriginal people lived on separate continents and knew nothing of one.
- Following the years of first contact, when fragile relations of peace, friendship and rough equality were given the force of law in treaties.
- As power tilted toward non-Aboriginal people and governments, and they moved Aboriginal people off much of their land and took steps to “civilize” them.

12. Highlights from the Royal Commission on Aboriginal Peoples: People to People, Nation to Nation. Official one volume summary. Page 1. <https://www.rcaanc-cirnac.gc.ca/eng/1100100014597/1572547985018>

- The present stage, a time of recovery for Aboriginal people and cultures, for critical review of the relationship, and renegotiation and renewal.

The RCAP held public hearings across the country, received briefs and submissions from individuals and groups, commissioned research, published reports and held roundtables. In 178 days of hearings, 2,067 people appeared, and more than 76,000 pages of testimony was recorded. Interim reports were published in October 1992, October 1993, November 1993 and November 1994.

Recognizing the difficulties some Aboriginal groups would have in participating, an Intervenor Participation Program helped organisations in researching and articulating their positions. The Royal Commission developed research in consultation with 150 scholars, with more than 350 studies commissioned on four major themes: governance, lands and economy, social and cultural matters, and the North. The Commission included research into the residential school system. Fourteen policy groups were formed to develop the final report and its recommendations.

Findings and recommendations

The RCAP produced a 5-volume report with wide-ranging findings and 440 recommendations, as well as a 1-volume summary. Commissioners framed their recommendations as a 20-year commitment, calling for a comprehensive agenda for change to completely restructure the relationship between Indigenous and non-Indigenous peoples in Canada. It proposed a new Royal Proclamation committing the government to a set of ethical principles respecting the relationship between Indigenous peoples and the state. This new relationship would respect the historical origins of Indigenous nationhood, the inherent right of self-determination, and Indigenous cultures and values. The report also highlighted the need for a public inquiry into the residential school system's purpose and its impact on Aboriginal communities.

However, implementing many of the recommendations would require constitutional change.

Follow up

- The federal government did not formally respond to the report until 7 January 1998. Though federal and provincial governments supported practical initiatives to address social and economic issues in the report, governments have not been willing to engage in constitutional discussions on issues affecting Indigenous peoples.
- The Prime Minister issued a formal apology, expressing regret for past

errors in a Statement of Reconciliation. He committed \$350 million toward community-based healing, especially for abuse survivors from the residential school system.

Lessons and features

- The research, findings and recommendations were more far-reaching than any other Canadian Royal Commission. However, there has proved to be ongoing reluctance to pursue constitutional changes required to address many of the recommendations.
- Despite this, the report remains an important national research document of unprecedented national scope.
- As with other truth telling processes, implementation of recommendations depends on political will, which can shift with changing governments, leaving follow-up vulnerable.

Truth and Reconciliation Commission of Canada (2008–2015)

Background to the truth telling process

The Truth and Reconciliation Commission of Canada (TRC) was created through a legal settlement between survivors of residential schools, the Assembly of First Nations, Inuit representatives and those responsible for creating and running the schools: the federal government and church bodies. This is the only truth commission established as part of a court settlement.

From 1893 until 1998 the federal government in partnership with the country's four major churches operated more than 130 Indian Residential Schools. Canadian law made attendance mandatory for all Aboriginal children and made the school administration the legal guardians of the children. When the TRC was formed, between 105,000 and 150,000 living Canadians had attended residential school as children.

Indigenous activism led to the TRC. The earlier Royal Commission on Aboriginal Peoples (1991–96) considered human rights violations in the residential schools system. During this period, in 1993, National Chief Phil Fontaine made a highly publicised statement on national television about the physical and sexual abuse suffered at the school he attended as a child. Wide-ranging legal action followed, with thousands of cases filed against the state for abuse at the schools. These cases pushed the government to reach a negotiated settlement to the class-action lawsuit. This settlement - the Indian Residential Schools Settlement Agreement - required a compensation program for survivors, a formal government apology, and agreed to the establishment of a truth and reconciliation commission specifically on the issue of residential schools.

Mandate

The mandate of the TRC was to inform all Canadians about what happened in Indian residential schools, and to document the truth of survivors, families, communities and anyone else personally affected. The mandate was narrowly defined around the residential schools and did not include other harms important to Indigenous peoples in Canada, such as past and ongoing expropriation of land. The mandate also did not include the thousands of children who attended residential schools as day students. The narrow mandate was due to its roots as part of the court settlement, rather than emerging from wider consultations with Indigenous peoples.

Methodology

The TRC faced early leadership challenges, with the chair and two other commissioners resigning after a conflict. Once it became fully operational under a new chair, between 2008 and 2014 the TRC took more than 6,500 testimonies from survivors in public and private settings, including community hearings, sharing circles and Commissioner Sharing Panels. The TRC held seven national hearings, with large audiences and media coverage helping to educate the public and honour survivors and their families. During public testimonies, survivors told of their experiences of abuse, sexual assault and malnutrition, as well as being denied use of their language and culture.

Findings and recommendations

In June 2015, the TRC released an Executive Summary of its findings along with 94 Calls to Action to governments, educational and religious institutions, civil society groups and all Canadians, to “redress the legacy of residential schools and advance the process of Canadian reconciliation.” The Commission concluded in December 2015 with the publication of a multi-volume final report that concluded the school system amounted to cultural genocide.

Follow-up

- Prime Minister Justin Trudeau accepted the Final Report of the TRC, publicly stating the government’s commitment to implement the recommendations of the Commission.
- In 2013, Orange Shirt Day was created as a day of observance to educate people and promote awareness about the Indian residential school system and the impact it had on Indigenous communities which continues today.
- In 2015, the National Centre for Truth and Reconciliation was established at the University of Manitoba in Winnipeg to serve as the permanent repository of the archives of the TRC aiming to serve public education purposes.
- In 2016, Canada endorsed the United Nations Declaration on the Rights of Indigenous Peoples, though national implementation legislation is yet to pass (after being one of only four countries to initially vote against the Declaration in 2007).
- In 2016 the National Inquiry into Missing and Murdered Indigenous Women and Girls was established, pursuant to one of the TRC’s Calls to Action (see below).
- In 2020, five years after the completion of the TRC, there was considerable reflection on implementation of its recommendations. Prime Minister Trudeau stated that 80% of the 94 Calls to Action implicating the

Government of Canada were complete or well underway, though he acknowledged much more work remained. However, others issued more stark criticism. Three former commissioners issued a statement on the “slow and uneven” implementation of the Calls to Action. They highlighted two essential foundations for reconciliation yet to be implemented: federal legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation and the establishment of a National Council for Reconciliation.

- At the same time Indigenous institutions and organisations expressed frustration with lack of implementation in key areas. The Assembly of First Nations, which publishes an annual report card on progress, noted the need for action in areas of justice, equity in the legal system and missing children.
- The Canadian Broadcasting Commission began a project to publicly monitor implementation of the Calls to Action, called Beyond 94. In June 2021, it reported that 20 Calls had not been started, 38 were in progress with projects proposed, 24 were in progress with projects underway, and 12 were complete.
- The Vatican has stated that the Pope would not formally apologize for the Catholic church’s role in the residential school system (Call to Action #58), which continues to be controversial in Canada.
- In 2021, following the discovery of the remains of more than two thousand Indigenous children on the grounds of a residential school, parliament quickly made the day a statutory public holiday. Ongoing Indigenous-led investigations continue to reveal hidden burial grounds for children at sites of the former residential schools.

Lessons and features

- The mandate was narrowly constructed on the specific theme of residential schools, because it emerged from a settlement of a class action court case. This was unusual and limited the scope of investigations.
- It took the TRC time to settle into its work, following a tumultuous first year that included conflict amongst leadership. However, once it settled under new leadership the TRC was considered an historic process.
- The Canada TRC has been credited with inspiring further truth commissions on violations of the rights of Indigenous peoples in the arctic regions, in the three Scandinavian countries (see below).
- There are contested views about the effectiveness of implementation of recommendations, highlighting the need for a credible, independent means of monitoring.
- Despite the high profile nature of the TRC, implementation of its recommendations remains a challenge.

National Inquiry into Missing and Murdered Indigenous Women and Girls (2016–2019)

Background to the truth telling process

Indigenous women accounted for 16% of all murdered females in Canada between 1980 and 2012 despite making up only 4% of the female population. From 2001–2015, the homicide rate for Indigenous women was nearly six times higher than that for non-Indigenous women.¹³

More than a decade of Indigenous activism, including community-led investigations, pushed for an official inquiry into the crisis. The Native Women's Association of Canada conducted research and investigations over a five-year period from 2005 in its Sisters in Spirit project which sparked further activism.

In June 2015, the Truth and Reconciliation Commission included Call to Action Number 41 to establish an inquiry into murdered and missing Indigenous women. Following a change of government in 2015, the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) was established the following year. Five commissioners were appointed, four of them Indigenous people.

Mandate

The Inquiry's mandate was to inquire into the underlying causes and systemic issues that contribute to the high levels of violence against Indigenous women and girls. Under the terms of reference Commissioners took a wide approach to identifying violence, seeking to address all forms of violence including sexual assault, child abuse, domestic violence, bullying and harassment, suicide and self-harm. They explained that these forms of violence are interconnected and can have equally devastating effects.

The National Inquiry was established under the Federal Inquiries Act and bound to the inquiry laws of all 13 provinces and territories. This status gave the Inquiry the authority to compel records and witnesses, including municipal and provincial police and their documents, something the TRC lacked. The National Inquiry was

13. National Inquiry into Missing and Murdered Indigenous Women and Girls.
<https://www.mmiwg-ffada.ca/>

given a two-year operational period, later extended by six months. By contrast, the Truth and Reconciliation Commission was mandated for five years and ran for almost six.

Methodology

The National Inquiry faced challenges and criticism in its first year, as logistical and management issues reportedly slowed start up. Some critics also believed the Inquiry was taking an overly legalistic approach, alienating some survivors and Indigenous communities. One commissioner resigned. Outreach and public communication were also problematic.

After its first year, commissioners pledged to do more to engage with Indigenous organisations and grassroots groups and improve public communication. They also argued that their process had evolved through listening and learning in order to be inclusive, culturally appropriate and trauma-informed.

The National Inquiry set out key principles for its operations, including:

- Building a foundation for Indigenous women and girls to reclaim their power and place.
- Recognising the diversity of Indigenous peoples, that they have their own distinct cultures, languages, and ways of life including distinct political, legal, social, cultural, and economic systems. It emphasised that there could be no one-size-fits-all, pan-Indigenous approach.
- Rooting research in Indigenous methodology, governed by traditional laws and ethics that affirm the resistance and resurgence of Indigenous women and girls, including people who identify as two spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual(2SLGBTQIA).
- Honouring the truth through public education. The Inquiry noted that Indigenous women and girls have been publicly devalued or ignored and general perceptions have been shaped by harmful colonial stereotypes. The Inquiry aimed to make hearings and their products as publicly accessible as possible.
- Creating a living legacy through commemoration and artistic expressions. This principle was especially important for teaching and learning from children and youth.

The Inquiry held numerous gatherings and 24 hearings across Canada, collected statements from 750 people, held institutional visits in eight correctional facilities, led four Guided Dialogues, and held eight validation meetings. More than 2,300 people participated in 15 community hearings, including 468 family members and survivors of violence. In more than 140 private sessions, family members

and survivors shared their stories. More than 80 expert witnesses, Elders and Knowledge Keepers, front-line workers and officials provided testimony in nine hearings.

Findings and recommendations

In June 2019 the National Inquiry presented its final report, *Reclaiming Power and Place*, to the Prime Minister. The report revealed persistent and deliberate human rights and Indigenous rights violations and abuses as the root cause behind staggering rates of violence against Indigenous women, girls and what is known as the 2SLGBTQQIA people.

The report focused on how human rights and Indigenous rights, and the history of colonisation can inform understanding of violence against First Nations, Inuit and Metis women, girls and 2SLGBTQQIA people. The report documents that the history of colonization has altered Inuit, First Nations and Metis Peoples' relationships to their culture and identity through targeted policies to sever their cultural and kin connections. These attacks on culture are the starting points for other forms of violence against Indigenous women, girls and 2SLGBTQQIA people today.

The 2-volume final report also documented testimony from family members and survivors of violence about multigenerational trauma and marginalization in the form of poverty, insecure housing or homelessness, and barriers to education, employment, health care and cultural support. Experts and Knowledge Keepers spoke about specific colonial and patriarchal policies that displaced women from their traditional roles in communities and governance and diminished their status in society, leaving them vulnerable to violence.

In the report, commissioners focused on what they called two important teachings: "We centre the voices of First Nations, Métis, and Inuit families, survivors, and others whose truths contain wisdom and guidance on ending violence that has been ignored or actively silenced for far too long; and, as we listen to this wisdom and guidance, we focus specifically on those teachings about how, through relationships, we can come to understand the underlying causes of violence and identify and implement the steps that must be taken to end violence."¹⁴

The report calls for major legal and social changes. It delivered 231 individual Calls for Justice directed at governments, institutions, social service providers, industries

14. National Inquiry into Missing and Murdered Indigenous Women and Girls. Volume 1, page 94. <https://www.mmiwg-ffada.ca/>

and all Canadians in the areas of health, security, justice and culture, including:

- Establishing a National Indigenous and Human Rights Ombudsperson and a National Indigenous and Human Rights Tribunal.
- Developing and implementing a National Action Plan to ensure equitable access to employment, housing, education, safety, and health care.
- Providing long-term funding for education programs and awareness campaigns for violence prevention and against lateral violence.
- Prohibiting the apprehension of children on the basis of poverty and cultural bias.

Follow up

To chart a path forward on the 231 Calls to Justice, in 2021 a National Action Plan was launched: Ending Violence Against Indigenous Women, Girls and 2SLGBTQQIA+ People. The plan's immediate next steps include support services for survivors and family members, an oversight body, and public awareness and training, all with continued involvement of families and survivors. It also outlines next steps for data and accountability. The Native Women's Association of Canada has published its own action plan, titled *Our Calls, Our Actions*.

Lessons and features

- It is important at the outset to seek clarity on the scope, focus and methodology of an inquiry. This effort usually requires time before a commission starts its work. Getting this right at the start prevents miscommunication and confusion about a truth telling process and can also help to manage expectations.
- Significant resources should be invested in community outreach, consultation and engagement even before a commission starts its work. Maintaining this trust at all stages of a commission's lifetime is essential to the commission's work and its ability to engage communities and individuals in the truth telling process.
- The capacity to adjust during the lifetime of a commission is important: to seek and act upon feedback from constituencies; to evaluate processes and their impact; and to make necessary adjustments.
- The Inquiry put in place mechanisms to promote cross-generational and community support and learning, in particular the Grandmothers and Elders Circle.
- Commissioners reflected in the final report that the mandate to examine all forms of violence had advantages and disadvantages: it allowed the Inquiry to look at interrelated issues in a more holistic way, meaningfully reporting on all forms of violence against Indigenous women and girls, but it was also

- very broad and perhaps too difficult to achieve in the span of two and a half years of operations.
- There is value in encouraging artistic expression as one method of telling and sharing truths. This effort can be extended into the community beyond the formal truth telling process. Cultural practices and artistic expression are a strong asset for authentic truth telling.

United States of America

Background

The number of Indigenous people in the United States is estimated at between 2.5 and 6 million, or as much as 1.7% of the population.¹⁵ Indigenous peoples identify themselves according to their nations, while government offices, legislation and general discourse, including by Indigenous peoples, often use the terms American Indian and Native American.

Today, official status as a Native American or Alaska Native is generally conferred on members of “federally recognised tribes”. In 2019, there were 574 officially recognised tribal entities, most with recognised national homelands. Federally recognised Native nations are inherently sovereign nations, but their sovereignty is legally limited as wards of the federal government. There are also state-recognised and non-recognised tribes but these are not officially Native nations in the eyes of the federal government.

The nature of the relationship between Indigenous nations and European colonisers and their descendants has changed over time. There was always some degree of recognition by foreign powers and colonisers of the sovereignty of the Indigenous nations, a position that the United States inherited and adapted.

American independence

The early period of colonization and the rise of British power in North America is described above. The American war of

15. International Work Group on Indigenous Affairs. United States of America <https://www.iwgia.org/en/usa/4253-iw-2021-usa.html>

independence between 1775 and 1783 had profound consequences on Indigenous nations. Caught in the middle, Indigenous nations had to decide how to protect their lands and ways of life. Initially neutral, most but not all Indigenous nations eventually sided with the British.

In 1776, the founding document of the Declaration of Independence referred to and denigrated the Indigenous nations, stating that “the Inhabitants of our Frontiers, the merciless Indian Savages, whose known Rule of Warfare, is an undistinguished Destruction...”

After the United States nation won its independence, Britain transferred its claims to all the territory between the Atlantic and the Mississippi and between the Great Lakes and Florida at the Peace of Paris conference. There were no Native Americans at the talks and they were not mentioned in its terms. With regard to land, the terms treated Indigenous nations equally whether they sided with the British or the American revolutionaries, though the language of the US Declaration of Independence gave a strong indication of the new state’s approach to Indigenous nations.

The new nation-state: two major policies

The United States of America claimed that the Doctrine of Discovery applied to the new nation, legitimising its sovereignty over the lands of the continent with claims emanating from earlier European “discovery.” This claim was confirmed by the highest court in the land which, under the leadership of Chief Justice Marshall, made judgements on Indigenous sovereignty and land rights between 1801 to 1835.

The Court found that Native American sovereignty was “inherent” and recognised Indigenous nations, but limited that sovereignty by characterising Indigenous nations as “domestic dependent nations” rather than independent sovereign states. The US government had a “federal trust responsibility” over Indigenous nations, meaning that Indigenous nations were like wards of the national government. Indigenous land rights were restricted to the right to occupancy, while title belonged to the state.

Congress took the lead in setting government policy on Indigenous peoples, with two overarching policy approaches: acquisition of Indigenous lands and “civilising” Indigenous peoples.

Westward expansion through the nineteenth century led to new wars, mass violence and dispossession. The 1830 Indian Removal Act resulted in tens of thousands of Native Americans dying in forced removals such as the infamous

“Trail of Tears.”¹⁶ Treaties were one aspect of the land acquisition strategy, especially until 1871. Some of the 600 treaties acknowledged Indigenous sovereignty to a limited extent, but were often forcibly entered into, altered without Indigenous approval, and not honoured by the government. In 1893, the United States forcefully annexed the islands of Hawaii without consent of the Indigenous peoples.

Assimilation accelerated

Following nineteenth century wars and land acquisition, assimilationist policies accelerated. The removal of children from their families and cultures to attend boarding schools was infamously described as aiming to “kill the Indian, save the man.”¹⁷ These boarding schools continued to operate into the 1960s, and investigations have found widespread physical, sexual and mental abuse.

From the 1940s, the federal government began what was called the termination policy, seeking to dismantle recognition of the sovereignty of the tribes. Federal funding of tribal governments and services also ended, and Indigenous communities were mainstreamed into state services to force assimilation.

Self-determination and the relationship today

Sustained Indigenous activism from the 1960s and 1970s led to the establishment of the International Indian Treaty Council, which included Indigenous peoples from Latin America and the Pacific. Indigenous activism throughout the 1970s aimed to expand self-determination.

Current federal policy recognizes a limited form of Indigenous sovereignty and stresses the government-to-government relations between the United States and federally recognised tribes. The US Congress continues to oversee this relationship, and individual states do not have authority over tribal governments.

Most Native American land is held in trust by the United States, and federal law still regulates the economic and political rights of tribal governments. Since 1824 the Bureau of Indian Affairs has managed government policy on Indigenous matters.

16. The “Trail of Tears” refers to the 1830s forced relocation of Indian nations of the south east region of the US to land west of the Mississippi River, with approximately 100,000 people being forced to march more than 5,000 miles across nine states - resulting in an estimated 15,000 deaths. Source: <https://www.britannica.com/event/Trail-of-Tears>

17. A saying attributed to Captain Richard Henry Pratt in his 1892 speech on Indigenous education and assimilation during the National Conference of Charities and Correction, held in Denver. Full text of speech available at: <https://carlisleindian.dickinson.edu/teach/kill-indian-him-and-save-man-r-h-pratt-education-native-americans>

Approximately 326 Indian land areas are administered as federal Indian reservations. Some are the remnants of a tribe's original land base. Others were created by the federal government resettling people forcibly relocated from their homelands. Not every federally recognized tribe has a reservation. Federal Indian reservations are generally exempt from jurisdiction by the states, including taxation, except when Congress specifically authorizes such jurisdiction.

Many Indigenous people live outside tribal reservation areas. Recent studies suggest that 54% of Native Americans live in rural and small-town areas on or near reservations, but a large percentage live in urban areas.¹⁸

Native Americans speak of being citizens of three sovereignties: their tribe, the United States, and the state in which they live.

Native Americans today have all the Constitutional rights of other Americans. The Constitution refers to Indigenous peoples three times but does not explicitly acknowledge their sovereignty. There is no elected representative body of Indigenous peoples, or reserved seats in national political institutions. Founded in 1944, the National Congress of American Indians aims to provide a unified voice for American Indigenous peoples.

In 2009, President Obama issued an apology to Native Americans, "on behalf of the people of the United States to all Native peoples for the many instances of violence, maltreatment, and neglect inflicted on Native peoples by citizens of the United States."¹⁹ However, many Indigenous people were frustrated by the apology. It was made as a resolution added to a defense appropriations bill, and was never announced, publicized or read publicly by the President, the White House or Congress.

The United States voted against the UNDRIP in 2007, but in 2010 announced that it would support the Declaration as moral guidance. The United States has not ratified ILO Convention No. 169.

18. Majority of Native Americans Live in Rural Areas and Small Towns, Not in Urban Areas as Commonly Reported, According to New "Twice Invisible" Report. Global Newswire. 20 April 2017. <https://www.globenewswire.com/news-release/2017/04/20/962599/0/en/Majority-of-Native-Americans-Live-in-Rural-Areas-and-Small-Towns-Not-in-Urban-Areas-as-Commonly-Reported-According-to-New-Twice-Invisible-Report.html>

19. Defense Appropriations Act of 2010 (H.R. 3326). <https://www.congress.gov/bill/111th-congress/house-bill/3326/text>

Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (2013–2015)

Background to the truth telling process

The Algonquian-speaking Wabanaki people have occupied maritime areas in the United States (Maine, New Hampshire, Vermont and Massachusetts) and Canada (Quebec, Newfoundland, Prince Edward Island, Nova-Scotia and New Brunswick) for thousands of years.

Decades of assimilationist policies in the twentieth century included forcibly placing Indigenous children into residential schools, where abuse regularly occurred, as well as with non-Indigenous families. In the 1970s, research found 25–30% of Indigenous children were being taken from their homes and that most were being placed outside of their families and communities even when fit and willing relatives were available. In 1978, the federal government enacted the Indian Child Welfare Act to protect “Indian Children’s best interest” while promoting “the stability and security of Indian tribes and families”.²⁰

However, in 1999 a review of the situation in Maine found ongoing problems. A collaborative working group was formed by Wabanaki and non-Indigenous, current and former child welfare workers. They concluded that a truth commission to examine the problems would be a useful step to address some of the root causes. The working group partnered with the state and tribal leaders and prepared a declaration of intent and a draft mandate and selected commissioners. Maine’s governor and five Tribal Chiefs co-signed authorisation of the truth commission.

The Commission received no funding from the State of Maine or the tribal governments, but only from private donors and foundations. There were five commissioners, three Indigenous, though none from the Wabanaki nation. One commissioner was the Secretary of State of Maine.

Mandate

This was the first commission to focus on child welfare of Indigenous communities in the United States. It was also unique in being established collaboratively by

20. Indian Child Welfare Act 1978, US Department of Interior: Indian Affairs.
<https://www.bia.gov/bia/ois/dhs/icwa>

“both sides of a conflict.” The Maine Wabanaki-State Truth and Reconciliation Commission had seven objectives:

- Give a voice to Wabanaki people who have had experiences with Maine state child welfare.
- Give a voice to those working in tribal and state welfare systems as well as care providers and those involved in the legal system about their experiences with Wabanaki families.
- Establish a more complete history of the Wabanaki people in the state child welfare system.
- Collaborate with TRC Community and Convening Groups to provide opportunities for healing and deeper understanding for Wabanaki people and state child welfare staff.
- Improve child welfare practices and create sustainable changes that strive to create the best child welfare system.
- Ensure that lessons learnt by the Commission are not forgotten by providing recommendations to tribal and state governments.
- Promote individual, relational, systemic and cultural reconciliation.

Methodology

The Commission began operations in 2013 and its staff traveled thousands of miles to visit villages and communities of Maine to hear people’s testimonies. They reviewed state documents, interviewed over 150 people, and conducted 13 focus groups.

The Commission’s focus on healing was distinctive. A significant element of its operations was the ongoing partnership with the collaborative working group of current and former child welfare workers that had helped prepare the ground for the truth commission. This group, now called the Maine-Wabanaki REACH, was a vital partner as the Commission reached out to Indigenous and non-Indigenous people who could help create an accurate narrative. The group also helped the Commission present initial findings and recommendations across the state.

When the Commission submitted its final report it had gathered statements from native and non-native people, including native elders, foster parents, those formerly in the child welfare system, judges, tribal attorneys, former caseworkers, service providers and adoptees. Members from all four Wabanaki groups — the Maliseet, Micmac, Passamaquoddy and Penobscot — participated.

Findings and recommendations

The Commission found that Indigenous children were five times more likely to be

put into foster care than other children. However, recent federal reviews indicated that over half of Indigenous children did not have their native ancestry verified, meaning it was not possible to know how many Indigenous children were in the system.

The Commission found that conditions for Indigenous children and the fact of their disproportionate entry into care can be viewed in the context of continued cultural genocide, as defined by the Genocide Convention adopted by the United Nations General Assembly in 1948.

The Commission found that it was essential to study and name the root issues, past harms and hopes for the future. It found that not acknowledging these complexities hurts not only Wabanaki families and others involved in child welfare, but to some degree, all who call Maine home.

To improve Indigenous child welfare, the Commission found that Maine and the tribes must continue to confront:

- Underlying racism among state institutions and the public.
- Ongoing impact of historical trauma, also known as intergenerational trauma, on Wabanaki people, which influences the well-being of people and communities.
- Differing interpretations of tribal sovereignty and jurisdiction that make encounters between the tribes and the government contentious.

The Commission made 14 recommendations, including:

- Respect the sovereignty and commit to upholding tribal, state and federal protocols for both state and local levels.
- Honour “the Wabanaki choice to support healing as the tribes see fit and celebrate the cultural resurgence of the tribes within the Wabanaki confederacy so that both individuals and communities may be strengthened.”
- Develop legal and judicial training for the Department of Health and Human Services to recognize bias and build cultural awareness and accountability at all levels of leadership in ways that frame the child welfare system within the historical context.
- Create better support to non-native adoptive or foster families to strengthen Wabanaki children's cultural ties.
- Create more Native foster and therapeutic homes.
- Renew the child welfare workgroup to help create and implement new training methods.
- With the help of the Wabanaki tribes, create a policy to monitor compliance

with the child welfare legislation.

Follow up

Since the final report, work has continued on both individual and community healing, as well as on changing the child welfare system.

Lessons and features

- The creation of the Commission through a genuine partnership between the Indigenous nations and the State of Maine was both innovative and fundamental to its legitimacy.
- Even with this legitimacy, Indigenous commissioners were conscious of the diversity of the Indigenous communities and the fact that they were from only one of those communities.
- The joint working group of Indigenous and non-Indigenous current and former child welfare workers played a fundamental role in establishing the Commission. The fact that the Commission continued to work closely with this group throughout its operations greatly strengthened its capacity to work in Indigenous communities.
- The funding model was unusual, being fully funded by private donors and national foundations, and enhanced the independence of the Commission.
- The Commission did not speak with Indigenous people in any Wabanaki languages. Although providers were given a choice to speak in an Indigenous language, almost all chose English.
- The Commission reported that it regretted that it did not connect as much as it intended with Wabanaki youth and teachers.
- The Commission operated under very tight time constraints and reported that this kind of undertaking requires many years.
- Some Wabanaki people felt that their communities were not ready to share these painful truths and worried about support being in place for statement providers.

California Truth & Healing Council (2019–present)

Background to the truth telling process

California is the US state with the largest Indigenous population. The 2019 Census indicated that 1.6% of the state population - or more than 650,000 - are “American Indian or Alaskan Native”, from 109 federally recognised tribes and a further 40 from groups seeking recognition.²¹

In the 1850s with the westward expansion of the United States, the Governor of California called for a war of extermination against the State’s Indigenous peoples. Wars and forced dispossession and relocation resulted in huge loss of life among Indigenous nations. Treaties were one tool of land acquisition by the state, but these were often coercive in nature and not honoured by the state. Assimilationist policies followed the mass violence and dispossession throughout the late nineteenth and deep into the twentieth centuries.

In June 2019, the Governor of California issued a formal apology to Indigenous peoples, signing an executive order issuing the apology and recognizing California’s history of discrimination against Indians. At a ceremony with Indigenous leaders, he said “It’s called a genocide. That’s what it was: a genocide. No other way to describe it. And that’s the way it needs to be described in the history books.... So I am here to say the following: I’m sorry on behalf of the state of California.”²² The executive order also established the California Truth and Healing Council.

The California Truth and Healing Council is the first entity of its kind in the United States tasked with such an expansive and broad-based undertaking. The Council is led and convened by the Governor’s Tribal Advisor and includes representatives from tribes, state and local agencies, and other relevant stakeholders.

Mandate

The mandate of the Council states that it is to bear witness to, record, examine

21. Quick facts California. 2019 official census. <https://www.census.gov/quickfacts/CA>

22. “It’s Called a Genocide”. Gavin Newsom apologies to Native Americans. San Francisco Chronicle. 18 June 2019. <https://www.sfchronicle.com/politics/article/It-s-called-a-genocide-Gavin-Newsom-14016400.php>

existing documentation of, and receive California Native American narratives regarding the historical relationship between the State of California and California Native Americans, in order to clarify the historical record of the relationship in the spirit of truth and healing. The Council is required to report annually and submit a final written report of findings by January 1, 2025.

Findings and recommendations

The final report will aim to reflect a holistic understanding of the historical relationship between California Native Americans and the State. It will be modelled on similar truth and reconciliation documents examining relations between governments and Indigenous populations, using an international human rights framework.

The Kellogg Foundation's national movement for Truth, Racial Healing and Transformation

In 2016, the Kellogg Foundation began developing a national movement for Truth, Racial Healing and Transformation. The foundation believed it was time for a comprehensive, national and community-based process to plan for and bring about change and to address the historic and contemporary effects of racism.

The movement seeks to expose deeply held, often unconscious, beliefs created by racism - primarily the idea of a hierarchy of human value which it says has dominated much western thinking through colonial eras and nation-building. The Kellogg Foundation has developed a framework of five areas of focus: Narrative Change, Racial Healing and Relationship Building, Separation, Law and Economy.

The movement focuses more on transformation than reconciliation, based on the analysis that the United States must fundamentally transform its foundational beliefs built on racial hierarchy. The foundation funds multi-sector collaborations at the community level. The movement includes partnerships with the First Alaskans Institute as well as a university in Hawai'i, addressing issues related to Indigenous peoples.

National Truth, Racial Healing and Transformation Commission

In early 2021 legislation was reintroduced to the US Congress calling for the establishment of the first United States Commission on Truth, Racial Healing, and Transformation. The Commission would examine the effects of slavery, institutional racism, and discrimination against people of colour, and the impacts of that history on laws and policies today. The Bill had been circulating for four years but gained new momentum in response to the public movement against police brutality against Black people following the killing of George Floyd.

Congress members introducing the bill said the Commission would be a major public education process, and a necessary first step to root out systemic racism in institutions, create proposals for addressing and repairing past harm, and build a more just nation. A number of state legislatures have formally called for the establishment of the national commission.

While the Bill centres on anti-Black racism, there are provisions on the experience of Indigenous peoples, including denying citizenship on their land; the federal boarding school policy that was intended to eradicate Indigenous cultures, traditions and languages; and land policies. The Bill also references the annexation of Hawai'i without the consent of the Indigenous inhabitants.

The Bill's framework reflects lessons from the Kellogg Foundation's work, as seen in the similarity of names and especially the focus on transformation. Separate legislation on reparations has been introduced, though the Commission is planned as a precursor for just reparations.

Grassroots organizers are already helping legislators draw up a blueprint for what the Commission could do, such as creating history lessons for American education systems, building monuments to honour underrepresented groups, and establishing safe public spaces for cultural dialogue.

Hawai'i

Background

The Indigenous peoples of Hawai'i, known as Kānaka Maoli, arrived at least 800 years ago. When the British navigator Captain Cook arrived in 1788, there were said to be up to one million Hawai'ians. By 1810, the unified Kingdom of Hawai'i was formed, and received international recognition. In 1893, the United States conducted an armed overthrow of the Kingdom and subsequently annexed it. In 1946, upon the establishment of the United Nations, Hawai'i was listed as a non-self-governing territory. Despite becoming a state in 1959, in 1998 a report by the UN Special Rapporteur on Indigenous peoples recommended that Hawai'i be relisted as a non-self-governing territory.

Indigenous Hawai'ians became organised and active in the 1970s and '80s, and continue to call for recognition of their sovereignty. Today they represent 20% of the 1.2 million population.²³ However, Indigenous Hawai'ians are the only US federally-recognized Indigenous people barred from self-determination and self-governance, still without a government-to-government relationship with the Federal Government.

Past Initiatives

Initiatives to formally recognize the past include 1978 changes to the State Constitution of Hawai'i and laws relating to the Indigenous Hawai'ian community. In 1993 the US Congress passed legislation apologising for the overthrow and acknowledging that Indigenous Hawai'ians had not ceded their sovereignty. In 2011, the State of Hawai'i officially recognized the Native Hawaiian people as "the only Indigenous, aboriginal, maoli population of Hawai'i."

In 2014, the US Department of the Interior held hearings across Hawai'i, giving hundreds of Indigenous people a platform to express their opinion on formal recognition by the federal government. The hearings revealed that the vast majority opposed recognition, arguing that the US overthrow of the Kingdom of

23. International Work Group on Indigenous Affairs. Hawai'i.
<https://www.iwgia.org/en/usa/3644-iw-2020-hawai-i.html>

Hawai'i violated international law and that the Kingdom therefore never stopped existing.

In 2016, the Department of Interior released procedures to create a framework for formal recognition if Native Hawai'ians form a unified government and call for a government-to-government relationship with the U.S.

Proposed Blue Ribbon Commission

In early 2020, following large protests against a telescope project on sacred land, state legislators introduced legislation calling for a "Blue Ribbon commission" to address the legacy of the 1893 overthrow of the Kingdom of Hawai'i by the United States, and to develop a participatory and meaningful reconciliation process to help "establish a new relationship based on trust between the Native Hawai'ian people, the State of Hawai'i and the United States of America." The legislation cited the need to address discord about land use and stewardship, as well as environment, economy, culture and science.

Responses were varied, including criticism of the bill for failing to address the issues facing Indigenous Hawai'ians, and for coming more from state government than Indigenous leaders and communities. A commission has not yet been formed. Hawai'i and its Indigenous peoples are also mentioned in the draft legislation for a national Truth, Racial Healing and Transformation Commission.





CHAPTER

13

AFRICA

*Family members outside the
Tazmamart military camp in Morocco
hold pictures of a relative jailed
following coup attempts in 1971-1972.
October, 2000.*

*(Photo by Abdelhak Senna/AFP via
Getty Images).*

Morocco

Equity and Reconciliation Commission (2004–2005)

Background to the truth telling process

After independence from France in 1956, Moroccan authorities arbitrarily detained, tortured and “disappeared” thousands of citizens. They also responded brutally to protests and strikes, causing many civilian deaths. Collective punishment was common for several decades. In 1975 war broke out in Western Sahara between Morocco and the Sahrawi Polisario Front. The fighting was marked by the disappearance, arbitrary detention and torture of thousands more people. This period of more than 40 years of repression and human rights violations became known as the “Years of Lead.”

The Amazigh are Indigenous peoples in Morocco, self-identifying and recognised by the Moroccan state, and are also in other North African countries. Population estimates vary. The official 2016 census found that 28% of the population of 37 million are Tamazight speakers. However, Amazigh communities dispute this and claim figures of up to 65-70%.²⁴ Despite such significant population numbers, dominant Arabic-Islamic narratives in the country fail to recognize the Amazigh cultural and linguistic identity. Due to their distinctiveness and refusal to assimilate to the majority culture and language, the Amazigh have suffered political and cultural marginalization. Land

24. International Work Group for Indigenous Affairs. Morocco.
<https://www.iwgia.org/en/morocco/4233-iw-2021-morocco.html>

expropriation and annexation, and damage to land and waterways by mining are also issues, a pattern dating to colonial era practices.

In 1958, 1960, and 1973, the government responded to uprisings by Amazigh tribes with brutal repression, resulting in the deaths of many Amazigh activists and the demolition of their homes. In 1994 the government clampdown on demonstrations backfired, strengthening support among civil society and the media for Amazigh demands for the recognition of their cultural and language rights. In 2001, King Mohammed VI established the Royal Institute for the Amazigh Culture to promote the group's language and identity.

Moroccan civil society campaigned for an independent truth commission as part of a comprehensive approach to dealing with the past. The Equity and Reconciliation Commission (ERC) was established not after a change in government, but as part of a gradual process of change led by the existing monarch. The ERC was the first truth commission in the Arab world.

Mandate

In 2004, the ERC was established by royal decree. While the Commission does not have the word “truth” in its name, the preamble of the decree calls the new body “a commission of truth and equity.” The government also made it clear that it saw the ERC as a significant step in the democratic transition of Morocco.

The mandate of the ERC was to investigate human rights violations during a 43-year period from independence in 1956, and to identify institutional, but not individual, responsibility for those wrongs. It was tasked to establish the truth about past violations, provide reparations to victims and families, and recommend measures to prevent future violations. The ERC was not especially focused on Indigenous peoples though it considered abuses against them within its broader mandate.

Methodology

The ERC's 17 commissioners included only one woman. Many commissioners were former political prisoners. The ERC divided its work into investigations, reparations and research. The investigations included public and private hearings, archival research, and interviews with past and present government officials. To reach as large an audience as possible, a series of themed seminars were also broadcast on state TV. However, during the seven national public hearings no perpetrators came forward to give testimony and the victims had to sign a pledge that they would not name those who had arrested and tortured them.

Findings and recommendations

The ERC resolved 742 cases of enforced disappearance.

The ERC found that repression and excessive use of force took place during the peak of Amazigh rights activism in the 1990s. Victims were identified and recommended for compensation by the ERC. The Commission also recommended the adoption of socio-economic and cultural development projects tailored to a number of cities, including predominantly Amazigh regions like the Rif and the middle Atlas. The ERC made wide-ranging recommendations on reparations for both individual victims and victim groups.

The report also pointed to the need to strengthen constitutional protection of human rights, as well as other legal and judicial protections.

The ERC failed to meet the expectations of many Amazigh people. Many argued that by considering the experiences of the Indigenous peoples within the framework of general human rights abuses, they were marginalised.

Follow up

- The National Council on Human Rights was tasked with managing the follow up on the ERC's recommendations.
- As effectively built into the design of the mandate, there was no effort to pursue criminal accountability of those responsible for human rights violations.
- Reparations were a major feature of the follow up. Individual and collective reparations programs were implemented - individual reparations involved both monetary payments and healthcare. Collective reparations focused on communities especially hit by violence, centred on social and economic programs - this meant that some programs did reach Amazigh communities.
- One important element of individual reparations programs was that they acknowledged women's rights to reparations when their spouse had been forcibly disappeared - contrary to national laws about women's rights of inheritance.

Lessons and features

- The ERC was considered a significant step as the first truth commission in the Arab-Islamic world.
- The ERC was also unusual at the time as it was established by a sitting monarch who continued in power - it was to be part of a gradual, managed transition.

- However, not all in the Moroccan human rights community were satisfied with the mandate that precluded prosecutions of perpetrators. Civil society organisations even organised alternative public hearings during the period of the ERC, where perpetrators were named.
- For the Amazigh people, the broad focus on abuses against all of those perceived to be a threat to the government limited the ERC's capacity to examine the specific roots of violations against Indigenous peoples. This limitation is an important consideration for truth commissions that consider violations against Indigenous peoples among other victims.
- The process of the ERC seems to have had little impact on the way the state of Morocco treats the rights of Indigenous Sahawari people of the Western Sahara region claimed by Morocco but recognised by the United Nations as a non-self-governing territory.

Kenya

Truth, Justice and Reconciliation Commission (2008–2013)

Background to the truth telling process

Kenya's history since independence from Britain, in 1963, has been marked by ethnic conflicts, semi-repressive governments, marginalization and political violence. Post-election violence in 2007 caused approximately 1,500 deaths, 3,000 rapes, and 300,000 people left internally displaced. The two parties signed a National Accord in 2008, following mediation by the African Union Panel of Eminent African Personalities chaired by Kofi Annan. The Truth, Justice and Reconciliation Commission was part of the accountability component of Accord.

There are more than 25 Indigenous communities in Kenya, and relationships among other tribal communities are complex. People who identify with the Indigenous movement are mainly nomadic herders and hunter-gatherers, as well as some fishing villages and small farming communities.²⁵

Indigenous communities experienced human rights abuses during the British colonial era (1895–1962), including displacement from their lands. Many colonial era practices continued under the modern nation-state, including violations of land rights related to mining and

25. The Indigenous World 2021. International Work Group for Indigenous Affairs.
<https://www.iwgia.org/en/kenya/4228-iw-2021-kenya.html>

logging practices.

The 2010 Constitution contains a progressive Bill of Rights that makes international law a key component of the laws of Kenya and guarantees protection of minorities and marginalized groups. The Bill of Rights does not explicitly refer to Indigenous peoples, though the definition of marginalised community includes them. Kenya has no specific legislation on Indigenous peoples and has yet to adopt the United Nations Declaration on the Rights of Indigenous Peoples, after abstaining during the initial vote. It has not ratified ILO Convention 169.

Mandate

An Act of Parliament created the TJRC to investigate gross human rights violations and other historical injustices in Kenya between 12 December 1963 and 28 February 2008. The Commission aimed to contribute to national unity, reconciliation and healing.

The TJRC had the power to investigate, analyse, and report on gross violations of human rights, economic crimes, illegal acquisition of public land, marginalisation of communities, ethnic violence, and the context in which the crimes occurred. The TJRC's power to investigate economic and public land crimes included inquiring into perceived economic marginalisation of communities.

The Commission was also tasked with educating the public about its work. It could recommend prosecutions, reparations, institutional changes, and amnesty in exchange for truth for perpetrators who did not commit gross human rights violations. The TJRC's two-year operational mandate was extended three times.

Methodology

As part of the Commission's mandate to look into historical injustices and gross violations of human rights, it took measures to ensure that minority groups and Indigenous people participated in its processes and that their situation was considered.

The TJRC took individual testimonies from victims of human rights violations and held public hearings. The Commission took statements from individual members of minority and Indigenous groups, heard their testimonies during its public hearings, and as well as received submissions prepared jointly by members of these groups. The Commission also heard evidence from experts on minorities and Indigenous peoples during a Thematic Hearing to look deeper into patterns, causes and consequences of abuses against these groups. The Commission also undertook a comprehensive review of academic papers and reports by organisations,

including the United Nations, on the subject of Indigenous and minority rights globally and in Kenya.

The TJRC's credibility was affected by controversy surrounding its Chairperson, himself linked to gross human rights violations. There were calls from him to step down from Archbishop Desmond Tutu, a request for court orders preventing him from entering the Commission's offices, and allegations and counter-allegations until he stepped down in 2010.

Findings and recommendations

The Commission found alongside a focus on ethnicity in any attempt to understand historical injustices in Kenya, it was important to understand the violations suffered by members of minority groups and Indigenous populations in particular.

The TJRC dedicated one chapter of its Report (Chapter Three, Volume IIC) to "Minority Groups, Indigenous People and Gross Violation of Human Rights". The Report analysed the context of Indigenous peoples in Kenya in light of international laws and standards, African institutions such as the African Commission, and the Kenyan legal framework, including the 2010 Constitution.

The TJRC found that systematic discrimination of minority and Indigenous people has taken varied forms in Kenya. However, three forms stood out: lack of formal recognition, violation of rights relating to citizenship, and negative public portrayal.

The TJRC found a broad range of gross violations against Indigenous peoples, including direct violence, including:

- **Collective punishment:** Collective punishment by the state took place mainly in Northern Kenya and in the context of security operations or disarmament. The practice included the massacres of civilians. Many other serious violations of human rights occurred during security operations, including sexual violence, torture and denial of social and economic rights.
- **Violation of land rights:** Indigenous pastoralists and hunter-gatherers in Kenya have been affected most severely by land loss, land fragmentation and forced evictions. The result has been increased marginalisation, deepening poverty, and cycles of conflict with neighbouring communities and the state.
- The TJRC documented the impact of expulsions of the Indigenous Endorois and Ogiek peoples from their ancestral lands. It recommended recognition of the Endorois right of ownership of ancestral land, including access without restrictions and compensation for the losses they suffered.

- Violation of right to development: Significant negative social, economic, cultural and environmental impacts on Indigenous communities arose from port development, hydro-electric and geothermal projects, logging and mining, and other development projects.
- Political participation: Indigenous people were under-represented in all levels of government, resulting in a lack of voice and decision-making power.
- Minority and Indigenous women: Minority and Indigenous women and girls are some of the most vulnerable groups in Kenya. It found that both inadequate security and oppressive security had negative impacts on minority and Indigenous women, ranging from loss of life and sexual violence to decreased access to traded goods and food.
- Access to socio-economic rights. Marginalised minorities and Indigenous communities in Kenya are much poorer than the rest of the population. Poverty is associated with lack of access to government and other services. Access to education for minority and Indigenous children is also a major problem.

Controversy surrounded the Land Chapter of the report after three commissioners alleged the contents were changed after the report was submitted.

Follow-up

- The final report was received with opposition by some powerful social forces. The government refused to widely publish the report, and court cases sought to expunge parts of the report and to block implementation of recommendations.
- Indigenous community expectations of the TJRC process were not met. Ogiek and Endorois claims remain unaddressed. The eviction of Ogiek people from the Mau forest in 2020 showed their continuing marginalization. Reparations for historical injustices and access to justice are also among the unaddressed claims of Indigenous communities.

Lessons and features

- The TJRC mandate was criticised as unwieldy and overly ambitious in seeking to cover 45 years of violence and repression, especially given limited resources and the high political tension surrounding its operations.
- Controversy surrounding the Chairperson harmed the credibility of the Commission, which did not have good relations with civil society.
- The issue of Indigenous rights with regard to land and resources can draw powerful opposition who will feel threatened by such a truth telling process with power to make recommendations.
- The final report, a document of 2,000 pages, was not very accessible to the

- public and was not widely published.
- Although Kenya has not endorsed the UNDRIP, the TJRC framed its discussion of the rights of Indigenous peoples within the international rights framework.
 - It is important to manage expectations as to whether a truth commission with a broad human rights mandate can effect change on longstanding human rights issues for Indigenous communities. Indigenous communities should develop clear strategies for how participation can contribute to their longer struggle for recognition and respect for their rights. Indigenous communities in Kenya did not feel that their expectations of the Commission were met.
 - Nevertheless, the TJRC did increase visibility for a number of Indigenous communities and their struggle to realise their rights.
 - The effectiveness of the TJRC's outreach operation was questioned.





CHAPTER

4

ASIA — PASIFIC

Members of the Tuhoe tribe march to commemorate the signing of the 1840 Treaty of Waitangi in Auckland, Aotearoa. February, 2008.

(Photo by Hannah Peters via Getty Images).

Although about 70% of the world's Indigenous peoples live in Asia and the Pacific, for many recognition by the modern nation-state as first peoples is a major challenge. The vast area of the Asia-Pacific did not experience a dominant coloniser, unlike Latin America. Colonising countries included Portugal and Spain, followed by the Netherlands, France, Britain, Japan and the United States, as well as Germany in the Pacific. Not all countries were colonised.

The situation of Indigenous peoples in most small Pacific countries is different from those in Asia, as they make up the majority of the population. The settler states of Australia and New Zealand, each colonised by the British, also have a different Indigenous and colonial context.

In September 2020, the UN Special Rapporteur for Indigenous Rights presented a report to the Human Rights Council with an overview of the situation of Indigenous peoples in Asia - which followed up similar reports in 2007 and 2013. The report focuses on issues relating to self-determination, governance and justice systems, lands, territories and resources, conservation, climate change; business and human rights, human rights defenders and the Sustainable Development Goals. The report highlighted major ongoing human rights challenges for Indigenous peoples across many Asian countries. These include lack of recognition of their status as Indigenous peoples, failure to protect Indigenous rights to land and resources - especially land grabbing practices and destruction of the environment through practices such as mining, logging, plantations and development projects like dams. It also found that Indigenous people are becoming criminalised when they seek to defend their rights.²⁶

This context of current human rights challenges is reflected in the long-standing history of denial and abuse of rights of Indigenous communities in many Asian countries, which have been exposed in some of the truth telling processes across the region.

26. Regional consultation on the rights of indigenous peoples in Asia: Report of the Special Rapporteur on the rights of indigenous peoples. Human Rights Council. 4 September 2020. A/HRC/45/34/Add.3. <https://undocs.org/A/HRC/45/34/Add.3>

Timor-Leste

Commission for Reception, Truth and Reconciliation, CAVR (2002–2005)

Background to the truth telling process

Timor-Leste was colonised by Portugal from the 16th century until 1975. Following a rapid and failed decolonisation process in 1975, Timor-Leste declared independence and was almost immediately invaded by neighbouring Indonesia. Indonesia occupied the territory for 24 years through intense military control. Timorese resistance was met with mass human rights violations, including major military operations such as aerial bombardments, forced displacement and related famine, massacres and killing, sexual violence and torture, as well as widespread social, economic and cultural rights violations. Between 100-183,000 people lost their lives.²⁷

East Timor - as it was then known - was listed by the United Nations as a non-self-governing territory from the 1960s, and this status did not change under Indonesian occupation. In 1999, following the fall of the longstanding authoritarian Indonesian leader Soeharto, the UN conducted an act of self-determination through a national ballot, resulting in a vote for independence. In the aftermath of the Indonesia military's violent response, the UN established a Transitional Administration until independence in 2002.

27. Chega! Final report of the Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR). <https://chega.tl/downloads/#chegareport>

The UN Transitional Administration human rights team worked with Timorese activists and local church leaders to hold consultations on transitional justice, leading to the creation of the Commission for Reception, Truth and Reconciliation (CAVR). At the same time, the Transitional Administration and later the independent Timor-Leste conducted a judicial process for serious crimes committed in the 1999 violence.

Timor-Leste is home to at least 30 different Indigenous language groups and cultures. Most of the population of Timor-Leste is of Malay-Polynesian and Melanesian-Papuan origin. In her 2019 visit to Timor-Leste, the UN Special Rapporteur for Indigenous Peoples noted that the vast majority of Timorese people are Indigenous.²⁸

Under Portuguese colonial laws of Indigenousness was associated with being “uncivilized”. In 1930, Portugal adopted the Colonial Act, which officially distinguished between *indigenes* (Indigenous Timorese) and *não indigenes* (this included whites, *mestiços* and *assimilados*). A person could gain *assimilado* status, for example, by learning Portuguese, doing military service and having “good character”. The stigma and divisions caused by the application of such terminology left a legacy.

Timor-Leste supported the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in 2007, and the 2002 Constitution contains several provisions that explicitly recognize the country’s customs, traditional values and cultural heritage. Timor-Leste has not ratified ILO Convention 169.

Mandate

The CAVR had a comprehensive mandate to examine human rights violations during the 24-year period from the end of Portuguese colonial rule to the end of the Indonesian occupation, as well as to promote reconciliation.

The CAVR did not apply a framework of Indigenous rights in its truth-seeking processes. However, its final report dedicated a chapter to the process of self-determination, focused on the struggle during the long era of Portuguese colonial rule and the Indonesian occupation. All seven national and 28 regional commissioners were Timorese.

28. Visit to Timor-Leste Report of the UN Special Rapporteur on the rights of Indigenous peoples. United Nations Human Rights Council. Forty-second session 9–27 September 2019. A/HRC/42/37/Add.2. <https://undocs.org/A/HRC/42/37/Add.2>

Methodology

While the CAVR was established under a UN administration law, the Commission conducted its operations after the restoration of independence. It had a wide-ranging mandate to seek the truth about human rights violations during the period of investigation.

The CAVR developed a process aimed at maximising community participation, with teams operating in all 13 districts. Local public hearings were held in addition to eight national thematic hearings. The truth-seeking methodology was based on individual testimonies, with nearly 8,000 individual statements recorded as well as more than 1,000 interviews with experts and leading figures. This approach was complemented by thematic research, including forced displacement and famine, killings and disappearances, torture, sexual violence, children's rights and the role of the international community.

Community reconciliation mandate combining traditional leaders, law and practices with a truth commission and the courts

To promote reconciliation at the local level, Community Reconciliation Procedures (CRP) were conducted in villages across the country. CRP hearings were designed to help communities reintegrate large numbers of former militia members linked to less serious crimes. Serious crimes such as killings and sexual violence were under the remit of special court. The CRP linked modern law, the CAVR's authority, and local traditional law and cultural practices, known as lisan. Public hearings aimed to peacefully reintegrate low-level militia members, restore the dignity of victims and re-establish harmony in communities.

The regulation establishing the CAVR set out the basic steps for CRP hearings. The Commission also drew up procedural guidelines to ensure a degree of uniformity. These guidelines, however, provided flexibility for other steps or practices. The Commission encouraged communities to employ local cultural practices to promote ownership. The extent to which lisan rituals were used and the form they took varied greatly between communities. Some practices were common to most CRP hearings, however, such as the ceremony of nahe biti boot (spreading the large mat).

Hearings were chaired by CAVR regional commissioners, with sign-off by the judicial unit prosecuting serious historical crimes. Traditional law and cultural practices were thus linked to the modern judicial and transitional justice system.

There was a strong collective, community spirit to the hearings. Lisan rituals were often performed in preparation for the CRP hearing and to mark its opening.

This fostered the view that the CRP was not just being held for the benefit of the individual perpetrators, but as a community event of significance for the entire village. The chants and recitations of the lisan leaders were intended to be heard not just by the living audience but also by the custodians of the community, the ancestors, who, it was believed, would also be witnesses to the hearing.

Findings and recommendations

The CAVR issued a detailed final report of more than 2,500 pages, in three languages. It was accompanied by a summary version, a youth version, and publications on thematic public hearings, as well as radio and video products. The final report included a chapter detailing the experience, results and lessons of the CRP hearings. The final report is yet to be published in the Indigenous official language of Tetun, though other related publications and multimedia products have been.

Follow up

- The CAVR made recommendations with regard to applying lessons of the CRP process to the formal justice system, but these have not been acted upon.
- More generally, in 2017 - more than a decade since the close of the CAVR and follow sustained advocacy by civil society, a new entity was established by decree law to oversee the implementation of Commission recommendations.

Lessons and features

- The CRP hearings were an example of a hybrid system of justice incorporating the official system and traditional cultural processes and leaders. This approach helped make CAVR processes more relevant and meaningful in local communities, while ensuring they were accepted within the formal justice system.
- Even if the government had wished to deal with crimes handled by CRP processes through the courts, the fledgling justice system would not have had the capacity to deal with case numbers.
- The local level and character of the hearings was important, an example of a truth commission operating at village level with traditional leaders and customs playing a key role.
- These hearings also had a strong community and collective character to truth telling and sharing. They spoke of how conflict affected communities as well as individuals. This may be relevant in other situations.
- A number of participants in the CRP program commented that by incorporating traditional customs helped to restore lisan as a unifying force within communities, after it had been manipulated during years of conflict.

Solomon Islands

Truth and Reconciliation Commission (2009–2010)

Background to the truth telling process

More than 90% of the population of the Solomon Islands are Indigenous Melanesians. Around 120 languages are spoken on 347 islands. Approximately 85% of the population live on customary-owned land and practise subsistence livelihoods in village settings. Identity is largely centred around “wantok” or clan loyalties.²⁹

Spanish sailors were the first Europeans to contact the Solomon Islands in the late sixteenth century. Following British colonisation in Australia and New Zealand, Christian missionaries began settling from the 1850s. From the 1870s, local people were being exploited for labour on plantations in Fiji and Queensland, Australia. In 1886, Britain and Germany divided the islands between them. In 1893, Britain declared the Solomon Islands a Protectorate and colonial rule began three years later. The Solomon Islands was the location of major battles during the Second World War. Following the war, a nationalist movement emerged, achieving independence in 1978.

A conflict in the Solomon Islands, locally referred to as “the tensions,”

29. Observations on the State of Indigenous Human Rights in the Solomon Islands Prepared for United Nations Human Rights Council: Universal Periodic Review October 2020. Cultural Survival. <https://www.culturalsurvival.org/sites/default/files/Solomon-Islands-UPR-2020-Final.pdf>

took place between 1998 and 2003. The conflict was mainly between militant groups from the two most populated provinces, Malaita and Guadalcanal. An estimated 200 people died, and torture, abduction and sexual violence occurred. An estimated 35,000 people, or 10% of the population, were displaced. The conflict severely disrupted government services, divided the police force, and badly damaged the economy. The effects were felt across the population.

The conflict has been described as an ethnic conflict between two major island populations. However, the roots of the conflict also included socio-economic, development, political and land issues. While the conflict began with violence along provincial lines, over time much violence also occurred within the groups.

Churches, local leaders and civil society networks led much of the meaningful reconciliation at the local level, illustrating the trust accorded them as mediators and peacemakers. The conflict officially ended with the arrival of the Regional Assistance Mission to Solomon Islands (RAMSI) in July 2003. The Australian-led regional mission to restore law and order centred on three pillars of recovery: machinery of government, economic governance, and law and justice. The mission involved the removal of weapons, criminal prosecutions, institutional strengthening and capacity-building. Neither peacebuilding nor reconciliation were included in RAMSI's mandate, nor did it partner directly with the Ministry for National Unity, Reconciliation and Peace.

The Solomon Islands Truth and Reconciliation Commission (TRC) was first proposed at the height of the tensions in 2000 by a Peace Committee of the Solomon Islands Christian Association. A commission was seen as a means to build national unity through truth telling, reconciliation, and justice or amnesty processes. However, momentum waned as RAMSI focused on other justice initiatives. It took a change of government in 2006 to reignite interest in a truth commission. After a consultative committee concluded there was public support for a commission, a steering committee was formed. In 2008, parliament passed the TRC Act.

The Solomon Islands has not endorsed the UNDRIP or ratified ILO Convention 169. The Solomon Islands constitution makes few references to the rights of Indigenous peoples.

Mandate

The Commission was launched in 2009 by Archbishop Desmond Tutu, former Chair of the South African TRC. It began operations in 2010, initially for one year and extended for a further year. Five commissioners were appointed, including three Solomon Islanders from the three provinces most affected by the conflict. Two

commissioners were women.

The Commission's mandate was to "promote national unity and reconciliation" by examining the nature, antecedents, root causes, responsibility for, and the extent of human rights violations or abuses between 1 January 1998 and RAMSI's arrival on 23 July 2003. It was also mandated to consider the impacts on health, education, law and other sectors, and to devise policies to prevent similar situations in the future.

The Commission was also mandated to "work to restore the human dignity of victims and promote reconciliation" by providing an opportunity for victims and perpetrators to give personal accounts of their experiences, "creating a climate which fosters constructive interchange between victims and perpetrators".³⁰ The mandate stipulated that special attention be given to sexual abuses and the experiences of children. The Commission was not empowered to provide amnesties or compensation.

Methodology

The Commission took statements across the country and compiled them into a central database. It also conducted regional and thematic public hearings, which were televised and relayed on radio, research and investigations, closed hearings as well as a number of exhumations.

Findings and recommendations

A final report of about 1,000 pages provided a narrative of the conflict and its background including details from statements as well as testimonies given at public hearings. It gave an analysis of human rights violations and made recommendations to the government.

Follow up

- The report was delivered to the Prime Minister, who refused to release it to Parliament. It was released unofficially in 2013 by the main editor, an action which led to some controversy.
- More than a decade after the TRC completed its work, Parliament is yet to debate the report as civil society continues its advocacy for follow up.

30. Truth and Reconciliation Act, section 5 [2c].

Lessons and features

- Critics have argued that although the TRC fulfilled the model and functions of a truth commission according to international practice, it was not integrated with local approaches to reconciliation and peacebuilding. With only a token commitment to kastom (traditional culture) and Indigenous reconciliation practices, some said the Commission missed opportunities for local ownership.
- Some also argued that the TRC became distanced from the civil society and church network initiatives that helped create it. As it became more of a government-backed institution, it became more remote from local traditions and practices.
- One aspect of this tension was the relationship between truth telling about past injustices and Melanesian cultural traditions, in which people either do not talk about the past or frame it in kastom practices, such as symbolic forms of compensation.
- Some also argued that individual statement taking focused on human rights violations and data collection did not allow space for more traditional approaches to truth telling through storytelling.
- There were reports that truth telling for women was not easy and even considered inappropriate. For example, women might come forward to tell of the destruction of their food gardens, but remain silent about violence against them, particularly sexual violence.
- Action on reconciliation did not gain traction, in part because the TRC Act did not set out how reconciliation would be conducted, implying only that it would flow from truth seeking. This approach is in contrast to the program of community reconciliation processes implemented in Timor-Leste where a specific program was legally mandated.
- Many who gave statements told TRC staff they were motivated because they wanted to see recommendations implemented, possibly including compensation. A lack of political follow up to the TRC and its recommendations has had a negative impact on victims of violations who had expectations that testifying would lead to official action.

Malaysia

Native Customary Land Rights Inquiry 2010–2012 of the National Human Rights Commission (SUHAKAM)

Background to the truth telling process

The Orang Asli, Orang Ulu and Anak Negeri groups are the Indigenous population of Malaysia, comprising more than 70 subgroups. In 2015, it was estimated that Indigenous peoples represented about 13.8% of a population of 31 million. However, in the region of Peninsular Malaysia, the Orang Asli account for only 0.7% of the population. On the island of Borneo, in Sarawak the Indigenous peoples represent more than 55% and in Sabah about 70% of the population. The majority live in rural and in many cases, remote areas, although more and more live on the periphery of urban areas.³¹

Human settlement in the territories of the modern state of Malaysia dates back more than 40,000 years. Trade relations with China and India were established in the 1st century BC. In the first millennium CE, Malays became the dominant ethnicity on the peninsula. Small early states were greatly influenced by Indian culture, as was most of Southeast Asia. Islam came through the Arab and Indian traders in the 13th century, ending the age of Hinduism and Buddhism

31. International Work Group for Indigenous Affairs. Malaysia.
<https://www.iwgia.org/en/malaysia.html>

The Malay states were successively colonized by Portugal, The Netherlands and Britain from the sixteenth century before being occupied by Japan from 1942 to 1945. Sabah and Sarawak were ruled by the North Borneo Chartered Company and the Brooke Rajahs until the Japanese occupation, after which they became colonies of Britain. While Peninsular Malaysia gained independence in 1957, Malaysia was created when the mainland states, Singapore, Sabah and Sarawak formed a federation in 1963. Singapore withdrew in 1965.

Since it was established in 2000, the national human rights commission, SUHAKAM, received many complaints from Indigenous communities. Initially it dealt with these individually. Between 2002 and 2010 there were many unresolved cases related to customary rights to land - concerning encroachment and dispossession of land; land included into forest or park reserves; overlapping claims; and slow processing of requests for native titles or community reserves. SHUKAM decided that more than managing complaints on a case-by-case basis it was necessary to address the root causes through a thorough human rights inquiry. It initiated the National Inquiry into the Land Rights of Indigenous peoples in Malaysia.

Malaysia has endorsed the UN Declaration on Indigenous Rights. It has not ratified ILO Convention 169. In Sarawak and Sabah, laws introduced under British colonial rule recognising customary land rights and law are still in place. The Malaysian constitution also provides protections for Native Customary Rights. However, these protections are generally not fully implemented. Large-scale corporate mining and plantations receive government support and impinge on Indigenous rights. On the Malay Peninsula, the small minority of Orang Asli Indigenous people are under significant government pressure with assimilationist policies.

Mandate

The terms of reference for the national inquiry included to:

- Determine the nature and effectiveness of the constitutional, legal, administrative and political recognition of Indigenous peoples' right to land.
- Inquire into the land rights situation of the Indigenous peoples and the impact of recognition or non-recognition of their right to land on their social, economic, cultural and political rights, taking into consideration relevant international and domestic laws.
- Identify the constraints on full enjoyment of the Indigenous peoples' rights to land in accordance with their needs and requirements.
- Create and promote more awareness, knowledge, and understanding of Indigenous peoples' right to land and their way of life.
- Develop recommendations to the Federal and State Governments.

Methodology

SUHAKAM formed a panel representing Sabah, Sarawak and Peninsular Malaysia. The panel was assisted by consultants selected by the Commission based on their experience and expertise in Indigenous rights.

The Inquiry took a cooperative and responsive approach to developing solutions to land problems of Indigenous peoples. It involved government agencies, non-governmental organisations, Indigenous communities, private companies, and other interested groups and individuals, to identify and develop practical ways to improve the status of land ownership of the Indigenous peoples.

The Inquiry started with introductory sessions in the three regions, followed by public consultations with stakeholders. The Inquiry accepted written public submissions. Subsequent public hearings heard selected cases from the consultations and submissions. Partners from University of Malaya, University Malaysia Sabah and University Malaysia Sarawak conducted in-depth research.

The consultations drew overwhelming response, with more than 6,500 Indigenous peoples participating in the sessions. A total of 892 statements were recorded, including 407 from Sabah, 198 from Sarawak and 287 from the Peninsula. A total of 132 cases were selected for public hearings in the three regions. The Commission also engaged with media to promote public awareness on Indigenous peoples' rights to land and their way of life, increase transparency, and build pressure on the authorities.

The Inquiry was guided by United Nations definitions and principles when identifying the Indigenous peoples of Malaysia. While the Inquiry recognised that Malays are Indigenous to Malaysia, it was guided by the United Nations' working definition in focusing on the Orang Asli of Peninsular Malaysia and the native peoples in Sabah and Sarawak.

Findings and recommendations

In 2013, SUHAKAM published its report, which analysed Indigenous rights within the international legal framework, in particular the UN Declaration on Indigenous Rights. The report also analysed the constitution and state laws in relation to Indigenous land rights. In addition, it analysed judicial developments on land rights in cases Indigenous peoples brought against state agencies, the private sector or private individuals.

The Inquiry found that Indigenous peoples are among the most marginalised and disadvantaged groups in Malaysia. It concluded that despite provisions that

recognise their land rights in the Federal Constitution, domestic and international laws, systemic issues have denied Indigenous peoples the full enjoyment of their legal and human rights. Successive amendments of land laws, it found, failed to recognise Indigenous peoples' perspectives of land ownership and management, and therefore eroded customary rights to land. It found that the adoption of government policies that prioritise large development projects over the Indigenous subsistence economy was a further obstacle to Indigenous rights.

The Inquiry found that the rapid erosion of cultural identity and languages as a result of land loss has reached alarming levels. It highlighted that respect for the right to self determination depended on recognition of the close connection between Indigenous cultural and language rights and their rights related to their lands, territories and resources.

The report documented 18 recommendations under a number of themes: recognise Indigenous rights to land; remedy land loss; address land development issues and imbalances; prevent future loss of Native Customary Rights land; address land administration issues; and recognise land as central to Indigenous identity. It also recommended activities to implement these recommendations, emphasizing the full and effective participation of Indigenous peoples. A major recommendation was that the government form an independent National Commission on Indigenous Peoples to ensure land rights issues are effectively addressed.

Follow up

- SUHAKAM had planned to issue the report to Parliament, State Legislative Assemblies, the Federal Government and relevant State Governments. However, the dissolution of Parliament for general elections forced SUHAKAM to postpone the launch. When the new session of Parliament convened the report was not tabled. Instead, the Federal Cabinet decided to set up a National Task Force to consider the report.
- The Task Force completed its study in 2014 and came up with its own report endorsing most of SUHAKAM's recommendations, except for the creation of a Commission on Indigenous Peoples. The Task Force's report was submitted to the Cabinet in 2015, which approved the formation of a Cabinet Committee for the Land Rights of Indigenous Peoples, headed by the Deputy Prime Minister. However, practical action on the fundamental issues has been lacking.
- During the 2012-2016 period, SUHAKAM made Indigenous people's rights one of the core themes of its strategic plan and continues to advocate for follow-up on recommendations.

Lessons and features

- The Inquiry anchored its analysis of Indigenous peoples and their rights in the international human rights framework, in particular the UNDRIP and ILO Convention 169. This process of applying the international legal framework on Indigenous peoples within a national context is especially significant in Asia.
- The media, particularly the local media, played an active role throughout the process. However, media self-censorship resulted in lower coverage than the Commission had expected.
- The Inquiry was seen as a major empowering platform for Indigenous communities, helping them to mobilise to protect their customary land.
- Implementing recommendations remains a challenge, and the fundamental issue of genuine recognition of Indigenous land rights at all levels of government remains unresolved.
- SUHAKAM has continued to include Indigenous rights as a key area of its work.

Indonesia

National Inquiry on the Rights of Indigenous Peoples to Their Territories in Forest Zones, by the National Human Rights Commission

Background to the truth telling process

Indonesia's population of around 260 million people is spread across more than 13,000 islands. There are an estimated 50-70 million Indigenous peoples in the country.³²

Centuries before Europeans arrived, the archipelago was home to coastal trading states and inland agrarian states. The first Europeans to establish themselves in Indonesia were the Portuguese in 1512. In the 1590s, Dutch traders began travelling to the archipelago, leading to the Dutch East Indies Company controlling most of the territory. The Netherlands government took over colonial power after 1800. The Dutch colonial state expanded large mining and agricultural practices, initially in Java and from the second half of the nineteenth century in the "outer islands" as well. In the early twentieth century an Indonesian nationalist movement emerged, leading to a diplomatic and armed struggle for independence. Japan occupied Indonesia during the second world war. Indonesia proclaimed independence in

32. The Indigenous World 2021: Indonesia. International Work Group for Indigenous Affairs. <https://www.iwgia.org/en/indonesia/4224-iw-2021-indonesia.html>

1945, and was recognised by the Netherlands four years later.

The Indonesian Indigenous rights movement began in the 1970s and '80s. In 1999, following the fall of President Soeharto and his repressive New Order regime, the Indigenous Peoples Alliance of the Archipelago (Aliansi Masyarakat Adat Nusantara, or AMAN) was established and today has 2,366 member communities.

The government recognises 1,128 ethnic groups. However, in 2012 it told the United Nations that the concept of Indigenous peoples does not apply in Indonesia.³³ This position is contrary to significant court, legislative and government actions. In 2013, the Constitutional Court affirmed the constitutional rights of Indigenous peoples to their lands and territories, including their collective rights over customary forests. The Court used the UNDRIP and various human rights instruments, including ILO Convention 169, as references. The third amendment to the Indonesian Constitution recognizes Indigenous Peoples' rights (Articles 18 B-2 and 28 I-3).

The Ministry of Social Affairs identifies some communities as “komunitas adat terpencil” (“geographically isolated customary communities”), effectively identifying them as Indigenous peoples. In more recent legislation, there is implicit recognition of some rights of Indigenous peoples, where they are referred to as Masyarakat Adat or Masyarakat Hukum Adat. Indonesia has endorsed the UNDRIP, but has not ratified ILO Convention 169. Despite progress, full recognition of Indigenous peoples remains a major challenge.

The modern state's land policies significantly affect Indigenous people's rights. In some areas, the state's division of lands into “forest” and “non-forest” zones, as well as designated uses for the lands, was carried over from the Dutch colonial period. From the 1960s, Soeharto's New Order regime asserted sole rights to all “unowned” lands and the resources within them. Between the early 1970s to early 1980s, nearly 70% of Indonesian land was designated as the forest zone and the government divided areas into conservation areas, protected forests and production forests - ignoring Indigenous peoples' traditional lands. The government issued licenses for logging concessions, timber plantations, and mining operations and converted forest land for other commercial ventures. There is also a widespread pattern of government at various levels criminalising Indigenous peoples who defend their lands and territories.

The National Human Rights Commission estimates that 20% of the complaints it

33. Submission to the United Nations Universal Periodic Review of Human Rights. Indigenous Peoples' Alliance of the Archipelago (AMAN). May 2017. https://www.upr-info.org/sites/default/files/document/indonesia/session_27_-_may_2017/aman_upr27_idn_e_main.pdf

receives are related to land disputes.

The Commission launched an inquiry in response to a 2012 decision of the Constitutional Court. This judicial review of forestry laws created momentum to recover the status of Indigenous peoples' rights to traditional territories. The Commission argued that this decision marked a significant point of state recognition of Indigenous peoples and their rights, especially to Indigenous territories, in line with the principle of human rights.

Indonesia has endorsed the UNDRIP, though it has not ratified ILO Convention 169.

Mandate

The Commission launched the inquiry into the rights of Indigenous peoples to their territories in the forest zone because the problem was widespread across Indonesia; the issues were complex and multi-faceted; and recent laws and regulations were conducive to remediation and strengthening rights of Indigenous peoples. The Commission also stated that one objective of the Inquiry was to educate the public on Indigenous rights, through public hearings and a media campaign. The National Inquiry was carried out in cooperation with the National Commission on Violence Against Women and supported by civil society organizations, including AMAN.

Methodology

The Inquiry was the first ever pro-active national inquiry by the Commission. Forty cases were selected for public hearings in seven regions: Sumatra, Java, Kalimantan, Sulawesi, Bali - Nusa Tenggara, Maluku and Papua. The cases were selected based on region and type of forestry problems, such as conservation, forest production, conversion to non-forestry production and mining.

The Inquiry also organized research and policy studies, conducted regional and national public hearings, and a public education campaign through media outlets.

Findings and recommendations

A final report in March 2016 was followed by three books: Indigenous Women's Rights Violations in the Forest Management, Agrarian Conflict and Indigenous Peoples in the Forest Zone, and National Inquiry Learning Experiences Blazing the Trail for Resolution of Human Rights Violations.

The Inquiry found that violations were often of a structural nature that were frequently overlooked. It found that conflicts involving Indigenous peoples in

areas claimed as state forests have a high intensity and tend not to be resolved. Individual and collective rights of Indigenous peoples were violated, with women and children put in the most vulnerable situations.

The Inquiry found five root causes of violations against Indigenous peoples, which began in the colonial era and continue in the present:

- Lack of legal recognition and status as Indigenous people, which makes their legal rights and claims unclear or uncertain.
- Simplification, as government authorities take a limited administrative or legal approach to the problems Indigenous peoples face concerning their rights over territories and forest resources.
- Development policy promoting economic growth has prioritised large economic interests over Indigenous territories, with the state apparatus and security forces protecting corporate interests.
- Inequity regarding the rights of Indigenous women.
- Inadequate capacity in institutions with the authority to resolve conflicts, and also those given mandates to resolve conflicts given to entities with a conflict of interest.

The report proposed immediate actions and made policy recommendations to the President, House of Representatives, Ministry of Environment and Forestry, the military, police and other agencies.

The report recommended that the President create an independent institution under his office to deal with the recognition, respect, protection and promotion of the rights of Indigenous peoples. It called on the President to implement the Constitutional Court decision as a way to settle disputes related to Indigenous peoples' rights in the forest zone. The report also recommended that parliament ratify the Bill on the Recognition and Protection of Indigenous Peoples Rights, as mandated by the Constitution. Detailed recommendations targeted government ministries, agencies and actors.

Follow up

- There has been virtually no implementation of the recommendations. Indigenous human rights defenders continue to be arrested for defending their traditional lands.

Lessons and features

- The Inquiry was established and conducted with support from Indigenous peoples through AMAN. Partnering with National Commission on Violence

Against Women and civil society organisations also strengthened the process. The Inquiry aimed to help maintain momentum for the recognition of Indigenous peoples and their rights, a root problem behind violations.

- Public hearings aimed to raise public awareness and provide a restorative effect for Indigenous peoples whose rights had been violated. This was an innovative approach for the promotion of Indigenous rights in Indonesia, and more generally in Asia.
- Despite the Commission's belief that there was an enabling legislative and political climate, recommendations have gone largely ignored and rights violations against Indigenous peoples continue. This outcome indicates the scale of the challenge, in particular when significant financial interests are involved.

Papua

Background to the truth telling processes

Papua is a territory in the Asia-Pacific region bordering Papua New Guinea, whose Indigenous people are of Melanesian background in more than 250 Indigenous language groups.³⁴

Tensions between Indigenous Papuans and the Republic of Indonesia are connected to past struggles for decolonisation. The Netherlands colonised the territory in 1898, a late addition to the Dutch East Indies territories that prefigured Indonesia. When the Netherlands recognised Indonesia's independence in 1949, the status of the Papuan territory remained unresolved. Under the 1962 New York Agreement, the territory was to be transferred to the United Nations Temporary Executive Authority known as UNTEA. The agreement also required that an "Act of Free Choice" be held by 1969, with all adults eligible to participate in the "act of self-determination to be carried out in accordance with international practice."

On 1 May 1963, UNTEA transferred authority over the territory to Indonesia. In the lead-up to the referendum, many Papuan leaders were detained, tortured, exiled, or killed as Indonesian forces suppressed efforts to organise around self-determination. Indonesian authorities persuaded UN officials to agree to a vote in which only 1,026 people were selected to represent the people of Papua. This selected group unanimously voted to be under Indonesian sovereignty. The territory was renamed West Irian (later changed to Irian Jaya in 1973), becoming Indonesia's 26th province.

Indigenous Papuans contested the political status of Papua from the

34. Indigenous World 2019: West Papua. International Work Group for Indigenous Affairs. <https://www.iwgia.org/en/indonesia/3441-iw2019-west-papua.html>

outset, denying there had been a genuine act of self-determination. Resistance took the form of armed separatism, political declarations, flag raisings, peaceful demonstrations, exile abroad, destruction of property and hostage taking. Military repression was used to quell dissent, targeting not just armed separatists but also civilians in conflict areas, peaceful demonstrators and political and Indigenous leaders.

Mass migration from within Indonesia caused the percentage of the Indigenous population decline to around 50%. The region is also rich in mineral resources and is home to the largest gold mine and the third largest copper mine in the world. The enormous multinational-owned Grasberg gold and copper mine is a major revenue earner for Indonesia, but has been the source of grievances for Indigenous people. Local communities have been marginalised on their own lands and seen little benefit from the mine. The mine has become a target for conflict, and security services by Indonesian military and police have further militarised relations with Indigenous communities. Resource activities such as logging and palm oil plantations have also driven migration and taken up large tracts of land, impairing the forest-based livelihoods of many Indigenous Papuans.

From colonial times, policies and laws on land use focused on exploitation of natural resources and large-scale agriculture. From the 1960s the New Order regime expanded these policies based on the state's sole rights to "unowned" land. Indigenous land rights have been largely ignored. Despite resource riches, poverty is a major problem for Indigenous Papuans.

The fall of the authoritarian President Soeharto in 1998 brought profound political change across Indonesia. As an attempt to address grievances and weaken support for independence, the 2001 Special Autonomy Law offered greater political and economic power to Papuans. On paper, the law recognized grievances, such as the exploitation of natural resources and threats to Papuan identity, while still ensuring that Papua remained within the territory of Indonesia. For example, the law provides that 80% of provincial revenues are to remain in the province, Papuan culture is to be preserved, and in 2005 a Papuan People's Assembly was established. However, many Papuans believe the promises for reform under the law have been broken. A planned truth commission and human rights court are yet to be established in Papua; there has been little acknowledgement of past violations; and Papuans continue to feel that their existence, way of life, and connection to land are threatened.

In recent years the independence movement of Indigenous Papuans has raised its profile, leading to continuing crackdowns and human rights violations. The history of Papua's Indigenous peoples and the human rights violations against them is little understood in other parts of Indonesia.

Transitional justice initiatives

Special Autonomy Law 2001

The Special Autonomy Law of 2001 called on the provincial government to strengthen rule of law and justice with three measures: a Human Rights Court to deal with past human rights violations; a Papua Truth and Reconciliation Commission, to establish a history of Papua and determine reconciliation measures; and a Papuan branch of the National Human Rights Commission, which would have both a truth seeking and judicial accountability function.

The Papuan Truth and Reconciliation Commission was never established, nor was the Human Rights Court. In the absence of state action, in the past decade Papuan civil society, along with international and regional NGOs and the National Commission on Violence Against Women have conducted a range of initiatives.

Four truth telling processes

01

Joint Documentation Working Group study on violence against Papuan women since 1963 (2009–2010)

Background to the truth telling process

Indigenous Papuan women continue to experience widespread violence and other violations of their rights. From 2009 to 2010, a coalition of organisations conducted a study on violence against Papuan women since 1963. The Women's Working Group of the Papuan People's Assembly worked with the National Commission on Violence against Women and key civil society actors including the International Center for Transitional Justice.

Mandate

The scope of work was to:

- Conduct fact-finding and document cases of violence against women and gender-based human rights violations experienced by Papuan women from 1963 to 2009.
- Conduct analysis of cases of violence against women and human rights abuses of Papuan women.
- Prepare a report with recommendations.

The Working Group faced a challenge of prioritisation given the long timeframe (1963-2009), the breadth and complexity of the problem

of violence against Papuan women, the vast geographical area, and limitations of time and resources. It prioritised cases that: met specific criteria (large impact; able to illustrate events in other contexts); were associated with major events; were not yet revealed in existing reports or that could complement these reports. Cases included violence and human rights violations that occurred in the domestic sphere (family) and in public in the context of extractive industries, entertainment, militarism and development policy.

Methodology

Documentation locations covered almost all of the two provinces that make up Papua.

Research began with identification of women victims as the main sources of information. Individual interviews with women focused on narratives indicating the kind and extent of violence, its impact on the lives of victims and their families, how the victims escaped from or coped with the violence and its impact, the victims' ability to survive, and the hopes of women victims for their futures and those of their families and communities. Teams gathered testimony from 243 women and 18 men.

Individual interviews were supplemented with focus group discussions involving community members such as traditional leaders, village heads, elders in the village. Human rights reports and research publications were also analysed.

Documentation teams analysed information through gender and human rights perspectives, including reference to the Constitution, national policies and laws, and international law.

Findings and recommendations

The report, titled *Enough is Enough!*, provided a record of human rights violations against Indigenous women, as well as domestic violence, showing the link between gender-based violence in public and private spheres. The report had five key findings:

- The state's security approach prioritizes violence to paralyze opponents, without serious sanctions for perpetrators of human rights violations, including violence against women.
- Discrimination against women in Papua perpetuates violence against them.
- Natural resource conflict, political conflict, and power struggles from local to national levels increase both state violence and domestic violence.
- There is no serious response or political will from the government to resolve the conflict in Papua, or the problem of violence against women in

particular.

- Overlapping layers of trauma and powerlessness are not addressed, giving rise to a cycle of victimization.

The report set out detailed recommendations to the national and provincial governments, the military and police, the National Commission on Violence Against Women, the National Human Rights Commission, parliaments at provincial, district and local levels, the Papuan People's Assembly, religious institutions, tribal leaders, civil society organisations, media, and private companies and investors.

02 Civil society truth telling partnership (2011)

Background to the truth telling process

In 2010, following the Enough is Enough report, the Institute for Human Rights Studies and Advocacy (Elsham), a leading Papuan human rights NGO, partnered with the International Centre for Transitional Justice to undertake truth seeking within a transitional justice framework.

Mandate

Seeing the failure to implement a truth commission as called for in the Special Autonomy Law, a civil society truth-seeking process emerged to document violations from the 1960s to the post-1998 period.

The organisations aimed to make a twofold contribution to the debate: first, to apply a transitional justice framework to a review of Papua's recent history, including the Special Autonomy Law and the prospects for a resolution to continuing conflict; second, to compile testimony to demonstrate the reality and impact of past violations against Indigenous Papuans and to learn of their wishes for how to address them.

Methodology

Researchers collected testimonies from 108 people during a 3-month statement taking process at the district level. Four locations were selected for their comparatively high levels of conflict and human rights violations in the past. Researchers focused on gathering testimonies from Indigenous women. These testimonies detailed 749 violations against 312 men and 56 women. They also gathered evidence, including photographs and records, and compiled secondary information (such as ELSHAM reports) to provide context and corroboration.

The research team recognised that the number of victims interviewed did not reflect the severity or quantity of violations, but rather a combination of factors: the skill of the interviewer, the victims' sense of security and risk, and the challenging geographic terrain.

Findings and recommendations

The report, titled *The Past That Has Not Passed: Human Rights Violations in Papua Before and After Reformasi*, was published in 2012. The report organised findings into three periods:

- 1960–1969: before the Act of Free Choice referendum.
- 1969–1998: the period between the Pepera and the end of the Soeharto regime.
- After 1998: the reform era known as “Reformasi”.

Truth seeking focused largely on the violation of civil and political rights, in particular serious violence to the body. The report found that government efforts to address Papuan discontent have focused almost exclusively on economic development and social services. It has not effectively addressed abuse and violations by the Indonesian military forces over 50 years. The anger and resentment Papuans feel about the past has been intensified by a lack of interest from government institutions.

Research indicated that deep wounds caused by past abuses remain unhealed and pointed to the need for comprehensive transitional justice efforts, including truth seeking, criminal accountability, reparations, institutional reform and a focus on the rights of women. Victims were clear and firm that they wanted to know the truth and they wanted perpetrators held accountable. The report made wide-ranging recommendations for further truth telling and other transitional justice processes.

Follow up

There has been little follow-up by the state. In the decade since the report, Indigenous Papuan civil society organisations together with a regional human rights

NGO, Asia Justice and Rights, have conducted a series of truth-seeking programs and reports.

Lessons and features

- In the absence of action by the government, this civil society partnership maintained momentum by raising the voice of Indigenous victims and proposing ways forward.
- A creative partnership between two leading NGOs, one local and one international, applied a transitional justice framework to an Indigenous human rights crisis. The final report emphasised the transitional justice element, but with little reference to the UNDRIP as a framework.
- Some victims were unable to be interviewed due to concern about emotional trauma or threats.
- The mountainous terrain across three districts was a challenge to engaging with Indigenous communities.
- Researchers relied on local networks of traditional leaders, the church, and victims groups to make introductions and improve protection of respondents.

03

Papuan Women's Working Group: participatory action research into violence against women (2013–2018)

Background to the truth telling process

In 2013, Elsham formed the Papuan Women's Working Group (PWG), which came to include five Papuan NGOs. The PWG partnered with the regional NGO Asia Justice and Rights (AJAR) to conduct participatory action research. Over six years, 249 Indigenous women took part in three cycles of research.

Participants included subsistence farmers, small-scale traders of garden produce, weavers of traditional bags (noken), widows and single mothers, survivors of violence, women living in border areas, transmigration areas and plantations and people living with HIV/AIDS. In each location, facilitators built on existing relationships and networks nurtured by the church and local NGOs.

Mandate

The purpose of the research was:

- To strengthen the voices of women victims of violence.
- To counter impunity with practical local action.
- To strengthen understanding about the social-economic causes and impact of violence as experienced by Indigenous women.

Methodology

The group took a phased approach to the participatory research over six years, applying lessons and developing approaches with Indigenous women as the work progressed. This process was supplemented by a literature review, creation of a video documentary, and consultation with experts. The three phases of the work were:

- Developing participatory action research tools with survivors (2013–2014). In July 2013, AJAR and ELSHAM Papua developed a methodology with 11 survivors of violence over six months of field work.
- Mapping socio-economic challenges of Indigenous women (2015–2016). To strengthen data, PWG mapped violations of and challenges related to social, economic, and cultural rights in five locations.
- Organizing for action and advocacy (2015–2018)

After findings of systematic and widespread violations, PWG worked with Papuan women in four areas to research natural resource conflict, internal migration, state and domestic violence, and emerging forms of urban poverty. PWG then began action research with women along the border with Papua New Guinea and inside palm oil plantations. In 2018, PWG conducted another cycle of action research in four more areas. Participatory action research involved a greater level of engagement with women survivors than the sort of statement-taking generally used in truth commissions.

In all phases, the research adapted methods from AJAR's manual, *Stone & Flower: A Guide for Understanding and Action for Women*, to develop tools for work with Papuan women. Central to this method is the creation of safe spaces for Indigenous women to gather and share their experiences of violence, trauma and impunity.

Exercises aim to strengthen the understanding of women survivors, empower them, facilitate a collective healing process and build solidarity and networking among the participants. Because topics can be traumatic and sensitive, life-affirming tools were used to aim to help women survivors share with each other, providing space for self-reflection and mutual support for action.

PWG wove the Papuan context into this approach, using local languages, metaphors, symbols of nature and skills.

Findings and recommendations

In 2015, after the first research phase, the findings were compiled in a report titled *Enduring Impunity: Women Surviving Atrocities in the Absence of Justice*. Published with the National Commission on Violence Against Women, the report tells the stories of 60 women across Indonesia focusing on violations of their civil and political rights. Alongside Papua, areas of past conflict in the report were Aceh, Yogyakarta, Kupang and Buru Island. In 2017, again together with National Commission on Violence Against Women, PWG launched a narrative and video report based on the stories of 170 Indigenous women.

In 2019, AJAR and PWG published the report *This is Me. I Am Here*, compiling the themes and findings after six years of participatory action research. The report found that despite 18 years of special autonomy in Papua, many Indigenous women remain far from the benefits of development and face different forms of violence. The impact of violations has extended over years and, for some, decades. Key findings were:

- Violence against Papuan women continues; the promise not to repeat violence is unfulfilled. Forms of violence against women included domestic violence, state violence (such as conflict over natural resources and Indigenous lands, and sexual violence related to political conflict), and violence and discrimination experienced as children.
- The long-term impact of denial, neglect, and gender-based discrimination makes women even more vulnerable to marginalisation, ill health, and extreme poverty. The situation is worse when they do not have access to land or possessions, often lost due to conflict. The stigma against victims of gender-based violence is intergenerational, with children experiencing the negative effects.
- Violations of economic, social, and cultural rights further inhibit women's ability to access justice. Most participants had experienced violations of economic and social rights compounding their experience of violence. The destruction of property, lack of access to land and livelihoods, and exclusion from education, employment and basic services combine to undermine their well-being.

- Widows and single mothers are particularly vulnerable to violence and discrimination. Widows are often rejected by their husbands' families, leading to a loss of residence and inheritance rights that becomes a barrier to accessing capital and social services. Single mothers are also often excluded by their communities and their children face barriers to education, putting them in a cycle of poverty.
- Women victims need programs to deal with critical incidents, as well as long term trauma support, to rebuild a life free from violence. Few resources are directed towards addressing long-term effects of violence against women, signalling official neglect and a lack of willingness to address the past.
- Lack of tenure for natural resources and traditional lands blocks women's empowerment and increases vulnerability to continued violence. Access to natural resources and land has been shrinking, reducing women's access to gardens and forests that were the source of their livelihoods. This is an impact of violent conflict, state land use policies, detrimental social norms, or a combination of these. Participants referred to land access and management as a key source of strength and survival. Conversion of forests to plantations or other purposes has a major impact on the social conditions of Indigenous Papuans.
- Papuan women's poor health, due to heavy workloads and lack of access to health care, makes recovery from violence more difficult. Women must contend not only with the health issues caused by violence by the state or an intimate partner, but with health issues related to poverty and the struggle to survive.
- Papuan women victims of violence face barriers to support and services. No services or programs are available for women traumatized by political violence. Social stigma affects victims of domestic violence, leaving some too ashamed to seek help.
- Papuan women face obstacles in reaping benefits from development that could help them build a strong foundation for lives free from violence. Their socioeconomic disadvantage increases their vulnerability and weakens their ability to heal after violence and conflict. Papuan women lack information and are seldom able to participate in village-level consultations, planning meetings and discussions about development programs.
- Papuan women lack access to markets and receive no protection for their local products. Traders struggle to compete against migrant traders from other parts of Indonesia, and are increasingly marginalized in the marketplace, both physically and economically. They face challenges in finding affordable and reliable transport, cannot secure safe and strategic places to sell their goods, and face challenges in accessing capital and credit.
- Papuan women work hard to pay school fees, and those in more remote locations highlighted the lack of schools in or near their villages.

Follow up

- The partnerships behind this research and truth telling work led to the next phase in 2019-20, as documented in the women's research of land, forests and resources (see below).

Lessons and features

- PWG developed a framework for the recovery and strengthening of Indigenous women. This framework considers Indigenous women holistically and as active agents of change, and does not solely focus on judicial processes for recovery and rebuilding of lives.
- Participatory research methods provided women with ways to share experiences and stories in small groups offering solidarity and support. This interactive methodology differed markedly from the statement taking of many truth commissions. Recovery, healing and strengthening of Indigenous women was built into a truth telling process. While this approach may be more time and resource intensive, it can also reveal deeper truths of marginalised Indigenous women, and offers them benefits that truth telling by itself does not.
- Further, discussions among women promote broader conversations within families and communities, encouraging and enabling broader change.
- At the same time, transformation at the community level cannot solve all problems and should not aim to. Governments, traditional and religious institutions, the international communities, and civil society must make commitments and provide resources at every level to make real and lasting change.
- The long 6-year period of participatory methods and partnerships, allowed for adaptation and development of effective processes.
- Partnerships were key to the process, with the informal network of Indigenous women's organisations and AJAR, as well as the National Commission on Violence Against Women. In each location, facilitators also built on relationships and networks nurtured by the church and local NGOs working in the area.

04 Indigenous women research and report on land, forests and resources (2019–2020)

Background to the truth telling process

As described, outside forces have long exploited Papua's natural resources. The pattern of unsustainable extraction of resources, including the conversion of forests to commercial plantations, is not unique to Papua across Indonesia. However, in Papua, the Indonesian approach of militarization and resource extraction has been implemented with an overlay of racism and violence that surpasses even that imposed on Indigenous people elsewhere in the country.

These impacts have placed a particularly heavy burden on Papuan women, who have been pushed aside and victimized by government, corporations, migrants, and their own communities. The scale of land acquisition and conversion in Papua is massive. Civil society organizations have documented at least 21 plantations involved in the deforestation of 2.6 million hectares of land. However, there are still significant gaps in knowledge regarding the impact of large land acquisitions on Indigenous Papuan communities, particularly women.

Mandate

Despite the many groups working on conservation and Indigenous people's rights to natural resources, the voices of Papuan women remained unheard. The Papuan Women's Working Group (PWC) and Asia Justice and Rights (AJAR) conceived the research project to listen to and support Indigenous women affected by large land acquisitions in Papua. The aim was to strengthen the capacity to understand and articulate the root causes and impact of the acquisitions through participatory action research. The practical knowledge they produced would help Indigenous women advocate for change.

The work was also timed to prepare for the expiry of the Special Autonomy Law. Indigenous women were left out of initial

negotiations for the law, and research aimed to help them speak out on the law's negative impact, such as by calling for an assessment of patterns of racism, sexism and gender-based violence, which increased under 20 years of Special Autonomy.

Methodology

The research team held focus group discussions in five communities, inviting male and female traditional leaders, local authorities and others. The team explained the purpose of the research, gained insights into social issues and identified potential facilitators and participants for community-based research.

Based on these consultations, PWC adapted participatory action research tools outlined in the manual, *Stone and Flower: A guide to understanding and action for women survivors*. The team developed seven activities to engage in a deep listening exercise about the experiences of Indigenous women impacted by land and natural resource conflict. They sought to gain a fuller picture of women's lives before conflict, their relationship to and knowledge of the land, and the impact of conflict.

In late 2019, PWC and AJAR conducted several months of participatory research with 100 Indigenous women in five locations across the provinces of Papua and West Papua. They selected areas with natural resource conflicts, including regions where palm oil plantations have been operating for more than 20 years, as well as areas with planned land acquisition for development projects.

Research focused on the impact of land grabbing and forest loss, and how Indigenous women cope with and resist these threats. Teams organized community workshops with local leaders and women, as a videographer documented key moments and follow-up interviews. When the pandemic struck in 2020, the work was concluded remotely.

Because the topic is broad and seen as "not women's business", PWC and AJAR designed the research using inter-generational, participatory tools that were both enjoyable and meaningful, facilitating learning and action with the women. Through the process they tried to change the lives of the women who shared their time and stories.

Findings and recommendations:

In March 2021, PWC and AJAR published its 200-page report, *All the Birds are Gone: Indigenous Women Speak Out Against Forest Loss in Papua*. PWC and AJAR also created a pocketbook to inform Indigenous women of opportunities for advocacy to protect their land and forests.

The report divided findings from case studies into five groups:

- The deep ties between Indigenous women and their traditional lands.
- Vulnerabilities and social problems of Papuan women.
- Incursions of corporations onto traditional lands.
- Impacts of corporate activity on the natural world.
- The response of Indigenous women to threats.

The findings indicate that, fundamentally, Indigenous women must be involved in decisions and discussions around land, forests and natural resources in Papua.

Ten recommendations targeted national and provincial governments, the National Human Rights Commission and the National Commission on Violence Against Women, natural resource companies, religious institutions, traditional institutions and leaders, and civil society. Recommendations included calls for:

- The national government to undertake a thorough assessment of Special Autonomy based on open dialogue with Indigenous Papuan communities, placing women at the centre, rather than simply rolling over an unchanged Special Autonomy agreement.
- The national government to pass a law to enact the decision of the 2012 Constitutional Court to provide direction for how customary territory can be registered and not classified as state forest.
- The National Human Rights Commission to undertake a follow-up inquiry into the role and impact of security forces in natural resources conflict in Papua, with a view to ensuring an end to using military security in plantations and mining.
- The National Commission on Violence Against Women, as well as religious institutions and civil society, to do more work with Indigenous Papuan women.
- Indigenous institutions and leaders to enable Indigenous women's participation in customary law and practices related to land and resources, and to raise awareness about domestic violence.

Lessons and features

- This partnership between Indigenous organisations and AJAR was built on years of joint truth-seeking research and advocacy, applying and adapting lessons on methodology and joint work.
- The initiative documented participatory research and testimony about violations, while building the capacity of Indigenous women to advocate for their rights. It took a practical and strategic approach to empowering victims.

This civil society action on Indigenous truth telling took place largely in the absence of state and government commitment and action. While important in itself, such activities cannot be a substitute for official action and articulate the root causes and impact of the acquisitions through participatory action research. The practical knowledge they produced would help Indigenous women advocate for change.

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Lessons and features

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- The initiative documented participatory research and testimony about violations, while building the capacity of Indigenous women to advocate for their rights. It took a practical and strategic approach to empowering victims.
- This civil society action on Indigenous truth telling took place largely in the absence of state and government commitment and action. While important in itself, such activities cannot be a substitute for official action.

Bougainville

Background to potential truth telling processes

Bougainville consists of two main islands in the Pacific region, with a population of about 300,000 (2019 census) speaking 21 distinct languages and more dialects. There is significant cultural diversity within and between language groups.³⁵

Bougainville is geographically part of the chain of islands that make up the Solomon Islands, and the population but in the 1880s it became politically part of what was then known as German New Guinea. At the outset of the first world war in 2014, Australia took over German New Guinea, including Bougainville, and in 1921 the League of Nations made Australia trustee of New Guinea (combining former German and British New Guinea colonies). Bougainville was occupied by Japan in the second world war - at war's end Australia retook control and from 1949 administered Bougainville as part of what was then called the Territory of Papua and New Guinea.

When Papua New Guinea gained independence in 1975, Bougainville declared independence as a separate country but it received no international recognition and remained part of Papua New Guinea with limited self-governing powers.

The push for independence from “the mainland” stemmed both from cultural differences and grievances related to mining. A copper mine co-owned by multinational Rio Tinto and the Papua New Guinea government began production in 1972, but only 1% of revenues went

35. Bougainville: Beyond Survival. Cultural Survival Quarterly Magazine. September 2002. <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/bougainville-beyond-survival>

to the people of Bougainville. Claims of racial discrimination, worker mistreatment and environmental degradation exacerbated resentment.

In 1988, these grievances triggered violence both between the governments of Papua New Guinea and Bougainville and between Bougainvillean armed factions, leading to civil war until 1997. The death toll was as high as 20,000, or 10% of the population, with accounts of massacres, extra-judicial killings, torture, mass rapes and disappearances. In 2001, the Bougainville Peace Agreement amnestied fighters, and did not put in place any inquiries or transitional justice mechanisms.

Reports of the impact of the large-scale violence include damage across community relationships as well as ongoing trauma among victims and high levels of domestic violence against women, as well as continuing violence.³⁶ Further, a 2013 United Nations study indicated high levels of ongoing sexual and other gender-based violence by men against women both in domestic violence contexts as well as non-domestic settings - revealing that 62% of male respondents admitted to committing rape against women, and 14% to having committed gang rape.³⁷

Papua New Guinea has endorsed the UNDRIP, though it has not ratified ILO Convention 169.

Action since the peace agreement

Seven years after the peace agreement, the government of Bougainville called for a truth commission, but plans were abandoned as too risky as former combatants were strongly against it. In 2014, the government began providing assistance to families searching for those who disappeared during the conflict, but did not support justice or compensation measures.

During the conflict many communities undertook local reconciliation processes, using a mix of customary and Christian practices. These efforts were credited with helping communities create “peace zones”, while building pressure on combatants to join the peace process. In more recent years, women and youth activists and the Catholic Bishop of Bougainville have called for a truth telling process to help people and communities heal.

36. The challenges of research on post-conflict violence in Bougainville. Rachel Jewkes, Yandisa Sikweyiya, Nwabisa Jama-Shai. The Lancet. 9 June 2014.

[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60969-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60969-7/fulltext)

37. Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the UN Multi-country Study on Men and Violence in Asia and the Pacific. UN Women, UNDP, UNFPA, UN Volunteers. September 2013.

Lessons and features

- Despite demand for a truth telling process, safe conditions can take time after armed conflict, as demonstrated by the resistance of former fighters in Bougainville. Despite this, as the harm of past violence continues to be experienced in the community there are persistent calls for some form of truth telling.
- Violence continues to be a major challenge in post-conflict Bougainville, and the levels and patterns of gender-based violence require particular attention including in any transitional justice initiatives.
- The Catholic Church is a significant social as well as religious institution in Bougainville, with reports of around 80% of the population being Catholic, and has played an important role in discussions related to truth telling and reconciliation.
- During the conflict local reconciliation practices, based on traditional customary practices, proved more fruitful than centralised initiatives.
- Most Bougainville leaders see building linkages between customary and state power as crucial to developing sustainable state structures.

Philippines

Mindanao: Transitional Justice and Reconciliation Commission (2014–2016)

Background to truth seeking process

The southern Philippines has many ethno-linguistic tribes. Historically 13 were Islamized, while 32 others are recognised as the Indigenous peoples of Mindanao, or Lumad. Indigenous peoples make up 5% of the population of the southern Philippines.³⁸

More generally across the country, while the precise number of Indigenous peoples is uncertain estimates range to around 100 Indigenous peoples. The National Commission on Indigenous Peoples estimates that there are approximately 11.3 million Indigenous peoples, around 12% of the total population - while civil society estimates are higher.³⁹

Islam arrived in Mindanao in the 14th century, 200 years before the Catholic Spanish colonisers. Conflict arose from historical tensions between minority Muslim and Indigenous groups in the southern island of Mindanao, and the majority Christian population in the Philippines as a whole.

38. Philippines Indigenous Peoples. Minority Rights Group. <https://minorityrights.org/minorities/Indigenous-peoples-6/>

39. Ibid

When the United States took over as colonial power in 1898, it encouraged settlement of Christians to the fertile and resource rich island, displacing local Muslim and Indigenous peoples. Following independence, successive national governments pursued this policy until, by the 1960s, the Islamic and Indigenous communities were a minority in their own lands.

Islamic groups led an armed struggle for an independent state from 1969. The conflict raged for more than 40 years until the Comprehensive Peace Agreement on the Bangsamoro was signed in 2014.

During the conflict, an estimated 40,000 people lost their lives, with widespread human rights violations and an especially devastating impact on the Indigenous Lumad people. Many Lumad were caught in the middle of the conflict, subject to militarisation within their communities as well as targeted with extrajudicial killings and torture - both by Islamic armed groups and the state security forces. Thousands were displaced while fleeing violence. Many Indigenous victims of extra-judicial killings were known as opponents of mining, palm oil plantations, corruption and government abuses.

In 2016 - after repeated attempts at peace deals - the parties agreed to an open-ended ceasefire. The Bangsamoro Transition Authority was established in 2019 tasked with managing a three-year transition. The peace agreement rests on four complementary pillars, said to have equal priority: security arrangements, socio-economic development, confidence-building measures, and transitional justice and reconciliation. In 2014 the Transitional Justice and Reconciliation Commission (TJRC) was formed, the first official body mandated to examine the truth and promote healing and reconciliation among Mindanao's divided communities.

Notably, in the post Marcos era there have been some important legal and institutional protections put in place for Indigenous peoples, though political will for full implementation remains a challenge. These include the two provisions in the new 1987 constitution: requiring the state to "protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural wellbeing" Article XII (5); and for the state to "recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions." Article XIV (17). Further, in 1997 the Indigenous Peoples' Rights Act (1997) was passed providing some recognition of the right to self determination as well as native title rights including Ancestral Domain title. The National Commission on Indigenous Peoples was established under the Act.

The Philippines endorsed the UNDRIP, though it has not ratified ILO Convention 169.

Mandate

The TJRC was mandated to undertake a study and make recommendations to promote healing and reconciliation of communities affected by the conflict. It was tasked with proposing appropriate mechanisms, to

- Address legitimate grievances of the Bangsamoro people.
- Correct historical injustices.
- Address human rights violations, including marginalization through land dispossession.

The TJRC could recommend immediate interventions in support of reconciliation and the healing of physical, mental, and spiritual wounds. It could also recommend measures to address the causes of the conflict and to prevent their recurrence.

The TJRC emphasised in its final report that it was “not a ‘truth commission’ nor an ad hoc official fact finding body; it is an independent commission mandated to make a report and propose holistic measures to deal with the legacy of the past.” The body preferred the term “dealing with the past” rather than “transitional justice”, as it reported that it believed dealing with the past was the work of all of society, not only legal professionals.

Methodology

The TJRC developed a multi-pronged process in its truth seeking. A “listening process” underpinned the truth telling, to reach out to a broad range of conflict-affected communities in Mindanao. The process heard from more than 3,000 people in over 200 communities. In addition, the TJRC conducted expert consultations, policy interviews and academic research.

Four expert study groups assessed existing research on relevant issues. A strong gender approach was applied across all methods, and a senior gender adviser was a key member of the TJRC. Indigenous communities were one among many constituents of the TJRC. The TJRC did include Indigenous communities in its public engagement and in its research.

Findings and recommendations

The TJRC report was submitted to the government and the Peace Panels in February 2016. The detailed report included approximately 90 recommendations. While the TJRC did not separately consider the experiences of Indigenous peoples, it made important findings and recommendations on their rights in virtually all areas it examined, including:

- Self-determination lies at the heart of the historical grievances of both the Muslim Moro people and the Indigenous peoples of Mindanao. The nationalist approach of the dominant majority has been damaging, despite the fact that the Philippines had itself once waged an anti-colonial struggle based on self-determination.
- It is critical to find common ground between the Bangsamoro and Filipino discourses. At the same time, Indigenous peoples faced further challenges from Moro Muslim communities to respect their right to self-determination and claims to ancestral domain of lands and territories.
- Land dispossession is behind legitimate grievances, historical injustices, human rights violations and marginalization. These violations have arisen due to systematic violence by the state, a culture of impunity and state neglect. A root cause was the imposition of a monolithic Filipino identity by the state.
- Structural violence against Indigenous peoples begun under colonial regimes continued under the Philippine Republic with the aim of achieving involuntary absorption of the Indigenous peoples (and Moro Muslim peoples). This structural violence led to massive disenfranchisement, marginalisation and dispossession, which came to be seen as normal rather than an historic injustice.
- Land dispossession and the erosion of Indigenous governance reinforced the “civilising” claim of the state. Brute force has been used against those who resisted structural and cultural forms of violence.
- The dominant public discourse in the Philippines ignores and denies - or disparages - the historical and sociocultural claims of Indigenous peoples (and Moro Muslims), and does not recognise their right to self-determination. This is expressed in prejudice which makes Indigenous peoples second class citizens by exclusion in national narratives, including by the media and education system.
- Colonialism imposed the private property model over traditional stewardship of the land, with devastating effect on the economic life, social forms of organisation and cultural identity of Indigenous peoples.
- Indigenous peoples experienced double marginalisation, first by the dominant Philippine settler culture, and then by the Moro Islamic minority also struggling against domination. Further, Indigenous peoples suffered violence both at the hands of state security as well as “horizontal” violence by Moro armed groups.
- Neglect assumed many forms, from the failure of the state to provide basic public services such as clean water and electricity to land dispossession. The TJRC highlighted state neglect in its failure to fulfil its duty to defend the integrity of ancestral domains. At the same time, the TJRC found that government policies of intensive development, promoting large-

scale resettlement and agriculture, resulted in waves of dispossession of Indigenous people. Large internal migration further increased Indigenous vulnerability to discrimination by a dominant Christian majority intolerant toward different religions and cultural practices.

- To address the cultural-ideological legacy of the decades of conflict, the Philippines needs to recognise that diversity is among its most precious resources as a country. This is key to peace, democracy, security and development in the future.

In its recommendations, the TJRC called for a strategic all-of-government effort to deal with the past. Virtually all recommendations have implications for Indigenous peoples. Some called for finding ways to promote Indigenous culture and identities as well as diversity, including changes to curricula at all levels. A range of recommendations relate to empowering women, and one important recommendation is to ensure the representation of Indigenous (and Moro) women in national, regional and local bodies, as a means to foster non-recurrence.

The TJRC recommended the establishment of a National Transitional Justice and Reconciliation Commission, with a mandate to operate for six years with an option of a further three years. One of four areas of focus would be land dispossession in the conflict areas, explicitly including claims on ancestral domain, and support for the redesign of land services and their legal framework.

Follow up

The TJRC operated on a short timeframe, from late 2014 to early 2016. Importantly, this constraint helped create a dynamic of the TJRC feeding into an ongoing peace process with proposals for short, medium and long-term action.

However, four years after the TJRC report, follow-up is in limbo. The fundamental recommendation for a follow-on national commission has not been acted upon. While the war has ended, the situation remains highly insecure. The Covid-19 pandemic has resulted in calls to extend the 3-year transition.

While the Organic Law established following the peace agreement supposedly protects the rights of Indigenous peoples, in many areas Moro violence against Indigenous people continues, some of it tied to land conflicts. In 2021, there were many reports of attacks against Indigenous schools.

To fill the gap in lack of follow up by government, civil society organisations formed an Independent Working Group on Transitional Justice and Dealing with the Past. It focuses on capacity building for members of the interim government ministries and the public. The larger Philippines population has not become engaged in the

peace process and maintains its lack of understanding of the root causes of the conflicts in Mindanao.

Lessons and features

This is a rare transitional justice process in Asia which addresses Indigenous rights, and one that contains lessons for other countries. The TJRC:

- Deeply considered the rights of Indigenous peoples.
- Examined the historical context of successive colonial eras and the modern state.
- Prioritised the facts and impacts of land dispossession and displacement and made clear recommendations on Indigenous ancestral domain.
- Addressed the recognition of Indigenous self-determination within a modern post-colonial state that itself engaged in anti-colonial struggles, which is highly relevant to other countries in Asia as well as other regions.
- Developed strong relations with civil society in the Bangsamoro.
- Ensured a strong gender focus.

Other lessons included:

- Much work remains on truth telling as a basis for justice and reconciliation. For example, the government was reluctant to open its archives for fear of the effects on the present administration or national security.
- Indigenous peoples in Mindanao continue to face double marginalisation - at the hands of the Christian dominant culture of the state, as well as from the Moro Muslim community which dominates the new autonomous governance.
- The issue of land is both inherent in Indigenous rights and claims at the same time as it is violently contested including by powerful economic private businesses who have long been encouraged and enabled by the state. This creates a highly insecure and dangerous situation for Indigenous people pursuing their rights, which is echoed in other parts of Asia and other regions of the world. It is fundamental to resolving ongoing human rights abuses and protecting all rights of Indigenous peoples in Mindanao.
- The disappointing lack of follow-up by the central government, or engagement by national media and the wider Philippines' population, demonstrates the challenge facing Indigenous peoples, especially in areas considered remote from power.

Nepal

Background to truth telling processes

Nepal is a South Asian country spreading across the high Himalayan mountain regions to the plains bordering India. Its diverse population includes 59 formally recognised Indigenous (Janjati) communities who make up at least 36% of the population (2011 census). There are also many ethnic minorities and Hindu castes. Indigenous peoples have been traditionally marginalised in what was a Hindu Kingdom until 2007.

In 1996 a Maoist insurgency began and during ten years spread across the country, met by counter-insurgency tactics by government forces. Serious human rights violations by both sides to the conflict contributed to an estimated 15,000 dead, mostly civilians, and around 1,300 forcibly disappeared. Some Indigenous communities suffered disproportionately, for example the Tharu community on the plains.

The conflict ended amid a mass people's movement in April 2006. A Comprehensive Peace Agreement provided for a transitional justice process, which included a truth and reconciliation commission and a commission on the disappeared. After long delays and controversy, the TRC started work in 2016 and is yet to submit its final report.

Indigenous peoples were outspoken during peace negotiations and then the drafting of a new constitution. They were strong advocates for a new federal political system to reflect diversity and reduce marginalisation, as ultimately set forth in a new constitution in 2015.

Nepal has endorsed the UNDRIP and, following the 2006 peace agreement, ratified ILO Convention 169, the only country in Asia to do so. Nepal has recently established constitutional commissions focused on minority communities, with the Indigenous Nationalities Commission and the Tharu Commission focussing on Indigenous peoples.

Mandate

Five commissioners oversee the TRC, which has a mandate to investigate grave violations of human rights between 1996 to 2006 during the armed conflict. The TRC focuses on kidnapping or taking hostages; beating that causes physical disability; physical or mental torture; rape and sexual harassment; and property damage. The TRC does not specifically examine the impact of the conflict on Indigenous communities, but receives complaints from individuals.

The main controversy surrounding the mandate of the TRC, and its sister commission on enforced disappearances, has been that the legislation establishing them allowed for amnesty for grave violations. In 2015, before the Commission began its work, Nepal's Supreme Court ruled that the law be amended. They found the provisions on amnesty unconstitutional and contrary to Nepal's international obligations. However, the government did not amend the law. Victims associations, the National Human Rights Commission, national and international human rights NGOs, and the United Nations have criticised this aspect of the mandate and called for change. The appointment process for commissioners was also criticised as politicised, non-transparent and lacking in consultation especially with victims' groups.

The operational mandate of both commissions has been extended multiple times in light of slow progress, most recently in July 2021 by a new government.

Methodology

The TRC primarily receives complaints from victims of violations, and then conducts investigations. The TRC does not conduct public hearings or research projects. The TRC collected more than 60,000 complaints (and the commission on enforced disappearances more than 3,000 complaints).

However, the TRC has conducted very few investigations, due in part to limited technical capacity and funding. The Commission has also been criticised for failing to establish victim support and witness protection programs. It has yet to issue a report.

Lessons and features

- Credibility in the eyes of victims and the human rights community is fundamental to a truth commission's operations and success. The TRC has not had a good relationship with victims' associations or civil society, who claim it lacks integrity.
- The appointment process of commissioners, a key element of credibility, has

been criticised for lacking adequate consultations with victims' groups, lack of transparency and politicisation.

- Limited consultation with Indigenous communities is perhaps reflective of the lack of engagement with victims overall. This failing runs counter to the principles of the UNDRIP, as the work of the TRC affects Indigenous peoples.
- The limited approach to its methodology, combined with the limited ten-year investigation period, was unlikely to facilitate truth-seeking that would address the underlying causes of violations against Indigenous peoples.
- Prior to the latest one-year extension, an alliance of 49 victims groups, Nepali and international human rights organisations issued a statement reiterating that they would not engage with the TRC in its current form, specifically its approach to amnesties. They stated, "We believe that continuation of these dysfunctional commissions is a tactic to prevent victims' access to justice, delay the process, frustrate victims, and further entrench impunity."
- Observing these many criticisms, an important lesson is that national truth telling processes should adhere to international human rights standards. In relation to Indigenous peoples, the UNDRIP is the principal guide.

Taiwan

Background to the truth telling processes

In Taiwan there are around 570,000 officially recognised Indigenous people, or 2.4% of the national population, comprising 16 officially recognized groups. However, the figure excludes the ten Indigenous communities of Pingpu (“low plains”), who number around 400,000 and are denied official recognition.

Taiwan has been colonized by Spain (1626–1642), the Netherlands (1624–1662), Ming Dynasty loyalist Koxinga (1662–1683), the Ching Dynasty (1663–1895) and Japan (1895–1945). Following defeat in China’s civil war, the Republic of China was established there, though its status remains questioned and it is not a Member State of the United Nations. Taiwan is claimed by the People’s Republic of China, the Republic of China, and Taiwanese Minnan-speaking nationalists who want independence.

The period of Japanese occupation and the Kuomintang period following the second world war saw mass violence, serious violations and marginalisation of the Indigenous people, including through forced assimilationist policies. The ruling Kuomintang imposed martial law until 1987. As Kuomintang domination ebbed in the 1980s, Indigenous peoples mobilised to claim their rights to land and culture. Laws and government initiatives have since been designed to protect and promote Indigenous rights, though implementation has often been patchy.

In 1994 the constitution was amended to recognise Indigenous peoples as the “original inhabitants.” Since 1996 the Council for Indigenous Affairs, a cabinet level entity, has been the lead interface between government and Indigenous peoples. In 2005, the Indigenous Peoples’ Basic Law granted a wide range of rights. In 2016, the new government initiated transitional justice measures.

Since Taiwan is not a member of the United Nations, it has not been able to vote on the UNDRIP or ratify ILO Convention 169.

Transitional justice measures

Indigenous Historical Justice and Transitional Justice Committee

In August 2016 newly elected President Tsai Ing-wen issued an historic apology to Indigenous peoples in Taiwan. The same year, the government formed the Indigenous Historical Justice and Transitional Justice Committee within the Presidential Office. The mandate is not time-bound and aims to “rebuild an Indigenous historical perspective, progressively promote Indigenous autonomous governance, restore Indigenous languages and cultures, and improve the livelihood of Indigenous communities as well as to pursue justice and serve as a platform for consultation between the government and the various Indigenous peoples on an equal footing.”

The Committee comprises one representative for each of the 16 officially recognised Indigenous peoples and three representatives for all plain (Pingpu) Indigenous peoples, along with two from relevant government agencies and seven scholars and experts. The Committee has met 15 times since its inception. There has been some criticism of how Committee members are chosen, as well as on the strength of its mandate.

Transitional Justice Commission for investigation of actions taken by Kuomintang

Another transitional justice measure relevant to Indigenous peoples is the Transitional Justice Commission to investigate actions by the Kuomintang between 15 August 1945 and 6 November 1992 and to rectify injustices. The Commission has so far identified 38 Indigenous political victims.

Some lessons

Compared to many other Asian countries, Taiwan has taken significant steps in the past 30 years to recognise, protect and promote the rights of its Indigenous peoples, including an ongoing mechanism for truth telling about historical injustices.

Indigenous peoples have played a leading role in this process, as Taiwan emerged from martial law. For many Indigenous activists, progress has been slow and patchy and challenges include: recognition based on self-identification for the plains people; implementation of the Basic Law in relation claims on ancestral land; issues related to mining rights and storage of nuclear waste; a need for greater

support for language preservation; cultural heritage and economic livelihood rights associated with hunting; lower levels of education and economic opportunities, and higher than average suicide rates.

Indigenous leadership and representation in the transitional justice processes underway will be important to their credibility and capacity to affect change.

Australia

Background to the truth telling processes

There are more than 250 Indigenous nations across the continent and islands of Australia. These diverse peoples and cultures have lived continuously on the land for more than 65,000 years, the world's oldest continuous cultural heritage.

There are an estimated 798,000 Aboriginal and Torres Strait Islander people in Australia, or 3.3% of the country's total population (2016 census figures).⁴⁰ Indigenous people in Australia are often referred to, by themselves as well as by the government, as Aboriginal and Torres Strait Islander peoples. Indigenous peoples also use the term First Nations or First Peoples and usually identify themselves by their specific Indigenous nationalities.

Australia endorsed the UNDRIP in 2009, after initially being one of only four countries to oppose the Declaration in 2007. Australia has not ratified ILO Convention 169.

First contact and early colonisation

European sea explorers first travelled to the continent now known as Australia from the early seventeenth century, in particular from Holland, France and Britain. In 1770, the British sea captain Cook chartered much of the east coast of the continent, landed in several places observing and in a limited way engaging with Indigenous peoples and, proclaimed British sovereignty over the entire east coast region.

40. International Work Group for Indigenous Affairs. Australia.
<https://www.iwgia.org/en/australia.html>

In 1788, Britain landed a fleet in the area of modern-day Sydney and established what was initially a penal colony with a militarised form of government. In establishing the colony, the British claimed sovereignty over not only the coastal area claimed by Cook but an area amounting to approximately the eastern half of the continent. While they knew of the presence of Indigenous peoples, they did not seek or receive their consent to settle the land let alone establish exclusive sovereignty. The Indigenous people never ceded their sovereignty and there was no attempt at agreement through treaties.

Indigenous peoples lived across the entire continent in hundreds of nations with their own languages and cultures. The British applied the legal concept of *terra nullius*, considering the territory uninhabited land and therefore open to be colonised under the sovereignty of the British Crown. Connected to this was the deep-seated European attitude of racial inferiority of Indigenous peoples, considering them as “savages” and “primitive” in a way that further enabled them to deny them basic rights.

As the colonial settlement expanded seeking more land, Indigenous communities across the territory resisted and a period of frontier wars erupted. Diseases brought by the European colonisers also devastated Indigenous communities. Following frontier conflicts, a long period of violent dispossession took place through the nineteenth century and continued in some areas into the twentieth century. Colonial expansion across the north of the country took place much later than the southern regions, and frontier conflicts and violence continued into the early twentieth century. This period was marked by egregious violence against Indigenous peoples, including a large number of massacres of civilians, poisonings, forced displacement from traditional lands. This violence also led to devastating damage to the cultural, social and economic rights of Indigenous peoples, individually and collectively.

Modern State of Australia: assimilation

From 1788 the British governed the colonial territories from London, via local governors. In the 1850s, the British government devolved power for internal self-government to most of the Australian states; from 1856 to 1900 the colonial territory was organised as six colonies, and these local colonial governments pursued policies of dispossession of Indigenous peoples.

In the 1890s a series of constitutional conventions considered forming a unified nation under a single constitution. Indigenous peoples were not included in this process, and the resulting constitution does not acknowledge the First Peoples of Australia. In the twentieth century, the Commonwealth of Australia and individual States enacted assimilationist policies with further devastating effects

on Indigenous peoples, including the forced removal of Indigenous children from their families and language bans.

Beginnings of modern Indigenous resistance and activism

Indigenous resistance continued, and from the 1920s and '30s Indigenous peoples formed organisations to advance their rights. In 1932, William Cooper established the Australian Aborigines' League and in 1938, marking the 150th anniversary of the arrival of the British, Indigenous peoples organised a national conference and Day of Mourning. This achievement marked the culmination of years of effort and inspired future twentieth Indigenous activism.

The 1960s was an important period with fundamental changes. Indigenous activists made land rights central to their struggle. In 1962, Indigenous people were granted the right to vote. And in 1967, following years of Indigenous activism, Australians voted to change the Constitution so that Aboriginal and Torres Strait Islander peoples would be counted in the population and the national government would be able to make laws for them. This change marked the beginning of a new era of Indigenous relations with government and policy, shifting authority from states to the national government.

Post-1967 modern era

The post-1967 era could be described as the modern era in relations between Indigenous people and the state, as well as the majority population. In 1972, the national government adopted self-determination as its guiding principle on policy related to Indigenous peoples. Land rights remained a central issue of the Indigenous struggle, especially in the vast territories in the north. Major legislation recognised these rights in some northern regions. In 1985 Uluru, a site sacred to Indigenous communities at the centre of Australia, was handed back to Indigenous people. In 1988 the national government committed to completing a treaty with Indigenous peoples, a measure it has failed to achieve.

Despite these advances, Indigenous peoples continued to experience widespread discrimination and violations of their rights. In 1987, activism by Indigenous families and groups led to a major national inquiry into Indigenous deaths in custody.

In 1991 the government initiated a ten-year program of reconciliation, establishing the Council for Aboriginal Reconciliation. In the landmark 1992 Mabo case, the country's highest court overturned the colonial era concept of *terra nullius* used to justify British sovereignty. National legislation followed to recognise Native Title under certain circumstances. Between 1995 and 1997, a second major truth telling

process on Indigenous rights took place, a national inquiry into the historical removal of Indigenous children from their families. In the 1990s and 2000s the “history wars” dominated public debate about colonisation and the treatment of Indigenous peoples. Even as the reconciliation process continued, there was backlash against recognition of Indigenous rights, especially land rights. In 2010, the government began to consider constitutional recognition of Indigenous peoples. The process led to unprecedented consultations with Indigenous peoples and, in 2017, the Uluru Statement from the Heart as a recommended way forward.

Current State of Truth Telling Processes in Australia

The process to consider constitutional recognition that began in 2010 led to the bipartisan establishment in 2015 of the Referendum Council, made up of Indigenous and non-Indigenous members. The Council held nationwide consultations with Indigenous communities, culminating in the unprecedented First Nations Constitutional Convention at Uluru in central Australia. The convention endorsed the Uluru Statement as the outcome of the consultations, and it became the Referendum Council’s recommendation for the way forward in Australia.

Indigenous representatives delivered the Uluru Statement as an invitation from First Nations to the people of Australia to “walk with us in a movement of the Australian people for a better future.” The 2017 Uluru Statement from the Heart sets the parameters of discussion about truth telling in Australia today.

The statement calls for a substantive change in the relationship between Indigenous peoples and the state and non-Indigenous peoples. It asserts continuing Indigenous sovereignty, which has “never been ceded or extinguished.” The statement called for three strands of action:

- Voice: Establish an Indigenous institutional voice to parliament, enshrined in the Constitution, to ensure self-determination.
- Treaty: Establish a Makarrata commission to undertake a process of agreement or treaty making.

- Truth: The Makarrata commission would also oversee truth telling processes to establish the context for the recognition process. “Makarrata “is a Yolgnu word from north-east Arnhem land, meaning “to come together after struggle, facing the facts of wrongs, and to live again in peace.”

The Statement made it clear that Indigenous peoples would not be satisfied with symbolic recognition in the Constitution, an outcome some political leaders support.

The Uluru Statement from the Heart did not elaborate on what kind of model for truth telling should be adopted. Continuing debate has included proposals for local truth telling processes as well as a national umbrella-type commission or process.

Follow up to the Uluru Statement from the Heart

National Government

The government quickly rejected the main calls of the Uluru Statement, describing a constitutionally enshrined Indigenous voice to parliament as an idea that was too radical. Instead, the government has launched a series of committee and expert processes to consider options. In 2020, the parliamentary committee recommended that the Australian Government support the proposed truth telling process, suggesting a combination of local and national efforts, before or after formation of an Indigenous Voice entity.

Civil society

Indigenous organisations and communities, and many non-Indigenous institutions including in the business sector, continue to advocate for action on the Uluru Statement from the Heart, which has become the central organising point for calls for action.

In 2021, Reconciliation Australia, an NGO continuing the work of the Council for Aboriginal Reconciliation, stated that the reconciliation movement was at a tipping point. In order to see braver action to achieve reconciliation, it called for truth telling to be at the centre of the way the country moves forward. Reconciliation Australia reported wide public support for truth telling: 90% of all Australians believe it is important to learn about past issues, nearly the same as the 93% of Aboriginal and Torres Strait Islander people.

However, it is not yet clear if non-Indigenous Australians broadly support the Indigenous strategy that truth telling should lead to substantive changes, including treaties recognising Indigenous sovereignty and a constitutionally enshrined

Indigenous voice to parliament.

State-level treaty and truth telling processes

At the same time, new steps for treaty and truth telling processes continue to emerge at state level. In each instance, truth telling is seen as necessary preparation to develop treaties. One state truth commission has been established but is yet to begin public work (Victoria), while others are under discussion (Northern Territory, Queensland). Other local initiatives on truth telling and recognition have begun, and a treaty process is being explored in Tasmania. A brief overview follows.

Victoria: Yoo-rrook Justice Commission (2021)

“Yoo-rrook” is a Wemba Wemba/Wamba Wamba word for truth. In 2019, following more than two years of consultation with Indigenous peoples across the state, Victoria established a First Peoples’ Assembly, an elected and appointed body of 32 Indigenous people to lead the treaty-making process. Concurring with the Assembly that a truth telling and justice process was a necessary precondition to a treaty, the State Government established the Yoo-rrook Justice Commission in May 2021. Preparatory work is underway.

Northern Territory

The Northern Territory Treaty Commission is an independent office established in 2019 to develop a framework for future treaty negotiations. It delivered an interim report in March 2020, and will deliver its final report in 2022.

The Memorandum of Understanding that led to the Commission acknowledged that the Indigenous people of the territory, as the First Nations, were the prior owners and occupiers of the land, seas and waters, were self-governing in accordance with their traditional laws and customs, and had never ceded sovereignty. It was also agreed that deep injustice had been done to the Aboriginal people of the Northern Territory, including violent dispossession, the repression of their languages and cultures, and the forcible removal of children from their families, leaving a legacy of trauma and loss to be addressed and healed.

The Treaty Commission advised that a truth telling process should occur before treaty negotiations. In a detailed discussion paper outlining key issues and options in February 2021, *Towards Truth Telling*, the Commission called for a truth commission to begin work as soon as possible.

Queensland

In 2019, the Queensland government established Tracks to Treaty, an initiative to reframe its relationship with Aboriginal and Torres Strait Islander Queenslanders. In early 2021, the government committed to establishing a truth telling process as a step on the path to treaty. It formed a committee to prepare the process.

South Australia

In 2016, the South Australian Government began to prepare for a treaty process, before a change of government paused the process. The former Treaty Commissioner reported to the incoming government and the Australian Parliament Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples, highlighting that Indigenous communities wanted to start a conversation on a treaty, but preferred to negotiate separately as nations rather than collectively

Tasmania

In June 2021, the State Premier appointed a former governor and a law professor to lead talks with the Indigenous community to find a path to reconciliation and a treaty. They are expected to report back by the end of the year with proposals. Some Indigenous leaders have called for a truth telling process.

Western Australia

No government action on treaty or truth telling initiatives have followed the Uluru Statement from the Heart yet. However, some commentators, including Indigenous leaders, regard Western Australia to have already committed to Australia's first treaty. The South West Native Title Settlement, a 2015 negotiated agreement between the Noongar people and the Western Australian Government, resolved native title claims for perpetuity in exchange for a package of benefits. These included recognition through an Act of Parliament, a perpetual Noongar Boodja Trust, access to crown lands for customary activities, the joint management of National Parks and a conservation area, and the development of a cultural centre. The Settlement enables the Noongar people to "control their own destiny, and build a solid future for generations to come."

Past Indigenous truth telling processes in Australia: two official national processes

Two major milestones in Indigenous truth telling took place in the 1980s and '90s. They were specific official thematic inquiries, rather than investigations into the full historical experiences of Indigenous peoples since colonisation.

01

Royal Commission into Aboriginal Deaths in Custody (1987-1991)

Background to the truth telling process

Indigenous community activists pushed for a commission following a large number of Indigenous deaths in custody in the 1980s. Soon after the campaign attracted international attention when Indigenous people presented their case to the United Nations in 1987, the Australian government announced a royal commission.

Initially only one commissioner was appointed, but as more deaths in custody were discovered four more commissioners were added. Four of the five commissioners were legally trained, one commissioner was Indigenous, and all were men.

Mandate

Royal commissions are frequently used in Australia to investigate political wrongdoing or significant social issues and make policy recommendations. Royal Commissions, the highest level of official inquiry in Australia, are formal, legal entities operating in a quasi-

judicial manner. The Commission examined all deaths in custody between January 1980 and May 1989, in each state and territory in which they occurred.

The Royal Commission pre-dated recent multidisciplinary truth commissions. However, shortly after it began its work the initial mandate was later amended so that, in addition to more legalistic case investigations, it could also consider underlying social, cultural and legal issues bearing on the deaths. It could ask not just how people died, but why:



Why do Aboriginal people, who form about 1.5% of the Australian population, have twenty times the risk of dying in police custody and ten times the risk of dying in prisons? Why are so many arrested and put in cells and prisons? Are they treated fairly by law? Why are so many Aboriginals unemployed, poorly housed, poorly educated? Why is their health poor? Why is their life expectancy shorter than other Australians?⁴¹

Methodology

When hearings began in 1988, the Commission set out to examine 44 cases, a figure that eventually grew to 99. The Commission conducted interviews with and received submissions from family members, governments, government agencies, Indigenous organisations and community members. Public hearings for each death were held in a quasi-judicial manner, in either the hometown of the deceased, the town in which the death occurred, or a capital city. The Commission avoided using local courtrooms for hearings in rural and regional towns because of their negative associations for Indigenous people.

Investigating underlying issues, the Commission relied upon sociological and criminological research, public meetings, and submissions to understand how Indigenous people lived and to appreciate the way colonisation has affected them. A year-and-a-half after the Commission began, specialised Aboriginal Issues Units were set up in all six states and the northern territory to increase access for research into underlying issues.

41. Final Report of the Royal Commission into Aboriginal Deaths in Custody. Vol 1, page 103. National Archives of Australia. <https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody>

Findings and recommendations

The 5-volume National Report was tabled in the national parliament in April 1991. The predominant finding was that Indigenous people were vastly over-represented in custody, leading to a large number of deaths. The Commission also found that almost half of those who died had been separated from their families as children. The report made 339 recommendations regarding underlying issues, focused primarily on:

- The adequacy of police and coronial investigations into deaths in custody.
- Self-determination and empowerment.
- Social, educational, vocational and legal services for Indigenous youth.
- Cultural diversity and the need for culturally sensitive practices in the dominant criminal and legal justice systems.
- Managing alcohol and substance abuse.
- Improving police relations with, and treatment of, Indigenous people.
- Improving custodial care.
- Conforming with international obligations.
- Addressing land needs.
- The importance of reconciliation.

Follow up

In 1991, the Australian parliament established the Council for Aboriginal Reconciliation, led by Indigenous former Royal Commissioner, Pat Dodson. When the Council was disbanded in 2000, the organisation Reconciliation Australia formed to continue work. In 2015, Dodson said,



By and large the problem the Royal Commission was set up to examine and advise governments on has become worse. This raises the question of how effectively the Commission's recommendations have been implemented ... and whether the issues identified by the Commission are understood or even considered important ... For the vast bulk of our people the legal system is not a trusted instrument of justice — it is a feared and despised processing plant that propels the most vulnerable and disabled of our people towards a broken, bleak future.⁴²

42. Pat Dodson's full speech is available via the National Press Club: <http://www5.austlii.edu.au/au/journals/IndigLawB/2016/12.pdf>

Thirty years after the Royal Commission, criticism persists about the failure to implement its recommendations, the continuing over-representation of Indigenous people, including children, in custody, and the ongoing crisis of aboriginal deaths in custody.

By April 2021, a further 474 Indigenous deaths in custody had occurred since the closure of the Commission. In 2020, widespread Black Lives Matter protests took place across the country, led by Indigenous activists calling for urgent action on the incarceration of Indigenous people and deaths in custody.

Lessons and features

- Overall, the Commission was regarded as the most thorough legal inquiry ever conducted into the lives of Indigenous Australians.
- One of the more important lessons from the Commission is that educating the people most affected by the outcome about the reason for the inquiry and its powers is essential to a supportive and trusting environment that makes it possible to collect information. Building and maintaining public support is a key ingredient of success that must begin before a commission begins its work.
- Developing a clear understanding of the problem beforehand would have helped the Commission establish its methodology from the outset, rather than having to add sociological research well into its work.
- Some observers considered the social research work under-resourced compared to more orthodox legal investigations, and found the focus on preventing deaths in custody too narrow, technical and legalistic. Instead, some believed, a deeper study of the underlying issues through sociological research might have served Indigenous people better. In this sense, some critics questioned whether a royal commission was the most appropriate or effective vehicle for the inquiry.
- The all-male commission has been criticised for marginalising Indigenous women. For example, the Commission was said to have inadequately considered the major risks to Indigenous women's health and safety, such as family violence and police treatment.
- Lack of time and resources, including the number and type of staff employed in each office, was a constraint.
- Some Indigenous people were particularly disappointed with the failure of the Commission to apportion blame to individual police and custodial officers.
- There was inadequate monitoring of the implementation of the recommendations of the Commission, and a lack of involvement of Indigenous peoples. At the 30-year anniversary of the report, competing monitoring reports brought a political spectre to the debate rather than a focus on the impact on Indigenous peoples.

02 **National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (1995–1997), by the Australian National Human Rights and Equal Opportunity Commission.**

Background to the truth telling process

Government laws, policies and practices resulted in the forcible removal of generations of Aboriginal and Torres Strait Islander children from their families and communities across Australia. The practice began in the late nineteenth century and became a systematic part of the policy of assimilation adopted by all Australian governments in the twentieth century.

Thousands of children were removed by governments, churches and welfare bodies. They were moved to institutions run by churches and non-government organisations, adopted by non-Indigenous families, or made to work as domestic servants and farm hands. Many children suffered very harsh, degrading treatment, including sexual abuse. They had limited or no contact with their families, and were frequently indoctrinated to believe in the inferiority of their people and culture. They are now known as the Stolen Generations.

Laws on Indigenous child removal were still in force in the early 1970s. The removal of children broke important cultural, spiritual and family ties, leaving a lasting and intergenerational impact on their lives, well-being and communities. The resulting trauma has been passed down to children and grandchildren, contributing to family violence, substance abuse, self-harm, and other issues Indigenous communities contend with.

Indigenous activists and organisations campaigned for a national inquiry into the policies of removal of Indigenous children from their families. They were concerned that public ignorance of the history of forcible removal was hindering recognition of the needs of its victims and their families and the provision of services. In 1995 the national

government referred the issue to the national Human Rights and Equal Opportunity Commission (HREOC), which initiated the official national inquiry.

Mandate

The Inquiry terms of reference were to:

- Examine past and continuing effects of separation on individuals, families and communities.
- Identify responses, including recommendations to change laws, policies and practices, reunite families, and otherwise deal with losses caused by separation.
- Identify the justification for, and the nature of, compensation for those affected.
- Review current laws, policies and practices affecting the placement and care of Indigenous children.

Methodology

While not a truth commission as such, the inquiry has been described as Australia's first truth commission and involved a powerful truth telling process. Mick Dodson, the Aboriginal and Torres Strait Islander Social Justice Commissioner, took primary responsibility along with the Commission President for conducting the hearings of the Inquiry. In each region visited, the Commission appointed an Indigenous woman as Co-Commissioner.

The Inquiry appointed a representative Indigenous Advisory Council to advise on the process, made up of members from all major regions of the country. A team was established to publicise the Inquiry, encourage testimony and submissions, and organise hearings. Outreach materials including an explanatory video, information booklets and posters.

The Inquiry held hearings in each capital city and in many regional and smaller towns. Limited time and resources prevented visits to every place people wished to give evidence. The Inquiry took evidence both publicly and in private, and took testimonies in writing or orally as well as accepting written submissions.

Due to the traumatic nature of memories and the difficulties associated with giving testimony, an Indigenous social worker supported witnesses before and during their evidence. Extra psychological support was provided by local Indigenous health services. The Inquiry received 777 submissions, including 535 from Indigenous individuals and organisations, 49 from church organisations and seven from government.

Findings and recommendations

When the report titled *Bringing Them Home* was tabled in the national parliament in May 1997, it revealed that:

- Forcible removal policies led to the removal of between one in three and one in ten Indigenous children between 1910 and 1970.
- The effects of such removal were usually negative, multiple and profoundly disabling.
- Indigenous children were placed in institutions, church missions, adopted or fostered and were at risk of physical and sexual abuse. Many never received wages for their labour.
- Welfare officials failed in their duty to protect Indigenous wards from abuse.
- Removal laws were racially discriminatory and genocidal in intent, because the principal aim was the elimination of Indigenous peoples' distinct identities.
- Many cases involved breaches of fiduciary duty and duty of care, as well as criminal actions.

The Inquiry also reported that many people did not have the opportunity to tell their stories, were not ready to, or chose not to in this forum. It stated that healing and reconciliation require that testimonies continue to be received and recorded. In line with submissions by Indigenous organisations, the Inquiry supported calls for a national archive for the collection and presentation of stories. However, the first priority was to enable people to tell their stories and to receive counselling and compensation.

The Inquiry also recognised the importance of reporting in a direct and accessible way to Indigenous communities, particularly those who gave evidence or made submissions. It provided a summary report and video to every Indigenous witness and organisation involved. *Bringing Them Home* included 54 recommendations⁴³ and a set of principles to underlie government responses to those affected by the forcible removal of children:

- Self-determination: The right of Aboriginal and Torres Strait Islander people, Stolen Generations members, and their families to exercise autonomy in their affairs and make their own decisions.
- Non-discrimination: The right to be free of racial discrimination and to access services appropriate to their needs.
- Cultural renewal: The right to participate in cultural activities, recognising the

43. Available in official summary online: <https://bth.humanrights.gov.au/the-report/report-recommendations>

- diversity of cultures and the need to repair family and cultural ties damaged by removal of children.
- A coherent policy base: The need for an agreed set of services to begin the process of healing and redress, with agreed objectives and goals.
 - Adequate resources: Funding to enable services to address the diverse effects of removal on individuals, families and communities.

Pointing the way to future action by the entire country, the report stated, “the past is very much with us today, in the continuing devastation of the lives of Indigenous Australians. That devastation cannot be addressed unless the whole community listens with an open heart and mind to the stories of what has happened in the past and, having listened and understood, commits itself to reconciliation.”⁴⁴

Recommendations were wide-reaching to address the many facets which continued to affect individuals, families and communities. There were also detailed proposals for reparations, as well as for the establishment of family tracing and reunion services. The report also called for national framework legislation to enable negotiations at community and regional levels on self-determination in relation to the well-being of Indigenous children and young people. One key recommendation was the need for an official acknowledgement of, and apology for, the forcible removal of children.

Follow-up

Follow-up to the report has been politically fraught. The government responded to the report in December 1997, providing a \$43 million package for family tracing and counselling, an oral history project, and other efforts to address the recommendations. The government rejected some recommendations, including all those dealing with contemporary forms of removal, such as national standards, framework legislation, and a social justice package. It also rejected recommendations for monetary compensation to survivors or their families. It did not issue an apology.

In a 1999 Senate inquiry into implementation of the recommendations, the government of the day denied there was a generation of Aboriginal and Torres Strait Islander children separated from their families. It argued that the number of separated children did not exceed 10%.

Arguably the Australian public responded in a more open-hearted way than the national government. The first Sorry Day was organised one year after the report, with tens of thousands of people gathering. In 2000, 300,000 people marched across the

44. Final Report of the Royal Commission into Aboriginal Deaths in Custody. National Archives of Australia. Chapter 1, page 1. <https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody>

Sydney Harbour bridge in support of the Stolen Generations, with “Sorry” written in the skies above. Similar reconciliation bridge marches took place across the country.

In 2008, more than a decade after the report, the Prime Minister tabled a formal apology, and Parliament passed the Apology to Australia’s Indigenous Peoples, implementing an important recommendation of the report. The Aboriginal and Torres Strait Islander Healing Foundation was established in 2009, following the Apology.

Indigenous organisations note that successive Australian governments oppose national processes for compensation. Governments have continued to respond by funding services for the broader Aboriginal and Torres Strait Islander community, rather than the Stolen Generations in particular. In August 2021, some states agreed to pay compensation to survivors. However, the national government insists this is a state responsibility, and not all states have agreed to act - even in those states which have acted, there are major concerns that criteria and reliance on poor official records will exclude many of the Stolen Generations.

There has been no formal monitoring of implementation of the recommendations. Twenty years after the report, two Indigenous NGOs conducted assessments, and found less than one in ten recommendations had been fully implemented. They reported that despite progress in some areas, there has never been a collaborative and systematic attempt to address the recommendations. Further, they reported that as well as creating additional trauma and distress, that “(f)ailure to act has caused a ripple effect to current generations. We are now seeing an increase in Aboriginal people in jails, suicide is on the rise and more children are being removed.”⁴⁵

Detailed studies have demonstrated the ongoing economic, social and health effects on surviving stolen generations children, and their children who it reported continue to suffer a cycle of trauma. It found that 52% of Stolen Generations survivors had poor or fair self-reported health, 42% have been homeless at least once in their lifetime and, in the past 12 months, 32% reported substance use and 26% were victims of violence. Among children of survivors, it found that 34% had poor mental health and 39% were homeless at least once in their lives.⁴⁶

45. Bringing Them Home 20 Years On: An Action Plan for Healing. Page 5. Aboriginal and Torres Strait Islander Healing Foundation. <https://healingfoundation.org.au/app/uploads/2017/05/Bringing-Them-Home-20-years-on-FINAL-SCREEN-1.pdf>

46. Aboriginal and Torres Strait Islander Stolen Generations and descendants: numbers, demographic characteristics and selected outcomes. Australian Institute of Health and Welfare and The Healing Institute. 15 August 2018. <https://www.aihw.gov.au/reports/indigenous-australians/stolen-generations-descendants/overview>

Lessons and features

- Indigenous people asked to give testimony about traumatic experiences need psychosocial support, which is often lacking, especially in remote areas. The Inquiry built support into its process, and The Healing Foundation that emerged later has been an important step towards more sustainable truth telling with Indigenous peoples in Australia.
- As documented in experiences of Indigenous peoples across the world, trauma is often intergenerational. It is important to keep this fact in mind when designing and implementing truth telling processes.
- Even a relatively well-resourced institution in a wealthy country, such as Australia's Human Rights and Equal Opportunity Commission, did not have the time and resources to reach all communities and people who wanted to testify.
- The Inquiry acknowledged that for some people the time or the Inquiry forum may not have been right for them to testify. The Inquiry highlighted the need to continue recording testimony beyond its lifespan.
- Many Indigenous people have not shared stories of their traumatic experiences outside close family and community. Many lack even these support networks due to the colonial experience. For many Indigenous people across the world, it is not physically safe to share their stories when they are still targeted with violence. Even without physical danger, the legacy of a threatening relationship with authorities makes trusting an official process hard. Leadership plays a vital role, including Indigenous leadership.
- An agreed and credible monitoring system for implementation of recommendations should be established, with significant participation by Indigenous peoples.
- The Stolen Generations report had a major and long-lasting impact on the broader non-Indigenous population of Australia; it shifted national narratives and opened discussions in significant ways. This demonstrated the power of Indigenous people sharing their stories.
- At the same time, it took more than a decade for a formal apology, and many recommendations of the Inquiry have yet to be acted on - the ongoing impact of the policies on survivors and their children have still not been adequately addressed by governments.
- The removal of Indigenous children from their families remains a major problem in Australia, if under different policies. Indigenous leaders and activists continue to call for action, highlighting the damage to individuals, families and communities.

Civil Society Initiatives

To demonstrate a range of truth telling possibilities, a small selection of civil society initiatives in Australia at national and local levels are described below.

Counter narratives in the East Kimberley art movement: Indigenous truth telling through traditional and contemporary culture and art

Background to the truth telling process

Indigenous peoples and communities of course have their own ways to pass information, knowledge, culture and law across generations. Indigenous media and artistic processes increasingly include truth telling of historic events and experience, such as confrontation with arriving colonists and a 50-year period of frontier massacres in Australia's remote north-west region. A modern Indigenous art movement in the community has presented a powerful counter-narrative during the contentious "history wars" about the early colonial settler period.

The East Kimberley region is a vast territory in remote north-west Australia. It is home to the Gija Indigenous people, who refer to the period from 1880 to 1927 as "The Killing Time". The colonial government referred to it as a time of "pacification."

From the late 1880s to the 1940s the colonial government encouraged pastoralists to expand into the East Kimberley region, with little regard for Indigenous communities. Mass killings, forced displacement and other violations against Indigenous peoples followed. Indigenous communities, who recall at least ten massacres during this period, resisted, sometimes with force. The killings lasted about 50 years. In 1927, the state government called a Royal Commission after one notorious massacre. It found 20 Indigenous people were killed with

participation by police officers, though others said many more were killed.

Art and culture as Indigenous truth telling in a time of contested history

The Gija peoples have a rich heritage of visual art and performing culture, such as song and dance. Rock art throughout the area dates back nearly 20,000 years. In the 1970s and '80s an internationally renowned contemporary art movement began with the work of Rover Thomas, who encouraged others to take up painting. Song lines, dance and paintings refer to contemporary or historical events, including The Killing Times.

In the 1990s and early 2000s, the government policy of reconciliation unfolded alongside “history wars” about the truth of settler violence in the early period of colonialism. The oral tradition of the Gija had kept alive the history of The Killing Times, but some historians remained strongly sceptical that such massacres occurred. In the early 2000s, Gija artists decided to take their work to the wider public.

“Blood on the Spinifex”, a 2002 visual art exhibition in Melbourne, showed paintings by ten artists depicting massacres. The exhibition was opened by the Governor-General. The curator wrote that Gija elders learned of the denial of the massacres, and decided to enter the debate using their culture through painting.

“Fire Fire Burning Bright” was a performance based on a traditional joonba associated with one painting in the exhibition, “Bedford Downs Massacre” by Timmy Timmes. The Neminuwarlin Performance Group, led by the artist’s sister, a Miriwoong/Gija woman named Peggy Patrick, combined traditional song and dance with elements of western theatre tradition. They took the performance to Darwin, Perth and Melbourne, as Patrick said, “to make white people understand about these things.”⁴⁷

This series of work was a counter-narrative by Indigenous people during a period of hotly contested history, an Indigenous truth telling about the past, combining art, performance and history. As late as 2020, art by renowned East Kimberley artist Queenie McKenzie was shown in public for the first time. The National Museum of Australia bought the painting in 2005 but never exhibited due to disagreements about the massacre it depicted. “Mistake Creek Massacre” was at last shown in the “Talking Blak to History” exhibition at the National Art Gallery, which aimed to add Indigenous voices to the narrative of Australian history.

47. Killing fields of the Kimberley, The Age (Melbourne) (on the dance performance Fire Fire Burning Bright) October 17, 2002. <https://www.theage.com.au/entertainment/art-and-design/killing-fields-of-the-kimberley-20021017-gdup7i.html>

Frontier Colonial Massacres 1788-1930 Project, University of Newcastle

Background to the truth telling process

The University of Newcastle project was the first Australia-wide record of frontier massacres. Work began in 2014, largely in response to the 1990s “history wars” about colonial settler practices and violence, in which academics played a leading role. The academic who initiated the project was also influenced by international scholarship and study on massacres in different conflict contexts.

Mandate

The project set out five aims:

- Over four stages identify and record sites of frontier massacres of Aboriginal and non-Aboriginal people across Australia from 1788 to 1930.
- Establish a coherent methodology to interrogate the wide array of sources.
- Provide a reliable resource for researchers.
- Inform public debate about colonial frontier violence.
- Provide open access knowledge to the public and invite contributions.

Methodology

In line with international practice, the project defined a colonial frontier massacre as the deliberate and unlawful killing of six or more undefended people in one operation.

The project utilised archival colonial sources such as government records like police and court reports, newspapers and letters. Significantly, academics also opened the project to receiving information from individuals and communities all over the country - including descendants of survivors. From assembled and corroborated information, the academic team created a live digital map depicting sites all over Australia of colonial era massacres of Indigenous people.

Starting in 2014, the final stage of the project was completed in 2021.

Findings

In presenting its preliminary findings, the project explicitly reported that information on this site represents the best evidence available to the research team and that it was subject to change from ongoing feedback, consultations and research - its findings were not closed.

The project detailed a range of characteristics of colonial massacres from the information it gathered. Project statistics and map timeline indicates that massacres spread steadily across the Australian colonial frontier with notable peaks in the number of massacres from the 1820s to 1840s in the south east of the continent, the 1860s and 1870s in Queensland and in the 1890s in the Northern Territory and the Kimberley region in Western Australia. It's preliminary analysis indicated that agents of the state were involved in at least 50% of the massacres.

The project documented 304 corroborated massacres, all but 12 of these were massacres of groups of Indigenous people. Preliminary findings indicated more than 8,140 Indigenous people were killed in these corroborated reports, and 146 settlers.

Lessons and features

Some of the lessons from this project include:

- Innovative use of digital technology to record and show historical data in an accessible and interactive way.
- The open source nature of the project, allowing the public to add information to the research effort greatly expanded the pool of information and knowledge.
- The scale of the research and data, providing an unprecedented truth telling process about massacres in the colonisation of Australia - in particular it was unusual as a truth telling process that focussed on the early years of contact between colonisers and Indigenous peoples, outside current living memory.
- Its creative partnership with the newspaper Guardian Australia to bring the project to a national and international audience.
- Consultation with the Indigenous educational institutions Wollotuka Institute and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) was an important foundation for research by a non-Indigenous academic institution.

Myall Creek Massacre: Local Truth Telling and Reconciliation

Background to the truth telling process

The Myall Creek massacre is one of the most notorious of the frontier period massacres. In 1838, white stockmen hunted and murdered 28 Aboriginal men, women and children at Myall Creek in rural New South Wales. It was one of the only times that some perpetrators of massacres of Indigenous people were brought to justice, with the colonial court sentencing seven men to hang.

In 1998, the Uniting Church held a reconciliation conference at Myall Creek. The event led to creation of the Friends of Myall Creek Memorial Committee, a group of Indigenous and non-Indigenous Australians, some of whom were descendants of survivors and perpetrators of the massacre.

Methodology

In 2000, the Committee arranged for a memorial to be placed at the site. Each year commemorative ceremonies draw hundreds of people from around the country, including descendants, local community members, and school children. The site has been heritage listed, and is now considered important in the national historical narrative. There are plans for an education centre for visitors, many of them from schools.

Lessons and features

In a 2013 interview, Gamilaraay Elder Aunty Sue Blacklock, a descendant of victims and survivors of the massacre, and founder of the memorial site and annual commemoration said, “It has lifted a burden off my heart and off my shoulders to know that we can come together in unity, come together and talk in reconciliation to one another and show that it can work, that we can live together and that we can forgive. And it really just makes me feel light. I have found no more heaviness on my soul.”⁴⁸

48. Sections of Aunty Sue Blacklock’s 2013 interview are available online via the Australian Association of Social Workers: <https://www.aasw.asn.au/document/item/6227>

During consultations about truth telling following the Uluru Statement from the Heart, national Indigenous leaders spoke of the Myall Creek process as a model for local truth telling activities needed across the country.

Truth telling Symposium and Report 2018

In October 2018, Reconciliation Australia and The Healing Foundation brought together experts from around the country for a truth telling Symposium held in Sydney. The findings, reflections, and recommendations from the Symposium were gathered in a report that was especially timely given commitments for truth telling processes across the country.

The Healing Foundation's work has outlined the need for truth telling to address the trauma and racism faced by Aboriginal and Torres Strait Islander peoples. The Foundation - which is an Indigenous non-governmental organisation established after the *Bringing Them Home* report of HREOC (see above) - traces the genesis of this ongoing trauma to Australia's violent early history and the genocidal policies that followed, including the forced removal of children. It says that this lack of a shared understanding of history is a source of ongoing trauma and a roadblock to reconciliation.

Reconciliation Australia's research shows that about a third of Australians do not know or accept some fundamental aspects of Australia's shared history, including mass killings, incarceration, forced removal from land and restriction of movement.

The Truth Telling Symposium aimed to investigate, foster, and share ways that truth telling can support healing and reconciliation in Australia. It focused on:

- The importance of truth telling.
- Truths that need to be told.
- Different truth telling practices that might be applicable to Australia.

- Guiding principles for future processes.

Participants developed a list of ten principles to guide truth telling processes in Australia:

- The right to know our many truths: Truth telling must encompass both past and contemporary injustices, empower multiple narratives, and embrace complexity.
- Safety is paramount: Time and effort must be put into creating safe spaces, including ways to ensure truth telling is conducted in a culturally safe manner.
- Aboriginal and Torres Strait Islander recognition and control: Indigenous people and communities must lead the design of truth telling processes and the narratives they create, including how engagement occurs, what stories are told, and what records are kept.
- Listen, bear witness and record: Audiences must be able to listen and accept the truths that are shared. Accurate records must be kept and Indigenous people must retain ownership of records relating to their personal stories.
- Build on documents of truth: Truth telling must be informed by past work, in particular the UNDRIP and the Uluru Statement from the Heart.
- Inclusivity and reciprocity: Non-Indigenous Australians, including recent migrants, have an important role to play in truth telling.
- Time sensitivity: Urgency to tell the truth must be balanced with allowing time for broad participation in a difficult process.
- Responsibility, action, and accountability: Truth telling requires responsibility and action to ensure past injustices are not repeated. Resources are required and there must be accountability for outcomes.
- Healing, justice, and nation building: Truth telling is an uncomfortable process that is not about shame or guilt, but driving positive change and acceptance.
- Truth telling is a gift: Truth telling benefits the nation, and communities must be supported to tell the stories they want to tell in the ways they want to tell them.⁴⁹

49. Truth Telling Symposium Report. Barangaroo, Sydney 2018. <https://www.reconciliation.org.au/wp-content/uploads/2019/02/truth-telling-symposium-report1.pdf>

New Zealand

Background to truth telling processes

Indigenous peoples make up about 15% of the population of New Zealand (Aotearoa).⁵⁰ The Māori, a people of Polynesian origin, came to New Zealand in a series of long sea journeys around the 13th century. Europeans first arrived in the early 17th century, and from the late 18th century there was regular contact with traders, missionaries and sailors. A British resident established his presence in the 1830s, reporting to the governor of the British colony of New South Wales. In 1841, New Zealand became a British colony in its own right.

The Treaty of Waitangi was signed on 6 February 1840 between the British and about 40 Māori chiefs. A further 500 hundred chiefs, all but 39, signed it in ceremonies around the country that year. Despite the Treaty, as colonial settlement expanded conflict ensued. The 1840s to the 1870s was a violent period known as The New Zealand Wars, followed by land confiscations and legal, economic and social marginalisation of the Māori through cultural dominance and assimilationist policies through much of the twentieth century.

Regarded as the founding document of New Zealand, the Treaty has been a constant source of debate and controversy. The Treaty is a broad statement of principles, not a constitution or a statute, laying out a general agreement between the British and the Māori to found a nation-state and build a government.

From its signing, the Treaty has been understood differently by the parties, largely due to varying English and Māori versions. In the English version, the Māori cede their sovereignty to Britain in return

50. Indigenous peoples in Aotearoa. International Work Group for Indigenous Affairs. <https://www.iwgia.org/en/aotearoa-new-zealand.html>

for protection of their property rights to land and natural resources. However, in the Māori version, what is ceded is an authority of governance rather than sovereignty.

The status of the Treaty has evolved and it is now regarded as a constitutional document. New Zealand does not have a single written constitution, but rather a collection of common laws, customs and legislation. However, as an international treaty, the Treaty's status in New Zealand law is less than settled. Treaty rights can only be enforced in court when a statute or an Act explicitly refers to the Treaty. In 1975, the Waitangi Tribunal helped address this issue.

New Zealand endorsed the UNDRIP in 2010, after being one of only four countries to vote against it in 2007. It has not ratified ILO Convention 169.

The Waitangi Tribunal

Background to the truth telling process

For more than a century, Māori tried to resolve grievances with the Crown through legal means such as petitions and court cases, with little success. From the 1960s and '70s a Māori movement emerged to call for greater equality and a stop to sales of Māori land. Over time, Māori protests shifted from denouncing the Treaty to calling for the government to honour its obligations under the agreement. In 1975, a Māori land march on Parliament was a watershed moment.

Mandate

In 1975 the Waitangi Tribunal was established by act of parliament with the exclusive right to determine the meaning of the Treaty and to investigate alleged breaches of it. The Waitangi Tribunal is a standing commission of inquiry, rather than a court or temporary institution. It is a unique institution developed to facilitate state-Indigenous relations.

The Tribunal considers claims brought to it by Māori people, in relation to breaches of the Waitangi Treaty concerning legislation, policies, actions or omissions by the government. The role of the Tribunal

includes:

- Inquiring into and making recommendations on well-founded claims.
- Examining and reporting on proposed legislation.
- Making recommendations or determinations about land for Crown forests, railways, state-owned enterprises, and educational institutions.

When considering the Treaty, the Tribunal focuses on its principles, which include:

- Partnership: Māori and the state, as Treaty partners, have an obligation to act reasonably towards each other and with utmost good faith.
- Active protection: The Treaty sets out guarantees that impose positive duties on the state.
- Redress: Where Treaty obligations are breached, redress ought to be provided.

The Tribunal lacks mandatory powers but can report on claims and make recommendations. Two exceptions are that the Tribunal can direct State Enterprise and Crown Forest lands to be returned to Māori, though these powers are rarely used.

Methodology

The Tribunal has evolved over more than 40 years. Its mandate and processes are broader than a court of law, as it takes a multi-disciplinary approach to its inquiries. When examining claims, the Tribunal conducts detailed historical research, beyond the process of a court hearing evidence from parties. The Tribunal pro-actively seeks the truth, not limited to listening to submissions from the Māori claimant and government.

The Tribunal strives to be bicultural and bilingual. About half of its members are Māori, and at least one Māori must sit on each panel. Members, who have grown in number from three to 20, do not necessarily have legal backgrounds. They may have qualifications in history, or as elders, businesspeople, or others of standing. Much evidence is taken in Māori language.

The Tribunal holds hearings in traditional “kainga”, in traditional meeting houses in villages, in front of the communities who bring the claim. Hearings are held as much as possible in accordance with the local Māori custom. Greeting ceremonies open each hearing, and prayer starts and ends each day.

Findings and recommendations

- In the course of 40 years of operation, the Tribunal has conducted inquiries, heard evidence, and issued reports and recommendations to government on a diverse claims, including those related to land and natural resources, fishing rights, language protection and broadcasting policy, and delivery of social services, and law and policy affecting Māori traditional and cultural knowledge.
- However, in its early years the Tribunal did not make a significant impact and was little known. Up to the early 1980s it had considered only a handful of matters.
- In the 1980s, the Tribunal began to hear more claims under a bicultural process, less formal in its use of western law and more culturally relevant to Māori people. Hearings were often held on the land of the claimants, in their traditional compounds, and evidence could be given in the Māori language.
- When it formed in 1975, the Tribunal was only empowered to handle matters arising after the date of the Act. However, major Māori grievances dated back to the nineteenth century and especially the period of land confiscations. One argument was that there was insufficient historical evidence to hear earlier grievances. A 1985 law allowed the Tribunal to consider historical grievances dating back to 1840, and there was a huge increase in claims. This surge influenced the way the Tribunal considered claims. To manage the huge influx, from 1996 the Tribunal launched what became known as a district inquiry system. Detailed research at the district level was compiled into a district casebook, and district level hearings were conducted. This process has been a major focus of the Tribunal over the past two decades, and by 2021 most district level inquiries had been completed, 37 in all. However, in 2008 the parliament revoked the authority of the Tribunal to consider new historical claims.
- The government established the Office of Treaty Settlements to develop policy on complex historical claims. After the Tribunal's recommendations, this office negotiates a settlement with the Māori party.

Lessons and features

Successes:

- Sustained Māori activism in the 1960s and '70s demanding action on the unjust colonial legacy created conditions for creation of the Tribunal.
- The Waitangi Tribunal is a mechanism and process without real comparison. It is a standing national inquiry with direct influence on cases and national policy concerning the relationship between Indigenous and non-Indigenous peoples.

- The Waitangi Treaty of 1840 gave the Tribunal's investigations a clear focus and structure, even as the Tribunal helped bring the Treaty to life in modern New Zealand. In countries with no Treaty between Indigenous and non-Indigenous peoples, such a process would be harder.
- As a standing commission of inquiry, the Tribunal uses a pro-active truth seeking methodology. This approach has promoted a process based on good faith, trust building and partnership more than an adversarial judicial system would.
- The Tribunal's initial mandate, operations and impact were limited. Being a standing commission of inquiry rather than a short-term truth commission or inquiry allowed the body to evolve and strengthen its relevance to both historical and contemporary challenges.
- This open timeframe also helped the Tribunal develop new ways to manage claims. In the early 1990s, with a backlog of hundreds of historical claims, the Tribunal developed the district inquiry system to streamline research on the main issues in each district and on nationally important issues. In the 2000s, the Tribunal developed a "New Approach" to assist parties reach settlement more quickly. It helped Māori and government parties identify areas of agreement, allowing rapid identification of more contentious issues.
- The Tribunal has not always been popular, and has survived periods of controversy and calls for its abolishment. As a standing commission of inquiry, the Tribunal walks a line between being a legal body considering claims, while also playing a significant role in social and political policies and decisions.
- The Tribunal has often walked a tightrope, asserting its authority yet acting in a restrained manner on issues that cause public backlash. For example, the issue of land returns and reparations for land has often been controversial. While legislation gave the Tribunal power to direct that State Enterprise and Crown Forest lands be returned to Māori, these powers have only rarely been used. In its 1992 Te Roroa Report the Tribunal recommended the return of private land, causing public outcry and legislation restricted returns to Crown land.
- On reparations for loss of land, the Tribunal has taken the approach that financial reparations would be too complex and beyond the capacity of the state. It has also found that Indigenous grievances go beyond monetary compensation. The approach has included a forward looking element related to restoring an economic base for communities. In the 2000s, in addition to financial packages, settlements usually included a formal apology and recognition of cultural association with land, including officially renaming places.
- The Tribunal's move to become relatively informal in terms of western legal procedure, and centring its processes in Māori culture and language, has helped make it relevant and credible for Māori communities.

- The government has promoted a route to resolve claims that is quicker than following the process of the Tribunal, which involves negotiating directly with the government. However, generally Māori people have shown that they prefer to work through the Tribunal even though it is slower and more expensive, indicating a significant level of trust.
- The Tribunal's mandate allows recommendations beyond what a court could do when considering individual cases. The Tribunal influences major social policy and legislation, bringing widespread change such as making Māori an official language of the country. A body such as the Tribunal may be more suited to dealing with fundamental historical grievances of Indigenous peoples that include, but go beyond, legalities to include social and political factors which are fundamental to the relationship between Indigenous and non-Indigenous peoples.
- Although the Tribunal makes mostly non-binding recommendations, most decisions have been implemented in full or in part by the government.
- The Tribunal has developed a deep understanding of Indigenous-non-Indigenous relations throughout the history of New Zealand, a profound educational legacy for the country. The Tribunal makes a major contribution to wider public awareness about Māori historical grievances and contemporary issues and culture.
- Combining these impacts, the Waitangi Tribunal can be considered a major factor in a national paradigm shift in official and public discourse relating to Māori rights.
- Māori people played an active role in developing the UN Declaration on Indigenous Peoples. Since then, the Tribunal references international standards in its reports, showing how the Declaration can strengthen national approaches.

Constraints:

- Financial resource constraints have hindered the Tribunal at many times.
- The Tribunal process can be very slow, with a long gap between the research and hearing process and the report. This is partly inevitable, as historical claims, especially land claims, are complex and sensitive, involving many perspectives.
- The Tribunal is dependent on legislation for its existence and powers, and on government for implementation of most findings and recommendations.
- The Tribunal approaches its work through a lens of partnership between Māori and non-Māori, and settlements depend on the government adopting this same spirit of partnership. This spirit varies between changing governments, and there has been significant criticism of a government approach to settlements based on unequal power between the parties.





CHAPTER

05

EUROPE

The Sami flag hangs at the Kallak prospecting area near Randijaur village, 40 kilometers north-west of Jokkmokk in Swedish Lapland. November, 2013. (Jonathan Nackstrand/AFP, via Getty Images).

Greenland

Background to the truth telling process

Colonised by Denmark in the 1700s, in 1953 Greenland - also known as Kalaallit Nunaat - ceased to be a colony and since 1979 it has been a self-governing country within the Kingdom of Denmark. The Act on Greenland Self-Government of 2009 recognizes Greenlanders as a people pursuant to international law with the right of self-determination. Following the election of a new government in 2013, Greenland political leadership aimed to move toward independence.

Greenland's population of 56,000 includes 50,000 Indigenous Inuit people, made up of three major groups.⁵¹ The majority of Greenlandic Inuit refer to themselves as Kalaallit.

Believing mental decolonization would prepare Greenlanders to cut ties with Denmark, the government formed a reconciliation commission. Such a body could address the lack of historical awareness among Greenlanders, and the need to define themselves, due to Denmark's control of their narratives and history. Denmark ratified ILO Convention 169 in 1996, and has endorsed the UNDRIP.

Mandate

The Greenland Reconciliation Commission was established in 2014. Six commissioners represented the regions, ethnicities and language groups of Greenland, with considerable turnover during operations.

The Commission looked at colonial policies, such as paying Inuit workers less, relocating families from their traditional lands into

51. International Work Group for Indigenous Affairs. Greenland. <https://www.iwgia.org/en/greenland.html>

settlements, and sending children to Denmark for schooling.

Methodology

Commissioners decided early on not to focus on the first 250 years of Danish colonization, but rather the detrimental effects of policies in the period 1953–1979, after Greenland formally ceased being a colony. One reason was that the Commission could access informants who lived through this period. This period was known as the modernization period, in which assimilationist policies — sometimes called Danification — tried to eliminate Greenlandic culture.

Denmark refused to participate in the Commission, saying it had no need to reconcile. The Commission then formulated a four-sided definition dealing solely with reconciliation within Greenland:

1. Personal reconciliation with one's self and background;
2. Reconciliation with the past;
3. Reconciliation between groups in society; and
4. Reconciliation between generations.

The Commission engaged the public by taking testimonies, conducting hearings, and fostered an artistic project to promote inclusion. A conference marked the end of the Commission, as the final report was delivered to the parliament. The Commission did not take a very legalistic approach to this work.

Findings and recommendations

The final report was released in December 2017, in Danish and Kalaallisut, a dialect of the Greenlandic language. Among the 11 recommendations, the report urged the government of Greenland to develop a national action plan to tell Greenland's story from a Greenlandic point of view; establish a knowledge centre to collect and promote an Inuit-centred history of Greenland; create a reconciliation fund to support healing, reconciliation and restoration; and to strengthen the use of the Greenlandic language across all parts of society. It called for a national debate about public apologies for forced movement, societal experiments, and the feeling of being second-rank citizens.

Lessons and features

- Greenland is a rare example of a territory conducting a truth telling process without support of the central government, and when the intention of the process was to pave the way toward independence.
- Some critics assess that the Commission had limited success in engaging with the public, limited public awareness of its work, and little evidence of lasting impact.

Norway, Finland, Sweden

Norway, Finland, Sweden: The Sámi peoples of northern Scandinavia

Background to truth telling processes

The Sámi are the Indigenous people of the northern part of the Scandinavian Peninsula and large parts of the Kola Peninsula, in Sweden, Norway, Finland and Russia. There is limited data on the precise population of the Sámi people, but it is estimated at between 50,000 and 100,000, with the largest number in Norway and fewest in Russia.⁵²

The Sámi people are represented by three Sámi parliaments, in Sweden, Norway and Finland. In Russia, Sámi communities are organized through non-governmental organizations. In 2000, the three parliaments established a joint council called the Sámi Parliamentary Council.

From at least the nineteenth century, governments in Norway, Sweden, Finland and Russia pursued aggressive policies of assimilation. The education system and Christian churches discouraged or suppressed Sámi languages and culture and forcibly assimilated children into the dominant culture.

Today, the Sámi live mostly in cities, though a substantial number

52. Indigenous Peoples in Sapmi. International Work Group for Indigenous Affairs.
<https://www.iwgia.org/en/sapmi.html>

remain in villages in the high arctic. They are still coping with the language and culture loss caused by generations of Sámi children being taken to missionary and state-run boarding schools. They also contend with the legacy of laws to deny the Sámi rights to their beliefs, language, land and traditional livelihoods. Further cultural and environmental threats come from oil exploration, mining, dam building, logging, military bombing ranges, tourism, commercial development and the effects of climate change.

Sámi parliaments have proposed truth commissions to address systemic discrimination. They were inspired in part by the Truth and Reconciliation Commission in Canada, a wealthy, stable country considering violations against Indigenous peoples of the Arctic. Some Sámi leaders wanted a truth commission common to their entire territory, but this was too politically challenging for the four countries involved.

Norway: The Commission to Investigate the Norwegianisation Policy and Injustice Against the Sámi and Kven/Norwegian Finnish Peoples (The Truth and Reconciliation Commission: 2017– present)

Background to the truth seeking process

Norway is home to the largest population of Sámi people, approximately 40,000 people.

Until the end of the twentieth century, Norwegian authorities enacted an assimilationist policy against the Sámi and Kvens (or Norwegian Finns). The policy had grave consequences for their cultures, languages, identities and living conditions, and continues to affect their relationship with the majority population. Also called the Norwegianisation policy, it marginalized and repressed

Indigenous communities.

In 1988, the Norwegian constitution was altered to make the government responsible for safeguarding Sámi people's rights to develop their own culture, language and society. The Sámi Parliament formed in 1989, and Norway was the first country to ratify ILO Convention 169, in 1990. Norway has endorsed the UNDRIP.

In September 2017, with the Sámi Parliament as a driving force, the Norwegian Parliament formed a Truth and Reconciliation Commission (TRC) to investigate centuries of repressive state policies against Indigenous Sámi and the Kven minority.

Mandate

The Commission has a 3-part mandate:

- To produce a historical survey of Norwegian policies and activities towards Sámi and Kven, locally, regionally and nationally.
- To investigate the effects of the Norwegianization policy, including how it affected the majority population's views, and its significance to this day.
- To suggest measures for further reconciliation.

The Commission's mandate is primarily to document and analyse history. Its main task is to carry out a "historic mapping" of policies toward three Indigenous peoples of northern Norway — the Sámi, the Kven, and the Skogfinn (Norwegian for "Finns of the forest") — from around 1800 until current times.

The aim is to establish a common understanding of how Norwegian authorities and society treated Indigenous populations and their cultures, laying a foundation for reconciliation between the Indigenous and majority populations.

Methodology

The 12 commissioners lead efforts to gather stories from individuals and groups in meetings, interviews, and submissions in written or recorded form. The Commission also plans to examine existing research, filling

gaps as necessary through partnerships with research institutions. The Commission committed to engaging with the Sámi-related efforts taking place in other countries throughout the process.

The Commission is scheduled to complete its work by September 2022, when it will submit its report to the Parliament.

| Sweden

Background to the truth seeking process

Approximately 20,000 Sámi people live in Sweden. In 2015 the Sámi Parliament in Sweden, together with the Equality Ombudsman, began exploring conditions for initiating a truth and reconciliation process. The Sámi people and the Church of Sweden had already worked on a White Paper to investigate the historical actions of the Church against the Sámi people.

In 2019 the government announced a Sámi Truth Commission to shed light on injustices against Indigenous people by the Swedish state. Preparatory work began in 2020. Sweden has endorsed the UNDRIP, but has not ratified ILO Convention 169.

Methodology

The work of the Commission will be done by the Samediggi, an elected, Indigenous 31-seat assembly that protects the rights of northern Sweden's people of Sámi heritage. The Samediggi also acts as an institution of cultural autonomy.

Finland

Background to the truth seeking process

Finland is home to around 10,500 Sámi people. Events organised by the Sámi Parliamentary Council and the Sámi Parliament in Finland included discussions on the intergenerational transmission of trauma, the loss of language and culture, the impact of residential schools, the assimilation policies of the four countries and colonisation policies.

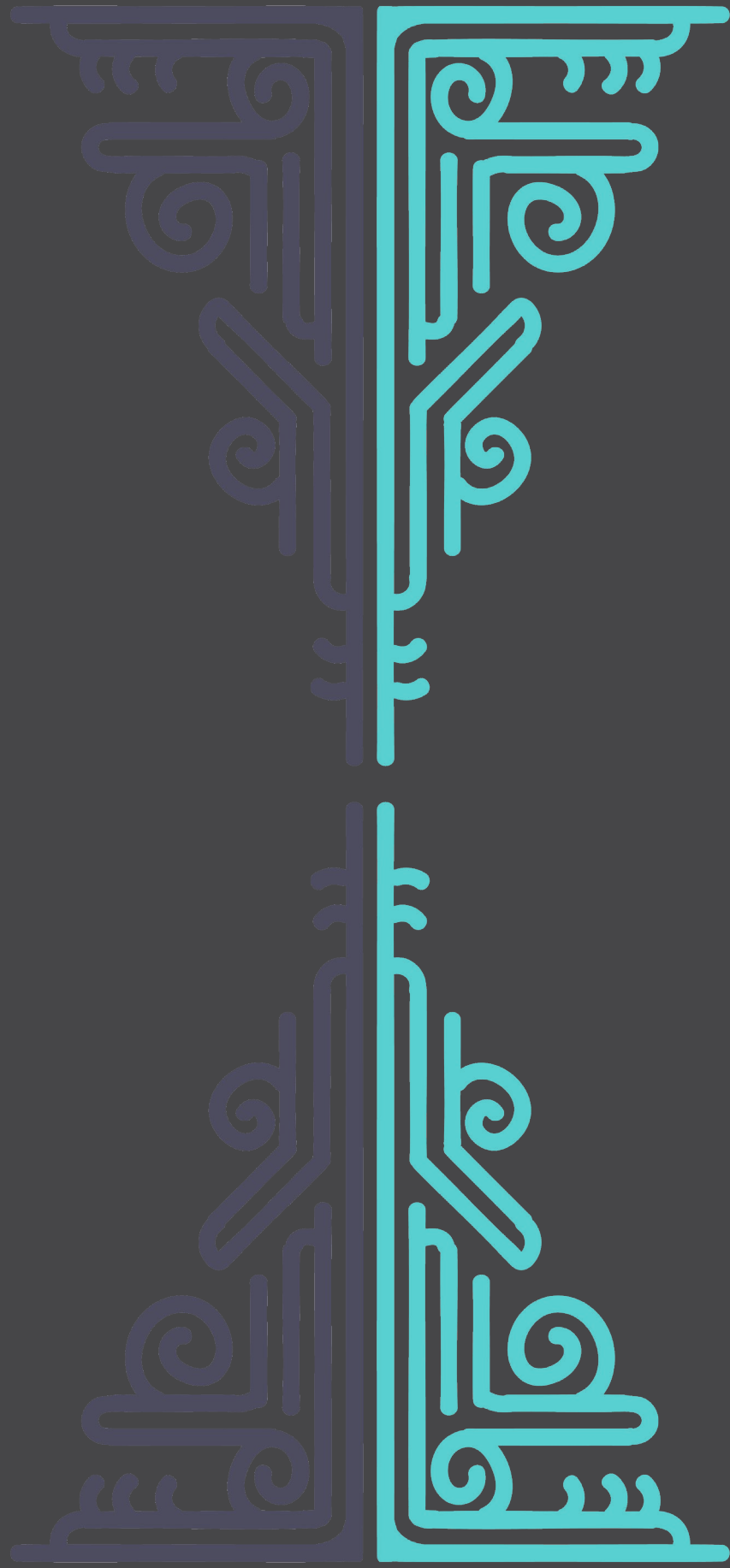
Following a proposal from the Sámi Parliament in October 2017, the government and the Sámi launched preparations for a truth and reconciliation process. In 2018 wide-ranging consultations took place in the Sámi homeland and the largest cities in Finland. In 2019 the Prime Minister approved the proposal for a Truth and Reconciliation Commission Concerning the Sámi People, and the Sámi Parliament approved it at the end of the year.

Finland has endorsed the UNDRIP but has not ratified ILO Convention 169.

Mandate

During negotiations on the mandate, the Sámi insisted that a fact-finding and truth process was required before focusing on reconciliation. The Sámi also insisted on recognition of their history.

The mandate of the Commission is expected to start from Finland's independence from the colonial power Russia in 1917. Because the Covid pandemic delayed the Commission's start, the deadline for completion of the work was extended to the end of 2023. Commissioners are expected to be appointed in 2021.





LESSONS & CONSIDERATION



A sign reading 'Customary Land' planted by an indigenous community in Boven Digoel, Papua. Indigenous communities in this area have been fighting to defend their traditional lands from large-scale palm oil plantations.

(Photo by AJAR/PWG, 2019).

Some common lessons and considerations emerge from the case studies. These are relevant for both Indigenous and non-Indigenous advocates and communities, whether a proposed truth telling process will include Indigenous peoples among other victims, or whether it will exclusively focus on violations of Indigenous people's rights,

Lessons can be divided into those to be applied before, during and after a truth commission. However, overarching all phases is the fundamental importance of applying the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) to guide truth telling from the beginning stages of considering a truth telling process through to the follow up work after it is completed. Most countries have endorsed the Declaration, and it can ensure a truth telling process is grounded in an international human rights framework.

Before

Whether to establish a truth telling process

Do Indigenous people want a truth telling process? Any process with implications for Indigenous peoples should be based upon their free, prior and informed consent. This consent requires an in-depth consultation process prior to a decision to set up a truth commission. Indigenous organisations and leadership should be partners from the outset and should represent the diversity within Indigenous communities.

What kind of body should conduct the truth telling process: status and composition

The case studies show the many formats a process can take. Each context has opportunities and obstacles that may make some formats more appealing and possible than others. Considerations include:

- A truth telling process could be conducted by an independent institution established by law or decree. This body could be an existing national human rights institution or an institution already created to protect and promote Indigenous rights. The institution or inquiry could be at the national level with a national mandate, or at a sub-national level with a more local focus. Whatever the form it takes the body must be credible in the eyes of Indigenous communities, while also having the status to impact decision-makers.
- In countries where official action is not yet possible, there may be scope for civil society — Indigenous and non-Indigenous — to collaborate on truth telling processes, which can be important for ongoing advocacy. This approach may be more achievable at the local level in most instances.
- Composition of the body conducting an inquiry is important, with sufficient numbers and diversity of Indigenous commissioners to establish credible Indigenous leadership of the process. Sufficient women commissioners are important to promote women's participation and perspectives in the truth telling process.
- Governance and advisory structures with Indigenous representatives can guide the work of the commission and lend the process integrity.

Mandate

What do Indigenous people want the truth telling process to focus on, what time period do they wish the investigation to examine, and what kind of process do they want?

A truth telling process could:

- Focus on a specific theme affecting Indigenous communities such as removal of children, murdered and missing women, or deaths in custody.
- Focus on the full historical experience of Indigenous peoples from colonisation to modern times, including examining pre-colonial life.
- Examine violations against Indigenous peoples among other victims, as part of a post-conflict or post authoritarian regime truth commission.

Indigenous peoples should be consulted on what they believe the mandate should focus on, and through what kind of process. Truth telling processes have consistently demonstrated that to examine even relatively contemporary violations of Indigenous rights, it is essential to examine underlying causes, going back to first contact and early colonial periods. Mandates should be drafted to allow for examination of these underlying causes, even if the specific focus is a single thematic issue or violations during a recent conflict.

In post-conflict truth commissions, how can a process ensure Indigenous engagement and adequate examination of underlying causes and a broad range of rights?

- There is a risk that post-conflict truth commissions which consider violations against Indigenous peoples among other victims fail to adequately address Indigenous experiences and expectations. Indigenous peoples should not be further marginalised by such commissions. In engaging with Indigenous stakeholders, a commission should be guided at all stages by the UNDRIP.
- Even if a mandate is limited to contemporary timeframes, a commission should consult with Indigenous stakeholders to ensure interpretation of the mandate and methodology allows adequate examination of underlying causes.
- At the mandate-making stage, decision-makers should consult with Indigenous communities to determine if social, economic and cultural rights issues are covered, including the collective rights of Indigenous communities over land, territories and resources. Most post-conflict truth commission mandates have focused on civil and political rights, in particular serious violence against the body such as killing, torture, disappearance and

sexual violence.

Thematic inquiries as an accessible way to Indigenous truth telling

In Australia and Canada, early truth telling processes focused on specific themes, such as deaths in custody and the removal of children. While such thematic investigations may not reveal all aspects of the truth of violations against Indigenous peoples, they can go deeper into specific issues while shedding light on underlying causes. Thematic inquiries may be more achievable where Indigenous people struggle to achieve recognition.

Thematic inquiries may also be conducted by an existing institution such as a national human rights commission, or Indigenous rights institution, which may be more achievable than creating a new stand-alone entity.

A new wave of Indigenous truth telling

A new wave of truth commissions is emerging, focused on the experiences of Indigenous peoples with a broad-based mandate for truth telling. In the three Scandinavian truth commissions, California, and Australia, current and planned truth telling processes seek to explore the full historic experience of Indigenous peoples. In some contexts, such as Australia, Indigenous people see this as a necessary step in re-establishing relations between Indigenous peoples and the state, as well as people-to-people relations.

These commissions have a wider framework than the thematic focus of previous inquiries and are embedded in the international framework for Indigenous rights represented by the UNDRIP. They are likely to expand the horizons of traditional post-conflict truth commissions, including what kind of truths are examined and the ways of telling and examining historical truths.

During

Interpreting the mandate

Most truth telling mechanisms require interpretation of the official mandate to decide where to focus limited time and resources. A lesson from virtually all truth commissions is that the scope of truth seeking is much larger than can be achieved in any time- and resource-bound effort. Priorities are needed. These early critical decisions must be informed by consultations with Indigenous peoples.

Ongoing mechanisms of consultation

Where a truth commission has been established and mandated without adequate consultation with affected Indigenous communities, a Commission must quickly act to consult the communities. This lack of preliminary consultation has occurred in a number of post-conflict truth commissions established by peace agreements. Some acted to repair this issue once they were formed, such as in Guatemala and Colombia.

A commission may decide to form an advisory or steering body of representative Indigenous bodies and individuals to guide all stages of the process. This mechanism can help ensure meaningful consultation on important decisions during its operations; assist in final recommendations; and help ensure the integrity of a commission.

Methodology

Truth commissions have evolved over 40 years, each learning from earlier experiences. While truth commissions are official institutions established by law, they can be flexible and creative in the way they work. Greater involvement of Indigenous peoples will expand what is necessary and possible in a truth commission.

In designing and operating truth commissions, stakeholders should look at methodologies that work best for Indigenous participants, to be determined

through consultation. Some lessons include:

- **The safety of Indigenous people is a first consideration.** Sufficient resources should ensure physical, psychological and cultural safety of participants. A meaningful process cannot proceed without doing so, and real harm may occur.
- **Multidisciplinary methods of research and examination** can be used alongside legalistic methods and individual statement taking. These include traditional Indigenous truth telling methods; artistic expression; and collaborating with historians, anthropologists, psychologists and data specialists.
- **Collective ways of testifying** can work well for many remote communities. They are also especially relevant for examining truth regarding violations of collective rights, highly relevant for Indigenous communities.
- **Examining long Indigenous and colonial history poses different challenges** than post-conflict truth commissions focussed on shorter, more recent periods. Research methodologies must take these into account, using oral histories taken from communities as well as individuals and partnering with Indigenous and other experts in history, anthropology, gender studies, forensics, and other disciplines.
- **Traditional cultural practices** and methods of information sharing and truth telling can be employed, including through expressive arts and performance, sometimes linking traditional and contemporary arts. This approach can be ceremonial and symbolic in important ways, and can be a key element of substantive truth telling and validation. This work can also create memorial art that can live on beyond the commission.
- **Taking the truth telling process to local communities** is important for Indigenous communities, especially those in remote communities.
- **Programs should be designed with Indigenous women** to ensure their effective leadership and participation.
- **Particular methods for truth telling by marginalised groups** should be considered, for example Indigenous LBGTQI people and people with disabilities.
- **A commission must have appropriate language** capacity to engage with diverse Indigenous communities.
- **Psychosocial support is needed** at all stages of engagement with Indigenous communities — outreach, preparation, testifying, and afterwards. Where psychosocial resources are limited, partnerships

with community and specialist agencies or government services are needed

- **A commission should decide early how much engagement with the wider society it wants.** Increasingly, truth commissions seek to engage society through the truth-seeking process itself as part of public education, using public hearings, media coverage and social media engagement. Resources are needed to make this work a priority, starting with a specialist communications team inside the commission.
- **Intergenerational aspects of truth telling and listening can be a powerful benefit** of the process. As a means of working toward social change, programs can promote youth engagement throughout the process.

Staffing

- Sufficient numbers and diversity of Indigenous staff are essential to successfully engaging with Indigenous communities.
- Commissioners and staff benefit from training to respectfully and effectively engage with diverse Indigenous communities.

Partnerships

- Partnerships are critical to the functioning of a truth commission and to building a network of support. They can contribute to broader community outreach and engagement, as well as political advocacy, during and after the commission.
- Partnerships with Indigenous organisations are particularly essential to success, including around advocacy for effective follow-up:
 - * Local Indigenous organisations can act as a bridge between a truth commission and local communities.
 - * Indigenous experts and specialist organisations can bring expertise to commissions, including knowledge of cultures, gender and psychosocial support.
 - * Indigenous organisations may conduct specific tasks for a commission, deploying statement takers, researchers or community outreach workers.
 - * Partnership with a truth commission can also help build capacity of local Indigenous civil society organisations.
- Media partnerships with Indigenous and other media can amplify

- outreach and engagement in local languages.
- Partnerships with the creative industry — Indigenous and otherwise — can enhance access and support for a commission's work, especially with young people.

Crafting findings and recommendations:

- Consultation with Indigenous representatives is important in shaping recommendations that address their experiences and priorities.
- While most post-conflict truth commissions have not taken an in-depth approach to Indigenous rights, some have yielded important findings and visibility on their rights: findings of genocide in Guatemala and in Peru; findings on land and territories of Indigenous peoples in the Philippines; and the focus on some Indigenous communities and rights in Kenya.
- In preparing its final report, a commission should also create accessible versions and products, in appropriate languages. These may include videos, audio products, child and youth versions of the report, as well as summary versions. Language is an important issue, which requires time and resources.
- A commission should consider the need for a follow-on institution and monitoring mechanism for recommendations, in consultation with Indigenous communities.

After

- The key lesson of virtually all truth commissions and truth telling processes is that implementing recommendations is very challenging. Sustained advocacy is required over many years. It is important to acknowledge and prepare for this reality during the lifespan of a commission.
- Partnerships and alliances formed before and during the commission are critical to sustained advocacy for implementation of recommendations. Broad-based support is important to address political opposition to recommendations.
- An Indigenous advisory body can be a critical voice for implementing recommendations, helping to sustain consultation and advocacy.
- Mechanisms to monitor implementation of recommendations are important. Many truth telling processes have lacked an official monitoring mechanism to hold decision-makers and others to account for implementation of recommendations.
- Recommendations usually target a variety of actors from central and local governments, civil society, religious communities, media, the business sector, schools and youth organisations. While some recommendations are especially challenging, others can be advanced more quickly to build momentum, maintain public support, and keep up pressure for wider implementation.
- It is important to provide feedback to individuals and communities who participated in the truth telling process as the commission completes its report and recommendations. This effort can include ensuring they receive the final report as well as other more accessible products, such as radio programs and films.
- Many truth commissions recommend a follow-up institution to house archives; conduct public education on the findings; support advocacy on the recommendations; and foster ongoing truth telling. A follow up institution should maintain a strong relationship with Indigenous people and communities involved in the original truth telling process.



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