

# ENCYCLOPEDIA OF TRANSITIONAL JUSTICE

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(possibly unjustly) assigning such categories to contemporary groups, and the possible absence of real and requisite remorse in official apologies to entire groups. Still, many hope that apologies, when made with sensitivity and attention to appropriateness and combined with compensation and other forms of transitional justice, may contribute to reconciliation and positive normative change in old and new democracies alike.

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Cross-references: Australia; Canada; Commission on Wartime Relocation and Internment of Civilians; Germany – the Nazi Past; Greensboro Truth and Reconciliation Commission (United States); Japan; New Zealand; Poland; Russia; South Africa; Truth and Reconciliation Commission (Canada); Truth and Reconciliation Commission (South Africa).

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### Commissionism

Commissionism refers to the proliferation of truth commissions in one national territory to address past human rights violations. To date, two different types of

commissionism have been observed. In the first one, one particular period of politically motivated human rights abuses is addressed by different commissions created independently of one another at different but close times. They work at the city, state, and national levels as well as within the scope of different civil society organizations. The other version of commissionism is focused on multiple incidents of past atrocities that were committed over different historic periods and that have not been addressed before. This complicated reality inspires commissions that operate simultaneously or during different periods. When they take place simultaneously, commissions at both national and subnational level can be established.

### *The Process in Detail*

Commissionism is a new phenomenon that has been clearly identified in two countries: Brazil and South Korea (see separate entries). Other countries may have had more than one truth commission – such as Chile – but they have not experienced the simultaneous proliferation of truth commissions in different instances dedicated to addressing human rights violations committed decades before. The goals of commissionism overlap with those of truth commissions – discovering past abuses, fulfilling the right to know, and restoring the dignity of the victims. By using multiple commissions, commissionism may achieve these goals by finding loopholes and overcoming the limitations of individual commissions. However, commissionism also has forward-looking objectives, such as recommending political and judicial reforms, reducing future human rights violations, and establishing the legitimacy of the current government.

In Brazil, the establishment of the National Truth Commission (NTC) (see separate entries) in May 2012, devoted to the investigation of human rights violations perpetrated by the country's military dictatorship (1964–1985), triggered the creation of numerous subnational truth commissions. Their rapid proliferation between November 2012 and 2014 did not follow any set pattern, nor was it governed by guidelines laid down by any leadership. Although Brazil regularly experiences high rates of state violence, it was during its military dictatorship that violence was used in a systematic manner against those considered political enemies by the regime. Thus, truth commissions are focused on this particular period.

During its short and intense lifespan, the phenomenon of commissionism mobilized around 1,000 commissioners in about 140 truth commissions throughout the country. They made up a heterogeneous arena divided between government bodies with hybrid compositions – that is, government departments and legislative chambers (at state and municipal levels) that combined state and civil society members – and organized sectors of civil society – mainly universities, professional associations, and trade unions – only composed of nonstate members. The truth commissions have had different scopes of action, frameworks, methodologies, work schedules, objectives, and mobilization capacities. They established occasional links with each other, concentrated around government and legislative commissions, mostly among the better-structured ones that were present in fourteen of the twenty-five states in the country.

Notwithstanding the diversity of commissionism, two important principles were shared by its hundreds of operators in Brazil, in line with paradigms of the

international human rights movement. The first principle is that the unveiling of the victims' truth creates the conditions to ensure that the crimes of the dictatorship are not repeated. Truth, in this view, has a prophylactic quality and inhibits the possibility of new cycles of human rights violations. The second principle of convergence among commissioners, closely related to the first, is that human rights are a necessary condition for democracy. Without their assurance, democracy would be merely formal, not a political reality. Although focused on inquiry into past human rights violations perpetrated by the dictatorship that formally ended almost thirty years ago, truth commissions in Brazil have also dedicated themselves to the public denunciation of current human rights violations, committed mainly by police agents against poor populations. In doing so, they question the quality of current democracy and point to strong continuities with the dictatorship.

Despite these points of convergence, commissionism in Brazil also included significant divergences regarding the commissioners' profile and truth-finding objectives. The first divergence related to the composition of commissioners' boards. Unlike the NTC in Brazil, whose founding law establishes the need for commissioners to act with impartiality, the Commission of the Legislative Assembly of the State of São Paulo (see separate entry), the first subnational truth commission in the country, establishes the opposite principle: that proximity is desirable between commissioners and their objects of inquiry. The Commission's founding document does not exclude the politically disappeared or people affected by human rights violations perpetrated by the dictatorship from membership on the Commission. On the contrary, this is precisely the desired profile for commissioners, for it is understood that people directly affected by the dictatorship are driven by a genuine willingness to reveal its actions and that they may have accumulated knowledge of the circumstances, perpetrators, and victims of repression. Indeed, the proliferation of truth commissions in Brazil evolved mainly around the proximity between commissioners and victims, at odds with the profile of the NTC, which resembled that of other truth commissions around the world.

The second difference refers to the definition of "serious human rights violations." The NTC understood them in accordance with international law, as equivalent to the crimes of death, torture, enforced disappearance, and concealment of human remains. Lower-level truth commissions tended to relate the seriousness of crimes to the type of violation most commonly imposed on their specific communities. Thus, revocation of political mandates and students' registrations in universities, restriction of the freedoms of expression and profession, and, above all, political purges were considered serious. Once again, the proliferation of truth commissions eluded the praxis of truth commissions around the world, adapting their understanding of "serious human rights violations" to the local histories of violence inflicted by the dictatorship.

For its part, South Korea experienced multiple periods of politically motivated human rights violations in its modern history. Gross and systemic human rights violations occurred during the Japanese colonial period (1910–1945), the US military occupation and internal unrest (1945–1948), the war with North Korea (1950–1953), the dictatorship of Syngman Rhee (1948–1960), and the repressive military and authoritarian regimes of Park Chung-hee, Chun Doo-hwan, and Roh Tae-woo (1961–1993).

Even before democratization began in the 1980s, local and sporadic commissions were created to address human rights violations. As these efforts mostly ended in failure, multiple commissions were created later. For example, the Special Committee and Court for the Punishment of Pro-Japanese Collaborators (1948) was created by the National Assembly to investigate collaborators with Japanese colonial rule. It failed because of a lack of support from the government, which contained many former collaborators. Similarly, the Congressional Committee for the Investigation of Civilian Deaths (1960) was set up to conduct fact-finding on the civilian mass murders during the Korean War, which were estimated to involve at least 300,000 deaths. The Committee conducted a week-long investigation and then hurried to close down. In a way, the Committee was created as a token to show victims that the Congress would work for future legislation regarding the issue of past human rights violations. It failed because of the investigators' lack of political will.

All these early efforts led to a severe backlash and repression after the military coup of General Park Chung-hee. Under him, efforts to address past human rights violations completely disappeared from the public space. It was only after democratization in the late 1980s and 1990s that victims of various human rights violations started cautiously to raise their voices again. The Congressional Committee on Gwangju (1987) was established to address the Gwangju massacre of 1980 and the Special Committee for the Investigation of Geochang Events (1996) was instituted by the National Assembly to investigate the Geochang massacres of 1951. However, both commissions had their limitations, since the former military and right-wing political groups were still in power. During this period, however, local efforts were made to address the Jeju massacres, which involved approximately 30,000 recorded victims. To investigate it, the Congressional Committee for the Jeju Massacres was set up under the Jeju Provincial Congress in 1993. Although established at the local level, this Committee was the first official government body to investigate the Jeju massacre.

Under Presidents Kim Dae-Jung (1998–2003) and Roh Moo-Hyun (2003–2008) the number of truth commissions increased exponentially. First, President Kim created two signature commissions in 2000. The Presidential Truth Commission on Suspicious Deaths investigated suspicious deaths and disappearances during the military and authoritarian regimes (see separate entry). The National Committee for the Investigation of the Truth about the Jeju April 3 Events investigated civilian deaths during the Jeju April 3 events (see separate entry).

These efforts continued under President Roh, who created six truth commissions that usually operated for a two-year term, but in some cases their mandate was extended. First, the Special Committee for the Investigation of Pro-Japanese Collaborators and the Special Committee for the Investigation of Forced Labor under Japanese Rule were both instituted in 2004 to make up for the failure of the first commission (created in 1948, but closed down in 1949). Thus, two new commissions were created after five decades. Second, the Truth and Reconciliation Commission was created in 2005 to investigate civilian deaths during the Korean War as well as various types of human rights violations since 1910 (see separate entry). This truth commission had the most extensive mandate in history. It investigated human rights violations committed not only by the South Korean government but also by the enemies of the

state, mainly North Korea. Third, the Presidential Truth Commission on Suspicious Military Deaths was established in 2006 to investigate suspicious deaths that occurred among the ranks of the military. Fourth, the Investigative Commission on Pro-Japanese Collaborators' Property was created also in 2006 to investigate the properties acquired by collaborators and to revert these properties to the state. Fifth, the Committee for the Victims of Overseas Forced Mobilization during the Pacific War was created in 2008.

Commissionism was a result of three distinct factors in South Korea. First, it had as an obvious precondition the multitude of human rights violations. Second, multiple commissions were created after democratization, specifically under the mandates of Presidents Kim and Roh, because of the manifest failure of and dissatisfaction with previous attempts to clarify the violent past. Third, commissionism was possible because of the functional division among various commissions. Sometimes one commission's work led to the creation of another commission, as in the case of the commission to investigate Japanese collaborators and the commission to investigate their properties. Another example is the two commissions established to investigate suspicious deaths in general and those within military ranks.

### *Outcomes*

Commissionism in Brazil and South Korea had mixed results. In Brazil, the fragmented arena of truth commissions and their great diversity of profiles, including local and specific objectives, precludes a precise evaluation of the effectiveness of commissionism. However, it is possible to identify some advantages and limitations regarding the goal of compelling the state to face the violence its agents committed during dictatorship (a recent political agenda in Brazil). The advantages include the fact that the commissions' dispersion made it possible to articulate local narratives of the dictatorship, allowing them to address it from new angles, such as the massacre of indigenous populations and the collaboration of national and international business actors with the regime.

At the same time, the fragmentation and the low level of coordination among the different commissions meant that commissionism had little clout although it involved nearly 1,000 commissioners. Nonetheless, it was successful in clarifying individual cases of deaths and disappearances and in raising the issue of state violence in Brazil's public arena. However, it did not raise the desired empathy and social dialogue around the suffering of past and present victims of state security agencies. Commissionism was symbolically defeated when the Brazilian citizens elected in October 2018 Jair Bolsonaro, a military president who publicly condones torture and dictatorship.

Just as in Brazil, in South Korea there are contesting views on the question of whether commissionism achieved its intended goals. It is difficult to reach a uniform conclusion on the effect of commissionism, since truth commissions differ in their purpose, size, mandate, and power. A major advantage of commissionism is that as the number of commissions increases, a more refined and complete picture of human rights violations is revealed to the public. In addition, gruesome truths about past human rights violations are revealed, and the society initiates various commemoration and reconciliatory projects in order not to forget the state abuse of power. For example,

in some cases, official apologies were issued by the heads of state, and national and local governments built memorial parks, museums, and foundations. The findings of various commissions were reflected in official government documents and history textbooks. Furthermore, after lawsuits revealed the truth, individual reparations were made to the victims, and some of them were able to clear themselves of previous false accusations.

However, there were also some drawbacks. Too many truth commissions were created, and this allowed opponents and the general public to question their validity and usefulness. The public also felt truth commission fatigue as the number of commissions mushroomed. Opponents coined the term “the Republic of Commissions” to question whether all these past-correcting measures could effectively accomplish their goals with limited budgets. Under the conservative regimes of 2008–2017, presidents criticized the practice of commissionism as backward-looking and resource-draining. This further led to the renewed suppression of victims and activists under these regimes, mainly by cutting monetary support to victims and various memorialization initiatives.

### *Conclusion*

Although commissionism took place in countries with quite distinct cultural and political backgrounds, it stemmed from a combined effort of victims and activists on one side, and political actors in strategic government and legislative positions on the other. In both countries, it did not result from a manifest and intended plan conceived by any personal or institutional leadership; instead, it evolved as a diverse and fragmented process unified by the goals of truth-seeking and democracy-fostering. That is, commissionism is both backward- and forward-looking. It denounces the horrors of the past so that they do not happen again.

In both Brazil and South Korea, commissionism would not have been possible if it were not for the fervent and consistent advocacy involving families and activists engaged in civil society organizations and also in national and local legislatures and governments. For example, families of the victims of the Araguaia massacre in the state of Pará in Brazil, and those of the victims of the Jeju massacre and of the Korean War in South Korea, struggled for many decades and played a decisive role in the creation of local and national truth commissions. Moreover, among many other cases, the persecution of gay people under the dictatorship in Brazil was unveiled by local scholars in the Truth Commission of the State of Rio de Janeiro (see separate entry), and a failed commission to investigate pro-Japanese collaborators in 1948 was revived because of the consistent research and activism of a research nongovernmental organization and scholars. Commissionism is the result of consistent and long-lived transitional justice activism involving both social movements and state actors. They confirm the politics of memory as a matter of past, current, and future interest.

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Cross-references: Brazil; Commission of the Legislative Assembly of the State of São Paulo (Brazil); National Committee for the Investigation of the Truth about the Jeju April 3 Events

(South Korea); National Truth Commission (Brazil); Presidential Truth Commission on Suspicious Deaths (South Korea); South Korea; Truth and Reconciliation Commission, Republic of Korea (South Korea); Truth Commission of the State of Rio de Janeiro (Brazil).

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### Compensation

Compensation consists of economic or monetary awards to remedy or alleviate damage or loss suffered by injured parties. As a measure of transitional justice, it has often been used to acknowledge and redress a range of harm caused to victims of disappearances in Argentina, the genocide of Jews in the Holocaust, and historical victimization caused by British colonial powers in Kenya with suspected Mau Mau fighters (see entries on Argentina; Germany – the Nazi Past; Kenya). It has also been used to resolve interstate conflicts, as with the Eritrean–Ethiopian Claims Commission.

In a number of cultures around the world compensation has been traditionally used as a means to settle disputes and assuage retribution or blood feuds amongst families, clans, and communities; this practice has continued in transitional contexts. As Grotius (1923) said, “money is the common measure of valuable things” (p. 35). Compensation can enable victims to manage their suffering as they see fit, spending it on private health services, investing it in a business or pursuing further education for themselves or their family. Such liberty enables compensation to be used to respond to a range of violations in countries emerging from authoritarianism or conflict.

In international law compensation is seen as a secondary remedy for violations that cannot be made good by restitution, as pure corrective justice for the harm caused. However, in cases where victims have been disappeared, killed or suffered serious injury, complete restoration to before-the-harm status is “impossible, insufficient, and inadequate” (*Blake v. Guatemala*, IACtHR 1999). Thus, compensation becomes a primary way to mediate the suffering caused. Domestic and international courts have often struggled to adjudicate mass atrocities, given their scale of victimization. Nevertheless, compensation is considered as a key form of reparation, but often for gross violations needs to be accompanied by other forms such as restitution, rehabilitation, measures of satisfaction, and guarantees of nonrepetition. This entry outlines the use of compensation in transitional contexts, highlighting the value and tensions in such measures, looking first at the practice and processes, followed by examining their outcomes.