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# From Dictatorship to Democracy: Truth Commissions and the Panamanian experience investigating the crimes committed under the military dictatorship

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## Resumen

La justicia transicional es la concepción de la justicia asociada a períodos de cambio político, caracterizada por respuestas jurídicas para hacer frente a los actos ilícitos de los regímenes represivos predecesores. Las Comisiones de la Verdad han sido uno de los instrumentos para lograr la justicia de transición. Como mencionó Adriana Rudling, hay múltiples razones por las que los gobiernos establecen Comisiones de la Verdad. Por ejemplo, en Chile, Patricio Aylwin decidió crear una Comisión de la Verdad porque era consciente de la necesidad de reconocer el sufrimiento de las víctimas. Por otro lado, en el Chad, Idriss Deby estableció la Comisión de la Verdad para limpiar su imagen en comparación con el último régimen criminal. Los gobiernos pueden ver este instrumento como una transferencia de responsabilidad a un tercero, por lo que están exentos de encontrar una narrativa que convenga a todas las partes involucradas en el conflicto mientras manifiestan la intención, auténtica o no, de hacer justicia.

En este artículo se analiza la Comisión de la Verdad de Panamá, creada el 18 de enero de 2001, mediante el Decreto Ejecutivo No. 2. Esta Comisión tenía el mandato de investigar las violaciones a los derechos humanos cometidas durante la dictadura militar de los generales Omar Torrijos Herrera y Manuel Antonio Noriega entre 1968 y 1989.

**Palabras clave:** Justicia transicional, comisiones de la verdad, Derechos Humanos, Panamá, Estados Unidos

## Abstract

Transitional justice is the conception of justice associated with periods of political change, which is characterized by effective legal responses to confront the wrongdoings of repressive predecessor

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regimes.<sup>1</sup> Truth Commissions are one of the instruments to achieve transitional justice. As Adriana Rudling<sup>2</sup> mentioned, there are multiple reasons why governments establish Truth Commissions. For example, in Chile, Patricio Aylwin decided to implement a Truth Commission because he was aware of the necessity of recognizing the suffering of victims. On the other hand, in Chad, Idriss Deby established the Truth Commission to clean his image and distinguish his government from its predecessor's criminal regime. Governments can see this instrument as a mechanism for transferring responsibility to a third party, so they are exempted from finding a narrative that suits all parties involved in the conflict while manifesting their intentions, authentic or not, to accomplish justice. This article presents the Panamanian Truth Commission (*Comisión de la Verdad de Panamá*) established on January 18, 2001, by Executive Decree No. 2. This Commission had the mandate to investigate human rights violations committed during the military dictatorship of Generals Omar Torrijos Herrera and Manuel Antonio Noriega between 1968 and 1989.

**Key words:** Transitional justice, Truth Commissions, Human Rights, Panama, United States.

## I. Truth Commission: general reflections

United Nations former Secretary-General Kofi Annan has noted that it is only through "reintroducing the rule of law and confidence in its impartial application that we can hope to resuscitate societies shattered by conflict."<sup>3</sup> As he declares, transitional justice is a critical element in the restructuring of post-conflict states.

In the past two decades, countries have been incorporating the transitional justice mechanism to uncover and deal with crimes and human rights violations from the past. Therefore, as a field of policy expertise, research, and law, transitional justice is gaining relevance within the world's most significant multilateral agencies, and it is being included in their work-agendas to build durable peace within countries.<sup>4</sup>

Truth Commissions' work often concludes with collecting a wide variety of records: transcripts, video and audio recordings, e-mails and computer files, and artifacts. According to Trudy H. Peterson, preservations "complete the Commission's work. Oppressive regimes try to impose selective amnesia on society...Saving the records make sure that amnesia does not prevail."<sup>5</sup>

As a non-judicial body, a Truth Commission's purpose is different from the one pursued in courtrooms. Nonetheless, it is not uncommon that, from the information collected in these non-judicial bodies, the General Attorney determines to begin an investigation against a particular perpetrator.

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<sup>1</sup> TEITEL, Ruti (2003): "Transitional Justice Genealogy", Harvard Human Rights Journal, V. 16, p. 70. Available at: <https://www.qub.ac.uk/Research/GRI/mitchell-institute/FileStore/Fileupload,757186,en.pdf>. Accessed: 6 January 2021.

<sup>2</sup> RUDLING, Adriana (2011): "¿Algo más que verdad? Un estudio sobre la implementación de las recomendaciones de la Comisión de la Verdad de Panamá", p. 74. Available at: <https://www.cidempanama.org/files/2013/05/%C2%BFalgo-mas-que-verdad-un-estudio-sobre-la-implementacion-de-las-recomendaciones-de-la-comision-de-la-verdad-de-panama-RPP-12.pdf>. Accessed: 7 January 2021].

<sup>3</sup> UNITED NATIONS, GENERAL ASSEMBLY: "Secretary-General's Address to the General Assembly", New York, September 21, 2004, available at: <https://www.un.org/sg/en/content/sg/statement/2004-09-21/secretary-generals-address-general-assembly>.

<sup>4</sup> For instance, the United Nations, the International Committee of the Red Cross, and the Inter-American Commission on Human Rights.

<sup>5</sup> PETERSON, Trudy (2005): *Final Acts: A Guide To Preserving The Records Of Truth Commissions* (Washington, Woodrow Wilson Center Press, First Edition), p. 2.

The mandate of Truth Commissions usually is to investigate and report the abuses of human rights committed over a specific period within a country or associated with a particular conflict. The goals are providing guidance and recommendations to prevent new abuses, like those committed in the past; presenting recommendations calling upon reparations to the victims; pushing reforms within the government and other social structures; and introducing memorialization efforts and reconciliation plans.

For Priscilla B. Hayner<sup>6</sup>, Truth Commissions should not be established by following some one size fits all rules and guidelines. She argues that the Commissions' structure, functioning, and objectives have to be decided on a case-by-case basis, considering the country's particular context and political reality. Some actors proposed the international approval of a basic template, so countries lacking the legal expertise required establishing a commission could have a model to rely on. However, this could risk the core principle of uniqueness required for Truth Commissions and, therefore, its usefulness and legitimacy within the population. The country has to decide how a commission should collect, organize, and evaluate the testimonies from victims and other relevant actors if the body should be taking public hearings instead of conducting their mandate confidentially; or name-specific perpetrators. For that reason, these bodies are rarely smooth, pleasant, well-managed, well-funded, politically uncomplicated bodies.<sup>7</sup>

Nonetheless, there are essential and general characteristics related to commissions' methodology and operation that countries have to address.

### *Establishment*

There are three conventional alternatives: presidential Decree, legislation in Congress, and during a negotiated peace agreement.

The benefit of a presidentially appointed commission is the possibility of a quick establishment, avoiding political opposition or interference—at least in their establishment—like the commissions of Panama, Argentina, and Chile.

Other Commissions, like the ones established in El Salvador, and Guatemala, were mandated by agreed on a national peace agreement administered by a United Nations office.<sup>8</sup>

Others, like the ones in Sierra Leone,<sup>9</sup> Liberia,<sup>10</sup> the Democratic Republic of the Congo,<sup>11</sup> and Kenya,<sup>12</sup> were created in a national peace agreement but later discussed and acknowledged by Congress, introducing specific terms regarding their functioning.

### *Commissioners*

Some commissions—like the one in Panama—have opted for limited consultation concerning commissioners' selection. However, it is more desirable to implement an elaborate selection process where the victims and the general population can examine and recommend candidates. For example, the South African Commission was the first to implement a method based on an independent selection

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<sup>6</sup> HAYNER, Priscilla (2011): *Unspeakable Truths Transitional Justice and the Challenge of Truth Commissions* (New York, Routledge, Second Edition), p. 12.

<sup>7</sup> HAYNER (2011), p. 210.

<sup>8</sup> UNITED NATIONS. SECURITY COUNCIL: “Report Of The UN Truth Commission On El Salvador”, S/25500 (1 April 1993); UNITED NATIONS, GENERAL ASSEMBLY: “United Nations Verification Mission of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala”, A/RES/51/198 (20 February 1997).

<sup>9</sup> HAYNER (2011), p. 58.

<sup>10</sup> *Id.*, p. 66.

<sup>11</sup> *Id.*, p. 253.

<sup>12</sup> *Id.*, p. 73.

panel and public interview for finalists.<sup>13</sup> This process was followed by the media, step-by-step, and ended up with a list of twenty-five candidates forwarded to President Nelson Mandela for his final selection of seventeen members.<sup>14</sup> Another example is the Truth Commission of Ecuador, where commissioners were selected directly by non-governmental organizations.<sup>15</sup>

A commission will have more legitimacy and public support if the society is involved in the commissioners' selection process. Nonetheless, it is also crucial to consider specific areas of expertise, geographic, gender, and political representation when appointing members.

#### *Term*

The Commission should have, as a general rule, a reasonable deadline—two or three years—to complete their mandate. Nevertheless, it is recommended to begin as soon as possible after the political transition. For Hayner,<sup>16</sup> it is strategic to keep a Truth Commission's tenure relatively short, preventing the risk of losing momentum, focus, and political and public attention and support. Two examples show the risk of extremely long and short periods: The Commission of Inquiry in Uganda (1986) had no deadline: they presented their conclusions more than nine years after the commission started their activity. Unfortunately, their report had little public and political effect on the population.<sup>17</sup> On the opposite, the Commission of El Salvador only was appointed with a six-month term, making it impossible to achieve their goal and resulting in their request for a two-month extension.

#### *Extent of the investigation*

Another factor to consider is that the Commission should choose some representation cases for in-depth investigation and summarize the rest. It is often more useful for future actions and reconciliation to have a deeper understanding of a few cases than a broad general knowledge of many of them.<sup>18</sup>

#### *Date of establishment*

When referring to the start date, there are advantages to start as soon as the transition occurs: political momentum, popular support, and the accessibility of evidence. Nevertheless, some countries prefer to give a reasonable time to the new administration to settle and reinforce the new or restructured democratic institution before working and dealing with the past.

#### *Funding*

Even though it should be ideal for Commissions to be fully funded from the beginning of their mandate, "Insufficiently resourced" is often the main complaint of Commissions.<sup>19</sup> People used to think that the financial support of the government to Commissions could diminish their impartiality. However, this is not true; perhaps, the opposite. When commissions are fully funded, they have more liberty to undertake their actions without asking for extra funding allocation. However, with the increase of international organizations and multilateral cooperation, now it is more common to see commissions partially funded by foreign governments and international organizations.

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<sup>13</sup> SOUTH AFRICA, *Act 95-34 (26/07/1995), Promotion Of National Unity And Reconciliation Act*.

<sup>14</sup> In the end, the President included two members who did not go through the process mentioned, to provide geographic and political balance.

<sup>15</sup> CURBELO, Nelsa (1996): "Comisión Verdad Y Justicia Del Ecuador, La Impunidad En Democracia" Available at: <http://www.derechos.org/koaga/xi/2/curbelo.html>. Accessed: 12 January 2021.

<sup>16</sup> HAYNER (2011), p. 216.

<sup>17</sup> UNITED STATES INSTITUTE OF PEACE: "Truth Commission: Uganda 86". Available at: <https://www.usip.org/publications/1986/05/truth-commission-uganda-86>. Accessed: 7 January 2021.

<sup>18</sup> HAYNER (2011), p. 216.

<sup>19</sup> HAYNER (2011), p. 216.

### *Are Truth Commissions popular?*

Governments are deciding, now with increasing frequency, to implement Truth Commission because they usually find them beneficial and politically convenient. This is a plausible way to address issues from the past without directly dealing with them.<sup>20</sup>

Nevertheless, governments are not the only ones who can benefit from the establishment of Truth Commissions. For victims, these bodies represent a real opportunity to achieve accountability, reparations, and overall, the system's improvement.

Because Truth Commissions are often mandated to identify, clarify, and formally recognize past violations, victims' claims to "counter impunity" and obtain individual accountability are perceived as tangible and imminent. Also, describing the institutional responsibility for the violence and the human rights violations that occurred opens the door for structural "non-repetition" reforms to the system while promoting reconciliation and forgiveness within the parties involved.<sup>21</sup>

Fact-finding is usually the first and most straightforward objective: to obtain "the truth." This body aims to clarify ambiguous events, lifting the lid of secrecy and denial to get an accurate record of a sensitive period of a country's history. The meetings with victims and relevant actors allow to reveal the hidden history of the events, and the information recollected is often of a kind and quality far better than what was available before, "in effect, the report of a Truth Commission reclaims a country's history and opens it for public review."<sup>22</sup> These facts were often quieted or unspoken, unusually reported honestly in the press, and not taught in schools. These commissions also contribute to removing the possibility of denial.

Another benefit of Truth Commissions is that they focus primarily on victims. They ordinarily allow victims, survivors, and witnesses to narrate their truth and have a voice. The victims of dictatorships and conflicts have often been kept in silence. Therefore, public hearings and reports describing a broad array of suffering experiences can create awareness in the general population. The victim-approach can also effectively help the victims and their families, as the relatives of the forcibly disappeared can finally achieve clarity on their beloved ones' legal status.

Moreover, Truth Commissions can help ascertain the facts and gather evidence for future counter impunity actions. Many Commissions transfer their records to the prosecuting officials, where trials may result.

From a different perspective, Truth Commissions open the possibility to evaluate previous experiences and how to reform the State and the government to deter further human rights abuses.

Finally, these bodies may have the mandate to "encourage reconciliation"; however, not all Truth Commissions have this obligation, nor can they achieve it immediately. The national, political, or even personal reconciliation will depend, among other factors, on how the "full truth" is clarified and what steps are taken after. In some cases, understanding the truth is only the first step of healing a nation.

## **II. Panamanian Truth Commission**

### **a. Brief background**

The Panamanian democratic era suddenly ended on October 11, 1968, after a military coup d'état toppled President Arnulfo Arias Madrid, only ten (10) days after his administration started. The National Guard, led by Boris Martínez and Jose Humberto Ramos, impeached President Arias, who managed to take refuge in the Panama Canal Zone (at the time, under the control of the United

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<sup>20</sup> Id., p. 19.

<sup>21</sup> Id., p. 22.

<sup>22</sup> Id., p. 20

States). After that, the “Junta Provisional de Gobierno” [Provisional Junta of Government] led by José María Pinilla Fábrega and Bolívar Urrutia Parrilla, was imposed. Subsequently, Torrijos, one of the leaders, stopped all political activity and shut down the congress. On February 23, 1969, Torrijos, sponsored by the United States, removed Boris Martínez and José Humberto Ramos from their positions and forced them into exile.

On July 31, 1981, Torrijos died in an airplane crash<sup>23</sup> (there are several speculations whether this event was an accident or no. However, no real evidence is presented to claim it was not an accident). Manuel Antonio Noriega, who joined the Panamanian defense force in 1962, was the chief of military intelligence at the time, hence, promptly after Torrijos died, he consolidated his power and, in 1983, he became the leader of the Panamanian armed forces and de facto leader of the country.<sup>24</sup>

Noriega's primary role was to "monitor" political opponents and work closely with the U.S. intelligence agencies to counter possible threats to the Panama Canal. From the 1950s until shortly after the U.S. invasion in 1989, Noriega worked with U.S. intelligence agencies. Precisely, he was a Central Intelligence Agency's (CIA) intelligence sources before 1989, informing about the illicit weapons market's status, military equipment, and money destined for the U.S. supported forces through Latin America.

Though, the honeymoon between Noriega and the U.S. did not last endlessly. The U.S. Senate called him: "the best example in recent U.S. foreign policy of how a foreign leader can manipulate the United States to the detriment of our interest."<sup>25</sup> For the U.S., Noriega formed “the hemisphere’s first narcokleptocracy.”<sup>26</sup> Although it is questionable if Noriega manipulated the U.S. and not the opposite, it has been proved that Noriega collaborated with Pablo Escobar, the famous (or infamous) Colombian drug lord, to smuggle cocaine into the United States and money laundering through Panama’s banking system. Furthermore, tensions with the U.S. increase when Noriega dismissed Nicolas Ardito Barletta, Panamá "first democratically elected president in 16 years." The quotation marks are because it has been known in Panama and within the U.S. government<sup>27</sup> that there was fraud in the elections against Arnulfo Arias Madrid.

As the tensions within the two governments grow, Noriega continuously supported non-democratic leaders, such as the Cuban leader Fidel Castro and Libya's Muammar Gaddafi. Noriega, the first foreign head of state to be convicted in a U.S. court, was indicted in February 1988 on federal cocaine trafficking and money laundering charges.

The U.S. imposed general economic sanctions on Panama to boost the pressure. Nevertheless, Noriega, which famous phrase was "Not a step back!" refused to retreat.

In December 1989, before the U.S. invasion, Panama's National Assembly proclaimed Noriega as the "Maximum Leader" and declared war on the United States. Finally, Noriega mandates ended on December 20, 1989, when President George W. Bush sent 27,000 troops to Panama in a military

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<sup>23</sup> El País, (8/1/1981). Available at: [https://elpais.com/diario/1981/08/02/internacional/365551203\\_850215.html](https://elpais.com/diario/1981/08/02/internacional/365551203_850215.html).

Accessed: 7 January 2021.

<sup>24</sup> JONES, Sam (2017): “Manuel Noriega, former Panama dictator, dies at 83” The Guardian (5/30/2017). Available at: <https://www.theguardian.com/world/2017/may/30/manuel-noriega-former-panama-dictator-dies-aged-83> . Accessed: 7 January 2021.

<sup>25</sup> MORENO, Elida (2017): “Panama's Noriega: CIA Spy Turned Drug-Running Dictator” Reuters (5/30/2017). Available at: <https://www.reuters.com/article/us-panama-noriega-obituary/panamas-noriega-cia-spy-turned-drug-running-dictator-idUSKBN18Q0NW>. Accessed: 7 January 2021.

<sup>26</sup> MORENO (2017).

<sup>27</sup> The private report of the Embassy of the U.S. asserted that the Panamanian electoral system intentionally did not count 62 thousand 564 hundred votes, almost 10% of the totality. See: BRANNAN JAEN, Betty (2010): “Legitimar el fraude de 1984” La Prensa (10/10/210). Available at: [https://www.prensa.com/imprensa/opinion/Legitimar-fraude\\_0\\_2950955021.html](https://www.prensa.com/imprensa/opinion/Legitimar-fraude_0_2950955021.html). Accessed: 7 January 2021.

operation called "Operation Just Cause" to tumble the dictatorship of Manuel Antonio Noriega and to, in their words, restore Panama's path to democracy.

However, the "Just Cause" was not "just" at all. It caused the death of 23 U.S. nationals and several hundred, yet to be determined, Panamanian civilians.<sup>28</sup> The military operation was at midnight, a few days before Christmas, and the military objectives were in the middle of a habitational area; there were no warnings and hundreds of civilian casualties. This is, alongside the dictatorship, a painful path in Panamanian history.

Noriega surrendered days after the U.S. invasion, on January 3, 1990. He was hiding in the papal nunciature. The tactic of the U.S. military and drug enforcement administration agents was to blast high-volume rock music<sup>29</sup> to get him to depart the protection of the Vatican.<sup>30</sup>

Noriega was convicted and sentenced in Miami, Florida, to 40 years in prison. He served 17 years. Attorneys for Noriega argued that he was a war prisoner, so he must be repatriated to Panama. Nevertheless, the petition was denied. However, he was extradited to France in 2010, where he had been convicted of money laundering to seven years in prison. In June 2011, the French foreign ministry announces that they had begun the extradition of Noriega to Panama. In December of the same year, Noriega is effectively extradited to Panama from France. Later, in June 2015, Noriega gives his first interview on a local channel, apologizing to Panama. Noriega died on May 29, 2017.<sup>31</sup>

#### **b. The return to democracy and the disclosure of abuses**

It is widely known in Panama that Torrijos and Noriega perpetuated numerous crimes during the dictatorship. However, nobody can know, with precision, the magnitude of those crimes. There is little information, covered with a veil of secrecy, of all the victims or even the mass graves' location.

In 1999, several clandestine graves were discovered. It is essential to mention that the first excavation was possible because of the disclosure of one witness. The church aspired to find Hector Gallego, a Colombian catholic priest who disappeared in June 1971. The body of Heliodoro Portugal was found instead, along with five other remains. The excavations, therefore, started by the initiative of the church and not of the government. Portugal was a "leftist," and the last time he was seen alive was when being forcibly pushed into a car on May 14, 1970.<sup>32</sup>

On September 22, 1999, the former military barracks were inspected, and several excavations were undertaken to find more graves. Days later, on September 24, three (3) sets of remains were discovered in that area. Despite this significant result, the excavations were suspended. On December 10, 2000, the Catholic Church restarted the excavations with few dispersed finds.<sup>33</sup>

As we know, part of the world's history is not written in books and only survives in the memory of the people who participated. Panama's experience concerning the darkest hours of its history is not an exception. The chronicle of the dictatorship and later U.S. invasion is deliberately vague. Furthermore, there has not been in the past any intention to study this subject in any depth. For that reason, this section includes an interview with a key actor in the process towards the creation of the

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<sup>28</sup> In Panama, there are not official records of the victims of the 1989 U.S. invasion. See: BBC News Mundo (6/22/2020). Available at: <https://www.bbc.com/mundo/noticias-america-latina-53136183>. Accessed: 7 January 2021.

<sup>29</sup> STEADE, Susan (2017): "Manuel Noriega: What Songs Did They Play During Panama Siege". The Mercury News (5/30/2017). Available at: <https://www.mercurynews.com/2017/05/30/manuel-noriega-call-of-duty-the-invasion-playlist-and-his-preteen-pen-pal/>. Accessed: 7 January 2021.

<sup>30</sup> MORENO (2017).

<sup>31</sup>To see more details: CNN Library (2017). Manuel Noriega Fast Facts. Available at: <https://edition.cnn.com/2013/08/19/world/americas/manuel-noriega-fast-facts/index.html>. Accessed: 7 January 2021.

<sup>32</sup> GROEN, W.J. Mike, MÁRQUEZ-GRANT, Nicholas and JANAWAY, Rob (2015): *Forensic Archaeology: A Global Perspective* (Hoboken, Wiley), p. 249.

<sup>33</sup> Id.

Panamanian Truth Commission: Alfredo Castillero Hoyos<sup>34</sup>, former Ombudsman of Panama and, at the time, Head of the Foreign Policy Division of the Ministry of Foreign Affairs. He is widely known as an expert in human rights issues, political science and international affairs.

Castillero Hoyos notices that the first draft of the Executive Decree that creates the Panamanian Truth Commission was remarkably different from the Commission as we know it. The proposal was to create a "Clarity Commission" to undertake the investigations and prepare the final report in three (3) months, with no possibility of extension. During their mandate, the Commission would not be allowed to access funds from international cooperation, and the final report should be addressed, in a single-sealed copy, to the Attorney General of the Nation, who should decide the usefulness of the information and whether to conduct or not any criminal investigations against the perpetrators. In practice, this "Clarity Commission" would decrease any opportunity to make any major improvement, either for the victims or for society at large.<sup>35</sup>

In a sudden political shift, a different proposal was presented<sup>36</sup>, a Truth Commission: this commission was able to access funds from international cooperation's, among other sources; was to work for 6 months and had the opportunity to ask for a time extension if needed. Perhaps, more importantly, the final report would be available for the public. The final report should be considered by the Attorney General of the Nation, as included in the previous draft, but now the right of victims to reparations was acknowledged.

Castillero Hoyos concludes by asserting that even though two-thirds of Panamanians voted against the Dictatorship in 1989, and arguably an even more significant number has come to reject the U.S. Invasion that took place the same year, clarifying the truth about the victims of the Dictatorship and those of the invasion has always been controversial in Panama. During a long time, for all practical purposes, it was as if an unwritten pact had existed between the political actors that participated in the Dictatorship and those that opposed it and requested, applauded, or profited from the U.S. invasion, a *quid pro quo* whereby nothing would be done to achieve truth, justice, reparation, and guarantees of non-recurrence in either case.<sup>37</sup>

### III. The Commission: mandate and structure

President Mireya Moscoso<sup>38</sup> created the Truth Commission through Executive Decree No. 2, January 18, 2001<sup>39</sup> as a result of the discovery of the victims' bodies discovered in 1999. This Commission was created due to the moral demand to clarify the human rights violations committed during the military regime.<sup>40</sup> The Decree's declaration of motives also states that the truth's knowledge makes it possible for the victims' relatives to honor them accordingly.

Therefore, the Commission's objective is to clarify the truth about the violation of the fundamental right to a life committed during the military regime. It is important to note that the Commission's mandate was exclusively intended to investigate those types of human rights violations and not others

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<sup>34</sup> Interview with Dr. Alfredo Castillero Hoyos, Panama's Ombudsman conducted May 9, 2020 (on file with the author).

<sup>35</sup> Id.

<sup>36</sup> Id. (The proposal, which adhered to then current international best practices regarding truth commissions, was prepared by Castillero Hoyos with Irene Ábrego Coronado and was presented with the authorization of then Minister of Foreign Affairs, José Miguel Alemán and Presidential Advisor, Mario Galindo).

<sup>37</sup> Id.

<sup>38</sup> Widow of President Arnulfo Arias Madrid.

<sup>39</sup> PANAMÁ, [Executive Decree No. 2 of 18 January 2001](#) (1/18/2001). Gaceta Oficial 24,224.

<sup>40</sup> PANAMÁ, [Executive Decree No. 2 of 18 January 2001](#) (1/18/2001). Gaceta Oficial 24,224.

like torture. This exclusion of torture was regrettably; because torture was one of the most widespread human rights violations committed during the military regime.<sup>41</sup>

Therefore, the Commission had the following duties: (i) Investigate the complete panorama of human rights violations concerning the violation of the right to life; (ii) Gather information that allows the identification of victims; (iii) Recommend legal and administrative measures to prevent the repetition of these atrocious events.

The Commission had seven commissioners: Juan Antonio Tejada Mora, Osvaldo Velasquez, Fernando Berguido, Otilia Tejeira de Koster, Julio Murray, Alberto Santiago Almanza, and Rosa Maria de Briton. As soon as the Commission was announced, the opposition began. In January 2001, Balbina Herrera, at the time president of the Revolutionary Democratic Party, threatened to sue the Executive Decree that created the Commission at the Supreme Court of Panama.<sup>42</sup> However, no steps were taken.

The Commission had the responsibility to collect valuable information from the relatives of possible victims and human rights organizations. The Commission had to accept statements, carry out proceedings, and prepare a final report including all the findings while guaranteeing the sources' confidentiality to secure the witnesses and informants' safety.

The final report had to be available for the public, published, and presented to the Nation's Attorney General, who was responsible for adopting the appropriate measures. The Commission's term was six (6) months, with the opportunity of extension for three (3) additional months. Nonetheless, the Commission served for one (1) year and three (3) months.

Finally, the Executive Decree mandate all the public institutions collaborate with the Commission, making available the documents and facilitating access to the appropriate.

#### **IV. Findings**

The Commission had the support of several North American and Panamanian anthropologist. They created a Department of Anthropology within the organization. This team conducted the excavations of over 30 sites. They also performed the recoveries and analysis of the remains found in several territories of the country.<sup>43</sup>

Similarly, cultural anthropologist participated in the preliminary investigation. They examined documents, interviewed informants, and developed a socio-cultural profile of the victims' historical context.<sup>44</sup>

The first phase was the excavation. The team led by Loreto Suarez, a Chilean trained archaeologist, identified, collected, and preserved the remains discovered. During the excavation, the commission president Alberto Almanza complained that U.S. anthropologist Sandy Anderson, who headed a forensic team, had been threatened because of their work. Sandy Anderson and her Doberman-German short-hair dog, Eagle, participated in hundreds of searches for missing people, including the ones related to 9/11, mass graves in Bosnia, and, as mentioned before, in Panama. However, years

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<sup>41</sup>GONZALEZ PINILLA, José (2017): "Asesinados y desaparecidos, la eterna búsqueda de la verdad" at La Prensa (8/30/2017). Available at: [https://www.prensa.com/judiciales/Asesinados-desaparecidos-eterna-busqueda-verdad\\_0\\_4837016284.html](https://www.prensa.com/judiciales/Asesinados-desaparecidos-eterna-busqueda-verdad_0_4837016284.html). Accessed: 7 January 2021; GUEVARA MANN, Carlos (2018): "Panamá En 1968" Palabras Del Dr. Carlos Guevara Mann en el evento académico "Reflexiones Históricas a los 50 años del 11 de octubre de 1968", *Revista Investigación y Pensamiento Crítico*, V. 6, N° 3, pp. 58-67. Available at: <http://ipc.org.pa/ojs/index.php/ipc/article/view/95/93>. Accessed: 7 January 2021.

<sup>42</sup> Panamá América (1/21/2001). Available at: <https://www.panamaamerica.com.pa/nacion/prd-demandara-el-decreto-sobre-comision-de-la-verdad-6152>. Accessed: 7 January 2021.

<sup>43</sup> GROEN, MÁRQUEZ-GRANT and JANAWAY (2015), p. 249.

<sup>44</sup> Id.

later, in 2004, Sandy Anderson was convicted in U.S. District Court in Detroit<sup>45</sup> for planting bones and other evidence at suspected crimes. Even though she did not mention any reference to her work in Panama, this was used by the members of the Partido Revolucionario Democrático (PRD) to delegitimize and defame the Commission.<sup>46</sup>

Notwithstanding, by April 18, 2002, the Commission had identified 110 victims. Most of the violations of human rights occurred in the first year of the dictatorship against supporters of Arnulfo Arias Madrid. However, these numbers were not static, as the team gathered new information, such as the identification of Jeronimo Díaz Lopez (confirmed in June 2003).<sup>47</sup>

According to the Commission, 50% of the victims were murdered or disappeared between 1986 and 1972; 20% between 1973 and 1983; 28% between 1984 and 1989. There is no information known about the remaining 2%.<sup>48</sup>

Overall, the report concluded that the military regime was involved in "torture and cruel, inhuman, and degrading treatment" of the victims. There is available documentation of 110 out of 148 cases of reported human rights abuses. The Commission also found twenty-four (24) gravesites, and they excavated thirty-six (36) graves. The graves sites were located principally at military sites throughout Panama, Bocas del Toro, and the former Coiba prison.<sup>49</sup>

On April 18, 2002, the term of operations of the Truth Commission expired. Still, on October 20, 2003, by Executive Decree 559, the Truth Commission was extended to December 31, 2004, and was renamed the Office for Follow-up of the Institutional Truth Commission. However, the office suffered a break-in after it completed its report, it is believed that the thief was trying to destroy records, to make them unavailable to public access. This Commission also experienced obstacles like budgetary restraints, which affected its efforts to pay reparations, and the Commission was unable to answer questions concerning the victims of the 1989 United States invasion. At that time, President Martín Torrijos, son of Omar Torrijos Herrera, did not take any further steps to continue with the investigation.<sup>50</sup>

## V. Recommendations

The Commission made eleven recommendations, as follows:<sup>51</sup>

1. The reactivation of cases that have new elements of convictions due to the findings of the Commission.
2. Financial and moral reparations to relatives of the victims.
3. Creation of a permanent Special Prosecutor office with jurisdiction over human rights violations and crimes against humanity.
4. Strict civilian control over the national police and other internal public security forces.

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<sup>45</sup> DEPARTMENT OF JUSTICE OF THE UNITED STATES (2004): "*SANDRA MARIE ANDERSON SENTENCED FOR FALSIFYING MATERIAL FACTS, OBSTRUCTION OF JUSTICE, AND FALSE REPRESENTATIONS*". Available at: [https://www.justice.gov/archive/opa/pr/2004/September/04\\_crt\\_652.htm](https://www.justice.gov/archive/opa/pr/2004/September/04_crt_652.htm). Accessed: 12 January 2021.

<sup>46</sup> LINARES FRANCO, Adolfo (2004): "El PRD, el perro 'Eagle' y la Comisión de la Verdad" *La Prensa* (3/28/2004). Available at: [https://www.prensa.com/impresa/opinion/PRD-perro-Eagle-Comision-Verdad\\_0\\_1160884047.html](https://www.prensa.com/impresa/opinion/PRD-perro-Eagle-Comision-Verdad_0_1160884047.html). Accessed: 7 January 2021.

<sup>47</sup> GROEN, MÁRQUEZ-GRANT and JANAWAY (2015), p. 250.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> The records in Panama are unavailable for public access. See: UNITED STATES INSTITUTE OF PEACE: "Truth Commission: Panama". Available at: <https://www.usip.org/publications/2001/01/truth-commission-panama>. Accessed: 7 January 2021.

<sup>51</sup> Interpretation from Spanish to English made by the author.

5. Compliance with the international human rights framework and guarantee the adequate protection of human rights. Particularly, accepting the obligations of international law by compensating the families of victims.
6. Human rights teaching must be reinforced at all levels of education, especially those related to national security forces.
7. The government must guarantee the satisfactory publication of the Commission's final report content so that it is accessible to all Panamanians.
8. The government should declare "the day of the disappeared" as a form of recognition to the martyrs of Panamanian's democracy.
9. To maintain the systematic excavation where the skeletal remains of the victims are presumed to exist.
10. To continue the analysis of DNA to identify the identity of the bones identified.
11. The establishment of a follow-up unit to give continuity to all the investigated material, declassified documents, evidence, and body remains resulted from the investigations carried out by the Truth Commission.

## **VI. Noriega's last interview**

In 2015, Manuel Antonio Noriega, the former "powerful man" of Panama, gave public statements on national television.

Explicitly, he said:

*" I ask for forgiveness to everyone who may feel offended, affected, injured, or humiliated by my actions or those of my superiors, or those of my subordinates while following orders under the responsibility of my civil and military government. As the last general of this group, I end the military era's cycle asking for forgiveness. As the commander in chief and the head of government."<sup>52</sup>*

However, his apologies were not useful nor seemed sincere. A sincere apology would contribute to the reparation of victims. The fact that he did not disclose any relevant information about the location of the disappeared victims nor the assassinated ones gives a bittersweet taste.

## **CONCLUSION**

Truth Commissions are a helpful instrument for the reconstruction and reparation of victims in the transition from a dictatorship or a conflict to democracy. These commissions contribute to the investigation and presentation of evidence, so the country can learn and move on from their traumatic experience. These bodies give a unique opportunity to achieve multi-dimensional accountability, providing reparations to the victims, and improving the system.

However, Truth Commissions are rarely smooth, pleasant, well-managed and funded, and uncomplicated political bodies, because even though they are limited in action, these bodies can evidence human rights violations often unspoken or ignored.

Panama is not an exception. The Truth Commission had a critical mandate: clarify the human rights violations and locate the remains of the victim of the dictatorship. The task was difficult, mainly because it had strong opposition from the political party founded by Omar Torrijos Herrera. Despite that, they completed and presented a 700 pages final report with recommendations to achieve complete reparations, not only for the victims but also for the country and its democratic institutions. The problem is that all the efforts will be, continued or destroyed, depending on which party is ruling the country. The more vivid example is that, at this time, there is no way of accessing the final report of the Commission because it has been, in our opinion, deliberately removed from all official sites.

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<sup>52</sup> Interpretation from Spanish to English made by the author.

Though Noriega, in his last days, asked for forgiveness to "close the circle of a military era in Panama," the lack of efforts to find the truth, compensate the victims, adopt measures to have strictly civilian control of the National police or even the publication of the Commission's report makes us doubt if the "circle of a military era" will ever be closed.