

# GLOBAL TRUTH TELLING



**David L. Phillips**



**National Peace Council  
of Sri Lanka**

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Presentation by:

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## About author

**David L. Phillips** is Director of the Program on Peace-building and Rights at Columbia University's Institute for the Study of Human Rights. Phillips served as a Senior Adviser to the United Nations Secretariat and as a Foreign Affairs Expert and Senior Adviser to the U.S. Department of State. He was Executive Director of Columbia University's International Conflict Resolution Program, Fellow at Harvard University's Future of Diplomacy Project, Visiting Scholar at Harvard University's Center for Middle East Studies, Director of American University's Program on Conflict Prevention and Peace-building, Professor at the Diplomatic Academy of Vienna, and as Adjunct Associate Professor at New York University's Department of Politics. He has worked at think-tanks as Deputy Director of the Center for Preventive Action at the Council on Foreign Relations, Senior Fellow at the Preventive Diplomacy Program of the Center for Strategic and International Studies, Senior Fellow at the Atlantic Council of the United States, and Project Director at the International Peace Research Institute of Oslo. Phillips has also been a foundation executive serving as President of the Congressional Human Rights Foundation, Executive Director of the Elie Wiesel Foundation and the Nobel Laureates Initiative, and as Director of the European Centre for Common Ground. He has extensive experience working on Turkish-Armenian issues having served as Chairman of the Turkish-Armenian Reconciliation Commission. He is author of *Liberating Kosovo: Coercive Diplomacy and U.S. Intervention* (Harvard University's Belfer Center and MIT Press, 2012), *From Bullets to Ballots: Violent Muslim Movements in Transition* (Transaction Press, 2008), *Unsilencing the Past: Track Two Diplomacy and Turkish-Armenian Reconciliation* (Berghahn Books, 2005), as well as *Losing Iraq: Inside the Postwar Reconstruction Fiasco* (Perseus Books, 2005). Phillips has authored many policy reports, as well as more than 100 articles in leading publications such as the *New York Times*, *Wall Street Journal*, *Financial Times*, *International Herald Tribune*, and *Foreign Affairs*.



## **GLOBAL TRUTH-TELLING**

**T**hank you for your warm welcome. My visit to Sri Lanka comes at a time when the Government of Sri Lanka is considering more vigorous implementation of the report by its Lessons Learnt and Reconciliation Commission (LLRC). My presentation to the National Peace Council is illustrative, not prescriptive. It describes how other countries have adopted truth-telling mechanisms helping their transition to peace and prosperity.

### **Truth-Telling**

Truth-telling occurs in the broader context of dealing with conflict or significant social trauma caused by conflict, crimes against humanity, or war crimes. It is part of a broader transitional justice (TJ) strategy aimed at helping states transition from war to peace or from authoritarian rule to democracy, while addressing legacies of human rights abuse.

TJ involves redress. It also seeks to prevent the recurrence of violent conflict, and assist a state or society repair itself through a range of measures such as reparations and justice sector reforms. TJ has different meanings in various contexts. In Timor Leste, it sought reconciliation between victims and perpetrators. In Peru, it was aimed at dignifying victims. In the Democratic Republic of the Congo (DRC), it was a way of consolidating the peace. And in Argentina, it set the stage for criminal prosecution and criminal justice sector reforms.

Dictatorships in Argentina, Brazil, Chile, and Uruguay institutionalized deception. Their lies were directed to both the victims, as well as their

surviving family members. In response, “Truth” was a significant feature of human rights movement in Chile and elsewhere in Latin America during the 1970s and 1980s. Jose Zalaquett, a leader of Chile's Human Rights Commission, heralded the “absolute value of truth.” Argentina's “Mothers of the Plaza de Mayo,” demanded to know what happened to loved ones. The UN Human Rights Commission codified the “right to truth” in its 2005 resolution, which obligated the state to investigate human rights violations, inform individuals of the fate of missing or forcibly displaced relatives, provide information on official investigations, provide “mortal remains,” and disclose the identity of violators.

Truth was expressed in two different ways as voice and as evidence. The Spanish term, “Testimonio,” is related to memory and storytelling. It differs from the English term, “testimony,” which is a form of legal documentation. Testimonio emphasizes personal accounts of victims, witnesses, family members, and survivors who tell their story in their words. Testimonio provided victims and family members with a forum to be heard, maximizing their emotional impact and healing power.

Historians and others simultaneously used oral history as a sub-discipline, seeking factual as well as narrative truth. In addition, lawyers and legally-oriented NGOs were documenting the abuses of regimes. To clarify the status of the “disappeared,” they were filing *Habeus Corpus* and other legal briefs with the authorities. They established a paper trail through formal requests to meet with detainees and compiled portfolios using media reports and other sources of information to document the fate of victims. They were also taking steps to lay the ground for criminal prosecution either in a domestic court or at an international tribunal through depositions, affidavits, and collecting legal testimony from witnesses and others.

## Truth Commissions

Since the Argentine transition back to democracy began in 1983, there have been dozens of TCs around the world. TCs vary in size, budget, goals, aspirations, and mandate. However, they include some common characteristics.

TCs are established to examine past abuses and consider the pattern of abuses over a specified time, as opposed to a particular event. They provide an overarching narrative of the historical period, including an account of the causes and consequences of violations. TCs are essentially victim-centered, defining victims and identifying beneficiaries. Though officially sanctioned by the state (and an armed opposition group if part of a peace accord), TCs require financial, legal, and operational independence. TCs can directly support prosecutions (e.g. Argentina, Chile, possibly Liberia) or be an alternative to prosecutions (e.g. South Africa). TCs provide a final and complete report.

Some governments may create a TC to illuminate the truth, while others may seek to defer action, deflect criticism, and undermine justice by:

- “Outsourcing” the responsibility of historical justice to a third party.
- Gaining “breathing space” by pointing to a process underway.
- Attributing investigative failures to the commission not the government.
- Presenting an alternative that is less threatening than trials and less expensive than compensation.
- Exhausting public interest in greater measures of political and legal accountability.

### **“Memoryworks”**

Victims want the truth to be remembered. To this end, “Memoryworks” focus on memory of the past to create public dialogue and open civic spaces. Memoryworks often emerge from recommendations in the final report of a TC. For example, Sierra Leone's “National Vision Project” invited the public to submit written and artistic expressions of their vision for the country's future. Peru's “To be remembered” project included a major photo exhibit. Morocco held public debates on the meaning of truth, state violence, political trials and prison literature. Other examples of Memoryworks include Iraq's Memory Project, which catalogues tons of Mukhabarat

documents itemizing the Anfal campaign against Iraqi Kurds. Cambodia's Genocide Museum displays human skulls neatly stacked to the ceiling.

### Unofficial Mechanisms

Beginning in Latin America in the 1980s, religious communities, academic institutions and local government have cooperated to document violations and issue reports, prompting democratic governments to take action. Unofficial truth projects produce reports similar in shape and scope to TCs. They can also undertake special activities such as mock trials that document abuses.

- Northern Ireland's Ardoyne Community Project used multi-media to describe “The Troubles” from the perspective of an affected community.
- USA/Greensboro Truth and Reconciliation Project documented the killing of 5 civil rights activists by the KKK on November 3, 1979 as a platform for community education efforts.
- Guatemala's Recovery of Historical Memory Project compiled statements from 6,500 people over 3 years after the UN brokered an accord ending the murder of indigenous people by security forces. The project set a standard and galvanized creation of an official commission.
- Brazil's “Nunca Mais” was an ecumenical initiative of Catholic and Protestant leaders who gained access to security archives to document disappearances by the junta (1964-79). The initiative resulted in city-based inquiries, exhumations and reparations.
- Colombia's Palace of Justice TC was led by former Supreme Court justices looking into the security's assault on the Supreme Court when it was seized by guerillas on November 6, 1985. More than 100 people including all the justices were killed during the incident.

Non-governmental or unofficial truth projects also produce memoryworks (e.g. theater, art, video and literature projects that focus on the past, as well as memorials, museums, and traveling exhibits).

Peace-building focuses on post-conflict rather than the post-authoritarian context. In his seminal article "After Violence: Reconstruction, Reconciliation, Resolution: Coping with Visible and Invisible Effects of War and Violence," Johan Galtung describes models of different forms of reconciliation and the relationships between reconciliation and a "positive peace."

### **Reconciliation**

Do the terms "truth" and "reconciliation" necessarily go together? Not all TCs use the term "reconciliation." The Historical Clarification Commission in Guatemala, for example, deliberately steered away from the idea of reconciliation, as did the Paraguayan Truth and Justice Commission.

The Chilean government established the world's first "truth and reconciliation" commission in 1990. Reconciliation focused on the political class and involved:

- Granting amnesties and commuting prison sentences.
- Creating conditions for the return of political exiles.
- Providing pensions or reparations to "both sides."
- Taking symbolic measures (e.g. monuments).
- Incorporating losers into cabinet posts, congress, etc.
- Adopting constitutional, electoral, and legal reforms.

Reconciliation means a variety of different things in different contexts.

- Mutual respect and peace between communities: As conflict comes to an end, it becomes important for combatants who have fought against each other to learn to co-exist in a way that respects differences.

- Selective Forgetting: When Cambodia's Khmer Rouge leaders call for reconciliation, they are asking for “bygones to be bygones,” not for a rigorous remembering of the past.
- Nation-building: In some contexts, including South Africa, reconciliation emphasizes the importance of being a single nation in which different ethnicities and races agree to live and work together and consider themselves parts of a single nation.
- Political cooperation: Another form of reconciliation, such as in Chile and Myanmar, is the idea that political actors can work together in a political system.
- Post-conflict reconstruction: Involves the institutions necessary for reconstruction after a conflict, the rule of law, and transparent or democratic decision-making bodies.

South Africa's 1995 “Promotion of National Unity and Reconciliation Act” established a Truth and Reconciliation Commission (TRC). The TRC was sought to address “the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice” and to create a future “founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex.” To hear the voices of perpetrators, South Africa's TRC granted amnesty to those who had committed crimes.

### **Technical issues**

Development of a truth-telling process depends on the range of political issues and strategic considerations described above. In this context, protagonists must also consider a range of technical issues.

#### *Objectives*

- Establish facts.
  - Interpret facts.
  - Recognize the experience of victims on all sides of a conflict

to restore their dignity.

- Emphasize impartiality by involving both sides.
- Contribute to other transitional justice policies.

### *Authority*

- Executive branch (e.g. presidential decree in Argentina, Peru, Chile and Honduras).
- Legislative branch (e.g. South Africa, Liberia, Kenya).
- Hybrid involving measures by both the executive and legislature (e.g. Nigeria, DRC)
- Monarch (e.g. Morocco).
- Judiciary (e.g. Canada, Colombia)
- United Nations (e.g. Timor Leste), part of a peace agreement (e.g. El Salvador), or via legislation codifying an accord (e.g. Sierra Leone).

(Note: Creation by decree is generally more expeditious. Alternatively, creation by law involves multi-party negotiations and is thus more legitimate. Legislatures can typically grant the TC with quasi-judicial powers whereas executive typically cannot).

### *Functions*

- Conduct research (e.g. examine witnesses, access records, inspect locations, forensics).
- Utilize special powers (e.g. subpoena, cooperation incentives).
- Organize hearings and other outreach activities.
- Report back to the authorities and the citizenry.
- Complement other truth seeking mechanisms such as freedom of information legislation or opening records of the security forces.

### *Competence*

- Define human rights violations or other crimes. (e.g. Article 2 of Liberia's used

international humanitarian law to define violations. Article 3 of Peru's TRC offered a shorter list of core examples.

- Consider a specific time period and territory (e.g. longer examples are Morocco [1956-99] and South Africa [1960-94]).
- Identify targets a group (e.g. state officials/security apparatus, members of armed opposition groups).
- Differentiate from a historical commission. (e.g. Turkey rejects the term genocide of events between 1915 and 1923, highlighting conditions of armed rebellion dating from the 1880s).

### *Powers*

- Request cooperation.
- Subpoena private or public persons and information.
- Witness protection.
- Administer legal benefits (e.g. immunity, amnesties, and clemency in exchange for cooperation).

### *Composition*

- Direct appointment by head of state (e.g. Panama); legislature (e.g. Germany); joint executive/legislature (e.g. Sierra Leone and South Africa).
- All nationals (e.g. Uganda), all foreigners (e.g. El Salvador), advised by UN (e.g. Sierra Leone), or advised by international experts (e.g. Timor Leste).

### *Credibility*

- International membership.
- Capacity/independence to carry out its mandate/tasks.

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- Public consultation or vetting (e.g. mandate and composition).
- Diverse representation (e.g. ethnicity, religion, gender).
- Participation (e.g. persons with high moral standing, reputation for objectivity, or representing constituencies directly affected by the conflict).

### *Financing*

- National government (e.g. Argentina).
- International sources (e.g. El Salvador).
- Both national and international sources (e.g. Peru).
- Private foreign donors (e.g. Nigeria). Budgets range from \$5-10 million/year.

### *Working methods*

- System (interviews)
- Database (aggregate information by region, background of victim, type of conduct, patterns).
- Duration (Note: TCs that do not conduct public hearings typically last less than one year. With public hearings, they usually last 1-2 years. Uganda had the longest running TC lasting 8 years).
- Staff (Personnel usually include social scientists, lawyers, and statisticians. Chile's TC was the largest comprised of 500 national staff).

## **Conclusion**

Sri Lanka is not the first country to consider truth-telling in the aftermath of violent conflict. There is, however, no boiler plate approach. Measures must be adapted to the unique history, culture and conditions of those directly affected by events. The strategies and approaches herein described are respectfully offered to Sri Lankans as they consider a follow-up mechanism to the LLRC and next steps in

national reconciliation.

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