



Indigenous Peoples and Truth Commissions: Analysis of the Canadian, Colombian, Norwegian and Australian experiences

Pueblos Indígenas y Comisiones de Verdad: Análisis de las Experiencias Canadiense, Colombiana, Noruega y Australiana

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Abstract

This article, adopting a socio-legal approach and using case study methodology, analyses the experiences of Truth Commissions in Canada, Colombia, Norway, and Australia (Victoria), which addressed violations against Indigenous peoples' rights and their reparations. The comparative experience reveals how transitional justice has been employed to confront historically continuous and structural injustices, whose overcoming requires far-reaching transformations. The transformative character of transitional justice for Indigenous peoples is a recent and expanding development. So-called Indigenous transitional justice links the potential for transformation to the protagonism of Indigenous peoples in the design and participation in the methodologies and working practices of the Truth Commissions, as well as to the incorporation of their values, normative systems, and epistemologies in determining harms and reparations.

Keywords: *Indigenous peoples; transitional justice; truth commissions; structural injustice.*

Resumen

Este artículo, desde un enfoque socio-legal, mediante el estudio de casos, analiza las experiencias de las Comisiones de la Verdad en Canadá, Colombia, Noruega y Australia (Victoria), que abordaron vulneraciones a los pueblos indígenas y sus reparaciones. La experiencia comparada muestra cómo la justicia transicional ha sido empleada frente a injusticias históricamente continuas, estructurales, cuya superación requiere profundas transformaciones. El carácter transformador de la justicia transicional para los pueblos indígenas es un rasgo reciente y en expansión. La llamada justicia transicional indígena asocia las posibilidades de transformación al protagonismo de los pueblos indígenas en el diseño y participación en las metodologías y formas de trabajo de las Comisiones de la Verdad, así como la incorporación de sus valores, sistemas normativos y epistemologías para determinar los daños y las reparaciones.

Palabras clave: *Pueblos indígenas; justicia transicional; comisiones de la verdad; injusticia estructural.*

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I. INTRODUCTION

One of the mechanisms commonly used in transitional justice processes (JT, by its acronym in Spanish) to address mass abuses has been the creation of Truth Commissions (CV, by its acronym in Spanish), whereby members are tasked with gathering evidence and assessing specific cases they become acquainted with.¹ One trend observed is that CVs have permitted addressing human rights violations and historical injustices specifically affecting indigenous peoples.² Indigenous peoples continue among those most affected by conflicts, due to their position at the “precarious intersection between unresolved historical injustices and contemporary industrial incursion and political violence.”³

The provided-for trend is consistent with the rise of an international legal framework for indigenous peoples’ rights following the United Nations Declaration on the Rights of Indigenous Peoples (DNUDPI, by its acronym in Spanish) and the growing acknowledgement of indigenous peoples’ rights globally.

Therefore, we want to question how CVs have been used to address injustices against indigenous people, overcoming the features of the classic JT paradigm. This allows them to transform the situation of those communities in contexts where their rights have been violated and their survival threatened.

The paradigmatic model of JT presents difficulties in addressing the claims for justice of indigenous peoples. However, based on an examination of the specific experiences of the use of CVs selected in this text, it is possible to identify an emerging set of practices so that the intersection between indigenous rights and JT is transformative and does not lead to disappointing or symbolic outcomes.

These emerging practices refer above all to the incorporation of the perspectives, values, and normative systems of indigenous peoples and their leading role in participating in CVs.

II. METHODOLOGY

In this paper, we will first analyze the obstacles offered by the classical JT paradigm to address historical injustices against indigenous people.

Next, we will undertake a socio-legal comparison of four cases of CV—focusing on the social context rather than their legal frameworks—, all of which we consider examples of an appropriate approach to such situations: Canada, Colombia, Norway, and Australia. This comparison focuses on how these CVs were created, how they operated, and the transformative consequences of their outcome. The comparison cases were selected because they show a different approach regarding indigenous people, and because these approaches translate into practices that are distinct from the classic JT paradigm and favor their transformative capacity.⁴

Below, the commissions are assessed regarding the lessons learned for developing their transformative potential.

¹ We focus on CVs as one of the main mechanisms of the JT. The JT also has other mechanisms: criminal trials, amnesties and pardons, symbolic and material reparations, and structural reforms such as guarantees of non-repetition. We focus on CVs because they constitute the most complex effort to resolve historical injustices with indigenous people.

² GONZÁLEZ (2021).

³ INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (2012), p. 1.

⁴ SKAAR (2023), RAMOS-CORTEZ & MACNEILL (2024), VEGH & CUNNEEN (2024).

III. CHALLENGES OF TRANSITIONAL JUSTICE ADDRESSING COLONIAL INJUSTICE

CV initiatives have been used both to investigate violence against indigenous peoples during periods of armed conflict, for example in Peru, Guatemala, and Colombia, and more recently to address violence and cultural assimilation directed against indigenous peoples, as in the cases of Canada, Australia, and Norway.⁵

The use of CV mechanisms has been questioned, particularly regarding colonial injustices affecting indigenous peoples, due to the inability of the classic transitional justice paradigm to address the full range of indigenous experiences of oppression and current forms of colonial violence.⁶

The constitution of a system of domination over indigenous peoples, with a set of historical injustices and projections up to the present day, has defined colonialism.⁷ Traditional approaches to TJ fail to account for the deeper causes and consequences of colonialism.⁸

A fundamental feature of TJ in relation to colonialism has been ambivalence.⁹ First, based on the classic liberal paradigm of JT, it confronts situations of structural injustice, e.g., racism and discrimination, as anomalous situations. Second, when it manages to recognize the structural nature of oppressive systems, it tends to dilute the responsibility of current generations regarding the past ones that established them. JT has been criticized for its lack of historicity and global vision, so that when it strives to overcome these limitations, it barely recognizes a limited layer of historicity.

There are at least five relevant challenges that can cause clashes between indigenous people's claims for justice and traditional approaches to JT.

First, regarding the injustices to be addressed, traditional JT, in its classic paradigm, focuses on a specific period of time, usually recent, related to changes in political regime. It deals with the restricted criminal damages inflicted by a government on individuals and groups, without questioning structural inequalities, remaining relatively silent on socioeconomic issues, while maintaining a state-centric approach.¹⁰ Therefrom, its interventions have usually had little significant effect on structural problems.

Therefore, it is difficult for the JT to confront the cover-up narratives of the systems of oppression that they preach about themselves. For example, the idea of self-overcoming colonialism, which affirms an imagined postcolonial future, where the colonizer becomes an inhabitant of the expropriated land and the colonized cease to be colonized and are reduced to minorities. There, the colonial relationship is extinguished and the “Indian question” is resolved. The durability of the colonial situation,¹¹ the long coloniality that differentiates it from the specific historical colonial fact, has to do with its comprehensive nature in society, its foundational success for long-term institutions, and its effects on enduring social imaginaries of discrimination.¹²

In colonial contexts, there is no clear break with the colonial past, but rather a continuity due to the persistence of violence and marginalization of indigenous people. A “political transition” could hardly bring about substantive changes.¹³ Governments often try to frame any JT effort as a clean break that clearly distinguishes past abuses from the present. However, for indigenous leaders, JT

⁵ GONZÁLEZ (2021), ARTHUR (2014).

⁶ GONZÁLEZ (2021).

⁷ COOPER (2005), ESCOBAR (2008), CAVANAGH & VERACINI (2017).

⁸ BALINT, et al. (2014).

⁹ PARK (2023).

¹⁰ ROLSTON & NI AOLAIN (2018), p. 333.

¹¹ STOLER (2016).

¹² QUIJANO (1992).

¹³ GONZÁLEZ (2021), BALINT, et al. (2014).

should serve “not as a wall, but as a bridge [...] The ‘transition’ is toward a relationship where connections between the past and the present are firmly acknowledged, and where the past guides current conceptions of obligation”.¹⁴

JT processes usually explore a specific period of supposedly exceptional violence and repression, rather than the ongoing violence that stems from unfair historical and social relations.¹⁵

A second set of difficulties arises due to the perspective from which injustices are approached. There is an intimate link between JT and the liberal view of the Rule of Law, which is problematic for the purposes of justice in the face of colonialism, because the liberal Rule of Law is built on an epistemological and social basis in which indigenous peoples are reduced to cultural minorities, with no rights other than those granted to them by the State legal system.¹⁶ The mechanisms of JT are often designed with the intention of legitimizing the actions of the government in power and, simultaneously, reestablishing the moral authority of the state.¹⁷ JT is classically state-centric, constituting a closure to indigenous demands for recognition of the right to self-determination and the reestablishment of indigenous governance.¹⁸

The state-centric view of JT overlooks the violence inherent in the very construction of the state for indigenous people and its continuity with subsequent violence. This view denies that collective subjects other than the nation exist, as well as their institutions, normative systems, and knowledge systems. This perspective hardly perceives the damage caused by material and symbolic violence to communities, especially by the rupture of intergenerational cultural transmission and the meanings given to communities’ relationships with nature.¹⁹ The latter is a critical point in the classic JT model, which is far from understanding the significance of the impact on their ecosystemic links.

Indigenous perspectives do not perceive damage as an impact on individual bodies and histories, but from a holistic and integrated perspective, between community and nature, considering that colonialism and its long-term consequences are verified as a complex system of oppression that alters the collective capacities of indigenous peoples to continue existing as their own distinct ways of life, in multiple relationships of reciprocity and adaptation with their environments.²⁰

From a decolonizing perspective, JT experts are criticized for having built a transnational, highly bureaucratized, and institutionalized field committed to the ideals of liberalism,²¹ in a way that participates in epistemic violence by imposing hegemonic regulatory frameworks, reproducing colonial forms of meaning, as they select from above the norms, knowledge, and violence that are relevant to their tasks of reconstructing the Rule of Law.²²

A third level of difficulty lies in the individualistic approach to responsibility and accounting promoted by the JT paradigm. The JT tends to emphasize violations of personal physical integrity, leaving out rights that have a collective meaning, such as cultural rights,²³ as well as economic and social rights. The accountability of individuals is part of the paradigmatic model, in that it conceives of an adversarial or retributive vision of justice, seeking to reproach responsible individuals.

¹⁴ JUNG (2009), p. 2.

¹⁵ BALINT, et al. (2014).

¹⁶ COULTHARD (2014).

¹⁷ JUNG (2009).

¹⁸ ARTHUR (2014), YASHAR (2012).

¹⁹ GOEMAN (2013).

²⁰ WHYTE (2017).

²¹ RIVERA (2019), p. 23.

²² JAMAR (2022).

²³ LUOMA (2021).

When armed conflicts or instability that led to violence have ethnocultural consequences, an exclusively individualistic model is inadequate. Since dispossession of traditional territories and the loss of indigenous language, culture, and ceremonies through assimilationist policies are at the core of historical injustices and current projections of colonialism, collective rights and community-based approaches are essential. Beyond collective rights lies the great challenge of finding ways to recognize the fundamental differences between Western and indigenous worldviews, especially in relation to the recognition and redress of harm experienced by non-human entities such as territories, rivers, mountains, ecosystems, animals, and plants.²⁴

Fourth, the issues raised bring into play the transformation goals of the JT. A more holistic approach, endowed with historicity and collectivity, will go beyond the forensic search for truth about what happened in a specific case of violation. Rather, it will focus on rebuilding the social cohesion destroyed or limited by structural violence, and will address the social changes needed to eradicate the root causes of violence.

Fifth, this brings us to the dimension of reparation. Indigenous peoples have forms of knowledge, historicization, and construction of responsibility conceived from continuous relationships with their environments, where all forms of life are interdependent and complementarity and reciprocity between them are sought. The damage and reparation of said damage, as well as non-repetition, must always have a perspective of justice beyond the present and the human, incorporating the interests of future generations and a bio-cultural vision of justice.²⁵

The claims for justice of indigenous peoples have proposed that their traditional territories be recognized as victims. This offers new dimensions for considering extractivism, the diverse forms of land dispossession, pollution, and destruction of biodiversity as forms of violence that affect the spiritual harmony of ecosystems and the daily lives of the communities that inhabit them.²⁶ Reparation in a biocentric key, considering the integral and collective relationships between land, bodies, and territories,²⁷ allows for incorporating forms of recognition of the rights or interests of non-human entities and the restoration of natural environments.

IV. COMPARATIVE SOCIO-LEGAL ANALYSIS OF EXPERIENCES

The CVs of Guatemala (1994), Peru (2001), Kenya (2008), and Brazil (2014), intended to address processes of political violence in general. They found different patterns of impact on indigenous communities and even incorporated specific recommendations.²⁸ However, these CVs did not apply differentiated approaches to address these impacts. Countries such as Chile were pioneers in forming truth commissions to constitute exclusively those dedicated to conflicts relating to the impact on indigenous people, in the case of the Commission for Historical Truth and New Deal (2001-2004), although without significant results as its recommendations were not implemented.²⁹

However, in the last decade, efforts in JT developed through CVs by countries such as Canada, Australia, Colombia, and Norway have stood out, effectively leading differentiated approaches to addressing violations against indigenous people. These approaches have specific

²⁴ IZQUIERDO & VIAENE (2018).

²⁵ CELERMAJER & O'BRIEN (2021).

²⁶ LYONS (2023).

²⁷ LYKES & MURPHY (2024).

²⁸ MILLALEO (2023).

²⁹ In Chile, there have been two other commissions with CV characteristics that have addressed indigenous issues: the Vargas Commission (2016-2017) and the Commission for Peace and Understanding (2022-2025). The latter process has only recently been completed at the time of writing.

methodologies, consequences, and transformative impacts in those countries. In the case of Australia, the Yoorrook Commission, although it has not completed its work, has produced partial reports, developing working methodologies that integrate indigenous methodologies of clarification and reparation.

Below, we will develop a socio-legal comparison of these cases,³⁰ that are similar as the VCs have applied differentiated approaches to address historical injustices against indigenous people. All four cases involve the use of CVs to advance transformative effects in political institutions and processes, increasing the role of indigenous peoples' actors.

To this end, we will first consider a description of the origins of these CVs, their mandate and design, their practices and procedures, and their outcomes, considering their actual implementation. We will then develop a comparative assessment of the transformative capacity of the VCs studied.

4.1. Canada

a) Origins

Canada's residential schools system constituted a coherent policy of assimilation and cultural genocide, managed by the Canadian government in collaboration with churches from the 1870s to the 1990s. Although indigenous communities resisted the residential schools from the outset, the government's failure to act led survivors to resort to litigation, leading to court-supervised negotiations in 2005.³¹

The Truth and Reconciliation Commission of Canada (CVR by its acronym in Spanish) was established in 2007 under the Indian Residential Schools Settlement Agreement (IRSSA), which settled the largest class action lawsuit in Canadian history, brought by survivors of the Indian Residential School System.

b) Mandate & design

The CVR received a mission to reveal the truth about church-run residential schools, documenting individual and collective harm against Aboriginal communities. In addition, it was to "guide and inspire a process of truth and healing that leads to reconciliation within Aboriginal families and between Aboriginal communities and non-Aboriginal communities, churches, governments, and Canadians in general."³²

The CVR had limited powers because it was not a public investigation; for example, it lacked subpoena power and was not required to name those responsible. However, it incorporated indigenous perspectives into its design, such as the use of traditional oral methodologies, recognizing the importance of indigenous oral and legal traditions. It included indigenous representation, requiring that at least one of the commissioners be indigenous, and created an Indian Residential School Survivor Committee to advise the commissioners.

Although indigenous communities were not widely consulted when establishing the Mandate, communities could also receive funding to design and organize their own events to

³⁰ HENDRY (2024).

³¹ HOUSE OF COMMONS OF CANADA (2005).

³² TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015), p. 29.

promote healing and develop collective community narratives about the impact of residential schools.³³

c) Practices and procedures

The three CVR commissioners were appointed by the parties to the resolution agreement: Judge Murray Sinclair (Anishnaabe) as Chair, Chief Wilton Littlechild (Cree), and Dr. Marie Wilson (non-Indigenous). The CVR spent six years traveling to 77 communities across Canada to listen to more than 6,500 Indigenous survivors who had been separated from their families as children and confined for much of their childhood in residential schools.

The CVR also held seven national events and 75 community events that were guided by traditional Indigenous knowledge and ceremonies: “The Seven Grandfather Teachings of the Anishinaabe—Respect, Courage, Love, Truth, Humility, Honesty, and Wisdom—served as themes for the seven National Events, and traditional ceremony and observance played an important role”.³⁴

d) Outcome

The CVR’s final report was published in 2015. It concluded that Canada had perpetrated cultural genocide against indigenous peoples and highlighted the legacy of intergenerational injustice and trauma caused by the residential schools system. A National Center for Truth and Reconciliation was created, and the statements collected throughout the CVR now constitute a permanent collection of documents relating to the residential schools, which are preserved in its archives.

The report made 94 calls to action, divided into two main categories. The “Legacy” section addresses the systemic inequalities faced by indigenous people (primarily in the areas of justice, child welfare, language and culture, education, and health). The “Reconciliation” section focuses on educating society at large, including indigenous people in various sectors of Canadian society, and establishing practices, policies, and actions that affirm indigenous people’s rights.³⁵

By 2023, only 13 of the 94 calls to action had been completed, most of them at a symbolic rather than structural level.³⁶ However, several important calls to action are underway, including the adoption and implementation of the DNUDPI as a framework for reconciliation.³⁷ The DNUDPI will serve as a framework for the expansive interpretation of indigenous rights in Canada.

4.2. Australia

a) Origins

In Australia, the creation of a treaty has long been a key demand of Aboriginal and Torres Strait Islander communities.³⁸ The Uluru Statement from the Heart was issued by a group of 250 Aboriginal and Torres Strait Islander delegates from across Australia in 2017,³⁹ calling for three

³³ TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015), p. 33.

³⁴ TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015), p. 33.

³⁵ TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015).

³⁶ JEWELL & MOSBY (2023).

³⁷ INDIGENOUS WATCHDOG (2024).

³⁸ HOBBS (2019), p. 178.

³⁹ VV.AA. (2017).

things: to establish a First Nations voice enshrined in the Constitution; a Marrakata Commission⁴⁰ to oversee a process of agreement-making between governments and First Nations; and a process of truth-telling about the history of First Nations communities.⁴¹

The constitutional recognition process (The Voice) was rejected in a referendum in 2023, while the Yoorrook Justice Commission was created in Victoria in 2020. This commission arose from the efforts of the First Peoples Assembly of Victoria and consultations by the State of Victoria to develop the basis for a treaty.⁴²

b) Mandate & design

The mandate of the Yoorrook Justice Commission is set out in its Letters Patent and is quite broad. Its three main objectives can be summarized as: (1) to clarify the truth by creating a lasting public record of historical and current systemic injustices and their causes; (2) fostering understanding within the wider Victorian community of the links between the past, present, and future regarding colonial injustice and Indigenous issues; and (3) fostering transformation by proposing changes to laws, institutions, and systems that can then be adopted through treaty negotiations.⁴³

The Yoorrook Justice Commission can exercise all the powers of a royal commission, including the ability to compel governments and other agencies to produce official documents and records.

c) Practices and procedures

Through a consultation process, the Yoorrook Justice Commission has developed a distinct and unique methodological framework, which aims to “weave Western methodological rigor with the methodological foundation of Aboriginal ways of knowing, being, and doing” into all aspects of the Commission’s work.⁴⁴

Using a concentric circle methodology, the Yoorrook JC justified its objectives within broader frameworks of Indigenous rights, all of which are interpreted and understood through Indigenous worldviews and ways of knowing and being:⁴⁵

- Central Circle: historical and systemic injustices; causes and consequences; responsibilities; redress and reform.
- Second Circle: Indigenous rights standards.
- Third Circle: Truth; Understanding; Transformation.
- Outer Circle: Indigenous ways to constitute knowing, being, and doing; self-determination, Indigenous data sovereignty; rebuilding the nation of the First Peoples.

In addition to designing its methodological framework, the Yoorrook Justice Commission has developed a Social Support and Welfare model to ensure that participants receive support at all stages of their involvement in the Commission’s truth-seeking processes from First Nations Health

⁴⁰ MARRAKATA is a Yolngu word meaning “the coming together after a fight.

⁴¹ BRACKA (2024a).

⁴² MOORE, et al. (2024).

⁴³ YOORROOK JUSTICE COMMISSION (2022), p. 2.

⁴⁴ YOORROOK JUSTICE COMMISSION (2022), p. 6.

⁴⁵ YOORROOK JUSTICE COMMISSION (2022), pp. 6-8.

and Wellness Services. It has also worked to incorporate cultural practices and use Indigenous languages in its operations. For example, public hearings are called wurrek tyerrang, a Wergaia word meaning “to talk together,” and these events include not only witness statements but also traditional ceremonies and cultural representations.⁴⁶

The Commission has also implemented a series of Indigenous Data Sovereignty and Governance Protocols that aim to “ensure free, prior, and informed consent for any relevant use, release, and/or access of information shared by First Communities.”⁴⁷

d) Outcome

So far, two interim reports have been published. The first highlighted the commission’s internal progress in designing a methodology and focusing on the voices of elders as the driving force behind Yoorrook’s work.⁴⁸ In this first phase of work, commission members traveled throughout Victoria to meet with elders and raise awareness of the next phases of the Commission’s work, listen to their priorities, and build trust in the Yoorrook approach.

The second phase of the Commission began in September 2022, focusing on criminal justice, the removal of children, and treaty priorities. The report examines historical and current injustices in these areas and makes 46 recommendations for urgent action and reform, as well as longer-term legislative reform and transformative change through the treaty process.⁴⁹

The Yoorrook Justice Commission is currently examining issues relating to land, sky, and water; health, housing, and education; and the economic prosperity of indigenous people in Victoria.

The Commission has been granted a 12-month extension and is expected to publish its Final Report in June 2025.

4.3. Colombia

a) Origins

Ethnic minority groups in Colombia (indigenous communities and peoples, Black, Afro-Colombian, Raizal, Palenquero, and Rom communities) have suffered historical violence and are among the populations most affected by the internal armed conflict in Colombia. In recognition of the disproportionate violence suffered by these groups, the 2016 Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace included measures agreed upon at the negotiating table in Havana between the Government of Colombia, the FARC-EP, and the ethnic communities of Colombia. This resulted in the Ethnic Chapter of the Final Agreement, which aims to cross-cut the differential approach and adopt specific measures to safeguard the rights of ethnic communities (indigenous peoples and communities, Black, Afro-Colombian, Raizal, Palenquero, and Rom communities).⁵⁰

The Commission of the Clarification of Truth, Coexistence, and Non-Repetition was created by the peace agreements. It formed one of the three parts of the transitional justice system known as the Comprehensive System of Truth, Justice, Reparation, and Non-Repetition (SIVJRNR, by its acronym in Spanish), and began its work in 2017.

⁴⁶ YOORROOK JUSTICE COMMISSION (2022), pp. 9-14.

⁴⁷ YOORROOK JUSTICE COMMISSION (2022), p. 13.

⁴⁸ YOORROOK JUSTICE COMMISSION (2022).

⁴⁹ YOORROOK JUSTICE COMMISSION (2023).

⁵⁰ WRIGHT, et al. (2024).

b) Mandate & design

The Commission of the Clarification of Truth, Coexistence and Non-Repetition had a broad mandate “to clarify what happened during the internal armed conflict in Colombia, promote the recognition of responsibilities, as well as social dialogue and coexistence, all with a view to allowing the leaving of the war behind forever.”⁵¹

The Commission included different specific approaches to guide its process, including an ethnic approach. From the outset, it incorporated an ethnic approach with an anti-racist perspective in a participatory and pluralistic manner.

To develop the ethnic approach and construct the ethnic chapter of the final report, the Truth Commission developed the “Ethnic Methodology against Racism, Racial Discrimination, and Other Related Forms of Intolerance” and the “Protocol for Relations with Ethnic Communities, Organizations, and in the Territories.” In 2018 and 2019, the Commission initiated a series of dialogues: the Permanent Roundtable for Consultation with Indigenous People and Organizations, the National Space for Prior Consultation with Black, Afro-Colombian, Raizal, and Palenquero Community, and the National Commission for Dialogue with the Rom or Gypsy People. In these forums, it was possible to ask the community about the ethnic methodology and protocol for relations with ethnic communities.

Finally, it adopted the Directorate of Ethnic Peoples (DPE, by its acronym in Spanish), which meant “including the narratives and ways to constitute knowledge transmission of ethnic communities, and making visible the different analyses and perspectives on the conflict.”⁵²

c) Practices and procedures

Over four years, the commission traveled through the seventeen ethnic macro-territories and compiled more than 3,849 interviews with ethnic communities, of which 1,693 were with indigenous people. In total, the commission heard from more than 11,000 people from ethnic communities in individual and collective interviews, meaning that almost 40% of the people heard by the commission in its various spaces were from ethnic communities.⁵³

The process also included accompanying several ethnic organizations and communities in preparing their own reports to submit to the commission. A total of 247 reports of ethnic interest were received, of which 89 were from indigenous peoples and their territories.⁵⁴ The DPE also led spaces for hearing and recognizing indigenous peoples, Black, Afro-Colombian, Raizal, and Palenquero communities, which allowed for the collection and incorporation of even more direct testimonies from these communities.

d) Outcome

The final report of the CVR was published in 2022. It had two important main conclusions:

⁵¹ COMMISSION FOR THE CLARIFICATION OF TRUTH, COEXISTENCE, AND NON-REPETITION (2022), p. 16.

⁵² COMMISSION OF THE CLARIFICATION OF TRUTH, COEXISTENCE AND NON-REPETITION(2022), p. 30.

⁵³ COMMISSION OF THE CLARIFICATION OF TRUTH, COEXISTENCE AND NON-REPETITION(2022), p. 30.

⁵⁴ COMMISSION OF THE CLARIFICATION OF TRUTH, COEXISTENCE AND NON-REPETITION(2022), p. 30.

i) “Colombia has been built on relationships based on colonial treatment and structural racism that seek to justify the dispossession, extermination, and denial of the existence of ethnic communities as a collective and as communities.”⁵⁵

ii) Ethnic communities have suffered continuous violence that is not limited to acts such as murder, massacres, torture, forced disappearances, child recruitment, displacement, or extermination, but also transcends their territories, their nature, their cultural integrity, their authorities, their autonomy, and their own governments, causing them multiple harms.⁵⁶

The final report made recommendations aimed at peacebuilding, reparations for victims, the political system and participation, and socioeconomic and cultural transformations, all with a territorial and ethnic differential approach.

The Truth Commission submitted the report to the General Archive of Colombia in 2023, so that this investigation could be made available to the general public. The Committee for Follow-up and Monitoring (CSM, by its acronym in Spanish) of the implementation of the recommendations for the non-repetition of armed conflict will supervise progress over a period of seven years (from 2022 to 2029), with assistance from the UN.

The measures for implementation of the ethnic chapter involve access to land for ethnic communities, the establishment and expansion of collective territories through national comprehensive rural reform plans, and the implementation of territorially focused development programs (PDET, by its acronym in Spanish) centered on the construction of life plans and ethno-development.

The implementation of these measures has been gradual, beginning with a pilot project in the department of Choco. However, according to the High-Level Special Committee for Ethnic Peoples of Colombia, progress has lagged regarding the rest of the CVR measures.⁵⁷ The PDETs were designed with indigenous participation, including the introduction of initiatives consulted in the Territorial Transformation Action Plans (PATR, by its acronym in Spanish), but their implementation is far behind schedule.⁵⁸

The Special Jurisdiction of Peace (JEP, by its acronym in Spanish) was supposed to incorporate an ethnic approach, considering the ethnic and cultural perspective in all its decisions, including respect for the right to participation and consultation of indigenous peoples, and coordination with the Special Indigenous Jurisdiction of Colombia. The SIVJRNRR incorporated the participation of authorities from indigenous and Afro-descendant ethnic groups.

4.4. Norway

a) Origins

La “Norwegianization” was a formal state assimilation policy in Norway that was in effect from the 1850s until its abolition in the late 1950s. The policy targeted the indigenous Sami people, as well as

⁵⁵ COMMISSION OF THE CLARIFICATION OF TRUTH, COEXISTENCE AND NON-REPETITION(2022), pp. 660-661.

⁵⁶ COMMISSION OF THE CLARIFICATION OF TRUTH, COEXISTENCE AND NON-REPETITION(2022), pp. 660-665.

⁵⁷ PLAZA (2024).

⁵⁸ QUIÑONES (2022).

the Norwegian Kven/Finnish minority. State repression under this policy resulted in the loss of the Sami language and the deprivation of Sami land rights.⁵⁹

The Sami community has long sought a public process to address repressive state policies in the Nordic countries.⁶⁰ Drawing direct inspiration from the Canadian CVR, the Sami Parliament and other minority interest organizations advocated for the creation of a Truth and Reconciliation Committee. The “Commission to investigate the policy of Norwegianization and injustice against the Sami and the Kvens/Norwegian Finns” was set up in 2018 by a parliamentary vote.⁶¹

b) Mandate & design

The mandate of the Norwegian CVR was to examine Norwegian policy and injustices committed against the rights of the Sami and Kvens/Finnish Norwegians to practice their own language, culture, and traditional ways of life, as well as its current impacts and recommendations for reconciliation measures.⁶²

Like the Canadian CVR, “the Norwegian CVR had neither legal authority nor the ability to introduce legislation directly, and it had no redistributive power.”⁶³ The Control and Constitution Committee held a lengthy hearing process with Sami and Kven interest organizations to select the commissioners.⁶⁴ The Norwegian CVR established close working relationships with groups affected by “Norwegianization” policies, who participated in the commission’s work and were consulted throughout the process.⁶⁵ However, the commission did not establish reference groups or collaborative forums to institutionalize these consultation and advisory processes, nor did it publish an interim report, which some say limited its capacity for public participation.⁶⁶

c) Practices and procedures

The CVR traveled throughout the country during its mandate and collected more than 750 personal stories.⁶⁷ They organized 39 open meetings, in collaboration with local stakeholders, including formal open meetings and more informal “coffee meetings.”⁶⁸ The Commission also participated in 109 events organized by other stakeholders.

At the open meetings, participants discussed various impacts of historical assimilation policies and their ongoing effects, particularly on indigenous linguistic and territorial rights, as well as the importance of maintaining culture and means of livelihood.⁶⁹ These meetings also included some elements of Sami culture, for example, opening the meetings with traditional music and songs.⁷⁰

⁵⁹ SKAAR (2023).

⁶⁰ KUOKANNEN (2020), p. 294.

⁶¹ SKAAR (2023).

⁶² COMMISSION TO INVESTIGATE THE NORWEGIANISATION POLICY AND INJUSTICE AGAINST THE SÁMI AND KVENS/NORWEGIAN FINNS (2023).

⁶³ BRODERSTAD & JOSEFSEN (2023).

⁶⁴ SKAAR (2023).

⁶⁵ SZPACK & BUNIKOWSKI (2022).

⁶⁶ BRODERSTAD & JOSEFSEN (2023).

⁶⁷ COMMISSION TO INVESTIGATE THE NORWEGIANISATION POLICY AND INJUSTICE AGAINST THE SÁMI AND KVENS/NORWEGIAN FINNS (2023).

⁶⁸ COMMISSION TO INVESTIGATE THE NORWEGIANISATION POLICY AND INJUSTICE AGAINST THE SÁMI AND KVENS/NORWEGIAN FINNS (2023).

⁶⁹ BRODERSTAD & JOSEFSEN (2023).

⁷⁰ BRODERSTAD & JOSEFSEN (2023).

d) Outcome

The Norwegian CVR concluded that “the policy of Norwegianization contributed to the marginalization of the Kven, Sami, and Finnish forest culture and language, and that the consequences of Norwegianization mean that many individuals and groups today live with wounds and losses.”⁷¹

Their recommendations call for “comprehensive and national” investments in language education, measures to counter hate speech, and periodic reviews to hold Norway accountable for past promises made to minority groups.

Given that Sami territory extends across the Nordic countries, the Norwegian example has provided a model for the Truth Commissions in Sweden and Finland regarding addressing historical and current injustice against the Sami.⁷² However, the Norwegian CVR has been criticized for not offering a sufficiently meaningful commitment to rectify the problems of land dispossession, nor did it commit to Sami customary law.⁷³

In November 2024, the Norwegian Parliament apologized to the Sami community as the first of 17 implementation decisions. Meanwhile, the Sami Parliament has promoted an agenda, following the report, that includes resolving conflicts over land use and natural resources, preserving Sami heritage, language, and identity, and protecting traditional ways of life related to reindeer herding and fishing.

V. ASSESSMENT OF THE TRUTH COMMISSIONS STUDIED

The differential use of CV mechanisms to explicitly redress injustices against indigenous peoples is a recent development.⁷⁴ Experiences described in Australia, Canada, Colombia, and Norway develop a differential approach that strives to understand the continuity of recent violence with historically rooted structural violence.

5.1. The Transformative Potential of Transitional Justice for Indigenous Peoples

In the cases studied, the increased use of the CV mechanisms has promoted the visibility of situations of injustice, providing an opportunity to analyze past violence and patterns of abuse.⁷⁵ From there, a transformative capacity can be developed through its methodologies and recommendations.

Where ordinary justice instruments - such as courts - work slowly and are limited, or where the political system has failed to ensure the implementation of reforms to enforce indigenous rights, The CV offers possibilities for progress. As shown in the cases analyzed, CVs can be effective in promoting the agendas of indigenous organizations, generating dialogue, and building agreements with other sectors.⁷⁶

According to Arthur, CVs can make a difference in objectives such as: (1) building a better understanding among indigenous people, the State, and non-indigenous people about how eroding self-determination has been detrimental to the human rights of indigenous people, and (2)

⁷¹ COMMISSION TO INVESTIGATE THE NORWEGIANISATION POLICY AND INJUSTICE AGAINST THE SÁMI AND KVENS/NORWEGIAN FINNS (2023).

⁷² SKAAR (2023).

⁷³ SONNELAND & LINGAAS (2023), OLSEN (2024).

⁷⁴ NAGY (2022).

⁷⁵ YASHAR (2012), p. 11.

⁷⁶ ARTHUR (2014), pp. 208-209.

strengthening the political legitimacy and capacity of indigenous organizations through participation in CV processes.⁷⁷ CVs can contribute to advancing the broader agenda of indigenous rights.

The agenda of rights such as self-determination, self-government, or rights over natural resources (in the case of Norway) or over land (Colombia), as well as cultural and linguistic rights, is driven by shared truth and recommendations based thereon.⁷⁸ These places the addressing of structural injustices at the forefront,⁷⁹ questioning the way in which the sovereignty of colonial States was constituted.⁸⁰

In the commissions of Canada and Colombia, it is noticeable how, as mentioned above, an understanding between indigenous peoples and the state has been developed or strengthened. In Canada, one of the major consequences of its VC was the incorporation of the DNUDPI into domestic law in 2021. In the case of Colombia, the ethnic chapter has been relevant in recognizing greater indigenous rights, as in the case of Decree 1275 on the environmental regulatory powers of indigenous authorities over their territories in 2024. The other processes are still too recent for assessing this aspect (Norway) or are incomplete (Australia). Meanwhile, all cases show a design for indigenous peoples' participation, incorporating indigenous methodologies for truth-building.

A first benefit of using CV with a differentiated approach has to do with the epistemic capacities mobilized by JT and its political effects. The possibility of generating shared truths in a society about human rights violations can foster the construction of consensuses on which normative changes can be achieved. This implies an epidemic expansion of JT to traditional and indigenous knowledge.

A second benefit is that it introduces special mechanisms that do not have the formal and substantive difficulties of the state's ordinary justice mechanisms. Particularly, CVs are able to raise issues that courts are resistant to, such as genocide recognition, offering more flexible ways to hear victims and survivors. In the case of Colombia, the development of the indigenous notion of "territories as victims" of the internal conflict has been highlighted. This has displaced the anthropocentrism of JT, and has been expanded precisely in the decisions of the Special Justice of the Peace, based on indigenous claims, regarding the recognition of rights for non-human natural entities.⁸¹ This is also the case with the notion of "indigenous data sovereignty" in the case of the Yoorrook Justice Commission in Australia.

Thirdly, crossing the two previous dimensions, CVs can make room for interculturality that isn't accessible from the usual spaces of politics and, thus, generate discussion between forces that have no meeting points in other spaces of state institutions. This is a process that can be seen in all the cases of CVs studied.

Regarding this, Augustine Park presents the idea that, by incorporating decolonial indigenous principles, JT could become a transformative tool for imagining how past injustices shape the present and how a more just future could be achieved (2020). This involves decentralizing the state, committing to the recognition of the self-determination of indigenous peoples, and accepting uncertainty and openness to transformative visions of what decolonization could look like in practice.⁸² He presents the view that JT processes promote forms of local justice, with participatory

⁷⁷ ARTHUR (2014), pp. 210-211.

⁷⁸ ARTHUR (2014), YASHAR (2012).

⁷⁹ BALINT, et al. (2014), pp. 213-215.

⁸⁰ BALINT, et al. (2014), PARK (2020).

⁸¹ NOGUERA & DIAZ (2025).

⁸² PARK (2020), pp. 275-278.

processes and the influence of customary normative systems, based on a vision centered on the needs of victims that contributes to the decentering of the colonial State.⁸³

A relevant development is the strengthening of indigenous normative systems as a constituent element of indigenous JT. The CV mechanisms analyzed aim to achieve healing and closure of conflicts, as well as their repercussions, and in some cases find the truth without the perpetrator.⁸⁴ Indigenous JT has a sense of place or ecological rootedness and gives cultural meaning based on the community's relationship with the natural environment. In order to strengthen mechanisms for redress and protection for victims, it is necessary to understand the perspectives and values framed within the categories of indigenous philosophies.⁸⁵ These perspectives challenge the basic notions of JT, based on different understandings of the relationships between human beings/ nature/ society.⁸⁶ The role of indigenous law (higher law) was strongly represented in the Colombian commission,⁸⁷ as well as in the Australian commission, playing a minor role in Canada and an even smaller role in Norway.

Integrating indigenous leadership and indigenous rights frameworks into JT mechanisms could also transform accepted interpretations of substantive concepts such as truth and justice to better reflect indigenous philosophies and worldviews. This may open the door to a paradigm shift to integrate indigenous approaches into the procedure, such as orality, performance, and jurisprudence based on tradition or custom.⁸⁸ This was exactly the effect of the meetings with tribal elders in Australia and the incorporation of “indigenous narratives” in the CV in Colombia.

Indigenous people seek collective reparations and guarantee of non-repetition that rebuild the community, ecological, and spiritual balances of their ways of life. They want these measures to not only address a specific past, but also relate to the present and future of their communities and their intercultural coexistence. Reparations must also address the underlying causes of conflicts, not just the most immediate ones. The process of deciding reparations must include co-design with indigenous peoples.⁸⁹ Co-design has been most noticeable in Canada and Colombia, although in all cases the big question is always the sustainability of cooperation between indigenous peoples and the State for the subsequent implementation of the recommendations.

This becomes even more important considering that the possibility of transformative transitional justice also depends on it being justice centered on indigenous victims and where they have full participation.⁹⁰ At the operational level, this requires effective ways of cooperation between international, state, and indigenous authorities—including indigenous jurisdictional authorities, where indigenous justice functions—as well as interdisciplinary support from a variety of professionals. One of the crucial issues is respect for the right to prior consultation of indigenous peoples, as has been the case in Colombia.

Although CVs with a differentiated approach to indigenous peoples have led to transformative goals regarding historical injustices, they have not yet had a significant impact on advancing all issues that are central to indigenous peoples' rights agendas. For example, while the CVR in Colombia is making progress on territorial rights, the same is not true in Norway.

⁸³ PARK (2020).

⁸⁴ BENYERA (2019), p. 3.

⁸⁵ ORTIZ (2023).

⁸⁶ VIAENE (2019), pp. 148-149.

⁸⁷ ARIZA & VARGAS (2024).

⁸⁸ GONZÁLEZ (2021), p. 15.

⁸⁹ RODRÍGUEZ-GARAVITO & LAM (2011), p. 26.

⁹⁰ ROBINS (2011).

5.2. Key Lessons from Comparative Experience

A transitional justice that is indigenous in nature can be seen in the distinctive features of the four CVs analyzed, providing for a transformative perspective that is off-centered with regard to the state and transcends anthropocentric views to understand the nature of injustice and the needs for reparation.

The four CVs examined differ significantly in terms of context and the type of colonial legacy they seek to address, from the violence of assimilation policies - such as the Canadian residential school system and “Norwegianization” - the differential impacts of the Colombian armed conflict on ethnic communities, to a broad investigation of historical and current colonial injustices in Victoria, Australia. Despite their differences, these experiences share some valuable lessons about the challenges and transformative potential of using transitional justice frameworks to address injustices perpetrated against indigenous peoples.

As the cases show, the strong participation of indigenous communities in shaping the CV processes and the inclusion of indigenous knowledge and ways of knowing in these processes play a key role in determining the extent to which a particular commission will be able to overcome the challenges of traditional transitional justice. Such an approach may have the potential for more transformative social change by opening up colonial power dynamics to questioning and scrutiny, reconstructing shared truths that better recognize indigenous sovereignty and ways of knowing, and creating a pathway for structural change.

a) Participation of indigenous peoples - Free, prior, and informed consent

One of the main criticisms of the Canadian CVR was the scope of the commission, which was limited to the residential school system and its causes and consequences. Indigenous organizations, such as Indian residential school survivor organizations and the Assembly of First Nations, negotiated the CVR’s mandate behind closed doors in the IRSSA negotiations.⁹¹ Although the commission had two Indigenous commissioners and a survivor committee to advise on its work, communities at large did not participate in its design. On the contrary, both the Colombian and Norwegian CVRs included consultations with representative indigenous organizations to shape the commissions’ mandate and methodology—in Norway’s case, through systematic and close partnerships with affected communities and organizations, and in Colombia’s case through a series of dialogues, permanent roundtables, and adopting the Directorate of Ethnic Peoples.⁹²

Furthermore, the Yoorrook Justice Commission incorporated the DNUDPI as a central part of its methodological framework. As such, consent has been deeply integrated into the processes of the Yoorrook Justice Commission, and it is fair to say that its mandate, scope, methodology, and operations have been significantly informed and shaped by the Aboriginal First Nations in Victoria. Its scope of action is extremely broad, and it has the flexibility to consult with communities on their priorities throughout the process. This has led to some significant innovations, such as the prioritization of Indigenous Data Sovereignty protocols in the work of the Yoorrook Justice Commission.

b) Creation of an emerging pathway for structural change

⁹¹ NAGY (2014).

⁹² BRODERSTAD & JOSEFSEN (2023), COMMISSION FOR THE CLARIFICATION OF TRUTH, COEXISTENCE, AND NON-REPETITION (2022).

Almost ten years after the Canadian CVR, it is possible to say that it has had a transformative impact on public education and the reconstruction of shared truths about historical injustice and its current repercussions. The commissioners interpreted the scope of the CVR quite broadly and firmly placed the residential school's system in the broader context of colonization. Indigenous languages and methodologies were incorporated into the commission's work, such as the use of ceremony and prayer, sacred fire, drumming, and talking circles in proceedings. The conclusions that Canada had committed cultural genocide have had a profound impact in terms of transforming the national narrative, and the Final Report and its 94 calls to action contain recommendations for profound structural changes.⁹³ The calls to action remain a powerful advocacy tool and an indicator of progress, or lack thereof, on Indigenous issues in Canada. However, the lack of substantive action on self-determination rights issues in particular has led to criticism regarding the reconciliation process.⁹⁴

Like its Canadian counterpart, the Norwegian CVR frames its transformative potential in the context of its role in public education about the current repercussions of "Norwegianization" policies. Two major criticisms have emerged regarding the commission's potential long-term impact: its lack of substantive engagement during the course of its activities and its failure to include the implications of the judiciary in "Norwegianization," and thus a general exclusion of Sami customary law from the conversation around reconciliation.⁹⁵ However, given that its reports were not published until 2023, its impacts will continue to unfold.

The ethnic chapter of the Colombian CVR is placed within the broader context of the structural change brought about by the Colombian peace process. As such, its transformative potential lies in the work it did to incorporate indigenous perspectives and methodologies from the outset, and in its ability to reconstruct a shared narrative of the impacts of ethnic injustice in relation to the conflict. The report's findings highlight how long-term patterns of colonial abuse shaped both the origins of the conflict and its repercussions on indigenous peoples.

Finally, as this is an ongoing initiative, it is difficult to say what the long-term repercussions of the Yoorrook Commission might be. However, the fact that the Commission originated and is placed within the broader context of the treaty-making process in the State of Victoria indicates a strong possibility that it may lead to deeper engagement. Given the broad scope of the Commission, its connection to a longer-term process of transforming settler-Indigenous relations is promising as an approach, as it combines JT mechanisms with deeper processes of social transformation. The Commission explicitly connects past and present forms of dispossession and injustice, for example by including testimony about the harm caused by current policies related to child removal, criminal justice, and policing.⁹⁶

VI. CONCLUSIONS

The cases of CVs analyzed illustrate both the deep challenges and the transformative potential of using JT mechanisms to address structural injustices and advance claims for justice for indigenous peoples. The nascent use of JT mechanisms, and CVs in particular, highlights some of the most profound conceptual tensions and challenges that exist between JT and indigenous peoples' rights frameworks. The notion of indigenous JT invites us to explore the transformative possibilities that

⁹³ MACDONALD (2020).

⁹⁴ CORNTASSEL & HOLDER (2008), JEWELL & MOSBY (2023).

⁹⁵ BRODERSTAD & JOSEFSEN (2023), SONNELAND & LINGAAS (2023).

⁹⁶ BRACKA (2024b).

can result from the integration of indigenous approaches into JT, and the emerging best practices observed in the VCs analyzed that address the issues of and with indigenous people.

Based on these analyses of the targeted VAs, it is possible to propose, first, that indigenous JT processes require, in terms of their constitutive working methods and methodology development, procedures in which indigenous peoples can play a leading role as collective agents. Particularly relevant is respect for the self-determination of these communities and its exercise through their representative authorities, as well as the appropriate use of instruments such as consultation and consent mechanisms.

Secondly, the proposals arising from the CVs studied show us the transformation of JT measures towards the incorporation of forms of indigenous customary law and the values of the peoples regarding peace, cohesion, and harmony with nature. This incorporation implies broadening the assumptions of JT towards perspectives focused less on the state and human coexistence, in order to embrace the visions of interdependence with nature inherent in the worldviews and natural philosophies of indigenous people.

The potential proliferation of JT mechanisms that incorporate these characteristics to address relations between indigenous peoples, the state, and other actors will likely continue to deepen the transformative nature that JT can assume, forcing it to review its assumptions, methods, and objectives.

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LIST OF ABBREVIATIONS

Indian Residential Schools Settlement Agreement (IRSSA)

Truth Commission(s) (CV)

Truth and Reconciliation Committee (CVR)

Follow-up and Monitoring Committee (CSM)

United Nations Declaration on the Rights of Indigenous Peoples (DNUDPI)

Directorate of Ethnic Peoples (DPE)

Revolutionary Armed Forces of Colombia-Community Army (FARC-EP)

Special Jurisdiction of Peace (JEP)

Transitional justice (JT)

United Nations Organization (ONU)

Action Plans for Territorial Transformation (PATR)

Comprehensive System of Truth, Justice, Reparation, and Non-Repetition (SIVJRNR)