

## RESTORATIVE TACTICS

From 1980 to 2000 more than 70,000 people in Peru dis-

appeared or were murdered. Most of the victims were from poor rural families who were largely excluded from economic and political life. The human rights community in Peru brought this issue to the attention of the media, the general public and international organizations, leading to the creation of the Truth and Reconciliation Commission on which I had the privilege to serve.

The Commission, which issued its final report in August 2003, made it impossible for the state to continue to ignore the cries for justice from the families of the disappeared. Its work, while a victory for human rights, was only a first step in a much larger process of restoring rights and justice for all people in Peru.

In this chapter you will read about other people and organizations, like the Truth and Reconciliation Commission, who were part of the process of restoring justice and rebuilding communities after horrific human rights abuses. Some recorded the abuses, making it impossible for the state or society to ignore them. Some helped heal communities and individuals damaged by abuse. Some sought justice for both victims and perpetrators.

In the Commission's work, justice meant punishing perpetrators, gaining reparations — both collective and individual — for victims and ensuring that the crimes that were committed will not happen again. Reparations are a crucial part of this mix in Peru, both because the Peruvian government owes a debt to the victims it failed to protect and because reparations will help restore rights to all members of Peruvian society.

Other groups have used other tactics to bring justice to their communities. I hope that you will find many of them useful to you in your work.

### — Sofia Macher

Former Member, Truth and Reconciliation Commission

Former Executive Director, National Coordinator of Human Rights, Peru

Even when human rights violations end — when the war is over or the old regime has been toppled, when victims have been freed or have escaped, or time has simply passed — even then the need for creative human rights work does not end. The impact of human rights abuse extends beyond immediate suffering: it can destroy leadership in a community, lead to economic decline and erode civil society.

A silence can descend that prevents victims, families and communities from rebuilding leadership and social structures, prevents perpetrators from being brought to justice and prevents communities from reconciling and moving on. The tactics described in this chapter have all been used to seek healing, justice and reconciliation for victims and communities, to rebuild leadership and to advance a vision for a free and fair society.

Traditionally a distinction has been made between restorative and retributive justice, where restorative justice emphasizes healing the wounds of victims, offenders and communities and retributive justice emphasizes punishment for the offender and redress for the victim. Both approaches are useful and essential to the task of rebuilding and restoring a damaged community and both are included here.

These tactics also, while most often focused on the past, play an important role in preventing abuses in the future. They have been used to strengthen damaged communities; break down walls of impunity that protect abusers; punish abusers and make it known that abuse will not be tolerated in the future; create records of abuse that acknowledge and validate the pain felt by victims and victims' families; and record patterns of abuse that, if we are vigilant, could help us recognize and stop abuses in the future.

*The tactics in this chapter are divided into three sections:*

- 1 Remembering abuses — tactics that bring to light the nature and extent of abuses, or the identities of the perpetrators or victims.
- 2 Strengthening individuals and communities — tactics that employ mental health interventions, rehabilitation and other techniques to heal individuals and communities.
- 3 Seeking redress — tactics that seek justice through litigation, sanctions, reparations or other means.

## REMEMBERING ABUSES

It would be easiest to forget the abuses we hear

about, witness and experience, but we then leave wounds untended and a door open to future abuses.

The tactics in this section create a permanent and public record of abuse and patterns of abuse. Without such a public record, memory will dissipate, because existing documents may be scattered or hidden within a deep layer of bureaucracy. Files regarding human rights abuses also have a tendency to “disappear” if not preserved. Where documentation does exist, special efforts may be needed to unearth it, preserve it and make it public. In situations where the best or only documentation lies with the bodies buried in unmarked or mass graves, other tactics put specialized forensic skills to use. In other cases the facts of abuse are already known to the public — perhaps it occurred a little further in the past — but people are in danger of forgetting what happened. These mechanisms not only keep the memory fresh, but also make it relevant. And in several situations below, where abuse has been widespread and pervasive, public commissions and tribunals give victims, victims’ families and, in some cases, perpetrators, the chance to tell their stories.

Opening files and records that contain information about human rights violations — especially deaths, torture and disappearances — to the general public can serve several purposes. It can bring to victims’ families a sense of “closure,” helping them put the past to rest and move on or perform the rituals traditional in their culture. It also helps families gather information to build a solid record for litigation against abusers. Also, the public records can become a visible and tangible memorial, providing a focal point for public discussions and becoming, in some ways, a voice to the voiceless.

A group in Cambodia has documented abuses from the Khmer Rouge genocide and made the records of abuse accessible to the public, preserving the memory of both those affected by the genocide and those who committed the abuses.

The Documentation Center of Cambodia (DC-Cam) collects records of the victims and perpetrators of the genocide in Cambodia so that families and friends can learn the precise fate of the disappeared. At the same time, DC-Cam gathers possible legal evidence that can be used against former Khmer Rouge leaders in a court of law.

DC-Cam’s Family Tracing File System helps families of both victims and perpetrators discover the fate of their loved ones by searching detailed records kept by the Khmer Rouge regime (1975–1979). DC-Cam has four databases that catalogue hundreds of thousands of pages of relevant documents, photographs and interviews. Its mapping project has used GPS technology to identify 19,466 mass graves, 168 prisons and 77 genocide memorials in 170 districts of Cambodia and nearly all of the country’s provinces.

Although most often finding that relatives were executed by the Khmer Rouge, families can still find closure and relief in knowing exactly what happened, and the community can begin to heal from the trauma of the genocide. Records occasionally reveal the location of the missing’s remains, allowing a family to perform the proper rites for the victim’s spirit. An estimated 80 percent of families that come to the center inquiring about loved ones leave with answers as to what happened.

DC-Cam’s ultimate goal is to keep the memory of the genocide alive, helping the people of Cambodia seek justice and build a strong future and preventing such atrocities from ever happening again.

DC-Cam’s tactic has been very effective in Cambodia, where the population has suffered grave, long-term abuses. Other countries emerging from long periods of abuse could benefit from the group’s experience. To create a central repository of information, a group must find how or whether the perpetrators left any documentation or evidence behind and may need to conduct exhumations and forensic work (see page 91). In Cambodia, the genocide targeted the educated class and destroyed the justice system, meaning that the information could only be put to use when the system was rebuilt.

***How can you record the history of abuses in your community? How can you use this history to promote healing and justice?***

## Opening the Archives of Terror: Promoting justice by leveraging the legal rights to access victims' records.

In Paraguay, the Centro de Documentación y Archivo (the Center for Documentation and Archives or CDyA) is taking advantage of a law that gives former prisoners the right of habeas data — the right to control documents relating to their own cases — to create an “archive of terror.”

The Centro de Documentación y Archivo (CDyA) opened police files to the public after the country's 35-year military dictatorship.

The constitution of Paraguay, like the constitutions of five other Latin American countries, includes the right of habeas data: the right of former prisoners to control data collected about them and their experiences. After filing a petition to obtain his own file, Martin Almada, a former political prisoner, accompanied by a local judge, found thousands of detention files in a police station in Lambare in 1992.

These files document prisoners' detention experiences in detail — including torture and other human rights violations — and have been used to corroborate individuals' stories of detention during several Latin American dictatorships, to confirm the disappearance of citizens and as evidence in the prosecution of former police and military personnel in several Latin American countries.

The Paraguayan courts, including the Supreme Court, eventually ordered that the files be made accessible to the public. The archive, now under the control of the CDyA, is open to researchers, investigators, human rights activists and the general public. CDyA has used the files as the basis for legal cases, to organize tribunals to prosecute the chief perpetrators of state-sponsored torture and illegal detention, and to inform the work of the Paraguayan truth commission. Twenty officials have been successfully prosecuted. The archive was also used to assemble the case for the extradition of General Augusto Pinochet from Great Britain to Spain in 1998.

CDyA has transferred 90 percent of the material in the archives to microfilm and is digitizing it as well. The group is also seeking to have the archives included in UNESCO's World Heritage List.

The availability of detailed information about human rights abuses can have important effects on those who suffered abuses as well as on the administration of justice after the abuses have ended. Almada's efforts in Paraguay confirmed the experiences of many victims and made legal recourse an option.

While the files in Paraguay were discovered by accident, the tactic of purposefully opening files regarding human rights violations has been used by several governments. In Germany and several Eastern Europe countries, for example, governments have opened the files of victims of the secret police. In Germany, the files are maintained by an independent body called the Gauck Authority and open to victims but not to the general public. In Czechoslovakia and other countries, files were opened selectively and not made available to victims and some files slipped through cracks in the service of political purposes.

There have been numerous criticisms of and lessons learned from these tactical approaches. Tina Rosenberg at the Harvard Law School Human Rights program on truth commissions, for instance, states that “the fact that German files were opened helped to solve the problem of the files' unreliability. Victims could help confirm whether or not the person accused of informing could actually have done what he was accused of. It is a self-checking mechanism, which does not exist in the Czech version. Furthermore in Germany, the victim can

choose whether or not he wants to publicize the information about who informed on him. That is not public information.

**What laws exist in your country that might be useful in obtaining access to documents that confirm abuses and identify perpetrators?**

## Preserving Memories: Coordinating efforts to preserve archival information among several organizations and creating a system for accessing it.

“Never again” is a vow frequently heard after human rights abuses come to light, but that vow cannot be kept unless the memory of the abuses, the victims and those who fought against the abuse remains alive. Unfortunately, the powerful information stored in the files of numerous human rights organizations is often unknown to the outside world and inaccessible to those who may later be able to use it to make sure that such history is not repeated. Memoria Abierta is an alliance of eight human rights organizations in Argentina that have combined their efforts to create a publicly accessible database, one they hope will contribute to the articulation of a collective and lasting memory.

Memoria Abierta has created a system to make accessible all public archives of documents, photographs and interviews that testify to the horrors of state terrorism in Argentina, its victims and the people who stood against it. While anyone with Internet access can search the online catalogue of the files, the actual materials remain in the offices of each member organization or in Memoria Abierta's office. The database provides a single index of all materials, easily searchable by any user. It also tells the location of the original documents, photos and videos so that interested researchers can set contact organizations about them. The project has created special software developed in open-source format to help other organizations create similar databases.

The Patrimonio Documental (Documentary Heritage Program) archive includes five parts: 1) the Documentary Heritage Program itself, which includes about 22,000 documents on state terrorism; 2) the Topography of Memory Program, with maps, documents and oral testimony about historical sites related to state terrorism — over 340 torture centers that were hidden in ordinary places throughout the country; 3) the Photographic Archive Program, which includes digital images from human rights organizations, private collections and the media; 4) the Oral Archive Program, with summaries of more than 320 interviews with people whose lives have in some way been affected by the experience of state terrorism; and 5) Memoria Abierta's own documents.

Memoria Abierta is comprised of the Abuelas de Plaza de Mayo, Asamblea Permanente por los Derechos Humanos, Asociación Buena Memoria, Centro de Estudios Legales y Sociales, Familiares de Desaparecidos y Detenidos por Razones Políticas, Fundación Memoria Histórica y Social Argentina, Madres de Plaza de Mayo — Línea Fundadora, and Servicio Paz y Justicia. The alliance was formed to develop and support projects that encourage communities and individuals to remember events that occurred during the military dictatorship. Memoria Abierta also sponsors initiatives to promote debates on the creation of sites of memory and spaces for public reflection. The archives will one day form part of the main collection of a Museum of Memory.

The tactic of coordinating archives of multiple organizations could be used in any country where more than one group is collecting human rights-related data. It could be part of a “memory” project, but could also be used in countries where multiple human rights organizations are tracking ongoing abuses and need to maximize access to information.

| Region   | Initiating Sector | Target Sector | Focus    | Human Rights Issue               |
|----------|-------------------|---------------|----------|----------------------------------|
| Americas | Civil Society     | Civil Society | National | Gross violations of human rights |

| Region   | Initiating Sector | Target Sector | Focus    | Human Rights Issue               | RESTORATIVE        |
|----------|-------------------|---------------|----------|----------------------------------|--------------------|
| Americas | Civil Society     | Civil Society | National | Gross violations of human rights | Remembering Abuses |



In cases where paper documents are insufficient or simply do not exist, forensic work can create a record for litigation and give victims' families the information they need for closure. Forensic work is an objective way to record abuses. Because the evidence is scientific, it can be even more powerful than testimony and written documentation in proving human rights violations. The exhumation of bodies can also allow families to perform traditional rituals, mourn and, though still hurting, move on with their lives.

Over the past two decades, Equipo Argentino de Antropología Forense (the Argentine Forensic Anthropology Team, or EAAF) has identified the remains of victims of state violence. During Argentina's military dictatorship (1976–1983), 10,000 to 30,000 people were killed or “disappeared” by the state. The EAAF's goal is three-fold: to return victims' remains to their families and thus aid in the healing process; to provide evidence for legal cases against the perpetrators of state violence; and to train and support the formation of other forensic teams in countries that have suffered periods of violence and need to investigate the past.

The EAAF has a permanent investigative team that researches information on people who were disappeared. The group usually begins a case with a preliminary investigation to ascertain where the person might be buried, interviewing relatives, friends, other former prisoners, cellmates and former political activists about the victim's physical characteristics and the likely time and place of death. The EAAF also studies police and bureaucratic records, which contain physical descriptions, fingerprints and autopsy records, and must often obtain court orders to gain entrance to police archives. The process moves forward when the group has found ten written or oral documents.

Once the burial's likely location has been identified, the team approaches the family of the victim; the EAAF will not continue the investigation without the family's consent. Once the family agrees, and the group has received authorization from the prosecutor or legal authority, the team begins the exhumations. Families are welcome to participate in some of the steps. The group uses standard archaeological techniques to recover the person's remains, and work then proceeds to the laboratory, where the EAAF scientists attempt to match the remains with the gathered information and establish the cause and manner of death.

Through this process, the EAAF has identified hundreds of victims' remains, bringing closure to families and contributing evidence to national and international tribunals, truth commissions and local courts. The EAAF has also trained many other groups around the world in its techniques. EAAF team members say this has been an important process for increased cooperation among countries in the global South.

When the EAAF investigates deaths, it gives control of the process to the family and community. This is essential in communities that have not only been marginalized under abusive governments but have been excluded from the reconciliation process. The EAAF's approach requires a certain level of openness and political freedom, but the group's experience transferring the tactic to over 30 other countries demonstrates that total government support is not necessary.

Another group, in Guatemala, also works with the community during exhumations, but focuses on psychosocial services. The Equipo de Estudios Comunitarios y Acción Psicosocial (Community Research and Psychosocial Action Team, or ECAP) works with the the Fundación de Antropología Forense de Guatemala to provide support to families and communities before, during and after an exhumation.

ECAP organizes support groups in which families can safely share emotions related to their loss, where they can reflect, fearlessly tell their stories, learn to face the consequences of violence and understand the current situation so that they can plan for the future. Families also receive assistance in burying their relatives legally and according to their own traditions, helping to preserve the bond between the living and the deceased.

After providing counseling prior to an exhumation, counselors accompany families to the exhumation site to provide support as members confront the reality of their relative's death, and continue to work with families to help them accept this reality. In communities affected by widespread political violence, common in many rural areas of Guatemala, counselors identify the impact of the violence and create groups to foster discussions of how the community as a whole can heal. To contribute to the healing, ECAP also supports communities in the creation of memorials and other ways of recognizing the traumas of the past. These programs all promote a critical awareness of the community's shared history, present and future, along with the emotions and challenges involved in reclaiming their rights.

**How might you use forensics or other technical expertise to document human rights violations?**

“ ” | *It is a very difficult moment when we approach families with information about where their loved ones might be. This could end the search for loved ones, which families are not always prepared for. We build a relationship with the family and talk to them until they are prepared. We explain to them what they will see, what they can expect, and encourage them to ask any questions or participate in the process.*

— Luis Fondebrider, EAAF President, Argentina

## Speaking Truth: Establishing a formal truth commission to investigate and acknowledge gross human rights violations.

In the past two decades, several countries emerging from long periods of abuse have created forums for victims, and sometimes perpetrators, to tell their stories. The truth-telling process can draw victims out of isolation; abusive regimes often maintain levels of secrecy that keep victims from knowing that their neighbors are suffering as well. Ideally, these truth-telling tactics engage the entire population, or at least large segments of it, so as to foster healing rather than be divisive.

Truth commissions are one kind of truth-telling tactic used by governments to start the process of reconciliation. Their mandates, which outline their purpose and authority, are typically established by country's legislative or executive bodies. In South Africa, a strategic decision was made at the end of apartheid to create a truth commission process rather than simply holding trials to prosecute perpetrators of gross human rights violations. The Truth and Reconciliation Commission was created by the country's parliament with a mandate to establish as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed, by all sides of the conflict, between March 1, 1960, and May 10, 1994.

The South African Truth and Reconciliation Commission (TRC) was initiated by national legislation in 1995, after a period of public debate. Its mandate was to collect information about gross human rights violations committed by state bodies or the armed opposition during apartheid and its goal was to promote national unity and reconciliation. The Commission was expected to offer suggestions for policy reforms to prevent future abuses. In addition to amnesty and human rights hearings, special hearings focused on abuses suffered by women and children and others were held on the role of faith communities, the medical establishment, the legal sector, the business community and other institutions that had passively or actively contributed to rights violations. Hearings were held all around the country and the broadcast media carried clips and live coverage. All media covered the TRC extensively through the duration of the Commission.

Twenty thousand victims provided testimony. To make the process as comfortable for victims as possible, the TRC used briefers (also an interesting tactic), who were chosen from the caring professions — ministers, social workers, and nurses, among others — and offered support to the victims before, during and after the process. The briefers received extensive training on the process and the structure of the Commission.

One unique aspect of the Commission's mandate was a conditional amnesty for perpetrators of human rights violations willing to publicly admit the details of their actions. Criteria for amnesty included full disclosure of the crimes as well as a determination that the acts were politically motivated. This conditional amnesty was a policy not attempted in previous truth commissions of this magnitude and it resulted in public confessions detailing many of the most notorious crimes of the apartheid era, including the 1977 murder of activist Steven Biko. Amnesty was not guaranteed for those who provided testimony, though steps for prosecution of those who were not granted amnesty or did not come forward to testify have not been implemented.

The Truth and Reconciliation Commission Report was released in seven volumes between 1998 and 2002. Though its long-term impact remains to be seen, some of the report's immediate achievements include recommendations on how to prevent future violations, which have influenced the new government, and the collection of indisputable documentation of human rights abuses during the apartheid era. It is important to note that the TRC has not fulfilled all of its expectations. None of the abusers who refused to testify have yet been prosecuted, although the process allows for this, and the country continues to struggle with the issue of reparations.

Read more about the use of briefers within the Commission at [www.newtactics.org](http://www.newtactics.org), under Tools for Action.



Truth commissions have been convened in dozens of countries and situations with a variety of mandates and results. Some are given subpoena powers, while others have no significant judicial tools at their disposal. Some hold open or even televised hearings, others work almost entirely behind closed doors. Some commissions recommend financial or other reparations for surviving victims and, in an effort to prevent future human rights violations, many have been asked to make substantial recommendations for changes in the political, military, police or judicial structures, or in the social or educational spheres.

Glenda Wildschut, a former commissioner on the South African Truth and Reconciliation Commission, notes that the commission operated under some limitations. Among them:

The TRC examined only gross violations of human rights. Victims of forced removals, land dispossession, the mixed marriages act and a host of other legislation could not seek recourse from the TRC.

The TRC's reparations committee was mandated only to make policy recommendations to parliament, while the amnesty committee had the power to grant immediate amnesty.

The TRC had to cover a period of 34 years — from 1960 to 1994 — in just three years of work.

The TRC had very few resources to provide emotional and psychological support for victims.

The tactic is still controversial. Some believe that truth commissions add to people's suffering and feelings of powerlessness because abuses come to light without punishment for perpetrators, or that the commissions can be used as a substitute for legal action. Others argue that deeply divided societies cannot press legal prosecution without strengthening the resolves and power of perpetrators to resist democratic change. But truth commissions can be used as part of a larger strategy that includes both truth-telling and punishment for abusers, or, as in the case of Argentina, may help create the political climate needed to begin prosecution.



## International Justice for War Crimes: Holding an international tribunal to raise awareness of and seek reparations for sexual war crimes.

A network in Asia organized an international tribunal to preserve the memory of abuses that occurred decades before, and to demand compensation.

The Violence Against Women in War Network, Japan (VAWW-NET) created a tribunal to acknowledge and seek justice for victims of sexual war crimes. In the first half of the twentieth century, the Japanese government created a system of sexual slavery through a network of “comfort stations,” brothel facilities controlled by the military. An estimated 400,000 women and girls were forced into the system. For close to 50 years the atrocity remained behind a veil of silence.

In 1998, VAWW-NET proposed the establishment of the Women’s International War Crimes Tribunal. An International Organizing Committee (the IOC) was formed, including representatives from nongovernmental organizations in victims’ home countries, Japan and the international community. The IOC created a charter, set the procedures and rules for the tribunal and prepared for proceedings in Tokyo in December 2000. At the tribunal, prosecution teams from ten countries presented indictments, including a joint indictment from North and South Korea. A four-judge panel representing a balanced geographic and legal spectrum presided over the proceedings. The tribunal heard live and videotaped testimony from survivors — euphemistically called “comfort women” — as well as from two former soldiers. Experts also testified about Japanese military structure. The judges reviewed official documents, memoirs, diaries and legal briefs. The tribunal hall was packed throughout the proceedings with up to 1,000 observers and members of the international media. After three days, the tribunal issued preliminary findings of fact and law and recommended reparations.

The tribunal created a historical record and raised awareness in the international community about sexual war crimes. The government of Japan, with the citizens of Japan, set up the Asian Women’s Fund (AWF) in 1995 to express its apologies and remorse and to provide compensation to victims. Although the fund has raised 483 million yen (approximately US\$4 million) for victims, many survivors and supporters view the AWF as a means for the Japanese government to avoid paying direct compensation; some of the victims have declined compensation from this private fund.

This tribunal broke decades of silence surrounding a subject taboo in Japan and difficult for the international community to face. It brought worldwide attention to the suffering of the “comfort women,” and even prompted private donations for the victims. It did not, however, succeed in holding the Japanese government to its responsibility to provide direct compensation.

A tribunal like this might be used on its own to break the silence around other issues — whether of this magnitude or on a much smaller scale — or to build momentum toward other international efforts, such as creating a fund for victims or building a powerful international movement.

Mock judicial procedures like these can also be used outside the country where the abuse occurred. In the United States, Minnesota Advocates for Human Rights organized a mock tribunal of the Khmer Rouge at which members of the local Cambodian community testified about the genocide in Cambodia. This gave Cambodians a chance to tell their stories, and local residents in the state of Minnesota a chance to learn about the new people arriving in their communities and what these people had survived. As part of the project a videotaped oral history was created that is now part of the permanent collection of the Minnesota History Center.

**How might you organize allies in different countries to highlight your struggle?**