

Transitional Justice: Enhancing the Right to Health Through Truth Commissions

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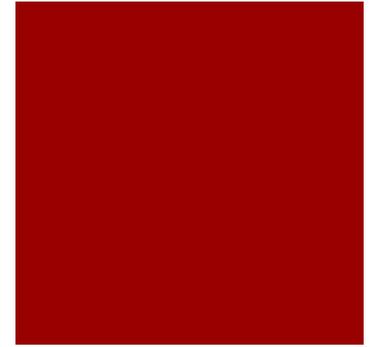
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Introduction

Truth and Reconciliation Commissions



- temporary
- non-judicial body
- mandated by the state or other competent institution
- investigating past human rights violations
- Victim centered approach
- make recommendations on how to deal with the legacy

¹ Hayner, P. B. *Unspeakable Truths: Transitional Justice and The Challenge of Truth Commissions*, 2001.



What is Transitional Justice?

- Peacekeeping, Rule of Law
- Addressing past abuses
- **Accountability**
- Right to Redress/Reparations
- Right to Truth
- Reconciliation
- Institutional Reform

Right to Health

Right to the *highest attainable standard*

Examples of UN human rights treaties:

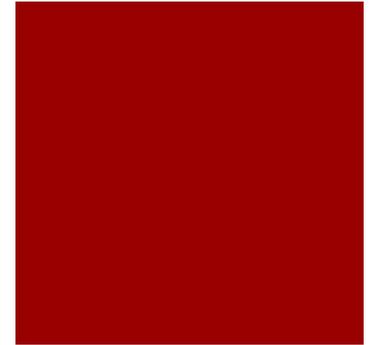
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966;
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979;
- Convention on the Rights of the Child (CRC), 1989.

Examples of regional human rights treaties:

- European Social Charter, 1961;
- African Charter on Human and Peoples' Rights, 1981; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador), 1988.

³ WHO, Right to Health, Fact Sheet No. 323, November 2013:
<http://www.who.int/mediacentre/factsheets/fs323/en/>

'A fundamental part of our understanding of a *life in dignity*' ⁴



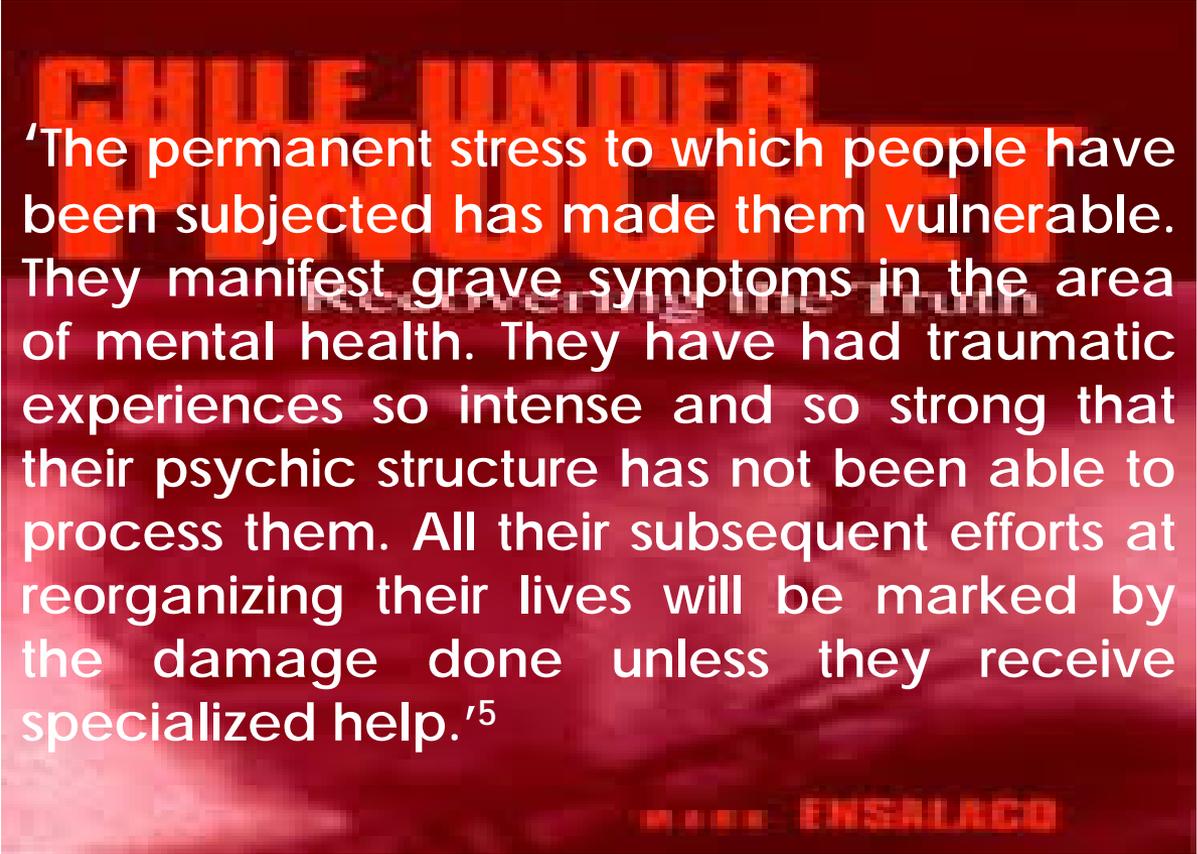
- Underlying determinants:

- ✓ Economic conditions
- ✓ Distribution
- ✓ Individual characteristics/behavior

- Inclusive right

⁴ UNHCHR, Information Sheet 31:

http://www.who.int/entity/hhr/activities/Right_to_Health_factsheet31.pdf?ua=1



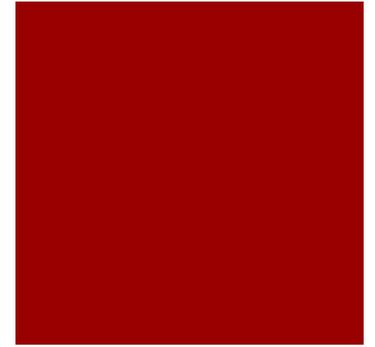
CHILE UNDER
Recovering the Truth

'The permanent stress to which people have been subjected has made them vulnerable. They manifest grave symptoms in the area of mental health. They have had traumatic experiences so intense and so strong that their psychic structure has not been able to process them. All their subsequent efforts at reorganizing their lives will be marked by the damage done unless they receive specialized help.'⁵

INSALACO

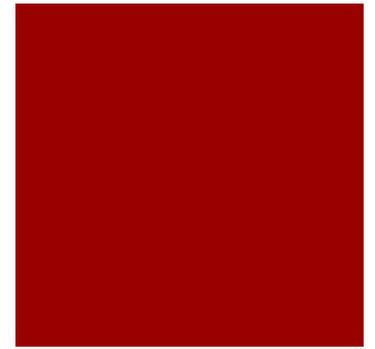
⁵ USIP, Report of the Chilean TRC, 1990:

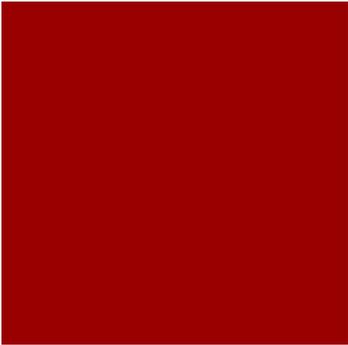
http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf



Case Studies

1. Guatemala





- Who?

- Anti-communist Government V.
- Unidad Revolucionaria Nacional Guatemala (URNG)

- 30 years of violence

- Estimated 200,000 deaths and disappearances

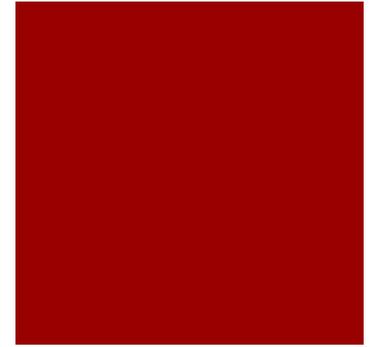
- TRC conducts 7,200 interviews with 11,000 persons:

- Documented **626 massacres**

- Documented **42,000 victims:**

- 23,000 killed
- 6,000 disappeared
- **83% Mayan** (17% Ladino)

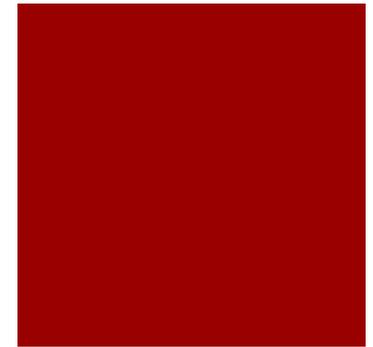
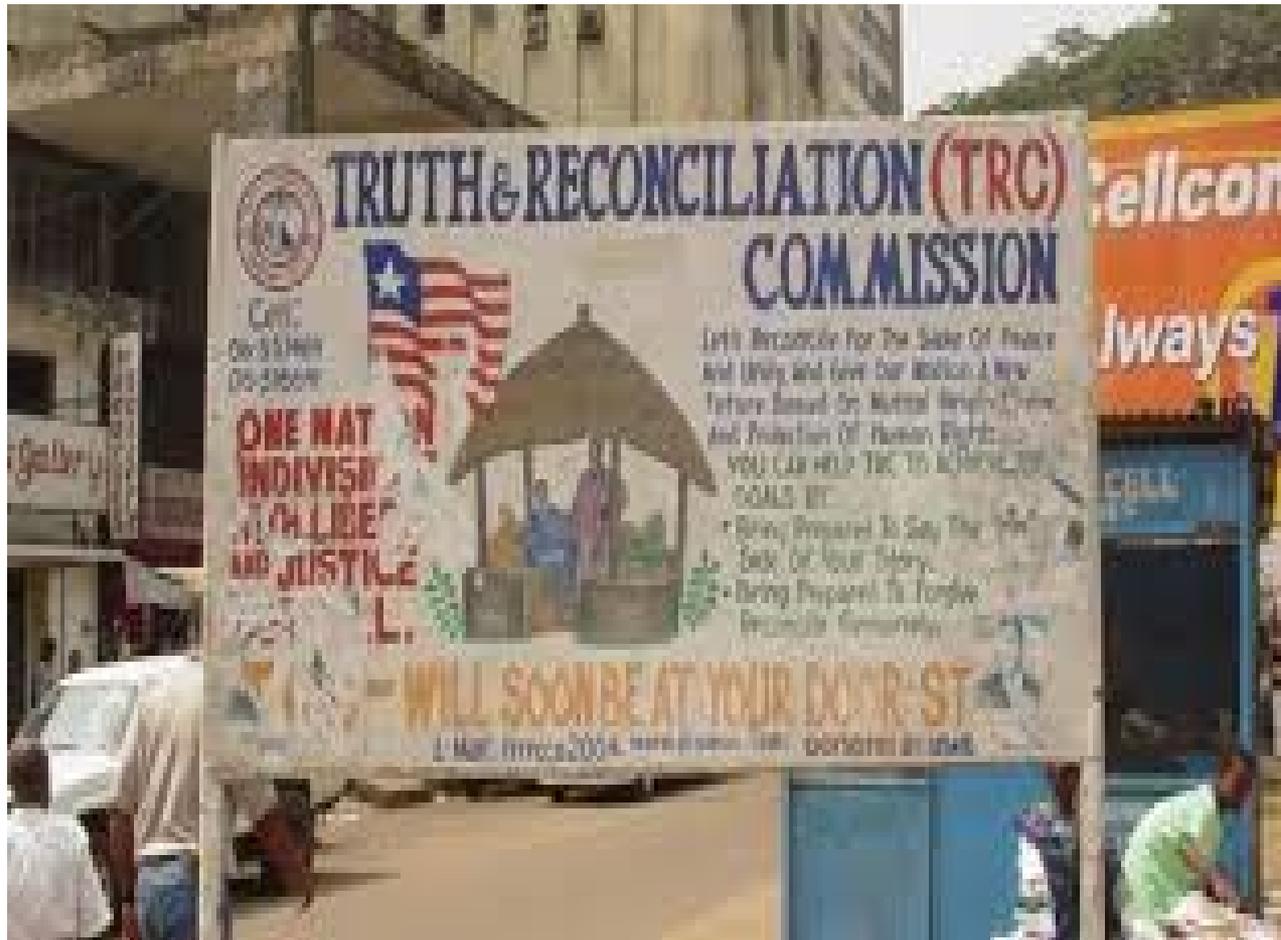
GTRC Recommendations



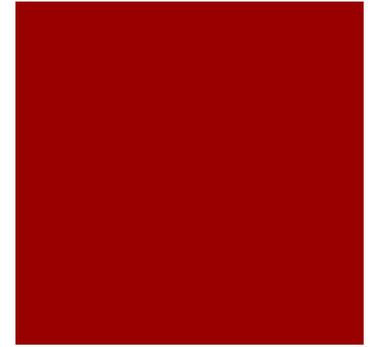
- 'Measures of **psychosocial rehabilitation** and reparation, which 'should include, among others, **medical attention** and **community mental health care**'⁶
- 2005 National Reparations Commission
- 2007 45,000 Victims Reparations Bill
- 2009 still pending approval
- 2014 commission still to be established

⁶ Commission of Historical Clarification, *Memory of Silence*, Recommendations 9-6:
http://www.aaas.org/sites/default/files/migrate/uploads/mos_en.pdf

2. Sierra Leone

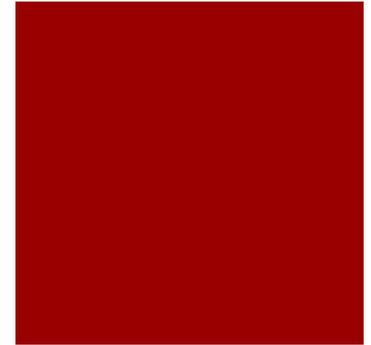


- 'prohibitively high costs of treatment'
- free health
- 'free prosthetic and orthotic devices'
- 'free rehabilitation services'
- 'free physiotherapy and occupational therapy'
- free testing (accompanied by counselling) for HIV/ AIDs and other STIs for all victims of sexual violence and free treatment for those testing positive,
- **expansion of current mental healthcare** treatment
- **legally binding** Recommendations
- 29,733 victims

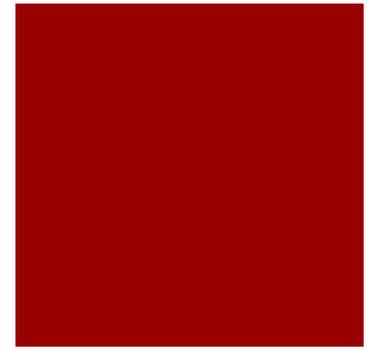


SLTC Recommendations

- National Commission for Social Action (NaCSA)
- 2008 one-year project institutional capacity **\$3 million USD**
- 29,733 victims registered
- 2009 launched the Victims' Trust Fund
- 2010 Interim Payment: **\$ 100 USD**
- 1/8 pregnant woman dies giving birth today
- UN urged government to produce completion strategy



3. Argentina



- 
- 7,000 statements in 19 months,
 - documented 8,960 people who had disappeared
 - between 10,000 and 30,000 people estimated
 - 1,500 survivors of torture

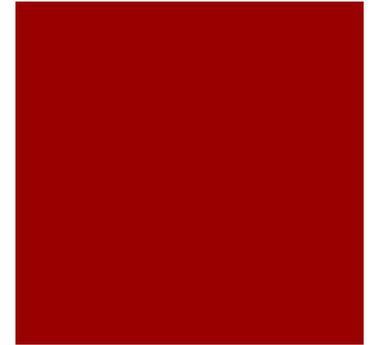
Recommendations:

NO RthH!!

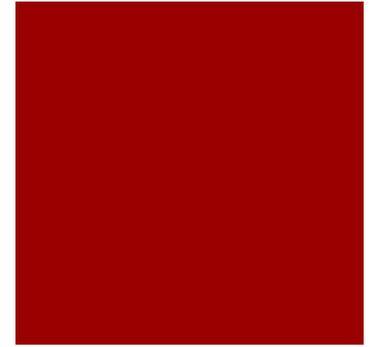
Yet....

Ley 24.043 of 1991 : Torture survivors

- 'daño en el **cuerpo o en la salud**' '**debilitación permanente de la salud**' (permanent health debilitation) (art 89-90) for serious damage,
- '**enfermedad mental** o corporal, cierta o probablemente incurable, **la inutilidad permanente para el trabajo, la pérdida de un sentido, de un órgano, de un miembro, del uso de un órgano o miembro, de la palabra o de la capacidad de engendrar o concebir**' (art. 91) for very serious violations.

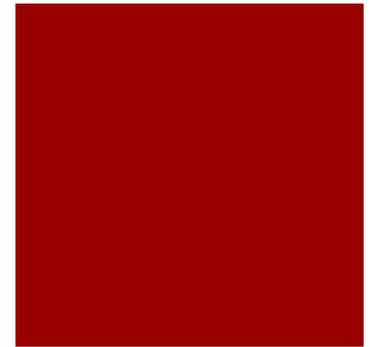
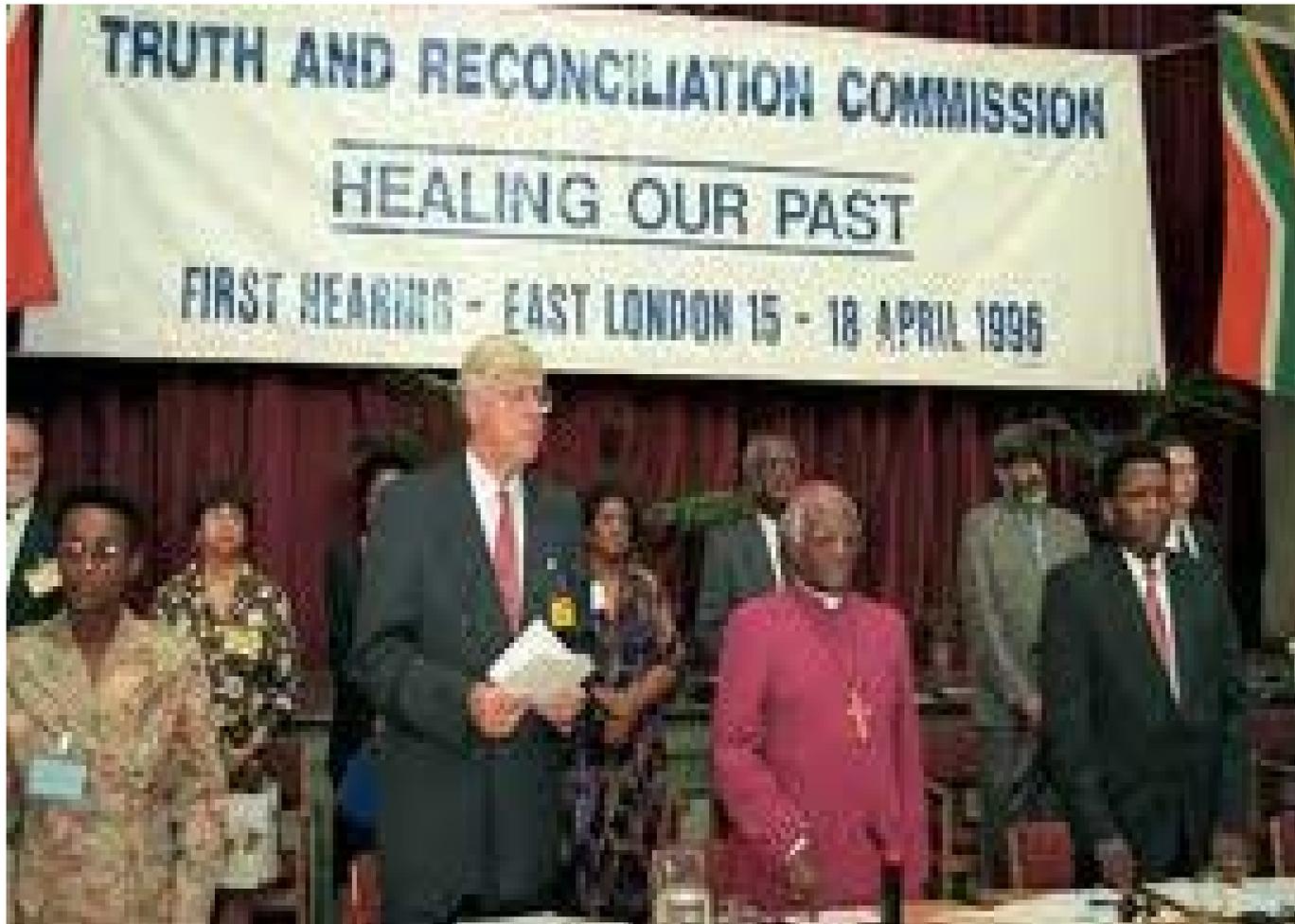


Ley 25.914

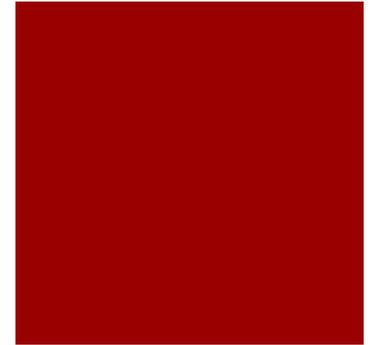


- pecuniary reparation if one qualifies as a victim,
- a progressive increment of percentage on that indemnity (respectively +50%, +70%, +90%) if the victim has been subjected to serious (art. 90 ACP), or very serious (Art. 91 ACP)

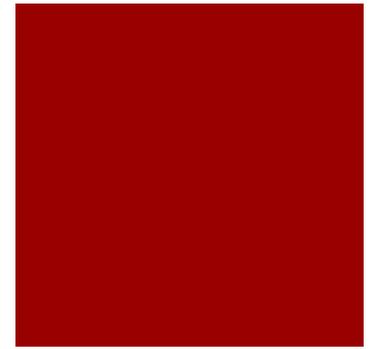
4. South Africa



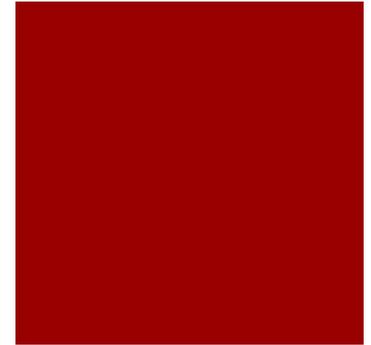
- 21,000 victims and witnesses, 2,000 of whom also appeared in public hearings
- Recognizing mental health programs as a cornerstone of social and economic development
- **community based interventions** consisting of support groups to assist victims and survivors, **life skills training**
- **specialized services and family based therapy with community based counsellors**
- All 21,000 victims have received interim payment



5. Chile



- 'enhancing the quality of life'
- Ley 19.123 of 1992,
- 140,000 \$ (to a family, 100,000 \$ to a single individual) to be distributed through a monthly pension.
- Art 19 makes a specific reference to a bonus percentage for **'health' reparations**.
- Art. 20 lists among the eligibility criteria the following: **physical intellectual or psychological damage or debilitation** that causes a diminution of 50% capacity of performing a normal task proportional to age sex actual education, capacity, and strength.



WHO, List of countries ranked by efficiency of health care: ⁷

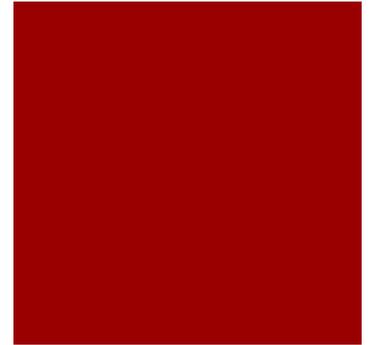
- Chile 33rd
- Argentina 75th
- Guatemala 78th
- South Africa 175th
- Sierra Leone 191st

⁷ <http://www.who.int/healthinfo/paper30.pdf>



Litigation

- Minister of Health v Treatment Action Campaign (2002)
- Plan de Sánchez v. Guatemala (IaCtHR)
- *María Chávez v. Peru, (IaCHR)*



'Many who live with violence day in and day out assume that it is an intrinsic part of the human condition. But this is not so. Violence can be prevented. Violent cultures can be turned around. In my own country and around the world, we have shining examples of how violence has been countered. Governments, communities and individuals can make a difference.'

Nelson Mandela, Foreword to World Report on Violence and Health (2002) WHO, Geneva.

