

# When truth goes to court

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For the indigenous peoples of Peru, speaking truth to power has proved a much more complex task 15 years after the end of its internal armed conflict. From [States of Impunity](#).



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Fifteen years have passed since the internal armed conflict in Peru (1980-2000) was declared over, and 12 years have passed since the Peruvian Truth and Reconciliation Commission (TRC) presented a report on the atrocities committed during those twenty years of violence. Researchers recorded around 17,000 interviews and testimonies of victim-survivors, witnesses, politicians, members of insurgent movements in prison and military personnel from 2001 to 2003. Today most of these documents are publically accessible and stored in the TRC's archive in downtown Lima.

Transitional justice mechanisms have progressed since the TRC, and so have civil and human rights movements in claiming accountability and justice. Those made responsible on the side of the state forces are facing trials in national and international courts, in some instances for crimes against humanity. In these court cases the testimonies once given to the TRC by witnesses to and survivors of violence have become key reference points, not only for the prosecutors, but also for the defenders of the accused. In an era of increasing judicial responses to the call of justice, testimonies given to the TRC have received another *raison d'être*, namely as a means to examine witnesses' credibility. This article examines the shifting role of these testimonies and the consequences for those who once committed to sharing their experiences with the nation.

## The aftermaths of the Peruvian internal conflict

In the early 1980s two insurgent groups declared war against the Peruvian state: first, the *Partido Comunista del Perú–Sendero Luminoso* (PCP-SL), also known as Shining Path; and then in 1980 and 1984, the Tupac Amaru Revolutionary Movement (MRTA). Three successive governments responded to the insurgent attacks by sending the armed forces to wage a brutal counterinsurgency war that mainly affected the rural and indigenous population of the Andean highlands. According to the [investigations of the TRC](#) 69,280 people were killed, around 430,000 people were forced to leave their homes, and an estimated 15,000 people are [still recorded as missing](#). "We will not rest until justice is

done”, is one of the main paroles with which witnesses, survivors and supporters of human rights groups continue protesting on the streets of Lima.

Scholars like Lisa Laplante and [Kimberley Theidon](#) have discussed the legacies of the TRC for those who entrusted their stories to the project of truth, stating that “truth tellers make an implicit contract with their interlocutors to respond through acknowledgment and redress”. Addressing the existing gap between talking truth and doing justice, Theidon and Laplante stress that the act of giving testimony may have temporary cathartic effects, but a lack of consequent action can lead to disappointment and further distrust towards the state and its institutions. Particularly in the areas most affected by the conflict, state presence was shaped by an often-aggressive military presence and insufficient social, educational or health services.

A more integral consideration for how the state was and is perceived by its citizens is certainly worthy of attention, because these sentiments considerably affect how a state and any form of state-funded intervention is evaluated by the people it concerns. Commissioned by Interim President Valentín Paniagua, the TRC was conceived of as an independent body with the task of investigating the past and restoring a sense of identity as Peruvians, with a shared responsibility towards the atrocities of the past expressed through the power of truth. Yet the independence of the TRC did not remain unchallenged, from both supporters and adversaries. Despite the political debates surrounding the foundation and work of the TRC, those most affected by the violence expected justice in the broadest sense. As the now elderly women of [ANFASEP](#)—the oldest victims organisation in the country—told me, many went to speak at the TRC’s public hearings and to give their testimonies for the cause of justice.

## After truth

As part of my fieldwork in Peru in 2011 and 2012, I was able to follow the proceedings against a military general, *Teniente* (Lieutenant) Ruben, implicated in the disappearance of several villagers in the early ‘80s. According to the prosecutors, *Teniente* Ruben was responsible for the disappearance of five villagers from the community of Matero in the Cangallo province, department of Ayacucho, on 30 July 1983. In 2004 the Peruvian human rights organisation APRODEH took on the investigations. It lost the case in 2006 and a second attempt to reopen the case was denied. Finally in 2011 the case was reopened. It was also the first time a court case of this sort was held in the province in which the events occurred. Previous court cases were held exclusively in Lima, making it nearly impossible for witnesses to attend, but a recent law favouring decentralisation now obliges these cases to be held in their respective provinces.

The three witnesses, a former mayor of Matero and two elderly women, who are relatives of the disappeared persons, had already arrived. Their daughters accompanied them. I had come with members of ANFASEP, which had asked me to come in solidarity and film the hearings for its archive. We sat down at the benches outside and the women started talking about their experiences in the courtrooms, and their hopes and expectations for their cases in the future. Señora Maxi, for instance, had her court hearing at the Inter-American Human Rights Court after she had exhausted her possibilities in the national courts. It was the first time she confronted the person presumed responsible for her husband’s death.

As Señora Maxi stood in front of the accused general, she said that she knew that he was guilty of her husband’s disappearance, to which he replied that she was no one to accuse him of such allegations. She had imagined this situation for so many years, and had recited and thought it through over and over again, but as she stood there she could not speak, only cry. A few days later she suffered a partial paralysis of her face through which she almost lost the sight of her right eye. Today she came to support the relatives of those who disappeared in Matero.

Court cases put immense pressure on the main witnesses, who in most cases hardly speak Spanish and even less the technical language of law. Often it is the first time they ever confront the person presumed responsible for their grief, which my contacts at ANFASEP described as “intimidating”. As we

spoke, the daughters of the witnesses prepared *agua de azar* (fortune water), a liquid made of the essence of flowers and herbs that is diluted in water to calm the nerves. One of the relatives' daughters sat in front, holding her mother's hand, stroking her face and her shoulders, repeating again and again that she should just tell the judges everything she knew.

After the bell announced the beginning of the court session, the first witness was asked to come forward. Since she did not speak any Spanish, a translator came to sit by her side. A woman appeared who was asked to swear on the Bible to accurately translate between Quechua and Spanish. As the first questions were asked, the audience started complaining that the translator was from Cusco, which has a different dialect. As the witness replied in long sentences and the translator would say just a few words, the session was stopped. Only adding to the witness' apprehension, the translator was briefed once more to translate accurately and without interpretations before the session could continue.

On the 30 July 1983 five people from the village of Matero were ordered by a soldier to report to the prefecture of Cangallo, which at the time was under the command of *Teniente* Ruben. None of the five villagers ever returned. During the whole session the witness was asked about the uniform of this soldier. In the report she filed right after the events she did not remember the uniform he was wearing, but in her testimony to the TRC, which she gave 19 years later, she said it was the uniform of an army soldier. Today, 30 years later, she was not sure whether he was a police officer (*policía*) or soldier of the army (*militar*). Her declarations became increasingly confusing when the lieutenant's lawyers brought up the contradictions between the three different declarations.

What I could not make sense of was that the declarations from 1983 and from the TRC (2002) were read out in Spanish. So at some point in time, someone must have translated the witness' declarations from Quechua to Spanish—perhaps a police officer, an interviewer or the defendants themselves? What remained without consideration was not only the question of who produced these declarations, but also the fact that they addressed different official bodies at different times and under different circumstances. In 1983 the police and the army had violently entered the region, killing indiscriminately villagers (taken for terrorists) in the name of the state. The role of the state itself was therefore more ambiguous or contradicting, on the one hand as institutional authority, but also as aggressor against its own citizens.

The TRC occurred after Peru's conflict, as well as the era of President Alberto Fujimori, who protected the members of the state forces from prosecution, had only just ended. The wounds were fresh, but nevertheless, those who spoke hoped for acknowledgement and justice. But decades later, memories of details may have faded. However, the argument of the lieutenant's defence clearly aimed to discredit the witness. The prosecution intervened stating that the witness could not be considered in her full capacities, because the concepts she uses are different to 'ours' (referring to non-indigenous people). Stressing cultural difference as the source of the witness' difficulty in making clear statements, the morning session closed.

One could identify at least three levels on which to question the ways in which the legal authorities (on all sides) handled the case: firstly, in regards to the ways Quechua as native Peruvian language that has official status in some regions of the country like Ayacucho, is integrated into the legal system. A considerable number of the people affected by the conflict are Quechua speaking. In this sense, it is not too surprising that many witnesses perceive the legal system as elitist and intimidating, whereby the witnesses' inability to speak Spanish is understood as flaw or a result of lacking education. Secondly, it is necessary to contextualise to whom, and under which circumstances declarations were made. Many testimonies were given with caution and suspicion. Maribel, one of my informants explained, "The declarations given at different times often don't coincide, because they used to give changed names, dates and details of events to protect their families or themselves." Distortions and alterations to the stories thus occurred because of fear of and pressure from people who were and still are in positions of power.

Thirdly, I find the prosecutor's strategy to pursue justice for victims of indigenous descent by portraying

them as culturally 'other' problematic—even more so if the cause is to challenge persisting social injustices against indigenous peoples. It seems paradoxical that the prosecution used the circumstance of cultural difference as a reason to render the witness incapable of fully understanding what was going on back then and today.

Leaving these three aspects without reflection offered a chance for the defence to weaken the witness' declarations by questioning their reliability in telling the 'truth'. The necessary challenge here (particularly on the side of the prosecutors) is to situate the witness' differing narratives within the particular contexts in which they were produced, because the roots for incongruences may be just as comprehensible. Ann Stoler writes that a distinction has to be made between researching the past and researching representations of the past: "Scholars need to move from archive-as-source to archive-as-subject." I would extend this call to the courtrooms in which the past, the present and future of those who died, or survived the conflict are currently at stake.

The differentiation lies in the awareness that declarations such as testimonies, interviews, documents, and images are themselves subject to the terms, conditions, and agendas of their creation as well as their use. In this sense the TRC and other archives are not simple re-presentations of the past, but a valuable mediator of its legacy. What the Matero case does not fail to show is how elusive justice can be.