



OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR  
HUMAN RIGHTS



# **RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES**

*Truth commissions*



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## **Truth commissions**



UNITED NATIONS  
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## **NOTE**

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The Office of the United Nations High Commissioner for Human Rights (OHCHR) has increasingly recognized the need to enhance its assistance in United Nations-wide efforts to work quickly and effectively to re-establish the rule of law and the administration of justice in post-conflict missions. Countries emerging from conflict often suffer weak or non-existent rule of law, inadequate law enforcement and justice administration capacity, and increased instances of human rights violations. This situation is often exacerbated by a lack of public confidence in State authorities and a shortage of resources.

In 2003, OHCHR, as the United Nations focal point for coordinating system-wide attention for human rights, democracy and the rule of law, began to develop rule-of-law tools so as to ensure sustainable, long-term institutional capacity within United Nations missions and transitional administrations to respond to these demands. These rule-of-law tools will provide practical guidance to field missions and transitional administrations in critical transitional justice and rule of law-related areas. Each tool can stand on its own, but also fits into a coherent operational perspective. The tools are intended to outline the basic principles involved in: *Mapping the Justice Sector, Prosecution Initiatives, Truth Commissions, Vetting and Monitoring Legal Systems*.

This publication specifically sets out basic principles and approaches to truth commissions and is intended to assist United Nations and other policymakers in advising on the development of truth-seeking mechanisms. The principles used in this tool have been primarily garnered from previous experience and lessons learned in the implementation of these techniques and mechanisms in United Nations field missions, including those in Sierra Leone and Timor-Leste.

Clearly, this document cannot dictate strategic and programmatic decision-making, which needs to be made in the field in the light of the particular circumstances within each post-conflict environment. However, this tool is meant to provide field missions and transitional administrations with the fundamental information required to target interventions with regard to truth-seeking mechanisms, in line with international human rights standards and best practices.

The creation of these tools is only the beginning of the substantive engagement of OHCHR in transitional justice policy development. I wish to express my appreciation and gratitude to all those who have contributed to the preparation of this important initiative.



Louise Arbour

United Nations High Commissioner for Human Rights

## ***ACKNOWLEDGEMENTS***

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Special thanks are due to the European Commission, whose financial contribution made it possible to carry out this project and publish the rule-of-law tools.

It is increasingly common for countries emerging from civil war or authoritarian rule to create a truth commission to operate during the immediate post-transition period. These commissions—officially sanctioned, temporary, non-judicial investigative bodies—are granted a relatively short period for statement-taking, investigations, research and public hearings, before completing their work with a final public report. While truth commissions do not replace the need for prosecutions, they do offer some form of accounting for the past, and have thus been of particular interest in situations where prosecutions for massive crimes are impossible or unlikely—owing to either a lack of capacity of the judicial system or a *de facto* or *de jure* amnesty. As described below, the work of a truth commission may also strengthen any prosecutions that do take place in the future.<sup>1</sup>

Unlike courts, for which there are clear international norms regarding their appropriate structure, components, powers and minimal standards for proceedings, truth commissions will reasonably differ between countries in many aspects. The experiences of over 30 truth commissions in the past two to three decades give rise to a number of best practice guidelines. This publication is intended to summarize these lessons, with the intention of guiding those setting up, advising or supporting a truth commission, as well as providing guidance to truth commissions themselves. The reader should also take into account the updated Set of Principles for the protection and promotion of human rights through action to combat impunity.<sup>2</sup>

The United Nations and other international actors have an important role in assisting such bodies in their establishment and operation. Many critical operational decisions and difficulties are outlined below, as is the role that various national and international actors may play.

### ***Why establish a truth commission, and when?***

The right for individuals to know the truth about the fate of disappeared persons or information about other past abuses has been affirmed by treaty bodies, regional courts, and international and domestic tribunals.<sup>3</sup> A truth commission reaches out to thousands of victims in an attempt to understand the extent and the patterns of past violations, as well as their causes and con-

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<sup>1</sup> Many topics that are covered only briefly in this publication are addressed in depth in other sources, including descriptions of case examples. See, for instance, Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York and London, Routledge, 2001).

<sup>2</sup> E/CN.4/2005/102 and Add.1.

<sup>3</sup> For a detailed description of the recent decisions confirming the right to know, see “Independent study on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity,” by Professor Diane Orentlicher (E/CN.4/2004/88), available at [www.ohchr.org](http://www.ohchr.org).



sequences. The questions of *why* certain events were allowed to happen can be as important as explaining precisely *what* happened. Ultimately, it is hoped that the work of the commission can help a society understand and acknowledge a contested or denied history, and in doing so bring the voices and stories of victims, often hidden from public view, to the public at large. A truth commission also hopes to prevent further abuses through specific recommendations for institutional and policy reforms.

While some countries have constructed a truth commission around the notion of advancing reconciliation—or have seen such a commission as a tool that would naturally do this—it should not be assumed that such an inquiry will directly result in reconciliation either in the community or in the national or political sphere. Reconciliation is understood differently in different contexts. For some, the full acknowledgement of a long-denied truth will certainly advance reconciliation. But experience shows that many individual victims and communities may require more than the truth in order to forgive. Reconciliation is usually a very long and slow process, and the work of a truth commission may be only a part of what is required. When considering and designing a truth commission, therefore, care should be taken not to raise undue and unfair expectations among the victims that they, or the country as a whole, will or should feel quickly “reconciled” as a result of knowing the truth about unspeakable past atrocities—or, in some cases, receiving official acknowledgement of a truth that they already knew.

The expectations placed in a truth commission are often exaggerated in the public mind; it is important to manage such expectations and keep them within reason. An honest portrayal of what can be offered by a truth commission is important from the start.

It should be recognized that a truth commission can ultimately have a significant political impact—even if unintended—in a context where, typically, some of the individuals or political entities that still hold power (or wish to gain power) may be the subject of inquiry. Where elections are planned to take place during the course of a commission’s work, or even shortly after a commission is due to conclude, the political consequences of its work can become very clear, and there may be pressure on a commission to halt, postpone or modify its schedule of hearings or the release of its final report. In some cases, it may be important for a commission to take these factors into account in planning its own calendar, while not altering the depth or focus of its investigations in any substantive way.

When is a country ripe for a truth commission? Three critical elements should be present. First, there must be the political will to allow and, hopefully, encourage or actively support a serious inquiry into past abuses. Ideally, the Government will show its active support for the process by providing funding, open access to State archives or clear direction to civil servants to cooperate. Second, the violent conflict, war or repressive practices must have come to an end. It is possible that the de facto security situation will not yet have fully improved, and truth commissions often

work in a context where victims and witnesses are afraid to speak publicly or be seen to cooperate with the commission. Indeed, the commission itself may receive threats while undertaking its work. But if a war or violent conflict is still actively continuing throughout the country, it is unlikely that there will be sufficient space to undertake a serious inquiry. Third, there must be interest on the part of victims and witnesses to have such an investigative process undertaken and to cooperate with it. There are, of course, other possible means of addressing the past, including through inquiries by non-governmental organizations (NGOs) or locally based processes that are less formalized than a national truth commission. These choices can ultimately only be made through broad consultation.



## **I. CORE PRINCIPLES AND OPERATING ASSUMPTIONS**

The following five principles or basic assumptions should help shape the early considerations of establishing a truth commission in any country:

### **A. National choice**

A truth commission is not appropriate for every country or every transition, and the decision to have a commission must always be taken by nationals. This decision should be based on a broad consultative process to seek especially the views of victims and survivors, and make clear the functions, strengths and limitations of truth commissions. International actors should provide comparative information and expertise, but should recognize from the start that a country may choose, for very legitimate reasons, not to have a truth commission or at least not to have one immediately upon transition. National views on this matter should be respected.

### **B. The need for a comprehensive transitional justice perspective**

Truth commissions are only one part of a comprehensive transitional justice strategy, and should be considered together with possible initiatives towards prosecutions, reparations, vetting and other accountability or reform programmes. The relationship between these various initiatives must also be given consideration, as will be further explored below. While recognizing that all of these policies and interrelationships cannot be worked out in advance, as options will change over time and unexpected initiatives may arise, early consideration of these questions may help to shape the process and investigative mandate of a commission.

### **C. Expect a unique, country-specific model**

It should be expected that every truth commission will be unique, responding to the national context and special opportunities present. While many technical and operational best practices from other commissions' experiences may usefully be incorporated, no one set truth commission model should be imported from elsewhere. This is true of the design of the commission's

mandate as well as in specific operational aspects. Many key decisions should be based on local circumstance. This approach is likely to result in a stronger commission and enhance a sense of national ownership.

## **D. Political will and operational independence**

A commission is likely to be most successful if there is genuine political will for rigorous investigation and truth reporting. This will be reflected, for example, in the authorities' cooperation in giving a commission access to official documents and in the level of public funds allocated to its work. The Government should provide records to the commission pertinent to its investigations, including restricted documents. Officials or former officials with knowledge of the acts and events under investigation should be expected to provide information to the commission, either in public hearings or, at the discretion of the commission, in private meetings.

Such support for a commission's work should coincide with clear operational independence. The legitimacy and public confidence that are essential for a successful truth commission process depend on the commission's ability to carry out its work without political interference. Once established, the commission should operate free of direct influence or control by the Government, including in its research and investigations, budgetary decision-making, and in its report and recommendations. Where financial oversight is needed, operational independence should be preserved. Political authorities should give clear signals that the commission will be operating independently.

## **E. International support**

Most truth commissions must rely on significant international support if they are to fulfil their mandates successfully. This includes but is not limited to financial support. The cost of a serious truth commission can easily exceed US\$ 5 to 10 million, and national resources are rarely sufficient to meet these needs. Other important international contributions include access to documents in foreign Government archives; technical and policy assistance, usually provided by international NGOs; international investigators, sometimes loaned to the commission by foreign Governments; and access to experts from previous truth commissions. Countries considering a truth commission, and international actors that support such a development, should be aware that significant international backing will likely be required for the process to succeed.

## **II. ESTABLISHING A TRUTH COMMISSION**

### **A. Consultation**

As noted above, the strongest truth commissions are founded through a process of consultation and careful consideration of what kind of commission would be most appropriate for the context. Each commission should be crafted to reflect national needs, strengths and opportunities. These consultative processes should have two equally important aims: increasing the understanding of a truth commission and strengthening its terms of reference through input about the most appropriate mandate. The consultation should explicitly include victim communities and civil society organizations, and should allow for a period of significant input into the fundamental mandate of the commission, as well as feedback on specific draft terms of reference as they are developed. This process, which typically would include workshops, seminars, and opportunities to debate and suggest specific components of mandate and design, should generally take place over several months, at least, and should incorporate views from all parts of the country and all major sectors, especially those communities most affected by the violence. Communication with victim and civil society groups, especially, should also be maintained during the work of the commission to allow public feedback on the methodology and impact of the commission's work.

Sometimes a truth commission is first agreed to in broad terms within a negotiated peace accord, but with few details on its terms. There may still be an opportunity for widespread consultation in crafting the specific terms of reference, staying within the general parameters of the original accord. At the same time, peace negotiators should be careful not to be overly prescriptive of the details in any agreement for a truth commission in a peace accord.

National NGOs often play an important role in this pre-commission phase, holding national conferences to debate proposed terms, helping to draft legislation to establish the commission, lobbying Government officials, providing training for the media and implementing a national outreach strategy to advance public understanding of the proposed commission.

## **B. Terms of reference**

The consultative process suggested above should include a close consideration of the specific aspects of the mandate, or terms of reference. Ultimately, the terms of reference may address each of the following subjects:

### ***1. Period of operation***

The terms of reference should establish start and end dates for the operation of the commission. These dates can be flexible, allowing for one or more possible short-term extensions. However, the total possible period of operation must be fixed, otherwise the commission can go on for too long, lose focus and momentum, and ultimately cease to interest the public. Experience indicates that a period of one and a half to two and a half years of operation is generally desirable.

### ***2. Temporal mandate: period of time under investigation***

The specific span of time that the commission is to inquire into should also be set out in the mandate. Some commissions have examined violations that took place over a 35-year period or longer, while others have examined a much shorter period. This should be based on those periods in the nation's history when the worst or the greatest number of violations took place. To avoid the appearance of bias, the time period should usually be consecutive, rather than broken up to focus on only select periods in a nation's history. Likewise, no key periods should be left out in a way that might make the commission appear politically partial in its scope.

In some cases it is useful to allow some flexibility in the precise start or end dates, for example indicating that the commission should investigate events "since the beginning of the conflict" if there is no agreement on the exact date that the relevant conflict began. The date can then be determined by the commission's investigations.

As a rule, a truth commission should not be tasked with investigating abuses or events that take place after the commission itself begins work. Such events are more appropriately covered by a national human rights commission or, alternatively, by the office of the public prosecutor.

### ***3. Types of violations to be investigated***

The commission's mandate should in some areas be specific and relatively detailed, but it must also remain flexible enough to allow interpretation and definition by the commissioners. It is generally preferred, for example, that a commission's mandate does not list specific events to be investigated, instead using more general language to indicate what kinds of violations it should investigate. This provides guidance to the commission, while also allowing

it to shape its investigations and report around the facts and patterns revealed. Language calling for investigation into “serious acts of violence which have had an impact on society” or “gross violations of human rights or humanitarian law, including violations which were part of a systematic pattern of abuse,” for example, have been used in mandates for past truth commissions.

Truth commissions have traditionally focused their investigations on serious human rights abuses (torture, disappearances, extrajudicial killings, crimes against humanity, genocide, etc.), as well as violations of international humanitarian law and war crimes. A commission’s focus should correspond to those abuses that society at large and victims in particular consider to be the most serious and most urgently need to be addressed. Thus, a careful balance may have to be found to define a sufficiently narrow universe of crimes or events that allows the commission to fulfil its mandate, while avoiding an unduly restrictive mandate that may exclude acts or events that are felt to warrant investigation.

In some countries, economic crimes have been as prominent—and in the public’s mind as egregious—as the civil and political rights violations by a prior regime. There may therefore be discussion of including corruption and other economic crimes within a truth commission’s mandate, or broadening its terms of reference to include violations of social and economic rights. This decision, like most, must ultimately be taken by nationals, but those drafting the mandate should be conscious of the dangers and difficulties of including economic crimes within a truth commission’s scope. The methodology and timing required for investigating corruption and economic crimes are quite different from those required for investigating individual or systematic practices of torture or killings, for example. Furthermore, a broad focus on “violations of economic and social rights” might suggest the need to look into poverty, homelessness, education policy failures and other social ills. Although these are critically important subjects, this could risk expanding the mandate of the commission so broadly that it may be impossible to reasonably complete its task.<sup>4</sup> However, economic matters certainly should not be excluded per se. If there is a clear link between economic issues and violence—such as land conflicts that erupt in violence, or the State confiscates property when persons are arrested or disappear—then a truth commission should clearly recognize, inquire into and report on these matters. Finally, a number of truth commissions have included in their report an assessment of the economic impact of the abuses and repression that took place, often a surprisingly high figure.

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<sup>4</sup> The Sierra Leone Truth and Reconciliation Commission decided that its terms of reference, which called for investigation into “violations and abuses of human rights and international humanitarian law”, included economic, social and cultural rights. When persons came forward with such complaints, it accepted them in the same manner as violations of civil and political rights. Other commissions, such as the Peruvian commission, have decided to focus on violations of civil and political rights in their statement-taking, hearings and investigations, although in some cases economic rights are intertwined; often the final reports do directly address economic, social and cultural rights, especially in the recommendations.



#### 4. *Special attention to key victim populations*

Where specific populations have been particularly affected by the violence, and especially where this violence is thought to be underreported or misunderstood, it is useful to direct the commission to pay particular attention to these victims or types of abuses. For example, some commissions have been directed to give special attention to abuses against women and children, or to victims of sexual abuse.<sup>5</sup> The commission may need to establish special procedures for such populations, such as assuring children a greater degree of confidentiality—be they children who were victims or perpetrators of abuse—or setting up specific procedures for survivors of sexual abuse to take part in hearings. It is best for the terms of reference to guide the commission to give special attention to these or other special populations, but to let the commission itself take the specific operational decisions.

#### 5. *Key activities*

The terms of reference should list the key functions or activities that the commission is expected to undertake. For example, they might note that the commission may take statements from victims, witnesses and others; undertake research and investigations; hold public hearings or sessions; and undertake all other activities necessary to uncover the truth within its mandate. In some cases, a commission has been directed to incorporate traditional or religious leaders into its work, such as paramount chiefs in some African contexts.<sup>6</sup>

#### 6. *Powers*

The powers given to a commission will help to determine its strength and reach. At a minimum, commissions generally need to be able to interview anyone who can provide relevant information, receive the cooperation of public authorities and carry out any on-site visits that may be necessary. Increasingly, truth commissions are given powers of subpoena, search and seizure, and witness protection. To protect the rights of those persons who may be compelled to testify against themselves when served a subpoena, a commission may also need the power to grant *use immunity*, whereby individuals can be assured that information they provide will not be used against them in any criminal proceeding.<sup>7</sup>

The commission should also be given sufficient power to ensure that penalties—perhaps fines, imprisonment, or both—can be imposed upon anyone who improperly interferes with or

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<sup>5</sup> The truth commissions in Sierra Leone and Haiti called for specific attention to victims of sexual violence, and, in the case of Sierra Leone, to children who were victims or perpetrators in the conflict.

<sup>6</sup> This language was provided in Sierra Leone, for example, although some at the Commission felt that the paramount chiefs were not well suited to assist.

<sup>7</sup> Use immunity does not extinguish criminal responsibility and should not be mistaken for amnesty. It merely makes certain evidence inadmissible in court.

knowingly provides false information to the commission, or who violates its subpoena or witness protection powers, for example.

## **7. Link to amnesty or to prosecutions?**

Most truth commissions do not have the power to grant amnesty to perpetrators. The great majority, in fact, recommend in their final report that there be criminal prosecutions (or judicial investigations leading to possible prosecutions) for the events that they have documented, and they often turn over any evidence they have to prosecuting authorities. Because a truth commission by its very nature is working with information pertaining to crimes, and often massive crimes, careful consideration must be given to the relationship between its investigations and those of any separate criminal procedure. As non-judicial bodies, commissions themselves of course cannot prosecute anyone. They must rely on the judicial system to carry forward any criminal case. This interrelationship will be considered in more depth below. The issues that must be considered in designing the commission's mandate are reviewed here.

In general terms, a truth commission might take one of the following three approaches:

*Recommend prosecutions.* As noted above, this is the most common approach. There is no reason to spell this out in the terms of reference, as this would generally be included within the commission's mandate to make recommendations. In some cases, information may be turned over to prosecutors even while a commission's work is still under way; more typically, such recommendations do not come until the commission's final report is released. The recommendation may be specific to named individuals, or may be a general recommendation for further investigations and criminal justice for past crimes.

*Grant or recommend amnesty.* Only one fully functioning truth commission to date, namely the Truth and Reconciliation Commission in South Africa, has had clear powers to grant amnesty to perpetrators. That Commission granted amnesties only for those crimes that were shown to be politically motivated and after the amnesty applicant fully and publicly disclosed details of the crime. Other countries have since been attracted to this approach, with the hope that this would encourage perpetrators to confess, and several commissions in formation may have some limited powers to grant or recommend amnesty.<sup>8</sup> However, great caution should be taken before incorporating this model elsewhere: such an amnesty-for-truth arrangement would be effective only where there is a serious threat of prosecutions, thus motivating perpetrators to

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<sup>8</sup> Proposed legislation in Liberia would grant a Liberian truth commission powers to recommend amnesty, but this cannot be applied to violations of international humanitarian law or crimes against humanity. Likewise, in the Democratic Republic of the Congo, a truth commission created in 2004 is given the power to "accept or refuse" an amnesty application for "acts of war, political crimes and crimes of opinion," but an earlier peace agreement prevents such an amnesty from applying to crimes against humanity or genocide. Finally, legislation passed in Indonesia seems to imply some amnesty powers for a yet to be established truth commission there, but this language, and how it will be interpreted, remains unclear.

come forward. Any power to grant amnesty would have to be accompanied by robust investigation capacities, which many commissions do not have, and careful attention to the rights of victims to take part in the proceedings or contest any application. It should also be noted that amnesties for serious violations of human rights and humanitarian law—war crimes, crimes against humanity and genocide—are generally considered illegal under international law, regardless of whether they are given in exchange for a confession or apology. Such an amnesty would violate the accepted Guidelines for United Nations Representatives on Certain Aspects of Negotiations for Conflict Resolution.<sup>9</sup> Drafters should thus take great care to avoid incorporating such immunities into a truth commission's mandate. (The granting of *amnesty* should not be confused with granting *use immunity*, discussed in the previous section, which is acceptable under international law.)

*Grant limited and conditional waiver of criminal responsibility.* Timor-Leste has offered a variation of the amnesty-for-truth model that has been considered acceptable internationally as well as nationally, including by victim communities. The truth commission was given the power to extinguish criminal and civil liability for non-serious crimes (excluding murder and rape, for example), contingent on full admission, apology and fulfilment of community service or an agreed symbolic payment to the victim or community. This was built around the traditional conflict resolution processes used in Timorese communities, and locally rooted through incorporation of community leaders and traditions. Because the criminal waiver is contingent on community service or payment, and is overseen by a local court, it is more akin to a negotiated plea bargain, and is not considered an amnesty. Similar locally rooted practices may be considered elsewhere, especially for less serious crimes.

## 8. Legislative or executive establishment?

Truth commissions are usually created either through national legislation or through presidential decree. There may be advantages and disadvantages to either, and the national context may automatically predetermine which route is clearly the best or is indeed required. However, where either is an option, consideration should be given to factors of timing (a presidential decree can be put in place more quickly than legislation); the potential for political influence (the legislature may include parties interested in weakening the commission's powers or reach); and political or popular legitimacy (the legislative process can potentially generate broader political support for a commission). In some legal systems, a legislative act is required for certain powers to be given to a commission, such as that of subpoena.

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<sup>9</sup> See the Secretary-General's report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), which confirms and further outlines this prohibition of amnesty for war crimes, crimes against humanity and genocide. These Guidelines were first established by the United Nations in a note sent by the Secretary-General to United Nations representatives in 1999. See also the updated Set of Principles for the protection and promotion of human rights through action to combat impunity, principle 24: restrictions and other measures relating to amnesty (E/CN.4/2005/102/Add.1).

## 9. *Implementation of recommendations*

The terms of reference should commit the Government, and the legislature, to giving serious consideration to a truth commission's recommendations. In some cases, as in Sierra Leone, the terms of reference have set up a follow-up procedure requiring the Government to publicly report, on a quarterly basis, on the implementation of the recommendations emerging from the commission. There are two examples to date, in El Salvador and Sierra Leone, where truth commissions have been given the power to make mandatory recommendations (that is, with an agreement in advance that the Government will implement all recommendations of the commission). However, this may raise constitutional or other difficult issues if the commission is perceived as usurping the powers of the legislature or executive. It may be preferable, therefore, to require serious consideration of the recommendations and regular public reporting on their implementation.

### **C. Selecting commissioners**

Ultimately, no factor will more define the commission than the persons who serve as its members. Ideally, these should be widely respected members of society (or internationals) who are accepted as neutral by all sides of a previous conflict (or the group as a whole should be seen to be representative of a fair range of views). They may include a range of professions or backgrounds, such as religious leaders, practising lawyers or retired judges, psychologists, educators, experts on violence against women or children, human rights professionals and others. Some countries have chosen to include international commissioners; this decision will be based on a number of local factors and inclinations, and should ultimately be decided by nationals.<sup>10</sup>

The process and timing of selecting the commissioners are key. First, commissioners should not be appointed until the commission's terms of reference have been set. Past attempts to jump-start the process through the swift appointment of commissioners, such as immediately following the conclusion of a peace agreement, have instead greatly weakened the prospects for an effective and widely respected commission. The terms of reference should spell out the process for selection and the general qualities or characteristics of the ideal commissioners. Any inclination to put political leaders or representatives of political parties, factions or former armed groups on the commission should be strongly resisted.

Instead, truth commissions will garner the greatest public and international support if their members are selected through a consultative process, and an honest attempt is made to ensure a fair balance in the representation of ethnic, regional or religious groups, gender, and political

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<sup>10</sup> One of the reasons for including non-national commissioners may be a felt need to involve persons who would be perceived as being more neutral than nationals, as well as persons who can bring special legal or other expertise to the process and international contacts for fund-raising, investigations and international outreach. But in some national contexts, the idea of international commissioners is considered inappropriate and quite unnecessary.

views. Such a consultative process may include inviting nominations from the public and forming a representative selection panel (appointed by a variety of sectors or societal groupings) to vet the nominations and interview the finalists, recommending the final commissioners to the appointing authority. Several past commissions have done this quite effectively.<sup>11</sup> The selection of international commissioners may involve international entities such as the United Nations, but should also be included in the national vetting process before the final appointment.<sup>12</sup>

Commissioners may serve either part-time or full-time. This may be determined by a number of factors, but as commissions are increasingly incorporating public hearings into their work, there is a much greater need for commissioners to be available full-time. In previous non-hearing, investigative commissions, the commissioners were present as little as one week a month. In those cases, their responsibilities focused less on day-to-day operations, which would be left to the executive director, and instead focused on general direction of thematic investigations, setting broad commission policies and overseeing the final report. As the public face of the commission, the commissioners' personal and political authority can also be critical in dealing with recalcitrant authorities. Whether commissioners serve full-time or part-time, the lines of responsibility between the staff executive director and the commissioners should be made clear from the start.

## **D. Preparatory period**

Many past truth commissions lost much time in administrative and logistical preparations, which cut significantly into their limited operational period. Essential organizational matters such as renting an office, hiring staff, buying desks and computers, and adapting or creating a database program, as well as larger tasks such as raising funds and designing a public outreach campaign, can easily consume months of a commission's time before it can reasonably begin investigations or statement-taking.

The terms of reference should thus set out a preparatory period of three to six months, once the commissioners are appointed, before the official operating period begins. Initial preparations may include:

- Developing a staffing plan and hiring initial staff
- Training statement-takers and others for the first phase of work

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<sup>11</sup> This form of selection was undertaken in South Africa and Sierra Leone, for example.

<sup>12</sup> Models for choosing international commissioners have varied. In Sierra Leone, OHCHR was asked to suggest three commissioners, who were then commented on by the national selection panel. But this process was criticized for failing to take fully into account the strong recommendations for international candidates made by local actors, thus excluding some strong candidates. Elsewhere, including in Haiti, El Salvador and Guatemala, international commissioners were appointed without much of a consultative process, with many of the names originating from the United Nations Secretariat in New York. Close attention should be given to improving on some of these past practices—allowing for strong candidates to emerge, while ensuring the full and informed involvement of national actors in the final selection.

- Adopting a workplan
- Considering specific plans for possible public hearings
- Establishing a witness protection programme, if needed
- Preparing a budget and raising initial funds from national and international sources
- Designing and installing an effective database for the storage, organization and retrieval of the perhaps thousands of violations that will be reported to the commission
- Designing a public outreach campaign
- Undertaking preliminary background research
- Collecting existing documentation from national and international NGOs, the United Nations, foreign Governments and other sources

During this time, resources, support and international consultation should be provided as needed to assist in the commission's preparations.

## **E. Staffing**

While circumstances and needs differ between countries, staffing needs are likely to be quite broad. For example, a commission should expect to need human rights experts, investigators, legal experts, researchers, therapists or social workers, translators, computer specialists, data-entry staff and security personnel, to name just a few categories. The position of executive director or executive secretary, variously named, is critical to overall management and oversight of a commission, particularly if the commissioners work part-time. The commission should take great care in hiring its staff, especially its most senior staff, as the politically sensitive and fast-paced environment will require sharp administrative and management skills, good political instincts and an ability to work effectively under great pressure.

The number of staff is likely to vary over the course of a truth commission, depending on the stage of work that it is in. However, recent commissions have typically had 200-500 staff members at their peak. This will include dozens of statement-takers, dozens of coders and data-entry staff, and many investigators, researchers and public hearings coordinators. Eventually, a much smaller team will be needed for writing and coordinating the final report. Many truth commissions have included internationals among their staff, but this should be determined by the national expertise that is otherwise available, as well as the national preference or comfort in including non-nationals within the commission.

Some expertise can be brought in through short-term consultants. For example, forensic specialists and academic historians may be turned to for specific projects, be it for exhumations or to help outline key historical periods or themes in designing a research plan.



### **III. A TRUTH COMMISSION'S OPERATIONS**

#### **A. Core activities**

##### ***1. Statement-taking***

Truth commissions collect much of their primary information through statements taken directly from victims, witnesses and survivors of past violations, generally during a one-on-one private meeting with a staff statement-taker. These statement-takers may be placed in regional offices of the commission in addition to the headquarters or may travel in mobile teams to different villages around the country. Statement-taking should be designed to allow victims to recount their experiences in a supportive and safe environment.

Statement-taking is generally one of a truth commission's first major activities and usually lasts for at least several months and perhaps up to a year, depending on the length of the commission's mandate. Training will likely be necessary for statement-takers. They will need to know how to properly take statements from victims who may have fading or confused memories and who may also show signs of deep trauma, even many years after an event. In addition, they will need to understand the specific technical aspects of the forms and procedures used for receiving statements. The staff statement-taker will be the only direct contact that most victims and witnesses have with the commission, so it is important the information they impart is clear and their approach supportive and fair.

Typically, a truth commission receives between 7,000 and 20,000 statements, from victims, witnesses or even perpetrators who wish to report on their own or others' involvement in activities.

##### ***2. Database***

To assist in processing this enormous amount of information, a truth commission should consider establishing a database for storing, organizing and analysing the statements that it receives. Such information management systems allow a level of analysis and a type and precision



of conclusions that would otherwise be impossible. However, the significant time requirements and costs associated with such a system—both in staffing and in physical hardware and software needs—should be clearly recognized in advance. In addition to a senior systems manager and analysts, the commission would require teams of coders and data-entry technicians to process the statements, and would see a significant amount of the commission's overall staff time dedicated to the coding, entry and analysis of this information. The outcome would point to important patterns and trends, would produce charts showing these patterns, and may allow the commission to estimate the total numbers of victims accurately.

### *3. Research and investigations*

Research and investigations are often most efficiently combined into one department, allowing a natural link between case investigations and thematic research. Since a truth commission will not have time to investigate every case in depth, it will typically select a number of representative cases for investigation. These may include violence against specific individuals or larger events such as massacres. Meanwhile, the commission may wish to undertake thematic research into the causes and consequences of the violence or repression, such as how certain communities were particularly affected or what groups were seen to hold the greatest responsibility. Some truth commissions have selected a number of specific towns or communities to explore the history of the repression in one particular place in depth.

Understanding the full context of historical events may also require an evaluation of the international role in the conflict. This involvement may have included funding or providing arms to belligerent parties in a civil war, or even directly taking part by offering troops or military training, or could have taken the form of maintaining political support to an abusive Government while failing to criticize ongoing abuses. A commission should consider these questions within its investigations.

### *4. Public hearings*

By giving victims and survivors a chance to tell their story before a public audience—particularly where the hearings are aired on the television or the radio—a commission can formally and publicly acknowledge past wrongs, allow victims the chance to be heard, reduce the likelihood of continued denial of the truth and make its work more transparent. Public hearings help to engage the public as audience, encouraging press coverage of the issues over a longer period and stimulating a national discussion about the past.

Some hearings may focus on listening to victims; others may focus on specific themes, special events, such as key moments in the violence, or specific institutions (for example, the role of the armed forces in the repression or the role of the religious institutions in responding to the violence).

The decision to hold public hearings will be based in part on concerns for the security situation in the country, as well as the time and resources the commission has to complete its task. However, public hearings have proven to be a very powerful and effective way to bring the commission's work to the public, and should at least be considered by all truth commissions.

Finally, there are interesting examples of community-based sessions rooted in local community involvement. In some cases, community members are able to put questions directly to admitted low-level perpetrators, such as in the community reconciliation procedures in Timor-Leste described above. Sierra Leone also incorporated local traditional leaders into some of its hearings. These kinds of modified and locally rooted hearing processes may be appropriate for other countries as well.

### *5. Public outreach and communications*

The nature and the extent of a commission's outreach efforts will help to determine its impact. The commission should make an effort to introduce and explain its work to the public, to invite victims or others with relevant information to its offices to give statements, and to be sure that its mission and goals are understood. This will help to keep the expectations of the public within reason. An outreach strategy may include the distribution of pamphlets about the role and mandate of the commission, public meetings and extensive contact with the media. Civil society and religious groups can also be very helpful in getting out the information about the commission's work.

While a strong outreach strategy and a general attitude of transparency are important, this should not suggest that the commission must operate openly in all of its work. Many of its investigations, meetings and collected information must rightly be kept confidential, certainly until the report is published. It is not unusual for the commissioners and staff to sign a pledge of confidentiality and to set up internal systems to approve what information can be released to the public prior to the report.

### *6. Report and recommendations*

The commission's final report, summarizing its findings and recommendations, will serve as its most enduring legacy. To ensure that its thematic investigations are well suited to the final report, a commission would do well to project an approximate outline or table of contents early on in its work.

Some commissions, especially more recent ones, have produced multi-volume reports of many thousands of pages.<sup>13</sup> However, a commission should consider whether a shorter (one- or two-

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<sup>13</sup> For example, the commission's report in Guatemala was 12 volumes, in South Africa 5 volumes and in Peru 9 volumes.

volume) report might be appropriate—to make the report more accessible and in recognition of the time constraints in production.<sup>14</sup> When a much longer report is produced, a summary version should also be prepared for broad distribution.

Recent commissions have produced interesting alternative and complementary presentations of their final reports. The Peruvian Commission published a separate, very powerful book of photographs documenting the conflict.<sup>15</sup> The Commission in Sierra Leone worked with an international NGO to produce a video version and with the United Nations Children's Fund (UNICEF) to publish a 50-page "child-friendly" version of its final report.<sup>16</sup> A number of commissions have published major excerpts of their reports in widely distributed national newspapers.

The commission's recommendations may suggest legal, institutional or legislative reforms to prevent abuses in the future; a reparations programme for victims; further exhumations or investigations into key areas where it was not able to conclude all the work needed; or other relevant programmes to address the weaknesses pointed to in its findings. It may also suggest specific follow-up measures to ensure the timely and effective implementation of its recommendations.

## **B. Key challenges**

### ***1. Time constraints: not all violations can be investigated***

It is very rare for a truth commission to have the time or resources to investigate all individual cases, even where clear evidence and witnesses exist. Thus, while a case-by-case individual truth is usually demanded by victims, and indeed an individualized truth is suggested by international norms outlining a right to truth, most truth commissions can provide only a global truth, a description of patterns, with some representative individual cases investigated in depth and reported in detail. This will often be a disappointment to the victims, who may have provided testimony with the hope that their own case would be solved. Thus, the establishment of a truth commission does not necessarily complete a State's obligation to provide the full truth to victims of State violence. Indeed, a commission may choose to recommend a follow-up process to undertake further individualized investigations.

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<sup>14</sup> In El Salvador, Argentina and Chile, the truth commission final reports were one or two volumes, in some cases with a separate volume for appendices.

<sup>15</sup> *Yuyanapaq – Para recordar: relato visual del conflicto armado interno en el Perú, 1980-2000* (Lima, Comisión de la Verdad y Reconciliación, 2003).

<sup>16</sup> Witness, an NGO based in New York, produced a one-hour video, *Witness to Truth*, which summarizes the Sierra Leonean report's main conclusions. Further information is available at [www.witness.org](http://www.witness.org). *The Truth and Reconciliation Commission Report For the Children of Sierra Leone* is available at <http://www.unicef.org/voy/media/TRCCF9SeptFINAL.pdf>.

## 2. Breadth of investigation

An appropriately flexible mandate will require the commission itself to define the precise parameters of its investigations. Some commissions have found it particularly difficult to define how far they should enter into subjects of social and economic justice, given that there is rarely a clear line between these factors and the more specific abuses that receive their primary attention. There may thus be a tension between an exclusively case-focused investigative strategy and one that takes into account the social and economic environment in terms of both cause and consequence of events. This tension is usually resolved by incorporating both aspects into the commission's research, being careful not to extend the scope too far, while also not excluding what would be seen as key factors in understanding events.

## 3. Naming names

A truth commission is likely to confront difficult questions about how it treats information that identifies specific perpetrators or purported perpetrators. These questions can arise both in the context of public hearings and in the preparation of the final report, when the commission must decide how much information on specific individual culpability should be published.

A number of issues are raised here, and each commission will have to work through its own set of policies in response. While the imperative of truth-telling pushes a commission to include information on individual responsibility, concerns for due process, accuracy of the reports and other issues should caution the commission to think through its response carefully and set a clear policy.

In public hearings, victims or witnesses may wish to name the individuals they know to have been involved in abuses. The commission should then have a procedure that allows for those named to respond to the allegations against them. It is generally advisable, however, that the accused perpetrators are not allowed to directly interrogate their accusers.

The commission is also likely to collect a great amount of information in the course of statement-taking and investigations that will point to many specific perpetrators. While this information may be collected in private, the commission must decide whether to name such individuals in their report. Before they are so named, those accused should minimally be given the chance to respond to the allegations. This may be in the form of a written submission to the commission after they are informed of the accusations. At least one truth commission, that of South Africa, has been the target of lawsuits by those that were to be named in hearings or in its report. While the Commission ultimately prevailed, clear due process restrictions were set by the court.<sup>17</sup>

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<sup>17</sup> See the case of *Van Rensburg and Du Preez v the Truth and Reconciliation Commission*.

There are legitimate reasons why a commission may choose not to name the wrongdoers or to name only those most responsible or most senior in the chain of command. These may include concerns for the security of witnesses or the safety and security of those named, especially if justice is not expected in the courts.

In addition, the commission will need to ensure that the information is reliable and consistent with the minimum standards of evidence that it has set for itself. The standards of evidence used by commissions have varied, but generally the standard of evidence that must be met for a perpetrator to be publicly named is higher than the level of evidence for drawing other general conclusions. For example, some commissions have used a “balance-of-probabilities” test for their basic findings, but have relied on a higher standard before naming names—though usually short of the strict “beyond-reasonable-doubt” standard that is required in criminal trials.<sup>18</sup> When a commission does name names in its report, it should clearly state that its findings do not constitute a finding of legal or criminal guilt.

To allow flexibility, the best practice is for a truth commission’s terms of reference to allow but not require the identification of perpetrators, leaving the matter to the discretion of the commission.

#### *4. Incorporating a gender perspective*

If the members of a truth commission do not bring experience or expertise in working on human rights abuses from a gender perspective, it is important to incorporate this expertise in senior staff members or advisers, as well as consult with NGOs or other experts that have focused on this area. Abuses suffered by women tend to be less reported overall, and may be different from those suffered by men. Sexual abuse in particular is likely to be underreported.

A commission should consider procedures to facilitate and encourage women to provide information about these sometimes very difficult topics. It might ensure that female statement-takers are available, which may help women feel more comfortable when reporting sexual abuse. A commission might also hold women-only hearings, with only female commissioners and observers present, or allow women to testify in a public hearing with their identity concealed.

#### *5. Confidentiality*

Among the policies that the commission must work out is the question of how and to whom to grant confidentiality, and in what manner this guarantee will be protected. Issues may be raised if prosecutorial authorities express an interest in the commission’s information, and they

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<sup>18</sup> The “balance-of-probabilities” standard is referred to as the “preponderance of evidence” in some countries.

may even consider using their subpoena power to gain access to the commission's records. Language in the mandate may provide some protection (such as stating that any guarantee of confidentiality cannot be overridden by any outside entity). However, the commission is well advised to give close consideration to these matters from the start.

## ***6. Access to documentation***

The question of who controls and has access to the commission's files after its work is concluded may complicate the protection of confidentiality even more. In some circumstances it may be appropriate to ensure duplicate copies of relevant material are retained outside the country.

## ***7. Psychological support***

While some victims and survivors will find that retelling their story to a truth commission is a supportive and indeed a healing process, others may find that the experience awakens sharp pains of trauma. A commission should be prepared to provide support and counselling to such deponents, minimally in the immediate context of testimony provided at public hearings and to those most upset when giving statements. Many commissions hire mental health professionals or social workers to provide such support, as well as set up referral systems to community-based organizations that may be able to provide more sustained assistance.

The members and staff of the commission are also likely to suffer the effects of trauma, after listening to horrific stories for many months on end. It is advisable that support services and debriefing opportunities are made available within the commission as well.

A commission should also consider emergency medical assistance that may be needed, especially during public hearings. During one televised public hearing of the National Reconciliation Commission in Ghana, for example, a victim suffered a heart attack and died while giving testimony. Thereafter, the Commission set up systems to check the blood pressure of all deponents before they were allowed to give testimony, and an ambulance was always on hand at the hearing hall.

## ***8. Witness protection***

Persons who provide information to the commission may also put themselves at physical risk, as those implicated in past crimes may try to prevent the cooperation of key witnesses or take action against those who do cooperate. This may arise in the context of public hearings, where those who testify may receive threats after the hearing. The commission should consider what form of protection can be provided to witnesses, and should make deponents aware of these resources—and their limitations—before they testify. Some commissions have tried to pre-empt these problems by selecting for public hearing cases that are less likely to put deponents at risk.

Those who provide information in other forms may also be reasonably wary. Often, a few high-level insiders who are able to provide specific and detailed information about the systems and responsibilities for past abuse voluntarily choose to cooperate with a commission. They are likely to ask for strict confidentiality and meet the commission in a way that cannot be traced. Maintaining this level of confidentiality—perhaps even limiting what information is seen by commission staff—serves as a form of protection in itself. But the commission should be aware of any threats that develop to persons as a result of their cooperation.

Where persons do receive threats, the commission should be prepared to provide at least minimal protection, perhaps by temporarily relocating persons from their home community until the situation has improved. Where resources allow, a more sophisticated witness protection programme should be designed. This may include collaborating with the police to provide ongoing monitoring and protection, or setting up safe houses to shelter those most in danger. The sustainability of such witness protection systems after the commission concludes its work must also be taken into consideration.

### *9. Backlash against the commission*

If a truth commission does its work well, it is likely to be seen as a threat to very powerful (or previously powerful) sectors of society. These sectors—be they military, political or private armed groups—may try to weaken the commission through direct or indirect attacks. This may come in the form of strong criticism of the commission in the media or physical threats against the commissioners or staff; a number of commissions have received direct death threats. If the commission is thought to be investigating persons or groups that hold Government power, it may find it difficult to gain access to Government files and may receive limited cooperation from State authorities. In Peru, the Commission was strongly attacked in the press by those whose interests were most threatened by its strong investigations. Accusations of political bias are likely, in order to weaken the impact of a commission's strong conclusions. For these reasons, it is important that the membership of a truth commission is broad and fairly balanced in the views it represents. Likewise, its members must take great care to treat subjects of investigations fairly, while not lessening the rigour and honesty of its work.

### *10. Funding*

A major challenge faced by virtually all truth commissions is raising sufficient funds to carry out their work. The budget of a truth commission is typically over US\$ 5 million and can easily total US\$ 12 million or more.<sup>19</sup> Ideally, the national Government should provide the lead by offering as much financing as possible, which serves in part to make clear its support for the process.

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<sup>19</sup> While the cost of a truth commission is significant, it is often noted that a truth commission generally costs far less than prosecutions undertaken by international or hybrid tribunals, which can run into the many tens of millions of dollars per year.

This may include support in the form of office space or equipment. Some commissions have been wholly funded by the national Government, but most must rely on the international community for much of their financial support, and a fund-raising plan should be set out from the very start in order to reach the stated goals.

Ideally, there should be outreach to donor States even before the commission is appointed, so that donors are prepared to consider such support very early in the commission's tenure. A United Nations mission can help to facilitate these contacts and keep the donor community informed of these developing needs, but it is important that the commissioners themselves have direct contact with donors or prospective donors, so that their mission, plans and personalities are clear. In some cases, fund-raising was done separately from the commission's work on the ground, and donors thus felt a disconnect between the realities of available funds and the claims and promises being made by the commission and its supporters in the country itself. The United Nations should ensure that it encourages direct contact rather than effectively creating a barrier between the donors and the commission.

While the commission must be realistic in its budgetary aims, it is likewise hoped that donor States will appreciate—and be able to accommodate—the time pressures of its work and the urgency of the fund-raising appeals, as well as the very real needs for significant support to undertake these inquiries in a serious manner. Clearly, in the interest of protecting the commission's independence, funding should never be provided with any expectation of influencing or directing the commission's operations.





## **IV. INTERRELATIONSHIPS**

### **A. Prosecutions**

As noted above, the information collected by a truth commission may be useful to those investigating cases for prosecution, be it while the commission is still operating, immediately after its conclusion or many years later. Generally, a truth commission should be viewed as complementary to judicial action. Even where prosecutions are not immediately expected, it is important to keep that option open, and to act accordingly. Possibilities for prosecution may open up in time, and the commission's report and its other records might then be important as background materials and to provide leads to witnesses. Even if the commission's report does not point to specific perpetrators, the commission's information would reveal greater patterns of violations and can show institutional involvement and responsibility, as well as command responsibility of those at the top.

While a commission's work is ongoing, however, there may be reasons why the commissioners prefer not to make all of their information available to prosecutors. If information is collected with an agreement of confidentiality, that would have to be respected. Furthermore, if perpetrators know that information will be shared with prosecutors and there are no amnesties or immunities in place, they are likely to resist admitting their crimes to a truth commission.

If prosecutions are under way and the commission comes upon exculpatory information—showing that the wrong person is being charged with a crime—it could be important for the commission to share that information with the prosecutorial authorities. Systems of communication should be set up from the start between the office of the prosecutor and the truth commission, in order to discuss these issues.

It is not yet clear how the International Criminal Court will view the establishment of a truth commission by national authorities, if the Court must judge whether the State is able and willing to respond to serious crimes and hold persons to account. The Court's interpretation of this action is likely to be determined by whether there appears to be an intent to follow such a

truth commission inquiry with judicial action, rather than to close the possibility of prosecution through the establishment of a non-judicial inquiry. These questions of complementarity with international courts and tribunals will only be worked out in practice over time.

## **B. Reparations**

It is not unusual for a commission to find that many victims and survivors come to it expecting to receive reparations as a direct response to their giving testimony. These demands for reparations, sometimes quite modest, reflect the heavy burden and direct economic impact suffered by those who lost loved ones or care for the severely injured. But truth commissions are not well placed to implement an extensive reparations programme themselves, and doing so would likely skew their results, affecting who came forward and the stories told. In a few cases, commissions have successfully provided urgent interim reparations to those who needed it most.

Understanding the realities of the victims, most truth commissions make strong recommendations in their final reports for the creation of reparations programmes. These programmes usually include but are not limited to financial reparations, perhaps also incorporating educational, symbolic, or other measures or benefits.<sup>20</sup> The design of such programmes can be complex, and it will be necessary for the commission to dedicate time and expertise to working out a plan. More recent commissions have been much more specific about the details of a recommended reparations programme, making it more likely that it will be implemented.

While a reparations programme can of course be designed independently from a truth commission or in a situation where no truth commission was created, there are clear advantages to basing such a programme on the investigations and research resulting from a commission's work. It may be necessary to expand the programme beyond those who provided testimony, however, given that no truth commission has claimed to have spoken to all victims. These and other considerations should be closely considered by the commission and incorporated into its recommendations. The fiscal reality of a country, and the likely sources and levels of funding, should also of course be taken into account when making these recommendations.

## **C. Vetting<sup>21</sup>**

Programmes to remove abusive members of the military, police, judiciary or civil service have been implemented in a number of countries, but often with great difficulty. And some have been criticized for providing insufficient protection or procedures to ensure against unfair accu-

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<sup>20</sup> See also the recently adopted Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Commission on Human Rights resolution 2005/35, annex).

<sup>21</sup> See also the OHCHR rule-of-law tool for post-conflict States on vetting in this series.

sations. The various groups of persons to be vetted must be considered separately; vetting the judiciary presents a special challenge in balancing the demands for reform with requirements to respect judicial independence. Given that most vetting programmes include procedures for public comment or review, as well as an examination of each person's personnel records and any previous complaints, it could be useful to incorporate information from a truth commission into such a vetting process. This may be foreseen when the commission's terms of reference are being drafted and provide another incentive for victims to come forward even in a situation where prosecutions are not likely. It may also influence the kind of specific information that is collected by the commission in relation to each perpetrator named during its investigations.

## **D. Reforms**

Clearly, the recommendations of a truth commission are ultimately intended to advance whatever reforms may be necessary, in addition to vetting programmes, to change the institutions that allowed or carried out abuses in the past. These recommendations, typically wide-ranging, may include judicial, legislative, legal or political reforms. The more specific and realistic a commission can be in these recommendations, the more likely they will be implemented. But after a commission submits its report, it will fall to civil society groups—or perhaps key officials in the Government who are sympathetic to these needs—to push this agenda forward. International actors can also play a critical role in pressing for the needed reforms, beginning with a close examination of the recommendations in the commission's report.



## **V. IMPACT AND FOLLOW-UP**

### **A. Follow-up and implementation**

The impact of a final report may ultimately depend less on its content than on a variety of surrounding factors, including when and in what circumstances the report is released and publicized, how widely it is distributed, how much coverage it receives in the media, and, perhaps most importantly, how the political authorities treat the report and whether they have any interest in publicizing and implementing its conclusions and recommendations.

Again, the commission must hope that civil society organizations will be its partner in the follow-up phase, since, once the commission submits its final report and is formally dissolved, the task of carrying out its recommendations must be taken up by others. Successfully implementing commissions' recommendations has been a major challenge, even in instances where there has been a legal obligation on the part of the Government to act. Even where there is sufficient political will, there may not be sufficient institutional capacity or funds to undertake the recommended measures.

Mechanisms for follow-up, whether through a formal follow-up committee or through a standing Government office that is tasked with implementation, should be carefully thought through. This mechanism may already be set out in the terms of reference that establishes the commission, showing a commitment from the start to take its findings seriously. If not, then the commission itself should propose a structure or procedure for follow-up, and should lobby the Government before its conclusion to be sure that preparations are made.

### **B. Distribution of the report**

In addition to the policy and institutional reforms that are suggested in the report, a truth commission also aims to affect the way the public understands its national history and the conflict or violence of recent years. It is thus important that the conclusions of the report are made widely available throughout the country. In some countries, key sections of the report have

been serialized in a daily national newspaper. Shortened, more accessible versions should be produced as well, and should be translated into the relevant languages of the country.

### **C. What happens to the files?**

Advance thought should be given to what will happen to the archives of a truth commission, including the thousands of statements and the many investigative files that go into the preparation of the report, as well as to how these records can be protected for possible future reference. Ideally, there should be some form of public library or other public access, perhaps a historical memory library. However, this requires confidential information to be removed or blocked from access, be it the names of deponents, the names of those accused or other facts and details, depending on the arrangements made by the commission in relation to this information. The commission should give thought far in advance to the question of long-term use; this may lead to statement-takers asking permission for the statement to be made available to the public after the commission has concluded, for example.

### **D. Judging “success”**

Judging the overall success of a truth commission is often difficult. The impact of a commission may be felt in so many different ways, in so many different sectors of society and over so much time, that it is hard to measure, quantify or evaluate. In some cases, the commission’s report is an immediate best-seller, some of its recommendations are quickly taken up, and the impact of the commission is undoubtedly deep and widely appreciated. In others, the initial reception of a commission’s report may be cold or hostile, at least on the part of the authorities, and there may be very limited distribution of the report. But a number of years later, perhaps under a different Government, the report may be re-released, its information used for unexpected prosecutions and its conclusions regarded as critical to understanding the rancorous past—and perhaps still rancorous present. Where there are public hearings, the impact of the commission is easier to see, as televised sessions often capture widespread attention and help to define the public debate for months on end. It is important that the commission is seen to be part of a long-term exercise of understanding the truth. Likewise, the truth commission process should be seen by all as just one part of a broader effort to account for the past crimes.

## **VI. ASSISTING TRUTH COMMISSIONS: NATIONAL AND INTERNATIONAL ACTORS**

### **A. Role of national NGOs**

As indicated above, national NGOs have a key place in the work of truth commissions. Indeed, the strongest commissions have been those that work in the context of a strong and active civil society.<sup>22</sup> NGOs should for the most part remain independent from the commission, even while assisting it with information, contacts or expertise. It is important that they monitor the commission's activities and provide honest feedback, and push the commission to respond appropriately to the needs of victims and communities. In many countries, NGO staff have been hired by the truth commission, bringing with them a useful base of expertise, while sometimes also creating tensions as senior staff are lost from key civil society organizations. The relationships between a commission and NGOs should not be taken for granted, but rather built with a sense of respect for the important but independent role that each plays in the ongoing search for truth.

In addition to the advance work in thinking through what a commission's terms of reference should be and the follow-up work after the commission ends, there are a number of other contributions that NGOs may make to the work of a truth commission. These include:

- Providing training to the commission's staff and background materials on the history and patterns of rights violations in the country.
- Providing access to their records, often including great numbers of testimonies and helping the commission map out the geographic regions it should focus its investigations and statement-taking on.
- Offering introductions to local community leaders, victims or other key contacts in communities where they have been particularly active and have built trusting relationships.

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<sup>22</sup> For a detailed exploration of this subject, see "Truth Commissions and NGOs: The Essential Relationship," International Center for Transitional Justice and Ghana Centre for Democratic Development, April 2004, available at [www.ictj.org](http://www.ictj.org).



- In some cases, NGOs have been subcontracted by a truth commission to field a team of statement-takers, operating on behalf of, and after being trained by, the commission.
- Some commissions have asked or allowed NGO representatives to accompany victims when they provide statements in a public hearing, especially where the organization has a long-established relationship with those persons and is well suited to provide the emotional support needed during the hearing.
- Before, during and after a commission, NGOs are well placed to lobby Government officials to implement the strongest policies or procedures possible in relation to the commission.
- Civil society organizations may offer support services that the commission may wish to refer victims and survivors to, such as individual or group counselling, community support mechanisms, or basic medical services to those injured and still suffering from past violence.

## **B. Role of the United Nations and other international actors**

International actors also have an important contribution to make. If a United Nations mission with a human rights component is present in the country and/or the Office of the United Nations High Commissioner for Human Rights (OHCHR) is represented there, it may be able to offer the commission specific areas of expertise, through training and through access to materials that set out international best practice for truth commissions, as well as background on international human rights and humanitarian law that may be relevant to the investigations. The United Nations human rights component or the local OHCHR office may also facilitate the provision of international expertise that it can access from other countries, including providing consultations or training with persons who have worked directly for truth commissions elsewhere. This is often done in conjunction with international NGOs.

As suggested above, international actors, including the United Nations and particularly OHCHR, may suggest but should not lead a process of considering, deciding or shaping a truth commission. The United Nations, particularly OHCHR, or others should get involved at that point where there is interest in such a possibility and a need for international assistance or useful comparative information. On some issues, such as the selection of commissioners and any possible consideration of immunities being incorporated into the commission's mandate, there should be international oversight and insistence on key principles or legal standards.

But the enthusiasm and expertise of United Nations staff should not supplant the role of national NGOs or other actors. Drafting the terms of reference, designing the specifics of a selection process, projecting a budget and organizational structure, and other planning activities should not be done independently by United Nations staff, regardless of the expertise that they may bring. These processes must be led, and owned, by national actors, be they NGOs, Government officials or, ultimately, the commission itself. In some situations, the international presence can and should insist on a broadly consultative process in the design of the commission and in the

selection of commissioners, especially where Government officials are preparing to move too quickly. After the commission is launched, internationals outside of it should continue to assist but not lead it in its work.

In some cases, United Nations structures have been asked to receive funds and oversee the expenditures of a truth commission (through the United Nations Office for Project Services, the United Nations Development Programme, OHCHR or others). This can lessen the administrative burden on the commission, while increasing the confidence of donors, but great care must be taken that this financial control in no way indicates programmatic control or influence. The budgetary decisions, which of course reflect programmatic decisions, must be taken by the commission, not by any external body. Likewise, the commission is best placed to take the lead in its own fund-raising, even if an international partner is the formal recipient of the funds.

The United Nations, particularly OHCHR, and foreign Governments with influence over the country have an important role in monitoring the Government's compliance with the truth commission's mandate, whether in providing open access to files for the commission's investigators or providing the security necessary for the commission to carry out its work safely. As the commission comes to a close, pressure from internationals can be critical to keep its recommendations on the agenda and actively pursued for implementation. The United Nations, particularly OHCHR, may also take a role in helping to ensure that the commission's archives are protected and preserved, if this is appropriate (and possible) in the given context. As previously noted, truth commissions generally rely on funding from foreign States as well.

International NGOs have also been helpful to many truth commissions in the past. Their contributions may include:

- Providing comparative information on how other truth commissions have operated, how they have been structured and how they have tackled specific areas of their work (statement-taking, databases, hearings, legal challenges, due process, naming names, budgeting and workplan, etc.).
- Introducing a truth commission's members and staff to other currently operating truth commissions elsewhere, facilitating an exchange of information and ideas.
- Bringing in experts from past truth commissions to offer a perspective on lessons learned on operational and policy issues.
- Legal analysis and advice pertaining to difficult operational or policy issues in carrying out the commission's work.
- Providing training to staff and directly to commissioners at the beginning and during the course of a commission's work.
- Before a commission is founded, international NGOs may provide the comparative information needed to support a dynamic consultative process, working closely with national organizations.

- International advocacy and monitoring organizations sometimes produce important reports during the commission's work that assess its accomplishments and/or critique any policy issues that may challenge international standards, especially with regard to due process or decisions that may affect criminal justice at a later date.

## Conclusion

Truth commissions are becoming more common in transitions, and new and creative models are being formed. The United Nations and other international actors, working together with local activists and officials, are well placed to provide the kind of assistance that will be needed for such commissions to be effective. A truth commission can be a painful and even risky endeavour, often working in the context of a still fragile transition. While the benefits can be great, and opening up and acknowledging the past may indeed be necessary, there should be no expectations of an easy or risk-free process.

With careful planning and close attention to the critical decisions in the design and operation of a truth commission, however, the process is likely to be one of the most prominent and powerful of the many developments that emerge in the course of a transition.





