



Truth Seeking

Elements of Creating an Effective Truth Commission



Cover Image: San Salvador, El Salvador. Portion of a public memorial by Salvadoran artist Julio Reyes that was erected in 2005 as part of the Monument to Memory and Truth. The monument lists the names of over 25,000 recorded victims of the Salvadoran Civil War. The monument is part of reparations to victims of the armed conflict, following recommendations in the Report of the Commission on the Truth for El Salvador. Photo credit: Edwin Merches

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Chapter 1

The Right to the Truth

Here in Ayacucho, everybody goes to the cemetery on the Day of the Dead, but I don't know whether I should go. I don't know whether I should take flowers somewhere. I don't know, even now, sometimes I just think

Testimony of Liz Rojas Valdez on the disappearance of her mother,
Truth and Reconciliation Commission of Peru

What Is the Right to the Truth?

Victims of gross violations of human rights and serious violations of international humanitarian law, and their families, have the right to an effective remedy. This includes the right to know the truth about the abuses they have suffered, including the identity of perpetrators, the causes that gave rise to the violations, and, if appropriate, the ultimate fate or whereabouts of the forcibly disappeared.

This right has been recognized in legal decisions by courts in several countries as well as by international judicial bodies. While its core elements are well established, the right to the truth continues to evolve and may be characterized differently in various legal systems.

Aspects of the Right to the Truth

The right to the truth applies to serious violations of human rights, but is most explicitly recognized in regard to enforced disappearances. Certain aspects are increasingly accepted at the international level:

- It is linked to the right to a remedy, including the right to an effective investigation, verification of facts, and public disclosure of the truth; and the right to reparation.
- Victims and their families have the imprescriptible right to know the truth about the circumstances in which human rights violations took place.¹
- It is connected to the right of relatives and communities to commemorate and mourn human loss in forms that are culturally appropriate and dignified.
- In addition to individual victims and their families, communities and society at large also have the right to know the truth about human rights violations.²
- Some legal systems consider the right to the truth to be integral to the enjoyment of freedom of information and freedom of expression.³
- Amnesty for perpetrators cannot be invoked to prevent the prosecution of certain international crimes, including crimes against humanity, genocide, and certain war crimes.⁴ As such, the prohibition against granting amnesty for such crimes relates to the right to truth insofar as it relates to verification of the facts in question.⁵
- The state has a duty to preserve documentary evidence for commemoration and remembrance, and protecting and ensuring adequate access to archives with information on violations.⁶

Pursuing the Right to the Truth

The right to the truth should be pursued through both judicial and nonjudicial proceedings. The state should attempt to establish the truth about abuses and violations regardless of whether criminal trials are immediately possible.

Knowing the truth “to the fullest extent possible” includes attempting to establish:

- The identity of perpetrators

1 UN Commission on Human Rights, Report of the Independent Expert Diane Orentlicher, “Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,” February 8, 2005, E/CN.4/2005/102/Add.1, Principle 4.

2 *Id.*

3 United Nations High Commissioner for Human Rights, Human Rights Resolution 2005/66, “Right to the truth,” April 20, 2005, E/CN.4/RES/2005/66. See preamble.

4 Rome Statute of the International Criminal Court, adopted July 17, 1998; 2187 U.N.T.S. 90, 37 I.L.M. 1002, entered into force July 1, 2002.

5 United Nations Human Rights Commission, Follow-up Report, “Study on the right to the truth,” June 7, 2007, A.HRC/5/7, ¶10.

6 UN Updated Set of Principles, *supra* note 1, Principle 3.

- The causes that led to abuses
- The circumstances and facts of violations
- The ultimate fate and whereabouts of victims in the event of enforced disappearances⁷

Limitations of the Judicial Establishment of the Truth

While courts can certainly be used to establish facts, they may present certain unavoidable limitations:

- The judiciary may be temporarily unable to hold effective trials if a state is failing or enduring civil unrest.
- Trials may be limited to notorious cases or to the most easily identifiable perpetrators, thus neglecting many victims.
- Trials establish the facts using judicial techniques, which may be inadequate to acknowledge the personal, cultural, or psychological experiences of victims.

Nonjudicial measures may be required to satisfy the right to the truth. They include:

- Establishing truth commissions and other non-judicial commissions of inquiry
- Reinforcing the laws protecting the freedom of information and expression
- Forms of remembrance and commemoration, such as memorials and museums

Why Does the Truth Matter?

Establishing the truth about what happened and who is responsible for serious crimes helps communities to understand the causes of past abuse and end it. Without accurate knowledge of past violations, it is difficult for a society to prevent them from happening again. The truth can assist in the healing process after traumatic events; restore personal dignity, often after years of stigmatization; and safeguard against impunity and public denial.

Establishing truth can initiate a process of reconciliation, as denial and silence can increase mistrust and social polarization. A political order based on transparency and accountability is more likely to enjoy the trust and confidence of residents and citizens.

Sources of the Right to Truth

The right to the truth has not yet been the object of a specific international convention. Some argue that the right derives from other well-established rights in international human rights law, such as the right to a remedy, the right to receive and impart information, and the right to due process. Others say it is an autonomous right, independent of or in addition to these other rights. Nevertheless, the core elements of the right are well accepted.

There are explicit treaty references to the right to know certain facts, including in instruments such as the Additional Protocol I to the Geneva Conventions⁸ and the International Convention for the Protection of all Persons from Enforced Disappearances (ICCPED),⁹ both of which establish the right of relatives of the missing or disappeared to learn the fate and whereabouts of their loved ones.

⁷ United Nations Human Rights Commission, Human Rights Resolution 9/11, "Right to the truth," September 24, 2008, A/HRC/RES/9/11. In this connection, an important legal proceeding is the search for the missing and disappeared, including exhumations.

⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, entered into force December 7, 1978.

⁹ International Convention for the Protection of All Persons from Enforced Disappearance, December 20, 2006, E/CN.4/2005/WG.22/WP.1/Rev.4. As of March 3, 2013, 95 states have signed the convention and 37 have ratified or acceded to it.

Most specifically, in an important development, the ICCPED confirms the right to the truth as an enforceable right in itself. The treaty, which entered into force in December 2010, guarantees victims the right to know the truth regarding the circumstances of enforced disappearances, the progress and results of investigations, and the fate of disappeared persons. It also sets out the obligations of state parties, including the duty to provide restitution and guarantees of non-repetition.

Many UN resolutions and reports by independent experts contain explicit statements on the right to the truth. Following resolutions by the Human Rights Council, the UN General Assembly emphasized that the international community should “endeavor to recognize the right of victims of gross violations of human rights, and their families, and society as a whole to know the truth to the fullest extent practicable.”¹⁰

While there is no specific international convention on the right to the truth (and while UN declarations are not binding agreements), certain regional and national courts have confirmed the enforceability of this right within their jurisdictions.

The Inter-American Commission of Human Rights and the Inter-American Court of Human Rights have confirmed that the right to truth is established by the American Convention on Human Rights,¹¹ under provisions covering the right to a fair trial, freedom of thought and expression, and the right to judicial protection.

In a series of cases, the Inter-American Court on Human Rights has upheld the right to the truth of victims, their next of kin, and society as a whole. The court has held that:

- The state is obliged to provide victims’ families with the truth about circumstances surrounding crimes.¹²
- The outcome of all proceedings must be divulged to the public for “society to know the truth.”¹³
- Society has the right to know the truth regarding crimes to prevent them in the future.¹⁴
- Amnesty laws impeding the investigation of the facts about gross human rights violations and the establishment of responsibilities are not permitted under international human rights law.¹⁵

Some national courts have also affirmed the right to the truth. In Argentina, the Supreme Court held in “Simón” that amnesty laws shielding perpetrators of crimes against humanity were unconstitutional.¹⁶ In Peru, the Constitutional Tribunal in “Villegas Namuche” recognized the right to the truth as a “fundamental right” directly protected by the constitution.¹⁷ In Colombia, the Constitutional Court in the case of “Gustavo Gallón Giraldo y Otros” stated that even the priority of contributing to the demobilization of illegal armed groups did not extinguish the state’s obligation to seek the truth regarding the disappeared.¹⁸ In South Africa, the Constitutional Court in “McBride” upheld the rights of victims, the media, and public to speak the truth about crimes, even if they were not the object of an amnesty.¹⁹ In this case, the court held that truth telling was the moral basis of a transition from the injustices of apartheid to democracy and constitutionalism.

Some states, such as Guatemala and Brazil, have justified the establishment of a truth commission by the explicit recognition of their citizens’ right to the truth. The Guatemalan peace treaties of 1994 included an “agreement

10 UN Human Rights Commission, Human Rights Resolution 9/11 (2008), *supra* note 7.

11 American Convention on Human Rights, OAS Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

12 Velásquez Rodríguez Case, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988).

13 Myrna Mack Chang Case, Inter-Am.Ct.H.R. (Ser. C) No. 101, 274-75 (2003).

14 Bámaca Velásquez Case, Inter-Am.Ct.H.R. (Ser. C) No. 91, 77 (2002).

15 Barrios Altos Case, Inter-Am.Ct.H.R. (Ser. C) No. 75 (2001).

16 Corte Suprema de Justicia de la Nación [National Supreme Court of Justice], 14/6/2005, “Simón, Julio Héctor y otros s/ privación ilegítima de la libertad,” etc. Case S. 17.768 (Arg.).

17 Constitutional Tribunal of Peru. Genaro Villegas Namuche. Case No. 2488-2002-HC/TC, March 18, 2004.

18 Constitutional Court of Colombia. Gustavo Gallón Giraldo y Otros v. Colombia. Sentencia No. C-370/2006, May 18, 2006.

19 Constitutional Court of South Africa. The Citizen 1978 (Pty) Ltd and others v. McBride. Case CCT 23/10, 2011, ZACC 11, April 8, 2011.

on the establishment of the commission to clarify past human rights violations,” recognizing that “the people of Guatemala have a right to know the whole truth concerning these events, clarification of which will help avoid a repetition of these sad and painful events and strengthen the process of democratization in Guatemala.”²⁰

In Brazil, the production of official truth began with a reparation process through the establishment of the Special Commission on Political Dead and Disappearing (1995) and the Amnesty Commission of the Ministry of Justice (2001). These commissions have the power to recognize violations caused or not prevented by the state, and promote their proper redress. In 2011, the law creating the National Truth Commission indicated that the commission will have the ultimate goal “to honor the right to memory and historical truth and promote national reconciliation.”²¹

20 Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan Population to Suffer, UN Doc. A/48/954-S/1994/751, June 23, 1994.

21 National Truth Commission of Brazil (Comissão Nacional da Verdade) created by Law No. 12.528, November 18, 2011, www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12528.htm



Chapter 2

What Are Truth Commissions?

A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.

Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front, Article VI(2), 1999

Truth commissions are official, nonjudicial bodies of a limited duration established to determine the facts, causes, and consequences of past human rights violations.²² By giving special attention to testimonies, they provide victims with recognition, often after prolonged periods of social stigmatization and skepticism. Truth commissions can contribute to prosecutions and reparations through their findings and recommendations, assist divided societies to overcome a culture of silence and distrust, and help to identify institutional reforms needed to prevent new violations.

Truth commissions are most effective when integrated in a comprehensive transitional justice strategy that includes reparation policies, criminal prosecutions, and institutional reforms. By delivering clear findings and compelling recommendations, commissions can enrich policy and create political and moral momentum for these initiatives.

Objectives of Truth Commissions

The objectives of a truth commissions are outlined in the legal instrument that established it, often a law or some form of executive decree. These may be expressed in different ways, reflecting the priorities or circumstances of each country. Three objectives are fundamental:

1. Truth commissions should establish the facts about violent events that remain disputed or denied. Some commissions have limited their work to clarifying the factual circumstances of abuses, but most have also analyzed the facts to determine the historical and social contexts that gave rise to them, and whether further or criminal investigation is appropriate.
2. Truth commissions should protect, acknowledge, and empower victims and survivors. Commissions establish a relationship with victims and survivors not only as informers, but also as rights-holders, partners, and as people whose experiences deserve recognition.
3. Truth commissions should inform policy and encourage change in the behavior of groups and institutions, thus contributing to social and political transformation. The final recommendations of a truth commission try to identify and address the causes of abuse and violations in order to prevent their recurrence. Closely related to this objective, some commissions consider reconciliation between former rival communities to be of primary importance.

When and How Are Truth Commissions Established?

Truth commissions are typically created during periods of political change, such as after the fall of an authoritarian regime or at the end of an armed conflict. A commitment to establish a truth commission is often included in peace agreements, transition-to-democracy negotiations, and in some cases, as a clause in a new constitution. A truth commission can be seen as a break from a violent past and a restoration of society's moral foundation, deserving the highest level of recognition and support.

Typically, the executive or legislative branch of government establishes a truth commission. The form chosen depends on the institutional and political realities in each country, with both approaches having advantages and disadvantages:

- In most constitutions, executive decisions, like presidential decrees, have less strength than formal legislation. Decrees are often succinct documents with limited reach, unable to empower commissions with the investigative powers typical of parliamentary inquiries. Depending on the context of a transition, the executive

22 For definitions of truth commissions, see Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. 2nd Ed. (New York: Routledge, 2010); R. G. Teitel, "Human Rights in Transition: Transitional Justice Genealogy," *Harvard Human Rights Journal*, 16(69), 69–94 (2003); Mark Freeman, *Truth Commissions and Procedural Fairness* (New York: Cambridge University Press, 2006); and ICTJ, "Truth Commissions," Fact Sheet Series (2008).

may have less political support than the legislature. In some countries, executive decrees can be as strong and legitimate as parliamentary legislation, and they may be faster and less contrived than legislative processes. Examples of successful truth commissions created by executive action include most Latin American commissions, Morocco, and Timor-Leste (under UN administration).

- Establishment by the legislature may reflect broader political support and institutional strength. However, the legislative process can be slow and is often subject to unpredictable negotiations that could affect the integrity of a commission's mandate. Most African commissions, including South Africa's, were established by parliamentary action.

Canada is the only case of a truth commission created from a judicial process.²³ Established to address the forced assimilation of indigenous children, it was the result of a court-mediated negotiation between Canadian civil society, churches, and the government, which concluded in a comprehensive settlement, including material compensation to survivors and memorialization initiatives.

The way that a country establishes a truth commission is largely determined by the political and institutional environment and the characteristics of the transition. Only local actors can make an informed decision about the best approach to ensuring a strong commission. What is most important is the need to ensure the commission's independence, credibility, and effectiveness.

Truth Commissions Established Outside the State Apparatus

When there is insufficient political will or governmental capacity to establish an effective inquiry, civil society, local governments, and other institutions have stepped in to create innovative, truth commission-like inquiries. Unofficial, local, or case-specific commissions may not have the powers to compel the provision of information, and they are unlikely to be as well resourced as state-funded activities. However, by mobilizing victims and survivors, documenting abuse, and issuing formal findings, these inquiries have often generated public support and catalyzed official action, leading to stronger official inquiries and other measures.

Examples of such truth commissions include the Project for the Recovery of Historical Memory (REMHI), run by the Catholic Church in Guatemala. REMHI published a comprehensive report, called "Guatemala, Nunca más,"²⁴ in 1998, which served as a precursor to the work of Guatemala's formal truth commission. In Colombia, the Supreme Court established a case-specific truth commission to investigate the killing of judges in a violent kidnapping in 1985.²⁵ In Brazil, during the debate and creation of the National Truth Commission, many states, universities and social organizations set up local and regional committees, with different powers and investigative purposes. Furthermore, in various states of the federation, civil society has created local Memory and Truth Committees to support the National Truth Commission.

Key Characteristics of a Truth Commission

- *Complementarity to criminal justice:* Truth commissions are not judicial inquiries. They do not establish individual criminal responsibility for specific crimes, determine punishment, or use the standards of due process applicable in a court of law. If they gather evidence useful for a criminal investigation, their inquiries may precede or complement the work of a court of law. While courts of law usually focus on the facts of an individual case, which are proven by exacting standards of evidence, truth commissions complement that approach by establishing the social and historical context of violations and large-scale patterns behind massive numbers of cases. Their analysis

23 The Truth and Reconciliation Commission of Canada was established in 2009 as the result of a judicial settlement between the government of Canada, five Christian churches, and the Assembly of First Nations. Schedule N of the Indian Residential Schools Settlement Agreement, January 7, 1998, www.trc.ca/websites/trcinstitution/index.php?p=7

24 Final Report of the Recovery of Historical Memory Project (REMHI Report), "Guatemala: Nunca Mas," ("Guatemala: Never Again"), Guatemala 1998, 4 vols.

25 Truth Commission on the Palace of Justice Siege (Comisión de la verdad sobre los hechos del Palacio de Justicia "Que Cese el Fuego"), established in 2005 by the Supreme Court of Justice of Colombia.

can help to uncover the logic and strategy behind abuses, helping to establish moral or political responsibility.

- *Focus on gross violations of human rights:* Historically, truth commissions have focused their investigations on the rights protecting a person's physical and mental integrity and other serious crimes, such as torture, enforced disappearance, extrajudicial killings, forced displacement, and sexual violence. Over time, their roles have expanded. Recent commissions have investigated more serious abuses, such as crimes against humanity and war crimes. Some have also looked at economic crimes and corruption as part of broader patterns of authoritarian abuse and violence.
- *Period of investigation:* Unlike parliamentary commissions of inquiry, common in many countries, which tend to focus on single issues or the circumstances of a specific event, truth commissions typically cover longer periods of abuse, sometimes decades. This allows truth commissions an opportunity to identify historical patterns of violence and systemic violations.
- *Large amounts of evidence:* Because of their broad focus, both in terms of violations and time period, commissions may gather massive information from direct witnesses, archives, and other sources. The Truth and Reconciliation Commission of Peru gathered 17,000 testimonies during its two-year tenure, and South Africa's Truth and Reconciliation Commission collected over 22,000 testimonies in three years. Such large amounts of data allow commissions to incorporate different methodological approaches, like statistical analysis, in their work.
- *Victim-centered approach:* Victims and survivors are primary sources of information for truth commissions, and many commissions have a legal mandate to ensure the well-being of victims. Many have developed services for victims, such as emergency help, psychological support, security, and legal aid. The Truth, Reception and Reconciliation Commission of East Timor employed specialized staff to grant emergency funds and help displaced people to return to their homes.

Commissions operate in good faith, assuming that victims will tell the truth, but they do recognize the fallibility of personal testimony. While they maintain a duty to establish truth through investigations, they typically refrain from methods like cross-examination, that may be onerous or have the potential for retraumatizing victims.

Ensuring the Strength of a Truth Commission

- *Commissions need to be credible:* Societies emerging from authoritarian rule may have become accustomed to ineffective or disingenuous official inquiries established to hide evidence of crimes. The credibility of a truth commission can be supported by:
 - Selecting members with excellent moral and professional reputations
 - Guaranteeing full independence from political interference
 - Establishing transparent procedures for research
 - Establishing dialogue with civil society, in particular victims' organizations
- *Commissions need support from stakeholders:* Truth commissions require the support of national political authorities and cooperation from government agencies, in addition to the appropriate provision of resources. When commissions face difficulties during their tenure, they will necessarily rely on the trust and support of the country's political leadership. At the same time, civil society institutions must support the truth commission's mission while maintaining their own autonomy and vigilance.
- *Commissions should earn the respect of society:* An effective truth commission requires the cooperation of a wide variety of social and political agents. At all stages of its work, from establishment to reporting, a commission should pay particular attention to outreach strategies so that its mission and achievements are understood and communities have the opportunity to offer feedback and ideas that may enrich its work. Facilitating public

participation indicates there is respect for the citizenry and allows the commission to gather information and prepare policy recommendations.

- *Commissions must consistently observe a code of conduct:* The operations of a truth commissions need to exemplify the new, fairer practices that citizens should expect from their government. Research, management, and public outreach must respect the fundamental standards of human rights and ensure the integrity and highest standards of professional ethics at all times. Such values and principles should be publicly proclaimed by the truth commission at the start of its operations.

Procedural Fairness

Procedural fairness should be respected by all persons involved in a commission, including those giving statements and those who may be found responsible for violations. The following rights should be meticulously respected: the right to be heard, the right against self incrimination, and the right to legal representation in appropriate circumstances.

Truth Commissions and Reconciliation

Many truth commissions have the explicit goal of fostering national reconciliation, with many incorporating the word “reconciliation” in their official mandate and/or name. However, commissions have understood this concept in a variety of ways. Some have attempted to heal individual relations between offenders and their communities; others have contributed to state and institutional reform in order to restore civic trust. Still others have had the goal of looking into the causes of conflict, providing compensation to victims, or securing justice for victims.

Reconciliation should be understood as a long-term social process that cannot be achieved by a truth commission alone, in a short amount of time. At best, commissions can help to create better conditions for reconciliation by encouraging institutional reform and changes in the political culture of a state, and by restoring the dignity of those most affected by violence.

Some examples of commissions that have addressed reconciliation include:

- The South African Truth and Reconciliation Commission, which allowed victims to participate in amnesty proceedings where perpetrators confessed their crimes. The commission encouraged several instances of direct contact between victims’ groups and offenders in an attempt to foster dialogue and understanding. While some cases received much attention, direct contact between victims and perpetrators is controversial and risky, particularly if victims feel pressured to participate.
- The East Timorese Commission on Reception Truth and Reconciliation, which organized “community reconciliation proceedings” in cooperation with traditional authorities in indigenous communities. At these events, perpetrators appeared before their communities to express repentance and ask to be re-admitted as members. The only perpetrators who participated in these events were those admitting to abuse that did not reach the level of a serious human rights violation (typically, attacks against property). The participation of prosecutorial authorities as observers ensured that no perpetrators of serious violations were eligible for communal reconciliation.
- The Peruvian Truth and Reconciliation Commission, which conceived of reconciliation as a political process of state rebuilding. It made several policy proposals for reforming state institutions whose actions caused or contributed to human rights violations.

It is important to highlight that in some post-conflict societies, there are no significant challenges of reconciliation to be achieved, and therefore the truth commission will focus on the typical task of strengthening democracy.



Chapter 3

Ensuring the Legitimacy and Independence of a Truth Commission

It's okay if they give us truth now, then the other things will follow. The first thing is finding out

Wife of disappeared man, Nepal

A perception of legitimacy is essential for a truth commission to be successful. The public's confidence that the commission is genuine will improve the willingness of victims, witnesses, and the public to participate, and facilitate access to information. Legitimacy can also protect the commission from political opponents invested in maintaining silence or denial about past abuse.

A Consultative Approach to Strengthening Legitimacy

Whether created by executive or legislative action, most truth commissions have been formed with limited direct public participation. In some cases, this is justified by the need to act quickly during a political transition. However, expedience may come at the expense of a meaningful consultation with all interested parties and their involvement.

Under ideal conditions, the contours of a commission are developed through a consultative approach that includes open discussions between government, civil society, victims groups, and others who may be impacted by the work of the commission. Facilitating public participation not only demonstrates a commitment to legitimacy, it also helps lawmakers to understand the needs of victims. Submissions from experts and community representatives can be solicited orally, or in writing, or through workshops. State rights agencies, such as an ombudsman or human rights commissioners, often manage these consultations.

Above all, consultation with victims' groups should be a priority during the establishment of a truth commission. Without their involvement and trust, a truth commission cannot credibly address their specific needs. It is also important to consider that for indigenous peoples, and some other groups, "good faith" consultation on any policy that may affect their rights is part of the state's duty to obtain their "free, prior and informed consent."²⁶

Consultation should continue during all phases of a truth commission's work, even when the commission was established quickly. Communication and dialogue with civil society, especially victims' groups, should be maintained throughout operations to allow for ongoing public feedback and assessment.

The South African Truth and Reconciliation Commission was formed after an extensive consultation process carried out by parliament, which included public discussions on draft legislation. Participation in the legislative debate helped to increase public interest and understanding of TRC-related policies when they were finally implemented.

Consultations can be effective and creative even in the absence of an adequate venue. In the aftermath of the Indonesian occupation of 1999, the United Nations organized dozens of community meetings under the leadership of Sergio Vieira de Mello in Timor-Leste. Consultations with indigenous communities helped the United Nations to develop a mandate for the truth commission that incorporated customary indigenous law to facilitate communal reconciliation.²⁷

An example of a missed opportunity is the Truth and Reconciliation Commission of the Democratic Republic of Congo, which was established as a result of peace negotiations in 2002.²⁸ Commissioners were appointed even before the commission had a legal statute, and there was the wide perception that appointments were dependent on political affiliation to the parties represented at negotiations.

In Brazil, the National Truth Commission resulted from a 2008 demand from civil society at the National Conference on Human Rights.²⁹ The conference was the highest-level public deliberation on human rights held by the federal government, and its findings shaped the Third National Plan for Human Rights,³⁰ which pointed to the

26 UN Declaration on the Rights of Indigenous Peoples, General Assembly Resolution 61/295, 7 September 2007, A/RES/61/295. See Art. 19.

27 UNTAET Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor, UNTAET/REG/2001/10.

28 Truth and Reconciliation Commission of Democratic Republic of Congo (Commission Vérité et Réconciliation de la République Démocratique du Congo) created by Law No. 04/018, www.leganet.cd/Legislation/DroitPenal/Loi01.18.30.07.2004.CVR.htm

29 11th National Conference on Human Rights, Brasília, Brazil, December 15-18, 2008. http://portal.mj.gov.br/sedh/11cndh/site/_index.html

30 Human Rights Ministry of Brazil. Third National Plan for Human Rights (Terceiro Programa Nacional de Direitos Humanos, PNDH-3), Decree n° 7.037/2009 and Updated by Decree n° 7.177/2010, <http://portal.mj.gov.br/sedh/pndh3/pndh3.pdf>

creation of a truth commission. Subsequently, the government established a working group, with representation from civil society. After several months of parliamentary debate, the bill passed with the support of all represented parties, and was sanctioned by the president in November 2011.³¹ The extended dialogue that led to the creation of Brazil's truth commission and the broad support of different social sectors for the project are reflected in the strong political legitimacy and positive public opinion now enjoyed by the commission.

Political and Operational Independence of the Commission

Commissioners and their staff need to be able to conduct their work without interference. Truth commissions must only be subject to the national legal framework and their legal mandate. Commissioners and staff must exercise their powers without fear, favor, or prejudice. In practical terms, the independence of a commission is defined by its ability to apply its legal mandate free of actual or apparent pressure, unwarranted influence, or dependence on any other institution or person.

The following conditions are essential for the independence of a commission:

- A transparent process for the appointment of commissioners
- Legal guarantees that commissioners can only be removed for a just cause
- Protection of commissioners against threats or retaliation
- Financial, administrative, and operational autonomy

Risks of Political Dependence

Truth commissions must avoid being subjected to allegations of bias, as this will negatively impact their effectiveness and render them less likely to successfully address the causes of the conflict under inquiry. In many parts of the world, civil society has a deep-rooted distrust of official inquiries because of a government history of using them to minimize or dismiss allegations of serious abuse.

People with questionable or dubious links to the subject matter under inquiry should not form part of a commission. A controversial example is Kenya, where insufficient scrutiny was given to the appointment of commissioners to the Truth, Justice and Reconciliation Commission (TJRC). Months after the TJRC began operations, its chair was alleged to have illegally acquired land and participated in other crimes. After he resigned, the TJRC lost much of its credibility. The ensuing litigation and internal disarray paralyzed the commission for over a year.

Financial and Operational Autonomy

Independence is also promoted by granting commissions the authority to manage their budgets and fulfill their mandates without interference:

- *Financial autonomy*: Truth commissions should enjoy financial autonomy, maintaining control over all financial and budgetary decisions. Commissioners should be given a reasonable budget that they alone manage and the authority to raise additional funds.
- *Operational autonomy*: Commissioners should have the authority to interpret their written mandate, establish priorities and methods for their inquiry, and make staffing decisions. Government institutions should avoid interpreting the mandate of a commission or hiring staff in anticipation of commissioners' decision.

³¹ Mandate of the National Truth Commission of Brazil, *supra* note 21.

Financial and operational autonomy should be exercised within the strict standards of government transparency, good administrative practices, and applicable labor legislation. Relations with governmental institutions, such as auditors and treasury, should respect the commission's autonomy.

Commissions' internal administrative and human resource procedures must ensure that funds are used appropriately and that the rights of staff are respected. Publishing complete financial information can help the commission to gain public trust.

Guiding Principles for Maintaining the Independence of a Truth Commission

Independence can generally be achieved if the following standards and principles are accepted:

- State agencies have a duty to respect the independence of the commission. They must assist and protect the commission to ensure its impartiality, dignity, accessibility, and effectiveness.
- An efficient, competent, and impartial inquiry depends on the financial security and organizational professionalism of a commission.
- Commissioners and their staff should not be (or be perceived as being) biased to a political faction. This includes those seconded from government agencies.
- Commissioners should work for the commission on a full-time basis.
- The commission should have sufficient funds to enable it to perform its functions to the highest standards and participate in determining its resourcing.
- Commissions should have properly trained staff and adequate facilities, and be fair, accessible, and responsive.

Selecting Commissioners

Selecting commissioners is critical, as they will determine the policies, methods of investigation, and content of the final report. In some cases, they are directly involved in investigations or research. They are also the public face of the truth commission, and their personal and moral authority is essential when engaging with perpetrators, authorities, and the public.

Commissioners should be selected through a transparent and preferably consultative appointment process, with input from different sectors of society, especially from victims and other marginalized groups. In some commissions, the selection process starts with nominations from the public and the formation of a panel to review nominations, interview finalists, undergo public scrutiny, and recommend a shortlist of candidates to an appointing authority.

The timing of commissioner selection is also important. Commissioners should not be appointed until a truth commission's enabling law or decree has been issued. Past attempts to expedite the process by appointing commissioners swiftly, such as immediately following the conclusion of a peace agreement, have weakened the prospects for effective truth seeking.

Historically, commissioners are selected in two ways:

- Exclusively based on their personal qualifications, moral leadership, and prestige. Most commissions in Latin American have been constituted this way (similar to the "blue-ribbon panel" in the United States). This form of appointment is fast and may transfer the legitimacy and prestige of the individual to the commission. However, this must be balanced against the risk of appearing elitist, resulting in distrust and resentment.

- As representatives, at least symbolically, of certain constituencies, such as women, races, ethnicities, or religious groups. Most commissions outside of Latin America have followed this approach, to appease fears of discrimination and marginalization.

The process of nomination and selection should combine evaluations of candidates' personal caliber and representation. The most successful commissions have combined the appointment of charismatic leaders and those of diverse background.

Selection Criteria for Commissioners

Selection committees should consider the following factors in nominating and appointing commissioners:

- *Commission size:* The number of commissioners should be large enough to represent society fairly, but small enough to constitute a manageable and sustainable group. Most commissions have had 3–17 members. Although commissioners should be expected to work by consensus, an uneven number of commissioners should be appointed to ensure democratic decision-making (by vote).
- *Fair representation:* Appointments should be broadly representative of diverse perspectives and backgrounds in order to avoid bias (or the appearance of bias). Selection committees should consider the geographic origin, religion, language, class, and ethnicity of candidates, among other factors.
- *Human rights record:* Each commissioner must have an impeccable record, free of any involvement in criminal activity, particularly human rights violations or corruption. They should have a record of promoting human rights or serving the public interest. Commissioners should enjoy unquestionable public confidence and be considered above partisan politics.
- *Neutrality:* Prospective commissioners should be vetted to ensure that they have no questionable links to the subject matters or organizations under inquiry. While it is common for state personnel to be seconded to commissions of inquiry, this is normally done in a way that protects the commission's independence and integrity, for example, by temporarily suspending the appointee's former governmental position.
- *Gender:* It is important to incorporate gender-based criteria in the commissioner selection process. Female commissioners offer a supportive and affirming environment for the participation of female victims. For example, this was evident in the dynamics of public hearings held by the Ghana National Reconciliation Commission, where three of nine commissioners were women. Having female commissioners was also important in South Africa, where the Truth and Reconciliation Commission responded to requests to establish women-only hearings chaired by female commissioners.
- *Full-time commitment:* No commission can operate effectively on a part-time basis. National commissioners should be required to work full-time while serving on the commission and avoid other work or responsibilities. Foreign commissioners should work a minimum number of days per quarter and avoid any other work that could create a conflict of interest.
- *Expertise:* Recruitment of commissioners should include a search for professional expertise in a range of disciplines that could be useful. Such disciplines may include law, in particular human rights and constitutional law; history; economics; forensics; gender studies; social anthropology; psychology; medicine; religion; journalism; and conflict resolution.

Good Practices for Appointing Commissioners

South Africa

The South African Truth and Reconciliation Commission was formed in 1995 to record and acknowledge crimes motivated by the political aims of protecting apartheid or fighting to abolish it.³² Priscilla Hayner describes the commission's

32 Mandate of the Truth and Reconciliation Commission in South Africa, "Promotion of National Unity and Reconciliation Act of 1995," July 19, 1995.

process of selecting commissioners: “The South African commission was the first to design a process based on an independent selection panel and public interviews of finalists. The empowering legislation indicated only that the commissioners should be ‘fit and proper persons who are impartial and who do not have a high political profile.’ A selection panel, including representatives of human rights organizations, called for nominations from the public. It received three hundred nominations, which it then trimmed to fifty people for interviews, which took place in public session and were closely followed by the press. It then forwarded a list of twenty-five to President Nelson Mandela for the final appointment of seventeen. To provide geographic and political balance, Mandela included two members who did not go through the full screening process.”³³

Sierra Leone

The law that created Sierra Leone’s truth commission was inspired by South Africa’s, with a significant variation: the appointment of foreign commissioners and the role of the United Nations.³⁴ According to Hayner: “The special representative of the UN secretary-general in Freetown was appointed as ‘selection coordinator,’ and a panel was formed (including members appointed by the former armed opposition, the president, the religious community, and human rights groups). The inclusion of the former armed opposition was important to gain its support for the process. This panel identified four national members based on public nominations and interviews. The UN high commissioner for human rights nominated three international members. Both national and international members were formally appointed by the president.”³⁵

Timor-Leste

The Commission for Reception, Truth and Reconciliation in East Timor was established by the UN Transitional Administration in East Timor (UNTAET), which appointed commissioners on the advice of a selection panel.³⁶ It included one member appointed by each of several civil society organizations and political parties. In calling for public nominations, the panel was required to consult broadly with civil society and give special consideration to diversity issues, including regional and gender representation.

Hybrid Truth Commissions

Occasionally, both local and foreign persons are appointed as commissioners and senior staff members, in order to give the commission greater credibility and comparative expertise. These “hybrid commissions” are generally established to avoid (or minimize) suspicions of bias when local investigative skills and expertise may be lacking. Examples of such commissions include Sierra Leone, Guatemala, Solomon Islands, and Kenya. International candidates should still be subject to a vetting process.

33 Hayner, *supra* note 22, at 212.

34 Sierra Leone Truth and Reconciliation Commission Act, February 2000, www.sierra-leone.org/Laws/2000-4.pdf

35 Hayner, *supra* note 22, at 212, citing the Sierra Leone Truth and Reconciliation Commission Act.

36 UNTAET Regulation Establishing the Commission for Reception, Truth and Reconciliation in East Timor, *supra* note 27, Section 4.



Chapter 4

The Legal Mandate of a Truth Commission: Objectives, Functions, Competence, and Powers

2 (1). There is hereby established a juristic person to be known as the Truth and Reconciliation Commission. [. . .]

3 (1). The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past

Promotion of National Unity and Reconciliation Act 34 of 1995,
South Africa, Chapter 2

Truth commissions are established by a legal mandate, normally by executive decree or a law sanctioned by parliament. Decisions taken by drafters and stakeholders at the start of a mandate shape the future inquiry and its effectiveness. This chapter describes the commission's objectives, functions, scope, and powers.

Objectives of a Truth Commission

The overall objectives of a truth commission are usually stated in the preamble to a mandate and its initial considerations, which should provide guidance to members of the commission. Although mandates may address different objectives, these three aims inform the work of most commissions:

- *Establishment and explanation of facts:* The core function of a truth commission is to ascertain facts. Mandates differ in the scope of those facts, their legal classification, or the depth of the explanation required.
- *Protection, recognition, and restoration of the rights of victims:* This function distinguishes truth commissions from courts of law and advisory panels, placing the rights of victims and their experiences at the center of the commission's work.
- *Positive social and political change:* Some mandates have entrusted commissions to suggest ways for government, civil society, and the public to contribute to reconciliation, reform, democracy, and prevention of recurrence.

Objectives, both complex and nuanced, will depend on the country's political environment. Mandates typically take a modest approach and recognize that a commission's overall objectives are "contributions" for further consideration, rather than imperative. It is essential that a commission's objectives are clear and succinct, to ensure that all participants have realistic expectations about what impact their contributions could have.

Functions

The functions of a truth commission are the activities required to achieve its objectives. Clarifying these activities in the mandate will provide guidance to commissioners as they design their inquiry, allocate resources, and establish the organizational structure necessary to carry out their work.

Some of the functions stated in the mandates of commissions include:

- *Preparing a report that establishes an accurate and impartial historical record of human rights violations:* Truth commissions report on the context, causes, circumstances, nature, and extent of human rights violations set out by the mandate for investigation. An authoritative final report is the main product of a truth commission and should become an important national document. The Report of the Argentine National Commission on the Disappeared, "Nunca más,"³⁷ is widely used for civic education in that country and reprinted regularly. Reports have evolved over time, from the single book form of the Argentine commission, to large multi-volume collections, abridged versions, audio and video versions, comic books, and versions prepared for specific audiences.
- *Gathering information:* The mandate should authorize the commission to investigate human rights violations, political strategies, local histories, specific cases, and the consequences of abuse. The commission must obtain information on historical events by interviewing witnesses and survivors, examining documents, and visiting places that may contain evidence, such as detention sites and mass graves. A commission needs to be able to perform these duties with the cooperation of government authorities. The most critical of these functions is gathering testimony from those who were directly involved in violations: victims, witnesses, and perpetrators. In order to perform this function effectively, the commission must prepare detailed procedures and protocols for the interviews and databases to record, store, and analyze information.

³⁷ *Never Again: The Report of the Argentine National Commission on the Disappeared (Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas)*, (New York: Strauss & Giroux, 1986).

- *Protecting the integrity and well-being of victims:* It is important for a truth commission to gather information from victims and witnesses in a manner that does not pose any danger to their personal safety or their integrity. The commission should ensure that victims are not treated merely as sources, but as valued partners and full citizens, whose human dignity is explicitly recognized. Victims of mass atrocity are generally among the most vulnerable and marginalized groups in society, and a truth commission must assess their needs and solicit their testimony in respectful, caring terms. The commission should create a safe environment for victims to speak about their experiences, which may require mental health support, physical protection, legal information, social services, and in some cases financial support. This network of support should pay specific attention to the needs of women, children, indigenous peoples, and other vulnerable groups. While the commission should always accept testimony in good faith and acknowledge the suffering of victims, it must always treat testimony in an objective manner, as information subject to corroboration.
- *Conducting educational outreach activities:* The commission should be authorized to address the public through communication, the media, and educational/outreach activities. Early truth commissions performed their activities without public involvement. Since the South African experience, it is common now for truth commissions to engage in outreach through partnerships with media, websites, and printed resources. Public hearings have proven to be a powerful outreach activity, providing victims with the opportunity to speak in their own voices and a sense of personal vindication, while also educating the public. The Peruvian Truth and Reconciliation Commission partnered with major universities across the country to recruit and train “Volunteers for Truth.” Thousands of young students across the country provided support for public hearings, helped victims to appear before the commission, and communicated information about the commission’s work.
- *Offering policy proposals to ensure violations are not repeated:* Truth commissions can help prevent the repetition of violations through recommendations that address the causes of conflict and promote respect for the rule of law. At the end of an inquiry, the commissioners should evaluate any institutional responsibility for abuses and recommend any measures or reforms needed to prevent further abuse. Commissions can typically make recommendations to support the rule of law; reform the security sector; promote good governance and fight corruption; improve respect for human rights; and to address the specific challenges faced by vulnerable populations such as indigenous people, children, youth, and women.
- *Supporting the work of the justice system:* A truth commission can play a significant role in tackling impunity, while cooperating with the work of the courts of law through meticulous research and documentation of abuses and violations, and the locations where these took place (for example, some commissions have uncovered grave sites through their investigations). This information can be provided as evidence to national prosecutors. According to country-specific circumstances, criminal prosecutions may be possible where there is a functioning judicial system, sufficient evidence, and political will. Commissions may also make recommendations to remove or bar perpetrators from public office or implement vetting programs as part of reforms of security and justice sectors and other institutions.
- *Promoting communal or national reconciliation:* Many truth commissions are tasked with organizing activities to promote reconciliation, tolerance and healing among individuals, communities, and parties to a conflict. They can provide a forum to hear each other’s grievances, recommend measures for the reintegration of offenders, and organise events to promote understanding and tolerance at the community and national level. In Timor-Leste, the Commission for Reception, Truth and Reconciliation partnered with indigenous communities to reintegrate low-level perpetrators who wanted to return to their homes and make amends with those they offended. In Peru, the Truth and Reconciliation Commission proposed that the best contribution to reconciliation between the government and the citizenry was the reform of state institutions.³⁸

38 Final Report of the Peruvian Truth and Reconciliation Commission, August 28, 2003.

Competence

Every legal mandate that sets up a truth commission establishes:

- The types of violations to be investigated
- The time period to be examined
- The parties to be examined
- The territory where violations took place

The legal framework should be strong, but flexible in defining the types of violations and issues under examination in terms that are not exhaustive. This means that the mandate, while identifying certain violations deemed of particular interest, should afford commissioners the possibility of examining other serious conduct. For example, the mandate of the Peruvian commission used the terms “torture and other serious injuries,” allowing the Truth and Reconciliation Commission to investigate sexual violence without the conduct being specifically named in the mandate.³⁹

The time periods and length of time under investigation varies greatly among commissions. Some have examined violations covering periods of up to 40 years, while others have focused on weeks. Longer time periods will require that investigations be more complex, but a commission should also be sufficiently equipped to critically examine the experiences that gave rise to the abuses.

Early commissions, like the Argentinean Commission on the Disappeared, focused only on abuses committed by government agents. However subsequent commissions have demonstrated the value of investigating all violations that have caused suffering to a society, whether the actions of state or nonstate agents, including violent anti-government actors and paramilitaries.

All commissions to date have focused their inquiry on the territory of the country or state that established the inquiry. However, many conflicts or abuses have crossed over borders or involved people from other countries. There may be cases in which a truth commission mandate should include the possible cooperation of other countries in some inquiries.

Powers, Penalties, and Protections

A truth commission should have the necessary powers to conduct effective and independent investigations. It should comply with certain procedures to protect the rights of victims and witnesses during investigations and hearings, and in its general work.

Investigatory powers: A truth commission should be authorized to gather information from any source, including governmental authorities. Some commissions are given powers to compel the production of evidence and testimony. Others have to rely on the cooperation and goodwill of witnesses, organizations, security forces, and government departments. In any case, a commission should develop cooperative relationships with the relevant authorities and civil society.

Ideally, a commission should have the following powers to carry out effective investigations:

- *Power of compulsion:* Such authority should include the power to summon persons to appear before the commission to provide evidence and produce articles or documents where appropriate. Designated commission staff should be able to obtain court orders to search for materials when appropriate.

39 Truth and Reconciliation Commission of Peru (Comisión de la Verdad y Reconciliación), created by Supreme Decree N° 065-2001-PCM [Peru], June 4, 2001.

- *Forensic procedures*: A truth commission ought to be authorized to conduct forensic examinations, including exhumations, in accordance with the law, in cooperation with judicial authorities, and respecting the wishes of relatives of the missing or disappeared.
- *Obligation to cooperate*: Everyone, including members of political parties and government officials, should be obligated to cooperate with the commission. They should provide the commission with unrestricted access for any purpose necessary to fulfill the commission’s legal mandate. Secrecy laws, like national security considerations, should not apply to any matter that is the subject of a truth commission inquiry. However, a commission should treat all the information it receives with the utmost care to avoid damaging the privacy and integrity of persons.
- *Conducting public hearings*: The hearings of a commission should be open to both the public and the media, unless the commissioners are satisfied that an open hearing is not in the interest of justice—or could harm someone. Hearings that involve minors must be closed to the public or conducted in a way that ensures the anonymity of the statement-giver. Testimony on sexual violence cases are normally closed to the public, unless adult victims request to testify in public as a means of sharing their story.

The commission’s criteria for selecting victims to testify should be publicized. All people invited to testify should be fully briefed beforehand on the procedures and any corresponding rights or duties. Victims should receive appropriate medical, psychological, or emotional support services.

The commission should also contact victims after their testimony to ensure that their well-being was not compromised and to offer counseling if necessary.

- *Procedural Rights*: Procedural fairness must be respected by a truth commission, particularly when publishing findings and recommendations:
 - *Right to be heard*: Whenever a commission contemplates making a decision or recommendation that may be detrimental to anyone, that person, along with any associated victim, should have an opportunity to make representations and/or appear at a hearing, as much as this is practically possible.
 - *Right against self-incrimination*: If a witness is compelled to appear before the commission and answer questions that may be incriminating, such answers should not be admissible as evidence against that person in any subsequent legal proceedings. A commission should only use this procedure when such information is necessary and justifiable to achieve its objectives and when a person has refused to answer on the grounds of self-incrimination. This measure is sometimes referred to as “use immunity.”
 - *Right to legal representation*: Any person who is questioned by an investigator or called before a commission should be entitled to legal representation, even if indigent. A commission should appoint a legal representative if it is satisfied that it is in the interests of justice.
- *Witness Protection*: A witness protection program should be established for essential witnesses when there are clear threats to their safety. Effective protection of witnesses and information is vital, especially when a commission is investigating sensitive matters and powerful people. Witnesses who are fearful may not tell the full truth, may fabricate information to protect themselves and their families, or avoid the commission altogether.

Where a commission cannot provide full witness protection, it should be able to guarantee the strictest confidentiality with respect to the identities of sensitive witnesses.

- *Penalties*: Provision should be made for punishment of offenses committed against the truth commission, including the obstruction of the commission in the performance of its duties, willfully giving false information, failing to obey a subpoena, disclosing confidential information, and destroying evidence or archives.

- *Protections for Commissioners:* Commissioners and staff members should enjoy a measure of protection for conduct carried out in good faith during the course of their work. No commissioner, member of staff, or person who performs any task on behalf of the commission should be liable with respect to anything reflected in any report, finding, point of view, or recommendation made or expressed in good faith. This protection hinges on commissioners and staff members doing their jobs diligently and in accordance with the principles of procedural fairness.
- *Publicity of report:* The truth commission should be authorized to issue its final report publicly through the media, internet, libraries, and archives. Restricting access to the report to a high authority, like the president, and entrusting that authority with dissemination will weaken the impact of the commission. Before a truth commission begins operations, it needs to go through a preparatory phase—typically a period of three to six months—when it reviews its legal mandate, develops internal administrative procedures, engages in public outreach, and recruits essential staff.



Chapter 5

A Critical Moment: Setting Up the Truth Commission

Through attributing responsibility for the different causes of the conflict, and the many violations of human rights committed throughout it, we create accountability and state unequivocally that we reject impunity. With this knowledge and understanding we vow to build a society that will be able to prevent such causes and violations from recurring.

“Witness to Truth: Report of the Sierra Leone Truth & Reconciliation Commission,” Volume 1, 2004

An effective preparatory phase will assist and facilitate the commission's deployment and operations. In Timor-Leste, extensive consultation in the country's 13 districts led to the formation of partnerships in each to support the work of the commission's local offices. Unless decisively addressed, weaknesses in the preparatory phase will be sorely evident.

Failure to review and understand the legal mandate may affect the design of the inquiry and the hiring of research staff. The Kenyan Truth, Justice and Reconciliation Commission did not realize until late in the process that its research had failed to obtain the best information on addressing economic crimes. The productive deployment of the commission's forces, then, assumes a strong and effective preparatory phase. If critical preparatory tasks are incomplete, the commission will waste energy solving problems as they emerge.

- Commissioners must review the legal mandate in order to establish a common understanding of its main components and objectives. They should invest time in clarifying any divergent interpretations or doubts, and develop consensus and compromise on important issues.
- Commissioners must conduct initial outreach with important partners, especially victims, to learn their views on the legal mandate, and their expectations, suggestions, or demands regarding the process. Frank and open discussions are more likely to occur in small, private, focused meetings that allow commissioners to develop rapport and common understanding with these individuals and groups.
- Commissioners must develop the terms of reference and hire essential personnel. Essential staff include senior officers who will establish and manage administrative, research, and outreach systems. The speed of the hiring process will depend on the mandate and the regulations applicable to public institutions. However, the government should provide all necessary procedural assistance to support and facilitate the initial hiring phase. If government personnel are seconded to the commission, it is important that they answer only to the commissioners for the duration of their service.

The government should provide the support necessary to ensure that the commission's initial tasks are carried out effectively and efficiently. Authorities should provide adequate financial and logistical support to a commission, including assistance to locate suitable offices. Where necessary, a commission should be permitted to solicit and obtain financial and expert support from the civil society and international community.

Standards, Policies, Procedures, and Work Plans

Once essential personnel have been hired, the commissioners must develop standards, policies, and procedures that will ensure proper governance and operations. These could include:

- A manual of functions, clarifying the commission's rules regarding decision-making, governance, and administration
- An organizational chart clarifying lines of reporting between commissioners and staff, the division of labor, and any operational deployment throughout the country
- A work plan, including the projected use of time, calculations of human and material resources needed, and a budget developed in accordance with appropriate government procedures
- Investigative and research plans that propose basic methodological approaches and specify forms of interdisciplinary cooperation
- Outreach and education plans for communicating the commission's mandate and operations to the public
- A declaration of principles and commitments governing the relationship between the commission, other public institutions, citizens, and civil society, including victims' groups

The preparatory phase is characterized by staff working in small teams and reporting directly to the commissioners and/or the commission's executive committee. Any delays in completing important tasks during this phase can cause anxiety and lead to a general loss of confidence in the commission's ability to carry out its mandate. Prolonged delays will also compromise the commission's operations and other phases of work.

Budgets

It is important for government to appreciate the operational requirements of a commission before allocating funding. Decisions on allocating funds for a commission have often fallen on parliament (as part of annual budget planning) or the executive (as part of their discretionary funding). In some cases, governments have allocated financial resources to commissions before they have started operations; however, allocating a budget too soon can jeopardise the commission's independence and may restrict operations.

A reasonable approach would be to ensure that the commission's first funding allocation is provisional, in order to support its initial phase, and make all subsequent funding subject to adjustment to reflect commissioner decisions.

Some commissions have used special funds separate from any standard parliamentary budget process or funding from international donors. More than 50 percent of the budget for Peru's Truth and Reconciliation Commission was recovered from secret foreign bank accounts held by corrupt officials.⁴⁰ Commissions in Sierra Leone and Timor-Leste were largely funded by international donors.

As a public institution, a truth commission should respect best practices of governmental transparency. Allocating resources for salaries, operational activities, and capital investments must closely follow the objectives and functions of the commission, as established by the mandate and the commission's work plans.

Because commissions often operate under difficult economic conditions, such as in post-war or post-dictatorship contexts, it is important that they be regarded as a frugal and austere institution, focused on operational activities. Salaries should be appropriate for experienced professionals—and not perceived as lavish.

Budgetary categories generally fall into four main categories:

- *Salaries* for commissioners and staff in program units, established upon review of the legal mandate; typically both legal and interdisciplinary social-science expertise; statement-taking and data processing expertise; victim support; public communication, outreach, and education support; and administrative support.
- *Operations* to complete research, outreach, and communication activities. This typically includes statement-taking, creating data management systems, outreach campaigns, organizing and publicizing hearings, and producing publications. These activities can require extensive travel within the country.
- *Capital investments* to furnish offices with equipment and vehicles.
- *Administrative expenses* and financial costs associated with the rental of space, banking, record keeping, and auditing.

Early Public Awareness and Sensitization

Efforts to communicate and educate the commission's mandate to the public should continue throughout the preparatory phase in collaboration with partners and civil society organizations. These efforts should inform the public of their rights and opportunities to access and participate in the commission's investigations.

⁴⁰ See, for example, Law No 28.476 of Peru on the Special Fund for the Administration of Money Illegally Obtained from the State (Ley del Fondo Especial de Administración del Dinero Obtenido Ilícitamente en Perjuicio del Estado), March 22, 2005, Art. 8 (g).

The commission should develop a strategic communication plan that identifies target audiences; sets clear goals and short-, medium- and long-term actions to achieve these objectives; and evaluates its effectiveness.

A range of media can be used to create awareness and build momentum, including radio, TV, press, songs, drama, and posters. Printed media can be distributed at outreach events and through civil society networks and local contacts. Commissioners should visit provinces and outlying districts to raise awareness of the commission's work and consult with important partners on issues of truth, accountability, and reconciliation.

Other effective public outreach activities include town hall-style meetings, where commissioners and staff can discuss the commission's activities and respond to questions. Consultative meetings and training programs can be held with victims, ex-combatants, police, military, parliamentarians, religious leaders, teachers, women, children, youth, and others. This is best done in small groups, with an emphasis on discussion and participation. Conferences are an effective way to focus attention on specific issues while bringing together different groups with similar interests. Partner organizations can also be trained and encouraged to conduct their own outreach and education activities among members.

Mapping and Background Research

Commissions often attempt to estimate the nature and extent of violations before they begin operations by conducting a preliminary mapping project that helps to identify potential challenges and assess needs. This involves the collection and analysis of information from different sources, including documents, witness interviews, and consulting with field experts.

Mapping provides a macro view of the conflict, taking into account:

- The nature and extent of incidents that took place
- When and where incidents occurred (to develop a sense of the scale of violations)
- Who the victims are
- The likely identity of perpetrators
- A chronological overview of events, province by province
- Any existing justice, reconciliation, and victim support initiatives
- Potential leads or sources of evidence
- Any patterns of abuse

When properly executed, mapping enhances the objectivity and effectiveness of the commission, enabling it to make strategic decisions based on preliminary indications of actual events, rather than on speculation. It also allows the commission to make realistic estimates for resource allocation, develop a coherent approach to statement taking, and identify themes for investigation and research.

Mapping can be carried out by a civil society organization with the necessary expertise, often supported by the United Nations or another institution with necessary resources.

After mapping violations, a commission can begin background research to develop a strong foundation for more coherent research and investigation during the later operational phase. Background research could include:

- Establishing important sources of information, documents, and reports—those that are either confidential and in the public domain:

- Government (justice, human rights, military, and police authorities)
 - United Nations, major international human rights bodies, and diplomatic missions
 - National and international media
 - Nongovernmental organizations (human rights bodies, unions, religious groups, aid agencies, and victims' associations)
- Holding meetings with representatives of organizations to present the commission's plans and objectives, and to seek partnerships
 - Collection and analysis of documents
 - Consulting with different national and international experts to evaluate research and strategic decisions

Exploring Local Customs

During the preparatory phase, the commission should learn how different affected groups are accustomed to dealing with human rights violations, punishment, accountability, and reconciliation. These studies are usually carried out by experts, such as social anthropologists, psychologists, and historians. They should provide guidelines on how to integrate local ethnic, religious, cultural, and other social processes and institutions into the commission's work, in a manner that is responsive to diverse traditional beliefs and customs, such as those of indigenous peoples, and secures their free, prior, and informed consent.⁴¹

Support and Advisory Groups

If permitted by the mandate, development partners, the international community, and civil society groups could form support networks to monitor, advise, and provide technical assistance to the inquiry. The Canadian Truth and Reconciliation Commission is advised by a committee of indigenous elders, who meet with commissioners and staff. The Sierra Leonean commission was monitored by a network of human rights organizations. The Peruvian commission established a network of victim groups to solicit advice during the development of its reparations policy.

⁴¹ UN Declaration on the Rights of Indigenous Peoples, *supra* note 26.



Chapter 6

From Establishment To Regular Operations

As Commissioners of the TRC, we know now with absolute certainty that the road we travel is equal in importance to the destination we seek. There are no shortcuts. When it comes to truth and reconciliation, we are all forced to go the distance.

The Honourable Justice Murray Sinclair, Chair, Truth and Reconciliation Commission of Canada, Presentation to the Senate Committee on Aboriginal Peoples, September 28, 2010

Deployment Phase

Following successful completion of the preparatory phase, the commission can act on its work plan and start its main operations and effective deployment on the ground. During its deployment, the commission should hire personnel fill out its organizational chart; open offices; and launch its research, outreach and administrative bodies:

- The commission should hire to full strength in accordance with its organizational chart, research, and outreach plans. Hiring should closely observe the highest standards of transparency and good practice applicable to the public sector, including disclosures of any conflicts of interest. The commission should be a responsible employer, observing all appropriate labor legislation, while seeking a diverse staff, with equal opportunity for men and women and ethnic, regional, and religious groups, as well as the right balance of professional disciplines.

Depending on its legal mandate and organizational chart, the commission may budget for a combination of the following teams and units:

- Legal team(s) to identify patterns of violations set out by the mandate, according to applicable law, and thoroughly investigate specific, illustrative cases
- Interdisciplinary teams of social scientists (such as historians, sociologists, political scientists, and anthropologists) to study the political processes and context that gave rise to the human rights violations under inquiry as well as examining the consequences of past abuse and violations. (As the operational phase makes progress, these teams may refine their functions, in order to transition from research on findings to work on recommendations based on findings.)
- A statement-taking and data-processing unit to design statement-taking procedures and forms, procedures for special witnesses, and procedures for the examination of archives and to develop a comprehensive database
- A victims unit to promote victims' participation and their emotional support. This unit could be staffed by professionals in the field of health care, social work, and education. (If compatible with the legal mandate, a separate service could be established to provide forms of protection to witnesses, in cooperation with the appropriate authorities.)
- A communication, outreach and education unit to monitor the public, media, and political environment in which the commission operates; help the commission to define its public profile and discourse; manage communications with important partners; and oversee general educational activities. (If compatible with the mandate and in coordination with the needs of the investigation, the communication unit could include a specific team to organize public hearings for victims and key witnesses.)
- An administrative unit to manage budget control, logistics, and monitor productivity
- The commission should establish regional offices and mobile teams, as appropriate, in accordance with its organizational chart, research, and outreach plans. Past experience demonstrates the value and advantages of staffing regional offices with experienced local professionals who enjoy the trust of the population, especially victims. Such professionals may be local activists or human rights defenders with experience and knowledge of the situations being examined by the commission.

The number of local offices will depend on the geographic characteristics of the country, the number of victims and witnesses expected to appear before the commission, and the strength of civil society and institutional partnerships. Some truth commissions, like Guatemala's Historical Clarification Commission, had relatively few offices, but employed plenty of statement-takers who traveled the country as mobile teams. Other commissions, like Timor-Leste's, opted for permanent district-by-district coverage. The Peruvian Truth and Reconciliation Commission was formed quickly, with limited public outreach, but opened additional offices in certain areas following criticism from civil society.

- The commission should develop its initial public outreach campaign to establish partnerships with national civil society and ensure full coverage of the territory or country. If appropriate at this stage, the commission could also conduct international outreach to human rights groups, institutions, and (potential) donors. It is particularly important to secure partnerships in order to:
 - Disseminate the work of the commission
 - Obtain access to victims' organizations and communities
 - Provide victims with support and counseling
 - Obtain the support of experts

Regular Operations

As the commission's work progresses and the organization reaches full capacity, the commission will begin to implement its regular operations, which, depending on the functions assigned by the mandate and work plans, may include the following tasks:

- Take statements through local offices and/or mobile teams, under the guidance of the research plan and the direction of any statement-taking and data-processing unit. This is the core activity of the commission and the primary experience through which it will engage with victims and witnesses. It is therefore important to ensure the strict application of the commission's methodology and principles of treatment of victims and witnesses. Through its territorial offices, the commission should give clear advance notice of the procedures of testimony gathering to all interested parties. The process of statement-taking must have an appropriate deadline in order to secure time for data-processing, editing, and formatting of the report; establishing findings; and making recommendations. This also applies to interviews of key witnesses and the examination of archival information.

Taking statements requires the use of a carefully designed and tested questionnaire and an interview protocol. Statement-takers require careful training to ensure that the experience of deponents will be productive and respectful. Deponents must be able to tell their stories in a form that is culturally and psychologically meaningful to them and respects their own narrative techniques. The questionnaire should not be intended to replace the deponent's narratives, but rather to help the interviewer ensure that certain basic information is recorded, and not overlooked or lost, in the process of gathering as much factual and contextual detail as possible.

- Interviewers will record in written form the testimonies they receive, ensuring all elements in the questionnaire are covered to the best ability of the deponent. Written narratives should be sent to the commission's headquarters for entry into the database. The commission's databases, developed following the commission's mandate, will identify both quantitative data (such as the frequencies of specific violations over time, measured with statistical techniques) and qualitative data (such as references to perpetrators' strategies and practices).
- The organization of public hearings allows select victims to share their experiences in front of a national audience and the media. Other forms of public hearings may include the testimony of experts and important political figures.

Some commissions have been authorized by their legal mandate to allow perpetrators to participate in hearings. This remains controversial: critics cite the risk of retraumatizing victims or providing a form for some witnesses to grandstand. When the Truth and Reconciliation Commission of Liberia invited former warlords to testify, proceedings were disrupted by participants and the public, resulting in a highly distressing situation to victims.

Public hearings are typically organized along three lines:

- Hearings for direct testimony by victims or survivors, aggregated according to geographic criteria
 - Thematic hearings, where victims’ or survivors’ testimony is aggregated according to patterns of human rights violations
 - Expert or key person hearings, in which political leaders or knowledgeable experts can share information and perspectives on issues brought to the attention of the commission
- *Public dialogue.* If appropriate, the commission could organize public activities that provide opportunities for public dialogue, education, or even to address issues of reconciliation, such as the recognition of the experiences of victims or acknowledgment of responsibility by perpetrators. This last possibility has occurred only in very specific legal conditions or involved perpetrators of minor offences not considered to be serious human rights violations (like attacks on property).
 - *Victim support and protection.* Victim support and protection should be an active consideration throughout the life of the commission, to ensure victims can become reliable partners or deponents. As commissions have a limited temporal mandate, it may not be sustainable for them to manage protection programs. It is preferable for them to partner with governmental protection agencies to ensure long-term protection of victims and witnesses, or with civil society to ensure informal networks of support around victims.

The length of the phase of deployment and operations will depend on the complexity of the commission’s mandate. Recent commissions with comprehensive mandates and extensive patterns of violations under investigation have dedicated anywhere from 12 to 24 months to this phase.

The deployment and operations phase is when the commission grows to full force and becomes a complex organization that includes specialized teams, territorial units, and a carefully managed distribution of labor and expertise among commissioners and important staff. During this phase, investigative teams require large numbers of interviewers and data processors, their logistical needs can become overwhelming. Commissions with broad and complex mandates, such as those of South Africa,⁴² Guatemala⁴³ and Peru,⁴⁴ have had staff in the hundreds and a similar number of volunteers.

Truth commissions are complex, extended inquiries, with work performed by a large staff responsible for a variety of tasks. Establishing an effective organizational structure is an important step in ensuring a commission’s efficiency and success. Truth commissions organize their structures in accordance with their mandate and the legal framework applicable in their country. There is no single model of best practices.

42 Mandate of the Truth and Reconciliation Commission in South Africa, *supra* note 32.

43 Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan Population to Suffer, *supra* note 20.

44 Mandate of the Peruvian Truth and Reconciliation Commission, *supra* note 39.



Chapter 7

Organizational Structure of a Truth Commission

The Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission (TRC) Selection Panel, the group tasked by the Wabanaki Tribal Governments and the State of Maine to select five commissioners to serve on the TRC, invites the public to nominate people for the Selection Panel's consideration. The Selection Panel seeks individuals of recognized integrity, empathy, stature and respect with a demonstrated commitment to the values of truth, reconciliation, equity, and justice.

Maine-Wabanaki Truth and Reconciliation Commission, Welcoming
Nominations for Commissioners, September 2012

General Organizational Characteristics of a Truth Commission

With some variation, the internal structures of truth commissions usually have the following characteristics:

- The internal organizational structure, which responds to the mandate in terms of the function and objectives of the truth commission. Commissions are composed of specialized units responsible for research, outreach, and administration; and regional offices deployed across the territory under inquiry or the country.

There are usually two options for determining the organizational structure of a commission:

- For commissions established by executive decree, commissioners interpret their mandate and decide independently on its priorities, including the best use of resources and its organization. Commissions in Chile, Guatemala, and Peru followed this model.
 - Commissions established by legislation have their internal structures decided in advance. This may be to comply with a mandate or to cover all territories of a country. For example, the law establishing the South African commission determined that it would be divided into three specialized committees, dealing with research, reparations, and amnesty procedures.⁴⁵
- The structure includes research, outreach, and administrative support units. These functions are outlined in the wide variety of legal mandates. The research function, which may be carried out by specialized units of legal professionals and social scientists, comprises investigation and production of a final report, which contains the commission's findings and recommendations. The outreach function communicates and educates the public on the commission's mandate. Administrative support ensures the efficient and effective use of commission resources.
 - Division of labor and responsibility among commissioners and professional staff. Commissioners have a direct legal duty to comply with the mandate and hold direct authority and responsibility to make decisions, present findings, and make recommendations. Owing to the political and ethical significance of the commission's decisions, they cannot be made by the professional staff, whose role is to support the commissioners.

Key Functions and Positions Within the Structure of a Truth Commission

The commission should establish units to deal with each specific function set out in the mandate, as appropriate and within the limits of the commission's resources. These units should be managed by professional staff who are accountable to the commissioners. The most important functions to entrust to professional staff are:

- *Executive Secretary (ES)*: The highest professional position among the hired staff, the ES is responsible for managing the commission's budget and administration, and coordinating its activities. The ES must have a well-staffed support unit to ensure effective communication with the research, outreach, and administrative services unit and offices deployed around the country. The ES also supports the commissioners in managing institutional relations with other government institutions and civil society organizations. The ES should report directly to the chair of the commission.
- *Research Director (RD)*: The RD is responsible for the investigation and analysis units of the commission throughout all phases of its work, including planning, information and data gathering, and evaluation and analysis. The RD should be the chief editor of the final report. He or she should report directly to the ES. Some of the possible units likely to operate under the leadership of the RD are:
 - *Methodology, statement-taking, and database*: Social science professionals are needed to design instruments for data-gathering from interviewees, such as statement forms or questionnaires. This unit will grow over time to accommodate interviewers, data clerks, and analysts.

⁴⁵ Mandate of the Truth and Reconciliation Commission in South Africa, *supra* note 32.

- *Analysis of specific violations*: According to their mandate, the commission can create units to conduct research on violations specifically mentioned in the mandate. Some commissions have concentrated all of their investigative functions in one comprehensive “truth-seeking unit,” while others have established separate specialized units to investigate cases of torture, extrajudicial executions, and enforced disappearances, etc.
- *Analysis of specific social and historical processes*: According to its mandate, a commission may decide to establish units to investigate the broader context and causes of the conflict, the role of certain institutions, or the effects of a conflict on a certain region. For example, a commission may appoint a unit to analyze the role of the police, the judiciary, or a specific profession.
- *Situations affecting specific groups*: The commission should ensure that all units strictly respect nondiscriminatory practices while complying with the mandate. The research unit, in particular, should ensure that it investigates the experiences of any groups that were specifically targeted or that were especially vulnerable, such as women, children, minorities, and indigenous groups. However, it is important that the commission is sensitive to issues affecting specific groups in all aspects of its work. For example, all units should be gender-sensitive. The RD is responsible for ensuring that such special needs are carefully accounted for.
- *Outreach and Communications Director (OCD)*: This position is responsible for communicating the mandate and objectives of the commission to the public and managing all public, media, and educational outreach. The role requires a sensitivity to public attitudes towards the commission and the ability to analyze public opinion. It may be convenient for the OCD to manage some public investigate activities in direct coordination with the RD. The OCD should report directly to the ES. Some of the possible units operating under the leadership of the OCD are:
 - *Victim support*: A unit should be created to reach out to victims and victim communities to assess their needs; facilitate protective, legal, psychological, social, and logistical support; and contribute to recommendations to restore their rights. Also, a victim support unit is essential to helping victims navigate the process of statement-giving and participating in hearings, and preparing submissions.
 - *Public hearings*: Public hearings are one of the most important activities of a truth commission, allowing the citizenry to learn about the violations directly from victims, key stakeholders, and experts. As appropriate, a specific unit should be responsible for organizing hearings, coordinating the various truth commission units to participate, and overseeing necessary logistics.
 - *Public information*: The truth commission needs to have a constant and effective means to communicate information about its activities to the public. Journalists, publicists and communicators should be hired to prepare and distribute periodical information through printed magazines, websites, social networks, and others. Also, this unit must be the liaison for organizing the commissioners’ availability to the press and offering trainings and support to journalists interested in covering commission activities.
 - *Educational initiatives*: In addition to information, the truth commission can create and disseminate educational tools specifically designed for teachers and students. As preparation of the final report moves forward, this unit can contribute to wider public understanding and awareness by helping to prepare pedagogic materials in different formats (written, audio, video, web-based, etc.).
- *Chief Administrative Officer (CAO)*: This position is responsible for managing the commission’s budget, finances, human resources, logistics, and procurement. The CAO must have significant experience working in public institutions and apply the best practices of transparency and efficiency in public administration. The CAO reports directly to the ES. The composition of the administrative units will be dependent on local practices, but the following functions may be covered:

- *Legal services*: This unit ensures that the commission meticulously observes all relevant laws and implements the best practices to prevent corruption, conflicts of interest, and nepotism. The unit is also responsible for drafting and managing contracts and agreements with staff, service providers, and partner organizations. Given that the commission may grow to have considerable numbers of staff, it may require a specific unit dedicated to human resources issues.
- *Accounting*: This unit manages the commission’s budget, allocating resources from the national budget or donors and tracking expenditures, assets, and other resources.
- *Procurement*: This unit coordinates the acquisition or rental of facilities, vehicles, and materials to support commission activities.

Territorial Offices and Mobile Teams

It is important for the commission to deploy staff and resources close to victimized populations. In many cases, patterns of violence occurred in isolated areas, far from large cities or populated regions. Victims and survivors living in areas that are difficult to access may need support in order to participate in the commission activities or give testimony.

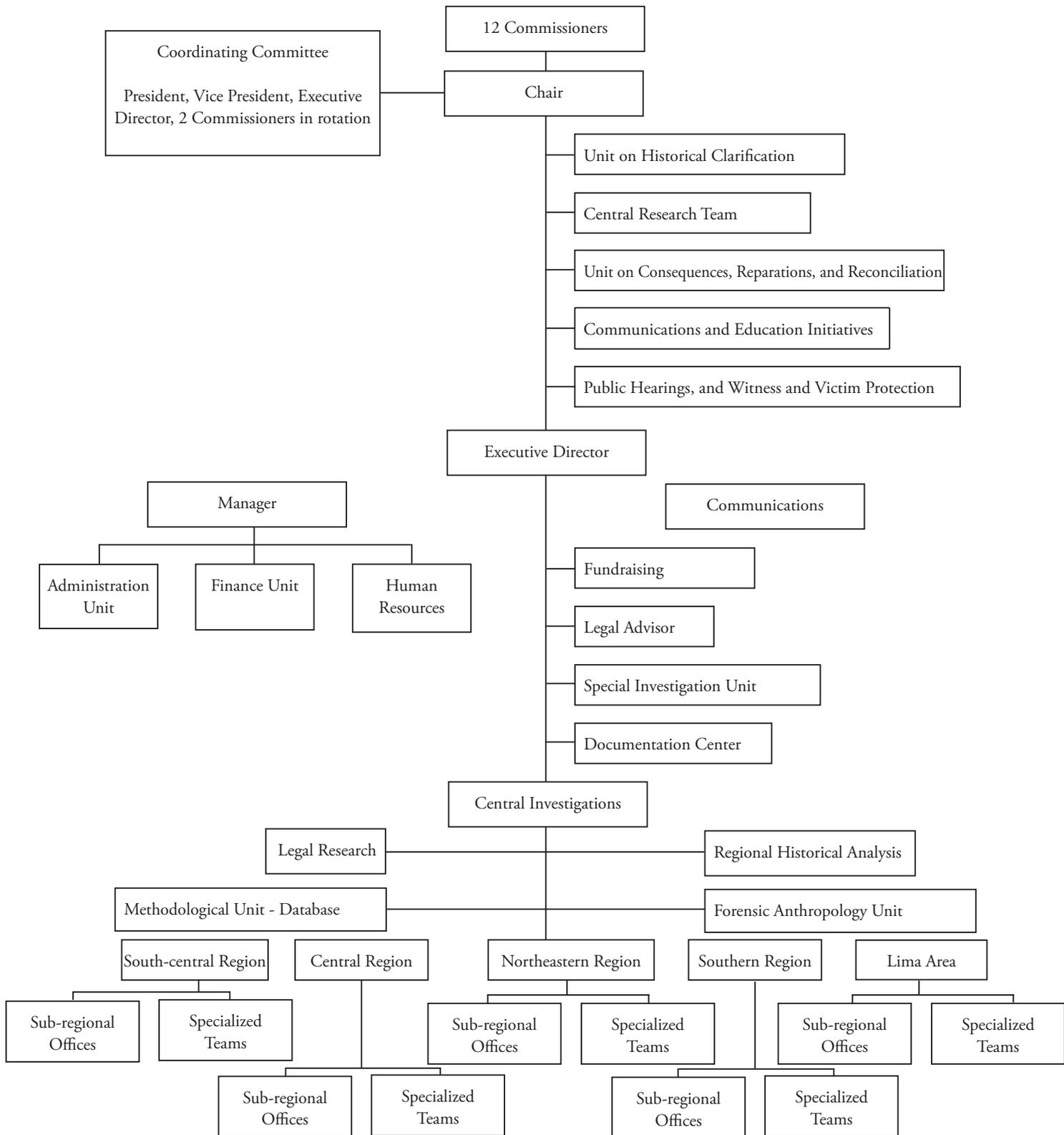
Most commissions have established territorial offices, in addition to headquarters, in order to reach the largest number of statement givers and allow staff to conduct research directly among affected populations. It is important that commissions assess both need and demand when identifying the most appropriate locations for territorial offices.

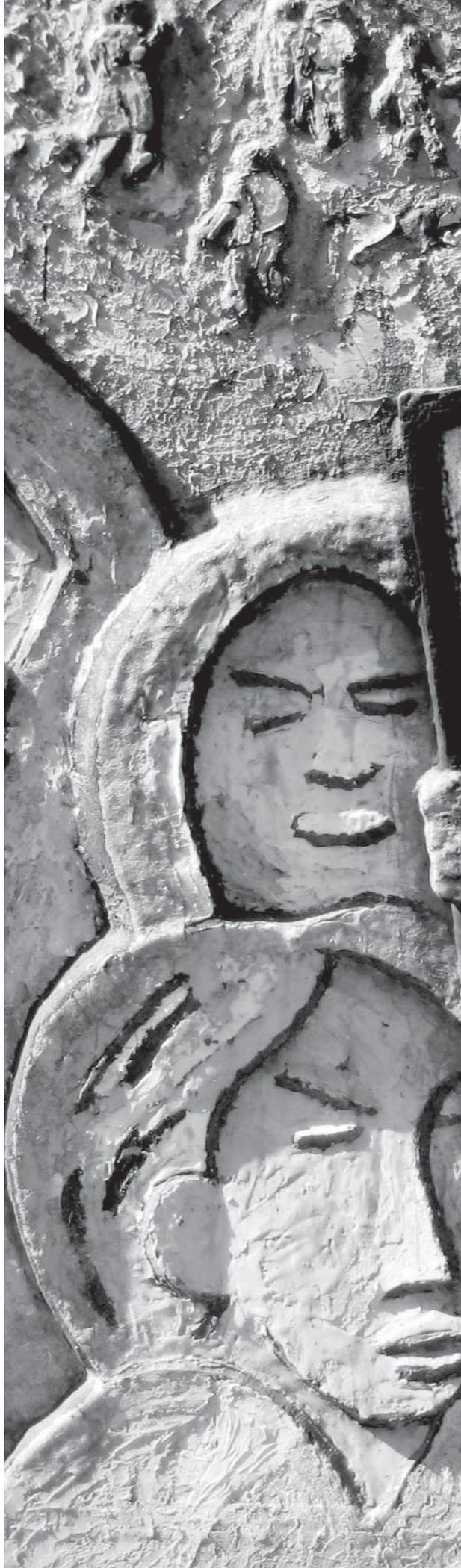
Each territorial office should have an Office Director (OD), that is accountable to the ED and commissioners. The local OD will manage the local research, communications, and administrative functions, ensuring that statement-taking teams can obtain information from local victims and survivors.

In addition to managing the territorial office’s access to victims, the OD should also organize staff to visit communities, as some victims may not be able to travel to an office. Mobile teams require significant resources, such as vehicles and communications equipment, as well as coordination with security forces in some situations. The OD has the primary responsibility of ensuring that mobile teams can conduct their activities effectively.

Table 1 (below) reflects the organizational structure of the Truth and Reconciliation Commission of Peru when it ended its preparatory phase and started operations.

Table 1: Organizational Structure of Peru’s Truth and Reconciliation Commission





Chapter 8

Outreach and Communications: Civil Society Partnerships

Every organization and individual at all levels of society in Timor-Leste should know about *Chega!* [The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste] and do what they can to see that its central message of non-violence, accountability and respect for human rights and the rule of law is realized in our society.

*Message from President Jose Ramos-Horta, *Chega!* Resource Kit:
Making the CAVR Report Work for Non-Violence and Human Rights, 2008*

To be successful, a truth commission must reach not only victims, witnesses, and others who will participate directly in its processes, but also the broader society in which it operates through outreach.⁴⁶ Public engagement is fundamental to a commission's achieving its goals, especially with regard to:

- Properly informing the public so that they can participate in the truth-seeking process
- Giving victimized populations a voice in the process
- Promoting inclusiveness and transparency as proper governmental practice
- Building a sense of ownership in the truth-seeking process

Outreach and Its Importance

Outreach consists of the materials and activities that a truth commission uses to build direct channels of communication with affected communities. Information should not simply flow one-way, from the commission to society; rather, truth commission outreach should be a vehicle for dialogue and partnership.

Because a commission has a responsibility to engage victims' groups and educate society at large, outreach forms part of the truth commission's main objectives. Outreach also affects the commission as an ongoing process, because communicating with the public is essential to ensuring the commission's sustainability in a political environment that is fluid and full of risks.

Outreach activities should be initiated as early as possible, in order to ensure public understanding of the commission's mission and reduce any misconceptions. The importance of outreach should be reflected in the founding documents and mandate of a truth commission as well as in its work plans (formulated during the preparatory phase).

Objectives of Outreach Programs

- *Dissemination of information:* Truth commissions should strive for transparency, which requires providing the public with access to all information necessary to understand the goals, structure, and working procedures of the institution, as well as timely updates on its progress. The commission should adopt a proactive approach to providing information to priority groups, especially witnesses and victims, so that they can participate in the process and cooperate with the institution. Outreach should make use of printed, online, and audiovisual media. Interaction with the community may be fostered through town hall-style meetings, internet resources, rural fairs, radio programs, and cultural activities, such as theater performances and public art contests. Training sessions, workshops, visits to commission facilities or museums, film screenings, and public hearings may also be effective. Other key elements of information dissemination include educational activities targeting youth and academia and consultative processes, such as public selection processes for commissioners, surveys, and workshops.
- *Establishing dialogue:* Beyond the initial dissemination of information, outreach should promote interaction with the population. Commissions must establish a two-way communication process through which the public can form appropriate expectations about the commission and the commission can understand the needs of the public and adjust its plans accordingly.
- *Consultation:* Consultation gives society and victims' groups, in particular, the opportunity to have a voice in the work of a truth commission, thus promoting a sense of ownership. Consultation mechanisms should focus on facts, such as the assessments of victim groups' circumstances, preferences, and expectations. In the case of

⁴⁶ For more information on outreach strategies, see ICTJ, "Truth Commissions and NGOs: The Essential Relationship" (2004); and Clara Ramírez-Barat, ICTJ, "Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice" (2011).

indigenous peoples, consultation is a legal obligation, as the free, prior, and informed consent of these populations is required for their participation in the process.⁴⁷

- *Participation*: The final element to successful outreach is the promotion of participation in the process. Allowing local governments, civil society, and victims groups to design and implement truth commission programs enriches the commission's work and creates capacity that will be useful in the long term.

Operational Aspects of Outreach

Ideally, the importance of outreach should be reflected in a truth commission's founding documents, and outreach programs should have a dedicated budget. In order to avoid sending contradictory messages, promote efficiency, and guarantee professionalism, outreach functions should be centralized in a specialized unit with its own dedicated staff. Although commissions understandably prefer to hire personnel with communications backgrounds, it is advisable to recruit staff with varied backgrounds in order to meet the range of needs in an outreach unit, including legal and educational expertise.

A strong field presence is fundamental to the good functioning of an outreach program. It helps to maintain a network that can distribute information over a wide geographic area and guarantee a continuous presence in order to build trust with local communities. Regional structures are essential to ensuring that a truth commission has a regular presence in the field, in particularly in rural areas. The Truth and Reconciliation Commission of Peru, for example, established offices from the outset in the regions most affected by the violence. To guarantee wider coverage, the coordinators of each office traveled within their regions to inform the population about the commission, organizing rural fairs and meetings in the villages with the help of personnel who spoke the local language. These local coordinators were instrumental to organizing the commission's public hearings.

Formulating an Outreach Strategy

Successful outreach programs require a strategic plan that includes the following components:

- *Analysis of the target population and the context*: Good analysis of the context includes basic data on demographics, cultural and social values, the legacy of the conflict, and the political climate. It is also crucial to have a clear picture of existing communications infrastructure, media outlets, and local informational preferences.
- *Clear and specific goals*: The commission should set specific outreach goals according to its general mandate, the mandate's internal priorities, the context and challenges that need be addressed, and the various phases in the life of the commission.
- *Clear messages*: The commission needs to carefully determine the messages and information it plans to communicate to the population at large and to specific groups. Strong discipline around those messages that avoids contradictions and confusion, is fundamental.
- *An activity plan*: On the basis of available resources, goals, and messaging priorities, the commission should set a plan to implement a number of outreach activities, including: establishing and maintaining an online presence, creating printed materials, organizing town hall-style meetings, conducting workshops with different stakeholders, holding public hearings, and organizing volunteers.

Outreach and Media Relations

Commissions must devote special attention to managing press and media relations. Given the complexities of truth commission work and the relative strength and capacity of national media, it cannot be taken for granted

⁴⁷ UN Declaration on the Rights of Indigenous Peoples, *supra* note 26.

that a truth commission's activities will attract adequate attention from the press or that the media will report on the justice process in an impartial and accurate way. Successful media relations involve providing the press with timely information, specific assistance, and well-organized materials.

Outreach and press officers should seek to actively engage with media organizations to promote basic journalistic standards through training and education. Additionally, outreach officials should design a clear communications strategy to prevent political propaganda from infiltrating press coverage, correct misinterpretations, and provide guidance on ethical reporting. An example of successful media coverage by a truth commission is in South Africa, where newspapers, radio, and television news covered national hearings. Hearings were broadcast live on national radio, and a Sunday evening show summarizing the hearings became the country's most-watched news program.

Issues that should be taken into consideration include:

- *Infrastructure support:* Communications officers must ensure that members of the press have everything they need to do their jobs. Journalists must have access to public proceedings and adequate facilities, including a media room for live broadcasts during hearings, with computers and internet access.
- *Media activities and materials:* A successful media approach should include all of the following: regular press releases, press conferences, meetings and briefings with journalists, facilitation of interviews, and the participation of senior officials in national and international TV and radio programs.
- *Training sessions and best practices:* Reporting on human rights and transitional justice issues requires expertise, accurate historical knowledge, and ethical awareness, especially given the sensitive nature of the subject matter. In order to promote high standards for reporting, outreach programs should organize training activities for national and international journalists and work to ensure that victims and other participants are treated with respect by the media.
- *Building relationships with the press:* Adopting a proactive approach to interacting with journalists is key to successful media relations. The aim of a press program is to create a coherent framework that facilitates consistent and broad media coverage, rather than coverage that only focuses on key moments. It is therefore necessary to provide journalists with a constant flow of useful material. It may also be appropriate to insist on transmitting certain messages about the transparency of the process, especially the role that victims play in the commission's work.

Contribution of Civil Society to Truth Seeking

Nongovernmental organizations have a number of valuable assets to share with commissions with respect to outreach, including access to information, research skills, and the ability to identify key cases and situations for examination. They also have connections with victims and broader civil society and the ability to mobilize public opinion and generate political pressure. Such assets may lead to the involvement of organizations in a variety of activities during the lifespan of a commission, potentially including engaging with the press, producing and disseminating media, working with victims, and gathering and disseminating information.

Civil society's role in outreach can be separated into three stages:

1. *Before the establishment of a truth commission:* Before a truth commission is established, civil society can play a vital role in mobilizing public opinion and public engagement with the truth-seeking process, developing or enhancing the commission's mandate and operational structure, and working to ensure that the commission has credibility and legitimacy in the eyes of the public and international society. Such engagement includes drafting or enhancing legislation, opening dialogue, and defining and assisting the overall truth commission process. Organizations can even play a critical role in cases where the decision to establish a truth commission

was undemocratic. For example, the Center for Democratic Development in Ghana transformed a political gesture into a national agenda by encouraging open and representative discussions about the truth commission.

Specifically, nongovernmental organizations may engage in the following activities in the lead-up to a truth commission:

- Drafting or contributing to legislation establishing a commission
- Lobbying to improve truth commission legislation (including mandate and commissioner-selection process)
- Convening national actors to discuss international best practices for truth commissions
- Training future commission staff (including executive managers)
- Providing or facilitating counseling services to prepare victims for truth commission hearings
- Educating the public, political actors, and media on transitional justice themes and mechanisms
- Developing consultative mechanisms for the commission
- Establishing patterns of collaboration with the truth commission

In Brazil, the Truth Commission is the direct result of civil society activities at the National Conference on Human Rights that required the creation of a state agency, which resulted in the Third National Plan for Human Rights.⁴⁸

2. *During a truth commission's mandate:* Civil society can continue their advocacy efforts in support of the truth commission and its investigations by providing it with information from various sources or even creating regional and unofficial efforts to establish the truth:

- Human rights documentation centers and their files
- Victims associations, including files collected by individuals
- Groups and individuals in exile and their files
- Prior truth commissions and committees of inquiry
- Court transcripts, proceedings, and records
- Intelligence agency records
- Records of professional bodies (legal, medical, media, and academic)
- Museums and national archives
- International organizations and foreign governments
- Material available under national and international freedom of information provisions

3. *After a truth commission is dissolved:* Civil society organizations can make a critical contribution to a truth commission's lasting impact by helping to ensure a commission's final report is publicly accessible, accurately transcribed or abridged, and available in a variety of formats and languages. To this end, civil society organizations may:

48 Third National Plan for Human Rights [Brazil], *supra* note 30.

- Translate the truth commission’s final report into major national languages
- Summarize key findings and recommendations
- Produce illustrated versions of key findings and recommendations
- Monitor the implementation of the commission’s recommendations
- Integrate the commission’s historical findings into school curricula
- Develop short videos or documentaries on the truth-seeking process



Chapter 9

Truth Commissions and Diversity

We women of Papua have been bruised, cornered, besieged from all directions. We are not safe at home, and even less so outside the home. The burden we bear to feed our children is too heavy. The history of the Papuan people is covered in blood, and women are no exception as victims of the violence of blind military actions. We have experienced rape and sexual abuse in detention, in the grasslands, while seeking refuge, no matter where we were when the army and police conducted operations in the name of security.

*Introduction, *Enough Is Enough!: Testimonies of Papuan Women Victims of Violence and Human Rights Violations, 1963–2009*, 2010*

A generic inquiry that does not account for the varying experiences of specific sectors of the population cannot appropriately recognize victims, fully understand the abuses and violations that occurred, or make effective policy recommendations to prevent their recurrence.⁴⁹ Truth commissions, as they have evolved, have gained more sensitivity toward the individual and varying experiences of human rights violations.

In particular, truth commissions have made significant progress in integrating a gender perspective, ensuring more sensitivity toward the needs of children, and being responsive to the rights of indigenous peoples. An inclusive approach to these often marginalized and vulnerable populations is an important factor in developing a richer understanding of the abuses under inquiry, gaining wider support for the commission, and creating better conditions for the implementation of the commission's recommendations.

Ensuring a Gender Perspective in Truth Commissions

Human rights abuses are inflicted differently on men and women. Gender roles inform social perceptions of violence, often excusing crimes like sexual abuse as regrettable but inevitable, and normalizing certain actions as intrinsic to gender. As a result, it has been common to ignore or condone sexual violence in conflict as a normal consequence or epiphenomenon of larger patterns of violence. Also, abuses such as the forced recruitment of children are seen as largely targeting boys, tacitly assuming that it is normal for males to be combatants and ignoring the experiences of girls.

Truth commissions must incorporate a gender perspective in order to fully understand human rights violations, make abuses against women visible, and better correct misconceptions about the links between masculinity and the exercise of violence. At the same time, truth commissions must ensure that women are seen not just as passive recipients of help, but as agents with specific experiences and distinct voices—key partners to ensuring that the work of the commission permeates society.

Truth commissions have only recently started to focus explicitly on gender violence. Sexual abuse was not included in many legal mandates, in spite of its pervasive presence in conflict and repression. Also, many early truth commissions paid little attention to the participation of women as commissioners and staff. Much has changed: new legislation on truth commissions, particularly in Africa, clearly includes all forms of sexual violence in commission mandates and requires gender parity in the nomination of commission members.

Making Gender Violence Visible

A gender perspective must be incorporated from the outset, when a truth commission's legal mandate is being negotiated or, failing that, when commissioners are making operational decisions about their mandate. Doing so may involve including gender-based violence, including sexual violence, in the mandate, but mandates should not be limited to gender-based violence.

The legal mandate or the commission's research plan, as appropriate, must address sexual violence as a multifaceted, complex criminal pattern that goes beyond rape. All forms of abuse of women and girls for sexual purposes and any infringement of female sexual and reproductive rights must be studied. Also, the commission should not focus on sexual violence to the exclusion of other types of violations committed against females. For example, the commission should address the experiences of women who—as a result of exile, forced displacement, or the killing of male relatives—became the sole breadwinners for their family. The commission should recognize that women very often suffer new abuses, marginalization, and stigmatization as a result of the death or disappearance of their male relatives. Women suffer because existing societal and structural inequalities exacerbate the impact of the initial violations. Effective truth-seeking must address all of these violations.

49 For more information on gender, child-friendly, and indigenous perspectives on truth commissions, see Vasuki Nesiah et al., ICTJ, "Truth Commissions and Gender: Principles, Policies, and Procedures. Gender Justice Series Working Paper" (2006); ICTJ & UNICEF, Innocenti Research Center, *Children and Truth Commissions* (2010); and Eduardo González et al., ICTJ, "Strengthening Indigenous Rights through Truth Commissions: A Practitioner's Resource" (2012).

In addition, a gender perspective can enrich the understanding of violence across the commission's work. Masculinity's particular association with the exercise of violence can illuminate patterns of abuse. Youths may sometimes agree to child recruitment, for instance, because war is seen as a manly enterprise. The capacity to commit acts of cruelty is often associated with masculinity, and cruelty toward prisoners and women can be seen as a demonstration of virility. Crimes like sexual violence against men are kept in silence because they are seen as a challenge to traditional notions of masculinity.

In practical terms, this means that a truth commission should work from the outset to build a gender perspective into all of its research. A gender perspective should be employed in the design and application of research instruments such as statements and hearings. And violations associated with gender must figure prominently in the final report.

Ensuring Female Participation

Consideration should be paid to gender in commission recruiting and appointments. Staff members should also have gender expertise. Ongoing training on gender issues is crucial to ensure that all members of the truth-seeking body are knowledgeable about and sensitive to gender.

The commission must be open to cooperation with women's groups in all its operations. Cooperation should feature at all stages of the commission's work, from defining and implementing the mandate to preparing and conducting training sessions to developing strategies to conducting outreach to female victims. Examples include advocacy to appoint commissioners with gender expertise; analysis of lessons learned by other institutions about incorporating and sharing gender perspectives; and providing suggestions about structuring statement-taking forms, the conduct of outreach to women, and other issues.

With regard to statement taking, steps that can be taken to ensure women's dignified and comfortable participation include conducting community outreach measures to ensure that women, particularly those in remote areas and those who are not literate, receive information about the truth commission and their opportunities for participation. Additionally, statement takers should receive interview training to sensitize them to the psychological trauma that women can experience when giving testimony. Female statement takers should be made available to speak to women and girls who may feel more comfortable speaking to other females.

A truth commission should consider strongly the possibility of holding thematic hearings on gender. Adult victims of sexual violence should have the option of keeping their testimony confidential. In some cases, victims of sexual abuse—male or female—may prefer to keep their testimony confidential to avoid social stigma; some victims may decide that their testimony is a powerful instrument of recognition and education.

Ensuring Compliance with the Rights of Children in Truth Commissions

Although children have an internationally recognized right to express their views on policy issues concerning them,⁵⁰ very few truth commissions have included a focus on children. Children have sometimes been excluded out of a desire to protect them from the potentially traumatic effects of a truth-seeking process. In other cases, children's issues are not addressed because victims who were children when abuses occurred are now adults.

However, it is critical to engage children in truth seeking and to recover childhood memories in order to highlight abuses suffered by children, encourage wide civil-society participation and education, and help prevent repetition. Truth commissions with an effective focus on children should consider including children in their mandate, ensuring protective procedures around child participants, and establishing productive partnerships with child protection agencies and child/youth-led organizations.

50 UN Convention on the Rights of the Child, General Assembly Resolution 44/25, November 20, 1989, U.N. Doc. A/44/49, entered into force Sept. 2 1990.

A Child-Sensitive Approach to Drafting the Legal Mandate

Most truth commissions have not explicitly focused on human rights violations targeting children. Exceptions are the commissions of Sierra Leone and Liberia, which operated around the same set of intimately connected conflicts. In both cases, the commissions and their supporting societies—put a high priority on addressing the prevalence of child soldiers. The Sierra Leonean commission was very active in reaching out to former child soldiers, and the Liberian commission was explicitly mandated to document the experiences of children.⁵¹

In general terms, the best way to incorporate a child-sensitive focus is to make explicit reference to abuses typically inflicted on children, such as forced recruitment and sexual abuse, in the commission's mandate. For other abuses, the mandate could require the commission to look into the experience of other crimes through the eyes of children, such as exile, forced displacement, and the torture and arbitrary imprisonment of parents and close relatives.

At the procedural level, a child-sensitive mandate involves ensuring that commission activities always consider the best interests of the child. This means, in particular, that research and outreach must be conducted with special care to prevent revictimizing children or exposing them to traumatic information that they are unable to process. However, taking care does not mean hiding information from children: a truth commission must recognize the changing, growing capacities of children to understand facts, make decisions, and participate in the truth-seeking process.

Even if a truth commission does not formally include child-sensitive issues, its commissioners should coordinate with child protection agencies, child-led organizations, and victim groups, to ensure that the experiences of children (or those who were children at the time of abuse) are understood.

How to Protect Children during Truth Commission Operations

Truth commissions should ideally ensure that commissioners and staff have expertise on children's rights. As it is now common for truth commissions to establish mental health units and other similar facilities to address victims' needs, it is critical to ensure that the staff of such units knows how to interact with children and have the necessary resources to work with them. Commissions may follow the good example of institutions that have opted to divide areas of attention among commissioners, ensuring that at least one commissioner has a permanent responsibility to engage children.

Statement taking should be open to children under strict guarantees of confidentiality and protection of the child's identity. Statement takers should preferably have experience giving psychosocial support or doing social work and experience with children who have survived abuse. The child's wishes should provide guidance on the presence of his or her parents or guardians during interviews. A truth commission that decides to interview children should ensure mental health follow-up is available to these witnesses.

In principle, a truth commission should organize "in camera," or private, hearings to receive the testimony of children. However, if a truth commission organizes public hearings to acknowledge the experiences of children, it should take effective measures to protect their identity, so that testimony can be heard without the risk of the participants being recognized. In any situation involving public testimony, children and their legal guardians must be able to provide their consent freely after being appropriately informed about the event.

Establishing Partnerships to Ensure Strong Child Participation

Obtaining children's testimony, documenting abuse against children, and producing information that can be understood by children are not easy tasks for a truth commission. Any child-sensitive commission must make

⁵¹ Truth And Reconciliation Commission of Liberia Mandate, National Transitional Legislative Assembly, May 12, 2005, <http://trcofliberia.org/about/trc-mandate>

arrangements with child protection agencies and child-led groups to facilitate their participation. One of the best examples in this regard is the Liberian truth commission, which, in coordination with UNICEF and local protection agencies, was able to obtain hundreds of statements from children.⁵²

The education sector can also be a valuable ally. Public and private schools and their teachers can be strong partners for the commission and help to disseminate information about the truth-seeking process and encourage children to study the issue and participate as appropriate.

Since children often are victimized indirectly, through the experiences suffered by their parents or guardians, it is important to establish direct linkages with children's organizations to establish spaces for dialogue and support children feel free to speak out and share experiences. In Canada, the Truth and Reconciliation Commission is investigating abuses against institutionalized children that took place many decades ago, with the result that the victims are now adults. However, the commission is actively reaching out to victims' children and grandchildren, giving them a chance to establish volunteer groups to discuss their history and disseminate information to the population at large.

Ensuring Compliance with the Rights of Indigenous Peoples in Truth Commissions

Truth commissions in Guatemala, Peru, Paraguay, and elsewhere have addressed cases of violence against indigenous peoples. New commissions in Canada, Cote d'Ivoire, and Nepal are investigating or will soon look into contexts where indigenous peoples were targeted by gross human rights violations. This trend runs parallel to the growing international acceptance of the rights of indigenous peoples reflected in the 2007 UN Declaration on the Rights of Indigenous Peoples.⁵³

Truth commissions have typically been established as instruments to reaffirm the goals of unity and reconciliation within a nation-state. However, this model may not work in cases where indigenous peoples see themselves as separate nations within a unitary country.

Also, commissions usually focus on recent instances of violence, more specifically, cases that can be remembered by individual witnesses and survivors and transformed into written text for the benefit of policy makers. Indigenous peoples who remember long-term, historical violence affecting a communal way of life, often transmitted through oral tradition, may find the standard truth commission model insufficient.

Truth commissions should be receptive to the perspective of multinational and multicultural countries where indigenous peoples have their own identities. Commissions should strive to undertake their research in ways that recognize communal experiences and long-term, historical abuses. And they should work to support indigenous peoples' strong oral history traditions.

At an operational level, truth commissions should involve indigenous peoples at all stages of their work. This includes carrying out constant consultations to obtain their "free, prior, and informed consent,"⁵⁴ respecting the representative institutions of indigenous peoples, and paying attention to the specific needs of indigenous witnesses.

Incorporating the Point of View of Indigenous Peoples

A truth commission built on the recognition of the rights of indigenous peoples should recognize the equal nationhood of indigenous peoples; ensure their free, prior, and informed consent at each step of the process; and acknowledge the value of indigenous customary legal practices on equal terms with mainstream law.

52 Final Report of the Truth and Reconciliation Commission of Liberia. See vol. 3, title 2.

53 UN Declaration on the Rights of Indigenous Peoples, *supra* note 26.

54 *Id.*

Also, in addition to violations against individuals, a truth commission should be able to inquire about violations targeting groups, such as persecution, forced displacement, and genocide. A truth commission that appropriately understands the viewpoint of indigenous peoples should investigate serious violations of economic, social, and cultural rights: indigenous peoples cannot exist if a government violates their right to land and territory or their practice of language, rituals, and religious beliefs.

This expansive focus when dealing with indigenous peoples means that commissions should be able to recognize injustices affecting indigenous communities, even if they took place in the remote past and even if commission inquiries question the historical narratives of the non-indigenous population.

Finally, a truth commission that responds to indigenous perspectives and is compliant with the rights of indigenous peoples should recognize in all its proceedings the importance of indigenous oral tradition as a source of law, a basis for truth claims, and an instrument of communal consolidation. The performance of ceremonies to witness or commemorate an event is a fundamental element of indigenous storytelling, issuing validity and dignity to what is told. Truth commissions should be prepared to understand and incorporate these characteristics.

Ensuring Consultation and Specific Attention to Indigenous Peoples

Broad and ongoing consultation with constituent groups is crucial to the success of a truth commission. This operational principle already enjoys ample consensus among transitional justice practitioners, but it is especially critical regarding indigenous peoples. In this case, according to international law, governments have the duty to consult in good faith in order to obtain the “free, prior, and informed consent” of indigenous peoples for any legislative or administrative measure affecting them.⁵⁵

The principle of free, prior and informed consent is linked to the question of how to interact with indigenous representation. Indigenous communities, like any political community, have multiple leaderships representing different voices within a society. Coordinating with a plurality of leaderships is a challenge for truth commissions, and even in the most successful cases it is unlikely everyone who ought to be heard will have a say.

A critical challenge is to recognize that, in some cases, the voices of indigenous women and children may not be heard through traditional channels. The UN Declaration of the Rights of Indigenous Peoples, however, explicitly recognizes the rights of indigenous women and the need for specific attention to the needs of indigenous children.⁵⁶ Any process of genuine dialogue must seek, in consultation with indigenous peoples, that all voices be heard.

Appropriately receiving indigenous witnesses entails critical attention to language. Some concepts that are critical in the legal framework of the inquiry will not translate well into indigenous languages, and similarly, some ways of expressing violent events in indigenous languages will be ill-understood by non-indigenous researchers. As such, truth commissions should enlist indigenous staff and pay special consideration to indigenous languages.

⁵⁵ *Id.*

⁵⁶ *Id.* Art. 21(2).



Chapter 10

The Final Report and Afterlife of a Truth Commission

The Final Report speaks of shame and dishonor, but its pages also record acts of courage, selfless gestures and signs of dignity that show us that human beings are essentially magnanimous. The report tells of people who did not renounce the authority and responsibility conferred upon them by their neighbors; who stood up to abandonment to defend their families, transforming their work tools as a weapons; who were unjustly imprisoned; who assumed their responsibility to defend the nation without violating the law; who refused to be uprooted and defended life. They are to be found in the core of our memory.

Preface, Final Report, Truth and Reconciliation Commission of Peru, 2003

Contents of a Final Report

The work of a truth commission culminates in the publication of a final report, the official written record of the commission's work and findings. It should be an important reference tool for scholars, policy makers, and historians for years to come.

The majority of the report will consist of the commission's findings, that is, conclusions and descriptions of historical events. Another significant section of the commission will be devoted to its policy recommendations.

Additionally, the final report should include:

- The commission's mandate, terms of reference, authorizing charters, procedural rules and any other relevant laws
- Background information on the commission members and an explanation of how they were chosen
- A description of the role of the government or other public or private institutions in the establishment and operations of the commission
- A clear explanation of the methodology used during testimony and investigations
- A list of the documents and evidence that gave rise to conclusions, relevant laws, and analysis of the failings within the institutional and social structures that led to events. If resources allow, transcripts of testimonies can be included in an appendix, in a separate published report, or on the internet
- A list of victims or perpetrators, except when identities have been withheld for safety, procedural or other reasons

Structure of a Final Report

The structure of the final report will vary depending on the circumstances of the conflict being addressed and the mandate of the commission. But it is important that the basic components are included in a clearly organized and comprehensive manner. The final report of the Sierra Leone truth commission dedicated the entire first volume to explaining its mandate, creation and management of the commission, and its methodology.⁵⁷ There may be additional information that would be valuable for explaining the content or framework of a final report that should be included in the report. Chile's 1990 commission included the full text of its authorizing decree in the opening section of its final report.⁵⁸

The largest section is typically the findings. An explanation of the historical context in which events took place can be organized in different ways: chronologically, as if relaying a story; by type of human rights violation; or by geographic region where events occurred:

- In Argentina, the National Commission on the Disappeared organized its report both geographically, addressing violations committed in different detention sites, and thematically to show patterns of criminal behavior.⁵⁹
- The Historical Clarification Commission of Guatemala offered a historical and analytical perspective,⁶⁰ identifying the underlying structural causes of the conflict, the evolving nature of violence over time, institutional responsibilities, and the social and institutional consequences. In addition, it integrated a number of "exemplary cases" with explanations to assist the reader in understanding the experience of victims and the methods of the perpetrators.

⁵⁷ *Witness to Truth: Final Report of the Sierra Leone Truth and Reconciliation Commission*, 2004. See vol. 1.

⁵⁸ The National Commission for Truth and Reconciliation Report, "Rettig Report" [Chile], February 1991.

⁵⁹ *Never Again: Report of the Argentine National Commission on the Disappeared*, *supra* note 37.

⁶⁰ REMHI Report, *supra* note 24.

- The Peruvian Truth and Reconciliation Commission structured chapters around a series of questions:⁶¹ “What happened? Why did it happen? What were the consequences of what happened? What must we do to address those consequences and avoid this to happen again?”

Recommendations usually appear in a separate section following findings, although some commissions, like Chile’s report,⁶² have chosen to break up the recommendations by category into sections that include related historical and contextual information. Many reports are accompanied by extensive appendices, which may include the full text of authorizing legislation, lists of victims, historical timelines, or selected testimony. These appendixes can be published after the primary volumes, but every effort should be made to release the information in a timely fashion.

Writing and Compiling the Final Report

Writing a final report is a complex process that requires coordinating research, bringing together multiple disciplines, and building consensus among the commissioners. Successful report-writing requires:

- A deadline for data-gathering activities to ensure that analysis is not altered by an influx of new information
- Consistency in research, based on clear procedures, guidelines, and objectives communicated before data is gathered
- Clear and uniform editing standards and firm drafting deadlines, particularly for commissions with international staff and several working languages. Deadlines should provide adequate time to ensure thorough investigations, analysis, drafting, editing, reviewing, and formatting

Because the final report will likely have many authors, it is important that writing style and standards are set from the start to ensure consistency and readability. Editors need to watch carefully for contradictions or inconsistencies from one section to the next.

Releasing the Final Report

A commission should publish its final report in both print and online. The report should also be simultaneously presented to the head of state and any other institutions involved in authorizing the commission, such as legislative and judicial bodies, and, if appropriate, the United Nations and other international organizations.

Although the final report is produced by an independent commission, the government should treat the document as a government report that will become part of its official record. The final report can be published in the government gazette or congressional record and evaluated in a special sitting of parliament or the national assembly (ideally within six months of publication) to debate the government’s response and consider any further action it may wish to take.

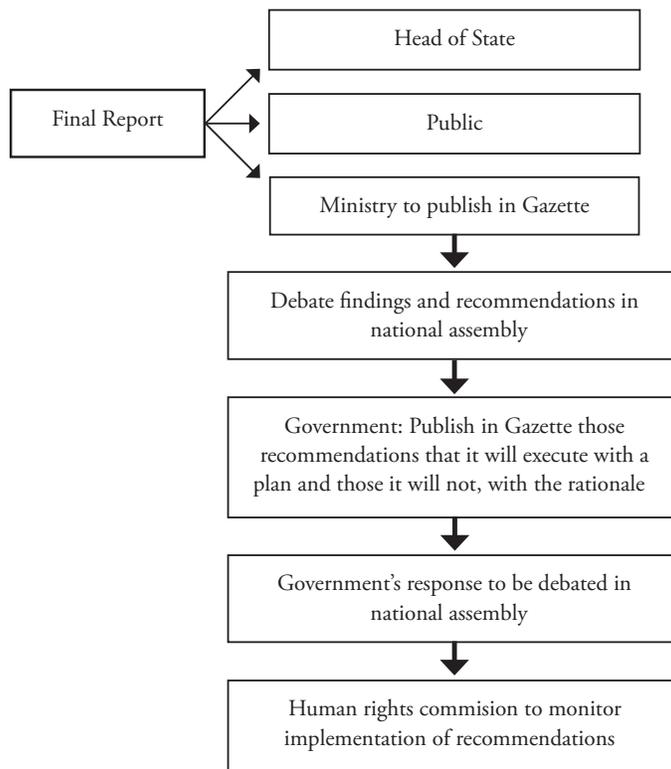
It is important that the commission’s legal mandate provide it with the authority and resources necessary to release the report in a dignified, official setting. If the commission is not authorized to release the report directly to the public, in certain political circumstances, its impact may be affected. At first, the government of Timor-Leste declined to make public the final report of the Timor-Leste Commission on Reception, Truth and Reconciliation, not even sharing it with parliament.⁶³ This created enormous frustration among victims and the general public. The report was later published, only after serious riots by former combatants demonstrated the persistence of factors of violence in the country.

The presentation of a final report can be a highly emotional and historic occasion. In Guatemala the report was presented to government and civil society leaders in the National Theater. It was the first time in the history of Guatemala that an official body recognized that genocidal acts had been committed against indigenous peoples.

61 Final Report of the Peruvian Truth and Reconciliation Commission, *supra* note 38.

62 The National Commission for Truth and Reconciliation Report [Chile], *supra* note 58.

63 Commission for Reception, Truth and Reconciliation in East Timor, *Chega! Final report of the Commission for Reception, Truth and Reconciliation in East Timor*, 2005.

Table 2: Presenting a Final Report

Ensuring Messages Reach the Widest Possible Audience

Due to the variety of audiences—policy makers, legislators, educators, researchers, victims, and others—consideration must be given to the different media and venues that could be utilized to maximize the report’s impact. As far as the commissions resources will allow (or in cooperation with major media outlets), the complete final report and shorter versions should be provided to the public for free.

In the months following publication, findings can be presented on television and radio programs, and commissioners should make themselves available for interviews and other press events. The report should be free for access and reproduction. In South Africa, the report’s publication was entrusted to a private academic publisher, operating under market conditions, which resulted in limited and expensive editions of the printed version.

For communities that do not have access to the internet or media outlets, books can be made available to schools and religious meeting places; or in small villages without any public buildings, a general store or other central gathering place. Audio versions could be broadcast through community radio stations.

The report should be translated and available in all commonly spoken languages, including indigenous languages, as well as the official state languages. A simplified, “children’s edition” should be written and made available in schools along with suggested lesson plans to assist teachers in presenting difficult material to children. Other communication materials can greatly increase a commission’s reach and impact, including:

- Videos and audio recordings
- Slide shows and photography collections
- Museum exhibits
- Graphic novels
- Online content
- Music and theatre performances

Commissions should consider other creative ways to effectively and memorably present the material. Peru's Truth and Reconciliation Commission created a photography exhibit in the National Museum and published a volume of photographs to coincide with the release of their final report.⁶⁴ In Timor-Leste, the Commission for Reception, Truth, and Reconciliation created a radio program as well as both illustrated and video versions of the report, and continues to maintain a public museum and library.⁶⁵ The Sierra Leonean commission developed a child-friendly version of its report for use in schools.⁶⁶

These publications and exhibits can be prepared after the formal presentation of a report, but should be available within six months, while the commission is still promoting its findings.

Acceptance of the Findings and Implementation of Recommendations

While the commission must be independent of the government, it is important that it maintains a positive relationship with the government in order to ensure it will engage actively with the report, receive it in a public event, and respond diligently.

It is usual for the executive branch of a government to receive the final report and begin the process of implementing its recommendations, although all branches of government should be involved in ensuring implementation is carried out.

The government receiving the report has an obligation to ensure that any person whose rights are violated is provided with a remedy, and it should carefully consider the options presented by the commission. While a commission's recommendations are not legally binding, the government should explain its reasons for not following certain recommendations.

Civil society should have the opportunity to express its position on major recommendations proposed by the commission and to campaign or advocate for the government to give closer attention to certain issues.

Monitoring implementation

A government's progress towards implementing recommendations should be monitored and reported on. The following bodies can fulfill this role:

- The highest human rights authority, such as an ombudsperson, ministry or commission
- A successor organization to the truth commission, established by law
- Civil society organizations

Civil society organizations, such as academic institutions and non-profit and legal organizations, are likely to have a permanent or long term presence, following the commission and be familiar with the social, legal, or economic problems of their society. An interesting example is Sierra Leone's civil society network on the truth commission, which created a system to monitor the government's responsiveness to the truth commission's recommendations. The network corresponded directly with government agencies to receive progress reports.

Whatever status monitors may have, they should be rigorous in monitoring the performance of government agencies in the implementation of recommendations. Reports summarizing progress should be published at regular

64 Final Report of the Peruvian Truth and Reconciliation Commission, *supra* note 38.

65 Timor-Leste Commission for Reception, Truth and Reconciliation, *Dalan ba Dame* (Road to Peace) Video, 2005.

66 Sierra Leone Truth and Reconciliation Commission, Truth and Reconciliation Commission Report for the Children of Sierra Leone (Child friendly version), 2004.

intervals and include discussions of what the government has failed to accomplish and any suggestions for implementing recommendations.

Dissolving a Truth Commission

The publication of the final report usually marks the formal conclusion of operations, although it is advisable for a commission's mandate to allow it to continue working for another three to six months, to ensure basic outreach and dissemination are completed and the commission's assets and archives are handed over to any successor institution.

During this period, the commission will likely need to address:

- *Disposal of assets, such as offices, vehicles, and equipment, in accordance with law.* Any materials on loan from public institutions will be returned. Any additional or surplus materials acquired with external funds could be donated, if the mandate allows for it.
- *Hand over of commission's accounting books, disposal of any remaining public funds, and closure of bank accounts, in accordance with law.* Publication of a comprehensive final accounting report for public scrutiny.
- *Organization and classification of the commission's archives.* The commission will generate massive amounts of documentation, including sensitive materials, such as a database of testimonies, early report drafts, and communications. Applicable legislation varies from country to country, but the commission should organize its archive, ensure its preservation, and produce a system of access that complies with relevant laws on privacy, management of evidence, protection of victims, and freedom of information.
- *Finalization of contracts.* Depending on the legal status of the staff members (full-time employees, consultants, government contractors, sub-contractors), the commission administration will need to ensure that all labor obligations have been complied with and that any pending issue, like labor disputes, are delegated to the appropriate authorities on dissolution of the commission.
- *Hand over of protection cases to the relevant authorities.* If the commission obtained protection and other services, such as legal, health, or economic assistance, for victims or witnesses, it will have to ensure that such programs are adequately continued if appropriate.

Tasks for a Successor Institution

The end of the commission should not mean the end of all outreach activities. Responsibility for the continuing dissemination and maintenance of the commission's materials should be set out in the authorizing mandate, usually taking the form of a successor institution. This may be a new office on the site of the original commission or an existing institution capable of fulfilling this role, such as a historical archive or academic institute. In the latter case, it is important to ensure that it is an independent body, like a human rights ombudsman, with the ability to successfully engage with civil society and state institutions.

The scope and nature of the any follow-up activities should be defined by the commission and agreed on by the successor organization. Some of the tasks entrusted may include:

- Providing all interested parties with a copy of the report. The successor institution should ensure that all relevant state authorities receive copies of the final report, its executive summary, and any necessary annexes as well as responding to any additional inquiries on specific areas of the report
- Ensuring that media receive the report and any supporting materials as well as responding to specific questions on all aspects of the report

- Ensuring that victims and their representative organizations receive copies of the report and, when possible and appropriate, recognition for their participation in the work of the commission
- Ensuring that national and international civil society, including donors, humanitarian agencies, and governmental human rights bodies, receive copies of the report

While the work of the successor organization will vary, depending on the circumstances and resources available, it should ensure that the archives remain accessible to the public and that the final report and other materials are kept available, either in print or electronic form. Proper consideration should be given to protecting the identities of witnesses who may be endangered by their testimony or for the protection of files used by prosecutorial authorities.

If resources allow, it could also involve the maintenance of memorial spaces or educational programs. A good example is Timor-Leste, where the president authorized the creation of a Post-CAVR Technical Secretariat, which operates under the executive branch of government.⁶⁷ The secretariat has four primary responsibilities: 1) to complete the CAVR's technical tasks, such as finishing financial audits and publishing additional copies of the final report; 2) disseminating the final report and other published materials to the public; 3) managing the Comarca Balide heritage site, a former prison now converted to a public space, and 4) maintaining the commission's archives.

Setting the Groundwork for Exhumations, Commemoration, and Public Access to Witness Statements

While a commission's findings have no legally binding power on their own, the final report is likely to be the most comprehensive and authoritative record of the events yet created. As such, it will be the starting point for future civil actions. The information within the communications and publications will also be highly influential: the way that events are portrayed—and which events are included—will affect what legal remedies lawmakers make available to victims and which victim's groups will be included in reparations and other recovery programs.

Some countries may establish a formal mechanism for victims to receive reparations, usually through an administrative court or agency. Providing reparation is a way for a government to officially recognize that a victim has suffered a human rights violation and is entitled to a financial remedy as compensation. Victims may need to prove that they are a member of a group entitled to reparations or produce some kind of evidence indicating that they suffered harm. A country may also allow for victims to bring civil suits for monetary damages against individual or institutional perpetrators.

Comprehensive reparations encompass measures of satisfaction for the victims, such as the issuing of formal apologies by the highest national authorities, creating a day of commemoration, consecrating a public space, or creating sites of conscience. Any activities must be undertaken with dignity, sincerity and solemnity. In Canada and Australia, the governments have offered solemn apologies for abuses committed in the past to indigenous populations in special sessions of parliament.⁶⁸

All information obtained by the commission on sites of illegal burial should be handed over to the appropriate authorities to ensure the exhumation and identification of the deceased and to ensure that families and communities can mourn in accordance with their customs and rituals.

It is important to be mindful that while the lifespan of a commission is brief, the issues raised and the information dispersed throughout the country will be the foundation of further discussions, inquiries, court cases, and the long and slow process of national healing for years to come.

67 Commission for Reception, Truth and Reconciliation in East Timor Website, Homepage, www.cavr-timorleste.org/. Last visited on March 13, 2013.

68 Prime Minister of Canada Website, "Prime Minister Harper offers full apology on behalf of Canadians for the Indian Residential Schools system," June 11, 2008, www.pm.gc.ca/eng/media.asp?id=2149. *Apology to Australia's Indigenous Peoples*, Prime Minister Kevin Rudd, MP, Australia, February 13, 2008.

Additional Resources

Freeman, Mark, *Truth Commissions and Procedural Fairness*. New York: Cambridge University Press, 2006.

González, Eduardo, “Where Are Truth Commissions Headed?” in *Transitional Justice: Handbook for Latin America*. Reátegui, Félix (ed.). Brasília: Brazilian Amnesty Commission, Ministry of Justice; New York: International Center for Transitional Justice, 2011.

González, Eduardo et al., ICTJ, “Strengthening Indigenous Rights through Truth Commissions: A Practitioner’s Resource,” 2012.

Hayner, Priscilla B. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. 2nd Ed. New York: Routledge, 2010.

ICTJ & UNICEF, Innocenti Research Center, *Children and Truth Commissions*, 2010.

ICTJ, “Essential Best Practices for Truth Commissions,” ICTJ Africa Program Briefing Paper, 2009.

———. “Truth Commissions and NGOs: The Essential Relationship,” 2004.

———. “Truth Commissions,” Fact Sheet Series, 2008.

———. “Truth Commissions II,” Fact Sheet Series, 2008.

———. “Selecting Commissioners for Nepal’s Truth and Reconciliation Commission,” ICTJ Nepal Briefing Paper, 2011.

James-Allen, Paul et al., ICTJ, “Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia,” 2010.

Nesiah, Vasuki et al., ICTJ, “Truth Commissions and Gender: Principles, Policies, and Procedures,” Gender Justice Series Working Paper, 2006.

Ramírez-Barat, Clara, ICTJ, “Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice,” 2011.

Teitel, Ruti G. “Human Rights in Transition: Transitional Justice Genealogy,” *Harvard Human Rights Journal* 16(69) (2003): 69–94.



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