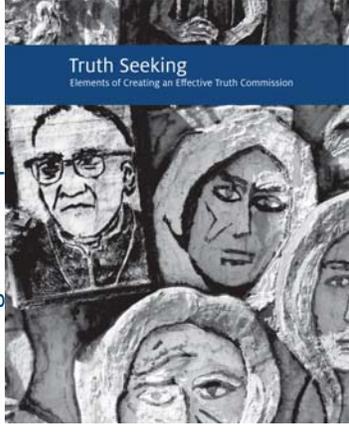


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Chapter 2

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 inves-

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

tigative powers typical of parliamentary inquiries. Depending on the context of a transition, the executive 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

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 *Recuperación de la Memoria Histórica. Guatemala: Nunca Más [Informe de la Recuperación de la Memoria Histórica]*, 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.

social and historical context of violations and large-scale patterns behind massive numbers of cases. Their analysis 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.



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Eduardo González and Howard Varney, eds., *Truth Seeking: Elements of Creating an Effective Truth Commission*. (Brasília: Amnesty Commission of the Ministry of Justice of Brazil; New York: International Center for Transitional Justice) 2013.

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This publication is also available in Arabic, French, Portuguese, and Spanish.