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TRUTH COMMISSIONS AND NGOs: THE ESSENTIAL RELATIONSHIP

The “Fрати Guidelines” for
NGOs Engaging With
Truth Commissions

*the International Center
for Transitional Justice*

April 2004

INTRODUCTION

About the ICTJ

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in other countries where historical injustices or systemic abuse remain unresolved. It provides comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organizations, governments, and others. The ICTJ assists in the development of strategies for transitional justice comprising five key elements: prosecuting perpetrators, documenting violations through nonjudicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and advancing reconciliation. The Center is committed to building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organizations and experts around the world to do so.

About CDD-Ghana

The Ghana Center for Democratic Development (CDD-Ghana) is a research think tank based in Accra, Ghana. It is dedicated to the promotion of society and government based on the rule of law, appropriate checks on the power of the state, and integrity in public administration. CDD works extensively in the transitional justice field and supports transitional justice and national reconciliation processes in Ghana. CDD is also spearheading the creation of a network of NGOs supporting transitional and reconciliation processes in West Africa. CDD intends to lead the field of transitional justice processes to provide the forum and opportunities for subregional exchange of ideas and lessons and also promote capacity building of transitional justice organizations in the subregion.

The Transitional Justice Alliance

One of the ICTJ's goals, through its Alliance and Capacity Development Program, is to help build, create, catalyze, and support a global network of NGOs, institutions, and individuals involved in transitional justice to promote cross-regional exchange and strengthen transitional justice organizations. The Center coordinates the Transitional Justice Alliance, a global network of working groups, organizations, and individuals working on transitional justice, including the Managing Truth Commissions (MTC) working group, which consists of executive managers (including current or former executive secretaries, unit directors, etc.) from past and current truth commissions. MTC discussions repeatedly emphasized the well-known fact that NGOs are critical actors in any truth commission process. As a result, the ICTJ convened a conference designed as a complement to MTC discussions with participants primarily drawn from the NGO sector. These participants have engaged with truth commission processes in countries including Ghana, Kenya, Paraguay, Peru, Sierra Leone, South Africa, and Timor-Leste. Their experiences, insights, and suggestions (as discussed in Bellagio, Italy, in November 2003) form the basis of this paper.

Authorship

Kirsten McConnachie was the primary author of this paper, although all the participants at the Bellagio conference made contributions. Kirsten listened to and engaged with all the presentations and discussions at the conference, took copious notes, asked tough questions of the participants, and ultimately transformed her notes into this paper. The conference additionally included special sessions dedicated to working on sections of the paper. In one, Louis Bickford, Kirsten McConnachie, Franklin Oduro, Samuel Opoku-Agyakwa, and George Sarpong hammered out the first substantive draft, and then led a discussion with other participants. Louis Bickford and Franklin Oduro made additional written contributions, as did

participants mentioned in the body of the paper, and Priscilla Hayner made very useful comments on earlier drafts. Sarah Rutledge and Louis Bickford edited the overall document.

Acknowledgements

Support for this paper came from the Canadian International Development Agency (CIDA) for assisting with travel costs as part of the ICTJ's global Transitional Justice Alliance project, and from the Rockefeller Foundation for the use of the Bellagio Study and Conference Center. During 2003–2004, the ICTJ, in partnership with the Rockefeller Foundation's Bellagio Committee, convened a series of three conferences at the Frati Center on the theme, "Global Dialogues on Transitional Justice." This paper is partially the result of the second conference of this series, "Truth Commissions and NGOs: The Essential Relationship," held at the Bellagio Study and Conference Center, Italy, November 5–10, 2003. The ICTJ and CDD would also like to thank Elsa España for arranging participants' travel, and Lydiah Bosire and Kelli Muddell for additional organization. We also appreciate the support and helpful discussions with Surita Sandosham and Dayna Cunningham throughout the Global Dialogue Series. Gianna Celli and Laura Podio in Bellagio were essential to the success of the meeting, as was the staff of Rockefeller's Bellagio Program.

"The relationship between truth commissions and civil society can determine the success or failure of the process. This publication not only seeks to examine this relationship, but it also looks to strengthen the capacity of NGOs to work productively with commissions and to play a key role in the follow-up of the commission's recommendations."

—Javier Ciurlizza, Executive Secretary, Peru Truth and Reconciliation Commission

PREFACE

Truth commissions are officially sanctioned, temporary investigative bodies established in an effort to clarify and address an earlier period of repression, conflict, atrocity, or systematic human rights abuse. They are nonjudicial bodies that exist for a predetermined period of time, at the end of which they generally produce a report of their findings with conclusions and recommendations for future reform. Truth commissions have gone by a variety of names, including the National Commission on the Disappearance of Persons (Argentina), National Commission on Truth and Reconciliation (Chile), National Reconciliation Commission (Ghana), Commission for Historical Clarification (Guatemala), Commission for Reception, Truth and Reconciliation (Timor-Leste), and Truth and Reconciliation Commission (Peru, Sierra Leone, South Africa).¹

Today, truth commissions seem to be proliferating. Peace agreements increasingly include proposals for truth commissions to help process the trauma of past conflict. Elections that appear to precipitate major changes (even if not technically “regime change” in the classic sense) often lead new governments and civil society organizations to propose truth commissions in the hope that a commission will identify and illuminate patterns of abuse, create new forms of reconciliation, give voice to victims, and/or make strong recommendations for institutional reforms and improvements under a new government—often one that proclaims itself to be democratic and transparent. Even in countries where there is no apparent commitment to democratic change (such as Burma), activists and political opposition parties have stated their desire for a truth commission. At the time of this writing, truth commissions have been discussed in the Democratic Republic of the Congo, Indonesia, Kenya, Liberia, Morocco, and Paraguay, and probably in many more countries.

Despite their current popularity, truth commissions are best understood as one of many complementary strategies for addressing legacies of abuse and violence. These include prosecuting perpetrators in criminal proceedings; establishing reparations programs (including compensation) for victims and survivors; engaging in projects to honor the memory of victims or establish social dialogue about the past; and embarking on wide-scale reform of institutions most responsible for past abuse (often including the police, army, or security forces).

Every truth commission is different and all have reflected, to one degree or another, their national context. There is no “science” of truth commissions, and indeed there should not be. National actors—victim associations, democratic leaders, NGOs, individual victims, religious institutions, and a host of others—should debate and ultimately decide *whether* to create a truth commission and, if they choose to do so, *what* it should look like.

That being said, the development of truth commissions, especially over the past two decades, has yielded interesting comparative lessons. Although there are numerous ways to imagine a truth commission, these lessons can help those who advocate or engage with new truth commissions to identify “best practices” and possibly learn from the mistakes and successes of those who have chosen a similar or analogous approach to confronting past human rights abuses.

¹ The literature on truth commissions is sizable. For an overview, see Priscilla Hayner, *Unspeakable Truths*, New York: Routledge, 2001. See also Neil J. Kritz (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Vols. I–III, Washington, D.C.: US Institute of Peace Press, 1995. One of the best and most rigorous analyses of a truth commission is Deborah Posel and Graeme Simpson (eds.), *Commissioning the Past: Understanding South Africa’s Truth and Reconciliation Commission*, Johannesburg: University of the Witwatersrand Press, 2002.

Truth commissions are usually official, state-created bodies. However, NGOs and victim associations have been at the forefront of their creation, and NGO involvement often has determined their success. Although there is no universal civil society response to truth commissions—some NGOs support them, some criticize them, some even rally against them—NGOs and civil society actors have always been key interlocutors during their formation and lifespan. Civil society has been described as the “essential ingredient” in a truth commission² for its ability to participate in and improve the process at all stages, from initial debate to implementation of recommendations.³

In some cases, especially where there is a social demand for truth-telling but lack of political will by government leaders, civil society actors have sought to construct “unofficial” truth commissions. In Uruguay, the report *Uruguay: Nunca Más*, produced by the organization SERPAJ (Fundación Servicio Paz y Justicia), “was more comprehensive, accurate and widely distributed than the little-known and anemic government report.”⁴ In Guatemala, the Project for the Recovery of Historical Memory report, *Guatemala: Nunca Más*, was not officially sanctioned, but it recorded more than 6000 victim and witness statements and was highly influential in the later work of the official national truth commission, the Historical Clarification Commission.

This paper is intended to provide some basic guidance to NGOs that are likely to engage with formal, official truth commissions established by the state during times of political transition. It is also meant to serve as a useful set of considerations and possible guidelines for NGOs in countries where a truth commission is certain or very likely.

The primary audience is NGOs because the contributors to this paper come from primarily the NGO community. This paper should also be useful to a much broader audience, including victim groups, religious organizations seeking justice or reconciliation, officials of democratic regimes who are involved in setting up commissions, and truth commissions themselves.

The paper emerged initially from a four-day conversation among a small group of people (see Appendix for participant list) that either have engaged directly with truth commissions (Ghana, Peru, Sierra Leone, South Africa) or who anticipate engaging with truth commissions in the near future (Kenya, Paraguay). Former staff or officials of four truth commissions also participated (Ghana, Peru, Sierra Leone, and Timor-Leste), as did representatives of international organizations (ICTJ, WITNESS). The participants at the Bellagio conference were asked to address the question: “What advice would you give to colleague NGOs in countries where momentum for the establishment of a truth commission is already strong?”

A Note on the Format

This paper is organized chronologically in three sections: before, during, and after the operation of a truth commission. Truth commissions that have existed to date generally do have similar chronological patterns of growth and development. However, a strictly chronological approach runs the risk of seeing a truth commission as a predefined institution for which a map or guide exists to mandate “correct” implementation. Rather, a truth commission’s creation is contingent on a host of factors that cannot be anticipated. There are numerous models, many of which have yet to be invented or even imagined.

² Priscilla Hayner, *Unspeakable Truths*, New York: Routledge, 2001, p. 34.

³ “We must emphasize the invaluable assistance the commission received from human rights organizations.” Argentine Commission on the Disappeared, *Nunca Más: The Report of the Argentine National Commission on the Disappeared*, New York: Farrar Straus Giroux, 1986, p. 429.

⁴ D. A. Crocker, “Truth Commissions, Transitional Justice and Civil Society,” in Robert I. Rotberg and Dennis Thompson (eds.), *Truth v. Justice: The Moral Efficacy of Truth Commissions, South Africa and Beyond*, Princeton: Princeton University Press, 2000.

There is also the danger of compartmentalizing a process that is best seen as complex and temporally interrelated. It is essential, for example, to consider the desired outcomes of a truth commission while working on the initial details of its creation.

A Note on the Title

The conference on which this paper was based was held at the “Fрати” facility, a small former monastery on the grounds of the Rockefeller Foundation estate in Bellagio, Italy. The generous and attentive care the Frati staff provided allowed participants to dedicate themselves to conceptualizing this paper, including discussions in the Frati’s *Roberto Celli Memorial Library*. Participants were so influenced by the site itself that they agreed that the title of the paper should include a mention of it.

NGOs and Civil Society

Throughout this paper, “civil society” is used as a conceptual term to refer to a broad spectrum of political and nonpolitical actors (such as grassroots organizations, religious groups, universities, etc.), while “NGOs” are understood to be formally established organizations that are recognized by both the government and the public.⁵

⁵ See Naomi Roht-Arriaza, “Civil Society in Processes of Accountability,” in M. Cherif Bassiouni (ed.), *Post-Conflict Justice*, Transnational Publishers, 2002.

CONTENTS

- I. Anticipating Truth Commissions
 - A. Overview
 - B. Assessing Societal Demand
 - 1. Developing a Conversation
 - 2. Defining or Determining Social Demand
 - 3. Developing a Vision of Engagement
 - C. Consultation and Cooperation
 - 1. Identifying Existing Initiatives and Locating Synergy
 - 2. Engaging Directly in the Creation of the Commission
 - 3. Establishment, Mandate, and Commissioner Selection
 - 4. Developing Consultative Mechanisms and Generating Civil Society Support
 - 5. Ensuring Participation of Key Groups
 - 6. Integrating a Gender Perspective as a Cross-cutting Theme
 - D. Communication and Information
 - 1. Identifying Information Sources
 - 2. Implementing Information-gathering Procedures
 - 3. Developing Systematic Engagement With the Media
 - E. Envisioning the Commission Over the Long Term
 - 1. Forging Links With Other Justice Mechanisms
 - 2. Examining Comparative Legislation
 - 3. Balancing High Expectations
 - 4. Anticipating Follow-up Work
- II. Working With Truth Commissions
 - A. Overview
 - B. Developing Relationships
 - 1. Considering Specifics of Working Relationships
 - 2. Engaging NGOs
 - 3. Developing Information-sharing Protocols and Agreements
 - 4. Restrategizing Engagements
 - C. Information
 - 1. Managing Information
 - 2. Disseminating Information
 - D. Anticipating Problems
 - 1. Strengthening Civil Society
 - 2. Funding and Institutional Identity
 - 3. Staff Migration
 - E. Envisioning the Future
 - 1. Avoiding Fragmentation
 - 2. Planning the Final Report
- III. The Post-Commission Period
 - A. Engaging With the Report and Evaluation Commission
 - 1. Writing the Final Report
 - 2. Developing Victim Support, Empowerment, and Advocacy
 - 3. Evaluating Impact
 - 4. Evaluating the Role of NGOs
 - B. Looking Toward the Future
 - 1. Harmonizing New Goals

2. Shifting to Institutional Reforms
3. Developing Niches
4. Monitoring Implementation of Recommendations

IV. Conclusion

APPENDIX Conference Participant Biographies

TRUTH COMMISSIONS AND NGOs: THE ESSENTIAL RELATIONSHIP

The “Fрати Guidelines” for NGOs Engaging With Truth Commissions

I. ANTICIPATING TRUTH COMMISSIONS

A. Overview

Nongovernmental organizations (NGOs) and broader civil society can play a vital role in the period before a truth commission is established by mobilizing public opinion and engagement with a truth-seeking process, developing or enhancing the mandate and operational structure of a commission, and working to ensure a commission has credibility and legitimacy in the eyes of national and international society. Such engagement includes drafting or enhancing legislation, opening societal dialogue, and defining and assisting the entire truth commission process.

B. Assessing Societal Demand

1. Developing a Conversation

This paper, as discussed in the Preface, is directed primarily at NGOs in countries where a truth commission is likely or certain. Nonetheless, it is essential for NGOs to catalyze, facilitate, or participate in a national conversation on “why have a truth commission?” In particular, will a truth commission respond to (and do existing proposals seek to accommodate) a specific demand? Are there alternatives that might be more appropriate?

Answers to these questions will depend on the particular social, historical, and political dynamics of the affected society, as well as demands and decisions of the local population, society, and decision-makers. Truth commissions have played important roles in numerous societies.

Factors that can lead to a successful truth commission include:

- *Identifiable social demand:* Victims and key opinion-makers see the creation of a truth commission as part of a larger effort of accountability for past human rights abuse
- *Political will:* Key governmental leaders strongly support the creation of a truth commission
- *Well-crafted mandate:* The enabling legislation allows for a rigorous investigation of the past
- *Available information:* NGOs and others have produced reliable information to get the commission started on investigations
- *Sufficient resources:* The commission will have a budget, staff, and professional capacity to perform its functions

As tools for accountability during transitions, truth commissions have contributed to transparency and accountability, and have helped to strengthen the rule of law. Reasons to have a truth commission might include victims’ demand to confront a legacy of silence; a belief that by elucidating the past, society can better build a stable and democratic future; a desire to develop certain cases for prosecution; a need to provide victims with an opportunity to tell their stories; a factual basis for establishing reparations

programs or embarking on wide-scale institutional reform; or an effort to make a clean break with the past by formally acknowledging the abuses or atrocity committed in a previous period.⁶

On the other hand, a truth commission may not be feasible, such as when there is a lack of demand; when victims, NGOs, or others feel that a commission is not an appropriate response; or when state actors dominate an effort and provide little opportunity for civil society to be genuinely involved.

NGOs can use the preparatory period to mobilize and educate public opinion to own, shape, defend, and avoid potential destabilization of the truth commission process. Even if the decision to establish a truth commission was made without public debate, NGOs can still play a critical role and potentially transform a political gesture into a national agenda by encouraging open and representative discussions with multiple actors. This was the case in Ghana, with the work of the Center for Democratic Development (CDD). Any conversation developed at this stage should involve a variety of actors and interest groups to ensure broad societal engagement.

2. Defining or Determining Social Demand

To determine whether a truth commission is appropriate and what form it should take, civil society organizations can conduct baseline research and get a sense of public thinking in a number of ways, including through the use of public opinion polls, workshops, seminars, consultative discussions, and/or focus groups. NGOs may also wish to organize public activities and press conferences to help focus the NGO community, improve policy decisions, and create a sense of ownership for victims and the rest of society. Such mobilization activities may be particularly valuable for nations where civil society is just emerging in a newly open political space, as they can galvanize public activity and allow for rapid development of a coherent civil society. In Timor-Leste, immediately subsequent to Indonesian President Soeharto's political demise, protest and peace marches proved an effective way for civilians to organize openly in political protest for the first time in almost 25 years of occupation. If national civil society is not capable of mobilizing people around broader issues of democracy, it will not be able to ensure engagement and education with nuanced debate of transitional justice and truth commissions. Discussions at this stage—and throughout NGO engagement with a truth commission—should represent a broad range of interests and sectors.

Reasons to engage with a truth commission:

- *Expertise:* NGOs can contribute expertise to the commission
- *Representation:* NGOs can ensure representation of key constituencies (e.g., victims from marginalized sectors)
- *Strength:* NGOs can help the commission to strengthen weak political institutions
- *Two-way relationship:* Engagement can lead to mutually strengthening relationships

However, before gauging public opinion, there may be a need for public education regarding transitional justice processes in general, truth commissions in particular, or the various options available for societies who want to confront past human rights abuse or violence. Some NGOs in Sierra Leone, for example, found that some individuals initially rejected truth commissions as Euro-centric, a “soft” option with no local cultural significance.⁷ Similarly, preliminary research the ICTJ conducted in Iraq immediately after the demise of Saddam Hussein's regime found local public opinion to be strongly in favor of retributive

⁶ For a set of discussions about reasons for establishing a truth commission, see Alex Boraine, Janet Levy, and Ronel Scheffer (eds.), *Dealing with the Past*, Cape Town: Institute for Democracy in South Africa, 1997.

⁷ See Appendix, Paul James-Allen.

justice mechanisms, even vengeance. Such perceptions may change if it is made clear that transitional justice is a comprehensive approach to confronting the past, and that there can be numerous ways to interpret and/or provide “justice.” However, it is also important to be sensitive to prevailing public momentum and local decision-makers, and to be clear and honest about what a truth commission can provide.

**CASE STUDY: THE ROLE OF NGOs IN THE FORMATION
OF THE SIERRA LEONE TRUTH COMMISSION**

by Paul James-Allen

In Sierra Leone, in February 1999, some members of the human rights community—including the National Forum for Human Rights, a coalition of human rights groups—started a campaign that called on the parties to any future peace talks to consider incorporating a truth, justice, and reconciliation commission. This view was discussed and concluded in a national civil society peace conference held in Freetown in April 1999. A few months later, after working with international consultants, a Working Group was established, which became a clearinghouse for information, generating civil society input and ensuring that the voice and wishes of Sierra Leoneans would be incorporated in the formation of a commission.

Regional consultations in accessible areas of the country included a national consultative meeting that discussed the draft bill for the Truth and Reconciliation Commission (TRC) and culminated in the establishment of Regional Working Groups in the four political regions of the country. The result of these efforts saw the concerns of civil society on issues like the composition, selection process of, and operational period of the commission being incorporated into the final TRC Act. The Inter-Religious Council and National Forum for Human Rights became members of an Advisory Board and Selection Panel, respectively. The Advisory Board was a three-member body that assisted the Selection Coordinator to shortlist nominated candidates for the position of the National Commissioners and the Selection Panel screened and interviewed these candidates for appointment.

One important additional element that civil society contributed to the process was in the area of information and public education. Although some sensitization and public information dissemination on the process had already started in the consultations that preceded the enactment of the TRC, NGOs became more active after the February 2000, conducting and contributing to activities such as sensitization, mapping the conflict, researching violations, identifying traditional methods of reconciliation and role of traditional leaders, enhancing the participation of combatants, and promoting and protecting women and children.

3. Developing a Vision of Engagement

For the NGO–truth commission relationship to be mutually strengthening, NGOs must develop a clear vision of their own identity and the identity of the proposed commission before the commission is established. Even when NGOs wish to support a commission, they must conceive of themselves as separate and fulfilling a distinctly different role. Truth commissions are finite bodies that exist to fulfill a clearly defined mandate, while NGOs can undertake a broader range of activities and usually expect to exist long after a truth commission has completed its work. This allows NGOs to adopt a more holistic vision of the commission process and avoid the selectivity a truth commission must inevitably adopt, for example, in setting a definitive point of transition and creating paradigms of violation (e.g., “political,” “criminal,” “sexual”). The earlier NGOs begin engaging with a commission, the more constructive and productive the engagement is likely to be, as a relationship will exist with (at least some) staff members before time and work pressures reduce opportunities for negotiation and consensus building.

NGOs should develop a vision of engagement through discussion of the guiding goals and purposes of the commission. Goals of engagement (and of a truth commission more generally) might include giving victims a voice in the truth-seeking process; publicizing the horror of past atrocities or “narrowing the range of permissible lies”⁸ about the past; establishing a historical narrative that can be integrated into the nation’s official history; fostering accountability by establishing responsibility; building judicial cases to be tried in a court of law; building or restoring relationships of trust (within civil society organizations and between victims and government, civil society and government and victims and the proposed commission); or generally furthering democratic goals through greater public representation of interests and inclusive decision-making processes. NGOs should consider how they can best work to further these goals within their sphere of operation and how they can shape a truth commission’s goals to encompass their field. How is the commission creating and positioning itself? What more could it do? What space exists for NGOs to support and complement the commission’s work?

Some NGOs may choose not to engage with a truth commission, depending on their goals, sphere of operation, and constituency. Some organizations (and donors) might disapprove of a truth commission because they feel it is inappropriate or insufficient to meet victims’ needs, or because they view it as an unjustifiable drain on national resources. Others may feel that a specific commission does not address their needs.

There is also the possibility that NGOs may wish to avoid becoming tainted by association with a flawed process: a truth commission process should contribute to the deepening and strengthening of democracy, and if NGOs suspect there is weak political commitment to this end, they should carefully consider whether and how closely they wish to engage with it. This was a major issue for many NGOs in Indonesia when government proposals for a truth commission indicated little more than lip service to transparency and a genuine accounting for the past. Many NGOs will want to avoid the risk of actual or perceived political partisanship, but constructive engagement with a weak commission could potentially transform a cynical political gesture into a powerful national process.

NGOs with little or no experience in engaging with a large-scale national political process should consider how they can maximize their limited resources to “assess whether promises are kept and rhetoric becomes reality.”⁹ If NGOs are used to working in opposition to the national government, they must cope with the shift and learn how to engage, rather than oppose.¹⁰ They should also ascertain what they wish to provide (such as documentation, research assistance, etc.) and on what basis they wish to provide it.

C. Consultation and Cooperation

1. Identifying Existing Initiatives and Locating Synergy

Truth commissions are not created in a social and political vacuum. Generally, in nations where a truth commission is seriously proposed, human rights and democracy-oriented NGOs already exist with developed plans and strategies for their futures¹¹ and activist infrastructures tend to be already in place.

⁸ “Reduce the number of lies that can be circulated unchallenged in public discourse.” M. Ignatieff, “Overview: Articles of Faith,” *5 Index on Censorship* 110 (1996).

⁹ D. A. Crocker, “Truth Commissions, Transitional Justice and Civil Society,” in Robert I. Rotberg and Dennis Thompson (eds.), *Truth v. Justice: The Moral Efficacy of Truth Commissions, South Africa and Beyond*, Princeton: Princeton University Press, 2000.

¹⁰ See José Zalaquett, “La reconstrucción de la unidad nacional y el legado de violaciones de los derechos humanos,” *Perspectivas*, Vol. 2, Número Especial, Santiago de Chile, 1999, pp. 385–405.

¹¹ This may be less likely to be the case in countries emerging from particularly long-term or destructive civil war or in nations with historically weak civil society and a lack of democratic tradition.

However, because truth commissions mobilize comparatively large resources and attract both national and international attention, they may divert attention from pre-existing NGO agendas. This can have both negative and positive results. On one hand, NGOs might feel frustrated that their priorities are being upstaged. On the other hand, NGOs that choose to engage with a commission can potentially integrate their agendas into the commission's work. Largely because of NGO advocacy, the Peru Truth and Reconciliation Commission (Comisión de la Verdad y Reconciliación, CVR) integrated gender issues throughout its work, including in training and communication strategies, guidelines for interviewers and statement takers, workshops, and public education, and as a cross-cutting theme throughout the Final Report (issued in August 2003).

NGOs should identify their existing priorities and fit a truth commission into those agendas, rather than allow the commission to determine the terms and parameters. Existing NGO initiatives may be directed toward areas such as documenting and monitoring human rights abuse, developing constitutions, resolving conflict, furthering democracy, and supporting victims. NGOs should analyze the emerging focus of a commission and determine how this merges (or does not merge) with their work. NGOs can operate as an intermediary between the commission and other actors, and if NGOs develop their vision and gain visibility for their cause within the commission, it will strengthen the process and final product.¹² However, realistic expectations must be retained: a truth commission is ultimately a short-term process—and a political process—and one investigation cannot exhaustively cover all bases.

2. Engaging Directly in the Creation of the Commission

The lobbying and advocacy role of NGOs in the preparatory period is critical to ensuring civil society's voice is represented in designing, monitoring, and improving the commission's performance. This can help create a process that is devoid of partisan interest and receives national ownership.

Initiatives NGOs might identify or wish to embark on in the preparatory period include:

- Drafting or contributing to legislation that establishes the commission
- Lobbying to improve truth commission legislation (e.g., mandate, selection process)
- Convening national actors to discuss international best practices
- Holding preparatory conferences leading up the creation of the commission
- Training or arranging for training of future commission staff (including executive managers)
- Providing or facilitating counseling services for victims to prepare them for commission
- Training the media on covering truth commissions
- Educating the public and political actors
- Researching alternative models of truth commissions
- Developing consultative mechanisms for the commission
- Establishing patterns of collaboration with future truth commissions

In South Africa, from the outset of the truth commission debate, the NGO sector—including Justice in Transition, headed by Dr. Alex Boraine—worked with the public and political parties through a series of conferences and workshops. This role of civil society was particularly valuable, as it partially removed the onus on members of parliament to push for adoption of legislation that might have upset the fragile

¹² H. van der Merwe et al. cite one NGO in South Africa as commenting, "If the conflict resolution NGOs were more involved in conceptualizing the TRC, it would have been more balanced....When we realized where the TRC was going, it was already too late." H. van der Merwe, P. Dewhirst, B. Hamber, "Non-Governmental Associations and the Truth and Reconciliation Commission: An Impact Assessment," *Politikon* 26:1 (1999).

coalition Government of National Unity between the African National Congress and the National Party.¹³ One NGO produced the initial draft of the bill that established the Truth and Reconciliation Commission (TRC) and other NGOs continued to influence its contents as it passed through parliament (notably ensuring that amnesty proceedings would take place in public rather than on camera, as had originally been designed). In Ghana, a 12-point declaration drafted during a conference with members of government, civil society, and other interested parties (political, victim, and religious groups) became the basis for the legislation that created the National Reconciliation Commission (NRC), substantially modifying the Ghanaian government's original legislation.

However, there is no guarantee that NGO opinions and activity will actually lead to constructive change. In Guatemala, the final agreement that created the Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification, CEH) contained many provisions that civil society had previously opposed, including a prohibition on naming perpetrators in its final report.

CASE STUDY: NGOs AND THE COMMISSIONER-SELECTION PROCESS IN SOUTH AFRICA

Having played a critical role in drafting the legislation that established the Truth and Reconciliation Commission (TRC), South African NGOs were also actively involved in designing a fair and inclusive commissioner selection process by nominating candidates, researching candidates' pasts, and providing suggested interview questions. The TRC establishing legislation provided that persons with a strong commitment to human rights and no high-level political affiliation were eligible to be appointed as commissioners by the President, but was otherwise silent on the means of selection. A proposed selection process was drafted by the NGO coalition and presented to the Minister of Justice, Dullah Omar. The NGO proposal was accepted very nearly wholesale and thus commissioner selection in South Africa was undertaken with significant public and civil society participation.

All organizations, political parties, churches, agents of civil society, and individuals in South Africa were invited to nominate potential commissioners. The 299 nominations received were reduced to a shortlist by a dedicated selection committee, following which public hearings were conducted to interview applicants in a manner that allowed the public to follow the selection process (either in person or through the media). At this stage, some NGOs independently compiled profiles of candidates to assess their suitability as commissioners. The selection committee then compiled a shortlist of 25 applicants, from which President Mandela made the final decision in consultation with his Cabinet.

President Mandela selected 15 commissioners from the list that the selection committee provided, with an additional two who had not been through the selection process. Archbishop Tutu was appointed as the chairperson, with Dr. Alex Boraine as deputy chair. The final selection was both gender- and race-conscious: 7 of the 17 commissioners were women, 7 were Africans, 6 were whites, 2 were mixed race, and 2 were of Indian descent.

3. Establishment, Mandate, and Commissioner Selection

- *Means of establishment.* The way a commission is established can influence its effectiveness and illustrate the level of political commitment to the process. A successful transitional justice process should have transparency, political commitment, and public debate. If there is a genuine desire to create an inclusive and open commission, these principles all suggest that a commission is better formed after an open decision-making process (such as through Congress or Parliament) rather than

¹³ H. van der Merwe, P. Dewhirst, B. Hamber, "Non-Governmental Associations and the Truth and Reconciliation Commission: An Impact Assessment," *Politikon* 26:1 (1999).

one of executive degree. However, congressional or parliamentary process may be impossible or inadvisable because of time pressures or legal difficulties, and in such cases NGOs can still work to ensure the rest of the process is transparent and participatory by developing a national debate that encourages public engagement.

- *Mandate.* The mandate will be the most essential document in the commission's existence and will determine how it works and what it achieves by defining the temporal, legal, and political parameters of its investigation. Generally, commissions work best when they have a broad scope in terms of powers of investigation (such as subpoena, search and seizure, and witness protection), powers of reporting (making recommendations), and breadth of investigation (violations to be investigated).¹⁴

NGOs should seek to influence a commission mandate in these areas by determining social demand, consulting key constituencies, and examining best practices internationally. As social demand is determined and defined, the goals, purposes, and ultimate conceptual goals a truth commission should adopt may begin to crystallize: NGOs can be crucial in articulating this vision. It will also be valuable if NGOs accord with the mandate of a commission from the outset, as some aspects may be impossible to correct later. For example, at the end of the official truth commission investigation in Guatemala, some NGOs put pressure on the commission to violate its legal mandate and name perpetrators.¹⁵

- *Commissioner selection.* Commissioners are the public face of a truth commission and thus have an important role in enhancing its credibility and legitimacy. NGOs are often closely involved in deciding on a selection process, sometimes even electing commissioners. In Timor-Leste's Commission on Reception, Truth and Reconciliation (CAVR), six of the seven National Commissioners have very strong civil society or NGO backgrounds. In South Africa, NGOs designed the commissioner selection process and had a strong influence in ensuring it had significant public and NGO participation throughout.

NGOs should give consideration to the ideal profile for a commissioner and the ideal selection process. Truth commissions are oriented toward victims, but also toward the nation and society as a whole: commissioners have to talk with governments, security agencies, and political parties as well as victims, and must have something to say as well as the ability to listen. Commissioners should be highly respected in their country, but it is possible to set the standard so high that it can be hard to find qualified candidates. National representation is also important, so where countries have a short supply of suitably qualified potential commissioners, it may be prudent to sacrifice some aspects (such as academic qualifications) in order to ensure national representation.

Commissioner selection should be broadly representative of society and should not result in a selection of commissioners based only on their political parties or ethnicities. The commission should not become a place where partisan rivalries and disagreements are played out.

Finally, a victim-centric truth commission process is important, but there are potential problems if victims are too closely involved in commissioner selection. For example, if victim groups directly

¹⁴ See Priscilla Hayner, *Unspeakable Truths*, New York: Routledge, 2001, Appendix 1, Chart 8: What Works Best?, pp. 335–336. Hayner also notes that in relation to defining the breadth of a commission investigation it may sometimes be “necessary and appropriate to narrow mandate.”

¹⁵ D. A. Crocker, “Truth Commissions, Transitional Justice and Civil Society,” in Robert I. Rotberg and Dennis Thompson (eds.), *Truth v. Justice: The Moral Efficacy of Truth Commissions, South Africa and Beyond*, Princeton: Princeton University Press, 2000.

elect commissioners, it could appear that those commissioners are not impartial, regardless of whether this is true. This could damage the commission's legitimacy and credibility.

4. Developing Consultative Mechanisms and Generating Civil Society Support

When preparing or mobilizing for a truth commission process, NGOs should be aware of how they can best use the political space available to them. Individual organizations will probably have limited resources and outreach capacity, and thus will be limited in what they can achieve alone. NGOs should therefore work to ensure they influence and strengthen a commission (and that the commission strengthens civil society) by identifying and combining civil society resources in a way that builds NGO confidence and skills.

To fully represent and communicate NGOs' multiple interests and relative strengths to the public and commission, it is enormously helpful to have some form of interorganizational networking. A well-managed consultative process can increase efficiency and influence and encourage NGOs that did not anticipate the truth commission debate to positively engage with the process. A coalition that retains broad and equitable participation of a wide spectrum of social actors—even where one link organization takes the most prominent role—can empower NGOs and reinforce the notion that they are essential actors in the process. Practically, a coalition can operate as an information clearinghouse and provide resources such as funding and lobbying advice, in addition to presenting routes of communication and support to all coalition participants. An inter-NGO consultation process that ensures broad and equitable societal representation and recognition of primary social demands can be an invaluable aid to relationship management later in the commission process.

Consultation could be conducted through a formal coalition or working group (such as CDD-Ghana/Civil Society Coalition on National Reconciliation), an informal coalition (National Human Rights Forum in Sierra Leone), a conference or series of conferences, or any other mechanism that brings together different representatives in a shared platform.

However, as with all efforts of this nature, coalitions should seek transparency and clarity in all matters and, from the outset, NGOs should devise strategies for coalition management, leadership, and decision-making. In South Africa, some organizations felt that activities facilitated by Justice in Transition could have been more inclusive and transparent.¹⁶ Care should be taken to avoid the subordination of smaller organizations to a larger, dominant voice: coalition meetings or consultations should not be treated as a “rubber stamp” for decisions taken by the largest or most visible organizations, but should allow for equitable input by all. There is a particular risk that organizations without a specific truth commission or transitional justice focus will get lost in the crowd.¹⁷ Organizations will have their own agendas (e.g., those that stress social rights and those that stress individual rights; professional organizations; labor organizations) that will lead to different conclusions and conceptualizations. Frequent consultations and regular strategy meetings may help retain the involvement of a variety of voices for the entire process.

¹⁶ “The process facilitated by Justice in Transition “was seen as not sufficiently transparent by many NGOs. Some felt left out of the loop, i.e. not being provided sufficient space to make formal input, not receiving regular report-backs or being kept abreast of developments.” H. van der Merwe, P. Dewhirst, B. Hamber, “Non-Governmental Associations and the Truth and Reconciliation Commission: An Impact Assessment,” *Politikon* 26:1 (1999), p. 61.

¹⁷ Van der Merwe et al. quote one South African organization as stating: “We attended NGO coalition meetings but did not have a unique role. Our input was mainly just to endorse the collective submissions that had been drafted.” Id. at note 9.

CASE STUDY: NGO RELATIONSHIPS WITH TRUTH COMMISSIONS IN GHANA

by Franklin Oduro

Despite apparent democratization in Ghana between 1992 and 2002, it was not until a democratically elected government took office in 2001 and announced its determination to examine the past and promote national reconciliation that an opening for a transitional justice process occurred. Soon after this announcement, civil society organizations began consultation internally and externally to fashion a role for Ghanaian NGOs.

The Ghana Center for Democratic Development (CDD-Ghana) felt it was important to transform the government's announced political agenda into a national one with public engagement and participation. CDD was not convinced that the government was adequately informed about the advantages and disadvantages of various transitional justice mechanisms and believed it would benefit from the information and education that NGOs could provide. CDD conducted initial public and civil society consultations that resulted in the formation of a Civil Society Coalition on National Reconciliation, composed of around 25 NGOs and constitutional bodies. The Coalition is coordinated by CDD and continues to interact with the National Reconciliation Commission (NRC) as of January 2004.

The Civil Society Coalition on National Reconciliation played a crucial role in developing the national transitional justice framework in three main areas: conceptualization, public and legislative consultations, and media space. In terms of conceptualizing a framework, the Coalition undertook empirical and comparative research and convened a two-day international conference on transitional justice, which resulted in the drafting of a 12-point declaration supported by civil society that outlined how the government should approach the issue of national reconciliation. This declaration formed the basis of the legislation for the NRC, substantially amending the government's initial proposals.

The NGO coalition engaged the public with the national process by conducting nationwide consultation and information campaigns: publicizing the draft legislation in all major newspapers and involving traditional authorities, opinion leaders, and key stakeholders to mobilize civil society input. Submissions given were compiled in a memorandum and presented to the national parliament. Consultations with the legislature—lobbying—were also undertaken, and a retreat organized to provide the opportunity for closed-door consultations between the Parliamentary select committee responsible for drafting the bill and key stakeholders from civil society. The Coalition at all times sought to create an all-inclusive process that brought government, political parties, human rights organizations, traditional authorities, and society at large to deliberate and search for an appropriate and acceptable framework. The Coalition's media engagement strategies are discussed in more detail below.

Lessons that can be drawn from the Ghanaian experience include: the need for coalition building to increase NGO impact and respect by acting with one voice through a coalition with a specific focus; the need for empirical research to inform policymakers, capture grassroots attitudes, evaluate impact of possible choices, and allow the citizenry a voice in the process; and the value of national and international consultation.

5. Ensuring Participation of Key Groups

A commission process should seek the participation of representatives of not just human rights organizations and victims' groups, but also grassroots organizations (particularly those that are gender-specific), professional and academic organizations (including universities and research units), political actors, and citizens. Informal or marginalized groups are most likely to be overlooked in a formal and institutionalized process, even where there is sincere political commitment to inclusiveness and representation. A successful commission simultaneously looks forward and backward—examining the

past, but with a view to improving the future. As such, it presents a possibility for changing (or at least recognizing) discriminatory social paradigms that NGOs that represent or work with special interest groups should be aware of.

An inclusive truth commission preparatory process might seek the views of:

- Human rights organizations
- Conflict resolution/intervention organizations
- Victim support organizations
- Mental health organizations
- Labor organizations
- Gender rights organizations
- Academic and research organizations
- Religious institutions

6. Integrating a Gender Perspective as a Cross-cutting Theme

Clearly, no truth commission investigation would be complete without women's voices, but in many commissions, women provide testimony about the suffering of their spouses and/or children, rather than their own experiences. In South Africa, more women than men gave testimony (55.3 percent versus 44.7 percent) to the TRC, but their testimony was mostly about men. This is likely for two reasons: (1) many women have learned to prioritize others and define their experience in relation to others, such as their spouses or children, and (2) women may find it very difficult to talk about their own experiences, particularly those that involve sexual violence. NGOs experienced in working with victims of sexual violence can help truth commissions devise guidelines and protocols to train staff and boost awareness of issues that might not be immediately apparent—for example, the need to address institutional violence and discrimination/violence experienced in the nonstate sphere.

In order to uncover the historical/social and political circumstances that gave rise to a conflict (and the particular experiences of women) truth commissions should adopt a less forensic and more systemic approach to truth-seeking, identifying and analyzing broader conflict patterns and experiences. Such a holistic approach would impact on the appointment and recruitment procedures, mandate and conduct of hearings, and training procedures in order to fully integrate gender perspective as a cross-cutting theme.

- *Appointment and recruitment.* In appointment and recruitment of commissioners and staff, truth commissions should seek gender parity. In past commissions, female commissioners have taken the lead in offering a supportive and affirming environment for female victims in the course of public hearings. However, gender balance alone is an insufficient indicator of whether a commission will adequately address human rights abuses suffered by women, so commissions should probe potential applicants' attitudes to gender prior to appointment.
- *Mandate.* In mandate definition, commissions should be aware of the need to explore institutional aspects of gender-based violations. Past commissions have focused on killings, disappearances, custodial torture, and abductions/illegal imprisonment, but these violations ignore major aspects of female victimization, such as internal displacement, losing breadwinners, forced removals, etc. The most abusive aspect of a human rights injury may not be captured by the act alone, but with attention to the range of social attitudes and policy frameworks within which the act is embedded.
- *Hearings.* Similarly, attempting to address gender issues through thematic hearings alone is likely to lead to an excessive focus on sexual violence, which fails to capture women's multiple roles in and

experiences of conflict. All commissions should work to allow women to give evidence in camera if they so choose, but they must also make proactive efforts to make public hearings a victim-friendly, dignified space where women will feel comfortable testifying about their abuse.

- *Training.* Training of commissioners and staff should be comprehensive and ongoing—a one-time training session at the outset of a commission’s work will exclude staff recruited at a later date and may also result in gender issues falling into the background rather than penetrating all aspects of the institution’s work.

In South Africa and Peru, gender organizations and activists successfully argued for a more prominent focus on women’s experiences of conflict. In South Africa, NGOs participated in workshops with truth commission staff to encourage policies that would include women. These NGO efforts resulted in thematic “gender” public hearings, gender-sensitive statement-taking protocols, and a dedicated gender chapter in the final report. However, these activities were criticized as ghettoizing the female experience by confining it to discrete areas, rather than fully integrating a gendered perspective throughout the TRC’s work. This descriptive approach had the effect of marginalizing women and rendering them invisible except in stereotypical roles (such as the grieving mother or the counselor). Media reporting conformed to this paradigm by focusing on men and stories of violent crime, failing to provide coverage of women’s stories of systemic social discrimination.

The Peruvian CVR addressed gender through a dedicated program, la Línea de Género. This program raised the profile of gender issues throughout the Commission. In addition to working directly with interviewers and commission officials, la Línea de Género also developed training documents and communication strategies, circulated suggestions for investigators and guidelines for interviewers, ran workshops, produced educational documents for the public, and created a gender working group of regional CVR representatives (Gender Programme Links) that encouraged regional dissemination/sharing of information on gender issues. These initiatives encouraged integration of gender throughout the commission in a multitrack approach that mainstreamed gender while also treating it as a specific focus area. Gender weaves in and out of all the volumes of the final report, published in August 2003, as a running thread in discussions about political history, institutional hearings, individual human rights abuse, and patterns of human rights abuse, as well as recommendations for reparations, reform, etc. In addition, two discrete sections focus specifically on gender: “sexual violence against women” and “violence and gender inequality.”¹⁸ However, even though much of the CVR’s work has been extraordinary, its discussion of gender still focuses largely on sexual abuse and rape. Scholars in Peru point to issues such as internal displacement and losing breadwinners as major issues for women, yet these have been given a relatively lower priority than sexual violence.

D. Communication and Information

NGOs can be an important source of information. If NGOs wish to gather or hand over information to a commission investigation, they must first consider how comfortable they feel sharing that information. They will likely have to grapple with two potentially conflicting impulses: the desire to collaborate with a commission fully and help guarantee its success versus the concern of losing control of documents (and problems of confidentiality and privacy). NGOs should consider consulting with colleagues in other countries about how to strike the right balance. Once these initial issues have been considered, NGOs will want to examine two operational questions—where they can get information and how they should organize the information they gather—in order to implement an efficient model of information sharing.

¹⁸ In Volumes VI and VII, respectively.

1. Identifying Information Sources

Past truth commissions have used information gathered by NGOs in a variety of ways: background information, a point of corroboration for later truth commission investigations, and even as a primary reference source in the final report. In Argentina, only about one-third of the 9000 deaths identified in CONADEP's report were reported in statements collected by the commission itself. Clearly this highlights the issue that information collected for one purpose was used without permission for another, potentially creating a situation where people who did not wish to participate in the commission process found their case publicly presented nonetheless. This problem suggests that a commission should corroborate sources or at least ensure information was not collected in confidence before including it in any public report. Information gathered by NGOs can also indicate patterns of conflict and initial areas for investigation, and generally make for more efficient allocation of investigative resources. This was the approach taken by the Rettig Commission in Chile, which used the information on disappearances that the Vicaría de la Solidaridad collected as a starting point for investigations, confirming each case of disappearance by contacting family members. Information that may be useful to a truth commission can be found in a variety of sources, including:

- Human rights documentation centers and their files
- Victim associations, including the files collected by individuals
- Groups and individuals in exile, and the files they have accumulated
- The work of previous truth commissions and committees of inquiry
- Court transcripts, proceedings, and records
- Intelligence agency records
- Records of professional bodies (legal, medical, media, academic)
- Museums and national archives
- International organizations and foreign governments
- Material available under national and international Freedom of Information provisions

The extent to which any of these sources is useful or available will vary according to the history of the conflict and the commission's investigative methodology. Guatemala's Historical Clarification Commission gained substantial information from declassified CIA information provided by the United States. In Kenya, NGOs found useful inventory materials from media houses and medical institutions (in particular, one media house had reports of a massacre not documented anywhere else). Media houses can be particularly helpful in collating photographic evidence of violations. Similarly, medical institutions can be expected to have death certificates, autopsy information, and other such resources. In Peru, the CVR used police, military sources, and declassified documents widely, but failed to incorporate much court information, as the court system impeded access to open files and the Commission's relationship with the Supreme Court was not always friendly.

2. Implementing Information-gathering Procedures

When gathering or handing over information to be shared with a truth commission, NGOs should be aware of how the commission could use that information effectively. For example, if an entire database is going to be turned over, how easy will it be for the commission to understand and systematize the information? A simple cataloguing system—information categorized by type and medium, with a short description of each record—can form the basis of a database that a truth commission can easily understand and incorporate at a later date.

In large part, the usefulness of NGO information will depend on how a commission chooses to collect and collate data. Most modern truth commissions use sophisticated information-gathering and management techniques that can make incorporation of externally gathered documentation a labor- and time-intensive

process. In general, NGOs can play an important role in gathering and preserving sensitive information prior to a truth commission's period of operation in order to prevent its destruction or disappearance.¹⁹ Much important information (such as security records and classified government documents) will most likely be off limits to NGOs, but they should try to access as much as possible. However, documents held by national or foreign governments may provide authoritative evidence of human rights violations and such documents may be accessible to citizens (including foreign nationals) through Freedom of Information Provisions.

NGOs working in countries where the United States has played a role can rely on the National Security Archive. This NGO, based at George Washington University in Washington, D.C., seeks to declassify U.S. documents, including those relating to U.S. involvement overseas. Although the process is slow, these documents can be a valuable contribution to truth-telling processes.

3. Developing Systematic Engagement With the Media

How national and international print and broadcast media choose to represent a commission can be critical to its success, as mass media is a vital tool for stimulating and guiding societal debate. In South Africa, interest in the TRC process was intense enough to support daily news items, as well as a weekly one-hour television program that garnered more than one million viewers. However, if the media is not engaged by the time a commission begins proceedings, it may be too late to ensure intelligent and informed reporting during commission operation. NGOs should seek to maximize engagement with the media for mobilization and education in the preparatory period, including helping to ensure that coverage is fair and well-informed.

In order to engage the media from the outset, one NGO, or a coalition, could position itself as a key source of information about the commission, especially concerning critical analysis of its work or international best practices. This might be through training sessions on transitional justice (a seminar, conference, or resource materials) or other tactics journalists will appreciate, such as a list of contacts for additional research, concise briefing papers, etc. NGOs in Ghana successfully encouraged media engagement with the NRC by employing a combination of these strategies. NGOs may have to work on their skills development in order to build a successful media strategy with informed staff and comprehensive resources. This might include training on basic techniques required to write a press release, identifying data journalists will use (quotes, facts, etc.), and nurturing positive relationships with members of the media.

There may be problems with attempting this kind of engagement in societies where the national media infrastructure is still very underdeveloped or there is public suspicion of a media that was traditionally muted about human rights violations.²⁰ Additionally, NGOs should not have sole responsibility for pre-operation media engagement: the commission itself should also be actively engaged in public education and outreach strategies. Less mainstream forms of media—for example, local community newsletters or traditional communications networks—may be valuable in trying to get a message to outlying areas or communities where there is little or no traditional media structure.

¹⁹ See Louis Bickford, "The Archival Imperative," *Human Rights Quarterly* 21:4 (1999).

²⁰ See, e.g., Andrew Kuper and Jocelyn Kuper, "Serving a New Democracy: Must the Media 'Speak Softly'? Learning from South Africa," *International Journal of Public Opinion Research* 13:4 (2003).

NGOs, MEDIA, AND TRUTH COMMISSIONS: THE GHANAIAN EXPERIENCE

by George Sarpong

In Ghana, civil society involved the media in the National Reconciliation Commission (NRC) process from the start by including the journalists' association as part of the Civil Society Coalition. The coalition organized training for journalists, developed a code of ethics for coverage of the truth commission (the **Spirit of Akosombo**), and helped ensure that the media adhered to its agreements by drawing attention to infractions of the code.

The Spirit of Akosombo: Guiding Principles for Media Coverage of the National Reconciliation Process

Adopted by the National Consultative Committee of the Ghana Journalists' Association, the Spirit of Akosombo was devised out of concern that inappropriate media coverage of the NRC could be divisive and potentially deepen conflict at community and national levels. As a pre-emptive self-regulatory measure, the code addresses key aspects of the media-truth commission relationship under the following headings: the National Reconciliation Process, the Situation of the Media and the National Reconciliation Process, Media Audiences and the National Reconciliation Process, and the Role and Posture of the Media. Under the latter heading, roles the media may find itself in or wish to adopt when engaging with the NRC are identified as: information providers, watchdogs, advocates, facilitators, counselors, and civic educators. Guiding principles from the GJA Code of Ethics are outlined as: audience before owner (public interest before the interest of media owners), nation before party (identifying partisan positions and balancing them in the national interest) and profession before profit. The document concludes: "[t]his is the Spirit of Akosombo—a collegial pact among media practitioners of renewed fidelity to the people of Ghana, serving the national process of understanding, reconciliation and healing through the considered and consistent practice of the ethics of our profession."

However, the Ghanaian experience did encounter a few downsides. First, because the overriding fear was the media derailing the commission process by critical or irresponsible reporting, ethical media behavior was stressed over the need to gain quantitative media coverage. The NGO assumption had been that the media would automatically be interested in the process and only needed to be encouraged to report ethically. This was the case until a National Media Commission (NMC) monitoring project showed the media was actually not covering the commission process very much at all. This realization taught the Civil Society Coalition two valuable lessons. First, the existence and operation of a truth commission may not itself engender media interest. Hence, NGOs and truth commissions may need to work to develop strategies to excite and keep media interest. Second, NGOs should constantly monitor quality and quantity of media coverage so that they can react quickly to avert a loss of interest. In Ghana, the NMC study provided an early wake-up call, and the NGO response equally illustrated how good relations with the media could help the process. Immediately after the study was released, the NMC, Ghana Journalists Association, and civil society coalition made both formal and informal approaches to media managers and editors (most of whom had been part of the earlier interactions). Consequently, coverage increased by the next monitoring report.

E. Envisioning the Commission Over the Long Term

Envisioning the entire commission process and how it fits into a broader strategy of human rights, accountability, and democracy building should be on NGO agendas from the very beginning. Sometimes civil society has a lot of power to influence the process of truth commission establishment, and when this is the case, organizations should ensure they are well informed about their options and models of a truth commission so they can advocate wisely.

1. Forging Links With Other Justice Mechanisms

Truth commissions, as mentioned in the Preface, are best understood as one of many strategies available to address the traumatic legacies of past abuse and violence. At an early stage of planning or engaging with a truth commission, it is important to consider the ways in which the planned truth commission complements or supports other transitional justice strategies. Even if some key actors (such as politicians or peace negotiators) argue that other strategies are not appropriate in a given context, it is still important for NGOs to discuss these options. For example, NGOs should ask how the proposed truth commission plans to complement, strengthen, or interact with processes such as:

- *Prosecution of past offenders.* Will the truth commission include a “judicialization” unit, such as in Peru, where a few key cases were developed to be handed over to the Attorney-General for prosecution? If there is an intention to use truth commission findings to build judicial cases, there may be issues of due process (for example, naming names of perpetrators without a right of reply). There may also be bars to prosecution (such as under amnesty or statute of limitations procedures).
- *Reparations for past abuse.* Will beneficiaries of reparations packages be identified through the truth commission process and, if so, what results will this have?²¹ It is also important to determine whether a promised reparations package is tenable. The South African TRC’s recommendations to provide reparations remain largely unfulfilled, which has been a point of international criticism of and national disillusionment with the TRC process.²²
- *Institutional reform.* How will the commission contribute to important reforms of abusive institutions? Will the Final Report make recommendations? Will the commission hold institutional hearings? Examining institutional responsibility for mass human rights violation is a critical issue in determining areas for future reform, and has been addressed by a number of past commissions by way of thematic hearings or dedicated sections in a final report.
- *Memory.* How will the memories of victims be served? Will the commission contribute to memorialization? How? Will the documents from the commission be preserved in a safe location, such as the subsecretary for human rights in Argentina has done?
- *Reconciliation.*²³ Regardless of whether the word “reconciliation” is in the title of the commission,²⁴ NGOs should consider the concept and inquire about the ways in which the commission should or might contribute to reconciliation. While reconciliation is a goal of many transitional justice processes, there may be a need to manage public expectations and clarify what “reconciliation” means in the national context and concrete processes that will be implemented to further reconciliation, either between individuals or on a national level.

2. Examining Comparative Legislation

While every truth commission is unique, awareness of comparative experiences can enrich the process and provide the opportunity to learn from past mistakes. During the preparatory period, NGOs should inform themselves and others on the process through research, perhaps including comparative study of legislation, final reports, public education materials, or writings on truth commissions. This research might allow NGOs to identify reasons why other TRCs have failed to maximize social impact (which

²¹ For example, the perception that the Ghana NRC will identify beneficiaries of a reparations package has, according to some analyses, encouraged people to exaggerate claims of victimhood.

²² Amnesty International and Human Rights Watch, *Truth and Justice: Unfinished Business in South Africa*, Amnesty International, 2003, AFR 53/001 2003.

²³ In some national contexts, this word has come to represent “sweeping under the rug” and “forgetting.” This paper understands it to mean a rich process of national dialogue and accountability.

²⁴ As noted above, many commissions purposefully do *not* have this word in the title. The Guatemalan commission, for example, was called the Commission on Historical Clarification.

may be political, such as a lack of political momentum or shift in political priorities, or more pragmatic, such as a restrictive budget). Identifying potential risk areas at the outset can help the development of strategies to avoid them.

3. Balancing High Expectations

NGOs should also consider the public expectations that are generated by the formation of a truth commission. If the mandate is too sweeping, or if the commission is presented by political actors or others as a panacea for the ills of the nation, NGOs must be responsible for helping forge more realistic expectations of the capabilities and capacity of a commission. Here, again, international best practices can be useful. For example, some South Africans have argued that they should have limited more clearly the hyperbole around “reconciliation” that tended to emerge from the commission’s work.

4. Anticipating Follow-up Work

NGOs should anticipate a truth commission follow-up phase from the beginning of the process. A common problem has been lack of implementation of truth commission recommendations. Failure to implement recommendations alienates victims, who see recommendation as promises; if these promises are not kept, victims can become cynical about the entire process. A centralized follow-up office is essential to channel and coordinate inquiries and ensure resource provision and delivery. NGOs should lobby from the beginning to ensure some form of independent public institution to monitor follow-up is provided for in the legislation establishing the commission. There are a number of institutional possibilities for this, such as an Ombudsman or an independent Human Rights Commission.

NGOs are well placed to evaluate the ways in which a commission positions itself and how it is received by the public. They should use this perspective to assess victims’ needs and determine how a truth commission is likely to impact their field. This could involve engaging with a commission or working to improve their own capacity. In South Africa, the TRC’s failure to work with NGO efforts to organize formally structured survivor support groups led to the creation of grassroots organizations. However, the risk with victim self-mobilization is a lingering resentment that the truth commission—and national government—has failed to adequately address expressed or evident needs.

NGOs should also assess whether a commission’s approach is likely to have a positive or negative impact on their field. For example, mental health organizations might find victims to be more responsive to their services if a commission promotes psychological healing as part of its agenda. However, they might also find that they have to deal with large numbers of victims who have suffered retraumatization or post-traumatic stress disorder as a result of giving testimony or being exposed to publicity related to past atrocities.

II. WORKING WITH TRUTH COMMISSIONS

A. Overview

NGOs can be particularly valuable for their access to information, research skills, and ability to identify key cases and situations for the commission to examine; for their connections with victims and broader civil society; and for their ability to mobilize public opinion and generate political pressure. These assets may involve NGOs in a variety of activities during the lifespan of a commission, potentially including engaging with media, producing and disseminating media, working with victims, and gathering and disseminating information. Some issues NGOs might encounter during these engagements include developing relationships, working with information, anticipating problems, and envisioning the future.

NGOs may find this stage of the process more difficult than the precommission period as the truth commission becomes a formal institution and staff adopt a different status. Without pre-existing working relationships, there is the risk that the common goal will be lost as an “us-and-them” perception develops. However, managing working relationships is a two-way process: NGOs should facilitate their working relationship with a truth commission, but a commission must display a sincere commitment to creating genuine partnerships with NGOs. For example, in Timor-Leste, the CAVR has been aware of the need to engage civil society in a positive manner from the outset, notably creating a Program Support Division that has prepared strategies for building relationships with NGOs and other organizations, including the holding of regular meetings.

Challenges in an NGO–truth commission relationship might include:

- *Vision:* Developing and maintaining a vision for how the commission fits into a broader accountability strategy
- *Representation:* Fair representation and equitable roles
- *Information:* Information management and sharing
- *Tension:* NGO tensions or disagreements with truth commission

B. Developing Relationships

1. Considering Specifics of Working Relationships

NGOs engaging with a truth commission have to manage working relationships not only within the NGO community and broader civil society, but also with commission staff, victims, and the media. They should strategize these working relationships from the earliest possible date in order to pre-empt and prepare for possible complications. Developing good working relationships and a clear long-term strategy at the outset also helps avoid a situation where a commission focuses only on the short-term goal of fulfilling its mandate, and helps ensure that the commission will gain an understanding of how its work will affect victims and broader society.

It is likely that some truth commission staff members will have past experience in the NGO sector, and thus links with the NGO community may be present from the outset. However, a shared history and common goals may not automatically lead to a friendly relationship with easy routes of communication. When a truth commission begins its work, staff will be under serious time and resource pressures and the time available for consensus building and negotiation with the NGO community is likely to be very limited. This could be damaging for both the NGO community and the commission’s work and working relationships may be smoother if mechanisms for communication have been established before this stage. These could take the form of cooperation agreements or guidelines, or any other mechanism that provides for NGO recommendations to and critiques of the commission, institutes regular meetings, and otherwise creates a common working platform.

In addition, some NGOs may experience suspicion and hostility if sectors of commissions perceive them as inherently biased and in pursuit of their own organizational goals. In Haiti, the commission chose not to work with the NGO community in contacting victims and witnesses, working instead with organs of the church or local government.²⁵ Similarly, NGOs may resent a truth commission’s funding and personnel resources. These natural tensions, if left to fester, can inhibit valuable cooperation that will ultimately make a commission more effective and responsive to victims’ needs. If certain segments of the NGO community are critical of a commission’s work, commission staff may feel hostile toward all NGOs

²⁵ Priscilla Hayner, *Unspeakable Truths*, New York: Routledge, 2001, p. 238.

(and vice versa). This is another good reason for devising secure routes of communication and criticism that allow tensions to be aired in a manner that will not affect the overall working relationship. In South Africa, the Khulumani Victim Support Group opposed the commission on a number of occasions. However, there has been a suggestion that this made some commissioners less willing to engage or trust NGOs as a whole.²⁶

INTERNATIONAL ACTORS AND TRUTH COMMISSIONS

Most truth commissions have relationships with international actors and organizations based in other countries that assist with a national process in multiple ways. International nonprofit organizations—such as the International Center for Transitional Justice, the National Security Archive (a Washington, D.C.–based NGO that specializes in declassifying U.S. government documents), or the Center for the Study of Violence and Reconciliation (Johannesburg)—can provide NGOs with experience and knowledge based on comparative experience, or with research and personnel resources, as well as advice on “best practices” and mistakes that have been made. NGOs from nearby countries (often overlooked, paradoxically, by national actors) often can assist with key lessons from their own experiences: conversations among West Africans have contributed greatly to the truth commissions in Sierra Leone and Ghana, for example. International foundations such as the Ford Foundation, the Open Society Institute, and the Rockefeller Foundation have provided both financial and other important forms of support, especially for NGOs, during truth commission processes, although these foundations are likely to require evidence of strong domestic support for any such initiatives, and will be unlikely to be able to support most of the costs associated with serious truth commissions. The international academic and research community can assist with documentation resources, research and conference space, information preservation, and monitoring facilities. The United Nations has been a central actor in a number of truth commissions—notably El Salvador, Guatemala, and Sierra Leone—and can be a source of support and legitimacy to national transitional justice processes. Finally, certain governments, most notably in Europe and in the Scandinavian countries, have a keen interest in transitional justice initiatives.

Both NGOs and truth commission staff should have empathy for the other’s situation: a commission’s good intentions to build NGO relationships may be subsumed by overwork and lack of time, while NGOs should be entitled to expect results from or recognition of their contributions in meetings, recommendations, and critiques.

2. Engaging NGOs

NGOs could adopt one of (or several among) of a number of different roles in dealing with truth commissions, according to how they wish to position themselves. NGOs may wish to operate primarily as watchdog, offering criticism and recommendations. Conversely, NGOs may wish to position themselves as ally and/or adviser, concentrating on positive engagement and encouragement. Various NGO sectors will have different forms and levels of engagement, depending on their area of primary activity (media making, public advocacy/education, victim support/counseling, etc.). The chosen model of engagement may be dictated by how the commission has positioned itself; the decision on whether its focus is psychological victim support or retributive justice will affect which NGOs have most influence.²⁷

²⁶ H. van der Merwe, P. Dewhirst, B. Hamber, “Non-Governmental Associations and the Truth and Reconciliation Commission: An Impact Assessment,” *Politikon* 26:1 (1999), at note 12.

²⁷ As discussed above, NGOs should try to make sure their voice is heard at the earliest possible date so that a truth commission represents multiple interests and sectors of civil society in its work.

If NGOs wish to operate as an ally of the commission, it is important that they remember that they are *not* the commission; they should seek to tread a line of partnership and cooperation without cooptation. NGOs should recognize and capitalize on this different role and determine how closely they wish to work with a truth commission in order to maintain constructive partnerships without losing their identity. Adverse effects on truth commissions if partnerships are too close or mismanaged include actual or perceived risks to independence and impartiality, breaches of confidentiality, a lack of institutional accountability, and inconsistency in information gathering. Adverse effects on NGOs might be a loss of organizational identity, funding, and resources. These are discussed further below.

If NGOs adopt a more overt watchdog role, they must make important decisions regarding criticism. Public and private criticism both have a place: the question is when each is appropriate, and what purpose it serves. In Peru, NGOs used a combination of formal and informal methods of criticism, but when these were ignored, they did not make their criticism public, feeling it was more important to strengthen the overall process than criticize small aspects and risk playing into the hands of political opponents. However, now that the CVR has completed its work, this previously unvoiced NGO criticism has emerged publicly, which has made commission staff feel underappreciated. In Sierra Leone, it was not until quite late in the TRC process that a project was developed that allowed NGOs to observe key stages of the commission process and make private criticisms, with the option of making public criticism if they deemed it necessary.²⁸ In addition to empowering NGOs and providing a clear route of communication, this also helped resolve the problem of NGO nonattendance at public hearings.

3. Developing Information-sharing Protocols and Agreements

Truth commissions induct staff from the NGO community in a number of different contexts (volunteers, full-time staff, temporary contracted workers, etc.). At times, these individuals may have access to confidential case files or victim and witness statements, which presents potential problems of confidentiality, security, and privacy of information. For example, in Sierra Leone, NGOs in the provinces retained some information because of lack of space at the truth commission. Similarly, international organizations may hire consultants working at a commission. In these cases, who has responsibility for information and to whom should staff owe their immediate loyalties in terms of reporting and release of information?

To clarify when information can be used and reproduced, and to ensure that all persons working for the commission know whom to report to, NGOs might wish to consider:

- Encouraging the commission to produce information-sharing protocols and agreements governing, for example, use and release of information and outlining a standard format for information gathering
- Producing a memorandum of understanding between individual organizations/coalition and the commission

Any agreements and protocols should be applied consistently to all those who work with the commission, although it might be necessary to have different agreements for various types of worker. There will still be some gray areas—particularly in determining when someone becomes a “commission staff member” (which can be a very fluid process)—but such agreements can reduce problematic areas. The Ghana NRC has established formats, including for information handling and statement taking, and it will not use information unless it adheres to these standard formats.

²⁸ “Monitoring the Truth and Reconciliation Commission Process.”

4. Restrategizing Engagements

The spectrum of relationships NGOs must engage in during a truth commission ranges from the formal and institutionalized (government and truth commission) to the informal (grassroots organizations, individuals). This requires NGOs to be alert and aware of various actors' agendas and expectations in order to remain an effective and influential voice throughout the process. Although relationships can be strong and mutually strengthening, problems can also arise.

In the period before a truth commission is established, NGOs will conduct almost all debate and political engagement. After the commission opens, many of these NGOs may be excluded from the process they helped create—perhaps the result of necessary security procedures, or perhaps because of commission staff members' hostility to organizations they perceive as biased and unnecessary to their work. Understandably, this institutional “ego explosion” of the truth commission may cause NGO frustration and become a source of personal and institutional conflict, which may be damaging to civil society and the work of the commission overall. However, problems of hostility and suspicion toward NGOs are most likely to occur at the beginning of commission proceedings, when Commission staff (particularly those without experience in the NGO sector) do not fully realize the volume of work and important information they can gain from NGOs, or the amount of work they must complete.

Some of these problems might be overcome if NGOs work to build a relationship of trust between the commission and key NGOs and victim associations. CDD-Ghana has developed good working strategies with the NRC that have allowed the Commission to complete important work in areas where it had insufficient capacity and could benefit from NGO coordination and personnel support (such as statement taking and public outreach).

The truth commission–NGO relationship is likely to be the most conciliatory when trust has been built, at which point commission staff may be under such severe time pressures that they do not have the time or inclination for lengthy negotiation and consensus building. This is also when the commission is most likely to draft NGO staff in areas where they had underestimated capacity. NGOs may justifiably resent being pushed away and view the relationship as a one-way transfer from NGO to truth commission. Such feelings of exclusion may fundamentally damage the truth commission process (e.g., if NGOs become fully disenfranchised and withdraw from engagement), so it is necessary to have clear role definition and pre-arranged routes for communication and criticism that allow for maximum representation with minimum negotiation. The relationship may be smoother if NGOs have some empathy for the position of commission staff members, who have a steep learning curve under difficult conditions. If NGOs understand internal commission tensions and present a coherent and united front, it is much easier for them to present resources to the commission and for the commission to recognize the valuable resource they have. The Peruvian CVR benefited from the work of more than 4500 volunteers across the entire country, but it was not until close to the end of the process that the commission staff realized how potentially valuable this was.

C. Information

1. Managing Information

When preparing and collating information to share with truth commissions, NGOs should be aware of problems of quality, coordination, and timing. Truth commissions need high-quality information at the earliest possible stage (and they may be able to use only information that reaches a certain level of quality in terms of authenticity, research rigor, or factual provability). To allow for easy incorporation, NGOs should ensure that the information they gather is accurate and that the format of their information and

databases is compatible with the commission's requirements and information systems.²⁹ This will alleviate time-consuming and labor-intensive information systematization.

Information management is also an issue in terms of truth commission staff communication: in some commissions, NGOs in the capital city have been better informed about truth commission activities than commission staff in outlying areas. This can be avoided if truth commissions establish clear lines of communication and clear staffing hierarchical structures. Training sessions for the commission secretariat might benefit from covering techniques of management for huge numbers of staff over a large area.

Even at an early stage in the process, NGOs should be aware of the need for post-commission information management and preservation: what will happen to the commission's files after it completes its work, and who should take on the caretaker role (in particular, determining access requirements for confidential information)?³⁰ Truth commissions often wrap up very quickly and do not have time to fully sift through and separate confidential and nonconfidential information, but failure to anticipate information preservation was a major flaw in the South African process that has inhibited follow-up work and evaluation.

Post-commission information preservation options include:

- Storing materials in the National Archive or National Library, assuming that these institutions are trustworthy, capable, and professionally managed.
- Lobbying at the outset for follow-up documentation institutions/offices to be provided for, or the establishment of a state archival source or unit after the process (such as the Subsecretary of Human Rights office in Argentina).
- Working closely with a dedicated NGO (such as, in Chile, the transformation of *La Vicaria de la Solidaridad* from an active human rights organization to a professionally run memory archive).
- Storing materials externally, as a number of U.S. and European universities are keen to archive materials from human rights organizations. Some of these universities can provide training in documentation management for NGO staff in addition to archival space (which includes access to an electronic archive that allows for controlled networked exchange of information).
- Contacting record managers/librarians internationally (e.g., the American Library Association is often willing to conduct missions in various countries).

Although NGOs may wish to take responsibility for archiving documents themselves in order to facilitate their own follow-up work, there are a number of reasons why this may be difficult:

- Documents and archives are easily damaged, destroyed, or even stolen
- Proper documentation preservation techniques (microfilm, paper preservation, special storage measures) require specific technical knowledge and resources
- It is resource intensive to take charge of large amounts of valuable material (cataloging and systematizing)

²⁹ A useful source on past truth commissions' information management techniques is Patrick Ball, Herbert F. Spierer, and Louise Spierer (eds.), *Making the Case: Investigating Large Scale Human Rights Violations Using Information Systems and Data Analysis*, American Association for the Advancement of Science, 2000, available online at <http://shr.aaas.org/mtc/>.

³⁰ Louis Bickford, "The Archival Imperative," *Human Rights Quarterly* 21:4 (1999).

CASE STUDY: CIVIL SOCIETY INFORMATION GATHERING— REMHI IN GUATEMALA

Toward the end of 36 years of civil war in Guatemala, UN assistance in the mid-1990s contributed to the creation of a national *Comisión de Esclarecimiento Historica* (Commission for Historical Clarification, CEH). Because both the guerillas and the Guatemalan government were represented in the peace agreements, the UN-sponsored truth commission was a compromise of limited conviction: it had no powers of subpoena or search and seizure, could not use evidence gathered toward criminal prosecutions, and was granted only six months in which to investigate more than three decades of abuses.

To support the official commission, and to help reveal the truth of Guatemala's past, the *Oficina de Derechos Humanos del Arzobispado* (Human Rights Office of the Archbishop of Guatemala) conducted an important project called the *Proyecto de Recuperación de la Memoria Histórica* (Recovery of Historical Memory Project, REMHI). The project had the support of more than 70 churches, human rights organizations, and NGOs worldwide, and over the course of three years, 800 interviewers collected 6500 testimonies and documented more than 55,000 human rights violations. Five hundred of the 600 interviewers were considered indigenous, and the ability to conduct interviews in 18 languages gave REMHI the capacity to reach into the most rural areas of Guatemala—linguistically, geographically, and culturally supporting and surpassing the capacity of the CEH.

Nationwide public education and sensitization was conducted through radio programs and pamphlet distribution. Victim and witness statements were taken, which went far beyond the traditional truth commission statement-taking format, asking reflective and personal questions to encourage victims and witnesses to talk freely in a way that allowed the project to gain a broader contextual understanding of past events. This process was designed to lead to local empowerment—it included local community leaders—and also focused on spiritual healing, as priests regularly accompanied statement takers.

The information gathered was used to compile a 1400-page report: *Guatemala: Nunca Más*. However, the REMHI project did not close at this point: follow-up work included meetings, workshops, and forums to discuss findings with affected communities; pamphlets and posters to disseminate findings; ceremonies, exhumations, reburials, and monuments; and legal assistance and health services.

The REMHI project was hugely advantageous to the CEH, which had a mass of findings to work with from the outset in addition to its own comparatively substantial resources. While the CEH was able to collect 7338 testimonies, REMHI made a massive contribution toward truth and clarification in Guatemala, especially in gaining testimonies from sectors of the indigenous population to which the CEH might not otherwise have gained access.

Even though taking control of documentation is not necessarily a good idea for NGOs in terms of archival responsibilities, the information would be very useful for follow-up work, and commission staff should consider asking permission to use this material for these purposes.

2. Disseminating Information

NGOs may be involved in disseminating information for a number of purposes, including publicizing the work of the commission, publicizing the work of their organization(s), educating the public, and training staff. For the truth commission, priorities of information dissemination will vary during the course of its work. At the outset, the most important issue is quality of information; in the middle, it is important that there is coordination of dissemination activities, and at the end of proceedings, the critical issue is ensuring information is received in time to influence or be incorporated in the final report. For example,

the Peruvian CVR commissioned high-quality educational booklets for schools, a good product that unfortunately arrived after the commission had completed its work.³¹

If NGOs are *media makers* (i.e., producing outreach and education materials or advocating for a particular transitional justice approach), they should examine:

- The goals of the outreach, educational, or advocacy work, and the message the materials are intended to convey
- The intended audience for the material
- The format that best suits the needs of the intended audience and will be most effective in conveying the material
- The most appropriate mode of presentation and choice of presenter

In determining audience, for example, a power point presentation might be effective for policymakers, while a handbook might be more helpful for work with NGOs. For victims, communities, and the broader public, accessible media (such as video) is particularly useful. In producing media for these groups, it is worth keeping information simple, with key messages repeated in a variety of ways so that more will be retained, as well as using representative case studies or stories with which viewers or information recipients can identify. The higher costs involved in video production generally are most easily justified where there is a large potential audience, and where it is clearly identified that they will be receptive to the video, and there is an effective means to distribute to them (such as an existing network of screening venues or a television broadcast slot guaranteed). The networks of distributing allies should be involved in the development of the video from the start to ensure their support in the eventual outreach, and that the material reflects their priorities. If video is to be used with a narrower audience or for very detailed presentation it is even more important that the message be clearly targeted and tailored for this audience, and that there be an evaluation of whether video or other audiovisual media is the most appropriate strategy (this may be so, but the decision should be made with a clear understanding of the potential benefits of using one medium over another).³²

The Peruvian CVR produced a wide variety of materials in different formats in order to maximize the impact of dissemination, including colorful, diagrammatic, and very simple education materials. Some NGOs might be handicapped in terms of limited resources, lack of skills, and poor distribution channels, but they should work with the strengths of their organization (or coalition) in order to provide the best training and education possible.

D. Anticipating Problems

NGOs engaging with a truth commission may experience problems internal to their organization (such as a competition for funding, lack of coordination, lack of marketing, wariness of losing their impartial status, and loss of key staff members) and in their relations with the commission (such as its framework of operation, political agenda, internal management structures, and political tensions).³³ At least some of these problems can be prepared for in advance.

³¹ “For truth commissions, critical concerns in information dissemination are quality at the beginning, co-ordination in the middle and timing at the end.” See Appendix, Javier Ciurlizza.

³² WITNESS, a New York-based NGO (www.witness.org), provides advice on how to incorporate video into human rights work.

³³ H. van der Merwe, P. Dewhirst, B. Hamber, “Non-Governmental Associations and the Truth and Reconciliation Commission: An Impact Assessment,” *Politikon* 26:1 (1999), at note 28.

NGOs engaging with a truth commission might experience problems such as:

- Competition for funding
- Lack of coordination with commission
- Loss of identity as commission takes center stage
- Staff migration to commission
- Fatigue with process

1. Strengthening Civil Society

NGOs should frequently reassess their position in light of changing political circumstances and public opinion to ensure they retain organizational identity and political space. Managing public and civil society expectations and anticipating potential tensions can help ensure that civil society is strengthened during and after its support of a truth commission, and forming a network of organizations can help provide support, encouragement, and effective routes of communication.

Truth commissions can also help strengthen civil society by engaging with sectors that they are not familiar with and building relationships with other areas of the NGO community, such as gender groups and labor organizations. During the commission process, there likely will not be time to build individual relationships, which is why there is a need for formally established mechanisms to provide channels of communication even during times of tension. Some problems can be anticipated, but they may still cause conflict and hostility.

2. Funding and Institutional Identity

As discussed above, NGOs should assess the closeness of their relationship with a commission in order to ensure they retain institutional identity. Funding is a critical problem, as NGOs are likely to be constrained by the projects they have already accepted and may find it difficult to change the parameters of a grant to encompass new work. Thus, they may end up doing truth commission work on a voluntary basis, or might miss out on building a closer relationship with the commission because they have limited resources and are committed to alternative projects. As a result, truth commissions should be aware of the need to recompense NGOs for their work (if possible), particularly if they have used substantial NGO time and personnel resources. In this regard, the symbolic value of payment as a sign of appreciation and recognition may be almost as important as the actual economic value.

During a truth commission's operational period, donors may prioritize commission-related projects and proposals, which encourages NGOs to position themselves closer to the commission. Donor preference for projects with concrete outcomes may also reduce the amount available for NGOs, particularly very local-level organizations. NGOs may be tempted to produce proposals they know the truth commission requires at that time, which is not necessarily positive or efficient for either party.

Competition for funding might be averted (or at least minimized) if organizations have a long-term strategy and vision of their role with the commission. It may also be the case that, in the long term, NGOs *gain* funding opportunities from a truth commission process as a wider range of donors become interested in issues such as human rights, democratization, accountability, or victim support services.³⁴

³⁴ In fact, in South Africa, "While one person complained that the TRC has absorbed funding that may otherwise have gone to NGOs doing related work, most interviewees felt that the TRC's activities had created greater possible funding for NGOs to do work in related areas in the future." H. van der Merwe, P. Dewhirst, B. Hamber, "Non-Governmental Associations and the Truth and Reconciliation Commission: An Impact Assessment," *Politikon* 26:1 (1999), at note 45.

3. Staff Migration

Truth commissions often have large staffs,³⁵ and recruiting locally can cause a drain from NGOs, reducing capacity in the short and long term. Understandably, NGOs are likely to lose the most experienced and capable staff to a commission.³⁶ Truth commissions can sometimes offer higher salaries, greater prestige, and more attractive opportunities for international career advancement, but staff migration is a major problem that needs creative solutions. One possibility might be to encourage donors to provide extra funding and allow NGOs to offer competitive salaries at this critical moment. NGOs often engage with truth commissions in a very ad hoc manner, providing staff or resources for discrete tasks without clear boundaries as to the extent of their engagement and/or commitment. This may exacerbate the problem of staff migration, as it is not entirely clear at what point someone becomes a commission staff member.

Truth commissions could be encouraged to expand their recruitment outside human rights NGOs in order to draw from a broader sector (this may also improve the commission's work by leading to a more multidisciplinary investigation). However, going to the opposite extreme and recruiting completely outside NGOs might lead to a lack of trust and may prevent truth commissions from realizing the value of NGOs.

E. Envisioning the Future

1. Avoiding Fragmentation

When a truth commission process is under way, the national NGO community may become fragmented as organizations work on disparate projects. If they stop consulting and reporting on their activities, they run the risk of damaging their relationships and becoming fatigued. It is important that NGOs try to retain a sense of the overall purpose of the process and their place in it. The need for consultation remains important to keep all actors informed and engaged about the whole process, rather than just their specific engagement(s).

2. Planning the Final Report

Envisioning the final report at an early stage can help NGOs retain a sense of the overall project, and is also crucial to ensuring the commission produces a socially relevant project that captures the prevailing public momentum. The South African TRC's Final Report has been criticized for focusing on a false dichotomy of political/criminal violence that avoided the primary social debates, which were the historical causes of apartheid and the beneficiaries of apartheid-related violence. While the limited mandate of a truth commission necessarily restricts the ambit of investigations and demands selectivity, NGOs could make a commission aware of the public mood and momentum and encourage the final report to include it. If this does not work, NGOs do not necessarily have to adopt the truth commission's paradigm and could continue to work toward meeting what they see as the primary social demand.

III. THE POST-COMMISSION PERIOD

³⁵ Truth commission staff size can vary radically: from less than 50 in El Salvador, to 155 in Ghana, to more than 400 in South Africa and Peru.

³⁶ See supra note 35. H. van der Merwe et al. cite the example of the Human Rights Committee in South Africa, which lost three of its twelve employees to the TRC, including its director. It took two years to rebuild its capacity to precommission levels.

The period after a truth commission has closed operations can be a time of important NGO activity in areas such as victim support, public education, memorialization, commission evaluation, monitoring of recommendations' implementation, disseminating truth commission findings, workshops, seminars, ensuring continued media engagement, and countering criticism of the commission.

A. Engaging With the Report and Evaluation Commission

1. Writing the Final Report

A truth commission's final report is vital not only as a measure of the commission's investigative work, but also as a determinant of future activity (or inactivity) from government and civil society. How much dissemination of a final report a commission and the government should undertake and what NGOs will be responsible for will depend on the specific circumstances of their working relationships, but an NGO's priority should be to engage with the government about its responsibilities and then go with the organization's key capabilities to popularize and disseminate the work and findings. A situation may arise where the government is unwilling or unable to disseminate a truth commissions findings widely, so to ensure that a final report impacts across all ages, social classes, and ethnicities within a nation, NGOs might consider:

- Translating the report into major national languages
- Summarizing key findings and recommendations in a broader range of national languages
- Producing graphic or illustrated book versions of key findings and/or processes
- Integrating the truth commission's work into school curriculum
- Developing short videos or documentaries

The key issue is accessibility, and different media will be better suited to furthering various goals: e.g., a comic book version might be appropriate for youth audiences or people with low levels of literacy. A combination of media instruments will have the broadest impact. In Sierra Leone, the organization WITNESS has produced a one-hour video version of the TRC Final Report, conveying key points of the report through a combination of testimony from public hearings and archival materials.

Creative and/or dramatic projects such as books, film, theater, photography, and other forms of cultural expression may also capture the pain, suffering, and hope exposed by a truth commission process. In Peru, the CVR organized a photography exhibition called "To Be Remembered," which more than 18,000 people visited in 80 days. Drama projects are a key technique of the Khulumani Victim Support Group in South Africa and were also used by the REMHI project with indigenous communities in Guatemala.

NGOs should ensure a truth commission final report is:

- Accessible to various publics
- Accurately transcribed or abridged
- Available in a variety of formats and languages

2. Developing Victim Support, Empowerment, and Advocacy

In some countries—notably South Africa—NGOs in the post-commission period found that victims felt let down by the process; particularly for those who give evidence at a high-profile public hearing, there may be a sense that nothing happens after they provide their statement. In this context, NGOs can improve the quality of the experience and increase victim satisfaction by managing expectations and ensuring that testimony is not the end of the process. The risk is that a truth commission process stirs up

emotions and expectations and then leaves victims and participants bereft and without support. The public momentum a commission garners can be positive if it acts as an incentive for people to seek help, but only if the facilities they need are available. Support and empowerment that proves victims are of continued importance is critical to the final impact of a commission. In developing victim support and empowerment strategies, NGOs must ensure they are in tune with the dominant social debate and public momentum. Failing to harness such a dominant debate will reduce the organization's impact.

However, truth commissions must anticipate NGO activity for these activities to be successful. In South Africa, the witness statements the TRC gathers are all confidential, which prevents NGOs from fully assessing the TRC process or contacting victims for evaluation and follow-up work. This frustrating situation could easily have been avoided by a clause requesting permission for follow-up research.

Victim support and empowerment strategies may be based on:

- Further truth recovery
- Prosecutions
- Reparations
- Psycho-social support
- Memorials

3. Evaluating Impact

NGOs should evaluate the processes and impact of a commission, including how far it has fulfilled its mandate, what it has (or has not) revealed, and how much resonance it has had with victims and society in general. It is likely that international actors, including donors, will be particularly interested in measuring the truth commission's ability to contribute to certain goals, such as democratization, challenging impunity, fostering peace or stability, and strengthening institutions.

This is an excellent opportunity to examine NGO perceptions and criticisms. For example, if NGOs suspected a commission was failing to engage with local complexities (or local actors and decision-makers) when conducting its investigation, it may be worthwhile to conduct impact assessments and evaluations in these local communities. Similarly, there may be a perception that a commission adopted an inappropriate paradigm of investigation, perhaps focusing on too narrow a range of violations to fully represent the conflict pattern, or adopting too wide a range to accurately pinpoint the causes and nature of violations. NGOs are well positioned to make impact assessments from the grassroots level upward.

NGOs that have been engaged in human rights or conflict resolution issues may feel that a truth commission has had limited impact, and might resent the attention a commission receives if their work has gone unrecognized. However, when conducting post-commission critiques, NGOs should still seek to maintain constructive dialogue with former commission staff and be aware of the time, resource, and political limitations under which they worked. This can lead to a more fruitful and informed assessment of the process. In many countries, former commissioners continue to engage with the truth-seeking debate.

4. Evaluating the Role of NGOs

The NGO community should also evaluate critically and honestly its own engagement with the commission process. Civil society usually leads the post-commission debate and deconstruction, and there is a tendency to concentrate on critique without discussing civil society's role, or even to overplay NGO achievements. NGOs may have failed to effectively mobilize around principles and concerns raised

by a commission, or may have chosen roles of engagement that increase their profile nationally or internationally (rather than acting out of less self-interested motivations).

In order to better facilitate post-commission evaluation, NGOs should consider documenting their work (or commissioning someone else to do so). This could prevent a continuation of the informational gap that is currently becoming evident where some commissions—particularly South Africa—have attracted multitudinous critiques, while others have received very little attention.

B. Looking Toward the Future

1. Harmonizing New Goals

Truth commissions usually take place at a moment of transition that influences many sectors of society. For example, human rights NGOs may have to face a whole new set of challenges as a result of the transition, and may have difficulty adapting to new contexts. A classic case is the human rights movement in much of the Southern Cone of Latin America, which, as a result of democratic transitions, was suddenly faced with a shift from *opposition* (in which they were accustomed to denouncing the military regime) to constructive *engagement* with state actors under electoral rule (in which they needed to reinvent their strategies of interaction).

Truth commission findings may highlight key areas of social demand that NGOs previously overlooked. Victim commemoration and recognition might be addressed by exhumations, burials, or memorials, but assistance to surviving victims is also vital. The need to compensate for lost education opportunities is one area that has come out of past commissions. It requires government commitment to be comprehensively implemented, but NGOs could help set up sponsorship or financial aid schemes in conjunction with universities, or enlist local businesses to provide computer facilities or other resources. Former staff members from the Peruvian CVR are creating an Institute for Human Rights and Democracy at the Pontifical Catholic University, which can help ensure continued engagement with truth commission lessons in a number of ways, not least by monitoring the follow-up procedure and implementation of TRC recommendations. Smaller projects could include workshops, seminars, or education and research packages with multimedia materials on thematic areas. Obviously, NGOs are limited in what they can deliver when needs are vast, so they must assess their capacity realistically and work with their strengths.

2. Shifting to Institutional Reforms

Final reports often have made specific proposals for reform of abusive institutions, such as the police force or security agencies. These can signal important shifts of direction and new activity for NGOs seeking to reinvent themselves. Removing or disqualifying human rights offenders from public office is perhaps one of the most important outcomes a truth commission can help engender, as the reform of the institutions that committed or permitted atrocities can contribute to prevention of recurrence. In the immediate aftermath of a truth commission, there is often a critical moment of public engagement and political commitment to initiating positive change. Harnessing this momentum could lead to major institutional reforms, perhaps concentrating on independent oversight institutions for the intelligence services or transparent structures of governance.

3. Developing Niches

NGOs should attempt to use the work and findings of a truth commission to develop niches for their future work, building on comparative advantages and strengths of each organization and applying relevant aspects of the commission to the field they want to work (or continue to work) in. This can help define organizational identity and form a basis for funding proposals. NGOs may wish to develop niches in areas

such as victim empowerment, human rights monitoring and advocacy, institutional transformation, access to information, prosecutions (or the broader area of “social justice”), conflict resolution and transformation, perpetrator rehabilitation, memorialization, and education.

4. Monitoring Implementation of Recommendations

Regardless of the level of political commitment that existed during a truth commission operation, after the final report has been issued and immediate social momentum has subsided, there is a risk that recommendations will be forgotten or swallowed up in other social problems. Whatever roles NGOs have adopted prior to and during the commission’s work, in the post-commission period they should act as a watchdog and monitor implementation. Clearly, governments should be responsible for ensuring that recommendations are implemented, but NGOs can apply pressure to ensure this responsibility is recognized. If a formal statutory monitoring institution was not provided for in the legislation, NGOs could lobby to have one established afterward. Additionally, although governments have an obvious responsibility, NGOs often survive governments and may have to apply pressure to a new administration.

NGOs may find valuable allies in commission staff and commissioners after an investigation has ended. In Sierra Leone, it has been proposed that a satellite group of the truth commission will remain and work with NGOs after the commission ends and will help to ensure implementation. In Timor-Leste, the CAVR has been very aware of the follow-up role of NGOs since the outset of its truth-seeking process and has organized meetings, workshops, and seminars to ensure the continued involvement of civil society.

IV. CONCLUSION

Truth commissions never should be seen as a panacea for the complex ills of any society. A truth commission is simply a tool, available for democratizers and advocates of human rights, challenging the impunity of lies and half-truths. Moreover, it is best used with complementary mechanisms, such as confronting and reforming abusive institutions, seeking justice through courts, designing reparations packages, and honoring the memory of victims.

There is also no single formula or design for truth commissions. On the contrary, every truth commission has been unique, and future truth commissions should continue to be innovative and relevant to local historical, cultural, and political contexts.

One lesson that has been learned over recent decades—as truth commissions have increasingly emerged as a tool for confronting the past—is that truth commissions need NGOs. This paper demonstrates the importance of these relationships and explores some of the specifics and nuances of how those relationships have played out in various contexts. If these guidelines are useful to NGOs and others in the creation of future truth commissions, the paper will have been a success.

APPENDIX Conference Participant Biographies

PAUL JAMES-ALLEN

Currently a Fellow of the Open Society Justice Initiative pursuing an M.A. in the Human Rights Program at Central European University in Budapest, Paul James-Allen has been a committed human rights activist in Sierra Leone since 1996. Most recently, he worked as a researcher for the Sierra Leone Truth and Reconciliation Commission (TRC). From 2000 to February 2003, he was the research and information officer at the National Forum for Human Rights in Sierra Leone. He also acted as executive secretary on many occasions. He has developed and implemented projects on generating civil society discussions on the relationship between the Special Court for Sierra Leone and the TRC, information and public education on the TRC, the protection and participation of children in the TRC, the monitoring of transitional justice mechanisms in Sierra Leone, and generating civil society recommendations for the final report. He has worked extensively with international organizations that address transitional justice issues, has served as a consultant on a number of projects (including “The Legacy of the Special Court”), and has also co-authored a handbook for a nonprofessional audience on the TRC and the Special Court for Sierra Leone.

LOUIS BICKFORD

Louis Bickford is director of the Alliances and Capacity Development Unit at the International Center for Transitional Justice (ICTJ). He has consulted with governmental and nongovernmental organizations, human rights activists, and democratic movements on strategies for confronting the legacies of past human rights abuses in more than a dozen countries, including Burma, Mexico, and Nigeria. He was previously associate director of the Global Studies Program and a lecturer in International Studies at the University of Wisconsin, Madison, where he coordinated the Legacies of Authoritarianism Project and taught regular seminars on human rights. Prior to that he worked as a frequent consultant to the human rights program of the Ford Foundation’s Santiago office and was visiting researcher at the Faculty of Latin American Social Sciences (FLACSO-Chile). He earned his Ph.D. in political science from McGill University and an M.A. from the New School, and did additional graduate work at the University of Oslo, Norway. He is also an adjunct professor of graduate studies in the department of political science at Brooklyn College of the City University of New York.

JOSE CAETANO

Jose Caetano Guterres was born in Betulari in the eastern mountains of Timor-Leste. From 1998 to 1999, he was a member of the Student Solidarity Council for Resistance in East Timor. He was a founding member of the NGO SATILOS (East Timor Health) Foundation and general secretary between 1999 and 2002. He was also an assistant of Health Net International for three months in 2001 and a Board member of National East Timor NGO Forum 2001–2002. In 2001, he joined the small Interim Office formed to prepare for the Commission for Reception, Truth and Reconciliation. When the Commission was officially formed in February 2002, he became the coordinator of Community Outreach, Media Liaison and Public Information (now Program Support Division), and a member of the Commission’s Senior Management Team.

JAVIER CIURLIZZA

Javier Ciurlizza has more than a decade of high-level international human rights experience and worked on the Peruvian Truth and Reconciliation Commission from its inception before taking up his post as its executive secretary. He has also worked as a human rights investigator and as secretary general of the Andean Commission of Jurists. In the Ministry of Justice of Peru, he served as the Chief of Cabinet. He

was the Peruvian representative to the Inter-American Court of Human Rights, where he also served as an ad hoc attorney and was the president of the Presidential Pardon Commission. He has taught courses in international law, constitutional law, and human rights in the Catholic University of Peru. Additionally, he has been a consultant with many organizations, including Catholic Relief Services and International Institute for Democracy and Electoral Assistance. He has published widely on human rights and democracy in Peru. He holds a law degree from the Catholic University of Peru and a Masters of International Political Economy from University of Warwick in the UK. He is currently the director of the newly established Institute for Democracy and Human Rights of the Catholic University.

ERIC DARKO

Eric Darko is the documentation officer at the ICTJ. A lawyer and librarian, he was a Crowley Advocate of International Human Rights Law at Fordham University. He also served as the organizing secretary of the University of Ghana branch of the Movement for Freedom and Justice, a pressure group that advocated a return to democratic rule in Ghana. He has worked as a reference librarian at the New York Public Library and a bibliographic instruction librarian at the College of Mount Saint Vincent. He is admitted to practice law in New York and Ghana and currently serves on the New York City Bar Association Committee on International Human Rights. He holds degrees from the University of Ghana, Legon; Ghana School of Law; Long Island University; and Fordham University School of Law.

SAM GREGORY

Sam Gregory is a video producer, advocacy trainer, and human rights activist, and currently the program manager at WITNESS (www.witness.org). Over the past 10 years, WITNESS has worked with more than 150 locally based human rights organizations around the world, training and supporting them to use video and the power of visual imagery and testimony to document abuse and advocate for change. He joined WITNESS after completing a Masters Degree in Public Policy as a Kennedy Scholar at Harvard's John F. Kennedy School of Government, where he focused on international development and media. Sam has worked as a television researcher/producer in the U.S. and has worked for development organizations in Nepal and Vietnam. In collaboration with WITNESS partners in the Philippines, Guatemala, Argentina, Burma, and the United States, he has supported advocacy and outreach campaigns centered around videos including, "Behind the Labels: Garment Workers on US Saipan," "Rule of the Gun in Sugarland," "Following Antigone: Forensic Anthropology and Human Rights," and "No Place to Go: Internally Displaced People in Burma."

PRISCILLA HAYNER

Priscilla Hayner, a co-founder of the ICTJ, is director of the Outreach and Analysis Unit. She has written widely on the subject of official truth-seeking in political transitions. She is the author of *Unspeakable Truths* (Routledge, 2001), which explores the work of more than 20 truth commissions worldwide. She has worked as consultant to the Ford Foundation, the Office of the UN High Commissioner for Human Rights, and other organizations. She was previously a program officer on international human rights and world security for the Joyce Merz-Gilmore Foundation. She holds degrees from Earlham College and the School of International and Public Affairs at Columbia University.

JENNIFER WANJIKU MIANO

Jennifer W. Miano is a lawyer by profession, having been admitted to the bar in Kenya in June 1992. Currently, she is the coordinator/deputy executive director for the Kenya Human Rights Commission, a nongovernmental organization committed to the protection and promotion of human rights in Kenya. As a senior programme officer in charge of the Advocacy Programme at the Commission, she conceptualized

the Campaign Against Impunity, which addresses various manifestations of rights abuses in Kenya for which perpetrators have not been held accountable. In 2003, she served as a lead researcher for a task force created by the Minister of Justice and Constitutional Affairs to advise on the viability of establishing a truth, justice, and reconciliation commission in Kenya. She holds a Masters Degree in International Human Rights Law from Notre Dame University.

KIRSTEN McCONNACHIE

Kirsten McConnachie has worked for the ICTJ on a number of research projects and consultancies, including as one of the primary authors of the ICTJ Training Module. She holds an LL.B. from the University of Glasgow, Scotland, and an LL.M. in International Criminal Justice and Armed Conflict from the University of Nottingham, England. She is currently studying for admission to the New York Bar.

M. KELLI MUDELL

Kelli Muddell is a program associate in the Country Program Unit at the ICTJ. She graduated from North Park College of Chicago with a B.A. in Sociology. She received a Presidential Fellowship to attend Fordham University, where she earned an M.A. in International Political Economy and Development with a concentration in Development Studies. While in graduate school, she interned in the Africa Division of Human Rights Watch, and was a contributing writer to its World Report 2000.

FRANKLIN ODURO

Franklin Oduro is a program officer and researcher at the Ghana Center for Democratic Development (CDD-Ghana), where he coordinates its Transitional Justice Project. He is also the program coordinator for the CDD/Civil Society Coalition on National Reconciliation support program. The CDD is a nongovernmental research and policy think tank based in Accra, Ghana. He studied at the University of Ghana, where he obtained a Master of Philosophy in political science. He has also participated in the Transitional Justice Fellowship program, sponsored by the Institute for Justice and Reconciliation (IJR) and the ICTJ.

SAMUEL OPOKU-AGYAKWA

Samuel Opopu works for the National Reconciliation Commission of Ghana as a personal assistant to one of the commissioners. In 2000, he graduated from the University of Ghana with a Bachelor of Laws Degree. He attended the Ghana School of Law, where he pursued the Professional Law Course and was called to the Bar on October 4, 2002. Currently, he has been tasked to investigate human rights violations suffered or perpetuated by members of the legal profession and the judiciary. His interests are in human rights, international relations, and conflict resolution.

GEORGE SARPONG

George Sarpong is the executive director of the Youth Network for Human Rights & Democracy, a network of 7 youth-oriented organizations and 22 community human rights education cells that is dedicated to deepening the involvement and participation of the youth and rural poor in the consolidation of democracy in Ghana. He received a Master of Philosophy from the University of Ghana and is currently studying for the Bar at the Ghana School of Law. He served as the General Secretary of the National Union of Ghana Students before coordinating research and publication activities for the Media Foundation for West Africa. He also edited the Foundation's human and media rights magazine, *Zongo-Giwa*. He has considerable experience in journalism and broadcasting and is currently the Ghana

correspondent for the New York–based *World Press Review*. He teaches media and democracy at the Ghana Institute of Journalism.

HUGO VAN DER MERWE

Hugo van der Merwe is a project manager in the Transition and Reconciliation Department at the Centre for the Study of Violence and Reconciliation (CSVr) in Johannesburg, South Africa. His work at the CSVr, where he has been based for six years, involves research and advocacy in relation to human rights and reconciliation issues emerging from the context of South Africa's transition to democracy, particularly the work of the Truth and Reconciliation Commission (TRC). He is the co-editor of *Conflict Resolution Theory and Practice* (Manchester University Press, 1993), and has authored various papers and articles on community justice, family mediation, restorative justice, and the TRC. He completed his Doctorate in Conflict Analysis and Resolution at George Mason University in 1999 and has worked in the conflict resolution field in the United States and South Africa for 15 years, including as a research coordinator for the Community Dispute Resolution Trust (Johannesburg).

SOLEDAD VILLAGRA DE BIEDERMANN

Soledad Villagra de Biedermann is a professor of International Law and International Human Rights at Catholic University and National University of Asunción and Universidad Andina in Bolivia. She is currently the independent expert of the United Nations Working Group on Arbitrary Detention. She is also coordinating the Paraguayan chapter of the Inter-American Platform of Human Rights, Democracy and Development and working on the creation of the first Paraguayan Truth Commission. She has taught courses on human rights with the IIDH, Costa Rica, and ICRC to lawyers, military, and judges. As the first Paraguayan representative for the CEJIL, she took the first cases from Paraguay before the Inter-American Commission of Human Rights. She later served as the first Director of Human Rights at the Paraguayan Ministry of Foreign Affairs. She is the co-founder of the Coalition of Human Rights NGOs of Paraguay (Codehupy) and the Group of Governmental Institutions of Human Rights. She holds an LL.M. from Harvard University.

ALFONSO WIELAND

Alfonso Wieland is a Peruvian lawyer who has studied sociology, theology and human rights. He is a co-founder of Paz y Esperanza (Peace and Hope), a human rights organization that helps people suffering injustice and oppression, provides integral support to victims of political violence, engages in conflict resolution and advocacy, and has been involved in the process of truth and justice in Peru.



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