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Peace *Peacebuilding*



Truth and Reconciliation Commissions

Operational Framework

Canada 

Acknowledgments

This framework has been prepared as part of a collaborative effort of the Conflict Prevention and Post-Conflict Reconstruction (CPR) Network which is an informal network of bilateral donor countries and multilateral (UN) agencies involved in responding to complex emergencies and conflict situations. (www.cpr-network.org) The CPR Network has established a working group as a focal point for the assembly of analytical frameworks and operational tools developed by donors for responding to conflict situations before, during and after conflict. All frameworks and tools respond to various peacebuilding themes and sectors, and aim to guide programming activity through the lens of past lessons learned and best practices.

In 1998, the CPR working group tasked the Canadian International Development Agency Peacebuilding Unit to conduct the first round of surveys of the international peacebuilding community regarding useful analytical tools. This survey resulted in the *Compendium of Operational Frameworks for Peacebuilding and Donor Co-ordination*. The Compendium is a work in progress, and has been subsequently revised by subsequent rounds of surveys. (available at <http://www.cida.gc.ca/peace>)

This paper, written by Yannick Hingorani, aims to provide an overview of best principles and practices, as they have emerged from the actual experience. In this overview, key challenges are examined, and the paper also tries to anchor the issue within the wider peacebuilding spectrum. Consequently, it provides recommendations to donors and practitioners on how development co-operation can be used to support work in this area.

INTRODUCTION

Over the last fifteen years, truth commissions have become a popular prescription for reconciliation in transitional societies. Past truth commissions comprise many different models and mandates, each designed for a specific social, political and cultural context. Nevertheless, effective truth commissions are based on certain principles and possess core characteristics that are common to all contexts. The three main principles on which such truth commissions are based are as follows:

They are considered a **neutral** enterprise by all stakeholders;

They conduct their activities **impartially**;

They only focus on **past** abuses and violations.

This operational framework seeks to guide policy makers and practitioners alike on the main principles and points that need to be integrated in any attempt to establish a truth commission in a transitional or post-conflict society.

PRELIMINARY FACTORS

A truth commission is but one component of a larger program of justice that is required for effective peacebuilding in a transitional or post-conflict environment. A truth commission should not be seen as a substitute for formal justice, but as a complementary initiative. The establishment of a truth commission depends on a range of factors, such as civil-military relations, the capacity of municipal courts and civil society, international attention and support, political will of the transitional or post-settlement government. All these factors should determine what other components should be added to any program of justice.

A truth commission is an official body that is mandated to produce a formal record, within a limited time frame, of past violations of humanitarian and/or human rights law committed by a previous regime and/or non-state actor(s) in a defined period of recent history. They may complement, but not substitute, courts of law, and primarily focus on the most serious violations, such as "disappearances," extra judicial and summary executions, and torture.

"Justice" and "reconciliation" might have different meanings for different people or groups. Therefore, the design and establishment of a truth commission should be preceded by broad-based consultations, which might include convening a constituent assembly or national conference. Broad-based consultations may include political groups/parties, national and/or ethnic minorities, victims of rights violations, women's groups, civil society organizations, and a range of political, military and socio-economic elite. [See Table C for a list of initiatives that may precede a truth commission.]

THE PURPOSE OF TRUTH COMMISSIONS

Truth commissions can play an important peacebuilding role in a divided society emerging from a period of gross human rights violations. Specifically, they can achieve salient peacebuilding objectives, some of which are as follows:

Build confidence. Fragile transitional societies are often plagued by mistrust between conflicting groups or sections of society. Mistrust can also infect political dialogue, specifically, the process of negotiating a lasting peace settlement. The inclusion of a truth commission in a peace accord can demonstrate a negotiating party's good faith in the peace process. A truth commission that investigates past abuses on all sides can also underscore the commitment of a new government to a lasting peace.

End the cycle of violence. Violent conflict is often cyclical: a violent act by one group against another often begets retribution. The cycle of violence is also spun by demagogues and/or a biased media that aggravate inter-group divisions by inflaming latent tensions and distorting facts based on ethnic, religious or socio-political lines. Propaganda has acted as a conflict accelerator between ethnic groups in both Bosnia-Herzegovina and Rwanda. As a peacebuilding measure, truth commissions can undermine attempts by political profiteers and revisionists to distort facts by conducting impartial investigations and developing an accurate, comprehensive record of who did what to whom (to put it simply).

Respond to needs of victims. After a period of gross human rights abuses, victims require rehabilitation, which might include some form of therapy and reparation. If truth commissions work in a participatory manner, the process of truth-telling and official acknowledgment of facts can have therapeutic value for victims. The form of reparation required by victims depends on their specific needs. Some families of "disappeared" persons simply wish to know the status their loved ones. Beyond determining the status of missing persons, truth commissions can provide a form of redress by providing confessions by perpetrators and official acknowledgement of past violations. In some cases, it may even provide material compensation to victims.

Entrench the rule of law. Truth commissions assist in combating the culture of impunity and unaccountability by exposing human rights abuses to public scrutiny and attributing responsibility for them. Open attribution of state or individual responsibility for abuses can shame perpetrators and send the message to citizens and leaders alike that no one is beyond the law. Ideally, truth commissions are followed up by prosecutions of, at least, serious violations of human rights and humanitarian law; that is, crimes against humanity, war crimes, and torture. The findings of truth commissions can greatly assist in directing future criminal investigations for prosecution.

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Truth commissions can also be an effective mechanism by which a new government can fulfill its obligations under international law. States have a customary obligation under international human rights law to investigate serious violations, provide a domestic remedy, bring perpetrators to justice, and take measures to prevent further violations. This is also the case with grave breaches of the four Geneva Conventions, which enjoy the status of customary law.

Prevent further human rights abuses. Often, truth commissions make recommendations to the government on reforms that will prevent the recurrence of gross human rights abuses. Such recommendations might include better police training, repeal of discriminatory laws, restructure of the military, and the establishment of new civilian response or oversight mechanisms, like an ombudsman. It is rare, however, that a truth commission's recommendations are binding on the government. Notable exceptions are the recommendations of Guatemala's Historical Clarification Commission and El Salvador's Commission on the Truth, which operated on the basis of peace accords, which were binding on the government.

MANDATE

It must be recognized at the outset that a truth commission cannot investigate all past human rights abuses. A truth commission's mandate must clearly define 1) the scope of its investigations; 2) the types of powers with which it will be vested in order to facilitate its work; and 3) the time table within which it must achieve specified results. See Table A for a list of issues on the design of a truth commission mandate. An effective mandate will be:

- Flexible enough to accommodate unexpected challenges to its work;
- Realistic in scope and match the resources available;
- Clear as to the relationship between the truth commission and the courts.

Table A
Key Aspects of Truth Commission Mandates

Mandate Components	Issues
Scope of investigation	<ul style="list-style-type: none">◆ As a first step, a truth commission must identify who are the victims and who are the perpetrators.◆ A truth commission should prioritize cases for investigation against the following criteria: legal weight; number of victims; the meaning attributed to them by society in general; and their impact on the conflict dynamic and future reconciliation.◆ In a civil war context, a delicate balance of investigation into abuses committed by both sides is important in avoiding allegations of bias against the truth commission.

Mandate Components	Issues
Scope of investigation (cont'd)	<ul style="list-style-type: none"> ◆ The temporal scope of investigations should take into account the resources available and the lifespan of the mandate: a shorter mandate should entail a narrower scope of investigation. ◆ A truth commission should investigate complicity of international actors, like foreign governments, in past rights violations.
Legal authority	<ul style="list-style-type: none"> ◆ A truth commission will benefit from having legal authority to search and seize documents from government departments and agencies, specifically the military and police. ◆ Most truth commissions do not have the power to subpoena witnesses, since it is not a judicial body. Notable exceptions are South Africa and Sierra Leone. Yet, South Africa's Commission has been criticized for playing the role of a quasi- court, and thus undermining the defendant's right to due process of a formally constituted court. <p>Truth commissions are more effective in preventing future rights violations if government heeds their recommendations. Thus, their recommendations should be made legally binding, as provided by their founding statute.</p>
Investigation of international actors	<p>Investigation of the role of international actors, like foreign governments, is important for exposing the full truth. Agreements with foreign governments for access to key files will facilitate a truth commission's work.</p>
Timing	<ul style="list-style-type: none"> ◆ Ideally, a truth commission should be established soon after a regime transition or the signing of a peace accord, else it may lose track of witnesses, risk evidence being lost or tampered with and face waning public support. <p>Rapid establishment of a truth commission can act as an effective confidence-building measure.</p>
Individual responsibility	<ul style="list-style-type: none"> ◆ Naming individual perpetrators in a truth commission report risks violating their right to due process of law, since truth commissions are not formally constituted courts. <p>In contexts where individual responsibility for certain acts is blatant common knowledge, naming names might be instrumental to providing victims and society with a sense of comprehensive, official truth (see El Salvador case).</p>

Mandate Components	Issues
Impartiality	<ul style="list-style-type: none"> ◆ Commissioners appointed to truth commissions should be persons with high moral integrity, respect for human rights, and acceptable to all parties and groups to be investigated. <p>The public needs to be aware of a truth commission's role and rationale. A public information campaign will dispel any misinformation about this purpose and increase public involvement by building confidence.</p>
Witness identity	<ul style="list-style-type: none"> ◆ Concealing the identities of witnesses from individuals investigated by a truth commission risks violating the human rights of the latter. All persons have the right to know their accusers in order to defend themselves properly. <p>A level of security should be provided for persons who testify or confess. Witness relocation programs might be an option in some contexts.</p>
Amnesty	<ul style="list-style-type: none"> ◆ The decision to grant amnesty by a truth commission is a political one; but a court when possible should review each case. ◆ Amnesty is often granted in post-conflict contexts where the judicial system is incapable of responding to such a vast number of potential indictments, or when perpetrators still wield significant power. It may be a realistic, second-best option. <p>Blanket amnesty fosters a culture of impunity and undermines efforts to prevent future human rights violations.</p>
Public involvement	<p>A rigorous public information campaign should accompany the establishment of a truth commission, since stakeholders need to know the commission's purpose, role, and limitations. This will foster greater co-operation and dispel unrealistic expectations.</p>
Prosecution link	<ul style="list-style-type: none"> ◆ International law requires the prosecution of genocide, crimes against humanity, certain war crimes (grave breaches), and torture. ◆ Truth commission investigation can provide a sound basis and important "leads" for future criminal investigations and legal proceedings. ◆ Truth commission sponsors should assess the risk that prosecution might pose to stability and reconciliation, especially in cases where perpetrators retain a power-base.

VARIABLE FOR EFFECTIVENESS

The success of a truth commission depends on a range of variables, many of which should be addressed by planners when designing its mandate and structure. Table B provides a list of variables that operate both at the political and programmatic level.

Table B
List of Key Variable for Success

Variables	Potential Impacts + -
Public commitment by all parties	+ Should minimize potential controversy of truth commission findings. Should enhance co-operation of those sectors or groups, which come under investigation.
Peace accords	+ Will provide legal or political framework for truth commission operations + Can make implementation of truth commission recommendations legally binding. + Can ensure accountability of all parties to their commitment to the peace process. If negotiated without participation of potential "spoilers," can undermine credibility of a truth commission.
Consultations on mandate design	+ Can increase the sense of ownership over the reconciliation process by local stakeholders and make greater impact. + Enhance awareness and acceptance of truth commission terms of reference. - Could lead to stalemate in a highly polarized society. Could delay the establishment of a truth commission in a context where quick impact and confidence building is crucial.
Perceived neutrality of staff	Will minimize potential controversy of truth commission findings.
Local Commissioners	+ May understand local political conflict dynamic better. + Will possess local language skills. - May attract threats to their security or smear campaigns. May be susceptible to real or perceived partiality.
Adequate security measures for staff	May allow Commissioners to undertake their work objectively and honestly without fear of reprisal.

Variables	Potential Impacts + -
Public involvement	+ Allows people to tell their stories, which may serve a therapeutic function. Can make certain individuals or groups vulnerable to reprisals or vigilante justice if adequate security provisions are not made.
The truth commission has good resource base	+ Should increase the truth commission's ability to act independently with minimum influence from political forces. May divert resources from legal/judicial reform and criminal prosecution.
Short timeframe (one year or less)	+ Can provide quick results as confidence building measures. + Can capitalize on political windfall in transition or post-conflict environment. May allow investigation for only a few select cases, thus decreasing potential reconciliation impact.
International support	+ May provide greater access to foreign government archives. + May undermine domestic challenges to truth commission findings. - May undermine continuity of truth and reconciliation initiatives if momentum is too dependent on international actors, as their interest or involvement may fluctuate.

FOLLOW UP OPTIONS

A range of other justice initiatives should follow up truth commissions, as part of a transitional justice program. [For other complementary initiatives, see Table C below.

Follow up options are:

Limited amnesty can be a powerful bargaining chip in peace negotiations and may be a realistic compromise when perpetrators of past human rights abuses still wield significant political, military, and economic influence. However, amnesty is limited by international law, which requires the prosecution of grave breaches of the four Geneva Conventions of 1949, violations of Genocide Convention of 1948 and the Torture Convention of 1984 (if applicable), and crimes against humanity, as defined by Charter of the Nuremberg Tribunal.

Lustration entails the disqualification of perpetrators of past rights violations from public service. In some instances this has also included the loss of civil and political rights. For example, El Salvador's Commission on the Truth recommended that all those found responsible for past violations be banned

from public service for 10 years.

Criminal prosecution can proceed alongside, or only after, the operation of a truth commission. Prosecution can bring formal justice to those perpetrators who are identified by truth commission investigations. Prosecution will provide an opportunity for uncovering complex and highly detailed information and analysis into the commission of past abuses, such as crimes against humanity, which require close examination into chain of command and level of knowledge. Such requirements might prove too onerous for a truth commission with limited material and human resources and time frame. Prosecution is also the best follow up option for serious crimes that do not qualify for amnesty.

Civil litigation is perhaps a follow-up option for individuals, groups, or organizations when state responsibility for past human rights violations is unraveled and clarified. Human rights cases should be launched through municipal courts (based on the principle of exhaustion of domestic remedies). If municipal courts are unable to treat the case in accordance to international standards of due process, then the plaintiff may petition relevant international human rights mechanisms, such as the American or European Court for Human Rights, the African Commission for Human Rights, and the UN treaty bodies, such as the Human Rights Committee under the First Optional Protocol to the International Covenant on Civil and Political Rights (if applicable), the Committee Against Torture under Article 22 of the Convention Against Torture (if applicable), or the Committee on the Elimination of Discrimination Against Women under Article 2 of the Optional Protocol to the Convention on the Elimination of All Forms Discrimination Against Women.

Legal and institutional reforms are important preventive measures against future rights violations. New transitional governments should revise legislation that does not meet international human rights standards, such as any discriminatory laws. They should also pass new laws that will address relevant, conflict-generating grievances and facilitate reconciliation. In some cases, judiciaries will have to be rehabilitated and technical assistance will be needed for ensuring their independence from the judiciary, and the training of judges, lawyers, and support staff.

Compensation is often provided to victims of human rights violations by either truth commissions, commissions of inquiry or courts as part of a remedy. For example, the South African Truth and Reconciliation Commission included a Reparations and Rehabilitation Committee. The Committee sought to restore victims' dignity and formulate policy proposals and recommendations on rehabilitation and healing of survivors, families, communities, some of which comprised of compensation packages paid to victims. Similarly, the Chilean Government established the National Corporation for Reparation and Reconciliation after the National Commission on Truth and Reconciliation terminated its mandate. This Corporation continued to search for the remains of the "disappeared," and implemented reparations benefits to victims, as specified by the Commission.¹

Traditional dispute resolution may also provide an opportunity for a transition society to bring past rights abuses to justice when formal justice through the court system is not feasible, due to a lack of judicial capacity. It is important, however, that traditional dispute resolution methods do not violate human rights. For example, acts of dispute resolution and reconciliation must be pursuant to the rule of law and registered by a public institution in order to avoid punishing an individual more than once for the same

¹ Hayner, *supra* n12, 622-23.

act. Traditional dispute resolution may reinforce local capacities and increase involvement of grassroots communities in the reconciliation process, thus enhancing its overall impact.

The Commission for Reception, Truth, and Reconciliation in East Timor established a community reconciliation mechanism to address lesser crimes, such as looting, arson, theft, minor assault, and killing of livestock. The community reconciliation mechanism functions on the basis of an agreement between the community and the perpetrator on an accepted act of reconciliation that is proportionate to the offence committed. For example, such a reconciliation act might consist of a perpetrator rebuilding a house that he burned down.

Entry Points for Peacebuilding Actors

Development actors can play a significant role in establishing an environment conducive to the effective operation of a truth commission. The types of initiatives that can reinforce the overall aims of a truth commission are listed below.

Initiatives	Rationale
Public information campaigns	To increase general awareness on the role and rationale of the truth commission vis-à-vis the overall transitional justice program, specifically how it will benefit victims (both individually and collectively) and perpetrators themselves.
Conflict resolution training	May assist communities in addressing in a peaceful and constructive manner small-scale offences that are uncovered by truth commission findings.
Trauma counseling	To assist victims and survivors in dealing with past abuses when providing testimony in the truth telling process of truth commission investigations.
Legal and judicial reform	Will reinforce the confidence building impact of a truth commission and assist in dispelling any residual mistrust of the legal system by formerly victimized individuals (or groups) who viewed it as biased or ineffective, and thus sought to resolve conflict outside its parameters. Such reform can also include strengthening human rights safeguards in the security sector, specifically judicial oversight of the military and police.
Human rights and justice education	For raising awareness on individual and group rights and on how they can be justiciable through existing public institutions.

Initiatives	Rationale
Human rights and justice education (cont'd)	Such an initiative should target civil society organizations and grassroots communities, and accompany legal/judicial reform, as the latter may introduce new and unfamiliar legal concepts and approaches.
Security sector reform	Should specifically focus on human rights training of civilian police and/or the military during the operation of a truth commission, since ongoing, highly visible human rights violations may undermine the credibility of the truth commission.
Human rights monitoring and reporting	On present human rights violations (if any) by independent mechanism and/or third parties is important if civil society's confidence in the truth commission's ability to improve the human rights situation in the country is not to be weakened.
Inter-group dialogues	On work and findings of the truth commission so that various groups/sectors of society, which are indirectly or directly affected by findings, may come to terms with the record of past abuses. Such fora may also provide opportunity for government and civil society to examine the underlying causes of rights violations and how they may be prevented in the future.
NGO training in documentation and information gathering and advocacy	Can complement the work of truth commissions when they cannot investigate all cases of human rights violations. NGOs can continue research and investigation in order to fill in the gaps (if any) and provide public information on follow up initiatives, such as criminal trials. NGOs can also apply pressure on the government for implementing truth commission recommendations.