



PEACE NEGOTIATIONS
POST-CONFLICT CONSTITUTIONS
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TRUTH AND RECONCILIATION COMMISSIONS: CORE ELEMENTS

Legal Memorandum

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TRUTH AND RECONCILIATION COMMISSIONS: CORE ELEMENTS

Executive Summary

The purpose of this memorandum is to provide an overview of the core elements of truth and reconciliation commissions (TRCs). Truth and reconciliation commissions are independent, temporary commissions of inquiry established to investigate patterns of human rights violations that have occurred over a specified period of time. The primary activities of TRCs include researching and investigating alleged abuses, reporting on documented findings, and making recommendations to promote reconciliation and prevent similar abuses from occurring in the future.

Although a number of different models for truth and reconciliation commissions exist, successful commissions share several core elements. These include: (1) establishing the legitimacy of the commission through consultation with the public and the choice of a sponsor; (2) articulating a properly tailored mandate; (3) selecting neutral and respected personnel; (4) providing for adequate resources and funding; (5) delineating specific activities and powers to enable the commission to fulfill its objective; and (6) producing a final report with concrete and manageable recommendations.

Legitimacy and credibility come from consultations with the public and the thoughtful choosing of a sponsor for the commission. Consulting the affected population and civil society to incorporate their concerns into the commission's mandate, functions, and powers increases the commission's legitimacy. Strong civil society engagement and support can also impact the degree to which the public remains supportive of the commission's work. In addition, a sponsoring entity with a favorable reputation commonly increases the credibility of the TRC at an early stage in the process.

Clear legislation that provides for a manageable mandate can facilitate the fulfillment of the commission's goals. Fulfillment of a commission's mandate is also most effective when the period of investigation is clear and when the violations subject to investigation are defined. Efficient mandates may propose the time period whereby the commission can investigate claims and extension periods to allow for further investigations.

Proper commission member selection provisions are crafted so as to ensure that the public trusts the TRC. The ideal commissioners are both neutral and well-

respected. The selection provisions chosen may highlight the independent nature of the commission so as to quell accusations of a political bias. Further, specifically providing for women commissioners can help encourage female victims to bring their grievances forward. Staff selection also plays a critical role in the successful fulfillment of a commission's mandate. An effective commission often requires human rights experts, investigators, legal experts, researchers, social workers or therapists, translators and technological experts.

Commissions are often tasked with significant investigation responsibilities aimed at consolidating national unity. Thus, providing the commission with sufficient powers to ensure the cooperation of relevant individuals or to investigate particular crimes may aid in the effective achievement of the commission's functions and goals. These powers may vary, but typically include taking testimonies, proposing reparations, requesting documents, and accessing all relevant locations to conduct investigations.

Provision of adequate resources, both financial and tangible, affects the pace and scope of the investigations. The great financial cost of a thorough investigation commonly requires a mixture of international and national funding. Tangible resources include reliable equipment and facilities, including a central location for the commission, transportation for commissioners, offices for the support staff, and basic technological equipment including computers and telephones.

TRC legislation that encourages widespread and accessible dissemination of a final report and requires acceptance of the commission's implementation recommendations can enhance a TRC's successful prevention of similar abuses and violations in the future. Wide dissemination of the final report also provides the public with a greater understanding of the state's national history and the conflict. In many cases, countries have distributed shortened versions of the report or printed versions in daily newspapers so as to afford more access by a broad range of citizens to the commission's findings.

Annex I of this memorandum provides further details on the mandate, personnel, resources, public participation, main activities and powers, and the final reports for the truth and reconciliation commissions created in Argentina, Chile, East Timor, El Salvador, Ghana, Guatemala, Liberia, Morocco, Nepal, Sierra Leone, South Africa, Tunisia, and Uganda.

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TRUTH AND RECONCILIATION COMMISSIONS: CORE ELEMENTS

Statement of Purpose

The purpose of this memorandum is to provide an overview of the core elements of truth and reconciliation commissions.

Introduction

A truth and reconciliation commission (TRC) is an independent, temporary commission of inquiry that investigates and reports on patterns of abuses of human rights or humanitarian law committed during determined periods of time.¹ The primary function of a TRC is to make recommendations for redressing human rights violations committed during periods of conflict and to prevent the repetition of these violations in the future.

Truth and reconciliation commissions are one component that states may use when developing a comprehensive plan for post-conflict transitional justice. States create these commissions after a period of human rights abuse and thus the environment is one where there is minimal trust in government institutions or particular groups of the population. Creating a TRC can be an effective tool to promote reconciliation in a society recovering from conflict by facilitating a transition from violent conflict to post-conflict peace building. TRCs often include a mandate to establish a record of past abuses, which can help in holding perpetrators accountable while concurrently providing a forum for victims to recount the abuses they suffered.²

State practice demonstrates that choices made during the creation of a truth and reconciliation commission will affect the legitimacy of the commission. Consulting the affected population and civil society to incorporate their concerns into the TRC's mandate, functions, and powers will increase the commission's legitimacy.³ Likewise, legitimacy of the commission will be affected by the ways in which a state or transitional government identifies the sponsorship of the commission, drafts its mandate, selects the personnel to serve on it, provides

¹ Mark Freeman, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 18 (2006) and Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict States*, para. 50, U.N. Doc S/2004/616 (Aug. 23, 2004).

² Mark Freeman and Priscilla Hayner, *Truth-Telling*, in RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK 122, 124 (D. Bloomfield et al., eds., 2003).

³ Mark Freeman and Priscilla Hayner, *Truth-Telling*, in RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK 122, 130-32 (D. Bloomfield et al., eds., 2003).

sufficient resources and funding for its activities, and specifies the main activities and powers of the commission.⁴

Establishment of Legitimacy

Legitimacy and credibility come from consultations with the public and the thoughtful choice of a sponsor for the commission. Consulting the affected population and civil society to incorporate their concerns into the commission's mandate, functions, and powers increases the commission's legitimacy. Strong civil society engagement and support can also impact the degree to which the public remains supportive of the commission's work. In addition, a sponsoring entity with a favorable reputation commonly increases the credibility of the TRC at an early stage in the process.

Consultation with the Population

State practice demonstrates that successful truth and reconciliation commissions reflect the primary concerns of the victims and other affected individuals. Often this process requires providing a forum for victims to express their grievances while also building the foundation for national reconciliation, peace, and reconstruction.⁵ Soliciting public involvement in the process of creating a commission or providing a mechanism to engage the public from the early stages has been demonstrated to be of critical importance to the success of a truth and reconciliation commission in attaining these objectives because the public has a voice in the TRC and therefore sees it as legitimate. Drafters of TRC legislation will ideally conduct extensive outreach and gather input from diverse sectors of civil society before establishing the commission's terms of reference. Conducting broad public consultations can provide insight into the national will for the establishment of a TRC, the concerns that the affected population may have regarding its implementation, and the TRC's public purpose.

States that choose to establish TRCs may engage in public consultations through workshops, seminars, and open forums. Feedback mechanisms and educational resources also increase government understanding of community needs.⁶ Open forums can provide opportunities for debate and comment regarding

⁴ TruthCommission.org, *Strategic Choices in the Design of Truth Commissions*, (May 30, 2002), available at <http://truthcommission.org/factor.php?fid=2andlang=en>.

⁵ Anna Triponel and Stephen Pearson, *What Do You Think Should Happen?: Public Participation in Transitional Justice*, 22 PACE INTERNATIONAL LAW REVIEW 103, 103 (2010).

⁶ Anna Triponel and Stephen Pearson, *What Do You Think Should Happen?: Public Participation in Transitional Justice*, 22 PACE INTERNATIONAL LAW REVIEW 103, 107, 121 (2010).

the implementation of a TRC, as was demonstrated in Liberia. The legislature of Liberia approved The Act to Establish the Truth and Reconciliation Commission in June 2005.⁷ This text was the result of a long process of consultation, generally considered to be genuine, between the government and civil society through workshops, trainings, seminars, and meetings.⁸ The United Nations Mission in Liberia (UNMIL) initiated an outreach process with a number of civil society organizations following an initial attempt by the chair of Liberia's transitional government to form the commission unilaterally.⁹ The UNMIL-initiated outreach process followed the recommendations of civil society to hold technical meetings, and brought together the expertise of international organizations, Liberian NGOs, and civil society.¹⁰ At the conclusion of the consultative outreach effort, a three-day conference was held during which these experts met with Liberian stakeholders to exchange opinions on how best to coordinate throughout the TRC process.¹¹ These activities provided a foundation for the next stage of the process – a two-week legislative effort by Liberians that ultimately produced a draft of the law that would become the TRC Act.¹²

Sponsorship

Truth and reconciliation commissions are typically sponsored by the government of a state, an international organization, or a civil society group. An entity sponsors a TRC when that entity supports the creation and functioning of the TRC, such as by lending the entity's name, reputation, or good will to the TRC, or by contributing money, expertise, and other resources to the TRC.¹³ Choosing an appropriate sponsor can contribute to the success of the TRC by attributing credibility to the TRC at an early stage and by ensuring a steady supply of resources to the TRC.

The reputation of the TRC's sponsor is key to establishing the TRC's legitimacy and credibility. Most commonly, presidential decrees create TRCs. However, if the president does not command widespread support, it is essential

⁷ *An Act to Establish the Truth and Reconciliation Commission of Liberia* (Liberia, 2005), available at <http://trcofliberia.org/about/trc-mandate>.

⁸ Amnesty International, *Liberia: Truth, Justice and Reparation*, 2 (2006), available at <http://www.amnesty.org/en/library/asset/AFR34/005/2006/en/3205abe5-d41f-11dd-8743-d305bea2b2c7/afr340052006en.pdf>.

⁹ Amnesty International, *Liberia: Truth, Justice and Reparation*, 26 (2006).

¹⁰ Republic of Liberia Truth and Reconciliation Commission, *Consolidated Final Report*, 175 (2009).

¹¹ Republic of Liberia Truth and Reconciliation Commission, *Consolidated Final Report*, 175 (2009).

¹² Republic of Liberia Truth and Reconciliation Commission, *Consolidated Final Report*, 175 (2009).

¹³ TruthCommission.org, *Strategic Choices in the Design of Truth Commissions*, (May 30, 2002), available at <http://www.truthcommission.org/detail.php?fid=1andcid=2anddid=5andsdid=andlang=en>.

that other organizations, such as the United Nations and/or a local non-governmental organization be involved in the sponsorship process. Locally based organizations in particular can bring credibility to the commission by enabling it to reflect the needs of the local communities and by guaranteeing a degree of political familiarity.¹⁴ In El Salvador, it was more appropriate for the United Nations, the Government of El Salvador, and the opposition forces of the Farabundo Martí National Liberation Front (FMLN) to co-sponsor a truth commission together.¹⁵ The Government and the FMLN were both parties to the Mexico Peace Agreements, and this co-sponsorship lent a degree of credibility to the commission for particular portions of the population. The United Nation's sponsorship permitted the commission to receive expertise and guidance from the international community and provided the commission with further credibility.¹⁶

In South Africa, the President and Parliament jointly sponsored the establishment of the TRC. The President pushed for the introduction of a bill to establish the TRC and assumed an important role in setting up the TRC as set out in the law, such as by appointing or removing the commissioners.¹⁷ Meanwhile, Parliament debated the bill and enacted it into law. The resulting Promotion of National Unity and Reconciliation Act of 1995 established by dual sponsorship provided greater authority to the commission.¹⁸

Mandate

The mandate of a truth and reconciliation commission describes the commission's goals and objectives, designates the violations and time period under investigation, and specifies a timeframe for completion of the commission's work. A number of factors are commonly considered in determining how to articulate the mandate for a TRC. The situation prompting the creation of the TRC, the resources available to it, the state of the government, and the political climate will all play a role in the drafting of the mandate.

Establishing a Legal Basis

The mandate of a truth and reconciliation commission is commonly provided for in a piece of legislation, a peace agreement, or an executive decree.

¹⁴ TruthCommission.org, *Strategic Choices in the Design of Truth Commissions*, (May 30, 2002).

¹⁵ TruthCommission.org, *Strategic Choices in the Design of Truth Commissions*, (May 30, 2002).

¹⁶ TruthCommission.org, *Strategic Choices in the Design of Truth Commissions*, (May 30, 2002).

¹⁷ *Promotion of National Unity and Reconciliation Act*, Preamble, secs. 2, 7 (South Africa, 1995), available at <http://www.justice.gov.za/legislation/acts/1995-034.pdf>.

¹⁸ *Promotion of National Unity and Reconciliation Act*, art. 3 (South Africa, 1995).

Additional legislation may be necessary to elaborate further on the mandate. In Sierra Leone and Liberia, peace agreements set forth the mandates for the commissions.¹⁹ These peace agreements were complemented by legislation specifying how the commissions' functions would be implemented and outlining the objectives of these commissions.²⁰ The TRC in South Africa was created by legislation, the Promotion of National Unity and Reconciliation Act, passed by the South African Parliament and signed into law by President Nelson Mandela in 1995.²¹ The Chilean TRC was established by a Presidential decree that was subsequently approved by two executive ministers.²² The President of Honduras has similarly issued a presidential decree to create the Honduran TRC.²³ Algeria also created its TRC by presidential decree.²⁴

Objectives and Goals of the Commission

The beginning of the text creating a truth and reconciliation commission outlines the goals and objectives of this commission. A mandate that explicitly identifies the truth and reconciliation commission's goals can guide the work of the commission and can clarify its purpose for the public. One common objective of TRCs is to clarify the main causes and effects of past violence and human rights abuses and make recommendations to prevent such events from recurring. TRC legislation also commonly attempts to promote national reconciliation, healing, and unity.²⁵

¹⁹ *Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone* (Sierra Leone, 1999), available at http://www.usip.org/files/file/resources/collections/peace_agreements/sierra_leone_07071999.pdf; *Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties* (Liberia, 2003), available at http://www.usip.org/files/file/resources/collections/peace_agreements/liberia_08182003.pdf.

²⁰ *The Truth and Reconciliation Act* (Sierra Leone, 2000), available at <http://www.usip.org/files/file/resources/collections/commissions/SeirraLeone-Charter.pdf>; *Truth and Reconciliation Commission Act* (Liberia, 2005), available at <http://trcofliberia.org/about/trc-mandate>.

²¹ *Promotion of National Unity and Reconciliation Act*, Preamble, secs. 2, 7 (South Africa, 1995).

²² *Supreme Decree No. 355, Creation of the Commission on Truth and Reconciliation*, art. 1, (Chile, 1990), reproduced in Report of the Chilean National Commission on Truth and Reconciliation, THE CENTER FOR CIVIL AND HUMAN RIGHTS OF THE NOTRE DAME LAW SCHOOL (1993), available at http://www.usip.org/library/tc/doc/reports/chile/chile_1993_foreward.html.

²³ *Executive Decree Number PCM-011-2010* (Honduras, 2010), available at <http://scm.oas.org/pdfs/2010/AGSC00258E-8.pdf>.

²⁴ *Presidential Decree No. 01-71* (Algeria, 2001), available at <http://www.usip.org/publications/truth-commission-algeria>.

²⁵ Mark Freeman, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 18 (2006).

In Chile and South Africa, the legislation creating their respective TRCs specified that the objective of these commissions was national reconciliation.²⁶ The law establishing the truth and reconciliation commission for East Timor specified nine distinct objectives, among which were inquiry into human rights violations during the political conflict, identification of factors leading to violations, identification of practices to prevent a recurrence of violations, referral of violations to a prosecutor, and restoration of the dignity of victims.²⁷ In Guatemala, the peace agreement establishing the TRC, the Commission for Historical Clarification, established the goal of “help[ing] lay the bases for peaceful coexistence and respect for human rights among Guatemalans.”²⁸ In the Democratic Republic of the Congo, the goals stated in the authorizing legislation included supporting the government transition process, mediating and preventing ongoing conflict between communities, healing trauma, and restoring mutual confidence among Congolese people.²⁹

Including Justice as an Element of the Mandate

In some cases, a TRC might be labeled a “Truth, Justice, and Reconciliation Commission.” In these cases, the name of the commission indicates the desire not only for the truth to be known and for society to achieve reconciliation, but also for violators to be brought to justice. Indeed, a TRC can be used as a means of bringing offenders to justice by collecting evidence of gross violations, referring serious violations to courts, or establishing relationships with criminal investigators.³⁰ While many transitional governments may wish to leave out the threat of justice in order to encourage more participants, particularly offenders, to come forward and offer testimony, TRCs can be a useful forum for identifying

²⁶ *Supreme Decree No. 355, Creation of the Commission on Truth and Reconciliation*, art. 1, (Chile 1990), reproduced in Report of the Chilean National Commission on Truth and Reconciliation, THE CENTER FOR CIVIL AND HUMAN RIGHTS OF THE NOTRE DAME LAW SCHOOL (1993); *The Promotion of National Unity and Reconciliation Act*, art. 3(1) (South Africa, 1995).

²⁷ United Nations Transitional Administration for East Timor, *Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth, and Reconciliation in East Timor*, U.N. Doc. UNTAET/REG/2001/20, sec. 3.1 (July 13, 2001), available at <http://www.un.org/peace/etimor/untaetR/Reg10e.pdf>.

²⁸ *Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer* (Guatemala, 1994), available at http://www.usip.org/files/file/resources/collections/peace_agreements/guat_940623.pdf.

²⁹ *Act for the Organization, Functions and Operations of the Truth and Reconciliation Commission*, art. 5 (Democratic Republic of the Congo, 2004), available in French at <http://www.leganet.cd/Legislation/DroitPenal/Loi01.18.30.07.2004.CVR.htm>.

³⁰ Amnesty International, *Commissioning Justice: Truth Commissions and Criminal Justice*, 16-18 (2010), available at <http://www.amnesty.org/en/library/info/POL30/004/2010>.

those who have committed serious violations of international law so that they can be prosecuted in another venue.³¹

In Kenya, the Truth, Justice, and Reconciliation Commission (TJRC) had the power to recommend prosecutions and suggest reparations for victims, though it could not enforce such recommendations.³² The TJRC had the authority to recommend other means of restoring peace and compliance with human rights as well as recommending conditional amnesty for perpetrators.³³ The TJRC could refuse amnesty for applicants who were already subject to criminal proceedings or in prison.³⁴ Primarily, however, the “justice” element of the Kenyan TJRC took the form of reparations for victims, rather than penalties for violators.³⁵ Information collected by the TRCs in Argentina, Chad, and Sri Lanka eventually led to prosecutions of violators, and numerous other TRCs established relationships with prosecution offices or otherwise provided information that could be used to prosecute offenders in criminal courts.³⁶

Acts Under Investigation

The mandate of a truth and reconciliation commission also specifies the acts that the commission is to investigate. Legislation establishing a TRC commonly focuses on the investigation of gross violations of human rights and humanitarian law, such as torture, rape, prolonged arbitrary detention, disappearances, other forms of inhumane treatment, and killings.³⁷ Where appropriate, drafters of TRC legislation may provide the TRC a broad scope for the crimes that it is authorized to investigate. In El Salvador, drafters authorized the TRC to investigate “serious acts of violence,” but did not specify particular crimes.³⁸

In some instances, drafters of TRC legislation choose to tailor the mandate of the TRC to respond to specific abuses that took place in that state, such as property crimes or issues regarding access to natural resources. In Ghana, the terms of reference for its TRC included “killing, abduction, disappearance,

³¹ Amnesty International, *Commissioning Justice: Truth Commissions and Criminal Justice*, 16 (2010).

³² *Truth, Justice, and Reconciliation Bill*, arts. 6, 7 (Kenya, 2008), available at <http://www.usip.org/files/file/resources/collections/commissions/Kenya-Charter.pdf>.

³³ *Truth, Justice, and Reconciliation Bill*, art. 6 (2008).

³⁴ *Truth, Justice, and Reconciliation Bill*, art. 38(6) (Kenya, 2008).

³⁵ *Truth, Justice, and Reconciliation Bill*, art. 41 (2008).

³⁶ Amnesty International, *Commissioning Justice: Truth Commissions and Criminal Justice*, 16-18 (2010).

³⁷ Mark Freeman, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 33 (2006).

³⁸ *The Mexico Agreements*, art. 2 (El Salvador, 1991), available at <http://www.usip.org/files/file/resources/collections/commissions/El%20Salvador-Charter.pdf>.

detention, torture, ill-treatment, and seizure of properties.”³⁹ In Liberia, the TRC legislation called for the commission to investigate “gross human rights violations and violations of international humanitarian law as well as abuses.”⁴⁰ These violations included, but were not limited to, massacres, rapes, murders, extra-judicial killings, and “economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflict.”⁴¹ This mandate was particularly relevant in Liberia in light of the conflict over the control of diamond mines.

Limiting a commission’s mandate can restrict its ability to fully investigate crimes related to the conflict. This can in turn result in the creation of duplicative commissions.⁴² In Chile, for instance, the executive decree creating the National Commission for Truth and Reconciliation, also known as the Rettig Commission, only included within the commission’s mandate those violations of international humanitarian law resulting in death.⁴³ The mandate excluded other violations such as torture or prolonged arbitrary detention. This exclusion resulted in the need for Chile to create an additional, separate commission years later to address the human rights violations not initially investigated by its first TRC.⁴⁴

To avoid unintentionally preventing a TRC from investigating certain abuses, drafters of TRC legislation may choose to reference international law as a defining source for violations of human rights and humanitarian law.⁴⁵ In East Timor, the United Nations Transitional Administration in East Timor regulation establishing the Commission on Reception, Truth, and Reconciliation referenced several international instruments that collectively defined “international humanitarian law.”⁴⁶ By keeping the definition of violations broad, a commission

³⁹ *The National Reconciliation Commission Act*, art. 4 (Ghana, 2002), available at <http://www.ghanareview.com/reconact.html>.

⁴⁰ *The Act to Establish the Truth and Reconciliation Commission of Liberia*, sec. 4(a) (Liberia, 2005).

⁴¹ *The Act to Establish the Truth and Reconciliation Commission of Liberia*, sec. 4(a) (Liberia, 2005).

⁴² TruthCommission.org, *Strategic Choices in the Design of Truth Commission*, (May 30, 2002).

⁴³ *Supreme Decree No. 355, Creation of the Commission on Truth and Reconciliation*, art. 1, (Chile 1990), reproduced in Report of the Chilean National Commission on Truth and Reconciliation, THE CENTER FOR CIVIL AND HUMAN RIGHTS OF THE NOTRE DAME LAW SCHOOL (1993).

⁴⁴ Amnesty International, *Liberia: Truth Justice and Reparation*, 14 (June 22, 2006).

⁴⁵ Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, U.N. Doc. HR/PUB/06/1, 12 (2006), available at <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>.

⁴⁶ The UNTAET regulation defined “international humanitarian law” to include “the Geneva Conventions of 12 August 1949; the Protocols Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International and non-International Armed Conflict of 8 June 1977; and the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects of 10 October 1980; and the laws and customs of war.” United Nations Transitional Administration for East Timor, *Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth, and Reconciliation in East Timor*, U.N. Doc. UNTAET/REG/2001/20, sec. 1(d) (July 13, 2001), available at <http://www.un.org/peace/etimor/untaetR/Reg10e.pdf>.

can gather information more freely than would be the case if it could only investigate specific types of crimes.

Time Periods Investigated

TRC legislation generally identifies a set time period within which it can investigate the violations and abuses that occurred. The time period under investigation may begin and end on a specific date or an unspecified date, such as when the conflict started until the conflict ended. An unspecified date allows the commissioners to determine the start or end of the period under investigation. The royal decree that established the Moroccan truth and reconciliation commission merely stated that the commission would investigate human rights violations “that occurred in the past.”⁴⁷ In practice, the Moroccan truth and reconciliation commission investigated instances of human rights violations that occurred during the years 1956 to 1999.⁴⁸

The law establishing the TRC in the Democratic Republic of Congo specified that the commission covered political crimes and violations of human rights that took place from 1960 until the “end of the transition,” a date to be specified in the future.⁴⁹ In Kenya, the Truth, Justice, and Reconciliation Commission Act specified that the commission would have jurisdiction over human rights violations from independence in 1963 to February 2008.⁵⁰ A general time period may also be indicated, leaving the precise details to be determined by the commission. The enabling legislation in El Salvador, for instance, tasked the TRC with investigating violations that took place “since 1980” until the signing of the peace agreement providing for the commission.⁵¹ To maintain impartiality, the time period identified in TRC legislation usually terminates before the TRC commences its work.

Most documents creating truth and reconciliation commissions call for the investigation of a continuous time period. Leaving gaps between periods of investigation may create an incomplete investigation or lead to a perception of bias if it appears that the commission is focusing only on aggressions committed by one

⁴⁷ *Dahir Approving Statutes of the Equity and Reconciliation Commission*, Preamble (Morocco, 2004), available at <http://www.usip.org/files/file/resources/collections/commissions/Morocco-Charter.pdf>.

⁴⁸ Amnesty International, *Broken Promises: The Equity and Reconciliation Commission and its Follow-Up*, 4 (2010), available at <http://www.amnesty.org/en/library/asset/MDE29/001/2010/en/63d99172-428d-4717-8c25-866c879c80e9/mde290012010en.pdf>.

⁴⁹ *Act for the Organization, Functions and Operations of the Truth and Reconciliation Commission*, art. 6 (Democratic Republic of the Congo, 2004).

⁵⁰ *Truth, Justice, and Reconciliation Bill*, art. 6 (Kenya, 2008).

⁵¹ *The Mexico Agreements*, art. 2 (El Salvador, 1991).

party to the conflict. The TRC law in Ghana initially limited investigations to three distinct nonconsecutive time periods between 1966 and 1993, leaving gaps between these three periods.⁵² The public and civil society groups protested these gaps, resulting in the drafters changing the law so investigations could include events that occurred throughout the established period.⁵³

Duration of Mandate

Truth and reconciliation commissions are temporary entities. Drafters of TRC legislation may either include specific start and end dates or create flexible dates and allow for extensions. Common state practice is to set the truth and reconciliation commission's completion timeframe with optional six-month extensions. For instance, the Truth and Reconciliation Commission Act in Sierra Leone established a completion timeframe with an optional six-month extension, in the event that there was good cause for the President of Sierra Leone to do so.⁵⁴ In East Timor, the regulation establishing the Commission for Reception, Truth and Reconciliation called for a completion timeframe of 24 months with a possible discretionary extension.⁵⁵

The completion timeframe for a TRC is usually determined with the overall mandate of the commission in mind. If a commission has many violations to investigate in a very short period of time, it may not be able to successfully fulfill its mandate and achieve all of its goals. In Guatemala, the TRC legislation limited the TRC's operations to six months. Commissioners complained that six months was not enough time to effectively complete their broad mandate.⁵⁶ Although very short completion times can be limiting, time constraints can also help to prevent the TRC from straying from its mandate or losing political momentum or budgetary support.⁵⁷

⁵² Nahla Valji, *Ghana's National Reconciliation Commission: A Comparative Assessment*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 5 (Sept. 2006) available at <http://www.ictj.org/static/Africa/Subsahara/GhanaCommission.pdf>.

⁵³ Nahla Valji, *Ghana's National Reconciliation Commission: A Comparative Assessment*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 5 (Sept. 2006).

⁵⁴ *The Truth and Reconciliation Commission Act* (Sierra Leone, 2000), available at <http://www.usip.org/files/file/resources/collections/commissions/SeirraLeone-Charter.pdf>.

⁵⁵ United Nations Transitional Administration for East Timor, *Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth, and Reconciliation in East Timor*, U.N. Doc. UNTAET/REG/2001/20, arts. 2.3, 2.4 (July 13, 2001), available at <http://www.un.org/peace/etimor/untaetR/Reg10e.pdf>.

⁵⁶ Christian Tomuschat, *Clarification Commission in Guatemala*, 23 HUMAN RIGHTS QUARTERLY 233, 240 (2001).

⁵⁷ Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, U.N. Doc. HR/PUB/06/1, 12 (2006).

Personnel

A government creating a truth and reconciliation commission will also need to determine at the outset a methodology for the selection of commissioners and staff members. The manner in which the TRC's personnel are selected commonly influences both the public perceptions of the commission as well as the commission's ultimate findings. Factors to consider include the desired demographic and political backgrounds for the commissioners and staff, the inclusion of international members, and the types of expertise required.

Commissioners

TRC commissioners have a significant impact on the recommendations that the TRC releases. The public's trust of the commissioners often forms the legitimacy of the TRC's work. The inclusion of widely respected members of society and generally accepted neutral members of the international community can increase public trust in the commission. The context and circumstances in each state will determine if it is appropriate to include international commissioners.

Methods of Selection

The president of the state, an international entity, or an independent selection panel may appoint the TRC commissioners. In Ghana and Argentina, the President appointed the commissioners.⁵⁸ In Guatemala, the Secretary General of the United Nations chose the commission's chairman.⁵⁹ In Liberia, the government appointed an independent selection panel comprised of political party members, civil society representatives, and representatives from the United Nations and the Economic Community of West African States (ECOWAS) to appoint commissioners.⁶⁰ The ECOWAS representative presided over the selection panel, which vetted candidates according to specific criteria of independence, personal integrity, and

⁵⁸ *National Reconciliation Act*, art. 2 (Ghana, 2002), available at <http://www.ghanareview.com/reconact.html>; Decree No. 187/83, art. 5 (Argentina, 1983), available at <http://www.usip.org/files/file/resources/collections/commissions/Argentina-Charter.pdf>.

⁵⁹ *Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer*, 2 (Guatemala 1994), available at <http://www.usip.org/files/file/resources/collections/commissions/Guatemala-Charter.pdf>.

⁶⁰ *Truth and Reconciliation Commission Act*, art. 5 (Liberia, 1995). See also Amnesty International, *Liberia: Truth Justice and Reparation* 25 (June 22, 2006).

diversity.⁶¹ The selected commissioners were then subjected to confirmation hearings before the legislature.⁶²

Consultation with the public and with affected groups can also greatly improve the staffing process. Commissions are more likely to garner public support and credibility where the public sees the process of selection as participatory and transparent.⁶³ If society respects and accepts commissioners, it is more likely that the TRC will be able to fulfill its mandate, whereas a failure of commissioners to maintain the trust of the public will undermine the TRC's ability to fulfill its mandate.⁶⁴ For instance, in Kenya, a lack of confidence in the chairman of the Truth, Justice, and Reconciliation Commission resulted in lack of faith in the commission and calls for the chairman's removal, which ultimately compelled him to step down.⁶⁵ In Liberia, tensions between the commissioners and the international members consulting the TRC led to a lack of confidence in the TRC both locally and internationally.⁶⁶

International Commissioners

In some instances, the membership of the commission is limited exclusively to citizens of that state. The commissioners chosen in Ghana, though drawn from a variety of professions and communities, were all Ghanaian.⁶⁷ Nonetheless, members of the public criticized the Ghanaian president and his advisors in the Council of State for ignoring the advice of civil society representatives before choosing the TRC commissioners.⁶⁸ In other cases, it is appropriate for the TRC to limit significantly the number of international commissioners. For instance, in South Africa, the TRC law declared that foreigners could be appointed to only two of the 17 commissioner positions.⁶⁹ In other instances, where the population may

⁶¹ *Truth and Reconciliation Commission Act*, art. 5 (Liberia, 1995). See also Amnesty International, *Liberia: Truth Justice and Reparation* 25 (June 22, 2006).

⁶² *Truth and Reconciliation Commission Act*, art. 5 (Liberia, 1995). See also Amnesty International, *Liberia: Truth Justice and Reparation* 25 (June 22, 2006).

⁶³ Nahla Valji, *Ghana's National Reconciliation Commission: A Comparative Assessment*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 6 (Sept. 2006).

⁶⁴ Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, U.N. Doc. HR/PUB/06/1, 6 (2006).

⁶⁵ Anthony Kariuki, *TJRC Chair Kiplagat Steps Aside*, DAILY NATION, Nov. 2, 2010, available at <http://allafrica.com/stories/201011020983.html>.

⁶⁶ Paul James-Allen et al., *Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 8 (2010), available at <http://allafrica.com/download/resource/main/main/idatcs/00020126:d95a98ec10130ea8f7b0605905fba5a2.pdf>.

⁶⁷ Nahla Valji, *Ghana's National Reconciliation Commission: A Comparative Assessment*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 8 (Sept. 2006).

⁶⁸ Nahla Valji, *Ghana's National Reconciliation Commission: A Comparative Assessment*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 7-8 (Sept. 2006).

⁶⁹ *The Promotion of National Unity and Reconciliation Act*, art. 7(b) (South Africa, 1995).

find it difficult to perceive a local citizen as neutral or where the TRC needs specific legal or technical experts, it may be preferable to provide for a greater number of international members. For these reasons, the United Nations did not appoint any Salvadoran to be a commissioner or staff member of the Truth Commission in El Salvador.⁷⁰

Staff

The staff of a truth and reconciliation commission may include a diverse set of individuals with specific skill sets. Like the commissioners, the president, an international entity, or an independent selection panel may appoint the staff members. Staff may include human rights experts, investigators, legal experts, researchers, therapists or social workers, translators, computer specialists, administrative experts, database managers, data entry and clerical staff, technology support, public affairs experts, security personnel, and forensic specialists.⁷¹ Similar to commissioners, the staff for the TRC may be either domestic or international. Some of the staff positions, such as those managing the database, or those hired to take statements from victims may also require specialized training. The number of staff members may vary depending on the type of work the commission engages in and the timeframe within which it needs to conduct its activities. TRC legislation typically provides that the commissioners will make staffing decisions. Legislation establishing a TRC may encourage the commissioners to fully consider staffing needs and resources before commencing its work.⁷²

In Guatemala, the number of staff members comprising the Commission for Historical Clarification ranged from 100 to 200 during the commission's operation and included both Guatemalans and internationals.⁷³ In El Salvador, the staff members were entirely international due to concerns that citizens serving on the TRC might be threatened based on their work.⁷⁴ The legislation establishing the TRC in Liberia prohibited the TRC from employing individuals who were "known or perceived as human rights violators," and required that the TRC include women

⁷⁰ Margaret Popkin, *The Salvadoran Truth Commission*, in TRUTH COMMISSION AND COURTS 105, 108 (William A. Schabas and Shane Darcy, eds., 2004).

⁷¹ Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, U.N. Doc. HR/PUB/06/1, 12 (2006).

⁷² Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, U.N. Doc. HR/PUB/06/1, 12 (2006).

⁷³ Joanna R. Quinn and Mark Freeman, *Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa*, 25 HUMAN RIGHTS QUARTERLY 1117, 1121-22 (2003).

⁷⁴ Margaret Popkin, *The Salvadoran Truth Commission*, in TRUTH COMMISSION AND COURTS 105, 108 (William A. Schabas and Shane Darcy, eds., 2004).

at all staff levels of the commission.⁷⁵ To ensure the presence of women in the commission, the legislating act in Liberia required that no less than four of the nine commissioners be women.⁷⁶

Resources

The availability of resources will affect the pace and scope of investigations conducted by truth and reconciliation commissions. If resources are minimal, then the scope of the investigation will be limited, thereby minimizing the legitimacy and relevancy of the commission.

Funding

Financial resources play a large role in the effectiveness and success of a truth commission because lack of funding can potentially undermine the fulfillment of the commission's mandate. Therefore, it is common for countries to look to international sources to meet the commission's financial needs. The TRC in Guatemala used a mixture of government and international funds. In El Salvador, the United Nations provided all of the funds for the TRC.⁷⁷ The government funded the TRC in South Africa,⁷⁸ while Sierra Leone's TRC obtained a combination of government funds and donations from "foreign governments, intergovernmental organizations, foundations and non-governmental organizations."⁷⁹ In Chile, the commissioners of the TRC were not paid, and secretariat staff was contracted as necessary by the government.⁸⁰ Some states, such as South Africa, noted that insufficient funding strongly influenced the magnitude of the TRC's investigation.⁸¹

Equipment and Facilities

Like financial funding, the availability of facilities and equipment can also impact the legitimacy and success of a TRC. The site of the commission, the number of offices available, transportation services for the staff and commission,

⁷⁵ *An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia*, secs. 11, 24 (Liberia, 2005). See also, Amnesty International, *Liberia: Truth Justice and Reparation* 25, 29 (June 22, 2006).

⁷⁶ *An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia*, sec. 7, (Liberia, 2005).

⁷⁷ TruthCommission.org, *Strategic Choices in the Design of Truth Commissions*, (May 30, 2002).

⁷⁸ TruthCommission.org, *Strategic Choices in the Design of Truth Commissions*, (May 30, 2002).

⁷⁹ *The Truth and Reconciliation Commission Act*, art. 12(1) (Sierra Leone, 2000).

⁸⁰ *Supreme Decree No. 355, Creation of the Commission on Truth and Reconciliation*, art. 9 (Chile, 1990), reproduced in Report of the Chilean National Commission on Truth and Reconciliation, THE CENTER FOR CIVIL AND HUMAN RIGHTS OF THE NOTRE DAME LAW SCHOOL (1993).

⁸¹ TruthCommission.org, *Strategic Choices in the Design of Truth Commissions*, (May 30, 2002).

and communications equipment such as telephones and computers may require the support and involvement of government ministries or non-governmental organizations. In Argentina, the headquarters of the National Commission on Disappeared Persons was provided with central headquarters in the San Martin cultural complex, with expansion areas available if needed.⁸² The commission also had transportation capabilities that allowed them to travel widely, and received assistance from the Foreign Ministry and various embassies to collect testimony from exiled persons.⁸³

Activities and Powers

TRC legislation usually lists the primary activities that the TRC will undertake. These activities typically include collecting data, investigating and researching facts, and drafting a final report setting forth specific recommendations for moving towards national reconciliation. TRC legislation also commonly lists the powers granted to the TRC in order to accomplish these activities and fulfill its broader goals and objectives.

Data Collection

The law creating the truth and reconciliation commission may specify a list of activities that can be undertaken to gather data. This can include taking statements from victims, witnesses, perpetrators, and other relevant persons; holding public or private hearings; conducting fact-finding missions; and reviewing specific or confidential documents. In Sierra Leone for example, the legislation creating the TRC authorized the commission to undertake investigations, conduct research, hold public and private sessions with both victims and ex-combatants, and take individual statements.⁸⁴ Alternatively, TRC legislation may include a broad provision authorizing the commission to perform any activities necessary to uncover the truth. In this regard, the TRC legislation of Liberia provided that “the TRC shall enjoy and exercise such functions and powers as are relevant for the realization of its mandates.”⁸⁵

⁸² TruthCommission.org, *Strategic Choices in the Design of Truth Commissions*, (May 30, 2002).

⁸³ TruthCommission.org, *Strategic Choices in the Design of Truth Commissions*, (May 30, 2002).

⁸⁴ *The Truth and Reconciliation Commission Act*, art. 7(3) (Sierra Leone, 2000).

⁸⁵ *The Act to Establish the Truth and Reconciliation Commission of Liberia*, sec. 26 (Liberia, 2005).

Research and Analysis

In order to establish an accurate historical record of events, a commission may need to conduct additional independent research to verify the information gathered. A TRC may call for the creation of a data management system to assist the commission with research and analysis, or collaborate with an international organization that maintains expertise in managing similar data. For instance, the Commission for Reception, Truth, and Reconciliation in East Timor collaborated with the Human Rights Data Analysis Group to establish information management processes and to guide the commission's statistical analysis.⁸⁶

Powers

TRC legislation commonly provides the commission with the requisite powers to fulfill its goals and objectives. Providing for certain powers enables the commission to operate effectively, particularly in states where the government is hesitant to cooperate or other similar obstacles to the commission's work could arise. Such powers may include the authority to carry out on-site visits, access documents, protect witnesses, grant amnesty, or impose sanctions or fines on those that interfere with the work of the TRC.⁸⁷ The powers that TRC legislation provides to a commission depend largely on the conflict, the abuses and violations committed, and the resources available to the commission.

A TRC may need the power to issue a summons or subpoena to effectively investigate past abuses. It may be particularly useful for TRCs investigating government officials or uncooperative perpetrators to have the power to compel attendance and cooperation of witnesses.⁸⁸ The TRCs in Liberia, Sierra Leone, and South Africa had the power to compel witnesses to testify and organizations to turn over documents.⁸⁹ In Guatemala, the TRC legislation did not give the commission the power to compel cooperation. Consequently, the commission was unable to secure participation from many of the perpetrators.⁹⁰

⁸⁶ Human Rights Data Analysis Group, *Projects: Timor Leste* (2010), available at <http://www.hrdag.org/about/timor-leste.shtml>.

⁸⁷ Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, U.N. Doc. HR/PUB/06/1, 12 (2006).

⁸⁸ Mark Freeman, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 190 (2006).

⁸⁹ *An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia*, sec. 27(a) (Liberia, 2005); *The Truth and Reconciliation Commission Act*, art. 8(1)(a) (Sierra Leone, 2000); *Promotion of National Unity and Reconciliation Act*, art. 31(1) (South Africa, 1995). See also Amnesty International, *Liberia: Truth Justice and Reparation*, 18 (June 22, 2006).

⁹⁰ Joanna R. Quinn and Mark Freeman, *Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa*, 25 HUMAN RIGHTS QUARTERLY 1117, 1124 (2003).

A TRC law can also encourage the commission to be sensitive in the exercise of its powers, particularly where victims are distrustful of the commission or intimidated at the thought of testifying. Compelling an unwilling victim to testify may be harmful for longer-term reconciliation.⁹¹ Mandating the involvement of social workers or counselors can help commissioners remain sensitive to the needs and rights of victims in the exercise of their investigating powers.⁹² Legislation can also mandate that the TRC provide witness protection so that a hesitant witness may testify without fear of intimidation or retribution.⁹³

A key decision in the truth and reconciliation process is whether to grant amnesty to human rights violators in exchange for truthful reports. Parties to a conflict may not agree to peace negotiations unless the TRC grants some form of amnesty. TRC legislation can provide for three types of amnesty: blanket amnesty, limited amnesty, and conditional amnesty. Blanket amnesty absolves all perpetrators of liability for all crimes, usually as an encouragement to cease hostilities and enter into negotiations.⁹⁴ Limited amnesty may only apply to certain persons, certain crimes, or certain time periods, while conditional amnesty requires a successful application and support through testimony before the commission.⁹⁵

In Sierra Leone, the peace agreement between the government of Sierra Leone and the rebels mandated that the rebels receive blanket amnesties.⁹⁶ Comparatively, in South Africa, the TRC legislation declared that the TRC might accept applications for amnesty based on the perpetrator's degree of disclosure and the current political objectives.⁹⁷ The TRC in the Democratic Republic of the Congo could recommend amnesty, but not for violations of serious international crimes like genocide and crimes against humanity.⁹⁸ The TRC in East Timor could not recommend or grant amnesty, although its process of reintegrating perpetrators into communities could result in their immunity from civil or criminal liability for non-serious crimes.⁹⁹

⁹¹ Amnesty International, *Liberia: Truth Justice and Reparation*, 14 (June 22, 2006).

⁹² Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, U.N. Doc. HR/PUB/06/1, 23 (2006).

⁹³ Mark Freeman, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 187 (2006).

⁹⁴ TruthCommission.org, *Strategic Choices in the Design of Truth Commission*, (May 30, 2002). See also Ernest Harsch, *Reintegration of Ex-combatants*, 19 AFRICA RENEWAL 1 (2005), available at <http://www.un.org/ecosocdev/geninfo/afrec/vol19no3/193combatant.html>.

⁹⁵ TruthCommission.org, *Strategic Choices in the Design of Truth Commission*, (May 30, 2002).

⁹⁶ TruthCommission.org, *Strategic Choices in the Design of Truth Commission*, (May 30, 2002).

⁹⁷ *Promotion of National Unity and Reconciliation Act No. 34*, arts. 18, 19 (South Africa, 1995).

⁹⁸ *Act for the Organization, Functions and Operations of the Truth and Reconciliation Commission*, art. 8(h) (Democratic Republic of the Congo, 2004).

⁹⁹ Amnesty International, *Commissioning Justice: Truth Commissions and Criminal Justice*, 14 (2010).

Nevertheless, recent national and international tribunals have invalidated amnesties previously enjoyed by government officials. In 2003, Argentina's government reopened past human rights cases from 1976 to 1983 after repealing laws which had previously granted immunities.¹⁰⁰ Similarly, in December 2010, the Inter-American Court of Human Rights (IACHR) handed down an opinion invalidating the previously established amnesty laws that protected state agents in Brazil from human rights violations between April 1972 and January 1975.¹⁰¹ The IACHR also required the Brazilian government to pay reparations to the victims.¹⁰²

Final Report and Recommendations

Typically, once a TRC has completed its information gathering, the TRC law requires that the commission issue a final report. The final report publicizes the TRC's findings and includes recommendations for implementation. This final report enshrines the work conducted by the commission. Unveiling the truth about past violations is typically one of the main objectives for creating a TRC, and the publication of a final report is often the primary means of disclosing the truth.

The length of a final report varies, but is often long. If this is the case, it may be appropriate for the commission to create short summary versions that are more accessible to the public.¹⁰³ In South Africa, the TRC's final report was five volumes long and was widely disseminated in its full-length version, in addition to being published on the Internet in a format that was broken down into smaller sections.¹⁰⁴ Conversely, in Argentina, the commission published the final report of the National Commission on the Disappeared as well as a shorter book-length version. The shorter version enabled a significant portion of the population to read the key findings of the final report.¹⁰⁵

¹⁰⁰ Human Rights Watch, *World Report 2011: Argentina* (2011) available at <http://www.hrw.org/en/world-report-2011/argentina>.

¹⁰¹ Alexei Barrionuevo, *Amnesty for Brazil Dictatorship Is Challenged*, N.Y. TIMES, Dec. 16, 2010, available at <http://www.nytimes.com/2010/12/16/world/americas/16brazil.html>.

¹⁰² Alexei Barrionuevo, *Amnesty for Brazil Dictatorship Is Challenged*, N.Y. TIMES, Dec. 16, 2010.

¹⁰³ Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, U.N. Doc. HR/PUB/06/1, 32 (2006).

¹⁰⁴ TruthCommission.org, *South Africa: The South African Truth and Reconciliation Commission*, available at http://www.truthcommission.org/commission.php?cid=3andcase_x=0andlang=en; Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report* (2003) available at <http://www.info.gov.za/otherdocs/2003/trc/>.

¹⁰⁵ TruthCommission.org, *Argentina: The National Commission on Disappeared Persons*, available at http://www.truthcommission.org/commission.php?cid=0andcase_x=0andlang=en.

The recommendations in the final report can take a number of forms depending on the commission's goals and objectives. A final report may suggest legal, institutional, or legislative reforms.¹⁰⁶ This report may also recommend a reparations program for victims. State practice reveals that concrete and manageable recommendations have a greater likelihood of successful implementation. In addition, TRC legislation may detail to what extent the government has a duty to implement the commission's recommendations, which may in turn influence the recommendations a TRC ultimately makes and the likelihood that these recommendations are implemented effectively.

In El Salvador, the agreement creating the commission declared that the parties agreed to undertake the recommendations in the final report, thereby requiring the government to implement the TRC's recommendations.¹⁰⁷ The report issued by the TRC ultimately made numerous recommendations, including the dismissal or resignation of members of the military, civil service, and judiciary officials found to have committed human rights abuses; significant reform of the national armed forces and public security agencies; the establishment of a National Civil Police; the distribution of material and moral compensation; and the establishment of mechanisms for both local and international monitoring and follow-up.¹⁰⁸ Some of the recommendations designated in the final report were implemented in El Salvador. After some international pressure, the government in El Salvador removed approximately 200 senior officials and made key reforms to the judicial appointment process.¹⁰⁹ Reports indicate however that the government did not fully implement the judicial reforms, nor did it establish a follow-up mechanism.¹¹⁰

Conclusion

When designing truth and reconciliation commissions, drafters commonly consider a number of issues to determine the commission's goals and objectives as well as its functions and powers. TRC laws created and implemented after consultation with the affected populations often more effectively address victims'

¹⁰⁶ Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, U.N. Doc. HR/PUB/06/1, 20 (2006).

¹⁰⁷ *The Mexico Agreements*, art. 10 (El Salvador, 1991).

¹⁰⁸ Security Council, *From Madness to Hope: The 12-year War in El Salvador: Report of the Commission on the Truth for El Salvador*, U.N. Doc. S/25500, 172-87 (1993), available at http://www.un.org/ga/search/view_doc.asp?symbol=S/25500.

¹⁰⁹ United States Institute of Peace, *Truth Commission: El Salvador*, available at <http://www.usip.org/publications/truth-commission-el-salvador>.

¹¹⁰ United States Institute of Peace, *Truth Commission: El Salvador*, available at <http://www.usip.org/publications/truth-commission-el-salvador>.

concerns, thereby contributing to the overall goal of creating an environment that supports reconciliation. Specific legislation that provides for a clear and manageable mandate can more easily facilitate fulfillment of the mandate. Staff selection provisions that encourage an independent and neutral commission assist in gaining the public's support for the TRC. Providing the commission with enough time to fulfill its mandate and sufficient powers to compel the cooperation of relevant people or to investigate particular crimes may aid in the effective achievement of commission functions and goals. TRC legislation that encourages widespread and accessible dissemination of a final report and requires acceptance of the commission's implementation recommendations, can also help prevent similar human rights abuses from occurring in the future.

In many post-conflict states, divisions in society remain after the conflict has ended, which are commonly linked to deeply rooted grievances and a history of human rights abuse. Creating an entity designed to elaborate the truth on the state's past and to promote national reconciliation provides a mechanism to address wrongs done during the conflict, with the goal of bringing society closer together. This goal can only be achieved if the population as a whole accepts the TRC, with a particular focus on the victims and perpetrators of past human rights abuse. If the TRC is widely respected, integrates views from the public into its operations, and is capable of resisting political pressures and unrealistic expectations, it can be a potent tool for allowing a state to address past human rights abuses and achieve greater national unity.

ANNEX I

TRUTH AND RECONCILIATION COMMISSIONS: CORE ELEMENTS

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
Argentina ¹¹¹	The National Commission on Disappeared Persons (Comisión Nacional sobre la Desaparición de Personas, CONADEP) was created by Presidential decree in 1983 to investigate the disappearances of persons between 1976 and 1983 and uncover the facts involved in those cases, including the locations of the bodies. Operated for 9 months. ¹¹²	13 commissioners (12 men and 1 woman). 10 non-legislative members were appointed by President Alfonsín and 3 were elected by Argentina's legislative Chamber of Deputies of Congress. ¹¹³ The commission was empowered to name its own chair and establish its own technical rules. ¹¹⁴	Fully funded by the government. Did not report financial constraints. ¹¹⁵	Recorded approximately 7,000 statements, including 1,500 statements from survivors. Did not hold public hearings. ¹¹⁶	Approximately 9,000 disappearances were documented between 1976 and 1983, but due to families' fears of coming forward, the commission estimated the correct number of disappearances to range between 10,000 and 30,000. ¹¹⁷	Published a final report and a shorter book-length version on September 1984. ¹¹⁸ Recommended "establishing a reparations program for the families of the disappeared and continued prosecutions and follow-up investigations concerning persons who remain missing. Judicial reform and human rights education were also recommended." ¹¹⁹
Chile ¹²⁰	The National Commission on Political Imprisonment and Torture (Comisión Nacional Sobre Prisión	8 commissioners (6 men and 2 women). Bishop Sergio Valech	Fully funded by the government. Did not	Testimony taken from 35,868 people, of which 27,255 considered legit-	"Instructed to identify the victims, propose measures of reparations, and produce a final report." ¹²⁵	Two reports issued. First, a 1,200-page report to President Ricardo Lagos on November 10, 2004 was

¹¹¹ TruthCommission.org, *Argentina: The National Commission on Disappeared Persons (CONADEP)*, available at http://www.truthcommission.org/commission.php?cid=0andcase_x=0andlang=en.

¹¹² United States Institute of Peace, *Truth Commission: Argentina* (2011), available at <http://www.usip.org/publications/truth-commission-argentina>.

¹¹³ *Decree No. 187/83*, arts. 5, 6 (Argentina, 1983), available in Spanish at <http://www.usip.org/files/file/resources/collections/commissions/Argentina-Charter.pdf>.

¹¹⁴ *Decree No. 187/83*, art. 7 (Argentina, 1983).

¹¹⁵ TruthCommission.org, *Strategic Choices in the Design of Truth Commission*, (May 30, 2002), available at <http://www.truthcommission.org/>.

¹¹⁶ TruthCommission.org, *Strategic Choices in the Design of Truth Commission*, (May 30, 2002).

¹¹⁷ TruthCommission.org, *Strategic Choices in the Design of Truth Commission*, (May 30, 2002).

¹¹⁸ TruthCommission.org, *Strategic Choices in the Design of Truth Commission*, (May 30, 2002).

¹¹⁹ United States Institute of Peace, *Truth Commission: Argentina* (2011), available at <http://www.usip.org/publications/truth-commission-argentina>.

¹²⁰ United States Institute of Peace, *Commission of Inquiry: Chile* (2011), available at <http://www.usip.org/publications/commission-inquiry-chile-03>.

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
	Política y Tortura) was created by Executive Decree on September 26, 2003 to “document abuses of civil rights or politically motivated torture between September 11, 1973 and March 10, 1990 by agents of the state and by people in their service.” ¹²¹	chaired the commission. ¹²²	report financial constraints. ¹²³	imate for the first report. Complementary report added 1,204 cases. ¹²⁴		issued. Lagos presented it in a televised speech. ¹²⁶ Complementary report (requested by the President) took “into account approximately 1,000 additional cases that were submitted by victims and their families.” The reports were then made available online in 2009. Reparations to the victims were recommended. ¹²⁷
East Timor ¹²⁸	The Commission on Reception, Truth, and Reconciliation was created under the auspices of the UN Transitional Administration of East Timor pursuant to UNTAET Regulation 2001/10 by the National Council of Timorese Resistance in 2001 to investigate the human rights violations that occurred from 1974 to 1999.	7 commissioners, all required to exhibit their past commitment to upholding human rights. High-ranking politicians were barred. ¹³⁰ Required to take an oath before the Transitional Administrator. A selection panel comprised of a	Empowered to raise funds in support of its functions from foreign governments, multilateral agencies, and non-governmental organizations. ¹³²	High public participation during the planning stages. Involvement of approximately 400,000 villagers for lesser crimes. A large portion of the public, a group of elders, perpetrators and victims attended the meetings. Perpetrators read formal statements,	Regulation gave independence to the commission. Powers to: (1) “order individuals to attend hearings and answer questions; (2) order the production of specified documents or objects relevant to inquiries;” (3) request the issuance of a search warrant; (4) request information from government authorities both within and outside Timor-	Required to provide a final report to the public through publication in the state’s official newspaper. The government was then required to “consider all recommendations made by the commission in its final report with a view to their implementation.” The final report recommended additional enforcement measures, to include parliamentary oversight,

¹²⁵ United States Institute of Peace, *Commission of Inquiry: Chile* (2011), available at <http://www.usip.org/publications/commission-inquiry-chile-03>.

¹²¹ United States Institute of Peace, *Commission of Inquiry: Chile* (2011), available at <http://www.usip.org/publications/commission-inquiry-chile-03>.

¹²² *Supreme Decree No. 355, Creation of the Commission on Truth and Reconciliation*, art. 1, (Chile 1990), reproduced in Report of the Chilean National Commission on Truth and Reconciliation, THE CENTER FOR CIVIL AND HUMAN RIGHTS OF THE NOTRE DAME LAW SCHOOL (1993).

¹²³ TruthCommission.org, *Strategic Choices in the Design of Truth Commission*, (May 30, 2002).

¹²⁴ United States Institute of Peace, *Commission of Inquiry: Chile* (2011), available at <http://www.usip.org/publications/commission-inquiry-chile-03>.

¹²⁶ United States Institute of Peace, *Commission of Inquiry: Chile* (2011), available at <http://www.usip.org/publications/commission-inquiry-chile-03>.

¹²⁷ United States Institute of Peace, *Commission of Inquiry: Chile* (2011), available at <http://www.usip.org/publications/commission-inquiry-chile-03>.

¹²⁸ United Nations Transitional Administration in East Timor, *Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth, and Reconciliation in East Timor*, (July, 2001), available at <http://www.un.org/peace/etimor/untaetR/Reg10e.pdf>.

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
	Mandate extended to 42 months. ¹²⁹	diverse group of civil society members solicited public nominations. The selection panel also required to consult with community groups, specifically minority groups. ¹³¹		and then made an apology. ¹³³ If the elders found the apology satisfactory, they would ask the public if they should accept the perpetrator back into society. The public would then shout, “Accept” or “No” and reparations would be made. ¹³⁴	Leste (5) “gather information and hold meetings” in other states; (6) “hold public and private hearings; and protect the identity of certain witnesses in [such] hearings.” Could not grant amnesty, but perpetrators of less serious crimes could receive immunity from criminal and civil liability. ¹³⁵	along with the formation of a committee to establish a follow on institution charged with ensuring compliance with all of the commission’s recommendations. ¹³⁶
El Salvador ¹³⁷	The Commission on the Truth for El Salvador (Comisión de la Verdad Para El Salvador, CVES) was created by The Mexico Agreements, brokered by the UN, in April 1991 to	“3 international commissioners, all men, appointed by the Secretary-General” of the U.N. Chaired by former Colombian	All funds provided by the UN. ¹⁴⁰	Over 22,000 complaints documented “(60% involved extrajudicial killings, 25% involved disappearances, 20% involved	Article 5 of the Chapultepec Peace Agreement declared “clarify and put an end to any indication of impunity on the part of officers of the armed forces.” ¹⁴²	Report presented on March 15, 1993. ¹⁴³ “Recommended dismissal of culpable army officers and civil servants.” Called for extensive judicial and legal reform and security and institutional reforms.

¹³⁰ United Nations Transitional Administration for East Timor, *Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth, and Reconciliation in East Timor*, U.N. Doc. UNTAET/REG/2001/20, art. 4.1 (July 13, 2001).

¹³² United Nations Transitional Administration for East Timor, *Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth, and Reconciliation in East Timor*, U.N. Doc. UNTAET/REG/2001/20, art. 9.4 (July 13, 2001).

¹²⁹ United Nations Transitional Administration for East Timor, *Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth, and Reconciliation in East Timor*, U.N. Doc. UNTAET/REG/2001/20, art. 2.3, 2.4 (July 13, 2001).

¹³¹ United Nations Transitional Administration for East Timor, *Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth, and Reconciliation in East Timor*, U.N. Doc. UNTAET/REG/2001/20, art. 4.3 (July 13, 2001).

¹³³ Leslie Evans, *Forgiveness in East Timor, But Where Is the Justice?*, UCLA INTERNATIONAL INSTITUTE (May 28, 2004), available at <http://www.international.ucla.edu/article.asp?parentid=11589>.

¹³⁴ Leslie Evans, *Forgiveness in East Timor, But Where Is the Justice?*, UCLA INTERNATIONAL INSTITUTE (May 28, 2004).

¹³⁵ Commission for Reception, Truth and Reconciliation, *Final Report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR)*, para. 121 (2005), available at <http://www.etan.org/news/2006/cavr.htm>.

¹³⁶ United Nations Transitional Administration for East Timor, *Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth, and Reconciliation in East Timor*, U.N. Doc. UNTAET/REG/2001/20, art. 21 (July 13, 2001).

¹³⁷ United States Institute of Peace, *Truth Commission: El Salvador*, available at <http://www.usip.org/publications/truth-commission-el-salvador>.

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
	investigate “serious acts of violence” and violations that took place since 1980 until the signing of the peace agreement providing for the commission. ¹³⁸	president Belisario Betancur. Only international staff members, for fear that citizen members might be threatened based on their work. ¹³⁹		torture, and some alleging more than one form of violence). ¹⁴¹		“Did not call for prosecution of incriminated perpetrators.” “Reparations for victims including memorials and monetary compensation.” “Recommended that a forum, comprising a representative sector of society, should be established to monitor the implementation of the recommendations.” ¹⁴⁴ No follow-up organization was developed. ¹⁴⁵
Ghana ¹⁴⁶	The National Reconciliation Commission was created by national law no. 611 in January 2002 to investigate “killings, abductions, disappearance, detention, torture, ill-treatment, and seizure of properties” from 1957 to 1993. ¹⁴⁷	8 commissioners and a chairperson. Commissioners appointed by the President and all Ghanaian. ¹⁴⁸ 6 men and 3 women. ¹⁴⁹	Funds provided by Parliament from the Consolidated Fund and any other public fund; donations;	“The commission heard testimony from 2,129 victims and from 79 alleged perpetrators. The former President, John Jerry Rawlings and the former National Security	Had access to any information and records that related to the performance of the functions of the commission. Visited any establishment or place in order to conduct investigations. Questioned any person in respect of a	Finished in 2004 and it was made public in 2005. Recommended comprehensive “reparation program including apologies, a memorial, and monetary compensation.” “The amount paid to victims was to be based on type of violations suffered.”

¹⁴⁰ TruthCommission.org, *Strategic Choices in the Design of Truth Commission*, (May 30, 2002).

¹⁴² United States Institute of Peace, *Truth Commission: El Salvador*, available at <http://www.usip.org/publications/truth-commission-el-salvador>.

¹⁴³ The Commission on the Truth for El Salvador, *From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador* (1993), available at <http://www.usip.org/files/file/ElSalvador-Report.pdf>.

¹³⁸ *The Mexico Agreements*, art. 2 (El Salvador, 1991), available at http://www.usip.org/library/pa/el_salvador/pa_es_04271991_truthcomm.html.

¹³⁹ United States Institute of Peace, *Truth Commission: El Salvador*, available at <http://www.usip.org/publications/truth-commission-el-salvador>.

¹⁴¹ *Chapultepec Peace Agreement*, art. 5 (El Salvador, 1992), available at https://peaceaccords.nd.edu/site_media/media/accords/Chapultepec_Peace_Agreement_16_January_1992.pdf.

¹⁴⁴ United States Institute of Peace, *Truth Commission: El Salvador*, available at <http://www.usip.org/publications/truth-commission-el-salvador>.

¹⁴⁵ United States Institute of Peace, *Truth Commission: El Salvador*, available at <http://www.usip.org/publications/truth-commission-el-salvador>.

¹⁴⁶ *National Reconciliation Commission Act* (Ghana, 2002), available at <http://www.ghanareview.com/reconact.html>.

¹⁴⁷ Nahla Valji, *Ghana's National Reconciliation Commission: A Comparative Assessment*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 5 (Sept. 2006) available at <http://www.ictj.org/static/Africa/Subsahara/GhanaCommission.pdf>.

¹⁴⁸ United States Institute of Peace, *Truth Commission: Ghana*, available at <http://www.usip.org/publications/truth-commission-ghana>.

¹⁴⁹ United States Institute of Peace, *Truth Commission: Ghana*, available at <http://www.usip.org/publications/truth-commission-ghana>.

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
			and grants.	Advisor, Captain Kojo Tsikata, also testified. Convened over 2,000 public hearings. ¹⁵⁰	subject matter under investigation by the commission. Could require a person to: furnish any information; produce any document or article. Had the power to issue subpoenas requiring the attendance of a person. ¹⁵¹	The commission suggested “reparations for approximately 3,000 victims of repression under Rawlings’ rule. The Commission recommended reforms within the prisons, the police and the military.” ¹⁵²
Guatemala ¹⁵³	The Historical Clarification Commission was ordered by the Oslo Accords of 1994 and created through legislation to investigate crimes from 1962 to 1996. Legislation limited the commission operation time to 6 months (although the commission received more time because of concerns of effectiveness). ¹⁵⁴	3 commissioners. Secretary General of the UN chose the commission chair. Staff members ranged from 100 to 200, which were both Guatemalans and internationals. ¹⁵⁵	Used a mixture of government funds and international funds. ¹⁵⁶	9,000 witnesses came out publically to describe human rights violations. 11,000 people registered 7,200 interviews in a database. ¹⁵⁷	Purpose was: to “clarify past human rights violations and acts of violence” connected with the armed conflict; “provide objective information regarding events during this period;” “formulate specific recommendations to encourage peace and national harmony in Guatemala;” and, “in particular, take measures to preserve the memory of the victims, to foster a culture of mutual respect and observance of human rights	Final Report titled <i>Guatemala: Memory of Silence</i> ¹⁵⁹ “recommended establishing a follow-up mechanism to monitor the implementation of its recommendations. Also, the Commission had recommended that the Guatemalan authorities act in conformity with the country’s law on national reconciliation, which contains an article granting amnesty for acts related to fighting true acts of war; not to be granted for very grave human rights

¹⁵⁰ United States Institute of Peace, *Truth Commission: Ghana*, available at <http://www.usip.org/publications/truth-commission-ghana>.

¹⁵¹ *National Reconciliation Commission Act*, art. 3 (Ghana, 2002), available at <http://www.ghanareview.com/reconact.html>.

¹⁵² United States Institute of Peace, *Truth Commission: Ghana*, available at <http://www.usip.org/publications/truth-commission-ghana>.

¹⁵³ United Nations, *Press Conference by Members of Guatemalan Historical Clarification Commission*, Press briefing (Mar. 1, 1999), available at <http://www.un.org/News/briefings/docs/1999/19990301.guate.brf.html>.

¹⁵⁴ *Agreements on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer*, Installation and Duration, para. 1 (Guatemala, 1994), available at <http://www.usip.org/publications/truth-commission-guatemala>.

¹⁵⁵ *Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer*, Composition, paras. 1-3 (Guatemala, 1994), available at http://www.usip.org/library/pa/guatemala/guat_940623.html.

¹⁵⁶ TruthCommission.org, *Strategic Choices in the Design of Truth Commission* (May 30, 2002).

¹⁵⁷ United States Institute of Peace, *Truth Commission: Guatemala*, available at <http://www.usip.org/publications/truth-commission-guatemala>.

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
					and to strengthen the democratic process.” ¹⁵⁸	violations such as genocide.”
Liberia ¹⁶⁰	The Truth and Reconciliation Commission of Liberia was agreed to in peace agreements and approved by the legislature in June 2005 to investigate “the root causes of the conflict, the impact of the conflict on women, children and the generality of the Liberian society, responsibility for the massive commission of gross human rights violations, and violations of international humanitarian law, international human rights law as well as egregious domestic law violations,” from January 1979 to October 14, 2003. ¹⁶¹	Made up of 9 commissioners. Government appointed an independent selection panel of 3 representatives from civil society organizations; 2 representatives from political parties; 1 representative from the UN and; 1 representative from the Economic Community of West African States (ECOWAS), which chose candidates. Head of State then selects the vetted commissioners and are confirmed by the National Legislature. Included women in all aspects of commission’s work. ¹⁶²	International Technical Advisory Committee of 3 persons worked directly with TRC. Implementing legislation mentioned as potential donors the government, individual Liberians and non-Liberians, “foreign governments, international financial institutions, specialized United Nations organizations, and international non-governmental org-	Engaged public through workshops, trainings, seminars, and meetings. All hearings were open to the public. Victims were able to petition to have hearings videotaped. All information was published in the public domain, with information on identities kept secure for 20 years. ¹⁶⁴	Granted powers to compel witnesses to testify, organizations to turn over documents, declare missing persons, and grant immunity to all persons or organizations that made statements. ¹⁶⁵ Powers to investigate, identify violations, and gather information. Compiled “accurate and objective record of the past and made recommendations reflective of the truth to re-unify and reconcile contending groups.” ¹⁶⁶	Report released July 1, 2009. Included recommendations to the Head of State for: (i) “reparations and rehabilitation of victims and perpetrators in need of specialized psychosocial and other rehabilitative services; (ii) legal, institutional and other reforms; (iii) need for continuing investigations and inquiries into particular matters; and (iv) need to hold prosecutions in particular cases as the TRC deems appropriate.” ¹⁶⁷

¹⁵⁹ United Nations, *Press Conference by Members of Guatemalan Historical Clarification Commission*, Press Briefing (Mar. 1, 1999).

¹⁵⁸ *Commission for Historical Clarification Accord*, (1994), available at <http://www.c-r.org/our-work/accord/guatemala/historical-clarification.php>.

¹⁶⁰ *An Act to Establish the Truth and Reconciliation Commission of Liberia* (Liberia, 2005), available at <http://trcofliberia.org/about/trc-mandate>.

¹⁶¹ Truth and Reconciliation Commission of Liberia, *TRC Final Report Released*, (2009), available at <http://trcofliberia.org/>.

¹⁶² *Truth and Reconciliation Commission of Liberia: Commissioners* (2011), available at <http://trcofliberia.org/about/commissioners>.

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
			anizations.” ¹⁶³			
Morocco ¹⁶⁸	The Equity and Reconciliation Commission (IER) was established in November 2003 and mandated by royal decree of King Mohammed VI to investigate instances of human rights violations that occurred during the Years of Lead (1956-1999). ¹⁶⁹	16 commissioners and 1 president. The sixteen commissioners were human rights activists, and the president was the former political prisoner, Driss Benzekri. ¹⁷⁰	Funded by the government.	22,000 files and nearly 200 people were given the opportunity to present testimony, twenty minutes each. ¹⁷¹	(1) “Investigate and document grave abuses (forced disappearances and arbitrary detention) that occurred” during the thirty-eight year reign of Hussein II; (2) “decide on reparation packages for victims and survivors; (3) propose other remedies for victims, and safeguards against a recurrence of abuses; and (4) provide a report that provides both a general historical record and specific information for families of victims.” Commission could not identify the identities of the	Despite the restriction on its inquisitorial powers, the TRC still investigated and made recommendations broadly, on all instances of human rights violations that it discovered. Agreed to the principle of amnesty. It “established the state’s role in perpetrating abuses and demanded a public apology.” The commission also emphasized the importance of constitutional reform. Reforms recommended include the separation of powers and eventual establishment of an independent judicial

¹⁶⁴ *An Act to Establish the Truth and Reconciliation Commission of Liberia*, sec. 47 (Liberia, 2005).

¹⁶⁵ Amnesty International, *Liberia: Truth Justice and Reparation*, 18 (2006), available at <http://www.amnesty.org/en/library/asset/AFR34/005/2006/en/3205abe5-d41f-11dd-8743-d305bea2b2c7/afr340052006en.pdf>.

¹⁶⁶ *An Act to Establish the Truth and Reconciliation Commission of Liberia*, sec. 26 (Liberia, 2005).

¹⁶⁷ *An Act to Establish the Truth and Reconciliation Commission of Liberia*, sec. 26 (Liberia, 2005).

¹⁶³ *An Act to Establish the Truth and Reconciliation Commission of Liberia*, sec. 36 (Liberia, 2005).

¹⁶⁸ *Dahir Approving Statutes of the Equity and Reconciliation Commission*, No 1.04.42 (Morocco, 2004), available at <http://www.usip.org/files/file/resources/collections/commissions/Morocco-Charter.pdf>.

¹⁶⁹ Amnesty International, *Broken Promises: The Equity and Reconciliation Commission and its Follow-Up*, 10 (2010), available at <http://www.amnesty.org/en/library/asset/MDE29/001/2010/en/63d99172-428d-4717-8c25-866c879c80e9/mde290012010en.pdf>.

¹⁷⁰ Amnesty International, *Broken Promises: The Equity and Reconciliation Commission and its Follow-Up*, 14 (2010).

¹⁷¹ Justice in Perspective, *National Commission for Truth, Equity and Reconciliation*, THE CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION, (2007), available at http://www.justiceinperspective.org.za/index.php?option=com_content&task=view&id=20&Itemid=54.

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
					perpetrators of grave human rights violations. ¹⁷²	system. ¹⁷³
Nepal	The commission was agreed to in the 2006 peace agreement with the main insurgent group, the Maoists. A bill drafted by the Ministry of Peace and Reconstruction remains in draft form but calls for an “investigation of facts about persons involved in gross violations of human rights and crimes against humanity during the course of armed conflict.” ¹⁷⁴	Commissioners were to be controlled entirely by the government appointed body established with the consensus of political parties. ¹⁷⁵	Government must make arrangements for building, materials and other resources required. ¹⁷⁶ If government resources inadequate, commission may seek grants from foreign sources. ¹⁷⁷	Public participation in the hearings.	“Necessary action” could not be recommended by the commission if the perpetrator and the victim have been involved in a reconciliation procedure. Would empower commission to recommend amnesty for persons who have “committed gross violations of human rights or crimes against humanity in the course of abiding by their duties or with the objective of fulfilling political motives.” ¹⁷⁸ Amnesty would not be available for perpetrators of certain types of murder, inhumane and cruel torture, or rape. ¹⁷⁹	The draft bill requires that the government implement the commission's recommendations, including any recommendation to pursue a criminal prosecution or grant amnesty to an individual. ¹⁸⁰ The National Human Rights Commission is charged with monitoring all implementation. ¹⁸¹

¹⁷² Justice in Perspective, *National Commission for Truth, Equity and Reconciliation*, THE CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION, (2007), available at http://www.justiceinperspective.org.za/index.php?option=com_content&task=view&id=20&Itemid=54.

¹⁷³ Justice in Perspective, *National Commission for Truth, Equity and Reconciliation*, THE CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION, (2007), available at http://www.justiceinperspective.org.za/index.php?option=com_content&task=view&id=20&Itemid=54.

¹⁷⁴ *A Bill Made for Making Provisions Relating to Truth and Reconciliation Commission* (Nepal, 2007), available at www.peace.gov.np/uploads/Publication/TRC-English.doc.

¹⁷⁵ International Center for Transitional Justice, *Comments on the Nepali Truth and Reconciliation Draft Bill*, 3 (August, 2007), available at http://www.ictj.org/static/Asia/Nepal/ICTJ_NPL_CommentsTRC_cm2007.pdf.

¹⁷⁶ *A Bill Made for Making Provisions Relating to Truth and Reconciliation Commission*, art. 13 (Nepal, 2007).

¹⁷⁷ *A Bill Made for Making Provisions Relating to Truth and Reconciliation Commission*, art. 13 (Nepal, 2007).

¹⁷⁸ *A Bill Made for Making Provisions Relating to Truth and Reconciliation Commission*, art. 25 (Nepal, 2007).

¹⁷⁹ *A Bill Made for Making Provisions Relating to Truth and Reconciliation Commission*, art. 25 (Nepal, 2007).

¹⁸⁰ *A Bill Made for Making Provisions Relating to Truth and Reconciliation Commission*, art. 28 (Nepal, 2007).

¹⁸¹ *A Bill Made for Making Provisions Relating to Truth and Reconciliation Commission*, art. 31 (Nepal, 2007).

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
Sierra Leone ¹⁸²	The Truth and Reconciliation Commission was mandated in a peace agreement with the main opposition group, the Revolutionary United Front, following eight years of armed conflict, to (1) address impunity; (2) break the cycle of violence; (3) provide a forum for victims of human rights violations to tell their stories; and (4) provide a clear picture of the past, during the period 1991-2002. ¹⁸³	7 commissioners: 4 citizens and 3 non-citizens. Non-citizens were nominated directly by OHCHR. Citizens were first nominated by UN Special Representative to the Secretary-General. Then an advisory committee with the consultation Sierra Leonean society determined finalists. Interviews were then conducted by a selection panel composed of appointees by the president, the armed forces, an inter-religious council, and human rights organizations working in Sierra Leone. ¹⁸⁴	Financed by government through a special fund. Empowered to seek donations from foreign governments, international organizations, foundations, and non-governmental organizations. In practice, OHCHR coordinated commission's fundraising efforts. ¹⁸⁵	Held some public sessions to hear victims' testimony and solicit responses from the alleged perpetrators of abuse. Critics argued that the truth-telling component of the public hearings in Sierra Leone may have been more successful if they were more heavily imbued with ritual practice. ¹⁸⁶	Authorized to undertake investigations, conduct research, hold public and private sessions with both victims and ex-combatants, and take individual statements. Power to compel witnesses to testify and organizations to turn over documents. Authorized to request and receive police assistance in carrying out its acts. Criminal penalties could be imposed upon anyone who willfully obstructed or interfered with the commission's work. Agreement between the government and rebels mandated that the rebels receive blanket amnesty. Also empowered to investigate all acts, from whatever time period that would allow it to effectively address mandate. ¹⁸⁷	Final report was commissioned in 2002. Upon submission of the report, the president must: (1) submit a copy to the UN Secretary-General; (2) submit a copy to parliament; (3) implement any recommendations directed at state entities; (4) establish a follow-up committee to monitor the implementation of the recommendations and facilitate their implementation; and (5) provide quarterly reports to a follow-up committee for 18 months. ¹⁸⁸

¹⁸² *The Truth and Reconciliation Act* (Sierra Leone, 2000), available at <http://www.usip.org/files/file/resources/collections/commissions/SeirraLeone-Charter.pdf>.

¹⁸³ *Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone*, art. 26 (Sierra Leone, 1999), available at http://www.usip.org/files/file/resources/collections/peace_agreements/sierra_leone_07071999.pdf.

¹⁸⁴ *The Truth and Reconciliation Act*, art. 31 (Sierra Leone, 2000).

¹⁸⁵ Sierra Leone Human Rights Commission, *Final Report of the Truth and Reconciliation Commission of Sierra Leone: Volume 1*, ch. 2, para. 41 (Oct. 5, 2004).

¹⁸⁶ Sierra Leone Human Rights Commission, *Final Report of the Truth and Reconciliation Commission of Sierra Leone: Volume 1*, ch. 1, para. 7 (Oct. 5, 2004).

¹⁸⁷ Sierra Leone Human Rights Commission, *Final Report of the Truth and Reconciliation Commission of Sierra Leone: Volume 1*, ch. 1, para. 16 (Oct. 5, 2004).

¹⁸⁸ *The Truth and Reconciliation Act*, arts. 15-18 (Sierra Leone, 2000).

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
<p style="text-align: center;">South Africa¹⁸⁹</p>	<p>The Truth and Reconciliation Commission was established by the Promotion of National Unity and Reconciliation Act of 1995 to expose and document human rights abuses perpetrated under the system of apartheid (1948-1994), to provide rehabilitation and reparations for victims, and to grant amnesty to perpetrators. It was dissolved after 6 years.¹⁹⁰</p>	<p>17 commissioners. Only 2 could be foreigners. 3 sub-committees to achieve its objectives: the Committee on Human Rights Violations responsible for investigating gross human rights violations; the Committee on Amnesty considered applications for amnesty from perpetrators; and the Committee on Reparation and Rehabilitation recommended appropriate interim and long-term reparations.¹⁹¹</p>	<p>Fully funded by the government. However, the government did note insufficient funding probably influenced the magnitude of their investigations. Budget was roughly \$18 million/yr for 2- and-a-half years.¹⁹²</p>	<p>The South African Broadcasting Corporation's provided complete live coverage of public hearings. Public hearings were not restricted to large cities, but held in remote areas as well. Over 22,000 victims made statements and over "7,000 perpetrators applied for amnesty. Approximately 10% of victims gave evidence at public hearings."¹⁹³</p>	<p>Greater authority because of dual sponsorship by President and Parliament. Desmond Tutu employed a moral framework, "ubuntu," urged that victims could only reclaim their humanity through the forgiveness and recognition of the humanity of the perpetrator.¹⁹⁴ Power to compel witnesses to testify and organizations to turn over documents. The TRC convinced perpetrators to come forward by offering amnesty, threatened to prosecute those who remained silent. Therapists were present during public testimonies before the TRC to support both those testifying and those listening.¹⁹⁵</p>	<p>Final report was 5 volumes long and produced and delivered to President Mandela in October 1998, and subsequently presented to the public. The report made 250 recommendations including recommendations to create a comprehensive reparations policy to compensate individual victims and to construct public memorials. The primary finding was that the majority of gross human rights violations were committed by the former government through its security and law enforcement agencies.¹⁹⁶</p>

¹⁸⁹ *Promotion of National Unity and Reconciliation Act* (South Africa, 1995), available at <http://www.justice.gov.za/legislation/acts/1995-034.pdf>.

¹⁹⁰ *Promotion of National Unity and Reconciliation Act*, art. 3 (South Africa, 1995)

¹⁹¹ *Promotion of National Unity and Reconciliation Act*, art. 7 (South Africa, 1995)

¹⁹² TruthCommission.org, *Strategic Choices in the Design of Truth Commission: The South African Truth and Reconciliation Commission* (May 30, 2002) available at http://www.truthcommission.org/commission.php?cid=3andcase_x=0andlang=en.

¹⁹³ Project for the Preservation and Access to Records and Stories relating to the South African Truth and Reconciliation Commission, *Traces of Truth*, UNIVERSITY OF THE WITWATERSRAND, available at <http://truth.wvl.wits.ac.za/about.php>.

¹⁹⁴ Audrey R. Chapman and Hugo van der Merwe, *Introduction: Assessing the South African Transitional Justice Model*, in TRUTH AND RECONCILIATION IN SOUTH AFRICA: DID THE TRC DELIVER? 1, 9 (Audrey R. Chapman and Hugo van der Merwe, eds., 2008).

¹⁹⁵ International IDEA, RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK 92 (2003), available at http://www.idea.int/publications/reconciliation/upload/reconciliation_full.pdf.

¹⁹⁶ TruthCommission.org, *South Africa: The South African Truth and Reconciliation Commission*, available at http://www.truthcommission.org/commission.php?cid=3andcase_x=0andlang=en.

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
Tunisia ¹⁹⁷	The National Commission to investigate the truth on violations committed during the revolution was formed by a decree from the interim government on January 17th, ¹⁹⁸ to establish facts on violations during the recent uprising period, including whether police violated the law, military blunders, rapes, and other violent acts committed during the protests since December 2010. ¹⁹⁹	15 commissioners, 8 women from different segments of civil society. Appointed by President Fouad Mbazaa. ²⁰⁰	The commission visits and investigates region by region but with no formal budget. ²⁰¹	Have received over 1,000 complaints from the public. The commission visits regions and gathers information on first-hand accounts. ²⁰²	Do not issue sentences but serve as investigative judges. Will make recommendations with respect to cases that should go before a criminal or a correctional court. Receives citizens and registers their applications, their direct testimony in the case of victims and families. Everything is recorded in digital broadcasting. They listen to witnesses, if they exist, then they call those responsible. ²⁰³	Report will include documented events before and during the revolution; and who the victims and perpetrators were. Will make recommendations based on the findings for how to reform the system and train people. ²⁰⁴

¹⁹⁷ Addressing the Past, Building the Future International Conference, *Truth Commissions as Instruments of Justice: Challenges for Tunisia* (Apr. 15, 2001), available at <http://tjtunis.blogspot.com/2011/04/truth-commissions-as-instruments-of.html>.

¹⁹⁸ The Project on Middle East Democracy, *Tunisia: Interview With Head of Investigations Commission* (May 17, 2011), available at <http://pomed.org/blog/2011/05/tunisia-interview-with-head-of-investigation-commission.html>.

¹⁹⁹ Zora Abid, "Ben Ali Gave the Order to Fire," *Said Mr. Bouderbala*, KAPITALIS, Apr. 13, 2011, available at <http://www.kapitalis.com/fokus/62-national/3504-tunisie-lben-ali-a-donne-lordre-de-tirerr-affirme-me-bouderbala.html>.

²⁰⁰ Maryam Mnaouar, *Tunisia In Search of Truth*, AFRIK.COM, May 17, 2011, available in French at <http://www.afrik.com/article22863.html>.

²⁰¹ Maryam Mnaouar, *Tunisia In Search of Truth*, AFRIK.COM, May 17, 2011.

²⁰² The Project on Middle East Democracy, *Tunisia: Interview With Head of Investigations Commission* (May 17, 2011).

²⁰³ Human Rights Watch, *Tunisia: Hold Police Accountable for Shootings*, Jan. 29, 2011, available at <http://www.hrw.org/fr/news/2011/01/29/tunisia-hold-police-accountable-shootings>.

²⁰⁴ Maryam Mnaouar, *Tunisia In Search of Truth*, AFRIK.COM, May 17, 2011.

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
<p>Uganda (CIDP)²⁰⁵</p>	<p>Commission of Inquiry into the Disappearances of People was established by Former President Idi Amin Dada in 1974, in part as a response to pressure from the international community, to account for the large numbers of missing persons in Uganda and was mandated to investigate instances of disappearance from 1971 to 1974.²⁰⁶</p>	<p>4 commissioners: expatriate Pakistani judge, two Ugandan police superintendents, and a Ugandan army officer.²⁰⁷</p>	<p>Unspecified, but government funding appears to have been used to carry out the mandate.²⁰⁸</p>	<p>Gathered information through public hearings and personal testimony from both civilians and army soldiers. 545 witnesses testified. News media covered the public hearings daily and broadcasted them live on the radio.²⁰⁹</p>	<p>To investigate accusations of disappearances; to determine whether those missing were dead or alive; to determine whether the missing individuals were still in Uganda, and if not, why they left; for anyone proven dead, to elaborate on the circumstances surrounding how and why; to determine whether anyone in Uganda was criminally responsible for the disappearances and what should be done to these people; and issue recommendations for Uganda to put an end to disappearances.²¹⁰</p>	<p>Report was over 836 pages of personal narratives from civilians and Ugandan soldiers. Civilian evidence included personal testimony and recollections from relatives/friends of disappeared persons. The evidence from soldiers detailed their roles in the disappearances or in locating the missing.²¹¹ The recommendations were not followed.</p>

²⁰⁵ *Commission of Inquiry Act 1914* (Uganda, 1974), available at http://www.usip.org/files/resources/collections/truth_commissions/Uganda74-Report/Uganda74-Charter.pdf.

²⁰⁶ *Commission of Inquiry Act 1914* (Uganda, 1974).

²⁰⁷ *Commission of Inquiry Act 1914* (Uganda, 1974) (noting that the members were Justice Mohamed Saied, Superintendent of Police S.M. Kyefulumya, Superintendent of Police A. Esar, and Captain Haruna of the Uganda Armed Forces).

²⁰⁸ United States Institute of Peace, *Truth Commission: Uganda 74*, available at <http://www.usip.org/publications/truth-commission-uganda-74>.

²⁰⁹ Trudy Huskamp Peterson, FINAL ACTS 79, available at <http://www.wilsoncenter.org/sites/default/files/Petersonfinpdf.pdf>.

²¹⁰ *Commission of Inquiry Act 1914* (Uganda, 1974).

²¹¹ United States Institute of Peace, *Truth Commission: Uganda 74*, available at <http://www.usip.org/publications/truth-commission-uganda-74>.

Country	Mandate	Personnel: Selection & Composition	Resources	Public Participation	Main Activities and Powers	Final Report
<p>Uganda (CIVHR)²¹²</p>	<p>The Commission of Inquiry into the Violations of Human Rights (CIVHR) was mandated to investigate all atrocity crimes that occurred in Uganda from independence in 1962 until 1986 and was established by President Yoweri Museveni in 1986, with a very broad mandate.²¹³</p>	<p>Either 5 or 6 commissioners, all male. All selected by President Museveni.²¹⁴</p>	<p>Short-funded from the inception. In 1987, after which the Ford Foundation donated \$93,000 USD.²¹⁵</p>	<p>608 witnesses appeared before the CIVHR.²¹⁶</p>	<p>The commission promoted a prosecutorial mission. The commission travelled widely throughout the country, holding public hearings, some of which were broadcasted on public radio, and collected testimony in seventeen districts.²¹⁷ Did not have any enforcement mechanisms in its implementation.</p>	<p>Offered prosecution, but the government simultaneously passed the Amnesty Act, thus thwarting its purpose. Commissioners made recommendations that exceeded the scope of their grant of authority. Few of the recommendations were implemented.²¹⁸</p>

²¹² *The Commission of Inquiry Act*, Legal Notice No. 5 (May 16, 1986), available at <http://www.usip.org/files/file/resources/collections/commissions/Uganda86-Charter.pdf>.

²¹³ *The Commission of Inquiry Act*, Legal Notice No. 5 (May 16, 1986).

²¹⁴ *The Commission of Inquiry Act*, Legal Notice No. 5 (May 16, 1986); United States Institute of Peace, *Truth Commission: Uganda 86*, available at <http://www.usip.org/publications/truth-commission-uganda-86>.

²¹⁵ United States Institute of Peace, *Truth Commission: Uganda 86*, available at <http://www.usip.org/publications/truth-commission-uganda-86>.

²¹⁶ Joanna R. Quinn, *Constraints: The Un-Doing of the Ugandan Truth Commission* 26 HUMAN RIGHTS QUARTERLY 401, 407 (2004), available at <http://politicalscience.uwo.ca/faculty/Quinn/constraints.pdf>.

²¹⁷ *The Commission of Inquiry Act*, Legal Notice No. 5 (May 16, 1986); Joanna R. Quinn, *Constraints: The Un-Doing of the Ugandan Truth Commission*, 26 HUMAN RIGHTS QUARTERLY 401, 406 (2004).

²¹⁸ Joanna R. Quinn, *Constraints: The Un-Doing of the Ugandan Truth Commission*, 26 HUMAN RIGHTS QUARTERLY 401, 408 (2004).

About the Public International Law & Policy Group

The Public International Law & Policy Group, a 2005 Nobel Peace Prize nominee, is a non-profit organization which operates as a global *pro bono* law firm providing free legal assistance to states, governments and groups negotiating and implementing peace agreements, drafting post-conflict constitutions, and prosecuting war criminals. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution.

PILPG's four primary practice areas are:

- **Peacebuilding**
- **War Crimes**
- **Post-Conflict Political Development**
- **Public International Law**

To provide *pro bono* legal advice and policy formulation expertise, PILPG draws on the volunteer services of over sixty former legal advisors and former Foreign Service officers from the US Department of State and other foreign ministries. PILPG also draws on *pro bono* assistance from major international law firms including Baker & McKenzie; Covington & Burling; Curtis, Mallet-Prevost, Colt and Mosle; DLA Piper; Sullivan & Cromwell; Steptoe & Johnson; Milbank, Tweed, Hadley & McCloy; WilmerHale; Vinson & Elkins; and graduate international affairs and law students at American University and Case Western Reserve Schools of Law. Annually, PILPG is able to provide over \$10 million worth of *pro bono* international legal services.

Frequently, PILPG sends members in-country to facilitate the provision of legal assistance and its members often serve on the delegations of its clients during peace negotiations. To facilitate this assistance, PILPG is based in Washington, D.C. and has points of contact in New York City, Boston, Seattle, Cleveland, London, Paris, Rome, The Hague, Stockholm, Belfast, Krakow, Budapest, Zurich, Tbilisi, Kabul, and Nairobi.

PILPG was founded in London in 1995 and moved to Washington, D.C. in 1996, where it operated under the auspices of the Carnegie Endowment for International Peace for two years. PILPG currently maintains an association with American University in Washington, D.C., and Case Western Reserve University in Cleveland, Ohio. In July 1999, the United Nations granted official Non-Governmental Organization status to PILPG.

In January 2005, a half-dozen of PILPG's *pro bono* clients nominated PILPG for the Nobel Peace Prize for "significantly contributing to the promotion of peace throughout the globe by providing crucial *pro bono* legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice."