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AI Index: POL 30/009/2007 (Public)

Date: 11 June 2007

Truth, justice and reparation Establishing an effective truth commission

Introduction

Truth commissions(1) have been defined as "official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a number of years".(2) The object of their inquiry (a pattern of human rights violations, rather than a specific event) distinguishes truth commissions from other commissions of inquiry. Their temporary character distinguishes truth commissions from many national human rights commissions and other national institutions for the promotion and protection of human rights, which are permanent monitoring and enforcement bodies. Truth commissions are established by national authorities, generally during a political transition. They take a victim-centred approach and conclude their work with a final report containing findings of fact and recommendations.(3)

In contexts of political transition, either to peace or to a democratic regime, truth commissions can play an important role in providing a full account of past human rights violations, contributing to their investigation and eventual prosecution, preventing their repetition, and ensuring that victims and their relatives are provided with full reparation.

From 1974 to 2007, at least 33 truth commissions were established in 28 countries (see box: Truth commissions: a worldwide phenomenon, p. 2). More than half of these commissions have been established in the past ten years. Amnesty International has particularly followed the work of the truth commissions in Chile, Timor-Leste, Ecuador, El Salvador, Guatemala, Haiti, Liberia, Morocco, Nigeria, Peru, Sierra Leone, South Africa, Sri Lanka and Uruguay.

This paper is based on Amnesty International's assessment of the work of truth commissions in many countries around the world over the past few decades. Part One discusses the role of truth commissions in the respect, protection and promotion of human rights. Part Two makes recommendations on the establishment, functions and powers of a truth commission, based on international human rights law and standards (see Annex A: Selected international standards and reference documents), as well as the jurisprudence of international and regional human rights bodies. This paper will be regularly updated in the light of further research.

Truth commissions: a worldwide phenomenon

From 1974 to 2007, at least 33 truth commissions were established in 28 countries: Argentina (National Commission on the Disappearance of Persons, 1983), Bolivia (National Commission of Inquiry into Disappearances, 1982), Chad (Commission of Inquiry on the Crimes and Misappropriations Committed by the ex-President Habré, his Accomplices and/or Accessories, 1991), Chile (National Commission for Truth and Reconciliation, 1990; National Commission on Political Imprisonment and Torture, 2003), Democratic Republic of Congo (Truth and Reconciliation Commission, 2003), Ecuador (Truth and Justice Commission, 1996), El Salvador (Commission of Truth, 1992), Germany (Commission of Inquiry for the Assessment of History and Consequences of the SED Dictatorship in Germany, 1992), Ghana (National Reconciliation Commission, 2002), Guatemala (Commission for the Historical Clarification of Human Rights Violations and Acts of Violence which Caused Suffering to the Guatemalan People, 1997), Haiti (National Commission for Truth and Justice, 1995), Indonesia (Truth and Reconciliation Commission, 2004), Indonesia and Timor Leste (Truth and Friendship Commission, 2005, bi-national), Liberia (Truth and Reconciliation Commission, 2005), Morocco (Equity and Reconciliation Commission, 2004), Nepal (Commission of Inquiry to Locate the Persons Disappeared during the Panchayat Period, 1990), Nigeria (Human Rights Violations Investigation Commission, 1999), Panama (Truth Commission, 2001), Paraguay (Truth and Justice Commission, 2003), Peru (Truth and Reconciliation Commission, 2000), Philippines (Presidential Committee on Human Rights, 1986), Serbia and Montenegro (Truth and Reconciliation Commission, 2002), Sierra Leone (Truth and Reconciliation Commission, 2002), South Africa (Truth and Reconciliation Commission, 1995), South Korea (Presidential Truth Commission on Suspicious Deaths, 2000), Sri Lanka (Presidential Commission of Inquiry into Involuntary Removal and Disappearances of Persons in Western, Southern and Sabaragamuwa Provinces, Presidential Commission of Inquiry into Involuntary Removal and Disappearances of Persons in the Central, North Western, North Central and Uva Provinces and Presidential Commission of Inquiry into Involuntary Removal and Disappearances of Persons in the Northern & Eastern Provinces, 1994; Commission Of Inquiry into Involuntary Removal and Disappearance of Certain Persons - All Island, 1998), Timor-Leste (Commission for Reception, Truth and Reconciliation, 2002), Uganda (Commission of Inquiry into the Disappearance of people in Uganda, 1974 and Commission of inquiry into Violations of Human Rights, 1986), Uruguay (Investigative Commission on the Situation of Disappeared People and its Causes, 1985 and Peace Commission, 2000).

In addition to the 33 truth commissions listed above, there are at the time of writing debates going on about establishing truth commissions in Burundi, Nepal and Bosnia and Herzegovina.

Part One. The role of truth commissions in the respect, protection and promotion of human rights

States have an obligation to respect, protect and fulfil the right of victims of human rights violations to an effective remedy.(4) This obligation includes three elements:

- Truth: establishing the facts about violations of human rights that occurred in the past;
- Justice: investigating past violations and, if enough admissible evidence is gathered, prosecute the suspected perpetrators;
- Reparation: providing full and effective reparation to the victims and their families, in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Principle VII of the Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law explains:

"Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and reparation mechanisms."(5)

With respect to past human rights violations, states must ensure that the truth is told, that justice is done and that reparation is provided to all the victims. In this sense, truth, justice and reparation are three aspects of the struggle against impunity.

I. The need for a comprehensive action plan for truth, justice and reparation

"Where transitional justice is required, strategies must be holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissal, or an appropriately conceived combination thereof."

UN Secretary-General(6)

Amnesty International believes that societies emerging from a history of crimes under international law and other serious human rights violations should create a long-term strategic action plan to ensure that the truth is told, that justice is done and that reparation is provided to all the victims. Judicial measures may be combined with non-judicial measures (including truth commissions, effective procedures for granting reparation and mechanisms for vetting armed and security forces).(7) Such an action plan should be developed in a coordinated process of national consultation and tailored to the particular country situation. At the same time, it should fully comply with international law.

Thorough investigations into allegations of human rights violations must be undertaken by independent and impartial institutions, which must be granted the necessary authority and resources for their task. The results of such investigations should be made public to provide a full account of the facts to the victims, their relatives and society as a whole.

If sufficient admissible evidence is gathered, those alleged to be responsible for crimes under international law must be prosecuted (regardless of whether they are officials of a past or current government, or, indeed, members of the opposition or armed groups) in trials that fully respect international standards of fairness and without recourse to the death penalty or other cruel, inhuman or degrading punishment.

Victims of gross violations of international human rights law and serious violations of international humanitarian law must be provided with full and effective reparation in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (see: Providing full reparation to the victims and their families, p. 38).

When new security or armed forces are established and recruited, perpetrators should not be placed in command positions or lower-level positions where they could repeat their crimes. An impartial mechanism should be established to ensure that those reasonably suspected of crimes under international law or other human rights violations are not recruited into the new security or armed forces, pending independent and

impartial investigations. Such a screening mechanism should work alongside independent and impartial investigations to identify suspected perpetrators and judicial proceedings to bring them to justice. It should comply with international law, in particular standards of fairness.

Legislative, institutional and other reforms must be passed to address the causes of the human rights violations of the past. This should include reforming the national criminal legislation to ensure that it fully complies with international law.

II. The role of truth commissions in a comprehensive action plan for truth, justice and reparation

"The value of truth commissions is that they are created, not with the presumption that there will be no trials, but to constitute a step towards knowing the truth and, ultimately, making justice prevail."

Inter-American Commission on Human Rights(8)

Truth commissions should uphold the right of victims of past human rights violations to obtain truth, justice and reparation. To this end, truth commissions should: clarify as far as possible the facts about past human rights violations; feed the evidence they gather into continuing and new investigations and criminal judicial proceedings; and formulate effective recommendations for providing full reparation to all the victims and their relatives.

A. Truth commissions and the right to truth

Victims of gross human rights violations and their families, as well as other members of society, have the right to know the whole truth about past human rights violations. The right to truth has both an individual and a collective dimension. The Inter-American Commission on Human Rights found:

"The right to know the truth is a collective right that ensures society access to information that is essential for the workings of democratic systems, and it is also a private right for relatives of the victims, which affords a form of compensation...".(9)

The right to truth requires states to provide information on: the causes of the events that have led to a person having become victim of a human rights violation; the reasons, circumstances and conditions of the violations; the progress and results of the investigation; the identity of perpetrators (both subordinates and their superiors); and, in the event of death or enforced disappearance, the fate and whereabouts of the victims. Both in its individual and collective dimensions, the right to truth is an inalienable right, which stands alone. It should be considered as a non-derogable right and should not be subject to limitations.(10)

With respect to the individual dimension of the right to truth, international humanitarian law expressly guarantees the right of family members to know the fate of their missing relatives.(11) The right to know the fate and whereabouts of "disappeared" relatives, both in times of peace and in times of armed conflict, has been confirmed in the jurisprudence of international and regional human rights bodies, (12) as well as of national courts.(13) The UN Commission on Human Rights recently stressed the need to recognize "the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their

families, within the framework of each State's domestic legal system, to know the truth regarding such violations, including the identity of the perpetrators and the causes, facts and circumstances in which such violations took place".(14) Principle 4 of the updated Set of principles to combat impunity states:

"Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victim's fate".

According to principle 24 of the Basic principles on the right to a remedy and reparation:

"Victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations".

In addition to this individual dimension, the right to truth has a collective dimension. Principle 2 of the updated Set of principles to combat impunity states:

"Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations".

By providing a full account of past violations and abuses and identifying their reasons, truth commissions are one of the main tools for the state to ensure the right to truth. Principle 5 of the updated Set of principles to combat impunity recommends:

"States must take appropriate action, including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary. Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence".

In this sense, the work of a truth commission contributes to fulfil the right to truth not only in its individual dimension, but also in its collective dimension, as the right of society to be informed about its own history. The Sierra Leone Truth and Reconciliation Commission maintained: "It is with [the right to truth] that truth and reconciliation commissions excel. Indeed, they can generally respond to the needs of truth-seeking better than the alternatives, such as criminal prosecutions".(15)

B. Truth commissions and the right to justice

While recommending that the Security Council refer the situation in Darfur to the Prosecutor of the International Criminal Court for investigation, the International Commission of Inquiry on Darfur discussed the establishment of a truth commission as a complementary mechanism to ensure accountability for the crimes

committed in the region:

"[A] Truth and Reconciliation Commission could play an important role in ensuring justice and accountability. Criminal courts, by themselves, may not be suited to reveal the broadest spectrum of crimes that took place during a period of repression, in part because they may convict only on proof beyond a reasonable doubt. In situations of mass crime, such as have taken place in Darfur, a relatively limited number of prosecutions, no matter how successful, may not completely satisfy victims' expectations of acknowledgement of their suffering. What is important, in Sudan, is a full disclosure of the whole range of criminality."(16)

The role of truth commissions in clarifying the facts about past human rights violations is naturally complementary to the role of national (and international) courts.(17) The UN Commission on Human Rights encouraged states "to consider establishing specific judicial mechanisms as well as, where appropriate, truth and reconciliation commissions to complement the justice system, to investigate and address gross violations of human rights and serious violations of international humanitarian law".(18)

While the respective functions of truth commissions and courts are complementary, they are different in nature and should not be confused. Truth commissions are not intended to act as substitutes for the civil, administrative or criminal courts.(19) In particular, truth commissions cannot be a substitute for a judicial process to establish individual criminal responsibility.(20)

International human rights bodies have consistently stressed that the work of a truth commission must be accompanied by prosecutions. Considering the serious human rights violations committed in Chile during the military dictatorship, the Human Rights Committee maintained:

"Although the Committee welcomes that the State Party took measures for the victims of human rights violations committed by the military dictatorship in Chile to receive compensation, such as the establishment of the National Commission on Political Imprisonment and Torture (CNPPT) in 2003, it is concerned by the lack of official investigations to determine direct responsibility for the serious human rights violations committed during this period (articles 2, 6 and 7, ICCPR). The State Party must ensure that serious human rights violations committed during the dictatorship do not remain unpunished; in particular, ensuring the effective prosecution of those suspected to be responsible. Additional measures must be taken to establish individual responsibilities".(21)

While "noting with appreciation the remarkable work of the Truth and Reconciliation Commission and its role in the peaceful transition" in South Africa, the Committee against Torture recommended:

"The State party should consider bringing to justice persons responsible for the institutionalization of torture as an instrument of oppression to perpetuate apartheid and grant adequate compensation to all victims. The State party should also consider other methods of accountability for acts of torture committed under the apartheid regime, and thus combat impunity."(22)

The Inter-American Commission on Human Rights has held that the establishment of truth commissions, as well as measures to compensate victims and their families, do not in any way exonerate the state from its obligation to guarantee the victims' right to obtain "a judicial investigation in a court of criminal law to determine those responsible for the crimes committed".(23)

In the case of Chile, the Inter-American Commission on Human Rights noted:

"[The National Commission for Truth and Reconciliation] was not a judicial body and its work was limited to establishing the identity of the victims whose right to life had been violated. Under the terms of its mandate, the Commission was not empowered to publish the names of those who had committed the crimes, nor to impose any type of sanction on them. For this reason, despite its important role in establishing the facts and granting compensation, the Truth Commission cannot be regarded as an adequate substitute for the judicial process".

The Inter-American Commission then expressly stated:

"The Government's recognition of responsibility, its partial investigation of the facts and its subsequent payment of compensation are not enough, in themselves, to fulfil its obligations under the Convention. According to the provisions of Article 1.1, the State has the obligation to investigate all violations that have been committed within its jurisdiction, for the purpose of identifying the persons responsible, imposing appropriate punishment on them, and ensuring adequate reparations for the victims".(24)

Similarly, in the case of El Salvador, the Inter-American Commission considered that:

"[D]espite the important contribution that the Truth Commission made in establishing the facts surrounding the most serious violations, and in promoting national reconciliation, the role that it played, although highly relevant, cannot be considered as a suitable substitute for proper judicial procedures as a method for arriving at the truth. The value of truth commissions is that they are created, not with the presumption that there will be no trials, but to constitute a step towards knowing the truth and, ultimately, making justice prevail. Nor can the institution of a Truth Commission be accepted as a substitute for the State's obligation, which cannot be delegated, to investigate violations committed within its jurisdiction, and to identify those responsible, punish them, and ensure adequate compensation for the victim..., all within the overriding need to combat impunity".(25)

The Sierra Leone Truth and Reconciliation Commission recognised that the third element of the struggle against impunity, the right to justice, might be more effectively addressed by other institutions. It stated:

"Just as the Commission may address the 'right to truth' component of the struggle against impunity better than the Special Court for Sierra Leone, the contrary may be the case with respect to the 'right to justice' component".(26)

C. Truth commissions and the right to reparation

Victims of gross violations of international human rights law and serious violations of international humanitarian law have the right to be provided with full and effective reparation in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (see: The five forms of reparation, p. 12). Reparation should be proportional to the gravity of the violations and the harm suffered.(27) It should be provided even if the perpetrator has not been identified and include measures to prevent further human rights violations from happening in the future.

The proper establishment and functioning of a truth commission is in itself a form of reparation. By officially acknowledging that a pattern of human rights violations occurred in the past and taking measures to investigate the facts and disclose the truth, the state provides victims and their families with an initial form of satisfaction.

In addition, truth commissions usually recommend a range of reparation measures in their final reports (See: Providing full reparation to the victims and their families, p. 38).

The five forms of reparation

Basic principles on the right to a remedy and reparation, principles 19 to 23

- "19. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.
20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.
21. Rehabilitation should include medical and psychological care as well as legal and social services.
22. Satisfaction should include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and administrative sanctions against persons liable for the violations; (g) Commemorations and tributes to the victims; (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.
23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention: (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international

humanitarian law."

Part Two: The establishment, functions and powers of a truth commission

I. Drafting the statute

The statute of a truth commission sets out its mandate and powers and ensures its resources and funding. The modalities for its approval vary according to the constitutional system of the country where the commission will operate and its legislation. In the past, truth commissions have been established either by the executive (for example, by presidential decree) or by the legislative (by a legislative act). In some cases, truth commissions have been established by executive decree under existing legislation regulating the establishment of commissions of inquiry.

While the form of the statute can vary, it is imperative that civil society be fully involved at all stages in the discussions about the establishment, mandate and powers of a truth commission. The UN Commission on Human Rights encouraged states "to involve, as appropriate, all those concerned, including civil society, victims, human rights defenders and persons belonging to minorities and vulnerable groups, in all efforts to combat impunity, including judicial processes and the design of truth and reconciliation commissions and other commissions of inquiry, the selection of commissioners and the drafting of relevant legislation, with efforts to ensure that men and women participate on an equal basis".(28)

Civil society participation has been fundamental in the establishment of truth commissions in other countries.

- *In Liberia, the Act to Establish the Truth and Reconciliation Commission was the result of a long process of consultation between the government and civil society. After a national consultation in five counties to assess Liberians' views and expectations of a truth commission, in July 2004 the Human Rights and Protection Section of the United Nations Mission in Liberia (UNMIL), the United Nations Development Program (UNDP) and the Transitional Justice Working Group (a coalition of non-governmental organizations) organised a consultative TRC Draft Act Workshop, gathering more than 70 civil society organisations and individuals. The following month a technical drafting group made up of civil society members, international experts, lawyers and representatives of the Ministry of Justice conducted a two-weeks long drafting session. The draft elaborated at this session was formally presented to the National Transitional Government of Liberia for review in September 2004 and approved on 10 June 2005.*

Civil society organizations, both national and international, should be fully involved in the discussions on the establishment, mandate and powers of a truth commission. National authorities should organize a comprehensive process of consultation with all sectors of civil society and seek cooperation by institutions such as the Office of the UN High Commissioner for Human Rights.

II. Mandate

A. Subject-matter mandate: types of violations to be investigated

The mandate of a truth commission must be broad, beyond human rights violations that might constitute crimes under either national or international law. In particular, the investigations should concern all cases of

past human rights violations and abuses, whether committed by government forces or by non-state actors, as well as violations of both civil and political and economic, social and cultural rights.

- *The Sierra Leone Truth and Reconciliation Commission (whose establishing legislation referred to "violations and abuses" without further qualification) decided that its mandate was not confined to violations of human rights that might constitute crimes under either national or international law, nor limited to violations committed by states or governments.*

The Human Rights Committee expressed concern that the three Presidential Commissions of Inquiry into Involuntary Removals and Disappearances, established in Sri Lanka in 1994, were not mandated to inquire into summary executions.(29) The experience of other truth commissions shows that a mandate limited to certain human rights violations can hamper a commission's effectiveness.

- *The 1990 Chilean Commission for Truth and Reconciliation was charged with gathering information to establish the truth behind cases of enforced disappearances, executions and deaths as a result of torture, as well as deaths as a result of violent acts by private individuals on political pretexts. Cases of torture not resulting in death were not investigated. A second truth commission, the National Commission on Political Imprisonment and Torture, had to be established more than a decade later, in 2003, to investigate human rights violations not covered by the mandate of the 1990 Commission.*
- *A broad mandate enabled the Truth and Reconciliation Commission of South Africa to identify the systematic nature of the violations and abuses committed by the state and by opposition groups. However, such a broad mandate was criticized because it did not include some of the violations perpetrated by the apartheid regime (in particular forced removals).*

The mandate of a truth commission should define human rights violations in a way consistent with international law and standards. The Committee against Torture expressed concern at the lack of clarity as to which acts the National Commission on Political Imprisonment and Torture in Chile defined as torture.(30)

The mandate should be formulated in a way which does not suggest a predetermined outcome or limit investigations. In particular, it should be flexible enough to enable the commission itself to determine in more detail the matters that come within the scope of its investigation, including other matters it considers relevant as its investigations progress.(31)

- *The mandate of the Equity and Reconciliation Commission in Morocco was limited to enforced disappearances and arbitrary detention. The Commission itself had to interpret its mandate in a very broad way to be able to deal with cases of torture and extrajudicial executions.*

In addition to clarifying the facts about past human rights violations, truth commissions generally draw an historical picture of the factors allowing human rights violations to occur, such as the broad institutional structures, policies and practices of the armed and security forces, the possible links of armed groups with foreign countries, etc.

B. Temporal mandate: period of time under investigation

Truth commissions should be given broad temporal mandates. Narrow limits in the period of time under a truth commission's investigation can hamper the effectiveness of its work. The Human Rights Committee expressed

concern that the three Presidential Commissions of Inquiry into Involuntary Removals and Disappearances, established in Sri Lanka in 1994, were not mandated to inquire into human rights violations allegedly committed between 1984 and 1988.(32)

The statute of a truth commission should also clarify its temporal mandate with respect to the temporal mandate of other bodies, such as a national human rights commission.

C. Period of operation

A truth commission should be allowed sufficient time to carry out its mandate. Laying down a particularly short time limit for reporting makes the work of truth commissions more vulnerable to changes in political climate. It could also make witnesses more hesitant to come forward as they may have doubts about the process being able to reach its final conclusion. At the same time, a truth commission should be asked to end its operations and report as promptly as reasonably possible. An extended period of operation risks losing the public's attention and political momentum.

The Human Rights Committee considered that the mandate of the Truth and Justice Commission in Paraguay (18 months) was too short to accomplish the Commission's objectives.(33) The Committee against Torture welcomed assurances by Chile that the tenure of the National Commission on Political Imprisonment and Torture would be extended to permit it to complete its work.(34) Amnesty International suggests that a truth commission be granted a relatively long temporal mandate, such as two years, with the possibility for extension if necessary to complete its tasks.

- *The TRC of Liberia was established on 20 February 2006. After a preparatory period of three months, the Commission is carrying out its operational work during a two-year-period (June 2006 to June 2008). It will have a further three months to wrap up its activities and produce a report on its activities and findings – which should be ready by September 2008. The Commission may request the National Legislature to extend its tenure for an additional period of three months. The request, which must demonstrate a good cause for extension, cannot be repeated for more than four times. If it were given the full series of extensions, the TRC of Liberia would end its work in September 2009.*

To some extent, the problem of length of time can be addressed by frequent public reporting and interim recommendations. Regular and frequent interim reports outlining progress made and obstacles encountered would help establish and maintain effective communication with national authorities, civil society organizations and the general public.

III. Functions and powers

A truth commission should receive the full scope of the state's resources and powers. Its statute should grant it full support by the national executive, legislative and judicial authorities.

In particular, a truth commission needs broad powers with respect to the investigation of human rights violations and the preservation of evidence. In this respect, Amnesty International recommends that the statute of the commission include a broadly-formulated residual provision, granting it such functions and powers as are relevant for the realization of its mandate.

In order to carry out the objectives of its mandate, the commission should be adopt necessary rules and procedures consistent with its statute.

A. Investigating human rights violations and abuses

The investigation of human rights violations should lead, where possible, to the identification of persons, authorities, institutions and organizations involved and shall determine whether the violations were the result of deliberate planning on the part of the state, authority, or political organization, movement or group of individuals.

A truth commission should have the power to gather any information it considers relevant, including the power to compel the production of such information as and when necessary. This would include:

- The power to take statements by, interview and investigate any person, group of persons or institution, including victims and witnesses in foreign countries, in public or private at the commission's discretion. This includes the power to travel outside the country to obtain statements. A truth commission should have the power to gather information by taking written or oral statements and by conducting both public and confidential hearings.
- The power to compel attendance and co-operation of any person, group of persons or institution, including state officials. This includes the power to publish a warrant, subpoena, or citation after attendance before the commission or cooperation have been requested to no avail, as well as the power to impose penalties for non-compliance with such orders.
- The power to administer oaths during investigation for the taking and making of statements, the falsity of which is punishable for perjury.
- The power to order production of any documents, records or other information from any source in the country, including executive, legislative and judicial authorities. This includes the power to impose penalties for non-compliance with such orders.
- The power to request any documents, records or other information from relevant authorities and government officials of foreign countries.
- The power to visit any establishment or place without giving prior notice and to enter upon any land or premises.

The Commission being a non-judicial body, special measures need to be taken to allow it to exercise the quasi-judicial powers mentioned above. These measure would depend on national legislation.

- *In Liberia, the TRC will be assisted by a Special Magistrate, able to issue the legal documents required under Liberian law to exercise the Commission's powers (including warrants of search and seizure, subpoenas, citations to procure information and testimonies).*

B. Ensuring accountability for human rights violations

"There are times when we are told that justice must be set aside in the interests of peace. It is true that justice can only be dispensed when the peaceful order of society is secure. But we have come to understand that the reverse is also true: without justice, there can be no lasting peace".

Kofi Annan, UN Secretary-General, March 2003(35)

Since they are usually established during a period of transition, truth commissions rarely coexist with a fully functioning national justice system. The national justice system may have been seriously deprived of human and material resources during an armed conflict, to the point that it is unable to function effectively. Alternatively, it may have a record of collusion with those in power who were responsible for committing human rights violations in the past. In many cases, a truth commission is called to cover, at least in part, the vacuum left by an ineffective national justice system. Its work should assist and should not prejudice current or future criminal proceedings.

A truth commission should inquire into credible evidence indicating individual criminal responsibility. It should forward it (on a confidential basis) to the relevant prosecution authorities for further investigation, with a view to bringing the suspected perpetrators to justice without delay. The commission should identify not only the direct perpetrators, but also those who planned or ordered the abuses, thereby establishing chain-of-command responsibility, as well as those who aided and abetted them.(36) Criminal evidence gathered by a truth commission should be safeguarded for later use in the administration of justice.(37)

The statute of the Equity and Reconciliation Commission in Morocco expressly excluded the identification of perpetrators of human rights violations, as well as criminal prosecutions. While acknowledging the efforts made by Morocco in the field of data collection and compensation in relation to enforced disappearances, the Human Rights Committee expressed its concern that "those responsible for disappearance have still not been identified, tried and punished".(38) The Committee against Torture expressed concern that the Chilean National Commission for Political Imprisonment and Torture did not have the competence to investigate allegations of torture in order to identify the individuals responsible, so that they may be prosecuted. The Committee recommended that the Commission's mandate be extended to permit investigations and, where warranted, the initiation of criminal proceedings against those allegedly responsible.(39)

Although a truth commission should have broad powers with respect to the investigation of human rights violations and the preservation of evidence, the responsibility for initiating prosecutions in cases where there is sufficient admissible evidence rests with the relevant prosecution authorities, rather than with the commission itself.

- *The Chilean Truth and Reconciliation Commission had no formal powers to recommend prosecutions, but transmitted its findings and new evidence on some 220 cases within its mandate to the courts for judicial investigation. The Chilean President, Patricio Aylwin, had previously written to the President of the Supreme Court urging him to instruct the courts to reopen the investigations.(40)*
- *The 1996 Truth and Justice Commission in Ecuador was mandated to investigate unresolved cases of human rights violations and file its findings and recommendations before the relevant judicial authorities.*
- *The Truth and Reconciliation Commission in Peru decided to transfer information on fully documented cases to the courts, including the identity of those allegedly responsible for violations. At the end of its mandate, it forwarded 43 cases in which the alleged perpetrators could be identified to the national Ombudsman's Office and the Public Prosecutor's Office. Four months after the publication of the Commission's report, an Office of the Specialist Prosecutor for Human Rights, Enforced Disappearances, Extrajudicial Executions and the Exhumation of Secret Graves was set up in Lima, together with ten other specialist prosecutors' offices.*

- *The Commission for Reception, Truth and Reconciliation in Timor-Leste was mandated to refer cases, where appropriate, to the Office of the General Prosecutor for prosecution.(41)*

In all aspects of its work, a truth commission should reaffirm a state's obligation under international law to combat impunity. In particular, a truth commission cannot recommend amnesties or similar measures of impunity with respect to crimes under international law.

- *The South African Truth and Reconciliation Commission granted amnesties to perpetrators of serious human rights violations in exchange for public confessions. However, that process was conditional and specific. The implementation of the amnesty provisions was coupled with important steps to achieve accountability. These included: extensive investigations and cross-examinations of the applicants, in some cases; public hearings with testimonies from victims of human rights violations; and the naming of those responsible for the gravest crimes. Open proceedings allowed victims of human rights violations and their relatives to attend and oppose the applications. The option of future criminal proceedings against perpetrators remained possible where suspected perpetrators had failed to co-operate with the Commission or had been denied amnesty. In its 1998 report the Commission recommended the prosecution of individuals who were denied or did not seek amnesty, where strong evidence had been found of their responsibility for gross human rights violations. The government established a unit in the office of the National Director of Public Prosecution to investigate these cases. (42)*

The amnesty process of the South African TRC is considered to be unacceptable under international law.(43) Noting that "de facto impunity persists regarding persons responsible for acts of torture during apartheid and that compensation has not yet been given to all the victims", the Committee against Torture recommended that South Africa combat impunity by considering prosecutions as well as other methods of accountability and grant adequate compensation to all victims.(44)

The prohibition of amnesty under international law

All states have an obligation to prosecute and punish perpetrators of crimes such as genocide, crimes against humanity, war crimes and other crimes under international law. This obligation includes investigating those crimes and, where there is sufficient admissible evidence, prosecuting suspected perpetrators in trials that meet international standards of fairness, without the death penalty or other cruel, inhuman or degrading punishment. As a precondition, national law should define genocide, crimes against humanity, war crimes and other crimes under international law in a manner consistent with the strictest requirements of international law.

Amnesties for crimes under international law are prohibited, as they deny the right of victims to justice. Amnesty International has consistently opposed, without exception, amnesties, pardons and similar measures of impunity that prevent the emergence of truth, a final judicial determination of guilt or innocence and full reparation to victims and their families. See: Amnesty International, *Sierra Leone: Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law* (AI Index: AFR 51/012/2003), October 2003.

C. Establishing an historical record

"When considering the question 'should we remember?' it is very important to firstly ask, has any victim forgotten? Could they ever forget? Secondly we should ask, who wants to forget? Who benefits when all the atrocities stay silent in the past?"

Roberto Cabrera(45)

States have a duty to preserve archives and other evidence concerning human rights violations and to facilitate knowledge of those violations. Appropriate measures should ensure a people's knowledge of its history and preserve its collective memory.(46) The UN Commission on Human Rights has declared:

"states should preserve archives and other evidence concerning gross violations of human rights and serious violations of international humanitarian law to facilitate knowledge of such violations, to investigate allegations and to provide victims with access to an effective remedy in accordance with international law".(47)

During its operations, a truth commission may organize activities targeted at the discussion of the country's historical record of human rights violations.

- *To facilitate a critical debate among Moroccan society on past human rights violations, the Equity and Reconciliation Commission in Morocco organised seminars and conferences on subjects linked to the history of human rights violations in the country.*

A truth commission should establish archives for the preservation of documents and evidence. An important legacy of the commission's work, such archives should be made and remain public after the end of the commission's mandate.

The truth commission's report would also contribute to the establishment of an impartial and complete account of the historical past. Although new information will continue to come to light, the report would serve as an invaluable source for further and continuing historical studies.

D. Promoting community and national reconciliation?

"Neither reconciliation nor forgiveness equate to impunity. Impunity is another name for injustice. That's why the TRC understands justice as the foundation of reconciliation, its precondition and effect, its point of departure and arrival. The exercise of justice guarantees the realization of reconciliation."

Truth and Reconciliation Commission of Peru(48)

Some truth commissions, most notably the Truth and Reconciliation Commission in South Africa and the Commission for Reception, Truth and Reconciliation in Timor-Leste, have designed their activities, in particular public hearings, to provide victims and perpetrators with a forum for public and private acts of reconciliation. Individual reconciliation between victims and perpetrators was seen as conducive to collective, political reconciliation.

Undoubtedly, the establishment of the facts is a precondition for, and can help to promote, individual and collective reconciliation. However, reconciliation, both at the individual and at the collective level, cannot be imposed by either a truth commission or any other official body or procedure.(49)

If a truth commission decides to adopt specific procedures to promote individual reconciliation, such as traditional mechanisms of conflict-resolution or religious practices, they must fully respect the rights and dignity of both victims and alleged perpetrators. In particular, victims and their families should not be forced to meet alleged perpetrators or to engage in any act of reconciliation. On the other hand, reconciliation procedures should not be at the expenses of a fair procedure: they should not involve specific punishment or humiliation of alleged perpetrators.

IV. Establishment and functioning of the Commission

A. Competence, impartiality and independence

The membership of truth commissions is particularly important, indeed vital, for their effective functioning, as the actions and personal qualities of the commissioners frequently set the tone for the activities of the commission as a whole. Members of a truth commission should be selected on the basis of their competence in human rights, proven independence and recognized impartiality.

Members of a truth commission should have demonstrated experience and qualification in the field of, as well as proven commitment to uphold, human rights. In particular, a truth commission should include members with proven expertise, knowledge and experience in the promotion and protection of human rights, including expertise of international human rights and humanitarian law. (50) Members should also be experienced in dealing with victims of serious crimes, including traumatized victims, victims of sexual violence and children victims.

Commissioners should not be closely associated with any individual, government or other entity, political party or other organization potentially implicated in the human rights violations under investigation or with an organization or group associated with victims.

The inquiry must be independent of the institutions or agencies under investigation and of the executive functions of government, and free of political pressures. Specific provisions in the statute should ensure independence from political or other influence to the commission and each of its members. In particular, a truth commission should be allowed to exercise executive authority and be responsible for the implementation of its mandate without supervision. Other measures may include security of tenure and other immunities and privileges.(51) The truth commission as a body, its individual commissioners and every member of its staff should be instructed to be independent from any party, government or faction, and to work without political or other bias, prejudice or motive.

- *In Liberia, the TRC Act guarantees the Commission full independence and considers obstructing or otherwise interfering with the work of the Commission or any of its members or officers to be an offence. Members of the Commission serve in a full-time capacity, to the exclusion of any other duty or obligation arising out of any other occupation or office, unless they are specifically authorized by the Commission. To protect the Commission's independence, the commissioners and the members of its staff are granted immunity from civil*

or criminal sanctions by virtue of statements made or actions taken "in rightful pursuit" of their work for or with the TRC. Members of the Commission may be removed from their position (for reasons such as misbehaviour, incapacity and incompetence), only by impeachment.

According to Principle 7 of the updated Set of principles to combat impunity, truth commissions "must be established through procedures that ensure their independence, impartiality and competence." If a truth commission is to be accepted as credible and capable of achieving its vital objectives, its members must be selected by a transparent process that inspires public confidence. NGOs, victims' groups and other civil society organization should fully and actively participate in the process of selection and appointment of the commissioners.

- *In 1995 Amnesty International expressed concerns that the legislation establishing the South African Truth and Reconciliation Commission, which gave the President the authority to appoint the members of the Commission in consultation only with the Cabinet, did not provide a sufficiently transparent appointment process.(52)*
- *In Liberia, the Chairman of the National Transitional Government had announced the appointment of the members of the future Truth and Reconciliation Commission before legislation setting out its mandate, composition and powers had been drafted and enacted into law. The TRC Act established that a selection panel would vet the commissioners already appointed through a "process of public scrutiny based on individual nominations and other petitions from the general public, institutions, and organisations". The selection panel screened more than 150 candidates nominated by the Liberian public and provided a shortlist of 15 names to the Chairman. New commissioners were appointed as a result of this process.*

The composition of a truth commission should reflect a balance of women and men and a pluralist representation of civil society.(53) In particular, the commission may include representatives of non-governmental organizations involved in the promotion and protection of human rights, victims' groups, women's groups, etc.

Some truth commissions are composed exclusively by nationals of the country where they are established. Other commissions have mixed members, both nationals and international. Some countries, such as Liberia, adopted the model of a national commission assisted by an international committee of experts. The choice of a national, international or mixed truth commission should be determined by the need to ensure its independence, impartiality and competence.

B. Setting up a secretariat and regional offices, staff recruitment and training

The work of a truth commission should be supported by a secretariat composed of a sufficient number of experienced, trained and skilled staff. In particular, a truth commission should have the support of adequate professional, technical and administrative staff. It should have the power to request the secondment of public officials and hire foreign staff.

- *During the first six months of its operations, the Sierra Leone Truth and Reconciliation Commission suffered an administrative crisis, created in part by a poor process of recruitment for the secretariat staff. Following a personnel audit, the staff initially recruited left. Most of the Commission's permanent staff arrived only several months after its establishment, when it was completing its statement-taking program. As a result, the Commission "effectively [lost] the first*

six months of its existence".(54)

A truth commission should have impartial, expert legal counsel and, where necessary, its own investigators. It should be able to obtain advice from consultants providing technical expertise in disciplines such as law, medicine, forensic science, psychology or other areas relevant to its investigations. This includes seeking help from the international community of experts in these areas.

Members of staff and experts engaged as consultants should be recruited on the basis of their competence, impartiality and independence. Women and men should be equally represented. All members and staff of a truth commission should receive comprehensive training in human rights, according to the principles established in Amnesty International's *12-Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials*.(55)

There should be adequate administrative provision for crucial areas of work such as victim and witness protection and communications. If the truth commission decides to organize its secretariat in sections or units, it should establish a victims and witnesses protection unit and an outreach unit (see: Public information and education campaign, below and A victim-centred approach, p. 27).

The establishment of regional offices may be necessary to guarantee to all victims and witnesses the opportunity to submit information, give statements and participate in the hearings. If regional offices are established, their number and location must take into account the specific patterns of human rights violations in the different regions of the country and its territorial extension. Where it would be a hardship or dangerous to travel to a fixed regional office, mobile offices may be used to reach rural areas.

- *In Peru, over 800 people working for the Truth and Reconciliation Commission travelled around the 24 departments which make up the country in search of firsthand testimonies. Almost 17,000 testimonies were received by the central office in Lima and the four regional offices.*
- *The 2001 Commission for Reception, Truth and Reconciliation in Timor-Leste was composed of both national commissioners and regional commissioners in several regional offices.*
- *In Morocco, the Equity and Reconciliation Commission set up one regional office in Laayoune (Western Sahara's chief town) to facilitate receipt of applications from victims and family members from that area. The decision to close the office after an initial period of three months was criticized by Sahrawi victims and civil society organisations.*

C. Public information and education campaign

During its operations, a truth commission should establish regular contacts with representatives of non-governmental organizations, other relevant non-state institutions and the media to publicize its work. An outreach unit may be specifically mandated with all issues concerning communication with journalists and with the general public, including civil society.

Radio, television, songs, drama and posters may be used to publicize a truth commission's work. The commission may also set up a website to help explain its functions and powers and provide updates. Information material on the role of the commission and its working methods may be translated to all local languages and distributed widely. Whatever means of dissemination are used, they must be accessible to interested sections of the public, taking account of whether they have access to electronic communications, radio/TV, are literate, and what language they understand.

D. Ensuring sufficient resources

A truth commission should receive sufficient national resources as well as, if necessary, targeted development assistance. At the same time, it should ensure compliance with internationally accepted standards of financial reporting and accountability.

- *The Truth and Reconciliation Commission in Sierra Leone had difficulties in raising funds. Internal mismanagement led to problems in the establishment and early functioning of the Commission, creating a crisis of credibility that exacerbated the funding crisis.*(56)

Although it is important that a truth commission should have sufficient resources, truth-seeking is only a part of what is needed to establish the facts about past human rights violations, bring the suspected perpetrators to justice and provide full reparation to the victims and their families. It is thus equally important that the truth commission does not divert resources away from the establishment of a functioning justice system, including courts to try those alleged to be responsible for crimes under international law.

V. The Commission's operations and procedures

A. A victim-centered approach

The success of a truth commission will be measured also against its approach to the victims and their families - the way in which it will provide an opportunity for them to tell their stories. Most truth commissions provide the first opportunity for victims to come forward and present their testimony.

- *Under the apartheid regime in South Africa victims of human rights violations and their relatives had faced years of denial from officials that the violations had taken place. The public hearings of the Human Rights Violations Committee, one of the three sub-committees of the South Africa Truth and Reconciliation Commission, enabled some 2,000 victims and their family members to describe what happened to them and to tell the committee what they hoped would come out of its work on their case. The hearings were held in major urban centres, small towns and rural areas and were attended by members of local communities. Often highly emotionally charged, the hearings were broadcast nationally on television and radio and widely reported in the print media. The South African Commission regarded these hearings as vital to achieve one of its statutory objectives: "restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims". The hearings "revealed the extent of gross violations of human rights and made it impossible for South Africans ever again to deny that such violations had indeed taken place".*

The UN Commission on Human Rights has urged governments to "encourage victims to participate in judicial as well as truth and reconciliation processes, including by taking appropriate measures to ensure the protection of, and support and assistance to, victims as well as witnesses, such as contact points and child- and-gender-sensitive procedures, paying special attention to crimes of sexual violence".(57)

International standards on the treatment of victims of crimes under international law and other serious crimes focus on three key responsibilities: to treat victims with humanity; to provide effective protection mechanisms;

to ensure effective support. In addition, states have specific responsibilities in relation to child victims and victims of sexual violence.

The Declaration of basic principles of Justice for victims of crime and abuse of power states that victims "should be treated with compassion and respect for their dignity" and that:

"[T]he responsiveness of judicial and administrative processes to the needs of victims shall be facilitated by taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation."(58)

Principle 10 of the Basic principles on the right to a remedy and reparation states:

"Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation."

Ensuring victims are treated with humanity

The statute of a truth commission should include broad provisions to ensure that victims are treated with humanity. To ensure that victims are not re-traumatized, all representatives of the truth commission who come into contact with victims, including commissioners, staff and others, should be comprehensively trained in dealing with victims of serious crimes, including victims of sexual violence and violence against children. This training may be organized with the collaboration and assistance of women's organizations and the United Nations Children's Fund (UNICEF).

Ensuring victims and witnesses are provided with effective protection

- *After publication of the report of the Haitian National Commission of Truth and Justice, some of those who testified before the Commission (many of whom, reportedly with their consent, were named in the main body of the report) reportedly received threats from former military and paramilitary personnel, still living in the same areas as the victims or their families and still occupying positions of power.*

The statute of a truth commission should ensure the protection of victims and witnesses who may be at risk as a result of their participation in the process. The commission should devise and implement a comprehensive, long-term and effective victims and witnesses protection program. Protection measures should be available for all witnesses, victims and their families, staff and others associated with the investigation. In determining which protection measures to take, the commission should take into account the views of the victims and witnesses on which measures they require and whether the protection measures are proportionate to the seriousness of the risk. The commissioners should be responsible for overseeing the implementation of all protection measures and a procedure should be established whereby a victim who is not satisfied with protection measures may apply to the commissioners to address the issue.

Protection measures should not be restricted to concealing the identities of victims and witnesses who request it. They may include seeking restraining orders against anyone who poses a threat to the victim or witness or to their family, organizing police protection, safeguarding the whereabouts of the victim or witness and their family from disclosure and providing them with medical and psychological treatment and support. In some cases, such protection measures will need to be long-term and can require relocation and new identities for the victim or witness and their families.

The truth commission should have the power to require the relevant authorities to suspend from duty officials allegedly involved in the human rights violations under investigation, or to transfer them to other duties where they would have no power over victims or witnesses, without prejudice pending completion of the investigations, if there is reason to believe that they may interfere with victims or witnesses or otherwise interfere with the investigation. The government should make an explicit undertaking that it will ensure compliance with the commission's requests to that effect.

A victims and witnesses protection program will need sufficient resources to succeed. Other bodies that have established a victims and witnesses protection program, as well as international institutions such as UNICEF, may be consulted in developing and implementing such a program.

Ensuring victims are provided with effective support to participate in the truth commission's process

The truth commission should provide special measures to assist victims and witnesses, especially those that are traumatized, children, elderly or victims of sexual violence, in presenting views and concerns, registering their case, participating and giving testimony.

The establishment of the commission and the matters it will look into should be notified to the public by all appropriate media. Special attention should be paid to notifying victims of human rights violations, their families or those who otherwise may have an interest.

The commission should allow and actively encourage all the victims, their families and other interested actors to register their cases officially and submit information. This includes providing information on the commission's functions and procedures. Steps should be taken to encourage participation of women and other groups, such as children, young people and the elderly.

As a matter of principle, truth commissions should be accessible to people throughout the country. A truth commission should carry out investigations in all areas of the country, with the staff and facilities necessary to reach all victims and their families. Commissioners should travel around the country and organize hearings in all regions to ensure direct access to victims and their families and raise awareness of the commission's function and work.

Victims, their families, lawyers and NGOs working in their behalf should be kept informed of hearings relating to the investigation of their case, to which they should have access and be allowed to present evidence.

Victims and witnesses should have access to psychological advice and support throughout the process. Support persons are important to guide victims through what may be a complex and potentially traumatizing process and to monitor the victim or witness through the process to identify whether they require any specific assistance or protection measures.

Examining the work of the National Commission on Political Imprisonment and Torture of Chile, the Committee against Torture noted with concern: the short time period in which alleged victims could register with the Commission, resulting in fewer persons registering than anticipated; the reported rejection of claims not filed in person, notwithstanding, e.g., the disability of the person(s) involved; the failure to permit persons to register who may have received reparation for other human rights violations (disappearance, exile, etc.).(59)

Special measures for child victims and victims of sexual violence

Special measures should be designed to ensure the proper treatment of child victims and victims of sexual violence and to ensure that they are provided with adequate protection and support services.(60)

Specific outreach activities should ensure that women and children are aware of the truth commission process and encouraged to participate. This should include specific information about the victims and witnesses protection program.

A special unit for victims and witnesses protection and support

Amnesty International recommends that a special unit for protection and support of victims and witnesses should be established within the truth commission. The unit should include staff with expertise in dealing with child victims and victims of sexual violence, together with mental health specialists and counsellors to respond to the needs of traumatized victims.

This unit's first tasks should be to develop policies and guidelines for protection and support and to provide comprehensive training to the Commission's members and staff. After the beginning of the Commission's operations it should monitor and evaluate the on-going work with respect to the treatment of victims. The unit should be responsible for assessing and making recommendations to the commissioners as to whether hearings should be held in camera. The unit should also be responsible for organizing long-term support measures such as relocation where required, by establishing effective channels of collaboration with national authorities.

B. A fair procedure

Witnesses, alleged perpetrators and other individuals involved should be guaranteed the following rights, among others, at all stages of the procedure before a truth commission:(61)

- The right not to be subjected to discrimination.
- The right to a fair and public hearing by a competent, independent and impartial body.
- The right to remain silent, without any adverse inferences being drawn from the exercise of this right, and the right not to be compelled to testify against themselves or to confess guilt.
- The right not to be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment.
- The right to have the free assistance of an interpreter if they cannot understand or speak the language used.
- The right to be informed promptly and in detail of any allegations made against them.
- The right to defend themselves and the right to have legal assistance.
- If alleged of having committed crimes before a truth commission, the right to be presumed innocent until and unless proven guilty beyond a reasonable doubt according to law in separate criminal

proceedings which comply with international standards of fair trial.

- If adversely affected by a truth commission's decision, the right to seek judicial review.

In the case of juveniles below 18 years of age, the procedure should take account of their age and the desirability of promoting their rehabilitation.

The following rights are of particular importance before truth commissions.

The right to remain silent without any adverse inferences being drawn from the exercise of this right and the right not to be compelled to testify against themselves or to confess guilt

An internationally recognized legal principle of fair trial is that no person should be compelled to confess guilt or to testify against themselves. This overrides any powers to compel witnesses to testify and can, therefore, sometimes conflict with a commission's task of seeking the truth. Both truth commissions and commissions of inquiry have sought to resolve this conflict by offering persons asked or compelled to testify "use immunity", or a guarantee that the evidence they disclose will not be used against them in any later criminal proceedings. Unlike amnesties, "use immunities" do not extinguish criminal responsibility.

Amnesty International opposes "use immunity", as it would prejudice a future process of bringing alleged perpetrators to justice. National authorities do not have the legal power to grant such immunity for crimes under international law, which are crimes against the entire international community. Protection against self-incrimination should not lead to amnesties or immunities. In any instance where there is a conflict between seeking full disclosure and the prohibition of amnesties or other similar measures of impunity, precedence should be given to fighting impunity.(62)

The right to defend oneself and the right to have legal assistance

The right to be represented by a lawyer is an essential safeguard for alleged perpetrators, as well as for victims and witnesses. Any witnesses, alleged perpetrators or others who may be implicated before a truth commission should be guaranteed their right to legal counsel and a right to reply.

In the case of alleged perpetrators, the commission should advise them of the possible consequences of their statements and that they may, if they wish, be assisted by legal counsel. Witnesses also should be permitted legal counsel if they are likely to be harmed by the inquiry (for example, if their testimony could expose them to criminal charges or civil liability). The commission should provide legal assistance to suspected perpetrators who cannot afford to pay for a lawyer, as well as to victims or relatives of victims who have difficulties in making a submission, whether because of lack of resources, expertise or distance.

- *The legislation establishing the Commission for Reception, Truth and Reconciliation (CRTR) in Timor-Leste provided both for persons invited or required to appear before the CRTR to be represented by a lawyer and for a lawyer to be appointed by the CRTR if the person could not afford to pay a lawyer themselves.*

The right to be presumed innocent until proved guilty according to law

While the identification of perpetrators of human rights violations is an important part of the obligation to

respect, protect and fulfil the victims' right to truth, justice and reparation, a truth commission is not a judicial body and cannot determine guilt or innocence. Persons alleged of having committed human rights violation before a truth commission have the right to be presumed innocent until proven guilty beyond a reasonable doubt according to law in a fair criminal trial.

Some past truth commissions have decided to "name and shame" publicly alleged perpetrators. However, this approach violates the right to be presumed innocent, may endanger the safety of both alleged perpetrators and witnesses and eventually is counter-productive to the interests of justice.

- *The Haitian National Commission of Truth and Justice drafted a confidential list of alleged perpetrators, which ended up being leaked to an Haitian newspaper. At that time, Amnesty International expressed its concern that the publication of the list not only might lead those named to go into hiding or flee Haiti to evade prosecution, but could also encourage reprisals against them.(63)*
- *The Commission of Truth of El Salvador initially decided to name, where appropriate, those alleged responsible for past crimes in its report. However, this decision caused considerable controversy and the government tried to delay the publication of the report until after the next elections. The then Salvadoran president maintained that he could not guarantee the safety of witnesses if the report was published with the names.*
- *The handover of the 1998 five-volume report of the Truth and Reconciliation Commission of South Africa was nearly derailed by court challenges to the Commission's findings from both the African National Congress (unsuccessfully) and former President F. W. de Klerk, whose litigation resulted in the removal of a section of the report which had named him as a perpetrator of human rights violations. The publication of a further two volumes, containing findings based on the evidence emerged after 1998 and a final list of victims and recommendations for reparations, was delayed as a result of an interim court order obtained by the Inkatha Freedom Party (IFP). The order constrained the South African Commission from submitting the report to the president and arranging for its printing and publication, pending a ruling on a prior application by the IFP for an order compelling the TRC to amend its findings against them.(64)*

C. Collection of evidence and statement- taking

A truth commission should conduct on-site investigations, visits, interviews and hearings, as appropriate. It should pursue all available sources of information, including: statements from victims, witnesses and alleged perpetrators; material evidence from sources such as government records, medical records or reports, police investigation files and court files; media reports; etc. In particular, a truth commission should seek the cooperation of the widest possible range of sectors of society, paying special attention to information and testimonies provided by victims of human rights violations and their families (both inside and outside the country), national and international human rights organizations and previous research projects.

As a first step in gathering evidence, the commission should invite people to testify or submit written statements. All interested parties should have an opportunity to submit evidence. The commission should be flexible about the manner of questioning witnesses and adapt its method to the circumstances of the case and the individual interviewees, so as to gather an optimal amount of evidence.(65) To protect the right of alleged perpetrators to be presumed innocent, the statement-taking phase should not be public.

Although the commission may potentially face a huge number of cases, all properly documented human rights

violations placed before it should be investigated and clarified. While the desire for an expeditious process inevitably imposes limits on the scope of the investigation, the right to a complete and faithful account of past human rights violations cannot be restricted to a limited number of cases selected because of the prominence of the victim or because of the effect the violations had at a national or international level.

The commission should be able to count on the services of experts in the field of psychology, pathology, forensic anthropology, and ballistics. In particular, forensic expertise should be on hand at short notice so that effective investigation and recording of, for example, injuries caused by torture or sexual violence, or post mortem investigations, can be done efficiently, increasing the likelihood of bringing perpetrators to justice. The methodology to be employed in exhumations, autopsies and analyses of bone remains should conform to the United Nations Principles relating to the effective prevention and investigation of extralegal, arbitrary or summary executions.⁽⁶⁶⁾ Where the investigation is dealing with unlawful killings, the commission should have the authority to prevent burial or other disposal of the body or bodies until an adequate post-mortem examination has been carried out.

In carrying out their inquiry, truth commissions should bear in mind the rules and conditions for the admissibility of evidence in the criminal process and should ensure that they produce admissible evidence for later criminal proceedings. At the same time, truth commissions are not bound by such strict rules of evidence as a court, and can consider reliable evidence of any kind (including, for example, hearsay/secondary evidence) for the purposes of their own investigations.⁽⁶⁷⁾ In no case a truth commission could consider evidence produced as a result of torture or other ill-treatment, except against the suspected perpetrator.

In addition to its own inquiries, the commission should review other proceedings that could provide relevant information. In particular, it should review evidence collected as a result of the vetting process of the armed and security forces, earlier police investigations and the findings of any relevant inquiry to determine if they were conducted thoroughly and impartially.

D. Publicity and confidentiality

As a matter of principle, all aspects of the work of a truth commission should be made public. So far as possible, the media and public should be given access to the proceedings and to the evidence on which the commission bases its findings. However, the need to protect the rights of individual victims, witnesses and suspected perpetrators should limit the openness of the investigation, in particular in cases when their security is deemed to be at risk.

As a general rule, the hearings should be open to the public. If the truth commission considers that measures are necessary to protect the rights of individual victims, witnesses or suspected perpetrators, it should have the power to decide to hold a hearing *in camera* (i.e., to exclude the media and the public from all or part of the hearing) or to prevent one or more individuals to be present. The commission must, however, permit any victim who has an interest in the proceedings concerned to be present.

The truth commission may conceal the identities of victims, witnesses and suspected perpetrators and keep confidential any other information relating to the proceeding, withholding such information from its public report. Full information should be provided confidentially to the judicial authorities, subject to effective safeguards for the safety of those concerned.

The truth commission should establish at the outset of its work the conditions that will govern access to its documents, including conditions aimed at preventing disclosure of confidential information while facilitating

public access to its archives.(68) When the commission considers that such a measure is needed to protect the rights of individual victims, witnesses or suspected perpetrators, some records or documents could be classified and remain so for a sufficiently long period of time.

VI. Building the future

"Remembering should be linked to new dreams. There is no point in looking back if it does not help us to dream and create a better future".

Roberto Cabrera(69)

A. Reporting, recommendations and dissemination

The final report is the most visible outcome of the work of a truth commission.(70) It should set out: the commission's mandate and terms of reference; its procedures and methods for evaluating evidence, as well as the law upon which it relied; the background to the investigation, including relevant social, political and economic conditions and information on whether the commission received the necessary cooperation by the government and other public institutions; the commission's findings of fact and a list of documents and other evidence upon which such findings are based; its conclusions based upon applicable law and findings of fact, including a critical analysis of institutional structures, policies and practices; a list of victims (except those whose identities are withheld for protection); and its recommendations.

A truth commission should be given the power to make recommendations to the national government with regard to, among others: reparations to the victims of human rights violations; the enactment of specific legal, institutional and other reforms; and any other necessary government actions to be taken in furtherance of its findings, such as continuing investigations or inquiries into particular matters and prosecutions in particular cases.

- *The Act establishing the TRC in Liberia provides that "all recommendations shall be implemented". The head of state shall report to the National Legislature within three months of receipt of the report of the TRC, and on a quarterly basis thereafter, as to their implementation. Where the implementation of any recommendation has not been complied with, the Legislature is directed to require the head of state to show cause for such non-compliance.*

The results of a truth commission's investigations and its recommendations should be officially proclaimed, published and widely disseminated without undue delay. The Commission on Human Rights has encouraged states to "disseminate, implement, and monitor implementation of, the recommendations of non-judicial mechanisms such as truth and reconciliation commission".(71) The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, has stated that "governments have a responsibility to facilitate access to information which is already in the public domain such as the reports and recommendations of truth and reconciliation commissions".(72)

The commission's findings may be presented to the nation in a television and/or radio broadcast. A summary of the final report may be communicated widely through radio, town hall meetings, distribution of books and

education materials to schools, etc. The full report should be made available in free copies distributed to schools, local administrations and on the internet. Translations into local languages, as well as popular versions, child-friendly versions and summaries should also be organised.

- *The Sierra Leone Truth and Reconciliation Commission recommended that the contents of its report should be incorporated into education programs. It also produced three special versions of the report for additional dissemination: a video version; a pictorial version; and a child-friendly version, written with the assistance of children and produced in collaboration with UNICEF. It encouraged the production of popular versions and summaries in different local languages, the organization of dissemination committees at the national and local levels and the use of the report to promote dialogue and debate in workshops and other events around the country.*

B. Recommending prosecutions

The modalities for a truth commission to recommend prosecutions may vary. The commission may decide to forward possibly incriminating information and evidence to the relevant authorities as soon as it receives it. Some truth commissions have compiled lists of those allegedly responsible for the human rights violations documented and annexed such a list to their final report.

If a truth commission decides to compile a list of suspected perpetrators, it should decide in advance, at the outset of its work, a clear policy defining the criteria for doing so, including standards of proof, consistent with international law. Those included in the list should be given, as a minimum, the possibility to respond to the allegations before the list is finalized. To safeguard the right of suspected perpetrators to be presumed innocent until proven guilty beyond a reasonable doubt according to law, the list should be kept confidential and should not be available to the general public. The names should be handed over to the national prosecution authorities on a confidential basis so that, where there is sufficient evidence, those concerned can be prosecuted.(73)

- *The deliberations of the Investigative Commission in Uruguay were held in secret, and the names of the military officers involved were not included in its final report, but were later turned over to the courts, together with thousands of pages of testimony and affidavits on which the Commission had based its conclusions.*

C. Providing full reparation to the victims and their families

Throughout the process, a truth commission should collect views from victims about what forms of reparation they require to rebuild their lives. In addition to measures of rehabilitation, compensation and satisfaction, the commission should recommend a broad range of other reparations for victims. These include measures that would prevent repetition of past violations, such as reforming laws, administrative procedures and practice; strengthening the justice system; and promoting human rights education. Any recommendation made for reparation should never be seen as a substitute for bringing those responsible to justice or preclude victims also seeking compensation through the courts.

Some past truth commissions focused their recommendations on monetary compensation. Other truth commissions have devised broad reparation programs, including rehabilitation, satisfaction and guarantees of non-repetition as well as compensation:

- *The Commission of Truth in El Salvador recommended that a fund be set up to provide financial compensation for the victims of past human rights violations. The Commission recommended that the state contribute to the fund but, given the amount of resources needed, it called on the international community to provide additional funds. It also suggested that a minimum of one per cent of any international aid to El Salvador should be earmarked for the fund and that the fund should be managed by a directorate of three members, one named by the government of El Salvador, one by the Secretary General of the UN and a third by mutual agreement of the two parties.*
- *After the publication of the report of the National Commission for Truth and Reconciliation in Chile, legislation established the Corporation for Reparation and Reconciliation (Law 19.123 of 8 February 1992) and designed mechanisms for granting initial sums of compensation and regular pensions to relatives of victims officially recognized by the state in either the Commission report or subsequent Corporation investigations. It further guaranteed the right to free medical assistance for families and educational grants until the age of 35 for children of the victims named in the investigations. In 1991 the Health Ministry had established a Program for Reparation and Integrated Health Provision (Programa de Reparación y Atención Integral en Salud, PRAIS), to provide medical assistance to relatives of those "disappeared" and extra-judicially executed as well as to those who suffered arbitrary detention and torture.*
- *The Peruvian Truth and Reconciliation Commission put forward a Comprehensive Plan for Reparations. This included symbolic reparations, such as the holding of commemorative events and the closing down or renovating for new purposes former detention centres and other places associated with human rights violations. The plan also included reparations in the field of health and education, such as free mental and physical health treatment for victims, a grants program for those who were forced to give up their studies and adult education programs for the communities most affected by the violence.(74)*
- *In its 1998 report, the South African Truth and Reconciliation Commission made extensive recommendations for reparations to victims, including both monetary compensation and various forms of symbolic reparations, ranging from the building of monuments and renaming streets and community facilities, to expunging criminal records for acts committed with political motives. (75)*
- *The Truth and Reconciliation Commission in Sierra Leone recommended the implementation of a Reparations program, to be co-ordinated by the National Commission for Social Action. The program comprised measures responding to the needs of victims in the areas of health, pensions, education, skill training and micro credit, community reparations and symbolic reparations.*
- *The Equity and Reconciliation Commission in Morocco was required to organize compensation of material and moral damages suffered by the victims of enforced disappearances and arbitrary detention and their families. The Commission organised consultations with victims, civil society associations and human rights NGOs about the nature of reparations they requested. It finally recommended both financial compensation and other forms of reparation (including medical rehabilitation, reintegration into administrative positions, restitution of property, collective satisfaction in the form of memorials and apologies by the Prime Minister).*

D. Designating a successor body

The statute of a truth commission should provide for a successor body to monitor the implementation of the commission's recommendations, continue investigations, preserve the archives, etc. These functions may be carried out by an *ad hoc* body or by existing bodies, such as national human rights institutions.

- *The Chilean Truth and Reconciliation Commission recommended the establishment of a successor body. The Corporation for Reparation and Reconciliation (Corporación de Reparación y Reconciliación) was charged with continuing investigations of the 641 cases the Commission had been unable to resolve, and receiving and investigating those cases which had not been presented during the Commission's one-year period of operation. It was further mandated to coordinate and promote preventive action to improve the regulation and protection of human rights and the consolidation of a culture of respect for human rights. The Corporation promoted human rights education and seminars and publications on issues of human rights protection and the functioning of the judicial system.*
- *Implementing one of the recommendations of the Haitian National Commission of Truth and Justice, a Proceedings and Follow Up Office (Bureau de poursuites et suivi) was set up to oversee the implementation of the Commission's recommendations. The Office was responsible for studying compensation claims and establishing appropriate means of reparation. It also reportedly organized training programs to help victims present complaints to the courts.*
- *After the end of the mandate of the Peruvian Truth and Reconciliation Commission, the national Ombudsman's office took charge of the archiving of documentation gathered by the Commission and inaugurated an Information Centre for the Historical and Collective Memory and Human Rights, where the information collected by the Commission would be available for public consultation. At the same time, a High-Level Cross-Sector Commission was set up to take charge of the state's action and policy on matters relating to peace, reparations and reconciliation and to follow up on the Commission's recommendations.*
- *In Liberia, the Independent National Human Rights Commission (INHRC) will have the responsibility to ensure that all the recommendations contained in the report of the TRC are implemented. It will also ensure that "civil society organisations and moral guarantors of the CPA [Comprehensive Peace Agreement] shall be seized of the responsibility to monitor, and campaign for the scrupulous implementation of all recommendations contained in the report". The INHRC may also set up a resource centre on the Liberian conflict and transitional justice.*

Conclusion

Amnesty International's research and experience with regard to transition processes and truth commissions reveals that the total or partial concealment of the truth and half-way steps to establish justice leave open wounds in the social fabric and revive conflicts which were earlier thought to be over. Truth commissions should unearth and reveal the whole truth – or as much as is possible to find. They should ensure that suspected perpetrators are prosecuted and that victims and their families receive adequate reparation. This would lay the foundation for building a strong and lasting reconciliation in countries in transition.

National authorities and international actors have a crucial role in facilitating and cooperating with the work of a truth commission, acting upon its findings and implementing its recommendations. They should ensure that the truth commission is granted all necessary powers and resources for it to fulfil its objective: that of making public knowledge of what has taken place and bringing those responsible to justice.

Societies that want to overcome a painful and violent recent history must critically face the reality of past human rights violations. Transition to lasting peace and the rule of law must be based on truth, justice and reparation.

Annex A – Selected international standards and reference documents

Declaration of basic principles of justice for victims of crime and abuse of power, adopted by the UN General Assembly in Resolution 40/34 of 29 November 1985.

Principles Relating to the Status of National Institutions (Paris Principles), adopted by General Assembly resolution 48/134 of 20 December 1993.

Set of principles for the protection and promotion of human rights through action to combat impunity (Set of principles to combat impunity), Annex II to the Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, UN Doc. E/CN.4/Sub. 2/1997/20/Rev. 1, 2 October 1997.

The rule of law and transitional justice in conflict and post-conflict societies (The rule of law and transitional justice in conflict and post-conflict societies), report of the UN Secretary-General, UN Doc. S/2004/616, 23 August 2004.

Updated Set of principles for the protection and promotion of human rights through action to combat impunity (updated Set of principles to combat impunity), Addendum to the Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005.

Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law (Basic principles on the right to a remedy and reparation), adopted and proclaimed by UN General Assembly resolution 60/147 of 16 December 2005, UN Doc. A/RES/60/147.

UN Economic and Social Council, Guidelines on justice in matters involving child victims and witnesses of crime, Resolution 2005/20 of 22 July 2005.

Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. E/CN.4/2006/91, 8 February 2006.

Office of the United Nations High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Truth Commissions*, Un Doc. HR/PUB/06/1, 2006.

Summary guidelines for the establishment of an effective truth commission

1. Truth commissions should uphold the right of victims of past human rights violations to obtain truth, justice and reparation.
2. To this end, truth commissions should: clarify as far as possible the facts about past human rights violations; feed the evidence they gather into continuing and new investigations and criminal judicial proceedings; and formulate effective recommendations for providing full reparation to all the victims and their relatives.
3. Truth commissions cannot be a substitute for a judicial process to establish individual criminal responsibility.

4. The statute of a truth commission should grant it full support by national executive, legislative and judicial authorities.

Establishment

5. Civil society organizations, both national and international, should be fully involved in the discussions on the establishment, mandate and powers of a truth commission.

6. NGOs, victims' groups and other civil society organization should also fully and actively participate in the process of selection and appointment of the commissioners.

7. Members of a truth commission should be selected on the basis of their competence in human rights, proven independence and recognized impartiality. The composition of a truth commission should reflect a balance of women and men and a pluralist representation of civil society.

Mandate

8. The mandate of a truth commission must be broad, beyond human rights violations that might constitute crimes under either national or international law. In particular, the investigations should concern all cases of past human rights violations and abuses, whether committed by government forces or by non-state actors, as well as violations of both civil and political and economic, social and cultural rights.

9. Truth commissions should be given broad temporal mandates.

10. A truth commission should be allowed sufficient time to carry out its mandate.

Functions and powers

11. A truth commission should have the power to gather any information it considers relevant, including the power to compel the production of such information as and when necessary.

12. The statute of the commission should include a broadly-formulated residual provision, granting it such functions and powers as are relevant for the realization of its mandate.

13. A truth commission should inquire into credible evidence indicating individual criminal responsibility. It should forward it (on a confidential basis) to the relevant prosecution authorities for further investigation, with a view to bringing the suspected perpetrators to justice without delay.

14. As required under international law, a truth commission should not recommend amnesties or similar measures of impunity with respect to crimes under international law.

15. If a truth commission decides to adopt specific procedures to promote individual reconciliation, such as traditional mechanisms of conflict-resolution or religious practices, they must fully respect the rights and dignity of both victims and alleged perpetrators.

Operations and procedures

16. In order to carry out the objectives of its mandate, the commission should be adopt necessary rules and procedures consistent with its statute.

17. The work of a truth commission should be supported by a secretariat composed of a sufficient number of experienced, trained and skilled staff. In particular, a truth commission should have the support of adequate professional, technical and administrative staff. If the truth commission decides to organize its secretariat in sections or units, it should establish a victims and witnesses protection unit and an outreach unit.

18. As a matter of principle, all aspects of the work of a truth commission should be made public. So far as possible, the media and public should be given access to the proceedings and to the evidence on which the commission bases its findings. However, the need to protect the rights of individual victims, witnesses and suspected perpetrators should limit the openness of the investigation, in particular in cases when their security is deemed to be at risk.

19. During its operations, the commission should establish regular contacts with representatives of non-governmental organizations, other relevant non-state institutions and the media to publicize its work. Whatever means of dissemination are used, they must be accessible to interested sections of the public, taking account of whether they have access to electronic communications, radio/TV, are literate, and what language they understand.

20. The statute of a truth commission should include broad provisions to ensure that victims are treated with humanity. To ensure that victims are not re-traumatized, all representatives of the truth commission who come into contact with victims, including commissioners, staff and others, should be comprehensively trained in dealing with victims of serious crimes, including victims of sexual violence and violence against children.

21. The statute of a truth commission should ensure the protection of victims and witnesses who may be at risk as a result of their participation in the process. The commission should devise and implement a comprehensive, long-term and effective victims and witnesses protection program.

22. The truth commission should provide special measures to assist victims and witnesses, especially those that are traumatized, children, elderly or victims of sexual violence, in presenting views and concerns, registering their case, participating and giving testimony.

23. Special measures should be designed to ensure the proper treatment of child victims and victims of sexual violence and to ensure that they are provided with adequate protection and support services.

24. The procedure before a truth commission should be fair. In particular, the commission should: exclude granting "use immunity"; ensure that any witnesses, alleged perpetrators or others who may be implicated have the right to legal counsel and a right to reply; respect the right of suspected perpetrators to be presumed innocent until and unless proven guilty beyond a reasonable doubt according to law in separate criminal proceedings which comply with international standards of fair trial.

25. A truth commission should receive sufficient national resources as well as, if necessary, targeted development assistance. At the same time, it should ensure compliance with internationally accepted standards of financial reporting and accountability.

Final report and recommendations

26. The results of a truth commission's investigations and its recommendations should be officially proclaimed, published and widely disseminated without undue delay.

27. If a truth commission decides to compile a list of suspected perpetrators, it should decide in advance, at the outset of its work, a clear policy defining the criteria for doing so, including standards of proof, consistent with international law. Those included in the list should be given, as a minimum, the possibility to respond to the allegations before the list is finalized. To safeguard the right of suspected perpetrators to be presumed innocent until proven guilty beyond a reasonable doubt according to law, the list should be kept confidential and should not be available to the general public. The names should be handed over to the national prosecution authorities on a confidential basis so that, where there is sufficient evidence, those concerned can be prosecuted.

28. In addition to measures of rehabilitation, compensation and satisfaction, the commission should recommend a broad range of other reparations for victims. These include measures that would prevent repetition of past violations, such as reforming laws, administrative procedures and practice; strengthening the justice system; and promoting human rights education. Any recommendation made for reparation should never be seen as a substitute for bringing those responsible to justice or preclude victims also seeking compensation through the courts.

29. The statute of a truth commission should provide for a successor body to monitor the implementation of the commission's recommendations, continue investigations, preserve the archives, etc.

(1) In general references, Amnesty International uses the term "truth commission" in preference to "truth and reconciliation commission". This is because, while some form of reconciliation may be the desired outcome of a truth-telling process over the medium or longer term, that cannot be imposed by either a truth commission or any other body or procedure (see: Promoting community and national reconciliation?, p. 22). In using the term "truth commission", however, Amnesty International notes that, as commissions of inquiry, truth commissions have the task of investigating and publicizing facts, particularly facts which have hitherto been hidden or misrepresented, rather than uncovering the 'truth' in an historical or philosophical sense. See also: Article 19, "Who wants to forget?": Truth and access to information about past human rights violations (London, December 2000), p. 41-44.

(2) Updated Set of principles for the protection and promotion of human rights through action to combat impunity (updated Set of principles to combat impunity), Addendum to the Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, Definitions, page 6.

(3) See: The rule of law and transitional justice in conflict and post-conflict societies (The rule of law and transitional justice in conflict and post-conflict societies), report of the UN Secretary-General, UN Doc. S/2004/616, 23 August 2004, para. 50.

(4) The right to an effective remedy for victims of human rights violations is enshrined in article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR). It is also recognized in article 8 of the Universal Declaration of Human Rights, article 6 of the International Convention on the Elimination of All Forms of Racial

Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 39 of the Convention on the Rights of the Child, article 3 of the 1907 Hague Convention concerning the Laws and Customs of War on Land, article 91 of the Protocol I Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), article 75 of the Rome Statute of the International Criminal Court and article 7 of the African Charter on Human and Peoples' Rights.

(5) Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law (Basic principles on the right to a remedy and reparation), adopted and proclaimed by UN General Assembly resolution 60/147 of 16 December 2005, UN Doc. A/RES/60/147.

(6) The rule of law and transitional justice in conflict and post-conflict societies, para. 26.

(7) See also: *ibid.*, para. 8.

(8) Report No.136/99, case 10.488, Ignacio Ellacuría et al. (El Salvador), 22 December 1999, para. 229-230.

(9) *Ibid.*, para. 224.

(10) Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. E/CN.4/2006/91, 8 February 2006, para. 38 and Conclusions.

(11) Article 32, Additional Protocol I to the 1949 Geneva Conventions.

(12) Human Rights Committee, *Elena Quinteros Almeida and Maria del Carmen Almeida de Quinteros v. Uruguay*, (Communication No. 107/1981), Un Doc. CCPR/C/19/D/107/1981, 21 July 1983, para. 14; European Court of Human Rights, *Cyprus v. Turkey* (application no. 25781/94), Judgment of 10 May 2001, Reports of Judgments and Decisions, 2001-IV, para. 157; Inter-American Court of Human Rights, *Ernest Rafael Castillo Páez v. Peru* (petition no. 10.733), Judgment, 3 November 1997, para. 90; Inter-American Court of Human Rights, *Efraín Bámaca Velásquez v. Guatemala* (petition no. 11.129), Judgment, 25 November 2000, para. 200-201.

(13) Human Rights Chamber for Bosnia and Herzegovina, *The 'Srebrenica Cases' (49 applications) v. The Republika Srpska* (case no. CH/01/8365 et al.), Decision on admissibility and merits, 7 March 2003, para. 174-178, <<http://www.hrc.ba/database>> [Database of the Human Rights Chamber's Decisions] accessed 6 December 2004.

(14) Commission on Human Rights, Resolution 2005/66, Right to the truth, 20 April 2005.

(15) Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, 2004, Vol. 1, p. 44-45, para. 77.

(16) Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, pursuant to Security Council Resolution 1564 of 18 September 2004, 25 January 2005, par. 617; available at <http://www.un.org/News/dh/sudan/com_inq_darfur.pdf> [last visited June 2006].

(17) See: Commission on Human Rights, Resolution 2005/81, Impunity, 21 April 2005, para. 14.

(18) Commission on Human Rights, Resolution 2005/66, *supra*, para. 4.

(19) See: Updated Set of principles to combat impunity, Principle 8.

(20) Article 2 (3) (b) of the International Covenant on Civil and Political Rights (ICCPR) obliges states parties to develop judicial remedies over other types of remedies. Decisions made solely by political organs or subordinate administrative organs (including a truth commission established by the government) do not by themselves constitute an effective remedy for victims of human rights violations. Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary (Kehl – Strasbourg – Arlington: N.P. Engel Publisher, 2nd revised edition 2005), p. 64, para. 65.

(21) Human Rights Committee, Consideration of reports submitted by States Parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: Chile, CCPR/C/CHL/CO/5, 17 April 2007, par. 9. Amnesty International translation from the Spanish original.

(22) Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention, Conclusions and recommendations of the Committee against Torture: South Africa, UN Doc. CAT/C/ZAF/CO/1, 7 December 2006, par. 18.

(23) Inter-American Commission on Human Rights, Report No. 28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311 (Argentina), 2 October 1992, para. 42-52, at para. 50.

(24) Inter-American Commission on Human Rights, Report No. 36/96, case 10.843 (Chile), 15 October 1996, para. 75 and 77.

(25) Inter-American Commission on Human Rights, Report No.136/99, case 10.488, supra, para. 229-230.

(26) Sierra Leone Truth and Reconciliation Commission, Witness to Truth, supra, Vol. 1, p. 44-45, para. 81.

(27) Basic principles on the right to a remedy and reparation, principles 15, 18.

(28) Commission on Human Rights, Resolution 2005/81, supra, para.16.

(29) Human Rights Committee, Consideration of reports submitted by States Parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: Sri Lanka, UN Doc. CCPR/C/79/Add.56, 27 July 1995, par. 16.

(30) Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention, Conclusions and recommendations of the Committee against Torture: Chile, UN Doc. CAT/C/CR/32/5, 14 June 2004, par. 6.

(31) See also: Office of the United Nations High Commissioner for Human Rights, Rule of Law Tools for Post-Conflict States: Truth Commissions, Un Doc. HR/PUB/06/1, 2006, p. 8-9.

(32) Human Rights Committee, Sri Lanka, UN Doc. CCPR/C/79/Add.56, supra, par. 16.

(33) Human Rights Committee, Consideration of reports submitted by States Parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: Paraguay, UN Doc. CCPR/C/PRY/CO/2, 24 April 2006, par. 7.

(34) Committee against Torture, Chile, UN Doc. CAT/C/CR/32/5, supra, par. 4.

99. (35) "International Criminal Court Judges embody 'our collective conscience' says Secretary-General to inaugural meeting in the Hague", Press release, UN Doc. SG/SM/8628, L/3027, 11 March 2003.

(36) Updated Set of principles to combat impunity, Principle 8 (c).

(37) Ibid., Principle 8 (e).

(38) Human Rights Committee, Consideration of reports submitted by States Parties under article 40 of the Covenant, Concluding observations: Morocco, UN Doc. CCPR/CO/82/MAR, 1 December 2004, para. 12.

(39) Committee against Torture, Chile, UN Doc. CAT/C/CR/32/5, supra, par. 6 (g) (vi) and 7 (k) (iv).

(40) See: Amnesty International, Chile: Transition at the crossroads: Human rights violations under Pinochet rule remain the crux (AI Index AMR 22/01/96), March 1996.

(41) Amnesty International welcomed this provision but seriously doubted whether the capacity existed to process these cases effectively or in a timely fashion. East Timor: Justice past, present and future (AI Index: ASA 57/001/2001), 27 July 2001, p. 58.

(42) See: Amnesty International, South Africa: Truth and Justice: Unfinished Business in South Africa (AI Index: AFR 53/001/2003), February 2003.

(43) See for example: Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, supra, par. 618.

(44) Committee against Torture, South Africa, UN Doc. CAT/C/ZAF/CO/1, supra, par. 18.

(45) "Should We Remember? Recovering Historical Memory in Guatemala", in Past Imperfect: Dealing with the Past in Northern Ireland and Societies in Transition, ed. By B. Hamber, 1998 (Incore/UU: Derry/Londonderry, Northern Ireland).

(46) Updated Set of principles to combat impunity, Principle 3.

(47) Commission on Human Rights, Resolution 2005/66, supra.

(48) Final Report of the Truth and Reconciliation Commission of Peru, 28 August 2003, Volume IX, p. 27, <<http://www.cverdad.org.pe/ifinal/index.php>> [Official website] accessed 15 December 2004. Amnesty International's translation from the Spanish original.

(49) See: Office of the United Nations High Commissioner for Human Rights, Rule of Law Tools, supra, p. 2.

(50) Updated Set of principles to combat impunity, Principle 7 (a).

(51) According to Principle 7 of the updated Set of principles to combat impunity, truth commissions should "be constituted in accordance with conditions ensuring their independence, in particular by the irremovability of their members during their terms of office except on grounds of incapacity or behaviour rendering them unfit to discharge their duties and pursuant to procedures ensuring fair, impartial and independent determinations. ... Their members shall enjoy whatever privileges and immunities are necessary for their protection, including in the period following their mission, especially in respect of any defamation proceedings or other civil or criminal action brought against them on the basis of facts or opinion contained in the commissions' reports".

(52) Memorandum to the Select Committee on Justice: Comments and Recommendations by Amnesty International on Promotion of National Unity and Reconciliation Bill, 13 January 1995, unpublished; South Africa: Amnesty International supports call for public role in Truth Commission appointment (AI Index: AFR 53/10/95), July 1995.

(53) Updated Set of principles to combat impunity, Principle 7 (c).

- (54) Sierra Leone Truth and Reconciliation Commission, *Witness to Truth*, supra, Vol. 1, p. 9.
- (55) Amnesty International's 12-Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials, AI Index: ACT/30/01/98, February 1998.
- (56) Sierra Leone Truth and Reconciliation Commission, *Witness to Truth*, supra, Vol. 1, p. 9.
- (57) Commission on Human Rights, Resolution 2005/81, supra, para. 12.
- (58) Declaration of basic principles of justice for victims of crime and abuse of power, adopted by the UN General Assembly in Resolution 40/34 of 29 November 1985, Principle 4 and Principle 6(d).
- (59) Committee against Torture, Chile, UN Doc. CAT/C/CR/32/5, supra, par. 6.
- (60) See: UN Economic and Social Council, Guidelines on justice in matters involving child victims and witnesses of crime, Resolution 2005/20 of 22 July 2005.
- (61) For a comprehensive review of international law and standards concerning fairness in proceedings, see Amnesty International, *Fair Trials Manual* (AI Index: POL 30/02/98, December 1998).
- (62) However, Amnesty International would not object if a truth commission makes undertakings to witnesses, in advance, that if they are later prosecuted and convicted, the commission will recommend that the court take account of their full disclosure as a mitigating factor when determining sentence.
- (63) Amnesty International, *Haiti: Still crying out for justice* (AI Index: AMR 36/02/98), July 1998, p. 9-10.
- (64) See: Amnesty International, AI Index: AFR 53/001/2003, supra.
- (65) For example, the commission may should consider written submissions from, or arrange special interviews with, witnesses who are unable to attend because they are abroad, because they are afraid, or for other valid reasons.
- (66) United Nations Principles relating to the effective prevention and investigation of extralegal, arbitrary or summary executions, endorsed by the General Assembly in December 1989 and approved by the Economic and Social Council in 24 May 1990.
- (67) However, hearsay evidence should, whenever possible, be corroborated with more reliable direct evidence and given less weight than direct (primary) evidence.
- (68) Updated Set of principles to combat impunity, Principle 8(f).
- (69) "Should We Remember? Recovering Historical Memory in Guatemala", supra.
- (70) As a response to the need to present a comprehensive and detailed account of their work, recent truth commissions tend to write longer reports. While the 1985 Investigative Commission on the Situation of "Disappeared" Persons and its Causes in Uruguay produced a 13-page report, the 1995 TRC in South Africa produced a report in six volumes.
- (71) Commission on Human Rights, Resolution 2005/66, supra, para. 3.
- (72) Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted pursuant to Commission on Human rights resolution 1997/26, UN Doc. E/CN.4/1998/40, 28 January 1998, para. 16.

(73) See also: Office of the United Nations High Commissioner for Human Rights, Rule of Law Tools, *supra*, p. 21-22.

(74) See: Amnesty International, Peru: The Truth and Reconciliation Commission – a first step towards a country without injustice (AI Index: AMR 46/003/2004), August 2004.

(75) See: Amnesty International, AI Index: AFR 53/001/2003, *supra*, p. 8-10.

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