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The Diversity of Truth Commissions and Commissions of Inquiry

Summary

- Over the past several decades, dozens of countries have established truth commissions and other bodies to investigate mass atrocities or systematic human rights abuse. Lessons learned from past truth-finding processes are invaluable to help address the legacies of human rights violations in countries transitioning to democratic regimes in the Middle East and North Africa and elsewhere.
- Truth commissions aim to uncover and acknowledge abuses from the past by recognizing the suffering of victims and making recommendations to prevent a recurrence of violence in the future.
- When convening authorities establish a truth commission, they need to select a process to choose the commission's membership, decide on the subject matter and a deadline for the work it will do as well as its legal powers, its duration and the extent to which its work is public.
- USIP has established a Truth Commissions Digital Collection (<http://www.usip.org/publications/truth-commission-digital-collection>) that provides summaries and vital statistics of 41 past commissions from 35 countries, along with copies of most of their legal charters and final reports. Each commission has a dedicated page along with information on subsequent developments, such as reforms, prosecutions and reparations to victims.
- The Truth Commissions Digital Collection is a resource for researchers and implementers seeking to learn and apply lessons from the past to make current "truth processes" more effective.

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Introduction

Truth commissions are now considered a standard element of transitional justice that aim to address and overcome a legacy of past human rights abuse. More countries will establish truth commissions in the near future. In Brazil, the Senate unanimously passed legislation to create a truth commission to investigate human rights violations committed during Brazil's authoritarian past. In Nepal, a proposal is underway to form a commission to investigate abuses committed during the armed conflict in Nepal between 1996 and 2006. Representatives of civil society from Afghanistan and Angola to Colombia, Iraq, the United States, and Zimbabwe have called for the establishment of new truth-seeking mechanisms in their respective countries.

Most recently, the upheavals in the Middle East and North Africa region have already been followed by intensified debates on the establishment of mechanisms to uncover abuses from

the past. In Tunisia, several commissions have reportedly started to investigate violations of human rights and corruption of the past regime, and the Libyan transitional government has indicated that it intends to prioritize transitional justice now that Moammar Qaddafi's 42-year rule has ended.

Countries create truth commissions to uncover the facts about broad patterns of abuse, to better understand and acknowledge the scope of abuses committed, and to address changes that need to be made to prevent future atrocities. Truth commissions are temporary bodies officially authorized or empowered by the state. They typically focus on a specific period of time, usually engage directly with the affected population and gather information on their experiences. Most of more than 30 commissions formed in the past three decades have—with various degrees of success—completed their mandates to investigate and report on patterns of human rights abuses. The majority of them have published their findings in final reports, made broad ranging recommendations of reform and urged for prosecutions and reparations to victims.

Governments, civil society or international organizations often convene similar bodies with a more limited scope than truth commissions, typically to investigate a particular atrocity or an episode of the conduct of a former leader. USIP refers to these bodies as “commissions of inquiry.” These commissions can be similar to truth commissions, but more closely resemble a criminal or quasi-judicial investigation than a national process. In some cases, commissions of inquiry have operated without the official backing of the state, but were organized by civil society or international organizations.

USIP has established a comprehensive online digital collection of truth commissions and commissions of inquiry at <http://www.usip.org/publications/truth-commission-digital-collection>, which includes the charter, reports and basic facts about more than 30 truth commissions and selected commissions of inquiry. This is designed to facilitate better design for truth processes seeking to account for legacies of past abuse.

Inspiration and Lessons from Past Truth Commissions and Commissions of Inquiry

When establishing a truth commission or commission of inquiry, there are a number of choices that convening authorities need to make. Although no one-size-fits-all truth-seeking mechanism works for any country facing a legacy of past abuses, there are some common ingredients for a successful truth commission or a commission of inquiry.

Engage in public consultations and tailor the mandate and goals of a truth commission to fit societal needs and the historical context. Truth commissions and commissions of inquiry have the greatest prospects of success when they are designed for the societal context in which they will serve. The society in one country may feel that it is most important to obtain the most complete historic record of patterns of past abuses. Or, it may want to acknowledge and then raise awareness about past violence. But in another country, an investigation, for example the finding of remains of a particular massacre, matters most. The best way to determine a society's needs is to consult the public at large before designing a mandate to ensure that it serves national goals rather than a particular group's narrow agenda.

Provide a robust mandate that enables a truth commission to access and investigate evidence without political restrictions. A truth commission tasked with examining the nature, antecedents, root causes, and impact of human rights violations, for instance, will require unhindered and safe access to evidence, witnesses and other sources of information. The commission will also need sufficient time and adequate human and financial resources to successfully complete its mandate.

A truth commission may also need specific legal powers of investigation or the right to explicitly name perpetrators in its report and refer those cases to courts. Often times, truth commissions conduct detailed investigations but are then pressured politically or otherwise prevented from releasing a final report revealing their findings. Provisions for the mandatory public dissemination of the body's final report can help to protect the independence of a commission's conclusions at the end of the process.

Select commissioners that are seen as objective and have a reputation for personal integrity. Individual truth commissioners must be credible and seen as independent persons of integrity who are selected in a transparent process. Where commissions are established based on inclusive and frank public consultations and formed with strong members, the more likely they will be seen as legitimate. In Togo, for instance, official consultations with civil society groups revealed that only a commission composed of individuals who are not members of political parties or the armed forces could gain public trust and legitimacy. In other countries, credibility may be ensured by including members from each of the main political, ethnic, or religious groups.

Ensure sufficient resources are committed at the beginning of the process to enable a truth commission to execute its mandate. Many truth commissions have struggled with waning political and financial support. As time passes and controversial findings emerge from the process, interest in sustaining the commissions tends to drop. Truth-seeking initiatives are most likely to garner the most political and financial support shortly after the transition. To avoid this, authorities should equip the commissions they create with a mandate securing its political and financial independence throughout the duration of its operations.

Do not rely on a truth commission to resolve all post-conflict problems; instead, combine truth-seeking initiatives with other mechanisms of transitional justice. Despite the best intentions and the strongest design, a truth commission alone is often unable to meet the multiple expectations of a society emerging from an abusive past. To alleviate this challenge, past experiences show that it may be warranted to combine a truth-seeking mechanism with other transitional justice mechanisms that address different types of abuses and their impacts on victims. South Africa, Sierra Leone and Timor Leste, for instance, combined their truth commissions with parallel judicial processes. Numerous countries established out-of-court reparations programs for victims, either directly after the completion of a truth commission, such as in Morocco, or sometimes years after a truth commission published its findings, such as in Argentina, Chile or Peru. Other available options include institutional reforms and the vetting of public officials.

The USIP Truth Commissions Digital Collection: a Library for Policy-Oriented Analysis

Given the complexities involved in designing truth commissions and commissions of inquiry, it is not surprising that those who wish to establish a new commission often seek inspiration from past examples of bodies created in other countries. The South African Truth and Reconciliation Commission, for example, is probably the most famous example of a truth commission. However, it is not the only experience from which to gain useful insight, and may not be an appropriate example for other countries with different circumstances. Drawing inspiration from truth commissions without understanding why they were considered relatively successful, or without knowing why less acclaimed models are perceived to have failed, can lead to flaws in a new truth commission's mandate that will undermine its effectiveness.

In fact, policy makers have a vast choice of options available to them for the design of a truth seeking mechanism. The USIP Truth Commissions Digital Collection contains facts, documents

ABOUT THIS BRIEF

This brief was written by USIP researcher Evelyne Schmid, who compiled the Truth Commission Digital Collection since 2008. She is a lecturer at the University of Bangor, Wales, UK and a PhD candidate at the Graduate Institute of International and Development Studies in Geneva. She previously received a MA in law and diplomacy from the Fletcher School of Law and Diplomacy.

and analysis of past examples of truth commissions and selected commissions of inquiry. It also includes information on their duration, background, and structure, as well as access to most of the full texts of the commissions' legal mandates and their final reports. The site is updated periodically with information about subsequent developments such as institutional reforms, prosecutions and/or reparations. It also includes a bibliography with links to relevant primary and secondary sources. This may serve as a tool for policy makers, civil society, and researchers that seek to derive lessons from past truth processes and design appropriate truth mechanisms.

There have been far more commissions of inquiry created over the years than truth commissions. USIP portrays a few selected examples that played a significant role in debates on how to address an abusive past. In Brazil, for instance, an unofficial team of civil society activists secretly worked from 1979 to 1982 to copy page after page of the Military Supreme Court's records. Based on the information gathered through this unofficial inquiry, the team published a final report that became a bestseller in Brazil and provoked a movement pushing for the official acknowledgement of abuses committed by the military regimes. Persistent demands for truth and justice now, in late 2011, resulted in an official truth commission there.

Rather than replicating any one truth commission from the past, policy makers should explore the broadest possible range of the options from past truth seeking experiences and make choices based on their own political and social contexts. The USIP online library enables policy makers to analyze many of the experiences in other countries. Such analyses will in turn help create commissions that draw from the valuable lessons of the past but that are tailored to be effective within the communities in which they seek to serve in the future.



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