



**GLOBAL TRUTH AND RECONCILIATION COMMISSION (TRC) SYMPOSIUM:
CAN TRCS EFFECTIVELY STRENGTHEN THE PEACE PROCESS?**

NAMUN 2019



Director's Letter

Dear Delegates,

Welcome to the Global Truth and Reconciliation Commission (TRC) Symposium committee under the NAMUN 2019 General Assemblies Branch! I am incredibly excited to be spearheading NAMUN's first committee of this nature. I would like to take this opportunity to explain the committee's content and structure, but I would encourage you to reach out if you have any further questions. Notably, this committee may be considered academically rigorous because it deviates from traditional GA topics. Although delegates of this committee may benefit from previous exposure to theories of justice, human rights law, and international law, it is by no means a prerequisite to engaging fully in discussion.

However, it may be noted that research for this committee's topic should include an analysis of your country's truth commission report, or any related documents or scholarship. Please refer to the "Sources" section to find a link to your country's truth commission and other relevant resources. Thus, the focus of your research should be on depth, rather than breadth. Do not be concerned if you only reference a few sources – it is likely that these sources will be comprehensive enough to prepare you for committee discussions.

Truth and Reconciliation Commissions (TRCs), often referred to as Truth Commissions, have been implemented in over 42 countries across the globe. The bodies of these commissions consist of legal experts, scholars, NGO staffers, and domestic representatives, among others, and are tasked with reconciling extensive perpetrations of harm by detailing a history of these crimes and by providing a forum for victims to share their experiences. Although truth commissions have traditionally addressed crimes perpetrated by authoritarian states, their mandates now include reconciling violence committed in communist states and against Indigenous peoples.

As a delegate of the "Global TRC Symposium", you represent a staff member of that country's truth commission. This symposium has been convened to discuss the lessons from 42 truth commissions in hopes of crafting recommendations for future truth commissions. Thus, committee debate should not be focused on highlighting the strengths of your truth commission at the expense of another, but rather contributing to the general discourse on the merits and faults of truth commissions.

This committee will assume the normal procedures of a NAMUN GA Committee, with a few changes. Most importantly for the review of this background guide, this committee will engage in a discussion of six smaller topics, rather than the traditional two topics. These topics have been described below with associated guiding questions. Delegates should refer to the "Global TRC Symposium Mechanics Guide" for a further explanation of procedural changes. Once again, if you have any questions about research or committee content, please do not hesitate to reach out.

Sincerely,

Andrea Ho, Director of General Assemblies



Welcome Letter

Dear Delegates,

We would like to warmly welcome you to the Global Truth and Reconciliation Committee (TRC) Symposium of the General Assemblies Branch and more broadly, to NAMUN 2019! To introduce ourselves: our names are Marianna Kalaczynski and Sara Malhotra, and we are your chairs for the Global TRC Symposium. We are each responsible for overseeing the academic content of this committee and addressing any questions or concerns you may have concerning the committee. We will be joined on the dais by Cindy Lui, moderator for the TRC Symposium.

With regards to our academic backgrounds, Marianna is completing a major in Polish Studies and minors in History and English, and Sara is pursuing a combined specialist in Political Science and Economics with a minor in Statistics at the University of Toronto. Both of us have considerable experience in Model United Nations and have worked tirelessly in the months leading up to February to ensure that you will have an amazing experience at Canada's oldest university-level conference. It is our hope and desire that the enclosed topics to be discussed at this year's conference will result in enriching, heated debates and, by extension, thoughtful and innovative resolutions. Your moderator, Cindy Lui, studies Political Science. This is her third year of Model UN.

We have created this background guide as an introduction to the committee material. It will serve as your primary academic reference point for the content of this committee and should be read ideally as a policy brief and not a fully comprehensive document. Therefore, we encourage you to research beyond what is included in this guide. If you are having trouble with any of the research involved with this committee, we encourage you to reach out to us.

On behalf of the NAMUN 2019 team, we wish you the best of luck in your preparations for this year's conference, and we look forward to meeting all of you very soon.

Yours truly,

Marianna Kalaczynski and Sara Malhotra



An Introduction to Truth Commissions:

Truth and Reconciliation Commissions (TRCs) have emerged in response to violations of human rights in a given region or state, and serve as attempts to investigate, record, and often prosecute those at fault or accused of egregious violations. Since the 1980s, these TRCS have been popular policy choices for emerging democratic states transitioning from repressive regimes or intra-state conflict. Although these commissions have not always used the specific “TRC” nomenclature, they are understood as variants of truth commissions. To the present day, 42 truth commissions have been established in various states, often adopting diverse operative frameworks. Notably, 23 of these TRCs were established in the decade between 1996 and 2006.¹

Truth commissions are often organized according to the principle of transitional justice. This particular notion of justice emerged in the 1980s as the proliferation of recently democratized states demanded a re-examination of past human rights abuses. Thus, transitional justice was conceived to facilitate a state’s peaceful transition into a post-conflict period by addressing the transgressions of the previous regime. Certain criteria were developed to justify the application of this distinct notion of justice. Firstly, citizens of the state must have been subject to widespread and iniquitous human rights abuses. Secondly, civic trust in institutions must have been eroded to the extent that justifies the introduction of external legal mechanisms. Notably, although ad-hoc criminal tribunals and the International Criminal Court (ICC) are also guided by transitional justice principles, this committee will focus solely on truth commissions. The distinction between international criminal trials and truth commissions is best framed in the relationship of perpetrator and victim: international tribunals aim to apply justice by prosecuting perpetrators, whereas truth commissions deliver justice to victims by establishing a historical record of crimes committed.² Additionally, truth commissions empower victims by developing competing theatres of memory which contend with previously undisputed narratives of conflict. International tribunals, on the other hand, are strengthened by their undisputable legal verdicts which leave little room for conflicting interpretations.³

¹ Michal Ben-Josef Hirsch, Megan Mackenzie, and Mohamed Sesay, "Measuring the Impacts of Truth and Reconciliation Commissions: Placing the Global ‘success’ of TRCs in Local Perspective," *Cooperation and Conflict* 47, no. 3 (2012): doi:10.1177/0010836712454273.

² Brants, Chrisje, and Katrien Klep. “Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness.” *International Journal of Conflict & Violence* 7, no. 1 (March 2013): 37.
<http://search.ebscohost.com.myaccess.library.utoronto.ca/login.aspx?direct=true&db=i3h&AN=88871560&site=ehost-live>.

³ Brants, Chrisje, and Katrien Klep. “Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness.” *International Journal of Conflict & Violence* 7, no. 1 (March 2013): 37.
<http://search.ebscohost.com.myaccess.library.utoronto.ca/login.aspx?direct=true&db=i3h&AN=88871560&site=ehost-live>.



The unique nature of the TRC is predicated on victim-focused investigations – victim testimonies are key, as is the acknowledgement and recognitions of the suffering and affected. TRCs are not government-mandated and are established by independent bodies. However, in order for TRCs to be effective, they must possess established patterns, practices, and evidence in a clear chain of command to ensure efficiency and transparency throughout the investigation.⁴ It is important to note that TRCs are fluid in their proceedings, as violations are not limited to physical integrity but include the abuse of economic, social, or cultural rights. Moreover, while truth commissions may be understood as “highly political instruments negotiated between two parties,” they effectively promote “justice cascades” by establishing norms of fair trials and accountability in local contexts.⁵

The findings of TRCs enact change in the sphere of criminal justice, often establishing reparations and institutional processes in attempt to address historical violations and prevent future abuse. More broadly, TRCs allow for divided societies to renew civic trust between victims and institutions.⁶ Additionally, truth commissions have developed a standardized “toolkit” of reforms, including criminal prosecutions, reparation programs, and institutional reforms.

The generative actors of TRCs have invariably consisted of local and international entities. For example, after the apartheid government in South Africa negotiated peace with the mainly Black opposition party, a TRC was instigated by local actors. Similarly, the “Greensboro Truth and Reconciliation Commission” in the United States was funded by local organizations in conjunction with the International Center for Transitional Justice. The impetus for this TRC was the Greensboro massacre and its suspected cover up by the Greensboro Police Department and the city; it is now widely known that the former led to the death of several Communist Workers’ Party protestors in a violent confrontation with the Ku Klux Klan and the American Nazi Party. Notably, the successful collaboration between domestic groups and international organizations demonstrates that political or social advocacy groups are effective

⁴“Truth and Reconciliation Commissions,” International Justice Resource Center, accessed September 07, 2018, <https://ijrcenter.org/cases-before-national-courts/truth-and-reconciliation-commissions/>.

⁵ Duncan McCargo, “Transitional Justice and its Discontents,” *Journal of Democracy* 26, no. 2(2015): 6. Brants, Chrisje, and Katrien Klep. “Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness.” *International Journal of Conflict & Violence* 7, no. 1 (March 2013): 42.

<http://search.ebscohost.com.myaccess.library.utoronto.ca/login.aspx?direct=true&db=i3h&AN=88871560&site=ehost-live>.

⁶ “Truth Commissions,” International Center for Transitional Justice, 2018, accessed September 07, 2018, <https://www.ictj.org/gallery-items/truth-commissions#>.



in compelling states to create TRCs.⁷ Thus, TRCs may pose a valid alternative for addressing human rights abuses when states fail to take the initiative to do so.⁸

As the name suggests, TRCs are bifurcated in their functions – truth-seeking and reconciliation. It is important to note that TRCs primarily promote restorative justice rather than retributive justice; thus, TRCs aim to reconcile divisions in societies with troubled pasts, instead of holding perpetrators accountable. Certain TRCs – such as Morocco's “Equity and Reconciliation Commission”⁹ – promote reparative justice, which include policies such as offering support for the victims to heal through either financial or non-financial reparations, official statements of apology, monuments to the victims, or societal commemorations of the event. Delegates will have the opportunity to discuss what type of justice should guide truth commission conduct.

The first dimension of truth commissions, “truth-seeking” is grounded in uncovering evidence of past violations.¹⁰ This new evidence may also result in the emergence of new information and narratives, which challenges the ostensibly axiomatic narrative surrounding the event. Such historical revisions can be found in Guatemala's “Historical Clarification Commission” which focuses on demystifying its former military government's portrayal of history, the “Truth and Justice Commission” in Mauritius, which focused on its colonial-era history of slavery and indentured servitude, and the “Commission for Reception, Truth and Reconciliation” in East Timor that was tasked with forming a national history free from foreign influence.¹¹

The second dimension of TRCs mandates refer to reconciliation. This aspect represents TRCs' attempts to validate victims while addressing the institutional perpetuation of human rights abuses in order to unite divided groups within society, such as through peace settlements found in the United Nations-approved “Truth Commission for El Salvador,” the “Truth and Reconciliation Commission” in Congo, and in the “Truth, Justice and Reconciliation Commission

⁷D. K. Androff, “Truth and Reconciliation Commissions (TRCs): An International Human Rights Intervention and Its Connection to Social Work,” *British Journal of Social Work* 40, no. 6 (2009): doi:10.1093/bjsw/bcp139.

⁸ Pablo De Greiff, “Observations by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Mr. Pablo De Greiff, on the Conclusion of His Recent Visit to Sri Lanka,” OHCHR, accessed November 03, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15820&>.

⁹ “Morocco's Truth Commission,” Human Rights Watch, November 2005, accessed September 07, 2018, <https://www.hrw.org/sites/default/files/reports/morocco1105wcover.pdf>.

¹⁰ Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed. (New York: Routledge, 2011), 21.

¹¹ “Truth Commission: Guatemala,” The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/1997/02/truth-commission-guatemala>.

“Truth Commission: Mauritius,” The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/2012/02/truth-commission-mauritius>.

“Commission for Truth and Friendship Report,” Chega Report, 2014, accessed September 17, 2018, <http://www.chegareport.net/profil-of-ctf/>.



of Kenya.”¹² In TRCs, reconciliation is often achieved through public hearings or processes in which victims disclose their testimonies of suffering. The public exposure of victims’ narratives ideally contributes to the healing process. However, this process of reconciliation also has the potential of stigmatizing victims or traumatizing them further through the exposition of their experiences.

Another strength of a truth commission stems from its ability to connect lofty notions of justice, invoked by lawyers and legal scholars, to messy legal realities. Bridging this gap ensures faithful applications of the rule of law.¹³ Thus, transitional justice satisfies both an ideological and idealistic dimension of legalism and a pragmatic interpretation of law in areas of conflict.

However, despite these principled intentions, the implementation of TRC recommendations and mandates vary, as the political climate can greatly influence their applications. Thus, some TRCs have been criticized for their narrow mandates or ineffective recommendations, such as Chad's “Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, His Accomplices and/or Accessories,” or the “Philippine Truth Commission.”¹⁴ Additionally, the implementation of TRC mandates may prove to be infeasible; for example, the “Commission of Truth and Reconciliation in Yugoslavia” never reported as Yugoslavia ceased to exist and the “International Commission of Investigation on Human Rights Violations in Rwanda”¹⁵ was unable to finish its proceedings due to the return of conflict in the region.

Definitions and Key Concepts

Reconciliation:

The process that involves repairing and rebuilding relationships after extensive human rights abuses. It exists at four main levels: individual, interpersonal, socio-political, and institutional. Additionally, reconciliation is often referred to as either “thin” or “thick”, with the former referring to the absence of respect or shared values, and the latter referring to a shared value

¹² "Truth Commission: El Salvador," The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/1992/07/truth-commission-el-salvador>.

"Truth Commission: Democratic Republic of Congo," The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/2003/07/truth-commission-democratic-republic-congo>.

"Truth Commission: Kenya," The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/2009/07/truth-commission-kenya>.

¹³ Anders, G and Zenker, O, “Transition and Justice: An Introduction,” *Development and Change* 45 (2014): 397. Doi: 10.1111/dech.12096

¹⁴ "Truth Commission: Chad," The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/1990/12/truth-commission-chad>.

¹⁵ "Commission of Inquiry: Rwanda 93," The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/1993/01/commission-inquiry-rwanda-93>.



of dignity and an intention to address the structural issues underlying discrimination.¹⁶

Horizontal Reconciliation:

Reconciliation between citizens and groups.¹⁷

Vertical Reconciliation:

Reconciliation between citizens and state institutions.¹⁸

Individual Reconciliation:

An individual's attempt to reconcile past experiences of harm, suffering, and damage. The process of reconciliation may involve psychological assistance or trauma/healing programs.¹⁹

Interpersonal Reconciliation:

Reconciliation attempts between victims, perpetrators, and the beneficiaries of violations. This process necessarily implicated the acknowledgement of past atrocities and can invariably draw from religious concepts.²⁰

Sociopolitical Reconciliation:

Reconciliation focused on relationship between groups differing along social, political, ethnic, or religious lines. This type of reconciliation is focused on groups which may be divided by diverging and conflicting beliefs.²¹

Institutional Reconciliation:

An attempt to foster institutional trust. These attempts are often focused on justice and security-based institutions and actors, such as courts, judges, police, and military. However, these attempts can also include informal institutions such as educational institutions and the

¹⁶ Paul Seils, "The Place of Reconciliation in Transitional Justice," *ICTJ Briefing* (2017): 1, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.

¹⁷ Paul Seils, "The Place of Reconciliation in Transitional Justice," *ICTJ Briefing* (2017): 5, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.

¹⁸ Paul Seils, "The Place of Reconciliation in Transitional Justice," *ICTJ Briefing* (2017): 5, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.

¹⁹ Paul Seils, "The Place of Reconciliation in Transitional Justice," *ICTJ Briefing* (2017): 6, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.

²⁰ Paul Seils, "The Place of Reconciliation in Transitional Justice," *ICTJ Briefing* (2017): 6, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.

²¹ Paul Seils, "The Place of Reconciliation in Transitional Justice," *ICTJ Briefing* (2017): 6, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.



media. The restoration of trust can be conducted through channels of accountability and reform and a focus on vertical trust between citizens and the state.²²

Reparations:

Reparations following the implementation of truth commissions often assume diverse forms, including individual reparations such as financial compensation and measures of social and economic integration, community reparation, history and memory initiatives, memorials, reforms that address structural issues, and the establishment of regional advisory boards etc.²³

Amnesty:

An official pardon granted to perpetrators of crimes that would otherwise be indicted. Amnesties are often granted by truth commissions as an effort to focus on restorative justice and society-wide reconciliation. Notably, not all truth commissions grant amnesties and are not explicitly required to do so. There is a disagreement as to whether granting amnesties can bolster human rights protections over time.

Truth Commission:

A investigative body tasked with collecting testimony and publishing an official record of the past. In the conclusion of its study, this body offers non-legally binding recommendations to the transitional or successor government on how to peacefully resume relations with its citizens.²⁴

Transitional Justice:

The justice-based process which focuses on widespread human rights violations usually conducted by a state in “transition”. Transitional justice is usually implemented if two key conditions are met. Firstly, the human rights abuses must either be so widespread or of such an egregious character that they cannot be addressed by civil and criminal domestic courts. Secondly, the state must be characterized by a period of “transition” and civic trust must be

²² Paul Seils, “The Place of Reconciliation in Transitional Justice,” *ICTJ Briefing* (2017): 6, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.

²³ Paul Seils, “The Place of Reconciliation in Transitional Justice,” *ICTJ Briefing* (2017): 12, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.

²⁴ Brants, Chrisje, and Katrien Klep. “Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness.” *International Journal of Conflict & Violence* 7, no. 1 (March 2013): 43. <http://search.ebscohost.com.myaccess.library.utoronto.ca/login.aspx?direct=true&db=i3h&AN=88871560&site=ehost-live>.



eroded to the extent that it warrants external judicial processes to reinstate the rule of law.²⁵

Retributive Justice:

Justice that entails proportional punishment for a perpetrator that commits a crime. Notably, this theory of justice does not account for possible aims of rehabilitation or deterrence, and instead is focused on a classical notion of the relationship between crime and punishment. In regards to this concept of justice's application in truth commission, it would refer to the prosecution of criminals and the responsibility to hold them accountable for their crimes for reconciliation purposes.

Restorative Justice:

Justice that is focused on reconciling relationships between victims and perpetrators, which may also consider members of the wider community. Thus, this form of justice is holistic in its goals and attempts to rebuild trust in communities.

Historical Background

Intellectual Origins of Transitional Justice

The origins of truth commissions can be found in the establishment of transitional justice; the latter is associated with the transition to democracies across South America and Europe in the 1970s to 1990s, often known as the third wave of democracy. Thus, the goals of truth commissions and transitional justice are grounded in the consolidation of democracies or and the restoration of civic trust in institutions.²⁶ The turn away from authoritarianism was associated with a push for accountability at both domestic and international levels which often involved enacting legal reforms, punishing leaders, and increasing transparency.²⁷ These measures emerged from discourse among human rights activists, lawyers, legal scholars, policy makers, and comparative policy experts.²⁸ Individual contributions aside, transitional justice is often considered the brainchild of collaborative work between international and domestic advocacy organizations.²⁹ This internationalist element of transitional justice is also reflected in

²⁵ Paul Seils, "The Place of Reconciliation in Transitional Justice," *ICTJ Briefing* (2017): 1, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.

²⁶ Paul Seils, "The Place of Reconciliation in Transitional Justice," *ICTJ Briefing* (2017): 3, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.

²⁷ Arthur Paige, "How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice," *Human Rights Quarterly* 31, no. 2(2009): 321. <http://www.jstor.org.myaccess.library.utoronto.ca/stable/20486755>.

²⁸ Paige, "How "Transitions" Reshaped Human Rights," 324.

²⁹ Paige, "How "Transitions" Reshaped Human Rights," 324.

Catherine Turner, "Deconstructing Transitional Justice," *Law and Critique* 24, no. 2(2013): 195. DOI 10.1007/s10987-013-9119-z



the comparative nature of truth commissions, which are often defined by distinct political contexts; indeed, the latter is often thought to empower transitional justice and elevate it above a “normal” application of justice.³⁰

In regards to the longer legacy of transitional justice, some scholars trace its origins to the Nuremberg trials following the conclusion of WWII.³¹ Although the groundwork for transitional justice was laid at Nuremberg and in Tokyo (The International Military Tribunal for the Far East), these trials are no longer considered truth commissions under the current operative definition.³² The subsequent introduction of the Cold War precluded a substantive focus on transitional justice and human rights.³³ However, with the establishment of ad-hoc tribunals in Rwanda and the former Yugoslavia, a renaissance of criminal prosecutions emerged in the 1990s.³⁴ Shortly thereafter, the official inauguration of truth commissions is denoted by the term’s appearance in a 1992 Boston Herald article. The phrase was later affirmed in literature by the publication of a four-volume compendium entitled “Transitional Justice: How Emerging Democracies Reckon with former Regimes” in 1995.³⁵

A key forum for the development of transitional justice was the 1988 Aspen Institute Conference which established an analytical framework for interpreting transitional justice. The conference’s goal was to clarify the legal, moral, and political challenges frustrating the mandate of truth commissions. Other central issues included whether there was an obligation under international law to punish violators of human rights or reveal the truth about human rights abuses. Most of these issues were decided in the affirmative, with the exception of an outstanding contention as to whether political concerns can dictate justice.³⁶

A Brief History of Seminal Truth Commissions

The first “truth commissions”, now understood as early iterations of TRCs, did not use the official TRC nomenclature, but were grounded in the share goal of uncovering the truth behind human rights violations. In Uganda in 1974, the “Truth Commission: Commission of Inquiry into the Disappearances of People in Uganda since 25 January 1971,” was established,

³⁰ Paige, “How “Transitions” Reshaped Human Rights,” 326.

David P. Forsythe, “Human Rights and Mass Atrocities: Revisiting Transitional Justice,” *International Studies Review* 13, 86. [10.1111/j.1468-2486.2010.01000.x](https://doi.org/10.1111/j.1468-2486.2010.01000.x)

³¹ Paige, “How “Transitions” Reshaped Human Rights,” 327.

³² Paige, “How “Transitions” Reshaped Human Rights,” 328.

David P. Forsythe, “Human Rights and Mass Atrocities: Revisiting Transitional Justice,” *International Studies Review* 13, 85. [10.1111/j.1468-2486.2010.01000.x](https://doi.org/10.1111/j.1468-2486.2010.01000.x)

³³ Paige, “How “Transitions” Reshaped Human Rights,” 342.

³⁴ David P. Forsythe, “Human Rights and Mass Atrocities: Revisiting Transitional Justice,” *International Studies Review* 13, 86. [10.1111/j.1468-2486.2010.01000.x](https://doi.org/10.1111/j.1468-2486.2010.01000.x)

³⁵ Paige, “How “Transitions” Reshaped Human Rights,” 329.

³⁶ Paige, “How “Transitions” Reshaped Human Rights,” 352.



but the report was not made public.³⁷ However, this commission is effectively known as the first truth commission.

During this time in Latin America, an increased frequency of military coups was associated with flagrant abuses of the law, exemplified by war crimes and oppressive conditions. .³⁸ For many countries, the response to these turbulent governments was the establishment of a truth commission. In 1982, Bolivia established the “National Commission of Inquiry Into Disappearances,” making it the first TRC in Latin America. This commission explored suspicious disappearances that occurred between 1967 and 1982, when a military dictatorship was installed in Bolivia. Unfortunately, after two years, the commission was disbanded by the government, and no reports were published.³⁹ The first effective TRC was Argentina's “National Commission on the Disappeared” in 1983.⁴⁰ Created by President Raúl Alfonsín, the commission issued the “Nunca Más” (Never Again) report, which detailed the human rights violations under the regime of Reynaldo Benito Bignone and led to the “Trial of the Juntas” – members of the aforementioned regime – that became the first major trial for war crimes since Nuremberg. In this case, “effective” refers to the successful creation of a report and the subsequent implementation of its suggestions. Chile’s “National Commission for Truth and Reconciliation” in 1990 was the first to use both “truth and reconciliation” in its name, reflecting a bifurcated purpose.⁴¹

Notably, the Tunisian government passed a Transitional Justice Law in 2013 which established the Truth and Dignity Commission (TDC) to examine and report on past abuses. Although this commission has yet to complete its work, it marks a successful attempt to use domestic legislation to enforce a truth commission’s proposal. Additionally, Tunisia enacted the “Economic Reconciliation Draft Law” which grants amnesty to members of corrupt businesses who have affiliation with previous regime members. The public reacted negatively to this proposal but this policy may present a compelling application of a truth commission’s themes, or alternatively, an inappropriate overreach of a truth commission’s mandate.⁴²

³⁷ "Truth Commission: Uganda 74," The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/1974/06/truth-commission-uganda-74>.

³⁸ "Latin American Truth Commissions: Confronting the Past," White & Case, July 24, 2014, accessed September 18, 2018, <https://www.whitecase.com/publications/article/latin-american-truth-commissions-confronting-past>.

³⁹ "Truth Commission: Bolivia," The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/1982/10/truth-commission-bolivia>.

⁴⁰ "Truth Commission: Argentina," The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/1983/12/truth-commission-argentina>.

⁴¹ "Truth Commission: Chile 90," The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/1990/05/truth-commission-chile-90>.

⁴² Paul Seils, “The Place of Reconciliation in Transitional Justice,” *ICTJ Briefing* (2017): 12-13, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.



Recent Developments in Truth Commissions: Reconciling Colonial Violence

Recently, TRCs have shifted from investigating human rights violations under authoritarian regimes to documenting crimes committed against Indigenous peoples, such as Canada's "Truth and Reconciliation Commission" and Australia's "National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families," or under communist regimes such as Germany's "Study Commission for Working Through the History and the Consequences of the SED Dictatorship in Germany."⁴³ Although post-communist states may be understood as states in transition, colonial violence may pose a challenge to orthodox truth commissions. In response to this inconsistency, scholars have endeavoured to reconceptualize the mandate and goals of truth commissions.⁴⁴

Indigenous truth commissions are guided by themes of "acknowledgement and recognition" that echo the rhetoric of transitional justice.⁴⁵ Some scholars posit these truth commissions reflect an inappropriate application of transitional justice because they are constructed in clearly democratic states. However, this criticism can be impugned by a deconstruction of the paradigm of transition; the latter does not refer solely to the transition to democracy, but rather the transition from unjust to just relations, or a transformation of the social, political, economic, and legal frameworks that underlie settler colonialism.⁴⁶ This conception of transitional justice may be "directed towards ensuring substantive justice through prompting societal, political, and economic change that addresses the structural underpinnings of harm and injustice in society" and acknowledge underlying structural issues that must be addressed.⁴⁷ Traditional applications of the law have often disregarded these systemic transgressions."⁴⁸

A further justification for truth commissions focused on colonial violence can be found in the concept that "radical changes to legitimating regimes" may constitute transition.⁴⁹ Official authorization of wrongdoing detracts from a state's political legitimacy; transitional justice responds to this damage by enacting by enacting legitimation values through truth

⁴³ "The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Bringing Them Home," Australian Human Rights Commission, accessed September 07, 2018, https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/submissions_un_hr_committee/6_stolen_generations.pdf.

"Truth Commission: Germany 92," The United States Institute of Peace, accessed September 07, 2018, <https://www.usip.org/publications/1992/05/truth-commission-germany-92>.

⁴⁴ Jennifer Balint, Julie Evans, Nesam McMillan, "Rethinking Transitional Justice, Redressing Indigenous Harm: A new conceptual approach," *International Journal of Transitional Justice* 8, no. 2(2014): 194. <https://doi-org.myaccess.library.utoronto.ca/10.1093/ijtj/iju004>.

⁴⁵ Balint, Evans, and McMillan, "Rethinking Transitional Justice, Redressing Indigenous Harm," 195.

⁴⁶ Balint, Evans, and McMillan, "Rethinking Transitional Justice, Redressing Indigenous Harm," 214.

⁴⁷ Balint, Evans, and McMillan, "Rethinking Transitional Justice, Redressing Indigenous Harm," 214.

⁴⁸ Balint, Evans, and McMillan, "Rethinking Transitional Justice, Redressing Indigenous Harm," 215.

⁴⁹ Stephen Winter, "Towards a Unified Theory of Transitional Justice," *International Journal of Transitional Justice* 7, no. 2(2013): 225. <https://doi-org.myaccess.library.utoronto.ca/10.1093/ijtj/ijt004>.



commissions.⁵⁰ Additionally, a truth commission may be useful in redressing colonial injustices because it serves as an analytical framework, supplements a normative understanding of justice, and informs the remedial responsibilities of postcolonial states.⁵¹

This taxonomy of truth commissions constitutes the “global phase” of transitional justice, which is defined by three specific dimensions. Firstly, truth commissions have moved from the pure conceptions of “transitional” responses to “steady-state” justice; the latter is a post-conflict phenomenon that emerges from continuous or sustained conflict. Secondly, the responsibility for truth commissions has shifted from state-centered obligations to non-state actors associated with globalization. Thirdly, truth commissions no longer contend with the rule of law in state-building procedures but rather focus on themes of peace and human security.⁵² The global phase of transitional justice is the last in what is commonly understood as a three-staged evolution of transitional justice.

The Evolution of Transitional Justice in the 20th century

Phase I: Postwar Transitional Justice

As previously noted, some of the roots of transitional justice can be found in the international military tribunals staged after WWII, namely the International Military Tribunal in Nuremberg (IMT) and the International Military Tribunal for the Far East (IMTFE) in Tokyo. This model of transitional justice was premised on notions of collectivity and individual criminal responsibility and is framed by the shift from national to international justice.⁵³ Additionally, a punitive dimension was shaped by the prosecution and punishment of perpetrators. However, the efforts to implement this notion of justice was soon eclipsed by the greater political tensions latent in the onset of the Cold War.

Phase II: Post-Cold War in Transitional Justice

This phase is the most prolific phase of transitional justice in regards to the “production” of truth commissions, and is associated with the liberalization of South America, Eastern Europe, and Central America in the late 1970s and early 1980s. In this period, the rule of law was intimately tied to efforts of nation-state legitimation.⁵⁴ Unlike the previous phase, punitive

⁵⁰ Winter, “Towards a Unified Theory of Transitional Justice,” 244.

⁵¹ Nicola Henry, “From Reconciliation to Transitional Justice: The Contours of Redress Politics in Established Democracies,” *International Journal of Transitional Justice* 9, no. 2(2015): 217. <https://doi-org.myaccess.library.utoronto.ca/10.1093/ijtj/ijv001>.

Rosemary L. Nagy, “The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission,” *International Journal of Transitional Justice* 7, no. 1(2013): <https://doi-org.myaccess.library.utoronto.ca/10.1093/ijtj/ijv034>.

⁵² Ruti Teitel, “Editorial Note – Transitional Justice Globalized,” *The International Journal of Transitional Justice* 2, no. 1(2008): 2. http://resolver.scholarsportal.info/resolve/17527716/v02i0001/1_enjg.

⁵³ Ruti Teitel, “Transitional Justice Genealogy,” *Harvard Human Rights Journal* 16, no. 69(2003): 2.

⁵⁴ Teitel, “Transitional Justice Genealogy,” 3.



measures were replaced by granting amnesties. The latter would later be recognized as the hallmark of truth commissions, although no doctrine or principle mandates the granting of amnesties.⁵⁵ Restorative justice was the leading model of this period and was predicated on an attempt to create a faithful history of past abuses and foster sustainable relationships between victims and perpetrators.⁵⁶ Additionally, although truth commissions were usually focused on particular human rights abuses, such as the mass disappearances of political dissidents, some truth commissions began adopting expansive mandates that included understanding the root causes of previous conflict. The major trend in this period can be framed by the shift from Phase I's focus on universalizing judgement to cultivating a strengthened political identity through the consolidation of the rule of law premised on local conceptions of legitimacy.⁵⁷ Lastly, truth commissions of this period were imbued with political theology and moral imperatives that began to conflict with secularism of liberal discourse in democratizing states.⁵⁸ The issues with this approach are detailed below.

Phase III: Steady State Transitional Justice

The “steady state” of transitional justice is characterized by the normalization of truth commissions within both international and domestic legal discourse. This normalization process was expedited by the rise of humanitarian law, a growing respect for inviolable human rights, and the establishment of other institutions such as the ICC.⁵⁹ As detailed previously, a society in the “steady state” (referred to above as the “global phase”) must contend with political legitimization issues rooted in past perpetration of colonial violence or an entrenched history of human rights abuses.⁶⁰ Controversially, some scholars advocate for the inclusion of globalization and terrorism in the purview of transitional justice.⁶¹

The Right to Truth

Notably, the normalization of truth commissions resulted in the protection of a “right to truth” in a number of legal instruments, including the “International Convention for the Protection of All Persons from Enforced Disappearance” and the “Basic Principles and Guidelines to the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights is

⁵⁵ Teitel, “Transitional Justice Genealogy,” 4.

⁵⁶ Teitel, “Transitional Justice Genealogy,” 4.

⁵⁷ Teitel, “Transitional Justice Genealogy,” 4.

⁵⁸ Teitel, “Transitional Justice Genealogy,” 4.

⁵⁹ Teitel, “Transitional Justice Genealogy,” 8-9.

⁶⁰ Teitel, “Transitional Justice Genealogy,” 9.

⁶¹ Teitel, “Transitional Justice Genealogy,” 1.



at the forefront of developing jurisprudence on the right to truth for victims and society at large.⁶² The court has framed this right to truth obligation as:

“Every society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent the repetition of such acts in the future.”⁶³

Despite this affirmation of the right to truth, truth commissions still face a number of challenges in post conflict settings including less structured crimes, security concerns which disincentivize witnesses, and deeply fractured civil societies.⁶⁴

Topics of Discussion

The following section will briefly describe the six topics for this committee. Unlike other NAMUN General Assemblies, this committee engages with several smaller topics. The interdependent nature of these topics may induce more frequent transitions between topics; delegates are encouraged to use procedural mechanics to facilitate a more natural discourse. Please refer to the “Global TRC Symposium Mechanics Guide” for further details. Following the description of each topic are a number of suggested guiding questions. Please note that these questions aim to define but not limit the scope of discussions. Delegates are free to introduce other relevant questions.

Expansive Mandates

A truth commission’s activities are defined by its mandate, which is often found in “foundational documents” such as executive decrees, legislative acts, peace agreements, or UN regulations. The stipulations of mandate include limits on the duration of a commission’s operation, the temporal scope of the mandate, the thematic content of the mandate (i.e. the types of violations truth commissions can address), the commission’s functions or the actions it can undertake, and the objective it needs to fulfill. However, many truth commissions’ expansive mandates often impair their ability to meet expectations and deadlines.⁶⁵ These ambitious mandates reflect a desire to address a growing number of pressing concerns. For example, Kenya’s truth commission’s mandate spanned the gamut of human rights violations,

⁶² Pablo de Grieff, “Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence,” *Human Rights Council 24th Session* (2013): 5.

⁶³ De Grieff, “Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence,” 5.

⁶⁴ De Grieff, “Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence,” 8.

⁶⁵ De Grieff, “Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence,” 10.



which is often cited as a major weakness.⁶⁶ Furthermore, truth commissions are already tasked with robust temporal and thematic mandates; some truth commissions trace crimes that last anywhere from 7 to 44 years.

In their initial iterations, truth commissions were animated by two purposes: “fact-finding” and “victim-tracing”. The former entailed establishing a truthful history of past abuses, while the latter was directed towards discerning the fate of missing and disappeared persons. Now, truth commissions have adopted “preventative” and “victim redress” functions; the former refers to preventing future human rights abuses, while the latter refers to making recommendations concerning victim reparation.⁶⁷ Given that truth commissions are expected to address multifaceted causes and propose comprehensive reforms, delegates are asked to consider a number of questions:

- Are over-expansive mandates debilitating the functionality of truth commissions? Or is there value in holistically addressing structural factors?
- Should truth commissions have the authority to address these kinds of abuses? Or would other judicial proceedings, such as permanent tribunals or domestic courts, be effective at prosecuting these crimes?
- Should there be an attempt to standardize the mandates of truth commissions? If so, what would those standards entail?
- Considering that truth commissions are underfunded and often politically impotent, should they be tasked with these complex functions? Are we overburdening the administration of justice?
- Should we limit the temporal scope of truth commissions (i.e. they should only be addressing crimes in clearly delineated time periods)?
- If not, what about persistent human rights transgressions manifested by a history of colonial violence?
- What violations should a truth commission address? Some legal experts are currently pushing for the inclusion of gender violence in truth commission mandates (gender violence was considered in the Peru, Sierra Leone, and Liberian truth commissions)
- Should truth commissions return to a focus of “fact-finding” and “victim tracing”? Or are the new functions of “preventative measures” and “victim redress” more appropriate? Should all four be considered?
- What is the value of victim-centered approaches?

⁶⁶ Kenya’s truth commission was tasked with examining “massacres, sexual violations, murder, extrajudicial killings, abductions, disappearances, detentions, torture, ill-treatment and expropriation of property, and includes in terms of economic crimes “grand corruption and the exploitation of natural or public resources”, “the irregular and illegal acquisition of public land”, “economic marginalization of communities” and the “misuse of public institutions for political objectives”. The Act which established the Commission also demanded an inquiry into the “causes of ethnic tensions”.

⁶⁷ De Grieff, “Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence,” 12-13.



Selection of Commission Staff

The selection of commissioner staff often generates political controversy. Contested appointments pose significant problems for entities such as truth commissions that derive their legitimacy from the moral authority and competence of their leadership.⁶⁸ Unfavourable selections have even induced the withdrawal of international support. For example, the international community refused to support the Kenyan truth commission because the commissioner was a member of the previous authoritarian regime, thereby giving him a personal conflict of interest.

In some cases, the authority that establishes the mandate selections commission staff without a formal consultative process. In other cases, the entities that establish truth commissions undertake extensive consultative processes, including a selection of panel with seats to represent different stakeholders, victims' groups, NGOs, professional associations, religious associations, local leaders, and representatives of the international community etc. The absence of a standardized appointment process often induces questionable appointments. Relying on direct appointments and consultative processes have their faults and merits. For example, direct appointments are expeditious but rely on a narrow authority. Conversely consultative processes increase representation, and strengthen legitimacy and popular support, but are debilitated by their lengthy processes and skewed biases on selection panels. Surprisingly, a diverse ethnic representation and non-national members on selection panels engenders further political controversy due to prevailing racial tensions.⁶⁹

The focus on selection procedures over selection criteria is a concerning trend. Past selections have focused on general moral standing and the reputation of commission staff, rather than relevant achievements in related areas of technical expertise.⁷⁰ Additionally, commissions are often given short turnover periods of 2 months to prepare commission activities. This often impairs a commission's functionality when staff range from 60-500 members. Notably, increased staffing may pose additional administrative burdens.⁷¹ Moreover, although truth commissions are relatively inexpensive compared to other peace-promoting security measures, they still require significant monetary resources. Costs can be as low as \$1 million for 9 months of operation to \$18 million for two years of operation, such as in South

⁶⁸ De Grieff, "Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence," 16.

⁶⁹ De Grieff, "Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence," 17.

⁷⁰ De Grieff, "Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence," 18.

⁷¹ De Grieff, "Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence," 18.



Africa.⁷² Considering staffing and resources issues, delegates may consider the following questions:

- Given the potential for political controversy, should we develop a standardized appointing process?
- Should the international community or other international bodies take the lead in appointing commissioner staff? Should domestic entities be responsible?
- Are formal consultation processes or direct appointments appropriate selection methods? Are there more compelling alternatives?
- What role does ethnic diversity and non-national representation play in the selection of commissioner staff? Should commissioner staff represent diverse viewpoints?
- Does diversity of representation always ensure the proper application of the rule of law?
- Do appointments sacrifice competency for representativeness? Do any of these methods particularly exacerbate pre-existing social and political cleavages?
- How should ambiguous roles and relationships be clarified?
- Should relations regarding commissions and external stakeholders and/or the government be clarified?
- Are extensive funds necessary to the operation of truth commissions? Or should those resources be allocated to more pressing infrastructure projects?
- Many commissioner staff act “ad honorem”: they have regular jobs while commission work is often a part-time activity. Should this practice be encouraged or discouraged?

Feasibility of Implementation

Truth commissions are often considered ineffective because their suggestions are not legally binding and of no force or effect. The responsibility lies with the government to implement suggestions, if any at all. This condition is exacerbated by the increasing length and detail of commission reports, which render them inaccessible as policy tools. To implement any suggestions may require complex legislative action. Some truth commissions have made truth commission suggestions legally binding, such as in Sierra Leone or Liberia. But many critics have reservations about allowing commissions to bind a state’s parliament, indirectly enact laws, or impose policies on the executive, actions generally considered to be in contravention of democratic legal norms.⁷³

In response to this problem, a number of solutions have been proposed including using independent bodies for truth commissions, assigning truth commissions as functional units within ministries, or assigning follow-up responsibilities to independent human rights

⁷² De Grieff, “Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence,” 19.

⁷³ De Grieff, “Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence,” 21.



organizations. All of these methods have their faults and merits. For example, independent organizations can successfully coordinate between disparate parties, and have political independence but no authority and weakened legitimacy. Subunits in ministries have political support but can only implement suggestions within a narrow range of options. Independent human rights institutions have more autonomy than government entities but are limited by the power to direct reform, and if they are tasked to implement solutions, rely heavily on a vigilant, active, and receptive civil society rather than institutional power. In light of these concerns, a number of issues may be addressed:

- Should commission suggestions be legally binding?
- Should governments be required to implement these suggestions?
- Should truth commissions be independent bodies? Functional units within ministries?
- How can human rights organizations coordinate with truth commissions to promote the protection of civil liberties?
- Should any foreign entities be given the authority to construct truth commissions?
- Do truth commissions impose incompatible notions of justice on states?
- Should the UN play a role in implementing truth commissions suggestions?
- Should truth commissions become an official department within the UN?
- Would UN-sponsored truth commissions impair their reputation and reception by domestic governments?
- Should a new international entity be created which is specifically tasked with creating, staffing, and undertaking truth commissions? (Note: The International Center for Transitional Justice coordinates significantly with truth commissions, but is not mandated to act nor is solely responsible for the establishment of truth commissions)

Support from the International Community

Notably, most of the funding for transitional justice proceedings and truth commissions comes directly from Western countries and Japan. Thus, although truth commissions are grounded in domestic affairs, they rely heavily on external funding. Successful commissions require sizeable budgets, though not all commissions have been afforded adequate funds. International agencies that manage truth commission budgets often have difficulty gaining access to funds and distributing them accordingly. Unfortunately, truth commissions cannot afford to deal with the slow speed of document-heavy, bureaucratically overburdened international agencies. Yet, international organization may still provide technical expertise and political legitimacy.

As noted previously, truth commissions are organized at the domestic level with input from international organizations such as the International Center for Transitional Justice or the UN. However, no single entity is responsible for recognizing the conditions conducive to “truth-



seeking” action; a reliance on domestic advocacy groups is often needed to instigate truth commission activities.

Recently, a robust industry of lawyers, UN Staffers, NGO activists, consultants, and traveling academics have developed to construct truth commissions. This growing market for truth commissions challenges the application of international law; many fear the commercialization of transitional justice. Given these considerations, a number of issues may be addressed:

- Is the current method of funding sustainable?
- If a truth commission does not gain international support, such as the one in Kenya, does it have a detrimental impact on the truth commission?
- Is support from the international community necessary for the establishment of a truth commission?
- Are international organizations a help or a hindrance in the operation of truth commissions?
- Even if international organizations are useful in contributing funds, would truth commissions, are truth commissions impaired by the administrative burdens characteristic of international organizations?
- How much of this international support is politically motivated?
- Does the commercialization of truth commissions threaten the integrity of transitional justice? Does this commercialization extend to other mediums of transitional justice, such as international tribunals or other human rights tribunals?
- Does the international community’s involvement in the construction of truth commissions constitute a breach of sovereignty?

Political and Cultural Context

Unlike other judicial proceedings, truth commissions are highly contingent on political and cultural contexts. These factors often play a role in dictating thematic content. For example, a high religiosity in South Africa informed Archbishop Desmond Tutu’s emphasis on ethical approaches imbued by religious sentiments; the concept of “ubuntu” or a common humanity was explicitly associated with broader concepts of harmony and healing. Similarly, in Chile’s truth commission, the Catholic Church played a seminal role in facilitating religious-based reconciliation.⁷⁴

This problem may be broadly characterized as the high specificity of truth commission action due to localization effects. For example, states in Communist Europe, which had single party regimes, were fundamentally different from the strong capitalist classes of Latin America.

⁷⁴ Paul Seils, “The Place of Reconciliation in Transitional Justice,” *ICTJ Briefing* (2017): 7, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.



Thus, truth commission activity diverged significantly from one to the other.⁷⁵ Once viewed as a strength of truth commissions, these distinct contextual factors are beginning to fuel a debate on whether truth commissions must be regionalized and no longer characterized by universal dimensions.⁷⁶ Thus, delegates may consider what role cultural and political contexts play in an understanding of truth commissions.

- Do distinctive cultural and political elements preclude any unifying themes among truth commissions?
- To what extent do these factors hinder the progress of truth commissions?
- What role does religion play in state-centered reconciliation?
- Does this activity encroach on the secular state?
- Should truth commission's pseudo-legal proceedings be entirely secular and forcibly divorced from religious themes?
- Do distinct political and cultural context preclude any standardization?
- Alternatively, is there a risk of over-standardization?
- Is there a difference between applying lessons to a post-authoritarian regime setting to a post-conflict setting?
- Should political and cultural factors be considered when determining the appropriateness of applying a truth commission? Or are other overriding justifications for the implementation of truth commissions? (A truth commission in Nepal was implemented despite considerable domestic resistance; victims' groups have even spoken out against its implementation.)
- Do truth commissions act as consensus builders in fractured societies or are they more likely to exacerbate pre-existing divisions?

Types of Justice

Although most truth commissions focus on restorative justice, a number of truth commissions have drawn from concepts of retributive justice by prosecuting perpetrators of past crimes. There is no consensus on whether one justice unilaterally is more effective than the other, but delegates may engage in a debate as to when it may be most appropriate to implement each type of justice. Delegates may also choose to engage in broader debate as to whether it is necessary to strictly adhere to a single concept of justice, or if other theoretical and legalist frameworks may be more suitable.

It may be noted that the tensions between different kinds of justice may be specious. For example, the dichotomy between restorative and retributive justice, with the latter often

⁷⁵ Paige, "How "Transitions" Reshaped Human Rights," 360.

⁷⁶ Anders and Zenkers, "Transition and Justice," 399.



associated with criminal justice, is misleading; the two can be compatible under the concept of international law which requires punishment guided by rehabilitation.⁷⁷

Justice often manifests itself in many forms: justice for victims, justice for perpetrators, and justice for society at large. Truth commissions are often thought to impact the public memory of events by reshaping narratives and “performing justice” through a public theatre of justice. This notion of justice is often praised as a challenge to Western legal norms and a legitimate alternative to domestic legal proceedings. However, this justice is imbued by principles of the liberal democratic state and traditionally acted to promote democracy abroad. The nature and history of this notion of justice may be of interest.

- Should truth commissions be focusing on a particular theory of justice? Or is this framework limiting?
- Are restorative and retributive justice compatible under truth commission activities?
- Should prosecutions be the focus of truth commissions? Should granting amnesties be the focus?
- When is it appropriate to grant amnesties or prosecute perpetrators?
- Are truth commissions exporting a particular notion of justice?
- Are truth commissions agents of democracy? Is this appropriate?
- To what extent is a truth commission grounded in the theories of a liberal democratic state?
- What role do truth commissions play in the public memory?
- To what extent does a truth commission rewrite history? Does this constitute revisionist history?
- Do truth commissions effectively deliver justice to their victims? Or are they political tools at the hands of the state?
- Do truth commissions “perform justice” rather than deliver justice?
- Do truth commission offer legitimate recourse to victims? Or are truth commissions’ benefits only for society at large?
- Do truth commissions have an obligation to deliver justice to victims first, before any other parties?

International Activity

TRCs have received support from international organizations such as the United Nations and the International Center for Transitional Justice. These institutions monitor and evaluate the progress made by the different iterations of TRCs. The “Commission on the Truth for El

⁷⁷ Paul Seils, “The Place of Reconciliation in Transitional Justice,” *ICTJ Briefing* (2017): 9, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.



Salvador” was the culmination of multiple negotiations and peace accords initiated by the United Nation. Notably, international actors often have the upper hand in funding and technical capabilities in comparison with local actors; consequently, the former are the essential entities in the creation of TRCs. In 2003, the United Nations High Commissioner for Human Rights (UNHCHR) began crafting a document entailing the establishment of a rule of law to be used in TRC proceedings. Priscilla Hayner, the director of the International Policymakers Unit at the International Center for Transitional Justice in New York, was instrumental in drafting these recommendations. Hayner, along with ICTJ and the European Commission in 2006, published this document (UNHCHR, 2006). However, the document suffers from major weaknesses, including extensive loopholes and ambiguous conclusions.⁷⁸ In 2004, a report was published by the Secretary-General entitled “On Transitional Justice and the Rule of Law in Conflict and Post Conflict Societies”. Its conclusions explained that transitional justice had goals of both peace and democracy and had manifested itself as a principle of law rather than a set of precise legal principles.⁷⁹ Shortly thereafter, Kofi Annan described transitional justice as:

“The full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with different levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”⁸⁰

Though TRCs have been largely considered successful, they are not exempt from the criticism of the international community. Indeed, a major criticism of TRCs attacks the timeframe within which these apparatuses are established. Mr. Pablo de Greiff, Special Rapporteur on the “Promotion of truth, Justice, Reparation and Guarantees of Non-Recurrence”, criticized the reduced scope of TRCs. In his opinion, transitional justice projects require a broader temporal scope with prolonged periods of violence. Widening the mandate would also prevent the victims from making a choice between the diverse themes of TRCs. Relying on specific measures at the cost of others would be both “legally unjustified and practically inconducive”. For instance, focusing on the ‘reparation’ advantages requires the victims’ willingness to give up their access and right to truth and justice, which in turn would detract from the reparation aspect.⁸¹

⁷⁸ Michal Ben-Josef Hirsch, Megan Mackenzie, and Mohamed Sesay, “Measuring the Impacts of Truth and Reconciliation Commissions: Placing the Global ‘success’ of TRCs in Local Perspective,” *Cooperation and Conflict* 47, no. 3 (2012): doi:10.1177/0010836712454273.

⁷⁹ Turner, “Deconstructing Transitional Justice,” 195.

⁸⁰ Andres, G and Zenker, O, “Transitional and Justice: An Introduction,” *Development and Change* 45 (2014): 398. Doi:10.1111/dech.12096

⁸¹ Pablo De Greiff, “Observations by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Mr. Pablo De Greiff, on the Conclusion of His Recent Visit to Sri Lanka,” OHCHR, accessed November 03, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15820&>.



The international community lacks a comprehensive framework to address the impact of TRCs, which creates room for apprehensions and political manipulation. This increases the likelihood that international support will be divided on the basis of race, culture, and religious traits. In May 2014, the International Center for Transitional Justice (ICTJ) critically evaluated the TRC established in Kenya. Christopher Gitari Ndungú, head of ICTJ's Kenya office and author of the study, commented on the lack of checks and balances available locally by saying "it shows Kenya as a state whose institutions are frequently exposed as corrupt and in callous disregard of the fundamental human rights of citizens." Since there is no review process for TRCs, independent reports such as these can substantially alter the perceived effectiveness of a TRC. Notably, this Truth, Justice and Reconciliation Commission (TJRC) was established due to extensive human rights violations and several other injustices committed in Kenya during the British colonial period (1895-1963) and during the 2007 to 2008 post-election violence. Additionally, the political palatability of a TRC may affect its level of institutional support and access to resources. For example, in the Kenya TJRC, international community withdrew its support from the commission because the Commissioner of the TJRC was deemed to have personal conflicts of interest as a member of the previous authoritarian regime. The ICTJ's report also pinpointed the issue of ethnicity, inter-ethnic conflict, and corrupt and powerful actors to be the downfall of the TJRC.⁸²

'You can't eat reconciliation' is a common criticism of TRCs; the phrase reflects the necessity of and difficulty in addressing people's basic needs in post-conflict situations.⁸³ Often poor resources are available to develop clear mechanisms for TRC implementation and subsequent evaluation demands increased international attention. Another pressing concern involves the creation of a "state policy", rather than a government policy, because the former can remain consistent under different political regimes.⁸⁴ Notably, there is disagreement on whether TRCs' efficacies would increase if they were supported or enforced by international judicial bodies.

⁸² Christopher Gitari Ndungú, "ICTJ: Kenya TJRC Final Report Deserves Serious Analysis and Action | ICTJ," International Center for Transitional Justice, May 20, 2014, , accessed November 03, 2018, <https://www.ictj.org/news/ictj-kenya-tjrc-final-report-deserves-serious-analysis-and-action>.

⁸³ D. K. Androff, "Truth and Reconciliation Commissions (TRCs): An International Human Rights Intervention and Its Connection to Social Work," *British Journal of Social Work* 40, no. 6 (2009): , doi:10.1093/bjsw/bcp139.

⁸⁴ Pablo De Greiff, "Observations by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Mr. Pablo De Greiff, on the Conclusion of His Recent Visit to Sri Lanka," OHCHR, , accessed November 03, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15820&>.



Tasks of the Committee

Very little is known about the impact of TRCs, which stems from convoluted lengthy reports and incoherent observations. Considering the lack of empirical evidence available to evaluate the success of a TRC, the international community can only assess a TRC's effectiveness by whether the society in which it was implemented returns to violence. According to this parameter, the South African TRC would undeniably be considered a successful case. However, this is not a universal outcome, as several states have failed and have seen the return to violence and repression, even after conducting a "successful" TRC, such as Chile, Sri Lanka and Uganda.⁸⁵

Developing parameters to assess the successes and failures of TRCs would be beneficial and would shed insight on the successful methods for certain states. This endeavor would also afford us a mechanism by which to evaluate the effect of war on different populations and communities. Additionally, the international community has the responsibility to ensure that the establishment of the TRC and its proceedings remain impartial and ethical. It is concerning that TRCs are driven, funded, implemented, and advocated by the global community, yet efforts to understand the meaning and the process of healing and reconciliation have stagnated.⁸⁶ The international community should consider devoting greater resources for the reconciliation of select communities. And perhaps most saliently, the impacts and long-term legacies of specific commissions needs greater consideration to prevent future crimes of a similar nature from occurring.

Thus, in light of these shortcomings, delegates of the Global and Truth and Reconciliation Symposium are encouraged to deliberate on the following general questions, in addition to the questions provided under the "Topics of Discussion" section:

- According to what parameters should TRC's effectiveness be judged?
- Should the international community commit more resources to the successful implementation of TRCs?
- Should an international body or entity facilitate TRC proceedings or should they be left to the prerogatives of individual states?
- How can the lessons of TRCs be applied to prevent crimes from a similar nature occurring?
- What aspects of TRCs lead to their successful implementation and resolution?

⁸⁵ D. K. Androff, "Truth and Reconciliation Commissions (TRCs): An International Human Rights Intervention and Its Connection to Social Work," *British Journal of Social Work* 40, no. 6 (2009): , doi:10.1093/bjsw/bcp139.

⁸⁶ Michal Ben-Josef Hirsch, Megan Mackenzie, and Mohamed Sesay, "Measuring the Impacts of Truth and Reconciliation Commissions: Placing the Global 'success' of TRCs in Local Perspective," *Cooperation and Conflict* 47, no. 3 (2012): , doi:10.1177/0010836712454273.



- Can citizens play an active role in the reconciliation of their societies?
- Should TRC mandates be expanded?
- How have different TRCs assessed and reacted to the tension between the goals of reconciliation and justice?
- How can we understand the contributions of TRCs to overcoming past divisions in favor of greater consensus and mutual understanding?
- How can the lessons learned from TRCs be used to enhance conflict mediation and even presentation?
- What implications do TRCs have for policy formation and practices generated?



Sources

Please refer to this page to find the truth commission associated with your country: https://en.wikipedia.org/wiki/List_of_truth_and_reconciliation_commissions. If you cannot find the official proceedings of your truth commission, please refer to any other documents, academic or otherwise, that discuss your truth commission.

International Center for Transitional Justice. Publications. <https://www.ictj.org/publications>. *The ICTJ has a host of resources, sorted by country, for almost all the truth commissions. Please refer to the side panel to sort according to country or document style.*

International Center for Transitional Justice. "Challenging the Conventional: Can Truth Commissions Strengthen Peace Processes?" *International Center for Transitional Justice and the Kofi Annan Foundation*. 2014. <https://www.ictj.org/sites/default/files/subsites/challenging-conventional-truth-commissions-peace/docs/ICTJ-Report-KAF-TruthCommPeace-2014.pdf>. *This document details the first iteration of a truth commission symposium and serves as the inspiration for this committee. Although the topics of discussion in this symposium closely mirror this committee's topics, there are noticeable differences. If you refer to this document for your research, please be mindful of changes in the topics.*

"Annual Report of the United Nations High Commissioner for Human Rights and Reports of OHCHR and the Secretary-General. Analytical Study on Human Rights and Transitional Justice." United Nations and the Rule of Law. 2009. Accessed September 09, 2018. <https://www.un.org/ruleoflaw/blog/document/annual-report-of-the-united-nations-high-commissioner-for-human-rights-and-reports-of-ohchr-and-the-secretary-general-analytical-study-on-human-rights-and-transitional-justice/>.

"Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice." United Nations and the Rule of Law. 2010. Accessed September 09, 2018. <https://www.un.org/ruleoflaw/blog/document/guidance-note-of-the-secretary-general-united-nations-approach-to-transitional-justice/>.

"Rule of Law Tools for Post-Conflict States: Truth Commissions." United Nations and the Rule of Law. 2006. Accessed September 09, 2018. <https://www.un.org/ruleoflaw/blog/document/rule-of-law-tools-for-post-conflict-states-truth-commissions/>.

"The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General." United Nations and the Rule of Law. 2004. Accessed September 09, 2018. <https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/>.



Bibliography

- Anders, G. and Zenker, O. Transition and Justice: An Introduction. *Development and Change*, 45 (2011): 395-414. doi:[10.1111/dech.12096](https://doi.org/10.1111/dech.12096)
- Arthur, Paige. "How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice." *Human Rights Quarterly* 31, no. 2 (2009): 321-67.
<http://www.jstor.org.myaccess.library.utoronto.ca/stable/20486755>.
- Balint, Jennifer, Evans, Julie and Nesam McMillan. "Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach". *International Journal of Transitional Justice* 8, no. 2(2014): 194–216, <https://doi-org.myaccess.library.utoronto.ca/10.1093/ijtj/iju004>
- Ben-Josfef Hirsch, Michal, MacKenzie, Megan and Mohamed Sesay. "Measuring the impacts of truth and reconciliation commissions: placing the global "success" of TRCs in local perspective." *Cooperation and Conflict* 43, no. 3(2012): 386-403.
- Brants, Chrisje, and Katrien Klep. "Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness." *International Journal of Conflict & Violence* 7, no. 1 (2013): 36–49.
<http://search.ebscohost.com.myaccess.library.utoronto.ca/login.aspx?direct=true&db=i3h&AN=88871560&site=ehost-live>.
- "Commission for Truth and Friendship Report." Chega Report. 2014. Accessed September 17, 2018. <http://www.chegareport.net/profil-of-ctf/>.
- "Commission of Inquiry: Rwanda 93." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/1993/01/commission-inquiry-rwanda-93>.
- David K. Androff; Truth and Reconciliation Commissions (TRCs): An International Human Rights Intervention and Its Connection to Social Work, *The British Journal of Social Work*, Volume 40, Issue 6, 1 September 2010, Pages 1960–1977, <https://doi.org/10.1093/bjsw/bcp139>
- Du Toit, Fannie and Parusha Naidoo. "Connecting TRCs to global trends: Implications for Policy and Practice." *The Institute for Justice and Reconciliation* 24 (2017): 1-4.
<http://ijr.org.za/home/wp-content/uploads/2012/07/IJR-Brief-No-24-TRC-30MAR-WEB.pdf>.
- Duncan McCargo. "Transitional Justice and Its Discontents." *Journal of Democracy* 26, no. 2 (2015): 5-20. <https://muse-jhu-edu.myaccess.library.utoronto.ca/article/578603>.



- Forsythe, D. P. Human Rights and Mass Atrocities: Revisiting Transitional Justice. *International Studies Review* 13, no. 1(2011): 85-95. doi:[10.1111/j.1468-2486.2010.01000.x](https://doi.org/10.1111/j.1468-2486.2010.01000.x)
- Hayner, Priscilla B. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. 2nd ed. New York: Routledge, 2011.
- Henry, Nicola. "From Reconciliation to Transitional Justice: The Contours of Redress Politics in Established Democracies." *International Journal of Transitional Justice* 9, no. 2 (2015): 199–218, <https://doi-org.myaccess.library.utoronto.ca/10.1093/ijtj/ijv001>.
- "Latin American Truth Commissions: Confronting the Past." White & Case. July 24, 2014. Accessed September 18, 2018. <https://www.whitecase.com/publications/article/latin-american-truth-commissions-confronting-past>.
- "Morocco's Truth Commission." Human Rights Watch. November 2005. Accessed September 07, 2018. <https://www.hrw.org/sites/default/files/reports/morocco1105wcover.pdf>.
- Nagy, Rosemary L. "The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission." *International Journal of Transitional Justice* 7, no. 1(2013): 52–73, <https://doi-org.myaccess.library.utoronto.ca/10.1093/ijtj/ijv034>.
- Ndungu, Christopher Gitari. "Kenya TJRC Final Report Deserves Serious Attention." *International Center for Transitional Justice*. May 19, 2014. <https://www.ictj.org/news/ictj-kenya-tjrc-final-report-deserves-serious-analysis-and-action>.
- Pablo de Grieff, "Report of the Special Rapporteur on the promotion of truth, justice, reparation, and the guarantees of non-recurrence," *Human Rights Council 24th Session* (2013): 1-29.
- Seils, Paul. "The Place of Reconciliation in Transitional Justice." *ICTJ Briefing* (2017): 1-16. <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>.
- Smith, David et al. "Special Report: Truth, Justice, and Reconciliation." *The Guardian*. June 24, 2014. <https://www.theguardian.com/world/2014/jun/24/truth-justice-reconciliation-civil-war-conflict>.
- Teitel, Ruti. "Editorial Note-Transitional Justice Globalized." *The International Journal of Transitional Justice* 2, no. 1 (2008): 1-4. doi:10.1093/ijtj/ijm041. http://resolver.scholarsportal.info/resolve/17527716/v02i0001/1_enjg.
- Teitel, Ruti. "Transitional Justice Genealogy." *The Harvard Human Rights Journal* 16, no. 69 (2003): 1-27.



"The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Bringing Them Home." Australian Human Rights Commission. Accessed September 07, 2018.

https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/submissions_un_hr_committee/6_stolen_generations.pdf.

Trevino, Monica, Pinsky, Randy, and Lorenzo Daieff. "Whose Truth? What kind of Reconciliation? The importance of Truth and Reconciliation Commissions for Promoting Democratic Good Governance." *International Conference at McGill University hosted by the Institute for the Study of International Development (ISID)*. March 13-14, 2014.

https://www.mcgill.ca/isid/files/isid/the_importance_of_truth_and_reconciliation_commissions_for_promoting_democratic_good_governance_2.pdf.

"Truth and Reconciliation Commissions." International Justice Resource Center. Accessed September 07, 2018. <https://ijrcenter.org/cases-before-national-courts/truth-and-reconciliation-commissions/>.

"Truth Commission: Argentina." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/1983/12/truth-commission-argentina>.

"Truth Commission: Bolivia." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/1982/10/truth-commission-bolivia>.

"Truth Commission: Chad." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/1990/12/truth-commission-chad>.

"Truth Commission: Chile 90." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/1990/05/truth-commission-chile-90>.

"Truth Commission: Democratic Republic of Congo." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/2003/07/truth-commission-democratic-republic-congo>.

"Truth Commission: El Salvador." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/1992/07/truth-commission-el-salvador>.

"Truth Commission: Germany 92." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/1992/05/truth-commission-germany-92>.

"Truth Commission: Guatemala." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/1997/02/truth-commission-guatemala>

"Truth Commission: Kenya." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/2009/07/truth-commission-kenya>.



- "Truth Commission: Mauritius." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/2012/02/truth-commission-mauritius>.
- "Truth Commission: Uganda 74." The United States Institute of Peace. Accessed September 07, 2018. <https://www.usip.org/publications/1974/06/truth-commission-uganda-74>
- "Truth Commissions." International Center for Transitional Justice. 2018. Accessed September 07, 2018. <https://www.ictj.org/gallery-items/truth-commissions#>.
- Turner, Catherine. "Deconstructing Transitional Justice." *Law Critique* 24, no. 2(2013): 193-209. <https://doi-org.myaccess.library.utoronto.ca/10.1007/s10978-013-9119-z>.
- Winter, Stephen. "Towards a Unified Theory of Transitional Justice." *International Journal of Transitional Justice* 7, no. 2(2013): 224–244, <https://doi-org.myaccess.library.utoronto.ca/10.1093/ijtj/ijt004>