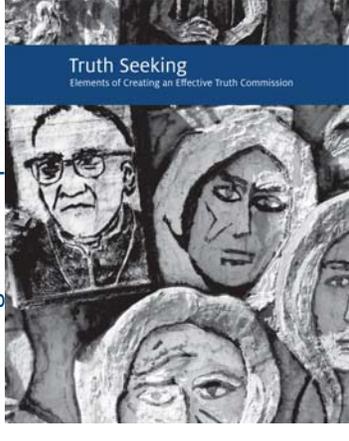


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“We women of Papua have been bruised, cornered, besieged from all directions. We are not safe at home, and even less so outside the home. The burden we bear to feed our children is too heavy. The history of the Papuan people is covered in blood, and women are no exception as victims of the violence of blind military actions. We have experienced rape and sexual abuse in detention, in the grasslands, while seeking refuge, no matter where we were when the army and police conducted operations in the name of security.”

*Introduction, Enough is Enough!: Testimonies of Papuan Women
Victims of Violence and Human Rights Violations, 1963-2009, 2010*

A generic inquiry that does not account for the varying experiences of specific sectors of the population cannot appropriately recognize victims, fully understand the abuses and violations that occurred, or make effective policy recommendations to prevent their recurrence.⁴⁹ Truth commissions, as they have evolved, have gained more sensitivity toward the individual and varying experiences of human rights violations.

In particular, truth commissions have made significant progress in integrating a gender perspective, ensuring more sensitivity toward the needs of children, and being responsive to the rights of indigenous peoples. An inclusive approach to these often marginalized and vulnerable populations is an important factor in developing a richer understanding of the abuses under inquiry, gaining wider support for the commission, and creating better conditions for the implementation of the commission's recommendations.

Ensuring a Gender Perspective in Truth Commissions

Human rights abuses are inflicted differently on men and women. Gender roles inform social perceptions of violence, often excusing crimes like sexual abuse as regrettable but inevitable, and normalizing certain actions as intrinsic to gender. As a result, it has been common to ignore or condone sexual violence in conflict as a normal consequence or epiphenomenon of larger patterns of violence. Also, abuses such as the forced recruitment of children are seen as largely targeting boys, tacitly assuming that it is normal for males to be combatants and ignoring the experiences of girls.

Truth commissions must incorporate a gender perspective in order to fully understand human rights violations, make abuses against women visible, and better correct misconceptions about the links between masculinity and the exercise of violence. At the same time, truth commissions must ensure that women are seen not just as passive recipients of help, but as agents with specific experiences and distinct voices—key partners to ensuring that the work of the commission permeates society.

Truth commissions have only recently started to focus explicitly on gender violence. Sexual abuse was not included in many legal mandates, in spite of its pervasive presence in conflict and repression. Also, many early truth commissions paid little attention to the participation of women as commissioners and staff. Much has changed: new legislation on truth commissions, particularly in Africa, clearly includes all forms of sexual violence in commission mandates and requires gender parity in the nomination of commission members.

Making Gender Violence Visible

A gender perspective must be incorporated from the outset, when a truth commission's legal mandate is being negotiated or, failing that, when commissioners are making operational decisions about their mandate. Doing so may involve including gender-based violence, including sexual violence, in the mandate, but mandates should not be limited to gender-based violence.

The legal mandate or the commission's research plan, as appropriate, must address sexual violence as a multifaceted, complex criminal pattern that goes beyond rape. All forms of abuse of women and girls for sexual purposes and any infringement of female sexual and reproductive rights must be studied. Also, the commission should not focus on sexual violence to the exclusion of other types of violations committed against females. For example, the commission should address the experiences of women who—as a result of exile, forced displacement, or the killing of male relatives—became the sole breadwinners for their family. The commission should recognize that women very often suffer new abuses, marginalization, and stigmatization as a result of the death or disappearance of their male relatives. Women suffer because existing societal and structural inequalities exacerbate the impact of the initial violations. Effective truth-seeking must address all of these violations.

49 For more information on gender, child-friendly, and indigenous perspectives on truth commissions, see Nesiya, Vasuki et al., ICTJ, "Truth Commissions and Gender: Principles, Policies, and Procedures. Gender Justice Series Working Paper" (2006); ICTJ & UNICEF, Innocenti Research Center. *Children and Truth Commissions* (2010); and González, Eduardo et al., ICTJ, "Strengthening Indigenous Rights through Truth Commissions: A Practitioner's Resource" (2012).

In addition, a gender perspective can enrich the understanding of violence across the commission's work. Masculinity's particular association with the exercise of violence can illuminate patterns of abuse. Youths may sometimes agree to child recruitment, for instance, because war is seen as a manly enterprise. The capacity to commit acts of cruelty is often associated with masculinity, and cruelty toward prisoners and women can be seen as a demonstration of virility. Crimes like sexual violence against men are kept in silence because they are seen as a challenge to traditional notions of masculinity.

In practical terms, this means that a truth commission should work from the outset to build a gender perspective into all of its research. A gender perspective should be employed in the design and application of research instruments such as statements and hearings. And violations associated with gender must figure prominently in the final report.

Ensuring Female Participation

Consideration should be paid to gender in commission recruiting and appointments. Staff members should also have gender expertise. Ongoing training on gender issues is crucial to ensure that all members of the truth-seeking body are knowledgeable about and sensitive to gender.

The commission must be open to cooperation with women's groups in all its operations. Cooperation should feature at all stages of the commission's work, from defining and implementing the mandate to preparing and conducting training sessions to developing strategies to conducting outreach to female victims. Examples include advocacy to appoint commissioners with gender expertise; analysis of lessons learned by other institutions about incorporating and sharing gender perspectives; and providing suggestions about structuring statement-taking forms, the conduct of outreach to women, and other issues.

With regard to statement taking, steps that can be taken to ensure women's dignified and comfortable participation include conducting community outreach measures to ensure that women, particularly those in remote areas and those who are not literate, receive information about the truth commission and their opportunities for participation. Additionally, statement takers should receive interview training to sensitize them to the psychological trauma that women can experience when giving testimony. Female statement takers should be made available to speak to women and girls who may feel more comfortable speaking to other females.

A truth commission should consider strongly the possibility of holding thematic hearings on gender. Adult victims of sexual violence should have the option of keeping their testimony confidential. In some cases, victims of sexual abuse—male or female—may prefer to keep their testimony confidential to avoid social stigma; some victims may decide that their testimony is a powerful instrument of recognition and education.

Ensuring Compliance with the Rights of Children in Truth Commissions

Although children have an internationally recognized right to express their views on policy issues concerning them,⁵⁰ very few truth commissions have included a focus on children. Children have sometimes been excluded out of a desire to protect them from the potentially traumatic effects of a truth-seeking process. In other cases, children's issues are not addressed because victims who were children when abuses occurred are now adults.

However, it is critical to engage children in truth seeking and to recover childhood memories in order to highlight abuses suffered by children, encourage wide civil-society participation and education, and help prevent repetition. Truth commissions with an effective focus on children should consider including children in their mandate, ensuring protective procedures around child participants, and establishing productive partnerships with child protection agencies and child/youth-led organizations.

50 U.N. Convention on the Rights of the Child, General Assembly Resolution 44/25, November 20, 1989, U.N. Doc. A/44/49, entered into force Sept. 2 1990.

A Child-Sensitive Approach to Drafting the Legal Mandate

Most truth commissions have not explicitly focused on human rights violations targeting children. Exceptions are the commissions of Sierra Leone and Liberia, which operated around the same set of intimately connected conflicts. In both cases, the commissions and their supporting societies—put a high priority on addressing the prevalence of child soldiers. The Sierra Leonean commission was very active in reaching out to former child soldiers, and the Liberian commission was explicitly mandated to document the experiences of children.⁵¹

In general terms, the best way to incorporate a child-sensitive focus is to make explicit reference to abuses typically inflicted on children, such as forced recruitment and sexual abuse, in the commission's mandate. For other abuses, the mandate could require the commission to look into the experience of other crimes through the eyes of children, such as exile, forced displacement, and the torture and arbitrary imprisonment of parents and close relatives.

At the procedural level, a child-sensitive mandate involves ensuring that commission activities always consider the best interests of the child. This means, in particular, that research and outreach must be conducted with special care to prevent revictimizing children or exposing them to traumatic information that they are unable to process. However, taking care does not mean hiding information from children: a truth commission must recognize the changing, growing capacities of children to understand facts, make decisions, and participate in the truth-seeking process.

Even if a truth commission does not formally include child-sensitive issues, its commissioners should coordinate with child protection agencies, child-led organizations, and victim groups, to ensure that the experiences of children (or those who were children at the time of abuse) are understood.

How to Protect Children during Truth Commission Operations

Truth commissions should ideally ensure that commissioners and staff have expertise on children's rights. As it is now common for truth commissions to establish mental health units and other similar facilities to address victims' needs, it is critical to ensure that the staff of such units knows how to interact with children and have the necessary resources to work with them. Commissions may follow the good example of institutions that have opted to divide areas of attention among commissioners, ensuring that at least one commissioner has a permanent responsibility to engage children.

Statement taking should be open to children under strict guarantees of confidentiality and protection of the child's identity. Statement takers should preferably have experience giving psychosocial support or doing social work and experience with children who have survived abuse. The child's wishes should provide guidance on the presence of his or her parents or guardians during interviews. A truth commission that decides to interview children should ensure mental health follow-up is available to these witnesses.

In principle, a truth commission should organize "in camera," or private, hearings to receive the testimony of children. However, if a truth commission organizes public hearings to acknowledge the experiences of children, it should take effective measures to protect their identity, so that testimony can be heard without the risk of the participants being recognized. In any situation involving public testimony, children and their legal guardians must be able to provide their consent freely after being appropriately informed about the event.

Establishing Partnerships to Ensure Strong Child Participation

Obtaining children's testimony, documenting abuse against children, and producing information that can be understood by children are not easy tasks for a truth commission. Any child-sensitive commission must make

⁵¹ Truth And Reconciliation Commission of Liberia Mandate, National Transitional Legislative Assembly, May 12, 2005, <http://trcofliberia.org/about/trc-mandate>

arrangements with child protection agencies and child-led groups to facilitate their participation. One of the best examples in this regard is the Liberian truth commission, which, in coordination with UNICEF and local protection agencies, was able to obtain hundreds of statements from children.⁵²

The education sector can also be a valuable ally. Public and private schools and their teachers can be strong partners for the commission and help to disseminate information about the truth-seeking process and encourage children to study the issue and participate as appropriate.

Since children often are victimized indirectly, through the experiences suffered by their parents or guardians, it is important to establish direct linkages with children's organizations to establish spaces for dialogue and support children feel free to speak out and share experiences. In Canada, the Truth and Reconciliation Commission is investigating abuses against institutionalized children that took place many decades ago, with the result that the victims are now adults. However, the commission is actively reaching out to victims' children and grandchildren, giving them a chance to establish volunteer groups to discuss their history and disseminate information to the population at large.

Ensuring Compliance with the Rights of Indigenous Peoples in Truth Commissions

Truth commissions in Guatemala, Peru, Paraguay, and elsewhere have addressed cases of violence against indigenous peoples. New commissions in Canada, Cote d'Ivoire, and Nepal are investigating or will soon look into contexts where indigenous peoples were targeted by gross human rights violations. This trend runs parallel to the growing international acceptance of the rights of indigenous peoples reflected in the 2007 UN Declaration on the Rights of Indigenous Peoples.⁵³

Truth commissions have typically been established as instruments to reaffirm the goals of unity and reconciliation within a nation-state. However, this model may not work in cases where indigenous peoples see themselves as separate nations within a unitary country.

Also, commissions usually focus on recent instances of violence, more specifically, cases that can be remembered by individual witnesses and survivors and transformed into written text for the benefit of policy makers. Indigenous peoples who remember long-term, historical violence affecting a communal way of life, often transmitted through oral tradition, may find the standard truth commission model insufficient.

Truth commissions should be receptive to the perspective of multinational and multicultural countries where indigenous peoples have their own identities. Commissions should strive to undertake their research in ways that recognize communal experiences and long-term, historical abuses. And they should work to support indigenous peoples' strong oral history traditions.

At an operational level, truth commissions should involve indigenous peoples at all stages of their work. This includes carrying out constant consultations to obtain their "free, prior, and informed consent,"⁵⁴ respecting the representative institutions of indigenous peoples, and paying attention to the specific needs of indigenous witnesses.

Incorporating the Point of View of Indigenous Peoples

A truth commission built on the recognition of the rights of indigenous peoples should recognize the equal nationhood of indigenous peoples; ensure their free, prior, and informed consent at each step of the process; and acknowledge the value of indigenous customary legal practices on equal terms with mainstream law.

52 Final Report of the Truth and Reconciliation Commission of Liberia. See vol. 3, title 2.

53 *Supra* note 26.

54 *Id.*

Also, in addition to violations against individuals, a truth commission should be able to inquire about violations targeting groups, such as persecution, forced displacement, and genocide. A truth commission that appropriately understands the viewpoint of indigenous peoples should investigate serious violations of economic, social, and cultural rights: indigenous peoples cannot exist if a government violates their right to land and territory or their practice of language, rituals, and religious beliefs.

This expansive focus when dealing with indigenous peoples means that commissions should be able to recognize injustices affecting indigenous communities, even if they took place in the remote past and even if commission inquiries question the historical narratives of the non-indigenous population.

Finally, a truth commission that responds to indigenous perspectives and is compliant with the rights of indigenous peoples should recognize in all its proceedings the importance of indigenous oral tradition as a source of law, a basis for truth claims, and an instrument of communal consolidation. The performance of ceremonies to witness or commemorate an event is a fundamental element of indigenous storytelling, issuing validity and dignity to what is told. Truth commissions should be prepared to understand and incorporate these characteristics.

Ensuring Consultation and Specific Attention to Indigenous Peoples

Broad and ongoing consultation with constituent groups is crucial to the success of a truth commission. This operational principle already enjoys ample consensus among transitional justice practitioners, but it is especially critical regarding indigenous peoples. In this case, according to international law, governments have the duty to consult in good faith in order to obtain the “free, prior, and informed consent” of indigenous peoples for any legislative or administrative measure affecting them.⁵⁵

The principle of free, prior and informed consent is linked to the question of how to interact with indigenous representation. Indigenous communities, like any political community, have multiple leaderships representing different voices within a society. Coordinating with a plurality of leaderships is a challenge for truth commissions, and even in the most successful cases it is unlikely everyone who ought to be heard will have a say.

A critical challenge is to recognize that, in some cases, the voices of indigenous women and children may not be heard through traditional channels. The UN Declaration of the Rights of Indigenous Peoples, however, explicitly recognizes the rights of indigenous women and the need for specific attention to the needs of indigenous children.⁵⁶ Any process of genuine dialogue must seek, in consultation with indigenous peoples, that all voices be heard.

Appropriately receiving indigenous witnesses entails critical attention to language. Some concepts that are critical in the legal framework of the inquiry will not translate well into indigenous languages, and similarly, some ways of expressing violent events in indigenous languages will be ill-understood by non-indigenous researchers. As such, truth commissions should enlist indigenous staff and pay special consideration to indigenous languages.

⁵⁵ *Id.*

⁵⁶ *Id.* Art. 21(2).



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Eduardo González and Howard Varney, eds., *Truth Seeking: Elements of Creating an Effective Truth Commission*. (Brasília: Amnesty Commission of the Ministry of Justice of Brazil; New York: International Center for Transitional Justice) 2013.

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