



**Cover Image: Portion of the the Keiskamma Tapestry, South Africa.** Created by over 100 women from Hamburg and neighboring villages in South Africa, the Keiskamma Tapestry tells the history of the people of the Eastern Cape Frontier, including their experience of repression under apartheid, as depicted in this detail. Courtesy of The Keiskamma Trust.

TRUTH AND MEMORY

# Drafting a Truth Commission Mandate

A Practical Tool

Eduardo González

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### **About the Author**

Eduardo González is the director of the Truth and Memory program at ICTJ, providing guidance to countries on truth commissions, declassification of archives, memorialization activities, museums, and other instruments. He has provided technical and strategic support to truth-seeking initiatives in places as diverse as East Timor, Morocco, Liberia, Canada, and the Western Balkans. He was formerly director of Public Hearings and Victim Protection at the Truth and Reconciliation Commission of Peru.

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## 1. Introduction

Over forty truth commissions have been created since the establishment of the Argentinian National Commission on the Disappearance of Persons, in 1983.<sup>1</sup> The variety of the commissions is enormous—as are the legal instruments that created them. They set different goals, outline different parameters for the inquiry in question, and define different powers for members of the commission, among other critical aspects. Their diversity reflects the different and unique historical conditions that gave rise to each commission. Yet among them, a certain convergence can be appreciated: effective mandates have a clear architecture, answering the need of the commission to have guidance in its inquiry and sufficiently empowering it to carry out its task.

Drafting the mandate of a truth commission, therefore, is a critically important step in the truth-seeking process that should be undertaken in a serious, well-thought-out manner. While no two mandates will be identical, they all need to respond to similar challenges and comply with international human rights norms.

Well-crafted mandates enable a commission to undertake its task with effectiveness: they set the stage for productive cooperation among institutions and allow civil society to fully understand the nature and potential of the truth-seeking exercise. A mandate that is incomplete, obscure, or contradictory to fundamental human rights standards can cripple a truth commission in many ways, forcing it to waste valuable time and resources in defining the parameters of its task, causing critical contradictions within the commission, and diminishing the capacity of key stakeholders to cooperate effectively with the commission.

This document is intended to facilitate the process of drafting a mandate for a truth commission charged with the nonjudicial investigation of serious human rights violations. It is designed to be used by government officials, civil society activists, victims' organizations, and other stakeholders in a transitional justice process.

As a practical tool, it covers aspects of a legal mandate that are necessary for an effective truth-seeking body, such as the normative and policy orientations entrusted to the commission, the actual definition of the object of inquiry, guidance on the process governing each phase of the commission's tenure, and the capacities and prerogatives necessary to ensure a comprehensive investigation. An adequate legal mandate gives clarity on each of these areas to stakeholders and members of the future commission.

The document also provides examples of how laws or decrees establishing a commission in various countries have addressed the elements of a mandate. These are included only as illustrations: they are not

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<sup>1</sup> National Commission on the Disappearance of Persons of Argentina (Comisión Nacional sobre la Desaparición de Personas), created by Decree No. 187/83, December 15, 1983.

exhaustive, nor are they necessarily models to be followed. Because every context is different, each commission must respond to its specific context, national needs and realities, and the legislative rules of the governing country or territory.

This tool, therefore, does not aspire to be prescriptive on each of the choices that mandate drafters will need to make, but it indicates areas where it will be necessary for them to make clear decisions. Also, it assumes that the act of establishing a truth commission responds to normative orientations. A truth commission needs to be effective in order to guarantee the rights of victims of the most serious human rights violations. Any choice made by the drafters of a mandate must meet the genuine goal of complying with governmental duties. Among those duties, clearly, the truth commission must ensure its full allegiance to the rights of victims, guarantees of nondiscrimination against any participants, and principles of fairness during the entire investigative process.



## 2. Considerations for Establishing a Truth Commission

A truth commission is established by an official mandate, or legal framework, that authorizes the actions of the commission within certain parameters. These include:

- Normative and policy orientations—the principles, objectives, and functions that will guide the work of the truth commission
- The object of inquiry or the description of the facts and crimes that the commission will establish
- Operational aspects—the powers, prerogatives, and procedures a commission will need to comply with in order to achieve its mission

National governments, through the executive or the legislative branch, are the source of most truth commission mandates. However, in some cases, truth commissions have been established by other means, such as by an international authority in the absence of a national government,<sup>2</sup> direct negotiation in a peace process,<sup>3</sup> or other forms of agreement between parties.<sup>4</sup>

The origin and form of the mandate—whether a decree by the executive branch or an act of parliament or a treaty, or some other instrument—result from each country’s specific context and decision-making institutions. Yet in each case, the mandate needs to include certain elements in order to ensure that the commission is fair, effective, and objective.

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2 The Commission for Reception, Truth and Reconciliation in East Timor was established in 2001 by the UN Transitional Administration in East Timor (UNTAET) Regulation No. 2001/10, July 13, 2001, [www.un.org/en/peacekeeping/missions/past/etimor/untaetR/Reg10e.pdf](http://www.un.org/en/peacekeeping/missions/past/etimor/untaetR/Reg10e.pdf) [hereinafter *East Timor Mandate*].

3 The Historical Clarification Commission of Guatemala (Comisión para el Esclarecimiento Histórico) was established in 1994 as part of the Oslo Peace Agreements.

4 The Truth and Reconciliation Commission of Canada was established in 2009 as the result of a judicial settlement between the Government of Canada, five Christian churches, and the Assembly of First Nations. See Schedule “N” of the Indian Residential Schools Settlement Agreement, January 7, 1998, [www.residentialschoolsettlement.ca/SCHEDULE\\_N.pdf](http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf).



## 3. Norms and Policy Orientations

### Preamble

The preamble presents the reasons for establishing the truth commission, laying out a broad vision for the commission as well as the legal standards, ethical principles, and policy priorities that will guide its work. In essence, it expresses the intention of the drafters and the spirit of the instrument, while providing guidance on the interpretation of specific provisions of the mandate. In some legal traditions, when an instrument does not include a preamble, the mandate is issued in conjunction with other documents, such as a declaration of purpose or an explanatory description of the mandate's provisions.

The original preamble to the Liberian law that established the Truth and Reconciliation Commission of Liberia, for example, is quite long,<sup>5</sup> covering issues such as the recent history of Liberia and the country's aspiration to build a peaceful and democratic society. The excerpt below provided guidance to the commission on how to interpret and implement its mandate under the standards of international human rights law.

**EXCERPT: Truth and Reconciliation Commission of Liberia Mandate (2004)<sup>6</sup>**

Preamble

Reaffirming the commitment of the Liberian people to peace and justice, unity, national healing and reconciliation and the general principles of human and people's rights as enshrined in the Constitution of the Republic of Liberia, the African Charter on Human and Peoples Rights, the Charter of the United Nations and the Universal Declaration of Human Rights and other international conventions and protocols relating to the rights and protections of women and children . . . .

### Objectives

The objectives are the commission's *raison d'être* and enunciate the contributions and outcomes expected of the commission. Every mandate enunciates its objectives differently, expressing priorities that derive from local circumstances. However, objectives usually fall into three main areas:

**1. Establishing the truth about crimes and events, what persons and groups are responsible for crimes, the causes of abuses, and historical explanation**

<sup>5</sup> Truth And Reconciliation Commission of Liberia Mandate, National Transitional Legislative Assembly, May 12, 2005, <http://trcofliberia.org/about/trc-mandate> [hereinafter *Liberia Mandate*].

<sup>6</sup> *Ibid.* at Preamble.

Some commissions are mandated to conduct descriptive fact-finding, which includes an exhaustive reconstruction of events and their circumstances, with the participation of different agents. Other commissions are mandated to add an explanatory account, taking into consideration the historical, institutional, and cultural contexts of past abuse.

For example, the law that created Brazil's National Truth Commission poses an ambitious goal:<sup>7</sup> the commission must reveal the facts and provide an account of the “surrounding circumstances” and apparatus that led to serious human rights violations. In the case of four specific crimes—torture, summary execution, enforced disappearance, and hiding of victim remains—the mandate specifically orders the commission to determine the perpetrators.

**EXCERPT: National Truth Commission Law, Brazil (2011)<sup>8</sup>**

Art. 2

The objectives of the National Truth Commission are the following:

1. Clarify the facts and circumstances surrounding the serious violations of human rights mentioned in Art. 1 above;
2. Promote the clarification of authorship for tortures, summary executions, forced disappearances, and hiding of victims' remains;
3. Identify and reveal the structures, locations, institutions and circumstances leading to serious human rights violations . . . .

## 2. Protecting, recognizing, and restoring the rights of victims

Several mandates include objectives such as the restoration of victims' dignity and rights, attention to the well-being and psychological healing of victims, and the drawing up of policy proposals aimed at improving the situation of victims.

The Peruvian decree that created the Truth and Reconciliation Commission,<sup>9</sup> for example, specifically mentions proposals for reparation and “dignification” as an intrinsic objective of the truth commission. The restoration of personal dignity was included as an objective, responding to the local context, because in Peru, victims have been stigmatized by the public or local communities who assume that they were associated with rebel groups and, therefore, somehow deserving of victimization.

**Excerpt: Truth and Reconciliation Commission Supreme Decree, Peru (2001)<sup>10</sup>**

Art. 2

The Commission will have the following objectives:

[ . . . ]

- (c) to draw up proposals for reparation and dignification of the victims and their family members.

7 National Truth Commission of Brazil (Comissão Nacional da Verdade) created by Law No. 12.528, November 18, 2011, [www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2011/lei/l12528.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12528.htm) [hereinafter *Brazil Mandate*].

8 Ibid. at Art. 3.

9 Truth and Reconciliation Commission of Peru (Comisión de la Verdad y Reconciliación) created by Supreme Decree N° 065-2001-PCM, June 4, 2001, [www.cverdad.org.pe/lacomision/cnormas/normaso1.php](http://www.cverdad.org.pe/lacomision/cnormas/normaso1.php) [hereinafter *Peru Mandate*].

10 Ibid. at Art. 10.

### 3. Positive social and political transformations

Several mandates include societal goals that a country should strive for in the wake of atrocity. In some cases, mandates include the goal of contributing to post-conflict reconciliation, advancing social justice, or proposing institutional reforms that should ensure nonrecurrence of abuses.

The Sierra Leonean law that created the Truth and Reconciliation Commission includes in a single idea three important aspirational goals: healing, reconciliation, and nonrecurrence of violations and abuses.<sup>11</sup> Thus, the mandate aims to restore a broken national community and put in place measures to consolidate peace.

**Excerpt: Truth and Reconciliation Commission Act, Sierra Leone (2000)<sup>12</sup>**

Art. 6

The object for which the Commission is established is [ . . . ] to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.

### Functions

Functions are the activities that the commission is authorized to undertake in order to comply with its objectives. As objectives may vary, or have different formulations or emphases, functions may also vary widely.

The following functions are often included in truth commission mandates, in part or in full:

- To prepare and submit a report of its findings and recommendations to national authorities and the public
- To receive and compile information provided by direct statements, as well as from archives and other documentary sources
- To conduct investigations and research
- To protect the integrity and wellbeing of victims and witnesses
- To conduct public communication activities, such as public hearings, educational events, etc.
- To support other transitional justice policies, such as trials, reparations, and vetting
- To carry out events promoting reconciliation, at the national or local level

The National Reconciliation Commission in Ghana was authorized by its mandate to conduct a wide array of activities to achieve its objectives.<sup>13</sup> In some cases, its functions were very specific: the commission was tasked with investigating events, but also determining whether they were the result of a plan by a public institution.

**Excerpt: National Reconciliation Commission Act, Ghana (2002)<sup>14</sup>**

Art. 4

For the purposes of attaining its object, the Commission shall:

<sup>11</sup> Sierra Leone Truth and Reconciliation Commission Act, February 2000, [www.sierra-leone.org/Laws/2000-4.pdf](http://www.sierra-leone.org/Laws/2000-4.pdf) [hereinafter *Sierra Leone Mandate*].

<sup>12</sup> *Ibid.* at Art. 6.

<sup>13</sup> Ghana National Reconciliation Commission created by Act 611 of the Parliament of the Republic of Ghana, January 9, 2002, [www.ghanareview.com/reconact.html](http://www.ghanareview.com/reconact.html) [hereinafter *Ghana Mandate*].

<sup>14</sup> *Ibid.* at Art. 4.

- (a) investigate violations abuses and of human rights relating to killings, abductions, disappearances, detentions, torture, ill-treatment and seizure of properties suffered by any person within the specified periods;
- (b) investigate the context in which and the causes and circumstances under which the violations and abuses occurred and identify the individuals, public institutions, bodies, organisations, public office holders or persons purporting to have acted on behalf of any public body responsible for or involved in the violations and abuses;
- (c) identify and specify the victims of the violations and abuses and make appropriate recommendations for redress;
- (d) investigate and determine whether or not the violations and abuses were deliberately planned and executed by the state or any person referred to in paragraph (b);
- (e) conduct investigations relevant to its work and or seek the assistance of the police and any public or private institution, body or person for the purpose of an investigation;
- (f) investigate any other matters which it considers requires investigation in order to promote and achieve national reconciliation; and
- (g) educate the public and give sufficient publicity to its work so as to encourage the public to contribute positively to the achievement of the object of the Commission.

## 4. Defining the Object of Inquiry

The mandate must clearly determine the focus of the commission’s investigation—what happened and how, who is responsible, who was affected, when did it happen, where did it take place?

### What Happened? Material Scope of the Inquiry

The mandate must indicate the acts and crimes that the commission will investigate, responding to the unique characteristics of the given conflict or historical experience. Typically, mandates identify a number of serious human rights violations for scrutiny, such as those affecting the life or integrity of individuals. Many include war crimes. Some recent mandates identify other violations, like violations of economic rights. Most recent mandates explicitly mention violations committed against women, children, and other vulnerable groups in order to prevent them from being ignored.

The material scope of the inquiry can be wide or narrow, depending on the number of crimes included in the mandate. Some mandates opt to include a closed list of acts that must be examined by the commission, while others leave the possibility open to the commission itself of adding other acts that are of similar gravity to those explicitly mentioned.

The Peru mandate comprised an open list of acts, allowing the commission to include additional crimes as it saw fit.<sup>15</sup> Clause (c) of the decree indicates “other serious injuries,” without specifying which ones, allowing the commission to include all forms of sexual violence. Also, clause (e) allowed the commission to include specific studies on violence against children, forced displacement, forced recruitment, the imposition of servitude, and other violations.

#### **Excerpt: Truth and Reconciliation Commission Supreme Decree, Peru (2001)<sup>16</sup>**

Art. 3. The Truth Commission shall focus its work on the following acts:

- (a) Murders and kidnappings;
- (b) Forced disappearances;
- (c) Torture and other serious injuries;
- (d) Violations of the collective rights of the country’s Andean and native communities;
- (e) Other crimes and serious violations of the rights of individuals.

<sup>15</sup> Peru Mandate, *supra* note 9.

<sup>16</sup> *Ibid.* at Art. 3.

## Who Is Responsible? Personal Scope of the Inquiry

Each commission is mandated to identify serious transgressions carried out by somebody; but each commission has defined these agents in a different way. Some commissions have limited their investigations to acts committed by public servants, while others have included the role of other groups, such as armed oppositions, militias, international actors, etc.

Some mandates are silent on this issue, allowing the commission to decide whether it will investigate acts committed by all types of agents or only by some specific type of perpetrator. In East Timor (now Timor-Leste), for instance, the mandate that created its Commission for Reception, Truth and Reconciliation authorized the commission to look into violations committed by all sides of the conflict.<sup>17</sup> Further, it required the commission to identify each perpetrator personally or institutionally, as well as the extent of their responsibility as deliberate planners.

### **Excerpt: Commission for Reception, Truth and Reconciliation Regulation, East Timor (2001)<sup>18</sup>**

Art. 13.1

13.1. In carrying out its objective to seek to establish the truth regarding the commission of human rights violations in East Timor, the Commission shall have the following functions: [ . . . ]

(iii) which persons, authorities, institutions and organisations were involved in human rights violations;

(iv) whether human rights violations were the result of deliberate planning, policy or authorisation on the part of a state or any of its organs, or of any political organisation, militia group, liberation movement, or other group or individual; [ . . . ]

## What Time Periods Will Be Relevant? Temporal Scope of the Inquiry

Each country will define differently the time period that the commission must investigate. The length of time under investigation will determine how comprehensive the historical narrative offered by the commission will be. However, examining very extended periods of time may pose significant methodological challenges.

For instance, the East Timor mandate gave very concrete temporal limits to the commission's investigation, from the 1974 "Carnation Revolution" in Portugal (the colonial power responsible for East Timor) to the 1999 creation of the United Nations Transitional Administration in East Timor (UNTAET), the UN mission established to administer the country after the evacuation of occupying Indonesian forces.<sup>19</sup> Moreover, the mandate authorized the commission to give special attention to two events, at the beginning and the end of the investigation's temporal limits.

### **Excerpt: Commission for Reception, Truth and Reconciliation Regulation, East Timor (2001)<sup>20</sup>**

Art. 13.2

13.2. In carrying out its functions under Part III, the Commission may consider human rights violations which took place between 25 April 1974 and 25 October 1999 and shall take into particular consideration:

<sup>17</sup> East Timor Mandate, *supra* note 2, at Art. 13.1

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.* at Art. 13.2.

<sup>20</sup> *Ibid.*



- (a) the events before, during and after the popular consultation of 30 August 1999 which resulted in a loss of life, injury, destruction of property, the commission of sexual offences and the forcible deportations of persons; and
- (b) the events and experiences of all parties immediately preceding, during and after the entry of Indonesia into East Timor on 7 December 1975, and the effect of the policies and practices of Indonesia and its forces present in East Timor between 7 December 1975 and 25 October 1999.

### **What Areas Are Relevant? Territorial Scope of the Inquiry**

Most mandates are silent on the issue of whether the commission is authorized to investigate violations committed outside of the governing body's legal territory. However, in many cases, relevant violent acts have taken place in more than one country, or spilled across borders, or affected foreign nationals living as refugees or exiles in a country. A clear decision on this issue is recommended.



## 5. Operational Aspects

### Appointing Commissioners, Their Role, and Removal

Appointing members of a truth commission is one of the most fundamental elements that determine the success or failure of a commission. In fact, some establishing decrees and laws emphasize its importance by placing provisions referring to commissioners at the beginning of the mandate.

Each mandate specifies the number of commissioners that will lead the inquiry. However, there is no rule for this, as some commissions have been led by only three members, while others, being quite large, have had seventeen. Also, mandates specify whether all commissioners will be nationals of the country.

All mandates emphasize the high qualifications required of an individual to be appointed as a commissioner. Mandates usually demand a record of integrity, experience, and political independence. Sometimes mandates indicate elements that would disqualify a person from becoming a member of the commission, such as active political affiliation or personal involvement in abuses. In some mandates, commissioners are directly appointed by the head of state. Other mandates establish a selection mechanism, including the nomination of candidates, vetting, and final appointment.

To achieve parity and fairness, some mandates include details on the number of commissioners that should represent various regions of the country, ethnic groups, social minorities, women, and other demographic groups.

Mandates often include conditions of service, indicating the relative status of the position of a commissioner, usually with the purpose of fixing compensation levels and time demands. Such mandates also provide details on the conditions under which a commissioner will be removed, for example, due to illness, incapacity, or misconduct.

A detailed process of nomination should include a clear time line, as the full process of nominating, vetting, and decision-making can become time consuming, particularly in contexts where several constituencies are expected to participate. The East Timor mandate anticipated this. It speaks of “fair” gender representation, instead of specifying “parity.”

**Excerpt: Commission for Reception, Truth and Reconciliation Regulation, East Timor (2001)<sup>21</sup>**

Art. 4

4.3. A Selection Procedure, involving broad consultation in the selection of the Commissioners, shall consist of the following:

<sup>21</sup> East Timor Mandate, *supra* note 2.

(a) within one month of the promulgation of the present Regulation, a Selection Panel (the “Panel”) shall be formed, composed of the Transitional Administrator or his or her appointee, serving as Chair, and one member appointed by each of:

- (i) Partido Trabalhista;
- (ii) Partido Kota;
- (iii) Fretilin;
- (iv) UDT;
- (v) the Transitional Administrator after consultation with proautonomy supporters;
- (vi) the NGO Forum;
- (vii) Rede;
- (viii) Presidium Juventude;
- (ix) the Association of Ex-Political Prisoners;
- (x) the Association of Families of Disappeared Persons;
- (xi) a joint nomination, by the Diocese of Baucau and the Diocese of Dili; and
- (xii) the Office of Human Rights Affairs of UNTAET.

[ . . . ]

(c) the Panel shall call for nominations from the people of East Timor of persons who wish to serve as National Commissioners, indicating a simple procedure for nominations and a reasonable deadline by which nominations should be submitted;

(d) the Panel may itself nominate persons for consideration as National Commissioners, but only where the Panel have specifically consulted with community groups concerning such persons.

(e) after consultation with a broad sector of society, including representatives of minority groups, the Panel shall select persons to recommend to the Transitional Administrator for appointment as National Commissioners. The Panel shall also make a recommendation concerning the Chair of the Commission;

(f) the Panel shall take decisions by consensus, when possible, and in the absence of consensus, by a majority vote of the Panel;

(g) in making its recommendation, the Panel should give special consideration to the representation of a diversity of experiences and views, including attitudes towards the past political conflicts in East Timor, and regional and fair gender representation;

(h) if a member of the Panel is nominated as a National Commissioner, and wishes to be considered for appointment to the Commission, he or she must resign from the Panel. The organization which appointed such person to the Panel shall be entitled to appoint a substitute.

4.4. The Selection Panel may include one or two international persons in their recommendations.

4.5. After appointment, the Transitional Administrator shall publish the names of those appointed as National Commissioners in the Official Gazette of East Timor.

[ . . . ]

The Brazil mandate is an example of direct appointment of commissioners.

**Excerpt: National Truth Commission Law, Brazil (2011)<sup>22</sup>**

Art. 2

The National Truth Commission will be formed democratically and comprise seven Brazilian members appointed by the President of the Republic who have distinguished themselves by their good standing and ethical conduct, contributions to democracy, constitutionalism and human rights.

### Investigative Powers

In order to carry out the functions entrusted to it, a truth commission needs to enjoy certain powers, some of which may be similar to those of a parliamentary enquiry or a law-enforcement institution.

The following investigative powers figure prominently in mandates:

- The power to summon persons, including government officials, to appear before the commission and to produce articles or documents
- The authorization to conduct inspections in places of interest, such as prison facilities and military barracks, and initiate exhumations in accordance with the law and in coordination with law enforcement
- The authorization to obtain official cooperation to ensure the security of proceedings, offices, and persons related to the commission

The Peruvian commission, for instance, could only “request” information, instead of summoning it.<sup>23</sup> However, due to a favorable political context, the provision was ultimately sufficient to obtain necessary information.

**Excerpt: Truth and Reconciliation Commission Supreme Decree, Peru (2001)<sup>24</sup>**

Art. 6

The Truth Commission shall enjoy the following authority for fulfilling its functions:

- (a) To interview and compile from any person, authority, functionary or public servant all the information it considers pertinent.
- (b) To request the cooperation of functionaries and public servants in order to access documentation or any other State information.
- (c) To carry out visits, inspections or any other investigate step it considers pertinent. To that end, the Commission shall be able to count on the support of experts to further its work.
- (d) To carry out public hearings and, as it considers appropriate, carry out investigative steps in a confidential manner, with the capacity to maintain the confidentiality of identity of those who provide important information to it or participate in the investigations.
- (e) To take steps to attain security measures for persons who, in the judgment of the commission, are in a situation that threatens their life or personal integrity.

<sup>22</sup> Brazil Mandate, *supra* note 7, at Art. 2.

<sup>23</sup> Peru Mandate, *supra* note 9, at Art. 6.

<sup>24</sup> *Ibid.*

- (f) The Truth Commission shall establish channels of communication and mechanisms for the participation of the population, especially that which was affected by the violence.
- (g) To approve its internal organizational and operating regulations for fulfilling its objectives and authority.

## Protections and Guarantees

Members of the commission, staff, and persons cooperating with the inquiry must be protected against physical threats or any kind of reprisal resulting from their work or participation. Mandates usually include such language, ensuring that the commission will have the cooperation of law enforcement bodies to guarantee its security. Some mandates have included provisions to ensure that no legal action will be used to harass members or staffers.

Furthermore, truth commissions must include guarantees of due process and guarantees of nondiscrimination. Due-process guarantees seek to ensure that the rights of persons who are alleged to have committed human rights violations are respected during the process of investigation, particularly if there are adverse findings. Nondiscrimination guarantees seek to ensure that the mandate is applied in a nondiscriminatory manner, including to sectors of the population who could be overlooked if not identified in explicit provisions.

In some cases, members of a commission and its staff have been sued for libel due to the findings in their reports. The provision contained in the Ghana mandate reduced the possibility of frivolous legal harassment;<sup>25</sup> however, every legal system has idiosyncrasies that need to be considered in ensuring a balanced and effective approach.

### **Excerpt: National Reconciliation Commission Act, Ghana (2002)<sup>26</sup>**

Art. 21

A member of the Commission, a member of staff of the Commission, or a person who performs a task on behalf of the Commission, shall not be liable in respect of anything contained in any report, finding, point of view or recommendation made or expressed in good faith under this Act.

The East Timor mandate provides fairness guarantees, though they are not exhaustive. Other guarantees may include the right to legal representation for defendants or the right to respond to allegations or adverse findings.

### **Excerpt: Commission for Reception, Truth and Reconciliation Regulation, East Timor (2001)<sup>27</sup>**

Arts. 17 and 25

17.1. No witness may be compelled to incriminate himself or herself. Every person who is invited or required to come before the Commission shall be informed of such right. If at any time it appears to the Commission that a question asked of a witness is likely to elicit a response that might incriminate the witness, the Commission shall readvise the witness of his or her right not to answer the question.

<sup>25</sup> Ghana Mandate, *supra* note 13, at Art. 21.

<sup>26</sup> *Ibid.*

<sup>27</sup> East Timor Mandate, *supra* note 17, at Art. 17.

17.2. No witness may be compelled to incriminate the witness' spouse or partner, parents, children, or relatives within the second degree.

A provision in the Liberia mandate addressed the scope of the inquiry, making explicit mention of the violations suffered by women, children, and other vulnerable groups, and complementing other language in the mandate.<sup>28</sup> It also included a clear declaration of principles regarding the treatment of victims, reiterating principles of nondiscrimination and inclusion.

**Excerpt: Truth and Reconciliation Commission of Liberia Mandate (2004)<sup>29</sup>**

Art. 4. Section (e)

Adopting specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender based violations, as well as to the issue of child soldiers, providing opportunities for them to relate their experiences, addressing concerns and recommending measures to be taken for the rehabilitation of victims of human rights violations in the spirit of national reconciliation and healing.

[ . . . ]

Art. 25. Section (q)

When dealing with victims, the Commission shall be guided by the following principles:

- (i) victims shall be treated with compassion and respect for their dignity; they shall be treated equally, without regard to race, ethnicity, religion, language, sex, or nationality; and, procedures dealing with victims should be expeditious and fair;
- (ii) appropriate measures shall be taken to minimize inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety and that of their families or witnesses testifying on their behalf; and
- (iii) the TRC shall take sufficient measures to allow victims to communicate in the language of their choice.

## Duration of the Work of the Commission

The mandate must clearly specify the time allotted for the commission to complete its work and the provisions to be made by the government in facilitating its work with efficiency and independence. As truth commissions have become more complex, dealing with larger scopes of research, the time allotted for their work has increased.

Very few commissions are given fewer than two years to comply with their mandate. Also, most mandates include the possibility of extension, under a certain procedure.

For instance, a clause in the Ghana mandate indicates that the commission will work for 12 months, with a possible extension contingent on presidential approval.<sup>30</sup> In a separate provision, the mandate calls every meeting of the commission a “hearing,” so that the time starts to run after commissioners meet. However, referring to different clauses may be a source of confusion.

<sup>28</sup> Liberia Mandate, *supra* note 5, at Art. 4(e).

<sup>29</sup> *Ibid.*

<sup>30</sup> Ghana Mandate, *supra* note 13, at Art. 5.

**Excerpt: National Reconciliation Commission Act, Ghana (2002)<sup>31</sup>**

Art. 5. Inauguration and duration, preparation and publicity:

- (1) The Commission shall be inaugurated within two weeks of the appointment of its members and shall operate for a period not exceeding 12 months from the date of its first hearing except that, for good cause shown by the Commission, the President may by executive instrument extend the term of the Commission for a further period of six months.

## Organization

Each commission is organized differently, depending on the scope of its investigations and functions. In some cases, the mandate has been silent on the issue of organization, and the commission has been free to choose its own internal structure. In other cases, the mandate specifies the commission's organization, creating special subcommittees. This model may respond to contextual needs. The commission may be entrusted with special functions, in addition to truth-seeking, that require specific teams (for example, units for allocating reparations). Also, the commission may be required to cover certain geographic areas with the mandate specifying where offices should be opened.

The Sierra Leone mandate provides an example of a mandate leaving discretionary powers to the commission to determine its structure, staff, and location, as it deems fit.<sup>32</sup> It includes a clear injunction that units within the commission must respect fair gender and regional representation.

**Excerpt: Truth and Reconciliation Commission Act, Sierra Leone (2000)<sup>33</sup>**

Art. 10

- (1) To assist it in the performance of its functions, the Commission may appoint such committees as it may consider necessary.
- (2) A committee under this section shall include persons who are not members of the Commission but who are appointed, taking into account gender representation and regional participation in the work of the Commission.
- (3) A member of a committee who is not a member of the Commission shall be paid such allowances as the Commission may determine.

Art. 11

- (1) The Commission shall have such offices and may employ such staff, including citizens of Sierra Leone, as it may consider necessary for the efficient performance of its functions.
- (2) Public officers may be seconded or otherwise render assistance to the Commission.
- (3) The staff of the Commission shall be employed on such terms as the Commission shall, after consultation with the Selection Coordinator, determine.

The South African Truth and Reconciliation Commission is the only commission to date that has administered an amnesty mechanism.<sup>34</sup> Also, it is one of a small number of commissions with an explicit man-

<sup>31</sup> Ibid.

<sup>32</sup> Sierra Leone Mandate, *supra* note 11, at Art. 10.

<sup>33</sup> Ibid.

<sup>34</sup> Truth and Reconciliation Commission of South Africa. Government of South Africa, Promotion of National Unity and Reconciliation Act 34 of 1995, July 19, 1995, [www.justice.gov.za/legislation/acts/1995-034.pdf](http://www.justice.gov.za/legislation/acts/1995-034.pdf).



date to recommend reparations.<sup>35</sup> The mandate fixed these functions, establishing specific units within the structure of the commission. However, separate provisions authorized the commission to establish additional units for other functions.

**Excerpt: Promotion of National Unity and Reconciliation Act 34, South Africa (1995)<sup>36</sup>**

Art. 3.3

In order to achieve the objectives of the Commission:

- (a) the Committee on Human Rights Violations, as contemplated in Chapter 3, shall deal, among other things, with matters pertaining to investigations of gross violations of human rights;
- (b) the Committee on Amnesty, as contemplated in Chapter 4, shall deal with matters relating to amnesty;
- (c) the Committee on Reparation and Rehabilitation, as contemplated in Chapter 5, shall deal with matters referred to it relating to reparations; [ . . . ]

## Confidentiality

Mandates must include provisions governing the conduct of commissioners and staff with regard to the use and circulation of information examined or produced by the commission. Testimonies, archives, and other forms of evidence contain information that is in the interest of justice and affect the integrity and possibly the safety of persons.

**Excerpt: Truth and Reconciliation Commission Act, Sierra Leone (2000)<sup>37</sup>**

Art. 14

- (3) No member of the Commission or member of staff of the Commission shall make private use of or profit from any confidential information gained as a result of his work in the Commission or divulge such information to any other person except in the course of his functions as a member or staff of the Commission and any contravention of this provision may result in dismissal from the Commission.

## Funding

Mandates should include specific information on the sources of funding available to the commission. It is critical to determine whether the commission will be fully supported by the national treasury, or if it will have the authority to fundraise by itself. Each country has different forms of allocation and control of public funds, so mandates present enormous variation on this point. However, determining funding sources is important for ensuring an efficient, transparent, and sufficient means of providing resources to the commission.

After a crippling internal armed conflict, Sierra Leone faced enormous economic challenges. It was improbable that its treasury would entirely fund the commission. However, the Sierra Leone mandate allowed the government to provide not only funds, but also “other resources,” like facilities, to the commis-

<sup>35</sup> Ibid.

<sup>36</sup> Ibid. at Art. 3.3

<sup>37</sup> Sierra Leone Mandate, *supra* note 11, at Art. 14(3).

sion.<sup>38</sup> Eventually, the commission was supported mainly by external funding, administered with the help of UN agencies.

**Excerpt: Truth and Reconciliation Commission Act, Sierra Leone (2000)<sup>39</sup>**

Art. 12

- (1) The operations of the Commission shall be financed by a fund consisting of moneys and other resources:
- (a) paid or made available to the Commission by the Government; and
  - (b) obtained by the Commission as gift or donation from foreign governments, intergovernmental organisations, foundations and non-governmental organisations.

### **Dissolution of the Commission and Other Final Provisions**

A truth commission is usually dissolved after presenting its final report. However, a growing number of mandates now include provisions that grant commissions additional time to ensure that certain critical activities are handled properly. For instance, a commission needs to hand over its extensive archive to the national archival authority or another institution. It also needs time to disseminate its final report and give clear accounts of the use of its funding, including how any remaining funding or resources will be used.

Depending on the commission's functions and institutional practice, mandates may also cover additional issues, like ensuring that the government will formally answer and address the report's findings and recommendations. Other concerns may be the creation of follow-up and dissemination institutions. The extent of these additional activities will depend on the specific priorities enumerated in the clauses of the mandate and their level of detail.

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<sup>38</sup> Ibid. at Art. 12.

<sup>39</sup> Ibid.

## Bibliography

Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia [Liberia], May 12, 2005, <http://trcofliberia.org/about/trc-mandate>

Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer (establishing the Historical Clarification Commission, or Comisión para el Esclarecimiento Histórico) [Guatemala], June 23, 1994, [www.usip.org/files/file/resources/collections/peace\\_agreements/guat\\_940623.pdf](http://www.usip.org/files/file/resources/collections/peace_agreements/guat_940623.pdf).

Decree No. 187/83 (establishing the National Commission on the Disappearance of Persons, or Comisión Nacional sobre la Desaparición de Personas) [Argentina], December 15, 1983.

Indian Residential Schools Settlement Agreement, Schedule “N” (establishing the Truth and Reconciliation Commission of Canada) [Canada], January 7, 1998, [www.residentialschoolsettlement.ca/SCHEDULE\\_N.pdf](http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf).

Law No. 12.528 (establishing the National Truth Commission, or Comissão Nacional da Verdade) [Brazil], November 18, 2011, [www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2011/lei/l12528.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12528.htm)

National Reconciliation Commission Act (Act 611) (establishing the National Reconciliation Commission) [Ghana], January 9, 2002, [www.ghanareview.com/reconact.html](http://www.ghanareview.com/reconact.html)

Promotion of National Unity and Reconciliation Act 34 of 1995 (establishing the Truth and Reconciliation Commission) [South Africa], July 19, 1995, [www.justice.gov.za/legislation/acts/1995-034.pdf](http://www.justice.gov.za/legislation/acts/1995-034.pdf).

Supreme Decree N° 065-2001-PCM (establishing the Truth and Reconciliation Commission of Peru, or Comisión de la Verdad y Reconciliación) [Peru], June 4, 2001, <http://www.cverdad.org.pe/lacomision/normas/normas01.php>

UN Transitional Administration in East Timor (UNTAET) Regulation No. 2001/10 (establishing the Commission for Reception, Truth and Reconciliation in East Timor) [East Timor], July 13, 2001, [www.un.org/en/peacekeeping/missions/past/etimor/untaetR/Reg10e.pdf](http://www.un.org/en/peacekeeping/missions/past/etimor/untaetR/Reg10e.pdf).

# ICTJ

Justice  
Truth  
Dignity

ICTJ New York  
5 Hanover Square, 24th Floor  
New York, NY 10004  
Tel +1 917 637 3800  
Fax +1 917 637 3900  
[www.ictj.org](http://www.ictj.org)