

Set of general recommendations for truth commissions and archives

Introduction

1. Many post-authoritarian and post-conflict societies are faced with enormous challenges in the preservation and disposition of records containing information on gross human rights violations and serious violations of international humanitarian law. In many cases, secrecy, national security concerns, and poor archival practice stand in the way of guaranteeing the right to know the truth.
2. Archivists have, over time, developed sophisticated technical expertise and knowledge on all relevant issues regarding archives, including preservation, accessibility, and management. However, there is a striking gap between technical archival expertise and practice. Policies and practices that fall short of international standards risk the loss of records containing an important part of a society's heritage and hence hamper the possibility of accessing documentary evidence and support for efforts to achieve truth and justice.
3. Indeed, archives are relevant and can make significant contributions to each of the pillars of transitional justice, not merely truth and justice. At the same time, transitional justice measures can contribute to a country's archival system. Beyond the fact that transitional justice measures generate records themselves, truth commissions, trials, reparations programs and other transitional justice initiatives can contribute to improving archival practice both by the way they implement relevant standards with respect to their own documents, and because some of them, particularly truth commissions, are in a good position to make comments and recommendations about archival reform in general.
4. That potential, however, has not been consistently realized. Even truth commissions, both in post-authoritarian and post-conflict settings, manifest a significant gap between expertise and actual practice. There is little consistency in the disposition of truth commission archives, in the regimes that govern subsequent access to them, and in the recommendations that truth commissions make concerning archival systems.
5. In the conviction that these gaps need to be addressed, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence in his 2013 report to UN Human Rights Council on truth commissions (A/HRC/24/42) "calls for the development of international standards on archiving" for truth commissions. What follows is intended to contribute to the development of such standards. Part I contains recommendations *for* truth commissions pertaining to their own operations and the disposition of their archives, and Part II comprises recommendations that truth commissions *can make* regarding the establishment of national archival policies concerning records that contain information about gross human rights violations and serious violations of international humanitarian law.¹

¹ Both sets of recommendations build on well-established definitions on the "right to know" and on "archives" as stipulated in, among other places, the Updated Set of principles for the protection

6. As a general point, the Special Rapporteur would like to take the opportunity to reiterate the call on States to provide full support to truth-seeking mechanisms throughout their whole life-cycle, which includes access to records containing information on gross human rights violations and serious violations of international humanitarian law, in order for them to be able to effectively and independently implement their mandate.

I. Recommendations for truth commissions

In the context of their operations, truth commissions are encouraged to:

7. *Build* provisions for the eventual disposition of their records, guaranteeing both their safety and accessibility. This needs to be done in the early stages of planning their operations; a commission needs to decide who will be responsible for managing the records, where they will be stored in the short and long term, and how access to them will be controlled.

8. *Engage* archival expertise in making and implementing those provisions during the life of the truth commission, and in this context take advantage of national (National Archives and Archival Associations) and international assistance and advice (e.g. International Council on Archives, Archivists without Borders);

9. *Plan* to deposit their archives in the country where the violations occurred and the commission operates, preferably in existing national archives, duly taking into account considerations of the security, integrity and accessibility of the archives. New and specialized archives may need to be created until such time as the national archives are able to adequately handle records of truth commissions. In the event of the possible loss, mutilation, poor preservation or destruction of the records in the country of origin, truth commissions should keep a complete, scanned and/or digitalized copy of the records in a secure facility outside the country or consider temporary preservation in a secure repository in a second jurisdiction or with an international institution;

10. *Consider* criteria having to do with preservation, accessibility, and trustworthiness of the host institution in deciding on the adequate repository.²

11. *Stipulate* that the access policy of truth commission archives should maximize public accessibility, while respecting applicable privacy concerns, including in particular assurances of confidentiality provided to victims and other witnesses as a precondition of their testimony. Access to truth commission archives may not be denied on grounds of national security or other grounds unless the restriction is in full compliance with international human rights law;

12. *Note* that maximizing future accessibility has an impact on many operations of a commission throughout its lifetime, including, for example, on the process of taking statements and other contact with victims and witnesses who should be advised that their contributions to the commissions may be accessible in the future under specified conditions;

13. *Establish* guidelines for access to truth commission records, which shall take into account:

and promotion of human rights through action to combat impunity; see report of the independent expert Diane Orentlicher to update the Set of principles to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005.

² For example, ISO 16363 defines a practice for assessing the trustworthiness of digital repositories.

(a) General access rules, such as what was previously public should remain public; victims, families, investigative and prosecutorial authorities, as well as legal defense teams, should have unhindered access to information on their specific case; there should be a presumption of public access to all State information with only limited exceptions; a procedure to make effective the right of access should be established; whatever access rules are determined for various categories of potential users (for example, victims, legal representatives, journalists, academics, and members of the general public) should apply to all members of the given category without discrimination;

(b) Categorization of records enabling familiar distinctions between types of documents (e.g. reports of own investigations, records of own meetings, victims' testimonies, documents obtained from other institutions, organizations, or private persons etc.) that will allow for a differentiated approach in facilitating access, in accordance with general access rules, to each type of document/collection;

(c) The need for effective mechanisms of reference services, as well as new technological advances in managing archives;

14. *Develop*, with the support of national and international expertise and assistance, provisions and measures to secure and preserve national archives, including by building effective and sustainable record management and archival systems, which includes, i.a., secure and adequate premises and clear appraisal policies;

15. *Elaborate* policies concerning relevant records and archives of non-State actors, including private businesses, so as to maximize effective management and access of these records by the truth commission.

II. Possible recommendations by truth commissions

16. Regarding their recommendations on archives and the establishment of national archival policies that concern records containing information on gross human rights violations and serious violations of international humanitarian law, truth commissions are encouraged to:

17. *Address* the issue of reform of national archival legislation and institutions to encourage the establishment of modern, accessible, and reliable archives which are essential for the long-term preservation and use of records containing information on gross human rights violations and serious violations of international humanitarian law. Recommendations should include that reform efforts ought to be conducted with the participation of public institutions, civil society, and archival experts;

18. *Make* recommendations to preserve and actively use national archives, including archives of security services;

19. *Call for* independent oversight over the archives, including of archives of formerly repressive regimes;

20. *Recommend* the creation of archival laws, freedom of information legislation, data protection legislation and transparency requirements within other laws, which take into account the right to information, the right to know the truth, and the specificity of the records dealing with human rights violations and violations of international humanitarian law;

21. *Recommend* to the responsible authorities that they increase the capacity and where necessary the resources of State and local archival actors;

22. *Recommend* the provision by the State of information to the public on legal and practical requirements for access to archives;

23. *Promote* the establishment of comprehensive National Archival systems, including non-governmental records, especially those that are relevant to gross human rights violations and serious violations of international humanitarian law. Improvements in the regulation, disposition, protection and access to non-governmental archives (which does not involve the centralization of *all* records) will contribute to the establishment of such comprehensive systems, in accordance with international standards;

24. *Recommend* to the responsible authorities that they facilitate the work of civil society in the area of archives and ensure an enabling environment in this respect, in accordance with international standards;

25. *Reiterate* that access to archives, containing records with information on gross human rights violations and serious violations of international humanitarian law, may not be denied to the public on grounds of national security unless the restriction is in full compliance with international human rights law.