

Truth, Right to, International Protection

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Table of Contents

[A. Notion](#)

[B. The Basis in International Law](#)

[C. Assessment](#)

[Select Bibliography](#)

[Select Documents](#)

A. Notion

- 1 An emerging—though rapidly developing—norm of → *international law*, the right to truth can be described as a ‘State obligation to reveal to the victims and society everything known about the facts and circumstances of massive and systematic human rights violations of the past, including the identity of the perpetrators and instigators’ (Méndez [1998] 255). This obligation presupposes the existence of massive or systematic human rights violations taking the form of the most abhorrent international criminal offences such as torture, → *genocide*, → *disappearances*, → *war crimes*, or → *crimes against humanity* (see also → *Gross and Systematic Human Rights Violations*; → *Torture, Prohibition of*; Seibert-Fohr 68). Likewise, this obligation is likely to arise in contexts of → *Transitional Justice in Post-Conflict Situations* marked by the end of political violence, the cessation of the hostilities, or the fall of the dictatorial regime (Teitel); yet technically this obligation arises with the systematic human rights violation itself.
- 2 In this respect, in a report to the UN Security Council, the UN Secretary-General defined 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 differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof’ (UN Doc S/2004/616 [23 August 2004] para. 8).
- 3 The → *International Military Tribunals* after World War II triggered a remarkable development of the international norms applicable to post-conflict reckoning with massive human rights abuses (see also → *History of International Law, since World War II*; Hughes, Schabas and Thakur). We can assert today that, in the presence of massive or systematic human rights violations, international law imposes certain basic obligations upon → *State[s]* and upon the → *international community*. At the State level:

these affirmative obligations include, first and foremost, an obligation to investigate, prosecute, and punish. This obligation on the part of the State is a *right to justice* when viewed from the perspective of the victims and their families. Second, there is an obligation to disclose to the victims and to society all that can reliably be known about the circumstances of the crime, including the identity of the perpetrators and instigators. This is called a *right to truth*. Third, the State is obliged to offer to the victims or their kin some measure of *reparation*, which should not be limited only to monetary compensation. Finally, whether or not perpetrators are punished, the State has a duty to eliminate from the ranks of the security forces those agents who are known to have participated in such crimes. All four obligations are independent from each other, and all must be executed in good faith. It follows that if one of them is rendered impossible to execute (for example, by a defective amnesty law), the State must still strive to comply with the other three to the best of its ability (Méndez [2006] 117).
- 4 The right to truth is not simply the access to public records or to information in general (→ *Information and Communication, Freedom of, International Protection*). It comprises a positive action from the State to undertake a sustained and systematic effort to investigate and accumulate evidence, an effort that will almost always necessitate major investments of attention and human resources. In a very broad sense we could simplify the aims of the truth telling process with the three Ws: what, why and who, ie what really happened, why did it happen, and who is directly and indirectly responsible.
- 5 In this respect, the → *Inter-American Court of Human Rights (IACtHR)* in *Almonacid-Arellano v Chile* explained that the ‘historical truth’ included in *Chile’s Comisión Nacional de Verdad y Reconciliación* (→ *Truth and Reconciliation Commissions*) is no substitute for the duty of the State to reach the truth through judicial proceedings. In this

sense, Arts 1 (1), 8 and 25 → *American Convention on Human Rights (1969)* (ACHR) protect truth as a whole, and hence, the Chilean State must carry out a judicial investigation of the facts related to Mr Almonacid-Arellano's death, attribute responsibilities, and punish all those who turn out to be participants (*Almonacid-Arellano v Chile* para. 150). Furthermore, this right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities (*Valle Jaramillo v Colombia* para. 102).

6 As regards the content of the right to truth,

in the first place, the State must try to establish the truth about the repressive structure that led to the commission of crimes against humanity, including the chain of command, the orders given, the establishments that were used, and the mechanisms knowingly used to insure impunity and secrecy in these operations (this was the model followed by the National Commission on Disappeared Persons—CONADEP—in Argentina). A second level of the truth-telling process is the individualized truth consisting of uncovering the fate of every one of the victims whose case is known. This individualized truth is the obligation that the State and society owe to each victim and each family of disappeared person, an obligation that remains in force while there is still uncertainty about the fate and whereabouts of the victims of State abuse (this was the model followed by the Rettig Commission in Chile). A third aspect of investigation and revealing the truth is the process whereby victims or their family members are invited to be heard by a State entity, or at least by a representative of the society in which they live. This often occurs after the authorities have denied them a chance to be heard or even to be received, after they have been intimidated and threatened so that they do not persist in searching for the truth (this aspect was of great importance in the South African experience) (Méndez [1998] 265).

7 International obligations are binding on States irrespective of domestic division of powers and jurisdictions (→ *International Law and Domestic [Municipal] Law*; see also → *Human Rights, Domestic Implementation*). The task to reveal the truth as part of the State obligation towards its own citizens is generally entrusted to the Executive Power,

since the relevant documents will most likely be in archives in possession of the Executive, and because the agents with knowledge of the facts will be members of the armed forces or of security forces, which belong to the Executive Branch. If the Executive complies in good faith with the full contents of this obligation, the judiciary will have no need to step in (Méndez [1998] 272).

In some cases, the judiciary may assume these kinds of functions, as in the so-called 'truth trials' in Argentina. This is because judicial bodies will always be asked

to arbitrate the means with which to guarantee the enjoyment of the right to truth, not only because in domestic law the judicial power is the final guarantor of the rights of the persons, but because it is the judicial branch which has the responsibility of incorporating international standards into domestic law (Méndez [1998] 270).

Nevertheless, it must be noted that this is an obligation of means and not of results, since it is not inconceivable that certain aspects of the truth will be lost forever.

8 In this respect, the work of the Office of the United Nations Commissioner for Human Rights (OHCHR; → *Human Rights, United Nations High Commissioner for [UNHCHR]*) on the right to truth emphasizes the need of States to 'ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law' as an essential precondition to protect the right to truth (UN Doc A/HRC/12/19 [21 August 2009]). According to this report, '[a] strong national archival system is essential in a democracy to ensure that records important to exercising human rights are preserved' (at para. 6) and '[m]ost of the key records for human rights purposes are governmental. This means that strengthening and building capacity in the national archives system is a vital step in a transition process. It also means that governmental access policies are a crucial issue, and new access laws need to be enacted by the legislature following the change of regime' (at para. 10). Archives and records are essential for truth-telling processes in a double dimension. Firstly as an existing source of information to build and support the history and the facts of any truth-seeking mechanism. Secondly, truth-seeking processes themselves create an important amount of records. 'The records of a transitional justice institution are a concentrated, rich source of information for the history of the country and its people and must be preserved and made available to future users' (at para. 7).

9 Directly connected with the content of the investigations seeking the truth, is the question of whether a truth commission or similar body should or should not name the presumed authors of the crimes whose identity comes to light through

the investigations (Hayner 107). National experiences show examples of both kinds of truth commissions, those that 'name names' and those that refuse to do so. Some authors believe that this depends on whether the truth report will be followed by criminal prosecutions against those presumed responsible (see Méndez [1998] 268).

- 10 It is important to mention three basic relationships between the right to truth and: a) the existence of → *amnesties*; b) the principle of → *aut dedere aut iudicare*; c) the need for reconciliation. The existence of amnesty laws is usually, though not necessarily, the reason why truth commissions become essential. If prosecutions cannot be carried out, there is no other way to know the truth of what really happened. In this sense, international law is witnessing the emergence of a principle regarding the invalidity of domestic amnesties when such amnesties attempt to cover grave breaches of international → *human rights* and humanitarian law (→ *Humanitarian Law, International*) such as war crimes, genocide and crimes against humanity (see *Barrios Altos Case [Judgment]* para. 41). Despite their illegality, these amnesties are often cited as obstacles to prosecution. If so, they are not a valid reason to ban the exercise of the right to truth. As the IACtHR emphasized,

even in the hypothetical case that those individually responsible for crimes of this type cannot be legally punished under certain circumstances, the State is obligated to use the means at its disposal to inform the relatives of the fate of the victims and, if they have been killed, the location of their remains (*Velásquez Rodríguez Case* para. 181).

- 11 Moreover, the United Nations policy towards amnesties, supported by the practice of both international and domestic bodies, clearly points to the non-recognition of the so-called 'blanket amnesties'. As the OHCHR's Analytical Study on Human Rights and Transitional Justice points out,

under various sources of international law and United Nations policy, amnesties are impermissible if they prevent prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity, gross violations of human rights, or serious violations of international humanitarian law. Both international law and United Nations policy also recognize the right of victims to an effective remedy, including reparations, and the right of victims and societies to know the truth about violations (UN Doc A/HRC/12/18 [6 August 2009] para. 54).

- 12 In addition, the UN Human Rights Council Resolution on Human Rights and Transitional Justice noted with interest the conclusion of the UN Secretary-General 'that peace agreements endorsed by the United Nations can never promise amnesties for genocide, crimes against humanity, war crimes and gross violations of human rights', as well as welcomed 'the fact that a growing number of peace agreements contain provisions for transitional justice processes, such as truth-seeking, prosecution initiatives, reparations programmes and institutional reform, and do not provide for blanket amnesties (UN Doc A/HRC/RES/12/11 [1 October 2009] principles 8 and 11 respectively; → *United Nations Commission on Human Rights/United Nations Human Rights Council*).

- 13 As regards the duty of the State to prosecute grave human rights violations, the adequate fulfilment of this obligation by the State could be the most complete and satisfactory method of obtaining both truth and justice, by means of transparent criminal trials conducted with full guarantees of due process (see also → *Fair Trial, Right to, International Protection*). However, if prosecutions are not possible the right to truth should take a different path. Even when prosecutions are possible, the creation of a truth commission is often an advisable policy option, because a commission's means to conduct → *fact-finding* and gather evidence need not adhere to more stringent criminal due process standards. Truth commissions will usually apply more flexible proof requirements, since their findings generally rely on testimonies of victims and witnesses. The goal of truth commissions is not to prove a perpetrator's criminal guilt but to disclose the truth about the facts. Thus, truth commissions do not have the ability to prosecute individuals nor to impose criminal sanctions. On the other hand, this special characteristic of truth-telling procedures guarantees observance of the principle → *ne bis in idem*, as well as the individual's right against self-incrimination. Nevertheless, in experiences such as the Truth Trials in Argentina, the disclosure during the sessions of new facts likely to constitute criminal offences—*notitia criminis*—not covered by amnesty legislation, is referred to the competent judicial body for investigation and eventual prosecution.

- 14 Whether truth-seeking is sought by means of judicial procedures or by truth commissions, it will necessarily require the involvement of witnesses, victims or any other person who can testify or provide first hand information about the human rights violations. Therefore witnesses are key actors of transitional justice processes yet, at the same time, vulnerable ones. The practice of judicial bodies, both at international and national levels, supports the need to create and maintain formal witness protection programmes 'designed to provide a full range of physical protection and psychosocial support to programme participants, be they witnesses or associated persons' (UN Doc A/HRC/12/19 [21 August 2009] para.

45). While witness protection programmes are common in most domestic criminal proceedings, they should be adapted or modified to fit the needs of witnesses of gross human rights violations.

Firstly, a distinction should be made between the witnesses of organized crime and those testifying in crimes related to gross human rights violations. In the context of prosecutions dealing with organized crime, witnesses are usually 'insiders', but in the case of trials for human rights violations, witnesses are to a large extent the victims or their family members, friends or relatives. Secondly, it is rare to find a link between State authorities and perpetrators of ordinary or organized crimes, even serious ones (eg drug trafficking). In human rights prosecutions, on the other hand, the alleged perpetrators are almost inevitably associated with State authorities. There are often State agencies or connected individuals with an interest in opposing prosecution and with the practical power to pervert the course of justice, including through abuse and intimidation of witnesses. As a result, it may become more difficult to prosecute perpetrators of gross human rights violations (UN Doc A/HRC/12/19 [21 August 2009] para. 41).

- 15 Traditionally, it has been repeatedly argued that the search for truth and justice might be an obstacle to accomplishing reconciliation (Goldstone). It is true that in certain circumstances when a community is trying to negotiate solutions to an armed conflict or political violence (→ *Armed Conflict, International*; → *Armed Conflict, Non-International*), it might be indispensable to grant some degree of amnesty to some of those responsible. Yet there cannot be reconciliation without knowing the truth. Reconciliation requires some act of contrition on the part of those responsible for the harm committed, as well as some gesture towards the victims on the part of society and the State, and this can only be accomplished if we have some degree of certainty as to what really happened (see also → *Victims' Rights*; Doak). In its Analytical Study on Human Rights and Transitional Justice, the OHCHR states that,

[it] has been involved in complex discussions articulating the relationship between justice and peace. In the past, the dilemma presented was between securing peace with the cooperation of perpetrators of international crimes or addressing justice at the cost of perpetuating conflict. In recent years, however, this assumed tension between justice and peace has gradually dissolved. The United Nations now recognizes that, when properly pursued, justice and peace can promote and sustain one another (UN Doc A/HRC/12/18 [6 August 2009] para. 51).

B. The Basis in International Law

- 16 The → *Inter-American Commission on Human Rights (IACommHR)* had asserted, as early as in the mid 1980s, that,
- 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 repetition of such acts in the future. Moreover, the family members of the victims are entitled to information as to what happened to their relatives. Such access to the truth presupposes freedom of speech, which of course should be exercised responsibly; the establishment of investigating committees whose membership and authority must be determined in accordance with the internal legislation of each country; or the provision of the necessary resources so that the judiciary itself may undertake whatever investigations may be necessary ('Annual Report of the Inter-American Commission on Human Rights 1985–86' OEA/Ser.L/V/II.68 Doc.8 Rev.1, 193; see also → *Opinion and Expression, Freedom of, International Protection*).
- 17 Since then the IACommHR and the IACtHR 'have recognized the right to the truth in their respective recommendations and judgments in various individual cases of human rights violations' (AG/RES. 2406 [XXXVIII-O/08] Preamble). Even the General Assembly of the → *Organization of American States (OAS)* has enacted several declarations on the matter (AG/RES. 2175 [XXXVI-O/06]; AG/RES. 2267 [XXXVII-O/07]; AG/RES. 2406 [XXXVIII-O/08]; AG/RES. 2509 [XXXIX-O/09]).
- 18 At the international level the UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of 8 February 2008, has explicitly embodied in principle 2 the inalienable right to the truth as follows:
- Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.

- 19 The OHCHR through a series of studies focused on the right to truth has supported the legal foundation of this right in the light of current international law (UN Doc E/CN.4/2006/91 [8 February 2006] paras 4–32).

The right to know the truth about gross human rights violations and serious violations of humanitarian law is recognized in some international treaties and instruments, in the national legislation of several countries, in national, regional and international jurisprudence and by many international and regional intergovernmental organizations (UN Doc A/HRC/5/7 [7 June 2007] para. 81).

- 20 The right to truth is not directly embodied in a binding international instrument, although there is reference to the right of the victim 'to know the truth regarding the circumstances of the enforced disappearance' in Art. 24 (2) International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006 (GAOR 61st Session Supp 49 vol 1, 408). As UN Independent Expert on Impunity D Orentlicher asserts, 'recent developments in international jurisprudence and State practice have strongly affirmed both the individual and collective dimensions of the right to know, although the contours of this right have been delineated somewhat differently by various treaty bodies' ('Promotion and Protection of Human Rights: Impunity' [18 February 2005] para. 17; see also → *State Practice*). Consequently, as explained by treaty bodies, regional courts, and international and domestic tribunals, this right arises directly from a more general international and widely accepted norm: the duty of States to respect and ensure human rights; see Art. 2 → *International Covenant on Civil and Political Rights (1966)* (ICCPR); Art. 1 → *African Charter on Human and Peoples' Rights (1981)*; Art. 1 ACHR and Art. 1 → *European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)* (ECHR). According to the IACtHR, the duty of States to respect and ensure human rights,

implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable juridically of ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation (*Velásquez Rodríguez Case* para. 166).

However and despite any binding international legal obligation, the IACtHR has declared that,

[i]t is worth noting that the obligation to investigate arises not only from provisions of the international legal conventions that are binding for the States Parties, but also from the domestic laws that refer to the obligation to investigate ex officio certain unlawful conducts and the provisions that allow the victims or their next of kin to denounce or file complaints, in order to participate procedurally in the criminal investigations undertaken to establish the truth about the facts (*Heliodoro Portugal Case* para. 143).

- 21 Likewise the → *Human Rights Committee* (HRC) in an individual complaint acknowledged that the anguish and stress caused to a mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts itself constituted a violation of the ICCPR as cruel, inhuman or degrading treatment (see also → *Human Rights, Individual Communications/Complaints*). The HRC concluded that 'the author has the right to know what has happened to her daughter' (*del Carmen Almeida de Quinteros v Uruguay* para. 14). The → *European Court of Human Rights* (ECtHR) arrived at the same conclusion when it asserted that 'the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attains a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3 [ECHR]' (*Cyprus v Turkey* para. 157; see also *Taş v Turkey* paras 79–80). In *Kurt v Turkey*, the ECtHR considered that an award of compensation was justified 'given that the authorities have not assisted the applicant in her search for the truth about the whereabouts of her son, which has led it to find a breach of Articles 3 and 13 [ECHR] in her respect' (at para. 175). This right to know has recently been recognized also in relation to the next of kin of victims of serious violations of human rights other than enforced disappearance (*El Caracazo Case* paras 122–25).
- 22 The IACtHR also declared that within the scope of Art. 1 (1) ACHR, the State has the obligation to ensure that grave violations do not occur again. 'Preventive measures and those against recidivism begin by revealing and recognizing the atrocities of the past Society has the right to know the truth regarding such crimes, so as to be capable of preventing them in the future' (*Bámaca Velásquez Case* para. 77). Therefore, the IACtHR reiterated that 'the State has the obligation to investigate the facts that generated the violations of the American Convention in the instant case, as well as to publicly divulge the results of said investigation, and to punish those responsible' (*Bámaca Velásquez Case* para. 78).

23 Similarly, in a case brought before the IACCommHR against Argentina for the disappearance of one of its nationals, as part of a friendly settlement between the State and the petitioners, the Argentine government agreed to accept and guarantee the 'right to the truth, which involves the exhaustion of all means to obtain information on the whereabouts of the disappeared persons. It is an obligation of means, not of results, which is valid as long as the results are not achieved, not subject to prescription' (*Aguiar de Lapacó v Argentina* para. 17 (1)).

24 International case law shows that the recognition of the right to truth has been linked to several other international norms and principles (see also → *General International Law [Principles, Rules and Standards]*). For instance, the ECtHR stressed that a State's failure to conduct an effective investigation aimed at clarifying the whereabouts and fate of missing persons who disappeared in life-threatening circumstances constitutes a violation of its obligation to protect the right to life under Art. 2 ECHR (*Cyprus v Turkey* para. 136; → *Life, Right to, International Protection*). Likewise in *Aksoy v Turkey* the ECtHR declared that,

where an individual has an arguable claim that he has been tortured by agents of the State, the notion of an 'effective remedy' entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure (*Aksoy v Turkey* para. 98; and *Çakıcı v Turkey* para. 111).

Moreover, the ECtHR pointed out that,

given the fundamental importance of the right to protection of life, Article 13 imposes, without prejudice to any other remedy available under the domestic system including the payment of compensation where appropriate, an obligation on States to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible and in which the complainant has effective access to the investigatory procedure (*Yaşa v Turkey* para. 114; *Tanrikulu v Turkey* para. 117; and *Kaya v Turkey* para. 107).

25 Since the *Velázquez Rodríguez case*, the jurisprudence of the IACtHR has repeatedly supported the right to truth pursuant to Art. 1 (1) ACHR (obligation to respect and ensure human rights), Art. 8 (1) ACHR (right to a fair trial), and Art. 25 ACHR (right to judicial protection). For example in the *Bámaca Velásquez case* the IACtHR asserted that,

the right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention (*[Merits]* para. 201; also in *Barrios Altos Case [Judgment]* para. 48).

Similarly, the IACCommHR declared that,

the right that all persons and society have to know the full, complete, and public truth as to the events transpired, their specific circumstances, and who participated in them is part of the right to reparation for human rights violations, with respect to satisfaction and guarantees of non-repetition. The right of a society to have full knowledge of its past is not only a mode of reparation and clarification of what has happened, but is also aimed at preventing future violations. (*Romero y Galdámez v El Salvador Case* 11.481 para. 148).

This last argument was supported by the IACtHR when it declared that,

exercise and recognition of the right to the truth in a specific situation constitutes a measure of reparation (*Heliodoro Portugal Case* para. 244)

and that,

in cases of serious breaches to fundamental rights the imperious need to avoid the repetition of said facts depends, to a great extent, on the avoidance of their impunity and satisfying the right of both victims and society as a whole to have access to the knowledge of the truth of what happened. The obligation to investigate constitutes a means to guarantee said rights, and failure to comply with it brings about the State's international responsibility (*Escué Zapata Case* para. 75).

Also the IACtHR asserted that,

'[t]he knowledge of the truth in human rights violations ... is an inalienable right and an important means of reparation for the victim and, if applicable, for their next of kin, and it constitutes a fundamental way of learning the truth that allows a society to develop its own methods of reproach and deterrence (*Ximenes-Lopes Case* para. 245).

- 26 This latter reasoning is also used by UN Special Rapporteurs T van Boven and C Bassiouni in drafting the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, approved by the UN General Assembly (UNGA Res 60/147 [16 December 2005]). The document recognizes that the 'right to remedies', enshrined in almost all international and regional human rights conventions and in → *customary international law*, includes: a) equal and effective access to justice; b) adequate, effective and prompt reparation for harm suffered; c) access to relevant information concerning violations and reparation mechanisms. Within the field of → *reparations*, the principles and guidelines state that it should comprise, inter alia: a) effective measures aimed at the cessation of continuing violations; b) verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; c) the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; d) an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; e) public apology, including acknowledgement of the facts and acceptance of responsibility; f) judicial and administrative sanctions against persons liable for the violations; g) commemorations and tributes to the victims; h) inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels (→ *Human Rights Education*; see also → *Education, Right to, International Protection*).

C. Assessment

- 27 More than two decades of national and international experiences of truth commissions provide an inestimable framework to assess weaknesses and advantages of truth-telling mechanisms (Hayner). International practice reveals experiences of truth-telling in Latin America, Eastern Europe, Africa, and Asia (van der Merwe, Baxter and Chapman). These national truth-telling experiences have all been generally satisfactory. Truth-telling mechanisms can produce a form of consensus that allows a society to move on to an acceptance and acknowledgement of painful facts, to achieve the political will to do justice regarding them, and eventually to reconcile (Méndez [2006] 142). Still, it is important not to exaggerate expectations about the outcome of a truth commission. An honest portrayal of what can be offered by a truth commission is important from the start (OHCHR 2).
- 28 In current international law and practice it is unclear if the right to truth is an independent human right or part of broader rights such as the right to reparations, the right to remedies, or the right not to be subjected to inhuman, cruel or degrading treatment. Its inclusion within the concept of reparations restricts truth-telling only to victims or their next-of-kin, when the right is actually owed also to → *civil society* as a whole. Moreover, a correct approach to the truth should address and develop more efficient means to bring together victims' expectations with the interests and needs of civil society, especially when they do not match. Subordinating the truth to the concept of reparations does not seem to recognize the political and moral weight that truth-telling exercises have acquired in recent times. In that sense, recognition of the right to truth as an autonomous right, perhaps eventually through a binding conventional norm, may be the way of the future.
- 29 The initiation by a State of a committed and sustained investigation and prosecution of past human rights violations might well suffice to reveal the truth, punish perpetrators, compensate victims, and remove offenders from strategic public office. However, international practice shows that prosecutions are the toughest challenge to societies in transition. For that reason, it may be conceptually and strategically advisable to keep these four elements of transitional justice apart. State obligations regarding past human rights violations do not cease when there is a failure to undertake criminal investigations and prosecutions. While discussing how and when prosecutions will take place, the State can, and sometimes should, move forward to disclose the truth, compensate the victims and remove alleged perpetrators from public office through other mechanisms. Truth commissions are not the only way to recover and disclose the truth about past human rights violations; the decision whether to establish a truth commission should lie basically in the domestic sphere and be made always through a broad consultative process. Nevertheless, it must be always borne in mind that international law imposes a duty upon States to disclose the truth about past human rights violations irrespective of the method or mechanism used to achieve such a goal.

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