

volume

1



# Indigenous Peoples and the Right to Truth

A Toolkit for Practitioners





# Indigenous Peoples and the Right to Truth: Volume 1

*This paper is part of AJAR's series on transitional justice in  
Australia and the Pacific.*

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# Who We Are

## Elsham Papua

ELSHAM PAPUA (Institute of Human Rights Study and Advocacy) was formed due to widespread and ongoing human rights abuses in Papua. Established on 5 May 1998, ELSHAM is a continuation of the Irian Jaya Working Group for West Papua (IJWGP) which began work in the 1990s. In a formal sense, it was established by leaders from three churches (GKI/ the Christian Evangelical Church in Papua, KINGMI/ the Tabernacle Christian Church and the Jayapura Diocese) as well as NGO activists in Papua. Since then, ELSHAM has carried out monitoring, investigations and advocacy in various human rights cases in Papua. ELSHAM works upon the principles of human rights with a vision for realising in Papua a society that has a critical awareness of the values and principles of human rights and democracy.

## AJAR

Asia Justice and Rights (AJAR) is a not for profit organisation that works to strengthen human rights and alleviate impunity in the Asia-Pacific region. AJAR facilitates learning and dialogue about human rights, documentation, conflict resolution, as well as holistic processes for the reparation, empowerment and advocacy of victims, their families and communities. We believe that the most effective way to reach our goals is to invest in people involved in the long-term struggle for human rights, such as victims, survivors and activists. Our work is focussed on countries that are transitioning from a context of mass human rights violations to democracy.

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# Preface

For decades, indigenous peoples in Papua have struggled together to fight injustice and abuse of power which undermines justice, law, and the right to truth. Underlying it all, is the continuing erosion of the right of indigenous communities to their customary land. But when indigenous peoples lose their customary lands, what do they become? Where are they supposed to go?

I recall the words of an indigenous women we worked with in Unurum Guay who explained the deep loss she felt after her traditional lands were converted into palm oil plantations:

“... After the trees were cut down, after we had stood there, it felt as if our hearts had been torn apart. We felt it as if it was our own bodies, it felt like our heads had been shaved bald, all of it had been destroyed. The forest is no more, all of it has disappeared.”<sup>1</sup>

Granted as part of Papua’s Special Autonomy Law (2001), special measures to recognise our identity through cultural symbols and the creation of a truth and reconciliation commission continue to be denied decades later. In the face of intimidation, violence and the theft of land, indigenous Papuans continue their fight for fundamental human rights.

It is my pleasure to have worked with AJAR in publishing ‘Indigenous Peoples and the Right to Truth’ which is based on years of experience in the field of human rights and work in solidarity with indigenous peoples carried out in the struggle to enforce human rights in Indonesia, Asia and other parts of the world. Through the collective work of AJAR and ELSHAM Papua, there have been real impacts in the advancement of

- 
1. AJAR, ELSHAM (Papuan Women's Working Group), All the Birds are Gone: Indigenous Women Speak out Against Forest Loss in Papua. AJAR, 2021. Pg. 50.

human rights, particularly the social, economic, cultural and political rights of different communities.

I hope that this book can be a resource for indigenous activists in Papua and around the world, enriching our understanding of movements to recognise and advance indigenous rights, focusing on our right to truth. I also hope that it empowers indigenous people in their ongoing campaigns to fight for, and protect, their fundamental human rights in the face of the many challenges and global changes that continue to arise.

The case studies on indigenous people in Papua, as well as the many experiences of indigenous peoples in the Pacific and Latin America, will certainly be enriching for readers.

Thank you to all those involved in producing this book which is invaluable in the fight for the existence of indigenous people in Papua and across the world.

Jayapura, January 2022.

ELSHAM Papua

Pdt. Matheus Adadikam.STh.





Two Sami activists stand next to a mural painted outside the Court of Appeal for Northern Norrland in Umeå, Sweden. The Girjasmålet case saw hunting and fishing rights taken from the Swedish State and granted to the Sami community in Norrbotten county.

In the mural, the Swedish state is represented by a wolf wearing a suit to symbolise the government's indifference to indigenous issues and the predatory extraction of natural resources. The reindeer represents the struggle of the Sami people with the skull a symbol of their willingness to resist state power, even after death. Between the two figures, the mural reads 'we are still here.' (Artwork by Anders Sunna and photo by Emma-Sofia Olsson, 2020).

# Introduction

## Background and Purposes of This Toolkit

This toolkit, divided into two volumes, offers practical assistance to Indigenous and non-Indigenous human rights organisations and activists, as well as governments considering truth telling processes related to Indigenous peoples. The toolkit distills lessons from forty years of truth commissions, especially those that have involved Indigenous peoples. The document also outlines the emerging international framework on Indigenous rights, which non-Indigenous organisations may not be familiar with.

### Volume 1

Over the past 40 years, a practice of transitional justice has emerged around the world, including truth commissions, mostly in post-conflict or post-authoritarian contexts. During this same period, a global Indigenous movement has led to the development of an international human rights framework on Indigenous rights endorsed by nearly all States. So far, there has been limited cross fertilisation between the two movements, though the case studies document an emerging wave of truth telling processes led by Indigenous activists. This toolkit aims to help foster cross-learning for further action.

The toolkit explains the key pillar of transitional justice, the right to truth, and outlines mechanisms that pursue the right to truth in relation to past injustice. It raises questions for Indigenous communities deciding to pursue a truth telling process, such as how it can contribute to their wider political and rights strategy.

The toolkit focuses on practical lessons about how to conduct successful truth telling processes that engage diverse stakeholders, with a focus on women. It considers methods to enhance participation, the value of civil society partnerships, and how truth telling processes can provide public education to mobilise social change. There is also a section on planning for ongoing action beyond the life of a truth telling process.

The second volume of this toolkit is made up of case studies and provides a wide-ranging survey of truth telling processes involving Indigenous peoples. Case studies are organised by region, and include post-conflict truth commissions that involve

Indigenous peoples among other groups of victims; truth commissions focused on particular violations against Indigenous peoples; special inquiries into particular kinds of violations against Indigenous peoples; special inquiries into the historical relationship between Indigenous and non-Indigenous peoples in a country; national human rights institutional inquiries into specific kinds of violations against Indigenous peoples; civil society truth telling processes; and community truth telling processes. Each case study highlights background elements, the mandate, methodology, operations, final report, recommendations, and follow-up to the process, and some main lessons learned.

AJAR is not an Indigenous organisation, but a regional NGO that works across the region in support of truth telling mechanisms and victims of human rights abuses within a transitional justice framework. In working with Indigenous peoples, we humbly acknowledge that Indigenous peoples themselves lead their struggle for recognition and realisation of their rights. In solidarity, we have much to learn. At the same time, we believe that non-Indigenous human rights organisations and governments can do much more to work alongside Indigenous organisations and communities in a rights-based framework to address past and current injustices.

Asia is home to the world's largest population of Indigenous peoples, many still struggling for recognition as distinct peoples. Many are especially vulnerable in the face of conflicts and uncontrolled development in their ancestral lands and territories, including dispossession, theft of natural resources and targeted violence.

As a human rights and transitional justice organisation, we need to build relationships with Indigenous human rights defenders and activists across our Asia-Pacific region. Such relationships are necessary across the human rights community to work with Indigenous peoples to address past injustice and current challenges so that societies can build a new foundation for just relationships based on full realisation of human rights.





Robert Campbell Jr,  
Aboriginal Embassy, 1986,  
synthetic polymer paint on  
canvas, 88 h x 107.3 w cm.  
Courtesy of Rolsyn Oxley9  
Gallery, Sydney.

# 01 Indigenous Peoples Worldwide

More than 476 million Indigenous people in 90 countries make up 6.2% of the global population. More than 5,000 diverse and distinct Indigenous communities speak 4,000 languages.

Indigenous peoples live in every region of the world, with about 70% in Asia and the Pacific; 16.2% in Africa; 11.5% in Latin America and the Caribbean; 1.6% in North America; and 0.1% in Europe and Central Asia. Almost three-quarters of Indigenous peoples live in rural areas. Just under half live in middle-income countries, with 16% in low-income countries.

## Who are Indigenous peoples?

The United Nations set out elements of a definition of Indigenous peoples in the Declaration on the Rights of Indigenous Peoples (2007):

- Self-identification as Indigenous peoples individually and as accepted by the community.
- Historical continuity with pre-colonial or pre-settler societies.
- Strong link to territories and surrounding natural resources.
- Distinct social, economic or political systems.
- Distinct language, culture and beliefs.
- Non-dominant status in society.
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

The term was deliberately not defined in the Declaration. Indigenous peoples have argued against a formal definition at the international level, stressing the need for flexibility and respect for the right to define themselves within highly variable contexts.

Indigenous peoples may be referred to in different countries as “Indigenous ethnic minorities,” “aboriginals,” “hill tribes,” “minority nationalities,” “native peoples,” “scheduled tribes,” or “tribal groups,” while some Indigenous peoples use the term “First Nations” or “First Peoples”.

In most countries, Indigenous peoples are in the minority. However, despite similar conditions of marginalisation, indigeneity is different from being an ethnic minority, as are the rights which flow from being first peoples (see Section 2).

### **State recognition**

Some States contest the concept of “Indigenous peoples”, arguing that all their citizens are Indigenous or that it is difficult to define who Indigenous peoples are. Others regard indigeneity as an ethnic minority, without regard to the notion and rights of first peoples. Recognition has been a particular challenge in many countries in Asia and Africa, where some argue that indigeneity simply means presence before European colonisation.

In countries where Indigenous peoples are recognised as distinct peoples they continue to struggle to have their rights enshrined in law with respect to constitutional recognition, sovereignty, and self-determination. Nonetheless, the global movement of Indigenous peoples continues to strengthen and the international rights framework continues to develop in different regional and national contexts. Despite challenges, many countries in Asia have taken steps to recognise Indigenous peoples, especially since the 2007 UN Declaration.





An indigenous woman walks past portraits of missing people in Guatemala City on the 12th anniversary of the Truth Commission's report. February, 2011. (Photo by Johan Ordonez/AFP via Getty Images).

## 02

## Indigenous Peoples and Human Rights

Indigenous peoples experience the consequences of historical invasion and colonisation of their territories. Development has not only often left Indigenous peoples behind, but has often negatively affected their rights and lives. Indigenous peoples face discrimination because of distinct cultures, identities and ways of life, while disproportionate poverty and marginalisation compounds human rights violations. Intergenerational trauma among Indigenous peoples is also well documented.

Resistance and survival has been the mainstay of Indigenous strategy. While this remains the case for many Indigenous communities, a global Indigenous rights movement has gained strength since the 1970s, offering the basis for new rights-based relationships between Indigenous peoples and states.

### **The global Indigenous movement, and major developments in international human rights law**

Since the 1970s, a significant global Indigenous movement has driven the international debate on Indigenous rights. The movement has engaged with civil society, international mechanisms, and national and regional bodies. In 1982, the Working Group on Indigenous Populations was created within the United Nations, guiding dialogue between Indigenous peoples and Member States to develop an international rights-based framework on Indigenous peoples, including two major international instruments.

### **Indigenous and Tribal Peoples Convention, 1989 (No.169)**

The Indigenous and Tribal Peoples Convention is the only international convention on Indigenous rights open to ratification by States. Only 23 states have ratified the

Convention, including only one in Asia (Nepal), with 16 in Latin America and the Caribbean.

The Convention calls for measures to protect Indigenous and tribal peoples' individual and collective rights, to ensure their integrity, to support their institutions, and to eliminate discrimination and socio-economic gaps. A central feature of Convention No. 169 is its focus on Indigenous and tribal peoples' participation in decision making through appropriate mechanisms and institutions. It also contains provisions on equal rights for Indigenous and tribal women.

### **United Nations Declaration on the Rights of Indigenous Peoples, 2007**

A landmark in the recognition of Indigenous peoples' rights and a driver of further change is the Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the United Nations General Assembly in 2007.

More than 20 years of intense dialogue, discussions, negotiations, lobbying and advocacy between Indigenous peoples and states led to the vast majority of Member States endorsing the Declaration. The Declaration establishes a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world. It elaborates on human rights standards and fundamental freedoms as they apply to the specific situation of Indigenous peoples. It is the first international instrument that formally recognizes Indigenous peoples' right to self-determination.

The Declaration lays out the individual and collective rights of Indigenous peoples worldwide as distinct peoples. The foundation of these rights is the right to self-determination of Indigenous individuals and peoples (Article 3), meaning they have the right to freely determine their political status and freely pursue their economic, social and cultural development - including the right to autonomy and self-government (Article 4). Directly related to this right is the guarantee of individual and collective rights under the Universal Declaration of Human Rights and international law (Article 1), freedom and equality and the right to non-discrimination (Article 2). Other related rights include the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the state (Article 5), as well as the the right to a nationality (Article 6).

Other major rights themes set out in the UNDRIP include:

- Indigenous peoples' right to participate in decision-making in matters affecting their rights, through representatives chosen by themselves in accordance with

their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions (Article 18).

- The right to be consulted by governments before they enact legislation or administrative measures affecting them (Article 19).
- Land rights, in terms of recognition of ownership of lands, territories and resources (Articles 26-27), the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard (Article 25), the right to develop strategies for the use of their lands, territories and resources (Article 32), right to restitution or compensation in relation to land (Article 28), prevention of forcible removal from lands and territories (Article 10), restrictions of military use of land (Article 30), as well as environmental conservation and protection (Article 29).
- Protection of economic rights (Articles 20-21), including the right to determine their own priorities and strategies in relation to development (Article 23).
- Rights to protect their culture through practices, languages, education, media and religion (Articles 12-16) - including the right to practise and revitalize their cultural traditions and customs (Article 11), as well as the right to control the intellectual property related to their cultural heritage (Article 31).
- States obligations to take measures with Indigenous peoples to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination (Article 22).
- Health rights (Articles 23-24)
- Protection of subgroups, including the elderly, women and children (Article 22).

### **United Nations support mechanism for implementation of the Declaration**

Three mandates are complementary, meeting annually to coordinate activities and share information:

- The United Nations Permanent Forum on Indigenous Issues, formed in 2000.
- UN Special Rapporteur on the Rights of Indigenous Peoples, first appointed in 2001.
- Expert Mechanism on the Rights of Indigenous Peoples, formed in 2007.

A number of other treaty-monitoring bodies play an important role in advancing the rights of Indigenous peoples. For example, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, and the Committee on Economic, Social and Cultural Rights developed a body of jurisprudence on the rights of Indigenous peoples even before the adoption of

the Declaration.

Finally, the universal periodic review is increasingly concerned with Indigenous issues - this is the process in which all UN Member States are reviewed by the Human Rights Council for the performance of their human rights obligations and commitments.


### **Translating Indigenous human rights at the national level**

Although a non-binding resolution, the UNDRIP is becoming a foundation for states to shape their relationship with Indigenous peoples. It has already informed and influenced the adoption of laws, policies, judicial decisions and operational guidelines at all levels. However, progress has been uneven within and between countries and regions, and major gaps remain between international standards and national policies and practices. Truth commissions and other truth telling processes can play a role in helping to close that gap.

Governments, justice systems, national human rights institutions, and civil society, as well as Indigenous peoples, all have a role to play to implement the UNDRIP at national and local levels.

## Developments at the UN to recognise and promote Indigenous rights

Building on the momentum of the global movement on Indigenous rights, United Nations initiatives to promote Indigenous rights since the 1990s include:



**1993: Year of the World's Indigenous People, declared by the UN General Assembly.**

**International Day of the World's Indigenous Peoples:**

In 1994, the UN General Assembly established 9 August as the International Day of the World's Indigenous People. The date marks the first meeting of the UN Working Group on Indigenous Populations in 1982.

**First International Decade of the World's Indigenous People:**

The UN General Assembly proclaimed 1995-2004 as the International Decade of the World's Indigenous People, with the objective of strengthening international cooperation in such areas as human rights, the environment, development, education and health.

**Second International Decade of the World's Indigenous People:**

The UN General Assembly proclaimed 2005-2014 as the Second International Decade of the World's Indigenous People. Objectives included promoting non-discrimination and inclusion of Indigenous peoples in processes and decision making at all levels; redefining development policies that are culturally appropriate; adopting targeted policies and programs for the development of Indigenous peoples; and developing strong monitoring mechanisms to improve the lives of Indigenous peoples.



### **World Conference on Indigenous Peoples:**

In September 2014, the first ever World Conference of Indigenous Peoples was convened as a special plenary session of the UN General Assembly. Participants shared perspectives and best practices on the realization of the rights of Indigenous peoples, including pursuing the objectives of the UNDRIP. It was preceded in 2013 by the World Conference of Indigenous Women, to ensure Indigenous women's voices were heard.



### **International Year of Indigenous Languages:**


The UN General Assembly named 2019 as the International Year of Indigenous Languages in 2019, and UNESCO and the Permanent Forum on Indigenous Rights co-hosted events.



### **Upcoming Decade of Indigenous Languages (2022–2032):**

In early 2020 in Mexico City a high-level event co-organised by UNESCO and Mexico called for a decade on Indigenous languages, in the Los Pinos Declaration. Building on the lessons of the International Year of Indigenous Languages (2019), the Declaration recognizes the importance of Indigenous languages to social cohesion and inclusion, cultural rights, health and justice. It also highlights their relevance to sustainable development and the preservation of biodiversity as they maintain ancient and traditional knowledge that binds humanity with nature.





Hermannsburg Potters  
Aboriginal Corp.,  
Imankinyanga Lyatinga  
Unah (Our History), 2001,  
synthetic polymer paint on  
canvas, 3830 h x 2945 w mm.  
Courtesy of Hermannsburg  
Potters Aboriginal Corp.,  
Northern Territory.

## 03

## Transitional Justice, the Right to Truth and Mechanisms for Truth Telling

### *What is transitional justice?*

Transitional justice refers to ways in which countries emerging from conflict and repression address human rights violations so numerous, systematic, and serious that the normal justice system cannot adequately respond.

Transitional justice aims to help a society break from a violent past and restore a moral foundation. It seeks recognition for victims and promotion of possibilities for reconciliation and democracy, helping victims and society at large deal with the past to achieve a sustainable peace in the future.

Transitional justice is rooted in support for the dignity of victims and accountability for human rights violations. Transitional justice can be pursued through judicial and non-judicial initiatives, such as criminal prosecutions, truth commissions, reparations programs, institutional reforms and memorialisation projects.

There is no one way to implement transitional justice, given the variety of contexts and cultures in which it can be applied. However, four pillars of transitional justice are consistent across contexts:

- Right to truth.
- Right to justice.
- Right to reparation.
- Guarantees of non-Recurrence.

### *What is the right to truth?*

The right to truth, especially central to this toolkit, has its roots in international law on summary executions, enforced disappearance, missing persons, abducted children, torture, and other serious human rights violations. This right has been recognised by

international judicial bodies, regional and national courts, and other entities.

### *Elements of the right to truth*

While the right to the truth continues to evolve, its core elements are well established. They include the entitlement to seek and obtain information on:

- Causes leading to the person's victimization.
- Causes and conditions pertaining to serious violations of international human rights and international humanitarian law.
- The progress and results of the investigation.
- The circumstances and reasons for the perpetration of such crimes.
- Circumstances in which violations took place.
- The fate and whereabouts of the victims, in cases of deaths or enforced disappearances.
- The identity of perpetrators.

### *Other characteristics of the right to truth:*

- The right to truth is closely linked to the right to an effective remedy and the right to obtain reparation, among other rights.
- The right to truth is inalienable. It cannot be taken or given away, suspended, limited, or denied by amnesties or other restrictions.
- The state has a duty to preserve documentary evidence for commemoration and remembrance, and to ensure access to archives with information on violations.

### *Who has the right to truth?*

Victims and their relatives or their representatives have a right to truth. The notion of "victim" can be both individual and collective.

The right to the truth also has a societal dimension: society has the right to know the truth about the perpetration of heinous crimes, as well as the circumstances and the reasons for those crimes, so that they do not reoccur in the future.

## International Day for the Right to Truth

The International Day for the Right to the Truth Concerning Gross Human Rights Violations and for the Dignity of Victims is observed on 24 March.

*What is a truth commission?*

### *Purpose*

A truth commission is one mechanism for truth telling, usually in the context of transition from conflict or repression to peace and respect for human rights. The first well-known truth commission, the Argentinian National Commission on the Disappeared, was formed in 1983. Since then there have been more than 40, each rooted in the historical, social, political, cultural and human rights issues it emerged from and addressed.

Truth commissions are official, non-judicial bodies of a limited duration. They are formed to determine the facts, causes, and consequences of past human rights violations. They generally focus on the experiences of victims, with special attention on their testimonies. Truth commissions often employ a multi-disciplinary approach to complement individual testimonies, using the expertise of lawyers, historians, sociologists, anthropologists, statisticians, psychologists, communications experts, and other disciplines. Truth commissions help give victims recognition, often after prolonged periods of social stigmatization and skepticism.

Truth commissions can contribute to prosecutions and reparations, help divided societies overcome silence and distrust, and identify institutional reforms to prevent new violations.

A major function of truth commissions is to contribute to public education and awareness of past violations, which have often been repressed or poorly understood. They can help create new, shared narratives as a foundation for ongoing change.

### *Context of establishment*

Truth commissions are typically established during periods of political change, such as after the end to an authoritarian regime or armed conflict. A commitment to establish a truth commission is often set out in peace agreements, transition-to-democracy negotiations, and in some cases, a new constitution, often due to the advocacy by victims associations, human rights defenders and wider civil society.

Indigenous communities have recently pursued truth commissions as part of a strategy

to address the past and secure their rights into the future, sometimes within the context of recognising their sovereignty and self-determination (see Case Studies, Australia).

A truth commission is usually established by a law that sets out its mandate and powers. They are led by commissioners, usually at least three, and staff from multiple disciplines. A truth commission can be a national institution or mandated to examine a local area and community (see Case Studies).

Truth commissions are most effective as part of a comprehensive transitional justice strategy that includes reparations, prosecutions and institutional reforms. By delivering clear findings and recommendations, commissions can contribute to new policies and create social and political momentum for these initiatives.

### *Partnerships and networks*

Civil society, often including religious communities, have an important relationship with truth commissions, advocating for their creation, supporting their work, deepening public engagement, supporting victims, monitoring progress and pushing for ongoing reform. Many commissions involve media, civil society and academia to maximise expertise, reach and impact.

### *Other truth telling processes*

Truth commissions are one forum for truth telling among many others. A historical record on human rights violations can emerge from commissions of inquiry, inquiries by bodies such as national human rights institutions, collection of oral histories, locating mass graves, artistic projects, developing memorial sites and activities, and other official or unofficial mechanisms, at a local or national level.

Below are examples of truth telling mechanisms; country specific examples are detailed in the Case Studies section.

### *Government commissions of inquiry*

Governments at different levels can establish commissions of inquiry with mandates to examine specific issues and timeframes and to develop recommendations for further action. The Australian Royal Commission into Aboriginal Deaths in Custody examined the cases of 88 men and 11 women who died in custody in the 1980s, operating from 1987-91. See Case Studies.

Another example is the Canadian National Inquiry into Missing and Murdered

Indigenous Women and Girls, which operated from 2016-2019 following a recommendation of Canada's Truth and Reconciliation Commission. See Case Studies.

### *National human rights institutions inquiries*

National human rights institutions, or NHRIs, are autonomous, permanent domestic bodies, usually with a wide mandate. They play a critical role in the promotion and protection of human rights, including in domesticating international human rights law, such as the UNDRIIP. They can help close the gap between international standards and commitments and national practice. NHRI's often establish strong links with civil society, and their reports and recommendations can act as a bridge to government.

In 2009, the then International Coordinating Committee of NHRIs (now the Global Alliance of National Human Rights Institutions) urged a greater focus on issues faced by Indigenous peoples. NHRIs also play a growing role in the United Nations Permanent Forum on Indigenous Issues.

NHRIs have appointed Indigenous commissioners with focused mandates, which has strengthened their focus on Indigenous rights, such as in Australia and New Zealand. In 2013, the Indonesian national human rights commission (Komnas HAM) assigned a Commissioner as a Special Rapporteur on Indigenous Peoples. NHRIs can also serve as a base for truth-seeking processes related to Indigenous rights, through individual complaints of human rights abuses as well as broader inquiries. Formal inquiries by NHRIs into specific issues related to Indigenous rights include:

- Australia's National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, from 1995-1997. This inquiry by the Human Rights and Equal Opportunities Commission (now the National Human Rights Commission) examined the forcible removal of Aboriginal and Torres Strait Islander children from their families throughout a prolonged period of the twentieth century. See Case Studies.
- The Human Rights Commission of Malaysia (SUHAKAM) in 2011 conducted a nationwide Native Customary Land Rights Inquiry after many complaints on land grabs and eroding native customary land rights. See Case Studies.
- In Indonesia in 2014, the national human rights commission, Komnas HAM, launched its first national inquiry into human rights violations linked to land conflicts involving Indigenous peoples. See Case Studies.

## National Institutions on the Rights of Indigenous Peoples

In 2009, the International Coordinating Committee of NHRIs urged States to consider national institutions on the rights of Indigenous peoples, mandated to promote and protect their rights in accordance with the 2007 UNDRIP. Two examples are India's National Commission for Scheduled Tribes, established under the Constitution, and the National Commission of Indigenous Peoples in the Philippines, established by law as the primary government agency related to Indigenous peoples. While not known for truth telling processes, they could be important partners or organizers of future efforts.

## Civil society investigations and community initiatives

NGOs, activists and media are often the first to document human rights violations, which then become part of the advocacy for official action. Indigenous and non-Indigenous NGOs can also serve as an effective bridge between local and national advocacy and action. Civil society, supporting victims of abuses, has been a major voice calling for commissions and for follow-up on their recommendations.

In Canada, long before a formal inquiry, the Native Women's Association of Canada conducted research and investigations over five years from 2005 in its "Sisters in Spirit" (SIS) project. The project conducted interviews and statistical research proving that Indigenous women were disproportionately victimised. SIS released a report which encouraged further activism by a loosely organised collective of organisations. Later, Canada's Truth and Reconciliation Commission recommended the establishment of an official national inquiry. See Case Studies.

In Papua,<sup>2</sup> Indonesia, in the absence of government implementation of special autonomy laws calling for a truth commission, the International Center for Transitional Justice partnered with a local NGO to develop a truth telling process with Indigenous women. See Case Studies. See also Case Studies on Australia for truth telling processes led by communities and civil society.

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2. In this toolkit, we use the word 'Papua' as shorthand to refer to both Papua and West Papua Provinces.

與國是  
少參與  
候選  
議

孩子，  
核廢料 交給你了



Climate change  
Killing indigenous

台灣

2019 FRIDAYS FOR FUTURE taiwan

台灣站出來  
週五為未來



Indigenous activists protest outside the Legislative Yuan in Taipei as part of the 'Fridays For Future' climate movement. May, 2019. (Photo by Craig Ferguson/ LightRocket via Getty Images).

## 04

## The Wider Struggle for Indigenous Rights: What Is the Role of Truth Telling?

### *Context and political strategy*

Specific context is critical to determine whether and what kind of truth telling process can help an Indigenous community realise its rights, and what issues to focus on. What are the major human rights challenges, and how do these relate to political aspirations such as recognition, sovereignty and self-determination? How do historical violations relate to current and ongoing violations? What are the priorities for a community? What are the social-political opportunities and constraints for a truth telling process? What laws, institutions, and other human rights tools would support a process? Who are likely allies? What is to be gained? Is it physically, psychologically and culturally safe for Indigenous people to share their stories?

Furthermore, a truth telling process cannot achieve all the objectives of each Indigenous community's struggle to realise their rights. A key question is: what role can truth telling play in achieving the wider struggle for rights in each situation?

The wider political strategy of an Indigenous community must inform decisions about whether to initiate or participate in a truth telling process, how the process should be structured, what it should focus on, and how it should operate. Clarity about possibilities and limitations is important to a successful process, results and follow up that contribute to the wider political and human rights strategy.

For non-Indigenous human rights defenders, as well as state institutions, it is essential that truth telling initiatives emerge through meaningful consultation with Indigenous institutions, leaders and communities to establish their free, prior and informed consent.

### *UN Declaration on Indigenous Rights as the foundation for truth telling*

Since 2007 a new international human rights framework guides state action on

Indigenous peoples. The UN Declaration on Indigenous Rights (UNDRIP) offers protection to Indigenous peoples and clear guidance to states and governments.

This framework did not exist during the early wave of post-conflict truth commissions that considered violations against Indigenous peoples, such as those in Guatemala, Paraguay and Peru. Today, the UNDRIP should guide States establishing truth telling processes. In particular, it must ensure consultation with Indigenous peoples about all aspects and stages of such a process to ensure their free, prior and informed consent. The declaration should also guide mandate formation, structure and operations of a truth commission as it relates to Indigenous peoples.

The mechanisms that support implementation of the UNDRIP, including the UN Permanent Forum on Indigenous Issues, the UN Special Rapporteur on the Rights of Indigenous Peoples, and the Expert Mechanism on the Rights of Indigenous Peoples can also help truth telling processes uphold international human rights standards for Indigenous peoples.

#### *Recognition and self-determination*

Recognition is at the heart of Indigenous peoples' struggles worldwide. The denial of the right to exist as peoples, to determine their own futures, is at the root of generations of subsequent denial and violation of rights. Self-determination flows from recognition.

A truth commission or other truth telling process involving Indigenous people should strengthen recognition, not diminish it. The aims of the state in relation to a truth telling process are a key factor. In countries transitioning out of conflict and authoritarian rule, a central aim of state-created truth commissions has often been to bring people together to create a new national narrative that supports a more inclusive, rights-based society. Sometimes described positively as part of a nation-building or renewing process, this effort can present risks for Indigenous people.

If the narrative of inclusion absorbs Indigenous people into a single, dominant national identity, then a truth telling process may compound historic violations and the denial of the right to exist as distinct peoples. A truth commission should engage with Indigenous people within the framework of the UNDRIP: based on recognition as distinct peoples with associated rights - both individual and collective. Truth telling should strengthen these distinct identities and rights, in a way that allows for plurality of identity in a nation-state.

The UNDRIP asserts the right of Indigenous peoples to affirm their nationhood while also retaining the right to citizenship of the state in which they live. A truth

commission should engage with Indigenous peoples based on a nation-nation relationship, recognising the collective as well as individual rights of Indigenous peoples.

Nevertheless, this can be a challenge in many contexts (see below, on managing backlash).

### *Advantages of truth commissions for Indigenous rights*

Truth commissions often use flexible methodologies that complement individual testimonies with multi-disciplinary research. It is common for truth commissions to employ or partner with lawyers, historians, sociologists, anthropologists, forensic specialists, statisticians, psychologists, artists and other specialists. Truth commissions are not generally limited to legalistic definitions, individual cases, or limitations on evidence.

This multidisciplinary approach has helped truth commissions investigate the context and causes of violence and violations of rights at the same time as recording individual testimonies and experiences. This longer and wider approach can then reveal the root causes of contemporary denial and violation of Indigenous peoples' rights. (See Case Studies of post-conflict truth commissions and thematic inquiries into violations against Indigenous peoples).

### *Adapting traditional truth commission methodologies for Indigenous truth seeking*

Two adaptations stand out for effective truth seeking on the rights of Indigenous peoples:

- Considering a longer time period, even back to colonial settler periods and the formation of the modern nation-state. This departure from more contemporary periods of inquiry, which most truth commissions have focused on, will require adaptation of methodologies as well as openness about sources of evidence, including oral histories, story-telling, and other traditional forms of expression.
- Examining violations of collective as well as individual rights. The UNDRIP indicates the expansion of traditional human rights standards through the recognition of rights held collectively by communities. Many of the violations suffered by Indigenous people have concerned collective experience and rights: targeting for violence as a group; dispossession from collectively owned lands, territories and resources; and violation of social, cultural and economic rights held collectively, such as through bans on languages and cultural practices. This adaptation will be a new challenge for truth commissions,

which have generally focused on individual rights, and mostly on civil and political rights, especially violence against individuals.

### *Backlash, standard setting and education*

Asserting Indigenous national identity as distinct from the nation-state can be seen as controversial. Political actors may interpret support for self-determination as encouraging separatism. There can be risk of political, community and even violent backlash.

Safety for truth telling is of paramount importance: Is it physically, psychologically and culturally safe for Indigenous people to participate in truth telling? Indigenous peoples have historically been targeted with violence by states and non-state actors, and this practice continues in many countries, causing a legacy of deep distrust. Indigenous leaders and communities will need to assess these risks in each context, and any truth telling process should treat these considerations as top priority.

Even where physical safety is not an issue, there will often be work to do to ensure that it is widely understood and accepted that the notion of self determination and a plurality of identities does not challenge the idea of national identity or of the nation-state.

In managing backlash, a truth commission can function as an explainer and educator in the wider society. It can contribute to more favourable conditions for understanding and acceptance of Indigenous rights. A commission can also help to set new standards, in particular by bringing the international human rights framework for Indigenous peoples into the national context. It can work with institutional, organisational and leadership allies to build this approach.

### *Indigenous rights agendas: common elements worldwide*

There is striking similarity among rights issues facing diverse Indigenous communities around the world. It can be useful to consider them in assessing if and how truth telling can help to address these situations and secure the protection and realisation of rights.

### *Recognition and self-determination*

Underpinning the Indigenous struggle for survival and human rights is a determination to exist as distinct peoples with defined rights, including collective rights as peoples. This fundamental right to recognition was denied in the expansion of empires, the creation of colonial societies, and the establishment of

modern nation states, which pursued policies of mass violence, land dispossession, cultural suppression and forced assimilation. Self-determination means that this recognition comes with the guarantee that Indigenous people have the authority to make decisions fundamental to their lives.

Modern dispossession and assimilationist policies remain a major challenge for many Indigenous peoples. Across many parts of Asia, states' unwillingness to acknowledge the applicability of the concept of indigeneity remains a major and critical obstacle for recognition of millions of people. Even in countries where Indigenous peoples are recognised as such, like Australia, there are ongoing struggles to translate that recognition into legal recognition of sovereignty and guarantees of self-determination.

In most countries, recognition and self-determination are at the crux of Indigenous peoples' struggle to secure a rights-based form of co-existence within the modern nation-state. For a more limited number of Indigenous peoples, recognition and self-determination might mean establishing fully independent states.

#### *Rights to land, territories and resources*

Lands and resources are vitally important to Indigenous peoples, as sources of not just income but of identity and life itself. Indigenous traditions of collective rights to lands and resources contrast with dominant modern models of individual ownership and development.

European colonisers used a number of concepts to justify land seizures from Indigenous peoples. The Doctrine of Discovery issued by the Pope in 1493 was used to justify claims by Christian monarchs and explorers to land occupied by non-Christians during the era Europeans called "The Age of Discovery," as they raced to claim lands in "the New World." The Spanish later applied the Regalian doctrine in their colonies, stating that title must be traced to the Spanish crown, as the basis for depriving Indigenous peoples of their lands. The British similarly used the concept of terra nullius, or empty land, refusing to recognise the occupation and ownership of lands of Indigenous peoples. The newly independent United States and Canada built on this justification for denial of Indigenous land rights, even as they entered treaties with Indigenous peoples.

In 2012, the UN Permanent Forum on Indigenous Rights selected a theme of "The Doctrine of Discovery: its enduring impact on Indigenous peoples and the right to redress for past conquests." The doctrine was described as the foundation of the violation of Indigenous peoples human rights.

Historically, and today in many parts of the world, non-recognition of the collective right to land and resources leads to land dispossession and destruction from large-scale development and resource extraction by state and private interests.

In Asia, as well as other places, a lack of recognition and protection of Indigenous peoples' rights to land and natural resources causes land insecurity and vulnerability and is also a major root cause of violence and conflict. Forced evictions, displacement and abuses are often connected to the militarisation or other enforcement of private economic interests and development policies. Indigenous human rights defenders are often targeted in these abuses.

#### *Armed conflict and militarisation*

Indigenous peoples are especially vulnerable to human rights violations during conflict. They often live in remote territories that are heavily militarised such as Papua in Indonesia, Nagaland in India, Mindanao in the Philippines, and parts of Colombia. In addition, national security laws that Asian governments enacted in the global fight against terrorism have often resulted in the violation of Indigenous peoples' rights.

#### *Poverty: cultural, social and economic rights*

Indigenous peoples constitute almost 19% of the world's extreme poor and are nearly three times more likely to be in extreme poverty. Access to good quality employment, education and health services are all major obstacles for Indigenous peoples. Lack of recognition of Indigenous peoples, and the subsequent failure to collect data and analyse conditions, continues to impede service delivery and realisation of these rights.

Historical and current dispossession of land and resources, destruction of cultures, and other serious violations of individual and collective rights cause much of this multi-generational poverty and denial of cultural, social and economic rights. Indigenous analysts also identify intergenerational trauma as a driving force behind modern marginalisation and suffering.

#### *Access to justice and discrimination by the justice system*

Indigenous peoples' experience of the justice system is often very negative, and leads to further violations of their rights. Racism, discrimination and profiling all contribute to a crisis for many Indigenous communities. In many countries, this modern practice is an extension of being targeted by the law enforcement system since the earliest colonial times. For example, in Australia the vast over-representation of Indigenous

people, including children, in the justice system is a longstanding crisis.

### *Climate change*

Despite having one of the smallest carbon footprints, Indigenous peoples bear the brunt of impacts of climate change due to their dependence upon, and close relationship, with the environment and its resources. Climate change exacerbates the difficulties Indigenous communities face, including political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment.

### *Indigenous women*

Indigenous women bear particular impacts and increased vulnerability from the loss of traditional livelihoods, displacement, conflict and increasing poverty, by virtue of their gender and ethnicity. Access to social services, especially healthcare, is often blocked by the lack of national legal status. Bride kidnapping, forced marriage and domestic violence also still persist in some Indigenous societies. UNDRIP specifically focuses on the rights of Indigenous women (Article 22).

### *Collective as well as individual rights*

Recognising that Indigenous peoples often organise their societies as a group, UNDRIP asserts collective rights to a degree unprecedented in international human rights law. Experience has shown that unless the collective rights of Indigenous peoples are respected, such cultures may disappear through forced assimilation into the dominant society. Recognising collective rights has implications for rights to land, territories and resources, to culture, traditional knowledge, and the integrity of societal structures and ways of organising communities.







Betty Adii, Behind Those Big Closed Doors, 2021,  
acrylic and oil on wood panel, 32 x 39 cm. Indonesia,  
Kolektif Uneido & Asia Justice and Rights.

Betty Adii

## 05

## Understanding the Particular Experiences of Women

Indigenous women face dual marginalisation by dominant cultures due to their indigeneity and being women. This fact calls for special efforts in truth telling processes to include women meaningfully and to give them scope to tell their truths. The UNDRIP also calls for special measures to protect the rights of Indigenous women.

In this document, gender is considered in terms of 1) the role of truth seeking in understanding the particular experience of women and 2) maximising women's meaningful participation in truth telling processes. We acknowledge that gender studies and analysis involves broader concepts and practices, some of which are beyond the scope of this toolkit.

We draw some lessons from experiences with truth telling processes, highlighting the importance of engaging with gender expertise from the conception and design process through all stages of implementation.

### What truth and whose truth is being sought?

Many truth commissions face criticism for inadequately engaging with how women experience conflict and repressive regimes, and therefore failing to adequately document these experiences in the resulting narrative. This failure compounds invisibility and can exclude women from the recommendations that follow from a truth telling narrative, exacerbating their vulnerability to further violations.

#### *What truth?*

Each truth commission must decide what violations of human rights to focus upon, depending on the context of conflict and repression, as well as the time and resources available to complete its mandate. Not all important issues can be adequately covered.

In particular, truth commissions have been criticised in their treatment of violations against women. One criticism of post-conflict truth commissions has been that they tend to focus on violations of civil and political rights, and especially serious violations against the body, such as killings, disappearances, torture and sexual violence, at the expense of other rights violations. In effect, these truth commissions establish a hierarchy of rights that neglects social, economic and cultural rights, which are heavily impacted during conflict and which can have a disproportionate impact upon women.

It was a breakthrough for truth commissions to explicitly focus on sexual violence, following global advocacy in the 1990s by women's organisations. This advocacy resulted in the United Nations taking a range of initiatives related to the women, peace and security agenda and justice for women survivors. Such progress was especially important given a history of silence and a lack of accountability or justice for these crimes in virtually all conflict-affected countries.

However, sexual violence alone does not capture the complex and multidimensional ways in which women experience violations. It has been argued that commissions need to move beyond individual incidents of sexual violence in conflict. They must address the context of inequality that facilitates these violations, as well as the continuum of violence against women from conflict to post-conflict periods. Women in the Papua civil society truth telling process emphasised this need. The mandate of the Canadian official inquiry into Missing and Murdered Indigenous Women and Girls was explicit in considering all forms of violence.

Considerations on what truth is being sought with special impacts on women's truth telling include:

- Which forms of violence against women, including but not limited to sexual violence, are considered.
- Whether the root causes of women's vulnerability to violence are addressed.
- Whether truth seeking includes violations of economic, social and cultural rights, in which women can be disproportionately impacted.
- The degree of truth seeking into violations of collective rights, which are integral to Indigenous rights and which open avenues for women's truth telling.

### *Whose truth?*

A truth commission's mandate, how it is interpreted, and how the commission is led and run can impact women's truth telling. Early truth commissions, such as those in Argentina and Chile, did little to focus on the issue of gender. The next generation, in countries such as Guatemala, South Africa, and Peru paid particular attention to gender, even though their mandates did not expressly call for this. Then, in countries like Haiti,

Sierra Leone, and Timor-Leste, gender or sexual violence was explicitly incorporated into the mandate, and these topics were identified as critical avenues of investigation.

Incorporating gender expertise into all stages of a truth commission – design of the mandate, interpretation and program development, outreach, operations, research, information analysis and report writing – will help ensure that women's truth telling plays a major role. Further, it is important to factor into research that women's experiences are often excluded from official records and historical narratives, a point which is compounded for Indigenous women.

Expertise, as well as partnerships with Indigenous and non-Indigenous women's organisations and academia, can build capacity to seek the truth of women's experiences. Without pro-active measures, these historically suppressed voices and stories may remain unheard and undocumented.

### Opportunities and methods to facilitate truth seeking and engagement with women

There are opportunities to strengthen engagement with women at every phase of a truth telling process: conception, mandate setting, preparations, appointment of leadership and staffing, outreach, implementation, report writing, and follow up. If these opportunities are missed, there is a high risk that women and women's experiences will be left out of the narrative and follow-up recommendations that emerge. Opportunities to enhance a gendered approach include:

- **Negotiations for ending conflict or repression:** Many truth commissions are conceived during a peace agreement or other political negotiation. Just as armed conflicts are dominated by men, so too are peace and political negotiations. Participation of women, and especially Indigenous women, in such processes is a major challenge that must be addressed for women to achieve fair outcomes, including the terms and focus of a truth commission.
- **Consultation:** A decision to establish a truth telling process may be considered outside the context of a recent armed conflict, with a focus on Indigenous rights, such as in the Scandinavian countries and Australia. In such cases, consultation should take special measures to ensure Indigenous women are properly consulted, in line with the UNDRIP.
- **Mandate making:** Whether through peace negotiations or legislative processes, a consultative phase will often define the formal, legal mandate of a truth commission often by legislation passed by parliament. Women tend to be under-represented in parliamentary processes, a flaw that must be addressed and mitigated. It is equally important to engage Indigenous and other women's

organisations to assist in consulting women and shaping a mandate.

- **Advisory body:** An ongoing advisory body or network of leading Indigenous and other women and organisations can operate for the life of the commission.
- **Selection of commissioners:** Indigenous women must be adequately represented in the leadership of a truth commission.
- **Selection of staff:** Indigenous women must be included in both technical positions (such as community outreach, victim support, statement takers, data analysts, report writers) and areas of specific gender expertise to ensure the capacity to understand issues, shape responses, and adequately engage with Indigenous women. Commissions also require the linguistic capacity to engage with Indigenous women not fluent or literate in official state languages.
- **Mandate interpreting:** In the early stages, commissioners decide what types of violations to focus upon and where to allocate scarce time and resources. They should consider how to examine social, economic and cultural rights, collective rights and underlying causes of violence.
- **Training and sensitisation:** Training for commissioners and staff should ensure an all-of-commission approach to gender.
- **Outreach:** Specific efforts should aim to reach and engage with Indigenous women, including potentially isolated women living in remote communities or, for example, LGBTQI+ or disabled women. Partnerships with women's and community-based organisations can be important to achieve this.
- **Methodology of truth seeking:** While not as formal as judicial entities, truth commissions nonetheless can have a quasi-judicial aspect. Through consultations and partnerships with women's organisations, commissions should develop flexible and sensitive methods of allowing women to tell their stories. These may include individual statement taking, collective story-telling, and traditional and artistic forms of expression. Gender-sensitive and culturally appropriate methods can help women retell traumatic experiences, including those carrying social stigma such as sexual violence.
- **Psychosocial support:** Adequate capacity and partnerships should provide psycho-social support to women before, during and after they testify to the commission. This can be a major practical challenge when resources are limited, especially in remote communities.
- **Data analysis:** A commission must have adequate expertise to analyse collected information through a gendered lens, so that the narrative and its recommendations for follow up that emerge reflect the experiences and future needs of women.
- **Recommendations:** Consultation with women's organisations and leaders should shape recommendations to meet the future needs of women, and monitor their implementation.
- **Follow-up:** Plans for follow-up institutions and processes must be structured to foster Indigenous women's leadership and ongoing participation.



Two Women from The Stolen Generations Yeperenye Festival, Alice Springs, NT 2000  
© Juno Gemes Archive © Juno Gemes/Copyright Agency, 2021.



## 06

## Methods for Meaningful Participation In A Truth Telling Process

### *Designing a people-focused approach*

One advantage of truth commissions over judicial processes is their flexibility in how they engage with people, especially victims of violations. While a commission maintains the gravity of an official process, there is more capacity for a people-focused approach to engage individuals and communities. Importantly for Indigenous peoples, this approach can include culturally appropriate ways of truth telling that differ from dominant cultural practices. Emerging Indigenous-led processes may further expand these possibilities.

A truth telling process must decide how to engage with victims of violations, their communities, and the wider society. The approach can vary widely, from desk research to community-based activities, engaging with civil society and the media to expand outreach.

Processes must be relevant, meaningful and respectful to Indigenous communities. They should establish meaningful relationships at the individual and the community level, both for cultural reasons and because they may involve collective rights.

A number of elements are especially important when enabling meaningful participation, especially by Indigenous peoples:

- Who seeks the truth
- What truth is being sought
- How the truth is sought
- Where the truth is sought
- What happens to the truth
- The role of non-Indigenous peoples, institutions, organisations and business sectors
- Intergenerational sharing

### *Who seeks the truth matters*

Indigenous peoples worldwide have had bad experiences with governments and official processes for a long time. Police, legal and judicial systems have been at the forefront of state policies of dispossession and assimilation. The status, nature and make-up of a truth-seeking body will therefore determine its legitimacy, credibility and trustworthiness with Indigenous peoples.

A commission that is an official state entity must consult with Indigenous peoples to ensure their free, prior and informed consent in line with the UNDRIP. Such consultation must take place at all stages, including the decision to move forward with a truth telling process, design of the mandate, appointment of leadership and staff, and operations. Ensuring a role for Indigenous peoples in directing the commission is also important, for example through an Indigenous advisory council or steering committee. The Maine-Wabanaki truth commission in the United States was jointly authorised by five Indigenous tribal chiefs and the state governor. See Case Studies.

Diversity within Indigenous communities should also be reflected in the commission. It may not be possible to represent the full diversity of Indigenous nationalities and language groups in the actual commissioners of a process, but the commission should engage meaningfully with all relevant nations and communities through staffing, partnerships, or other strategies. Adequate gender representation in commission leadership and staffing also sends a critical signal to women who might participate, and is fundamental to the capacity of the commission.

Engaging with remote communities is a challenge for many truth-seeking processes involving Indigenous peoples. To avoid the appearance of a distant, “fly-in fly-out” operation a commission can conduct advance outreach, partner with local community leadership and groups, and keep communities engaged after local truth telling. Indigenous media can play an important role, supported by a commission.

### *Whose truth is being sought matters*

To avoid further marginalising Indigenous women and other marginalised people requires careful planning, clarity about who the commission aims to reach, and corresponding measures. For example, including women’s leadership in a commission, staff with gender expertise, and parity in staffing can help orient a commission and give it the skills to ensure equal inclusion of women in the process. These efforts are especially important because patriarchal legal institutions and processes have left Indigenous women facing double marginalisation in many past interactions.

Processes must also ensure adequate engagement with people living in remote

communities, LGBTQI+ people, people with disabilities, elderly people, youth, and any other marginalised people.

### *How the truth is sought matters*

#### *Safety*

Creating a safe place and process to share painful experiences is a major priority for truth commissions, given the threatening experience victims have usually had with agents of the state, not least legal and judicial figures and institutions. Indigenous peoples have often experienced these agents and institutions as the frontline of policies of forced dispossession and assimilation.

A truth telling process may be the first time many Indigenous people share their stories outside their close families, and the need for physical, psychological and cultural safety cannot be overstated.

Indigenous people may face physical threats in coming forward to testify, forcing a commission to assess whether it can realistically guarantee witness safety. Measures should be in place early to improve physical safety and reviewed periodically if the decision is made to proceed in the face of risk.

Psychological safety is a challenge truth commissions face as they support vulnerable people to come forward to share painful experiences. Most commissions lack the resources to meet this overwhelming need by themselves. Indigenous communities, especially in remote areas, may already lack access to healthcare. Partnerships with local health systems, civil society and Indigenous organisations are critical, before, during and often long after the truth telling process.

#### *Cultural relevance and Indigenous ownership of the process*

A truth telling process can ensure that Indigenous law and cultural practices validate its procedures and forms of expression. It can celebrate culture in the way hearings and other activities are conducted.

A truth commission does not need to be bound by technical, legal methods of gathering evidence. Truth telling can also occur through traditional and contemporary Indigenous practices of sharing information and telling stories, which often incorporate cultural expressions including visual art and performance. Seeing an official state institution embrace Indigenous cultures can

encourage a sense of ownership of the truth telling, and serve as a powerful step toward healing, given the widespread destruction of Indigenous cultures by state policies. At a practical level, ensuring a capacity to engage Indigenous peoples in their languages is critical, especially in remote communities.

While individual statement taking often forms the backbone of a truth-seeking process, in many rural communities a form of collective truth telling and sharing can be important. Indigenous communities in particular have often undergone experiences as communities, and the rights in question often include collectively held rights. A collective approach can also work well in especially marginalised groups with similar experiences, such as LGBTQI+ people and people with disabilities.

### *Time*

While a truth commission will have limited time to complete its mandate, methodologies must allow individuals and communities to share their stories in their own ways and time. Preparatory work in communities and with civil society partners can help people get ready to come forward.

Many truth commissions have had insufficient time and resources to document the truth of everyone wishing to come forward. For some people, the limited operational mandate was not the right time to come forward. Such reluctance can increase for Indigenous people wary of an official process. Many commissions have recommended ongoing mechanisms for statement taking and other truth telling and documentation to continue beyond their lifespan.

### *Where the truth is sought matters*

While most commissions are headquartered in a capital city, some of the most effective have taken their program of work out to communities. This approach can be even more crucial in engaging with Indigenous people, especially those in remote communities. However, it is resource intensive, requiring larger teams and more time.

To facilitate outreach and engagement, a commission can develop local partners, especially Indigenous organisations. In addition to increasing a commission's local capacity, partnerships can provide legitimacy in community eyes. Involving local Indigenous leaders, elders, organisations and networks helps to build local ownership of the truth telling process.

It may be important to consider how Indigenous communities will respond to

certain locations or buildings. In Australia, the Royal Commission into Aboriginal Deaths in Custody avoided using courthouses in country towns for hearings because of their bad associations for Indigenous peoples. On the other hand, some commissions have reclaimed sites of human rights violations - in Timor-Leste, the truth commission rehabilitated the most notorious political prison as its headquarters and held public hearings there.

### *What happens to the truth matters*

Before a truth telling process begins, Indigenous peoples should know what will happen to the information they share. To allow free and informed consent, they must understand decisions on reporting, archiving, privacy and anonymity, and access to this material.

### *Reports and related products*

Commissions generally produce large, complex final reports on their findings and recommendations. To increase engagement and follow up, some have also produced more accessible formats, such as summary versions, youth and children's versions, booklets on thematic hearings, video and audio products, comic books, and art installations.

Indigenous communities benefit from translated versions, as well as radio, video and other formats for communities without widespread literacy or written languages. Indigenous cultural practices could inform the report and its presentation to communities.

### *Archives and accessibility*

Most commissions develop plans for archiving and institutional continuity. They may form a partnership with an institution such as a university, as in Canada at the completion of its Truth and Reconciliation Commission. It may establish a new body, such as in Timor-Leste. Public accessibility is critical to ensure that the lessons and results of the commission are open to all and can help drive change. Reports and materials gathered by a truth commission are a rich resource for the education, research and arts sectors. Public accessibility to records can play an important role in advocacy to implement commission recommendations for years or even decades. At the same time, policies related to free, prior and informed consent as to the use of testimonies and information are critical.

Special efforts are needed to make these materials accessible to Indigenous communities, especially those who engaged with the commission or living far

from any institutional centre.

*The role of non-Indigenous peoples, organisations and institutions*

Respectfully listening to uncomfortable truths is part of developing a new shared narrative of historical experiences and their ongoing impact. By empowering these often suppressed voices and developing new narratives, a truth commission can help ignite and expand a wider social movement for change. See Section 8.

*Intergenerational sharing*

People testifying to truth commissions often express a wish to contribute to change. By testifying they want to help ensure future generations never experience the same violations. This agency can be a powerful aspect of healing.

Promoting interaction with young generations can contribute to advocacy for change, and inspire hope for those sharing painful truths. Involving schools and youth groups in a truth telling process can produce powerful legacies and lead to action after the process itself ends.

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Diana Yembise, Broken, 2021, acrylic on paper,  
30 x 42 cm. Indonesia, Kolektif Uneido & Asia  
Justice and Rights.

## 07

## The Importance of Partnerships with Civil Society and Media

Most truth commissions require a foundational partnership with victims of violations and their associations and representatives. This relationship, often starting with advocacy by such groups to push for a truth telling process, must be nurtured throughout the life of a commission and into follow-up on its recommendations. Relationships with these groups can expand the reach of the commission while building the capacity of Indigenous organisations.

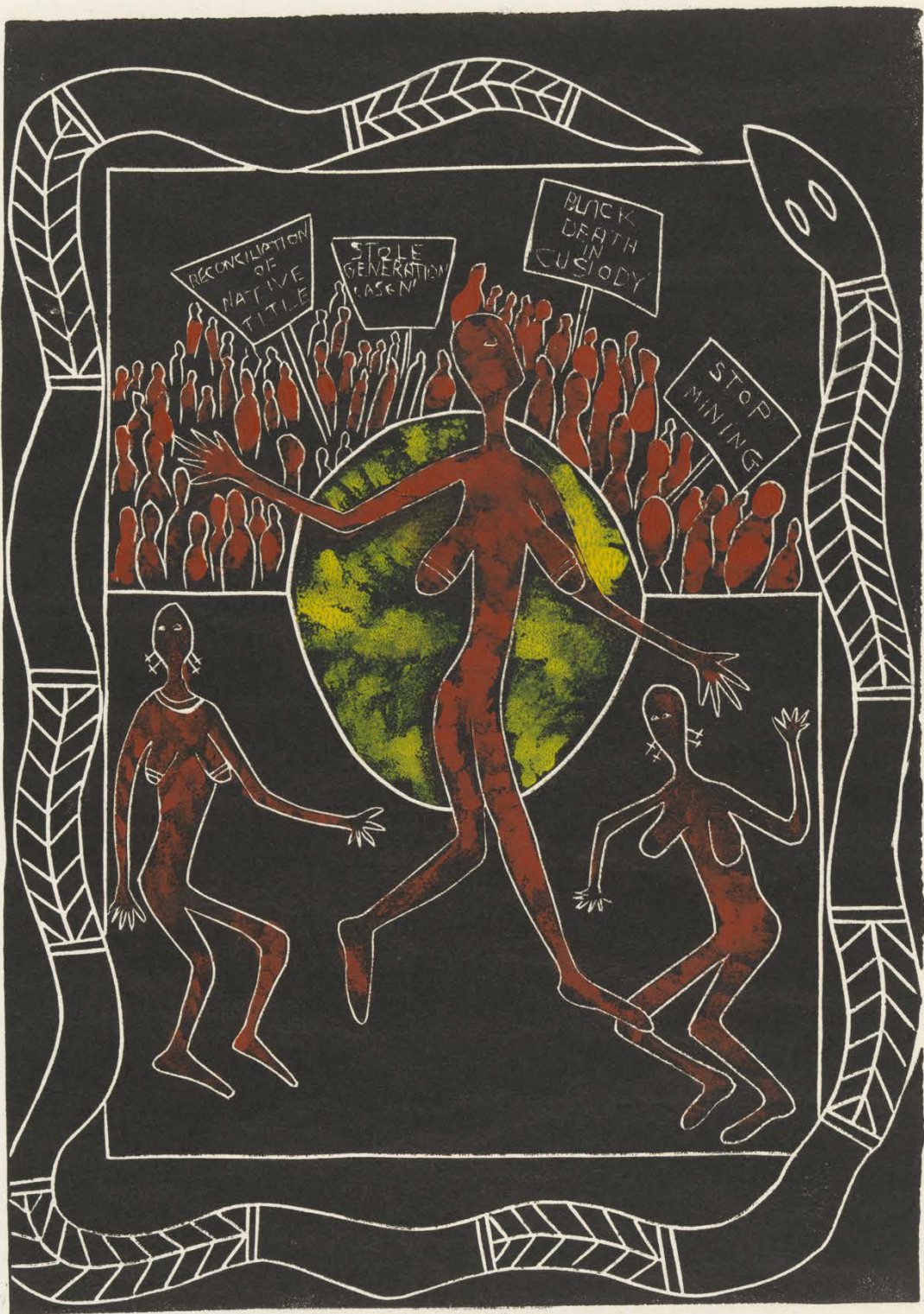
Commissions relate to sensitive issues and may attract both political support and opposition during their work. Much of this tension can play out in traditional and social media and needs to be pro-actively managed. Truth commissions should be able to reach Indigenous communities through media to ensure continual engagement with the process. Focused relationships with Indigenous media may include investment in capacity, especially to reach remote or marginalised communities.

### *Opportunities for civil society partnerships*

There are many opportunities to strengthen relationships at different stages of a process. Civil society, in particular Indigenous organizations, can play a role:

- As members of an advisory council or committee.
- Externally monitoring the operations and performance of the process.
- Organising consultations with Indigenous communities.
- As commissioners.
- As a source of technical staff for community outreach, victim support, statement taking, organizing hearings, data analysis, and communications.
- As trainers of commissioners and staff.
- As cultural advisors.
- In organising local hearings and related truth telling events.
- As a support network for those testifying before the commission.

- As contractors in specific areas, such as psycho-social or research services.
- As advocates for the commission, contributing both to political advocacy and expanding educational aspects of the process within their constituencies, including the business sector.
- Developing new narratives, particularly within the education sector.
- In extending the reach of the truth telling process around the country and promoting public discussion, primarily with media partners. Indigenous media in particular have relationships with Indigenous audiences, as well as language and cultural skills.



Mary Cummings

Mary Cummins, not titled [three nude indigenous women with protestors holding placards in background surrounded by a snake border], 1982-2001, linocut, 40.2 h x 28.4 w cm. Courtesy of the National Gallery of Australia, Canberra.

## 08

## Truth Commissions as Public Educational Processes

Commissions bring to light long-suppressed facts and truths, giving space to the voices and stories of those most marginalised and victimised in a society. This process fundamentally changes shared histories and narratives. A truth commission can engage the public in this process 1) during truth seeking, 2) in its final report and related products, and 3) in the follow-up activities.

### *During the truth-seeking process*

Since the South African truth and reconciliation process, truth commissions have used public hearings, amplified by media. Social media offers even more opportunities to engage the community. Public processes with a powerful potential for engagement and education include:

- Public hearings, at national and local levels, perhaps the most powerful public tool of a truth telling process.
- Public memorialisation, for example at sites of atrocities.
- Public art and performance.
- Seminars and discussion groups (including via social media), at the local and national level. This mechanism can target specific groups, such as women's organisations, LGBTQI+ people and ethnic communities.
- Programs by religious organisations that provide support and amplification.
- Curricula, class plans and other school-based activities focused on the hearings.
- Further study of specific aspects of the process by academia.
- Partnerships with media, especially Indigenous media, to give deeper public insight into the process and stories emerging from a commission.

### *The final report*

A final report is an official record that serves as a foundation for institutional and policy changes. It can also change a public national narrative, supporting ongoing

social engagement and education as the basis for research, curricula, media projects, and arts and creative interpretations. Because reports can be long and technical, truth commissions may produce more popular products, including multimedia products and children's versions.

### *After the truth commission*

Maintaining public engagement requires institutional responsibility for follow-up and resources that allow outreach and advocacy on the findings and recommendations. Partnerships developed during the life of the commission will be critical to follow-up, especially in media, civil society, and educational and religious organisations. Products and programs developed in partnerships with Indigenous communities, in local languages, can also be important initiatives.

### *Practical lessons on public engagement*

- Make a clear policy decision from the outset about the aims for engaging with and educating the public. How public will the process be? Who are the key audiences and how will they be effectively engaged?
- Establish a dedicated outreach and media/social media team, at the core of the commission's work. Ensure capacity to engage with Indigenous communities including in relevant languages.
- Give commissioners and staff media and social media training, including cultural awareness in communicating with Indigenous communities.
- Establish media partnerships, especially with Indigenous media at all levels, to enable effective outreach and engagement with the full diversity of Indigenous communities. Resource local Indigenous media to cover the work of the commission, especially in local languages.
- Develop and maintain relationships with civil society and religious organisations and provide them with briefings, materials and access to the commission. Ensure that these partnerships include Indigenous organisations, and have links with local Indigenous groups.
- Develop a school and university package to facilitate ways for students to engage in the process of the commission and to become advocates for change.
- Put in place institutional responsibility for follow-up, including socialising the findings and recommendations of the commission. Empower civil society and other partners to continue outreach and advocacy after the commission. Involve Indigenous stakeholders in the leadership and all steps of this process.



People hug in front of a mural honouring missing indigenous children during the first National Day for Truth and Reconciliation on Parliament Hill in Ottawa. September, 2021. (Photo by Lars Hagberg/AFP via Getty Images).



## 09

## Beyond the Truth Telling Process: Planning for Ongoing Action

A truth commission occurs for a limited period of time, within a specific mandate. It is one step in a process of justice and social change that usually starts long before a commission is established, and that must continue well beyond the life of the commission.

Indigenous people and others should have realistic and strategic expectations for a truth commission. Implementing the recommendations of even the most significant and successful truth commissions is a major long-term challenge. Commissions and other truth telling processes should plan for this effort and put in place building blocks for future advocacy.

### *Lessons for ongoing action*

- Establishing and maintaining credibility will strengthen the commission's capacity to withstand backlash, and make it more difficult to ignore its findings and recommendations. This effort must include strong relationships with diverse Indigenous communities involved. The commission should factor in the required time and resources throughout its lifetime.
- The UNDRIP should serve as a guide in a commission's relationship with Indigenous peoples. This instrument provides internationally accepted principles and protections for all steps of a commission's mandate and operations, including consultations on recommendations and follow-up.
- Participation of Indigenous organisations and communities during the truth telling process can help build their capacity for ongoing advocacy, necessary to help achieve implementation of recommendations.
- Robust processes for monitoring implementation of recommendations should not be an afterthought, and should have adequate Indigenous ownership and representation.
- Indigenous peoples should be included in the governance and work of follow-on institutions that allow access to archives, provide victims support,

continue truth telling, and educate future generations. Materials related to Indigenous peoples should be maintained with their consent and in a culturally appropriate manner.

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