

# TRUTH

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CVS Conference on Dealing with the Past

25 February 2014

# Presentation Overview

- Who has a right to truth?
- What types of information should be provided under the right to truth?
- To what extent is the right to truth established in law?
- What are the goals of truth recovery?
- What processes can be used to provide truth?

WHO HAS A RIGHT TO  
TRUTH?

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# General Remarks

- Right to truth is not mentioned explicitly in any international treaties
- But it is viewed as *emerging* international law
- This means that states have a duty to investigate international crimes and the most serious human rights violations (eg enforced disappearances, torture, violations of the right to life)
- BUT the precise nature of the right is not clearly defined in binding international law

# Right to Truth under the ECHR

- Referred to GHRV triggering a '**right to know** what happened' for the victims, their relatives and the general public (eg El Masri v FYR Macedonia, 2012, para 191)
- Found right to an effective remedy creates a duty on states to investigate violations of right to life, torture and disappearances
- To fulfil this obligation, investigations must be 'Article 2 compliant', i.e.
  - Effective
  - Independent
  - Prompt
  - Transparent

## Truth as an Individual Right

Updated Set of Principles, Princ 4

NB. These principles are 'soft law' standards meaning that they are not legally-binding

*“Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate.”*

## Truth as a Collective Right

(Updated Set of  
Principles, Princ 2)

NB. This principles are  
'soft law' standards  
meaning that they are  
not legally-binding

*“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.”*

# SCOPE OF THE RIGHT TO TRUTH

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# Content of Right to Truth

- UN Study on the Right to Truth (2006) found it should entail investigating:
  - Causes leading to person's victimisation
  - Causes and conditions pertaining to gross violations
  - Progress and results of an investigation
  - Circumstances and reasons for crimes
  - Circumstances in which the violation took place
  - For disappearances, fate and whereabouts of victims

# Common Limitations on Uncovering Truth

- Truth recovery processes only mandated to investigate certain crimes/periods/actors
- Time, resource, personnel or legal constraints may restrict the types of questions that are asked by truth recovery processes
- Problems with obtaining evidence of past abuses
- Methods to record and analyse testimony may impact on the truth revealed
- Reliance on testimony likely to produce multiple truths
- Need for some form of immunity to get evidence from persons who might be liable for criminal prosecution, means that are often compromises to be made between truth and prosecutions
- Whole truth of a conflict is impossible to obtain

# TRUTH RECOVERY PROCESSES

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# Potential Objectives of Truth Recovery Processes

- Discover and clarify facts about past abuses
- Highlight institutional or social responsibility for violations
- Provide formal acknowledgement to victims
- Reduce conflict and denial over the causes and consequences of past violence
- Contribute to holding individual offenders accountable
- Recommend reforms
- Facilitate reconciliation
- Strengthen democracy and rule of law
- Providing other assistance to victims, eg recommending reparations

# Types of Truth Recovery Bodies

- Truth commissions
- International commissions of inquiry
- International and national courts
- Public inquiries
- National human rights institutions
- Ombudsmen
- Traditional or informal justice processes
- Official archives projects
- Freedom of information bodies

# Key Questions in Truth Recovery Design

- What time period should a truth commission investigate?
- What types of violations / patterns of victimisation should a truth commission investigate?
- What level of information should a truth commission be expected to produce?
- Should particular victim populations receive particular attention?
- Should offenders receive any incentives to testify / protections against self-incrimination ie immunity?
- How long should a truth commission operate?
- How to balance aspirations with what a truth commission can realistically deliver?

# Conclusions

- Right to truth is emerging in international law from a range of sources, but much of it is not legally binding
- Relevant legal obligations in NI come from Article 2 of the ECHR
- Generally recognised that victims and societies have a right to truth for gross violations of human rights
- Right to truth can entail investigations into facts of individual cases as well as patterns of violations, and cause and consequences of violence
- Truth recovery processes have a range of individual and social goals designed address past abuses and prevent repetition
- Different mechanisms can engage in truth recovery