



OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR
HUMAN RIGHTS



RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES

*National consultations
on transitional justice*



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NOTE

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With the publication of *National Consultations on Transitional Justice*, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations system's lead entity on transitional justice, launches another transitional justice tool for post-conflict States. These publications are meant to help develop sustainable institutional capacity within United Nations missions, as well as to assist transitional administrations and civil society to better craft their responses to transitional justice needs.

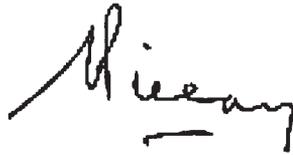
For transitional justice efforts to be effective, they must be human rights-based, consistently focusing on the rights and needs of victims and their families. The United Nations has frequently emphasized that a comprehensive process of national consultations is a crucial element in that respect. People who have been affected by past oppression or conflict need to be able to freely express their views so that the transitional justice programmes can take into account their experiences and identify their needs and entitlements. A careful process of consultations will also ensure that there is a strong sense of local ownership and promote stakeholder participation in the transitional justice programme. Moreover, consultations can benefit the design of specific aspects of transitional justice programmes, reignite stalled or slow-moving peace processes and trigger important debates in the community.

National Consultations identifies the main applicable human rights instruments, and discusses the focus and the form of national consultations. To provide guidance to practitioners, this publication further considers various issues important for the conduct of such consultations, including preparations, when and where to consult and for how long, who should conduct the consultations and who should be consulted, protection-related and ethical considerations, reporting and follow-up.

National Consultations builds on our previous series of tools, which included *Prosecution Initiatives*, *Truth Commissions*, *Vetting*, *Maximizing the Legacy of Hybrid Courts*, *Reparations Programmes*, *Amnesties*, *Mapping the Justice Sector* and *Monitoring Legal Systems*. Each of these tools can stand on its own, but also fits into a coherent operational perspective. The principles used in these tools are firmly grounded in international human rights law and reflect previous experience and lessons learned from United Nations field operations.

In line with its engagement in transitional justice policy development and responding to requests from the United Nations system, particularly its field presences, as well as other partners, OHCHR will continue to develop rule-of-law tools.

I would like to take this opportunity to express both my appreciation for the feedback received from our partners thus far and my gratitude to all those who have contributed to this important initiative.

A handwritten signature in black ink, appearing to read "N. Pillay". The signature is fluid and cursive, with a long horizontal stroke at the end.

Navanethem Pillay
United Nations High Commissioner for Human Rights

I. NATIONAL CONSULTATIONS: WHAT THEY ARE AND WHY THEY MATTER

In 2004, the United Nations Secretary-General defined “transitional justice” as comprising “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”. In addition, he emphasized that, in the context of transitional justice, strategies must be “holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriately conceived combination thereof”.¹ Whatever combination is chosen must be in conformity with international legal standards and obligations. Transitional justice should seek to examine more comprehensively the root causes of conflicts and the related violations of all human rights, including economic, social and cultural rights as well as civil and political rights. As the United Nations High Commissioner for Human Rights has pointed out, “transitional justice must have the ambition of assisting the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future. It must reach to, but also beyond, the crimes and abuses committed during the conflict which led to the transition, into the human rights violations that pre-existed the conflict and caused or contributed to it.”²

For transitional justice efforts to be effective, they must be grounded in international human rights standards. Above all, they must be human rights-based: consistently focusing on the rights and needs of victims and their families. A human rights-based approach to transitional justice demands that programmes should be designed in a context of in-depth consultation with affected communities. The Commission on Human Rights, in its resolution 2005/70, stressed “the importance of a comprehensive process of national consultation, particularly with those affected by human rights violations, in contributing to a holistic transitional justice strategy that takes into account the particular circumstances of every situation and in conformity with international human rights standards.”

The Secretary-General has said that “the most successful transitional justice experiences owe a large part of their success to the quality and quantity of public and victim consultation carried out.”³ In January 2005, the then High Commissioner for Human Rights, Louise Arbour, applied these insights to the specific context of Afghanistan when, speaking in Kabul, she praised the Afghan Independent Human Rights Commission “for its remarkable efforts in conducting these

¹ “Report of the Secretary-General to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies” (S/2004/616, paras. 8 and 26).

² Louise Arbour, “Economic and social justice for societies in transition”, Second Annual Transitional Justice Lecture hosted by the New York University School of Law Center for Human Rights and Global Justice and by the International Center for Transitional Justice (New York, 25 October 2006).

³ S/2004/616, para. 16.

national consultations. And the Afghans, first and foremost, must be praised for having had the courage to speak out, and for not giving up hope for a better future, one which puts an end to human rights violations and impunity. In reading the report, I was particularly struck by the poignancy of how Afghans were thankful for being asked their opinion—for the first time—on these issues. That, in itself, is an important step.”

The United Nations has repeatedly emphasized the importance of national consultations. In March 2005, the Secretary-General recommended that in Burundi, in parallel to the negotiations, there should be “a broad-based, genuine and transparent process of consultation [...] with a range of national actors and civil society at large, to ensure that, within the general legal framework for the establishment of judicial and non-judicial accountability mechanisms acceptable to the United Nations and the Government, the views and wishes of the people of Burundi are taken into account.”⁴ In January 2007, the United Nations High Commissioner for Human Rights, while reporting to the Human Rights Council on the situation in Nepal, also emphasized the importance of consultations.⁵

As will be seen later, international human rights law requires national consultations to be undertaken. Such consultations are also a matter of common sense. The people who have been affected by oppression or conflict need to be listened to, so that the transitional justice programmes best reflect their actual experiences, as well as their needs and entitlements. This is all the more important given that no two country situations are the same and each programme must be precisely crafted to take account of the particular needs of the national situation. A careful process of consultations will also ensure that there is a strong sense of local ownership of the transitional justice approaches and should serve to promote stakeholder participation throughout the transitional justice programme.

As will be further discussed below, consultation can particularly benefit the design of specific aspects of transitional justice programmes, such as determining the best formal role for victims to play, highlighting the experience of otherwise neglected victim groups, identifying culturally appropriate truth-telling mechanisms, determining the role in proceedings of cultural practices, defining elements for a criminal prosecutorial strategy, adjusting inappropriate procedures, deciding on the time period to be covered by various transitional justice mechanisms and how best to craft recommendations on such matters as reparations.

In addition, national consultations can revitalize stalled or excessively slow-moving peace processes or make it difficult for peace negotiators and other decision makers to back out of their commitments to transitional justice. They can also trigger important debates in the community—

⁴ “Report of the assessment mission on the establishment of an international judicial commission of inquiry for Burundi” (S/2005/158, para. 75).

⁵ A/HRC/4/97, para. 42.

sometimes opening up possibilities for freedom of expression that are new to a society and can have long-term beneficial effects.

National consultations need to be distinguished from outreach activities. They are not intended as mere one-way information channels to keep the community informed of work that may be under way. Nor can they be mere public relations exercises. Instead, national consultations are a form of vigorous and respectful dialogue whereby the consulted parties are given the space to express themselves freely, in a secure environment, with a view to shaping or enhancing the design of transitional justice programmes.

National consultations should also, to the extent possible, be distinguished from the discussions and debates that occur as a substantive part of a transitional justice programme, for instance, in truth verification proceedings or public hearings. National consultations do inevitably touch on issues of substance about the past but these have to be addressed with great care so as not to lose sight of the purpose of the consultations, to avoid compromising future transitional justice programmes and not to raise unrealistic expectations.

II. NATIONAL CONSULTATIONS AS A HUMAN RIGHTS LEGAL REQUIREMENT

There is a requirement for national consultations under international human rights law. The International Covenant on Civil and Political Rights, in article 25, guarantees the right of every citizen to take part in the conduct of public affairs. The treaty body that monitors the Covenant's implementation, the Human Rights Committee, has stated that, "the conduct of public affairs [...] is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels."⁶ The Committee has also made it clear that citizens are entitled to be consulted on the design and implementation of transitional justice programmes. In 2006, it recommended to the Central African Republic that it should "act swiftly to implement the recommendations of the 'national dialogue' on the establishment of a truth and reconciliation commission."⁷

The right to be consulted can also be identified under the terms of a number of other human rights treaties. For instance, the Convention on the Rights of the Child, in article 12 (1), states that "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." The entitlement of affected communities to be consulted in the design of transitional justice approaches is reinforced by the provisions of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity. Principle 35 stipulates that "institutional reforms aimed at preventing a recurrence of violations should be developed through a process of broad public consultations, including the participation of victims and other sectors of civil society."⁸

To enjoy the right to be consulted, a wide range of related human rights need to be implemented, such as freedom of expression, assembly and association. The Human Rights Committee has recalled that, "in order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstra-

⁶ General comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service (art. 25), para. 5.

⁷ CCPR/C/CAF/CO/2, para. 8.

⁸ E/CN.4/2005/102/Add.1.

tions and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.”⁹

Important aspects of the right to be consulted are highlighted in human rights-based approaches to development. The principal elements of the human rights-based approaches have been indicated in a statement of a common position of all the United Nations agencies engaged in human development.¹⁰ While emphasizing that the participation and inclusion of rights-holders in decisions and processes that affect them are unavoidable as a matter of human rights law, this statement also recalls that the design and implementation of such processes must respect and promote the fundamental dignity of every human being, based on the principles of equality and non-discrimination on the grounds of race, colour, gender, language, religion, opinion, national or social origin, property, birth or other status.

It is important to keep in mind the converse right to that of consultation: the right of the individual *not* to participate in consultations if that is what he or she chooses. This negatively expressed right can be derived from the manner in which international human rights law protects a person’s privacy (see, for instance, article 17 of the International Covenant on Civil and Political Rights).

⁹ General comment 25 (1996), para. 25.

¹⁰ Report of the second interagency workshop on implementing a human rights-based approach in the context of United Nations reform, Stamford, Connecticut, 5-7 May 2003. See OHCHR, *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation* (2006), annex II.

III. THE FOCUS OF NATIONAL CONSULTATIONS

National consultations can serve as the basis for designing a comprehensive and inclusive transitional justice programme. They can also be part of, or feed into, an existing transitional justice mechanism. National consultations that occur within the framework of some existing transitional justice proposals must take account of those elements. Consequently, consultations on a programme of criminal prosecutions may look very different from those preceding a non-judicial exercise. Consultations related to criminal justice operate within a relatively narrow band of options, such as in seeking views on whether there is public interest in an international or hybrid court and what the reasons may be for such views, on prosecutorial strategy, on the design of hybrid courts, on forms of reparation and on the possible role of traditional justice mechanisms. The questions need to be carefully formulated so that they acknowledge the constraints of international law. For instance, instead of asking whether participants wish to see an amnesty for acts of genocide, a question might elicit their views on the importance of prosecution for serious crimes. Consultations regarding non-judicial mechanisms, on the other hand, may be able to explore a wide range of options. Yet even here any options for transitional justice that have already been identified, for instance in a peace agreement, will have to be taken into account.

Inevitably, and often very usefully, consultations may focus attention on transitional justice possibilities that were not originally envisaged. Except if the law or good practice requires otherwise, a consultation process should be open to such possibilities. In Timor-Leste (then East Timor), the consultation process prior to the establishment of the Commission for Reception, Truth and Reconciliation delivered findings that led to a significant expansion in the Commission's mandate, for example by providing for the conduct of "community reconciliation procedures", i.e., local community-based procedures for justice and reconciliation using traditional practices. It also led to the Commission considering the issue of widespread enforced famine—a matter that had not previously been up for discussion.

IV. THE FORM OF THE CONSULTATIONS

The consultations that preceded or coincided with early transitional justice initiatives, mainly in the 1990s, were almost all *qualitative*. This was the case, for instance, before the establishment of the truth and reconciliation commissions in South Africa and Sierra Leone. Since then, however, various forms of *quantitative* methodologies have been used, as well as consultations that integrated *both approaches*.

A. Quantitative consultations

As the name suggests, the main focus of quantitative consultations is to collect, analyse and interpret quantifiable information. The information is scientifically measured in numbers and percentages, and mathematical or statistical techniques are used to analyse them.

The principal quantitative consultation technique is the survey. In a survey, consultation experts ask a usually large number of people a series of pre-designed questions either through written questionnaires or through formal, structured interviews. Researchers use sampling techniques to select participants, either randomly choosing a group from a population of interest (random sampling) or seeking individuals with specific, pre-designed attributes (purposive sampling). By studying the selected sample they may extrapolate their findings to the population from which the sample was chosen.

Public opinion surveys are very common in transitional justice consultations. They can help policymakers and researchers in assessing public expectations of how to deal with the past, in measuring trust and support for traditional or alternative mechanisms of transitional justice, or in testing the legitimacy of a proposed transitional justice policy and the public support for it. Surveys conducted in Poland, Hungary and the Czech Republic in 2004 found that the demand for lustration remained high 15 years after the fall of communism. Surveys have also demonstrated the unwillingness of a society to support transitional justice programmes. For instance, surveys conducted in the former Yugoslavia during 2000–2002 indicated a lack of community-wide demand for international prosecutions. One of the most extensive and far-reaching quantitative consultations to evaluate transitional justice processes was undertaken by the South African Institute for Justice and Reconciliation in 2000/2001.¹¹ Researchers conducted a large, nationally representative survey among almost 4,000 South Africans. The survey measured the level of satisfaction with the performance of the Truth and Reconciliation Commission, the level of approval of the amnesty process, as well as the degree of (racial) reconciliation.

¹¹ James Gibson and Helen MacDonald, "Truth – yes, reconciliation – maybe: South Africans judge the truth and reconciliation process", research report (Rondebosch, Institute for Justice and Reconciliation, 2001).

The design and conduct of surveys should always be calibrated to specific circumstances and goals. It is, therefore, not possible to give general guidance on what surveys should address and how the questions should be framed. However, a general sense of how transitional justice consultation surveys appear can be garnered from a brief review of two recent ones. However, it should be kept in mind, as discussed further below, that the construction of survey questions is a task for the experts.

Kosovo (2007). A survey conducted by the United Nations Development Programme focused on public opinion on human rights standards, violations and accountability; explored ethnic bias in the assessment of war crimes and missing persons; addressed challenges faced by judges and prosecutors; and sought to identify appropriate forms of reparation. The questions addressed, among other topics, how many people of various ethnicities had experienced human rights violations; levels of support for the resolution of problems of missing persons; achievement of reconciliation among ethnic communities; and degrees of preference for such forms of reparation as material compensation, rehabilitation and formal recognition of victim status.

Northern Uganda (2007). The regional survey conducted by the Berkeley-Tulane Initiative on Vulnerable Populations and the International Center for Transitional Justice sought to describe attitudes to peace and justice. The questions addressed, among other topics, levels of exposure to various forms of violence (such as abductions and damage to property); prioritization of demand for such basics and services as health care, food and justice; preferences among such forms of reparation as compensation, apologies and reconciliation; and preferences between traditional and formal justice mechanisms.

A drawback of the survey method is the manner in which it tends to propose a limited range of options, to which the respondents react. This may preclude respondents from suggesting novel or otherwise unanticipated transitional justice arrangements. Surveys that are not carefully constructed to overcome this limitation may reduce policymakers' opportunity to take into account forms of traditional or local practice that might play an important role within a transitional justice programme. Qualitative data methods can address some of these risks.

B. Qualitative consultations

While quantitative consultations are based on the collection of data in the form of numbers, qualitative consultations are concerned with collecting data in the form of words. Those data are typically unstructured and statistical methods cannot be used to analyse them.

Whereas, in quantitative consultations, structured interviews and questionnaires reflect the researcher's interest and concerns, qualitative research techniques focus on the respondents and seek to gain an in-depth understanding of their personal views, attitudes and beliefs on certain issues. The aim of the researcher is to view the issue through the eyes of the respondent.

It is therefore crucial to strike a balance between sensitizing the respondents and clarifying the basic elements of the discussions, and at the same time giving them enough space to fill abstract terms like “reconciliation” and “justice” with their own ideas and perceptions.

Qualitative consultations can take various forms, including workshops, seminars, community meetings and other forms of organized debate. The main types of qualitative research are:

Focus groups: a consultation method which brings together a small group of preselected individuals for one or two hours to discuss a particular topic under the guidance of a professional moderator/facilitator.¹² The moderator’s questions are set beforehand, but asked in a loosely structured way so as to encourage a free-flowing exchange of ideas and facilitate an interactive group discussion. As the discussion takes place in an informal setting and participants can speak within their own framework and terminology about the topic, the focus group method allows researchers to gain an understanding of people’s personal views and attitudes.

Focus groups should comprise a more or less homogenous selection of people so that the views of a particular interest group are drawn out. A 2007 proposal for the conduct of consultations in Bosnia and Herzegovina identified 13 such interest groups whose views would be elicited (e.g., the legal community, Government, academics, youth, religious communities, victims, women, journalists, veterans, returnees, artists and historians). The individual composition of the focus group is crucial for an open and frank discussion. When selecting participants one needs to be aware of and take into account potential obstacles to effective participation, for instance, the presence of senior and junior members of the community, having men and women or adults and children together, different educational levels of participants, linguistic differences such as regional dialects, and so forth. These considerations are discussed further below.

Focus groups have played an important role in some of the best documented transitional justice consultations. The OHCHR qualitative consultation in northern Uganda involved the participation of 1,725 victims of the armed conflict in 69 focus groups.¹³ The consultations undertaken by the Afghanistan Independent Human Rights Commission in 2005 involved over 2,000 people in 200 focus groups.

A common criticism of the focus group method is that the groups are too large. Meetings of many hundreds of consultees are reported from Colombia and Guatemala. Such large groups should be avoided in future. Social science practice suggests an optimal size for focus groups to be 10 to 12 people.

¹² W. Lawrence Neuman, *Social Research Methods: Qualitative and Quantitative Approaches*, 6th ed. (Boston, Pearson, 2006), p. 412.

¹³ OHCHR, *Making Peace Our Own: Victims’ Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda* (2007).

In-depth interviews. Unlike quantitative surveys, in which each respondent is asked the same set of predetermined questions, in-depth interviews are unstructured or loosely structured conversations between an interviewer and an interviewee. There is no formal structured interview guide and the interviewer is free to move the conversation in any direction of interest that may come up. In in-depth interviews the interviewee is encouraged to talk in detail about personal experiences. The goal is to explore in depth the interviewee's point of view, feelings and perspective on the issue at hand. This type of consultation requires skilled interviewers and can be time-consuming. Moreover, the responses can be difficult to interpret. However, it is a suitable method to investigate complex and sensitive issues.

In-depth interviews have been used in different transitional justice contexts and at different stages of the transitional justice process. In the OHCHR consultation in northern Uganda, 39 key participants were interviewed to provide a degree of cultural interpretation of responses from the focus groups. In the aftermath of the truth and reconciliation process in South Africa, the Centre for the Study of Violence and Reconciliation conducted in-depth interviews both with victims and with perpetrators to learn about their attitude and satisfaction with the Truth and Reconciliation Commission's procedures and outcome.¹⁴

C. Mixed methods research/Triangulation

The quantitative and qualitative approaches are not mutually exclusive. Many data-gathering exercises use both to complement each other. Given the complexities of scientifically studying transitional justice and national reconciliation, most researchers use several types of methodologies so that each can compensate for the limitations of the others, add different types of data, maximize the reliability and validity of the findings, and thereby provide greater insight.

The Afghanistan Independent Human Rights Commission undertook, during 2003–2005, a large-scale consultation that integrated quantitative and qualitative elements. The quantitative methodology was intended to test for preferences and priorities through the application of a survey, whereas the qualitative method was intended to give a rich level of detail that would be "particularly useful to policymakers". This detail was captured in focus group discussions. The American Association for the Advancement of Science's Science and Human Rights Program and the Centre for the Study of Violence and Reconciliation conducted a six-year study of the Truth and Reconciliation Commission in South Africa. It used a wide range of methodologies in

¹⁴ Ruth Picker, "Victims' perspectives about the human rights violations hearings", research report (Johannesburg, Centre for the Study of Violence and Reconciliation, 2005); Sasha Gear, "Wishing Us Away: challenges facing ex-combatants in the 'new' South Africa", *Violence and Transition Series*, vol. 8 (Johannesburg, Centre for the Study of Violence and Reconciliation, 2002).

its assessment of reconciliation and forgiveness: a systematic quantitative and qualitative analysis of the transcripts of the human rights violations and amnesty hearings, quantitative surveys, reanalysis of existing survey data relevant to the topic, focus groups, in-depth interviews with religious leaders, and participant observation.¹⁵

¹⁵ Audrey R. Chapman and Hugo van der Merwe (eds.), *Truth and Reconciliation in South Africa: Did the TRC Deliver?* (Philadelphia, University of Pennsylvania Press, 2008).

V. PREPARING THE WAY FOR CONSULTATIONS: THE IMPORTANCE OF SENSITIZATION

Regardless of the form or precise objective of the consultations, they need to be accompanied by a tailor-made sensitization programme. The people to be consulted need to have the necessary information and understanding so that they can express informed viewpoints. They need to be aware of the transitional justice options open to them. This requires them first to be made aware of the specific context in which the consultations are taking place. Depending on the circumstances, they may need to be confronted with reminders of the patterns of conflict or oppression that are to be addressed. They may also require information on political or other decisions that have been taken about transitional justice, for instance, on the relevant provisions of a peace agreement. Groups to be consulted will always require information about the precise purpose of the consultations, so that they are less likely to have false or unrealistic expectations of the outcomes. Managing expectations is particularly important if the fundamental elements of the transitional justice framework are already in place. This is illustrated by reports from Colombia that participants in consultations that occurred after the adoption of the relevant legislation were frequently confused about the purpose of the exercise and had unrealistic hopes of what could be achieved.

Sensitization work should also refer to the experience of other countries. This is in order to provide consultees with an understanding of the range of options open to them as well as the relative strengths and weaknesses of various transitional justice initiatives. However, this aspect of sensitization needs to emphasize that national programmes of transitional justice have to be calibrated to the specific circumstances of the situation. It is important not to give the impression that what worked in one country will be just as effective in another. This misunderstanding lay behind the common misapprehension, which persisted for many years, that the South African Truth and Reconciliation Commission's model could be exported and applied without any amendment or adaptation to local circumstances or that its amnesty-for-truth approach might work in any situation.

The extent to which the language and the concept of transitional justice may be alien to a population cannot be overstressed. Sensitization should be undertaken in as comprehensible a manner as the circumstances allow, for instance, by ensuring the use of all relevant forms of expression and languages, including indigenous languages and local dialects. It should take account of the extent to which the terminology of transitional justice and of law may be unknown or a literal translation may not exist. Thus such words as "impunity" and "accountability" and even "crime" and "human rights" may need to be explained (even the very basic notions of human rights may appear very remote to people whose primary concern is one of sheer survival in desperate circumstances). However, it is important to distinguish between technical terms, which are to be explained to the consultees, and terms on which the consultation experts wish

to seek the consultees' views. For instance, an important part of the consultations may be to elucidate victims' understanding of such terms as "forgiveness" and "reconciliation."

When appropriate, sensitization can be generalized for an entire population with mass dissemination in newspapers and the broadcast media. More local means can include drama as well as role play, group exercises and carefully structured "games." In Timor-Leste, song was used as a sensitization tool for the design of the truth and reconciliation process. However, specialists need to monitor the sensitization tools used so that they serve their precise purposes and avoid such consequences as re-traumatization.

Sensitization efforts can have unintended but beneficial consequences, such as making a victim community aware that its members have rights and entitlements. For instance, during transitional justice sensitization efforts in Peru, many rural people in the mountains learned for the first time that raping a woman was a crime.

Sensitization typically both precedes a consultative process and continues during it. During consultations it can often be in reaction to unanticipated or ad hoc demands for information or access to materials. It will usually be prudent to ensure that consultation teams are equipped with the sorts of materials that may be requested, including the wording (translated into local languages) of provisions of laws, peace agreements and other relevant texts. These texts need to be distributed in a way that gives people ample time to study them or, in the case of representative participation, to consult their constituencies, before they come up for discussion.

VI. WHEN TO CONSULT?

The circumstances prevailing in a country will determine the form and scale of the consultations, and the impact of the outcome. Consultations will be most productive if conducted in times of relative peace and security and when the relevant communities are accessible over reasonable periods of time. The greatest challenges are those confronted in times or places of ongoing armed conflict. Efforts to undertake consultations in such circumstances need to take account of the impact of the prevailing climate of fear, intimidation or reprisals. In addition, because of problems of access to the relevant communities as well as of insecurity, it will rarely be possible to undertake widespread consultations or any form of quantitative research. The consultations themselves may even exacerbate the risk to individuals and communities, for instance, by gathering people in dangerous locations or by encouraging them to express views that may draw hostile attention. Consultations are not, however, impossible in such circumstances. In Sierra Leone, in early 1999, national human rights organizations, supported by the United Nations, held consultations on the forms of transitional justice mechanisms that any future peace agreement should address. The organizations recognized that the circumstances made a major national consultation impossible but that it was, nevertheless, possible and necessary to assess the views of Sierra Leonean non-governmental organizations. These consultations led to the non-governmental groups forming a common position on the need for a truth and reconciliation commission and successfully arguing for its inclusion in the peace agreement adopted later that year (the Lomé Agreement).¹⁶

If security and other considerations limit the geographic scope of consultations, it is important to seek to address any resulting biases in findings. For instance, it is necessary to acknowledge how views obtained only in urban environments (for instance, in the capital city) may differ substantially from the unsolicited views of rural communities. The same may apply regarding the views of people consulted in territory controlled by only one party to a conflict.

The consultations in Sierra Leone illustrate the utility of conducting consultations before the finalization of, and with a view to influencing, a peace agreement. In other cases, such as in Uganda, the principal elements of the transitional justice framework preceded national consultations. This order of developments significantly limits the extent to which the consultation can shape the fundamental elements of the transitional justice programme. Consultations in such a context can, however, play an important role in elaborating, refining and putting into operation whatever transitional justice proposals have already been agreed upon.

¹⁶ Michael O'Flaherty, "Sierra Leone's peace process: The role of the human rights community", *Human Rights Quarterly*, vol. 26, No. 1 (February 2004), p. 29.

It is generally useful to periodically conduct consultations during the implementation of a transitional justice programme, with a view to recalibrating it or otherwise considering how its impact might be enhanced by structural adjustments, for instance, in the framework of the development or the renewal of applicable legislation. These types of consultations are also sometimes used to identify forms of reparations, including symbolic reparations, that might be recommended by a transitional justice programme. This was the case, for instance, in Peru and Chile. In Peru, the consultations led to recommendations for the education of the children of victims. In Chile, consultations with victims led to a recommendation that victims should receive pensions rather than lump sums. Consultations during the implementation phase may also facilitate the participation of victims that had previously been overlooked, marginalized or excluded.

Regardless of the period in which it is decided to conduct consultations, it may be useful to undertake preliminary piloting activities. This is particularly the case for large-scale national consultations. Piloting should be undertaken in such a manner that it can be carefully evaluated. Pilot activities will usually result in minor adaptations of consultation methodology, as was the case, for instance, after the piloting of the Afghanistan Independent Human Rights Commission's consultations in 8 out of 34 provinces.

VII. WHERE TO CONSULT AND FOR HOW LONG?

Sometimes, depending on the precise objective of the consultations, a localized approach may be appropriate. This might be the case, for instance, where the goal is to hear the views of a particular community or category of victims. Broad, countrywide consultations, embracing all viewpoints, also have merit, including when they seek the views of communities that may not have been directly affected by a conflict. In Uganda, it is widely considered that the decision of the parties to the 2007 Agreement on Accountability and Reconciliation to consult across the country, even in areas untouched by the violence, generated useful findings that also served to impress on people that the responsibility for reconciliation lay with the entire nation.

The experience from many countries suggests that national consultations can usefully be preceded by a preliminary “mapping exercise” that charts the patterns of a conflict or of victimization and that thus assists in determining where consultations should take place.

The specific venues need to be chosen with care. Ideally, these venues should be neutral. It will rarely be prudent, for instance, to consult civilians in army or police buildings or on the premises of any armed group. Similarly, where the authorities are implicated in past misdeeds, the use of a governmental building such as a town hall may be inappropriate. Where religious tensions arise, care needs to be taken if the buildings of any one religious community are used, particularly if members of other communities are expected to attend. Experience also suggests that holding consultations at the scenes of past crimes may trigger emotional responses that are harmful to the victims and not conducive to the purpose of the consultations. Such locations should be avoided. Whenever possible, it is prudent to choose the venues and the precise timing of events in consultation with local representatives of victims or the other stakeholders to be consulted.

Decisions on the duration of a consultation will depend on its purpose and scale, as well as on such considerations as access and security. Consequently, no specific guidance can be given *in abstracto*. However, the relative merits of short and protracted processes should be kept in mind. Short processes, such as those that last no more than a few weeks, help maintain a tight focus and avoid fatigue or loss of motivation among consultation personnel. It has also been suggested that consultations should sometimes “seize the moment” of a political transformation when there may be a high level of political will and popular opinion may be favourable to addressing the past.

However, hasty consultations are best avoided, since they risk being ill-considered and, to the extent that they are perceived as tokenistic, can adversely affect public perceptions of the value of transitional justice. Social scientists consider that opinion surveys are best conducted over time so that patterns of holding and developing opinions may be identified. One expert study

in 2008, while acknowledging the practical problems in conducting protracted consultations, observed that “over-time data cannot generate instant policy-relevant findings, but it is crucial to establishing trends and, therefore, causality”.¹⁷ In addition, more drawn-out consultations may facilitate acceptance of the process on the part of consultees, a maturation of their viewpoints and an ongoing refinement of methodologies. Great care was taken in South Africa to avoid a rushed consultation. There, the preparatory activities for the Truth and Reconciliation Commission occurred over a period of 18 months following democratic elections in 1994. As one commentator put it: “This preparatory time was crucial to developing the commission’s complex empowering legislation, to gain the backing from almost all political parties, and to seek input from many outside observers through which the proposed commission gained legitimacy”.¹⁸

¹⁷ Oskar Thoms, James Ron and Roland Paris, “The effects of transitional justice mechanisms”, working paper (Ottawa, Centre for International Policy Studies, April 2008), p. 81.

¹⁸ Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, Routledge, 2001), p. 221.

VIII. WHO SHOULD CONDUCT THE CONSULTATIONS?

It is best for the consultations to be conducted by independent experts who do not have any organizational or political stake in specific transitional justice outcomes.

National human rights institutions may play a very important role in the conduct of national consultations. The experience of the consultations carried out by the Afghanistan Independent Human Rights Commission demonstrates how a well-respected independent institution with good outreach across a country can deliver valuable findings that clearly convey the attitudes and opinions of affected communities. The fact that consultations are conducted by national institutions that comply with relevant standards of good practice (the so-called Paris Principles) also provides the reassurance that the process will be conducted on the basis of human rights standards and with respect for the rights and the dignity of the consultees.

More discrete and targeted forms of consultation can be conducted by any interested organization. Typically, a wide array of these may be undertaken during the design phase of a country's transitional justice programme by or on behalf of local and international NGOs, academic institutions and others. Great care needs to be taken to ensure that such targeted consultations are carried out properly and professionally (see further below). Wherever possible, international groups that seek to conduct consultations should (and generally do) work with and through appropriate national and local groups, thereby respecting the local social infrastructures, drawing on relevant expertise, local knowledge and languages, and facilitating a transfer of skills.

The United Nations is frequently called on to assist in designing and conducting national consultations (while respecting that process leadership and decision-making belong to the national stakeholders). There are examples of OHCHR, as well as human rights components of peace-keeping missions, providing expert and material support to the consultation work of Governments, parties to agreements, national human rights institutions and civil society. OHCHR can play a role in providing legal and technical advice, promoting the participation of victims, women and vulnerable groups, supporting capacity-building, and helping to mobilize financial and material resources. The United Nations, wherever it assists consultative processes, should do so in support of national initiatives and capacities. For instance, in Burundi, in 2007, it worked with civil society organizations in developing methodologies to enable them to participate in the planning for consultations. The United Nations should not seek to influence consultation findings. Nor does it generally associate itself with particular views expressed in any consultative exercise.

It is crucial to coordinate consultation exercises so that they are conducted in an efficient and targeted manner, avoid duplication, best address gaps, and do not overly burden consulted groups and individuals. Coordination can also make transitional justice initiatives more coherent

and ensure their calibration with larger socio-political contexts, such as the implementation of a peace agreement. As an example of a coordination framework, in the former East Timor, in 2000, a steering committee was established comprising representatives of the political leadership, national human rights NGOs, women's groups, youth organizations, the Commission for Justice and Peace of the Catholic Church, the Association of Ex-Political Prisoners, Falintil, the United Nations Transitional Administration in East Timor (UNTAET) and the Office of the United Nations High Commissioner for Refugees. More recently, in November 2007, the Government of Burundi and the United Nations signed a framework agreement on the establishment of a tripartite steering committee for national consultations on transitional justice mechanisms. The Committee is composed of two representatives each from the Government, civil society and the United Nations.

All forms of consultations, whether qualitative or quantitative, are specialist undertakings and, regardless of which institution or organization conducts them, it is imperative that it should retain suitably qualified expert personnel. It will always be important to ensure that staff are fully trained in all technical aspects of their work as well as concerning any cultural or religious sensibilities that may arise. Consultation teams should always include persons who are thoroughly knowledgeable of the local context and the recent history, especially the period of conflict or oppression that the transitional justice programme will address. Special account needs to be taken of the skills and training issues that arise when undertaking consultations with women. Children should only ever be consulted by properly skilled personnel.

IX. WHO SHOULD BE CONSULTED?

Depending on their precise scope and method, different consultation exercises will target particular groups of consultees. Generally, however, to be effective, national consultations should involve all the key stakeholders, in one form or another.

In the first place, it is necessary to hear the voices of the victims and witnesses to the past patterns of abuse and oppression. As already observed, victims are sometimes identified by means of a preliminary mapping exercise, usually carried out by experts with thorough local knowledge. In identifying victims to be consulted it is important to take account of the very many ways in which conflict or repression has an impact on communities. It is not just the wounded or bereaved who will have suffered. Other victims may include those who have been deprived of humanitarian assistance or medical services, had their homes destroyed, lost their livelihoods or been displaced. There is also a level of community-wide psychological scarring or traumatization that is sometimes overlooked. It is important to take account of the most marginalized or neglected groups. Individuals and communities that are generally marginalized or discriminated against are also likely to be victimized even more in times of turmoil. This was the case, for instance, with the Roma during the conflicts in the former Yugoslavia and has been the experience of many indigenous groups in Latin America in recent years.

Women are sometimes disregarded when the voices of victims are sought. There are also situations where they were inadequately consulted. This was reportedly the case in South Africa and led to the development of a “gender-neutral” statute for the Truth and Reconciliation Commission. In Timor-Leste it was only when women were eventually consulted that prosecutors began to pay attention to the perpetration of sexual crimes during the occupation. In other instances, women have been consulted by or in the presence of men, whereby they felt constrained to express views they thought the men expected of them. Experience suggests that the consultation of women should be undertaken by women, without haste and with full respect for the confidentiality of individual views. Consultations need to take particular account of the stigmatization that may be associated with having been subjected to sexual violence.

The characterization of women as victims should never, however, lead to their being considered as passive or powerless. On the contrary, consultations should be predicated on the considerable extent to which women are the moulders, guardians and agents of change in their communities, taking into account the possibly evolved gender roles of women and men during conflict. Indeed, a well-designed process can draw attention to this role women play, enhance their empowerment within their communities and challenge men to confront their own prejudices.

Another group of victims that has been overlooked in many transitional justice consultations is children. Widespread traditional views of childhood across all regions of the world have resulted

in their views either not being sought or being disregarded. As understanding of the rights of the child has improved, this practice is slowly changing and recent consultations have paid close attention to their viewpoints. Children should be approached only by specially trained personnel. It is essential to keep the principle of the best interest of the child at the forefront of the consultation process and to take account of the evolving capacities of the child. Every effort must be made to avoid re-traumatizing children. It should be noted that some children, such as child soldiers, were both victims and perpetrators, and it is important not to re-victimize them. Experience also suggests that children are best consulted out of the presence of their parents or other adults. Finally, consultations need to be devised in a manner whereby they do not convey to children any sense that they themselves are responsible for the problems of their country or for finding the solutions.

In Uganda, in the national consultations regarding the 2007 Agreement on Accountability and Reconciliation, a special consultation event was organized for children. The United Nations Children's Fund worked closely with the local child protection organizations to obtain the views of children in a framework and environment that took account of their needs for protection while at the same time encouraging them to speak frankly. The outcome of the consultation was reported in a manner that fully respected the confidentiality of each child. The experience in Uganda has been that the views of children on transitional justice can be remarkably precise, honest and straightforward. It has also been observed that children are very effective in catalysing each other to speak out.

A further victim group that might be neglected is that of those who are outside the country, either as refugees or otherwise. It is still rare for transitional justice consultations to be undertaken in refugee camps, although this was done, for instance, with Sierra Leonean refugees in Guinea in 1999 and with Afghan refugees in the Islamic Republic of Iran and Pakistan in 2004, as well as with East Timorese refugees in West Timor and other parts of Indonesia in 2000. Still rarer are efforts to seek the views of non-refugee emigrants or exiles. Of course, such consultations may be extremely difficult or expensive to organize. Nevertheless, in situations where the diaspora may have an important contribution to make, and where it is easily accessible, efforts to enter into a dialogue with it should be considered. Consultations on the Liberian transitional justice framework included an innovative exercise, in 2006, to seek the views of the large population of Liberians resident in particular locations in the United States.¹⁹

Account also needs to be taken of the voices of those civil society groups that either represent victims or otherwise convey their concerns and demands. Victim groups can be numerous, diverse in form and opinion, geographically far-flung and under-resourced. For example, after publication of Peru's Truth and Reconciliation Commission's report a survey of victim groups

¹⁹ See <http://liberiatrnc.mnadvocates.org/>.

identified some 118 organizations in 11 national departments, including 18 regional, 21 provincial and 32 “direct” organizations, 22 women’s organizations, 15 youth groups and 26 organizations of displaced people.

It is necessary to ensure that victims’ groups really represent the victims’ views. Although this is often the case, sometimes the groups may convey very specific viewpoints of just some victims or will have an agenda of their own. Some groups, often based in national or provincial capitals (and far from many of the victims), may tend to reflect solely what might be described as “elite” views. For instance, in one country it is reported that urban, capital-based NGOs dominated phases of the consultation process, assuming representation of victims as a whole without properly consulting with those they claimed to represent or gaining an express mandate to do so. Another concern is the extent to which victims’ groups have internal processes to discern and present the views of the victims they claim to represent. Care needs to be taken, for instance, when consulting any victims’ group that seems to be run in an authoritarian or undemocratic manner. In all situations, victims’ groups need to be given adequate time to consult with those they represent.

Victim groups can make an important contribution to the design of victim consultation processes. Notwithstanding the concerns mentioned above, the perceived success of consultations of victims in Guatemala prior to the approval of transitional justice legislation (Law 975/2005) was attributed in part to the active participation of such organizations in all planning and implementation phases.

The identification of other stakeholders will very much depend on the precise purpose of the consultation. These stakeholders may include civil, traditional and religious leaders, political representatives, national human rights institutions, professional organizations, the media, trades unions and the business community, the security forces, including the police and army, other former combatants, educationalists and academics. Diplomatic missions, representatives of international organizations and the donor community may also be consulted (although such groups cannot be considered as representative of “national” views). Victims’ groups themselves may demand that various other groups should be consulted or otherwise participate in the process. In Nepal, for instance, they expressed a strong desire for the presence at consultations of all the concerned stakeholders, including ministers, local authorities, party leaders, and district and regional administrative officers, as their presence reassured the victims that their grievances were acknowledged and would be addressed.

A consultation process, in addition to conducting an actual direct dialogue, may also take account of stakeholder views that have been expressed in other contexts. Sources for such views can include the proceedings of peace conferences, debates in the media, the proceedings of parliament and the output of workshops.

Where relevant, and again being aware that the scope of the consultation goes beyond a country's borders, account can be taken of the findings of international human rights monitoring bodies, such as the concluding observations of the United Nations human rights treaty bodies. In recent years, the treaty bodies have made specific recommendations on transitional justice in their concluding observations directed to a significant number of countries. The country-specific findings of the special procedures of the United Nations Human Rights Council and the outcomes of its universal periodic review may also be relevant, as might judgements of the regional human rights courts (in Africa, the Americas and Europe).

X. ADDITIONAL PROTECTION CONSIDERATIONS DURING THE CONSULTATIONS

A number of protection-related and ethical considerations have been identified already, for instance, with regard to how to engage with women and children. Some additional guidance should be kept in mind.

Transitional justice consultations should be undertaken in a manner that demonstrates respect for the dignity of victims and others affected by human rights violations. They should be conducted with a sense of propriety and in a manner that is culturally sensitive to local conditions. Cultural sensitivity requires attention to such matters as the engagement between men and women, adults and children, and the manner in which respect is paid to traditional leaders and senior members of communities. It also requires attention to be paid to the role that religion and ritual may play in public life. For instance, if it is normal practice that meetings begin with prayers, there should be a specific reason for any decision to disregard such convention. Moreover, cultural sensitivity entails that consultation mechanisms are designed in recognition of and appropriate to the realities of societies with multiple justice systems, where a traditional indigenous justice mechanism exists next to a constitutional one. Finally, while it is critical to be sensitive to the local cultural context, national consultations should be conducted in accordance with international human rights standards.

Consultation experts, when they visit communities, should conduct themselves in culturally appropriate ways, heeding local conventions regarding such issues as diet, dress and behaviour. Even when off duty they should avoid improper behaviour, both as a form of courtesy and to avoid bringing the consultation process into disrepute.

However, not every local custom may be conducive to the undertaking of effective national consultations. For instance, sometimes it is an established practice that people who attend workshop-type events receive a modest sum of money or a benefit in kind to cover their expenses. Applying this practice in transitional justice consultations is not of itself something to be prohibited and, in fact, it may be unavoidable, but it does raise the issue of the extent, if any, to which such payments may influence the outcome of the proceedings.

Those responsible for transitional justice consultations should seek to anticipate any risks of harm to others that may arise in connection with the consultations and need to take every possible measure to avoid exposing individuals or communities to undue risk. One such risk may be the publicization of the particular views of an individual or community. For example, in northern Uganda, one community-based organization received a formal directive from local authorities to leave the district after having expressed its views during Government-organized consultations. Specific attribution of views must be on the basis of a clear agreement with regard to privacy and confidentiality. Groups of victims may sometimes be reckless in granting

such consents and the onus is always on the consultation experts to determine whether the consents are full, free and prudent.

It is important to have an enabling and protective national legal environment for consultations. People must not be at risk of prosecution for anything they might say, and it is necessary to verify that the relevant criminal or other laws, such as laws on libel, defamation and slander, pose no such risk. In some countries it may be necessary to review the scope and application of laws on treason, lese-majesty and other offences against the State. Similarly, the application of laws that govern assembly and movement should be reviewed. The risk of falling foul of the law will be exacerbated during a period of national emergency, when some human rights may have been suspended. Generally, the extent to which a national consultation process will require legislative amendment to address such issues should be assessed. In rare cases it may be necessary to erect new legal protections that specifically address the threats and risk to consultees and other participants in a transitional justice process. In Colombia, the Government was ordered, by means of a judicial finding, to put in place such a protection programme. Protection programmes need to be well resourced, supported by the political leadership and designed to be preventive rather than reactive.

The risk of harm is all the more evident when the extent to which consultations touch on issues of what may actually have happened in the past is considered. As mentioned above, even though consultations should be distinguished from the forms of discussion and debate that occur as a substantive part of a transitional justice programme, this engagement is usually inevitable. It must be handled with great care in order to protect the best interests of the consultees and not to compromise the broader transitional justice programme.

There is a substantial risk in any consultation process that misplaced or unrealistic expectations will be raised. This is a cause of harm and hurt to consultees and can also tarnish the credibility of the overall transitional justice project. Consultation experts can mitigate the risks through their sensitization efforts and the very clear and careful presentation of the purpose of each activity and the use to which its results will be put.

XI. REPORTING ON CONSULTATIONS

While a report of a consultation exercise can take numerous forms, it must always be true to the views that have been expressed. In part, this will be achieved by maintaining the scientific rigour of whatever qualitative or quantitative consultation has been undertaken. Any additional analysis and editorializing need to be considered with great caution. This has not always been the case in the past. For instance, a national consultation process in one country resulted in a clear call for the establishment of a “truth, reconciliation and justice commission”, whereas the report of that consultation made reference only to a “truth and reconciliation commission.”

As a general rule, reports should be published. Certainly, if a commitment was made to publish, it should be honoured. Otherwise, it will generally be correct to at least deliver specific findings, or some other form of summary feedback, to those who have been consulted.

There may be exceptional circumstances in which publication is not appropriate. The clearest such situation is if a report on a specific consultation should be withheld until a wider process is completed, thus avoiding the release of partial or possibly misleading findings. Other cases justifying non-publication include those in which there may be reasons to suspect that findings have been manipulated or tampered with, although in such a situation it will be important to rectify the faults at the earliest possible opportunity and then consider publication of the corrected findings. If the findings are inconsistent with international standards of transitional justice, it is important to accompany their publication with a critical commentary.

When reports are published, account needs to be taken of the capacities of the recipients. Reports should be translated into local languages and distributed appropriately. In some countries, they have been quoted at length in newspapers and on posters, and copies have been handed out free of charge. Copies have also been placed for consultation in such public facilities as town halls, post offices, medical facilities, schools and libraries. When reports are posted on the Internet, account should be taken of the technical capacities of the readership. For instance, it will often be best to post plain text versions, without elaborate images or formats, so that they can be more readily downloaded by people with poor Internet connections.

XII. FOLLOW-UP TO NATIONAL CONSULTATIONS

It is beyond the scope of this tool to examine in any depth the decision-making by policymakers that follows a consultation process. It should, nevertheless, be emphasized that the results of consultations should be taken into very serious account. However, they should not tie the hands of the decision makers. This is consistent with the human right of participation, which requires that views should be taken into account in a conscientious and respectful manner but does not carry with it the expectation that those views will be acted on. This is the only possible approach in a democratic society where the authorities must balance the demands of the various elements of the society in the context of a limited range of options and of finite resources. It may also guard against majoritarian tendencies, whereby the demands of the many would overwhelm the rights and entitlements of minority groups.

Even if views are not acted upon, they remain a very useful resource. They can constitute valuable sources of information about the capacity and the willingness of communities to undertake reconciliation and rehabilitation, as well as about the assistance they need in that regard. As such, they are important for policymakers in general and development actors in particular. The findings of consultation processes have also often assisted educational authorities to devise school curricula and adult learning programmes that promote good citizenship, and national and community reconciliation.

Annex

Summary

I. National consultations: what they are and why they matter

- A comprehensive process of national consultations is a crucial element of the human rights-based approach to transitional justice, as the United Nations has frequently emphasized.
- People who have been affected by past oppression or conflict need to be able to freely express their views, in a secure environment, so that the transitional justice programmes can identify and take account of their experiences, as well as of their needs and entitlements. A careful process of consultations will also ensure that there is a strong sense of local ownership of and promote stakeholder participation in the transitional justice programme. Moreover, consultations can benefit the design of specific aspects of transitional justice programmes, reignite stalled or slow-moving peace processes and trigger important debates in the community.
- National consultations need to be distinguished from outreach activities. They are not one-way information or public relations exercises, but instead are a form of profound and respectful dialogue whereby the consulted parties are able to freely express themselves with a view to shaping or enhancing the design of transitional justice programmes. Consultations should also be distinguished from the discussions and debates that occur as a substantive part of a transitional justice programme.

II. National consultations as a human rights legal requirement

- The right to be consulted can be identified in a number of human rights instruments. It is covered by article 25 of the International Covenant on Civil and Political Rights, guaranteeing the right of every citizen to take part in the conduct of public affairs, article 12 of the Convention on the Rights of the Child, regarding respect for the views of a child, and principle 35 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity.
- To enjoy the right to be consulted, a wide range of related human rights need to be implemented, such as freedom of expression, assembly and association.
- The design and implementation of transitional justice processes must respect and promote the fundamental dignity of every human being, based on the principles of equality and non-discrimination on the grounds of race, colour, gender, language, religion, opinion, national or social origin, property, birth or other status.

III. The focus of national consultations

- A well-designed national consultations exercise must take account of the forms of transitional justice that are envisaged for a country: the design of criminal justice-related consultations may look very different from, and be more limited than, those preceding a non-judicial exercise.
- While care must be taken to consider transitional justice mechanisms that have been identified beforehand, e.g., in a peace agreement, the consultation process should be open to transitional justice possibilities that were not originally envisaged.

IV. The form of the consultations

- The consultations that preceded or coincided with early transitional justice initiatives were almost all qualitative, i.e., taking place in the form of workshops, seminars, community meetings and other forms of organized debate while using classical qualitative research techniques such as focus groups, in-depth interviews and participant observation. Since then, various forms of quantitative methodologies have also been used, most commonly surveys. The quantitative and qualitative approaches are not mutually exclusive and many data-gathering exercises integrate both approaches.

V. Preparing the way for consultations: the importance of sensitization

- It is crucial that the people to be consulted have the necessary information and understanding of the transitional justice options open to them, of the specific context of the consultations, and of the specific purpose of the consultations, so that they can express informed viewpoints and do not have false or unrealistic expectations of the outcomes.
- While sensitization work should refer to the experience of other countries in order to inform consultees about the relative strengths and weaknesses of different transitional justice mechanisms, it also needs to emphasize that national programmes of transitional justice have to be tailored to the specific circumstances of the situation.
- Sensitization efforts should make use of all relevant languages, including indigenous languages and local dialects, and should be prepared to explain the technical terminology of transitional justice and of law to the consultees. However, it is important to distinguish between technical terms and terms on which the consultation experts wish to seek the consultees' views.
- Sensitization can be achieved through mass dissemination in newspapers and the broadcast media or by way of local means such as drama and role play. It should be monitored by specialists to avoid such consequences as re-traumatization.

VI. When to consult?

- The circumstances prevailing in a country will determine the form and scale of the consultations, and the impact of their outcome. Consultations will be most productive if conducted in times of relative peace and security and when the relevant communities are accessible over reasonable periods of time.
- In times or locations of ongoing armed conflict, efforts to undertake consultations need to take account of the impact of the prevailing climate of fear or intimidation, and need to cope with impeded access to the relevant communities as well as insecurity. The consultations themselves may even exacerbate the risk to individuals and communities, for instance, by gathering people in dangerous locations or by encouraging them to express views that may draw hostile attention.
- It is useful to periodically conduct consultations during the implementation of a transitional justice programme, with a view to recalibrating it and enhancing its impact by structural adjustments.
- Preliminary piloting activities may be useful, in particular for large-scale national consultations, as they might lead to adaptations and improvements of the consultation methodology.

VII. Where to consult and for how long?

- The location of the consultations depends on their precise objective. A localized approach may be appropriate if the goal is to hear the views of a particular community or category of victims. Broad, countrywide consultations also have merit, including when they seek the views of communities that may not have been directly affected by a conflict. A preliminary mapping exercise, taking account of previous conflict patterns, can assist in determining the locations where consultations should take place.
- Venues for consultations should ideally be neutral. Places which are directly or symbolically linked to the previous conflict, such as army or police buildings, government or religious buildings and crime sites, should be avoided. It is prudent to choose the venues and the precise timing of events in consultation with local representatives of victims or the other stakeholders.
- The duration of a consultation will depend on its purpose and scale, as well as on such considerations as access and security. Short processes help maintain a tight focus and avoid fatigue or loss of motivation among consultation personnel. Longer consultation processes, on the other hand, may facilitate acceptance of the process on the part of consultees, a maturation of their viewpoints and an ongoing refinement of methodologies.

VIII. Who should conduct the consultations?

- It is best for the consultations to be conducted by independent experts who do not have any organizational or political stake in specific transitional justice outcomes.
- National human rights institutions may play an important role in the conduct of national consultations as they can provide reassurance that the process will be conducted on the basis of human rights standards and with respect for the rights and dignity of the consultees.
- Frequently, international NGOs, academic institutions and others conduct consultations. Wherever possible, these international groups should work with and through appropriate national and local groups, thereby respecting the local social infrastructures, drawing on relevant expertise and facilitating a transfer of skills.
- The United Nations, in particular OHCHR and the human rights components of peacekeeping missions, frequently assists States in designing and conducting national consultations. It does so in support of national initiatives and capacities without seeking to influence consultation findings. Nor does it generally associate itself with particular views expressed in any consultative exercise.
- It is crucial to coordinate consultation exercises so that they are conducted in an efficient and targeted manner, avoid duplication, best address gaps, and do not overly burden consulted groups and individuals.
- Regardless of which institution or organization undertakes consultations, it is imperative that it should retain suitably qualified expert personnel. Its staff need to be fully trained in all technical aspects of their work as well as concerning any cultural or religious sensibilities that may arise. Special skills and training are required for consultations with women and children.

IX. Who should be consulted?

- National consultations should involve all the key stakeholders, including victims and witnesses of past patterns of abuse and oppression, women, children, as well as those who are outside the country, as refugees, emigrants or exiles.
- Women are sometimes disregarded or consulted inadequately or inappropriately, for instance, by or in the presence of men. The consultation of women should be undertaken by women, without haste and with full respect for the confidentiality of individual views, while also taking account of the stigmatization that may be associated with having been subjected to sexual violence. A well-designed consultation process

should also be predicated on the considerable extent to which women are the moulders, guardians and agents of change in their communities.

- Another group of victims that has been overlooked in many transitional justice consultations is children. Only recently have consultation exercises started to pay attention to their viewpoints. Children should be approached only by specially trained personnel and the principle of the best interest of the child should be kept at the forefront. Every effort must be made to avoid re-traumatizing children or to convey to them any sense that they themselves are responsible for the problems of their country or for finding the solutions.
- Account also needs to be taken of the voices of those civil society groups that either represent victims or otherwise convey their concerns and demands. It is important, however, to ensure that victims' groups really represent the victims' views.
- Other stakeholders may include civil, traditional and religious leaders, political representatives, national human rights institutions, professional organizations, the media, trades unions and the business community, the security forces, including the police and army, other former combatants, educationalists and academics, or diplomatic missions, representatives of international organizations and the donor community.
- Stakeholder views may be expressed in other contexts than direct consultations, such as in peace conferences, debates in the media, parliament and workshops. Consultations can also consider the findings of international human rights monitoring bodies.

X. Additional protection considerations during the consultations

- Consultations should be undertaken in a manner that demonstrates respect for the dignity of victims and others affected by human rights violations. They should be conducted with a sense of propriety and in a manner that is culturally sensitive to local conditions. Consultation experts should conduct themselves in culturally appropriate ways, heeding local conventions regarding such issues as diet, dress and behaviour.
- Every possible measure should be taken to avoid exposing individuals or communities to undue risk, such as the publicization of their particular views. Specific attribution of views must be on the basis of a clear agreement with regard to privacy and confidentiality.
- An enabling and protective national legal environment for consultations must be in place, ensuring that people are not at risk of prosecution for anything they might say.

XI. Reporting on consultations

- The report of a consultation exercise must always be true to the views that have been expressed; any additional analysis and editorializing need to be carefully considered.
- Principles of accountability suggest that such reports should, as a general rule, be published. It will generally be correct to at least deliver specific findings, or some other form of summary feedback, to those who have been consulted.
- Publication is not appropriate if a report would release partial or possibly misleading findings or if there are reasons to suspect that findings have been manipulated or tampered with.
- Reports should take account of the capacities of the recipients, and therefore should be translated into local languages and distributed appropriately.

XII. Follow-up to national consultations

- Results of consultations should be taken into very serious account. However, they should not tie the hands of the decision makers. This is consistent with the human right of participation, which requires that views should be taken into account in a conscientious and respectful manner but does not carry with it the expectation that those views will be acted on.
- Even if consultations are not acted upon, they can constitute valuable sources of information about the capacity and the willingness of communities to undertake reconciliation and rehabilitation, as well as about the assistance they need in that regard. As such, they are important for policymakers in general and development actors in particular.

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