

The caveat that national 'truth commissions' or other mechanisms be unbiased, and be seen to be unbiased, is difficult to achieve. Thus in many situations, there is a particularly important role for the international human rights community in helping to set the record straight. Often this is best done by the UN since it will be perceived, particularly by the government, as being more neutral. However this UN role in helping to establish what happened in the past should not always be left up to an HRO or the larger UN operation. At times it is best done by an 'independent' UN mechanism, eg. created and authorized by the High Commissioner for Human Rights or the UN Commission on Human Rights.

Recommendation #55

It is recommended that, where there has been a history of egregious human rights violations with little investigation or accountability for those violations, the mandate of an HRO should include the capacity to help identify those responsible.

The issue of amnesties¹⁹³ for human rights violations is fundamentally in opposition to justice and accountability. However, amnesties are a legitimate option for societies attempting to achieve some form of reconciliation. Reconciliation is primarily a political and moral process, where legal redress and justice become secondary. Having said that, blanket amnesties for particularly egregious violations such as torture, rape, and extrajudicial executions, are arguably doomed to failure in any effort to build a basis for reconciliation. Nevertheless, issues of amnesties must be solely the decision of societies themselves, and the UN appears to have little or no standing to advocate amnesties.

At a minimum, the UN and an HRO must "refrain from initiating or proposing any broad amnesty laws or other mechanisms that are incompatible with the obligation of states to investigate human rights violations and offer some recourse to their victims."¹⁹⁴ There are even a number of international norms¹⁹⁵ that make it unacceptable and possibly even illegal for the UN to call for amnesties.

Quite apart from the apparent lack of legal and moral standing of the UN to advocate amnesties, there is the operational contradiction in doing so. "It was the issue of amnesty that brought the contradictions between the human rights and political dimensions of the UN/OAS

¹⁹³ For a good discussion of this issue, see pp. 142-148, *Haiti: Learning the Hard Way*, Lawyers Committee 1995 op cit.

¹⁹⁴ p.158, *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador*, Lawyers Committee for Human Rights, December 1995.

¹⁹⁵ Art.2 International Covenant on Civil and Political Rights; Art.18(1) Declaration on the Protection of all Persons from Enforced Disappearance; The Principles for Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions; Part II Art.60 & 62 Vienna Declaration on Human Rights; and decisions of the Inter-American Commission on Human Rights. Note that Geneva Conventions Additional Protocol II Art.6(5) calls for amnesties but only for participation in armed conflict, not for human rights violations.