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The Truth Commission as a Tool for Accessing and Disseminating Information: Realization of the Right to Truth in Post-Conflict Societies

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Abstract

An important attribute of present-day society is the ability to make sense of past conflicts and prevent future ones on the basis of such reflections. A central tool in this regard has been the right to truth, realizing which enables the public to not only learn about mass and gross human rights violations and their perpetrators but also seek guarantees that there will be no repeat of such events in the future.

Institutionally, the right to truth is realized both via international and domestic legal procedures and through the use of various investigative and quasi-investigative commissions. The latter include truth commissions. The foundational principles underlying the operation of truth commissions were developed by UN specialists, with the basic idea being to establish such commissions in post-conflict societies as independent entities, provide them with access to all relevant documents and victims, and supply them with all necessary financial and operational support.

To gain an insight into models for the formation and operation of truth commissions, an analysis was conducted of the activity of the Study Commission for Working Through the History and the Consequences of the SED Dictatorship in Germany, the Yugoslav Truth and Reconciliation Commission (both representing Europe), the South African Truth and Reconciliation Commission (Africa), and the Truth Commission for El Salvador (Latin America). The conclusion drawn from the study is that each of these commissions has been criticized for inefficient activity, despite differences in the fulfillment of their recommendations. Truth commissions formed of local specialists tend to enjoy a higher level of support from the public. The realization of the commissions' recommendations tends to depend on there being political will and to be possible only under pressure from the international community and a state's civil society.

Keywords: truth commission, right to truth, transitional justice, post-conflict society, armed conflict, civil conflict, fair society, reconciliation.

1. Introduction

One of the essential characteristics of present-day society is unrestricted or relatively unrestricted access to information dealing with various spheres of human activity and social processes. The greater the significance of information for a specific individual, the more fundamental is the right to possess that information. If information deals with the fate of a relative or another loved one, their place of burial, and the circumstances of their death, the significance of such information becomes critical. Surviving victims of mass and gross human rights violations may need to share their sad experience in order to bring the guilty to justice. Spreading

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information about such experience through media is crucial, for it is important that both individual citizens and society as a whole should know the reasons behind a given social, negative or positive, phenomenon, its impact, and its effect.

Such knowledge can help forecast social processes, plan out life, and prevent undesired trends. It facilitates the self-identification of individual citizens in civilizational and socio-political context, the formation of a civil position, and the critical conceptualization of facts of the past. On one hand, coming to a realization of the wrongness of a certain past event and denouncing it and regretting it happened can facilitate the search for compromises and for opportunities for the development of heteropolar ideological currents in the context of attaining the common good. On the other hand, where facts of the past clearly bear the impress of crimes the only thing that can facilitate the common good and sustainable development is the inevitability of liability for one's actions. It is these basic prerequisites that the right to truth appears to stem from.

In a broad sense, the right to truth is an element of transitional justice. Transitional justice is one of the ways to stabilize post-conflict societies that have experienced a major crisis (e.g., a genocide, a civil war, or a ruthlessly suppressed mass protest). The need to employ transitional justice mechanisms is based on the need to bring the guilty to justice, ensure compensation for the victims, and put in place means of protection from similar events occurring in the future.

In this context, of fundamental significance is conducting a comprehensive investigation, systematizing information, and making such information public. The right to truth can be realized through public legal action, exploration of relevant government documents and archives, and provision of the general public with access to information through media. A major role in providing institutional and information support for the processes of learning about and acknowledging the past (no matter how complicated it may be), reconciliation, and, consequently, opening opportunities for further progressive development is played by truth commissions.

The aim of this paper is to provide an insight into best practices associated with the operation of truth commissions in different countries, their role within the information space of post-conflict societies, and their influence on the processes of reconciliation and solidarization within society and the information security of citizens.

2. Materials and methods

As already mentioned earlier, the need to realize the right to truth mainly arises in post-conflict societies. This particular characteristic of the right to truth is what can explain why research in this area is lacking. Nevertheless, there have been some relatively successful cases of realization of the right to truth, including via so-called "truth commissions".

Accordingly, the study's methodological basis is research dealing with the right to truth as a whole and the work of truth commissions in particular (Brahm, 2007; Ilic, 2004; Hayner, 2011; Pejic, 2001; Romeike, 2016; Torpey, 1995). Given the significance to the work of truth commissions of fact-checking rules (e.g., clear-cut argument processing rules, proper evidence gathering methods, and solid logic underpinning an investigation), reference was made to relevant studies on methodology for checking facts lying outside of the domain of judicial or law-enforcement activity (Lebid et al., 2020).

A substantial contribution to the study of the nature of the right to truth has been made by international organizations and bodies such as the Office of the United Nations High Commissioner for Human Rights, the United Nations Human Rights Council, and the Inter-American Court of Human Rights. Reports, resolutions, decisions, and other documents by these organizations were used as a basis for this work as well. Another significant source employed in this study is agreements and acts relating to the creation of truth commissions and final reports by such commissions. An insight was gained into the history of creation and operation of four different truth commissions – the ones in Germany, the former Yugoslavia, South Africa, and El Salvador. These commissions represent three different regions (Europe, Africa, and Latin America) and vary in terms of the formation and scope of powers available to such entities.

3. Discussion

The report by the Office of the United Nations High Commissioner for Human Rights entitled 'A Study on the Right to the Truth' lists the following key institutional and procedural mechanisms for implementing the right to the truth:

1) international criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court;

2) national criminal judicial proceedings and trials, conducted in accordance with rigorous procedural standards;

3) other judicial procedures limited to investigation and documentation, such as so-called “truth trials”, habeas corpus, and amparo;

4) truth commissions (Study..., 2006).

Thus, as already mentioned earlier, truth commissions (or truth and reconciliation commissions) are tasked with ensuring the realization of the right to truth institutionally.

A/HRC/RES/21/7, a resolution adopted by the Human Rights Council in 2012, states that the organization “welcomes the establishment in several States of specific judicial mechanisms and other non-judicial mechanisms, such as truth and reconciliation commissions, that complement the justice system, to investigate violations of human rights and of international humanitarian law” (Resolution, 2012). That is, it can be concluded that truth and reconciliation commissions are a fairly common phenomenon in contemporary history that helps improve life in post-conflict societies. According to the United States Institute of Peace, there were 33 truth and reconciliation commissions around the world as at 2011 (Truth Commission..., 2011).

The result of a codification of international best practices in this area was the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, adopted in 2005. This document both defines the right to truth and establishes the basic principles of the operation of “truth commissions”. In particular, Principle 2 holds that “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 [human rights] violations” (Set of Principles, 2005).

Pursuant to Principle 6, to the greatest extent possible, decisions to establish a truth commission, define its terms of reference, and determine its composition should be based on broad public consultations in which the views of victims and survivors especially are sought. Commissions of inquiry must be established through procedures that ensure their independence, impartiality, and competence. To this end, the terms of reference of commissions of inquiry must respect the following guidelines:

1) they shall be constituted in accordance with criteria making clear to the public the competence and impartiality of their members, including expertise within their membership in the field of human rights and, if relevant, of humanitarian law;

2) their members shall enjoy whatever privileges and immunities are necessary for their protection, including in the period following their mission;

3) in determining membership, concerted efforts should be made to ensure adequate representation of women as well as of other appropriate groups whose members have been especially vulnerable to human rights violations (Principle 7);

4) the Commission’s terms of reference must be clearly defined and must be consistent with the principle that commissions of inquiry are not intended to act as substitutes for the civil, administrative, or criminal courts (Principle 8);

5) the Commission shall be provided with sufficient material and human resources to ensure that its credibility is never in doubt (Principle 11) (Set of Principles, 2005).

At the same time, the Office of the United Nations High Commissioner for Human Rights draws attention to the following basic principles and approaches to truth commissions:

1) national choice (having a truth commission cannot be imposed from without; international actors should provide comparative information and expertise, but should recognize from the start that a country may choose, for very legitimate reasons, not to have a truth commission);

2) the need for a comprehensive transitional justice perspective;

3) a unique, country-specific model (while many technical and operational best practices from other commissions’ experiences may usefully be incorporated, it should be expected that every truth commission will be unique, matching the national context and special opportunities present);

4) political will and operational independence;

5) international support (Rule of Law Tools, 2006).

A 2015 report prepared by Special Rapporteur Pablo de Greiff for the United Nations Human Rights Council places a special emphasis, via a set of general recommendations for truth commissions and archives, on the need to preserve archival data and ensure the accessibility of a commission’s working materials. It is stressed in the report that truth commission records and proceedings must be open for public access and secure from accidental or intentional damage (De Greiff, 2015).

4. Results

European best practices on truth commissions are associated, above all, with the German reunification processes, as well as the process of post-conflict adjustment in the former Yugoslavia. Entities that bear a certain resemblance to truth commissions are the “historical commissions” established in the Baltic countries subsequent to the disintegration of the Soviet Union (e.g., Estonian International Commission for the Investigation of Crimes Against Humanity) (Hiio et al., 2005).

In 1992, the government of the Federal Republic of Germany established the Study Commission for Working Through the History and the Consequences of the SED Dictatorship in Germany. Even after German reunification the legacy of the Socialist Unity Party of Germany (German: Sozialistische Einheitspartei Deutschlands (SED)) remained a burden hampering the consolidation of German society. The memory of human rights abuses, humiliations, persecutions, and repressions continued to weigh on the minds of many of those looking for justice, retribution, and guarantees that something like that would not happen again in the future (Law, 1995: 216).

The Study Commission was comprised of 27 members, headed by pastor Rainer Eppelmann, an East German parliamentarian and human rights activist (Torpey, 1995: 114). It was mandated to investigate the practices of the East German government between 1949 and the fall of the SED regime in 1989, document human rights abuses, and assess the political-historical, economic, ideological, and societal factors of the dictatorship as well as the misuse of environmental resources. In addition, it engaged in the organization of public hearings with participation from victims, scholars, and civil activists (Torpey, 1995: 114-115). The focus of such activities was not only to raise awareness – they also were expected to facilitate public dialogue, reconciliation and unification, and the development of a common political culture between the communities of the two once-separate parts of Germany.

The report prepared by the Commission contained witness testimony, theoretical assessments, and political statements on the dictatorship’s consequences, spoke of the repressive and monopolistic nature of the SED’s authority, and discussed the persecution of dissenters (e.g., barring one from universities or prohibiting one from working in the professional world). The Commission’s recommendations mainly dealt with memory policy (the use of national holidays, memorials, and documentation centers and mapping of government buildings used by SED institutions) and the exchange of information with neighboring states in Eastern Europe. The Commission proposed establishing a permanent independent foundation for follow-up on the recommendations (Germany, 1992).

Due to the inability of the 1992 SED study commission to report on all aspects of communist rule in East Germany from 1949 to 1989, a successor commission, the Study Commission for the Overcoming of the Consequences of the SED Dictatorship in the Process of German Unity, was set up to complete the work. It had the same goals and objectives as its predecessor (Antrag, 1995). The Commission was comprised of 36 members of parliament, headed again by R. Eppelmann.

The Commission’s final report analyzed the structural conditions and perspectives of the reunited German Republic to overcome the repressive past of the SED dictatorship. The volumes focused on economic, social, and environmental policies as well as education, science, culture, and daily life in East Germany. Compared with its counterpart presented by the 1992 commission, this time the final report was focused on everyday aspects of repression, such as blanket discrimination against women and the severe restrictions on consumption of goods, as opposed to more violent atrocities (Germany, 1995).

The work of the two study commissions led to the establishment in 1998 of the Federal Foundation for the Reappraisal of the SED Dictatorship (increasingly known alternatively as the Federal Foundation for the Study of the Communist Dictatorship in East Germany). This institution, whose work is funded by the German government, has sought to conduct comprehensive investigation and study of the causes and effects of the influence of the dictatorship in the Soviet occupation zone in the German Democratic Republic as well as in other countries of Eastern and Central Europe. The foundation provides support for various projects, like documentaries, papers, exhibitions, seminars, and research (e.g., memorial site and archive work and publication of the results) (Romeike, 2016: 61).

In furtherance of the recommendations proposed by both commissions, additional measures were adopted, including seeking additional reparations for former political prisoners and other victims groups and providing psychological and legal assistance for victims of political persecution (Germany, 1995).

Doubt has been voiced about whether the above project can be technically regarded as a truth commission (Gross, 2005), and that has to do with the generally cultural and educational, rather than investigative, nature of the work of the 1992 and 1995 commissions. However, every country that has experienced a conflict or dictatorship will look for its own, distinctive, ways to reconcile and consolidate society, so it would not be very practical to push some kind of uniform work standards onto all truth commissions. Altogether, the activity of the German commissions has had a significant effect on the process of solidarization within German society, with their recommendations being taken account of in the legislative practice of both the federal states of East Germany and the Federation as a whole.

A lot less successful, if not totally disastrous, is the story of having a truth and reconciliation commission in the former Yugoslavia. In March 2001, the government of the Federal Republic of Yugoslavia set up the Truth and Reconciliation Commission in an attempt to investigate the legacy of the wars in the Balkans. The commission, comprised of 15 members, was tasked with investigating war crimes committed in the 1990s.

The massive scale of those crimes, their cruelty, mixed sentiment within society, and the dictatorial regime of President Slobodan Milošević, which persisted in Yugoslavia up until 2000 and was characterized by serious human rights violations, were the key factors behind the urge to establish the Commission. As fairly argued by researchers of that period, it would be hardly possible to advance democratic principles and values and build democratic institutes without breaking free from the mental models associated with a repressive policy disguised as one characterized by public interests prevailing over private concerns and without distancing oneself morally and politically from the crimes of a preceding regime (Gojković, 2000). The activity of an institution of this kind could serve as a substantial supplement to investigations by the International Criminal Tribunal for the former Yugoslavia (Pejić, 2001: 2-5).

The Truth and Reconciliation Commission was established on March 30, 2001, through a mandate from Vojislav Koštunica, President of the Federal Republic of Yugoslavia (Odluka, 2001). The Commission's work was not particularly efficient from the very outset. As early as April, two members left the Commission – Vojin Dimitrijević, a prominent Serbian human rights activist and international law expert, and Latinka Perović, a Serbian historian. The reason was the approach taken to forming the Commission's lineup – it was highly homogeneous politically, being comprised of just citizens of the Federal Republic of Yugoslavia and including no members of ethnic minorities and no citizens of the former constituent states of the Socialist Federal Republic of Yugoslavia. It took the Commission quite a long time – nearly nine months – to develop its action program, which later would be reconsidered with a gradual shift in focus away from the actual war crimes. Finally, in 2003 it was decided to prepare a report on the causes of the 1990s wars in the Western Balkans that was to cover the period starting from the 19th century, the two world wars, the spread of totalitarian ideologies in Europe, and a few other fairly broad issues that had little to do with the actual purpose behind the establishment of such a commission (Ilic, 2004).

The Commission, which had been appointed without due consultation, attracted very little civil society support in light of a lack of political will on the part of the authorities to investigate the circumstances of relevant past events, identify the guilty, and try to achieve reconciliation. The absence of an adequate action program undermined public trust in the Commission further. After failing to achieve any significant results, it eventually was dissolved in 2003 without producing a meaningful report.

The South African Truth and Reconciliation Commission was established in 1995 via the Promotion of National Unity and Reconciliation Act (Promotion, 1995) as an endeavor to dismantle the legacy of apartheid.

The Act's Article 3 includes the following objectives for the Commission:

- establishing as complete a picture as possible of the causes, nature, and extent of the gross violations of human rights which were committed during the period from March 1, 1960, to the cut-off date (established by the 1993 Constitution of the Republic of South Africa), including the antecedents, circumstances, factors, and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings;

- facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts...;

– establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims... (Promotion, 1995).

The Act's Article 7 sets out the procedure for forming and staffing the Commission. Specifically, the Commission was to consist of not fewer than 11 and not more than 17 members, which was to be determined by the President in consultation with the Cabinet. The commissioners were to be fit and proper persons who were impartial and who did not have a high political profile. Furthermore, it was allowed to appoint as commissioners not more than two persons who were not South African citizens (Promotion, 1995). Consequently, the Commission was comprised of 17 members and included no citizens of foreign countries and no members of international organizations (Hayner, 2006). The President was empowered to designate one of the commissioners as the Commission's Chairperson and another as its Vice-Chairperson and to remove a commissioner from office on the grounds of "misbehavior, incapacity, or incompetence" (this was to be determined on receipt of an address from the National Assembly and one from the Senate) (Promotion, 1995). The president having a prime role in forming the Commission must have been associated with his enjoying a high degree of credibility with the country's population. At that time, South Africa was headed by prominent human rights activist Nelson Mandela, who previously had spent 27 years in jail. It can, however, be argued that the idea of concentrating this much power over the operation of a truth commission in the hands of a country's president would be untenable in the long run.

The Commission was comprised of the following three committees:

- Committee on Human Rights Violations (tasked with investigating gross human rights violations);
- Committee on Amnesty (concerned with issues of amnesty for particular individuals);
- Committee on Reparation and Rehabilitation (concerned with issues of compensation for victims of human rights violations) (Promotion, 1995).

Each committee was to follow separate rules and lines of work. For instance, over the course of the first few years of the Commission's operation, the Committee on Human Rights Violations held a number of public hearings, with nearly 2,000 victims and their family members taking the opportunity to speak out and share their experiences of human rights abuses. The hearings, often highly emotionally charged, were broadcast nationally on television and radio and widely covered in the print media. Members of the Commission were convinced that this would help bring people out of the dark about what really had happened and shed new light on the scale of past human rights abuses in the country (Truth and Justice, 2003).

On October 29, 1998, the Commission presented a five-volume report. Each volume had a special focus – from a general introduction (Volume 1) to a description of gross human rights violations (Volumes 2 and 3) and conclusions and recommendations (Volume 5) (Truth and Reconciliation..., 1998).

Despite the submission of the final report in 1998, certain committees within the Commission continued work up until mid-2001, with the final version of the report taking longer to publish due to legal action being launched against the Commission by a group of persons whom it had found directly or indirectly responsible for numerous human rights abuses. In the end, the High Court in Cape Town directed in 2003 that the Commission publish in its final report a "schedule of changes and corrections" to its findings and a "memorandum" formulated by the Claimant "setting out its views concerning the findings with which it disagrees" (Truth and Justice, 2003).

Overall, the Commission worked out in-depth recommendations on victim compensation, including monetary, social, and symbolic reparations. The Commission proposed that each survivor or family be paid around \$3,500 per annum over six years. The Commission also recommended reforming South Africa's social and political system in such a way as to engage in the reconciliation process the nation's religious communities, business, legal system, correctional system, armed forces, healthcare sector, media, and educational institutions. Furthermore, it was decided to prosecute individuals who either had not applied for amnesty or had been refused amnesty on the strength of proof of their having committed human rights abuses (Truth and Reconciliation..., 1998).

The work of the Commission has mainly been criticized for the poor enforcement of its decisions, which included not paying compensations to deserving victims and letting many of the perpetrators refused amnesty avoid prosecution. For instance, victims registered by the Commission each received a lump-sum payment of 30,000 rand (\$6,417) from the government.

This was about a quarter of what the Commission had recommended (Der Merwe, Lamb, 2009). However, it is worth noting that the contribution made by the Commission to letting the public know about the crimes of apartheid was unprecedented, and this experience could be put to good use by other post-conflict societies.

Another important example of the operation of a truth commission is the situation in El Salvador. The Salvadoran Civil War lasted for more than 10 years – from 1979 to 1992. Tens of thousands of civilians disappeared or were killed during the conflict – by some estimates, nearly 1.4% of the country's population. The war did not formally end until the signing of the Chapultepec Peace Accords in Mexico City on January 16, 1992. It is via this peace agreement that the Truth Commission for El Salvador was established. The Commission was in operation from July 13, 1992, to March 15, 1993 (Hayner, 2006).

The Agreement views the Commission as a medium for the “purification” of the armed forces and putting an end to any indication of “impunity” on the part of officers of the armed forces (Mexico Peace Agreement, 1992). The Commission's mandate is defined in an annex to the Agreement. Its primary objective was to investigate “serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the truth”. The Commission's charge also included “recommending the legal, political, or administrative measures which can be inferred from the results of the investigation”. The Parties, in turn, agreed to full cooperation with the Commission, including in terms of providing it with all relevant materials and information and with complete freedom of action and decision regarding its composition and work plan (Mexico Peace Agreement, 1992).

The Commission was comprised of three members, appointed by the UN Secretary-General by agreement with the Parties. All were members of the international community. Specifically, the Commission was composed of Belisario Betancur (ex-President of Colombia), Thomas Buergenthal (former Judge of the International Court of Justice), and Reinaldo Figueredo Planchart (former Venezuelan Foreign Affairs Minister) (Hayner, 2011:50).

Initially, the Commission was given six months in which to perform its task. Subsequently, it got two more months to do so. According to the Commission itself, more time was necessary to complete the work, considering that the violence had lasted for 12 years.

The Commission investigated the following two types of cases:

a) individual cases or acts that, by their nature, outraged Salvadorian society and/or international opinion;

b) a series of individual cases with similar characteristics revealing a systematic pattern of violence or ill-treatment which, taken together, equally outraged Salvadorian society, especially since their aim was to intimidate certain sectors of that society (From Madness, 1993).

The Commission maintained an “open-door” policy for hearing testimony (to make sure any victim coming forward would be heard) and a “closed-door” policy for preserving confidentiality.

The Commission was to produce recommendations across the following key areas:

1) recommendations inferred directly from the results of the investigation (dismissing most of the persons named in the investigation from the armed forces and civil service, carrying out a judicial reform, and punishing the guilty);

2) structural reforms (including reforms in the armed forces and in the area of public security);

3) institutional reforms to prevent the repetition of similar acts (changes to areas such as administration of justice, protection of human rights, and the National Civil Police);

4) steps toward national reconciliation (including via the provision of moral and material compensation and creation of platforms for national dialogue).

The making of the Commission's final report public was met with harsh criticism from the persons mentioned in it, with the Salvadoran military high command blasting it as “unfair, incomplete, illegal, unethical, biased, and insolent” (Hayner, 2011:51).

Nevertheless, some of the persons concerned in the report were eventually dismissed from their posts, but there was only so much that could be accomplished in terms of staffing policy at the time. Subsequently, some of the Commission's recommendations were carried into effect after considerable pressure from the international community. In general, going forward El Salvador's political leadership would tend to ignore the Commission's report. Most of the Commission's painstaking work would ultimately go for naught, which can be explained by its lineup featuring no domestic “moral beacons” and a lack of political will.

5. Conclusion

This study produced the following findings:

1) Neither theoretical research on nor the practice of realizing the right to truth in different countries has helped find a “perfect” model of truth commissions. This is quite logical given the diversity of military conflicts (Lebid, 2019: 39) and social upheavals, the diversity of their causes and implications, and the uniqueness of each society’s historical experience. The work of just about every such commission has been subject to criticism, which figures given that such work is inextricably associated with reflecting on the consequences of long and bloody conflicts.

2) The commissions that tend to be the most efficient are those formed predominantly of local investigators, academic researchers, and “moral beacons” – their performance was found to have commanded the most trust with the population. At the same time, despite their high levels of professionalism, commissions formed entirely of members of the international community tend to be perceived as “imposed” from without.

3) Of major significance is that truth commission reports documenting human rights violations and containing recommendations on victim compensation, reconciliation, and guarantees of non-recurrence be made public. Of importance to the efficient work of truth commissions is also the use of fact-checking (e.g., clear-cut argument processing rules, proper evidence gathering methods, and solid logic underpinning an investigation).

4) The duration of a commission’s operation and its size must be correlated with the duration of a conflict and the number of probable victims and human rights abuses generated by it.

5) Unfortunately, the realization of truth commission recommendations primarily depends on there being political will. In some countries, it appears to have been possible only through pressure from civil society or the international community.

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