

ICTJ Africa Program  
 December 2009

This is the second paper in a series of three ICTJ briefs corresponding to the recommendations proposed by the African Union High Level Panel on Darfur in *Darfur: The Quest for Peace, Justice and Reconciliation* (October 2009).

---

**TABLE OF CONTENTS**

---

Introduction	1
Essential Characteristics	3
Essential Principles	3
Objectives and Functions	4

## Essential Best Practices for Truth Commissions

### Introduction

This briefing paper provides an overview of the essential best practices that a truth commission (TC) should employ. It is not intended to be a prescription for the perfect truth commission. It merely serves as a high-level guideline based on comparative experiences from around the world. ICTJ will in due course make available a more detailed briefing paper on best practices for truth commissions.

The briefing seeks to answer certain basic questions about truth commissions. It also outlines the essential characteristics of a credible truth commission and the principles that a commission and its members should value at all times. The appendix to this briefing provides ICTJ's technical recommendations in respect of several key aspects of a truth commission.

Darfur provides an important context for a truth commission exercise. The region has deeply rooted traditional conflict resolution and tribal reconciliation mechanisms. These two functions have overlapped in complex tribal peace conferences mediated by neutral tribal elders. However traditional reconciliation mechanisms are limited in their scope and coverage. They are not designed to address the type of conflict that has plagued Darfur for years.

The conflict in Darfur was unprecedented in nature and extent. While traditional methods may be usefully employed within aspects of a truth commission's work, such mechanisms do not have the capacity or the tools to deal with this type of new conflict. More robust mechanisms with the capacity to cover the entire region of Darfur are required. A truth commission established to investigate the conflict in Darfur ought to comply with the basic principles and standards set out in this technical briefing.

### When should a truth commission be established?

A truth commission is typically established following the cessation of hostilities and/or at the end of a period of abusive rule. A truth commission is not created to secure the peace; that is the task of conflict resolution mechanisms.

### What are the overarching goals of a truth commission?

A truth commission is created to assist a country break from its violent past. A TC ought to help ensure that conflicts do not reoccur. Ultimately a truth commission should place a country on a solid foundation from which to build a new society based on respect for the human rights of all.

A truth commission is not a panacea for all of society's ills. Moreover, while a truth commission can contribute an important, valuable narrative about the past to the historical record, it

cannot be responsible for writing the entire history or telling the full truth about a country. A truth commission can merely help a country to rise above the bitterness of the past and begin the arduous process of building a new society based on tolerance and reverence for human dignity.

#### **What makes a truth commission credible?**

A truth commission should confront the past with honesty, integrity, and vigor. It must do so regardless of how painful and divisive the truth may appear to be. The higher objectives of a truth commission cannot be realised if it is subject to manipulation, overlooks inconvenient facts, or generates a manicured version of the truth for short-term goals. The people of a country will know soon enough if they have been deceived or not told the full story.

A country emerging from the bitterness of conflict requires the most reliable facts in order to build a new future. Meaningful recommendations to address the real causes of national strife can only be made on the basis of accurate information and tested facts.

#### **Is a truth commission a substitute for accountability?**

A serious truth commission is not merely an opportunity for victims and perpetrators to tell their stories at public hearings. Nor is it about public expressions of remorse and reconciliation. A credible truth commission involves a methodical and rigorous examination of the past through meticulous inquiry. It leaves no uncomfortable stones unturned.

A truth commission is a means to ensure a measure of accountability in circumstances when it is not possible to do so through normal channels or where conventional means have failed. Accordingly, where a commission has conducted thorough investigations and respected principles of procedural fairness, it should make findings of fact, including naming all people and entities responsible for human rights violations. This is not to suggest that a truth commission is a substitute for judicial proceedings; indeed most truth commissions do recommend cases for prosecution.

#### **What is a truth commission expected to do?**

A conventional commission of inquiry is essentially a mechanism through which a head of state or a national assembly can obtain information and advice. The functions of a commission are therefore to determine facts and to advise the executive and/or legislative branches on how to address them.

A truth commission is also a commission of inquiry but it does substantially more. A truth commission is required not only to establish an accurate and impartial account of the past, but it must also address the needs of victims and recommend measures to prevent the repetition of conflict. A TC is expected to initiate the important tasks of restoring shattered lives and rebuilding destroyed and discredited institutions.

#### **A truth commission should belong to all the people**

Unlike a single-issue commission of inquiry, a national truth commission implicates the future of a country's entire population. It therefore belongs to all the people. A truth commission is a once in a lifetime opportunity for a country. So, special care should be taken when designing a TC. Its legal framework should be the product of extensive and meaningful consultation with all interested parties, particularly victims and survivors.

Such public participation signifies respect for the citizenry and allows lawmakers to gather important information for purposes of making a better law. With a greater stake in the lawmaking process, people will become more engaged and responsive to the needs of a TC.

### **Amnesty, pardons, and truth commissions**

There is a perception that an important part of a commission's work is to grant amnesty or pardons. In fact the inclusion of such powers is an extraordinary step that should not be taken lightly. An amnesty process is likely to complicate an already complex process. A conditional amnesty process drains resources and time and is likely to distract a commission from its central tasks. Experience illustrates that an amnesty process does not contribute significantly to the generation of truth. It should only be considered as an absolute last resort. There must be a sound justification for the inclusion of an amnesty process and it must also be practically feasible to implement.

### **Essential Characteristics of a Truth Commission**

A credible truth commission should be imbued with certain essential characteristics.

#### **Strong Independence**

A truth commission must be independent and subject only to the constitution and the law. The commission and its members must be impartial. They must exercise their powers and perform their functions without fear, favour, or prejudice. Nobody should be permitted to interfere with the functioning of a truth commission.

A commission that is not scrupulously independent is likely to be tarnished by bias. The findings and recommendations of such a commission are likely to be tailored to particular interests. They are unlikely to address the real causes of conflict. The public will not trust the commission and its findings will be discredited.

Independence is normally obtained by appointing commissioners and senior staff of the highest competence and integrity. They should enjoy unquestionable public confidence. Nobody with questionable links to the subject matters of the inquiry should be permitted to be part of the commission.

#### **Strong Autonomy**

The independence of a commission is not only measured by the caliber of its commissioners. Even with the most respected commissioners a commission's independence can be compromised through other shortcomings. A truth commission should enjoy financial, administrative, and operational autonomy. Financial autonomy means maintaining control over the commission's finances and retaining decisions on how to spend money. A truth commission should be given a reasonable budget that it alone manages.

Administrative and operational independence means having full decision making powers in relation to the hiring and managing staff and experts. A TC should have full control of administrative and information management systems, as well as over the commission's daily operations.

### **Essential Principles of a Truth Commission**

Since a truth commission is expected to help build a new society respectful of human rights, the commission and its members must act in accordance with values and principles that uphold human rights.

#### **Values, Principles, and Practices**

These values, principles, and practices are:

- respect for human dignity
- respect for the truth and upholding it

- respect for equality and the advancement of human rights and freedoms
- rejection of racism and sexism
- accountability, responsiveness, accessibility, and openness
- rigorous and methodical inquiry
- procedural fairness
- integrity, resoluteness and the maintenance of the highest standards of professional ethics

A truth commission should require compliance with such values and principles through a binding code of conduct. Such a code should be incorporated in the law or decree authorizing the TC.

### **Respect for Victims**

A commission ought to handle victims in accordance with certain principles. First and foremost, victims should be treated with compassion. Their dignity should be respected. Victims should not be unfairly discriminated against. No group of victims should be prioritized over others without proper justification.

Procedures for dealing with victims should be expeditious, fair, inexpensive, and accessible. They should be informed of their rights to seek redress through the truth commission. Appropriate measures should be taken to minimize inconvenience to victims and, when necessary, to protect their privacy and safety, particularly in the case of children and victims of gender-based violence or discrimination. A truth commission should exercise similar sensitivity when dealing with other groups that have experienced abuse, such as indigenous peoples, minorities, and the disabled.

### **Gender Mainstreaming**

A truth commission should strive to achieve gender parity within its organization. At least one-third of the commissioners and staff members should be women.

## **Objectives And Functions Of A Truth Commission**

### **Objectives of a truth commission**

While a TC's overall goals are to help consolidate peace and build a new humane society, a commission's mandate or legal framework should have more focused objectives to meet those goals. Typically a truth commission ought to pursue three broad objectives; establish an accurate and impartial historical record of human rights violations; address the needs of victims; and prevent the repetition of conflict.

### **Functions of a truth commission**

The functions of a truth commission are the tasks that are required to achieve the objectives. Typical functions that ought to be pursued under each of the three broad objectives are set out below.

#### **Establish an accurate and impartial historical record of human rights violations**

This objective normally includes an inquiry into the causes, antecedents, circumstances, contexts, nature, and extent of such violations. The functions involved include uncovering the truth behind such violations, discarding falsehoods, and debunking myths and rumours. In pursuit of such functions a truth commission ought to enable victims to provide their perspectives and also to encourage perpetrators to provide their perspectives and motives for such violations.

*The types of violations under investigation*

While a legal framework should define the types of violations that a commission should investigate, such a list should not be couched in exhaustive terms. What is crucial is to investigate the totality of the story of the conflict and its causes. A commission does not investigate crimes; it investigates violations of human rights. Some of these violations may in fact be recommended to appropriate state agencies for criminal investigations.

#### *The agents under investigation*

A commission ought to investigate whether the violations and abuses were the result of deliberate planning, policy, or authorisation by any government, group, or individual, and the role of both internal and external factors in the conflict. A commission should be authorised to investigate incidents that occurred outside of a country when such incidents are relevant to the commission's mandate.

#### *The time period under investigation*

The mandate of a truth commission must balance both the need to adequately examine the most critical periods of violence and authoritarianism against the practicality of an efficient inquiry. Clear historical periods, with a beginning and an end, facilitate the work of a commission. A commission must however be required to critically examine the antecedents that gave rise to the conflict. It may also be relevant for a commission to consider pertinent events and developments that took place subsequent to the conflict period.

#### **Address the needs of victims**

This objective is commonly referred to as “restoring the human dignity of victims.” Typical functions include:

- creating a safe environment for victims to come forward to speak of their experiences;
- acknowledging the wrongs and suffering that victims have endured and recommending measures to redress them; and
- devoting specific attention to gender-based human rights violations by investigating such violations and the causes thereof.

#### **Prevent the repetition of the violations**

The functions required to achieve this objective normally involve making recommendations that address the causes of conflict and that specifically address impunity and promote respect for the rule of law. Activities should be organised that advance reconciliation and healing between individuals, communities, and factions. In particular a truth commission ought to engage in public education and raise aware of the truth about the past.