

# NOBLE INTENTIONS, NAGGING DILEMMAS

*In Search of Context-Responsive Truth  
Commissions in Africa*



**NPI-Africa**

A Peace Resource Organisation

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## Executive Summary

From 2007 to 2009, the Nairobi Peace Initiative-Africa (NPI-Africa) and the West African Network for Peace-building (WANEP) carried out research on the role of truth commissions in post-accord societies in Africa. Undertaken in five African countries, the study was stimulated by the notable increase in the number of truth commissions deployed, this amidst largely untested claims of their efficacy. Research findings indicate that whereas truth commissions do successfully execute their guiding mandates and do produce very useful reports, vast discrepancies persist between conceptual and policy assumptions regarding their performance and the realities observed in their wake. A lacuna of this nature calls for a re-examination of the oft-repeated claims of the truth commissions' unique contribution to the transitional agenda, particularly with regard to the claimed focus on victims of human rights violations.

This policy brief presents select findings emanating from the research and offers policy recommendations to truth commission proponents in government and in non-governmental organisations. It recommends that truth commissions should be viewed less as default mechanisms of transitional justice and more as tools of last resort. They should be commissioned with limited and very specific goals within a comprehensive and well-sequenced transitional justice agenda. Even within these strictures, they should be deployed only when desired goals match the limited capacity of the mechanism.

## Introduction

The term transitional justice (TJ) has become a key mantra in societies emerging from socio-political turmoil, often marked with human rights violations, mal-governance and violence. In theory, TJ alludes to a wide range of remedial or restorative options such as: prosecutions, general or conditional amnesties, reparation for victims, removal of implicated or indicted government officials, reform of institutions, and the recovery of sequestered information regarding the past, among much else. Beginning with the trend-setting South African Truth and Reconciliation Commission (SATRC), the truth commission has become the most visible—but not the only—mechanism deployed in the quest for TJ in Africa. An excessively optimistic presentation of the SATRC's performance initially glossed over critical issues with regard to its eventual efficacy and replicability

elsewhere. It is clear in retrospect that unique transitional and operational circumstances prevailed in South Africa which rarely obtained in other contexts where truth commissions have been deployed.

Over the past 15 years, fourteen variants of the truth commission have been implemented in diverse transitional African contexts. The Research by NPI-Africa and WANEP explored a broad range of views regarding the performance of truth commissions in Ghana, Liberia, Kenya, Sierra Leone and South Africa. This particular constellation of countries enabled the research to focus on varying transition stages; i.e., countries in which truth commissions had already concluded their work (Ghana, Sierra Leone and South Africa), a country where a truth commission was underway (Liberia), and a country where the option of deploying a truth commission was being considered (Kenya). Respondents included victims of human rights violations and violence, TJ and human rights experts, former and serving Truth and Reconciliation Commission (TRC) commissioners together with related staff, civil society leaders, government officials, self-confessed and presumed perpetrators of atrocities, former militia members, individuals who offered testimonies or submitted statements to the commissions, relatives of victims, and care professionals, among others.

This Policy Brief begins with a discussion of contextual and conceptual issues arising from the research, followed by a presentation of select findings and lessons learned. It concludes with policy recommendations to stakeholders in the TJ field, including the international TJ community, governments, non-governmental organisations and the media.

## Contextual and Conceptual Issues

Three key conceptual and contextual elements are critical to an understanding of the role and legacy of truth commissions in Africa.

- ♦ **An Unwieldy Dualism:** The dualism consists in the following: a conflation of the discourse and goal of human rights defence and accountability, on the one hand, and the goals and requirements of conflict resolution, peacebuilding and reconciliation, on the other. TJ and its mechanisms are conceptualised within the human rights discourse with a focus on accountability, justice, and the obligation to discourage violations. Indeed the foregrounding of the truth commission as a TJ mechanism implies that proponents and policymakers view it as a fitting response to human rights violations. However, the truth commission's inherent accent on 'reconciliation' and its design often foreclose issues of justice and accountability; at the same time its processes, duration and outcomes fall short of the precepts of reconciliation. Eventually it delivers sub-optimally on both of these desired elements. Claims of a victim-focused approach also founder, particularly when the process raises expectations of material compensation and makes victim-specific recommendations which are not fulfilled. Truth commissions in Kenya and Togo have included the term 'justice' in their respective designations, thus appearing to counter the perceived bias towards a perfunctory reconciliation. However, nothing in the design, structure, staffing, statements by commissioners, or in operational procedures, indicates how justice will be addressed or achieved. The end result is a process that delivers only marginally with regard to the defence of human rights, accountability and reconciliation.
- ♦ **Isolating the TRC's Unique Role:** Truth commissions have been established rather causally in post-conflict or newly democratized societies without due consideration being accorded to the unique justice and reconciliation needs of such societies and with little regard for ongoing state and extra-state reforms and reconciliation processes. This approach risks intercepting and displacing ongoing locally-driven processes while raising expectations

that the truth commission eventually cannot fulfil. Kenya's Truth, Justice and Reconciliation Commission (TJRC), charged with a rather ungainly mandate, was established in a context of ongoing reforms, including the writing of a new constitution, and other so-called 'Agenda Four Commissions'. Each of these reform processes and commissions somehow address themselves to one or other aspect of the mandate of the TJRC. Issues such as economic crimes, land policy reform, and regional developmental inequalities require concerted constitutional, policy and institutional responses that a truth commission is not equipped to deliver. In the case of Kenya, the fact that the TJRC is operating at the same time as some of these issues are being addressed (through the enactment of a new constitution, a reinvented anti-corruption commission and a land policy, for example) suggests poor sequencing and a lack of clarity of the distinctive and realistic role of a truth commission. Therefore the question: What is the unique contribution that only a truth commission can best fulfil?

- ◆ **Transitional Moments:** Typically, democratic elections and peace accords provide the transitional moment within which TJ is considered. TJ measures, including truth commissions, are thought to provide opportunity for 'closing the books' on the past and consolidating a new future of a democratic and human rights culture. However, countries which have implemented truth commissions often lack a definitive break with a past which TJ measures are intended to address. Instead, 'newly constituted' governments comprise a mix of the old and the new. Typically, policies and institutions put in place by outgoing regimes remain largely unchanged, thus inappropriate attitudes and practices become a part of the new regime. Within a short period into the 'new regime', the dynamics of 'business as usual' blur the substantive meaning of 'transition', injecting a disabling ambivalence into the TJ agenda. The implementation of truth commissions in unclear transitional circumstances, such as those prevailing in Kenya, Liberia and Togo, may amount to squandering a once-in-a-lifetime opportunity, relegating it, merely, to an item on the checklist of post-accord or post-election must-do 'packages' or 'standard operating procedures.' At times, proponents appear to mistakenly believe that truth commissions can function as tools for the defeat of an ancien regime; in reality, truth commissions are best suited to consolidate defeat rather than to effect it.

## Specific Research Findings

Truth commissions are resorted to because it is believed that they offer plausible solutions to difficult dilemmas. Broadly, truth commissions are assumed to:

- ◆ Carry out investigations to establish the truth about the past
- ◆ Establish an official record of the past
- ◆ Grant 'earned' individual—as opposed to blanket—amnesties
- ◆ Provide 'free space' for previously voiceless victims to tell their stories
- ◆ Provide perpetrators opportunity to expiate their guilt
- ◆ Recommend reparations for individual victims and communities
- ◆ Reveal information about crimes and events which would otherwise remain hidden
- ◆ Recommend measures to hold perpetrators accountable
- ◆ Promote reconciliation

The research findings indicate that truth commissions do indeed perform some of the noted functions. In particular, certain categories of respondents, among them former commissioners and staff members, government officials and some members of the civil society tended to highlight the claimed benefits of truth commissions. However, their performance vis-à-vis victims was found to be unsatisfactory. A significant number of respondents in Ghana, Sierra Leone

and South Africa retrospectively characterized the truth commission as a good mechanism that nevertheless met neither their own nor the expectations of victims. In Kenya and Liberia, respondents pointedly expressed scepticism regarding the truth commission process from the outset. The following explanations inform the pessimism:

1. *Constraining transitional contexts:* In Kenya and Liberia, truth commission processes were undertaken whilst personalities associated with human rights violations and other crimes continued to wield political and economic power within a seriously balkanised polity. The politics of accommodation and the continued influence of such persons on the national stage render truth commissions ineffectual as mechanisms for counteracting impunity. In Kenya, the findings and recommendations of previous commissions implicating some of the people in positions of influence were ignored, thus raising the possibility or even likelihood of the TJRC findings/recommendations being equally ignored.
2. *A victim-dominated, one-sided process:* Despite the accent on 'reconciliation' (which suggests mutuality), perpetrators of human rights violations and other atrocities have tended to avoid participation in truth commissions, thus rendering it a victim-dominated process devoid of meaningful encounters between victims and offenders. Perpetrators who do come forward—sometimes compelled to do so—typically deny knowledge of human rights violations or refuse to take responsibility for any such violations. Some choose to be accompanied by lawyers, thus challenging the ideal of the truth commission as a non-adversarial space for victim-offender encounter and reconciliation. As a result, victim-perpetrator encounters within the truth commission framework have been few. Indeed, the inability of the commission to facilitate such encounters compromises the basic expectation with regard to restorative justice, inhibiting the possibility of reconciliation.
3. *Victim-friendly recommendations are ignored, delayed, or only partially implemented:* Truth commissions are lauded as 'victim-focused' mechanisms, but failure to implement victim-friendly recommendations contradicts this assertion. In South Africa, perpetrators were granted amnesty immediately while victims were urged to forgive and then await reparations years later. Indeed, perpetrator amnesties were anticipated in the SATRC founding legislation, while reparations were left to the discretion of the TRC at the end of its process. Respondents in South Africa and Liberia noted that the exhortation to be satisfied with 'moral victory' while victims expected and demanded prosecution, reparations or other forms of redress amounted to 'using' victims to advance interests or policy agenda which did not fulfil the requirements of justice, healing or reconciliation.
4. *High expectations of material compensation, not abstract future gains:* When proponents are queried about the virtues of truth commissions, they are prone to cite the broad societal gains such as the consolidation of democratic values, the promotion of a human rights culture or the establishment of a common historical narrative. In significant contrast, this research indicated that the greater portion of victims—variously defined—were motivated by more practical and more specifically material considerations. In Africa, truth commissions function in contexts of great poverty and material need. Human rights violations together with the legacy of violent dictatorships have only rendered an already difficult situation much worse. Dissatisfaction with the TRCs in South Africa, Sierra Leone, Liberia and with the National Reconciliation Commission (NRC) in Ghana is commensurate with the paucity of reparations or other support for victims. Respondents in Kenya indicated that they would be seeking monetary compensation from the TJRC. High expectations with regard to monetary compensation for different hierarchies of 'suffering' easily lead to 'victim competition', particularly when select victim groups are more conspicuous, for whatever reason, than others. In South Africa, for example, divisions between recognised

and unrecognised victims led to acrimonious competition for reparations.

5. *Contested truths*: Although some truth commissions—notably the SATRC—have grappled with the conceptual interpretation of ‘the truth’, they have limited capacity to deliver satisfactorily on any truth form—narrative or forensic. Witness narratives are typically contested by those portrayed as villains, thus rendering the final report a contested rather than an agreed official account of the past. For instance, the SATRC was sued by several entities ostensibly for publishing contested narratives as ‘the truth’. Similarly, the recollections of victims regarding past events are frequently in dispute, thus rendering public hearings as mere adversarial process. Outgoing regimes typically destroy evidence while key witnesses may have died or may have forgotten critical details, leaving the recollections of survivors open to contestation. Similarly, the choice of historical periods or time frames for investigation predetermines which truth narratives are admissible even as victims and perpetrators may have switched places severally.
6. *Role of secret societies and initiation rituals*: Research findings in Liberia and Sierra Leone indicate the futility of expecting ritually initiated ex-combatants, members of militias and members of secret societies usually responsible for war atrocities—typically sworn to secrecy—to reveal the truth in public forums before appropriate rituals can be performed to release them from the secret oaths. This problem applies to aspects of Kenya’s recent past which the TJRC is expected to investigate. How do modern instruments of transition—such as truth commissions—deal with the opaque world of rituals and secret oaths in societies which consider them integral to the prevailing cultural composite? At this juncture, the problematic remains unresolved.
7. *Structural and historical contexts of violations*: Invariably respondents expect the truth commission to investigate or at least take into account structural contexts within which violations took place. For example, the SATRC’s strict definition of ‘human rights violations’ has been faulted for creating an impression that the greater portion of these took place in the dying years of the apartheid period. These latter years of apartheid were marked by unrest—called ‘black-on-black violence’—in some of the townships. A majority of perpetrators was therefore identified as black South African while the apartheid system with its enduring consequences was less rigorously examined. Respondents in South Africa were of the view, therefore, that the SATRC failed to place the violence in the context of apartheid, and instead appeared to criminalise the struggle to defeat an ‘evil system’.
8. *Revelation of ‘new’ truth*: In Liberia and Kenya respondents were of the view that the truth was already in the public domain; that the perpetrators and their actions were already known. Particularly in Liberia, respondents identified known perpetrators, some of them in prominent government positions and thus serving as clear examples of impunity. In Kenya, earlier commissions had already examined issues which the TJRC was also being asked to investigate. Respondents considered it unrealistic to expect the TJRC to muster expertise, resources and time to investigate economic crimes such as the infamous Goldenberg heist in more detail than had been done by the earlier Bosire Commission. The challenge is therefore not necessarily digging up hidden truths, but rather what gets to be done with the truth.
9. *Sensitivity to issues of gender*: Sierra Leone’s TRC ranks highest in its gender-sensitive process, involving separate flexible hearings with options providing for confidentiality and anonymity. However, this nuanced approach has not been pursued or adopted by other truth commissions. In Liberia, one of the commissioners cited the general treatment of sensitive testimonies—including those related to gender and sexual violence—as sufficient reason for not endorsing the final report of the TRC. In South Africa it emerged that competitive access to reparations led to an increase in violence at household level.
10. *Catharsis is temporary if expectations are not met*: The reciting of personal narratives during a truth commission is believed to bring a sense of relief to victims and restores a

sense of dignity. However, such cathartic relief quickly evaporates if concomitant changes or benefits are not forthcoming. Extreme material need, often exacerbated by conflict or violation of human rights, creates expectations for material redress which cannot be met by the mere act of telling one's story. The initial catharsis in South Africa and Sierra Leone was found to have given way to a deepened sense of victimhood.

11. *'Sudden death' and lack of follow-up mechanisms:* The typical abrupt end to a truth commission process leaves in its wake much unfinished business, including incomplete investigations, inadequate or inappropriate management of information and selective implementation of recommendations. Although it has been argued that a commission's mandate does not include the implementation of its own recommendations, this research indicates that failure to anticipate or to specify a range of follow-up options with regard to the implementation of recommendations is a fatal shortcoming of truth commissions.

## Recommendations

### General

1. *Resolve conceptual and policy goal conflicts:* Proponents of truth commissions as a TJ mechanism do well to address the conceptual disconnect between the discourse and objectives related to human rights, on the one hand, and those of peace-building, healing and reconciliation, on the other. At this juncture it must be questioned whether these desired ends are achievable simultaneously within a TJ mechanism such as the truth commission.
2. *Match TJ mechanisms with transitional context:* Decisions regarding which TJ mechanisms are most appropriately deployed should be guided by the nature of a particular country's transition. In the case of an incomplete transition, it is preferable to opt for institutional reforms which strengthen the hands of reformers in government, while buying time for the adoption, subsequently, of more radical mechanisms of transitional justice. For example, the new post-2010 constitutional dispensation in Kenya offers a better environment for a truth commission, particularly if new elections in 2012 also usher in a reform-minded leadership. Instituting truth commissions in situations where they are unlikely to deliver desirable results is tantamount to squandering an otherwise useful mechanism.
3. *Avoid overloading:* Where a truth commission is deemed necessary, it should not be presented as a catch-all solution for all of society's ills. In the Kenyan scenario, the mandate assigned to the TJRC was excessive. Some of the desired reform could have been achieved more effectively through other processes such as the promulgation of a new constitution, the adoption of a new land policy, investigation and prosecution for economic crimes through the Kenya Anti-Corruption Commission, national healing and reconciliation through the National Cohesion and Integration Commission, among other options. A truth commission is most efficacious when deployed for very specific and limited purposes such as reviewing a country's history with a view to building an inclusive national narrative, acknowledging victims of human rights violations and marginalization, and offering redress.
4. *Anticipate follow-up from the beginning:* The law and design of a truth commission must anticipate how the recommendations and any pending tasks will be carried forward.

In the eyes of the public, the credibility of the truth commission is pegged not only on the clarity of its analysis, but also on the specificity of follow-up recommendations and action. Truth commission design should therefore include a self-implementing mechanism which obliges the government or established institutions, such as the Judiciary or the National Human Rights Institution, or a new successor institution, to assume responsibility for the implementation of the eventual recommendations. In Kenya, the Commission of Inquiry into the 2008 Post-Election Violence (CIPEV, also known as the Waki Commission) established a remarkable precedent in this regard, ensuring that its report could not be ignored by the government.

5. *Align mandate and design:* Truth commissions, such as those in Kenya and Togo, with a 'justice' component must define what they understand by 'justice' and then demonstrate through design and process, how this justice component is to be pursued. The truth commission template, as currently understood and formulated, may well be incapable of such a pursuit. Similarly, commissions with expansive mandates, such as Kenya's TJRC, should be accorded commensurate resources including adequate staff and realistic timeframes within which to complete assigned tasks.
6. *Local roots with national reach:* In contexts marked by people-to-people communal violence, a truth commission process must be rooted in the authenticity of local grassroots dynamics, on the one hand, and be able, on the other, to be understood and to function credibly at the national level. Localized processes of justice, healing and reconciliation must be carried out through meaningful interaction with local structures. Among these are localized hearings at specific sites of violations; deployment of local languages and local rituals to enhance participation, all of which must function recognizably within a national legal framework.
7. *Facilitate encounters:* Encounters between victims and perpetrators should be encouraged both within the truth commission's framework and beyond the commission space. Rituals and covenants of non-repetition of violations can be facilitated by community organizations and by civil societies apart from the immediate truth commission mandate.
8. *Demonstrate victim-sensitivity:* The truth commission process must avoid the appearance of victim-insensitivity and perpetrator-bias by ensuring that amnesty and other perpetrator-focused processes not overshadow or run too far ahead of the options related to victim redress.
9. *Internal process cohesion:* Working committees must command conceptual and logical clarity on procedural and anticipated outcomes. Victims who intend to tell their stories in a public hearing should be prepared for possible legal questioning and adversarial cross-examination by lawyers of the perpetrators. Similarly, victims need to be helped to understand the nature reparations in order to avoid unrealistic expectations.
10. *Sensitivity to gender-based and sexual violence:* During investigations and hearings, victims of gender-based and sexual violence must be allowed all possible options to enable a dignified participation. Options of confidentiality, privacy, anonymity and freedom to choose which commissioners to speak to, should be explored. Moreover, gender-based and sexual violence should not be clustered with 'other human rights violations'; it must be treated as a crime in itself.
11. *Referral mechanism:* Given its limited timeframe and capacities, the truth commission should have the power to refer certain matters to other institutions. An example would be the special needs of women and girls in a post-violence period touching on issues of re-integration, medical care and psycho-social support.

## To Governments, Donors, the United Nations and Human Rights Institutions

1. International and local proponents of TJ should assist governments and civil societies to formulate a comprehensive and well-sequenced transitional trajectory, based on an assessment of the peculiar needs of each respective country.
2. Commission independent case study evaluations of truth commissions performance as a way of improving future TJ mechanisms
3. Confine the mandate of the truth commissions to matters that cannot be addressed by other existing institutions and transient processes
4. Ensure adequate legal grounding, access to information, and access to financial and human resources throughout the life of the commission
5. Ensure meaningful engagement with existing healing and reconciliation structures, including traditional justice and reconciliation mechanisms
6. Provide technical and administrative support
7. 'Fund-raise' resources to supplement government budgetary allocations
8. Provide political and technical support for the independence of the Truth Commission

## Non Governmental Organisations

1. Base TJ advocacy on assessment of the national context and sound knowledge and information gleaned from actual performance in diverse situations.
2. Carry out public education on the TJ process as a whole, facilitating informed participation
3. Organise and accompany victim groups in their quest for recognition, accountability and redress
4. Train a wide range of stakeholders, including journalists, victims and offenders, on TJ processes and terminology
5. Consult, engage with and, where necessary, train commissioners on important technical aspects such as the recording of comprehensive statements and addressing gender concerns
6. Maintain an astute balance between active engagement and objective distance in order to accompany and critique the commission's performance

## To the Media

1. Build knowledge base on the workings, objectives and challenges of TJ and truth commissions by assigning and training specialised journalists
2. Conduct public information campaigns communicating clearly the commission's mandate, structure and process
3. Develop and adhere to a code of conduct on treatment of victims and perpetrators by the media; stories of both victims and perpetrators should be treated ethically without sensationalising
4. Keep in focus the broad goals of the truth commission when reporting on day-to-day events
5. Air public hearings in a nuanced manner without focussing only on the emotional and dramatic scenes
6. Disseminate key messages, objective analyses and audits of the truth commission

## Conclusion

Truth commissions should be guided by a careful consideration of the specific circumstances of each respective country, identifying clearly the goals being sought and indicating how such goals are to be achieved. Research findings indicate that the noble ideals associated with truth commissions and the results of the chosen processes do not uniformly meet the expectations of the respective publics. Indeed, any continuing deployment of truth commissions as one-size-fits-all 'standard operating procedures' risks the possibility of discrediting this otherwise innovative TJ mechanism.

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