



International Center for Policy and Conflict

Press Statement

Monday April 20, 2009

Truth Justice Commission Commissioners Selection Process must be Transparent

International Center for Policy and Conflict (ICPC), which convenes civil society Working Group on Transitional Justice, is urging the Panel responsible for selecting Commissioners to the Truth Justice and Reconciliation (TJRC) to make disclosure of the initial list of the short listed candidates who were interviewed. This would offer the opportunity for full public scrutiny, participation and comment at virtually every point in the selection process. The Truth Justice and Reconciliation process was agreed under Item 4 of the Dr. Kofi Annan team mediation framework. Its agreement was signed on March 14, 2008.

We would like to make it clear that by ICPC seeking transparency to the process is not doing an injustice neither is it serving to prematurely discredit what we believe to be a valuable exercise but rather it is critical that the people appointed to the Truth Justice and Reconciliation are people of high moral integrity and have no track record of either having been accused or associated with any form of human rights violations, corruption or impunity.

ICPC believe that an effective TJRC is essential in beginning the long haul reconciliation process but it is inadequate if it does not explicitly preserve the possibility of criminal prosecutions. Kenyans have to guard against a situation where a TJRC would improperly immunize lawbreakers and thus foreclose prosecutions. Thus the correct process of nominating Commissioners has to be followed otherwise the whole exercise would be disastrous. The success or failure of the TJRC clearly shall be determined by the character of the commissioners as much also it depends on how the commission would operate and on the nature of its conclusions and recommendations. A commission designed to investigate alleged criminal conduct by particular individuals — especially a commission with subpoena power — raises serious concerns about due process that could render it unconstitutional. As such ICPC is requesting the Justice Minister and Attorney General to ensure that no law(s) or provisions of the constitution would stand on the way of the TJRC process. Those concerned have to address certain aspects of the TJRC Act that are still contentious to avoid future challenging of the Act as well as the process as happened in Indonesia.

We are aware that the Panel did invite potential candidates to offer their candidacy under certain criteria published in the local press. ICPC may not fully agree entirely on all aspects of the criteria. However, it offered the best beginning for the selection process. It is our believe that the Panel was given the opportunity to engage in an intelligent and enriching dialogue, not only about the substantive issues entailed in dealing with the past, but also about the composition of the body that will spearhead this process. And that the Panel had gained insights which allowed them to discuss the formulation of the shortlist in a subtle and sophisticated manner.

However, considering the sensitivity and the significance of the TJRC to the future of Kenya, Kenyans have every right to know the form and content of the selection process of the Commissioners. It is therefore vital that an initial shortlist is published, giving anyone the opportunity to provide the Panel with comment on any of the candidates prior to final shortlist. Further, the letter containing the final shortlist which the Panel would send to Parliamentary Committee on Legal Affairs and Administration must set out clearly the general approach and principles which they (Panel) followed during the appointment process. It is significant to observe that the selection process of South African Truth Commission Commissioners, which Kenya has heavily borrowed from, was conducted both directly and indirectly through public vetting and interviewing.

Signed by

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Executive Director,

Basic Facts on Truth Commission

What is a Truth Justice and Reconciliation Commission? A Truth Commission is an officially created, temporary, non-judicial investigative body. It is used in societies in transition. Truth commissions offer some form of accounting for the past. They take statements, conduct investigations and research, hold public hearings, and publish a final public report. **Why Establish a Truth Commission?** The question of *why* certain events were allowed to happen can be as important as explaining precisely *what* happened. Truth Commission recognizes the right for individuals to know the truth about past abuses. It reaches out to victims of past abuse to understand the extent and patterns, as well as the causes and consequences. A Truth Commission may help a society understand and acknowledge an ignored or denied history, bringing the voices and stories of victims to the public at large. Finally, it hopes to prevent further abuses through specific recommendations for systemic reforms.

About International Center for Policy and Conflict

The International Center for Policy and Conflict, ICPC, is registered in Kenya under the Trustee (Perpetual Succession) Act as non-government, non-profit organization fostering democratic, peaceful, secure and just societies in the Great Lakes and Horn of Africa by engendering the principles of justice, accountability, the rule of law and sustainable human security. These goals are accomplished through research, documentation, capacity building and technical assistance, networking, dialogue, information sharing and advocacy. The Center's core programmes are: Transitional Justice and Human Rights; Conflict Resolution and Peace building; Gender Justice; Capacity Building and Technical Assistance; and Human Security and Displacement.