Truth and Reconciliation as a paradigm for Peace-building: Retrospect and Prospects for South Africa and Kenya

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Abstract

The world has seen many conflicts frozen into protraction by the dissociative approaches, which only aim at conflict settlements. Conflict management should not only aim at avoiding war. Rather it should seek to transcend settlements toward a frame of reference that addresses the relational components of reconciliation as a central concern. Managing conflicts by regulating behaviour has about the same effect to conflict, as curing symptoms has to real therapy. There is need for mechanisms that aim to deal with the root causes and actual effects of tension and violence in society rather than expiring with cessation of physical hostilities.

This paper examines the concept of Truth and Reconciliation as an instrument for post conflict social reconstruction and peace building. It takes a comparative analysis of two cases: South Africa and Kenya. Both countries experienced conflict and gross human rights violations to varying degrees. In both cases the upshot of tensions and violence was the increased destruction to the social fabric of society. South Africa engaged the idea of Truth and Reconciliation after its transition from apartheid to democracy in 1994 and the processes animated widespread international interest.

After an electoral victory in 2002, the new NARC government in Kenya mooted the same thought, which however seems to have lost impetus with time.

Broadly, the concept of truth and reconciliation has a very recent history of about two decades. It has particularly been regarded as a remarkable and influential instrument for transitional justice especially where new and *perceived* democratic regimes take over leadership from previously authoritarian systems. Truth Commissions have mostly been pursued as a basis for national reconciliation and regarded as an alternative to the politics of vengeance and total retribution. They are philosophically guided by the need to integrate emotional and substantive concerns in the process of building sustainable peace. They also underline the essential for creating dynamic and conflict responsive mechanisms that respond to the subjective realities shaping people's needs. As a mechanism for post-settlement peace building, they transcend the tradition of signing peace agreements and embrace an innovative way for social reconstruction

There are however those who doubt the meaning and political potency of the idea of reconciliation and perceive it as a sell-out to the commitment to justice and reparation. The projects in South Africa and Kenya were and still remain fragile and contested. This paper examines whether Truth and Reconciliation Commissions offer an alternative repertoire for conflict resolution. It attempts to answer questions such as

what is the philosophical foundation of these Truth and Reconciliation Commissions, how robust are they in the two countries and as a global motif? More specifically can the Truth and reconciliation Commissions contribute to social cohesion?

The Concept of Truth and Reconciliation: Background

The concept of truth and reconciliation as an instrument for post transitional peace building has stirred widespread international interest in the recent past. Several countries including Argentina, Chile, El Salvador, Peru, Ghana, Uganda, Sierra Leone, South Africa, Guatemala, Rwanda and Kenya have adopted or at least attempted to take up diverse forms of Truth and Reconciliation Commissions to galvanize the process of transition from a past of human rights violations and violence to a future, *built on democratic ideals and the rule of law**.

South Africa's Truth and Reconciliation Commission particularly, hugely enhanced the truth commission agenda in the universe of transitional justice owing to various reasons. First the process of forming the Truth and Reconciliation Commission in South Africa was negotiated and endorsed by Nelson Mandela and then headed by Archbishop Desmond Tutu. The prominence of the two gave the TRC a lot of mileage. Their contribution to the TRC and its processes obviously drew a lot of public and international appeal. Second, the truth and reconciliation processes were themselves held in the full glare of the public and given the intractable nature of South Africa past, the proceedings too, drew widespread significance. Third, South Africa's TRC had a very huge mandate including the amnesty provision whose conditionality and specificity was not only ground breaking but sometimes very controversial, particularly when it came to the thorny questions of how justice was to be pursued.[1]

In Kenya on the other hand, the work of transitional justice has not been as visible as in the case of South Africa. There were high expectations after the widely praised democratic elections in 2002 that resulted in the defeat of the former ruling party KANU. KANU had been in power for 39 years and its rule characterized by human rights violations and massive corruption. Upon taking over leadership, the NARC government promised to establish a comprehensive truth commission or similar body to facilitate accountability for past economic crimes and violations of human rights. Towards that end, the Kenyan government appointed a task force in April 2003, to collect and collate views on the need for, and structure of a truth commission. In its final report of October 2003, the task force recommended the formation of a Truth, Justice and Reconciliation Commission (TJRC) to look into past crimes and human rights violations since 1963.[2]

The change in government in Kenya in 2002 and subsequent formation of the task force on the formation of a truth commission, prompts comparisons with South Africa's post 1994 transitional peace-building efforts. Both situations had experienced various forms of gross human rights violations and violence albeit with different intensities.

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[1] See Amnesty International, *Truth and Justice: Unfinished Business in South Africa*, Human Rights Briefing Paper, February 2003.

* Italisation implies the word or concept is debatable.

[2] See D. Taylor, *Will Kenya Hear the Truth*? www.news24.com/news24/africa/features, 22/04/2004

Overview of the Conflicts

A comprehensible trajectory of the various forms of the protracted conflicts in South Africa and Kenya desires an in-depth historical analysis, which this paper does not encompass. However, in brief the system of apartheid in South Africa imposed appallingly heavy burdens on most South African citizens. Apartheid extended various forms of socio-economic and political pillage based on race and this system crucially underpinned the entire legal order.[3] The situation transformed South Africa into a ranked society by vertically stratifying the society and having the politically dominant group also controlling access to resources, education, health and status.[4] This generated both direct and structural conflicts and violence as successive regimes used various forms of coercive leverage to manage the tensions.

The South African situation broadly presents a very intricate conceptual problem relating to the relationship between race, class, the capitalist economy and white domination. The aspects stood in a contingent relationship to one another, as conflicts in one sphere exacerbated tensions in others. This paper observes that the conflicts in South Africa were not augmented *only* by the aspect of race as held by some observers. Rather there was a connection between various factors, socio-economic, political and ideological all of which intertwined to intensify hostilities.

For the case of Kenya, the various forms of violence and injustices were not informed by a clear-cut ideology or racial segregation. From independence in 1963 to 2002, both Kenyatta's and Moi regimes[5] epitomized authoritarian systems that perpetuated cronyism and clientilism. They effected a personal rule and preferences in the allocation and distribution of national resources. This fostered ethnic animosity as the idea of being in power was equated to having the opportunity for 'one and his community to eat' Both the Kenyatta and Moi regimes wrought many problems and structural violence on Kenyans. The two regimes sought to limit political competition through manipulation and patronage of opportunities and very often misused public power to weaken or eliminate opponents. Like was the case in South Africa, they too, employed repressive mechanisms for instance detention without trial and torture to coarse opponents into submission. Infact both regimes were less answerable to their constituencies. Corruption and personal survival was at times purchased at the expense of socio-economic development.

By comparison, the centrality of violence and gross human rights violations in South Africa and Kenya places similar issues on the agenda of each country's post transitional peace building processes. The endemic conflicts and human rights violations to which both situations were subjected to is certainly a common thread. Opposition to regimes in both cases was justified on the basis that the systems did not allow for democratic participation (until 1994 in South Africa and to a lesser degree in 1992 in Kenya[6]). Certainly in both cases democratic space was denied to alternative

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[3] D. Dyzenhaus, Truth, Reconciliation and the Apartheid Legal Order, (Cape town: Juta and Co. 1998). p.xiii.

[4] See R. Lemarchard, " Managing Transition Anarchies: Rwanda, Burundi and South Africa in Comparative Perspective" in Journal of Modern African Studies, vol. 32, no. 4, p. 58.

[5] Mzee Jomo Kenyatta was Kenya post independent leader until his death in 1978 and was replaced by Daniel arap Moi, who remained in power until 2002 when he left office constitutionally, having served his two terms in office in the multi party era.

[6] Kenya changed from one party state to a multi party system in 1992 but most the one party state structure were left intact.

conceptions by the use of repressive legislation and partisan security. The intractable socio-economic and political situations exacerbated the action-reaction forces thereby intensifying the conflicts.

The repressive patterns and dynamics of violence and injustice however varied in the two countries. The South African case was much more ramified and articulate in terms of victimhood and agency compared to that of Kenya. Moreover Kenya's case was compounded by the question economic mismanagement and corruption, which however, was not a crucial dimension in South Africa. The perpetuation of economic crimes in Kenya resulted in structural violence; the denial of citizens to enjoy those fundamental human needs.

It is these forms of conflicts and injustice that played a central role in moving the two countries toward the idea of truth and reconciliation after their various transitions to *democratic rule*.

The TRC and the TJRC

Today, South Africa has made substantial progress on the implementation of a truth commission, unlike Kenya, which has so far stagnated at the recommendation stage of the task force.

South Africa's TRC

Unlike many previous truth commissions, South Africa's TRC had vast powers that went beyond its models in the degree to which it was open driven. It also had a very broad scope of investigation and its inquiries invited a lot of public participation.[7] The TRC effected its mandate through three committees; the Amnesty committee, the Reparations and Rehabilitation Committee and the Human Rights Violations Committee, all of which had elaborate structures to effect their work.

In a nutshell, the TRC sought to investigate details of violations of human rights from 1960 to 1994, to identify the nature and extend of those violations, the individuals and institutions that perpetuated or participated in the perpetuation and its report was expected to lead to institutional reforms and reparations to victims. The perpetrators of crimes who confessed and sought for forgiveness were entitled to amnesty by the commission. The TRC was supposed to bring to light the truth about South Africa's past. It too sought to build a foundation for reconciliation through the illumination of truth, which was supposed to be sought in a way of promoting reconciliation. The commission did not thereby emphasize retributive or criminal justice but rather 'working things together' Insights gathered through the TRC's investigative process were supposed to lead to the transformation of the institutional framework of government. Indeed the TRC's report records massive human rights abuses and makes important recommendations for reparations to victims.[8] There was however opposition to the final report from both senior officials in the ANC and the National Party when both parties were implicated in human rights violations. The current South African president Thabo Mbeki argued that the ANC was involved in a liberation struggle and whatever ensured during that struggle could not therefore be categorized as human rights violation. Former President F.W de Klerk on the other hand argued

[7] See D.Dyzenhaus, 1998,p.2.
[8] Visit http://www.doj.gov.za/trc/

his government never deliberately perpetuated human rights violations and that he personally was unaware of the accusations leveled against his regime by the report. These assertions by both sides of the divide lend credence to the observation that the TRC at least exercised some degree of impartiality in its work.

Kenya and the TJRC

The task force appointed by the government of Kenya recommended among others that the president establishes a TJRC by June 2004 of no more than eleven commissioners, to investigate violations against individual and community rights between 1963-2002. It further recommended that the commission be vested with powers to bar the guilty from holding public office and seize fraudulently acquired property. The commission was too, expected to have powers to summon anyone and for those who willfully surrender stolen wealth, it was supposed to have powers to grant them amnesty. Victims of injustice were to be redressed through compensation, restitution and reparations.

Today, the NARC government's commitment to implementing the task force's recommendations seems to have lost impetus. By August 2004, there was little sign that the government will move toward implementing the task force's recommendations. Given the enthusiasm with which NARC advanced the idea of a truth commission during its campaigns, the question many observers have been asking is why nothing substantive seems to be happening and whether Kenya will actually hear the truth about past crimes. The government has on the other hand instituted several mini commissions to look into a series of specific crimes and other issues outside what the task force had recommended. This has raised fears that the NARC government, now bogged down by internal wrangling and accusations of corruption, is no longer willing to implement a broad based TJRC. This can be explained in part by the fact the NARC government is itself populated by members of the two former regimes, some of who were alleged to have participated in the perpetration and perpetuation of economic crimes and annihilation of ethnic violence in 1992 and 1997. It is argued that the government cannot implement a TJRC without antagonizing itself. Secondly, the increased tensions and wrangling in the ruling coalition has led the Kibaki government to engage in the politics of survival where political clout and support is procured at the expense of transparency and accountability.

TRC and TJRC: a Comparison

While Kenya's TJRC seems to have stagnated at the level of the task force's recommendations, the South African's TRC made tremendous progress since its inception in 1995.The TRC received very favourable reviews especially from outside South Africa.[9] Inside South Africa on the other hand the TRC's work remains a controversial subject. There are debates about whether South Africa's TRC actually advanced questions of truth, justice and reconciliation or infact undermined them. Some people have dismissed the TRC as a sensationalist circus[10] while others viewed it as nursing a bias toward the ANC despite the Mbeki's opposition to parts of TRC report.

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[9] See C. Jenkins, *The South African Truth and Reconciliation Commission: A Break through for Africa?* "Paper Presented at the 2003 Centre for African Studies Annual Conference on 'Remarking Law in Africa" University of Edinburgh.

[10] Ibid.

Various scholars and commentators have critiqued the TRC on among other issues, its investigative processes (that there was no collaboration of evidence), on amnesty (that this provision sacrificed justice) and on reconciling South Africans (that reconciliation is a process rather than an event and it depended on individual dispositions, critiques argue that the TRC could only facilitate the process rather allege to be reconciling people on itself as ascribed in its name). These appraisals will be revisited later.

Truth and Reconciliation as A Paradigm for Peace building.

Certainly South Africa's TRC made more progress carrying out its mandate and its structures and processes provided a more ambitious and promising innovation in truth and reconciliation as model, compared to the case of Kenya. The amnesty provision was a middle ground and central incentive in moving the perpetrators in particular and the previously conflicting parties in general, out of their hardened positions. In other words the price for historical truth and presumption of reconciliation involved a significant compromise in the pursuit of criminal justice[11]

Broadly, there is no single formula for constructing a truth commission. The structure, mandate and other details of such commissions are/should be dictated by the particular circumstances of each individual country. However, by and large truth commissions have often included investigations, amnesty for confessed criminals, prosecution of worst offenders who refuse to cooperate and compensatory settlements for victims. As a paradigm for peace building truth commissions generate a variety of reviews ranging from legal, moral to those suffused in religious and social science critiques.[12]

Problematic areas in the Paradigm of Truth and Reconciliation

- **Justice**

This concern has dominated discussions especially from legal scholars. For many, the proper response to a criminal act is to follow the due process of law, to render verdicts and punish criminals. But truth commissions particularly the South African case did not offer this sort of justice. It moved away from retributive justice particularly for those who confessed their wrongdoing and sought forgiveness. In such circumstances aspects of truth and reconciliation end up balancing somewhere in a morally, politically and emotional equilibrium.[13] In such cases, tensions exist between two poles of forgiving and retribution on the justice continuum. Advocates of the truth and reconciliation idea in South Africa and elsewhere, argue that the fragility of transitional governments necessitate a precarious balancing between retribution and amnesty, lest perpetrators of past crimes gang up for fear of punishment and sabotage the new governments social reconstruction efforts.

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[11] See P. Conway, *Truth and Reconciliation: The Road not Taken in Namibia*, "The Online Journal of Peace and Conflict Resolution" Issue 5.1, Summer 2003. (Published by Tabula Rasa Institute)

[12] See K. Avruch and B. Vejarano, *Truth and Reconciliation Commissions: A Review Essay and Annotated Bibliography (1)*, "The Online Journal of Conflict Resolution" Issue 4.2, Spring 2002, Issn 1522-211x.

[13] Ibid

- **Truth**

Truth has been another very problematic area in the operations of Truth Commissions. This is so because previously conflicting parties may play competing versions of what they consider to have happened. Lerche observes that all sides have their own versions of truth of what really happened.[14] Truth seeking becomes a very complex process because it may be difficult to establish and distinguish between sensationalism, lies and actual facts about the past.

- **The Problem of Reconciliation**

Truth Commissions have been regarded as advancing social healing and reconciliation in society. That through acts of perpetrators acknowledging their wrongs and asking for forgiveness, the society undergoes some forms of catharsis (social healing between perpetrators and victims). Many scholars question how acknowledgement and forgiveness even if affected at the individual level can be moved to the societal level. It is on that basis that critiques contend that it is problematic to shift healing and reconciliation from the individual to societal or national levels.

This paper contends that truth and reconciliation as a mechanism for peace building goes beyond conflict settlements toward a point that addresses those relational components of reconciliation. It is true, the mechanism carries along new challenges, but it at least embodies pragmatism and principle in terms of transcending traditional approaches especially those that expired with cessation of physical hostilities or at the signing of peace agreements. Truth commissions purpose to be processes that build durable blocks for sustainable peace and ensure non-repetition of past crimes. It is increasingly obvious that the real challenge for most countries emerging from transitions including South Africa and Kenya is to build a society that is truly participatory and that fulfils the basic needs of its people. Truth commissions can act as a bridge toward that form of society. They are points of departure for a process of transformation that seeks to fulfill rather that frustrate the enjoyment of human needs. But they are not enough in themselves for the reason that if structural inequalities continue to prevail, new fissures will be generated which give rise to alienation and new forms of conflict. The ubiquitous surrounding countries where truth commissions have been established including South Africa indicate that far-reaching challenges are still to be met. In some cases like Chile political turmoil still prevails. In South Africa political violence has subsided tremendously although structural violence has shaded into criminal activities especially in such poor areas as Soweto.

Retrospect.

This paper points out that both South Africa and Kenya experienced various forms of intractable conflict, violence and injustices. In both cases the conflicts were mainly intra state and therefore conflicting groups lived in close geographical proximity and had direct experience of the violent trauma that they associated with their [perceived enemies. Their experiences were tied to a history of grievance and enmity that had escalated over time. After their various transitions in 1994 and 2002 respectively, there was need to create transitional instruments for transforming the previous patterns of conflict toward sustainable peaceful relations. Both Countries embraced

[14] See C.O. Lerche, *Truth Commissions and National Reconciliation: Some Reflections on Theory and Practice*, "Peace and Conflict Studies" Vol.7, no. 1, May 2000.

the idea of a truth commission and South Africa's case has gone through nearly the entire process. Kenya's initial enthusiasm seems to have waned due to the new government's internal wrangles and decreasing lack of political will.

Prospects.

The idea of truth and reconciliation is bound to draw more interest globally. It certainly takes a more holistic approach toward transforming the underlying structures and cultures of violence, the residual traumas and psychological suffering toward durable peaceful outcomes. Despite its constraints, it at least makes a modest contribution toward responding to questions of conflict in a new way that seeks to break the destructive behaviour and circles of violence. Indeed, if carefully implemented, truth commissions can be strong symbols that indicate and sustain the democratic institutions and structures for good governance. They can contribute to social cohesion by preventing impunity and encouraging reconciliation. But they should be seen mainly as handmaidens and building blocks rather than the ultimate end and solution in themselves.

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