

Economic and social justice

[Law](#), [Crime](#)



According to Olsen et al, commissions are a means of rectifying and remedying human rights violations. Commissions are temporarily constructed and have non-judicial investigative mandates. Upon their expiry, commissions are expected to file their findings and recommendations. Other than commissions, there are other transitional mechanisms such as trials and amnesties. Commissions however stand a good chance of addressing institutional failures and instituting given their mandate and independence. More often than not, commissions are adopted in critical times when institutions such as the judiciary are compromised.

Most commissions however are more skewed towards rendering civil and political justice at the expense of economic and social. For the below mentioned reasons, victims of economic and social violations rarely get justice. However, Social and economic justice are necessary in cases of economic marginalization and social inequality. More often than not, situations of social inequalities and economic marginalization prompt people to use violence as a tool making known their dissatisfaction.

The following discussion aims at revealing some of the approaches employed by the Kenyan truth justice and reconciliation commission(TJRC) in looking at economic and social violations and noticeable gaps in their approach. The study draws from other nations of the world to demonstrate how other commissions have approached the issue of economic and social justice. The discussion begins with possible reasons for commissions leaving out social and economic violations in their analysis.

The scope of economic rights at times overlap with the development goals of a nation to which every member of the society is entitled. The redress measures involved in restoring back the lives of victims in many ways resemble development projects. Such measures of redress for example include compensation of land in case victims were displaced. There then lies danger in the community interpreting redress measures as discriminating against other members of the society. However, the Kenyan commission just for example indicated that the measures of redress were overly above the supposed equalization fund. (Arbour, 2009)

More often than not, the economic and social aspects of violations are viewed as background issues. The civil and political violations are mainly the direct manifestation of the background issues categorized under economic and social factors. The social and economic factors require more analysis to establish patterns and so on. Many commissions in the process of avoiding the analysis of social and economic contexts some of which are historical miss out on patterns and the role of these factors in causing, fueling and continuing violence.

The discourse of economic and social justice is more dedicated towards attaining sustainable peace. Sustainability is the result of articulating systematic discrimination and inequalities that continue to be ignored by most commissions. Moreover, lack of such analysis denies the commission a great opportunity of suggesting better policies and appropriate institutional reforms. Evidently, in Kenya the ethnic tensions fueled by land issues have

led to displacement of people election after the other since the multiparty elections.

The TJR act required the commission to investigate economic crimes, grand corruption cases, sexual violence among other violations with a social and economic connotation. In addition the act mandated the commission to enquire and establish the reality or otherwise perceived economic marginalization of some communities and to make recommendations of addressing the marginalization.

Unfortunately, the act failed to adequately define economic violations and what exactly fell within that very domain . The commission however adopted the definition of economic marginalization as " a situation that is produced by the process through which groups are discriminated directly or indirectly in the distribution of social goods and services." In addition, like many commissions, the Kenyan commission aimed to assess the socio-economic impact of violations directed on the individual's bodily integrity. Clearly, the socio-economic concerns are secondary interest and thus addressing them is tied to their impact on bodily integrity.

Regarding land issues, the analysis were done under the colonial and post colonial periods. The colonial administration was engaged in forced evictions, establishment of native reserves and even alienation for the sake of multinational corporations. Worse still, the colonial administration saw establishment of ethno specific boundaries that give an impression that communities were entitled to land within the boundaries of their existence.

The ethno-specific boundaries continue to be exploited by the political leaders for their selfish gains.

Upon attaining independence, the leadership perpetuated the same or even worse political practices that saw the concentration of land within some central powers through willing buyer and seller policy adopted by subsequent government. This process some communities and especially those not aligned to the political leadership then.

Unfortunately, the segment of the report involving land was leaked earlier in advance to the head of state. As a result, the commission was summoned and intimidated to make adjustment to the very findings surrounding land and which adversely mentioned the first president. Moreover, the dissenting report written by the international commissioners was excluded against the dictates of the TJR act.

The suggested and later on implemented adjustment created a rift between the Kenyan commissioners and those of other nationality involved in the commission. Prior to the adjustment, some part of the findings by the commissions' report read:

'However, after Kenya attained independence in 1963, President Kenyatta unlawfully alienated to himself 250 acres of the land, especially portions on the beach. He also allocated part of the land to his friends, relatives and other associates. He directed residents that whatever was left of the trust land would be established as settlement schemes for their benefit. However, without following due procedures of law, he again took part of whatever remained for himself and his relatives. He also demanded that local

communities that should have benefited from the trust lands accept payment of KSh600 per acre. When the locals declined to accept the money, he told them that whether or not they accepted it, the remainder of the trust lands would go to the government. That is how irregularly President Kenyatta took all of Tiwi and Diani trust lands at the expense of local people who immediately became "squatters" on the land and were subsequently evicted, rendering them landless and poor. By 2012, land in the former trust lands fetched Ksh15 million per acre.'

The aforementioned manipulation reduced legitimacy of the report among citizens and other stakeholders. This subsequently, risked the possibility of the report being dismissed in its entirety. The manipulation also prevented Kenyan citizens an opportunity of having a complete history for current and future purposes. Therefore, Kenyans have a distorted kind of history. Resulting recommendations suggested afterwards may not be as comprehensive as would have been the case had the alterations being minimized. Hayner supposes that an accurate record of the past produces a knowledgeable citizenry who may deviate any path leading to outcomes such as those documented in the record. Therefore, alteration, reduces the deterrence effect of the historical records.(Hayner, 2001)

Economic marginalization is also exercised along gender lines. Fully cognizant of this, the commission delved into unequal distribution of resources and opportunities between men and women. Discriminatory practices surrounding land as an important factor of production were enumerated in the commissions' task.

Women in Kenya continue to suffer from limited control and access of land. Most women access land depending on their relationship with the males in the society. Missing appropriate analysis on exactly how women engage with land, how much time they spend on land and such critical analysis limited the commission policy recommendations.

In most cases, commissions arrive at reparations in an attempt to respond to the violations. The dictates of international human rights of law oblige states to accord redress for violations perpetrated by the state agencies.

Reparations are executed through different means such as compensation, restitution, guarantee of non-repetition, rehabilitation and satisfaction.

The TJRC act provided for reparations. Notably, the commission's interpretation of reparation was limited to compensation and restitution giving little attention to important aspects of guarantee for non-repetition and rehabilitation. Rehabilitation is an important measure within reparations that is aimed at medical, legal or even psychological attention to the victims. Moreover, whereas the reparations provision means well for victims of violations, the TJRC act by requiring victims of violations to apply for reparation risks leaving out many victims.

The commission also failed to analyze the economic violations undertaken by private sectors. The approach of the commission was narrowed to economic violations perpetrated by the government and public officials. Recent studies have for example pointed at the huge economic roles undertaken by the international corporations. With most corporations surpassing the Gross

domestic product of African countries, their role in economic violations is equally enormous.

Pursuant to section 6(n) and (b) of the TJR act, the commission investigated economic crimes involving among others grand corruption. Close links were established between the corruption cases and poverty in the country.

Whereas corruption has adverse effects on the country in its entirety, the poor and vulnerable members of the community are bound to experience the impact of corruption more.

Studies reveal a close relationship between power and wealth. The relationship between power and wealth is such that the wealthy use their wealth to prevent accountability and such perpetuate impunity. In Kenya for example, the corrupt officials used their wealth to shield themselves from further interrogation. Recommendations by the commission reveal gaps in that they do not offer the way forward for such corrupt individuals most of whom continue to serve in government. (Dustin, 2009)

The most probable result of insufficient articulation of the corrupt cases is impunity. The culture of impunity complicates the process of accountability shielding the wealthy political leaders from being accountable to the general population.

With respect to facilitating social justice, the Kenyan commission handled the issues of sexual violence. The commission conducted hearings from victims of sexual violence such as rape. Women in closed rooms sessions narrated incidents of sexual violence. In some cases, a woman narrated being assaulted by many men at the same time.

The commission then made recommendations that include appointment of a special rapporteur on sexual violence, establishing gender based violence recovery centre in all counties and formulating a code of conduct and ethics for national police.

Close observation at the commission's findings reveal a disconnect between the findings made by the commission and the recommendations made thereafter. Moreover, the recommendations are by all means reactive measures, superficial to the extent of not questioning the status quo in the society. The measures were narrowly focused into separate incidents encountered by the commission disregarding an inclusive approach of viewing patterns.

Sexual violence and other means of violence meted against women is aimed at reinforcing the subordinate position of women in the society. Whereas negotiations at the country level may end up in attaining peace in the country, they if not careful risk gender violence unattended. The reported rape cases are a reflection of the strain relationship between men and women that begin at domestic level and escalate to national level in case of major violence.

Attaining some level of social and economic justice would require inclusivity of all stakeholders be they victims or perpetrators. Opting to shut women out in the discussion may only serve to contain the situation and momentarily so. Recommendations also should have reflected genuine interest in changing the status quo.

The Kenyan commission largely suffered from lack of cooperation from the civil society and other international actors. The questionable credibility of Bethuel Kiplagat as the commission's chairperson cost the commission legitimacy and civil society support. The civil society organizations (CSOs) are key participants in most societal activities. CSOs deliver services to the citizens, conduct civic education at grass root levels and as such have an influence that cannot be underestimated.

The CSOs are not only important in terms of funding the organization but also play a great role in providing informed perspectives to the commission. In analyzing the various methodologies embraced by different commissions, Hayner has pointed to the importance of secondary participants who are not necessarily victims. Whereas victims stand a chance of giving first hand information, they are easily influenced by their immediate material deprivation.

Constructing a complete record requires secondary interviewees a bulk of whom can be drawn from the CSOs. The latter are able to properly situate the specific incidents in their immediate context for the sake of better analysis. The Kenyan commission missed on this opportunity of working closely with the civil society which by all means would have proved better on their methodological approach.

Liberian truth and reconciliation was mandated to analyze economic violations experienced during conflict that is between 1989 and 2003.

Following the Accra agreement, a commission was set up to establish the

truth about the violations. The agreement also entailed reforms surrounding the elections.

Following the election of Ellen Johnson-Sirleaf as the first female president, a new perspective was introduced. The president dedicated efforts towards combating sexual violence and so on. The administration also facilitated provision of basic services such as water and electricity.

The Liberian commission successfully handled corporate responsibility surrounding illegal timber exploitation by corporations. The success is largely attributed to the fact local civil society organizations, the government and international actors worked closely to provide any relevant data. In addition, the act leading to the formation of the commission directly condemned impunity. As such, the commission made recommendations for prosecutions of senior personalities such as the ex-rebel leader Prince Johnson.

In view of the limited scope and timelines associated with commissions, the Liberian commission suggested for an additional mechanism of accountability. The palava hut draws from the traditional set up in Liberia. The mechanism is set up to aid in resolving disputes that for some reasons escape the attention of the commission. Studies provide evidence of very successful traditional mechanisms.

In Mozambique, the traditional healing is conducted by the healers, 'curandeiros' who do cleansing to the soldiers of war. In an attempt to reconcile the perpetrators and victims, there is a ceremony held to bring

back those that were involved in killing. The exercise then ensures that members coexist harmoniously.(Hayner, 2001)

In conclusion, the mandate of the commissions is often explicit leaving room for creativity. It is therefore important that commissions take advantage of their unique position and provide sustainable solutions to their respective countries. Given the diversity of most countries, commissions must situate themselves to address the situations as they appear in the country. This of course must reflect all aspects of the society be it social, political or even economic.

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