

# Traditional justice assignment

[Law](#), [Justice](#)



Studies indicate that most countries in the world have at some point been engaged in civil wars resulting in mass atrocities. Following such atrocities, transitional mechanisms are taken up in order to promote peace and reconciliation. There are many types of transitional justice mechanisms ranging from trials, truth commissions and amnesties. Each mechanism is different from the other in terms of the procedures and results expected. Therefore, the context has to be thoroughly examined so as to decide on the most appropriate transitional justice mechanism.

Commissions are characterized by limited scope and timelines of operation at the end of which a report is filed. Commissions may be formulated in response to a presidential decree or even peace agreement. Such commissions are given specific mandates which mainly include providing a record of the past. The commissions come up with a detailed account of violations. Surveys indicate the dissatisfaction of victims with commissions and other mechanisms that do not put into consideration economic violations. The following discussion is about two commissions in both Kenya and Liberia which had explicit mandate to handle the cases of economic violations. The discussion will further shed light into possible outcomes of neglecting the economic crimes.

The scope of economic rights greatly relates to 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. For this reason, commissions are slow to recommend appropriate measures as part of their recommendation. However, public participation at all levels is the means to better understanding in the society.

As alluded, the timelines with which Commissions operate are constricted. Redress measures for the violations may go beyond the time set up for the truth commission. However, from the Chilean commission this factor is not necessarily an impediment. The Chile commission just for example instituted yet another corporation to foresee the implementation of reparations program. The corporation that was reliant on the commission's findings to administer reparation. The corporation also went a step further to include victims who might have been left out in the commission list.

Most violations surrounding the second generation of human rights are viewed as, 'background' issues. The reason for the perception is that second generation violations mainly lead to the conspicuous violations of civil and political rights. In an attempt to avoid delving into the historical realities, then economic violations are left out. Commissions that are not careful to analyze the historical links of the reported links risk giving unfounded and better still unfit recommendations.

Some commissions are faulted for poor methodology in collecting and analyzing their data. Whereas there is not a single 'fit -all' methodology, careful selection should be made at least to identify if or not the methodology for example captures single events or patterns in its analysis,

whether or not the commission interviews secondary sources who are not necessarily victims of violations.

The reasoning behind including a methodology that captures thematic issues as opposed to single events is that such an approach is likely to challenge the status quo. Sexual violations just for example are mainly presented as single events the various events in most commissions. That for example some women were raped during the atrocities covered by the Salvadorian commission. A more elaborate perspective would be studying the power relations in the society that exist between men and women. Such a perspective would shed light into whether or not such relations reflect power imbalances and incase there are imbalances, how exactly they are manifested.

Myopic approach of recording events and in some cases recommending guidance and counseling for the victims misses out on important details. The unequal distribution of job opportunities between the two genders, lack of control and limited access to land to mention but a few could be some of the factors facilitating violence. A better approach then would be determined to adjust the inequalities and the entire offensive status quo.

The highly contested elections of 2007 in Kenya concluded in mass violence. In the Kenyan context, the option for having a commission was conceptualized around a national dialogue led by prominent African leaders. Deliberations around the need for a commission had been around before then. In 2002, a task force led by Professor Makau Mutua strongly

recommended a truth commission. The following years so the commission debate fading given the political environment then.

However, after the post election violence the establishment of a commission was inevitable. An act of parliament was then passed to include the mandate of the commission. (Research on the dictates of the act). Makau Mutua states that the commissions around the world do a rather poor job in as far as articulating economic, social and cultural rights is concerned. Through research, it is increasingly agreeable that victims who should take centre stage in any transitional mechanism are rather expectant of it.

From the onset, the commission was mandated into considering economic violations. In strictness of the language of the act, the act for example required the commission to establish a complete and accurate record of violations and abuses of economic and human rights and so on. As a result, the commission looked into socio-economic impacts of the violations that touched on the bodily integrity or their civil and political rights. The commission then defined 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." The commission aimed at revealing exclusion and marginalization of communities.

Economic crimes conspicuously missed on the list of gross violations in the TJR act which included among others enforced disappearances, detentions and sexual violence. (replicate the same argument for Liberian government).

## **Insufficient Recommendation**

The commission went ahead to define indicators of economic marginalization such as agriculture, land and education. The commission operated with an understanding that unequal distribution of resources were to blame for the increased tensions among the ethnic composition in Kenya. More specifically the land question was interrogated further.

The commission investigated official means surrounding acquisition and ownership of land which were in contravention of the land practices established by law. Land grabbing and other malpractices were analysed with an intention of proper recommendations. 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.

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 automatic results of such adjustments impacts negatively on the kind of recommendations made. The recommendation made by Kenyan commission on the issue of land.....Lacking in comprehension and clarity.

The commission also led to a discovery that the land grievances in the coastal region may have led to the secessionist group in coast. Whereas this finding can be further interrogated, the commission was intimidated to do away with it. Clearly, the contextual interpretation of violations such as those in the coastal region are avoided and considered as delicate topics.

Unfortunately, the avoidance of such contextual interpretations may lead to resurgence of war and other manner of conflict. For as long as the people in the coastal region remain disturbed by the grabbing of land under Kenyatta's regime, there remains a possibility of a war breaking up.

Kenyan commission was over reliant on secondary sources of information , mainly on reports other commissions. The overreliance can easily be explained in terms of the financial constraints that met the commission. As regards to land, the commission recommended that:

1. Design and implement measures to revoke illegally obtained titles and
2. restore public easements" and
3. survey and register remaining public lands;
4. " revoke illegally obtained titles to and
5. re-open all public beaches, beach access routes and fish landing beaches;" and
6. develop " a computerized inventory of all lands in Kenya

The Kenyan commission also handled the issues of sexual violence. .

Regarding sexual violence, recommendations include appointing 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. Critiques have observed a real disconnect between the findings made by the commission and the recommendations made thereafter. Moreover, the recommendations 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.

In volume iv, the Kenyan commission conceptualized a reparations programme coordinated by a special implementation committee. The reparations programme would operate using regulations provided for by the



national assembly.. The national assembly has in the recent past expressed intentions of amending the act so as to get powers to consider the report and monitor implementation. The adverse possible results can be speculated. The national assembly may not necessarily afford the independency of a formally constituted committee, secondly it is possible for the manipulation of the suggested recommendations given that powerful corrupt officials . THE

### **The Liberian Cases**

Liberian truth and reconciliation commission committed itself to the analysis of economic violations experienced during conflict. The Liberian commission successfully handled corporateresponsibility surrounding illegal timber exploitation by corporations. The success is largely attributed to the fact local civil society organisations, the government and international actors worked closely to provide any relevant data. The same may not be said of Kenya where the civil society pulled away from the entire process. The civil society reach the people more easily in our world today. By means of service delivery, mainstreaming exercises the civil society is able to penetrate into the society more easily than a government body.

Methodological approaches that disregard interviewing of secondary sources of information such as the informed members of the society is bound to miss out a lot. A strict adherence to interviewing the victim may be limited in itself. Firstly, victims may not bring out the issues as they are but may otherwise be motivated by possible remuneration at a personal level. Secondly, victims may not link their most immediate situations with the prevailing circumstances be they political , social or even economical. For

such reasons, more figures for example those in the civil society contribute a great deal to the success of any commission set up in their respective countries.

The Liberia commission also defined economic crimes and identified economic criminal actors too in about fifty four pages.