

Africa: Diversity and Development

**NOT THE UNIVERSAL REMEDY: THE DIVERSITY AND IMPACT OF TRUTH
AND RECONCILIATION COMMISSIONS IN AFRICA**

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The South African Truth and Reconciliation Commission is well known as an exemplar around the world, even being copied, most inappropriately, in the Solomon Islands. Other African TRCs, from Morocco to Nigeria and from the Congo to Chad are much more obscure. This paper examines two questions (1) the idealistic, often Christian influenced, theory behind what TRCs are supposed to achieve and (2) the reality of what their results actually are in both the short and long term. The conclusion is that, without major outside assistance, disorganised countries can only run disorganised TRCs, and that the proponents of TRCs are frequently politically naïve and cause harm by promising the impossible, especially in relation to reparations.

TO START AT THE BEGINNING

The original truth commissions in Latin America were aimed at establishing what had happened to people who had disappeared under dictatorial regimes. Either they were established by Catholic church groups or other non-government organisations when the dictator was still in power, or they were established by the new governments who replaced the dictators. In neither case was there any thought of reconciling with the dictators and their cronies. Most victims could not testify in person, precisely because they were dead or had disappeared. There was a clear distinction between perpetrators and victims, and although the numbers might be very large they were not beyond the scope of making an evidence file for each victim and each perpetrator. Sadly, in Africa the numbers are far larger and the bureaucratic capabilities for handling testimonies far less. Much more concern is for living victims who may need to be prevented from seeking revenge (Burnet 2008). Also, in many African contexts, the line between victims and perpetrators is much more blurred. Children recruited as soldiers rapidly move from being only victims to becoming both victims and perpetrators.

SOUTH AFRICA ADDS RECONCILIATION TO TRUTH

Today, the South African TRC has become the very model for each TRC even being adopted a world away in the Solomon Islands (Vella 2014). It was established in 1999 by the post-Apartheid State with very strong Protestant

Christian linkages symbolized by Archbishop Tutu as the Chair. It was born in very special political circumstances, set up to prevent civil war, in a situation where the undeclared civil war had come to an end, but mass trials of state torturers and murderers and their political sponsors would almost certainly have led to bloodshed. It was also necessary to reconcile whites and blacks across the nation, in a situation where the state sponsored violence had been initiated by the whites, with most of the victims being black. People were in search of two kinds of truth: to find out what had happened to individual victims and how had they suffered and died and to determine the broader nature and patterns of the state's programme of Apartheid violence and suppression of the rights of the black majority.

The South African TRC remains the most famous example around the world, and the model for many other TRCS. "The TRC has become one of South Africa's most successful exports. Many countries engaged in transitions look to the TRC as a model path between blanket, unjustified amnesty on the one hand, and a regime of costly, ineffective trials on the other" (Daly 2003:385). This certainly constitutes one form of success: international approval. South Africa remains at peace and civil war has not broken out which, the author would argue, is the single most important indicator of TRC success especially for the ANC government and the major opposition parties. But the question of the success of the South African TRC at the level of the individual and the local communities is still bitterly debated inside South Africa and, to a much lesser extent, elsewhere. (van Zyl 1999, Soyinka 1999, Gibson 2004). Those who argue that the TRC failed focus almost entirely on the level of the individual and, using social surveys, demonstrate that many victims and many of those in the black community are not satisfied with the TRC (Theissen 2002). This raises some interesting questions as to how far it is possible for a TRC to be a success at a national level but a failure at the individual level.

There have been more than seven thousand publications about the South African TRC and, as noted, debate still continues as to how successful this Commission was at delivering reconciliation. Elsewhere, however, faith in the linkage between truth and reconciliation has now become a near universal requirement of such commissions with a very wide spread assumption that truth is to reconciliation and, indeed, that truth is necessary for reconciliation. This is a normative assumption and there has been very little investigation as to its empirical truth. This author is unusual among the peace studies community in being a cynic in this respect and requiring some proof that knowing the forensic truth of what happened necessarily leads to, or even assists, reconciliation.

To make this concern more concrete, consider the case of many female survivors who are often neglected in the discussion. Generally, women who have been raped know who raped them, at least in terms of knowing whether they were rebel militias or government troops, although they may well not know the names of the multiple individuals involved from the actual rapists to the commanders who ordered the sexual violence as a matter of strategy. It is argued that an acknowledgement that the women were raped will somehow help to mend their anguish though in many African cultures this will probably result in their husbands casting them out of their homes. Certainly some women have reported

that they found the experience of testifying to be cathartic whilst others do not (Hamber, B and Wilson, R. 2002; Avruch 2010) . But in an individual country there will be thousands, even tens or hundreds of thousands of women who were raped who will never come forward, either because of the sheer logistical problems or because of a culture where they will actually make their situation worse by publicly acknowledging that they have been raped. [For Sierra Leone, it is estimated that between 215,00 and 257,000 women had experienced sexual violence during the war (Doucet and Denov 2012: 613]. In the Solomon Islands women countered this problem, of individual women being blamed and shamed for being raped, by compiling a group testimony of their experiences from which no individual woman could be identified – this was especially important because some of the women had been incestuously raped by close family members (Vella 2014). For a village mother will reading of the experiences of other women who have been raped, assuming that she can read and can access the TRC report (with the latter being most unlikely) experience catharsis and move on to reconciliation? Presumably, the assumption rather is that a much more general process is underway. This might involve summary information on the radio combined with acceptance by local political and traditional leaders leading to a general feeling of reconciliation. In some cases, as in South Africa, oral testimony to the TRC, was broadcast on the radio and even the television. However, the numbers problem still remains, across Africa, usually only a small proportion even of those most directly affected are able to tell their stories to the Commission (Wilson, 2003). For a particular Commission it may be enough to know that rape of women was a deliberate policy of certain militia groups and was ordered by Commanders X and Y who have testified along with survivors N, O, P, Q and R.

With truth commissions there is always the question of whose truth is being acknowledged. A good case in point relates to the gender biases. For example, in the Ghana TRC women comprised 43% of the victims of sexual violence, for Sierra Leone the figure was 34% and South Africa 40% [contrast Timor Leste with 90% (Nesiah et al. 2006)]. It appears incredible that sexual violence was so much more commonly used against men than against women in each of these African countries. It must be strongly suspected that these figures represent differences in female/ male willingness to report sexual abuse and the Commissioners' willingness to listen to yet one more rape story rather than differences in occurrence. In this case the actual figures are clear, but there would be many other areas such as regional, ethnic, political and religious background where it would be necessary to consider just who are the people who choose and are chosen to testify before each truth commission.

The Sierra Leone TRC had a special focus on women's experiences, but when it came to report its recommendations largely ignored women's concerns except for a recommendation again female genital cutting. For individuals, whether female or male, the question remains of the relationship between reconciliation at a societal level and a personal level. There is little consideration of societies where only a certain proportion of people (say 70% ?) reconcile.

It has yet to be demonstrated that either truth or justice is a precondition for peace where peace is defined, as most ordinary people use the term, to mean

that the fighting has stopped and stays stopped. Many normative statements as to the vital need for justice and reconciliation before peace can be achieved are totally circular because they include these terms in their own definitions of peace. It needs to be recognised that reconciliation is a culturally bounded concept (difficult to translate into many African languages) which means much more to Christians than it does to adherents of other faiths or to those whom torture and trauma have left without religious faith. For some time Morocco was the only Arab country to have had a commission: Instance Equite et Reconciliation (no mention of truth). Reconciliation even means different things to Catholics and Protestants. Writing on Morocco, Valerie Orlando (2009) has described how female political prisoners were able to discuss some experiences in French, which they were culturally not able to describe in Arabic (see Fatma El Bouhl, *Une Femme Nommee Rachid*, 1977).

Amnesty International is an example of an organization which actively campaigns for truth commissions on the grounds that all victims of genocide, crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances have a right to truth. Well, that may be the case, but what is to happen where that right has to be weighed against other rights such as the right to life of those who will be killed if internal war resumes.

Amnesty maintains that truth is a vital response to crimes :

- For the direct victims to know the whole truth about the crimes they suffered and the reasons behind it (sic), as well as have their suffering publicly acknowledged. Moreover, the truth is necessary to correct any false accusations made against them in the course of the crime.
- For family members, particularly of those killed or disappeared, to find out what happened to their loved-one and to establish their whereabouts.
- For the affected in society to know the circumstances surrounding and reasons that led to violations being committed to ensure that they will not be committed again, and to have their shared experiences acknowledged and preserved (Amnesty web Site Truth Commissions).

Reading this, it is clear that the authors are thinking mostly of the situations in Latin America where dictatorial governments in power 'disappeared' individuals rather than of post-war or post-genocide situations in Africa or Cambodia. They also place great emphasis on understanding "the reasons that led to violations" which is a very significant requirement, which may well never be met. It is doubtful that, despite trials, autobiographies of victims and perpetrators, and countless academic studies, the world will ever really know why the mass killings in Cambodia or the genocide in Rwanda occurred. Those who have studied these iniquities have their theories but they do not agree. Several populist accounts of the Rwandan genocide blame it on the Belgian colonialists. Since we cannot change history, knowing this, even if it were true, would do nothing to prevent a recurrence of genocide in Rwanda. The absolutist slogan 'no peace without justice' was invented by a lawyer, the general population has more sense. Often real life does involve trade offs with choices to be made: would you rather your enemies be put to death or that your children can live in peace? Can you just bear to live along the path from the man who killed your

husband or have you the near super-human strength to be able to reconcile with him ?

Amnesty fights for a “victim-centred” approach to truth commissions which again reflects a Latin American view. It also implies a simple black-white model in which there are good victims and evil perpetrators, whereas the situation is often so much more complicated with one person, say a former child soldier, being both a victim and a perpetrator. Finally, Amnesty places great stress on reparations for the victims and their families, clearly envisaging a society which is wealthy enough to make reparations a realistic possibility. In very poor societies reparations for some must come at an open cost for others. Possibly memorialisation or other public gestures would be more affordable and more effective. For example, one might think of building memorial schools in areas affected by ethnic targeting in a country such as Chad but would that be fair on the children of perpetrators or likely to support future peace ?

There are a few other voices which have spoken out against ‘compulsory reconciliation’. Ruben Carranza of the International Centre for Transitional Justice argues: “I am always wary about making reconciliation an explicit goal in a transitional justice mechanism, whether it involves policies on prosecutions and amnesties, reparations for victims and forgiveness for perpetrators or the idea of truth in exchange for pardon. I am wary because reconciliation – whether for human rights violations or economic crimes – isn’t something you try and look for and then find. It is something that will happen when it happens. Not all types of violations need to be addressed with a reconciliation objective in mind, such as those involving war crimes, crimes against humanity, or large scale economic crimes that might constitute pillage or other inhumane acts in international criminal law” (EIPR 3013). Tunisia is establishing a Truth and Dignity Commission (2014) chaired by a woman with a special gender mandate to “gain the trust of women victims and to make sure that their identities are protected so that they do not experience further shame and stigma by coming forward”. In this Muslim country, unlike Morocco, there is no mention of reconciliation.

As noted, originally Truth Commissions were just that, with no consideration of reconciliation. This was because the Commissions originated in Latin America where opposition movements were trying to bring rogue governments and especially their rogue militaries to account.

There is thus a crucial division between Truth Commissions where the abusive regime is still in power and Truth and Reconciliation Commissions where the regime has changed and the former leaders are no longer in a position to defend their torturers. One of the most fiercely contested aspects of many truth commissions is the question of exactly what dates should be covered in their mandate, since a fine line can divide examining the sins and crimes of the former regime and those of the people currently holding power. As discussed below, the Rwandan case exemplifies this problem.

Some, including this author, would argue that there is a risk that the very format of a TRC creates an unhealthy culture of victimhood rather than a celebration of the strength of those who survived. Around the world, women testifying to TRCs

tend to be more likely to talk of their lost husbands and male children than of their own experiences. The South African TRC found itself bound up with the language of victimhood because of the very language in its foundation legislation. Where possible the term survivor is used here, but it has to be recognised that this does not cover those victims who were killed.

The following discussion of a selection of African national truth commissions (not all even aimed at reconciliation) is ordered by date of inception of the Commission with those most distant in time being dealt with first. This format helps to emphasize the changes in the commission format over time with the South African TRC 1995-2002 as a crucial new stage of development. Also, because several of these commissions are highly obscure, it is necessary to set out their historical context and details. The definition of what constitutes a truth commission is based on Hayner's (1999: 16) classic definition, as a temporary body officially sanctioned by the state to investigate a pattern of abuses and to issue a report. As will be seen below, in a number of cases the truth commission's report was never officially released but only leaked to the general public some time after completion.

UGANDA'S TWO TRUTH COMMISSIONS

Uganda would appear to be a good example of how truth commissions are not necessarily successful. As long ago as 1974 Uganda had its first truth commission: the Commission of Inquiry into the Disappearance of People in Uganda since 25 January 1971. This was actually established by President Amin but clearly contributed little to curb the brutality of his rule. The Commissioners were a Pakistani judge, two Ugandan police superintendents and a Ugandan army officer. Most of the hearings were held in public, but the report was never officially published (although it is now available on line). The report recommended reform and human rights training for the armed forces and police. After handing over their Report to President Amin, the Commissioners lives were under threat.

The second Ugandan Truth Commission, the Commission of Inquiry into Violations of Human Rights was appointed in 1986 and tottered on despite financial woes until 1994, by which time the public interest had moved elsewhere and many had become bored with the whole process. This Commission represented President Museveni's attempt to improve Uganda's human rights record after the governments of Presidents Amin and Obote. The hearings were in public and some were broadcast on radio and TV. The Report was published in 1994 but it was very difficult to access copies since less than a hundred were printed. Now, thanks to organizations such as the United States Institute of Peace (USIP) and TRIAL (Track Impunity Always) such documents are available to anyone with internet access. This second commission recommended the repeal of laws allowing detention without trial and human rights education from school to university and, once more, doubtless with feeling, the training of the armed forces.

Once upon a time, as a new broom, President Museveni was an active supporter of reform. Today the situation is far more complex, essentially because there have been egregious human rights breaches on both sides. Joseph Kony and his

men have committed dreadful deeds but so too, albeit to a lesser extent, have the government soldiers under the command of President Museveni. Any enquiry into events in Northern Uganda will also, at least implicitly, raise the question as to why the Ugandan army were not more successful in preventing the ravages of Kony's Lord's Resistance Army and, indeed were they really supported to do their best or was a government of Southerners content to see the Northerners suffer, because it kept them from coming down and trying to take over politics in the Southern based capital Kampala?

The current debate about truth and justice mechanisms in Northern Uganda has to be understood against this background of the interplay of various groups fighting over power, sometimes using real soldiers and real weapons. There has been a deal of over romanticized writing about traditional methods of reconciliation which takes no account of who has power over whom. Stepping over the egg in the Moto Oput ceremony is fine where the ceremony is meaningful to both sides participating (and not a custom only recognised by one side) and where the 'traditional' leaders organizing the ceremony are widely respected and not just has-beens or jumped up individuals who have recognised that friendly donors will finance such ceremonies (ref XX).

THE CHADIAN COMMISSION OF INQUIRY

Few, outside the select community of those who campaign for truth commissions, have heard of the Chadian Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habre (CICM), his Accomplices and/or Accessories which dates back to 1991 and reported in 1992 – it was, and remains, an obscure example, especially outside of the francophone world. Nevertheless it raises a considerable number of very interesting questions as it was a both a political exercise by a new regime wishing to irreparably damage the reputation of the previous regime and a genuine exercise in truth finding on the part of the human rights organizations involved. It was chaired by Chad's Chief Prosecutor Mahamat Hassan Abakar and thus had some features of a single trial covering multiple crimes from the human rights breaches of assassinations and illegal detentions to the more standard crimes of illicit narcotics trafficking and the embezzlement of state funds

Historically what happened was that when President Habre fled he left behind un-shredded the documents of the dreaded DDS or Secret Police and no one thought to destroy them. Without these documents the CICM would not have been possible. As it was most of the research was carried out by a local NGO in collaboration with Human Rights Watch.

The CICM found Habre's Government responsible for 40,000 deaths. This was the first Commission to name those individuals considered to be the most significant human rights abusers (it even published their photographs). Unfortunately some forty of those named still held senior positions in the Deby Government (Deby had been one of Habre's generals). In 2015 Habre is finally on trial in Senegal where he had been living in exile.

NIGERIAN HUMAN RIGHTS VIOLATIONS INVESTIGATION COMMISSION

In June 1999 President Obasanjo by Statutory Instrument Number 8 of that year constituted and appointed the Human Rights Violations Investigation Commission, commonly known as the Oputa Panel after its Chair. Since the Report of the Commission, which was submitted to President Obasanjo in June 2002, was never officially made public, the question remains as to how far this qualifies as a Truth Commission. Interestingly, although it was appointed well after the South African TRC was underway, it never made any claim to be associated with reconciliation. Obasanjo's personal involvement with the fight against Apartheid may well have made him feel that the South African example was not applicable since Nigeria had already achieved its own form of reconciliation after the Biafran civil war without any formal reconciliation mechanism. The Commission received some 10,000 testimonies of human rights violations and held public hearings across the country which heard some 150 cases (the basis for their selection was highly contentious). The Panel concluded that the Nigerian military were responsible for gross human rights violations abetted by powerful and rich civilians and some State Counsels in the Ministries of Justice. The Commissioners recommended combatting corruption; a drastic down sizing of Nigeria's armed forces and a review of their internal disciplinary procedures; reform of the police and academic institutions. The panel also recommended compensation for human rights victims and a number of reforms to the Federal system including public consultations on the form of the Constitution (Nigerian Democratic Movement 2005).

In November 2007 Governor Rotimi Amaechi established a TRC in Rivers State to "unearth the remote and immediate causes of cult clashes in Rivers State" and to identify perpetrators and victims with a view to pursuing prosecutions and granting compensation. Thus the Rivers State TRC was unusual in two ways: it was established at a sub-national level (though Rivers State is more populous than many African countries) and it was designed to lead to prosecutions. This followed on from the Oputa Commission which had forwarded 35 cases of human rights abuses for special police investigation. Thus the Nigerian view has been that reconciliation is compatible with prosecutions of the small fish if not of the political leaders behind the crimes. The usage of TRCs to lead to prosecutions is supported by Amnesty International which frequently appears to be more concerned with justice than with peace.

DECIDING NOT TO HAVE A TRC: THE NAMIBIAN CASE

The best known cases of countries deciding not to go after truth are Spain after the Civil War which ended in 1939 and then the death of General Franco 1975 , and Mozambique where many cultural groups believe that it is wrong to disturb the dead, especially the male dead, by discussing the evils they experienced (Lundin 2004). Some countries thus make a conscious decision not to have a TRC. Some international human rights and justice organizations argue that countries do not have any right to take such a decision – which is a highly prescriptive view of life, which will be discussed further below.

South Africa and Namibia are neighbours with much recent history in common. But they decided on very different paths in relation to truth and reconciliation.

In Namibia's case those who had committed the terrible breaches of human rights had largely left the country – it would have been possible for the survivors to testify but there was no reason for the perpetrators to return to the country or to come forward. [There are similarities here with the case of Timor Leste where the Indonesian perpetrators were no longer in country]. There was another significant problem with the new regime, which had an issue of its own in relation its followers that it had 'disciplined' in the past.

Namibia has a Bill of Rights in its Constitution and an effective Ombudsman. In theory it could also have had a TRC, but achieving the first two was almost certainly more of a priority for achieving a peaceful future than holding a TRC. The proof of the contention that TRCs prevent the occurrence of future abuses and internal conflict depends upon the long term histories of individual countries. However, it is worth noting that both Namibia and Mozambique have avoided bloodshed after a conscious decision not to hold a TRC. In the case of Mozambique, this reflects a cultural belief that the dead do not desire such commemoration and the existence of cleansing ceremonies for healing [which, most unfortunately, exclude women (Ludin 2004)].

GHANA

The Ghanaian National Reconciliation Commission (NRC) was established under the National Reconciliation Act in January 2003 and reported in October 2004, The NRC was appointed by John Kufor, who had won power in 2001 in Ghana's first peaceful democratic transition. The NRC's mandate was to promote national reconciliation by establishing "an accurate and complete record" of human rights violations and abuses related to the killing, abduction, disappearance, detention, torture and seizure of property during three periods of unconstitutional government between March 6th, 1957 and January 6th, 1993 which is an extraordinarily long period. Any citizen could apply to have the commission investigate specific incidents. The Commissioners were all Ghanaians: six men and three women chaired by the former Chief Justice K.E. Amua-Sekyi. Their Report was submitted in October 2004 and published in April 2005. The Commissioners heard from 2,129 victims and just 79 alleged perpetrators in over 2,000 public hearings. Both the former President Jerry Rawlings and the National Security Advisor, Kojo Tsikata testified. All proceedings were transmitted live on TV.

Many saw the NRC as being part of a partisan political attack on Jerry Rawlings and his NDC party by Kufor and his NPP party ten years after the event. Others asked why there was a need for the NRC, would not individual trials have worked just as well give that, although there had undoubtedly been human rights abuses, these were limited in number. Some said that they could understand the need for a TRC in South Africa or Sierra Leone but since Ghana had not experienced Apartheid or a civil war the NRC appeared to be a disproportionate response (Wain 2004). The use of TRCs as a means of attacking former governments poses many problems, sometimes such attacks are well justified, on many other occasions they involve nasty political games of tit for tat. Research by the West African Network for Peacebuilding (WANEP) found that the political class in Ghana had used the TRC process for point scoring so that

even though the NRC had been formed “ostensibly to promote justice, unity and reconciliation, the outcome has been more towards public doubt and loss of confidence in the ability of the processes to deliver” (Wachira 2009). TRCs set up by new governments as a political gesture are very different to the original Latin American truth commissions bravely aimed at incumbent dictators

THE TRUTH AND RECONCILIATION COMMISSION OF LIBERIA

The Liberian TRC which was heavily promoted by the Liberian diaspora, some of whom had fled the country in fear of their lives whilst others were comfortably established economic migrants to the United States. Understandably, many in the diaspora are precisely the people who do not want to reconcile. They feel that they were forced out of their homeland by a repressive regime and they have no desire, or indeed need, to kiss and make up.

The Liberian TRC was appointed in 2006 but public hearings did not begin until 2008 and its final edited Report was published in 2009. The Accra Peace Agreement back in 2003 had called for a truth and reconciliation commission as well as an independent national commission on human rights. The legislation establishing the commission was passed in 2005 and the commissioners were selected before Ellen Johnson-Sirleaf was elected President. This is significant because the TRC actually recommended that Ellen Johnson-Sirleaf not be able to participate in political life for a period of thirty years because of her support for former President Charles Taylor (since imprisoned in England after conviction by the UN Special Court for Sierra Leone where he fomented civil war). This was certainly a recommendation made with very little concern for the practical and most likely violent outcomes of its unlikely implementation. It is very difficult to see how this recommendation would “promote national peace, security, unity and reconciliation” as required by the TRC Act. Unfortunately, little attention has been paid in the literature to the role of diasporas in becoming involved in TRCs at a safe distance.

Amnesty International argues that truth commissions should “provide the evidence they gather to continuing and new investigations and criminal judicial proceedings” and “formulate effective recommendations for proving full reparations to all the victims and their families”. The requirement for supporting criminal justice proceedings is a long way from reconciliation in a situation such as Liberia’s delicately balanced democracy. Equally, “full reparations to all victims and their families” might just be possible in Argentina (where there were some 12,000 named victims but possibly 30,000 in total) but certainly not in Liberia, a desperately poor country where almost all records were destroyed during a war in which some 250,000 died.

Liberia is unusual, possibly unique in having included economic crimes in the TRC mandate which included: “investigating human rights violations and violations of international humanitarian law as well as abuses that occurred, including economic crimes, recommending measures to be taken for the rehabilitation of the victims of such violations”. Current debate in Egypt now includes the idea of a TRC largely devoted to economic justice.

President Johnson-Sirleaf is a very interesting example of someone who has certainly been associated with considerable human rights abuses at one remove through her previous support for President Charles Taylor, but who is making a good job of being president and uniting her country behind her, as in the current campaign against ebola (albeit she would appear to be still highly nepotistic - Questioned by the press as to why she should appoint her sons to key positions her response was “ Because I do not have anyone else I trust”. She has since backed down on this point). It is alleged that between 2006 and 2011, this President gave the rights to over one third of Liberian land to foreign backed logging, mining and agro-industrial industries. Unsurprisingly, conflicts over land remain a major source of violence in Liberia.

PAST HURTS ARE HAUNTING SHADOWS: EGREGIOUS FAILURE IN THE CENTRAL AFRICAN REPUBLIC

To some “Truth Commissions do nothing more than dancing to the whims of those in power by covering up their past wrong doings” (Masika 2014: 66). Originally this paper was framed in the context of discussing some failed truth commissions as an antidote to the approach of Amnesty International and other human rights groups who appear to see holding a TRC after the South African model as the universal answer to the problems of divided post-conflict societies in Africa. [Proposals for a TRC for Afghanistan or Iraq are less common, perhaps because they might explore international involvement]. Any discussion of failure implies an awareness of what would constitute success. Eric Brahm (2007) has discussed a range of possible measures ranging from the Commission’s report simply being published to the level of democracy and human rights protection after the TRC. He also suggests a quasi experiment comparing two neighbouring countries both with a civil war but one with a TRC to follow and one without> This would be difficult to do now in Africa since a requirement for a TRC has become a standard clause in peace agreements.

Some truth commissions undeniably fail. Failure ranges from Commissions which never get off the ground, as in the case of Burundi, to Commissions whose reports are so disliked by those in power that they are suppressed and never officially published, as in the case of Nigeria (Samii 2010). More open to debate are the cases where TRC Report is published but the government of the day then refuses to implement the significant recommendations. In one sense as in Liberia – this represents failure but in other senses it may constitute success. If the aim is to promote public discussion and get the truth out there, this may already have been achieved.

The Central African Republic’s TRC of 2003 would have to rank as a mega failure. This was an unusual Commission in that it frequently provided a running commentary and judgement on on-going events. Thus in October 2003 the Commission told the head of state Francois Bozize to enlarge his transitional government to allow for broader consensus in his administration. The Commission’s Chairman, Andre Denamsse (sic) said that the aim of his work was to identify the causes of the country’s crises between 1960 and 2003. He called for all politicians to apologize publicly for their mistakes; also the army for having fired on the public; intellectuals for having contributed to the crises; the

labour unions for involving themselves in politics; and the general public for having engaged in looting and destruction of public and private property. He went on to call on the army to stay neutral; for all the country's ethnic groups to be represented in the army and for all recruits to be taught international humanitarian law and for a national centre for conflict prevention and resolution and a national mediation council to be set up alongside a solidarity fund to compensate victims of the nation's crises (IRIN 2003). Today the CAR remains in turmoil facing the cruel irony that the more sources of mineral wealth that are discovered inside its borders the worse the inter-ethnic and Muslim on Christian violence becomes. There is no suggestion that knowing the truth about the cruel action of former presidents of the CAR has played any role in assisting towards peace. Indeed the exclusion of former president Patasse (then in exile in Togo and under an international arrest warrant) from the 2003 reconciliation talks at the behest of the TRC president, has been cited as one of the factors in subsequent violence.

Understandably we hear little about failed Truth Commissions. In the case of Burundi, even after more than a decade of negotiation, the Commission has yet to get started – so why persist ? Failed Truth Commissions share one feature in common: the lack of political will to support the Commission and carry through on its recommendations.

One question is clearly who gets to define the success or failure of a Commission. Relevant viewpoints include the views of the victims, local communities, the government, the opposition and the international community.

The success question is made more complex by the issue of reparations. When the TRC is in a poor country, individuals are almost invariably left dissatisfied, especially if the reparations have been collective (as in building a school in a traumatised community).

RWANDA: TOO MUCH JUSTICE NOT ENOUGH RECONCILIATION

The South African TRC was associated with amnesties and was seen as an alternative to costly and possibly unsuccessful trials. Elsewhere in Africa there have been far more complex combinations of TRCs and trials. Rwanda has possibly had more post-conflict 'justice' per capita than anywhere else in the world as it has had international trials, national trials and the much romanticized local gacaca courts which extended right across the rural areas..

For Rwanda, some would argue that amongst adults there are more perpetrators than surviving victims. Before the establishment of the gacaca system of local village trials across the country from 2001 there was a considerable literature devoted to arguing that Rwanda should establish a South Africa style TRC. The gacaca courts by their sheer numbers eclipsed anything which a national TRC could ever have done and contributed far more at the grass-roots level. They also raised difficult questions about the relationship between justice and reconciliation. Imagine a majority Tutsi village where an alleged Hutu genocidaire has been released from prison to return and apologize for his crimes and to offer some public labour as reparations. It is government policy that reconciliation should occur in such circumstances and the intrusive

Rwandan state is monitoring developments across the country. What likelihood is there that 'reconciliation' will not occur? In a preponderantly Hutu village the pressure would be even greater.

Rwanda has had trials at three levels: the international with the International Criminal Court for Rwanda, the national with full formal trials in Kigali and the local with the 1,200 village level gacaca courts across the country which finished their work in 2012. After such a wealth of trials, it could have been difficult to argue that Rwanda needed any more truth (except in relation to Tutsi crimes which are still excluded from public discussion by the government). The President has said that the gacaca established "the real truth of what happened during the Genocide" (Burnet 2008: 1). Yet the need for unity is still a major preoccupation for a government, which is only too well aware that disunity is a constant threat to its control of the army, the economy, the bureaucracy and thence the country. Hence Rwanda has a permanent (originally appointed in 1999 with a time limit, permanent since 2002) National Unity and Reconciliation Commission. The law establishing the Commission requires it to prepare and conduct "at national level, debates intended to promote unity and reconciliation among Rwandans" which seems a strange role for debates to play (Uvin and Mironko 2003).

Even before the genocide of 1994, the Arusha peace agreement had required a commission of inquiry to investigate human rights violations. Given that its mandate does not include investigating the truth (least it examine the human rights crimes of the current government) the Commission has worked on national reconciliation summits, anti-discrimination law and producing a school history text-book which has yet to be adopted.

In the Rwandan context, anti-discrimination law is highly problematic especially since it is illegal to use the terms Hutu and Tutsi and the legislation is used against political opponents of the regime (it allows for two year prison terms). The current Rwandan government has near perfected the malign art of transforming what should be human rights protections into mechanisms for attacking those rights. Even the work of the now permanent National Unity and Reconciliation Commission begins to have nightmare overtones of Orwell's 'Big Brother'. TRCs are supposed to be short term investigation bodies reporting their recommendations and then relying on regular government mechanisms to put them into practice.

THE SIERRA LEONE EXPERIENCE

As with Rwanda, Sierra Leone is a country which could almost be said to have had too much justice in the court and truth commission sense. To have both the national and international trials and the TRC confused the public who showed little support for the TRC

The Sierra Leone TRC was mandated to: "create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone from the beginning of the conflict in 1991 to the signing of the Lome Peace Agreement on July 7th, 1999; to address impunity, to respond to the needs of the victims, to promote healing and

reconciliation and to prevent a repetition of the violations and abuses suffered". The Commission was also to "investigate and report on the causes, nature and extent of the violations and abuses ... work at restoring the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for the perpetrators to relate their experiences, and create a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict ..." (Truth and Reconciliation Act, Supplement to the Sierra Leone Gazette, CXXXI, No. 9, Freetown, February 10, 2000: 4). Having been set such a massive task, the Commission would have been destined to fail even without the addition that where atrocities were revealed, not only was the suffering of the victims to be acknowledged, but, in deserving cases, reparations were to be provided to the victims. Those who watched the proceedings around the country and then interviewed those who had testified generally found that truth was not a major concern since the witnesses were only too well aware of the attacks on themselves: their concern was with the future, with putting things right as far as money could provide a pension for those who had lost limbs or training or education for themselves and their children. This was how they saw healing the wounds of the nation and reclaiming their human worth. They were very little concerned with the notion of providing a channel for the perpetrators of atrocities to expiate their guilt and chasten their consciences as suggested by UNAMSIL (2001), nor did they agree with the notion of a national catharsis based on truth telling and respectful listening. Overall, research by WANEP would strongly suggest that the highly selective TRC in Sierra Leone has done more to increase levels of political cynicism amongst the general populace than to foster reconciliation (Wachira et al. 2014).

One of the most important reasons why TRCs fail is because they promise too much. Victims expect, want, need reparations. The poorer the country the more reparations are needed and the less likely the country is to be able to pay them. Field work in Sierra Leone produced a series of complaints "We cannot eat truth", "I suffered and now my children need food and medicine". Amputees were very clear that they would forgo truth to get cash. Morocco could afford and paid significant reparations in sums such as \$20,000, which is almost seven years' income according to the per capita GNI. South Africa paid almost \$4,000 to the families of victims. If a country cannot afford to pay reparations beyond what "can be eaten in a day" it appears to be gratuitously cruel to offer a promise that is most unlikely to be met.

DEMOCRATIC REPUBLIC OF THE CONGO: A MATTER OF TIMING

Back in 1991 President Mobutu agreed to hold a National Sovereign Conference (akin to a TRC) led by Bishop Monsengwo Pasinya. Mobutu then boycotted his own conference because he did not want himself and his collaborators to face the truth.

The 2003 peace agreement for the DRC included a TRC as one of the institutions of the democratic government and its transition [the Congo has since had the 2009 and 2013 peace agreements]. The TRC was signed into law as law 18 of

2004 by President Joseph Kabila. This TRC was designed as a “forum for dialogue and unification of the Congolese people by persuasion instead of constraint, but” concluded Commission President Bishop Jean-Luc Ndong: “ended up mainly managing pre-electoral, electoral and post electoral conflicts and reconciliation of political and military actors”. In another speech Bishop Jean-Luc explained that the TRCs objectives were to re-establish the truth, promote peace, justice, reparation, forgiveness, and reconciliation in order to consolidate national unity. This was to include accompanying Congolese citizens in the transition; preventing and managing conflict by mediation; establishing the truth about political, social and economic violations that happened in the DRC between 1960-2003; leading efforts to heal trauma; and re-establishing trust between Congolese ethnic communities and encourage peaceful cohabitation and eradicate tribalism, regionalism, intolerance, exclusion, and hate in all forms. These were all too clearly vastly ambitious aims.

Justice in the DRC is “mainly accessible to and protects the powerful” says Africa Faith and Justice Network [AFJN], a collaboration of Catholic missionaries. On the 49th anniversary of independence in June 2009, President Joseph Kabila said: “Today. Justice is itself on the bench of the accused.. It is time for agents of justice to choose their camp either serve or more martyrize a people already ravaged and tested by years of conflict and violence”. The Catholic Bishops took up the theme “The weakening of the state’s authority is mainly felt by the people in our neighbourhoods and villages where assassinations, rape and robbery occur without punishment ... “. For many years the Congolese people have been calling for justice to restore state authority and the people’s rights but this has yet to materialize.

AFJN asks: “Can the Congo set the clock forward without setting it back and correct(ing) the mistakes that have been made ? Can it deal with more than three decades of dictatorship followed by 13 years of war that claimed approximately 6 million lives ? “ This 6 million figure includes both deaths directly due to fighting and deaths which it is estimated would not have occurred if food supplies and health services had not been interrupted by the war. Clearly, such estimates depend on many uncertain assumptions and may be highly inaccurate.

The reality was that the Congo TRC had been an abject failure, as the Chair Bishop Jean-Luc admitted in Goma in 2008, at yet another peace conference. The Bishop blamed politics, especially the fact that the transitional government included warlords and members of the former dictator’s regime who fought off the TRC by violating its independence and its financial autonomy.

The international community was also unsupportive. This was not because they disapproved of the idea of the TRC, but of its timing. Diplomats and international experts predicted that it would be close to impossible to carry out investigations in the Kivu provinces where fighting was still active and that those in power would not allow the truth about their complicity to be told and would withhold their collaboration because they had nothing to gain from the truth.

It is a rare occasion where people who have lived through civil war have been asked about their priorities for life and justice. A survey of people living in the

eastern Congo, a region which has seen as much civil war as any where and which has become known as the worst place in the world for the systematic implementation of mass rape as a deliberate strategy of war asked respondents to name their top three priorities (so the totals add to more than 260%) yet if every one of the responses relating to justice, reconciliation and reform are added together the total comes to less than 10% whereas the desires for peace and security top the list for 85% of respondents (Vinck et al. 2008). Pragmatically more people want seeds and farming tools than want justice. You cannot eat justice. This is a fact which international lawyers, who have never gone hungry, ignore at their peril.

MOROCCO: A ROYAL ARAB COMMISSION

The Moroccan Equity and Reconciliation Commission stands out as being the only commission appointed by a monarch to date and the first commission to be appointed in an Arab country. [Negotiations are currently underway for Tunisia's Truth and Dignity Commission]. Established by King Mohammed VI following public pressure, the Moroccan Commission lasted twelve months from late 2004 to late 2005. It was to inquire into the "years of lead" (*les années de plomb*) in which secret detentions, arbitrary arrests and disappearances of anti-monarchists had become common practice. Its mandate was to investigate forced disappearances and arbitrary detention between independence in 1956 and the death of Hassan II in 1999 and to rule on reparation requests. Although the Commission had only one woman among its sixteen members, five of the commissioners were former political prisoners. The Commission's Report determined the fate of 742 individuals and the role of state systems of violence but did not name names. Some 9,779 victims were recommended for financial, medical and psychological assistance and some communities were recommended for communal reparations. In total 23,676 people received compensation for human rights abuses to a total of US \$85 million. In many ways, this Commission was closer to the original post-dictator Latin American Truth Commissions than to the TRCs of sub-Saharan Africa. It made no mention of Western Sahara and the massive abuses which had occurred there.

THE KENYAN TRUTH JUSTICE AND RECONCILIATION COMMISSION

The Kenyan Truth, Justice and Reconciliation Commission (TJRC) was appointed in 2009 in the wake of the violence which followed the highly disputed 2007 Presidential Election which resulted in some 1,300 deaths and the displacement of some 350,000 people. The Commission of Inquiry into the Post-Election Violence (the Waki Commission) had already recommended the formation of a Special Tribunal for Kenya to try the people suspected of bearing criminal responsibility for the post-election violence (PEV) . As this did not happen, the International Criminal Court stepped in at the time when the TJCR also was being established. Unsurprisingly, many "Kenyans viewed the TJRC as a ploy by those in government to shield the merchants of impunity from criminal prosecution" (Makiska 2014:iv). The fact that its mandate covered events from December 1963 to February 2008 seemed to some to be a blatant attempt to bury the significant of the PEV. The TJRC also faced the problem that its Chair: Ambassador Bethuel Kiplagat was surrounded by controversy as he had been in

government employ during some of the period in question and had been accused of human rights violations. A tribunal to examine these claims made no clear findings and he stayed on. The Deputy Chair: Ms Betty Murungi eventually resigned in protest. The TJRC lasted for four years suffering the while from financial problems and a lack of political support from the Government. The general feeling is now that “the violence may have ended on the streets but the hatred remains in the hearts of men” (Makiska 2014: 1) This Commission was unusual in being appointed after post-election violence rather than out right fighting between rebels and government.

In the end both international development agencies and Kenyan civil society organizations came to distance themselves from the TJRC even though they had been responsible for funding it and campaigning for its appointment. Suto Masika (2014) has presented a highly nuanced and critical account of the TJRC arguing that there was no true political support for the Commission amongst those of the elite who mattered. This was evident in the way the release of its final report kept being delayed for reasons “reeking of political mischief” so that it would not appear before the general elections of 2013 Thus its objectives to “promote peace, justice, national unity, healing, and reconciliation among the people of Kenya” faded away and remained unfulfilled despite the conduct of healing and reconciliation forums across the country.

George Wachira co-founded Concerned Citizens for Peace (CCP) in the wake of the post-electoral violence in Kenya. He is now a peace policy advisor with UNDP. He summarizes his research thus: “the major purpose of TJ [Transitional Justice] should be the restoration of faith in the rule of law through reformation of institutions, re-affirmation of constitutional rights, and justice for those who have been wronged. If we achieve these goals, we increase the possibilities for other outcomes such as healing and reconciliation. I understand reconciliation as a long process and a culmination of other processes that may include the victim’s acceptance of what happened, encounter with and/or acknowledgement by the perpetrators, assurance of non-recurrence, recovery from the effects of the violations, material restitution, etc. I therefore feel we should treat with caution the promise of ‘reconciliation’ contained in some of the ephemeral mechanisms of TJ such as truth commissions. As a firm believer in the possibilities of reconciliation, and after research in five countries, I make the point that in many ways truth commissions as they are unfolding in Africa are creating scepticism about reconciliation.” Once again the expectations of what transitional justice involves and what it might be expected to deliver are overwhelming. Given the dire circumstances of post-conflict societies in Africa, more modest objectives are more likely to be rewarded by success and the best should not be allowed to be the enemy of the good. Civil society, clergy and lawyers all tend to argue in terms of absolutes, when the ordinary woman or man in the village would benefit from much more pragmatism in the search for truth, justice and peace.

CONCLUSION

An earlier draft of this paper was tentatively titled: “Some Failed Truth and Reconciliation Commissions”. As the discussion above demonstrates, there have been a number of African truth commissions which have been failures even by

the simple measure of not even achieving the official publication of their reports. Such Commissions may have found a close approximation to the forensic truth, but this has proved to be unacceptable to their political masters who are content with the existing system of human rights abuses staying in place so long as they are able to back the perpetrators and resist any chance of becoming victims. This is all a very long way away from any form of reconciliation at either the national or the individual level. Belief in reconciliation requires faith, in many cases religious faith but in any case faith in the restorative power of the truth. The success of Truth and Reconciliation Commissions, even in the case of the quintessential South African TRC, is also a matter of faith rather than evidence. The corollary of this is that anyone advocating yet one more TRC in a post-conflict situation in Africa should be morally bound to make a very clear assessment of two risks. The first risk is that the TRC will simply fail; it will gather information, raise expectations and then be shelved because its findings and/ or recommendations are unacceptable to the government of the day. The second risk is that the TRC will actually make matters worse. This may happen because one side or the other finds the results so unacceptable that they take up violent action again whether just by threatening the lives of the Commissioners as in Uganda or by resuming full scale fighting as in the Central African Republic. Or the failure of the TRC may be much more low key but still a failure as where the report is perceived as being politically biased (as in Ghana, Liberia or Sierra Leone); or because of the difficult issue of having promised too much, especially in relation to reparations for the survivors of abuses. Where people are hungry and in deep poverty, food and basic physical security take first priority. Even when people are concerned with human rights, will their first priority be to revisit the past or to secure the future? Did Namibia make the right choice in emphasizing mechanisms to protect human rights for the future rather than a backward looking TRC? Whatever its level of success, the South African TRC was designed to address an unique problem in an unique context which is not replicable elsewhere. Of the other truth commissions discussed above, arguably the most successful was the Moroccan Equity and Reconciliation Commission because it had modest aims; was fully backed by its political father who was prepared to consider constitutional changes which lessened his power; embraced former political prisoners as Commissioners and was able to ensure the payment of significant sums of reparations. Again these are conditions which it would be difficult to replicate elsewhere. So African governments, international donors and civil society groups considering the potential benefits and costs of the appointment of a new TRC should carefully consider the factual truth of the claim "no peace without justice".

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